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WEST AMWELL TOWNSHIP  
ZONING BOARD OF ADJUSTMENT

HELD AT: WEST AMWELL TOWNSHIP MUNICIPAL BUILDING  
150 Rocktown-Lambertville Road  
Lambertville, New Jersey 08530  
DATE: MONDAY, NOVEMBER 28, 2016  
Commencing at 7:30 P.M.

TRANSCRIBED BY: DONNA BRUNCK, CCR

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1 BEFORE:

2

3 ROBERT FULPER, Chairman

4 JOHN CRONCE, Vice Chairman

5 BRIAN FITTING

6 JOSEPH ROMANO

7 RUTH HALL, Secretary

8 STUART PALILONIS, Township Attorney

9 FRANK SABATINO

10 GEORGE FISHER

11 THOMAS DECKER, Engineer

12 JAMES KYLE, Planner

13

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1 ALSO PRESENT:

2

3 SZAFERMAN, LAKIND, BLUMSTEIN & BLADER, P.C.

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17 Email: Ctrofimov@lanzsandlanza.com

18 Attorneys for Township

19

20

21

22

23

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5

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21 (NO REQUESTS MADE)

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23

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25

6

1 MR. FULPER: We will have our  
 2 applicant come up, Vernor/Lubchansky (A-Z Venue  
 3 Management, LLC), Block 11, Lot 28, 16 Mill Road.  
 4 MR. LAKIND: Thank you. Mr. Chairman.  
 5 MR. FULPER: We have a continuation  
 6 of the hearing that was started in September.  
 7 MR. LAKIND: Mr. Chairman, my name is  
 8 Arnold Lakind. Jonas Singer did the first day of  
 9 hearing, but he had to be in Los Angeles today.  
 10 There's one glitch and I'll take it up right now.  
 11 Mr. Lubchansky's wife, who is 12  
 12 weeks pregnant, had an automobile accident, so he's  
 13 at the hospital with her and he's going to try to  
 14 get here at the end of the hearing this evening. so  
 15 I'm going to go out of order. We had completed his  
 16 testimony, and it's conceivable there may be some  
 17 additional cross examination, but I just wanted to  
 18 let you know. My hope is that he'll be here before  
 19 the end of the evening.  
 20 MR. FULPER: Okay.  
 21 MR. PALILONIS: Before we proceed, I  
 22 just want to verify that all the members of the  
 23 board present here tonight attended the September  
 24 meeting?  
 25 MS. HALL: September, yes.

7

1 MR. FULPER: September, yes, the  
 2 first part of the hearing.  
 3 MR. PALILONIS: So we have seven  
 4 people qualified to continue.  
 5 MR. LAKIND: Thank you. Before I  
 6 call my first witness, I thought it would be prudent  
 7 to mark as an exhibit a consent order that was  
 8 entered by the superior court in an action initiated  
 9 by the township against Mr. Lubchansky and A-Z Venue  
 10 Management.  
 11 MR. FULPER: Hold on one second. You  
 12 re-noticed for this evening's meeting?  
 13 MR. LAKIND: We did.  
 14 MR. FULPER: Why did you do that?  
 15 MR. LAKIND: There were some concerns  
 16 expressed by the planner for the township, and I  
 17 thought the notice was fine, the notice was  
 18 approved, but in an excess of caution, I figured why  
 19 should we not send a notice so that there's no  
 20 confusion at all. because I didn't want to be in a  
 21 position where if this board's decision to approve  
 22 the initial notice were overturned, somebody would  
 23 say well, it should have been corrected.  
 24 MR. PALILONIS: So what was I going  
 25 to say? I just lost it. So you had multiple

8

1 theories for relief. That's the upshot of having  
 2 the two different notices.  
 3 MR. LAKIND: Yes.  
 4 MR. PALILONIS: You haven't given up  
 5 any theory of why you should get relief.  
 6 MR. LAKIND: We are not going to  
 7 proceed on a D-1 variance. I don't think I could  
 8 prevail on that, in here or in court, so we are  
 9 proceeding simply on the conditional use.  
 10 MR. PALILONIS: So in light of that,  
 11 would you -- well, I don't want to -- go ahead. I  
 12 was just going to ask you what conditions so we all  
 13 have in mind you are asking for relief from.  
 14 MR. LAKIND: Well, there are three  
 15 conditions in the ordinance. One is that the  
 16 coverage cannot exceed 35 percent. We satisfied  
 17 that condition.  
 18 The second is that there has to be 4  
 19 acres of -- and I may be doing these out of order, 4  
 20 acres of buildable area. There's a dispute as to  
 21 whether that means contiguous buildable area,  
 22 because there's a definition in your ordinance about  
 23 contiguous. We think it does not, but if the  
 24 ultimate conclusion is that buildable area must be  
 25 contiguous, we do seek a variation -- excuse me, a

9

1 variance from that.  
 2 The third condition in your ordinance  
 3 is that no structure may be more than 75 feet from a  
 4 side line, and we have two structures, neither of  
 5 which -- well, one of which is slightly used in the  
 6 wedding activities. The other which is not, which  
 7 don't meet that requirement. All of these  
 8 conditions are existing conditions, and my hope is  
 9 that the board will ultimately determine that they  
 10 are preexisting.  
 11 Suffice it to say though those are  
 12 the three conditions in your ordinance that we have  
 13 to satisfy.  
 14 MR. PALILONIS: So you are assuming  
 15 that what you want to do is -- comes within the  
 16 definition and requirements for a conditional use?  
 17 MR. LAKIND: For an assembly, yes.  
 18 Those are the conditions associated with an  
 19 assembly. We'll have testimony from our planner  
 20 indicating that we satisfy that requirement or we  
 21 fall within that definition, I'm sorry, not a  
 22 requirement.  
 23 MR. FULPER: So we are going to  
 24 proceed tonight by addressing specifically that  
 25 conditional use?

10

1 MR. LAKIND: Yes, we are. I will not  
 2 be seeking a use variance, D-1 use variance.  
 3 MR. FULPER: Okay.  
 4 MR. LAKIND: May I proceed?  
 5 MR. FULPER: Yes.  
 6 MR. LAKIND: Thanks.  
 7 MR. FULPER: Just speak loud to get  
 8 on the tape good.  
 9 MR. LAKIND: At the outset, what I  
 10 would like to do is mark as an exhibit a consent  
 11 order that was entered in litigation called the  
 12 Township of West Amwell versus James Vernor, et al.  
 13 It was entered in the Superior Court by Judge Miller  
 14 in litigation initiated by the township against my  
 15 client. The purpose of asking to mark and enter  
 16 this is there are a number of conditions set forth  
 17 in that consent order and just indicate the  
 18 applicant, if this application is approved, is  
 19 prepared to meet those conditions.  
 20 The consent order provides that if  
 21 it's, that the conditions expire once we have a  
 22 decision, but he wanted me to communicate to you  
 23 that he will meet these conditions in the event the  
 24 application is approved. Unfortunately, because I  
 25 didn't do the first hearing, I kind of lost track of

12

1 Nonetheless, we agreed to comply with that and to  
 2 reduce the noise no later than 10:00 p.m. in the  
 3 evening at -- during a wedding event. We are  
 4 permitted to hold weddings until October 31, 2016 or  
 5 thereafter with zoning or court approval.  
 6 The next is not really terribly  
 7 relevant. We agreed to provide the township with a  
 8 list of all wedding events scheduled until October  
 9 31st. Certain alleged construction board of appeals  
 10 violations were agreed to be deferred pending the  
 11 conclusion of the zoning board hearing. That's item  
 12 4. We were asked to install no parking fire lane  
 13 signs, which we've done. Notice of the agreement  
 14 must be provided to the Educational Services  
 15 Commission which has been allowing us to park, which  
 16 is No. 6. Unless and until we prevail before the  
 17 board of adjustment, we can't have more than 20  
 18 persons in total present at the property after  
 19 October 31st.  
 20 We made arrangements for the fire  
 21 marshal inspection. The township agreed to respond  
 22 to all of our inquiries within ten days. There's  
 23 limitations. No open flames under the main tent  
 24 other than Sterno cans used for chaffing dishes and  
 25 tabletop candles. Attendance is limited to 250

11

1 the exhibit numbers, and I was wondering,  
 2 Mr. Palilonis, if you could tell me where we are?  
 3 MR. PALILONIS: Okay, B-3.  
 4 MR. LAKIND: May I hand up several  
 5 copies of B-3?  
 6 MR. FULPER: Yes.  
 7 (Exhibit B-3, Consent order, is  
 8 received and marked for identification.)  
 9 MR. PALILONIS: Who doesn't have a  
 10 copy of the consent order?  
 11 MR. FULPER: Can you briefly explain  
 12 what those conditions are?  
 13 MR. LAKIND: Yes, I will.  
 14 MR. FULPER: Okay.  
 15 MR. LAKIND: There is an action  
 16 initiated by the township in order to terminate my  
 17 client's wedding operations at his property. With  
 18 the assistance of the trial judge, we were able to  
 19 negotiate an interim consent order which has a  
 20 variety of conditions which, if I could just  
 21 summarize the major conditions, the first is that we  
 22 will comply with the New Jersey Department of  
 23 Environmental Protection noise regulations. The  
 24 township does not have its own noise regulation nor  
 25 does it have a regulation approved by DEP.

13

1 guests.  
 2 We have named the West Amwell  
 3 Township as an additional insured under my client's  
 4 comprehensive liability policy. We've agreed to use  
 5 Americans With Disabilities Act compliant porta  
 6 potties during an event, if requested. In addition,  
 7 we agreed to maintain the suitable generator at the  
 8 property in operable condition. We agreed to  
 9 provide the name and access of an individual  
 10 associated with A-Z Venue Management, so that they  
 11 could be contacted in the event of a problem.  
 12 No. 16 makes provision for an  
 13 inspection by the fire marshall. In reading these,  
 14 I don't mean to suggest we weren't doing these  
 15 before we agreed to them in the form of an order.  
 16 We agreed that no further bookings of events would  
 17 occur until after this process is complete. We  
 18 agreed that if there's an adverse decision from the  
 19 zoning board of adjustment, we will notify all  
 20 individuals that booked weddings after October 31st.  
 21 Paragraph 19 didn't really impact us  
 22 as much as it did the Vernors who were seeking an  
 23 extension of a bulk variance previously granted in  
 24 connection with the stream encroachment permit.  
 25 20, we agreed no fireworks, Chinese

14

1 lanterns or similar items will be used at the  
2 property, and that 21, the litigation would be held  
3 in abeyance pending the conclusion of this process.  
4 A fire pit would be used only during  
5 wedding and other events so long as Mr. Lubchansky  
6 is present or another certified firefighter is  
7 present.  
8 So those are the terms we agreed to  
9 in an effort to assuage the concerns raised by the  
10 township, and while it was agreed to be an interim  
11 consent order, as I said earlier, if the board  
12 chooses to approve and impose these conditions, they  
13 are acceptable to us.  
14 MR. FISHER: Could you put some words  
15 around item number, 19, plaintiff recognizes that  
16 the variances granted to the defendant --  
17 MR. LAKIND: Yes.  
18 MR. FISHER: Could you explain that?  
19 MR. LAKIND: I was not party to that,  
20 nor was my client, but I understand that the Vernors  
21 received a variance in order to put a structure, I  
22 think, that encroached upon a stream, but it was  
23 conditioned upon receipt of a stream encroachment  
24 permit from the DEP, and the DEP had not proceeded  
25 with sufficient expedition to grant that permit. It

15

1 had not been denied, just hadn't been granted or  
2 denied, so the Vernors asked the township and the  
3 township attorney's here, as I recall, to say can we  
4 apply for an extension of the bulk variance to allow  
5 DEP to finally act.  
6 MR. FISHER: Okay.  
7 MR. KYLE: That extension was granted  
8 last week. That's what we did last week.  
9 MR. LAKIND: If I said anything  
10 wrong, the township attorney is here to fix it up.  
11 I have two witnesses this evening.  
12 May I call my first witness?  
13 MR. FISHER: Before we get started,  
14 does that mean if that permit is not granted, what  
15 do you not get if that permit is not granted? What  
16 do you lose with that?  
17 MR. LAKIND: I believe, and Chris  
18 would know better, the township attorney, that then  
19 there is a bridge, I think, that encroaches on the  
20 stream. I think that's the subject. Without a  
21 stream encroachment permit, that bridge would have  
22 to be removed.  
23 MR. KYLE: There is another structure  
24 involved as well.  
25 MR. DECKER: The pool house.

16

1 MR. FISHER: Isn't the tennis court  
2 on the other side of the -- is there another bridge?  
3 MR. FITTING: On the house.  
4 MR. LAKIND: Mr. Smith, if he could  
5 be sworn. He could address that better than I.  
6 MR. PALILONIS: Has he been sworn?  
7 MR. SMITH: I have not.  
8 ----  
9 RUSSELL SMITH, having been first duly sworn,  
10 testified as follows:  
11 ----  
12 EXAMINATION BY MR. LAKIND:  
13 MR. PALILONIS: State your name and  
14 address for the record, please.  
15 MR. SMITH: Russell M. Smith, 1600  
16 Reed Road, Pennington, New Jersey.  
17 MR. LAKIND: Mr. Chair, what I would  
18 propose to do is qualify Mr. Smith and ask him to  
19 respond to the questions of the board and move on to  
20 a series of questions I have for him.  
21 Q. Could you tell us where you are  
22 employed, please?  
23 A. I'm currently president of Hopewell  
24 Valley Engineering.  
25 Q. What is the nature of business at

17

1 Hopewell Valley Engineering?  
2 A. We do surveying and civil  
3 engineering.  
4 Q. Do you possess any professional  
5 licenses?  
6 A. I'm a licensed professor engineer and  
7 professional planner in the State of New Jersey.  
8 Q. And could you tell the board what  
9 your educational background is, please?  
10 A. Yes, I have a bachelor of science in  
11 civil engineering from Lafayette College in 1983.  
12 Q. Will you explain to the board what  
13 civil engineering entails?  
14 A. Yes, I've been employed in the field  
15 of civil engineering. We've done land development  
16 work throughout the State of New Jersey, and I've  
17 been doing that since my graduation in 1983.  
18 Q. In connection with the services you  
19 perform at Hopewell Valley Engineering, is the bulk  
20 of that land development work?  
21 A. That's correct.  
22 Q. Could you tell us what you mean by  
23 land development work?  
24 A. Yes, we prepare site plans and  
25 subdivisions for land parcels to develop land

18

1 parcels, and we also do the surveying work  
2 associated with those land parcels.  
3 Q. Have you had occasion to prepare site  
4 plans, subdivisions and other land use applications  
5 in Hunterdon County?  
6 A. Yes, I have.  
7 Q. Have you had occasion to testify  
8 before land use boards, be they board of adjustments  
9 or planning boards in Hunterdon County?  
10 A. Over the last 30 years I've testified  
11 in Mercer, Hunterdon, Burlington, Monmouth, Ocean  
12 and Middlesex Counties and several -- over several  
13 hundred times.  
14 Q. That was my next question. In each  
15 of these several hundred times, were you accepted as  
16 an expert in civil engineering and land use matters?  
17 A. Yes, I was.  
18 MR. LAKIND: Mr. Chairman?  
19 MR. FULPER: We'll accept him as a  
20 professional.  
21 MR. SMITH: Thank you.  
22 MR. FULPER: For the record, also so  
23 the public can hear, just speak, make sure you speak  
24 loud enough for the record and for the public to  
25 hear.

19

1 MR. LAKIND: I will.  
2 Q. Mr. Smith, a question was raised  
3 about the necessity for the stream encroachment  
4 permit and the structures impacted by that permit by  
5 the need for that permit. Would you respond to that  
6 question before I move on?  
7 A. Yes, the Vernors came before the  
8 board to get approval for structures they had  
9 reconstructed after Tropical Storm Irene struck the  
10 property and washed out several of those structures.  
11 They reconstructed those buildings and structures  
12 after the storm without permits. They came to the  
13 town once they realized that they should have  
14 obtained permits prior to building those structures  
15 and obtained a variance for rebuilding the  
16 structures within the stream corridor that now  
17 existed next to Alexauken Creek, so that's what the  
18 variance was for.  
19 We are currently processing it with  
20 DEP. No violation has been issued. We are working  
21 with them to resolve and obtain an after-the-fact  
22 permit for the reconstruction of those buildings and  
23 structures after the storm.  
24 Q. What is the nature of the permit that  
25 you would be requesting from DEP?

