

**IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND**

VILLAGE OF FRIENDSHIP HEIGHTS and
BROOKDALE CITIZENS ASS'N, INC.,

Plaintiffs,

v.

Civil No. C-15-CV-26-002907

MONTGOMERY COUNTY PLANNING
BOARD, COUNTY COUNCIL FOR
MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR
THAT PORTION OF THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, and FRIENDSHIP
COMMONS PARTNERS LLC,

Defendants.

**DEFENDANT FRIENDSHIP COMMONS PARTNERS LLC'S
MOTION TO DISMISS**

(HEARING REQUESTED)

Defendant Friendship Commons Partners LLC ("Friendship Commons"), by undersigned counsel, and pursuant to Maryland Rules 2-311 and 2-322(b)(1) and (2), hereby files this Motion to Dismiss Plaintiffs' Amended Complaint ("Motion"). This Court should dismiss Plaintiffs' lone claim for Declaratory Judgment because (i) this dispute is not ripe for judicial resolution; (ii) Plaintiffs are seeking to bypass the exclusive administrative review process governing the pending land use applications; (iii) Plaintiffs lack standing; and (iv) the requested declaration would amount to an improper advisory opinion.

INTRODUCTION

This case arises from a dispute over the proposed redevelopment of the former GEICO headquarters property located at 5260 Western Avenue in Chevy Chase, Montgomery County (the “Property”). Plaintiffs contend that a set of “Binding Elements” adopted by the County Council in 1998 as part of a prior rezoning of a portion of the Property still governs the redevelopment of the site today. Friendship Commons is the contract purchaser of the Property and, on April 2, 2026, submitted Sketch Plan No. 320260030, Preliminary Plan No. 120260140, and Site Plan No. 820260120 (collectively, the “Applications”) to redevelop the site, which are currently pending before the Montgomery County Planning Board (“Planning Board”). The County Council for Montgomery County, sitting as the District Council, is the governmental body that originally approved the 1998 rezoning and the related development plan.

Plaintiffs contend that the Binding Elements continue to control the proposed redevelopment and that the Applications, therefore, may not be favorably acted upon in their current form. Friendship Commons disputes that position and, among other things, contends that a subsequent County rezoning action extinguished those restrictions. But this Court need not (and may not) consider the merits of that dispute. The immediate issue is whether Plaintiffs may obtain a judicial declaration before any final administrative decision has been issued. As explained below, they may not.

Friendship Commons’ Applications are still pending before the Planning Board. The Planning Board is responsible for reviewing and acting on those Applications. Plaintiffs can raise their arguments in that forum, and, if a final administrative decision is later issued that aggrieves them, Maryland law provides a path for judicial review. This case is therefore not about a completed land use decision. It is about Plaintiffs’ attempt to obtain a judicial ruling while the

administrative land use process is still happening. At its core, this case is about who gets to decide, and when, whether certain development restrictions still apply to the redevelopment of the Property. The law makes clear that the Planning Board must make this determination as prescribed by statute before Plaintiffs seek relief from this Court.

Altogether, Plaintiffs' claim for declaratory relief is, in substance, an improper request for an advisory opinion from this Court—a practice that is expressly forbidden by law. A court may not issue a declaratory judgment unless there is an actual, justiciable controversy before it. Here, the administrative process is still pending, and no final decision has been rendered. There is therefore no ripe dispute for this Court to resolve. For these reasons, and as detailed further below, Plaintiffs' Amended Complaint should be dismissed in its entirety.

STANDARD OF REVIEW

Maryland Rule 2-322(b)(1) permits a defendant to file a motion to dismiss for “lack of jurisdiction over the subject matter.” Under this standard, dismissal is proper “if the facts and allegations, so viewed ... establish a lack of subject matter jurisdiction.” *Lewis v. Murshid*, 147 Md. App. 199, 203 (2002); Md. Rule 2-322(b)(1).

Maryland Rule 2-322(b)(2) further permits a defendant to file a motion to dismiss for “failure to state a claim upon which relief can be granted.” A motion to dismiss for failure to state a claim tests the sufficiency of the pleadings, requiring the complaint to be well-pleaded with facts that would afford the plaintiff relief. *See Walton v. Network Solutions*, 221 Md. App. 656, 665 (2015). To qualify as “well-pleaded,” the allegations “must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.” *See id.* at 665-66.

