

**MINUTES OF THE SPECIAL CALLED SESSION OF THE  
PIPERTON PLANNING COMMISSION  
January 28, 2021, 5:00 P.M.**

The Piperton Planning Commission met on January 28, 2021 at 5:00 p.m., at City Hall, with Board members: Chairman John Henszey, Vice-Mayor Mike Binkley, Commissioner Bob Archer and Commissioner Mimi Ragon present. Mayor Henry Coats was absent. City Planner Brett Morgan, City Engineer Harvey Matheny, Fire Chief Reed Bullock, Public Works Director Bill Kilp and City Recorder Beverly Holloway were also present along with Vicki Hancock, Jim Ragon, Hank Wright and Frank Fitzgerald in the audience. John McCarty was present electronically via Zoom.

**Agenda item 1. Call to order, establish quorum**

**Action taken:** Chairman John Henszey called the meeting to order at 5:00 p.m., and established that a quorum was present.

**Agenda item 2. Prayer and Pledge of Allegiance to the American Flag**

**Action taken:** Commissioner Bob Archer led in the opening Prayer and Vice-Mayor Mike Binkley led in the Pledge of Allegiance to the American Flag.

**Agenda item 3. Piperton Business Park PD-O Rezoning Application**

City Planner Brett Morgan stated the planned development is located at the southeast corner of S.R. 385/Hwy 57, known as the Piper Subdivision that is currently zoned B-2, this application involves 4 lots of the Piper Subdivision along with the corner lot which all combine to total 9.23 acres, as you know from the last meeting staff had a meeting with the applicant, and the applicant's consultant and that led to a work session of the Planning Commission during the regular meeting on January 21<sup>st</sup> and that led to this special called meeting tonight to review this application, staff report, amended project text and the Piperton land use table was sent to everyone in their packet, the applicant's reason for requesting a PD-O over property that is already zoned B-2 and it is basically 3-fold: 1) to allow for the construction of a Flex building space not that we wouldn't allow it somewhere else but these flex buildings being written into what is allowed on this property makes its much simpler for site planning to come forward with something like this and to get it approved after the zoning has taken place, 2) to maintain the legal non-conforming status of current industrial uses on the property and as discussed at the meeting the Piperton Zoning Ordinance limits the uses of non-conforming uses as long as they are not vacant for more than 6 months (See Article 3), after 6 months the City can basically not allow the non-conforming uses anymore, the applicant is asking for leniency in that regard and the last project text is asking for there not to be any stipulations in regard to the legal non-conforming uses on the property and 3) to allow for some uses that are not strictly commercial uses, B-2 is basically a commercial district so the PD-O would essentially allow for some things that the City would not ordinarily define or qualify as a commercial use and the applicant has maintained that is a fairly essential part to the success of the development and needed as far as the approval of this application is concerned, I will note on the land use map that this area is in "transitional" as far as land use is concerned and that is a fairly significant factor in this application, transitional basically means going from one to another, so south of here are very heavy industrial uses this was set up by the City when the land use map was set up to basically transition from that to other uses and so the actual text of the land use map says transitional provides for non-residential uses (except industrial) within the context of an approved Planned Development only, the staff report went into some of these and what is being ask in a little bit more detail but before we get to much further into this if there is any question or the applicant wishes to make a presentation.

Commissioner Archer inquired about the extension of the non-conforming uses part, is that no longer a part of the request or is that still a part of the request?

Mr. Morgan stated it is part of the request, the initial outlined planned text, I think it said 18 months and the latest outline planned text basically eliminates that and says it is 10 years and we would essentially or could have any one of these existing ones for 9 ½ years and then at 9 ½ years allow a non-conforming use to go back in there.

Vice-Mayor Binkley inquired if that could be vacant up to 10 years.

