



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 24- , ADOPTED 02/18/2025

TO: Members of the Authority

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

COPY: Eric Scheffler, Executive Director

SUBJECT: Hearing Officer's Report and Recommendation
Application #2024-08-3695
Applicant: Naldy Josephine Solano
36 N. Mississippi Avenue
Block 280, Lot 19
Atlantic City, NJ
Certificate of Nonconformity

DATE: January 13, 2025

On September 19, 2024, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Naldy Josephine Solano has submitted an application to the Casino Reinvestment Development Authority "Authority" requesting a Certificate of Non-Conformity detached single family dwelling at 36 N. Mississippi Avenue, Lot 19 in Block 280. The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-68) for the proposed residential dwelling on the property where such use is no longer permitted. 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 and in the application documents, 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 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 Applicant has met its burden for

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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:
36 N. Mississippi Ave
Block 280, Lot 19

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 280, Lot 46 in the City of Atlantic City. The property is improved with an existing structure comprised of a single family dwelling 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 Robert L. Reid, AICP, P.P., dated September 11, 2024.

FINDINGS OF FACT

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the property located at Block 280, Lot 19 in the City of Atlantic City. The property is improved with an existing structure comprised of a single family dwelling 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:

- Application Form for Certificate of Non-Conformity, dated 08/21/2024;
- Deed dated 07/12/2022 (Recorded);
- A.H. Mueller Map Atlas, Plate 6, dated 1908;

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- Sanborn Map Company Atlas, Plate 28, dated 1921, updated 1926;
- Sanborn Map Company Atlas, Plate 28, dated 1952, updated 1964;
- Property Record Card assessment records, dated 1961 to 1982;
- Property Record Card assessment records, dated 07/20/1981 to 10/29/2004;
- Sanborn Map Company Atlas, Plate 28, dated 1997;
- Certificate of Land Use Compliance issued by AC Planning Office, dated 08/14/2000;
- Property Survey, dated 09/28/2023;
- Property Record Card assessment records, dated 08/15/2024.

Robert L. Reid, AICP, PP was sworn and provided testimony on behalf of the Authority. Mr. Reid referenced her review memo dated September 11, 2024 and indicated that there is adequate evidence within the application materials and public record to establish that the single-family use lawfully existed since 1952, significantly before 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 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

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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 single-family dwelling 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.