



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Equitable Growth & Housing

Chairperson, Reggie Harris
Vice Chairperson, Meeka Owens
Councilmember, Jeff Cramerding
Councilmember, Mark Jeffreys
Councilmember, Liz Keating
Vice Mayor, Jan-Michele Kearney
Councilmember, Victoria Parks
Councilmember, Scotty Johnson

Tuesday, December 20, 2022

1:00 PM

Council Chambers, Room 300

PUBLIC HEARING

PRESENTATIONS

Proposed Notwithstanding Ordinance at 4924 Winton Rd in Spring Grove Village & Winton Hills

Gabrielle Couch

AGENDA

START OF PUBLIC HEARING

- [202202150](#) ORDINANCE submitted by Sheryl M. M. Long, City Manager, on 12/20/2022, AUTHORIZING the redevelopment of the real property located at 4924 Winton Road in the Spring Grove Village and Winton Hills neighborhoods for use as an office and indoor storage facility NOTWITHSTANDING the use and development limitations contained in Chapter 1403, "Single-Family," of the Cincinnati Municipal Code, Chapter 1433, "Hillside Overlay Districts," relating to the addition of the three-bay garage, and any other applicable zoning regulations that would restrict the property's redevelopment.

Sponsors: City Manager
Attachments: [Transmittal](#)
[Ordinance](#)
[Exhibit A](#)
[Exhibit B](#)
[Legislative Record](#)
[CPC Memo to Clerk](#)
- [202202207](#) PRESENTATION submitted by Sheryl M. M. Long, City Manager, dated 12/20/2022, regarding the Emergency Notwithstanding Ordinance permitting an HVAC Business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Presentation](#)

END OF PUBLIC HEARING

ADJOURNMENT

December 20, 2022

To: Members of the Equitable Growth & Housing Committee

From: Sheryl M. M. Long, City Manager 202202150

Subject: Emergency Notwithstanding Ordinance – Permitting an HVAC Business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills

Transmitted is an Emergency Ordinance captioned:

AUTHORIZING the redevelopment of the real property located at 4924 Winton Road in the Spring Grove Village and Winton Hills neighborhoods for use as an office and indoor storage facility **NOTWITHSTANDING** the use and development limitations contained in Chapter 1403, “Single-Family,” of the Cincinnati Municipal Code, Chapter 1433, “Hillside Overlay Districts,” relating to the addition of the three-bay garage, and any other applicable zoning regulations that would restrict the property’s redevelopment.

The City Planning Commission recommended approval of the emergency ordinance at its December 2, 2022 meeting.

Summary

Harnist & Corcoran’s current location in South Fairmount is being appropriated by the City for the Western Hills Viaduct Replacement project, and they are proposing relocation to the site at 4924 Winton Road in Spring Grove Village and Winton Hills. The proposed site has zoning conflicts regarding the proposed use and necessary site modifications, which the applicant is looking to resolve through the Notwithstanding Ordinance.

The City Planning Commission recommended the following on December 2, 2022 to City Council:

APPROVE the proposed Notwithstanding Ordinance permitting an HVAC business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills with the following conditions:

1. The proposed development substantially conforms to the site plan as submitted, including:
 - a. Construction of an approximately 2,500 sq. ft. garage located in the rear of the existing gravel parking lot
 - b. Paving of the existing gravel parking lot
 - c. Installation of a new 10 by 15 foot sign in front of the building
 - d. Installation of a shed roof over the existing loading dock
 - e. Installation of a 6 foot high replacement fence surrounding the loading area
 - f. Parking expansion on the south side of the existing building (approximately 800 sq. ft.)

2. All site work and regrading, excluding what is necessary for the addition of the 3-bay garage, will remain subject to the regulations of the Hillside Overlay.
3. The Notwithstanding Ordinance does not provide relief from any other code except necessary zoning modifications.

cc: Katherine Keough-Jurs, FAICP, Director, Department of City Planning and Engagement



EMERGENCY

City of Cincinnati

DBS

EESW

An Ordinance No. _____

- 2022

AUTHORIZING the redevelopment of the real property located at 4924 Winton Road in the Spring Grove Village and Winton Hills neighborhoods for use as an office and indoor storage facility NOTWITHSTANDING the use and development limitations contained in Chapter 1403, "Single-Family," of the Cincinnati Municipal Code, Chapter 1433, "Hillside Overlay Districts," relating to the addition of the three-bay garage, and any other applicable zoning regulations that would restrict the property's redevelopment.

WHEREAS, DSW Investments, LLC ("Owner") owns the real property located at 4924 Winton Road in the Spring Grove Village and Winton Hills neighborhoods ("Property"), which property is located in the SF-20, "Single-Family," zoning district and consists of one parcel containing a legally non-conforming commercial structure ("Structure") that has been occupied by various commercial uses since its construction in 1996, including its current use by D.A.G. Construction Company; and

WHEREAS, Harnist & Corcoran Properties, LLC ("Petitioner") owns the real property located at 1457 Harrison Avenue in the South Fairmount neighborhood, where it has operated a heating, ventilation, and air conditioning ("HVAC") company with approximately 40 employees since 1986; and

WHEREAS, the City has undertaken a roadway project commonly known as the Western Hills Viaduct Replacement Project that includes, but is not limited to, the construction, reconstruction, maintenance, and improvement of a bridge open to the public without charge; and

WHEREAS, the City deemed it necessary and has duly declared it is the City's intent to appropriate the real property located at 1457 Harrison Avenue to public use for the Western Hills Viaduct Replacement Project; and

WHEREAS, the Petitioner has entered into a purchase contract with the Owner to acquire the Property so that it may relocate its HVAC company to the Property and seeks to redevelop the Property for its use by modifying the Structure at an estimated cost of \$1,275,300 to include construction of a three-bay garage, retrofitting the existing garage, paving the existing gravel area, extending the existing storm detention infrastructure, installing new fencing and new signage, and making other cosmetic improvements inside the Structure ("Project"); and

WHEREAS, the Project is compatible with the surrounding land uses in the area, which include a strip of several other commercial and industrial businesses along Winton Road and another HVAC company located directly across Winton Road; and

WHEREAS, the Project will not alter the character of the surrounding area and will allow for the long-established commercial use of the Property to continue; and

WHEREAS, the Petitioner has requested authorization to complete the Project notwithstanding certain zoning code provisions that would otherwise prevent the Petitioner from relocating its HVAC company to the Property; and

WHEREAS, reasonable deviations from zoning code provisions that would otherwise prevent the Petitioner from relocating its HVAC company to the Property will provide substantial public benefits by allowing the Petitioner to redevelop the Property at an estimated cost of \$1,275,300 and continue to operate its business with approximately 40 employees within the City of Cincinnati; and

WHEREAS, the City Planning Commission, at its regularly scheduled meeting on December 2, 2022, upon considering the factors set forth in Cincinnati Municipal Code (“CMC”) Section 111-5, recommended the adoption of a notwithstanding ordinance authorizing the Project subject to certain conditions; and

WHEREAS, this ordinance authorizing the Project is consistent with *Plan Cincinnati* (2012), specifically the goal to “[f]oster a climate conducive to growth, investment, stability, and opportunity” (page 103) and the strategy to “[g]row our own by focusing on retention, expansion and relocation of existing businesses” (page 103); and

WHEREAS, the Council finds that the Project will preserve the quality and character of the neighborhood by improving and rehabilitating an existing building that will fit within the context of Winton Road and the Spring Grove Village and Winton Hills neighborhoods; and

WHEREAS, the Council additionally finds that permitting the Project will not have an adverse effect on the character of the area or the public health, safety, and welfare, and the Project is in the best interests of the City and the public's health, safety, morals, and general welfare; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That, following its own independent review and consideration, the City Council incorporates the foregoing recitals as if fully rewritten herein, and it hereby confirms that this ordinance satisfies the criteria set forth in Section 111-5 of the Cincinnati Municipal Code in all respects.

Section 2. That the Council specifically finds that this ordinance authorizing the redevelopment and use of the Property as an office and indoor storage facility which property is

depicted on the map attached hereto as Exhibit A and incorporated herein by reference, will not have an adverse effect on the character of the surrounding area or the public's health, safety, and general welfare and that it is consistent with the purposes of the Cincinnati Municipal Code and the zoning districts within which the property is located.

Section 3. That the Council authorizes the construction of the Project and the Property's use as an office and indoor storage facility, subject to the terms and conditions set forth in this ordinance. This authorization is granted notwithstanding the use limitations contained in Chapter 1403, "Single-Family," of the Cincinnati Municipal Code, Chapter 1433, "Hillside Overlay Districts," relating to the addition of the three-bay garage, and any other applicable zoning regulations that would restrict the construction of the Project and its use as a heating, ventilation, and air conditioning company.

Section 4. That the Council authorizes the construction of the Project and the Property's use as an office and indoor storage facility, subject to the following conditions:

- a. The Project must substantially conform to the site plan attached hereto as Exhibit B and incorporated herein by reference.
- b. The new ground signage shall not exceed 10 feet in width and 15 feet in height.
- c. All site work and regrading, excluding that is necessary for the addition of the three-bay garage, will remain subject to the regulations of the Hillside Overlay District.
- d. That this ordinance does not provide relief from any other laws of the City of Cincinnati, and the property shall remain subject to all other provisions of the Cincinnati Municipal Code, the SF-20, "Single-Family" zoning district, and Chapter 1433, "Hillside Overlay Districts."

Section 5. That the City Manager and the appropriate City officials are authorized to take all necessary and proper actions to implement this ordinance, including by issuing building permits and related approvals provided they conform to applicable building codes, housing codes, accessibility laws, or other laws, rules, or regulations.

Section 6. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to allow the Petitioner to move forward so that the City may receive the economic and noneconomic benefits from the sale and redevelopment of the Property at the earliest possible time.