Mr. Morgan stated it could be vacant, that is my understanding of what their text says and as I got into our zoning ordinance and looking at some of the things I thought it was important that the Planning Commission

be reminded of what are some of the reasons that the PD-O Ordinance was initiated in the first place and the purpose of that, drawing attention to the bottom of page 3 of the staff report "it mentions special amenities and benefits to the city beyond those otherwise required by the zoning ordinance, and it can be achieved to allow flexible planning" and that is the way planned developments are throughout the nation, they are designed to allow flexibility for the planner but in turn the city expects some amenity to go with that and I think that is something that has been lost on us maybe in this discussion and the other thing I would like to note is under that article is deviation from use restrictions of underlying zone districts, while the primary purpose of the PD-O district is to provide maximum design flexibility, it is not, however, the intent of this article to usurp the use restrictions of the zone districts in which a PD-O district is permitted and proposed to be established, accordingly a PD-O a district shall not provide for any use(s) specifically excluded from the permitted accessory and/or special exception uses within an underlying zone district for which a PD-O district is proposed, now at the beginning of all this the applicant had made application for a base district of light industrial and I ask them to change it but in reading that statement-if we are to offer things that are not considered commercial we would probably need to add M-1 or M-2 for some of the uses that are listed as based districts because otherwise we would be in violation of this statement, we cannot set base districts and then allow uses beyond those base districts in this PD-O.

Chairman Henszey stated we started this whole process with saying this was a really key spot, the gateway into Piperton, and we were very anxious to have a nice retail not industrial site coming in because if we allowed some of the things that are being asked for here, we would then have to have it the whole way down, it would take the Poplar corridor and set a precedent in it that we would never be able to dig out and I thought we were really clear when we first started this that it needs to be an upscale nice retail development and if we have to wait another 5 or 10 years than that would be fine too but it is important that we set the stage for what the rest of the City is going to look like and set the stage for the residents that have moved here would expect, so I think we can shorten this or lengthen this by deciding the uses and then we can get into things like roads, railroads, tunnels, sewers but if we can't decide the uses that we are going to have then we are spinning our wheels.

John McCarty stated as far as us making our initial presentation, what we want to discuss is why we are asking for what we are asking and how it will look and how we think it can still continue to meet your expectations of a nice entry to the City, so currently the property is zoned B-2 and we are asking for industrial uses whether it is M-1 or M-2 listed or other allowed uses, our goal is that this property with this PD-O would operate on what is considered a form based code, it doesn't matter what is inside the building if we do the building well and meets the City's requirements and provides a nice architectural building that could be retail or it could be contractor's offices, we are proposing that it is limited to only inside use with no exterior storage of materials or equipment so it would be a nice brick building designed to a certain level of architectural that would be approved by the Board, what we feel that we are offering as a part of this is that we can clean up this strip at lot earlier than normal retail shopping/commercial development could provide and providing this industrial use that would only occur in the buildings would allow that to happen, it is a flex space product-the front is a brick façade that has commercial entry features and there will be roll up doors in the back where an electrician brings in pallets of wire that would be stored inside the building, our goal tonight is to bring this project to you, discuss its downfalls and get a vote, the applicant is happy either way but this is the only way he can make it work from a financial standpoint, so we are proposing three flex space buildings-commercial façade all along the frontages of 385 and the Poplar frontage, if the storage ends up being a part of the project there would be some type of storage office for rentals and we would propose that there would be gates along the three or four access drives that provide access to the rear of the property that can be done in way that they are screened so there are no visibility issues in the back, and with the any type of contractor uses-we would expect that they would not be allowed to have any type of company vans or work trucks parked out front there maybe 1 or 2 from time to time but they would definitely not allowed to have a fleet of vehicles parked in front of the buildings which the goal is for it to be a good gateway into Piperton, as far as the non-conforming uses-the ability to continue to maximize the rental of the existing buildings is the only way the project financially works, the western auto body building would not be salvaged for very long, the first project would take it out and allow the two eastern buildings to continue to pay rent allowing the project to be financially stable, the goal is if the auto body shop moves in or out through out that 10 year period we could continue to rent the buildings and make cash flow on it, and if someone is in there at the end of the 10 year period Mr. Wright's intention is that they would be allowed to stay as a continuing not conforming use, on the eastern building (Kenny McKenzie's old shop) Mr. Wright is willing to remove the old metal fence, pressure wash, and paint the building to clean it up so that the buildings that remain would still look better and Brett you mention we may have lost part of the scope of the PD-O that we

