

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

July 18, 2019

I. This meeting of the Santa Fe County Planning Commission called to order by Chair Charlie Gonzales on the above-cited date at approximately 4:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

II. & III. Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

Charlie Gonzales, Chair
Frank Katz, Vice Chair
J J. Gonzales
Leroy Lopez
Fred Raznick
Steve Shepherd

Member(s) Excused:

Susan Martin

Staff Present:

Penny Ellis Green, Growth Management Director
Paul Kavanaugh, Building & Services Development Supervisor
John Lovato, Development Review Specialist
Rick Word, Assistant County Attorney
Gabriel Bustos, Case Manager
Jose Larrañaga, Building & Services Staff
Jaome Blay, Fire Marshal

IV. Approval of Agenda

The agenda was accepted without opposition.

V. Approval of Minutes: May 16, 2019 [No action taken]

MEMBER KATZ: So moved.
MEMBER RAZNICK: Second.

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RICK WORD (Assistant County Attorney): Mr. Chair, I believe there are some corrections that staff and I have. On page 4 of the minutes, which is in the packet – I guess they’re not separately provided. Unless they are in yours; they’re not in mine. But there’s a statement from me in the paragraph about four paragraphs up from the bottom of page 4, the next to last line currently reads “...and there are some other steps, and it is again my understanding that he has not – it should read not, commenced business. There’s a “not” missing prior to commenced business in that line.

CHAIR GONZALES: Okay. Anything else?

JOSE LARRANAGA (Building & Development Services): Mr. Chair, I don’t know if all your packets – in fact I was going to get into that. There’s a few errors in your packet. We want to apologize for that. I don’t know if in your packets you have the full set of minutes. I know my packet doesn’t have it. Is that what you’re saying here? The packet does not have them. They should be right up front, right after the agenda. I don’t think you have them. We can make copies of the minutes real quick and pass them out.

CHAIR GONZALES: The minutes we have are at the end of the packet.

MR. LARRAÑAGA: That’s correct, and that’s part of an exhibit of the Case that’s coming in front of you, but the actual minutes were not put into this packet. So if I can get staff to go make copies of the minutes.

And Mr. Chair, while I have you, there’s a few other items. In your packet, pages OB-5 through OB-8 are duplicates of what’s already in your packet material as exhibits. That’s the development permit. They’re just duplicates that got in there as part of your packet but they’re already in your packet as exhibits. Just not to confuse the two too much. And then also what we discussed here, pages OB-44 through OB-51, copy of the May 16th minutes, should have been labeled as exhibits, as an exhibit to the case that you’re going to be hearing today. So the notice should be number 6. The minutes as an exhibit to the case should be number 7.

CHAIR GONZALES: Okay.

MR. LARRAÑAGA: And that’s all the corrections I have. Thank you, Mr. Chair.

CHAIR GONZALES: Okay. Anybody else? Okay, being that we don’t have the minutes I guess we could just continue on with the agenda.

MR. LARRAÑAGA: Yes, if you like, and we’ll make copies of that and you can review them.

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd.

MEMBER SHEPHERD: With respect to the minutes, if we have a complete set of minutes how many pages should we have? Because I have nine pages of minutes and it looks like a complete set.

MR. LARRAÑAGA: I believe the exhibits – still had some exhibits on the original minutes. So I don’t know how many pages that would be, but we’re going to get copies.

MEMBER SHEPHERD: Well, these are minutes from the May 16, 2019 meeting.

MR. LARRAÑAGA: Correct. And we put the minutes in from the last meeting if it’s coming back to the Planning Commission as an exhibit so you can see what was heard.

MEMBER KATZ: This is just the minutes of the portion that’s come back to us today.

MEMBER SHEPHERD: Oh, I see.

MEMBER KATZ: It doesn’t have everything.

MR. LARRAÑAGA: So we’ll get to those minutes shortly. I don’t know, Mr. Chair, if you want to continue with the case and then we can address the minutes later.

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CHAIR GONZALES: Okay, we can do that. Is the Commission okay with that? Okay, we're going to approve the minutes later on in the meeting and continue on with the agenda.

VI. Old Business

- A. Case #19-5070 Roadhouse Custom Welding Appeal. Stephen Klinksiek, Appellant, is Appealing the Land Use Administrator's Decision to Approve Development Permit No. 18-4076, Roadhouse Custom Welding (Anthony Riojas), to Allow a Low Impact Home Occupation for a Mobile Welding Service. The Site is Zoned Residential Estates (RES-E). The Property is Located at 5 Reina Ct. E, Within Section 27, Township 11N, Range 7E (Commissioner District 3) [Exhibit 1: Photographs Provided by Appellant]**

CHAIR GONZALES: May I have a motion to reconvene the public hearing from May 16, 2019, Planning Commission for Case 19-5070, Roadhouse Custom Welding Appeal?

MEMBER KATZ: So moved.

MEMBER RAZNICK: Second.

The motion passed by unanimous [6-0] voice vote.

CHAIR GONZALES: Who's going to give this presentation? Gabriel.

GABRIEL BUSTOS (Case Manager): On May 16, 2019, this case came before the Santa Fe County Planning Commission. The appellant in this matter, Mr. Klinksiek, failed to comply with the legal noticing requirements of the SLDC, therefore, the Planning Commission tabled the case and granted Roadhouse Custom Welding permission to begin operating his business, until such time that proper legal notice was completed and the case came back before the Planning Commission. The appellant did not meet the noticing requirements to be heard at the June 20, 2019 Planning Commission meeting, therefore this case was tabled once again. The appellant has now met the noticing requirements as set forth in the SLDC for the July meeting, therefore, this case is being brought back to the Planning Commission.

On October 3, 2018 Anthony Riojas doing business as Roadhouse Custom Welding submitted an application for a development permit for a low-impact home occupation at his home at 5 Reina Court East. In his application Mr. Riojas proposed to base a mobile welding service known as Roadhouse Custom Welding at his home. In his application Mr. Riojas stated all work would be performed off site and not at the residence. Work would be performed utilizing one work vehicle upon which all necessary welding equipment is mounted. Mr. Riojas states that any metal work done at the residence would be for his personal use and enjoyment as a hobby activity. In addition to parking for one work vehicle, Mr. Riojas further states that the proposed home occupation would use approximately 120 square feet of his home for office space, and approximately 320 square feet of an existing accessory structure for storing additional welding equipment and supplies. Roadhouse Custom Welding will have one employee.

On February 22, 2019, the Land Use Administrator approved Development Permit No. 18-4076, Roadhouse Custom Welding to allow a Low Impact Home Occupation for a mobile welding service.

Home occupations are allowed in any residential district subject to the provisions set forth in Chapter 10 Section 10.6. Road House Custom Welding has met all requirements of the Sustainable Land Development Code, which is the basis for the Land Use Administrator's approval.

The Appellant, Stephen Klinksiek, was notified of the approval of the home occupation application on February 25, 2019. On March 4, 2019, Mr. Klinksiek filed an application requesting an

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appeal of the Land Use Administrators decision to approve a Low Impact Home Occupation for a mobile welding service on a residential lot.

The appellant asserts that the applicant has littered his property with broken down vehicles, assorted types of sheet metals and pipes, trailers, tools, equipment, parts and assorted garbage and it is stored openly across his property without any shielding from public view. The appellant also states that there had been other code violation on the Riojas property.

