



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 #2025-02-3783
Applicant: Mohammed U. Bhuiyan
2608 Pacific Avenue
Block 35, Lot 19
Atlantic City, NJ
Resort Commercial District (RC)
Certificate of Nonconformity

DATE: March 10, 2025

On March 06, 2025, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Mohammed Bhuiyan (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for a residential unit over commercial at 2608 Pacific Avenue, Lot 19 in Block 35, located in the RC 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 brick two-story building with a store in 1921 through 1926 before the first Building Zone



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Ordinance was adopted in 1929. The two-story brick building was labeled as a dwelling before 1964. The said building existed before the 1977 parking requirements were adopted. These uses 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.

INTRODUCTION

Application Information:
2608 Pacific 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 35, Lot 19 in the City of Atlantic City. The property is improved with a brick two story structure with a second-floor residential unit, 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 February 7, 2025.

FINDINGS OF FACT

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the property located at Block 35, Lot 19 in the City of Atlantic City. The property is improved with a two-story brick structure with a 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:

Application Form for Certificate of Non-Conformity, dated 11-05-2024;
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- A H Mueller Map Atlas, Plate 6, dated 1908;
- Sanborn Map Company Atlas, Plate 7, 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 7, dated 1952, updated 1964;
- Property Record Cards, dated 1966 to 1982;
- Property Record Cards, dated 12-22-1981
- Ord. # 23 of 1977 - Interim Development Ordinance.
- Ord. # 27 of 1979 – Land Use Ordinance
- Sanborn Map Company Atlas, Plate 7, dated 1997;

Robert L. Reid, AICP, PP was sworn and provided testimony on behalf of the Authority. Mr. Reid referenced his review memo dated February 7, 2025, and indicated that there is adequate evidence within the Applicant's evidence and research of the public record documents, demonstrate that the property was a brick two-story building with a store in 1921 through 1926 before the first Building Zone Ordinance was adopted in 1929. The two-story brick building was labeled as a dwelling before 1964. The said building existed before the 1977 parking requirements were adopted.

The applicant asserts that the property lawfully existed as commercial use on the first floor with one residential unit above for a least 59 years and desires to maintain the one residential unit above commercial.

It appears that one unit above commercial existed before 1977 and before N.J.A.C. 19:66 was in effect on 01-02-2018, which rendered such use nonconforming.

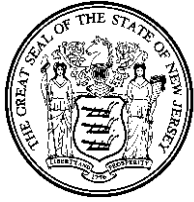
It also appears that the residential use existed before 1977 and before N.J.A.C. 19:66 was in effect on 01-02-2018, which rendered such use nonconforming.

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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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 over commercial first floor use, 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.