



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 22- , ADOPTED 10/18/2022

**TO:** Members of the Authority

**FROM:** Lance B. Landgraf, Jr., Land Use Hearing Officer

**COPY:** Sean Pattwell, Executive Director

**SUBJECT:** Hearing Officer's Report and Recommendation  
Application #2022-08-3272  
Atlantic Beach Properties, LLC  
Preliminary and Final Site Plan Approval with Variances Pursuant to  
N.J.S.A. 40:55D-70(c)(2) and (d)(5)  
2707 Pacific Avenue  
Block 173, Lot 16  
Resort Commercial (RC) Zoning District

**DATE:** October 3, 2022

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### EXECUTIVE SUMMARY

On September 15, 2022, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The property is improved with an existing three story motel with no parking or loading on site. The Applicant, Atlantic Beach Properties, LLC (the "Applicant"), seeks Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c)(2) and(d)(5) to convert the three existing floors to a mix of studio, one-bedroom and two-bedroom apartments, and add a fourth floor with one and two-bedroom apartments.

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.

### INTRODUCTION



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## Application Information

Atlantic Beach Properties, LLC  
Preliminary and Final Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)(2) and (d)(5)  
2707 Pacific Avenue  
Block 173, Lot 16  
Resort Commercial (RC) 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 property is improved with an existing three story motel with no parking or loading on site. The Applicant seeks Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c)(2) and(d)(5) to convert the three existing floors to a mix of studio, one-bedroom and two-bedroom apartments, and add a fourth floor with one and two-bedroom apartments.

## Evidence List

- A-1 Application Materials
- B-1 Letter from Environmental Resolutions, Inc. dated August 31, 2022

## **FINDINGS OF FACT**

The property is improved with an existing three story motel with no parking or loading on site. The Applicant seeks Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c)(2) and(d)(5) to convert the three existing floors to a mix of studio, one-bedroom and two-bedroom apartments, and add a fourth floor with one and two-bedroom apartments.

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, who was qualified as an expert in the fields of professional architecture and professional planning. Mr. Dothe described the location of the site, existing conditions, development proposal and site layout. He testified that the redevelopment of the property is necessary to support the neighborhood and bring activity to Atlantic City. He noted that the property is surrounded by parking lots and was previously operated as a low-end motel/rooming house. The property was closed down by the police several times due to criminal activity and has been vacant for many years. He testified that the building is dilapidated and contributing to urban blight.



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Mr. Dothe described the location of the site, development proposal and site layout. He testified as to architectural features of the proposed improvements, floor-plans, operational features, access, parking, loading, landscaping and signage. He noted that the entire building will be protected by a fire suppression system. He further noted that there is adequate public parking in the vicinity to serve the proposed use.

Mr. Dothe testified that the site has a number of pre-existing non-conforming conditions that will not be exacerbated by the development proposal. He acknowledged on behalf of the Applicant that there are a number of encroachments into the public right-of-way and agreed to obtain all necessary licenses from the City of Atlantic City to authorize such encroachments.

Mr. Dothe testified that the Applicant seeks variances pursuant to N.J.S.A. 40:44D-70(c)(2) as follows:

- A side yard setback of 4' on the southern side and 2.5' northern side where a minimum of 20' is required. He noted that this is a pre-existing, non-conforming condition only exacerbated at the fourth floor addition.
- A rear yard setback of 5' 2.5" where a minimum of 20' is required.
- A total area of wall sign of 34.04 square feet where a maximum of 10 square feet is permitted. Here, he noted that the proposal represents a significant reduction in wall signs from 74.67 square feet.
- Zero loading spaces where a minimum of one loading space is required. Here, he noted that the lot is 100% developed and there is no opportunity to provide a loading space.
- A variance to not provide a landscaping plan. Here, Mr. Doth testified that the property is 100% developed, and agreed to coordinate with the Authority and the City to provide landscaping planters in the public right-of-way.

Mr. Dothe testified that the Applicant requires a variance pursuant to N.J.S.A. 40:55D-70(d)(5) for density to provide 208.62 dwelling unites/acre where a maximum of 50 dwelling units/acre. He opined that the proposed use is far less intense than the existing use. He noted that the use is permitted and will stabilize the neighborhood by bringing in activity, lighting and security.

Mr. Dothe 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 the establishment of appropriate population densities that will contribute to the well-being of persons, neighborhoods and communities (Purpose E) by repopulating the neighborhood and supporting existing uses.



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Mr. Dothe 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.

Finally, Mr. Dothe testified that the Applicant would comply with all of the requirements of the letter from Environmental Resolutions, Inc. dated August 31, 2022.

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 address all issues raised in the review letter and that he supports approval of the Application.

### CONCLUSIONS OF LAW

#### 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). A land use agency may waive the requirements of a site plan ordinance for modest changes, provided that the use is permitted and requirements of the site plan ordinance are met. See Garafolo v. Burlington Tp., 212 N.J. Super. At 464.

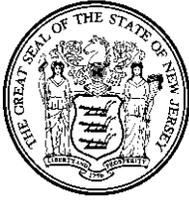
Here, based on the evidence and testimony, the Applicant has demonstrated that development plan generally conforms to the technical requirements of the Tourism District Land Development Rules and the grant of Preliminary and Final Site Plan is appropriate.

#### Variance 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. See 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 the Applicant seeks variances pursuant to N.J.S.A. 40:44D-70(c)(2) as follows:

- A side yard setback of 4' on the southern side and 2.5" northern side where a minimum of 20' is required.
- A rear yard setback of 5' 2.5" where a minimum of 20' is required.
- A total area of wall sign of 34.04 square feet where a maximum of 10 square feet is permitted.
- Zero loading spaces where a minimum of one loading space is required.
- A variance to not provide a landscaping plan.

The evidence and testimony demonstrate that the approval of the application for development would advance the purposes of the MLUL will be advanced by promoting the establishment of appropriate population densities that will contribute to the well-being of persons, neighborhoods and communities (Purpose E) by repopulating the neighborhood and supporting existing uses.

### 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 have any substantial detriment to the Tourism District Master Plan or Tourism District Land Development Rules.

### Variance Pursuant to N.J.S.A. 40:55D-70(d)(5)

### Positive Criteria

For variances requested pursuant to N.J.S.A. 40:55D-70(d)(5), an applicant must demonstrate through evidence and testimony that the site will accommodate problems associated with a proposed use with greater density. See Price v. Himeji, LLC, 214 N.J. 263, 296-297 (2013). Here, the evidence and testimony demonstrate that the proposed use is less intense than the existing motel use. Moreover, the proposed use will stabilize the neighborhood by bringing in more residents to support existing uses.

The evidence and testimony demonstrate that the approval of the application for development would advance the purposes of the MLUL will be advanced by promoting the establishment of appropriate population densities that will contribute to the well-being



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of persons, neighborhoods and communities (Purpose E) by repopulating the neighborhood and supporting existing uses. Therefore, the site is particularly suited for the proposed use.

### Negative Criteria

Here, the evidence and testimony demonstrate that the grant of the requested variance 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.

### **RECOMMENDATION**

For all of the foregoing reasons, the Hearing Officer recommends that the Application for Preliminary and Final Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c)(2) and (d)(5) 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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