



## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

### EXHIBIT "A" TO RESOLUTION 18-49, ADOPTED 6/19/2018

**TO:** Members of the Authority

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

**COPY:** Christopher M. Howard, Executive Director

**SUBJECT:** Hearing Officer's Report and Recommendation  
Application #2018-05-2398  
Boardwalk 1000, LLC  
Minor Site Plan Approval and Variances Pursuant to N.J.S.A. 40:55D-70(c) and (d)  
1000 Boardwalk at Virginia Avenue  
Block 1, Lot 146 & Block 61, Lot 29  
B Beach Zoning District

**DATE:** June 13, 2018

### EXECUTIVE SUMMARY

On June 7, 2018, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Boardwalk 1000, LLC (the "Applicant"), seeks Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) and (d) to permit exterior signage on the property. The Property is located in the "B" Beach Zone and is developed with the existing Hard Rock Hotel and Casino with a bridge structure over the Boardwalk which connects to the Steel Pier amusement pier.

The signage plan consists of four (4) signs: two window identification signs on either side of the bridge bearing the Hard Rock badge logo, one wall identification sign and one electronic billboard sign on the pier structure. The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit a total wall surface area of proposed signs in excess of

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25% per elevation; to permit an electronic billboard higher than 40 feet from grade; and to permit window signs covering more than 25% of window surface. The Applicant also requires a variance pursuant to N.J.S.A. 40:55D-70(d) to permit an electronic billboard in the Beach Zone, where electronic billboards are not permitted.

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 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

Boardwalk 1000, LLC  
Minor Site Plan Approval and Variances Pursuant to N.J.S.A. 40:55D-70(c) and (d)  
1000 Boardwalk at Virginia Avenue  
Block 1, Lot 146 & Block 61, Lot 29  
B Beach 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) and (d) to permit exterior signage on the property. The Property is located in the "B" Beach Zone and is developed with the existing Hard Rock Hotel and Casino with a bridge structure over the Boardwalk which connects to the Steel Pier amusement pier.

The signage plan consists of four (4) signs: two window identification signs on either side of the bridge bearing the Hard Rock badge logo, one wall identification sign and one electronic billboard sign on the pier structure. The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit a total wall surface area of proposed signs in excess of 25% per elevation; to permit an electronic billboard higher than 40 feet from grade; and to permit window signs covering more than 25% of window surface. The Applicant also

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requires a variance pursuant to N.J.S.A. 40:55D-70(d) to permit an electronic billboard in the Beach Zone, where electronic billboards are not permitted.

### Evidence List

A-1 Application Materials

B-1 Letter from Cofone Consulting Group, LLC dated May 15, 2018

### FINDINGS OF FACT

The Applicant seeks Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) and (d) to permit exterior signage on the property. The Property is located in the "B" Beach Zone and is developed with the existing Hard Rock Hotel and Casino with a bridge structure over the Boardwalk which connects to the Steel Pier amusement pier.

The signage plan consists of four (4) signs: two window identification signs on either side of the bridge bearing the Hard Rock badge logo, one wall identification sign and one electronic billboard sign on the pier structure. The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit a total wall surface area of proposed signs in excess of 25% per elevation; to permit an electronic billboard higher than 40 feet from grade; and to permit window signs covering more than 25% of window surface. The Applicant also requires a variance pursuant to N.J.S.A. 40:55D-70(d) to permit an electronic billboard in the Beach Zone, where electronic billboards are not permitted.

The attorney for the Applicant, Jack Plackter, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. Mr. Plackter explained that the signage package will primarily serve the Hard Rock Hotel and Casino Atlantic City and the Steel Pier. He noted that fraction (less than 10%) of the time on the variable message electronic billboard may be allocated to off-premises advertising.

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. Mr. Barnhart described the size, type and location of the proposed signs. He testified that the following "bulk" variances pursuant to N.J.S.A. 40:55D-70(c) are required:



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- Variance to permit a total wall surface area of proposed signs of 52.43% per elevation where a maximum wall surface area of proposed signs of 25% is permitted.
- Variance to permit an electronic billboard that measures 56.25 feet from grade where a maximum height of 40 feet from grade is permitted.
- Variance to permit window signs covering in excess of 25% of window surface.

The Applicant also requires a "use" variance pursuant to N.J.S.A. 40:55D-70(d) to permit an electronic billboard in the Beach Zone, where electronic billboards are not permitted.

As the development proposal is a comprehensive and cohesive signage package, Mr. Barnhart testified that the same justifications are applicable to all requested variances. He testified that the grant of the requested variances advance the purposes of the Tourism District Act and Tourism District Master Plan, as well as the Municipal Land Use Law.

