



Town Hall: POB 970, 4117 Oak Ridge Road, Summerfield, NC 27358

ph: 336-643-8655 / fax: 336-643-8654 / www.summerfieldgov.com

BOARD OF ADJUSTMENT AGENDA

JANUARY 28, 2016, 6:30PM, SFD COMMUNITY CENTER

1. Call to Order

2. Introductions

3. Consent Agenda

A. Approval of Agenda

B. Approval of November 17 and October 22, 2015 minutes

4. New Business:

A. CASE 03-15-SUP (RENEWAL): This request is to consider a possible approval of a Special Use Permit for a Special Events Facility at the property located at 4105 Oak Ridge Road (parcel number 0146966), owned by Patrick and Deborah Jenks, and at 7610 Brisbane Drive (parcel number 014870), owned by Gardens at Gray Gables LLC, both located in Bruce Township.

5. Other Business

6. Adjourn

Council: Mayor Mark Brown, Mayor Pro-tem Dena Barnes, Mike Adams, Dianne Laughlin, John O'Day, Reece Walker **Manager:** Scott Whitaker

Staff: Jeff Goard (PE&R Mgr.), Cheryl Gore (Mgr. Asst./Events Coord.), Valarie Halvorsen (Clerk), Julie Reid (Planner), Katrina Whitt (Finance Officer)



BOARD OF ADJUSTMENT MINUTES

OCTOBER 22, 2015*, 6:30PM, SFD COMMUNITY CENTER

**THIS IS A CONTINUANCE OF THE 9/17/15 MEETING*

The meeting was called to order at 6:30pm by Chairman Jim Brady. The following were present:

Board

James (Jim) Brady
Michael Stewart
Robert (Rob) Lovell (alternate)
Don Wendelken (alternate)

Staff

Julie Reid, Town Planner
William Hill, Town Attorney
Valarie Halvorsen, Town Clerk

CONSENT AGENDA: Approved by consensus following item A below.

BUSINESS FROM THE BOARD

A. CASE 03-15-SUP (RENEWAL): This request is to consider a possible renewal of an expired Special Use Permit for a Special Events Facility at the property located at 4105 Oak Ridge Road (parcel number 0146966), owned by Patrick and Deborah Jenks, and at 7610 Brisbane Drive (parcel number 014870), owned by Gardens at Gray Gables LLC, both located in Bruce Township.

Hill presented an agreement to Chairman Brady regarding Case 03-15-SUP, which was signed by Brady and Patrick Jenks. Hill stated an agreement had been reached between the Town and The Gardens at Gray Gables via their respective attorneys (Hill and Richard Gabriel) to approve a probationary permit allowing Gray Gables to operate under the same terms and condition as the previously issued permit for 90 days beginning from 10/22/15. During the 90 day period Gray Gables were subject to all applicable town ordinances and the terms of the initial permit including, but not limited to, those pertaining to signs and temporary structures. Following the 90 day probationary period, the Board of Adjustment may consider issuance of a new permit, which if approved, will expire on the original expiration date of May 26 with renewals subject to town ordinances. No testimony was presented.

B. CASE 03-15-V: This request is to consider a variance to Section 6-2.4 (C) Design Standards for Parking, Stacking and Loading - Improvements-Paving for a Special Events Facility at the property located at 4105 Oak Ridge Road (parcel number 0146966), owned by Patrick and Deborah Jenks, and at 7610 Brisbane Drive (parcel number 014870), owned by Gardens at Gray Gables LLC, both located in Bruce Township.

Reid presented the case noting the request was to allow the Special Use Facility to continue to use an unpaved parking lot. The original variance, granted to preserve mature oaks by not requiring paving, was to serve 13 employees the Forestry Services business has been expanded considerably to accommodate up to 150 guests of the Special Use Facility. Some tree clearing has been done to accommodate event parking. Reid discussed the findings of fact that must be met to approve the variance. The board must determine if the request meets those findings of fact, or require the applicant to pave the parking area.

Council: Mayor Tim Sessoms, Mayor Pro-tem Dena Barnes, Mike Adams, Alicia Flowers, Dianne Laughlin, Elizabeth McClellan

Staff: Scott Whitaker (Manager), Jeff Goard (P&R Manager), Valarie Halvorsen (Clerk), Julie Reid (Planner), Katrina Whitt (Finance Officer)



Following a brief recess, Hill stated there was a change to the text of (A) 1) a) and read the amended text into the record: "Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property."

Brady asked if anyone would like to offer testimony about the variance; Halvorsen swore in attorney Richard Gabriel.

Gabriel stated the request was to continue same variance which was not to pave the parking area in order to ensure that the trees get enough nutrients and moisture. He said the number of parking spaces had slightly increased but was not 150 and it is the same area that was originally addressed by variance so in the absence of any other facts, the same circumstances exist and the variance should be granted again.