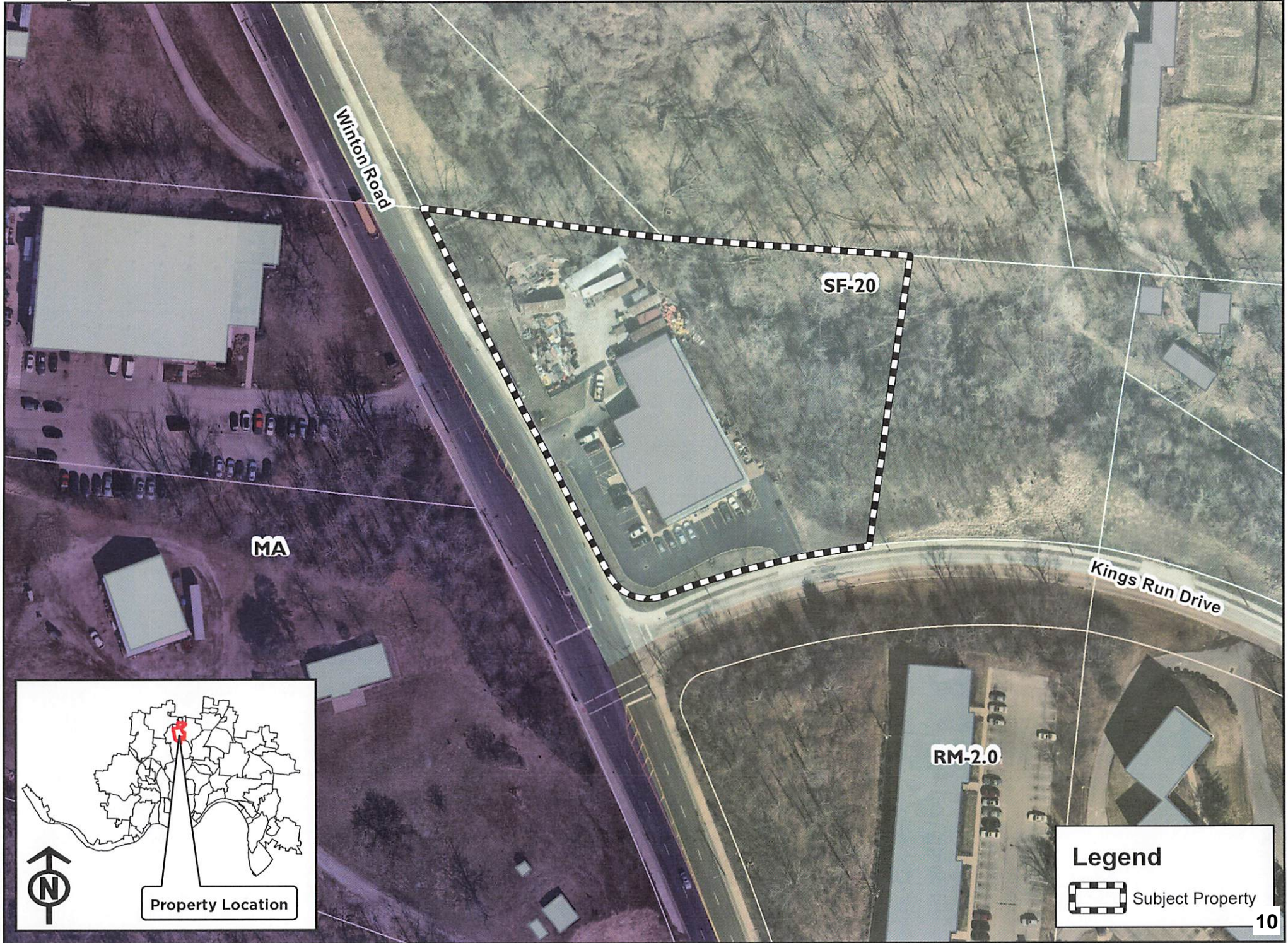
Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

EXHIBIT A

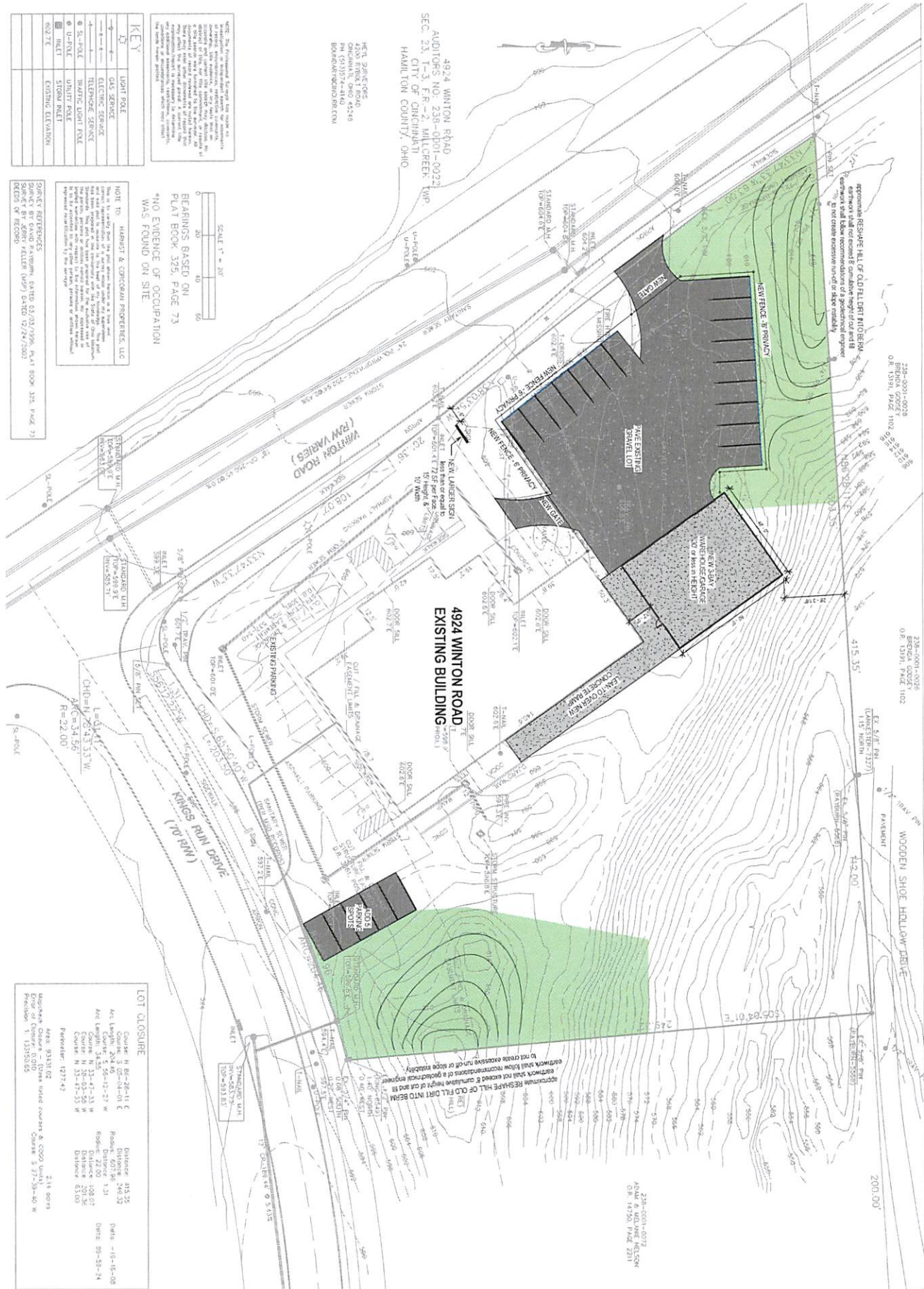
Proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove/Winton Hills



Legend

 Subject Property

EXHIBIT B



NOTE: The Foundation Survey was done as a...
 SEC. 23, T-3, R-2, MALDEN TWP.
 CITY OF CINCINNATI
 HAMILTON COUNTY, OHIO

NOTE: THE FOUNDATION SURVEY WAS DONE AS A...
 SEC. 23, T-3, R-2, MALDEN TWP.
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KEY

---	LIGHT POLE
---	GAS SERVICE
---	ELECTRIC SERVICE
---	TELEPHONE SERVICE
---	ST-POLE
---	UTILITY POLE
---	WATER
---	SEWER
---	EXISTING ELEVATION

APPROXIMATE RECONSTRUCTION OF OLD FULL BERT MUD-BERM...
 ESTIMATED SHALL NOT EXCEED 6' CUMULATIVE HEIGHT OF CUT AND FILL...
 ESTIMATED SHALL FOLLOW RECOMMENDATIONS OF A GEOTECHNICAL ENGINEER...
 DO NOT CREATE EXCESSIVE TUCKER OR SLOPE INSTABILITY.

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LOT CLOSURE

Course N 88-38-11 E	Distance 413.25	Date: 11-15-08
Course S 40-14-01 E	Distance 498.52	Date: 09-25-04
Course S 55-12-27 W	Distance 1.31	Date: 09-25-04
Course N 33-47-33 W	Distance 148.07	Date: 09-25-04
Course N 33-47-33 W	Distance 201.36	Date: 09-25-04
Course N 33-47-33 W	Distance 531.80	Date: 09-25-04
Course N 127-42	Distance 214.00	Date: 09-25-04
Course N 127-42	Distance 133.00	Date: 09-25-04

