



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  
James Clavelli, PP, AICP

Re: **Joel Feller**  
**Application Z-23-020**  
Certificate of Nonconformity  
Block 343, Lot 17  
68-70 East 5<sup>th</sup> Street  
R-2, Detached/Attached Residential District

Date: January 9, 2024

**1. APPLICATION DESCRIPTION**

**Application.** The applicant requests a certificate of nonconformity relating to a three-family residential building in the R-2 zone. The application states that the building has maintained the same three-unit configuration since before 1995 when the R-2 zoning took effect. **Granting a Certificate of Nonconformity appears to be reasonable in this instance based on the evidence provided by the applicant.**



**Image of the Property in Question**

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



## JOEL FELLER | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

- 1.1. Property and Use Description.** The building is three stories as can be seen in the preceding photograph. The building façade is aluminum siding in white and pink, three awnings over the front door and front windows, and a brick stairway leading to a fenced terrace on the main level. A white gate is located to the building's east side, beyond which is a concrete walkway leading to a rear yard. In addition to the main entrance, there is also a side entrance on the east side of the building leading into the base of the brick terrace.
- 1.2. Neighborhood Context.** The site is an interior lot located near the intersection of East 5<sup>th</sup> Street, Silver Street and Hobart Avenue. The building fronts on East 5<sup>th</sup> Street. The neighborhood west of Hobart Avenue is entirely residential and contains primarily single and two-family dwellings (though there may be more three-family dwellings nearby). East of Hobart Avenue the zoning is industrial, and the uses are warehouses and other commercial facilities.



Recent Google Earth Aerial of Property (in red) and Surrounding Area



## JOEL FELLER | CERTIFICATE OF NONCONFORMITY

---

Clarke Caton Hintz

### 2. REVIEW OF REQUEST OF CERTIFICATE OF NONCONFORMITY

2.1. **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 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 of the property, the applicant 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 time barred from the issuance of the certificate.

2.2. The land use treatise by Cox and Koenig, 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. Regarding the burden of proof, and elements of proof, the Treatise says the following:

- **Burden of Proof<sup>1</sup>.** *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 Proof<sup>2</sup>.** *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*

---

<sup>1</sup> Cox & Koenig, *New Jersey Zoning and Land Use Administration* (GANN, 2021), p. 597.

<sup>2</sup> *Ibid.*



## JOEL FELLER | 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.*

- 2.3. **Establishment of the R-2 Zone.** The Bayonne Zoning Maps adopted on December 11<sup>th</sup> 1990 and May 3, 1995 both show that the site was located in the R-2 zone at that time, though it was entitled the “R-2 Low Medium Density Residential” zone. 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 today.

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 for three-family dwellings.

3. **When Was the Building Constructed?** According to historic aerials dating back to 1931 when the entire state was aerially photographed by New Jersey show that the building was constructed sometime between 1954 (that aerial indicates no dwelling), and 1966 where the house is shown. Furthermore, the applicant’s submittal contains a 1980 contract for purchase of the dwelling, which indicates that the owner prior to Mr. Feller had owned and lived on the premises since at least 1965 and references a survey indicating the existence of the property dating back to June 20, 1958. The contract also states that the building contained three units during that time, indicating two tenants, and that the owner also lived on site in an “owner’s apartment.” Importantly, historic aerials from 1966 and beyond do not indicate any significant physical change to the building.

4. **EVIDENCE SUBMITTED BY THE APPLICANT**

- 4.1. **Applicant’s Submittal.** The applicant has provided four forms of evidence as part of their application. These consist of the 1980 contract purchase agreement, a DCA Certificate of Inspection, a DCA Certificate of Registration, and a letter from the Bayonne Housing Authority.

- 4.2. **Contract Purchase Agreement.** The purchase agreement is dated August 7, 1980, and indicates that Joel and Cheryl Feller purchased the building from Ruth Czlapinski. The contract indicates an “owner’s apartment” and two apartments rented by tenants, totaling three units. Furthermore, the contract also indicates that this was the configuration of the building dating back to 1965, when Vincent Czlapinski, the husband and original co-owner with Ruth Czlapinski, passed away. Finally, though the date of construction of the building is not indicated in



## JOEL FELLER | CERTIFICATE OF NONCONFORMITY

---

Clarke Caton Hintz

the contract, it does indicate that the Czlapinski couple purchased the land in 1954, presumably to build the house.

- 4.3. **DCA Certificate of Inspection.** A DCA Certificate of Inspection dated August 20, 2023 indicates that the property consists of one building with three units.
- 4.4. **DCA Certificate of Registration.** A DCA Certificate of Registration indicates that the property was certified by DCA on December 10, 1980 as a “Multiple Dwelling” building type with three units. The registration indicates that certificate was further issued/printed on August 30, 2023, indicating this has been the state of the property over that 43 year period.
- 4.5. **Bayonne Housing Authority Letter.** A letter from the Bayonne Housing Authority dated July 10, 2023 and titled “Annual Reexamination” indicates the amount of the Housing Assistance Payment (or “HAP”) and indicates that there are three units in the building.

### 5. ANALYSIS OF THE APPLICATION

- 5.1. **Conclusion.** For the evidence thus submitted so far, it appears from our analysis that sufficient evidence has been submitted regarding the continuous use of the site as a preexisting nonconforming use. The evidence that has been provided clearly indicates that the building has been a three unit dwelling dating back at least to the period of 1965 – 1980 and possibly earlier. Official documentation from the New Jersey Department of Consumer Affairs indicates that it has contained three units since 1980. As indicated in Comment 2.3, as recently as 1990, three unit dwellings were permitted in the R-2 zone (albeit a different iteration of the R-2 zone) and the zoning map from that period indicates that this property was located in the R-2 zone during that time. Furthermore, historic aeriels appear to indicate that the building has not changed in any significant way since the applicant purchased the property in 1980.

**Granting a Certificate of Nonconformity appears to be reasonable for the subject application.**

### 6. APPLICANT AND THEIR PROFESSIONALS

- Applicant/Owner. Joel Feller, 1280 Virginia Avenue, Mountainside, NJ 07945. Email: jollycool2@yahoo.com.
- Attorney. Paul Kapish, Esq., Kiczek & Kapish, 707 Broadway, Bayonne, NJ 07002. Tel: 201-437-8787. Email: paul@kiczeklaw.com.





## JOEL FELLER | CERTIFICATE OF NONCONFORMITY

---

Clarke Caton Hintz

### 7. MATERIALS REVIEWED

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

- Application, dated November 7, 2023.
- *Narrative Statement of Applicant*, undated.
- *Zoning Officer Letter*, dated October 10, 2023.
- *Letter from Bayonne Housing Authority*, prepared by Jamie Paolino, dated July 10, 2023.
- *Contract for Purchase of 70 East 5<sup>th</sup> Street*, dated August 7, 1980.
- *Department of Community Affairs Certification of Inspection*, dated August 30, 2023.
- *Department of Community Affairs Certification of Registration*, dated August 30, 2023.

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

Cc. Alicia Losonczy, Land use Administrator  
Richard N. Campisano, Esq., Board Attorney  
Robert J. Russo, PE, PP, CME, Board Engineer  
Suzanne T. Mack, PP, AICP, CTP, FITE, AHP, City Planner  
Tracey Tuohy, Zoning Officer

W:\5000's\Bayonne Planning\5612 Zoning Board\5612.25 Joel Feller\Bayonne\_ZB Project No. 5612.25 Joel Feller.docx