



NEWPORT

KENTUCKY

PUBLIC NOTICE OF A SPECIAL MEETING

Notice is hereby given that a Special Meeting of the Board of Adjustments of the City of Newport, Kentucky, has been called. The meeting will be held on Tuesday, December 3, 2024, at 4:30 p.m.

The Agenda will be available at www.newportky.gov

This notice has been published to meet the requirements of KRS 61.823(3) and (4).

Notice dated 26 of November 2024.

Tiffany Myers

City Clerk Tiffany Myers



NEWPORT
KENTUCKY

**NEWPORT BOARD OF ADJUSTMENTS
SPECIAL MEETING**

December 3, 2024 @ 4:30 P.M.

Newport Municipal Building, 998 Monmouth Street, 1st Floor Multi-Purpose Room

*The public can access the meeting through the live stream on
Facebook.com/CityofNewportKY or YouTube/CityofNewportKY*

AGENDA

CALL TO ORDER:

APPROVAL OF MINUTES:

- Regular Minutes from November 21, 2024.

PUBLIC HEARING:

BA-24-23:

The applicant is appealing the zoning administrator's decision for 20 West 6th Street, Newport, KY 41071.

Request by: Westside Citizens Coalition

ADJOURNMENT:

BOARD OF ADJUSTMENT APPLICATION



CASE NUMBER: BA-24-23
DATE RECEIVED: 11-21-23 11:42y
HEARING DATE: 11-21-24

A GENERAL INFORMATION (PRINT OR TYPE):

1. Name of person or entity requesting hearing Westside Citizens Coalition
Address Post Office Box 72825
Newport, Ky. 41072

Telephone number(s) that you can be reached at between the hours of 8:30 a.m. and 4:30 p.m.
859-802-9821

2. Address of subject property 20 West 6th St, Newport, Ky. 41071

3. Current zoning of subject property Central Business District Fringe

*****Please provide the owner's names and addresses of all adjacent property including immediately across any adjoining streets. (On either side, directly across the street and directly behind your property.)*****

4. Has subject property been platted? Yes _____ No _____

5. Has property been subject to any previous Board of Adjustment's hearings?

Yes No _____ if yes, attach application number and brief explanation:

6. Attach Site Plan if required by Zoning Administrator. Required _____
Not required _____

B TYPE OF HEARING REQUESTED (CHECK APPLICABLE CATEGORY OR CATEGORIES):

____ 1. **DIMENSIONAL VARIANCE (SITE PLAN REQUIRED):**

Fully describe the dimensional variance(s) requested; give specific measurements and cite the applicable Zoning Ordinance section(s) governing the request. Attach additional pages as necessary.

Listed below are conditions, which must be met in order to qualify the property for a dimensional variance. Check the conditions, which apply to this request and provide supporting documentation for each item checked

____ (a) Specific conditions exist, which are unique to this land and do not exist on other land in the same zone.

- _____ (b) Strict application of Zoning Ordinance requirements will deprive the applicant to reasonable use of the land in a manner equivalent to uses permitted other landowners in the same zone.
- _____ (c) The unique conditions and circumstances in Section B-1-(a) above are not the result of actions taken by the applicant subsequent to March, 1982.
- _____ (d) The dimensional variance will preserve and not harm public safety and welfare and will not alter the essential character of the neighborhood.
- _____ (e) Granting a dimensional variance will not give the applicant any special privilege that is not allowed to other lands, structures, or buildings in the same zone. The nonconforming use of neighboring lands and structures in the same zone is not considered grounds for issuance of a dimensional variance.

X 2 **APPEAL OF ZONING ADMINISTRATOR'S ORDER, REQUIREMENT, DECISION, GRANT, OR REFUSAL:**

Fully describe the grounds for appeal, citing the applicable Zoning Ordinance section(s), and thoroughly explain why the Zoning Administrator erred in reaching the appealed decision. Attach additional pages as necessary.

Please see attached pages 1-4.

