



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 #2025-01-3770
Realty Management Services, Inc.
Minor Site Plan Approval with Variance Pursuant to N.J.S.A. 40:55D-70(d)(1) and N.J.S.A. 40:55D-70(c)
215 South Tennessee Avenue
Block 54, Lot 27
Resort Commercial (RC) Zoning District

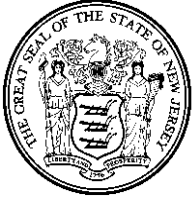
DATE: February 27, 2025

EXECUTIVE SUMMARY

On February 20, 2025, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Realty Management Services, Inc. (the "Applicant"), seeks Minor Site Plan Approval to permit the construction of a three-story structure with a commercial use on the first floor and a single-family residence on the second and third floors.

Although multi-family low-rise, mid-rise and high-rise uses are permitted in the zoning district, single-family residences are not permitted under the Authority's Tourism District Land Development Rules. A variance pursuant to N.J.S.A. 40:55D-70(d)(1) is required to permit the single-family use where only mid-rise and high-rise residential uses are permitted. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for parking and signage. Variances pursuant to N.J.S.A. 40:55D-70(c) for deviation from bulk standards are subsumed by the "d" variance.

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



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

evidence and testimony that the grant of the requested variance 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

Realty Management Services, Inc.
Minor Site Plan Approval with Variance Pursuant to N.J.S.A. 40:55D-70(d)(1) and
N.J.S.A. 40:55D-70(c)
215 South Tennessee Avenue
Block 54, Lot 27
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 Minor Site Plan Approval to permit the construction of a three-story structure with a commercial use on the first floor and a single-family residence on the second and third floors.

Although multi-family low-rise, mid-rise and high-rise uses are permitted in the zoning district, single-family residences are not permitted under the Authority's Tourism District Land Development Rules. A variance pursuant to N.J.S.A. 40:55D-70(d)(1) is required to permit the single-family use where only mid-rise and high-rise residential uses are permitted. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for parking, signage and building height. Variances pursuant to N.J.S.A. 40:55D-70(c) for deviation from bulk standards are subsumed by the "d" variance.

Evidence List

- A-1 Application Materials
- A-2 Architectural Rendering

- B-1 Letter from Environmental Resolutions, Inc. dated January 29, 2025
- B-2 Letter from Environmental Resolutions, Inc. dated February 13, 2025



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

FINDINGS OF FACT

The Applicant seeks Minor Site Plan Approval to permit the construction of a three-story structure with a commercial use on the first floor and a single-family residence on the second and third floors.

Although multi-family low-rise, mid-rise and high-rise uses are permitted in the zoning district, single-family residences are not permitted under the Authority's Tourism District Land Development Rules. A variance pursuant to N.J.S.A. 40:55D-70(d)(1) is required to permit the single-family use where only mid-rise and high-rise residential uses are permitted. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for parking, signage and building height. Variances pursuant to N.J.S.A. 40:55D-70(c) for deviation from bulk standards are subsumed by the "d" variance.

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

The Applicant presented the testimony of Mark Callazzo, who is the owner of the property. Mr. Callazzo described other projects that he has developed throughout the "Orange Loop" section of the City. He testified that the intent of the project is to construct a three-story structure with a commercial use on the first floor and a single-family residence on the second and third floors. He testified that the ground floor commercial use would likely be a retail use and would not be a food service facility. Mr. Callazzo said that the second two floors of the structure will be one single-family residence spanning both floors. He testified that the single-family residence will be used as a short-term rental. Rooms will not be rented individually.

The Applicant presented the testimony of Jason Sciuлло, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. Mr. Sciuлло described the location of the site, existing conditions and development proposal. He testified that the property is currently a paved parking lot and had been improved with a residential use until approximately 2000.

Mr. Sciuлло described site layout and circulation. Trash will be stored inside and taken to the curb on pick-up day. Mr. Sciuлло testified regarding architectural features and noted that the residential unit will have six bedrooms and deck access. He noted that the structure includes architectural features and signage intended to resemble playing pieces from the boardgame "Monopoly". On behalf of the Applicant, Mr. Sciuлло agreed to obtain any necessary licenses from the City for encroachments into the right of way.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

With respect to the variance pursuant to N.J.S.A. 40:55D-70(d)(1), Mr. Sciullo explained that although multi-family low-rise, mid-rise and high-rise uses are permitted in the zoning district, single-family attached units are not permitted pursuant to the Authority's Tourism District Land Development Rules.

Mr. Sciullo testified that the following variances pursuant to N.J.S.A. 40:55D-70(c) are required to permit:

- Zero on-site parking spaces where a minimum of 7 on-site parking spaces are required.
- Four signs where a maximum of two signs are permitted.
- A roof sign where roof signs are prohibited.

In addition, Mr. Sciullo identified the following deficiencies that are subsumed into the "(d)(1)" variance:

- Lot area of 1,750 square feet where a minimum lot area of 7,500 square feet is required.
- Lot depth of 150 feet where a minimum lot depth of 150 feet is required.
- Lot width of 35 feet where a minimum lot width of 50 feet is required.
- Lot frontage of 35 feet where a minimum lot frontage of 50 feet is required.
- Building coverage of 90% where a maximum building coverage of 70% is permitted.
- Impervious coverage of 100% where a maximum impervious coverage of 100%.
- Front yard setback of 0 feet where a minimum front yard setback of 20 feet is required for buildings exceeding 35 feet in height.
- Side yard setback of 0 feet where a minimum side yard setback of 20 feet is required for buildings exceeding 35 feet in height.
- Rear yard setback of 5 feet where a minimum rear yard setback of 20 feet is required.

