

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY GRANTING AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL AND VARIANCE RELIEF FOR THE CONSTRUCTION OF THE RESORTS MARGARITAVILLE LAND SHARK BAR AND GRILL UNDER APPLICATION 2012-12-511**

**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, as affirmed and re-adopted by Resolution 12-33 dated February 21, 2012 (the "Master Plan"), subject to further comment and revision; and

**WHEREAS**, pursuant to Resolution 12-130 adopted August 21, 2012, the Authority granted conditional use, preliminary and final site plan approval and variance relief for the reconstruction of the former Steeplechase Pier and the construction of a Margaritaville Land Shark Bar and Grill under application 2012-06-382; and

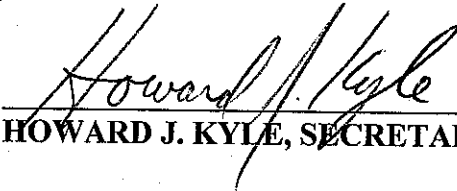
**WHEREAS**, on February 21, 2013, the Authority's Land Use Regulation and Enforcement Division convened a public hearing on Application 2012-12-511 in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and the Act, and subsequently prepared and delivered the Hearing Officer's Report and Recommendation dated March 10, 2013 (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 2012-12-511 is hereby approved in accordance with the Hearing Officer's Report and Recommendation dated March 10, 2013.
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 13-39 of the Casino Reinvestment Development Authority.

  
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**HOWARD J. KYLE, SECRETARY**

**MEETING OF MARCH 19, 2013**



Casino Reinvestment Development Authority  
Land Use Regulation and Enforcement  
Division

EXHIBIT "A" TO RESOLUTION 13- , ADOPTED 3 /19/2013

**TO:** Members of the Authority

**FROM:** P. G. Weiss, Interim Land Use Hearing Officer

**COPY:** John F. Palmieri, Executive Director  
Scott G. Collins Collins, Esq.

**SUBJECT:** Hearing Officer's Report and Recommendation -  
Application 2012-12-511  
DGMB Casino, LLC  
Amended Preliminary and Final Major Site Plan with Variances

**DATE:** March 10, 2013

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EXECUTIVE SUMMARY AND RECOMMENDATION

On February 21, 2013, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, DGMB Casino, LLC (the "Applicant"), seeks Amended Preliminary and Final Site Plan Approval with Variances pursuant to the Municipal Land Use Law in connection with the Resorts Casino Hotel/Margaritaville and Landshark Pier project in the City of Atlantic City. The Applicant seeks approval for the construction and display of four (4) additional signs associated with the project. Although the Applicant also proposes construction of a new billboard sign on site, consideration of that portion of the Application was adjourned at the request of the Applicant pending submission of additional evidence and testimony.

During the Hearing, the Applicant presented evidence and testimony that satisfy the requirements of the Municipal Land Use Law for the grant of the requested relief. Specifically, the development proposal meets the standards set forth in the Atlantic City Code for site plan approval. In addition, the grant of the variances will advance the purposes of the Municipal Land Use Law and will not create a substantial detriment to the public good or impair the intent and purpose of the zone plan and the zoning ordinance.

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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**INTRODUCTION**

**Application Information**

DGMB Casino, LLC  
1100 Boardwalk  
Block 1, Lots 142 & 142.01  
B-Beach 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 property in question is the Resorts Casino Hotel/Margaritaville and Landshark Pier project in the City of Atlantic City. Applicant seeks Amended Preliminary and Final Site Plan Approval with Variances pursuant to the Municipal Land Use Law for the construction and display of four (4) additional signs associated with the project.

**Relief Requested**

Amended Preliminary and Final Site Plan Approval with Variances.

**Evidence List**

- A-1 Façade Signage Plan.
- A-2 Signage Package.
- A-3 Margaritaville entrance Rendering.
- A-4 Casino Entrance Perspective.
- A-5 Collage of Prior Billboard Sign (subsequently demolished).
- A-6 Overall Plan of Landshark Pier.
- A-7 Close-up view of Prior Billboard Sign (subsequently demolished).

B-1 Letter dated January 15, 2013 from Timothy Kernan, P.E.

**FINDINGS OF FACT**

Applicant seeks Amended Preliminary and Final Site Plan Approval with Variances pursuant to the Municipal Land Use Law for the construction and display of four (4) additional signs associated with the Resorts Casino Hotel/Margaritaville and Landshark Pier project in the City of



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Atlantic City. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for signage. The Applicant, represented by its attorney, Nicholas Talvacchia, Esq., introduced the development proposal generally.

The Applicant presented the testimony of Mark Petrella, a New Jersey-licensed architect, who was qualified as an expert witness. Mr. Petrella gave an overview of the Margaritaville project, and described the proposed signage package. Specifically, he testified that four (4) additional signs are proposed as part of the Application and described them as follows: (1) the sign indicated as "E-2" in the signage package is a blade sign that conforms to the requirements of the Zoning Ordinance and requires site plan approval only; (2) the sign indicated as "E-3" in the signage package is a blade sign for the "5 O'Clock Somewhere Bar" that projects 5.5 feet from the building façade where a maximum a projection of four feet is permitted, requiring a variance and site plan approval; (3) the sign indicated as "E-5" in the signage package is a mural sign that conforms to the requirements of the Zoning Ordinance and requires site plan approval only; and (4) the sign indicated as "E-6" in the signage package is a roof-mounted sign that is prohibited under the Zoning Ordinance, requiring a variance and site plan approval.