Staff has responded to the appellant's concerns. Staff has determined that Development Permit #18-4076 meets the requirements set forth in Chapter 10, Section 10.6 of the SLDC based on the following: Roadhouse Custom Welding will only have one employee. According the Santa Fe County Tax Assessor information the heated area of the home is 1,198 square feet. The office and truck storage amount to 228 square feet, which is within the allotted 35 percent of the heated square footage of the residence. A low impact license allows for up to 600 square feet of accessory building storage, and the business will utilize a 320 square foot shipping container for storage of other welding equipment. This type of use is a permitted use as illustrated in Chapter 10, Table 10.1, Home Occupation Requirements.

Chapter 4, Section 4.5.2 of the SLDC states an aggrieved person with standing may appeal the decision of the Administrator to approve, deny or approve with conditions an application to the Planning Commission. An appeal from a decision of the Administrator shall be filed in writing with the Administrator within five working days of the date of the decision. If no appeal is filed within five days, the decision of the Administrator shall be final and not subject to further appeal, review or reconsideration. The timely filing of an appeal shall stay further processing of the application unless the Administrator certifies to the Planning Commission that special circumstances exist.

The Appellant is requesting that the Planning Commission overturn the Land Use Administrator's decision and deny the application to allow a Low Impact Home Occupation for a mobile welding service located at 5 Reina Court East.

Staff recommends denial of the Appellant's request and that the Planning Commission uphold the Land Use Administrator's decision to approve Development Permit # 18-4076 to allow a Low Impact Home Occupation for a mobile welding service at 5 Reina Court East. Staff would, however, recommend that the Planning Commission impose conditions as follows that are specific to the Applicant's request. Mr. Chair, may I enter conditions 1 through 9 into the record?

CHAIR GONZALES: Yes, you may.

MR. BUSTOS: Thank you, Mr. Chair.

CHAIR GONZALES: Okay, does the Commission have any questions of staff? Go ahead.

MR. BUSTOS: The conditions would be:

1. No non-resident employees are allowed.
2. No on-site appointments or patron visits allowed.
3. Business sign is not allowed.
4. The work truck must be parked on-site.
5. Application must comply with all Santa Fe County Fire Prevention approval conditions.
6. Accessory storage building used for the business shall not exceed 320 square feet.
7. The business shall not occupy more than 120 square feet of the residence.
8. Outdoor storage is prohibited.
9. Any changes in the Home Occupation will require submission of a new application and approval by the Santa Fe County Land Use Administrator

Mr. Chair, I stand for any questions.

CHAIR GONZALES: Thank you. Does the Commission have any questions of Gabriel?

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Steve.

MEMBER SHEPHERD: Yes, on February 22nd the Land Use Administrator approved the development permit with a set of eight conditions. Correct?

MR. BUSTOS: Mr. Chair, Commission Member Shepherd, that is correct.

MEMBER SHEPHERD: And how the staff is recommending that the conditions be expanded to nine, but equally important is five out of those nine are stricter than the ones that were approved on February 22nd. And when I look at Table 10.1, Home Occupation Requirements for low impact, it appears that the February 22nd list of eight complies with that table and the new recommendations you're requesting are tighter than that table. Could you elaborate why you feel it is necessary to go tighter than the requirements?

MR. BUSTOS: Mr. Chair, Commission Member Shepherd, I believe the stricter conditions are being asked to be implemented just to keep the appellant happy and also not necessarily allow for the business to grow.

CHAIR GONZALES: Any other questions? Go ahead, Penny.

PENNY ELLIS GREEN (Growth Management Director): Mr. Chair, Committee members, we wanted to change those conditions so they're actually specific to the home occupation that had been requested. So even though the code allows it a little bigger, that's not the application that had been requested. So when we review an application for a home occupation we want to put the conditions on that say, okay, you stay how you submitted. If you want to come back and expand later, still within the code, you could do that, but the reason why we're recommending these conditions be changed is so they're very specific to the actual application that had been submitted.

CHAIR GONZALES: Okay. Thank you. I have a question too, real quick. Penny, if we added this ninth condition and the guy's allowed to operate, does he know about this extra condition? The applicant?

MS. ELLIS GREEN: Mr. Chair, Committee members, I understand he has been emailed this report and has been emailed these conditions.

CHAIR GONZALES: Okay. Thank you. Any other questions of staff?

MEMBER RAZNICK: I have some questions.

CHAIR GONZALES: Fred.

MEMBER RAZNICK: I don't know if this is the appropriate time or not, but in reviewing the packet and then getting these photographs, has the County been out to look at the property since the time of these photographs? And if so, when was the last time that the property was visited by the County?

MR. BUSTOS: Mr. Chair, Commission Member Raznick, I believe that the last time the County was out to the property was when the application was submitted.

MEMBER RAZNICK: When the application was made.

MR. BUSTOS: Yes.

MEMBER KATZ: Was that last October?

MR. BUSTOS: I believe so.

MEMBER RAZNICK: Have you reviewed these photos?

MR. BUSTOS: Mr. Chair, Commission Member Raznick, I have reviewed the photos, yes.

MEMBER RAZNICK: Can you describe – was there a difference from what you saw and what these photos show?

MR. BUSTOS: Chair Gonzalez, Commission Member Raznick, I believe the property

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has remained the same.

CHAIR GONZALES: Do we know the date of these photos? There's no date on them. Do we know what the date is?

MR. BUSTOS: Chair Gonzales, as the appellant stated, they were of March and May of this year.

MEMBER RAZNICK: March of last year?

MR. BUSTOS: Of 2019.

MEMBER RAZNICK: So if I understand this correctly, the application was made in October 2018. These pictures were taking in March 2019. Is that correct?

MR. BUSTOS: Chair Gonzales, Commissioner Raznick, that is correct.

MEMBER RAZNICK: What assurances – in the recommendations it looks like there's some severe recommendations there. What assurances do the County and the neighbors have that this property will not continue to look like that?

MR. BUSTOS: If I can defer this question please?

MEMBER RAZNICK: Is the applicant present to discuss the condition of the property prior to – in October, March and what it looks like today or what it will look like tomorrow?

MR. BUSTOS: Chair Gonzales, Commission Member Raznick, the applicant is not here to speak on that.

MEMBER RAZNICK: And the applicant is not required to be here. Is that correct?

MR. BUSTOS: That is correct.

MEMBER RAZNICK: So if the property is in the same condition as when these were taken, what enforcement action does the County have from all the items that are on the property per these photographs? Does it take a citizen to call the County? What is the enforcement?

MR. BUSTOS: Commissioner Garcia, Commission Member Raznick, that would be correct. There could be a complaint made and the County would then go out to the property and do another inspection.

MEMBER RAZNICK: Was the applicant – was there any discussion about what these photographs show, if the applicant saw them? I'm assuming that representatives of the County were out there, saw these – is that correct? Saw the debris or whatever it is – on the property. Is that correct?

MR. BUSTOS: Chair Gonzales, Commission Member Raznick, that would be correct.

MR. KAVANAUGH: Mr. Chair, we did send a code enforcement officer out there and we were told that there were no violations. In light of these pictures, we would need to send a code enforcement officer out there. I don't know when these pictures were taken. I don't know what the property looks like now, but we sent a code enforcement officer out there to look at it and we were told that there were no violations. We would like to send a code enforcement officer out there tomorrow and have him bring pictures so we could see what the property looks like today.

