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September 13, 2024



Anderson Township, Ohio  
Board of Zoning Appeals  
7850 Five Mile Road  
Anderson Township, OH 45230  
Attn: Paul Drury, Planning and Zoning Director  
Email: [pdrury@andersontownshipoh.gov](mailto:pdrury@andersontownshipoh.gov)

**Re: Application for Special Zoning Certificate (aka Conditional Use)**

**Kroger Distribution Warehouse located at 4320 Mt. Carmel Road, Anderson Township, Ohio, also being known as Hamilton County Parcel ID No. 500-0090-0023-00 (the "Site")**

To Whom It May Concern:

This letter shall serve as Kroger, Inc.'s ("Kroger") application for a Special Zoning Certificate (aka Conditional Use) (collectively, the "Application") from the Anderson Township Board of Zoning Appeals (the "BZA") to permit the operation of a warehouse and distribution center on the Site, as set forth in the concept plan enclosed with this application (the "Plan").

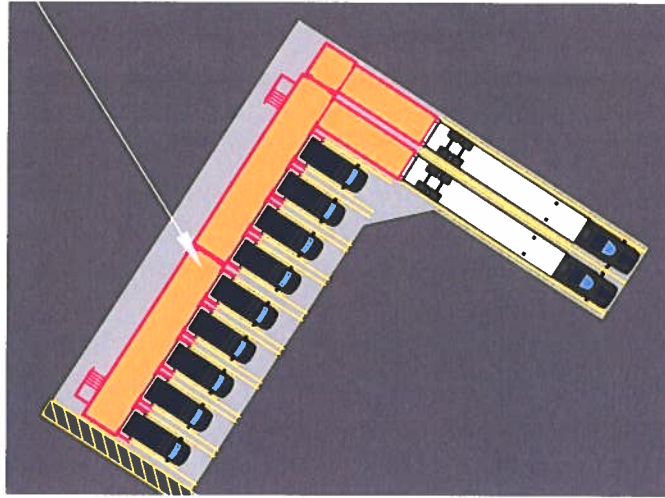
This letter will explain Kroger's intended use of the Site, as depicted on the Plan, and why the approval of the Application is appropriate in this case.

Site and Surrounding Area

The Site is currently zoned in the "I-D" Industrial Development District and is being used for office and light industrial purposes in connection with an energy company. Historically, the Site has been used to park heavy industrial vehicles and other industrial equipment on a paved parking field and for office purposes ancillary thereto.

Kroger intends to use the Site as a 'spoke' (i.e., last mile service) warehouse and distribution center to support Kroger's home delivery grocery service. The Site will not be used for any onsite processing or manufacturing. Instead, a docking facility will be situated near the center of the Site, from which two semi-trucks will dock with their

contents being distributed entirely within the docking facility to Kroger's neighborhood grocery delivery vans, as seen here:



Kroger will use the office building located on the Site for supporting its distribution operations.

As evidenced in the Plan, the only new improvements to the Site proposed by Kroger will be:

- the repaving and striping of the current parking fields located on the Site;
- the installation of updated perimeter fencing;
- future van fueling and EV charging stations; and
- the installation of the aforementioned loading dock.

Otherwise, Kroger plans on using the existing buildings on the Site, excepting the lean-to, green-roofed building located to the north of the office building, which is intended for removal. Kroger will be the only tenant of the Site.

The properties located to the north, east and west of the Site are all zoned "ID". The property to the south across the Site's access drive is zoned "AA" and used for agricultural purposes.

### Special Zoning Certificate

The Anderson Township Ohio Zoning Resolution (the "Code") identifies the conditions and standards for the BZA's approval of a Special Zoning Certificate. Article 3.16(F) of the Code specifies that the BZA shall utilize the following performance standards in approving a Special Zoning Certificate. Kroger has provided the following responses to each of the standards, thereby providing support for the Application:

1. **Modifications by Board of Zoning Appeals:** *In a case where the topography or other physical features of the tract or its relation to surrounding property may make complete compliance with the requirements of this unnecessary or undesirable, the Board of Zoning Appeals may modify such requirements to the extent warranted provided the surrounding property and the public welfare are adequately protected.*

It has been brought to Kroger's attention by Township planning staff that the existing parking lots are likely noncompliant with Article 5.3 of the Code. As evidenced by the Plan, Kroger intends to re-pave and stripe the existing parking areas of the Site to accommodate Kroger's delivery vans and employee parking. Given that (i) Kroger is not introducing any new parking areas and (ii) the parking is for a light industrial use, as opposed to a retail use, Kroger requests that the BZA modify any applicable requirements of Article 5.3 as necessary to permit the redevelopment of the parking lots as depicted on the Plan.

