

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 134 S. BELLEVUE AVENUE, BLOCK 36, LOT 73, IN THE CITY OF ATLANTIC CITY UNDER APPLICATION #2023-11-3557

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, Jasmyn Jacob (the “Applicant”), seeks a Certificate of Non-conformity pursuant to N.J.S.A. 40:55D-68 for the subject property located at 134 S. Bellevue Avenue, Block 36, Lot 73 on the Tax Map of Atlantic City, located in the Resort Commercial (RC) Zoning District; and

WHEREAS, on December 7, 2023, the Authority’s Land Use Regulation and Enforcement Division convened a public hearing on Application 2023-11-3557 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 December 27, 2023 (the “Report), 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 December 27, 2023.

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 2023-11-3557 is hereby approved in accordance with the Hearing Officer’s Report and Recommendation dated December 27, 2023.

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 24-03 of the Casino Reinvestment Development Authority.

Michael Beson

MICHAEL BESON, SECRETARY

MEETING OF JANUARY 16, 2024



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 23- , ADOPTED 01/23/2024

TO: Members of the Authority

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

COPY: Maisha Moore, Interim Executive Director

SUBJECT: Hearing Officer's Report and Recommendation
Application #**2023-11-3557**
Applicant: **Jasmyn Jacob**
134 S. Bellevue Avenue
Block 36, Lot 73
Resort Commercial District - RC
Certificate of Nonconformity

DATE: December 27, 2023

On December 07, 2023, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Jasmyn Jacob (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for an existing structure comprised of two or three single family residential dwelling units where such residential use is no longer permitted in the zoning district. The Certificate of Non-Conformity would certify that the two or three residential uses existed lawfully prior to a zoning change that rendered the use non-conforming and that the uses were continuously operated in the structure and permit them to continue on the 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 with either a two or three-unit residential use lawfully existed prior to the adoption of the current zoning ordinance. However, further investigation by the authority's land use regulation officer revealed that it appeared only two of the units would qualify for the Certificate of Non-Conformity. Therefore, as more fully outlined below, the Applicant's

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

request for the Certificate of Non-Conformity will be limited to two residential dwelling units. The applicant has met its burden for the relief requested for the two residential units under the Municipal Land Use Law and the Hearing Officer recommends that the application be approved by the Authority.

INTRODUCTION

Application Information:

Applicant: Jasmyn Jacob
134 S. Bellevue Avenue
Block 36, Lot 73

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 73 in the City of Atlantic City. The property is improved with an existing three-story structure housing residential use, 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 November 24, 2023

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 72 in the City of Atlantic City. The property is improved with an existing three-story structure comprised of a residential use 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:



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- Application Form for Certificate of Non-Conformity, dated 11-01-2023;
- 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)
- Sanborn Map Company Atlas dated 1949;
- 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 05-18-1961 to 1982;
- Ord. # 23 of 1977 - Interim Development Ordinance.
- Ord. # 27 of 1979 – Land Use Ordinance
- Property Record Card assessment records dated 09-29-1981;
- Sanborn Map Company Atlas, Plate 7, dated 1997;

Robert L. Reid, AICP, PP was sworn and provided testimony on behalf of the Authority. Mr. Reid referenced his review memo dated November 24, 2023 and indicated that there is adequate evidence within the application materials and public record to establish that two of the dwelling units lawfully existed prior to the amendment of the zoning ordinance in 1979.

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.

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

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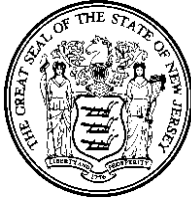
Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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 two residential dwelling units 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 for two dwelling units within the existing structure.

RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the application for a Certificate of Nonconformity be approved, for two dwelling units. 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

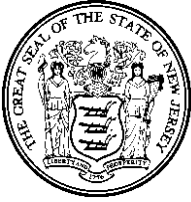
COPY: Applicant, Scott Collins, Esq., File

SUBJECT: Certificate of Nonconformity Request
Review Application and Support Documents
Application #2023-11-3557
Applicant: Jasmyn Jacob
134 S Bellevue Avenue
Block 36, Lot 73
Atlantic City, NJ

DATE: Nov. 24, 2023

The applicant, Jasmyn Jacob has submitted an application to the Casino Reinvestment Development Authority "Authority" requesting a Certificate of Non-Conformity for a three residential unit building at 134 S. Bellevue Avenue, Lot 73 in Block 36. The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-68) for two or three-unit residential dwelling.

