

SUBJECT: A report and recommendation on a proposed Notwithstanding Ordinance permitting the installation and operation of an interim indoor practice facility at 621 W. Mehring Way in the Central Business District.

GENERAL INFORMATION:

Location: 621 W. Mehring Way, Cincinnati, OH 45202

Petitioner/
Petitioner's Address: Cincinnati Bengals, Inc.
1 Paul Brown Stadium, Cincinnati, OH 45202

Property Owner/
Property Owner's Address: Hamilton County Board of Commissioners
138 E. Court Street, Cincinnati, OH 45202

ATTACHMENTS:

Provided in addition to this report are the following attachments:

- Exhibit A - Location Map
- Exhibit B - Notwithstanding Ordinance (NWO) Application
- Exhibit B-1 – Interim Indoor Practice Facility
- Exhibit B-2 – Sign Locations and Sizes
- Exhibit C – Flood Action Plan
- Exhibit D – Reasons for the Notwithstanding Ordinance Request
- Exhibit E – Sign Location and Sizes
- Exhibit F – Floodplain Development Analysis Summary
- Exhibit G – Zoning Relief Summary
- Exhibit H – Rendering

BACKGROUND:

On April 4, 2022, the Department of City Planning and Engagement received an application for a Notwithstanding Ordinance (NWO) from the Cincinnati Bengals requesting the construction and operation of an interim indoor practice facility located at 621 W Mehring Way. These temporary indoor practice facilities, known as Interim Indoor Practice Facilities (IIPF), are a standard practice among teams in the National Football League (NFL) as they allow appropriate practice spaces for players when inclement weather occurs and will serve as a much-needed practice space due to an increase in wintertime games. This interim facility will be utilized immediately by team players and staff. The Bengals are proposing to build the facility at its expense and plans to have the facility available for use during the 2022 NFL season.

The property in question is located in the Central Business District, along W. Mehring Way and Smith Street, situated in between the Brent Spence Bridge and the Clay Wade Bailey Bridge. The property is zoned both Manufacturing General (MG), on the north, and Riverfront Manufacturing (RF-M), on the south. The property consists of 6.697 acres of land along the Ohio River. Additionally, the property is located in a Federal Emergency Management Agency (FEMA) Flood Plain (specifically flood plain panels 21117C0009F and 39061C0334F). Per the Cincinnati Zoning Code, this proposal is considered an Indoor Recreation and Entertainment use which is permitted in the MG zoning district, but not in the RF-M zoning district.

The owner of the subject property is the Hamilton County Board of Commissioners. The parcels on the property have been consolidated into one large parcel. Hamilton County and the Cincinnati Bengals have a Lease Agreement for Paul Brown Stadium and binding Memorandums of Understanding that specifically allow authorization for the construction and usage of the proposed facility on the subject property. The Bengals intend to find a more permanent solution, on the subject site or somewhere else, to its indoor practice needs in the near future.

The proposed development will be a removeable and inflatable, 75-foot high, synthetic air dome that attaches to a concrete footer, which will house a regulation-size interior turf practice field for Bengals players and staff only. The exterior will be paved and will include an 8-foot security fence and 187 parking spaces. Mechanical equipment for the dome will be housed on platforms above the floodplain. In instances of flooding, the dome, structure, contents, and fence will be removed from the site and stored outside of the floodway prior to flooding leaving the footer and turf on the site. A full layout and explanation of the Flood Action Plan may be found in Exhibit C. The exterior of the facility will display signage, in which the petitioner is requesting a Notwithstanding Ordinance from the Zoning Code for height, sign area, and total number of signs. In addition to the use and sign variances, the petitioner is requesting relief in the Notwithstanding Ordinance for the proposed parking allotment, parking lot landscaping, and fence height. Full descriptions of the Code relief may be found in Exhibit G.

PROPOSED NOTWITHSTANDING ORDINANCE:

The proposed language in the Notwithstanding Ordinance authorizes the construction and operation of the development notwithstanding the following sections of the Cincinnati Zoning Code and Cincinnati Building Code:

Zoning Code Relief:

1. A use variance will be required from Section 1415-05 Land Use Regulations RF-M
2. A variance of 85 parking spaces is required from Section 1425-19-A
3. Special Exceptions are required from Section 1425-29
4. A variance of 2 ft. for the proposed fence is required from Section 1421-33(b)
5. Signage variances from Section 1427-39:
 1. A variance for two additional signs is required
 2. A variance of 5,741 sq. ft. is required for the east signage
 3. A variance of 6,221 sq. ft. is required for the west signage
 4. A variance of 1,213.25 sq. ft. is required for the north side
 5. A variance of 1,851.25 sq. ft is required for the south size
 6. A variance of 32 ft. for the proposed sign height

