

Appeal: The appellant requests a Variance to the maximum allowable freestanding signage area, as well as a Variance to the maximum allowable freestanding sign height, to relocate an existing freestanding sign

Background

The subject property is located at 2890 NE 46th (Broadway) Avenue, Des Moines. The property is approximately 1.30 acres in size, and is legally described as Lot 10 & Lot 11, except the south 7 feet thereof, Broadway Place, within Section 18 of Township 79 North, Range 23 West of the 5th P.M. (Delaware Township). The property is zoned "NB" Neighborhood Business District, and is located at the northwest corner of the intersection of NE 46th (Broadway) Avenue and NE 29th Street within the unincorporated village of Norwoodville. Surrounding properties to the north, east and south are also zoned "NB" Neighborhood Business District and contain a mix of existing commercial and residential uses. Adjacent to the west of the subject property is a single-family residence zoned "MU" Mixed Use District. Grandview Christian Elementary School is located at the opposite, southeast corner of the intersection and is zoned "MDR" Medium Density Residential District. The City of Des Moines corporate limits are located approximately 2,000 feet to the south where they extend north along NE 29th Street near NE 44th Avenue, NE Norwoodville Lane and further south along E. Aurora Avenue. See *Attachment A* for a vicinity map of the subject property and surrounding area.

The subject property is rectangular shaped, measuring approximately 317 feet east to west and approximately 178 feet north to south. The property is a corner lot having frontage and access onto NE 46th (Broadway) Avenue to the south and NE 29th Street to the east. The site is developed and utilized as a Casey's gas station and convenience store, including an existing convenience store building as well as fuel island and canopy. The site also includes two (2) access drives onto NE 46th (Broadway) Avenue and NE 29th Street, paved and curbed surfacing for parking and circulation, open space and storm water detention area in the western half of the property, and landscaping. The site also includes an existing freestanding sign located in the far southeastern corner of the property near the street intersection, which is the subject of this Variance Appeal.

Additional Property History / Details

County records indicate that Casey's originally permitted a store at this location in the late 1970s, including obtaining required building permits in 1977 from Polk County. In 1994, Polk County approved a development site plan for redevelopment of the property for a modernized Casey's gas station and convenience store that occupies the site at present day, and construction was completed in 1995. In 2012, Casey's constructed a small addition to the west side of the convenience store building, with appropriate permits and approvals from Polk County.

The property currently has several wall signs on both the convenience store building and the fuel canopy, as well as one (1) freestanding sign located in the southeast corner of the site near the street intersection. The County has no record of any sign permits for this property. The existing freestanding sign contains a total signage area of 81.29 square feet and is 23 feet tall. Due to a lack of any sign permit(s) it is not clear when the freestanding sign was originally installed or

when it may have been modified thereafter. Polk County considers the freestanding sign to be illegal and nonconforming, as it was installed without a permit and exceeds the maximum size and height allowances permitted, which are 60 square feet maximum area for the subject property and ten (10) feet maximum height. Furthermore, the sign exceeds the height and/or area requirements under previous iterations of the Polk County Zoning Ordinance, dating back to 1990 and 1959. In addition to freestanding signage, the property is also permitted wall signage based on the lineal feet of building and fuel canopy frontage. As stated previously, no sign permits have been obtained for this property, including for the existing wall signs. Staff cannot issue any sign permits for the property until such an application addresses how the nonconforming freestanding sign will be corrected.

Over the last several years, Polk County has received permit applications and inquiries from sign contractors requesting to change and update signage at the subject property, including changes to the freestanding sign. Staff has repeatedly communicated that no further sign permits can be issued until the freestanding sign is either removed or redesigned and permitted as a conforming monument sign. We have also communicated that the owner has the option to request variances for the existing sign to remain. Communication to this effect is on file as far back as 2011, and as recently as this year. Polk County has at no point initiated official enforcement action to require removal of the freestanding sign; however, our communication has been consistent regarding the requirements and options to address the sign's illegality and nonconformity.

