



## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

### EXHIBIT "A" TO RESOLUTION 24- , ADOPTED 12/17/2024

**TO:** Members of the Authority

**FROM:** Lance B. Landgraf, Jr., Land Use Hearing Officer

**COPY:** Eric Scheffler, Executive Director  
Maisha Moore, Deputy Executive Director

**SUBJECT:** **Hearing Officer's Report and Recommendation**  
**Application #2024-09-3705**  
**Applicant: Lina Hong**  
**142 S. Bellevue Avenue**  
**Block 36, Lot 77**  
**Atlantic City, NJ**  
**Resort Commercial District (RC)**  
**Certificate of Nonconformity**

**DATE:** November 27, 2024

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On November 07, 2024, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Lina Hong (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for two residential apartments at 142 Bellevue Avenue, Lot 77 in Block 36, located in the RC District.

The Certificate of Non-Conformity would certify that the residential use that existed lawfully prior to a zoning change that rendered the use non-conforming and permit it to continue on the subject property.

During the hearing, the Applicant presented evidence and testimony to explain the history of the use. Specifically, the Applicant provided evidence and testimony that the structure contains a two-family residential dwelling, lawfully existed prior to the adoption of the current zoning ordinance, and that such use has been continuous and was not abandoned. Therefore, as more fully outlined



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below, the Applicant has met its burden for the relief requested under the Municipal Land Use Law and the Hearing Officer recommends that the application be approved by the Authority.

### **INTRODUCTION**

Application Information:  
142 Bellevue Avenue

A hearing on the Application was conducted in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and P.L. 2011, c. 18.

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the property located at Block 36, Lot 77 in the City of Atlantic City. The property is improved with an existing two-family structure, where such two-family residential use is no longer permitted in the zoning district.

Relief Requested

Certificate of Nonconformity pursuant to N.J.S.A. 40:55D-68.

Exhibits

A-1 Application materials

B-1 Review memo from Robert L. Reid, AICP, P.P., dated September 13, 2024.

### **FINDINGS OF FACT**

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the property located at Block 36, Lot 77 in the City of Atlantic City. The property is improved with an existing two-family dwelling, where such two-family residential use is no longer permitted in the zoning district.

The Applicant asserted the following based on the documents submitted in connection with the application:

- Application Form for Certificate of Non-Conformity, dated 09-09-2024;
- Deed dated 08/09/2024;
- A H Mueller Map Atlas, Plate 6, dated 1908;
- Sanborn Map Company Atlas, Plate 7, dated 1921, updated 1926;

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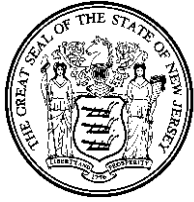
- Ord. # 34 of 1929 - Building Zone Ordinance (First development ordinance for Atlantic City)
- Building Zone Map, dated 01-01-1950, supplement to Building Zone Ordinance (Ord #34 of 1929);
- Sanborn Map Company Atlas, Plate 7, dated 1952, updated 1964;
- Property Record Card assessment records, dated 1961 to 1982;
- Ord. # 23 of 1977 - Interim Development Ordinance.
- Ord. # 27 of 1979 – Land Use Ordinance
- Sanborn Map Company Atlas, Plate 7, dated 1997;
- AC Certificate of Land Use Compliance dated 11/16/2005;
- Property Record Card assessment records, updated 12/20/2005;
- Property Survey dated 08/14/2024;
- Property Record Card assessment records, dated 07/29/2024.

Robert L. Reid, AICP, PP was sworn and provided testimony on behalf of the Authority. Mr. Reid referenced his review memo dated September 13, 2024, and indicated that there is adequate evidence within the Applicant's evidence and research of the public record documents, demonstrate that the building was originally a single-family dwelling from before 1908 to 1961 (over 53 years) when the Property Record Cards first references 2 units. The 3-story brick building, over a basement, was subsequently modified from 2 units to 3 units sometime after 1982 and before 2005. This is according to a Certificate of Land Use Compliance that was issued 11/16/2005, and a Property Record Card assessment record, updated 12/20/2005 referencing 3 living units. It appears the building was modified into a 3 unit dwelling after 1977 with no record of land use approvals being granted. The building was a 3-story brick dwelling before the first land development ordinance (Building Zone Ordinance) was adopted in 1929, and was modified into a 2 unit before parking requirements went in effect in 1977.

It appears that the residential use existed before 1977 and before N.J.A.C. 19:66 was in effect on 01-02-2018, which rendered such use nonconforming.

### **CONCLUSIONS OF LAW**

The Applicant seek a Certificate of Nonconformity pursuant to the Municipal Land Use Law. A nonconforming use is one which existed on the property prior to the adoption of a zoning ordinance, but which the ordinance does not now permit in the particular zone. N.J.S.A. 40:55D-5. The Municipal Land Use Law provides in part that any nonconforming use or structure existing



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at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied. N.J.S.A. 40:55D-68.

The burden of proving the existence of a nonconforming use is always on the applicant asserting such use. Ferraro v. Zoning Bd. of Keansburg, 321 N.J. Super. 288, 291 (App. Div. 1999); Weber v. Pieretti, 72 N.J. Super. 184, 195 (Ch. Div. 1962), aff'd 77 N.J. Super. 423 (App. Div. 1962), cert. den. 39 N.J. 236 (1963); Grundlehner v. Dangler, 51 N.J. Super. 53 (App. Div. 1958), aff'd 29 N.J. 256 (1959). The Applicant must show through testimony and documentary evidence what the use, including its character, extent, intensity, and incidents, on the property was at the time of the adoption of the zoning ordinance which rendered it prohibited. After the Applicant has established that the use was lawful at the time of the adoption of zoning, such use must be shown to have been continuous and not have been abandoned during the period in which it was made nonconforming. See Villari v. Zoning Bd. of Adj., 277 N.J. Super. 130, 135 (App. Div. 1994); Poulathas v. Atlantic City Zoning Bd. of Adj., 282 N.J. Super. 310, 313 (App. Div. 1995); Camara v. Bd. of Adj. of Tp. of Belleville, 239 N.J. Super. 51, 57 (App. Div. 1990); Borough of Saddle River v. Bobinski, 108 N.J. Super. 6, 13 (Ch. Div. 1969); Cox, Zoning and Land Use Administration, §11-3, 302 (2014).

The Hearing Officer concludes that the Applicant's evidence and testimony demonstrate that the use of the subject property as a structure comprised of one residential unit, lawfully existed until the amendment of the zoning district regulations in 1977, which rendered the residential use nonconforming. The evidence and testimony further demonstrate the continuation of such use from such time to present, and that such use was not abandoned. Accordingly, the Applicant has satisfied the legal requirements for the grant of the requested relief.

### **RECOMMENDATION**

For all of the foregoing reasons, the Hearing Officer recommends that the application for a Certificate of Nonconformity be approved. The grant of approval of this Application shall be expressly conditioned upon the Applicant satisfying all representations made by the Applicant or by others on its behalf during the course of the hearing on this matter before the Hearing Officer, all applicable requirements of the city of Atlantic City Land Use Ordinances, or other City Ordinances, and the requirements of any City agency, board or authority. Any approval granted in accordance herewith shall be further expressly conditioned upon the Applicant obtaining all other necessary governmental approvals, and compliance with all Federal, State and local laws.