



**TOWN OF MIDWAY  
PLANNING & ZONING BOARD  
MINUTES  
TUESDAY, JULY 28, 2020**

**MINUTES OF MIDWAY PLANNING & ZONING BOARD MEETING HELD ON TUESDAY,  
JULY 28, 2020 AT 6:00 P.M. AT THE DAVIDSON COUNTY GOVERNMENTAL CENTER, 913  
GREENSBORO STREET, LEXINGTON, NORTH CAROLINA**

**CALL TO ORDER**

Chairman LeeAnn Tuttle-Thomas called the meeting to order.

Planning & Zoning Board members present were: Charles Waddell, Jamie Hester, LeeAnn Tuttle-Thomas and James Smith. Absent: Carl Tuttle. Alternate: Vacant.

Town Manager Tammy Michael, Town Clerk Linda Hunt, Deputy Clerk Tammy Robertson, Town Attorney Jim Lanik, Davidson County Planning Director Guy Cornman and Davidson County Zoning Officer Lee Crook were present.

**APPROVAL OF MINUTES**

On motion by Board member Jamie Hester, seconded by Board member Charles Waddell, the Board voted unanimously to approve the June 30, 2020 minutes as presented.

**ADOPT AGENDA**

On motion by Board member Jamie Hester, seconded by Board member James Smith, the Board voted unanimously to adopt the agenda as presented.

**PUBLIC COMMENT PERIOD**

There were none.

**REGULAR BUSINESS**

**REVIEW – REQUEST BY FELIPE DE JESUS MENDOZA PINA AND MARIA TERESA VILLAGOMEZ GONZALEZ TO REZONE A PORTION OF LOT 67 CONTAINING .69 ACRES IN MIDWAY TOWNSHIP, TAX MAP 6, FROM RA-3 (RURAL AGRICULTURAL DISTRICT) TO CU-RC (CONDITIONAL USE RURAL COMMERCIAL DISTRICT)**

At the June 30, 2020 Planning Board meeting, the Planning Board voted unanimously to reschedule a zoning request by Felipe De Jesus Mendoza Pina and Maria Teresa Villagomez Gonzalez to rezone .69 acres in Midway Township from RA-3 to CU-RC until the July 28, 2020 Planning Board meeting due to an error in the legal advertisement inadvertently listing the property as being located on the north side of Dublin Drive intersection instead of the Dover Road intersection.

The property is in the Midway Township, Tax Map 6, Lot 67 containing .69 acres more or less.

Said property is located on the north side of Gumtree Road approximately 400 feet west of the Dover Road intersection. Rezoning is requested to change from RA-3, Rural Agricultural District to that of CU-RC, Conditional Use Rural Commercial District.

Davidson County Zoning Officer Lee Crook advised the Planning Board that the rezoning request by Felipe De Jesus Mendoza Pina and Maria Teresa Villagomez Gonzalez is a recommendation from the Planning Board to Town Council for approval or denial of the rezoning request.

Mr. Crook stated that there are two site plans for the Board to review, one being what the Zoning Ordinance requires applicants to adhere to and secondly, a staff recommendation and acceptance from the applicants to add a hedge of trees along the property line as a screening mechanism.

Mr. Mendoza stated to the Planning Board that he and his wife bought the property three years ago in hopes of having their tire shop on the front part of the land since there is already commercial property in the surrounding area, and building their home on the back portion of the land. The property is five minutes from their current home where this family has resided for the past twelve years. Their daughters have been raised in the Midway community and they currently attend the local schools, where they would like to remain. The current tire shop that they have operated for the past eight years is in a residential neighborhood. Mr. Mendoza said that he has never had any problems with the neighbors, in fact, many are current customers of his. Mr. Mendoza said that he offers honest quality work and great customer service and he would like to bring that service to the Midway community.

The building would be constructed of metal. The parking lot would be small but would allow enough space for future growth if the Mendoza's chose to add a small inventory of automobiles to sell. Mr. Crook stated that with the Conditional Use (CU) Rezoning, it was best for the Mendoza's to plan for future growth with the business and ask for everything upfront so that they would not have to go back and amend the conditions to the approving body if they chose to expand the business.

Mr. Crook stated that there is Commercial Shopping (CS), Limited Industrial (LI) and Rural Commercial (RS) zoning directly across the street from the Mendoza's property with additional commercial zoning along Gumtree Road inside the Town limits. Rural Agricultural (RA) zoning surrounds the proposed applicant's property.

