



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 18- , ADOPTED 1/15/2019

**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 #2018-11-2547  
DGMB Casino LLC  
Preliminary and Final Site Plan Approval and Variances Pursuant to  
N.J.S.A. 40:55D-70(c)  
1100 Boardwalk  
Block 1, Lots 142 & 142.01; Block 60, Lots 14 & 15  
B Beach Zoning District

**DATE:** December 28, 2018

---

### EXECUTIVE SUMMARY

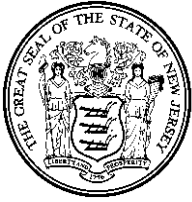
On December 6, 2018, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, DGMB Casino, LLC (the "Applicant") seeks Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) to convert 2,600 square feet of the existing interior retail space of the Landshark Bar and Grill into restaurant/bar space with 18 restaurant seats and 32 bar seats, as well as add a new 2,300 square foot deck with 94 dining seats on the landward side of the structure.

The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit (1) more outdoor seating than indoor seating; (2) 1,872 parking spaces where 1,879 parking spaces are required; and (3) a roof-mounted sign.

Page 1 of 6

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*

Error! Unknown document property name.



## 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 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

DGMB Casino LLC

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

1100 Boardwalk

Block 1, Lots 142 & 142.01; Block 60, Lots 14 & 15

B Beach 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) to convert 2,600 square feet of the existing facility including interior retail space of the Landshark Bar and Grill into restaurant/bar space with 18 restaurant seats and 32 bar seats, as well as add a new 2,300 square foot deck with 94 dining seats on the landward side of the structure.

The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit (1) more outdoor seating than indoor seating; (2) 1,872 parking spaces where 1,879 parking spaces are required; and (3) a roof-mounted sign.

#### Evidence List

- A-1 Application materials
- A-2 Aerial photograph of site
- A-3 Site Plan
- A-4 Google Earth image

***CONFIDENTIALITY NOTICE:** This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

B-1 Letter from ARH Associates dated November 28, 2018

### FINDINGS OF FACT

The Applicant seeks Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) to convert 2,600 square feet of the existing interior retail space of the Landshark Bar and Grill into restaurant/bar space with 18 restaurant seats and 32 bar seats, as well as add a new 2,300 square foot deck with 94 dining seats on the landward side of the structure.

The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit (1) more outdoor seating than indoor seating; (2) 1,872 parking spaces where 1,879 parking spaces are required; and (3) a roof-mounted sign.

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

The Applicant presented the testimony of Mark Petrella, who was qualified as an expert in the field of architecture. Mr. Petrella described the existing conditions on the property and explained the development proposal. He testified that approximately 2,600 square feet of the existing facility including interior retail space of the Landshark Bar and Grill will be converted to restaurant/bar space with 18 restaurant seats and 32 bar seats. He further testified that the Applicant proposed to construct a new 2,300 square foot deck with 94 dining seats on the landward side of the structure. Mr. Petrella explained the layout and floorplan, access, lighting, signage, branding and architectural elevations and features.

The Applicant presented the testimony of Arthur Ponzio, P.P., who was qualified as an expert in the field of professional planning. Mr. Ponzio described the location of the site, existing conditions, development proposal and site layout. Mr. Ponzio testified that the following "bulk" variances pursuant to N.J.S.A. 40:55D-70(c) are required to permit:

- more outdoor seating than indoor seating;
- 1,872 parking spaces where 1,879 parking spaces are required; and
- a roof-mounted sign.

With respect to the requested variance for outdoor seating, Mr. Ponzio opined that the intent of the regulation is to discourage outdoor dining uses that are not integrated with a

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

fully-functioning restaurant. He noted that the Landshark Bar and Grill is a full-service restaurant operating year round and that the additional outdoor seating will be operated seasonally to take advantage of the unique location with views of the beach, Boardwalk and ocean. He concluded that operational experience has demonstrated that increased outdoor seating is desirable at the location and did not result in any negative impacts. Finally, Mr. Ponzio testified that the grant of the variance would advance the purposes of the Tourism District and constitute a better planning alternative to strict compliance with the regulation.

With respect to the variance to provide 1,872 parking spaces where 1,879 parking spaces are required, Mr. Ponzio testified that the shortfall is *de minimis*, and that parking need is easily met existing parking facilities in the vicinity and on-street parking. He noted that operational experience indicates that the majority of patrons are guests at the Resorts Hotel and Casino or other destination within the City and therefore do not require additional parking. Finally, Mr. Ponzio testified that the grant of the variance would advance the purposes of the Tourism District and constitute a better planning alternative to strict compliance with the regulation.

With respect to the variance for the roof-mounted sign, Mr. Ponzio testified that the approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting a desirable visual environment (Purpose I) based on the aesthetics of the overall site and its impact on the neighboring land uses in the Tourism District. He noted that the sign will not protrude above the roofline, is on a scale consistent with other signage in the vicinity and will create visual excitement along the Boardwalk. He concluded that a roof-mounted sign would constitute a better planning alternative than a conforming sign.

With respect to the negative criteria, Mr. Ponzio testified that the grant of the requested variances would advance the purposes of the Tourism District Master Plan and would not have any substantial detriment to the Tourism District Master Plan or Tourism District Land Development Rules.

Justin Auciello, P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. William, England, P.E., P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Mr. Auciello and Mr. England testified that all issues raised in their November 28, 2018 review

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

letter had been addressed and that the Applicant had provided sufficient testimony to support 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 Hearing Officer concludes that the Applicant has demonstrated that development proposal generally conforms to the site plan standards and technical requirements of the Tourism District Land Development Rules.

#### Variances 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).

Here, the Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit:

- more outdoor seating than indoor seating;
- 1,872 parking spaces where 1,879 parking spaces are required; and
- a roof-mounted sign.

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*



## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

The Applicant presented testimony that the application would advance the purposes of the Municipal Land Use Law by promoting a desirable visual environment (Purpose I) based on the aesthetics of the overall site and its impact on the neighboring land uses in the Tourism District. In addition, the grant of the variances would advance the purposes of the Tourism District Master Plan and the Tourism District Land Development Rules and constitute a better planning alternative to strict compliance with the regulations.

### 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 Tourism District Master Plan and the Tourism District Land Development Rules.

### **RECOMMENDATION**

For all of the foregoing reasons, the Hearing Officer recommends that the Application for Preliminary and Final Major Site Plan Approval with 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.

*CONFIDENTIALITY NOTICE: This Memorandum may contain confidential information that is subject to the attorney-client privilege or is attorney work product. Any disclosure, copying, distribution or use of any of the information contained in or attached to this Memorandum is strictly prohibited. If you receive this Memorandum in error, please immediately contact the CRDA Law Department at 609-347-0500.*