



15 South Pennsylvania Avenue
Atlantic City, NJ 08401

APPLICATION FOR CERTIFICATE OF LAND USE COMPLIANCE

Fee: Commercial: \$50.00

Residential: \$25.00

Check or Money Order Payable To "Casino Reinvestment Development Authority" NO CASH

Applicant's (Your) Name: Lynelle Bard-Hairston Phone: 215-471-8301

Business Name: _____

Applicant's (Your) Address: 291 Cobbs Creek Parkway, Phila., PA 19139

Applicant's (Your) Email Address: iamlynelle@verizon.net

Owner's Name: Same as above Phone: _____

Owner's Address: Same as above

Owner's Email Address: _____

*Property Owner's Signed Consent N/A Date: _____

Name and Address of Professional Consultant(s): _____

Street Address of Subject Property: 127 Wilson Avenue

Zoning District: RS-C Block(s) 24 Lot(s) 4

Prior Use (include total number of units, describe fully): Residential Duplex

Proposed Use (fully describe proposed use and/or signage, including total number of units; attach sheets if necessary):
Residential Duplex

SIGN PLAN MUST ACCOMPANY APPLICATION. Rendition of sign with dimensions and square footage of façade of building. Business name and Sign information must match.

Notice: 1) THIS CERTIFICATION MAY NOT BE THE ONLY APPROVAL REQUIRED NOR DOES IT SUBSTITUTE FOR A CERTIFICATE OF NON-CONFORMITY, BUILDING PERMIT, PERMITS REQUIRED IN FLOOD HAZARD AREAS, MERCANTILE LICENSE OR OTHER STATE AND LOCAL PERMITS. 2) THE OWNER, BY HIS "SIGNED CONSENT" ABOVE, ALSO AUTHORIZES THE RELEASE OF THE PROPERTY RECORD CARDS AND ANY OTHER DOCUMENTS TO THE APPLICANT.

Approved _____ FOR OFFICE USE ONLY _____

Approved  Denied _____

Conditions of Approval: Subject to applicant's satisfaction of all applicable City of Atlantic City ordinances and regulations.

Certificate of Nonconformity issued per CRDA Resolution 14-139 to allow continued use as a residential duplex


Application Number: 2014-07-1146

Fee Received: Hearing application

Date Filed: 10/24/2014

Date Issued: 10/24/2014

Authorization: _____



(N.B.: Must be acted on within ten days of receipt).

RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY APPROVING A CERTIFICATE OF NONCONFORMITY FOR LYNELLE BARD-HAIRSTON UNDER APPLICATION 2014-07-1146

WHEREAS, pursuant to Resolution 11-25 adopted April 19, 2011, the Casino Reinvestment Development Authority (the "Authority") designated the tourism district (the "Tourism District") in the city of Atlantic City in accordance with P.L. 2011 chapter 18 (the "Act"); and

WHEREAS, pursuant to the Act, the Authority is required to develop a master plan for the Tourism District, and adopt and impose regulations concerning the review and approval or denial of site plans and development proposals for development upon and improvements to land within the Tourism District (the "Land Use Regulations") to supersede the regulations imposed by the governing bodies or agencies of the county or municipality; and

WHEREAS, pursuant to Resolution 11-33 adopted April 19, 2011, the Authority established the Land Use Regulation and Enforcement Division to, among other matter, hear applications for development in the Tourism District; and

WHEREAS, pursuant to Resolution 11-34 dated April 19, 2011, the Authority adopted the master plan, zoning and land use ordinances and regulations, and zoning maps approved by the City of Atlantic City until such time as the Authority adopts the Land Use Regulations in accordance with the Act; and

WHEREAS, pursuant to Resolution 12-14 dated February 1, 2012, the Authority adopted the "New Jersey CRDA Atlantic City Tourism District Master Plan" prepared by Jones Lang LaSalle, LLC and dated February 1, 2012 (the "Master Plan") (as affirmed as readopted pursuant to Resolution 12-23 adopted February 21, 2012), subject to further comment and revision, which master plan shall become effective upon the adoption of design, development and land use regulations consistent therewith, and in accordance with N.J.S.A. 5:12-220a, the Atlantic City Master Plan dated September of 2008 (as adopted by the CRDA pursuant to Resolution 11-34 dated April 19, 2011) shall remain effective for development applications received by the CRDA until adoption of such regulations; and

WHEREAS, Ms. Lynelle Bard-Hairston (the "Applicant"), seeks a Certificate of Nonconformity pursuant to pursuant to N.J.S.A. 40:55D-68 of the Municipal Land Use Law P.L.1975, c. 291 (C.40:55D-1 *et seq.*) for the uses and structure located at 127 Wilson Avenue, Block 24, Lot 4 in the city of Atlantic City, a property used as a residential duplex dwelling, which is not currently a permitted use in the RS-C Zoning District, under application 2014-07-1146 (the "Application"); and

