

# Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629



Benton County Board of Adjustment  
Regular Hearing – January 6, 2011 – 7 p.m.  
Benton County Planning Department - Planning Annex  
1002 Dudley Avenue, Prosser, WA 99350

## CALL TO ORDER

## APPROVAL OF SEPTEMBER 2, 2010 MINUTES

### NEW BUSINESS:

**SPECIAL USE PERMIT – SP 10-17/EA 10-08** – The applicant is requesting a special use permit for a project that involves the operation of a special event center for weddings, reunions, conferences, etc. to be conducted outdoors and indoors utilizing an existing 5600 square foot building, new construction of a 30 foot by 40 foot building, preparation room for catering and a 20 foot by 25 foot greenhouse for resale of plants. The site is located at 33907 S Gerards Road in the Northwest Quarter of the Southeast Quarter of Section 21, Township 8 North, Range 30 East, W.M. The written date of completeness on this action was December 7, 2010. Applicant: Dwight Lydell/Roberta Kenyon Lydell – 33907 S Gerards Road – Kennewick, WA 99337

### PLANNING DEPARTMENT REPORTS AND DISCUSSION:

Dated this 29<sup>th</sup> day of December, 2010

THE FOLLOWING MEMO HAS  
BEEN SCANNED WITHOUT EXHIBITS  
FOR THE HEARING TO BE  
CONDUCTED BY THE BENTON  
COUNTY BOARD OF ADJUSTMENT  
ON JANUARY 6, 2011 AT 7 P.M. -  
PLANNING ANNEX - 1002 DUDLEY  
AVENUE - PROSSER, WA

IF YOU WISH TO OBTAIN A  
COMPLETE PACKET INCLUDING THE  
EXHIBITS PLEASE CONTACT THE  
BENTON COUNTY PLANNING  
DEPARTMENT AT  
736-3086 - TRI-CITIES  
OR  
786-5612 - PROSSER  
OR  
EMAIL TO  
[planning.department@co.benton.wa.us](mailto:planning.department@co.benton.wa.us)

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**DATE:** DECEMBER 28, 2010  
**TO:** BENTON COUNTY BOARD OF ADJUSTMENT  
**FROM:** BENTON COUNTY PLANNING DEPARTMENT  
**RE:** SPECIAL PERMIT APPLICATION – SP 10-17

**APPLICANTS/  
 PROPERTY OWNERS:** DWIGHT/ROBERTA KENYON LYDELL  
 33907 S GERARDS ROAD  
 KENNEWICK, WA 99337

**TAX PARCEL NUMBER:** 1-2180-400-0018-001

**SPECIFIC REQUEST:** The applicants are seeking a Special Use Permit for the operation of a special event center for weddings, reunions, conferences, etc (DBA/Ambiance Gardens), to be conducted on a 5.81-acre parcel of land. An existing 5,600 square foot agricultural building is located on site that would be utilized for the special event center. Phase 2 as proposed would be for a 30'x40' foot steel frame structure and a 20'x25' foot greenhouse to be completed within a two-year timeframe.

**ZONING:** Subject and surrounding properties are zoned Unclassified.

**COMPREHENSIVE PLAN DESIGNATION:** The Benton County Comprehensive Plan designates the site and surrounding parcels as Rural Lands 5.

**STATE ENVIRONMENTAL POLICY ACT:** A Determination of Non-Significance was issued on October 5, 2010 relative to the facts submitted to the Planning Department on Special Use Permit – SP 10-17 under the requirements of the Washington State Environmental Policy Act. Environmental Impact Statement is not required.

**APPLICABLE DEVELOPMENT REGULATIONS:**

The Benton County Code Section 11.48.010(g) (in the Unclassified Zone District) states that: "All other uses of property not otherwise prohibited by laws of Benton County or the State of Washington, in addition to those listed below, may be allowed only by Special Permit issued by the Benton County Board of Adjustment after notice and public hearing as provided in BCC 11.52.090."

**Benton County Code Section 11.18.070 states:**

"Uses requiring permits – Special Permit Required. Upon issuance of a Special Permit by the Board of Adjustment, the following uses shall be permitted within the Urban District; provided that they are located in a manner that minimizes adverse impacts to agricultural productivity on adjacent lands."

**Benton County Code Section 11.52.090(a) states:**

“Conditional Use/Special Permit-General Standards. The conditional use/special permit application process allows the Board of Adjustment to review the location and design of certain proposed uses, the configuration of improvements, and the potential impacts on the surrounding area. The application process also allows the Board of Adjustment to ensure development in each zoning district protects the integrity of that district. The notice, hearing, decision and enforcement procedures are as set forth herein and in Section 2.

