



222 N. BROADWAY AVENUE, SUITE B
RIVERTON, WYOMING 82501
PHONE: (307) 857-0300
FAX: (307) 463-2679

November 14, 2023

City of Lander
Building Inspection Department
240 Lincoln Street
Lander, WY 82520

Re: Bertha Joan Zerga – Nonconforming Use

Dear Building Inspector:

This Firm represent Bertha Joan Zerga who owns the property at 690 Evergreen Lane, Lander, Wyoming. Mrs. Zerga is requesting that the City of Lander fulfill its duty and obligation to certify the non-conforming uses under the Municipal Code with respect to Mrs. Zerga's property.

Enclosed is Mrs. Zerga's Request Certificate Of Zoning Compliance form and Non-Conforming Use Application form. It is unclear from the City's website which form it would like citizens to use when seeking to have the City certify an historical non-conforming use. The information requested and standards applied are different in each form. To not delay the City's action on Mrs. Zerga's request, both forms are being submitted.

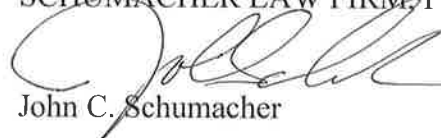
The Non-Conforming Use Application form requires a \$275.00 fee. The Request Certificate Of Zoning Compliance form does not require a fee. Enclosed you will find a check in the amount of \$275. If the correct form is the Request Certificate Of Zoning Compliance form, please return the check to this office. Mrs. Zerga is quite elderly and would appreciate the ability to save any expense she can in getting her request processed. Under the zoning code, the certification should have occurred at the time the zoning code was adopted in the late 1970s.

Please direct all questions and communications concerning this request to me at the Schumacher Law Firm, P.C., 222 N. Broadway Avenue, Suite B, Riverton, WY 82520 or (307) 857-0300.

Please contact this Firm with any questions.

Sincerely,

SCHUMACHER LAW FIRM, P.C.



John C. Schumacher

Enclosures
cc: client

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**NON-CONFORMING USE APPLICATION
NONREFUNDABLE FEE \$275.00**

NCU 23.23

For Office use only:	
Date Received <u>11/20/23</u>	Date Fee Paid <u>11/20/23</u> <i>not deposited</i> BOA Hearing
Date _____	
Existing zone designation <u>R-2</u>	Applicable Section of zoning code <u>4-12-3-17</u>

Name of Applicant Bertha Joan Zerga Email see attached

Address 690 Evergreen Lane Phone see attached

Do you own this property Yes No

If no, Name of Owner _____ Email _____

Address _____ Phone _____

Legal Description of Property (Street address, subdivision lot and block numbers, or attached a Legal description prepared by a surveyor)
see attached

Describe type and size of use at the present time or at the time you acquired the property:
see attached

Describe how this use does not conform to the current zoning code
see attached

Note the date use began (or structure was built) as well as the size or intensity of the use when said use began:
see attached

Attachment To
Non-Conforming Use Application

Name of applicant: Bertha Joan Zerga **Email:** lizzerga@comcast.net
by Elizabeth Zerga POA

Address: c/o Elizabeth Zerga **Phone:** (307) 631-6287
1416 Lyndon Lake Road
Fort Collins, CO 80524

Do you own this property? Yes

Legal description of property:

A tract of land in the SE¼SW¼ of Section 7, Township 33 North, Range 99 West, 6th P. M., Fremont County, Wyoming, more particularly described as follows:

Beginning at Corner No. 1 of this tract which point is located N. 38°08.8' W. a distance of 956.12 feet, more less from the South quarter section corner of said Section 7, and proceeding thence S. 1°02' E. a distance of 205.0 feet to corner No. 2 of this tract; thence proceeding N. 89°57.7' W. a distance of 320.0 feet, more or less, to corner No. 3 of this tract, thence proceeding N. 1°02' W. a distance of 205.0 feet to corner No. 4 of this tract; thence proceeding S. 89°57.7' E. a distance of 320.0 feet, more or less, to corner No. 1 of this tract, the point of beginning hereinbefore described; the area of which tract is 1.506 acres, more or less

This property has a street address of 690 Evergreen Lane

Describe the type and size of use at the present time or at the time you acquired the property:

The description of the property at the time it was acquired by Bertha Zerga is included in the section below entitled: Note the date use began (or structure was built) as well as the size or intensity of the use when said use began. This section will only include information about the present time.

