



MEMORANDUM

Clarke Caton Hintz

Architecture
Planning
Landscape Architecture

100 Barrack Street
Trenton NJ 08608
clarkecatonhintz.com
Tel: 609 883 8383
Fax: 609 883 4044

To: City of Bayonne Zoning Board of Adjustment
From: Brian Slaugh, PP, AICP
Donna Miller, AICP, PP, CFM
Isabel Rodriguez, PP, AICP
Re: **SRL Realty – 78 W 16th Street**
Application Z-25-006
Certificate of Nonconformity
Block 245, Lot 33
78 West 16th Street
R-2, Detached/Attached Residential District
Date: December 15, 2025

1. APPLICATION DESCRIPTION

1.1. **Applicant’s Request.** The applicant seeks a certificate of nonconformity relating to an existing three-story residential building in the R-2 zone. The applicant submitted a statement of the prior owner, dated August 22, 2025, which indicates that the building has been used as a three-unit dwelling since at least 1965, and that it has maintained the same configuration – three stories with one dwelling on each story – since before 1995 when the R-2 zone went into effect. The applicant describes the configuration as a three-bedroom unit on the ground floor, a two-bedroom unit on the second floor, and a three-bedroom unit on the third floor. Each unit has its own electric and gas meters. Whether this should be considered a legally preexisting nonconforming use will depend on whether it can be proven that the building was legally used as a three-unit dwelling prior to 1995, and continued to be after the zoning changed to R-2.



Image of Building Façade from Google Street View.

2. **Property and Use Description.** The subject property consists of a detached, three-story dwelling with frontage on the south side of West 16th Street. The lot is a

John Hatch, FAIA
George Hibbs, AIA
Brian Slaugh, AICP
Michael Sullivan, AICP
Michael Hanrahan, AIA
Mary Beth Lonergan, AICP



SRL REALTY | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

rectangular lot that consists of 4,098 square feet of area (25' x 163.90'). The building was constructed in 1920, as a two and a half story building over a partially subsurface garage, like many of the other existing buildings on the block. At some point the garage level was removed and the door bricked up. The above ground pool and wood deck depicted in the property survey have been removed.

- 2.I. **Neighborhood Context.** The property is located on the south side of West 16th Street between John F. Kennedy Boulevard to the west and Avenue C to the east. The lot is closer to (approximately 200 feet) Avenue C, which is within the R-2 zone. West 16th Street is primarily residential, with housing types primarily consisting of single- and two-family dwellings. Most of the buildings on West 16th Street are of a similar size and scale as the subject property. Avenue C and J.F.K. Boulevard are both two-way roads with four lanes, while West 16th Street is a one-way, west bound street.





3. REVIEW OF REQUEST OF CERTIFICATE OF NONCONFORMITY

3.1. **Overall Comment.** While this office defers to the Board Attorney in advising the Board on the application of relevant criteria for determining whether a certificate of nonconformity should be granted, this report identifies criteria for purposes of establishing a framework for review. Pursuant to *§N.J.S. 40:55D-68*:

“The prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or person interested in any land upon which a nonconforming use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the burden of proof. Application pursuant hereto may be made to the administrative officer within one year of the adoption of the ordinance which rendered the use or structure nonconforming or at any time to the Board of Adjustment...”

As the owner(s) of the property, the applicant(s) may be considered an “other interested party.” Given the length of time since the adoption of the R-2 zone standards, the applicant must apply to the Board of Adjustment, as the Zoning Officer is not authorized to issue a certificate, if the property is eligible.

3.2. **Consideration of the Request.** The land use treatise by Cox and Koenig, *N.J. Zoning and Land Use Administration*, though not having any official status, is often used as a compendium of case law and practice on the administration of land use in New Jersey and in fact is often utilized in court proceedings. Regarding the burden of proof, and elements of proof, the treatise says the following:

- **Burden of Proof¹.** *It is important that the evidence presented to the board establish exactly what the use was at the time of adoption of the ordinance, its character, extent, intensity and incidents. Then, if any question arises in the future by the same or a different owner who may be seeking to extend or substantially modify the use, the record will contain an ample description of the use as it is protected by the statute.*
- **Elements of Proof².** *The proper question presented to the board by one who seeks to obtain a certificate for a nonconforming use is: what was the use which existed on the property in question at the time of the adoption of the zoning ordinance? It is this use which the statute protects, and such use must have been continuous...In determining the status of a purported nonconforming use or structure, the board of adjustment must trace the nonconforming history of the property back to the zoning*

¹ -*ibid.* p. 411-412, §27-2.3.