Attorney Jeff Berg, representing Mr. Zack Brock who owns two lots to the right of the proposed rezoning property, states that Mr. Brock just completed construction of his new home on the backside of the second lot and was hoping to be in the woods with no neighbors around his property. Mr. Brock would be okay with the second recommendation of the Zoning Department and require arborvitae tree screening placed down the entire side that adjoins the properties and along a portion of the back of the property that will totally block Mr. Brock's view of the proposed rezoned property. Mr. Crook stated that the site plan is designed where the screenings start at the front edge of the building closest to Gumtree Road and runs all the way back to the corner and extends out about fifty feet on the northern property line. The Mendoza's have already agreed to the condition.

Betty Nifong, resident of 183 Dublin Drive for fifty-three years and adjoining property owner to the proposed rezoned property, stated that the legal advertisement was written incorrectly and that it should read the rezoning is requested to change from an RA-3, Rural Agricultural District to that of CU-CS (Conditional Use-Commercial Shopping) District and not that of CU-RC (Commercial Use Rural Commercial) District as written by the appraiser Gerry Crowder.

Mrs. Nifong said that new commercial business in this area would negatively impact the quality of life and property values in the community. There are currently twelve driveways leading from Bobby Willard Road and Dover Road into Gumtree Road. The proposed new business has requested a separate entrance which would be the thirteenth driveway. A blind hill from Bobby Willard Road makes it difficult to pull onto Gumtree Road. Mrs. Nifong stated that her family gets their water supply from a well and fears that runoff from the land from the proposed business will contaminate the water supply. Mrs. Nifong also anticipates excessive noise from the business during daylight hours that will hinder her family from enjoying their property. If the application is approved, Mrs. Nifong requested that an eight-foot privacy fence be required along the backside of the property line.

Mr. Crook clarified the discrepancy in the legal advertisement that Mrs. Nifong eluded to by stating that the applicants initial request was for a CU-CS (Conditional Use-Community Shopping) District, but after speaking with the broker about obtaining the CU part of the request, the CS was changed to RC (Rural Commercial) because the CS District required an entire acre. The Mendoza's did not want an entire acre for the business because they plan to build a house on the remaining acreage. Mr. Crook did not feel that it was necessary to change the classification since CS is a more intensive use than RC. More businesses can be added to CS. Since the broker felt the application was good for CS it should be good for RC since it is less intrusive than CU.

Ms. Suzanne Dellinger, a resident of Norman Shoaf Road, spoke in opposition to the rezoning stating that she would be concerned to have a commercial business along Gumtree Road with no sewer system. Adding commercial businesses along Gumtree Road would be a stress on the environment to add septic systems to support a small business along with new houses being built. Ms. Dellinger said that the business zoning is a passive business zoning. The only active commercial business is Competition Karting and they are only open limited hours. Bringing in a full commercial business does not fit the model. There are also concerns about the RC (Rural Commercial) designation. The proposed tire shop does not seem to meet the guidelines because tires are durable goods. The RC designation is for low volume sales of conveniences and services. Ms. Dellinger is also concerned with heavy traffic on Gumtree Road and the new business would create heavier volumes of traffic especially at Dover and Bobby Willard Roads during school hours. There would also be a lot of noise coming from the business, especially since the building will be a metal building.

Board member Jamie Hester asked how close the existing automobile shop was to the proposed tire shop. Mr. Crook stated that they would be directly across the street from each other. The applicants would have to get a commercial driveway permit from the North Carolina Department of Transportation (NCDOT) in Salisbury. If the DOT found that it was an unsafe driveway connection, the applicants would be denied from obtaining the permit.

The land was previously perked for a three-bedroom, two bath home, but will need to be re-perked for the home and business since the land will be divided.

Mr. Crook presented a list of conditions from the Mendoza's regarding the rezoning of the property:

1. Property will be used for a Tire Service Center now and perhaps an automobile sales lot and automobile repair facility in the future.
2. Hours of operation will be Monday through Saturday from 8:30 a.m. till 6:00 p.m.
3. Air compressor will be enclosed to reduce noise.
4. As per the attached site plan, the building will be constructed to a maximum size of 40' x

120' to conduct business in.

5. No outside storage of inventory (tires or junk).
6. Landscaping will be presentable and well-kept and will comply with any rules or laws within the Town limits.
7. Lighting will be motion detected and directed onto the property to reduce glare or pollution on any neighbor's property.

Since the submittal of the application, the following conditions have been added:

8. Arborvitae trees planted down the east side of the property and fifty feet down the north side of the property. A type D planting yard which requires a five-foot minimum width will be required around the rest of the property.
9. Add privacy fence along the north side (back) of the property.

Mr. Crook stated that the conditions for the landscaping are over and above what the ordinance requires.

Ms. Dellinger questioned Mr. Crook about the RC rezoning since there was a possibility of selling durable goods in the future and durable goods would fall under the CS zoning. Mr. Crook stated that the County goes by the Table of Permitted Uses in the Zoning Ordinance because it is more specific than going by the general description. Automobile sales, body shops and repair shops can be operated in the RC Zoning District.

