

Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 25- , ADOPTED 4/15/2025

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 #2025-01-3779
Caring, Inc.
Variances Pursuant to N.J.S.A. 40:55D-70(c)
2611 & 2619 Pacific Avenue
Block 169, Lots 7 & 8
Resort Commercial (RC) Zoning District

DATE: March 31, 2025

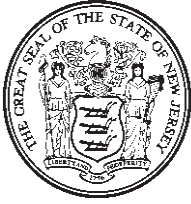
EXECUTIVE SUMMARY

On March 6, 2025, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Caring, Inc. (the "Applicant"), seeks bulk variances pursuant to N.J.S.A. 40:55D-70(c) to provide a rooftop deck/rooftop access on the existing mixed-use building located at the subject property. 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
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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 bulk variances pursuant to N.J.S.A. 40:55D-70(c) to provide a rooftop deck/rooftop access on the existing mixed-use building located at the subject property. 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 March 4, 2025

FINDINGS OF FACT

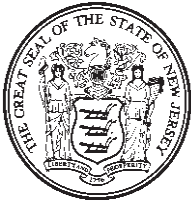
The Applicant seeks bulk variances pursuant to N.J.S.A. 40:55D-70(c) to provide a rooftop deck/rooftop access on the existing mixed use building located at the subject property. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal.

The attorney for the Applicant, Hank Rovillard, 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 provide a rooftop deck/rooftop access on the existing mixed-use building. He noted that the existing structure contains commercial space and three residential units and is being renovated and upgraded to improve the neighborhood. The Applicant also purchased the adjacent property to provide parking for the site.

The Applicant seeks bulk variances to construct a railing around the border of the existing roof structure to create an outdoor living space for residents, as well as a small penthouse area at the center of the building to accommodate stairway access to the roof. Mr. Barnhart testified that the Applicant intends to use the residential units as short-term rentals.

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:



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- A front yard setback of 0 feet for the roof railing where a minimum setback of 20 feet is required at heights above 35 feet.
- A side yard setback of 18.1 feet for the roof railing where a minimum setback of 20 feet is required at heights above 35 feet.
- A side yard setback of 10 feet for the penthouse where a minimum setback of 20 feet is required at heights above 35 feet. (Spray Avenue frontage)

Mr. Barnhart testified that the development proposal will promote the purposes of the Municipal Land Use Law ("MLUL") by promoting the general welfare (Purpose A) by bringing activity to the neighborhood; promoting the free flow of traffic (Purpose H) by providing parking for the site that never existed and create a desirable visual environment (Purpose I) by renovating a structure that is in disrepair. 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.

Christine Cofone was qualified as an expert in the field of professional planning and provided testimony on behalf of the Authority. Ms. Cofone testified that she supports the approval of the development proposal. She further testified that the grant of the variances is also appropriate under N.J.S.A. 40:55D-70(c)(1) as it will improve a lawfully existing structure with more living space and greater marketability.

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 March 4, 2025 and plan revisions requested during the course of the hearing.

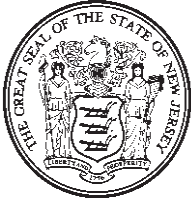
CONCLUSIONS OF LAW

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



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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 front yard setback of 0 feet for the roof railing where a minimum setback of 20 feet is required at heights above 35 feet.
- A side yard setback of 18.1 feet for the roof railing where a minimum setback of 20 feet is required at heights above 35 feet.
- A side yard setback of 10 feet for the penthouse where a minimum setback of 20 feet is required at heights above 35 feet. (Spray Avenue frontage)

The characteristics of the property and structures lawfully existing thereon present a hardship in complying with the Tourism District Land Development Rules. Moreover, the development proposal will promote the purposes of the MLUL by promoting the general welfare (Purpose A) by bringing activity to the neighborhood; promoting the free flow of traffic (Purpose H) by providing parking for the site that never existed and create a desirable visual environment (Purpose I) by renovating a structure that is in disrepair.

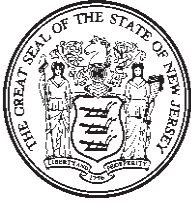
Negative Criteria

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 provide a rooftop deck/rooftop access on the existing mixed-use building located at the subject property 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



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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.

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