

Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 18- , ADOPTED 12/118/2018

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 #2018-09-2510
Tennessee Avenue Beer Garden
Preliminary and Final Site Plan Approval and Variances Pursuant to
N.J.S.A. 40:55D-70(c)
133 S. Tennessee Avenue
Block 54, Lots 13 & 14
RS Resort Commercial Zoning District

DATE: December 3, 2018

EXECUTIVE SUMMARY

On November 1, 2018, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, 133 South Tennessee Avenue, LLC (the "Applicant"), seeks Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) to permit modifications to a previously-approved site plan. The modifications include the addition of a roof above the outdoor bar, the relocation of a trash enclosure and installation of fencing, as well as other related site improvements. All site improvements have already been constructed.

The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit a rear yard setback of one (1) foot where a minimum setback of twenty (20) feet is required; to permit a fence height in the front yard of seven (7) feet that will buffer the utility meters, where a

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maximum height of four (4) feet is permitted; and to permit a fence height of six (6) feet along Tennessee Avenue where a maximum height of four (4) feet is permitted.

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

INTRODUCTION

Application Information

Tennessee Avenue Beer Garden
Preliminary and Final Site Plan Approval and Variances Pursuant to N.J.S.A. 40:55D-70(c)
133 S. Tennessee Avenue
Block 54, Lots 13 & 14
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 Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) to permit modifications to a previously-approved site plan. The modifications include the addition of a roof above the outdoor bar, the relocation of a trash enclosure and installation of fencing, as well as other related site improvements. All site improvements have already been constructed.

The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit a rear yard setback of one (1) foot where a minimum setback of twenty (20) feet is required; to permit a fence height in the front yard of seven (7) feet that will buffer the utility meters, where a maximum height of four (4) feet is permitted; and to permit a fence height of six (6) feet along Tennessee Avenue where a maximum height of four (4) feet is permitted.

Evidence List

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A-1 Colorized Site Plan

B-1 Letter from Environmental Resolutions, Inc. dated October 12, 2018

FINDINGS OF FACT

The Applicant seeks Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) to permit modifications to a previously-approved site plan. The modifications include the addition of a roof above the outdoor bar, the relocation of a trash enclosure and installation of fencing, as well as other related site improvements. All site improvements have already been constructed.

The Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit a rear yard setback of one (1) foot where a minimum setback of twenty (20) feet is required; to permit a fence height in the front yard of seven (7) feet that will buffer the utility meters, where a maximum height of four (4) feet is permitted; and to permit a fence height of six (6) feet along Tennessee Avenue where a maximum height of four (4) feet is permitted.

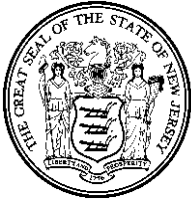
The attorney for the Applicant, Nicholas Talvacchia, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. Mr. Talvacchia explained that the roofs over the outdoor bar and trash enclosure are required under Health Department standards. Based on prior approvals issued by the Authority for the site, Mr. Talvacchia requested that the Authority waive several application submission requirements in connection with the Applicant's request for Preliminary and Final Site Plan Approval.

The Applicant presented the testimony of Jay 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.

Mr. Sciuillo testified that the following "bulk" variances pursuant to N.J.S.A. 40:55D-70(c) are required:

- a rear yard setback of one (1) foot where a setback minimum of twenty (20) feet is required;

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- a fence height of seven (7) feet that will buffer the utility meters, in the front yard where a maximum height of four (4) feet is permitted; and
- a fence height of six (6) feet along Tennessee Avenue where a maximum height of four (4) feet is permitted.

Mr. Sciullo testified that the approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting a desirable visual environment (Purpose I) based on the aesthetics of the overall site and its impact on the neighboring land uses in the Tourism District. Finally, Mr. Sciullo opined that compliance with the zoning standards would create a hardship.

With respect to the negative criteria, Mr. Sciullo testified that the grant of the variances 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.

Jeffrey Hanson, P.E. was qualified as an expert in professional engineering and provided testimony on behalf of the Authority. Mr. Hanson testified that the Applicant had provided sufficient testimony to support approval of the Application.

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 prior approvals issued by the Authority for the site, the Hearing Officer concludes that the grant of waivers of several application submission requirements in connection with the Applicant's request for Preliminary and Final Site Plan Approval is appropriate. Further, based on the evidence and testimony, the Hearing Officer concludes that the Applicant has demonstrated that development proposal generally conforms to the site plan standards and technical requirements of the Tourism District Land Development Rules.

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

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 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, the Applicant requires variances pursuant to N.J.S.A. 40:55D-70(c) to permit a rear yard setback of one (1) foot where a minimum setback of twenty (20) feet is required; to permit a fence height in the front yard of seven (7) feet that will buffer the utility meters, where a maximum height of four (4) feet is permitted; and to permit a fence height of six (6) feet along Tennessee Avenue where a maximum height of four (4) feet is permitted. The Applicant presented testimony that the application would advance the purposes of the Municipal Land Use Law by promoting a desirable visual environment (Purpose I) based on the aesthetics of the overall site and its impact on the neighboring land uses in the Tourism District.

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.

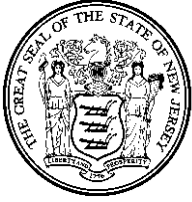
The evidence and testimony demonstrate that the grant of the requested variances will not create any detriment to the public good, and will not substantially impair the purpose and intent of the Tourism District Mast Plan and the Tourism District Land Development Rules.

RECOMMENDATION

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For all of the foregoing reasons, the Hearing Officer recommends that the Application for Preliminary and Final Major 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 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.

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