



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 16- , ADOPTED 12/20/2016

**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 2016-09-2050  
Narendra Dutta  
Block 338, Lot 13  
119 N Georgia Avenue (rear)  
Variances Pursuant to N.J.S.A. 40:55D-70(c)

**DATE:** December 5, 2016

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### EXECUTIVE SUMMARY

On November 3, 2016, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Narendra Dutta (the "Applicant"), seeks variances pursuant to N.J.S.A. 40:44D-70(c) for its proposal to reconstruct a detached single-family residential structure on the property located at 119 N. Georgia Avenue (rear) in the city of Atlantic City. The proposed use is permitted in the Zoning District and will replace a previously-existing residential structure that was destroyed in Superstorm Sandy. The proposed single-family dwelling will be constructed at the required elevation within the footprint of the former structure.

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

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Atlantic City and 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  
Narendra Dutta  
Block 338, Lot 13  
119 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 Applicants seeks variances pursuant to N.J.S.A. 40:44D-70(c) for its proposal to reconstruct a detached single-family residential structure on the property located at 119 N. Georgia Avenue (rear) in the city of Atlantic City. The proposed use is permitted in the Zoning District and will replace a previously-existing residential structure that was destroyed in Superstorm Sandy. The proposed single-family dwelling will be constructed at the required elevation within the footprint of the former structure.

Evidence List

A-1 Application materials

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

### FINDINGS OF FACT

The Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(c) for its proposal to reconstruct a detached single-family residential structure on the property located at 119 N. Georgia Avenue (rear) in the city of Atlantic City. The proposed use is permitted in the Zoning District and will replace a previously-existing residential structure that was destroyed in Superstorm Sandy. The proposed single-family dwelling will be constructed at the required elevation within the footprint of the former structure.

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The architect for the Applicant, Robert Bolton, introduced the application generally and provided background regarding the specific relief sought by the Applicant. He described the location of the site, existing conditions and development proposal. He noted the need to raise the structure in light of frequent flooding in the area.

Justin Auciello, P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Mr. Auciello 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:

- Minimum lot area: 30,000 square feet required; 1,750 square feet existing and proposed.
- Minimum lot width: 40 feet required; 25 feet existing and proposed
- Front yard setback: 10 feet required; 12.85 feet existing and 6.16 feet proposed.
- Rear yard setback: 25 feet required; 17 feet existing and 8 feet proposed.
- One side yard setback: 12 feet required; 19.82 feet existing and proposed.
- Second side yard setback: 5 feet required; 0 feet existing and proposed.
- Lot coverage: 35% permitted; 100% existing and proposed.

Mr. Auciello opined that the Applicants had presented sufficient testimony to support the grant of approval of the application. Specifically, he opined that the relief from regular flooding and architectural improvements would benefit the community, and that the benefits would outweigh any detriments. Mr. Auciello noted that the proposed development is consistent with what previously existed on the property, and the development pattern of the community generally.

### **CONCLUSIONS OF LAW**

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

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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, relief from regular flooding and architectural improvements would benefit the community and promote the general welfare by creating a desirable visual environment.

### 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 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

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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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