

BOARD OF APPEALS

May 5, 2008

7:00 PM

ATTENDANCE: Board Members: William Malesh, Jennifer Hagar, Amy Chetelat, Bob Matthews, Susan TerBorg, Planning and Zoning Coordinator Heather Erickson and Court Reporter Penny Comer.

Meeting was called to order at 7:00 PM.

APPROVAL OF MINUTES

Motion was made by Susan TerBorg and seconded by Amy Chetelat to approve the September 24, 2007 meeting minutes as written. **All in Favor; Motion Carried.**

NEW BUSINESS

File No. SE2008-01- Special Exception Request for a Manufactured Home- Double Wide at 1424 Clayton Street. PROPERTY OWNER: Clayton Auto Parts, LLC; APPLICANT: Jay C. Emrey III; LOCATION: 1424 Clayton Street, Perryville, MD; Tax Map 800, Parcel 76 & 189, Zoned C-2, 2.7 acres.

Bill Malesh asked the representatives of the request to address the Board.

Penny Comer, Court Reporter, swore in Jay Emrey, Richard Baker and Daniel Baker.

Jay Emrey stated that he is here tonight representing his clients Richard Baker and Daniel Baker. The property is 2.73 acres and consists of seven parcels. Mr. Baker owns four parcels. His own residence is on one of the parcels. He has his business on part of the property. Then there are two other small parcels that are there. What he would like to do is bring in a manufactured home to serve as a residence for his son Daniel mainly to operate and provide security for the businesses that are on the property. He has had problems with vandalism and trespassing for some time now. Not long ago there was an incident. There is a machine shop and storage buildings there. He asked Mr. Baker what other businesses are operated there.

Richard Baker replied that there is a counter top shop, the machine shop, vinyl and decal lettering shop and the automotive repair shop.

Mr. Emrey asked if Joe Mitchell is still there.

Mr. Baker replied no, he is gone. He added that they also have a portion of an acre fenced in the back that they are trying to get situated for campers and boats because a lot of the Homeowners Associations in the new developments do not allow people to keep a boat or camper in their yard. Therefore, they are trying to supply storage.

Mr. Emrey stated that the property adjoins the railroad tracks. He asked Mr. Baker if Charlie Dan still does the countertops.

Mr. Baker replied yes. Where the property borders the railroad is on the south side and east side and bordered by 222 and of course the front is Clayton Street.

Mr. Emrey asked Mr. Baker if his house would be between the adjoiners to the north and the manufactured home.

Mr. Baker replied yes.

Mr. Emrey stated that the way that it is shown on the application it is going to be setback the same distance from the street as his house.

Mr. Baker replied that the front would be setback even with the house that is there now.

Mr. Malesh asked if the seven parcels apart of the LLC.

Mr. Baker replied yes.

Mr. Emrey asked Mr. Baker if he is retired or semi-retired.

Mr. Baker replied that he is semi-retired but he would like to be fully retired. He explained that Daniel is soon to be a father and he of course wants a place of his own to live. He is partial owner of the property; he owns about 30%.

Mr. Emrey added that it is close enough that he can still be fed.

Mr. Baker replied yes, if his mother wants to.

Mr. Emrey explained that it is an ideal situation for him because he would be right there to provide security for the property yet he is not so far from Mom and Dad that he cannot pop in for dinner or breakfast or both.

Mr. Malesh asked if he could have a copy of his County site plan.

Mr. Baker asked what County site plan.

Mr. Malesh stated that he needs a County site plan to expand the business.

Mr. Emrey stated that he is not expanding the business. He is putting another residence on the property.

Mr. Malesh explained that they are within 500 feet of a major highway and anything built within that 500 feet of a major highway, this being 222, requires a County site plan before we can even consider it.

Mr. Emrey asked even if they are putting a residence there.

Mr. Malesh replied yes.

Mr. Emrey and Mr. Baker stated that they were not aware of that. Mr. Emrey asked if Keith Baynes if he could explain.

Mr. Baynes stated that he is looking at the section now.

Heather Erickson stated to Mr. Baker that what we have found out is that his property actually lies within the Highway Corridor Overlay District, which is 500 feet from any highway such as 222, Route 40 or 95. It goes from the centerline of the road and 500 feet back. It is up to the Board how they would like to handle it.

Mr. Malesh replied that actually it was supposed to be presented to the Zoning Board and they missed it somehow in their review before they sent it to us. What he needs to do is to get his County site plan, go to the Zoning Board and say here it is and get a recommendation and come back before this Board for approval. We need to follow our own regulations.

Mr. Emrey asked if this is from the Perryville Ordinance.

Ms. Erickson replied yes.

Mr. Malesh stated that it is pretty standard around the State of Maryland.

Mr. Emrey asked if he wanted to build a house on Rt. 7 if he would have to do that.

