

**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  
321 ATLANTIC AVENUE, BLOCK 124, LOT 58, IN THE CITY OF  
ATLANTIC CITY UNDER APPLICATION #2024-08-3700**

**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**, First Investment Holdings LLC (the “Applicant”), seeks a Certificate of Non-conformity pursuant to N.J.S.A. 40:55D-68 for the subject property located at 321 Atlantic Avenue, Block 124, Lot 58 on the Tax Map of Atlantic City, located in the Lighthouse 1 (LH-1) Zoning District; and

**WHEREAS**, on September 19, 2024, the Authority’s Land Use Regulation and Enforcement Division convened a public hearing on Application 2024-08-3700 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 January 13, 2025, 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 January 13, 2025.

**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 2024-08-3700 is hereby approved in accordance with the Hearing Officer’s Report and Recommendation dated January 13, 2025.

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 25-18 of the Casino Reinvestment Development Authority.

*Michael Beson*  
MICHAEL BESON, SECRETARY

**MEETING OF FEBRUARY 18, 2025**



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

### EXHIBIT "A" TO RESOLUTION 24- , ADOPTED 02/18/2025

**TO:** Members of the Authority

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

**COPY:** Eric Scheffler, Executive Director

**SUBJECT:** Hearing Officer's Report and Recommendation  
**Application #2024-08-3700**  
**Applicant: First Investment Holdings LLC**  
**321 Atlantic Avenue**  
**Block 124, Lot 58**  
Atlantic City, NJ  
Certificate of Nonconformity

**DATE:** January 13, 2025

---

On September 19, 2024, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, First Investment Holdings LLC has submitted an application to the Casino Reinvestment Development Authority "Authority" requesting a Certificate of Non-Conformity for two residential apartments over first floor commercial use at 321 Atlantic Avenue, Lot 58 in Block 124, located in the LH-1 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 Certificate of Non-Conformity would certify that the residential uses existed lawfully prior to a zoning change that rendered the use non-conforming and permit it to continue on the property.

During the hearing and in the application documents, the Applicant presented evidence and testimony to explain the history of the use. Specifically, the Applicant provided evidence and testimony that the structure with a residential uses lawfully existed prior to the adoption

Page 1 of 4

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



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

of the current zoning ordinance, and that such use has been continuous and was not abandoned. Therefore, as more fully outlined 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:  
321 Atlantic Avenue  
Block 124, Lot 58

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 124, Lot 58 in the City of Atlantic City. The property is improved with an existing structure comprised of a first-floor commercial use with two residential apartments above where such 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 11, 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 124, Lot 58 in the City of Atlantic City. The property is improved with an existing structure comprised of a first-floor commercial use with two residential apartments above where such 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:

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



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

- Application Form for Certificate of Non-Conformity, dated 08-29-2024;
- Deed dated (11/16/2023 Recorded)
- A H Mueller Map Atlas, Plate 1, dated 1908;
- Sanborn Map Company Atlas, Plate 38, 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 38, dated 1952, updated 1964;
- Property Record Card assessment records, dated 06-07-1961 to 1982;
- Ord. # 23 of 1977 - Interim Development Ordinance.
- Ord. # 27 of 1979 – Land Use Ordinance
- Certificate of Development Plan Conformance from AC Housing Authority, dated 05/15/1991;
- Sanborn Map Company Atlas, Plate 38, dated 1997;
- Land Title Survey dated 03/03/2024.

Robert L. Reid, AICP, PP was sworn and provided testimony on behalf of the Authority. Mr. Reid referenced her review memo dated September 11, 2024 and indicated that there is adequate evidence within the application materials and public record to establish that 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. It appears that the three-story brick structure including the two apartments 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.

### **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 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.

Page 3 of 4

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



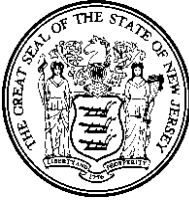
## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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 a commercial first-floor with two residential apartment units above lawfully existed until the amendment of the zoning district regulations in 1979, 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.



