



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 17- , ADOPTED 11/21/2017

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 #2017-09-2257
DGMB Casino, LLC d/b/a Resorts Casino Hotel
Preliminary and Final Site Plan Approval with Variances Pursuant to
N.J.S.A. 40:55D-70(c)
156 S. North Carolina Avenue
Block 57, Lot 9; Block 58, Lots 7-11; Block 59, Lot 1
RS-C Resort Commercial Zoning District

DATE: November 14, 2017

EXECUTIVE SUMMARY

On October 19, 2017, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, DGMB Casino, LLC d/b/a Resorts Casino Hotel (the "Applicant"), seeks Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the construction of a reconfigured surface parking lot on the property located at 156 S. North Carolina Avenue in the city of Atlantic City. The reconfigured parking lot will serve the existing Resorts Casino Hotel.

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 variances 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

DGMB Casino, LLC d/b/a Resorts Casino Hotel
Preliminary and Final Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)
156 S. North Carolina Avenue
Block 57, Lot 9; Block 58, Lots 7-11; Block 59, Lot 1
RS-C Resort 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 pursuant to N.J.S.A. 40:55D-70(c) for the construction of a reconfigured surface parking lot on the property located at 156 S. North Carolina Avenue in the city of Atlantic City. The reconfigured parking lot will serve the existing Resorts Casino Hotel.

Evidence List

- A-1 Application Submission
- A-2 Site Plan Sheet C-29-01
- A-3 Site Plan Sheet C-29-02
- A-4 Site Plan Sheet C-29-03

- B-1 Letter from InSite Engineering, LLC dated October 16, 2017

FINDINGS OF FACT

The Applicant seeks Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the construction of a reconfigured surface parking lot on the property located at 156 S. North Carolina Avenue in the city of Atlantic City. The reconfigured parking lot will serve the existing Resorts Casino Hotel.

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The attorney for the Applicant, Nicholas F. Talvacchia, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. Mr. Talvacchia explained that the Applicant proposes to consolidate property that it owns on various sides of now-vacated Chalfonte Avenue to create a reconfigured surface parking lot that will be used by patrons and employees of the Resorts Casino Hotel. Mr. Talvacchia noted that the development proposal will improve the operation of existing parking facilities and serve existing parking needs.

The Applicant presented the testimony of Jason T. Sciallo, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. Mr. Sciallo described the location of the site, existing conditions, development proposal and site layout. He further described the proposed site circulation, stormwater management, landscaping, fencing, lighting, pavement striping, electronic gate system and signage. Mr. Sciallo noted that the Applicant will provide additional details on pole-mounted lighting as a condition of any approval.

Mr. Sciallo testified that the development proposal is a more efficient use of available land. He testified that all existing infrastructure is adequate to support the development proposal. Finally, he testified that the development proposal complies with all applicable land use and site plan standards with the exception of the requested variances.

With respect to the requested submission waivers, Mr. Sciallo testified that the Applicant will provide all submission requirements as identified in the engineering and planning review letter dated October 16, 2017 unless specifically noted in testimony. With respect to the requested design waiver to permit stacked parking, Mr. Sciallo agreed that the Applicant would submit a stacked parking plan depicting site circulation as a condition of any approval.

With respect to the variance to permit a fence height of 4.5 feet where a maximum of 4 feet is permitted, Mr. Sciallo testified that the proposed fence will match the height of existing fencing on the site. With respect to the variance to permit a 5 foot setback along the perimeter of the parking lot where a minimum setback of 10 feet is required, he testified that the setback distance will match existing conditions on the site. Mr. Sciallo opined that the development proposal will promote the safer and more efficient use of land and that 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 October 16, 2017 was marked into evidence as Exhibit B-1. Mr. Fichter testified that the Applicant had provided sufficient testimony to address all issues raised in the review letter and that he supports 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. Mountain Lakes, 256 N.J. Super. 646 (App. Div. 1992); Green Meadows v. Planning Board, 329 N.J. Super. 12 (App. Div. 2000).

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The Applicant seeks variance to permit a fence height of 4.5 feet where a maximum of 4 feet is permitted and permit a 5 foot setback along the perimeter of the parking lot where a minimum setback of 10 feet is required. The Applicant provided testimony that the proposed deviations match existing conditions on the site, and that the proposed construction and reconfiguration of the surface parking lot will promote the safer and more efficient use of land, thereby promoting purposes 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 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 Preliminary and Final Site Plan Approval with variances 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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