



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

Similarity of Use Determination | Scooter Sales

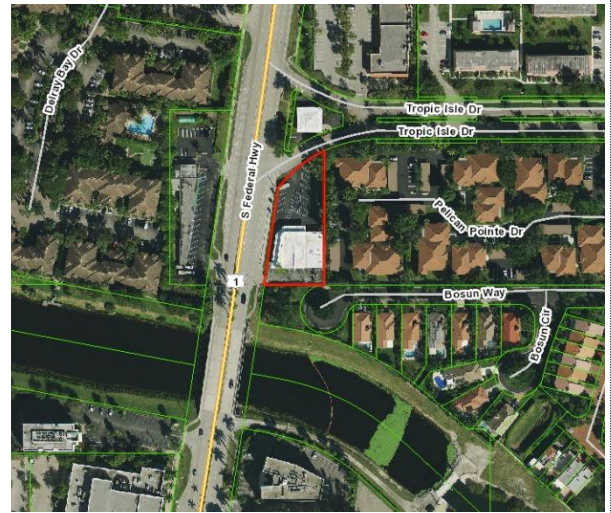
Meeting	File No.	Application Type
November 18, 2019	2020-019-SIM-PZB	Similarity of Use

Request

Determine if scooter sales can be considered a similar use to other permitted uses in the General Commercial (GC) zoning district, particularly All Terrain Vehicles and Personal Watercraft.

Background Information

The applicant has requested a determination of similarity of use for the sale of motorized scooters in the General Commercial (GC) zoning district; the applicant is specifically interested in establishing a business for the sale of motorized scooters at 3415 South Federal Highway (the "Property"). The property was previously used as a retail space for patio furniture sales. The applicant has been operating a scooter sales and service center in Boca Raton, and desires to relocate the business to Delray Beach; the new location would expand the business to include the sale of All Terrain Vehicles (ATVs).



Scooter sales are not currently identified in the Land Development Regulations (LDRs) as a use. Therefore, the applicant has requested that the Planning and Zoning Board make a determination that a scooter sales center is similar to All Terrain Vehicle and Personal Watercraft sales and services, which is allowed as a conditional use in the GC zoning district.

Review and Analysis

Requested Use

Pursuant to **LDR Section 2.4.5(N)(5), Determination of Similarity of Use**, prior to approving a determination of similarity of use request, the Planning and Zoning Board must find that the requested use is indeed similar to a use allowed in the referenced zoning districts and is in keeping with the stated purpose of the district. The specific request is for a Board determination that a scooter sales center is similar to "sales and service of All Terrain Vehicles and personal watercraft (waverunners, jet skis), with no outside display, outside storage or outside service", which is permitted as a conditional use within the GC zoning district.

Description of the Zoning District

Pursuant to LDR Section 4.4.9(A), Purpose and Intent, the GC district "provides basic regulations for small parcels which are best suited for general retail and office uses. In addition, this district has provisions in the Four Corners Overlay District which encourages mixed use development that may include retail, office, and multi-family uses. The GC designation is applied to small parcels, most of which are developed, where adherence to standard regulations is most appropriate. The GC designation is to be applied primarily along arterial and collector streets. Uses may be conducted singularly or in combination within the same structure."

While the applicant is requesting a similarity of use determination for a GC zoned parcel (3415 South Federal Highway), the determination would apply to all properties in all zoning districts that permit the sale of All Terrain Vehicles and personal watercraft, including Planned Commercial (PC), which allows all uses permitted in GC. Please refer to the City zoning map provided as Exhibit A for a visual depiction of all areas designated as GC or PC. While the applicant has characterized the GC as a “catch-all” district, the GC zoning district “provides basic regulations for small parcels which are best suited for general retail and office uses”.

Surrounding Zoning of 3415 S. Federal Hwy	
	Zoning Designation
Subject Property	General Commercial (GC)
North	Planned Commercial (PC)
South	Planned Residential Development (PRD)
East	Multiple Family Residential (MD)
West	Planned Commercial (PC)

It is also important to consider that in 2016, Ordinance No. 36-16 was approved, which added the sale, lease, or rental of Neighborhood Electric Vehicles (NEVs) to the Automotive Commercial (AC) and GC zoning districts as a permitted use; however, in the GC, the sale, lease, or rental of NEVs was limited to transactions only, with no inventory permitted on-site for any purpose. The Ordinance specifies, “whereas, the City desires to support businesses which promote sustainability by increasing opportunity for the general public to obtain and use electric vehicles...limited to the transaction only with no inventory on site for any purpose.”

Rationale for Making a Determination of Similarity of Use

Definitions for each of the similar uses, as well as scooter sales, is provided below along with discussion.

