



SYMMES TOWNSHIP ZONING
HAMILTON COUNTY, OHIO
OFFICE OF THE ZONING INSPECTOR
 138 E Court Street • Room 801 • Cincinnati, OH 45202
 513-946-4550

| |
|-----------------------------------|
| APPLICATION NO \$240136 |
| BZA CASE NO N/A |

NOTICE OF REFUSAL

TO APPLICANT **KEVIN OLIVER, ARCHITECT**
7100 EUCLID AVE., SUITE 200
CLEVELAND, OH 44103

TO OWNER **GHB-95-1 LLC**
1999 RICHMOND RD., SUITE 300
LEXINGTON, KY 40502

AUDITOR'S ID NUMBER
 BOOK: 620 PAGE: 190 PARCEL: 280

Your application, submitted August 5, 2024, for a zoning certificate for the construction of a cannabis dispensary retailer at premises designated as **12160 MASON ROAD** is hereby refused on this 8th day of August 2024 under Sections 41, 51.1, 102, 102.2 and Section 281 of the zoning resolution in that:

- Section 41** The Zoning Resolution and the Symmes Township District Maps designate said premises to be in the "E" Residence District (with Subservient Retail).
- Section 51.1** No structure or land shall be used, and no structure or other development shall be located, extended, converted, substantially improved, or structurally altered without full compliance with all the applicable provisions of this Resolution.
- Section 102** Use Regulations: A building or premises may be used as for any of the following purposes or uses similar in character as determined by the Zoning Commission:
- Section 102.2** Also permitted within the "E" Residence District are consumer type establishments engaged primarily in retail sales directed to individuals and families, such as: Listed uses 1 through 32.
- NOTE:** The uses listed in 102.2 do not include Cannabis Dispensary, therefor the use is not permitted in the "E" district.
- Section 281** It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain or use any building or to use any land in violation of any regulation in or any provision of this Resolution or any amendment or supplement thereto.

An appeal from this decision to the Symmes Township Board of Zoning Appeals is governed under **Sections 183, 184, 184.1, 184.2 and 184.6** of the Zoning Resolution.

Kim Lapensee

Kim Lapensee, ZONING INSPECTOR

Tom Hershner

Tom Hershner, ZONING PLANS EXAMINER

NOTE: ANY APPEAL MUST BE FILED WITH THE BOARD OF ZONING APPEALS WITHIN TWENTY (20) DAYS AFTER THE DATE OF THIS REFUSAL IN ORDER TO BE SCHEDULED FOR A HEARING BEFORE THE SYMMES TOWNSHIP BOARD OF ZONING APPEALS. **FOR FURTHER INFORMATION**, CONTACT THE ZONING PLANS EXAMINER, OFFICE OF THE ZONING INSPECTOR AT THE HAMILTON COUNTY RURAL ZONING COMMISSION, 513-946-4550. **ALL BOARD OF ZONING APPEALS HEARINGS WILL BE SCHEDULED BY SYMMES TOWNSHIP. THE HEARINGS WILL TAKE PLACE AT THE SYMMES TOWNSHIP ADMINISTRATION BUILDING, 9323 UNION CEMETERY ROAD, LOVELAND, OHIO, 45140. CALL 513-683-6644 WITH QUESTIONS CONCERNING SUCH.**

MANLEY BURKE

a legal professional association

Micah E. Kamrass
mkamrass@manleyburke.com
513-763-6747

August 1, 2024

To Whom It May Concern:

Please find the attached Zoning Certificate Application Form by Kevin Oliver on behalf of my client. The application is for a retail operation. My client's use is exactly in line with Sec. 31.3-39 and Sec. 102.2 of the Symmes Township Zoning Resolution in effect at the time of the submission of this application. The applicant's principal use or purpose is the sale of goods, products, or merchandise directly to the consumer. It will be a consumer type establishment primarily in retail sales directed to individuals and families.

My client appreciates your time and consideration to this application. If you have any questions, feel free to reach me at the above-listed contact information.