MEMBER RAZNICK: And just as a follow-up question, let's say it's all been cleaned up. What is the protocol if it starts turning into what these pictures show down the road? Somebody would have to call, make a complaint?

MR. KAVANAUGH: Mr. Chair, Commissioner, that's correct. They'd make a complaint. We'd send a code enforcement officer to investigate that.

MEMBER RAZNICK: And what would be the timeframe of the time that the complaint came in to a code officer going out there, filing a report –

MR. KAVANAUGH: Worst case scenario, two days.

MEMBER RAZNICK: Two day.

MR. KAVANAUGH: Yes, sir. Only because Edgewood is a little far and that inspector

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has quite a bit area. But we would like to get them out there ASAP.

MEMBER RAZNICK: Okay. So if the property was like this, within a two, three-day period, what would then happen? Can you take me through the –

MR. KAVANAUGH: A notice of violation would be issued to the property owner. They have seven days to respond to that violation. If they don't respond, a final is issued and they're filed into court. What we do try to do is work with them. Normally what the code enforcement officer will do is work with them, give them time to clean it up. They monitor it and see that it gets into compliance.

MEMBER RAZNICK: If the application was approved, and the applicant did not cooperate, can the approval be rescinded?

MR. KAVANAUGH: Mr. Chair, Commissioner, yes.

MEMBER RAZNICK: Is that by court action or is that handled through a hearing such as this?

MR. KAVANAUGH: Mr. Chair, that would be an administrative decision, because they would not meet the conditions that are being imposed.

MEMBER RAZNICK: Thank you.

CHAIR GONZALES: I guess I have a quick question or comment on that too. If these pictures were taken in March, how come we didn't have them for the meeting in May? Who took these photos? The applicant or the appellant?

MR. KAVANAUGH: The appellant.

CHAIR GONZALES: Okay. I'll ask you when you come up.

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd.

MEMBER SHEPHERD: To the previous conversation, in the minutes from our last time we discussed this, I believe that all of the conditions need to be met before the license or the permit is approved. At this point in time he wouldn't have a permit to operate his business because he hasn't met the requirements. So it's not a case of he's in violation of his permit; I think it's a case of until he meets the requirements he doesn't get his permit.

MEMBER RAZNICK: And the applicant is not here to say whether he has or hasn't.

MEMBER SHEPHERD: Right. Correct.

MR. WORD: Mr. Chair, members, just a procedural point. The photographs that have been referenced are not in the packet. Is that correct? And I did not have a copy. So perhaps somebody could tell us more about the origin of the photographs. If they're not from staff but from the appellant at some point we need to have that in the record.

CHAIR GONZALES: Okay. Let's finish our questions of staff and then we'll go to the appellant.

MR. WORD: If I may finish and then you could come back to some of these questions to staff that are raised by the photographs.

CHAIR GONZALES: Sounds good. Okay, any other questions of staff? Okay. The appellants, could you like to make a presentation?

[Duly sworn, Stephen Klinksiek testified as follows:]

STEPHEN KLINGSIEK: If it would please the Commission I'd like to take one second here for a moment to thank someone in this room. The Fire Department in Edgewood literally saved my life six weeks ago, and I'd like to thank you guys. I was in a-fib and they hauled me down to Albuquerque and they shocked me to death and actually saved my life. I think that's really cool. So I just wanted to thank the gentleman that was here.

CHAIR GONZALES: All right.

Skk: I'm under orders that I have to sit. Is that okay? From the doctor. I'm not allowed to stand for a long period of time.

CHAIR GONZALES: You could sit down if you like.

MR. KLINKSIEK: I'm supposed to walk for 30 minutes but not stand for a long time.

CHAIR GONZALES: Whatever makes you comfortable.

MR. KLINKSIEK: Back when the neighbors next door, Mr. Riojas and his wife first moved in, one of the next door neighbors was talking to him – I want to preface all my comments on this particular conversation. And she says that Mr. Riojas pointed to the section of land next to his gate on Reina Court, which is right across from my gate Reina Court, and told her that he was going to build his welding shop there. So that's where this all starts. He's applied for a low impact home occupation and so the second that I started reading all the rules and regs for this, two big questions came up.

If this is a mobile welding shop, where all the work is performed outside of his property, why isn't this going to be a no impact home office? And if he actually intends to do something on the property, why didn't he go for the medium impact? Well, the answer is, he gets no storage with the no impact and he has to go through a re-assessment of the property and rezoning for the medium impact. So he chose the perfect one that fits in the middle. And the whole issue that comes up with this is, for me particularly, is the neighborhood is full of people like me: old. Older. And the vast majority of them don't want this to occur. It doesn't make sense to us.

Just a few moments ago, the first part of the issue comes up, although it wasn't put in the terms I was going to use. How do you enforce it? How are you going to know that Mr. Riojas doesn't go down the road to some person who needs some emergency welding, haul his trailer out to the front yard, weld the trailer up where it's supposed to be and drive it off? How do you know?

He stated that he wanted to build a welding shop, literally at my front gate, about 175 feet from my front door. How are we, the neighbors, going to see to it that this thing doesn't turn into his welding shop right across the fence from my front door? How are we going to do it? If you look at the pictures how are you, the Commission, Santa Fe County, going to determine which of the – it's bigger by they way, now – out of that immense pile of stuff is personal and what's business? Are you going to take his word for it? Is that how this is going to be enforced? How do you know? How do we know?

This is setting a bad precedent. A really bad precedent. If I remember right, and I'm pretty sure I do, Section 10.6.2.4 is an exception to the rules for home occupancy, any home occupancy, by the way. It says roofing or towing business, construction yard, portapotty leasing, retail sales open to the public, vehicle leasing crematories – that's a biggy – auto paint and body shop or heavy industrial uses. They can't have a home occupancy permit issued.

So here's my question. What is the difference between his paraphernalia that he's got literally everywhere. By the way, it starts with four trucks and three cars and goes down from there. And a bunch of trailers. What's the difference between that and a construction yard? Why is a construction yard now allowed? It doesn't state why; it just says it isn't. And what's the difference between the two? Are we getting a construction yard but calling it a welding supply instead? And how do we stop it? How do you enforce it?

Heavy industrial use. If you look at any city code, where it's a reasonable city including the City of Santa Fe, that's what welding shops fall under. They're an industrial business. Why is it being allowed under some home occupancy rule? Please, I don't want to sound like the angry neighbor. I don't want to sound like somebody who wants to make business something that's never done around me. I love the idea of home occupancy businesses. I think it's the greatest thing since sliced bread. Seriously. Think about it. You're allowing people to become entrepreneurs under certain limited conditions, and make a living in their own home.

There was a pair of occupants in house there. They're going to sell their house because now it's too big; all the kids left. They want to have two offices in there. One is for a construction company and one is for a real estate agency. It's perfect for that. They want to be together while they conduct business most of the time and the only way they can do that is if they have the same office and their home is perfect for that. I understand this. I truly do and I appreciate the effort of the state and the County to encourage this kind of thing. The problem with the welding shop and the Riojas neighbor that we have is the fact that he started his entire welding shop idea telling a neighbor that lives behind him is that he intended to build a welding shop right out on the gate to my property. And then we get this going.

