

## ARTICLE 45

### EXTRACTION OF MINERALS

#### PREAMBLE

The extraction of minerals is recognized as a necessary land use, which has many negative side effects for those living nearby. These regulations shall apply to Conditional Use applications for mineral extraction to regulate this land use in a reasonable manner allowing input from concerned parties and ample information to make informed decisions. These regulations will override those in Article 4 of this resolution in the event of a conflict.

To the extent that any requirements of this Article do not match the requirements of Ohio Revised Code 1514.02, the more restrictive requirements will prevail.

#### SECTION 4501          CONDITIONAL USE APPLICATION

No person shall be issued a zoning certificate pursuant to Section 302 of this Zoning Resolution to commence any use or alter any structure for the purpose of mineral extraction without the prior approval of a Conditional Use Application from the Board of Zoning Appeals. No use shall be carried on, no structure shall be constructed or altered, and no other improvement or construction shall be undertaken, except as shown upon an approved Conditional Use Application.

#### SECTION 4502          SUBMISSION OF CONDITIONAL USE APPLICATION

- A. Every Conditional Use application shall be filed with the Township in eight (8) identical copies on one or more sheets of paper measuring no larger than 11 x 17". Each site plan shall be drawn to a scale not smaller than forty (40) feet to the inch. A larger or smaller scale for all or part of the area may be required by the Zoning Administrator. Narrative attachments shall be no larger than 8 1/2 x 11".
- B. Those elements of a Conditional Use application which require special expertise in such fields as surveying, engineering or architecture shall be prepared and certified by an appropriate professional licensed to practice in the State of Ohio.
- C. Every Conditional Use application shall be signed by the owner of the land to which the Conditional Use application applies or, if a corporation, limited liability company, partnership or other entity, by a duly authorized officer of the corporation, limited liability company, partnership or other entity.
- D. Each Conditional Use application shall be submitted at least thirty (30) full days in advance of the regular Board of Zoning Appeals meeting at which it is requested to be considered.

#### SECTION 4503          CONDITIONAL USE APPLICATION CONTENTS

In addition to the requirements, specifications and materials required to be submitted as part of a

surface mining permit application pursuant to Ohio Revised Code 1514.02 (A) and the requirements of Article 4, Section 406 of this Zoning Resolution, the Conditional Use application shall contain the following information:

A. A survey map showing:

1. The location and size of the subject property, pinpointing the exact location(s), including all boundary lines, of the proposed gravel mining and/or excavation site(s).
2. The location and description of the processing plant to be used and any accessory or kindred operations that may be utilized in connection with the operation of the processing plant by the mining processor or any other firm, person or corporation. The processing plant shall be located so as to minimize the problems of dust, dirt and noise insofar as reasonably possible.
3. Natural features such as woodlots, significant isolated trees (five inches or more in diameter), streams, lakes or ponds, and man-made features such as existing roads and structures, with indications as to which are to be retained and which are to be removed or altered, including identification of adjacent properties and their uses.
4. The shape, size, location, height and floor area of all existing and proposed structures and the estimated finished ground and basement floor grades with indications as to which are to be retained and which are to be removed or altered.
5. The existing and/or proposed specific usage of the land and all structures thereon.
6. Existing and proposed streets, driveways, parking spaces, loading spaces, vehicle stacking areas and sidewalks, with indications of direction of travel for one-way streets and drives and the total number of parking spaces.
7. The location and size of all existing and proposed public and private utilities, sanitary services and waste disposal facilities with indications as to which are to be retained and which are to be removed or altered.
8. All proposed landscaping, mounding, fences and walls.
9. The locations, dimensions and lighting of all signs. See Article 41 of the Zoning Resolution-Sign and Billboard Regulations.
10. The location, intensity and orientation of all exterior lighting.
11. Detailed plans of all drainage provisions, detention facilities, vegetative practices, erosion and sediment control measures, steep excavations and other protective devices to be constructed in connection, or as a part of, the proposed work, together with a plan showing the drainage area of land contributing to the site and the estimated cubic feet per second of run-off of the area served by any drain, computed in accordance with current Township storm drainage criteria.

