

CITY OF BELLEVUE  
BOARD OF ADJUSTMENT

November 6, 2014

AGENDA

- I. Call to Order
- II. Old Business
  - September 25, 2014 Meeting Minutes
  - Application 14-003 submitted by Kroger Cincinnati/Dayton KMA, Monte Chesko, for a conditional use and zoning variance at 55 Donnermeyer Drive, Bellevue, KY 41073. The property is located in the Transect 5 (T5) form-based code zoning district.
- III. Other Business
- IV. Adjourn

October 14, 2014

Mr. John Yung  
Zoning Administrator  
City of Bellevue  
616 Poplar Street  
Bellevue, KY 41073

Hand Delivered

RE: Board of Adjustment Case #14-003 – Kroger Fuel Center at 55 Donnermeyer Drive

Dear Mr. Yung:

On behalf of Kroger, I am transmitting the enclosed revised plans for review by the City of Bellevue Board of Adjustment of a conditional use and variances to allow the proposed Kroger fuel center to replace the existing All Season Car Wash at 55 Donnermeyer Drive. It is my understanding that the Board of Adjustment hearing will be reconvened at 6 PM on November 6, 2014.

Please find the following information:

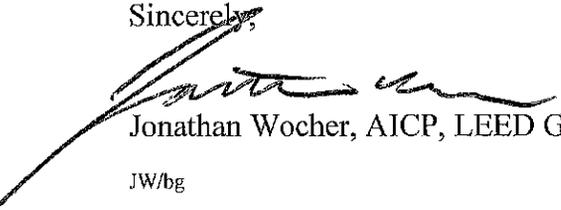
- Four full size copies of revised site plan and revised building elevations.
- Four 11"x17" revised sign detail plans showing the proposed building monument sign.
- A narrative description of the revisions relative to the conditional use and variance requests.
- A CD containing PDFs of the revised plans.

Please review this information and contact me with any questions or if you require additional information. Please notify me if additional fees are required.

Please confirm the November 6 meeting date and send me a copy of the meeting notice. Please transmit a copy of the meeting agenda and staff report when available.

Thank you for your continued assistance. Do not hesitate to contact me as needed.

Sincerely,



Jonathan Woche, AICP, LEED GA

JW/bg

Enclosures

cc: Kroger

MDC #3336

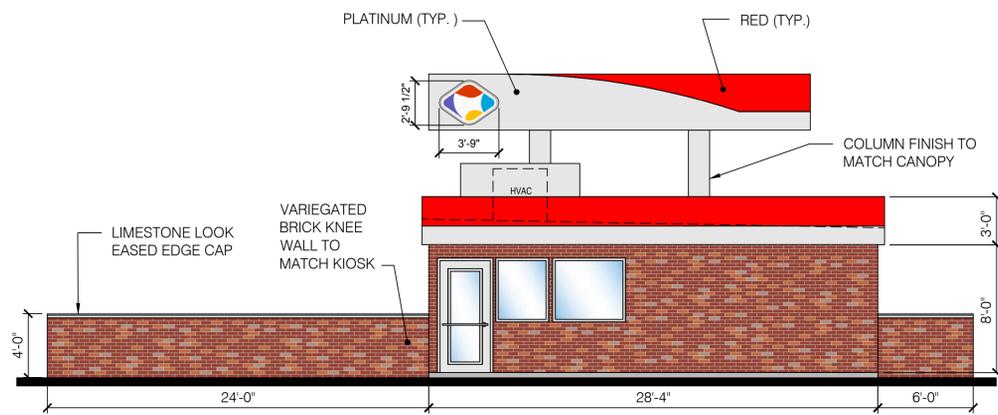
*Planning • Zoning • Development Services*

**Proposed Kroger Fuel Center  
BOA Case #14-003 – Description of Revisions**

Described below are the revisions to the proposed Kroger Fuel Center plans resulting from the 10-1-14 BOA hearing:

1. Conditional Use:
  - The proposed pedestrian path from Donnermeyer Drive to the Kroger grocery store west of the proposed fuel center has been enhanced so that the path will be a concrete sidewalk, at grade with the existing asphalt. Bumper blocks will be installed at the eastern end of each parking space adjacent to the pedestrian path to protect pedestrians and prevent vehicles from driving across the sidewalk. [Final alignment is subject to investigation of construction details.]
  - Kroger agrees to use cut-off lighting fixtures in the fuel canopy to limit light trespass on the eastern property line, and to provide a photometric lighting plan during construction permitting.
  - Kroger agrees that external illumination of signs, if used, will not be directed or glare towards the residential uses to the east.
2. Variance for 80% building frontage buildout:
  - Kroger proposes to install a 4 foot tall brick streetscreen wall along approximately 30 feet of the Donnermeyer Drive street frontage.
  - Approximately 24 feet of wall will be constructed on the west side of the fuel center store, and approximately 6 feet of wall on the east side of the store.
  - The building material of the fuel center store has been changed to be brick to match the proposed streetscreen wall.
  - Combined the store building and streetscreen walls will be 58'4", representing 58.25% of the frontage. A variance is still necessary.
    - The lot has 100 feet of frontage. There will be a 3 foot landscape strip on the east property line; a 24 foot driveway; a 10 foot mountable curb for truck egress; a 6 foot long wall east of the store; a 28' store building; a 24 foot long wall west of the store; and a 3 foot curb radius area to meet the existing shopping center driveway.
3. Variance for window glazing:
  - No revisions are proposed to the glazing. A variance is still necessary.
4. Variance for internal illumination:
  - A variance is no longer requested. Kroger will either utilize external illumination or will not illuminate the proposed signs.
5. Variance for freestanding sign area and height:
  - The freestanding sign height has been revised to be 6 feet, complying with the code. (Proposed shrubs along Donnermeyer Drive have been removed so that sign visibility will not be blocked.)
  - The sign area and width have not changed. A variance is requested.
6. Variance for buffer:
  - The city determined that a buffer is not required and therefore no variance is needed.
7. Variance for west side yard:
  - The proposed streetscreen walls described in item #2 above (building frontage buildout) correlates with this requirement. A variance is still necessary.
8. Variance for the east side yard:
  - The proposed streetscreen walls described in item #2 above (building frontage buildout) correlates with this requirement. A variance is still necessary.
9. Variance for ceiling height:
  - No revisions are proposed to the ceiling height. A variance is still necessary.
10. Variance for fuel price cabinet on the fuel center:
  - No revisions are proposed to the fuel price cabinet signs. A variance is still necessary.





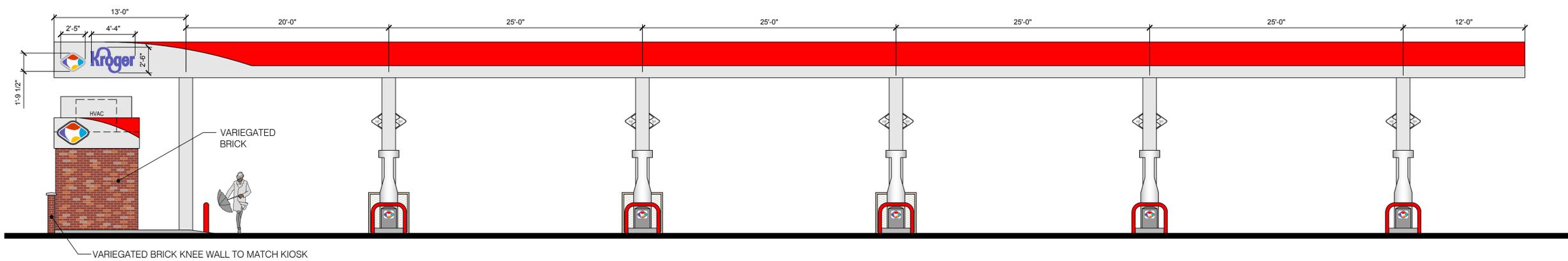
**3 SOUTH SIDE ELEVATION**  
SCALE: NTS



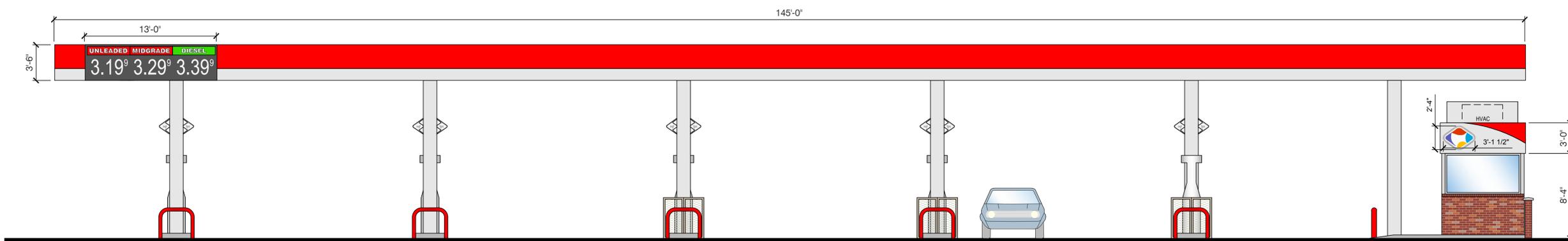
**4 NORTH SIDE ELEVATION**  
SCALE: NTS

HEIGHT OF KIOSK: 11'-0"  
 KIOSK AREA: 28'-4" X 8'-0" = 222 SF  
 HEIGHT TO BOTTOM OF CANOPY: 15'-6" (MIN.)  
 CANOPY AREA: 24'-0" X 145'-0" = 3,480 SF  
 HEIGHT OF FASCIA: 3'-6"

SIGNAGE SCHEDULE				
SIGN	QUANTITY	SIGN AREA [SF]	TOTAL AREA [SF]	
UNLEADED MIDGRADE DIESEL 3.19 <sup>9</sup> 3.29 <sup>9</sup> 3.39 <sup>9</sup>	1	45.50	45.50	
Kroger logo	CANOPY - NEXT TO LETTERS	1	2.80	2.80
	CANOPY - SOLO	2	6.77	13.54
Kroger logo	KIOSK	2	4.66	9.32
		1	10.83	10.83
TOTAL			81.99	



**2 EAST ELEVATION**  
SCALE: NTS



**1 WEST ELEVATION**  
SCALE: NTS

**SSOE**  
**SSOE, INC.**  
 ARCHITECTS • ENGINEERS  
 TROY, MICHIGAN 48064  
 248.643.6222

**Kroger**  
 The Kroger Co.  
 CINCINNATI DAYTON MARKETING AREA  
 150 Tri-County Parkway  
 Cincinnati, OH 45246  
 Phone (513) 762-3300

REVISIONS		DATE
No.	DESCRIPTION	DATE
1	OWNER REVIEW	06-14-2014
2	SITE PLAN APPROVAL	06-20-2014
3	OWNER REVIEW	09-29-2014
5	OWNER REVIEW	10-01-2014

