



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 24- , ADOPTED 12/17/2024

TO: Members of the Authority

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

COPY: Eric Scheffler, Executive Director
Maisha Moore, Deputy Executive Director

SUBJECT: Hearing Officer's Report and Recommendation
Application #2024-10-3730
Applicant: Misty Sparks
205 N. Florida Avenue
Block 385, Lot 1
Atlantic City, NJ
Thorofare Waterfront District (TWD)
Certificate of Nonconformity

DATE: December 5, 2024

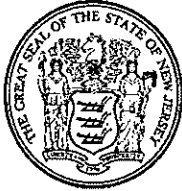
On November 07, 2024, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Misty Sparks (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for a single-family residential dwelling at 205 N. Florida Avenue, Lot 1 in Block 385, located in the TW District.

The Certificate of Non-Conformity would certify that the residential use that existed lawfully prior to a zoning change that rendered the use non-conforming and permit it to continue on the subject 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 contains a single-family residential dwelling, lawfully existed prior to the adoption of the current zoning

Page 1 of 4

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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:
205 N. Florida Avenue

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 385, Lot 1 in the City of Atlantic City. The property is improved with an existing single-family structure, where such single-family 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 October 29, 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 385, Lot 1 in the City of Atlantic City. The property is improved with an existing single-family dwelling, where such single-family 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 10/22/2024;
- Sanborn Map Company Atlas dated 1921, updated 1926;
- Sanborn Map Company Atlas dated 1952, updated 1964;

Page 2 of 4

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- Polk Directory dated 1961, 1965;
- Sanborn Map Company Atlas dated 1997;
- Property Record Card assessment records, dated 06/30/1961 to 1982;
- Property Record Card assessment records dated 07/17/1981 – 12/28/2006;
- Deed Filed 10/12/2021;
- Property Record Card assessment records dated 10/16/2024;

Robert L. Reid, AICP, PP was sworn and provided testimony on behalf of the Authority. Mr. Reid referenced his review memo dated October 29, 2024, and indicated that there is adequate evidence within the Applicant's evidence and research of the public record documents, demonstrate that the building was originally a single-family dwelling from before 1921 to 1964 (over 43 years).

The documents listed above have been reviewed and the following is offered:

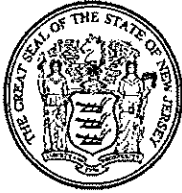
Plate 42 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1921, updated 1926, depicts a two-story brick dwelling. This was before the first land development ordinance was adopted in 1929. Ord. # 23 of 1929 permitted single-family dwelling uses. Plate 42 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1952, updated 1964, depicts a two-story brick dwelling. Plate 42 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1997, depicts a two-story brick dwelling. Property Record card (Building Record card reverse) dated 06/30/1961 through 1982 indicates a single-family dwelling. Property Record card (Building Record card reverse) dated 10/12/1981 indicates a one living unit. Property Record Card assessment records dated 10/16/2024 indicate one family.

It appears that the residential use existed before 1977 and before 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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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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 one residential unit, lawfully existed until the amendment of the zoning district regulations in 1977, 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.