

**THE LAW OFFICES OF
KRISTOPHER J. FACENDA, LLC**

Counselor at Law
2408 New Road, Suite 2
Northfield, New Jersey 08225
(609) 385-8791
kris@facendalaw.com

April 12, 2023

(Via Hand Delivery by Client)

Casino Reinvestment Development Authority
Attn: Loreta Acevedo, Project Officer
15 S. Pennsylvania Avenue
Atlantic City, NJ 08401

**RE: Application of Minah Panah
Preliminary and Final Site Plan Approval and "C" Variance Relief
2322-2324 Arctic Avenue
Block 280 Lot 2**

Dear Ms. Acevedo,

Please be advised that I represent Minah Panah in connection with the above referenced Casino Reinvestment Development Authority application. In that regard, enclosed please find the following:

1. (11) CRDA Land Development Application;
2. (11) "C" Variance Checklist;
3. (11) Minor Site Plan Checklist;
4. (11) Courtyard Seating for Setaara Restaurant Plans by Craig F. Dothe Architect LLC dated March 16, 2023;
5. (11) Land Title Survey by Robert J. Catalano and Associates, P.A. dated April 5, 2023;
6. (11) Variance Justification Report by Kristopher J. Facenda, Esq.;
7. Photographs of the property (included on Dothe Plans);
8. Deeds of 2322 Arctic Avenue and 2324 Arctic Avenue (2);
9. Proof of Paid Taxes (to be provided);
10. 200' Property Owners List dated April 11, 2023;
11. Escrow Setup Information Page;
12. Application Fee in the amount of \$650.00; and
13. Escrow Fee in the amount of \$4,400.00.

Upon your receipt of this submission, it is my understanding that your office will perform its completeness review and schedule this matter for public hearing.

**THE LAW OFFICES OF
KRISTOPHER J. FACENDA, LLC**

April 12, 2023
Page 2

Thank you very much for your attention to this matter. In the event you should have any questions, comments or concerns, please do not hesitate to contact me.

Very truly yours,

THE LAW OFFICES OF KRISTOPHER J. FACENDA, LLC

By: *Kristopher J. Facenda*
KRISTOPHER J. FACENDA
kris@facendalaw.com

KJF/ml

Enclosures

Cc: Minah Panah *(via email)*
Robert Reid, AICP, NJPP *(via email)*
Craig F. Dothe, Architect *(via email)*

City of Atlantic City

LAND USE APPLICATION

City of Atlantic City: (Check where applicable)**AC Planning Division Jurisdiction**

City of Atlantic City Planning Board
1301 Bacharach Boulevard
City Hall-Suite 508
Atlantic City, NJ 08401
609-347-5404

CRDA: (Check where applicable)**NJ CRDA LURED Jurisdiction**

Casino Reinvestment Development Authority
15 S Pennsylvania Avenue
Atlantic City, NJ 08401
609-347-0500

To be completed by staff only.

Date Filed _____

Application No. _____

Application Fees: _____

Escrow Deposit _____

Scheduled for:

Review for Completeness _____ Hearing: _____

1. SUBJECT PROPERTY

Location: 2322-2324 Arctic Avenue

Tax Map	Page _____	Block 280	Lot(s) 2
	Page _____	Block _____	Lot(s) _____
	Page _____	Block _____	Lot(s) _____

Dimensions Frontage 50ft Depth 100ft Total Area 5,000 sq ft

Zoning District DA _____

2. APPLICANT

Name Minah Panah

Email c/o kris@facendalaw.com

Address c/o Kristopher J. Facenda, Esq. - 2408 New Road, Suite 2, Northfield, NJ 08225

Telephone Number c/o Kris Facenda, Esq. 609-385-8791

Applicant is a: Corporation ☐ Partnership ☐ Individual ☒**3. If Owner is other than the applicant, provide the following information on the Owner(s):**

Owner's Name Same as above

Email _____

Address _____

Telephone Number _____

Name	<u>N/A</u>	Address	_____	Interest	_____
Name	_____	Address	_____	Interest	_____
Name	_____	Address	_____	Interest	_____
Name	_____	Address	_____	Interest	_____
Name	_____	Address	_____	Interest	_____

5. PROPERTY INFORMATION:

Restrictions, covenants, easements, association by-laws, existing or proposed on the property:

Yes [attach copies] _____ No X _____ Proposed _____

Present use of the premises: Restaurant

Note: All deed restrictions, covenants, easements, association bylaws, existing and proposed must be submitted for review and must be written in easily understandable English in order to be approved.