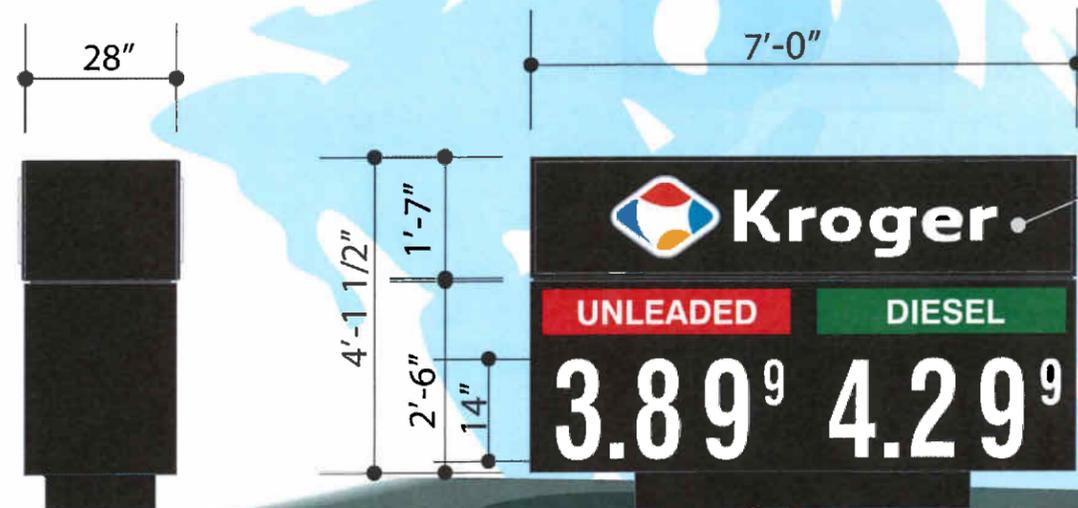
Project No.: P14-01611-00  
 Project Manager: ALFIERI  
 Designed By: SALA  
 Drawn By: BABB  
 Checked By: SALA  
 Store No.: A-359  
 Address: 55 6th STREET  
 BELLEVUE, KY

**COLOR ELEVATION & SIGNAGE PLAN**

Drawing No.: **C2.1**

THIS DRAWING IS AND SHALL REMAIN THE PROPERTY OF THE KROGER CO. REPRODUCTION OR ALTERATION OF THIS DRAWING WITHOUT THE EXPRESS WRITTEN PERMISSION OF THE KROGER CO. IS PROHIBITED. (NOT PUBLISHED: ALL RIGHTS RESERVED)  
NOTE TO CONTRACTOR: THIS SET OF DRAWINGS AND DOCUMENTS IS INTENDED AS A SET OF GUIDELINES FOR THE PROJECT AND ARE INTENDED TO BE USED IN CONJUNCTION WITH A SET OF CONSTRUCTION SPECIFICATIONS TO BE SUPPLIED BY OWNER. THEY MUST BE READ TO INCORPORATE ALL APPLICABLE FEDERAL, STATE, AND LOCAL CODES INCLUDING FEDERAL A.D.A. REQUIREMENTS. THIS SET ASSUMES THAT THERE ARE NO UNUSUAL SOIL CONDITIONS OR WIND LOADS. THE FAILURE OF THIS CONDITION MAY REQUIRE SIGNIFICANT CHANGES TO THESE DOCUMENTS. IT IS THE RESPONSIBILITY OF THE GENERAL TO CONFORM TO ALL APPLICABLE CODES AND TO INFORM THE OWNERS/ARCHITECTS OF ANY QUESTIONS OR CLARIFICATIONS WHICH ARE DESIRED. CONTRACTORS SHALL ALSO VISIT THE SITE BEFORE BIDDING. CONTRACTORS ARE REQUIRED TO KNOW ALL OBSERVABLE CONDITIONS AND APPLICABLE CODES.

Overall height of 6', including a 22" base. The sign will be externally illuminated.



Formed PCB cap over type push thru white acrylic letters. (DBR-see copy options)

Price sign furnished by others.

COLORS



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CUSTOMER APPROVAL:

DATE: \_\_\_\_\_

Rev. #	DATE	BY	Rev. #	DATE	BY
Rev. #1	10-18-2010	S.H.	Rev. #4	_____	_____
Rev. #2	01-18-2011	S.H.	Rev. #5	_____	_____
Rev. #3	10-17-2011	S.H.	Rev. #6	_____	_____

**The Kroger Co.**

DRAWING NO:  
53154.07B1  
DATE: 2-12-09  
S. Hawke



# STAFF REPORT

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**APPLICATION NUMBER:** 14-003  
**APPLICANT:** Kroger  
**TYPE OF REQUEST:** Conditional Use Permit/Variances

## UPDATE

City staff met with Kroger representatives on October 2, 2014 regarding changes to the proposals site plan and layout. At the discussion Kroger representatives offered the following modifications to the site plan:

- The inclusion of a pedestrian walkway from Donnermeyer Dr. to the store. Kroger officials indicated that the path would be a concrete walkway that will be at grade with the pavement. There will be parking bumpers on the west side of the pathway for the existing parking. They stated that they did not want to go with a raised curb sidewalk due to safety concerns for pedestrians entering the store and drainage concerns for rainwater.
- Reduced height of the Monument Sign. The monument sign base height has been reduced from 30 inches to 22 inches however the overall square footage of the proposed sign remains the same as the original proposal.
- Lighting has been modified to direct downward from the canopy. The canopy sign will either not be illuminated or have external illumination directed away from the residential properties.
- Limit hours of operation in response to neighbor concerns at the meeting to 11PM.
- The material of the kiosk have been changed to red brick.
- The kiosk will also feature four foot tall “wing walls” on each side along the frontage. The applicant indicated that this is a concession to meet the code however staff indicated that the “wing walls” still do not count as part of the building frontage. The applicant has indicated they still wish to pursue the variance request for this aspect of the code.

The applicant refused to expand the footprint of the front building, raise the ceiling height of the building, reduce the size of their monument sign or increase the amount of clear glazing along the buildings front as required by the code. City staff had a vigorous conversation with the applicant about addressing the number and scope of the remaining variances. However; at the conclusion of the meeting, many of the variance requests remained at the insistence of the applicant.

After the meeting staff conducted research into each variance claim and analyzed several existing Kroger brand gas stations in the Cincinnati and Louisville area. Staff evaluated signage, building type, site layout, and building materials. At the September 25 meeting Kroger representatives stated that their division does not build convenience stores with the gas station. However, staff located a Kroger gas station with a convenience store that was constructed in Fairfield Ohio last year.

On October 14, city staff visited the Kroger gas station located at Niles Rd and Pleasant Ave in Fairfield Ohio. The gas station is the only location in the Cincinnati area to feature a 1,000 square foot convenience

store. The store is approximately 30 feet deep by 50 feet wide. It appears that over 30% of the front of the building is clear glazing. The building contains a bathroom, water fountain, ATM, storage area and many of the items that would be sold as outdoor sales at other locations. Pictures are below:



Additionally, staff contacted Fairfield city officials which provided information regarding how the convenience store was ultimately constructed. Their city had similar regulations that prohibited a kiosk and required a building. The Fairfield Planning Commission and Design Review Boards rejected similar kiosk oriented gas station proposals from the applicant based on their zoning and design guidelines.

Kroger representatives appealed to their City Council with a plan that ultimately complied with the city's codes and design guidelines. The redesigned site included the convenience store and eliminated all outdoor sales at the site. That alternative was approved after the conclusion of a traffic study in September 2012 and the store was constructed in 2013. The documents from those meetings are attached to this report.

**CONDITIONAL USE EVALUATION  
REQUIREMENTS**

Section 18.1 (A) of the City’s Zoning Regulations governs the requirements for conditional uses. In section (A) it is clear that the *applicant* is required to present evidence that they meet the requirements of a conditional use permit. Since this would be a new development most of the evaluation criteria will apply. The Board of Adjustment should ensure, however, that the *gasoline* function meets the following criteria:

1. That the proposed conditional use is in agreement with various elements of the Comprehensive Plan and where applicable, any other adopted plan; and
2. That the *Gasoline* function provides a necessary or desirable service to the community; and
3. That the *Gasoline* function will not be detrimental to the health, safety or welfare of the residents in the neighborhood; and
4. That the parking and traffic flow will not put any additional stress on the neighborhood; and
5. That any signage should be of appropriate scale and should enhance the building and not detract from the neighborhood.

The applicant has submitted a sheet with their arguments for the conditional use and variances with their application which is attached to this report.

**BOARD OF ADJUSTMENT DUTIES**

KRS 100.237 gives the Board of Adjustment the power to hear and decide applications for conditional use permits to allow proper integration into the community.

The Board of Adjustment may approve, modify, or deny any application. If the Board approves the permit, it may impose time limitations and/or require that one or more things are done before the request is initiated.

**FINDINGS UPDATE**

**1. Agreement with the Comprehensive Plan and Intent Section of the form based code:**

**COMPREHENSIVE PLAN**

The addition of the pedestrian walkway satisfies parts of the comprehensive plan however there is still a concern regarding the location of use based on service population. There is still concern that the new drive land along the western side of the project is wider than what is recommended for local traffic circulation. It is recommended that a buffer of either bollards or parking is added along the drive lane side of the sidewalk to develop an adequate buffer between pedestrians and moving cars.

**FORM BASED CODE INTENT**

There is still a concern that automobile traffic would increase while the proposal does not do enough to adequately encourage a pedestrian scaled corridor and eliminate or reduce sprawl development.

At the Fairfield location staff observed many gas station patrons entering the convenience store instead of using the outdoor window. Many of these patrons purchased items inside the store as well. If a retail store similar in the size and use of the Fairfield Ohio Kroger gas station location was located along Donnermeyer, many of these concerns would be addressed as a store of that size would significantly enhance the corridor and would draw more pedestrians to the location thus promoting a viable pedestrian environment.

2. **Desirability to community:**

As indicated in the prior report, there are three other gas stations within a one-half mile radius of the site. The project is an approximately \$1.5 to \$1.8 million construction project that will generate five part-time jobs. The city estimates the proposal will net approximately \$4,000 annually from the proposal based on property, tangible and payroll tax income. The project may positively or negatively affect the property values of the adjacent properties. The board will have to determine if this proposal is the highest and best use of the land.

One thing that has come up is the appearance and tidiness of the operation. Many of the fuel centers in the region have outdoor sales areas and the proposed gas station includes those. After viewing many of these stations staff has become more concerned about the appearance of the outdoor sales areas. Therefore staff recommends that the outdoor sales on the premise be limited or removed all together. If the kiosk is expanded into a building, many of the outdoor sales components could be sold inside the building.

3. **Health, safety or welfare concerns:** Adjacent property owners spoke at the public hearing on September 25<sup>th</sup>. Additionally, the city has received a letter from an adjacent property owner opposing the project out of concern for access to their property. The applicant has agreed to not illuminate the gas canopy, direct interior canopy illumination down and limit their hours of operation in response to neighbor concerns.

4. **Traffic and Parking:** Some traffic conflicts between automobiles and pedestrians have been addressed with the addition of the walkway. Staff is still concerned about pedestrian safety along the active drive lane since the drive lane is still much wider than 24 ft. This can be remedied by adding a parking buffer, bollards or other buffering device along the proposed sidewalk/pathway.

Additionally there is concern about the ability for automobiles to enter and exit Donnermeyer and the gas station throughout the west drive lane which would create more conflict points for automobiles. Staff recommends that the applicant modify its plan to better focus automobile access points between both properties.

5. **Signage:** The building and gas canopy are required to adhere to sign standards delineated in Section 21.4 (K) of the Zoning Code. However the applicant is maintaining its application for variances regarding the monument sign.

**CONCLUSION**

The revision to the plan is an improvement to the previously submitted plan however there are still requests from the applicant for specific variances to the zoning code. The variance requests affect the applications ability to conform to the conditional use criteria above.

