

RICHLAND COUNTY
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IN THE COURT OF COMMON PLEAS OF RICHLAND COUNTY, OHIO
LINDA H. FRARY
CLERK OF COURTS

Blueberry Patch LLC, et al.,

Case No. 2017 CV 59 R

Appellants,

v.

Larry L. Flowers,

**ORDER ON OBJECTIONS TO
MAGISTRATE'S DECISION ON
ADMINISTRATIVE APPEAL**

Appellee.

This administrative appeal from the final order of the Ohio Board of Building Appeals was overruled by the 11-2-17 order of this court's magistrate. The Board of Building Appeals has ordered that the appellant Blueberry Patch, LLC comply with the requirements of the Ohio Building Code and Ohio Fire Code or pay a fine. The magistrate affirmed that ruling. The Appellant Blueberry Patch LLC and its members, Stephen and Lisa Beilstein filed timely objections to the magistrate's decision on 11-16-17.

1. Standard of Review:

Appellant contends the magistrate should have ruled on the appeal under R.C. 3781 rather than under the general administrative statute R.C. chapter 119. The court disagrees. The order appealed from was issued pursuant to R.C. 3737.42 under which the Fire Marshall may issue a citation for violation of the state fire code. Pursuant to R.C. 3737.43, the responsible person may appeal the citation under R.C. chapter 119.

RULE 58 (B) NOTICE
THIS JUDGMENT WAS ENTERED ON THE
COURT'S JOURNAL

ON 1-24-18

BY W. H. Frary

Richland County Clerk of Courts
Deputy Clerk

The appropriate standard of review is that in R.C. 119.12(M) – whether the order is supported by reasonable, probative and substantial evidence and is in accordance with laws.

2. Agricultural exemption from the firecode:

Appellant contends that if property is claimed as agricultural and exempt under the local zoning code, structures on that property are also exempt from compliance with the Fire Code.

Appellee responds that the Fire Code applies to all structures unless there is a specific exemption. Ohio Administrative Code 1301:7-7-01(A)(1)(b) and (B)(1)(b) say the Fire Code applies to agricultural premises “where the conditions constitute a distinct hazard to life or property in the opinion of the fire code official.” There was such a finding in violation number 13. The magistrate points out from the record that the Board’s conclusion of distinct hazards was supported by adequate evidence.

3. Board’s order for complete set of building plans:

Appellant objects that the Board’s order doesn’t deal just with Fire Code violations but demands the defendant submit a complete set of building plans for review. Appellant points out that in 2014, the county and Washington Township building officials concluded this property was exempt from the building code. Appellee does not adequately answer this objection and it appear meritorious.

4. and 5. Factual support for magistrate’s findings:

Appellant objects that Mr. Hoptry’s testimony about the distinct hazards is not credible because some of the inspection reports do not include the same

findings.

Credibility determinations are for the trier of the fact – in this case the Board of Building Appeals. As the magistrate points out, there is evidence which, if believed, supports the distinct hazard finding.

6. Change of use of structure:

There was evidence to support the Board's finding and the Magistrate's affirmation that a greenhouse originally contracted for growing and selling strawberries and blueberry plants was constructed to other uses. Those uses include a restaurant with a wood fire pizza oven and a gift shop and retail sales area. The evidence further showed the use of reclaimed untreated wood throughout the facility, a balcony in the restaurant with a single stairway access, and a lack of fire detection, suppression or alarm systems in these areas. That evidence supports a substantial change of use finding.

7. & 8. Procedural irregularities:

The Board in this case ordered appellants to submit a complete set of building plans for all improvements done in the last three years and yet to be completed. The Board declined to limit the plans to cover the Fire Code violation components, but rather included plumbing and electrical components. The Board should have limited its orders to the citations of the Fire Marshall.

Appellant quotes a Board member from the record¹:

“[W]e’re going to bend the rules a little bit but let’s at least make sure it’s safe. That’s the word we always fall back on.”

and

“[I]t will end up being for the court to decide.”

