



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 21- , ADOPTED 12/21/2021

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 #2021-09-3068
Dharmendrakumar H. Patel d/b/a Gem Liquors
Variances Pursuant to N.J.S.A. 40:55D-70(c)
1737 Atlantic Avenue, Atlantic City
Block 289, Lot 36
Central Business District (CBD) Zoning District

DATE: December 9, 2021

EXECUTIVE SUMMARY

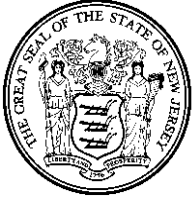
On November 4, 2021, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Dharmendrakumar H. Patel d/b/a Gem Liquors (the "Applicant"), seeks variances pursuant to N.J.S.A. 40:55D-70(c) for signage on an existing liquor store along Atlantic Avenue in the city of Atlantic City. Specifically, the Applicant seeks variances for the number of awning signs, number of window signs and coverage of window signs.

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.

INTRODUCTION

Application Information

Dharmendrakumar H. Patel d/b/a Gem Liquors
Variances Pursuant to N.J.S.A. 40:55D-70(c)
1737 Atlantic Avenue, Atlantic City
Block 289, Lot 36



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Central Business District (CBD) 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 variances pursuant to N.J.S.A. 40:55D-70(c) for signage on an existing liquor store along Atlantic Avenue in the city of Atlantic City. Specifically, the Applicant seeks variances for the number of awning signs, number of window signs and coverage of window signs.

Evidence List

- A-1 Application Materials
- A-2 Street view Photo

- B-1 Letter from Environmental Resolutions, Inc. dated November 3, 2021

FINDINGS OF FACT

The Applicant seeks variances pursuant to N.J.S.A. 40:55D-70(c) for signage on an existing liquor store along Atlantic Avenue in the city of Atlantic City. Specifically, the Applicant seeks variances for the number of awning signs, number of window signs and coverage of window signs.

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 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 and site layout. Mr. Barnhart explained that the Applicant had removed a number of non-conforming signs, and that the purpose of the application is to obtain approvals the remaining non-conforming signs.

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

- A total of three (3) awning signs where a maximum of one (1) is permitted pursuant to N.J.A.C. 19:66-5.7(j)3(iii).
- A total of three (3) window signs where a maximum of one (1) is permitted pursuant to N.J.A.C. 19:66-5.7(i)3(iii).
- A total window sign coverage of 50% where a maximum coverage of 25% is permitted pursuant to N.J.A.C. 19:66-5.7(g)9.



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With respect to the variance for number of awning signs, Mr. Barnhart testified that the property is located on a corner and the awning and associated signage are intended to be visible from both street frontages. He noted that the two balconies along Atlantic Avenue are actually one continuous feature on either side of the entry door.

With respect the variance for the number of window signs, Mr. Barnhart again noted that the property is located on a corner and the signs are intended to be visible from both street frontages. He noted that the amount of signage is less than permitted based on the building frontage. He agreed that any approval of the number of window signs would be expressly conditioned on the Applicant's agreement not to seek approval for any permitted wall signs.

With respect to the variance to permit 50% window sign coverage, he noted that the signage is intended to advertise products available on site and reasonable in light of the Applicant's agreement to forgo additional building signage. Mr. Barnhart represented that the Applicant would agree to limit window signage to the bottom 50% of the northern-most window along Atlantic Avenue, and to the top 50% of the other two windows.

Mr. Barnhart opined that the that the approval of the requested variances would advance the purposes of the Municipal Land Use Law by promoting the free flow of traffic (Purpose H) through clear and visible signage directing vehicular and pedestrian traffic. With respect to the negative criteria, he 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.

CONCLUSIONS OF LAW

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)(1) is satisfied if relief can be granted for a specific piece of property upon the finding of hardship



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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 total of three (3) awning signs where a maximum of one (1) is permitted pursuant to N.J.A.C. 19:66-5.7(j)3(iii).
- A total of three (3) window signs where a maximum of one (1) is permitted pursuant to N.J.A.C. 19:66-5.7(i)3(iii).
- A total window sign coverage of 50% where a maximum coverage of 25% is permitted pursuant to N.J.A.C. 19:66-5.7(g)9.

The evidence and testimony demonstrate that the variances for signage are necessary because the property is located on a corner and the signs are intended to be visible from both street frontages. Moreover, the signage is reasonable in light of the Applicant's agreement to forgo additional building signage and less than the maximum amount of permissible signage based on building frontage. The evidence and testimony demonstrate that the approval of the requested variances would advance the purposes of the Municipal Land Use Law by promoting the free flow of traffic (Purpose H) through clear and visible signage directing vehicular and pedestrian traffic.

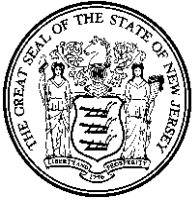
Negative Criteria

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 variances pursuant to N.J.S.A. 40:55D-70(c) be approved. The grant of approval of this



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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.