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Ohio Court Holds that Short-Term Rental Businesses in Residential-Only Zoning Districts Can Be Lawful

Recently, in *Russell Twp. Bd. of Trustees v. 7722 Fairmount LLC*, Ohio's 11th District Court of Appeals addressed a recurring residential-zoning question: Does a property owner violate the applicable zoning code if they operate a short-term-rental business—like an Airbnb and VRBO—in a residential district? The court's ruling in this case is a cautionary tale for townships and political subdivisions seeking to enforce their zoning codes if certain provisions are found to be overly broad or haven't been updated to address concerns over short-term rentals.

7722 Fairmount's Overnight-Hosting Business

Suzyn Fortner operates an Ohio LLC called 7722 Fairmount out of her home. The LLC's sole business purpose is to provide short-term lodging, for a fee, to guests who book through Airbnb and VRBO. Fortner hosts the guests in a guest suite behind her main residence. The guest suite shares a laundry room with the rest of the home and is connected to it by a finished interior hallway. Both the property and guest suite are located in a residential zoning district.

The applicable zoning resolution expressly permits single-family dwellings, agricultural uses, and public uses in residential districts. It allows certain accessory uses like "home occupations," defined as "[a] trade, profession or business conducted on residential property," so long as they do not "occupy ... more than 30% of the total floor area of the dwelling" and do not employ any nonresidents. But it prohibits "[a]ll other uses not specifically permitted" as regular or conditional uses.

This Business Use Did Not Violate *This* Zoning Code

In July 2022, Russell Township asked the trial court to enjoin 7722 Fairmount from operating its short-term rental business, arguing that it violated portions of the applicable residential zoning code. Russell Township argued that the business was not a permissible home occupation because overnight paying guests are non-residents “employed in” the home occupation, and that the paying guests in Fortner’s guest suite constituted prohibited “multifamily use.”

The trial court agreed and granted summary judgment in Russell Township’s favor. But the appellate court reversed. It did so in part because the applicable definition of “home occupation” was broad, and 7722 Fairmount’s business fell within it. In particular, it rejected the trial court’s conclusion that short-term guests are “employed in” the hosting business. And since only Fortner and her family (who also live in the home) furnish, decorate, clean, and restock consumables in the guest suite, 7722 Fairmount’s business is permissible.

Zoning Code Updates Can Reduce Enforcement Headaches

While the appellate court’s analysis turned on specific particularities in Russell Township’s zoning resolution, the lesson to be learned has a broader application. Zoning codes are ordinarily to be construed in favor of the property owner. *See Saunders v. Clark Cty. Zoning Dept.*, 66 Ohio St.2d 259, 261 (1981). To borrow a sports reference, the metaphorical “tie” normally goes to the runner—and the runner is the property owner.

Because of this principle, courts often seem to allow property owners to continue land uses that might, at first glance, appear to violate the applicable zoning code. Whether that is true or not in practice is immaterial; the real upshot is that imprecise and vague zoning codes often lack the enforcement options that political subdivisions believe they have. Local officials would be wise to consider business regulation approaches in tandem with land use controls to address public health and safety concerns with short-term rentals.

As land uses evolve, such provisions can create unforeseen enforcement headaches. Frost Brown Todd's [government services](#) attorneys are experienced in helping political subdivisions audit and update portions of their zoning code to meet their ever-evolving zoning priorities, including short-term rentals.

Contact the authors or any other attorney in Frost Brown Todd's [Government Service Practice Group](#) if you have any questions about addressing these or similar zoning issues.

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