¹ Record at 11, 115: 22-24

Judgment Entry

It is therefore ordered:

1. All the appellants' objections except for objection 3 and 7 are overruled.
2. The case is remanded to the Ohio Board of Building Appeals to promptly draft a new order in place of the December 23, 2016 order which is limited to remediation of the Fire Marshall's violations 1, 12, and 13 which the Board found were proved, and which does not include a requirement to submit all building plans.
3. Court costs are assessed one half against appellee and one half against appellants.
4. The magistrate's decision is otherwise affirmed.



Judge Brent N. Robinson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was sent by regular U.S. Mail this _____ day of January, 2018 to the following:

Gregory R. Flax

Jennifer S.M. Croskey

Hilary R. Damaser

Clerk of Courts

RICHLAND COUNTY
CLERK OF COURTS
FILED

2017 NOV -2 P 2: 20

LINDA H. FRARY
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

BLUEBERRY PATCH LLC, et al.,

Appellants,

LARRY L. FLOWERS,
Ohio State Fire Marshal,

Appellee.

Case No. 2017-CV- 0059 R

**MAGISTRATE'S DECISION
ON ADMINISTRATIVE APPEAL**

This is an administrative appeal from a final order of the Ohio Board of Building Appeals, (Case No. 16-0181) which upheld a citation issued by the Ohio State Fire Marshal (Fire Marshal's Order 2015-152.) It came on for oral hearing before the Magistrate, pursuant to R.C. § 119.12(L), on September 28, 2017. Attorney Gregory R. Flax appeared on behalf of the Appellants, the Blueberry Patch LLC, Stephen H. Beilstein, and Lisa K. Beilstein. Stephen Beilstein was present at the hearing. Assistant Attorney General Hilary R. Damaser appeared on behalf of the Appellee Ohio State Fire Marshal. Appellee Ohio Board of Building Appeals has not filed a separate appearance in this appeal and did not appear for the hearing. Attorneys for the parties were heard on oral argument. No new testimony was taken, nor was any new evidence admitted into the record. The hearing was digitally recorded.

The Magistrate has reviewed the pleadings, the full record of administrative

proceedings, the transcript of hearing before the Ohio Board of Building Appeals, the oral arguments of the parties and the relevant Ohio law.

FINDINGS OF FACT

1. The Appellants, Stephen H. Beilstein, and Lisa K. Beilstein are the members of co-Appellant, The Blueberry Patch LLC.¹ The Blueberry Patch is an 80 acre farm and market operation located at 1285 West Hanley Road, Mansfield Ohio, 44904 (hereinafter “the Property”).² Appellants raise blueberries, raspberries, and blackberries on approximately 27,000 bushes.³ Over 50% of the revenues of the Blueberry Patch are derived from sales of agricultural products produced on the Property.⁴ Appellant’s commercial sales of blueberries are made by the ton, not by the pint.⁵ Appellants also operate a wholesale nursery which sells approximately a quarter million plants a year.⁶
2. Since December 2014, Appellants have made and sold wine on the Property.⁷ Crushing, fermentation, aging, storage, bottling, and sales of the wine all occur on the Property.⁸
3. The retail space at The Blueberry Patch (hereinafter the “Structure”) is located in a functioning greenhouse,⁹ part of which has been converted into a gift shop, a wine

¹ Stephen H. Beilstein (Appellant) testimony, Transcript of December 20, 2016 Ohio Board of Building Appeals Hearing (hereinafter “Hearing Transcript”), p. 61.

² Beilstein, Hearing Transcript pp. 61-62.

³ Beilstein, Hearing Transcript p. 62.

⁴ Beilstein, Hearing Transcript p. 64.

⁵ Beilstein, Hearing Transcript p. 63.

⁶ Beilstein, Hearing Transcript p. 62.

⁷ Beilstein, Hearing Transcript p. 62.

⁸ Beilstein, Hearing Transcript p. 62.