2. **Emissions:** *In the case of emissions, applicable U.S. and Ohio Environmental Protection Agency regulations shall be observed, and the Board of Zoning Appeals may rely on expert testimony from parties who by education, training and experience are recognized experts.*

Kroger intends to comply with all applicable U.S. and Ohio Environmental Protection Agency regulations. Please note that Kroger will not be performing any processing or manufacturing on the Site.

3. **Regulated Substances:** *Once it has been determined that a proposed use may involve one or more Regulated Substances, the Anderson Township Board of Zoning Appeals shall establish and enforce necessary and appropriate performance standards to protect the public health, safety and welfare and the environment.*

Kroger intends to continue the use of the existing diesel fuel tanks located on the Site, currently being used by the Site's operator. Kroger will comply with all applicable laws in their use of the fuel tanks.

Aside from the existing diesel fuel tanks, Kroger's use of the Site will not involve any other Regulated Substance (as that term is defined in the Code), other than those items permitted under Article 3.16-C-7(b) of the Code.

4. **Vibration and Shock:** *No vibration or shock perceptible to a person of normal sensibilities at or beyond the property line shall be permitted.*

Given the Site's historical use as a vehicle and equipment depot and office building for an energy company, Kroger's use of the Site will not result in an increase in vibration or shock, if any, historically present at the Site.

5. **Nuisances:** *In order to prevent the operation or use of any facility or property from constituting a nuisance to or upon surrounding property, all odor, dust, smoke, gas, emissions, noise or similar nuisance shall be so located on the tract that such use does not create a nuisance at or beyond any boundary line of the tract, and evidence shall be submitted, consisting of testimony or a certified statement by a competent authority in the field affected, to clearly demonstrate that the use will not create a nuisance. The best practical means known for the abatement of a nuisance caused by odor, dust, smoke, gas, emissions, noise or similar nuisance shall be employed in a manner approved by the Board of Zoning Appeals.*

As opposed to the current use of the Site, Kroger's operations will be primarily indoors, and any dust should be mitigated by the newly paved lot. Further, and as depicted on the Plan, Kroger's fueling and distribution will be located in the center of the Site, not along any property line.

6. **Landscaping and Other Requirements:** *Reasonable additional requirements as to landscaping, lighting, screening, fencing, access ways, building setbacks, and building sitting may be imposed by the Board of Zoning Appeals for the protection of adjacent property.*

Kroger does not believe that additional requirements as to landscaping, lighting, screening, fencing, access ways, building setbacks, and building sitting are necessary given that Kroger (i) is not materially changing the layout of the Site from what currently exists, (ii) is not materially changing the light industrial use of the Site, (iii) is improving the existing vehicular movement and parking areas by new pavement, and (iv) will be erecting new perimeter fencing around the entire Site. As shown on the Plan, Kroger will not be locating any improvements closer to the boundary lines, or affecting perimeter landscaping/buffering currently in place.

7. **Consideration of Enhancements:** *In reviewing Conditional Use applications the Board of Zoning Appeals shall consider enhancements proposed by the Applicant to the transportation network, the working environment, and the neighborhood as positive reasons for granting the application.*

Recognizing that the Site (i) is located within a larger "ID" District and is predominantly surrounded by other industrial-type facilities, and (ii) that Kroger's intended use of the Site will not substantially deviate from (in fact, will likely mitigate) the use of the Site by heavy industrial vehicles, which made substantially more trips to and from the Site than Kroger's intended use. Accordingly, Kroger requests that no additional enhancements, beyond the submitted Plan, be part of the Application.

In addition to the above standards, the Code states that the BZA shall consider and apply the following guidelines in determining whether to grant a Special Zoning Certificate. Again, Kroger has provided the following responses to each guideline:

- a) **Spirit and Intent.** *The proposed use and development shall comply with the spirit and intention of the Zoning Resolution and with District purposes.*

Code Article 1.1(A) states that the purpose of the Code is for “...*promoting health, safety, morals, comfort or general welfare; to conserve and protect property and property values; to secure the most appropriate use of land; and to facilitate adequate but economical provision of public improvements...*”.

Kroger’s intended use of the Site per the Plan comports will the spirit and intent of the Code outlined in Article 1.1(A) because such use will (i) result in a less intense heavy truck traffic use of the Site from what has historically existed, (ii) increase the economic value of the Site due to Kroger’s investment in the proposed property improvements, and (iii) be a continuation of the use of the Site consistent with the Code and Plan.