6. Applicant's Attorney Kristopher J. Facenda, Esq.

Email kris@facendalaw.com

Address 2408 New Road Suite 2, Northfield, NJ 08225

Telephone Number 609-385-8791

FAX Number _____

7. Applicant's Engineer _____

Email _____

Address _____

Telephone Number _____

FAX Number _____

8. Applicant's Planning Consultant Craig Dothe, Architect

Email craig@cfidarchitect.com

Address 33 N. Brighton Avenue, Atlantic City, NJ 08401

Telephone Number 609-348-2236

FAX Number _____

9. Applicant's Traffic Engineer _____

Email _____

Address _____

Telephone Number _____

FAX Number _____

4. DISCLOSURE STATEMENT

Pursuant to N.J.S 40:55D-48.1 [Application by corporation or partnership; list of stockholders owning 10% of stock or 10% interest in partnership.] Disclosure of owners of organization and property subject to application. [A corporation or partnership applying to a governing body of a municipality]Any organization making an application for development under this act [for permission to subdivide a parcel of land into six or more lots, or applying for a variance to construct a multiple dwelling of 25 or more family units or for approval of a site to be used for commercial purposes] shall list the names and addresses of all members, stockholders or individual partners (collectively, "interest holders") [owning at least 10% of its stock of any class or at least 10% of the interest in the partnership], including any other organization holding at least a 10% ownership interest in the organization, and shall also identify the owner of the property subject to the application, including any organization holding at least a 10% ownership interest in the property [as the case may be]. In accordance with 40:55D-48.2 [Disclosure of 10% ownership interest of corporation or partnership which is 10% owner of applying corporation or partnership.] Listing of names and addresses of interest holders of applicant and owner organization. If [a corporation or partnership] an organization owns an interest equivalent to 10% or more of another organization the stock of a corporation, or 10% or greater interest in a partnership, subject to the disclosure requirements hereinabove described, [pursuant to section 1 of this act that organization shall list the names and addresses of its interest holders holding 10% or greater interest in the [partnership, as the case may be, and] organization. [This requirement shall be followed by every corporate stockholder or partner in a partnership, until the names and addresses of the stockholders and individual partners, exceeding the 10% ownership criterion established in this act, have been listed.] In accordance with recently added 40:55D-48.3 Disclosure of all officers and trustees of a non-profit organization. A non-profit organization filing an application for development under this act shall list the names and addresses of all officers and trustees of the non-profit organization. In accordance with 40:55D-48.4 [Failure to comply with act; disapproval of application.] Approval of application. a. No municipal planning board, board of adjustment or [municipal] governing body shall approve the application of any [corporation or partnership] organization or non-profit organization which does not comply with this act. Any approval not in compliance with this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court. b. Any party, including any member of the public, may institute a proceeding in lieu of prerogative writ in the Superior Court to challenge any PROPOSED AMENDMENTS TO MUNICIPAL LAND USE LAW approval granted by a municipal planning board, board of adjustment or governing body on the grounds that such action is void for the reasons stated in subsection a. of this section, and if the court shall find that the approval was not in compliance with this act, the court may declare the approval to be void. In accordance with 40:55D-48.5 [Concealing names of owners;] Organization or non-profit organization failing to disclose; fine. Any [corporation or partnership which conceals] organization or nonprofit organization failing to disclose in accordance with this act, [the names of stockholders owning 10% or more of its stock, or of individual partners owning a 10% or greater interest in the partnership, as the case may be,] shall be subject to a fine of \$1,000 to \$10,000, which shall be [recovered] recoverable in the name of the municipality in any court of record in the State in a summary manner pursuant to the "Penalty Enforcement Law" (N.J.S.A. 2A:58-1 et seq.).

10. List any other **Expert** who will submit a report or who will testify for the Applicant: [Attach additional sheets as may be necessary]

Name Craig Dothe, Architect

Field of Expertise Architecture

Email craig@cfidarchitect.com

Address 33 N. Brighton Avenue, Atlantic City, NJ 08401

Telephone Number 609-348-2236

FAX Number _____

11. APPLICATION REPRESENTS A REQUEST FOR THE FOLLOWING:

SUBDIVISION:

_____ Administrative Review of Minor Subdivision Plan

_____ Administrative Review of Major Subdivision Plan

_____ Minor Subdivision Approval

_____ Major Subdivision Approval [Preliminary]

_____ Major Subdivision Approval [Final]

Number of lots to be created _____ Number of proposed dwelling units _____
(including remainder lot) (if applicable)