Mr. Malesh replied yes, probably. You would have to be within 500 feet of a major highway. Now 222 is, but he is not sure about Rt. 7.

Mr. Emrey asked how far away from that 500 they are.

Ms. Malesh replied that it is from the centerline of the road. It is just an application and they will have to come down and take a look at it and when they get their site plan they will go from there.

Mr. Emrey asked Mr. Malesh what he means by the term site plan because it is typically used for commercial development.

Mr. Malesh replied that this is a commercial piece of property. He stated that he is sorry that he has to do this and understands that he is paying an attorney also.

Ms. Erickson asked Mr. Malesh to point out where it says that they have to submit a site plan.

Mr. Malesh replied that it says prior to the Zoning Board actually needing it done they needed to have that before they went to the Zoning Board.

Ms. Erickson stated that usually what happens is that when they receive an application, and it usually happens on Route 40 because that is where you think of highway, we require those applicants even if they are changing their sign or such as the Whistle Stop had to come forth when they changed to Mom's Kitchen. What they do is they come before the Planning Commission and they look at the architecture of the building, if there are any improvements that need to be made, if anything needs to be screened like air conditioning units, any landscaping or lighting that needs to be installed, sidewalks if required, etc. Usually we ask that they have a drawing of their property and then the Board deliberates and makes the decision of what needs to be done to that property to bring it up to the Highway Corridor standards.

Mr. Emrey stated that he is trying to find where it says that they need a site plan.

Mr. Malesh replied Section 145-1. At the top it says that all development plan applications, including applications for building permits, site plan review and subdivision approval. These really should be presented to the Zoning Board.

Mr. Emrey replied in which they were.

Mr. Malesh argued that they did not present a site plan.

Mr. Emrey replied that it does not say that they have to.

Mr. Malesh replied that it says "site plan."

Mr. Emrey replied that he thinks that is in conjunction with applications for building permit, site plan review and subdivision approval. In other words, if you are changing an entrance or building something on Route 40 you have to do a site plan and State Highway has to be involved. He does not think that this means that site plan is required for a building permit.

Mr. Malesh replied that a commercial property within 500 feet is the way he interprets it. He added that he is one vote and that is the way he interprets it.

Mr. Emrey stated that he would defer to Council to see what he thinks.

Jennifer Hagar asked if it is Section 152 that he is referring to.

Ms. Erickson asked if she could add her thoughts on the two sections that they are looking at since she has been through this a couple of times. Section 145-1, the way that we have always looked at it with the Planning Commission is that any plans that come such as for a new business on Route 40 or if you get a zoning certificate for a change of use or an addition to a building, etc. it is just saying that any of those situations need to come before the Planning Commission in

order for them to review the Highway Corridor Overlay regulations. Section 152-1, talks about the same thing that they need to go before the Planning Commission.

Mr. Malesh stated that it is part of the Highway Corridor Overlay District and it requires a site plan.

Ms. Erickson replied that it does not necessarily require one. The Planning Commission can recommend one or require one if they deem necessary.

Bob Matthews stated that besides those two sections there are other sections that state the different reviews that the process would include as part of the Highway Corridor Overlay District. Therefore, there has to be enough information to satisfy those reviews by Planning Commission.

Mr. Emrey stated that what makes this most unusual is that generally it would be applicable to development fronting on that highway but this one does not. There is no access to 222 from this property or nor will there ever be.

Mr. Malesh replied but something does not necessarily mean a road. He is not speaking of access, this property comes up to the road.

Mr. Matthews stated that Section 144-2 covers that. Highway Corridor Overlay District shall include all lands within 500 feet of each side of the center line of the following rights-of-way: U.S. 40, I-95, and MD 222.

Ms. Hagar stated that it does not specify front or back. Also, if you read that last statement you have to have a surveyed plat.

Mr. Malesh stated that most commercial properties that come in today have a site plan and we know that the Town has looked at it and its okay.

Mr. Baker stated that it would have been nice for the Town to have told him that he needed that.

Mr. Malesh replied that it is an error on the Zoning Board's part.

Mr. Emrey stated that he is still not convinced that they need it. He is trying to figure out where it requires a site plan for this type of development.

Mr. Malesh replied that is the way that they interpret the reading and he has read the whole thing and it appears to him that it refers back to the specifications that would be required in a site plan.

Mr. Emrey stated that a site plan also requires an architect's seal.

Mr. Malesh replied that they would need to survey for the house anyway. He asked Mr. Baker if he has had the land surveyed where the house is going to be.

Mr. Baker replied no.

Mr. Malesh stated that it is a couple hundred dollar expense to get it surveyed. The fact that you are adding a new structure on the property and making it a residence he thinks that there should be a site plan and it is something that the County will have to review because it is in the Highway zone.

