



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 15- , ADOPTED 8/18/2015

**TO:** Members of the Authority

**FROM:** Robert L. Reid, Land Use Hearing Officer

**COPY:** John F. Palmieri, Executive Director

**SUBJECT:** Hearing Officer's Report and Recommendation  
Application 2015-05-1493  
Bass Pro Shops Outdoor World, LLC  
Block 281, Lots 1-12  
Preliminary and Final Site Plan with Variances

**DATE:** August 4, 2015

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### EXECUTIVE SUMMARY

On June 18, 2015, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Bass Pro Shops Outdoor World, LLC (the "Applicant") seeks amended preliminary and final site plan approval with variances to add 30 parking spaces, vehicle control gates and a handicapped accessible ramp on the existing Bass Pro Shops retail facility in the city of Atlantic City. The improvements were previously constructed without approval.

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 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

Bass Pro Shops Outdoor World, LLC  
Block 281, Lots 1-12

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 seeks amended preliminary and final site plan approval with variances to add 30 parking spaces, vehicle control gates and a handicapped accessible ramp on the existing Bass Pro retail facility in the city of Atlantic City. The improvements were previously constructed without approval.

### Evidence List

- A-1 Application submission
- A-2 Overall site plan rendering
- A-3 Previously approved site plan--colorized
- A-4 Enlarged portion of site plan

B-1 Letter from Adams, Rehman & Heggan Associates, Inc. dated June 9, 2015

## FINDINGS OF FACT

Applicant seeks amended preliminary and final site plan approval with variances to add 30 parking spaces, vehicle control gates and a handicapped accessible ramp on the existing Bass Pro Shops retail facility in the city of Atlantic City. The attorney for the Applicant, Nicholas F. Talvacchia, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. Mr. Talvacchia explained that Lot 11, previously owned by the Authority and subject to

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environmental contamination, has been remediated and conveyed to the Applicant. With the addition of Lot 11, the Bass Pro Shops now occupies the entire Block bounded by Atlantic Avenue, Arctic Avenue, Christopher Columbus Boulevard and Mississippi Avenue.

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

Mr. Sciallo provided testimony regarding overall parking layout for the site, as well as the new parking spaces. He described the access points, site circulation, and queuing associated with the entire site. He also provided extensive testimony regarding the need, location and operation of parking control booths. He noted that the development proposal has been modified in response to concerns raised by Authority staff and consultants regarding site circulation and queuing, including the relocation and operation of parking control booths.

Mr. Sciallo provided testimony regarding the requested variances. Specifically, the Applicant requested the following variances related to parking: (1) to provide a parking stall size of 9' by 18' where 9' by 19' is required pursuant to 163-70A.(2)(c)[1]; and to provide parking in the lot frontage where such parking is prohibited pursuant to 163-70A.(2)(c)[11].

With respect to the variance for stall size, Mr. Sciallo testified that 9' by 18' stalls are the industry standard and that a variance to provide stalls of such size was granted by the Authority for the original Bass Pro Shops site. He noted that the reduced stall size is a more efficient use of land and promotes better circulation throughout the site by permitting an additional egress point.

With respect to the variance for parking in the front yard, Mr. Sciallo noted that the property has four front yards and strict compliance with the ordinance would be impossible. He noted that the parking configuration will promote the purposes of the Municipal Land Use Law, N.J.S.A., by providing air light and open space and eliminating other variances originally granted in connection with the development of the site.

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Mr. Sciullo testified that the grant of both requested variances represents a better planning alternative to what is required under the ordinance, and would not result in any detriment to the zoning ordinance or the public good.

Finally, Mr. Sciullo represented that the Applicant accepts engineering and planning report of the Authority's consultants dated June 9, 2015 in its entirety and will cooperate with the Authority in addressing all issues raised therein, and will coordinate with the Authority to address concerns regarding signage and lighting.

William M. England P.E., P.P. and Christine A. Cofone, AICP, P.P. were qualified as experts in professional engineering and professional planning and provided testimony on behalf of the Authority. Mr. England testified that he supports the approval of the application as modified, and Ms. Cofone testified that she supports the grant of the requested variances.

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

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.

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### 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 reduced stall size is a more efficient use of land and promotes better circulation throughout the site by permitting an additional egress point. In addition, the parking configuration will promote the purposes of the Municipal Land Use Law, N.J.S.A., by providing air light and open space and eliminating other variances originally granted in connection with the development of the site.

### 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

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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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