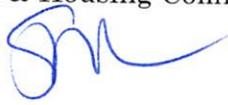


December 20, 2022

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 

December 20, 2022

To: Office of the Clerk of Council

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

Copy: Gabrielle Couch, City Planner

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

The above referenced emergency ordinance is ready to be scheduled for the Equitable Growth and Housing Committee. This item requires a public hearing following a required 14-day notification period by mail and in the City Bulletin.

Included in this submission are the following items:

- 1) The transmittal letter;
- 2) A copy of the City Planning Commission staff report dated December 2, 2022;
- 3) The Emergency Notwithstanding Ordinance Permitting and HVAC Business (Harnist & Corcoran) at 4924 Winton Road in Spring Grove Village and Winton Hills;
- 4) Mailing labels for the notice of the Committee meeting and;
- 5) A copy of the mailing labels for your records.

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:

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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

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:
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Respectfully submitted:



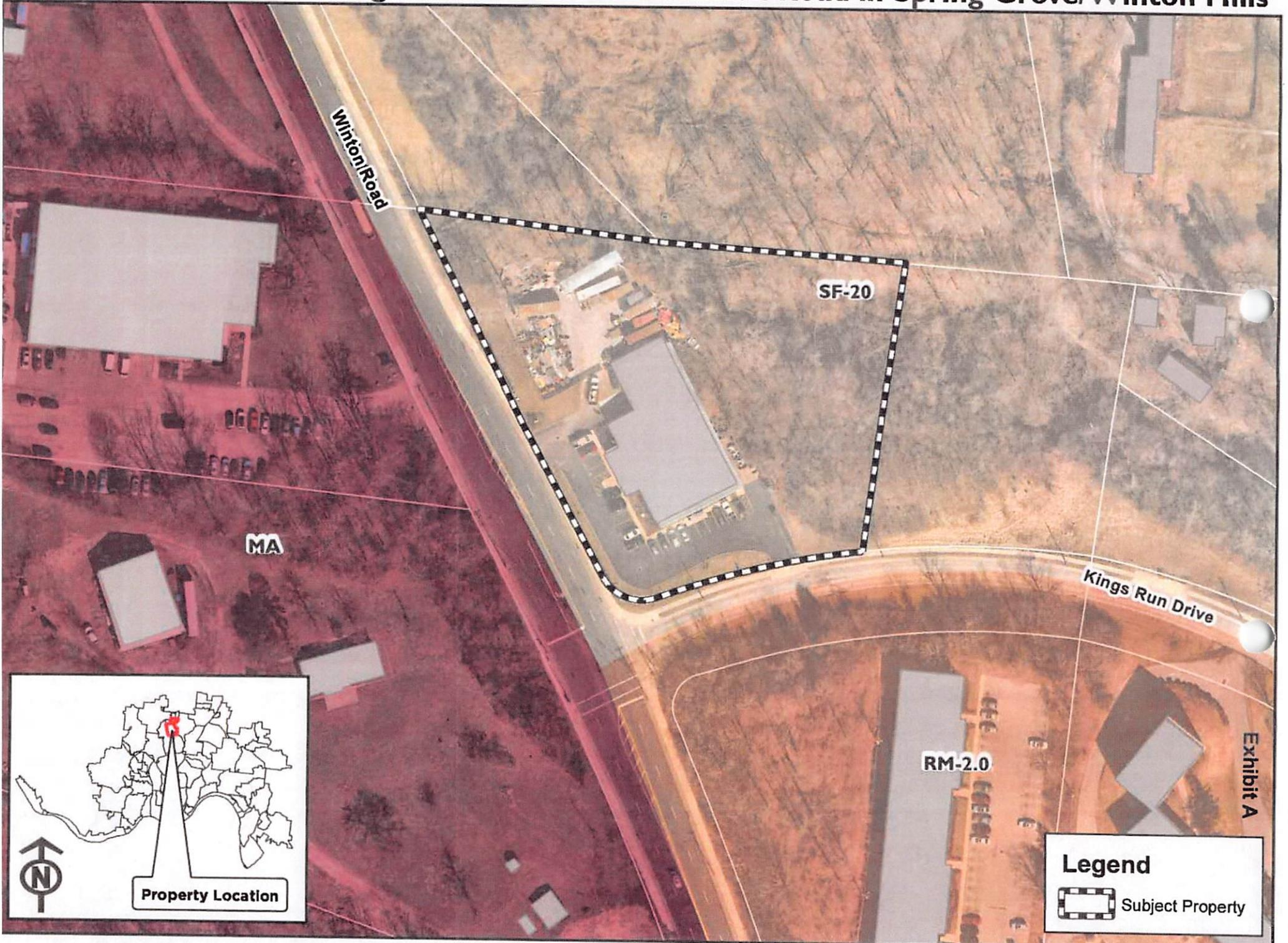
Gabrielle Couch, City Planner
Department of City Planning & Engagement

Approved:



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

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



Winton Road

SF-20

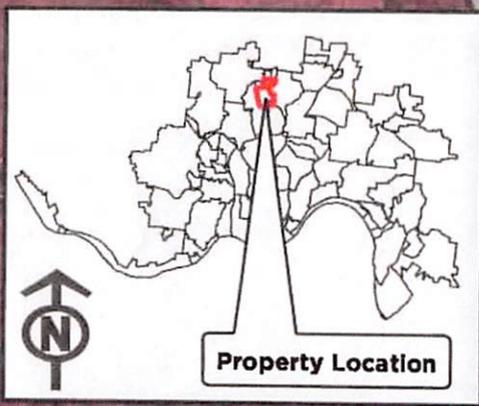
MA

Kings Run Drive

RM-2.0

Exhibit A

Legend
[Dashed Box] Subject Property



Property Location