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NOV 16 2021

Appeal No. ZVST 2022-01
Filed 11.16.2021



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

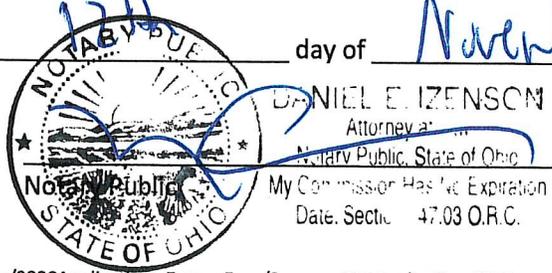
Appellant Yiwei Cheng & Jarrod Tucker Address 10112 Meadowknoll Dr., Loveland, OH 45140
 Owner Yiwei Cheng & Jarrod Tucker Address 10112 Meadowknoll Dr., Loveland, OH 45140
 Lessee _____ Address _____

The undersigned Yiwei Cheng & Jarrod Tucker hereby appeals under Sections _____ of the Zoning Resolution several, including, but not limited to Article XVIII; Sec. 31.3-14; Sec. 31.3-173; Article II; Sec. 54.1 & November 5, 2021 official zoning interpretation and October 4, 2021 notice of violation
 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.

Taylor Turk
 Attorney for Appellant

Sworn to and subscribed before me, this _____ day of November, 2021.



Address of subject property 10112 Meadowknoll Dr., Loveland, Ohio 45140

Lot Number _____

Identification	Name	Address	City	State	Zip Code	Phone No.
Owner	Yiwei Cheng & Jarrod Tucker	See above				
Contractor						
Plans By						

Type of improvement: (Briefly describe proposed work)

Residential property

- Commercial
- Residential
- Other _____
- Appeal
- Conditional Use
- Non-Conforming Use
- Compatible Non-Conforming Use
- Other _____

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

Existing Rental property

Proposed _____

- Ownership
- Private
- Public (Federal, State, Local)
- Corporate
- Other
- Cost
- Estimated cost of improvement for which this application is made:
- \$ _____

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: Taylor V. Trout, attorney for owners Address: 1 East 4th Street, Cincinnati, Ohio 45202

DO NOT WRITE BELOW THIS LINE (office use only)

Adopted: _____ Journalized: _____

BZA Filing Fee: \$ 781.20

Joseph L. Trauth Jr.
D: 513.579.6515
jtrauth@kmlaw.com

Taylor V. Trout
D: 513.579.6948
ttrout@kmlaw.com

November 12, 2021

VIA CERTIFIED MAIL

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

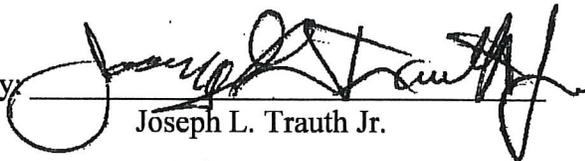
Re: Appeal of Zoning Code Violation - 10112 Meadowknoll Drive, Loveland, Ohio 45140 (the "Property")

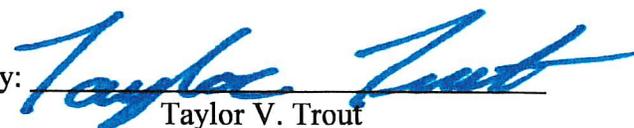
Dear Board of Zoning Appeals:

As you are aware, this office and the undersigned have been retained to represent Yiwei Cheng and Jarrod Tucker ("Owners") with regard to the Zoning Code Violation issued by Symmes Township regarding the above referenced Property. This letter and the attached form shall serve as formal notice of Owners appeal of the October 4, 2021 Notice of Violation and Official Written Interpretation letter dated November 5, 2021. A copy of both are enclosed herewith. In addition, I enclose herewith my letter dated October 26, 2021, which generally outlines Owners' position and includes some of the arguments that will be raised during the appeal hearing. Check number 104548 in the amount of \$781.20 is enclosed herewith for the costs associated with the appeal. Please contact Taylor Trout at the telephone number and email listed above should you need additional information. Finally, please contact Taylor Trout in advance to schedule the appeal hearing so that I can ensure availabilities for myself and my clients.

Sincerely,

KEATING MUETHING & KLEKAMP PLL

By: 
Joseph L. Trauth Jr.

By: 
Taylor V. Trout

JLT/TVT:jrr

Keating Muething & Klekamp PLL

Attorneys at Law

One East Fourth Street | Suite 1400 | Cincinnati, Ohio 45202

P: 513.579.6400 | F: 513.579.6457 | kmlaw.com

Kimberly A. Lapensee, Administrator
Bryan Snyder, Development Services Administrator
November 12, 2021
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Enclosures

cc: Bryan.Snyder@hamilton-co.org
klapensee@symmestownship.org

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November 5, 2021

Taylor Trout, Associate
KMK Law
One E. 4th Street, Suite 1400
Cincinnati, Ohio 45202

Dear Mr. Trout:

We are in receipt of your email dated 11/2/21 requesting an official zoning interpretation for the zoning violation that Symmes Township sent to Yiwei Cheng and Jarrod Tucker, 10112 Meadowknoll Drive on 10/4/21 concerning a property being used as an Airbnb or for a bed and breakfast without permits in a single family zoning district.

