



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 14- , ADOPTED 1/20/2014

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 2014-8-1176
Tri-County Community Action Agency, Inc.
Block 293, Lot 1
Preliminary and Final Site Plan with Variances

DATE: January 9, 2015

EXECUTIVE SUMMARY

On December 18, 2014, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Tri-County Community Action Agency, Inc. (the "Applicant"), a 501(c)(3) nonprofit, charitable entity seeks preliminary and final site plan approval with variances for a proposed 44,600 square foot Early Head Start/Head Start day nursery and educational center with landscaping and related site improvements on the property located at Block 293, Lot 1 in the city of Atlantic City.

During the hearing, the Applicant presented adequate evidence and testimony to satisfy the requirements of the Municipal Land Use Law for the grant of the requested relief. Specifically, the evidence and testimony demonstrated 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. Therefore, as more fully outlined below, the

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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

Tri-County Community Action Agency, Inc.
Block 293, Lot 1
CBD-Central Business 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.

Applicant, a 501(c)(3) nonprofit, charitable entity, seeks preliminary and final site plan approval with variances for a proposed 44,600 square foot Early Head Start/Head Start day nursery and educational center with landscaping and related site improvements on the property located at Block 293, Lot 1 in the city of Atlantic City.

Evidence List

- A-1 Tourism District Map
- A-2 Aerial Photo-Existing Conditions
- A-3 Rendered Aerial Photo Location Plan Showing Site
- A-4 Rendered Version of Site Plan
- A-5 Rendered Front Building Elevation-Architectural
- A-6 Rendered Rear and Side Building Elevation-Architectural
- A-7 Rendered Roof Plan

B-1 Letter from Kernan Consulting Engineers dated November 26, 2014

FINDINGS OF FACT

Applicant, a 501(c)(3) nonprofit, charitable entity, seeks preliminary and final site plan approval with variances for a proposed 44,600 square foot Early Head Start/Head Start

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

day nursery and educational center with landscaping and related site improvements on the property located at Block 293, Lot 1 in the city of Atlantic City. The attorney for the Applicant, Stephan R. Nehmad, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

The Applicant presented the testimony of Jason Sciallo, P.E., who was qualified as an expert in the field of professional engineering. Mr. Sciallo described the location of the site, as well as development proposal, site layout and design.

Mr. Sciallo provided testimony regarding parking. He testified that the zoning ordinance requires 62 on-site parking spaces and that no on-site parking is proposed for the development. He testified that all parking needs will be satisfied off-site and that the Applicant will obtain a lease or license for the use of 40 parking spaces at an off-site location. The Applicant agreed to provide proof of a lease or license for 40 spaces off-site shall be a condition of any approval of the application.

Mr. Sciallo also provided testimony regarding the requested variance for rear yard set-back. He testified that the existing building has a zero set-back and that the Applicant proposes that the new building have a zero rear yard set-back to match existing conditions along Arctic Avenue. He also testified with respect to the requested variance for visibility across corners. He noted that the corner in question is signalized and bounded by one-way streets. He testified that visibility will be adequate and the grant of the variance is appropriate. With respect to the variance for loading spaces, Mr. Sciallo testified that he testified that a loading zone will be created in the public right of way along Arctic Avenue.

Mr. Sciallo also provided testimony regarding the requested variance from the requirement that facades along streets be designed predominantly for retail and entry lobbies. He noted that any retail and entrance lobbies at street level would need to be raised and pushed into the interior of the site to accommodate recent changes to flood hazard regulations. He testified that such a design would not accomplish the intent of the zoning ordinance. He further testified that the development proposal for the construction of a daycare center is better served by limiting access to the facility at one main entrance and restricting access along other street frontages.

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Finally, Mr. Sciullo testified that, except as noted, the development proposal generally complies with all requirements of the land use ordinances of the city of Atlantic City and that the Applicant would agree to comply with all comments in the Kernan Consulting Engineers review letter dated November 26, 2014.

The Applicant presented the testimony of Angelo Alberto, a registered architect, who was qualified as an expert in architecture. Mr. Alberto testified as to the architectural features of the development proposal, as well as the building floor plans and layout. Mr. Alberto testified as to the requested variance from the provision of the zoning ordinance requiring that 50% of flat roof areas be landscaped, and noted that approximately 47% of the flat roof area will be used as play areas and outdoor recreation space. He further noted that these areas will include planters and other landscaping features such that the intent of the zoning ordinance would be satisfied. He testified that the building has been designed with the goal to be certified as LEEDS Silver or better. Finally, he testified that all rooftop mechanical equipment will be appropriately screened.

