



CITY COMMISSION STAFF REPORT

Meeting

File No.

Application Type

Property Owner

Authorized Agent

Neil M. Schiller, Esq.

Request

Site Data & Information

PCN: 12-43-46-18-53-000-0020

Property Size: 1.85 acres

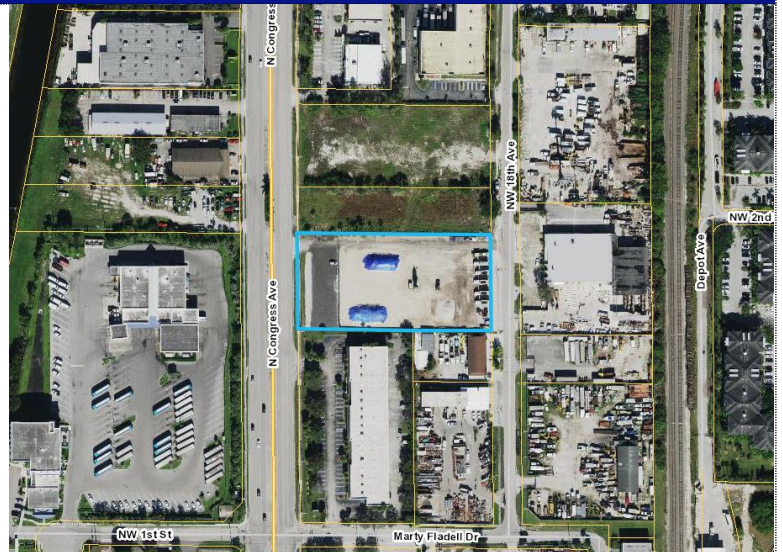
Land Use: Commerce (CMR)

Zoning: Mixed Industrial and Commercial (MIC)

Adjacent Zoning:

- **North, South, & East:** MIC
- **West:** Community Facilities (CF)

Existing Use: Vacant (Existing site improvements completed without permit or development approvals)



Proposed Land Use: Gunitite Yard (Manufacturing and Wholesale of products using ceramic and plaster material)

Background Information

The subject property is zoned Mixed Industrial and Commercial (MIC) with an underlying Land Use Map (LUM) designation of Commerce (CMR). Previously a vacant lot, the subject property has undergone extensive site modification without permit or necessary development approvals. Modifications have included site work and installation of unpermitted structures to facilitate operation of a use that the Applicant refers to as a “gunite yard”, which has included leveling and grading the site without civil engineering review, installation of a cement storage silo without Building Division or Zoning review, and persistent utilization of the site for storage purposes, including storage of materials and trucks used in the daily operation of the gunite yard. The property has been cited under Code Enforcement action, and this specific request is made to alleviate some of the outstanding code compliance issues with regard to the use and its noncompliance with requirements of the MIC zoning district.

Through previous correspondence with the Applicant and in reviewing material that has been presented to Staff in relation to the proposed use, Staff has determined that the operation of a gunite yard as described by the Applicant is considered *Concrete Products Manufacturing*. This use is permitted in the Industrial (I) zoning district, subject to Conditional Use approval. Industrial is the district intended to accommodate the most intense industrial uses permissible within the City – such as Concrete Products Manufacturing. However, Concrete Products Manufacturing is not a permitted or conditional use in the MIC district, which is intended to accommodate industrial uses of a lighter intensity with supporting business and office functions that are compatible and harmonious in scale and intensity with adjacent commercial uses.



Project Description

An application for a Determination of Similarity of Use has been submitted by the Applicant specifically requesting that the operation of a gunite yard, as described, be considered similar to *Manufacturing and Wholesale of products using ceramic and plaster material*, which is a permitted use in the MIC zoning district, rather than being classified as *Concrete Products Manufacturing* (a prohibited use in the MIC zoning district), as initially determined by Staff upon review of information provided by the Applicant. A narrative of the request, which describes the use and provides the Applicant's justification of the request, is included with this submittal. Staff analysis and considerations are provided in the following section.

