

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
October 9, 2013**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, October 9, 2013.

Present were: Chair Joe Blakaitis, Vice Chair John Fricker, Ron Forlano, Tim McKeithan and Marc Murray.

Absent: None.

Also present were: Director of Community Development Andy Garman, Council Liaison Chuck Burdick and Permit Coordinator Sandy Cross.

Others Present: Jon Britt and Henry Blaha.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for October 9, 2013 at 6:35 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion/Consideration of ZTA 13-001, an Application by Mr. Henry Blaha, to Amend the Zoning Ordinance of the Town of Duck, North Carolina, Pertaining to Non-Conforming Lots of Record, Town Code Section 156.071 to Establish a Town-wide Minimum Lot Size of 7,500 Square Feet for the Development of Single-family Dwellings and Eliminating Existing Standards that Allow Reduced Setbacks and Lot Coverage for Non-Conforming Lots of Record below 7,500 Square Feet

Director Garman stated that Henry Blaha was present and would be giving some background on why the item was submitted. He stated that Sound Sea Village was one of the oldest subdivisions in the Town and thought most of the lots were recorded in the 1960's. Henry Blaha stated that they were recorded in 1965. Director Garman stated that back then, the original developer was trying to sell lots in the early 1970's and at the time, most of the lots were served by septic systems and well water since there wasn't any County water serving the area. He added that the Health Department at the time was requiring homeowners to have a minimum separation distance between septic system and well. He believed that it was approximately 100 feet. Henry Blaha stated that State law had it at 55 feet; Dare County Health Department required 75 feet; so if a homeowner complied with the state law, it would limit an owner to two bedrooms on the lot. He added that if the owner enlarged a lot to 10,000 square feet, they could have three

bedrooms because they could meet a larger separation distance. He stated that instead of replatting the lots to make them all 10,000 square feet, the developer would sell one lot and a portion of another lot, causing a hodge podge of non-conforming lots of record. He stated that the purpose of this was to allow people to have homes with more than two bedrooms.

Director Garman stated that more recently, the town has seen some of these portions of lots being developed as individual lots. These lots are smaller than the original platted lot size of 7,500 square feet. He stated that a recent permit was issued to develop a 4,500 square foot lot which was an example of one of these “portions” of a lot created by deed. He added that since this lot met the standards for a non-conforming lot of record of under 5,000 square feet, the lot was granted a 15 foot front yard setback and five foot side yard setbacks. He stated that Henry Blaha and some of the residents of Sound Sea Village became concerned when the house was being constructed because the house was situated at the 15 foot front yard setback. Mr. Blaha explained that the intent of the original developer was not to create a developable lot of 4,500 square feet, but to give the lot to an adjacent property owner to create a larger lot.

Chair Blakaitis clarified that the lot was actually a half of one of the other lots. Director Garman stated he was correct. Chair Blakaitis noted that it wasn't exactly half and asked how it turned out to be a 4,500 square foot lot. Henry Blaha stated that the developer used some of the land in the subdivision as a borrow source to create the roads. The 4,500 square foot lot was originally 7,500 square feet, but was reduced in area to use a portion of it for borrow material. The borrow site is now a pond which sits adjacent to the 4,500 square foot lot.

Director Garman stated that the purpose of the amendment would be to create a minimum lot size of 7,500 square feet. This was chosen because 7,500 square feet was the minimum lot size that was originally platted in Sound Sea Village. He added that staff did some research on the issue and it appeared that 7,500 square feet is the minimum platted lot size of any subdivision in Town. He noted that Sound Sea Village had the smallest lots in Town and thought South Snow Geese came close with their lots being between 7,500 and 8,000 square feet. He stated that as far as he knew, there were no lots platted on the original subdivision plat in Town that were less than 7,500 square feet that were intended for single family use. He stated that smaller lots were platted for common areas but not for single family use.

Director Garman stated that staff picked 7,500 square feet with the intent to honor the lot size on the original subdivision plats but not allow development on lots below that size. He stated that the ordinance was drafted to state that 7,500 square feet would be the minimum lot size that a building permit could be issued to build a single family dwelling.