Sincerely,

/s/ Micah E. Kamrass

Micah E. Kamrass
Partner
Manley Burke, LPA

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SEP 26 2024

Aug 5th, 2024

RECEIVED

SEP 26 2024

**SYMMES TOWNSHIP
BOARD OF ZONING APPEALS**

**KEVIN OLIVER, AIA
OLIVER ARCHITECTURE**

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And

APPEAL NO: _____

GHB-95-1 LLC, Owner

Appellants

STATEMENT IN SUPPORT OF APPEAL

On August 1, 2024, Kevin Oliver, AIA, of Oliver Architecture (“Oliver”), submitted an application for zoning certificate to establish a retail business which has been licensed by the State of Ohio to serve as a cannabis dispensary at the premises designated at 12160 Mason Road, Cincinnati, Ohio 45249 (“Premises”) on behalf of the owner of the Premises, GHB-95-1 LLC (“Owner”). Through an exchange of emails with Tim Hershner (“Hershner”) the Zoning Plans Examiner, Oliver and Owner were notified that the Township planned to issue a refusal on Oliver’s Application. It was not until August 28, 2024 that Hershner issued the Notice of Refusal (“Notice of Refusal”).¹ Thereafter, Oliver and Owner filed their timely Appeal of the Notice of Refusal and have included this Statement in Support to be incorporated by reference into their Appeal.

Oliver submitted the Zoning Certificate Application (hereinafter “Application”) to the Symmes Zoning Inspector to confirm that the construction of a cannabis dispensary retail space met the zoning requirements of the Premises that is currently zoned as an “E” District. An “E” District is a Residential District that permits a wide variety of Subservient Retail uses. *See* Section

¹ While this Notice of Refusal references August 8, 2024 as the date of the refusal, the Notice was not formally provided to the Owner and Oliver until August 28, 2024. Therefore, as a matter of law and by agreement and acknowledgement with Symmes Township Counsel, the timing for the Appeal began on August 28, 2024.

SEP 26 2024

41 and Article X of the Symmes Township Zoning Resolution. Pursuant to Article X and more specifically Section 102.2 of the Symmes Township Zoning Resolution (hereinafter “Resolution”), in addition to residential uses there are “consumer type establishments” that are permitted in the “E” District. Section 102.2 prescribes that these Consumer type establishments that are “established primarily in retail sales directed to individuals and families” are permitted. The Resolution then goes onto list, without limitation, examples of such uses included in this category. These examples include drug stores, liquor stores, grocery stores, and convenience stores.

As Appellants point out in their Application, a cannabis dispensary is a permitted use in the “E” District. It is a retail store that sells goods to consumers. It operates just like any liquor store, drug store, or grocery store would operate. The Notice of Refusal takes the position that because the term Cannabis Dispensary, which is not a defined term within the Resolution, is not specifically listed under Section 102.2 that it is therefore precluded in the “E” District under the Resolution. This simply isn’t the case. The list of possible permitted uses under Section 102.2 of the Resolution is not an exhaustive list, nor could it ever be. It is merely a demonstrative of examples that would be permitted within the “E” District. That is why Section 102.2 states “such as” when articulating possible uses. Otherwise, the Resolution would be need to limit the uses to that list by stating “which only include the following uses.” This is not the case. Accordingly, the thirty-two (32) listed uses under Section 102.2 is not a limitation on all possible uses within the “E” District. This list does not include hardware stores or ice cream shops, yet there is no doubt that they are uses which are consumer type establishments engage in retail sales. The legal sale of cannabis is the same and certainly no different than a pony keg, bar, liquor store, or drug store. Since that is the sole reason upon which the Notice of Refusal is based, it should be overtured and

Appellant should be granted a Zoning Certificate allowing it to proceed with the construction of the cannabis dispensary.

Finally, it should be pointed out that pursuant to Sections 102.3 and .4, nearly all other kinds of businesses are permitted to operate in the “E” District to provide goods and services to individuals. This raises the issue that the only reason the Notice of Refusal was issued is because of the type of business that intends to operate on the Premises. Article X does not specifically preclude any type of businesses from operating in the “E” District so long as they are “consumer type establishments engaged primarily in retail sales directed to individuals.” The fact that the township may be considering legislation to limit the number of cannabis dispensaries in the Township has no impact on this Application and Appeal must be judged against the zoning resolutions on the date that the Application was filed. *See Gibson v. Oberlin*, 167 N.E.2d 651 (Ohio 1960)(holding that a property owner and municipality must comply with the zoning ordinance in effect that the time an application is made, there is no retroactive effect to new ordinances). Therefore, the Township has no legal basis to refuse to allow Appellants to operate a cannabis dispensary on the Premises. The Township’s refusal to follow its own Resolution and allow Appellants to use the Premises as prescribed by its own Resolution creates a serious issue under Section 2744.00 of the Ohio Revised Code that Appellants hopefully will not have to pursue.

