

**IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO**

MICHAEL E. CHEEK

Plaintiff - Appellant

-vs-

CITY OF CANTON BOARD OF
ZONING APPEALS

Defendant - Appellee

Case No. 2026CA00070

Opinion And Judgment Entry

Appeal from the Court of Common Pleas,
Case No. 2024CV02374

Judgment: Affirmed

Date of Judgment Entry: October 26, 2026

BEFORE: Andrew J. King; Robert G. Montgomery; Kevin W. Popham, Judges

APPEARANCES: SUSAN J. LAX, for Plaintiff-Appellant; JASON P. REESE, CARRIE D'ANDREA, for Defendant-Appellee.

King, P.J.

{¶ 1} Plaintiff-Appellant, Michael E. Cheek, appeals the March 6, 2026 judgment entry of the Stark County Common Pleas Court affirming the decision of Defendant-Appellee, City of Canton Board of Zoning Appeals ("CBZA"). We affirm the trial court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} In 2022, Cheek purchased a house in the City of Canton in the Montabella Estates housing development. The development contains approximately 140 single-family homes, and is zoned R-1b, Single-Family Residential District.

{¶ 3} At some time, Cheek listed his property for rent on Airbnb. Airbnb is an online marketplace connecting travelers with local property owners offering short-term rentals or

limited lodging. Airbnbs are permitted as a conditional use in R-4, Multi-Family Residential District, but are not permitted in areas zoned R-1b.

{¶ 4} In a letter dated August 27, 2024, A.K. Fullmer, the Zoning Inspector for the City of Canton Department of Planning and Zoning, issued a citation to Cheek, alleging he was in violation of Ch. 1138 of the Codified Ordinances of the City of Canton, Permitted Uses – Residential Zoning Districts. Specifically, Cheek was cited for operating a "Limited Lodging" in a residential district in violation of the city ordinances.

{¶ 5} Cheek appealed the citation to the CBZA. A hearing was held on October 15, 2024. Cheek testified he lives in the house and sometimes rents it out. By final entry dated October 17, 2024, the CBZA denied the appeal.

{¶ 6} On December 11, 2024, Cheek filed an appeal of the administrative decision with the Stark County Common Pleas Court. By judgment entry filed March 6, 2026, the trial court affirmed the decision of the CBZA.

{¶ 7} Cheek filed an appeal with the following assignments of error:

I

{¶ 8} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN AFFIRMING THE DECISION OF THE CANTON BOARD OF ZONING APPEALS BECAUSE THE BOARD'S DECISION WAS BASED UPON SPECULATION, GENERALIZED COMMUNITY OPPOSITION, AND HYPOTHETICAL CONCERNS RATHER THAN RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE AS REQUIRED BY R.C. 2506.04."

II

{¶ 9} "THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT AFFIRMED THE DECISION OF THE CANTON BOARD OF ZONING APPEALS, WHICH FAILED TO GIVE EFFECT TO THE PLAIN AND UNAMBIGUOUS LANGUAGE THE CITY OF CANTON'S CODIFIED ORDINANCE 1131.01, EXPRESSLY AUTHORIZING OCCUPANCY OF A DWELLING UNIT BY THE FAMILY AND "ANY AUTHORIZED PERSONS OCCUPYING SUCH DWELLING UNIT WITH THE FAMILY."

STANDARDS OF REVIEW

{¶ 10} R.C. 2506.01 provides for appeals from administrative decisions to the court of common pleas. R.C. 2506.04 sets forth the applicable standards of review for the court of common pleas and the appellate court:

[T]he court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure, and, to the extent not in conflict with those rules, Chapter 2506 of the Revised Code.

{¶ 11} In construing the language of R.C. 2506.04, the Supreme Court of Ohio stated:

The common pleas court considers the "whole record," including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.

The standard of review to be applied by the court of appeals in an R.C. 2506.04 appeal is "*more limited* in scope." (Emphasis added.) "This statute grants a more limited power to the court of appeals to review the judgment of the common pleas court only on 'questions of law,' which does not include the same extensive power to weigh 'the preponderance of substantial, reliable and probative evidence,' as is granted to the common pleas court." "It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. * * * The fact that the court of appeals, or this court, might have arrived at a different conclusion than the administrative agency is immaterial. Appellate courts must not substitute their judgment for those of an administrative agency or a trial court absent the approved criteria for doing so."

(Citations omitted.) *Henley v. Youngstown Board of Zoning Appeals*, 90 Ohio St.3d 142, 147 (2000).

{¶ 12} As for any constitutional arguments, Cheek "bears the burden of proof and must prove unconstitutionality beyond fair debate." *Goldberg Cos. v. Council of Richmond Heights*, 81 Ohio St.3d 207, 209 (1998). "A zoning regulation is presumed to be constitutional unless determined by a court to be clearly arbitrary and unreasonable and without substantial relation to the public health, safety, morals, or general welfare of the community." *Id.* at syllabus.