If we give him the license, how are we going to protect not only her, the people that are beside him on Wind Dancer? One of those pictures shows the view that the people who live at 7 Wind Dancer stare at out their front windows and their kitchen. This is the view they get. Every morning. How are we going to enforce, as bad as it is, that it doesn't get worse. I mean, I understand, yes, we complain. The code enforcement people, who are wonderful, by the way. Wonderful. Come out there and they do the best they can to work things around, and then it goes into a limbo until somebody actually gets it into the Commission I guess, and then it takes forever. That's my concern.

You have pictures there. The picture where the guy is welding in his front yard right outside my front yard, is taken at the dead of night in the summer. It's after – well after – 9:00 pm. Is this private or is this for somebody? How do I know? How do you know? You would never know. He would say I was welding on my trailer. How the hell are you going to tell? Sorry. That just came out. How is anybody going to know? And once it starts, how are we going to stop it? This opens a big, huge can of worms, because I don't believe, seriously, that this was the intent of the home occupancy. I don't think they ever intended to have these kinds of businesses actually applied for. I guess they must have because they have some exclusions that they put on, but it would have never come up in my head for that kind of thing, and so I'm just wanting to say there's tons of commercial properties for this particular business to operate out of in the Edgewood area. Tons of it. If he wants to have just the office so he can take care of the paperwork and all that stuff – fine. But when it starts coming to storing his material, and/or actually providing work on the property, how are we going to somehow control it so it remains the neighborhood that it actually is.

In every one of the pieces that comes up in this, he's not supposed to change the character of the property. What's the character of the property today? What is the character of the property today? Four trucks, three cars, two motorcycles in the garage, or three – I don't know for sure. He's got two storage facilities, at least three or four trailers, one of which contains a mobile welding shop, besides his truck. And all the paraphernalia that literally stretches 330 feet long and four feet wide. That's just a start. Is that changing the character of the neighborhood, and where does it go? And how do you control it? How do we the people who are around him try to keep it to where it's not going to kill us in property values?

Ask yourself would you buy a house next to that? That's changing the nature of the neighborhood. That's my problem with this. That's my appeal, is common sense. Some things don't fit. I don't think this does. Thank you. I think my wife would also like to address the – Do you have any questions?

CHAIR GONZALES: Any questions of the appellant?

MEMBER RAZNICK: Yes. I have a question. These photographs were taken in March. What's the condition of the property today?

MR. KLINKSIEK: My wife would better address those. She's the photographer. Would that be okay?

MEMBER RAZNICK: Sure.

MR. KLINKSIEK: Any other questions?

CHAIR GONZALES: I have a question for you, actually. Is your concern about him operating this home occupation business? Or are you more concerned anticipating him building a welding shop?

MR. KLINKSIEK: Like I said, I have absolutely – I had my own business for 21 years. And I lived in the business. The City granted me a zoning variation from [inaudible] The place was big enough. I had the house in the back of the place, like in the olden days. People lived with their own business. I actually did that for 21 years. I have zero problem with them having a business. I have a problem with the nature and the type of the business and what's happening to the area. I don't care if he has a business in his house as long as he doesn't affect the neighborhood.

CHAIR GONZALES: Well, see, I have mixed feelings about this because I live in a traditional village and our property, I live on a half-acre property that welding – there's neighbors doing welding around me and it's a traditional village and we're talking half-acre lots, not bigger lots. So I'm real interested in what you have to say.

MR. KLINKSIEK: I have no problem with Mr. Riojas doing all the welding he wants to on his property. As long as it's his personal welding. It's when it becomes a commercial enterprise that it becomes different. Wouldn't you agree? As far as the statute of limitations of your laws are concerned, that's when it crosses into a new boundary and that's the concern. We're not talking about Mr. Riojas being Mr. Riojas and doing what he wants to on his property. That's personal. It's when it transitions over to business. That's the discussion today. I have no problem with him doing that stuff. I really don't. I don't care. I couldn't care less, as a matter of fact. That's why this is going to be an incredible problem to enforce.

CHAIR GONZALES: Okay, any other questions of the appellant? Did you want to say something?

[Duly sworn, Elizabeth Klinksiek testified as follows:]

ELIZABETH KLINSKIEK: Thank you, Mr. Chair. members of the committee. My name is Elizabeth Klinksiek. I'm Stephen's wife. I just wanted to say that I took the photographs, all of them. Actually the first four photographs were taken this morning. There is a mixture of photographs, they were time-stamped on my camera and we did bring a thumb drive with the photographs on them and I'm sure that those time stamps will be shown on the photographs when they were taken. I believe most of them were taken in March. During this time Steve and I were going back and forth to Albuquerque quite a bit because of his medical problems and he was hospitalized twice and the other photographs I took, the nighttime photographs I remember were taken on May 25th and the time stamps were between 9:15 and 9:34 this year, after Mr. Riojas was granted permission to go ahead and perform welding, only if he did not do it on his property. That's all I have to say.

CHAIR GONZALES: Any questions of the appellant?

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd.

MEMBER SHEPHERD: Could you go through each of the pictures you presented and to the best of your recollection – because none of these have a date stamp on it. So could we discuss picture by picture what date do you think these pictures were taken?

MS. KLINSKIEK: Can I be provided a copy? And I can just tell you. The first photograph, second, the fourth –

MEMBER SHEPHERD: Let's go back to the first. What about the first?

MS. KLINSKIEK: First, second and fourth were taken today.

MEMBER SHEPHERD: So that would be July 18th.

MS. KLINSKIEK: Yes.

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MEMBER SHEPHERD: The first, the second and the fourth?

MS. KLINKSIEK: Yes.

MEMBER SHEPHERD: July 18th.

MS. KLINKSIEK: July 18th.

MEMBER SHEPHERD: Okay.

MS. KLINKSIEK: The third photograph was taken in May.

MEMBER SHEPHERD: May? The fifth?

MS. KLINKSIEK: The fifth photograph was taken I believe in March.

MEMBER SHEPHERD: Okay.

MS. KLINKSIEK: The sixth in March.

MEMBER SHEPHERD: Okay.

MS. KLINKSIEK: The seventh and the eighth were taken in May.

MEMBER RAZNICK: May I ask a question about the seventh?

CHAIR GONZALES: Sure.

MEMBER RAZNICK: Is that all the applicant's property? That entire picture?

MEMBER KATZ: This one, sir?

MEMBER RAZNICK: Yes.

MEMBER KATZ: That is Mr. Riojas's property on the east boundary line. The road is called Wind Dancer.

MEMBER RAZNICK: My question is I see six or seven various structures. It looks like including a travel hauler. Are those all on his property?

KLINKSIEK: Yes. The structure on the far left, which is a two-story house with a metal roof, that is our home. There is a boxcar, recreational trailer, small storage building, and a barn to the right.

MEMBER SHEPHERD: Okay, the ninth picture shows a man on a tractor..

MS. KLINKSIEK: Yes. So that was taken in May.

MEMBER SHEPHERD: Okay.

MS. KLINKSIEK: Those are the residents of Wind Dancer who live on the east boundary, just across Wind Dancer.

MEMBER SHEPHERD: The next picture has the mobile mini.

MS. KLINKSIEK: That was taken in March.

MEMBER SHEPHERD: March. Okay.

MS. KLINKSIEK: The next photograph was also taken in March.

MEMBER SHEPHERD: Okay.

MS. KLINKSIEK: And the next one was taken in May. The three nighttime photographs were taken on May 25th.

MEMBER SHEPHERD: May 25, did you say?

MS. KLINKSIEK: May 25, 2019.

