



Borough of Garwood
PLANNING BOARD

MUNICIPAL BUILDING,
403 SOUTH AVE
GARWOOD, NJ 07027

MEMORANDUM

**To: All Planning Board Members
Victor Vinegra, Borough Planner
Christine Ariemma, Borough Administrator
Adele Lewis, Planning Board Secretary**

From: Donald B. Fraser, Jr., Planning Board Attorney

Dated: December 12, 2012

Re: CERTIFICATES OF NON-CONFORMITY

Certificates of Non-Conformity are typically requested when a property owner seeks to provide proof of the right for a non-conforming use to continue, and there has not been a Use Variance previously granted. They are sometimes requested as a “dodge” around the need to obtain a Use Variance.

The Certificates are usually requested to facilitate a real estate sale or re-finance when the Buyer, or the lender, demands such proof. This demand will come up, time and again, usually for two-family residences which are located in what are now one-family zones.

The realtors know this, or at least they should. Where a use is not permitted in the zone, which can easily be checked when they take the listing, the realtors should be counseling their clients (sellers) **when they take the listing, not after they are in contract**, to start the application process. They will typically have plenty of time to get it done by closing if they do this.

Unfortunately, the Sellers, not being properly advised by some Realtors, when they took the listing, of the need for the Certificate of Non-Conformity, frequently wait until “the last minute,” and they then expect it done on an emergency rush basis.

If property owners express concern, or frustration, at the process, it should be pointed out to them that it is not the fault of the Borough, or the Planning Board.

If the Certificate is requested within one year of the relevant zone change, the Zoning Officer can issue the Certificate of Non-Conformity.

If it is not done within one year of the zone change, then the process of applying for a Certificate of Non-Conformity requires publication and notice, in accordance with the Municipal

Land Use Law. Although not strictly required, Applicants are well-advised to utilize the services of an attorney. Since they are usually either selling or re-financing, this is not particularly burdensome - they are already using an attorney. The attorney can make reference to the MLUL.

The burden of proof is on the applicant. They need to submit satisfactory evidence that the use, or structure, as the case may be, pre-dated the adoption of the relevant zoning ordinance.

I recommend that a copy of this Memorandum be circulated to local Realtors, and that same be given to any member of the public who inquires as to that all inquiries from members of the public regarding these Certificates be referred to Adele, Victor, or myself, and I urge Board members to refrain from opining to citizens as to the procedure.

The application for a Certificate of Non-Conformity can be found on the Borough web-site:
www.garwood.org
