

**Albion BZA Meeting – Minutes**  
**March 21, 2012 at 6:00 PM**  
**Albion Municipal Building 211 E Park Drive**

**Roll Call** vote showed members present: David Bremer, Scott Cole, Terry Dazey and Mark Hunter. Absent was member David Dunn.

The meeting was called to order at 6:03 p.m. by BZA Attorney Michael Yoder. Attorney Yoder explained that with 4 board members present, there was a quorum. However, since the Chairman Elect Larry Ellet moved out of town and resigned, and in the absence of the Vice Chairman David Dunn, that the Election of Officers agenda item would be considered first. He then opened the floor to nominations for Chairman.

**ELECTION OF OFFICERS:** A motion was made and seconded (Dazey, Hunter) to nominate Scott Cole as Chairman. Scott Cole asked if any other board member wished to be nominated. None present desired to be considered. A motion was then made and seconded (Dazey, Hunter) to close nominations. A motion was then made and seconded (Hunter, Dazey) to confirm Scott Cole's election as Chairman for 2012. Motion carried by a 4-0 unanimous vote. Chairman Cole then presided over the meeting and asked for nominations for Vice Chairman.

A motion was made and seconded (Dazey, Hunter) to nominate David Dunn as Vice Chairman. Having received no other nominations, a motion was then made and seconded (Dazey, Bremer) to close nominations. A 4-0 unanimous vote confirmed David Dunn's election as Vice Chairman.

A motion was made (Dazey) to nomination Mark Hunter as Secretary. Hunter declined. A motion was then made and seconded (Dazey, Hunter) to nominate David Bremer as Secretary. Having received no other nominations, a motion was then made and seconded (Dazey, Hunter) to close nominations. A 4-0 unanimous vote confirmed David Bremer's election as Secretary.

Also in attendance were Town Manager Beth Shellman; BZA Attorney Michael Yoder; Steve Shane; Mike Katz; Stuart Smith; Sue Smith; Ashley Rice; Bill Foote; Julie Foote; Shawn Deck; Russell C. Smith; Cindy Weber; Craig Simon; Everett Troyer; Vicki Jellison; Chris Magnuson; Patrick Moore; Bryce Loring; Jack Owen; and John Morr. (sign in sheet attached to minutes)

**Approval of Minutes:** Minutes from the November 16, 2011 regular meeting were approved as submitted by a motion and second (Dazey, Bremer). Motion carried unanimously by a 4-0 voice vote.

**NEW BUSINESS:**

Chairman Cole asked everyone to sign the meeting attendance sheet and to state their name if making any comments. Petitioners were cautioned that 3 votes are required to pass any motion. All petitioners were given an option to continue their request to the April 18<sup>th</sup> regular meeting to allow for a full board to be present. The meeting procedure was outlined - 20 minutes for petitioners, no more than 20 minutes for interested parties and then 5 minutes rebuttal for the petitioners.

Variance Number 2012-01, Steven and Bethany Shane, requesting a Variance from Section 5.6 Accessory Building Setbacks, Albion Zoning Ordinance, allowing construction of a shed to be placed 3' from a side property line instead of the required six (6) foot side setback in a Residential Two (R2) Zoning District; real estate located Lot 10 North Woods Estates, common location 308 Woods Drive, Albion.

Steve Shane was in attendance. Proof of legal publication was noted as was verification of notification to surrounding property owners. No written correspondence was received. Chairman Cole opened the public hearing at 6:10 p.m.

Shane presented a site plan sketch and explained he is requesting a 3' side setback Variance to construct a 10' x 30' shed on his property to store his camper in. He is currently paying for a storage area and would like to move the camper to his home. Due to large 40' mature Walnut and Oak trees, it is difficult to maintain the 6' setback from his west property line and allow him to use the shed by putting in a garage door. He will observe the required rear and front yard setbacks. The next door neighbor affected by the setback is Eleanor Richter who has signed the sketch approving the setback (on file in petitioners file). Denial of the Variance will cause him difficulty in using his property unless several large trees were removed. Interested party Stuart Smith asked for clarification if the shed would run north/south. Upon confirming it would, he had no concerns.

S. Cole asked if there were any options to take down the trees. S. Shane stated he would not take the trees down. If he doesn't receive the Variance he will construct a smaller shed which will not allow him to store his camper.

There being no further comments, the public hearing was closed at 6:15 p.m. Board members then reviewed and adopted Findings of Fact in support of the request. Member Terry Dazey voted against the Finding that the request will result in practical difficulty in the use of the property. A Motion was made and seconded (Bremer, Hunter) to approve the Variance petition as requested. Motion carried by a 3 in favor -1 opposed voice vote.

Variance Number 2012-02, Casey's Marketing Company, doing business as Casey's General Stores, as authorized by property owners Nathaniel and Ashley Rice, requesting an Use Variance to construct a convenience store with gasoline pumps and a canopy in a Residential Two (R2) Zoning District, instead of locating in a commercial or industrial district; real estate located Section 18, Albion Township, common location 717 E Main St, containing 1+ acre, Albion.