Brady asked how many spaces were used to serve the original 13 employees; Jenks said approximately 20. Brady asked if 38 more parking spaces had been added; Jenks stated when the site plan was submitted in 2007 there was a maximum capacity of 150 which required the addition of parking places and were shown on the site plan that were marked as being gravel and approved; in 2012 a variance was received for the bridal cottage and for some reason on July 10th "the show stopped and it now needs to be remedied". Brady asked if the board had any questions for Jenks. Stewart asked if there was enough room onsite for all parking needs; Jenks replied affirmatively. Lovell asked if the grounds were walkable in rainy weather; Danielle Cottrell (Jenks' daughter) replied affirmatively.

Brady asked if anyone else would like to read anything into the record, pro or con. Hearing none, Brady stated that concluded evidence collecting portion of meeting and opened up board deliberation, noting that the audience would not be permitted to ask any questions during this time. Wendelken asked if approval was basically extending or continuing the existing variance and for how long. Hill stated the approval was into perpetuity as long as the owner and/or use does not change. Reid stated the variance goes with the use and with the land and has not been brought back before this board that she was aware of. Wendelken asked if there was any obligation to pave the parking area at some point in the future; Hill said no as long as the owner or circumstances do not change. Hill stated the initial variance was for a limited number of parking spaces for the Forestry Systems business, now there is more parking for another business that was not approved with the original variance.

Brady asked about finding (A) 1) b); Stewart replied that the unique circumstance related to the property were the 100 year old oak trees on the property, stating that was the finding in previous variance approval. Brady asked if tree protection was the reason for not requiring paving and Stewart replied affirmatively. Lovell asked if there may be a requirement to pave should the trees die; Reid said no. Stewart noted that gravel produces less run-off than pavement and requires more maintenance. The board discussed the findings of fact, agreeing a) had been met, b) is related to tree protection, c) the trees relate to the property rather than the applicant's personal circumstances, and d) the applicant did not plant the trees in question.

Wendelken motioned to approve the variance (CASE 03-15-V) based on the findings of fact which are: 1) a) unnecessary hardship would result from the strict application of the ordinance, b) the



hardship of which the applicant complains result from unique circumstances related to the applicant's property because of the trees, c) the hardship relates to the applicant's property rather than personal circumstances due to tree protection, and d) the hardship is not the result of the applicant's own actions as he didn't plant the trees; 2) the variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and 3) the granting of the variance assures the public safety and welfare and does substantial justice. The motion was seconded by Lovell and carried unanimously.

With no further business, a motion was made at 7:00pm by Brady to adjourn. The motion was seconded by Lovell and carried unanimously.

James Brady, Board Chair

Valarie R. Halvorsen, Town Clerk



BOARD OF ADJUSTMENT MINUTES

SEPTEMBER 17, 2015, 6:30PM, SFD COMMUNITY CENTER

The meeting was called to order at 6:39pm by Chairman Jim Brady. The following were present:

Board

James (Jim) Brady
Michael Stewart
Robert (Rob) Lovell (alternate)
Don Wendelken (alternate)

Staff

Julie Reid, Town Planner
William Hill, Town Attorney
Valarie Halvorsen, Town Clerk

CONSENT AGENDA

Stewart motioned to remove approval of 3/26/15 minutes from the proposed agenda, seconded by Lovell, which carried unanimously. The amended agenda was approved by consensus.

BUSINESS FROM THE BOARD

Brady explained the Board could only consider facts and anyone wishing to speak would be given sworn testimony; Halvorsen administered the oath to Patrick Jenks.

A. CASE 03-15-SUP (RENEWAL/REISSUANCE): This request is to consider a possible renewal/reissuance of an expired Special Use Permit for a Special Events Facility at the property located at 4105 Oak Ridge Road (parcel number 0146966), owned by Patrick and Deborah Jenks, and at 7610 Brisbane Drive (parcel number 014870), owned by Gardens at Gray Gables LLC, both located in Bruce Township.

Reid described the case, noting Section 6-4.75 Special Events Facility (I) states the permit must be renewed every year and is due May 26th of each year, in the eight years since the approval of the Special Use Permit, the renewal has not be paid prior to the expiration date. On October 14, 2014, Gray Gables was told that their Special Use Permit would expire if the renewal fee was not paid by May 26, 2015. The renewal was not received. On July 10, 2015, a **Notice of Violation** was sent regarding operating a Special Event Facility with an expired permit, along with a number of other violations.

Reid gave background information about the original permit issuance and conditions. She also reviewed the Notice of Violations including: operating with an expired permit, unpermitted uses such as hosting commercial/community events and preparation and retail sale of food and beverages on the premises, operating a bar, operating outside of allowable hours, adjacent properties not approved for use in conjunction with permit, use of temporary tent as permanent structure, and repeated sign violations.

