



ANDERSON TOWNSHIP PLANNING AND ZONING - STAFF REPORT

CASE NUMBER 1-2026 BZA

4455 MT. CARMEL RD

FOR CONSIDERATION BY THE BOARD OF ZONING APPEALS ON JANUARY 8, 2026

APPLICANT:	Alexander C. Johnson, KMK Law, on behalf of Evans Gravel, Inc, property owner of 4455 Mt. Carmel Road.	
LOCATION &	4455 Mt. Carmel Road (Book 500, Page 81, Parcel 38)	
ZONING:	"ID" – Industrial Development District	
REQUEST:	Expansion of a previously-approved gravel mine conditional use (Case 16-2003 BZA, Case 2-2009 BZA, and Case 10-2018 BZA) to incorporate extraction-related operations (detention ponds, sediment structures, and a service road) outside of the previously approved conditional use area, per Article 3.16, C, 1 of the Anderson Township Zoning Resolution.	
SITE DESCRIPTION:	<i>Tract Size:</i>	Approximately 76.346 acres
	<i>Frontage:</i>	Approximately 3,418' on Mt. Carmel Road
	<i>Topography:</i>	Varies- active surface mine
	<i>Existing Use:</i>	Active surface mine
SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
	North: "ID" Industrial Development	Scenic River Canoe
	South: "ID" Industrial Development	Senco
	East: "ID" Industrial Development	Kroger Distribution Facility
	"AA" Residence	and Single-Family Residences
	West: "ID" Industrial Development	Vacant (former B-Way)
PROPOSED DEVELOPMENT:	<p>The applicant is requesting to expand the area of a previously approved conditional use permit to incorporate existing extraction-related uses, i.e., detention ponds, sediment structures, and a service road on the property, into the approved conditional use area. The applicant is not requesting an expansion of the intensity, duration, or area of the permitted sand and gravel mining operation themselves.</p> <p>The applicant uses the 5 ponds in the southeastern corner of the property referenced in the application for drainage and erosion control for the 4455 Mt. Carmel Rd and neighboring properties. These ponds are also used to comply with the EPA water discharge requirements for the mine as governed by the National Point Discharge Elimination System (NPDES) permit.</p> <p>The applicant is also requesting the continued use of service roads that were installed without prior approval. The application states the property owner uses these roads in service to the sand and gravel operations.</p>	

HISTORY:

The Conditional Use was first approved by the BZA through Case 16-2003 BZA. The Conditional Use was extended by the BZA through Case 2-2009 BZA and Case 10-2018 BZA.

Below is the recent history regarding the property at 4455 Mt. Carmel Rd:

- 8/18/2023 – A notice of zoning violation (NOV) was sent to Evans Gravel, Inc regarding excavation outside the approved mining area.
- 7/19/2024 – A NOV was sent regarding large retaining wall and grading outside approved mining area which was promptly appealed by the property owner.
- 2/14/2025 – A site visit was conducted with county agencies to evaluate the mine. After the site visit, attorneys, on behalf of Evans Gravel, Inc, discussed a new application to BZA for expansion of conditional use permit instead of appealing the NOV. An unpermitted structure on the site was also found during the site visit.
- Mid 2025 – A consent decree was entered between Evans Gravel, Inc and Public Health on a portion of the property north of mine to be capped.
- 6/10/2025 – Township staff received email and capping plans from DS2 Architects requesting zoning approval for the work.
- 7/2/2025 – Township staff confirmed a zoning certificate would be issued and requested revised plans showing the extent of pavement at the site.
- 7/9/2025 – KMK Law, submitted a zoning application for the accessory structure observed during the site visit in February. Township holding plan to issue 1 zoning certificate for capping plan and accessory structure together per Evans request. Payment has been made.
- 10/8/2025 – NOV sent for expansion of gravel mine without BZA approval.
- 11/19/2025 – Application to BZA for expansion of the conditional use submitted by KMK Law, on behalf of Evans Gravel Inc.

