

**TOWN OF INDIAN HEAD
BOARD OF ZONING APPEALS
Village Green Pavilion
PUBLIC HEARING #BZA201601
March 30, 2016**

Chairman Edward Joell called Public Hearing #BZA201601 to order at 6:00 p.m. Latisha McFarland and Anthony McFarland were present to request a special exception for a home occupation at 4130 Arthur Ross Place. Those in attendance were:

Chairman Edward Joell
Rose Chase
Rickie Posey
Ryan Hicks, Town Manager
Andrea Brady, Town Clerk
Fred Sussman, Town Attorney
Richard Parks, Town Zoning Administrator

The application and fee were received on February 18, 2016. Notice for the Public Hearing was published in the Maryland Independent on March 18, 2016. Certified letters were sent to adjoining property owners on March 16, 2016. The applicant was notified of the date time and place of the hearing on March 16, 2016. The sign for the public hearing was posted on the property at 4130 Arthur Ross Place on March 21, 2016. Chairman Edward Joell administered the Oath to Latisha and Anthony McFarland

Anthony McFarland began by explaining their plan for the home occupation. The McFarlands plan to use their garage as a commercial kitchen to bake cakes for their online store and the restaurants they supply cakes to. There would be 4 employees including Mr. and Mrs. McFarland. There will be no advertising for the business at the home and it will not increase traffic since it will be strictly for baking and shipping.

Chairman Joell asked the Town's Zoning Administrator, Richard Parks to present the finding of facts. Mr. Parks developed a report that was provided to the Board and asked that it be entered into the record. (See attached.) Mr. Parks stated that some of the responses are subjective and a matter of opinion.

Chairman Joell asked if there was anything in the law to prevent approval of the special exception for the home occupation. Fred Sussman explained that Richard Parks gave his opinion on the special exception but the Board has to decide based on all testimony the received letter of opposition and verification that all criteria was satisfied by the applicant.

There was no testimony other than the applicant's testimony, supporting the applicant's position.

Chairman Joell asked for those present opposing the applicant's position to approach the podium and state their name and address for the record.

Chairman Joell administered the Oath to LaVon Proctor of 4110 Arthur Ross Place. Ms. Proctor has lived on Arthur Ross Place since June 2006 and believes the McFarlands moved in, in fall 2013. Ms. Proctor stated that upon moving in the McFarlands set up their home business and the commercial kitchen in their garage, this is not being set up now. Ms. Proctor stated that the problems started a year after the McFarlands started their business at their residence. Ms. Proctor said the cul-de-sac is extremely small and there is an easement to get to the Proctor and Payne households and the McFarlands and the Poindexters are in the rear of the cul-de-sac. Ms. Proctor said the 1 ½ lane easement is not mean for parking and the McFarlands employees used to park on her side of the cul-de-sac leaving no space for her visitors to park. Ms. Proctor stated that she saw in Mr. Parks' report that delivers would only be once a month and there would be no increase in traffic. Ms. Proctor said that deliveries are several times per day with the employee parked in the cul-de-sac obstructing other residents. Ms. Proctor told the Board about an incident where the male employee was parked near her mailbox and when she went to make sure there would be room for mail delivery, the employee screamed at her asking her if she had a problem. Ms. Proctor never discussed this incident with the McFarlands because she felt they knew what happened since the employees stopped parking on her side of the cul-de-sac following the incident. Ms. Proctor has also had issues receiving her water deliveries because the truck cannot enter the cul-de-sac. Ms. Proctor had also previously had to wait for the employees to move their cars before she was able to mow her lawn. Ms. Proctor feels she is being denied peaceful enjoyment of her home and that the McFarland's business could cause home values to go down due to the deliveries.

Fred Sussman asked Ms. Proctor if she would like her letter dated March 30, 2016 with photo attachments to be added to the record. Ms. Proctor stated that she would like her letter and attachments added to the record. (See attached)

Mr. McFarland explained that the driveway is narrow and there are 4 houses on the cul-de-sac. The McFarlands have four vehicles in their driveway and they have two employees, one who parks behind their vehicles and the other parks in the street. One employee is there five days a week and the other employee comes twice a week for deliveries. Following the incident with Ms. Proctor that employee parks behind the McFarland's' vehicles. Mr. and Mrs. McFarland stated they were not aware the employee had screamed at Ms. Proctor or they would have addressed it with him at that time. The McFarlands are in the process of having a storefront built in Prince George's County and the home occupation would be temporary.