MEMBER SHEPHERD: Thank you.

CHAIR GONZALES: Thank you. Any other questions?

MR. WORD: Mr. Chair, members, if I may suggest perhaps the witness could use a pen and mark the pages. If you're listening to this it's not absolutely clear when you say the first photo, the second photo. I'm assuming she's starting at the top of the stack that she was looking at. Just to make sure the record is clear I would she suggest she number then one through eleven and we'll just put that in the record.

CHAIR GONZALES: That would be fine.

MEMBER SHEPHERD: So therefore they would be exhibits.

MR. WORD: Yes. Correct, Mr. Chair, members. This would then be an exhibit.

CHAIR GONZALES: Exhibits for the appellant.

MEMBER LOPEZ: Mr. Chair, this question is for staff. Did the Fire Department go down to visit the property in question?

JAOME BLAY (Fire Marshal): Mr. Chair, Member Lopez, the Fire Department went there in I believe the 17th of October, 2018 to do a site visit and a final inspection and the inspector that went down there at that time, he's now retired, but according to is letter it said there were no violations as far as fire-related violations. Fire code violations.

MEMBER LOPEZ: That was your only visit, sir?

MARSHAL BLAY: I believe so.

MR. KAVANAUGH: Mr. Chair, part of Mr. Riojas's application was no outdoor storage. That does appear to be construction material. That would need to be removed. That can't stay.

CHAIR GONZALES: Okay. Frank.

MEMBER KATZ: Yes, I had a question for staff, and I guess I'm a little puzzled by this. Reading the materials it hit me, just what Fred talked about, which is you have the neighbors talking about a real mess and we now see the photos about what they were talking about and staff saying everything is hunky-dory. And we haven't progressed beyond that. And I'm just a little disappointed that obviously, we can't rule today; we have no idea what's going on. Do we have any sense of why the applicant isn't here? Did anyone talk with him?

MR. BUSTOS: Mr. Chair, Commission Member Katz, unfortunately he was not able to take leave from work to be here today.

CHAIR GONZALES: Well, it kind of seems to me that if somebody is interested in getting this thing they'd take off work to come and take care of this.

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd.

MEMBER SHEPHERD: This is a question to staff. Has a development permit been issued?

MR. BUSTOS: Mr. Chair, Commission Member Shepherd, it was issued, but at risk, depending on the outcome of tonight's meeting.

MEMBER SHEPHERD: The reason I ask that is in the prior month we talked about this. My understanding through the dialogue was the development permit isn't issued until after the conditions are met. And since one of the conditions is the outdoor storage is prohibited it would appear to me that the development permit can't be issued until the land is cleared. Am I mistaken about something?

CHAIR GONZALES: Usually what the process is is that the code inspectors go out there and they do an inspection and if they find existing violations on the property the permit is not issued.

MEMBER SHEPHERD: So are we at a point where – so the code inspectors did go out to the property and based on their findings then we did issue a development permit?

CHAIR GONZALES: That's the standard procedure I know but let's let Penny answer that.

PENNY ELLIS GREEN (Growth Management Director): Mr. Chair, Commission Members, the applicant has stated that they don't store any of their business material outside. He stated I have personal storage outside, as do many people throughout the county. So when it comes to vehicles, we will send someone out there to look and see if they're registered. If they're registered, there's not a violation related to the vehicle. As far as – there's a few photographs here where I'm seeing things on

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there that I think do not look like they should be there, but whether or not they're related to the business is a completely different issue. So what he has stated and what he has put in writing is that his storage is inside the storage area, a portion of the storage area, and that meets the code requirements, which is why he was allowed to proceed. I think you allowed him to proceed last month because of the noticing issues.

And so he's stating that that's not anything to do with his business. Now, I think Paul addressed earlier, we will send code enforcement out there and if there are violations that meet our Anti-Litter Ordinance, we will request that that get moved. If he doesn't move it, we will proceed with court action for that. But what we're hearing tonight is an appeal on the actual home occupation. That is why we scaled back the conditions to be specific to what he applied for. There was a concern about how we enforce. It's the same with absolutely everything in the County. Every permit we issue, as to whether or not they put a mobile home, for example, where they've stated on their plat. Whether or not every home occupation we issue is complying with exactly what they stated they were going to do.

So it's an ongoing issue in the county as it is in any other jurisdiction as to how you ensure that what somebody is actually doing on their property is precisely what they made application for.

CHAIR GONZALES: I have a question. Would that – that stuff out there, would it be allowed to stay there if the property was screened with a fence or something, or put in a screened area?

MS. ELLIS GREEN: Mr. Chair, if there's a junked vehicle there, our ordinance says if you have a junked vehicle you can leave it on your property but it must be screened. I'm not sure what the Anti-Litter Ordinance says. So for example, if he's got a shed and he's stating this is personal and not for his business, then it would be acceptable that he pick it up and put it inside the shed.

MEMBER RAZNICK: Mr. Chair.

CHAIR GONZALES: Mr. Raznick, go ahead.

MEMBER RAZNICK: If I understand, he wants to have a welding business, but also, for lack of a better word, he's an artisan for his personal creations. And I'm looking at these pictures and they appear to be – the items lying on the ground, mostly of a metal nature. And so I'm having trouble distinguishing what the applicant could claim is what I create versus are any of these materials going to be used for his business? And it's like mixing the two, and I have trouble, and I know we're not all alike, but I can't imagine – I'm having trouble getting my head around this, that somebody would make an application and allow the premises to be like this and for this issue not to have – before it even reached us, not to come up.

Like, is this personal or is this business? Are they going to be intermingled? Is some of this for business? Where is it going to be stored? Do you have enough room to store it? There's tons of stuff here. I see these storage buildings but I have no idea what's in these buildings. So I'm very –

CHAIR GONZALES: I kind of have concerns about it myself and also in the example, like a lot of times they put hours of operation but if it's not a business to be done at home, then you have no hours of operation and he's working at night, how do you know if he's working on his hobby or if he's doing work as well. So that's kind of another concern I have. Frank.

MEMBER KATZ: Yes, I had that same concern. I just think that there's no way that you can allow him to be personal welding work, which is perfectly fine for him to do, I guess. I don't know what the rules are for that, but to – there's no way we'd know what's personal and what's actual work for other people. And at the appropriate time, because of that and because he is not here to explain any of this to us, at the appropriate time I would move to grant the appeal.

CHAIR GONZALES: Any other comments from the Commission? Okay. This is a public hearing. Is there anybody out there that wants to speak on this, for or against? I don't see anybody out there. Okay, what's the pleasure of the Commission?

MEMBER KATZ: Mr. Chair, on the basis of the fact that I do not believe that there's any

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way to ensure compliance with the rules, and on the basis of the fact that the applicant has shown a fair disregard of the concerns of the neighbor, and the likelihood that he will not follow the rules, and further, in light of the fact that he is not here to explain any of this, I would move to grant the appeal and deny the – overturn the Administrator’s decision and deny the license, or whatever it is. The permit.

MEMBER RAZNICK: Mr. Chair, I second that.

CHAIR GONZALES: Okay, there is a motion and a second.

The motion passed by majority [5-1] voice vote with J.J. Gonzales casting the nay vote.

MEMBER RAZNICK: Mr. Chair, just a procedural question.

CHAIR GONZALES: Sure.

MEMBER RAZNICK: Should there have been a call for discussion on the motion before the vote was taken?

