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Appeal No. ZA 5M 2022 07
Filed 7.15.2022



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

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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 Aaron and Kristin Landolt Address 11922 N. Lebanon Rd., Loveland, OH 45140
 Owner Aaron and Kristin Landolt Address 11922 N. Lebanon Rd., Loveland, OH 45140
 Lessee _____ Address _____

The undersigned Aaron Landolt hereby appeals under Sections
Sec. 151 et seq. and Sec. 183 et seq. of the Zoning Resolution
The use of the property is a legitimate non-conforming use, as discussed in the attached letter.

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.

Aaron Landolt
 Appellant

Sworn to and subscribed before me, this 14 day of July, 2022



ALYSSA RENNEKER
 Notary Public
 State of Ohio
 My Comm. Expires
 February 17, 2025

Alyssa Renneker
 Notary Public

Address of subject property 11922 N. Lebanon Rd., Loveland, OH 45140

Parcel No. 620-0070-0204-00

Lot Number _____

Identification	Name	Address	City	State	Zip Code	Phone No.
Owner	Aaron and Kristin Landolt	11922 N. Lebanon Rd.	Loveland	OH	45140	(513) 607-6654
Contractor						
Plans By						

Type of improvement: (Briefly describe proposed work)
N/A

- Commercial
- Residential
- Other

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- Appeal
- Conditional Use
- Non-Conforming Use (Legitimate)
- Compatible Non-Conforming Use
- Other _____

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

Existing The subject property is a legitimate, non-conforming use under Ohio law and the Symmes Township Zoning Resolution, as discussed in the attached letter.

Proposed N/A

Ownership

Cost

Private

Estimated cost of improvement for which this application is made:

Public (Federal, State, Local)

\$ N/A

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: Aaron and Kristin Landolt

Address: 11922 N. Lebanon Rd., Loveland, OH 45140

DO NOT WRITE BELOW THIS LINE (office use only)

Adopted: _____

Journalized: _____

BZA Filing Fee: \$ 805.35

Sophia R. Holley
D: 513.579.6592
sholley@kmklaw.com

July 15, 2022

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VIA HAND DELIVERY

Symmestownship Board of Zoning Appeals
c/o Ms. Kimberly Lapensee
Administrator
9323 Union Cemetery Road
Symmes Township, OH 45140
klapensee@symmestownship.org

Mr. Thomas Stahlheber
Zoning Plans Examiner
Hamilton County Planning + Development
138 East Court Street, Room 801
Cincinnati, OH 45202
tom.stahlheber@hamilton-co.org

Re: Appeal to BZA Regarding 11922 N. Lebanon Rd., Loveland, OH 45140

Dear Members of the Board:

This firm represents Aaron and Kristin Landolt (the "Owners") with regard to the determination made by the Symmes Township Office of the Zoning Inspector on June 27, 2022 (the "Decision"), memorialized in the attached Exhibit A, as applied to the property located at 11922 N. Lebanon Rd., Loveland, Ohio 45140 (the "Property"). Please allow this correspondence to support the Owners' Appeal (the "Appeal") under the Zoning Resolution (the "Resolution") of the June 27, 2022 Decision pursuant to Sec. 183 of the Resolution.

I. STATEMENT IN SUPPORT OF APPEAL

A. Statement of Facts

This Appeal challenges the determination of the Zoning Inspector that a conditional use permit is required for the use of "short-term rental" at the Property. The Owners purchased the Property in January 2021, and began using the Property as a rental property with Airbnb shortly thereafter. Documentation relating to this use is attached as Exhibit B. As the attached documentation reflects, the Property was offered by the Owners, for a fee, for a term of less than thirty (30) days at all relevant times since the time when the Owners purchased the Property.

Keating Muething & Klekamp PLL

Attorneys at Law

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

P: 513.579.6400 | F: 513.579.6457 | kmklaw.com

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Effective June 19, 2022, pursuant to Symmes Township Resolution G2022-52, the Township implemented changes to the Resolution to both define a short-term rental, and require that it become a conditional use in the Township. Under Sec. 31.3-192(A), a “short-term rental” is now defined as follows:

A dwelling unit or portion thereof, which is offered or provided to a guest by a short-term rental owner or operator for a fee for a term of less than thirty (30) days.

See Resolution at § 31.3-192(A). Prior to the implementation of Res. 62022-52 on June 19, 2022, the use of “short-term rental” was neither defined nor restricted in any way under the Resolution.

