



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 17-\_\_\_, ADOPTED 5/16/2017

**TO:** Members of the Authority

**FROM:** Lance B. Landgraf, Jr., Land Use Hearing Officer

**COPY:** Christopher M. Howard, Executive Director

**SUBJECT:** Hearing Officer's Report and Recommendation  
Application #2017-03-2152  
A. Rando Bakery, Inc  
Preliminary and Final Site Plan Approval with Variance Pursuant to  
N.J.S.A. 40:55D-70(c)  
128 N. Mississippi Avenue and 5 Blake Street  
Block 337, Lots 5, 62, 63, 65 and 66  
NC-2 Neighborhood Commercial Zoning District

**DATE:** May 4, 2017

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### EXECUTIVE SUMMARY

On April 20, 2017, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, A. Rando Bakery, Inc. (the "Applicant"), seeks Preliminary and Final Site Plan Approval with a variance for the expansion of the existing one-story bakery located at 128 N. Mississippi Avenue in the city of Atlantic City. The Application requires variance pursuant to N.J.S.A. 40:55D-70(c) to provide less than the required number of parking spaces.

The Applicant demonstrated by evidence and testimony 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 variance is warranted. Therefore,

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

### INTRODUCTION

#### Application Information

A. Rando Bakery, Inc.

Preliminary and Final Site Plan Approval with Variance Pursuant to N.J.S.A. 40:55D-70(c)

128 N. Mississippi Avenue and 5 Blake Street

Block 337, Lots 5, 62, 63, 65 and 66

NC-2 Neighborhood Commercial 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 Preliminary and Final Site Plan Approval with variances for the expansion of the existing one-story bakery located at 128 N. Mississippi Avenue in the city of Atlantic City. The Application requires a variance pursuant to N.J.S.A. 40:55D-70(c) to provide less than the required number of parking spaces.

#### Evidence List

A-1 Application

A-2 Site Plan with photographs

B-1 Letter from InSite Engineering, LLC dated April 3, 2017

### FINDINGS OF FACT

The Applicant seeks Preliminary and Final Site Plan Approval with variances for the expansion of the existing one-story bakery located at 128 N. Mississippi Avenue in the city of Atlantic City. The Application requires a variance pursuant to N.J.S.A. 40:55D-70(c) to provide less than the required number of parking spaces.

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The attorney for the Applicant, Bridget Sykes, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

The Applicant presented the testimony of Stephen Rando, President of the bakery. Mr. Rando testified that the bakery has operated at this location since 1949 and has undertaken limited upgrades and expansions since that time. He explained that the operation is devoted 90% to the wholesale sale of baked goods and 10% to retail sales from a small shop in the front of the facility. He testified that the facility employs between 15 and 20 people and staffs two shifts per day. Mr. Rando testified that the purpose of the development proposal is to increase warehouse and office space for the existing bakery operation.

The Applicant presented the testimony of Craig Dothe who was qualified as an expert in the field of architecture. Mr. Dothe described the location of the site, existing conditions, development proposal, site layout and floor plan. He explained that the Applicant has demolished an adjacent residential structure and proposes construction of a two-story addition to the existing building containing approximately 876 square feet of new warehouse space and 717 square feet of office space. He noted that the exterior will be consistent with the exterior of the existing structure.

He testified that all existing infrastructure is adequate to support the development proposal. No landscaping, drainage improvements or public improvements are proposed. He also testified that the development proposal complies with all applicable land use and site plan standards with the exception of a request for a variance to provide less than the required number of parking spaces.

With respect to the variance, Mr. Dothe testified that 15 on-site parking spaces are currently required and none are provided. With the proposed addition, 18 on-site parking spaces will be required and none will be provided. Mr. Dothe testified that the proposed addition will consolidate storage and provide office space for existing employees, and will not increase the parking need for the facility. He noted that parking needs are currently met off-site and no additional need is anticipated. Mr. Dothe opined that the development proposal will improve storage and circulation within the structure and create a safer physical environment for the bakery operation. Mr. Dothe testified that the negative criteria for the grant of the requested variances is satisfied because the grant of the variances will not create a substantial detriment to the public good and will not substantially impair the purpose and intent of the zone plan and zoning ordinance.



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Jason L. Fichter, P.E., P.P. was qualified as an expert in professional engineering and planning and provided testimony on behalf of the Authority. Mr. Fichter's engineering and planning review letter dated April 3, 2017 was marked into evidence as Exhibit B-1. Mr. Fichter requested that the Applicant provide spot elevations and finished floor plans, and asked that items 12 through 16 of his April 3, 2017 review letter be made conditions of any approval of the application.

### CONCLUSIONS OF LAW

#### Preliminary and Final Site Plan Approval

A land use agency's authority in reviewing an application for site plan approval is limited to determining whether the development plan conforms to the zoning ordinance and the applicable provisions of the site plan ordinance. See Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216 (1994).

Here, based on the evidence and testimony, the Applicant has demonstrated that development proposal generally conforms to the site plan standards and technical requirements of the land use ordinances of the city of Atlantic City.

#### 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.

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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 a variance to provide less than the required number of on-site parking spaces. Specifically, 18 on-site parking spaces are required and none are proposed. The Applicant provided testimony that the proposed addition will consolidate storage and provide office space for existing employees, and will not increase the parking need for the facility. In addition, parking needs are currently met off-site and no additional need is anticipated. The Applicant provided expert testimony that the development proposal will improve storage and circulation within the structure and create a safer physical environment for the bakery operation, thereby promoting the public health safety and welfare (Purpose A of the Municipal Land Use Law).

### 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 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 Preliminary and Final Site Plan Approval with variance 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

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all other necessary governmental approvals, and compliance with all Federal, State and local laws.

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