Rickie Posey asked for a timeline on the storefront. Mrs. McFarland said they are currently in the permit phase. Mr. McFarland explained that they are finance the construction on their own and he would anticipate it be complete in two years or less. Mrs. McFarland said they were told construction would take 8 to 12 weeks.

Ms. Proctor completed her testimony by saying she doesn't want to shut down the McFarland's business but she doesn't want the parking issues and she wants the employee issue to be addressed.

Chairman Joell administered the Oath to Christopher Payne of 4140 Arthur Ross Place. Mr. Payne feels that if the McFarlands are going to run a business they should

provide parking and not park in the easement. Mr. Payne suggested a driveway extension or having employees park elsewhere. Mr. Payne has addressed the parking issue with the McFarlands previously. Mr. McFarland said to heal the parking issue he will have his employees park elsewhere effective immediately.

Chairman Joell administered the Oath to Gina Poindexter and Audria Crowder of 4120 Arthur Ross Place. Ms. Poindexter said she has an issue with the McFarland's trash. According to Ms. Poindexter the McFarlands have a lot of trash and only one trash can. Ms. Poindexter has also experience the parking issue and gave an example of a situation that happened on July 4th. Mr. McFarland stated that sometimes the wind will blow their recyclables into the yard but he tries to collect all of it immediately. Town Manager Hicks will have 4130 Arthur Ross added to the recycle bin request list and have an extra bin delivered to the McFarlands. Town Manager Hicks also explained that having your trash contained in a can with a lid is a town ordinance and putting trash bags out on top of the can does not prevent possible rodent issues. Mr. McFarland apologized for the trash issue and said he will take care of it immediately. Ms. Crowder expressed her concerns with the parking issue. Ms. Crowder said she has come out and both of the McFarlands vehicles are parked on both side of the street and she has approached them about the parking issue more than once. Ms. Crowder feels the parking issue can be worked out through respect for each other.

Mr. Posey asked if all sales will be online or if walk-ins will be permitted. The McFarlands explained that there will be no walk in sales and there will be no advertising in the yard to indicate that there is a business in the home.

Fred Sussman asked the audience if there have been any issues in affect to odor. Mr. Sussman asked that the record reflect that the people in the audience were shaking their head no; there have been no odor issues.

Richard Parks asked if there is an HOA for Arthur Ross Place. The McFarlands indicated that there is no HOA. Mr. Parks asked the HOA had been contacted and if an inspection is needed. The McFarlands stated that they contacted the Health Department and were told to contact the Town because they did not have jurisdiction. Town Manager Hicks explained that the Town would revert back to the Health Department because the Town does not have its own health inspector. Fred Sussman suggested that if the Board is inclined to approve the special exception there should be condition for a Health Department inspection.

Richard Parks brought up the discussion of employees. Per the Zoning Ordinance a home occupation can only have one employee other than the family that resides in the home. Mr. McFarland stated that neither employee resides in the home and they will let the delivery driver go to rectify the issue. The number of allowed employees will also be a condition of the resolution should the BZA decide to approve the special exception.

In closing, Mr. McFarland stated that he feels all of his neighbors who spoke opposing the special exception are good people and he truly apologizes for the things that have happened and he hopes they can accept his apology and they can all move forward.

Mr. Posey made a motion to close the hearing. Ms. Chase seconds the motion. Chairman Joell closed the hearing at 6:51pm and invited those in attendance to stay to hear the Board's discussion of the hearing.

Ms. Chase suggested that the applicants need time to clarify the issues their neighbors brought up during the hearing and that they need time to do the things they said they would do.

The Board discussed actions that can be taken should the applicants not meet the required conditions. If a condition is not met it would become a zoning violation and become subject to enforcement by the Zoning Administrator and if need be another hearing could be held to address the violation and potentially revoke the special exception. The hearing would provide due process.

Mr. Posey asked if it would be possible to approve a probation period. Mr. Sussman explained that this would be the same process as a zoning violation and explained that if the special exception is granted the resolution will be strongly worded and have stiff conditions addressing items including trash, parking, employees, and health department approval. The McFarlands will have to provide proof of approval or denial from the Health Department.

