

**Planning and Zoning Board  
January 9, 2023**

Present: Messrs. Curtis Hodges, Kip Hulvershorn, Stephen Yates, Brooks Weiss, and Chair Sandra Smith.  
Absent: Larry Wheatcraft.

Approval of minutes for October 3, November 7, and December 5 was unanimous. (Note: The minutes for November 7 included a memo on The Temporary Development Moratorium included at the author's request. The memo was not discussed at the November meeting.)

The election of a Vice-chair was moved to the next meeting due to Mr. Wheatcraft's absence.

**Public Participation:**

One individual spoke to the Historic District Agenda item. Chair Smith noted that this belonged under discussion of the Historic District. Another individual spoke about new developments and suggested that all new buildings should be stem wall construction and that all buildings along Turnbull Creek and its watershed should be elevated. Two people spoke against portions of the rewrite of Chapter 50 – Historic Preservation.

**Old Business:**

**V-16-22 802 Magnolia Street** continued from the November meeting. The applicant originally requested a 9' variance to allow the replacement of a currently dilapidated building which is now unusable due to the two hurricanes to be located 1' from a side property line. He stated that he could live with a 3-5' setback from the property line. Staff recommended a variance of anywhere from 1-5 ft. **Motion to approve a 5' setback was unanimous.**

**New Business:**

**Z-1-23, North Atlantic Avenue.** A group of 12 homeowners located on the east side of North Atlantic Avenue between Crawford Road and Sapphire Road applied jointly for a zoning change from R-3 to R-3A. which provides some minor changes in setbacks and garages but is otherwise comparable. The main reason for the application is that while zone R-3 allows monthly or longer rentals, R-3A permits short term rentals. The representative applicant submitted a letter of support from neighbors, and stated that the group had agreed to limit short term rentals to 7 nights or longer and this agreement would run with the deed.

Besides the applicant and her 11 co-applicants and her neighbors who sent letters of support, there were 23 others who spoke on the proposal, 11 in favor and 12 against. The general tenor of those in favor was property rights and that they should be allowed to rent as they wish. They contend that short term rentals tend to be families who spend money in restaurants and shops and bring vibrancy to New Smyrna Beach. Also, short-term rentals bring in additional tax money. Those opposed felt that the applicants should have done their due diligence before they bought and not asked for change after the fact. Many had been illegally renting their homes and had been caught, and a long list of violations was submitted. One person pointed out that these homes would rent for \$6,000/month and \$4,500/week. There was also concern that this change would trigger the provision in Florida law that

would take away the city's right to regulate short term rentals and set a precedent for future zoning change requests. The Assistant City Attorney said this would not trigger the City's loss of ability to regulate rentals because short term rentals are currently allowed in R-3A and the properties are to be rezoned with no changes to what is allowable under current zoning. Staff recommended the Board give a positive recommendation to the City Commission to change the zoning for the properties listed. **A motion to recommend approval to the City Commission failed with a 2-3 vote with Weiss and Hodges voting Yes, and Hulvershorn, Yates and Chair Smith voting NO.**

**ZT-8-22, Multiple Amendments to Section 504.02 of the City Land Development Regulations.** The applicant was the NSB Planning Department. They wish to amend the Land Development Regulations to restrict the maximum height of new construction and aggregation of parcels in either of the City's National Registered Historic Districts (Coronado – Flagler Avenue and New Smyrna Beach - Canal Street.) This is complicated by the fact that there are five different zoning classifications in these districts: R-1,R-2,R-3A, R-4, and R-5. They are requesting that three stories and 35' be the maximum height for all new buildings in the Historic Districts, regardless of zoning. Multi-family and commercial buildings will have the same height regulations unless the first story is parking. There will be possible waivers with the approval of the Historic Commission. The Assistant City Attorney is concerned that there will be legal issues. Mr. Hodges feels that this is changing regulations after the fact. Staff feels this is a bold attempt to limit construction in Historic Districts that would be out of scale with our current historic structures and recommends that the Board give the City Commission a positive recommendation for the amendment.

There was one speaker in opposition. He felt that this is a solution in search of a problem. His concern is Canal St. which he feels is vibrant and not in need of regulation. His biggest concern was that there was no publicity about this proposal. If there had been, he felt that speakers would be lined up out the door. There were nine speakers, mostly on behalf of the NSB Residents' Coalition, who spoke in favor of the proposal. **The motion to recommend approval to the City Commission passed with a 4-1 vote with Mr. Hodges voting NO.**

**Discussion of Workshop Items:**

Mr. Weiss submitted a two-page list of items to be discussed at a future workshop. The board will decide which ones to include at the next meeting.