



Casino Reinvestment Development Authority
Land Use Regulation and
Enforcement Division

EXHIBIT "A" TO RESOLUTION 15- , ADOPTED 9/15/2015

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 2015-07-1574
Phero Dai Huu Nguyen
Block 339, Lot 32, 46
128 N. Georgia Avenue
Reconstruction of Single Family Residence with Variances Pursuant to
N.J.S.A. 40:55D-70(c)

DATE: September 2, 2015

EXECUTIVE SUMMARY

On August 20, 2015, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Phero Dai Huu Nguyen (the "Applicant"), seeks variances pursuant to N.J.S.A. 40:44D-70(c) for its proposal to raise and reconstruct an existing single family dwelling located at 128 N. Georgia Avenue in the city of Atlantic City. Specifically, the Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) front deck setback, rear deck setback and fence height.

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 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.

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INTRODUCTION

Application Information

Phero Dai Huu Nguyen
Block 339, Lot 32, 46
128 N. Georgia Avenue
R-3 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 variances pursuant to N.J.S.A. 40:44D-70(c) for its proposal to raise and reconstruct an existing single family dwelling located at 128 N. Georgia Avenue in the city of Atlantic City.

Evidence List

B-1 Letter from Cofone Consulting Group, LLC dated August 19, 2015

FINDINGS OF FACT

The Applicant seeks variances pursuant to N.J.S.A. 40:44D-70(c) for its proposal to raise and reconstruct an existing single family dwelling located at 128 N. Georgia Avenue in the city of Atlantic City. The Applicant presented the testimony of Craig Doth, who was qualified as an expert in the field of architecture. Mr. Dothe introduced the application generally and provided background regarding the specific relief sought by the Applicant.

Mr. Dothe testified that the purpose of the development proposal is to raise the base floor elevation of the structure to comply with FEMA regulations. The development proposal also presents an opportunity for the Applicant to update and improve the dwelling, provide on-site parking beneath the structure and eliminate an existing non-conforming accessory structure. The Applicant proposes a new raised deck at the rear of the structure to provide access to the ground from the raised first floor that will replace the existing concrete patio. The Applicant also proposes a new raised deck at the front of the structure to replace the existing front porch.

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Mr. Dothe provided extensive testimony regarding the need to raise the base floor elevation, and the manner in which it will be accomplished. He also provided testimony regarding building design and layout, drainage and utility connections. He further testified as to the need to update the dwelling to accommodate modern living practices. He also provided testimony that the development proposal will eliminate existing conditions where structures encroach into the public right of way, as well as eliminate a non-conforming shed currently used to house a washing machine and dryer.

Mr. Dothe identified the variance relief sought in connection with the application. Specifically, the Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) to provide a front deck setback of 0.0' where a minimum of 10' is required; provide a rear deck setback of 0.0' where a minimum of 25' is required; and provide a 5' fence where a maximum fence height of 4' is permitted. Mr. Dothe testified that the grant of the requested variances is warranted because the development proposal will protect the residential dwelling from flooding at the first floor level, provide on-site parking, eliminate an existing non-conforming accessory structure and improve the visual environment.

Christine Cofone, P.P., A.I.C.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. She testified that the development proposal would promote Purpose B (secure safety from fire, flood, panic and other natural and man-made disasters) of the Municipal Land Use Law, N.J.S.A. 40:55D-1.1 et seq. ("MLUL") by raising the base floor level in accordance with current FEMA requirements to protect against flooding. She further testified that the development proposal would promote Purpose I (promote a desirable visual environment) of the MLUL by updating the existing structure in an attractive way to accommodate modern living practices. Ms. Cofone noted that the grant of the requested variances will not have any substantial detriment to the public good. Finally, she asked that the Applicant add privacy slats to the proposed chain link fence.

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. Mr. England testified that all of the issues raised in his review letter had been adequately addressed in testimony. Both Ms. Cofone and Mr. England supported approval of the application.

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CONCLUSIONS OF LAW

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

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).

The Applicant seeks "C" bulk variations to provide a front deck setback of 0.0' where a minimum of 10' is required; provide a rear deck setback of 0.0' where a minimum of 25' is required; and provide a 5' fence where a maximum fence height of 4' is permitted in connection with the application as set forth herein. Based on the evidence and testimony demonstrates that the requested variance can be justified because the grant of the variations will promote the purposes of the Municipal Land Use Law. Specifically, the development proposal will promote Purpose B (secure safety from fire, flood, panic and other natural and man-made disasters) of the MLUL by raising the base floor level in accordance with current FEMA requirements to protect against flooding. The development proposal will also promote Purpose I (promote a desirable visual environment) of the MLUL by updating the existing structure in an attractive way to accommodate modern living practices.

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" variations 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.

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The evidence and testimony demonstrate that the grant of the requested variance 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 variances pursuant to N.J.S.A. 40:44D-70(c) 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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