It is important to note that the analysis of this request is limited to consideration of the use. Any existing or potential conditions stemming from site modifications and operational procedures that do not conform with the requirements of the LDR are not a factor in this specific request. Any nonconformities must be addressed through the applicable review mechanism. For example, the Applicant requires outdoor storage as a major component of the use. However, outdoor storage is only permissible as an accessory use in the MIC zoning district. This request should not be construed as a request to allow outdoor storage as a primary permitted use, and if this request for similarity of use determination is granted, it should not be assumed that outdoor storage as a primary permitted use is also granted, even if the operation of a gunite yard requires outdoor storage in the amount that exceeds the level of an incidental and subordinate accessory use.



Review and Analysis: Similarity of Use

LDR Section 2.4.6(D)(5), Findings

Prior to approving a requested determination of similarity of use, the Planning and Zoning Board must find that the requested use is, indeed, similar to other uses allowed in the zoning district and is in keeping with the stated purpose of the district.

Pursuant to LDR Section 4.4.19(A), MIC District: Purpose and Intent, *the Mixed Industrial and Commercial (MIC) District is created to provide for a mix of industrial, commercial, and office use in a single zoning district. The uses allowed are intended to enhance employment opportunities in the industrial, manufacturing and trade sectors, with supporting business and professional office functions. Retail uses are appropriate on a limited basis, and only as a secondary use within the district. Residential uses are only allowed within the I-95/CSX Railroad Corridor Overlay District, subject to Article 4.7. The MIC District is applied to properties with a Commerce or Industrial designation on the Land Use Map.*

Given the range of uses allowed within the MIC zoning district, it is important to note that the subject area of MIC zoning is supported by the underlying Commerce land use designation, as opposed to Industrial.

Adjacent Zoning, Land Use, and Use					
	Zoning Designation	Land Use	Use	Zoning Map	Land Use Map
North	MIC	CMR	Vacant		
South	MIC	CMR	Retail/Office		
East	MIC	CMR	Light Industrial / Contractor		
West	Community Facility (CF)	CMR	Office / Vehicle Storage		

The Applicant justification statement states that “the business sells the raw materials for gunite and loads the trucks for their customers. There is no manufacturing, processing, mixing, or alteration of the raw materials.” However, the applicant requested a Determination of Similarity of Use to liken the gunite yard to the Manufacturing and Wholesale of products using ceramic and plaster material. The analysis is based on this request and considers whether the request “is in keeping with the stated purpose of the district.”

Manufacturing:

MIC zoning allows the *manufacturing, fabrication and wholesale of items and other uses as described in Section 4.4.20 (B) (1), (2) and (3)*. LDR Section 4.4.20 provides the regulations for those properties zoned Industrial (I). The MIC zoning district allows limited uses from the Industrial zoning district that are less impacting and require less mitigation, given the mix of uses allowed within the MIC and the need to maintain compatibility with adjacent lower intensity commercial uses. LDR Section 4.4.20(B)(1), Industrial District: Principal Uses and Structures Permitted, describes “manufacturing” as *the processing of raw materials to create final products for distribution*. It is important to note that this description specifies that manufacturing entails the conversion of raw materials into a final product. If a use only involves the distribution of raw materials, but not the conversion of raw materials into a final product for distribution, the use does not meet the definition of manufacturing. The uses would instead be classified as the storage and distribution of raw materials. The defining characteristic of manufacturing, per the LDR, is that a final product is the result of processing of raw materials.

The Industrial Zoning District (LDR Section 4.4.20) lists specific materials that may be used in manufacturing. One of the permissible materials is ceramics and plaster.