Declaratory judgments are a discretionary form of relief. *See* Md. Code Ann., *Cts. & Jud. Proc.* § 3-409(a) (“[A] court *may* grant a declaratory judgment”); *see also Sprenger v. Pub.*

Serv. Comm'n of Maryland, 400 Md. 1, 20-21 (2007) (“[W]hen a declaratory judgment action is brought and the controversy is not appropriate for resolution by declaratory judgment, the trial court is neither compelled, nor expected, to enter a declaratory judgment.”). This Court should not and may not issue a declaratory judgment but should instead dismiss Plaintiffs’ Complaint.

ARGUMENT

I. This Court should dismiss the Amended Complaint.

A. Plaintiffs’ claim is precluded by statute.

The Declaratory Judgments Act expressly prohibits declaratory relief where a specific statutory remedy exists for the type of case at issue. *See* MD. CODE ANN., *Cts. & Jud. Proc.* § 3-409(b). Maryland courts consistently enforce this limitation. As the Supreme Court of Maryland explained in *Sprenger*, “when there is a special statutory remedy for a specific type of case, and that remedy is intended to be exclusive or primary, a party may not circumvent those [special statutory] proceedings by a declaratory judgment . . . action.” 400 Md. at 24 (internal quotations omitted). Maryland case law, therefore, reflects a firm rule: where the legislature has established a special statutory remedy, courts will not entertain parallel declaratory actions addressing the same issues. *See Furnitureland S., Inc. v. Comptroller of Treasury of State*, 364 Md. 126, 133 (2001) (citing a long line of consistent authority supporting the established principle that a party may not bypass the special statutory authority by bringing an action for declaratory relief). *See also Maryland-Nat’l Cap. Park & Plan. Comm’n v. Washington Nat. Arena*, 282 Md. 588, 595 n.4 (1978) (“Maryland is the only jurisdiction in the United States having an express statutory provision which restricts the applicability of the Uniform Declaratory Judgments Act in cases where the legislature has created an alternative statutory remedy.”).

The Montgomery County Code, through the Zoning Ordinance for sketch and site plans and its Subdivision Regulations for preliminary plans, provides a detailed statutory scheme and

related remedies that are available to Plaintiffs in the underlying administrative proceeding. Specifically, under the Zoning Ordinance, sketch and site plan applications undergo technical review and analysis, then go to the Planning Board for final approval in accordance with Sections 59-7.3.3.D and E and Sections 59-7.3.4.E and F of the Zoning Ordinance. A preliminary plan application similarly undergoes a comprehensive review with ultimate approval action taken by the Planning Board in accordance with Sections 50-4.2.C and D of the Subdivision Regulations. All three types of applications require a public hearing before the Planning Board, and the review processes afford the Plaintiffs multiple opportunities to be heard, including at the public hearing. Critically, all three types of applications are subject to judicial review. *See* MD. CODE ANN., *Land Use* § 23-401; Zoning Ordinance § 59-7.3.4.F.2; Md. R. 7-201, *et seq.*, 7-401, *et seq.* As a result, declaratory relief is precluded in this context.

The subject of the Amended Complaint is the ongoing review and anticipated action by the Planning Board on the Applications: an issue squarely committed by statute to the administrative process outlined above. Plaintiffs do not (and cannot) cite any legal authority to support their attempt to skirt the lawful administrative process and explicit statutory scheme that provides Plaintiffs with relief *if* they are ultimately aggrieved by the Planning Board's final decision. Plaintiffs' requested relief would require this Court to effectively preempt the ongoing administrative decision-making process. That is precisely the type of circumvention that § 3-409(b) and related Maryland case law forbids. Because Plaintiffs' claim for declaratory relief is impermissible as a matter of law, Plaintiffs' Amended Complaint should be dismissed in its entirety.

B. Plaintiffs have not exhausted their statutory remedies.

Plaintiffs' declaratory judgment claim also fails because it is premature, as there is no final administrative decision, and available statutory remedies were not exhausted before seeking this

Court's intervention. Maryland law is unequivocal: where the legislature has established an administrative review process, a party must pursue and complete that process before seeking judicial intervention. *See Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 485 (2011). This exhaustion requirement is a fundamental limitation on judicial review designed to ensure that courts decide concrete disputes based on a developed administrative record and a final agency action. *See id.* at 487 (reasoning that courts treat a party's failure to invoke and exhaust an administrative remedy as a jurisdictional question).

Plaintiffs ignore that requirement here. As noted above, the Applications are currently under review by the Planning Board, no final decision has been issued, no conditions of approval have been imposed, and no administrative record has been finalized. As such, no party, including Plaintiffs, has yet been "aggrieved" by any agency action. Nevertheless, Plaintiffs ask this Court to intervene now and adjudicate the legality of a potential future outcome of that process.

