



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 23- , ADOPTED 2/21/2023

**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 #2022-12-3346  
CCAM Realty, LLC  
Preliminary and Final Major Site Plan Approval with a Variance Pursuant  
to N.J.S.A. 40:55D-70(d)(5)  
2805 Atlantic Avenue  
Block 271, Lot 20  
Central Business (CBD) Zoning District

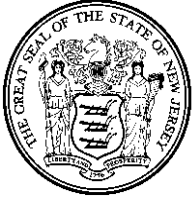
**DATE:** February 5, 2023

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### EXECUTIVE SUMMARY

On January 19, 2023, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, CCAM Realty, LLC (the "Applicant"), seeks Preliminary and Final Major Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(d)(5). The Applicant seeks to legalize a previously-constructed fourth story addition to a three-story structure. The building previously consisted three stories with two commercial units on the ground floor and one residential unit on each of the second and third floors. The fourth story addition was constructed without necessary approvals prior to being purchased by the current owner. A variance pursuant to N.J.S.A. 40:55D-70(c) for parking and a site plan waiver are subsumed into the "(d)(5)" variance.

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.



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## INTRODUCTION

### Application Information

CCAM Realty, LLC

Preliminary and Final Major Site Plan Approval with a Variance Pursuant to N.J.S.A.

40:55D-70(d)(5)

2805 Atlantic Avenue

Block 271, Lot 20

Central Business (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 Preliminary and Final Major Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(d)(5). The Applicant seeks to legalize a previously-constructed fourth story addition to a three-story structure. The building previously consisted three stories with two commercial units on the ground floor and one residential unit on each of the second and third floors. The fourth story addition was constructed without necessary approvals prior to being purchased by the current owner. A variance pursuant to N.J.S.A. 40:55D-70(c) for parking and a site plan waiver are subsumed into the "(d)(5)" variance.

### Evidence List

A-1 Application Materials

A-2 Survey

B-1 Letter from Robert L. Reid, AICP. P.P. dated January 11, 2023

## FINDINGS OF FACT

The Applicant seeks Preliminary and Final Major Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(d)(5). The Applicant seeks to legalize a previously-constructed fourth story addition to a three-story structure. The building previously consisted three stories with two commercial units on the ground floor and one residential unit on each of the second and third floors. The fourth story addition was constructed without necessary approvals prior to being purchased by the current owner. A variance pursuant to N.J.S.A. 40:55D-70(c) for parking and a site plan waiver are subsumed into the "(d)(5)" variance.



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The attorney for the Applicant, Kristopher J. Facenda, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

The Applicant presented the testimony of Jason Sciuлло, 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. He noted that the fourth story addition appears to have been constructed without necessary approvals approximately 15 years ago.

With respect to the requested variance pursuant to N.J.S.A. 40:55D-70(d)(5), Mr. Sciuлло testified that the Applicant seeks approval to permit a density of 52.3 units per acre where a density of 25 units per acre is permitted. Mr. Sciuлло testified that the site can accommodate and potential adverse land use impacts associated with the increased density. He noted that the exceedance is created by one two-bedroom residential unit and the condition has existed for approximately 15 years without any adverse land use impacts. He further testified that the density is consistent with other development in the neighborhood. With respect to the parking deficiency, Mr. Sciuлло noted that there is adequate public parking in the vicinity of the site to serve the parking needs of the property.

Mr. Sciuлло further opined that the that the grant of the variances would advance the purposes of the Municipal Land Use Law ("MLUL") by promoting the public health, safety, morals and general welfare (Purpose A) by legalizing a condition that has existed for approximately 15 years without any significant negative impacts.

Mr. Sciuлло opined that the grant of the variance 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.

Robert L. Reid, AICP, P.P was qualified as an expert in in the field of professional planning and provided testimony on behalf of the Authority. In response to questions raised by Mr. Reid, the Applicant explained lighting and trash removal. Mr. Reid testified that the Applicant had provided sufficient testimony to support approval of the Application.

### **CONCLUSIONS OF LAW**

#### **Preliminary and Final Major 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).



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Here, based on the evidence and testimony, the Applicant has demonstrated that development plan generally conforms to the site plan standards and technical requirements of the 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 Applicant requires a variance pursuant to N.J.S.A. 40:55D-70(d)(5) to provide approximately 52.3 units per acre where a maximum of 25 units per acre is permitted. The exceedance is created by one two-bedroom residential unit and the condition has existed for approximately 15 years without any adverse land use impacts. The density is consistent with other development in the neighborhood.

### 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 Major Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(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 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.

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