12. The schedule for the project with anticipated start and completion dates of the proposed mining operation and any related construction activities. If the development is to be staged, the schedule shall show a general indication as to how the staging is to proceed; what the anticipated starting and completion dates of each development sequence may be, specifically addressing stripping and/or clearing, rough grading and construction, final grading and vegetative establishment and maintenance, and the time of exposure of each disturbed area prior to the completion of effective erosion and sediment control measures.
  13. The type of resources or materials to be removed, the proposed method of removal, with a description of the equipment to be used, and whether or not blasting or other use of explosives will be required. This information shall be shown on the map by location.
  14. Any other information necessary to satisfactorily demonstrate compliance with this Article or any other statute or ordinance.
- B. The legal description of the land included in the Conditional Use application with boundary dimensions based upon a field survey, and the names, addresses and contact information of the owner, the developer and the engineer.
- C. A vicinity sketch showing the location of the site in relation to the surrounding street system. This vicinity sketch (or an additional sketch) shall also identify all adjacent properties by location and use and the sites of the adjacent properties' private wells and sanitary systems.
- D. Aerial photographs showing the site location and immediate environs. The aerial photograph should not have been taken more than one (1) year prior to the submission of the Conditional Use application.
- E. A cover letter shall be provided with the Conditional Use application and should address the following issues:
1. The letter should clearly indicate that a request for a Conditional Use approval is being made.
  2. The letter shall clearly identify the applicant name of the entity conducting the operation.
  3. The letter shall list all sites within German Township where the applicant or operating entity has extraction rights, either directly or indirectly, and where the applicant holds or has options on processing sites.
    - a. These sites are also to be illustrated on a map provided as an attachment to the letter.
- F. A reclamation plan to reclaim the area to be mined, which reclamation plan shall comply

with the requirements of the Ohio Department of Natural Resources.

1. This plan shall indicate the method of rehabilitation and reclamation of the mined-out area, including a grading plan showing existing contours in the area to be excavated and the proposed future contours showing topography of the area after completion.
  2. The plan shall include the surrounding area within 500 feet of the subject property boundary line, drawn to an appropriate scale with contour lines at intervals of five (5) feet or less.
- G. A hydrologic study determining and describing both ground and surface water in the vicinity of the land requested to be mined. The description of surface water shall include the location of the water body, the area and depth of ponds, the volume and direction of stream flow, and other characteristics as may be determined by the Zoning Administrator. The description of ground water shall include depth to water table, direction of ground water movement (flow), the location and ownership of water wells used for both domestic and agricultural purposes, and other characteristics as may be determined by the Zoning Administrator. The applicant shall perform and submit to the Zoning Administrator the results of ground water testing to establish pre-development water quality and quantity as required by, and to the specifications of, the Montgomery County Combined Health District.
- H. A statement indicating whether or not dewatering is to be used in the mining operation.

#### SECTION 4504 SUPPLEMENTING OR ELIMINATING REQUIREMENTS

- A. The Zoning Administrator may supplement the requirements set forth in Subsections 4502 and 4503 upon a finding that additional information is needed for an informed review of the Conditional Use application or may waive any requirements that are irrelevant under the circumstances.
- B. Any requirement of Subsections 4502 or 4503 so modified or eliminated shall be noted in the staff report prepared by the Zoning Administrator pursuant to Subsection 4505 and the applicant shall be notified of any changed requirements.

#### SECTION 4505 STAFF REVIEW

The Zoning Administrator may consult with or seek recommendations from any professional regarding any area of concern within the Conditional Use application.

#### SECTION 4506 PUBLIC HEARING BEFORE THE BOARD OF ZONING APPEALS

Once a Conditional Use application has been submitted for review, a public hearing on the application shall be held by the Board of Zoning Appeals and notice thereof given, as specified under Subsection 404.03 of this Zoning Resolution.

#### SECTION 4507 CONDITIONAL USE REVIEW CRITERIA

Uses permitted shall be subject to and in conformance with the Ohio Revised Code 1514.02. A copy of the surface mining permit application required by the Ohio Revised Code 1514.02 (A) and any amendments thereto proposed by the State of Ohio or the applicant, and the additional requirements of this Article shall be provided. In addition to the requirements stipulated in Ohio Revised Code 1514.902 (A), the following regulations shall apply to all operations covered under this Chapter.

The Board of Zoning Appeals shall review the Conditional Use application and the report of the Zoning Administrator at the next regularly scheduled Board of Zoning Appeals meeting where an accurate and complete application has been submitted to the Zoning Administrator at least thirty (30) full days prior to the date of that meeting.

