

# Board of Zoning Adjustment

## Staff Report

October 6, 2014



<b>Case No(s):</b>	14CUP1024
<b>Project Name:</b>	Kroger Distribution Center – Hydrogen Fuel Cell Tank
<b>Location:</b>	2000 Nelson Miller Parkway
<b>Owner(s):</b>	The Kroger Company
<b>Applicant(s):</b>	The Kroger Company
<b>Representative(s):</b>	Phil Gambrell
<b>Project Area/Size:</b>	3,150 square feet
<b>Existing Zoning District:</b>	PEC, Planned Employment Center
<b>Existing Form District:</b>	SW, Suburban Workplace
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	19 – Jerry Miller
<b>Case Manager:</b>	Jon E. Crumbie, Planner II

### REQUEST

- Conditional Use Permit to allow a potentially hazardous or nuisance use (hydrogen fuel cell tank) in a PEC zoning district.

### CASE SUMMARY/BACKGROUND

The applicant is proposing a new hydrogen fuel cell tank for the existing Kroger Distribution Center. The tank will be located at the rear of the property approximately 80 feet from the property line.

### SITE CONTEXT

The site is irregular in shape and located on the west side of Nelson Miller Parkway. The site is surrounded by Offices, Warehouses, and commercial uses to the north, south, east, and west.

### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Warehouse	PEC	SWC
<b>Proposed</b>	Warehouse	PEC	SWC
<b>Surrounding Properties</b>			
<b>North</b>	Warehouse	PEC	SWC
<b>South</b>	Office, Warehouse, Commercial	PEC	SWC
<b>East</b>	Office, Warehouse, Commercial	PEC	SWC
<b>West</b>	Office, Warehouse, Commercial	PEC	SWC

### PREVIOUS CASES ON SITE

**14DEVPLAN1046** A Revised Detailed District Development Plan to allow a hydrogen fuel cell tank on property known as 2000 Nelson Miller Parkway. This proposal is staff approvable.

### INTERESTED PARTY COMMENTS

Staff received several calls and emails concerning the proposal. Most wanted to know if a neighborhood notification plan or evacuation plan is in place in the event of a tank explosion? Who will be notified and what is the radius? Other emails were trying to get information from the applicant but were unable to do so.

### APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMITS

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 did not comment on the proposal.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested? There are 4 requirements and 1 item will be met which are items A. The applicant will need to explain how item B. and C. will be handled. These items were discussed at the pre-application meeting, but no written statement was submitted.

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.**

### **EZ-1 and M-3**

Aluminum powder

Brick, fireback, tile, clay products, including refractories: manufacturing, processing or treatment but not including storage

Cement, gypsum, lime, and plaster of paris (but not storage)

Charcoal, lampblack, carbon black, bone black, and fuel briquettes, including pulverizing

Chemicals, including acetylene, acids and derivatives, alcohol (industrial), ammonia, aniline dyes, carbide, caustic soda, cellulose and cellulose storage, chlorine, cleaning and polishing preparation (non-soap), dressings and blackings, creosote, dyestuffs, exterminating agents and poisons, **hydrogen and oxygen**, plastic materials, and synthetic resins, potash, pyroxylin, tar products, turpentine and resin, and solvent-extracting

Coal, coke, or tar products including fuel gas, and coke-oven products

Distillation, manufacture, or refinement of coal, tar, asphalt, or asphalt products

Metal and metal ores, reduction, refining, smelting, alloying, including blast furnaces, cupolas, and blooming mills (but not storage of metal products)

Minerals and earths (including sand-lime products), grinding, crushing, processing or storage

Paint manufacture, processing, or treatment (but not storage)

Petroleum or petroleum products, refining, bulk storage, including gasoline or other petroleum products

Plastic, manufacture, processing, treatment, or bulk storage

Radioactive materials

Steel works and rolling mills (ferrous) for steel, structural iron and steel fabrication, and structural products, including bars, cables, girders, rails, wire rope, or similar products

Waste paper and rag operations

Wood pulp or fiber, reduction or processing (including paper mill operations)

### **M-3 Only**

Distillation of wood and bones  
 Explosives (when not prohibited by other ordinances) including ammunition, fireworks, nitrating of cotton or other materials, nitrates (manufactured and natural) of an explosive nature, and storage of latter  
 Exterminating operations where exterminating chemicals or agents are stored  
 Fertilizer (organic and non-organic), including fish, oils, manure, or peat  
 Glue and size (vegetable), gelatin (animal), and starch manufacture  
 Grain storage or grain elevators  
 Hair, hides, raw fur, leather, curing, dressing, dyeing, finishing, tanning, and storage  
 Match manufacture, processing, or treatment  
 Meat and fish products, including slaughtering of meat or curing of fish, packing, and storage  
 Ore dumps, slag piles  
 Rendering, incineration or reduction, and storage of dead animals, garbage, offal, or waste products (the entire operation to be performed within a building)  
 Slaughtering of animals or poultry  
 Stock yards and feed lots

**TECHNICAL REVIEW**

There are no outstanding technical review issues.