DATE	DESCRIPTION
11/15/08	FOR REVIEW

4924 WINTON ROAD
 AUDIORS NO. 238-0001-0022
 SEC. 23, T-3, R-2, MALDEN TWP.
 CITY OF CINCINNATI
 HAMILTON COUNTY, OHIO

4924 WINTON ROAD
 EXISTING BUILDING

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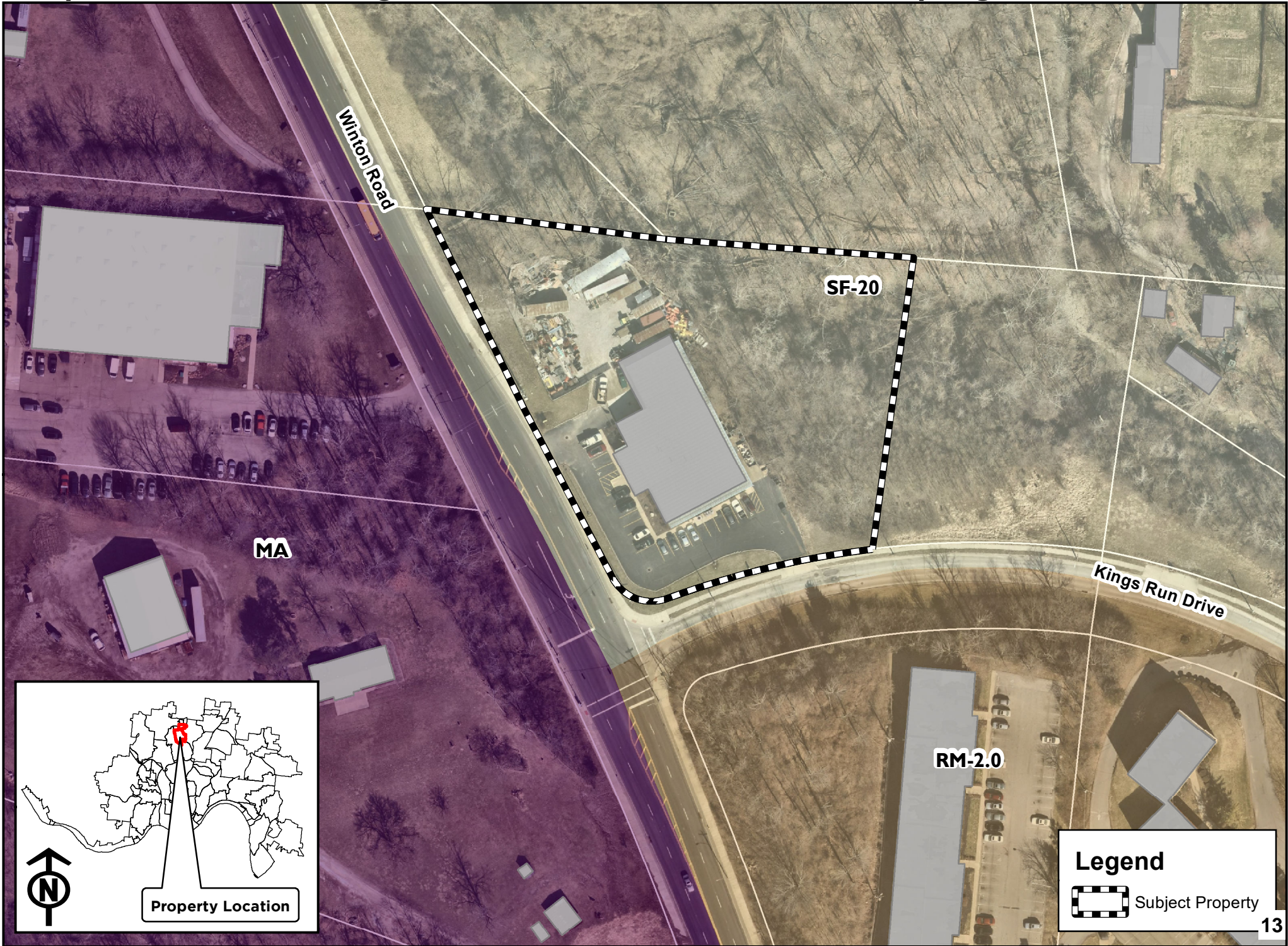
Corcoran & Harnist
 4924 Winton Road
 Cincinnati, Ohio 45232

NOT FOR CONSTRUCTION

JOSE GARCIA
 REGISTERED PROFESSIONAL ENGINEER
 No. 104,100
 Date of Issue: 11/20/07

FELIX BLANCO
 REGISTERED PROFESSIONAL ENGINEER
 No. 104,100
 Date of Issue: 11/20/07

Proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove/Winton Hills



238-0001-0028
BRENDA GODSEY
O.R. 13191, PAGE 1102

238-0001-0026
BRENDA GODSEY
O.R. 13191, PAGE 1102

200.00'

approximate RESHAPE HILL OF OLD FILL DIRT INTO BERM
earthwork shall not exceed 8' cumulative height of cut and fill
earthwork shall follow recommendations of a geotechnical engineer
to not create excessive run-off or slope instability

JOSE GARCIA
DESIGN + CONSTRUCTION

DESIGNER
Jose Garcia Design
644 Clemmer Avenue
Cincinnati, Ohio 45219
(513) 751-1222

PRELIMINARY
Site Plan Based on HEYL Survey
Dated October 24, 2022
File #194

NOT FOR
CONSTRUCTION

Corcoran & Harnist

4924 Winton Road
Cincinnati, Ohio 45232

238-0001-0072
ADAM & MELANIE NELSON
O.R. 14750, PAGE 2211

4924 WINTON ROAD
AUDITORS NO: 238-0001-0022
SEC. 23, T-3, F.R.-2, MILLCREEK TWP.
CITY OF CINCINNATI
HAMILTON COUNTY, OHIO

HEYL SURVEYORS
4200 RYBOLT ROAD
CINCINNATI, OHIO 45248
PH (513) 574-4140
BOUNDARY@CINCLRR.COM

NOTE: The Professional Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership, title evidence, or any facts that an accurate and current title search may disclose. No abstract of title, nor title commitment, or results of a title search were furnished to the surveyor. All documents of record reviewed are noted hereon. There may exist other documents of record that may affect the surveyed parcel. A current title examination/report is necessary to determine any additional easements, restrictions, covenants, conditions or encumbrances which may affect the lands herein platted.

KEY	
	LIGHT POLE
	GAS SERVICE
	ELECTRIC SERVICE
	TELEPHONE SERVICE
	TRAFFIC LIGHT POLE
	UTILITY POLE
	STORM INLET
	EXISTING ELEVATION



BEARINGS BASED ON
PLAT BOOK 325, PAGE 73

*NO EVIDENCE OF OCCUPATION
WAS FOUND ON SITE.

NOTE TO: HARNIST & CORCORAN PROPERTIES, LLC
This is to certify that the plat shown hereon is a true and correct representation of a survey made under my supervision and said plat is accurate to the best of my knowledge. This plat has been prepared in the conformity with the State of Ohio Minimum Standards. This plat has been prepared for the exclusive use of the person, persons or entities named hereon. No expressed or implied warranties with respect to the information shown hereon is to be extended to any other person, persons or entities without expressed recertification by the surveyor.

SURVEY REFERENCES
SURVEY BY DAVID RAYBURN, DATED 03/03/1996, PLAT BOOK 325, PAGE 73
SURVEY BY JERRY KELLER (MSP) DATED 12/24/2002
DEEDS OF RECORD

**4924 WINTON ROAD
EXISTING BUILDING**

NEW, LARGER SIGN
less than or equal to
72 SF per Face,
15' Height, &
10' Width

NEW FENCE - 6' PRIVACY

NEW 3-BAY
WAREHOUSE/GARAGE
30' or less in HEIGHT

PAVE EXISTING
GRAVEL LOT

NEW GATE

NEW FENCE - 6' PRIVACY

NEW GATE

NEW FENCE - 6' PRIVACY

ADD 5
PARKING
SPOTS

approximate RESHAPE HILL OF OLD FILL DIRT INTO BERM
earthwork shall not exceed 8' cumulative height of cut and fill
earthwork shall follow recommendations of a geotechnical engineer
to not create excessive run-off or slope instability

LOT CLOSURE

Course: N 86-28-11 E	Distance: 415.35	
Course: S 05-04-01 E	Distance: 249.32	Delta: -19-16-08
Arc Length: 204.46	Radius: 607.96	
Course: S 56-12-27 W	Distance: 1.31	
Arc Length: 34.55	Radius: 22.00	Delta: 89-59-24
Course: N 33-47-33 W	Distance: 108.07	
Course: N 38-03-58 W	Distance: 201.36	
Course: N 33-47-33 W	Distance: 63.00	
Perimeter: 1277.42		
Area: 93431.02	2.14 acres	
Mapcheck Closure - (Uses listed courses & COGO Units)		
Error of Closure: 0.010	Course: S 27-39-40 W	
Precision: 1: 133150.65		

A-100

SITE PLAN

PRINTED: 11/29/2022 3:29:16 PM
COPYRIGHT JOSE GARCIA DESIGN, LLC

DATE	DESCRIPTION
201X-XX-XX	1 FOR REVIEW

**Honorable City Planning Commission
Cincinnati, Ohio**

SUBJECT: A report and recommendation on a proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove Village and Winton Hills.

GENERAL INFORMATION:

Location: 4924 Winton Road, Cincinnati OH, 45232

Petitioner: Harnist & Corcoran Properties, LLC

Petitioner's Address: 1457 Harrison Avenue, Cincinnati OH, 45214

Owner: DSW Investments, LLC

Owner's Address: 4924 Winton Road, Cincinnati OH, 45232

ATTACHMENTS:

- Exhibit A – Location Map
- Exhibit B – Notwithstanding Ordinance Application
- Exhibit C – Letter requesting a Notwithstanding Ordinance
- Exhibit D – Proposed Site Plan

BACKGROUND:

Harnist & Corcoran is a Heating, Ventilation, and Air Conditioning (HVAC) company currently located at 1457 Harrison Avenue in South Fairmount, from which they have been operating since 1986. The company has 40 employees and services the greater Cincinnati area. In 2020 the City of Cincinnati filed and eventually settled an eminent domain action to acquire the Harrison Avenue property for the Western Hills Viaduct Replacement Project in *City of Cincinnati v. Harnist & Corcoran Properties LLC et al.* (case no. A2003641). Harnist & Corcoran were given until October 1, 2023 to vacate their current location. After working with both the Real Estate Division of the Law Department and the Department of Community and Economic Development (DCED) to find a suitable relocation site within the City, Harnist & Corcoran entered a purchase contract with DSW Investments LLC for the subject property in July of 2022.

The subject property at 4924 Winton Road is a 2.14 acre parcel located in Spring Grove Village and Winton Hills. The property is currently zoned Single-family (SF-20), and the adjacent zones are Manufacturing Agricultural (MA) and Residential Multi-family (RM-2.0), none of which permit Harnist & Corcoran's HVAC operations. The existing structure is a legally non-conforming commercial building that has been occupied by commercial uses since its construction in 1996, and is currently occupied by DAG Construction. The site is located in close proximity to several other commercial businesses, including another HVAC business directly across the street at 4995 Winton Road with legal non-conforming status.

