



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 21- , ADOPTED 5/18/2021

TO: Members of the Authority

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

COPY: Matthew J. Doherty, Executive Director

SUBJECT: Hearing Officer's Report and Recommendation
Application #2021-03-2954
Atlantic City Investments, LLC
Minor Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c) and (d)
10 South New York Avenue
Block 151, Lot 15
RC-Resort Commercial Zoning District

DATE: May 3, 2021

EXECUTIVE SUMMARY

On April 15, 2021, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Atlantic City Investments, LLC (the "Applicant"), seeks Minor Site Plan Approval for Phase II of the renovation of the existing structure located at the above-captioned property in the city of Atlantic City. Phase I consisted of the renovation of the first floor of the structure and was previously approved by the Authority administratively. Phase II consists of the renovation of floors two through five, as well as an approximately 6,000 square foot addition on floor five, to provide a total of 31 residential dwelling units. Variances pursuant to N.J.S.A. 40:55D-70(c) and (d) are required for minimum side and rear yard setback, as well as maximum density.

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 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.



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INTRODUCTION

Application Information

Atlantic City Investments, LLC
Minor Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c) and (d)
10 South New York Avenue
Block 151, Lot 15
RC-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 Applicant seeks Minor Site Plan Approval for Phase II of the renovation of the existing structure located at the above-captioned property in the city of Atlantic City. Phase I consisted of the renovation of the first floor of the structure and was previously approved by the Authority administratively. Phase II consists of the renovation of floors two through five, as well as an approximately 6,000 square foot addition on floor five to provide a total of 31 residential dwelling units. Variances pursuant to N.J.S.A. 40:55D-70(c) and (d) are required for minimum side and rear yard setback, as well as maximum density.

Evidence List

- A-1 Application Materials
- A-2 Aerial Photograph

- B-1 Letter from ARH Associates dated April 12, 2021

FINDINGS OF FACT

The Applicant seeks Minor Site Plan Approval for Phase II of the renovation of the existing structure located at the above-captioned property in the city of Atlantic City. Phase I consisted of the renovation of the first floor of the structure and was previously approved by the Authority administratively. Phase II consists of the renovation of floors two through five, as well as an approximately 6,000 square foot addition on floor five to provide a total of 31 residential dwelling units. Variances pursuant to N.J.S.A. 40:55D-70(c) and (d) are required for minimum side and rear yard setback, as well as maximum density.

The attorney for the Applicant, Nicholas Talvacchia, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. Mr. Talvacchia explained that the Applicant proposes to renovate the interior of the



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structure and that, with the exception of the fifth floor addition, no site improvements are proposed. Mr. Talvacchia noted that there is adequate public parking in the vicinity to meet parking needs and that no variance is required for parking.

The Applicant presented the testimony of John Longacre, a principal for the developer of the property. Mr. Longacre described the Applicant's proposal to construct one and two bedroom market-rate units in the style of city lofts.

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. He explained that the existing structure is currently five stories at the front of the building, and four stories at the rear. He testified that the Applicant proposes to construct an approximately 6,000 square foot addition to build out the fifth floor at the rear of the structure.

Mr. Sciuillo testified that all existing infrastructure is adequate to support the development proposal. In addition, he provided testimony regarding site access, trash removal and lighting. The Applicant agreed to provide a roof deck detail and an isometric lighting plan as a condition of any approval granted by the Authority. Applicant specifically represented that the roof deck will be for recreational use by residents and will not be a "party deck". Finally, the Applicant agreed to seek administrative approval for any future entrance along the northern wall of the building in the event that it acquires a right to use the property to the immediate north.

The Applicant seeks the following variances in connection with the application:

- Variances to permit side yards of 0' (north side yard) and 7' (south side yard) where minimum side yards of 20' and 35' are required respectively;
- A variance to permit a rear yard of 5.9' where a minimum of 20' is required; and
- A variance to permit a density of 138.3 dwelling units per acre where a maximum of 50 is permitted.

Mr. Sciuillo opined that, through the adaptive reuse of the historic structure for residential use, the development proposal will promote the purposes of the Municipal Land Use Law (the "MLUL"). Specifically, he opined that the purposes of the MLUL will be advanced by providing adequate air, light and open space (Purpose C); providing sufficient space for a variety of uses, including residential, to meet the needs of all New Jersey citizens (Purpose G); creating a desirable visual environment (Purpose I); and promoting the conservation of historic sites (Purpose J). He noted that the set-back deviations are de minimis and opined that the grant of hardship variances is appropriate based on the unusual size and shape of the lot and location of the existing building.



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With respect to the variance to permit increased density of residential units he opined that the site continues to be suitable for the use despite the non-conformity as the property is served by adequate existing infrastructure and parking.

Finally, he 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.

Kathryn Cornforth, P.E., was qualified as an expert in professional engineering and provided testimony on behalf of the Authority. Ms. Cornforth testified that the Applicant had provided sufficient testimony to address all issues raised in the review letter and that she supports approval of the Application. Christin Cofone, P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Ms. Cofone testified that the Applicant had provided sufficient testimony to address all issues raised in the review letter and that she supports approval of the Application.

Former Mayor Donald Guardian and Barbara Woolley-Dillon, Director of Planning and Development for the city of Atlantic City, appeared and spoke in support 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 proposal generally conforms to the site plan standards and technical requirements of the Authority's Tourism District Land Development Rules.

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 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



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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 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).

Here, based on the unique size and shape of the property and the existing building, strict compliance with the bulk zoning requirements would create a hardship for the Applicant. In addition, the grant of the variances would advance the purposes of the MLUL by providing adequate air, light and open space (Purpose C); providing sufficient space for a variety of uses, including residential, to meet the needs of all New Jersey citizens (Purpose G); creating a desirable visual environment (Purpose I); and promoting the conservation of historic sites (Purpose J).

Variance Pursuant to N.J.S.A. 40:55D-70(d)(5)

For a variance pursuant to N.J.S.A. 40:55D-70(d)(5) to permit a greater density than permitted under Tourism District Land Development Rules, the Applicant must demonstrate that the site will accommodate the problems associated with the proposed use with the greater density. See Price v. Himeji, LLC, 214 N. J. 263, 296-297 (2013). Stated differently, the Applicant must demonstrate that the use continues to be appropriate despite the non-conformity.

Here, the evidence and testimony demonstrate that the site continues to be suitable for the use despite the non-conformity as the property is served by adequate existing infrastructure and parking.

Negative Criteria

Relief under either c(1) or c(2) or (d)(5) 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.

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 Approval with variances pursuant to N.J.S.A. 40:55D-70(c) and (d) 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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