



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

EXHIBIT "A" TO RESOLUTION 24- , ADOPTED 2/20/2024

TO: Members of the Authority

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

COPY: Maisha Y. Moore, Interim Executive Director

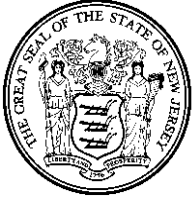
SUBJECT: Hearing Officer's Report and Recommendation
Application #2023-03-3401
PPP Dispensary, LLC
Minor Site Plan Approval with Variance Pursuant to N.J.S.A. 40:55D-70(c)
3001 Atlantic Avenue
Block 266, Lot 3
Central Business District (CBD) Zoning District
Green Zone Redevelopment Area

DATE: January 26, 2024

EXECUTIVE SUMMARY

On January 4, 2024, the Casino Reinvestment Development Authority (the "Authority") heard testimony and public comment on the above-subject application. The Applicant, PPP Dispensary, 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. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal. A variance pursuant to N.J.S.A. 40:55D-70(c) is required for parking.

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

PPP Dispensary, LLC
Minor Site Plan Approval with Variance Pursuant to N.J.S.A. 40:55D-70(c)
3001 Atlantic Avenue
Block 266, Lot 3
Central Business District (CBD) Zoning District
Green Zone Redevelopment Area

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. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal. A variance pursuant to N.J.S.A. 40:55D-70(c) is required for parking.

Evidence List

- A-1 Application Materials
- B-1 Letter from Environmental Resolutions, Inc. dated January 2, 2024

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. The property has several pre-existing, non-conforming conditions that are not exacerbated or impacted by the development proposal. A variance pursuant to N.J.S.A. 40:55D-70(c) is required for parking.

The attorney for the Applicant, Benjamin T. Branche, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant.

The Applicant presented the testimony of Ronald Murphy, who is a principal of the Applicant. Mr. Murphy testified regarding operational features. He explained customer cuing will take place in the vestibule. Mr. Murphy testified the facility will be open from



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10 am to 8 pm daily, or as permitted under City ordinances. He stated that there will be a total of 10 total full-time employees. He testified that the space in front of the overhead door will be marked as a loading zone. Deliveries will be made prior to opening.

Mr. Murphy described security features and noted that 2-3 armed security guards will be on premises during hours of operation. He testified that the security plan has been approved by the Cannabis Regulatory Commission.

Mr. Murphy noted all trash will be stored inside of the building and removed by a commercial hauler, and agreed to have the plan amended to depict trash storage. He testified that all signage will comply with the requirements of the Cannabis Regulatory Commission, the Green Zone Redevelopment Plan and the Green Zone Architectural Review Board. No variance relief is required for signage. In response to questioning from Authority staff, Mr. Murphy agreed to provide signage details, and stripe the parking lot.

Mr. Murphy 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.
- Comply with all requirements of the Cannabis Regulatory Commission.

The Applicant presented the testimony of Jason Sciallo, P.E., P.P., who was qualified as an expert in the fields of professional engineering and professional planning. Mr. Sciallo 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. Mr. Sciallo testified that loading will take place through the existing overhead door. He testified that the area in front of the door will be striped and signed "NO PARKING".

Mr. Sciallo testified that the property has several pre-existing, non-conforming conditions identified in the Environmental Resolutions, Inc letter dated January 2, 2024 that are not exacerbated or impacted by the development proposal. Mr. Sciallo testified that the Applicant requests a variance pursuant to N.J.S.A. 40:55D-70(c) for parking. Specifically, the Applicant requests a variance to permit 8 on-site parking spaces where a minimum of 13 are required.



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Mr. Sciullo noted that there are 9 existing parking spaces, and there is a grandfathered shortfall of 4 parking spaces. However, the Applicant proposes to reduce the number of parking spaces to 8 to accommodate an accessible parking space. Accordingly, a variance is required to reduce the number of parking spaces by 1. Mr. Sciullo testified that there is adequate public parking in the vicinity of the site.

Mr. Sciullo testified 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 an accessible parking space. 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.

David J. Benedetti, P.P., was qualified as an expert in the field of professional planning and provided testimony on behalf of the Authority. Mr. Benedetti requested that the Applicant replace 3 street trees along Atlantic Avenue, repair the sidewalk and driveway along Morris Avenue and update the lighting plan as a condition of any approval. Mr. Benedetti 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).

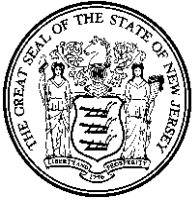
Here, based on the evidence and testimony, the Applicant has demonstrated that development plan generally conforms to the site plan standards and technical requirements of the Tourism District Land Development Rules.

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



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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 requests a variance pursuant to N.J.S.A. 40:55D-70(c) for parking. Specifically, the Applicant requests a variance to permit 8 on-site parking spaces where a minimum of 13 are required. 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 an accessible parking space.

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 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.