Mr. Emrey stated that it is not the County that looks at it, it is the Town. He thinks that the control factor is that it is on commercial property and if he wanted to put this additional residence then it would be by Special Exception granted by the Board of Appeals.

Ms. Hagar added that they can only consider granting a special exception if it is for security.

Amy Chetelat asked why wouldn't the existing house on the property be considered as the dwelling or building for security. Why does it require a second building?

Mr. Emrey stated that Mr. Baker, as he said, is semi-retired and would like to retire. He and Mrs. Baker would like to travel and they will not be staying in the house all of the time. He asked Mr. Baker how much he expects to travel.

Mr. Baker replied pretty much all summer. He has a rather large boat that he would like to use. With the amount of vandalism that they have had just in the past two months he is not sure what would happen if someone were not there. For example, on Friday night some kids came up on the porch, on his front porch, and broke a window out. Right around 10:00.

Mr. Malesh asked Mr. Baker if he thinks that maybe he is putting his young son in harms way.

Mr. Baker replied that he is more able than he is.

Mr. Emrey added that the police were there.

Mr. Baker agreed that the police were called.

Mr. Emrey stated that there have been other incidents.

Mr. Baker explained that they have destroyed the soda machine down in front of the shop. The week before they broke the siding off of the house across the street and broke their mailbox.

Mr. Malesh asked Mr. Baker if he was home when all of these things happened.

Mr. Baker replied yes.

Mr. Emrey added that there was actually an arrest there and Mr. Baker was called to court on Friday to testify against somebody who was parking down there by the commercial building.

Mr. Baker continued by stating that they pulled into the darkest parking area down there and were smoking their pot. He went down to confront them and they said that they were looking for their buddy's house and Mr. Baker told them that their buddy does not live here. Things escalated and they tried to run him over with their car. He grabbed his cell phone and called 911 told them that he was about to be ran over and the police came. That was the second incident that night. The first incident, a group of four pulled up in front of the building again out of the light and they were sitting there and they had a few golf ball size bags of weed in their car. They were juveniles so they got locked up. Somebody needs to be there as much as they can.

Susan TerBorg asked how long it would delay this if they had to get a site plan.

Mr. Emrey replied that it could take months. His question is where does it say that he has to have a site plan for any type of development? That is what he is trying to find. He is not trying to be argumentative but he just trying to find it. When you use the word site plan generally it is with respect to commercial development not residential, which is permitted by Special Exception on commercial property. He stated that he has done a lot of work in the County and for many, many years and mobile homes are permitted for farm help on agricultural land and for security purposes on industrial and commercial land. When they come in and make application for a mobile home for security purposes on commercial property he does not believe that they have to go through the County site plan process.

Ms. Chetelat asked that in allowing a double wide mobile home structure to be put on for security, even with somebody living in it, it does not make it residential. The land still stays commercial.

Mr. Emrey agreed and stated that it does not change the zoning.

Ms. Chetelat stated that since it does not change the zoning then she thinks that they need to distinguish that it is still commercial property from being residential property.

Mr. Baynes stated that it is always going to be commercial property. This is just a Special Exception for security purposes.

Mr. Emrey asked Mr. Baynes if he is correct in saying that when they do this in the County and you are applying for special exception for security purposes on commercial or industrial that they do not have to have a site plan. You generally get the special exception and then move forward. The Health Department would be concerned about whether there is water and sewer there. Other than that there is no other review that takes place. He stated that this is probably new to the Town.

Ms. Hagar stated that Section 150-c-5, Architectural Review, states that no temporary structures are permitted except those used in conjunction with and during construction projects. So what we are saying is that this has to be a temporary structure because it cannot be place on a permanent foundation yet this says that it would only be allowed in that zone if it was used in conjunction with and during construction projects.

Mr. Emrey agreed. Except the zoning ordinance says that it can be permitted as a Special Exception.

Ms. Hagar stated that it also states that whatever section of this chapter is more restrictive should apply. Therefore, this would supersede that. She pointed out that it is stated under Section 144. She added that Section 150-3 states that mobile homes and office-type mobile units shall be screened from view from the highway and equipped with skirting on all sides.

Mr. Emrey replied that this is not a mobile home.

Ms. Hagar stated that it is a manufactured home and that it needs to be skirted and it is not on a permanent foundation.

Mr. Emrey agreed and stated that it is because the ordinance calls for that. When speaking of temporary structures he thinks that it would be a mobile office.

