

RESOLUTION
MODIFYING
APPEAL NO. 2022-01

WHEREAS, Yiwei Cheng and Jarrod Tucker, 542 Slack Street, Cincinnati, OH 45202, appellants, filed Appeal No. 2022-01 under Section 184.1 of the Zoning Resolution, requesting an interpretation from the Township Zoning Inspector that short term rental properties shall be categorized as part of the Bed and Breakfast category for the purposes of regulating such uses within Symmes Township, Hamilton County, Ohio; and

WHEREAS, a public hearing was held on said appeal on February 7, 2022, notice of such hearing was given by first class mail to parties in interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the date of said hearing in accordance with Section 303.15 of the Ohio Revised Code; and

WHEREAS, Section 41 et seq. of the Zoning Resolution and the Symmes Township District Maps designate said premises to be in the "B" Residence district; and

WHEREAS, Section 31.3-14 defines a Bed and Breakfast as a private owner-occupied residence with one to three guest rooms contained within that structure 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; and

WHEREAS, Section 31.3-100 defines a Hotel or Motel as 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; and

WHEREAS, Section 31.3-72 defines a Family as 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; and

WHEREAS, Section 31.3-173 defines a Residential Use as 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 and breakfast facilities, granny cottages, Residential Facilities, and day care/Type A;

WHEREAS, Section 31.3-63 defines a dwelling as a dwelling designed for and occupied by not more than one family as that term is defined in Article III and surrounded by open space or yards and which has no roof, wall or floor in common with any other dwelling unit; and

WHEREAS, according to testimony provided at the public hearing, the Township Assistant Zoning Inspector received a complaint in early fall of 2021 about a property being used as an Airbnb or Bed and Breakfast at 10112 Meadowknoll Drive. Confirmation of the short-term rental was verified on the Airbnb and Vrbo websites. Following consultation with staff, including the Township Zoning Inspector, it was determined that such short-term rentals are a use that is not specifically defined, permitted, or prohibited in the Symmes Township Zoning Resolution but is most similar to the use category of Bed and Breakfast. Bed and Breakfast uses are permitted in single-family zoning districts only after approval of a Conditional Use by the Symmes Township Board of Zoning Appeals; and

WHEREAS, according to further testimony provided at the public hearing, on October 4, 2021 the Township Assistant Zoning Inspector issued a Notice of Violation directing the property owners to obtain a Conditional Use. However, the attorney representing the property owners sent a letter on October 26, 2021 disputing the interpretation of the short-term rental as a Bed and Breakfast and demanded that the violation be rescinded; and

WHEREAS, according to further testimony provided at the public hearing, upon receipt of the letter the Township Zoning Inspector prepared an official written interpretation to the attorney on November 5, 2021 stating that short-term vacation rental properties, such as homes and dwellings that are listed on Airbnb, Vrbo, etc. for rent on a short-term basis fit best in the Bed and Breakfast use

category which is supported by the definitions of Family, Residential Use, and Residential, Single Family Detached; and

WHEREAS, according to further testimony provided at the public hearing, said attorneys, on November 12, 2022, acting upon the Township Zoning Inspector's interpretation appealed the Notice of Violation and the official written interpretation letter on the basis that the use is not a Bed and Breakfast because of the following:

- a) the owners do not reside within the property;
- b) individual rooms at the property are not rented or leased to guests, but rather, the entire property is rented or leased;
- c) the kitchen facilities at the property may freely be utilized by the guests.

WHEREAS, according to further testimony offered at the public hearing, the subject property is available for rental overnight, for the weekend or can be rented for several months if needed and;

WHEREAS, according to further testimony offered at the public hearing, the property is sometimes rented to multiple families at one time which affects the peace and safety of the neighborhood; and

WHEREAS, according to further testimony offered at the public hearing, during deliberations the Symmes Township Board of Zoning Appeals thought the Hotel or Motel use category was a better fit due to the fact that multiple families are allowed to stay at the home at one time and it can be rented to different individuals multiple times within a thirty (30) day period similar to a hotel or motel; and

WHEREAS, Section 184.1, empowers this Board to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an Administrative Official in the enforcement of this Resolution; and

WHEREAS, Section 185 provides, in exercising the above-mentioned powers, the Board may reverse or affirm, wholly, or partly, or may modify the order requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all powers of the Officer from whom the appeal is taken; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of all testimony heard and all the evidence taken as a whole, and after significant deliberation, the Symmes Township Board of Zoning Appeals does hereby modify the interpretation of the Township Zoning Inspector that short-term rentals should fall under the category of Hotel or Motel in accordance with the authority granted in Section 184.1; and

BE IT FURTHER RESOLVED that all notices and letters and other data submitted be and are hereby made a part of this Resolution.

ADOPTED at a regularly scheduled meeting of the Symmes Township Board of Zoning Appeals in session this 7th day of February 2022.

Mr. Deutch – 'aye', Mr. Fowler – 'aye', Ms. Harlow – 'aye', Mr. Jamison - 'aye' and Mr. Trick – 'aye'.

APPROVED: FEBRUARY 7, 2022

Luanne Felter
Township Zoning Secretary

Byron Fowler, Chairperson