



STAFF REPORT

MORGAN COUNTY PLANNING COMMISSION

PETITION FOR: TEXT AMENDMENT

Applicant: Christine May, 72 Blackburn Road, Summit, NJ 07901
Applicant's Agent: N/A
Zoning Ordinance: Morgan County Zoning Ordinance, Chapter 7.29, Short Term Rentals

Summary

Christine May has requested a text amendment to *Chapter 7.29.1, Short Term Rentals, Location Allowed/Prohibited*, related to grandfathered uses.

In the attached support documents, Ms. May requests a declaration of her grandfathered rights. Please note that this action is outside of the purview of the Planning Commission and will not be discussed. As an alternative to the above mentioned action, she is requesting a text amendment to alter the language of the Short Term Rental ordinance. Please also note that the support documents contain information regarding previous legal actions regarding Ms. May's use of the property as a short term rental. As you are aware, the decision to amend ordinance language is not property specific . The language change will affect any and all properties that fall under the regulations of the subject ordinance. Therefore, discussion should be related to whether the proposed language is appropriate for the ordinance, not for a specific property.

Current Language

Short Term Rentals are prohibited in all zoning districts, except where specifically allowed as a conditional use.

Nothing in this Chapter shall be construed to prohibit motels, hotels, inns, or other commercial lodging uses from being located in commercial zoning districts or where otherwise specifically allowed.

Proposed language (Add to the end of the current language.)

The lawful use of any building, structure, or land existing at the time of the enactment of this Ordinance may be continued, even if such use does not conform with the provisions of this Ordinance. Any such nonconforming use shall not be subject to the requirements of this Chapter.

The proposed language is taken from the first sentence in *Article 8, Non-conforming Uses* of the Morgan County Zoning Ordinance:

Chapter 8.3 Continuation of Non-conforming Uses

The lawful use of any building, structure or land existing at the time of the enactment of this Ordinance may be continued, even though such use does not conform with the provisions of this Ordinance, except that the non-conforming structures or use shall not be:

- Changed to another non-conforming use;
- Re-established after discontinuance of one (1) year;
- Extended except in conformity with this Ordinance;
- Any change in a non-conforming building or use is subject to the following:
 - No non-conforming building can be structurally altered, except for repairs on or installation of plumbing fixtures required by law, the changing of interior partitions, and interior remodeling;
 - No non-conforming building, except those residential dwellings needing repairs on or installation of plumbing fixtures as required by law, maybe substantially added to, moved, or extended in any manner unless such building is changed so as to conform with the provisions of this Ordinance;
 - Whenever an existing residential dwelling must have repairs on or installation of plumbing fixtures which will force the location of the future addition of the dwelling nearer the lot line than the requirements set forth in this Ordinance, the addition to the dwelling shall be allowed to extend to the existing dwelling line, but no nearer the property line than the existing portion of the dwelling;
 - Should a non-conforming building be moved, all non-conforming yard areas shall be eliminated within 60 days thereafter.

It shall be the responsibility of the owner of a non-conforming use to prove to the Director of Planning and Development that such use was lawfully established and existed on the effective date of adoption or amendment of this Ordinance.

Chapter 8.4 Extension of Non-conforming Uses

A non-conforming use of land shall be restricted to the lot occupied by such use of this Ordinance. A non-conforming use of a building or buildings shall not be extended to include either an additional building or land, after the effective date of this Ordinance.

The assertion that a use as a Short Term Rental could be considered a non-conforming, or grandfathered, use should also be examined. The Morgan County Zoning Ordinance states that any use that is not specifically permitted as a use by right or specifically indicated as a conditional use is a prohibited use. In short, if it is not listed in the use chart, it is prohibited. See Chapter 4.25 below:

Chapter 4.25 Use Prohibited When Not Specified

If not otherwise stated, any use not specifically permitted as a use by right or specifically indicated as a conditional use in any given zoning district provided under this Zoning Ordinance shall be prohibited in that zoning district, and any such prohibited use constructed or maintained in violation of this zoning ordinance is a violation subject to Penalties under Chapter 2.17.