B. Justification for the Appeal

The Owners respectfully request that this Board reverse the decision of the Zoning Inspector, and find that the use of the Property is a legitimate, nonconforming use pursuant to Sec. 151 *et seq.* of the Resolution. The Resolution provides as follows:

The lawful use of any dwelling, building or structure and of any land or premises as existing and lawful at the time of enactment of this Resolution or amendment thereto, may be continued although such use does not conform with the provisions of this Resolution or Amendment.

(Resolution at § 151). Further, “[w]henver the use of any dwelling building or structure and of any land or premises becomes nonconforming through an Amendment of this Resolution or Maps, such use may be continued[.]” (*Id.* at § 152). This nonconforming use may be continued so long as it is not voluntarily discontinued for two (2) years or more, in which case “any future use thereof shall be in conformity with the provisions of [the] Resolution.” (*Id.* at § 153).

In this respect, the Resolution follows the law of the State of Ohio, which provides that a nonconforming use means a use that “was lawful prior to the enactment of a zoning ordinance and which use may be continued after the effective date of the ordinance even though it does not comply with the applicable use restrictions.” *City of Marietta v. Bd. of Trs. for Wash. Cty. Woman’s Home*, 2020-Ohio-5144, ¶ 65 (4th Dist.).

Furthermore, “[w]here a zoning resolution provides that an existing and nonconforming use may be continued but contains no provision as to a permit therefor, it is not necessary as a condition precedent to such continuance to secure from the zoning authorities such a permit.” *Verbillion v. Enon Sand & Gravel, LLC*, 2021-Ohio-3850, ¶ 121 (2d Dist.). “In other words, where a use exists at the time a zoning resolution or ordinance takes effect, which make such use nonconforming and does not provide for an application to continue such use, such use may be continued under the terms of the ordinance or resolution, and a permit to continue such nonconforming use is not required.” (*Id.*). Pursuant to Article XV of the Resolution, no permit is required to continue a lawful nonconforming use. (See Article XV, attached as **Exhibit C**).

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Here, there is no question that the Property was being used in the manner now defined as a "short-term rental" prior to the effective date of Symmes Township Resolution G2022-52. Since 2021, the Property has been rented as a dwelling unit and offered to guests by the Owners for a fee for a term of less than thirty (30) days. This is reflected in the documentation attached as Exhibit B, and testimony will be presented regarding this fact at the hearing of this matter. This use has been continuous, and has not been abandoned under Ohio law or the Resolution.

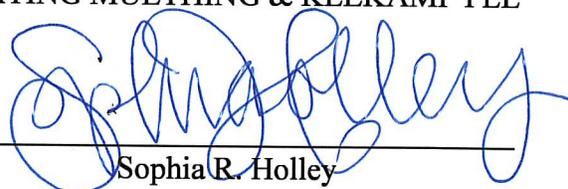
Further, there is no requirement under the Resolution that the Owners apply for a permit to continue their legitimate, nonconforming use. (See Resolution at Article XV). Accordingly, the Owners are permitted to continue using the Property, as of right, under both the Resolution and the law of the State of Ohio.

The Owners seek the intervention of this Board so that they may continue to lawfully use their Property. For the reasons stated above, Aaron and Kristin Landolt respectfully request that the Board of Zoning Appeals reverse the Decision of the Zoning Inspector. Thank you for your consideration of this matter and we look forward to presenting to you at your earliest convenience.

Sincerely,

KEATING MUETHING & KLEKAMP PLL

By: _____


Sophia R. Holley

cc: Mr. Jeffrey D. Forbes (via email - jdforbes@woodlamping.com)
Mr. Bryan D. Snyder (via email - bryan.snyder@hamilton-co.org)

SRH:mav

Attachments

11891797.1

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Exhibit A

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

TO: Aaron & Kristin Landolt DATE: 6-27-2022
Owner, Occupant, Contractor, or Other

LOCATION OF VIOLATION: 11922 N. Lebanon Rd
Loveland, OH 45140

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

Board of Zoning Appeals at Symmes Twp. now required a Conditional Use permit/zoning certificate to be approved for all short term rentals. Please apply: 513-946-4550

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 946-4473 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:

Aaron & Kristin Landolt Status of Violation as of: _____
11187 Marlette Dr.
Cinti OH 45249

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Exhibit B

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----- Forwarded message -----

From: **Airbnb** <automated@airbnb.com>

Date: Thu, Apr 1, 2021 at 4:26 PM

Subject: Congratulations! Your listing is published.

To: <aaronlandolt@gmail.com>



You're all set to welcome your first guest

Your listing, **3 BD Loveland Getaway Near Kings Island & Bike Trl**, is published. Guests will see your listing in search and **can instantly book available days** as long as they meet your requirements. You're now ready to help travelers from all over the world explore your neighborhood.

