

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, January 4, 2022 – 3:00 PM – Council Chambers

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, January 4, 2022, at 3:00 PM in Council Chambers of City Hall.

Members Present: Kevin Jones, Chair
Judith A. Mathews, Vice Chair
Tom Tartt
Allen Delzell
Tad Fogel

Staff Present: Aaron Bland, Assistant Planning Director
Katherine Buzby, Planner
Emily Brewer, Planner
Janice Pinson, Board Clerk
Brian Gulden, Board Attorney

Others : Elaine Grove, Court Reporter, Huseby's
Mike Rogers, Property Owner
Al Horrigan, President, French Broad Place Homeowners Assn.
Marnie Martin, Property Owner French Broad Place
Bill Martin, Property Owner French Broad Place
Charlie Hardy, Property Owner French Broad Place

I. WELCOME

Chair K. Jones called the meeting to order at 3:00 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS

Board members, Board Attorney, and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

Chair Jones had the Clerk certify that a quorum of the Board was present.

IV. APPROVAL OF AGENDA

Motion to approve the agenda as presented by Tad Fogel, second by T. Tartt, unanimously carried.

V. APPROVAL OF MINUTES

Dr. Delzell moved, seconded by T. Tartt that the December 7, 2021, Minutes be approved as presented. Motion carried unanimously.

VI. NEW BUSINESS

a. Continuation of consideration of the revocation of Special Use Permit (SUP-12-104) issued to David Stokely for an automotive repair business doing business as "David's Auto. The property is located at 69 W. French Broad Street within the City of Brevard, within a Downtown Mixed Use (DMX) zoning district, identified by PIN# 8586-52-4162-000.

Ms. Mathews recused herself from the hearing due to a conflict of interest.

Chair Jones polled the board as to exparte communications and conflicts of interests. He explained that he was approached by someone wanting to discuss the matter, but that he did not discuss the matter, and that he felt he could be impartial in the matter. All other members of the board had no exparte communications or conflicts of interest.

Attorney Gulden recognized the disclosure.

Mr. Jones explained quasi-judicial procedures, and read the following protocol:

"Under North Carolina law, this is a quasi-judicial proceeding which involves this Board making specific findings of facts regarding the potential revocation of the prior development approval, SUP-12-104. The purpose of this proceeding is limited to hearing evidence and determining, based upon such evidence, whether the holder of such development approval substantially departed from the approved application, plans or specifications of such prior approval or whether the holder of such development approval has refused or failed to comply with the requirements of the development regulation."

"Additionally, this Board must follow the same development review and approval process required when the development approval was issued. In 2012, when SUP-12-104 was issued, special use permits required an affirmative four-fifth vote for approval. As such, this Board can only revoke SUP-12-104 upon an affirmative supermajority vote as was needed when the development was initially approved."

"Lastly, since this hearing will be *quasi-judicial* in nature, the Board can only entertain testimony or other evidence which is germane to the case. Further, such testimony or other evidence can only be presented by those parties with standing."

Mr. Fogel moved that all of the residents present from French Broad Place have standing in the matter, second by Dr. Delzell, unanimously carried.

The following were sworn by the Board Clerk: Bill and Marnie Martin, Al Horrigan, Charlie Hardy, Michael Rogers and Aaron Bland.

Chair Jones opened the hearing.

Aaron Bland, Assistant Planning Director stated that the matter was properly advertised, letters mailed to neighbors and the property posted. He presented the staff report.

Transcript of the hearing by Huseby's Court Reporting Service is attached hereto, labeled Exhibit "A" and incorporated herein by reference.

The following Exhibits are attached hereto and incorporated herein by reference:

Exhibit "B" - Letter Mike Rogers to David Stokely dated January 4, 2022

Exhibit "C"- Photo taken by City of Brevard Planning Department December 28, 2021

Exhibit "D" – Photos taken by Al Horrigan, French Broad Place

Exhibit "E" – Photos taken by Bill Martin, French Broad Place

VII. UNFINISHED BUSINESS – None

VIII. REMARKS – None

IX. ADJOURN

T. Fogel moved, seconded by T. Tartt that the meeting adjourn. Motion carried. Meeting adjourned at 4:42 PM.


Janice H. Pinson, Board Clerk
Kevin Jones, Chair

EXHIBIT "B"

January 4, 2022

David's Auto

Attn: David Stokely

209 N. Caldwell St

Brevard, NC 28712

Dear Mr. Stokely,

Thank you for the many years of rented space you've done with myself and Terry McCracken, as partners of 206 N. Caldwell St in the City of Brevard, NC.

Per conversation this morning, you and I have mutually agreed that it's in the best interest of both parties not to renew the current lease agreement which expires on Jan. 30, 2022.

Terry McCracken, part owner of 209 N. Caldwell St, and I demand that David's Auto no longer conduct any business at said location after January 30, 2022, the end of the lease.

In an effort to lease the property to a new business, all vehicles, equipment, tires, material, possessions and signage must be removed on or before Jan. 30, 2022. January rent is still due on January 10, 2022. If for some reason, all of the properties are not removed by January 30, 2022, eviction papers will be served and \$86 per day will be charged until all vehicles, tires, equipment, material and possessions have been removed off the property.

If you have any questions, please let me know. Again, thank you for the many years we've been able to work together. We wish you the very best in the future.

Respectfully submitted,

Michael J. Rogers

Terry McCracken

Cc: Terry McCracken

Connie Rogers

Sandy Stokely

Paul Ray- City of Brevard Planner

Via: Text

Mail

Certified Mail

EXHIBIT "C"

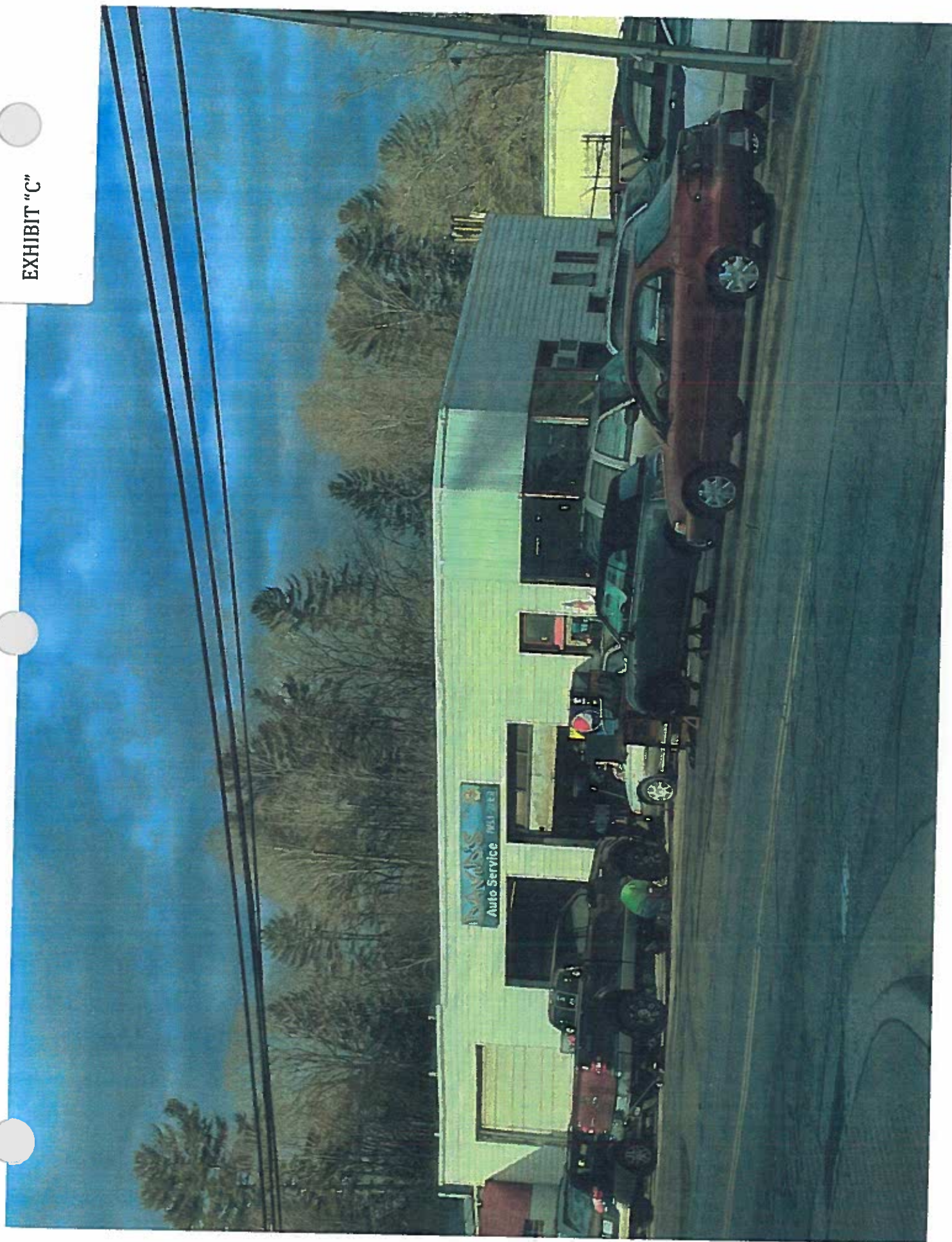
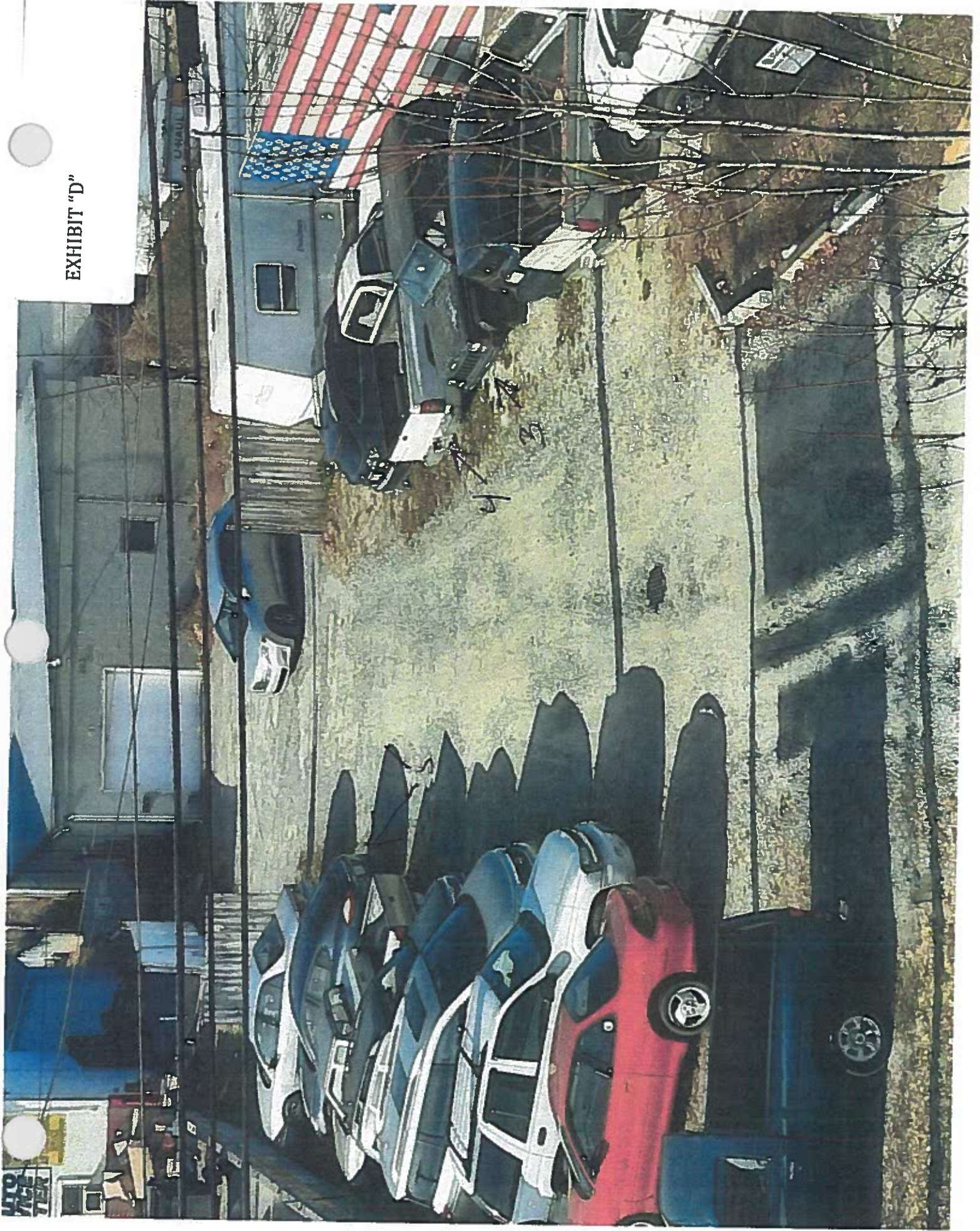
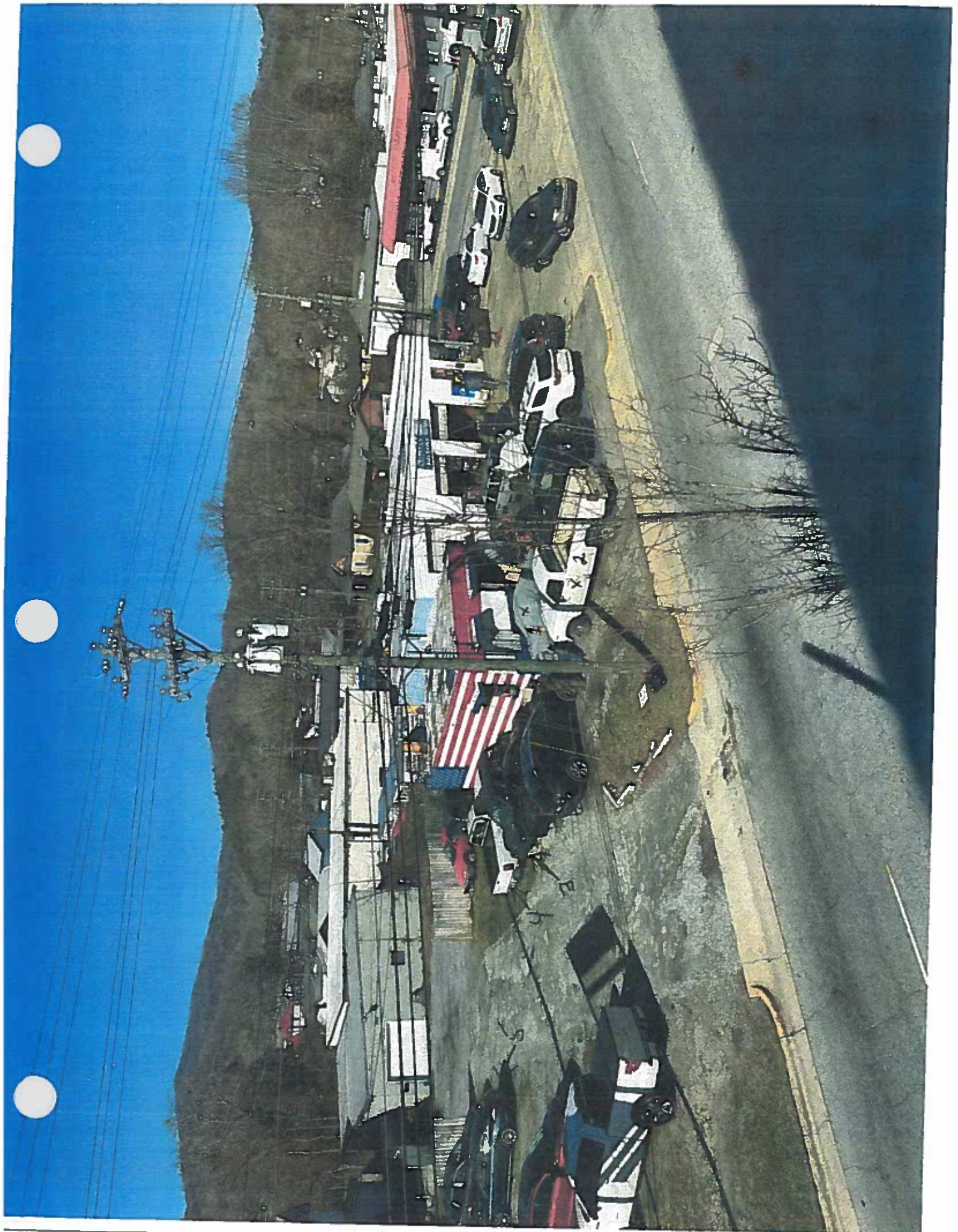


EXHIBIT "D"