FINDINGS

Staff has reviewed the supplemental application with the twenty-six conditions that were placed on the extended conditional use zoning certificate as granted by Case 10-2018 on 12/6/2018 as well as the Conditional Use Standards found in Article 3.16, C, 1 of the Anderson Township Zoning Resolution. The findings with the corresponding conditions are outlined below:

1. **The site is to be fully compliant with regulations and requirements of all other relevant agencies including but not limited to:**
Hamilton County, Occupational Safety and Health Administration, Ohio Department of Natural Resources, U.S. Department of Labor, Ohio Department of Taxation and the Ohio Environmental Protection Agency.
Staff contacted Hamilton County, OSHA, and the Ohio Environmental Protection Agency. As of now, staff has received a response from the OEPA,

which stated that there are multiple violations related to their NPDES permit. All responding Hamilton County agencies have no active violations for this property.

Specifically included within these regulations and requirements is the opacity test required by the Hamilton County Department of Environmental Services (HCDOES”), which opacity test shall remain current throughout the duration of the conditional use permit. In the event that the approved conditional use falls out of compliance with any of the relevant regulations or requirements of any of these agencies, then the Board of Zoning Appeals may act pursuant to Article III (a)(4) of the Board’s By-Laws and Revised Code §519.14(D). Staff has not received any information to indicate this condition has not been met.

2. **Substantial conformance with the plot plan dated July 12, 2018 delineating the 30-acre Property is required. The plot plan was submitted during the July 12, 2018 Board of Zoning Appeals meeting and is attached hereto as Exhibit 1.** Non-compliant – the applicant is looking to add the ponds on the property into the approved mining area that were not included with the 2018 application.
3. **The equipment used and to be present on property at any given time, is limited to what is stated in the supplemental packet #2 from Doug Evans of Evans Landscaping dated October 23, 2009 (Exhibit S#2-E), and the numerical limits added to the Exhibit, a copy of which is attached hereto as Exhibit 2 and incorporated by reference herein.** Staff has not received any information to indicate this condition has not been met.
4. **No fuel, chemicals, or lubricants are to be stored on site.** Staff has not received any information to indicate this condition has not been met.
5. **All mining activities on the Property shall cease, and this conditional use permit shall expire, no later than December 6, 2033. Within two-weeks of the beginning of the twenty-fourth (24th) month after the issuance of this extension of the conditional use permit, Applicant shall provide documentation to Township staff showing compliance with all applicable non-Township agencies, which have some oversight of the operations on the Property, as well as compliance with the conditions in this approval. Thereafter, Applicant shall again affirmatively document compliance with these other agencies, as well as compliance with the conditions in this approval, within two-weeks of the beginning of the sixtieth (60th) month after the issuance of the extension of the conditional use permit.** Compliant

6. **The hours of operations on site are limited to 7:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to 12:00 p.m. on Saturday and no hours of operation on Sunday. "Operations" means any activity on the Property whatsoever.** Staff has not received any information to indicate this condition has not been met.
7. **There is to be no lighting on the Property except for safety and security unless a photometric plan is submitted to the Anderson Township Development Services Department and approved.** Staff has not received any information to indicate this condition has not been met.
8. **There is to be compliance with the letter submitted on behalf of Applicant by Savage Walker and Associates titled Supplemental Information dated August 1, 2003, a copy of which is attached hereto as Exhibit 3, and which is incorporated by reference herein.** Staff has not received any information to indicate this condition has not been met.
9. **Directional signage, in accordance with the Anderson Township Zoning Resolution, shall be installed to direct all trucks exiting the Property are to make a left turn to go to Round Bottom Road unless they cannot fit under the railroad bridge.** Staff has not received any information to indicate this condition has not been met.
10. **There is to be compliance with the letter submitted on behalf of Applicant from Craig V. Simonson of SWA Design Group Inc. (formerly known as Savage Walker & Associates) to Doug Evans of Evans Gravel Inc. dated September 4, 2003, a copy of which is attached hereto as Exhibit 4, and which is incorporated by reference herein.** Staff has not received any information to indicate this condition has not been met.
11. **The conditional use permit for the Property shall be for surface mining only.** Compliant as of November 3, 2025. Hamilton County Public Health and the Ohio EPA have entered into a consent order to resolve alleged violations of Ohio's solid waste and construction demolition debris regulations for the northern portion of the site.
12. **The reclamation plan submitted to ODNR, a copy of which is attached hereto as Exhibit P shall be followed by Applicant when mining operations cease.** This is only applicable when operations cease. The ODNR permit expires October 21, 2033.
13. **The mining equipment shall be maintained in good order and sound deadening technology employing "best available technology" shall be employed on the conveyors and screens. This includes the latest urethane**

coatings on metal surfaces of conveyors, screens and impactors. Staff has not received any information to indicate this condition has not been met.

