

RESOLUTION
AFFIRMING
APPEAL NO. 2022-07

WHEREAS, Sophia R. Holley, Keating Meuthing & Klekamp, PLL, One East Fourth Street, Suite 1400, Cincinnati, OH 45202 (attorney) on behalf of Aaron and Kristen Landolt, 11187 Marlette Drive, Cincinnati, OH 45249, appellants and owners, filed Appeal No. 2022-07 under Section 184.1 of the Zoning Resolution, challenging the determination of the Zoning Inspector that a Conditional Use permit is required for the use of a short-term rental at the property located at 11922 Lebanon Road in Symmes Township, Hamilton County, Ohio; and

WHEREAS, a public hearing was held on said appeal on October 3, 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 31.3-42 of the Zoning Resolution states, in part, that a use permitted within a district other than a principally permitted use requires an application for a Conditional Use certificate and approval by the Board of Zoning Appeals; and

WHEREAS, according to testimony provided at the public hearing, the Township Assistant Zoning Inspector received a complaint from a resident that the subject property was being rented as a short-term rental and was able to verify the listing on the Airbnb and Vrbo websites. Since the owner of the property had not contacted zoning staff and had not applied for nor received approval of a Conditional Use that is required in the Zoning Resolution, the designated Township Assistant Zoning Inspector issued a Notice of Violation on June 27, 2022 and advised them that they had 20 days from receipt of the notice to address the issue or appeal the determination. On July 15, 2022, staff received an application for an appeal challenging the determination of the Zoning Inspector that a Conditional Use permit is required for the use of a short-term rental. The hearing with the Board of Zoning Appeals was scheduled for October 3, 2022; and

WHEREAS, according to further testimony provided at the public hearing, the attorney claims that the short-term rental located at 11922 Lebanon Road is a legal nonconforming use because it existed prior to the adoption of the text amendments approved by the Symmes Township Board of Trustees which became effective on June 19, 2022. The amendments define short-term rentals as "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." These amendments also added short-term rental uses to the list of Conditional Uses found in Table 35-1 of the Zoning Resolution as conditional in the "AA-C", "D", and "H" zoning districts and added specific criteria for Conditional Use consideration to Section 386 of the Zoning Resolution. Several exhibits were provided by the attorney supporting the claim. These exhibits included reviews from the Airbnb website from April 2021 through July 2022 and apparent verification from Airbnb that the property was published on the website and ready for booking dated April 1, 2021. Additionally, a copy of Article XV – Non-Conforming Uses of the Symmes Township Zoning Resolution was included as an exhibit; and

WHEREAS, according to further testimony provided at the public hearing and upon review of the submitted material, it is the determination of the Township that the short-term rental use of the subject property does not meet the definition of nonconforming use. The definition of nonconforming use included in Section 31.3-146 of the Zoning Resolution states that a nonconforming use is "any use lawfully being made of any land, building, or structure on the effective date of these regulations or any amendment thereto rendering such use nonconforming, which does not comply with all of the regulations of this Resolution or amendment thereto." In this case, the short-term rental use of the subject property was not lawfully being made at the time the amendment became effective since staff had interpreted

such uses as requiring Conditional Use approval in November 2021. Since the appellant did not seek nor gain Conditional Use approval for the property prior to the June 19, 2022 effective date of the zoning text amendments, the property was never lawfully used as a short-term rental and therefore, the nonconforming use provisions of Article XV do not apply to the continued use of the property as a short-term rental without Conditional Use approval; 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 affirm the determination of the Township Zoning Inspector that a Conditional Use permit is required for the use of a short-term rental 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 3rd day of October 2022.

Mr. Fowler – ‘nay’, Ms. Harlow – ‘aye’, Mr. Horvath - ‘aye’, Mr. Trick – ‘aye’ and Mr. Wolfe – ‘aye’.

APPROVED: OCTOBER 3, 2022



Luanne Felter
Township Zoning Secretary



Ralph Wolfe, Chairperson