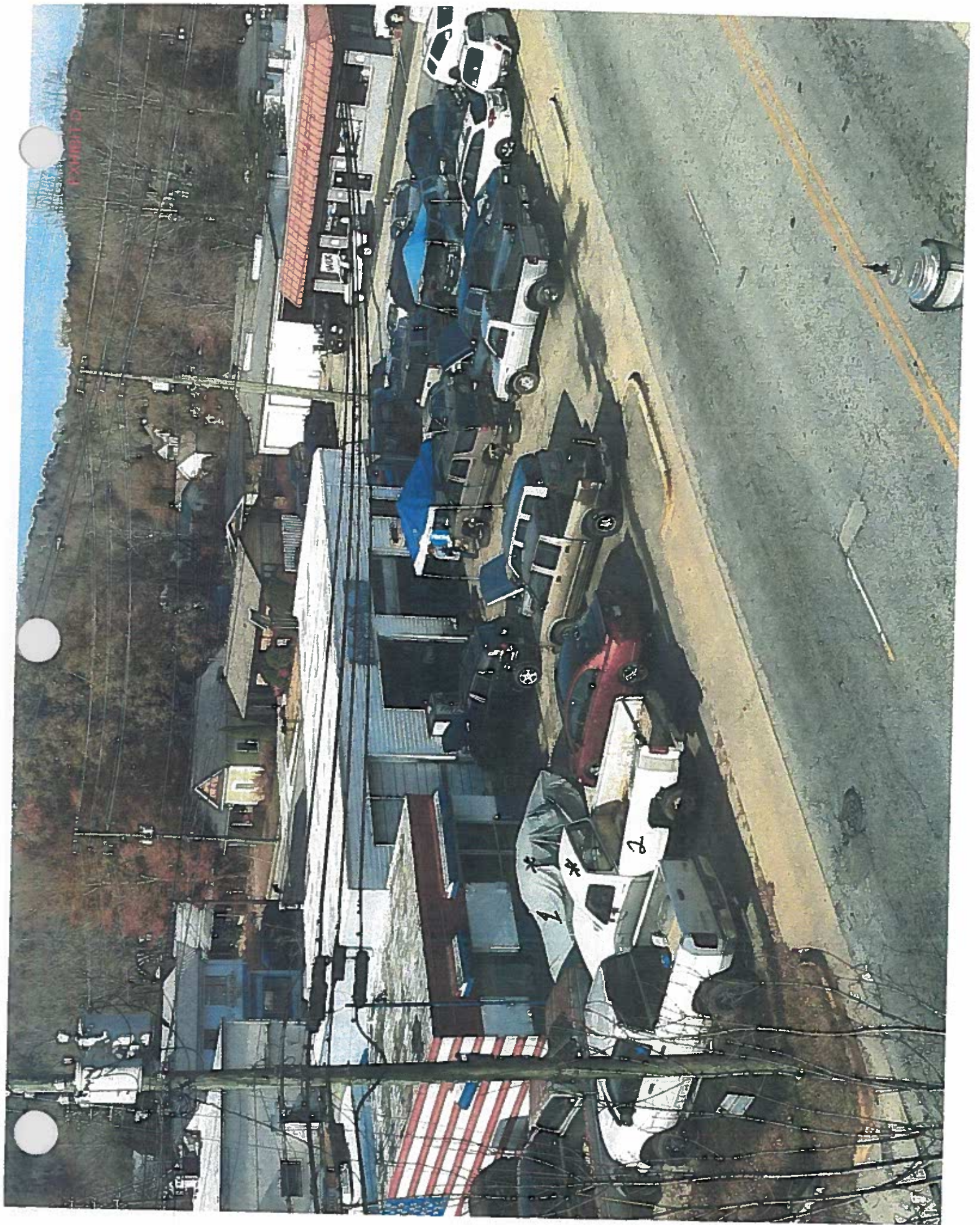
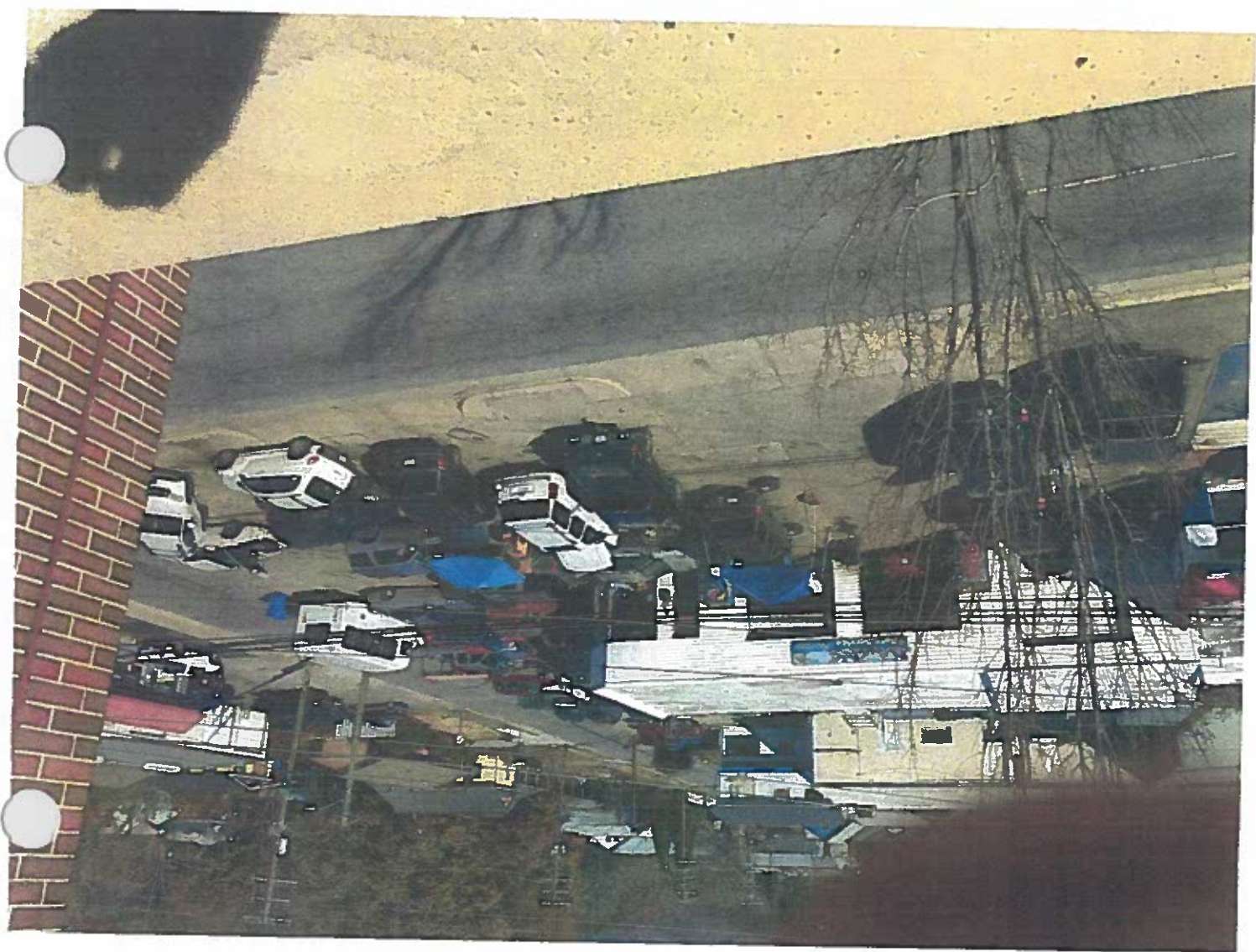


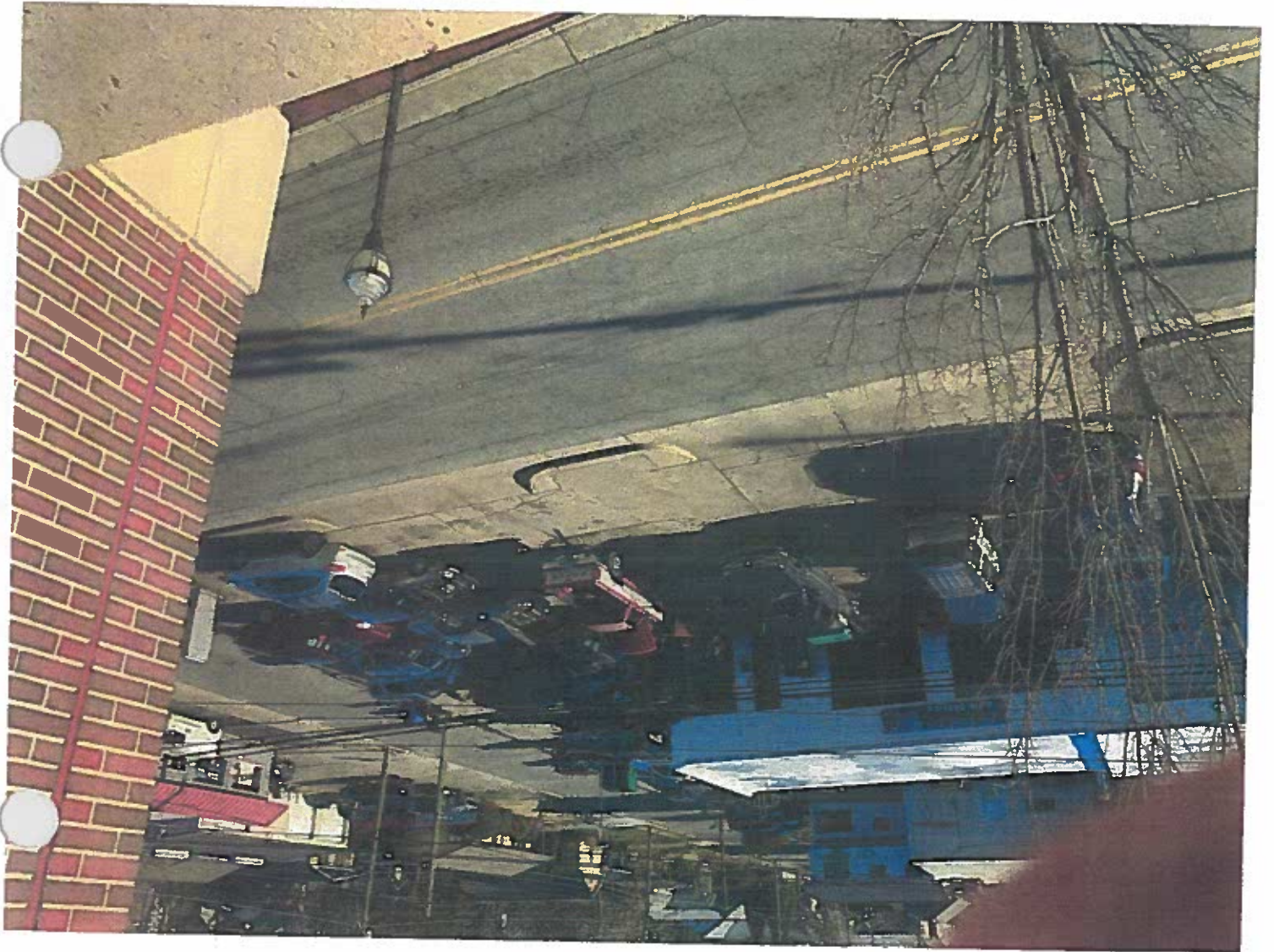
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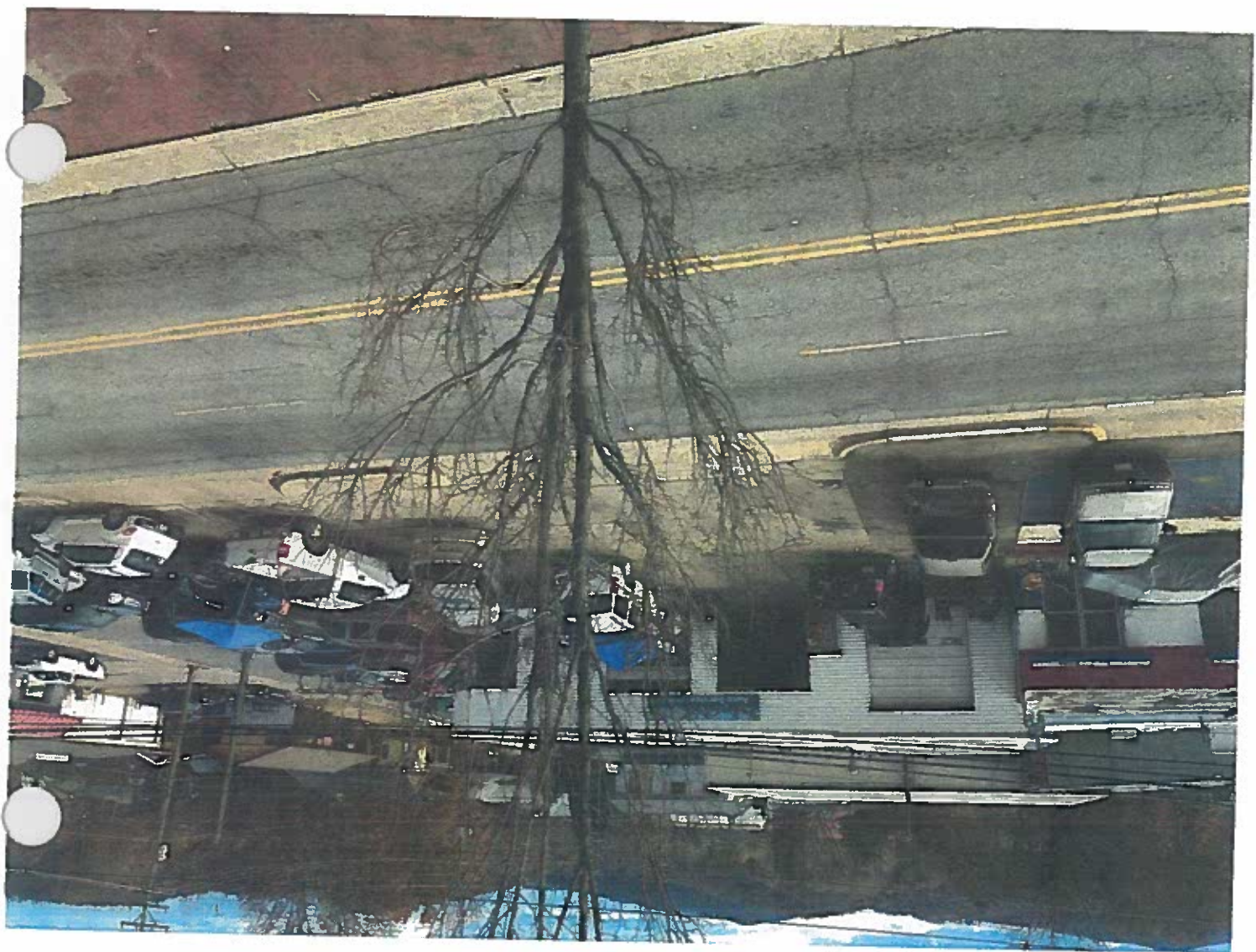


