

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

IN RE: VIRGINIA CONCRETE COMPANY
Appeal Building Permit No. B1111984

Statement of Grounds for Appeal

I. Introduction

Virginia Concrete Company, Inc. ("Virginia Concrete") appeals the decision of the Inspector of Buildings ("Inspector") to issue Building Permit No. B1111984 ("Permit")¹ to the Government of the District of Columbia ("Government") for the property located at 3 DC Village Lane, SW, Ward B, Lot 0001, Washington, D.C. 20032 ("Property"). In clear violation of Section 802.17 of Chapter 11 of the D.C. Code of Municipal Regulations ("Zoning Code"), the Permit allows the erection of a "PORTABLE CONCRETE MANUFACTURING FACILITY" without a special exception. See 11 D.C. Code Mun. Regs. § 802.17.

II. Jurisdiction and Standard of Review

The Board of Zoning Adjustment ("BZA" or "Board") is charged with interpreting the D.C. Zoning Code and regulations. *District of Columbia v. L.G. Indus.*, 758 A.2d 950, 954 (D.C. 2000). In its role as an appellate body, the BZA enjoys broad jurisdiction, embracing appeals

by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit . . .

D.C. Code § 6-641.07(f); see also *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 853 (D.C. Cir. 1971). Although the decisions of government agencies and officials, such as the Inspector, are generally afforded great weight, they should not be upheld when plainly erroneous or inconsistent with the express language of D.C. regulations. See *Levy v. D.C. Bd. of Zoning Adjustment*, 570 A.2d 739, 748 (D.C. 1990). Additionally, when an official's decision hinges on a question of law, it is entitled to less deference by a reviewing body. *Economides v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 427, 433 (D.C. 2008) (quoting *Saah v. District of Columbia Bd. of Zoning Adjustment*, 433 A.2d 1114, 1116 (D.C. 1981)).

¹ The Permit is attached hereto as Exhibit A.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18349

EXHIBIT NO. 3

Board of Zoning Adjustment
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III. Argument and Authorities

1. *Virginia Concrete is an Aggrieved Party.*

In order to satisfy the “person aggrieved” requirement, Virginia Concrete must have suffered some damage greater than what is experienced by the general public. *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 922-923 (D.C. 1980). As a leading concrete supplier in the region, Virginia Concrete is uniquely harmed by the Government’s ability to circumvent the special exception process and obtain a permit for a concrete manufacturing facility as a matter of right. Virginia Concrete owns concrete batch mixing plants located at 2 S Street, SW, Washington, D.C. 20003 and 2155 Queens Chapel Rd, NE, Washington, D.C. 20018. The Government’s ability to erect and run a similar concrete manufacturing facility outside of the regular permit and rezoning process constitutes unfair and extra-legal competition in violation of D.C. law and zoning ordinances. Because Virginia Concrete is one of the few, if not the only, businesses that would compete with the Government’s new concrete facility, it will suffer a greater harm than the general public if this Board allows construction to proceed outside of the mandated process and without a public hearing or special exception.

2. *The Inspector’s Decision to Issue the Permit without a Special Exception was Plainly Erroneous.*

Under Zoning Code § 802.17, a special exception is required in a Commercial-Light Manufacturing (“C-M”) district to construct or operate a “facility that manufacturers, processes, mixes, stores or distributes concrete or asphalt or the materials that are used to make concrete or asphalt” 11 D.C. Code Mun. Regs. § 802.17. In order to obtain a special exception, the property owner must gain BZA approval following a public hearing. 11 D.C. Code Mun. Regs. § 802.1. In this case, the Property is located entirely within a C-M district.² Nevertheless, the Inspector issued a permit without a special exception for a “PORTABLE CONCRETE MANUFACTURING FACILITY” – a structure that clearly falls under the terms of Zoning Code § 802.17.

Notably, the Permit does not allow the erection of an asphalt production plant. Although the Zoning Code includes a special carve-out for “[a]n asphalt plant located in D.C. Village” as a use as a matter of right, by its plain terms, this provision only applies to an “asphalt plant” and not a concrete manufacturing facility. *See* 11 D.C. Code Mun. Regs. § 8.01.7(b). In fact, the asphalt facility contemplated in the carve-out is currently under construction in D.C. Village.

In both general usage³ and the construction and engineering industries,⁴ asphalt and concrete are not identical products. Therefore, based on the express terms of the

² Relevant extracts of the Property’s location on the D.C. Zoning Map are attached hereto as Exhibit B.

³ Webster’s defines asphalt as a “bituminous substance that is found in natural beds and is also obtained as a residue in petroleum or coal-tar refining and consists chiefly of hydrocarbons.” Webster’s New Collegiate Dictionary 52 (7th ed.). Concrete is “a hard strong building material made by mixing a

Zoning Code §§ 8.01.7(b) and 802.17, a concrete manufacturing facility always requires a special exception in a C-M district.

