

# Board of Zoning Adjustment

## Staff Report

July 30, 2018



|                          |                                            |
|--------------------------|--------------------------------------------|
| <b>Case No:</b>          | 18CUP1040                                  |
| <b>Project Name:</b>     | Kroger Hydrogen Fuel Tank Farm Relocation  |
| <b>Location:</b>         | 2000 Nelson Miller Parkway                 |
| <b>Owner(s):</b>         | The Kroger Company                         |
| <b>Applicant:</b>        | The Kroger Company                         |
| <b>Jurisdiction:</b>     | Louisville Metro                           |
| <b>Council District:</b> | 19 – Julie Denton                          |
| <b>Case Manager:</b>     | Jon Crumbie, Planning & Design Coordinator |

### **REQUEST(S)**

Modified conditional use permit to allow the relocation of hydrogen fuel tanks

### **CASE SUMMARY/BACKGROUND**

The Middletown Fire Department has requested that Kroger replace their existing hydrogen fuel operation with modern, safer equipment. In response, the current fuel cell farm is being decommissioned and a new hydrogen fuel cell is being constructed approximately 30 feet to the southeast of the existing pad to serve the distribution center.

### **STAFF FINDING / RECOMMENDATION**

There are 4 requirements and all have been met under the previous approved Conditional Use Permit. No additional changes to the requirements were requested. Based upon the information in the staff report and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards established in the LDC for a Conditional Use Permit.

## **RELATED CASES**

**14CUP1024** A request for a Conditional Use Permit to allow a potentially hazardous or nuisance use (hydrogen fuel cell tank) in a PEC zoning district. This request was approved by the Louisville Metro Board of Zoning Adjustment on October 6, 2014.

**14DEVPLAN1046** A request for a Revised Detailed District Development Plan to allow a potentially hazardous or nuisance use (hydrogen fuel cell tank) in a PEC zoning district. This request was approved by staff on October 6, 2014.

## **TECHNICAL REVIEW**

There are no outstanding technical review items.

## **INTERESTED PARTY COMMENTS**

A neighborhood meeting was not required.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT**

### 1. Is the proposal consistent with the applicable policies of the Comprehensive Plan?

STAFF: The proposal meets all applicable policies of the Comprehensive Plan. Lighting will not be added.

### 2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc?

STAFF: The subject site is located in a commercial area that has a mix of commercial uses and is a focal point for several surrounding neighborhoods. All the commercial uses in the area have similar, scale, intensity, traffic, noise, and lighting.

### 3. Are necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use?

STAFF: The proposal has been reviewed by Public Works and MSD and both have approved the plan. The Middletown Fire Protection District requested the updated equipment.

### 4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

The following uses (manufacture, processing, treatment, or storage unless otherwise specified), having accompanying hazards such as fire, explosion, noise, vibration, dust, or the emission of smoke, odor, or toxic gases may, if not in conflict with other laws or ordinances, be located in industrial zones as indicated below by Conditional Use Permit after the location and nature of such use shall have been approved by the Board of Zoning Adjustment. In reviewing an application for a CUP, the Board of Zoning Adjustment shall review the plan and statements of the applicant and the following:

- A. The Comprehensive Plan;
- B. Environmental and health related concerns raised by the operation and the applicant's proposal to mitigate any adverse effects to the public's health, safety and general welfare;
- C. The applicant's site design, buffering, and security measures and their adequacy to mitigate any adverse effects to the public's health, safety and general welfare;
- D. Any other evidence submitted by the applicant and any other party addressing the issues.