If the Board does make a decision to approve the conditional use, staff suggests that the following conditions be attached to limit potential adverse impacts to the surrounding residential neighborhood:

- Bollards or a similar buffering device be installed along the drive-lane side of the proposed pedestrian pathway to buffer pedestrians from vehicular traffic.
- The applicant must construct a retail building of at least 1,000 square feet along the frontage of the street.
- The exterior of the building shall be brick façade.

- Outdoor retail shall not be permitted on premise.
- The applicant must provide the city a copy of the site’s Elevation Certificate upon completion of the project.
- The gas station must not operate between 11PM – 6AM daily.
- Lighting from the gas station must be directed away from adjoining residential properties.

**VARIANCES UPDATE**

The application initially asked for the following nine variances:

1. A variance for up to 51.75% of the minimum frontage build-out requirement.
2. A variance for 16% of window glazing requirement.
3. A variance for internally illuminated signage of all signs.
4. A variance for 10 extra square feet for a ground monument sign.
5. Exemption from any applicable buffer zone requirements.
6. Setback is 2 feet greater than the minimum (3 feet) allowed for the west side yard setback.
7. Setback is 32 feet greater than the minimum (3 feet) allowed for the east side yard setback.
8. Store ground to ceiling height is eight (8) ft. Applicant can apply for 3 foot variance from 11ft height minimum. (Section 21.4 F(1.e)).
9. Gasoline canopy price sign exceeds maximum allowable sign height by .5 feet. (Section 21.4 K(5.b)).

After the meeting the applicant stated they would have to externally illuminate signage. Staff and the applicant agreed that the buffer variance was not required. Staff evaluated the signage by rendering a 3D model of the project. Staff found that the west canopy price sign no longer required a variance because only the numbers are visible from the street. The visible sign height conforms to the zoning code.

However dimensional variances are still requested by the applicant for the kiosk dimensions, the glazing, ceiling height and the monument sign.

**Table 1: Variance Request Update**

<b><u>Variance #</u></b>	<b><u>Summary</u></b>	<b><u>Recommendation</u></b>	<b><u>Suggested correction</u></b>
1	Frontage Buildout	<b>Deny</b>	Build a building that better meets the code.
2	Glazing %	<b>Deny</b>	Add more windows.
3	Internal Illumination	<b>RESOLVED</b>	Not dimensional. Applicant will follow code.
4	Monument sign	<b>Deny</b>	Reduce or eliminate sign.
5	Buffer Zone	<b>RESOLVED</b>	Issues were addressed.
6	East side setback	<b>Deny</b>	Move or expand building at least two feet.
7	West side setback	<b>Deny</b>	Expand building to better meet code.
8	Interior height	<b>Deny</b>	Raise ceiling height by moving canopy back.
9	Canopy Sign	<b>RESOLVED</b>	Legible copy is within zoning reqs.

**FINDING OF FACT (Summary)**

KRS 100.241 reads “The board shall have the power to hear and decide on applications for variances. The board may impose any reasonable conditions or restrictions on any variance it decides to grant.”

KRS 100.243 states "Before any variance is granted, the board must find that the granting of this variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the

general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations." In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances that do not generally apply to land in the general vicinity, or in the same zone.
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

Many of the variance requests can be easily eliminated with adjustments to the proposal. Staff has developed recommendations as to how the applicant can comply with the city's zoning code which will be discussed in the staff alternative proposal section. Granting the variances could negatively impact the viability of the associated Conditional Use application.

**Building Frontage Variances (Variances 1, 6 & 7)**

**Frontage percentage reduction of 51.75% of code requirement.**

**West and east side yard setbacks of 27 feet and 40 feet off 8 foot maximum respectively.**

- A) Is there a special circumstance that does not generally apply to land in the general vicinity or in the same zone?
  - a. No. The lot is a conforming lot to the city's zoning code. It is a lot that can support the development of a building that would conform with the dimensional requirements of the city's zoning code.
  - b. The only justifiable constraint would be the need for a curb cut and drive lane to access the parcel. That area is 24 foot as designated by the code. The site plan also provides for a mountable curb adjacent to the drive lane access for the fuel truck. That distance is an extra ten (10) feet. If the Board of Adjustment finds the mountable curb necessary it could grant a variance for this which would be relief of 26 feet from the 8 foot east setback and a reduction of 14% of the 80% building frontage requirement. This means that 66% of the frontage (66ft) must be building frontage to comply with the code. The updated proposal is still at 28% of the lot frontage (100ft).
- B) Does the strict application of the zoning regulation deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant?
  - a. No. The applicant has demonstrated that it can build a building to the size and scope of the code at a different location within the Cincinnati market. The Fairfield Ohio location has a building that would be similar in size to meet the requirements of Bellevue's zoning code.
- C) Are the circumstances the result of actions the applicant has taken after the adoption of the zoning regulation provisions from which relief is sought?
  - a. The applicant has not taken any actions on the property since the adoption of the current zoning designation in 2011.

Staff Recommendation: **DENY** the variance proposal. See staff alternate proposal for recommended modifications.

## Glazing Variance

- A) Is there a special circumstance that does not generally apply to land in the general vicinity or in the same zone?
- No. The applicant is refusing to conform to this zoning requirement. They indicated that there is no more room in the kiosk to locate more windows however if they increase the size of the building frontage, it would increase the amount of frontage that can be glazed. For example, the larger Fairfield Ohio Kroger gas station store glazing percentage would likely meet our zoning requirements for this section.
- B) Does the strict application of the zoning regulation deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant?
- No. The applicant has indicated that they do not want to deviate from their standard model for gas stations and is requesting this variance because of their own internal policies. The variance request has no grounding in site limitations, hardship or other defensible findings.
- C) Are the circumstances the result of actions the applicant has taken after the adoption of the zoning regulation provisions from which relief is sought?
- The applicant has not taken any actions on the property since the adoption of the current zoning designation in 2011.

Staff Recommendation: **DENY** the variance proposal. See staff alternate proposal for recommended modifications.



Kroger stated the gas canopy must cover their kiosk. That is not the design for the Fairfield OH location.



This Kroger gas station store glazing would meet Bellevue's zoning glazing requirement.

## Interior Ceiling Height Variance

- A) Is there a special circumstance that does not generally apply to land in the general vicinity or in the same zone?
- No. Staff indicated at the meeting that it would be feasible for the applicant to raise their ceiling height to conform to this crucial part of the code. The applicant refused. Staff presented alternatives including reducing the canopy length to allow a building to meet the height requirement. The applicant indicated that it was important for them to shelter people from weather between the kiosk and the gas pumps. However when staff visited the Fairfield Ohio Kroger gas station staff found there was no canopy between the gas pumps and the convenience store. Therefore the applicant could make the necessary modifications to conform to the code.

- B) Does the strict application of the zoning regulation deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant?
  - a. No. There were several alternatives presented to the applicant however none were even explored by the applicant. Those include:
    - i. Moving the canopy farther back to allow for a taller building.
    - ii. Connecting the canopy to the building to give a greater appearance of a building frontage along the street.
- C) Are the circumstances the result of actions the applicant has taken after the adoption of the zoning regulation provisions from which relief is sought?
  - a. The applicant has not taken any actions on the property since the adoption of the current zoning designation in 2011.

Staff Recommendation: **DENY** the variance request. See staff alternate proposal for recommended modifications.

**Signage Variances - Memorial Sign**

- A) Is there a special circumstance that does not generally apply to land in the general vicinity or in the same zone?
  - a. No. The monument sign exceeds the zoning regulations. The applicant claims the sign is non-negotiable because of their own policies that dictate signage size. Staff investigated this and found various Kroger gas stations that have a variety of sizes and types. In Louisville, KY staff found a Kroger gas station sign that was made smaller due to the need for it to be part of an existing monument sign. Staff also found another Kroger gas station that did not have a monument sign at all.
- B) Does the strict application of the zoning regulation deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant?
  - a. No. Staff has determined the monument sign can be modified to conform to the zoning code or it can be eliminated.
- C) Are the circumstances the result of actions the applicant has taken after the adoption of the zoning regulation provisions from which relief is sought?
  - a. The applicant has not taken any actions on the property since the adoption of the current zoning designation in 2011.



This Kroger gas sign features custom lettering to fit into a shared monument sign.



This Kroger gas station does not have a monument sign at all.

Staff Recommendation: **DENY** the variance request. See staff alternate proposal for recommended modifications.

**SketchUP Site Render Comparisons**

Staff has modeled the site plan in Google SketchUp to determine the justifications of the variances in relation to the constraints of the site and the possibility of the proposal to fit into the requirements of the city’s zoning regulations.

First the applicant’s proposal was rendered:



Then staff worked on a possible alternative to the proposal that would largely meet the city’s zoning requirements.

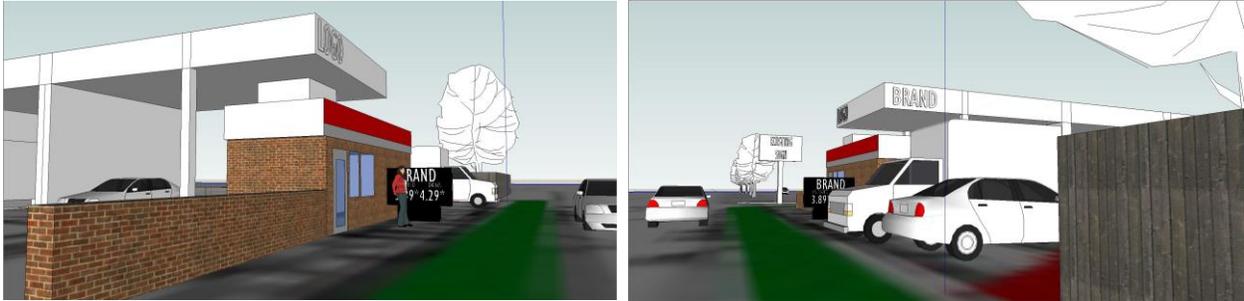
First the kiosk was expanded into a building. This was done by expanding the building forward 7 feet to meet the front lot line and then back another 14 feet back for a building depth of 30 feet. The canopy and gas tanks were moved back by 14 feet to maintain the spacing between the gas canopy and the kiosk. The building was then widened to 66 feet to meet the staff recommended variance width of the building. The



result is a 66 feet by 30 feet building that is just under 1500 square feet of retail area. This does not include about 500 square feet of the building that would be used for storage and a kiosk style walk-up window similar to the Fairfield Ohio store.

This proposal still allows access to the rear fuel tanks by semi-truck.

One of the things staff found was the prominence and uselessness of the proposed monument sign. The sign would be blocked by pedestrians that enter or exit the building and also may create a visibility dead spot for pedestrians walking along the sidewalk. A smaller monument sign would be better, but the best option would be to eliminate the sign and disperse its functions to sign bands that could be located along both sides of the building and a small blade sign for the logo.



To illustrate this the staff alternative proposal eliminated the monument sign and replaced it with two signs on each side of the building and a small blade sign for the logo in front. The signs in the rendering are the based on what is permitted in the zoning code.



After seeing the store operations in Fairfield Ohio, city staff has determined that there is no hardship or site constraints outside of the width needed for the curb cut that justifies a variance from the city code.