The freestanding sign is now being impacted by a County road improvement project to NE 46th (Broadway) Avenue. The project will occur over the next several years in phases, and includes the following improvements: Acquiring permanent right-of-way and temporary construction easements, widening the roadway, converting to an urban cross-section profile, and adding a multi-use trail. The project will impact the subject property by requiring acquisition of permanent right-of-way and temporary construction easement. The impact will require the existing freestanding sign to be removed. The appellant could install a new freestanding sign on the property in conformance with the area, height and permitting requirements of the Zoning Ordinance without any action from the Board of Adjustment. Instead, the appellant has decided to request variances to the freestanding signage area and height requirements in order to relocate the existing, illegal and nonconforming sign elsewhere on the property. The proposed relocated sign would be the same 23 feet in height, but with a slightly smaller total signage area of 80.37 square feet.

Summary of Request

The Polk County Zoning Ordinance, *Article 11: Signs, Division 3, Table 11.1 & Division 3, Section 2.B* permits one (1) freestanding sign not to exceed 60 square feet in size for gas station/convenience store uses, based on site frontage, within the "NB" Neighborhood Business District. Additionally, *Article 11, Division 5, Section 1* sets the maximum height for all freestanding signs at ten (10) feet. As discussed above, the appellant previously constructed a freestanding sign on the subject property exceeding both the maximum allowable signage area and maximum allowable height. The sign was constructed without the required Sign Permit from Polk County, and its current location is being impacted by a proposed roadway project at the intersection of NE 46th (Broadway) Avenue and NE 29th Street. The appellant requests a freestanding signage area Variance of approximately 20.37 square feet and a freestanding sign height Variance of

approximately 13 feet in order to relocate the sign on the subject property with a total signage area of 80.37 square feet and total height of 23 feet. See *Attachment B* for a copy of the Variance Appeal Application, and *Attachment C* for a copy of the site plan showing proposed relocation, and rendering of the existing and proposed relocated signs.

Staff mailed out 31 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 250-foot notification boundary. To-date staff has received no responses either in support or in opposition of this Appeal.

Natural Resources

The subject property has gradual elevation change, with a high point of approximately 918 feet in the northeast corner of the property and a low point of approximately 906 feet in the southwestern corner. The property contains a few mature trees and other landscaping along its frontages. The western half of the property is open space, including stormwater detention area. The property is not located within a floodplain and contains no other known environmental hazards or features.

Roads & Utilities

The property has existing frontage onto NE 46th (Broadway) Avenue and NE 29th Street, including an entrance/access point onto each roadway. Water service is provided by Des Moines Water Works, and wastewater treatment is provided by an onsite septic system. An upcoming roadway project along NE 46th (Broadway) Avenue will impact the subject property in terms of permanent right-of-way acquisition as well as a temporary construction easement. This impact will require that the existing freestanding sign be removed.

Recommendation

Variance Request #1: Freestanding sign area Variance of approximately 20.37 square feet in order to relocate an existing freestanding sign on the subject property with a total signage area of 80.37 square feet, in lieu of the maximum permitted area of 60 square feet

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?
No. There are no unique, exceptional or extraordinary circumstances or special conditions which prevent the placement of a new, legal and conforming monument sign on the property. While the current sign is being removed due to a County roadway project, the sign was constructed/modified illegally without a permit at larger than the maximum permitted size under the Polk County Zoning Ordinance. The applicant has the ability to construct a new sign in conformance with the Ordinance that does not require a variance and would provide adequate advertising visible from adjacent roadways.

- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)
- No. The requested variance is not necessary to preserve property rights associated to a freestanding sign on the subject property. The sign in question was constructed/modified illegally and not in conformance with the Ordinance. The site is permitted one (1) freestanding sign not to exceed 60 square feet in area without the granting of a variance. Other commercial properties are subject to the same standards. Properties that have a legal nonconforming sign that was previously permitted by the County may continue to use that sign until such time that it requires removal or replacement with a conforming sign per the nonconforming standards of the Polk County Zoning Ordinance.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
- No. The current sign regulations within the Polk County Zoning Ordinance serve to protect and promote the public interest by regulating the size, type, area, height, placement, etc. of signage throughout the County. Polk County is investing significant financial resources into future roadway improvements along NE 46th (Broadway) Avenue to improve traffic and pedestrian movement. There is a public interest in ensuring that signage impacted along this corridor is replaced in accordance with the Ordinance.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
- No. There is no special condition, and any perceived hardship is self-created as the appellant constructed/modified the sign illegally without a permit.
- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?
- Yes. The proposed relocation area on the property would have a minimal impact on any of these provisions. However, the variance is also not necessary to limit any impacts on these provisions of the Ordinance. This criterion is largely irrelevant in this circumstance.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were not answered in the affirmative, staff recommends **denial** of the requested variance.