² -*ibid.*

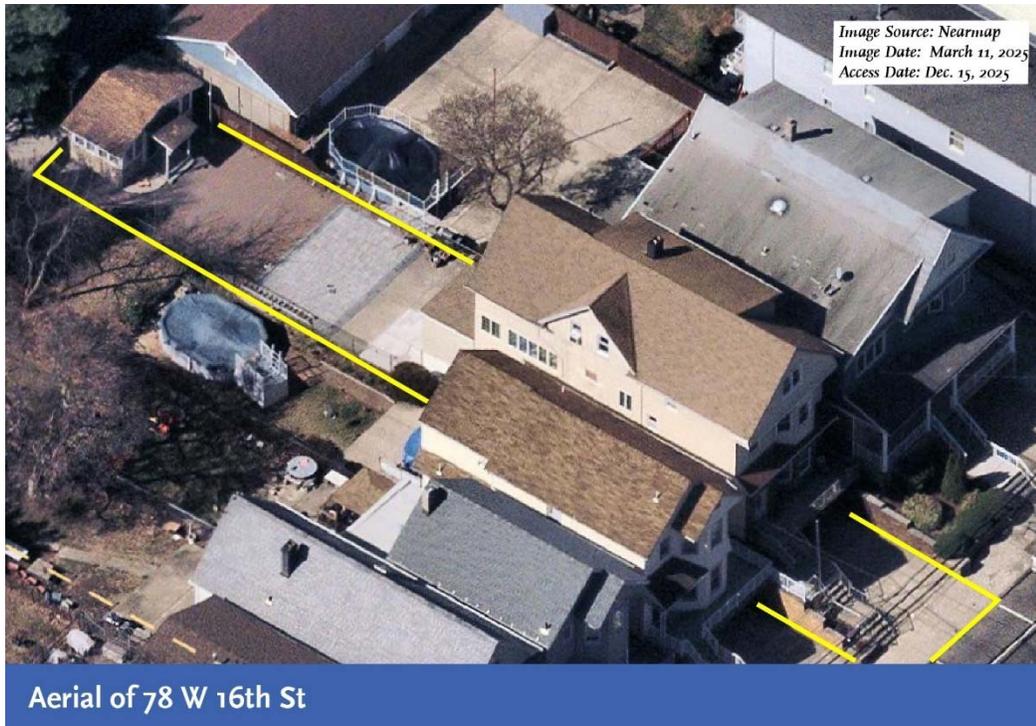


SRL REALTY | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

ordinance in existence at the time the use in question commenced in order to establish that it was in fact conforming when commenced or existed prior to an amendment which made it nonconforming.

If the history of the zoning and use cannot be established, the Board cannot grant a certificate, and the applicant would need to request, in this case, a use variance, pursuant to N.J.S.A. 40:55D-70.d(1).



- 3.3. **Establishment of the R-2 Zone.** The Bayonne Zoning Maps adopted on December 11, 1990 and May 3, 1995 both show that the site was located in the R-2 zone at those times, though it was entitled the “R-2 Low Medium Density Residential” zone. The 1990 Master Plan states on page 136 “*The City’s major residential zone, the R-2 General Residential District, only allows for residential structures of 1 to 6 units.*” It appears that the R-2 zone at that time allowed multi-family dwellings, although it is unclear under what restrictions, such as density or floor area ratio. Just because a multi-family use was permitted at that time, the applicant must prove that its multi-family use was legally conforming to the zone requirements. Ordinance 01-01-19, adopted on March 21, 2001, repealed the entirety of that version of the R-2 zone and replaced it with the “R-2 Detached/Attached Residential” zone that it is in effect today.



SRL REALTY | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

3.4. **Establishment of Existing Building.** The existing building is depicted on the 1912 Sanborn fire insurance map, but not the 1898 one; it is older than noted by the affidavit. The 1912 map indicates the building as a dwelling. According to historic aerials dating back to 1931 when the entire state was aerially photographed by New Jersey show that at least part of the building was constructed as early as 1954 (the 1931 image is blurry and it is difficult to determine if it is the same building and footprint, and as such will not be relied upon). The 1979 aerial, which is the clearest of the aerials until 2002, indicates that the extent of the principal building footprint remained unchanged since at least 1979. Except for the 1912 map, none of these sources indicate the use of the property at those times.

