

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT
AUTHORITY GRANTING VARIANCE RELIEF PURSUANT TO *N.J.S.A.*
40:55D-70(d)(1) TO CONVERT AN EXISTING ROOMING HOUSE WITH
ONE APARTMENT INTO A DUPLEX ON PROPERTY LOCATED AT 112
SOUTH OCEAN AVENUE, IN THE CITY OF ATLANTIC CITY BLOCK
54, LOT 57 UNDER APPLICATION 2018-12-2559**

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 Authority’s adoption of design, development and land use regulations on January 2, 2018; and

WHEREAS, on May 16, 2019, the Authority’s Land Use Regulation and Enforcement Division convened a public hearing on Application 2018-12-2559 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 June 7, 2019 (the “Report”), incorporated herein by this reference and appended hereto as Exhibit “A”; and

WHEREAS, Teresita Seguritan (the “Applicant”) seeks a variance pursuant to *N.J.S.A.* 40:55D-70(d)(1) of the Municipal Land Use Law to convert an existing rooming house with an existing apartment into a duplex at the property located at 112 South Ocean Avenue in the city of Atlantic City, Block 54, Lot 57. The Applicant requires the variance because duplexes are not permitted in the RC Resort Commercial Zoning District; and


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

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 2018-12-2559 is hereby approved in accordance with the Hearing Officer's Report and Recommendation dated June 7, 2019.
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.

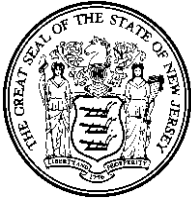
I hereby certify that this document is a true and correct copy of Resolution 19-74 of the Casino Reinvestment Development Authority.



HOWARD J. KYLE, SECRETARY

MEETING OF JUNE 18, 2019

EXHIBIT "A" TO RESOLUTION 19-74, ADOPTED 6/18/2019



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 19- , ADOPTED 6/18/2019

TO: Members of the Authority

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

COPY: Matthew J. Doherty, Executive Director

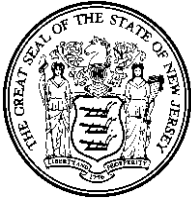
SUBJECT: Hearing Officer's Report and Recommendation
Application #2018-12-2559
Teresita Seguritan
Variance Pursuant to N.J.S.A. 40:55D-70(d)(1)
112 South Ocean Avenue
Block 54, Lot 57
RC Resort Commercial Zoning District

DATE: June 7, 2019

EXECUTIVE SUMMARY

On May 16, 2019, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Teresita Seguritan (the "Applicant"), seeks a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to convert an existing rooming house with one apartment into a duplex at the above-captioned property in the city of Atlantic City. Specifically, the Applicant proposes to maintain the existing first floor apartment and convert the rooming house use on the second and third floors into a second apartment. The Applicant requires the variance because duplexes are not permitted in the zoning district.

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 and 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.



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INTRODUCTION

Application Information

Teresita Seguritan
Variance Pursuant to N.J.S.A. 40:55D-70(d)(1)
112 South Ocean Avenue
Block 54, Lot 57
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 a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to convert an existing rooming house with one apartment into a duplex. Specifically, the Applicant proposes to maintain the existing first floor apartment and convert the rooming house use on the second and third floors into a second apartment. The Applicant requires the variance because duplexes are not permitted in the zoning district.

Evidence List

A-1 Application materials

B-1 Letter from Cofone Consulting Group, LLC dated April 4, 2019

FINDINGS OF FACT

The Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to convert an existing rooming house with one apartment into a duplex. Specifically, the Applicant proposes to maintain the existing first floor apartment and convert the rooming house use on the second and third floors into a second apartment. The Applicant requires the variance because duplexes are not permitted in the zoning district.

The Applicant introduced the application generally and provided background regarding the development proposal.



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The Applicant presented the testimony of Craig Dothe, who was qualified as an expert in the fields of architecture and professional planning. Mr. Dothe described the location of the site, existing conditions and development proposal. He explained that the existing structure is a three-story masonry building located on an approximately 17' by 47' lot. The development proposal consists of the conversion of the second and third floors of the structure into second apartment. No modifications are proposed to the existing apartment on the first floor or the exterior of the structure.

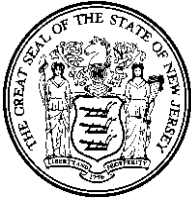
Mr. Dothe testified that multi-family residential uses are permitted within the zoning district, and that a three-family structure, as opposed to a duplex, would be permitted as of right. Importantly, Mr. Dothe noted that the conversion of the rooming house to a duplex would extinguish a prohibited use on the property.

Christine Cofone, P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. She testified that the Applicant had provided sufficient testimony to support approval of the Application. Specifically, Ms. Cofone noted that the Authority's Tourism District Land Development Rules promote residential development in the zoning district and that the development proposal would advance the purposes of the Municipal Land Use Law by establishing appropriate population densities (Purpose E). She further opined that the development proposal can be granted without substantial detriment to the public good.

CONCLUSIONS OF LAW

The Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to convert an existing rooming house with one apartment into a duplex. Specifically, the Applicant proposes to maintain the existing first floor apartment and convert the rooming house use on the second and third floors into a second apartment. The Applicant requires the variance because duplexes are not permitted in the zoning district.

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), cert. denied, 127 N.J. 325 (1991)) (internal quotations omitted). To sustain a use



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variance, a reviewing court must find both that the “Board” s 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 the development proposal will advance the purposes of the statute by establishing appropriate population densities (Purpose E) in the zoning district.

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



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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 Authority’s Tourism District Master Plan and Land Development Rules.

RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the Application for a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to convert an existing rooming house with one apartment into a duplex 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, any applicable 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

June 18, 2019

**TERESITA SEGURITAN (112 S OCEAN AVENUE, BLOCK 54, LOT 57) - Seeking Use
Variance relief (LL)**

MOTION

FG

SECOND

DD

Modia Butler

Y

Debra DiLorenzo

Y

Edward Gant

Y

Mark Giannantonio

A

Mayor Frank Gilliam

Y

Michael I. Hanley

Y

Gary Hill

Y

Howard Kyle

Y

James Plousis

A

William Mullen

Y

Kevin C. Ortizman

Y

David Rebeck for the State Attorney General

Y

Maureen Hassett for the State Treasurer

Y

Robert Long for the DCA Commissioner

Y

Richard Tolson, Vice Chairman

Y

Robert Mulcahy, Chairman

Y