

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT
AUTHORITY APPROVING A CERTIFICATE OF NONCONFORMITY
FOR CORY PARKING, LLC UNDER APPLICATION 2016-06-1946**

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 18 South Martin Luther King Boulevard, Block 156, Lots 17 - 23, in the city of Atlantic City, which is not currently a permitted use in the zoning district, under application 2016-06-1946 (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

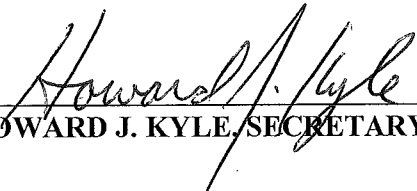
WHEREAS, the Authority intends to adopt the findings, conclusions and recommendations of the Hearing Officer, as detailed in the Report; and

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 2016-06-1946 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 16-85 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 #2016-06-1946
Cory Parking, LLC
18 S. Martin Luther King Boulevard
Block 156, Lots 17, 18 19, 20, 21, 22 and 23
RS-C Resort Commercial Zoning District
Certificate of Nonconformity

DATE: July 22, 2016

On June 30 and July 7, 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 stand-alone 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 hearings, the Applicant presented evidence and testimony to explain the history of the use. Specifically, the Applicant provided evidence and testimony that the stand-alone 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.

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

INTRODUCTION

Application Information:

18 S. Martin Luther King Boulevard
Block 156, Lots 17, 18 19, 20, 21, 22, 23
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 156, Lots 17, 18 19, 20, 21, 22 and 23 in the city of Atlantic City. The property is improved with an existing stand-alone 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 Zoning Map dated 1995
- A-2 Application with attachments
- B-1 Zoning Map dated 1993
- B-2 Zoning Map dated 1984
- B-3 Review memo from Robert L. Reid, AICP, PP dated June 30, 2016 with attachments
- C-1 Photos of stand-alone parking facility taken on June 26, 2016

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 156, Lots 17, 18 19, 20, 21, 22 and 23 in the city of Atlantic City. The stand-alone parking facility 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:

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- The site was zoned Central Business District ("CBD") in 1984.
- The stand-alone parking facility use was permitted in the CBD zoning district in 1984.
- The stand-alone parking facility use was constructed and lawfully in existence as of 1979.
- The zoning ordinance was subsequently amended to locate the subject property within the RS-C Resort Commercial zoning district, which rendered the use nonconforming.
- The stand-alone parking facility use has continued since 1984 and has not been abandoned.
- The Applicant intends to maintain the property as a stand-alone parking facility use.

Richard M. Santoro, Director of the Atlantic City Special Improvement District, appeared and offered public comment on property maintenance and security issues.

Justin Auciello, P.P. and Christine Cofone, P.P. were sworn and provided testimony on behalf of the Authority. They indicated that there is adequate evidence within the application materials and public record to establish that the stand-alone parking facility use lawfully existed prior to the amendment of the zoning ordinance in 1984.

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 the subject property as a stand-alone parking facility lawfully existed until the amendment of the zoning district regulations in 1984, 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.



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 #2016-06-1946
Cory Parking LLC, Applicant
8-18 S. Martin Luther King Blvd.
Block 156, Lots 17, 18, 19, 20, 21, 21, 22, 23
Atlantic City, NJ

DATE: June 30, 2016

The applicant, Cory Parking LLC has submitted an application requesting a Certificate of Non-Conformity for a free standing parking lot at 8-18 S. Martin Luther King Blvd., Lots 17, 18, 19, 20, 21, 21, 22, 23 in Block 156. 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 free standing parking lot 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 subject property is currently located in the RS-C, Resort Commercial District. The existing use as a free standing parking lot does not comply with the permitted uses listed on Schedule III, 163 Attachment 18:2 of the Atlantic City Land Use Development Ordinance. Schedule III, 163 Attachment 18.2 does, however, permit free standing parking lots in the CBD Zone.

The application requesting a Certificate of Non-Conformity was heard at a special meeting held on 6/30/16. A zoning map from 1984 depicting the subject property as being located in the CBD Zone at that time was presented along with Schedule III, 163 Attachment 18.2 showing that free standing parking is a permitted use in the CBD Zone.



Casino Reinvestment Development Authority
Land Use Regulation and Enforcement
Division

At the hearing it was determined that the site was in the CBD Zone in 1984, however, the actual date when the use was permitted in the zone could not be determined without reviewing the ordinance amendments listed on Schedule III, 163 Attachment 18.2. As a result, the hearing was continued until the regularly scheduled CRDA LURED hearing scheduled for 7/7/16 to allow time for proper research and review of the ordinance amendments.

Each ordinance listed on the Schedule III, 163 Attachment 18.2 was reviewed. There was no mention of free standing parking lots in the CBD Zone. Since there was no mention of free standing parking lots in the CBD Zone in ordinance amendments listed on Schedule III, 163 Attachment 18.2, it appears that the free standing parking lot use was a permitted use in 1982.

At the continued hearing, the Applicant has the obligation to present evidence and testimony to explain the history of the use. Specifically, the Applicant must provide evidence and testimony that the free standing parking lot 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.

CRDA BOARD TALLY

August 16, 2016

CORY PARKING LLC (18 S. MARTIN LUTHER KING JR. BLVD., BLOCK 156, LOTS 17, 18, 19, 20, 21, 22, 23) - Certificate of Nonconformity

MOTION

FS

SECOND

BB

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

A

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