The following findings are required to be met in the granting of a Special Use Permit for the Special Events Facility located at 4105 Oak Ridge Road and 7610 Brisbane Drive:

1. **That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted.** The use of the two properties for a

Council: Mayor Tim Sessoms, Mayor Pro-tem Dena Barnes, Mike Adams, Alicia Flowers, Dianne Laughlin, Elizabeth McClellan

Staff: Scott Whitaker (Manager), Jeff Goard (P&R Manager), Valarie Halvorsen (Clerk), Julie Reid (Planner), Katrina Whitt (Finance Officer)



Special Use Facility is restricted to the sites approved for its use and in conformance with the approved plans and according to the specific development standards for a Special Use Facility (Section 6-4.75). Public health and safety cannot be assured if activities exceed those approved (uses), if the number of attendees exceed what was approved (150 people) or if the use of additional unapproved properties in conjunction with use. The posting of banners and signs within the public right-of-way is not permitted and does create the potential for public safety concerns, especially safe sight distance.

2. **The use meets all required conditions and specifications.** The Special Use permits must be renewed each year and a renewal fee paid. This has been done only after telephone calls, e-mails and after the renewal date has been passed. The owner has exceeded the uses permitted for a Special Events Facility by holding community wide activities and events, exceeded the number of attendees, has violated the sign ordinance by posting signs that are not allowed and posted sign without permits.
3. **That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.**
4. **That the location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which is to be located and in general conformity with the plan of development of the Jurisdiction and its environs.** Regarding items 3 and 4: base zoning classification (Local Business) was denied four times between 1983 and 2000; the fifth application was approved as a conditional use application with very limited uses, a good indication the public and board members were cognizant of the difficulty of placing even limited non-residential uses in this location.

Reid stated there were five possible actions: Approve the Special Use Permit with all of the original conditions; approve the Special Use Permit with the original conditions **and additional conditions**; approve the conditional renewal of the Special Use Permit for a period of 90-180 days. If at that time there have been no further violations, the permit could be approved until the next renewal is due, with all of the original conditions; approve the conditional renewal of the Special Use Permit for a period of 90-180 days. If at that time there have been no further violations, the permit could be approved until the next renewal is due, with all of the original conditions **and additional conditions**; or revoke the Special Use Permit.

Wendelken asked about complaints received by the town; Reid said complaints are accepted by email, in person, in writing, and could be anonymous. Reid defined temporary structure for Wendelken. Wendelken asked if the owner knew about the sign ordinance; Reid replied affirmatively, noting improper signs continued after notification. Brady asked about town notifications to the owner; Reid said contact was in person, in writing, and via Notifications of Violations.

Hill asked Reid if she could produce files and/or other documents related to notifications, complaints, and other items should the board or the owner wish to review them; Reid replied affirmatively.

Hill asked owner Patrick Jenks if he felt he had proper notice and preparation time; Jenks stated he was unprepared for the extensive content of the issue and allegations and would like a copy of



the staff report, and said he had no notification of citizen complaints. Jenks asked to testify tonight and requested an additional 10 days to address allegations he was unaware of.

Brady said the board could not make a decision without hearing all the evidence and felt it more practical to hear all the evidence at once, rather than piecemeal. Jenks asserted there were no visits to his facility, nor any notification of complaints. Jenks requested that weddings be allowed to continue in the interim; Brady said the board was not shutting the business down and ordered Jenks to present evidence all at once.

Lovell made a motion to continue the matter until 10/1/15, 6:30pm, seconded by Wendelken. Stewart and Wendelken felt Jenks should be allowed to speak. Brady and Lovell voted affirmatively on the motion, Stewart and Wendelken were opposed; motion failed. Hill stated Jenks challenged the notice and recommended continuing the matter with no testimony from Jenks. Wendelken motioned to continue the meeting until 10/1/15, 6:30pm, seconded by Stewart, carried unanimously.

With no further business, a motion was made at 7:34pm by Stewart to adjourn. The motion was seconded by Wendelken and carried unanimously.

James Brady, Board Chair

Valarie R. Halvorsen, Town Clerk



January 26, 2016

To: Members of the Board of Adjustment
From: Julie Reid, Town Planner
Regarding: A possible approval of a Special Use Permit for a Special Events Facility at Gardens at Gray Gables (to be heard January 28, 2016)

This request is to consider a possible approval of a Special Use Permit for a Special Events Facility at 4105 Oak Ridge Road (parcel number 0146966), owned by Patrick and Deborah Jenks, and at 7610 Brisbane Drive (parcel number 014870), owned by Gardens at Gray Gables LLC, both located in the Bruce Township.

