

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SUN LEISURE POINT RESORT, LLC

(Case No. 12428)

A hearing was held after due notice on June 1, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the separation distance requirement for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 266 feet from the requirement that individual mobile campers, tents, camp trailers, touring vans and the like be at least 400 feet from existing dwellings on properties of other ownership. This variance request pertains to the separation distance requirement from the Applicant's proposed RV park to existing dwellings on lands of the heirs of Francis Niblett ("the Niblett Property") which are adjacent to the property hereafter described. The Niblett Property is identified as Sussex County Tax Map Parcel Nos. 234-24.00-39.07 and 39.08. The Applicant previously included as part of its application request for a variance of 55 feet from the same 400 feet separation requirement from dwellings on lands of the DeGirolano family but the Applicant has redesigned the RV park and withdrawn that request. At issue before the Board is simply the 266 foot variance request from the Niblett Property. The Property is located on the southwest side of Diplomat Street, approximately 440 feet southeast of Radie Kay Lane (911 Address: N/A) said property being identified as Sussex County Tax Map Parcel Number: 2-34-24.00-39.02 and 39.06. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an exhibit booklet from the Applicant, a letter from the Applicant's attorney dated May 28, 2020, letters in opposition, a schematic of the proposed site, a conditional use application, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of and three letters in opposition to the Application.
3. The Board found that George H. Harrison, Jr., Mark Davidson, Brian Styck, and Jackie Maguire were sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Mr. Hutt stated that the Sun Leisure Point Resort community is a community of manufactured homes, recreational vehicles (RVs), and a marina located just off Long Neck Road.
5. The Board found that Mr. Hutt stated that the Property under consideration is made up of two tax parcels and each parcel is made up of four acres for a total of eight acres. The Property is zoned AR-1 and neighboring parcels are also zoned AR-1.
6. The Board found that Mr. Hutt stated that the Applicant originally planned to have 64 RV sites on the Property and the Applicant sought a variance of 266 feet from the manufactured home owned by the Niblett's and a variance of 55 feet from the home owned by the DeGirolano family. The Applicant has reconfigured the site plan so that the request for the 55 foot variance from the DeGirolano residence is no longer necessary and the only variance being sought is the 266 foot variance from the property owned by the heirs of Francis Niblett.
7. The Board found that Mr. Hutt stated that Leisure Point has been in existence since the 1960s and was developed by George Harrison, Sr., prior to the enactment of the

Sussex County Zoning Code so it is considered a pre-existing legally nonconforming manufactured home and RV resort community.

8. The Board found that Mr. Hutt stated that Leisure Point was originally developed for transient campers but, over time, it became a mixture of permanent manufactured home lots as well as RV sites.
9. The Board found that Mr. Hutt stated that, currently, the community consists of 211 manufactured home sites, 317 RV sites, and 305 boat slips in the marina.
10. The Board found that Mr. Hutt stated that this proposal is for recreational vehicle sites which would be open from April 15 to October 15 each year.
11. The Board found that Mr. Hutt stated that the Property is currently vacant but is not farmed.
12. The Board found that Mr. Hutt stated that there is a Conditional Use Application pending before the Planning and Zoning Commission for 64 RV sites on these eight acres.
13. The Board found that Mr. Hutt stated that that, after the Conditional Use application was filed, the Applicant was informed that a variance from the separation distance requirement would also be necessary for this property and that, if the variance is approved, the Applicant will go before the Commission and Sussex County Council and the public will have an opportunity comment at those hearings as well.
14. The Board found that Mr. Hutt stated that the Applicant will have to meet agency regulations such as the Fire Marshal, engineering, and DelDOT regulations as part of the conditional use application process.
15. The Board found that Mr. Hutt stated that the 400 feet separation distance requirement limits the developable area of the site.
16. The Board found that Mr. Hutt stated that the dwellings of other ownership within the 400 foot separation distance area are located off Diplomat Street and the owners access their properties through the gated entrance for the Sun Leisure Point Resort.
17. The Board found that Mr. Hutt stated that, with the change in the site plan, the Conditional Use request will be reduced to 58 RV sites and the Applicant has reduced its proposed RV capacity by 6.
18. The Board found that Mr. Hutt stated that the site will also be improved by a bathhouse, pool, and tot lot. The pool will be closed in the off-season.
19. The Board found that Mr. Hutt stated that a privacy fence will be installed around the perimeter of the eight acres and there will be a 50 foot landscaped buffer from neighboring properties.
20. The Board found that Mr. Hutt stated that this area has developed into a manufactured home and RV resort area with 21 developments of a similar nature.
21. The Board found that Mr. Hutt stated that this proposed use is consistent with the area and will have a positive financial impact on the area.
22. The Board found that Mr. Hutt stated that there are no wetlands on the Property and the Property is not in a flood zone.
23. The Board found that Mr. Hutt stated that the site will use central water and sewer.
24. The Board found that Mr. Hutt stated that the park will be seasonal in use.
25. The Board found that Mr. Hutt stated that many of the residents will use golf carts within the community.
26. The Board found that Mr. Hutt stated that there will be no change in access to the Property as the park will share its entrance with the existing manufactured home / RV park.
27. The Board found that Mr. Hutt stated that this Property is unique as it is located adjacent to the pre-existing, non-conforming manufactured home park and has two dwellings of other ownership that access their properties through this site.
28. The Board found that Mr. Hutt stated that, in order to enable the reasonable use of this Property, it is necessary for the expansion of the park onto this Property.

29. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicant as the placement of the dwellings on adjacent properties is not within the Applicant's control.
30. The Board found that Mr. Hutt stated that the variance will not alter the essential character of the neighborhood as the surrounding area is primarily residential and consists of manufactured home / RV parks, single-family residential homes and farmland.
31. The Board found that Mr. Hutt stated that the homes on Diplomat Street were placed in 1987 after the original Leisure Point was already in existence.
32. The Board found that Mr. Hutt stated that the variance requested is the minimum variance possible for the Applicant's proposed use and the Applicant has revised the site plan to eliminate the 55 foot variance but there is not a means of doing that for the 266 foot variance.
33. The Board found that Mr. Harrison and Ms. Maguire affirmed the statements made by Mr. Hutt as true and correct.
34. The Board found that Mr. Hutt stated that the Applicant intends to allow RVs to remain on the site in the off-season.
35. The Board found that Mr. Hutt stated that the Niblett property is located off Diplomat Road and that there is no variance needed from homes located off Long Neck Road.
36. The Board found that Mr. Davidson testified that the subject property was once owned by the Niblett family and that the properties that are owned by the Niblett Heirs are less than 400 feet from the existing manufactured home park and RV resort
37. The Board found that Mr. Hutt stated that the existing guard shack will be used for all of Leisure Point.
38. The Board found that Mr. Hutt stated that the fence will be around the rest of Leisure Point.
39. The Board found that Mr. Hutt stated that the only entrance is from Diplomat Street for Leisure Point. Neighbors also access their properties through Diplomat Street.
40. The Board found that Mr. Harrison testified that there is a pool in the existing section of the park and the patrons in the new area will also have a pool. He expects that most people will use the pool nearest to their camper.
41. The Board found that Mr. Harrison testified that, in the RV section, the pools and water infrastructure are winterized after October 15 each year.
42. The Board found that Mr. Harrison testified that the manufactured home section is open year-round.
43. The Board found that Mr. Harrison testified that the guard shack is an electronic system and has not been an issue.
44. The Board found that Mr. Harrison testified that the additional RV sites should result in insignificant traffic on Diplomat Street and that there is no back up of traffic at the guardhouse.
45. The Board found that Mr. Hutt stated that the neighboring homes, which were placed after Leisure Point was developed, have created the uniqueness and that much of the existing Leisure Point is within 400 feet of the Niblett Property.
46. The Board found that Joseph DeGirolano, Nancy DeGirolano, Marilyn Wilson, Anthony DeGirolano, Mildred Barnsworth, and James Russum were sworn in to give testimony in opposition to the Application.
47. The Board found that Joseph DeGirolano testified that he is concerned that the RVs will remain on the lot when the season is over and cause issues when there are high winds. He is also concerned the retaining pond will overflow.
48. The Board found that Joseph DeGirolano testified that his family has owned property on Long Neck Road for over 100 years with 3,000 feet of undeveloped waterfront property. According to Mr. DeGirolano, his mother owns 10 acres on Dogwood Lane and his mother gave easement rights for the entrance to Sun Leisure Point Park.

