



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 15-___, ADOPTED 2/17/2015

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 2013-12-897
Robert Boselli, Jr.
Block 386, Lots 3 & 4, Block 387, Lots 9 & 10
Preliminary and Final Site Plan with Variances

DATE: February 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, Robert Boselli, Jr. (the "Applicant"), seeks preliminary and final site plan approval with variances for a proposed mixed use development consisting of a restaurant and bar on the first floor, a 2,597 square foot bar on the second floor and eight (8) residential units on floors three and four, a fifth floor loft area for the fourth floor units with parking and related site improvements on the property located at Block 386, Lots 3 and 4, and Block 387, Lots 9 and 10 in the city of Atlantic City. Waterfront improvements are also proposed, including a new bulkhead, floating dock and water taxi service.

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

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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 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

Robert Boselli, Jr.
Block 386, Lots 3 & 4, Block 387, Lots 9 & 10
Preliminary and Final Site Plan with Variances
MUR-Mixed Use Recreational 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.

Applicant seeks preliminary and final site plan approval with variances for a proposed mixed use development consisting of a restaurant and bar on the first floor and eight (8) residential units on the second floor with parking and related site improvements on the property located at Block 386, Lots 3 and 4, and Block 387, Lots 9 and 10 in the city of Atlantic City. Waterfront improvements are also proposed, including a new bulkhead, floating dock and water taxi service.

Evidence List

- A-1 Aerial Photo-Existing Conditions
- A-2 Sheet C-2 of Site Plan
- A-3 Sheet C-3 of Site Plan
- A-4 Colorized Version of Site Plan
- A-5
- A-6 Sheet A-1 of Site Plan
- A-7 Sheet A-2 of Site Plan

B-1 Letter from Kernan Consulting Engineers dated November 24, 2014

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FINDINGS OF FACT

Applicant seeks preliminary and final site plan approval with variances for a proposed mixed use development consisting of a restaurant and bar on the first floor, a 2,597 square foot bar on the second floor and eight (8) residential units on floors three and four, a fifth floor loft area for the fourth floor units with parking and related site improvements on the property located at Block 386, Lots 3 and 4, and Block 387, Lots 9 and 10 in the city of Atlantic City. Waterfront improvements are also proposed, including a new bulkhead, floating dock and water taxi service. The attorney for the Applicant, Stephen Hankin, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. He noted that the existing, non-conforming warehouses on the property will be demolished and replaced with a five-story mixed use structure.

The Applicant presented the testimony of Jon Barnhart, P.E., P.P., who was qualified as an expert in the field of professional engineering and professional planning. Mr. Barnhart described the location of the site, existing conditions and development proposal. He explained that Block 386, Lots 3 and 4 are waterfront parcels, and are separated from Block 387, Lots 9 and 10 by a public right of way. He further explained that the Applicant proposes to develop the waterfront parcel with mixed uses, including nine parking spaces underneath the structure, and to develop the inland parcel for parking only.

Mr. Barnhart testified that the waterfront parcel will be developed with a five-story structure with up to three commercial uses, including a restaurant and bar, on the first floor with 8 residential units above. The structure will also include a large public deck and a floating dock to support the proposed water taxi use.

Mr. Barnhart provided extensive testimony regarding site circulation, parking needs and parking availability. He noted the urban nature of the location of the site and the availability of multiple modes of transportation, the availability of on-street parking and the availability of parking at the nearby Wave garage. He also testified that the requirement of the zoning ordinance to provide landscaping on 50% of the surface of flat rooftops is impractical based on climatic conditions affecting the waterfront property.

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Mr. Barnhart testified that the proposed uses are permitted in the MUR zoning district. He then provided testimony in support of the requested variances. He identified the requested variances as follows:

- In accordance with § 163-70A(1)(c)[4], 100% of required parking shall be provided on-site. The plan does not conform to this requirement.
- In accordance with § 163-70A(2)(a)[2][a], no part of any parking lot, other than driveways for ingress and egress, shall be located closer to a street than the minimum front yard setback required for a one-story principal building in the relevant district or the face of the principal building on the lot in question facing such street, whichever is greater. The plan does not conform to this requirement, proposing parking on the property line of Lots 9 and 10.
- In accordance with § 163-70A(2)(a)[2][b], no part of any parking lot other than driveways for ingress and egress, shall be located in any required side yard or between a side lot line and the side of any principal building on such lot, unless located to the rear of the rear of such building. The plan does not conform to this requirement, proposing parking within 2 feet of the side lot lines on the south side of Sunset Avenue and within 5 feet on the north side.
- In accordance with § 163-70A(2)(b)[1][a], a perimeter landscaped open space of a width of at least 10 feet shall be provided along every street line. The plan does not conform to this requirement, proposing approximately 2 feet of landscaping along Lots 3 and 4 and no landscaping along Lots 9 and 10.
- In accordance with § 163-70A(2)(b)[1][d], shade trees shall be provided at a ratio of one tree for every 10 parking spaces. The plan does not conform to this requirement, as only 2 ornamental trees and no shade trees are proposed.
- In accordance with § 163-70A(2)(b)[2], a perimeter landscaped open space of a width of at least 15 feet is required for parking lots adjoining residential uses. The plan does not conform to this requirement, proposing parking within 2 feet of a lot line to a residential use.
- In accordance with § 163-70A(2)(c)[1], each required off-street parking space shall have a vertical clearance of at least 6-1/2 feet. For 90° parking, a minimum width of 9 feet, length of 19 feet and aisle width of 24 feet are required. For 45° parking, a minimum width of 9 feet, perpendicular length of 19.8 feet and aisle width of 13 feet are required. The parking spaces in the garage are 18 foot long. The parking spaces on Lots 9 and 10 do not have a perpendicular length of 19.8

