



*Development Services Department*

**BOARD ACTION REPORT – APPEALABLE ITEM**

---

**Project Name:** Determination of Similarity of Use for Scooter Sales and Service

**Project Location:** 3415 S. Federal Highway (PCN 12434632100000690)

**Request:** Similarity of Use to determine if scooter sales and service is similar to the sale and service of Personal Watercraft and All Terrain Vehicles as allowed by Conditional Use within the General Commercial zoning district.

**Board:** Planning & Zoning Board

**Meeting Date:** October 21, 2019

**Vote:** 3-4 (Nays – Casale, Howell, Long, and Stepner)

**Board Action:**

At its November 18, 2019 meeting, a motion by the Planning & Zoning Board failed to find that scooter sales and service is similar to the sale and service of All Terrain Vehicles and Personal Watercraft, with no outside display, outside storage or outside service, as allowed as a Conditional Use in the General Commercial zoning district, with the Board voting 3-4 on a motion to approve the request.

**Project Description:**

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 location is highlighted on a map (included in the report backup as Exhibit A) of the zoning for the subject property and surrounding properties. 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 are allowed as a conditional use in the GC zoning district. While the applicant is requesting a similarity of use determination for a specific GC zoned parcel, 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. A map of City zoning districts, with all GC and PC zoning highlighted, is included in the report backup as Exhibit B.

**Board Comments:**

Based on concerns that a scooter is not similar to All Terrain Vehicles or Personal Watercraft sales and services, the Board also voted 7-0 to recommend that the City Commission direct staff to draft a text amendment to the Land Development Regulations to define what a scooter is and to identify the appropriate zoning regulations.

**Public Comments:**

NA

**Associated Actions:**

If the use was determined to be similar, the applicant would be subject to a Conditional Use process.

**Next Action:**

The PZB action is final unless appealed by the City Commission.



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

November 21, 2019

Jeffrey C. Lynne, Esq.  
Beighley, Myrick, Udell & Lynne, P.A.  
2385 Executive Center Drive, Suite 250  
Boca Raton, FL 33431  
(Sent via email to [jlynne@bmulaw.com](mailto:jlynne@bmulaw.com))

**RE: Determination of Similarity of Use for Scooter Sales (File No. 2020-019-SIM-CCA)**

Dear Mr. Lynne:

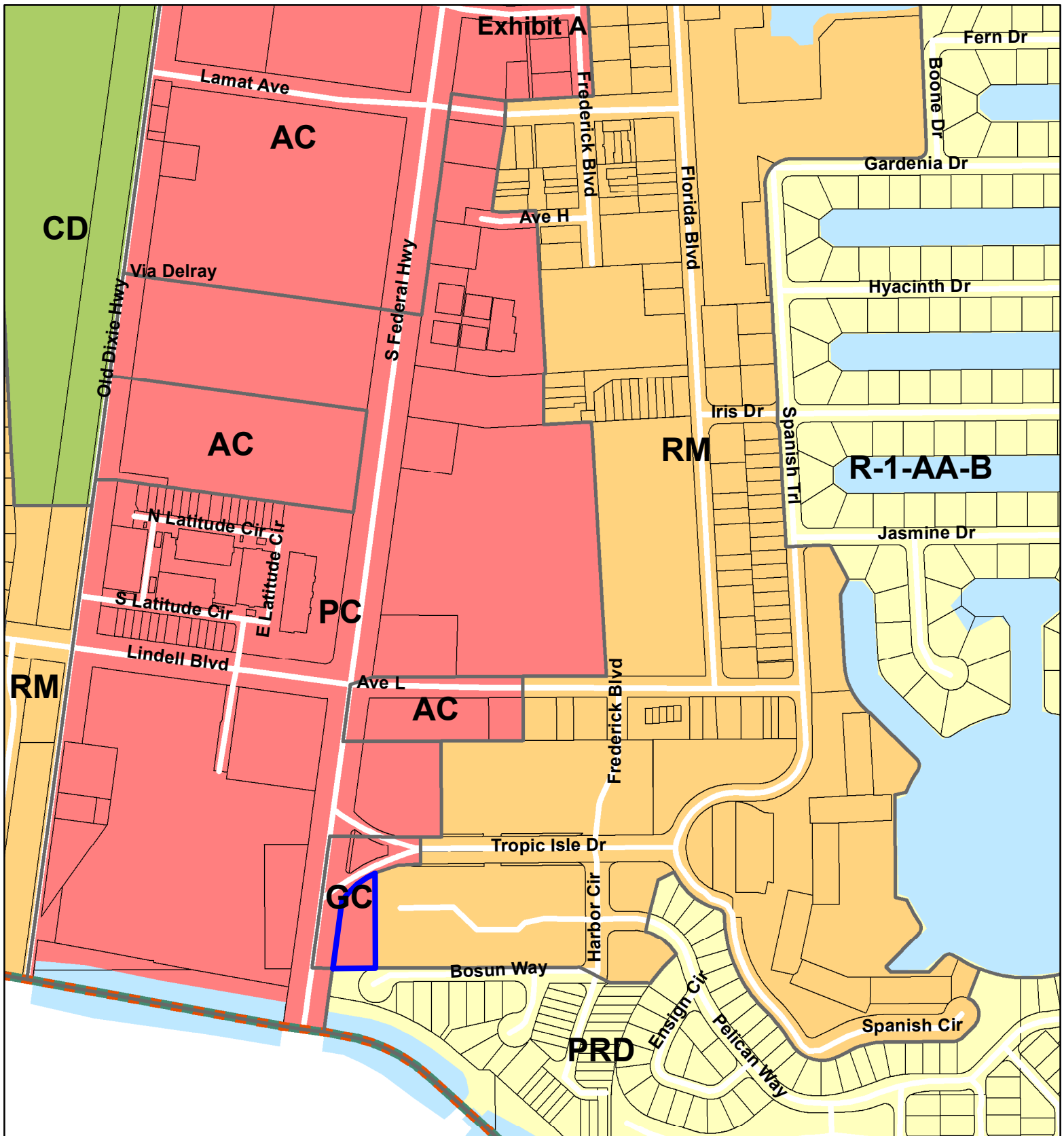
At its meeting of November 18, 2019 the Planning and Zoning Board (PZB) voted 3-4 on a motion to find “the sale and service of motorized scooters is similar to the ‘sale and service of All Terrain Vehicles and personal watercraft (waverunners, jet skis), with no outside display, outside storage or outside service, as allowed as a Conditional Use in the General Commercial zoning district.”

