

County Planning Board of Adjustment Minutes

February 20, 2024

The Codington County Board of Adjustment met for their monthly meeting on February 20, 2024, at the Codington County Extension Complex. Members of the Board of Adjustment present were Myron Johnson, Alex Kahnke, Brenda Hanten, Rodney Klatt, Calvin Mack, Mel Ries, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer). Absent: Mark O'Neill.

Others present: Lindsey Jungers, Matt Jungers, Roy Brownlee, Randy Schweer, Andrew Zemlicka, and Becky Goens.

Chair Hanten brought the meeting to order at 1:00 pm.

Motion by Johnson, second by Ries, to approve the December 11, 2023 meeting minutes. Motion passed unanimously.

Mark O'Neill and Alex Kahnke, nominating committee, recommend the same officers for 2024 which would be Brenda Hanten as Chairperson and Alex Kahnke as Vice Chair. Motion by Ries, second by Johnson, to take officer recommendation. Motion passed unanimously.

Motion by Klatt, second by Kahnke, to approve the agenda. Motion passed unanimously.

Motion by Johnson, second by Ries, to recess the Planning Commission and convene only as the Board of Adjustment. Motion passed unanimously.

Motion by Kahnke, second by Ries, to approve a Conditional Use Permit request made by Matthew Jungers. Mr. Jungers is seeking to amend a condition placed on his original permit to allow five additional full-time, non-family, employees. Property is owned by Teresa Jungers are located in SW1/4, Section 25-T116N-R52W and S865' of W2015', 40 acres of SW1/4, Section 25-T116N-R52W, Codington County, SD. Muller reviewed Staff Report. Matt and Lindsey Jungers indicated they are getting busier and need additional help. No one was present to speak on this application. Public hearing closed. Motion by Klatt, second by Mack, to increase the total employee number from eight (8) to ten (10). Motion on amendment passed unanimously. Muller read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Klatt, second by Ries, to approve the variance request by Brownlee Construction to mine less than 1000' from the property line of a residence. Property is located in NW1/4, Section 10-T119N-R52W. Muller reviewed this variance request and the subsequent Conditional Use Permit request per Staff Report (attached). Public hearing opened for variance and Conditional Use Permit discussion. Adjoining landowner Andrew Zemlicka indicated he had future plans of constructing a new home and wouldn't want a gravel pit within 1000' from his home. Public hearing closed. Muller read the Findings of Fact on the variance. There were no

questions or objections. Motion passed unanimously.

Motion by Ries, second by Mack, to approve the Conditional Use Permit request by Brownlee Construction, Inc. to mine sand and gravel, with rock crusher, on property located in NW1/4, Section 10-T119N-R52W. Approval will be subject to the applicant signing a Letter of Assurance agreeing to the following conditions:

1) Effective Date:

- a. Signing of the Letter of Assurance; and
- b. Submittal of Haul Road Agreement(s) with applicable road authorities.

2) General Requirements:

- a. There will be no storage of junk, concrete batch plant, asphalt mixing, or storage of rubble, waste products or other construction/demolition materials on site.
- b. A mining permit or proof thereof from the South Dakota Department of Environment and Natural Resources shall be presented to the zoning officer prior to the excavation of material from this property.
- c. Any expansion of mining operations, not including piling of topsoil (not for sale), shall be confined to the area allowed upon the above legally described property (as constrained by minimum setbacks.)
- d. The applicant shall obey any Federal, State and Local law of and obtain any necessary permits from the State of South Dakota. These permits may include but are not limited to Storm water drainage permit, Flood Control Permit, Water Rights Permit, US Army Corps of Engineers, etc.
- e. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
- f. Not more than 20 acres shall be mined at any given time. All other property shall remain unmined or reclaimed.
- g. No mining shall occur within 100' of the waterway (unnamed tributary of Soo Creek) on this property unless documentation from the corps of engineers indicates such excavation is authorized.
- h. This conditional use permit authorizes the use of this property for crushing of rock and for the applicant to screen materials.

