



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 14- , ADOPTED 10/ /2014

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 2013-06-679
Steel Pier Associates, LLC
1000 Boardwalk
Block 1 Lots 144, 145, 146 & 147
Preliminary and Final Site Plan with Variances

DATE: October 20, 2014

EXECUTIVE SUMMARY

On September 18 and October 20, 2014, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Steel Pier Associates, LLC (the "Applicant"), seeks preliminary and final site plan approval with a variance to expand the boardwalk at the southwest side of the existing Steel Pier. The approximate dimensions of the boardwalk expansion are 100 feet by 315 feet. The proposed development will include the relocation of the existing "Sling Shot" amusement, the construction of an observation wheel with supporting structure and associated amusement facilities. A variance pursuant to N.J.S.A. 40:55D-70(c) is necessary because the height of the observation wheel will be approximately 205 feet above the boardwalk where the maximum permitted height of a principal structure is 200 feet.

Page 1 of 6

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

During the hearings, 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, and that the grant of the requested variance is justified. Therefore, as more fully outlined below, the Applicant has met its burden for the relief requested under the Municipal Land Use Law and the Hearing Officer recommends that the Application be approved by the Authority.

INTRODUCTION

Application Information

Steel Pier Associates, LLC
1000 Boardwalk
Block 1, Lots 144, 145, 146 & 147
B-Beach Zoning District
Atlantic City Beach Redevelopment Plan

Hearings on the Application were conducted in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and P.L. 2011, c. 18.

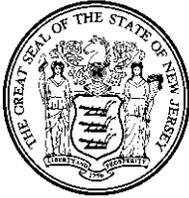
The property in question is on the boardwalk on the southwest side of the existing steel pier located at 1000 Boardwalk in the City of Atlantic City. Applicant seeks a preliminary and final site plan approval with a variance to expand the boardwalk at the southwest side of the existing Steel Pier for the installation of amusement rides and associated amusement facilities, including an observation wheel. The approximate dimensions of the boardwalk expansion are 100 feet by 315 feet. The height of the proposed observation wheel is approximately 205 feet.

Relief Requested

Preliminary and Final Site Plan Approval with Variance.

Evidence List

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

- A-1 Aerial Photo
- A-2 Architectural Rendering
- A-3 Colorized Version of Sheet A-1 of Site Plan Labeled "Floor Plan"
- A-4 Architectural Rendering of Observation Wheel

B-1 Letter dated July 22, 2014 from Kernan Consulting Engineers

FINDINGS OF FACT

The Applicant seeks a preliminary and final site plan approval with variance to expand the boardwalk at the southwest side of the existing Steel Pier. The approximate dimensions of the boardwalk expansion are 100 feet by 315 feet. The proposed development will include the relocation of the existing "Sling Shot" amusement and the construction of an observation wheel and associated amusement facilities. The height of the proposed observation wheel is approximately 205 feet.

The attorney for the Applicant, Stephen Hankin, Esq, introduced the application generally and provided background on the development proposal. Mr. Hankin explained that the development proposal is being implemented in accordance with the Atlantic City Beach Redevelopment Plan, which encourages the development of entertainment and recreational uses within the Beach District. He stated that the Applicant has authorization to proceed with the development pursuant to a lease agreement with dated August 30, 2013 and Redevelopment Agreement dated June 12, 2013 with the city of Atlantic City.

The Applicant presented the testimony of Anthony Catanoso and Bill Catanoso, owners of the Steel Pier property. Anthony Catanoso testified as to the general development proposal to expand the boardwalk and construct amusement structures similar to those already operating on the Steel Pier. The centerpiece of the development will be the construction of an observation wheel with approximately 40 enclosed gondolas that will be heated and air-conditioned and will constitute a year-round amusement attraction. Bill Catanoso testified as to the height of other attractions currently installed on the pier, specifically noting that the Sling Shot attraction is approximately 240 feet.

The Applicant also presented the testimony of John Barnhart, P.E., P.P., who was qualified as an expert in the field of engineering and planning. Mr. Barnhart described the location of the site, as well as the development proposal, site layout and design. Mr.

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Barnhart explained that the expansion will match the grade of the existing boardwalk and Steel Pier and will primarily house a base building that will support the operations of the approx. 205-foot observation wheel. The base building will include a waiting area, food and gift shops and restrooms. It will also serve as the loading area for the observation wheel. Mr. Barnhart testified that no signage is proposed as part of the Application.

Mr. Barnhart testified that the observation wheel with supporting structure is considered principal structure under the Atlantic City Zoning ordinance and that a maximum permitted height of a principal structure is 200 feet. He further testified that the Applicant seeks a "C" bulk variance because the observation wheel with supporting structure will be approx. 205 feet in height.

Mr. Barnhart testified that the grant of the requested variance can be justified because the proposed amusement attraction will create an icon for the city of Atlantic City and will promote non-gaming tourism to boost the local economy. He further testified that the grant of the requested variance will not create any detriment because the observation wheel will be located more than 100 feet off of the boardwalk, is consistent with the scale of other structures on both sides of the block and pier, is significantly lower in height than many surrounding structures and will not create any negative visual impact that will block any air, light and open space.

Mark Petrella, a licensed architect, provided testimony in support of the Application in response to questions raised during the course of the hearing. Specifically, he testified as to the layout of improvements and compliance with the applicable urban design standards.

Timothy Kernan, P.E. was qualified as an expert in engineering. Mr. Kernan entered his review letter dated July 22, 2014 into evidence and provided testimony on behalf of the Authority. Mr. Kernan supported the development proposal and the grant of the requested relief, including the grant of a variance pursuant to N.J.S.A. 40:55D-70(c).

CONCLUSIONS OF LAW

Preliminary and Final Site Plan Approval

Page 4 of 6

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

A land use agency's authority in reviewing an application for site plan approval is limited to determining whether the development plan conforms with 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 this development proposal generally conforms to the site plan standards and technical requirements of the land use ordinances of the City of Atlantic City.

Variances

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 a "C" bulk variance because the proposed observation wheel with supporting structure will be approx. 205 feet in height where the maximum permitted height of a principal structure is 200 feet. Based on the evidence and testimony the grant of the requested variance can be justified because the proposed amusement attraction will create an icon for the city of Atlantic City and will promote non-gaming tourism to boost the local economy. Moreover, the height of the observation wheel is necessary to perform its essential function, i.e. provide scenic views of the ocean, beach, and cityscape. Thus, the development proposal advances the purposes of the Municipal Land Use Law by promoting the public health, safety and welfare (Purpose A), encouraging the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies (Purpose F), and providing sufficient space in appropriate locations for a variety of uses, including recreational and commercial uses, both public and private, in order to meet the needs of all New Jersey citizens (Purpose G).

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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 indicate that the grant of the requested variance will not create any detriment because the observation wheel and supporting structure will be located more than 100 feet off of the boardwalk and consistent with the scale of other structures on both sides of the block and pier, is significantly lower in height than many surrounding structures and will not create any negative visual impact that will block any air, light and open space. Indeed, the Applicant provided testimony that other attractions, specifically the Sling Shot, are greater in height than the proposed Observation Wheel. Thus, the development proposal will not 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 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 all other necessary governmental approvals, and compliance with all federal, State and local laws.

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