Mr. Baynes stated that when he reads this he is not quite sure he agrees that for this type of application that a site plan is required. He is not sure what a site plan is going to show them other than what they have in this hand drawn diagram. It is of course going to show you where the proposed mobile home is going to be located. There are two questions that you have to determine. First, based on two of the questions that were raised he thinks that you first have to determine whether this proposed application meets the requirements for security purposes. There are questions about why the house cannot serve that same purpose or that there are other means that the applicant can do to provide security. That is your initial finding, whether this mobile home is needed for security purposes. Assuming you do find that and assuming that you still believe that a site plan is required again one alternative would be to approve it conditioned upon site plan approval by the Planning Commission rather than make them come back here. In any Special Exception you can grant them with any conditions that you feel appropriate. He is sure that they saw in the minutes the Planning Commission did recommend approval. Some of these conditions are limits on time, who was occupying the property or the residence, if Mr. Baker moved out of the house then it was to expire, landscaping and buffers and those type of things.

Mr. Malesh stated that he would assume that there are licenses for each of the businesses on the property. He asked Mr. Baker if they are in fact all licensed businesses with Cecil County.

Mr. Baker replied yes.

Mr. Malesh stated that we should have a copy of all of the licenses for our records.

Ms. Erickson added that she has two permits and that is all that she has. One is for a boat and jet ski repair and the other is for auto repair.

Mr. Baker replied that it was sold to RC Service Center.

Mr. Malesh asked if RC Service Center has a business license.

Mr. Baker replied that he cannot answer. When he had Clayton Auto Park he had auto repair there and he could not get a business license. They would not issue him one because he did not show a profit.

Ms. Chetelat asked if RC owns the business and rents the location from Mr. Baker.

Mr. Baker replied yes and he also does the vinyl lettering, which is just another portion of his business.

Mr. Malesh mentioned the countertop shop.

Mr. Emrey stated that they sell to homebuilders.

Mr. Malesh stated that there is also auto repair and a machine shop there.

Mr. Baker stated that the machine shop is closed, the fellows moved out of it.

Mr. Malesh stated that his experience has been in granting a home or a trailer or double wide in this Town, and he has been here 28 years, putting conditions of when somebody moves the home must be removed that they are never removed. They are there for the duration of the century. Therefore, that is not a very good condition to put on it. It has to be sold as one unit of the property possibly. Or still get a better look at the site plan he still thinks that the Highway is a little bit of an issue to him because all properties within 500 feet of this that he has looked at the highway is looked at and there is the railroad track there that is a bit of an issue for them.

Mr. Emrey stated that he thinks that they need to make a record for the need for security.

Ms. Hagar asked if Daniel is trained in security. If you are saying that there is a need for security then you should have a security company evaluate the situation.

Mr. Emrey responded that it is the nature of having someone there as a deterrent. It is not to have someone there that is armed and dangerous.

Ms. Hagar stated that obviously it has not been a deterrent if they have been breaking in the front window on the porch while they are home.

Mr. Malesh added if he is going to leave his wife and child there when he goes off.

Daniel Baker stated that he thinks that having the house there nearer to the shop would deter the pulling in and parking.

Ms. Hagar asked why they couldn't do lighting or fencing in that area because that adds security.

Daniel Baker reiterated that he thinks that having the house there would deter people from pulling into the parking lot and doing whatever they do. He has a motion light on the end of the

house but there are no lights down there right now. He thinks that having the large gap between the house and the shop now is why people do it because they think that nobody will notice.

Mr. Emrey added that it is unoccupied. It is unoccupied if the businesses are closed and there is enough green grass between that they do not feel intimidated by the residence over there. In regards to the security issue, it is not security in the sense of a security force or a security company. It is to make the premises more secure by having someone there as opposed to having no one there or someone further away. If Mr. Baker and his wife go out on the boat for the summer or go away then there is nobody there, which is the problem. A security purpose does not necessarily mean that somebody is going to be armed and looking out the window looking for trouble. Mr. Emrey asked Daniel where else he works.

Daniel Baker replied that he works in Elkton at a boat dealership during the day.

Mr. Malesh asked if they require evening hours.

Daniel Baker replied no.

Mr. Matthews asked if they have tried better lighting.

Mr. Baker replied that it does not seem to phase them, it just runs the electric bill up.

Mr. Malesh asked about fencing the property.

Mr. Baker replied that there is fence there. It would not be very accessible to fence it all the way out to the road. It would be difficult for trucks to come in and deliver parts.

Mr. Emrey stated that generally the way that he looks at the statute is that if there is a need or a general need for security then the ordinance has provided for that. A commercial property may have a manufactured home for security purposes. He looks at it as a deterrent not someone who is going to be armed and looking for trouble. The ordinance has by allowing the special exception has created the presumption that it is in the public health, safety and general welfare to have such a use at that location absent any showing of any harmful affect at that location above and beyond those normally associated with that use. He does not see anyone here from the neighborhood in protest, which is good for them. There may be the question that if this is detrimental to the public health, safety and welfare somebody could say that it is going to lower their property value or I don't want anymore, it is too congested or I'm just against it because I don't want any change. However, they do not have anyone here against it. So, he would think that it is the presumption that it is appropriate at this location is bolstered by the fact that there is nobody here against it.