3) Haul Road Agreements:

- a. Grantor is required to complete an agreement for the maintenance of 457th Avenue from the entrance to the gravel pit to the intersection of SD HWY 20 and 457th Avenue, hereafter referred to as "Haul Route," in addition to any other routes agreed upon by the applicable road authority and Grantor. Upon completion of the

agreement, a copy of the "Haul Road Agreement" shall be provided to the zoning officer and kept on file with the application and supporting documents for this conditional use permit.

- b. In the event a haul road agreement with Germantown Township is not executed, the grantor, his heirs, assigns or successors in interest of the Grantor agree that all of the terms and conditions of Item "3" are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item "3".
 - c. The Grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the portion of the Haul Route, and
 - d. All road work whether customary or extraordinary shall be done under the authority and supervision of the Township and meet its specifications. The work shall be done through the applicable contractor unless the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.
 - e. Germantown Township shall be responsible for all ordinary snow removal on its portion of the Haul Route on the same basis as provided to the remainder of the Township. Any additional snow removal deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.
 - f. The Grantor acknowledges that, to the extent already provided for by the law, and further acknowledges that it shall be responsible for any and all damages to applicable road authority roads or road rights-of-way due to the result of the Grantor's operations (i.e. hauling of excavated materials). Work will be done on the same basis as specified hereinabove. However, no unique standard or obligation not otherwise provided for by law is created by this acknowledgment.
 - g. If it is determined that other streets/roads are being used as primary haul routes prior to this same agreement being filed/amended to include such routes, all mining activities will be ordered to Cease and Desist until such agreements are filed.
 - h. If necessary, actions are not taken within twenty-four (24) hours of notification of the Grantor by the Zoning Officer, all mining activities will be required to cease and desist until such measures have been taken.
- 4) Violation and Penalties:
- a. The applicant is put on notice that failure to abide by the requirements of this letter of assurance will result in a hearing of the Board of Adjustment to consider revocation of the conditional use permit associated herewith.

Muller read the Findings of Fact. There were no questions or objections. Motion passed unanimously. Motion by Ries to extend the Permit deadline to three years rather than the recommended two years. Motion dies due to lack of a second. Motion passed unanimously.

Motion by Johnson, second by Ries, to adjourn the Board of Adjustment and reconvene only as Planning Commission. Motion passed unanimously.

Muller provided the year-end report.

Motion to adjourn made by Johnson, second by Ries. Motion passed unanimously. Meeting adjourned at 2:25 pm.