Chairman Joell made a motion to approve the special exception subject to the discussed conditions, to include, health department approval, employee requirements, parking and trash. Ms. Chase seconds the motion. The motion was approved as follows: 3 for, 0 against. Mr. Parks suggest including two year expiration.

Mr. Sussman will prepare the resolution subject to the conditions discussed.

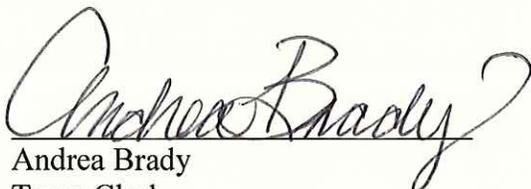
Mr. Sussman will email the resolution to the Town Clerk to be distributed to the Board members for review and any comments. If there are no comments or changes, the Town Clerk will convene the Board to officially approve and sign the resolution.

The Board requested that a copy of the resolution be sent to the applicant's neighbors after formal adoption.

Town Manager Hicks will contact the Health Department for further information on requirements for the home business.

Mr. Sussman encouraged Mrs. and Mr. McFarland to get ahead of the issues that were discussed while they are waiting for approval of the resolution.

There being no further discussion, Rose Chase made a motion to adjourn the meeting, and Rickie Posey seconds the motion. The meeting adjourned at 7:02pm.


Andrea Brady
Town Clerk

REFERENCE: Staff Report for Special Exception for Home Occupation at
4130 Arthur Ross Place, Indian Head, MD
Latisha McFarland

PURPOSE OF SPECIAL EXCEPTION:

This special exception is for a home occupation for the preparation and baking of honey buns for online sales or off site deliveries.

In accordance with Section 455 of the Zoning Ordinance, a Special Exception shall find the following:

- i. That the establishment, maintenance and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare.

In my opinion as Zoning Administrator, the granting of this special exception will not endanger the public health or welfare.

- ii. That the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, not substantially diminish and impair property values within the neighborhood.

The granting of this special exception will generate odors in the immediate vicinity of the house, although the odors are not objectionable. The garage door must be at least partially open to allow ventilation which provides the neighbors a view into the garage during the times baking of goods is underway.

In my opinion, these issues do not constitute a nuisance or diminish property values.

- iii. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.

There will be no exterior architectural change to the building.

- iv. That adequate utilities, water, sewer or septic system, access roads, storm drainage and/or other necessary public facilities and improvements have been or are being provided.

Adequate public infrastructure exists to serve the intended use.

- v. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

The house has a driveway which can accommodate 2 vehicles, one of which may be a delivery truck. It is my understanding deliveries to off-site locations is minimal and may only be monthly. In view of this, no traffic congestion will exist as a result of the intended use.

- vi. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the Town of Indian Head.

The intended use is consistent with the Comprehensive Plan.

- vii. That the special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements for the specific use.

In all other respects, the intended use will conform to the requirements of the R-2 Zoning District.

- ix. Conditions and Guarantees. Prior to granting of any special exception, the Board of Appeals shall stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exception as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified in Article XI. In all cases which special exceptions are granted, the Board of Appeals shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. Such proof shall be filed with the board on or before March 15 of each year. The first filing shall not be made unless and until at least 12 months have lapsed since the date of the grant of the special exception.

The Board of Appeals may consider limiting the times during the day when baking will occur and/or place an expiration date of one (1) year on approval, since the owner has informed the Town this will only be temporary until a permanent store is occupied.

4110 Arthur Ross Place
Indian Head, Maryland 20640

March 30, 2016

Board of Zoning Appeals
4195 Indian Head Highway
Indian Head, Maryland 20640

Reference Appeals # BZA201601

Dear Sir and Madame:

My name is LaVon E. Proctor. My family and I reside at 4110 Arthur Ross Place, Indian Head, MD. We have resided at this address since June 2006. I am writing this letter because we are opposed to the Special Exception to the Zoning Ordinance as referenced in the request made by Latisha McFarland, 4130 Arthur Ross Place, Indian Head, MD and the referenced appeal number.

Our opposition is as follows: in accordance with the Charles County, Maryland Zoning Regulations with Amendments through July 28, 2015, Article XXV: Board of Appeals, § 297-415. Special exceptions, "the Board of Appeals shall grant a special exception when, from a preponderance of the evidence of record, the proposed use:" ... "will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood."

