

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT
AUTHORITY APPROVING A CERTIFICATE OF NON-CONFORMITY
PURSUANT TO N.J.S.A. 40:55D-68 FOR THE PROPERTY LOCATED AT
142 S. BELLEVUE AVENUE, BLOCK 36 LOT 77, IN THE CITY OF
ATLANTIC CITY UNDER APPLICATION #2024-09-3705**

WHEREAS, pursuant to P.L. 2011, c. 18, as amended (the “Act”), the Casino Reinvestment Development Authority (the “Authority”): (i) designated the Atlantic City Tourism District by Resolution 11-25, adopted April 19, 2011; (ii) established the Land Use Regulation and Enforcement Division to, among other matters, hear applications for development in the Tourism District by Resolution 11-33, adopted April 19, 2011; and (iii) adopted the master plan, zoning and land use ordinances and regulations, and zoning maps approved by the City by Resolution 11-34, adopted April 19, 2011; and

WHEREAS, pursuant to Resolution 12-14, adopted February 1, 2012, the Authority adopted the “New Jersey CRDA Atlantic City Tourism District Master Plan” prepared by Jones Lang LaSalle, LLC and dated February 1, 2012 (the “Master Plan”) (as affirmed and readopted pursuant to Resolution 12-23, adopted February 21, 2012), subject to further comment and revision, which master plan shall become effective upon the adoption of design, development and land use regulations on January 2, 2018; and

WHEREAS, Lina Hong (the “Applicant”), seeks a Certificate of Non-conformity pursuant to N.J.S.A. 40:55D-68 for the subject property located at 142 S. Bellevue Avenue, Block 36, Lot 77 on the Tax Map of Atlantic City, located in the Resort Commercial (RC) Zoning District; and

WHEREAS, on November 7, 2024, the Authority’s Land Use Regulation and Enforcement Division convened a public hearing on Application 2024-09-3705 in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and the Act, and subsequently prepared and delivered a Hearing Officer’s Report and Recommendation dated November 27, 2024, incorporated herein by this reference and appended hereto as Exhibit “A”; and

WHEREAS, the Authority intends to adopt the findings, conclusions, and recommendations of the Hearing Officer, as detailed in the Report dated November 27, 2024.

NOW THEREFORE, BE IT RESOLVED by the Casino Reinvestment Development Authority that:

1. The above recitals are incorporated herein, as if set forth in full.
2. Based on the record in this matter, a Certificate of Non-conformity pursuant to N.J.S.A. 40:55D-68 under Application 2024-09-3705 is hereby approved in accordance with the Hearing Officer’s Report and Recommendation dated November 27, 2024.

3. A copy of this Resolution shall be immediately transmitted to the Governor. This Resolution shall take effect immediately, but no action authorized herein shall have force and effect until the earlier of the passage of ten (10) days, Saturdays, Sundays, and public holidays excepted, after the delivery of the copy to the Governor, or the Governor's approval.

I hereby certify that this document is a true and correct copy of Resolution 24-153 of the Casino Reinvestment Development Authority.

Michael Beson
MICHAEL BESON, SECRETARY

MEETING OF DECEMBER 17, 2024



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

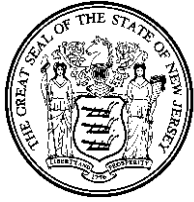
SUBJECT: **Hearing Officer's Report and Recommendation**
Application #2024-09-3705
Applicant: Lina Hong
142 S. Bellevue Avenue
Block 36, Lot 77
Atlantic City, NJ
Resort Commercial District (RC)
Certificate of Nonconformity

DATE: November 27, 2024

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

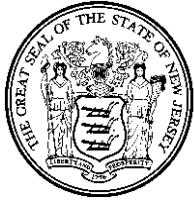
The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the property located at Block 36, Lot 77 in the City of Atlantic City. The property is improved with an existing two-family dwelling, where such two-family residential use is no longer permitted in the zoning 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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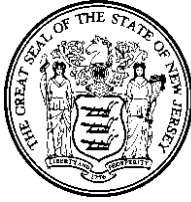
at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied. N.J.S.A. 40:55D-68.