Under long-standing D.C. rules of construction, statutory terms “should be construed according to their ordinary sense and with the meaning commonly attributed to them.” *District of Columbia v. Place*, 892 A.2d 1108, 1111 (D.C. 2006) (citations and internal quotations omitted). Appellate bodies should give effect to every word of an ordinance and endeavor to avoid any interpretation that renders a word inoperative. *1137 19th St. Assocs., Ltd. Pshp. v. District of Columbia*, 769 A.2d 155, 161 (D.C. 2001) (same). Thus, this Board must assume that the Zoning Commission did not conflate the terms “asphalt” and “concrete” when drafting the ordinances, and that it intended to create the special carve-out for “asphalt plants” in D.C. Village while requiring concrete production facilities to obtain a special exception. To construe otherwise would render the distinction between the terms meaningless and the use of both words in § 802.17 superfluous – an interpretation that this Board must endeavor to avoid. *See BSA 77 P St. LLC v. Hawkins*, 983 A.2d 988, 1000 n. 4 (D.C. 2009); *In re D.T.*, 977 A.2d 346, 354 n. 5 (D.C. 2009).

Based on the plain language of the Zoning Ordinance and clear principles of statutory construction, the Government was required to obtain a special exception for its concrete manufacturing facility. *See* 11 D.C. Code Mun. Regs. § 802.17. Because the Inspector did not require a special exception before issuing the Permit, the Inspector’s decision was “plainly erroneous [and] inconsistent with the regulations.” *Levy*, 570 A.2d at 748. Consequently, the Permit must be revoked.

IV. Conclusion

By its express terms, the unique zoning provision allowing an asphalt plant in D.C. Village does not apply to concrete manufacturing facilities. Therefore, the Inspector

cementing material and a mineral aggregate with sufficient water to cause the cement to set and bind the entire mass.” *Id.* at 172.

⁴ NCRS Construction Dictionary defines asphalt as a “A mineral insoluble in water and used extensively in building for waterproofing roof coverings.” *See* <http://www.engineering-dictionary.org/asphalt>. Concrete is defined as

A composite material which consists essentially of a binding medium, within which are embedded particles or fragments of a relative inert filler in portland cement concrete, the binder is a mixture of portland cement and water; the filler may be any of a wide variety of natural or artificial, fine and coarse aggregates; and in some instances, an admixture.

See <http://www.engineering-dictionary.org/concrete>.

erred in issuing the Permit without a special exception, and this Board must revoke the improper Permit.

Respectfully submitted,

VIRGINIA CONCRETE COMPANY, INC

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By:



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Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel (202) 442 - 4589 Fax (202) 442 - 4862

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557

B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK
UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 11/28/2011

Expiration Date: 11/28/2012

PERMIT NO. B1111984

Address of Project: 3 DC VILLAGE LN SW	Zone:	Ward: 8	Square: 6264	Suffix:	Lot: 0001
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Description Of Work: ERECTION OF PORTABLE CONCRETE MANUFACTURING FACILITY, AND OFFICE TRAILER.

Permission is Hereby Granted To: Govt Of District Of Columbia	Owner Address: 2000 H ST NW #500 DC	PERMIT FEE: \$3,056.70
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Permit Type: Alteration and Repair	Existing Use: Other (Specify)	Proposed Use: Other (Specify)	Plans
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Agent Name: I J Bradshaw	Agent Address: SAME DC	Existing Dwell Units: 0	Proposed Dwell Units: 0	No. of Stories: 0	Floor(s) Involved:
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Conditional Restrictions:

- 1) No signs can be visible from the Anacostia Freeway
 - 2) Truck access to the facility will be along DC Village Lane and Shepherd's Parkway. All parking, standing, and queuing will be limited to interior of lease area. There will be no queuing of vehicles along the public way
 - 3) No dumping, picking up of concrete or related materials will occur in the public right of way
 - 4) The lease area will be enclosed by a 10' high site tight fence
 - 5) All mandated landscaping shall be maintained and kept in healthy growing condition. All dead trees shall be replaced.
 - 6) Cinders, dust, and fly ash levels will be controlled by the use of a fabric filter (baghouse), sweeping and wetting down of surfaces
- This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year.

All Construction Done According To The Current Building Codes And Zoning Regulations;

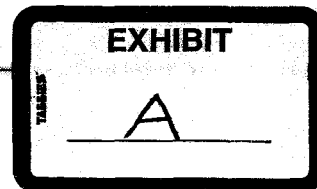
As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.

Lead Paint Abatement

Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2004' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to <http://ddoe.dc.gov>, Lead and Healthy Housing.

