

## Bona fide farm law worries some in Orange County

CHAPEL HILL — Some Orange County residents continue to express concern about a state law that could bring event centers or other businesses to their rural neighborhoods, citing noise, traffic and availability of well water as a few of their qualms.

Residents near Morrow Mill Road and Millikan Road say they are worried about a proposed wedding venue called The Barn of Chapel Hill. The project was denied for a special use permit in November, but plans continue today because the property has a farm number issued by the Farm Service Agency, which exempts it from county regulations.

Kara Brewer, the owner of that property, said she went through the special use permitting process because she was interested in addressing concerns from her neighbors.

Some rural residents are on edge about another property being constructed off Ferguson Road, worried that a similar event center may be in the works.

However, it is unclear what plans for the property include

### FARM USE

Karen Macdonald, who owns the 45-acre plot across from Willis Road with her husband, Robert, said the couple plans to move from their Wake County home and live on the property to start a 5- to 6-acre lavender farm as they near retirement.

According to their business plan, their farm will be called Lavender Oaks Estate, and the land “was purchased with the sole purpose of creating a Lavender Farm, including a large Barn for production of lavender value-added products.”

Macdonald said that their barn would be used to make lavender products, adding that she thought people often assumed that barns on properties would be used as event centers.

But John Guins of Guins Excavating Service, which provided work for the property and is helping to build a road, said Macdonald told him an event center between 8,000 and 10,000 square feet was going on the property.

Guins said that he was told the events center would host weddings and other events.

Macdonald said that was a misunderstanding and that one of the draftsmen was discussing his desire to get married at a lavender farm.

Macdonald said she has been approached by several people who have expressed interest in marrying on a

lavender farm but that she has turned them all down.

She said she's sure there's a process for that and that it's not something she's ready to consider.

"I just want to make sure everything we're doing is by the books," she said.

The project already encountered one hitch back in April. When county officials saw a large swath of land being cleared, erosion control officer Steve Kaltenbach put a stop work order on the property, citing a violation of the Unified Development Ordinance.

Macdonald wrote to Kaltenbach the next day, explaining that the property has a farm number issued by the Farm Service Agency.

That email read, in part, "Our understanding in speaking to the planning dept is we are able to clear for our farm without an erosion control permit, however we are still staying well over 100' away from any stream buffers and only clearing a very small portion of the 44 acres for our farm, crops, and barn. We are going to be a lavender farm and plan to be organic and echo your concerns for appropriately caring for and adhering to environmental issues."

The stop work order has since been lifted because the land's bona fide farm status makes the project exempt from county regulations, Kaltenbach said in an email.

## EXTENT OF EXEMPTIONS

In a previous interview, UNC School of Government professor David Owens weighed in on why the bona fide farm law has initiated such a debate.

He said the law has resulted in gray areas in cases across the state, from event centers to bed and breakfasts to shooting ranges.

Owens said property owners cannot expect to use their bona fide farm properties for any purpose and still be exempt from county regulations.

"That is clearly not the case because the statute has always said the exemption does not apply to non-farm uses," he said.

If a farm is conducting agritourism as its farm use, Owens said, the activity must be related to farm production or incidental to production.

Macdonald said she has no plans to use her farm number for anything except farming lavender and participating in agritourism.

"We don't fall into that category at all," she said, referring to the possibility that properties could use farm numbers for non-farm uses. "We're going to be great, quiet...terrific community-minded people."

Macdonald said she and her husband plan to be “good guardians of 45 acres” and build up a farm that can be in their family for generations.

She said neighbors surrounding the property have been welcoming and have helped the Macdonalds learn about the history of the land.

She said it would take at least a couple of years to get their farm going but that once it is established, they want to engage in agritourism.

Macdonald said she would love to host farm events, as well as other events that could give back to the community.

Their plan is to “make (the farm) something others can enjoy when we are ready — and if we’re allowed to,” she said.

Brewer, too, has said her first priority for The Barn of Chapel Hill is establishing her farm, and that she will begin booking weddings only when the property is ready.

Owens said that the government body responsible for administering zoning ordinances — in Orange County’s case, the planning department — is responsible for interpreting what activities in an application constitute a farm use.

In a December email forwarded to the county commissioners, Jonathan Lanier, assistant general counsel for the North Carolina Department of Agriculture and Consumer Services, wrote that the county had the power to interpret the law.

“Ultimately, it is up to the county to determine the applicability of the exemption,” he wrote.

## POWER UNCLEAR

Earl McKee, chair of the Orange County Board of Commissioners, said that although the county does have interpretive power, the application of this power is questionable.

The commissioners have been advised by county attorney John Roberts not to discuss specific projects.

Attorney Andrew Petesch, who represents the owners of the Barn of Chapel Hill, contacted the commissioners via email to request a meeting to clear up information that he viewed as “inaccurate, incomplete or distorts the facts.”

But the commissioners said they had been advised not to discuss the project and asked Petesch to provide all further communication in writing.

McKee said he is aware that some residents are concerned about the loopholes that the bona fide farming law could potentially provide.

But he said that because farms are dictated by state law, the county is limited in its ability to control what farms do and what constitutes a farm use.

"The county's really caught in a catch-22 situation," he said.

McKee said that if change were to occur, it would have to come from the General Assembly. At an April meeting with Orange County's legislative delegation, the Board of Commissioners asked their representatives to begin working on a change. The discussion drew a handful of residents to the meeting.

But McKee said he doesn't want to see agritourism struck from the law completely — he just wants to see it more tightly defined.

"Agritourism, properly applied, allows farming families to optimize their income," he said.

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## Tags

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