20

1 A. It's called a flood hazard individual  
2 permit. It will verify that the bridge, the pool  
3 house and the work along the banks is permitted  
4 under the DEP rules, and we are preparing plans and  
5 specifications to show that.  
6 MR. FULPER: Okay. Do you anticipate  
7 any problems moving forward with DEP? Has there  
8 been questions brought up?  
9 MR. SMITH: The biggest problem we  
10 had, we had a major rule change by DEP in the summer  
11 of this year. What that did is since the process  
12 was underway and not completed, the DEP has required  
13 us to re-file all our paperwork to comply with the  
14 current regulations. It was a pretty significant  
15 flood hazard regulation change, and we are in the  
16 process of doing that currently.  
17 MR. PALILONIS: For the record, who  
18 is your client on that application?  
19 MR. SMITH: James Vernor.  
20 MR. FISHER: If the permit is denied,  
21 does the bridge stand?  
22 MR. SMITH: If the permit is denied,  
23 the improvements that were made would be illegal and  
24 would have to be removed. Even though they existed  
25 prior to the storm, they would still have to be

21

1 removed.  
2 MR. FISHER: Is there any other  
3 access to the other sides of the creek other than  
4 the one bridge?  
5 MR. SMITH: There's actually two  
6 bridges, two pedestrian bridges. One of the bridges  
7 survived the storm and was not reconstructed. The  
8 covered bridge was replaced after the storm, because  
9 it was destroyed.  
10 MR. FISHER: Thank you.  
11 Q. Mr. Smith, at my request did you  
12 undertake an examination of the project that's before  
13 the board?  
14 A. Yes, I did.  
15 Q. Can you explain to the board in  
16 general terms what you did, please?  
17 A. Certainly. I'd like to work with and  
18 present two exhibits tonight. The first one I'd  
19 like to mark B-4 I believe is where we are.  
20 (Exhibit B-4, Site plan, is received  
21 and marked for identification.)  
22 MR. LAKIND: We've marked an Exhibit  
23 B-4 --  
24 Q. Before you describe it essentially  
25 that in detail, can you tell the board what the

22

1 exhibit is that you've marked as B-4?  
2 A. Yes. It's entitled Assembly Areas,  
3 Brookmill Farm, 5/28, Lot 11.  
4 Q. Who prepared that exhibit?  
5 A. It's prepared by Hopewell Valley  
6 Engineering, dated 11/28/16. This plan is based on  
7 a boundary and topographic survey prepared by my  
8 firm in conjunction with the flood hazard area  
9 permit that we are applying for. It shows two areas  
10 that are colored. One area is brown and one area is  
11 green. These areas are the areas used in  
12 conjunction with the weddings, the assembly areas,  
13 as we have it entitled.  
14 The brown areas are actual permanent  
15 structures that exist on the property that are used  
16 in the wedding process. We have a guest house. We  
17 have a main --  
18 Q. Just so the record is clear as to  
19 where the guest house is, explain to the board that  
20 each is labeled, so the record is clear.  
21 A. Yes, each of the structures has a  
22 label, which I'll describe, and the first structure  
23 is the guest house. Second structure is the main  
24 house. Third structure is the foot bridge. That's  
25 the covered foot bridge that I was describing

23

1 previously. That provides access to the other side  
2 of the stream. There's a what we've entitled stone  
3 house. This is a really a storage area where the  
4 area -- with a sitting area on the upper floor  
5 that's used by the wedding guests and the wedding  
6 party. There's the pool area which is used by the  
7 wedding party. There's a second pedestrian foot  
8 bridge, which I described before, that did survive  
9 Tropical Storm Irene, and then the tennis court  
10 area, which is now used as a dining terrace in  
11 conjunction with the reception for the weddings, and  
12 finally, a gazebo, which is used in taking  
13 photographs.  
14 Finally, the area in green are areas  
15 that are used by people who attend the meetings.  
16 There's even wedding ceremonies conducted on the  
17 property adjacent to the pond, which is along the  
18 Alexauken Creek. So these green areas are also used  
19 in conjunction with the wedding assembly operations.  
20 Q. Can you just show the board what the  
21 access is to this property, because that was  
22 mentioned in one of the engineer's --  
23 A. Yes, access is from Mill Road and  
24 this is the driveway that leads in from the top of  
25 the drawing down to the west and provides vehicular

24

1 access to the property.  
2 Q. Did you undertake to calculate the  
3 land area of the property?  
4 A. Yes. The land area is 13.8 acres in  
5 total. That includes the entire property. And  
6 we've also looked at the buildable portions of the  
7 site, and I've prepared a drawing that was submitted  
8 as part of the application. I have it with me  
9 tonight and it's mounted. I can mark it if you'd  
10 like or I could just discuss it, because it is part  
11 of the application package.  
12 Q. I'd like to mount it and mark it,  
13 please.  
14 MR. FULPER: Just for the record then  
15 in that first map there, the green, the brown areas  
16 are used and they are structures. The green areas  
17 are used and not structures, they are open areas?  
18 MR. SMITH: That's correct. These  
19 are open areas adjacent to the stream. These areas  
20 are used by the wedding party during the ceremony  
21 and during the reception.  
22 MR. FULPER: The green areas tend to  
23 be landscaped areas and lawn areas?  
24 MR. SMITH: That's correct.  
25 MR. FULPER: Thank you.

25

1 A. I'll mark this Exhibit B-5. This is  
2 a plan entitled Building, Buildable Area Plan of  
3 Brookmill Farm, tax lot 28, block 11. It's dated  
4 9/26/16.  
5 (Exhibit B-5, Buildable area plan, is  
6 received and marked for identification.)  
7 Q. Who prepared that plan, Mr. Smith?  
8 A. It's prepared by Hopewell Valley  
9 Engineering and signed by myself.  
10 Q. What was the purpose of that plan?  
11 A. This plan identifies buildable areas  
12 on the property in conformance with the township's  
13 definition of critical area. Critical area are  
14 areas that are wetlands and buffers, open waters,  
15 DEP flood hazard areas and slopes 25 percent or  
16 greater. So critical areas are not considered part  
17 of a buildable area, so what we did is we  
18 highlighted only areas that did not include one of  
19 those categories or one of those areas. So that's  
20 highlighted in gray on this plan, and we found three  
21 separate areas that met the definition of buildable,  
22 in other words, not critical.  
23 Area No. 1, which is in the area of  
24 the housing and the driveway, is 1.5 acres. Area  
25 No. 2 is up near Mill Road, it's 0.4 acres. And

26

1 area No. 3 on the opposite side of Alexauken Creek  
2 from the homes is 3.7. So we have a total on the  
3 property of 5.6 acres that would be considered  
4 buildable under the definition.  
5 Q. Now, can you point out to the board  
6 where the bridges are on the property and how they  
7 relate to the buildable areas?  
8 A. Yes. One of the things that we have  
9 with this site is we have a stream that bisects the  
10 site. That is not -- that is an environmentally  
11 critical area in your definition in your ordinance,  
12 so it separates the buildable areas on the property,  
13 but we do have a connection and we have lawfully  
14 existing structures within those environmentally  
15 critical areas. So we have a bridge here which is  
16 the covered bridge. We have a bridge here, which is  
17 the pedestrian bridge. Both of those bridges  
18 connect these two buildable areas on the property,  
19 and they both cross Alexauken Creek.  
20 Alexauken Creek, let me briefly talk  
21 about that. That creek flows in this direction to  
22 the bottom of the page.  
23 Q. That's to the west, Mr. Smith?  
24 A. That's to the west -- I'm sorry, to  
25 the east. You're correct, and it's dammed up

27

1 slightly at this area right in front of the home,  
2 the main home on the property. So it creates a pond  
3 or an impoundment. That's the way it's been for as  
4 long as I can find records, so this actually creates  
5 a pond, so this is a desirable area to be in. And  
6 that's why it's being used. It was used primarily  
7 before by the homeowner and now during the weddings.  
8 Q. What's the total acreage of the  
9 connected portions of the property that are  
10 buildable?  
11 A. All three buildable areas total 5.6  
12 acres.  
13 Q. At my request, did you undertake to  
14 determine what structures failed to meet the 75-foot  
15 setback conditions?  
16 A. Yes. I'm going to go back to Exhibit  
17 B-4. I've added the 75-foot setback onto this  
18 drawing, which is this line. What that shows is you  
19 can see that the gazebo does not meet the 75-foot  
20 setback. The pool, a portion of that setback arcs  
21 right through the pool deck, so that the pool does  
22 not meet that requirement. And the other structure  
23 that does not meet that requirement is a barn, which  
24 is currently used for chickens and goats. That barn  
25 is within the 75-foot setback. That's not used, of

28

1 course, with the weddings.  
2 Q. Now, if the gazebo and pool deck were  
3 removed, would the only structure within the 75 feet  
4 be the barn?  
5 A. That's correct.  
6 MR. FISHER: Is the tennis court  
7 within the 75-foot setback?  
8 MR. SMITH: It is not. Tennis court  
9 is right here. And then the 75-foot setback line  
10 comes through like this, so it's in between.  
11 MR. FISHER: Isn't it right up  
12 against the creek?  
13 MR. SMITH: It's right near the  
14 stream.  
15 MR. FISHER: If it were to be  
16 constructed now, wouldn't it have to be 75 feet from  
17 the stream?  
18 MR. SMITH: Yes. That's one of the  
19 structures that was granted a variance as part of  
20 the application. It was constructed prior to the  
21 ordinance requirement of 75 feet, so it's a lawfully  
22 existing structure.  
23 MR. FISHER: But it is within 75 feet  
24 of the stream?  
25 MR. SMITH: Of the stream but the

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1 requirement is 75 feet of the property line, not the  
2 stream, for the conditional use.  
3 MR. FISHER: 75 feet of the property  
4 line?  
5 MR. SMITH: So that's what this line  
6 is. This is 75 feet from all the property lines.  
7 MR. FULPER: That's the requirement  
8 by the zone.  
9 Q. If -- maybe what I should do is  
10 rather than summarize the conditions, I should just  
11 read them. That way there will be less confusion,  
12 no confusion. Section 109-104 places of assembly  
13 are conditional use I think it means uses in a zone  
14 specified and shall adhere to the following: A, the  
15 minimum lot size shall be five acres, at least four  
16 of which shall be buildable. The minimum lot size  
17 here exceeds five acres?  
18 A. That is correct.  
19 Q. More than four are buildable; is that  
20 correct?  
21 A. That is correct.  
22 Q. The principal or accessory structures  
23 should be located no less than 75 feet from any  
24 front, side or rear property line or within the  
25 building setbacks for the zoning district, whichever



1 is greater. There are several structures that do  
 2 not meet that requirement; is that correct?  
 3 A. That is correct.  
 4 Q. They were the gazebo, the pool deck  
 5 and the barn?  
 6 A. The barn, correct.  
 7 Q. Finally -- oh, minimum lot coverage  
 8 shall be 35 percent. Did you undertake to calculate  
 9 the lot coverage of this property?  
 10 A. Yes, it was approximately 6 percent  
 11 coverage.  
 12 Q. Just to elaborate on a question that  
 13 was asked by one of the board members, with regard  
 14 to the tennis courts, if as a condition of approval  
 15 we were required to erect a building, a four-wall  
 16 building around the tennis court, what would be the  
 17 approval process at the Department of Environmental  
 18 Protection level? I know we need a site plan, but  
 19 at the Department of Environmental Protection level?  
 20 A. I actually know the new rules pretty  
 21 well now after having read them with our other  
 22 application. I can explain them. The tennis court  
 23 has two corners that are within the New Jersey flood  
 24 hazard designed flood, because those two corners are  
 25 within the New Jersey design flood, any structure

1 that's built there would require a DEP permit. It  
 2 would have to be properly flood approved, and that  
 3 would be reviewed on an individual permit  
 4 application.  
 5 MR. FULPER: Just a little bit  
 6 louder.  
 7 A. The NJDEP flood hazard area  
 8 individual permit application would address the  
 9 flood proving required for any structure that was  
 10 put there.  
 11 Q. Earlier, and I should have elaborated  
 12 on this, you used the word wetland and wetland  
 13 buffer. Could you explain to the board that that is  
 14 different than a 75-foot setback?  
 15 A. Sure. Wetlands are associated with  
 16 the wet soils along the stream, and adjacent to  
 17 those, some areas have buffers or transition areas  
 18 which is what they are sometimes called. That's  
 19 different than the 75-foot setback from the property  
 20 line. Those buffers are only adjacent to certain  
 21 types of wetlands.  
 22 MR. LAKIND: Unless Mr. Smith has  
 23 anything further to add, that's all the questions I  
 24 have of this witness.  
 25 MR. SMITH: I'd be glad to answer any

1 questions the board has.  
 2 MR. FULPER: Let's start with the  
 3 professionals.  
 4 MR. DECKER: Just a couple questions.  
 5 With regards to the wetland transition area, the  
 6 plan notes that you are assuming a 50-foot  
 7 transition area. There are sections along the  
 8 wetland line that do not show 50 feet. Could you  
 9 explain why?  
 10 MR. SMITH: You mean right along the  
 11 creek? Yes. The areas along the creek have been  
 12 identified as open waters by the wetlands  
 13 consultant. I'm not the wetlands consultant, but  
 14 the wetlands consultant has identified them as open  
 15 waters, and therefore, they are not required to have  
 16 a transition area. So that's what I've been told,  
 17 so we've identified the buildable area based on  
 18 those classifications made by our wetlands  
 19 consultant.  
 20 MR. DECKER: Are you in the process  
 21 of obtaining an LOI, letter of interpretation?  
 22 MR. SMITH: We are going to submit to  
 23 the DEP. To this point the DEP has not required an  
 24 LOI to be issued for this property. They will  
 25 review it as part of the flood hazard area

1 individual permit application, but they have not  
 2 required an official LOI to be issued as long as we  
 3 submit the documents that our wetlands consultant  
 4 prepares as part of the documentation.  
 5 MR. DECKER: As far as footprint of  
 6 the surface?  
 7 MR. SMITH: That's correct.  
 8 MR. DECKER: The DEP would be looking  
 9 at those areas that you are seeking the permit for.  
 10 MR. SMITH: I didn't --  
 11 MR. DECKER: The pool house and the  
 12 bridge.  
 13 MR. SMITH: Yes, this is an  
 14 after-the-fact permit. We are not proposing any new  
 15 construction as part of our application.  
 16 MR. DECKER: As part of that process,  
 17 the DEP would not be confirming the state open water  
 18 necessarily in those areas where you do not have the  
 19 50-foot transition area?  
 20 MR. SMITH: I think it would come up,  
 21 because we have this bridge which crosses. We have  
 22 the pool pump house which is adjacent, so I think  
 23 they are going to look closely at those  
 24 determinations made by our wetlands consultant.  
 25 MR. DECKER: I also notice that there

1 may be some steep slopes that you missed to the  
2 southeast of the tennis court?

3 MR. SMITH: Okay, yeah, we followed  
4 the rule which says you are supposed to look at  
5 every ten-foot increment, but we could have missed  
6 one.

7 MR. DECKER: And the other thing is  
8 this is a category one stream, correct?

9 MR. SMITH: That is correct.

10 MR. DECKER: What other buffers are  
11 required by the state in width?

12 MR. SMITH: Well, they have a  
13 riparian zone requirement. That riparian zone is  
14 300 feet.

15 MR. DECKER: Would that pretty much  
16 encompass the entire property?

17 MR. SMITH: Yes, it does.

18 MR. DECKER: Would it also have a  
19 special water resource protection area, a SRPA?

20 MR. SMITH: Yes.

21 MR. KYLE: I guess we should talk  
22 about this area, this issue of buildable area and  
23 contiguous versus noncontiguous. I know that you  
24 guys are taking a very literal reading of these  
25 conditional use requirements, because the word

1 four contiguous acres, you can't get to the 3.7.

2 You wouldn't be able to put a parking lot in any of  
3 the locations at this site. so I know you guys  
4 differ on, you know, and that's going to happen. I  
5 think Tom and I have kind of talked this over and  
6 think that while this conditional use standard  
7 doesn't say buildable area consistent with the exact  
8 definition that we have in the ordinance, I think  
9 it's intended to mean, you know, when you look at  
10 the word buildable, it's meaning contiguous acreage.

11 MR. FITTING: Is there a structure on  
12 that 3.7?

13 MR. KYLE: The tennis court is  
14 situated partially within, so as Russ just said,  
15 there's two corners of the tennis court that  
16 actually stick into the flood hazard area, but the  
17 tennis court itself is actually in the contiguous  
18 area.

19 MR. LAKIND: If --

20 MR. FISHER: Have we determined that  
21 the tennis court's a structure?

22 MR. KYLE: I think technically --

23 MR. FISHER: I thought we were  
24 arguing about that in September.

25 MR. FITTING: That's one of the

1 buildable appears in those conditional use  
2 standards, but the definition that's contained in  
3 the ordinance is buildable area.

4 So you know, Tom and I have kind of  
5 talked about this issue, and looking at the  
6 definitions, I don't see any other way that it's not  
7 intended to mean that those 4 acres are supposed to  
8 be contiguous, based on our buildable area  
9 definition. So I think I have a little bit of an  
10 issue with this exhibit in that it, I don't think  
11 you have four contiguous buildable acres. You have  
12 3.7. Is that what that one is there, Russ?

13 MR. SMITH: Yes, 3.7.

14 MR. KYLE: I mean, I know that the  
15 applicant has a different opinion. I think it's  
16 something for the board to consider, and I think in  
17 this case, it's somewhat of an issue.

18 You know, we've talked about this  
19 parking availability. As of right now, we don't  
20 know anything about any other alternative parking  
21 arrangement. I think what we do know, you probably  
22 could never construct a parking area anywhere on  
23 this site.

24 MR. LAKIND: That's correct.

25 MR. KYLE: Even if you had more than

1 things, we had to give a variance for that, but we  
2 gave a variance for a tennis court, not for the  
3 structure that's there now, so I would assume that  
4 we would have to also give a variance for that  
5 structure as well.

6 MR. KYLE: I think the issue with the  
7 structures that we granted variances for, if it was  
8 a preexisting, nonconforming structure, that's one  
9 thing. When that structure was destroyed by a rain,  
10 you know, there's somewhat -- I don't know what the  
11 exact language is in the ordinance. Some ordinances  
12 say if it's more than 50 percent destroyed and not  
13 conforming, you can't rebuild it. The variances  
14 that we granted for those structures were specific.

15 MR. FITTING: I just mean the tennis  
16 court though.

17 MR. KYLE: I'm having trouble  
18 hearing.

19 MR. FITTING: Just the tennis court.

20 MR. KYLE: That was an existing  
21 structure, so we didn't have to grant relief related  
22 to that.

23 MR. FITTING: I thought we did.

24 MR. DECKER: No. That wasn't part of  
25 the variance application.

1 MR. FULPER: I didn't think it was  
2 either. I thought it was just the bridge, the deck  
3 on the house --

4 MR. DECKER: And the pool house.

5 MR. KYLE: It preexisted the stream  
6 corridor ordinance that West Amwell Township  
7 adopted.

8 MR. FITTING: Now a structure being  
9 on there is something new that's within the --

10 MR. DECKER: If you look at the  
11 definition of a structure, it excludes unroofed  
12 patios at ground, ground-level parking lots or  
13 driveways, so it doesn't specifically say tennis  
14 court, but a tennis court would be in that grade  
15 certainly.

16 MR. LAKIND: We will have testimony  
17 on that issue.

18 MR. FITTING: Now it's a structure.

19 MR. LAKIND: Can I respond? I don't  
20 know if this is the appropriate time to get to the  
21 buildable area distinction.

22 MR. FULPER: What's that  
23 specifically, yourself or with your professional?

24 MR. LAKIND: I think it's to some  
25 extent a legal issue, the conditional use uses the

1 MR. KYLE: That's what kind of drags  
2 that word contiguous in. Contiguous comes from the  
3 buildable area, which is a defined term in the  
4 ordinance, and who knows. Maybe it was an oversight  
5 by the person that, you know, drafted the  
6 conditional use standards that they left the word  
7 "area" out. I mean, but we won't ever know that.