PURPOSE OF THE SPECIAL USE PERMIT

When regulations and restrictions of a zoning district for a specific use are not adequate to ensure the compatibility of a proposed use with the immediately surrounding neighborhood, the ordinance may specify that the use requires special consideration, conditions and approvals.

The purpose of the Special Use Permit is to ensure the compatibility of the proposed use with the immediately surrounding area. For this particular use, the use of a Special Use Permit was to ensure that the events held at this location did not become a nuisance to the surrounding neighborhood. This use is located in the middle of a neighborhood, surrounded by homes.

The reason for the annual renewal is to determine whether the conditions imposed at the time of approval have prevented any negative impact and to assure a process to discontinue an activity that has proved to be incompatible with the surrounding uses or violates the conditions put in place at the time of approval.

The previous permit expired on May 26, 2015.

RENEWAL OF THE SPECIAL USE PERMIT - (90-day Probationary Permit)

On October 22, 2015, William Hill presented an agreement to Chairman Brady regarding Case 03-15-SUP, which was then signed by Brady and Patrick Jenks. Hill stated an agreement had been reached between the Town and The Gardens at Gray Gables via their respective attorneys (Hill and Richard Gabriel) to approve a probationary permit allowing Gray Gables to operate under the same terms and condition as the previously issued permit for 90 days beginning 10/22/15. During the 90 day period Gray Gables was to be subject to all applicable town ordinances and the terms of the initial permit including, but not limited to, those pertaining to signs and temporary structures.

BACKGROUND

1. The existing zoning classification of the property (approved 2001) located at 4105 Oak Ridge Road and 7601 Brisbane Drive is Conditional Use - Local Business (CU-LB). The uses were limited to those established at the time of approval. The proposed use was to allow the existing dwelling to house a software company, Forestry Systems, Inc., with 13 employees.



Base zoning classification for this property to LB (local business) was denied four times between 1983 and 2000. It was approved on the fifth application. This fifth application was a conditional use application with very limited uses. This was a good indication that the public and board members were cognizant of the difficulty of placing even limited non-residential uses in this location. The community sought to make some reasonable use of the property in part to secure the preservation of this historic property, while protecting the adjoining residential uses.

2. A Special Use Permit was granted (11-29-2007) for the 4105 Oak Ridge Road property for an Outdoor Special Events Facility.

A Special Events Facility, as defined by the Summerfield UDO, is:

SPECIAL EVENTS FACILITY: A parcel of land where activities of a limited duration or use are held. The site may or may not include a permanent structure to house the event. Such activities may include banquets, weddings, parties, company gatherings, one-day conferences, etc. It is intended that the site be used on an ongoing basis for these activities and are not single events.

A Special Events Facility is a facility offered for use by others for gatherings with a known attendance, a specific number of attendees, open only to those registered or specifically invited to a function at the facility. Services provided to those in attendance are generally provided by private caterers, companies or contractors.

The type of activities, the duration of the activities, the intensity of the use (limited attendees) and the nature of the activities all define the characteristics of a Special Event Facility. It was intended that such a facility would be compatible with residential development surrounding it.

The compatibility of the use by limiting the type of activities, by limiting the hours, limiting the number of attendees, limiting whether food is permitted to be prepared on site ensures the low impact on adjacent uses. Additional measures to protect adjacent uses include careful siting of parking and location of landscape buffers.

A site plan was approved for use of this property at the time the Special Use Permit was granted. This approved site plan showed the 4105 Oak Ridge Road property. The Special Use Permit did not extend to the 7601 Brisbane Drive location or any additional lot under their ownership, such as 7603 Brisbane Drive (zoned RS-30). All parking was shown on the 4105 Oak Ridge Road property.

3. An additional rezoning and an amended Special Use Permit were approved to include the property located at 7610 Brisbane Drive for the purpose of a bridal dressing room and an office. Additional parking was provided with this addition. The same conditions were approved for the Amended Special Use Permit as for the original Special Use Permit.

CURRENT STATUS

1. The Special Use Permit was allowed to expire on May 26, 2015.
2. A Notice of Violation (NOV) was issued on July 10, 2015 citing the use of the property without a valid permit. In addition to this violation several other compliance issues were addressed.



The Notice of Violation listed alternatives to challenge any items addressed in the Notice of Violation including:

- a. requesting a hearing with the Code Administrator where a person has opportunity to explain or to show proof why the Notice of Violation should not have been issued.
- b. appealing the Notice of Violation to the Board of Adjustment within thirty (30) days of the date of the notice.

Neither alternative was pursued by the applicant.

3. A new application was received for a Special Use Permit with the same conditions proposed as the original application. The public hearing notice was duly advertised, notices were sent to the surrounding property owners and the location was posted.
4. A probationary Special Use Permit was negotiated with the Town. This probationary permit was for a 90-day period.
5. The 90-day probationary period has ended. Following the 90-day probationary period, the Board of Adjustment must hold a hearing, determine findings, determine what conditions would need to be considered and make a final decision.