Code Article 3.16(A) states that the purpose of the “ID” District is to “...*improve the quality of commercial, research, and industrial use and enhance its value and to provide a significant area where commercial, research, and industrial development may be encouraged and guided for the benefit of the total community.*”

Kroger’s intended use of the Site per the Plan represents a state of the art distribution model by bringing perishable goods to the customer in the most efficient manner, thereby benefitting the consumer expectations of the community.

- b) **No Adverse Effect.** *The proposed use and development shall not have an adverse affect upon adjacent property, or the public health, safety, and general welfare.*

Kroger’s intended use will have no detrimental impacts upon the adjacent properties or the public health, safety and general welfare, particularly in comparison to the Site’s historical use. With Kroger’s predominantly indoor use, there should be a reduction in the noise, odor, emission and dust burden on adjacent properties and the general public. Kroger’s intended use will also facilitate the convenient delivery of fresh groceries to the entire Anderson Township community, resulting in greater availability and convenience for all residents.

- c) **Protection of Public Services.** *The proposed use and development should respect, to the greatest extent practicable, any natural, scenic, and historic features of significant public interest.*

Kroger’s proposed use will not impact any natural, scenic or historical features of significant public interest, as its use stays within the boundaries of the historical site.

- d) **Consistent with Adopted Plans.** *The proposed use and development shall, as applicable, be harmonious with and in accordance with the general objective of the Township’s comprehensive plan and/ or Zoning Resolution.*

As stated under a) above, and as evidenced under Comprehensive Plan Compliance below, Kroger’s intended use of the Site per the Plan is harmonious and in accordance with the general objective of the 2021 Plan and/or Zoning Resolution.

#### Comprehensive Plan Compliance

In 2021, the Township adopted the *Anderson Township Comprehensive Plan Update* (the “2021 Plan”). The Future Land Use Map included in the 2021 Plan categorizes the Site as being intended for continued “Light Industrial” use. The 2021 Plan defines Light Industrial as “[s]maller scale industrial uses such as warehouses, storage, limited manufacturing, research and development, transit terminals, distribution, and wholesaling activities that are in enclosed facilities without offensive emissions or nuisance.”

In addition to the 2021 Plan, the Township has also adopted the ANCOR Area Master Plan (the “ANCOR Plan”) to address the economic development of the area surrounding and including the Site. Similar to the Future Land Use Map included in the 2021 Plan, the Land Use Plan included in the ANCOR Plan identifies the Site for continued light industrial use.

Kroger’s use of the Site, per the Plan and for a warehouse/distribution center, complies with both the 2021 Plan’s and ANCOR Plan’s future zoning and land uses of the Site and for Light Industrial purposes. Thus, the Application is consistent with the Township’s visioning of the Site.

#### Conclusion

We respectfully request that the BZA issue a Special Zoning Certificate (aka Conditional Use) for Kroger’s use of the Site as a distribution center and warehouse in accordance with this Application, including the Plan.

Respectfully,



Richard B. Tranter, Esq.  
Attorney for Kroger, Inc.

RBT/MAH

enclosure  
45843863.1



*Legal Counsel.*

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September 12, 2024

**SENT VIA ELECTRONIC MAIL**

4320 MT CARMEL ROAD LLC  
3700 Roundbottom Road  
Cincinnati, OH 45244  
Attn: Doug Evans  
Email: devans@evanslandscaping.com

**Re: Application for Special Zoning Certification / Conditional Use**

**4320 Mt. Carmel Road, Anderson Township, Ohio, also being known as  
Hamilton County Parcel ID No. 500-0090-0023-00 (the "Site")**

Mr. Evans:

By signing where indicated below, you are consenting to **Dinsmore & Shohl, LLP** acting as the agent of **4320 MT CARMEL ROAD LLC** in all matters related to and in connection with the zoning application referenced above.

The below signature shall also provide authorization for the Anderson Township Board of Zoning Appeals and staff members of the Anderson Township Planning and Zoning Department to access the Site for purposes of inspecting same in connection with the application.