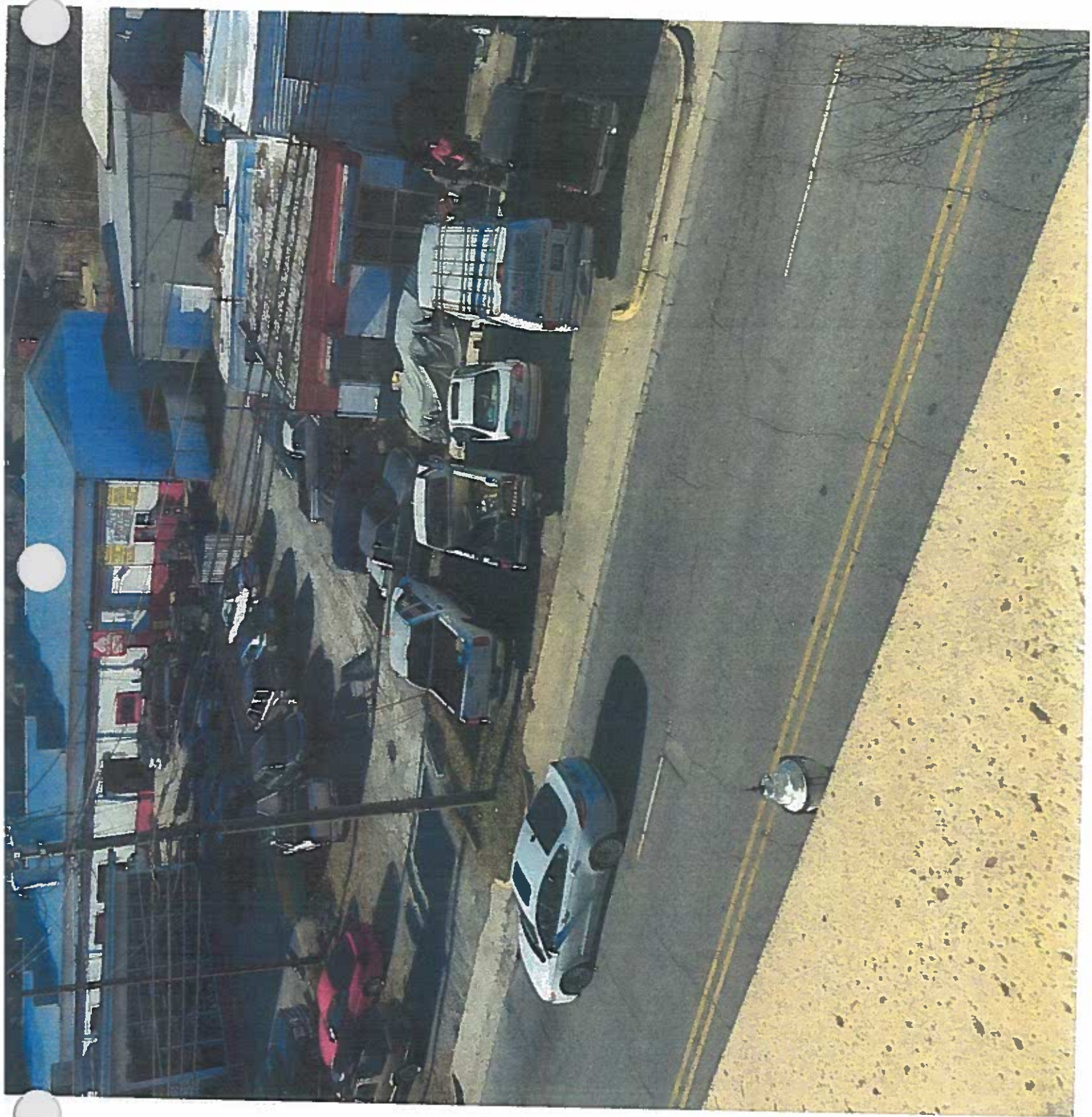


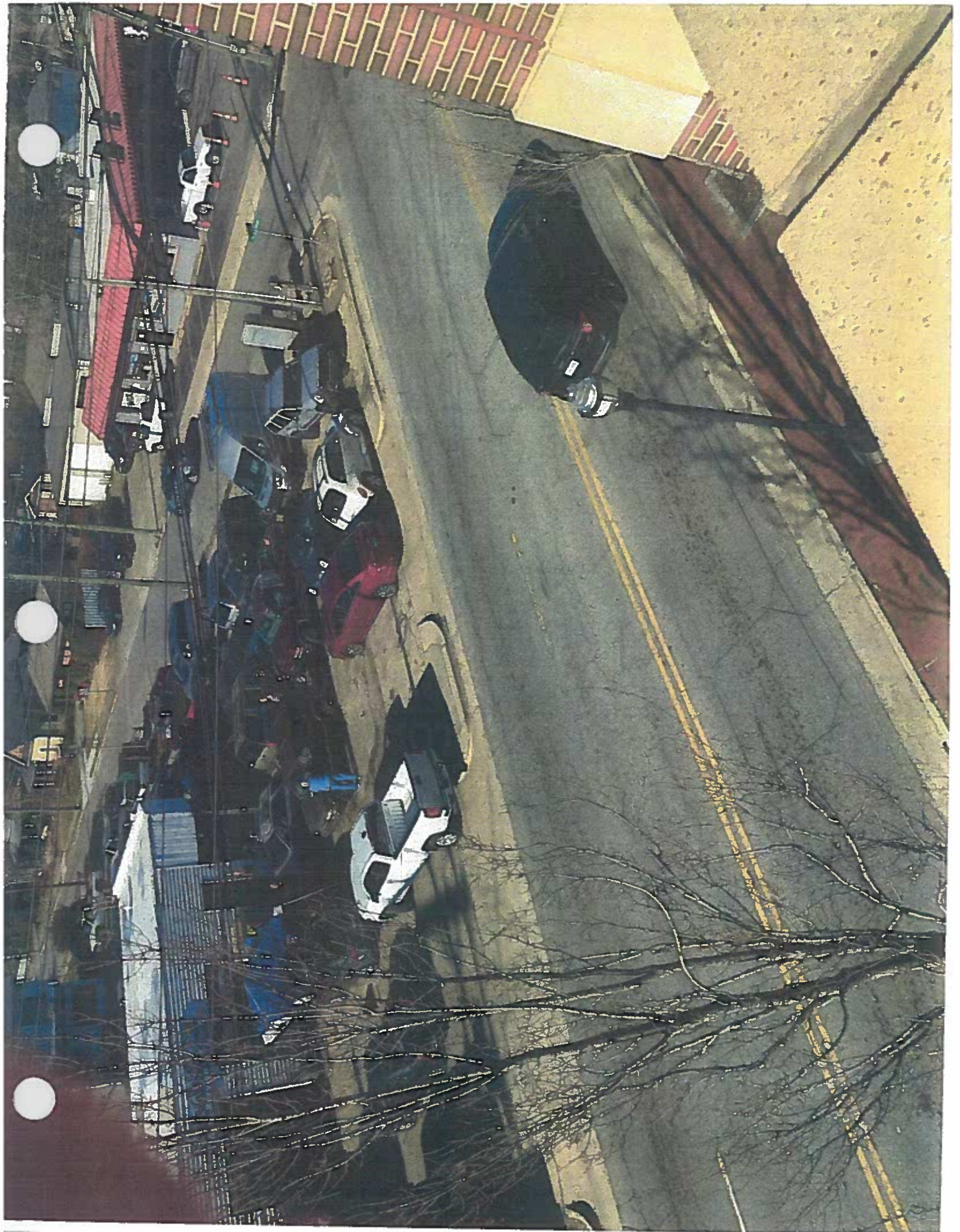


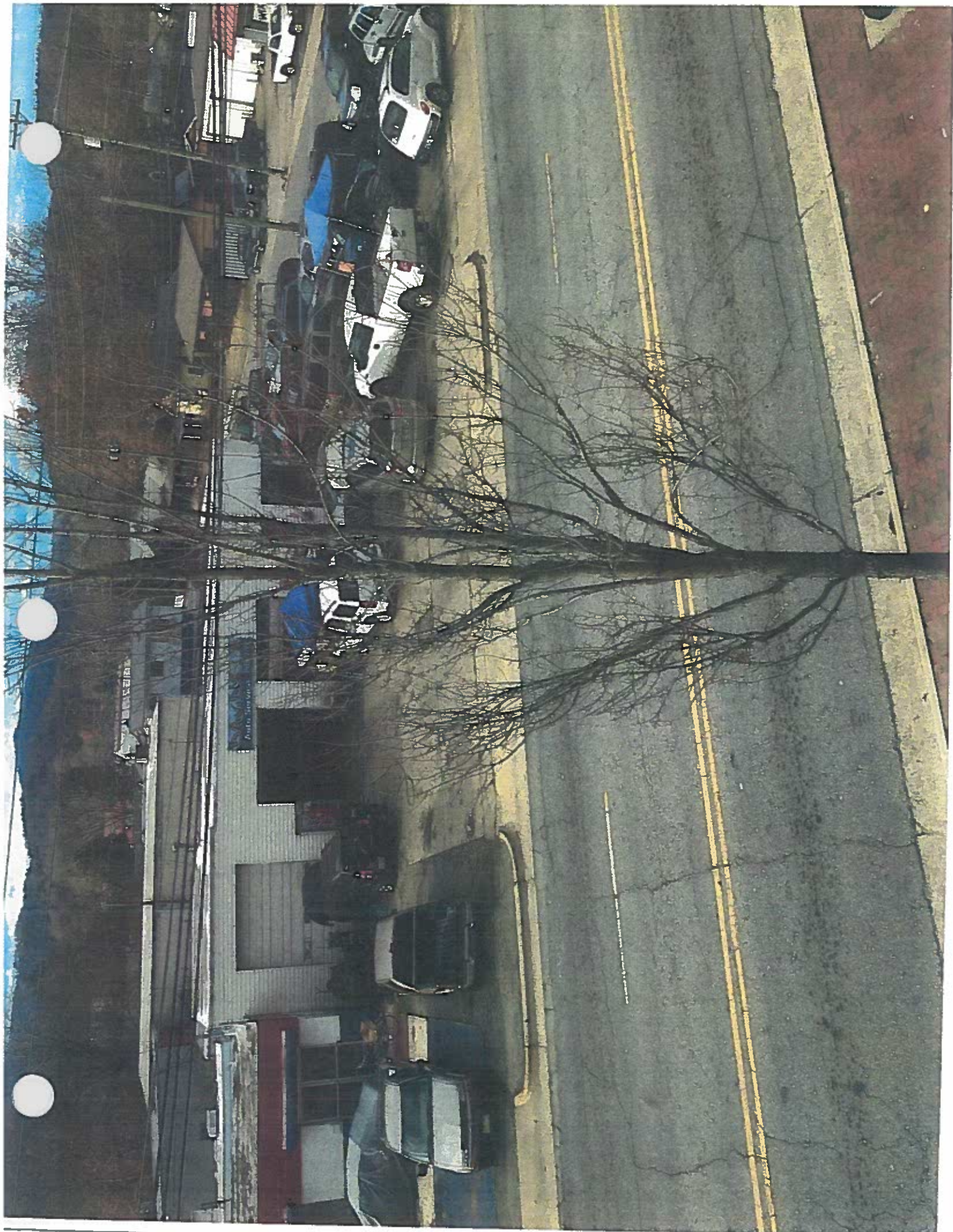


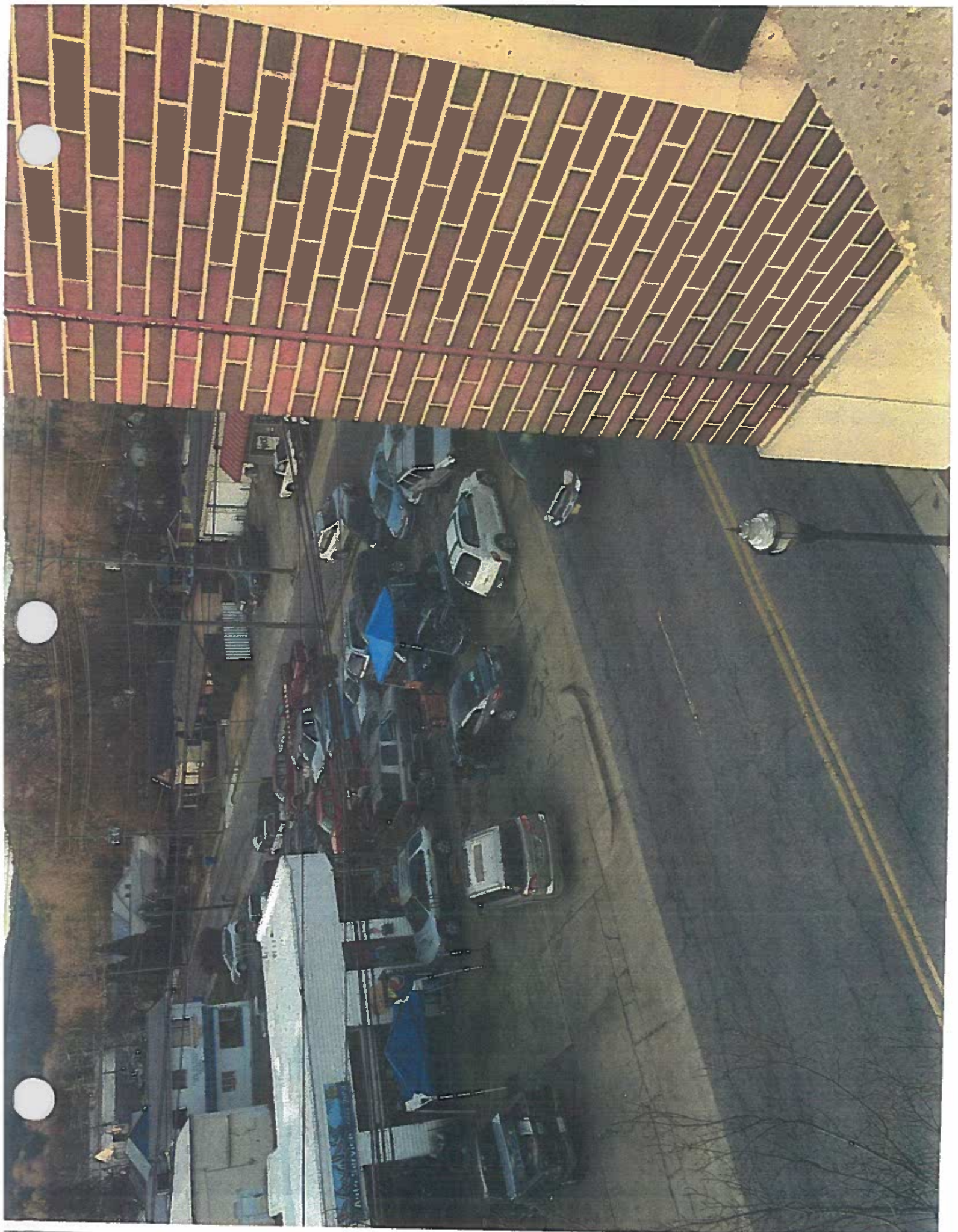




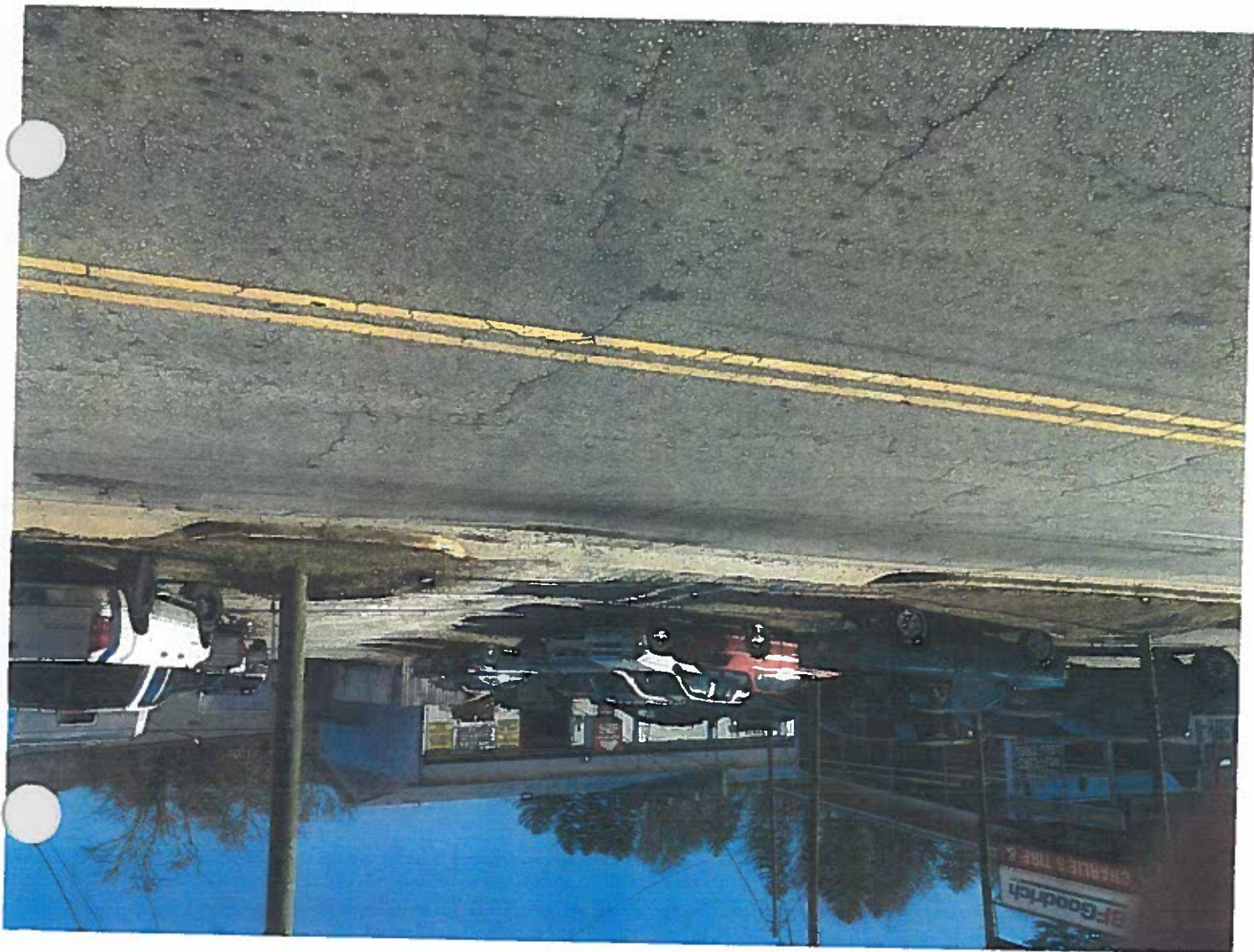


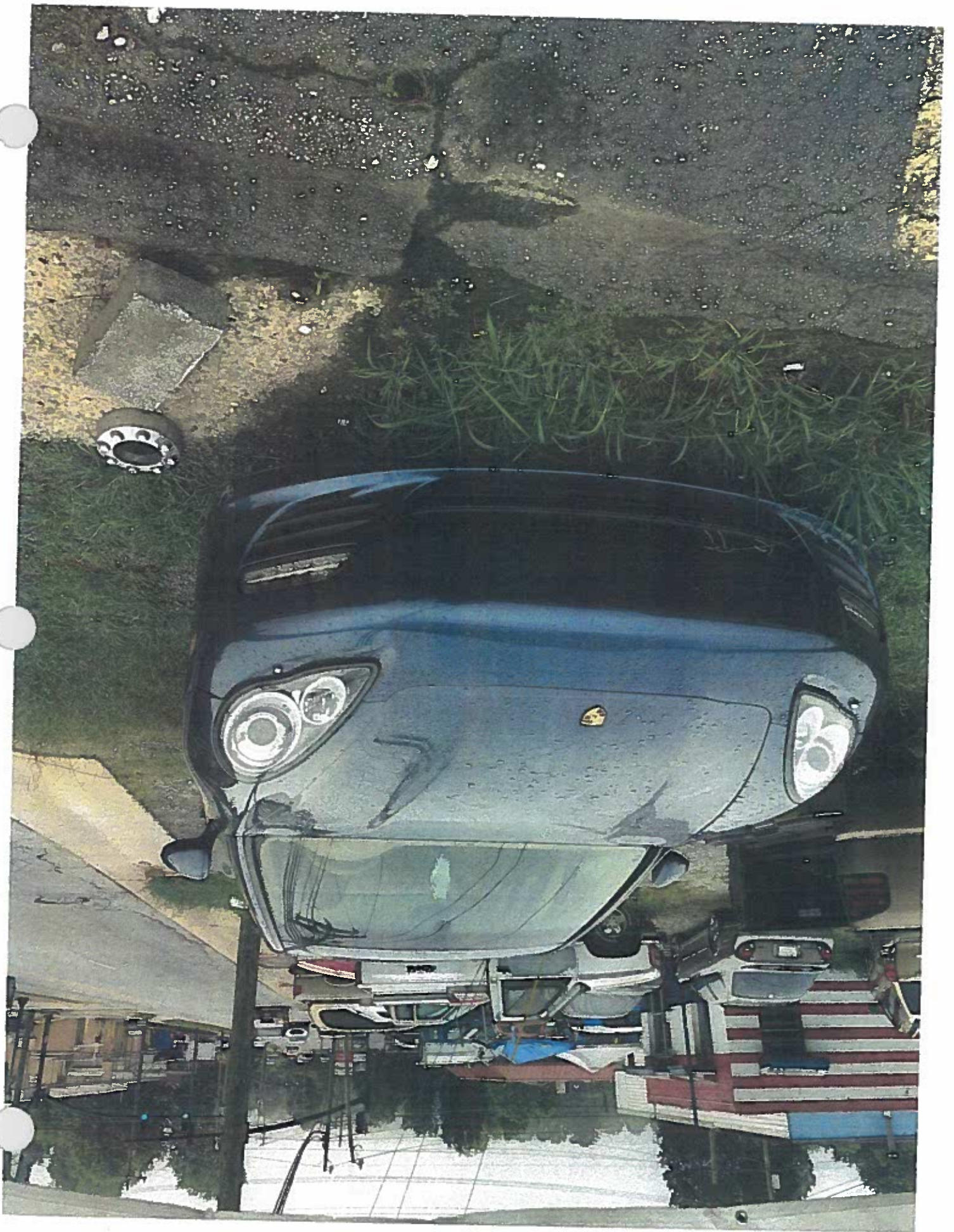


