



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 22- , ADOPTED 1/18/2022

**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 #2021-11-310  
Premier Entertainment AC, LLC  
Preliminary and Final Site Plan Approval with Variances Pursuant to  
N.J.S.A. 40:55D-70(c)  
1900 Boardwalk Avenue  
Block 42, Lots 1.04, 6 & 7; Block 43, Lots 1 & 13; Block 44, Lots 4 &  
4.02; Block 45, Lots 1, 3 & 5  
RC-Resort Commercial Zoning District

**DATE:** January 12, 2022

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### EXECUTIVE SUMMARY

On January 6, 2022, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Premier Entertainment AC, LLC (the "Applicant"), seeks Preliminary and Final Site Plan Approval for the construction of an approximately 5,100 square-foot beer hall, together with outdoor seating and a 200 square foot outdoor stage within the courtyard of the existing Bally's Casino and Hotel in the city of Atlantic City. The development proposal includes additional renovations to include 6 gaming tables and related site improvements. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for signage, maximum building coverage and maximum impervious coverage.

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

Premier Entertainment AC, LLC

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

1900 Boardwalk Avenue

Block 42, Lots 1.04, 6 & 7; Block 43, Lots 1 & 13; Block 44, Lots 4 & 4.02; Block 45, Lots 1, 3 & 5

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 for the construction of an approximately 5,100 square-foot beer hall, together with outdoor seating and a 200 square foot outdoor stage within the courtyard of the existing Bally's Casino and Hotel in the city of Atlantic City. The development proposal includes additional renovations to include 6 gaming tables and related site improvements. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for signage, maximum building coverage and maximum impervious coverage.

### Evidence List

A-1 Application Materials

A-2 Parking Analysis dated December 15, 2021

B-1 Letter from ARH Associates dated December 15 2021

## FINDINGS OF FACT

The Applicant seeks Preliminary and Final Site Plan Approval for the construction of an approximately 5,100 square-foot beer hall, together with outdoor seating and a 200 square foot outdoor stage within the courtyard of the existing Bally's Casino and Hotel in the city of Atlantic City. The development proposal includes additional renovations to include 6 gaming tables and related site improvements. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for signage, maximum building coverage and maximum 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.



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He noted that the use is permitted in the zoning district and that “bulk” variances are required.

The Applicant presented the testimony of Michael Monty, who is the General Manager of the Applicant. He testified that the purpose of the development proposal is to reinvigorate the Boardwalk with an indoor/outdoor beer hall with live entertainment.

The Applicant presented the testimony of John DeRichie, A.I.A., who was qualified as an expert in the field of professional architecture. He described the location of the site, existing conditions and site layout. He testified as to architectural features of the proposed improvements, materials, floor-plans, operational features, and signage. He noted that the structure will feature operable garage doors and a retractable roof to maximize an outdoor experience in seasonable months. He also testified that the outdoor space will include lounge furniture, yard games and fire pits. He testified that the new space will be integrated with improvements to the existing building, including a bar, pool tables and gaming tables.

The Applicant presented the testimony of Jon Barnhart, 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, site layout and utilities. He noted that on-site parking exceeds the minimum parking required under the Authority’s Tourism District Land Development Rules.

The Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) to permit three(3) wall-mounted signs where a maximum of two (2) wall-mounted signs are permitted on each facade; to permit a building coverage of 87% where a maximum of 70% is permitted; and impervious coverage of 98.3 where a maximum impervious coverage of 80% is permitted.

Mr. Barnhart testified that the existing number of signs already exceeds the total number of wall-mounted signs permitted under the Authority’s Tourism District Land Development Rules, but the total square footage of the existing and proposed signage is less than the amount permitted under the with respect to location, height and width. In addition, Mr. Barnhart testified that the proposed building and impervious coverage is consistent is compatible with surrounding land uses. In addition, he testified that any potential land use impacts associated with the deviations with respect to building coverage and impervious coverage will be mitigated through modifications to the existing drainage system in the courtyard.

Mr. Barnhart opined that 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 a desirable visual environment (Purpose A) by creating an attractive appearance from the Boardwalk. In addition, he opined that the



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development proposal will promote the free flow of pedestrian traffic by improving site visibility and providing safe identification and maneuverability.

Mr. Barnhart 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 she supports the approval of the Application upon the condition that the Applicant agree to comply with all issues raised in the review letter dated December 15, 2021. Christin Cofone, P.P. was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Ms. Cofone testified that she supports 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 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 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).



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Here, The Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) to permit three(3) wall-mounted signs where a maximum of two (2) wall-mounted signs are permitted on each facade; to permit a building coverage of 87% where a maximum of 70% is permitted; and impervious coverage of 98.3 where a maximum impervious coverage of 80% is permitted.

The grant of the requested variances would promote the purposes of the Municipal Land Use Law (the "MLUL"). Specifically, the purposes of the MLUL will be advanced by promoting a desirable visual environment (Purpose A) by creating an attractive appearance from the Boardwalk. In addition, the development proposal will promote the free flow of pedestrian traffic by improving site visibility and providing safe identification and maneuverability.

### 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 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 Preliminary and Final Site Plan Approval with a variance 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 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.