Harnist & Corcoran are proposing modifications to the site that will include the addition of a three-bay garage, a retrofitting of the existing garage, paving the existing gravel area, extension of the existing storm detention infrastructure, new fencing, and cosmetic improvements inside the building (see exhibit D). The legal non-conforming status of the site does not permit Harnist & Corcoran to execute the proposed modifications, which they maintain are necessary for relocation there.

The community has indicated that it would prefer the land not to be rezoned when a similar Notwithstanding Ordinance was granted in 2021 for a daycare located roughly 500 feet south at 4870 Winton Road. Additionally, the project timeline is constrained by the fact that all renovations to the relocation site must occur in advance of the vacation date of October 1, 2023. These factors have led the applicant to pursue a Notwithstanding Ordinance to permit the proposed commercial use as well as the proposed buildout and site modifications. This ordinance

only provides relief for zoning modifications, and all other City codes still apply.

ANALYSIS:

The Department of City Planning and Engagement has typically taken a position to not support NWOs because they do not comply with the Zoning Code that the department is charged with developing and enforcing. However, Cincinnati Municipal Code Section 111-5 establishes a list of factors by which a City Council committee may consider a notwithstanding ordinance application. As such, the City Planning Commission shall consider the following when making a recommendation on notwithstanding ordinances to City Council:

- 1) *Whether the proposed application will not have an adverse effect on the character of the area or the public health, safety and welfare;*

The proposed development is consistent with the surrounding area, which includes several commercial businesses, including another HVAC service directly across the street. It is consistent with the past use of the site, which has been under commercial operation for over 25 years. The proposed Notwithstanding Ordinance is consistent with the wishes of the community to preserve the existing zoning of the land.

- 2) *Whether the proposed application is consistent with the purposes of this code and the zoning district where the subject property is located including but not limited to:*

- (a) *Providing a guide for the physical development of the city.*

The proposed Notwithstanding Ordinance would permit the renovation of an existing structure that is consistent with the character of similar adjacent structures.

- (b) *Preserving the character and quality of residential neighborhoods.*

The subject property, despite its SF-20 classification, is located on a predominantly commercial and industrial strip of Winton Road, and is surrounded by multiple acres of vegetation that act as a buffer between all adjacent residential properties (see Exhibit A).

- (c) *Fostering convenient, harmonious and workable relationships among land uses.*

The subject property is located within an existing corridor of commercial and manufacturing land uses. All adjacent residential uses are buffered by multiple acres of vegetation.

- (d) *Achieving the arrangement of land uses described in the comprehensive plan for the development of the city as may have been adopted by council.*

The proposed Notwithstanding Ordinance is consistent with *Plan Cincinnati (2012)* (see "Consistency with Plans").

- (e) *Promoting the economic stability of existing land uses and protecting them from intrusions by inharmonious or harmful land uses.*

The subject property has been an established commercial use since 1996 and is located within an existing commercial and industrial corridor with multiple similar or identical businesses. The proposed Notwithstanding Ordinance will allow for the continued occupancy of the building and will not alter the character of the area as it currently exists.

- (f) *Providing opportunities for economic development and new housing for all segments of the community.*

The proposed development and Notwithstanding Ordinance will facilitate the retention and expansion of a longstanding Cincinnati business and 40 jobs.

(g) Creating pedestrian-friendly environments to reduce reliance on the automobile for travel.

All modifications to the street or sidewalk will be subject to review by DOTE according to the applicable standards.

(h) Preventing excessive population densities and overcrowding of land or buildings.

The proposed development will not impact population densities or overcrowding.

(i) Ensuring the provision of adequate open space for light, air and fire safety.

The proposed development will not adversely impact the existing open space, light and air quality, or fire safety of the site.

(j) Ensuring that development is compatible with the environment, particularly on the hillsides and along the riverfront.

All site work and regrading, excluding what is necessary for the addition of the 3-bay garage, will be subject to the regulations of the Hillside Overlay.

(k) Promoting the conservation, protection, restoration and enhancement of the historic resources of the city.

The subject property is not located within a historic district.

(l) Lessening congestion in the public streets by providing for off-street parking and loading areas for commercial vehicles.

This site contains an existing 20-space surface parking lot, with the applicant proposing 5 additional spaces. The existing fenced loading area will be paved to create 16 spaces for commercial vehicles.

(m) Providing effective signage that is compatible with the surrounding urban environment.

Proposed signage conforms to the standard regulations of the CC-A and CC-G zones.

(n) Setting standards by which a nonconforming use may continue to function and to provide for the adaptive reuse of nonconforming buildings.

The proposed Notwithstanding Ordinance would allow for the proposed modifications to the building and site, which are not currently permitted due to the legal non-conforming status of the property.

PUBLIC COMMENT AND NOTIFICATION:

Notice of the December 2, 2022 City Planning Commission meeting was sent to all property owners within 400 feet of the site, as well as both the Spring Grove Village and Winton Hills Community Councils. The applicant has communicated with the Spring Grove Village Council. Staff have received no public comment at this time.

CONSISTENCY WITH PLAN CINCINNATI:

The proposed Notwithstanding Ordinance is consistent with the Compete Initiative Area of *Plan Cincinnati* (2012) with the goal to “Foster a climate conducive to growth, investment, stability, and opportunity” and the strategy to “Grow our own by focusing on retention, expansion and relocation of existing businesses” (p. 103). The City wishes to retain Harnist & Corcoran’s long-standing business and 40 local employees within City limits. The proposed Notwithstanding Ordinance would enable this relocation and minimize adverse impacts to Harnist & Corcoran’s business operations by facilitating the transition within the required timeline.

CONCLUSIONS:

Harnist & Corcoran has been working actively with the City for the past two years to relocate their business for the Western Hills Viaduct Replacement Project. Given the nature of their business, the circumstance, and some financial restraints, this task has proven to be somewhat complex. The most suitable property identified has zoning conflicts that would need to be resolved in order to permit the relocation. Due to the wishes and previous actions of the community and the constrained timeline, Harnist & Corcoran are pursuing a Notwithstanding Ordinance as the best means of resolution.

The Department of City Planning and Engagement has typically taken the position to not support any Notwithstanding Ordinances for land use decisions. However, due to the City's desire to retain Harnist & Corcoran's business, the unique zoning circumstances of the site, the will of the community, and the minimal impact the proposed development will have on the existing character of the area, Staff finds that a Notwithstanding Ordinance is suitable to resolve this matter in a timely fashion.

RECOMMENDATION:

The staff of the Department of City Planning and Engagement recommends that the City Planning Commission take the following action:

APPROVE the proposed Notwithstanding Ordinance permitting an HVAC business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills with the following conditions:

1. The proposed development substantially conforms to the site plan as submitted, including:
 - a. Construction of an approximately 2,500 sq. ft. garage located in the rear of the existing gravel parking lot
 - b. Paving of the existing gravel parking lot
 - c. Installation of a new 10 by 15 foot sign in front of the building
 - d. Installation of a shed roof over the existing loading dock
 - e. Installation of a 6 foot high replacement fence surrounding the loading area
 - f. Parking expansion on the south side of the existing building (approximately 800 sq. ft.)
2. All site work and regrading, excluding what is necessary for the addition of the 3-bay garage, will remain subject to the regulations of the Hillside Overlay.
3. The Notwithstanding Ordinance does not provide relief from any other code except necessary zoning modifications.

Respectfully submitted:



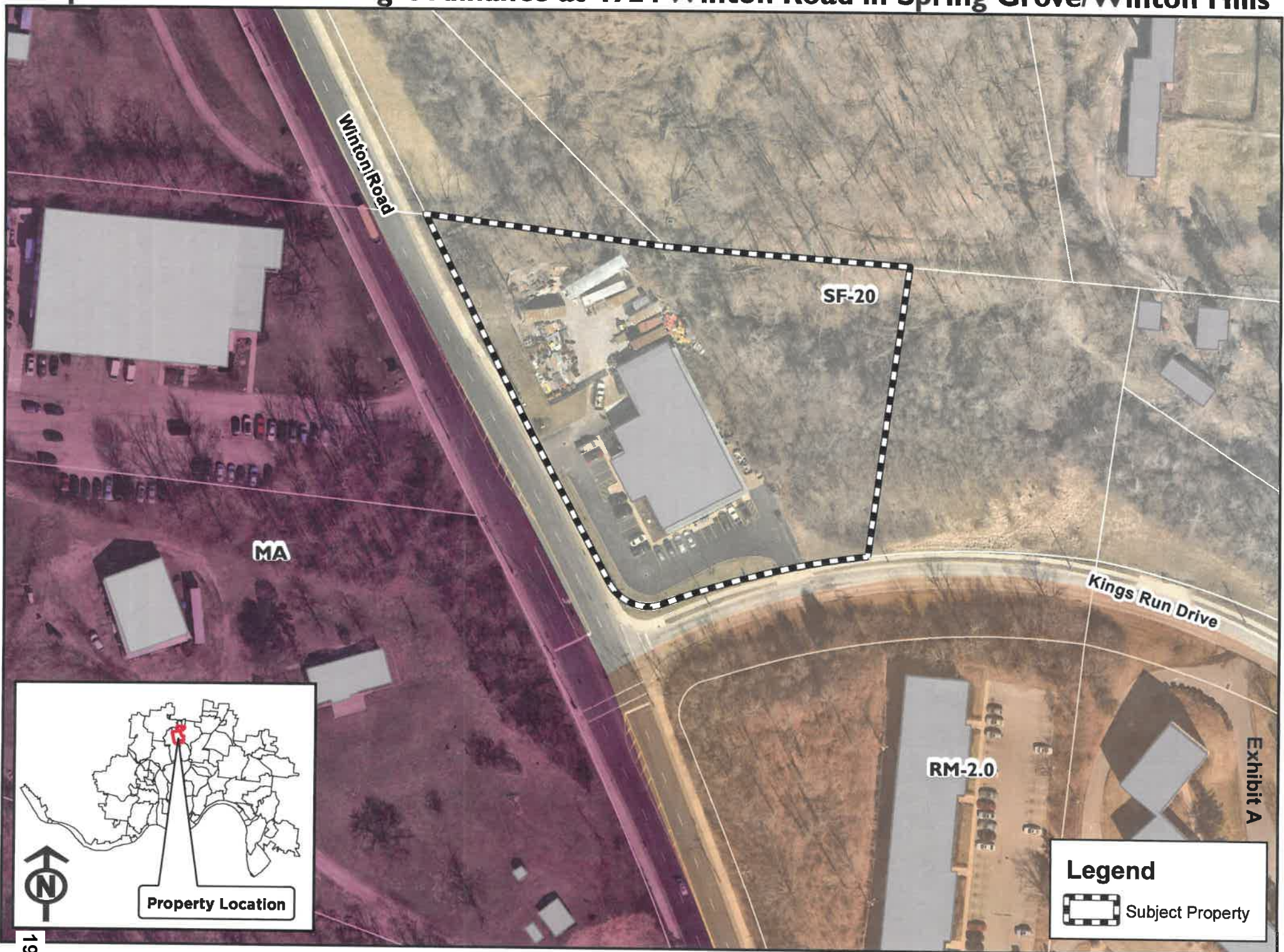
Gabrielle Couch, City Planner
Department of City Planning & Engagement

