Orange County Planning and Inspections Department

BOARD OF ADJUSTMENT – GENERAL APPLICATION FORM

****NOTE – This form shall accompany all specific application packages as denoted herein****

REQUEST (Check the box denoting the purpose of your application to the Board of Adjustment)

APPEAL: ☑ **VARIANCE:** ☐ **INTERPRETATION:** ☑

GENERAL INFORMATION:

Date: 06/17/16

Property Address: Approximately 22 acres on Morrow Mill Road and Millikan Road

Applicant: Gleta Carswell, Rene Quadt, Margaret Wilkman,*

Address: c/o LeAnn Nease Brown, their attorney

101 N. Columbia Street, Chapel Hill, NC 27514

Phone Number: (919) 968-1111

Cell Phone: ---

*Alice Sandra Wilkman, Thomas Ray, Doris Ray

Owner: Southeast Property Group, LLC

Address: c/o Kara Brewer, its registered agent

82 Jordan Hills, Chapel Hill, NC 27517-6432

Phone Number: (919) 357-2118

Cell Phone: ---

PROPERTY INFORMATION (IF APPLICABLE):

Watershed: _____ Zoning: AR Lot Area: 22±

PIN Number: 9729-50-7168 Township: Bingham

Subdivision: Lot 3 Margaret Jo Pickard Estate (Plat Book 86, Page 95) Deed Book/Page Number: 5924/494

Legal Relationship of Applicant to property owner: Appellants reside at 2700 Millikan Road, 7310 Morrow Mill Road and 7319 Morrow Mill Road respectively and are persons who will suffer special damages as a result of the decision appealed.

SUBMITTAL INFORMATION:

1) A completed, signed Variance or Appeal/Interpretation Form (whichever is applicable), (See attached).
2) Small Scale Map showing the exact location of property with respect to existing streets, street numbers and size of lots, nature of adjacent property uses, and other important features within and contiguous to the property. This site plan should further denote the issue being raised for the Board of Adjustment's consideration (if applicable), (See attached).
3) Any and all documentation outlining the nature of the requested action including documentation justifying the issuance of a requested variance or the facts associated with a request to reverse or otherwise modify a previously issued interpretation, and (Please see attached and Record prepared in accordance with N.C.G.S. Section 160A-388(b1)(5)).
4) An application filling fee in accordance with the adopted Orange County Fee Schedule (Enclosed).

OFFICIAL USE ONLY:

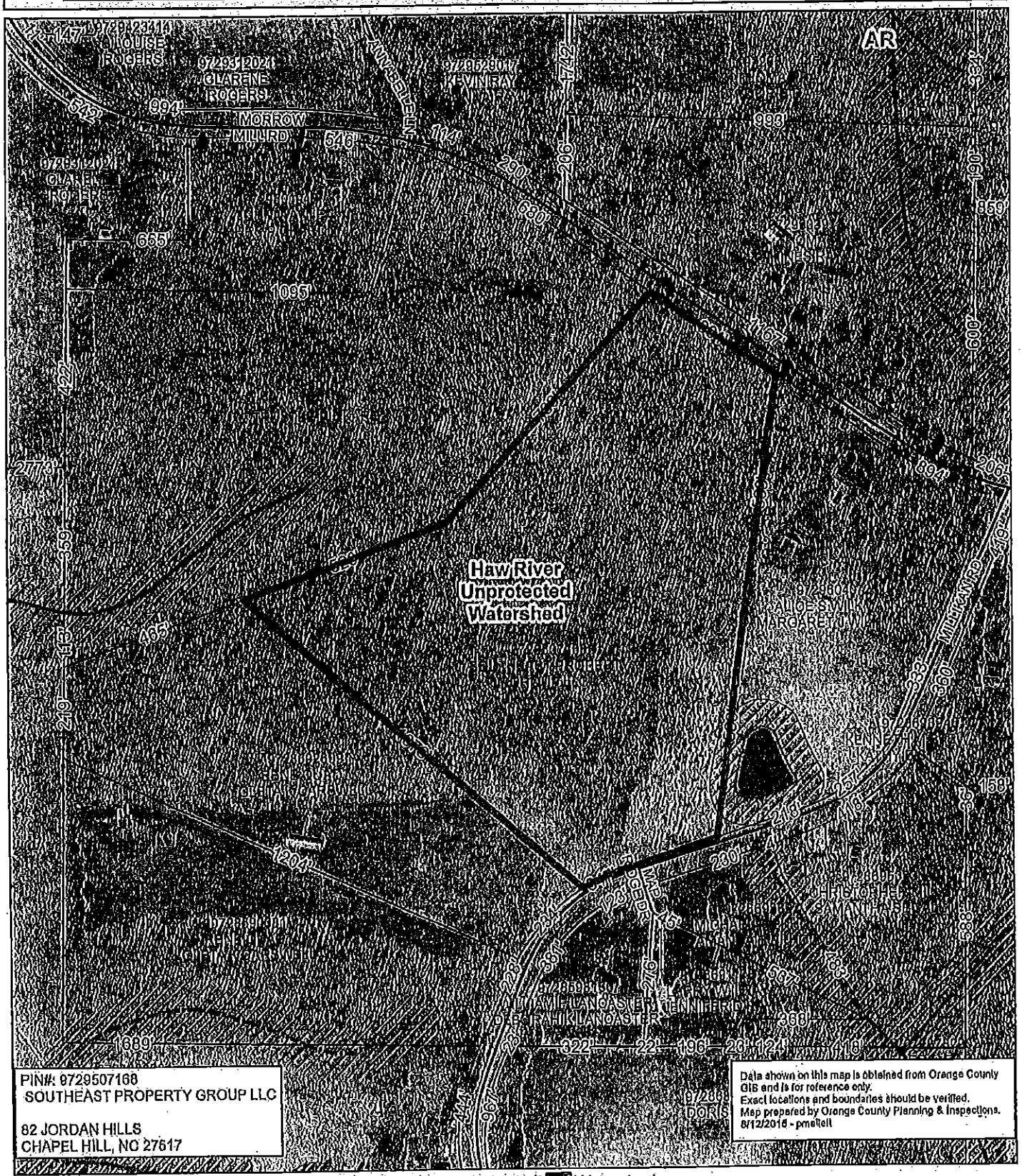
Date Application Properly Filed: _____ Accepted By: _____

Fee Collected: _____ Receipt Number: _____ Staff Assigned to Review: _____

Date scheduled for PUBLIC HEARING: _____

Attachment 1

Vicinity Map
Barn of Chapel Hill
Class B SUP



PIN# 9729507168
SOUTHEAST PROPERTY GROUP LLC

82 JORDAN HILLS
CHAPEL HILL, NC 27517

Data shown on this map is obtained from Orange County GIS and is for reference only.
Exact locations and boundaries should be verified.
Map prepared by Orange County Planning & Inspections.
8/12/2016 - pmellt

Streams
- Soils Survey Stream
- Water Body Buffer 65ft
- Watershed

TYPE
- USGS Stream
- Parcels
- Zoning
- Water Body

USGS Stream
Soils Survey Stream
Stream Buffer 65ft

N

1 inch = 300 feet
0 .75 150 Feet

Orange County Planning and Inspections Department

BOARD OF ADJUSTMENT
APPLICATION FOR AN APPEAL/INTERPRETATION

The Orange County Board of Adjustment with a four-fifths (4/5) vote, may overturn or modify an interpretation of an Administrative Official for the Orange County Planning Department concerning the enforcement and/or the interpretation of a specific provision of the Unified Development Ordinance (UDO). Under the State-enabling act, the review of an interpretation by the Board of Adjustment is not intended to vary the UDO but to interpret and apply what the governing body has written and how it is being implemented in a particular circumstance. The decision of the Board of Adjustment shall be in accord with what the members believe to be the actual meaning and intent of the UDO.

RELIEF REQUESTED: *Please check all applicable boxes and complete the required documentation attached.*

APPEAL: ☑ **INTERPRETATION:** ☑

I, Gleta Carswell, Rene Quadt, Margaret Wilkman* hereby appeal to the Board of Adjustment from the following adverse decision of an Administrative Official of the Planning and Development Department of the County of Orange, North Carolina made on the 18th day of May, 2016

*Alice Sandra Wilkman, Thomas Ray and Doris Ray, through our attorney, LeAnn Nease Brown

The decision ordered that: See attached email from Michael Harvey, Planning Supervisor dated May 18, 2016.

This adverse decision was made with respect to property described in the attached General Application form.

I, Gleta Carswell, Rene Quadt, Margaret Wilkman* hereby request an interpretation of:

*Alice Sandra Wilkman, Thomas Ray and Doris Ray, through our attorney, LeAnn Nease Brown

☐ The Zoning Map

☑ The Unified Development Ordinance (UDO), Section 1.1.8, 2.2.3, 2.7, 2.2.8, 10.1 definition of agritourism insofar as it relates to the use of the property described in the attached General Application form.

** **NOTE**: If the owner of the property subject to this application **is not** the same as the appellant, a notarized letter from the owner signifying his/her approval authorizing the submittal of the application shall be required **

In the space provided below, or on an attached letter, present your interpretation of the ordinance provision in question and state what reasons you have for believing that your interpretation is the correct one:

(See attached).

STATEMENT BY APPELLANT:

I certify that the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

Signature of applicant: _____

LeAnn Nease Brown as attorney for Gleta Carswell, Rene Quadt, Margaret Wilkman, Alice Sandra Wilkman, Thomas Ray and Doris Ray

Date: 06/17/16

NOTARY:

STATE OF North Carolina, COUNTY OF Orange

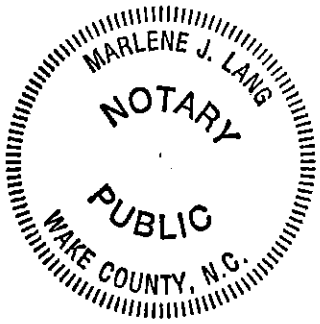
On this 17th day of June, 2016

LeAnn Nease Brown personally appeared before me and is known to me to be the person who signed the foregoing instrument and he/she acknowledged that he/she signed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

Signature of Notary Public _____
Marlene J. Lang

My Commission expires: 01/25, 2019

Seal



LeAnn Nease Brown

From: Michael Harvey <mharvey@orangecountync.gov>
Sent: Wednesday, May 18, 2016 4:21 PM
To: LeAnn Nease Brown
Cc: John Roberts; James Bryan; Anne Marie Tosco; Craig Benedict
Subject: Barn of Chapel Hill

Ms. Brown: as an update to the Barn project off of Morrow Mill Road I would like to offer you the following: As you may already be aware the applicant has filed a building permit application proposing the construction of an agricultural structure (i.e. barn) along with an affidavit indicating the structure will be used for agricultural purposes exempt from zoning. As a result of the submitted documentation no zoning approval of the project was required for a building permit. Future zoning enforcement will be dependent upon actual use of the property and whether it is consistent with the County's Unified Development Ordinance or state statutory exemptions.

Please let me know if I can be of further assistance.

Michael D. Harvey AICP, CFM, CZO
Current Planning Supervisor – Planner III
Orange County Planning Department
131 West Margaret Lane
PO Box 8181
(919) 245-2597 (phone)
(919) 644-3002 (fax)

Pursuant to North Carolina General Statute 132, correspondence sent and received from this account is a public record and may be disclosed to third parties.

Insert to BOA Application for an Appeal/Interpretation:

Decision Being Appealed.

By email dated May 18, 2016, appellants, through their counsel, were notified by Michael Harvey, Planning Supervisor, that Southeast Property Group, LLC (SPG), the owner of an approximately 22 acre tract on Morrow Mill Road and Millikan Road (no address assigned), Orange County PIN 9729-50-7168 (SPG tract), filed a building permit application proposing construction of a "barn" on the SPG tract. The notification stated that SPG had filed an affidavit indicating the structure would be "used for agricultural purposes exempt from zoning." The planning supervisor determined that "[a]s a result of the submitted documentation, no zoning approval of the project was required for a building permit." Under N.C.G.S. §160A-388(b1) and the Orange County Unified Development Ordinance, applicants are appealing to the Orange County Board of Adjustment the decision of the planning supervisor that no zoning approval of a building permit is required.

Appellants and Standing.

Appellants, Gleta Carswell and Rene Quadt, are the owners of property at 2700 Millikan Road. Their property is contiguous to the SPG tract, bordering it on the east side. SPG proposes a secondary entrance to the SPG tract next to 2700 Millikan Road.

Appellants, Margaret Wilkman and Alice Sandra Wilkman, are the owners of property at 7310 Morrow Mill Road. 7310 Morrow Mill Road is at the corner of Morrow Mill Road and Millikan Drive. 7310 Morrow Mill Road is contiguous to the SPG tract and adjacent to SPG's proposed main entrance on Morrow Mill Road.

Appellants, Thomas Ray and Doris Ray, are the owners of property at 7319 Morrow Mill Road. 7319 Morrow Mill Road is directly across the street from the SPG tract. The property and driveway entrance to the SPG tract is across from the Ray's home at 7319 Morrow Mill Road.

Each appellant will sustain real and proven special damages distinct from the rest of the community if the SPG tract is developed under the building permit over which Orange County has determined it has no zoning jurisdiction. Appellants will experience increased traffic, light pollution, noise pollution and other related pollution if the SPG tract is developed as proposed. Increased traffic from events culminates at appellants' properties. Each appellant will experience damage to their property from overflow parking, littering and noise. Each appellant has significant safety concerns arising out of development of the SPG tract as proposed. Each appellant faces the threat of trespass, damage to animals on their farms and other special damages. Each will be damaged from loss of the quiet enjoyment of their properties. If the

SPG tract is developed as proposed, it will decrease the value of appellants' properties.

SPG is Estopped From Claiming The Proposed Development is Exempt from Zoning.

On November 9, 2015, the Board of Adjustment considered and denied a Class B Special Use Permit Application to develop a retreat center on the SPG tract. Zoned agricultural residential (AR), the SPG tract has frontage along Morrow Mill Road (SR 1958) and Millikan Road (SR 1959). Called "The Barn of Chapel Hill," SPG's proposed retreat center was designed for weddings, corporate retreats and other similar special events. SPG proposed a 4,200 square foot historic barn to be relocated onto the SPG tract. SPG's Class B Special Use Permit Application contemplated 150 parking spaces to accommodate event attendees, outdoor parking lot lighting and landscaping. The main entrance to be used by event attendees was off Morrow Mill Road with a secondary entrance off of Millikan Road for staff, event organizers and emergency service personnel. The Application showed that the barn proposed had a 250 person maximum occupancy.

Orange County Staff determined SPG's proposed use required a Class B Special Use Permit. The determination that a Class B Special Use Permit was required was not appealed by SPG.

During the special use permit public hearing, SPG testified that the barn would be used primarily for weddings and wedding rehearsals on Friday and Saturday nights along with fundraisers and charity events.

The Board of Adjustment received competent, material and substantial evidence about potential adverse impacts on public health and safety from the proposed event barn, including from traffic and noise. Among the witnesses was Norel D. Stewart, an expert witness in acoustics. He testified regarding sound decibel levels and the impact of sound emanating from the proposed event barn. He testified that sound from events would be noticeable both outdoors and indoors.

Based on the competent, material and substantial evidence presented during its public hearing, the Board of Adjustment determined that SPG failed in its burden of proof that the use as proposed would maintain or promote the public health, safety and general welfare if located where proposed and developed and operated according to the plan as submitted. The Board of Adjustment further determined that SPG failed in its burden of proof that the use as proposed would maintain or enhance the value of contiguous property. The Board of Adjustment further determined that SPG failed in its burden of proof that the location and character of the use, if developed according to the plan, would be in harmony with the area in which it would be located. The Board of Adjustment further determined that SPG failed in its burden of proof that the use complies with the general plans for the physical development of Orange County.

The Board of Adjustment denied the Class B Special Use Permit Application by unanimous vote on November 9, 2015. No appeal was taken.

Subsequent to the November 2015 denial and without a special use permit, SPG, through its registered agent, Kara Brewer, applied for building permit on January 5, 2016. The building permit application listed the proposed use as "Farm Event Building" with the use category "assembly" marked. On information and belief, the details of the construction proposed were substantially the same as those in the denied Class B Special Use Permit Application.

In February 2016, SPG filed a driveway permit application with the North Carolina Department of Transportation. On information and belief, the trip generation estimate provided to NCDOT is dated November 9, 2015 and analyzes the traffic impact of a "special events" and "retreat center." On information and belief, the driveway permits sought were for two driveways in approximately the same locations as the denied Class B Special Use Permit Application.

On March 16, 2016, SPG filed a new building permit application. The March application had been changed to describe the project as "barn for agricultural use, including but not necessarily limited to, the storage and processing of agricultural products and equipment; agritourism such as educational workshops, school field trips, weddings, retreats and farm dinners, and support for all other activities related and incidental to the operation of a farm." Where "assembly" had been checked for the proposed use in the January application, "utility and miscellaneous" was checked in the March application with "farm use" written beside it.

The application for the denied Class B Special Use Permit, the January 5, 2016 application for building permit and the March 10, 2016 application for building permit each describe the land disturbance as 85,000 square feet. The building cost listed in the January 2016 and March 2016 building permit applications is $734,988.75. The heating and air conditioning cost listed is $74,615.00 (7 electric heating and cooling units are planned). The January 5, 2016 and March 10, 2016 applications for building permit identify the building size as 3,996 square feet with a 658 foot loft, consistent with the 4,200 square foot building described in the denied Class B Special Use Permit Application.

On information and belief, in or around February 2016, SPG applied to Orange County Environmental Health for a wastewater system to serve an event center for 250 guests and 10 staff members (a daily design flow of 2,750 gallons). The design required 82,500 square feet of suitable soil area but only 50,000 square feet were available. On information and belief, a Wastewater System Construction Authorization was issued May 12, 2016 for an event center with 3 events per week for 250 people per day plus a staff of 10 and for a staff of 5 for 4 days per week for non-events. The Wastewater System Construction Authorization includes a septic tank, pump tank and a grease trap with a 2,500 gallon septic tank to serve only kitchen waste.

A review of the materials submitted for the building permit issued by Orange County reveals virtually the same design as the wedding and special event venue denied by the Board of Adjustment. Having been informed by Orange County to proceed with a special use permit, having done so without appeal, having had its application denied and having taken no appeal, SPG is estopped from presenting the same plans to Orange County purportedly as a farm building. The proposal is not exempt from the requirements of the Orange County Unified Development Ordinance.

The Orange County Unified Development Ordinance Prohibits SPG From Applying for a Building Permit After Denial of Its Application for a Class B Special Use Permit.

Section 2.2 of the Orange County Unified Development Ordinance addresses applications under the Ordinance. Section 2.2.7 and 2.2.8 set forth Orange County's prohibition against the filing of an application for the same or similar project affecting the same property or portion of it for one year after a denial. Section 2.7 of the Orange County Unified Development Ordinance addresses special use permits. For Class B Special Use Permits, the denial decision is delegated by the Board of County Commissioners to the Board of Adjustment. The provisions of 2.2.8 regarding the effect of denial on subsequent applications applies to the denial of SPG's Class B Special Use Permit Application by the Board of Adjustment. The Planning Director erred in accepting two separate applications for a building permit by SPG following the denial of the Class B Special Use Permit Application.

Orange County is Required to Enforce the Orange County Unified Development Ordinance Regarding Non-Farm Use.

Orange County is required to enforce its Ordinance fairly and equitably. It is required to review building permit applications to determine that the use proposed is not one requiring unattained zoning approvals. Orange County is required to determine the true intent and purpose behind a building permit application.

While N.C.G.S. §153A-340 provides that zoning regulations adopted by counties apply to properties used for bona fide farm purposes in limited ways, N.C.G.S §153A-340(b)(1) expressly states it is not intended to limit the application of zoning regulations to uses of farm property for non-farm purposes. N.C.G.S. §153A-340 does not exempt non-farm uses on farm property from zoning regulations. It does not exempt non-farm commercial use of property from zoning regulations. It does not exempt non-farm event centers from zoning regulations.

Section 1.1.8 of the Orange County Unified Land Development Ordinance follows N.C.G.S. §153A-340. While its provisions do not apply to property used for bona fide farm purposes (as that term is defined

in the North Carolina General Statutes), the Ordinance applies to non-farm use of farm property.

The March 2016 application for building permit filed by SPG demonstrates (particularly when compared to materials filed with Orange County for the denied Class B Special Use Permit) that the building proposed is a use for a non-farm purpose.

Orange County's reliance on a March 3, 2016 affidavit submitted to by Kara Brewer purporting to claim a bona fide farm exemption is misplaced. Paragraph 3 of the affidavit acknowledges: "non-farm uses are not exempt and I am subject to future zoning enforcement for any non-farm use that does not comply with the Orange County Unified Development Ordinance." The event center proposed is designed and intended for a non-farm use that does not comply with the Orange County Unified Development Ordinance. The affidavit acknowledges such a use is not exempt.

Orange County appears to misinterpret N.C.G.S. 150A-340(b)(2). Non-farm uses are not exempt from zoning regulations even if criteria are met which evidence a bona fide farm. Under N.C.G.S. §150A-340(b)(2)(5) and (6), the exemption applies when the operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction are incident to the farming operation. Even when performed on an actual farm, activities including "agritourism" must be incident to the operation of a farm in order for the exemption from zoning to apply. See, N.C.G.S. §150A-340, N.C.G.S. §106.581.1 and the Orange County Unified Development Ordinance generally and at Article 10.1. SPG is not exempt from zoning because it filed an affidavit suggesting it is operating a "farm" and the weddings and events it proposes are "agritourism." The facts do not show that the event venue is ancillary to a farming operation or is agritourism. The planning supervisor's determination that SPG's building permit application for the same facilities and activities as proposed in the denied Class B Special Use Permit Application is error.

The Planning Director Erred in Interpreting the Orange County Unified Development Ordinance, the Provisions of N.C.G.S. §153A-340 and Other Applicable Law in Determining that No Zoning Approval of SPG's Building permit was Required.

The Planning Director erred in interpreting the Orange County Unified Development Ordinance, including but not limited to, Sections 1.1.8, 2.7, 2.2.8 and 10.1. The Planning Director erred in interpreting the provisions of N.C.G.S. §153A-340 and other applicable statutory and case law in determining no zoning approval was required before SPG was issued a building permit. The Planning Director erred in allowing SPG to file applications for a building permit after denial of its Class B Special Use Permit Application.

Reservation of Rights to Raise Additional Issues.

Under N.C.G.S. §160A-388(b)(8), appellants are not be limited at the hearing of this appeal to matters stated in this notice. Appellants reserved all rights to raise additional issues at the hearing of this matter.

Prayer for Relief.

Because the issuance of a building permit to SPG was erroneous, appellants respectfully pray the Board of Adjustment (1) stay the building permit pending appeal, (2) reverse and vacate the May 16, 2016 decision, and (3) remand this matter to the Planning Director to rescind the building permit issued to SPG.

13460\01\m\002Insert to BOA Application for an Appeal