

Exhibit G

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September 28, 2023

Fionna Jensen
Associate Planner
Monterey County Housing & Community
Development-Planning
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901-4527

Re: Corral de Tierra Fueling Station Project, County File No. PLN220348

Dear Ms. Jensen:

We write on behalf of our client, the Phelps Family-OMNI Resources, LLC (“Phelps Family”), in support of its Application to the County of Monterey (the “County”) for the Corral de Tierra Fueling Station Project (the “Project”). The Project consists of a replacement service station and convenience market of a similar size, nature, and configuration as a prior service station facility on the Project site. We write to provide written justification for a Variance to allow reduced side and rear yard setbacks in order to make the Project physically and economically feasible.

1. Background and Project Description

The Project is located on an approximately 0.7 acre site at the southeast corner of Corral de Tierra Road and State Route (“SR”) 68 (the “Property”). The Property has long been planned and zoned for commercial uses. The Property’s commercial land use designation dates back nearly 50 years and is reflected in both the 1982 County General Plan and the 2010 County General Plan.

The Project seeks to build a replacement service station and convenience market on the Property of a similar size, nature, and configuration as a prior service station facility on the site. The Phelps Family, the Property owner, is also the owner of the adjacent property which includes the entitled site of the Corral de Tierra Neighborhood Retail Village (“Retail Village”).

The Property was purchased by Phelps Family’s predecessor in 1974. At that time, the Property had an operational service station and was leased to a third party operator. The service station was authorized pursuant to a Use Permit granted by the County Zoning Administrator on November 25, 1966. (County File No. ZA-74.)¹

¹ A copy of this approval is attached hereto as Exhibit A.

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In 1994, the County Zoning Administrator granted a Combined Development Permit to allow for a real estate office and convenience market on the Property. (County File No. ZA94005.)² One of the approvals obtained was for a front yard setback Variance. In granting the Variance, the Zoning Administrator found that because of special circumstances applicable to the Property, namely 100-foot setbacks on two sides, the strict application of the ordinance would deprive the Property of privileges enjoyed by other properties in the vicinity and under identical zone classification. The Zoning Administrator also found that the approval of the Variance did not constitute the granting of special privileges “because similar variances have been approved on similarly constrained lots.” (County File No. ZA-94005.)

Subsequently, the-then service station operator was notified of the need to remediate contaminated soils and replace the service station’s underground storage tanks. The service station pumps and tanks were removed sometime in 2002 when remediation work commenced. The service station was closed while the Property was remediated, but the real estate office remained open. Notwithstanding the temporary closure of the service station, Phelps made clear in a May 6, 2002 letter from its attorney to the County that it was not abandoning the service station use while it remediated the site and expressed its intent to construct a new service station on the Property as soon as permits and approvals could be obtained from the County.³

On February 7, 2012, the County Board of Supervisors adopted Resolution No. 12-040 approving the Retail Village. At build-out, the Retail Village will consist of 99,970 square feet of mixed commercial uses spread across multiple structures. To ensure that the new service station would be architecturally compatible with the new Retail Village, the Retail Village approval was conditioned on removal of the old service station building and improvements. Other conditions required shared access between the Retail Village and the service station Property so as to facilitate development of both parcels. Per County request, the Phelps Family even presented plans for the construction of an approximately 3,500 square foot replacement service station and convenience market as part of the Retail Village approval process and committed to applying for and building it.

Both a Use Permit and Variance were previously granted by the County for the prior service station and convenience market building located on the Property. (County File Nos. ZA-74 UP; ZA-94005.) Those approvals were expressly retained/reserved by the Phelps Family in connection with the required site remediation/demolition work and run with the land. The Project proposes to construct a replacement service station and convenience market to replace the ones that formerly existed on the Property. The proposal consists of an approximately 3,000 square foot convenience market in approximately the same location as the former structure and six dual-sided pumps (12 fueling stations) to replace the six dual-sided pumps (12 fueling stations) that previously existed on the site.

