



ANDERSON TOWNSHIP PLANNING AND ZONING - STAFF REPORT

CASE NUMBER 22-2024 BZA

4320 MOUNT CARMEL ROAD

FOR CONSIDERATION BY THE BOARD OF ZONING APPEALS ON NOVEMBER 7, 2024.

APPLICANT: Richard B. Tranter, Esq., Dinsmore & Shohl LLP on behalf of Kroger, Inc., lessee, on behalf of 4320 Mt. Carmel Road LLC, property owner.

LOCATION & ZONING: 4320 Mt Carmel Road
(Book 500, Page 90, Parcel 23) – “ID” Industrial Development

REQUEST: A conditional use request for a storage and distribution facility, per Article 3.16, C, 4 of the Anderson Township Zoning Resolution.

SITE DESCRIPTION:
Tract Size: 10.075 acres
Frontage: Approximately 520’ on Bickel Ln.
Topography: Mostly flat, sloping upward at the southern end of the parcel.
Existing Use: Vacant building and empty parking lot, previous use by KS Energy

SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
North:	“ID” Industrial Development	Cleared land
South:	“AA” Residence	Agriculture
East:	“ID” Industrial Development	Private drive for Evans Landscaping
West:	“ID” Industrial Development	Vacant

PROPOSED DEVELOPMENT: The applicant is proposing to use the property for a storage and distribution facility for “last mile service” for Kroger, Inc’s home delivery grocery service. The applicant is proposing to install a series of “Dockzilla Mobile Units” totaling 2,532 ft. sq. with 9 grocery delivery van loading docks and 2 larger semi-truck loading docks. The applicant is also proposing to use the existing office building to support distribution operations. Additional modifications to the property include repaving and striping of the current parking lots, and installation of updated perimeter fencing and landscaping (?).

Storage and distribution facilities are a conditional use in “ID” Industrial Development districts per Article 3.16, C, 4, of the Anderson Township Zoning Resolution.

HISTORY: The oldest zoning certificate on file was issued on July 26, 1994, for a conditional use for a topsoil and compost facility granted by Case 14-1993 BZA on November 4, 1993. This use had ceased by 1995.

In 2001, a zoning certificate was issued for Blue Chip Pavement Maintenance, Inc. for the existing 4,650 ft. sq. office building and attached 6,000 ft. sq. service garage. In 2007, a zoning certificate was issued for the two 10,000-gallon fuel tanks and the 20’ x 40’ concrete base along with asphalt access drive modifications.

A zoning certificate was issued in 2016 to Bee Holdings for a 11,055 ft. sq. driveway modification resulting in the currently existing asphalt driveway on the south side of the office building. In 2019, a zoning certificate was issued to KS Energy for the 30’ x 50’ carport accessory structure located north of the driveway loop.

A zoning certificate was issued to Evans Landscaping in 2021 for the private drive on this property and the adjacent property to the east (Book 500, Page 90, Parcel 24). Most

recently, a zoning certificate was issued in 2022 for expansion to the commercial storage area on the property. In May of 2024, the existing gravel storage area had been paved over by the property owner without applying for or receiving a zoning certificate from Anderson Township Planning and Zoning. Hamilton County Soil & Water sent the property owner a Notice of Violation on October 8th, 2024, the stormwater management for the existing storage area is not adequate for the recently paved area and updating the stormwater management for the property is necessary.

FINDINGS:

To authorize a Special Zoning Certificate for any of the Conditional Uses in the “ID” Industrial Development District set forth in Article 3.16, C, the Board of Zoning Appeals shall employ the performance standards described in Article 3.16, F and shall also consider the compatibility of such uses with surrounding uses and the effect of such uses upon the health, safety, and morals of the community.

Performance Standards for Conditional Uses:

1. *Modifications by the Board of Zoning Appeals:*

The applicant requests a variance for Article 5.3, L to permit less intense landscaping and buffering around the “northwest” lot which is proposed to be primarily used for vehicle storage. Staff is of the opinion that granting this variance is a reasonable compromise since the applicants will be adding parking islands and fully complying with landscaping for the “southern” employee parking lot. The northwest corner of the lot is already screened from non-industrial uses by existing vegetation. Additionally, the currently proposed 8’ fence is not in compliance with the Zoning Resolution and would require a variance. (is of the opinion that the applicant should comply with Zoning Resolution, which only allows for a maximum of 6’ high fencing.

2. *Emissions:*

Staff is of the opinion that the applicant’s statement that, “Kroger intends to comply with all applicable U.S. and Ohio EPA regulations,” would benefit from a more comprehensive description of how regulations will be followed.

3. *Regulated Substances:*

Staff is of the opinion that the plans comply with this standard. The only substances present will be those falling under Article 3.16, C, 7, b (Conditional Uses for Regulated Substances) which are not considered regulated substances.

4. *Vibration and Shock:*

Staff is of the opinion that this conditional use proposal meets the requirements of this standard. The proposed operations align with the expected vibration and shock within an industrial area.

5. *Nuisances:* Staff is of the opinion that more information is needed to make an informed assessment. The applicant states that, “Kroger’s operations will be primarily indoors,” but there will be movement and emissions from vans and trucks throughout the site as deliveries are processed and vehicles are subject to maintenance. It’s not clear how the proposed use would impact traffic and air quality in the area.

6. *Landscaping and Other Requirements:* Staff is of the opinion that more requirements may be necessary. The applicants do not have a detailed landscaping or lighting plan included in their submission. Staff recommends a full landscaping and lighting plan, which shows footcandles at the property lines, be required before a zoning certificate is issued. The applicant submittal shows where lighting fixtures and

landscaping will be located, but does not include what specific plants will be used and it did not include a photometric plan.

