



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 21- , ADOPTED 9/21/2021

**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 #2021-03-2942  
Mina Panah  
Minor Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)  
2322-2324 Arctic Avenue, Atlantic City  
Block 280, Lot 2  
Ducktown Arts (DA) Zoning District

**DATE:** September 7, 2021

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### EXECUTIVE SUMMARY

On August 19, 2021, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Mina Panah (the "Applicant"), seeks Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for improvements already constructed to the property containing two restaurant buildings in the city of Atlantic City. The Applicant seeks approval for the addition of 726 square feet of courtyard seating on the first and second floor levels of both buildings and the additional of deck/roof-top deck seating areas. The Applicant also requires variances pursuant to N.J.S.A. 40:55D-70(c) for front yard, rear yard setback, building coverage, impervious coverage, outdoor seating, parking and signage.

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 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

Mina Panah

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

2322-2324 Arctic Avenue, Atlantic City

Block 280, Lot 2

Ducktown Arts (DA) 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 with variances pursuant to N.J.S.A. 40:55D-70(c) for improvements already constructed to the property containing two restaurant buildings in the city of Atlantic City. The Applicant seeks approval for the addition of 726 square feet of courtyard seating on the first and second floor levels of both buildings and the additional of deck/roof-top deck seating areas. The Applicant also requires variances pursuant to N.J.S.A. 40:55D-70(c) for front yard, rear yard setback, building coverage, impervious coverage, outdoor seating, parking and signage.

### Evidence List

A-1 Application Materials

A-2 Aerial Photograph

A-3 Newspaper Articles

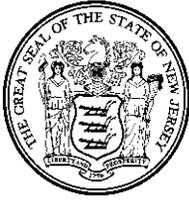
A-4 Light Details

Rendering

B-1 Letter from Environmental Resolutions, Inc. dated July 21, 2021

## FINDINGS OF FACT

The Applicant seeks Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for improvements already constructed to the property containing two restaurant buildings in the city of Atlantic City. The Applicant seeks approval for the addition of 726 square feet of courtyard seating on the first and second floor levels of both buildings and the additional of deck/roof-top deck seating areas. The Applicant also requires variances pursuant to N.J.S.A. 40:55D-70(c) for front yard, rear yard setback, building coverage, impervious coverage, outdoor seating, parking and signage.



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The attorney for the Applicant, Brian Callaghan, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

The Applicant presented the testimony of Craig Dothe, R.A., P.P., who was qualified as an expert in the fields of professional architecture and professional planning. He described the location of the site, existing conditions and site layout. Mr. Dothe explained that the purpose of the application is to obtain approvals for improvements to the site that have already been completed. He noted that all but one of the residential units that had been on the second and third floors of the buildings have been vacated and the residential uses have been discontinued. Mr. Dothe explained the floor plans, site operation and architectural features in detail.

Mr. Dothe testified that the hours of operation will be from 4 pm to 9 pm Monday through Thursday and 4 pm to 10 PM on Friday and Saturday. He testified that there will be no live music on the premises and that trash collection will be privately contracted. He agreed to place lighting and security camera details on the site plan. Finally, he agreed to provide the Authority with a deed of consolidation for the two properties and all necessary license agreements with The City as a condition of any approval of the application.

Mr. Dothe 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 5' is required. This is a preexisting non-conforming condition and the applicant agreed to obtain a license from the City for building, bay window and planter encroachment into the public right of way.
- A rear yard setback of .13' where a minimum of 20' is required. This is an expansion of a pre-existing non-conforming condition and requires a variance.
- Building coverage of 72% where a maximum building coverage of 30% is permitted.
- Impervious coverage of 100% where a maximum of 40% is permitted. This is a preexisting non-conforming condition.
- Maximum number of outdoor seating spaces.
- Zero on-site parking spaces where a minimum of 75 is required.
- Four wall signs with a total 75 square feet where a maximum of 10 square feet per face is permitted.

Mr. Dothe testified that several of the requested variances relate to preexisting non-conforming conditions. With respect to the variance for parking, he testified that there is adequate parking in the vicinity of the site and most patrons will be pedestrians visiting from nearby casinos. Finally, he noted that the variances for signage will create visual excitement and enliven the neighborhood. Overall, he concluded that the development



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proposal constitutes a better planning alternative to strict compliance with the requirements of the Tourism District Land Development Rules.

Mr. Dothe opined that the that the approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting the public health, safety morals and general welfare (Purpose A) and encouraging the establishment of appropriate population densities and concentrations that contribute to well-being of persons, neighborhoods, communities and regions through the development of an attractive and well-lit destination in the neighborhood and the establishment of a safe walking space and viable restaurant district in a neighborhood under stress.

With respect to the negative criteria, Mr. Dothe 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., C.M.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 address all issues raised in the review letter and that he supports approval of the Application. Ms. Cornforth asked that the Applicant provide a building lighting plan as a condition of any approval.

### 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 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)

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



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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 5' is required. This is a preexisting non-conforming condition and the applicant agreed to obtain a license from the City for building, bay window and planter encroachment into the public right of way.
- A rear yard setback of .13' where a minimum of 20' is required. This is an expansion of a pre-existing non-conforming condition and requires a variance.
- Building coverage of 72% where a maximum building coverage of 30% is permitted.
- Impervious coverage of 100% where a maximum of 40% is permitted. This is a preexisting non-conforming condition.
- Maximum number of outdoor seating spaces.
- Zero on-site parking spaces where a minimum of 75 is required.
- Four wall signs with a total 75 square feet where a maximum of 10 square feet per face is permitted.

The evidence and testimony demonstrate that several of the requested variances relate to preexisting non-conforming conditions. With respect to the variance for parking, the evidence and testimony demonstrate that there is adequate parking in the vicinity of the site and most patrons will be pedestrians visiting from nearby casinos. Finally, the evidence and testimony demonstrate that the variances for signage will create visual excitement and enliven the neighborhood. Overall, the development proposal constitutes a better planning alternative to strict compliance with the requirements of the Tourism District Land Development Rules.

The evidence and testimony demonstrate that the that the approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting the public health, safety morals and general welfare (Purpose A) and encouraging the establishment of appropriate population densities and concentrations that contribute to



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well-being of persons, neighborhoods, communities and regions through the development of an attractive and well-lit destination in the neighborhood and the establishment of a safe walking space and viable restaurant district in a neighborhood under stress.

### 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**

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) 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.