

**RESOLUTION
BOROUGH OF BUTLER
PLANNING BOARD
IN THE MATTER OF WALTER L. HARFORD (ESTATE)
DECIDED ON SEPTEMBER 16, 2021
MEMORIALIZED ON OCTOBER 14, 2021
APPLICATION NO. NC-21-66
CERTIFICATE OF NON-CONFORMITY**

WHEREAS, the Applicant, Walter L. Harford (Estate) (hereinafter the "Applicant") has filed an application with the Borough of Butler Planning Board ("Board" or "Planning Board") seeking a Certificate of Non-Conformity in regard to real property designated as Block 25, Lot 30 on the Tax Assessment Map of the Borough of Butler which premises are located at 98 Arch Street, Butler, New Jersey in the R-4 Residential Zone District (hereinafter "R-4 Zone"); and,

WHEREAS, a public hearing was held on September 16, 2021, after the Planning Board determined it had jurisdiction; and,

WHEREAS, the Applicant was represented by William F. Kehoe, Esq., who is also the Executor of the Estate of Walter L. Harford.

NOW, THEREFORE, the Planning Board makes the following findings of fact based on evidence presented at its public hearing, at which time a record was made.

The application before the Board is a request for a Certificate of Non-Conformity in regard to real property known and designated as Block 25, Lot 30 on the Tax Assessment Map of the Borough of Butler which premises are located at 98 Arch Street, Butler, New Jersey in the R-4 Zone.

Testifying on behalf of the Applicant was Walter Harford, Jr.

Submitted as part of the application package was a certification from Walter Harford, Jr. Mr. Harford represents in his certification that his father purchased the Property at 98 Arch Street in Butler, New Jersey in 1946. At the time the Property was acquired the Property was used as a four-

unit railroad-style apartment complex. Therefore, since the time that Mr. Harford's father purchased the Property, there were four (4) independent apartment units on site, which units were available for rent. Mr. Harford certified that the apartments were rented out by his father up until the time of his father's death in 1984. Since that time, his mother rented out the four (4) apartments up until the time of her death in 2020. At the present time the four (4) apartments exist and continue to be rented out.

A Subcommittee of the Board reviewed this matter and determined through historical documents, there have been four (4) apartment units on the Property since on or about 1920. The Property record cards support the conclusion that four (4) apartments existed on the Property since on or about 1920. Therefore, the use of the Property as four (4) independent apartment units pre-existed the Zoning Ordinance in the Borough of Borough.

The meeting was opened up to members of the public and there were no members of the public present expressing an interest in this application.

NOW, THEREFORE, the Butler Planning Board makes the following conclusions of law based upon the foregoing findings of fact.

The application before the Board is a request for a Certificate of Non-Conformity for property designated as Block 25, Lot 30 on the Tax Assessment Map of Borough of Butler, which premises are located at 98 Arch Street, Butler, New Jersey in the R-4 Zone.

An application for a Certificate of Non-Conformity attempts to memorialize an already vested statutory right that is firmly grounded in constitutional principles, Berkeley Square v. Trenton Zoning Board of Adjustment, 410 N.J. Super. 255, 269 (App. Div. 2009), certif. den. 202 N.J. 347 (2010).

The Municipal Land Use Law pursuant to N.J.S.A. 40:55D-68 provides in relevant part that:

“any non-conforming 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 and any such structure may be restored or repaired in the event of partial destruction thereof.”

A non-conforming use is one which existed on 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.

Furthermore, in accordance with N.J.S.A. 40:55D-68, the prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a non-conforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure non-conforming. The application is to be made to the Administrative Officer within one year of the adoption of the Ordinance which rendered the use or structure non-conforming or at any time to the Board of Adjustment.

More than one (1) year has elapsed since the zoning ordinance amendment which rendered the uses as set forth herein non-conforming and, as such, jurisdiction over this application is vested with the Butler Planning Board acting as a Zoning Board of Adjustment to render a decision in this matter.

The Board accepts the representations of the Applicant that four (4) residential dwelling units have existed at 98 Arch Street, Butler, New Jersey since on or about 1920. The Board is also satisfied that based upon a review of Borough records, that four (4) dwelling units have existed on this Property since on or about 1920 which precedes the adoption of Zoning Ordinances within the Borough of Butler. Further, there is no evidence to suggest that there was ever a cessation or discontinuance of the use of the Property as four (4) independent dwelling units.

Therefore, the Board finds that the Applicant has vested property rights in four (4) residential dwelling units as represented in the application submitted to the Planning Board and the

representations made on the record during the public hearing. The Board finds that the Applicant is entitled to a Certificate of Non-Conformity in accordance with the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-68. The Board, therefore, recommends the issuance of the Certificate of Non-Conformity by the administrative officer of the Borough of Butler in regard to this matter.

Upon consideration of the plans, testimony and application, the Board determines that the request for a Certificate of Non-Conformity pursuant to N.J.S.A. 40:55D-68 meets the minimum requirements of the MLUL, case law and Borough Ordinances to a sufficient degree so as to enable the Board to grant the relief being requested.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board that the application of Walter L. Harford (Estate) for Property designated as Block 25, Lot 30 on the Tax Assessment Map of the Borough of Butler which premises are located at 98 Arch Street, Butler, New Jersey in the R-4 Zone, requesting land use relief is determined as follows:

1. Certification of a Pre-Existing Non-conforming use is granted under the MLUL pursuant to N.J.S.A. 40:55D-68.

IT IS FURTHER RESOLVED that the application is granted subjected to the following terms and conditions:

1. The development of the site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this Application.

2. The Applicant represents that all of his representations and stipulations made either by or on behalf of the Applicant to the Borough of Butler Planning Board are true and accurate and acknowledges that the Planning Board specifically relied upon the Applicant's stipulations in the Board's granting of this approval. If any representation or stipulation is false, this approval is subject to revocation.

3. This approval is granted strictly in accordance with any recommendations set forth on the record by the Planning Board at the time of the public hearing on September 16, 2021.

4. The granting of this application is subject to and conditioned upon the Borough of Butler Administrative Officer issuing a Certificate of Non-Conformity in accordance with this approval.

5. The granting of this application is subject to and conditioned upon the Applicant opening and maintaining an escrow account with the Borough of Butler and keeping the account current with sufficient funds for professional inspection and review fees.

6. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of request by the Board's Secretary.

7. Certification that taxes are paid to date of approval.

8. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Butler, County of Morris, State of New Jersey, or any other agency having jurisdiction hereunder.

VOTE ON APPLICATION

Motion Introduced By:

Seconded By:

In Favor:

Opposed: None

VOTE TO APPROVE RESOLUTION

Motion Introduced By:

Motion Seconded By:

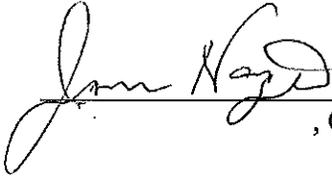
In Favor

Opposed

Butler Planning Board

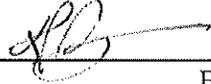


, Board Secretary



, Chairman

The undersigned secretary certifies that the within Resolution was adopted by the Borough of Butler Planning Board on September 16, 2021 and memorialized herein pursuant to N.J.S.A 40:55D-10(g) on October 14th, 2021.



, Board Secretary