

Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 14- , ADOPTED 4/21/2015

TO: Members of the Authority

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

COPY: John F. Palmieri, Executive Director

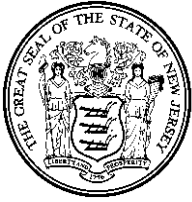
SUBJECT: Hearing Officer's Report and Recommendation
Application #2015-02-1338
David W. Karpus, Applicant/Owner
2403 Aliantro Terrace
Block 164, Lot 45
Atlantic City, NJ
RSC Resort Commercial Zoning District
Certificate of Nonconformity

DATE: April 21, 2015

On April 2, 2015, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, David W. Karpus (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 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

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

INTRODUCTION

Application Information:

Application #2015-02-1338

David W. Karpus, Applicant/Owner

2403 Aliantro Terrace

Block 164, Lot 45

Atlantic City, NJ

RSC 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 45 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

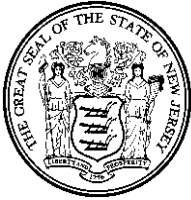
The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the existing single-family residential dwelling located at Block 164, Lot 45 in the city of Atlantic City. The single-family residential dwelling use is not currently a permitted use in the zoning district.

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

- The single-family residential dwelling use, without off-street parking, was permitted under the zoning ordinance until 1979.

Page 2 of 4

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 zoning ordinance was amended in 1979. As a result of the amendment, the existing use was rendered non-conforming.
- Property Record Cards for the subject property from 1961, 1981 and 1982 indicate 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, P.P., ACIP, provided expert testimony on behalf of the Authority in the fields 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.

Page 3 of 4

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

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.

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.