



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## **EXHIBIT "A" TO RESOLUTION 24- , ADOPTED 1/21/2025**

**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 #2024-10-3718  
SD Manor LLC  
Variances Pursuant to N.J.S.A. 40:55D-70(c)  
115 S. Seaside Avenue  
Block 77, Lot 36  
Lighthouse 2 (LH-2) Zoning District

**DATE:** January 7, 2025

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### **EXECUTIVE SUMMARY**

On November 21, 2024, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, SD Manor LLC (the "Applicant"), seeks variances pursuant to N.J.S.A. 40:55D-70(c) to construct a three-story deck on an existing duplex. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal.

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.

### **INTRODUCTION**

#### Application Information

SD Manor LLC  
Variances Pursuant to N.J.S.A. 40:55D-70(c)  
115 S. Seaside Avenue





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

Block 77, Lot 36  
Lighthouse 2 (LH-2) 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 variances pursuant to N.J.S.A. 40:55D-70(c) to construct a three-story deck on an existing duplex. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal.

### Evidence List

- A-1 Application Materials
- B-1 Letter from ARH Associates dated November 1, 2024

### **FINDINGS OF FACT**

The Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) to construct a three-story deck on an existing duplex. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal.

The attorney for the Applicant, Tara L. Vargo, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

The Applicant presented the testimony of Jon Barnhart, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. Mr. Barnhart described the location of the site, existing conditions and development proposal to construct a three-story deck on the existing duplex. He noted that the proposed deck will mirror the three-story deck on the other duplex unit.

Mr. Barnhart testified that the existing structure does not comply with FEMA regulations, but that no changes to the building structure are proposed. He agreed on behalf of the Applicant to relocate the trash storage to the rear yard and provide screening. He also agreed on behalf of the Applicant, to cure the existing sidewalk encroachment within 18 months of commencement of construction.

Mr. Barnhart testified that the property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal. He testified that the Applicant requests variances pursuant to N.J.S.A. 40:55D-70(c) to permit the following:

- A building coverage of 79% where 30% is permitted and 63% is existing.
- A side yard setback of .06 feet where a minimum setback of 20 feet is required.





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

- A rear yard setback of 2.85 feet where a minimum setback of 20 feet is required.

Mr. Barnhart testified that the characteristics of the property and the structures lawfully existing thereon present a hardship in complying with the Tourism District Land Development Rules. Specifically, he opined that any development of the property would require variance relief based on the narrowness of the property. Moreover, he testified that the development proposal will promote the purposes of the Municipal Land Use Law ("MLUL") by promoting the general welfare (Purpose A) in bringing activity to the neighborhood. He also opined that the development proposal is consistent with other developments in the vicinity to the property. With respect to the negative criteria, Mr. Barnhart 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.

Carolyn Feigin, P.E., was qualified as an expert in the field of professional engineering and provided testimony on behalf of the Authority. Ms. Feigin testified that she supports the approval of the Application, subject to the Applicant's compliance with all requirements of the ARH Associates review letter dated November 1, 2024.

### **CONCLUSIONS OF LAW**

#### 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 requests variances pursuant to N.J.S.A. 40:55D-70(c) to permit the following:

- A building coverage of 79% where 30% is permitted and 63% is existing.





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

- A side yard setback of .06 feet where a minimum setback of 20 feet is required.
- A rear yard setback of 2.85 feet where a minimum setback of 20 feet is required.

The characteristics of the property and structures lawfully existing thereon present a hardship in complying with the Tourism District Land Development Rules because any development of the property would require variance relief based on the narrowness of the property. Moreover, the development proposal will promote the purposes of the MLUL by promoting the general welfare (Purpose A) in bringing activity to the neighborhood. The development proposal is also consistent with other developments in the vicinity to the property.

### 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 variances pursuant to N.J.S.A. 40:55D-70(c) to construct a three-story deck on an existing duplex. 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, 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.