IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

THE COUNTY COUNCIL FOR DORCHESTER COUNTY	*	
	*	
Plaintiff		
	*	Case No. C-09-CV-22-000148
v.		
	*	
TRIQUETRA VENTURES, LLC		
	*	
Defendants		

* * * * * * * * * * * * *

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Defendant Triquetra Ventures, LLC ("Triquetra"), by and through its undersigned attorneys, hereby files this Memorandum in Support of its Motion to Dismiss or for Summary Judgment and in support hereof states as follows:

Introduction

This case is a Declaratory Judgment action initiated by the County Council for Dorchester County (the "County") against Triquetra Ventures, LLC ("Triquetra"). Triquetra is the owner of real property located at 608 Hills Point Road, Cambridge, Maryland 21613 (the "Property"), which Triquetra uses as a short-term rental. The Property is located in the Resource Conservation zoning District ("RC District"). The County contends that the short-term rental of Triquetra's single-family dwelling constitutes a commercial use, not a residential use, and therefore is prohibited by the Dorchester County Zoning Code. The County seeks a declaration from this Court that "the Dorchester County Code prohibits short-term rentals of single-family residences in the RC District."

Triquetra contends that the Complaint should be dismissed or that it is entitled to judgment as a matter of law for the following reasons: (A) the use of the Property as a short-term-rental constitutes a residential use not a commercial use as a matter of law; (B) the Complaint fails to state a claim upon which relief may be granted because the available administrative remedies have not been exhausted; and (C) the County has failed to join necessary parties, and therefore dismissal is appropriate pursuant to Maryland Rule 2-211.

Facts alleged in Complaint

The County alleges that the Dorchester County Zoning Code (the "Zoning Code") authorizes the use of property in the RC District as single-family homes and that "[c]ommercial uses are not permitted in the RC District." Compl. at ¶¶ 5-6. The County further alleges that Triquetra advertises its single-family residence on VRBO and that the residence "has been booked for short-term rental for most weeks during the summer of 2022." Compl. at ¶ 8. The County further alleges that it "has informed the Defendant that the use of the residence for short-term rentals is not permitted by the County Zoning Code in the RC District." Compl. at ¶ 11. The County seeks a declaration that the "Dorchester County Zoning Code prohibits short-term rentals of single-family residences in the RC District" and seeks to enjoin Triquetra from offering its single-family dwelling as a short-term rental.

Strict Construction of Zoning Ordinances

Zoning ordinances "are in derogation of the common law and should be strictly construed." *Gino's of Maryland, Inc. v. Mayor of Baltimore*, 250 Md. 621, 642 (1968). They "are in derogation of the common law right to so use private property as to realize its highest utility, and while they should be liberally construed to accomplish their plain purpose and intent, they should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in

their language." *Landay v. Board of Zoning Appeals*, 173 Md. 460, 466 (1838). When construing a zoning ordinance, a court may not "supply omissions or remedy possible defects in the statute" or "read into a statute a meaning that is not expressly stated or clearly implied" or "embellish a statutory provision so as to enlarge its meaning." *Abington Ctr. Assocs., Ltd. Pshp. v. Baltimore County*, 115 Md. App. 580, 603 (1997).

Argument

The Dorchester County Zoning Code (the "Zoning Code") defines the term "Dwelling – Single-Family Detached" as "[a] detached residential building designed for and occupied by only one family." Zoning Code § 155-13. The term "family" is defined as "[a]n individual or two or more persons related by blood or marriage or group of not more than eight persons not related by blood or marriage living together as a single housekeeping group in a dwelling unit." Zoning Code § 155-13. The term "single housekeeping group" is not defined in the Zoning Code. Likewise, the Zoning Code does not regulate the duration of rentals on residentially-zoned property located within the County or define the term "short-term rental."

The table of uses in the Zoning Code authorizes the use of RC-zoned property for single-family dwellings. Zoning Code Table of Uses at 1:12. The table of uses in the Zoning Code prohibits any property located in the RC, RR-C, RR, RR-RCA, AC, AC-RCA, SR, SR-RCA, V, and B-1 zoning districts to be used as a hotel. Zoning Code Table of Uses at 1:3. Only property zoned B-2 and I-1 may be used as a hotel according to the Table of Uses in the Zoning Code. *Id.* The applicable excerpts from the Table of Uses set forth in the Zoning Code are attached hereto collectively as Exhibit 1.

