

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
September 9, 2009**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, September 9, 2009.

Present were Chairman Jon Britt, Ron Forlano, John Fricker and Don Kingston.

Absent: Vice Chair Joe Blakaitis.

Also present were Director of Community Development Andy Garman and Permit Coordinator Sandy Cady.

Others Present: Dave Stormont, Willo Kelly, Olin Finch and Jackie Orsulak

Absent: Council Liaison Dave Wessel.

Chairman Britt called to order the Regular Meeting of the Planning Board for September 9, 2009 at 6:30 p.m. He noted that Vice Chair Blakaitis and Council Liaison Wessel were both absent.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion/Consideration of an Ordinance to Amend Town Code Section 156.071, Non-conforming Lots of Record

Director Garman stated that he had tried to provide each Board Member a way to perform their own analysis of each option that he was presenting. He added that there were seven (7) options. He noted that out of three hundred eighty-nine (389) non-conforming lots, there were one hundred seventy-nine (179) lots that were allowed more lot coverage than a 15,000 square foot lot. He went on to review the options as well as values and objectives with the Board and audience. He stated that all options included a 4,500 square foot cap on coverage to provide an even playing field for property owners of lots that are greater than 15,000 square feet (since 4,500 would be the maximum coverage for a 15,000 square feet lot). He stated that staff was most comfortable with Option 5 because it met all of the objectives being presented.

Member Kingston clarified that in a previous analysis, none of the non-conforming lots were developed beyond forty percent (40%). Director Garman stated he was correct. He added that based upon the surveys staff had, there were only a handful of lots that were over thirty-five percent (35%).

Member Fricker noted that the issue came back to the Board from Town Council to look at it more holistically than what was initially presented to the Board by Snow Geese South, which was looking at a change in their circumstances so they would be on the same playing field as Snow Geese North. He added that the Board recommended denial of the application, Town Council held a public hearing and sent it back to the Board to revisit the issue but, not just to look at Snow Geese South, but all lots (less than 15,000 square feet) that would potentially be affected by one or more type changes. He thanked Director Garman for his clear, thoughtful and well presented staff report to the Board.

Chairman Britt stated that he had been struggling with the issue. He stated that his inclination had always been to leave the issue alone. He added that he saw all of the arguments but the bottom line was that the Town would be taking something away from people no matter which option the Board chose. He stated that he would like more input from the Board.

Member Kingston stated that he was concerned with density as there was still the potential for high density areas. He stated that his other concern was fairness. He stated that he would like a sliding scale approach and reduce density while giving back some of the smaller lots as opposed to doing nothing.

Member Fricker stated that he was not insensitive to the Town Council's request of the Board, but thought it should be looked at globally to see if the Board could come up with a plan for fairness for all lots less than 15,000 square feet. He didn't think it left the Board the ability to exercise their best judgment as finders of fact in their recommendation to Council. He didn't think the Board was obliged to do anything other than listen to people, try to understand the implications and vote using their best judgment. He agreed that if the Board were to change something, Option 5 would be the best, but he was not persuaded by the fairness issue. He stated that the Board still did not know how many of the lot owners in Snow Geese South bought them after they knew they would not benefit from additional coverage. He wondered how many lots would gain and how many would lose coverage and what the total square footage gained or lost would be. Director Garman went on to show the impacts on the lots using Option 5.

Director Garman noted that the issue all went back to what was a reasonable standard for a residential lot. He stated that, in staff's opinion, looking at stormwater regulations and looking at development intensity/density, and given the fact that the Town does not count gravel or open decking; in some cases a lot could have up to seventy percent (70%) lot coverage (if one were to include gravel and open decking), which was more than a commercial lot is allowed. Commercial lots must provide mechanisms to retain stormwater on-site.

