

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA
and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 02/03/2009 by the following vote:

AYES: ☐

NOES: ☐

ABSENT: ☐

ABSTAIN: ☐

RECUSE: ☐



Resolution No. 2009/43

IN THE MATTER OF a hearing on the appeal by Kenneth Barker, of the San Ramon Valley Regional Planning Commission's approval of a land use permit for a netting structure up to 55 feet tall and 172 feet long, for the Round Hill Country Club Golf Course Driving Range with variances to the side yard setback and height requirements.

WHEREAS, a request was received on November 30, 2007 by Round Hill Country Club c/o Greg Gonsalves (Applicant & Owner), for an amendment to a land use permit 409-59 for the installation of a driving range netting structure 45 feet in height with variances from the side yard setback and height standards.

Following issuance of public notices on the land use permit application, the County received letters from two neighbors in opposition to the proposed development; and

WHEREAS, for the purposes of compliance with the provisions of the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, a Categorical Exemption from environmental review was determined for the project pursuant to Section 15301, Class 1 (f), the addition of safety devices in conjunction with existing facilities. This proposal consists of the operation, maintenance, or minor alteration of an existing private golf course facility with driving range involving the negligible or no expansion of the existing use; and

Contact: Christine Louie (925) 335-1237

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 3, 2009

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:

WHEREAS, on September 8, 2008, after issuance of a notice as required by law, the Zoning Administrator conducted a public hearing on the above land use application. The Zoning Administrator accepted public testimony and at the conclusion, approved the application for the netting structure as proposed with variance granted from the side yard setback, determined that the required findings could be made, and that the Categorical Exemption under Section 15301, Class 1 (f), the addition of safety protection devices in conjunction with existing facilities involving the negligible or no expansion of the existing use, was accepted; and

WHEREAS, in a letter dated September 9, 2008, the neighbor, Mr. Kenneth Barker, filed an appeal of the Zoning Administrator's decision to approve the land use permit to the San Ramon Valley Regional Planning Commission; and

WHEREAS, on October 22, 2008, after issuance of notice as required by law, the San Ramon Valley Regional Planning Commission, acting as Board of Appeals, conducted a public hearing on the appeal of the Zoning Administrator's approval decision; and

WHEREAS, at the conclusion of the hearing, the Commission having fully reviewed, considered, and evaluated all testimony and evidence submitted in this matter and upheld the Zoning Administrator's decision and approved the development for a driving range netting structure with variances to the side yard setback and height standards as contained in the Commission's Resolution No. 6-2009. The Commission found justification to grant the variance from the side setback and height standards for the proposed development irrespective of it being called a fence or a structure. In response to the appellant's comments that the netting was not tall enough, the Commission voted to authorize a height up to 55 feet instead of 45 feet as requested by the applicant; and

WHEREAS, in a letter dated October 23, 2008, the neighbor, Mr. Kenneth Barker, filed an appeal of the San Ramon Valley Regional Planning Commission's decision to approve the land use permit to the Board of Supervisors; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled before the Board of Supervisors on Tuesday January 27, 2009, whereat all persons interested therein might appear and be heard; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors ("this Board") takes the following actions:

1. In accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the County's CEQA Guidelines (together, "CEQA"), this Board finds that the proposal is Categorically Exempt from environmental review under Section 15301, Class 1 (f), and this determination is adequate for purposes of compliance with CEQA and ADOPTS the Categorical Exemption for the project. This Board further finds that the project also qualifies as Categorically Exempt under Section 15303(e) (regarding construction of small accessory structures) and Section 15311 (construction of minor accessory structures). This finding and the following actions and determinations by this Board are based on all the evidence in the record, in writing and presented orally at hearings. This Board finds that no credible information has been presented to rebut the Categorical Exemption or to trigger the exceptions to exemptions described in Section 15300.2. This Board also finds that specific allegations of potential significant impacts from the project are remote and speculative and are not supported by any credible evidence, and that credible evidence in the record sufficiently rebuts and disproves said allegations, including but not limited to claims that shadows may harm vegetation, bird deaths may result, and the project conflicts with the scenic roadway designation for Stone Valley Road.