Ms. Dellinger stated that the Town does not need any more used car lots and opposes the rezoning as an RC District.

Mrs. Nifong is concerned that the storage of tires will be outside of the shop and not inside as the Mendoza's have stated they would be. She has seen the present location from where Mr. Mendoza operates his current tire business and she stated that she is not impressed with what she sees and would hate to have that in her little community.

Mr. Mendoza said that he keeps the tires inside of the shop or in a storage building behind the shop. One of the reasons he wants to move from location is because it is not in a safe location. He risks his life every day to take care of his family. The proposed location for the new tire shop will be a lot safer for he and his family. He did not inherit a lot of money, so he had to start somewhere.

Town Manager Tammy Michael asked Mr. Mendoza about the disposal of the used tires. Mr. Mendoza responded by saying that he disposes of them at the Hanes Mill Road Recycling Center. Once he has a trailer load, he takes them to be recycled.

Mr. Crook stated that with the conditions as submitted, the County would be able to enforce the outside storage of tires legally.

Chairperson LeeAnn Tuttle-Thomas asked Mr. Mendoza what his plans would be as far as adding automobile sales and a repair shop to the business. Mr. Mendoza's plans would be to start with tires and mechanical work and in time apply for the proper permits to add a small amount of cars to sell. His parking lot would not be large enough to handle a lot of cars.

Mr. Crook submitted the following staff analysis and recommendation regarding the Mendoza's request to rezone property in the Midway Township:

The applicant is requesting to rezone a portion of a parcel of land containing .69 acre more or less from that of RA-3, Rural Agricultural District, to that of CU-RC, Conditional Use Rural Commercial District. Said property is located on the north side of Gumtree Road approximately 400 feet west of the Dover Drive intersection. The proposed use of the property is for a tire service center to be located inside of a 40 x 120-foot building. The proposed rezoning will only include the front .69 acre of the total 2.06 acre tract. The applicant also intends to have parking and landscaping on site.

The back of the 2.06 acre tract will remain as it is currently zoned, RA-3 Rural Agricultural District. The applicant plans on building a house on the rear portion of the 2.06 acre tract. With only the front portion of the 2.06 acre tract proposed to be rezoned, protection will continue to be offered to the Canterbury Park Subdivision located to the rear of the property. Should the rezoning request be approved, the applicant should apply for a commercial driveway permit from the NCDOT.

Gumtree Road is a two lane, State maintained facility that would be classified as a heavily traveled collector road. There is a wide diversity of uses located in the immediate proximity of the proposed rezoning. Directly across the road from the subject property are RC, Rural Commercial District, CS, Community Shopping District and LI, Limited Industrial District uses that create a small nonresidential node along this portion of Gumtree Road. On the same side of the road as the rezoning are multiple LI zoning uses just one tract to the west. This creates a varied mixture of uses with everything from single wide manufactured homes to well established commercial and industrial buildings in the area.

Staff realizes that the Town of Midway Land Development Plan, "Future Land Use Map" that was adopted in 2006 does not promote non-residential development along the Gumtree Road corridor. While the state and the judicial system want jurisdictions to follow their adopted plans, there is room to deviate from them if the public benefit is served. In the Town of Midway's Zoning Ordinance, Article 7, Section 7.10, Amendments, Paragraph (B) Purpose, the Town is allowed "To extend the boundary of an existing zoning district" if it so chooses.

Staff feels that this rezoning is reasonable due to the mixed character of the area and the conditions that help this use minimize its impact on surrounding residential properties. The "RC" zoning classification is designed to provide services to the "local" area and therefore would not be located in the Town's center. Staff would like to recognize the fact that there are new houses being built on the adjoining tracts to the east and would like to see the applicant submit a condition that would require the planting and maintenance of an opaque screening yard along the eastern property line of the rezoning.

With the addition of the screening requirement to protect the residential lots to the east, Staff would recommend for the approval of this request based on it being contiguous and in close proximity to non-residential zoning districts.

On motion by Board member Jamie Hester, seconded by Board member James Smith, the Board voted unanimously to recommend to Town Council to deny the rezoning request by Felipe De Jesus Mendoza Pina and Maria Teresa Villagomez Gonzalez to rezone a portion of Lot 67 containing .69 acres in the Midway Township, Tax Map 6, from RA-3 to CU-RC. The request was found to be inconsistent with the Town's Land Development Plan and the current development pattern of the area.

#### **OTHER BUSINESS**

There was none

#### **ADJOURNMENT**

On motion by Board member Charles Waddell, seconded by Board member James Smith, the Board voted unanimously to adjourn the meeting at 7:10 p.m.

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LeeAnn Tuttle-Thomas, Chairperson

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Tammy H. Robertson, Deputy Clerk