A Conditional Use Permit under this section shall be issued only if the evidence shows the applicant's operation and associated nuisances will be properly managed and the public's health, safety and general welfare will be protected. The Board of Zoning Adjustment may impose additional conditions to protect surrounding properties. All Conditional Use Permits under this section shall be issued subject to the applicant also receiving all necessary permits from local, state and federal regulatory agencies

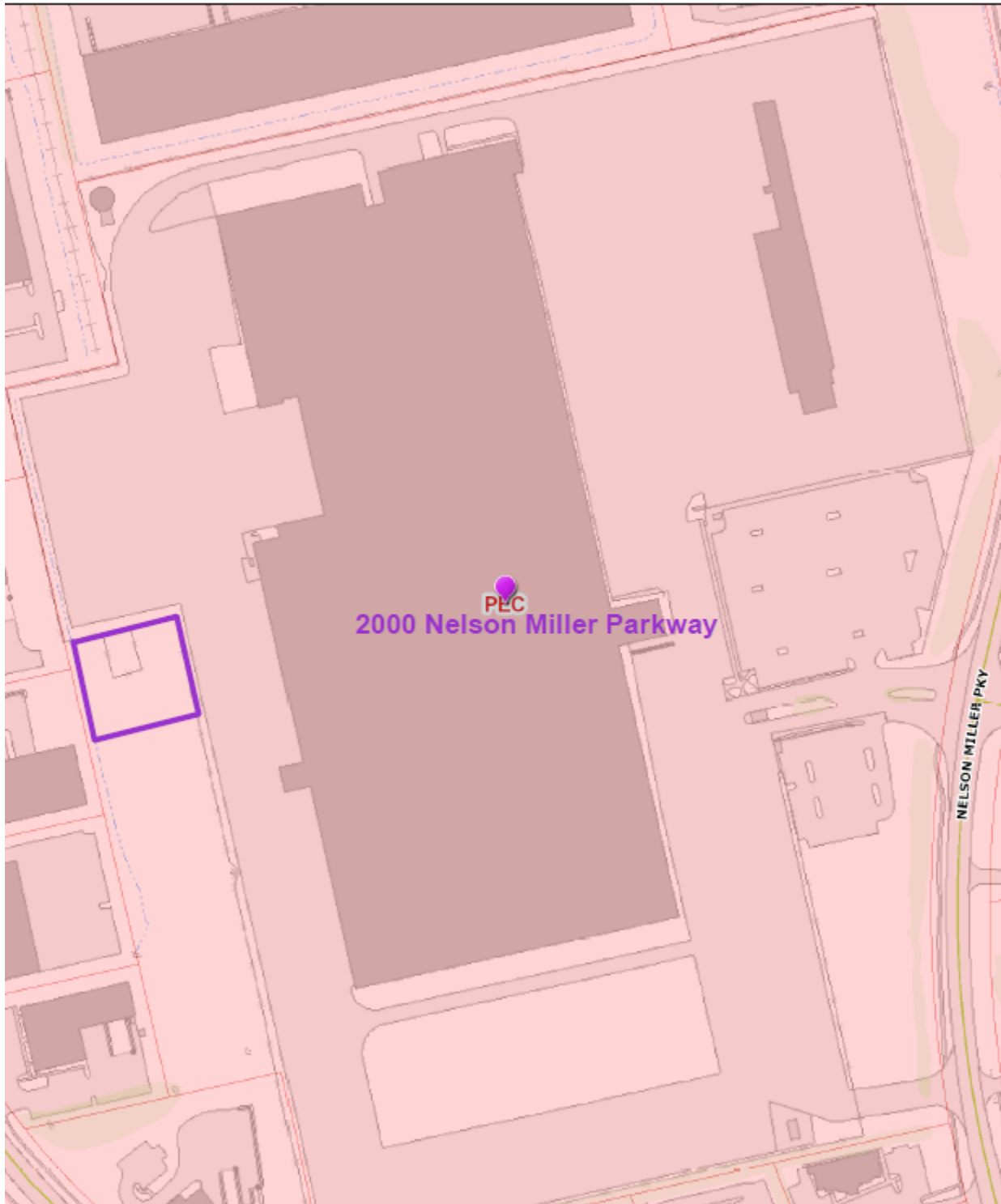
#### **NOTIFICATION**

| Date    | Purpose of Notice            | Recipients                                            |
|---------|------------------------------|-------------------------------------------------------|
| 7/13/18 | Business Session before BOZA | Registered Neighborhood Groups in Council District 19 |