The Applicant presented the testimony of Jon Barnhart, P.E., P.P., who was qualified as an expert in the field of planning. Mr. Barnhart provided testimony in support of the grant of the requested variances.

With respect to the "5 O'Clock Somewhere Bar" blade sign, Mr. Barnhart testified that the type of sign and the square-footage of the sign conform to the Zoning Ordinance. However, the proposed sign projects 5.6 feet over the Boardwalk where a maximum projection of four feet is permitted. Mr. Barnhart testified that the increased size of the sign will increase visibility along the Boardwalk and create architectural interest. He testified that the deviation from the Zoning Ordinance advances the purposes of zoning through the creation of a desirable visual environment, and does not impair the purpose and intent of the zoning plan and zoning ordinance or create a detriment to surrounding properties.

With respect to the proposed roof-mounted sign, Mr. Barnhart testified that it is similar to another roof-mounted sign previously approved on a different face of the same thatched-roof architectural feature, and that the same justifications for the grant of the prior variance are applicable to this sign. Specifically, (1) that roof-mounted signs are typically considered signs which are mounted on top of a flat structure; (2) that the Applicant proposes a sign located above the eave line of a sloping roof; and (3) that as a result of the architectural characteristics of the structure, there is no other place to locate the sign. He testified that the location of the sign advances the purposes of zoning through the creation of a desirable visual environment, and does not impair the purpose and intent of the zoning plan and zoning ordinance or create a detriment to surrounding properties. He further testified that the grant of the variance would advance the purposes of the Tourism District.



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Timothy Kernan, P.E. was qualified as an expert in engineering and planning, and provided testimony on behalf of the Casino Reinvestment Development Authority. Mr. Kernan's review letter dated January 15, 2013 was marked into evidence, and in Mr. Kernan's opinion the Applicant presented sufficient proofs to support the requested relief, and he therefore supported the approval of the application and the grant of the variances.

**CONCLUSIONS OF LAW**

Applicant seeks Amended Preliminary and Final Site Plan Approval with Variances pursuant to the Municipal Land Use Law for the construction and display of four (4) additional signs associated with the Resorts Casino Hotel/Margaritaville and Landshark Pier project in the City of Atlantic City. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for signage.

**Preliminary and Final Site Plan Approval**

A land use agency's authority in reviewing an application for site plan approval is limited to determining whether the development plan conforms with the zoning ordinance and the applicable provisions of the site plan ordinance. See Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216 (1994).

Here, the Hearing Officer concludes based on the Applicant's evidence and testimony that the development proposal generally conforms to the site plan standards and technical requirements of the land use ordinances of the City of Atlantic City and that the development proposal satisfies the legal requirements for the grant of the requested relief.

**Variances**

For variances requested pursuant to N.J.S.A. 40:55D-70(c)(2), an applicant must demonstrate through evidence and testimony that the positive and negative criteria of the statutory requirements have been met.

**Positive Criteria**

The positive criteria for variances requested pursuant to N.J.S.A. 40:55D-70(c)(2) is satisfied if one or more purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of that deviation would substantially outweigh any detriment to the public good. Ketcherick v. Bor. Mountain Lakes, 256 N.J. Super. 646 (App. Div. 1992); Green Meadows v. Planning Board, 329 N.J. Super. 12 (App. Div. 2000).



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With respect to the "5 O'Clock Somewhere Bar" blade sign, there is adequate evidence that the deviation from the Zoning Ordinance advances the purposes of the Municipal Land Use Law by promoting a desirable visual environment through creative development techniques and good civic design (Purpose I).

With respect to the variances permitting roof-mounted signs, the Applicant testified that the location of the sign was determined based on architectural considerations, and to maximize visibility of the structure and use. Moreover, the sign conforms to the ordinance in all other respects. There is adequate evidence that the location of the signs advances the purposes of the Municipal Land Use Law by promoting a desirable visual environment through creative development techniques and good civic design (Purpose I).

**Negative Criteria**

Relief under N.J.S.A. 40:55D-70(c)(2) cannot be granted unless the negative criteria is satisfied. The negative criteria required for all "c" variances is that the requested relief can be granted without substantial detriment to the public good and without substantially impairing to the intent and purpose of the zone plan and the zoning ordinance.

Based on the Applicant's evidence and testimony, the Hearing Officer concludes that the development proposal will not result in any detriment to the public good, and will not substantially impair the purpose and intent of the zone plan and zoning ordinance.

**RECOMMENDATION**

For all of the foregoing reasons, the Hearing Officer recommends that the Application for Amended Preliminary and Final Site Plan Approval with Variances be approved. Such approval shall specifically exclude the proposed billboard sign, consideration of same having been adjourned at the request of the Applicant pending submission of additional evidence and testimony. The grant of approval of this 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. 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.

**CRDA BOARD TALLY**

**March 19, 2013**

**DGMB CASINO, LLC (MARGARITAVILLE SIGNAGE) - Granting use variance relief**

**MOTION**

RS

**SECOND**

GO

David Rebeck for Jeffrey Chiesa

Y

Robert Bartolone for Richard Constable

Y

Kevin DeSanctis

A

Debra DiLorenzo

Y

Edward Gant

A

Robert Garrison

Y

Robert Griffin

A

Matthew Levinson

Y

Howard Kyle

Y

Mayor Lorenzo Langford

Y

Robert Mulcahy

Y

Gerald Owens

Y

Robert Shaughnessy for Andrew Sidamon-Eristoff

Y

Frank Spencer

A

Richard Tolson

Y

Chairman James Kehoe

A

Y

Y

Y

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