



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 20- , ADOPTED 8/18/2020

TO: Members of the Authority

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

COPY: Matthew J. Doherty, Executive Director

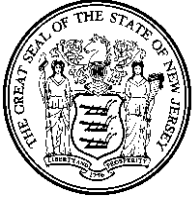
SUBJECT: Hearing Officer's Report and Recommendation
Application #2020-02-2830
Bally's Park Place, LLC
Minor Subdivision Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)
200 Pacific Avenue, Atlantic City
Block 42, Lot 1
Resort Commercial (RC) Zoning District

DATE: August 11, 2020

EXECUTIVE SUMMARY

On July 16, 2020, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Bally's Park Place, LLC (the "Applicant"), seeks Minor Subdivision Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the subject property in the city of Atlantic City. The subdivision is proposed to facilitate the sale of the property. No construction is proposed in connection with the application.

The property consists of the Wild West Casino and a parking garage. The parking garage is a self-park garage that is utilized by patrons of Bally's Atlantic City Hotel & Casino ("Bally's"). The Wild West Casino includes a casino and entertainment venue, food and beverage services, a poker lounge and a sports wagering area. The garage is connected to Bally's via pedestrian air bridges. The Wild West Casino is connected to Bally's by a pedestrian air bridge and is also physically connected to the Caesars Atlantic City Hotel & Casino ("Caesar's"). The subdivision is proposed to facilitate the sale of the garage and Bally's Casino to a third party. Proposed Lot 1.01 contains the parking garage and Proposed Lot 1.02 contains the Wild West Casino. The garage will continue to function as



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an accessory to the Bally's casino. The Wild West casino is proposed to be transferred from Bally's to Caesars.

The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) for setback, lot coverage and impervious coverage requirements.

The Applicant demonstrated by evidence and testimony that the development proposal generally conforms to the site plan standards, subdivision 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

Bally's Park Place, LLC
Minor Subdivision Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)
200 Pacific Avenue, Atlantic City
Block 42, Lot 1
Resort Commercial (RC) 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.

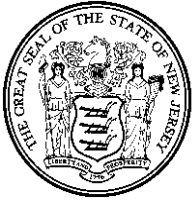
The Applicant seeks Minor Subdivision Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the subject property in the city of Atlantic City. No construction is proposed in connection with the application.

Evidence List

A-1 Application Materials
B-1 Letter from Environmental Resolutions, Inc. dated July 10, 2020

FINDINGS OF FACT

The Applicant seeks Minor Subdivision Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the subject property in the city of Atlantic City. The subdivision is proposed to facilitate the sale of the property. No construction is proposed in connection with the application.



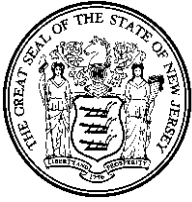
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The attorney for the Applicant, Joseph Dougherty, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. He explained that the property consists of the Wild West Casino and a parking garage. The parking garage is a self-park garage that is utilized by patrons of Bally's Atlantic City Hotel & Casino ("Bally's"). The Wild West Casino includes a casino and entertainment venue, food and beverage services, a poker lounge and a sports wagering area. The garage is connected to Bally's via pedestrian air bridges. The Wild West Casino is connected to Bally's by a pedestrian air bridge and is also physically connected to the Caesars Atlantic City Hotel & Casino ("Caesar's"). The subdivision is proposed to facilitate the sale of the garage and Bally's Casino to a third party. Proposed Lot 1.01 contains the parking garage and Proposed Lot 1.02 contains the Wild West Casino. The garage will continue to function as an accessory to the Bally's casino. The Wild West casino is proposed to be transferred from Bally's to Caesars.

The Applicant presented the testimony of John Barnhart, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. He described the location of the site, existing conditions, development proposal and site layout.