A. <u>The short-term rental of a single-family residence constitutes a residential use as a matter of law.</u>

The County contends that the short-term rental of a single-family dwelling is not a residential use, but rather a commercial use, and therefore is prohibited by the Zoning Code. The County is wrong as a matter of law. Although the Maryland appellate courts have not considered whether the short-term rental of a home constitutes a residential use under a zoning ordinance limiting use to a single-family dwelling, the Court of Appeals has concluded that the use of a single-family residence as a short-term rental does not violate a restrictive covenant limiting use of the property to single family residential purposes.

In *Lowden v. Bosley*, 395 Md. 58 (2006), the Court of Appeals considered whether a restrictive covenant that limited the use of property for "single-family residential purposes only" precluded the use of a single-family home as a short-term rental. The Court of Appeals rejected the argument that the short-term rental of a single-family residence constituted a commercial use because the owner received a financial benefit, explaining:

> "Residential use," without more, has been consistently interpreted as meaning that the use of property is for living purposes, or a dwelling, or place of abode. . . *The transitory or temporary nature of such use does not defeat the residential status*. . . .
>
> The Lowdens, as well as some of the out-of-state cases on which they rely, seem to view the owner's receipt of income from a residential tenant as inconsistent with "residential" use. There is no inconsistency. *The owner's receipt of rental income in no way detracts from the use of the properties as residences by the tenants.* There are many residential uses of property which also provide a commercial benefit to certain persons.

395 Md. at 68-69. (emphasis added). The Court of Appeals went on to emphasize that "there is no inherent inconsistency between a residential use by a tenant and a commercial benefit for the landlord." 395 Md. at 70. The court was also mindful that the applicable covenants did not limit occupancy to a specific duration, noting "at what point does the rental of a home move from short-

term to long-term: a week? a month? a season? three months? six months? one year? or several years?" and "[i]f the framers of the Declaration had intended to prohibit rentals shorter than a certain period, they would have said so, just as they prohibited tents, trailers, campers, etc." *Lowden*, 395 Md. at 73.

The *Lowden* decision has been cited favorably by many courts located in states outside of Maryland that have concluded the short-term rental of property does not constitute a commercial use and does not violate restrictive covenants limiting the use of property to single-family residences. *See e.g. Slabey v. Mountain River Estates Residential Assoc.*, 100 So. 3d 569, 582 (Ala. Civ. App. 2012) ("[T]he restriction in the covenant at issue prohibiting 'commercial use' of the property does not prohibit the [property owners] from renting their property on a short-term basis."); *Vera Lee Angel Rev. Trust v. O'Bryant*, 537 S.W.3d 254 (Ark. 2018) (holding short-term rental of property did not violate restrictive covenant that precluded use of property for commercial purposes); *Houston v. Wilson Mesa Ranch Homeowners Assoc.*, 360 P.3d 255, 260 (Colo. Ct. App. 2015) ("We . . . conclude that short-term vacation rentals such as [the homeowner's] are not barred by the commercial use prohibition in the covenants."); *Santa Monica Beach Property Owners Ass'n v. Acord*, 291 So. 3d 111, 114 (Fla. Dist. Ct. App. 2017) ("[T]he critical issue is whether the renters are using the property for ordinary living purposes such as sleeping and eating, not the duration of the rental."); *Lake Serene Prop Owners Ass'n v. Esplin*, 334 So.3d 1139, 1142 (Miss. 2022)("[W]hen the property is used as a place of abode, the use is considered residential no matter how short the rental period."); *Wilson v. Maynard*, 961 N.W.2d 596, 603 (N.D. 2021) ("If the Covenants intended 'residential purposes' to prohibit profit-making activity . . then the Covenants would even prohibit a long-term lease of the Property that generated profit."); *Scott v. Walker*, 645 S.E.2d 278, 283 (Va. 2007)(holding restrictive covenant restricting use to "residential purposes"

did not prohibit short term rentals and noting "those people who rent the [property owner's] property use it as a temporary place of abode and engage in activities normally associated with a dwelling place").

