

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT
AUTHORITY APPROVING A CERTIFICATE OF NONCONFORMITY
FOR CORY PARKING, LLC UNDER APPLICATION 2016-06-1945**

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, Cory Parking LLC (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 parking facility located at 147 South Martin Luther King Boulevard, Block 48, Lots 12 - 14, in the city of Atlantic City, which is not currently a permitted use in the zoning district, under application 2016-06-1945 (the "Application"); and

WHEREAS, on June 30, 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 July 22, 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 2016-06-1945 is hereby approved in accordance with the Hearing Officer's Report and Recommendation dated July 22, 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 16-87 of the Casino Reinvestment Development Authority.



HOWARD J. KYLE, SECRETARY

MEETING OF AUGUST 16, 2016

EXHIBIT "A" HEARING OFFICER REPORT FOR APPLICATION 2016-06-1945



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 16- , ADOPTED 8/16/2016

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 #2016-06-1945
Cory Parking, LLC
147 S. Martin Luther King Boulevard
Block 48, Lots 12, 13, 14
RS-C Resort Commercial Zoning District
Certificate of Nonconformity

DATE: July 22, 2016

On June 30, 2016, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Cory Parking, LLC (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for an existing parking facility where such use is no longer permitted in the zoning district. 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 parking facility 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.

Page 1 of 4

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

INTRODUCTION

Application Information:
147 S. Martin Luther King Boulevard
Block 48, Lots 12, 13, 14
RS-C 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 48, Lots 12, 13 and 14 in the city of Atlantic City. The property is improved with an existing parking facility, 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.

Exhibits

- A-1 Application with attachments
- A-2 Parking lot plan dated June 30, 2016
- B-1 Review memo from Cofone Consulting Group, LLC dated June 22, 2016

FINDINGS OF FACT

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the existing parking facility located at Block 48, Lots 12, 13 and 14 in the city of Atlantic City. The parking lot use is not currently a permitted use in the zoning district.

The Applicant was represented by Brian, Callaghan, Esq. The Applicant presented the testimony of Jon Barnhart, who was sworn and qualified as an expert in the fields of professional engineering and professional planning. Mr. Barnhart testified as follows:

- The parking facility on Lot 13 was constructed and lawfully in existence as of 1979.

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- The parking facility use on Lot 13 was permitted under the zoning ordinance until 1979.
- The zoning ordinance was amended in 1979. As a result of the amendment, the existing use on Lot 13 was rendered non-conforming.
- The parking facility use has continued since 1979 and has not been abandoned.
- The Applicant intends to maintain Lot 13 as a parking facility use.
- The owner of Lots 12, 13 and 14 is also the owner of adjacent Lots 16, 17, 18, 19, 23, 24 and 25 operated as Boardwalk stores (the "Boardwalk Stores").
- The existing parking facilities on lots 12 and 14 are accessory to the Boardwalk Stores and therefore permitted in the zoning district.

Justin Auciello, P.P. was sworn and provided testimony on behalf of the Authority. Mr. Auciello referenced his review letter dated June 22, 2016 and indicated that there is adequate evidence within the application materials and public record to establish that the parking facility use lawfully existed prior to the amendment of the zoning ordinance in 1979. In addition, he concurred that the parking facilities on Lots 12 and 14 are accessory to the Boardwalk Stores and therefore permitted in the zoning district. Upon questioning from Mr. Auciello, the Applicant agreed to submit an application for site plan approval for Lots 12, 13 and 14 showing site landscaping and other site improvements within 30 days as a condition of approval of the application.

CONCLUSIONS OF LAW

The Applicant seek 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 Lot 13 as a parking facility 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. The parking facilities on Lots 12 and 14 are accessory to the Boardwalk Stores and are therefore permitted in the zoning district.

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.



