



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT “A” TO RESOLUTION 25- , ADOPTED 2/18/2025

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 #2024-12-3768
DBMG Casino, LLC and IMCMV Atlantic City, LLC
Amended Preliminary and Final Site Plan Approval with Variances
Pursuant to N.J.S.A. 40:55D-70(c)
1100 Boardwalk
Block 1, Lots 137,138, 139, 140, 141, 142 & 142.01
Beach (B) Zoning District

DATE: February 3, 2025

EXECUTIVE SUMMARY

On January 16, 2025, the Casino Reinvestment Development Authority (the “Authority”) heard testimony and public comment on the above-subject application. The Applicant, DBMG Casino, LLC and IMCMV, LLC (the “Applicant”), seeks Amended Preliminary and Final Site Plan Approval to permit the construction of a seasonal beachside bar and recreational amenities at the existing Landshark Beach Bar. Variances pursuant to N.J.S.A. 40:55D-70(c) are required height of accessory structure, signage and outdoor seating.

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.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

INTRODUCTION

Application Information

DBMG Casino, LLC and IMCMV Atlantic City, LLC
Amended Preliminary and Final Site Plan Approval with Variances Pursuant to N.J.S.A.
40:55D-70(c)
1100 Boardwalk
Block 1, Lots 137,138, 139, 140, 141, 142 & 142.01
Beach (B) 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 Amended Preliminary and Final Site Plan Approval to permit the construction of a seasonal beachside bar and recreational amenities at the existing Landshark Beach Bar. Variances pursuant to N.J.S.A. 40:55D-70(c) are required height of accessory structure, signage and outdoor seating.

Evidence List

- A-1 Application Materials
- B-1 Letter from ARH Associates dated January 14, 2025

FINDINGS OF FACT

The Applicant seeks Amended Preliminary and Final Site Plan Approval to permit the construction of a seasonal beachside bar and recreational amenities at the existing Landshark Beach Bar. Variances pursuant to N.J.S.A. 40:55D-70(c) are required height of accessory structure, signage and outdoor seating.

The attorney for the Applicant, Nicholas Talvacchia, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. He noted that the intent of the application is to restore the original beach bar that had been removed due to beach erosion, as well as add additional outdoor seating, a tiki bar, stage with dance floor and signage.

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. He described the location of the site, existing conditions, site layout and the development proposal.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Mr. Barnhart testified that the Applicant proposes to expand the existing beach bar to include a tiki bar, stage, dance floor, thatched umbrellas, lounge chairs, fire pits and outdoor games. Mr. Barnhart testified that the tiki bar will be in the style of a hut with a thatched roof and will be the centerpiece of the application. He testified that it will stand 20 feet tall and have roof signs on all 4 sides. He testified that the Applicant also seeks to increase the number of outdoor seats from 244 to 700. Mr. Barnhart agreed on behalf of the Applicant that any firepits will be fueled by propane and subject to approval by the Atlantic City Fire Department. No changes to existing landscaping and lighting are proposed at this time.

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

- roof signs where roof signs are not permitted.
- 8 signs where a maximum of 2 are permitted.
- an accessory structure with a height of 20 feet where the maximum height permitted is 10 feet.
- 700 outdoor seats where a maximum of 180 are permitted and 244 are existing as authorized by prior variance.

Mr. Barnhart testified that the location of the signs on the roof is necessary for visibility from the Boardwalk and along the beach. He further opined that the signs are appropriate to the scale of the structure and would comply with the requirement of the Tourism District Land Development Rules with respect to sign area if they were mounted on walls, though walls are not proposed on the tiki bar. Similarly, he testified that the height of the tiki bar is necessary for visibility from the Boardwalk and along the beach.

With respect to the number of outdoor seats, Mr. Barnhart testified that the seating will include bar seats, lounge chairs, high-tops, cabanas and hammocks. He noted that the total number is difficult to estimate based on spacing, attendance and customer behavior. However, he testified, the estimate as to number of seats is conservative and can be accommodated in the available space. He noted that the beach bar area will be cordoned off in accordance with Alcoholic Beverage Commission regulations.

Mr. Barnhart testified that the that the approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting public health, safety and welfare (Purpose A) by creating unique experiences and increasing tourism. 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.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Carolyn Feigin, P.E., P.P., was qualified as an expert in professional engineering and professional planning and provided testimony on behalf of the Authority. Ms. Feigin testified that the grant of the requested variances is justified and that she supports approval of the Application.

CONCLUSIONS OF LAW

Amended 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)(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) to permit:

- roof signs where roof signs are not permitted.
- 8 signs where a maximum of 2 are permitted.
- an accessory structure with a height of 20 feet where the maximum height permitted is 10 feet.
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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

The approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting the public health, safety and welfare (Purpose A) by creating unique experiences and increasing tourism.

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 Tourism Master Plan and the Tourism District Land Development Rules.

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 Master Plan and the Tourism District Land Development Rules.

RECOMMENDATION

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

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