Council Liaison Burdick asked how many buildable lots were in Duck that were less than 7,500 square feet. Director Garman stated that he wasn't sure. Council Liaison Burdick asked how many were in Sound Sea Village. Director Garman stated that the Dare County tax records showed parcels that were usually 7,500 – 10,000 square feet. He noted that there was one 4,500 square foot lot but, other than that, the half lots do not show up because they are under common ownership with the adjacent property. Council Liaison Burdick asked how many lots were at 4,500 square feet. Director Garman stated that he did not have that information since he would have to research the deeds to find this out.

Vice Chair Fricker clarified that Council Liaison Burdick wanted to know the number of property owners in Sound Sea Village that would be precluded from putting a house on the lot if the Planning Board and Town Council moved forward with what Director Garman and Henry Blaha were suggesting. Council Liaison Burdick stated he was correct. Chair Blakaitis thought it was important. Director Garman agreed. He believed that this 4,500 square foot lot was the only lot that was a stand-alone in the subdivision (that was not under common ownership with an adjacent property thereby created a larger developable parcel). Mr. Garman stated that Mr. Blaha was trying to prevent a situation from occurring where older houses would be torn down and then the property owner would try to build on two lots (one being the original lot and one being the portion of a lot). He explained that many properties consisting of two small lots were developed as one piece of property, but the old lot line was still in existence. Council Liaison Burdick pointed out that it was registered as one lot. Director Garman noted that many of these lots were not legally recombined. Therefore, they were allowed to build across the lot lines without legally recombining the lot.

Member McKeithan clarified that the existing house could be torn down and a home could be built on half of the property. Director Garman stated that they could be treated as individual lots. He added that today, the Town would make the owner recombine the lots and would not allow a house to be built across a lot line. If a house is built across a lot line, it creates a zoning non-conformity since the house would be built into the side yard setback of both lots. Council Liaison Burdick clarified that if the owner decided to tear down the house and split the lot, it would not be allowed. Director Garman stated that if they wanted to tear down the house and rebuild it the same way, Town staff would make them recombine the lot. Council Liaison Burdick asked if an owner would be allowed to build a house on either side of the existing house without tearing the existing one down. Director Garman stated that the owner might be able to build on both lots if the existing house were removed.

Member Murray noted that there was one other lot that was 2,300 square feet but one would have a hard time building anything on a lot that small.

Member Forlano asked if the person who purchased the property was issued a legal deed for Parcel A and Parcel B. Director Garman stated that this was correct. Member Forlano asked if they were issued two legal deeds or one deed. Director Garman stated it was probably handled a variety of ways. Director Garman stated that when they had the property surveyed, it showed the lot line and then they obtained a building permit to develop across the lot line. Member Forlano clarified that there were two legal parcels. Director Garman stated he was correct.

Council Liaison Burdick thought there were two pieces to the issue – (1) if the Town was taking away an owner's property rights because they own another lot like the one being built and (2) if the Town was stopping people from subdividing a lot in the future. He didn't think if someone has a 4,500 square foot lot, the Town could tell them that they could not build on it. He added that the Town could say they would not allow lots to be subdivided below 7,500 square feet. Chair Blakaitis pointed out that the Town's existing subdivision rules would cover subdividing lots that were less than 7,500 square feet.

Director Garman stated that staff met with the Town attorney regarding the specific ordinance that was drafted and he had concerns about outright banning development of any lots under

7,500 square feet. He explained that with the lot in question, if the house were ever to be removed or destroyed, the owners would have to obtain a variance in order to build on the lot again. He stated that the Town attorney had concerns about that. He stated that staff discussed it and thought there would be a better way to address Henry Blaha's concerns without eliminating the ability to develop on a lot that was smaller than 7,500 square feet. He stated that he worked on something that the Town attorney reviewed that would not eliminate the ability to develop on lots less than 7,500 square feet, but would require a conditional use or special exception permit for any development on lots of that size. He added that there would be a higher level of scrutiny and review and it would eliminate the 15 foot front yard setback. He didn't think there was any intent to allow 15 foot front yard setbacks; but in looking at the ordinances, it seemed to be something that the Town inherited from Dare County that was never changed.

