



GRANT COUNTY SOUTH DAKOTA  
PLANNING AND ZONING OFFICE  
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**Minutes from the meetings of Grant County Board of Adjustments  
April 15th, 2024**

**Board of Adjustment members present:** Mark Leddy, Nancy Johnson, Tom Pillatzki, Steve Spors, James Berg and County Commissioner Mike Mach.

**Alternate(s) present:** Don Weber.

**Board of Adjustment members absent:** John Seffrood and Jeff McCulloch

**Others present:** Jena Moak (Otter Tail Power Company), Mark McCulloch, Steve Pendergrass (City of Milbank), Todd Kays (First District), and Steve Berkner (Grant County Planning Commission officer.)

**Meeting Date:** Monday, April 15th, 2024

**Meeting Time:** 4:00 P.M. In-person in Courthouse Community Room.

1. Chairman Leddy calls the Board of Adjustment to order at 4:00.
2. Leddy seats alternates Weber to sit in for Seffrood who is absent.
3. Leddy asks if any member has anything to add to the agenda with none being offered.
4. Leddy makes an invitation for anyone present wanting to speak prior to the meeting starting with an item not on the agenda with no one responding.
5. Leddy asks for a motion to approve the agendas with Johnson making the first motion and Pillatzki making the second. Motion passes 7-0.
6. Leddy asks for a motion to approve the Board of Adjustment minutes as submitted from the March 11<sup>th</sup>, 2024, Board of Adjustment meeting which was made by Mach with Weber making the second. Motion passes 7-0.
7. Leddy asks if any seated board or commission member if they think they need to recuse themselves from any discussion topics on the agendas, or from voting on an agenda item with no one responding.

8. Leddy calls for a motion to be made to consider a Conditional Use Permit, CUP03082024, Pursuant to Section 1101.03.18: Conditional Uses in the “A” Agricultural Zoning District #18 – Home Extended Business. The applicant, Mark McCulloch DBA McCulloch Cemetery Services, is requesting a conditional use permit to operate a Home Extended Business.

Motion made by Mach with a second made by Johnson.

During Kays staff report for the cemetery services home business, he explained that the business-related activity that would happen at the McCulloch home location would be primarily the storage of equipment that would be kept in an accessory building.

Kays said that according to the McCulloch business plan that actual “cemetery services” work would be performed off-site where the business would be either setting cemetery markers or engraving cemetery markers. Kays quoted the County Zoning Comprehensive Plain saying that any home business in an Agriculture Zoned area should not be in conflict with normal AG use which he thought McCulloch’s business plan supported.

At the conclusion of Kays Staff Report Kays asked Planning and Zoning Administrative Officer Berkner if he had been contacted by anybody with concerns or comments about the proposed home business for which Berkner said he had received none.

Kays then went over the “Conditions” of the home business saying that the business activity would have to be run by a McCulloch Family member, that business related equipment would have to be stored inside, that visible cemetery services work would be performed off-site, and that signage would have to be limited to no more than 16 square feet.

Leddy opened the public hearing for comments inviting McCulloch to make any additional remarks different from the staff report where McCulloch said he had none but would be available for questions if any needed answering.

Leddy then asked three separate times for public comments “in favor” or “against” granting the CUP for a home cemetery services business where no one responded.

With no meaningful discussion Leddy asked for any amendments to the original motion where none was offered. Leddy then asked Kays to read the Findings of Fact.

- A. On March 08, 2024, Mark McCulloch applied for a conditional use permit to operate a Home Extended Business (Cemetery Services) on the property legally described as Tract of Land Beginning at the SW Corner S ½ NW ¼ thence E