7. *Consideration of Enhancements:* Staff is of the opinion that the applicant will be enhancing the property by improving the working environment through parking lot landscaping.

General Standards from Article 2.12, D, 8, a:

- i. *Spirit and Intent:* Staff is of the opinion that the proposed use as a “last mile distribution” center aligns with the industrial purpose of the district. Kroger will be investing in the property and enhancing its value for the owner and future tenants.
- ii. *No Adverse Effect:* Staff is of the opinion that there may be an adverse impact on the properties which rely on access to Mt Carmel Rd through the property due to the increase in traffic. However, Kroger will also likely be increasing the value of the adjacent properties as a result of its own property improvements.
- iii. *Protection of Public Services:* Staff is of the opinion that this standard will be satisfied by the proposed plans. The existing lot is already cleared, and Kroger will be adding to the vegetation as part of their landscaping. The violation notice from Hamilton County Soil and Water and any other County agencies will need to be addressed prior to occupancy.
- iv. *Consistent with Adopted Plans:* Staff is of the opinion that the proposed use is consistent with adopted plans. The light industrial use of the site aligns with the 2022 Future Land Use Map in the 2022 Comprehensive Plan. Additionally, the plan aligns with Initiative 3.2.2 – Support the expansion of nonresidential uses, provided they are compatible with adjacent land uses, and Initiative 7.3.4 – Facilitate infrastructure enhancements in the ANCOR Area that will help increase economic development opportunities for the Township, while minimizing environmental impacts.

**STANDARDS TO
BE CONSIDERED:**

Performance Standards for Conditional Uses: As authorized in Article 2.12, D, 7 of this Resolution, the Board of Zoning Appeals shall employ the following performance standards in approving Conditional Uses:

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.
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.
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. The Board of Zoning Appeals shall consider any information supplied by the Applicant; a report and recommendation of the Anderson

Township Zoning Inspector and such other relevant information as may be requested or submitted. In any application for a special zoning certificate for a use involving any Regulated Substance, the Applicant shall indicate how it will comply with the requirements set forth below. Noncompliance with any such requirements shall be grounds for revocation of such special zoning certificate:

- a. Observation of all federal, state and local environmental laws including all applicable USEPA and OEPA Rules and Regulations.
 - b. Use of Best Management Practices (“BMPs”) and Best Available Technology (“BAT”), unless alternative practices or technology are shown to be equally effective, to control the use, storage or transport of Regulated Substances. BMPs mean a practice or combination of practices that is the most effective and practicable (including technological, economic, and institutional considerations) means of preventing or reducing the amount of emissions or pollution generated. BMPs may include structural and non-structural practices, conservation practices and operation and maintenance procedures, including those as may be defined from time to time by USEPA, OEPA or the Hamilton County Soil and Water Conservation District. Best Available Technology means the best technology, treatment techniques or other means for preventing or reducing the release or discharge of regulated substances into the environment, taking into consideration efficacy under field conditions and cost.
 - c. Implementation of BMP and BAT primary and secondary containment measures.
 - d. Implementation of sufficient security measures to prevent accidental or unauthorized use.
 - e. Installation and maintenance of ground water monitoring wells or equivalent 3.16 | “ID” Industrial Development District Regulations | 53 As Amended: 5/19/2016 | Effective: 11/3/1987 devices where determined by the Board of Zoning Appeals to be necessary.
 - f. Development and implementation of emergency response plans with sufficient equipment to rapidly contain accidental discharges or releases. Emergency response plans, including applicable floor plans and Material Safety Data Sheets, shall be filed with local emergency response agencies and kept up to date.
 - g. Development and implementation of hazardous material and emissions management plans where determined by the Board of Zoning Appeals to be necessary.
4. Vibration and Shock: No vibration or shock perceptible to a person of normal sensibilities at or beyond the property line shall be permitted.
 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.

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.
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. Such enhancements may include but shall not be limited to: a. Provision for on-site or nearby childcare facilities; b. Bicycle transportation facilities, including bicycle lockers, bicycle racks, bicycle lanes, and shower/changing areas; and c. Public transit facilities including bus shelters, park-n-ride lots, and helicopter landing areas.

The aforementioned variance requested should be evaluated on the following criteria:

- (1) The property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.
- (2) The variance is substantial.
- (3) The essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.
- (4) The variance would not adversely affect the delivery of governmental services (i.e. water, sewer, garbage).
- (5) The property owner purchased the property with knowledge of the zoning restrictions.
- (6) The property owner's predicament can be feasibly obviated through some method other than a variance.
- (7) The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

In determining whether to grant a special zoning certificate, the Board shall consider and apply the following standards:

- (1) Spirit and intent. The proposed use and development shall comply with the spirit and intention of the Zoning Resolution and with purposes.
- (2) No adverse effect: the proposed use and development shall not have an adverse effect upon adjacent property, or the public health, safety and general welfare.
- (3) Protection of public services: the proposed used and development should respect, to the greatest extent practicable, any natural, scenic and historic features of significant public interest.
- (4) 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.

Disclaimer: This staff recommendation is based on the facts known to the author at the time the recommendation was made. Staff attempted to use those known facts to analyze the relationship of those facts to the standards set forth in the Zoning Resolution for the particular issue and property before the BZA, and in keeping with past decisions of the BZA. The BZA members have an obligation to consider all of the evidence that is entered into this case during the BZA hearing through the sworn testimony of the witnesses, as well as the documents submitted as part of the witnesses' testimony. The staff recommendation should be considered as part of the evidence before you. The Zoning Resolution empowers the BZA to make reasonable interpretations of the Zoning Resolution, to judge the credibility and reliability of the witnesses, and to decide each case based on the evidence presented during the BZA hearing process.