

RESOLUTION
AFFIRMING
APPEAL NO. 2022-06

WHEREAS, Sophia R. Holley, Keating Meuthing & Klekamp, PLL, One East Fourth Street, Suite 1400, Cincinnati, OH 45202 (attorney) on behalf of Yiwei Cheng and Jarrod Tucker, 542 Slack Street, Cincinnati, OH 45202, appellants and owners, filed Appeal No. 2022-06 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 10112 Meadowknoll Drive 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, 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 rented as a short-term rental and was able to verify the listing on the Airbnb and Vrbo websites. Following consultation with staff, including the official Township Zoning Inspector, it was determined that such short-term rental uses were a use that was not specifically defined in the Zoning Resolution but were 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. Since the owner of the property had not contacted Zoning staff and had not applied for nor received approval of a Conditional Use the Township Assistant Zoning Inspector issued a Notice of Violation to the property owners on October 4, 2021. 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2021 disputing the interpretation of the short-term rental as a Bed and Breakfast and demanded that the violation be rescinded. The Township Zoning Inspector prepared an official written interpretation to the attorney on November 5, 2021 stating that short-term rental uses, 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, on November 16, 2021 staff received an application for an appeal of the October 4, 2021 Notice of Violation and the November 5, 2021 interpretation letter. The Symmes Township Board of Zoning Appeals held a public hearing to consider the appeal case at their February 7, 2022 regular meeting. At the hearing, the Board voted to modify the interpretation of staff and place short-term rental uses in the category of Hotel/Motel for the purposes of zoning regulation. This decision was appealed to the Court of Common Pleas and is currently pending. Also in 2022, the Symmes Township Trustees initiated a series of text amendments to the Symmes Township Zoning Resolution. These proposed amendments included, among other things, provisions for defining and regulating short-term rental uses within the Township. The full set of text amendments, including the short-term rental regulations, were approved by the Symmes Township Trustees on May 19, 2022 and became effective on June 19, 2022. The amendments defined 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." The 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.

WHEREAS, according to further testimony provided at the public hearing, following the effective date of the text amendments, an additional inspection was performed by the designated Township Assistant Zoning Inspector to verify continued use of the property as a short-term rental and a Notice of Violation was sent to the appellants on June 27, 2022 advising that an inspection revealed use of the property as a short-term rental without the proper zoning permits. The notice again advised the appellants that a Conditional Use approval by the Board of Zoning Appeals was required for such uses and that the appellant needed to seek such approval or appeal the decision relative to the notice to the Board of Zoning Appeals within 20 days. The attorney for the appellant filed an appeal challenging the determination of the Zoning Inspector that a Conditional Use permit is required for the use of a short-term rental for the subject property and the hearing was scheduled for October 3, 2022. Since submittal of this appeal, the Township Zoning Inspector has rescinded the original Notice of

Violation from October 4, 2021 and the Board of Zoning Appeals vacated their ruling on the original case from February 7, 2022; and

WHEREAS, according to further testimony provided at the public hearing, the attorney claims that the short-term rental use of the property existed prior to the adoption of the amendments defining short-term rental and requiring Conditional Use approval for such uses and, therefore, should be considered a legal nonconforming use and provided several exhibits supporting the claim. These include reviews from the Airbnb website from October and November 2021 and apparent modifications made by the property owner to the listing on Airbnb from October 2020. Additionally, a copy of Article XV – Non-Conforming Uses of the Symmes Township Zoning Resolution was included as an exhibit. Although the authenticity of the reviews and modifications exhibits cannot be verified based on the lack of specific reference to the subject property, staff can verify that the property was being offered as a short-term rental prior to June 19, 2022 based on the inspections from October 2021 and the previous BZA history on this site; and

WHEREAS, according to further testimony provided at the public hearing, upon review of the submitted material it is the determination of the Township that the short-term rental use of the 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

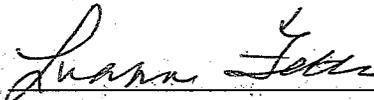
NOW, THEREFORE BE IT RESOLVED that upon consideration of all testimony heard and all the evidence taken as a whole, and after significant deliberation, the Symmes Township Board of Zoning Appeals does hereby affirm the determination of the Township Zoning Inspector that a Conditional Use permit is required 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