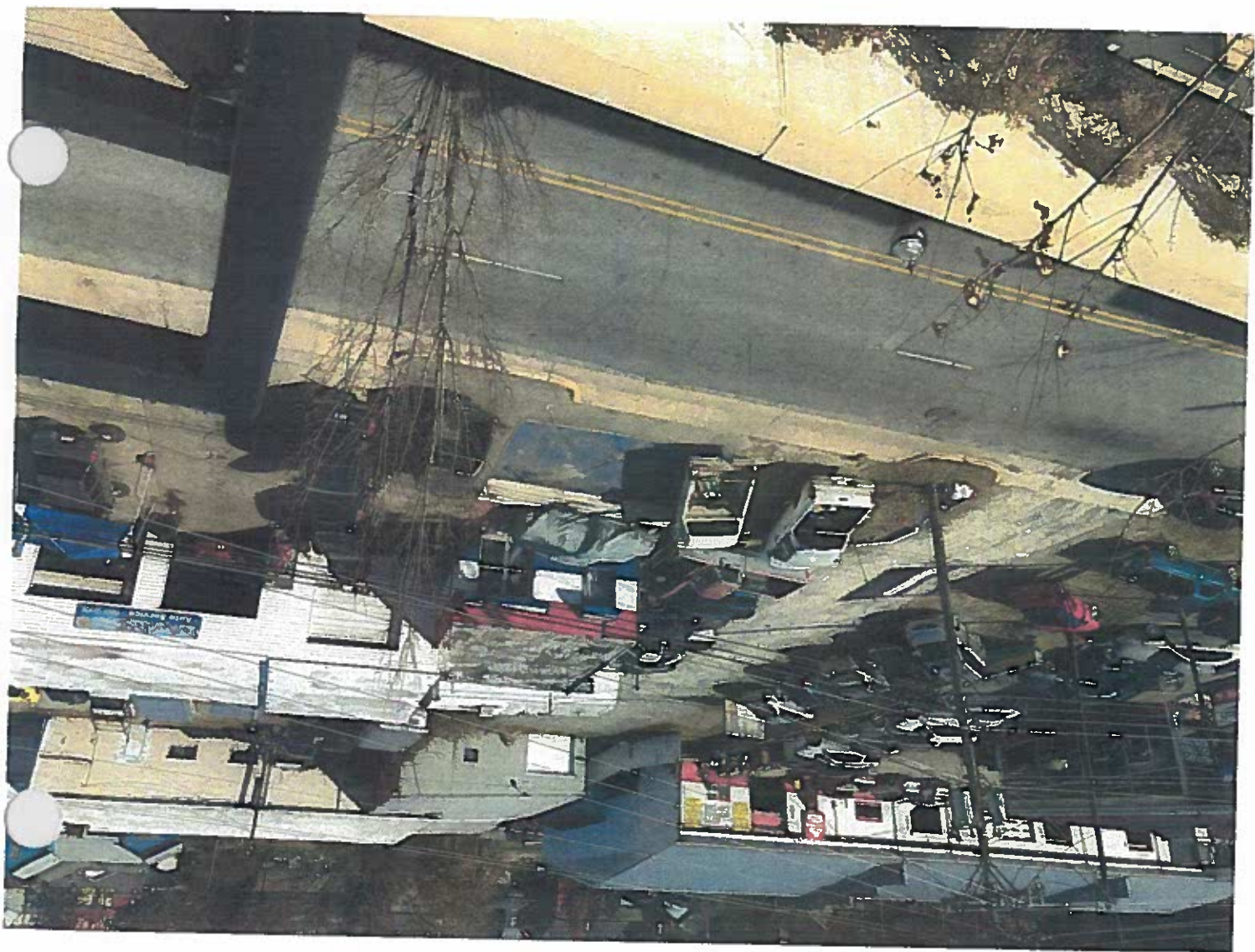


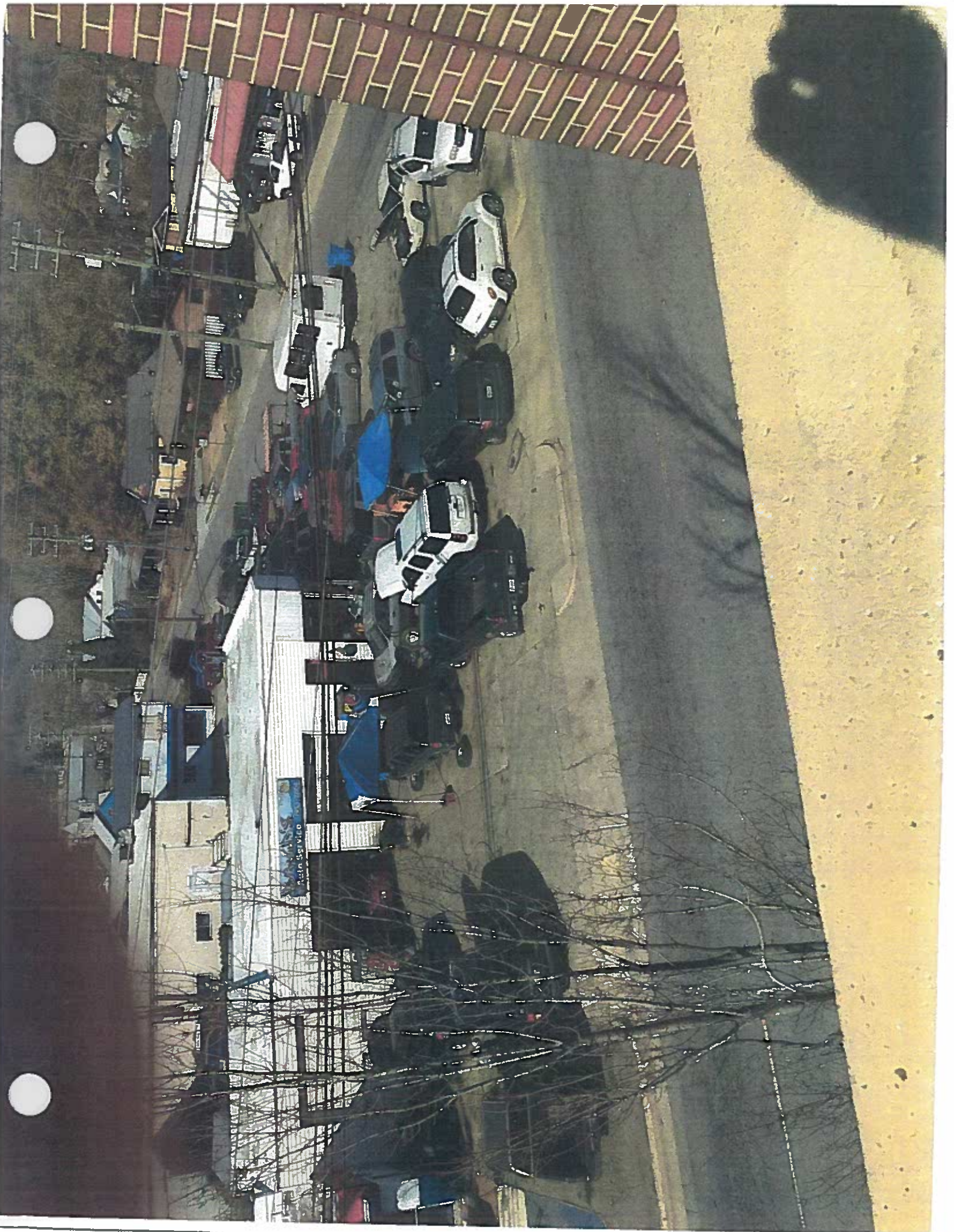


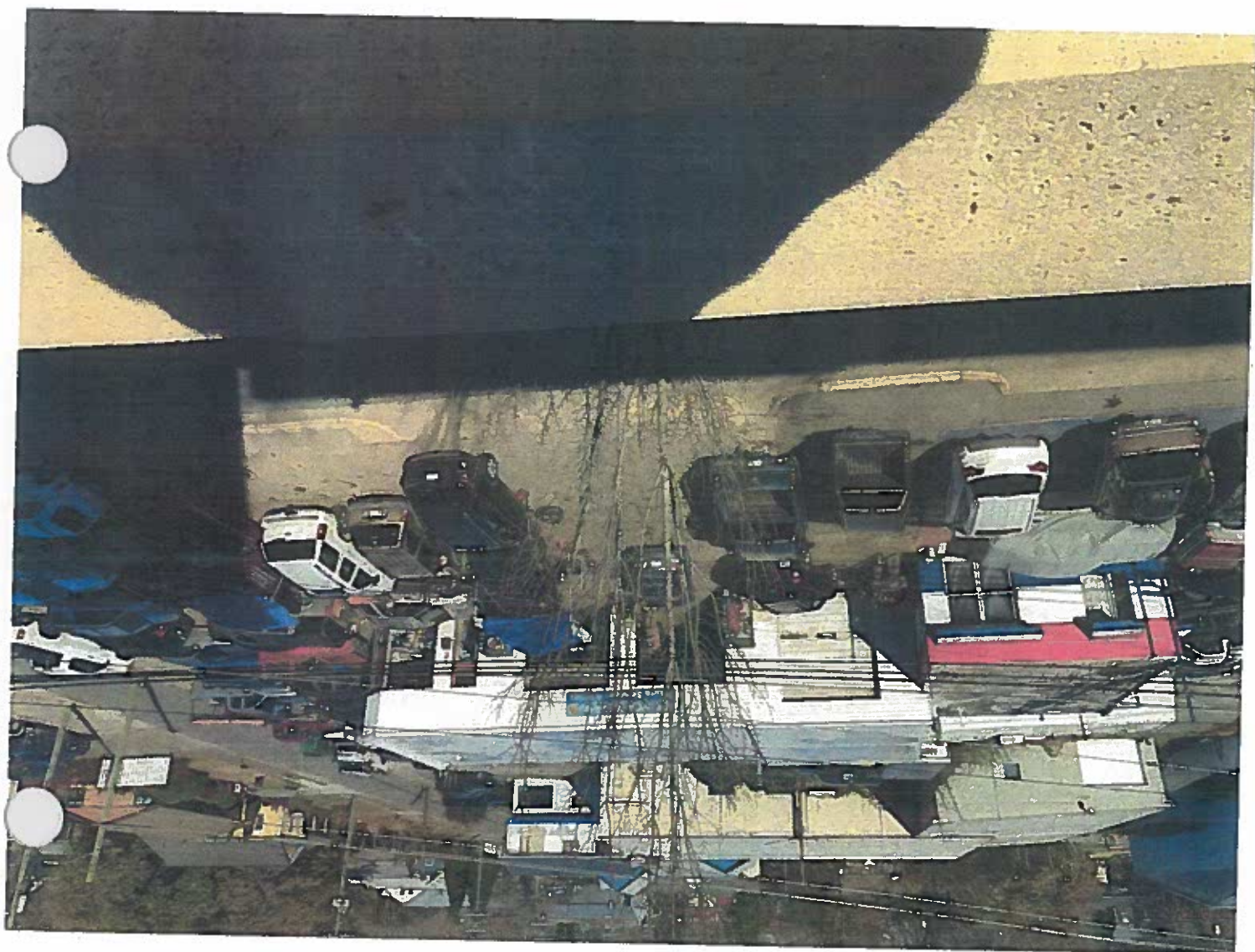






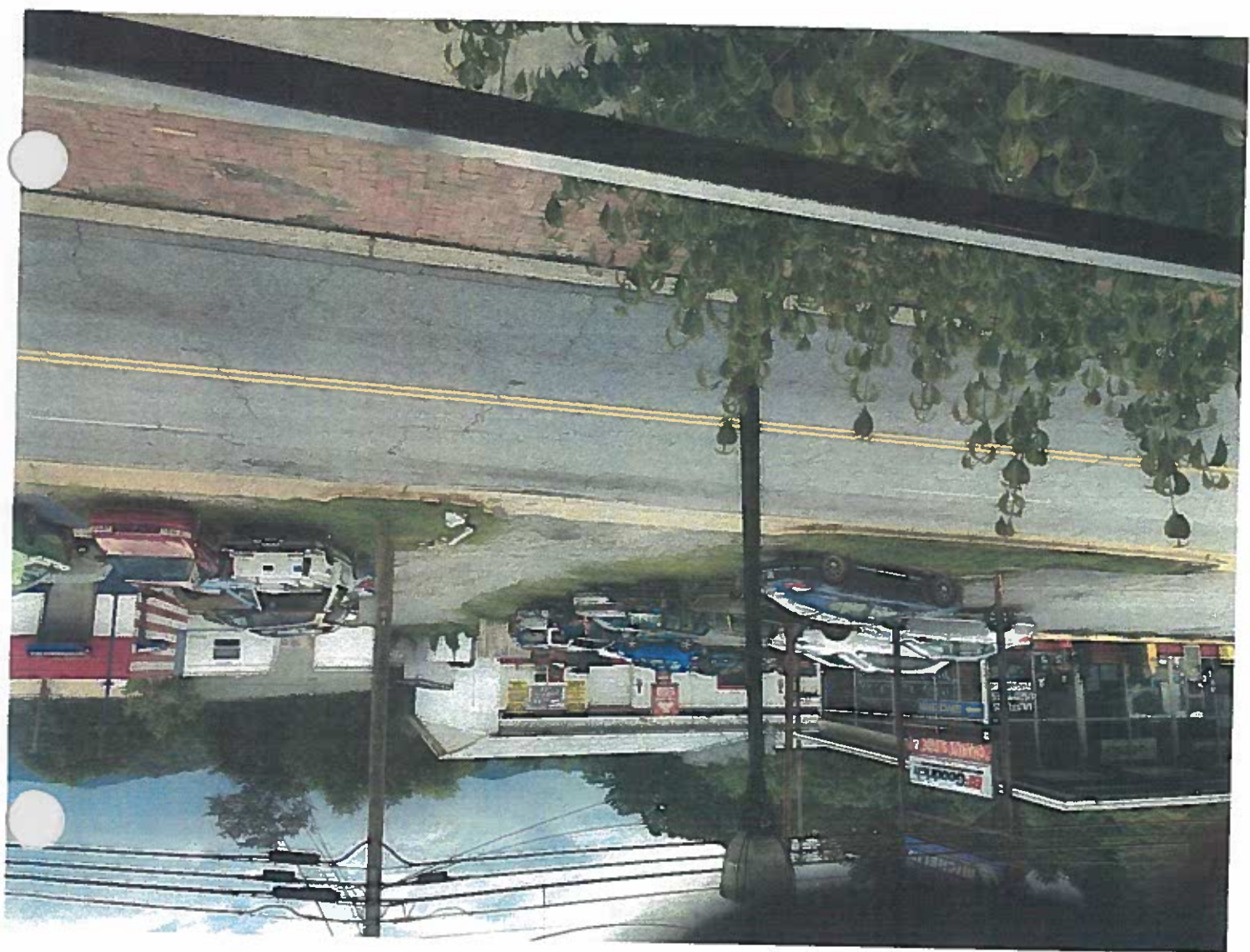


















CITY OF BREVARD PLANNING DEPARTMENT
Board of Adjustment Violation Hearing on 01/04/2022