CHRISTINE A. COFONE, PP, AICP
Principal

COFONE CONSULTING GROUP, LLC

June 22, 2016

Lance B. Landgraf, Jr., P.P., AICP
Director of Planning
Casino Reinvestment Development Authority
15 South Pennsylvania Avenue
Atlantic City, NJ 08401

RE: **Cory Parking, LLC**
147 S. MLK Blvd.
Block 48, Lots 12, 13, 14
Application #2016-06-1945

Dear Mr. Landgraf:

As per your direction, we have reviewed the above-referenced development application. In the subject application, the applicant is seeking a Certificate of Nonconformity for the standalone parking use on Block 48, Lots 12, 13, and 14 located within the RS-C (Resort Commercial) District.

As part of our analysis, we undertook the following tasks: an inspection of the subject premises; a survey of surrounding land uses; review of the City of Atlantic City Zoning Ordinance and Zoning Map; review of municipal records and Sunburn Insurance atlas maps; and review of the filed application materials.

We offer the following analysis and comments for your consideration.

Description of Site and Summary of Development Proposal

According to the Applicant's Certificate of Nonconformity application, the present use of the property is a standalone parking lot. The applicant is seeking a Certificate of Nonconformity to continue to utilize the site as such without seeking a variance, as a standalone parking lot is not a permitted use in the RS-C District.

Nonconformity standard

The term "nonconforming use" is defined at N.J.S. 40:55D-5 as "a use or activity which was lawful prior to the adoption, revision, or amendment of a zoning ordinance, but which

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Principal

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fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.”

N.J.S. 40:55D-68 provides that “[a]ny 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 and any such structure may be restored or repaired in the event of partial destruction thereof.”

The burden of proof in establishing and proving the existence of a nonconforming use is upon the Applicant. According to the 2011 Edition of New Jersey Zoning and Land Use Administration at 11-2.2, titled “Burden of proof,” the Applicant should be very clear in explaining the prior usage of the subject property:

It is important that the evidence presented to the board establish exactly what the use was at the time of adoption of the ordinance, its character, extent, intensity and incidents.

Further at 11-2.3, titled “Elements of proof,” it states:

In determining the status of a purported nonconforming use or structure, the board of adjustment must trade the nonconforming history of the property back to the zoning ordinance in existence at the time the use in question commenced in order to establish that it was in fact conforming when commenced or existed prior to an amendment which made it nonconforming.

If the usage of the property had changed at any given time contrary to the use for which an applicant seeks a certificate of nonconformity – and is therefore not a continuous usage of the property – then it is not entitled to protection. Municipal records, such as tax certificates and certificates of occupancy, have been found to be sufficient by the judiciary (Eltrym Euneva v. Keansburg, 407 N.J. Super. 432, 438-439 (Law Div. 2008)).

Planning Analysis and Issues for Consideration by the Board

We offer the following for your consideration in reviewing the Application:

- 1) The burden of proof is on the Applicant to prove the existence of a legal non-conforming use prior to the adoption of the ordinance establishing the RS-C District.
- 2) CRDA has conducted research into the historical usage of the property. To begin, CRDA used 1979 as the test year. Lot 12 was previously utilized by the the

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Traymore Hotel parking garage and warehouse and was demolished in 1982. Lot 13 was utilized by the Traymore Hotel as a parking lot before 1979. Lot 14 was utilized by the Lombardy Motel then later the Village Motel. The motel was demolished in 1990.

- 3) The collective site is not eligible for a certificate of non-conformity and thus requires a d(3) conditional use variance. While we note that Lot 13 would be eligible for a certificate of non-conformity, it would be impractical from an enforcement standpoint to allow only one lot of an overall property to be utilized for parking.

I would be happy to address any questions or comments on the above at the public hearing.

Respectfully submitted,

Christine A. Nazzaro-Cofone, AICP, PP
Principal

CRDA BOARD TALLY

August 16, 2016

CORY PARKING LLC (147 S. MARTIN LUTHER KING JR. BLVD., BLOCK 48, LOTS 12, 13, 14) - Certificate of Nonconformity

MOTION

HK

SECOND

HS

Debra DiLorenzo

Y

Edward Gant

Y

Mark Giannantonio

Y

Mayor Don Guardian

Y

Michael I. Hanley

A

Gary Hill

Y

Howard Kyle

Y

Matthew Levinson

Y

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)

A

Frank Spencer

Y

Richard Tolson

Y