



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 #2024-01-3577
IMCMV Atlantic City, LLC
Amended Preliminary and Final Site Plan Approval with Variances
Pursuant to N.J.S.A. 40:55D-70(c)
1100 Boardwalk
Block 1, Lots 142 & 142.01
Beach (B) Zoning District

DATE: February 14, 2024

EXECUTIVE SUMMARY

On February 1, 2024, the Casino Reinvestment Development Authority (the “Authority”) heard testimony and public comment on the above-subject application. The Applicant, IMCMV, LLC (the “Applicant”), seeks Amended Preliminary and Final Site Plan Approval to permit the construction an approximately 600 square foot storage space and relocation of an existing roof sign at the existing Landshark Bar & Grill. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for parking and signage.

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

IMCMV Atlantic City, LLC
Amended Preliminary and Final Site Plan Approval with Variances Pursuant to N.J.S.A.
40:55D-70(c)
1100 Boardwalk
Block 1, Lots 142 & 142.01
Beach (B) 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 Amended Preliminary and Final Site Plan Approval to permit the construction an approximately 600 square foot storage space and relocation of an existing roof sign at the existing Landshark Bar & Grill. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for parking and signage.

Evidence List

- A-1 Application Materials
- B-1 Letter from ARH Associates dated January 26, 2024

FINDINGS OF FACT

The Applicant seeks Amended Preliminary and Final Site Plan Approval to permit the construction an approximately 600 square foot storage space and relocation of an existing roof sign at the existing Landshark Bar & Grill. Variances pursuant to N.J.S.A. 40:55D-70(c) are required for parking and signage.

The attorney for the Applicant, Nicholas Talvacchia, Esq., introduced the application generally and provided background regarding the specific relief sought by the Applicant. He noted that the purpose of the application was to provide additional storage to increase kitchen efficiency at the Landshark Bar & Grill.

The Applicant presented the testimony of Jon Barnhart, 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, site layout and the development proposal.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Mr. Barnhart testified that the Applicant proposes to add an approximately 600 square foot structure with two cold and one dry storage space. He explained that the existing roof-mounted sign will be obstructed by the structure, and therefore moved to a different location on the roof of the Landshark Bar & Grill. No new seating is proposed. Mr. Barnhart testified regarding roof drainage, landscaping and lighting. He confirmed the dimensions and location of the proposed storage structure, and that it will conform to all setback standards. He noted that a CAFRA Permit is required and the permit application is currently pending before the New Jersey Department of Environmental Protection. Mr. Barnhart testified that the Applicant would agree to comply with all of the comments in the letter from ARH Associates dated January 26, 2024.

Mr. Barnhart testified that the Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(c) for a parking shortfall of two parking spaces. He explained that the development proposal to add storage space does not increase parking demand, and the proposed replacement of existing retail space with kitchen space (which is not the subject of this application) will actually reduce parking demand. In addition, the Applicant seeks a variance to permit a roof-mounted sign where roof-mounted signs are not permitted. Mr. Barnhart testified that a variance was previously granted for the roof-mounted sign based on its aesthetic features and consistency with the architecture of the Landshark Bar & Grill structure, and that it is only being relocated because it will be obstructed by the proposed storage structure.

Mr. Barnhart testified 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 and welfare (Purpose A) by creating a better experience for the public; and by creating a desirable visual environment (Purpose I) by using creative design techniques to create a storage structure that is subtle, tasteful and hides the trash enclosure. In addition, he opined that the roof-mounted sign is attractive and welcoming. With respect to the negative criteria, Mr. Barnhart testified that the grant of the variances would not have any substantial detriment to the Tourism District Master Plan or Tourism District Land Development Rules.

Christine Cofone, P.P., was qualified as an expert in professional planning and provided testimony on behalf of the Authority. Ms. Cofone testified that the grant of the requested variances is justified and that she supports approval of the Application.

Christopher Morris, P.E., was qualified as an expert in professional engineering and provided testimony on behalf of the Authority. Mr. Morris testified that he supports approval of the Application.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

CONCLUSIONS OF LAW

Amended Preliminary and Final 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 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)(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)(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) for a parking shortfall of two parking spaces. In addition, the Applicant seeks a variance to permit a roof-mounted sign where roof-mounted signs are not permitted. The approval of the application for development would advance the purposes of the Municipal Land Use Law by promoting the public health, safety and welfare (Purpose A) by creating a better experience for the public; and by creating a desirable visual environment (Purpose I) by using creative design techniques to create a storage structure that is subtle, tasteful and hides the trash enclosure.

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



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

impairing the intent and purpose of the Tourism Master Plan and the Tourism District Land Development Rules.

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 Amended Preliminary and Final 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.

4858-1899-6389, v. 1