

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
May 20, 2009**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, May 20, 2009.

Present were Chairman Jon Britt, Vice Chair Joe Blakaitis, Ron Forlano, John Fricker and Don Kingston.

Absent: None.

Also present were Director of Community Development Andy Garman, Council Liaison Dave Wessel and Permit Coordinator Sandy Cady.

Others Present: Michael Milan and Jackie Orsulak of the Snow Geese South Homeowner's Association.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for May 20, 2009 at 6:36 p.m.

**PUBLIC COMMENTS**

None.

Chairman Britt stated that he would like to move the zoning text amendment item up on the agenda. It was *consensus* of the Board to move the item up in the agenda for discussion.

**NEW BUSINESS**

**ZTA – Zoning Text Amendment Application Submitted by Michael A. Milan on Behalf of the Snow Geese South Homeowner's Association to Amend Town Code Section 156.071, Non-conforming Lots of Record**

Director Garman stated that the Snow Geese South Homeowner's Association had submitted an application to change the Town ordinance relative to non-conforming lots of record. He stated that Dare County established it back in the 1990's and it applied to lots that were created prior to November 28, 1975, which was when Dare County's zoning ordinances were adopted. He stated that it dealt with lots that were less than 15,000 square feet and provided owners with additional coverage and reduced setbacks depending on the size of the lot. He pointed out that the typical setbacks for a lot were twenty-five (25) feet for the front and rear, ten (10) feet for the side yards, giving thirty percent (30%) lot coverage. He noted that these lots receive an advantage based on their size, but were smaller than a typical one. He stated that in 1982, Dare County passed a rule

that required all lots to be at least 15,000 square feet, which came from the Dare County Health Department to establish a minimum size for wastewater systems.

Director Garman stated that the basis for the applicant requesting the amendment was that they were created four (4) months after the Snow Geese North subdivision by the same developer, but the lots were smaller. He stated that the Snow Geese North lots benefit from the provision while Snow Geese South does not because of the date of their recordation. He stated that the owners of Snow Geese South would like to benefit from the rules.

Director Garman noted that there were roughly three hundred sixty (360) lots that were benefiting from the current ordinance provision. He added that an additional two hundred eighty (280) lots would be impacted positively by a change in the zoning text amendment if the Planning Board grants the request. He went on to review the issue with the Planning Board and audience.

Director Garman stated that staff's position was that fifty percent (50%) lot coverage for any lot in Town seemed excessive based on their vision. He noted that the Town does not count gravel and decks in lot coverage, which gives the homeowner a greater advantage. He felt that when one gets in the forty to fifty percent (40-50%) range, a town is no longer dealing with low density. He stated that staff's position was that they wanted to see some sort of balance from the lots that benefit versus those that do not benefit.

Member Fricker asked if Director Garman and staff were recommending this as a more broadly fair approach than what was applied for by Snow Geese South. Director Garman stated that staff was recommending it as an alternative to their application so it would provide a fair solution while keeping with the vision of the Town. Member Fricker clarified that the recommended alternative would apply to any redevelopment or new development in both subdivisions. Director Garman stated that he was correct. He added that an owner could make improvements to their property as long as they did not increase the degree of the nonconformity.

Member Forlano clarified that in an attempt to level the playing field; Director Garman was suggesting an option of asking three hundred sixty (360) lots to give up coverage to accommodate the other two hundred eighty (280). Director Garman stated that their development potential would be impacted, but wasn't sure they would be impacted based on what their coverage was. Member Forlano stated that if the Board were to make a decision like this, all of the homeowners would need to be notified since the ordinance would be changed substantially for three hundred sixty (360) people. Director Garman agreed.