Director Garman thought the 4,500 square foot lot that is presently being developed could still be developed with a 25 foot front yard setback but may not have been developed in the same way. He felt that the 15 foot setback was something that alarmed the Sound Sea Village subdivision and guessed it would alarm most subdivisions in Town if additional new homes were built with the 15 foot front yard setback.

Council Liaison Burdick asked what impact this would have on the house that was being built. Member Murray stated that the home that was presently being built was unique due to the pond on the adjacent lot and the drainfield had to be 50 feet away from it. He stated that it was a three bedroom home; however a site plan was drawn up for a four bedroom house but it wasn't practical. He stated that in light of the pond, the 15 foot setback was helpful in this case.

Henry Blaha noted that all of the deeds in the Sound Sea Village subdivision state that there was a 25 foot setback to keep the views of the ocean and sound. He added that they had 40 foot wide roads to keep things wide with 25 feet on each side of the street. He stated that when the setback changes from 25 feet to 15 feet, it impacts the views of everyone else. Chair Blakaitis noted that the impact would only be on the non-conforming lots. Henry Blaha stated that by taking away the 25 foot setback, it was injuring all of the compliant property owners that had to comply with the 25 foot setback to build their homes. Chair Blakaitis asked if the deeds stated that the 25 foot setback applied to the non-conforming lots as well as the 4,500 square foot lot. Mr. Blaha stated that he wasn't sure about the 4,500 square foot lot as he did not have the deed for it. He added that all the deeds he looked at showed the County standard of 25 feet in the front and 10 feet on the sides. Chair Blakaitis asked if the Sound Sea Village association rules covered setbacks as many associations have rules on setbacks regardless of what the Town has in effect and could be more restrictive. Henry Blaha stated that they just went by what the County rules were with the 25 foot and 10 foot setbacks.

Chair Blakaitis asked Member Murray if the house he was building had the setbacks on the deed. Member Murray stated that he did not see a copy of the deed, but had built a new house in Sound Sea Village two years ago that had 15 foot setbacks. He added that it wasn't 4,500 square feet.

Director Garman stated that some of the points of discussion for the Board were whether or not the Town would change the setback for the non-conforming lots from the 15 to 25 foot setbacks and whether the Town would require someone with a lot less than 7,500 square feet to obtain a Conditional Use Permit. He noted that the lot could be developed, but it would entail a higher

level of scrutiny as well as allowing more notification to adjacent property owners. He passed out an alternative ordinance to the Board and noted that Section C tried to address the situation that Henry Blaha was referring to. He added that if there were two lots that were side by side that did not meet the area or width requirements of the ordinance, making them non-conforming with respect to area or width and were developed as one parcel, they would be treated as one lot into the future.

Chair Blakaitis asked if the Town could make the owners recombine the lots moving forward if the ordinance passed. Director Garman stated that the Town could.

Member McKeithan noted that the language; "...shall be considered..." did not sound very legal. He asked if there was some kind of legal requirement involved. Director Garman stated that he talked to Town Attorney Hobbs and the draft ordinance was modeled after other ordinances. He added that it would mean the Town would have a record of how the property was developed with a building permit and survey. He stated that in the future, if an owner came in and showed that they had a 35 foot wide lot that they wanted to develop or tear down a house that was built across two lot lines and wanted to develop the lots individually, the Town would be able to look at the records and see that the two lots were developed as one parcel and did not meet the area and width requirements of the ordinance. He stated that the owner would have to recombine the lots and treat it as one lot moving forward if the owner wished to build on it.

Vice Chair Fricker didn't think that the language stated what Director Garman explained. He thought it was stating that by operation of the facts, it would be deemed by the Town as having been recombined. He asked how it would work with the recordation of deeds at the County level. Member Murray wondered how the lots could be combined. He added that the language stated; "...physically combined for the purposes of development...", the obvious physical combination would be to have a house straddle the lot line, while the less obvious one would be a house on one lot and a conventional septic system on the lot line. He stated the worst case scenario could be a house and a septic system on one lot and the other portion of the lot used for a well, which was abandoned due to the owner using city water. Director Garman thought it was looking at what improvements were developed on both properties.

Vice Chair Fricker stated that his concern was if a current owner who owned all of Lot A and half of Lot B could sell only half of his Lot B. He asked if the potential buyer would understand that the lot would not be able to be built upon. He further asked who would protect the potential owner or provide sufficient legal notice to the potential purchaser of what everything in the draft ordinance would mean. He didn't know if the Board had enough information as to how many property owners would be adversely impacted if the ordinance was passed.

