



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 #2024-08-3700
Applicant: First Investment Holdings LLC
321 Atlantic Avenue
Block 124, Lot 58
Atlantic City, NJ
Certificate of Nonconformity

DATE: January 13, 2025

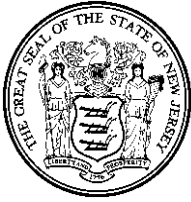
On September 19, 2024, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, First Investment Holdings LLC has submitted an application to the Casino Reinvestment Development Authority "Authority" requesting a Certificate of Non-Conformity for two residential apartments over first floor commercial use at 321 Atlantic Avenue, Lot 58 in Block 124, located in the LH-1 District. The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-68) for two residential apartments over first floor commercial use.

The Certificate of Non-Conformity would certify that the residential uses 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 uses lawfully existed prior to the adoption

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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.

INTRODUCTION

Application Information:
321 Atlantic Avenue
Block 124, Lot 58

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 124, Lot 58 in the City of Atlantic City. The property is improved with an existing structure comprised of a first-floor commercial use with two residential apartments above 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 124, Lot 58 in the City of Atlantic City. The property is improved with an existing structure comprised of a first-floor commercial use with two residential apartments above 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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- Application Form for Certificate of Non-Conformity, dated 08-29-2024;
- Deed dated (11/16/2023 Recorded)
- A H Mueller Map Atlas, Plate 1, dated 1908;
- Sanborn Map Company Atlas, Plate 38, dated 1921, updated 1926;
- Ord. # 34 of 1929 - Building Zone Ordinance (First development ordinance for Atlantic City)
- Building Zone Map, dated 01-01-1950, supplement to Building Zone Ordinance
- (Ord #34 of 1929);
- Sanborn Map Company Atlas, Plate 38, dated 1952, updated 1964;
- Property Record Card assessment records, dated 06-07-1961 to 1982;
- Ord. # 23 of 1977 - Interim Development Ordinance.
- Ord. # 27 of 1979 – Land Use Ordinance
- Certificate of Development Plan Conformance from AC Housing Authority, dated 05/15/1991;
- Sanborn Map Company Atlas, Plate 38, dated 1997;
- Land Title Survey dated 03/03/2024.

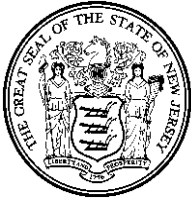
Robert L. Reid, AICP, PP was sworn and provided testimony on behalf of the Authority. Mr. Reid referenced her review memo dated September 11, 2024 and indicated that there is adequate evidence within the application materials and public record to establish that the building was a three-story brick structure at the time the first land development ordinance (Building Zone Ordinance) was adopted in 1929. The three-story brick structure included two apartments since 1961 before parking requirements went in effect in 1977. It appears that the three-story brick structure including the two apartments existed before 1977 and at the time N.J.A.C. 19:66 was in effect on 01-02-2018, which rendered such use nonconforming.

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.

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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. 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 commercial first-floor with two residential apartment units above 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.