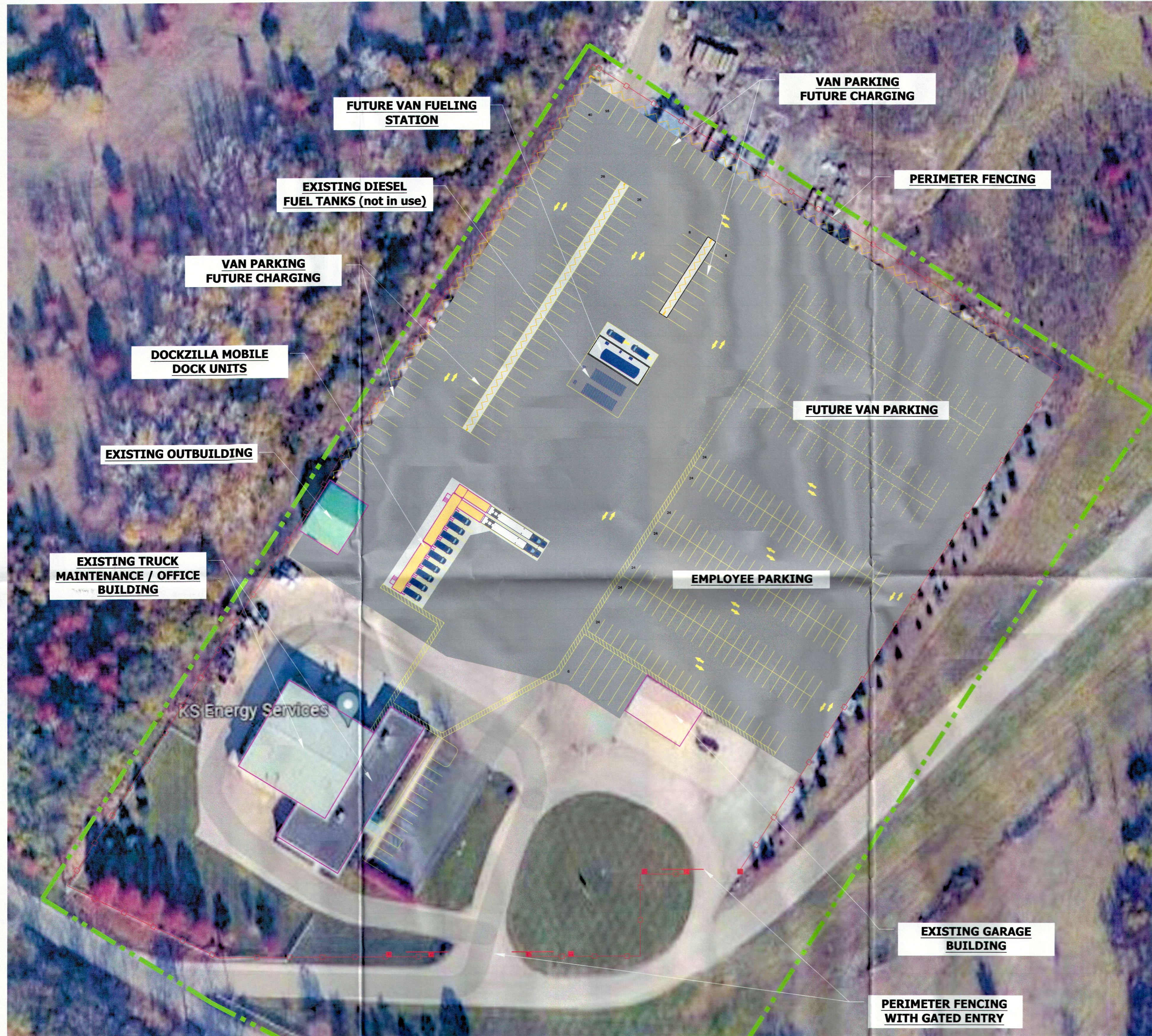
Very Truly Yours,

Richard B. Tranter  
Attorney for Kroger, Inc.

**OWNER:**

*Doug Evans*  
Doug Evans, \_\_\_\_\_  
4320 MT CARMEL ROAD LLC





## **KROGER FULFILLMENT - CINCINNATI SPOKE**

4320 Mount Carmel Rd, Cincinnati, Ohio 45244

### **FREE STANDING DOCKZILLA MOBILE UNIT OPERATION**

#### **SITE**

PROPERTY USAGE: 7.5 +/- ACRES  
 FUTURE VAN FUELING: 2 PUMP STATIONS  
 EMPLOYEE AUTO PARKING STALLS: 168  
 VISITOR AUTO PARKING STALLS: 12  
 DELIVERY VAN PARKING STALLS: 124  
 FUTURE VAN PARKING STALLS: 96

#### **BUILDING**

5 BAY TRUCK MAINTENANCE: 11,400 +/- Sq. Feet  
 OFFICE: 9,200 +/- SQ. FEET

#### **DOCKZILLA MOBILE UNIT**

MOBILE UNITS: 2 UNITS = 2,180 SQ. FEET  
 TRACTOR TRAILER DOCKS: 2  
 DELIVERY VAN DOCKS: 9



DRAWING COMPLETED BY KROGER Real Estate Special Projects:  
 FOR REVIEW PURPOSES ONLY



### **Conceptual Site Plan**

SCALE: 1/4" = 1'-0"