8 But, you know, Mr. Lakind's point is  
9 taken and understood, and I understand that, you  
10 know, they are supposed to be precise. That's why  
11 we define all those terms. But we don't define just  
12 the word buildable, and here we are talking about an  
13 exhibit that shows land area. I understand the  
14 distinction, and the point's well taken, but that's  
15 really for the board to decide, you know, whether it  
16 was intended to mean contiguous or, you know, just  
17 be buildable.

18 MR. FULPER: Does the board  
19 understand that discussion?

20 MR. FITTING: It has to be buildable  
21 something, so buildable.

22 MR. FULPER: The key I think here is  
23 depending on which term they use, one would assume  
24 that what it meant was it had to be contiguous, a  
25 contiguous four-acre buildable area, whereas you can

1 word buildable. If that's construed to say we need  
2 4 acres to be contiguous, then we don't satisfy the  
3 condition. If it's construed the way we think it's  
4 construed, then we do satisfy. That's the genesis  
5 of the dispute.

6 As a matter of law, and I could brief  
7 this if it's helpful, zoning ordinances are required  
8 to be precise, because they impact land, which is,  
9 you know, a valued commodity under juris prudence.

10 Here they use the word buildable, but  
11 in other provisions of your ordinance, they do use  
12 buildable area. If you look at your cluster zone in  
13 other provisions, they actually use buildable area,  
14 so that led us to conclude that buildable and  
15 buildable area are two different phrases, because if  
16 they meant buildable area, it would have said that  
17 here.

18 Now, if the board ultimately  
19 disagrees, then we will ask for a variance from that  
20 condition. If the board agrees, then we don't need  
21 that variance. That's the genesis of that dispute.  
22 I think that's a fair --

23 MR. FULPER: I thought the genesis  
24 was more focused on whether it was contiguous  
25 building area. Is this what you are trying to --

1 use the term --

2 MR. FITTING: Buildable area, that  
3 definition does say contiguous, but what the thing  
4 is that it just said buildable, not area added to  
5 it, but something has to be buildable, so the word  
6 buildable doesn't have, like you said, a definition  
7 unto itself.

8 MR. FULPER: That's the question the  
9 board has to struggle with.

10 MR. CRONCE: Should we handle that  
11 now since we are in a stall and get it over with so  
12 we can proceed on, or are we going to lump this all  
13 into one thing?

14 MR. FULPER: Stu, what do you think?

15 MR. PALILONIS: I think it would be  
16 helpful to resolve it at this point.

17 MR. DECKER: I have a question. If  
18 we were to assume that buildable area is not what  
19 was intended and we just look at buildable, and you  
20 were to apply the 300-foot riparian buffer and the,  
21 300-foot SRPA buffer, how much buildable area would  
22 you have based on that?

23 MR. SMITH: You wouldn't have any.

24 MR. FULPER: Why isn't that being  
25 applied right now?

1 MR. DECKER: Because those criteria  
2 are not specifically addressed in our critical  
3 areas, but my point is is that if we are going to  
4 just work off of buildable, not buildable area, then  
5 the buildable portion of this property, based on the  
6 state regulations, is far less than 4 acres.

7 MR. FISHER: Because of the 75.

8 MR. DECKER: No. This is a category  
9 one stream, so DEP has a riparian buffer of 300 feet  
10 on both sides of the bank, which basically  
11 encompasses the entire lot, I think, except for a  
12 small triangular portion in the eastern corner. So  
13 my point is is that if we are going to use the term  
14 buildable and not buildable area, then that may  
15 bring in DEP buffers in establishing what that  
16 buildable portion of the property is.

17 MR. KYLE: At that point if we are  
18 not talking about a term that's defined in the  
19 ordinance, we have to figure out what buildable is.

20 MR. FITTING: Buildable portion,  
21 buildable land, buildable area.

22 MR. DECKER: There are certain things  
23 you can do within riparian buffers that are  
24 permitted. However, the entire area, except for a  
25 small triangular portion, would fall within the DEP.

1 in the -- not that this is a cluster zone, so when  
2 they wanted to talk about buildable area, the  
3 township committee knew how to do that, so 4 acres  
4 of buildable. is more buildable than 2.5 acres of  
5 buildable.

6 MR. PALILONIS: What does that add?  
7 I mean, that's a distinction, but what does that add  
8 to the concept of having an assembly use.

9 MR. LAKIND: Because we would need  
10 2.5 acres of buildable area contiguous area and the  
11 other condition we'd have to meet is 4 acres of  
12 buildable, so there's two conditions.

13 MR. PALILONIS: I don't know the  
14 answer, but I would argue that, you know, what's  
15 another 1.5 acres add, you know, from a planning  
16 perspective that 2.5 acres doesn't give you for any  
17 particular assembly use, which could be, you know,  
18 very small to extremely large.

19 MR. LAKIND: It's really -- it's an  
20 ambiguity in the ordinance. None of us are sure how  
21 to construe it. I'm advocating our construction,  
22 but we will have a witness about this.

23 MR. DECKER: Just one other question  
24 for Mr. Smith, and this regards parking, and I know  
25 this would be reviewed at the time of site plan, but

1 MR. CRONCE: Would be governed by  
2 that?

3 MR. DECKER: Yes.

4 MR. CRONCE: Which is a lot stricter?

5 MR. DECKER: Yes.

6 MR. CRONCE: So with that in mind --

7 MR. PALILONIS: Let me add something  
8 here that may help. There's three things I'm  
9 looking at, the definition of buildable area, which,  
10 as everybody agrees, requires that it be contiguous.  
11 And then the condition which talks about buildable,  
12 and then the Schedule 1 residential zones talks  
13 about minimum buildable area, which says in the RR-5  
14 zone shall be 2.5 acres. I would submit that --  
15 well, arguably when the term is used in the  
16 conditional use provision, it's making the point  
17 that you need more, whatever zone it's in, or you  
18 need at least four whatever zone it's in, so I would  
19 say it means -- you could argue it means buildable  
20 area.

21 MR. LAKIND: Could I just -- I know  
22 it's a legal issue. I don't mean to interrupt.  
23 Another interpretation is that you need 4 acres of  
24 buildable, which is more than 2.5 acres of buildable  
25 area, so they use buildable area in the schedule and

1 you testified earlier that we would not be able to  
2 fit a parking lot on the site at all?

3 MR. SMITH: That's correct.

4 MR. DECKER: In the off street  
5 parking ordinance, 109-164, there's a requirement.  
6 and this is in Section D, that off street parking  
7 areas shall be oriented to and within reasonable  
8 walking distance of the buildings they are designed  
9 to serve, and that goes into maximum distances,  
10 which includes a maximum distance of 300 feet for  
11 guests.

12 So if you were to proceed knowing  
13 that you can't get parking on-site, you would be  
14 needing a design waiver for that at the time of site  
15 plan.

16 MR. LAKIND: We recognize that, yeah.

17 MR. PALILONIS: By the way, we should  
18 have brought this up initially. You are effectively  
19 bifurcating this application?

20 MR. LAKIND: That's correct.

21 MR. PALILONIS: I didn't know whether  
22 that was in the record or not.

23 MR. LAKIND: Yeah, I neglected to  
24 mention that.

25 MR. FULPER: I asked him if he was

1 strictly going for a use tonight.

2 MR. PALILONIS: That doesn't mean he  
3 didn't recognize that he needs site plan if he gets  
4 approval.

5 MR. FULPER: Does the board have any  
6 more discussion in reference to this buildable  
7 versus building area that's before us right now?

8 MR. ROMANO: With the intent to  
9 decide it now or do we want to hear their expert?

10 MR. FULPER: Excuse me?

11 MR. ROMANO: Do they have a witness  
12 regarding this?

13 MR. LAKIND: We have a witness that  
14 will talk about, assuming it's contiguous buildable  
15 area.

16 MR. FITTING: Not specifically on the  
17 definition.

18 MR. ROMANO: Okay. Then we can  
19 decide that now.

20 MR. FULPER: You have no more  
21 testimony in reference to the buildable versus  
22 buildable area question?

23 MR. LAKIND: That's correct. We have  
24 no more testimony addressed to the definition.

25 MR. FULPER: And does the board have

1 interpretation is to be contiguous, so...

2 MR. FULPER: So do we have a motion  
3 to that extent at this point or are we ready to put  
4 a motion out?

5 MR. FITTING: So I guess I don't know  
6 what the motion is. I mean, I believe the intent is  
7 buildable area, so are we saying there's a mistake  
8 in the language somewhere else that's saying  
9 buildable and that's not what we want to use?

10 MR. FULPER: Well, this board  
11 interprets the ordinance with all the facts the best  
12 we can. Whatever your interpretation is with the  
13 facts you heard.

14 MR. FITTING: I believe the term  
15 "buildable area" should be applied here in this  
16 instance.

17 MR. FULPER: Okay.

18 MR. FITTING: I guess that's --

19 MR. CRONCE: Do we need a motion?  
20 Can't we just say we agree with the ordinance?

21 MR. PALILONIS: You have to indicate  
22 a consensus of the board on that issue by making a  
23 motion.

24 MR. CRONCE: Seems like we are  
25 supposed to live by the book.

1 any more questions of their professionals or  
2 paraprofessionals as far as deciding what direction  
3 you want to go?

4 MR. LAKIND: I would be happy to  
5 brief the issue. if that that would be helpful.

6 MR. FISHER: If they would want to  
7 construct anything on the property because of this  
8 riparian buffer, you are saying that there's almost  
9 no place to build anything; is that correct?

10 MR. DECKER: Pretty much.

11 MR. KYLE: Yeah, more or less. They  
12 would have to get permits from the DEP, which I  
13 guess Mr. Smith has conceded they would probably not  
14 be successful.

15 MR. FULPER: Tom or Jim, any other  
16 input on this question of buildable versus buildable  
17 contiguous and not contiguous?

18 MR. KYLE: No, I don't think so.

19 MR. FULPER: Does the board want to  
20 make a decision on this now? We can make a motion,  
21 looking for a motion to decide whether or not to  
22 accept the areas being either contiguous or not  
23 contiguous. In the event that it's not contiguous,  
24 then they don't meet the ordinance?

25 MR. FITTING: I believe the

1 MR. PALILONIS: That's not the issue.

2 MR. KYLE: The issue, just so we  
3 understand, the conditional use standard just uses  
4 the term "buildable," doesn't say "buildable area."  
5 There's a definition in the ordinance for buildable  
6 area. Mr. Lakind is saying there was a distinction  
7 that it's intentional that it just says buildable,  
8 and it wasn't meant to be contiguous acres.

9 You are deciding you think Mr. Lakind  
10 or you are deciding the 4 acres need to be  
11 contiguous. It means they need another form of  
12 relief for not having four contiguous acres.

13 MR. FISHER: The wording of the  
14 motion is the stumbling block.

15 MR. PALILONIS: It's just simply that  
16 the buildable acreage has to be contiguous or not.  
17 Those are your choices.

18 MS. HALL: I'll make the motion that  
19 the buildable acres has to be contiguous.

20 MR. PALILONIS: Referenced in the  
21 conditional use ordinance of 109-104.

22 MS. HALL: Thank you. Yes.

23 MR. FISHER: Second.

24 MR. FULPER: Motion of a second. Any  
25 discussion on the motion? Joe.

50

1 MR. ROMANO: Just to support that,  
 2 you know, subsection (a) it says, "Minimum lot size  
 3 shall be 5 acres," which is area obviously, "at  
 4 least four of which shall be buildable," and it's a  
 5 buildable area in my estimation, so it supports the  
 6 notion that this should be contiguous. It defaults  
 7 in my estimation to the buildable area, which is  
 8 contiguous.  
 9 MR. PALILONIS: You are saying that  
 10 the buildable clearly refers back to area.  
 11 MR. ROMANO: The definition, the  
 12 minimum lot size shall be 5 acres. It's an area of  
 13 which four shall be buildable, an area. They are  
 14 talking about a buildable area. It's the way I see  
 15 it. I could be --  
 16 MR. FULPER: It's all to  
 17 interpretation. Any other discussion on the motion?  
 18 Roll call on the motion.  
 19 MS. HALL: Cronicc?  
 20 MR. CRONCE: Aye.  
 21 MS. HALL: Fitting?  
 22 MR. FITTING: Aye.  
 23 MS. HALL: Mr. Romano?  
 24 MR. ROMANO: Aye.  
 25 MS. HALL: Hall? Aye.

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1 Sabatino?  
 2 MR. SABATINO: Aye.  
 3 MS. HALL: Fisher?  
 4 MR. FISHER: Aye.  
 5 MS. HALL: Fulper?  
 6 MR. FULPER: Aye. Based on the facts  
 7 and the testimony tonight, I vote in favor.  
 8 MS. HALL: Thank you.  
 9 MR. FULPER: Okay.  
 10 MR. LAKIND: I think the board was  
 11 questioning Mr. Smith when we broke to evaluate that  
 12 issue.  
 13 MR. FULPER: Are you done with his  
 14 testimony?  
 15 MR. LAKIND: I am, yes, I am.  
 16 MR. FULPER: We can open it up for  
 17 discussion.  
 18 MR. PALILONIS: He will -- I have a  
 19 question. This property is in the RR-5 district,  
 20 correct?  
 21 MR. SMITH: Yes.  
 22 MR. PALILONIS: The minimum yard  
 23 area, it says area, and then parenthesis feet, which  
 24 I assume is the setback requirement, this is  
 25 Schedule 1, 109 attachment one, is 100 feet front

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1 yard, 50 feet side yard, 100 feet rear yard, which  
 2 in some cases is greater than the, you know,  
 3 pursuant to the condition, it's greater than the  
 4 75 foot. Are all those setbacks met?  
 5 MR. SMITH: We have not analyzed that  
 6 as part of our exhibit.  
 7 MR. FULPER: Any of the professionals  
 8 or board have any questions of the expert?  
 9 I'll go to the public, anybody in the  
 10 public, any of the professionals?  
 11 MR. FISHER: Would that statement  
 12 that Mr. Palilonis just made, would that restrict  
 13 the 4 acres? How many acres do you have there?  
 14 Four point what you are saying?  
 15 MR. FULPER: You mean buildable?  
 16 MR. PALILONIS: Good follow-up.  
 17 MR. SMITH: The setbacks would not  
 18 affect the buildable acreage. That's based on  
 19 environmental critical areas.  
 20 MR. FISHER: Doesn't actually have to  
 21 be buildable, since it can't be put in a setback, it  
 22 can't be built in a setback.  
 23 MR. FITTING: You can have buildable  
 24 acres in a setback.  
 25 MR. SMITH: That's correct. You can

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1 have buildable acres within the setback.  
 2 MR. FISHER: Even though they can't  
 3 be buildable?  
 4 MR. DECKER: The differences between  
 5 buildable area and building envelope.  
 6 MR. FULPER: Anything else, George?  
 7 MR. FISHER: No.  
 8 MR. FULPER: Anybody from the public?  
 9 Professionals first.  
 10 MR. TROFIMOV: Christopher Trofimov,  
 11 Lanza & Lanza -- good evening again. Christopher  
 12 Trofimov, Lanza & Lanza, counsel for the township.  
 13 EXAMINATION BY MR. TROFIMOV:  
 14 Q. Mr. Smith, I have some questions on  
 15 B-4.  
 16 A. Yes.  
 17 Q. The map with the brown and the green?  
 18 A. Yes.  
 19 Q. Just to clarify, again, the brown are  
 20 permanent structures used as part of the wedding  
 21 events and the green area represents other area used  
 22 on the property during the wedding event; is that  
 23 correct?  
 24 A. That is correct.  
 25 Q. Now, can you tell me which one of the

1 brown areas is used for the, for what parts of the  
 2 wedding events, for instance, the reception? Can  
 3 you tell me which structure is utilized for that?  
 4 A. You should probably ask  
 5 Mr. Lubchansky, but the reception, I believe, takes  
 6 place on the dining terrace, which is where the  
 7 tennis court is.  
 8 Q. Where the tennis court is, okay.  
 9 It's open air, are you familiar or do you know that?  
 10 A. Yes. I do. It's open air.  
 11 MR. FITTING: Open air or open sides?  
 12 MR. TROFIMOV: It's hard to see.  
 13 I'll look at it real quick.  
 14 Q. Mr. Smith, do you know if a tent is  
 15 utilized as part of the wedding events?  
 16 A. I believe that it is, yes.  
 17 Q. Do you know where that tent is  
 18 located?  
 19 A. I believe the tent is on the tennis  
 20 court area, but the exact location should be  
 21 confirmed with the operator.  
 22 Q. I will do that then. Just to  
 23 clarify, there are no additional structures proposed  
 24 as part of this application; is that correct?  
 25 A. That is correct.

1 MR. TROFIMOV: That's all I would  
 2 have.  
 3 Mr. Morgan, do you have any  
 4 questions?  
 5 MR. FULPER: Thank you.  
 6 MR. SMITH: I've actually obtained a  
 7 copy in my file of the variance and plot plan which  
 8 addressed the setbacks of the RR-5 zone, so I can  
 9 confirm that information for the board, since it was  
 10 asked.  
 11 MR. FULPER: The 100-foot setback  
 12 line?  
 13 MR. SMITH: Yes. There's two  
 14 100-foot setbacks. That's a 100-foot front setback  
 15 and a 100-foot rear setback. I'm going to mark this  
 16 as an exhibit.  
 17 (Exhibit B-6, Variance and plot plan,  
 18 is received and marked for identification.)  
 19 MR. SMITH: So this is B-6. This is  
 20 a plan entitled variance and plot plan for Brookmill  
 21 Farm, Lot 28, Block 11 prepared by Hopewell Valley  
 22 Engineering. It's dated February 10, 2014. This  
 23 drawing shows the property, Mill Road is at the top,  
 24 and Mill Road is our frontage, so that's where we  
 25 have a 100-foot setback. And then we have side

1 setback on the south, side setback, 50-foot side  
 2 setback on the south, 100-foot front setback on the  
 3 west. 50-foot side setbacks along the north, and a  
 4 100-foot rear setback along the east. So the  
 5 structures that we have identified on the previous  
 6 drawing at 75 feet also comply with the requirements  
 7 for the zone, the RR-5 zone, so the barn violates  
 8 the 50-foot side setback and it also violated of  
 9 course the 75-foot setback. The gazebo violates the  
 10 50-foot side setback as it did before.  
 11 MR. FULPER: The front and rear  
 12 100-foot setbacks doesn't encompass any of your  
 13 buildings?  
 14 MR. SMITH: That's correct. We  
 15 confirmed that based on the variance of the plot  
 16 plan.  
 17 MR. FULPER: Next. Person wants to  
 18 come up and ask questions of the expert.  
 19  
 20 MR. MORGAN: I'm Charles Morgan. I'm  
 21 an attorney. I'm representing several of the  
 22 residents in the area. The Brezinas, the  
 23 Chaussepiels, the Morgans that live in my house at  
 24 Steeple View and there's a few others. I don't  
 25 think there are others. Just have a few questions.

