



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

### **EXHIBIT "A" TO RESOLUTION 25- , ADOPTED 3/18/2025**

**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 #2024-12-3759  
Ducktown Tavern, Inc.  
Minor Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)  
2400 Atlantic Avenue and 8, 14, 16, 18 & 20 S. Georgia Avenue  
Block 164, Lots 30, 32-34 & 36-37  
Ducktown Arts (DA) Zoning District

**DATE:** February 25, 2025

### **EXECUTIVE SUMMARY**

On February 6, 2025, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Ducktown Tavern, Inc. (the "Applicant"), seeks Minor Site Plan Approval to permit the construction of a pole-barn garage to provide storage to support the catering business conducted at the existing bar/restaurant facility. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for building coverage, setbacks, impervious coverage and parking.

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

Ducktown Tavern, Inc.

Minor Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)

2400 Atlantic Avenue and 8, 14, 16, 18 & 20 S. Georgia Avenue

Block 164, Lots 30, 32-34 & 36-37

Ducktown Arts (DA) 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 to permit the construction of a pole-barn garage to provide storage to support the catering business conducted at the existing bar/restaurant facility. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for building coverage, setbacks, impervious coverage and parking.

### Evidence List

A-1 Application Materials

A-2 Colorized Rendering

B-1 Letter from Environmental Resolutions, Inc. dated January 30, 2025

## FINDINGS OF FACT

The Applicant seeks Minor Site Plan Approval to permit the construction of a pole-barn garage to provide storage to support the catering business conducted at the existing bar/restaurant facility. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for building coverage, setbacks, impervious coverage and parking.

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 John C. Exadaktilos, who is the owner of the property. Mr. Exadaktilos testified that the owner acquired additional lots adjacent to the existing bar/restaurant facility during the Covid-19 pandemic and expanded the operation to include outdoor seating and catering services. He testified that the pole-barn garage will be used for storage associated with the catering business. Items to be stored in the garage include catering boxes, tables, chairs, DJ equipment a beer trailer and vehicles. He testified



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that the pole-barn garage will be served by electricity and water, but not sewer and will not have any bathroom facilities. Mr. Exadaktilos testified that gasoline and diesel will not be stored in the pole-barn garage.

The Applicant presented the testimony of Andrew Previti, P.E., who was qualified as an expert in the field of professional engineering. He described the location of the site, existing conditions, site layout and the development proposal. Mr. Previti testified that the Applicant will consolidate the existing lots and newly acquired lots by deed, if this had not already been done.

Mr. Previti testified that the Applicant proposes an approximately 36' by 60' pole barn. He testified that the pole-barn garage will be used for storage associated with the catering business. He noted that most properties in the vicinity exceed coverage requirements and do not provide parking. Mr. Previti testified that no new landscaping is proposed, and that new lighting will be installed around the perimeter of the new structure. In response to questioning by Authority consultants, Mr. Previti agreed on behalf of the Applicant to install planters on the site and conduct a nighttime lighting survey after the improvements are installed.

Mr. Previti testified that the inside bar/restaurant has 95 patron seats and a small kitchen. The outside bar/restaurant has 108 patron seats. He testified that the outdoor facility is seasonal only and that the indoor and outdoor operations are never conducted at the same time. He noted that the original facility had no on-site parking and that 39 on-site parking spaces are now proposed.

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

- Building coverage of 32.6% where a maximum building coverage of 30% is permitted.
- Impervious coverage of 100% where a maximum impervious coverage of 80% is permitted.
- A rear yard setback of 5' where a minimum rear yard setback of 20' is required.
- 39 on-site parking spaces where a minimum of 61 spaces are required.

Mr. Previti testified that the building coverage variance is de minimis and will have minimal visual impact. He opined that impervious coverage variance is an existing condition and consistent with development trends in the vicinity of the site. With respect to the variance for rear yard setback, Mr. Previti testified that most development on the block has no rear yard setback. Moreover, the reduction in setback allows for additional on-site parking. Finally, with respect to the variance for parking, he opined that the development proposal is an improvement over existing conditions and that the site is adequately served by off-site parking in the vicinity.



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Mr. Previti testified that the that 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 providing services and entertainment in the neighborhood and creating a desirable visual environment (Purpose I) by creating an attractive structure the compliments the existing facility design and color. With respect to the negative criteria, Mr. Previti 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.

David J. Benedetti, P.P., was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Mr. Benedetti testified that the grant of the requested variances is justified and that he supports approval of the Application.

### **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 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).



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Here, the Applicant seeks the following variances pursuant to N.J.S.A. 40:55D-70(c) to permit:

- Building coverage of 32.6% where a maximum building coverage of 30% is permitted.
- Impervious coverage of 100% where a maximum impervious coverage of 80% is permitted.
- A rear yard setback of 5' where a minimum rear yard setback of 20' is required.
- 39 on-site parking spaces where a minimum of 61 spaces are required.

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 providing services and entertainment in the neighborhood and creating a desirable visual environment (Purpose I) by creating an attractive structure the compliments the existing facility design and color.

### Negative Criteria

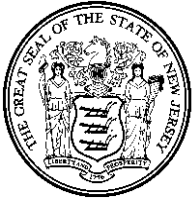
Relief under N.J.S.A. 40:55D-70(c)(2) cannot be granted unless the negative criteria is satisfied. The negative criteria required for all "c" variances is that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose 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 Mast Plan and the 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) 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 and on the ERI report dated 1/30/2025.

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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