Pursuant to the City of Delray Beach Land Development Regulation Section 2.4.7(E), you have the right to appeal the decision by the Board to the City Commission. Such an appeal must be filed within ten (10) working days of the Board action. Additionally, at the City Commission’s discretion, the PZB action can be appealed by the City Commission at its meeting of **December 10, 2019 at 4:00 PM**, or as soon thereafter as may be heard. It will be listed within the “Report of Appealable Land Use Items” on the consent agenda. In such case, the PZB decision is NOT final until **December 10, 2019**. Decisions appealed by the City Commission or the applicant are scheduled for a new action. Plans pending certification or permit issuance could be held until the appeal period has lapsed.

Should you have any questions regarding this application, please do not hesitate to contact me via email at [dasari@mydelraybeach.com](mailto:dasari@mydelraybeach.com) or by phone at 561.243.7400, Ext. 7044.

Sincerely,

Rebekah Dasari  
Senior Planner



## Adjacent Zoning for Determination of Similarity of Use

- R-1-AA-B - SINGLE FAMILY RESIDENTIAL
- PRD - PLANNING RESIDENTIAL
- RM - MULTIPLE FAMILY RESIDENTIAL (MEDIUM DENSITY)
- AC - AUTOMOTIVE COMMERCIAL
- GC - GENERAL COMMERCIAL
- PC - PLANNED COMMERCIAL

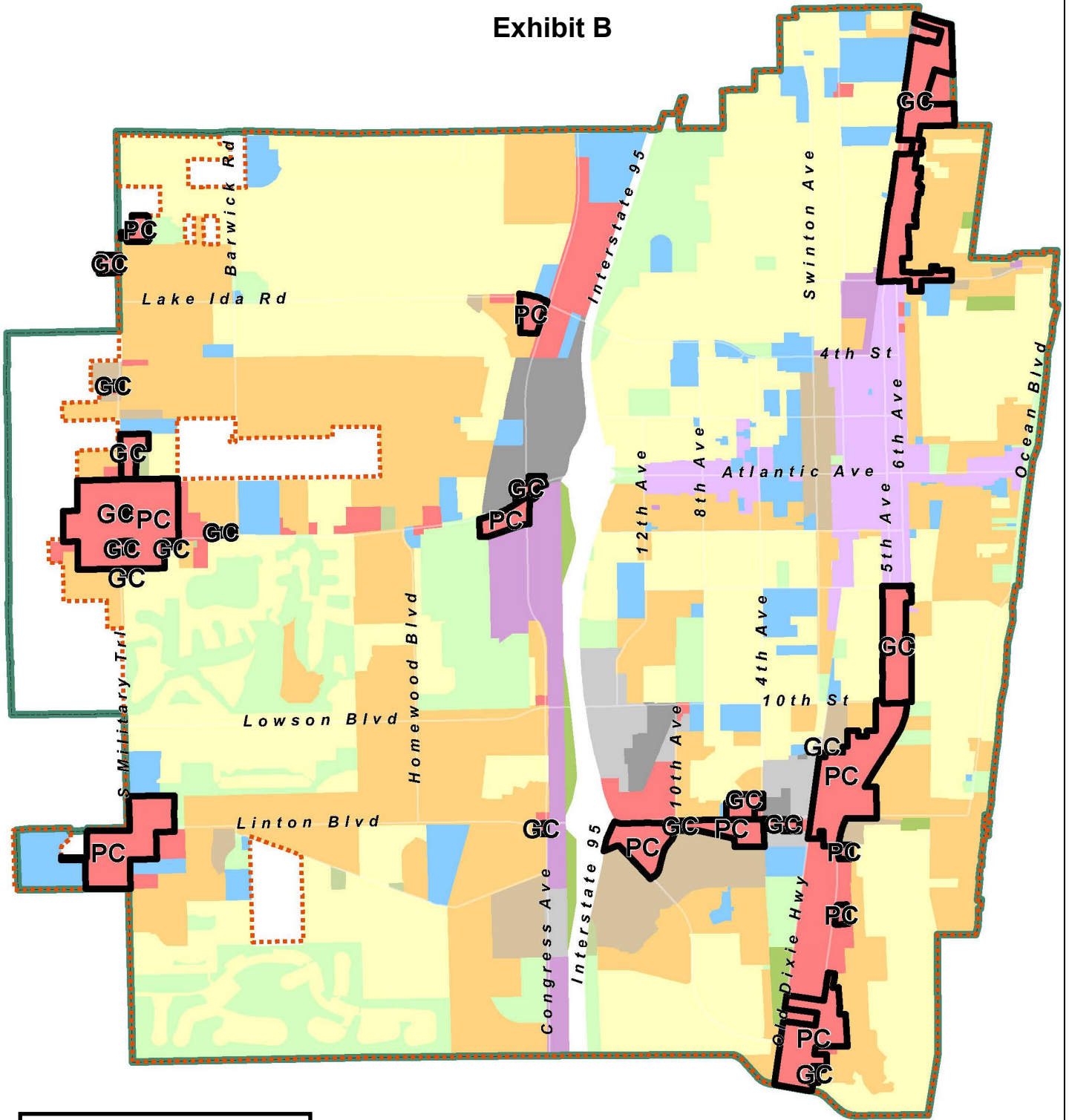
- Municipal City Limits
- Planning Area
- Subject Parcel