Certain uses are classified as conditional uses/special permit uses because of their unusual nature, infrequent occurrence, special requirements, or potentially significant impacts to the environment, public infrastructure or adjacent properties, and/or possible safety hazards and other similar reasons.

Once granted, a Conditional Use/Special Permit may be transferred by a holder thereof after written notice to the Board of Adjustment; provided the use and location must remain the same and the transferee must continue to comply with the conditions of the permit and, if applicable, the requirements set forth in BCC 11.52.070.

**Benton County Code Section 6A.15.040 PUBLIC NUISANCE NOISE—UNLAWFUL states:**

It is unlawful for any person to make, continue, or cause to be made or continued or to allow to originate from his or her personal or real property any public nuisance noise which:

(a) Is plainly audible within any dwelling unit which is not the source of the sound or is generated within two hundred (200) feet of any dwelling; and,

(b) Either annoys, disturbs, injures or endangers the health, comfort, repose, peace or safety of others.

Benton County Code Section 6A.15.050(p) provides that sounds created by un-amplified human voices from 6:00 a.m. to 10:00 p.m. are exempt from the provisions of Benton County Code 6A.15 and are not considered public nuisance noises.

**Benton County Code Section 11.52.090(d) states:**

Conditional Use/Special permit—Permit Granted or Denied. The Benton County Board of Adjustment will consider the proposed special permit application at an open record hearing. A special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:

(1) Is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;

(2) Will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;

(3) Would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;

(4) Will be supported by adequate service facilities and would not adversely affect public services to the surrounding area; and

(5) Would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district.

If reasonable conditions cannot be imposed so as to allow the Board of Adjustment to make the conclusions required above, the conditional use/special permit application shall be denied.

**PLANNING STAFF FINDINGS OF FACT:**

Based on the application and information received by the Planning Department, the Planning Staff makes the following findings.

1. The applicants/property owners are Dwight/Roberta Kenyon Lydell 33907 S Gerards Road. Kennewick, WA 99337.

2. The applicants are seeking a Special Use Permit for the operation of a special event center for weddings, reunions, conferences, etc (DBA/Ambiance Gardens), to be conducted on a 5.81-acre parcel of land. An existing 5,600 square foot agricultural building is located on site that would be utilized for the special event center. Phase 2 of the proposal would be for a 30'x40' steel frame structure and a 20x25 foot greenhouse to be completed within a two year timeframe. The site plan did not show the location of the steel frame building.

3. The site is located at 33907 S Gerards Road. Kennewick, WA 99337 in the Northwest Quarter of the Southeast Quarter of Section 21, Township 8 North, Range 30 East, W.M.

4. The application for SP 10-17 was submitted to Benton County on March 5, 2010 and was deemed incomplete and returned to the applicant on March 15, 2010 requesting additional information. At the request of the applicant the permit was amended by the applicant and re-submitted to the Planning Department on August 27, 2010. The August 27, 2010 application was deemed complete for processing by the Planning Department on September 1, 2010 and routed for utility review on September 7, 2010. The special use permit was scheduled for a hearing with the Board of Adjustment on November 4, 2010. The applicant contacted the Benton County Planning Department requesting another month as she had additional information to add to the existing special use permit application. The applicant submitted another revised application on December 2, 2010, which was deemed complete for processing on December 7, 2010.

5. The notice for the Benton County Board of Adjustment Open Record Hearing for application SP 10-17 was published on Thursday, December 16, 2010, in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing is scheduled for January 6, 2011.

6. Said application SP 10-17 had been reviewed under the requirements of the State Environmental Policy Act. A Determination of Non-Significance was issued on October 5, 2010. Environmental Impact Statement was not required.

7. The site and the surrounding parcels are zoned Unclassified.

8. The Benton County Comprehensive Plan designates the site and surrounding parcels as Rural Lands 5.

9. BCC Section 11.18.070(2) states that the proposed use may be allowed by a special use permit.

10. The existing building was constructed in 2007 as an agricultural building (barn) for the storage of agricultural products and animals. Changes to the building have been conducted without the proper building permits being obtained. If this special permit is approved the building must meet the standards for a commercial building with the projected occupancy load which may require that some of the existing sheetrock or interior finish of the building be removed to verify that it was constructed to the required standards of the building code. The applicant would have to provide verification that the electrical system is approved by the Washington State Department of Labor and Industry for the proposed commercial/assembly use. The Benton County Building Department will require the applicant to obtain a Change of Use Permit for the reclassification of the existing 5600 sq. ft. building from an Agriculture Building to a Commercial/Assembly Building.