Since guests can book reservations instantly on Airbnb, make sure to keep your calendar regularly updated to avoid getting booked on dates you can't host.

[Update calendar](#)

April 2021



SUN

MON

TUE

WED

THU

FRI

SAT

28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24

Unavailable

Available

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Based on your settings

How much notice do you need before guests arrive?

Guests must book with 1 day's notice.

[Change advance notice](#)

How far in advance can guests book?

Guests can book up to 3 months in advance.

[Edit booking window](#)

How long can guests stay?

Guests can book trips that are at least 2 nights long.

[Change trip length](#)

What if I'm not ready to host yet?

If you want some time before you host your first guest, block off dates on your calendar until you're ready.

[Update calendar](#)

Don't recognize this?

Let us know—we'll help secure and review your account. Otherwise, no action is required.

Sent with ♥ from Airbnb

Airbnb, Inc., 888 Brannan St, San Francisco, CA 94103

[Earn travel credit](#)

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Opportunities Reviews Earnings Views Superhost Cleaning

3 BD Loveland Getaway Near Kings Island & Bike Trl



All 5★ 4★ 3★ 2★ 1★

Sarah

Jun 4 - Jun 7, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Great proximity to Kings Island and Cincinnati! Wonderful hosts! Beautiful deck and large backyard!

[Read review](#)

Angel

May 2 - Jun 2, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

My wife and I just spent a month at Aaron's and Kristy's place in Loveland-Ohio. They are both amazing hosts, at all times they made themselves available in case we needed something in the house. Their communications with us were superb, and their response time was top notch. If...

[Read review](#)

Niki

Apr 6 - Apr 10, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

5 star place all around. Convenient location to kings island, downtown Cincinnati, shopping, restaurants and hospitals. Very safe, nice area and close to liberty, mason, and Cincinnati. There is a huge deck and yard to enjoy and the place is immaculate. Hosts super easy to get in touch...

[Read review](#)

Compliments · Sparkling clean, Outstanding hospitality, Thoughtful touches, Quick responses, Amazing amenities, Stylish space, Local tips



1 ... 5 6 7

5★

Overall rating

27

Total reviews



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3 BD Loveland Getaway Near Kings Island & Bike Trl



All 5★ 4★ 3★ 2★ 1★

Karen

Jul 5 - Jul 30, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

We had a great month long stay at this house as a young family with a 2 year old and we really made use of the grill and outside deck to enjoy breakfast and dinners while we visited local relatives. The house is clean and has most of everything you need including most kitchen items an...

[Read review](#)

Courtney

Jul 2 - Jul 4, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Would recommend. Exceptionally clean with easy check in/out. Responsive host.

[Read review](#)

Chris

Jun 17 - Jun 19, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

10 minutes from Kings Island, Dave & Busters plus Full Throttle Go Kart Track. Downtown Loveland was a neat little town that is well kept offering several different dinner and ice cream options. I think they have kayak rental on the edge of town as well. The house was well kept and...

[Read review](#)

Jack

Jun 11 - Jun 13, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

It's a great place that gets the job done. A little further from downtown Cincinnati than we expected, but the drive was very manageable.

[Read review](#)



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3 BD Loveland Getaway Near Kings Island & Bike Trl



All 5★ 4★ 3★ 2★ 1★

Amber

Aug 27 - Aug 29, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

owners were amazing at communicating! House had everything we needed! would definitely stay again!

[Read review](#)

Mark

Aug 19 - Aug 22, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Place was great. Clean, quiet, fast wifi, and great communication. Aaron was very responsive and helpful.

[Read review](#)

Madison

Aug 9 - Aug 14, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Aaron did an amazing job at providing everything we could have needed. The house was also neat and clean! I couldn't find one thing wrong with this stay!

[Read review](#)

Daisy

Aug 5 - Aug 8, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

You won't regret staying at this place. It was an excellent experience.

[Read review](#)



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Opportunities Reviews Earnings Views Superhost Cleaning

3 BD Loveland Getaway Near Kings Island & Bike Trl



All 5★ 4★ 3★ 2★ 1★

Robert

Sep 23 - Sep 27, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

This was a great house! I recommend it highly. We had five people for a long weekend and it did not feel crowded. The living room was comfortable, the kitchen was nice, and the bedrooms were nice. The deck and the breezeway were very relaxing. Yes, we heard traffic but it...