Respectfully Submitted,

Becky Goens

**FEBRUARY 2024
CODINGTON COUNTY
PLANNING COMMISSION/BOARD OF ADJUSTMENT STAFF REPORT**

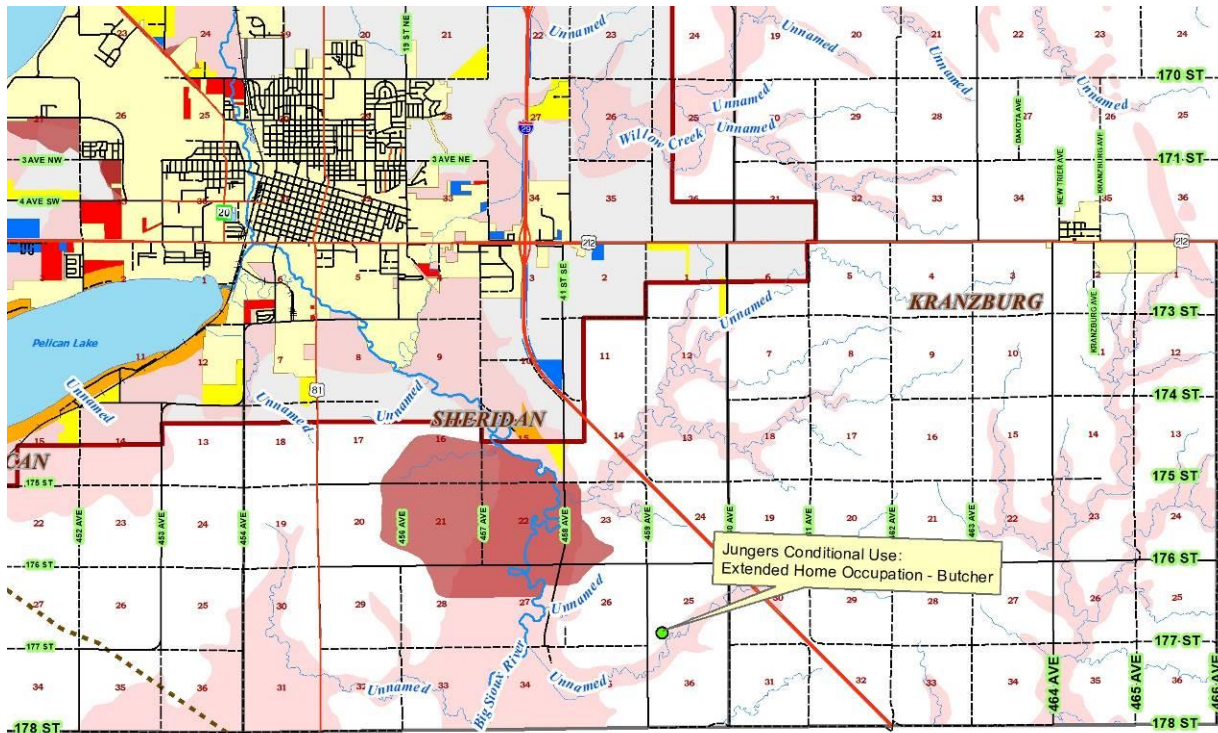
ITEM #1 CONDITIONAL USE

Applicant: Lindsey and Matt Jungers

Owner: Teresa Jungers

Property Description: SW1/4 of Section 25, Township 116 North, Range 52 West of the 5th P.M., Codington County, South Dakota. (Sheridan Township)

Action Items – Amendment to Conditions of Conditional Use Permit – Extended Home Occupation (Butcher Shop) (3.04.02.16) Granted on June 15, 2020; and amended on April 19, 2021.



Zoning Designation: Agricultural

Request: Amend Conditional Use Permit to allow the applicant to have up to 8 non-family employees.

History/Issue(s):



(Picture facing South)

