



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 21- , ADOPTED 7/20/2021

TO: Members of the Authority

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

COPY: Matthew J. Doherty, Executive Director

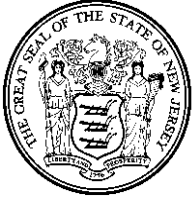
SUBJECT: Hearing Officer's Report and Recommendation
Application #2021-04-2981
NYORANGEDEEDS, LLC
Amended Site Plan Approval with Variances Pursuant to N.J.S.A.
40:55D-70(c)
161-205 New York Avenue and 120-142 St. James Place, Atlantic City
Block 52, Lots 11-18 & 30-39
Resort Commercial (RC) Zoning District

DATE: July 8, 2021

EXECUTIVE SUMMARY

On June 17, 2021, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, NYORANGEDEEDS, LLC (the "Applicant"), seeks Amended Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the subject properties in the city of Atlantic City. The Applicant previously obtained approvals from the Authority for the construction of mixed use development on the site, including a two-story building with approximately 10,000 square feet of retail space. The Applicant now seeks approval to add a third floor to the building for a total of approximately 15,000 square feet. Under the current development proposal, the ground floor will contain approximately 5,000 square feet of retail space. The second and third floors will each contain four (two-bedroom) residential units. The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) for front yard, side yard and rear yard setbacks and impervious coverage.

The Applicant demonstrated by evidence and testimony that the development proposal generally conforms to the subdivision standards, 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



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

variances is warranted. Therefore, for the reasons more fully outlined below, the Hearing Officer recommends that the Application be approved by the Authority.

INTRODUCTION

Application Information

NYORANGEDEEDS, LLC

Amended Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)

161-205 New York Avenue and 120-142 St. James Place, Atlantic City

Block 52, Lots 11-18 & 30-39

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 Amended Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the subject properties in the city of Atlantic City. The Applicant previously obtained approvals from the Authority for the construction of mixed use development on the site, including a two-story building with approximately 10,000 square feet of retail space. The Applicant now seeks approval to add a third floor to the building for a total of approximately 15,000 square feet. Under the current development proposal, the ground floor will contain approximately 5,000 square feet of retail space. The second and third floors will each contain four (two-bedroom) residential units. The Applicant requires a variance pursuant to N.J.S.A. 40:55D-70(c) for front yard, side yard and rear yard setbacks and impervious coverage.

Evidence List

- A-1 Application Materials
- A-2 Current Rendered Site Plan
- A-3 September 2019 Rendered Site Plan
- A-4 Architectural Rendering
- A-5 Architectural Rendering
- A-6 Architectural Rendering

- B-1 Letter from ARH Associates dated May 24, 2021

FINDINGS OF FACT

The Applicant seeks Amended Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for the subject properties in the city of Atlantic City. The Applicant



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

previously obtained approvals from the Authority for the construction of mixed use development on the site, including a two-story building with approximately 10,000 square feet of retail space. The Applicant now seeks approval to add a third floor to the building for a total of approximately 15,000 square feet. Under the current development proposal, the ground floor will contain approximately 5,000 square feet of retail space. The second and third floors will each contain four (two-bedroom) residential units. The Applicant requires a variance pursuant to N.J.S.A. 40:55D-70(c) for front yard, side yard and rear yard setbacks and impervious coverage.

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 represented that the Applicant intends to consolidate the properties and obviate the need for a side yard setback (ocean-facing side yard).

The Applicant presented the testimony of Patrick Fasano, who is a principal of the Applicant. He described the overall project and the specific changes under the current application. He explained that the Applicant seeks to implement a block by block approach to the redevelopment of the neighborhood with a dynamic mix of restaurant, entertainment venues and residences.

The Applicant presented the testimony of Jason T. Sciuлло P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. He described the location of the site, existing conditions and site layout. Mr. Sciuлло explained that the purpose of the application modify the approved retail building to convert the second floor to residential use and was to add a third floor for residential use. He noted that the overall height of the building is 38.5'.

Mr. Sciuлло testified that the Applicant is seeking variances pursuant to N.J.S.A. 40:55D-70(c) to permit:

- A front yard setback of 0' where a minimum of 20' is required for structures above 35';
- A side yard setback of 0' where a minimum of 20' is required for structures above 35' (Pacific Avenue side yard);
- A rear yard setback of 5' where a minimum of 20' is required above 35; and
- Impervious coverage of 84.7% where a maximum of 80% is permitted.

He noted that the existing lot is deficient in lot depth, thereby creating a hardship in satisfying the setback requirements. He testified that the development of the properties within the permitted building envelope would be an inefficient use of land and inconsistent with existing structures in the neighborhood. Mr. Sciuлло opined that the that the approval of the application for development would advance the purposes of the Municipal Land Use Law by providing adequate air, light and open space (Purpose C) by providing appropriate



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

development intensity; promoting a desirable visual environment (Purpose I) through the use of architectural features; and encouraging the more efficient use of land (Purpose M) by developing vacant land with minimal impacts on neighboring properties. Overall, he concluded that the development proposal constitutes a better planning alternative to strict compliance with the requirements of the Tourism District Land Development Rules.

With respect to the negative criteria, Mr. Sciuлло testified that the grant of the variance would advance the purposes of the Tourism District Master Plan and would not have any substantial detriment to the Tourism District Master Plan or Tourism District Land Development Rules. He testified that development proposal was designed to minimize impact on neighboring properties.

The Applicant presented the testimony of William McLees, a licensed architect in the State of New Jersey, who as qualified in the field of architecture. Mr. McLees described the location of the site, development proposal and site layout. He testified as to architectural features of the proposed improvements, floor-plans, operational features, accessibility improvements and signage.

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. Ms. Cornforth asked that the Applicant provide a building lighting plan as a condition of any approval.

Christine 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 support approval of the Application.

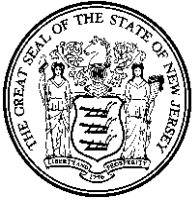
CONCLUSIONS OF LAW

Amended 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 subdivision standards and technical requirements of the Tourism District Land Development Rules.

VariANCES Pursuant to N.J.S.A. 40:55D-70(c)



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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 for variances requested pursuant to N.J.S.A. 40:55D-70(c)(1) 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 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 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).

Here, the Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) to permit:

- A front yard setback of 0' where a minimum of 20' is required for structures above 35';
- A side yard setback of 0' where a minimum of 20' is required for structures above 35' (Pacific Avenue side yard);
- A rear yard setback of 5' where a minimum of 20' is required above 35; and
- Impervious coverage of 84.7% where a maximum of 80% is permitted.

Based on the unique size and shape of the property, 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) by providing appropriate development intensity; promoting a desirable visual environment (Purpose I) through the use of architectural features; and encouraging the more efficient use of land (Purpose M) by developing vacant land with minimal impacts on neighboring properties. The Applicant's expert witness concluded that the development proposal constitutes a better planning alternative to strict compliance with the requirements of the Tourism District Land Development Rules.

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



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

The evidence and testimony demonstrate that the grant of the requested variance will not create any detriment to the public good, and will not substantially impair the purpose and intent of the Tourism District Mast Plan and the Tourism District Land Development Rules.

RECOMMENDATION

For all of the foregoing reasons, the Hearing Officer recommends that the Application for Amended Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) 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 Tourism District Land Development Rules, city of Atlantic 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.