² A copy of this approval is attached hereto as Exhibit B.

³ A copy of the May 6, 2002 letter from Brian Finegan to Luis Osorio is attached hereto as Exhibit C.

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With this background in mind, we turn to a description of the planning and zoning designations applicable to the Property as well as the myriad reasons justifying the Variance from the side and rear yard setbacks.

2. Planning & Zoning

The Property has a General Plan land use designation of Commercial. (General Plan, Figure LU10: Toro Area Plan-Land Use Map.) Commercial sites are to serve the projected population, to accommodate a broad range of uses, and to be developed in a compact manner. (General Plan, Policies LU-4.2, LU-4.3, and LU-4.4.) Specifically, the Light Commercial designation “accommodates and allows a broad range of light commercial uses such as stores, shops, restaurants, service stations and general office uses suitable for the convenience of nearby residential areas.” (General Plan, p. LU-18.)

Portions of Corral de Tierra Road and SR 68 abutting the Property are designated critical viewshed. (General Plan, Figure 16: Toro Area Scenic Highway Corridors and Visual Sensitivity Map.) As to such lands, Toro Area Plan Policy T-3.3 provides as follows:

Except for driveways, pedestrian walkways, and paths, a 100-foot building setback shall be required on all lots adjacent to these routes to provide open space and landscape buffers.⁴ This setback may be reduced for existing lots of record that have no developable area outside the setback and to accommodate additions to existing structures that become non-conforming due to this policy. New development shall dedicate open space easements over setback areas established by this policy.

The Project is a replacement service station and convenience market of a similar size, nature, and configuration as a service station and convenience market that was formerly located on the Property. Project improvements (e.g., fuel pumps, fuel canopy, and convenience market building) will be located in the same approximate location as the prior improvements on the Property. But unlike the old convenience market, the new convenience market building will be located entirely outside of the 100-foot setbacks from SR 68 and Corral de Tierra Road. The County has previously recognized that Policy T-3.3 places emphasis on project design as a means to determine whether a project is acceptable in a visually sensitive area.⁵ Here, the Project design is of a high quality befitting its semi-rural setting and will complement the aesthetics of the adjoining Retail Village. Further, as explained more fully below, the Property is an existing lot of record and has no economically viable developable area outside the two 100-foot setback areas.

⁴ “Building” is defined by the County Zoning Code as “any structure built entirely of frame or a more lasting type of construction, having a roof supported by columns or by walls and intended for the shelter, housing, or enclosure of any person, animal, or chattel, but not including any tent or trailer.” (Monterey County Zoning Code [“MCZC”] § 21.06.130.)

⁵ (See, e.g., Staff Report to County Planning Commission Regarding Retail Village Project, December 8, 2010, Appendix B, p. 8.)

The Property is zoned Light Commercial with Design Review and Building Site Overlay Districts (LC-D-B-8). The purpose of the LC zoning designation is to “accommodate and maintain a broad range of light commercial uses suitable for the convenience of nearby residential areas.” (MCZC § 21.18.010.) A service station use is allowed in the LC zone with approval of a Conditional Use Permit. (MCZC § 21.18.060.J.) A convenience market use is likewise allowed with approval of an Administrative Permit. (MCZC § 21.18.050.K.)

The Property is subject to a 30-foot front setback, a 20-foot rear setback and a side setback of 10 percent of the average lot width. (MCZC § 21.42.030.) The Property width varies between 160 and 180 feet, depending on whether Corral de Tierra or SR 68 is used as the frontage. As such, a side setback of 16 to 18 feet appears to be required. The Project complies with the front yard setbacks, but requires a Variance from the side and rear yard setbacks. Justification for the Variance is provided below.