were offering something to the City as far as enhanced design, I think the greatest thing offered is that on day one if the project is approved that Mr. Wright is able to acquire the property and clean up all of the property, the old abandon junkyard will be completely cleaned up, grass mowed and maintained but also the architectural standards that we could bring to the building would be above the bare minimum and similar as discussed in the last meeting, and of course Frank Fitzgerald did have some comments and may speak tonight on the level of building construction can be for this type of product.

Mr. Morgan stated I don't disagree that the City would benefit from cleaning up that area but that is a benefit to both the City and the applicant so I don't know that particularly completely qualifies as an amenity for the City.

Mr. McCarty stated that is why we are here tonight to present the project and if it is in the interest of the City we hoped to be approved if not in the interest of the City and doesn't meet the expectations we fully understand, no hard feelings, if we can discuss the conditions of approval if we can agree on some of these other things.

Mr. Morgan stated I will go ahead and read what was put in should the Planning Commission decide to move forward with this, staff didn't give a recommendation but decided to put conditions of approval on it, with that said Mr. Morgan read the conditions as such: 1) the applicant shall modify the Outline Plan Text, including approved and excluded uses, as determined by the Planning Commission- that is the reason why, we know that this might be a negotiated meeting tonight and there may be uses that are added and subtracted from the applicant's land use plan and so that was the first condition of approval, 2) this item has already been discussed-the applicant shall provide "Appropriate Architectural" imaging to service as a baseline for architectural design, this imaging shall be approved by the Planning Commission and recorded with the PD-O, 3) architectural guidelines for the entire Planned Development, including building facades, exterior lighting standards, appropriate landscape materials, screening, dumpster enclosures, and signage shall be submitted with the first Final Site Plan application for Planning Commission/Design Review Commission review and approval, 4) a traffic impact study (TIS) for the Planned Development will be provided with the first final plan submittal. The TIS will include a level of service analysis of existing and proposed intersections and driveways associated with the development as directed by the City Engineer. TDOT review and input regarding the TIS is required, 5) Hwy 57 dedication and improvement shall be submitted for TDOT and City Engineer review and approval. The timing of these improvements is subject to the City Engineer's determination, 6) the City's extension of sewer services under the Norfolk Southern Railroad are subject to the approval of the Board of Mayor and Commissioners, 7) a Storm Water Management Plan shall be provided with the first Final Site Plan application, 8) locate area reserved for Storm Water Detention on the Master Development Plan, 9) a Business Owner's Association shall be established for this development, the Bylaws and CCR's shall be submitted to the City for review with the first Final Site Plan application, these covenants shall contain restrictions for business vehicles and fleet parking to the rear of the buildings, 10) the City reserves the right to acquire an easement on site for City Gateway Signage, and 11) applicant is responsible for revising and re-recording the remaining lots of the Piper Subdivision which are the lots that they are now removing from that existing subdivision, I am sure we would have much more specific conditions of approval when site plans come and I will make this note as well regarding land use for instance heavy construction contractors on our land use table is permitted under M-2 as a special exception and while a PD-O precludes special exceptions from being a part of it as far as process is concerned, it does not preclude the requirements of the details of special exceptions that are found in the zoning ordinance and I went through those details again today for heavy construction contractors and this site would not work for that, you could not do on this site what the special exception requires of it for heavy contractors I do not believe so I wanted to make that point as this time because I have been trying very hard to work out how this gets solved because technically this is a tough sale and felt like this could be resolved as long as the businesses that were contractors were retail businesses first and I think that can probably still happen but I don't know with these other contracting things that are being requested, I don't know that they could work with the City's land use plan and/or zoning ordinance.