The request must go through the prescribed procedure with a Board of Adjustment quasi-judicial public hearing. The case must be heard and approved for a Special Events facility to continue this use at this location. Again, a public hearing notice was duly advertised, notices were sent to the surrounding property owners and the location was posted.

POSSIBLE ACTIONS

There are three actions that can be taken on this request:

1. Approve the Special Use Permit until the next renewal date of May 26, 2016.
2. Approve a renewal of the probationary Special Use Permit for the remaining period until May 26, 2016. If at that time there have been no further violations, the permit could be approved until the next renewal is due.
3. Revoke the Special Use Permit. (See page 6, last paragraph for Ordinance provision.)

REQUIRED FINDINGS AND CONDITIONS

The findings are required to be met in the granting of a Special Use Permit for the Special Events Facility located at 4105 Oak Ridge Road and 7610 Brisbane Drive. These findings form the basis for the approval of a Special Use Permit. Any change to the use of the property that deviates from the approved activity also affects the findings.

The following is an excerpt from the Town of Summerfield Unified Development Ordinance:



- (A) Conditions for Approval: *An application for a Special Use Permit shall be approved by the Board of Adjustment if and only if the Board of Adjustment finds that:*
- 1) *The proposed use is represented by an "S" in the column for the district in which it is located on the Permitted Use Schedule in this Ordinance.*
 - 2) *The proposed conditions meet or exceed the development standards found in Article VI (Development Standards).*
 - 3) *Either the use as proposed, or the use as proposed subject to such additional conditions as the owner may propose or the Board of Adjustment may impose, is consistent with the purposes of the District and compatible with surrounding uses.*
 - 4) *The Special Use Permit shall be granted when each of the following Findings of Fact have been made by the Board of Adjustment:*
 - a) *That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted;*
 - b) *That the use meets all required conditions and specifications;*
 - c) *That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and*
 - d) *That the location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which is to be located and in general conformity with the plan of development of the jurisdiction and its environs.*
- (B) Greater Restrictions: *In granting a Special Use Permit, the Board of Adjustment may impose more restrictive requirements upon such permit as it may deem necessary in order that the purpose and intent of this Ordinance are served.*

Following are the original approved conditions:

- Events shall not be in operation later than 10:30PM.
- Maximum guest capacity shall be approximately one hundred fifty (150).
- All events shall be held outdoors; no indoor events shall be permitted.
- No twenty-first birthday parties or events shall be held.
- Alcohol sales and/or consumption shall adhere to all applicable North Carolina law, and/or applicable local Ordinances or Regulations.
- All lighting on site shall be installed and operated in conformance with the Town of Summerfield Unified Development Ordinance (UDO) lighting requirements.
- Amplified music, bands or other entertainment shall adhere to applicable Town of Summerfield and/or Guilford County Ordinances and Regulations with regard to noise or nuisance.



RECOMMENDED MOTION

I move that the request for a Special Use Permit for a Special Events Facility at the property located at 4105 Oak Ridge Road (parcel number 0146966), owned by Patrick and Deborah Jenks, and at 7610 Brisbane Drive (parcel number 014870), owned by Gardens at Gray Gables LLC, both located in Bruce Township be (*options follow*):

1. Approved with the original approved conditions until the next renewal date of May 26, 2016; **OR**
2. Approved as a probationary renewal of the Special Use Permit for the remaining period until May 26, 2016. If at that time there have been no further violations, the permit could be approved until the next renewal is due; **OR**
3. Denied a Special Use Permit.

FINDINGS (with possible conditions in addition to those approved at original approval)

- 1) *The proposed use is represented by an "S" in the column for the district in which it is located on the Permitted Use Schedule in this Ordinance.*
- 2) *The proposed conditions meet or exceed the development standards found in Article VI (Development Standards).*
- 3) *Either the use as proposed, or the use as proposed subject to such additional conditions as the owner may propose or the Board of Adjustment may impose, is consistent with the purposes of the District and compatible with surrounding uses.*
- 4) *The Special Use Permit shall be granted when each of the following Findings of Fact have been made by the Board of Adjustment:*
 - A. *That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted;*

Possible condition:

Public health and safety can be assured only if activities do not exceed those approved (uses), if the number of attendees do not exceed what was approved (150 people) and if there is no use of additional unapproved properties in conjunction with use. Further, there shall be no posting of unapproved signs on the property or within the right-of-way.

A tent, which is classified as a temporary structure, shall only be permitted for a short duration, only under an approved temporary use permit and removed promptly in conformance with any temporary permit approved.

- B. *That the use meets all required conditions and specifications;*

Possible condition:

It shall be the responsibility of the applicant to initiate the renewal of the Special Use permit prior to expiration each year and submit the renewal fee. No community-



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wide activities or events will be held at the facility. No events will exceed the number of attendees by more than 10 percent.

The only authorized signatory for a liquor license within the Town of Summerfield is the Town Manager. Alcohol sales and/or consumption shall adhere to all applicable North Carolina law, and/or applicable local Ordinances or Regulations, per the original approved conditions. A copy of a license signed by the Town Manager or an application for such shall be submitted to the Town for the use of alcohol at this location.

- C. *That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and*

Possible condition:

The use of the two properties for a Special Use Facility is restricted to the sites approved for its use and in conformance with the approved plans and according to the specific development standards for a Special Use Facility (Section 6-4.75).

- D. *That the location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which is to be located and in general conformity with the plan of development of the Jurisdiction and its environs.*

All parking, activities and storage for the facility shall occur at the approved locations of 4105 Oak Ridge Road and 7610 Brisbane Drive. The use or accessory use of any other properties in conjunction with this facility are specifically prohibited.

Amplified music shall not occur past 9:30 P.M. in accordance with the Unified and Development ordinance. Events shall not be in operation later than 10:30. No extensions of time shall be granted.

Notice in granting a Special Use Permit, the Board of Adjustment may impose more restrictive requirements upon such permit as it may deem necessary in order that the purpose and intent of this Ordinance are served.

"The Board of Adjustment shall revoke such permit on all or part of a development if it finds that there has been a violation that: was intentional; or continued for an unreasonable time after the owner had notice thereof; or was substantially inconsistent with the purposes of the district and continued for any time after the owner had notice thereof and the opportunity to cure."

**A request to renew an expired Special Use Permit for a Special Events facility.
Gardens at Grey Gables**



Town of Summerfield, NC

Prepared by Town of Summerfield Planning Department. 08-12-2015



NOTICE OF VIOLATION

Date of Issue: July 10, 2015

The Gardens at Gray Gables, Inc.
c/o Patrick J. Jenks
4105 Oak Ridge Rd.
Summerfield, NC 27358

Gardens at Gray Gables, LLC
4105 Oak Ridge Rd.
Summerfield, NC 27358

Patrick and Deborah Jenks
4105 Oak Ridge Rd.
Summerfield, NC 27358

- Re: Citation Number: **Z-15-11**
Property Address: 4105 Oak Ridge Rd. Property ID Number: 7839159901000
- Citation Number: **Z-15-12**
Property Address: 7601 Brisbane Dr. Property ID Number: 7839168126000
- Citation Number: **Z-15-13**
Property Address: 7603 Brisbane Dr. Property ID Number: 7839155803000
- Citation Number: **Z-15-14**
Property Address: 7610 Brisbane Dr. Property ID Number: 7839168126000

Mr. and Mrs. Jenks:

The Town has received multiple complaints from surrounding property owners and members of the community at large. This Notice of Violation (NOV) is a Warning Citation alerting you of several on-going violations. You are hereby ordered to cease, and not repeat, the described violations.

BACKGROUND:

1. The existing zoning classification of the property located at 4105 Oak Ridge Road and 7601 Brisbane Drive is Conditional Use - Local Business. The uses, limited to those established at the time of approval, are as follows:

- | | |
|--|---|
| <i>Agricultural Production</i> | <i>Computer Maintenance and Repair</i> |
| <i>Retail Arts and Crafts</i> | <i>Computer Services</i> |
| <i>Retail Antique Store</i> | <i>Economic, sociological or Educational Research</i> |
| <i>Retail Florist</i> | <i>Engineering, Architect or Survey Service</i> |
| <i>Accessory Uses and Structures</i> | <i>Finance or Loan Office</i> |
| <i>Government Office</i> | <i>Insurance Agency (no on-site claims inspections)</i> |
| <i>Library</i> | <i>Law Office</i> |
| <i>Museum/Art Gallery</i> | <i>Office Uses, Not otherwise specified</i> |
| <i>School Administration Facility</i> | <i>Photography Studio</i> |
| <i>Accounting/Auditing/Bookkeeping</i> | <i>Real Estate Office</i> |
| <i>Administrative or Management Services</i> | <i>Stock, Security or Commodity Broker</i> |
| <i>Advertising Agency or Representative</i> | <i>Tourist Home, Bed and Breakfast</i> |



The proposed use of the property was to allow the existing dwelling to house a software company, Forestry Systems, Inc., with 13 employees.