We sincerely request that the decision of the Zoning Plans Examiner and Zoning Inspector be overturned and Appellants be granted a zoning certificate to operate a retail use through which cannabis is dispensed on the Premises.

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SEP 26 2024

Respectfully, Counsel for Appellants,



Micah E. Kamrass (OH# 0092756)
Emily Cooney Couch (OH#0096815)
Manley Burke, LPA
225 West Court Street
Cincinnati, OH 45202
mkamrass@manleyburke.com
Emily.couch@manleyburke.com
(513) 721-5525

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Appeal No. ZA 5M2024-10
Filed 9-16-2024

Board of Zoning Appeals
9323 Union Cemetery Road
Symmes Township, OH 45140-9386

APPEAL UNDER THE ZONING RESOLUTION

The appellant must file herewith an explicit typewritten statement setting forth the following:

- a. The principal points on which the appeal is made. In any case, the principal points set forth in this appeal shall be the same as those under which the administrative officer acted, whether the granting or refusal of a zoning certificate or any other decision based upon the regulations of the Zoning Resolution.
- b. A clear and accurate description of the construction use.
- c. Specific reference to the Sections of the Zoning Resolution which, it is claimed, authorize the determination sought.
- d. Names and addresses of owners of all abutting lots and lands within two hundred (200) feet of the property in question. (This list is now provided by the Board on the applicant's behalf.)

NAMES AND ADDRESSES

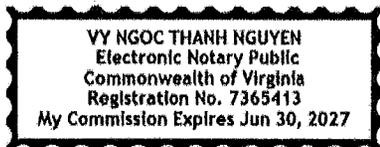
Appellant Kevin Oliver, Architect Address 7100 Euclid Avenue, Suite 200, Cleveland, Ohio 44103
 Owner GHB-95-1 LLC Address 1999 Richmond Road, Suite 300, Lexington, Kentucky 40502
 Lessee _____ Address _____

The undersigned Kevin Oliver, Architect hereby appeals under Sections 31.3-39, 41, 51.1, 102, 102.2, 281 as well as procedurally under Sections 183 and 184 of the Zoning Resolution as it relates to the Notice of Refusal issued by the Zoning Inspector and Zoning Plans Examiner related to a zoning certificate for the construction of a cannabis dispensary retailer at the premises designated as 12160 Mason Road which is attached hereto. In accordance with the plats, plans and other data hereto attached and made a part of this appeal.

I hereby depose and say that all the above statements and the statements contained in all of the exhibits transmitted herewith are true.

[Signature]
Appellant

Sworn to and subscribed before me, this 13th day of September, 2024



[Signature]
Notary Public

Address of subject property 12160 Mason Road, Cincinnati, Ohio 45249

Lot Number _____

| Identification | Name | Address | City | State | Zip Code | Phone No. |
|----------------|--|--------------------------------|-----------|-------|----------|------------------------------|
| Owner | GHB-95-1 LLC | 1999 Richmond Road, STE 300 | Lexington | KY | 40502 | |
| Contractor | None at this Time | | | | | |
| Plans By | Kevin Oliver, AIA Oliver Architecture | 7100 Euclid Ave Suite 200 | Cleveland | OH | 44103 | 216-245-2661 330-206-9325 |

Type of improvement: (Briefly describe proposed work)

A new one (1) story retail sales building on an existing parcel for use as a cannabis dispensary retailer.

Commercial

Residential

Other

Appeal

Conditional Use

Non-Conforming Use

Compatible Non-Conforming Use

Other _____

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State in detail all existing and proposed uses of this building and premises:

Existing _____

Proposed A new 3,000 sq ft. one (1) story retail sales building on an existing parcel is being proposed for use as a cannabis dispensary retailer

Ownership

Cost

Private

Estimated cost of improvement for which this application is made:

Public (Federal, State, Local)

\$ _____

Corporate

Other

The owner of this building and undersigned, do hereby covenant and agree to comply with all the laws of the State of Ohio and the Zoning Resolution of Symmes Township, pertaining to building and structures, and to construct the proposed building or structure or make the proposed change or alteration in accordance with the plans and specifications submitted herewith, and certify that the information and statements given on this application, drawings and specifications are the best of their knowledge, true and correct.