Chair Blakaitis thought it would take some work to find out how many property owners would be impacted. He wondered what additional lots in Sound Sea Village the Town would need to be concerned with. He asked if the Town was just going to prevent the recombining of lots to exist as two lots, what it would do to the rest of Duck. He wondered how many other lots in Town would be affected by the ordinance. Director Garman didn't think there were very many since the smallest platted lots in the Town are in Sound Sea Village and the minimum lot size on the original plat was 7,500 square feet.

Chair Blakaitis stated that if the lots existed the way they currently do, the owner could sell either one until the ordinance goes into effect. Vice Chair Fricker asked if the recombination could be something that was confirmed by deeds of recordation. Director Garman stated that it would have to be confirmed moving forward if the property was developed or sold. He added that it was part of the due diligence process when purchasing property. He stated that if there was an ordinance in the books that explained the rules, the potential buyer should look at the current rules to determine if the property could be developed.

Council Liaison Burdick thought the Board was dealing with two problems – (1) does the Town of Duck wish to prevent any development of lots less than X square feet; and (2) would the Town not permit any subdivision of grandfathered properties that would not meet the same standard. Chair Blakaitis pointed out that the properties were already subdivided. He added that what Council Liaison Burdick meant was that construction would not be permitted on two parcels separately. Council Liaison Burdick asked if it was already built on a certain lot size, even if they were two separate lots, the Town would not permit anyone to build on the separate pieces if they were less than X square feet.

Council Liaison Burdick asked how many lots in Sound Sea Village were split. Henry Blaha thought there were approximately 60-70 lots. Chair Blakaitis asked how many lots existed in Sound Sea Village. Mr. Blaha stated there were 140. He stated that the first phase were lots that went from the sound to the ocean and were all 7,500 square foot lots. He added that the second phase consisted of lots that were 10,000 square feet.

Chair Blakaitis clarified that the reason for the text amendment was to prevent illegal subdivisions. Henry Blaha stated he was correct. Mr. Blaha noted that the Sound Sea Village subdivision had \$6,000 in an account to maintain its roads. He asked the Board if they thought the subdivision had the money to fight an illegal subdivision. Chair Blakaitis clarified that Henry Blaha was referring to it as an illegal subdivision because of the time that it was done. Henry Blaha stated that he was correct. Chair Blakaitis clarified that the newest house that was being built was what prompted Henry Blaha to bring the issue before the Board. Mr. Blaha stated he was correct, adding that he was thinking about the future and trying to protect the views. Chair Blakaitis asked if what was left in Sound Sea Village could occur like what just happened. Henry Blaha thought there were about 7-8 lots that have not been built on to date.

Council Liaison Burdick asked how many more lots were in Sound Sea Village that was less than 10,000 square feet that could have houses built on them. Henry Blaha wasn't sure. Director Garman noted that Member Murray had pointed out that there was one.

Member McKeithan thought the Board was trying to figure out the existing problem; which was if there were any lots that could be built on that were small but still buildable. He thought that Henry Blaha's issue was the houses that could be torn down and have homes built on smaller size lots. Vice Chair Fricker thought Henry Blaha didn't care about a small house being built on a small lot, but maintaining the 25 foot setback. Henry Blaha stated he was correct. Vice Chair Fricker asked why the Board was addressing more than just that. Mr. Blaha stated that it was also the size of the side yard setback from 10 feet to five feet.

Jon Britt was recognized to speak. Mr. Britt stated that it was also a density issue. He added that it was a significant change. Council Liaison Burdick stated that the Town was now at 15,000 square foot minimum lot size for density purposes. He asked how the Town could be moved toward it and not away from it. Chair Blakaitis thought the Board needed to see things from the owner's perspective. Council Liaison Burdick understood and added that that was why he asked the question regarding the number of small lots. Director Garman stated that density was a key core principle of the Town's land use plan, as the Town was trying to encourage low density residential development. He wondered how it could be done with 15 foot front yard setbacks and five foot side yard setbacks on a 3,000 square foot lot. He noted that the only reason the Town has a non-conforming lots of record section in the ordinance was to honor the size of lots that existed previously. He explained that there were lots in the South Snow Geese subdivision that were 7,700 square feet and were allowed to build with a 25 foot front yard setback and 10 foot side yard setback without any problem.