Approved:



Katherine Keough-Jurs, FAICP, Director
Department of City Planning & Engagement

Proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove/Winton Hills





MATTHEW W. FELLERHOFF
 Writer's E-Mail: mwfellerhoff@strausstroy.com

Writer's Direct Dial: 513.768.9791

November 14, 2022

City of Cincinnati
 Katherine Keough-Jurs
 Director of City Planning
 805 Central Avenue, Suite 720
 Cincinnati, Ohio 45202

RE: Application for Notwithstanding Ordinance
 4924 Winton Road, Cincinnati, Ohio 45232
 Hamilton County Parcel No. 238-0001-0022-00

Dear Ms. Keogh-Jurs:

I represent Harnist & Corcoran Properties, LLC ("Harnist & Corcoran") with regard to its application for a Notwithstanding Ordinance for property located at 4924 Winton Road, Cincinnati, Ohio 45232 ("Winton Road Property"). This letter sets forth the basis of the request and outlines the practical difficulties created by following existing legislative and administrative procedures. Also being submitted with this letter is (1) Application for Notwithstanding Ordinance; (2) Portion of Zoning Map depicting the Winton Road Property; (3) CAGIS Map depicting the Winton Road Property; (4) Aerial Map depicting the Winton Road Property; (5) Auditor's photograph of existing structure; (6) Letter from DSW Investments authorizing the submission of the Application of Notwithstanding Ordinance; and (7) a check in the amount of \$1,000. In addition, Harnist & Corcoran has submitted its City Business Disclosure form, Confirmation Number 734948.

Harnist & Corcoran currently owns property located at 1457 Harrison Avenue, Cincinnati, Ohio 45214 ("Harrison Avenue Property"), where Corcoran & Harnist Heating and Air Conditioning, Inc. has operated its business since 1986. In 2020, the City of Cincinnati filed an eminent domain action to acquire the Harrison Avenue Property for the Western Hills Viaduct Replacement Project. See *City of Cincinnati v. Harnist & Corcoran Properties, LLC, et al*, Hamilton County Case No. A2003641. In order to continue to operate its business, which employs 40 employees and provides heating and air conditioning service to the Greater Cincinnati Area, Harnist & Corcoran began searching for a comparable property to purchase. Given the unique nature of its business operations and financial restraints, Harnist & Corcoran had great difficulty identifying a property that would meet its operational needs and budget. With the assistance of both a commercial real estate broker, City of Cincinnati Real Estate staff, and the City of Cincinnati Department of Community & Economic Development, Harnist & Corcoran evaluated dozens of available properties over a period of two years, but was unable to identify a suitable replacement property. However, in July of 2022, it entered into a

purchase contract with DSW Investments, LLC to acquire the Winton Road Property. Harnist & Corcoran believes that, with certain improvements, this property will be an acceptable replacement for its current building and location.

The Winton Road Property consists of a commercial structure and parking area located at the corner of Winton Road and Kings Run Drive. It is currently occupied by DAG Construction. The existing commercial building was built in 1996, and has been used continuously for commercial purposes since it was constructed.

Through the course of its due diligence, Harnist & Corcoran discovered that the property is zoned SF-20, which would preclude its legal use and the build-out for Harnist & Corcoran's needed commercial use. It is believed that this property was zoned such in error, as it does not have a history of residential use and is also located in close proximity to many other commercial uses. Through a zoning verification letter, the City Planning Department confirmed that the existing use is a legal non-conforming use, which would permit its continued use, but would hinder the needed expansion of such use. In order to resolve this zoning conflict, and ensure that the site can be modified to meet its business and operational needs, Harnist & Corcoran seeks a Notwithstanding Ordinance permitting the Winton Road Property to be used for its commercial purposes, including its necessary planned buildout, which includes a basic 3 bay garage in addition to retrofitting the existing garage/warehouse, paving the existing gravel/area, extension of the existing storm detention infrastructure, new fencing, and cosmetic improvements inside the existing building. The proposed build out and use would remain consistent with how the property has been used for the past 25 years.

The need for a Notwithstanding Ordinance, as opposed to existing legislative and administrative remedies, is to ensure that Harnist & Corcoran can close on the purchase within the time frames of its purchase contract. The seller has indicated that it will not extend any time frames under the contract past the end of the year. While this may normally not be grounds for the remedy requested, Harnist & Corcoran is in the unique position of needing to relocate due to an involuntary move within the site preparation and construction time frames established for the Western Hills Viaduct Replacement Project. In the event Harnist & Corcoran is unable to secure this property by the end of the year, it is highly unlikely that Harnist & Corcoran will be able to relocate its business within the timeframes established by the City of Cincinnati and the Ohio Department of Transportation, thus creating significant hardship that could jeopardize the business operations of Corcoran & Harnist Heating and Air-Conditioning.

Harnist & Corcoran has worked cooperatively with the City of Cincinnati throughout the acquisition and relocation process. While Harnist & Corcoran would prefer to not move at all, it understands that the project is an important one which will be transformative for the West Side of Cincinnati and an important element of the City's overall transportation system. The granting of the Notwithstanding Ordinance will allow Harnist & Corcoran to secure a new location within the City of Cincinnati and ensure that the business continues to thrive and provide job opportunities and service to the region. In light of the facts as

Page 3

set forth herein, a Notwithstanding Ordinance is an appropriate and reasonable remedy to cure the zoning conflict.

Should you need any additional information, please do not hesitate to contact me.

Sincerely,

STRAUSS TROY



Matthew W. Fellerhoff

cc: Kevin Tidd, Assistant City Solicitor (via email kevin.tidd@cincinnati-oh.gov)
Alex Peppers, AICP, Deputy Director, Department of City Planning and Engagement (via email alex.peppers@cincinnati-oh.gov)

16035951.2



805 CENTRAL AVE, SUITE 720
 CINCINNATI OHIO 45202
 P 513 352 3271
 F 513 352 2579
 WWW.CINCINNATI-OH.GOV
 CAGIS.HAMILTON-CO.ORG

Notwithstanding Ordinance Application
INITIALIZED BY

Part A - Identification

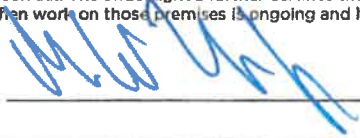
Subject Property Address (Please print in blue or black ink only) 4924 Winton Road, Cincinnati, Ohio 45232		
Applicant - Name (Print) Harnist and Corcoran Properties, LLC	Phone No (513) 921-2227	E-mail Address timcorcoran@corcoranharnist.com
Street Number & Name 1457 Harrison Avenue	City / State / Zip Code Cincinnati, Ohio 45214	Phone No / Fax No
Relationship of Applicant to Owner: <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Lessee <input type="checkbox"/> Attorney		
Property Owner - Name (Print) DSW Investments, LLC	Phone No (513) 616-8950	E-mail Address
Street Number & Name 4924 Winton Road	City / State / Zip Code Cincinnati, Ohio 45232	Phone No / Fax No

Part B - Submission Requirements (Please provide the following for a complete application)

1. **A copy of the zoning map showing the subject property. A copy may be obtained through the Zoning Administration by emailing zoninginfo@cincinnati-oh.gov or by calling (513) 352-2430.**
2. **A written statement outlining all of the practical difficulties created by following existing legislative and administrative procedures.**
3. **Submit one (1) paper copy and one (1) digital copy of the application to the Director of City Planning at 805 Central Avenue, Suite 720, Cincinnati, Ohio 45202. Payment must be included with the application. (Payable to the City of Cincinnati)**

Part C - Authorization

The applicant or agent undersigned does hereby certify that the information and statements given on the application, drawings, and inspections are to the best of their knowledge, true and correct. The undersigned further certifies their authorization to grant consent to the inspection by employees of the City of Cincinnati of the described premises at any time when work on those premises is ongoing and hereby grants their consent.