- 14. There shall be an annual 200,000 tonnage limit on extraction of gravel from the Property. If the Applicant wishes to increase this annual tonnage limit, approval must be sought from the Board of Zoning Appeals prior to any extraction over this limit. Applicant shall maintain a running monthly total with appropriate documentation, which shall be provided to Township staff for review within one (1) business day of a request by the Township for such information.** Staff has not received any information to indicate this condition has not been met.
- 15. The Property shall be operated in compliance with the short term and long-term dust control strategy agreed upon between Township staff and Southwest Ohio Air Quality Agency dated December 30, 2009.** Compliant
- 16. This conditional use approval is only applicable to the property. Any additional use proposed for the larger parcel, or any portion thereof, shall be submitted and approved by the Township prior to commencement of any such additional use.** Non-compliant
- 17. The mine shall employ the enforcement policy submitted by the Applicant on October 23, 2009 (Exhibit S#2-F, a copy of which is attached hereto as Exhibit 6 and incorporated by reference herein). In addition, the enforcement policy shall incorporate the following language: "Evans understands that continued validity of the conditional use permit for the Property will be judged, in part, on the effectiveness of and Evans' compliance with this policy." In addition, Evans shall, prior to commencement of any further mining activity and for the duration of such activity, pay for and maintain a sign which design, layout, text, size and placement shall be determined and approved by Township staff, in its sole discretion, listing complaint procedures for the public.** Staff has not received any information to indicate this condition has not been met.
- 18. Notwithstanding the time frames given for resolution of general complaints about the operation of the conditional use, for nuisance-type complaints (such as dust, noise, etc.), Applicant shall address those matters as quickly as possible. To that end, Applicant shall maintain an up-to-date complaint log, showing the date and time the complaint was received, the complainant's name (if given), a description of the complaint and the manner in which the complaint was addressed by Applicant. A copy of the prior month's complaint log shall be provided to the Township staff no later than the twelfth (12th) day of each month. To the extent no complaints are received in the preceding month, Evans' shall nonetheless still produce such**

log and affirmatively state thereon that no complaints were received during the requisite monthly reporting period. Failure of Evans'; to produce such log on a monthly basis shall constitute grounds for revocation of this conditional use permit by the Board of Zoning Appeals. Compliant – staff receives a complaint log every month indicating if complaints had been made.

19. **The Board, as part of its decision granting the extension of the conditional use permit, hereby approves, pursuant to Zoning Resolution Article 3.16, F, 1, a modification to the general requirements of Zoning Resolution Article 3.16, H to allow vegetation on the berm along the front of the Property to grow in its natural state in accordance with the landscaping plan submitted by Applicant, a copy of which is attached hereto as Exhibit 7. The Board, in approving this modification, finds that complete compliance with the requirements of Zoning Resolution Article 3.16, H is unnecessary given the location of the Property and its relationship to surrounding properties..**
Compliant
20. **The gravel storage piles on the Property shall be no taller than the Mt. Carmel Road right-of-way elevation immediately adjacent to the mine's current primary ingress and egress point.** Staff has not received any information to indicate this condition has not been met.
21. **A wheel wash system shall be in operation at all times when the mining use is in operation. The wheel wash system shall comply with a system to be agreed upon between Township staff and HCDOES as now operated on the Property as of the date of filing of the application. There shall be no tracking of dust and/or mud onto the public roadway.** Staff has not received any information to indicate this condition has not been met.
22. **Low volume, back-up alarms employing "white noise" technology shall be utilized on Evans' equipment used on the Property.** Staff has not received any information to indicate this condition has not been met.
23. **The impactor to be used in conjunction with the gravel mining operation shall be limited to a maximum capacity of 100 tons per hour.** Staff has not received any information to indicate this condition has not been met.
24. **There shall be no blasting or use of explosives associated with the mining operation anywhere on the Property.** Compliant
25. **In the event of a challenge by applicant or required enforcement by Township, Applicant shall be responsible for reimbursing the Township for all attorneys' fees and costs associated with such challenge or enforcement.**
This event has not occurred.