0 150 300  
Feet

Development Services  
Department

# Exhibit B



**Legend**

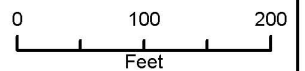
GC and PC Zoning



DEVELOPMENT SERVICES  
DEPARTMENT

## Similarity of Use | Scooter Sales

General Commercial (GC) & Planned Commercial (PC)  
Properties





October 14, 2019

**VIA E-MAIL and HAND DELIVERY**

Ms. Anthea Gianniotis  
Director, Development Services Department  
City of Delray Beach  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

**Re: Request for Determination of Similarity of Use  
Pursuant to LDR 2.4.5(N)**

Dear Ms. Gianniotis:

Thank you for meeting with us and our client, Boca Scooters, LLC dba Delray Scooters, on Monday, October 7, 2019, to review our client's desire to relocate his prominent and successful 10-year-old motorized Scooter business to the City of Delray Beach. As we discussed, he is under negotiations to purchase a significant landmark building located at 3415 South Federal Highway (the "Property") within that transportation corridor in order to relocate his business there.

The Property has a zoning designation of GC/General Commercial and is otherwise surrounded by AC/Automotive Commercial-zoned properties. Scooter sales are not specifically identified as "uses" in the City's Land Development Regulations, though there are numerous other vehicles which are.

At the Property, the sale of ATVs and Jet Skis are allowed as "Conditional Uses." Therefore, and as result of the compatibility of the location and the use, the applicant is seeking to have the sales and servicing of "Scooters" to be deemed a similar use as "All Terrain Vehicles" (ATVs) and "Personal Watercraft" (aka "Jet Skis") which are allowed in the GC zoning districts. The applicant is only seeking to be afforded the same opportunity to submit to the City's Conditional Use Approval process to establish Scooter sales at this specific Property based upon the justification and rationale provided below. We therefore respectfully ask that this letter be accepted as our client's Request for Determination of Similarity of Use pursuant to LDR 2.4.5(N). The required \$500.00 application fee accompanies this letter.

Pursuant to that section, the following information is required to be provided:

- (a) *That the requested use be identified and described;*
- (b) *That the appropriate zoning designation be identified; and*

- (c) *That a rationale is provided as to why the use should be deemed similar to other uses already allowed in the identified zoning district.*

For the reasons stated herein, the applicant believes the Planning & Zoning Board can reasonably find the sale of the proposed Scooters are similar to these already approved uses within the transportation corridor on South Federal Highway with a GC zoning designation.

**(a) The Requested Use.**

The requested use is the establishment of a retail store for the sale of Scooters. Scooter sales are not explicitly listed in the City's Land Development Code as a "use." The term is actually excluded by the Land Development Regulations from the definition of "Motor Vehicle," which means: "[A]ny 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.**" (Emphasis added).

Scooters are, by City definition, not Motor Vehicles. They do not require the same lot size, bullpen holding space, road testing, or servicing bays. While they are licensed and registered by the State of Florida, the process is also different than Motor Vehicles is is much more similar to the approved ATV and Jet Skis and are serviced similar to those approved uses as well. We believe this is why the City has not required that such uses only be established in AC zoned districts.