Jurisdictions that have considered the issue in the context of zoning laws that limit the use of property to single-family dwellings likewise have concluded that the short-term rental of single-family residence constitutes a residential use, not a commercial use, as a matter of law. In *Heef Realty and Investments, LLP v. Board of Appeals*, 861 N.W.2d 797, 798 (Wis. Ct. App. 2015), the Court of Appeals of Wisconsin considered "whether a short-term rental is a permitted use for property in a single family residential district." The court held that the zoning district authorizing the use of the property for single-family dwellings did not preclude the use of the property as a short-term rental. The court reasoned as follows:

> This focus on the daily living connotation of "residential" gibes with the circuit court's explanation that what makes a home a residence is its use "to sleep, eat, shower, relax, things of that nature." What matters is residential use, not the duration of the use. The words "single-family," "residential" and "dwelling" do not operate to create time restrictions that the legislative body did not choose to include in the ordinance.
>
> [W]hat this case is about, is whether a zoning board can arbitrarily impose time/occupancy restrictions in a residential zone where there are none adopted democratically by the City. . . . There is nothing inherent in the concept of residence or dwelling that includes time. The City offers no authority that anything about the concept of "residential" distinguishes between short-term and long-term occupancy. If the City is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law.

Heef Realty, 861 N.W.2d at 801-02 (citations omitted).[1]

Similarly, the Utah Court of Appeals, examining substantially similar definitions of "single family dwelling" and "family" that are applicable in this case, concluded that the zoning code did

[1] Although a zoning case, the court in *Heef* cited favorably to *Louden. Heef*, 861 N.W.2d at 802.

not preclude short-term rentals. *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998). In *Brown*, the applicable zoning code defined the terms "Dwelling, Single Family" as "[a] detached housing unit within a structure with kitchen and sleeping facilities, designed for occupancy by one family." *Id.* at 208. The term "family" was defined as "[a]n individual or two or more persons related by blood, marriage or adoption, or a group not to exceed four unrelated persons living together as a single housekeeping unit." *Id.* The court rejected the city's argument that the zoning code did not specifically permit short-term rentals, reasoning as follows:

> The Code specifically permits use of a dwelling for *occupancy* by a single family. Thus, if a single family occupies a home, the structure is being used as permitted. However, [the city] contends that, because the Code does not specifically permit occupancy by a single *tenant family for less than thirty days,* occupancy by a single *tenant family for less than thirty days* is proscribed by the ordinance. We are not willing to import such a restriction. The Code does not limit the permitted use by referencing the type of estate the occupying family holds in the property or the duration of the occupancy. Thus, it is irrelevant what type of estate, if any estate at all, the occupying family has in the dwelling, i.e., whether the family holds a fee simple estate, a leasehold estate, a license, or no legal interest in the dwelling. It is equally irrelevant whether the occupying family stays for one year or ten days. The only relevant inquiry is whether the dwelling is being used for occupancy by a single family; if it is, the ordinance has not been violated. [The city's] argument, taken to its logical conclusion, would mean that the staff could restrict any use without limitation by simply arguing that the use was one not specifically mentioned in the general permitted use provisions. For instance, it would allow the staff to prohibit an owner from leasing the property under any conditions because the ordinance does not specifically permit occupancy by a single family *leasing the dwelling.* It would also allow the staff to prohibit tenancy-in-common time-share arrangements since the ordinance does not permit occupancy by a single family *not owning as joint tenants.*

Brown, 957 P.2d at 211. The court also rejected the city's argument that the short-term lease of residential property is inconsistent with the purposes of residential zoning, explaining:

> Despite [the city's] ability to pass an ordinance to restrict short-term leasing, as discussed above, we must construe existing zoning ordinances strictly against the city. Thus, we must conclude that short-term leases of residential properties are not prohibited by the zoning ordinance. Sections 15-7-3(a) and 15-7-5(a) of the Code "represent[] [only] the broad goal sought to be achieved by the [city] in enacting regulations governing" uses of properties in these zones. Through the purpose

> declaration, [the city] explained what its goal was in establishing the residential zones. It then enumerated specific regulations to meet that goal. "By satisfying the *actual* regulations enumerated in [§§ 15-7-3(b)(2) and 15-7-5(b)(2)] the [use of the properties] has met the legal requirements of th[ose] section[s]," *id.* (emphasis added), and, thus, met the general purpose of the statute. Although we recognize that short-term leases *may* disrupt the residential environment of a neighborhood in some instances, by failing to prohibit short-term leases, Sandy City has implicitly determined that such practices are conducive to a residential environment. In other words, "[w]e will not find a violation of law simply because [the permitted use may appear] inconsistent with the general intent statement ... when [the use] is in compliance with the substantive provisions of the ordinance." *Id.*

