

RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH VARIANCE RELIEF FOR THE CONSTRUCTION OF A SERVICE STATION, CONVENIENCE STORE AND CAR WASH ON THE PROPERTY LOCATED AT 912 AND 916 PACIFIC AVENUE CITY OF ATLANTIC CITY, BLOCK 61, LOTS 9 AND 10 UNDER APPLICATION 2017-12-2300

WHEREAS, pursuant to P.L. 2011, c. 18, as amended (the "Act"), the Casino Reinvestment Development Authority (the "Authority"): (i) designated the Atlantic City Tourism District by Resolution 11-25 adopted April 19, 2011, (ii) established the Land Use Regulation and Enforcement Division to, among other matter, hear applications for development in the Tourism District by Resolution 11-33 adopted April 19, 2011, and (iii) adopted the master plan, zoning and land use ordinances and regulations, and zoning maps approved by the City by Resolution 11-34 adopted April 19, 2011; and

WHEREAS, pursuant to Resolution 12-14 dated February 1, 2012, the Authority adopted the "New Jersey CRDA Atlantic City Tourism District Master Plan" prepared by Jones Lang LaSalle, LLC and dated February 1, 2012 (the "Master Plan") (as affirmed and readopted pursuant to Resolution 12-23 adopted February 21, 2012), subject to further comment and revision, which master plan became effective upon the adoption of design, development and land use regulations on January 2, 2018; and

WHEREAS, on December 21, 2017, the Authority's Land Use Regulation and Enforcement Division convened a public hearing on Application 2017-12-2300 in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and the Act, and subsequently prepared and delivered the Hearing Officer's Report and Recommendation dated January 23, 2017 (the "Report"), incorporated herein by this reference and appended hereto as Exhibit "A"; and

WHEREAS, Boardwalk 1000, LLC (the "Applicant") seeks preliminary and final site plan approval with variance relief for the construction of multiple principal uses, a service station, convenience store and car wash on one lot in the RS-C Resort Commercial zoning district, located at 912 and 916 Pacific Avenue, Atlantic City, New Jersey, Block 61, Lots 9 and 10, under application 2017-12-2300, pursuant to Municipal Land Use Law N.J.S.A. 40:55D-70(d)(1); and

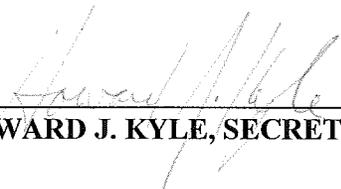
WHEREAS, the Authority intends to adopt the findings, conclusions and recommendations of the Hearing Officer, as detailed in the Report; and

NOW THEREFORE, BE IT RESOLVED by the Casino Reinvestment Development Authority that:

1. The above recitals are incorporated herein, as if set forth in full.

2. Based on the record in this matter, Application 2017-12-2300 is hereby approved in accordance with the Hearing Officer's Report and Recommendation dated January 23, 2018.
3. A copy of this Resolution shall be immediately transmitted to the Governor. This Resolution shall take effect immediately but no action authorized herein shall have force and effect until the earlier of the passage of ten (10) days, Saturdays, Sundays and public holidays excepted, after the delivery of the copy to the Governor, or the Governor's approval.

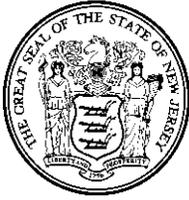
I hereby certify that this document is a true and correct copy of Resolution 18-02 of the Casino Reinvestment Development Authority.



HOWARD J. KYLE, SECRETARY

MEETING OF JANUARY 30, 2018

***EXHIBIT "A" ATTACHED TO RESOLUTION 18-02 ADOPTED JANUARY 30, 2018
HEARING OFFICER REPORT DATED JANUARY 23, 2018***



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 18- , ADOPTED 1/30/2018

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 #2017-12-2300
Boardwalk 1000, LLC
Preliminary and Final Site Plan Approval and Variance Pursuant to
N.J.S.A. 40:55D-70(d)(1)
912 and 916 Pacific Avenue
Block 61, Lots 9 & 10
RS-C Resort Commercial Zoning District

DATE: January 23, 2018

EXECUTIVE SUMMARY

On December 21, 2017, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Boardwalk 1000, LLC (the "Applicant"), seeks Preliminary and Final Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to allow the construction of a service station, convenience store and car wash on the subject property. The variance pursuant to N.J.S.A. 40:55D-70(d)(1) is necessary to permit more than one principal use on one lot. All three uses are permitted in the applicable Zoning District. It should be noted that the development proposal could have been approved under the Authority's recently-adopted Land Use Regulations without need for the requested variance as multiple uses are permitted on one lot under such regulations.