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 11-01-2023;
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)
Sanborn Map Company Atlas dated 1949;
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 05-18-1961 to 1982;
Ord. # 23 of 1977 - Interim Development Ordinance.
Ord. # 27 of 1979 – Land Use Ordinance
Property Record Card assessment records dated 09-29-1981;
Sanborn Map Company Atlas, Plate 7, dated 1997;

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

Plate 6 in A.H. Mueller Atlas depicts brick building in 1908.

Plate 7 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1921, updated 1926, depicts a three-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 uses in Business No. 2 zone. as well as residential uses permitted in the residential zones. This included single family, two family and multifamily residential uses. The ordinance was silent on parking requirements.

Sanborn Map Company Atlas dated 1949 depicts three-story brick apts.

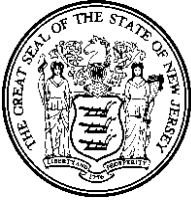
Plate 42 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1952, updated 1964, depicts three-story brick apts.

Property Record card (Building Record card reverse) dated 05-17-1961 through 1982 has two family use box checked off. Plumbing box checked with two bathrooms and two 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.

Property Record card (Building Record card reverse) dated 02-12-1981, updated 1992 indicates two units. Notation in "Built in Appliances" section indicates one kitchen. Notations along margin (using only letters and numbers) indicate three kitchens.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Plate 42 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1997, depicts three-story brick apts.

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

During site inspection on 11-24-2023 the following was inventoried:

Building is a 3-story brick building over basement. Basement was not accessible and appeared to be uninhabitable. Each three levels above the basement had a full bathroom and a common room with just a sink. No oven/cooking range or refrigerator in the building.

Entire building in poor condition and appeared to be uninhabitable.

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.

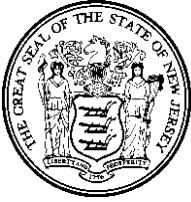
The applicant asserts that the property lawfully existed as two or three-unit dwelling from 1949 and desires to maintain a two or three-unit dwelling.

The documentary evidence provided by the Applicant appears to be sufficient to consider the granting the requested relief for two units, not three units.

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 1949 (over 41 years) when the Atlas first references apts. The three-story brick building, over a basement, was subsequently modified into a two-unit building before 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 Certificate of Land Use (*Foot note 1) being issued or construction permit for the third unit.

However, it does appear that two units 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.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

For all of the foregoing reasons, the Land Use Regulation Enforcement Officer recommends the request for a Non-Conformity Use Certification for a two-unit residential dwelling 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 two-unit building and the requirement to secure a Certificate of Land Use Compliance.

*Foot note 1 - If the Zoning Officer was to have issued a Land Use Certificate for the third unit it would 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)*).

Tally

DATE: JANUARY 16, 2024

JASMYN JACOB – 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 134 S. BELLEVUE AVENUE, BLOCK 36, LOT 73, IN THE CITY OF ATLANTIC CITY UNDER APPLICATION #2023-11-3557

Motion: BM

Second: MH

Paulina Banasiak	<u>Absent</u>
Michael Beson	<u>Y</u>
Sen. Chris Brown <i>for Acting DCA Commissioner</i>	<u>Y</u>
Daniel Cosner	<u>Y</u>
Michael Hanley	<u>Y</u>
Michael Laughlin	<u>Y</u>
Alicia Magee	<u>Y</u>
Brett Matik	<u>Y</u>
William Mullen	<u>Y</u>
James Plousis	<u>Y</u>
Dave Rebeck <i>for the State Attorney General</i>	<u>Absent</u>
Mayor Marty Small, Sr.	<u>Absent</u>
William Sproule	<u>Y</u>
Robert Tighue <i>for the State Treasurer</i>	<u>Y</u>
Joseph Tyrrell	<u>Absent</u>
Chairman Mo Butler	<u>Absent</u>