



CHRISTINE A. COFONE, PP, AICP
Principal

COFONE CONSULTING GROUP, LLC

June 22, 2016

Lance B. Landgraf, Jr., P.P., AICP
Director of Planning
Casino Reinvestment Development Authority
15 South Pennsylvania Avenue
Atlantic City, NJ 08401

RE: **Cory Parking, LLC**
18 S. MLK Boulevard
Block 156, Lots 17, 18, 19, 20, 21, 22, and 23
Application #2016-06-1946

Dear Mr. Landgraf:

As per your direction, we have reviewed the above-referenced development application. In the subject application, the applicant is seeking a Certificate of Nonconformity for the standalone parking use on Block 156, Lots 17, 18, 19, 20, 21, 22, and 23 located within the RS-C (Resort Commercial) District.

As part of our analysis, we undertook the following tasks: an inspection of the subject premises; a survey of surrounding land uses; review of the City of Atlantic City Zoning Ordinance and Zoning Map; review of municipal records and Sunburn Insurance atlas maps; and review of the filed application materials.

We offer the following analysis and comments for your consideration.

Description of Site and Summary of Development Proposal

According to the Applicant's Certificate of Nonconformity application, the present use of the property is a standalone parking lot. The applicant is seeking a Certificate of Nonconformity to continue to utilize the site as such without seeking a variance, as a standalone parking lot is not a permitted use in the RS-C District.

Nonconformity standard

The term "nonconforming use" is defined at N.J.S. 40:55D-5 as "a use or activity which was lawful prior to the adoption, revision, or amendment of a zoning ordinance, but which

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fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.”

N.J.S. 40:55D-68 provides that “[a]ny 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 and any such structure may be restored or repaired in the event of partial destruction thereof.”

The burden of proof in establishing and proving the existence of a nonconforming use is upon the Applicant. According to the 2011 Edition of New Jersey Zoning and Land Use Administration at 11-2.2, titled “Burden of proof,” the Applicant should be very clear in explaining the prior usage of the subject property:

It is important that the evidence presented to the board establish exactly what the use was at the time of adoption of the ordinance, its character, extent, intensity and incidents.

Further at 11-2.3, titled “Elements of proof,” it states:

In determining the status of a purported nonconforming use or structure, the board of adjustment must trace the nonconforming history of the property back to the zoning ordinance in existence at the time the use in question commenced in order to establish that it was in fact conforming when commenced or existed prior to an amendment which made it nonconforming.

If the usage of the property had changed at any given time contrary to the use for which an applicant seeks a certificate of nonconformity – and is therefore not a continuous usage of the property – then it is not entitled to protection. Municipal records, such as tax certificates and certificates of occupancy, have been found to be sufficient by the judiciary (*Eltrym Euneva v. Keansburg*, 407 N.J. Super. 432, 438-439 (Law Div. 2008)).

Planning Analysis and Issues for Consideration by the Board

We offer the following for your consideration in reviewing the Application:

- 1) The burden of proof is on the Applicant to prove the existence of a legal non-conforming use prior to the adoption of the ordinance establishing the RS-C District.
- 2) CRDA has conducted research into the historical usage of the property. To begin, CRDA used 1979 as the test year. Lots 17, 18, 19, 20 were utilized by four

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individual dwellings that were demolished in 1977. Tax records show the lots were vacant in 1979 and paved parking lot in 1982. Lot 21 was a parking lot in 1957. The front portion of Lot 22 was a parking lot in 1957. The several buildings on Lot 23 were demolished in 1981 and the parking lot was paved in 1982.

- 3) The site is therefore not eligible for a certificate of non-conformity and thus requires a d(3) conditional use variance.

I would be happy to address any questions or comments on the above at the public hearing.

Respectfully submitted,

Christine A. Nazzaro-Cofone, AICP, PP
Principal