

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

OCTOBER 6, 2014

NEW BUSINESS

CASE NO. 14CUP1024

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

Project Name: Kroger Distribution Center—Hydrogen Fuel Cell Tank

Location: 2000 Nelson Miller Parkway

Owner: The Kroger Company
Tony Cox, Kroger Project Manager
2000 Nelson Miller Parkway
Louisville, KY 40223

Applicant: Same as owner

Representative: Luckett & Farley
Phillip Gambrell
737 S. 3rd Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 19—Jerry Miller

Staff Case Manager: Jon Crumbie, Planner II

Notice of this public hearing was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicant.

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained at the Planning and Design Services offices located at 444 S. 5th Street).

Agency Testimony:

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing

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a new hydrogen fuel cell tank which will be located at the rear of the property, approximately 80 feet from the property line. He said area residents wanted to know if there is an evacuation plan and the radius of people alerted if there should be an explosion. Mr. Crumbie said the applicant needs to discuss how items B. and C. will be handled with regard to specific standards required to obtain the Conditional Use Permit (pg. 5 of staff report). Member Fishman questioned where the minutes were for the neighborhood meeting. Mr. Crumbie said to ask the applicant.

The following spoke in favor of this request:

Tony Cox, The Kroger Company.

Summary of testimony of those in favor:

Tony Cox, the applicant, explained how the process will reduce greenhouse gases and reduce the carbon footprint. He said this is new technology that they've implemented in other states with no safety incidences. He said they are not required to submit an evacuation plan; and that there are already numerous safety measures in place. Member Allendorf said area residents can subscribe to the Metro Safe Code Red to be alerted of any leaks/danger.

The following spoke neither for nor against the request:

Phil Williams, 2115 Stanley Gault Parkway, Louisville, Kentucky 40223.

Jim Kennedy, 13901 Old Henry Trail, Louisville, Kentucky 40245-

Summary of testimony of those who spoke neither for nor against:

Phil Williams said he is representing a client who lives near the site. He said the applicant has answered all their questions, and his clients are comfortable with the request.

Jim Kennedy said he is chairman of the Old Henry Road Neighborhood Association, said he didn't receive a notice and has heard nothing about this request. Mr. Crumbie said he needs to sign up for the e-mails through the city's website; and that 278 people in District 19 were notified. Mr. Kennedy said the procedure is flawed for people who don't use a computer.

The following spoke in opposition to this request:

No one.

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Summary of testimony of those in opposition:

No one spoke in opposition.

Deliberation:

Member Allendorf said this is new "green" technology and is flammable but said there is probably more hazardous material than this. He said as long as there is proper ventilation and security measures in place, should be safe. Member Fishman asked if anyone showed up at the neighborhood meeting.

Back Into Public Hearing:

Scott Harrington, Councilmember Jerry Miller's legislative assistant, said he attended the neighborhood meeting and said it was 22 miles from the district and at 6:00 p.m. making it very difficult for anyone to attend. He said the applicant should conduct another neighborhood meeting to answer any questions area residents might have. He said the policy should be changed so that neighborhood meetings are held within the same zip code or district and held at a neutral venue, as this meeting was held at the applicant's engineering firm. Chair Proffitt agreed, and said he will address this at the next Policies and Procedures meeting.

Back Into Business Session:

Member Fishman said she would like the area residents to have the opportunity to ask questions regarding this request.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the October 6, 2014 public hearing proceedings.

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

On a motion by Member Allendorf, seconded by Member Liggin, the following resolution was adopted:

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WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow a potentially hazardous or nuisance use (hydrogen fuel cell tank) in a PEC-Planned Employment Center zoning district; and

WHEREAS, the Board finds that the proposal meets all applicable policies of the Comprehensive Plan; and lighting will not be added; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses since 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; and because all the commercial uses in the area have similar scale, intensity, traffic, noise and lighting; and

WHEREAS, the Board finds that the proposal complies with specific standards required to obtain the conditional use permit because the evidence shows that the operation and associated nuisances will be properly managed and the public's health, safety and general welfare will be protected; and because the applicant will need to receive all necessary permits from local, state and federal regulatory agencies;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a potentially hazardous or nuisance use (Hydrogen Fuel Cell Tank) in a PEZ zoning district on the site **SUBJECT** to the following 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.

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YES: Members Allendorf, Proffitt, Liggin, Fishman, Tharp and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Jarboe.

ABSTAINING: No one.