

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KINGS CREEK COUNTRY CLUB

(Case No. 12097)

A hearing was held after due notice on February 5, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the height requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 58 feet from the 42 feet height requirement for a proposed driving range netting system. This application pertains to certain real property located on the east side of Kings Creek Circle at the intersection of Patriots Way and Kings Creek Circle (911 Address: 1 Kings Creek Circle, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-1158.00 C (portion of).

1. The Board was given copies of the Application, aerial photographs of the Property, a portion of the tax map of the area, and a site plan of the Property dated November 30, 2017.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Kevin Wiest, Don Beyerly, and Joel Weiman were sworn in to testify about the Application. Steve W. Spence, Esquire, presented the case on behalf of the Applicant and submitted exhibit booklets into the record for the Board to review.
4. The Board found that Mr. Spence stated that the Applicant intends on increasing the height of the netting for its driving range from 50 feet to 100 feet. A variance is needed from the 42 feet height requirement since the netting system is considered a permanent structure. The increase in height of the netting will protect the 18th hole green and the clubhouse from the driving range.
5. The Board found that Mr. Spence stated that the entire property consists of a golf course and a portion of the golf course is used as a driving range.
6. The Board found that Mr. Spence stated that the driving range is existing and the existing netting has been in place for many years. The existing netting is as high as 50 feet tall in some areas.
7. The Board found that Mr. Weiman testified that he is the senior designer for McDonald Design Group and he has been retained by the Applicant to assist with design changes to the course. He has been working with the club's improvement committee for two years on improving the golf course and practice area.
8. The Board found that Mr. Weiman testified that the current driving range has many safety issues. Errant shots from the driving range have landed on the golf course, the clubhouse, and parking lot.
9. The Board found that Mr. Weiman testified that he studied a possible relocation of the driving range but relocating the driving range was determined to be infeasible due to the size of the golf course, the cost of relocating holes, and environmental impact.
10. The Board found that Mr. Weiman testified that, if the golf course was relocated, it would be placed near ponds and that, even if the driving range was relocated, the nets would still be needed.

11. The Board found that Mr. Weiman testified that the current location of the driving range is the best location possible.
12. The Board found that Mr. Weiman testified that he worked with a consultant to design the netting and the consultant recommended a netting structure measuring 135 feet tall surrounding the driving range. The consultant's proposal was not well received and was deemed impractical. Instead, the Applicant proposes to install a netting structure measuring 100 feet tall.
13. The Board found that Mr. Weiman testified that the Kings Creek golf membership generally consists of retirees and the Applicant determined that the additional 35 feet was not needed since the users of the driving range would be unlikely to hit balls that far.
14. The Board found that Mr. Weiman testified that there is an existing tree line between the clubhouse and the driving range.
15. The Board found that Mr. Weiman testified that practice areas for golf courses have increased in popularity.
16. The Board found that Mr. Weiman testified that the netting will be a mesh netting strung on steel chords and the netting structure will be 100 feet tall at its highest point.
17. The Board found that Mr. Spence stated that the existing tree canopy is approximately 68-75 feet tall but there are some trees which exceed 100 feet tall. The netting will exceed the height of the tree canopy.
18. The Board found that Mr. Wiest testified that he is the PGA professional at Kings Creek Country Club and that the golf membership at Kings Creek has increased in recent years.
19. The Board found that Mr. Wiest testified that the existing driving range was previously used as a warm-up range but has evolved in recent years for use as a practice range. More lessons are being given and the increase in lessons has resulted in greater use of the driving range. The number of golf balls hit at the range increased from 2,000 per day to 15,000 per day.
20. The Board found that Mr. Wiest testified that players are trying to hit the ball higher and longer and there has been an improvement in technology in golf balls and equipment which has resulted in players being able to hit the balls higher and farther.
21. The Board found that Mr. Wiest testified that the average age of members at the Club is 63 years old.
22. The Board found that Mr. Wiest testified that a netting structure measuring 100 feet tall will capture most balls hit by members at the driving range.
23. The Board found that Mr. Wiest testified that another club has a netting structure measuring 90 feet tall and many golf balls clear the netting.
24. The Board found that Mr. Wiest testified that he has watched many members hit balls at the range and feels comfortable that the proposed structure of 100 feet will satisfy the Club's purpose.
25. The Board found that Mr. Wiest testified that the use of the golf course has changed to increased driving range use rather than members playing all 18 holes of the course.
26. The Board found that Mr. Wiest testified that the Club wants to stay competitive and make renovations but safety is the number one priority.
27. The Board found that Mr. Byerly testified that he is the general manager of the Club and the members desire to improve the safety of the clubhouse.
28. The Board found that Mr. Byerly testified that the patio of the clubhouse is near the driving range and on two occasions during his recent interview process golf balls landed on the patio.
29. The Board found that Mr. Spence stated that the clubhouse patio is approximately 160 yards from the driving range.
30. The Board found that Mr. Byerly testified that vendors and employees use the rear of the clubhouse for loading and access and balls tend to land in that area as well.