⁹ Stanley Hoptry , State Fire Marshal (Appellee) testimony, Hearing Transcript p. 26.

tasting room, two seating areas, a kitchen, and a café with a wood-fired pizza oven.¹⁰ The café includes a small food preparation area and a commercial kitchen area with a commercial hood system.¹¹ The tasting room includes a bar and several tables for customer seating.¹² The wood fired pizza oven stands in the middle of the tasting room area.¹³

4. An upstairs loft area provides additional seating for the café and tasting room.¹⁴ The loft has no external exit and a single staircase access/egress.¹⁵
5. The walls inside the café, tasting room, seating areas, loft, and gift shop are all lined with dry, untreated, reclaimed wood.¹⁶ The gift shop offers combustible retail products including candles, clothing, packaged foods and handbags.¹⁷ The various areas of the space are not separated by rated fire-resistant construction.¹⁸ The Blueberry Café has no fire detection system, no fire alarm system, and no fire suppression system.¹⁹
6. The Blueberry Patch is advertised to, and patronized by, members of the public, sometimes in large numbers.²⁰
7. On February 6, 2015, October 1, 2015, July 26, 2016 and November 22, 2016, State

¹⁰ Hoptry, Hearing Transcript pp. 19-26.

¹¹ Hoptry, Hearing Transcript p. 24.

¹² Hoptry, Hearing Transcript p. 25.

¹³ Hoptry, Hearing Transcript p. 21.

¹⁴ Hoptry, Hearing Transcript p. 25.

¹⁵ Hoptry, Hearing Transcript p. 26.

¹⁶ Hoptry, Hearing Transcript p. 23.

¹⁷ Hoptry, Hearing Transcript pp. 23-24.

¹⁸ Hoptry, Hearing Transcript p. 27.

¹⁹ Hoptry, Hearing Transcript p. 27.

²⁰ Beilstein, Hearing Transcript pp. 76-78.

Fire Marshal Fire Code Inspector Stanley Hoptry, a certified fire safety inspector, inspected the Blueberry Patch facility.²¹ During the February 6, 2015 inspection, Mr. Hoptry found fifteen violations of the Ohio Fire Code (hereinafter "OFC").²²

Violations of the OFC that Inspector Hoptry observed during the February 6, 2015 inspection remained when he returned on October 1, 2015, and on July 26, 2016.²³

8. Consequently, on August 16, 2016, Appellee Ohio Department of Commerce, Division of State Fire Marshal, issued a citation to Appellants Stephen H. Beilstein and Lisa K. Beilstein, listing thirteen violations of the OFC.²⁴ On September 23, 2016, the Fire Marshal amended the citation only to include the Blueberry Patch LLC as a responsible person.²⁵
9. Between September 23, 2016 and November 22, 2016, the Appellants engaged in substantial remediation efforts. The November 22, 2016 inspection report lists Total Violations -- 24; Corrected -- 23, Uncorrected -- 1.²⁶
10. Blueberry Patch LLC requested a hearing before the Ohio Board of Building Appeals.²⁷ At the December 20, 2016 hearing, the Fire Marshal withdrew violations two through eleven (2-11) from the Fire Marshal's amended September 23, 2016 citation.²⁸ The Ohio Board of Building Appeals proceeded to hear evidence as to violations one (1), twelve (12) and thirteen (13), which read:

²¹ State's Exhibits 2-6.

²² State's Exhibit 4.

²³ State's Exhibits 5-6.

²⁴ Record of Proceedings before the Ohio Board of Building Appeals, section 2.

²⁵ Record of Proceedings before the Ohio Board of Building Appeals, section 2.

²⁶ State's Exhibit 7.

²⁷ Request for Appeal Hearing, received by the Ohio Board of Building Appeals September 19, 2016.

²⁸ Opening statement of Hilary Damaser, counsel for the State Fire Marshal, Hearing Transcript p. 6.

