



MEMORANDUM

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To: City of Bayonne Zoning Board of Adjustment

From: Brian Slaugh, PP, AICP
James Clavelli, PP, AICP

Re: **Randy Joskowitz, Jennifer Joskowitz, Scot Joskowitz, and Jodi B. Joskowitz**
Application Z-24-008
Certificate of Nonconformity
Block 356, Lot 6
27 East 3rd Street
R-2, Detached/Attached Residential District

Date: September 10, 2024

1. APPLICATION DESCRIPTION

1.1. **Application.** The applicant requests a certificate of nonconformity relating to a three-unit, multifamily dwelling building in the R-2 zone. The application states that the building has maintained the same configuration, three stories with one dwelling on each story, since before 1995 when the R-2 zoning took effect.

1.2. **Property and Use Description.** The building is described as three stories in height, and contains a pitched roof and dormers. An accessory, detached garage is located behind the multifamily building, containing two separate garage doors and two parking spaces. The house is faced with blue siding and mainly has a brick base. A stairwell leads to the main entrance on East 3rd Street, while a smaller staircase leads to a side entrance on Lord Avenue. A third stairwell, also on Lord Avenue, leads to a small rear yard that sits between the dwelling and the detached garage. Decorative, mature vegetation lines both frontages, and is located in a planting space situated between the building and a retaining wall that wraps around the property's two front yards. A chain link fence separates the rear yard from the neighbor to the west, though it is unclear if this is located on the subject property or neighboring property.



Image of Street Facing Facades of Subject Property. Image provided in applicant's submittal.

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



JOSKOWITZ | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

The lot is rectangular and consists of a standard Bayonne residential lot of 2,500 square feet in a configuration of 25' x 100' (see image below).

- 1.3. **Neighborhood Context.** The building is located on the northwest corner of the intersection of E. 3rd Street and Lord Avenue, located within the R-2 zone. The immediate area is entirely, or almost entirely, residential, though non-residential uses are located one block to the north on E. 4th Street and two blocks to the east on E. 3rd Street. The neighborhood contains a mix of dwellings sizes, with older, larger homes on slightly larger lots, and other dwellings of a similar size and scale to the subject building on similarly sized lots. A multifamily building is located halfway up the street on Lord Avenue. Lord Avenue is a two-way street, while E. 3rd Street is a one-way street with traffic headed west.



Aerial Image of Subject Property (in red) and Surrounding Area. Image Obtained from Nearmap, dated June 16, 2024, accessed on Sept. 9th, 2024

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



JOSKOWITZ | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

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(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 unable to issue 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 reference 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 ordinance in existence at the time the use in question commenced in order to*

¹ - Cox & Koenig, *New Jersey Zoning and Land Use Administration* (GANN, 2023), p. 411-412; §27-2.3.

² - *ibid.*



JOSKOWITZ | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

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 11th 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 is in place 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.

- 2.4. When Was the Building Constructed?** The building and garage are depicted on the 1912 Sanborn fire insurance map. Updates in 1950 to the Sanborn map seem to indicate that the building housed two dwellings at that time. The 1979 aerial, which is the clearest of the aerials until 2002, indicates that the extent of the principal and accessory buildings remained unchanged since at least 1979 and indeed, the buildings’ footprints appear the same as in 1912. The Sanborn map’s notations and the fact that siding reaches to the ground in the front attest to the fact that the front had a two-story porch which was enclosed at some point in time.

The applicant’s submittal contains a 2016 deed of the dwelling. Tracing the deed book and page listed using the publicly available Hudson County Register database, the oldest publicly available deed is from 1997. The 1997 deed states that “*Being the same premises conveyed to Charles H. Lanktree and Rita Lanktree, his wife, by Deed from Henry Lanktree and Catherine Lanktree, his wife, dated June 30, 1945 and record July 2, 1945 in Deed Book 2119 page 168. Charles H. Lanktree died on February 11, 1978 leaving Rita Clare Lanktree surviving tenant by the entirety. Rita Clare Lanktree died July 9, 1996, testate³...premises are devised to her children Daniel P. Lanktree, Charles T. Lanktree and Patricia A. Lanktree.*” The deed changes hands on March 27th, 2007, and was then sold to the current owners on February 11, 2016, and in all instances the property is referred to as “the same premises conveyed”. None of the deed documents reviewed by this office indicate the number of dwelling units within the building. The property record card from the tax assessor indicates the property as “2U”, meaning two dwellings, however.

³ - According to the Merriam-Webster Dictionary, accessed via their online portal on Sept. 9, 2024, “testate” means “*having made a valid will*”.



