

Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 21- , ADOPTED 6/15/2021

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 #2021-03-2931
North Beach Mini Golf, LLC
Preliminary and Final Site Plan Approval with Variances Pursuant to
N.J.S.A. 40:55D-70(c) and (d)
120 Euclid Avenue
Block 82, Lot 2
LH-2-Light House-2 Zoning District

DATE: May 28, 2021

EXECUTIVE SUMMARY

On May 20, 2021, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, North Beach Mini Golf, LLC (the "Applicant"), seeks Preliminary and Final Site Plan Approval for the construction of an 18-hole mini golf amusement/entertainment venue at the above-captioned property in the city of Atlantic City. The development proposal includes a raised deck, pedestrian bridge to the Boardwalk and bicycle rentals. A variance pursuant to N.J.S.A. 40:55D-70(d) is required to permit the amusement/entertainment venue where such use is not permitted in the zoning district. Variances pursuant to N.J.S.A. 40:55D-70(c) for front yard setback, side yard setback, parking and lot depth are subsumed by the "d" variance.

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

North Beach Mini Golf, LLC
Preliminary and Final Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c) and (d)
120 Euclid Avenue
Block 82, Lot 2
LH-2-Light House-2 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 Preliminary and Final Site Plan Approval for the construction of an 18-hole mini golf amusement/entertainment venue at the above-captioned property in the city of Atlantic City. The development proposal includes a raised deck, pedestrian bridge to the Boardwalk and bicycle rentals. A variance pursuant to N.J.S.A. 40:55D-70(d) is required to permit the amusement/entertainment venue where such use is not permitted in the zoning district. Variances pursuant to N.J.S.A. 40:55D-70(c) for front yard setback, side yard setback, parking and lot depth are subsumed by the “d” variance.

Evidence List

- A-1 Application Materials
- A-2 Slide Presentation
- A-3 Aerial of Site

- B-1 Letter from ARH Associates dated March 25, 2021

- O-1 Photograph of Street View
- O-1 Property Listings

FINDINGS OF FACT

The Applicant seeks Preliminary and Final Site Plan Approval for the construction of an 18-hole mini golf amusement/entertainment venue at the above-captioned property in the city of Atlantic City. The development proposal includes a raised deck, pedestrian bridge to the Boardwalk and bicycle rentals. A variance pursuant to N.J.S.A. 40:55D-70(d) is required to permit the amusement/entertainment venue where such use is not permitted in



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the zoning district. Variances pursuant to N.J.S.A. 40:55D-70(c) for front yard setback, side yard setback, parking and lot depth are subsumed by the “d” variance.

The attorney for the Applicant, Christopher Baylinson, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. He noted that the property is a vacant approximately 8,500 square feet lot and that all other lots within the block are devoted to recreational uses.

The Applicant presented the testimony of Nicholas Intrieri, a principal for the developer of the property. He testified that the purpose of the application is to provide family-friendly activities on the north end of the Boardwalk to serve residents and tourists. He testified that the property will be improved by a multi-tiered Atlantic City-themed miniature golf course and bike rental facility. He stated that the Applicant selected the location in the inlet for the following reasons:

- to provide a needed recreation amenity;
- to allow a connection to the Boardwalk to attract foot traffic;
- to locate adjacent to existing recreational uses, including tennis and basketball courts and a children’s playground; and
- to provide a modest, high-quality miniature golf course that operates independent of a larger amusement facility.

The Applicant presented the testimony of Michael Intrieri, a principal for the developer of the property. He testified as to the layout and design of the proposed miniature golf course, consisting of 18 holes on two levels with a clubhouse located adjacent to the Boardwalk. He said that the intention is to attract pedestrian traffic from the Boardwalk to a high-quality, Atlantic City themed miniature golf course. He also described the course design and materials. Mr. Intrieri testified that the facility would operate from 9 a.m. to 10 p.m.

The Applicant presented the testimony of Arthur Ponzio, P.L.S., P.P., who was qualified as an expert in the fields of professional surveying and professional planning. Mr. Ponzio described the location of the site, existing conditions, development proposal and site layout. He noted that the entire block, with the exception of the subject property, is dedicated to park or recreational uses. He also noted that the two blocks inland are improved by recreational uses and the historic Atlantic City lighthouse. He opined that the property is particularly suited for recreational use and that the proposed “soft commercial recreational use” is compatible with the surrounding uses. He testified that parks and playgrounds are permitted uses in the zoning district, and that the proposed use is consistent with such uses.

Mr. Ponzio testified that the Applicant intends to obtain approval from the City to construct a much-needed ramp connecting the street to the Boardwalk. He noted that this component is essential to the project in order to be able to attract pedestrian traffic from the Boardwalk.



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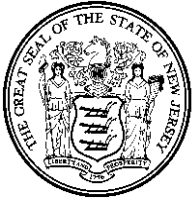
He also testified that this connection will further the public policy to provide public access to the State's beaches. In addition, he provided testimony regarding site access, landscaping and lighting.

The Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(d) to permit the amusement/entertainment venue where such use is not permitted in the zoning district. Variances pursuant to N.J.S.A. 40:55D-70(c) for front yard setback, side yard setback, parking and lot depth are subsumed by the "d" variance. Mr. Ponzio testified that the setback deficiencies are necessary so that the deck can abut the ramp to the Boardwalk and provide continuity of grade. The setback from Maine Avenue is a technicality as Maine Avenue in this location is a paper street. Although no on-site parking is proposed, Mr. Ponzio opined that there is adequate on-street parking in the vicinity of the site to meet parking needs.

With respect to the variance to permit the amusement/entertainment venue where such use is not permitted, Mr. Ponzio testified that one of the purposes of the Master Plan and Tourism District Land Development Rules is to reinvent the area with commercial uses and economic diversity. He opined that the proposed use will accomplish this goal by developing an underutilized property as a "soft commercial recreational use." He further opined that the particular property, based on its size, shape and proximity to the Boardwalk, make it particularly suitable for the proposed use.

Mr. Ponzio opined that, through 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 promoting the general welfare of the community (Purpose A) as the adjacent uses are recreational and the development proposal will provide a less intense, more compatible use than other uses permitted under the Tourism District Land Development Rules. In addition, he opined that the development proposal would secure safety from fire, flood and other disasters (Purpose B) by providing barrier-free access from the Boardwalk to the street. He testified that the development proposal will provide sufficient space for a variety of uses to meet the needs of all New Jersey citizens (Purpose G) by meeting a need for commercial recreational activities in the inlet. He also testified that development proposal will create a desirable visual environment (Purpose I) through the development of a vacant site with limited economic utility. Finally, he testified that the development proposal will encourage the more efficient use of land (Purpose M) by developing a property of unusual size and shape to accommodate an open-air use. Mr. Ponzio testified that the advancement of the purposes of the MLUL constitute special reasons making the site particularly suitable for the use.

Mr. Ponzio 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. He testified



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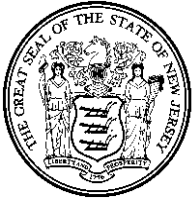
that the development proposal preserves views and open space better than development of the property for permitted uses.

The Applicant presented the testimony of David Shropshire, P.E., who was qualified as an expert in the field of traffic engineering. Mr. Shropshire testified that he prepared an analysis of the site and concluded that there is more than sufficient parking along Euclid Avenue and New Hampshire Avenue to support the proposed use. He testified that there are 56 on-street parking spaces and the current demand is 4 parking spaces. He noted that the proposed use will generate approximately 10 vehicular trip in the peak hour. He testified that the use will rely heavily on pedestrian traffic. Finally, Mr. Shropshire testified that development proposal will not have any impact on vehicular traffic in the vicinity.

Eleanor Murray, a member of the public who resides 30 South Maine Avenue, was sworn and offered testimony in opposition to the application. She stated that her home is directly across the street from the proposed development. She expressed concerns about parking and identified other properties where she believes that the use would be more appropriate.

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 he 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 the Applicant had demonstrated that special reasons exist for the grant of the variance and that the site is particularly suited for the development proposal. Finally, she testified that the development proposal has less intense land use impacts, including parking, than other uses that are permitted under the Tourism District Land Development Rules.

Numerous local government officials, business owners and residents appeared and spoke in support of the Application.



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CONCLUSIONS OF LAW

Preliminary and Final Site Plan Approval

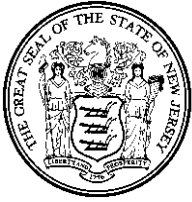
A land use agency's authority in reviewing an application for site plan approval is limited to determining whether the development plan conforms to the zoning ordinance and the applicable provisions of the site plan ordinance. See Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216 (1994).

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(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)



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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.

Positive Criteria

The evidence and testimony demonstrate that special reasons exist for the grant of the variance as the development proposal advances several purposes of the MLUL. Specifically, the general welfare of the community will be promoted (Purpose A) as the adjacent uses are recreational and the development proposal will provide less intense, more compatible use than permitted under the Tourism District Land Development Rules. The development proposal would secure safety from fire, flood and other disasters (Purpose B) by providing barrier-free access from the Boardwalk to the street. The development proposal will provide sufficient space for a variety of uses to meet the needs of all New Jersey citizens (Purpose G) by meeting a need for commercial recreational activities in the inlet. The development proposal will create a desirable visual environment (Purpose I) through the development of a vacant site with limited economic utility. Finally, the development proposal will encourage the more efficient use of land (Purpose M) by developing a property of unusual size and shape to accommodate an open-air use.

The development proposal has less intense land use impacts, including parking, than other uses that are permitted under the Tourism District Land Development Rules. Based on the size, shape and location of the property, and the purposes of the MLUL advanced by the development proposal, property is particularly suited for the proposed use.

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.



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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.

RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the Application for Preliminary and Final Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(c) and (d) be approved. It is expressly noted that the variances pursuant to N.J.S.A. 40:55D-70(c) for front yard setback, side yard setback, parking, signage and lot depth are subsumed by the "d" variance. 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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