



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT “A” TO RESOLUTION 25- , ADOPTED 10/21/2025

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 #2025-07-3866
145-147 S. South Carolina Avenue LLC
Minor Site Plan and Minor Subdivision Approval with Variances Pursuant
to N.J.S.A. 40:55D-70(d)(1)
145-147 S. South Carolina Avenue
Block 57, Lots 7 & 8
Resort Commercial (RC) Zoning District

DATE: October 8, 2025

EXECUTIVE SUMMARY

On September 18, 2025, the Casino Reinvestment Development Authority (the “Authority”) heard testimony and public comment on the above-subject application. The Applicant, 145-147 S. South Carolina Avenue LLC (the “Applicant”), seeks Minor Site Plan and Minor Subdivision Approval with variances pursuant to N.J.S.A. 40:55D-70(d)(1) to permit the construction of 3 single-family attached townhouses located on 3 separate subdivided lots on the subject properties. Although high-rise multi-family residential uses are permitted in the zoning district, single-family attached townhouses are not permitted pursuant to the Authority’s Tourism District Land Development Rules. Variances pursuant to N.J.S.A. 40:55D-70(d)(1) are required to permit single-family attached townhouses. Variances pursuant to N.J.S.A. 40:55D-70(c) are subsumed by the variances pursuant to N.J.S.A. 40:55D-70(d)(1).

The Applicant demonstrated by evidence and testimony that the development proposal generally conforms to the site plan 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 variance is warranted. Therefore, for the



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reasons more fully outlined below, the Hearing Officer recommends that the Application be approved by the Authority.

INTRODUCTION

Application Information

145-147 S. South Carolina Avenue LLC
Minor Site Plan and Minor Subdivision Approval with Variance Pursuant to N.J.S.A.
40:55D-70(d)(1)
145-147 S. South Carolina Avenue
Block 57, Lots 7 & 8
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 and Minor Subdivision Approval with variances pursuant to N.J.S.A. 40:55D-70(d)(1) to permit the construction of 3 single-family attached townhouses located on 3 separate subdivided lots on the subject properties. Although high-rise multi-family residential uses are permitted in the zoning district, single-family attached townhouses are not permitted pursuant to the Authority's Tourism District Land Development Rules. Variances pursuant to N.J.S.A. 40:55D-70(d)(1) are required to permit single-family attached townhouses. Variances pursuant to N.J.S.A. 40:55D-70(c) are subsumed by the variances pursuant to N.J.S.A. 40:55D-70(d)(1).

Evidence List

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

- B-1 Letter from Environmental Resolutions, Inc. dated August 28, 2025
- B-2 Letter from Environmental Resolutions, Inc. dated September 10, 2025

FINDINGS OF FACT

The Applicant seeks Minor Site Plan and Minor Subdivision Approval with variances pursuant to N.J.S.A. 40:55D-70(d)(1) to permit the construction of 3 single-family attached townhouses located on 3 separate subdivided lots on the subject properties. Although high-rise multi-family residential uses are permitted in the zoning district, single-family attached townhouses are not permitted pursuant to the Authority's Tourism District Land Development Rules. Variances pursuant to N.J.S.A. 40:55D-70(d)(1) are required to



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permit single-family attached townhouses. Variances pursuant to N.J.S.A. 40:55D-70(c) are subsumed by the variances pursuant to N.J.S.A. 40:55D-70(d)(1).

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 residential uses are critical to the viability of the commercial uses in the neighborhood and that several similar residential developments have recently been approved by the Authority in the vicinity. He also noted that single-family attached townhouses are permitted in the zoning district under proposed amendments to the Authority's Tourism District Land Development Rules.

The Applicant presented the testimony of Jason Sciuillo, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. Mr. Sciuillo described the location of the site, existing conditions, development proposal and site layout and circulation. He presented architectural renderings and explained floor plans. He testified that each of the 3 units will be 3 stories and have 3 bedrooms. Each unit will have a garage and room for 2 stacked parking spaces in front of the garage. He testified that trash will be stored inside of the unit and hauled to the curb on collection days. The lot is adequately served by existing utilities and stormwater management regulations are not implicated.

Mr. Sciuillo acknowledged that several bulk deficiencies associated with the application as identified in the Environmental Resolutions, Inc. letter dated September 10, 2025 and modified through testimony during the course of the public hearing. He opined that the bulk deficiencies are largely attributable to the small size of the lot. In any event, any necessary bulk variances are subsumed into the "(d)(1)" variances.

With respect to the variances pursuant to N.J.S.A. 40:55D-70(d)(1), Mr. Sciuillo explained that although high-rise multi-family residential uses are permitted in the zoning district, single-family attached townhouses are not permitted pursuant to the Authority's Tourism District Land Development Rules. Mr. Sciuillo testified that the public welfare is advanced by the Application because the site is particularly suited for the development proposal based on historical and current residential uses in the vicinity.

Mr. Sciuillo 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) because single-family attached townhouses are permitted in the zoning district under proposed amendments to the Authority's Tourism District Land Development Rules; provide adequate air, light and open space (Purpose C) by developing the property on a less intense scale and height than permitted under the Authority's Tourism District Land Development Rules; provide appropriate population densities for a variety of uses (Purpose E) by



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providing residential uses that are in demand and creating a walkable neighborhood; provide sufficient space for a variety of uses (Purpose G) by providing a use that will complement existing and proposed commercial uses in the neighborhood; and create a desirable visual environment (Purpose I) through the use of creative techniques and attractive architecture.

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. Indeed, he testified that the development proposal will be permitted in the zoning district under proposed amendments to the Authority's Tourism District Land Development Rules.

Jeffrey Hanson, P.E., was qualified as an expert in professional engineering and provided testimony on behalf of the Authority. Mr. Hanson requested clarification of plan dimensions and asked that the zoning table be updated to indicate the bulk standards as to each of the 3 subdivided lots. In response to questioning by Mr. Hanson, Mr. Sciullo testified that lighting will be limited to building lighting required under applicable building codes and existing street lighting. Mr. Hanson testified 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 site plan standards and technical requirements of the Tourism District Land Development Rules.

Minor Subdivision Approval

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



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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.

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) 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.



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Positive Criteria

The Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(d)(1) to permit 3 single-family attached townhouses located on 3 separate subdivided lots where single-family attached townhouses are not permitted pursuant to the Authority's Tourism District Land Development Rules. The evidence and testimony demonstrate that special reasons exist for the grant of the requested variance. The general welfare is advanced by the Application because the property is particularly suitable for the proposed use based on historical and current residential uses in the vicinity.

The development proposal will promote the purposes of the MLUL. Specifically, the development proposal will promote the public health, safety and welfare (Purpose A) because single-family attached townhouses are permitted in the zoning district under proposed amendments to the Authority's Tourism District Land Development Rules; provide adequate air, light and open space (Purpose C) by developing the property on a less intense scale and height than permitted under the Authority's Tourism District Land Development Rules; provide appropriate population densities for a variety of uses (Purpose E) by providing residential uses that are in demand and creating a walkable neighborhood; provide sufficient space for a variety of uses (Purpose G) by providing a use that will complement existing and proposed commercial uses in the neighborhood; and create a desirable visual environment (Purpose I) through the use of creative techniques and attractive 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 variances 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.



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RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the Application for Minor Site Plan and Minor Subdivision Approval with variances pursuant to N.J.S.A. 40:55D-70(d)(1) to permit 3 single-family attached townhouses located on 3 separate subdivided lots where single-family attached townhouses are not permitted pursuant to the Authority's Tourism District Land Development Rules 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.

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