2. A variance was granted in May 2002 to allow the use of a gravel parking lot. This variance was granted "with the condition that if there was any change in use that the lot will be paved as per the ordinance" (Town of Summerfield Board of Adjustment, May 7, 2002, minutes). The Special Events Facility approval was a change in use. The parking lot shall be paved.
3. A Special Use Permit was granted for the 4105 Oak Ridge Road property for an Outdoor Special Events Facility with the following conditions:
 - Events shall not be in operation later than 10:30PM.
 - Maximum guest capacity shall be approximately one hundred fifty (150).
 - All events shall be held outdoors, no indoor events shall be permitted.
 - No twenty-first birthday parties or events shall be held.
 - Alcohol sales and/or consumption shall adhere to all applicable North Carolina law, and/or applicable local Ordinances or Regulations.
 - All lighting on site shall be installed and operated in conformance with the Town of Summerfield Unified Development Ordinance (UDO) lighting requirements.
 - Amplified music, bands or other entertainment shall adhere to applicable Town of Summerfield and/or Guilford County Ordinances and Regulations with regard to noise or nuisance.

A Special Events Facility, as defined by the Summerfield UDO, is:

SPECIAL EVENTS FACILITY: A parcel of land where activities of a limited duration or use are held. The site may or may not include a permanent structure to house the event. Such activities may include banquets, weddings, parties, company gatherings, one-day conferences, etc. It is intended that the site be used on an ongoing basis for these activities and are not single events.

A Special Events Facility is a facility offered for use by others for gatherings with a known attendance, a specific number of attendees, open only to those registered or specifically invited to a function at the facility. Services provided to those in attendance are generally provided by private caterers, companies or contractors.

A site plan was approved for use of this property at the time the Special Use Permit was granted. This approved site plan showed the 4105 Oak Ridge Road property. The Special Use Permit did not extend to the 7601 Brisbane Drive location or any additional lot under your ownership, such as 7603 Brisbane Drive (zoned RS-30). All parking was shown on the 4105 Oak Ridge Road property.

4. A rezoning and an amended Special Use Permit were approved to include the property located at 7610 Brisbane Drive for the purpose of a bridal dressing room and an office. The same conditions were approved for the Amended Special Use Permit as for the original Special Use Permit.

The following findings were required to be met in the granting of a Special Use Permit for the Special Events Facility located at 4105 Oak Ridge Road:

- a. *That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted;*
- b. *That the use meets all required conditions and specifications;*
- c. *That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and,*
- d. *That the location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which is to be located and in general conformity with the plan of development of the Jurisdiction and its environs.*

These findings form the basis for the approval of the Special Use Permit. Any change to the use of the property that deviates from the approved activity also affects the findings.

VIOLATIONS:

1. Your Special Use Permit has expired. A Special Use Permit is required to operate as a Special Events Facility. Section 6-4.75 of the Town of Summerfield UDO states:

(A) Special Use Permit Renewal:

- 1) *The Special Use Permit must be renewed every year, or with change of ownership, through the process outlined in Article 3-13-4 of the Summerfield Development Ordinance.*
- 2) *The fee for the first year of issuance shall be the standard fee as set forth in the Summerfield Fee Schedule. The fee for each successive year will be \$100, provided that the original Permit does not expire.*

Gray Gables has been reminded on several occasions about this issue. This was a condition of your Special Use Permit and your agreement to renew and maintain this permit was included on the permit application you originally submitted to the Town of Summerfield. As the permit has expired, a fee of \$850.00 + \$20.00/acre = \$937.60 will be required to re-issue a Special Use Permit for this property. **The property must be in conformance for this Special Use Permit to be re-issued.** Failure to fully comply with the requirements of the Town of Summerfield UDO may result in permanent revocation of the Special Use Permit.

The use of the property as a Special Events Facility without a valid permit is a zoning violation. A civil penalty will be assessed each day the violation has existed and continues to exist. Civil penalties will be assessed from the date you were first notified of this violation. To be clear, you are liable for civil penalties each day from July 10, 2015.

Section 8-1.6 of the UDO states, "Each day's violation of any provision of this Ordinance is a separate and distinct offense."

Section 8-3.4 of the UDO states, "If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or an Order of Corrective Action following an appeal, the owner or occupant shall be subject to such remedies and penalties as may



be provided for by state law and Section 8-4 (Remedies). If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction."

Section 8-5.4 of the UDO states, "For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty."

2. Multiple events advertised and open to the community at large have been held at the facility. This facility is not approved as a commercial establishment for the purposes of providing food (restaurant), beverages (bar or night club), entertainment (concerts, theatre or other similar activity) or any retail purpose. This facility is not approved for community-wide events. This facility is not approved as a private club. This facility is not approved as a convention center or public venue. The facilities are not adequate for the above-described uses. Commercial activities are not a permitted use at this facility.

Gray Gables has been advised that any activity beside that of providing a facility for lease or rent is not be permitted.