1 MR. LAKIND: Could I ask that all the  
 2 clients be identified so we don't have repetitive  
 3 questions?  
 4 MR. PALILONIS: I've requested the  
 5 submission of a list.  
 6 MR. MORGAN: The Whipples. I  
 7 mentioned the Brezinas, Leslies and the  
 8 Chaussepiels.  
 9 MR. FULPER: You need to identify for  
 10 the record.  
 11 MR. MORGAN: And your name?  
 12 A VOICE: (Inaudible).  
 13 MR. MORGAN: Did you get that?  
 14 MR. FULPER: Do you have a list?  
 15 MR. MORGAN: I can give you one  
 16 before the evening's out.  
 17 MR. FULPER: Then your clients know  
 18 that you speak on their behalf.  
 19 MR. MORGAN: They understand that.  
 20 CONTINUED EXAMINATION BY MR. MORGAN:  
 21 Q. You are not expressing any opinions  
 22 as to the particular use of the facilities that will  
 23 be made?  
 24 A. That's correct.  
 25 Q. So you are not expressing opinions

1 about whether or not the structure will be like a  
 2 church or a amphitheater, something like that. Your  
 3 opinions relate solely to setbacks and the  
 4 compliance of the zoning rules as they pertain to  
 5 that kind of thing?  
 6 A. And the property itself, yes.  
 7 MR. MORGAN: Thank you.  
 8 MR. LAKIND: If I could just clarify  
 9 one thing? I had said in response to the engineer's  
 10 question that we might need a design waiver. That's  
 11 going to be a function of whether we billed  
 12 anything, I believe.  
 13 MR. DECKER: Understood. I just  
 14 wanted to make sure.  
 15 MR. FULPER: Any other body in the  
 16 general -- any professionals that want to question  
 17 the applicant's engineer? Do any of the residents  
 18 that aren't represented by an attorney want to come  
 19 up and question this -- the applicant's engineer at  
 20 this point, his testimony?  
 21 No one from the audience? Okay.  
 22 MR. CRONCE: Could I ask him a  
 23 question?  
 24 MR. FULPER: Sure.  
 25 MR. CRONCE: While we are on boundary

1 lines and everything, I'm looking at the driveway  
 2 part of this property. You don't own the entrance  
 3 part of this property where the driveway -- your  
 4 property -- you don't own that?  
 5 MR. SMITH: I'm not sure I understand  
 6 your question.  
 7 MR. CRONCE: At the end of the  
 8 driveway there, it looks like the property line cuts  
 9 across and that's somebody else's property where the  
 10 sign and entrance to the property.  
 11 A. I believe that's a Mill Road  
 12 right-of-way. It's a little unusual right on that  
 13 corner. See, if you look above, you see Mill Road  
 14 variable width, and the property line's the heavy  
 15 line.  
 16 MR. FULPER: John, did he answer your  
 17 question?  
 18 MR. CRONCE: You are saying that that  
 19 driveway is part of Mill Road or our township  
 20 easement?  
 21 MR. SMITH: I believe that's what the  
 22 survey showed, yes.  
 23 MR. CRONCE: Okay.  
 24 MR. FISHER: Shouldn't we get a  
 25 definitive answer there? Is that yes or no or

1 maybe?  
 2 MR. SMITH: The survey does not show  
 3 the driveway on any other property. It shows it  
 4 within the right-of-way. I'm interpreting the  
 5 drawing.  
 6 MR. CRONCE: Can I talk to Phil? I  
 7 guess I can't, can I?  
 8 MR. FULPER: Do you have anything  
 9 else?  
 10 MR. CRONCE: I don't know whether  
 11 this is an important --  
 12 MR. DECKER: Just one quick question,  
 13 Russ. How wide is the existing driveway accessing  
 14 the property?  
 15 MR. SMITH: Right near where it  
 16 connects to the road?  
 17 MR. DECKER: Along its length.  
 18 MR. SMITH: It's variable, Tom. It's  
 19 around 12 feet near the road. It's closer to ten on  
 20 the property itself. Then it widens out in front of  
 21 the house.  
 22 MR. FULPER: Do you have a question  
 23 --  
 24 MR. BRADY: I have a question of the  
 25 engineer, yes.

1 MR. FULPER: Come up and identify  
 2 yourself for the record.  
 3 MR. BRADY: My name is Michael Brady.  
 4 I live at 20 Steeple View in the neighborhood. You  
 5 made reference to a blockage that has created the  
 6 pond on the property?  
 7 MR. SMITH: The pond is created by a  
 8 small embankment across the stream. It's existed  
 9 for a very long time.  
 10 MR. BRADY: Is that a permanent  
 11 structure?  
 12 MR. SMITH: It's a permanent  
 13 structure. It was actually in the stream when  
 14 Tropical Storm Irene hit. It was not washed out by  
 15 the tropical storm and was not rebuilt by  
 16 Mr. Vernor.  
 17 MR. BRADY: Do we know who built that  
 18 and is that safe? We live downstream from that. Is  
 19 that something that DEP should be aware of and  
 20 looked into as to what kind of a structure that is,  
 21 how well that operates and make sure that we don't  
 22 have a problem with that water coming back into the  
 23 neighborhood?  
 24 MR. SMITH: I can say to you that the  
 25 DEP is aware of it. They are currently reviewing it



1 as part of the application for the Vernors, so will  
2 be resolved and approved by the DEP.

3 MR. BRADY: Thank you.

4 MR. FULPER: Thank you. Anybody  
5 else? Otherwise, this professional's going to step  
6 off the stand. Thank you.

7 Let's take a short break, five  
8 minutes.

9 (A brief recess is taken.)

10 MR. FULPER: I'm going to call the  
11 meeting back to order, and we are ready to have your  
12 next expert.

13 MR. LAKIND: Thank you. I'd like to  
14 call Mr. Jim Miller, please.

15 ----

16 JAMES A. MILLER, having been first duly sworn,  
17 testified as follows:

18 ----

19 EXAMINATION BY MR. LAKIND:

20 MR. PALILONIS: State your name and  
21 address for the record, please.

22 MR. MILLER: James Miller, 222  
23 Nicholson Drive. Moorestown, New Jersey, J.A. Miller  
24 Planning Consultants.

25 Q. Mr. Miller, would you tell the board

1 Q. Let me turn to the site location and  
2 description of the site. Would you please go  
3 through that for the board?

4 A. Sure. As part of our submission to  
5 the board, there was a letter that I prepared. I  
6 think it's dated November 17th, and it was submitted  
7 to the board under a cover letter from Jonas Singer,  
8 who's one of the attorneys representing the  
9 applicant.

10 MR. FULPER: The 16th.

11 A. In any event, what that letter does  
12 is it responds to some questions that were raised by  
13 the board at the September 27th meeting about the  
14 physical facilities present on the site and also as  
15 to the -- whether the site met the definition of an  
16 assembly use. And what I'd like to begin with is to  
17 read that definition once more into the record, even  
18 though by this point the board's heard it a number  
19 of times. Assembly is defined as a use which is a  
20 permanent facility, building, structure or  
21 installation which is provided for civic,  
22 educational, political, religious or social  
23 assemblage purposes. This term shall include  
24 non-profit. for profit facilities and shall include  
25 but not be limited to houses of worship, banquet

1 what your qualifications are, please?

2 A. Yes. I'm a licensed professional  
3 planner in the State of New Jersey. I am certified  
4 by the American Institute of Certified Planners as a  
5 certified planner. I've been practicing  
6 professional planning since the 1970s. I've got  
7 over 40 years of experience in the field. I've been  
8 qualified as an expert witness in both state and  
9 federal courts and in over 230 communities in New  
10 Jersey and Pennsylvania. And I'll stop there unless  
11 you want me to --

12 MR. FULPER: No, we'll accept you as  
13 an expert.

14 MR. MILLER: Thank you.

15 Q. Mr. Miller, were you retained to  
16 provide expert testimony in connection with the  
17 application before the board?

18 A. Yes, I was.

19 Q. Will you be providing the board with  
20 certain opinions this evening?

21 A. Yes, I will.

22 Q. Are those opinions which you hold to  
23 a reasonable degree of certainty, is that concept as  
24 used in the planning field?

25 A. Yes, they will.

1 facility, lodges, fraternal organizations and  
2 funeral homes.

3 Our position has been that we are a  
4 banquet facility, and, as such, we fit into the  
5 definition, and what the board members were  
6 questioning at the September 27th meeting was were  
7 there permanent facilities present on the site. And  
8 the advantage we have with this application is that  
9 the application proposes the use facilities that  
10 have been on the site for an extended period of  
11 time. They are all established, and as a  
12 consequence, it's not only possible to show them on  
13 the plans, but also to go out into the field and  
14 take photos and document through photos exactly  
15 what's present on the site.

16 So what I did is I combined some  
17 photos I took when I first visited the site in June  
18 and supplemented it with some additional photos I  
19 took in October and made those photos part of this  
20 November 16th letter, and basically I think the  
21 board members all received this in the packet, but  
22 just to go quickly through the photographs, there's  
23 a photo, to begin with, the bridal suite exterior.

24 MR. LAKIND: Could I stop you for a  
25 minute? I think we should mark this as an exhibit.

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1 Can I mark it B-7 the October 16, 2016 letter from  
2 Mr. Miller to the zoning board.  
3 MR. MILLER: It's November.  
4 MR. LAKIND: November, I'm sorry.  
5 (Exhibit B-7, Letter dated 10/16/16,  
6 is received and marked for identification.)  
7 A. I wasn't certain it would have to be  
8 marked since it was part of the packet. Again, the  
9 first structure I depict is what I call the bridal  
10 suite, and I show both an interior and a exterior  
11 photograph, and I think that that structure, which  
12 was formerly a dwelling, clearly meets the  
13 definition of a permanent structure. It's a  
14 two-story frame residential structure, which is  
15 currently used as a bridal suite as part of the  
16 wedding banquet operation. And then that included  
17 the interior shots that you can see some of the  
18 interior furnishings in the back that the building  
19 is obviously occupied in good repair and utilized on  
20 an ongoing basis.  
21 The second sheet of photos depicts  
22 the covered bridge which was discussed earlier in  
23 the hearing. Again, it's a permanent structure.  
24 It's got a roof. It's got sides. It's got a deck  
25 affixed to it and the stone structure which is also

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1 sometimes referred to as the pool house, contains  
2 both the storage area and then a second floor which  
3 is used as sort of an outdoor sitting area, and  
4 there's also a roof portion which is also used as a  
5 sitting area and basically again is one of the  
6 facilities that's used as part of the wedding venue  
7 and the banquet facility, and again, it's a building  
8 and I don't think there's any doubt that it's a  
9 structure as defined by the ordinance. The third  
10 set of photographs depict structures and  
11 installations associated with the pool deck and the  
12 pool, and you can see there's a two-story pool house  
13 which again is a permanent building, and then  
14 there's a series of installations which include  
15 number of elements, landscape elements, a swimming  
16 pool, pool deck, an area where there's significant  
17 amount of masonry installations, again all which of  
18 permanent and all of which are part of the facility  
19 that are associated with the banquet facility.  
20 I would also note that the, if you  
21 look at the photograph, there's a series of deck  
22 chairs and that area is the deck that violates the  
23 75-foot setback standard, and we'll come back to  
24 that of course when we talk about the conditional  
25 use standards.

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1 The last -- the next series of  
2 pictures are those that depict what was once the  
3 tennis court and now is utilized as a tent where  
4 some of the banquet facilities occur. And you could  
5 see that there's a hard surface floor within it and  
6 also a platform, which I believe is probably used  
7 for dancing. But it just gives you another  
8 perspective as to the facilities that are present  
9 on -- at this location.  
10 And then the final set of photos, I  
11 included these to answer some of the questions  
12 regarding the character of the bathroom facilities.  
13 And, again, this is an exterior and interior.  
14 There's both a men's and women's bathroom, but these  
15 represent, I believe, the women's bathroom and  
16 basically the men's bathroom is comparable. And I  
17 don't know, that whole area is germane to the  
18 variance, but I know the board had some questions as  
19 to what those facilities entailed. To sum up,  
20 there's very substantial structures and facilities  
21 and improvements and installations all of which meet  
22 I believe the standard for the assembly definition  
23 and moreover, they are not proposed, they are  
24 existing, and I don't think there's any question in  
25 my mind that this facility meets the assembly

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1 definition and that the proper way to proceed with  
2 any relief that this application might require would  
3 be D-3 conditional use variance procedure.  
4 Q. We'll come back to D-3 elements.  
5 Would you first run through for the board and tell  
6 the board what the location of the property is and  
7 how the property is zoned and the implications for  
8 your opinion?  
9 A. Yes. First of all, this again is at  
10 16 Mill Road. The site is zoned RR-5 which is the  
11 rural residential district. And the purpose of this  
12 district is to provide a traditional zone between  
13 the Sourlands regional planning district and the  
14 highway commercial district, which basically follows  
15 Route 179.  
16 Q. Before you move on from there, can  
17 you tell the board the source of your information  
18 for the purpose of that district?  
19 A. Well, that comes right out of the  
20 ordinance. And these control up -- are the result  
21 of ordinance update that occurred during the course  
22 of 2015. They were adapted by unanimous vote of the  
23 township committee in November of 2015, but there  
24 was extensive discussions of the ordinances all  
25 throughout 2015.

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1 I've reviewed the minutes, and there  
2 was a lot of deliberations, a lot of consideration,  
3 a lot of work went into the preparation of this  
4 ordinance and the uses which are now permitted in  
5 the RR-5 zone, what the ordinance basically did,  
6 what the revision to the ordinance basically did was  
7 refine the schedule of permitted and conditional  
8 uses. But the main ordinance basically clarified  
9 but didn't significantly change the character of the  
10 district. It did delete some of the uses which were  
11 formerly permitted like the golf courses and some of  
12 the recreational uses, but it retained the  
13 residential uses, the farming uses and some of the  
14 other uses which were previously permitted in the  
15 RR-5 district. It retained the 5 acre minimum lot  
16 size, and as permitted uses, it calls out single  
17 family detached dwellings, farms, parks and  
18 municipal uses. Those are the as of right permitted  
19 uses, and in addition to that there are  
20 conditionally permitted uses which include assembly  
21 uses, bed and breakfast, riding academies, schools,  
22 some renewable energy uses and also wireless  
23 facilities, basically telecommunications.  
24 Q. Mr. Miller, let me stop you there.  
25 Can you explain to the board how a conditional use

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1 is different than a permitted use?  
2 A. Permitted use is a right.  
3 Conditional use is a permitted use but it's only  
4 permitted if you satisfy the conditions which are  
5 enumerated in the ordinance, and they usually have  
6 to do with characteristic of the use. Maybe there's  
7 a need for a deeper setback or some other  
8 modification to the use which becomes an affected  
9 condition that needs to be met before the use would  
10 be an as of right use. Or in the alternative, you  
11 need to seek relief for, as a D-3 variance.  
12 Q. Now, is this zone exclusively  
13 residential?  
14 A. No, it is not, and that's one of the  
15 reasons I wanted to get into some of the other uses  
16 which were permitted in the zone. In addition to  
17 the residential uses, there's some institutional and  
18 business uses. Those include funeral homes,  
19 schools, farms, civic organizations, bed and  
20 breakfasts, banquet facilities and wireless sites.  
21 And this is not an unusual way to structure a zoning  
22 ordinance. Typically residential districts do  
23 provide for certain nonresidential uses, and this  
24 district is no exception, and they tend to be more  
25 liberal in rural areas, because you have larger lot

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1 sizes and the residential uses have a greater  
2 ability to coexist with some of the nonresidential  
3 uses by virtue of the larger lot sizes.  
4 The surrounding zoning is and uses  
5 are basically single family, RR-5 consistent with  
6 the zoning ordinance. There is a farm not too far  
7 distant from the property that I'm not sure the  
8 direction right now. I guess it would be towards  
9 the west, northwest, and the existing use on this  
10 property is basically it's what was originally  
11 developed as a residential estate. It was for many  
12 years used for vacation rentals and to some extent  
13 as a banquet facility by the prior owner, and  
14 basically the improvements date from those prior  
15 uses.  
16 The proposed use is the banquet  
17 facility which has been described earlier in the  
18 hearing. I was going to read the definition again,  
19 but I don't think I need to at this point. I think  
20 everyone is familiar with the definition. It's  
21 basically a banquet venue primarily for weddings.  
22 Q. Now, with regard to the conditions,  
23 the board inquired earlier of what the conditions  
24 are that govern this assembly use, and can you tell  
25 the board what those conditions are and whether you

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1 evaluated this project to see if you met them?  
2 A. Yes. I'm going to go basically  
3 through the conditions, even though again the board  
4 has heard some of this earlier. The first condition  
5 is that the coverage standard is, you can't exceed  
6 35 percent coverage, and here, as our engineer has  
7 testified, we have 6 percent, which is significantly  
8 less than what's required, and we meet that  
9 condition of the ordinance.  
10 The second condition was the  
11 condition that there be a minimum of 4 acres that  
12 were buildable, and here the board has ruled that  
13 those 4 acres have to be contiguous, and later on as  
14 I testify, I will provide my analysis of that and  
15 why I believe that relief from that standard would  
16 be justified under the standards for D-3 variance.  
17 Q. Before we move on to that, we do not  
18 have essentially four contiguous acres, that is  
19 correct?  
20 A. Correct.  
21 Q. But we do have 4 acres of connected  
22 property for the bridges; is that correct?  
23 A. Yes, we do.  
24 Q. I'm sorry, go on, if you would, to  
25 the next condition.