11. The Benton County Department of Public Works has commented that the access approach onto Gerards Road must be paved to the 96-05 Benton County Standard and that no parking will be allowed on or within the right of way of Gerards Road at any time. The existing paved area for Gerards Road is currently 20 feet and the right of way is maintained by Benton County Public Works. A 20-foot wide dead end road is not the ideal road to handle the projected traffic that will be created by an event center. The issue will occur when those attending an event arrive or leave at the same time. The accessing of the property could cause a back up of traffic and prevent emergency vehicles from accessing the fourteen properties located to the south of the site. Gerards Road is the only access to the properties south of the site.

12. As you can see from the attached comments submitted by the Benton Franklin Health District and the Washington State Department of Health, both departments have concerns about the applicant's water and sewer systems. It appears the applicant has installed the systems, but not to the required standards. Comments from the Benton-Franklin Health Department include:

- (1) Washington State Department of Health comments that the facility is currently being served by an unapproved public water supply in accordance with and is not in compliance with WAC 246-291-100(2).
- (2) Benton-Franklin Health Department comments: The facility is currently being served by a non-approved sewage disposal system. (currently a holding tank) and,
- (3) The lot must meet minimum land area requirements as specified in Benton-Franklin Health District Rules and Regulations No 2.

As you can see from the comments above by the health department and building department, the applicant's are making changes to their property without obtaining the permits for the changes. Because these changes were made without permits and required inspections, it will be difficult to verify if they meet the current code provisions. **The applicants have operated without proper permits and have been cited and fined by the courts, until such time as the water and sewer requirements are satisfied, the facility cannot be used. In**

**addition buildings should be brought into compliance with current Building Codes and any Life Safety Issues prior to public occupancy of the facility or public use (including any private or personal use).**

13. The Benton County Fire Marshal commented that a "A 20' foot fire lane is needed for ingress and egress to the building, but it can be either gravel or asphalt, and can terminate within the parking area. Provided, the portion of the parking area that extends southward toward the event center and is designated a "NO PARKING-FIRE LANE". The applicant will need to provide a parking diagram to the Fire Marshal to determine if there would be enough room for a fire truck turnaround. The applicants show on their site plan a driveway for entrance and one for exit. The driveway for the exit will access Gerards Road directly across from the single family dwelling located on the west side of Gerards Road, so that the headlights of the car exiting the site will shine into the dwelling and could impact the owners use of the dwelling. The driveway labeled as day entrance on the site plan should be used for both entering and exiting the property. The Fire Marshal is requiring this access be improved to at least 20 feet wide, which should be able to handle two-way traffic.

14. The applicants are providing 100 off site parking spaces on a grassy parking lot. The applicants provided that access would be limited to weekends and by appointment only. The building plan indicates 99 or fewer occupants, but the application does not provide a number of persons that will be attending events at this facility. If you had two persons per vehicle you could have 200 persons at an event. The number of persons per an event should be determined so that the impact of this facility can then be determined. Based on the location and information presented by the applicants, the planning staff recommends that if this special permit is approved that it limit the number of persons at an event to 200.

15. The applicants are asking to operate every day of the week until 10:00 p.m. There are approximately 23 residential dwellings within 1200 feet of the site. Conducting events until 10:00 p.m. every night will impact the surrounding property owner's enjoyment of their properties. Given the number of dwellings located around the property that may be affected by the activities of the event facility; no outside amplified music would be allowed. The music would need to be contained within the existing building only. Any event conducted on site would need to be concluded by 10:00 p.m.

16. The proposed use may be no more incompatible than are any other outright permitted uses in the Unclassified Zoning District, such as schools, churches, libraries, community clubhouses, or stills. Do to the size and location the above uses would not be at this location and those uses may be required to upgrade the road and put in barriers around the property to reduce impacts on surround properties.

17. The proposed use may not materially endanger the health, safety and welfare of the surrounding community to an extent greater then that associated with any other permitted uses in the Unclassified Zoning District such as schools, churches, libraries, community clubhouses, stills, and packing sheds, however, the above uses normally do not have outside amplified music or activities until 10:00 p.m. every night.