3. Variance Justification

Modifications to the setback regulations of the MCZC may be considered by a Variance. (MCZC § 21.72.020.) A Variance can be granted based on the following findings: (1) that because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the County Zoning Code is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification, (2) that the Variance not constitute a grant of special privileges inconsistent with the limitations upon other property in the vicinity and zone in which such property is located, and (3) a Variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regularly governing the parcel of property. (MCZC § 21.72.040.)

First, because of special circumstances, strict application of the MCZC setbacks would deprive the Property of privileges enjoyed by other properties in the vicinity and under identical zone classification. Portions of Corral de Tierra Road and SR 68 along the Property are designated critical viewshed. (General Plan, Figure 16.) Toro Area Plan Policy T-3.3 calls for buildings in such areas to be setback 100 feet from these roadways. Unlike the old convenience market, the new convenience market building will be located entirely outside of the 100-foot setbacks from SR 68 and Corral de Tierra Road. However, such placement necessitates a Variance from the rear and side yard setbacks. It would be impossible to locate the building outside the 100-foot front setbacks desired by the Toro Area Plan and also comply with the side and rear yard setbacks imposed by the MCZC. In previously granting a Variance for the former real estate office/convenience market building, the Zoning Administrator found that special circumstances existed on the site, citing the 100-foot viewshed setbacks on two sides. (County File No. ZA-94005.)

Absent Variance relief, the site would have no economically viable developable area and the Phelps Family would be deprived of all economically viable use of the Property. The Property is 29,646 square feet and the zoning allows approximately 14,823 square feet of building site coverage on the site. (MCZC § 21.81.070.) Yet, application of the planning setbacks alone would

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only leave a building site area of 4,025 square feet. As such, the combined planning and zoning setbacks encumber more than 86 percent of the Property and do not leave enough developable land for a commercially viable development.

Second, the Variance would not constitute a grant of special privileges inconsistent with the limitations on other property in the vicinity and zone in which such property is situated. The previous service station and convenience market/real estate office were situated in a similar location on the Property. Moreover, the County previously approved a Variance for setbacks on the Property in 1994, which approval runs with land. In approving that Variance, the Zoning Administrator found that it would not constitute the granting of special privileges because “similar variances have been approved on similarly constrained lots.” (County File No. ZA-94005.) Of the comparably sized properties and uses in the LC zone, the nearby Flowers & Gas and Toro Place Café commercial developments appears to be situated in required setback areas. A list of other commercial developments located nearby is attached hereto as Exhibit D. As such, a Variance from setback requirements for the Project will not constitute a grant of special privileges.

Finally, the uses—a service station and convenience market—are expressly authorized by the LC zoning district subject to securing the appropriate permits. These exact uses previously existed on the Property. Moreover, the Project design is architecturally compatible with the Retail Village as well as the semi-rural setting of the Toro Area. The Project will reduce vehicular trips and add necessary services and convenience shopping to the area consistent with the Property’s long-standing commercial zoning.

Thank you for your consideration of our client’s views on this matter. Please do not hesitate to contact me or Eric Phelps at (831) 214-5362 with any questions regarding this correspondence.

Very truly yours,

RUTAN & TUCKER, LLP


Matthew D. Francois

cc: Eric Phelps
Elisa Cavaliere

EXHIBIT A

COUNTY OF MONTEREY, STATE OF CALIFORNIA

NO. ZA-74

In the matter of the application of
Humble Oil & Refining Co.

FINDINGS AND DECISION

for a Use Permit in accordance with Section 32 of Ordinance No. 911, the Zoning Ordinance of the County of Monterey, to allow: a service station on portion of North-east portion of Lot A2, Map of El Toro Rancho, Toro area,

came on regularly for hearing before the Zoning Administrator on November 25, 1966.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

FOUND

That the establishment, maintenance, or operation of the use or building applied for will not under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

DECISION

WHEREFORE; it is the decision of said Zoning Administrator that said application for a Use Permit be granted as shown on the attached sketch, and subject to the following conditions:

1. That no repairs other than minor repairs shall be made on the premises and that all such minor repairs and all automobile services such as lubrication shall be done in an enclosed building.
2. No product shall be sold and no service shall be rendered other than those products and services pertaining directly to the service of automobiles with petroleum products and other accessories such as tires and batteries; that the sale or rental of equipment such as lawn mowers, concrete mixers, automobiles, trucks, trailers, garden equipment or spare parts not installed on the premises, and the conduct of any other commercial enterprise not directly related to the necessary operation of an automobile service station shall be prohibited; that no special service such as upholstery or convertible top replacement shall be conducted on the premises.
3. That no signs, beacons, pennants, flags or other attention getting devices shall be permitted.
4. That the landscaping plan be approved by the Director of Planning.
5. That all landscaped areas shall be continuously maintained in a litter-free, weed-free condition and all plant material shall be continuously maintained in a healthy, growing condition.

6. That a water supply be developed subject to the approval of the Health Officer.
7. That the sewage disposal system be located no closer than 100 feet to the water supply.
8. Provide the Health Officer with the results of a soil boring to (at least) 15 feet depth in the area of the proposed sewage disposal system.
9. Construct standard curb and gutter and paveout along entire frontages.
10. First drive on Corral de Tierra Road to be 100' from Highway 68 property line unless center divider constructed on Corral de Tierra Road for 100' by applicant.

PASSED AND ADOPTED this 25th day of November, 1966.

ROBERT SLIMMON, JR.
ZONING ADMINISTRATOR, COUNTY OF MONTEREY

Copy of this decision was mailed to the applicant on November 28, 1966.

FILE COPY
DO NOT REMOVE

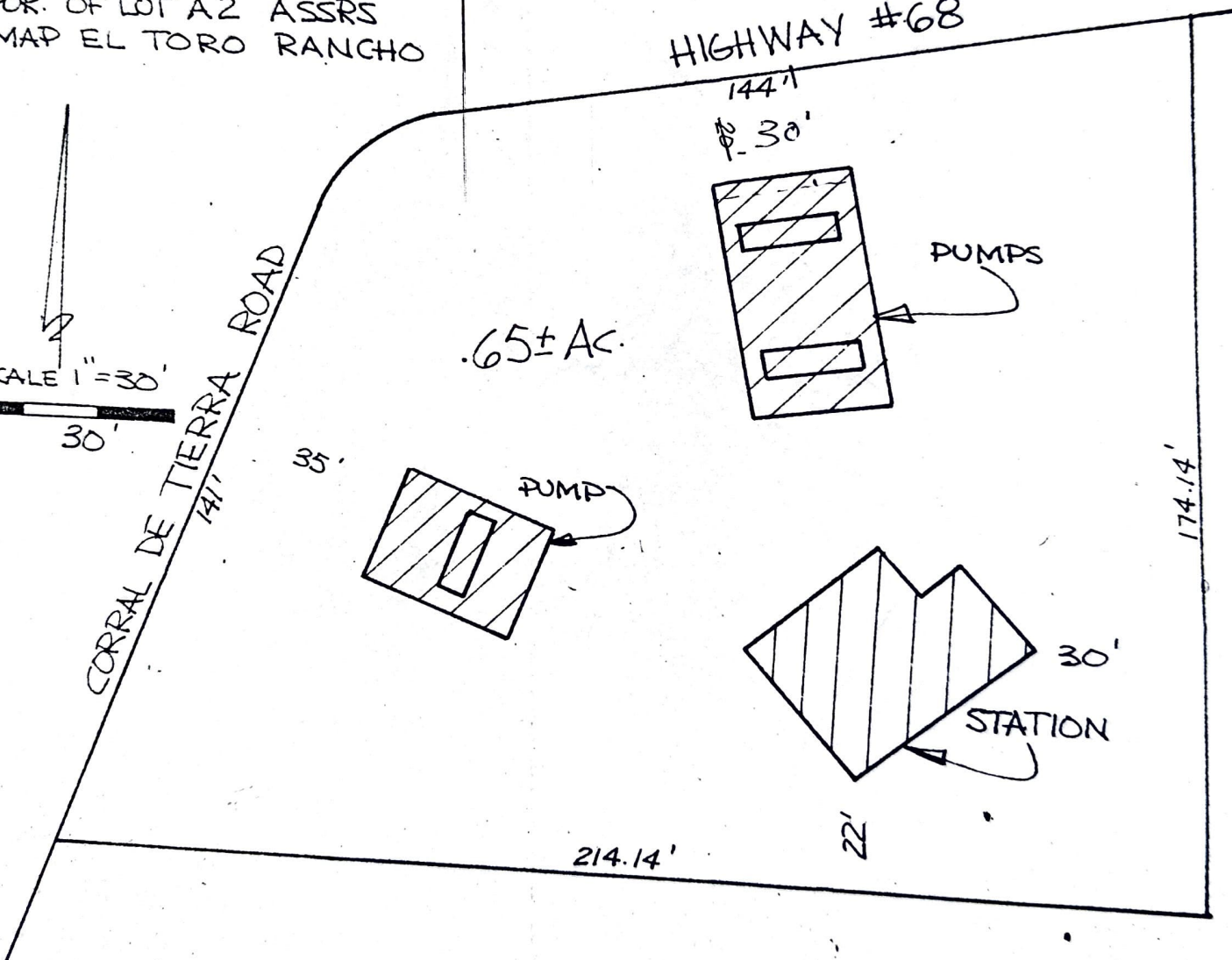
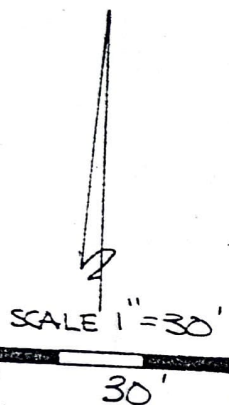
USE PERMIT

