

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

ORDINANCE NO. 44-23: CONDUCT THE SECOND READING AND QUASI-JUDICIAL PUBLIC HEARING OF AN ORDINANCE, WHICH IF ADOPTED, WOULD REZONE 12 PARCELS OF LAND LOCATED EAST OF NORTH ATLANTIC AVENUE BETWEEN CRAWFORD ROAD AND SAPPHIRE ROAD FROM R-3, SINGLE FAMILY & TWO FAMILY RESIDENTIAL TO R-3A, SINGLE FAMILY & TWO FAMILY RESIDENTIAL.

August 8, 2023

Background:

Applicant: Amy Blakely, 807 North Atlantic Avenue, New Smyrna Beach, Florida 32169.

Property owners:

- 1. Zsuzsanna Celenza, 805 North Atlantic Avenue
- 2. Blakely Properties 11 LLC, 807 North Atlantic Avenue
- 3. Charles R. Tomkins III, 809 North Atlantic Avenue
- 4. Passalacqua LP, 811 North Atlantic Avenue
- 5. James M. White TR, 813 North Atlantic Avenue
- 6. Michael F. Sutton TR, 815 North Atlantic Avenue
- 7. APR Realty LLC, 903 North Atlantic Avenue
- 8. Natasta M. DeCamillis, 905 North Atlantic Avenue
- 9. Donald L. M. Haase, 907 North Atlantic Avenue
- 10. Immo H. & Kathleen R. Redeker, 911 North Atlantic Avenue
- 11. Michael D. Boyle, 919 North Atlantic Avenue
- 12. Deborah Demito, 921 North Atlantic Avenue

Request: Change the current City zoning of R-3, Single Family and Two Family to City R-3A Single Family on 12 adjacent properties.

Site: These 12 properties are located on the east side of North Atlantic Avenue between Crawford Road and Sapphire Road.

Findings:

Exhibits used in this report:

Exhibit A: Location Map

Exhibit B: Aerial Map

Exhibit C: Applicant's Request

Exhibit D: Neighborhood Letters of Support
Exhibit E: Applicant Map
Exhibit F: Existing Zoning Map
Exhibit G: Existing R-3 Zoning Text
Exhibit H: Proposed Zoning Map
Exhibit I: Proposed R-3A Zoning Text
Exhibit J: LDR Section 504.01.N
Exhibit K: Short Term Rental District Map
Exhibit L: Legal Descriptions
Exhibit M: Restrictive Land Covenant

The property owners from 805 North Atlantic Avenue through 921 North Atlantic Avenue request a zoning change from R-3, Single Family and Two Family Residential to R-3A Single Family and Two Family Residential.

The intent of both zoning districts are similar, as these two zoning districts are intended to be a medium density type of residential development. The permitted uses and accessory uses in each zoning district are the same. The Special Exception uses are also very similar with the exception that the R-3A zoning does allow for a garage apartment for properties located east of Atlantic Avenue.

There are slight differences in the minimum lot size and building setbacks.

The R-3 zoning requires a minimum lot size of 50 feet in width and a minimum lot depth of 115 feet. The R-3A zoning requires a minimum lot width of 50 feet and a minimum lot depth of 100 feet. Since the properties requesting the zoning change are at least 50 feet in width and over 110 feet in depth, this should not affect these properties.

The R-3 zoning has a front yard building setback of 20 feet, side and rear building setback of 7 1/2 feet. The R-3A zoning also has a front yard building setback of 20 feet, but has a side yard building setback of 5 feet, and a rear building setback of 10 feet. The R-3A also allows for a zero lot line developments. But the recorded plat does not reference zero lot line developments.

Currently most of the homes are closer than 7 1/2 feet to the side property line thus in concept the R-3A zoning would create less of a non-conformity since the required side yard building setback would be reduced. The difference in the rear yard building setback should not create an issue since these properties must comply with the City's Coastal Construction Setback Line, (CCSL), regulation under Section 703.00 of the City's Land Development Regulations.

Both zoning districts have the same maximum building coverage of 40% and maximum impervious coverage of 60%. Both zoning districts have the same building height restrictions of 3 stories and 35 feet and both zoning districts also have the same minimum floor area requirements.

Under Land Development Regulation Section 504.01.N, ordinance number 66-07, properties zoned R-3A, with dwellings located east of Atlantic Avenue, are allowed to operate as a short term rental. Short term rentals as defined in the City's Land Development Regulation is a dwelling rented less than 30 days.

Planning and Zoning Board

The following questions and or statements from the Planning and Zoning Board and general public that were addressed at that meeting.

1. If the properties were to be rezoned, could the properties be reconstructed on a zero lot line?
 - A zero lot line development would have to have that option listed on the plat. A requirement of a 10 foot side yard setback on the opposite side yard with an access easement to the neighbor would be required. Since this option is not listed on the 1929 "Boardwalk Subdivision" these properties could not be redeveloped as a zero lot line development.