The Board of Zoning Appeals shall either grant or deny the application, table a decision in the matter or shall recommend modifications thereof to the applicant or landowner within thirty days after the Board of Zoning Appeals' decision on the application. Conditional Use Application modifications shall be recommended by the Board of Zoning Appeals when any of the following requirements are not met:

- A. The application shall be fully and accurately completed.
- B. The substance of the application shall conform to the provisions of this Article and any other German Township Resolution or state or federal law, or provide an explanation of why any nonconformity should be allowed.
- C. The application shall provide adequate parking, loading and vehicle stacking facilities, open space, and lighting systems.
- D. The application shall provide for adequate pedestrian and vehicular circulation within the development and adjacent public right-of-way.
- E. The proposed use shall access the public roadway via curb cuts shared with adjacent uses to the maximum extent feasible, consistent with sound traffic engineering standards.
- F. The application shall provide adequate utility, waste disposal or sanitary services.
- G. The application shall create a satisfactory and harmonious relationship between the development of the site and the existing and prospective development of contiguous land.
- H. The application shall include all dedications of easements and rights-of-way, and all public improvements to conform to and implement German Township plans for utilities, streets and open space preservation and development.
- I. The application shall include landscaping and screening in conformance with German Township requirements, administrative standards or other reasonable criteria.

- J. The application shall eliminate any existing conditions hazardous to health or safety, shall not create such conditions, and shall not create a nuisance.
- K. The application shall include all design elements and expressly state all operational limitations recommended by the Board of Zoning Appeals which are reasonably related to the public health, safety and general welfare and which are desirable to serve the premises or minimize the adverse effects of the plan on the neighborhood or community.
- L. The application shall limit noise as follows:
- When the active mining or processing area is within one thousand (1,000) feet of any existing residential structure, the maximum hours of operation shall be sunrise to sunset.
- M. The application shall limit pollution as follows:
1. Control measures shall be implemented on a continuing basis, during times of operation, to control dust and debris, such as mud, sand or rocks on entrance roadways, in equipment operation, and throughout the mining site.
  2. The Board of Zoning Appeals, as part of the Conditional Use application approval process, may require the paving of travel surfaces, the upgrading of dust and debris control devices for processing and on-site manufacturing equipment, and other treatments to control dust and debris as may be needed.
- N. The application shall address the surface mine's visual impact as follows:
- Ten (10) foot high earthen barriers shall be established to attempt to minimize the visual impact of the active mining or processing area from adjacent public road right-of-way except in those instances where prohibited by other governmental rules and/or regulations or where deemed to be impractical or hazardous by the Board of Zoning Appeals.
- O. The application shall address access to and circulation at the surface mine as follows:
1. Points of ingress and egress associated with extraction and/or processing sites shall be located as approved by the German Township Board of Zoning Appeals, Montgomery County Engineer or the Ohio Department of Transportation as appropriate.
  2. The application shall include a map of the proposed major access roads to be utilized for ingress and egress for the extraction operation. If an alternate route is available, the use of Township roads is prohibited.
- P. The application shall address surface water and drainage as follows:
1. The hydrographs and quality of water leaving the site of an extraction activity shall not be degraded due to the activities.

2. During mining and reclamation, drainage shall be controlled so as to prevent the causing of flooding, landslides, and flood hazards to adjoining lands resulting from the mining operations. Upon completion of mining, ponds shall be left in such condition as to avoid their constituting a hazard to adjoining lands, or allowing creation of stagnant water.

Q. The application shall address groundwater quality as follows:

1. During mining and reclamation, the site is prohibited from being used as a landfill in any way. Contamination of underground water supplies shall be prevented. Materials contaminating to groundwater shall not be used for filling or grading at any time. Upon completion of reclamation, any lake or pond located within the site boundaries shall be free of substances resulting from mining in amounts or concentrations that are harmful to persons, fish, waterfowl, or other beneficial species of aquatic life.
2. The storage of fuels and chemicals and equipment service facilities shall be located where they are least likely to contaminate groundwater as determined by the Township Zoning Inspector and/or the Board of Zoning Appeals.

R. The application shall address vibration and blasting at the surface mine as follows:

1. The operation of stationary and mobile equipment shall not cause vibrations in excess of that permitted by applicable federal and/or state law.
2. Blasting shall be done in accordance with the applicable laws of the State of Ohio, and shall be carried out by persons certified to be knowledgeable and competent in the sizing and placing of the explosive to be used for blasting.
3. When the blasting area is within one thousand (1,000) feet of an existing residential structure the maximum hours of blasting operation shall be sunrise to sunset.

