



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 19- , ADOPTED 10/15/2019

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 #2019-08-2725
Rigoberto Alvarez and Eric Alvarez
Minor Site Plan with Variances Pursuant to N.J.S.A. 40:55D-70(c)
2430 Fairmont Avenue, Atlantic City
Block 339, Lots 1 & 78
Ducktown Arts (DA) Zoning District

DATE: October 4, 2019

EXECUTIVE SUMMARY

On September 19, 2019, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicants, Rigoberto Alvarez and Eric Alvarez (the "Applicants"), seek Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the subject properties in the city of Atlantic City. The properties are currently operated as the "El Charro" restaurant. The Applicant proposes an expansion of approximately 726 square feet of the first floor, an expansion of approximately 586 square feet of the second floor and an expansion of approximately 235 square feet of the roof deck. The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) for lot setbacks, impervious coverage, parking and signage.

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.



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INTRODUCTION

Application Information

Rigoberto Alvarez and Eric Alvarez
Minor Site Plan with Variances Pursuant to N.J.S.A. 40:55D-70(c)
2430 Fairmont Avenue, Atlantic City
Block 339, Lots 1 & 78
Ducktown Arts (DA) 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 Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the subject properties in the city of Atlantic City. The properties are currently operated as the “El Charro” restaurant. The Applicant proposes an expansion of approximately 726 square feet of the first floor, an expansion of approximately 586 square feet of the second floor and an expansion of approximately 235 square feet of the roof deck. The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) for lot setbacks, impervious coverage, parking and signage.

Evidence List

- A-1 Application Materials
- B-1 Letter from Environmental Resolutions, Inc. dated September 10, 2019

FINDINGS OF FACT

The Applicant seeks Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the subject properties in the city of Atlantic City. The properties are currently operated as the “El Charro” restaurant. The Applicant proposes an expansion of approximately 726 square feet of the first floor, an expansion of approximately 586 square feet of the second floor and an expansion of approximately 235 square feet of the roof deck. The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) for lot setbacks, impervious coverage, parking and signage.

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 Craig Dothe, a licensed architect and professional planner in the State of New Jersey, who was qualified as an expert in the fields of architecture and professional planning. Mr. Dothe described the location of the site,



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existing conditions, development proposal and site layout. He testified as to architectural features of the proposed improvements, floor-plans, operational features, landscaping and signage.

He noted that this is a developed site with pre-existing non-conforming conditions implicating front yard setback, rear yard setback and impervious coverage that are not being exacerbated by the development proposal. Mr. Dothe also noted that the existing improvements encroach into the public right of way in some locations, and the Applicant agreed to obtain all necessary licenses from the City of Atlantic City for such encroachments as a condition of any approval granted by the Authority. The Applicant also agreed to obtain a license from the City of Atlantic City to permit proposed outdoor dining within the public sidewalk as a condition of any approval granted by the Authority. Finally, the Applicant agreed to coordinate with the Authority and its consultants replace the brick borders around street trees along the public sidewalk in front of the subject property with metal grates.

Mr. Dothe testified that the Applicant is seeking the following variances pursuant to N.J.S.A. 40:55D-70(c):

- a variance to permit an encroachment into the public right of way along Fairmont Avenue of approximately 3.5 feet where a minimum front yard setback of 5 feet is required;
- a variance to permit an encroachment into the public right of way along Florida Avenue of approximately 3.5 feet where a minimum front yard setback of 5 feet is required;
- a variance to permit building coverage of 44% where maximum building coverage of 30% is permitted;
- a variance to permit impervious coverage of 100% where a maximum impervious coverage of 80% is permitted;
- a variance to provide 13 parking spaces on site where a minimum of 121 are required;
- a variance to permit an awning sign, where awning signs are not permitted;
- a variance to permit a blade sign, where blade signs are not permitted; and
- a variance to permit three signs on a building façade where one sign is permitted.

Mr. Dothe testified that the same justifications are applicable to all requested variances. He opined that the development proposal will be aesthetically pleasing and help bring excitement to the neighborhood and the City of Atlantic City. He further opined that the 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) through the use of architectural features and signage treatments.



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With respect to the negative criteria, Mr. Dothe testified that the grant of the variances would not have any substantial detriment to the Tourism District Master Plan or Tourism District Land Development Rules. In fact, he testified that the grant of the variances would advance the purposes of the Tourism District Master Plan by creating vibrancy and visual excitement in the Tourism District.

Jeffrey Hanson, P.E., was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Mr. Hanson testified that the Applicant had provided sufficient testimony to support approval of the Application, subject to the Applicant's agreement to comply with all comments set forth in his September 10, 2019 review letter.

CONCLUSIONS OF LAW

Minor 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 plan 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 is seeking the following variances pursuant to N.J.S.A. 40:55D-70(c):



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- a variance to permit an encroachment into the public right of way along Fairmont Avenue of approximately 3.5 feet where a minimum front yard setback of 5 feet is required;
- a variance to permit an encroachment into the public right of way along Florida Avenue of approximately 3.5 feet where a minimum front yard setback of 5 feet is required;
- a variance to permit building coverage of 44% where maximum building coverage of 30% is permitted;
- a variance to permit impervious coverage of 100% where a maximum impervious coverage of 80% is permitted;
- a variance to provide 13 parking spaces on site where a minimum of 121 are required;
- a variance to permit an awning sign, where awning signs are not permitted;
- a variance to permit a blade sign, where blade signs are not permitted; and
- a variance to permit three signs on a building façade where one sign is permitted.

The Applicant presented testimony 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) through the use of architectural features and signage treatments.

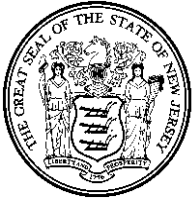
Negative Criteria

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 Mast Plan and the Tourism District Land Development Rules.

RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the Application for Minor 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.



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The grant of approval shall be further conditioned upon compliance with all applicable requirements of the Tourism District Land Development Rules, city of Atlantic 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.