1 Continuation of Board of Adjustment Violation
2 Hearing To Consider Revocation of Special Use
3 Permit, Sup-12-104 At 69 West French Broad Street.
4
5

6 DATE: Tuesday, January 4th, 2022

7 TIME: 3:00 p.m.

8 LOCATION: City of Brevard Planning Department
9 95 West Main Street
Brevard, North Carolina

10

11

12

BOARD MEMBERS

13

Kevin Jones - Chair

14

Judith Mathews - Vice Chair

15

Tad Fogel

16

Janice Pinson Clark - Board Clerk

17

Tom Tartt

18

Allen Delzell

19

Brian Gulden - Board Attorney

20

21 REPORTED BY: Elaine L. Grove-DeFreitas
22 Independent Professional Reporter
23
24
25

1 MR. JONES: Good afternoon everybody.
2 This is a January 4th meeting of the Board of
3 Adjustment. That's my welcome.

4 And the first thing we are going to do
5 is ask everyone behind the table here and at the
6 City to introduce themselves. And we usually go
7 audience left on over, so I'm going to say let's do
8 that. And Tad, if you will introduce yourself.

9 MR. FOGEL: As the name implies, I'm Tad
10 Fogel and have been a member for a couple years,
11 representing the City, I guess.

12 MS. MATTHEWS: Judy Matthews. I'm the
13 Vice Chair.

14 MR. JONES: Kevin Jones. I am the
15 Chair, although I'm just keeping the seat warm for
16 Ms. Mathews when she is ready to reoccupy it.

17 MS. PINSON CLARK: Janice Pinson Clark
18 to the Board.

19 MR. TARTT: I'm Tom Tartt, Board member.

20 MR. DELZELL: I'm Allen Delzell, Board
21 member for about twelve years.

22 MR. GULDEN: Brain Gulden, attorney for
23 the Board.

24 MR. BLAND: I'm Aaron Bland, Assistant
25 Planning Director.

1 MS. BREWER: I'm Emily Brewer. I am the
2 new City Planner.

3 MS. BUZBY: Katherine Buzby, City
4 Planner.

5 MR. JONES: Thank you very much. And
6 our recorder here is Elaine. I don't know your last
7 name.

8 THE COURT REPORTER: Grove.

9 MR. JONES: Can we certify a quorum
10 here?

11 MS. PINSON CLARK: We do have a quorum.

12 MR. JONES: All right. So I'm assuming
13 everyone has had a chance to look at the agenda. Do
14 I have a motion to approve it?

15 MR. FOGEL: I move we approve the agenda
16 as presented.

17 MR. JONES: Do we have a second?

18 MR. DELZELL: I second.

19 MR. JONES: All in favor, please say
20 "Aye."

21 BOARD MEMBERS: Aye.

22 MR. JONES: So the agenda is approved.

23 Now, hopefully you have all had an
24 opportunity to look at the minutes of our meeting on
25 December 7th. And if there are no corrections that

1 anyone would like to suggest, I would entertain a
2 motion to approve those.

3 MR. DELZELL: I so move.

4 MR. JONES: Second?

5 MR. FOGEL: Second.

6 MR. JONES: Thank you.

7 All in favor, please say "Aye."

8 BOARD MEMBERS: Aye.

9 MR. JONES: The motion is approved.

10 So we move on to unfinished business.

11 MS. MATTHEWS: Excuse me, Mr. Chair. I
12 want to remind everyone that I am officially recused
13 so I'm going to go sit with my neighbors.

14 MR. JONES: All right. And that sort of
15 segues into the next point, too. Is there anyone
16 who feels, since the last meeting, that they have
17 received information which would prejudice them
18 against or anyone have anything they need to
19 disclose to us?

20 MR. FOGEL: Not I, sir.

21 MR. JONES: Okay. The chairman does,
22 however. I was actually approached by someone I
23 don't know and I had to sort of ask him to stop
24 talking to me for two times but that has not,
25 Mr. Attorney, changed my opinion, because I do not

1 yet have one, nor has it prejudiced me towards any
2 of the parties here.

3 MR. GULDEN: And the standard for
4 ex-parte communications would be that you have to
5 disclose them if you had them. So I think that is a
6 specific disclosure of ex-parte communications
7 related to this upcoming matter.

8 MR. JONES: Thank you.

9 So does anyone who is seated here,
10 who is planning to be a participant -- maybe I
11 should just check for who -- I guess I should find
12 all the people with standing first.

13 So let me start out with the Board is
14 now taking up Case Number Supplement 12-104,
15 Consideration of the Revocation of David's Auto
16 Special Use Permit.

17 Now, under North Carolina law this is a
18 quasi-judicial meeting which involves the Board
19 making specific findings of fact. And that's the
20 most important. It really is just the facts,
21 please, regarding the potential revocation of the
22 prior development approval SUP-12-104.

23 The purpose of this proceeding is
24 limited to hearing evidence and determining, based
25 on such evidence, whether the holder of such

1 development approval subsequently departed from the
2 approved application, plans or specifications of
3 such prior approval or whether the holder of such
4 development approval has refused or failed to comply
5 with the requirements of the development regulation.

6 Obviously, I'm reading. I don't talk
7 like that.

8 Reading again: Additionally, this board
9 must follow the same development review and approval
10 process required when the development approval was
11 issued.

12 In 2012 when SUP-12-104 was issued
13 Special Use Permits required an affirmative
14 four-fifths vote for approval. As such, this Board
15 can only revoke SUP-12-104 upon an affirmative super
16 majority vote as was needed when the development was
17 initially approved.

18 So with four voting members, by the way,
19 that means that it needs to be a four/zero vote.

20 Okay. Lastly, since this hearing will
21 be quasi-judicial in nature, the Board can only
22 entertain testimony or other evidence which is
23 germane to this case. Further, such testimony or
24 other evidence can only be presented by those
25 parties with standing.

1 So the City, by virtue of bringing this,
2 they have standing. Other persons are entitled to
3 give testimony once we establish the fact that they
4 have standing. And we have a slightly different
5 crowd than the last time, so I'm going to ask you
6 to, in some cases, reintroduce yourself. But
7 please, those of you who would like to testify
8 because you think you have standing -- and standing
9 is defined as having a very specific concern here
10 that is unique to you, so the business owner or the
11 property owner or people right in the area and
12 whatnot. So I'm just going to ask you all, anyone
13 who wants to testify?

14 MR. ROGERS: I'm Mike Rogers, and I'm a
15 part owner of the property.

16 MR. JONES: Okay.

17 MR. MARTIN: Bill Martin. I'm a
18 resident at French Broad Place.

19 MS. MARTIN: And a board member.

20 MR. MARTIN: And a board member.

21 MR. GULDEN: Mr. Chair, we have had
22 Mr. Al Horrigan -- and I'm going to say Marnie
23 Martin?

24 MS. MARTIN: Yes, sir.

25 MR. GULDEN: And they are here, it looks

1 like, and they have already qualified as parties
2 with standing.

3 MR. JONES: Okay.

4 MR. HARDY: Charlie Hardy, Vice
5 President of the board for French Broad Place.

6 MR. JONES: I'm sorry. Tell me your
7 name again.

8 MR. HARDY: Charlie Hardy, resident and
9 board member.

10 MS. PINSON CLARK: Is that H-A-R-D-Y?

11 MR. HARDY: Correct.

12 MR. JONES: Well, that's just about
13 everybody, isn't it?

14 MR. GULDEN: I was going to say,
15 Mr. Chairman, we had David Stokely as the tenant of
16 the property that was subject to the Special Use
17 Permit, he qualified with standing today. I don't
18 know Mr. Stokely. Is he here today, do we know?

19 MS. PINSON CLARK: No.

20 MR. GULDEN: No? Okay.

21 As the permit runs with the land, we
22 still need to proceed forward with the hearing, in
23 that it does affect, I believe, Mr. Rogers, who --
24 you said you're part owner of the property?

25 MR. ROGERS: Yes, sir.

1 MR. GULDEN: All right.

2 MR. JONES: And let's see. So I'm going
3 to ask the Board -- so we have got -- two of the
4 residents we have already said have standing, but
5 now we have a third resident here.

6 MS. MARTIN: Two more.

7 MR. JONES: Two more.

8 MS. MARTIN: Martin and Hardy.

9 MR. JONES: So I'm going to ask the
10 Board their opinion as to whether everybody has
11 standing.

12 MR. FOGEL: Mr. Chair, I have move that
13 everyone that has been presented for standing be
14 included and should be qualifiable.

15 MR. JONES: All right.

16 MR. TARTT: I second.

17 MR. JONES: Okay. Any discussion? All
18 those in favor --

19 BOARD MEMBERS: Aye.

20 MR. JONES: So everybody has standing.
21 So does our co-property owner. And if Mr. Stokely
22 arrives later, he has standing too.

23 So with that, I would throw this over to
24 the City for their presentation.

25 MR. GULDEN: Do you want to swear all

1 the parties with standing in?

2 MR. JONES: That's a good point.

3 MR. FOGEL: Including the City planners.

4 MR. JONES: Everybody stand and we will
5 just do a drive-by swearing.

6 MS. PINSON CLARK: Raise your right
7 hands, please.

8 Do you swear or affirm that the
9 testimony you're about to give is the truth, the
10 whole truth and nothing but the truth? If so,
11 please stay "I do."

12 PARTIES WITH STANDING: I do.

13 MR. GULDEN: All right. Open the
14 hearing.

15 MR. JONES: Do I get to use the gavel?

16 MR. GULDEN: No. You can just say "I
17 open the hearing."

18 MR. JONES: Okay. The hearing is open.

19 Okay. Mr. Bland, we are throwing this
20 over to you.

21 MR. BLAND: Thank you, Mr. Chair.

22 So in August of last year the Planning
23 Department received an official complaint by letter
24 from the French Broad Place Condominium Owners and
25 Associates about the property -- the subject

1 property at 69 West French Broad Street. The letter
2 indicated that the tenant, Mr. David Stokely, was
3 not in compliance with his Special Use Permit,
4 Special Use Permit 12-104 and the conditions
5 outlined in the approval of that permit.

6 The City of Brevard reviewed the final
7 order of that permit and conducted an on-site
8 inspection on September 1st and another one on
9 September 23rd, and we found several violations in
10 accordance with those conditions of the Special Use
11 Permit. Those are outlined in your staff report.
12 After that -- after those two inspections a Notice
13 of Violation was sent to the tenant and to the
14 property owner and it referenced those violations.

15 Again, I'm not going to read each and
16 every one of those. They are in your staff report.

17 The initial Notice of Violation stated
18 that the property was to be brought into compliance
19 within twenty days, and the deadline was October
20 15th, 2021.

21 We reinspected the property on October
22 25th and found that it was still not in compliance
23 with several of the previously found conditions, and
24 we -- actually, myself and Paul Ray, the planning
25 director, we met on-site with Christian Rogers, one

1 of the co-owners, and Mr. Stokely and discussed the
2 continued violations of the permit.

3 We notified -- made them both aware of
4 the violations. Mr. Stokely said, verbally, that he
5 would bring the property into compliance at that
6 point in time.

7 A Notice of Continued Violation and
8 Notice of Hearing was sent to the owner and tenant
9 again, following that, and notified both parties of
10 the evidentiary hearing that was to be held December
11 7th. And that meeting was properly advertised in
12 the Transylvania Times and a posting on the
13 property, and letters to the surrounding properties.

14 Prior to that, the December 7th hearing,
15 we did a final reinspection on December 2nd. Paul
16 Ray and Katherine Buzby did that inspection and
17 found that several conditions were -- again,
18 continued to be in violation of the Special Use
19 Permit conditions.

20 As noted by the Chair, revocation has to
21 happen in the manner in which this was approved. So
22 that's why we are here today, a hearing before the
23 Board of Adjustment. And the case was initially
24 brought to you back in December but was continued to
25 today's meeting date. So you have all the evidence

1 in the packet that we have found during our site
2 inspections, photos and things like that.

3 I can bring those up and we can discuss
4 those if you want, but they are in your packet.

5 And your options today are to do nothing
6 and let the permit exist the way it is or you can
7 conclude that there are violations and provide -- or
8 put in place some time-sensitive conditions to be
9 met within a certain timeframe to bring the property
10 into compliance, or you could conclude that the
11 violations are continuous and a remedy is not
12 feasible and therefore revoke the Special Use
13 Permit. So those are your options before you today.
14 I'm happy to answer any questions.

15 MR. GULDEN: And I would just remind the
16 Board that several Board members, when we were
17 considering the motion to continue made in December,
18 had a lot of questions about the information
19 contained in the staff report. So it might be
20 useful to start asking those questions of Mr. Bland
21 now, if there are any questions, because I do recall
22 that there was a significant amount of questions
23 last time.

24 MR. FOGEL: Can I see where you were
25 going to provide an updated photograph?

1 MR. BLAND: Yeah. That was done -- I
2 believe it was emailed to the Board.

3 MR. ROGERS: I think I can save us a lot
4 of time.

5 MR. JONES: I'm loving it. Why don't
6 you stand up. You can have the podium.

7 Mr. Attorney, I'm going to allow
8 Mr. Rogers to speak a little bit out of turn. But
9 he is thinking he can save us some time, so if
10 Mr. Bland doesn't mind fielding questions in a few
11 minutes.

12 MR. BLAND: Not at all.

13 MR. ROGERS: Thank you to the Board.
14 Thank you to the City.

15 First of all, Terry McCracken and I have
16 been doing business with David's Auto and David
17 Stokely for seventeen years. David Stokely is a
18 kind, compassionate, willing-hearted and helpful
19 gentleman. It grieves me, from both a business and
20 a personal standpoint, to see him stopped in this
21 manner.

22 I was at his place of business yesterday
23 morning as elderly men and senior women drove up and
24 on a first-name basis said, "David, can you inspect
25 my car for me?"

1 David's reply, "Sure, baby. Just give
2 me a minute." That's David.

3 Most of us have personally witnessed his
4 kindness, generosity and goodhearted personality.
5 Most of you don't know and have never seen his
6 kindness behind closed doors like taking lunch to
7 local businesses behind the scene; having to be
8 wait -- having to wait to be paid by customers for
9 months. David Stokely's kindness and meekness
10 towards others has now cost him his business that
11 his dear father started decades ago.

12 Now secondly, in the midst of hugs and
13 tears we mutually agreed it's in the best interest
14 of everybody to not renew his lease that expires on
15 January the 30th, 2022.

16 As owners of the property, Terry
17 McCracken and I are taking the necessary steps to
18 ensure as good a departure as can possibly happen
19 under the circumstances.

20 We appreciate the City of Brevard's
21 consideration in allowing us to continue to allow
22 business in the automotive garage industry under the
23 guidelines established on the 27th of August 2012.
24 It is also our recommendation, after listening to
25 the neighbors of French Broad Place, to incorporate

1 the City Noise Ordinance into the Special Use
2 Permit. Thank you.

3 MR. FOGEL: Mr. Chair, I have to say, if
4 it's appropriate, that I have been involved as a
5 promoter of business in Brevard for many years, and
6 this particular issue made it very uncomfortable for
7 me because I hate to see any business close by any
8 action by our board. And although I was very
9 concerned about the multiple notices that went out,
10 the obvious awareness of the violations that had
11 been ongoing, it really made me very uncomfortable
12 that I was going to have to make a decision.

13 MR. JONES: Well, the decision, in part,
14 has been taken away from us, hasn't it?

15 MR. GULDEN: Well, I'm just going to
16 disagree with that because the permit is going to
17 run with the land.

18 MR. JONES: Right.

19 MR. GULDEN: And you have three things
20 that you can do. One is you can revoke the permit
21 based upon the evidence, the competent material and
22 substantial evidence that has been presented, or you
23 can do nothing and allow the permit to stand as is.

