

**BEFORE THE BOARD OF SUPERVISORS
OF EAST NANTMEAL TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

**IN RE: CONDITIONAL USE APPLICATION OF
MARSH CREEK TREE FARM LLC
301 MARSH ROAD, ELVERSON**

DECISION AND ORDER

I. FINDINGS OF FACT

1. Applicant is Marsh Creek Tree Farm, LLC (the "Applicant").
2. Applicant owns a property with a postal address of 301 Marsh Road, Elverson, Pennsylvania, Chester County UPI No. 24-3-46. (the "Property").
3. The Property is located in the AP Agricultural Preservation Zoning District as regulated by the East Nantmeal Township Zoning Ordinance of 2011 (the "Zoning Ordinance").
4. The Property is currently used for agricultural purposes and is improved with a pole barn and other agricultural structures.
5. The Applicant requests conditional use approval to use the Property for "special events" which the Applicant describes as a wedding venue.
6. A hearing on the Application (the "Hearing") was convened and conducted by the Board of Supervisors on Wednesday March 13, 2024 at 6:00 PM at the East Nantmeal Township Building, 3383 Conestoga Road, Glenmoore. Pennsylvania.
7. The Hearing was originally scheduled for February 14, 2024, but was continued to March 13, 2024 at the request of the Applicant.

8. The following Exhibits were marked and admitted into evidence at the Hearing:

- B-1 Application dated December 26, 2023
- B-2 Proof of Publication of Hearing Notice in the Daily Local News on January 30, 2024 and February 6, 2024
- B-3 Verification of Mailing Notice to nearby property owners dated January 24, 2024
- B-4 Verification of Posting the subject property with Hearing Notice on January 29, 2024
- B-5 Electronic Mail from Marissa Constable dated February 13, 2024 extending time for convening the hearing until March 13, 2024
- B-6 Memorandum of East Nantmeal Township Planning Commission dated January 27, 2024
- B-7 Aerial depiction of wedding venue property submitted by the Applicant (one page) dated December 12, 2024
- B-8 Aerial depiction of wedding venue concept submitted by the Applicant (one page) dated December 12, 2024
- B-9 Electronic Mail from Thomas Oeste, Township Solicitor to Mark Constable dated May 10, 2023 re: wedding event venue inquiry
- B-10 Preliminary Subdivision Plan of Property of Marsh Creek Farm LLC prepared by OTM LLC dated 7/12/2023, Sheet 1 of 1

9. The following individuals requested and were granted party status: Charles Ellis, 128 James Mill Road, Elverson; Arthur Locilento, 157 Drake Road, Elverson; and Kevin Roberts, 100 Millard Road, Elverson.

10. Section 301.B.5 of the Zoning Ordinance permits by conditional use "special events provided the applicant demonstrates compliance with Section 304.G." (The correct reference is to Section 304.F).

11. A special event is defined by Section 201 of the Zoning Ordinance as follows:

A special event shall constitute an activity on the land open to the general public or a specialized segment thereof wherein admission thereto is by advertisement or invitation (whether or not a fee is charged. No lot shall be used for special events more than ten (10) days per calendar year not shall more than four (4) special events be conducted on a lot in any calendar year. Special events include, but are not limited to, the sale of items or services such as carnivals, the conduct of flea markets, the providing of lawful games of chance and activities constituting competition with awards of prizes. Excluded from the definition of "normal functions" are private parties by invitation where no admission charge is made, liquidation sales or events at institutions having permanent facilities designed for such events, such as stadiums, auditoriums, etc.

12. Section 304.F of the Zoning Ordinance prescribes specific standards which are applicable to special events.
13. The Applicant used part of the Property on one occasion to hold a wedding for a child of the owners of the Applicant.
14. The Applicant proposes to use part of the Property to conduct wedding ceremonies and receptions approximately ten times per year.
15. The location of the proposed venue is depicted on Exhibit B-7.
16. The Property would be improved as depicted on Exhibits B-8, including access from Marsh Road, a partially paved/partially grass parking area for full-size buses and 65 cars, a portable rest room trailer, a tent structure with tables and a dance floor, a catering station, and a generator to provide electricity for lighting and food service.
17. The use would include food provided by a caterer, live or DJ-provided music, an outdoor lounge, outdoor games, and food service and dancing inside the tent.

18. The Property is subject to a Deed of Agricultural Conservation Easement (the "Conservation Easement") dated January 30, 2008 held by the County of Chester by and through its Agricultural Land Preservation Board which is recorded with the Chester County Recorder of Deeds at Book 7363, Page 875.
19. The Conservation Easement restricts the use of the Property to permitted acts as defined in the Easement which in summary are agricultural uses.
20. The Conservation Easement also prohibits the construction of buildings and structures, except for those related to the permitted agricultural activities.
21. The wedding venue is not an agricultural use.
22. Mr. Mark Constable testified that the Applicant would request that the Chester County Agricultural Land Preservation Board determine that the proposed wedding venue use is permitted by the terms of the Conservation Easement.