Director: Nicholas A. Majer	Permit Clerk: Kim Queen
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TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639
FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557
TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.





District of Columbia Office of Zoning

EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP

December 1, 2011



Terms of Use

Zoning Layers

- | | | |
|--------------------|--------------|-----------------|
| Zone Districts | CEA | Pending PUDs |
| Historic Districts | Campus Plans | PUDs |
| Overlays Districts | TDRs | Air Rights Zone |

To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.

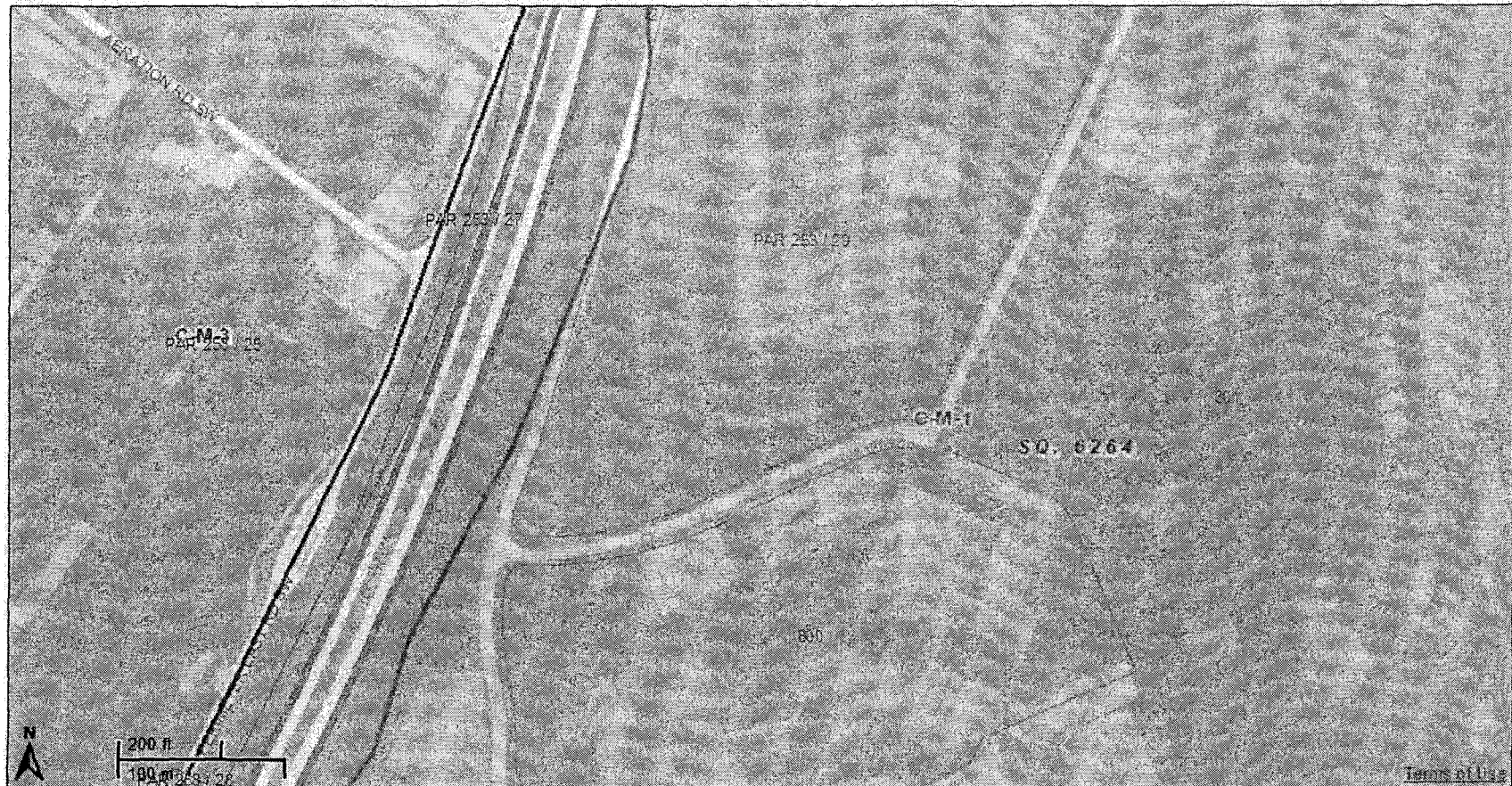
TAB 100

B

EXHIBIT



District of Columbia Office of Zoning
EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP
December 1, 2011



**Zoning
Layers**

Zone Districts	CEA	Pending PUDs
Historic Districts	Campus Plans	PUDs
Overlays Districts	TDRs	Air Rights Zone

To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.