Member Murray pointed out that 7,700 square feet wasn't the same as 4,500 square feet. Director Garman stated that there were no platted lots in Town that were 4,500 square feet. He added that the lot in question was created by a deed and that the County never approved the subdivision of this lot or the creation of the lot. He reiterated that it was created by deed. Jon Britt clarified that nothing in Town has been platted that was less than 7,500 square feet. Director Garman stated he was correct, adding that Sound Sea Village and South Snow Geese were the two smallest subdivisions. He explained that South Snow Geese has to meet more strict rules than Sound Sea Village even though they have the smaller lots. He indicated that staff's position is not to prevent development on legally created lots, but to limit the number of lots that are developed that are smaller than the original platted size.

Member Murray stated that, on the other side of the coin, the issue was essentially limited to Sound Sea Village. He added that keeping it to a minimum was a perspective question. He stated that if the Town didn't want to get into the situation of potentially limiting an owner's property rights, no new subdivisions should be allowed. He stated that if there were 60 lots in question in a 120 lot subdivision, it was a huge problem for the Sound Sea Village subdivision, but compared to the overall number of lots in Duck, it was a tiny problem.

Chair Blakaitis wondered how tiny the problem was. Council Liaison Burdick thought it seemed that the real issue was how to prohibit having the properties taken apart again and building on them separately. He thought there were existing standards that prohibited it. Member Murray pointed out that it wasn't a subdivision because the lot line has never been vacated. Director Garman added that that was the problem. He stated that the ordinance would treat the lots as one parcel for future development so they would be sold as one lot and not two. Vice Chair Fricker noted that the ordinance was not saying that for the purpose of purchase or sale, but only for development. Director Garman stated that it could be put in the ordinance that it would be for the purpose of sale, but didn't want to because the Town did not get into property transactions.

Member Murray asked what would happen if a neighbor wanted to buy a portion to make their lot larger. He thought Section C in the draft ordinance made sense with the intent, but felt that that language needed to be tightened up. He thought it should be laid out in a much more rigid and clear manner.

Member Forlano wondered how the 66 homeowners that own the combined lots would feel if they knew that the Planning Board was considering taking a part of their property away from them. Member Murray stated that the Board was not taking anything away. Member Forlano stated that if he was one of the 66 homeowners, he would be at the meeting telling the Board that they couldn't tell him what to do as long as he stayed within the confines of the ordinance. Member McKeithan thought the issue was throughout the Town. Member Forlano disagreed. Member McKeithan thought there were situations where people had a house that sat on two lots.

Member Forlano clarified that two lots could be recombined to make a larger lot. Director Garman stated that if the old house was torn down and a new house was to be built, the owner would have to recombine the properties if they were straddling the properties before applying for a building permit.

Member Murray clarified that it was applicable under the new ordinance. Director Garman stated he was correct. Member Murray stated that an owner could use the two deeded lots to their advantage and have two ranges on what would be the same property. Member Forlano thought the Board was tampering with property rights.

Council Liaison Burdick thought the Board needed to be careful as one deed had 7,500 square feet and the other had a different square footage. Henry Blaha stated that the majority of the deeds indicated that it was one deed and not separate ones. He stated that when the property was deeded, it was sold in a way so as to put one house on it in order to meet the requirements of the County for well and septic.

Jon Britt clarified that the buyer at the time had to develop a single family residence on the entire lot. Member Forlano stated that the original buyer knew that was the intent. Mr. Britt stated that the intent had to be done in order for it to be developed. Henry Blaha stated that the deed noted that with a 13,000 square foot lot, it shall only be one house. Council Liaison Burdick stated that if the deed stated that only one house could be on the property, it seemed that the Board was dealing with a vacuum. Jon Britt stated that he was on the Planning Board for nine years and always backed property rights to protect the land, but thought this issue was different. He thought it didn't dawn on the property owners back then that they could build two houses on the smaller lots since it wasn't the intent then.