2. ADOPTS the proposed Land Use Permit (County File #LP07-2078) and approves the side yard setback and structure height variances, subject to the conditions of approval as recommended by the San Ramon Valley Regional Planning Commission;

BE IT FURTHER RESOLVED that the reasons for these actions are as follows:

FINDINGS

A. Growth Management Element Performance Standards

- 1) Traffic: The proposed development for driving range netting would not result in additional trips to the subject property. There is no change to the number of peak hour trips to the site. Therefore, preparation of a traffic report pursuant to the Measure C-1988 requirements is not necessary.
- 2) Water: The site is within the service area of East Bay Municipal Utilities District. The District currently provides water service to the site and there is no proposed change in service.
- 3) Sanitary Sewer: The site is within the service area of the Central Sanitary District. The District currently provides sewer service to the site and there is no proposed change in service.
- 4) Fire Protection: The site is within the service area of the San Ramon Valley Fire District.
- 5) Public Protection: The Growth Management standard is 155 square feet of Sheriff's station area and support facilities for every 1,000 members of the population. The proposed development will not increase the residential population within the area, and the proposal will not require the construction of additional Sheriff's facilities.
- 6) Parks and Recreation: The project does not include a residential element and therefore would not have any adverse impacts to existing parks and recreational facilities. The existing golf course is a park and recreation facility.
- 7) Flood Control and Drainage: The site is located within Flood Zone C, an area with minimal flooding.

B. Land Use Findings:

1. The proposed project as conditioned will not be detrimental to the health, safety and general welfare of the County.

Project Finding: The proposed development is intended to provide additional safety features to the golf course facility in response to the neighbor's complaint to the Country Club of golf balls trespassing onto his property. The applicants have already implemented measures in the club which would restrict the use of specific clubs at certain positions on the driving range, and require the use of limited flight balls within this area. This is to avoid balls from being hit over the existing 20 foot fence, as indicated by the applicant, located at the end of the driving range and onto neighboring properties. The proposal for the netting structure will supplement the policies of the Country Club in protecting the private property that borders the driving range area and is proposed based on the calculations made by the applicant's engineer and recommendations made by the netting company.

2. The proposed project as conditioned will not adversely affect the orderly development of the property within the County.

Project Finding: The proposed development for golf course netting is consistent with the use of the Country Club and is complementary to the golf course use that was established under an approved land use permit authorized in 1958. The surrounding residential development was part of the proposed subdivision which included the existing Country Club and 18-hole golf course.

3. The proposed project as conditioned will not adversely affect the preservation of the property values and protection of the tax base within the County.

Project Finding: The proposed golf course netting is intended to provide additional safety measures to an existing facility in an attempt to keep golf balls from the driving range to be confined to the driving range area. The proposed project will not alter what has existed on the site since 1958, and is responding to the neighbor's complaints and the improved technology of golfing equipment. The use of the driving range and golf course has been consistent and according to the applicant, has not changed in location. This development will provide further protection of the neighbor's property from potential golf balls that may fly onto his property.

4. The proposed project as conditioned will not adversely affect the policy and goals as set by the General Plan.

Project Finding: The General Plan designation for this site is Parks and Recreation (PR) which allows for golf course uses on the site. The proposal for a netting structure will not have any significant adverse impacts to the policies and goals of the General Plan as this proposal involves the addition of safety equipment to an existing use.

5. The proposed project as conditioned will not create a nuisance and/or enforcement problem within the neighborhood or community.

