

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT
AUTHORITY APPROVING A CERTIFICATE OF NONCONFORMITY
FOR MAGDY ATALLAH UNDER APPLICATION 2015-01-1334**

WHEREAS, pursuant to P.L. 2011, c. 18, as amended (the "Act"), the Casino Reinvestment Development Authority (the "Authority"): (i) designated the Atlantic City Tourism District by Resolution 11-25 adopted April 19, 2011, (ii) established the Land Use Regulation and Enforcement Division to, among other matter, hear applications for development in the Tourism District by Resolution 11-33 adopted April 19, 2011, and (iii) adopted the master plan, zoning and land use ordinances and regulations, and zoning maps approved by the City by Resolution 11-34 adopted April 19, 2011; 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") (as affirmed and readopted pursuant to Resolution 12-23 adopted February 21, 2012), 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, Mr. Magdy Atallah (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 2407 Aliantro Terrance, Block 164, Lot 47 in the city of Atlantic City, a property used as an existing single family residential dwelling, which is not currently a permitted use in the RS-C Resort Commercial ("RS-C") zoning district, under application 2015-01-1334 (the "Application"); and

WHEREAS, on May 7, 2015, 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 13, 2015, 2015 (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 2015-01-1334 is hereby approved in accordance with the Hearing Officer's Report and Recommendation dated May 13, 2015.
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 15-59 of the Casino Reinvestment Development Authority.



HOWARD J. KYLE, SECRETARY

MEETING OF MAY 19, 2015

EXHIBIT "A" HEARING OFFICER REPORT FOR APPLICATION 2015-01-1334



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 15- , ADOPTED 5/19/2015

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 2015-01-1334
Applicant: Magdy Atallah
Owner: Saint Kerolos, LLC
2407 Aliantro Terrace
Block 164, Lot 47
RS-C Resort Commercial Zoning District
Certificate of Nonconformity

DATE: May 13, 2015

On May 7, 2015, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Magdy Atallah (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for an existing single-family residential dwelling where such use is no longer permitted in the zoning district. The Certificate of Non-Conformity would certify that the use existed lawfully prior to a zoning change that rendered the use non-conforming, and permit it 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 single-family residential dwelling 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

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

the Municipal Land Use Law and the Hearing Officer recommends that the application be approved by the Authority.

INTRODUCTION

Application Information:
2407 Aliantro Terrace
Block 164, Lot 47
RS-C Resort Commercial 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 property located at Block 164, Lot 47 in the city of Atlantic City. The property is improved with an existing single-family residential dwelling, which is not currently a permitted use in the zoning district.

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

Exhibits

- A-1 1952 Sanborn Map
- A-2 Property Record Card dated May 16, 1977
- A-3 Property Record Card dated October 7, 1981
- A-4 Building Record Card indicating single family use in 1960 and 1961
- A-5 Building Record Card indicating construction of structure in 1923
- A-6 Property Record Card dated October 7, 1981 indicating two tenants
- B-1 Review memo from Robert L. Reid, AICP, PP dated March 17, 2015 (revised April 29, 2015)

FINDINGS OF FACT

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the existing single-family residential dwelling located at Block 164, Lot 47 in the city of Atlantic City. The single-family residential dwelling use is not currently a permitted use in the zoning district.

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

The Applicant asserted the following through testimony based on the documents submitted in connection with the application:

- The single-family residential dwelling was constructed in 1923.
- A Building Record Card indicates a single family use on the property in 1960 and 1961.
- A Property Record Card from 1977 indicates that a lawfully-existing single-family residential dwelling use.
- The zoning ordinance was amended in 1979. As a result of the amendment, the existing use was rendered non-conforming.
- A Property Record Cards for the subject property from 1981 indicates a single-family residential dwelling use at the property.
- The single-family residential dwelling use has continued since 1979 and has not been abandoned.
- The Applicant intends to maintain the property as a single-family residential dwelling use.

Robert L. Reid, AICP, PP was sworn and provided testimony on behalf of the Authority. Mr. Reid referenced his Review Memo dated March 17, 2015 (revised April 29, 2015) and indicated that there is adequate evidence within the application materials and public record to establish that the single-family use lawfully existed prior to the amendment of the zoning ordinance in 1979.

CONCLUSIONS OF LAW

The 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.

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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 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 demonstrate that the use of the subject property as a single-family residential dwelling lawfully existed until the amendment of the zoning district regulations in 1979, which rendered such use nonconforming. The evidence and testimony further demonstrate the continuation of such use from such time to present, and that such use was 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. 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.

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CRDA BOARD TALLY

May 19, 2015

MAGDY ATALLAH (2407 Aliantro Terrace, Block 164, Lot 47) – Certificate of non-conformity (LL)

MOTION

BS

SECOND

RT

Tom Ballance

A

Bob Bartolone for Charles A. Richman

BB

Debra DiLorenzo

Y

Edward Gant

Y

Mark Giannantonio

Y

Mayor Don Guardian

Y

Gary Hill

Y

David Rebeck for John Hoffman

DR

Howard Kyle

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Matthew Levinson

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Robert Mulcahy

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William Mullen

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Gary Puma

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Bob Shaughnessy for Andrew Sidamon-Eristoff

RS

Frank Spencer

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Richard Tolson

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