Council Liaison Burdick asked if the Town did nothing and someone tried to develop a subdivision, what would happen. Director Garman stated that they would have to apply for a demolition permit; there would be two lots and one of the lots could be sold. He added that the new buyer would be impacted if the Town tried to change the rules. He stated that the current standards did not establish a minimum lot size. Council Liaison Burdick clarified that that was what the Board was discussing. Director Garman stated that they were discussing two different alternatives to do something. He explained that if an owner had a 3,000 square foot lot and could make the coverage, septic and setbacks work, they could build on the lot. He added that there was a lot of history that made the entire issue problematic. He noted that the Town of Nags Head had a minimum lot size of 5,000 square feet and anything below that, a building permit was not issued at all. He stated that there was a size that was too small to support any kind of development. He stated that one should not assume that they have a legal right to develop a lot that was very small in a town where everyone else had to have 15,000+ sized lots.

Director Garman thought the 7,500 square foot limit was something the Town would support based on the history, but felt there were other things that were worth consideration. He added that if the language needed to be tightened up in Item C, he could try to do it. Henry Blaha stated that the only reason he came up with the 7,500 square foot lot was because that was what was platted. He felt that if an owner bought a 7,500 square foot platted lot, they should be able to build on it. He thought the draft ordinance would protect the people who bought the lots.

Chair Blakaitis asked the Board for their thoughts on the issue.

Member Murray thought it was something that would work but felt that Item C needed to be tightened up as well as having language in it regarding if a house burned down. Director Garman stated that there wasn't anything in the draft ordinance but there was an ordinance in place that grandfathered the house under casualty loss situations, adding that the rebuilt home needed to meet the setbacks to the extent possible.

Member Forlano stated that he was uncomfortable with the whole situation. He added that he was always taught that a deed took precedence over everything else. He stated that he did not feel comfortable playing around with the properties and changing the deeds. Chair Blakaitis asked if the Board made the changes, the deed would still be valid and could still be developed, but it would have to go through a variance process. Director Garman asked if Chair Blakaitis was referencing the applicant's scenario or staff's scenario. Chair Blakaitis stated that he was referencing the staff's scenario. Director Garman stated that they would have to obtain a special exception, which was different than a variance as it was easier to obtain.

Member Forlano felt that the Sound Sea Village subdivision was a unique development and if they had small homes on small lots next to a bigger house on a larger lot; that was fine with him. He reiterated that he was still uncomfortable with the situation.

Vice Chair Fricker stated that if the issue was presented as a matter of density, he could accept it, because it would be consistent with the Land Use Plan; but the other items that involved words being loosely used where the meaning was not clear with regard to duties to record and give notice bothered him. He asked if Town Attorney Hobbs was a real estate attorney or a municipal law attorney. He stated that he was uncomfortable with things and didn't think the Board sufficiently knew all the facts.

Member McKeithan stated that even though the ordinance made sense, he didn't think it was necessary at this time with the information the Board was given.

Council Liaison Burdick wondered if there was any tightening of the Town ordinance that the Board wanted to make in terms of setbacks that would promote lower density. He asked if something could be structured along those lines that would almost prohibit building on smaller lots. He thought if there was something that could be done to tighten up the density issue; it would help to move things in the right direction. Chair Blakaitis clarified that Council Liaison Burdick wanted the Board to stick to setbacks and things on existing lots regardless of size. Council Liaison Burdick stated he was correct. He added that it would accomplish most of what

the Board was trying to do. Vice Chair Fricker pointed out that it was not accomplishing what the applicant wanted to do.

Henry Blaha stated that Sound Sea Village had private roads with private rules. He asked what right the Town had to come in and make exceptions to their rules when all of their deeds indicate 25 foot setbacks and 10 foot side setbacks. He stated that to come in to a private community that was abiding by the laws and ordinances and change things because the Town thought it was right was hard for him to accept. Member Forlano clarified that all of the deeds had a 25 foot setback. Henry Blaha stated that they did. Chair Blakaitis asked if it was a fact. Director Garman stated that he had not examined all of the deeds but had seen some that did indicate there was a 25 foot setback. He added that the problem was that if the association was not enforcing that and not being self-enforced by whoever owns it, then it wouldn't serve any purpose.