- Personal Watercraft.** The Land Development Regulations do not define Personal Watercraft (jet skis or waverunners). Because they are used exclusively on water, a comparison between a sales center for personal watercraft is less applicable to a sales center for a vehicle designed for use on public roads.
- All Terrain Vehicles.** The Code of Ordinances defines all-terrain vehicles as a motor vehicle: “*Motor vehicle.* Any self-propelled motorized device designed and used for the purpose of transporting or moving any person or property from one place to another but not operated upon rails or guideway, including but not limited to the following: all-terrain vehicles (ATVs) and powered paragliders” (Code of Ordinances, “Municipal Parks, Beaches, and other Recreational Sites,” Definitions, Section 101.5). According to Section 320.01(41), Florida Statutes, ATVs are considered Low Speed Vehicles (LSV). The Statute defines LSVs as “any four-wheeled vehicle whose top speed is greater than 20 miles per hour, but not greater than 25 miles per hour.” Furthermore, “all-terrain vehicles (ATV) may only be operated on unpaved roadways where the posted speed limit is less than 35 MPH and only during daylight hours” (flhsmv.gov).
- Neighborhood Electric Vehicles (NEVs).** NEVs are defined in the Land Development Regulations as “any four-wheeled electric vehicle whose top speed is not greater than 25 miles per hour and a maximum load of 3,000 lbs, pursuant to the National Highway Traffic Safety Administration definition in 63 Federal Register 33913 published on June 17, 1998, and subject to the safety standards in 49 Code of Federal Regulations Section 571.500 and Section 316.2122, Florida Statutes, all as may be amended from time to time.” Sale, lease, or rental transactions (no inventory on-site for any purpose) of NEVs is permitted in the General Commercial zoning district, as well as AC, NC, CBD, POC, POD, RO, PCC, MIC, LI, and MROC districts.
- Scoters.** As noted by the applicant, scooter sales are specifically excluded from the definition of “Motor Vehicle” in the Code of Ordinances. “*Motor vehicle* shall mean any self-propelled vehicle not operated upon rails or guide way, but not including any bicycle or electric personal assisted mobility device, moped or motorized scooter” (Chapter 74 – Civil Traffic Enforcement, Section 74.03). The Florida Department of Highway Safety and Motor Vehicles, however, places scooters in the same category as motorcycles. “Since Chapter 322, Florida Statutes, has no definition for motor scooters, they fall under the definition of a motorcycle. Therefore, the operator must have a valid driver license to operate a motor scooter, or motorcycle. However, if the

vehicle is powered by a motor with a displacement of more than 50 cubic centimeters, the operator must have a motorcycle endorsement” (flhsmv.gov).

All Terrain Vehicles, Personal Watercraft, and NEVs differ from scooters in both speed and classification of vehicle. Only NEVs are allowed on certain low-speed City streets, and their speed is less than 25 MPH. A review of the applicant’s website (bocascooters.com) indicates that some of the models sold at the applicant’s current location come with a base model speed of up to 50 MPH, e.g. Agility 125 model (Source: bocascooters.com and kymcousa.com). Additionally, on the applicant’s website the business advertises aftermarket improvements to increase scooter speed. This type of servicing is performed inside

The applicant states that there will be no outside sales or storage, and customers will not be allowed to test drive scooters in the neighborhood (in conformance with the regulations governing sales of All Terrain Vehicles and Personal Watercraft in LDR Section 4.4.9). However, it should be noted that the applicant’s social media (posted under Instagram handle “bocascooters”) extensively advertises the availability of test rides at its current location.

The subject property is within the South Federal Highway Redevelopment Plan Area. A significant goal of the Plan is to provide adequate buffering and setback provisions to ensure that the commercial uses within the plan area are not incompatible with the surrounding residential areas as the area redevelops. The plan discusses the impact automotive uses have on adjacent residential development, “such as test-driving on residential streets” and for this reason, recommends that AC zoning is appropriate on the west side of South Federal Highway. For the areas east of South Federal Highway, the Plan says that “Redevelopment in this area should consist of general retail and service uses and not additional automotive commercial uses.”

The AC zoning district (north of the property, separated by PC zoning) allows for sales, rental, and servicing of automobiles, boats, recreational vehicles, trucks, and motorcycles. As discussed above, the Code of Ordinances does not include scooters in the definition of motor vehicles, but the State of Florida definition does. The absence of scooters as a permitted use in the AC zoning district does not imply that scooters are thus better suited for the GC zoning district as indicated by the applicant, inasmuch as no section of the Land Development Regulations discusses scooters as a use.

Review By Others

Similarity of Use requests are not reviewed by other Boards.

Board Action Options

Options for board actions are:

- A. The Planning and Zoning Board finds that the sale and service of motorized scooters is similar to the “sale and service of All Terrain Vehicles and personal watercraft (waverunners, jet skis), with no outside display, outside storage or outside service, as allowed as a Conditional Use in the General Commercial zoning district.
- B. The Planning and Zoning Board does not find that the sale and service of motorized scooters is similar to the “sale and service of All Terrain Vehicles and personal watercraft (waverunners, jet skis), with no outside display, outside storage or outside service, as allowed as a Conditional Use in the General Commercial zoning district.

Public and Courtesy Notices

Courtesy Notices are not applicable to this request.

Public Notices are not required for this request.

Public Notice was posted at the property 7 calendar days prior to the meeting.

Public Notice was mailed to property owners within a 500’ radius 10 days prior to the meeting.

Public Notice was mailed to the adjacent property owners 20 days prior to the meeting.

___ Public Notice was published in the Sun Sentinel 10 calendar days prior to the meeting.

___ Public Notice was posted to the City's website 10 calendar days prior to the meeting.

___ Public Notice was posted in the main lobby at City Hall 10 working days prior to the meeting.

___ Agenda was posted at least 5 working days prior to meeting.