



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 19- , ADOPTED 2/19/2019

**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 #2018-11-2555  
NYORANGEDEEDS, LLC  
Preliminary and Final Site Plan Approval and Variances Pursuant to  
N.J.S.A. 40:55D-70(c)  
161-205 South New York Avenue & 118-142 St. James Place  
Block 52, Lots 11-18 and 30-40  
RC Resort Commercial Zoning District

**DATE:** January 31, 2019

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### EXECUTIVE SUMMARY

On January 3, 2019, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, NYORANGEDEEDS, LLC (the "Applicant") seeks Preliminary Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) to construct a mixed-use, pedestrian-friendly development on the property located at 161-205 South New York Avenue & 118-142 St. James Place in the city of Atlantic City. The development proposal includes an approximately 10,000 square foot retail building, a ten (10) room "shipping container hotel" with an entertainment area and a stage, restrooms, seasonal concession stands, a seasonal bar and 51 new parking spaces.

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The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit (1) a rear yard setback of 15 feet where a minimum rear yard setback of 20 feet is required; and (2) 53 parking spaces where 120 parking spaces are 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 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

NYORANGEDEEDS, LLC

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

161-205 South New York Avenue & 118-142 St. James Place

Block 52, Lots 11-18 and 30-40

RC Resort Commercial Zoning District

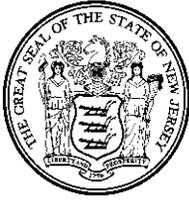
A hearing on the Application was conducted in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and P.L. 2011, c. 18.

The Applicant seeks Preliminary Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) to construct a mixed-use, pedestrian-friendly development on the property located at 161-205 South New York Avenue & 118-142 St. James Place in the city of Atlantic City. The development proposal includes an approximately 10,000 square foot retail building, a ten (10) room "shipping container hotel" with an entertainment area and a stage, restrooms, seasonal concession stands, a seasonal bar and 51 new parking spaces.

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### Evidence List

- A-1 Application materials
- A-2 Slide show consisting of 21 marked slides
- A-3 Fortune Magazine article dated February 24, 2018
  
- B-1 Letter from ARH Associates dated December 17, 2018

### **FINDINGS OF FACT**

The Applicant seeks Preliminary Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) to construct a mixed-use, pedestrian-friendly development on the property located at 161-205 South New York Avenue & 118-142 St. James Place in the city of Atlantic City. The development proposal includes an approximately 10,000 square foot retail building, a ten (10) room “shipping container hotel” with an entertainment area and a stage, restrooms, seasonal concession stands, a seasonal bar and 51 new parking spaces.

The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit (1) a rear yard setback of 15 feet where a minimum rear yard setback of 20 feet is required; and (2) 53 parking spaces where 120 parking spaces are required.

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 Patrick Fasano, a principal in the Applicant. Mr. Fasano described his experience redeveloping similar properties in Asbury Park, New Jersey and his ultimate vision for the development of the subject property and surrounding environs. He explained that the goal is to create a pedestrian-friendly destination that is connected to the Boardwalk and the larger community.

The Applicant presented the testimony of Jason Sciuillo, P.E., P.P., who was qualified as an expert in the field of professional engineering and professional planning. Mr. Sciuillo described the location of the site, existing conditions, development proposal and site layout. He noted that the development proposal includes an approximately 10,000 square foot retail building, a ten (10) room “shipping container hotel” with an entertainment area and a stage, restrooms, seasonal concession stands, a seasonal bar and 51 new parking spaces.

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He further described the proposed site circulation, architectural features, landscaping, fencing, lighting, public utilities, and parking. Mr. Sciullo testified that no stormwater management improvements are necessary or proposed. He noted that additional plan details, including signage, will be clarified in a subsequent application for Final Site Plan Approval.