24 The fact that the property owner has
25 decided not to renew the lease does nothing for the

1 permit. Right. And so you Board members aren't
2 guaranteed that David Stokely will stop business at
3 all. The process going forward for the property
4 owner -- and Mr. Rogers, I'm not giving you any
5 legal advice, but the property owner would have to
6 take out an eviction paper or, you know, file some
7 type of breach of lease, termination of lease in
8 order to get the tenant out.

9 The tenant can appeal that while still
10 preserving his right to continue to operate. And so
11 it may be that some of the issue has been
12 potentially taken away from you all, but I would
13 suggest getting the evidence from all the necessary
14 parties to make a determination of whether we are
15 going to do one of three things: That is do
16 nothing, revoke it, or put time-sensitive conditions
17 on bringing it into compliance which then may allow
18 Mr. Jones, what you were saying, the process to work
19 itself through since the business owner himself, the
20 tenant, who does have standing, is not here to
21 testify.

22 But I would suggest building the record
23 so in case you do -- in case you impose
24 time-sensitive conditions that the tenant -- the
25 lessee can't come in and argue otherwise.

1 MR. JONES: Well, then, Mr. Attorney,
2 should we -- we were at the point where we were
3 asking Mr. Bland questions. Should we pick it up
4 right from there?

5 And at some point we are going to have
6 to segue in and understand the new stuff that has
7 happened. And I guess -- so I'm guessing, to try
8 and navigate this, and I'm thinking out loud for the
9 rest of the Board members too, is we go through the
10 process. So we are at the point where if anyone has
11 questions of Mr. Bland he can answer them, and then
12 we would -- we would take any kind of statements or
13 testimony from the tenants. And if -- and again, if
14 Mr. Rogers cared to amplify on his presentation of
15 something, he would have a chance to do that.

16 MR. GULDEN: That is exactly correct.
17 And/or Mr. Rogers at the end, like you were saying,
18 could consent to any time-sensitive conditions that
19 the Board -- if the Board decided to do that. So
20 that's fantastic.

21 MR. JONES: All right. So stand back
22 up, Mr. Bland.

23 Thank you very much. Who has got a
24 question for him?

25 All right. Well, don't go away.

1 MR. BLAND: I will be here.

2 MR. DELZELL: Have there been further
3 inspections? Since the last meeting nobody has been
4 out there?

5 MR. BLAND: Yeah. Katherine, did you
6 guys go out there?

7 MS. BUZBY: Yes. I have been out twice.
8 And there was a picture emailed to you guys.

9 MR. DELZELL: And how recent was that?

10 MR. BLAND: Is it this photo
11 (indicating)?

12 MR. DELZELL: Yes.

13 MR. BLAND: That's from December 28th.

14 MR. DELZELL: December 28th?

15 MR. BLAND: Yes.

16 MR. DELZELL: Okay. Thank you. I'm
17 sorry I didn't pick that up.

18 MR. TARTT: In looking at the pictures
19 that came out from staff who was over there recently
20 and the activity that I can see very little of in
21 the last month, I don't see why this would be left
22 alone, just because nothing has happened in X number
23 of years. Why do you expect it to happen now? He
24 had a lot of time to do it.

25 MR. JONES: Okay. Well, I'm going to

1 suggest you're venturing into once we close the
2 public part of the meeting and we discuss what we
3 want to do that's absolutely appropriate, but right
4 now I think we should, you know, give it to the
5 other folks here who need to talk.

6 So who is my first victim?

7 MR. MARTIN: I'm Bill Martin. And my
8 wife and I live in French Broad Place. Our condo
9 unit is right above Stokely's facility across the
10 street.

11 I wake up every morning and see what's
12 there and I go to bed every night to see what's
13 there left.

14 What I have here is a list of
15 photographs that I have done both before and after
16 the last meeting. The latest one was yesterday.
17 And you can have these. And you can find out that
18 every one of them reflects a failure to comply with
19 the requirements of the existing permit. And it is
20 hard for me to believe that the solution to this
21 problem is to simply move on the property to
22 somebody else.

23 If you want these, you're welcome to
24 have them. Some of them were given to the Planning
25 Department before this meeting. These were all part

1 of my inspection of their property.

2 MR. JONES: Well, I'm going to suggest
3 you place them on the desk here. Any board member
4 who might want to look at them can. I'm not going
5 to because I walk past the property every day. So
6 I'm going to trust what I saw.

7 MR. MARTIN: And it includes a
8 photograph yesterday.

9 MR. GULDEN: And Mr. Martin, if you will
10 just go back up there, there may be some Board
11 members that have some questions, or maybe
12 Mr. Rogers, who is the property owner, may have some
13 questions of you.

14 MR. FOGEL: I rode by it yesterday and
15 today.

16 MR. JONES: So does anyone need some
17 conversation with Mr. Martin or may we go on to
18 our --

19 MR. TARTT: Is it just the picture that
20 you -- you know, a picture of it and looking out and
21 seeing how it bothers you? You don't have a noise
22 problem? You don't have --

23 MR. MARTIN: There is an all-day noise
24 problem. And, you know, it's just not a very
25 attractive facility, and the photographs are a

1 reflection of that. And it hasn't changed one iota
2 from the time we had the last meeting until today.

3 MR. DELZELL: I want to clarify
4 something. I'm not sure I understand this exactly.
5 Are we saying that another tenant could come in and
6 take over the business? Is that what I heard?

7 MR. JONES: I think that would be a
8 question for Mr. Rogers. He is the one that --

9 MR. DELZELL: Mr. Rogers. Okay.

10 MR. JONES: And we won't let him get
11 away.

12 MR. DELZELL: Is that correct?

13 MR. GULDEN: Well, legally speaking,
14 from a development perspective, the development
15 approval runs with the land. So regardless of who
16 the tenant is or who the owner is, the ability to
17 operate under the permit -- Special Use Permit
18 12-104 continues to run with that piece of property,
19 whatever the parcel identification number is.

20 And Mr. Bland, I think on this -- I
21 don't know that you testified, it might be in your
22 staff report, was the property properly noticed and
23 were notices sent and was it advertised?

24 MR. BLAND: Yes, for the December
25 meeting all that was done. The property was only

1 posted prior to this meeting since it was a
2 continuance.

3 MR. GULDEN: Yeah. So to Mr. Delzell --
4 Dr. Delzell's question, yes, it's important because
5 the permit runs with the land, whether Mr. Rogers
6 owns it or whether I own it.

7 MR. DELZELL: And under that -- under
8 that provision a new tenant would have to comply
9 with every single condition that we put -- that was
10 put on the Special Use Permit? I mean, in order to
11 operate they would have to comply to every
12 condition. Correct?

13 MR. GULDEN: Yes. Those are the
14 conditions that were placed on it back on -- I think
15 Mr. Rogers said August 27th, 2012. Those conditions
16 are part of the approved permit, regardless of who
17 the tenant is. If they are going to operate an auto
18 industry out of it they would have to comply with
19 those conditions.

20 MR. DELZELL: Thank you.

21 MR. JONES: Any other questions here or
22 should we move on?

23 Mr. Rogers, I'm going to let all the
24 folks who are residents get to bat and then we will
25 bring you back. It will save us a lot of back and

1 forth, if you know what I mean.

2 MR. ROGERS: I understand.

3 MR. JONES: So anyone else who is a
4 resident who would like to talk?

5 Now, bear in mind we have already gotten
6 a certain number of facts presented. And that's
7 what we are looking for, is additional facts. So
8 please bear that in mind.

9 MS. MARTIN: Thank you. My name is
10 Marnie Martin. I'm a resident across the street.
11 And I don't know whether we have addressed the noise
12 issues, but early on when we moved in in February --
13 I don't have the date because I didn't know what I
14 was supposed to do, but at 2:30 in the morning they
15 were working outside of the building. And it was
16 hugely noisy and machines were going and guys were
17 going crazy. I didn't know what to do. So when I
18 woke up in the morning I called Chief Harris -- then
19 Chief Harris, who is a friend of mine, and I asked
20 what was I supposed to do?

21 And he said, "You don't have the
22 non-emergency phone number?" Which I did not. He
23 gave it to me and he sent it to -- he said, "I'm
24 going to send a deputy out there to talk to
25 Mr. Stokely." And then he called me back in an hour

1 and said the deputy talked to Mr. Stokely and he
2 said, "I'm so sorry. I know there were two of my
3 guys working up there last night. I think I know
4 who they were. It will never happen again. I
5 promise."

6 Well, it has happened again, time and
7 time and time. But I'm not a complainer -- or try
8 not to be, but on September the 9th -- and I know
9 this date because our air conditioner busted and we
10 were trying to sleep with the window open. And it
11 was about 12:15, 12:30 in the morning and there were
12 a couple of guys over there just working on cars,
13 working with their machinery, yelling back and forth
14 to each other. Not meanly or anything, just yelling
15 at each other. It was so loud.

16 And Bill finally said, "Please call the
17 law."

18 I get up out of my bed. I go to the
19 other end of my condo where my phone was. I called
20 the non-emergency number because they are in
21 violation of the Noise Ordinance or whatever it is.
22 And the nice lady at the other end of the phone
23 said, "It's not belligerent or anything, we are not
24 in trouble here?"

25 I said, "No, but they should shut up and

1 go home."

2 And she said to me, "Would you like to
3 have me call you back when it's taken care of?"

4 I said, "No, you don't need to, because
5 these guys have no mufflers on their cars."

6 So by the time I got from my end of the
7 condo back to my bedroom a law enforcement officer
8 showed up and quieted these guys down and the lights
9 went out. And just because these boys were mad they
10 took their non-muffled cars up Caldwell, and
11 because they were mad they came back down and back
12 up again. So, you know, it's just the noise.

13 MR. JONES: Okay. So I'm going to jump
14 in here and I'm just going to -- being the great
15 abbreviator that I am --

16 MS. MARTIN: I can shut up any time.

17 MR. JONES: -- the concerns that you
18 raise are noise and hours of the night.

19 MS. MARTIN: Yes. That's correct.
20 That's pretty much all I have to say about that.

21 MR. JONES: Any other questions?

22 Well said, then.

23 Who else would like to step up to the
24 plate? Come on up, sir.

25 MR. HARRIGAN: First of all, I would

1 like to stipulate that I understand that David is a
2 good guy. And I have heard that from a lot of
3 people. That's not the issue here today, whether he
4 is a good guy or not. And I will stipulate that
5 David has actually removed some of the cars from in
6 front of the place. They are still out there, but
7 there has been some --

8 MR. JONES: He has. Uh-huh.

9 MR. HARRIGAN: However, it remains in
10 violation of the vast majority of the conditions in
11 the Special Use Permit. And you can go through all
12 the ones on page 1 of the staff report, but they are
13 still there.

14 MR. JONES: Yes.

15 MR. HARRIGAN: I do have a picture -- I
16 have a couple of pictures that I will give you.

17 MR. DELZELL: Mr. Chairman, did we
18 identify --

19 MR. HARRIGAN: I'm Al Harrigan. I'm
20 sorry.

21 MR. DELZELL: I thought you were.

22 MR. HARRIGAN: I'm terribly sorry.

23 MR. DELZELL: That's okay. I just
24 wanted to -- I thought you were. But thank you.

25 MR. HARRIGAN: I have the staff pictures

1 and I have one that I took today. And the part that
2 I'm making a point of is that we asked that cars not
3 remain there for a long period of time.

4 In the staff photograph there is a car
5 that's under cover. There is a truck out in front
6 of it, a white one. And then on the side of the
7 building there are several vehicles. And there are
8 three of them that are still there, so they have
9 been there longer than the period of time that they
10 are allowed to be there under the Special Use
11 Permit. So I have identified them as 1, 2, 3, 4 and
12 5, and I will give you -- you already have the
13 staff --

14 MR. JONES: Do you need those to come
15 back to you?

16 MR. HARRIGAN: No, I do not. There is
17 the staff report. There is 1, 2, 3, 4, 5. And
18 there is -- in the staff photographs those same cars
19 are identified. So they have been there. Just
20 evidence that they have been there for a period of
21 time.

22 One of the things that I look at, I'm a
23 MRM, which you may not know what that is, but the
24 National Association of Home Builders has an
25 Institute of Residential Marketing, and I am a

1 master in residential marketing and so I can tell
2 you a couple of things. Homes that are on a ski run
3 are worth more than the ones that are across the
4 street from it.

5 MR. JONES: Okay. I'm going to
6 discourage this because -- simply because you're
7 taking this beyond -- right now all we need to
8 understand is whether they are in compliance or not
9 in compliance. We are not talking about damages.
10 We are not talking about property value.

11 MR. HERRIGAN: Okay. I guess I'm
12 mistaken then. I thought property value was one of
13 the issues that was -- where someone was hurt,
14 someone was damaged. I thought the County
15 attorney -- the Board attorney told you that. Now,
16 if that's not --

17 MR. GULDEN: Right. And that was for
18 standing purposes. In order to participate as a
19 party to this action on the revocation we are
20 looking at what the statute requires in order for
21 revocation, and that's substantial deviation from
22 the permit conditions or failure or refusal to
23 comply.

24 But in order for standing, you already
25 came up and testified about the damages, separate

1 and distinct from the rest of the community that you
2 suffer, so you have been made a party with standing.

3 MR. HERRIGAN: All right. And the final
4 thing that I would like to say is that over the last
5 forty-five years I have served on the Board of
6 Adjustment, City Council, a couple of planning
7 commissions, and one of the things that everyone has
8 to be careful of is setting a precedent. And
9 precedent is if we don't enforce our conditions in
10 the future and past conditions, it just -- it
11 becomes a problem for any enforcement that someone
12 wants to take in the future.

13 So I would appreciate -- I do appreciate
14 the offer that the owner has made here, and if I
15 heard him correctly he is saying that he would come
16 back with the Conditional Use Permit as it is plus
17 he would add hours of operation --

18 MR. JONES: Okay. When Mr. Rogers talks
19 again you are actually allowed to ask him a question
20 for clarification. But once again, let's get
21 through what we need to do.

22 So are the residents -- have y'all said
23 what you need to say?

24 MR. HARDY: I reiterate what Bill and Al
25 have said.

1 MR. JONES: Okay. Thank you for your
2 brevity.

3 Okay. So get ready, Mr. Rogers, you get
4 to come to bat again. But before we do, any Board
5 members or the City have questions for the
6 residents? Or Mr. Rogers, do you have questions for
7 the residents?

8 MR. ROGERS: I will in my rebuttal.

9 MR. JONES: Okay. That's fine.

10 Mr. Rogers, you're up.

11 MR. ROGERS: First of all, I would say
12 again and reiterate that as the property owner we
13 will incorporate the Special Use Permit regulations,
14 the ten that are currently there plus any that you
15 deem necessary in all of the leases current and
16 forthcoming.

17 It was mentioned about the place not
18 looking attractive, and the only thing I would say
19 in regards to that is are we talking from an
20 eye-level standpoint? As I understand it, the
21 condominiums are second, third, fourth floors and
22 higher. If you're looking straight out I would say
23 that there are many unpleasant scenarios that the
24 residents would be looking at, up to and including
25 but not limited to rooftops with HVA systems and

1 things of that nature.

2 In fact, if you look straight out the
3 most pleasant scenery would be the mountains. And I
4 don't think -- again, I don't think any of the
5 residents live at eye level.

6 The fact, that the property has not
7 changed one iota, quote, is untrue.

8 As of December the 23rd there were
9 fifty-plus vehicles on the property. I did an
10 inspection yesterday and there were thirty-four
11 vehicles on the property. So there has been change.

12 Setting a precedent -- and I understand
13 that very, very well, but the precedent could also
14 be set to let the landlords and property owners try
15 to take care of this. And the facts are the letter
16 that I have given to each one of you is a nonrenewal
17 of lease. We have chosen this. My partner and I,
18 after the board meeting we realized that we were
19 going to have to probably take this into our hands
20 as far as getting the property cleaned up. We
21 have -- I will tell you this. And I have
22 documentation. I do not have it with me. I can
23 email it to the City right now, but we sent a letter
24 to Mr. Stokely on December 13th with the guidelines
25 to get the property in ordinance and to meet the

1 guidelines. We have a document.

2 I have met with him multiple times up
3 until today to try to get it in compliance; hence,
4 the nonrenewal of this lease. That is our choice.

5 Again, consider the fact of setting a
6 precedent to let the landlords take care of this.
7 Obviously, this is an investment property that my
8 partner and I have had for twenty years.

9 Also, please consider the fact that
10 there is an automotive business directly behind
11 Mr. Stokely which you have never heard anything
12 about, I suppose -- I didn't hear any complaints
13 from the residents today about -- and if this
14 Special Use Permit gets taken away not only are we
15 shutting one business down, but we are shutting two
16 businesses down.