Due to the nature of ever-changing use categories as time progresses, it is impossible for any Zoning Code or Resolution to always anticipate every type of possible use in a jurisdiction. Accordingly, interpretations related to the use category of new uses not specifically defined in the Symmes Township Zoning Resolution must be made. Such is the case with the short-term vacation rental properties, such as homes and dwellings that are listed on Airbnb, VRBO, HomeAway, etc. for rent on a short-term basis. Such uses are not specifically defined in the Symmes Township Zoning Resolution. Therefore, the official interpretation for Symmes Township is that such uses shall be categorized as part of the Bed and Breakfast use category. This is supported by the definitions of Family, Residential Use, and Residential, Single Family Detached, which read:

Family: A person or group of persons occupying a premises and living as a single housekeeping unit but as distinguished from a group occupying a boarding house, fraternity/sorority, hotel, or other type of contractual living quarters.

Residential Use: A home, abode, dwelling unit or place, where a family or individuals live, where such a place has areas for living and eating within the structure. This category includes but is not limited to single-family detached units, single-family detached units in PUDs (clustered, patio-dwelling, and zero lot line), multi-family units, and manufactured or mobile homes as well as uses such as bed & breakfast facilities, granny cottages, Residential Facilities, and day care/Type A.

Residential, Single Family Detached: A dwelling designed for and occupied by not more than one family as that term is defined in this Article and surrounded by open space or yards and which has no roof, wall, or floor in common with any other dwelling unit.

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Short-term vacation rental properties are most similar to a type of "other contractual living quarters" when viewed in context with the definition of Family. Since this definition eliminates a list of uses from the types of groups living as a single housekeeping unit, one of these other types of uses must apply. The definition of Residential Use clearly indicates that any type of residence is considered a Residential Use, including bed and breakfast facilities, but also including multi-family uses that are not permitted in single-family zoning districts. Single-family zoning districts in Symmes Township permit Single-family Residential uses. The definition of Single Family Residential refers back to the definition of Family, which excludes other types of contractual living quarters. Therefore, short-term vacation rentals do not fall into the classification of Single Family Residential and are therefore not permitted as-of-right in Single Family Residence zoning districts.

In reviewing the Resolution as it relates to the other types of contractual living quarters, including boarding house, fraternity/sorority, and hotel, it has been determined that considering them as other types of contractual living quarters offers the interpretation that is most favorable to the property owners. The most favorable type of other contractual living quarters in this case is a Bed and Breakfast. Bed and Breakfast is defined as:

Bed and Breakfast: A private owner-occupied residence with one to three guest rooms contained within that structure and operated so that guests reside at the home for not longer than two continuous weeks. No kitchen facilities may be provided for use by guests.

While short-term rental uses do not fit neatly into this definition, as evidenced by the fact that these uses are often not owner occupied and there are typically kitchen facilities provided for the guests, this definition serves to differentiate these types of uses from the definition of hotel, which is defined as:

Hotel or Motel: A building containing more than four (4) individual rooms for the purpose of providing, for periods not exceeding thirty (30) days, overnight lodging facilities to the general public for compensation with or without meals, and which has common facilities for reservations and cleaning services, combined utilities, and on-site management and reception.

While Hotels and Motels are types of uses that are prohibited in Single-family Residence zoning districts, Bed and Breakfast uses are permissible in Single-family Residence zoning districts as a Conditional Use. Since the majority of short-term rental uses are located in areas zoned for Single-family Residence, this classification offers the least restrictive zoning approval process and has been deemed to be the use category most

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favorable to individual property owners. Accordingly, short-term rental uses shall be interpreted to be included in the use category of Bed and Breakfast for the purposes of zoning administration and may be permitted in Single-family zoning districts only upon approval of a Conditional Use by the Symmes Township Board of Zoning Appeals.

Please let me or Bryan Snyder know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kimberly Lapensee". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Kimberly Lapensee
Township Administrator

CC: File

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SYMMES TOWNSHIP
OFFICE OF THE ZONING INSPECTOR
9323 Union Cemetery Road
Symmes Twp., OH 45140-9312
513-683-6644

TO: Yiwei Cheng & Jarrod Tucker DATE: 10-4-2021
Owner, Occupant, Contractor, or Other

LOCATION OF VIOLATION: 10112 Meadowknoll Dr
Loveland, OH 45140

A recent inspection of your property located at the subject address reveals:

Property used as air bnb or bed and
breakfast without permits

The above condition(s) violates the Symmes Township Zoning Resolution.

You are hereby directed to accomplish the following no later than twenty-one (21) days from receipt of this notice:

A conditional use permit must be obtained
to use this property as a bed and breakfast,
a public hearing by the planning commission
will be required. Call 513-946-4550 (146 4550)

If not completed in the time designated, a citation will be issued. Should you have any questions concerning this matter, you can contact me at 946-4550 between the hours of 7:30 and 9:00 a.m., Monday through Friday. Permits for work performed without a Zoning Certificate will be assessed a double fee.