Member Forlano stated that he kept going back to the fairness issue and agreed with Member Kingston's comments regarding density. He questioned whether it was fair for a small lot to have more coverage than a conforming lot (greater than 15,000 square feet). He noted that the Land Use Plan said the Town was trying to control that and if the Town started trying to accommodate the small lots, it could potentially equate to up to seventy percent (70%) density on the small lots. He stated that, globally, the Board was talking about the 15,000 square foot lots but wondered about the larger lots. He thought they should be part of the discussion. He stated that if the Board was looking at thirty-five percent (35%) lot coverage on small lots, why not give it to the large lots. He thought percentage for lot coverage was arbitrary.

Director Garman stated that most ordinances for beach towns have a standard residential lot coverage close to (30%), depending on what was included in the definition of lot coverage. He stated that the thirty percent (30%) standard came from research on the infiltration of stormwater. Member Forlano didn't think there was a stormwater runoff problem on a sandy lot. He added that he thought the coverage could go up to thirty-five percent (35%). He stated that he did not see a problem when he drove around in Snow Geese North and South but was worried about redevelopment.

Director Garman stated that findings of consistency with the Land Use Plan will need to be made with any recommended change. He added that if the lot coverage percentage is raised for all lots in Town, it would be hard to make a finding of consistency with the Land Use Plan.

Member Kingston asked if the proposed options would be taking back more than giving. Director Garman stated he was correct, adding that not many lots were built out more than forty percent (40%) because coverage becomes self limiting. He stated that in most cases it could not physically be done due to other requirements such as setbacks, on-site wastewater, parking, and vegetation. Member Forlano stated that he was still leaning towards the thirty-five percent (35%) lot coverage for small lots or using Option 5, which would incorporate the sliding scale.

Olin Finch of 116 Sandy Ridge Road was recognized to speak. Mr. Finch stated that there would need to be a lot of reasons to change the ordinance because people make choices based upon the regulations in place at the time. He stated that it may result in people building out to the maximum extent now if they believe the government was going to reduce coverage. He stated he did not have an opinion on the issue.

Member Forlano noted that the entire issue came up as a fairness issue between North and South Snow Geese and from there it mushroomed into looking at lot coverage. Olin Finch stated it was all arbitrary and unfair to start with. Director Garman stated that he pulled the Dare County ordinances relative to non-conforming lots of record as they had changed a few years back to deal with the fairness issue.

Member Fricker clarified that if the Board recommended any changes, notices would have to be given to the affected property owners. Director Garman stated that state and local statutes do not require individual notifications, but it would need to be advertised in newspapers of general circulation. He stated that if the Board chose an option, they would need at least one more month to discuss setbacks before anything would be ready to go before Council. He thought it wouldn't go before Council as a Public Hearing until January 2010 at the earliest.

Member Kingston thought that one proposal that wasn't considered was thirty percent (30%) lot coverage across the board for ultimate consistency. He asked if an analysis could be done. Director Garman stated it would take things back to the pre-1992 Dare County ordinance. He stated that an analysis could be done.

Dave Stormont of 6036 Currituck Road in Martin's Point was recognized to speak. Mr. Stormont stated he was a Duck resident and taxpayer. He added that he owned several lots in Duck, two (2) of which were recorded prior to 1975 and were under 10,000 square feet. He

stated that Option 5 would take away thirty percent (30%) of his lot coverage potential on his two (2) lots. He stated that the issue with Snow Geese Dunes would affect every lot in the Sound Sea Village subdivision, as the majority of them were less than 10,000 square feet.

Dave Stormont wondered how many developments that Director Garman looked at had a soil composition of one hundred percent (100%) sand. He thought Director Garman was looking at areas west of the Outer Banks where the data would support his findings. He stated that the Outer Banks was unique since it was one hundred percent (100%) sand with overall stormwater control. He noted that it was difficult to build out a lot with value if the coverage was reduced from fifty percent (50%) to thirty percent (30%) plus five hundred (500) square feet. He added that he did not like Option 5 and encouraged the Board to go with Option 2. He wondered when the definition of lot coverage would change for Duck. He stated that he feared lower percentages would harm the Town as a start and then a potential change to coverage could be devastating. He reiterated that he would encourage the Board to go with Option 2.

