

**STAFF REPORT
ZONING BOARD OF ADJUSTMENT
Thursday, March 17, 2022
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 #003-2022

SUBJECT PROPERTY INFORMATION	
Name of Applicants & Owners:	Edwin & Margaret Birky 1564 Charlie Russell Dr. Helena, MT 59601
Legal Description:	Section 4, Township 21 North, Range 01 West
Geo- Code:	02-3135-04-1-01-01-0000
Parcel Number:	6120300
Existing Zoning:	Mixed-Use 20 (MU-20)
Requested Action:	Approval of a Special Use Permit to allow a Quarry on the subject property.
Surrounding Land Uses/Zoning:	North: Agricultural/Teton County & Residential/MU-20 South: Agricultural/MU-20 East: Agricultural/MU-20 West: Residential & Agricultural/MU-20
Current Land Use:	Agricultural
Applicable Regulations:	Sections 7.6.11(35), 8.1.5 10, 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 from Eric Urban on behalf of Edwin & Margaret Birky to allow for a Quarry on the Subject Property. The Applicant is requesting that a SUP be granted as required by Sections 7.6.11(35) of the CCZR.

General Provisions

A special use is a use for which conformance to additional standards will be required and shall be deemed to be a permitted use in its respective district, subject to the standards and requirements set forth herein, in addition to other applicable requirements of these regulations. All such uses are hereby said to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

A SUP may be issued only upon meeting all requirements in these regulations for a specific use which is explicitly mentioned as one of the “Uses Permitted Upon Issuance of a Special Use Permit as Provided in Section 10” within the respective zoning districts contained in CCZR §§ 7 or Section 8.1.5. After the public hearing is closed, the ZBOA can approve, deny, or approve with conditions the SUP. A separate SUP shall be required per each tract of land. Appeals of the ZBOA decision shall follow the process outlined in CCZR § 12.

A SUP may be revoked by the ZBOA at any time a building(s) or use(s) is deemed to be in violation of the standards and zoning requirements under which the SUP was issued. A violation of a SUP will be handled as any other violation under CCZR § 13.

The ZBOA approval of the SUP shall be valid for only one particular use and shall expire one (1) year after the date of approval if construction or the use has not started. The Zoning Administrator may grant a one-time only six (6) month extension of the ZBOA’s approval. The SUP shall expire if the use ceases for six (6) months for any reason. Any further extension requests must be granted by the ZBOA prior to the date of expiration.

Additional Findings of Fact:

1. The property is owned by Edwin L. & Margaret E. Birky.
2. The property is in the Mixed-Use 20 Zoned District. A Quarry is allowed in the MU-20 District with a SUP.
3. The property is not known to be in violation of the CCZR or any other County ordinances, and county taxes are current.
4. Legal Notice of the Application and the public hearing was published in the Great Falls Tribune on March 6, 2022, and March 13, 2022 and mailed to adjacent property owners, via certified mail, on February 28, 2022.
5. Access to the subject property will be from County Line Road. This is a publicly maintained road, maintained by Cascade County.
6. The subject property is not located within 2,400 feet of a Missile Alert Facility or Launch Facility.
7. The property is not located in the Regulated Flood Hazard Area¹.

Findings with Respect to the Analysis Criteria

The Planning Department provides that the following analysis, findings and conclusion for each of the required criteria provided under the controlling sections of the Zoning Regulations.

¹ Subject Property is located in Zone X based on FIRM Panel No. 30013C0275E.

1. Conditions may be required that the ZBOA determines if implemented, will mitigate potential conflicts in order to reach these conclusions.
2. The proposed development will not materially endanger the public health or safety.

Considerations:

- a. Traffic conditions in the vicinity, including the effect of additional traffic on streets and street intersections, and sight lines at street intersection and, and approaches:

Applicant: Significant traffic increases are not anticipated. The site is a relatively small area comprised of 4 acres. Trucks will be utilizing County-Line road for access to and from the site. Dust mitigation will be implemented if/when necessary.