The definition and regulations for Short Terms Rentals were added to the Morgan County Zoning Ordinance in 2010 (Planning Commission July 22, 2010-Tabled, Planning Commission August 26, 2010-Withdrawn by Staff, Planning Commission September 23, 2010-recommendation to approve text amendment, Board of Commissioners October 5, 2010-approved as presented). Prior to this language, Short Term Rental was not a listed use in the Morgan County Zoning Ordinance and was, therefore, prohibited.

Staff Comments

The requested language already exists in the Morgan County Zoning Ordinance and, therefore, does not need to be repeated. Furthermore, there can be no non-conforming, or grandfathered, use as a short term rental because the use was prohibited prior to the adoption of the ordinance in 2010. Only a use that was legal prior to an ordinance change may be considered a grandfathered use.

Based on the comments above, Staff suggests the following recommendation:

Recommendation to the Board of Commissioners to deny the text amendment request due to the fact that the language already exists in the Morgan County Zoning Ordinance and does not need repetition, and recognition that the use as a short term rental prior to the adoption of the Short Term Rental Ordinance was prohibited and cannot be a grandfathered use.

Christine May
1361 Grayson Pointe Drive
Buckhead, GA 30625

DESCRIPTION OF TEXT AMENDMENT REQUEST

I, Christine May, file this petition to ask the commission for a declaration of my grandfathered right to rent my property for periods of less than 30 days and for damages under 42 U.S.C. §§ 1983 and 1988 resulting from Morgan County's failure to recognize this right, including but not limited to lost rental income, attorneys' fees and costs of litigation. In the alternative, pursuant to my proven grandfathered right to rent for periods of less than 30 days and in order to avoid further injustice, I seek a text amendment to Morgan County Zoning Ordinance Chapter 7.29 that affirms the applicability of Chapter 8.3 to Chapter 7.29 and allows for the legal continuation of short term rentals for property owners who rented for periods of less than 30 days prior to the enactment of Regulation 15.35 and the subsequent amendment to Chapter 7.29.

I. Background

In 2012, after receiving a criminal citation for renting my home for periods of less than 30 days, I initiated legal action against Morgan County to have my grandfathered right to rent for periods of less than 30 days recognized. Judge Wingfield of the Superior Court of Morgan County originally ruled that because I lawfully rented my lake house prior to the County's new Regulation 15.35 (now Morgan County Zoning Ordinance Chapter 7.29) I had a grandfathered right to continue to do so.¹ Morgan County appealed Judge Wingfield's

¹ In his original order Judge Wingfield failed to address my claims that Regulation 15.35 as enacted is unconstitutional on its face. Should the Committee fail to recognize my rights to rent my property, I intend not only to pursue my grandfathered right to rent, but also my constitutional claim against the validity of Morgan County's short term rental ban. For further discussion of my constitutional claims against the validity of Morgan County's short term rental ban, see Plaintiff's Post-Trial Brief, Section B, attached hereto.

ruling to the Georgia Court of Appeals, claiming that I had not followed the appropriate procedural process before asserting my claim to have my grandfathered rights recognized. The County claimed that I was required to exhaust certain administrative remedies prior to bringing my claim in Superior Court. The Court of Appeals remanded the case back to the trial court to determine whether I had in fact exhausted administrative remedies and “appealed” the enactment of Regulation 15.35 the proper timeframe,² Judge Wingfield held that I had done neither and ruled for the County on each of my claims. The Court of Appeals refused to hear my appeal of that decision. I am now filing this application to address the procedural steps the County says I must follow before I am able to exercise my grandfathered right to rent my home for periods of less than 30 days. (See fn. 2 below.)

