



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 16- , ADOPTED 11/15/2016

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 2016-09-2049
Bashu Dev
Block 338, Lot 9
123 N. Georgia Avenue
Variances Pursuant to N.J.S.A. 40:55D-70(c)

DATE: November 7, 2016

EXECUTIVE SUMMARY

On October 6, 2016, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Bashu Dev (the "Applicant"), seeks variances pursuant to N.J.S.A. 40:44D-70(c) to construct a two-story, detached single-family dwelling and ancillary site improvements on the property located at 123 N. Georgia Avenue in the city of Atlantic City. Specifically, the Applicant seeks variances to permit the reconstruction of a detached single-family dwelling destroyed in Superstorm Sandy.

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 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

Bashu Dev
Block 338, Lot 9
123 N. Georgia Avenue (rear)
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) to construct a two-story, detached single-family dwelling and ancillary site improvements on the property located at 123 N. Georgia Avenue in the city of Atlantic City. Specifically, the Applicant seeks variances to permit the reconstruction of a detached single-family dwelling destroyed in Superstorm Sandy.

Evidence List

A-1 Application materials

B-1 Letter from Cofone Consulting Group, LLC dated September 26, 2016

FINDINGS OF FACT

The Applicant seeks variances pursuant to N.J.S.A. 40:44D-70(c) to construct a two-story, detached single-family dwelling and ancillary site improvements on the property located at 123 N. Georgia Avenue in the city of Atlantic City. Specifically, the Applicant seeks variances to permit the reconstruction of a detached single-family dwelling destroyed in Superstorm Sandy.

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The Applicant presented the testimony of Robert Bolton, a registered architect, who introduced the application generally and provided background regarding the specific relief sought by the Applicant. He testified that the property was previously improved with a detached single-family dwelling. He indicated that the prior structure was destroyed in Superstorm Sandy and subsequently demolished. The Applicants now seek to construct a new single-family dwelling on the property in the same footprint as the prior structure. Mr. Bolton testified that the structure will be raised in order to comply with FEMA flood hazard regulations. He provided testimony on site layout and building design.

The Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) as follows:

- Minimum lot area: 30,000 square feet required; 1,224 square feet existing and proposed.
- Minimum lot width: 40 feet required; 18 feet existing and proposed.
- Coverage: 38% permitted; 65% proposed.
- Setbacks:
 - Rear yard: 25 feet required; 13.38 feet existing and 10.40 proposed.
 - Side yard: 12 feet required; 1.08 feet proposed.
 - Side yard: 5 feet required; .77 feet proposed.

Chistine Cofone, P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. She questioned the Applicant's architect on issues such as parking, landscaping and fencing.

Ms. Cofone opined that the development proposal will advance the purposes of the MLUL by establishing appropriate population densities (Purpose E of the MLUL), and creating a desirable visual environment (Purpose I of the MLUL). In addition, she opined that the development proposal will not impair the purpose or intent of the zone plan or zoning ordinance, and will not impair the purpose and intent of the zone plan or zoning ordinance, or result in any substantial detriment to the public good. Ms. Cofone concluded that the Applicants had presented sufficient testimony to support the grant of approval of the application.

CONCLUSIONS OF LAW

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

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 ” variances to deviate from the requirements of the zoning ordinance as set forth herein. The evidence and testimony demonstrate 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 grant of the variances will promote the establishment of appropriate population densities (Purpose E of the MLUL), and create a desirable visual environment (Purpose I of the MLUL).

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.

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

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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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