Staff: The applicant estimates an average of 1 customer on site per day, and will have 6 employees working on site. It is anticipated that the employees and customers will be driving to the subject property. Though additional trips will be created, a significant increase in traffic is not anticipated.

- b. Provision of services and utilities including sewer, water, electrical, telecommunications, garbage collections, and fire protection.

Applicant: Electrical service is already on site. This project will not require additional services.

Staff: The effect on utilities at or around the proposed parcel will be minimal. Condition #2 is proposed to require all necessary permits and/or approvals for wastewater from the City-County Health Department.

- c. Soil erosion, sedimentation, and stormwater run-off.

Applicant: The proposes Opencut mine will be fully permitted with the Department of Environmental Quality. Additionally, appropriate BMP measures will be taken to prevent off-site sediment transport.

Staff: The applicant will need to obtain an Opencut Mining Permit from the DEQ. At the time of this report, no indication has been given regarding the erosion and sedimentation of the subject property. The project falls outside of the MS4 Stormwater Permit boundary. Condition #1 is proposed to require any and all state required permits to be obtained by the applicant.

- d. Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater.

Applicant: No public or community water supplies exist near the proposed site location. An on site groundwater investigation determined that no aquifer occurs within at least 25 ft of the ground surface. Mining is anticipated to not exceed 15ft below ground surface. BMP's will be installed to protect surface water per DEQ requirements.

Staff: Best management practices will need to be installed to ensure that no private water supply may be effected by the quarry (See Condition #1).

3. The proposed development is a public necessity, or will not substantially impact the value of adjoining property.

Considerations:

- a. The relationship of the proposed use and the character of the development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

Applicant: All disturbed land will be reclaimed to pastureland and all impacts during mining will be temporary. The reclaimed use of pastureland will compliment the local area uses.

Staff: The adjacent properties to the north and west are currently used for residential purposes. Mitigation of noise, dust, and vibrations will be vital in resolving the conflicts between the different uses (See Conditions #3, #4, #5).

- b. Whether the proposed development is so necessary to the public health, safety, and general welfare of the community or county as to justify it regardless of its impact on the value of adjoining property.

Applicant: The material from the project will be used to improve infrastructure within Cascade County, continue residential and commercial growth within the area, and will support employees associated with these projects.

Staff: The Planning Department has determined that this use is not so necessary to the public health, safety, and general welfare of the community of county as to justify it regardless of its impact on the value of adjoining property.

4. The proposed development will be in harmony with the area in which it is located.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

Applicant: *Immediate neighbors may be impacted by sight, noise, sound, and dust. A sight and sound barrier will be constructed between the project and all residence within 300 ft. Also, operation hours will be limited to 7am to 7pm. Finally, dust mitigation will be implemented as needed to prevent impacts to the neighbors.*

Staff: The subject property is surrounded by residential uses, therefore, there is currently a conflict between the adjoining land uses. All conflicts shall be mitigated by restricting operating times (See Condition #3), adding a sight obscuring fence, berm, or other such improvement (See Condition #4), utilizing the use of a water truck to mitigate dust, and no physical or chemical processing or treating of the product shall be used (See Condition #5), unless given permission by the ZBOA. Once excavation activity is discontinued, the excavation shall be restored in accordance with Open Cut Mining Reclamation guidelines (see MCA § 82-4-400, et seq.)(See Condition #6)

5. The proposed development will be consistent with the Cascade County Growth Policy.

- a. *Consistency with the Growth Policy objectives for the various planning areas, its definitions of the various land use classifications and activity centers, and its locational standards.*

Applicant: *As “Mixed-use 20” the growth policy anticipated a need for Quarries within the area and provided the opportunity for a Special Use Permit.*

Staff: The proposed use is consistent with the Cascade County Growth Policy.

