

FILED

2007 MAR 16 A 11:20

DIVISION OF ADMINISTRATIVE HEARINGS

TALLAHASSEE-LEON COUNTY PLANNING COMMISSION

JOSEPH R. GILLESPIE and MELANIE  
A. GILLESPIE,

Petitioners

vs.

DOAH Case No. 06-1234

CITY OF TALLAHASSEE and  
MIDYETTE, LLC,

Respondents.

---

**FINAL ORDER**

This matter came before the Planning Commission on the attached RECOMMENDED ORDER entered by T. Kent Wetherell, II, Administrative Law Judge, Division of Administrative Hearings, acting as the Hearing Officer for the Planning Commission in this matter. The record of the proceeding before the Administrative Law Judge has been filed with the Clerk. The Planning Commission has considered PETITIONER'S EXCEPTIONS TO RECOMMENDED ORDER, CITY'S RESPONSE TO PETITIONERS' EXCEPTIONS TO RECOMMENDED ORDER, and RESPONDENT'S, (MIDYETTE, LLC) RESPONSE TO PETITIONERS' EXCEPTIONS TO RECOMMENDED ORDER.

## FINDINGS OF FACT

1. The Findings of Fact in the RECOMMENDED ORDER are hereby accepted, adopted and incorporated herein by reference, except as expressly provided below:

A. The last sentence in Paragraph No. 19 in the Findings of Fact of the RECOMMENDED ORDER is rejected as unsupported by competent substantial evidence, and in its place the last sentence in Paragraph No. 19 in the Final Order shall state "Petitioners' property is zoned High Intensity Urban Activity Center, AC."

B. The last sentence in Paragraph No. 21 in the Findings of Fact of the RECOMMENDED ORDER is rejected as unsupported by competent substantial evidence, and in its place the last sentence in Paragraph No. 21 of the Final Order shall state "The Chaps' property is zoned High Intensity Urban Activity Center, AC."

C. Paragraph No. 41 of the RECOMMENDED ORDER, which is included as a Finding of Fact in the Recommended Order, is hereby stricken because it is not a Finding of Fact, but rather, is a Conclusion of Law, and it is hereby concluded as a matter of law that it is in error. Article IX, Section 5 of the By-Laws of the Tallahassee-Leon County Planning Commission, states that when a decision of the Development Review Committee is appealed that "[t]he decision under appeal will

be treated as a staff report.” The DRC decision does not come to the Planning Commission as a recommendation with the Recommended Order.

D. Paragraph No. 59 of the Findings of Fact of the RECOMMENDED ORDER is rejected as not based upon competent substantial evidence and in its place as Paragraph No. 59 in this proceeding the Final Order shall state “The deviation approved by the Development Review Commission in this case is set forth in Exhibit 13 to this proceeding.”

#### CONCLUSIONS OF LAW


2. The Conclusions of Law in the RECOMMENDED ORDER are hereby accepted, adopted and incorporated herein by reference.

3. The PETITIONERS’ EXCEPTIONS TO RECOMMENDED ORDER after thorough consideration are hereby rejected except that with regard to the FOURTH EXCEPTION therein, pursuant to the stipulation of the parties with regard to the zoning of the subject property the FOURTH EXCEPTION is accepted as addressed above.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law and the record of this proceeding, it is ordered that the Planning Commission approves the Type B site plan application submitted by Midyette, LLC, pursuant to

the conditions imposed by the Development Review Committee as set forth in Exhibit 13 to this proceeding, and the following additional condition that the applicant shall provide an eight-foot privacy fence on either side of the driveway, and the fence shall be landscaped.

DONE AND ORDERED by the Planning Commission on this 13<sup>th</sup> day of March, 2007.



Maribel Nicholson-Choice, Chairperson  
Tallahassee-Leon County Planning  
Commission  
City Hall  
300 South Adams Street  
Tallahassee, Florida 32301-1731

Roxanne Manning, Planning Commission, Clerk  
Tallahassee - Leon County Planning Commission  
City Hall  
300 S. Adams Street  
Tallahassee, Florida 32301-1731

Mr. Joseph R. Gillespie  
Ms. Melanie A. Gillespie  
2030 Midyette Road  
Tallahassee, FL 32301-6206

Mary Ann Chap  
107 Gresham Ave.  
Durham, NC 27704-4207

Michael Lee Chap  
1862 Baby Farm Circle  
Tallahassee, FL 32310-4418

Linda Hudson, Esq.  
Assistant City Attorney  
City Attorney's Office  
City Hall  
300 S. Adams St., Box A-5  
Tallahassee, FL 32301-1731

Daniel E. Manausa, Esq.  
Smith, Thompson, Shaw & Manausa  
3520 Thomasville Rd., Fourth Floor  
Tallahassee, FL 32309

TLPC\Midyette\Final Order