Project Finding: Although, no golf balls were observed flying over the existing 20 foot tall fence by the applicant or staff during a site visit, it is reasonable to accept that there may be golf balls from the driving range that could potentially make it over the existing fence. The proposal is not to modify the location of the golf course facility, but to amend the existing use permit to install a driving range netting structure to the existing facility which exceeds the height and side yard setback standards of the zoning district. The proposed structure will not create a nuisance as the intention of the structure is to provide further protection to the residence that is located at the end of the driving range. The structure in itself will not attract an increased volume of traffic to the area nor will it attract crime or other enforcement issues.

Although it can be generally accepted that living next to a golf course and driving range can be annoying when the occasional stray ball is hit outside of the driving range onto private property, the proposed use permit is only for the review of the driving range netting proposed and not for the golf course use on the property. The golf course was established on site in 1958 and is a legal use on the property. Furthermore, in 1973, a fence easement was granted and recorded by the previous owners Jimmie Lynn and Carole Lynn to Round Hill Estates on the appellant's property for the purposes of erecting a fence to screen golf balls from the driving range. The appellant must have been aware of the adjacent driving range and the risk of golf balls entering his property when he purchased the home, as the previous owners of this property granted an easement for a fence to block balls and signed an agreement to indemnify the Country Club from claims of injury to people on his property caused by golf balls, both of which were recorded against title to the appellant's property.

6. The proposed project as conditioned will not encourage marginal development within the neighborhood.

Project Finding: The subject property and surrounding area is fully developed. The proposed project to modify the existing land use permit for the golf course to add driving range netting will not encourage marginal development within the neighborhood.

7. That special conditions or unique characteristics of the subject property and its location or surroundings are established.

Project Finding: There is an existing golf course with driving range which has been established as a part of the Country Club which is located within a residential neighborhood on a site designated Parks and Recreation in the General Plan. The proposed development to construct driving range netting is consistent with the existing golf course use and is intended to contain any balls hit from the driving range from entering the neighboring property. The proposed development is intended to respond to the neighbor's complaint to the Country Club and to the new technology that has been established in golfing equipment.

C. Findings for Requested Variances to Side Yard and Structure height Zoning Design Standards:

1. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.

Finding: Proposing the driving range netting in a different location to meet the current zoning setback standards or reducing its height to meet zoning height standards will reduce the effectiveness of the proposed netting structure. The granting of this proposal is consistent with similar structures which are constructed on driving ranges or golf courses within the County. Although the subject property is zoned residential, and the surrounding development is residential in nature, the overall proposal is consistent with a residential golf course community and the existing development on the site.

2. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

Finding: This proposed development was filed in response to complaints from the neighboring property owner at 2349 Royal Oaks Drive that golf balls from the existing driving range are flying over the existing fence onto their property. To remedy this neighbor's complaint, the applicant is proposing the netting structure at the specific location. If the applicants were to relocate the proposed structure to a different location to meet the side setback requirement of 10 feet and reduced its height to meet the maximum height of 35 feet the netting structure will not be as effective in providing screening from potential golf ball encroachment onto neighboring properties. Although the golf course staff monitors the area and restricts the use of specific clubs on the driving range, and uses limited flight balls to avoid balls from flying onto neighboring lots, the Round Hill Country Club is proposing this structure to remedy the situation.

3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.

Finding: The proposal and the requested variances from the side setback and height requirement meet the intent and purpose of the General Plan designated land use district of Parks and Recreation. The proposal does not introduce a new land use to the property, rather, it proposes an accessory structure which is incidental to the primary use on the property and to the existing golf course driving range. The variances proposed will allow for the addition of a safety structure to be located on the property so that any potential golf balls that may fly over the existing structure and shrubs would be screened from the neighboring property. The Single Family Residential Zoning District (R-15 & R-6) allows for a maximum height of 35 feet for a structure as indicated under § 84-4.802 of the Zoning Ordinance. Regardless of whether this development is evaluated as a "fence" or "structure", the intent of the proposed development is to provide additional screening protection to the neighboring property, and the variances requested for the proposal are appropriate.