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1 A. The third condition is that the  
2 structures be granted the 75 feet from any property  
3 line, and as was noted earlier, there's several  
4 structures that don't meet that standard. The first  
5 is a barn which has no connection with the use which  
6 is being sought this evening. Again, it's a  
7 preexisting structure that dates back to when this  
8 was primarily a residential complex, and I  
9 understand also there was some hobby farming going  
10 on at one time, and the barn dates back to that use,  
11 and it is not used in any way in conjunction with  
12 the banquet facility.

13 The second structure is the pool, and  
14 the violation there is basically the pool deck.  
15 It's my understanding that if the board didn't see  
16 fit to grant that relief, the applicant would agree  
17 to remove the pool deck, but -- and I'll again  
18 address this as I discuss the variance criteria, but  
19 it's a very minor encroachment given the character  
20 of the structure that we are discussing. And then  
21 the third item is the gazebo and that is primarily a  
22 deck traffic element which is used occasionally as a  
23 backdrop for photographs. Again that is a structure  
24 which really doesn't have a significant -- doesn't  
25 make a significant contribution to the facility, and

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1 if the board didn't see fit to grant relief there, I  
2 think the applicant would also agree to remove that  
3 structure.

4 Q. If the gazebo and the pool deck were  
5 removed, then with regard to the 75-foot condition,  
6 all of the assembly uses would satisfy that  
7 condition, correct?

8 A. That is correct. All the structures  
9 and installations associated with that use would be  
10 conforming. With that standard.

11 Q. Now, how do professionals such as  
12 yourself go about analyzing whether a variance is  
13 warranted from a deviation from a condition in a  
14 conditional use?

15 A. Basically the variance, you look at  
16 the variance in the context of the statute and the  
17 case law and the physical characteristic of the site  
18 and the surrounding area, and then based on that  
19 arrive at conclusions relative to whether or not the  
20 relief sought would meet the statutory standards as  
21 they are interpreted through the courts.

22 And with this particular type of  
23 variance, which is a D-3 variance, the standards are  
24 somewhat less stringent than they would be for a D-1  
25 variance.

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1 Q. By D-1, you mean a traditional use  
2 variance?

3 A. Traditional use variance. The use is  
4 not prohibited in the zone. It's conditionally  
5 permitted, so the courts have found that the  
6 standard that's appropriate for that type of  
7 variance would be that the site remain appropriate  
8 under the positive criteria this is that the site  
9 remains appropriate for the use, despite the  
10 deviation from the standard. And this particular  
11 criteria comes from a case called Coventry Square  
12 vs. Westwood, which is the case that governs D-3  
13 variances.

14 I don't necessarily think that the  
15 case requires this, but I like to on the record also  
16 state that I believe that the relief we are seeking  
17 would advance a number of purposes of municipal land  
18 use law, that would include purpose A, to encourage  
19 municipal action as to appropriate development of  
20 all lands in the state in a manner that will promote  
21 the public health, safety, morals and general  
22 welfare. Purpose G, to provide sufficient space and  
23 appropriate locations to provide agricultural,  
24 residential, recreational, commercial and industrial  
25 uses of open space, both public and private.

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1 according to respective environmental that would  
2 meet the needs of all New Jersey citizens, and these  
3 are conditions which are specific to the site and  
4 include the zoning, the size, the character,  
5 improvements which are at the location and then also  
6 seek to provide adequate light, air and open space,  
7 and here your conditional use standards are  
8 primarily really old standards, so I believe that  
9 the relief we are seeking would also advance that  
10 purpose.

11 Q. Let me stop you for a minute. Just  
12 under the zoning ordinance -- excuse me, under the  
13 municipal land use law, there's something called the  
14 positive and negative criteria?

15 A. Yes.

16 Q. Before we move on to a discussion,  
17 and I should have asked you this earlier, can you  
18 explain to the board what the positive criteria are  
19 and somewhat the negative criteria are?

20 A. The positive criteria are the  
21 affirmative reasons why we believe the relief we are  
22 seeking is justified and then that's why you get the  
23 shorthand version of the positive criteria. With a  
24 typical use variance of the special reasons that you  
25 here discussed but, again, with the conditional use

1 variance, it's more that you need to show that the  
2 site can remain appropriate despite the deviation.  
3 And that carries forward to several other categories  
4 of the variances as well, but for this variance  
5 that's the standard.

6 Q. We'll come back to that in a minute.  
7 And the negative criteria is that showing there's no  
8 substantial detriment to the public and no  
9 substantial impairment to the development and master  
10 plan?

11 A. Yes.

12 Q. What is your understanding of how  
13 substantiality is to be evaluated?

14 A. Well, what they mean by substantial  
15 is that there's obviously going to be some impact  
16 whenever there's relief granted from the code, and  
17 that there's an impact normally from any type of  
18 land development. Some of those impacts and some of  
19 them can be potentially detrimental. And what the  
20 statute is basically saying is that there can be  
21 some negative impacts, but as long as they are not  
22 substantial, then they are within the standards of  
23 the statute.

24 Q. Let's return to the positive criteria  
25 which under Coventry Square. You said the site must

1 I should also note that this site is,  
2 and you'll see this in our operations statement that  
3 we submitted earlier when we first submitted the  
4 application, relies on vans for transporting the  
5 guests, and this I think also helps to mitigate some  
6 of the potential impacts of the use, because what  
7 the vans do is they eliminate a significant amount  
8 of the traffic to the site, because instead of  
9 having individual passenger cars, you have a series  
10 of vans, which are able to transport a lot more  
11 people than an individual car does, which reduces  
12 the trips, and also it eliminates the need for any  
13 on-site parking.

14 How this use functions basically is  
15 that the guests are parking somewhere off-site and  
16 then brought to the site in the vans, and the actual  
17 location of the parking can vary somewhat. It was  
18 ordinarily a school site that's a little -- some  
19 distance from the property, and that site had  
20 roughly a hundred parking spaces, more than ample to  
21 accommodate the guests, but the bottom line is, that  
22 we were able to address the parking requirement  
23 through an off-site manner, and I know that will be  
24 governed by the site plan, but it's another aspect  
25 of this site which helps to reduce its impact, and I

1 remain appropriate for the use despite the  
2 deviations, and did you do an assessment as to  
3 whether or not this site remains appropriate for the  
4 use, notwithstanding deviations?

5 A. Yes.

6 Q. Can you tell the board what you  
7 concluded, please?

8 A. There's a variety of reasons I  
9 believe that remains the case. Some of them are  
10 general, and some of them apply specifically to the  
11 standards themselves. But overall, the conditions  
12 specific to this site help to absorb any impact from  
13 the deviations from the standard. And that's  
14 because of a number of factors.

15 First of all, the site is extensive.  
16 It contains 13.7 acres, and that allows for some  
17 very substantial separation from, between the active  
18 portions of the use and the surrounding area. It's  
19 also in a valley along the stream corridor, and I  
20 believe that the train also helps to mitigate some  
21 of the impacts of the proposed use. It's basically  
22 very sheltered and views are screened by the wooded  
23 areas, so there's a lot of characteristics to the  
24 site which help to mitigate any potential impact of  
25 surrounding uses.

1 believe shows that the site is remains appropriate  
2 for the site despite some of the deviations.

3 Q. Let's turn to the specific conditions  
4 we do not satisfy because you've testified we  
5 satisfy the coverage condition, correct?

6 A. Yes.

7 Q. And one of those conditions is that  
8 there has to be 4 acres of contiguous buildable  
9 area, correct?

10 A. Yes.

11 Q. As a result of the board's  
12 determination?

13 A. Yes.

14 Q. And how much is that deviation in  
15 this case?

16 A. That deviation equals 0.3 acres,  
17 which is a relatively small deviation from the  
18 standard. The basically the standard's four and we  
19 have 3.7.

20 Q. Now, do you have an opinion as to  
21 whether this site remains appropriate as that term  
22 is used in Coventry Square, notwithstanding the 0.3  
23 acre deviation?

24 A. Yes, I do. I think there's a series  
25 of reasons that I believe that. First of all, if

1 you add all the buildable area together, we have  
2 well in excess of the standard. We have 5.6  
3 buildable acres, and the areas which are buildable  
4 are basically linked by the portion of the site  
5 which is most heavily developed. It's basically the  
6 built portion of the site, and I think that the  
7 exhibits --

8 Q. Referring to B-4 now?

9 A. Yeah. I'm going to refer to B-4.  
10 What B-4 basically does it shows the active  
11 portions of the banquet facility, and as you could  
12 see, they are all located along the stream corridor  
13 and they form a bridge or a link and then I'll go to  
14 B-6, I don't want to use B-6. I want to use B-3.  
15 As you could see, if you look at B-5 and B-4  
16 simultaneously, you could see that this green area  
17 fits into the area in between the shaded portions,  
18 which indicate where the buildable area is.  
19 So basically the built area, the  
20 active area links the buildable areas and in effect  
21 they are all contiguous. They are all linked by  
22 bridges. They are all linked by facilities. They  
23 are all linked by pedestrian pads, and what you have  
24 is an integrated site, and where all the pieces fit  
25 together. They are all linked. They are all

1 contiguous, and basically because these facilities  
2 were established and constructed prior to the  
3 current environmental regulations, you have this  
4 preexisting condition, which is entitled to continue  
5 because it is preexisting and nonconforming, and you  
6 basically have, again, all the site linked together  
7 by virtue of the improvements within the stream  
8 corridor area.

9 Q. Let me make sure I understand your  
10 testimony there. Essentially the deviation is 0.3  
11 acres; is that correct?

12 A. Yes, it is.

13 Q. And the parts of the land that  
14 fulfill the definition of buildable area are linked  
15 by developed properties?

16 A. By developed properties.

17 Q. And this lot exceeds the required lot  
18 size by two-and-a-half times in this district; is  
19 that correct?

20 A. It does.

21 Q. I'm sorry, and --

22 A. I would add to that that very little  
23 of the buildable area or the gulf area of the site  
24 is actually devoted to the activity. It's  
25 basically, again, if you refer to D-4, the areas

1 that are shaded in either brown or green are the  
2 areas which are basically where most of the activity  
3 of the business occurs, and the primary purpose of  
4 having a minimum buildable area requirement is to  
5 ensure that there's adequate space on the site to  
6 accommodate the activities associated with the  
7 conditional use, and here I think it's obvious that  
8 this particular conditional use can operate very  
9 easily within the parameters of the ordinance, and  
10 that the intensity objectives of that standard are  
11 easily met by this use at the specific location.

12 Q. Another one of the conditions is that  
13 structures must be more than 75 feet from the  
14 property line, correct?

15 A. Yes.

16 Q. And now the applicant is prepared to  
17 remove, and we'll have testimony later about this,  
18 the gazebo and pool deck in order to bring it into  
19 compliance, correct?

20 A. Yes.

21 Q. If the applicant were not to remove  
22 that, do you have an opinion as to whether or not a  
23 variance is warranted for 75-foot requirement?

24 A. Yes, I believe the variance would be  
25 warranted for the pool deck, because it's basically

1 a relatively minor encroachment into the 75-foot  
2 setback. Its impact is mitigated by the physical  
3 features of the site, which include the wooded areas  
4 and the slopes which provide screening and  
5 buffering, and the fact that it's a relatively low  
6 activity area. It's basically a place where people  
7 sit in deck chairs by a pool, and in reality, during  
8 the course of a typical banquet, there's very little  
9 activity that would occur around the pool. It's  
10 more of a decorative element than anything else, and  
11 this small encroachment of the pool deck I don't  
12 think has any kind of a significant impact in terms  
13 of the kinds of impacts that the ordinances is  
14 designed to alleviate.

15 Q. Now the other structure within 75  
16 feet is the gazebo; is that correct?

17 A. Yes.

18 Q. Or the second structure?

19 A. Yes.

20 Q. Did you do an analysis of whether or  
21 not a variance is warranted in connection with the  
22 gazebo if that were not removed?

23 A. Yes. The gazebo, again, is in the  
24 northwest corner of the site, and the gazebo is a  
25 very minor element in the overall banquet facility.

1 It's basically, again, used as a photo backdrop. As  
 2 a consequence, it has very little impact on the  
 3 surrounding community, and I think because of its de  
 4 minimis impact, the relief for the standard for that  
 5 particular structure would be justified, but that  
 6 said, it's not a really critical aspect. If the  
 7 board saw fit to deny that relief, I think that the  
 8 site would still meet the balance of the standards.  
 9 Q. Now the barn. Mr. Lubchansky  
 10 testified the first day of the hearing is not used  
 11 in connection with the banquet facilities. As a  
 12 result, is it fair to say that that has no impact on  
 13 the assessment of whether or not the -- this  
 14 location remains suitable for the conditional use?  
 15 A. Yes, it is.  
 16 Q. Can you explain why that is, please?  
 17 A. Because it really isn't -- doesn't  
 18 contribute to the use in any manner. It's basically  
 19 just a structure that's a carryover from a prior use  
 20 of the site. I think it's basically just used for a  
 21 few chickens at this point, and, again, I don't  
 22 think it's really related to the use that's in  
 23 question this evening.  
 24 Q. Now, earlier you mentioned something  
 25 called a negative criteria. Could you tell the

1 board first what they are and how they are evaluated  
 2 in the context of the conditional use **variance**?  
 3 A. Yes. In terms of the statutes, the  
 4 negative criteria require that the relief can be  
 5 granted without any detriment to the public welfare.  
 6 Q. Without substantial detriment?  
 7 A. Without substantial detriment to the  
 8 public welfare, and the proposed use will not impair  
 9 the intent or plan or zone ordinance, and for  
 10 conditional use variances this standard is also been  
 11 relaxed and for conditional use variance we need to  
 12 show that the deviation can be reconciled with the  
 13 township's determination that the condition should  
 14 be imposed on the use where it is otherwise  
 15 permitted. And this, again, primarily applies to  
 16 the conditional use standards that we deviate from  
 17 in terms of the lot standard or the building  
 18 coverage standard.  
 19 I think that deviation can be  
 20 reconciled with the township's determination by a  
 21 number of factors. They are basically very similar  
 22 to the ones that I had discussed when I talked about  
 23 the positive criteria, and they all relate to the  
 24 fact that the improvements are already existing and  
 25 the buildable areas are all linked by areas which

1 are already occupied by installation structures and  
 2 buildings. They are already actively used, and I  
 3 think that the site is consistent with the intent  
 4 and purpose of this standard, if not the letter of  
 5 the standard, and for those reasons, I don't believe  
 6 there's any -- I think it meets the intent and  
 7 justification is justified.  
 8 Q. Let me break that up a little bit.  
 9 With regard to the four contiguous buildable acres,  
 10 we deviate by 0.3 acres, correct?  
 11 A. Yes.  
 12 Q. It's your opinion that 0.3 deviation  
 13 does not have a substantial impact on the public?  
 14 A. That's correct. It's not a  
 15 substantial deviation. There's not a real  
 16 significant difference between 4 acres and 3.7  
 17 acres, especially in the use which doesn't even  
 18 approach occupying the entire 3.7 acres.  
 19 Q. With regard to the 4 acre contiguous  
 20 building requirement, do you have an opinion as to  
 21 whether or not the 0.3 acre deviation has a  
 22 substantial impact on the public good?  
 23 A. It does not.  
 24 Q. Why is that?  
 25 A. Again, because --

1 MR. LAKIND: I'm sorry --  
 2 A. First of all, it's not so much that  
 3 it has --  
 4 MR. FULPER: Hold on a minute. When  
 5 there's testimony taking place, you can't interrupt.  
 6 We are on the record. It's a hearing, and you'll  
 7 have your opportunity. You cannot talk about  
 8 interrupt the record. Thank you.  
 9 A. Here we have to show that we can  
 10 reconcile the deviation with the township's intent,  
 11 and the intent, again, was to make sure that there  
 12 was sufficient space for the use. And here I think  
 13 that when you look at the scale and scope of this  
 14 use, it easily fits within the 3.7 acres, and  
 15 there's no overloading of the site by virtue of that  
 16 deviation from the standard, and again it's an  
 17 intensity standard, and this use is well under the  
 18 intensity that's contemplated by that standard.  
 19 Q. Now with regard to the gazebo which  
 20 is one of the encroaching buildings, structures, do  
 21 you have an opinion as to whether or not the 75-foot  
 22 deviation for the gazebo has a substantial impact on  
 23 the public good?  
 24 A. Well there the standard, the setbacks  
 25 are ordinarily imposed to prevent friction between

1 an activity on one lot with the use of an adjoining  
2 lot, and this gazebo is -- has very low activity  
3 level. It's a structure which could have been  
4 located on a residential property adjoining this  
5 property as a decorative element in someone's  
6 backyard and have a comparable impact. It's, again,  
7 it's basically decorative and, as a consequence,  
8 doesn't have much of an impact on anything, and it's  
9 not the kind of structure that they are really  
10 targeting when they impose the 75-foot setback, and  
11 I say that because I think the setback is really  
12 geared towards the primary facilities of the banquet  
13 facilities as opposed to ancillary facilities such  
14 as this.

15 Q. Now if the gazebo were to remain and  
16 not be removed, would its existence have a  
17 substantial impact on the zone plan?

18 A. It would not.

19 Q. With regard to finally the pool deck,  
20 did you do an assessment as to whether or not, if  
21 that pool deck were to remain, it would have a  
22 substantial impact on the public good?

23 A. Again, I do not believe it would.  
24 It's another example of a relatively low impact  
25 item. A pool deck could very easily be associated

1 with a residential dwelling in the zone. It's not  
2 something that attracts a lot of the more intensive  
3 activity of use which the setback is designed to  
4 regulate, and moreover, the deviation isn't all that  
5 extensive. It only is a matter of maybe five or six  
6 feet, so for all those reasons I don't believe it --  
7 I think it can be reconciled with the potential --

8 Q. Negative criteria.

9 A. And the negative criteria.

10 MR. LAKIND: Could I just have one  
11 moment just to check my outline, please?

12 Q. And finally, you have an opinion as  
13 to whether or not conditional use approval would be  
14 warranted by this application?