## **DISCUSSION**

The Board must consider whether or not granting the variances to the site would prohibit ANY development on the site or just prohibit the development of the applicants' submitted gas station proposal. Variances are typically granted when there are unique characteristics to the land, when hardship has been demonstrated, or when a unique situation occurs that the zoning regulations have not anticipated. The Board must ensure that variances be granted with appropriate findings to protect the board's decisions in the event of legal action. Additionally the Board should consider the replicability of its decisions by other property owners.

For example, will approving a sign variance encourage other property owners in the same zone to apply to the Board for a duplicate variance request?

With minor adjustments to the site plan and signage plan many of these variance requests could be eliminated as they are not necessary. Staff considers most of the variance requests are considered unreasonable circumventions of the city's zoning code and are not an unnecessary hardship for the applicant. However; if the Board determines that the western curb cut and mountable curb are required for truck access then two alternative variances could be permitted:

- A variance of up to twenty six (26) feet to the west side yard setback.
- A variance of up to fourteen (14) percent off the frontage build-out requirement.

The Board must also consider that any approved variances run with the land in accordance with KRS 100.247. Any variances given as part of this application will be applicable to any future development or use of the land. It is transferable to future property owners as well.

### **RECOMMENDATION**

The Board has to determine whether the gas station is a desired need to community and whether or not the gas station advances the city's comprehensive plan and form-based code intent section. The revision has made several improvements that move towards these goals however the overall proposal still does not conform to the zoning code.

Therefore staff recommends the Board **DENY** the Conditional Use based on the findings pursuant to Section 18.1(A) of the zoning code and below:

- The proposed plan does not conform with the city's zoning code and;
- The proposed plan does not advance the intent of Article XXI and;
- The proposed plan is not in agreement with the city's Comprehensive Plan;

Staff recommends the Board **DENY** all the Variance requests based on the findings pursuant to KRS 100.243.

If you have any questions or if I can be of assistance please feel free to contact me at (859) 292-4221.

## DESIGN REVIEW COMMITTEE MEETING MINUTES

**October 20, 2011**

Members present: Mark Koeninger, Stephanie Spurlock, Mitch Rhodus, Bill Vidourek, Tom Hasselbeck, Tim Bachman and Rick Helsinger.

### MINUTES OF THE PREVIOUS MEETING:

The minutes of the previous meeting, held September 15, 2011, were approved as submitted.

### OLD BUSINESS:

#### Kroger's Gas Station – 5214 Pleasant Avenue (Tabled)

A motion was made and seconded to remove this item from the table. Motion passed unanimously.

Jonathan Woche, McBride, Dale, Clarion, introduced Monte Chesko, real estate manager for the Cincinnati area Kroger stores and Tony Spaeth, manager of the Village Green Kroger store.

Erin Donovan reminded the members that gas stations are permitted in the Downtown zone. Items to be reviewed are the aesthetics and site layout of the proposed station. A slide of the site plan was shown; the concern raised during the August meeting was the proposed curb cut on Pleasant Avenue. Kroger's modified this curb cut to be a right in only with a mountable curb. Tanker trucks would still be able to turn into the site by rolling over this curb. Staff's concern with this design is that southbound traffic would still use this curb cut to access the station (crossing 4 lanes of traffic). Ben Mann, City Engineer, reviewed the proposed curb cut and feels the design is not acceptable. He recommended using a design that Butler County uses with a decal lane and long concrete barrier decreasing the chances of a left hand turn. Even though this is an existing curb cut, traffic generated with the new use would significantly increase. The Pleasant Avenue/Nilles Road intersection is one of the top 10 intersections in the city for traffic accidents and the Public Works Department is concerned that any curb cut would decrease the safety for this section of roadway.

Regarding the mountable curb, a cross section was shown to the Committee. Staff also visited an existing Kroger gas station in Fort Mitchell which has a right in/right out curb cut and the mountable curb (slides were shown of this site). The Fort Mitchell station also has a concrete median in the roadway preventing any left turn movement. Kroger's was required to install this median when the gas station was constructed.

In order to meet design elements of the D-1 zone, the canopy was modified to have a hipped roof. The kiosk was modified for a mansard roof which is not recommended in the D-1 District. Regarding the outdoor storage, 2 slides were shown depicting the areas where items would be displayed for purchase.

Ms. Donovan stated the Staff Report addressed 4 items of concern:

- The proposed use does not meet the definition of a “Motor Vehicle Fuel Dispensing Facility”;
- The outdoor display of sale items is not permitted per the Zoning Code;
- The architectural intent of the D-1 Guidelines is not being met; and
- The proposed right in from Pleasant Avenue should be prohibited.

Ms. Donovan explained the Zoning Code defines gas stations as either a “Motor Vehicle Fuel Dispensing Facility” or “Motor Vehicle Service or Filling Station”. Ms. Donovan felt the Kroger proposal fell under the “Motor Vehicle Fuel Dispensing Facility” which states “A place where gasoline or other motor fuel is sold at retail to the public and deliveries are made directly into or onto motor vehicles and no other motor vehicle service is performed. The sale of gasoline or other motor vehicle fuel under this definition must be an accessory use to retail grocery and/or convenience store sales and must be of the self-service sales type. Vending machines do not constitute retail sales under this definition. All motor fuel tanks shall be underground and shall not exceed a total of 20,000 gallons for any one facility.” United Dairy Farmers meets this definition; the Kroger proposal does not (the sale of gasoline is their primary use). The retail sales from vending machines also do not meet the requirement as per the definition. Ms. Donovan stated the Kroger proposal does not meet the definition of “Motor Vehicle Service or Filling Station” since they do not offer other services associated with a service or filling station (battery replacement, oil changes, etc.).

The definition of outdoor display states that the business shall be conducted wholly within a completely enclosed building however, incidental outdoor display may occur as long as it does not exceed five percent of the floor area of the principal structure or 5,000 square feet. The display area also cannot exceed 4' in height. It is staff's opinion that the kiosk is the principal structure which would limit outdoor storage to 5.7 square feet. The Kroger proposal has units taller than 4' and exceeds the 5.7 square feet of outdoor display area.

The Design Guidelines in the D-1 states “The Town Center should project a positive image. This will be achieved in part through well designed buildings, which will come to represent the Town Center and the City of Fairfield”. The principal structure for this project is a pre-fabricated kiosk. It is staff's opinion that the kiosk doesn't have the architectural framework to present the well organized facade required in the Town Center.

The last issue in the Staff Report was the curb cut proposed on Pleasant Avenue. Concerns of the City Engineer were previously discussed.

Slides of the proposed landscape, lighting and signage were reviewed. Staff has requested the landscape areas be irrigated.

Jonathan Wocher handed out a response to the staff report (attached and made a part of these minutes) and a color copy of the structure elevations and landscape plan. Mr. Wocher stated even though the sale of gasoline is their primary function, they meet the definition of motor vehicle service which is a permitted use in the D-1 district. He also stated it is their opinion the canopy is the primary structure and therefore, they would be permitted 5,547 s.f. of outdoor storage area as calculated by code regulations. The Kroger proposal meets 13 out of 16 building design requirements; 2 cannot be achieved (facade organization and storefront requirements) due to the nature of the use. He asked the Design Review Committee to modify the ingress/egress guidelines to allow a curb cut on Pleasant Avenue and Nilles Road. Kroger will work with the City on an acceptable design for the Pleasant Avenue curb cut. City cooperation will be needed though if the curb cut is re-designed as recommended by Fairfield's City Engineer (property to the south will need to be acquired). Mr. Wocher feels the curb cut as currently designed, is appropriate to restrict left turn move into or out of the site. It will be striped, have the mountable curb and signage informing the motoring public it is for right in only traffic. Their proposal for 2 curb cuts is not inconsistent with competitors in the area; one directly across the street. Nilles Road has the same number of lanes as Pleasant Avenue and several businesses have multiple full access curb cuts. The proposed Pleasant Avenue design is more restrictive than some previously approved by the City.

Mr. Wocher explained the mountable curb at the Fort Mitchell store was specifically designed for that site. The curb cut was a wider driveway with a longer approach. The intent was to show the beveled edge, the height and material used. The striped island will be painted yellow and discourage movement over it.

Mr. Wocher stated the landscape plan, lighting plan and signage meet or exceed the D-1 requirements. Kroger's has agreed to install irrigation in the landscape areas. They feel they meet all the criteria of the D-1 zone and will also improve a current blighted site. Mr. Monte Chesko, stated the usable property is only .62 acres (the lot line currently goes to the centerline of Pleasant Ave.). Customers have been asking for a Kroger's fueling center in the area. He believes they have addressed the requirements of the D-1 district and designed the site to deter left hand turns from Pleasant Avenue.

Use - Mark Koeninger said the Kroger proposal met one item under “Motor Vehicle Service”; they sell gasoline. They don’t provide other services as outlined in the definition. Mr. Wocher asked if they would meet the definition by providing two or three additional services. Mr. Koeninger replied the definition clearly states the difference between a fueling station and a service station. Tim Bachman asked if Kroger had considered constructing a larger building where customers can go in and purchase items similar to United Dairy Farmers. Mr. Chesko stated their current business model is to utilize the kiosk with limited indoor sales. There has been some discussion regarding a larger building but that has not occurred locally yet. The merchandise stored outside is done in a clean manner. Mr. Chesko stated display of items at a service station would be much more offensive than the products they offer outside. Ms. Donovan replied a full service automobile repair facility would not be permitted in the D-1 zone. Mr. Koeninger added this is a more intense use than an auto repair facility and because it is a redevelopment, it needs to meet the requirements of the D-1 zone. Redevelopment of any other site would have to go through the same review.

From a planning standpoint and assisting many communities in developing zoning codes, Mr. Wocher felt the reason Fairfield has two definitions regarding gas stations was to allow for a facility to solely dispense fuel as a secondary part to a primary use. Ms. Donovan replied the definition for the “Motor Vehicle Fuel Dispensing Facility” was probably written to regulate stations from only selling gasoline; they also had to have a retail component. This definition was probably written when full service stations started changing to the self service stations.

Outdoor Display – Mr. Koeninger stated Kroger has calculated the amount of outdoor display based on the canopy being the principal building. They have also said that the canopy doesn’t need to meet the design guidelines since it is not a building. Mr. Bachman reiterated storage is based on 5% of the floor area of the principal structure; Kroger’s position is the canopy is the principal structure and the City’s position is it’s the kiosk. Mr. Wocher explained even though they feel the canopy is the principal structure, it cannot be designed to have the facade orientation and storefront required under the D-1 Guidelines. Mr. Rhodus felt the principal structure should have utilities – sewer, water, electric, etc.

Mr. Bachman stated that Section 1168.06, Required Conditions, incorporates all conditions as specified in the C-1 District. Section 1157.04 of the C-1 District states “ all businesses, services or processing shall be conducted wholly within a completely enclosed building except off-street parking and such incidental outdoor display of merchandise, material and equipment as does not exceed five percent (5%) of the floor area of the principal structure or 5,000 square feet, whichever is less”. The obvious intent was that items be displayed within an enclosed building. Outdoor dining requires approval through the Board of Zoning Appeals for this reason.

Building Design/Landscape - Mr. Rhodus asked about the lack of landscaping on the south property line. Ms. Donovan stated they are not required to provide landscaping there since it abuts another commercial use. Mr. Koeninger stated if landscaping was installed along the south line, it would screen some of the outdoor display areas.