Applicant's Signature  Date 11/14/2022

FOR OFFICE USE ONLY

Reviewed By: _____ Processing Fee _____

City Planning Staff _____ Date Application Complete _____





238-0001-0002
SUNESIS PROPERTIES LLC

238-0001-0004
GOCSEY BRENDA
CINCINNATI CITY OF
238-0001-0005
GOCSEY BRENDA

238-0001-0011
MARIJUNG USA & STEVE SLACK
SHERWIN PATRICK & EMILY ZAEBST
238-0001-0013
SHERWIN PATRICK & EMILY ZAEBST
238-0001-0025
SHERWIN PATRICK & EMILY ZAEBST

238-0001-0006
TDH PROPERTIES LLC

238-0001-0025
GOCSEY BRENDA

238-0001-0079
SUNESIS PROPERTIES LLC

CINCINNATI CITY OF

238-0001-0026
GOCSEY BRENDA

238-0001-0017
BRICKLER JOHN T & LINDA D

238-0001-0025

AJ RAHN GREENHOUSES INC

238-0001-0060

238-0001-0077
BRYANT HABEGGER CO

238-0001-0022
ESW INVESTMENTS LLC

238-0001-0023
NELSON ADAM & MELANIE

238-0001-0025
FLOYD ELIZABETH

RAHN JOSEPH A

Book: 238
Page: 1

Cincinnati

238-0001-0045
NELSON ADAM & MELANIE

238-0001-0074
NELSON ADAM & MELANIE

238-0001-0059
CINCINNATI CITY OF

238-0001-0056
CINCINNATI CITY OF

PRESENT TRUTH WORSHIP CENTER

238-0001-0082
SPRING LAWN FREEHOLD LLC

238-0001-0076
WINTON KINGS LLC

238-0001-0070
WINTON KINGS LLC

Book: 219
Page: 50
SPRING LAWN FREEHOLD LLC

238-0050-0003

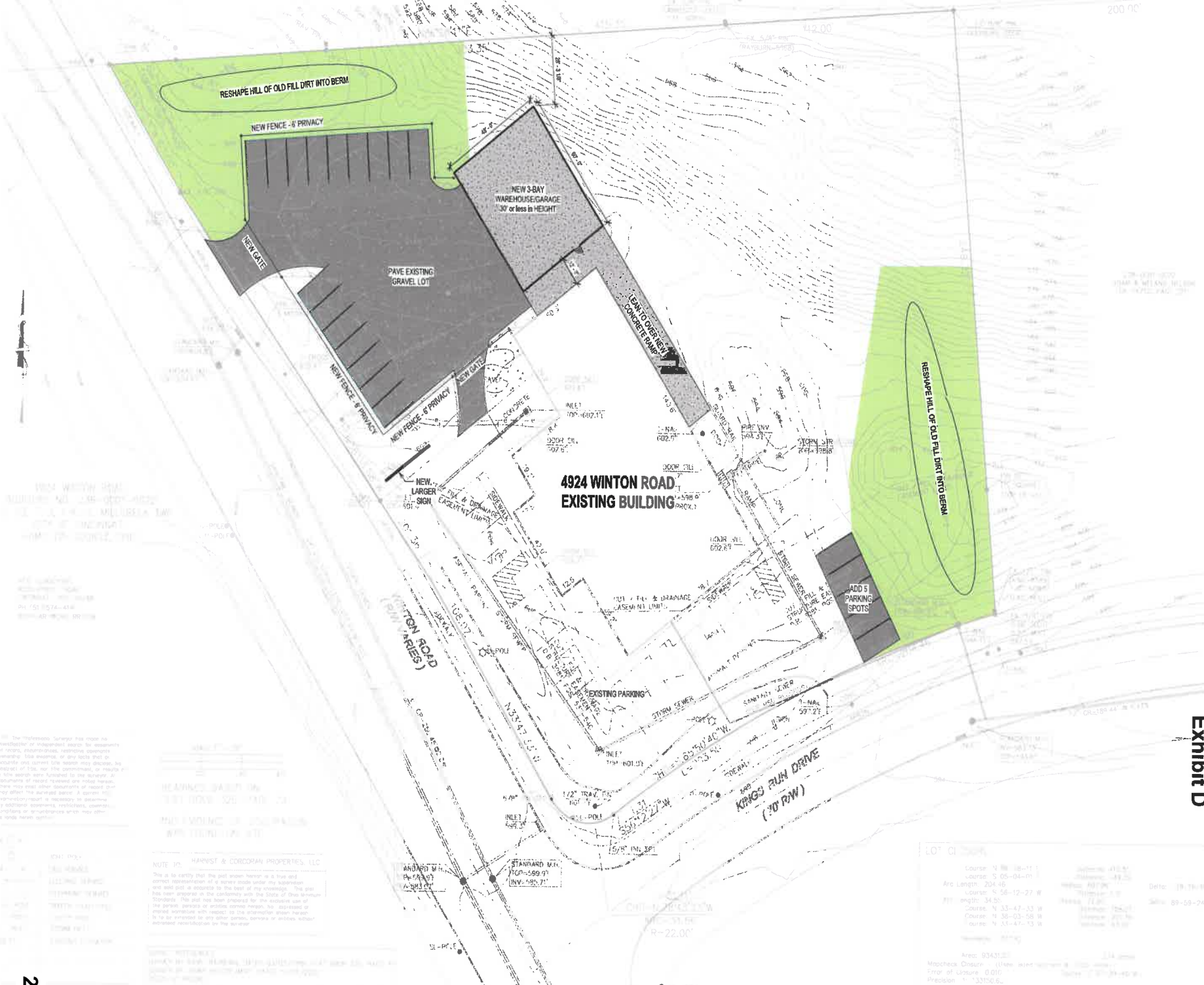


Image not authorized for Commercial Use



www.HamiltonCountyAuditor.org

238-0001-0022-00 06/05/2021



4924 WINTON ROAD
EXISTING BUILDING

RESHAPE HILL OF OLD FILL DIRT INTO BERM

NEW FENCE - 6' PRIVACY

NEW 3-BAY
WAREHOUSE/GARAGE
30' or less in HEIGHT

PAVE EXISTING
GRAVEL LOT

LEARN TO DRIVE NEW
CONCRETE RAMP

RESHAPE HILL OF OLD FILL DIRT INTO BERM

NEW LARGER
SIGN

EXISTING PARKING

ADD 5
PARKING
SPOTS

KINGS RUN DRIVE
(70' RW)

HEADINGS: NORTH
WEST NORTH WEST
MAGNETIC NORTH
MAGNETIC NORTH

NOTE: HARNIST & CORCORAN PROPERTIES, LLC
This is to certify that the plot shown hereon is a true and correct representation of a survey made under my supervision and was plotted as depicted on the plan of any encumbrance. This plan has been approved in the conformity with the State of Ohio laws and regulations. This plan was prepared for the exclusive use of the person, persons or parties herein named, and is not to be construed as a deed, mortgage, or other instrument in law. It is to be returned to any other person, persons or parties, without increased responsibility by the surveyor.

DATE: 11/20/2022
DRAWN BY: J. HARNIST
CHECKED BY: J. HARNIST
SCALE: AS SHOWN
PROJECT NO: 2018XXXX

LOT DATA			
Course: N 88-11-1	Distance: 410.5'	Bearing: 410.5'	Date: 10/19/18
Course: S 05-04-01	Distance: 48.25'	Bearing: 48.25'	Date: 09-09-24
Arc Length: 204.46'	Area: 407.96'		
Course: N 56-12-27 W	Distance: 34.50'	Bearing: 34.50'	
Course: N 33-47-33 W	Distance: 124.21'	Bearing: 124.21'	
Course: N 38-03-58 W	Distance: 201.76'	Bearing: 201.76'	
Course: N 31-47-33 W	Distance: 48.30'	Bearing: 48.30'	
Area: 9343.00'	Perimeter: 1114.00'		
Matches Deed: (View deed location & area)			
Error of Closure: 0.01'			
Precision: 1:133150.6			

JOSE GARCIA
DESIGN + CONSTRUCTION

DESIGNER
Jose Garcia Design
644 Chester Avenue
Cincinnati, Ohio 45219
(513) 751-1222

PRELIMINARY
Site Plan Based on BEYL Survey
Dated October 28, 2022
File #154

NOT FOR
CONSTRUCTION

Corcoran & Harnist
4924 Winton Road
Cincinnati, Ohio 45232

Exhibit D

DATE	DESCRIPTION
2018XXXX	FOR REVIEW

PRINTED: 11/20/2022 12:04:59 PM
COPYRIGHT JOSE GARCIA DESIGN, LLC

SITE PLAN
A-100

December 20, 2022

Cincinnati City Council
Council Chambers, City Hall
Cincinnati, Ohio 45202

Dear Members of Council:

We are transmitting herewith an Emergency Ordinance captioned as follows:

AUTHORIZING the redevelopment of the real property located at 4924 Winton Road in the Spring Grove Village and Winton Hills neighborhoods for use as an office and indoor storage facility **NOTWITHSTANDING** the use and development limitations contained in Chapter 1403, “Single-Family,” of the Cincinnati Municipal Code, Chapter 1433, “Hillside Overlay Districts,” relating to the addition of the three-bay garage, and any other applicable zoning regulations that would restrict the property’s redevelopment.

Summary:

Harnist & Corcoran’s current location in South Fairmount is being appropriated by the City for the Western Hills Viaduct Replacement project, and they are proposing relocation to the site at 4924 Winton Road in Spring Grove Village and Winton Hills. The proposed site has zoning conflicts regarding the proposed use and necessary site modifications, which the applicant is looking to resolve through the Notwithstanding Ordinance.

The City Planning Commission recommended the following on December 2, 2022 to City Council:

APPROVE the proposed Notwithstanding Ordinance permitting an HVAC business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills with the following conditions:

1. The proposed development substantially conforms to the site plan as submitted, including:
 - a. Construction of an approximately 2,500 sq. ft. garage located in the rear of the existing gravel parking lot
 - b. Paving of the existing gravel parking lot
 - c. Installation of a new 10 by 15 foot sign in front of the building
 - d. Installation of a shed roof over the existing loading dock
 - e. Installation of a 6 foot high replacement fence surrounding the loading area
 - f. Parking expansion on the south side of the existing building (approximately 800 sq. ft.)
2. All site work and regrading, excluding what is necessary for the addition of the 3-bay garage, will remain subject to the regulations of the Hillside Overlay.
3. The Notwithstanding Ordinance does not provide relief from any other code except necessary zoning modifications.

