



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 16-___, ADOPTED 6/21/2016

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 2016-03-1824
Gazi Chowdury
Block 337, Lot 54
2322 Siracusa Terrace
Variances Pursuant to N.J.S.A. 40:55D-70(c)

DATE: June 6, 2016

EXECUTIVE SUMMARY

On May 5, 2016, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Gazi Chowdury (the "Applicant"), seeks variances pursuant to N.J.S.A. 40:44D-70(c) for lot area, lot width, front, side and rear yard setbacks to reconstruct a single family dwelling to replace a nonconforming dwelling on the property located at 2322 Siracusa Terrace in the city of Atlantic City that was damaged during Superstorm Sandy. The existing structure currently encroaches over a property line and violates all area and bulk requirements. The development proposal will eliminate the encroachment.

During the hearing, the Applicants 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 technical requirements of the land use ordinances of the city of Atlantic City and that the grant of the requested variances is warranted. Therefore, for

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the reasons more fully outlined below, the Hearing Officer recommends that the Application be approved by the Authority.

INTRODUCTION

Application Information

Gazi Chowdury
Block 337, Lot 54
117 Dewey Place
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 lot area, lot width, front, side and rear yard setbacks to reconstruct a single family dwelling to replace a nonconforming dwelling on the property located at 2322 Siracusa Terrace in the city of Atlantic City that was damaged during Superstorm Sandy.

Evidence List

A-1 Application materials
A-2 200-foot Map
A-3 Aerial

B-1 Letter from Cofone Consulting Group, LLC dated April 19, 2016

FINDINGS OF FACT

The Applicant seeks variances pursuant to N.J.S.A. 40:44D-70(c) for lot area, lot width, front, side and rear yard setbacks to reconstruct a single family dwelling to replace a nonconforming dwelling on the property located at 2322 Siracusa Terrace in the city of Atlantic City. The Applicant, Gazi Chowdury (the "Applicant"), seeks variances pursuant to N.J.S.A. 40:44D-70(c) for lot area, lot width, front, side and rear yard

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setbacks to reconstruct a single family dwelling to replace the existing nonconforming dwelling on the property located at 2322 Siracusa Terrace in the city of Atlantic City. The attorney for the Applicants, Brian J. Callaghan, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. He noted that the existing structure currently encroaches over a property line and violates numerous bulk requirements. The development proposal will eliminate the encroachment. Finally, Mr. Callaghan noted that the Applicant attempted unsuccessfully to acquire property from adjoining property owners to reduce the severity of several of the requested variances.

The Applicants presented the testimony of Rami Nassar, P.E. Mr. Nassar described the location of the site, existing conditions and development proposal. He explained that development proposal seeks to construct a new approximately 900 square foot single family dwelling on the property. He noted that the development proposal will cure all existing encroachments and comply with all applicable FEMA flood hazard regulations.

Mr. Nassar 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) as follows:

- Lot area: 647.50 square feet where 3,000 square feet is required. (Existing non condition.)
- Lot Width: 18.50 feet where 30 feet is required. (Existing condition.)
- Front & Rear setback: 1.5 feet where 10 & 25 feet are required. (Existing condition: Front yard encroaches into right of way; rear yard setback is 0.7'.)
- Side yard setbacks: 1.5 feet where 12 feet is required. (Existing condition: Current structure encroaches over the property line by 2' and 0.9' respectively.)
- Lot coverage: 76.6% where 40% is required. (Existing lot coverage is 100%.)

Mr. Nassar testified that the requested variances can be justified under both N.J.S.A. 40:55D-70(c)(1) and (c)2. With respect to (c)(1), he testified that strict compliance with the zoning ordinance would constitute a hardship due to the narrowness and shape of the lot. With respect to (c)(2), he testified that the development proposal to raise the house to protect against storms and flooding will advance the purposes of the Municipal Land Use Law by securing safety from fire, flood, panic and other natural and man-made disasters (Purpose B) and create a desirable visual environment (Purpose I).

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With respect to the negative criteria, Mr. Nassar testified that the development proposal will not impair the purpose and intent of the zone plan or zoning ordinance, or result in any substantial detriment to the public good.

The planning report of Chistine Cofone, P.P. was marked into evidence.

No member of the public offered testimony or comment regarding the Application.

CONCLUSIONS OF LAW

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

For variances requested pursuant to N.J.S.A. 40:55D-70(c)(1) and 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 is satisfied if relief can be granted for a specific piece of property upon the finding of hardship arising out of the exceptional narrowness, shallowness, shape, or exceptional topographic conditions of specific piece of property or from a structure lawfully existing thereon. See Lang v. Zoning Board of Adjustment, 160 N.J. 41 (1999). 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).

Here, the testimony and evidence demonstrate that the development proposal satisfies the statutory positive criteria pursuant to Sections c(1) and c(2). Specifically, the size and shape of the property creates a hardship in satisfying the bulk requirements of the zoning ordinance. In addition, the development proposal advances purposes of the Municipal Land Use Law by securing safety from fire, flood, panic and other natural and man-made disasters (Purpose B) and creating a desirable visual environment (Purpose I).

Negative Criteria

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Relief under either c(1) or 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 to the intent and purpose of the zone plan and the zoning ordinance.

Here, the testimony and evidence demonstrate that the development proposal will result in 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) 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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