

# Barn Vows: Rustic Wedding Venues and Zoning Regulations

**B**arns have been used as gathering places in one fashion or another for centuries, but over the last few years, a particular barn use has become increasingly more popular. It is the idea of using a carefully decorated barn (be it a converted working barn or a new-build) as a wedding venue and reception hall, and the surrounding land as a scenic backdrop for the festivities. In fact, a recently conducted survey conducted by The Knot revealed that approximately 15 percent of weddings held within the United States in 2017 were hosted in a barn venue or similar rural setting. (Kitchener, *Why is Everybody Getting Married in a Barn?*, The Atlantic (May 10, 2018)).

With the rise in popularity of this type of stylized event space, the owner/operator of a “wedding barn” has the opportunity to run an extremely lucrative operation, which may help in stimulating the surrounding local economy. However, this operation may, in turn, increase traffic and noise, and result in other unintentional annoyances, all of which can upset the neighbors and surrounding community. Across the country, political subdivisions are being asked to look into the operation of wedding barns regarding these often-conflicting points of view. From a township perspective, where do these structures that have, for centuries, been synonymous with the operation of a traditional family farm or other agricultural operation fall with respect to a township’s ability to regulate land use through zoning, and agriculture’s statutory exemption from zoning under the Ohio Revised Code?

As with any issue related to the agricultural zoning exemption, the specific facts and circumstances are controlling, and, since every situation is different, the Ohio Revised Code provides little specific guidance, and the case law on the topic may or may not apply to the unique situation you’re facing. That being said, there is some case law to help identify what does not fall under the agricultural zoning exemption, some administrative

guidance on what could fall under this exemption, and a case pending appeal out of Ohio’s Ninth District Court of Appeals that relates to the operation of a wedding barn/event facility within a township and the cultivation of wine on the property. While there are specific statutory provisions for viticulture that are at issue in the case, it is our hope that the final decision regarding this case will provide some helpful future guidance for townships with respect to wedding barn operations.

You may be aware (and if you’re familiar with any of our previous articles, then you already know) that townships are creatures of statute and only have the authority granted to them under the law and the powers necessarily implied from that statutory authority. Under the Ohio Revised Code (“R.C.”), a township has the authority to regulate land use in the unincorporated territory of a township. R.C. §519.02 However, that authority is limited with respect to the agricultural use of land or agricultural buildings or structures on that land, including buildings used primarily for the vinting and selling of wine located on land used for viticulture.

Under the Ohio Revised Code, agriculture is broadly defined to include “farming; ranching; algaculture meaning the farming of algae; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including, but not limited

to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy

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production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; and the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.” R.C. §519.01 Furthermore, there are limits on a township’s ability to enact zoning regulations for agritourism operations. For context, “agritourism” means “an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity.” R.C. §§519.21(D)(2); 901.80(A) (2)

Turning to the statutory provisions exempting agriculture from township zoning, Ohio law gives townships no power to regulate an agricultural use or structure located on a lot greater than 5 acres. R.C. §519.21(B)(3) On lots smaller than 5 acres, where the use of property and/or structure is agricultural, a township cannot regulate such use or structure unless it falls into a statutory exception. R.C. §519.21(B) The general exceptions are that townships may regulate the following: 1) agriculture on lots of 1 acre or less; 2) the setbacks, height, and size of agricultural structures on

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lots between 1 and 5 acres in size; and 3) dairying and animal and poultry husbandry on platted subdivision lots between 1 and 5 acres in size where at least 35 percent of the lots in the subdivision are developed. *Id.* However, in order to regulate as provided by the statutory exceptions, the township's regulations must be codified in the township's zoning resolution. *Id.* The township cannot rely on the statute alone to provide its zoning regulations regarding agriculture. No matter how simple or complex, they must be included in the zoning resolution itself.

Regarding wedding barns, either an existing older structure or a proposed new structure, property owners continue to raise the question to township zoning departments: if I use my barn as a wedding or event venue, would that use and/or structure be considered agriculture, and therefore, be exempt from zoning?

