



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 24- , ADOPTED 9/17/2024

TO: Members of the Authority

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

COPY: Eric Scheffler, Executive Director

SUBJECT: Hearing Officer's Report and Recommendation
Application #2024-06-3650
209 S. Tennessee, LLC
Preliminary and Final Site Plan Approval with Variances Pursuant to
N.J.S.A. 40:55D-70(c)
209 S. Tennessee Avenue
Block 54, Lot 26
Resort Commercial (RC) Zoning District

DATE: August 22, 2024

EXECUTIVE SUMMARY

On August 1, 2024, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, 209 S. Tennessee, LLC (the "Applicant"), seeks Preliminary and Final Site Plan Approval to convert a 40-room hotel into 12 apartments with ground floor retail. The property has several pre-existing, non-conforming conditions that are not exacerbated by the development proposal. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for side yard setback, rear yard setback, and building coverage.

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

209 S. Tennessee, LLC
Preliminary and Final Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)
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Block 54, Lot 26
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 Preliminary and Final Site Plan Approval to convert a 40-room hotel into 12 apartments with ground floor retail. The property has several pre-existing, non-conforming conditions that are not exacerbated by the development proposal. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for side yard setback, rear yard setback, and building coverage.

Evidence List

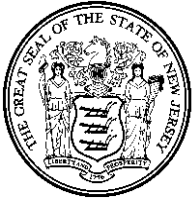
- A-1 Application Materials
- A-2 Architectural Renderings
- B-1 Letter from ARH Associates dated July 29, 2024

FINDINGS OF FACT

The Applicant seeks Preliminary and Final Site Plan Approval to convert a 40-room hotel into 12 apartments with ground floor retail. The property has several pre-existing, non-conforming conditions that are not exacerbated by the development proposal. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for side yard setback, rear yard setback, and building coverage.

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

The Applicant presented the testimony of Craig Dothe, R.A., P.P., who was qualified as an expert in the fields of professional architecture and professional planning. He described the location of the site, existing conditions and site layout. He explained that the existing



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building has been vacant for at least 8 years. He testified that the intent of the Application is to renovate and restore a prominent building along the Orange Loop that has been in a state of disrepair for many years. He testified that the Applicant proposes to renovate the façade and replace the recess windows with more attractive fixtures and facade materials. The Applicant also proposes to add a sixth floor, a small gym and an elevator to the structure.

Mr. Dothe explained the floor plans, site operation and architectural features. Trash will be stored inside the building and taken to the street on trash removal day. In addition, building features that are not ADA-compliant will be brought into compliance. He testified that the parking need will be reduced based on the change in use and that adequate parking will be provided off-site. Finally, he agreed on behalf of the Applicant to obtain a license from the City for the location of landscaping planters within the public right of way.

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

- The vertical and horizontal expansion of preexisting side yard setbacks of .02' and .08' where a minimum of 20' is required;
- The vertical and horizontal expansion of a preexisting rear yard setback of 15' where a minimum of 20' is required; and
- A building coverage of 97.28% where a maximum building coverage of 80 is permitted.

Mr. Dothe testified that the characteristics of the lot and location of the structure present a hardship in renovating the building to meet modern code requirements with regard to safe ingress and egress and ADA-compliance without deviation from the requirements of the land use regulations.

Mr. Dothe further testified that the that the approval of the application for development would advance the purposes of the Municipal Land Use Law ("MLUL") by promoting a desirable visual environment (Purpose I) by renovating a building that has been vacant for many years. With respect to the negative criteria, Mr. Dothe 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.

Christine Cofone, P.P. was qualified as an expert in the field of professional planning and provided testimony on behalf of the Authority. Ms. Cofone opined that the approval of the application would promote the purposes of the MLUL by establishing appropriate population densities (Purpose E) by creating a walkable neighborhood. She testified that she supports approval of the application.



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Carolyn Feigin, P.E., was qualified as an expert in professional engineering and provided testimony on behalf of the Authority. She testified that she supports 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 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)(1) and (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)(1) is satisfied if relief can be granted for a specific piece of property upon the finding of hardship arising out of the exceptional narrowness, shallowness, shape, or exceptional topographic conditions of specific piece of property or from a structure lawfully existing thereon. See Lang v. Zoning Board of Adjustment, 160 N.J. 41 (1999). 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 outweigh 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 variances pursuant to N.J.S.A. 40:55D-70(c) to permit:

- The vertical and horizontal expansion of preexisting side yard setbacks of .02' and .08' where a minimum of 20' is required;
- The vertical and horizontal expansion of a preexisting rear yard setback of .15' where a minimum of 20' is required; and



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- A building coverage of 97.28% where a maximum building coverage of 80 is permitted.

The evidence and testimony demonstrate that the characteristics of the lot and location of the structure present a hardship in renovating the building to meet modern code requirements with regard to safe ingress and egress and ADA-compliance without deviation from the requirements of the land use regulations.

In addition, the evidence and testimony demonstrate that the approval of the application for development would advance the purposes of the MLUL by promoting a desirable visual environment (Purpose I) through the renovation of a building that has been vacant for many years; and establishing appropriate population densities (Purpose E) by creating a walkable neighborhood.

Negative Criteria

Relief under N.J.S.A. 40:55D-70(c) (1) and (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 Preliminary and Final 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 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.