_____ 3 **CONDITIONAL USE PERMIT (SITE PLAN REQUIRED):**

Most recent or current use of property _____

If not currently in use, when was it last in use _____

Proposed conditional use _____

Listed below are conditions, which must be met in order to qualify for a conditional use permit. Check the conditions, which apply to this request and provide supporting documentation for each item checked.

- _____ (a) The proposed building and use are necessary and desirable to provide a service or facility, which will contribute to the general well-being of the neighborhood or the community.
- _____ (b) The building and use will not be detrimental to the health, safety or general welfare of the people who reside or work in the vicinity or be injurious to property or improvements in the vicinity.
- _____ (c) The building and use will comply with any regulations and conditions specified in the Zoning Ordinance for such building and use.

_____ 4 **INTERPRETATION OF ZONING MAP OR OTHER SPECIAL QUESTIONS:**

Fully describe the nature of the request for interpretation or clarification. Cite all Zoning Ordinance sections applicable to the question asked.

5. CHANGE FROM ONE NON-CONFORMING USE TO ANOTHER NON-CONFORMING USE:

Current or most recent non-conforming use _____
If not currently in use, when was it last in use _____
Proposed non-conforming use _____
Comprehensive Plan for subject area _____

Fully explain all reasons why the proposed change will preserve and not harm the public safety and welfare and will not injure the essential character of the neighborhood. Attach additional pages as necessary.

Fully explain how the proposed non-conforming use will be more in conformance with the Comprehensive Plan for the City of Newport, as it applies to the area in question, than the existing non-conforming use. Attach additional pages as necessary.

Fully explain how the proposed non-conforming use is more in conformance with permitted uses in the same zone than the present non-conforming use. Attach additional pages as necessary.

I hereby depose and say under the penalties of perjury that all of the statements contained in or submitted with this application are true.

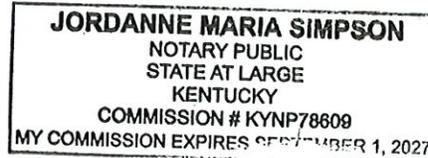
Roy E. Davis

Owner's or Duly Authorized Legal Agent's Signature

City of Newport
County of Campbell
Commonwealth of Kentucky

Subscribed and sworn to before me this 1 day of November 2024
Jordanne Maria Simpson
(Notary Public)

My Commission expires Sept 1, 2027



This hearing was concerning a variance
in sign design.

What are we doing?

Per the Official Zoning Ordinance (O.Z.O) Art. XVIII BOARD OF ADJUSTMENT § 18.2 PROCEDURE FOR ALL APPEALS TO THE BOARD (Am. Ord. O-2016-024, passed 12-12-16), the Westside Citizens Coalition is an entity claiming to be injuriously affected or aggrieved by an official action or decision of the Zoning Administrator (ZA). Specifically, we are appealing the ZA's determination that the proposed Kroger Fuel Center is a "customary accessory building or use" to the Board of Adjustment.

What definition was incorrectly interpreted and improperly applied by the ZA in his determination?

Per O.Z.O. Art. VII § 7.0 WORDS AND PHRASES, ACCESSORY BUILDING OR USE CUSTOMARY: A "customary accessory building or use" is one which:

- (a) Is subordinate to and serves the principal building or principal use, and
- (b) Is subordinate in area, extent, or purpose to the principal building or principal use served, and
- (c) Contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use served,
and
- (d) Is located on the same zoning lot as the principal building or principal use served, with the single exception of such accessory off street parking facilities as are permitted to locate elsewhere than on the same zoning lot with the building or use served.

Why is this definition inappropriate and inapplicable to the proposed Kroger Fuel Center?

- 1 The Kroger Fuel Center is not subordinate to or serving the principal building or principal use (grocery store) in terms of area, extent, or purpose. A gas station is a distinct business operation that can stand on its own, rather than being subordinate to a grocery store.
- 2 Selling fuel is a primary business activity, not an accessory one. Courts have ruled against classifying certain uses as accessory when they become too prominent and/or overshadow the principal use.
- 3 A fuel center operates as (even if not legally structured as) a separate business entity with its own revenue stream, customer base, and operational requirements. Customers cannot purchase their fuel while

inside of the grocery store, and customers cannot purchase their groceries while fueling their vehicles at the pumps. Fuel centers have distinct operational needs, including specialized equipment, safety regulations, and environmental considerations that are entirely unrelated to grocery store operations.