Vice Chair Blakaitis clarified that Director Garman was suggesting the Board change the nonconforming status as given by Dare County in 1975. He asked why the issue wasn't addressed when the Town adopted its coverage. Permit Coordinator Cady thought staff was not clear why it was there. She added that it wasn't until Director Garman got to the reasoning that it was put in place. She stated it wasn't put in place just for Duck, but was County-wide. Vice Chair Blakaitis clarified that Duck would have had the power to change it at that time if they wanted to. Chairman Britt stated that they did. Director Garman suggested that the Planning Board make a decision on the application before them and if they wished to pursue other items, they could ask Council to recommend it be reviewed further by the Board.

Member Forlano pointed out that the application was bringing to light a situation that the smaller lots were allowed too much lot coverage in the Town's ordinance. Director Garman stated that it was allowing a substantial amount of lot coverage for certain lots based on their size. Member Forlano clarified that now it needed to be changed. Director Garman stated that it was a suggestion.

Michael Milan of 107 South Snow Geese Drive was recognized to speak. Mr. Milan stated that they did not intend to have a multiplier of ten (10). He stated that as a community association, they felt they had a negative impact since they were not covered under the ordinance, which applied to nonconforming lots. He stated that he understood staff's perspective, but from their perspective, they felt they were at a disadvantage with respect to their intent of the application to change the ordinance. He stated that the owners simply wanted to add pools and did not have plans to build huge homes on the lots. He added that they simply wanted to be in conformity with other similar communities.

Vice Chair Blakaitis asked if there was an immediate need from the homeowner association for bringing the issue to the Planning Board. Jackie Orsulak of 104 South Snow Geese Drive was recognized to speak. Ms. Orsulak pointed out that there were homes for sale that have not been sold because the lots could not have pools. She stated that if the amendment was made, pools could be built on some of the lots.

Michael Milan noted that the three hundred sixty (360) homes that were part of the nonconformity were put in after November 1982. Director Garman pointed out that the three hundred sixty (360) homes that it applied to were all subdivided prior to November 20, 1975. He added that the applicant did leave the date up to staff and staff used the date that Dare County indicated that there could not be anymore lots less than 15,000 square feet. He stated that if the date was changed to four (4) months later, it would add thirty-eight (38) lots from Snow Geese South and would not apply.

Member Fricker asked if the homeowners knew when they bought their properties of the issue they were now bringing forward to the Board. He felt that if the property owners bought their lots, the anomalies must have been public knowledge. He thought they were asking the Board to relieve them of the responsibility or consequence of their actions or taking the rights away from others that were more prudent in their purchases. He asked if it was a fair characterization. Michael Milan disagreed. He stated that the when a buyer is looking at a piece of real estate, most real estate agents were not competent to bring these issues to light unless they understood the true intent of the ordinances. He agreed that the information was out there for the buyers to research. He stated that they were trying to level the playing field by correcting an arbitrary date and time by making things equal.

Member Kingston pointed out that the rationale for the issue came from Dare County Health Department. He stated that they were concerned about wastewater and put it in effect in 1982. He wondered what rationale the Board had to go back and change things. He didn't think it had anything to do with fairness, but with wastewater. Vice Chair Blakaitis agreed and added that it was an important aspect. Director Garman pointed out that the nonconforming lots of record was adopted in 1992. He stated that prior to that date the lots were not afforded additional coverage.

Chairman Britt stated that he understood the issue from a fairness standpoint. He stated that he wasn't sure what the Board could do since it would affect so many other homes. He felt it could be a snowball effect if the Board changes the rules for one subdivision and one date. Vice Chair Blakaitis agreed with Chairman Britt's thoughts. He pointed out that the homeowners are saying there wasn't an immediate crisis. He asked if the Board turned the application down as presented today and re-address it as Council handing it back to the Board, there would not be any objection.

Member Kingston stated that there would be a fairness issue for other lots that were greater than 15,000 square feet. Member Fricker agreed. Director Garman suggesting taking some additional time to research what could be done to determine if the issue was feasible and who it would impact. Chairman Britt thought the consensus of the Planning Board was that they could not grant the request. He stated that he would like to address the Town Council to see if they would want the Board to look at the issue.

