



**Contra
Costa
County**

To: Board of Supervisors
From: Catherine Kutsuris, Conservation & Development Director
Date: February 3, 2009

Subject: Appeal by Kenneth Barker of the San Ramon Valley Regional Planning Commission's Approval of a Netting Structure Up to 55 Feet Tall with Variances

RECOMMENDATION(S):

1. OPEN public hearing and take testimony on the project.
2. CLOSE the public hearing.
3. DENY the appeal filed by Kenneth Barker.
4. ADOPT the Categorical Exemption, Section 15301, Class 1 (f) determined for this project as being adequate whether the netting is called a "fence" or a "structure" based on the evidence in the record, in writing, and orally at hearing. 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 including fences). This finding and the following actions and determinations are based on all the evidence in the record, in writing and presented orally at hearings.
5. ACCEPT the recommendation by the San Ramon Valley Regional Planning Commission (SRVRPC), as contained in its Resolution No. 6-2009 and as further clarified in the attached Board resolution.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **02/03/2009** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Gayle B. Uilkema, District II Supervisor
Mary N. Piepho, District III Supervisor
Susan A. Bonilla, District IV Supervisor
Federal D. Glover, District V Supervisor

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 Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

Contact: Christine Louie (925)
335-1237

cc:

6. APPROVE the project as recommended by the San Ramon Valley Regional Planning Commission

RECOMMENDATION(S): (CONT'D)

with the attached conditions of approval.

7. DIRECT the Department of Conservation and Development, Community Development Division to post a Notice of Exemption with the County Clerk.

FISCAL IMPACT:

None. The applicant is responsible for application processing costs.

BACKGROUND:

On November 30, 2007, an application was submitted to amend Land Use Permit #409-59 for the installation of a driving range netting structure located at the end of the driving range with variances to the side yard setback and height standards. The proposed development was initiated by the applicant based on complaints from the appellant, Mr. Kenneth Barker, of golf balls from the driving range entering his property.

On September 8, 2008, the County Zoning Administrator conducted a noticed public hearing on the application. At the hearing, testimony was accepted from the neighbor, Mr. Barker, and Round Hill Country Club representatives. The Zoning Administrator's decision was to accept the categorical exemption for the project and approve the development as proposed. Prior to the public hearing, a letter of opposition, which is attached, was received from Mrs. Betty Jane Best who resides at 2350 Royal Oaks Drive. In summary, she was concerned that the proposed structure would block out her light, air, views, and reduce the value of her property. Mrs. Best's residence is located across the street from Mr. Barker's residence on Royal Oaks Drive. She did not submit any additional letters or appear at the hearing.

On September 9, 2008, Mr. Barker filed an appeal of the Zoning Administrator's decision. The appeal letter is attached for reference, and a summary of the appeal points is listed in the next section.

On October 22, 2008, the San Ramon Valley Regional Planning Commission conducted a noticed public hearing on the application. At the hearing, testimony was accepted from the neighbor, Mr. Barker, the Alamo Improvement Association, and Round Hill Country Club representatives. The appellant testified before the SRVRPC that he would not be satisfied even if the netting height is increased, and said that the only acceptable remedy is to close or move the driving range. The SRVRPC unanimously denied the appeal and upheld the Zoning Administrator's decision and granted a height variance for a height up to 55 feet high and 172 feet long and a variance to the side yard setback.

On October 23, 2008, Mr. Barker filed an appeal of the San Ramon Valley Regional Planning Commission's decision. The reasons for the appeal are summarized in the section below.

APPEAL BY KENNETH BARKER OF THE SAN RAMON VALLEY REGIONAL PLANNING COMMISSION'S APPROVAL

In summary, the appellant objects to the San Ramon Valley Regional Planning Commission's approval of the proposed netting structure due to the following reasons:

- 1) the approval of the proposed netting was evaluated incorrectly and should be reviewed as a fence,
- 2) the project is not in compliance with the applicable law and ordinance codes,
- 3) the project is in violation of the California Environmental Quality Act,
- 4) the project will reduce the value of the appellant's residence,
- 5) information was not provided for the appellant's review prior to the public hearing, and,
- 6) the trajectory study is not accurate and requires verification

STAFF RESPONSE TO POINTS OF APPEAL

1. Appeal Point #1 & 2: The approval of the proposed netting was evaluated incorrectly and should be reviewed as a fence. The project is not in compliance with the applicable law and ordinance codes.

Staff Response to Appeal Point #1 & 2:

The proposed development was evaluated as an amendment to an approved land use permit to install a driving range netting structure with variances to the side yard setback and height standards. Mr. Barker argues that the proposal should be evaluated as a fence with a maximum height of 6 feet and not as a "structure" subject to the 35-foot height limit. A "structure" as defined by Section 84-4.270 of the Zoning Ordinance, is anything constructed that is permanently attached to the ground with a few exceptions. There is no specific definition for a "fence" in the Zoning Ordinance, only a reference to fences less than 6 feet in height as being exempt from being classified as a structure under Section 82-4.270. Under this section, fencing up to 6 feet in height is not evaluated for compliance with setbacks. It is when fencing exceeds 6 feet in height that it would then qualify as a structure and must comply with the zoning standards for setbacks and height.