With that, since the Fall of 2013 when the McFarlands moved into 4130 Arthur Ross Place, Indian Head, MD they have operated a commercial kitchen from their garage for the purpose of making and selling cakes for a profit, which has affected my peaceful enjoyment of my home. Specifically, we live in a cul-de-sac that is so small it does not have a street name. We use the street nearest to the cul-de-sac as our street name. There are four houses in the cul-de-sac. The properties share an easement that allows ingress and egress to 4110, 4120, 4130 and 4140 Arthur Ross Place. It is my understanding that easement was never intended for parking, i.e., it is to allow access to the residences. My home, 4110 and 4140 have extended driveways that were built along with the houses and 4120 recently installed an extended driveway to accommodate parking for their

vehicles that would not fit in their garage. The McFarlands do not have an extended driveway and as mentioned, in the Zoning Officer's Staff Report for the Special Exception for Home Occupation at 4130 Arthur Ross Place, Indian Head, MD – Latisha McFarland “the driveway can accommodate [only] **2 vehicles.**” The McFarlands have 4 vehicles (see photos #5 and #7) and in addition, they have 2 persons that drive and park their vehicle in the easement (see photos #1 and #2). Since the McFarlands have a commercial kitchen in their garage, they do not have the ability to use the garage to park their vehicles nor the space to accommodate the vehicles of the persons that arrive at 4130 Arthur Ross Place around 8:30 a.m. Monday through Friday and occasionally on the weekends until approximately 4:30 – 6:00 p.m. For showing the flow of traffic resulting from the business, there are approximately 2 additional persons that are dropped off at the residence in the morning. I will refer to the 4 persons, i.e., the 2 that park their vehicles and the 2 who are dropped off, from here on in this letter, as employees of the Honey Bun Cake Factory (family owned business). The parking of the 4 vehicles in a driveway meant for 2 vehicles appear to be problematic. Now, including the 2 employees that park at 4130 Arthur Ross Place (see photo #6) daily adds an addition problem, which spills over into the surrounding property owners as described below.

Specifically, the surrounding three property owners have visitors, deliveries, home repairs or maintenance and other normal life activities, such as, mowing the lawn, that are occasionally obstructed because of the McFarlands' employees parking their vehicles in the easement. Although Mrs. McFarland states in her application the sales are on-line and deliveries are offsite, the parking, as described in this letter, is problematic and detrimental to my peaceful enjoyment of my home. There is no mentioning of the employees' daily arrival and parking or the deliveries made from the residences daily in Mrs. McFarland's written request for a zoning exception.

However, the Zoning Officer mentions in his report that it is his “understanding that the deliveries to off-site locations is minimal and may only be monthly.” This is a grossly inaccurate statement. The McFarlands make several deliveries at various intervals throughout the day, Mondays through Fridays and sometimes on the weekend. This adds to the **daily** traffic flow into and out of the small cul-de-sac, which not only is problematic and detrimental to my peaceful enjoyment, in my opinion it diminishes the property value. Specifically, neither the county nor town provides maintenance or repairs to the easement. We, the property owners are responsible for snow removal and I assume the repairs, as needed.

Not only are the parking, traffic flow and diminish property values problems, I have had unpleasant encounter(s) with one of the McFarlands' employees who drives his vehicle and obstructs access to our property (see enclosure #9). Specifically, there were several occasions when the employees park their vehicles obstructing ingress and egress but there was an occasion in the Fall of 2015, when one of the McFarlands' employees parked by my mailbox and when I went out to make sure the mailman had enough space to deliver the mail, the employee became aggressive and confrontational. Specifically, he approach me and asked, “if I had a problem.” I found this

encounter to be offensive and unnecessary. This offensive encounter would not have occurred if the McFarlands weren't operating a business from their residence that provided insufficient parking for their employees. Another example of the many unpleasant encounters resulting from the residential business was when my neighbor in 4120 Arthur Ross Place was blocked by one of the McFarlands' vehicles during a re-load for delivery and we had to move our vehicle so they could leave the cul-se-sac. This is described as an unpleasant encounter because I later found out that someone in 4130 refused to move the delivery vehicle due to the fact that they were in the process of reloading. On several occasions, we had to delay mowing because their employees were parked on the tip of our lawn. There have been times when my in-home deliveries were impaired as a result of the Honey Bun Cake Factory employees parking in the easement (see photo#9).

