

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT
AUTHORITY APPROVING A CERTIFICATE OF NONCONFORMITY
FOR ANTONIO NATALE UNDER APPLICATION 2016-03-1846**

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, Antonio Natale (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 an existing single-family residential dwelling located at 2415 Trenwith Terrace, Block 164, Lot 21, in the city of Atlantic City, which is not currently a permitted use in the zoning district, under application 2016-03-1846 (the "Application"); and

WHEREAS, on May 5, 2016, 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 9, 2016, (the "Report"), incorporated herein by this reference and appended hereto as Exhibit "A"; and

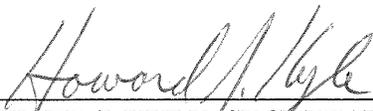
WHEREAS, the Authority intends to adopt the findings, conclusions and recommendations of the Hearing Officer, as detailed in the Report; and

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 2016-03-1846 is hereby approved in accordance with the Hearing Officer's Report and Recommendation dated May 9, 2016.
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 16-59 of the Casino Reinvestment Development Authority.



HOWARD J. KYLE, SECRETARY

MEETING OF JUNE 21, 2016

EXHIBIT "A" HEARING OFFICER REPORT FOR APPLICATION 2016-03-1846



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 16-___, ADOPTED 6/21/2016

TO: Members of the Authority

FROM: Lance B. Landgraf, Jr., Land Use Hearing Officer

COPY: John F. Palmieri, Executive Director

SUBJECT: Hearing Officer's Report and Recommendation
Application #2016-03-1846
Antonio Natale, Owner / Applicant
2415 Trenwith Terrace
Block 164, Lot 21
Atlantic City, NJ
RS-C Zoning District
Certificate of Nonconformity

DATE: May 9, 2016

On May 05, 2016, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Antonio Natale (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. 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's attorney Brian Callaghan, Esq. presented evidence to explain the history of the use. Specifically, Mr. Callaghan provided evidence and that the single-family residential dwelling lawfully existed prior to the adoption of the current zoning ordinance, and that such structure has been continuous used as a single family dwelling and was not abandoned. Therefore, as more fully outlined below, the Applicant

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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.

INTRODUCTION

Application Information:

Application #2016-03-1846

Antonio Natale, Applicant/Owner

2415 Trenwith Terrace

Block 164, Lot 21

Atlantic City, NJ

RS-C Zoning District

Certificate of Nonconformity

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 21 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.

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 21 in the City of Atlantic City. The single-family residential dwelling use is not currently a permitted use in the zoning district.

The Applicant was represented by Attorney Brian Callaghan, Esq. in the proceedings. Mr. Callaghan asserted the following based on the documents submitted in connection with the application:

- Application Form for Certificate of Non-Conformity, dated 3/1/16;

Page 2 of 4

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- Request for Certified List of Property Owners Form, dated 1/14/16;
- Property Record Card indicating the brick row home constructed in 1910;
- Sanborn Map Company, NY depicting brick row home fronting on Trenwith Terrace from 1952;
- Map Atlas dated 1938;
- Polk Directory listing property dated 1961, 1965;
- Property Record Card depicting assessment records from 1966 to 1982;

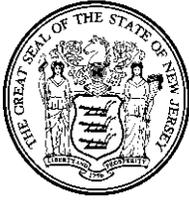
Robert L. Reid, P.P., ACIP, provided a report dated March 31, 2016 on behalf of the Authority in the field of professional planning. Mr. Reid is the Land Use Regulation Officer in the CRDA's Planning Department. His conclusion was that the residential use of the property met the criteria under the MLUL for the issuance of a Certificate of Nonconformity. Mr. Reid supported the grant of the requested relief.

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. 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.

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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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Casino Reinvestment Development Authority
Land Use Regulation and Enforcement
Division

Review Memorandum

TO: Lance Landgraf, AICP, PP, Land Use Hearing Officer

FROM: Robert L. Reid, AICP, PP, Land Use Regulation Officer

COPY: Applicant, Scott Collins, Esq., File

SUBJECT: Certificate of Nonconformity Request
Review Application and Support Documents
Application #2016-03-1846
Antonio Natale, Owner / Applicant
2415 Trenwith Terrace
Block 164, Lot 21
Atlantic City, NJ

DATE: March 31, 2016

The applicant, Antonio Natale has submitted an application requesting a Certificate of Non-Conformity for an existing single family dwelling at 2415 Trenwith Terrace, Lot 21 in Block 164. The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-68) for the existing single family residential dwelling on the property where such use is no longer permitted. 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.

The existing use as a single family dwelling does not comply with the permitted uses listed on Schedule III, 163 Attachment 8 of the Atlantic City Land Use Development Ordinance.

Schedule III, 163 Attachment 8 permits Multiple-family dwellings in the Resort Commercial District (RS-C). The purpose of the RS-C zoning is intended to apply to established resort areas in the City. Its purpose is to provide for the City's main industry, consisting predominantly of transient and tourist-oriented uses, at such intensity as is justified by the City's limited land resources, high land values and infrastructure capacity. Residential development is also encouraged for the purpose of preserving and enhancing the family-resort character of the City and integrating the specialized activities of the Resort Commercial District with the rest of the community. [163-58 A]



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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. (NJSA 40:55D-68) The existing single family use was permitted up until March 31, 1979 when Ordinance 27 of 1979 was adopted. The owner at that time was to submit an application to the City for a Certificate of Land Use Compliance within one year of the adoption of the ordinance that rendered the use nonconforming in accordance with NJSA 40:55D-68. 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. (NJSA 40:55D-5)

Evidence List / Documents submitted to support the request for Certificate of Non-Conformity:

- Application Form for Certificate of Non-Conformity, dated 3/1/16;
- Request for Certified List of Property Owners Form, dated 1/14/16;
- Property Record Card indicating the brick row home constructed in 1910;
- Sanborn Map Company, NY depicting brick row home fronting on Trenwith Terrace from 1952;
- Map Atlas dated 1938;
- Polk Directory listing property dated 1961, 1965;
- Property Record Card depicting assessment records from 1966 to 1982;

The public record indicates that the current owner purchased the property on December 17, 2015. The applicant asserts that the single family use has existed since 1910 and desires to continue the single family use.

At the hearing, the Applicant has the obligation to present evidence and testimony to explain the history of the use. Specifically, the Applicant must 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. The Applicant must meet the burden of proof for the relief requested under the Municipal Land Use Law in order for the Hearing Officer to recommend that the application be approved by the Authority.

The documentary evidence provided by the Applicant appears to be sufficient (subject to testimony by the Applicant at the hearing) to grant the requested relief.

CRDA BOARD TALLY

June 21, 2016

ANTONIO NATALE (2415 TRENWITH TERRACE, BLOCK 164 LOT 21) - Certificate of Nonconformity. (LL)

MOTION

RT

SECOND

HK

Debra DiLorenzo

A

Edward Gant

Y

Mark Giannantonio

Y

Mayor Don Guardian

Y

Gary Hill

Y

Howard Kyle

Y

Matthew Levinson

A

Robert Mulcahy

Y

William Mullen

Y

Christopher S. Porrino(Designee David Rebuck)

DR

Charles A. Richman (Designee Bob Bartolone)

BB

Ford M. Scudder (Designee Bob Shaughnessy)

BS

Frank Spencer

Y

Richard Tolson

Y