[Read review](#)

Selina

Sep 17 - Sep 20, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

we loved our stay! the house was very clean and had everything we needed. Beds were comfortable and the house was decorated very nicely. would definitely stay there again. we even saw a deer hanging out in the backyard.

[Read review](#)

Harry

Sep 8 - Sep 14, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

A wonderful home away from home. It was everything we could have hoped for. Clean, quiet, and serene. Everything we needed was there. And we appreciated very much the host checking in with us to make sure we were getting on okay. Would definitely love to stay there again!

[Read review](#)

Jerrica

Sep 3 - Sep 5, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Great location wise if you are visiting King's Island

[Read review](#)



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3 BD Loveland Getaway Near Kings Island & Bike Trl



All 5★ 4★ 3★ 2★ 1★

Emily

Oct 29 - Oct 31, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

the beds are extremely comfortable!

[Read review](#)

Scott

Oct 18 - Oct 25, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Very clean, comfortable and great location. Host is very responsive with fantastic communication. Won't hesitate to book again.

[Read review](#)

Douglas

Oct 15 - Oct 17, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Very great listing! Check-in was smooth and the house was immaculate. Exactly what I was looking for this weekend. Two thumbs up!

[Read review](#)

Brandon

Sep 29 - Oct 9, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

We loved this house. Close to a lot of restaurants, grocery stores, shopping, and the highway to get around Cincinnati. It was clean and had everything we needed for a long stay - laundry, smart TV, kitchen with plates, utensils, etc, WiFi, grill, and much more. The host was...

[Read review](#)



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JUL 15 2022

Opportunities Reviews Earnings Views Superhost Cleaning

3 BD Loveland Getaway Near Kings Island & Bike Trl



All 5★ 4★ 3★ 2★ 1★

Megan

Dec 9 - Dec 18, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Cute ranch all updated and nice throughout. I would stay again

[Read review](#)

JoAnne

Nov 18 - Nov 21, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Aaron was a very good host, making sure we had all we needed. The house was very clean, organized, and nicely decorated. Great yard for kids and a pleasant location. We will use again when in Loveland.

[Read review](#)

Tyler

Nov 11 - Nov 14, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Loved it!

[Read review](#)

Bradley

Nov 4 - Nov 6, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

This was a pleasure to stay, very clean and comfortable.

[Read review](#)



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3 BD Loveland Getaway Near Kings Island & Bike Trl



All 5★ 4★ 3★ 2★ 1★

Smita

Jul 1 - Jul 3, 2022 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

Excellent host! Thanks

[Read review](#)

Shayna

Jun 24 - Jun 27, 2022 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

We had a wonderful weekend at Aaron's home. The home was very clean and had several amenities (soaps and lotions in the bathroom, extra blankets in the bedrooms, dishwashing detergent, etc). Aaron was very responsive and made sure we had everything we needed. The house...

[Read review](#)

Jake

Jan 1 - Jun 4, 2022 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

I really appreciate the hosts; they were very accommodating when our plans changed and pleasant to work with while during our stay. We were here for 5 months and it felt like a second home to us. The area is beautiful, with an abundance of parks and walking trails, and great food...

[Read review](#)

Donna

Dec 20 - Dec 27, 2021 · 3 BD Loveland Getaway Near Kings Island & Bike Trl



Overall rating

We loved this house! Close to family, very comfortable, and had everything we need. Highly recommended.

[Read review](#)



