

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY GRANTING MINOR SITE PLAN APPROVAL WITH VARIANCE RELIEF FOR THE CONSTRUCTION OF IMPROVEMENTS ON PROPERTY LOCATED AT 10 SOUTH NEW YORK AVENUE (BLOCK 151, LOT 15) IN THE CITY OF ATLANTIC CITY UNDER APPLICATION #2021-03-2954**

**WHEREAS**, pursuant to P.L. 2011, c. 18, as amended (the “Act”), the Casino Reinvestment Development Authority (the “Authority”): (i) designated the Atlantic City Tourism District by Resolution 11-25, adopted April 19, 2011; (ii) established the Land Use Regulation and Enforcement Division to, among other matters, hear applications for development in the Tourism District by Resolution 11-33, adopted April 19, 2011; and (iii) adopted the master plan, zoning and land use ordinances and regulations, and zoning maps approved by the City by Resolution 11-34, adopted April 19, 2011; and

**WHEREAS**, pursuant to Resolution 12-14, adopted February 1, 2012, the Authority adopted the “New Jersey CRDA Atlantic City Tourism District Master Plan” prepared by Jones Lang LaSalle, LLC and dated February 1, 2012 (the “Master Plan”) (as affirmed and readopted pursuant to Resolution 12-23, adopted February 21, 2012), subject to further comment and revision, which master plan shall become effective upon the adoption of design, development and land use regulations on January 2, 2018; and

**WHEREAS**, The Applicant, Atlantic City Investments, LLC, seeks Minor Site Plan Approval with Variances pursuant to N.J.S.A. 40:55D-70(c) and (d) for Phase II of the renovation of the existing structure located at 10 South New York Avenue, Block 151, Lot 15, in the Resort Commercial Zoning District, 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; and

**WHEREAS**, on April 15, 2021, the Authority’s Land Use Regulation and Enforcement Division convened a public hearing on Application 2021-03-2954 in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and the Act, and subsequently prepared and delivered a Hearing Officer’s Report and Recommendation dated May 3, 2021 (the “Report”), incorporated herein by this reference and appended hereto as Exhibit “A”; and

**WHEREAS**, the Authority intends to adopt the findings, conclusions and recommendations of the Hearing Officer, as detailed in the Report dated May 3, 2021.

**NOW THEREFORE, BE IT RESOLVED** by the Casino Reinvestment Development Authority that:

1. The above recitals are incorporated herein, as if set forth in full.

2. Based on the record in this matter, the Minor Site Plan under Application 2021-03-2954 hereby approved in accordance with the Hearing Officer's Report and Recommendation dated May 3, 2021.
3. A copy of this Resolution shall be immediately transmitted to the Governor. This Resolution shall take effect immediately but no action authorized herein shall have force and effect until the earlier of the passage of ten (10) days, Saturdays, Sundays and public holidays excepted, after the delivery of the copy to the Governor, or the Governor's approval.

I hereby certify that this document is a true and correct copy of Resolution 21-48 of the Casino Reinvestment Development Authority.

  
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HOWARD J. KYLE, SECRETARY

**MEETING OF MAY 18, 2021**

***EXHIBIT "A" ATTACHED.***



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 21-48, 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

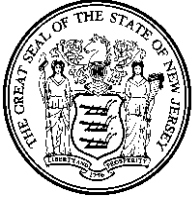
**DATE:** May 3, 2021

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### 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.



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## 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



## Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

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 Sciullo, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. Mr. Sciullo 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. Sciullo 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. Sciullo 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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**CRDA BOARD TALLY**

**May 18, 2021**

**RESOLUTION OF THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY  
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CONSTRUCTION OF IMPROVEMENTS ON PROPERTY LOCATED AT 10 SOUTH  
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UNDER APPLICATION #2021-03-2954**

**MOTION**

**GH**

**SECOND**

**DD**

Modia Butler

**Y**

Debra DiLorenzo

**Y**

Ed Gant

**Y**

Michael Hanley

**Y**

Gary Hill

**Y**

Howard Kyle

**Y**

Kim Holmes for the Lt. Governor & DCA Commissioner

**Y**

William Mullen

**Y**

James Plousis

**Y**

David Rebeck for the State Attorney General

**Y**

Bob Shaughnessy for the State Treasurer

**Y**

Mayor Marty Small

**A**

Shelley Williams

**Y**

Karen Worman

**Y**

Vice Chairman, Richard Tolson

**Y**

Chairman, Robert Mulcahy

**Y**