17 Again, Brevard Tire. Billy Sack, with
18 the U-Haul rental vehicles, is a separate business.
19 They have conducted their business -- would you all
20 agree that he has conducted his business without any
21 problem?

22 MS. MARTIN: No.

23 MR. ROGERS: No? What problem?

24 MR. JONES: We are not going there.

25 MS. MARTIN: Okay. Sorry.

1 MR. JONES: They don't agree, but we are
2 not going to -- we are not going to discuss that.
3 That's a can of worms we don't need to be using for
4 fishing. But please continue.

5 MR. ROGERS: Noise. I think I had
6 addressed the noise in asking you, as the Board of
7 Adjustment, to incorporate the City Noise Ordinance
8 into these conditions.

9 MR. JONES: Okay. Well, don't sit down
10 quite yet, because we might have a few questions for
11 you.

12 I'm going to let residents go first.
13 But please, this is for clarification of facts.
14 This isn't to argue the issue. We will do that.

15 So City or residents, any particular
16 questions on what Mr. Rogers has just addressed?

17 MR. HERRIGAN: Sure. I would like to
18 ask Mr. Rogers is what you're proposing, so I can
19 understand, that you continue with your Conditional
20 Use Permit on the property, that you will have it in
21 compliance within -- by the first of the month
22 because that's when he is going to be out?

23 MR. ROGERS: The letter that I have
24 given to Mr. Stokely, can I read this so they -- can
25 I read this for them?

1 MR. JONES: I think we will allow that.

2 MR. ROGERS: It's dated January the 4th,
3 2022. Again, there was another letter that was
4 submitted to him on December the 13th of him getting
5 in compliance. We have not been sitting on the
6 sideline and not doing anything. I can assure you
7 of that. Multiple trips to the property.

8 "Dear Mr. Stokely. Thank you for the
9 many years of rented space you have done with myself
10 and Terry McCracken as partners of North" -- "206
11 Caldwell Street in the City of Brevard, North
12 Carolina."

13 "Per conversation this morning, you and
14 I have mutually agreed that it is in the best
15 interest of both parties not to renew the current
16 lease agreement which expires on January the 30th,
17 2022."

18 "Terry McCracken, part owner of 209
19 North Caldwell Street, and I demand that David's
20 Auto no longer conduct any business at said location
21 after January the 30th, 2022, the end of the lease."

22 "In an effort to lease property to a new
23 business, all vehicles, equipment, tires, material,
24 possessions and signage must be removed on or before
25 January the 30th, 2022. January rent is still due

1 on January the 10th, 2022. If, for some reason, all
2 of the properties are not removed by January the
3 30th, 2022, eviction papers will be served and \$86
4 per day will be charged until all vehicles, tires,
5 equipment, material and possessions have been
6 removed off of the property."

7 "If you have any questions, please let
8 me know. Again, thank you for the many years we've
9 been able to work together. We wish you the very
10 best in the future."

11 "Respectfully submitted, Michael J.
12 Rogers."

13 MR. JONES: Please.

14 MR. MARTIN: Has he, in writing, agreed
15 to that?

16 MR. ROGERS: He doesn't have to. Yes --
17 yes, he has with a lease agreement.

18 MS. MARTIN: Was it hand-delivered to
19 him?

20 MR. GULDEN: If we can just have one
21 party with standing ask questions so that we are not
22 duplicating. So let's just --

23 MR. ROGERS: Has he agreed to do this?
24 Yes, in a lease agreement on February the 10th of
25 2017, a five-year lease agreement. So yes, sir.

1 MR. JONES: So just to clarify, there is
2 no renewal option in that original lease agreement?

3 MR. ROGERS: No, sir.

4 MR. JONES: Anyone else? Anyone from
5 the City have something that you think is germane
6 from what you have been listening to so far, or have
7 you guys said it all?

8 Okay. How about Board members?

9 I have got a couple.

10 MR. FOGEL: When you bought -- you said
11 you bought the building twenty years ago?

12 MR. ROGERS: Yes, sir.

13 MR. FOGEL: And there was no Special Use
14 Permit.

15 MR. ROGERS: No, sir.

16 MR. FOGEL: And you got that, what did
17 you say, about thirteen -- you got it when you
18 leased to David the first time or what? When did
19 the Special Use Permit go into effect?

20 MR. ROGERS: We had been renting to
21 David for seven years. I think the documents
22 clarify that.

23 MR. BLAND: The Special Use Permit was
24 granted in 2012, and it was required because David
25 wanted to expand his business. So it was in

1 operation prior to the UDO. And it was a
2 preexisting nonconformity, but in order to expand
3 that preexisting nonconformity he had to get the
4 Special Use Permit. So that's what triggered the
5 current Special Use Permit on the property.

6 MR. FOGEL: I would like to be made
7 clear on what it was prior to the Special Use
8 Permit. What was allowed, prior to the Special Use
9 Permit versus now, just out of curiosity, since we
10 are talking about, really, the future ongoing at
11 this point?

12 MR. BLAND: You're talking about
13 development regulations before the UDO existed, so
14 different zoning districts, different allowable uses
15 in those districts. It's just not something I --
16 any of us really would know off the top of our
17 heads. We have those old documents, but --

18 MR. FOGEL: Okay. Well, under the UDO,
19 with or without special use obviously the building
20 is designed as a service station, so I'm curious as
21 to what can be allowed versus -- in other words,
22 with or without the Special Use permit.

23 MR. BLAND: Well, we can talk about
24 what's currently allowed with or without the
25 special-use permit. I mean, do you want to hear

1 those uses?

2 MR. GULDEN: Well, let's stick with --
3 sorry, Aaron, to cut you off.

4 MR. BLAND: Sure.

5 MR. GULDEN: Let's stick with questions
6 from Mr. Rogers and then we can go back to those,
7 because those are pertinent questions.

8 MR. FOGEL: And I'm sure he is going to
9 be interested in that too.

10 MR. JONES: Well, yeah, because anyone
11 who wants to start a business in that location might
12 have a pertinent question.

13 MR. ROGERS: Would it be helpful if I
14 shared with you the businesses that were there prior
15 to the UDO?

16 MR. FOGEL: Sure.

17 MR. ROGERS: We bought the business from
18 Robert Merrill -- Bob Merrill, Merrill Masonry. And
19 he bought the property. There was a service station
20 there. There was a plumbing business there prior to
21 us owning it.

22 Since we have owned it there used to be
23 a pet shop in the back. There used to be a car
24 detail. Rick's Detail used to be in the front
25 building. 336 Exchange, Laura Minor, who has

1 passed, she used to be in the front. There used to
2 be a -- there used to be an auto repair body shop is
3 the word I'm looking for -- body shop that was in
4 one of the buildings. There's three rentals, could
5 be four on this location. So those are -- and of
6 course David Stokely has been there for seventeen
7 years. And those are some of the examples, most of
8 what has been there. Again, you know, it's best
9 suited for an auto repair, auto inspection, that
10 type of business. You know, and looking at the
11 adjacent property, Charlie's Tires, what they do,
12 auto parts across the street, providing a service.

13 MR. JONES: Okay. So here is mine. So
14 Mr. Stokely is going to vacate, hopefully by the
15 31st so you don't have to get ugly about it. Now,
16 he will be removing all the vehicles there and
17 disposing of them however. There are tools and
18 equipment there. Is that being left behind or is he
19 expected to take those too?

20 MR. ROGERS: Per my letter, the
21 equipment and material are to be removed. I think I
22 addressed that twice in that letter.

23 MR. JONES: Okay. So what you expect,
24 then, is to basically have a building on some
25 property.

1 MR. ROGERS: Yes, sir.

2 MR. JONES: So now you're looking for
3 somebody new to move in.

4 MR. ROGERS: Yes, sir.

5 MR. JONES: So presumably, if another
6 auto repair person wanted to move in, that wouldn't
7 be unpalatable to you.

8 MR. ROGERS: No, sir. But, with a --
9 with the Special Use Permit very clear in the lease
10 agreement and a copy given to the potential --

11 MR. JONES: Yes. And I would point out,
12 too, that we don't write noise requirements in our
13 Special Use Permits. Those are the City's stuff.
14 We don't touch that. You know, every business needs
15 to adhere to the noise requirement. So, you know,
16 us adding that onto the Special Use Permit probably
17 makes the Special Use Permit vulnerable and doesn't
18 help at all.

19 Tell me this: Are you talking to folks?
20 You just decided this fairly soon, so maybe you
21 haven't even shopped it around, but are there people
22 that are interested in this?

23 And I actually -- there is a reason why
24 I'm asking this particular question, even though it
25 doesn't sound like it drops into one of our three

1 options.

2 MR. ROGERS: It's new but it's not.
3 When we gave Mr. Stokely the letter on December the
4 13th we had full intention of not renewing the
5 lease. In fact, that letter specifically stated
6 that we would go on a month-to-month basis because
7 of the issues that we have incurred. And that was
8 going to be the conditions if we did renew the
9 lease, but he had to bring it into compliance.

10 So I can't sit here and say that I'm
11 surprised that we are where we are, you know? But
12 have we talked to other folks about renting the
13 space yet? No, sir.

14 My deadline was December 31st. In my
15 letter on December the 13th, my deadline to get in
16 compliance was December the 31st of 2021. I was out
17 of town all of last week. I got back in town on
18 Sunday evening.

19 MR. FOGEL: Did I hear that you
20 potentially have several different businesses?
21 Different properties that he has been operating as a
22 single business on multiple properties? Is that
23 right?

24 MR. ROGERS: David, at one time, rented
25 the space where he is at now. And he rented the

1 space behind -- it's a large garage, about 3,400
2 square feet of garage space, 528 square feet of a
3 two-story building. He once occupied both of those
4 spaces. Now he only occupies the front space where
5 the three garage doors are, office and the former
6 336 Exchange used to occupy.

7 MR. JONES: Any questions from down on
8 my left? You're not required.

9 MR. TARTT: Why should I believe that
10 anything is going to change that hasn't changed in
11 the last ten years?

12 MR. ROGERS: Because we have certainly
13 not been to this point.

14 MR. TARTT: I know. But you had
15 responsibility for the place that you own, and that
16 has not been held up by you. You didn't kick the
17 guy out when he messed up.

18 MR. ROGERS: We did not.

19 MR. TARTT: That's where I am right now.
20 It has been there for a while and it hasn't had
21 anything done with it. And you think I'm going to
22 believe that it's going to be done?

23 MR. ROGERS: I would simply ask you to
24 take my word that -- you know, I'm here. I'm
25 telling you. I have given you a letter that I have

1 given Mr. Stokely with guidelines.

2 I'm telling you that it's in my best
3 interests that whoever is there comply with the
4 Special Use Permit guidelines. I have a vested
5 interest.

6 MR. TARTT: You had one for several
7 years.

8 MR. ROGERS: I'm a businessman. I have
9 multiple businesses, properties. It will happen.

10 MR. FOGEL: Mr. Chairman, I have got a
11 question for our Counsel. It says the Special Use
12 Permit was issued to David Stokely. Does that have
13 a bearing in this as to whether it continues to run
14 with the property or potentially would?

15 MR. GULDEN: Yeah. Stokely was
16 probably -- Mr. Stokely was probably the applicant,
17 and at that time the applicant probably had
18 permission from the property owner to seek approval
19 of the Special Use Permit. But the Special Use
20 Permit is going to run --

21 MR. FOGEL: So it still runs with the
22 property.

23 MR. GULDEN: Yes. It was just issued to
24 David Stokely, I think at that time because he was
25 the applicant. I would assume. I haven't seen the

1 application, but that's what I would imagine.

2 MR. JONES: Anyone else?

3 MR. DELZELL: What are you -- what is
4 your -- what are you asking the Board for? What,
5 exactly, are you asking the Board for?

6 MR. ROGERS: I would ask the Board to --
7 first of all, I ask the Board to allow the Special
8 Use Permit as it is. And I did offer the Board on
9 our -- in recognition of the French Broad Place
10 concerns with noise to incorporate the Noise
11 Ordinance. I understand why you would not do that.
12 I understand that.

13 I want somebody to be successful there.
14 I need somebody to be successful there. And I want
15 them to be a good neighbor to French Broad Place and
16 a good business for the City of Brevard.

17 MR. DELZELL: Are you going to put any
18 stipulations on a future tenant as to what kind of
19 business they can run there? I mean, they can have
20 an auto repair business?

21 MR. ROGERS: Yes, sir, they -- I would
22 allow that. I mean, that's what -- that's what
23 those -- without significant capital going into the
24 buildings, that's its best use at this time.

25 MR. DELZELL: Because of the way it's

1 set up.

2 MR. ROGERS: Yes, sir. Yes, sir.

3 Again, there is one behind it. There is one
4 adjacent to it with Charlie's Tires. But I can -- I
5 can assure you that -- again, that the Special Use
6 Permit guidelines will be a part and incorporated
7 into the lease agreement. I can 100 percent
8 guarantee you that.

9 MR. FOGEL: I can appreciate the
10 compliance concern that you have going forward.

11 MR. ROGERS: I do.

12 MR. FOGEL: And I'm thinking back to the
13 hearing that we had for the blacksmith shop that's
14 on the other side of French Broad Place, didn't we
15 put a stipulation on operating hours on that
16 business?

17 MR. JONES: We did. We did.

18 MR. FOGEL: And because of a noise
19 factor is that something that we could consider here
20 as a stipulation going forward?

21 MR. JONES: So I think, Mr. Attorney, we
22 could within -- you know, if we were taking what we
23 have right now and just adding additional
24 stipulations onto it, operating hours probably would
25 be something we could address.

1 MR. GULDEN: Yes. No. You're correct,
2 you can address operating hours, any conditions that
3 would bring it into conformity with a Special Use
4 Permit requirement. But we are not here for that,
5 which is unfortunate. What we are here for is
6 revocation and look at the two standards that,
7 Mr. Chairman, you read, and that is substantial
8 deviation or failure to -- or refusal to comply with
9 the three outcomes.

10 Under the development regulations if
11 Mr. Rogers wanted to come back and modify his
12 Special Use Permit, he certainly has the right to do
13 that. Whether the modification is to expand it,
14 reduce it, increase the hours of operation, reduce
15 the hours of operation, he has got the right to do
16 it. But unfortunately, we can't -- well, I don't
17 believe at this time it is appropriate. Nor can we
18 legally change any of the conditions on that Special
19 Use Permit as they currently exist.

20 MR. FOGEL: Based on the agenda item we
21 have on revocation of this Special Use Permit, I'm
22 going to offer a motion that in view of the lease
23 expiration at the end of this month that we not
24 revoke the Special Use Permit.

25 MR. JONES: Okay. We are going to have

1 to get done with the hearing, close the hearing and
2 then we have discussion at that point. But are you
3 asking our attorney for any particular --

4 MR. FOGEL: You're right. You need to
5 close the hearing.

6 MR. GULDEN: Yes. And I think that's
7 what I thought you were asking, if that would be an
8 appropriate motion. That would be an appropriate
9 motion.

10 But Mr. Rogers, if there are any more
11 questions, whether staff -- there was a question
12 about uses by right that has not yet been answered.
13 And based on the testimony that has been elicited
14 thus far, I don't know if any of the residents have
15 any additional questions for Mr. Rogers.

16 But yeah, let's make sure we have all
17 the evidence in the record before we close that
18 hearing and then, Mr. Fogel, make your motion.

19 MR. HARDY: I do have a question, but
20 it's not for Mr. Rogers. When does that question
21 get asked?

22 MR. GULDEN: It depends on who it's to.

23 MR. HARDY: It's the timeline of when
24 the Special Use Permit -- when the first occurrence
25 happened with Mr. Stokely and then how many chances

1 he got and the property owner, and we are still here
2 with it looking the same.

3 MR. GULDEN: That may very well be a
4 question either to Mr. Rogers or to staff, but I
5 don't know.

6 MR. HARDY: I just don't have those
7 dates in my head.

8 MR. GULDEN: Well, let's finish up with
9 Mr. Rogers. We are trying to finish up with him.
10 Let's do one witness at a time so that it's correct
11 for Madam Court Reporter so she has, again, got the
12 record in order.

13 And so if there are no more questions of
14 Mr. Rogers, then maybe Mr. Hardy could ask that
15 question of Mr. Rogers, if he knows.

16 MR. HARDY: Do you know those dates?

17 MR. ROGERS: Could you repeat that
18 again, please?

19 MR. HARDY: The dates of when the
20 first -- when the City first went out, and how many
21 times the City had to keep going out and nothing has
22 changed.

23 MR. ROGERS: I think, if I recall
24 correctly, it was September the 12th that -- am I
25 correct in that, Mr. Bland?

1 MR. JONES: I believe the City could
2 probably answer that question more precisely.

3 MR. GULDEN: Let's finish up with
4 Mr. Rogers before we move on to another witness.

5 So Mr. Rogers, if you can't answer it,
6 that's fine. But if you can and you want to try to
7 answer the question, please do so.

8 MR. ROGERS: I think it was September
9 the 12th. You know, it's obvious that, you know, we
10 are -- we have taken the steps to resolve this
11 situation the best that we can at this time with the
12 letter on December 13th of multiple inspections,
13 multiple conversations and then the nonrenewal of
14 lease.