The height and location of the canopy was discussed. Although it meets the required setback, Committee members expressed concern with it appearing to encroach into the intersection and the affects of its lighting. Ms. Donovan received correspondence from Mr. Woche which stated the lights would be flush mounted. The flat lens fixtures would be 250 watt and focus lens fixtures, 70 watts. The photometric plan shows 0 foot candles at the sidewalk. Canopy lights will typically be turned off at 11:15 p.m. Two night lights at the front corner of the canopy will be left on for security.

Ingress/Egress – Mr. Bachman stated this is and has been issue. He didn't feel the design would preclude people from making dangerous turns. This is a tough site with many constraints, one being the width. This is a potential 30 year project and needs to be properly designed. Mr. Bachman felt the design submitted will not work. The design recommended by the City Engineer also will not work because the site is too small. There isn't sufficient room for the taper or the barrier. Regarding UDF across the street, left turns into that site stack in a lane specifically dedicated for left turn movement onto Nilles. Mr. Chesko discussed the left turn movement into McDonalds and their proximity to the intersection. He felt the right in only curb cut as designed will work and the proposed signage will enforce its proper use. Mr. Koeninger disagreed stating fuel trucks will still make a left into the site and use the mountable curb for what it is designed for – driving over. Mr. Bachman replied even if Kroger gets all the fuel delivery drivers to make the right in only, they have no control over the public which is the concern. Ms. Donovan added a driver might not be able to see the signs if the four northbound lanes are backed up.

Mr. Koeninger said the Nilles Road curb cut is full access. Mr. Rhodus pointed out left turns into this drive stack in a dedicated left turn lane, the same as UDF. Mr. Koeninger added that the Public Works Department has stated the Pleasant Avenue access is not safe, guidelines indicate it's not safe and the City has experience that if it is approved, it will be abused leading to accidents.

Mitch Rhodus, seconded by Tom Hasselbeck, made a motion to deny the Kroger Gas Station submittal based on concerns expressed by staff and Committee members during the meeting, the outdoor display, the use determination and ingress/egress.

Motion to deny was approved unanimously.

motion to Deny based on staff Report  
1.6-0

STAFF REPORT

Re: Proposed Kroger Motor Vehicle Fuel Dispensing Facility at Pleasant Avenue and Nilles Road

Date: September 15, 2011

While a Motor Vehicle Fuel Dispensing Facility is a principally permitted use under Subsection 1168.01(j) in the D-1, Downtown District, the above-referenced proposed facility does not meet the definitional requirements of the use or comply with other requirements of Chapter 1168 (Downtown District) and included Design Guidelines (from the Town Center Development Plan adopted June, 1993 and revised March, 1996) of the zoning ordinance for the following reasons:

(1) Section 1133.01 (63.1) of the zoning ordinance defines "Motor Vehicle Fuel Dispensing Facility" as follows:

63.1 "Motor vehicle fuel dispensing facility" means a place where gasoline or other motor fuel is sold at retail to the public and deliveries are made directly into or onto motor vehicles and no other motor vehicle service is performed. The sale of gasoline or other motor vehicle fuel under this definition must be an accessory use to retail grocery and/or convenience store sales and must be of the self-service sales type. Vending machines do not constitute retail sales under this definition. All motor fuel tanks shall be underground and shall not exceed a total of 20,000 gallons for any one facility. **(Underlining added)**

The proposed use in this case does not meet the above definition because the sale of gasoline is not an accessory use to retail grocery and/or convenience store sales. The sale of gasoline is clearly primary. There is not even a store structure proposed. There is only a small prefabricated kiosk with incidental display of merchandise and/or vending machines which do not constitute retail sales. All of the other four (4) businesses in the D-1 zoning district which offer gasoline for sale have a primary retail

175 sq  
↓  
houses an attendant only not a store

grocery/convenience store building structure. This proposed use does not meet the definition of a Motor Vehicle Fuel Dispensing Facility and is therefore not a principally permitted use.

(2) Outdoor Display. The proposed facility does not meet the requirement of Section 1168.06, REQUIRED CONDITIONS, which incorporates all conditions as specified in the C-1 District. Section 1157.04 of the C-1 District specifies that all businesses, services or processing shall be conducted wholly within a completely enclosed building except off-street parking and such incidental outdoor display of merchandise, material and equipment as does not exceed five percent (5%) of the floor area of the principal structure or 5,000 square feet, whichever is less. Since the principal structure is a small pre-fabricated kiosk, the proposed point-of-purchase displays exceed the limit. Most of the displays also exceed the allowable height limit of four (4) feet. This limitation of outdoor display is consistent with the requirement of a substantial structure under the Design Guidelines as addressed below.

(3) Building Design Guideline Requirements. Under Section 1168.11 specific design requirements are adopted as well as authorization for additional Design Guidelines to be adopted by the Planning Commission. In the Design Guidelines at Page 71, under Architectural Character, it is stated as follows:

The Town Center should project a positive image. This will be achieved in part through well designed buildings, which will come to represent the Town Center and the City of Fairfield.

The principal structure in this proposed use is a pre-fabricated kiosk. While the kiosk may constitute a building for purposes of the building code, it has none of the architectural framework to be created by having an organized facade or consistent frontage and is not a well-finished, well-designed building as should characterize the Town Center as required by the guidelines at Pages 72 and 73. The mansard roof on the kiosk is also prohibited at Page 72 of the Design Guidelines. The extremely small size of the kiosk prevents it from meeting the architectural requirements irrespective of the exterior

materials or roof design utilized. It also does not allow the site to meet the Outdoor Display limitation and general requirement that business be conducted within a completely enclosed building as addressed above. The importance of these architectural/outdoor display requirements is heightened by the location of this site at the most important and highly visible intersection of the entire Town Center/Downtown District, Pleasant Avenue and Nilles Road. This is the core/axis intersection at the very center of the Town Center. The other three corners of this most highly visible and critical intersection are already developed with buildings which fully meet the architectural/outdoor display requirements. To allow the fourth corner to redevelop as proposed without meeting the guidelines is particularly damaging and regressive to the entire Town Center/Downtown Plan.

(4) Ingress/Egress. The proposed plan has two curb cuts, one on Nilles Road and one on Pleasant Avenue. This is contrary to Subsection 1168.11(b)(1) of the zoning ordinance which limits curb cuts to one per lot. In addition, for reasons addressed by the City Engineer in a separate communication, the proposed curb cut on Pleasant Avenue is unsafe due primarily to its close proximity to the intersection and should not be permitted even if limited to a right-in only movement.

#### **CONCLUSION**

The Development Services staff recommends that the Design Review Committee recommend to the Planning Commission that the proposed Kroger Motor Vehicle Fuel Dispensing Facility be denied in its current form because it does not meet the ordinance or design guidelines as addressed above. The architectural/outdoor display concerns could potentially be addressed by the construction of a much larger and more substantial building with limited outdoor display. However, the curb cut on Pleasant Avenue must be designed safely for this high traffic volume facility or continue to be denied.

**MINUTES OF A REGULAR VOTING MEETING OF THE**

**FAIRFIELD PLANNING COMMISSION**

**October 26, 2011**

Members present: Jeff Holtegel, Mitch Rhodus, Don Hassler, Scott Lepsky, Mark Morris, Bill Woeste and Tom Hasselbeck.

**MINUTES OF THE PREVIOUS MEETING:**

The minutes of the previous meeting, held September 28, 2011, were approved as submitted.

**NEW BUSINESS:**

**Kroger's Gas Station – 5214 Pleasant Avenue**

At the Commissioner's places were copies of the Design Review Committee Meeting draft minutes, the Staff Report, memos from Public Works regarding Pleasant Avenue access, the response from Kroger's to the Staff Report and information regarding the Conditional Use application submitted at the Boymel Office Park. The Commission was also given a copy of the changes proposed to Chapter 1192, Source Water Protection.

A slide of the site plan was shown. A full access curb cut is proposed on Nilles Road as far east of the Pleasant Avenue intersection as possible. Access on Pleasant Avenue is proposed as right in only. There will be no egress at this curb cut. Mr. Bachman explained along the Pleasant Avenue frontage, Kroger is proposing a small grass area at the south property line, then heading north, the right in only curb cut, a mountable curb, a full raised section of curb and then landscape to the corner. Staff visited a Kroger site in Ft. Mitchell, Kentucky that utilizes the mountable curb with a right in/right out curb cut (slides of curb cut were shown). This particular location also has a concrete barrier in the roadway to prevent left turns into or out of the site and a decel lane for the right turn in. The concrete barrier was constructed when the Kroger Fuel Center was built.

A slide of the building elevations was shown. The kiosk will have a mansard roof, drivit band, brick and glass. The canopy is shown with a green standing seam hip roof and brick columns matching the kiosk. Slides were shown of the areas where Kroger is proposing to display product for sale. These areas include cages located next to the gas pumps, snack station near the kiosk and hydration centers on each side of the kiosk.

A slide of the landscape was shown. There is a landscape buffer at the intersection of Pleasant and Nilles that wraps to both the south and east curb cuts. Screening and landscape will be placed around the dumpster.

Regarding lighting, Mr. Bachman stated the plans shows 0 foot candles at the right of way. The majority of light will be under the canopy. Two fixtures are proposed; flat lens and fixed. The lights will be turned off when the facility is closed with exception of a few for security purposes.

A slide of the proposed ground sign was shown. The location will be in the general vicinity of the existing Flowerama ground sign.

The staff report was reviewed. There were four points discussed:

Use – The proposal is defined as a motor vehicle fuel dispensing facility and is a permitted use in the D-1 zone. The Zoning Code defines this as “A place where gasoline or other motor fuel is sold at retail to the public and deliveries are made directly into or onto motor vehicles and no other motor vehicle service is performed. The sale of gasoline or other motor vehicle fuel under this definition must be an accessory use to retail grocery and/or convenience store sales and must be of the self-service sales type. Vending machines do not constitute retail sales under this definition. All motor fuel tanks shall be underground and shall not exceed a total of 20,000 gallons for any one facility.” (Underlining by staff; Zoning Code definition has no underlining). There are several issues regarding the proposed Kroger facility meeting this definition. The sale of gasoline is not an accessory use to a retail grocery or convenience store. It is clearly the primary use. Mr. Bachman stated he believed this definition was adopted before 1985 when the Clark stations started locating in the Midwest. Those stations had a small kiosk building with the sale of gas being their primary function. Council must have had a concern that it was a use that didn't provide any services except the sale of gas and was not desired in the community.

Building Design – The D-1 Guidelines state “The Town Center should project a positive image. This will be achieved in part through well designed buildings, which will come to represent the Town Center and the City of Fairfield”. Mr. Bachman stated the Commission needs to decide if a kiosk is the type of building they want in the Town Center.

Outdoor Display – This was discussed in length at the Design Review Committee meeting. A big part of Kroger's business plan is to have a large portion of outdoor display. The D-1 Code refers to the C-1 District, Section 1157.04 which states “All businesses, services or processing shall be conducted wholly within a completely enclosed building except off-street parking and such incidental outdoor display of merchandise, material and equipment as does not exceed five percent (5%) of the floor area of the principal structure or 5,000 square feet, whichever is less”. The City's position is that the kiosk is the principal structure and therefore, 8 – 9 s.f. would be permitted for outdoor storage (based on 5% of total floor area). The Code also states displays cannot exceed 4' in height.

