



# Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

## EXHIBIT "A" TO RESOLUTION 23- , ADOPTED 10/17/2023

**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 #2023-01-3383  
The THC Shop, LLC  
Minor Site Plan Approval with Variance Pursuant to N.J.S.A. 40:55D-70(c)  
1740 Atlantic Avenue  
Block 156, Lot 1  
Central Business (CBD) Zoning District  
Green Zone Redevelopment Area

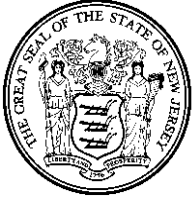
**DATE:** October 9, 2023

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### EXECUTIVE SUMMARY

On September 21, 2023, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, The THC Shop, LLC (the "Applicant"), seeks Minor Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(c) to permit the operation of a Class 5 dispensary for the sale of adult use recreational cannabis at the subject property. Other than façade improvements and signage, no physical changes to the site plan are proposed. A variance pursuant to N.J.S.A. 40:55D-70(c) is required for signage. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal.

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.



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## INTRODUCTION

### Application Information

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1740 Atlantic Avenue  
Block 156, Lot 1  
Central Business (CBD) Zoning District  
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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 a variance pursuant to N.J.S.A. 40:55D-70(c) to permit the operation of a Class 5 dispensary for the sale of adult use recreational cannabis at the subject property. Other than façade improvements and signage, no physical changes to the site plan are proposed. A variance pursuant to N.J.S.A. 40:55D-70(c) is required for signage. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal.

### Evidence List

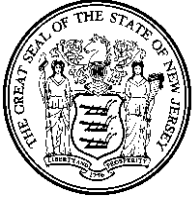
- A-1 Application Materials
- A-2 Security Camera Specifications
- B-1 Letter from Environmental Resolutions, Inc. dated September 14, 2023

## FINDINGS OF FACT

The Applicant seeks Minor Site Plan Approval with a variance pursuant to N.J.S.A. 40:55D-70(c) to permit the operation of a Class 5 dispensary for the sale of adult use recreational cannabis at the subject property. Other than façade improvements and signage, no physical changes to the site plan are proposed. A variance pursuant to N.J.S.A. 40:55D-70(c) is required for signage. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal.

The attorney for the Applicant, Jeffrey P. Barnes, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

The Applicant presented the testimony of William Abbott, who is a principal of the Applicant. Mr. Abbott He noted that he has worked in the cannabis business since 2010.



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He described security procedures, surveillance cameras, customer queuing, and operational features. He testified that there will be approximately 15 to 22 total employees, but not all will be working at the facility at the same time. He described the interior layout and noted that there will be 6 POS stations for customer transactions. Mr. Abbott testified that deliveries will be made between the hours of 8 am and 9 45 am. He noted that trash will be stored inside and placed at the curb on trash pick-up days. Mr. Abbott testified that the Applicant will provide security to manage crowds and queuing at the facility for at least one hour prior to the facility opening.

The Applicant presented the testimony of William McLees, AIA, an architect licensed in the State of New Jersey, who was qualified as an expert in the field of professional architecture. Mr. McLees 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, lighting and signage. He testified that any encroachments into the public right of way will require a license from the City as a condition of any approval. With respect to signage, Mr. McLees testified that certain aspects will be subject to review and approval of the Green Zone Architectural Review Board.

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. Mr. Sciuлло described the location of the site, existing conditions, development proposal, site layout, parking, loading, lighting and signage. He explained interior floor plans and site operations. He also testified that there are no changes proposed to the building footprint.

He testified that deliveries will be made by cargo van, and will take approximately 10-20 minutes. He indicated that the development proposal actually reduces parking demand for the site. With respect to loading, Mr. Sciuлло testified that loading will be accomplished via a dedicated loading zone along Atlantic Avenue. Any approval would be conditioned upon the Applicant confirming with the City that the loading space will remain and be available to the Applicant. As an alternative, Mr. Sciuлло testified that deliveries and trash may be handled through a door on Van Ness Place. On behalf of the Applicant, Mr. Sciuлло agreed to revise the plan to include a door along Van Ness Place for trash removal.

Mr. Sciuлло testified that the Applicant will agree to the following as a condition of any approval:

- Comply with all standards and requirements of the Green Zone Redevelopment Plan, including architectural standards.
- Provide security on site at least one hour prior to the daily opening to manage crowds.
- Have its security plan approved by the Atlantic City Police Department.
- Make all security cameras subject to monitoring by the Atlantic City Police Department.



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- Comply with all requirements of the Cannabis Regulatory Commission.

Mr. Sciullo testified that the property has several pre-existing, non-conforming conditions identified in the Environmental Resolutions, Inc letter dated September 14, 2023 that are not exacerbated or impacted by the development proposal.

Mr. Sciullo testified that the Applicant requests a variance pursuant to N.J.S.A. 40:55D-70(c) to permit eight signs where a maximum of two signs are permitted. He noted that eight signs are permitted under the Authority's Tourism District Land Development Rules, but not under the Green Zone Redevelopment Plan. A variance is required to accommodate existing signs and new signs. Mr. Sciullo that the property is unique in that it has frontage along two street, and the building contains multiple uses.

Mr. Sciullo testified that the that the approval of the application for development would advance the purposes of the Municipal Land Use Law (the "MLUL") by promoting the public health, safety and welfare (Purpose A) by providing wayfinding for pedestrians and motorists; providing sufficient space in a variety of locations for a variety of uses (Purpose G) by providing an opportunity the expansion of new uses; and promoting a desirable visual environment (Purpose I) through architectural upgrades to the existing building.

With respect to the negative criteria, Mr. Sciullo testified that the grant of the variance would not have any substantial detriment to the Tourism District Master Plan or Tourism District Land Development Rules.

Jeffrey Hanson, P.E., was qualified as an expert in the field of professional engineering and provided testimony on behalf of the Authority. Mr. Hanson asked the Applicant to coordinate with the City regarding tree grates along Atlantic Avenue. Mr. Hanson testified that he supports the approval of the Application.

### 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 Mantin 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 site plan standards and technical requirements of the Tourism District Land Development Rules.



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### 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 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).

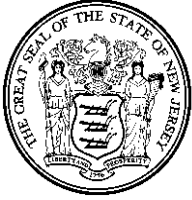
Here, the Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(c) to permit eight signs where a maximum of two signs are permitted. The evidence and testimony demonstrate that the approval of the application for development would advance the purposes of the MLUL by promoting the public health, safety and welfare (Purpose A) by providing wayfinding for pedestrians and motorists; providing sufficient space in a variety of locations for a variety of uses (Purpose G) by providing an opportunity the expansion of new uses; and promoting a desirable visual environment (Purpose I) through architectural upgrades to the existing building.

#### Negative Criteria

Relief under N.J.S.A. 40:55D-70(c)(1) and (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 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 a variance pursuant to N.J.S.A. 40:55D-70(c) to permit the operation of a Class 5 dispensary for the sale of adult use recreational cannabis at the



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subject property 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, 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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