Member Fricker felt the application should not be approved. He thought the Board owed some broader consideration to Mr. Milan. Member Forlano and Vice Chair Blakaitis agreed. Chairman Britt stated that the Planning Board would like to recommend to the Town Council that the issue be looked at. Michael Milan stated that he appreciated the Planning Board looking at the issue.

It was *consensus* of the Planning Board to make a recommendation to the Town Council for consideration. Director Garman suggested that the Board make a motion to deny the application, but the Council would hold a public hearing on the issue.

Member Fricker moved that the Zoning Text Amendment application submitted by Michael Milan on behalf of Snow Geese South Homeowner's Association to amend Town Code Section 156.071, non-conforming lots of record be denied with the recommendation to the Council by the Board that the application be denied. Vice Chair Blakaitis seconded.

Motion carried 5-0.

Member Fricker suggested that in the interest of timing, the applicant could withdraw the application to expedite the process. Chairman Britt stated he would like to hear Council's perspective on the issue. Vice Chair Blakaitis agreed.

## **OLD BUSINESS**

### **Discussion of Ordinances Related to Quasi-Judicial Procedures**

Director Garman stated that the Board considered an amendment to the land disturbing activities of the code at their April meeting. He stated that staff had come up with several objectives that would be used to develop the findings and conditions. He stated that the Board now had the objectives in their packets regarding specific findings and conditions. He noted that the Board was near the conclusion of the ordinance with regard to quasi-judicial procedures. He suggested striking Conditional Use Permits and Special Exceptions from the duties of the Board of

Adjustment. He stated that that was the last thing in the ordinance that needed to be changed for consistency.

Member Forlano asked if an applicant can ask for a determination on what was “reasonable”. He stated that it could be different depending on individual points of view. Member Fricker stated that the word “reasonable” took out the absolute black and white standard. He stated that he could see removing “reasonable” in lieu of the other criteria. It was *consensus* of the Board to strike the word “reasonable” from Number 2 in the ordinance.

Member Fricker recommended for Number 4 that the phrase: “...have not been designed...” be stricken and replaced with: “...will not create...”

Chairman Britt asked if the whole ordinance would be brought back to the Planning Board at their June meeting. Director Garman stated that it would.

## **NEW BUSINESS**

### **Planning Board Elections**

Vice Chair Blakaitis moved to nominate Jon Britt as the Chairman for the Planning Board. Member Fricker seconded.

Motion carried 5-0.

Chairman Britt moved to nominate Joe Blakaitis as the Vice Chair for the Planning Board. Member Kingston seconded.

Motion carried 5-0.

## **APPROVAL OF MINUTES**

### **Planning Board Meeting April 15, 2009**

Chairman Britt directed the Board to review the minutes from the April 15, 2009 meeting. Member Kingston had one change to Page 3 of the minutes.

Vice Chair Blakaitis moved to approve the minutes as amended. Member Kingston seconded.

Motion carried 5-0.

## **OTHER BUSINESS**

None.

## **STAFF COMMENTS**

### **Report on Town Council Presentation of the Renewable Energy Survey Results**

Director Garman reviewed the article that was in *The Coastland Times* with the Planning Board regarding the renewable energy survey results. He noted that there may be a joint work session at the mid month July or August meeting with the Council to bring in a professional to help draft a zoning ordinance on renewable energy. Chairman Britt stated that he would like to have one in September as he would not be available in July or August.

**BOARD COMMENTS**

Member Fricker stated that he was glad that Chairman Britt and Vice Chair Blakaitis were willing to continue to serve on the Planning Board.

**ADJOURNMENT**

Member Forlano moved to adjourn the meeting. Chairman Britt seconded.

Motion carried 5-0.

The time was 7:55 p.m.

Approved: \_\_\_\_\_  
                  /s/ Jon Britt, Chairman