SITE PLAN:

_____ Administrative Review of Minor Site Plan

_____ Administrative Review of Major Site Plan

_____ Minor Site Plan Approval

_____ Major Preliminary Site Plan Approval [Phases (if applicable) ____]

_____ Major Final Site Plan Approval [Phases (if applicable) ____]

☒ Amendment or Revision to an Approved Site Plan

Area to be disturbed (square feet) none

Total number of proposed dwelling units none

_____ Request for Waiver From Site Plan Review and Approval

Reason for request: _____

MISC:

_____ Administrative Review

_____ Appeal decision of an Administrative Officer [N.J.S. 40:55D-70a]

_____ Map or Ordinance Interpretation of Special Question [N.J.S. 40:55D-70b]

☒ Variance Relief (hardship) [N.J.S. 40:55D-70c(1)]

☒ Variance Relief (substantial benefit) [N.J.S. 40:55D-70c(2)]

_____ Variance Relief (use) [N.J.S. 40:55D-70d]

_____ Conditional Use Approval [N.J.S. 40:55D-67]

_____ Direct issuance of a permit for a structure in bed of a mapped street, public drainage way, or flood control basin [N.J.S. 40:55D-34]

_____ Direct issuance of a permit for a lot lacking street frontage [N.J.S. 40:55D-35]

12. Section(s) of Ordinance from which a **variance is requested and justification for said request:** [attach additional pages as needed] See the Courtyard Seating for Setaara Restaurant Plans by Craig F. Dothe Architect, LLC

13. **Waivers Requested** of Development Standards and/or Submission and justification for request.

Requirements: [attach additional pages as needed] N/A

14. Attach a copy of the Notice to appear in the official newspaper of the municipality and to be mailed to the owners of all real property, as shown on the current tax duplicate, located within the State and within 200 feet in all directions of the property, which is the subject of this application. The Notice must specify the sections of the Ordinance from which relief is sought, if applicable.

The publication and the service on the affected owners must be accomplished at least 10 days prior to the date scheduled by the Administrative Officer for the hearing. An affidavit of service on all property owners and a proof of publication must be filed before the application will be complete and the hearing can proceed.

To be supplied

15. **Explain in detail the exact nature of the application and the changes to be made at the premises, including the proposed use of the premises:**

[attach pages as needed] See attached Variance Justification Report

16. Is a public water line available? Yes

17. Is public sanitary sewer available? Yes

18. Does the application propose a well and septic system? No

19. Have any proposed new lots been reviewed with the Tax Assessor to determine appropriate lot and block numbers? N/A

20. Are any off-tract improvements required or proposed? No

21. Is the subdivision to be filed by Deed or Plat? N/A

22. What form of security does the applicant propose to provide as performance and maintenance guarantees? As required

23. Other approvals, which may be required and date plans submitted:

	Yes	No	Date Plans Submitted
Atlantic City Municipal Utilities Authority	_____	<u>✓</u>	_____
Atlantic County Health Department	_____	<u>✓</u>	_____
Atlantic County Planning Board	_____	<u>✓</u>	_____
Atlantic County Soil Conservation Dist.	_____	<u>✓</u>	_____
NJ Department of Environmental Protection	_____	<u>✓</u>	_____
Sewer Extension Permit	_____	<u>✓</u>	_____
Sanitary Sewer Connection Permit	_____	<u>✓</u>	_____
Stream Encroachment Permit	_____	<u>✓</u>	_____
Waterfront Development Permit	_____	<u>✓</u>	_____
Wetlands Permit	_____	<u>✓</u>	_____
Tidal Wetlands Permit	_____	<u>✓</u>	_____
Potable Water Construction Permit	_____	<u>✓</u>	_____
Other	_____	<u>✓</u>	_____
NJ Department of Transportation	_____	<u>✓</u>	_____
Public Service Electric & Gas Company	_____	<u>✓</u>	_____
_____	_____	_____	_____

24. Certification from the Tax Collector that all taxes due on the subject property have been paid. See Attached

25. List of Maps, Reports and other materials accompanying the application (attach additional pages as required for complete listing).

Quantity	Description of Item
<u>5</u>	<u>Courtyard Seating for Setaara Restaurant Plans by Craig F. Dothe Architect LLC</u>
<u>5</u>	<u>Survey by Robert J. Catalano and Associates, P.A.</u>
_____	_____

26. The Applicant hereby requests that copies of the reports of the professional staff reviewing the application be provided to the following of the applicant's professionals:

Specify which reports are requested for each of the applicant's professionals or whether all reports should be submitted to the professional listed.