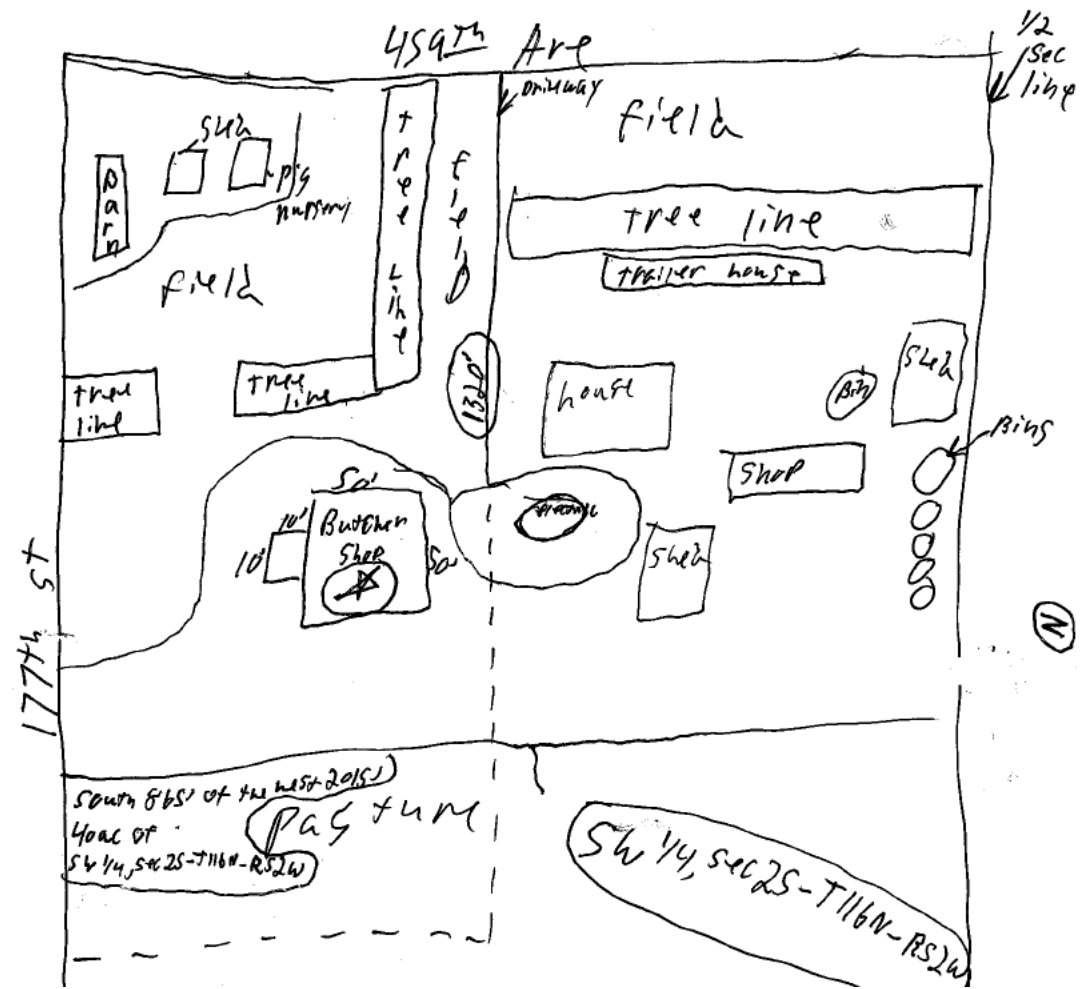
Specifics of Request:

1. Mr. Jungers was granted a Conditional Use Permit on September 27, 2017 to operate an 880 animal unit CAFO (swine)
2. Mr. Jungers was granted a Conditional Use Permit on June 15, 2020 to operate a butcher shop at the same property as the CAFO and his residence.
 - a. The CAFO is on a separate but adjoining legal description as the residence but the property is under common ownership.
3. On April 19, 2021 the Board removed a condition requiring ALL animals butchered to be raised by the applicant. He now butchers some animals raised by neighboring feedlots.
4. The applicant seeks to add staff to help work the butcher shop, drivers/sellers off-site for their meat as below:
 - 1) Delivery Driver #1
 - 2) Delivery Driver #2
 - 3) Pop up Sales Agent
 - 4) Cleaning person (nightly)
 - 5) Slaughter assistant
 - 6) Slaughter/Butcher*
 - 7) Processing/Packaging*
 - 8) Office Manager*

*Positions already held.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The County overhauled the rules relating to Extended Home Occupations in 2022.
2. This operation as operated today (with 3 unrelated individuals) would be a “Special Permitted Use” (Would not require Board Approval)
3. The Condition of addition more than 3 unrelated individuals is the only condition requiring this to be considered by the Board of Adjustment.
 - a. This is not a variance – The Board is only considering whether to change the number of unrelated individuals employed from 3 to 10.
4. Only two of the employees are anticipated to spend the majority of the time on site.
5. There is adequate area for parking of additional employees.
6. It is not expected for customer traffic to increase to accommodate the additional employees.
7. Neither the merits of the previously issued permit, nor any conditions other than the number of employees are germane to this request unless it is presumed that the scope of the business has exceeded that of an extended home occupation.



Staff Summary

Regardless of the decision to extend the permit today, Jungers still has a valid conditional use permit to operate his CAFO and to slaughter/butcher animals subject to the conditions agreed upon by the Board and applicant. The only question before the Board is to allow up to 8 non-family individuals to be employed by the Jungers for the extended home occupation permit.