Page 1 of 7

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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

INTRODUCTION

Application Information

Boardwalk 1000, LLC
Preliminary and Final Site Plan Approval with Variance Pursuant to N.J.S.A. 40:55D-70(d)(1)
912 and 916 Pacific Avenue
Block 61, Lots 9 & 10
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 a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to allow the construction of a service station, convenience store and car wash on the subject property. The variance pursuant to N.J.S.A. 40:55D-70(d)(1) is necessary to permit more than one principal use on one lot. All three uses are permitted in the Zoning District. All three uses are permitted in the applicable Zoning District.

Evidence List

- A-1 Aerial Photo
- A-2 Site Plan Landscape Plan
- A-3 Elevations of Fuel Canopy
- A-4 Building Elevations of Convenience Store
- A-5 Elevations of Car Wash Building
- A-6 Site Plan

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B-1 Letter from ARH Associates dated December 18, 2017

FINDINGS OF FACT

The Applicant seeks Preliminary and Final Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to allow the construction of a service station, convenience store and car wash on the subject property. The variance pursuant to N.J.S.A. 40:55D-70(d)(1) is necessary to permit more than one principal use on one lot. All three uses are permitted in the applicable Zoning District.

The attorney for the Applicant, Jack Plackter, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. Mr. Plackter explained that the development proposal will be an amenity that will serve the Hard Rock Hotel and Casino to be developed on neighboring property, and the community generally.

The Applicant presented the testimony of Joseph Emanuele, a licensed architect and professional planner in the State of New Jersey, who was qualified as an expert in architecture and professional planning. Mr. Emanuele testified that he is the Senior Vice President of Design and Construction for Hard Rock International.

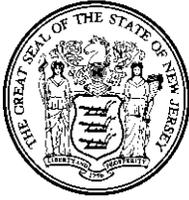
Mr. Emanuele testified as to described the location of the site, existing conditions, development proposal and site layout. He testified as to architectural features of the proposed improvements, lighting, landscaping, site-circulation, loading and trash. He also testified as to the operation aspects of the development proposal and noted that the site will be well-landscaped, well-lit, safe and secure.

The Applicant presented the testimony of John Barnhart, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. Mr. Barnhart described the development proposal and site layout. He testified that site access and circulation will be safe and efficient. He noted that the development proposal complies with all New Jersey Department of Environmental Protection and Atlantic City requirements for stormwater management, and will comply with all engineering comments related to drainage set forth in the December 18, 2017 ARH Associates review letter as a condition of approval. Finally, Mr. Barnhart testified that the Applicant will circulation templates for all turning movements into, out of and on the site.

Page 3 of 7

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With respect to the variance to pursuant to N.J.S.A. 40:55D-70(d)(1) to permit more than one principal use on the property, Mr. Barnhart testified that all three uses are permitted under applicable Zoning District regulations. He noted that the service station is a principally permitted use and the car wash is a permitted accessory use to the service station. He explained that although the convenience store is also a principally permitted use, the current zoning does not permit more than one principal use on the site.

Mr. Barnhart testified that the approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting the public health, safety, morals and general welfare (Purpose A) because the site is adequately-sized to support the proposed uses and otherwise complies with all zoning restrictions. He further testified that the development proposal will provide sufficient space in appropriate locations for a variety of uses to meet the needs of all New Jersey Citizens (Purpose G) because the uses compliment and support each other. Mr. Barnhart testified that the development proposal will promote the free flow of traffic and discourage congestion and blight (Purpose H) based on the location of the site and access configuration. Finally, Mr. Barnhart testified that the development proposal will promote a desirable visual environment (Purpose I) based on the design and landscaping of the site.

Finally, Mr. Barnhart noted that the development proposal actually reduces the amount of impervious coverage on the site, and would be permitted without need for a variance if reviewed under the Authority's recently-adopted Land Use Regulations.

With respect to the negative criteria, Mr. Barnhart testified that the grant of the variance would advance the purposes of the Tourism District Master Plan and would not have any substantial detriment to the zone plan of either the City or the Authority.

The Applicant presented the testimony of Andrew Feranda, P.E., who was qualified as an expert in the field of professional engineering. Mr. Feranda provided testimony in response to question by Authority staff and consultants regarding site access, circulation, stacking and drive-aisle width.

Christine Cofone, P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Ms. Cofone confirmed that merchandise will not be available for sale at the fuel pumps and recommended that such sales be restricted as a condition of approval. She testified that the Applicant had provided sufficient testimony to support approval of the Application. William England, P.E. was qualified as an expert

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

in professional engineering and provided testimony on behalf of the Authority. Mr. England testified that the Applicant had addressed all issues raised in the ARH Associates planning and engineering review letter dated December 18, 2017 and supported 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(d)(1)