Goal 1: Sustain and strengthen the economic well-being of Cascade County’s citizens.

- A. *Stimulate the retention of existing businesses and expansion of existing businesses, new businesses, value-added businesses, wholesale and retail businesses, and industries including agriculture, mining, manufacturing/processing and forest products.*

Applicant: *Residential, commercial, and government (infrastructure) projects often require gravel. The cost associated with these can be greatly impacted by the trucking distances of gravel. Having additional gravel sources available creates a more favorable market for the consumers.*

Staff: The location of the subject parcel could provide a cost effective opportunity for the hauling of gravel to the northwestern portion of Cascade County.

- B. *Stabilize and diversify the county's tax base by encouraging the sustainable use of its natural resources.*

Applicant: *The operator of the proposed project is a Cascade County resident. As such the sale of the natural resources will have a direct benefit to the County's tax base. Additionally, many of the employees working on this project will be Cascade County Residents.*

Staff: Though the natural resources may not be used solely in Cascade County, the resources may be utilized in the future for developmental infrastructure within the county. The tax base for Cascade County could be increased and diversified due to this use.

- C. *Identify and pursue primary business development that complements existing business, which is compatible with communities, and utilizes available assets. Identify and pursue targeted business development opportunities to include, but not limited to, manufacturing/heavy industry, telecommunications, and youth/social services.*

Applicant: *All existing businesses and potential business development opportunities which require infrastructure (roads, sewers, water, buildings, etc.) will benefit from having potential access to the mine products from this site.*

Staff: The proposed use will not negatively affect businesses in Cascade County.

- D. *Promote the development of cultural resources and tourism to broaden Cascade County's economic base.*

Applicant: *The material from this project has the potential to be used for road improvements and education site improvements for cultural resources and tourism.*

Staff: For this particular use to promote tourism and cultural resources, material would be provided for improvements to any roads and trails that could increase the amount of traffic to the cultural and tourism sites.

- E. *Foster and stimulate well-planned entrepreneurship among the county's citizenry.*

Applicant: *The Operator of this site is an accomplished entrepreneur and provides an example to Cascade citizens of multiple business opportunities within the County.*

Staff: The use of this property could promote entrepreneurship by providing the material to be used on the entrepreneur's project site.

- F. *Promote a strong local business environment. Encourage and strengthen business support mechanisms such as chambers of commerce, development organizations and business roundtable organizations.*

Applicant: *The operator will continue to encourage and support business within Cascade County.*

Staff: The proposed use will not negatively impact business support mechanisms.

- G. *Improve local trade capture for Cascade County businesses. Promote local shopping as well as well-planned businesses and new businesses.*

Applicant: *Increase in residential and commercial construction will have a direct impact on local businesses. Our products are necessary for most new residential and commercial construction projects.*

Staff: The applicant has stated that employees will be from Cascade County, therefore, employing locally will allow employees to continue to spend money that is earned within the county, at local businesses.

- H. *Network with and support other economic development efforts in the region and statewide, in recognition of Cascade County's interdependence with other communities and to leverage available local resources.*

Applicant: *Products from this site may be used to support other communities, such as Fairfield, as a further of our interdependence on resources across our region.*

Staff: Resources from this site may be utilized in Teton County, chiefly due to the fact that the county line is just north of the property. Projects in the community of Fairfield may utilize the site, as well as potential projects along the Highway 200 corridor.

- I. *Encourage the growth of the agricultural economy.*

Applicant: *The site will be reclaimed back to pastureland and is anticipated*

Staff: The site is currently classed as agricultural land by the Department of Revenue, however, the use will not negatively effect the agricultural economy. The majority of the project location is gravelly loam and is not farmland of statewide importance.

- J. *Stimulate the growth of the economy by encouraging the use of alternate methods of energy production, including wind energy.*

Applicant: This project is not proposing any alternative energy sources other than what is available on the Sun River Coop grid.

Staff: This project does not propose the use of any alternative energy source.

