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 #2015-08-1658
Susan Lothian, Owner
Lila Erlandson, Applicant
4 Italy Terrace
Block 337, Lot 15
Atlantic City, NJ

DATE: September 16, 2015

The applicant, Lila Erlandson has submitted an application requesting a Certificate of Non-Conformity for an existing single family dwelling at 4 Italy Terrace, Lot 15 in Block 337. 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 at the second floor or above, over commercial uses in the Neighborhood Commercial District (NC-2). The purpose of the NC-2 zoning is to provide for groups of small business establishments located to serve frequent retail and personal service needs of residents within convenient traveling distance, with an option of moderate density multiple-family residential development located above such business establishments. These districts are not intended to permit major commercial or service establishments which would attract substantial amounts of trade from outside the neighborhood. [163-59 A (1)]

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 2008 when the zone was changed from R-3 Residential to the NC-2 District. 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 non-conforming 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 8/24/15;

Property Record Card indicating the brick row home with flat roof was constructed in 1900;

Portion of Plate 42 depicting brick row home fronting on Italy Terrace from Sanborn Map Company, NY from 1952;

Building Record Cards depicting use as single family, dated 6/23/1961;

Polk Directory dated 1961, 1965,

The applicant asserts that the single family use has existed since 1900 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.