26. Because each separate condition listed herein is necessary to ensure compliance with the intent and purpose of the Anderson Township Zoning Resolution and each condition is an integral part of the whole decision, if any one or more conditions in this resolution is challenged in court and declared invalid, void or ineffective for any reason, this entire resolution granting the extension of the conditional use permit shall be null and void and all operations shall immediately cease. A NOV was sent and in response, a revised BZA application was submitted.

**STANDARDS TO
BE CONSIDERED:**

To authorize by the grant of a special zoning certificate after public hearing, the Board of Zoning Appeals shall make a finding that the proposed conditional use is appropriate in the location proposed. The finding shall be based upon the general considerations set forth in Article 2.12, D, 7, as well as the designated specific criteria for specific uses of the Industrial Development District contained in Article 3.16, F.

Specific Criteria:

(1) Modifications by the Board of Zoning Appeals: In a case where the topography or other physical features of the tract or its relation to surrounding property may make complete compliance with the requirements of this section unnecessary or undesirable, the Board of Zoning Appeals may modify such requirements to the extent warranted provided the surrounding property and the public welfare are adequately protected. N.A

(2) Emissions: In the case of emissions, applicable U.S. and Ohio Environmental Protection Agency regulations shall be observed, and the Board of Zoning Appeals may rely on expert testimony from parties who by education, training and experience are recognized experts. The surface mining activities are regulated by the OEPA and HCDOES.

(3) Regulated Substances: Once it has been determined that a proposed use may involve one or more Regulated Substances, the Anderson Township Board of Zoning Appeals shall establish and enforce necessary and appropriate performance standards to protect the public health, safety and welfare and the environment. The Board of Zoning Appeals shall consider any information supplied by the Applicant; a report and recommendation of the Anderson Township Zoning Inspector and such other relevant information as may be requested or submitted. In any application for a special zoning certificate for a use involving any Regulated Substance, the Applicant shall indicate how it will comply with the requirements set forth below. Noncompliance with any such requirements shall be grounds for revocation of such special zoning certificate:

- a. *Observation of all federal, state and local environmental laws including all applicable USEPA and OEPA Rules and Regulations.*
- b. *Use of Best Management Practices ("BMPs") and Best Available Technology ("BAT"), unless alternative practices or technology are shown to be equally effective, to control the use, storage or transport of Regulated Substances. BMPs mean a practice or combination of practices that is the most effective and practicable (including technological, economic, and institutional considerations) means of preventing or reducing the amount of emissions or pollution generated. BMPs may include structural and non-structural practices, conservation practices and operation and maintenance procedures, including those as may be defined from time to time by USEPA, OEPA or the Hamilton County Soil and Water Conservation District. Best Available Technology means the best technology, treatment techniques or other means for preventing or reducing the release or discharge of regulated substances into the environment, taking into consideration efficacy under field conditions and cost.*
- c. *Implementation of BMP and BAT primary and secondary containment measures.*
- d. *Implementation of sufficient security measures to prevent accidental or unauthorized use.*
- e. *Installation and maintenance of ground water monitoring wells or equivalent devices where determined by the Board of Zoning Appeals to be necessary.*
- f. *Development and implementation of emergency response plans with sufficient equipment to rapidly contain accidental discharges or releases. Emergency response plans, including applicable floor plans and Material Safety Data Sheets, shall be filed with local emergency response agencies and kept up to date.*
- g. *Development and implementation of hazardous material and emissions management plans where determined by the Board of Zoning Appeals to be necessary.*

N.A

(4) Vibration and Shock: No vibration or shock perceptible to a person of normal sensibilities at or beyond the property line shall be permitted.

Staff has not received any information to indicate this condition has not been met.

