

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY APPROVING A CERTIFICATE OF NONCONFORMITY FOR 2414 FAIRMOUNT AVENUE ASSOCIATES, LLC UNDER APPLICATION 2012-13-843**

**WHEREAS**, pursuant to Resolution 11-25 adopted April 19, 2011, the Casino Reinvestment Development Authority (the "Authority") designated the tourism district (the "Tourism District") in the city of Atlantic City in accordance with P.L. 2011 chapter 18 (the "Act"); and

**WHEREAS**, pursuant to the Act, the Authority is required to develop a master plan for the Tourism District, and adopt and impose regulations concerning the review and approval or denial of site plans and development proposals for development upon and improvements to land within the Tourism District (the "Land Use Regulations") to supersede the regulations imposed by the governing bodies or agencies of the county or municipality; and

**WHEREAS**, pursuant to Resolution 11-33 adopted April 19, 2011, the Authority established the Land Use Regulation and Enforcement Division to, among other matter, hear applications for development in the Tourism District; and

**WHEREAS**, pursuant to Resolution 11-34 dated April 19, 2011, the Authority adopted the master plan, zoning and land use ordinances and regulations, and zoning maps approved by the City of Atlantic City until such time as the Authority adopts the Land Use Regulations in accordance with the Act; and

**WHEREAS**, pursuant to Resolution 12-14 dated February 1, 2012, the Authority adopted the "New Jersey CRDA Atlantic City Tourism District Master Plan" prepared by Jones Lang LaSalle, LLC and dated February 1, 2012 (the "Master Plan"), subject to further comment and revision, which master plan shall become effective upon the adoption of design, development and land use regulations consistent therewith, and in accordance with N.J.S.A 5:12-220a, the Atlantic City Master Plan dated September of 2008 (as adopted by the CRDA pursuant to Resolution 11-34 dated April 19, 2011) shall remain effective for development applications received by the CRDA until adoption of such regulations; and

**WHEREAS**, pursuant to Resolution 12-23 adopted February 21, 2012, the Authority affirmed and re-adopted the Master Plan; and

**WHEREAS**, 2414 Fairmount Avenue Associates, LLC (the "Applicant"), seeks a Certificate of Nonconformity pursuant to pursuant to N.J.S.A. 40:55D-68 of the Municipal Land Use Law P.L.1975, c. 291 (C.40:55D-1 *et seq.*) for the uses and structure located at 2414 Fairmount Avenue, Block 339, Lot 2 in the City of Atlantic City, a property used as towing and car repair, which is not currently a permitted use in the Resort Commercial ("RSC") zoning district, under application 2012-13-843 (the "Application"); and

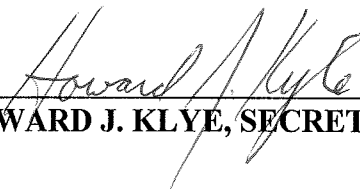
**WHEREAS**, on March 20, 2014, the Authority's Land Use Regulation and Enforcement Division convened a public hearing on the Application in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and the Act, and subsequently prepared and delivered the Hearing Officer's Report and Recommendation dated May 12, 2014 (the "Report"), incorporated herein by this reference and appended hereto as Exhibit "A"; and

**WHEREAS**, the Authority intends to adopt the findings, conclusions and recommendations of the Hearing Officer, as detailed in the Report; and

**NOW THEREFORE, BE IT RESOLVED** by the Casino Reinvestment Development Authority that:

1. The above recitals are incorporated herein, as if set forth in full.
2. Based on the record in this matter, Application 2012-13-843 is hereby approved in accordance with the Hearing Officer's Report and Recommendation dated May 12, 2014.
3. A copy of this Resolution shall be immediately transmitted to the Governor. This Resolution shall take effect immediately but no action authorized herein shall have force and effect until the earlier of the passage of ten (10) days, Saturdays, Sundays and public holidays excepted, after the delivery of the copy to the Governor, or the Governor's approval.

I hereby certify that this document is a true and correct copy of Resolution 14-63 of the Casino Reinvestment Development Authority.

  
\_\_\_\_\_  
**HOWARD J. KLYE, SECRETARY**

**MEETING OF MAY 20, 2014**



Casino Reinvestment  
Development Authority  
Land Use Regulation and  
Enforcement Division

**EXHIBIT "A" TO RESOLUTION 14- , ADOPTED 5 /20/2014**

**TO:** Members of the Authority

**FROM:** Paul G. Weiss, Land Use Hearing Officer

**COPY:** John F. Palmieri, Executive Director

**SUBJECT:** Hearing Officer's Report and Recommendation  
**Application #2012-13-843**  
**2414 Fairmount Avenue Associates, LLC**  
2414 Fairmount Avenue  
Block 339, Lot 2  
Certificate of Nonconformity

**DATE:** May 12, 2014

---

On March 20, 2014, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, 2414 Fairmount Avenue Associates, LLC (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the existing towing and car repair uses operating on the property. The Certificate of Non-Conformity would certify that the uses existed lawfully prior to a zoning change that rendered the uses non-conforming, and permit them to continue on the property.

During the hearing, the Applicant presented evidence and testimony to explain the history of the use. Specifically, the Applicant provided evidence and testimony that the towing and car repair uses lawfully existed prior to the adoption of the current zoning ordinance, and that such use has been continuous and was not abandoned. Therefore, as more fully outlined below, the Applicant has met its burden for the relief requested under the Municipal Land Use Law and the Hearing Officer recommends that the application be approved by the Authority.

Page 1 of 5

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



Casino Reinvestment  
Development Authority  
Land Use Regulation and  
Enforcement Division

**INTRODUCTION**

Application Information:

2414 Fairmont Avenue Associates, LLC  
2414 Fairmount Avenue  
Block 339, Lot 2  
MUR-Mixed Use Recreation Zoning District

A hearing on the Application was conducted in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and P.L. 2011, c. 18.

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the existing towing and car repair uses operating on the property located at Block 339, Lot 2 in the City of Atlantic City. The property is improved with a cinder-block housing seven bays and a rear parking lot serving towing and car repair uses, which are not currently a permitted use in the zoning district.

Relief Requested

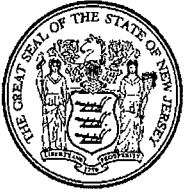
Certificate of Nonconformity pursuant to N.J.S.A. 40:55D-68.

Evidence List

The following materials were submitted in support of the Application:

- A-1 Application for Certificate of Non-Conformity, together with all attachments.
- A-2 Certificate of Land Use Compliance dated 9/12/08
  
- B-1 Letter dated 5/24/11 from Cofone Consulting Group, LLC
- B-2 Photos of site taken by CRDA Zoning Officer-8 photos

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



Casino Reinvestment  
Development Authority  
Land Use Regulation and  
Enforcement Division

**FINDINGS OF FACT**

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the existing towing and car repair uses operating on the property located at Block 339, Lot 2 in the City of Atlantic City. The property is improved with a cinder-block housing seven bays and a rear parking lot serving towing and car repair uses, which are not currently a permitted use in the zoning district.

The Applicant, was represented by its attorney, Pacifico Agnellini, Esq. Mr. Agnellini disclosed that his father had been an owner of the property since approximately 1970 and that he has maintained an ownership interest in, and managerial responsibility for, the property since his father passed away. Mr. Agnellini introduced the application and gave an extensive history of the use of the property, citing to numerous documents submitted in connection with the application.

The Applicant presented the testimony of Florence Agnellini in support of the application. Ms. Agnellini testified that her husband had purchased the property in approximately 1970 and that it has been operated as a towing and car repair use continuously since that time. The Applicant further presented the testimony of Raphael Moldonado in support of the application. He testified that he acquired the business of a competitor in 2008 and has operated a primary source towing provider for the American Automobile Association from the property since that time. He further testified that his operations are substantially similar to the operation of his predecessor/competitor.

Mr. Agnellini asserted the following based on the documents and testimony presented in connection with the application:

- The towing and car repair uses were permitted under the zoning ordinance prior to 2008.
- The City of Atlantic City issued numerous Mercantile Licenses permitting the uses dating back at least as far as 2004 and continuing through 2008.
- The City of Atlantic City issued a Certificate of Land Use Compliance for "Tow Lot, Storage and Auto repair in 2008.
- The zoning ordinance was amended in 2008. As a result of the amendment, the existing uses were rendered non-conforming.

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- The towing and car repair uses have continued since 2008 and have not been abandoned.