Variance Request #2: Freestanding sign height Variance of approximately 13 feet in order to relocate an existing freestanding sign on the subject property with a total height of 23 feet, in lieu of the maximum permitted height of ten (10) feet

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

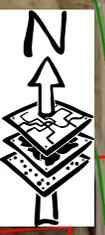
- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?
No. There are no unique, exceptional or extraordinary circumstances or special conditions which prevent the placement of a new, legal and conforming monument sign on the property. While the current sign is being removed due to a County roadway project, the sign was originally constructed/modified illegally without a permit and in excess of the allowable height under the Polk County Zoning Ordinance. The applicant has the ability to construct a new sign in conformance with the Ordinance that does not require a variance and would provide adequate advertising visible from adjacent roadways.
- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)
No. The requested variance is not necessary to preserve property rights associated to a freestanding sign on the subject property. The sign in question was constructed/modified illegally and not in conformance with the Ordinance. The site is permitted one (1) freestanding sign not to exceed ten (10) feet in height without the granting of a variance. Other commercial properties are subject to the same standards. Properties that have a legal nonconforming sign that was previously permitted by the County may continue to use that sign until such time that it requires removal or replacement with a conforming sign per the nonconforming standards of the Polk County Zoning Ordinance.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
No. The current sign regulations within the Polk County Zoning Ordinance serve to protect and promote the public interest by regulating the size, type, area, height, placement, etc. of signage throughout the County. Polk County is investing significant financial resources into future roadway improvements along NE 46th (Broadway) Avenue to improve traffic and pedestrian movement. There is a public interest in ensuring that signage impacted along this corridor is replaced in accordance with the Ordinance.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
No. There is no special condition, and any perceived hardship is self-created as the appellant constructed/modified the sign illegally without a permit.

5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. The proposed relocation area on the property would have a minimal impact on any of these provisions. However, the variance is also not necessary to limit any impacts on these provisions of the Ordinance. This criterion is largely irrelevant in this circumstance.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were not answered in the affirmative, staff recommends **denial** of the requested variance.