Whether a barn used for weddings or similar events falls under the agricultural exemption depends on the nature of the use. Townships cannot regulate, through zoning, structures that are "incident to the use for agricultural purposes of the land on which such buildings or structures are located." R.C. §519.21(A) To be "incident to" an agricultural use, a structure's use must directly and immediately relate to an agricultural use, or be usually or naturally and inseparably dependent upon agricultural use. *State v. Huffman*, 20 Ohio App.2d 263, 269 (3d Dist.1969). To the extent the use of the structure is incidental to agricultural use, it is exempt from zoning. *Litchfield Twp. Bd. of Trustees v. Nimer*, 982 N.E.2d 1282, 1289 (9th Dist.2012) Therefore, to qualify as being used for an agricultural purpose, the barn in question must be used directly or naturally in conjunction with the agricultural use of the land.

Furthermore, while a building or structure's use must be incidental to the property's agricultural use to fall under the statutory exemption for agriculture, the agricultural activity does not have to be the sole use or function of the building. A structure can still qualify for the agriculture exemption even if a non-agricultural use is secondary to, but still in conjunction with, the agricultural use of the property. Whether a structure's use is incidental to the agricultural use of the property is fact-specific and is a question for a court to determine if the zoning regulation is challenged.

Some of the courts that have considered the issue of a structure qualifying for the agricultural exemption have held that the following structures did not qualify: a mobile home used as living quarters for temporary and occasional farm help; and a building for processing beef, the majority of which came from off-site farms. On the other hand, these structures have been considered incidental to the agricultural use of the property by courts or the Ohio Attorney General: dwellings constructed on farmland for migrant workers; structures housing farm machinery; and a garden center that sold agricultural products grown on the property.

There is some guidance that may indicate that a wedding barn may be able to fall under the "farm market" exemption outlined in R.C. §519.21(C)(1). The farm market exemption provides that a township has no authority to prohibit a farm market where "fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year." The Ohio Attorney General has opined that the farm market exemption includes a farm market that "conducts banquets, receptions, parties at which entertainment is provided... and special events..." and meets the fifty percent gross income requirement outlined in R.C. §519.21(C)(1). 2002 Ohio Atty.Gen.Ops. No. 2002-029

While the Attorney General's opinion did not specifically address a wedding barn, and the matter does not appear to have been widely litigated at this time, it's our interpretation that a wedding and reception could be consistent with the events outlined in the opinion, and therefore, if a farm market also operates a wedding barn and meets the fifty percent gross income threshold, it could fall under the farm market exemption.



But what, if anything, have the courts said specifically about wedding barns? The answer is: not much. That being said, townships and zoning bodies should keep an eye on the outcome of *Litchfield Township Board of Trustees v. Forever Blueberry Barn, LLC*, a case originating in Medina County that is currently being appealed to the Ninth District Court of Appeals. The factual and procedural history of the case is extensive, and a final decision has yet to be rendered. Ultimately, the crux of the case deals with the relationship between a wedding barn/event space and the cultivation and sale of wine on the property, specifically, whether the barn, which is used for weddings as well as winemaking, is "used primarily for" the vinting and selling of wine.

To the best of our knowledge, once issued, the Ninth District Court of Appeals' decision in the *Litchfield Township* case will be the highest-level court decision in Ohio yet to address the operation of wedding barns and agricultural zoning exemption, and no Ohio court has yet made a final ruling on what depth of connection must be present between the use of the property for agriculture and the use of a barn for holding weddings or other events. Given the popularity of the barn wedding trend, and the opportunities for tension, we anticipate more court cases resulting in more guidance on the agriculture exemption and barns as event venues. Based on the statistics, chances are good that you've attended a wedding or another event held in a barn, and if you haven't, you'll probably be invited to one soon. ■



Jennifer Huber, Esq., Julie Donnan, Esq., and Emily Butler, Esq., are attorneys with the law firm of Brosius, Johnson & Griggs, LLC. The firm advises and represents townships across Ohio on a variety of matters ranging from employment and labor to zoning and land use.