{¶ 13} We will review the assignments of error under these standards.

I, II

{¶ 14} In his two assignments of error, Cheek claims the trial court erred in affirming the decision of the CBZA. We disagree.

{¶ 15} Cheek argues: 1) the trial court's decision was not based on reliable, probative, and substantial evidence; and 2) the trial court erred in affirming the CBZA's decision which failed to give effect to the plain and unambiguous language of Canton Codified Ordinance 1131.01 expressly authorizing occupancy of a "dwelling unit" by the family and "any authorized persons occupying such dwelling unit with the family."

{¶ 16} The City of Canton established residential districts "to provide for residential neighborhoods that are in harmony with the natural features of the land, economic conditions, and the needs of Canton residents, both present and future." Canton Cod.Ord. 1136.01. Cheek's neighborhood is zoned R-1b - Single-Family Residential District. "The purpose of the R-1b District is to encourage the establishment of single-family residential uses at approximately three (3) houses/acre." *Id.* "Limited lodging" is not a permitted use in an R-1b residential zoning district. Canton Cod.Ord. 1138.01.

{¶ 17} Canton Cod.Ord. 1131.01 provides definitions and states in pertinent part:

{¶ 18} "Family" is defined as "one (1) or more persons functioning as members of a cohesive household, occupying a dwelling unit and living as a single housekeeping unit. This is to be distinguished from persons in a boarding house, fraternity house, sorority house, short-term rental, lodging house, motel, hotel, rooming house, or home for juvenile or released offenders."

{¶ 19} "Limited Lodging" is described as "the conditional or permitted use of all or part of a dwelling unit, as defined by dwelling, multi-family, by rental or temporary occupancy for dwelling, sleeping, or lodging." It includes "the arrangement of such rental by the owner through a booking agent in connection with an 'AirBnB' or similar internet site, any other type of advertising or notification, a bed and breakfast, or similar agreement."

{¶ 20} "Dwelling unit" is defined as "a group of rooms arranged, maintained or designed to be occupied by a single-family (see definition of family), and consists of a complete bathroom, complete kitchen or kitchenette; and facilities for living, sleeping and eating. All of the facilities are to be located in contiguous rooms and used exclusively by such family and by any authorized persons occupying such dwelling unit with the family."

{¶ 21} Cheek argues his residence falls under the definition of a dwelling unit and not a limited lodging as found by the CBZA and affirmed by the trial court.

{¶ 22} During the CBZA hearing, the CBZA entertained testimony from several individuals. Cheek testified the cited property was both a residential property and an Airbnb. October 15, 2024 T. at 66. When told the property could not be both, he explained, "I stay there, and if somebody rent[s] it out I move out." *Id.* When Cheek was asked if the property was an Airbnb then, he replied, "[r]ight." *Id.* Cheek's counsel spoke up and stated she did

not agree with her client because the property is a residential property that he uses. *Id.*
Counsel explained:

That he uses to selectively rent it out to folks, but it is a residential property that he stays at. And these people, just so we're clear, that he has there, you know, are authorized by him to stay there, you know, but he is the one who exclusively uses the property and allows these authorized people to come.

* * *

He's not renting the whole place out. He's allowing them for a price to come and enjoy the property with him. That's how it works. It's slightly different.

* * *

It's a different animal. That's the whole thing. It's a hybrid. It's different.

* * *

Exclusively by such family, any such family, and any authorized persons occupied such dwelling unit with the family. So they're not there without him.

Id. at 66-68.

{¶ 23} Justin Dominick, President of the Montabella Estates Homeowners Association, spoke during the hearing and opposed the Airbnb, explaining a resounding majority of the neighborhood residents expressed disapproval and concern over the issue:

Firstly, you know, as I stated, Montabella Estates only consists of single-family homes. When the city updated its city zoning laws, it states that buildings zoned for R4 – multifamily properties, could be utilized for short-term Internet rentals. When you look at Montabella Estates, there are no multifamily structures there, there are no apartment buildings, there are no condos, there are no town homes. So a property being conditionally zoned for multifamily use would be completely out of place in our community. It does not fit with the theme and the style of the community that we have all worked very hard to improve and maintain with the ward and the residents as well.

Secondly, we do not want to set a precedent that short-term rentals should be located in family-oriented communities. We believe that allowing even one exception, that will open the door to future rentals in our development and community. These types of rentals are more well-suited for areas designated for commercial or entertainment usages, but not the quiet neighborhood of exclusive single-family homes. We don't want to quote, unquote, hotelization our development, Montabella Estates. The proximity to any commercial entertainment locations, the benefits we believe do not outweigh the risk for the homeowners who live there.

Id. at 75-76.

{¶ 24} Lastly, Dominick argued a rotation of temporary visitors would be unaware of the homeowners association bylaws, declarations, and covenants and could "not maintain the standards and upkeep that we ask our residents and families to do." *Id.* at 77-78.

