

Board of Adjustment  
Meeting Minutes  
December 14, 2015

**1.) Call the meeting to Order**

Chairperson Jim Corbett called the meeting of the Board of Adjustment to order at 6:00 p.m.

**2.) Roll Call.**

Members Present: Jim Corbett, Karissa Hastings, Vince Nossaman, Merlan Rolffs, Jane Smith, John Van Den Berg, Lyle Vander Meiden, Mike Vander Wert, Glenn Van Wyk.

Members Absent: No members were absent

Others Present: George Wesselhoft – Planning and Zoning Director, Jerry Byers – Board Secretary, Mike Nardini – City Administrator, Gary Van Vark, Denny Van Zante, Ed Pelds, Katherine Seekamp, Joe Seekamp, Sherri Seekamp, Caleb Woods, Mikal Woods, Nancy Van Roekel, Eileen Hiemstra, Rich Hiemstra, Steve Woodhouse, JoAnne Dyar, LeAnne Krell, Dennis Vander Beek, Joyce Vander Beek, Joan Haman, Ken Haman, Laura Nieboer, Jim Nieboer, Jan Erichen, Jennifer Spotten, Dan Spotten, Bernice Van Gorp, Sandie McDaniel, Candace DePenning, Scott DePenning, Michael Robinson, Chris Robinson, Lynn Branderhorst, Nick Branderhorst, Dody Boat, Josh Cowman, Ann Visser, Cathy Haustein, Robin Vos, Jon DeNooy, Dan Comstock, David Kermode, Rhonda Kermode, Monica Newendorp, Vince Newendorp, Payson Nossaman, John Vander Wert, Sayne Stienstra, Jacquieline Hale, Dan Houser, Mark DeJong, Don Andie, Kris Andie, Fred Kreykes, Dennis Vander Horst, Angie Viersen, Arla Rietveld, Chris Brown, Willie Van Essen, Robert Van Essen, Emely Wiersma, Bret Wiersma, Lance Van Zee, Aaron Vander Meiden, Byron Vander Meiden, Kyle Winward, Bruce Boertje, Daryl Gates, Nate Vander Struck, Larry Peterson , Derek Bradford, Shelley Jean Bradford, Verna Van Dyk, Merlin Van Dyk, Bruce Thompson, Keith Van Nimwegen. (*Others were present*)

**3.) Welcome new member**

Chairperson Corbett welcomed new Board of Adjustment Member Jane Smith.

**4.) Approval of Agenda**

Lyle Vander Meiden made a motion to approve the agenda as submitted. Glenn Van Wyk seconded the motion. Upon vote, all voted yes. The agenda was approved.

#### **5.) Approval of Minutes**

John Van Den Berg made a motion to approve the Minutes of the November 9, 2015 meeting as submitted. Vince Nossaman seconded the motion. Upon vote, all voted yes. The minutes were approved as submitted.

#### **6.) Public Hearing on a variance application by Casey's Marketing Company.**

Public Hearing on Variance Application by Casey's Marketing Company Concerning a Site Plan for a Proposed New Convenience Store (Casey's General Store) Located at 505 – 513 main Street & 705 Union (Legal description: Lot 1, except the West 70.00 feet thereof, and all of Lots 4 and 5 in Block 61 in the City of Pella, Iowa).

Chairperson Corbett explained to the audience that Casey's first has a chance to explain why they are requesting a variance. Then the microphone will be open for public comments. He continued by asking that everyone state their name and address and limit comments to three minutes.

Chairperson Corbett asked if there were any written comments.

Jerry Byers, secretary to the Board told the Board that there were 10 sets of written comments. Darrell and Karen Dobernecker, Brenda Munson, Eileen Hiemstra, Bruce Boertje, Adam and Jacqueline Hale, Citizen Petition, Don Andre, Keith Van Nimwegen, Dave and Rhonda Kermode, Verna Van Dyk. (*Attached*)

Chairperson Corbett asked for a motion and a second to enter the comments into the record.

Mike Vander Wert made a motion to enter the written comments into the record.

Karissa Hastings seconded the motion.

Upon vote, motion passed 9 to 0.

Chairperson Corbett opened the floor to public comments.

Ed Pelds, of Pelds Engineering Company, representative for Casey's Marketing Company spoke to the Board concerning building a new Casey's General Store.

Mr. Pelds, spoke about the lot being a dual frontage lot and the issue with not being able to put the parking to the rear of the store.

He continued by explaining how by moving the building to the rear of the lot would keep parking, lighting, canopy and other element to the front of the store and create a buffer from residential neighbors.

He stated that Casey's is trying to be good neighbors and still have the best use for this site.

Vince Nossaman asked the question, "if the request for variances are denied, does Casey's have a plan B", "and are they prepared to re-configure the building that would meet the zoning for the property and build on that property?"

Leanne Krell, Assistant General Counsel for Casey's General Stores, Inc., stated that the use was zoned correctly and Casey's is asking for variance for several reasons. If Casey's turn the building any other direction, we have concerns about buffer to the neighborhood, and safety concerns with the operation of a Casey's store.

She continued by stating that Casey's did not have an option B or one that suits that property.

Mr. Nossaman indicated that he just wanted to make sure that if the variances were denied, that there wasn't another option on the table and that the Board was not saddling the neighbors with a bigger problem by denying the variances.

Mr. Nossaman continued by telling the audience that it is possible to configure a building on that property that by denying the variances that they could have bigger issues.

Ms. Krell stated that they have had their engineers and draftsmen look at other options for the building, but that there were still other issues with buffers and safety for their industry.

Mr. Nossaman asked Robert Benton, City of Pella attorney, if Casey's does configure a building on the lot that meets all of the zoning requirements, do the citizens have any other process to challenge the project?

He continued by stating that if the Board denies the variances that Casey's may develop a plan B, even though they may not have one at this time. He asked if there is any other recourse that the people may have concerning that they just don't want a Casey's as a neighbor.

Mr. Benton, stated that at this time, Casey's is saying they do not have a plan B. He continued by saying that there is a way for Casey's to not have to ask for a variance.

Ms. Krell stated that the ground is zoned properly and that Casey's can build without asking for a variance. But to build the building as they currently can, would not be as friendly to the neighborhood as the building design they are asking the variances for.

Mr. Benton indicated to the audience that there could be other businesses that could build on the lot other than a Casey's. These other businesses could build without needing to come and ask for a variance.

Casey's could absolutely put their store in that location stated Ms. Krell; They don't think it would be the right thing to do given the neighborhood, they want to do this right, well, and something good for the community.

John Van Den Berg asked what their hardship would be and if they are closing other stations.

Ms. Krell stated that they are proposing to close three stations and their employees are aware of that, and Casey's wants to put the new store to replace those three to better serve the needs of the City.

Chairperson Corbett opened the floor to Pella Citizens.

Don Andre, 601 W. 1<sup>st</sup>, spoke about how unregulated growth contributed to problems. He gave a list of his concerns for the City and the property in question.

Jim Nieboer, 514 Broadway, indicated he was a safety manager and that he worked in risk management. He expressed concern about safety issues associated with the proposed building and the neighborhood.

Rhonda Kermode, 510 Broadway Street, had concerns about the hardship going to the land owner, not the applicant. She continued by stating that a reasonable profit was due the land owner but not the maximum profit. She stated that the hardships associated with the property were of the making of the land owner and Casey's.

Ms. Kermode continued by stating the hardships that would be bestowed upon her own property by having a "Super Casey's" in her back yard. She submitted pictures of Casey's in neighboring towns into the record. (*Attached*)

Chairperson Corbett asked Legal Counsel to explain how Casey's is able to apply based on them not owning the property.

Mr. Benton stated that they have a property interest that allows them to come before the Board to ask for a variance.

Mr. Nossaman asked if the variance, if approved, would stay with the property.

Mr. Benton stated that he thought that the variance would not stay with the property due to the differences in projects with another entity.

There was more discussion about the variance process.

Joan Haman, 707 Union, made note of the 1112 signature petition that asked the Board of Adjustment to deny the variances. She commented on Sherman Hills and Valley Junction in Des Moines as examples of historical areas. She also stated that a Casey's would bring down the property values for the houses and that there was going to be a vote at Council concerning a moratorium on Gateway corridors.

Chairperson Corbett asked about the moratorium.

Mr. Wesselhoft informed the audience that the moratorium only pertains to single family and two family homes. Commercial construction, as long as they met City codes, would not be affected.

Mr. Corbett asked Mr. Wesselhoft to address the use and appropriateness of commercial zoning along Main Street.

Mr. Wesselhoft continued by stating vehicle service use and food sales convenience were a permitted use.

Mr. Corbett asked about the Comprehensive Plan and the Gateway Corridor.

Mr. Wesselhoft went on to say that after talking to the City Attorney, the Comprehensive Plan is just a guide and not binding for a developer.

Ken Haman, 707 Union, talked about his hardship of having a Casey's next to his house would be imposed by others. He continued that the Vander Beek Trust bought the properties on speculation so if he has a hardship, which would be self-imposed.

Eileen Hiemstra, 807 W. 2<sup>nd</sup> Street, had concerns that this variance would set a precedent along Main Street and that it would go against current zoning, the Gateway Overlay District and the Comprehensive Plan for the City.

Laurie Nieboer, 514 Broadway, informed the audience that she was a customer of Casey's and that she didn't have any problems with Mr. Vander Beek developing the properties along Main Street. However, she did feel that there could be a better use for the property in question other than building a Casey's there. She went on to talk about the Gateway Overlay District and about how beautiful and quaint the city is.

Mr. Nossaman spoke to the fact that something worse could be built on the property.

Wayne Stienstra, 1019 Park Lane, commented that he owns a historic home on the National Register, and that he is on the Community Development Committee and that once you grant an exception, the exception usually becomes the rule.

Michael Robinson, 513 Broadway, stated that he bought gas at Casey's because all of the little businesses were run out by big Casey's. He continued by saying he had seen multiple variances approved over the years and that communities are trying to get back

what they once had. He continued by stating that he was afraid of losing historic buildings to new development.

Mr. Robinson continued with concerns over property rights and that the houses that were on the property were part of the actual fabric of Americans. He said that if progress was not watched we would end up with blighted neighborhoods.

He asked the question why we have zoning as this is an inappropriate place to put a Casey's. He continued by stating there are other places in Pella to put a convenience store.

Doty Boat, 915 Elm Street, asked if the building permit had been issued.

Mr. Byers confirmed that it had not been issued.

Ms. Boat said that Casey's could just turn around and leave.

Kaleb Woods, 610 Peace Street, area supervisor for Pella and Knoxville, commented that the building in question is not a Mega Casey's, or a Super Casey's but a standard Casey's store. He continued by stating that a new store would provide restrooms for Tulip Time, would help with traffic around the square, provide area for delivery trucks, better parking for customers and allow more room for inventory in the stores.

Mason Ouderkirk, Ouderkirk Law Firm, Indianola, Iowa, represent David and Rhonda Kermode, commented that he would not go over again all of the issues presented. He did address that the need is to focus on the property in question. He talked about hardship for the owner of the property and if there was one. He did comment that another building for Casey's or another business could go in and comply with the Gateway Overlay. He stated what the board needed to address if they wanted a building that did not comply with the setbacks as the other buildings along the block.

Mr. Ouderkirk continued by stating that Casey's submitted a case in Iowa called Greenawalt vs Dubuque regarding hardship and use of the property.

Mr. Ouderkirk went on to talk about hardship.

Chairperson Corbett asked Legal Counsel about the criteria for meeting hardship.

Mr. Benton said he would take a moment and read City of Pella Code concerning zoning hardship.

Ms. Krell stated there were two types of variances that boards look at. One being use and the other being dimensional. They are not asking for a use variance because the property is zoned commercial. They are asking for a variance on the dimensions and setbacks of the property. The use is permitted, but is there a hardship for this particular lot due to safety and being a corner lot.

She also addressed the statements of a Mega Casey's or a Super Casey's, or a truck stop. It is a standard Casey's. We are not going to see a lot of truck traffic. She continued by saying there are Casey's in historic areas. They have one in Valley Junction and Galena, IL. and are used to working with historic areas.

Michael Robinson spoke that he doesn't want any Casey's there.

Arla Zanten, 2506 Scholte Straat, concerned about safety, and that the variance would make things safer. If they don't get the variance, and decide to build, would they have all these safety issues?

Allis DeJong, 514 W. 3<sup>rd</sup> Street, also expressed concerns about safety and traffic turning on Main Street.

Bob Van Essen, 511 Broadway, stated he does not want this to happen.

Joe SeeKamp, 507 Broadway, we don't want Casey's anywhere around due to driving down property prices.

Randy Lunsford, 507 W. 1<sup>st</sup> Street, started off by asking how everyone knows that a new Casey's would drive down property prices. He commented that there is a 1000 signatures, yet there are 9000 others who could want a new Casey's.

There was discussion on property values.

Kyle Windward, 603 Peace Street, stated that it was ironic that Casey's keeps presenting about safety. He indicated that he has daughters that walk to the Library and Community Center and yet know there will be more traffic. He asked about turn lanes and crosswalks.

Scott DePenning, 1009 Broadway, talked about Comprehensive Plan. He stated that he has a hard time seeing a Casey's fit the Comprehensive Plan for that neighborhood.

Keith Van Nimwegen, 503 Main Street, (owner) said the Casey's in Valley Junction is half the size of the Casey's they want to build here.

Dan Comstock, 610 Huber Street, said he had heard a lot of concerns about safety issues.

Mr. Comstock told a story about walking along Oskaloosa Street and vehicles running the lights at the corner of Oskaloosa and Clark coming out of the Casey's on the corner. He continued about concerns with traffic.

Ed Pelds, Pelds Engineering, addressed traffic issues with controlled choke points and two distinct exits from the store. He commented that you want people to exit onto the street instead of exiting from an alley.

The public hearing was closed.

**7.) Variance Application by Casey's Marketing Company – street side yard parking.**

Variance Application by Casey's Marketing Company Concerning a Site Plan for a Proposed New Conveyance Store (Casey's General Store) Located at 505 – 513 main Street & 705 Union (Legal description: Lot 1, except the West 70.00 feet thereof, and all of Lots 4 and 5 in Block 61 in the City of Pella, Iowa).

Variance A. – Table 165.12-3 Summary of Site Development Regulations CUC District Maximum amount of Total Parking located in the Street Yard of 35 percent. Casey's proposed 100 percent of parking in street yard.

Vince Nossaman said he would make a motion. He read the criteria from the report, "The authorization of the variance will not be of substantial detriment to the adjacent property and the character of the district will not be changed by granting of the variance".

Mr. Nossaman continued by asking City of Pella Legal Counsel, if he would need to read every criteria or could he have a blanket statement for the motion.

Mr. Benton informed Mr. Nossaman that now was not the time to leave anything unsaid.

Mr. Nossaman continued, "I appreciate everything Casey's has done in trying to produce a plat that would be safe for the City of Pella". He continued, "It is kind of a unique location, but yet not as there are other locations in the corridor that would be a corner lot that would have the same problems that you got. While you have done your best to have something safe and convenient for everyone I still don't think that it is the only option on the property. That you could do something else there too".

Mr. Nossaman said he was going to make a motion to deny the variance. He continued by saying " I feel that by granting a variance would have an extreme hardship on the adjoining properties and that I do believe that property values will go down on properties adjacent to this in the immediate vicinity of it".

"I do think that all of the other business in that area are going to have to play by the same rules. I don't think that it is asking something special that isn't asked of all of the other properties that are going to be built or have been built, using Leighton State Bank as an example."

"I do think that by granting it we are pushing the envelope and setting a precedent to the properties that are of a similar nature. That once we grant this to Casey's we are leaving the door open to precedent."

Mr. Nossaman made a motion to deny the variance.

Mike Vander Wert seconded the motion.

Upon vote, motion to deny passed 9 to 0.

**8.) Variance Application by Casey's Marketing Company – parking areas to side or rear.**

Variance B. – 165.18 (1) (B) Parking areas shall be located along the side of the buildings or in the rear of the building. Casey's proposed parking in the front of the building.

Lyle Vander Meiden made a motion to deny using the same criteria as the first motion.

Merlan Rolffs seconded the motion.

Upon vote, motion passed to deny, 9 to 0.

**9.) Variance Application by Casey's Marketing Company – maximum building setback.**

Variance C. - 165.18 (1) (D) (1) The maximum building setback from the public right of way shall be based on the average of setbacks within 200 feet (composite 16' 4" plus or minus) or 20 feet, whichever is less. Casey's proposed 118 foot front setback.

Lyle Vander Meiden made a motion to deny based on the same criteria.

Glenn Van Wyk seconded the motion.

Upon vote, motion passed to deny, 9 to 0.

**10.) Other Business**

Mr. Vander Meiden spoke to the audience and thanked everyone in the audience and applauded their input and the process. He spoke about the uniqueness of Pella and about pride and ownership in the community and the process of government in a community.

**11.) Adjournment**

The meeting adjourned at 8:20p.m.

Respectfully submitted,  
Jerry Byers  
Building Official