**(b) The GC Zoning District**

There are a multitude of Permitted, Accessory, and Conditional uses allowed within GC zoning districts. It is the "catch-all" district for most, if not all, retail sales and services in the City.

The Property in question is at the southern tip of the City on South Federal Highway, immediately north of the City of Boca Raton city limits. This small parcel appears to have a City Zoning Map Designation of GC/General Commercial. The sale of Scooters is not specifically identified in the GC zoning regulations. Likewise, the sale of Scooters is also not specifically mentioned in the AC/Automotive Commercial zoning districts which surround the Property.

This Property in question remains an island of GC-zoned Property at the southern tip of the City. Within such GC-zoned districts, the "[s]ales and service of All Terrain Vehicles and personal watercraft (wave runners, jet skis), with no outside display, outside storage or outside service" are allowed as **Conditional Uses**. See LDR 4.4.9(D)(12).

This vehicle sales corridor, which is more fully discussed and addressed within the City's "South Federal Highway Redevelopment Plan," has the largest concentration of personal transportation vehicles sales within the City. However, the overwhelming majority of the land south of Linton Boulevard on South Federal Highway is zoned AC and is owned and controlled by only a few large motor vehicle dealerships, making the establishment of a retail Scooter dealership practically impossible in the City. Likewise, AC properties generally do not sell ATV's, Personal Watercraft, or Scooters, at least not as a primary use.

The surrounding AC-zoned properties allow, as Permitted Uses pursuant to Section 4.4.10 of the City's Land Development Regulations, the sale, rental and full servicing of automobiles, boats,

recreational vehicles, trucks, and motorcycles. *Scooters and similar personal transportation devices are not addressed* and, as stated above, are specifically excluded from the definition of “Motor Vehicle.”

**(c) Why Scooters Should Be Deemed Similar to Other Allowed Uses.**

**(1) Impacts from Business are the Same.**

While Scooters are not defined by the Code to fall within the definitions of “Recreational Vehicles” or “Motorcycles,” these vehicles are bought, sold, stored, serviced, licensed, and registered in exactly the same way that “All Terrain Vehicles” and “Personal Watercraft” are. The applicant will also be selling ATVs from this new location.

These items for sale do not meet the definition of “Motor Vehicles” and therefore the City chose to address them differently. However, the Code is silent as to how the sale and servicing of such items they are to be established.

The applicant is seeking only the ability – through the Conditional Use Approval process – to sell and service these items. Unlike Motor Vehicles, there will be no rentals or leasing. Test rides will not be permitted. There will be no outdoor display of items. There will be no outdoor storage. There will be no open service bays (all servicing occurs within enclosed spaces, similar to ATVs and Personal Watercraft). As such, the use has all of the indicia of a standard Retail sales establishment which is appropriate to be located within a GC-zoned parcel. The sale of Scooters is entirely compatible with the surrounding neighborhood and the entirety of the South Federal Highway transportation sales corridor.

**(2) LDR Does Not Require All “Street Legal” Vehicles to Be Sold Only in AC Districts.**

City Ordinance No. 36-16, adopted on January 10, 2017, provided for a new scheme relating to the sale and servicing of golf carts driven on City streets and public rights-of-way. This Ordinance was adopted to facilitate and legitimize the sale of “street legal” golf carts, as the prevalence and popularity of the vehicle as a transportation device has grown and become synonymous with the City of Delray Beach. Likewise, Scooters are equally ubiquitous throughout the City and has become part of its fabric and identity.

These golf carts, which City Ordinance No. 36-16 newly defined to be “Neighborhood Electric Vehicles” or “NEV” also allow this use throughout most of the City as a “Permitted Use” including the **GC** districts; **AC** districts; **NC** (Neighborhood Commercial) districts; **CBD**/Central Business Districts; **POC**/Planned Office Center districts; **POD**/Professional and Office districts; **RO**/Residential Office districts; **PCC**/Planned Commerce Center districts; **MIC**/Mixed Industrial and Commercial districts; **LI**/Light Industrial districts; and **MROC**/Mixed Residential, Office and Commercial districts.

The reasoning for allowing NEVs throughout the City was, pursuant to Ordinance No. 36-16, “to support businesses which promote sustainability by increasing the opportunity for the general public to obtain and use electric vehicles, particularly neighborhood electric vehicles and maintaining the City’s strict control over the location of vehicle leasing, sales and rental locations

by allowing offices which sell, lease, or rent as a permitted use in several commercial, mixed-use and light industrial districts..." The applicant believes the same public policy supports a finding of similarity of use between Scooters and ATVs/Personal Watercraft, particularly as the establishment of the use requires additional review and approval as a Conditional Use by the Planning & Zoning Board, and then the City Commission.<sup>1</sup>

(3) Exclusivity.