CHAIR GONZALES: Not necessarily.

MEMBER RAZNICK: Since we do have one nay, should the nay be allowed to speak to it, to see if he can get any of the ones that voted in favor of the motion to abstain or change their mind.

CHAIR GONZALES: I don’t know if he wants to. Would you – the vote’s been taken.

MEMBER J. J. GONZALES: It’s already taken. So whatever.

CHAIR GONZALES: Okay.

MEMBER J. J. GONZALES: Mr. Chair.

CHAIR GONZALES : Okay, did we get the minutes?

MR. KAVANAUGH : Mr. Chair, we’ll provide you those minutes with your next packet. That way that will give you time to be able to review them and then you can act on them.

CHAIR GONZALES: That’s fine. Thank you. J. J.

MEMBER J. J. GONZALES: I had a kind of procedural question. The appellant’s appeal was confirmed. It was approved. Now, does Mr. Riojas, the applicant, have a chance to appeal this to the BCC? Or is this a final decision?

MR. KAVANAUGH: We have to receive the final order from you guys and then he has 30 days to appeal it to the Board of County Commissioners. So yes, they do have a chance to appeal this decision.

MEMBER RAZNICK: So will the final determination, if the applicant appeals it and it goes to the BCC, is the final decision with the BCC? Or are there circumstances where the BCC can refer it back to the Planning Commission?

MR. KAVANAUGH: I believe the final action will be with the BCC.

MEMBER RAZNICK: Thank you.

CHAIR GONZALES: Okay. Any other discussion?

VIII. Petitions from the Floor

None were offered.

IX. Communications from the Committee

None were offered.

X. Communications from the Attorney

None were presented.

XI. Matters from Land Use Staff

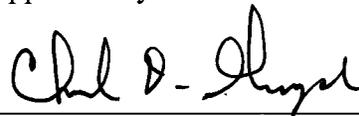
None were presented.

XII. Next Planning Commission Meeting: August 15, 2019

XIII. Adjournment

Having completed the agenda and with no further business to come before this Commission, Member Katz moved to adjourn and Member Shepherd seconded. Chair Gonzales declared this meeting adjourned at approximately 5:10 p.m.

Approved by:



Charlie Gonzales, Chair
Planning Commission

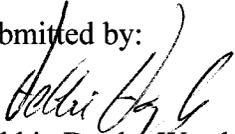


ATTEST TO:



GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Submitted by:



Debbie Doyle, Wordswork

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

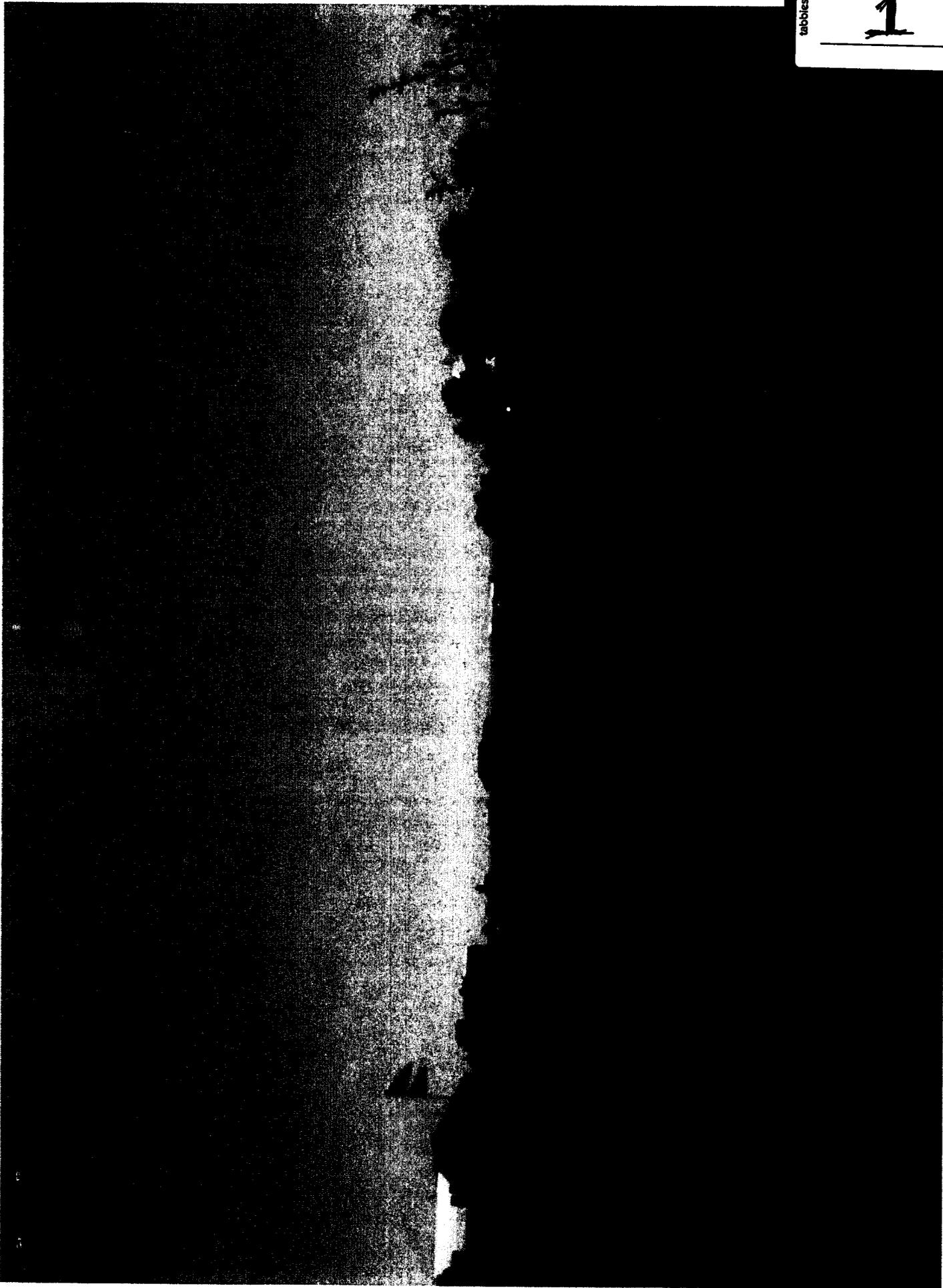
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I Hereby Certify That This Instrument Was Filed for
Record On The 19TH Day Of August, 2019 at 04:11:00 PM
And Was Duly Recorded as Instrument # 1894413
Of The Records Of Santa Fe County