WHEREAS, on August 21, 2014, the Authority's Land Use Regulation and Enforcement Division convened a public hearing on the Application in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and the Act, and subsequently

prepared and delivered the Hearing Officer's Report and Recommendation dated September 19, 2014 (the "Report"), incorporated herein by this reference and appended hereto as Exhibit "A"; and

WHEREAS, the Authority intends to adopt the findings, conclusions and recommendations of the Hearing Officer, as detailed in the Report; and

NOW THEREFORE, BE IT RESOLVED by the Casino Reinvestment Development Authority that:

1. The above recitals are incorporated herein, as if set forth in full.
2. Based on the record in this matter, Application 2014-07-1146 is hereby approved in accordance with the Hearing Officer's Report and Recommendation dated September 19, 2014.
3. A copy of this Resolution shall be immediately transmitted to the Governor. This Resolution shall take effect immediately but no action authorized herein shall have force and effect until the earlier of the passage of ten (10) days, Saturdays, Sundays and public holidays excepted, after the delivery of the copy to the Governor, or the Governor's approval.

I hereby certify that this document is a true and correct copy of Resolution 14-139 of the Casino Reinvestment Development Authority.



PAUL G. WEISS, ESQ, ASSISTANT SECRETARY

MEETING OF OCTOBER 21, 2014



October 24, 2014

**CASINO REINVESTMENT DEVELOPMENT AUTHORITY
LAND USE REGULATION AND ENFORCEMENT DIVISION**

NOTICE OF DECISION

Application #2014-07-1146

Lynelle Bard-Hairston

127 Wilson Avenue

Block 24, Lot 4

Certificate of Nonconformity

Please take notice that pursuant to Resolution 14-139 adopted October 21, 2014, the Casino Reinvestment Development Authority approved a Certificate of Non-Conformity pursuant to N.J.S.A. 40:55D-68 of the Municipal Land Use Law, for a residential duplex on the property where such use is no longer permitted. The Certificate of Non-Conformity certifies that the use existed lawfully prior to a zoning change that rendered the use non-conforming, and permits it to continue on the property. The property is located in the RS-C Resort Commercial Zone.

The grant of the application shall be expressly conditioned upon the applicant satisfying 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. Further, the approval is conditioned upon the applicant obtaining any and all other necessary governmental approvals, and compliance with all Federal, State and Local laws. Any approval granted in accordance herewith shall be further expressly conditioned upon the grant and recording or cross-easements allowing access between the two properties, contemporaneous with the approval of the subdivision.

Rose Ann Lafferty,
Land Use Regulation & Enforcement Officer



Casino Reinvestment Development Authority
Land Use Regulation and
Enforcement Division

EXHIBIT "A" TO RESOLUTION 14-139, ADOPTED 8/19/2014

TO: Members of the Authority

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

COPY: John F. Palmieri, Executive Director

SUBJECT: Hearing Officer's Report and Recommendation
Application #2014-07-1146
Lynelle Bard-Hairston
127 Wilson Avenue
Block 24, Lot 4
Certificate of Nonconformity

DATE: September 8, 2014

On August 21, 2014, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The applicant, Lynelle Bard-Hairston (the "Applicant"), seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for an existing residential duplex where such use is no longer permitted. The Certificate of Non-Conformity would certify that the 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 residential duplex 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.

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

INTRODUCTION

Application Information:

Lynelle Bard-Hairston
127 Wilson Avenue
Block 24, Lot 4
RS-C Zoning District

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 24, Lot 4 in the city of Atlantic City. The property is improved with an existing residential duplex, which is not currently a permitted use in the zoning district.

Relief Requested

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

Evidence List

The following materials were submitted in support of the Application:

A-1 Application for Certificate of Non-Conformity, together with all attachments.

FINDINGS OF FACT

The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law for the existing residential duplex located at Block 24, Lot 4 in the city of Atlantic City. The residential duplex use is not currently a permitted use in the zoning district.

The Applicant represented herself at the hearing on this matter. She asserted the following based on the documents submitted in connection with the application:

- The property was built in 1935 as a residential duplex.

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- Property Record Card for the subject property from 1974, 1977, 1981 and 2006 indicate a residential duplex use.
- The Applicant purchased the property in 2006 as a residential duplex.
- The property has been used as a residential duplex since the time that the Applicant purchased the property.
- The residential duplex use was permitted under the zoning ordinance prior to 2008.
- The zoning ordinance was amended in 2008. As a result of the amendment, the existing use was rendered non-conforming.
- The residential duplex use has continued since 2008 and has not been abandoned.
- The Applicant intends to maintain the property as a residential duplex use.

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 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.

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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 residential duplex lawfully existed until the amendment of the zoning district regulations in 2008, which rendered such 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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