Applicant's Professional Reports Requested All

Attorney Kristopher J. Facenda, Esq.

Engineer Craig F. Dothe (Architect)

CERTIFICATIONS

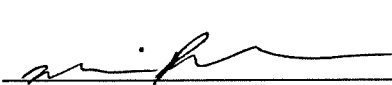
27. I Minah Panah certify that the foregoing statements and the materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the Corporation or that I am a general partner of the partnership applicant.

[If the applicant is a corporation, this must be signed by an authorized corporate officer. If the applicant is a partnership, this must be signed by a general partner.]

Sworn to and subscribed before me this

12th day of April, 20 23


NOTARY PUBLIC



SIGNATURE OF APPLICANT

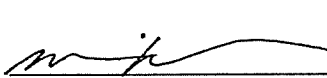
28. I certify that I am the Owner of the property which is the subject of this application, that I have authorized the applicant to make this application and that I agree to be bound by the application, the representations made and the decision in the same manner as if I were the applicant.

[If the owner is a corporation, this must be signed by an authorized corporate officer. If the owner is a partnership, this must be signed by a general partner.]

Sworn to and subscribed before me this

12th day of April, 20 23

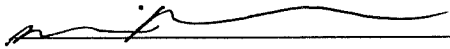

NOTARY PUBLIC

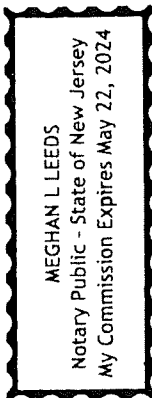
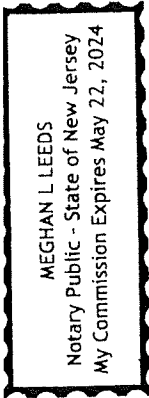

SIGNATURE OF OWNER

29. I understand that the sum of \$4,400.00 has been deposited in an escrow account (Builder's Trust Account). In accordance with Land Use Fees and Escrow Deposit Requirements, I further understand that the escrow account is established to cover the cost of professional services including engineering, planning, legal and other expenses associated with the review of submitted materials and the publication of the decision by the Board. Sums not utilized in the review process shall be returned. If additional sums are deemed necessary, I understand that I will be notified of the required additional amount and shall add that sum to the escrow account within fifteen (15) days.

April 12, 2023

Date


SIGNATURE OF APPLICANT





15 South Pennsylvania Avenue

Atlantic City, NJ 08401

NJ CRDA – City of Atlantic City – “c” Variance Checklist (Form #12)

REQUIRED APPLICATION ITEMS

Project Name: Setaara Courtyard Seating Application # _____

Prepared by: Kristopher J. Facenda, Esq. Title _____ date 04/12/2023

Note : Five (5) copies of plans and supporting documents are required as the initial submission. Ten (10) copies of plans are required for final sign-off and distribution.

Item #	Description	REQUIRED	SUBMITTED	WAIVER REQUESTED BY APPLICANT	Waiver Recommended by Reviewer
1	Completed Land Use Application Form	X	×		
2	Payment of Required Application and Escrow Fees (19:66-4.3)	X	×		
3	Name and address, email address of property owner and applicant.	X	×		
4	Proof of real estate taxes and other assessments paid.	X	TBS (to be supplied)		
5	Name, signature, license number, seal and address of each professional consultant, as applicable, involved in preparation of required documents.	X	×		
6	Color Photographs of site from four (4) different viewpoints.	X	included in plans		
7	Project narrative describing existing conditions, surrounding uses and the proposed development including list of “c” variance(s) and design waiver relief sought, if applicable.	X	×		
8	Title block denoting type of application, tax map sheet, project address, block and lot, and street location.	X	×		
9	Proof of ownership of property. (Report of title, copy of deed AS FILED with the Atlantic County Clerk's Office, affidavit or other documentation evidencing ownership.)	X	×		
10	Consent of property owner to applicant to development project.	X	×		
11	Zoning Schedule listing: Use, lot area, lot	X	×		