Motion to Approve: Ms. Sessler
Seconded: Ms. Kearney

Ayes: Mr. Eby
Ms. Kearney
Mr. Samad
Ms. Sessler
Ms. Smitherman
Mr. Weber

THE CITY PLANNING COMMISSION



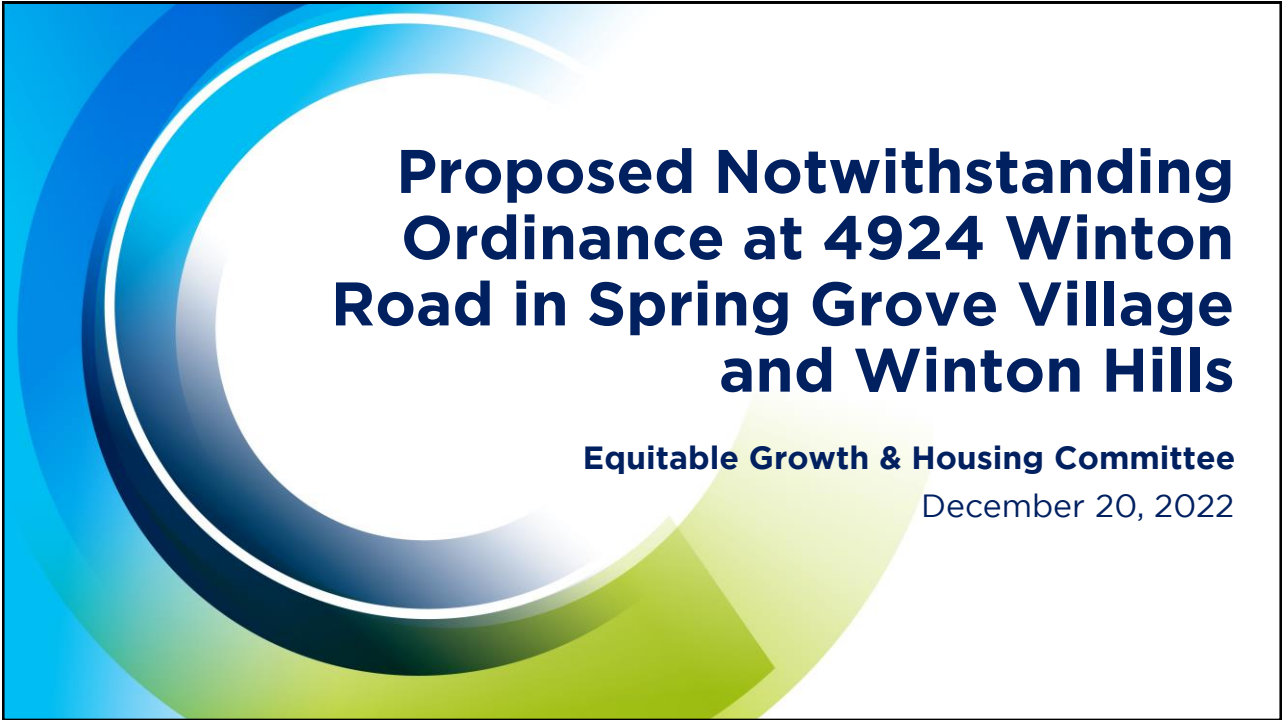
Katherine Keough-Jurs, FAICP, Director
Department of City Planning and Engagement

December 20, 2022

To: Equitable Growth and Housing Committee 202202207
From: Sheryl M. M. Long, City Manager
Subject: Presentation – Emergency Notwithstanding Ordinance Permitting an HVAC Business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills

Attached in the presentation for the Emergency Notwithstanding Ordinance permitting an HVAC Business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills.

cc: Katherine Keough-Jurs, FAICP, Director, Department of City Planning and Engagement
Department of City Planning and Engagement



Proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove Village and Winton Hills

Equitable Growth & Housing Committee
December 20, 2022

1

Background

- The City notifies Harnist & Corcoran of intent to acquire their current location via eminent domain.
- They are given until October 23rd, 2023 to vacate.
- Harnist & Corcoran enter a purchase contract for the subject property in July.
- There are zoning conflicts that must be resolved prior to finalizing the purchase.



CINCINNATI CITY PLANNING & ENGAGEMENT | 2

2

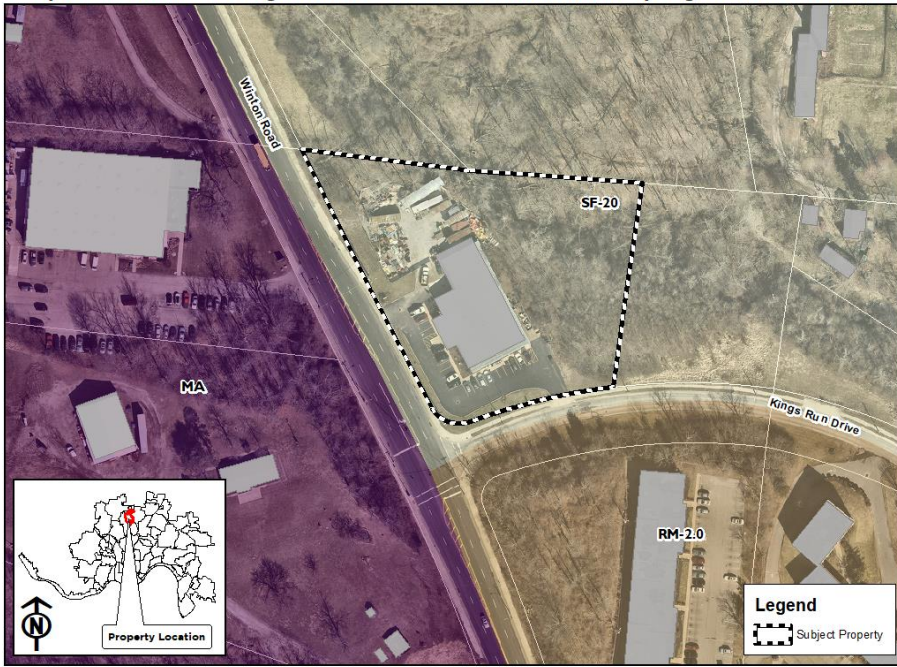


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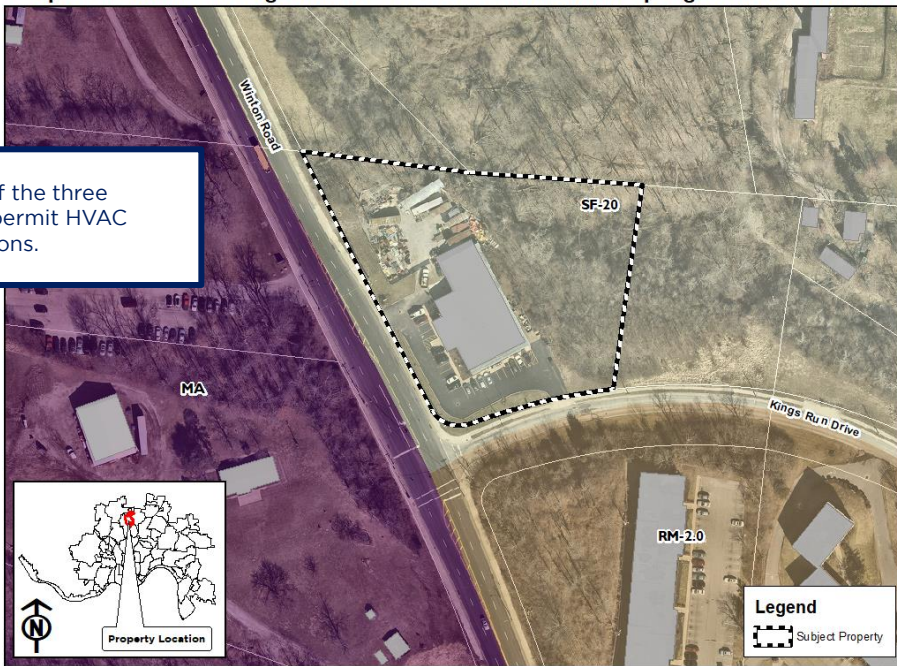
Proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove/Winton Hills



5

Proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove/Winton Hills

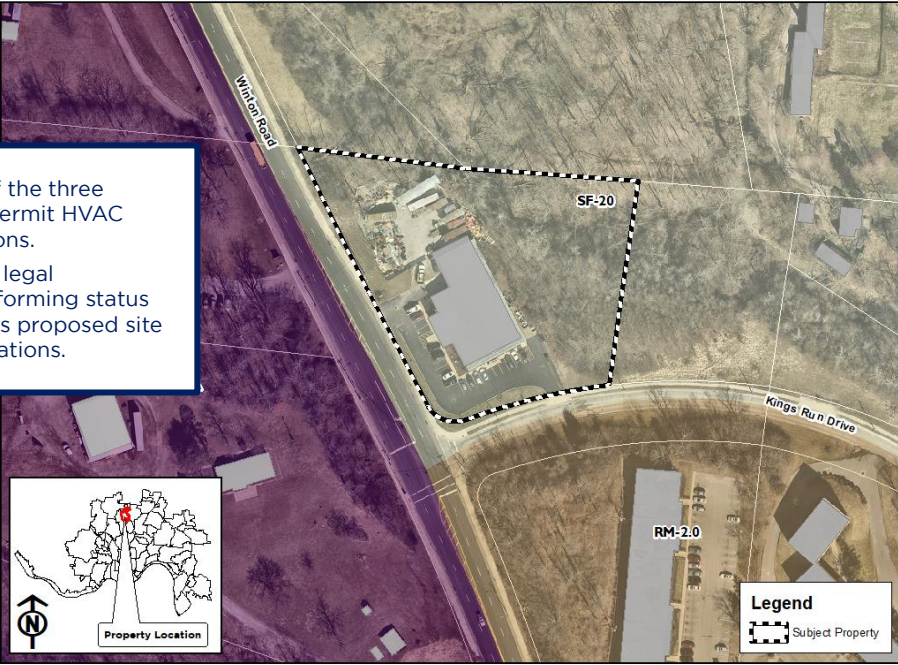
- None of the three zones permit HVAC operations.



