



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 14- , ADOPTED 9/15/2015

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
#2015-06-1549 – Mohammed Ullah
15 S. Bellevue Avenue, Block 166, Lot 1
City of Atlantic City.
Seeking Certificate of Nonconformity to allow the continued use as a two family dwelling.

DATE: August 24, 2015

On August 6, 2015, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Mohammed Ullah (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for an existing two-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 two-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 the Municipal Land Use Law and the Hearing Officer recommends that the application be approved by the Authority.

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INTRODUCTION

Application Information:

#2015-06-1549 – Mohammed Ullah
15 S. Bellevue; Block 166, Lot 1
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 166, Lot 1 in the city of Atlantic City. The property is improved with an existing two-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 two-family residential dwelling located at Block 166, Lot 1 in the city of Atlantic City. The two-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 two-family residential dwelling use was permitted under the zoning ordinance until 1979.

- Application Form for Certificate of Non-Conformity, dated 6/26/15;
- 1941 - Polk Directory listing three different names at 15 S. Bellevue Avenue;
- 1950 - AC Directory listing different two names at 15 S. Bellevue Avenue;
- Portion of Plate 27 depicting frame two story dwelling fronting on Bellevue Avenue from Sanborn Map Company, NY from 1952;

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- Building Record Card with single family checked off, along with an inventory of rooms that includes two kitchens, two living room/dining room combinations, dated 5/26/1961;
- 1961 - Polk Directory listing three different names at 15 S. Bellevue Avenue;
- 1965 - Polk Directory listing two different names at 15 S. Bellevue Avenue;
- Building Record Card, dated 1966 through 1980, no mention of number of units;
- 1970 - AC Directory listing one name at 15 S. Bellevue Avenue;
- City Re-evaluation listing property as 2 units, dated 1982;
- Deed dated 11/9/2010;
- Occupancy Permit dated 12/20/2010 for two units;
- Photographs depicting two electric meters, two gas meters, two boilers, no date;

Robert L. Reid, P.P., ACIP, provided a report 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. Lance Landgraf presented Mr. Reid's report in his absence.

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

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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 two-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.