Building Code Relief:

1. Relief from Section 1109-11(5)(b)(1-2) to permit this proposed development in the floodplain

Floodplain Standards

The Department of Building & Inspections has reviewed the application and the Flood Action Plan, in which sufficient justification and equivalencies were submitted that will ensure the construction and operation of this interim facility will minimize flood risks and threats to the public's health, safety, morals, and general welfare. The applicant team has specifically

established that the proposed facility's foundation and stem walls are flowable and capable of base flood events and will successfully implement the removal of all remaining equipment and above-ground improvements when flooding occurs.

ANALYSIS:

The Department of City Planning and Engagement has consistently taken a position to not support any Notwithstanding Ordinances because they do not comply with the Cincinnati Zoning Code that the Department is charged with developing and enforcing, however in this unique instance, the Department is recommending approval. The Cincinnati Municipal Code Section 111-5 establishes certain factors for evaluation by the City Council committee that considers a Notwithstanding Ordinance application, and the Department will therefore provide input on the following factors. The City Planning Commission shall consider the following when making a recommendation on NWOs 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 interim development is not expected to have any negative impact on the character of the proposed location area, or the public health, safety, and welfare. The surrounding properties are in MG and RF-M zoning districts. There are no residential properties within 400-feet of the subject property. The applicant has additionally stated that it is intended while the Cincinnati Bengals find and construct a more permanent solution in the future.

- 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.

Not applicable to this application.

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

Not applicable to this application.

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

The proposed use of this interim facility (Indoor Recreation and Entertainment) is consistent with the surrounding uses. There are utility uses to the west, vacant industrial land uses to the north and a railroad line sits to the east. The Ohio River serves as the property's southern border.

- (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 Plan Cincinnati" for further information in this staff report).

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

The proposed interim facility is consistent with adjacent properties and the petitioner has a plan in place for when flooding occurs on the property.

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

This proposed interim facility will spur further economic development as it will assist the continued success of the Cincinnati Bengals and could foster a greater sense of community within the City and the larger region. As experienced earlier this year with the team's exhilarating appearance in Super Bowl LVI, this development could provide tangible benefits in the form of enhanced tax revenues, riverfront investment, and greater name recognition for Cincinnati on a global and national scale.

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

The proposed interim facility will be within walking distance to Paul Brown Stadium allowing easy and convenient access for Bengals players and staff.

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

This proposed interim facility will only be utilized by the Cincinnati Bengals players and faculty.

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

Not applicable to this application.

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

Even with the use of Indoor Recreation and Entertainment not being permitted in and RF-M zoning district, the applicant team has put substantial measures in place when the instance of flooding occurs. Although this proposed use does not require river access, the proposal will help to maintain the economic vitality of the industrial riverfront and there is a plan set in place to minimize the future impacts from the commercial recreational facility.

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

Not applicable to this application.

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

Not applicable to this application.

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

The applicant is proposing large sign panels that are proportionate to the proposed development and commonly seen among other NFL facilities. (see Exhibit E for further analysis). This is compatible with the surrounding environment as it is in a unique location, placed between two large bridges and located in commercial and industrial districts.

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

Not applicable to this application.

PUBLIC COMMENT AND NOTIFICATION:

Notice for the April 15, 2022 City Planning Commission meeting was sent to property owners within 400 feet of the proposal in addition to the Downtown Residents Council. No comments have been received to-date.

CONSISTENCY WITH PLAN CINCINNATI (2012):

The proposed Notwithstanding Ordinance is consistent with *Plan Cincinnati* (2012), specifically within the Compete Initiative Area. This proposed facility contributes to the goal to “Foster a climate conducive to growth, investment, stability and opportunity” (pg. 103) through the Strategy to “Grow our own” by focusing on retention, expansion and relocation of existing businesses” (pg. 104). This request is an important way to retain the Cincinnati Bengals by meeting their needs and helping them achieve their goals. This project will contribute to the City’s energy, economic vitality, and job growth along with facilitating the development of the local professional sports industry.

This request is additionally consistent with the goal to “Become nationally and international recognized as a vibrant and unique city” (pg. 121) and would “Provide support to businesses that focus on our City’s historic heritage of...the arts and other cultural traditions” (pg. 123). Football, among other sports, is a treasured tradition and passion within Cincinnati.