The applicant is an Authorized Dealer of the Top 3 Scooter manufacturers in the world (KYMCO, SYM, and PGO brands) and anticipates receiving the highly sought franchise to be the exclusive retailer of the Italian-made Vespa brand Scooter, which is abundantly popular in Europe. As an Authorized Dealer and pursuant to Florida Statute 320.642, the applicant will have the exclusivity to sell these branded Scooters within a 12.5-mile exclusion zone, meaning no other Scooter sales location can exist within that radius. As a result, the applicant would be the only Scooter sales location on South Federal Highway and likely the only Scooter sales location in the City's transportation corridor as well.

The applicant therefore respectfully requests that this matter be placed on the November Planning & Zoning Board agenda for its members to determine whether the proposed Scooter sales and servicing use is similar to the ATV and Personal Watercraft sales and servicing uses already allowed at the Property, consistent with LDR 2.4.5(N). If allowed to proceed through the Conditional Use Approval process, the applicant intends to maintain the architectural style of the existing building, only upgraded and enhanced to reflect a modernized retro-1960's "Village by the Sea" motif, with an iconic sign marking the entrance into the City from the south, which is currently sorely lacking.

We thank you very much in advance for your time. Please do not hesitate to contact us in the interim should you have any questions.

Very truly yours,



**JEFFREY LYNNE, ESQ.**

Cc: Mr. Colton Ralston  
Cory Kravit, Esq.  
Bradley Miller, Miller Land Planning  
Lynn Gelin, City Attorney  
William Bennett, Assistant City Attorney

Enclosure

---

<sup>1</sup> Scooters – also a non-defined use within the Land Development Regulations – does not enjoy the same rights and privileges as NEV, notwithstanding its mass popularity as an alternative personal transportation device throughout the City. This differential treatment of Scooters actually may violate the Commerce Clause of the U.S. Constitution. See Island Silver & Spice, Inc. v. Islamorada, Vill. of Islands, 475 F. Supp. 2d 1281 (S.D. Fla. 2007), *aff'd sub nom, Island Silver & Spice, Inc. v. Islamorada*, 542 F.3d 844 (11th Cir. 2008) ("The Commerce Clause presumes a national market free from local legislation that discriminates in favor of local interests.").



# 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

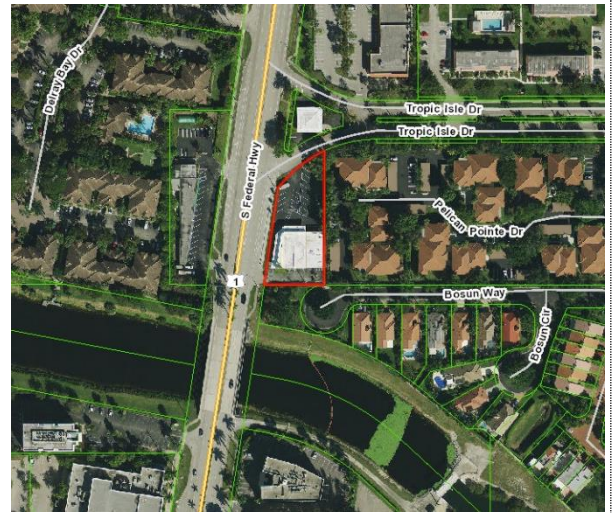
#### Request

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
<b>Subject Property</b>	General Commercial (GC)
<b>North</b>	Planned Commercial (PC)
<b>South</b>	Planned Residential Development (PRD)
<b>East</b>	Multiple Family Residential (MD)
<b>West</b>	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.
- Scooters.** 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.

# Request for Determination of Similarity of use:

## Delray Scooters

City of Delray Beach  
Planning & Zoning Board Meeting  
November 18, 2019



1

### LDR 4.3.2 – Determining use (C)(2) – Determination of similarity of use

- In situations where the Director finds that the requested use is not identical but has similar characteristics to allowable uses or when the use is of a specific nature (e.g. automobile sales) and is listed as a specific use in another zone district, the use may be established within a specific zone district by action of the Planning and Zoning Board in authorizing it through a determination of similarity of use.

2

## LDR 2.4.5 (N) - Determination of similarity of use

- Identify and describe requested use (**what**);
- Identify the appropriate zoning designation (**where**); and
- Provide rationale as to why the use should be deemed similar to other uses already allowed in the identified zoning district (**why**).