15 MR. HERRIGAN: What I have is for staff,
16 not for Mr. Rogers.

17 MR. JONES: Okay. Well, then if no one
18 else has any questions for Mr. Rogers, let's let him
19 take a seat.

20 Thank you, sir.

21 MR. BLAND: Can I answer the first
22 question first?

23 MR. JONES: I would love it if you
24 would.

25 MR. BLAND: Our initial inspection was

1 on September 1st. We got the official complaint on
2 August 27th and we did our first inspection
3 September 1st.

4 MR. HERRIGAN: And then how many times
5 did you have to go back with nothing changing?

6 MR. BLAND: We went back again on the
7 23rd of September. We met on-site on October 26th.
8 And we did another inspection on December 2nd. And
9 then that final picture was showed on December 28th,
10 I believe it was. Yes.

11 MR. HERRIGAN: That's five
12 opportunities, from when the first complaint was
13 made, for him to comply. I'm just making a
14 statement. And who is to say the next guy won't do
15 the same thing?

16 MR. JONES: I'm going to say again,
17 monitor your questions. If they are designed to
18 argue, you know, consider that, you know, we really
19 get to do the arguing here. Your questions should
20 be to ascertain facts.

21 MR. HERRIGAN: I understand. The
22 attorney just gave you some choices in the proposed
23 motion and did not include number 2 that's in the
24 staff recommendation. Is that because it's not
25 appropriate? Staff recommendation number 2 is:

1 "Impose additional conditions to SUP 12-104 that are
2 time sensitive, requiring conditions to be met
3 within a specific time frame." That was number 2.

4 Number 1 was what I thought I heard, the
5 initial run at it was just let him go and let it
6 sort itself out. But if we let it go and sort
7 itself out and it doesn't get sorted out are we back
8 here again in another month or two? Or do you just
9 want to do number 2, tell him he has got his
10 Conditional Use Permit, he has got to until such and
11 such a time to clean it up and off you go?

12 MR. JONES: Okay. I have got bad news
13 for you. Now, that's a good question. It is a very
14 good question, but it will be discussed when the
15 public part of the hearing is closed and we talk
16 about it. So you're not going to get an answer
17 until you hear us talk about it.

18 MR. HARRIGAN: Okay.

19 MR. JONES: Yes, sir, Mr. Rogers.

20 MR. ROGERS: I would only say that I
21 can -- I can only do what the law allows. I'm not
22 going to go down there and handcuff Mr. Stokely.
23 You know, when his -- when his lease expires on
24 January the 30th we will take the legal -- if he is
25 not removed we will take legal action to get -- to

1 rectify the situation, whatever that is, just adding
2 the legal parameters.

3 MR. JONES: All right. Any more
4 questions here?

5 All right. Mr. Attorney, I intend to
6 close the public session part of this meeting.

7 MR. GULDEN: It sounds like you just did
8 that, Mr. Chair.

9 MR. JONES: It sounds like I just did.

10 Now, you folks, you can sit here and
11 listen if you want. You know, so please feel free
12 to, but now all the conversation is just going to be
13 amongst us.

14 MR. FOGEL: Okay. I heard what was said
15 about that item number 2 on the additional
16 conditions. My intent was to at least get the
17 agenda item taken care of. And it was my hope that
18 we could add stipulations going forward, if it's
19 appropriate, or should it be included in the agenda?
20 I can go either way.

21 MR. JONES: Well, this is the time we
22 are -- you know, the meeting is closed. The agenda
23 has been approved, so we just need to deal with it
24 now.

25 MR. GULDEN: And if I can -- I'm just

1 going to read from the statute briefly and ask the
2 Board to consider when it talks about revocation of
3 development approvals it says: "Development
4 approvals shall be revoked for any substantial
5 departure from the approved application plans or
6 specifications or for refusal or failure to comply
7 with the requirements of any applicable local
8 development regulation."

9 And so I would just say those are the
10 focuses that we need to look at, or those are the
11 elements that we need to look at and then the Board
12 has the options in the proposed motion. But we have
13 spoken about that, and that is to do nothing, to
14 condition it on some time-sensitive conditions and
15 then -- or to revoke it.

16 MR. JONES: Everyone understand that?
17 We don't want Brian to have to repeat it.

18 Okay. So let's just -- let's not worry
19 too much about motions right at the moment. Why
20 don't we each, you know, sort of speak to what we
21 hear from the other board members and we can, you
22 know, form a rugby scrum and make a decision.

23 So Ted, we want to start with you.

24 MR. FOGEL: Well, I pretty well have
25 said my piece so I would like to hear from the

1 others.

2 MR. JONES: Okay. Anyone want to go
3 first?

4 MR. TARTT: I will be glad to speak. I
5 have a lot of trouble with it because there have
6 been several years involved and nothing has
7 happened. And that gives me grave concern to come
8 in and tell me tomorrow, ten days from now it's
9 going to change, and it ain't changed lately. So
10 why do I believe that? I don't. Period.

11 MR. DELZELL: I suppose you want to hear
12 from me, Mr. Chairman.

13 MR. JONES: Only if you feel like
14 talking. If not, you can sit back.

15 MR. DELZELL: The point is, a Special
16 Use Permit, we are here to decide whether it should
17 be revoked or continued or, I don't know, altered
18 even. I just want to be sure that I understand, if
19 we revoke -- if we don't revoke a Special Use
20 Permit, the next party that occupies the business or
21 the location of the business will have to apply for
22 another Special Use Permit in order to operate
23 something that isn't within the zoning district, the
24 downtown mixed use district, that might require
25 another Special Use Permit.

1 MR. JONES: You might be right.

2 MR. DELZELL: It kind of depends on
3 what's going to go in there. And I certainly hope
4 that we are not talking about Mr. Stokely doing
5 anything there in the way of auto repair because
6 that -- it doesn't seem like -- we have eliminated
7 that. Well, they are not renewing his tenancy. So
8 I think our action is supposed to be no action, as
9 we have said, or to revoke the Special Use Permit,
10 and no matter who comes in there -- I hope I
11 understand this right, that they are going to have
12 to get a Special Use Permit to operate certain kinds
13 of business. And that's why I was asking him, who
14 does he expect to be in there and what kind of
15 business are they going to be doing? I guess that's
16 not the issue here. The issue is whether to revoke
17 it or not revoke it or add special conditions. I
18 guess we have said that several times.

19 MR. JONES: Well, let me ask you a
20 question to help clarify this because, first of all,
21 we haven't said it, but the City's complaint,
22 supported by the residents of French Broad Place, in
23 my opinion, establish the fact that the Special Use
24 Permit has not been followed. So the City's case
25 has been made. Would you agree?

1 MR. DELZELL: I would.

2 MR. JONES: And would you guys agree
3 too?

4 MR. TARTT: I do.

5 MR. JONES: So then I think -- and I
6 think we are thinking exactly alike on this, you
7 know, the case has been made for revocation. The
8 case has not been made for do nothing. And then the
9 question is, has the case been made for adding some
10 requirement onto the Special Use Permit? And I
11 would say to you that we don't know what we are
12 talking about there.

13 So what I'm thinking is that now we
14 don't know who the new owner is going to be. I take
15 Mr. Rogers at his word, that he is just starting to
16 talk it out so he doesn't have anybody in his back
17 pocket yet, but somebody will, at some point or
18 another, be interested in that. And not that it's
19 any of our business here, but the fact of the matter
20 is we don't know whether altering the existing
21 Special Use Permit is even going to make -- is going
22 to be helpful or whether the new business owner is
23 going to have to come in here and ask for something
24 else.

25 So I'm thinking that sometimes the

1 simplest solution is the most direct, which is let's
2 do what the City has pointed out that we do and not
3 try and figure out the rest.

4 MR. DELZELL: I understand.

5 MR. JONES: So I think my feeling is --
6 and as much as I hate to place a hindrance on
7 business or property owners, I think the simplest
8 thing to do and the only absolutely correct thing to
9 do is to revoke the current Special Use Permit. And
10 then this, again, shouldn't be part of our
11 considerations but makes me feel better that, hey,
12 what's to stop the new guy from coming with a new
13 business or even a different model in an automotive
14 business and say, I need these things. Tell me what
15 I can and can't do.

16 So the only bad thing about revoking the
17 Special Use Permit is guess what? It's a tar baby.
18 It's coming back to us. But that's really where my
19 feeling is.

20 You know, we really are, when it comes
21 right down to it, really constrained in what we
22 should be doing or shouldn't be doing. And the
23 constraints really have to do with did they or
24 didn't they? Is the case made? And the case is
25 made.

1 And then is there a remediation that's
2 really within our parvenu? And given all the other
3 stuff here, the concerns here, the fact that this
4 has been going on, in fact, for quite some time, but
5 in terms of -- in terms of this for four months or
6 something like that, I think the only thing we can
7 do is say we are going to revoke.

8 MR. DELZELL: I don't have a problem
9 with that.

10 MR. JONES: Now, Tad, I think you're the
11 one who is going to push back on me on that.

12 MR. FOGEL: You have made a valid case
13 here. I mean, they can always come back. You're
14 right.

15 MR. DELZELL: And whoever made the
16 statement that --

17 MR. FOGEL: I say "they." A new
18 prospect can always --

19 MR. DELZELL: Excuse me, Tad. But I
20 think you were the one who said, "I'm not for
21 putting people out of business." And neither am I.
22 None of us are.

23 MR. ROGERS: There are two others there.
24 You have two other businesses there.

25 MR. DELZELL: Yeah. Well, I can't ask

1 him a question. Can new tenants come in -- are
2 these subject -- if revoked, if they are not
3 operating the right kind of business in that zoning
4 district they will have to apply for a Special Use
5 Permit to continue, will they not?

6 MR. JONES: Correct. They will be under
7 the current UDO zoning requirements which have
8 restrictions. And yeah, the restrictions, among
9 other things, if you will read what the special use
10 permit is, it's clearly what a new business is going
11 to have to do is do stuff that is -- I don't know if
12 this is a legal word or not, but comely, because the
13 requirements that are in here are designed to make
14 sure the business doesn't trash up the corner more
15 than it has to or to a certain extent. So yes, a
16 new business coming in is probably -- you know, if
17 you want to have a tech store there I bet you can
18 slide in without too much problems at all. But if
19 you have got -- if you have got a business that has
20 a lot of merchandise and workers, yeah, we are going
21 to -- I'm sure we are going to see another Special
22 Use Permit. But I am not the expert, and the fellow
23 who is sitting quietly there because we can't ask
24 him anything anymore.

25 So do we have anything else or does

1 someone want to make a motion?

2 MR. DELZELL: Well, Mr. Chairman, I
3 think, from this discussion, I would move that in
4 regard to Case Number SUP-12-104 that we find that
5 we revoke the Special Use Permit. And I think
6 that's all you need to hear.

7 MR. JONES: Mr. Attorney, do we need to
8 add something to that or have the case notes been
9 sufficient so that that is a passable motion?

10 MR. GULDEN: I think that is an
11 appropriate motion. It was a motion to revoke the
12 Special Use Permit, which that Special Use Permit is
13 just the one, is Special Use Permit 12-104 to
14 authorize the expansion of the previously
15 nonconforming, preexisting auto repair shop.

16 MR. JONES: Alrighty, then. So is that
17 the amended motion?

18 MR. DELZELL: Hang on just one second,
19 Mr. Chairman. If the business that is conducted
20 there now does not include what he has the Special
21 Use Permit for, to expand his business and he
22 doesn't do business in that expanded area, he just
23 does with it what was originally there, is he able
24 to operate?

25 MR. JONES: That would be a question for

1 him to ask the City. It's just not our business.
2 Right, Mr. Attorney?

3 MR. GULDEN: I didn't quite hear the
4 question.

5 MR. DELZELL: The question was if the
6 operations continue, say, either with Mr. -- it
7 sounds like it's not going to be with Mr. Stokely,
8 but with someone else who comes in and wants to do
9 auto repair, very much -- in which he was in
10 compliance with by having the business before the
11 ordinance was passed, as you know, he only asked for
12 a Special Use Permit because he was -- because he
13 was going to do something different, and I don't
14 know exactly what that was but he was going to do
15 something different and he got his Special Use
16 Permit. If he continues to operate the basic
17 business --

18 MR. GULDEN: Well, once the Special Use
19 Permit is revoked you no longer can operate this
20 automotive business out of that location under those
21 conditions. You can operate any other business, by
22 right, out of it, but that's not --

23 MR. DELZELL: But if we revoke the
24 Special Use Permit we revoke the conditions, do we
25 not?

1 MR. GULDEN: Yeah, yeah, yeah.

2 Absolutely. You revoke everything.

3 MR. DELZELL: Everything is gone.

4 MR. GULDEN: Right.

5 MR. JONES: So a business can come in
6 and operate under our existing UDO or it can come in
7 and request a Special Use Permit for whatever they
8 want to do. So that comes to us. So only that
9 comes to us. So if a business just comes in and
10 wants to put a couple of counters in and sell, you
11 know, laptops or something like that, I bet you he
12 can do that without any help from us. But I don't
13 know.

14 But all the history gets erased. Right?
15 You know, it's just a case of now we have a UDO on
16 the zoned property and what do the rules say? And
17 if they need something beyond that, then they may
18 come to us.

19 MR. DELZELL: So our revoking or not
20 revoking doesn't change -- it doesn't change what
21 kind of business is conducted there or anything.
22 Does it change anything?

23 MR. JONES: Well, the matter of
24 revocation or nonrevocation is not intended to
25 change what businesses are there. If we, for some

1 reason, chose to do nothing, that might give an
2 opportunity for some other business -- some other
3 auto business to try and assume what's there and use
4 that and things like that. But I don't see that
5 that's a choice for us. Again, we are not
6 speculators here. So really, the case is --

7 MR. DELZELL: I agree with you.

8 MR. JONES: Has the violation been
9 sufficient so that we should revoke? And I have
10 been seeing head nods mostly.

11 MR. FOGEL: That revocation would
12 preclude any type of automotive business going into
13 that building.

14 MR. DELZELL: See, I don't think
15 necessarily it would.

16 MR. FOGEL: I'm not understanding.

17 MR. JONES: Yeah. Well, again, the guy
18 who could answer that question is out of the meeting
19 now.

20 MR. DELZELL: I'm sorry to confuse the
21 issue here, I really am, because I'm not arguing for
22 revoking or not. I'm just trying to clarify it.
23 That's all. I think if we do agree to a vote to
24 revoke, that the owners -- the owners can get
25 another tenant for the building for whatever

1 business and then we go from there, as you say.

2 MR. JONES: Right. You know those
3 erasable pads that you have where you write stuff in
4 and then flip it up? That's essentially what we
5 will be doing here, which is, you know, sort of we
6 are -- we are making that history go away so we are
7 back to the basic UDO. The owner has his building.

8 You know, I don't even want to touch on
9 what happens if Mr. Stokely is slow at getting out
10 of there. The owner and the City will deal with
11 that and whatnot. But what we are basically doing
12 is we are erasing -- we are erasing the Special Use
13 Permit because it has been abused.

14 MR. DELZELL: Okay. Well, I agree with
15 you.

16 MR. GULDEN: Well, you have made the
17 motion.

18 MR. DELZELL: Yes.

19 MR. GULDEN: Which was made. Is there a
20 second? Was it seconded?

21 MS. PINSON CLARK: No, it was not.

22 MR. TARTT: I will.

23 MR. JONES: All right. And I will call
24 for a vote. And because this needs to be unanimous,
25 I'm going to ask each one of you to vote

1 individually.

2 MR. DELZELL: Aye.

3 MR. TARTT: Aye.

4 MR. FOGEL: Aye.

5 MR. JONES: And I also vote aye. So
6 four/nothing. The Board has revoked the Special Use
7 Permit. And with that our business today, I think,
8 is done.

9 And I will say this to the property
10 owner. I wish you the best of luck and whatnot.
11 And, you know, this isn't directed at you or
12 anything like that, but I wish you good luck, as I'm
13 sure all the Board members do.

14 MR. FOGEL: Absolutely.

15 MR. JONES: Do I have a motion to
16 adjourn?

17 MR. FOGEL: Mr. Chairman, I move to
18 adjourn.

19 MR. JONES: Do I have a second for that?

20 MR. DELZELL: I second that.

21 MR. JONES: All in favor.

22 As Ms. Mathews used to say, "Push your
23 chairs back. The meeting is closed."

24 (The meeting was concluded at 4:45 p.m.)

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CERTIFICATE OF REPORTER

I, Elaine L. Grove-DeFreitas, Certified
Shorthand Reporter and Notary Public for the State of
North Carolina at large, do hereby certify that the
foregoing transcript is a true, accurate and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

WITNESS MY HAND, I have hereunto
affixed my official seal this 14th day of January 2022
at Henderson County, North Carolina.



Elaine L. Grove-DeFreitas, RPR
Notary Public for North Carolina
Henderson County
Commission No.: 20011280042
My Commission Expires: 6-11-2023