The issue of what is the principal structure, canopy or kiosk, was thoroughly discussed. One of the Committee members felt it would be defined as the one served by utilities. It was Mr. Bachman's opinion the primary structure would be the one occupied by the employee. If one structure was removed, which one would have to remain in order for the business to function – the kiosk? This is the premier intersection in the Town Center. He asked if it was appropriate to have all of the outdoor display and kiosk at this location when compared to the other three corners. Only one of the three buildings was constructed under the requirements of the D-1 zone but the other two are also substantial buildings without outdoor storage.

Building Design – Mr. Bachman stated there are two elements to be considered. The first being if the building(s) are acceptable as defined in the Town Center Guidelines. The second would be the colors and materials the buildings are comprised of. Kroger's has done a good job in designing the structures with brick and the green roof used throughout the Town Center. It is still a pre-fabricated kiosk and canopy and the Commission has to decide if this meets to intent of the Guidelines created in the early 1990's.

Access – Two memos were submitted from Public Works discussing the Pleasant Avenue access point. They recommend no access from Pleasant Avenue as it is too close to the intersection and would be a safety issue. Kroger initially proposed a full service curb cut and then revised it to the right in only. There is still the concern of a fuel delivery truck and the general public making a left turn from Pleasant Avenue into the site. Kroger is proposing signage stating the left turn is not permitted but past experience has shown these signs are ignored. Mr. Bachman used the Applebee's/PNC right in/right out curb cut as an example. If Pleasant Avenue access is critical, Public Works submitted a standard they felt would minimize accidents. The problem is that the site is too small to meet the criteria for this standard.

The Design Review Committee also discussed the full access curb cut on Nilles Road. The concern with this curb cut is a motorist will have to cross five lanes of traffic to go north on Pleasant Avenue.

Mr. Jonathan Wocher, McBride, Dale, Clarion spoke on behalf of Kroger. He distributed a color rendering of the proposed landscape and elevations. Mr. Wocher also introduced Monte Chesko, Director of Real Estate for the Cincinnati Region and Carol Crank, Real Estate Representative for this project. The landscape plan has been modified to reflect changes in the tank location and Pleasant Avenue access. Kroger is proposing to develop this site for seven fuel dispensing locations, canopy and kiosk. Mr. Wocher stated they met with the City several times to discuss their proposal which initially included a full access driveway on Nilles and Pleasant. The landscape area proposed will be 12' wide, exceeding the requirements of the D-1 district, and will be irrigated. The canopy will be 126' x 43' and the kiosk, 8' x 22'. The dumpster proposed

in the south east corner will be in a masonry enclosure and screened. Lighting is contained under the canopy and will be flat lens and focus lights. Only a few security lights will remain on when the facility is closed. The hours of operation will be 6:00 a.m. until 11:00 p.m.

Mr. Wocher addressed access. The existing site has two full access curb cuts. Kroger is proposing moving the Nilles Road curb cut further east away from the intersection. The Pleasant Avenue access will be generally in the same location and align with one of the UDF curb cuts. Based on the comments from the City Engineer, the Pleasant Avenue curb cut was redesigned to be a right in only with signage that would indicate no exit and no left turn into the site. Regarding the mountable curb, the photos show earlier display the detail of this curbing. It is a 6" concrete curb with a beveled edge designed for only trucks to roll over. The width of the driveway will only be 12'; smaller than the photos of the Ft. Mitchell station. The photos do represent the type of mountable curb proposed for this site. The Pleasant Avenue curb cut is essential for tanker truck access and Mr. Wocher requested the City approve the design. The tanker truck will access the property from Pleasant Avenue, unload the fuel and exit onto Nilles. Kroger customers leaving the store will more than like follow this same traffic pattern. Mr. Wocher pointed out the access issue is with the site; any business locating here would have the same access challenge. It is their belief the right in only addresses the problem. They are willing to continue working with the City on other options. Mr. Wocher stated they feel there is ample room to construct a barrier on Pleasant Avenue to prohibit the left turn movement. Another option would be moving the curb cut further south onto City owned property. The Butler County design proposed by Public Works is not feasible due to the size of the site and location of an existing utility pole.

Outdoor Display – The staff report states the sale of fuel is the primary element of the operation and the kiosk is the principal building. In function, design and size, the canopy is clearly the principal component of this property. It is more than 5,000 s.f. compared to the kiosk which is less than 200 s.f. It is Kroger's opinion that the canopy should be used for determining the amount of outdoor display. City staff has been consistent in their opposition to the amount of outdoor display. The site plan submitted is Kroger's preferred plan in regard to locations of display material. There are options for removing some of it. They feel they are meeting the requirements of the Zoning Code in regard to outdoor display as defined in the C-1 section of the Code.

Use – There are two definitions relating to fuel sales in the D-1 District. The first is "Motor Vehicle Service" which states "Motor vehicle service station, display, hire and sales subject to the provisions of Chapter 1189". That is the first fuel related term permitted in the D-1. The second definition which City staff is classifying this use as is the "Motor Vehicle Fuel Dispensing Facility". Both terms are listed in the D-1 District. Staff's position is that the Kroger

proposal is not permitted since it is not part of a grocery store. Kroger believes they meet the "Motor Vehicle Service". They sell gasoline, other motor vehicle fuel, lubricants, supplies for operating vehicles and the products are sold to the public and delivered onto or into motor vehicles. The Code does not say they have to offer vehicle services (tire rack, oil change facility, etc.). This is an important issue which was not brought up until the second presentation before the Design Review Committee. To find out now that this proposal is not a permitted use is surprising. It is common for communities have two definitions pertaining to fueling stations. They normally are to be inclusive, not exclusive. The D-1 District allows both definitions and it is Mr. Wocher's opinion it was intended to be inclusionary to allow a use that might not be just a gas station and not to be exclusionary saying we're trying to keep all of these out.

Design Guidelines – The D-1 zone allows motor vehicle service and fuel dispensing. There are certain guidelines that have to be followed. The guidelines contain 16 specific standards that are to be applied to properties. The Kroger proposal complies with setback, area, height, roof, materials, colors, ingress/egress (they are asking for an exception to allow the driveway on Pleasant), parking, loading, landscaping, pedestrian, buffering, signage and lighting. Thirteen out of sixteen standards they comply with. Facade organization and storefronts they cannot comply with. A storefront cannot be put on the canopy and the facade organization does not apply.

A comment was made this corner doesn't have the substance of the other uses. This corner would also end up with less access than the others. The west corner has more access via multiple driveways approaching the same intersection with no restrictions. There is a similar use across the street with two full access points. If there is a way they can meet the storefront or facade orientation, they will work with the City to achieve.

In summary, Mr. Wocher stated they meet the design guidelines and definition of Motor Vehicle Service. If the Commission is inclined to support this project, they are willing to work through the issues of access and outdoor display. Kroger had preferred to be in the parking lot in front of their building but that was not allowed so they looked for alternative locations. Redevelopment of this site would remove blighted buildings and serve the public.

Monte Chesko, Real Estate Manager for the Cincinnati/Dayton Division of Kroger, stated they opened their store in July, 2002 and invested nearly \$15 million in the project. When the project was built, they were interested in constructing a fuel center but the City did not want to see it in Village Green. Fuel has become a very important part of their business model and they are willing to work with community guidelines to accomplish establishing a fueling center.

Negotiations with the owner of this property has been very difficult and has not been easy even getting to this point. The site is only .62 acres and requires access from both Nilles and Pleasant. Mr. Chesko emphasized their desire to locate on this corner. It may not be what the City envisioned there but will be first class. From a design standpoint on the building, there is flexibility. This will be a \$2 million dollar investment and they would like to partner with the City in a manner that is conducive and profitable for both the City and Kroger. They also would like to meet with the City and review a median design to prohibit the left turn movement or moving the access further south. With respect to outside storage, he has received several other opinions that the canopy would be the principal structure on this site. They can however modify the amount of display. Regarding use, they were not aware until the second scheduled Design Review Committee meeting that they would be classified as a non-permitted use. They understand this is a high profile intersection and respect the City's comments.

Planning Commission Discussion – John Clemmons, Law Director, stated definition 63.1 "Motor Vehicle Fuel Dispensing Facility" was created in the early 1980's to address the small kiosk gas stations. Those facilities were determined by the City not to be very attractive uses so the second definition was added. The first definition actually provided service in conjunction with fuel sales. There had to be a substantial structure in order to perform automobile service. Motor Vehicle Fuel Dispensing Facility was created to permit stations not offering the various services conditioned upon them also having a substantial structure. The Kroger proposal does not meet this; the canopy may be large but it is only an awning. The intent of the second definition is still valid today. Kroger is going back to a model that was rejected back in the 1980's. This is not the type of fuel dispensing facility that Council thought they needed. Council knew the auto service and gas dispensing went together but they didn't want to see fuel sales done from a small, inexpensive structure. Either the business had to offer automobile service or have fuel sales out of a substantial structure. That is how these two definitions go together and were intended to prevent this type of use. If you are going to sell gasoline, it has to be done one of two ways.

Use – Mr. Lepsky asked why definition 63 "Motor Vehicle Service" was not modified instead of creating 63.1 "Motor Vehicle Fuel Dispensing Facility". Mr. Clemmons replied 63.1 was created to allow the dispensing of fuel in conjunction with a convenience type store; they do not have to offer auto service. The intent was not to allow the small kiosk type buildings. Mr. Bachman pointed out the Marathon station at Patterson and River was a service station that closed up their bays and turned into a convenience type store. Mr. Clemmons added the Kroger proposal is not offering any type of service; everything is basically sold at retail. Mr. Wocher pointed out definition 63 states "Motor Vehicle Service or Filling Station". It doesn't quantify that you have to have service. What is a filling station? Mr. Clemmons replied that is an old definition that did more than put gas in a car; services were also offered. The Kroger

proposal is not offering any service. It is a contortion of the definition to say they provide service. Mr. Wocher debated how many services they would have to offer to meet the definition. They were well into the process when they were told they didn't meet either definition. He feels they meet the definition of Motor Vehicle Service or Filling Station. Deliveries are made into the motor vehicle. Mr. Bachman stated similar uses in the D-1 zone all have the component of a convenience type store with them – Marathon, BP, Ameristop and UDF.

Outdoor Display - Mr. Clemmons stated the interpretation being offered by Kroger's is really troublesome. The incidental display is an exception to the requirement that all businesses, services or processing shall be conducted wholly within a completely enclosed building, except incidental outdoor display. To take an open air canopy and argue the exception to being required to place the items inside a building is going to be governed by this open air outdoor structure is totally turning the requirement. There is no support for this interpretation. This is supposed to be an exception to doing everything within a wholly enclosed building. The amount of outdoor display cannot be increased by saying it is based on an open air structure. Mr. Rhodus added the comment he made at Design Review was that the principal building should have the utilities – plumbing, electric, HVAC, water, etc. Even though decks require a permit in the City of Fairfield, it does not make them the primary structure. Mr. Wocher stated the canopy will have footings, foundations and electric. Fairfield's Codes do not define principal permitted structure. The canopy is a building. There is no guidance in the Code as to what is the principal structure. Mr. Clemmons asked as an exception to the requirement that business has to be done wholly within a completely enclosed building, is the canopy considered an enclosed building and should be the basis for determining the amount of outdoor display? Mr. Wocher replied that is their argument and outdoor display is based on the principal structure. Mr. Clemmons stated this is an exception to the requirement that business be conducted within a wholly enclosed structure. Mr. Wocher replied the exception does not include fuel dispensing either. The pumping of gas is not being done within an enclosed building. Mr. Bachman stated the Design Review Committee also struggled with what is the principal structure. The canopy is large but does that make it the principal structure? Mr. Clemmons said if you read the definition in the context in which it is written, business is suppose to be conducted wholly within a completely enclosed building. It is illogical to use an open air canopy to determine the exception to that requirement. Mr. Chesko asked if there could be a reasonable amount of outdoor display that could be agreed upon. He understood there is a difference of opinion for calculating the amount. Mr. Holtegel didn't feel the Commission could negotiate these items at this point. The amount of outside display they are entitled to based on definition is a huge point. Mr. Bachman stated the time to negotiate this was months ago. This is not a new element and they made a business decision to ask for what's been presented. Outdoor display is only one element of issues the City has with this project. Mr. Chesko stated they are willing to work with the City on the various issues to make this a viable project. Mr. Clemmons reiterated the incidental display is suppose to be no more than 5% of the

square footage of the principal structure. It was Mr. Clemmons' opinion the principal structure for this proposal is very small. If it were larger, similar to UDF, they would be permitted more incidental display. That however is not what they submitted. Mr. Bachman stated construction of a larger building with everything being kept inside has been discussed with Kroger. They stated that is not the business model they want to do in the Greater Cincinnati market.