Ceramics: The US Environmental Protection Agency defines “ceramics” as “*a class of inorganic, nonmetallic solids that are subjected to high temperature in manufacture and/or use. The most common ceramics are composed of oxides, carbides, and nitrides. Silicides, borides, phosphides, tellurides, and selenides also are used to produce ceramics. Ceramic processing generally involves high temperatures, and the resulting materials are heat resistant or refractory. Traditional ceramics refers to ceramic products that are produced from unrefined clay and combinations of refined clay and powdered or granulated non-plastic minerals. Often, traditional ceramics is used to refer to ceramics in which the clay content exceeds 20 percent. The general classifications of traditional ceramics are described below:*

Pottery: *sometimes used as a generic term for ceramics that contain clay and are not used for structural, technical, or refractory purposes.*

Whiteware: *refers to ceramic ware that is white, ivory, or light gray in color after firing. Whiteware is further classified as earthenware, stoneware, chinaware, porcelain, and technical ceramics.*

Earthenware: *defined as glazed or unglazed nonvitreous (porous) clay-based ceramic ware. Applications for earthenware include artware, kitchenware, ovenware, tableware, and tile.*

Stoneware: *vitreous or semivitreous ceramic ware of fine texture, made primarily from nonrefractory fire clay or some combination of clays, fluxes, and silica that, when fired, has properties similar to stoneware made from fire clay. Applications for stoneware include artware, chemical ware, cookware, drainpipe, kitchenware, tableware, and tile.*

Chinaware: *vitreous ceramic ware of zero or low absorption after firing that are used for nontechnical applications. Applications for chinaware include artware, ovenware, sanitaryware, and tableware.*

Porcelain: *defined as glazed or unglazed vitreous ceramic ware used primarily for technical purposes. Applications for porcelain include artware, ball mill balls, ball mill liners, chemical ware, insulators, and tableware.*

Technical ceramics: *include vitreous ceramic whiteware used for such products as electrical insulation, or for chemical, mechanical, structural, or thermal applications.”*

Plaster is defined by USG Corporation, a leading manufacturer of gypsum product, as “*a cementitious material or combination of cementitious materials and aggregate that, when mixed with water, forms a plastic mass. When applied to a surface, plaster adheres to it and subsequently sets or hardens, preserving in a rigid state the form or texture imposed during the period of plasticity.*” Plaster is customarily used in the production of products that are molded and set in place, including surface finishes such as stucco or grout, amongst other products with applications in a variety of industry.

The manufacturing of certain other materials identified in LDR Section 4.4.20(D), Conditional uses and structures allowed, are only permissible through the approval of a conditional use. The conditional use review process allows for evaluation on a case-by-case basis rather than as-of-right, because it is understood that the processes and operations customarily associated with the production or use of these materials is often of a certain intensity that necessitates additional scrutiny and assessment to determine the appropriateness of the use within a specific location and whether additional improvements or other considerations are required to mitigate potential impacts on the surrounding area. Concrete products manufacturing, because of the intensity of use, is one form of manufacturing that is specifically subject to conditional use approval in the Industrial district, which is intended to accommodate the most intense industrial uses permissible within the City, and only in areas within the Industrial District where the surrounding context supports the use.

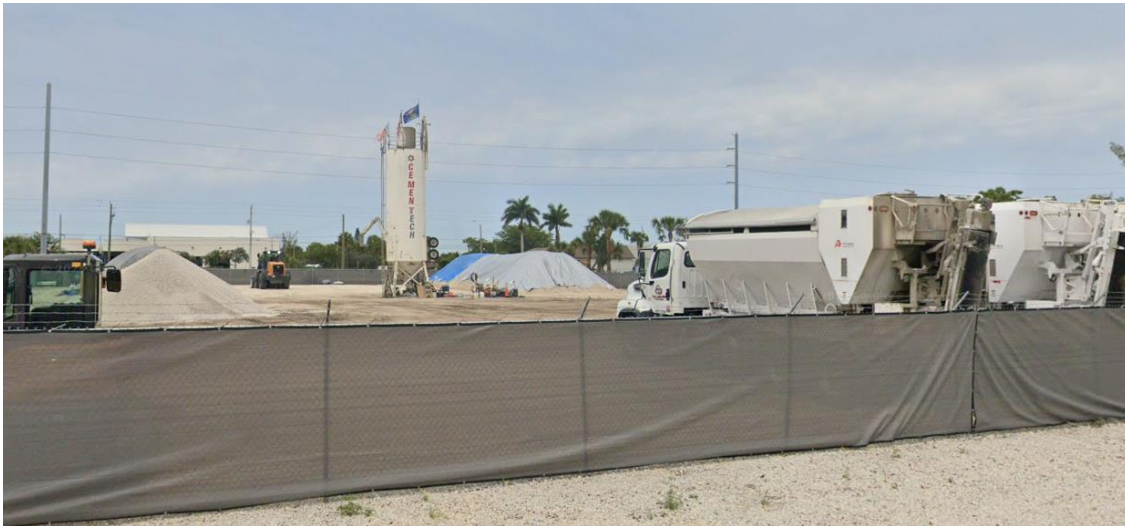
The MIC zoning district, however, does not list concrete products manufacturing as a conditional use, either by direct reference or by reference to Industrial district regulations. Therefore, it can be inferred that the intent of the LDR is to deem Concrete Products manufacturing too intense for the MIC district in all contexts.