The Zerga property is a compatible mixture of single family dwellings meeting the intent of an R-2 District. The dwellings on the Zerga property are at a density that is lower than even an R-1 District which only allows single family dwellings. Municipal Code § 4-12-3-(A).

The Zerga property is currently within an R-2 District. Municipal Code § 4-12-3 Single And Multi-Family Residential District. There are six single family detached dwellings which are permitted uses under Municipal Code § 4-12-3(B)(1). Each of the dwellings has its own kitchen, bathroom, bedroom, and other spaces which create independent housing units. Municipal Code § 4-2-3(29). The dwelling units are set up for stable, non-transient family living. The use of the property by Bertha Zerga beginning in the 1990s for an art studio is a home business permitted under Municipal Code § 4-12-3(C)(2).

The two accessory structures on the Zerga property meet the requirements of accessory uses under Municipal Code § 4-12-3(D) and § 4-11-8 – Accessory Uses as follows:

- The use of the accessory buildings owned by the Zerga's for a shop and storage are incidental to the residential use of the dwellings. No business is operated from the outbuildings. Municipal Code § 4-11-8(A)(1), (2), and (3).
- The outbuildings are not used for residential purposes. Municipal Code § 4-11-8(A)(4).
- The outbuildings size is less than the gross floor area of the dwelling units. Municipal Code § 4-11-8(A)(6).
- The accessory buildings meet the lot setback requirements of Municipal Code § 4-11-8(A)(8) and (9). The accessory buildings are less than 20 feet high. Municipal Code § 4-11-8(A)(10).

The lot area of the Zerga property exceeds the 3,750 square foot minimum requirement for a single family dwelling under Municipal Code § 4-11-3(E)(1). The area of permitted accessory uses for the outbuildings exceeds the minimum 3,750 square foot threshold in Municipal Code § 4-11-3(E)(3). The 1.5 acre Zerga property contains 65,340 square feet of lot area or 8,167 square feet on a per structure basis which is well in excess of minimum lot size requirements under the Municipal Code either – collectively or individually. The Zerga property lot width is 320 feet along the front line of the lot which exceeds the 50 foot minimum under Municipal Code § 4-12-3(F).

The Zerga property's structures meet the setback requirements of Municipal Code § 4-12-3(G).

All of the principal structures on the property are less than 30 feet in height. Municipal Code § 4-12-3-(I).

Describe how this use does not conform to the current zoning code.

The Municipal Code describes three separate categories of non-conformance: lots, uses, and structures. Municipal Code § 4-11-1, Board Of Adjustment Rules – Non-conforming Use Application (Existing Or Expansion), § (a).

For the Zerga property, the only potential non-conforming R-2 District category which may not be met under the current zoning code is the number of dwelling structures. The Municipal Code only allows one dwelling permitted use structure. Municipal Code § 4-12-3-(H). The Zerga property currently has six dwelling structures on the property which meet the use requirements for dwellings under the R-2 District.

The Municipal Code does not provide a limit on the number of accessory structures. As discussed above, the accessory buildings are within the maximum size requirements.

The number of structures has not increased since the original adoption of the zoning code around 1979. Since the adoption of the zoning code, the structures have not been enlarged, extended, or structurally altered except for a sun room that was added to the largest single family dwelling. Municipal Code § 4-11-1(B). It is believed this enlargement was permitted by the City of Lander. The properties have had routine maintenance such as new shingles, new steps, and updated electrical service. Nonconforming structures may be repaired provided the degree of nonconformity is not increased. Board Of Adjustment Rules – Non-conforming Use Application (Existing Or Expansion), § (d). The ability to repair is limited if the structures have been damaged to the point of more than 75% percent of their replacement value. Board Of Adjustment Rules – Non-conforming Use Application (Existing Or Expansion), § (e)(2). None of the structures have been damaged to 75% of their replacement value. Board Of Adjustment Rules – Non-conforming Use Application (Existing Or Expansion), § (e)(2) also provides that this percentage of damage provision does not apply on a one-time basis for any structure in existence on the date the zoning code section was adopted. All structures on the property pre-date adoption of the zoning code.

Note the date use began (or structure was built) as well as the size or intensity of the use when said use began.