Ms. Chetelat added that she thinks that there is also a presumption that there is not already another residence or another building for that purpose on the property and in this case there is. There is a residence on the property and she does not see in the ordinance where you would be allowed to put a second home or a second building on the property for the convenience of the person. In other words, so one owner can travel while the other owner is there. So she thinks

that there is that issue that needs to be dealt with; that this is actually a second building being put on the property for security purposes.

Daniel Baker stated that he currently lives in the house that is there. He stays in the basement and he has no view of the shop at all.

Mr. Emrey stated that one point of information here is that the commercial building is located on a separate parcel from the residential portion. In other words, this second residence would actually be located not on commercial property. The way that these parcels are configured is that the commercial buildings are on one parcel and the residence is on the largest parcel and then there are two small parcels.

Ms. Chetelat stated that it is her understanding that there are parcels but they are all deeded under one deed and they are all deeded commercial.

Mr. Baynes clarified that they are all zoned commercial.

Mr. Emrey added that it may be one deed but there are multiple parcels.

Mr. Baynes stated that the only way that this manufactured home is permitted in this zone is for security purposes.

Mr. Matthews stated that the problem that he is having is that what he is hearing is that the primary purpose is as a residence and as good as that intention may be he is not sure that it fits the special exception criteria. There is already a building there that satisfies the security requirement and they are asking for a second building.

Ms. Hagar added that they are also adding a wife and a child, which is not necessarily indicative of being security oriented.

Mr. Matthews added that he also thinks that they are getting a little ahead of themselves with this Highway Corridor issue.

Ms. Hagar asked if they do not have a list of exactly what this Highway Corridor Overlay District is looking for. They talk about showing a surveyed line by the applicant, which she would assume they are looking for a surveyed site map. She asked if that is part of the minimum requirement.

Mr. Emrey stated that he takes the position that it does not apply. The fact that it is in the Highway Corridor Overlay District does not apply to whether or not special exceptions should be granted for security purposes. The legislative body of the Town has indicated certain uses that are presumed compatible with existing development by special exception. They said that these are compatible if they are absent of showing harmful affects. It puts the burden on the applicant to come in and show that it will have a positive affect on the neighborhood. He feels that they have done that but they are stuck on legal ease.

Ms. Hagar stated that she does think that it has to apply. It specifies that the Highway Corridor Overlay District regulations are intended to supplement the regulations of the underlying zoning districts and to provide harmony and compatibility, etc. When other provisions of this chapter are more restrictive they shall apply. Therefore, it does say that it is in correspondence with all of the other zoning and we have to take it into account. She asked if there is someone that is well versed in this that can tell them what exactly it is looking for.

Mr. Malesh stated that they do have the option of shelving it for 30 days and researching it a little bit.

Mr. Emrey suggested some sort of a workshop.

Mr. Malesh added that 30 days is not forever.

Ms. Hagar stated that there would not be any additional fees.

Mr. Malesh stated that they would waive any fees.

Mr. Baker stated that the thirty days is fine but unfortunately this unit will be gone before that. He has already had them on hold for 90 days and he wanted an answer tonight. It's a used unit; they are trying to save as much money as they can.

Mr. Malesh asked if it is in good condition.

Mr. Baker replied that it is in very good condition.

Mr. Malesh stated that the other buildings on the property are not in good condition. When he drives down 222 and looks down there it looks like a rust pile.

Mr. Baker replied that in the time that he has owned that property he has spent over \$75,000.00 rehabing those buildings.

Mr. Malesh replied that maybe some silver paint would take care of it; it is just so rusted.

Mr. Emrey stated that the issue before the Board tonight is the Special Exception.

Ms. Hagar added that she feels that they have to take it into account.

Mr. Malesh stated that they could make a motion to deny the request or they can make a motion to approve and discuss and vote on it or they can make a motion to table it for 30 days.

Mr. Baynes stated that one of the main issues before the Board is that this manufactured home is permitted in this zone only for the purpose of security. That is the only reason why a manufactured home is permitted in this zone. You cannot have a second residence. You cannot run the shops from there.

Ms. Hagar asked why he couldn't run the shop from there.

Mr. Baynes replied that maybe he could, maybe that is something for Ms. Erickson to decide. His thought would be that one of the initial questions because their have been questions and discussions back and forth about the issue of security. One way to handle this would be to see how the Board votes in whether the applicant has met there case for security. If they do and suggest that they meet that requirement then he would suggest looking at the next step and what is going to be required, i.e. Site plan. If for some reason the Board votes and they do not think that it meets a legitimate need for security then you do not have to worry about a site plan because you are going to deny the application. That is one of the initial questions that at some point needs to be answered. He does not see any sense in having the applicant come back in a month from now with a site plan if the Board is of the feeling that this is not for security anyway. Why make someone go to that time and expense if you are still having problems with whether this is for security purposes or for a second residence for the son or operating out of the business or anything else that is brought up.