Deputy )
Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

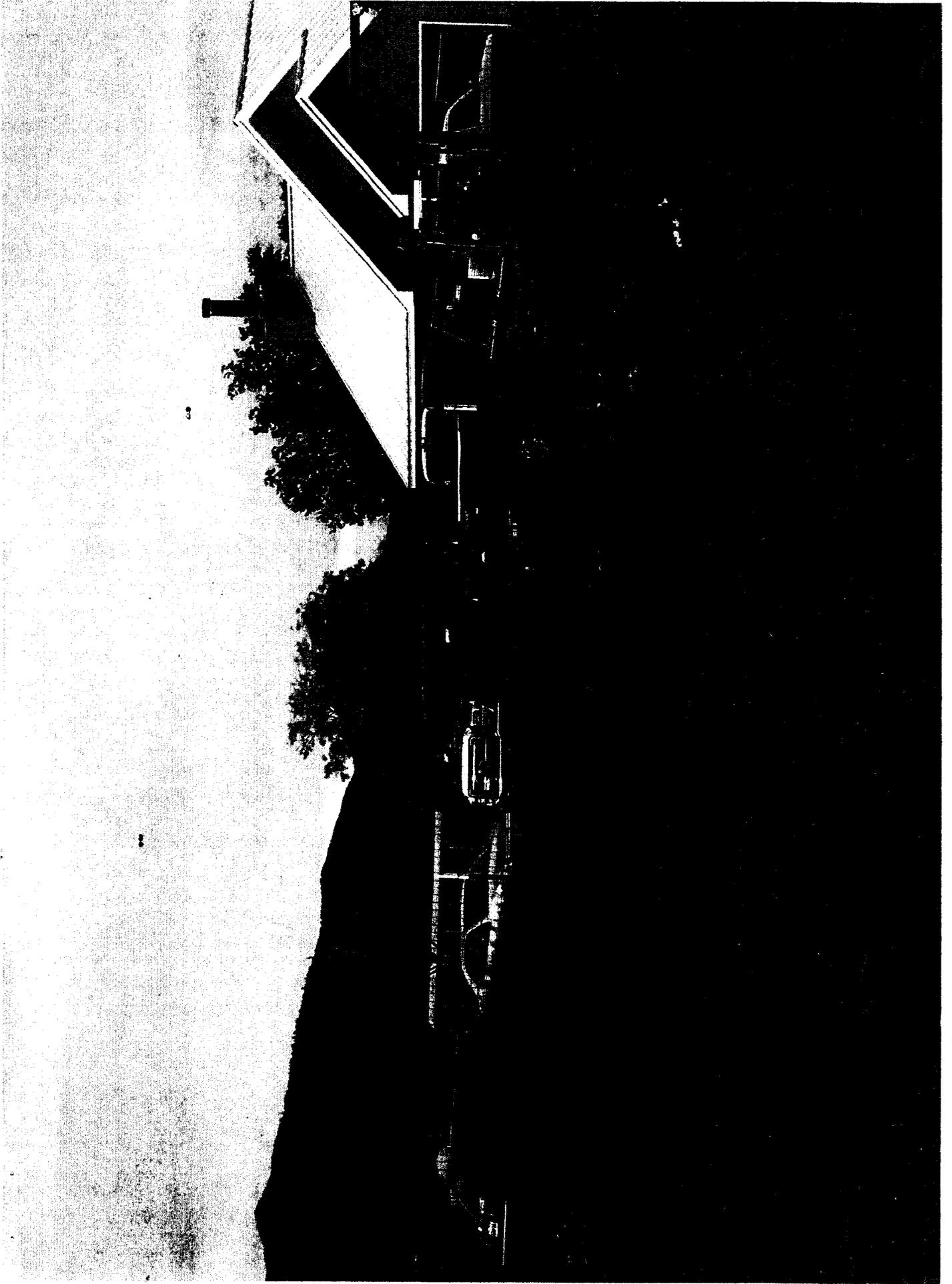
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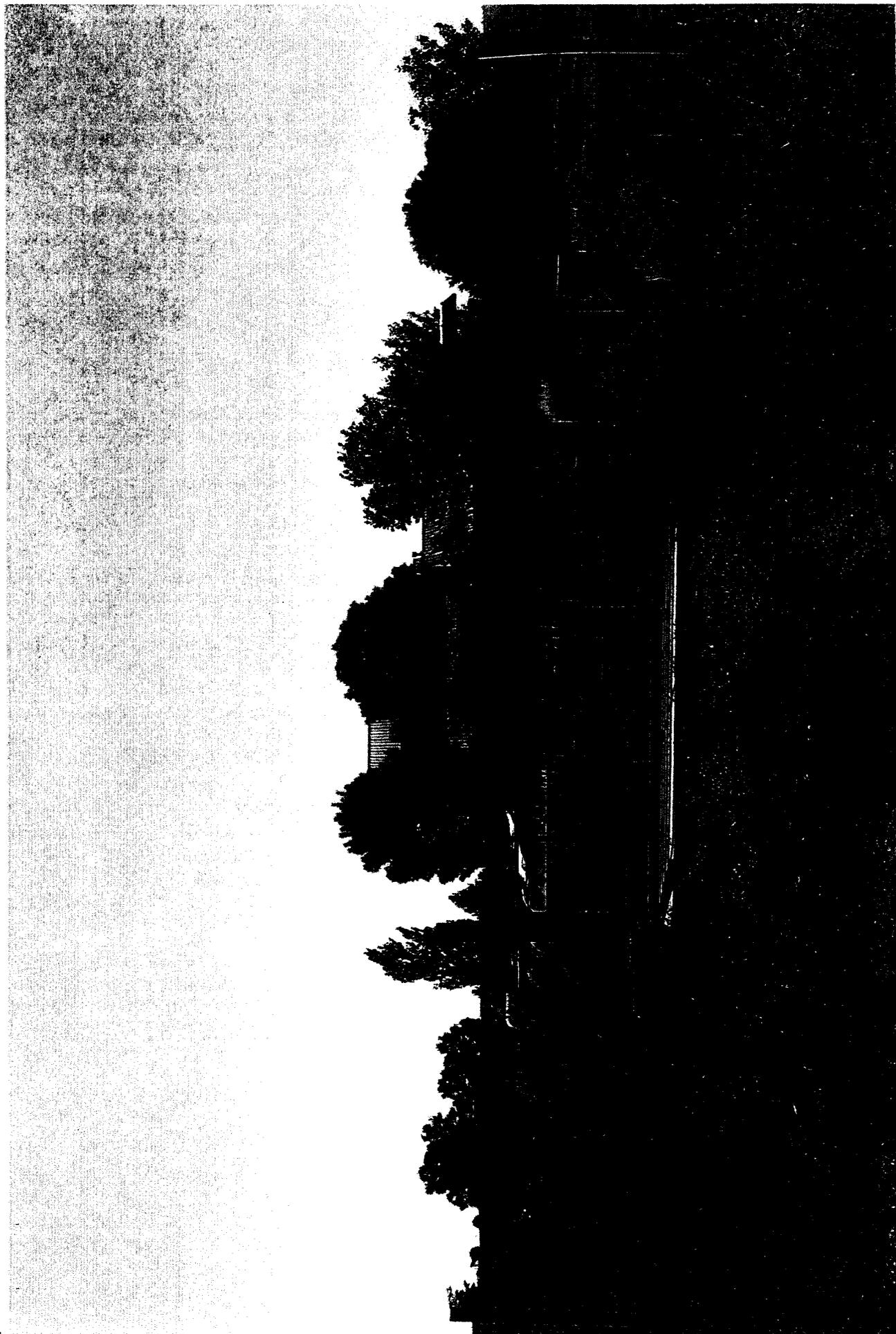