Application by: _____ Address: 225 W Court Street, Cincinnati, Ohio 45202

Micah E. Kamrass, Esq. and Emily Cooney Couch, Esq.
Manley Burke, LPA
Counsel for Appellant

DO NOT WRITE BELOW THIS LINE (office use only)

Adopted: _____ Journalized: _____

BZA Filing Fee: \$1,101.44

APPLICATION NO.
5240136
 REFUSAL
 office use

ZONING

JURISDICTIONS:

- Hamilton County
- Symmes Township
- Village of North Bend
- Village of Woodlawn

ZONING CERTIFICATE APPLICATION FORM 2024

HAMILTON COUNTY PLANNING + DEVELOPMENT

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 138 EAST COURT STREET, ROOM 801, CINCINNATI, OHIO 45202
 513-946-4550
 website address: <http://www.hamiltoncountyohio.gov/pd>

SEP 26 2024

DATE: 08/01/2024

PROJECT INFORMATION

(To be completed by plans examiner)

| ZONE DISTRICT | AUDITOR'S BOOK NO. | AUDITOR'S PAGE NO. | AUDITOR'S PARCEL NO. | LOT NO. | CASH / CC | CHECK # |
|---------------|--------------------|--------------------|----------------------|---------|-----------|---------|
| E | 620 | 190 | 280 | 6 | CC | 1627 |

(BALANCE)

PROJECT ADDRESS:

12160 Mason Rd.

ZIP CODE: 45249

TOWNSHIP OR VILLAGE:

SYMMES

PROJECT NAME:

MASON RD. DISPENSARY

SUBDIVISION NAME: TEEGEE SUBD.

| NAME ↓ | STREET ADDRESS ↓ | CITY ↓ | ST ↓ | ZIP ↓ | PHONE # ↓ |
|---|-------------------------------|-----------|------|-------|--------------|
| PROPERTY OWNER: (Land Owner) GHB-95-1 LLC | 1999 RICHMOND ROAD, SUITE 300 | LEXINGTON | KY | 40502 | |
| CONTRACTOR: NONE AT THIS TIME | | | | | |
| ARCH / ENG / SURVEYOR: (Plans By) OLIVER ARCHITECTURE | 7100 EUCLID AVE., SUITE 200 | CLEVELAND | OH | 44103 | 216.245.2661 |
| APPLICANT: (Permit Contact Person + Email) KEVIN OLIVER, AIA | KEVIN@OLIVERARCHITECT.COM | | | | 330.206.9325 |
| OLIVER ARCHITECTURE | | | | | |

↓ PLEASE SELECT TYPE OF IMPROVEMENT BELOW ↓

| RESIDENTIAL | COMMERCIAL |
|--|--|
| <input type="checkbox"/> NEW SINGLE-FAMILY RESIDENCE NO OF BEDROOMS _____ SEWER: PUBLIC / PRIVATE DECK INCLUDED? _____ | <input checked="" type="checkbox"/> NEW BUILDING SQ. FT. <u>3,000</u> |
| <input type="checkbox"/> NEW MULTI-FAMILY RESIDENCE NO OF UNITS _____ | <input type="checkbox"/> BUILDING ADDITION SQ. FT. _____ |
| <input type="checkbox"/> ADDITION TO SINGLE FAMILY/MULTI-FAMILY RESIDENCE | <input type="checkbox"/> NEW TENANT OR CHANGE OF USE W/PARKING ANALYSIS |
| <input type="checkbox"/> ACCESSORY GARAGE OR SHED SQ. FT. _____ | <input type="checkbox"/> NEW TENANT OR CHANGE OF USE W/NO PARKING ANALYSIS |
| <input type="checkbox"/> SWIMMING POOL (IN-GROUND OR ABOVE GROUND) SQ. FT. _____ | <input type="checkbox"/> EXISTING TENANT/INTERIOR ALTERATIONS |
| <input type="checkbox"/> FENCE OR WALL | <input type="checkbox"/> FAÇADE ALTERATIONS |
| <input type="checkbox"/> DECK (ATTACHED OR DETACHED) | <input type="checkbox"/> PARKING LOT (NEW PAVEMENT/RESTRIPING/LIGHTING) |
| <input type="checkbox"/> ANTENNA OR SATELLITE DISH | <input type="checkbox"/> AWNING OR MARQUEE |
| <input type="checkbox"/> IN-HOME OCCUPATION | <input type="checkbox"/> NEW SIGN OR BILLBOARD |
| <input type="checkbox"/> CHICKEN COOP | <input type="checkbox"/> SIGN FACE CHANGE |
| <input type="checkbox"/> BEE KEEPING | <input type="checkbox"/> TEMPORARY SIGN |
| <input type="checkbox"/> OTHER | <input type="checkbox"/> SWIMMING POOL OR TANKS SQ. FT. _____ |
| | <input type="checkbox"/> TEMPORARY TENT SQ. FT. _____ |
| | <input type="checkbox"/> TEMPORARY SALES |
| | <input type="checkbox"/> FENCE/WALL |
| | <input type="checkbox"/> OTHER |