(5) Nuisances: In order to prevent the operation or use of any facility or property from constituting a nuisance to or upon surrounding property, all odor, dust, smoke, gas, emissions, noise or similar nuisance shall be so located on the tract that such use does not create a nuisance at or beyond any boundary line of the tract, and evidence shall be submitted, consisting of testimony or a certified statement by a competent authority in the field affected, to clearly demonstrate that the use will not create a nuisance. The best practical means known for the

abatement of a nuisance caused by odor, dust, smoke, gas, emissions, noise or similar nuisance shall be employed in a manner approved by the Board of Zoning Appeals

Staff receives complaint logs from Evans Gravel, Inc monthly indicating current and past complaints made to Evans. Staff has become aware of violations from the Ohio EPA, which described multiple violations to the property's NPDES permit.

(6) Landscaping and Other Requirements: Reasonable additional requirements as to landscaping, lighting, screening, fencing, access ways, building setbacks, and building sitting may be imposed by the Board of Zoning Appeals for the protection of adjacent property

When the original conditional use request was granted there was a small landscaping berm along Mt. Carmel Road. This berm has since grown, providing ample screening from the road to the mine.

(7) Consideration of Enhancements: In reviewing Conditional Use applications, the Board of Zoning Appeals shall consider enhancements proposed by the Applicant to the transportation network, the working environment, and the neighborhood as positive reasons for granting the application. Such enhancements may include but shall not be limited to:

- a. Provision for on-site or nearby childcare facilities;*
- b. Bicycle transportation facilities, including bicycle lockers, bicycle racks, bicycle lanes, and shower/changing areas; and*
- c. Public transit facilities including bus shelters, park-n-ride lots, and helicopter landing areas.*

N.A.

Article 2.12, D, 8, a

Spirit and Intent: The proposed use and development will comply with the spirit and intention of the Zoning Resolution and with District purposes. The location of the surface mine is within the "ID" Industrial Development District and fits within the activities that are described to take place in an industrial type zone.

No Adverse Effect: There will be no adverse effect by granting an extension for the existing surface mine. If the mine is maintained within the regulations and standards of the OPEA and HCDOES, and in accordance with the Anderson Township Zoning Resolution standards of conditional use within the "ID" Industrial Development District, the mine should have no adverse effect on surrounding uses in the ANCOR area.

Protection of Public Services: There are no historical aspects of this site to be maintained. However, there are violations of the current NPDES permit which could cause harm due to the discharging of industrial waste into an unnamed

tributary to the Little Miami River. This would need to be addressed and remedied by the applicant. The Township actively seeks to maintain the Little Miami Riverfront as a major natural resource in the community, as identified in the 2022 Comprehensive Plan.

Consistent with Adopted Plans: The proposal aligns with Initiative 3.2.2 – Support the expansion of nonresidential uses, provided they are compatible with adjacent land uses, and Initiative 7.3.4 – Facilitate infrastructure enhancements in the ANCOR Area that will help increase economic development opportunities for the Township, while minimizing environmental impacts.

**STANDARDS TO
BE CONSIDERED:**

In determining whether to grant a special zoning certificate, the Board shall consider and apply the following standards:

- (1) Spirit and intent. The proposed use and development shall comply with the spirit and intention of the Zoning Resolution and with District purposes.
- (2) No adverse effect; the proposed use and development shall not have an adverse effect upon adjacent property, or the public health, safety and general welfare.
- (3) Protection of public services: the proposed use and development should respect, to the greatest extent practicable, any natural, scenic and historic features of significant public interest.
- (4) Consistent with adopted plans; the proposed use and development shall, as applicable, be harmonious with and in accordance with the general objective of the Township's comprehensive plan and/or Zoning Resolution.

Disclaimer: This staff recommendation is based on the facts known to the author at the time the recommendation was made. Staff attempted to use those known facts to analyze the relationship of those facts to the standards set forth in the Zoning Resolution for the particular issue and property before the BZA, and in keeping with past decisions of the BZA. The BZA members have an obligation to consider all of the evidence that is entered into this case during the BZA hearing through the sworn testimony of the witnesses, as well as the documents submitted as part of the witnesses' testimony. The staff recommendation should be considered as part of the evidence before you. The Zoning Resolution empowers the BZA to make reasonable interpretations of the Zoning Resolution, to judge the credibility and reliability of the witnesses, and to decide each case based on the evidence presented during the BZA hearing process.