15 A. Well, I, just to sum up, I believe  
16 that the application meets the stanchion of both the  
17 positive and negative criteria and would merit the  
18 board's approval. I don't think it represents a  
19 significant deviation from the standards which apply  
20 to the use, and given the scale and the intensity of  
21 this use, I believe it's consistent with the overall  
22 intent of the ordinance.

23 MR. LAKIND: That's all the questions  
24 I have of this witness, Mr. Chairman.

25 MR. FULPER: Okay. Tom or Jim?

1 MR. KYLE: Mr. Miller, you mentioned  
2 parking. How do you feel this use, and the first  
3 thing that we started out this hearing was the  
4 applicant telling us he lost his lease for off-site  
5 parking. How do you think that impacts the  
6 continued suitable -- I know it's not one of the  
7 standards, but I think it's something that's kind of  
8 hard to ignore and kind of a second part of that  
9 question is, let's say that because I think what  
10 you've asked is that we condition the approval on  
11 the applicant obtaining off-site parking. Let's say  
12 that parking happens to be in a zone in the township  
13 where parking is not permitted as an accessory use?  
14 Like, say, it's in a -- on the farm next door in a  
15 residential zone. Do you think that would implicate  
16 off-site properties potentially in use issues as  
17 well.

18 MR. MILLER: Yes, it would.

19 MR. KYLE: How do you feel this site  
20 functions if, you know, in the absence of any  
21 evidence that we have, you know, a parking  
22 arrangement that we can rely on.

23 MR. MILLER: I don't think this site  
24 can function without arrangements being made for  
25 accommodating the off-site parking. I think there's

1 a lot of avenues that or a lot of options and a lot  
2 of ways that that could be accomplished. I don't  
3 think it necessarily has to be uniform for every  
4 event, because the events vary in size and where the  
5 guests originate.

6 For example, sometimes for a wedding  
7 you might make an arrangement with a hotel or motel  
8 and accommodate all your guests in one location and  
9 then it's very easy to just use vans to transport  
10 them from that location to the banquet facility.  
11 But in cases where there needs to be some sort of a  
12 satellite parking facility, that parking facility  
13 would have to be compliant with the appropriate  
14 zoning regulations and in some cases might need  
15 additional relief from the board. And I think that  
16 you'd have to condition the ongoing operation of  
17 this facility with the understanding or requirement  
18 or condition, however you want to phrase it, that  
19 the guests be transported via the vans.

20 MR. LAKIND: Could I just elaborate  
21 on one thing? When we filed this application, we  
22 had parking and we would have included that as part  
23 of the application. We are compelled to bifurcate  
24 it because for reasons I don't want to discuss,  
25 there was some intervention that caused us to lose



1 the parking, completely unrelated to Mr. Lubchansky,  
2 so as a result, we have to bifurcate the application  
3 and ask that it be conditioned on that, because  
4 until we know what the parking arrangements are, I  
5 can't make an application for that.

6 Had the existing parking arrangement  
7 continued and had there not been some intervention,  
8 then we would be here prosecuting that application.

9 MR. KYLE: Do you feel that for most  
10 assembly use, do you think that the off-site parking  
11 arrangement is something that's typical.

12 MR. MILLER: Do I think this is a  
13 typical off-site parking arrangement?

14 MR. KYLE: In other words, for the  
15 majority of, say, banquet or assembly type uses, is  
16 the parking generally on-site or off-site.

17 MR. MILLER: It's generally on-site,  
18 and I think this is a unique facility.

19 MR. KYLE: Mr. Chairman, I don't have  
20 any specific comments on the actual testimony. I  
21 just had those couple of questions about the  
22 parking.

23 MR. FULPER: I think the board is  
24 still struggling with, you know, whether it's an  
25 assembly use or not assembly use.

1 that use of the vans will limit the trips to the  
2 site and reduce impacts. What we don't know is  
3 because we don't know where parking is, we don't  
4 know if those positive, that positive criteria is  
5 negated by creating other traffic or other impacts  
6 off-site, because we don't know where that parking  
7 area is.

8 MR. FULPER: Yeah, the negative  
9 impacts off-site, which can't be addressed until  
10 they are identified.

11 MR. DECKER: That was my only  
12 question.

13 MR. MILLER: My response to that  
14 would be that the parking would have to occur at a  
15 place where it was authorized by the zoning,  
16 wherever that place might be, and as a consequence,  
17 it would be in an appropriate location. I don't  
18 think -- so I believe that the extent that that is a  
19 factor in the negative criteria, I think we satisfy  
20 it by virtue of the fact that we recognize that we  
21 need to put the parking on a legally existing,  
22 appropriate location.

23 MR. LAKIND: I also think that when I  
24 sum up, I intend to cite cases for this. The zoning  
25 analysis of the positive and negative criteria

1 MR. KYLE: I think Mr. Lakind has  
2 basically conceded that if you feel it's not an  
3 assembly use, he doesn't feel he has a case, so...

4 MR. LAKIND: That's correct.

5 MR. KYLE: I think part of the  
6 testimony that they are planning to put on is trying  
7 to convince you that this is an assembly use, so I  
8 think you had to hear that testimony I think before,  
9 and I think there's another planner here that's  
10 representing the township that also submitted a  
11 report that probably has an opinion as well, so I  
12 don't know that. I think we kind of had the  
13 intention of maybe disposing with that issue, but I  
14 think you probably need to hear the testimony of all  
15 the sides, and it's probably something that we'll,  
16 you know, unfortunately have to go through a lot of  
17 testimony to come to an arrangement on.

18 MR. FULPER: Okay. Are you done with  
19 your questioning?

20 MR. KYLE: Yes. I don't have  
21 anything else.

22 MR. FULPER: Tom?

23 MR. DECKER: Basically mine was in  
24 the same vein with what Jim had discussed and that  
25 was that we heard testimony about positive criteria

1 pertain only to the deviations, not to the use,  
2 because the use is a permitted use. The deviations  
3 are essentially contiguous area and some are  
4 setbacks. So yes, we have to get parking at some  
5 point, but it's not really part of the conditional  
6 use analysis, because, the parking is not triggered  
7 by those deviations.

8 MR. KYLE: But I think if you had --  
9 it's interesting, because the whole area, the whole  
10 issue of buildable area and contiguous or not  
11 contiguous, I think here there's no way that you  
12 could construct parking on this site, and I think  
13 the distinction between buildable area and  
14 contiguous buildable area and the whole discussion  
15 we had about the, you know, the DEP stream corridor  
16 and the 300-foot buffer, I think it does have some  
17 bearing on, you know, the positive in this case.

18 You know, the continued suitability,  
19 while it's not a direct standard, once you start to  
20 extrapolate all these issues and look at it, and the  
21 site is unique. You have this stream that bisects  
22 the property and makes a lot of it unusable, you  
23 know, even though it's technically there are only  
24 three tenths short on the buildable area, I don't  
25 know that you could, you know, that's where you have

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1 to kind of start to weigh, okay, I don't disagree  
2 with what Mr. Lakind is saying. You are looking at  
3 specific legal standards for the grant of variances  
4 here. If it's D-3 versus D-1, you know, kind of a  
5 significant issue in my mind as to the relief and  
6 the standard that you are judging the variance by.  
7 I think if you look overall at the intent of the  
8 contiguous area, they are thinking oh, okay, you  
9 have contiguous area that you can build a parking  
10 lot on. You know what I mean? I don't think it's a  
11 dead issue on the continued suitability if, you know  
12 what I mean?

13 MR. FITTING: They use the built area  
14 as the link between the buildable areas to sort of  
15 say that now that's, that should all be considered  
16 buildable area, but the built area, you can correct  
17 me if I am wrong, how much of that built area is  
18 buildable area?

19 MR. MILLER: The answer is that a  
20 good bit of it isn't buildable, but it's already  
21 existing. If you look in New York City, you could  
22 never build on significant portions of the battery  
23 because it's all landfill. You know, what happens  
24 is you have a lot of established --

25 MR. FITTING: The built area that is

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1 technically unbuildable area is linking to buildable  
2 areas that aren't buildable.

3 MR. MILLER: They are buildable  
4 within the definition of buildable.

5 MR. FITTING: Within the definition.  
6 but not to make the site whole.

7 MR. MILLER: Actually, I wanted to  
8 address Jim's point about the fact that you can't  
9 use it for parking. In many ways, it's an asset to  
10 this facility, because what it does is it creates  
11 the ambiance which makes this a unique facility.  
12 You know, this isn't your typical banquet facility  
13 along the highway where you've got a nondescript  
14 building and a big parking field and everything  
15 happens inside. What makes this such a wonderful  
16 facility is that you can't do all these things, you  
17 can't put a parking lot there, and you have the  
18 advantages of access to the stream corridor, the  
19 pond, all these elements that are preexisting and  
20 probably not replicable under the current  
21 regulations, but they are there and they make a very  
22 unique and very appropriate setting for the type of  
23 use we are proposing.

24 MR. FULPER: Some of the biggest  
25 discussion that seems to be had between some of the

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1 professionals and the board and assembly use is this  
2 technical word permanent structure, and, you know,  
3 one argument we are hearing is that, you know, the  
4 tent is not a permanent structure, and that, in  
5 essence, is a problem. And then I hear, you know,  
6 some of your argument talking about the facilities  
7 and while you are here on the stand talking, do you  
8 want to elaborate anymore on how you come to the  
9 conclusion that this use falls within our  
10 definition?

11 MR. MILLER: Well, the definition  
12 requires the sum structures to be permanent, and you  
13 have --

14 MR. ROMANO: Where does it say that?  
15 I'm sorry.

16 MR. MILLER: A use which is a  
17 permanent facility, and I think we are going to  
18 argue, first of all, it's a permanent facility, you  
19 know. It's there for extended time, building, and I  
20 think that there's several examples of buildings,  
21 the bridal suite, the pool house and the storage  
22 structure with the. I don't know what you would call  
23 it exactly, but a cocktail area, if you will, on the  
24 second floor. Those are permanent buildings.  
25 So they meet -- that was one of the

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1 board's concerns is the tent wasn't a building.  
2 Well, the tent might not be a building, but the pool  
3 house, the bridal suite and the storage building are  
4 all buildings. They have four sides. They have  
5 roofs, there's no way --

6 MR. ROMANO: I have an issue with how  
7 you are characterizing that, because I'm just -- I'm  
8 anal. I'm looking at the definition, and it says  
9 use which is, so what is the tent doing right now?  
10 Is the tent up right now?

11 MR. MILLER: I'm not sure if it's up  
12 now. It was up during the course of the summer.

13 MR. ROMANO: Is it up now?

14 MR. MILLER: No, but we are saying.

15 MR. ROMANO: It isn't an "is." The  
16 definition doesn't say use which includes or  
17 occasionally is, you know, use which is.

18 MR. MILLER: Exactly, and that's what  
19 we are saying. There are permanent buildings. The  
20 tent may not qualify as a permanent building, but  
21 there's three other structures that do.

22 MR. FITTING: So those other  
23 structures that you have deemed permanent, those  
24 buildings under the building code, are they suitable  
25 for assembly?

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1 MR. MILLER: Yes.  
2 MR. FITTING: Are they?  
3 MR. MILLER: Yes.  
4 MR. PALILONIS: Let me try to put a  
5 little bit more of a point on it. What is your  
6 understanding of typical events held there?  
7 MR. MILLER: Well, the typical events  
8 held there are wedding banquets, and I'm very  
9 familiar with outdoor wedding banquets. I went to  
10 one back in the beginning of October at a facility  
11 very similar to this in Massachusetts right down to  
12 virtually identical tent and virtually identical  
13 bathroom facilities, so I'm very familiar with this  
14 type of facility. I was married at an outdoor  
15 facility not all that different from this one. And  
16 a facility is made up of various elements, and in  
17 your definition recognizes, in this case this  
18 facility is made up of buildings, structures and  
19 installations. You know, the landscaping, for  
20 example, I would consider an installation. All of  
21 which are permanent, and that's one of the reasons I  
22 thought it was so important for the board to see the  
23 photos, because as you look at the photos, you can  
24 see that these structures have been there a long  
25 time. They are permanent, and they are all in

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1 combination.  
2 MR. FITTING: The question was, are  
3 they suitable for assembly?  
4 MR. MILLER: Yes.  
5 MR. PALILONIS: Where is the  
6 permanent facility for having a wedding banquet?  
7 MR. MILLER: The permanent facility  
8 for having the wedding banquet I would argue is this  
9 entire area, and the reason I say that is because in  
10 a wedding there's indoor activities; there's outdoor  
11 activities; and in a given wedding you can have the  
12 ceremony sometimes indoor, sometimes outdoor. You  
13 can have the banquet indoors. You can have it  
14 outdoors. There's a lot of flexibility in how you  
15 conduct a banquet. And what this is is a facility  
16 that provide a number of different options for  
17 someone, depending on the scale and what the  
18 particular parties want out of their wedding.  
19 MR. LAKIND: The other thing is that  
20 sentence is written in a disjunctive, can qualify if  
21 it's either facility or building structure or  
22 installation. The tennis court is a structure.  
23 MR. ROMANO: It's not a structure.  
24 MR. LAKIND: Absolutely.  
25 MR. FITTING: The building definition

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1 states that it has to be combination to form a  
2 construction adopted a permanent, temporary or for  
3 continuous occupancy.  
4 MR. LAKIND: No, structure --  
5 MR. PALILONIS: And having a roof.  
6 MR. ROMANO: Anything constructed or  
7 erected which requires permanent or temporary  
8 attachment to something which is erected on the  
9 ground and designed, intended or arranged for the  
10 housing, shelter, enclosure, I can go on and on,  
11 housing, shelter, enclosure, there's like ten or  
12 more lines, but you are defining a tennis court as  
13 such?  
14 MR. LAKIND: Tennis court, yes, as a  
15 structure.  
16 MR. MILLER: Putting that aside, we  
17 don't need the tennis court to qualify as a  
18 structure, because there's other items which do  
19 qualify as structures, and I would also argue that a  
20 banquet facility is more than just a building. It's  
21 the environs around the building. It's the  
22 facilities. It's the landscaping. It's the  
23 gardens.  
24 MR. FITTING: Are you familiar with  
25 the International Building Code?

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1 MR. MILLER: I am not.  
2 MR. FITTING: Use and occupancy?  
3 MR. MILLER: No.  
4 MR. FITTING: So the use and  
5 occupancy classification under the International  
6 Building Code, their definition of assembly is  
7 identical to our definition of assembly. But what  
8 they also state that following rooms and spaces  
9 shall not be classified as assembly occupancies and  
10 they are rooms or spaces used for assembly purposes  
11 with occupant load of less than 50 people, 50  
12 persons.  
13 So my question about the permanent  
14 structures that are there, do any of them meet that  
15 requirement?  
16 MR. MILLER: They don't have to.  
17 MR. FITTING: Yes, they do, then  
18 there's also building requirements based upon fire  
19 and all this other criteria that have to be met. So  
20 my question is if you want to hang your hat on those  
21 permanent structures, are they approved for  
22 assembly?  
23 MR. MILLER: It's an easy question to  
24 answer. That definition is not part of your zoning,  
25 it is not a zoning definition and it's not

1 applicable to defining whether or not this use meets  
2 your assembly definition.

3 This sometimes comes up in zoning  
4 hearings. It came up in a hearing I was involved in  
5 in Lower Merion. The building code is created to  
6 regulate a whole different area. another whole area  
7 of the police powers, and it has to do with  
8 construction and fire code and access and all these  
9 other things, and that's why it reads the way it  
10 reads. But you can't apply that definition to a  
11 zoning ordinance.

12 What you've done though is taken  
13 portions of it and adapted to the zoning ordinance,  
14 which is fine, and I believe to the extent that this  
15 definition is in your ordinance, we meet the letter  
16 and purpose and intent of that definition as an  
17 assembly use by virtue of the fact -- by virtue of  
18 all the arguments I've already made. You have the  
19 structures, facilities, installations. They are all  
20 permanent and they are all used as part of this  
21 facility, which is an assembly facility. And it's  
22 an assembly facility for one of the specified  
23 identified enumerated assembly uses, which is the  
24 banquet facility.

25 MR. FITTING: I disagree, but based

1 upon your interpretation, if I have 4 acres and have  
2 a shed on it, then the shed and the land itself is a  
3 structure that permits me to throw weddings?

4 MR. MILLER: Well, you know, you  
5 possibly could have an assembly use with just that  
6 amount of infrastructure, and I'll tell you why.  
7 This grows out of the idea that you could have all  
8 kinds of different assemblies. An assembly could  
9 take place in the open air. I mean, we've all been  
10 to that type of assembly, and depending on what  
11 other installations that are associated with that  
12 shed, it might very well be a full-fledged assembly  
13 facility.

14 Now, you'd have to have a specific  
15 plan in front of you and walk the property and  
16 understand exactly what was there, but is it  
17 possible to have an assembly use under the, your  
18 definition that consisted of a relatively small  
19 building and other facilities? My answer would be  
20 yes.

21 MR. ROMANO: Tom? Okay, the  
22 structure they are claiming that a tennis court,  
23 which I presume is at grade? Is it an at-grade  
24 tennis court?

25 MR. MILLER: Yes.

1 MR. ROMANO: Is a structure. Is that  
2 your interpretation of it?

3 MR. DECKER: No.

4 MR. ROMANO: That's all I need to  
5 know.

6 MR. FULPER: Anybody else have any  
7 questions of the professional?

8 MR. FISHER: If the buildings you  
9 stated were all part of the facility, what percent  
10 of the people you think use the bride's changing  
11 area?

12 MR. MILLER: Well, I think just the  
13 bridal party.

14 MR. FISHER: And the storage  
15 building, what percentage, just roughly?

16 MR. MILLER: I don't really know the  
17 specifics of what's stored there. but to the extent  
18 that it supports the use, then you could argue  
19 everybody.

20 MR. FISHER: How about the barn?

21 MR. MILLER: The barn has no use  
22 whatsoever one way or another. It's not associated  
23 with the use that's proposed.

24 MR. FISHER: The pool?

25 MR. MILLER: The pool has a minor

1 role.