II. Applicable Law and Analysis

Morgan County Zoning Ordinance Chapter 7.29, formerly Regulation 15.35, prohibits short-term rentals except where specifically allowed as a conditional use. However, both Georgia law and the Morgan County Zoning Ordinance recognize a property owner’s right to a grandfathered use. Morgan County Zoning Ordinance Chapter 8.3, “Continuation of Non-conforming Uses,” states “[t]he lawful use of any building, structure or land existing at the time of the enactment of this Ordinance may be continued, even though such use does not conform with the provisions of this Ordinance....” *See also Henry v. Cherokee County*, 290 Ga. App. 355 (2008) (“In order to establish a grandfathered, nonconforming use, it is necessary to show that the land was used for the nonconforming

² Judge Wingfield’s order did not specify the proper timeframe for appealing a zoning decision. I rely upon my letter to Danielle in the Planning Commission’s office (attached to Application for Rezoning or Text Amendment), along with County Attorney Christian Henry’s assertion that I could still apply for rezoning as of May 21, 2014 (See Defendant’s Brief in Opposition to Plaintiff’s Motion to Amend, Motion for Reconsideration, and Motion for New Trial, pp. 11-12 (“**Nothing prevents Plaintiff from applying to rezone her property now and appealing the denial of that decision to this Court within 30 days.**”)) to support my assertion that this Application is timely.

purpose prior to the enactment of the zoning ordinance.”); *Flippen Alliance for Community Empowerment, Inc. v. Brannan*, 267 Ga. App. 134, 136, 601 S.E2d 106, 109 (2004) (“It is incumbent upon one seeking to use the property for a non-conforming use after the rezoning ordinance to show that his prior use of the property was legal and not unlawful.”). **These and similar cases, as well as Chapter 8.3 of the Zoning Ordinance, contain no requirement that grandfathered rights must be validated through the zoning commission or the superior court in order to be effective.** Morgan County has unceasingly attempted to enforce the short-term rental ban laid out in Chapter 7.29 against me, despite the fact that I validly rented my home for periods of less than 30 days prior to the enactment of Regulation 15.35. This enforcement of the short-term rental ban against me constitutes a violation of my vested property right to continue renting as set forth in Chapter 8.3 and by well-settled Georgia law.

Based on the clearly established law establishing my right to rent my home as I did prior to the enactment of Morgan County’s short term rental ban, I ask the Commission to declare that I have a grandfathered right to rent my home for periods of less than 30 days, regardless of the limitations on that action contained in Chapter 7.29 and award me compensation in the amount of my lost rental income and the attorneys’ fees and costs of litigation I have incurred in pursuing this right. Should the Commission decline to recognize my right to rent and my right to damages, and in order to avoid further injustice, I respectfully ask them to amend Chapter 7.29.1 of the Morgan County Zoning Ordinance to include the following language:

“The lawful use of any building, structure or land existing at the time of the enactment of this Ordinance may be continued, even if such use does not conform with the provisions of this Ordinance. Any such

nonconforming use shall not be subject to the requirements of this Chapter.”

III. Conclusion

My house is a lovely custom-designed timberframe structure that I built for both personal use and short-term rental. If Morgan County recognizes my grandfathered right to resume renting the house, I will rent, like I did before, only to families that will use the house to enjoy the lake and each other’s company, just as my family and I do each time we visit the house. Although I am in no way required to do so, I interview all potential renters to protect my property and the community from renters that pose a risk that they might damage my property or interfere with my neighbors’ enjoyment of their own property. . With properly screened renters, the risk that short-term renters would pose to the quality of life within my neighborhood would be minimal and cannot overcome my right to rent my home as I did prior to the enactment of the short-term rental ban. In fact, the people who can afford to rent my house will be excellent customers for the County’s stores, restaurants and museums and will be a positive benefit to the County. Wholly apart from the legal obligation to do so, it is in the *best interest of Morgan County* to allow me to continue renting my property for periods of less than 30 days.

If the Commission were to allow political influence to overcome justice and fails to recognize my right to rent for periods of less than 30 days, I will be forced to sell my family’s dream home that took me years to laboriously and lovingly design and build for my enjoyment and the enjoyment of my three children and eight grandchildren. We have many wonderful memories of our visits to the house over the past seven years, but I cannot financially support the house without the income from short-term rentals. I relied very heavily on my right and ability to rent on a short-term basis in deciding whether to build

my lake home in Morgan County, and I pray that the County will do nothing further to interfere with that right.

In conclusion, I ask the Commission to recognize and respect my grandfathered rights and to grant the relief requested by my application.