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March 12, 2018

Gregory Mooers, President
Mooers Enterprises, LLC
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

SUBJECT: Application: Variance – VAR-18-000460
Applicant: Gregory Mooers, Mooers Enterprises, LLC
Owner: The Easley Corporation
Request Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-126 Minimum Yards and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Front Yard Setbacks)
Tax Map Key: 6-5-003:030

The Planning Director certifies the **approval** of Variance No. 18-000460, subject to variance conditions. The variance will allow two existing price signs on the subject property to remain in their current locations, six feet from the property line, along Māmalahoa Highway and Lindsey Road, both of which are within the required 15-foot front yard setback and the 10-foot open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-126, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property is a 0.548-acre (23,870 square feet) parcel located at the northwest corner of the intersection of Lindsey Road and Māmalahoa Highway in Waimea, South Kohala. The subject property's street address is 65-1200 Māmalahoa Highway.
2. **Zoning.** Village Commercial – 7,500 square feet (CV-7.5).
3. **State Land Use.** Urban.
4. **Required Setback.** 15-foot front and none for sides. Section 25-4-40, General requirements for yards and open space: (a) On every building site, yards of the minimum width or depth as specified for the established zoning district shall be maintained open and unobstructed from the ground up, except as specified in sections 25-4-40 through 25-4-47.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on January 12, 2018, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and

prepared by Kendall N. H. Hee, Licensed Professional Land Surveyor, has been modified by the applicant to denote the location of the two price signs within the 15-foot front yard setback along Lindsey Road and Māmalahoa Highway. (See **application site map – Exhibit E**)

The site plan shows that the two price signs within the 15-foot front yard setback along Lindsey Road and Māmalahoa Highway. Both signs are indicated to be 6-feet from the property line from both respective roads.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that the following building permits were issued for the building on property: 37588 (11/3/67), 63384 (1/27/76), 890666 (4/7/89), 936153 (11/12/93) and B2006-2985H (11/17/06). There are no records regarding sign permits issued for the business on property.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated February 8, 2018: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. Department of Public Works – Building Division notice dated January 24, 2018: "This is to inform you that our records on file, relative to the status of the subject, discloses that: The following violation(s) still outstanding: Sign; Others: Fences & Accessory Structures, Projections into Building Setbacks; When the current signs were re-branded from Chevron to Shell, no sign permits were applied for as required per Sign Code Section 3-13 Permits required for the Ground signs and the Marquee signs, thus these signs are in violation. Also per Section 3-6 (b)(3) only one ground sign shall be permitted per lot, even if the lot is occupied by multiple businesses. There are currently two ground signs one each on Lindsey Road and Māmalahoa Highway. Thus one appears to be in violation of the Sign Code, if no prior agreement was made with the County of Hawai'i."
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on February 6, 2018 and February 20, 2018, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on February 19, 2018.
9. **Comments from Surrounding Property Owners or Public.** Written comments were received February 20, 2018 (COR-18-116842) from Dwight Manley, in support of the variance application.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

1. *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.*

The variance application meets criteria for the following reasons:

The applicant provided documentation and plans that provide a basis for the applicant's statement that the County's acquisition of the roadway frontages in 1996 to effectuate the improvements to the Lindsey Road Māmalahoa Highway intersection created the need for this variance application. According to the application the signs were originally located the proper distance from the property lines. During the intersection improvements the sign on Māmalahoa Highway was not relocated however the County widened the roadway and the resulting new property line/property boundary was then identified to be 6 feet from the price sign. The price sign on Lindsey Road was relocated by the County during the intersection improvements to 6 feet from the property line/property boundary.

Documentation submitted by the applicant shows that at the time of the intersection improvements the County assumed responsibilities for relocating certain improvements on the subject property including planters, landscaping, the price sign on Lindsey Road and the water and air dispenser. Documentation also shows that the County was aware of the proposed and actual location of the price signs in relation to the revised property lines/property boundaries from the submitted copies of the construction plans for the intersection improvements.

The above special and unusual circumstances exist to a degree which obviously interferes with the best use or manner of development of the property.

2. There are no other reasonable alternatives that would resolve the difficulty.

The variance application meets criteria for the following reasons:

The applicant states that the relocation of the signs to locations outside of the setback area would create a financial burden as it would require the removal of the existing signs and supporting poles and would also create a loss of business opportunity as the relocation of one sign would be in a fueling lane and the other would be in the travel way creating an on-site travel hazard.

Another option would be to replace the existing signs with ground signs that are less than 6 feet in height. The applicant states that the ground signs would not be visible above vehicular traffic and will result in loss of business.

The applicant further states that the County was aware of this alternatives at the time of the intersection improvements but allowed the signs to be remain in place or be relocated in the form as exists.

3. The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The variance application meets criteria for the following reasons:

The CV district provides for a broad range of commercial and light industrial uses for populations in the rural areas. The existing service station has been operating for nearly 50 years and is consistent with the zoning districts purpose and applicability, the use is permitted under Section 25-5-122 (a) (5) Automobile Service Station. The price signs have also been located in their existing locations for the past 19 years.

This variance would be consistent with the purpose of the General Plan and the pattern of development as indicated by the LUPAG maps. The LUPAG designation for this area is medium density urban.

The applicant points out that leaving the price signs where they have been located for 19 years will not be materially detrimental to the public welfare or cause substantial, adverse impact to the area's character or to adjoining properties. The applicant, owner, or leaseholder know of no regarding the location of these signs.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code, and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's site map, the two existing price signs on the subject property in their current locations, six feet from the property line, along Māmalahoa Highway and Lindsey Road, will not meet the minimum front yard setback requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance request is **approved** subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Should the structures on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. Future or new building improvements and permitted uses shall be subject to State Law and County Ordinances and Regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-18-000460 null and void.

Sincerely,



MICHAEL YEE
Planning Director

March 12, 2018

Gregory Mooers/The Easley Corporation

Page 5 of 5

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cc: West Hawaii Office