Bonnie Eggenberg, Vice-President for Early Head Start and Head Start services for the Applicant was sworn and provided testimony in support of the Application. She provided testimony describing the Applicant's organization and programs for early childhood education and supporting programs. She testified that employees of the Applicant will require no more than 40 parking spaces. She stated that most children will arrive at the facility by bus (approximately two busses per day with approximately 50 children per bus), via public transportation or on foot. This projection is based on her experience in the operation of similar facilities at other locations. Finally, she testified that most deliveries to the facility will be for food, milk and school and office supplies, and will be accomplished via small truck and coordinated at off-peak traffic hours.

The Applicant presented the testimony of William Crane, P.P., who was qualified as an expert in the field of professional planning. Mr. Crane testified that the proposed use is permitted in the CBD zoning district. He then provided extensive testimony in support of the requested variances.

- With respect to the variance to provide 40 off-site parking spaces where 62 on-site spaces are required, he testified that the zoning ordinance permits commercial uses in the zoning district to provide parking off-site on other properties that are

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- commercially zoned. He indicated that such practice is common in the zoning district.
- With respect to the variance to provide landscaping and rooftop treatment on less than 50% of the proposed building rooftop, Mr. Crane testified that the intent of the ordinance is to improve aesthetics on flat rooftops when viewed from taller buildings. He testified that the active use of large portions of the flat rooftops for playgrounds and recreation areas, together with planters, trellises, screening and graphic designs satisfy the intent of the zoning ordinance. Finally, he noted that rooftop landscaping treatments have been largely unsuccessful due to climatic conditions.
 - With respect to the variance to from the requirement that buildings be designed predominantly for commercial uses and entrance lobbies at street level, Mr. Crane testified that such requirement is simply not practical for institutional uses such as proposed. He noted that the “friendly” entrance at the corner at Bacharach Avenue and New York Avenue satisfies the intent of the zoning ordinance to the greatest extent practicable.
 - With respect to the variance to provide on-street loading as opposed to off-street loading, Mr. Crane testified that the intensity of the use does not warrant a dedicated, on-site loading space. He testified that the limited needs of the facility for loading, together with the unattractive appearance of on-site loading zones, support the grant of the variance.
 - With respect to the variance from the requirement to provide visibility across corners, he testified that the safety need for a sight triangle at the intersection is diminished where, as here, the intersection at the corner is signalized and the surrounding streets are designated as one-way.
 - With respect to the variance to provide zero rear yard set-back where 30’ is required under the zoning ordinance, Mr. Crane testified that the imposition of the set-back along the street with other existing uses at the property line would create spaces between buildings and be “contrary to the urban fabric” of the neighborhood.

Mr. Crane testified that the positive criteria for the grant of all of the requested variances is satisfied because the grant of the variances will promote the purposes of the Municipal Land Use Law. Specifically, the grant of the variances will provide sufficient space in appropriate locations for a variety of uses to meet the needs of all New Jersey citizens (Purpose “G”). Here, he noted that the Tourism District Master Plan promotes the

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

development of educational facilities in this area. He further testified that the grant of the variances will promote the public health, safety and general welfare (Purpose "A"), as educational uses are universally considered a value to the community promoting the general welfare. Finally, he testified that the grant of the variances will promote a desirable visual environment through creative development techniques and good civic design (Purpose "I") as it is architecturally appealing and "fits within the urban fabric of the other buildings in the area".

Mr. Crane testified that the negative criteria for the grant of all of the requested variances is satisfied because the grant of the variances will not create a substantial detriment to the public good and will not substantially impair the purpose and intent of the zone plan.

Timothy Kernan was qualified as an expert in professional engineering and planning and provided testimony on behalf of the Authority. Mr. Kernan supported the development proposal and the grant of the requested relief. He requested that the grant of any approval of the development proposal be conditioned upon the Applicant providing information regarding the location of any underground storage tanks on site.

Several members of the public offered testimony and public comment in support of the Applicant and the Application.

CONCLUSIONS OF LAW

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 to 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, based on the evidence and testimony, the Applicant has demonstrated that development proposal generally conforms to the site plan standards and technical requirements of the land use ordinances of the city of Atlantic City.

Variances

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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 out-weigh 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).

The Applicant seeks "C" bulk variances as set forth herein. Based on the evidence and testimony demonstrates that the requested variances can be justified because the grant of the variances will promote the purposes of the Municipal Land Use Law. Specifically, the grant of the variances will provide sufficient space in appropriate locations for a variety of uses to meet the needs of all New Jersey citizens (Purpose "G"); promote the public health, safety and general welfare (Purpose "A"); and promote 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 the intent and purpose of the zone plan and the zoning ordinance.

The evidence and testimony demonstrate that the grant of the requested variances will not create 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 preliminary and final site plan approval be approved. The grant of approval of this

Page 7 of 8

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Application shall be expressly conditioned upon the Applicant complying with all conditions of prior approvals, 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.

The grant of approval shall be further conditioned upon compliance with 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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