Concrete Products Manufacturing:

The National Ready Mixed Concrete Association (NRMCA) defines concrete as a material that is “a mixture of paste and aggregates. The paste, composed of cement and water, coats the surface of the fine (sand) and coarse aggregates (rocks) and binds them together into a rock-like mass.” Concrete is a pourable and moldable material that is customarily used in many construction applications. Concrete is sometimes manufactured into fabricated products including concrete masonry units (CMU), blended dry material known as dry-mix that becomes pourable and moldable when mixed with water, or concrete pre-mixed with water known as ready-mix. CMU blocks, dry-mix concrete, and ready-mix concrete are considered final products that are manufactured through the combination of raw materials through a process that results in the creation of a different product.

Concrete products manufacturing customarily includes certain site elements such as outdoor storage of raw material, silo structures, and the frequent use of large vehicles to load, mix, and maneuver the raw materials so that they can be combined as needed. Concrete products manufacturing has the potential to impart negative side-effects onto adjacent properties by way of air pollution created through the agitation of dry materials, as well as noise and visual nuisances because of the nature of the use, and because production of these products customarily occurs outdoors. As such, facilities that deal with concrete processing and other similar materials often require permits and licensure from State agencies to confirm compliance with certain pollution mitigation measures. It should be noted that the Applicant, Calabash Gunitite, Inc. has an Air General Permit Registration issued by the Florida Department of Environmental Protection that specifically refers to the facility at 135 North Congress Avenue as a **Concrete Batching Plant**.

An image of the operations at the subject property is provided below.



Gunitite:

Gunitite is a type of building material customarily used in pool construction that is a sub-category of concrete with many similar characteristics to concrete, including how it is processed and batched. There are, however, a few key distinctions between concrete and Gunitite processing. Both traditional concrete and gunitite are comprised of a formula of dry cement and sand, with concrete containing larger aggregates and gunitite exclusively using small aggregate particles in the mix. Concrete is traditionally mixed with water prior to installation on-site whereas gunitite is typically transported in a dry state, pumped through a hose using air pressure, and mixed with water at the hose point during the act of being sprayed. This particular application method has benefits for pool construction that render the use of gunitite commonplace in this industry, as well as other applications where the structural surface is curvilinear.

Staff performed a web search of the Applicant, Calabash Gunitite Inc., in an effort to obtain clarity on their business operations. When performing a web search of the term “Calabash Gunitite”, the first site the search engine routes the user to is a website with address “nextdayconcrete.com.” This website states the following in reference to their gunitite services: “Gunitite is a popular construction method

used for building strong and durable structures, such as swimming pools, retaining walls, and underground tanks. It is a dry mixture of sand, cement, and water, which is sprayed onto a prepared surface using a high-pressure hose...Our efficient processes and onsite batching capabilities enable us to deliver **gunite concrete** promptly and tailor-made to your specifications. We use volumetric concrete technology to provide less waiting time and more productivity for pool contractors.” Volumetric concrete mixers compartmentalize the individual materials that comprise concrete or gunite and batch mix the materials on site prior to application in the desired ratio or formula.