Mr. Malesh added that they are making a case that it is needed for security.

Mr. Baynes agreed and stated that he is not taking sides that it is just an issue that needs to be decided at some point. If it is a major issue then maybe that should be decided before requiring them to do a site plan because it may be a mute point.

Ms. Hagar asked if they have the exact language regarding security because she was looking for it again.

Mr. Baynes stated that it is under Section 183-2.

Penny Comer swore in Commissioner James Hansen.

Commissioner Hansen stated that he sits on the Board of Planning and Zoning and they went through this with them and they specified that it could only be allowed for security. Therefore, if this man moves out of that trailer then that trailer has to go off of that property. There are no ifs ands or buts and no reason why that trailer could stay there. It is put there in a temporary position. Since it is in a temporary position they wanted skirting around it and a little bit of vegetation to make it look decent. They are willing to do that. He asked if they said that every five years this applicant will be re-looked at and made sure that they are within the guidelines or otherwise the trailer would have to move.

Mr. Emrey replied that he believes that is correct.

Commissioner Hansen stated that is why they approved it.

Mr. Malesh stated that is why he said that he has seen this happen before and the trailer stays forever.

Commissioner Hansen stated that he does not see how they can get over on us if it is on paper saying that especially since it says that it is only permitted as a temporary security purpose. It is temporary, not permanent.

Mr. Malesh stated that it probably will not be temporary especially if they are going to be putting at least \$15,000.00 for water and sewer and then \$30-40-50,000.00 into the home. That's a lot of money especially if he and his wife decide they don't like each other anymore.

Mr. Baker stated that he has a lot of faith in his son and daughter. His son is the third owner in the property and Clayton Auto Park, LLC. Therefore, he has an interest in being there. The way that this is laid out they will not be creating another access onto Clayton Street. There are already two accesses there one to the house and the lower one towards the railroad would bring access to his house.

Ms. Hagar stated that she keeps going back and forth between the conflicts. The one is stating that it basically has to be temporary in nature because it cannot be on a permanent foundation and then the overlay says that no temporary structures are permitted. That is why she is looking for more clarification. She is not convinced that it is for security anyway and that its primary purpose is to function as a residence.

Mr. Malesh stated that he did his homework. He walked around the site a little bit and spoke to people. The people that he talked to thought Mr. Baker was a nice guy.

Mr. Baker stated that when he bought the property ten years ago there was a single wide house trailer on it that was taken down.

Mr. Emrey stated that the Board should keep in mind that there has been vandalism and criminal activity in the area.

Ms. Hagar stated that she would not want to put a baby in that situation. She added that she is a mother of two small children and she would not put a baby in that situation. That's why she does not think that the primary purpose for this is security. She thinks it's for residence. You do not put a baby in a building that is for security. Where there is vandalism. Where there is loitering. Where there are windows being broke in. Where there is the potential for violent situations. You fence the yard and put in motion sensor lighting. It is a beautiful lot there and would make a great second home but that's what it would make it is a second home and we cannot allow it as a second home unfortunately because of the zoning regulations. She is not convinced that it is for security. She understands that having somebody closer to that lot is a bigger presence. But to her having a wife and a child in that building is not about security. It is about residence.

Mr. Emrey stated that again it is not about somebody being on guard, it is about the presence.

Ms. Hagar replied that you are talking about a facility that has security style issues.

Mr. Emrey stated that he thinks that they would evaporate if there was a residence and someone in it that close to the commercial property.

Ms. Hagar replied that it is only another 75-100 feet closer. It is not like they are completely out of site. That house is right there. You can see the business from the house. She asked if anyone else had any thoughts on this.

Mr. Matthews stated that he is exactly where Ms. Hagar is.

Daniel Baker stated that he can only see how the situation could be better by having the house there because it would deter some of the violence. Whether he lives in this house or the house that is presently there and have the baby there are still people on the front porch breaking windows and still parking in the parking lot and doing whatever they do. If he puts the house there it would deter some of that. It certainly would not attract it.

Mr. Matthews added that if they are blatant enough to come on the front porch and break a window.

Mr. Malesh added or trying to run your dad over he would not want him to go out there to confront them.

Ms. TerBorg stated that she would like to recommend that they approve the special exception for the double wide manufactured home at 1424 Clayton Street conditioned on the following: that they revisit the special exception in five years, that they provide adequate landscaping, that only the son and his family live there, that it's primarily for security purposes, and that we revisit it if they think it is no longer necessary and/or if they move. She also thinks that they should make it conditioned upon finding out more about the Highway Corridor Overlay District, which was just thrown at her.