With respect to the hotel facility, Mr. Sciullo testified that it will be operated electronically and that there will not be any on-site management office. A portion of the on-site parking will be dedicated to hotel patrons. He noted that the Applicant envisions that the hotel, restaurant and entertainment space will be an integrated operation that will compliment other existing and proposed uses in the area.

Mr. Sciullo testified that design waivers are required for landscape buffer and fence height. He testified that, based on substantial compliance with the landscape buffer requirements and other landscaping on site, and the fact that the fencing is required under the Applicant's alcoholic beverage license, the grant of the design waivers is reasonable and appropriate.

Mr. Sciullo testified that the following "bulk" variances pursuant to N.J.S.A. 40:55D-70(c) are required to permit:

- (1) a rear yard setback of 15 feet where a minimum rear yard setback of 20 feet is required; and
- (2) 53 parking spaces where 120 parking spaces are required.

Mr. Sciullo noted that the property is deficient in lot depth, an existing non-conforming condition that is not exacerbated by the development proposal.

With respect to the variance to permit a rear yard setback of 15 feet where a minimum rear yard setback of 20 feet is required, Mr. Sciullo testified that the lot depth and dimensional configuration creates a hardship in strictly complying with the regulation. Moreover, he opined that the development proposal promotes the purposes of the Municipal Land Use Law by providing adequate air, light and open space (Purpose C) as the property is far below the permitted impervious coverage. With respect to the negative criteria, Mr. Sciullo testified that the grant of the requested variance 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.

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With respect to the requested variance to permit 53 parking spaces where 120 parking spaces are required, Mr. Sciullo testified that there is more than adequate parking in the vicinity of the property on-street, in public parking lots and casino garages to support the development proposal. He noted the increased use of ridesharing platforms such as Uber and Lyft has significantly reduced parking needs at restaurant facilities. He concluded that the reduced on-site parking in fact constitutes a better planning alternative to strict compliance with the regulation.

Mr. Sciullo opined that the development proposal promotes the purposes of the Municipal Land Use Law by providing adequate air, light and open space (Purpose C) as the property is far below the permitted impervious coverage. In addition, he testified that the parking lot arrangement encourages the location and design of transportation routes which promote the free flow of traffic (Purpose H). Finally, he opined that the overall architectural design of the development proposal creates a desirable visual environment (Purpose I) and the use of recycled materials (Purpose O) through the repurposing of shipping containers support the positive criteria. With respect to the negative criteria, Mr. Sciullo testified that the grant of the requested variance 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.

Christine Cofone, 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. Ms. Cofone and Mr. England testified that all issues raised in their December 17, 2018 review letter had been addressed and that the Applicant had provided sufficient testimony to support approval of the Application.

One member of the public appeared and spoke in support of the Application.

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## CONCLUSIONS OF LAW

### Preliminary 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).

With respect to the variance to permit a rear yard setback of 15 feet where a minimum rear yard setback of 20 feet is required, the Applicant presented expert testimony that the lot depth and dimensional configuration creates a hardship in strictly complying with the regulation. The Applicant also presented testimony that the development proposal promotes the purposes of the Municipal Land Use Law by providing adequate air, light and open space (Purpose C) as the property is far below the permitted impervious coverage.

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With respect to the requested variance to permit 53 parking spaces where 120 parking spaces are required, the Applicant presented testimony that there is more than adequate parking in the vicinity of the property on-street, in public parking lots and casino garages to support the development proposal. The Applicant noted the increased use of ridesharing platforms such as Uber and Lyft has significantly reduced parking needs at restaurant facilities and concluded that the reduced on-site parking in fact constitutes a better planning alternative to strict compliance with the regulation.

The Applicant further presented testimony that the development proposal promotes the purposes of the Municipal Land Use Law by providing adequate air, light and open space (Purpose C), encouraging the location and design of transportation routes which promote the free flow of traffic (Purpose H), creating a desirable visual environment (Purpose I) and encouraging the use of recycled materials (Purpose O).

### 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 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 Authority's Tourism District Land Development Rules, City

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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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