Brown, 957 P.2d at 212. (citations and footnotes omitted). Other courts have also concluded that short-term rental of property does not violate zoning codes that limit the use of property to single family dwellings. *See e.g. Fruchter v. Zoning Board of Appeals*, 20 N.Y.S.3d 701 (N.Y. App. Div. 2015) (holding short-term rental of property constituted use as a one-family dwelling and was not a hotel or bed-and-breakfast); *In re Toor*, 59 A.3d 722 (Vt. 2012) (holding short-term rental of property did not violate the zoning code that limited use to single-family dwellings).

The same rationale applied by the courts in *Lowden*, *Heef* and *Brown* applies in this case. The mere leasing of the Property on a short-term basis does not constitute a commercial use for the reasons set forth by the Court of Appeals in *Lowden*. The Zoning Code does not impose any durational limitations on the leasing of single-family dwellings within the County. It merely requires that properties in the various residential zoning districts, including the RC, be a "residential building designed for and occupied by only one family." The County has broadly defined family as "[a]n individual or two or more persons related by blood or marriage or group of not more than eight persons not related by blood or marriage living together as a single housekeeping group in a dwelling unit." The building at issue in this case is designed and occupied by only one family, as defined in the Zoning Code. Nothing in these definitions precludes the use of the Property as a short-term rental or transform the use of the Property to a commercial use.

The County, through its elected officials, certainly has the ability to limit the minimum duration of rentals or enact a short-term rental ordinance. It has not done so.

The County's interpretation of the Zoning Code would also lead to absurd results. Under the County's argument that the short-term rental of a single-family dwelling constitutes a commercial use (namely a hotel), all short-term rentals of single-family dwellings within the County would be prohibited. As noted in the table of uses, hotels are prohibited in all of the residential zoning districts in Dorchester County, and are permitted only in the B-2 and I-1 zoning districts. Moreover, if the fact that the property owner makes money from the rental of a single-family dwelling causes it to be a commercial use, then no rental of residential property within the County, regardless of duration, would be permitted. The argument proffered by the County that the leasing of a single-family dwelling is a commercial use leads to unreasonable results, and therefore should be rejected.

In conclusion, the Zoning Code does not prohibit or otherwise limit the short-term rental of property located within the County, and specifically within the RC-zoning district. The short-term rental of property is consistent with the use of the Property as a single-family dwelling, as defined in the Zoning Code.

B. The County failed to exhaust administrative remedies.

Section 155-17 of the Zoning Code authorizes the Director of Planning to determine whether any provisions of the Zoning Code are being violated and is tasked with providing notice to the property owner of alleged zoning violations. Section 155-20.A authorizes the Dorchester County Board of Appeals (the "Board of Appeals") "[t]o hear and decide appeals where it is alleged there is any error in any order, requirement, decision or determination in the administration of this chapter." The Board of Appeals is vested with the authority to "reverse . . . and render the

decision is ought to be made, the actions of the Director of Planning, and to that end shall have the powers of the Director of Planning." Zoning Code § 155.20.E.

On or about June 13, 2022, Triquetra received via mail a letter from the County dated June 7, 2022, setting forth the County's position that the short-term rental of property constitutes a hotel, which is a commercial use, and such commercial use is not permitted in the zoning district in which the Property is located.[2] Ex. 2, Aff. of A. Cross at ____. The County's June 7, 2022, letter is attached hereto as Exhibit 3. Triquetra promptly appealed the June 7, 2022, letter to the Board of Appeals. A copy of the appeal is attached hereto as Exhibit 4. The appeal is currently pending before the Board of Appeals and is expected to be heard on September 22, 2022.

Under well-established case law, the County is not authorized to proceed with the above-referenced case unless and until the administrative remedies available to Triquetra are exhausted. *See Prince George's County v. Ray's Used Cars, Inc.*, 398 Md. 632 (2005); *Maryland Reclamation Assoc. v. Harford County*, 382 Md. 348 (2003). For that reason, the above-captioned case should be dismissed.