JOSKOWITZ | CERTIFICATE OF NONCONFORMITY

Clarke Caton Hintz

3. EVIDENCE SUBMITTED BY THE APPLICANT

3.I. The applicant has provided two forms of evidence as part of their application. The first consists of a record from the Department of Community Affairs, and the second consists of photos of the building, individual apartments, and utility meters.

- **Department of Community Affairs.** Two documents from the Department of Community Affairs have been provided.

The first is a Certificate of Registration dated February 23, 2019 which refers to the building as a Multiple Dwelling with three units on the property.

The second is a registration card from the “Housing Registration Master File” with a date of March 15, 2024. This document indicates a transfer/application date of April 16, 1975, and states that the building has three units. Unlike the other document, this document does not contain any indication that it is from the Department of Community Affairs. **While this document would seem to verify that this has been a three-unit multiple dwelling building since 1974, or at least was a three-unit multiple dwelling building in 1974, the applicant should provide testimony indicating where this document is from, and to the extent possible, verify the information on the card.**

- **Property Photos.** Two exhibits containing photos of the property were provided with the application. The first contains images of the buildings interior, and the second contains images of the building’s exterior.

The interior photos show pictures of cabinetry, utility meters, a living room, two images of window trim, two images of door trim, a sticker from above a circuit breaker, a picture of a radiator, two pictures of an interior stairwell, and another picture of a radiator. The picture of the utility meter shows a configuration for individual meters for each floor, and one meter for the whole building. This would suggest a configuration for three individual units. **The applicant should provide testimony regarding these images, particularly the utility configuration, and how it serves as evidence of this being a legally preexisting nonconforming use.**

The exterior photos show the front and side of the building facing the street. Three mailboxes are evident next to the front door of the building.



4. ANALYSIS OF THE APPLICATION

- 4.I.** At this time, it does not appear that sufficient evidence has been submitted regarding the continuous use of the site as a preexisting nonconforming use. The evidence that has been provided indicates that this has been a residence dating back to the 1940s, and that it currently is used as a three-unit multifamily building (with a certification dating to 2019, and evidence of this having possibly been the configuration since 1974).

The applicant should be prepared to offer substantial evidence, as indicated in Comment 2.2 of this report, under testimony so that the Board may have the information necessary to decide.

It is recommended that the applicant provide evidence of the following:

- That the building has been continually used as a three-unit multifamily building since prior to 1995.
- Any permits, approvals, or other official documentation that would support the application by indicating that the nonconforming use has been in continuous existence since prior to 1995. The applicant should clarify the meaning of the registration card from the “Housing Registration Master File” and whether that is evidence that this has been a three-unit building since 1974, the date on the card. This was run recently, but appears to be what the DCA has on file about this property.

5. CONDITION OF APPROVAL

- 5.I. Letter From Fire Sub-Code Official.** A letter from Joseph Coughlin, the Fire Sub-Code Official for the City of Bayonne, states “Owner must install railings on stairs. Register with State Housing and Fire Prevention.” **The applicant should be required to comply with Mr. Coughlin’s comments as a condition of any approval.**

6. APPLICANT AND THEIR PROFESSIONALS

- Applicant/Owner. Randy Joskowitz, Jennifer Joskowitz, Scot Joskowitz, Jodi B. Joskowitz, 30 O’Brien Court, Bayonne, NJ 07002. Tel: 201.206.8279.
- Attorney. Christopher D. Vitale, Esq., O’Halloran & Vitale, 27 West 8th Street, Bayonne, NJ 07002. Tel: 201.437.5436. Email: cv@ohalloranesq.com
- Architect/Planner. Stephen M. Kawalek, RA, PP, 764 Avenue C, Bayonne, NJ 07002. Tel: 551-208-9167. Email: steve.kawalek@gmail.com



7. MATERIALS REVIEWED

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

- Application, dated July 26, 2024.
- *Narrative Statement of Applicant*, undated.
- *Letter from Megan Maida*, Assessor Trainee for the City of Bayonne, dated July 16, 2024.
- Property deed, dated February 23, 2016.
- Department of Community Affairs Certificate of Registration, dated February 23, 2019.
- *Survey of Property for 27 East 3rd Street (Block 356, Lot 6)*, 1 sheet, prepared by Warner T. Rodgers, PLS, Aqua Firma Surveys Inc., dated July 21, 1997.
- *Photographs of Property Evidencing Pre-1995 Use as 3-Family Dwelling*.
- Pictures of Property – Exterior.
- *Letter from Joseph Coughlin*, Fire Sub-Code Official for the City of Bayonne, dated August 20, 2024.
- 1912-1950 Sanborn Fire Insurance Map (Plate no. 21), *Library of Congress*.
- Property Record Card, www.njtaxmaps.com

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