Staff Recommendation

Amendment of Condition of Approval of Conditional Use Permit – **Extended Home Occupation – Butcher Shop (June 15, 2020)**: The Board may postpone the request, deny the request or approve the request. Staff recommends that if approved, the Board specify that not more than eight (8) non-family employees be associated with this business.

ITEM #2 CONDITIONAL USE

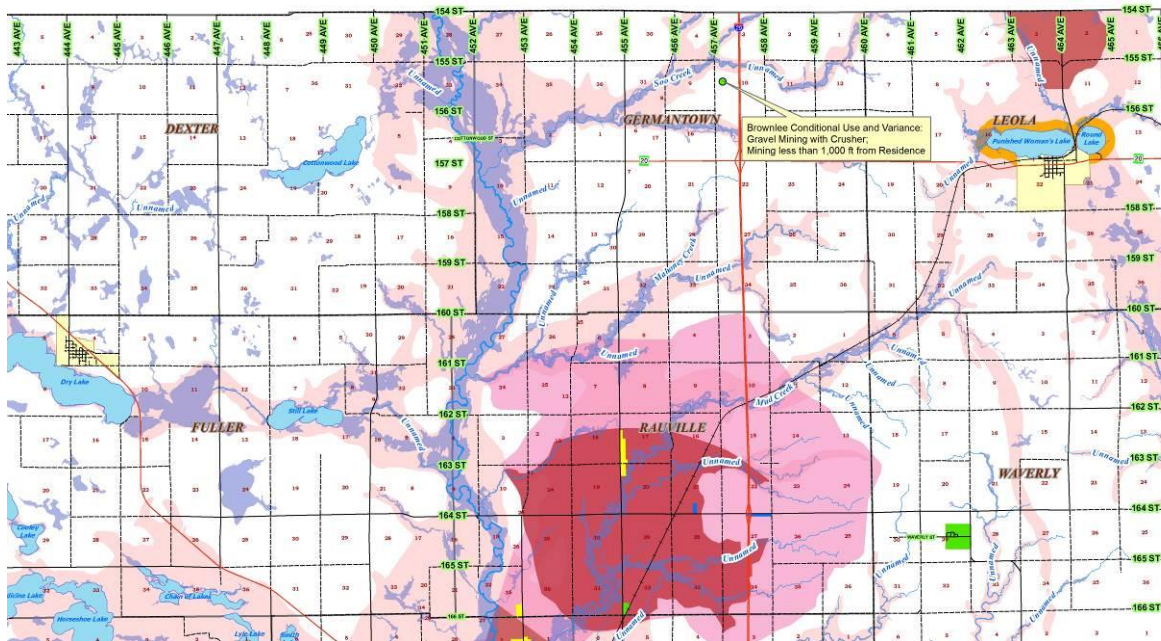
Applicant/Owner: Brownlee Construction by Roy Brownlee

Property Description: Northwest Quarter of Section 10, Township 119 North, Range 52 West of the 5th P.M., Codington County, South Dakota (Germantown Township).

Latitude/Longitude: 45.133880° / -97.066201°

Action Items –

**Conditional Use Permit – Gravel Mining (with rock crusher).
Variance – Gravel Mining less than 1,000 ft from residence**



Zoning Designation: Agricultural

Request: The Brownlee's seek to mine gravel and periodically crush rock (as needed) on the above described property in areas less than 1,000' from a residences property lines.