C. The County has failed to join necessary parties.

Several other property owners within the County use their respective single-family residences as short-term rentals. Ex. 2, Aff. of A. Cross at _____. None of these properties are located in the B-2 zoning district, where hotels are permitted as a matter of right, or in the I-1 zoning district, where they are permitted by special exception. *Id*. at ____. Under the County's argument that the short-term rental of a single-family dwelling constitutes a commercial use, each of the other short-term rentals within the County would be banned because they are not located in

[2] Under Section 155-17 of the Zoning Code, the notice was required to be sent certified mail. The notice was not sent via certified mail, but nevertheless Triquetra treated the notice as a decision from the Director of Planning that is appealable to the Board of Appeals.

the B-2 or I-1 zoning districts, where hotels are permitted. However, the County has identified only Triquetra as a defendant to this declaratory judgment action.

Section 3-405(a)(1) of the Courts and Judicial Proceedings Article provides that when "declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party." Maryland Rule 2-211(a) also provides as follows:

> a person who is subject to service of process shall be joined as a party in the action if in the person's absence
>
> (1) complete relief cannot be accorded among those already parties, or
>
> (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple of inconsistent obligations by reason of the person's claimed interest. The court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff.

Md. Rule 2-211(a). If a person meeting these criteria is not joined, the action may be dismissed under Maryland Rule 2-211(c). The purpose of these rules is "to assure that a person's rights are not adjudicated unless that person has had his 'day in court' and to prevent 'multiplicity of litigation by assuring a determination of the entire controversy in a single proceeding.'" *Bodnar v. Brinsfield*, 60 Md. App. 524, 532 (1984). In *Rounds v. Maryland-Nat. Capital Park & Planning Comm.*, 441 Md. 621, 648-49 (2014), the Court of Appeals upheld the dismissal of plaintiffs' declaratory judgment action with respect to their right to use of a 10-foot private road and to the issuance of an address on the road when the plaintiffs failed to join all persons who had an interest in the 10-foot road.

The same rationale applied by the Court of Appeals in *Rounds* applies in this case. There are multiple persons within the County who are utilizing their single-family dwellings as a short-term rental. Without joinder of those individuals, those people will not have their day in Court, and it is quite possible that there will be other litigation when the County seeks to stop these other

owners from using their single-family dwellings as short-term rentals within the County. Thus, the dispute at issue will not be resolved in a single proceeding without the joinder of the other property owners.

If the other property owners in the County who rent their property on a short-term basis are not joined as parties, it may leave the County at risk of incurring multiple inconsistent obligations under Maryland Rule 2-211. For example, any determination in this case would not be binding on any property owners who are not made parties to this action. If the County were to prevail, nothing would prevent those other property owners from challenging the County's assertion that the Zoning Code prohibits the short-term rental of a single-family dwelling. The County therefore could not achieve complete relief and could be subject to inconsistent obligations with respect to enforcement of its Zoning Code. To the extent the County seeks to prohibit short-term rental of property within the County because it contends the short-term rental of property constitutes a commercial use, it is required to join as parties each property owner who leases his/her single-family dwelling as a short-term rental. Having failed to do so, the County's Complaint should be dismissed.

Conclusion

Triquetra respectfully requests that the Complaint filed by Dorchester County be dismissed because (A) Triquetra's short-term rental of its single-family dwelling is not a commercial use and does not violate the Zoning Code; (2) the available administrative remedies have not been exhausted; and (3) the County has failed to join necessary parties, namely the other property-owners within the County who use their single-family dwellings as a short-term rental.

Respectfully submitted,

/s/ Demetrios G. Kaouris

Demetrios G. Kaouris (AIS No. 9812000380)
Brendan Mullaney (AIS No. 1612140119)
McAllister, DeTar, Showalter & Walker, LLC
300 Academy Street
Cambridge, Maryland 21613
410-228-4546
dkaouris@mdswlaw.com
bmullaney@mdswlaw.com

Attorneys for Defendant

CERTIFCIATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 2022, a copy of the forgoing Memorandum in Support of Motion to Dismiss or for Summary Judgment was served via MDEC on Christopher F. Drummond, 119 Lawyers Row, Centreville, Maryland 21617, chrisdrummondlaw@gmail.com, attorney for Plaintiff.

/s/ Demetrios G. Kaouris
Demetrios G. Kaouris