

RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL AND VARIANCE RELIEF FOR A PROPOSED RITE AID PHARMACY, WITH DRIVE-UP PHARMACY AND RELATED SITE IMPROVEMENTS AT 3218 ATLANTIC AVENUE, BLOCK 183, LOTS 1-8 AND 20-28 UNDER APPLICATION 2014-09-1213

WHEREAS, pursuant to P.L. 2011, c. 18, as amended (the "Act"), the Casino Reinvestment Development Authority (the "Authority"): (i) designated the Atlantic City Tourism District by Resolution 11-25 adopted April 19, 2011, (ii) established the Land Use Regulation and Enforcement Division to, among other matter, hear applications for development in the Tourism District by Resolution 11-33 adopted April 19, 2011, and (iii) adopted the master plan, zoning and land use ordinances and regulations, and zoning maps approved by the City by Resolution 11-34 adopted April 19, 2011; and

WHEREAS, pursuant to Resolution 12-14 dated February 1, 2012, the Authority adopted the "New Jersey CRDA Atlantic City Tourism District Master Plan" prepared by Jones Lang LaSalle, LLC and dated February 1, 2012 (the "Master Plan") (as affirmed and readopted pursuant to Resolution 12-23 adopted February 21, 2012), subject to further comment and revision, which master plan shall become effective upon the adoption of design, development and land use regulations consistent therewith, and in accordance with N.J.S.A 5:12-220a, the Atlantic City Master Plan dated September of 2008 (as adopted by the CRDA pursuant to Resolution 11-34 dated April 19, 2011) shall remain effective for development applications received by the CRDA until adoption of such regulations; and

WHEREAS, Cedar Properties, LLC (the "Applicant") seeks preliminary and final site plan approval pursuant to the Municipal Land Use Law P. L. 1975, c. 291 (C.40:55D-1 *et seq.*) and variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) for the construction of a Rite Aid Pharmacy, with drive-up window and other related improvements on the property located at 3218 Atlantic Avenue in the city of Atlantic City, Block 183, Lots 1-8 and 20-28, under application 2014-09-1213 (the "Application"); and

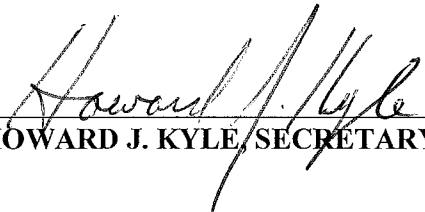
WHEREAS, on July 16, 2015, the Authority's Land Use Regulation and Enforcement Division convened a public hearing on the Application in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and the Act, and subsequently prepared and delivered the Hearing Officer's Report and Recommendation dated August 7, 2015 (the "Report"), incorporated herein by this reference and appended hereto as Exhibit "A"; and

WHEREAS, the Authority intends to adopt the findings, conclusions and recommendations of the Hearing Officer, as detailed in the Report; and

NOW THEREFORE, BE IT RESOLVED by the Casino Reinvestment Development Authority that:

1. The above recitals are incorporated herein, as if set forth in full.
2. Based on the record in this matter, Application 2014-09-1213 is hereby approved in accordance with the Hearing Officer's Report and Recommendation dated August 7, 2015.
3. A copy of this Resolution shall be immediately transmitted to the Governor. This Resolution shall take effect immediately but no action authorized herein shall have force and effect until the earlier of the passage of ten (10) days, Saturdays, Sundays and public holidays excepted, after the delivery of the copy to the Governor, or the Governor's approval.

I hereby certify that this document is a true and correct copy of Resolution 15-109 of the Casino Reinvestment Development Authority.



HOWARD J. KYLE, SECRETARY

MEETING OF AUGUST 18, 2015

EXHIBIT "A" – HEARING OFFICER REPORT FOR APPLICATION 2014-09-1213



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

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

Page 1 of 7

CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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.

Page 2 of 7

CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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%.¹ 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.

¹ The existing site has 92.8% lot coverage.

CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- 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. 75 feet is required, whereas the Applicant proposes 8 feet along Atlantic Avenue. 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): No part of any parking lot, other than driveways for ingress and egress, shall be located in any required 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. 72 feet is required, whereas 5 feet is proposed along Sovereign Avenue. 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)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. 18 feet is required, whereas the Applicant proposes 9 feet along Montpelier Avenue. 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.

Page 4 of 7

CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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 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.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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.

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

Page 6 of 7

CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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.

CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.

CRDA BOARD TALLY

August 18, 2015

CEDAR PROPERTIES, LLC – Preliminary & Final Site Plan with "C" variances (3218 Atlantic Avenue, Block 183, Lots 1-8 & 20-28) (LL)

MOTION

FS

SECOND

HK

Tom Ballance

Y

Bob Bartolone for Charles A. Richman

BB

Debra DiLorenzo

Y

Edward Gant

Y

Mark Giannantonio

Y

Mayor Don Guardian

Y

Gary Hill

Y

David Rebeck for John Hoffman

A

Howard Kyle

Y

Matthew Levinson

Y

Robert Mulcahy

Y

William Mullen

Y

Gary Puma

Y

Bob Shaughnessy for Robert A. Romano

BS

Frank Spencer

Y

Richard Tolson

Y