History/Issue(s):

Specifics of Request:

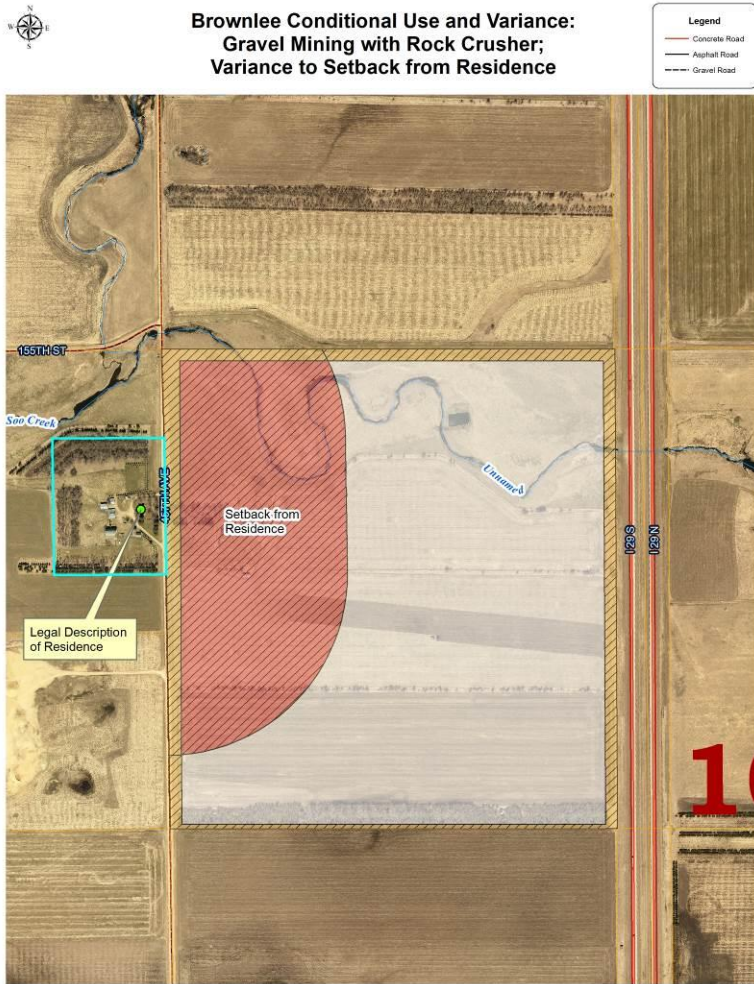
1. The applicant owns the above described property.
2. Applicant agrees to mine more than 65' from the right of way.
3. One residence has a property line less than 1,000' from the property proposed to be mined. As of the date of this report, no agreement or consent has been filed with this office regarding the position of the adjoining landowner.
4. Most of the Quarter Section is proposed to be mined except for a building site on the west edge of the property, a tree line on the south side of the property, and any portion of the tributary of Soo Creek located within its banks. (see below)
5. The property accesses a gravel township road (457th Avenue). Truck traffic will primarily travel south approximately 1.75 miles to continue SD HWY 20.
 - a. No haul road agreement has been provided, nor record of correspondence with Germantown Township at the time of this report.



6. Staff received a call from Neil Quitsch (adjoining east of the interstate) that does not support the request.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The Comprehensive Land Use Plan lists considerations for Gravel Pits on page 63.
2. No new structures, monitoring wells, or shelterbelts are proposed.
3. In the past Germantown Township has requested to have haul road agreements required as a condition of approval of conditional use permits.
4. Reclamation for this project is scheduled to occur upon completion of mining activities, at which time the topsoil will be returned with the intent to use the property for agricultural use/grassland. (No indication was provided of duration of mining.) The topsoil will at that time be seeded with crops or grass.
5. The applicant has a bond with the state for reclamation of the site. Staff has become aware that counties no longer have the authority to require bonds for reclamation of gravel pits (state law).
6. Land Use plan states that: "Drainage patterns... require a case by case consideration of stormwater/pollution control measures." AND "Appropriate extraction setbacks will be imposed".
 - a. Soo Creek/Tributary runs through this property. The applicant is required to follow rules of the USACE (Corps of Engineers) to ensure the water course is not disturbed and SDDANR to ensure that Willow Creek is not polluted.
7. With recent permits the Board has specified an amount of acres which may remain unclaimed until completion of the mining. (The Board has consistently required not more than 20 acres mined at a time.)
8. The applicant proposes to operate a (portable) rock crusher, presumably for up to 30 days at a time. All crushing would be required to occur greater than 1,000' from the legal description of the adjoining residence (red/black hatched area).
9. This application is not to allow a concrete batch plant, asphalt mixing, or storage of rubble, waste products or other construction/demolition materials.
10. No mining activities, except possible piling of topsoil, will occur on a legal description less than 1,000 feet from off-site residences.
11. Storage of over 1,100 gallons of petroleum products (fuel) at the same time on the property requires secondary containment. This is to include overnight storage of vehicles which may hold a cumulative total of over 1,100 gallons. If over 1,100 gallons of fuel will be on-site



overnight staff recommends it be done over a concrete pad or other impermeable surface with the ability to contain any petroleum spill or leak.

- a. It is not anticipated that the applicant will use this site for overnight storage of vehicles or fuel (or other petroleum products) in quantities greater than 1,100 gallons.

Staff Summary and Recommendation:

Without an agreement or letter of consent from the Peterson's (the affected residence west of this property) there are no grounds for denying a variance and that variance should be denied. If consent is received at a later date, the request will be considered substantially different and allowed to return, otherwise; no request to mine the area in red on the map above may be considered before August 20, 2024.

Though not recommended by staff, the Board may choose to allow a greater area to be mined (open) without reclamation for a prescribed period of time.

Variance – **Setback between gravel pits and residences (property boundary)** The Board may postpone the request, deny the request or approve the request. Unless written approval from the affected landowner is provided at or prior to the meeting, staff has no recommendations for findings to support the request.

Conditional Use Permit – **Gravel Pits...** The Board may postpone the request, deny the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

2) Effective Date:

- c. Signing of the Letter of Assurance; and
- d. Submittal of Haul Road Agreement(s) with applicable road authorities.

5) General Requirements:

- a. There will be no storage of junk, concrete batch plant, asphalt mixing, or storage of rubble, waste products or other construction/demolition materials on site.
- b. A mining permit or proof thereof from the South Dakota Department of Environment and Natural Resources shall be presented to the zoning officer prior to the excavation of material from this property.
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- d. The applicant shall obey any Federal, State and Local law of and obtain any necessary permits from the State of South Dakota. These permits may include but are not limited to Storm water drainage permit, Flood Control Permit, Water Rights Permit, US Army Corps of Engineers, etc.
- e. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
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- h. This conditional use permit authorizes the use of this property for crushing of rock and for the applicant to screen materials.

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- j. In the event a haul road agreement with Germantown Township is not executed, the grantor, his heirs, assigns or successors in interest of the Grantor agree that all of the terms and conditions of Item "3" are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item "3".
- k. The Grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the portion of the Haul Route, and
- l. All road work whether customary or extraordinary shall be done under the authority and supervision of the Township and meet its specifications. The work shall be done through the applicable contractor unless the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.
- m. Germantown Township shall be responsible for all ordinary snow removal on its portion of the Haul Route on the same basis as provided to the remainder of the Township. Any additional snow removal deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.
- n. The Grantor acknowledges that, to the extent already provided for by the law, and further acknowledges that it shall be responsible for any and all damages to applicable road authority roads or road right-of-ways due to the result of the Grantor's operations (i.e. hauling of excavated materials). Work will be done on the same basis as specified hereinabove. However, no unique standard or obligation not otherwise provided for by law is created by this acknowledgment.
- o. If it is determined that other streets/roads are being used as primary haul routes prior to this same agreement being filed/amended to include such routes, all mining activities will be ordered to Cease and Desist until such agreements are filed.
- p. If necessary actions are not take within twenty-four (24) hours of notification of the Grantor by the Zoning Officer, all mining activities will be required to cease and desist until such measures have been taken.

7) Violation and Penalties:

- b. Applicant is put on notice that failure to abide by the requirements of this letter of assurance will result in a hearing of the Board of Adjustment to consider revocation of the conditional use permit associated herewith.