



# 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 2016-05-1910  
Trump Plaza Associates, LLC  
Block 162, Lot 3  
2201 Pacific Avenue  
Variance Pursuant to N.J.S.A. 40:55D-70(d)

**DATE:** June 8, 2016

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### EXECUTIVE SUMMARY

On June 2, 2016, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Trump Plaza Associates, LLC (the "Applicant"), seeks a variance to permit an off-site advertising sign on the façade of the former Trump Plaza Transportation Center located at 2201 Pacific Avenue in the city of Atlantic City. Specifically, the Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to permit the location of the off-site advertising sign in the RS-C zoning district where such signs are not permitted. The sign is proposed to be surface mounted to the wall of the garage structure in a location that has previously been used for onsite signage. The signage is proposed to advertise and promote concerts and events at the Taj Mahal Casino. Signage for events that do not take place at the Taj Mahal Casino would be limited to events that promote the purposes of the Tourism District and be subject to review and approval of Authority staff.

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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. In addition, 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.

### INTRODUCTION

#### Application Information

Trump Plaza Associates, LLC  
Block 162, Lot 3  
2201 Pacific Avenue  
NC-2 and R-3 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.

The Applicant seeks a variance pursuant to N.J.S.A. 40:44D-70(d)(1) to permit an off-site advertising sign on the façade of the former Trump Plaza Transportation Center located at 2201 Pacific Avenue in the city of Atlantic City.

#### Evidence List

- A-1 Application
- B-1 Letter from Cofone Consulting Group, LLC dated May 20, 2016

### FINDINGS OF FACT

The Applicant seeks a variance pursuant to N.J.S.A. 40:44D-70(d)(1) to permit an off-site advertising sign on the façade of the former Trump Plaza Hotel and Casino located at 2201 Pacific Avenue in the city of Atlantic City. The attorney for the Applicant, John M. Donnelly, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

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The Applicant presented the testimony of Jon Barnhart, P.E., P.P., who was qualified as an expert in the field of professional engineering and professional planning. Mr. Barnhart described the location of the site, existing conditions and development proposal. He explained that the sign is proposed to be surface mounted to the wall of the garage structure in a location that has previously been used before for onsite signage. The signage is proposed to advertise and promote concerts and events at the Taj Mahal Casino. Signage for events that do not take place at the Taj Mahal Casino would be limited to events that promote the purposes of the Tourism District and be subject to review and approval of Authority staff.

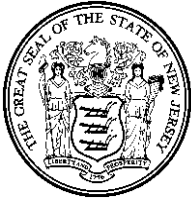
Mr. Barnhart identified the variance relief sought in connection with the application. Specifically, the Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to permit the location of the off-site advertising sign in the RS-C zoning district where such signs are not permitted. Mr. Barnhart testified that the proposal conforms to all of the requirements of the zoning ordinance (size, dimension, type) for on-premises signs. He testified that the proposal advances the purposes of the Municipal Land Use Law (MLUL”) by promoting the general welfare by activating a blank wall and promoting tourism in the city of Atlantic City.

Mr. Barnhart testified that the site is particularly suited for the proposed use because a wall-mounted sign of the same size, height and width was previously located at the site for many years. Mr. Barnhart testified that the application will not impair the purpose and intent of the zone plan or zoning ordinance, or result in any substantial detriment to the public good. He testified that the development proposal advances the purposes of the zone plan and the Tourism District as it will promote tourism-related events and activities.

Christine Cofone, P.P., A.I.C.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Her planning report dated May 20, 2016 was marked into evidence. Ms. Cofone testified that the development proposal advances Purposes A and I of the MLUL supported approval of the application. In response to questions raised by Ms. Cofone, the Applicant agreed that any signage for events that do not take place at the Taj Mahal Casino would be limited to events that promote the purposes of the Tourism District and be subject to review and approval of Authority staff. This representation was expressly made a condition of the approval of the Application by the Authority.

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### CONCLUSIONS OF LAW

The Applicant seeks a variance pursuant to N.J.S.A. 40:44D-70(d)(1) to permit an off-site advertising sign on the façade of the former Trump Plaza Hotel and Casino located at 2201 Pacific Avenue in the city of Atlantic City. It is well-established that “[v]ariations to allow new nonconforming uses should be granted only sparingly and with great caution since they tend to impair sound zoning.” Burbridge v. Twp. of Mine Hill, 117 N.J. 376, 385 (1990) (quoting Kohl v. Mayor & Council of Fair Lawn, 50 N.J. 268, 275 (1967)). Consequently, although deference must be given to any decision by a board of adjustment, a reviewing court gives less deference to a grant than to a denial of a use variance. Funeral Home Mgmt., Inc. v. Basralian, 319 N.J. Super. 200, 208 (App. Div. 1999). In reviewing the grant of a use variance, a court must consider whether a board of adjustment “in the guise of a variance proceeding, [has] usurp[ed] the legislative power reserved to the governing body of the municipality to amend or revise the [zoning] plan . . . .” Vidal v. Lisanti Foods, Inc., 292 N.J. Super. 555, 561 (App. Div. 1996) (quoting Feiler v. Fort Lee Bd. of Adjustment, 240 N.J. Super. 250, 255 (App. Div. 1990), certif. denied, 127 N.J. 325 (1991)) (internal quotations omitted). To sustain a use variance, a reviewing court must find both that the “Board’s decision comports with the statutory criteria and is founded on adequate evidence.” Burbridge, supra, 117 N.J. at 385.

A land use board is authorized to grant a use variance only “[i]n particular cases and for special reasons.” N.J.S.A. 40:55D-70(d). This is sometimes referred to as the positive criteria for the grant of a use variance. Smart SMR of New York, Inc. v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 323 (1998). “Special reasons” is not specifically defined, but has been broadly interpreted to mean reasons which advance the purposes of the Municipal Land Use Law. New Jersey case law recognizes three categories of circumstances in which the “special reasons” required for a use variance may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing facility, see Sica v. Bd. of Adjustment of Wall, 127 N.J. 152, 159-60 (1992); (2) where the property owner would suffer “undue hardship” if compelled to use the property in conformity with the permitted uses in the zone, see Medici v. BPR Co., 107 N.J. 1, 17 n.9 (1987), and (3) where the use would serve the general welfare because “the proposed site is particularly suitable for the proposed use.” Smart SMR, supra, 152 N.J. at 323 (quoting Medici, supra, 107 N.J. at 4).

In addition, an applicant for a use variance must show that the variance “can be granted without substantial detriment to the public good and will not substantially impair the

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intent and purpose of the zone plan and zoning ordinance.” N.J.S.A. 40:55D-70. This is sometimes referred to as one of the “negative” criteria for the grant of a variance. Smart SMR, supra, 152 N.J. at 323.

### Positive Criteria

In this case, the Applicant must demonstrate that the use would serve the general welfare because “the proposed site is particularly suitable for the proposed use.” The test is whether the public benefits because of the community’s need for the use itself. See Funeral Home Mgmt., Inc., supra, at 210.

In considering whether the purposes of the Municipal Land Use Law are advanced by a showing of special reasons, the Hearing Officer concludes that the Applicant has demonstrated that the application advances the purposes of the MLUL by promoting the general welfare and creating a desirable visual environment through creative design techniques.

### Negative Criteria

To assure that a land use agency does not usurp the governing body’s statutory authority to determine the municipality’s zoning, an applicant for a use variance must show by “an enhanced quality of proof . . . that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance [,]” and the Board must make “clear and specific findings” that this showing has been made, Medici, 107 N.J. at 21. “The applicant’s proofs and the board’s findings . . . must reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district.” Ibid.

Here, the Hearing Officer concludes, based on the evidence and testimony, that the grant of the requested variance will not result in any substantial detriment to the public good is not inconsistent with the intent and purpose of the master plan and zoning ordinance.

### RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the Application for **use variance approval pursuant to N.J.S.A. 40:44D-70(d)** be approved. The grant of approval of this Application shall be expressly conditioned upon the Applicant

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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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