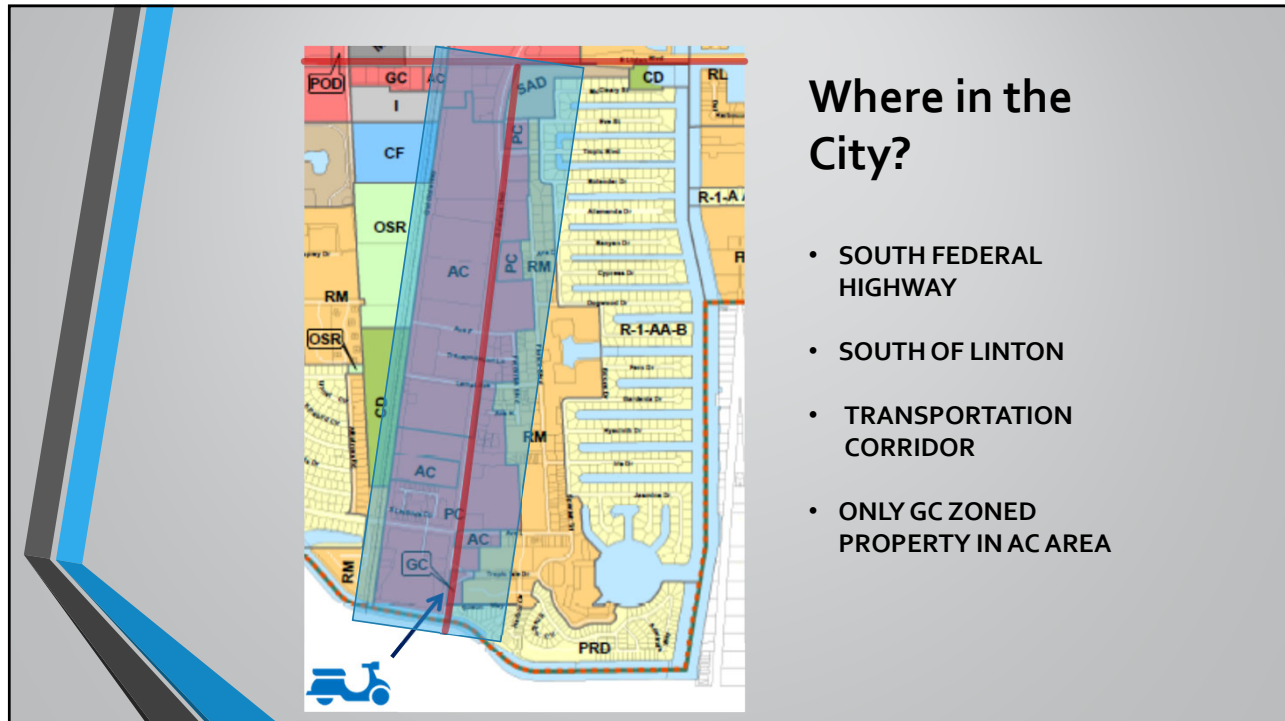


3

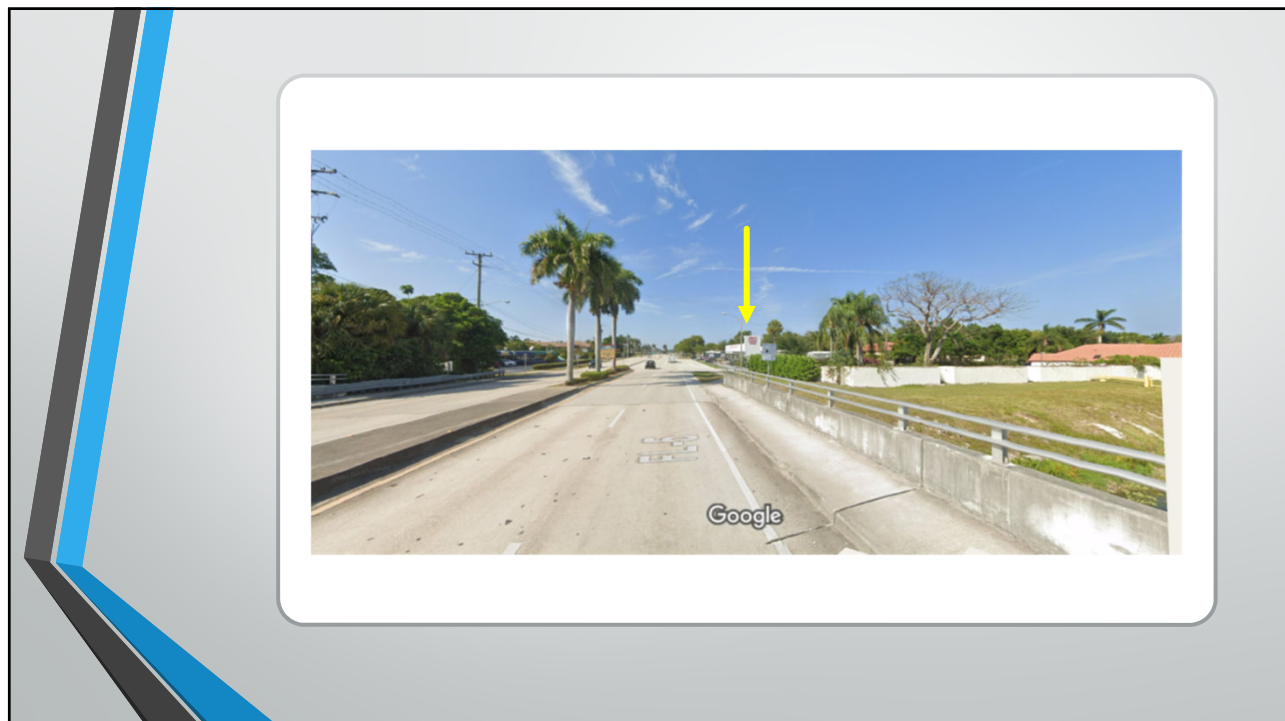


The requested use -  
Sale and Servicing of Scooters

4



5



6



7



8



## Why similar?

- Similar sales and servicing as ATVs or Wave Runners.
- Similar registration with state and county.
- Similar impacts from use.
- Similar use of completely enclosed spaces.
- No rentals – same.
- No test drives – same.
- No outdoor display of merchandise – same.
- Entirely compatible with surrounding AC/Automotive Commercial uses.

9

## Request for Determination of Similarity of use:

### Delray Scooters

City of Delray Beach  
Planning & Zoning Board Meeting  
November 18, 2019



10



# Planning & Zoning Board

November 18, 2019

1



## Agenda Item 9.A

### Determination of Similarity of Use for a Scooter Sales Center

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.

2020-019-SIM-PZB

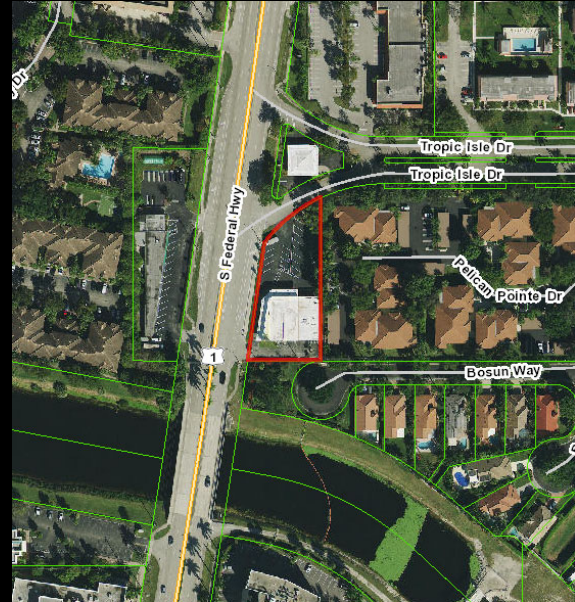
2



## Agenda Item 9.A

### Location:

3415 South Federal Highway,  
nearly adjacent to the City limits



3