Mr. Emrey stated that they have no problem with that.

Ms. TerBorg continued by stating that it should be pending whatever regulations they make as well.

Mr. Malesh stated that even with those conditions they will have to wait to get that report back and he is trying to buy it today.

Mr. Matthews asked if that is the motion.

Ms. TerBorg replied yes that is her motion. Basically, she took the motion that they were given and simply added that it would be pending whatever additional conditions may be put on it (for the HCOD) by the Planning & Zoning Board.

Ms. Chetelat stated that it still does not give them an answer though.

Ms. TerBorg stated that we can either approve it or disapprove it.

Mr. Emrey added that they are in favor of it.

Ms. Erickson stated that they have two options. They can table it conditioned upon Ms. TerBorg's motion with the Highway Corridor Regulations going back before the Planning Commission then returning to the Board of Appeals for approval on the Special Exception. Or they could approve the Special Exception conditioned upon the applicant returning to the Planning Commission and receiving Highway Corridor approval.

Mr. Malesh stated that he would like to request that they change the every five year review, assuming he is still a resident there, to every twenty four months. He asked that they just show that they are still a resident there.

Mr. Emrey stated that he does not have a problem with that.

Mr. Malesh stated that it also helps us. Next, he would also like a letter from him stating that this will no longer be on the property if he does not reside there.

Ms. Chetelat stated that she was reading through the minutes the Planning Commission recommended that there be sprinklers in the double wide manufactured home and she would like to see that put into the motion. She stated that the motion includes landscaping, sprinklers and it being contingent upon Daniel living in that house.

Ms. Erickson asked if she may add in conjunction with all of those conditions that it state prior to occupancy permit. Therefore, he cannot get his occupancy permit until all of those conditions are met.

Ms. Chetelat stated that also before we do this she would like to make sure that what they are doing still puts the condition on them that even if nobody was living in the main house there that it (manufactured home) would need to be removed from the property. There was a recommendation placed by the Board that if for some reason Ricky Baker and his wife decide to move out of their house that they would have to come back again for review and the double wide manufactured home would have to be removed from the property. She added that they need to make sure that neither house could be used as a rental.

Mr. Baker stated that he does not have an issue with that.

Mr. Emrey stated that as he recalls the sprinkler issue from talking to the Planning Commission that it was somehow not applicable.

Ms. Erickson disagreed and stated that it is applicable.

Ms. Chetelat added that it states in the minutes that they have to have internal sprinklers.

Mr. Baker stated that there are systems out there and that he does not disagree with it.

Ms. TerBorg stated that she moves that they approve the special exception request for the double wide manufactured home at 1424 Clayton Street conditioned upon the following: to revisit the special exception if the occupancy changes and/or every two years.

Mr. Malesh stated that there is no need to revisit it if the occupancy changes because it is done.

Ms. Chetelat stated that if the occupancy changes then it comes off. It is not revisited. If the occupancy changes then the manufactured home has to be removed.

Mr. Malesh clarified that the special exception would expire.

Mr. Emrey added that it terminates.

Ms. TerBorg stated that it says to revisit or review if the occupancy changes or every two years if it does not.

Ms. Chetelat stated that her intent and what she believes is the intent of the Board is to revisit it every two years where they would basically have a review of the situation every two years or if the situation occurs where the occupancy changes and Daniel is no longer living there then it expires.

Ms. TerBorg continued with her motion by stating to revisit the special exception every two years, to provide adequate landscaping and sprinklers.

Ms. Chetelat clarified internal sprinklers as opposed to sprinklers for the landscaping.

Ms. TerBorg continued by stating to provide adequate landscaping, internal sprinklers, to remove the manufactured home if the son, Daniel, leaves and finally that all of the conditions of the Highway Corridor Overlay District must be met prior to receiving a use and occupancy permit.

Ms. Chetelat stated that she thinks that they still need to add something into it about if the occupancy of the other house changes. She thinks that it needs to specify that neither residences can be used as rental properties. She feels that it really needs to be spelled out.

Ms. TerBorg stated that neither the existing home or the manufactured home can be used as a rental property.

Ms. Chetelat added that if the occupancy of the original house changes then it has to come back before the review Board. Basically, what they are saying is that if Daniel no longer lives in the double wide then the exception expires. If the residency changes in the original home they have to come back before the Board.

Mr. Baker and Mr. Emrey stated that it is fair enough.

Ms. TerBorg agreed.

Mr. Baker stated that the Planning Board asked for two years but he asked for five because of the expense of the water and sewer connection, which is why they asked for five years.

Mr. Malesh replied that it is only if he does not live there. If he is going to live there then it is a non-issue.