	width, lot depth, yard setbacks, floor area ratio, density, building coverage, building height and parking requirements, including existing and proposed with conformity status of each.				
12	Certified List of Property Owners within 200' Radius of the subject property by City of Atlantic City Tax assessor's Office.	X	×		
13	Public Notice in compliance with NJSA 40:55D-12.	X	TBS		
14	North arrow, scale and graphic scale.	X	×		
15	Signature blocks for Hearing Officer, Land Use Regulation Enforcement Officer, Engineer and Planner.	X	×		
16	Key map(s) at a legible scale showing location of property with existing structures, uses, streets, public right of ways, municipal boundaries, public parks, beaches, environmental sensitive areas, zoning district boundaries within 200 feet of the subject property. Property tax lots within 200 feet of the subject property taken from the most recent municipal tax map records.	X	×		
17	List of any existing or proposed deed restrictions, easements, covenants, Homeowners Association Agreements, etc. as recorded or in recordable form if proposed.	X	None known		
18	List of development stages or phases, if any.	X	N/A		
19	List of approvals or permits required by other regulatory authorities having jurisdiction and the status of same.	X	×		
20	Land Title Survey and topographic survey depicting existing conditions prepared by New Jersey licensed professional land surveyor. All elevations shall be based on NAVD 1988. The horizontal datum shall on the NJ State Plane Coordinate System (NAD 1983) Survey shall include all existing conditions, including buildings, structures, parking areas with parking space striping, driveways, walkways, fences, stoops, stairs, porches, easements, walls, patios, curbs, roof overhangs, overhead wires, bay windows, building setbacks of building on-site and adjoining the site, landscape areas, trees, utility poles, flag poles, directional and identification signs, spot elevations, contours in one foot intervals, FEMA Flood Zone, State Claim areas, utility poles, utilities such as water, sanitary sewer, storm sewer, electric, gas, cable, telephone, etc. Improvements in adjoining right-of-ways / roadways / streets including painted traffic markings.	X	×		

21	Site Plan depicting proposed buildings, structures, existing and proposed building setbacks, landscape areas, location of identification signage and directional signs, trash enclosure, building setback lines (dashed) and their dimensions from the property lines, parking area plan showing spaces, size and type, aisle width, curb cuts, drives, driveways, and all ingress and egress areas and dimensions.	X	×		
22	Preliminary architectural plan and elevations, and areas and type of each proposed use.	X	×		
23	Electronic copy of the full application including: application, photos, maps, reports, plans and other exhibits in pdf format. Maximum size of file(s) 4 MB.	X	×		



15 South Pennsylvania Avenue

Atlantic City, NJ 08401

NJ CRDA – City of Atlantic City - Minor Site Plan Checklist (Form # 5)

(An Application for Development that does not exceed one acre in size, maximum building gross floor area of 10,000 square feet, a maximum of three stories and no more than twenty-five parking spaces)

REQUIRED APPLICATION ITEMS

Project Name: Setaara Courtyard Seating Application # _____

Prepared by: Kristopher J. Facenda, Esq. Title _____ date 4/12/2023

Note : Five (5) copies of plans and supporting documents are required as the initial submission. Ten (10) copies of plans are required for final sign-off and distribution.

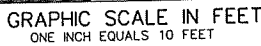
Item #	Description	REQUIRED	SUBMITTED	WAIVER REQUESTED BY APPLICANT	Waiver Recommended by Reviewer
1	Completed Land Use Application Form	X	×		
2	Payment of Required Application and Escrow Fees (19:66-3.4)	X	×		
3	Name and address, email address of property owner and applicant.	X	×		
4	Proof of real estate taxes and other assessments paid.	X	To be supplied		
5	Name, signature, license number, seal and address of each professional consultant, as applicable, involved in preparation of required documents.	X	×		
6	Project narrative describing existing conditions, surrounding uses and the proposed development including list of variance and design waiver relief sought, if any.	X	×		
7	Title block denoting type of application, tax map sheet, project address, block and lot, and street location.	X	×		
8	Proof of ownership of property. (Report of title, copy of deed AS FILED with the Atlantic County Clerk's Office, affidavit or other documentation evidencing ownership.)	X	×		
9	Consent of property owner to applicant to development project.	X	×		

