

CITY OF PEORIA ILLINOIS

MARY STAMBERGER, TRUSTEE OF)
THE EUGENIA F. HAASIS TRUST,) **No.** _____
 Petitioner)

PETITION FOR VACATION, WAIVER OR RELEASE OF
SETBACK ENCROACHMENT AGREEMENT FOR
4709 N. STERLING AVENUE, PEORIA, ILLINOIS

NOW COMES the Petitioner, Mary Stamberger, as Trustee of the Eugenia F. Haasis Trust, by and through her attorneys, Quinn Johnston, and submits her Petition For Vacation, Waiver or Release of a certain Setback Encroachment Agreement for 4709 N. Sterling Avenue, Peoria, Illinois, and in support thereof, states as follows:

1. That the Haasis family and now the Petitioner have owned 4709 N. Sterling Avenue, City of Peoria, Illinois (the "Property") for many years. The Property has been leased to different tenants over the years to operate a gasoline and convenience station at the Property.

2. That on or about April 23, 2020 the Petitioner contracted to sell the Property to the current tenant who operates a Shell gas station at the Property (the "Buyer").

3. During the due diligence for the purchase and sale of the Property, it was discovered that the Property is subject to a certain Setback Encroachment Agreement dated November 2, 1987 recorded as document number 87-24660 (the "Agreement"). A copy of the Agreement is attached hereto as Exhibit A. The Agreement was not signed or authorized by the Petitioner, but instead signed by the then current tenant of the Property, Illico Independent Oil Co.

4. The Buyer has objected to the Agreement and requested that the Petitioner obtain a vacation, waiver of release of the Agreement for the sale and purchase of the Property to occur.

5. The Agreement refers to Section 2-4.1001 of the Zoning Ordinance that was in effect in 1987. That Section no longer exists but the applicable Section appears to be Section 3.5.6

of the Unified Development Code that provides in part that as to “thoroughfares as indicated on the official thoroughfare map of the City of Peoria: all buildings shall be sixty (60) feet from the centerline or twenty-five (25) feet from the right-of-way, whichever may be greater.” Sterling Avenue is considered a minor thoroughfare in the City of Peoria.

6. Attached is a portion of a recent ALTA survey for the Property which has been marked as Exhibit B. The plat shows that enforcement of the setback from Sterling Avenue as to the Property would require that the sign, certain equipment, and a portion of the canopies to be demolished and removed. There is also a concern that the Agreement and setback requirements can be read to apply to all improvements on the Property. Moreover, Sterling Avenue has been significantly improved with 4 lanes of traffic and a raised median; it is not likely that additional right of way for Sterling Avenue would ever be needed.

7. In addition, the City of Peoria granted similar relief to two Shell gas stations owned by MacDonald Properties, LLC on July 9, 2019 as Consent Agenda Items 19-221 and 19-222. The Buyer of those two gas stations is the same Buyer of the Property.

8. The failure or refusal of the City of Peoria to approve this Petition and vacate, waive or release the Agreement will result in an extreme hardship to Petitioner as the Buyer has objected to the Agreement and requested the Petitioner to obtain the relief in this Petition for the sale and purchase of the Property to occur. Moreover, the City of Peoria has already granted similar approval to MacDonald Properties, LLC for its sale of similar properties and there is no reason not to approve this Petition of the Petitioner.

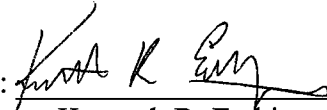
WHEREFORE, Petitioner respectfully request that the City Council of

Peoria:

- A. Approve the Petitioner's Petition; vacate, waive and release the setback requirements of the Setback Encroachment Agreement as described in the Setback Encroachment Agreement dated November 2, 1987 as document number 87-24660; vacate, waive and release the Setback Encroachment Agreement dated November 2, 1987 as document number 87-24660; and
- B. For such other and further relief as equity as the City Council deems just and appropriate.

Respectfully Submitted,

Mary Stamberger, as Trustee of the Eugenia
F. Haasis Trust, Petitioner

By: 
Kenneth R. Eathington

Kenneth R. Eathington
Quinn Johnston
227 NE Jefferson Street
Peoria, Illinois 61602
309-674-1133