CONCLUSIONS:

This request for a Notwithstanding Ordinance will allow the Cincinnati Bengals to construct and operate this interim indoor practice facility and will:

1. Permit the usage of the proposed interim facility within the RF-M zoning district;
2. Grant relief from floodplain regulations as depicted in the “Proposed Notwithstanding Ordinance Section” and Exhibit F;
3. Grant Zoning Code relief as depicted in depicted in the “Proposed Notwithstanding Ordinance Section” and Exhibit G including relief for parking, fence, and signage;
4. Address any other requirements of the MG or RF-M zones that would preclude approval of the construction and operation of the interim facility.

The Department of City Planning and Engagement has consistently taken the position to not support any Notwithstanding Ordinances for land use decisions because they do not comply with the zoning laws that the department is charged with developing and enforcing. However, this proposed Notwithstanding Ordinance is temporary as it is intended by the applicant there will be a search for a more permanent solution. The applicant team will need to coordinate with the appropriate City Departments when planning for the permanent facility and future approval processes.

This proposal is consistent with surrounding land uses and properties within the Central Business District as it is surrounded by commercial and industrial uses, much of which is vacant and non-residential. Permitting this installation and operation of the interim facility is the minimum necessary to relieve the applicant team from the exceptional hardship of developing this site to meet their needs. This interim facility is similar to those of other NFL Teams and poses no adverse effects to the surrounding area or to the public health, safety, and welfare of the Central Business District and City. The applicant team

has submitted detailed processes for flooding occurrences and requirements to construct in the floodplain. This proposal will contribute to Cincinnati Bengals' future growth, both as a business and as a team, which in turn could spur additional energy, economic vitality, and job growth for the City. With this property's proximity to elevated freeways, location within a manufacturing district, and being located directly adjacent to Paul Brown Stadium complex, this interim development is the most compatible development opportunity that could be developed in this location at this time.

RECOMMENDATION:

Typically, the Department of City Planning and Engagement has consistently taken the position to not support any Notwithstanding Ordinances for land use decisions because they do not comply with the zoning laws that the department is charged with developing and enforcing. In this unique situation, the staff of the Department of City Planning and Engagement recommends that the City Planning Commission take the following action:

ADOPT the Department of City Planning and Engagement findings and conclusions based on the fact that it will not have an adverse effect on the character of the area or the public health, safety and welfare and is consistent with the purposes of the Cincinnati Municipal Code Section 111-5 and zoning district(s); and

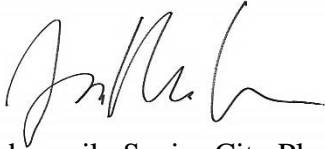
APPROVE the Notwithstanding Ordinance permitting the installation and operation of an interim indoor practice facility 621 W. Mehring Way in the Central Business District with the following conditions:

- a. That the Property shall be developed substantially consistent with the plans attached hereto as Exhibits B-1 and B-2 and those on file with the Department of Buildings and Inspections ("Plans"); and
- b. That the authorizations granted herein include permission to construct additional site improvements, including fencing up to 8 feet in height and lighting, that are substantially consistent with the Plans and incidental thereto, subject to the floodplain administrator's determination that the site improvements comply with the requirements of CMC Chapter 1109, "Flood Damage Reduction," or are designed to provide an equivalent measure of safety that minimizes the potential for flood damages and threats to public safety during a flood event; and
- c. That the authorizations granted herein are contingent upon the Team's implementation of the flood action plan, attached hereto as Exhibit C and incorporated herein by reference, which plan shall provide for reporting upon the City's request following a base flood event and for coordination between the Team and the City on supplementary operational measures as are necessary to minimize the potential for flood damages and threats to public safety during a base flood event, and which plan shall not be modified without the prior written consent of the floodplain administrator; and

- d. That the interim indoor practice facility shall be operated as a participant-only facility and remain subject to any occupancy limitations established by the Ohio Building Code; and

- e. That the City Manager and the appropriate City officials may order the removal of the interim indoor practice facility and the restoration of the Property, at no cost to the City: (i) upon finding that the Team has failed to comply with one or more of the conditions contained herein; (ii) at any time following fifth anniversary of the effective date of this ordinance; or (iii) upon the Team's vacation of the Property or abandonment of the interim indoor practice facility. For the avoidance of doubt, the interim indoor practice facility shall be deemed abandoned if the Team intentionally discontinues its use and occupancy of the facility for more than 365 consecutive days.

Respectfully submitted:



Jesse Urbancsik, Senior City Planner
Department of City Planning and Engagement

Approved:



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