Christine Cofone, P.P. of Cofone Consulting Group, LLC was qualified as planning expert. Ms. Cofone's planning review letter was marked into evidence and she provided expert planning testimony on behalf of the Authority. Ms. Cofone questioned the Applicant as to whether junk cars are bought or sold or stored at the property, and whether the property is operated as a "junkyard" as that term is defined in the zoning ordinance. The Applicant acknowledged that "junkyards" are not a permitted use under the zoning ordinance, and represented that any operation constituting the purchase, sale or storage of cars for scrap would not be conducted at the property. Mr. Agnellini, on behalf of the Applicant further testified that no such operations would be advertised at the property. Finally, in response to questions regarding peeling paint on the building façade and other zoning violations, the Applicant represented that they would address such property maintenance issues.

Ms. Cofone noted that the Applicant in this case had compiled substantial and persuasive evidence to meet its burden, and all inquiries contained in her review letters have been satisfied through testimony and evidence.

### CONCLUSIONS OF LAW

This Applicant seeks a Certificate of Nonconformity pursuant to the Municipal Land Use Law. A nonconforming use is one which existed on the 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. The Municipal Land Use Law provides in part that any nonconforming 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. N.J.S.A. 40:55D-68.

The burden of proving the existence of a nonconforming use is always on the applicant asserting such use. Ferraro v. Zoning Bd. of Keansburg, 321 N.J. Super. 288, 291 (App. Div. 1999); Weber v. Pieretti, 72 N.J. Super. 184, 195 (Ch. Div. 1962), aff'd 77 N.J. Super. 423 (App. Div. 1962), certif. den. 39 N.J. 236 (1963); Grundlehner v. Dangler, 51 N.J. Super. 53 (App. Div. 1958), aff'd 29 N.J. 256 (1959). The applicant must show through testimony and documentary evidence what the use, including its character, extent, intensity, and incidents, on the property was at the time of the adoption of the zoning ordinance which rendered it prohibited. After the Applicant has established that the use was lawful at the time of the adoption of zoning, such use must be shown to have

Page 4 of 5

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

been continuous and not have been abandoned during the period in which it was made nonconforming. See Villari v. Zoning Bd. of Adj., 277 N.J. Super. 130, 135 (App. Div. 1994); Poulathas v. Atlantic City Zoning Bd. of Adj., 282 N.J. Super. 310, 313 (App. Div. 1995); Camara v. Bd. of Adj. of Tp. of Belleville, 239 N.J. Super. 51, 57 (App. Div. 1990); Borough of Saddle River v. Bobinski, 108 N.J. Super. 6, 13 (Ch. Div. 1969); Cox, Zoning and Land Use Administration, §11-3, 302 (2014).

The Hearing Officer concludes that the Applicant's evidence and testimony demonstrates that the use of the subject property for towing and car repair lawfully existed until the amendment of the MUR zoning district regulations in 2008, which rendered such uses nonconforming. The evidence and testimony further demonstrate the continuation of such uses from such time to present, and that such uses were not abandoned. Accordingly, the Applicant has satisfied the legal requirements for the grant of the requested relief.

### RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the application for a Certificate of Nonconformity be approved by the Authority. The grant of approval of this Application shall be expressly conditioned upon the Applicant satisfying all representations made by the Applicant or by others on its behalf during the course of the hearing on this matter before the Hearing Officer, all applicable requirements of the City of Atlantic City Land Use Ordinances, or other City Ordinances, and the requirements of any City agency, board or authority. Any approval granted in accordance herewith shall be further expressly conditioned upon the Applicant obtaining all other necessary governmental approvals, and compliance with all Federal, State and local laws.

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*

**CRDA BOARD TALLY**

**May 20, 2014**

**2414 Fairmount Avenue Associates, LLC, Block 339, Lot 2 (Application 2012-13-843) –Grant of relief for a Certificate of Nonconformity**

**MOTION**

EG

**SECOND**

TB

Tom Ballance

Y

Bob Bartolone for Richard Constable

Y

Debra DiLorenzo

Y

Edward Gant

Y

Mark Giannantonio

Y

Mayor Don Guardian

Y

David Rebeck for John Hoffman

Y

Howard Kyle

Y

Matthew Levinson

Y

Robert Mulcahy

Y

William Mullen

Y

Gerald Owens

Y

Robert Shaughnessy for  
Andrew Sidamon-Eristoff

Y

Frank Spencer

A

Richard Tolson

Y

Chairman James Kehoe

Y