Ms. Chetelat stated that they are going to review it every two years and without a good reason they could not revoke it. She stated that she would be more comfortable in revisiting it every two years and doing a review.

Mr. Malesh asked about three years.

Daniel Baker stated that he thought that they were going to revisit it just to check to make sure that he was still a resident there and if they check and he says no then they would say get the manufactured home out.

Ms. Chetelat stated that if he moves out after six months then it's a done deal, it's gone. She stated that she can see three years but five is a little too long.

Mr. Emrey stated that they would like five years but three is a reasonable compromise.

Ms. TerBorg stated that she would agree to three years.

Mr. Matthews stated that what is troubling him is that they have zoning ordinances where they can request a special exception and the only criteria that they can grant that special exception on is security and we are making a motion that is conditioning it upon this specific individual living there.

Ms. Hagar asked if they could condition it upon the incidents of trouble going down.

Mr. Emrey asked about tying it to the ownership, whoever owns the property because whoever owns the property is going to need it for security.

Ms. Chetelat replied that then they are back in that situation where Ricky Baker could say you take the house and I'll take the manufactured home and the reason for security disappears. She thinks that just blanket one of the owners of the property. She sees that as a problem simply because that situation that is not allowable could then occur. Therefore, she thinks that Daniel as a 30% owner of the business.

Mr. Baker stated that sitting on the Board as he did for four or five years absentee landlords in the Town of Perryville have been a big problem and he can just see that if he had plans to sell, which he doesn't, coming in there and renting to whoever.

Mr. Matthews stated that lets says it's a future owner, we have already set a precedent that there is a need for security in addition to the house that is already there.

Ms. TerBorg stated that she was convinced that there was a need for security there after reading the minutes from the Planning Commission. She thought that they made a case at the Planning & Zoning Commission.

Ms. Hagar stated that she disagrees because you do not put a baby in that situation. For security you put up fences and motion sensors. Therefore, they could tie it to reduced incidences of vandalism. She asked if they could tie it to a security clause.

Mr. Emrey stated that he thinks that the way it is written now may be sufficient and revisit it in three years and see how it works.

Ms. Chetelat stated that the way that it is written now is by tying to Daniel living in the house and providing security and you were to sell the property then the exception does not go with the sale, it would expire.

Mr. Matthews stated that at the same time we have granted this and future owners could come in and legally argue that there is a need there.

Mr. Baynes agreed and stated that potentially they are going to be faced with that same dilemma and even if they come in and you say look crime is down and there have not been any incidents of vandalism out there they can say see it worked, it was needed. Once you grant a special exception, unless conditions dramatically change, it is going to be very difficult for this Board to deny a future application whether it is Daniel coming back in two or three years or someone else. If the circumstances are the same then an appeal would be filed saying that you are being arbitrary or capricious in denying based on similar facts two years from now versus today.

Ms. Hagar asked if it says that no temporary structures are permitted except those used in conjunction with and during construction projects and the essence of our other zoning is saying that it is a temporary structure does that one supersede the other one.

Ms. Chetelat stated that by putting the clause in there to send it back to the Zoning Board it puts it back on the Zoning Board to make that decision.

Mr. Baynes stated that a manufactured home for security purposes is permitted in this zone as a special exception. It just cannot be on a permanent foundation. It is permitted as a special exception as long as you find that it is needed for security purposes.

Mr. Emrey stated that then it would not be a temporary structure.

Mr. Baynes replied that he does not know how he would define temporary but it would not be on a permanent foundation.

Mr. Malesh stated that he would like twenty four months for review.

Discussion ensued about twenty four months versus thirty six. The Board decided on twenty four months.

Motion was made by Susan TerBorg and seconded by Jennifer Hagar to approve File No. SE2008-01- Special Exception Request for a Manufactured Home- Double Wide at 1424 Clayton Street conditioned upon the following: to revisit the special exception every twenty four months; if the occupancy changes either in the existing residence or in the doublewide manufactured home the manufactured home must be removed; adequate landscaping being provided; the application being referred to the Perryville Planning Commission to determine what effect the Highway Corridor Overlay District has on this application and the Applicant must comply with all such requirements imposed by the Planning Commission; that the use of the manufactured home is limited to the Applicant, Daniel Baker and his family. If Daniel Baker and his family move out of the manufactured home the manufactured home must be removed; the manufactured home must have internal sprinklers consistent with the Town's ordinance; neither the permanent residence nor the manufactured home can be used for rentals; and the Applicant must meet all conditions of approval prior to being issued an occupancy permit for the manufactured home. **3 in Favor, 2 Opposed; Motion Carried.**

Motion was made by Amy Chetelat and seconded by Bob Matthews to adjourn the meeting at 8:30pm. **All in Favor; Motion Carried.**

Respectfully Submitted,

Heather Erickson/Dianna Battaglia
Planning & Zoning Coordinator