DESCRIPTION OF PROPOSED WORK A NEW, 1 STORY RETAIL SALES BUILDING ON AN EXISTING PARCEL FOR USE AS A CANNABIS DISPENSARY RETAILER

The owner of this building and undersigned, do hereby covenant and agree to comply with all the laws of the State of Ohio and the Zoning resolution of the County of Hamilton, pertaining to building and buildings, and to construct the proposed building or structure or make the proposed change or alteration in accordance with the plans and specifications submitted herewith, and certify that the information and statements given on this application, drawings and specifications are to the best of their knowledge, true and correct.

APPLICANT SIGNATURE

Kevin Oliver

DATE

08/01/2024

PLEASE MAKE CHECKS PAYABLE TO THE "HAMILTON COUNTY TREASURER"

Parking Analysis (Single-Tenant Building)

Building Address: 12160 Mason Rd., Cincinnati, OH 45249

Township: SYMMES

Existing Building Gross Floor Area: 0 SF SQ. FT. Proposed Building Gross Floor Area: 3000 SF SQ. FT.

| FLOOR | TENANT | TYPE OF USE | CODE CALCULATION | EXISTING BUILDING SQUARE FOOTAGE | | PARKING SPACES | |
|--------------------|---------------------|--------------|-------------------------------|----------------------------------|-----|----------------|----------|
| | | | | GROSS | NET | REQUIRED | PROVIDED |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| FLOOR | TENANT | TYPE OF USE | CODE CALCULATION | PROPOSED BUILDING SQUARE FOOTAGE | | PARKING SPACES | |
| | | | | GROSS | NET | REQUIRED | PROVIDED |
| 1 | CANNABIS DISPENSARY | RETAIL STORE | 1 SPACE PER 200 SF FLOOR AREA | 3000 SF | NA | 15 | 33 |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| SITE TOTALS | | | | | | | |