S. The application shall address slope stability as follows:

1. The sides of excavation sites shall be set back a minimum of fifty (50) feet from the property line with a sufficient slope of excavation to ensure the lateral support of surrounding property with the following provisions:
  - a. The reclaimed sides of excavation sites shall be set back a minimum of one hundred fifty (150) feet from the right-of-way of all public streets or roads.
  - b. If the adjoining property is zoned industrial, no setback from the common property line is required if both property owners, by signed agreement, are mining their properties as if one (1) operation with an approved Conditional Use application, which takes into account the joint operation.
2. Final slopes shall be graded, contoured or terraced, wherever needed, sufficient to achieve soil stability and control landslides, erosion and sedimentation. High walls will be permitted if they are compatible with the future uses specified in the

Conditional Use Application and measures are taken to ensure public safety. Where ponds, impoundments, or other resulting bodies of water are intended for recreational use, banks and slopes shall be established that will assure safe access to such bodies of water. Where such bodies of water are not intended for recreation, measures to ensure public safety shall be included.

T. The application shall address soil erosion sedimentation control as follows:

1. The area of land affected by the proposed mining operation shall be resoiled, wherever needed, with topsoil or suitable subsoil, fertilizer, lime or soil amendments, as appropriate, in sufficient quantity and depth to raise and maintain a diverse growth of vegetation adequate to bind the soil and control erosion and sedimentation.
2. A diverse vegetative cover of grass and legumes or trees, grasses and legumes capable of self-regeneration and plant succession, wherever required by the Conditional Use Application, shall be established.

U. Other requirements:

1. Government boundary, section, corner, and other government survey monuments that were removed by the operator as a result of the mining shall be replaced where practical.
2. Mining and reclamation shall be carried out in the sequence and manner set forth in the Conditional Use Application and reclamation measures shall be performed in a timely manner. All reclamation of an area of land affected shall be completed no later than three (3) years following the active mining of such area, unless the Board of Zoning Appeals is satisfied that the future use of such area requires a longer period for completing reclamation.
3. During mining, the owner or operator shall store topsoil or fill in quantities sufficient to complete the backfilling, grading, contouring, terracing, and resoiling that is specified in the plan. The owner or operator shall also stabilize the slopes of, and plant each, spoil bank to control soil erosion and sedimentation wherever substantial damage to adjoining property might occur.
4. On sites located along the Twin Creeks, the excavation area shall be set back a minimum of two hundred fifty (250) feet from the ordinary high water mark of the river/creek.
5. No mining of sand and gravel shall be carried on, or any stockpile placed closer than fifty (50) feet to any property line, or such greater distance as specified by the Board, where such is deemed necessary for the protection of adjacent property, except that



this distance requirement may be reduced by the written consent of the owner or owners of abutting property, but in any such event, adequate lateral support shall be provided for said abutting property.

6. In the event that the site of the mining operation is adjacent to the right-of-way of any public street or road, no part of such operation shall take place closer than fifty (50) feet to nearest line of such right-of-way.
7. Any excavated area adjacent to a right-of-way of any public street or road shall be back-filled for a distance of one hundred fifty (150) feet from the right-of-way line.
8. An earthen barrier, a minimum of ten (10) feet high, shall be erected and maintained around the entire site or portions thereof for the public safety and/or community aesthetics.
9. Quarrying shall not be carried out closer than three hundred (300) feet to any adjoining property line unless the written consent of such adjoining property owner has first been obtained.

#### SECTION 4508 DEVELOPMENT STANDARDS

- A. No mining of sand and gravel shall be carried on, or any stockpile placed closer than fifty (50) feet to any property line, or such greater distance as specified by the Board, where such is deemed necessary for the protection of adjacent property, except that this distance requirement may be reduced by the written consent of the owner or owners of abutting property, but in any such event, adequate lateral support shall be provided for said abutting property.
- B. In the event that the site of the mining operation is adjacent to the right-of-way of any public street or road, no part of such operation shall take place closer than fifty (50) feet to the nearest line of such right-of-way, except as may otherwise be provided by Section 4153.11 of the Revised Code of the State of Ohio.
- C. Any excavated area adjacent to a right-of-way of any public street or road shall be back-filled for a distance of one hundred fifty (150) feet from the right-of-way line.
- D. Fencing or other suitable barrier shall be erected and maintained around the entire site or portions thereof where, in the opinion of the Board, such fencing or barrier is necessary for the protection of the public safety and shall be of a type specified by the Board.
- E. All equipment and machinery shall be operated and maintained in such manner as to minimize dust, noise and vibration. Access roads shall be maintained in a dust-free condition by surfacing or other treatment as may be specified by the Board.
- F. The Board is authorized to impose such requirements with respect to providing adequate barriers as it may feel necessary to protect the public safety.