Maryland courts have repeatedly rejected precisely this type of premature challenge. In *Renaissance*, the Supreme Court of Maryland reasoned that a plaintiff's contention that an agency's planned action would be unauthorized and improper did not "excuse or cure the lack of a final administrative decision and the failure to exhaust the administrative remedy," going on to explain that "[t]he appropriate time to argue that the decision of an administrative agency was not in accordance with law is in a judicial review action, *after* the rendering of a final administrative decision." *See id.* at 490.

Like the plaintiff in *Renaissance*, Plaintiffs here speculate that the administrative process may result in an unlawful or harmful outcome and seek judicial intervention in advance of that outcome. However, speculation about what an agency *might* do is not a substitute for a final decision. Until the Planning Board completes its review and issues a determination, there is no

agency action to challenge and no basis for judicial review. Moreover, the existing statutory framework surrounding the review of the Applications provides Plaintiffs with a clear and adequate path for relief if they are ultimately aggrieved: judicial review in this Court following a final decision. By attempting to invoke this Court's jurisdiction now, Plaintiffs are not supplementing that process, they are attempting to supplant it. Maryland law requires dismissal under these circumstances, and the Amended Complaint should be dismissed accordingly.

II. This Court should dismiss the Amended Complaint in its entirety because Plaintiffs fail to establish standing and to articulate that a “justiciable controversy” exists.

A. Plaintiffs do not have standing entitling them to declaratory relief because they fail to adequately allege special aggrievement.

The Amended Complaint flatly fails to assert any doctrine of standing on either Plaintiff's behalf to establish their entitlement to bring the present action. “Unless a complainant alleges a sufficient special aggrievement, or is presumed to be aggrieved specially because of the subject property's location, he, she, or it has no standing to challenge the act but is instead merely generally aggrieved, in a similar manner as the rest of the public.” *Anne Arundel Cnty. v. Bell*, 442 Md. 539, 557 (2015) (internal quotations omitted). A property owner is often deemed “*prima facie* aggrieved” through ownership of a property that is “adjoining, confronting, or nearby” the at-issue property. *See Greater Towson Council of Cmty. Associations v. DMS Dev., LLC*, 234 Md. App. 388, 410 (2017). However, this presumption of aggrievement is rebutted when a property owner is not actually aggrieved and therefore lacks standing altogether. *See Ray v. Mayor & City Council of Baltimore*, 203 Md. App. 15, 26 (2012). Meanwhile, a community association “can have no standing to sue where it has no property interest of its own, separate and distinct from that of its individual members,” and “[u]nless the allegations suggest that the [organization] possess[es] such separate interests, it would have no standing despite a pecuniary loss or tax increase allegation by

the individual[s].” See *Carroll Park Manor Cmty. Ass’n, Inc. v. Bd. of Cnty. Comm’rs of Frederick Cnty., Md.*, 50 Md. App. 319, 326 (1981).

Here, Plaintiffs have only superficially alleged the loss of “light, air, open space and building compatibility” from a proposed redevelopment that has not yet been approved. Am. Compl. ¶ 34. The Amended Complaint lacks specificity regarding these claimed damages and is notably silent as to how *particular* property owners and their respective properties are affected, instead broadly referring to these purported damages for the entire Village of Friendship Heights and the general Brookdale neighborhood. Furthermore, regarding Plaintiff Brookdale Citizens Association, the Amended Complaint does not allege that the Association has an independent property interest of its own, “separate and distinct from that of its individual members,” such that Plaintiff Brookdale Citizens Association has failed to plead its basis for standing to file the instant action. See *Carroll Park Manor*, 50 Md. App. at 326.

Relatedly, Plaintiffs’ failure to exhaust their administrative remedies precludes standing to bring the present action because no decision exists by which Plaintiffs can even claim to be aggrieved. Accordingly, Plaintiffs’ alleged injuries are speculative, their asserted interests are contingent, and their Amended Complaint fails to establish standing. Without standing to bring the present action, Plaintiffs’ Amended Complaint is devoid of a justiciable controversy and should be dismissed. See *Md. State Admin. Bd. of Election Laws v. Talbot Cnty.*, 316 Md. 332, 339 (1988) (reasoning that a justiciable controversy is an “absolute prerequisite” to the maintenance of a declaratory judgment action and justiciability encompasses ripeness, standing, and whether there is an “actual controversy” between the parties).