4. EVIDENCE SUBMITTED BY THE APPLICANT

4.1. **Application Materials.** The applicant has provided two statements, one by the applicant and one by the prior owner, describing the property use and ownership, along with a description of the location of each dwelling within the building. Specifically, the statement provided by the prior owner, Carl Esposito, indicates that the property has been used as a three-family home since at least 1965, indicating he believes the home was not registered as a three-family home because it was primarily occupied by the extended Esposito family. The applicant's statement, identifies the property being sold in August 2024 to the current owners and describes the configuration as a three-family dwelling.

5. EVIDENCE OF THE ZONING OFFICER

5.1. The City's Zoning Officer has the following information for the subject property:

- The City's "old housing book" indicates that the property was registered and inspected as a three-family unit in 1980, 1984, and 1995.
- The City's Property Record Card dated October 1, 1990, shows the number of units was corrected from three to two units.
- A Certificate of Continued Occupancy (CCO) application in 2013 completed and signed by Carl and Susan Esposito identified the property as a two-family dwelling. A CCO in lieu of affidavit with that application signed and dated November 20, 2013, which states there were no more than two dwelling units.
- An inspection report prepared by Joseph Coughlin, the Fire Sub-Code Official of the City of Bayonne, on November 20, 2013, noted the property as a two-family dwelling.
- On July 30, 2024, a CCO was issued by Construction Official Joseph Benkert, for a two-family dwelling. The applicants listed on the CCO



SRL REALTY | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

application, Carlo and Susan Esposito, identified the property as a two-family dwelling.

- 5.2. **City's Former Amnesty Program.** The City of Bayonne had an amnesty program in 2013 to aid the City in eliminating illegal and unregistered apartments. The program was discontinued more than 10 years ago. There does not appear to have been a request made for this property under that program.
- 5.3. **DCA Multiple Dwelling Registration.** The NJ Department of Community Affairs (DCA) records indicate the property was registered as a multifamily dwelling in 1990; however, the property no longer has a valid certificate of registration on file and the property has not been inspected by the state since before 2015.

6. ANALYSIS OF THE APPLICATION

- 6.1. **Conclusion from Submitted Materials.** At this time, it does not appear that sufficient evidence has been submitted to prove that the property was a legally permitted or non-conforming use at the time the R-2 zone was established. Although the property may have been occupied and in family ownership for many years, the prior owners did not properly register it as a three-unit building. City ordinance has required registration and inspection of buildings used as multiple dwellings for many years. The City also developed an amnesty program to validate such uses, of which the property owners did not avail themselves. Most recently, in 2024 when the property was sold to the current owners, the prior owner identified the property as a two-family dwelling on the City's transfer of title/CCO application. While the property may have been used and registered the building as a three-family dwelling in the early 1990s, there is more evidence to support an argument for abandonment, based on the multiple inspections and verifications by City officials.

7. APPLICANT AND THEIR PROFESSIONALS

- **Applicant/Owner.** SRL Realty (Mike Napa), 125 West 5th Street, Bayonne, NJ 07002. Tel: 201.339.0924. Email: firm@RMWlawfirm.com.
- **Attorney.** Paul Weeks, Esq., Raff, Masone & Weeks, 1083 Avenue C, Bayonne, NJ 07002. Tel: 201.339.0924. Fax: 201.339.0250. Email: firm@raffmasone.com firm@rmwlawfirm.com

8. MATERIALS REVIEWED

The following materials were reviewed in the preparation of this report:

- Application, received October 15, 2025.



SRL REALTY | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

- *Narrative Statement of Applicant*, undated.
- *Narrative Statement of the Prior Owner*, dated August 22, 2025.
- *Survey of Property*, 1 sheet, prepared by David J. Von Steenburg, PLS, Morgan Engineering & Surveying, date not legible.
- *Site Photographs*, dated October 2022.

We would be pleased to answer any questions concerning this review.

Cc. Alicia Losonczy, Land Use Administrator
Richard N. Campisano, Esq., Board Attorney
Greg Valesi, PE, CME, MBA Board Engineer
Suzanne T. Mack, PP, AICP, CTP, FITE, AHP, City Planner
Tracey Tuohy, Zoning Officer
Applicant and Attorney

W:\5000's\Bayonne Planning\5612 Zoning Board\5612.47 SRL Realty 78 W 16th\SRL Realty 78 W 16th_Nonconformity Review 1.docx