0 750 1,500 3,000 Feet



Attachment A Vicinity Map

**Subject
Property**

NE 46th Ave

NE 27th Ct

NE 28th Ct

NE 29th St

NE 30th St

NE 31st St

Grandview Christian
Elementary

NE 44th Pl

NE 44th Ave

NE Norwood Ln

NE 26th St

NE 27th St

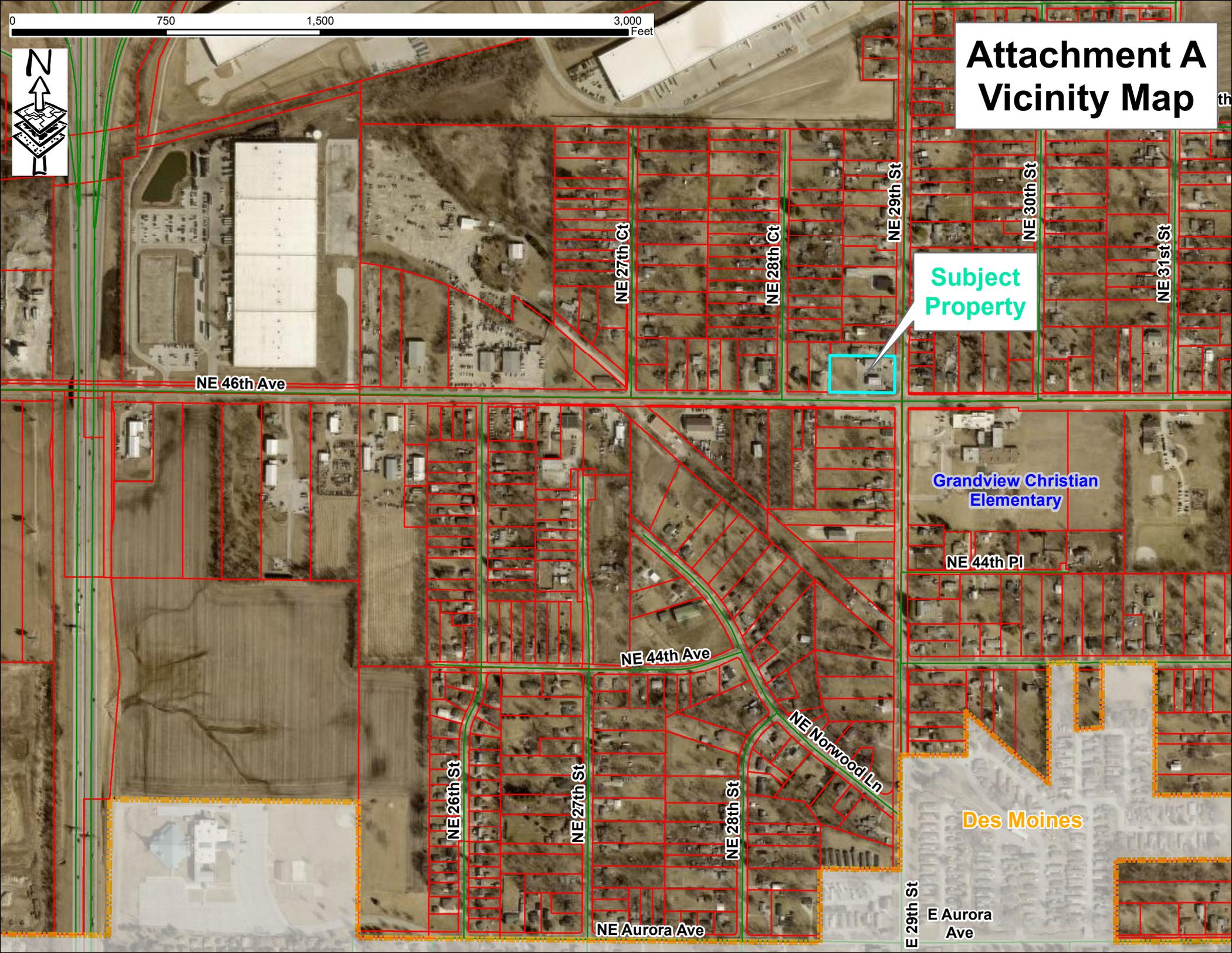
NE 28th St

Des Moines

NE Aurora Ave

E 29th St

E Aurora
Ave



Variance Appeal Application



Board of Adjustment Authority

The Polk County Board of Adjustment is empowered by Iowa law and by the Zoning Ordinance of Polk County to hear requests and to make decisions on variance appeals to the Zoning Ordinance for individual properties where provisions of the Ordinance impose a unique and unnecessary hardship on the property owner and where the granting of a variance is not contrary to the intent of the Zoning Ordinance or to the public interest.

Each variance appeal is only a request to have a hearing before the Board of Adjustment. Notice of the hearing will be provided to all property owners located within 250 feet from the subject property. The Board of Adjustment will make a determination at a public hearing whether or not to approve or deny the request based on a staff report, applicant presentation, as well as public input. All appeals that are denied shall not come back to the Board of Adjustment for one year. Refunds will not be made once notice has been sent out to adjacent property owners.

Please complete the entire application and review the Variance Regulations on page 3.

1. The undersigned applicant requests that the Board of Adjustment consider this application for a variance appeal for the following general purpose. (Describe briefly the request)

Casey's is requesting a variance to allow it to maintain its current sign at a new location on the property. A County road widening project is requiring the sign to be moved from its current location.