1. OAC 1301:7-7-01 (G)(1); OFC 107.1: Devices, equipment, systems, conditions, arrangements and levels of protection required by the Ohio Fire Code have not been continuously maintained in accordance with the Ohio Fire Code and applicable reference standards as further described in violations 2-13 of this citation.

Civil penalty pursuant to Ohio Revised Code 3737.51 (B) and/or (C):

\$1000.00

12. OAC 1301:7-7-01 (B)(1)(a)(iii), OFC 102.1.1; OAC 1301:7-7-01 (B)(3)(a)(ii)(a), OFC 102.3.1(a); OAC 1301:7-7-01 (B)(3)(a)(ii)(b), OFC 102.3.1(b); OAC 1301:7-7-01 (B)(3)(a)(ii)(c), OFC 102.3.1(c); OAC 1301:7-7-01 (B)(4), OFC 102.4; OAC 1301:7-7-01 (I)(1)(a), OFC 109.1; OAC 1301:7-7-01 (B)(3)(c), OFC 102.3.3: The owner has changed the use of the building in violation of the Fire Code and the Building Code. The greenhouse is now a gift shop, café, and winery with a newly constructed wood fired pizza oven. The structure is open to the public for general business, parties, dining and meetings.

Civil penalty pursuant to Ohio Revised Code 3737.51 (B) and/or (C):

\$500.00

13. OAC 1301:7-7-01 (B)(1)(a)(iii), OFC 102.1.1; OAC 1301:7-7-01 (B)(1)(b)(ii)(a), OFC 102.1.2; OAC 1301:7-7-01 (I)(1)(a), OFC 109.1; OAC 1301:7-7-01 (B)(3)(c), OFC 102.3.3: The owner is permitting public occupancy of a structure in a manner that constitutes a distinct hazard to life or property and/or is not in substantial compliance with the OFCA. A former greenhouse is now a gift shop, café, and winery with a newly constructed wood fired pizza oven. The structure is open to the public for general business, parties, dining and meetings and does not have adequate fire protection system(s) properly installed and operational at the structure. The structure is being occupied while the OFC violations described in sections 1-12 of this citation are ongoing.²⁹

Civil penalty pursuant to Ohio Revised Code 3737.51 (B) and/or (C):

\$500.00

11. The Magistrate notes that the violations listed in the various *inspection reports* are not co-extensive with the violations in the *State Fire Marshal's citation*. It appears that this is because multiple code violations in the inspection report may be consolidated into a single violation in the citation. This discrepancy accounts for the

²⁹ Fire Marshal Amended Citation 2015-152, September 23, 2016, pp. 1-4.

confusion at the Magistrate's hearing, and in the parties' briefs, where the Appellant insisted that only one violation remained after November 22, 2106 (based on the inspection report, State's Exhibit 7) and the Appellee insisted that three violations remained at issue (based on the Fire Marshal's Citation).

12. Appellant Stephen Beilstein presented an August 26, 2014 email from Stephen M. Risser, then-Director of the Richland County Building Department. ³⁰ Mr. Risser stated that the alterations to the existing facility (winery, new pizza oven, new dining area, and accessory alterations) are exempt from the Ohio Building Code (OBC) in accordance with section 101.2 Exception 3. ³¹ Mr. Risser stated: "As the project is exempt from the scope of the OBC, we cannot issue a Certificate of Use and Occupancy for the above described project." ³² No certificate of occupancy has ever been issued for the winery, tasting room, or loft area, based upon the determination of Mr. Risser that that agricultural exception to the Ohio Building Code applies.

13. On August 26, 2014, a Certificate of Occupancy signed by Kenneth A. Arthur was issued to The Blueberry Patch for the café and gift shop area, with a designated Mercantile use group. ³³ The Certificate of Occupancy applies to the gift shop and café only. ³⁴

14. After hearing the testimony and deliberating, the Ohio Board of Building Appeals unanimously upheld violations one (1), twelve (12), and thirteen (13) of the State

³⁰ Appellant's Exhibit A.

³¹ Id.

³² Id.

³³ Appellant's Exhibit B.