**STAFF CONCLUSIONS**

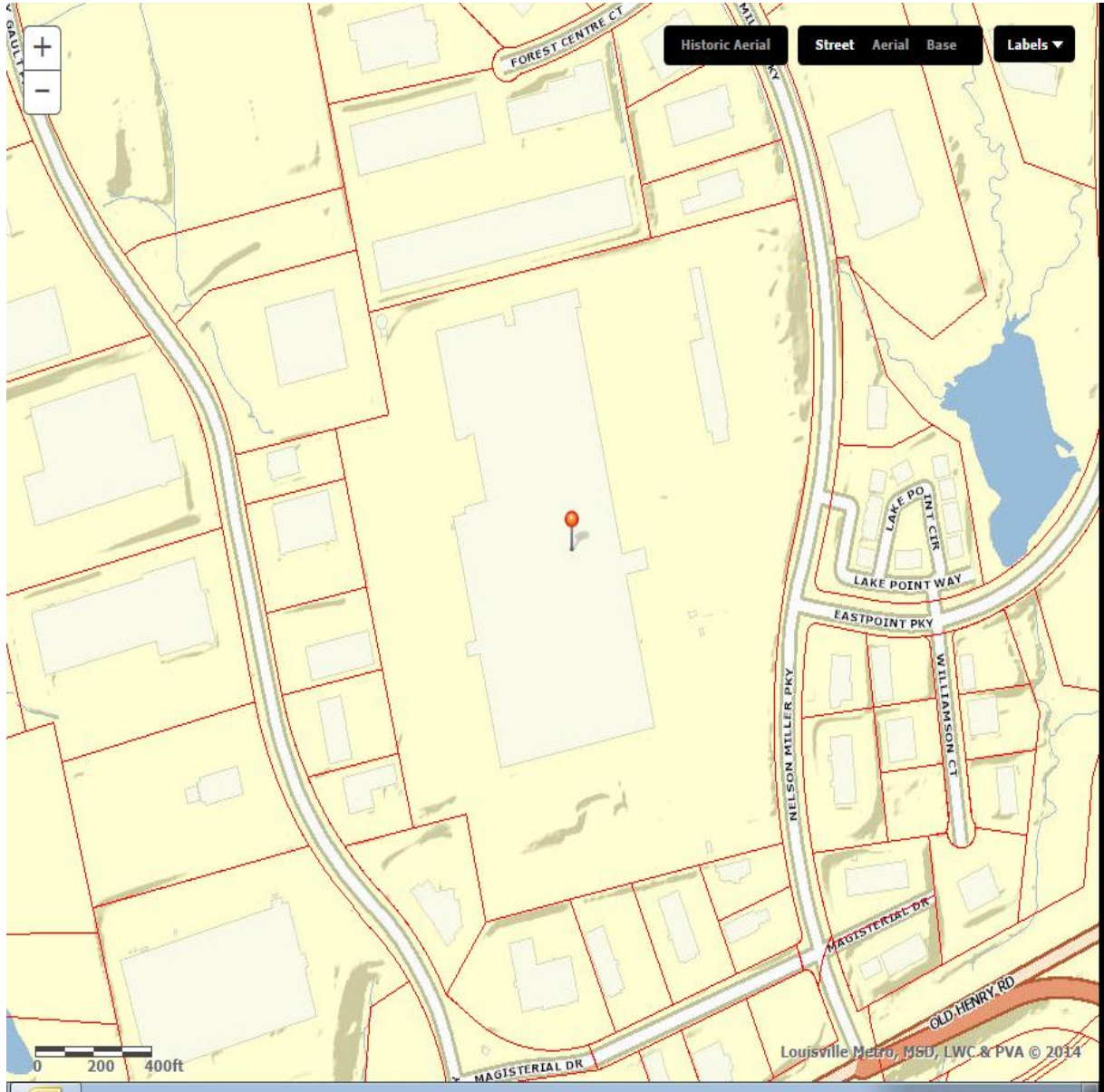
Based upon the information in the staff report, the testimony and evidence provided at the public hearing, BOZA must determine if the proposal meets the standards for granting the Conditional Use Permit as established in the LDC

**NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
9/18/14	APO Notice	First tier adjoining property owners Neighborhood notification recipients
9/19/14	Sign Posting	Subject Property

**ATTACHMENTS**

1. Zoning Map



2. Aerial Photograph



### 3. Cornerstone 2020 Staff Checklist

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
6	Form District Goals G1, G2, G3, G4, Objectives G1.1, G2.1-2.5, G3.1-3.3, G4.1-4.4	Community Form/Land Use Guideline 3: Compatibility	A.5: The proposal mitigates any potential odor or emissions associated with the development.	√	APCD has reviewed the proposal and does not have any comments.		
7	Form District Goals G1, G2, G3, G4, Objectives G1.1, G2.1-2.5, G3.1-3.3, G4.1-4.4	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	√	Public Works has reviewed the proposal and does not have any comments.		
38	Livability, Goals B1, B2, B3, B4, Objectives B1.1-1.8, B2.1-2.7, B3.1-3.4, B4.1-4.3	Livability/Environment Guideline 10: Flooding and Stormwater	The proposal's drainage plans have been approved by MSD, and the proposal mitigates negative impacts to the floodplain and minimizes impervious area. Solid blue line streams are protected through a vegetative buffer, and drainage designs are capable of accommodating upstream runoff assuming a fully-developed watershed. If streambank restoration or preservation is necessary, the proposal uses best management practices.	√	MSD has reviewed the proposal and has no comments.		
39	Livability Goals C1, C2, C3, C4, all related Objectives	Livability/Environment Guideline 12: Air Quality	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	√	APCD has reviewed the proposal and does not have any comments.		

