



## 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:** Lance B. Landgraf, Jr., Land Use Hearing Officer

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

**SUBJECT:** Hearing Officer's Report and Recommendation  
Application 2014-09-1213  
Cedar Properties, LLC  
3218 Atlantic Avenue  
Block 183, Lots 1-8 and 20-28  
Preliminary and Final Site Plan with Variances

**DATE:** August 7, 2015

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### EXECUTIVE SUMMARY

On July 16, 2015, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Cedar Properties, LLC (the "Applicant") seeks preliminary and final site plan approval with variances for a proposed Rite Aid Pharmacy, including drive-up pharmacy, and related site improvements on the property located at 312 Atlantic Avenue 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, and that the grant of the requested variances is appropriate. Therefore, as more fully outlined below, the Applicant has met its burden

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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

Cedar Properties, LLC  
Block 183, Lots 1-8 and 20-28  
RS-C and NC-2 Zoning Districts

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 Rite Aid Pharmacy, including drive-up pharmacy, and related site improvements on the property located at 312 Atlantic Avenue in the city of Atlantic City.

#### Evidence List

- A-1 Architectural elevation
- A-2 Architectural elevation
- A-3 Architectural elevation
- A-4 Aerial Photo
- A-5 Colorized landscape plan
- A-6
- A-7 Decorative panel

B-1 Letter from Adams, Rehman & Heggan Associates, Inc. dated July 10, 2015

### FINDINGS OF FACT

Applicant seeks preliminary and final site plan approval with variances for a proposed Rite Aid Pharmacy, including drive-up pharmacy, and related site improvements on the property located at 3218 Atlantic Avenue in the city of Atlantic City.

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The attorney for the Applicant, Keith A. Davis, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

The Applicant presented the testimony of Peter Stampfl, a licensed architect, who was qualified as an expert in architecture. Mr. Stampfl testified as to the architectural features of the development proposal, as well as site lighting, building materials, exterior finishes, floor plans and layout. He also described how the building is designed to comply with the municipal flood control ordinance. Mr. Stampfl opined that the site layout and building design create a desirable visual environment through good civic design that advances the purposes of the Municipal Land Use Law. In response to questioning by CRDA officials, Mr. Stampfl agreed on behalf of the Applicant that the decorative panels would of the same general design on all four sides of the building.

The Applicant presented the testimony of William P. McManus, P.P., who was qualified as an expert in the field of professional planning. Mr. McManus described the location of the site, as well as development proposal, site layout and design. Mr. McManus noted that the proposed use is a permitted use under the zoning ordinance. He testified that the development proposal is consistent with the purposes of the Atlantic City Master Plan, as well as the Authority's Tourism District Master Plan.

Mr. McManus provided extensive testimony in support of the following variances.

- Ordinance Section 163-71(J)5(c): The maximum height of ground signs permitted is five feet, whereas the Applicant proposes six feet. Mr. McManus noted that the height increase is de minimis and the base of the sign will landscaped.
- Ordinance Section 163-71(F)10: On-site informational signs may not exceed two square feet, whereas the Applicant proposes four square feet. Mr. McManus testified that increased size of the signs will aid the motoring public and increase driver expectation.
- Ordinance Section 163(D) Schedule 1: The maximum lot coverage permitted is 80%, whereas the Applicant proposes 83%.<sup>1</sup> Mr. McManus noted the existing non-conforming condition and testified that the Applicant is reducing the extent of the variance and adding considerable landscaping to the site.

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<sup>1</sup> The existing site has 92.8% lot coverage.

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- Ordinance Section 163 Schedule IV: 65 off-street parking spaces are required, whereas 53 off-street parking spaces are proposed. Mr. McManus testified that Ordinance Section 163-70(A)3(b) permits the reduction of parking requirements up to 85% for retail and similar uses located within 300 feet of an established public transit route. Mr. McManus testified that applying this ordinance provision would require 55 parking spaces. Finally, he noted that additional parking could be located on site in areas that are landscaped, but that the Applicant opted for a reduction of coverage and aesthetic improvements as it believes that the proposed parking is adequate for its needs.
- Ordinance Section 163 Diagram 1: Parking spaces at a dimension of 9' x 19' are required, whereas 9' x 18' spaces are proposed. Mr. McManus testified that the proposed parking space size is consistent with industry standards and allows for a reduction of lot coverage.
- Ordinance Section 163-70(A)2(a)2(a): In all districts, 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. 77.5 feet is required, whereas the Applicant proposes 8 feet. Mr. McManus noted that the parking layout maximizes the use of the site and is consistent with the Applicant's business model, while being consistent with the Tourism District Master Plan.
- Ordinance Section 163-70(A)2(a)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. 30.3 feet is required, whereas 0.9 feet is proposed. Mr. McManus noted that the parking layout maximizes the use of the site and is consistent with the Applicant's business model, while being consistent with the Tourism District Master Plan.

Mr. McManus 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 promote the public health, safety and general welfare (Purpose "A"); provide adequate air, light and open space; and provide sufficient space in appropriate locations for a variety of uses to meet the needs of all New Jersey citizens (Purpose "G"). Mr. McManus noted that the Tourism District Master Plan promotes the development of this type of use, that the

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proposed building height of 25 feet is far less than the 380 feet permitted under the zoning ordinance.

Mr. McManus 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.

Finally, Mr. McManus testified that the Harold Corry sign on the property would be relocated off-site, and that the Applicant would coordinate with the city of Atlantic City to relocate parking meters adjacent to the site. In response to questions from Authority officials, Mr. McManus represented that the Applicant will submit a revised detail of the ground-mounted sign with a brick base that matches the building façade.

The Applicant presented the testimony of Peter Dolcy, P.E., who was qualified as an expert in the field of professional engineering. Mr. Dolcy responded to questions and requests for clarification by Authority officials. Mr. Dolcy represented that the Applicant will comply with all comments in the July 10, 2015 letter of Adams, Rehman & Heggan Associates, Inc. as a condition of approval of the application.

William M. England, P.E., P.P., C.M.E., C.P.W.M was qualified as an expert in professional engineering and planning and provided testimony on behalf of the Authority. Christine A. Cofone, P.P., A.I.C.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Mr. England and Ms. Cofone's joint review letter dated July 10, 2015 was marked into evidence as Exhibit B-1. Both Mr. England and Ms. Cofone supported approval of the application. Mr. England asked that the Applicant coordinate with the Authority in the design of the fencing on the site.

### 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).

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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. 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 Applicant presented testimony that the grant of the variances will promote the public health, safety and general welfare (Purpose "A"); provide adequate air, light and open space; and provide sufficient space in appropriate locations for a variety of uses to meet the needs of all New Jersey citizens (Purpose "G").

#### 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.

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### 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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