Olin Finch stated that he didn't think stormwater was an issue. He added that lower density was better as it had waxed and waned over the years and loosened things up. He thought it should be treated differently when taking something away from a property owner.

Member Forlano agreed with Olin Finch's comments regarding stormwater, but was concerned about the density level in the future. He thought it could be handled with setbacks.

Chairman Britt stated that he was concerned about density and fairness. He noted that part of the issue would be tied with the setbacks. He stated that he wasn't sure he could say which way he wanted to go until the Board looked at both. Director Garman stated that if the setbacks were increased for existing nonconforming lots, it would result in a lot of encroachments. He stated that he would not recommend increasing the setbacks.

Member Fricker stated that he was strongly inclined to do nothing at this time. He thought that there would be a greater unfairness done to the property owners who would have their lot coverage taken away. He stated that he was not insensitive to the problems that plagued staff, but it wasn't a problem that stemmed from the property owners. He felt that anything the Board did would do some harm. Member Forlano agreed with Member Fricker's comments.

Member Kingston stated that he was concerned with density and fairness but wanted to see a limit to the size of the square footage. He thought the Board should do nothing with the exception of limiting coverage to 4,500 square feet.

Chairman Britt agreed with the Board member's comments. He stated that the Board could not get away from the fairness issue as it will not reduce the problem.

Member Forlano asked how the Board felt about Member Kingston's suggestion of limiting the square footage to 4,500. Member Fricker stated he wasn't sure since he didn't look at it as a single issue. Member Kingston noted that the Town Council minutes showed that they wanted the Board to look at reducing lot coverage.

Willo Kelly was recognized to speak. Ms. Kelly stated that with the way the economy was, any change would do further harm to the market than what presently exists in Town.

Chairman Britt stated that he did not want to do anything at this time.

Member Fricker moved that the Planning Board recommend to the Town Council that the ordinance remain unchanged.

Member Forlano suggested that the issue be tabled so Vice Chair Blakaitis could weigh in at the next meeting. Member Kingston thought it would be fair and thought there should be further discussions regarding the maximum of 4,500 square feet. Member Forlano stated he would like to see a full Planning Board discussion on the issue. Member Fricker stated he had a problem with Member Forlano's suggestion as he didn't want the Board to have the same discussion again at their next meeting. He didn't think it was fair to the Board or to the owners that were looking for consistency. Member Forlano noted that Member Kingston wanted to re-visit the 4,500 square foot limit at the next meeting. Member Kingston thought it was both a density and a fairness issue.

Chairman Britt suggested not having a second to the motion and recommended simply having a discussion at the next meeting when Vice Chair Blakaitis was present, but with the principal point of discussing Option 1 versus Option 2 and looking at the 4,500 square feet maximum. Member Forlano agreed with Chairman Britt's suggestion.

Chairman Britt tabled the issue till the next meeting.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Planning Board Meeting August 12, 2009

Chairman Britt directed the Board to review the minutes from the August 12, 2009 meeting.

Member Fricker moved to approve the minutes as presented. Member Forlano seconded.

Motion carried 4-0.

OTHER BUSINESS

Member Kingston asked if the Council meeting on September 23, 2009 would be a joint meeting with the Planning Board. Director Garman stated that the meeting will be at the Town Amphitheater and the primary purpose would be to discuss plans for the Town Hall. He stated that he contacted several representatives from the State Energy Office to attend the meeting. However, the staff person who deals with wind energy would not be able to attend the meeting due to a conflict. He stated that one representative would be attending to talk about the energy

efficiency program but did not believe it would be a joint meeting like the Board had anticipated. He thought the joint renewable energy discussion would be scheduled for another time.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

Chairman Britt moved to adjourn the meeting.

Motion carried 4-0.

The time was 8:07 p.m.

Approved: _____
/s/ Jon Britt, Chairman