

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT  
AUTHORITY APPROVING A CERTIFICATE OF NONCONFORMITY  
FOR CORY PARKING, LLC UNDER APPLICATION 2016-06-1944**

**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 1713 - 1715 Pacific Avenue, Block 156, Lots 29 - 32, in the city of Atlantic City, which is not currently a permitted use in the zoning district, under application 2016-06-1944 (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

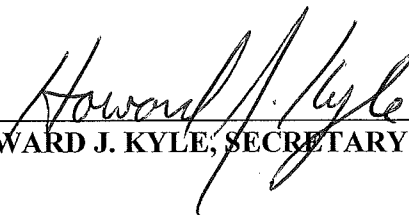
**WHEREAS**, the Authority intends to adopt the findings, conclusions and recommendations of the Hearing Officer, as detailed in the Report; and

**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 2016-06-1944 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 16-86 of the Casino Reinvestment Development Authority.

  
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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 #2016-06-1944  
Cory Parking, LLC  
1713-1715 Pacific Avenue  
Block 156, Lots 29, 30, 31, 32  
RS-C Resort Commercial Zoning District  
Certificate of Nonconformity

**DATE:** July 22, 2016

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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 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 hearing, 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

Page 1 of 5

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## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

the Municipal Land Use Law and the Hearing Officer recommends that the application be approved by the Authority.

Page 2 of 5

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## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

### INTRODUCTION

Application Information:  
1713-1715 Pacific Avenue  
Block 156, Lots 29, 30, 31, 32  
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 29, 30, 31 and 32 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 Application with attachments
- B-1 Review letter 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 stand-alone parking facility located at Block 156, Lots 29, 30, 31 and 32 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:

- The stand-alone parking facility was constructed and lawfully in existence as of 1957.
- The stand-alone parking facility use was permitted under the zoning ordinance until 1995.

Page 3 of 5

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## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- The zoning ordinance was amended in 1995. As a result of the amendment, the existing use was rendered non-conforming.
- The stand-alone parking facility use has continued since 1995 and has not been abandoned.
- The Applicant intends to maintain the property as a stand-alone parking facility use.

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 stand-alone parking facility use lawfully existed prior to the amendment of the zoning ordinance in 1995.

### 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 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.

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## 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 standalone parking facility lawfully existed until the amendment of the zoning district regulations in 1995, 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.

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COFONE CONSULTING GROUP, LLC

CHRISTINE A. COFONE, PP, AICP  
*Principal*

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**  
**1713-1715 Pacific Avenue**  
**Block 156, Lots 29, 30, 31, 32**  
**Application #2016-06-1944**

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 156, Lots 29, 30, 31, and 32 and 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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CHRISTINE A. COFONE, PP, AICP  
*Principal*

## COFONE CONSULTING GROUP, LLC

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 31 was utilized by a garage with apartments

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CHRISTINE A. COFONE, PP, AICP  
*Principal*

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above. According to tax records the building was demolished in 1970. Lot 29 was a parking lot in 1957. It appears that this site may be eligible for a CNC.

- 3) Accordingly, it appears that the site may be eligible for a certification of non-conformity and thus does not require a d(3) conditional use variance.

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 (1713-1715 PACIFIC AVENUE, BLOCK 156, LOTS 29, 30, 31, 32) -  
Certificate of Nonconformity

MOTION

FS

SECOND

HK

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