

Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 17-___, ADOPTED 7/18/2017

TO: Members of the Authority

FROM: Lance B. Landgraf, Jr., Land Use Hearing Officer

COPY: Christopher M. Howard, Executive Director

SUBJECT: Hearing Officer's Report and Recommendation
Application #2017-04-2172
Applicant: Mohammed Homary
2429 Arctic Avenue
Block 339, Lot 62
NC-1 Neighborhood Commercial Zoning District
Certificate of Nonconformity

DATE: June 20, 2017

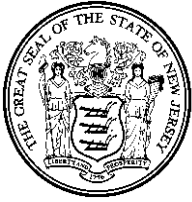
On June 1, 2017, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Mohammed Homary (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for an existing structure comprised of a ground-floor commercial use and second-floor residential use where such residential use is no longer permitted in the zoning district. The Certificate of Non-Conformity would certify that the residential 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 structure with a ground-floor commercial use and second-floor residential use 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

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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.

INTRODUCTION

Application Information:
2429 Arctic Avenue
Block 339, Lot 62

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 339, Lot 62 in the city of Atlantic City. The property is improved with an existing structure comprised of a ground-floor commercial use and second-floor residential use where such residential use is no longer permitted in the zoning district.

Relief Requested
Certificate of Nonconformity pursuant to N.J.S.A. 40:55D-68.

Exhibits

- A-1 Application materials
- B-1 Review memo from Cofone Consulting Group, LLC dated May 11, 2017

FINDINGS OF FACT

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the property located at Block 339, Lot 62 in the city of Atlantic City. The property is improved with an existing structure comprised of a ground-floor commercial use and second-floor residential use where such residential use is no longer permitted in the zoning district.

The Applicant asserted the following based on the documents submitted in connection with the application:

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- A Property Record Card for the subject property from 1961 indicating a lawfully-existing structure comprised of a ground-floor commercial use and second-floor residential use.
- The zoning ordinance was amended in 1979. As a result of the amendment, the existing residential use was rendered non-conforming.
- A Property Record Card for the subject property from 1981 indicating a structure comprised of a ground-floor commercial use and second-floor residential use.
- A Housing Report from 1991 indicating a structure comprised of a ground-floor commercial use and second-floor residential use.
- The residential use has continued since 1979 and has not been abandoned.
- The Applicant intends to maintain the property as a structure comprised of a ground-floor commercial use and second-floor residential use.

Christine Cofone, AICP, PP was sworn and provided testimony on behalf of the Authority. Ms. Cofone referenced her review memo dated May 11, 2017 and indicated that there is adequate evidence within the application materials and public record to establish that the single-family use lawfully existed prior to the amendment of the zoning ordinance in 1979.

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

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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 structure comprised of a ground-floor commercial use and second-floor residential use lawfully existed until the amendment of the zoning district regulations in 1979, which rendered the residential 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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