



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

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

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

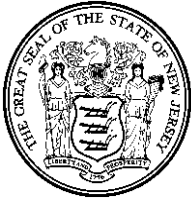
The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the existing single-family residential dwelling located at Block 164, Lot 21 in the City of Atlantic City. The single-family residential dwelling use is not currently a permitted use in the zoning district.

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

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

- 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;

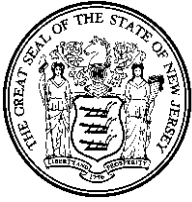
Robert L. Reid, P.P., ACIP, provided a report dated March 31, 2016 on behalf of the Authority in the field of professional planning. Mr. Reid is the Land Use Regulation Officer in the CRDA's Planning Department. His conclusion was that the residential use of the property met the criteria under the MLUL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

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.