10	FOR ADMINISTRATIVE REVIEW AND APPROVAL: Certification from Applicant's licensed professional that the development proposed meets all requirements and no variance or design waivers are requested. (19:66-4.6)	X	N/A		
11	Zoning Schedule listing: Use, lot area, lot width, lot depth, yard setbacks, floor area ratio, density, building coverage, building height and parking requirements, including existing and proposed with conformity status of each.	X	×		
12	Certified List of Property Owners within 200' Radius of the subject property by City of Atlantic City Tax assessor's Office.	X	×		
13	Public Notice in compliance with NJSA 40:55D-12.	X	To be supplied		
14	North arrow, scale and graphic scale.	X	×		
15	Signature blocks for Hearing Officer, Land Use Regulation Enforcement Officer, Engineer and Planner.	X	×		
16	Key map(s) at a legible scale showing location of property with existing structures, uses, streets, public right of ways, municipal boundaries, public parks, beaches, environmental sensitive areas, zoning district boundaries within 200 feet of the subject property. Property tax lots within 200 feet of the subject property taken from the most recent municipal tax map records.	X	×		
17	List of any existing or proposed deed restrictions, easements, covenants, Homeowners Association Agreements, etc. as recorded or in recordable form if proposed.	X	None known		
18	List of development stages or phases, if any.	X	N/A		
19	List of approvals or permits required by other regulatory authorities having jurisdiction and the status of same.	X	×		

20	Land Title Survey and topographic survey depicting existing conditions prepared by New Jersey licensed professional land surveyor. All elevations shall be based on NAVD 1988. The horizontal datum shall on the NJ State Plane Coordinate System (NAD 1983) Survey shall include all existing conditions, including buildings, structures, parking areas with parking space striping, driveways, walkways, site lighting/fixtures, fences, stoops, stairs, porches, easements, walls, patios, curbs, roof overhangs, overhead wires, bay windows, building setbacks of building on-site and adjoining the site, landscape areas, trees, utility poles, flag poles, directional and identification signs, spot elevations, contours in one foot intervals, FEMA Flood Zone, State Claim areas, utility poles, utilities such as water, sanitary sewer, storm sewer, electric, gas, cable, telephone, etc. Improvements in adjoining right-of-ways / roadways / streets including painted traffic markings.	X	×		
21	Stormwater management plans and drainage calculations. (19:66-7.5)	X		W	
22	Site Plan depicting proposed buildings, structures, existing and proposed building setbacks, landscape areas, lighting / fixtures, lighting intensity, location of identification signage and directional signs, trash enclosure, building setback lines (dashed) and their dimensions from the property lines, parking area plan showing spaces, size and type, aisle width, curb cuts, drives, driveways, and all ingress and egress areas and dimensions.	X	×		
23	Grading plan depicting direction of flow of surface run-off, spot elevations, contours within 1 foot intervals, stormwater management structures	X		W	
24	Landscaping Plan, details and plant schedule (19:66-7.6)	X		W	
25	Lighting plan and details (19:66-7.10)	X	×		
26	Soil Erosion and Sediment Control Plan. (Required for soil disturbance of 5,000 sq. ft. or greater)	X		W	

27	Plans of proposed utility layouts including sanitary sewer, water, gas, telephone, cable and electricity and showing proposed connections to existing or any proposed utility systems.	X	×		
28	Road and paving cross-sections and profiles.	X	N/A		
29	Solid and liquid waste management plan.	X		W	
30	Vehicular and pedestrian circulation patterns, Traffic control signs, directional signs and Sight triangles	X	N/A		
31	Preliminary architectural plan and elevations, and areas and type of each proposed use.	X	×		
32	Estimate of costs of on-site and off-site improvements [19:66-3.4 (b)]	X		W	
33	Electronic copy of the full application including: application, photos, maps, reports, plans and other exhibits in pdf format. Maximum size of file(s) 4 MB.	X	To be supplied		
34	Performance guarantee [19:66-3.4 (b)]	X	N/A		
35	Maintenance guarantee (19:66-16.3)	X	N/A		
36	Inspection Fees (19:66-16.1)	X	N/A		

(60 FT. WIDE)



I hereby certify that this survey is a true and accurate representation of the conditions found by actual field survey, made under my immediate supervision as of the latest date shown, unless noted otherwise.

3325 ATLANTIC AVENUE--ATLANTIC CITY, N.J.

LS18612

ROBERT J. CATALANO PROFESSIONAL LAND SURVEYOR NO 18612
PROFESSIONAL PLANNER NO 1600 PHONE 609-345-1897
catrsr@comcast.net crystal.calvez@comcast.net

VARIANCE JUSTIFICATION REPORT

CASINO REINVESTMENT DEVELOPMENT AUTHORITY

Applicant: Minah Panah
Property Address: 2322-2324 Artie Avenue
Block 280, Lot 2
Atlantic City, New Jersey
Nature of Application: Application to CRDA

This Application is brought by Minah Panah (the "Applicant"). The Applicant is the owner of the real property commonly known as 2322-2324 Artie Avenue and is described on the Atlantic City Tax Map as Block 280, Lot 2 (the "Property").