SECTION 4509 REHABILITATION REQUIREMENTS

- A. All excavation shall be made either to a water producing depth, such depth to be not less than five (5) feet below the watermark, or shall be graded or back-filled with non-noxious, noncombustible and nonflammable solids, to ensure:
  - 1. That the excavated area shall not collect and permit to remain therein, stagnant water; or
  - 2. That the surface of such area which is not permanently submerged is graded or back-filled as necessary so as to produce a gently rolling surface that will minimize erosion due to a rainfall and which will be in substantial conformity to the adjoining land area.
- B. The banks of all sand and gravel excavations in a water producing excavation, and to the pit bottom in a dry operation, shall be sloped to the water line, at a slope which will not be less than three (3) feet horizontal to one foot vertical and said banks shall be restored with vegetation.
- C. Vegetation shall be restored by the spreading of sufficient soil and by appropriate seeding of grasses or planting of shrubs and trees in all parts of said mining area where the same is not submerged under water.
- D. Proper drainage shall be provided for the mined-out area.
- E. All equipment and structures shall be removed from the mined-out area within six (6) months of the completion of mining.
- F. Due to the inherent difficulties in reclaiming and rehabilitating areas from which stone has been quarried, the Board of Zoning Appeals is empowered to impose such reasonable standards for reclamation as may be necessary to protect the public interest, without unduly restricting the operations of the mine owner.

SECTION 4510 APPROVAL OR DISAPPROVAL

- A. Conditional Approval: Upon satisfaction of any conditions set by the Board of Zoning Appeals, as determined by the Zoning Administrator, approval shall be complete. Such approval shall be endorsed on all copies of the site plan or modified site plan and one copy shall be returned to the applicant.
- B. Notice: The Zoning Administrator shall notify, in writing, both the applicant and the landowner of all actions of the Board of Zoning Appeals and of the Zoning Administrator related to the Conditional Use application or modified Conditional Use Application.

- C. Filing of Record Copies: Upon approval by the Board of Zoning Appeals, the applicant shall be furnished with a copy of the finalized Conditional Use application and narrative attachments. The Zoning Administrator shall endorse such copy indicating final approval.

SECTION 4511            MODIFICATION OF APPLICATION UNDER REVIEW

- A. Maintenance of pending status: In cases where Conditional Use application modifications have been recommended by the Board of Zoning Appeals to maintain the pending status of the application before the Board, the applicant shall within (90) ninety days after receipt of the recommendations or such longer period as may be granted by the Board, file a modified Conditional Use application incorporating the recommended modifications or suggested new alternatives. Failure to respond to the Board's initial and subsequent recommendations in a timely manner as set forth above may result in denial of the application without further notice.
- B. Staff Review: Upon the filing of a modified Conditional Use application by an applicant, the Zoning Administrator shall evaluate the changes made in the modified application and shall prepare a report on such application to be submitted with such application to the Board no later than (30) thirty days from the time of submittal.
- C. Board of Zoning Appeals Review: The Board shall review such Conditional Use application and the aforesaid report and shall take action on such application at the next regularly scheduled Board meeting, provided the time limits prescribed in Section 4502 are met.

SECTION 4512            CONTROL OF ISSUANCE OF ZONING PERMITS;  
RESTRICTION OF USES

- A. The Conditional Use application required by this Article shall be approved by the Board of Zoning Appeals before the start of operation of any use proposed by the Conditional Use application.
- B. An approved Conditional Use application shall control the issuance of all zoning certificates. An approved Conditional Use application shall conclusively restrict the nature, location and design of all uses within the area described in the approved Conditional Use application, unaffected by any subsequent change in ownership or tenancy of the premises.

SECTION 4513            CONDITIONAL USE APPLICATION AS CONDITION OF ZONING  
CERTIFICATE AND CONTINUATION OF USE

- A. The continual compliance with the terms, contents and conditions of any Conditional Use application approved by the Board of Zoning Appeals is a requirement for issuance of a Zoning Certificate. A violation of any of those terms, contents and conditions is grounds for revoking such certificate at any time.

- B. All subsequent owners of land and/or use covered by such Conditional Use application shall maintain compliance with the approved Conditional Use application. Failure to maintain compliance may result in termination of the use by revocation of the zoning certificate.

SECTION 4514 BURDEN OF PROOF; STANDARD OF PROOF

- A. The duty to come forward with evidence demonstrating compliance of a Conditional Use application with all laws and reasonable rules and regulations of the Township rests solely with the applicant. Such evidence shall be sufficient in quality and quantity to be clear and convincing, unless a different standard of proof is specifically stated within the regulation at issue.