#### 4. Applicant's Justification Statement and Proposed Findings of Fact

7/14/14

Conditional Use Permit - Pre Application

Kroger Distribution Center - Hydrogen Fuel Cell Tanks

The project consists of providing a new Hydrogen Fuel Cell <sup>tank</sup> for the existing Kroger Distribution Center.

Impervious area will include 3,588 SF of new pavement for the tanks to sit on, resulting in an impervious area increase of 0.18%. The enclosure for the tank is located 80'-0" from the property line.

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## Neighborhood Meeting Notification

DATE SENT: August 25, 2014

TO: Adjoining Property Owners of: Kroger Distribution Center, 2000 Nelson Miller Parkway, Louisville, KY 40223; Neighborhood Group Representatives expressing interest in this area; and, Metro Councilperson for the 19<sup>th</sup> District.

FROM: The Kroger Company, Developer

RE: Development Proposal for Property located at 2000 Nelson Miller Parkway, Louisville, KY 40223

A proposal to install a hydrogen storage tank at the Kroger Distribution Center, located at 2000 Nelson Miller Parkway, Louisville, KY 40223 has been submitted to the Louisville Metro Department of Codes and Regulations. The current use on this site is a Food Distribution Warehouse and is not proposed to change.

This proposal entails a request for a Conditional Use Permit. This request will be considered by the Louisville Metro Planning Commission and/or Board of Zoning Adjustment.

In accordance with procedures of Louisville Metro Planning and Design Services, we have been directed to invite adjoining property owners and neighborhood group representatives to discuss this proposal before an application can be filled. This will be an informal meeting to give you the opportunity to review the proposed plan and discuss the proposal with the developer or his representative. This meeting will be held in addition to the established public meeting procedures of the Planning Commission and/or Board of Zoning Adjustment.

MEETING DATE AND LOCATION: Thursday, September 4, 2014 at 6:00 pm at the Offices of Lockett & Farley, 737 South Third Street, Louisville, KY 40202.

At this meeting, representatives from Lockett & Farley will explain the proposal and then discuss any concerns you have. The purpose of this meeting is to increase your understanding of this proposal early in the process. We encourage you to attend this meeting and to share your thoughts.

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11/11/2014

NEIGHBORS IN ATTENDANCE

Name  
(Optional)

Address

Zip Code

Phone #

Scott Harrington 601 W Jefferson St 40202 574-1119

↳ L.A. for Councilman Jerry T. Miller

Shenie' Long 444 South 5th Street 40202 574-3283

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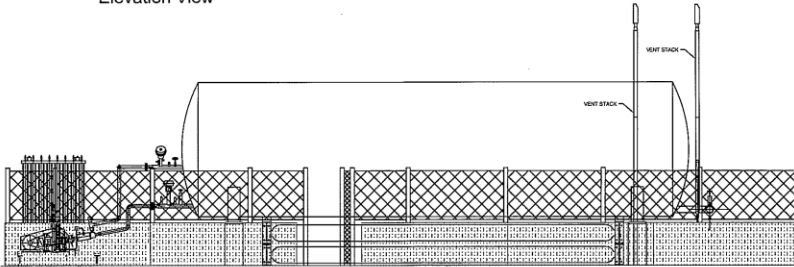


**Equipment Elevation View**

**General Requirements to be provided by Plug Power**  
 1. Placards and warning signs as per NFPA 2, 8.2.1.3

**General Requirements to be provided by Customer**  
 1. Crash Protection to be provided in accordance with NFPA 2, 4.14.2

**Elevation View**



Note: Transparency of Jersey barriers to improve visibility

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DATE	REV	DESCRIPTION	DATE	BY
THIS DOCUMENT IS UNCONTROLLED IF: - IT DOES NOT HAVE THIS MARKING - IT DOES NOT HAVE THIS MARKING - IT DOES NOT HAVE THIS MARKING - IT DOES NOT HAVE THIS MARKING - IT DOES NOT HAVE THIS MARKING				
Prepared by Design Services		317.m Equipment Elevation View GenFuel for Kroger Louisville, KY		
Checked by Design Services		317.m 317.m		
APPROVED: [Signature] PROJECT MANAGER: [Signature]		SCALE: NONE SHEET: 02		

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**14CUP1024**

**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 potentially hazardous or nuisance use (Hydrogen Fuel Cell Tank) without further review and approval by the Board.