2 MR. FISHER: The tennis court?

3 MR. MILLER: The tennis court is used  
4 as the flooring to the tent.

5 MR. FISHER: That's where the  
6 majority of the banquet takes place?

7 MR. MILLER: In many cases that's  
8 probably correct, yes.

9 MR. FISHER: If it was a paved road,  
10 if the driveway was paved, could we have the banquet  
11 then on the paved driveway?

12 MR. MILLER: It's unlikely because of  
13 the character of the driveway.

14 MR. FISHER: The porta potties are  
15 just emptied at the end? There's no real sewerage  
16 disposal system on, other than the bride's area,  
17 which is used by whatever percent it is used by, but  
18 the majority of people have to use the porta  
19 potties, which are then emptied at the end of the  
20 facility?

21 MR. MILLER: That's correct.

22 MR. FISHER: And the parking is  
23 off-site.

24 MR. FULPER: Mr. Miller, have you  
25 dealt with assembly uses in other municipalities

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1 before? Have you come across this ordinance?  
 2 MR. MILLER: This specific ordinance?  
 3 No.  
 4 MR. FULPER: And you think the  
 5 intent, the way you interpret this ordinance, the  
 6 intent is that a facility that has multiple  
 7 permanent structures, even though one of the  
 8 structures is temporary, qualifies it?  
 9 MR. MILLER: Yes.  
 10 MR. FULPER: How do you come to that  
 11 intent if you don't have experience with it  
 12 elsewhere? How do you arrive at that?  
 13 MR. MILLER: I think you read the  
 14 letter of the definition, and you also look at it  
 15 within the context of the fact that it was very  
 16 carefully considered. The township spent a lot of  
 17 time reviewing this ordinance. It was unanimously  
 18 enacted by the governing body, and I think you have  
 19 to take the words at what they say. And I think  
 20 when you read it, there's no other way to read it.  
 21 MR. KYLE: Your questioning is  
 22 interesting, because this is something that I've  
 23 thought about, because I'm actually helping a friend  
 24 with a similar issue in Hopewell Township, and she's  
 25 trying to convert an existing barn structure for use

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1 just like this, to have kind of beyond just  
 2 weddings, like community events, things like that.  
 3 What I learned through that process  
 4 was that kind of once you go from hey, this is just  
 5 my house and I'm going to throw up a tent and have  
 6 some weddings to hey, I have a commercial assembly  
 7 space and you start to get into the building code  
 8 issues.  
 9 MR. FITTING: It's significant.  
 10 MR. KYLE: They basically told her  
 11 hey, look, you can't basically throw portable  
 12 toilets outside and call it an assembly use. If you  
 13 do, you can only have X number of people. If you  
 14 want to have Y number of people, you have to have  
 15 this many accessible exits. You have to have this  
 16 many permanent toilet facilities, so also a lot of  
 17 building code issues that --  
 18 MR. FULPER: They are all --  
 19 MR. FITTING: They are building  
 20 issues, but they define the use of the structure,  
 21 so --  
 22 MR. MILLER: No.  
 23 MR. FITTING: You cannot use the  
 24 structure unless they meet the criteria, so  
 25 materials that are used in the construction,

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1 fire-related sprinklers maybe, you know, whatever,  
 2 number of toilets per number of guests.  
 3 MR. FULPER: Aren't they site plan  
 4 issues?  
 5 MR. FITTING: No.  
 6 MR. LAKIND: They are building and  
 7 site plan issues.  
 8 MR. FITTING: They are occupancy and  
 9 use in the building code. They are defined based  
 10 upon the use, so if you said I was using -- I had 49  
 11 people in this building, you would not meet the  
 12 assembly requirement. You wouldn't have to put  
 13 sprinklers in, you wouldn't have to use armored  
 14 cable. If you had 50, then you would.  
 15 MR. LAKIND: That would be building  
 16 code.  
 17 MR. FITTING: It is building code,  
 18 but --  
 19 MR. LAKIND: Not use variance.  
 20 MR. FITTING: But the use is still  
 21 the same.  
 22 MR. MILLER: What you can't do is you  
 23 can't conflate use as defined in a building or a  
 24 fire code with how use is applied when you are  
 25 talking about a zoning code. They are different

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1 codes, different systems of regulation.  
 2 MR. CRONCE: But they are married  
 3 together.  
 4 MR. FITTING: It helps clarify the  
 5 definition.  
 6 MR. MILLER: I think it also could  
 7 confuse it.  
 8 MR. KYLE: What if the building code  
 9 X number of handicapped spaces within X number of  
 10 feet of the assembly use or somehow there's parking  
 11 issues that are implicated through the building  
 12 code?  
 13 MR. FITTING: I don't think there is.  
 14 MR. KYLE: There are handicapped  
 15 accessibility user issues. I don't know if some of  
 16 that can be overcome.  
 17 MR. FITTING: That's a site plan  
 18 thing, because it's outside and the building is  
 19 dealt with the interior.  
 20 MR. KYLE: Either way, even if you  
 21 agreed that they're site plan issues, they still  
 22 have to prove the negative criteria when they come  
 23 back for site plan approval. It's not as though  
 24 those issues go away because we are only dealing  
 25 with the use variance.

1 MR. FITTING: They made a concession  
 2 to make handicapped toilet, but under the assembly,  
 3 they would have had to do that as code, like it  
 4 wouldn't have been a concession.  
 5 MR. KYLE: Right. There's also an  
 6 issue of permanent bathroom facilities and whole new  
 7 septic system, but, again, if those are -- those are  
 8 site plan related issues, you'll get another shot at  
 9 that down the road, if the use variance is approved.  
 10 MR. LAKIND: The first step, the  
 11 reason the statute allows you to go for use variance  
 12 first is because the second and third steps are  
 13 expensive. If it's denied, we have to get it  
 14 resolved, and the municipal land use law recognizes  
 15 that.  
 16 MR. FULPER: That's kind of my --  
 17 that's what I'm trying to say is that we are looking  
 18 at a use. There's going to be a lot of site plan  
 19 issues associated with that use. By no means,  
 20 whether we interpret it to be an assembly use or  
 21 not, in no way, shape or form is it ever going to  
 22 give him the right to go forward unless they go to  
 23 site plan and then maybe it's unsurmountable issues.  
 24 I really want to stay focused on what's before us.  
 25 the site plan and those issues.

1 building structure or installation?  
 2 A. No.  
 3 Q. Is a bathroom facility housed in a  
 4 transportable structure a permanent facility,  
 5 building structure or installation?  
 6 A. No.  
 7 Q. Can this proposed assembly use  
 8 operate without a tent?  
 9 A. Yes.  
 10 Q. Can it operate without bathroom  
 11 facilities?  
 12 A. Probably not.  
 13 Q. Just how many uses are on this  
 14 property, talking about an assembly use, but is  
 15 there still a farming use, with this chicken  
 16 coup/facility?  
 17 A. No.  
 18 Q. Is the property still used as a  
 19 residence?  
 20 A. I don't believe so.  
 21 Q. So the only use of the property would  
 22 be for an assembly?  
 23 A. Yes.  
 24 MR. TROFIMOV: That's all I have.  
 25 MR. MORGAN: Charles Morgan,

1 MR. CRONCE: Shouldn't we make a  
 2 decision right now on assembly use?  
 3 MR. FULPER: We are going to have  
 4 some input from other professionals. We are cross  
 5 examining this professional right now. I want to  
 6 make sure we are focused on the use. That's what we  
 7 are here to decide.  
 8 MR. CRONCE: Okay.  
 9 MR. FULPER: This board's authority  
 10 is actually to interpret the zone. This is what we  
 11 do. We have to get as many facts as we can and make  
 12 sure we approach it correctly. So are there any  
 13 other questions of the professional from the board  
 14 at this point?  
 15 MR. CRONCE: Not right now I don't  
 16 think, Bob.  
 17 MR. FULPER: I'll open up to the  
 18 professionals from the audience to come up. Again,  
 19 you are going to question the professional's  
 20 testimony.  
 21 MR. TROFIMOV: Mr. Miller, again,  
 22 Chris Trofimov, Lanza & Lanza, on behalf of the  
 23 township.  
 24 EXAMINATION BY MR. TROFIMOV:  
 25 Q. Is a tent a permanent facility,

1 representing several of the residents. You have my  
 2 list.  
 3 MR. FULPER: Thank you.  
 4 EXAMINATION BY MR. MORGAN:  
 5 Q. Did I hear you say or suggest that  
 6 all assembly facilities could qualify for an  
 7 assembly use here?  
 8 A. I don't believe so.  
 9 Q. Would a skating rink be something  
 10 that could qualify here? I mean, is that a social  
 11 assemblage type facility?  
 12 A. I haven't really analyzed it, and I'd  
 13 have to look at it in the context of the code,  
 14 whether it meets one of the definitions here. It's  
 15 certainly not a banquet facility. I don't know as  
 16 it would fit the definition.  
 17 Q. It's not a social assemblage.  
 18 Skating rink is not a facility that's used for  
 19 social assemblage purposes?  
 20 A. I would characterize it more as a  
 21 commercial recreation facility, but, again, I didn't  
 22 analyze that, and I don't have a plan for a skating  
 23 facility in front of me.  
 24 Q. How about an amphitheater, is that a  
 25 permanent facility, building, structure or

- 1 installation which is providing for civic,  
2 educational, political, religious or social  
3 assemblage purposes?  
4 A. In that case I would say yes.  
5 Q. How about a bowling alley? Would  
6 that be a permanent facility, building, structure or  
7 installation which is providing for civic,  
8 educational, political, religious or social assembly  
9 purposes?  
10 A. No. I would categorize that as a  
11 commercial recreation facility.  
12 Q. How about a movie theater?  
13 A. Movie theater would also be  
14 entertainment facility generally. Movie theaters  
15 are regulated specifically in codes, although I,  
16 again, did not analyze that in conjunction with  
17 this.  
18 Q. How about a dance hall? Is a dance  
19 hall a facility or structure used for social  
20 assemblage purposes?  
21 A. Yes.  
22 Q. And you are characterizing this as a  
23 banquet facility, not a dance hall?  
24 A. Yes.  
25 Q. Well, what percentage of time during

- 1 this use will people be banqueting rather than  
2 dancing?  
3 A. It would depend on the program for an  
4 individual event. It could be 100 percent or it  
5 could be less than that. I don't know.  
6 Q. You are not characterizing this as a  
7 house of worship?  
8 A. No.  
9 Q. So you don't expect that wedding  
10 ceremonies will be performed there?  
11 A. They could be.  
12 Q. Well, what about performing arts, do  
13 you expect performing arts such as a band with  
14 musicians to be participating in this facility?  
15 A. Commonly bands perform at weddings,  
16 yes, or banquets.  
17 Q. How about DJs with recorded music  
18 amplified?  
19 A. Yes, that too.  
20 Q. Those would be considered performing  
21 arts?  
22 A. They would be considered part of the  
23 entertainment at a banquet.  
24 Q. Performing arts, right?  
25 A. Well, I think that that's stretching

- 1 it a little bit.  
2 Q. That's your opinion?  
3 A. That's my opinion.  
4 Q. You admitted that an amphitheater is  
5 a permanent facility, building, structure  
6 installation which is providing for civic,  
7 educational, political, religious or social  
8 assemblage purposes. would that be permitted in the  
9 RR-5 zone? Would this zoning board be allowed to  
10 provide a conditional variance permitting that?  
11 A. Yes.  
12 Q. They would?  
13 A. Yes.  
14 Q. That's your opinion?  
15 A. Yes.  
16 Q. Possible -- okay. Would it surprise  
17 you to find, to learn that those are explicitly  
18 prohibited under the entertainment and recreation  
19 part of the ordinance, which is a use for the public  
20 or private presentation of and a participation in  
21 performing arts, sports and other recreation  
22 activities, this term shall include but not be  
23 limited to skating rinks, amphitheaters, carnivals,  
24 bowling alleys, movie theaters and basketball  
25 courts. You've expressed the opinion that they

- 1 could approve that as an amphitheater?  
2 A. May I see the section you are  
3 referring to?  
4 Q. Sure.  
5 MR. PALILONIS: Is that part of the  
6 ordinance?  
7 MR. MILLER: It's in the definitions  
8 section. There's a definition of entertainment and  
9 recreation and use for, a use for the public or  
10 private presentation of and/or participation in  
11 performing arts, sports and other recreation  
12 activities. This term shall include, but not be  
13 limited to, skating rinks, amphitheaters, carnivals,  
14 bowling alleys, movie theaters and basketball  
15 courts. The term shall not include parks associated  
16 with recreation facilities, and it was added in  
17 2015, and that's what it says.  
18 Q. So but if you read the Schedule 3,  
19 that is not a permitted use, amphitheaters, so --  
20 A. I stand corrected then.  
21 Q. So your opinion was mistaken?  
22 A. In that sense, yes.  
23 Q. So, can we suggest that maybe your  
24 opinions here are subject to some question?  
25 A. No. Because I also predicated my

1 answer with the observation that I hadn't researched  
2 that or investigated that in conjunction with this  
3 hearing, and I don't think it has any bearing on the  
4 balance of my opinion.  
5 Q. It seems to me that we've got a  
6 challenge for the board, would you not agree, with  
7 an ambiguity regarding a use that is quasi-banquet  
8 and quasi-performing arts?  
9 A. No, I would not.  
10 Q. That's your opinion?  
11 A. That's my opinion.  
12 Q. Would you agree that the board has  
13 the authority to articulate a decision based on a  
14 different opinion?  
15 A. That's a tough question, because I  
16 think the board really should decide it in the way  
17 that I've suggested.  
18 MR. MORGAN: Thank you, sir.  
19 MR. MILLER: I have confidence in my  
20 opinion.  
21 MR. MORGAN: I love your tie. That's  
22 it.  
23 MR. FULPER: Thank you.  
24 MR. MILLER: Yours is nice too. My  
25 wife picked it out.

1 MR. DECKER: If I can, I just have  
2 one question. Mr. Miller. So far the assembly  
3 questions have all revolved around weddings and so  
4 forth. And I just want to -- I took a look at the  
5 applicant's website, and there's a number of other  
6 uses proposed on the site, and I just want to make  
7 sure that they don't conflict with anything that  
8 you've represented. Those uses include weddings,  
9 yoga events, photo shoots, corporate retreats,  
10 weekend getaways, workshops, business gatherings,  
11 bar mitzvahs, bat mitzvahs, family reunions,  
12 anniversaries and more.  
13 MR. MILLER: Most of those sound like  
14 banquet-type uses. The photo shoot, I think, would  
15 have to be in conjunction with a wedding. I don't  
16 think you could necessarily be able to categorize  
17 that as an assembly use. But for the most part,  
18 those seem to be banquet-type activities. The yoga  
19 maybe would depend on the context.  
20 MR. FULPER: Any other professionals  
21 that want to get up and question the expert?  
22 MR. PALILONIS: I have a question.  
23 Do you think that this property, this site,  
24 constitutes a banquet facility?  
25 MR. MILLER: Yes.

1 MR. PALILONIS: To what extent?  
2 MR. MILLER: I think it constitutes a  
3 banquet facility, because that's the broader term  
4 for the uses proposed, and I think it's borne out by  
5 the material that just came to light from the  
6 website. It's not just limited to weddings. It's  
7 limited to other social assemblages like bar  
8 mitzvahs and corporate retreats, which are basically  
9 banquets. You know, basically you have a meal and a  
10 gathering associated with that meal, and that's, to  
11 my mind, a banquet facility. I believe it meets  
12 that definition.  
13 MR. PALILONIS: You are talking about  
14 the dirt and -- I mean, what permanent structure is  
15 being used for banquets?  
16 MR. MILLER: First of all, I think  
17 the whole facility is a permanent structure -- it's  
18 a series of permanent structures, but that aside,  
19 there's any number of locations within this facility  
20 that could be utilized for the banquets. I think  
21 primarily it's the area on the tennis court, but  
22 there are other locations that could be used for a  
23 banquet. All you need is basically an area where  
24 you can have a dining take place, and a banquet can  
25 take all variety of forms. Can be indoor, can be

1 outdoor. I know my own wedding all the dining took  
2 place outside at portable tables on a lawn at a  
3 park. And that's a common option for weddings or  
4 other gatherings, but I don't think you need to  
5 confine it to any one location within the facility.  
6 With that said, I think there's ample  
7 space and ample installations for the conduct of the  
8 banquet.  
9 MR. PALILONIS: Well. I think that's  
10 what it comes down to, whether or not open lawn  
11 areas constitute a banquet facility. You are saying  
12 that they do?  
13 MR. MILLER: No.  
14 MR. PALILONIS: I don't want to be  
15 unfair in characterizing what you are limiting or  
16 what you are saying the facilities include, but I'm  
17 just saying, you know, you think of a banquet  
18 facility, you know, I mean, you think of the  
19 Riverview Inn, room at the Lambertville Station or  
20 wherever.  
21 MR. MILLER: Let me respond to that.  
22 It's commonplace for banquet facilities to be housed  
23 within tents. It's not just venues of this nature.  
24 The venue that I cited earlier was actually The  
25 Wayside in -- which is a famous structure up in



1 Massachusetts, and the banquet facility there was a  
 2 tent virtually identical to this. Another example  
 3 would be golf courses where, again, that's a  
 4 frequent place where banquets occur, and frequently  
 5 golf courses utilize a tent of the type that's being  
 6 utilized here. And I think that those are permanent  
 7 facilities and that even though the tent comes down  
 8 during winter, it's there on an ongoing basis year  
 9 after year, and the basic platform, if you will,  
 10 where the tent's erected is there in perpetuity as  
 11 well, so I think that this is -- this kind of a  
 12 facility is commonplace for banquets. The tent is a  
 13 common element in those facilities, and based on all  
 14 that, that's the reason that I concluded it met the  
 15 definition of banquet facility.

16 MR. PALILONIS: Right. That's what  
 17 the board has to decide, whether it's permanent and  
 18 the banquet facility are, you know, what that means  
 19 and how they apply.

20 MR. MILLER: But I don't want the  
 21 board to feel it's a net opinion on my part. It's  
 22 based on my opinion of another facility and personal  
 23 experience with very similar experience.