II. DISCUSSION

Section 603 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10603, provides that a zoning ordinance may contain "provisions for conditional uses to be allowed or denied by the governing body pursuant to public notice and hearing and recommendations by the planning agency and pursuant to express standards and criteria set forth in the zoning ordinances." 53 P.S. § 10603(c)(2). The uses which may be established or maintained as conditional uses are set forth by a municipality in its zoning ordinance and the standards to be applied to the granting or denial thereof are also enumerated in the zoning ordinance. *In Re Thompson*, 896 A.2d at 670. The applicant for a conditional use has the burden of establishing that its proposed use is one permitted by conditional use and its proposed use complies with the specific criteria in the zoning ordinance. *Id.*

Section 1900.B of the Zoning Ordinance provides that the requirements of Section 1900 and the standards for specific types of conditional uses shall be deemed an element of the definition under which conditional use approval may be granted. The failure of the applicant to demonstrate compliance with the requirements is a basis for denying the application. Further, Section 1900.F, titled "Criteria for Review of Conditional Use Applications" requires the applicant to demonstrate compliance with all applicable criteria.

In this case, the Applicant's initial burden was to prove that the use it proposes is a use permitted by conditional use. The Applicant contends that the wedding venue use is a "special event" as defined by the Zoning Ordinance. The special event use is defined by Section 201. A special event is an "activity on the land open to the general public or a specialized segment thereof." The definition lists examples of special events – carnivals, flea markets, and competitions. The Applicant's proposed use is not open to the general public or a segment of the general public. On the contrary, the proposed wedding venue is to be used for private events as a profit-making business. The proposed use is not a special event.

Assuming for the sake of argument that the wedding venue use is a special event, the Applicant failed to present substantial evidence to demonstrate compliance with the specific standards set forth in Section 304.F of the Zoning Ordinance. We conclude Applicant's general description of the proposal failed to demonstrate the availability of an approved drinking water supply, adequate parking and loading, a plan for traffic control, and a plan for the collection and removal of trash. The proposal also does not comply with Section 304.F.5 which only permits a single event, not multiple weddings as proposed by the Applicant.

Moreover, Applicant failed to demonstrate compliance with any of the objective criteria set forth in Section 1900.F of the Zoning Ordinance. In these circumstances, the Board must deny the request for conditional use approval.

Although the Township has no authority to enforce the Conservation Easement, we believe the wedding venue use is prohibited by the Conservation Easement and incompatible with agricultural conservation. Finally, several Township residents and nearby property owners expressed opposition to the proposed use. Among other concerns was the incompatibility of the use with the permitted agricultural uses in the AP District and the policy of the Township as expressed in the Zoning Ordinance to preserve the Township's agricultural heritage. However, we do not base our decision on these comments, but rather base our decision on the other reasons set forth in this Decision.

III. CONCLUSIONS OF LAW

1. The Hearing was duly advertised, all required notices were given, and the Hearing was duly convened in accordance with the MPC and the Zoning Ordinance.

2. The Board of Supervisors has exclusive jurisdiction to hear and render a decision on this Application.

3. Applicant has standing to file and prosecute this Application.

4. The parties to the Hearing have standing and were properly granted party status.

5. Applicant's proposed wedding venue use is not a special event as defined by the Zoning Ordinance.

6. The proposed wedding venue is not a permitted conditional use as a special event in the AP Zoning District or on the Property.

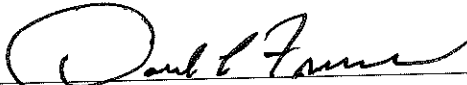
7. The Applicant did not demonstrate by substantial and compelling evidence that it is entitled to conditional use approval pursuant to Section 403.F of the Zoning Ordinance.

8. The Applicant did not present substantial evidence to prove compliance with all of the criteria and standards of Sections 403.F and 1800.F of the Township Zoning Ordinance.

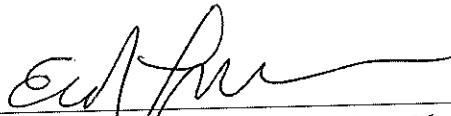
ORDER

AND NOW, this 10th day of April, 2024, the application of Marsh Creek Tree Farm, LLC for conditional use approval pursuant to Section 301.B.5 of the Zoning Ordinance, to use the Property located at 301 Marsh Road, Elverson, Pennsylvania for a wedding venue is hereby **DENIED** for the reasons set forth in the Decision above.

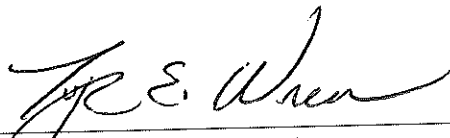
**BOARD OF SUPERVISORS
EAST NANTMEAL TOWNSHIP**



David L. Frame, Chairman

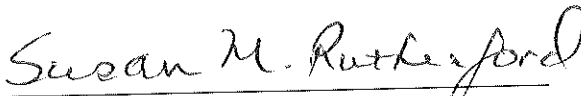


Edward P. Loomis, Jr., Vice Chairman



Tyler E. Wren, Member

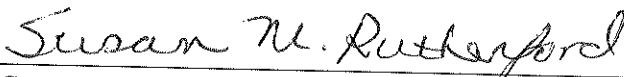
ATTEST:



Susan Rutherford, Secretary

CERTIFICATION OF MAILING

I certify that an executed copy of the foregoing Decision and Order was sent to the Applicant Marsh Creek Tree Farm, LLC, care of Mark Constable, 301 Marsh Road, Elverson, PA 19520 by USPS first class mail, postage prepaid and by electronic mail to markconstabletricolor@gmail.com on April 11, 2024 which is the Date of the Decision and Order. I further certify that an executed copy of the foregoing Decision and Order was also sent by USPS first class mail, postage prepaid to Charles Ellis, 128 James Mill Road, Elverson, PA 19520; Arthur Locilento, 157 Drake Road, Elverson, PA 19520; and Kevin Roberts, 100 Millard Road, Elverson, PA 19520.



Susan Rutherford, Township Secretary