Commissioner Archer thanked the applicant for bring this to us, it is a nice development but based on what we have learned the last couple of weeks I don't think it fits with what the City is looking for this particular piece of land and what is sounds like is we are asking for the PD-O with the B-2, B-3, O and now we are talking about some M-1 maybe coming in so we are putting the industrial back in there that we have tried to avoid and place most of our industrial sites on Hwy 72 and not here, the exterior appearance would be fine but with this type of development there is only so high of level that can go but when you put the electrician in there and he can bring cable and wires in and have an electrical shop working in there and I don't see a financial planner or dentist moving in that bay next door to an electrical shop and that does deter some other business coming in

there but I feel like it will be restricted to such a point that you will probably not going to be able to live with what we are trying to do, further discussion ensued requiring the M-1 and M-2 uses at this location.

Mr. Morgan stated heavy contractors can't go here because the site doesn't work for it and that is something the applicant would need to address if this kind of contractor's work is something that has to happen here then I think we are at a stalemate in regards to moving forward with the application if we can get something in that has a retail component that offers contracting services or the offices of a contractor I think that works with the land use plan but otherwise as the Planning Consultant, I would say it doesn't fit the land use plan of the City of Piperton.

Frank Fitzgerald stated I appreciate your honesty, I would like to discuss two separate things 1) the planning issues behind this and the market factors that are driving what we are doing and the limits of what we can do, first off we are really focusing on these industrial uses as heavy contractors and big equipment and that is precluded from being here and to go back to the form base zoning, all zoning ordinances are based on an older school analysis of things we do, a different analysis in the planning stages now than we use to do, a lot of people say our zoning ordinance haven't prepped up, I was on the Planning Commission in Collierville for 10 years and we ran into a lot of this issue of the uses not necessarily being what was envisioned when the zone was done and having to be overly restrictive on uses and there is a lot of unintended consequences in that and we talked a lot about form based and the thought is what are you trying to prevent when you say industrial, is it the scale of the project, you think of a bigger project with industrial outdoor storage, noise, pollution, excessive traffic (18 wheeler traffic), those are the things that a lot of people think are industrial and the reason it needs to be regulated to an area that is less intrusive than this and we have eliminated those by what we are building and who is going to be attracted to it, we have no outdoor storage and if someone has a backhoe, it is not going to be able to sit here they are going to go to Hwy 72 or somewhere else in Mississippi, so the form of our building is really the driving force of who are tenants are going to be and to say they are all going to industrial-they are not, certainly a significant part of our tenant mix is going to be office showrooms where you have light fixtures out front and storage in the back and people come in to look at the light fixtures or your furniture, that is what we think the majority of this is going to be, it is a very upper scale flex space much like you would see in Schilling Farms or there are nice ones in the Wolfchase Mall area, so I think the emphasis on the use as opposed to what it looks like and how it functions is important, the transition that we are making from existing stuff that is not very nice to this nice product, it is the highest and best use that the market will support right now but the simple fact is we are backing up to the railroad tracks and have heavy industrial behind us and have industrial down the road (Alpha Chemical), I think this is logical really nice transition and I understand your desire for retail from my standpoint we would love to do it too but we don't think the market focuses on it, I think the northside and maybe the westside of 269 is going to be more suitable for that, certainly it will be competition to this and as those properties develop they will have a higher and better use that will complement this, this is a nice transition to it and 2) as a Piperton property owner that has seen that building on the corner for many years when Mr. Wright came to me with this I said let's do it, let's fix this place up, it is going to make an immediate difference of what we look like coming off of 57 and it will help all the properties around there by cleaning this up, I wouldn't be for this if I thought it would be detrimental to the area because I have got land interest on the corner, I think it is a huge step forward so as a landowner and someone that wants to see positive things for Piperton, not from the development side, I think this is something we need to look at, I would hate to turn this down and then we have to deal with this when we are trying to develop our property into a high better use and this will allow us to raise the bar in the rest of the area, we would appreciate an up or down vote on what we have submitted, I think there are still some issues to work out but we are happy to work with the Mayor and Board but from a plan perspective I think the decision is simple, is this an appropriate use for land that isn't the highest or best use or reasonable expectations, quite frankly being in the business for a long time I don't think the classic retail is going to go here and if it does, I will say thank you but I just don't think it can.