By way of background, on August 19, 2021, CRDA heard testimony and public comment in connection with a prior application pertaining to the subject property. In that prior application, the Applicant sought minor site plan approval with variances for improvements to the property containing two restaurant buildings in the City of Atlantic City. The Applicant sought and obtained approval for the addition of 726 square feet of courtyard seating on the first and second floor levels of both buildings and the addition of deck/rooftop deck seating areas. The Applicant received minor site plan approval together with "c" variances for front yard setback, rear yard setback, building coverage, impervious coverage, outdoor seating, parking and signage. The prior approval was memorialized by the Resolution attached hereto as **Exhibit "A"**.

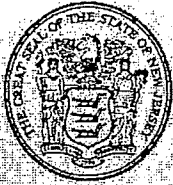
In the within application the Applicant is seeking amended preliminary and final minor site approval in order to construct, establish and maintain revised floor plans on the first floor, second floor and third floor of the existing structures. The revisions to the various floor plans are depicted on the plans submitted in connection with the within application. The revised floor plans include a new kitchen, new dining areas, the addition of storage, etc.

The within application, in addition to seeking preliminary and final amended site plan approval, also includes application for a "c" variance for additional building lot coverage. The previous CRDA approval approved a building lot coverage of 72%. The within application seeks to increase that building coverage to 90.2% which triggers a "c" variance. There are no other variances associated with the within application.

This application can be approved as it will satisfy both the positive and negative criteria. With respect to the positive criteria, the within application will provide an aesthetic enhancement and promote a desirable and visual environment through creative development techniques and good civil design and arrangement. It will also provide the establishment of appropriate population density and concentrations that will contribute to the well-being of persons, neighborhood, communities, religious and preservations of the environment.

With respect to the negative criteria, the Applicant will demonstrate that both prongs of the negative criteria can be satisfied as the within application will not be a substantial detriment to the public good and/or character of the neighborhood, nor will there be a substantial impairment to the zoning plan and zoning ordinance.

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Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT

A

EXHIBIT "A" TO RESOLUTION 21- , ADOPTED 9/21/2021

TO: Members of the Authority

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

COPY: Matthew J. Doherty, Executive Director

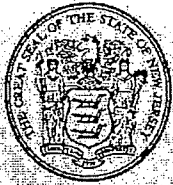
SUBJECT: Hearing Officer's Report and Recommendation
Application #2021-03-2942
Mina Panah
Minor Site Plan Approval with Variances Pursuant to N.J.S.A. 40:55D-70(c)
2322-2324 Arctic Avenue, Atlantic City
Block 280, Lot 2
Ducktown Arts (DA) Zoning District

DATE: September 7, 2021

EXECUTIVE SUMMARY

On August 19, 2021, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, Mina Panah (the "Applicant"), seeks Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for improvements already constructed to the property containing two restaurant buildings in the city of Atlantic City. The Applicant seeks approval for the addition of 726 square feet of courtyard seating on the first and second floor levels of both buildings and the additional of deck/roof-top deck seating areas. The Applicant also requires variances pursuant to N.J.S.A. 40:55D-70(c) for front yard, rear yard setback, building coverage, impervious coverage, outdoor seating, parking and signage.

The Applicant demonstrated by evidence and testimony that the development proposal generally conforms to the subdivision standards, 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

Mina Panah

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

2322-2324 Arctic Avenue, Atlantic City

Block 280, Lot 2

Ducktown Arts (DA) 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 Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for improvements already constructed to the property containing two restaurant buildings in the city of Atlantic City. The Applicant seeks approval for the addition of 726 square feet of courtyard seating on the first and second floor levels of both buildings and the additional of deck/roof-top deck seating areas. The Applicant also requires variances pursuant to N.J.S.A. 40:55D-70(c) for front yard, rear yard setback, building coverage, impervious coverage, outdoor seating, parking and signage.

Evidence List

A-1 Application Materials

A-2 Aerial Photograph

A-3 Newspaper Articles

A-4 Light Details

Rendering

B-1 Letter from Environmental Resolutions, Inc. dated July 21, 2021

FINDINGS OF FACT

The Applicant seeks Minor Site Plan Approval with variances pursuant to N.J.S.A. 40:55D-70(c) for improvements already constructed to the property containing two restaurant buildings in the city of Atlantic City. The Applicant seeks approval for the addition of 726 square feet of courtyard seating on the first and second floor levels of both buildings and the additional of deck/roof-top deck seating areas. The Applicant also requires variances pursuant to N.J.S.A. 40:55D-70(c) for front yard, rear yard setback, building coverage, impervious coverage, outdoor seating, parking and signage.