{¶ 25} Richard Sacco, Canton City Councilman for Ward 8 that governs the neighborhood, opposed Airbnb use in the neighborhood, explaining as a councilman, "we zoned this R-1 for the purpose of single-family homes. The purpose not being to allow an end run around it, because he lives there, but still uses it for Airbnb. That's not what we set the zoning for. The zoning was single-family homes, residential. That's it. The purpose of this is to maintain the community. Maintain these homes." *Id.* at 82.

{¶ 26} Connor Teter, a resident of the neighborhood, read the listing of the Airbnb into the record. *Id.* at 83. The listing described the home's amenities and all the bedrooms and indicated: "Guest access: The entire home is available for use." *Id.* at 84.

{¶ 27} Nicole Teter, another resident of the neighborhood, explained she bought into Montabella Estates for a "strong family-oriented community that provided safety and high community standards" and permitting "Internet rental * * * could pose risk to this community, as well as create allowances for this to be the norm in other Canton City neighborhoods. The use of a family home as an Internet rental also allows for continual turnover with temporary residents that are not familiar with the standards of Montabella Estates." *Id.* at 90-91.

{¶ 28} Cheek testified "no bum can get this place" because anyone who stays at his home has "to go through the process on Airbnb, and they charge money." *Id.* at 92.

{¶ 29} Cheek now argues "the Board's decision was not supported by a preponderance of reliable, probative, and substantial evidence" but instead "was based upon speculation, generalized neighborhood opposition, a disregard for the defining and hypothetical concerns

regarding short-term rentals rather than competent evidence." Appellant's Brief at 4. The record does not support this assertion.

{¶ 30} The CBZA heard how Montabella Estates is zoned R-1b - Single-Family Residential District to encourage the establishment of single-family residential uses and was well aware of the zoning ordinances they are charged with enforcing. Cheek's counsel argued in favor of adopting the definition of a "dwelling unit" which is to be occupied by a single-family to be "used exclusively by such family *and* by any authorized persons occupying such dwelling unit with the family." (Emphasis added.) Canton Cod.Ord. 1131.01. The definition specifically mentions "see definition of family." The definition of "family" distinguishes "one (1) or more persons functioning as members of a cohesive household" from persons in a "short-term rental." *Id.*

{¶ 31} Cheek admitted to the CBZA that he uses his residence as an Airbnb; he advertises it on the internet site and the listing indicates that the guests have access to the entire home. The advertisement belies the claim that Cheek stays in the home and the paid guests are "not there without him." T. at 68.

{¶ 32} Cheek's residence may fall into the broad definition of "dwelling unit" as he argues, but it also falls under the more specific definition of "limited lodging" which is the rental of a residence by the owner through a booking agent in connection with an Airbnb or similar internet site. A limited lodging use is not a permitted use in an R-1b single-family residential district. Canton Cod.Ord. 1138.01.

{¶ 33} As for Cheek's constitutional arguments, he argues the evidence presented to the CBZA did not establish a detrimental substantial effect on the public health, safety, and/or welfare of any of the residents of Montabella Estates. Appellant's Brief at 8. He argues the

CBZA's denial "reflects an impermissible reliance upon generalized community opposition and hypothetical future misconduct." *Id.* at 11.

{¶ 34} The trial court conducted a thorough analysis on the issue of constitutionality. The trial court discussed the testimony presented at the hearing and the reason for establishing zoning districts and concluded: "In the instant case, Canton sufficiently demonstrated the zoning ordinance in question was based on established community standards, objectives, and goals, and was rationally related to the public health, safety and welfare. * * * Disallowing limited lodging rentals in a single-family residential district bears a substantial relation to the public health, safety, morals, or general welfare of the community." Judgment Entry filed March 6, 2026 at 11-12. Cheeks's argument that the trial court erroneously considered the economic viability of the property in light of *Goldberg* is misplaced because he himself raised that argument to the trial court; the trial court merely addressed his arguments. *See* Appellant's Brief to the Trial Court filed April 22, 2025 at 7.

{¶ 35} The trial court reviewed the CBZA record and upheld the denial of Cheek's appeal of the citation, finding the decision was "neither unconstitutional, illegal, arbitrary, capricious, nor unreasonable, and the decision is supported by the preponderance of substantial, reliable, and probative evidence in the whole record." Judgment Entry filed March 6, 2026 at 13.

{¶ 36} Upon review, without weighing the evidence, we find the trial court's decision affirming the CBZA's decision was based on a preponderance of substantial, reliable, and probative evidence on the whole record and we do not find an error of law.

{¶ 37} For the reasons stated in our accompanying Opinion, the judgment of the Stark County Common Pleas Court is AFFIRMED.

{¶ 38} Costs to Appellant.

By: King, P.J.

Montgomery, J. and

Popham, J. concur.