Issued By: E. Witte Received By: mail

PLEASE NOTE: A copy of the Symmes Township Zoning Resolution may be obtained for \$30.00 at the Symmes Twp. Administration Office or viewed on-line at www.symmestownship.org. You may appeal any decision of the Administrative Official relevant to this notice by filing an appeal with the Township Board of Zoning Appeals within twenty (20) days from receipt of this notice.

TO BE COMPLETED BY ZONING INSPECTOR:

Status of Violation as of: _____

Also:
Yiwei Cheng & Jarrod Tucker
5412 Spark St
Cinti, OH 45202

Distribution: White - Violator; Yellow - Zoning Inspector; Pink - Township Office; Goldenrod - File.



Joseph L. Trauth Jr.
D: 513.579.6515
jtrauth@kmklaw.com

Taylor V. Trout
D: 513.579.6948
ttrout@kmklaw.com

October 26, 2021

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VIA ELECTRONIC MAIL ONLY

Kimberly A. Lapensee
Administrator
Symmes Township
klapensee@symmestownship.org

Bryan Snyder
Development Services Administrator
Symmes Township
bryan.snyder@hamilton-co.org

Re: Zoning Code Violation - 10112 Meadowknoll Drive, Loveland, Ohio 45140 (the "Property")

Dear Kim and Bryan:

This office and the undersigned have been retained to represent Yiwei Cheng and Jarrod Tucker ("Owners") with regard to the Zoning Code Violation issued by Symmes Township regarding the above referenced Property. In that zoning code violation, "E. Witte" claims, without citing any building or zoning code, that a "conditional use permit must be obtained to use the Property as a bed and breakfast, a public hearing by the planning commission will be required." After a review of the applicable Symmes Township zoning codes, I have been unable to find any support for the violation. In fact, the applicable Symmes Township Zoning Code clearly permits the Property to be utilized as it is currently—a single-family residential rental property. Accordingly, Owners demand that the violation be rescinded immediately.

The Property is not being utilized as a "Bed and Breakfast." The Symmes Township Zoning Code defines a Bed and Breakfast as:

A private owner-occupied residence with one to three guest rooms contained within that structure and operated so that guests reside at the home for not longer than two continuous weeks. No kitchen facilities may be provided for use by guests.

The Property is not a Bed and Breakfast because (1) Owners do not reside within the Property, (2) individual rooms at the Property are not rented or leased to guests, but rather, the entire Property is rented or leased to guests, and (3) the kitchen facilities at the Property may freely be utilized by the guests.

Section 54.1 states that "an 'area zoned for residential use' shall mean an area zoned as a residential district, an area with a residential zoning classification under the township's zoning resolution or an area zones primarily for residential use." The zone in which the property is located is undeniably zoned for residential use. See "Article VII "B" Residence District Regulation" at pp. 45-47 and "Summary of Zoning Regulations" at p. 190. Section 31.3-173 defines "Residential

Keating Muething & Klekamp PLL

Attorneys at Law

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Kimberly A. Lapensee, Administrator
Bryan Snyder, Development Services Administrator
October 26, 2021
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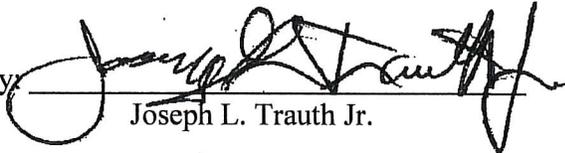
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Use” as “A home, adobe, dwelling unit or place, where a family or individual(s) live; where such a place has areas for living and eating within the structure. . . as well as uses such as bed & breakfast facilities” Since the Property is utilized by families or individuals and it has areas for living and eating within the structure, it clearly falls within the definition of “Residential Use,” and the use of the Property as a rental property clearly falls within the definition of “Residential Use.” And, to be clear, it is well-established Ohio law that interpretations of, and ambiguities contained in, zoning codes and ordinances **must be strictly construed in favor of the property owner.** *Allen v. Miami Cty. Bd. of Zoning Appeals*, 186 Ohio App.3d 196, 2010-Ohio-377, 927 N.E.2d 33, ¶ 16 (2d Dist.); *see also Cleveland Clinic Found. v. Bd. of Zoning Appeals*, 141 Ohio St.3d 318, 2014-Ohio-4809, 23 N.E.3d 1161, ¶ 17.

There is no question that the Property may be utilized for rental purposes—whether short-term or long term—and that any assertion from Symmes Township to the contrary is improper. Accordingly, Owners demand that the violation dated October 4, 2021 be immediately rescinded. If Symmes Township refuses to do so, then Owners specifically request an appeal be heard on this matter at the earliest date that is mutually available to the Board and Owners.

Sincerely,

KEATING MUETHING & KLEKAMP PLL

By: 
Joseph L. Trauth Jr.

By: 
Taylor V. Trout

JLT/TVT:jrr