



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.

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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,

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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. 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.

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