31. The Board found that Mr. Spence stated that the Property is unique as it is a golf course community and the driving range is an integral part of the course. The safety issues presented by the range have also created a unique situation.
32. The Board found that Mr. Spence stated that the driving range cannot be relocated elsewhere on the course but the Applicant explored alternatives.
33. The Board found that Mr. Spence stated that the changes in golf ball and equipment technology have led to an increase in the safety concerns and the Applicant intends to improve the safety of the course.
34. The Board found that Mr. Spence stated that immediate neighbors, including those who will be able to see the structure, support the Application.
35. The Board found that Mr. Spence stated that the structure will not alter the essential character of the neighborhood since the golf community remains.
36. The Board found that Mr. Weiman testified that black netting will be used to blend in with the surrounding natural elements.
37. The Board found that Mr. Wiest testified that the existing netting has not posed a problem for wildlife. There are geese on the golf course but they tend to stay away from the driving range.
38. The Board found that Mr. Weiman testified that poles for the proposed netting structure will be designed to be wind-graded and will be safer than the existing netting structure.
39. The Board found that one (1) party appeared in support of the Application.
40. The Board found that no parties appeared in opposition to the Application.
41. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is clearly unique as it is a large but oddly shaped parcel. The Property is used as a golf course (which takes up a large portion of the Property), a driving range, a clubhouse, and other amenities. The driving range is irregularly shaped because of its proximity to the clubhouse, parking lot, tennis courts, 18th hole, and a pond. The driving range is also shorter than average sized driving ranges and is narrow; thereby creating the need for the netting system. The driving range is centrally located on the site and is currently surrounded by a 50 feet tall netting structure to keep golf balls from landing outside the driving range area. The height of the netting system, however, is too short to adequately keep golf balls within the driving range. Evidence and testimony clearly show that errant golf balls have landed in the parking lot and clubhouse. These errant shots have damaged property and pose safety concerns for persons at the Kings Creek Country Club. The Applicant, thus, needs to construct a taller netting system to improve the safety of the driving range but the Applicant is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the exceptional practical difficulty is due to the irregular and narrow shape of the Property and its environmental features (such as ponds and streams) which greatly limit the area where a driving range could be located.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was developed many years ago as a golf course with a driving range and related amenities. The driving range is improved by a netting system that is insufficient to adequately keep golf balls within the driving range. In order to have a netting system that will protect adjacent areas, the Applicant needs to install a netting system which exceeds the height limits set forth in

the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a netting system, which is tall enough to protect neighboring properties and nearby amenities from balls hit from the driving range, to be constructed on the Property. The Board is convinced that the size, shape, and location of the netting system are reasonable, which is confirmed when reviewing the survey and exhibits provided by the Applicant.

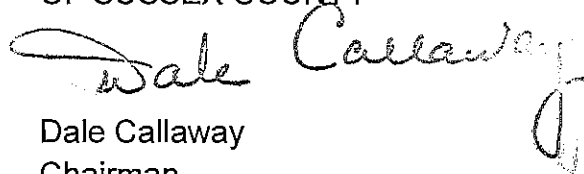
- c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed many years ago and is narrow and has environmental conditions which limit its developable area. Due to these physical conditions, the Applicant has a netting system to protect against balls hit from the driving range. Improvements in golf technology, however, have rendered the existing netting system obsolete and dangerous. The Applicant seeks install a taller netting system which will enhance the safety of the driving range. The Board is convinced that the Applicant is otherwise unable to relocate the driving range or erect other barriers which would adequately protect nearby areas without a netting system which exceeds the height requirement. The exceptional practical difficulty is the result of the Property's unique physical conditions and changes in the golf industry.
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Property has been improved for many years by an existing netting system which exceeds the height requirement and, despite its longstanding location and notice to neighbors, no evidence was presented which would indicate that the existing netting system or a taller one as proposed by the Applicant would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. This lack of evidence is telling since the Board would expect some evidence if the existing netting system had altered the essential character of the neighborhood. The Board notes that the exhibits indicate that the netting system will enhance the safety of the nearby area by protecting non-driving range areas from errant golf shots. The Board also notes that the Kings Creek Homeowners Association supports the request. The system is also designed with a dark mesh netting in order to blend into the aesthetics of the area. The system will also be wind-rated which should improve the safety of the netting system as compared to the existing system which uses older technology.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to erect a new netting system that will adequately protect nearby areas from the driving range. The Board notes that a professional consultant recommended that the Applicant install an even taller system but the Applicant chose the shorter system to reduce the degree by which the system will exceed the height requirement. The Board is also convinced that the Applicant explored other options, such as relocating the driving range elsewhere on the Property, but those options were not feasible and would require similar netting systems in those areas. The Board finds that the Applicant took reasonable measures to limit the height of the netting system while improving the safety of the driving range.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date March 20, 2018