With respect to parking, Mr. Sciullo testified that there is a grandfathered shortfall of four parking spaces. Accordingly, he testified, that the Applicant seeks variance relief for three parking spaces. He noted that there is adequate parking in the vicinity of the site to support the development proposal. With respect to signage, Mr. Sciullo testified that the number of signs is appropriate to the size of the building. He testified that the roof sign creates architectural interest and aesthetics. With respect to building height, Mr. Sciullo noted that the variations in height do not contribute to building mass but rather add architectural appeal.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

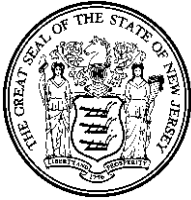
With respect to the variance pursuant to N.J.S.A. 40:55D-70(d)(1), Mr. Sciullo explained that although multi-family low-rise, mid-rise and high-rise uses are permitted in the zoning district, single-family units are not permitted pursuant to the Authority's Tourism District Land Development Rules. In addition, although mixed use developments are permitted, mixed uses must have three or more residential units.

Mr. Sciullo testified that the site is particularly suited for the development proposal because it is consistent with development patterns in the neighborhood. Moreover, he opined, it would be nearly impossible to develop the site with a conforming use based on the size of the lot.

Mr. Sciullo opined that the development proposal will promote the purposes of the Municipal Land Use Law (the "MLUL"). Specifically, he opined that the development proposal will promote the public health, safety and welfare (Purpose A) by developing a property that has been underutilized for many years; provide air, light and open space (Purpose C) because the structure is not as tall as permitted under the Authority's Tourism District Land Development Rules; provide sufficient space in appropriate locations (Purpose G) by complimenting other uses in the vicinity; and create a desirable visual environment (Purpose I) through the use of interesting and appealing architecture.

Mr. Sciullo opined that the proofs supporting the grant of the variance pursuant to N.J.S.A. 40:55D-70(d)(1) also support the grant of the variances pursuant to N.J.S.A. 40:55D-70(c) for parking and signage. Moreover, Mr. Sciullo opined that the grant of the variances will not create a substantial detriment to the public good and will not substantially impair the purpose and intent of the Authority's Tourism District Master Plan and Tourism District Land Development Rules.

Jeff Hanson, P.E., was qualified as an expert in professional engineering and provided testimony on behalf of the Authority. In response to questioning by Mr. Hanson, the Applicant agreed to provide a letter indicating that off-site parking will be procured and maintained at parking lots in the vicinity of the site. In addition, the Applicant agreed to provide a detailed signage plan and lighting plan as a condition of any approval of the application. Finally, the Applicant agreed to request that the City designate an on-street parking space in front of the building for ADA parking. Mr. Hanson testified that he supports approval of the Application.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

CONCLUSIONS OF LAW

Minor Site Plan Approval

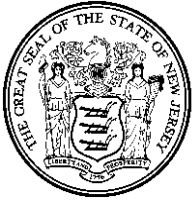
A land use agency's authority in reviewing an application for site plan approval is limited to determining whether the development plan conforms to the zoning ordinance and the applicable provisions of the site plan ordinance. See Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216 (1994).

Here, based on the evidence and testimony, the Applicant has demonstrated that development plan generally conforms to the site plan standards and technical requirements of the Tourism District Land Development Rules.

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

It is well-established that “[v]ariations to allow new nonconforming uses should be granted only 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 board of adjustment 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 MLUL. 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)



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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 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

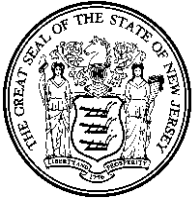
The Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(d)(1) to permit a single-family use where only mid-rise and high-rise residential uses are permitted. The evidence and testimony demonstrate that special reasons exist for the grant of the requested variance.

The property is particularly suitable for the proposed use because the residential use is consistent with other development in the neighborhood. In addition, the development proposal will promote the purposes of the MLUL. Specifically, the development proposal will promote the public health, safety and welfare (Purpose A) by developing a property that has been underutilized for many years; provide air, light and open space (Purpose C) because the structure is not as tall as permitted under the Authority’s Tourism District Land Development Rules; provide sufficient space in appropriate locations (Purpose G) by complimenting other uses in the vicinity; and create a desirable visual environment (Purpose I) through the use of interesting and appealing architecture.

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.

Here, the evidence and testimony demonstrate that the grant of the requested variance will not create any detriment to the public good, and will not create a substantial detriment to the public good and will not substantially impair the purpose and intent of the Authority’s Tourism District Master Plan and Tourism District Land Development Rules.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Variations Pursuant to N.J.S.A. 40:55D-70(c)

For variations 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 variations 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 variations pursuant to N.J.S.A. 40:55D-70(c) to permit:

- Zero on-site parking spaces where a minimum of 7 on-site parking spaces are required.
- Four signs where a maximum of two signs are permitted.
- A roof sign where roof signs are prohibited.

The proofs supporting the grant of the variance pursuant to N.J.S.A. 40:55D-70(d)(1) also support the grant of the variations pursuant to N.J.S.A. 40:55D-70(c) for parking and signage.

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” variations 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 variations 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.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the Application for Minor Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(d)(1) and variances pursuant to N.J.S.A. 40:55D-70(c) to permit the construction of a three-story structure with a commercial use on the first floor and a single-family residence on the second and third floors where single-family residences are not permitted in the district 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 Authority's Tourism District Land Development Rules, any applicable 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. Any approval shall also be conditioned upon a condition that all appropriate access easement(s) for construction and maintenance of the building shall be sought from adjacent property owner(s) by the Applicant as was agreed upon at the hearing.

4928-8522-8832, v. 1