- 4 Fuel centers often attract customers who may not be shopping at the grocery store. Many people stop for gas without entering the main store, supporting the argument that a fuel center is not subordinate to or serving the principal grocery use.
- 5 Kroger has built fuel centers at locations separate from their grocery stores, further demonstrating that these facilities are not subordinate or accessory uses.
- 6 Kroger regularly breaks out fuel sales and fuel-related metrics in its financial reports, further indicating that its fuel sales are not subordinate to grocery sales.
- 7 The proposed fuel center is too large or extensive to be considered an accessory use to the grocery store. Introducing a gas station would be a significant change to the current use of the property, not a mere accessory use.
- 8 Allowing a fuel center as an accessory use circumvents the intent of the Zoning Ordinance, which does not permit gasoline service stations or convenience stores with retail gasoline sales in the CBDF Zone (O.Z.O. art. X § 10.3 COMMERCIAL DISTRICT).
- 9 While not directly applicable, other elements of the Zoning Ordinance related to non-commercial districts provide context and examples of intent when defining "customary accessory building or use."
 - 1 From O.Z.O. art. X § 10.2(C)(2) RESIDENTIAL DISTRICTS: "In the R-5 Zone...such accessory uses shall not exceed ten percent (10%) of the gross floor area of the permitted uses in the building..." The same language appears in O.Z.O. art. X § 10.3(C) (2) COMMERCIAL DISTRICTS for the Professional Office Zone.
 - 1 If a similar standard were applied to this case, the Fuel Center would certainly exceed 10% of the Grocery Store gross floor area, and potentially exceed 10% of the total parcel area, especially when factoring in parking spaces dedicated to or required for the Fuel Center.
 - 2 From O.Z.O. art. X § 10.4(C)(1)(a) INDUSTRIAL DISTRICTS

contains the language "...operations required to maintain or support..."

- 1 A fuel center is not required to maintain or support a grocery store

How were we injuriously affected or aggrieved?

I think others would be better positioned to address this question, but general themes:

- 1 Traffic and safety
- 2 Environmental and health concerns
- 3 Property values
- 4 Setting precedent for future nonconforming development

Other Considerations:

From O.Z.O. art. X § 10.3(F)(1) COMMERCIAL DISTRICTS | OTHER DEVELOPMENT CONTROLS: "All Commercial Zones shall be governed by the following additional development controls."

- 1 O.Z.O. art. X § 10.3(F)(1)(f) states "No use producing objectionable noise, odors, or dust shall be permitted within five hundred (500) feet from the boundary of any residential zone."
 - 1 The proposed Fuel Center would be within 500 feet from the boundary of both Zones R-5 (Central Ave. to the west) and R-3 (7th St. and Columbia St. to the southwest).
 - 2 Gasoline emits an objectionable odor.
 - 3 The odor threshold for gasoline is quite low, around 0.025 ppm. This means humans can detect the smell of gasoline at very low concentrations in the air.
 - 4 Benzene is responsible for the smell: Of the many compounds in gasoline, benzene is primarily responsible for its characteristic odor. The human nose can detect benzene at concentrations as low as 1 part per million in the air. A 2019 study found that benzene emissions from underground gasoline storage tank vents could pose a health concern at distances up to 524 feet (160 meters) from gas stations.
- 2 O.Z.O. art. X § 10.3(F)(1)(g) states: "All business activities permitted within this District shall be conducted within a completely enclosed building with the exception of off street parking and loading and/or unloading areas, temporary seasonal businesses, automotive sales lots, tools and equipment rental and sales, and boat sales, with the

exception of outside dining areas."

- 1 A Fuel Center would fall under the broad definition of "all business activities."
- 2 Fuel Centers are not completely enclosed buildings.