Characteristics of Ceramics and Plaster Manufacturing in the MIC District:

LDR Section 4.6.6, Commercial and Industrial uses to operate within a building, states that *all commercial and industrial uses shall conduct within a completely enclosed building rather than outside regardless of the zoning district. However, certain aspects of a use may be conducted outside, and such aspects are identified in (B) below.* Subheading (B) of the section does not allow manufacturing a product outside of a fully enclosed structure (list at right). As such, the expectation of the LDR is that any manufacturing of final products using ceramics and plaster material would occur inside a building in the MIC district, because the nature of the use does not have the potential to create nuisances that require mitigation (such as Concrete Products Manufacturing) or require outdoor manufacturing processes. Ceramics and Plaster Manufacturing is not subject to conditional use approval.

Section 4.6.6(B), Allowable outside usage

- (1) Off-street parking.
- (2) Refuse and service areas.
- (3) Storage of nursery plants.
- (4) Fruit and vegetable displays.
- (5) Signage.
- (6) Outside dining areas.
- (7) Loading and unloading of materials.
- (8) Outside storage where specifically permitted within a zoning district.
- (9) Activities associated with outside conditional uses, pursuant to (A)(2) above.
- (10) Retail displays.

Characteristics of a Gunite Yard as Described by the Applicant:

The operation of a gunite yard as described by the Applicant, and as observable during normal operations, comprises the outdoor storage of raw materials including sand in large piles, storage of cement in a cement silo, storage of construction equipment and vehicles used in the moving and distribution of the material, frequent unloading of the raw material from supply trucks, and loading of the raw material into volumetric mixers that is then batched and distributed off-site for use in construction applications – all of which occurs outside of a building. The Board should consider whether the observable operational characteristics of a gunite yard are indeed similar to the manufacturing of ceramic and plaster material (allowable in the MIC district), or if it is instead more accurately classified as concrete products manufacturing (which is prohibited in the MIC zoning district).

Wholesale:

In the Industrial (I) district and MIC district, the LDR allows *the wholesaling, storage, and distribution of any products which may be manufactured, assembled, or fabricated on the premises*. As such, the LDR is clear that only final products are permissible to be wholesaled and distributed. Raw materials that have not yet been manufactured into a final product are not intended to be wholesaled or distributed from the MIC district as a main permitted use.

Additional Considerations

As noted above, the Applicant states that “the business sells the raw materials for gunite and loads the trucks for their customers. There is no manufacturing, processing, mixing, or alteration of the raw materials.”

If this is in fact the case, then the Applicant acknowledges that the use does not constitute manufacturing given that a final product is not produced per the description of *Manufacturing* in LDR Section 4.4.20(B)(1). If a use does not entail the creation of a final product, then the use as described is not manufacturing, but is instead storage and distribution of raw materials. The Board should consider whether it is appropriate to deem the operation of a gunite yard as being similar to manufacturing, when the Applicant says the use does not entail manufacturing.

Alternatively, if the Board instead finds that the batching and distribution of raw materials for the purpose of combining into a dry-mix formula is itself the manufacturing of a final product (“dry-mix”), then the Board should consider whether a dry-mix that becomes gunite when mixed with water is most accurately described as a concrete product.

Board Action Options

- A. Move **approval** of a Determination of Similarity of Use finding that the operation of a gunite yard is similar to Manufacturing and Wholesale of products using ceramic and plaster material, as listed as an allowed use in the MIC zoning district, and is in keeping with the stated purpose of the district.

- B. Move **denial** of a Determination of Similarity of Use finding that the operation of a guniting yard is not similar to Manufacturing and Wholesale of products using ceramic and plaster material, as listed as an allowed use in the MIC zoning district, and is not in keeping with the stated purpose of the district.
- C. **Continue with direction.**