SERVICE STATION

(H-I-D-P)

LOCATION
POR. OF LOT A2 ASSRS
MAP EL TORO RANCHO

HIGHWAY #68



~ HUMBLE OIL CO. ~

I-1023
Humble
Realtor Viol.

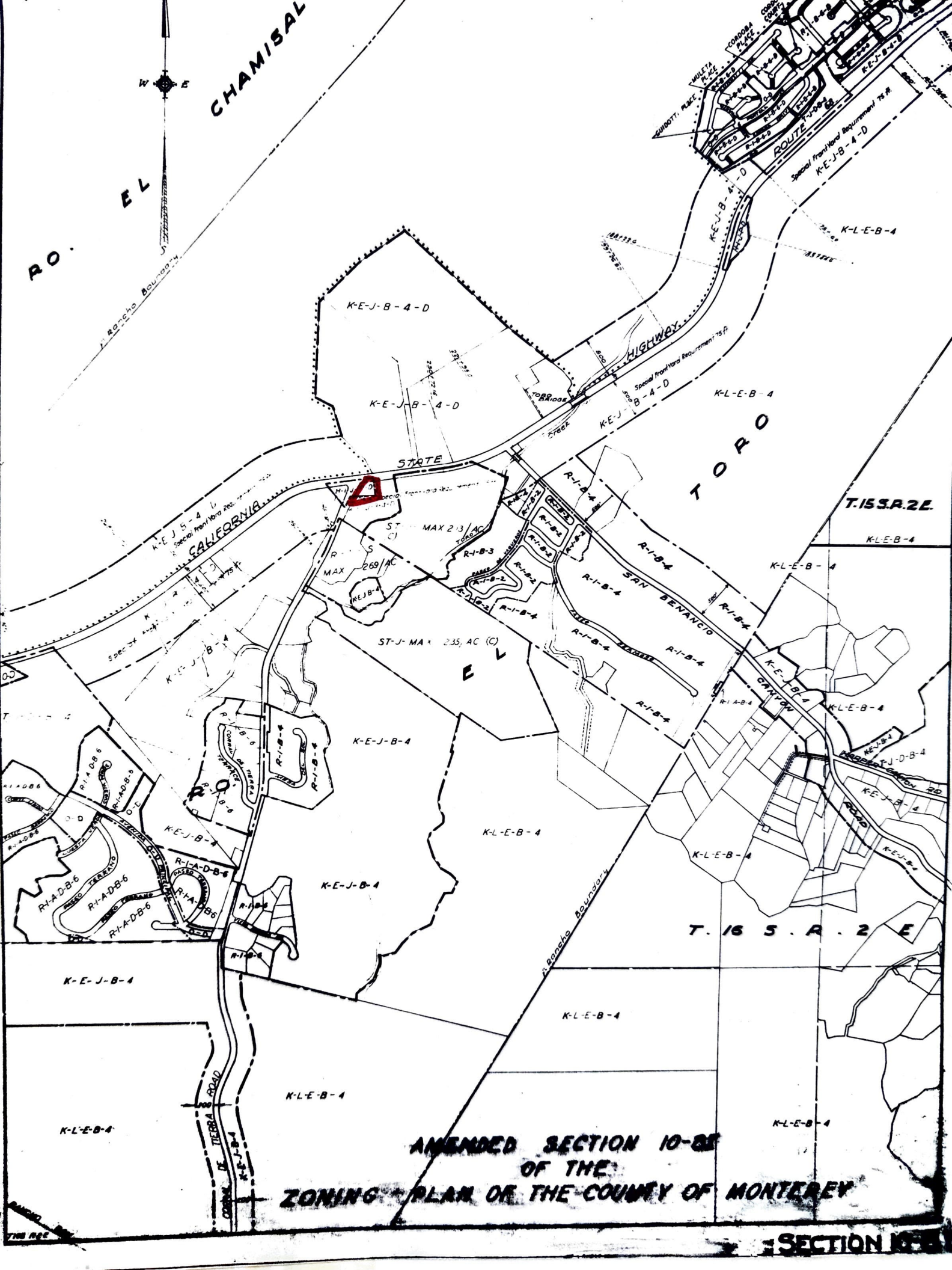


EXHIBIT B

DALE ELLIS
ZONING ADMINISTRATOR

COUNTY OF MONTEREY
STATE OF CALIFORNIA

NO. ZA94005

A. P. # 161-571-002-000

FINDINGS AND DECISION

In the matter of the application of
Bill & Nancy Phelps

WHEREAS: The Zoning Administrator pursuant to regulations established by local ordinance and state law, has considered, at public hearing, a Combined Development Permit for Variance from Front Yard Setback Requirements; Administrative Permit for Design Approval, located on Parcel 1 of Lot 2, Assessor's Map, El Toro Rancho, Toro Area, fronting on Corral de Tierra and Highway 68, and

WHEREAS: Said Zoning Administrator having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. FINDING: The project approved by this permit consists of a 342 square foot addition to an existing commercial structure. The subject property is .684 acres in size and is zoned Light Commercial (LC/B-8-D). The Toro Area Plan designates the property as Commercial land use.
EVIDENCE: Materials in file ZA-94005.
2. FINDING: Development on the subject parcel is required to maintain a 100 foot front yard setback on two sides
EVIDENCE: Monterey County Zoning Map Section 18A
3. FINDING: That because of special circumstances applicable to the subject property, namely 100 foot front yard setback requirements on two sides applied to a parcel with a size of .684 acres, the strict application of this ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications.
EVIDENCE: Findings 1 and 2 above.
EVIDENCE: Materials in file ZA-94005.
4. FINDING: That the granting of a variance would not constitute a granting of special privileges inconsistent with the limitations of other properties in the vicinity and zone in which the subject property is located.
EVIDENCE: Similar variances have been approved on similarly constrained lots.
5. FINDING: The project is exempt from CEQA.
EVIDENCE: Materials in file ZA-94005 evaluated against CEQA requirements (section 15301).
6. FINDING: The proposed use of an office and cashier/retail sales area is consistent with the Light Commercial zoning designation and the Monterey County General Plan and Toro Area Plan.
EVIDENCE: Offices and service stations are permitted uses in the Light Commercial zoning district so long as an Administrative Permit is first obtained.