1324.95 N of Section 5, Township 120, Range 48 of the 5th P.M., Grant County, South Dakota

- B. Home Extended Business) is a conditional use per Section 1101.03.18.
- C. Grant County published a notice of Public Hearing in the Grant County Review on April 3, 2024.
- D. The Grant County Board of Adjustment held a public hearing on April 15, 2024.
- E. The Board determined that application, staff report and testimony at the meeting allowed the Board to adequately review and determine that satisfactory arrangements have been made that meet the Standard Findings of Fact for Conditional Uses and Variances adopted by the Board of Adjustment on February 12, 2018.
- F. The Board determined that there were no other issues brought up with the application or during testimony which relate to the Zoning Ordinance or Land Use Plan that the Board felt needed to be addressed.
- G. The Board determined that the conditions recommended by staff report should be incorporated into the conditional use permit.
- H. The Board determined that the issuance of this conditional use permit will not adversely affect the public interest if operated according to the County's ordinance and the conditions prescribed.
- I. The Board determined that it is empowered to issue this permit.
- J. The Board determined that the applicant, along with information available to the Board through the zoning office, has provided sufficient information regarding this request. The Board has determined the information to be sufficient to warrant issuing the permit. Staff and the Board suggested the following conditions to ensure the requirements of the zoning ordinance are met.
  - 1. The home extended business may not be changed to another home extended business except by the issuance of a separate conditional use permit.
  - 2. Individuals engaged in such an occupation shall consist of family members.

3. Off-premise signage associated with the home extended business will be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as “Blue Signs”.
  4. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premise sign. On-premise signage may be permitted by the Zoning Officer subject to the following:
    - a. A maximum of 16 square feet of sign area will be allowed.
  5. Outdoor storage of materials, vehicles, or inventory shall be prohibited.
  6. No traffic shall be generated by such home extended business in greater volumes than would normally be expected in an agricultural neighborhood, and any need of parking generated by the conduct of such home extended business shall be provided off the street and other than in a required front yard.
  7. No equipment or process shall be used in such home extended business which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in line voltage off the premises.
  8. There will be no storage of junk on site.
  9. The Conditional Use permit for the home extended business is not transferable.
  10. This permit shall be valid as long as the operation of the Cemetery Services is in accordance with terms of the letter of assurance.
  11. Any failure to comply with the terms of this agreement will be deemed a violation of the terms of this Conditional Use permit. The Grant County Zoning Officer will determine violations. If violations are substantiated the Board of Adjustment may hold a hearing to consider revocation of this Conditional Use Permit.
- K. On April 15, 2024, the Conditional Use Permit request was approved by a vote of 7 yes and 0 no. (Ref: SDCL 11-2-59).

9) Leddy calls for a motion to be made to consider a Conditional Use Permit, CUP03112024, Pursuant to Section 1101.03.17: Conditional Uses in the “A” Agricultural Zoning District #17 - Seasonal Retail Stand including fireworks stand - the applicant, Evan Erickson, is requesting a conditional use permit to operate a seasonal fireworks stand.

Motion made by Pillatzki with a second made by Berg.

Kays began his staff report for CUP03112024 saying that Ericksons wanted to be permitted to run a seasonal fireworks stand in the former Revillo School location where they had been granted "in writing" permission to run that style of business in the lobby area of the former school.

Kays went on to say that if the CUP was to be granted that it would also be contingent on that Erickson had all of the needed licenses and permits from the State of South Dakota which was confirmed by Berkner that all of that documentation had already been presented by Ericksons.

Kays said that as with all recent retail fireworks permits, if granted for the current year, that renewal of the permit the following year would be dependent on no problems being reported either by local law enforcement or the owner of the building. Kays said it would be up to the Planning and Zoning Administrator to enforce this condition where if there were any reported problems of concerns that Erickson would have to re-apply for their seasonal retail fireworks permit.

Kays said that only on-site sales would be allowed as well as it was understood that Erickson said that they would use a sperate and secure trailer/shipping container to store a majority of their Fireworks inventory.

Kays suggested that due to the nature that the business location was also available for use by other public and private activities that the "Finding of Fact" should be amended that the storage container should be required to be removed from the former Revillo School location within one week of the last days of seasonal fireworks sales.

Kays said that stand alone signage would be limited in total to 80 square feet and that all related frontage road and side-lot setbacks would have to be followed.

At the conclusion of Kays Staff Report he asked Planning and Berkner if he had been contacted by anybody with concerns or comments about the request for a CUP to run a seasonal fireworks stand at the former school location where Berkner said he had received none.