³⁴ Beilstein, Hearing Transcript p. 78.

Fire Marshal's citation. Although the Ohio Board of Building Appeals' Final Order does not use the words "distinct hazard" anywhere within the text of their order, during their deliberations the members of the Board were unanimous in expressing opinions that the conditions at the Blueberry Patch constitute a distinct hazard.³⁵

Furthermore, violation thirteen (13), cited above, makes a clear finding of a distinct hazard to life or property, and the Ohio Board of Building Appeals Final Order unanimously and expressly upheld that violation.

15. The Ohio Board of Building Appeals issued the following Final Order on December 23, 2016, upholding the citation of the Fire Marshal and from which order the instant appeal has been taken:

Based upon the evidence submitted and testimony, the Board upholds Items 1, 12, and 13 of the citation and a civil monthly penalty of \$2,000.00 shall be assessed after the (sic) 120 days from the date of the hearing. The civil penalty shall be waived if construction documents indicating conformance with the Ohio Building Code and Ohio Fire Code are submitted to the building official and State Fire Marshal for review within 120 days AND any alterations identified on the approved construction documents shall be completed within 180 days of receipt of a permit by the building official or approval by the State Fire Marshal. Single station smoke detectors shall be installed within 15 days of the date of this hearing throughout the building to the satisfaction of the State Fire Marshal in order to maintain occupancy until required alterations are completed.

STANDARD OF REVIEW

This appeal is taken from a final order of the Ohio Board of Building Appeals, which upheld a citation issued by the Ohio State Fire Marshal pursuant to Chapter 3737

³⁵ Deliberations of the Ohio Board of Building Appeals, Hearing Transcript pp. 113-132. Statements in the Hearing Transcript in support of finding a distinct hazard by each board member: Chairman Schneider, p. 116, lines 2-11; Board Member Giering p. 113, lines 12-15; Board Member Kerst p. 113, line 18; Board Member Beegan, p. 113, lines 19-25, and p. 114, lines 1-20; Board Member Welch p. 115, lines 4-8.

of the Ohio Revised Code. This Court, in a previous order, found that this appeal is properly decided under Chapter 119 of the Revised Code, and not pursuant to the O.R.C. § 3781.031 standard, as Appellant has argued.³⁶ Ohio courts have recognized that appeals taken from an order of the State Fire Marshal pursuant to R.C. Chapter 3737 are properly brought pursuant to R.C. Chapter 119.³⁷

O.R.C. § 119.12(M) provides:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, **that the order is supported by reliable, probative, and substantial evidence and is in accordance with law.** In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section. [Emphasis added].

The evidence required by R.C. 119.12 can be defined as follows: (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.³⁸

³⁶ See Order Granting Appellee's Motion to Strike, p. 3, filed June 29, 2017, ("Where R.C. § 3737.43 and R.C. Chapter 119 each specifically make reference to the other, the Court concludes that this appeal is one properly brought pursuant to R.C. Chapter 119, and not pursuant to R.C. § 3781.031.").

³⁷ See, e.g., *Steed v. Ohio Dep't of Commerce Div. of State Fire Marshal*, C.P. No. 12CVF-08-9855, 2012 Ohio Misc. LEXIS 17781, at *3 (Ohio Oct. 29, 2012) ("Appeals under the Ohio Fire Code are governed by R.C. § 119.12 and R.C. § 3737.43"). See also *Garg v. Ohio State Fire Marshal*, C.P. No. 12CVF-06-7204, 2012 Ohio Misc. LEXIS 17487 (Ohio Oct. 17, 2012); *Paulding Cty. Home v. State*, 3d Dist. Paulding Case No. 11-79-10, 1980 Ohio App. LEXIS 11226 (Jan. 10, 1980).

³⁸ *Our Place, Inc. v. Ohio Liquor Control Com.*, 63 Ohio St. 3d 570, 571, 589 N.E.2d 1303 (1992).