The dwelling structures on the property were built before 1964. The property has been owned by my extended family for over 60 years. An aerial photograph from 1964 shows that the current dwelling structures on the property existed at that time. Exhibit A. The current owner, Bertha Joan Zerga, acquired the property on March 16, 1973, with her husband, Victor George Zerga. My parents, my siblings, and I moved onto the property in 1970.

Six of the structures on the property in 1964 consisted of family dwellings. All these dwellings were used for residential living purposes, each with its own eating, sleeping, and bathroom areas. The various dwellings were used by families on a non-transient basis. In 1964, the property had two accessory structures used for a shop and storage. There has been no change in the number of structures since the property was purchased by the current owner. The use of the dwelling structures has always been residential.

In 1964, the property consisted of approximately 1.5 acres of land. At that time, the property was rural in nature and surrounded by vacant land consisting primarily of horse pasture. It appears that in 1964 the property was located outside the city limits of the City of Lander, Wyoming.

Other Relevant Information.

When the zoning code was first adopted in 1977, the City of Lander was required to issue Certificates of Zoning Compliance for non-conforming uses of land, structures, and lots. Ordinance 643, § 8. These certificates were to document exactly why the use was nonconforming. A copy of the Certificate was to be retained by the City.. The City failed in its responsibility to inventory, create a map of nonconforming uses, and issue certificates to nonconforming properties, which would have created a contemporaneous historical record. The City now has two forms for Certificates of Zoning compliance for properties which may be nonconforming under the current code, even though under the zoning code the City is responsible for documenting the non-conforming use of a property and issuing Zoning Compliance certificates. At least one of those City provided forms clearly shifts the burden to the applicant to document their decades of historical use, in spite of contrary zoning code language which makes it the City's burden. Both forms have been completed and submitted with this affidavit.

When there is a non-conformance under the Municipal Code, the presumption is that the conforming activity be permitted to continue. Municipal Code § 4-11-1(A), This presumption has existed since the first zoning code in 1977. Section 5 of Ordinance 643 states that "It is the

intent of this ordinance to permit these nonconformities to continue until they are removed.” The Municipal Code provides that the Code shall not be construed to require removal, changes, or alterations of any non-conforming structure or to otherwise interfere with the continuance of the non-conforming use. Municipal Code § 4-12-15 (A). The only burden of proof placed on the citizen under the zoning code is the requirement to show that the structures, lot, or use was lawfully established. Municipal Code § 4-11-1(F). The discussion above shows the structures were lawfully constructed when they were constructed on the property. There was no applicable zoning code which prohibited their construction at that time. Further, on information and belief, at the time the structures were constructed, the land on which they were constructed had yet to be annexed into the City of Lander.

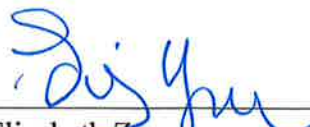
The Applicant has consistently treated the dwellings as residential. In addition to the foregoing information, the Applicant has always insured the dwellings for residential use. Each dwelling is served by city residential water and sewer. The residential gas and electricity for the dwellings are all set up for separate metering and have been billed as separate dwellings.

The Zerga property is accessed by an officially approved location. The access is from Evergreen Lane. On May 24, 1983, the Ninth Judicial District Court granted an easement along Evergreen Lane for the Zerga property and six other properties between the Zerga property and Amoretti Street. Judgment, *Victor Zerga v. Joseph Spriggs et al.*, Civil No. 19776. Exhibit B. The Judgment found that the Zerga property contained the dwelling units that are currently on the property.


I request that the City of Lander issue a Certificate of Zoning Compliance for the eight structures on the property – six residential and two accessory structures.

AFFIDAVIT

I hereby depose and say that all of the above statements in support of the City of Lander’s certification of the above-described nonconforming use for 690 Evergreen Lane, Lander, Wyoming and the statements contained in any papers submitted herewith are true.


Elizabeth Zerga

POA for
Joan Zerga


Date

STATE OF COLORADO)
) ss:
COUNTY OF Laramie)

The foregoing instrument was acknowledged before me on November 8, 2023.



Notary Public

My commission expires: 3-27-2024

CHRISTOPHER MICHAEL WARMAN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20204011771
MY COMMISSION EXPIRES 03/27/2024