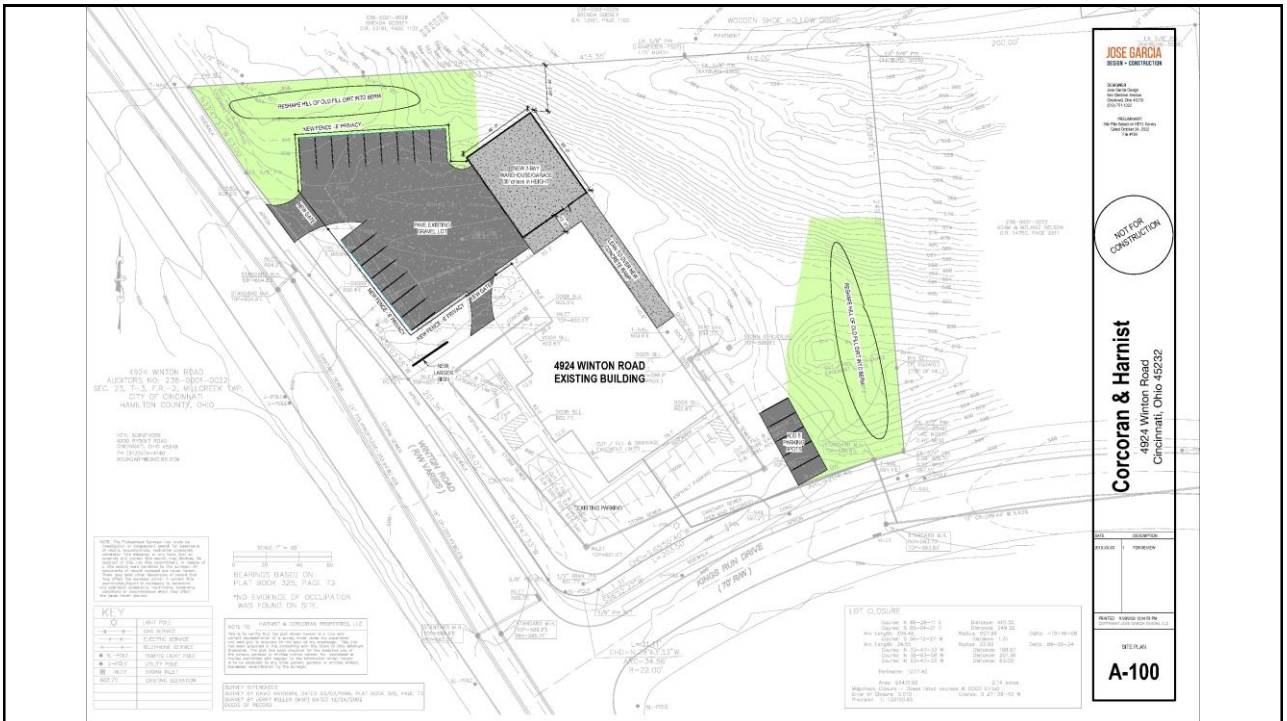
6

Proposed Notwithstanding Ordinance at 4924 Winton Road in Spring Grove/Winton Hills

- None of the three zones permit HVAC operations.
- Current legal nonconforming status prohibits proposed site modifications.



7



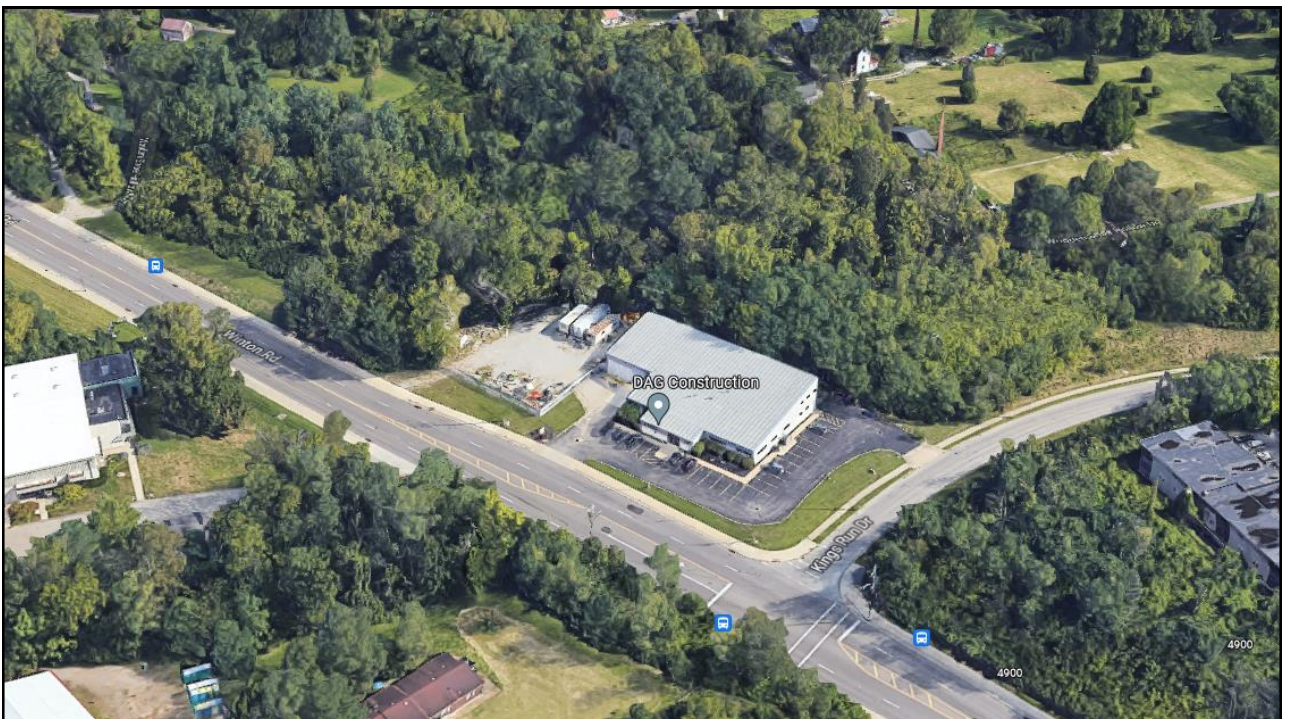
8

Proposed Notwithstanding Ordinance

Why an NWO?

- The timeline is constrained due the need for all renovations of the relocation site to be complete prior to the vacation date of October 23rd 2023 to avoid adverse impacts on business.
- A similar Notwithstanding Ordinance was issued nearby in 2021 for a daycare.

This ordinance only provides relief for **zoning code modifications**. All other City Code regulations **still apply**.





11



12



Site Conditions:

- Commercial use in a commercial building since 1996.
- Located on an existing commercial strip of Winton Road.
- Adjacent to multiple similar or identical businesses.

13



Site Conditions:

- Commercial use in a commercial building since 1996.
- Located on an existing commercial strip of Winton Road.
- Adjacent to multiple similar or identical businesses.
- Buffered against adjacent residential uses by vegetation.

14

Analysis

Section 111-5 of the Cincinnati Municipal Code

The committee of council shall consider the following when making a recommendation to council:

- Whether the proposed application will not have an adverse effect on the character of the area or the public health, safety and welfare;
- Whether the proposed application is consistent with the purposes of this code and the zoning district where the subject property is located including but not limited to:

Analysis

- | | |
|--|---|
| <ul style="list-style-type: none"> (a) Providing a guide for the physical development of the city. (b) Preserving the character and quality of residential neighborhoods. (c) Fostering convenient, harmonious and workable relationships among land uses. (d) Achieving the arrangement of land uses described in the comprehensive plan for the development of the city as may have been adopted by council. (e) Promoting the economic stability of existing land uses and protecting them from intrusions by inharmonious or harmful land uses. (f) Providing opportunities for economic development and new housing for all of the community. (g) Creating pedestrian-friendly environments to reduce reliance on the automobile for travel. (h) Preventing excessive population densities and overcrowding of land or buildings. | <ul style="list-style-type: none"> (i) Ensuring the provision of adequate open space for light, air and fire safety. (j) Ensuring that development is compatible with the environment, particularly on the hillsides and along the riverfront. (k) Promoting the conservation, protection, restoration and enhancement of the historic resources of the city. (l) Lessening congestion in the public streets by providing for off-street parking and loading areas for commercial vehicles. (m) Providing effective signage that is compatible with the surrounding urban environment. (n) Setting standards by which a nonconforming use may continue to function and to provide for the adaptive reuse of nonconforming buildings |
|--|---|

Analysis

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- (m) Providing effective signage that is compatible with the surrounding urban environment.
- (n) Setting standards by which a nonconforming use may continue to function and to provide for the adaptive reuse of nonconforming buildings

Consistency with *Plan Cincinnati* (2012)

Compete Initiative Area

Goal: Foster a climate conducive to growth, investment, stability, and opportunity.

Strategy: Grow our own by focusing on retention, expansion and relocation of existing businesses.

Notice and Public Comment

Notice was sent to all property owners within 400 feet of the site, as well as both the Spring Grove Village and Winton Hills community councils.

Community members have expressed concerned with the **impact to the hillside** and **stormwater management** as related to the site plan.

Conclusion

The Department of City Planning and Engagement has typically taken the position to not support Notwithstanding Ordinances for land use decisions. However, due to:

- The relocation being driven by the City's **appropriation of property** for the **Western Hills Viaduct Project**
- The **constraining factors on location selection**, including the nature of the business and financial concerns
- The **unique zoning circumstances** of the site
- The minimal impact the proposed development will have on the **existing character of the area**

Staff found that a Notwithstanding Ordinance is suitable to resolve this matter in a timely fashion.

Recommendation

The City Planning Commission recommends that City Council take the following action:

APPROVE the proposed Notwithstanding Ordinance permitting an HVAC business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills with the following conditions:

Recommendation

1. The proposed development substantially conforms to the site plan as submitted, including:
 - a) Construction of an approximately 2,500 sq. ft. garage in the rear of the existing gravel parking lot
 - b) Paving of the existing gravel parking lot
 - c) Installation of a new 10 by 15 foot sign in front of the building
 - d) Installation of a shed roof over the existing loading dock
 - e) Installation of a 6 foot high replacement fence surrounding the loading area
 - f) Parking expansion on the south side of the existing building (approximately 800 sq. ft.)

Recommendation

2. All site work and regrading, excluding what is necessary for the addition of the 3-bay garage, will remain subject to the regulations of the Hillside Overlay.
3. The Notwithstanding Ordinance does not provide relief from any other code except necessary zoning modifications.