2. If these properties were to be rezoned to R-3A, would this set a precedent for the neighbors to the west along North Atlantic Avenue to be rezoned to R-3A in the future and then also be allowed to operate a short term rental?
 - The current short term rental ordinance allows for properties located east of Atlantic Avenue that are zoned R-3A to operate as a short term rental. So if the properties west of Atlantic Avenue wish to entertain the option to be rezoned with the result of operating their homes as short term rentals, that option of operating as a short term rental would not be allowed.

3. Would Staff support the possibility of other properties along the beach, located north of these properties, to be rezoned to R-3A and thus allowing for those properties to be short term rentals?
 - All of the parcels to the north of the Grayce Kenemer Barck North Beach Community Park, except for one parcel, is zoned R-1, Single Family Residential. The R-1 zoning district requires a 100 foot lot width with a side yard building setback of

a total of 20 feet with no side less than 8 feet. The front yard building setback is 35 feet. Since the minimum lot width and building setbacks are almost twice the minimum R-3A zoned property, staff would not support a future application to include those properties to the north.

4. Why are southern properties located east of Atlantic Avenue zoned R-3A and these properties which are also located east of Atlantic Avenue are not?

- In 2006 the City Commission directed staff to consider changing the comprehensive plan and zoning regulations to address the concern of incompatible development on the beachside. On June 20, 2007, the City Commission approved three separate proposals to change the future land use and zoning designations for vacant lots or sites developed with single-family or two-family dwellings from R-6 to R-3A, between East 8th Avenue and East 30th Avenue. This was done to reduce the incompatibility of constructing high-rise multi-family buildings adjacent to remaining low-rise single-family and two-family homes. In 2007 under ordinance 66-07, The R-3A zoned properties, which are located east of Atlantic Avenue, were included in the short term rental district.

Summary

When the Planning Department receives an application for rezoning, Staff has to review an application to see if that application is consistent with the City's *Comprehensive Plan* and Land Development Regulations.

After reviewing the application against the City *Comprehensive Plan*, the application would be consistent with the following:

- Element II, Future Land Use, Residential Zoning Table II-5; and
- Element IV, Property Rights Element, Statement 2; and
- Element XV, Economic Development Element, Objective 4, Policy a.

After reviewing the application against the City Land Development Regulation, the application would be consistent with the following:

- The front yard building setback is consistent with the current and proposed zoning.
- The side yard building setback would be less for the R-3A zoning but since most of the structures are non-conforming to the current R-3 side yard setback, the change in zoning would, in theory, create a less non-conforming structure and the possibility of less requested variances.
- The rear yard building setback would not be required as rear building setbacks

along the Atlantic Coastline are subject to Land Development Regulation Section 703.00, Development in Coastal area. The City Coastal Setback Line, (CCSL) would control a rear building setback.

- The maximum building coverage and maximum impervious coverage would remain the same under either zonings.
- The minimum residential floor area would remain the same on either zoning districts.
- The properties on this application, if they so choose, could rent the houses as short term rentals as part of this zoning change.
- The R-3A zoning district does allow for developments to design structures to be on a zero lot line, but that allowance would have to be labeled on the subdivision plat. The current Boardwalk Subdivision plat of 1929 does not give the option of primary structures to be built using the zero lot line format.

Staff would also review if a change in zoning would affect adjacent or closely located neighboring properties. The applicant did submit letters of support from some of the neighbors on this side of the street, that are not part of this application, and staff did receive one call of non-support from the property owner located at 941 North Atlantic Avenue. Staff also receive 8 out of 10 letters of support from the property owners located across the street.

Recommendation

At its regular schedule meeting on January 9, 2023 the Planning and Zoning Board voted, 4-1, to amend the current motion to add the restrictive land covenant, but the final vote on a motion to approve, the Board members voted, 1-4, members Smith, Yates, Weiss, & Hulvershorn dissented, and the motion **failed** to recommend the City Commission to approve the requested rezoning from R-3, Single Family and Two Family to R-3A, Single Family & Two Family.

After reviewing the application against the consistency of the City's *Comprehensive Plan* and Land Development Regulations, and reviewing the overwhelming support of the neighboring property owners from across the street, Staff would recommend the City Commission to **approve** the rezoning for the properties listed on the application from R-3, Single Family and Two Family Residential District to R-3A, Single Family and Two Family Residential District.

Fiscal Analysis:

N/A

Strategic Plan Item:

No

Staff Report Created By: Robert Mathen - Planner II

Attachments:

[Exhibit A Location Map.pdf](#)

[Exhibit B Aerial Map.pdf](#)

[Exhibit C Applicants Request2.pdf](#)

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[Exhibit J LDR Section 504.01.N.pdf](#)

[Exhibit K Short Term Rental Zoning Map Current.pdf](#)

[Exhibit L Legal Descriptions.pdf](#)

[Exhibit M Restrictive Land Covenant - New Smyrna Copy.pdf](#)

[Ord 44-23 Rezoning 12 Parcels N Atlantic Ave.pdf](#)