The proposed netting structure is 45 feet in height, and the SRVRPC agreed with the Zoning Administrator's decision to consider the netting a structure rather than a fence, and determined that the 55-foot height variance can be approved. In addition, the netting is permanently attached to the ground, which classifies the proposed development as a structure pursuant to Section 82-4.270 of the Zoning Ordinance. All structures as defined by the Zoning Ordinance must meet the yard setback and height standards of the prescribed zoning districts. The maximum height limits for a structure as referenced in

Sections 84-12.802 and 84-4.802 is 35 feet.

The appellant has made a broad statement and has not elaborated on how the project is not in compliance with applicable laws and ordinances. The project is an amendment to a land use permit and both the Zoning Administrator and the SRVRPC found the project to be consistent with the Zoning Ordinance.

2. Appeal Point #3: The project is in violation of the California Environmental Quality Act.

Staff Response to Appeal Point #3:

The SRVRPC determined the project to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Existing Facilities, 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. The golf course and driving range facilities have been established on site for several decades, and the proposal includes the installation of driving range netting. In addition, the proposed netting structure falls under two additional exemptions. The categorical exemption would also apply under Accessory Structures, Section 15311, Class 11, the construction of minor structures accessory or appurtenant to commercial facilities. Also, the categorical exemption under New Construction or Conversion of Small Structures, Section 15303, Class 3 (e), the construction of limited numbers of new accessory (appurtenant) structures including fences would also apply to this project.

The appellant has made a broad statement and has not submitted any evidence to support his claims. Under Section 15204 of CEQA, which addresses the focus of review of draft EIRs and Mitigated Negative Declarations, reviewers of these documents should explain the basis for their comments and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Although this proposal was determined to be categorically exempt from CEQA, and the above section addresses the review of draft EIRs and Negative Declarations, it can be generally applied to this project to address the general review and comment procedures for projects under CEQA.

3. Appeal Point #4: The project will reduce the value of the appellant's residence.

Staff Response to Appeal Point #4:

The appellant has made a broad statement without submitting any supporting documentation prepared by qualified professionals in regards to the impacts to the value of his residence. The golf course and driving range was approved as a part of a residential golf course community in 1958. Based on approved land use permits and historical aerial photographs, the golf course and driving range was established prior to the construction of the Barkers' residence. Hence, any reduction in property value was already accounted

for in the original purchase price. Furthermore, an easement was established by the previous owners and the Country Club on June 1, 1973 allowing the Country Club to establish fence screening for the driving range on Mr. Barker's property. However, the proposed development is located entirely on Round Hill Country Club property.

4. Appeal Point #5: Information was not provided for the appellant's review prior to the public hearing.

Staff Response to Appeal Point #5:

The appellant has been lawfully noticed for the public hearings before the Zoning Administrator and the San Ramon Valley Regional Planning Commission. In addition, staff reports have been provided to the appellant prior to the public hearings before the Zoning Administrator and the San Ramon Valley Regional Planning Commission. In addition, the appellant has visited the County offices to review the file prior to the public hearings. At the SRVRPC hearing, the applicant submitted additional exhibits including trajectory analyses and photographs for the review and consideration of the SRVRPC. These documents were submitted by the applicant at the meeting and were not available prior to the meeting to either staff or the appellant.

5. Appeal Point #6: The trajectory study is not accurate and requires verification.

Staff Response to Appeal Point #6:

The trajectory study which was submitted for review and consideration was reviewed and accepted by the Zoning Administrator and the SRVRPC. The trajectory study submitted does not include every possible scenario of ball flight. However, it is evident that the proposed netting structure will undoubtedly screen the appellant's property from golf balls that may reach his property. It may not screen every ball, but it will provide additional protection from golf balls. The SRVRPC addressed the appellant's concern by authorizing the variance for an additional 10 feet to the netting structure height.

STAFF RECOMMENDATION

Staff is recommending that the Board of Supervisors approve the project as recommended by the San Ramon Valley Regional Planning Commission as contained in its Resolution No. 6-2009. Regardless of the appellant's claims that the netting is not high enough to stop every ball, it is clear that the proposed netting will reduce the number of balls reaching his property.

ATTACHMENTS

Resolution No. 2009/43

SRVRPC Resolution 6-2009

Maps and Photos

Conditions of Approval

Letters of Appeal and Letter of Opposition

SRVRPC Evidence

Staff Report to the SRVRPC

Staff Report to the Zoning Administrator

Letters from the Applicant

Round Hill Prop Owners Assoc Letter

AIA Comments

Plans dated 2-15-08

Revised Plans Dated 9-24-08 Showing Trees

Historic Aerial Photos

Trajectory Analyses and Examples of Netting Installations

Trajectory 4/7/08

Rendering and Netting Specifications

Exhibit O-Use Permit #409-59

Fence Easement

Notification List