(time stamp)
Official Use Only

2. Subject Property Address: 2890 NE 46th Ave, Des Moines, IA 50317

3. Subject Property Zoning District: Neighborhood Business District

4. District and Parcel Number: 190/00540-000-000

5. Subject Property Legal Description (attach if necessary):

Lot 11 (except the South 7 feet) in BROADWAY PLACE, except the South 7 feet, all being in the official plat BROADWAY PLACE, an official Plat, now included in and forming a part of Polk County, Iowa containing 1.30 acres, more or less.

6. Filing Fee: \$315 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

Casey's Marketing Company
Applicant (Print Name)

Sam James
Signature

8/25/2022
date

Owner

Interest in Property (owner, renter, prospective buyer, etc.)

Email

One SE Convenience Blvd, Ankeny, IA 50021
Address, City, State and Zip

515-965-6100
Phone

515-965-6160
Fax

8. Applicant(s) Representative:

If the appeal is going to be represented by someone other than the applicant please provide that information below

James Skloda

Assistant General Counsel

Applicant Representative (Print Name)

Firm or Business Name

One SE Convenience Blvd, Ankeny, IA 50021
Address, City, State and Zip

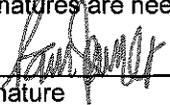
james.skloda@caseys.com
Email

515-965-6100
Phone

515-965-6160
Fax

9. Property Owner Consent

The application must be signed by all the Titleholders, Contract Purchasers, or Option Purchasers of the subject property. The application may also be signed by the Registered Agent for a corporation or other person with similar legal authority to sign for a property owner. (if additional signatures are needed please attach)

Sam James, President _____ (Print Name)	 _____ Signature	8/25/2022 _____ date
_____ (Print Name)	_____ Signature	_____ date
_____ (Print Name)	_____ Signature	_____ date
_____ (Print Name)	_____ Signature	_____ date

10. State the reason(s) the variance is necessary and why you cannot comply with the regulations of the Zoning Ordinance. Specifically explain the nature of the appeal.

Polk County is currently planning a Reconstruction of NE Broadway Avenue/NE 46th Avenue. As part of the project, Polk County is forcing Casey's to move its existing pylon sign. Due to ordinance changes since it was installed, relocating the existing sign requires a variance.

There are extraordinary circumstances or special conditions applying to the property in question that do not exist generally on other properties in the same zoning district. The property is currently used a gas station and gas price signage is extremely important to this type of business. Motor fuel is the only product where consumers expect to see a price from the road. In addition, the property is surrounded by landscaping that would make a monument sign virtually worthless. By virtue of the special conditions, it would be an extreme hardship, caused solely by the County, to comply with current sign regulations.

The variance is necessary for the preservation and enjoyment of substantial property rights possessed by Casey's and other properties in the same zoning district and in the same vicinity. No other property owners of gas stations in the vicinity are being required to permanently lose their pylon sign for the County road project. As the sign is pre-existing, the public interest will not be harmed.

The authorization of such variance will not be of substantial detriment to adjacent property and will not be contrary to the purpose of this Ordinance and the public interest. The sign is pre existing, there will no adverse affects from a variance.

Special conditions or circumstances did not result from the actions of the applicant, this is solely a result of actions being taken by the County in requiring Casey's to move its sign.