## Agenda Item 9.A

### 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.

Scooter sales are not currently identified in the Land Development Regulations (LDRs) as a use.

4



## Agenda Item 9.A

### Request Criteria

#### Section 2.4.5(N)

- (1) **Rule.** A determination of Similarity of Use shall be made only by the Planning and Zoning Board.
- (2) **Required Information.** The appropriate processing fee along with a letter in which:
- (a) The requested use is identified and described;
  - (b) The appropriate zoning designation is identified;
  - (c) Rationale is provided as to why the use should be deemed similar to other uses already allowed in the identified zoning district.

5



## Agenda Item 9.A

### Identification & Description of Requested Use

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).



Streetview

6

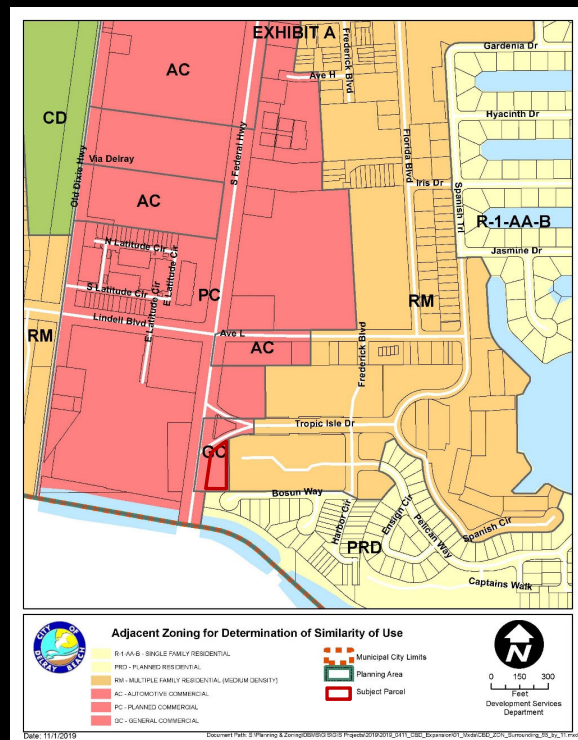


## Agenda Item 9.A

### Surrounding Zoning

<b>Subject Property</b>	General Commercial (GC)
<b>North</b>	Planned Commercial (PC)
<b>South</b>	Planned Residential Development (PRD)
<b>East</b>	Multiple Family Residential (MD)
<b>West</b>	Planned Commercial (PC)