Goal 2: Protect and maintain Cascade County's rural character and the community's historic relationship with the natural resource development.

Objectives:

- A. *Foster the continuance of agriculture and forestry in recognition of their economic contribution and the intrinsic natural beauty of grazing areas, farmlands and forests.*

Applicant: The project will be reclaimed to pastureland to support local livestock.

Staff: According to the USDA Web Soil Survey², the Subject Property is not considered farmland of statewide importance. Once the excavation use has discontinued, the parcel will be reclaimed per the regulations of the DEQ. The use of the subject property will not have a negative impact on grazing, farmlands, or forests due to the existing land use in the subdivision currently.

- B. *Preserve Cascade County's scenic beauty and conserve its forests, rangelands and streams, with their abundant wildlife and good fisheries.*

Applicant: The project will be reclaimed to pastureland to support local livestock.

Staff: The proposed use will have a short term effect on the scenic beauty within Cascade County. Once the site has been reclaimed after extraction is finished, the scenic beauty will be renewed.

- C. *Preserve Cascade County's open space setting by encouraging new development to locate near existing towns and rural settlements and by discouraging poorly designed, land subdivisions and commercial development.*

Applicant: The project will return to the open space character of it's pre-mine condition after reclamation is complete.

Staff: The subject property is located 11.351 miles from Fairfield, 4.961 miles from Sun River, and 22.435 miles from Great Falls as the crow flies. The parcel currently has two pole frame buildings on the property but is mainly open, undeveloped space. Once the use has ceased, the area shall be reclaimed to the open ag space it was prior to the quarry being placed on the property.

² <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

D. Assure clean air, clean water, a healthful environment and good community appearance.

Applicant: The project will comply with the DEQ requirements for to maintain the clean air, clean water, a healthful environment and good community appearance.

Staff: The proposed use does not plan on using any sort of wastewater system; however, if the need for a wastewater system arises, the applicant will need to obtain approval from the City/County Health Department for water/waste (see Condition #3).

E. Support the development of natural resources including but not limited to timber, mining, oil and gas production, and renewable energy production.

Applicant: The materials produced from this project will be available, and are necessary for the timber, mining, oil and gas production, and renewable energy production projects.

Staff: The proposed use will utilize existing natural resources within Cascade County.

F. Continue to work with federal and state agencies to redevelop properties within Cascade County which are currently undergoing Superfund and Brownsfield processes..

Applicant: The materials produced from this project will be available for, and are often used in, Superfund and Brownsfield redevelopment projects.

Staff: The subject property is not located in a known Superfund or Brownsfield site.

Goal 3: Maintain Agricultural economy

A. Protect the most productive soil types.

Applicant: All topsoil will be stripped and stockpiled for use during reclamation.

Staff: According to the USDA Web Soil Survey³, the Subject Property is not considered farmland of statewide importance. It has been proposed that the topsoil will be stored during the excavation process and returned to the disturbed area once the excavation has been completed in order to reclaim the subject property.

B. Continue to protect soils against erosion.

Applicant: Long term soil stockpiles will be seeded to prevent erosion.

³ <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

Staff: The Planning Department does not anticipate a significant effect on soil erosion from the placement of this subject property. The Subject Property is approximately 134.210 acres. If more than one acre is disturbed during construction, a General Permit for Storm Water Discharges Associated with Construction Activity will be required by the Montana Department of Environmental Quality (see Condition #1).

C. *Protect the floodplain from non-agricultural development.*

Applicant: *Development is not planned to occur within a floodplain.*

Staff: The location of the subject property is not in a regulated floodplain area and therefore will protect the floodplain from non-agricultural development.

D. *Support the development of value-added agricultural industry in Cascade County utilizing the products from the regional area.*

Applicant: *Seed for reclamation will be sourced from local producers.*

Staff: The proposed subject property will not negatively affect the agriculture industry.

Goal 4: Retain the presence of the US Military in Cascade County.

Objectives:

A. *Encourage the federal congressional delegation to actively support maintaining the current mission status at a minimum.*

Applicant: *Not applicable to this project.*

B. *Promote the location of additional military missions in Cascade County.*

Applicant: *Not applicable to this project.*

C. *Encourage the reactivation of the runway at Malmstrom Air Force Base for fixed wing operations.*

Applicant: *Not applicable to this project.*

D. *Refer to the Joint Land Use Study for resolving conflicts and promoting mission compatible development.*

Applicant: *Not applicable to this project.*

Staff: The placement of the subject property will not negatively affect military presence. The placement of the subject property is not within a

Military Overlay District which restricts the height of any structures. This use does not propose any new structures.

Goal 5: Preserve and enhance the rural, friendly and independent lifestyle currently enjoyed by Cascade County's citizens.

Objectives:

A. *Maintain Cascade County's citizens independent lifestyle and minimize local governmental intervention, to the extent possible, consistent with the requirements of a continually evolving economy and constantly changing population.*

Applicant: We do not anticipate this project having an impact on Cascade County's rural lifestyle.

Staff: The proposed subject property will likely have little to no impact on Cascade County's citizens' rural lifestyle.

B. *Preserve and promote Cascade County's rich cultural heritage, rooted in natural resource development and reflected in its numerous cultural/historic sites and archaeological areas.*

Applicant: The project will comply with DEQ requirements and will consult with the State Historical Preservation Office.

Staff: The subject property is not known to be a cultural/historic sites or a archaeological area.

C. *Promote fire prevention measures throughout the county, giving special emphasis to the extreme fire hazards present at the wild land/urban interface.*

Applicant: Fire prevention measures will be taken and include operating primary equipment in non-vegetated areas and maintain access to a local water source for fire suppression.

Staff: The proposed subject property will be serviced by the Sun River Fire Department, and is considered having a low risk terrain/fuel hazard not located in the Wildland Urban Interface⁴.

D. *Encourage the continued development of educational programs and facilities, recreational opportunities and spaces and health services for all county residents.*

⁴ Based on the Community Fire Plan Wildland-Urban Interface Cascade County and Dearborn FSA Map.

Applicant: Not applicable to this project.

Staff: The proposed Quarry will not negatively affect continued development of educational programs and facilities, recreational opportunities and spaces and health services for all county residents.

- b. Consistency with the municipal and joint land use plans incorporated by the Growth Policy.

Staff: The application will likely not have a negative impact on the municipal or joint land use plans.

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: Based on the information provided in the application, the proposed subject property regular working hours will conclude at 7:00 PM to prevent conflicts with residential uses, a water truck will be utilized to mitigate dust build up, and a sight/sound barrier will be constructed to mitigate noise near the residential uses. With these mitigation efforts in place, noise, fumes, vibrations, or flashing lights should have small effect on the adjoining properties.

Motions:

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

- A. Move that Special Use Permits #003-2022 to allow a quarry on the subject property on Parcel #6120300, be **denied** due to (*Board must make findings delineating the legal reason for denial*); or
- B. Move the Board to adopt the Staff Report in its entirety with Findings of Fact and **approve** Special Use Permits #003-2022 to allow a quarry on Parcel #6120300, 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. Applicant obtains an approved Subsurface Wastewater Treatment System Permit from the City-County Health Department prior to installation of any wastewater treatment system.
 - 3. Operations hours shall be limited from 7:00 a.m. to 7:00 p.m.
 - 4. 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 excavation.

5. No rock crusher, 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.
6. In the case where excavation activity is discontinued, the excavation shall be restored in accordance with Open Cut Mining Reclamation guidelines (see MCA § 82-4-400, et. Seq).

Attachments:

- Special Use Permit Application
- Vicinity & Zoning Maps
- Applicable Zoning Regulations
- Comment

cc: Edwin & Margaret Birky