Chairman Henszey stated retail is not going to be like we remember retail, the world is changing.

Commissioner Mimi Ragon inquired where is the point of contention.

Mr. Morgan stated after the work session we marked up the outline planned text specifically striking heavy construction contractors and it was put back in.

Mr. Fitzgerald stated we do want the ability to have contractors and an electrician there, they will be restricted, they won't have backhoes and stuff up there, I am actually a contractor that has a construction license and my office is on the Town Square now, we are not asking for outdoor equipment storage, Agriscapes and people like that are not going to be here.

Commissioner Ragon inquired so what did we strike that you wanted.

Mr. Fitzgerald stated so I am not sure exactly what was struck but what I am saying is the uses we are asking for that fit this form are not the classic things that makes the industrial need to be segregated from the other places.

Mr. Morgan stated I have said along that the office use would provide for any number of contractors uses and would cover most everything but would not cover the big equipment type stuff and so I am not sure there is a point of contention if the wording can be made as such to where the office use fits here but when the heavy construction contractors and special trade contractors got put back in as a specific uses that had to be there that is when I started looking into it because we have not had much new of this come in to what our special exception says about it and it says exactly what you said they can't physically go here and they would never be able to put the trucks back there and there may be some semantics here that we are dealing with that can be worked out but we would have to make sure of it if we are going to be true to our land use map.

Mr. McCarty stated the best way to look at this property in the extensity scales up on the use, the way the project is being designed is a lot more storage is going to limit those things so if a heavy construction or a highway street construction is only allowed to be there, they can't be there fully, they will have their office and a rollup door on the back for a very small level of stuff, the specialty trade contractors which are allowed in M-1 (Plumbing, Heating & Air-those types of people) they are going to be able to operate fully on the property if they can contain all their vehicles and equipment inside, the concern with us removing the contractors and only allowing office is they wouldn't be able to operate and do that part of their business, the heavy construction I don't think there is any concern from us-we could strike heavy construction from it specifically because only heavy construction would be there would be an office in a small minor part of their operation could be occurring inside the way we submitted the project text.

Mr. Morgan stated as discussed before our B-2 allows Merry Maids and the Vet Clinic where the City Admin office is and Merry Maids is a contracting service, we didn't have to go to M-1 or M-2 with it to make it happen, they store equipment there and that level of contractor I think would not be problematic to this, we can't define it as something that crosses the boundary into M-1 or M-2, that is where the problem gets to be and the uses as defined in the B-2, B-3 and O, I think it covers any number of things but I don't think it is really where yall ultimately want to go and there is the sticking point, our zoning ordinance does not regard form based objects as the measuring stick for what is allowed.

Mr. McCarty stated I think that is our concern, going back to some of these other uses-so carpentry and floor work, I would assume that Alex's Carpet in Collierville on Hwy 72, they have a roll up door, they take big deliveries of big rolls of carpet using a forklift to do it, wouldn't be allowed in a contractor's office and that is the ideal kind of business that would be located in this facility.

Mr. Morgan stated millwork wood, kitchen cabinets, hardwood, veneer, plywood-that kind of thing is restricted to our industrial district.

Mr. McCarty stated I think that is what we are asking tonight if mason stonework, tile places, and paint places can't operate in your vision on Hwy 57 then yall can't approve the project.

Commissioner Archer stated that is exactly where I am at on this but where you are talking about skilled trades where you have an operating shop in the back part of the building, and I am not worried about the heavy big industrial I don't think that is an issue I don't think that will go there no matter what but that was what I was trying to say initially is that type business in my mind and thank you for the explanation of land use and what you perceive as the appropriate land use at this time but I think that sets a precedent that we don't want to set and if you have two or three of those in the building then some of the other more traditional B-2, B-3 and O uses are going to be chased away because they don't want to be next to a fabricator or plumbing shop or electrical shop and there will certainly be traffic in and out both workers and supplies so it will generate all of things that I don't think as one member of this Commission that was our vision for this piece even if we have to wait to develop until another time and I hate to be negative but I just don't see that if that is the keystone of what you are thinking of those type business.

