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JUL 15 2022

Appeal No. ZA5M 2022-08
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 10007 Bent Creek, LLC, c/o Yiwei Cheng Address 10007 Bentcreek Dr., Loveland, OH 45140

Owner 10007 Bent Creek, LLC, c/o Yiwei Cheng Address 10007 Bentcreek Dr., Loveland, OH 45140

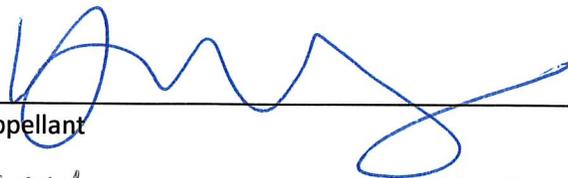
Lessee _____ Address _____

The undersigned 10007 Bent Creek, LLC, c/o Yiwei Cheng 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.

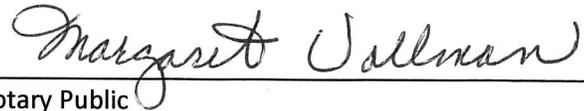
I hereby depose and say that all the above statements and the statements contained in all of the exhibits transmitted herewith are true.



Appellant

Sworn to and subscribed before me, this 15th day of July, 2022

MARGARET VOLLMAN
Notary Public, State of Ohio
My Commission Expires June 28, 2024



Notary Public

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

July 15, 2022

VIA HAND DELIVERY

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

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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 10007 Bentcreek Drive, Loveland, OH 45140

Dear Members of the Board:

This firm represents 10007 Bent Creek, LLC, c/o Yiwei Cheng (the "Owner") 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 10007 Bentcreek Drive, Loveland, OH 45140 (the "Property"). Please allow this correspondence to support the Owner's 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 Owner purchased the Property in January 2022, 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 Owner, for a fee, for a term of less than thirty (30) days at all relevant times since the time when the Owner 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 | kmlaw.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 Owner respectfully requests 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. Prior to the enactment of Symmes Township Resolution G2022-52, the Property has rented as a dwelling unit and offered to guests by the Owner 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.

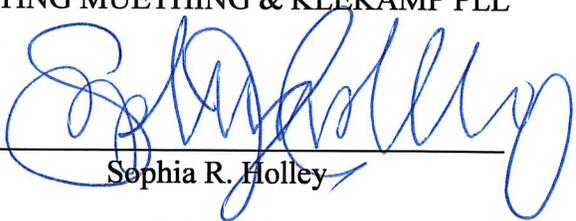
Further, there is no requirement under the Resolution that the Owner apply for a permit to continue its legitimate, nonconforming use. (*See Resolution at Article XV*). Accordingly, the Owner is permitted to continue using the Property, as of right, under both the Resolution and the law of the State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

The Owner seeks the intervention of this Board so that it may continue to lawfully use its Property. For the reasons stated above, 10007 Bent Creek, LLC, c/o Yiwei Cheng respectfully requests 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

11891417.2

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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: 10007 Bentvueek LLC / Property Owner DATE: 6-27-2022
Owner, Occupant, Contractor, or Other

LOCATION OF VIOLATION: 10007 Bentvueek Dr.
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:

The Board of Zoning Appeals must now approve a Conditional Use Permit for all short-term rentals. Please apply within 21 days.

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:

Lareta LLC
Corporation Service Company
5326 Riverside Dr. Ste 102
Upper Arlington OH 43221

Status of Violation as of: _____

LARETA LLC
901 Corporate Center Dr.
Pomona, CA 91788

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

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Exhibit B

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7/15/22, 11:31 AM

Reservations - Airbnb

Status	Guests	Contact	Check-in	Checkout	Booked	Listing	Confirmation Code	Total Payout
Past guest	Redacted	—	Feb 26, 2022	Mar 1, 2022	Feb 21, 2022	Serene 4B Home w/Outdoor Firepit & Close to Trails	HMD22A99WN	Redacted



Today

Inbox

Calendar

Insights

Menu ▾



Serene 4B Home w/Outdoor Firepit & Close to Trails activity

2/1/2022 - 2/3/2022

Users

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02 FEB 2022

Serene 4B Home w/Outdoor Firepit & Close to Trails 6:17 PM

Price updated

By Yiwei Cheng (via Guesty)

Serene 4B Home w/Outdoor Firepit & Close to Trails 6:17 PM

Cancellation policy updated

By Yiwei Cheng (via Guesty)

Serene 4B Home w/Outdoor Firepit & Close to Trails 6:17 PM

4 amenities were updated

By Yiwei Cheng (via Guesty)