EVIDENCE: The text and policies of the Monterey County General Plan and Toro Area Plan have been evaluated during the course of the review of this application. No conflict or inconsistencies with the text or the policies were found to exist.

7. FINDING: The site is suitable for the use proposed.
EVIDENCE: The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department and Health Department. There has been no indication from those agencies that the site is not suitable.
EVIDENCE: There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.
8. FINDING: The conditions of approval are appropriate.
EVIDENCE: The conditions are based on the recommendations of the local fire district, the Monterey County Water Resources Agency, Monterey County Health Department and Monterey County Department of Public Works.
9. FINDING: That the establishment, maintenance, or operation of the use or building applied for will not under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.
EVIDENCE: Findings 1 through 8 above.

DECISION

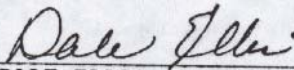
THEREFORE, it is the decision of said Zoning Administrator that said application for a Combined Development Permit be granted, as shown on the attached sketch and subject to the following conditions:

1. That this permit allows for use of the building as a real estate office (area A) and a cashier/retail sales area (area B). (Planning and Building Inspection)
2. That the retail sales area be limited to the sale of soft drinks, snack items, beverages and similar items for the convenience of the travelling public and residents of the area. (Planning and Building Inspection Department)
3. That there be no flags, pennants, banners or similar attention getting devices. (Planning and Building Inspection Department)
4. That any modification to the parking layout be approved by the Zoning Administrator. (Planning and Building Inspection Department)
5. That any modifications to the landscaping and/or fencing be approved by the Zoning Administrator. (Planning and Building Inspection Department)
6. The property owner agrees as a condition of the approval of this permit to defend at his sole expense any action brought against the County because of the approval of this permit. The property owner will reimburse the County for any court

costs and attorneys' fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of his obligations under this condition. Said indemnification agreement shall be recorded upon demand of County Counsel or prior to the issuance of building permits or use of the property, whichever occurs first. (Planning and Building Inspection Department)

7. The applicant shall record a notice which states: 'A Variance permit (Resolution # ZA94005) was approved by the Monterey County Zoning Administrator for Assessor's Parcel number 161-571-002-000 on February 24, 1994. The permit was granted subject to 7 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department.' Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning and Building Inspection Department)

PASSED AND ADOPTED this 10th day of March, 1994.


DALE ELLIS, AICP
ZONING ADMINISTRATOR

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON MAR 17 1994

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE MAR 27 1994

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Salinas.

2. This permit expires two years after the above date of granting thereof unless construction or use is started within this period.

EXHIBIT C

BRIAN FINEGAN
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW
SIXTY WEST ALISAL STREET, SUITE 1
POST OFFICE BOX 2058
SALINAS, CALIFORNIA 93902

AREA CODE 831
SALINAS TELEPHONE 757-3641
MONTEREY TELEPHONE 375-9652
FACSIMILE 757-9329
E-MAIL brian@bfinegan.com

May 6, 2002

Mr. Luis Osorio
Monterey County Planning and
Building Inspection Department
2620 1st Avenue
Marina, California 93933

Re: Omni Resources Ltd. - APN 161-571-002

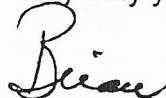
Dear Luis:

As you and I discussed yesterday at our pre-application meeting, the gasoline service state located at the corner of Highway 68 and Corral de Tierra Road, owned by Omni Resources, Ltd., is now temporarily closed. The purpose of the closure is to remove the existing underground storage tanks in accordance with the regulations of the Monterey County Environmental Health Department.