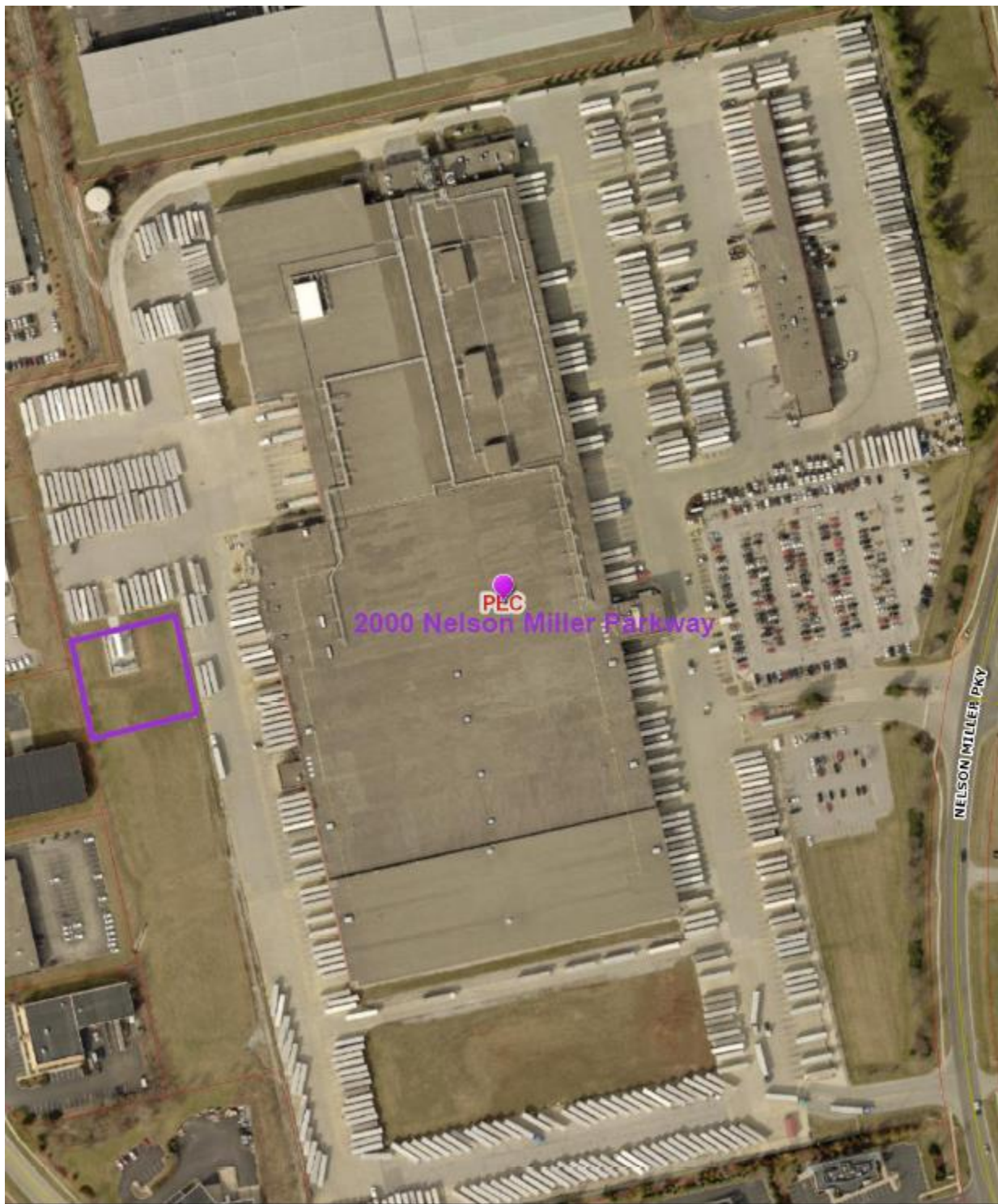
#### **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Existing Conditions of Approval
4. Proposed Conditions of Approval

1. **Zoning Map**



2. Aerial Photograph



3. Existing Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a nuisance use (hydrogen fuel cell tank) without further review and approval by the Board.

4. **Proposed Conditions of Approval**

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a nuisance use (hydrogen fuel cell tank) without further review and approval by the Board.