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), certif. 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.



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Review Memorandum

TO: Lance Landgraf, AICP, PP, Land Use Hearing Officer

FROM: Robert L. Reid, AICP, PP, Land Use Regulation Officer

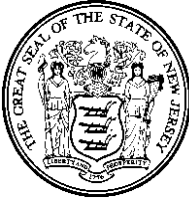
COPY: Applicant, Scott Collins, Esq., File

SUBJECT: Certificate of Nonconformity Request for the
existing 3 units to be converted back to 2 units.
Review Application and Support Documents
Application #2024-09-3705
Applicant: Lina Hong
142 S Bellevue Avenue
Block 36, Lot 77
Atlantic City, NJ

DATE: September 12, 2024

The applicant, Lina Hong has submitted an application to the Casino Reinvestment Development Authority "Authority" requesting a Certificate of Non-Conformity for existing 3 units to be converted into 2 residential units at 142 S Bellevue Avenue, Lot 77 in Block 36, located in the RC District. The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-68) for two residential apartments over first floor commercial use.

The Municipal Land Use Law provides in part that any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied. (NJSA 40:55D-68) The owner can submit an application to the city for a Certificate of Land Use Compliance. A nonconforming use is one which that lawfully existed on the property prior to the adoption of a zoning ordinance but which the ordinance does not now permit in the particular zone. (NJSA 40:55D-5)



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Evidence List / Documents submitted and/or researched to support the request for Certificate of Non-Conformity:

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;
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.

The documents listed above have been reviewed and the following is offered:

Plate 6 in A.H. Mueller Atlas depicts a brick row home in 1908.

Plate 7 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1921, updated 1926, depicts 3 Story brick dwelling.

This was before the Building Zone Ordinance was adopted in 1929. According to the Building Zone Map, dated 01-01-1950, the subject property was located in Business No. 2 zone.

Ord. # 34 of 1929 permitted commercial and apartments among other types of residential uses in Business No. 2 zone. The ordinance was silent on parking requirements.

Plate 7 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1952, updated 1964, depicts 3 Story brick dwelling.

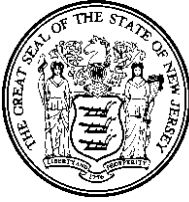
Property Record card (Building Record card reverse) dated 1961 through 1982 has two family use box checked off. Plumbing box checked with 2 bathrooms and 2 kitchen sinks.

Ord. # 23 of 1977 - Interim Development Ordinance is the first ordinance to require parking for each dwelling unit.

Ord. # 7 of 1979 – Land Use Ordinance is second ordinance to require parking for each dwelling unit.

Plate 7 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1997, depicts 3 Story brick residence.

AC Certificate of Land Use Compliance (CLUC) dated 11/16/2005 issued for a 3 family.



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Property Record Card assessment records, updated 12/20/2005 includes 3 living units.

Property Record Card assessment records, dated 07/29/2024 indicates 2 units.

Property Survey dated 08/14/2024 indicating 4 story Masonry Dwelling.

It should be acknowledged that the map atlases indicating dwelling were based on exterior inspection only, and not an interior inventory of units as the common practice with tax assessment inspections.

The Applicant must meet the burden of proof for the relief requested. The Applicant has the obligation to present evidence to explain the history of the use. Specifically, the Applicant must provide evidence that the non-conforming use lawfully existed prior to the adoption of Ordinance and/or State Regulation which rendered the use nonconforming. Applicant must also provide evidence that such use has been continuous, unchanged and was not abandoned.

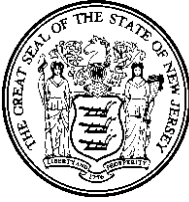
The Applicant must meet the burden of proof for the relief requested under the Municipal Land Use Law in order for the Hearing Officer to recommend that the application be approved by the Authority.