You are aware that the property owner is submitting an application to reconstruct a new service station on the site. Until the permit and design for the new station is approved by the County, it is not possible to install the new tanks because their location cannot be established.

The purpose of this letter is to make clear for the record that Omni Resources Ltd. is not abandoning the service station use at this site is being closed temporarily in order to comply with the law requiring removal of the existing storage tanks, and it is the intention of the owner to construct a new service station on the site just as soon as the permits and approvals are obtained from the County.

Very truly yours,



Brian Finegan

cc: Mr. Phelps

EXHIBIT D

**PROPERTIES WITHIN TORO AREA PLAN AREA
WITH COMMERCIAL LAND USE DESIGNATION**

1. 273 River Road (APN 139-021-006) – River Road Exxon

General Plan: Commercial
Zoning: HC-D
Size: 2 AC
Current Use: Gas Station, Convenience Store and Retail Center

2. 100 River Road (APN 139-221-024) – Correy House

General Plan: Commercial
Zoning: LC-HR
Size: 1.59 AC
Current Use: Hotel Resort

3. 1831 Portola Drive (APN 161-011-061) Portola Center (old CHP Building)

General Plan: Commercial
Zoning: LC-D
Size: 1.8 AC
Current Use: Offices

4. 19040 Portola Drive (APN 161-021-021) – Blazer Wilkinson

General Plan: Commercial
Zoning: VO-D
Size: 1 AC
Current Use: Offices

5. 19045 Portola Drive (APN 161-021-018) – Trident

General Plan: Commercial
Zoning: VO-D
Size: 0.61 AC
Current Use: Offices

6. 19000 Portola Drive (APN 161-021-012) – Backus Properties & Church Brothers

General Plan: Commercial
Zoning: VO-D
Size: 0.82 AC
Current Use: Offices

7. **19065 Portola Drive (APN 161-021-022) – Portola Plaza**

General Plan: Commercial
Zoning: LC-D
Size: 1.5 AC
Current Use: Offices

8. **15885 Toro Hills Ave (APN 161-041-048) – Steinbeck Peninsula Equine Clinics**

General Plan: Commercial
Zoning: LC-D
Size: 4.66 AC
Current Use: Large Animal Veterinary Hospital

9. **22760 Portola Drive (APN 161-293-012) – Toro Shopping Center & 7-11 Convenience Store & Gas Station**

General Plan: Commercial
Zoning: LC-D
Size: 3.26 AC
Current Use: Gas Station, Convenience Store and Retail Center

10. **22722 Portola Drive (APN 161-293-012) – Toro Park Animal Hospital**

General Plan: Commercial
Zoning: LC-D
Size: 0.536 AC
Current Use: Small Animal Veterinary Hospital

11. **22730 Portola Drive (APN 161-293-004) – former Warren’s Martial Arts Building**

General Plan: Commercial
Zoning: LC-D
Size: 0.41 AC
Current Use: Vacant

12. **663 Monterey Salinas Hwy (APN 161-011-005) – Toro Place Café & Castle Rock Coffee**

General Plan: Commercial
Zoning: LC-VS(20)
Size: 0.52 AC
Current Use: Restaurant & Coffee Shop

13. 2 Corral de Tierra Road (APN 161-641-017, 161-641-018, 161-641-019) – Hwy 68 Flowers & Gas, Corral Market & Deli

General Plan: Commercial
Zoning: LC-D
Size: 1.64 AC
Current Use: Gas Station, Market, Other

14. 5 Corral de Tierra Road (APN 161-571-003, 161-581-001)-Corral de Tierra Neighborhood Retail Village

General Plan: Commercial
Zoning: LC-B-8-D
Size: 10.98 AC
Current Use: Vacant, but entitled for Corral de Tierra Neighborhood Retail Village