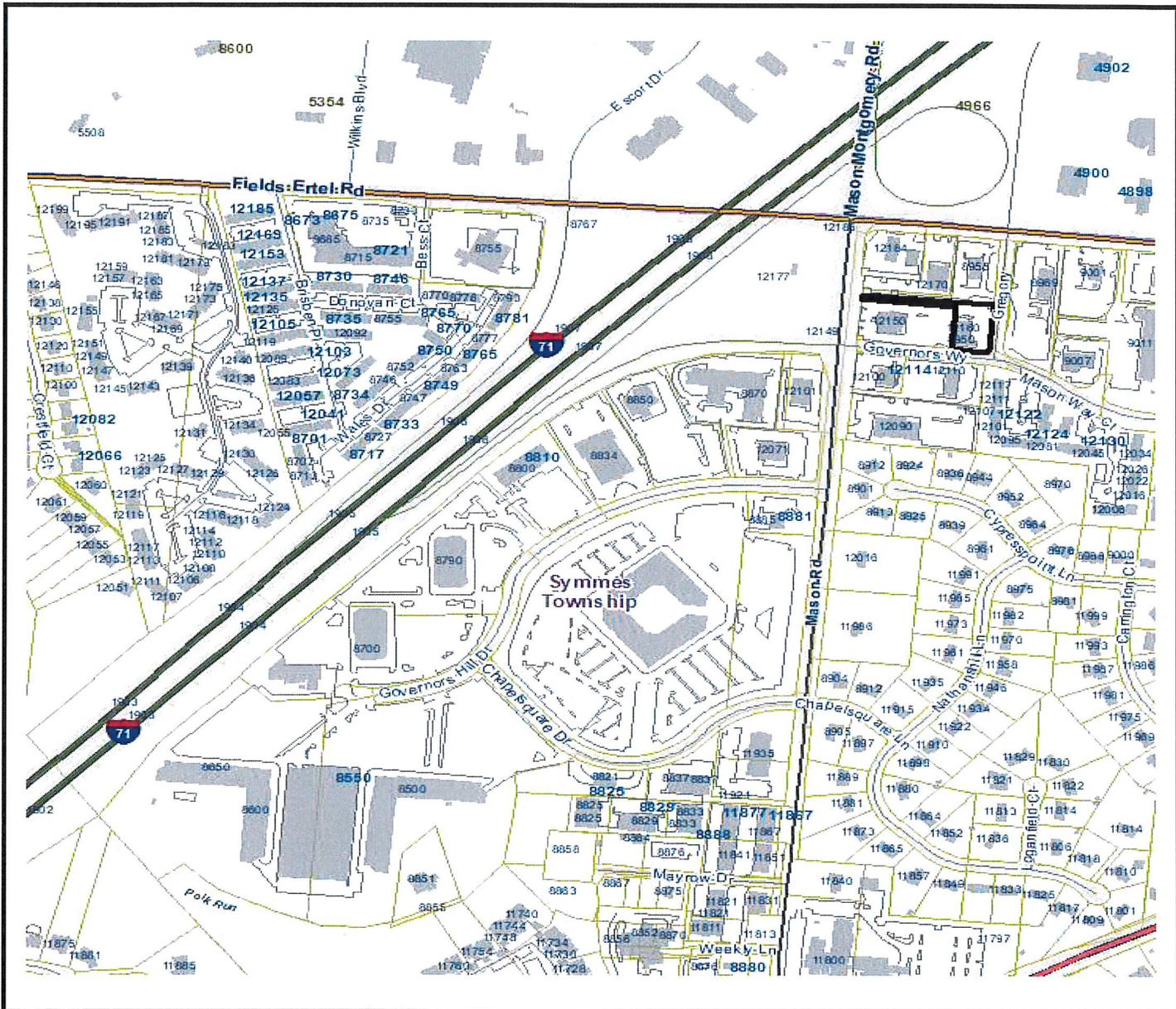
Floor Area, Gross. The sum of the horizontal areas of each floor of the building, measured from the exterior walls or from the center line of party walls, including the floor area of accessory buildings and structures.

Floor Area, Net. The sum of the horizontal areas of each floor of the building, measured from the exterior walls or from the center line of party walls, including the floor area of accessory buildings and structures. The term does not include any area used exclusively for the parking of motor vehicles or for building or equipment access, such as stairs, elevator shafts, and maintenance crawl space or areas occupied by mechanical equipment, toilet or rest rooms.

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SEP 26 2024

Prepared By Kevin A. Oliver Date 08/01/2024

Kevin A. Oliver, AIA
Oliver Architecture



Vicinity Map

Case: Symmes Township: 12160 Mason Road
Request: Appeal Under the Zoning Resolution

DISCLAIMER:

Neither the provider nor any of the parties of the Cincinnati area geographic information system (CAGIS) make any warranty or representation, either expressed or implied, with respect to this information, its quality, performance, merchantability, or fitness for a particular purpose. As a result this information is provided as is, and you, the recipient, are assuming the entire risk as to its quality and performance.

In no event, will the provider or any party of CAGIS be liable for direct, indirect, incidental, or consequential damages resulting from any defect in the information or any other part of the map product, even if advised of the possibility of such damages. In particular, neither the provider nor any party of CAGIS shall have any liability for any other information, programs or data used with or combined with the information received, including the cost of recovering such information, programs or data.

Any floodway and flood fringe information provided on this map is for conceptual planning purposes only. For official determination of limits recipient must refer to the 2004 FEMA floodway fringe maps. Large differences can exist between actual flood prone area and official FEMA flood fringe areas.

HAMILTON COUNTY RURAL ZONING COMMISSION
 138 E COURT ST RM 801
 CINCINNATI, OH, 45202-020
 (513) 946-4500

Signed: _____ Date: _____

Created: 09-26-2024