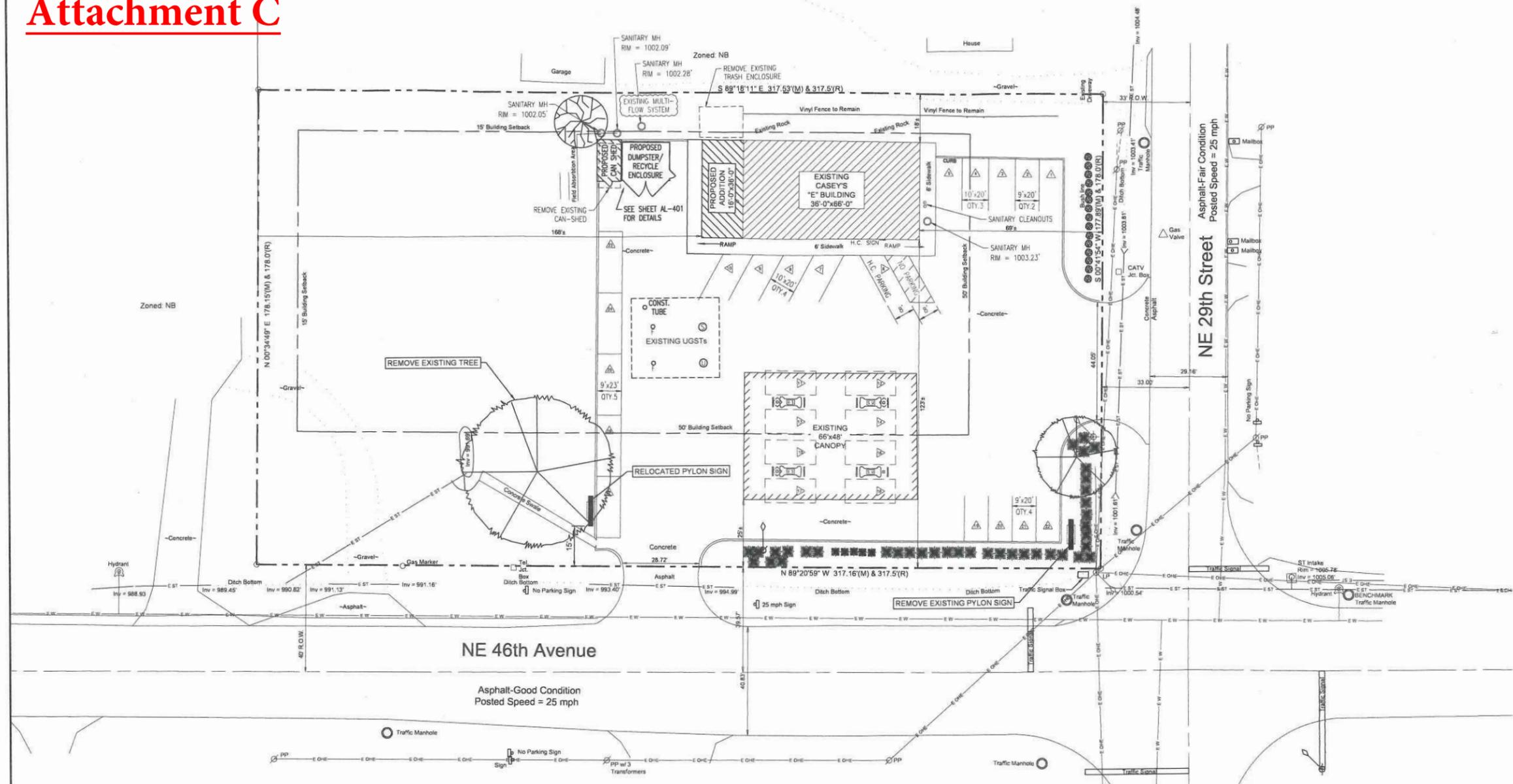
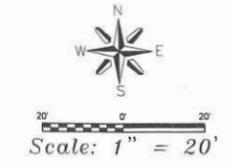
The condition and/or situation of a property for which the variance is sought is of an unusual nature. It is rare that a county road project forces a private business to remove their signage from their private property.

**A completed application with site drawing and filing fee are required for a submittal.
Incomplete submittals will not be processed and returned to the Applicant.**

Return completed forms to: Polk County Public Works, Planning Division 5885 NE 14th Street, Des Moines, IA 50313
Phone (515) 286-3705 • Fax (515) 286-3437
Forms and calendar available online <http://www.polkcountyiowa.gov/PublicWorks/>

OFFICIAL USE ONLY			
Received by		Docket Number	
Date Received		Reviewed by	
BOA meeting date		BOA Approved	Y / N

Attachment C



Site Information

CASEY'S MARKETING COMPANY
 ONE CONVENIENCE BLVD.
 ANKENY, IOWA 50021
 CONTACT:
 JACOB CLARK (515) 963-3831

Zoned: NB

NEIGHBORHOOD BUSINESS DISTRICT

SETBACKS:
 E BROADWAY: 50 FEET
 E 29TH STREET: 50 FEET
 SIDE YARD: 15 FEET
 REAR YARD: 15 FEET

PARKING REQUIRED:
 27 SPACES REQUIRED

PARKING PROVIDED:
 CANOPY SPACES: 8 SPACES
 OTHER SPACES: 19 SPACES
 TOTAL: 27 SPACES PROVIDED

Legal Description:

LOT 11, EXCEPT FOR THE SOUTH 7 FEET, AND ALL OF LOT 10, BROADWAY PLACE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF POLK COUNTY, IOWA CONTAINING 1.30 ACRES, MORE OR LESS.