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- feet or an aisle width of 13 feet. The plan does not conform to these requirements.
- In accordance with § 163-70A(2)(c)[7], car stops or curbs shall be provided. The parking on Lots 9 and 10 conforms to this requirement. The parking in the garage does not indicate curbs or car stops. Bollards are proposed on one side.
 - In accordance with § 163-70A(3)(a), off-street parking spaces shall be provided in accordance with the required off-street parking spaces set forth in Schedule IV, Schedule of Required Off-Street Parking Spaces. In addition to the number of spaces shown on the schedule, each use having employees on the premises shall provide one space for each 1-1/2 employees. Eight (8) apartment units are proposed. In accordance with the RSIS, two-bedroom apartments require 2.0 spaces per unit. Therefore, 16 spaces are required for the residential aspect of the project. The Applicant also proposes a restaurant and bar in 8,000 square feet and water taxi service in 444 square feet. The Applicant's engineer has calculated these uses require an additional 161 parking spaces for a total of 177 spaces. The plan does not conform to this requirements, proposing 16 spaces.
 - In accordance with § 163-70B(2)(a), no loading space shall be so located as to require or permit any vehicle it is designed to accommodate to extend into any front yard or across any lot line while being loaded or unloaded. The plan does not conform to this requirement.
 - In accordance with § 163-70B(2)(c)(1), no required loading space shall be less than 12 feet in width or 35 feet in length or have a vertical clearance of less than 10 feet. The plan does not conform to these requirements, proposing a width of approximately 10 feet and length of 31 feet to the right-of-way line.
 - In accordance with § 163-74G(1), at least 50% of the total exposed surface of all flat roofs, including, but not limited to decks, balconies and parking garage roofs shall be landscaped as roof gardens.

Mr. Barnhart 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. He noted generally that the application for development promotes the purposes of zoning by eliminating pre-existing non-conforming uses on the site. In addition, he testified that the grant of the variances will promote the public health, safety and general welfare (Purpose "A") by encouraging the redevelopment of other properties with the MUR zoning district. He further testified that the grant of the variances will promote a desirable visual environment through creative development

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techniques and good civic design (Purpose "I") as it is architecturally appealing and consistent with the waterfront development envisioned by the zoning ordinance. He further testified that 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 uses are precisely what is envisioned in the MUR zoning district regulations. Finally, he testified that the grant of the variances will promote the free flow of traffic (Purpose "H") and encourage the use of multiple modes of transportation.

Mr. Barnhart 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.

The Applicant presented the testimony of Stephen Fenwick, a registered architect, who was qualified as an expert in architecture. Mr. Fenwick testified as to the architectural features of the development proposal, as well as the provision of the zoning ordinance requiring that 50% of flat roof areas be landscaped. He noted that the location is remote from the view of any high-rise structures in the city and that much of the flat roof areas will be deck space for the restaurant and residential uses and generally satisfy the intent of the zoning ordinance.

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. In response to issues raised by Mr. Kernan, the Applicant agreed to coordinate with Mr. Kernan in suggested modifications to sidewalk and cartway width.

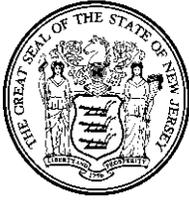
Gaspare Campesi, an owner of nearby properties, was sworn and offered extensive testimony regarding restaurant operations and the suitability of the subject property for same. He also offered testimony regarding parking, loading, roadway circulation and fire safety issues.

CONCLUSIONS OF LAW

Preliminary and Final Site Plan Approval

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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

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. The evidence and testimony demonstrate 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 promote the public health, safety and general welfare (Purpose "A"); promote a desirable visual environment through creative development techniques and good civic design (Purpose "I"); provide sufficient space in appropriate locations for a variety of uses to meet the needs of all New Jersey citizens (Purpose "G"); and promote the free flow of traffic (Purpose "H").

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

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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 with variances be approved. The grant of approval of this 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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