Serene 4B Home w/Outdoor Firepit & Close to Trails 6:17 PM

Check-in time updated

By Yiwei Cheng (via Guesty)

Serene 4B Home w/Outdoor Firepit & Close to Trails 6:17 PM

Check-out time updated

By Yiwei Cheng (via Guesty)

Serene 4B Home w/Outdoor Firepit & Close to Trails 6:17 PM

End of check-in time updated

By Yiwei Cheng (via Guesty)

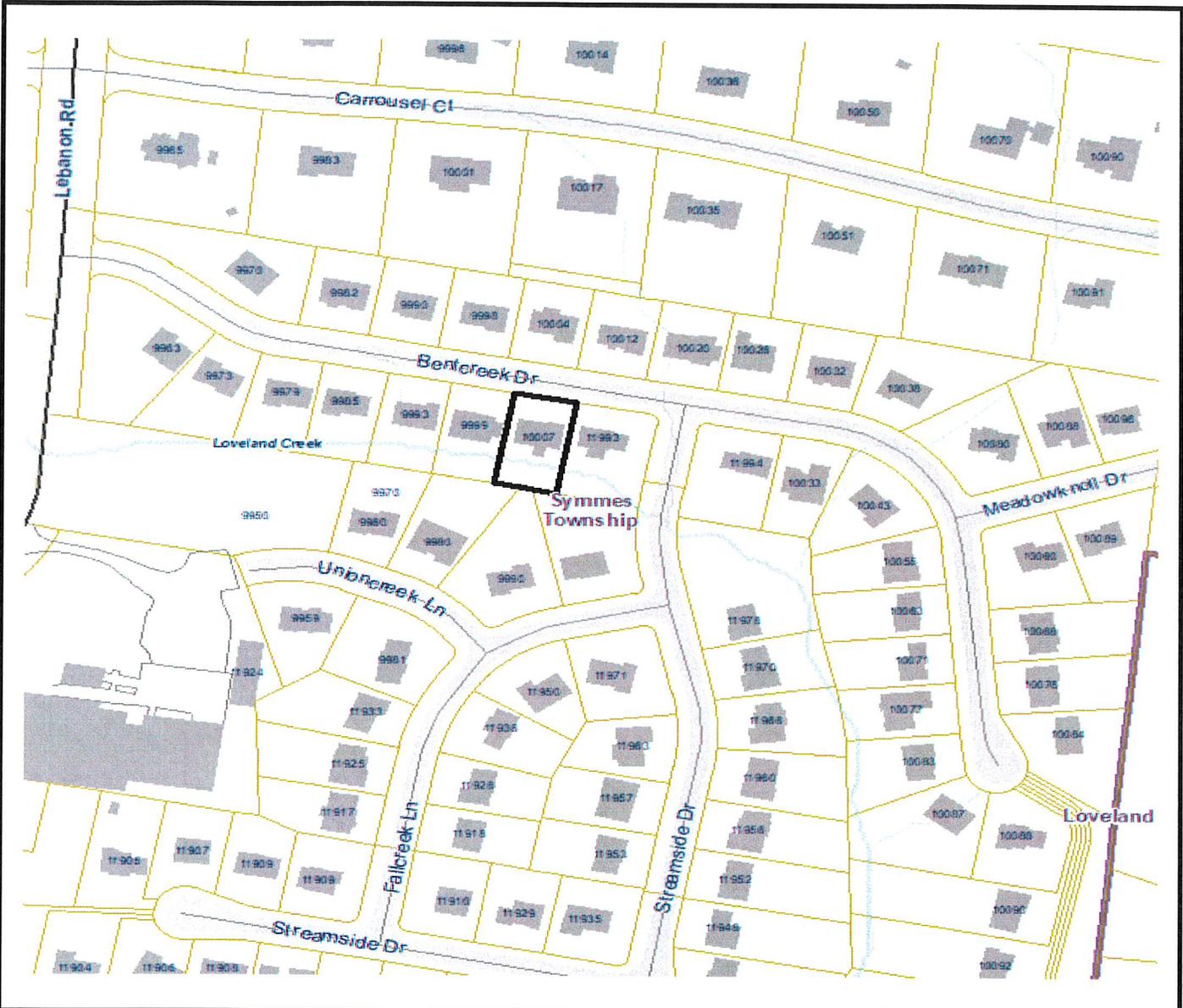
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Exhibit C

**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: ZASM2022-08; 10007 Bentcreek Drive
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