Mr. McCarty stated that is what we are envisioning but not all of the property is keystoned for that types of businesses but it would be the ideal possible product showroom for carpet/tile in the first space with a nice showroom in the front and the rollup door and the shop in the rear.

Chairman Henszey stated there is a little legal precedent that can be set by allowing this to happen in this kind of development when the next person comes along down the road and wants to do something it will put you in a little bit of a legal predicament if you allow it one place and then you aren't going to allow it in the next place and so it is kind of a line that needs to be drawn and we would really like to have your development there, we really can't afford to have it with some of the uses that you think you have to have.

Commissioner Ragon stated for her it is the location and the impact of when you enter the City.

Mr. Morgan stated on the outline plan text for things like pervious areas and number of parking spaces calculations that they would be subject to the different base district uses and we were talking about the different kinds of uses that can to in there and the more I thought about it the more I realized we can't do it that way no matter how we approach the uses in there things like impervious ratio, parking counts and that kind of thing has to be looked at as the most intense use filling up the building and that would be the stick we use and that would be commercial-one parking space per 200 square feet because we couldn't be changing the parking every time a different kind of use went in there so we need to set those ratios if we move forward based on the most intensive uses that go in there, and inquired of Mr. McCarty with the square footage there does the parking that is shown adequate?

Mr. McCarty stated they have not dealt with the full design, the sketch that we provided is conceptual similar to one done on the east part of town, we did intend to meet the correct zoning parking ratio and work out any additional vehicle storage in the area in the back.

Mr. Morgan stated that kind of thing would be worked out at site planning if a phase came in for it.

Mr. McCarty stated their proposal was for it to fall under the intensive city zoning for whatever use.

Mr. Morgan stated we would need the most intense use that is in here and that would be the commercial.

Mr. McCarty stated currently I think we would need 330 parking spaces for proposed square footage and we would obviously have to get them from the back if we don't have them in the front and not wanting to have a sea of asphalt in front of the buildings and how we ended up coming up with the idea for this project, our next door neighbor is zoned industrial and everything east of the B-2 Piper (AOC).

Vice-Mayor Binkley stated they were already there and there is nothing we can do about that.

Mr. Fitzgerald stated we would like a vote tonight because we will not proceed and have the discussion whether to appeal to the Mayor and Board but in general we are not moving forward and it sounds like it is going down and I understand that is your judgement but I will say this from a non-developer standpoint something needs to happen there, it is going to look like this for a long time and someone needs to do something.

Chairman Henszey stated we would like to have it done, and you would like to be the one doing and the pieces aren't fitting at this particular time.

Vice-Mayor Binkley stated if there is a way to leave the industrial out and approve special usages for it that can be controlled other than broadly saying we are going to have M-1 and M-2 in there.

Mr. Fitzgerald stated we only asked for specific uses in M-1 and M-2 not everything just specific uses.

Vice-Mayor Binkley stated if we could make it work somehow that would be great. I would like to see this proceed forward but definitely keeping the industrial classification out of there I think is important.

Further discussion ensued about the usages.

**Action taken:** Chairman Henszey moved to approve the requested plan as presented, seconded by Vice-Mayor Binkley. The Motion received all negative votes. The Motion fails.

#### **Agenda item 4. Adjournment**

**Action taken:** Vice-Mayor Binkley moved for adjournment, seconded by Commissioner Mimi Ragon. The Motion received all affirmative votes, and the meeting was adjourned at 6:14 p.m.

Respectfully submitted,

Beverly Holloway, City Recorder

Approved: \_\_\_\_\_ date: \_\_\_\_\_