Mr. Barnhart testified that collectively, the new signage will be an aesthetically pleasing update to the current exterior and will attract attention to patrons of the Boardwalk. He noted that the electronic billboard sign in particular will display appropriate and relevant content to direct the attention of the people on the Boardwalk to the Steel Pier and to the Hard Rock Hotel and Casino, two important tourism attractions which promote the local economy.

With respect to the variance required for the overall size of the signage, Mr. Barnhart testified that the relief is justified in light of the size of the adjoining structures, which offsets any visual impact on the area.

With respect to the variance to permit the electronic billboard at a height greater than 40 feet from grade, Mr. Barnhart testified that the height of the sign is appropriate as it does not exceed the height of the existing structure.

With respect to the variance to permit window signs covering in excess of 25% of window surface, Mr. Barnhart testified that the signage is essentially a "wrap" covering the windows along the bridge over the Boardwalk. He noted that such windows are in disrepair and that the wrap constitutes an aesthetic improvement.

With respect to the variance to permit an electronic billboard sign in the Beach Zone, Mr. Barnhart testified that the variance is justified because the Steel Pier is a main attraction

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and one of the few large developments on the beach necessitating enhanced signage. The size and placement of the electronic sign is appropriate based on the size of the structure of the Pier and Bridge relative to other development in the Beach Zone. Finally, he noted that there are numerous electronic billboards along the Boardwalk in the Beach Zone.

Mr. Barnhart testified that the approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting the public health, safety, morals and general welfare (Purpose A) by supporting the Hard Rock Hotel and Casino and Steel Pier uses and promote a desirable visual environment (Purpose I) based on the aesthetics of the overall signage package.

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.

Finally, Mr. Barnhart noted that the Applicant will comply with comments set forth in the May 15, 2018 Cofone Consulting Group, LLC review letter as a condition of approval.

Christine Cofone, P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Ms. Cofone testified that the Applicant had provided sufficient testimony to support approval of the Application. In response to issues raised by Ms. Cofone, the Applicant agreed to restrict advertising on the electronic billboard to items, events, attractions and brands available within the Tourism District.

### 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 proposal generally conforms to the site plan standards and technical requirements of the Tourism District Land Development Rules.

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### 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 variances pursuant to N.J.S.A. 40:55D-70(c) to permit signage associated with the existing Hard Rock Hotel and Casino and Steel Pier. The Applicant presented testimony that the application would advance the purposes of the Municipal Land Use Law by promoting the public health, safety, morals and general welfare (Purpose A) by supporting the Hard Rock Hotel and Casino and Steel Pier uses and promote a desirable visual environment (Purpose I) based on the aesthetics of the overall signage package.

#### 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.

### Variance Pursuant to N.J.S.A. 40:55D-70(d)(1)

The Applicant seeks a variance pursuant to N.J.S.A. 40:44D-70(d)(1) to permit an electronic billboard in the Beach Zone where electronic billboards are prohibited. It is well-established that "[v]ariances to allow new nonconforming uses should be granted only

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

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The Applicant presented testimony that the application would advance the purposes of the Municipal Land Use Law by promoting the public health, safety, morals and general welfare (Purpose A) by supporting the Hard Rock Hotel and Casino and Steel Pier uses and promote a desirable visual environment (Purpose I) based on the aesthetics of the overall signage package.

### 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 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.

The Applicant presented sufficient evidence and testimony to establish 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.

### 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) (d) 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 applicant agreed to prohibit any and all advertising of non-Atlantic City related items, events or businesses from being advertised on the electronic billboard.

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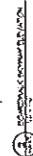
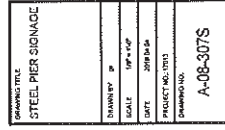




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The grant of approval shall be further conditioned upon compliance with all applicable requirements of the Atlantic City Tourism District Land Use Regulations, or other City Codes and the requirements of any City agency, board or authority. Any approval 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 19, 2018

**BOARDWALK 1000, LLC (1000 BOARDWALK) – Minor Site Plan Approval and bulk variance(s) for signage.**

### MOTION

WM

### SECOND

RT

Debra DiLorenzo

A

Edward Gant

Y

Mark Giannantonio

Recusal

Mayor Frank Gilliam

Y

Michael I. Hanley

Y

Gary Hill

Y

Howard Kyle

Y

James Plousis

Y

William Mullen

Y

Kevin C. Ortizman

Y

Dave Reback for the State Attorney General

Y

Robert Shaughnessy for the State Treasurer

Y

Stacy Spera for the DCA Commissioner

Y

Frank Spencer

Y

Richard Tolson

Y

Robert Mulcahy, Chairman

Y