Representatives for Casey's Marketing Bryce Loring and Patrick Moone were in attendance. Proof of legal publication was noted as was verification of notification to surrounding property owners. Written correspondence was received from Craig Simon and David and Shelbee Smolek (filed in petitioner's file). Several interested parties were in attendance. Chairman Cole opened the public hearing at 6:23 p.m.

B. Loring addressed the BZA and provided one packet of information that was presented to the Plan Commission and Town Council. He noted 59% of their buildings are located in towns with a population of 5,000 or less. They recently opened a store in Syracuse and have plans to open a store in Ligonier. With Use Variance approval, they will construct a hip style store that specializes in soft serve ice cream and pizza. They plan to have 8 pumps for gasoline and passenger vehicle diesel fuel. They are applying for the Variance rather than the zoning change due to the denial of their rezoning which was in part based on one concern regarding the multiple commercial uses permitted in CB should the gas station not develop. The Variance is granted to them only and only for the stated purpose. The property will remain residential zoned.

Another concern was for the safety of children and other residents walking in this area. Casey's is willing to pay for 1/2 of the sidewalk from the school to the library. When asked, Mr. Loring stated he had not communicated with the church or school regarding the placement of a sidewalk on either of their properties.

A third concern was the need for acceleration or deceleration lanes. P. Moone is the Engineer on the project. Based on the 35 mile speed limit and the fact they will extend the shoulder to the same

width as currently at the library, across the Casey's property, INDOT will approve a driveway with no acceleration/deceleration lanes. They also changed the lay-out from two access drives off E Main Street to now having one off E Main and sharing the existing drive with C. Simon and the Noble County Public Library. C. Simon stated he was not aware of that plan and does not object but the library owns the property and C. Simon has a driveway easement across it. The petitioner's were not sure if anyone from their company had secured permission from the Library to use the driveway.

T. Dazey asked why they selected this property instead of any other commercial property when there are several other commercial properties available for the proposed use. B. Loring stated another site they looked at did not have the required depth they were looking for and there may be some underground tanks at another property from a gas station which closed in the 1940's. They are concerned about potential contamination and clean-up costs at a different site.

Interested party Cindy Weber read a letter from her and Max (on file in petitioner's file). They own a rental property near the proposed site and have no objections to the request. They feel the north side of Main Street has been used for other commercial uses. They like the idea of allowing Casey's to operate in a residential zoning that reverts to residential uses only if Casey's would close down.

Jack Owen supports the request. The store will offer diesel fuel and adds to the tax base.

Neighboring interested party Julie Foote lives directly south of the site and they are opposed to the request because of the traffic congestion in the area. They have witnessed several close calls with children almost getting hit while crossing E Main in this area. She has lived here 38 years. She would like to see Casey's locate in Albion just not in a residential area.

Everett Troyer is concerned about the kids crossing in this area and school bus safety. The area between the school and library has a high amount of foot traffic and adding a business here will increase the congestion and increase the risk of a child being hit by a vehicle. He is also concerned about the underground tanks. Who would remove the tanks if Casey's closed the business and left?

Steve Shane stated a commercial business in this area is a good fit. However, he is concerned about the safety of pedestrians. The gas pumps being installed will generate a lot of vehicular traffic and increase the exposure of pedestrian-vehicle traffic accidents. He noted the proposal to put in a sidewalk is a mute point because the petitioner's failed to present an agreement between the current property owners (church/school) stating their agreement to sidewalk placement.

Vicki Jellison stated she is a resident and Town Council member. She questioned the new proposal of putting in one driveway off E Main Street and sharing a drive without securing permission from the Noble County Public Library and Craig Simon. They also have failed to show any correspondence from the church or the school on the sidewalk. She asked if Casey's has opened any business at another location that was later closed. B. Loring replied that they have closed stores in the past.

Craig Simon clarified that he has an easement across the library's property and Casey's would need to check that out with them. He noted the school kids cross E Main Street at least once right now at the Crossing Guard. He supports the placement of a sidewalk from the school to the church.

Chris Magnuson stated she is a resident, Plan Commission member and Town Council member. At every meeting she has attended, it is a majority of all present that the town would like to see Casey's locate in Albion. She lives beside a gas station in town now. She has been looking at moving due to the traffic, noise, lighting from cars, trash blowing across the parking lot, traffic causing her windows to rattle. The Crossing Guard at Orange and Jefferson Street has approached her about

the congestion in this area and safety concerns he has about the hazard this traffic creates for the school children. The proposed directional lighting from Casey's is good but doesn't solve all of the other negative issues associated from a business of that type located in or next to a residential area.

Mike Katz has been in the Syracuse Casey's store and it is clean. The business will increase the tax revenue in Albion and create jobs. He does feel the approval should have conditions that they place sidewalks on the north side of the road. Neither of the current gas stations in town sell diesel and these stations are very small for vehicles with trailers, etc. to maneuver in easily.