5 ★

Overall rating

27

Total reviews

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 English (US) \$ USD



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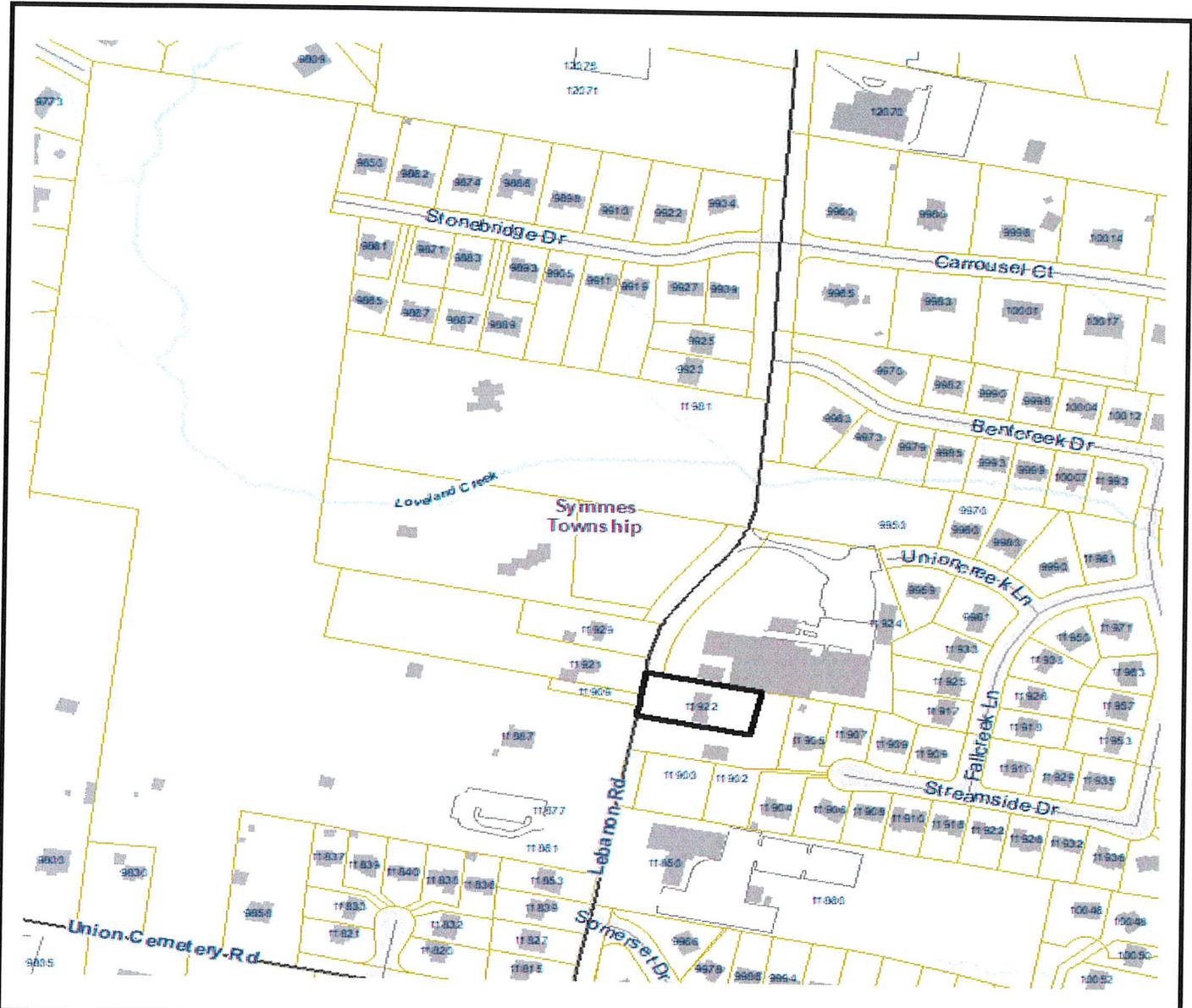
JUL 15 2022

Exhibit C

JUL 15 2022

**ARTICLE XV
NON-CONFORMING USES**

- Sec. 151 The lawful use of any dwelling, building or structure and of any land or premises as existing and lawful at the time of enactment of this Resolution or amendment thereto, may be continued although such use does not conform with the provisions of this Resolution or Amendment. If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or of a more restricted classification. Whenever a non-conforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.
- Sec. 152 Whenever the use of any dwelling building or structure and of any land or premises becomes non-conforming through an Amendment of this Resolution or Maps, such use may be continued and, if no structural alterations are made, it may be changed to another non-conforming use of the same or of a more restricted classification.
- Sec. 153 In the event that a non-conforming use of any dwelling, building or structure and of any land or premises is voluntarily discontinued for two (2) years or more, any future use thereof shall be in conformity with the provisions of this Resolution.
- Sec. 154 Except as hereinafter provided in Article XVIII, no existing building or premises devoted to a use not permitted by this Resolution in the District in which such building or premises is located, except when required to do so by law or order, shall be enlarged, extended, reconstructed, or structurally altered, unless the use thereof is changed to a use permitted in the District in which such building or premises is located.
- Sec. 155 When a building, the use of which does not conform to the provisions of this Resolution, is damaged by fire, explosion, Act of God, or the public enemy, to the extent of more than sixty percent (60%) of its reproduction value, it shall not be restored, unless the restoration of such use shall have been authorized by the Board in the manner provided in Article XVIII. (STT Res. Z9705 eff. Dec. 4, 1997)
- Sec. 156 Nothing in this Resolution shall be interpreted as authorization for or approval of the continuance of the use of any activity, land, building or premises in violation of zoning regulations in effect at the time such use was begun.



Vicinity Map

Case: ZASM2022-07; 11922 Lebanon Road
Request: Appeal

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: 07-19-2022