Council Liaison Burdick felt that wasn't the issue. He stated that the issue was if the Town wanted to do something that uniformed the Town's approach to housing density. Member Murray pointed out that the Town did have a unifying approach. Council Liaison Burdick stated that he was talking about a minimum basis. He stated that right now, there could be 15 feet. Chair Blakaitis questioned whether the Board should do that. He wondered if it would solve the applicant's problem. He thought maybe it could be addressed at a future meeting.

Director Garman stated that the applicant came to Town staff with concerns. He added that staff had several meetings with him and helped him draft an ordinance based on his concerns. He stated that the applicant was trying to meet whatever objectives he had and thought one objective was to not develop any lots that were less than 7,500 square feet. He stated that if the applicant was asked if the Town could adjust the setbacks so that they were 25 feet while not making the minimum lot size 7,500 square feet, he thought the applicant would be fine with it. Chair Blakaitis thought that was how the Board felt.

Chair Blakaitis asked Henry Blaha how he felt about the setback change. He suggested that if he did not like the setback change, he could change the subdivision covenants and make sure they were enforced. Henry Blaha stated that the setback change would solve his problem because it would make it harder for larger homes to be constructed on these smaller lots and it would preserve views. He thought it superseded the lot size in terms of concern for him as he could not see having varying setbacks. Director Garman stated that he was not aware of any subdivision covenants that had less than a 25 foot setback.

Vice Chair Fricker stated that, as presented, he would vote against the proposal because it was more than the Board should take on. He recommended that Henry Blaha come back with some members of the Sound Sea Village community that were in support of it.

Chair Blakaitis stated that he was not comfortable with the situation. He thought the Board discussed it enough. He agreed with Council Liaison Burdick that something could be done with regard to the setbacks but wasn't sure the Board should be doing that at this time.

Vice Chair Fricker moved that proposed ZTA 13-001 not be recommended for approval by the Planning Board to the Town Council. Member Murray seconded.

Motion carried 5-0.

Chair Blakaitis thought it seemed that the Board had a lot of discussion regarding setbacks to satisfy Henry Blaha and he wasn't sure why Mr. Blaha didn't state as such in the beginning of the discussion. He thought if the Board did decide to change the setbacks, they didn't have to bring it back to 25 feet as 20 feet may have been enough. He felt that the Town bends over backwards to make certain exceptions.

Director Garman stated that with regard to the 5,000 square foot or below standard, this was the only lot that he was aware that had taken advantage of a five foot side yard setback. He stated that once it gets to the 5,000 – 10,000 square foot range, there would probably be more of those situations. He stated that he did not see any reason not to eliminate the standards that applied to the lots that were less than 5,000 square feet. He thought it should be made 0 – 10,000 square feet and use the standards for them. Chair Blakaitis noted that the impact on the remainder of the Town was minimal. He added that he had a problem doing something just for one subdivision.

Director Garman asked if he should state in the recommendation to the Town Council that the Planning Board requested that they be authorized to review standards for non-conforming lots of record less than 10,000 square feet. It was *consensus* of the Board to have Director Garman do so.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Planning Board Meeting – September 25, 2013

Vice Chair Fricker had an addition to Page 7 of the minutes. Member Murray had corrections to Pages 2 and 3 of the minutes.

Chair Blakaitis moved to approve the minutes from September 25, 2013 as amended. Vice Chair Fricker seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

Member Forlano asked how many lots were less than 5,000 square feet in Town. Director Garman stated that he wasn't aware of any outside of Sound Sea Village. Member Forlano asked if it would be right if Council asks the Board to look at setbacks and to inform the 66 homeowners that the Town was considering changing the setbacks. Director Garman thought it would be appropriate to inform them. Member Forlano asked how they would be informed. Director Garman thought staff would have to use Henry Blaha as a conduit since Town staff did not have direct communication with those property owners. Member Forlano felt that the Town should inform the homeowners of what was being done.

Vice Chair Fricker asked what the sense was of Henry Blaha's communication with the Sound Sea Village community. Director Garman thought Mr. Blaha was communicating with them regularly because he was receiving complaints.

ADJOURNMENT

There being no further business to discuss, Chair Blakaitis adjourned the meeting. There was no vote.

The time was 8:21 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman