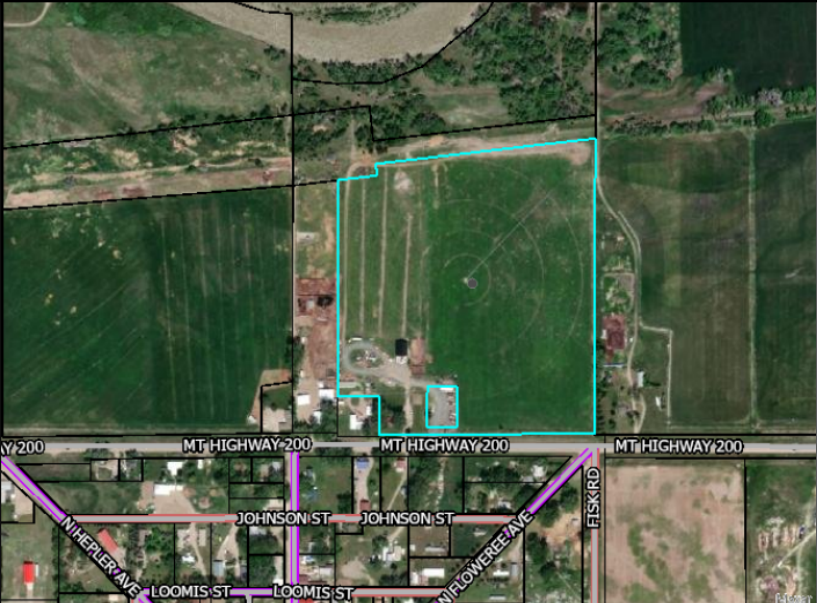


STAFF REPORT
ZONING BOARD OF ADJUSTMENT
Thursday, February 16, 2023

9:00 a.m.

Room 105 Courthouse Annex, Cascade County Commissioners Chambers
 & Via Zoom (an online platform, see www.cascadecountymt.gov for more information)

SUP #003-2023

SUBJECT PROPERTIES INFORMATION	
	
Name of Applicant & Owner:	John & Wendy Myers 12775 MT Hwy 200 Simms, MT, 59477
Legal Description(s):	Section 12, Township 20 North, Range 03 West, PMM, Cascade County, MT
Geo-Code(s):	02-3009-12-4-04-01-000
Parcel Number(s):	4715200
Existing Zoning:	Mixed Use 20 ("MU-20")
Surrounding Land Uses/Zoning:	North: Open Space/MU-20 South: Residential/ Mixed Use ("MU") East: Agriculture/ MU-20 West: Agriculture/ MU-20
Current Land Use:	Agricultural
Applicable Regulations:	Sections 7.6.11(35), 8.1.5, 10 of Cascade County Zoning Regulations ("CCZR")

General Information:

The Cascade County Zoning Board of Adjustment (ZBOA) is in receipt of a Special Use Permit (SUP) Application submitted by John Myers to allow a quarry on the subject property. The Applicant is requesting that a SUP be granted as required by Section 7.6.11(35) and 10 of the CCZR.

The property is currently in violation of the CCZR and the Cascade County Floodplain Regulations, as it is currently being used as an unpermitted quarry in the Regulated Flood Hazard Area. A large mound of material and equipment in the immediate vicinity is visible from the roadway. Based on photos from the site visit and advertisement on Mr. Myers business page for North Star Equipment, he has two gravel crushers on the property. Staff has added the request of approval for use of that machinery to this application on behalf of Mr. Myers. Approval of this Special Use Permit with the corresponding Location/Conformance Permit and Floodplain Permit #2022-015 would remedy the violation. No Location/Conformance Permit may be issued until after the required Floodplain Permit is acquired.

The Department was notified by a citizen that unauthorized excavation was being conducted in the Floodplain. On June 1st, 2022, the applicant was served with a Notice of Violation from the Planning and GIS Department. Applicant submitted the Floodplain Permit on August 1, 2022. Applicant submitted Special Use Permit Application on January 26, 2023.

Applicant currently operates a trucking business and heavy equipment rental business on the property in question. Applicant obtained a Special Use Permit #006-015 for the business in May of 2015. Taxes are current on the property.

During course of writing this report, a review of aerial images from google earth¹ shows a different location on the property, but still within the Regulated Flood Hazard Area was excavated between 2014 and 2018. No zoning or floodplain permits were obtained for that excavation.

Findings with Respect to the SUP Analysis Criteria:

The Planning & GIS Department provides that the following analysis, findings and conclusion for each of the required criteria provided under the controlling sections of the CCZR are in the Findings of Fact and Conclusions for SUP #003-2023, and hereby incorporated by reference into this Staff Report and attached.

¹ <https://earth.google.com/web/>

Section 10.7 Operations:

Operations in connection with the SUP shall not be more objectionable to nearby properties by reason of noise, fumes, vibrations, or flashing lights, than would be the operation of any permitted use.

Staff: The property is adjacent to the unincorporated town of Simms zoned Mixed Use due to its residential and limited commercial operations in that area. Directly adjacent to the property are residentially used properties. Any loud machinery, crushing and grinding of rock and increased traffic has a strong potential in becoming public nuisances to the surrounding residences. Per section 7.6.11(35) "providing that any building housing power or power producing machines shall be a distance of at least two hundred (200) feet from all adjacent property or street and highway lines. Operational hours shall be limited from 7:00 a.m. until 7:00 p.m." These conditions will help mitigate potential conflicts.

Recommendation: The Planning and GIS Department would recommend conditional approval of the quarry.

Motions:

The following motions are provided for the Board's consideration:

- A. Move that Special Use Permit #003-2023 to allow the quarry and use of rock crusher on Parcel #4715200 be **denied** due to (ZBOA member proposing denial must delineate legal reason that the application be denied); or
- B. Move the Board to adopt the Staff Report in its entirety and **approve** Special Use Permit #003-2023 to allow a quarry and use of rock crusher on Parcel #4715200 subject to the following conditions:
 1. The Applicant obtains any other required county, state, or federal permits and approvals, and comply with the laws, rules, regulations, and/or ordinances associated with any other permits and approvals.
 2. The Applicant must obtain an approved Cascade County Floodplain Permit for all unpermitted work done on the property in the Regulated Flood Hazard Area, including unpermitted past excavations, and any future work and/or storage of machinery/equipment on the property in the Regulated Flood Hazard Area.
 3. Applicant must obtain an Opencut Mining Permit from DEQ if there is more than if there is commercial sale of the product extracted, or if during the excavation there is an intersection of water on the subject property.
 4. Machines used for the gravel operation will be at least 200 feet from all adjacent property or street and highway lines.
 5. The excavation shall be restored in accordance with Open Cut Mining Reclamation guidelines (see MCA § 82-4-400, *et seq.*).

6. No cement plant, or other crushing, grinding, or polishing or cutting machinery, or other physical or chemical process for treating the product of such quarry shall be permitted.
7. The Applicant shall install a sight obscuring fence, berm or other such improvement along the site perimeter adjacent to the Mixed-Use District to the south. Said sight obscuring fence, berm or other such improvement shall be six (6) feet in height to sufficiently shield the line of sight from the adjacent Mixed-Use District.
8. In the case of an open excavation, there shall be a substantial fence, suitable gates, completely enclosing the portion of the property which the excavation is located in, and such fence shall be located at all points forty (40) feet or more from the edge of the excavation.
9. Hours of Operation for the above listed uses shall be limited to 7:00 a.m. to 7:00 p.m.
10. Applicant shall utilize Best Management Practices to control runoff and prevent sediment from reaching the Sun River. Examples of Best Management Practices are available at:
<https://www.mdt.mt.gov/research/projects/env/erosion.aspx>.
11. In the event, any active or inactive eagle nest(s) are identified on the property, a 0.5-mile buffer zone where no disturbances can occur must be established to prevent disturbing any golden eagle nesting sites, active or inactive.

Attachments:

- Findings of Fact & Conclusions for SUP #003-2023
- Special Use Permit Application
- Vicinity & Zoning Map
- Applicable Zoning Regulations
- Comment(s)

cc: Applicant(s)
County Attorney's Office