Shawn Deck stated he lives across the street from the proposed site and has a concern for safety of kids crossing E Main. He is opposed to car lighting waving across his residence. He feels the proposed gas station and convenience store will adversely affect his property value. He works with semi drivers on a daily basis and knows they will pull alongside E Main Street and add to the congestion.

Russ Smith said he is wondering why everyone is talking about safety now when the sidewalk issue has been a concern for years. It was noted that safety is being addressed now by the town providing a crossing guard at the school. The library also provides their own crossing guard at their crosswalk. Steve Shane stated the safety issue will be magnified by allowing a business that generates a high amount of vehicular traffic. The sidewalk does not eliminate the safety issue because they will still be crossing the drives where Casey's patrons will be entering and exiting the property.

John Morr is struggling with the issue of kids walking across the high school driveway if a sidewalk is placed on the north side of the road.

Two letters were received (noted above). Craig Simon expressed his feelings earlier in the meeting. The other letter was from David and Shelbee Smolek who own the property directly across the road from the proposed site. They are opposed to the request due to the lighting, traffic increase, late and early morning hours of the operation and the decrease in property values that is already resulting from their current attempt at selling their home. They support the gas station locating in an area already zoned and available for such a use since there are several sites available.

B. Shellman asked the petitioner's if they have developed a plan to address the filling of the property since there is an approximately an 8' contour difference from the front to the back of the lot. She is also concerned about drainage issues and how taking a small amount of pervious area and turning that into an acre of hard surface will affect drainage on the adjacent properties. P. Moone stated he has not started any design work or discussed any drainage permits.

In rebuttal, B. Loring stated they have closed stores and pulled tanks at other locations. However, there is no guarantee that this will occur at this site and no way of conditioning that on the Variance. T. Dazey asked if Casey's sets aside money for tank removal. B. Loring replied they did not.

P. Moone stated they will work with adjacent lot owners on the sidewalk construction from Cougar Court to the library. There is nothing they can do to address the noise. Parking on the shoulder of E Main Street is an enforcement issue. The tanks are fiberglass and double-walled. The lighting is designed to stay contained within the lot boundary and not spill onto other properties. They will get a written agreement on the shared driveway entrance. Their canopy is too low to support Ag vehicles or semis wanting diesel fuel - they cater to passenger vehicles only for diesel pumps. They are willing to place a 36" tall evergreen screening along E Main Street to block the lights from patrons using the pumps that will be parked facing south.

M. Hunter asked if anyone has done a cost estimate on what it would cost to place a sidewalk here. M. Yoder suggested that the engineering and costs associated with the sidewalk placement should be borne 100 % by the petitioners.

S. Cole asked if Casey's had the numbers for the traffic count they earlier stated was completed. B. Loring did not have the numbers. S. Cole stated he has a traffic count of westbound traffic during a one-week period from Dec. 1 thru Dec. 7 in 2011. There were 10,000 vehicles a week traveling on E Main in the westbound lane. He also provided an average count of 126 cars pulling out of the school parking lot each day.

Board Members were concerned in general with considering any type of approval based on conditions. A considerable amount of time was spent discussing the sidewalk placement. Four specific items were a concern - 1. Shared Driveway Access with the Noble County Public Library; 2. Sidewalk placement from Cougar Court to the Library; 3. Funding for Tank Removal and 4. Clarification on matching the shoulder with INDOT specifications at approximately 8' of width but no less than currently found along the library property.

T. Dazey asked the petitioner's if they could demonstrate the finding stating the denial of the Variance would result in practical difficulty in the use of the property for the residential purposes. They could not.

B. Shellman stated there are 8 sites available on the east side of town and several sites available on the north side of town which are already zoned for commercial gas station/convenience store use.

There were no further comments on the use and Chairman Cole closed the hearing at 7:25 p.m.

Board members then reviewed Findings of Fact. A motion was then made and seconded (Dazey/Bremer) to continue the Use Variance request until the April 18, 2012 meeting to allow the petitioner's time to evaluate the 1. Sidewalk from Cougar Court to the Library and 2. Driveway Entrance they propose to share with the Library and Simon. Motion carried by a 4-0 voice vote.

It was discussed whether or not the April 18th meeting should be a public hearing. Attorney Yoder and Manager Shellman agreed that if the petitioner's present new testimony, then the Board Chairman may allow the public hearing to be reopened for interested parties to provide new testimony. Neither side will need to provide testimony that has already been discussed at this hearing.

With no further business, a motion was made and seconded (Dazey, Hunter) to adjourn the meeting at 7:55 p.m.

Note: after the meeting adjourned, the petitioner's asked for the min. sidewalk width standard in Albion. It was noted to them that the sidewalk width must match the existing sidewalks but no less than 4' in width. The existing sidewalks on E Main at Cougar Court are five feet (5') in width.

\_\_\_\_\_  
Scott Cole,

Chairman

\_\_\_\_\_  
David Bremer,

Secretary