The Applicant seeks a variance pursuant to N.J.S.A. 40:44D-70(d)(1) to allow the construction of a service station, convenience store and car wash on the subject property. The variance is necessary to permit more than one principal use on one lot. It is well-established that "[v]ariations to allow new nonconforming uses should be granted only sparingly and with great caution since they tend to impair sound zoning." Burbridge v. Twp. of Mine Hill, 117 N.J. 376, 385 (1990) (quoting Kohl v. Mayor & Council of Fair Lawn, 50 N.J. 268, 275 (1967)). Consequently, although deference must be given to any decision by a board of adjustment, a reviewing court gives less deference to a grant than to a denial of a use variance. Funeral Home Mgmt., Inc. v. Basralian, 319 N.J. Super. 200, 208 (App. Div. 1999). In reviewing the grant of a use variance, a court must consider whether a board of adjustment "in the guise of a variance proceeding, [has] usurp[ed] the legislative power reserved to the governing body of the municipality to amend or revise the [zoning] plan . . ." Vidal v. Lisanti Foods, Inc., 292 N.J. Super. 555, 561 (App. Div. 1996) (quoting Feiler v. Fort Lee Bd. of Adjustment, 240 N.J. Super. 250, 255 (App. Div. 1990), certif. denied, 127 N.J. 325 (1991)) (internal quotations omitted). To sustain a use variance, a reviewing court must find both that the "Board's

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decision comports with the statutory criteria and is founded on adequate evidence.” Burbridge, supra, 117 N.J. at 385.

A land use board is authorized to grant a use variance only “[i]n particular cases and for special reasons.” N.J.S.A. 40:55D-70(d). This is sometimes referred to as the positive criteria for the grant of a use variance. Smart SMR of New York, Inc. v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 323 (1998). “Special reasons” is not specifically defined, but has been broadly interpreted to mean reasons which advance the purposes of the Municipal Land Use Law. New Jersey case law recognizes three categories of circumstances in which the “special reasons” required for a use variance may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing facility, see Sica v. Bd. of Adjustment of Wall, 127 N.J. 152, 159-60 (1992); (2) where the property owner would suffer “undue hardship” if compelled to use the property in conformity with the permitted uses in the zone, see Medici v. BPR Co., 107 N.J. 1, 17 n.9 (1987), and (3) where the use would serve the general welfare because “the proposed site is particularly suitable for the proposed use.” Smart SMR, supra, 152 N.J. at 323 (quoting Medici, supra, 107 N.J. at 4).

In addition, an applicant for a use variance must show that the variance “can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” N.J.S.A. 40:55D-70. This is sometimes referred to as one of the “negative” criteria for the grant of a variance. Smart SMR, supra, 152 N.J. at 323.

Positive Criteria

In this case, the Applicant must demonstrate that the use would serve the general welfare because “the proposed site is particularly suitable for the proposed use.” The test is whether the public benefits because of the community’s need for the use itself. See Funeral Home Mgmt., Inc., supra, at 210.

In considering whether the purposes of the Municipal Land Use Law are advanced by a showing of special reasons, the Hearing Officer concludes that the Applicant has demonstrated that the application advances the purposes of the Municipal Land Use Law by promoting the public health, safety, morals and general welfare (Purpose A); provide sufficient space in appropriate locations for a variety of uses to meet the needs of all New

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Jersey Citizens (Purpose G); promote the free flow of traffic and discourage congestion and blight (Purpose H); and promote a desirable visual environment (Purpose I).

Negative Criteria

To assure that a land use agency does not usurp the governing body's statutory authority to determine the municipality's zoning, an applicant for a use variance must show by "an enhanced quality of proof . . . that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance [,]" and the Board must make "clear and specific findings" that this showing has been made, Medici, 107 N.J. at 21. "The applicant's proofs and the board's findings . . . must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district." Ibid.

Here, the Hearing Officer concludes, based on the evidence and testimony, that the grant of the requested variance will not result in any substantial detriment to the public good is not inconsistent with the intent and purpose of the master plan and zoning ordinance. Indeed, the development proposal advances the purposes of the Tourism District Master Plan and is consistent with the Authority's Land Use Regulations.

RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the Application for Preliminary and Final Site Plan Approval with variance pursuant to N.J.S.A. 40:55D-70(d)(1) 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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CRDA BOARD TALLY

January 30, 2018

**BOARDWALK 1000 LLC (ROCK STOP) CONVENIENCE STORE/GAS
STATION SITE PLAN (912 – 916 PACIFIC AVE, BLOCK 61, LOTS 9 & 10) -
Preliminary and Final Site Plan with use variance (LL)**

MOTION

CH

SECOND

DD

Debra DiLorenzo

Y

Edward Gant

Recusal

Mark Giannantonio

Y

Mayor Frank Gilliam

Y

Michael I. Hanley

Y

Gary Hill

Y

Howard Kyle

Y

James Plousis

Y

William Mullen

Y

Kevin C. Ortzman

Y

Dave Rebeck for the State Attorney General

Y

Robert Kennedy for the DCA Commissioner

Y

Robert Shaughnessy for the State Treasurer

Y

Frank Spencer

Y

Richard Tolson

Y

Robert Mulcahy, Chairman

Y