



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 14- , ADOPTED 10/21/2014

**TO:** Members of the Authority

**FROM:** Lance B. Landgraf, Jr., Land Use Hearing Officer

**COPY:** John F. Palmieri, Executive Director

**SUBJECT:** Hearing Officer's Report and Recommendation  
Application 2014-04-1030  
California Avenue Ventures, LLC  
2701 Boardwalk  
Block 32, Lot 8  
Preliminary and Final Site Plan with Variances

**DATE:** September 19, 2014

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### EXECUTIVE SUMMARY

On August 21, 2014, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, California Avenue Ventures, LLC (the "Applicant"), seeks preliminary and final site plan approval with variances to construct a new approximately 13,715 square foot retail building at 2701 Boardwalk in the City of Atlantic City to be subdivided among up to nine tenants.

During the hearing, the Applicant presented adequate evidence and testimony to satisfy the requirements of the Municipal Land Use Law for the grant of the requested relief. Specifically, the evidence and testimony demonstrated that the development proposal generally conforms to the site plan standards and technical requirements of the land use ordinances of the city of Atlantic City. Therefore, as more fully outlined below, the Applicant has met its burden for the relief requested under the Municipal Land Use Law and the Hearing Officer recommends that the Application be approved by the Authority.

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## INTRODUCTION

### Application Information

California Avenue Ventures, LLC  
2701 Boardwalk  
Block 32, Lot 8  
RS-C, Resort Commercial 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 property in question is an existing parking lot with an elevated, frame wall art exhibit located at 2701 Boardwalk in the City of Atlantic City. Applicant seeks a preliminary and final site plan approval with variances to construct a proposed approximately 13,715 square foot retail building.

### Relief Requested

Preliminary and Final Site Plan Approval with Variances.

### Evidence List

A-1 Aerial Overlay  
A-2 Existing Site Plan  
A-3 Site Development Exhibit

B-1 Letter dated July 17, 2014 from Kernan Consulting Engineers

## FINDINGS OF FACT

The Applicant seeks a preliminary and final site plan approval with variances to construct an approximately 13,715 square foot retail building on the property located at 2701 Boardwalk in the City of Atlantic City. The attorney for the Applicant, Jack Plackter,

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Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

The Applicant presented the testimony of Arthur Ponzio, P.P., who was qualified as an expert in the field of planning. Mr. Ponzio described the location of the site, as well as the development proposal, site layout and design, site circulation, grading and location of utility connections. Mr. Ponzio also testified as to the justifications for the grant of the bulk variances identified in the July 17, 2014 review letter from Kernan Consulting Engineers as follows:

- Minimum front yard requirement: Mr. Ponzio indicated that the Applicant is requesting essentially zero setbacks on both Belmont Avenue and California Avenue where a ten foot setback is required. He testified that this deviation can be justified because compliance with the requirement for a structure located along the Boardwalk would create “gaps” along the Boardwalk that would be aesthetically undesirable and potentially create issues with visibility and public safety.
- Shade trees: Mr. Ponzio testified that one shade tree is required on site for every ten parking spaces. The Applicant requested that the shade trees be located along the perimeter of the site to avoid interference with site lighting and public safety issues. The location of the trees shall be determined in cooperation with Mr. Kernan and Authority staff.
- Number of parking spaces. The Applicant is not proposing any parking spaces on site where a minimum of 15 parking spaces are required. Mr. Ponzio testified that onsite parking is not necessary since the proposed retail spaces will not be a destination location, but rather will likely be patronized by people already walking the Boardwalk. Moreover, he testified that there is adequate public parking in the vicinity of the site.
- Loading areas to be located and screened to minimize visual impact. Loading is proposed within a gated area at the rear of the building. Mr. Ponzio testified that the property has four frontages and screening of the loading areas is a challenge. In an attempt to satisfy the ordinance requirement, the Applicant has segregated any loading from the public with fencing and gate access.
- Roofscape requirement. Mr. Ponzio testified that literal compliance with the requirement that the rooftop be landscaped is impractical, but noted that the roof would receive a decorative treatment to ameliorate any negative impacts of non-compliance.

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Mr. Ponzio testified that all of the requested variances can be justified because the improvements will create a benefit to the community generally by promoting economic development in the City and the transformation of a surface parking lot in a high-profile location into a vibrant commercial use. He testified that the development proposal will advance promote the public health, safety and welfare and will not have any negative impact on the zone plan or the public good.

Mitchell Gurwicz, a member of California Ventures, LLC, testified on behalf of the Applicant. Mr. Gurwicz testified that the Applicant will deal with any parking demands from tenants as an operational issue and provide off-site parking if necessary.

Timothy Kernan, P.E. was qualified as an expert in engineering. Mr. entered his review letter dated July 17, 2014 into evidence and provided testimony on behalf of the Authority. Mr. Kernan supported the development proposal and the grant of the requested relief. Mr. Kernan noted that the current front yard setback of existing parking spaces is less than the ten feet required under the ordinance. Although this is a pre-existing nonconforming condition, any changes to the existing parking required by grading or re-striping would necessitate the grant of a new variance. Mr. Kernan supported the grant of such variance.

### CONCLUSIONS OF LAW

#### 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 with 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 proposal generally conforms to the site plan standards and technical requirements of the land use ordinances of the City of Atlantic City.

#### Variances

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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).

Based on the evidence and testimony, the development proposal will improve the community by replacing a surface grade parking lot in a high-profile location along the Boardwalk with vibrant retail uses. Thus, the development proposal advances the purposes of the Municipal Land Use Law by promoting the public health, safety and welfare (Purpose A).

### 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 to the intent and purpose of the zone plan and the zoning ordinance.

The evidence and testimony indicate that the development proposal will not result in any detriment to the public good, and will not substantially impair the purpose and intent of the zone plan and zoning ordinance.

### **RECOMMENDATION**

For all of the foregoing reasons, the Hearing Officer recommends that the Application for preliminary and final site plan approval and variances 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.

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Specifically, the Applicant shall be bound by the following representations made on its behalf during the course of the hearing:

- Applicant shall install ten shade trees in locations acceptable to Authority staff and consultants;
- Applicant shall install four ADA-compliant parking spaces on the contiguous parking lot;
- Applicant shall comply with items 21 and 24 regarding submission completeness as set forth in the Kernan Consulting Engineers letter dated July 17, 2014;
- Applicant shall repair and maintain the evergreen hedge and fence around the perimeter of the parking area on the contiguous lot; and
- Applicant shall match the proposed gates on the site to Special Improvement District fencing in the vicinity of the site.

The grant of approval shall be further conditioned upon compliance with all applicable requirements of the City of Atlantic City Land Use Ordinances, or other 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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