**NOTE:** 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.

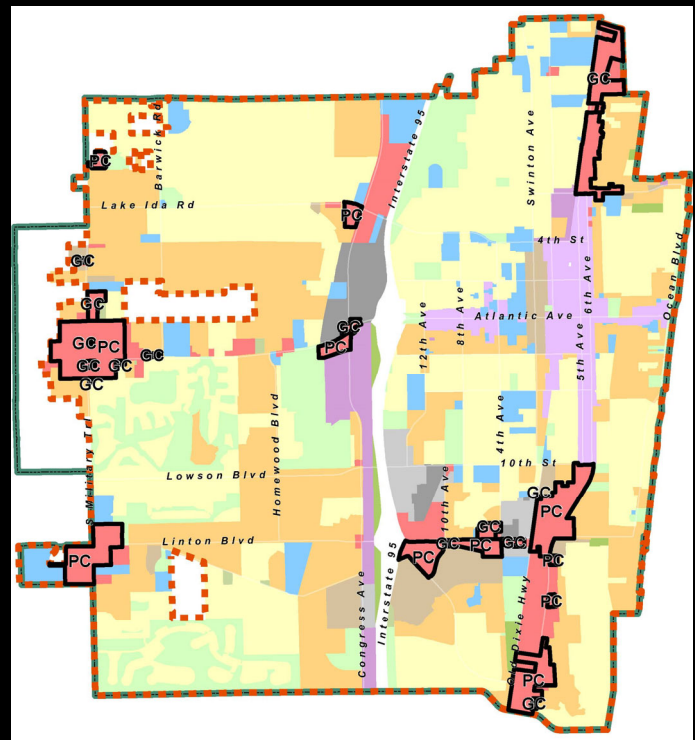


7



## Agenda Item 9.A

Areas currently zoned  
Planned Commercial (PC) +  
General Commercial (GC)



8



## Agenda Item 9.A

### Rationale for Determination: Findings

#### Section 2.4.5(N)(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 so allowed in the zoning district and is in keeping with the stated purpose of the district.*

#### Staff Comment:

LDR Section 4.4.9(A). **Purpose and intent.** The General Commercial (GC) District provides basic regulations for small parcels which are best suited for general retail and office 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."

9



## Agenda Item 9.A

### Rationale for Determination: Findings (Continued)

The following uses are included in the applicant's request for determination of similarity of use.

Proposed Similar Uses	
Personal Watercraft	The Land Development Regulations do not define Personal Watercraft (jet skis or waverunners).
All Terrain Vehicles	<ul style="list-style-type: none"> <li>The Code of Ordinances defines all-terrain vehicles as a motor vehicle.</li> <li>ATVs are considered Low Speed Vehicles (LSV). F.S. 320.01(41) 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."</li> <li>"[A]ll-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).</li> </ul>

10



## Agenda Item 9.A

### Rationale for Determination: Findings (Continued)

The following uses are included in the applicant's request for determination of similarity of use.

#### Proposed Similar Uses (Continued)

##### Neighborhood Electric Vehicles

- 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.

##### NOTE:

- Scooters have much higher MPG than motorcycles and are a "greener" option; however, scooters can be either gas or electric.

11



## Agenda Item 9.A

### Rationale for Determination: Findings (Continued)

The following uses are included in the applicant's request for determination of similarity of use.

#### Proposed Similar Uses (Continued)

##### Scooters

- Scooters are 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 categorizes scooters with 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).

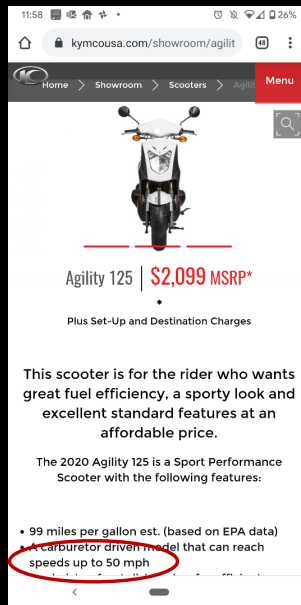
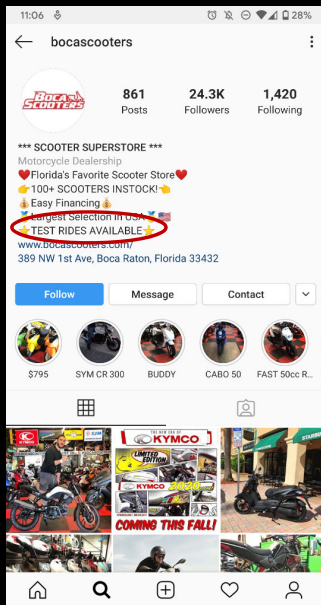
##### NOTE:

- Motorcycle sales are not allowed in GC, but are permitted in AC.
- Scooters have much higher MPG than motorcycles, and are "greener."

12



## Agenda Item 9.A



13



## Agenda Item 9.A



14



## Agenda Item 9.A

### Options for Board Action

- 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.

2020-019-SIM-PZB

15