



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 22- , ADOPTED 12/20/2022

**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 #2022-07-3251  
Starboard Industries NJ, LLC  
Preliminary and Final Site Plan Approval with variance pursuant to  
N.J.S.A. 40:55D-70(c)  
1705 to 1717 Atlantic Avenue, 1714 Arctic Avenue, and 19 North Martin  
Luther King Boulevard  
Block 298, Lots 1, 9, 12 & 14 and Block 290, Lots 2, 3 & 4  
Central Business District (CBD) Zoning District (subject to Green Growth  
Development Plan)

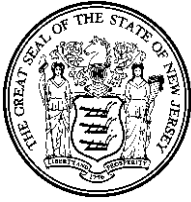
**DATE:** December 7, 2022

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### EXECUTIVE SUMMARY

On December 1, 2022, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The property consists of two sites separated by Martin Luther King Blvd. The Applicant, Starboard Industries NJ, LLC (the "Applicant"), proposes construction a 125,000 square foot Class I cannabis cultivation and Class 2 cannabis manufacturing facility employee parking lot (surface) consisting of 75 spaces. The Applicant seeks Preliminary and Final Site Plan Approval. During the course of the hearing, it was determined that the Applicant requires a variance pursuant to N.J.S.A. 40:55D-70(c) to permit the installation of a six foot front yard fence where only a two foot fence is permitted under the Authority's Tourism District Land Development Rules.

The Applicant will be required to obtain all necessary approvals from the State for the growth and manufacture of cannabis prior to commencement of operations, and be subject to compliance with all laws and regulations governing such operations.



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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 variance 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

Starboard Industries NJ, LLC  
Preliminary and Final Site Plan Approval with all necessary variances  
1705 to 1717 Atlantic Avenue, 1714 Arctic Avenue, and 19 North Martin Luther King  
Boulevard  
Block 298, Lots 1, 9, 12 & 14 and Block 290, Lots 2, 3 & 4  
Central Business District (CBD) Zoning District (subject to Green Zone Redevelopment  
Plan)

A hearing on the Application was conducted on December 1, 2022 in accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and P.L. 2011, c. 18.

The property consists of two generally unimproved lots dissected by Martin Luther King Boulevard (NW to SE). The Applicant proposes to construct and operate a Class I and Class II cannabis cultivation and manufacturing facility on Block 289 (Lots 1, 9, 12, 14) and to construct, for use by employees of that facility, an accessory surface parking lot consisting of 75 spaces on Block 290 (Lots 2, 3, 4). The Applicant previously sought and obtained a use variance to permit the operation of the Class I cannabis cultivation and Class II cannabis manufacturing facility at the subject property where such use are not permitted pursuant to the Authority's Tourism District Land Development Rules. The Applicant now seeks Preliminary and Final Site Plan Approval along with a variance pursuant to N.J.S.A. 40:55D-70(c)(2) to permit the construction of a six-foot ornamental metal fence on the front yard of the proposed surface parking lot on Block 290 where a maximum height of two feet is permitted under Authority's Tourism District Land Development Rules.

### Evidence List

- A-1 Application Materials
- A-2 Architectural Renderings
- A-3 Maps and Aerial Photographs



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B-1 Letter of Support from Mayor Small

## **FINDINGS OF FACT**

The portion of the subject property located on Block 289 is unimproved and located on the South side of Martin Luther King Boulevard. The portion of the subject property located on Block 290, located on the North side of Martin Luther King Boulevard, is covered with a degraded, surface parking lot. The Applicant proposes to construct a 125,000 square foot cultivation and manufacturing facility on that portion of the subject property located on Block 289 and to rehabilitate and improve upon the existing surface parking lot on that portion of the subject property located on Block 290. The Applicant seeks Preliminary and Final Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(c) to permit fencing of up to 6 feet on site on Block 290 where a maximum fence height of 24 inches is permitted in any required front yard under the Authority's Tourism District Land Development Rules, N.J.A.C. 19:66-7.7(a)(1).

The attorney for the Applicant, Jack Plackter, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. Jon Cohn, principal of the Applicant, was also present and presented testimony on behalf of the Applicant during the course of the hearing.

The Applicant presented the testimony of Marc Byers, a consulting expert for the Applicant who was qualified as an expert in odor mitigation of cannabis cultivation facilities. Mr. Byers testified that he is the president and founder of Byers Scientific, a world leader in cannabis odor mitigation. Mr. Byers explained the general approach of his company and its use of custom tailored solutions for each cannabis client. He explained that his company employed a combination of measures to mitigate the odors inherent in any cannabis cultivation facility including: dry vapor systems and carbon scrubbers.