In summary, we wish the McFarlands much success in their Honey Bun Cake Factory business. In fact, we have enjoyed their cakes. However, that does not negate our desire and right as property owners for a peaceful enjoyment of our home. Therefore, we object to the Town of Indian Head Zoning Appeal Board granting a special exception on a temporary (for one year or less) or permanent basis. I have included photographs taken as evidence of my claims made regarding the parking, traffic flow and diminish property value. We would like to return to the peaceful enjoyment of our home without the hassle of the parking situation, traffic flow and unpleasant encounters with employees of the Honey Bun Cake Factory.

Sincerely,

A handwritten signature in black ink, appearing to read "LaVon Proctor". The signature is written in a cursive style with a large, stylized initial "L".

LaVon Proctor

Enclosures: 9 photos

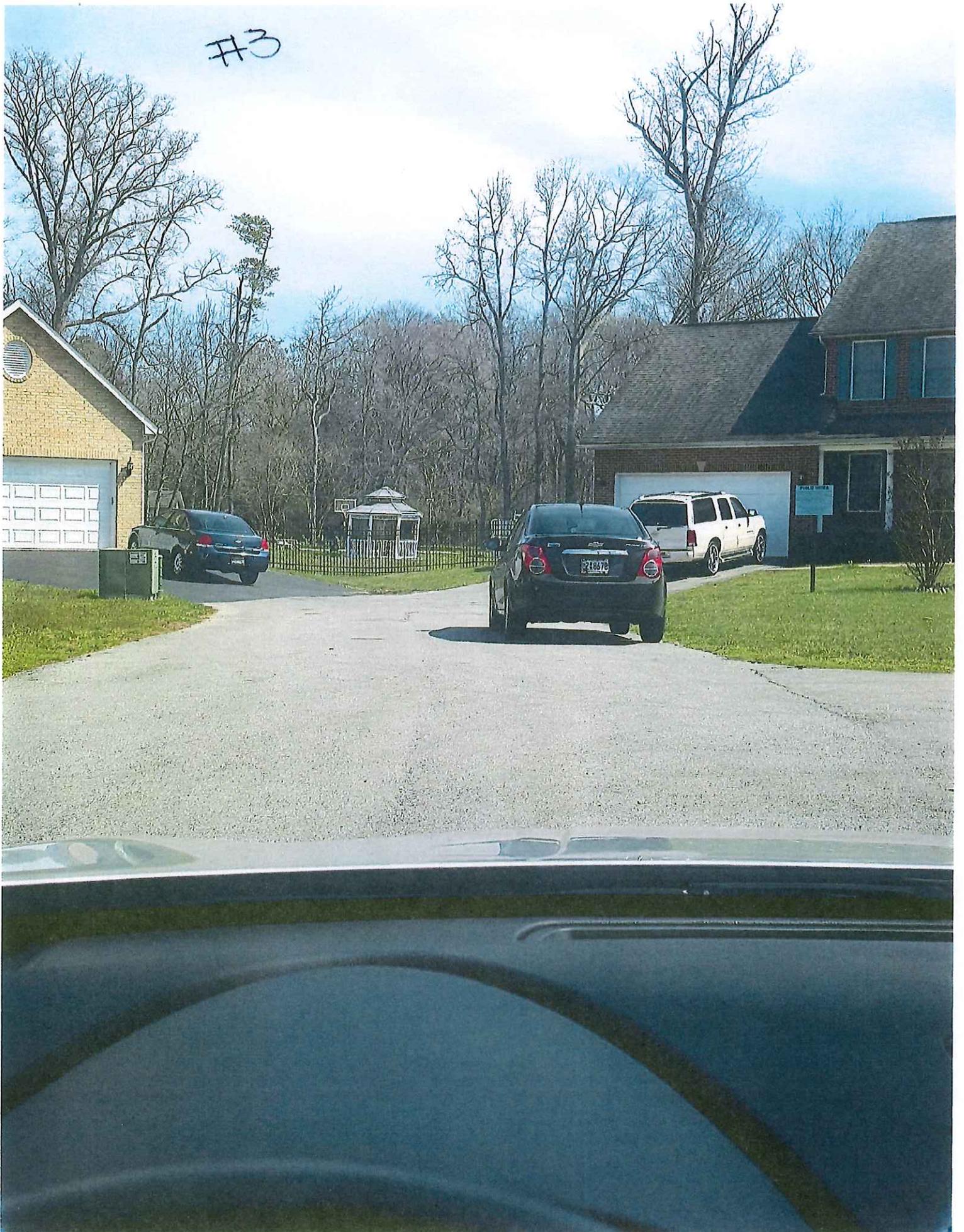
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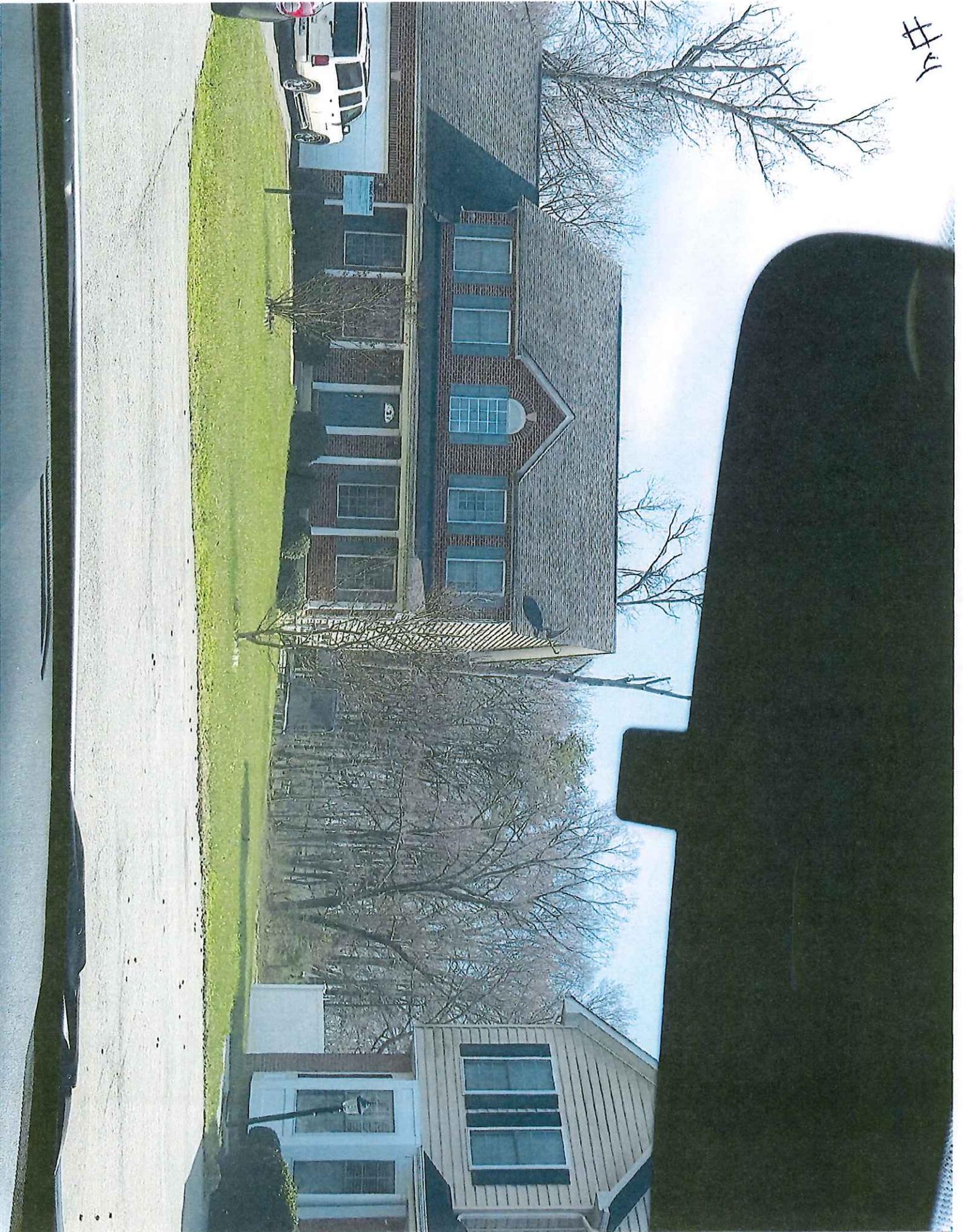
#2



#3



#4



#5