Gray Gables has been advised that it may submit a Temporary Use Permit Application for consideration. Only those uses that meet the same criteria as the original Special Use Permit will be considered. Again, several commercial events have been held without any type of permits or approvals and **all such activities shall immediately cease.**

3. The preparation, and retail sale, of food and beverages on the premises is not permitted. This facility was not approved for this purpose.

Section 6-4.75 states, "Unless the property is zoned for restaurant use, all food must be prepared off-site, but may be assembled in a Guilford County Public Health Department approved "catering" or "warming" kitchen."

This facility was not approved for the retail sale of food or beverages. **All such activities shall immediately cease.**

4. There have been repeated sign violations. The Town of Summerfield does not permit mobile signs in any zoning classification, as noted in previous Notices of Violation. Signs are not permitted within the public rights-of-way. Offsite signs are not permitted. Signs have been posted within the safe sight distance of Oak Ridge Road and US Highway 220, posing a safety hazard. Sign permits were not obtained and are required, as you have been informed. Any mobile sign, sign placed within the public rights-of-way, offsite signs and/or sign placed without a permit is subject to violation. **Only approved signs with a current permit shall be posted on your site and your site only.**
5. A tent, which is classified as a temporary structure, has been placed without a permit and has been in place for an extended period of time. Temporary structures are only permitted for a short duration and only under a temporary use permit. One permit was issued several years ago for thirty days. That permit has long been expired. **The tent must be removed.**



- 6. Additional parking spaces were added at the time the rezoning for 7610 Brisbane Drive was approved. You have been approved for a maximum of 150 attendees. No other parking areas have been approved for use with this facility. Two properties across Brisbane Drive are being used for overflow parking - one zoned CU-LB (7601 Brisbane Drive) and one zoned RS-30 (7603 Brisbane Drive). **The use of these properties shall immediately cease.**

Two additional properties, 4115 Oak Ridge Road (zoned RS-30) and 4108 Oak Ridge Road (zoned RS-40) are under your ownership. **Neither of these properties has been approved for use in conjunction with the Special Events Facility.**

- 7. Temporary storage units and sheds have been placed on 7603 Brisbane Drive. Any temporary or permanent structure requires an approved permit. No permits have been approved for the placement of these units. Additionally, no accessory structure shall be placed prior to a primary structure being placed. **These temporary storage units and sheds shall be removed.**
- 8. The use of 7603 Brisbane Drive for any use other than a residential use is a zoning violation. **The use of this property for commercial uses shall immediately cease.**
- 9. It has been reported that a bar called the Blue Marlin has been opened at the facility. It has also been reported that this bar is open to the general public. It also appears to be operating as a sports bar. A bar is not a permitted use in the CU-LB zoning classification. **This use and operation of a bar shall immediately cease.**

Finally, mature trees and vegetation have been removed from 7601 and 7603 Brisbane Drive. No use permit, plot plan, site plan or other plans or permits have been submitted or approved for these properties. Future use of 7601 Brisbane Drive will require landscape buffers to be planted. Slopes and areas used for overflow parking in the past should be revegetated with ground cover to prevent erosion.

You are hereby ordered to immediately cease and desist the above-described violations. All violations must be corrected by a date not later than August 12, 2015.

If the violations are not corrected by this date, Civil Citations may be issued for each day the violations remain thereafter. Civil penalties, as described below, are incurred for each Civil Citation issued and may also result in additional court costs and/or attorney fees. In addition to the penalties and remedies permitted by the Unified Development Ordinance, the Town may institute any appropriate action or proceedings to prevent, correct, or abate the violation.

<i>First Citation</i>	\$25.00
<i>Second Citation</i>	\$50.00 for same offense
<i>Third Citation</i>	\$100.00 for same offense
<i>Fourth and subsequent</i>	\$200.00 for same offense

If you feel this Warning Citation has been issued in error, you may request a hearing with the Code Administrator. At this hearing you will have an opportunity to explain or to show proof why you feel this Warning Citation should not have been issued, and why Civil Citation(s) should not be issued. To arrange a date and time for a hearing, please call me at 704-793-7659 during regular business hours.



Town Hall: POB 970, 4117 Oak Ridge Road, Summerfield, NC 27358
ph: 336-643-8655 / fax: 336-643-8654 / www.summerfieldgov.com

You may appeal this Warning Citation to the Board of Adjustment within thirty (30) days of the date of this notice. The request for an appeal must be in writing to the Code Administrator and Town Clerk and must state the specific nature of the appeal.

Please remember that **this is an official notice** and should not be ignored. Your immediate attention to this matter is required. If these violations have already been corrected, please notify the Code Administrator. Thank you for your prompt attention to this matter. If there are any questions, I may be reached at 704-793-7659.

Respectfully,

Kevin May, CZO, CEP
Town of Summerfield
Code Administrator
Mobile: 704-793-7659
kmay@nfocusplanning.org

cc: Town Planner Julie Reid
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