Berkner then asked to be recognized where he said that Erickson was unable to attend the meeting due to an out-of-town appointment that had run late but that Darwin Erickson was available by phone if he was needed to answer any questions.

Leddy then opened the public hearing portion of the Erickson CUP request asking three times each if there was anyone wishing to speak in favor or against granting the seasonal retail fireworks permit to which no one responded.

After closing the public hearing Leddy invited Board of Adjustment discussion where there was some discussion concerning the multiple public uses that the former school was being used, which is under the ownership of a local non-profit organization made up of past school alumni, for where the alternative was that the building be demolished.

With no more meaningful discussion Kays was asked to read the Finding of Facts listed below.

- A. On March 11, 2024, Evan and Darwin Erickson applied for a conditional use permit to operate a seasonal fireworks stand on the property legally described as: S1240' of the N 1475' of the W46'' of the W ½ SE ¼ Section 18, Township 118, Range 48 of the 5th P.M., Grant County, South Dakota
- B. Seasonal Retail Stand (Fireworks Sales) is a conditional use per Section 1101.03.17.
- C. Grant County published a notice of Public Hearing in the Grant County Review on April 3, 2024.
- D. The Grant County Board of Adjustment held a public hearing on April 15, 2024.
- E. The Board determined that application, staff report and testimony at the meeting allowed the Board to adequately review and determine that satisfactory arrangements have been made that meet the Standard Findings of Fact for Conditional Uses and Variances adopted by the Board of Adjustment on February 12, 2018.
- F. The Board determined that there were no other issues brought up with the application or during testimony which relate to the Zoning Ordinance or Land Use Plan that the Board felt needed to be addressed.
- G. The Board determined that the conditions recommended by staff report should be incorporated into the conditional use permit.

- H. The Board determined that the issuance of this conditional use permit will not adversely affect the public interest if operated according to the County's ordinance and the conditions prescribed.
- I. The Board determined that it is empowered to issue this permit.
- J. The Board determined that the applicant, along with information available to the Board through the zoning office, has provided sufficient information regarding this request. The Board has determined the information to be sufficient to warrant issuing the permit. Staff and the Board suggested the following conditions to ensure the requirements of the zoning ordinance are met.
1. The applicant is required to meet all State laws regarding location and operation of fireworks stand (separation from other structures, hours of operation, etc).
  2. The applicant may be required to present the Zoning Officer with a copy of the State Permit from the State Fire Marshall's Office prior to opening for sales for any specific season.
  3. Sales shall occur no closer than 65' to the public right-of-way.
  4. No parking shall be allowed in the public right-of-way.
  5. Separate conditional use permit(s) are required for any off-premise advertising associated with the business.
  6. Total on-premise signage, during periods of fireworks sales, shall not exceed eighty (80) square feet.
  7. The conditional Use is valid only for the dates of June 27 through July 5, 2024.
  8. All signs and temporary storage unit structures are to be removed on or before July 12, 2024.
  9. This conditional use permit expires on July 12, 2024. Following subsequent application(s), the Zoning Officer may authorize future permits on this property after a review of the application and any complaints/violations regarding sales from past seasons. Subsequent

Zoning Officer decisions may be appealed to the Board of Adjustment in accordance with the Zoning Ordinance.

10. Any failure to comply with the terms of this agreement will be deemed a violation of the terms of this Conditional Use permit. The Grant County Zoning Officer will determine violations. If violations are substantiated the Board of Adjustment may hold a hearing to consider revocation of this Conditional Use Permit.
11. This Conditional Use permit is not transferable.

K. On April 15, 2024, the Conditional Use Permit request was approved by a vote of 7 “for” and 0 “against.”

10) Leddy calls for a motion to be made to consider a Conditional Use Permit for Otter Tail Power Company, CUP03122024, Pursuant to Section 1102.03.07: Conditional Uses in the “CI” Commercial/Industrial Zoning District #7 – Public and Private Utilities - the applicant, Ottertail Power, is requesting a conditional use permit to construct a warehouse /shop for transmission equipment.

Motion made by Weber with a second made by Mach.