The applicant asserts that the property lawfully existed as a commercial use on the 1st floor and two apartments on the 2nd floor from 1961 and desires to maintain the commercial unit on the 1st floor the two apartments on the 2nd floor.

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 two units. The three-story brick building, over a basement, was subsequently modified from two units to three units before 2005 according to a Certificate of Land Use Compliance (*Foot note 1) that was issued 11/16/2005 and a Property Record Card assessment record, updated 12/20/2005 referencing 3 living units. In 1977 when the first parking requirements went into effect. It appears the building was modified into a three-unit dwelling after 1977 with no record of land use approvals being granted. The building was a three-story brick building before with one unit before the first land development ordinance (Building Zone Ordinance) was adopted in 1929 and was modified into a two-unit before parking requirements went in effect in 1977. There is no record of a parking variance being granted to allow the third unit after 1977. There is no record of a construction permit for the third unit.

The documentary evidence provided by the Applicant appears to be sufficient to consider the granting the requested relief for the existing three units to be converted into two units. Such a conversion from 3 units to 2 units is consistent with *Poulathas v. Atlantic City Zoning Board*, 282 NJ Super. 310 (NJ Super. 1995) – 660A.2d 7, Decided June 28, 1995.

The Applicant's evidence and research of the public record documents, demonstrate that the property building was originally a three-story brick dwelling. According to public records reviewed (from before 1961 to 2005) the building included two units.



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The building was a three-story brick structure at the time the first land development ordinance (Building Zone Ordinance) was adopted in 1929. The three-story brick structure included two apartments since 1961 before parking requirements went in effect in 1977. The three-story brick structure including the two apartments lawfully existed before 1977 and, at the time N.J.A.C. 19:66 was in effect on 01-02-2018, which rendered such use nonconforming.

For all of the foregoing reasons, the Land Use Regulation Enforcement Officer recommends the request for a Non-Conformity Use Certification for two apartments use be considered. Should the Authority grant of approval of this Application, it should be expressly conditioned upon all applicable requirements of the city of Atlantic City Code, NJAC 19:66 Land Use Regulations, 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. This includes providing architectural plans prepared by a licensed architect for the structure as part of the requirement to secure a Certificate of Land Use Compliance.

*Foot note 1 - It should be noted that the Land Use Administrator had no authority to issue a CLUC for a 3 family use. The Certificate of Land Use Compliance for the third unit and it should be considered invalid without the prerequisite variance relief required. (Case Law - Chelsea Neighborhood Association v. City of Atlantic City; Dept. of Planning, Div. of Land Use Administration, and Jay Fiedler, Administrator. The Order for Summary Judgement dated 11/13/1992 (DOCKET NO. ATL-L-001994-92 – PW).



DATE: DECEMBER 17, 2024

LINA HONG - RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY APPROVING A CERTIFICATE OF NON-CONFORMITY PURSUANT TO N.J.S.A. 40:55D-68 FOR THE PROPERTY LOCATED AT 142 S. BELLEVUE AVENUE, BLOCK 36 LOT 77, IN THE CITY OF ATLANTIC CITY UNDER APPLICATION #2024-09-3705

Motion: **MH**

Second: **JP**

Michael Beson	<u>Y</u>
Chris Brown <i>for the DCA Commissioner</i>	<u>Y</u>
Daniel Cosner	<u>Y</u>
Christopher Glaum <i>for the State Attorney General</i>	<u>Absent</u>
Michael Hanley	<u>Y</u>
Michael Laughlin	<u>Y</u>
Brett Matik	<u>Absent</u>
William Mullen	<u>Y</u>
Paulina O'Connor	<u>Y</u>
James Plousis	<u>Y</u>
Mayor Marty Small, Sr.	<u>Absent</u>
William Sproule	<u>Absent</u>
Ryan Feeney <i>for the State Treasurer</i>	<u>Y</u>
Joseph Tyrrell	<u>Y</u>
Chairman Mo Butler	<u>Absent</u>