B. Plaintiffs fail to allege that a “justiciable controversy” exists.

“A declaratory relief action that requests adjudication based on facts that have yet to occur or develop lacks ripeness and should be dismissed for failure to allege a justiciable controversy.”

120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore City, 413 Md. 309, 356 (2010). See also *Hickory Point P'ship v. Anne Arundel Cnty.*, 316 Md. 118, 130 (1989) (“Generally, an action for declaratory relief lacks ripeness if it involves a request that the court declare the rights of parties upon a state of facts which has not yet arisen, or upon a matter which is future, contingent and uncertain.” (internal quotations omitted)); *Hatt v. Anderson*, 297 Md. 42, 45-46 (1983) (reasoning that the existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action, where courts require “concrete and specific issues to be raised in actual cases, rather than as theoretical or abstract propositions”). Without a justiciable controversy, Plaintiffs’ Amended Complaint fails as a matter of law.

“A controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded.” *Reyes v. Prince George’s Cnty.*, 281 Md. 279, 288 (1977). No such controversy exists here. First and foremost, there is no final administrative action by which Plaintiffs can even claim to be aggrieved. Further, Plaintiffs do not challenge a final agency decision, but instead express disagreement with the pending Applications and speculate about the possible future effects of their approval. Effectively, Plaintiffs hold a different interpretation about the applicability of the Binding Elements than Friendship Commons does, which ultimately is a matter for the Planning Board to resolve in the pending, underlying administrative proceeding, not this Court.

The present case is squarely consistent with a previous Supreme Court of Maryland decision, in which the Court affirmed dismissal of a declaratory relief action that challenged a proposed redevelopment project, where, similarly, the plaintiff alleged violations of certain agreements, yet the authorized agency had not yet adopted or approved any plans. See *120 W. Fayette*, 413 Md. at 357. In that case, the court held that because none of the purportedly violative

plans had been approved, the plaintiff failed to sufficiently allege facts that were ripe and rose to the level of an actual dispute between the parties meriting declaratory judgment. *See id.*

Here, not only do Plaintiffs allege harm based on an event that has not—and may not—happen, but they also fail to plead any special circumstances that would justify declaratory relief in this context. *See Boyds Civic Ass’n v. Montgomery Cnty. Council*, 309 Md. 683, 690 (1987) (“In a declaratory judgment proceeding, the court will not decide future rights in anticipation of an event which may never happen, but will wait until the event actually takes place, unless special circumstances appear which warrant an immediate decision.” (internal quotations omitted)). *See also Hickory Point*, 316 Md. at 131 (“The disagreement over which declaratory relief is sought must not be nebulous or contingent but must have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them.” (internal quotations and citations omitted)). For these reasons, the Amended Complaint fails to allege a justiciable controversy and should be dismissed.

Further, Plaintiffs’ request for declaratory relief without the demonstration of a justiciable controversy would require this Court to issue an advisory opinion, a practice long forbidden by Maryland courts. Maryland law is clear: courts may not render “purely advisory opinions” or decide abstract disagreements untethered to a concrete dispute. *See Hatt*, 297 Md. at 46. “To be justiciable the issue must present more than a mere difference of opinion, and there must be more than a mere prayer for declaratory relief.” *Id.* In other words, a complaint must involve a fixed and developed set of facts such that the court’s decision will resolve an actual, existing controversy. Again, that is not the case here. Plaintiffs ask this Court to make a declaration pertaining to Applications for development that are still under active administrative review and

have not resulted in any final agency action. They are asking the Court to pre-judge the outcome of an ongoing administrative process. That is the hallmark of an advisory opinion.

This case illustrates precisely why the prohibition on advisory opinions exists. Until the administrative process concludes, any judicial declaration would be relying on contingent, unresolved facts. Maryland law does not permit courts to engage in such speculative adjudication. Accordingly, because Plaintiffs' claim would require this Court to render an advisory decision in the absence of a justiciable controversy, the Amended Complaint should be dismissed.

CONCLUSION

WHEREFORE, Defendant Friendship Commons Partners LLC requests that the Court dismiss the Amended Complaint in its entirety and grant such further relief as the Court deems necessary and proper.

Respectfully submitted,

LERCH, EARLY & BREWER, CHTD.

/s/Erin E. Girard

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 18, 2026, a copy of the foregoing was served via the Court's MDEC electronic filing system.

/s/Erin E. Girard

Erin E. Girard