49. The Board found that Joseph DeGirolano testified that he has concerns about noise pollution, campfire smoke, crime, golf carts riding through the DeGirolano property, inability to sleep, and traffic jams at the guard hut. He did not feel that campgrounds are residential uses or that the fence will stop noise or keep people off their property.
50. The Board found that Ms. DeGirolano testified that, of the 23 manufactured home parks and RV parks, only three are strictly RV parks.
51. The Board found that Ms. Wilson testified that 70 acres of family lands are being impacted by placing 58 RV sites with a retaining pond and a dog bathroom area that will produce fecal waste.
52. The Board found that Ms. Wilson testified that the DeGirolano property has a farmhouse and graveyard.
53. The Board found that Anthony DeGirolano testified that he is opposed to the variance request as he is concerned that it will affect his ability to manage the family farm and that he does not want many people close to his farm and livestock. He plans to retire to the farm.
54. The Board found that Ms. Barnsworth testified that Leisure Point is a gated community and she lives in the Sun Leisure Point community and had to pass a background check to live there. She has concerns that patrons of the new RV park also have to pass a background check.
55. The Board found that Mr. Russum testified that he will be most affected if the variance is approved as his home will be 134 feet away from the nearest RV.
56. The Board found that Mr. Russum testified that it is difficult to enter his property currently and that there will be additional traffic with the park expansion.
57. The Board found that Mr. Russum testified that the noise level and crime level will go up and that it will limit his ability to develop his property if he has to meet the 400 feet separation distance.
58. The Board found that Mr. Hutt stated that, of the 21 manufactured home parks and RV resorts in the area, 4 are strictly RV parks.
59. The Board found that Mr. Hutt stated that a proposed fence will prevent patrons in golf carts from wandering onto neighboring properties.
60. The Board found that Mr. Hutt stated that the concerns about traffic building up at the guardhouse should not be an issue as historically this has not been an issue as campers are a part of the current Sun Leisure Community.
61. The Board found that Mr. Hutt stated that there is an online check-in process and the patrons will have a code to enter and therefore, traffic should not back up.
62. The Board found that Mr. Hutt stated that granting this variance would not prohibit Mr. Russum from developing his property in the future.
63. The Board found that Mr. Hutt stated that Leisure Point is not a year-round park as utilities are cut off in the off-season.
64. The Board found that Mr. Hutt stated that the park uses hurricane anchoring systems required by Code.
65. The Board found that Mr. Harrison stated that, if a patron was renting year to year, that the empty RV could remain on the property over the winter but that patrons renting for one season would remove the RV at the end of the season.
66. The Board found that no one appeared in support of and six people appeared in opposition to the Application.
67. The Board tabled the Application and, on July 6, 2020, the Board discussed and voted on the Application.
68. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 with conditions.

- a. The Property is unique as it is an expansion of an existing manufactured home / RV park on neighboring lands. The existing park is a non-conforming use. In order to develop these lands, the Applicant must meet a separation distance requirement from existing dwellings on lands of other ownership. This separation distance requirement greatly limits the building envelope. More specifically, the existence of houses on lands of the Niblett Property severely restricts the expansion of the RV park onto the Property. The situation is quite unique because the dwellings on the Niblett Property were placed in 1987 well after the establishment of the Leisure Point community. Furthermore, the dwellings on the Niblett Property are within 400 feet of RV sites in the existing Leisure Point community. The Property is subject to separation requirements and the Applicant is restricted on where to place certain structures due to those requirements. The development on neighboring properties has significantly constrained the Applicant. The location of the dwellings on the Niblett Property, for which the Applicant has no control, and the Property's unique history and conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to reasonably expand its RV park but is unable to do so without a variance.
- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant operates an existing RV park on neighboring lands and a neighbor constructed a home within 400 feet of the existing park. The Applicant seeks to expand the park but cannot do so without a variance due to the location of the dwellings on the Niblett Property. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow for the reasonable expansion of the RV park. The Board is convinced that the location of the proposed RV sites are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Property has unique conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty. Importantly, the Applicant did not develop the Niblett Property with the dwelling or develop the existing RV park close to the dwellings on the Niblett Property. Rather, the dwellings on the Niblett Property were placed there after the RV park was developed. The Applicant is unable to construct a reasonable expansion to the park due to the unique conditions of the Property and the construction on neighboring lands.
- e. 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 Applicant proposes to use the Property as an expansion of the existing RV park. The park will use an automated guard tower to facilitate access to the site. The Applicant has demonstrated that this area is already developed with other manufactured home and RV parks. The proposed use is consistent with those uses. The concerns raised by the opposition were generalized concerns and failed to convince the Board the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the conditions imposed by this decision should alleviate concerns raised by the opposition. Furthermore,

the Applicant must still obtain a conditional use and the opposition will have an opportunity to voice their opposition to the conditional use application at hearings before the Planning & Zoning Commission and Sussex County Council.

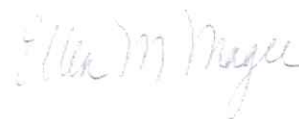
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to reasonably expand the RV park. The Applicant has modified its plan and reduced the number of RV sites to minimize the need for variances.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.
- h. This approval is subject to the following conditions:
 - i. The granting of a conditional use for a campground / RV resort by County Council pursuant to Section 115-22 of the Zoning Code, along with the special requirements for recreational vehicle uses (campgrounds) found in Section 115-172 of the Zoning Code.
 - ii. Except for the variance to the separation requirements from the residential units on Sussex County Tax Map Parcel Nos. 234-24.00-39.07 and 39.08, the expansion of the RV portion of Leisure Point shall comply with all buffer requirements, height, area, and bulk requirements of the Zoning Code, including the special requirements for recreational vehicle uses (campgrounds) found in Section 115-172 of the Zoning Code.
 - iii. The Applicant shall install a privacy fence around the perimeter of the expansion area to match the existing privacy fence.
 - iv. Preliminary and Final Site Plans of the expansion area shall be subject to the review and approval of the Planning & Zoning Commission.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor of the Motion to approve were Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. Dr. Kevin Carson and Mr. Brent Workman voted against the Motion to approve the variance application with conditions.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date August 17, 2020.