



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 18- , ADOPTED 12/18/2018

**TO:** Members of the Authority

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

**COPY:** Matthew J. Doherty, Executive Director

**SUBJECT:** Hearing Officer's Report and Recommendation  
Application #2018-10-2513  
Bahaa Said – Mr. B's Auto Service  
Variances Pursuant to N.J.S.A. 40:55D-70(c)  
Block 388, Lots 5-8  
TWD Thorofare Waterfront Zoning District

**DATE:** November 28, 2018

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### EXECUTIVE SUMMARY

On November 1, 2018, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Bahaa Said d/b/a Mr. B's Auto Repair (the "Applicant"), seeks variances pursuant to N.J.S.A. 40:55D-70(c) to permit the expansion of an existing auto repair and storage use located in the "TWD" Thorofare Waterfront Zoning District. The use is conditionally permitted in the zoning district and the development proposal complies with the applicable conditional use standards.

The Applicant proposes to expand the existing auto repair and storage use by providing more building space for vehicle storage, adding two parking spaces adjacent to Georgia Avenue, and adding a 10-foot high garage door to allow vehicles to exit onto Georgia Avenue. Ancillary improvements include a 4-foot wide landscape planter box, a 6-foot high board-on-board fence along a portion of the northeastern boundary of the property,

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pavement stripes in the northeastern portion of the property and wheel stops along the northern property line.

The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) for existing non-conforming conditions related to the existing building location, building and impervious coverage, lot area, lot depth, front and rear yard setbacks. Additional bulk variances are required for the following non-conforming conditions: Parking (0 existing, 2 proposed, 17.6 required) and loading (0 existing, 0 proposed, 1 required).

The Applicant demonstrated by evidence and testimony that the development proposal generally conforms to the site plan standards and technical requirements of the Authority's Tourism District Land Development Rules. In addition, the Applicant demonstrated by evidence and testimony that the grant of the requested variances are warranted. Therefore, for the reasons more fully outlined below, the Hearing Officer recommends that the Application be approved by the Authority.

### INTRODUCTION

#### Application Information

Bahaa Said – Mr. B's Auto Service  
Minor Site Plan Approval and Variances Pursuant to N.J.S.A. 40:55D-70(c) and (d)  
Block 388, Lots 5-8  
TWD Thorofare Waterfront 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 variances pursuant to N.J.S.A. 40:55D-70(c) to permit the expansion of an existing auto repair and storage use located in the "TWD" Thorofare Waterfront Zoning District. The use is conditionally permitted in the zoning district and the development proposal complies with the applicable conditional use standards. Bulk variances are required for the following non-conforming conditions: Parking (0 existing, 2 proposed, 17.6 required) and loading (0 existing, 0 proposed, 1 required).

#### Evidence List

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A-1 Application Materials

B-1 Letter from Cofone Consulting Group, LLC dated October 29, 2018

### FINDINGS OF FACT

The Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) to permit the expansion of an existing auto repair and storage use located in the "TWD" Thorofare Waterfront Zoning District. The use is conditionally permitted in the zoning district and the development proposal complies with the applicable conditional use standards. Bulk variances are required for the following non-conforming conditions: Parking (0 existing, 2 proposed, 17.6 required) and loading (0 existing, 0 proposed, 1 required).

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

The Applicant presented the testimony of Jay Sciuлло, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. He testified that the Applicant proposes to expand the existing auto repair and storage use by providing more building space for vehicle storage, adding two parking spaces adjacent to Georgia Avenue, and adding a 10-foot high garage door to allow vehicles to exit onto Georgia Avenue. Ancillary improvements include a 4-foot wide landscape planter box, a 6-foot high board-on-board fence along a portion of the northeastern boundary of the property, pavement stripes in the northeastern portion of the property and wheel stops along the northern property line.

Mr. Sciuлло described the property location, development proposal and site layout, operation and circulation. With respect to the existing non-conformities, Mr. Sciuлло testified that such conditions have existed since the 1930 and are a result of the hardship uniquely affecting the property and the structures lawfully existing thereon. He testified that the following variances pursuant to N.J.S.A. 40:55D-70(c) are required based on the development proposal:

- Parking (0 existing, 2 proposed, 17.6 required)
- Loading (0 existing, 0 proposed, 1 required).

Mr. Sciuлло noted that the development proposal improves an existing deficiency with respect to parking, and that the need for loading spaces at the property is minimal. He

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testified that the requested variances advance the purposes of the Tourism District Act and Tourism District Master Plan, as well as the Municipal Land Use Law by encouraging the location and design of transportation routes which permit the free flow of traffic. Specifically, the development proposal will improve traffic circulation on the property and along the roadways in the vicinity of the property. With respect to the negative criteria, Mr. Sciullo testified that the grant of the variances would not have any substantial detriment to the Tourism District Master Plan, Tourism District Land Development Rules or the public good.

Finally, Mr. Sciullo noted that the Applicant will comply with comments set forth in the October 29, 2018 Cofone Consulting Group, LLC review letter as a condition of approval.

Christine Cofone, P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Ms. Cofone testified that the Applicant had provided sufficient testimony to support approval of the Application. She further opined that the development proposal advances the purposes of the Tourism District Master Plan and Municipal Land Use Law by creating a desirable visual environment. Finally, in response to issues raised by Ms. Cofone, the Applicant agreed to maintain seasonal plantings in the planter box.

### 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

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).

Here, the Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) to permit the following non-conforming conditions: Parking (0 existing, 2 proposed, 17.6 required) and

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loading (0 existing, 0 proposed, 1 required). The Applicant presented testimony that the application would advance the purposes of the Municipal Land Use Law by promoting the free flow of traffic through site circulation improvements (Purpose H) and promote a desirable visual environment (Purpose I) based on the proposed upgrades to the property.

### 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 Applicant presented sufficient evidence and testimony to establish that the grant of the variances would not have any substantial detriment to the Tourism District Master Plan, Tourism District Land Development Rules or the public good.

### **RECOMMENDATION**

For all of the foregoing reasons, the Hearing Officer recommends that the Application for variances pursuant to N.J.S.A. 40:55D-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 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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