Building Design - Mr. Clemmons stated the staff report references the Town Center Guidelines which are a part of the D-1 zone. The reason they cannot meet the organized facade or consistent frontages is those guidelines contemplate substantial buildings that enable facade organization and consistent frontages. If you don't have a substantial building, obviously you cannot meet these requirements. They have admitted they cannot meet it. It is suppose to be a substantial structure; not a kiosk. The downtown is to have a sense of presence. The whole intent of this zone is not to have structures like this.

Access - Mr. Hassler stated the only use that can survive on this corner would be one with a low traffic impact. Access is tough. If the Kroger project is approved, it will be a problem due to the amount of traffic. A decel lane on Pleasant Avenue would be needed to even get in there. Mr. Rhodus was concerned with Kroger being able to regulate the fuel tank drivers so they cannot turn left from Pleasant. They are not Kroger employees.

Mr. Woche reiterated there are options that can be discussed in terms of outdoor display and access. If initiating these options would be something the Commission could approve, he asked they be permitted more time to work through them.

Mr. Rhodus thanked Kroger for working on their existing landscaping at the store. He encouraged them to look at other sites throughout the City if this location is denied.

Mr. Lepsky said Kroger has been a wonderful community partner. When the store was first proposed, there was community input which resulted in a win win situation for both Kroger and the citizens of Fairfield. Since there are so many site specific issues that need to be addressed, i.e., curb cut and City property that the Commission is not empowered to deal with, Mr. Lepsky made a motion that the proposal be denied in its current state. Mr. Hassler seconded the motion. Mr. Woche asked if there would be another plan option they could submit if this one is denied. He was informed they could but they would need to work with the Development Services staff to resolve the comments addressed this evening.

The vote was unanimous to deny the Kroger fueling center submission.

Item No. \_\_\_\_\_

**City of Fairfield, Ohio**  
**City Council Meeting Communication**

Date 7-9-12

**Item:**

An ordinance approving a modified development plan for a Kroger Gas Fueling Facility proposed at the southeast corner of Pleasant Avenue and Nilles Road and authorizing the City Manager to sign a development agreement with the Kroger Limited Partnership1.

**Financial Impact:**

This is an appeal of a Planning Commission decision as permitted in the Fairfield Codified Ordinances chapter 1168.12(d).

**Synopsis:** Kroger Limited Partnership1 has appealed the Planning Commission decision and has made several modifications to the plan to address both the Planning Commission and Design Review concerns. The attached development agreement addresses the construction and on-going operational issues with the Kroger Gas Fueling Facility.

**Background:** The Design Review Committee reviewed plans for a Kroger Gas Fueling Facility to ensure that the proposed project complied with the Design Guidelines outlined in Chapter 1168 of the Planning and Zoning Code. The Design Review Committee denied the request based on four main concerns: the proposed use did not meet the definition of a "Motor Vehicle Fuel Dispensing Facility;" the proposed square footage of outdoor display was greater than the maximum allowable; the access on Pleasant Avenue posed an increased risk for vehicular accidents; and the architectural intent of the Design Guidelines were not met. Planning Commission supported the Design Review Committee's recommendation to deny the project.

**Recommendation:**

It is recommended that City Council have first reading on this item at the July 9 meeting.

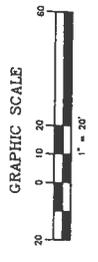
**Legislative Actions:** Rules Suspension and Adoption Requested? No.  
Emergency Provision Needed? No.

Prepared by: Orin Demora (Planning Manager)  
Approved for Content by: \_\_\_\_\_  
Financial Review (where applicable) \_\_\_\_\_  
Legal Review (where applicable) \_\_\_\_\_  
Accepted for Council Agenda: \_\_\_\_\_

**PRIMARY SITE PLAN #5B**

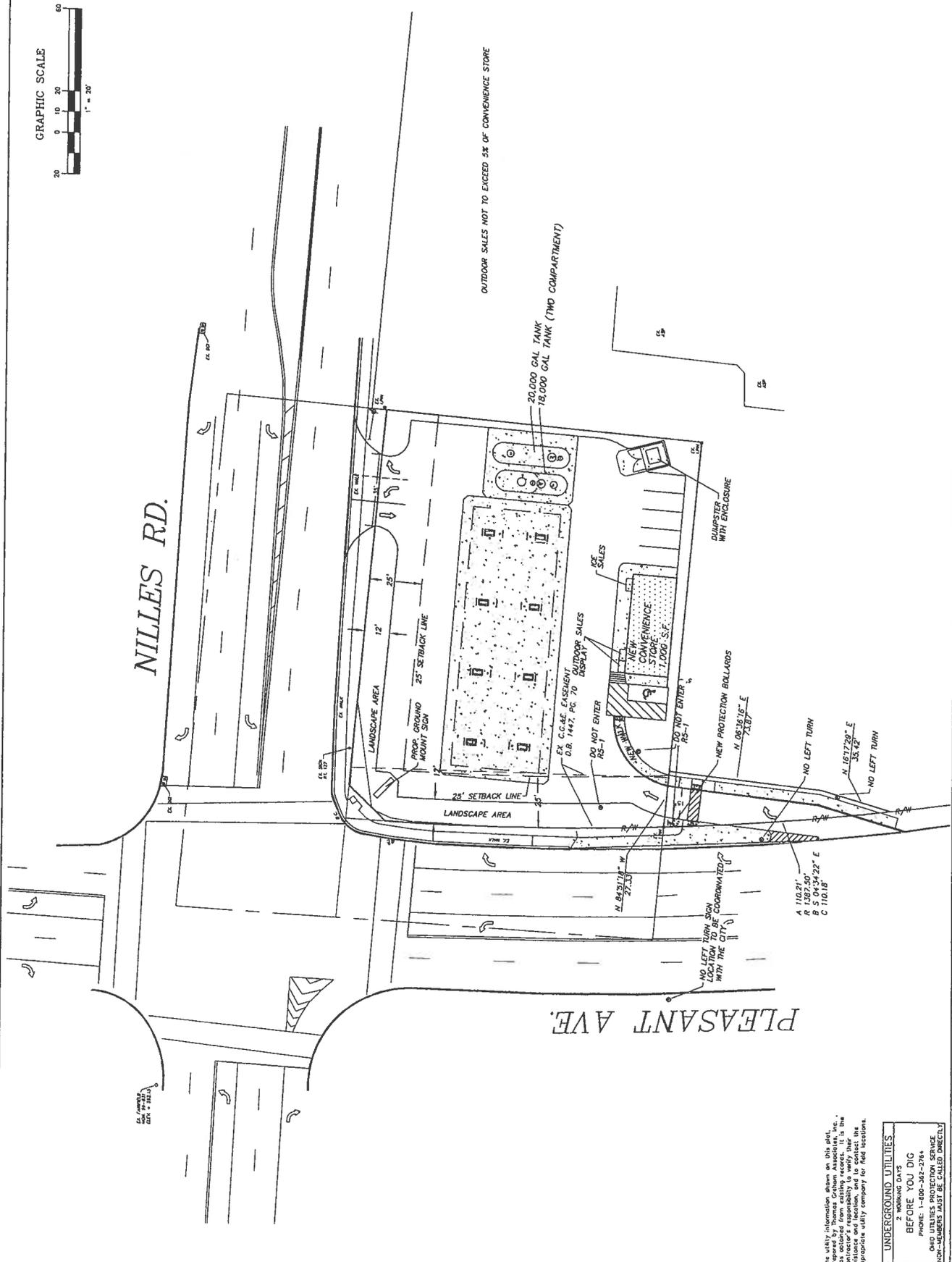
SEC. 33 T. 2 R. 2  
 FAIRFIELD TOWNSHIP  
 BUTLER COUNTY, OHIO

ACAD FILENAME: 7716\_939\_STUDY5B.DWG



**NILLES RD.**

**PLEASANT AVE.**



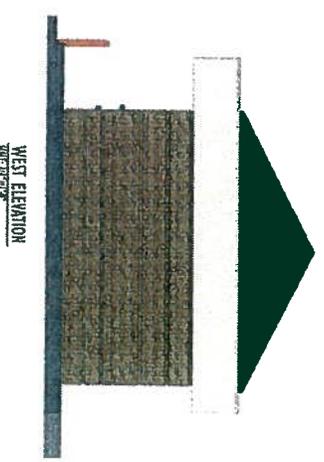
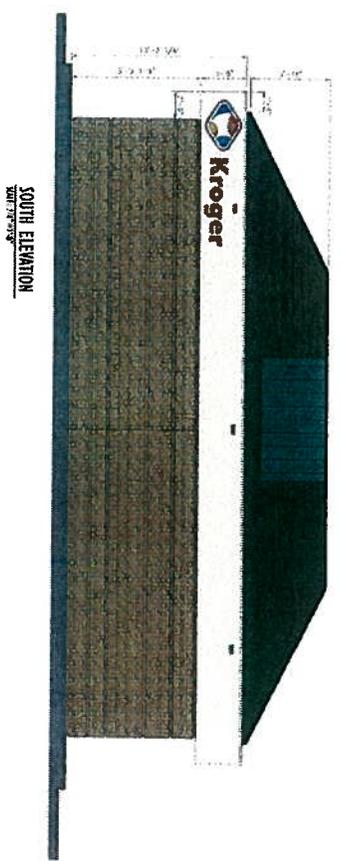
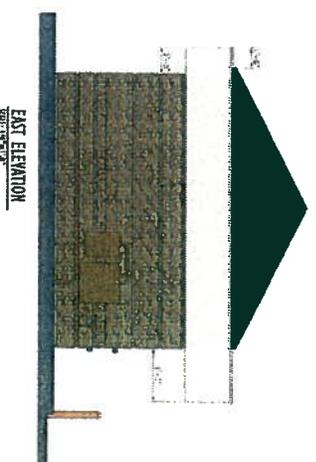
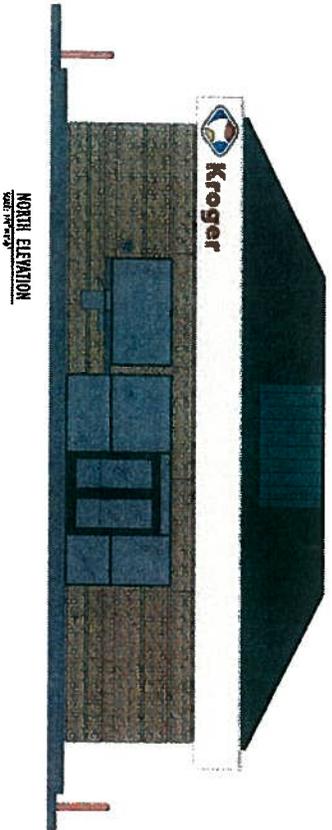
OUTDOOR SALES NOT TO EXCEED 5% OF CONVENIENCE STORE

The utility information shown on this plan was prepared by Thomas Graham Associates, Inc. It is the contractor's responsibility to verify that the entrance and location, and to contact the appropriate utility company for field locations.