18. The written information included with the applicants revised application provides that a 30' by 40' steel building is to constructed and be phased into the facility within the next 2 years. However, the application does not provide the use of the building and the site plan does not show the location of the building. Based on the information on the application, it cannot be determined what impact the proposed 30X40 phased building could have. The greenhouse

being proposed will need an additional Special Permit if more than on site usage of items grown are offered for sale and not just used onsite for the facility. Building Permits will be required for the construction of any additional buildings.

**CONDITIONS OF APPROVAL:**

If the Board of Adjustment decides to approve the Special Use Permit Application 10-17 based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department recommends that the following conditions be included in the Board of Adjustment approval:

1. Applicant shall not conduct any of the activities within the scope of Special Permit 10-17 until the applicant is in compliance with Condition Nos. 3 through 11 set forth herein. The applicants shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not issue the special use permit until those conditions have been met. The special use permit shall not become effective until issued by the Planning Department.

2. If the conditions of approval have not been met and the Planning Department does not issue the special use permit within one (1) year from the time the Board of Adjustment conditionally approved the special use permit, the Board of Adjustment may declare its approval null and void at a regular Board of Adjustment meeting. Prior to doing so, the applicant shall be notified in writing at the applicants' last known address at least twelve (12) days in advance of the upcoming Board of Adjustment meeting.

3. The applicant must provide written verification from the Benton Franklin Health District to the Benton County Planning Department that the applicant has complied with the Health Department's requirements for the proposal. **The facility must be served by an approved public water supply and there is currently an illegally installed sewage holding tank on site, an application had been submitted, but complete requirements were not met to obtain a permit. Full approval must be must be given within 60 days of the Health Districts letter of November 30, 2010 or referral to the Benton County Prosecutor for legal action will commence. The applicants shall resolve the above listed Health District's concerns and continue to meet all such related requirements while SP 10-17 is in effect.**

4. That the applicants provide written verification to the Benton County Planning Department that all requirements of the Benton County Fire Marshal and Benton County Building Office have been completed and all requirements for the change of use of the existing building are completed and approved. The applicant shall continue to meet all such requirements while Special Use Permit SP 10-17 is in effect.

5. That the applicants provide written verification to the Benton County Planning Department that all requirements of the Washington State Department of Labor and Industry electrical inspection division have been completed and all requirements for the change of use of the existing building are completed and approved. The applicant shall continue to meet all such requirements while Special Use Permit SP 10-17 is in effect.

6. That the applicants provide written verification to the Benton County Planning Department that all requirements of the Benton County Department of Public Works Office have been completed and approved. The applicant shall continue to meet all such requirements while Special Use Permit SP 10-17 is in effect.

7. The hours of operation shall be limited to the hours of 10:00 a.m. to 10:00 p.m. Monday to Sunday. No outside amplified music will be allowed and will need to be contained within the existing building only. The applicant shall continue to meet all such requirements while Special Permit 10-17 is in effect.

8. The applicants have not addressed WAC 256-215 (Food Service Sanitation). If food is to be prepared on site the business must meet all requirements for application/issuance of a Benton-Franklin Health District Food Service Permit.

9. That the applicants provide a parking plan showing where parking will take place and limiting the parking to 100 (one hundred) cars and 200 (two hundred) patrons or visitors. No additional parking will be allowed along the public right-of-way. The applicants shall continue to meet all such requirements while SP 10-17 is in effect.

10. The applicants need to provide an emergency response and designated fire lane for the facility. This plan is to be coordinated and approved by the Benton County Fire Marshal, Benton County Fire District #1 and the Benton County Sheriff's Office. The applicants shall continue to meet all such requirements while SP 10-17 is in effect.

11 That this special permit does not approve on-site sale or consumption of alcoholic beverages. The Washington State Liquor Control Board Laws must be followed and appropriate permits or licenses (if needed) must be obtained prior to alcoholic consumption on premise. The applicant shall continue to meet all such requirements while SP 10-17 is in effect.

12. A parking attendant located at the entrance and exit of the event center and Gerards Road will be required to facilitate the traffic entering and leaving the property in an orderly manner and the applicants shall provide a security/crowd control plan outlining how crowd control and security will be implemented during events. The applicants shall continue to meet this requirement while Special Permit SP 10-17 is in effect.

13. The site is not to be used for music concerts and amplified music events. The applicants shall continue to meet this requirement while Special Permit SP 10-17 is in effect.

14. The requirements of or permission granted by the Board of Adjustment shall not be construed as an exemption from Land Restrictions or Covenants placed upon this property at any time of segregation, separation or recording of any land deeds or transactions related to this property. The applicants shall continue to meet all such requirements while SP 10-17 is in effect.