Kays was then asked to give his staff report on the proposed commercial use 62' x 120' warehouse building where it was discussed going over the site plan that its location was now within the fringe flood area of the newly adopted floodplain map, as of 3/27/2024, where Berkner said he had been working with South Dakota Emergency Management Coordinator Marc Macy and FEMA if an elevation certificate would be needed before construction could begin where application for the Building Permit and Conditional Use Permit was prior to the new floodplain maps becoming effective.

At the conclusion of Kays Staff Report he asked Berkner if he had been contacted by anybody with concerns or comments about the request for a CUP to run a seasonal fireworks stand at the former school location where Berkner said he had received none.

Kays then asked Ottertail’s Jenna Moak if she had anything to add to the staff report where she said she would be available for questions if needed.

Leddy then asked three separate times if anybody present would like to speak in “support of” or “against” the utility warehouse project seeking a CUP where no one asked to be recognized.



Leddy then invited discussion amongst the board.

Items of discussion included whether the new floodplain maps would require captive berms or barriers to catch any fuel or transformer oil spills where Kays said that was covered under State and Federal codes where the building site would be required to follow those types of laws and statutes.

Other items discussed were whether a road maintenance agreement would be necessary for use of the private frontage road that provided access to the site where Berkner and Moak said a private party “road use agreement” was already in place.

During board discussion it was also discussed that due to the close proximity of the warehouse location to the city limits of the City of Milbank that if city water, sanitary sewer and storm sewer utilities become available to the site sometime in the future that a “waiver of right to protest” could be conditioned to the CUP where the site would have to accept being connected to those utilities if it was offered. Kays said he would add that condition to the Finding of Facts.

With no more meaningful discussion the following Findings of Facts was read by Kays.

- A. On March 12, 2024, Ottertail Power Company applied for a conditional use permit to operate a Public Utility Warehouse/Shop on the property legally described as: Lot 5A Berkners Addition NW ¼ Section 12, Township 120, Range 49 of the 5th p.m. Grant County, South Dakota.
- B. Public Utility is a conditional use per Section 1102.03.07.
- C. Grant County published a notice of Public Hearing in the Grant County Review on April 3, 2024.
- D. The Grant County Board of Adjustment held a public hearing on April 15, 2024.
- E. The Board determined that application, staff report and testimony at the meeting allowed the Board to adequately review and determine that satisfactory arrangements have been made that meet the Standard Findings of Fact for Conditional Uses and Variances adopted by the Board of Adjustment on February 12, 2018.

F. The Board determined that there were no other issues brought up with the application or during testimony which relate to the Zoning Ordinance or Land Use Plan that the Board felt needed to be addressed.

G. The Board determined that the conditions recommended by staff report should be incorporated into the conditional use permit.

H. The Board determined that the issuance of this conditional use permit will not adversely affect the public interest if operated according to County's ordinance and the conditions prescribed.

I. The Board determined that it is empowered to issue this permit.

J. The Board determined that the applicant, along with information available to the Board through the zoning office, has provided sufficient information regarding this request. The Board has determined the information to be sufficient to warrant issuing the permit. Staff and the Board suggested the following conditions to ensure the requirements of the zoning ordinance are met.

1. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution.
2. Junk shall not be stored on-site
3. Use or storage of any petroleum-based products shall comply with Grant County Aquifer Protection regulations and all other applicable regulatory agencies.
4. All structures shall be constructed in accordance with flood plain regulations
5. Maximum on-site signate shall be limited to eighty (80) square feet and shall observe all yard and height requirements.
6. All structures are to be constructed in accordance with the 2021 International Building Code (SDCL 11-10-6).
7. The applicant agrees to sign a waiver of right to protest future annexation into the City of Milbank.
8. Any failure to comply with the terms of this agreement will be deemed a violation of the terms of this Conditional Use permit. The Grant County Zoning Officer will determine violations. If violations are substantiated the Board of Adjustment may hold a hearing to consider revocation of this Conditional Use Permit.
9. This Conditional Use permit is issued solely for a public utility warehouse/shop and associated accessory uses and is transferable.

Leddy called for a roll call vote which passed 7-0.

11) At 5:01 Leddy calls for a vote to adjourn. That motion was made by Johnson and seconded by Pillatzki and passes 7-0.

DRAFT