**UNDERGROUND UTILITIES**  
 2 WORKING DAYS  
**BEFORE YOU DIG**  
 PHONE: 1-800-382-2764  
 WWW: WWW.811.ORG  
**NON-MEMBERS MUST BE CALLED DIRECTLY**

# Kroger Fueling Center

FAIRFIELD, OHIO #A939



**Galloway**

ARCHITECTS  
10000 W. 12th St.  
Suite 100  
Overland Park, KS 66211  
913.666.1100  
www.galloway.com



**Building Color Elevations**

06/28/12

**OLD BUSINESS**

**PARKS & RECREATION COMMITTEE**

**Terry Senger, Chairman; Debbie Pennington, Vice Chairman, Adam Jones, Member**

Ordinance to authorize the City Manager to enter into an agreement with The Joe Nuxhall Miracle League Fields, Inc. for the operation of the Field of Dreams recreation complex.

Councilmember Senger presented the third reading of this ordinance.

Councilmember Senger, seconded by Councilmember Pennington moved to adopt . Motion Carried 7-0.  
ORDINANCE NO. 91-12. ADOPTED 7-0.

**FINANCE & BUDGET COMMITTEE**

**Tim Abbott, Chairman; Terry Senger, Vice Chairman, Mike Oler, Member**

Ordinance to amend subsection 953.01(a) of Ordinance No. 166-84, the Codified Ordinances of Fairfield, Ohio, relative to the service fees for residential garbage and solid waste collection and recycling.

Councilmember Abbott presented the third reading of this ordinance.

Councilmember Abbott, seconded by Councilmember Oler moved to adopt . Motion Carried 7-0.  
ORDINANCE NO. 92-12. ADOPTED 7-0.

**DEVELOPMENT SERVICES COMMITTEE**

**Jeff Holtegel, Chairman; Tim Abbott, Vice Chairman, Tim Meyers, Member**

Ordinance to approve a modified development plan for a Kroger Gas Fueling Facility and to authorize the City Manager to sign a development agreement with the Kroger Limited Partnership I.

Councilmember Holtegel presented the third reading of this ordinance.

Councilmember Holtegel noted that it has been a long process, starting with Design Review and Planning Commission, and he would have voted against the fueling center in its original form. The requested changes have been made and the new design is palatable. Councilmember Holtegel stated that he does not particularly like the use for that location, however, the zoning is in place and the plan meets the minimum requirements. He would have liked a larger building and is concerned about the access to the location.

Development Services Director Tim Bachman noted that traffic engineer Jack Pflume was in attendance at the meeting and available to answer any questions Council had.

Councilmember Tim Meyers asked Mr. Pflume if he took into account the amount of traffic that a Kroger gas station would attract to the intersection. Mr. Pflume explained that there were estimates made, based on nationally accepted data. Mr. Pflume explained that safety studies look more at the physical

characteristics of the location. He noted that there were several things suggested in the report to be done to the location to assist in making it as safe as possible. Councilmember Meyers commented that he uses the Kroger fuel center in Hamilton and the location and access driveways are similar to what the Fairfield location will have. He noted that it is always very congested and he would consider that a benchmark to use when considering a Kroger fuel center in Fairfield. He asked Mr. Pflume if the gas station will improve the safety of that corner (Pleasant and Nilles). Mr. Pflume stated that he thinks the gas station will improve the safety, because of the changes Kroger has agreed to make. He noted that there is a big difference between congestion and safety of a location. Councilmember Meyers asked Development Services Director Tim Bachman if there are any obligations on Kroger to make changes if it is deemed unsafe after it has been opened for a period of time. Mr. Bachman stated that there are some suggestions in Mr. Pflume's report that Kroger do some analysis after the fuel center has been open for three to six months to see if additional safety measures are necessary. Aside from those suggestions, Kroger will not be financially responsible for additional safety measures deemed necessary by an expert.

Councilmember Oler commented that the volume of traffic will impact the safety of the location, and Kroger fuel centers tend to have a high volume of traffic. Mr. Pflume answered that the safety of a location is determined more by the physical characteristics of the location than by the volume of traffic. He noted that he was asked to perform a safety study, which does not take into account volume of traffic. He was not asked to do a traffic impact study, which would take into account the volume of traffic at a location. Mr. Pflume then explained the differences in the two studies and the results of the safety study he conducted.

Councilmember Abbott commented that he has been a supporter of the Kroger fueling center since day one and has thousands of signatures showing why he supports the project, because the residents want it. He was happy that Mr. Pflume was hired for the safety study, given the history between the city and Mr. Pflume. He noted that he was surprised that 70% of the customers that will use the fueling center are existing Fairfield residents and people that already travel through that intersection, so they are already familiar with how to navigate that intersection. Councilmember Abbott commended Kroger for their hard work and patience in working on the project.

Mayor D'Epifanio commented that he is happy the city has Kroger as a business partner, however, he does not support the Kroger fueling center. He does not feel that it is the best option for the residents of Fairfield. He noted that he did not support the Forest Fair/Cincinnati Mills Mall development, either, because of the location. In his opinion, that mall has only created traffic and problems. He also commented that there are other city development projects that he was opposed to that have not had problems, such as the Community Arts Center not being large enough to pay for itself. He noted that there were several items in the agreement with Kroger for the location at Village Green that have not been upheld by Kroger, probably due to management changes, and he does not want to see that happen with the fueling center. Mayor D'Epifanio reported that he has driven to Kroger in Hamilton and to Shell on Route 4 in Fairfield and the gas price is always within a penny, and the Kroger card is accepted at Shell for \$0.10 off per gallon. He noted that he feels the access to the fueling center should be restricted to right-turn in and right-turn out only. He stated that Flowerama told him they were going out of business because their customers said the location was too difficult to get in and out of. He commented that he hopes the location stays as beautiful as the drawings have shown.

Councilmember Senger commented that he is happy with the process and that it took so long to get to this point, because it shows the passion of the city to do what is best for the community. He thanked the city staff and Kroger for all of their hard work on the project and stated that he will be supporting it.

Councilmember Pennington commented she voted against the project when it was presented to the BZA board, but now it is a better plan. She is supporting the project because the residents want it. She reported that the elderly have told her that they don't use their points, because they can't go to Hamilton to get gas. She noted that she wants to keep the dollars in Fairfield and having a fueling center here will do that.

Councilmember Holtegel commented that if the project passes, the police chief should probably post people at the location to give warnings for a period of time to make sure they are not making illegal turns.

Councilmember Jones commented that he also appreciates the work of city staff and Kroger on the project. He noted that this project is a culmination of a lot of hard work and compromise, and that Fairfield is showing that it is business friendly by accepting the project today. He agrees that the money should stay in Fairfield, and feels that the potential line of traffic is a good sign, instead of something negative. He would have liked to see the numbers prior to 2008 in the traffic study, when Taco Bell was in business there, and what the impact was at that time. He commented that the current condition of the location does not reflect well on Fairfield, and Kroger is taking on the financial responsibility of cleaning up that property and making it look better.

Resident Cathy Dubbs, 460 Regorian Drive, commented that she moved to the city about 20 years ago. She supports the fueling center and feels that the current condition of the location gives the impression that the city is dying, when it is not. She is very touched by the concern of council for the safety of the residents, but feels that it is more of a safety risk for residents to drive further to go to Hamilton to get gas at Kroger.

Resident Jeff Rader, 4472 Rita Mae Drive, commented that he has lived in the city since 1995. He feels that common sense will intervene with people using the fueling center and most people will not try to turn left out of that driveway. He commented that if the fueling center is not approved, Kroger may move out of the Village Green location at some point because they want a fueling center, and then that leaves a larger empty building that will be difficult to find a use for.

Resident Lee Marcus, 5437 Southgate Boulevard, commented that he has lived in Fairfield for eight years. He is proud to live in Fairfield and more proud than ever after attending the council meeting. He noted that some residents, like himself, may have 300-400 fuel points that they are unable to use because they don't have the money to drive to Hamilton to fill their gas tank. He is proud that Fairfield is working so well with Kroger.

Resident Joe Swartz, 5305 Bibury Road, commented that he was first against the Kroger fuel center, due to the architectural design. However, due the vast improvements made to the design and the landscaping, he now supports the project. Kroger has been in the city for 50 years and has done their part in meeting the city's requests for changes to the design. He would like to see the project supported.

Law Director John Clemmons clarified that Mr. Plume's recommendations will be part of the development agreement with Kroger.

Resident Kim Goodwin, 5327 Lakeside Drive, commented that she has lived in Fairfield for 25 years. She has been to all of the local Kroger fuel locations and feels that the proposed design for Fairfield will

make it nicest location in the area. She was a customer at Flowerama and her way around the difficulties in traffic was to make a right from Nilles into the parking lot, and then a right out of the parking lot onto Pleasant, which she feels is a much safer way to access the location. She is hopeful that Council will pass the legislation.

Councilmember Oler commented that everyone appreciates Kroger and he would like to see a fueling center, but would prefer it next to the store, instead of on the corner of the intersection. He noted that he has never seen a building turn out to look like the original drawing shows, but he hopes that the Kroger fuel center will. He does not feel that the store is very clean, because employees smoke outside and cigarette butts are on the ground. He would like to see some improvement in the store, possibly turn it into a Kroger Marketplace. He mentioned that most people don't pay attention to what they are signing, and simply sign a petition because a friend asks them to.

Mayor D'Epifanio commented that Kroger Manager Speath is a credit to Kroger and is a great manager. He appreciates the work they do for the city.

Councilmember Jones thanked the residents for their participation in the process.

Councilmember Holtegel, seconded by Councilmember Abbott moved to adopt . Motion Carried 6-1. ORDINANCE NO. 93-12. ADOPTED 6-1, COUNCILMEMBER MIKE OLER DISSENTING.

Ordinance to authorize the City Manager to enter into an easement agreement with the Farhat S. Khan Trust.

Councilmember Senger commented that this agreement states that the city will receive \$22,500 for the portion of city property that Kroger needs to build an easement.

Jonathan Woche, McBride Dale Clarion, commented that he has been working with Kroger on this project for a year and he appreciates the work of the city staff and city manager as they went through the process.

Monty Chesko, real estate manager with Kroger Cincinnati Division, thanked the city staff for their assistance and hard work on the project, as well as city council for their support and faith in their staff and Mr. Bachman.

Tony Spaeth, Kroger Manager, thanked the city for the yes vote and asked that if there are any issues, please contact him directly and he will take care of it. The city's concerns are also his concerns.

Councilmember Holtegel presented the third reading of this ordinance.

Councilmember Holtegel, seconded by Councilmember Abbott moved to adopt . Motion Carried 7-0. ORDINANCE NO. 94-12. ADOPTED 7-0.