



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 14- , ADOPTED 4/21/2015

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 2015-03-1403
JTD Realty Group, Inc.
Block 336, Lots 8 through 23
2231 Arctic Avenue
Preliminary and Final Site Plan with Variances Pursuant to N.J.S.A.
40:55D-70(c)

DATE: April 15, 2015

EXECUTIVE SUMMARY

On April 2, 2015, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, JTD Development Group, Inc. (the "Applicant"), seeks preliminary and final site plan approval with variances pursuant to N.J.S.A. 40:44D-70(c) to convert an existing building on the property into two restaurants and bars with on-site parking, landscaping and related site improvements on Block 336, Lots 8 through 23 in the city of Atlantic City.¹

¹ The Application originally proposed the construction of parking improvements and a kiosk for the sale of boat tour tickets on adjacent Lots 2 through 7. As the Applicant does not currently possess a proprietary interest in such property for such uses, the Applicant withdrew that portion of the Application at the hearing on the matter. No development on Lots 2 through 7 is currently proposed.

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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. In addition, the Applicant demonstrated by evidence and testimony that the grant of the requested variances is warranted. Therefore, for the reasons more fully outlined below, the Hearing Officer recommends that the Application be approved by the Authority.

INTRODUCTION

Application Information

JTD Realty Group, Inc.
Block 336, Lots 8 through 23
2231 Arctic Avenue
CBD-Central Business 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 preliminary and final site plan approval with variances pursuant to N.J.S.A. 40:44D-70(c) for its proposal to convert an existing building on the property into two restaurants and bars with on-site parking, landscaping and related site improvements on Block 336, Lots 8 through 23 in the city of Atlantic City.

Evidence List

- A-1 Application package
- B-1 Letter from Kernan Consulting Engineers dated March 31, 2015

FINDINGS OF FACT

The Applicant seeks preliminary and final site plan approval with variances pursuant to N.J.S.A. 40:44D-70(c) for its proposal to convert an existing building on the property

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into two restaurants and bars with on-site parking, landscaping and related site improvements on Block 336, Lots 8 through 23 in the city of Atlantic City. The attorney for the Applicant, Nicholas T. Menas, Esq., introduced the application generally and provided background regarding the history of the property, the development proposal and the specific relief sought by the Applicant.

The Applicant presented the testimony of Charles E. Endicott, P.E., P.P., who was qualified as an expert in the field of professional engineering and professional planning. Mr. Endicott described the location of the site, existing conditions and development proposal. Specifically, he noted that the site is currently improved with an approximately 10,000 square foot masonry building commonly known as the Patsy Wallace Building. He testified that the building is currently vacant and will be converted into two restaurants of approximately 5,000 square feet each. The restaurants will have separate entrances and signage, but will share a kitchen and bathroom via internal connections.

Mr. Endicott further testified as to site access, site circulation, lighting, landscaping and parking. He noted that the development proposal does not conform to the zoning ordinance with respect to minimum on-site parking requirements, but that it is anticipated that all employees and many patrons will park at the nearby Wave Parking Garage. Mr. Endicott identified the variance relief sought in connection with the application. Specifically, the Applicant seeks the following variances:

- A variance pursuant to N.J.S.A. 40:55D-70(c) to permit a rear-yard encroachment of 0.6' where a 300' setback is required. Mr. Endicott noted that this is an existing condition that will not be exacerbated by the renovation of the existing building.
- A variance pursuant to N.J.S.A. 40:55D-70(c) to permit a side-yard of 3.4' where a side-yard of 15' is required. Mr. Endicott noted that this is an existing condition that will not be exacerbated by the renovation of the existing building.
- A variance pursuant to N.J.S.A. 40:55D-70(c) to permit parking improvements in the side-yard where parking in the side-yard is prohibited.
- A variance pursuant to N.J.S.A. 40:55D-70(c) to permit a landscaped perimeter of 4' where a landscaped perimeter of 5' is required. Mr. Endicott testified that the challenges of providing landscaping in an urban environment while balancing concerns about sight distances and the impact on reduction of parking justify the grant of the variance.

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- A variance pursuant to N.J.S.A. 40:55D-70(c) to permit less than the required number of shade trees. Mr. Endicott testified that shade trees may be problematic in terms of visibility and agreed to coordinate with Mr. Kernan to provide shade trees in appropriate locations.
- A variance pursuant to N.J.S.A. 40:55D-70(c) to permit 49 on-site parking spaces where 146 parking spaces are required. Mr. Endicott testified that all restaurant employees and many patrons will park at the nearby Wave Parking Garage.
- A variance pursuant to N.J.S.A. 40:55D-70(c) to not provide a designated loading space where one is required. Mr. Endicott testified that deliveries will be scheduled while the restaurants are not open to the public and delivery trucks will be able to move freely about the site. In addition, Mr. Endicott testified that he will demonstrate that the access route will provide adequate turning radii to accommodate delivery trucks.
- A variance pursuant to N.J.S.A. 40:55D-70(c) from the requirement that structures fronting on a public sidewalk be designed predominantly for entrance lobbies and commercial uses. Mr. Endicott testified that although the structure fronts on Arctic Avenue, there will be no entrances or doorways along Arctic Avenue. He further testified that the building façade will include decorative awnings along Arctic Avenue to satisfy the spirit of the zoning regulation.
- A variance pursuant to N.J.S.A. 40:55D-70(c) from the requirement that 50% of the surface area of flat roofs be landscaped and the requirement that the balance of the unlandscaped portion of flat roofs be designed with aesthetic treatments. Mr. Endicott testified that roof-top landscaping is impractical due to climatic conditions and that the roof will be treated with an aesthetically pleasing rubber membrane and appropriate screening. He testified that the Applicant would coordinate with Mr. Kernan to design an acceptable roof treatment.

Mr. Endicott testified that the grant of the requested variances will advance the purposes of the Municipal Land Use Law by maximizing the development potential of the property and taking advantage of existing infrastructure. He further testified that the benefits of granting the requested variances will outweigh any detriments.

Timothy Kernan was qualified as an expert in professional engineering and planning and provided testimony on behalf of the Authority. Mr. Kernan's review letter dated March 31, 2015 was marked into evidence as Exhibit B-1. Mr. Kernan supported the development proposal and the grant of the requested relief. He noted specifically that the

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variances related to parking are appropriate as the development proposal “strikes a balance between tenant requirements, the city code and good urban planning.”

He requested that the grant of any approval of the development proposal be conditioned upon the Applicant satisfying all of the plan revision and engineering comments set forth in his review letter dated March 31, 2015 and the Applicant agreed to do so. In addition, Mr. Kernan requested that grant of any approval be conditioned on the Applicant satisfying concerns raised at the hearing regarding site grading, landscaping, shade trees, stormwater quality, underground storage tanks and a Phase I Environmental Assessment.

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.

Variations Pursuant to N.J.S.A. 40:55D-70(c)(2)

For variations 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 variations 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).

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The Applicant seeks several “C” bulk variances in connection with the application 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 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 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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