

## **“How To” Section 68**

**TO:** Whom It May Concern  
**FROM:** David J. Diehl, Zoning Official  
**RE:** Two (2) Family, Multi-Family Dwellings within the R-12.5, R-15, R-30  
and CC Zone Districts

### **REMARKS:**

A two (2) family or multi-family dwelling within the above referenced zone district would most likely fall into one of these four categories:

1. **Illegal non-conforming:** Converted after 1965 without permits or approvals.
2. **Pre-existing non-conforming:** Existing prior to 1965, no Section 68
3. **Pre-existing non-conforming:** Constructed or converted with permits Between 1965 and 7/22/68.
4. **Legal non-conforming:** Interpretation/Section 68 or ‘D’ Use Variance from Zoning Board of Adjustment on file.

In order to rectify conditions 1, 2 and 3 the following shall apply:

The dwelling would need to be altered/remodeled back to a single-family dwelling or apply to and receive approval from the Zoning Board of Adjustment for a ‘D’ Use Variance for a multi-family dwelling in a single-family zone district.

Obtain an application from the Zoning Board of Adjustment Secretary and apply for an Interpretation under MLUL 40:55D-70b that the multi-family existing prior to 1965 or was converted or built between 1965 and 7/22/68. A favorable interpretation would entitle the applicant/property a memorialized resolution as a Section 68 Certification and thus would be ‘Legal non-conforming’.

In the event someone wants to purchase a non-conforming use or structure; or in the event a bank or mortgage company is requested to loan money with respect to such purchase, invariably what is requested by the purchaser or the lender is some form of proof that the non-conforming use or structure remains lawful and may be continued upon the lot, or in the structure, so occupied. What neither a purchaser nor lending institution wants to hear after the sale is concluded is that the alleged non-conforming use or structure, in the opinion of the administrative officer no longer enjoys that status, and that the use or structure has been discontinued and abandoned and may no longer be restored or repaired. Current Legal Issues – Submitted by Louis P. Rago, Esquire

**Example:** Property owner, their attorney and/or agent asserts that this property has been a two-family home for ‘some time’ possibly since its construction decades ago. The Town has classified this property as a two-family home via tax assessor’s office and/or landlord registration. However, there are no legal records/certifications to support this.

Prior to 1962 the Town of Hackettstown residential districts permitted residential dwellings as a principal permitted use. However, there was no distinction as to single-family dwelling(s). Thus, two-family or multi-family residential dwellings could have been built. In 1962 and again in 1965 the Town of Hackettstown adopted ordinances that permitted two-family homes but only those two-family homes existing at the time or built/converted via permits to a two-family dwelling. As described below, the property owner had one (1) year from noted date(s) to obtain a certification of pre-existing non-conformity.

NJSA 40:54D-68 provides for certification of pre-existing non-conforming uses. Essentially, the statute states that if a municipality adopts an ordinance that renders a property non-conforming, the property owner has one (1) year from the date of the ordinance adoption to obtain a certification of pre-existing non-conforming use. Accordingly, the property owner should have, not later than 1966, obtained such a certificate. Apparently, no such certification exists, and accordingly you have deemed this property non-conforming and unable to be used as a two-family residence.

NJSA 40:55D-70(a) and (b) permit people to apply to the Land Use Board where they either take issue with a decision by the zoning officer or for an

interpretation of a zoning ordinance. **Unfortunately, for the former property owner, this is the only recourse they have.** There are no provisions in the Municipal Land Use Law for certifying a pre-existing non-conforming use more than one year after the adoption of the subject ordinance. Accordingly, the former or current property owner should make an application to the Land Use Board under NJSA 40:55D-70(a) and/or (b) and present their proof to the Board that the property is, and has been, a two-family. If the Board accepts their proof, then the property can be deemed a legal non-conforming use.

Please see "How To" Section 68