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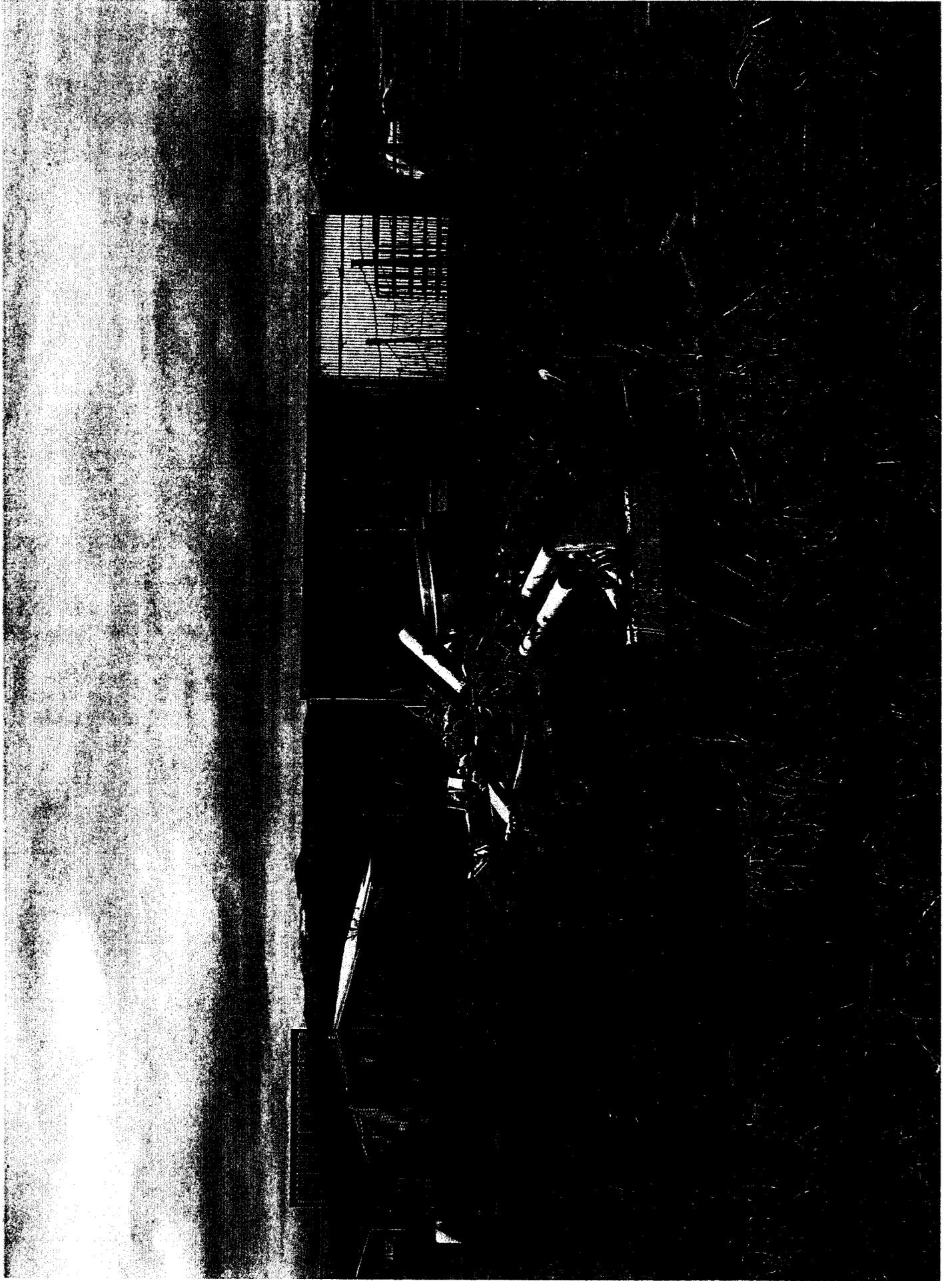
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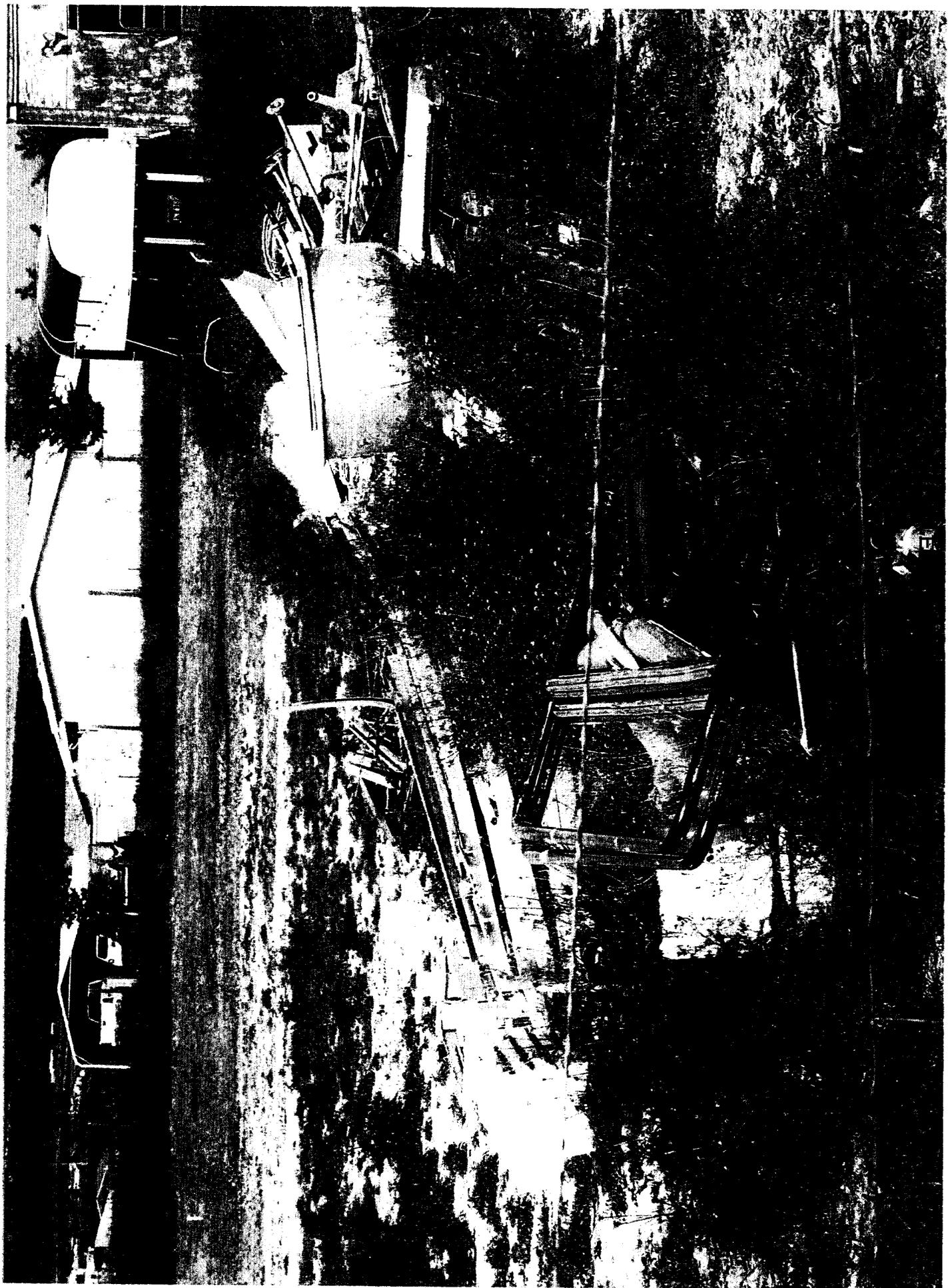
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