Mr. Byers testified that he recommended the installation of a carbon scrubbing and monitoring system and stated that this system would prevent any odors from being detectable on the street level around the facility.

At the conclusion of Mr. Byer's testimony, both Mr. Plackter and Mr. Cohn confirmed the Applicant would employ either the odor mitigation system recommended by Mr. Byers or a substantially similar system.

The Applicant presented the testimony of Thomas Sykes, R.A., an architect licensed in the State of New Jersey, who was qualified as an expert in the field of professional architecture. Mr. Sykes described the location of the site, development proposal and site layout. He testified as to architectural features of the proposed improvements, floor-plans and operational features. He noted that the exterior of the building would include various



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installations to break up its extensive continuity, including: variably textured panels and full height murals. He noted that the facility would include a theater, museum, gift shop and information center that would be open to the public.

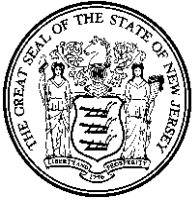
The Applicant next presented the testimony of Nathan Mosley, P.E., who was qualified as an expert in the field of traffic engineering. Mr. Mosley described the anticipated traffic impact of the proposed development with particular emphasis on Martin Luther King Boulevard. He testified that all traffic to and from the facility would occur at a single, self-contained entry and exit point along Martin Luther King Blvd. He addressed the Hearing Officer's concerns and Carolyn Feigin's (CRDA's Engineering and Planning Consultant) concerns about large delivery trucks obstructing traffic on Martin Luther King Boulevard when entering and exiting the site. He testified that deliveries and pickups by large trucks would be a rarity and that the Applicant would do its best to limit such deliveries and pickups to hours other than Atlantic City rush hours in order to minimize any impact to traffic on Martin Luther King Boulevard. The Applicant's representative, Mr. Cohn, confirmed that the such traffic mitigation steps would be taken.

The Hearing Officer inquired whether Mr. Mosley had addressed the CRDA's concerns raised at a prior hearing about employees crossing Martin Luther King Boulevard in the middle of the block instead of using crosswalks. Mr. Mosley explained that while some errant employees might attempt to cross mid-block, signage and the employee entrance location would encourage crossing at crosswalks.

The Applicant presented the testimony of John Barnhart, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. Mr. Barnhart described the location of the site, existing conditions, development proposal and site layout.

Mr. Barnhart also addressed traffic conditions on the property and explained that the majority of vehicles accessing the facility would be "sprinter" type vans that would enter and exit the facility without any impact on traffic. He further explained how trash would be collected from the facility.

He then testified that the proposed development required approval from the New Jersey Department of Environmental Protection ("NJDEP") under the Coastal Area Facilities Review Act ("CAFRA"). He explained that the Applicant had submitted the CAFRA application months ago and that recent comments from NJDEP would require the Applicant to address stormwater through the implementation of stormwater perimeter (an under-drained bio-orientation system) behind a low-rising landscaped garden wall. Mr. Barnhart testified that this installation would not only benefit the site in terms of stormwater runoff reduction, but would also improve the overall aesthetics of the streetscape. He explained that the final plan and CAFRA permit would be submitted as part of the Applicant's compliance submission.



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Mr. Barnhart testified that six foot black metal, ornamental fencing would be installed around in the front yard of the surface parking lot. The Hearing Officer noted that, while this installation was noted as a waiver in the application, it would in fact require a variance pursuant to N.J.S.A. 40:55D-70(c) because the Authority's Tourism District Land Development Rules, N.J.A.C. 19:66-7.7(a)(1), permits maximum 24 inch fence in any required front yard. Mr. Barnhart explained that it was impossible to comply with the regulation because it was in direct conflict with additional CRDA regulations that require a minimum four foot screening fence.

Finally, Mr. Barnhart testified that the development proposal generally conforms to the technical requirements of the Tourism District Land Development Rules and the grant of Preliminary and Final Site Plan is appropriate. Mr. Barnhart further testified that the Applicant would comply with all of the requirements of the CRDA's professionals.

There were no public comment.

### **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



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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 seeks a variance pursuant to N.J.S.A. 40:55D-70(c) to install a six foot fence in the front yard of the proposed parking lot on Block 290 where only a two foot fence is permitted under CRDA Tourism District Land Development Rules. The evidence and testimony demonstrate that the approval of the variance was appropriate because of a conflict in land use regulations and also because it would advance the purposes of the MLUL by promoting the public health, safety and welfare (Purpose A) by protecting employees and parked vehicles and (Purpose I) through the beautification of the exterior of a parking facility in a prominent location along Martin Luther King Blvd.

### 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.

### **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)(2) 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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