The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of people equipped with the necessary knowledge and experience pertaining to a particular field.³⁹

CONCLUSIONS OF LAW AND RECOMMENDED JUDGMENT

1. The Ohio Fire Code (hereinafter "OFC") is located in Chapter 1301:7-7 of the Ohio Administrative Code. Agricultural premises fall within the scope of the OFC pursuant to OAC Ann. 1301:7-7-01(A)(2)(5)(b) § 101.2.2, which provides:

Unless specifically exempted or as limited by federal or state law or this code, the provisions of this code are intended to safeguard life and property from fire and explosion and shall apply to all aspects of fire safety at any structures, buildings, premises, vehicles or other locations within the territorial jurisdiction of the state of Ohio. The scope of this code includes, but is not limited to, property owned by the state of Ohio or other political subdivisions of the state, residential premises (one, two and three family dwellings), **and agricultural premises. The scope of this code includes all aspects of fire safety for any occupancy of or any activities at the places subject to this code**, including actions of or uses by any individual, corporation, business trust, estate, trust, partnership, associations, the state, a political subdivision of the state, and any other entity, public or private. [Emphasis added.]⁴⁰

2. OAC Ann. 1301:7-7-01(B)(1)(b) § 102.1.2 expressly codifies the applicability of the OFC with relation to agricultural premises:

³⁹ *Pons v. Ohio State Medical Bd.*, 66 Ohio St. 3d 619, 622, citing *Farrand v. State Med. Bd.* [1949], 151 Ohio St. 222, 224, 39 O.O. 41, 42, 85 N.E.2d 113, 114.

⁴⁰ OAC Ann. 1301:7-7-01(A)(2)(5)(b) OFC § 101.2.2.

Agricultural uses and locations. The construction and design provisions of this code, including any construction permit requirements, shall not apply to structures:

- (i) subject to section 3781.061 of the Revised Code, or
- (ii) otherwise exempt from the building code as listed in rule 1301:7-7-47 of the Administrative Code because such structures are being used for agricultural purposes ***unless the conditions of the structure constitute a distinct hazard to life or property or the occupancy of a structure constitutes a change of use or occupancy*** of the structure from one of the exempt uses listed in this division to another occupancy classification subject to this code. [Emphasis added.]⁴¹

3. Appellants argue that this case is one to be decided by applying the exemption to the OFC in OAC Ann. 1301:7-7-01(B)(1)(b)(i) above. Section 3781.061 of the Revised Code, adopted by reference in OAC Ann. 1301:7-7-01(B)(1)(b)(i) provides:

Exemption for building or structure used in agriculture. Whenever a county zoning inspector under section 303.16 of the Revised Code, or a township zoning inspector under section 519.16 of the Revised Code, issues a zoning certificate that declares a specific building or structure is to be used in agriculture, such building is not subject to sections 3781.06 to 3781.20 or 3791.04 of the Revised Code.⁴²

4. Appellants also argue that the Property is exempt from zoning pursuant to ORC Ann. 519.21 (A)⁴³ and ORC Ann. 303.21 (A),⁴⁴ and therefore, they need not

⁴¹ OAC Ann. 1301:7-7-01(B)(1)(b) OFC § 102.1.2

⁴² R.C. 3781.061.

⁴³ ORC Ann. 519.21 (A): Except as otherwise provided in divisions (B) and (D) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure

⁴⁴ ORC Ann. 303.21 (A): Except as otherwise provided in division (B) of this section, sections 303.01 to 303.25 of the Revised Code do not confer any power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used

produce a zoning certificate declaring the structure is to be used in agriculture, and is not subject to sections 3781.06 to 3781.20 or 3791.04 of the Revised Code.

However, the plain language of Section 3781.061 of the Revised Code requires issuance of a zoning certificate by a zoning inspector as a condition precedent to the statutory exemptions of the Ohio Building Code and the Ohio Fire Code.

