

EXHIBIT "A" TO RESOLUTION 12- , ADOPTED / /2013

TO: Members of the Authority

FROM: P. G. Weiss, Interim Land Use Hearing Officer

COPY: John F. Palmieri, Executive Director
Scott G. Collins Collins, Esq.

SUBJECT: Hearing Officer's Report and Recommendation -
Application #2012-12-511
DGMB Casino, LLC
Amended Preliminary and Final Major Site Plan with Variances

DATE: March 10, 2013

EXECUTIVE SUMMARY AND RECOMMENDATION

On February 21, 2013, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, DGMB Casino, LLC (the "Applicant"), seeks Amended Preliminary and Final Site Plan Approval with Variances pursuant to the Municipal Land Use Law in connection with the Resorts Casino Hotel/Margaritaville and Landshark Pier project in the City of Atlantic City. The Applicant seeks approval for the construction and display of four (4) additional signs associated with the project. Although the Applicant also proposes construction of a new billboard sign on site, consideration of that portion of the Application was adjourned at the request of the Applicant pending submission of additional evidence and testimony.

During the hearing, the Applicant presented evidence and testimony that satisfy the requirements of the Municipal Land Use Law for the grant of the requested relief. Specifically, the development proposal meets the standards set forth in the Atlantic City Code for site plan approval. In addition, the grant of the variances will advance the purposes of the Municipal Land Use Law and will not create a substantial detriment to the public good or impair the intent and purpose of the zone plan and the zoning ordinance.

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.

INTRODUCTION

Application Information

DGMB Casino, LLC
1100 Boardwalk
Block 1, Lots 142 & 142.01
B-Beach 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 the Resorts Casino Hotel/Margaritaville and Landshark Pier project in the City of Atlantic City. Applicant seeks Amended Preliminary and Final Site Plan Approval with Variances pursuant to the Municipal Land Use Law for the construction and display of four (4) additional signs associated with the project.

Relief Requested

Amended Preliminary and Final Site Plan Approval with Variances.

Evidence List

- A-1 Façade Signage Plan.
- A-2 Signage Package.
- A-3 Margaritaville entrance Rendering.
- A-4 Casino Entrance Perspective.
- A-5 Collage of Prior Billboard Sign (subsequently demolished).
- A-6 Overall Plan of Landshark Pier.
- A-7 Close-up view of Prior Billboard Sign (subsequently demolished).

B-1 Letter dated January 15, 2013 from Timothy Kernan, P.E.

FINDINGS OF FACT

Applicant seeks Amended Preliminary and Final Site Plan Approval with Variances pursuant to the Municipal Land Use Law for the construction and display of four (4) additional signs associated with the Resorts Casino Hotel/Margaritaville and Landshark Pier project in the City of Atlantic City. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for signage. The Applicant, represented by its attorney, Nicholas Talavacchia, Esq., introduced the development proposal generally.

Comment [A1]: Talvacchia

The Applicant presented the testimony of Mark Petrella, a New Jersey-licensed architect, who was qualified as an expert witness. Mr. Petrella gave an overview of the Margaritaville project, and described the proposed signage package. Specifically, he testified that four (4) additional signs are proposed as part of the Application and described them as follows: (1) the sign indicated as "E-2" in the signage package is a blade sign that conforms to the requirements of the

Zoning Ordinance and requires site plan approval only; (2) the sign indicated as “E-3” in the signage package is a blade sign for the “5 O’Clock Somewhere Bar” that projects 5.6 feet from the building façade where a maximum project of four feet is permitted, requiring a variance and site plan approval; (3) the sign indicated as “E-5” in the signage package is a mural sign that conforms to the requirements of the Zoning Ordinance and requires site plan approval only; and (4) the sign indicated as “E-6” in the signage package is a roof-mounted sign that is prohibited under the Zoning Ordinance, requiring a variance and site plan approval.

Comment [A2]: 5.5

The Applicant presented the testimony of Jon Barnhart, P.E., P.P., who was qualified as an expert in the field of planning. Mr. Barnhart provided testimony in support of the grant of the requested variances.

With respect to the “5 O’Clock Somewhere Bar” blade sign, Mr. Barnhart testified that the type of sign and the square-footage of the sign conform to the Zoning Ordinance. However, the proposed sign projects 5.6 feet over the Boardwalk where a maximum projection of four feet is permitted. Mr. Barnhart testified that the increased size of the sign will increase visibility along the Boardwalk and create architectural interest. He testified that the deviation from the Zoning Ordinance advances the purposes of zoning through the creation of a desirable visual environment, and does not impair the purpose and intent of the zoning plan and zoning ordinance or create a detriment to surrounding properties.

With respect to the proposed roof-mounted sign, Mr. Barnhart testified that it is similar to another roof-mounted sign previously approved on a different face of the same thatched-roof architectural feature, and that the same justifications for the grant of the prior variance are applicable to this sign. Specifically, (1) that roof-mounted signs are typically considered signs which are mounted on top of a flat structure; (2) that the Applicant proposes is a sign located above the eave line of a sloping roof; and (3) that as a result of the architectural characteristics of the structure, there is no other place to locate the sign. He testified that the location of the sign advances the purposes of zoning through the creation of a desirable visual environment, and does not impair the purpose and intent of the zoning plan and zoning ordinance or create a detriment to surrounding properties. He further testified that the grant of the variance would advance the purposes of the Tourism District.

Timothy Kernan, P.E. was qualified as an expert in engineering and planning. Mr. Kernan’s review letter dated January 15, 2013 was marked into evidence. He provided testimony on behalf of the Casino Reinvestment Development Authority that the Applicant has presented sufficient proofs to support the requested relief and supported the approval of the application and the grant of the variances.

CONCLUSIONS OF LAW

Applicant seeks Amended Preliminary and Final Site Plan Approval with Variances pursuant to the Municipal Land Use Law for the construction and display of four (4) additional signs associated with the Resorts Casino Hotel/Margaritaville and Landshark Pier project in the City of Atlantic City. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for signage.

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, we conclude based on the evidence and testimony that 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 and that the development proposal satisfies the legal requirements for the grant of the requested relief.

Variances

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 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).

With respect to the "5 O'Clock Somewhere Bar" blade sign, there is adequate evidence that the deviation from the Zoning Ordinance advances the purposes of the Municipal Land Use Law by promoting a desirable visual environment through creative development techniques and good civic design (Purpose I).

With respect to the variances permitting roof-mounted signs, the Applicant testified that the location of the sign was determined based on architectural considerations, and to maximize visibility of the structure and use. Moreover, the sign conforms to the ordinance in all other respects. There is adequate evidence that the location of the signs advances the purposes of the Municipal Land Use Law by promoting a desirable visual environment through creative development techniques and good civic design (Purpose I).

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.

We conclude that 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 Amended Preliminary and Final Site Plan Approval with Variances be approved. Such approval shall specifically exclude the proposed billboard sign, consideration of same having been adjourned at the request of the Applicant pending submission of additional evidence and testimony. The grant of approval of this Application shall be expressly conditioned upon the Applicant satisfying 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.