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

- Proposed Lot 1.01 has front yard setbacks of 9.9' (Pacific Avenue frontage) and 5.9' (Michigan Avenue frontage) where a minimum front yard setback of twenty feet (20') for structures higher than thirty five feet (35') is required.
- Proposed Lot 1.02 has front yard setbacks of 0.0' on the Michigan Avenue, Arkansas Avenue and Pacific Avenue frontages where a minimum front yard setback of twenty feet (20') for structures higher than thirty five feet (35') is required.
- Proposed Lot 1.01 has side yard setbacks of 0.7' (West property line) and 0.0' (South P.L.) where a minimum side yard setback of twenty feet (20') for structures higher than thirty five feet (35') is required.
- Proposed Lot 1.02 has side yard setbacks of 0.0' on its borders with both Proposed Lot 1.01 and existing Lot 4.01 (Caesar's Centurion Tower) where a minimum side yard setback of twenty feet (20') for structures higher than thirty five feet (35') is required.



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- Proposed Lot 1.02 has a rear yard setback of 0.0' where a minimum rear yard setback of twenty feet (20') is required.
- Proposed Lot 1.01 has a building coverage of 94% where a maximum building coverage of 70% is permitted.
- Proposed Lot 1.02 has a building coverage of 88% where a maximum building coverage of 70% is permitted.
- Proposed Lot 1.01 has an impervious coverage of 100% where a maximum of 80% is permitted.
- Proposed Lot 1.02 has an impervious coverage of 100% where a maximum of 80% is permitted.

Mr. Barnhart provided testimony in support of the requested variances. He noted that all of the setback variances are existing non-conforming conditions that are not exacerbated by the proposed subdivision. He opined that the that the approval of the subdivision would advance the purposes of the Municipal Land Use Law because the structures on the property are lawfully existing and will not impair traffic, visual impact or the air, light and open space of neighbors and the public generally. He further noted that no new construction is proposed in connection with the application.

With respect to the negative criteria, Mr. Barnhart testified that the grant of the 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.

Director of Planning for Atlantic City, Barbara Allen Woolley-Dillon appeared and spoke in support of the Application.

G. Jeffrey Hanson, PE, CME was qualified as an expert in professional engineering and provided testimony on behalf of the Authority. The Applicant agreed to comply with all conditions and comments in Mr. Hanson's July 10, 2020 review letter. Mr. Hanson testified that the Applicant had provided sufficient testimony to support approval of the Application.

CONCLUSIONS OF LAW

Minor Subdivision Approval



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A land use agency's authority in reviewing an application for minor subdivision approval is limited to determining whether the development plan conforms to the zoning ordinance and the applicable provisions of the subdivision 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 subdivision 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 seeks the following variances pursuant to N.J.S.A. 40:55D-70(c):

- Proposed Lot 1.01 has front yard setbacks of 9.9' (Pacific Avenue frontage) and 5.9' (Michigan Avenue frontage) where a minimum front yard setback of twenty feet (20') for structures higher than thirty five feet (35') is required.
- Proposed Lot 1.02 has front yard setbacks of 0.0' on the Michigan Avenue, Arkansas Avenue and Pacific Avenue frontages where a minimum front yard setback of twenty feet (20') for structures higher than thirty five feet (35') is required.
- Proposed Lot 1.01 has side yard setbacks of 0.7' (West property line) and 0.0' (South P.L.) where a minimum side yard setback of twenty feet (20') for structures higher than thirty five feet (35') is required.
- Proposed Lot 1.02 has side yard setbacks of 0.0' on its borders with both Proposed Lot 1.01 and existing Lot 4.01 (Caesar's Centurion Tower) where a minimum side yard setback of twenty feet (20') for structures higher than thirty five feet (35') is required.



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- Proposed Lot 1.02 has a rear yard setback of 0.0' where a minimum rear yard setback of twenty feet (20') is required.
- Proposed Lot 1.01 has a building coverage of 94% where a maximum building coverage of 70% is permitted.
- Proposed Lot 1.02 has a building coverage of 88% where a maximum building coverage of 70% is permitted.
- Proposed Lot 1.01 has an impervious coverage of 100% where a maximum of 80% is permitted.
- Proposed Lot 1.02 has an impervious coverage of 100% where a maximum of 80% is permitted.

The Applicant presented testimony that the approval of the subdivision would advance the purposes of the Municipal Land Use Law because the structures on the property are lawfully existing and will not impair traffic, visual impact or the air, light and open space of neighbors and the public generally.

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. Indeed, the structures on both lots are lawfully existing and no new construction is proposed in connection with the application.

RECOMMENDATION

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

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