5. Appellants cannot have it both ways: If Appellants can produce a zoning certificate, OAC Ann. 1301:7-7-01(B)(1)(b)(i) applies. However, if the Blueberry Patch is exempt from zoning requirements, and therefore has no zoning certificate, the Magistrate must apply OAC Ann. 1301:7-7-01(B)(1)(b)(ii) analysis to evaluate the Blueberry Patch facility.
6. No evidence of the issuance of a zoning certificate exists in the record of the Board of Building Appeals proceedings. In fact, Appellants have adamantly argued for the exemption of the Property from zoning regulations. The Magistrate agrees that the Property is exempt from zoning pursuant to ORC Ann. 519.21 (A) and ORC Ann. 303.21 (A). Since no evidence of the issuance of a zoning certificate exists, the distinct hazard and change of use or occupancy analysis of OAC Ann. 1301:7-7-01(B)(1)(b)(ii) must be applied.
7. The testimony of Fire Marshal Stanley Hoptry established the following hazardous conditions in the Property. The loft has no external exit and a single staircase access/egress.⁴⁵ The walls inside the café, tasting room, seating areas, loft, and

primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.

⁴⁵ Hoptry, Hearing Transcript p. 26.

gift shop are all lined with dry, untreated, reclaimed wood.⁴⁶ The gift shop offers combustible retail products including candles, clothing, packaged foods and handbags.⁴⁷ The various areas of the space are not separated by rated fire-resistant construction.⁴⁸ The Blueberry Café has no fire detection system, no fire alarm system, and no fire suppression system.⁴⁹

8. The Magistrate finds that the testimony of Fire Marshal Stanley Hoptry provided sufficient reliable, probative, and substantial evidence in support of finding of a distinct hazard. While the Blueberry Patch engaged in substantial remediation efforts prior to the November 22, 2016 re-inspection, the items listed above remained unchanged at the time of the Ohio Board of Building Appeals hearing.
9. The Magistrate has reviewed the occupancy classifications of the OFC.⁵⁰ The Magistrate finds that the addition of a gift shop, café, tasting room, loft, and pizza oven to the structure have changed the occupancy classifications of this facility to a mixed use involving Assembly Group A-2,⁵¹ Business Group M⁵² and Mercantile Group M⁵³ for the purposes of OFC enforcement.
10. The Magistrate finds that all of the testimony at the hearing provided sufficient reliable, probative, and substantial evidence to support of finding of a change of use and occupancy classification for the purposes of OFC enforcement.

⁴⁶ Hoptry, Hearing Transcript p. 23.

⁴⁷ Hoptry, Hearing Transcript pp. 23-24.

⁴⁸ Hoptry, Hearing Transcript p. 27.

⁴⁹ Hoptry, Hearing Transcript p. 27.

⁵⁰ OAM 1301:7-7-02[B].

⁵¹ OAM 1301:7-7-02[B] Assembly Group A-2, restaurant.

⁵² OAM 1301:7-7-02[B] Business Group B, office.

⁵³ OAM 1301:7-7-02[B] Mercantile Group M, retail or wholesale stores.

11. Upon consideration of the entire record, the Magistrate finds that that the final order of the Ohio Board of Building Appeals is supported by reliable, probative, and substantial evidence and is in accordance with law.
12. The Magistrate recommends that the Court affirm the final order of the Ohio Board of Building Appeals.
13. The Magistrate recommends that the Court tax costs against the Appellants.


MAGISTRATE ANDREA J. CLARK

RIGHT TO OBJECT

WITHIN FOURTEEN (14) DAYS OF THE FILING OF A MAGISTRATE'S DECISION, A PARTY MAY FILE WRITTEN OBJECTIONS TO THE MAGISTRATE'S DECISION. OBJECTIONS SHALL BE SPECIFIC AND STATE WITH PARTICULARITY THE GROUNDS OF THE OBJECTION. A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THAT DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was served according to local rules and sent by regular U.S. Mail this 2nd day of November, 2017 to the following:

Gregory R. Flax

Jennifer S.M. Croskey

Hilary R. Damaser

Deputy Clerk

