

RESOLUTION #2016-014

**RESOLUTION OF INTERPRETATION
OF THE BOARD OF ADJUSTMENT
THE BOROUGH OF HAWTHORNE**

In the matter of:

**Bergen Mobile Concrete, LLC (“Applicant”)
63-73 Goffle Road
Block 9, Lot 11(the “Property” or the “Premises”)
Hawthorne, New Jersey
I-1 Zoning District (the “Zone”)**

WHEREAS, the Board in this instance is asked to use its authority pursuant to N.J.S.A. 40:55D-70(b) to interpret whether Applicant’s use is a permitted use in the Zone; and

WHEREAS, the Board conducted a public hearing on November 21, 2016; and

WHEREAS, proper application was made, on requisite notice and Applicant was represented by Darryl Siss, Esq.; and

WHEREAS, both the Borough Zoning Officer and Board Engineer have already concluded that Applicant’s use is permitted in the Zone; and

WHEREAS, counsel, John Veteri, Esq. for a neighboring property owner and Borough Attorney Michael Pasquale, Esq. both voiced legal arguments arguing Applicants’ use is not permitted; and

WHEREAS, after review of all credible evidence presented, the Board makes the following findings of fact and conclusions as follows:

1. The Property is located in the Borough’s I-1 District which allows, among other items: “establishments which are engaged in research and development, manufacturing, processing, fabricating, indoor warehousing and storage, provided that no land or building shall

be used or occupied for a use which will in any manner create any dangerous, injurious, noxious or otherwise objectionable fire, explosive, radioactive or other hazard; noise or vibration; smoke, dust, odor or other form of air pollution; heat, cold, dampness; movement of air; electrical or other disturbance; glare; liquid or solid wastes, any of which shall violate the performance standards hereinafter set forth in §540-126.”

2. Also, the code provides a list of specifically enumerated prohibitions in the I-1 Zone as follows: “Lime, cement or plaster manufacture.”

3. Applicant demonstrated that its operation consists of the on-site marshaling and assembling of materials, necessary to make concrete which are then offloaded on to Applicant’s trucks and delivered for final stage processing at Applicant’s customer job sites. The products: cement, sand and gravel are delivered to the Property and stored in bulk. Water, another needed component, is available on site. Company trucks are filled up with the concrete ingredients in separate chambers, then brought to the end user where all components are mixed on site and the final product is put to use. The ingredients are kept indoors or in three sided, roofed silo structures. There are three trucks which operate on a daily basis.

4. Exhibit A-1 is a series of materials, 35 pages of which are incorporated herein by reference.

5. Opposing counsel essentially makes two arguments:

(a) The use as proposed does not involve “. . . manufacturing”, “processing” or “fabricating”;

(b) The plain meaning of the word “cement” should be construed to mean “concrete”.

6. The Board rejects the first argument and the Board specifically finds and concludes that the use involves the “. . . manufacturing, processing . . . [and] fabricating” of the constituent components of concrete which are combined on site and delivered to an end user. This is a fundamental, primary step in the overall manufacture process. Furthermore, there is a secondary argument that Applicant’s storage of materials, in three sided roofed structures is a prohibited use since the principal use of outdoor storage is prohibited. The Board also rejects that argument and concludes: (a) the storage is accessory to the primary manufacturing use; and (b) the storage of the referenced materials is indoors.

7. The Board also rejects the argument that the plain meaning of “cement” is “concrete.” The Applicant has easily demonstrated that cement is a single component of concrete. Furthermore, it is clear when reading the list of specific prohibitions that the types of uses forbidden are not the type of use under scrutiny herein. They include such offensive uses as ammonia and chlorine manufacture; insecticide/poison manufacture; glue manufacture. Also forbidden is “lime, cement or plaster of paris manufacture.”

As explained at the hearing and as shown in the Exhibit A-1 materials, cement manufacture involves a chemical process resulting in its production. The nature and degree of the cement manufacture process is completely different than the Applicant’s use. In a nutshell the Applicant’s use is not cement manufacture, but as set forth above, is assembly and distribution of concrete materials which includes finished cement as one of its ingredients.

8. Furthermore, no evidence has been presented which indicates the proposed use results in the creation of “. . . any dangerous, injurious, . . . noise or vibration; smoke or dust, odor or other form of air pollution. . . which shall violate the performance standards hereinafter set forth in §540-126.”

9. For all of the reasons set forth above, the Board concludes that Applicant's use is permitted in the I-1 Industrial Zone.

The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on December 19, 2016.


Raymond Hallock, Chairman


Joan Herve, Board Secretary

OFFERED BY: Gallagher
SECONDED BY: De Ritter
VOTE: Ayes: 6
Nays: 0