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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, R.A., P.P., who was qualified as an expert in the fields of professional architecture and professional planning. He described the location of the site, existing conditions and site layout. Mr. Dothe explained that the purpose of the application is to obtain approvals for improvements to the site that have already been completed. He noted that all but one of the residential units that had been on the second and third floors of the buildings have been vacated and the residential uses have been discontinued. Mr. Dothe explained the floor plans, site operation and architectural features in detail.

Mr. Dothe testified that the hours of operation will be from 4 pm to 9 pm Monday through Thursday and 4 pm to 10 PM on Friday and Saturday. He testified that there will be no live music on the premises and that trash collection will be privately contracted. He agreed to place lighting and security camera details on the site plan. Finally, he agreed to provide the Authority with a deed of consolidation for the two properties and all necessary license agreements with The City as a condition of any approval of the application.

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

- A front yard setback of 0' where a minimum of 5' is required. This is a preexisting non-conforming condition and the applicant agreed to obtain a license from the City for building, bay window and planter encroachment into the public right of way.
- A rear yard setback of 13' where a minimum of 20' is required. This is an expansion of a pre-existing non-conforming condition and requires a variance.
- Building coverage of 72% where a maximum building coverage of 30% is permitted.
- Impervious coverage of 100% where a maximum of 40% is permitted. This is a preexisting non-conforming condition.
- Maximum number of outdoor seating spaces.
- Zero on-site parking spaces where a minimum of 75 is required.
- Four wall signs with a total 75 square feet where a maximum of 10 square feet per face is permitted.

Mr. Dothe testified that several of the requested variances relate to preexisting non-conforming conditions. With respect to the variance for parking, he testified that there is adequate parking in the vicinity of the site and most patrons will be pedestrians visiting from nearby casinos. Finally, he noted that the variances for signage will create visual excitement and enliven the neighborhood. Overall, he concluded that the development



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proposal constitutes a better planning alternative to strict compliance with the requirements of the Tourism District Land Development Rules.

Mr. Dothe opined that the approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting the public health, safety morals and general welfare (Purpose A) and encouraging the establishment of appropriate population densities and concentrations that contribute to well-being of persons, neighborhoods, communities and regions through the development of an attractive and well-lit destination in the neighborhood and the establishment of a safe walking space and viable restaurant district in a neighborhood under stress.

With respect to the negative criteria, Mr. Dothe 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. Ms. Cornforth asked that the Applicant provide a building lighting plan as a condition of any approval.

CONCLUSIONS OF LAW

Minor 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 Martin Group v. Township of Randolph, 137 N.J. 216 (1994).

Here, based on the evidence and testimony, the Applicant has demonstrated that development plan generally conforms to the subdivision standards and technical requirements of the 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



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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 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 front yard setback of 0' where a minimum of 5' is required. This is a preexisting non-conforming condition and the applicant agreed to obtain a license from the City for building, bay window and planter encroachment into the public right of way.
- A rear yard setback of 13' where a minimum of 20' is required. This is an expansion of a pre-existing non-conforming condition and requires a variance.
- Building coverage of 72% where a maximum building coverage of 30% is permitted.
- Impervious coverage of 100% where a maximum of 40% is permitted. This is a preexisting non-conforming condition.
- Maximum number of outdoor seating spaces.
- Zero on-site parking spaces where a minimum of 75 is required.
- Four wall signs with a total 75 square feet where a maximum of 10 square feet per face is permitted.

The evidence and testimony demonstrate that several of the requested variances relate to preexisting non-conforming conditions. With respect to the variance for parking, the evidence and testimony demonstrate that there is adequate parking in the vicinity of the site and most patrons will be pedestrians visiting from nearby casinos. Finally, the evidence and testimony demonstrate that the variances for signage will create visual excitement and enliven the neighborhood. Overall, the development proposal constitutes a better planning alternative to strict compliance with the requirements of the Tourism District Land Development Rules.

The evidence and testimony demonstrate that the that the approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting the public health, safety morals and general welfare (Purpose A) and encouraging the establishment of appropriate population densities and concentrations that contribute to



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well-being of persons, neighborhoods, communities and regions through the development of an attractive and well-lit destination in the neighborhood and the establishment of a safe walking space and viable restaurant district in a neighborhood under stress.

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 Minor Site Plan Approval with variances 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 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.