



## Cover Memorandum/Staff Report

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**File #:** 24-1632

**Agenda Date:** 2/4/2025

**Item #:** 7.B.

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**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Director  
**THROUGH:** Terrence Moore, ICMA-CM  
**DATE:** February 4, 2025

RESOLUTION NO. 09-25: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AFFIRMING ITS APPEAL OF THE PLANNING AND ZONING BOARD'S SIMILARITY OF USE DETERMINATION FINDING THAT THE OPERATION OF A GUNITE YARD IS CONSISTENT WITH THE MANUFACTURING AND WHOLESALE OF FINAL PRODUCTS USING CERAMICS AND PLASTER MATERIAL WITHIN THE MIXED INDUSTRIAL AND COMMERCIAL (MIC) DISTRICT, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (QUASI-JUDICIAL HEARING)

### **Recommended Action**

Review and consider Resolution No. 09-25, approval of a similarity of use determining that a gunite yard is similar to manufacturing and wholesale of final products using ceramics and plaster material, which is a permitted use in the Mixed Industrial and Commercial (MIC) district.

### **Background:**

The Similarity of Use request was submitted for the property at 135 N Congress Avenue, an approximate 1.8 acre property located east of N. Congress Avenue and approximately 1/4 mile north of W. Atlantic Avenue. However, approval of this determination will apply to the entire MIC zoning district.

Previously a vacant lot, the subject property has undergone extensive site modification without permits or necessary development approvals. These modifications include site work and installation of un-permitted structures to facilitate operation of a use that is not currently allowed in the zoning district, which the Applicant refers to as a "gunite yard." The unauthorized improvements include leveling and grading the site without civil engineering review, installing a cement storage silo without Building Division or Zoning review, and ongoing 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 the MIC zoning district.

The Applicant's request is to find operation of a "gunite yard" consistent with the allowed use of "*Manufacturing and Wholesale of Final Products Using Ceramics and Plaster Material.*" The Applicant's justification statement (attached) describes the gunite yard as, "*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.*" This use is consistent with the use, "*Concrete Products Manufacturing, including concrete block and redimix concrete,*" which anticipates mixing raw

materials, then loading and transporting the mix to an offsite location to create the final product (similar to "redimix" concrete). Concrete Products Manufacturing is permitted only in the Industrial (I) zoning district, subject to conditional use approval. The Industrial zoning governs, *"industrial land uses and their regulation so as to provide reasonable protection for the environment and the public with respect to the impacts of such use."*

According to the Florida Department of Environmental Protection (FDEP) air permit filed by the applicant, the use is a "Concrete Batching Plant" which is consistent with the City's Concrete Products Manufacturing use.

MIC provides for a mix of industrial, commercial, and office uses and is intended to accommodate industrial uses of a lighter intensity with supporting business and office functions that are compatible with other commercial and office uses. MIC uses include Manufacturing, *"The processing of raw materials to create final products for distribution"*. For example, making architectural moulding from ceramic plaster. MIC excludes more intense industrial uses like Concrete Products Manufacturing, and shifts other uses that are permitted by right in the Industrial district (for example, "boat repair") to a conditional use to assess potential impacts prior to approval. It is important to note, Concrete Products Manufacturing is neither a permitted nor a conditional use in the MIC district.

Pursuant to LDR Section 2.4.6(D)(5), *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.*

On October 21, 2024, the Planning and Zoning Board (PZB) reviewed the request and approved the similarity of use by a vote of 4-1.

On November 4, 2024, The City Commission voted 5-0 to appeal the decision of PZB and to reconsider the request at a future meeting.

#### Considerations for the Board:

1. Consider whether it is appropriate to deem the operation of a gunite yard as similar to manufacturing ceramics, when the Applicant says the use does not entail manufacturing.
2. Consider that the LDR only allows for wholesale and distribution of products that may also be manufactured in the MIC district. However, wholesale of raw materials that have not been manufactured into a final product is a separate use entirely that is not permitted in MIC.
3. Consider whether the batching of components of a dry-mix, even if compartmentalized separately until off property, is the same as the creation of a final product (manufacturing); and if so, whether this product is most accurately considered a concrete product.
4. Consider whether the requested use is in keeping with the stated purpose of the MIC district and whether the proposed use is appropriate in all areas currently zoned MIC.

Please note, the item before the City Commission is final action on the similarity of use determination, which requires specific findings be made. The attached Staff Report provides a thorough analysis of the project and the findings. This item is final action and the project will not

appear as an appealable item on a future agenda.

**City Attorney Review:**

Approved as to form and legal sufficiency.

**Funding Source/Financial Impact:**

N/A

**Timing of Request:**

Approval of the similarity of use is required before a site plan application for site modifications can be accepted for review.