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

### 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  
Commercial on Ground floor with Apartments above  
Review Application and Support Documents  
**Application #2024-08-3700**  
**Applicant: First Investment Holdings LLC**  
321 Atlantic Avenue  
Block 124, Lot 58  
Atlantic City, NJ

**DATE:** September 11, 2024

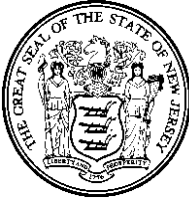
---

The applicant, First Investment Holdings LLC has submitted an application to the Casino Reinvestment Development Authority "Authority" requesting a Certificate of Non-Conformity for two residential apartments over first floor commercial use at 321 Atlantic Avenue, Lot 58 in Block 124, located in the LH-1 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)

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

- Application Form for Certificate of Non-Conformity, dated 08-29-2024;
- Deed dated (11/16/2023 Recorded)
- A H Mueller Map Atlas, Plate 1, dated 1908;
- Sanborn Map Company Atlas, Plate 38, 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 38, dated 1952, updated 1964;



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

Property Record Card assessment records, dated 06-07-1961 to 1982;  
Ord. # 23 of 1977 - Interim Development Ordinance.  
Ord. # 27 of 1979 – Land Use Ordinance  
Certificate of Development Plan Conformance from AC Housing Authority, dated 05/15/1991;  
Sanborn Map Company Atlas, Plate 38, dated 1997;  
Land Title Survey dated 03/03/2024.

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

Plate 8 in A.H. Mueller Atlas depicts a brick structure not identified in 1908.

Plate 38 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 38 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1952, updated 1964, depicts 3 story brick building labeled "store".

Property Record card (Building Record card reverse) dated 06-07-1961 through 1982 has two apartments with store use box checked off. Plumbing box checked with 2 bathrooms and 2 kitchens.

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

Ord. # 27 of 1979 – Land Use Ordinance is second ordinance to require parking for each dwelling unit.

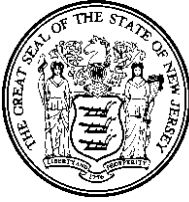
Certificate of Development Plan Conformance from AC Housing Authority, dated 05/15/1991 is an inventory of uses in the building which includes 1<sup>st</sup> floor commercial and residential on 2<sup>nd</sup> and 3<sup>rd</sup> Floors.

Plate 38 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1997, depicts 3 story brick building labeled "store".

It should be acknowledged that the map atlases indicating store 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.





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

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 first floor and two apartments on the 2<sup>nd</sup> and 3<sup>rd</sup> floors from 1961 and desires to maintain the commercial unit on the first floor the two apartments on the 2nd and 3rd floors.

The documentary evidence provided by the Applicant appears to be sufficient to consider the granting the requested relief for the two apartments over commercial.

The Applicant's evidence and research of the public record documents, demonstrate that the property building was originally a three-story brick single family dwelling. According to public records reviewed (from before 1952 to present) the building included a commercial unit on the first floor and residential use above.

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. It appears that the three-story brick structure including the two apartments 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 over a commercial 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.



**DATE: FEBRUARY 18, 2025**

**FIRST INVESTMENT HOLDINGS, LLC – 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 321 ATLANTIC AVENUE, BLOCK 124, LOT 58, IN THE CITY OF ATLANTIC CITY UNDER APPLICATION #2024-08-3700**

**Motion: BM**

**Second: MB**

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>Y</u>
Michael Hanley	<u>Y</u>
Michael Laughlin	<u>Y</u>
Brett Matik	<u>Y</u>
William Mullen	<u><b>Absent</b></u>
Paulina O'Connor	<u><b>Absent</b></u>
James Plousis	<u>Y</u>
Mayor Marty Small, Sr.	<u><b>Absent</b></u>
William Sproule	<u>Y</u>
Robert Tighue <i>for the State Treasurer</i>	<u>Y</u>
Joseph Tyrrell	<u><b>Absent</b></u>
Chairman Mo Butler	<u>Y</u>