Notes (1978):

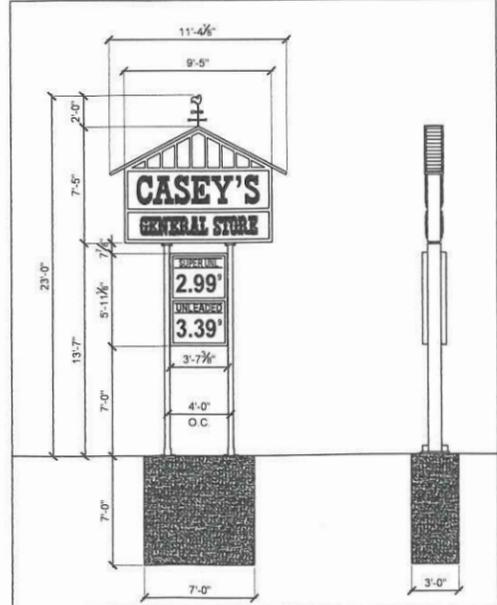
- EXISTING APPLICABLE NOTES
- 2-10,000 GALLON SINGLE WALL FIBERGLASS TANKS 8'-0" x 31'-6" 1/2" 1 - UNLEADED 1 - SUPER UNLEADED
 - ISLAND SIZE - 4 DOGBONE @ 8'
 - 4 - 4 HOSE GILBARCO QUAD DISPENSERS
 - DO NOT PLACE PRODUCT PIPING UNDER ISLAND
 - 18" MIN. FROM TANK PIPING TO FINISH SURFACE
 - DRIVEWAY JOINTS TO BE PACKED & CAULKED
 - CONCRETE DRIVE TROWELED WITH LIGHT BROOM FINISH
 - CONTROL JOINTS - MIN. 100 sq. ft. - MAX. 125 sq. ft. - 25% DEEP
 - CONSTRUCTION JOINTS - PINNED 4" O.C. 12" EACH WAY WITH 1/2" REBAR #4
 - APPROACHES TO BE 7" NON-REINFORCED OR AS PER STATE CITY SPEC
 - SLOPE RAMP FOR BUILDING SIDEWALK 1:20
 - RUN VENT LINES UP CANOPY COLUMN (2 MAX.), VERIFY
 - VERIFY ALL UTILITY LOCATIONS
- ** WELL ON SITE ABANDONED IN 1995

Notes (2012):

- 16'-0" x 36'-0" LEFT HAND BUILDING ADDITION
- EXISTING BUILDING: CECO BUILDING SYSTEMS - JOB NO. 84-20172
- PROPOSED NEW DUMPSTER/RECYCLE ENCLOSURE W/ CANOPY SHED
- REPAINT PARKING STRIPES AS NEEDED
- "AS-BUILT" AVAILABLE

Proposed Notes

- REMOVE EXISTING PYLON SIGN AND FOUNDATION
- REMOVE EXISTING TREE
- INSTALL NEW PYLON SIGN FOUNDATION
- RELOCATE EXISTING PYLON SIGN TO NEW FOOTING



CASEY'S CONSTRUCTION DIVISION One Convenience Blvd., P.O. Box 3001, Ankeny, IA 50021 515-965-6100			
PROJECT: DES MOINES, IA (#2) #45 2890 NE 46th AVE	DATE: 07-28-22	SHEET NO.: SITE PLAN	
TITLE: PYLON RELOCATION		DRAWING NO.: AL-101	
CONSTRUCTION DIVISION JACOB CLARK			