24 MR. FITTING: The golf course is not  
 25 residential property.

1 yes, then you move on to your question, well, is  
 2 this permanent, but there's a threshold issue as to  
 3 what permanent modifies. If it doesn't modify  
 4 structure or doesn't modify installation or  
 5 building --

6 MR. FISHER: Is the food prepared at  
 7 this banquet center?

8 MR. LAKIND: It's brought in.

9 MR. FISHER: Are there --

10 MR. LAKIND: I shouldn't be --

11 MR. FISHER: Is there liquor served  
 12 at the banquet? Some banquets do and some do not, I  
 13 prefer those that do, but is there liquor that is  
 14 brought in?

15 MR. LAKIND: If I could ask my client  
 16 to respond to that.

17 MR. LUBCHANSKY: Yes.

18 MR. FISHER: So, therefore, a field  
 19 could be a banquet center. I mean, you could  
 20 bring --

21 MR. LAKIND: I don't think so.

22 MR. FULPER: He was sworn at the  
 23 original hearing. He's still under oath.

24 MR. LAKIND: You were asked if liquor  
 25 is served at the facility.

1 MR. MILLER: Certainly it is, not --

2 MR. FITTING: Not used for  
 3 residential use.

4 MR. MILLER: No, but this is not an  
 5 exclusively residential zoning district. It permits  
 6 a lot of uses which are not residential.

7 MR. FITTING: The other facility that  
 8 you are talking about, I'm sure that the permanent  
 9 structure on-site is rated assembly, and that's my  
 10 issue. So if you have a hotel and a tent or  
 11 restaurant and a tent, that's -- those are assembly  
 12 permanent structures with a temporary tent, not a  
 13 home with a tent that's bigger than the home.

14 MR. DECKER: I guess the question is,  
 15 for a banquet for I think we are looking at 250, 300  
 16 people. If the tent wasn't there, is it still a  
 17 viable facility for 250 people for a banquet?

18 MR. MILLER: My answer would be yes.

19 MR. LAKIND: If I might, I think the  
 20 question's a little broader than it was framed.  
 21 There's a threshold issue, what's permanent and  
 22 modified. Permanent only appears before the first  
 23 word in the disjunctive list, so does permanent  
 24 modify facility and -- excuse me, and building and  
 25 structure and installation, and if you answer that

1 MR. LUBCHANSKY: Yes.

2 MR. FISHER: None of it is prepared  
 3 and sold there; is that correct? The food is not  
 4 prepared there; it's brought in. Do they pay you  
 5 for the food or --

6 MR. LUBCHANSKY: No. We have a  
 7 private list of caterers that they choose from. The  
 8 caterers also serve the alcohol and carry their own  
 9 liability. We don't purchase and resell the alcohol  
 10 or the food.

11 MR. FISHER: Again, why could you not  
 12 have a banquet facility right next in Mr. Holcom's  
 13 farm?

14 MR. LAKIND: That's not for the  
 15 client. I don't think that would fit of definition.

16 MR. FISHER: There's no building  
 17 structure there.

18 MR. LAKIND: I don't know anything  
 19 about the farm.

20 MR. MILLER: I'm hearing a lot of  
 21 laughter, but there's more facilities here than just  
 22 open fields. There's formal gardens. There's  
 23 pathways. There's the decorative bridges. There's  
 24 pedestrian ways. There's a lot here, and this has  
 25 been landscaped and designed very carefully, and

1 it's a very attractive facility, and, again, I don't  
 2 think there's any reason why you can't have an  
 3 outdoor banquet with several hundred people. It  
 4 happens all the time. But that's not the only  
 5 facility for banquets here obviously, because the  
 6 tent is also part of it.  
 7 MR. FULPER: Are there any more  
 8 professionals in the audience that want to speak?  
 9 Is there anybody here -- let me ask a question, is  
 10 there anybody here from Burgis Associates that sent  
 11 this report out?  
 12 MR. TROFIMOV: Mr. Lydon is here.  
 13 MR. FULPER: Do you want to ask  
 14 questions of this expert at this time?  
 15 MR. LYDON: No.  
 16 MR. FULPER: Have you read the Burgis  
 17 report?  
 18 MR. MILLER: Yes, I did.  
 19 MR. FULPER: Dated October 25th?  
 20 MR. MILLER: Yes.  
 21 MR. FULPER: In his description of  
 22 proposed use as an assembly, his argument you've  
 23 read and have looked at?  
 24 MR. MILLER: Oh, yes, yes.  
 25 MR. FULPER: And where do you differ?

1 How do you come to a different conclusion than his  
 2 does? Basically his opinion again is focusing on  
 3 the tent, saying it's not a permanent structure.  
 4 And then hence doesn't qualify under assembly use.  
 5 MR. MILLER: Yes. I don't want to  
 6 necessarily go through his letter.  
 7 MR. FULPER: You don't have to. I  
 8 guess it's a redundant question.  
 9 MR. MILLER: Obviously I disagree  
 10 with his findings.  
 11 MR. FULPER: Okay.  
 12 MR. FISHER: One other question, if  
 13 the owner or lessee is not paying for the facilities  
 14 or the meals or the liquor, who is having the  
 15 banquet? I mean, so we are just leasing the place  
 16 and is that -- does that have any bearing?  
 17 MR. FITTING: Just leasing the land,  
 18 not really a facility.  
 19 MR. LUBCHANSKY: Many facilities  
 20 operate like that. They have outside caterers or a  
 21 list of caterers. Catering is not always done  
 22 inside.  
 23 MR. FISHER: But it's a banquet  
 24 facility.  
 25 MR. FULPER: In the back of the room,

1 do you want to come up and ask some questions?  
 2 Again, you can ask questions to the expert.  
 3 MR. KYLE: He's represented by  
 4 counsel, so...  
 5 MR. FULPER: Are you represented by  
 6 counsel?  
 7 MR. KARNA: Yes.  
 8 MR. PALILONIS: Have your counsel ask  
 9 the questions.  
 10 MR. KARNA: I will ask questions to  
 11 him.  
 12 MR. FULPER: If you have a question,  
 13 you can send it through him.  
 14 MR. PALILONIS: What's your name?  
 15 MR. KARNA: Upendra Karina.  
 16 MR. LAKIND: We have no objection.  
 17 MR. FULPER: So --  
 18 MR. KARNA: The question that I have  
 19 is as you know that the area is in the valley and  
 20 that is in the valley?  
 21 MR. MILLER: Yes.  
 22 MR. KARNA: As far as -- and you have  
 23 seen that this will be used as banquet facilities  
 24 and the weddings and the music, DJ, and you said  
 25 yes?

1 MR. MILLER: Yes.  
 2 MR. KARNA: When the same kind of  
 3 noise, same decibel of noise when they effect on the  
 4 surrounding area and the open area, is there a  
 5 difference or not?  
 6 MR. MILLER: I'm not sure I  
 7 understood your question.  
 8 MR. KARNA: The question that I have  
 9 is if there is a valley and the ridge is there, if  
 10 the same kind of noise, same decibel of noise, is  
 11 coming, the surrounding area will have the same  
 12 impact or if there is open area?  
 13 MR. LAKIND: That's not really his  
 14 area of expertise.  
 15 MR. KARNA: He said it was a perfect  
 16 venue because of the valley.  
 17 MR. PALILONIS: Then you state to  
 18 what extent he's able to answer that.  
 19 MR. KARNA: He said this is a unique  
 20 area. The area is confined. Nobody is, you know,  
 21 impacted with that. But this is impact which is,  
 22 you know, environmental impacts. Noise.  
 23 MR. FULPER: You have to ask the  
 24 expert the question.  
 25 MR. KARNA: Do you think that there

1 will be no impact or there will be more impact to  
2 the surrounding area?

3 MR. MILLER: There was an earlier  
4 witness that addressed the noise, and that's really  
5 not an area that planners really can opine on  
6 professionally. What I talked about was that the  
7 valley created a very nice setting for this  
8 facility, and that's really what my comment was  
9 addressed to.

10 MR. FULPER: Thank you.

11 MR. KARNA: Aesthetically.

12 MR. FULPER: Those questions of noise  
13 and those kinds of things will come up at a later  
14 point. If this application gets through the use  
15 portion of it, there will be a site plan portion.  
16 At that point all those issues have to be brought  
17 out and addressed, and at that point in time you  
18 will have ample opportunity to cross-examine any  
19 expert witness on that issue.

20 MR. ROMANO: To -- one of the things  
21 that was mentioned I think by you was the train  
22 helps minimize the impacts. I was scribbling down  
23 real fast. What do you mean by impacts?

24 MR. MILLER: Well, what it did is it  
25 creates some screening and some shielding visually.

1 bothering me, Charlie Morgan, again, representing  
2 several of the folks here.

3 Let's talk about a normal wedding  
4 event. This is a reception. They normally start  
5 around 5:00 or 6:00 while the bride and groom are  
6 getting the photographs, is that fair to say? And  
7 then we have sit down, after hor d'oeuvres, sit down  
8 might last an hour, hour and a half. So now you are  
9 around 7:30 or 8:00. Now the music starts and you  
10 are going to have dancing, and that dancing is going  
11 to go until 10:00, 11:00, 12:00, 1:00 a.m.,  
12 depending on the arrangement in the contract with  
13 whoever.

14 So I'm trying to understand, let's  
15 just say for the sake of argument that this bride  
16 and groom hire Madonna to come play. Now, when you  
17 go to a concert from, that Madonna puts on, is she  
18 doing performing arts?

19 MR. MILLER: I think you have to get  
20 to the foundation of your question, because it has a  
21 lot of assumptions which aren't consistent with the  
22 record and really don't relate to what we are  
23 discussing in terms of the use variance. As I  
24 understand the use, the activity would be -- would  
25 end at 10:00 and also would have to conform to the

1 Basically look across, and it also creates kind of a  
2 sense of enclosure, you know, just aesthetically  
3 it's a very nice setting for the use.

4 MR. ROMANO: So but the definition of  
5 the impacts are what? You said terrain helps  
6 minimize the impacts.

7 MR. MILLER: I meant primarily with  
8 the screening and the fact that it breaks up the  
9 view. If it was on grade with the surrounding  
10 uses --

11 MR. ROMANO: Just visual impacts?

12 MR. MILLER: Basically visual.

13 MR. ROMANO: No audible impacts?

14 MR. MILLER: I don't want to opine  
15 on --

16 MR. ROMANO: You used the word  
17 impacts. I want to understand what impacts you are  
18 referring to.

19 MR. MILLER: I'm primarily visual.

20 MR. FULPER: Any other questions?

21 MR. KARNA: No. That's the only  
22 question I had.

23 MR. FULPER: Any other questions from  
24 the public?

25 MR. MORGAN: It's just sort of

1 state noise standards, so a lot of the hypotheticals  
2 that you are presenting would not be consistent with  
3 those representations, and also I think you also  
4 have to take into account that weddings follow  
5 different patterns. Some weddings don't even have  
6 music, so there's a variety of ways that a wedding  
7 can be presented.

8 The question about whether Madonna's  
9 a performer or not I don't think is really germane  
10 to what I was discussing.

11 MR. MORGAN: It's germane to what  
12 this board has authority to do and not to do,  
13 because the board in the RR-5 zone has no authority  
14 to approve a facility that is going to be used for  
15 the performing arts, and as a predicate to the  
16 question, and the point of the matter is, it's a  
17 real slippery slope. It's between something that's  
18 happening in a movie theater or a theater versus a  
19 stage or not a stage, and a banquet facility, so it  
20 goes back to the question I had on percentage of  
21 time and the characterization of this thing as a  
22 banquet facility, which you are characterizing it  
23 as, and why it's not characterized more as a dance  
24 hall, because the majority of the time is spent  
25 dancing to music and not sitting and eating, so if

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1 you can explain to the board for the record why this  
2 is a banquet facility when it's really more a dance  
3 hall?  
4 MR. MILLER: Because it is a banquet  
5 facility and a banquet facility sometimes will  
6 involve some dancing as part of the activities  
7 associated with the banquet. But it's certainly not  
8 a dance hall. Dance hall would be a venue which was  
9 specifically for dancing at the conclusion  
10 potentially of other activities.  
11 MR. MORGAN: Don't you agree this is  
12 a mixed use?  
13 MR. MILLER: No, I do not. It's  
14 clearly a banquet facility, and dancing sometimes  
15 does occur as an ancillary activity to a banquet.  
16 MR. MORGAN: And you are firm in your  
17 opinion that a group of musicians performing for a  
18 group is not performing arts?  
19 MR. MILLER: Absolutely, because it's  
20 not -- it's ancillary to the primary activity which  
21 is the banquet.  
22 MR. MORGAN: Thank you. You put your  
23 opinion on the record. I appreciate it.  
24 MR. FITTING: Do banquet facilities  
25 have permanent on-site restrooms?

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1 MR. MILLER: No. The answer is no.  
2 MR. FITTING: They do not.  
3 MR. MILLER: They don't always.  
4 MR. FITTING: Do banquet facilities  
5 have kitchens to support the guests?  
6 MR. MILLER: No, and I think you've  
7 heard testimony that commonly it's done through  
8 catering.  
9 MR. FITTING: So a banquet is a  
10 permanent facility that can neither feed nor relieve  
11 the people that it houses?  
12 MR. MILLER: It feeds them through  
13 caterers and provides sanitary facilities in a  
14 number of ways, and one of the options is the one  
15 that's currently utilized. And it's not an uncommon  
16 method.  
17 MR. FULPER: Anybody else from the  
18 audience that wants to ask questions of the expert?  
19 Tom or Jim. any other follow-up comments for the  
20 board? Anything that you want to have input on that  
21 relates to the use?  
22 MR. KYLE: No. I mean, I think we  
23 are going to hear more testimony. When we first  
24 started, like I said before, I thought we kind of  
25 disposed of the assembly use issue. Now you have

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1 documents which were submitted as part of the  
2 record. We are going to have to hear testimony from  
3 Mr. Lydon on his report.  
4 MR. FULPER: On his report?  
5 MR. KYLE: The Burgis report. I  
6 think we have to kind of roll through it, and at the  
7 end you are going to think about --  
8 MR. FULPER: We are going to hear it  
9 tonight?  
10 MR. KYLE: God, I hope not. I don't  
11 think so.  
12 MR. FULPER: Is he here tonight?  
13 MR. KYLE: They are going to present  
14 a case once Mr. Lakind is done.  
15 MR. FULPER: This board is getting  
16 ready to make a decision here on use. We need all  
17 the facts before us now. Until we have to quit  
18 here, we have to quit by 10:45. We have 15 minutes,  
19 I guess. So whether anybody else is going to give  
20 us some testimony --  
21 MR. KYLE: Let me understand. You  
22 are saying you are going to determine whether or not  
23 it's an assembly use?  
24 MR. FULPER: That's the direction we  
25 are going.

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1 MR. KYLE: If you want to have  
2 Mr. Lydon come up and testify, I think that's fine.  
3 MR. FULPER: You want to dispose of  
4 this expert and bring him up?  
5 MR. KYLE: That's up to you. If you  
6 guys feel like you want to get through it.  
7 MR. FULPER: We need to hear  
8 everything we can here. I guess then I need to make  
9 sure, does anybody have any more questions of this  
10 expert at this time?  
11 Thank you very much.  
12 MR. MILLER: Thank you for your  
13 attention. I appreciate it.  
14 MR. FULPER: You might not get it  
15 done in 15 minutes.  
16 MR. PALILONIS: Why would you start?  
17 MR. FULPER: The board is willing to  
18 move forward with more testimony.  
19 MR. LAKIND: Before they proceed with  
20 their case, I want to clarify a couple things.  
21 Mr. Lubchansky just got here an hour or so ago. He  
22 had a difficulty tonight. I marked the consent  
23 order. Mr. Lubchansky would agree, if it's  
24 approved, to abide by the consent order. I just  
25 marked it because he was not here at the time. I

1 just wanted to clarify that. And he would be  
2 amenable to removing the deck and the gazebo, if  
3 that were a requirement of any approval, and that's  
4 all I have and I think Chris wants to go forward.

5 MR. FULPER: You can approach the  
6 board.

7 MR. TROFIMOV: Again, for the record,  
8 Christopher Trofimov, Lanza & Lanza, on behalf of  
9 the township. I'm going to present Mr. Lydon of  
10 Burgis & Associates to testify regarding the report  
11 submitted dated October 25, 2016.

12 ----

13 STEVEN M. LYDON, having been first duly sworn,  
14 testified as follows:

15 ----

16 EXAMINATION BY MR. TROFIMOV:

17 MR. PALILONIS: State your name and  
18 address for the record, please.

19 MR. LYDON: Steven, with a V, Lydon.  
20 L-y-d-o-n. Our business address is 25 Westwood  
21 Avenue in Westwood, New Jersey.

22 Q. Mr. Lydon, are you employed with  
23 Burgis & Associates?

24 A. Yes, I am. I have been for the last  
25 15 years or so.

1 matter?

2 A. Yes, I have. I've also had a chance  
3 to review the West Amwell Township master plan and  
4 the land use ordinance adopted by the mayor and  
5 council.

6 Q. In fact, are the documents that you  
7 reviewed in preparation of your report enumerated on  
8 pages 1 and 2 of your report?

9 A. Yes, they are.

10 MR. TROFIMOV: I'm going to ask that  
11 we mark this. Keep it in sequence or start a new  
12 numbering sequence?

13 MR. PALILONIS: Well, it would be I  
14 guess O used O for objectors.

15 MR. TROFIMOV: So O-1,  
16 (Exhibit O-1, Report, is received and  
17 marked for identification.)

18 MR. PALILONIS: By the way, was this  
19 document signed by anybody?

20 MR. FULPER: Are you the author of  
21 this?

22 MR. LYDON: Yes, I am.

23 MR. PALILONIS: Has it been signed?

24 MR. TROFIMOV: I have an original  
25 signed, but unfortunately it looks like the

1 Q. What's your position with the  
2 company?

3 A. Senior associate.

4 Q. What are your professional  
5 affiliations?

6 A. After graduating from Rutgers, I sat  
7 for and passed the professional planners license I  
8 believe in 1987 or so. I've been a professional  
9 planner since then. I also hold membership in the  
10 American Institute of Certified Planners. I believe  
11 I've held that since the early '90s. I've testified  
12 in front of numerous boards, primarily in the  
13 northern part of the state. I've also testified in  
14 superior court, both in the northern part of the  
15 state and in Hunterdon County, and I have sat on  
16 boards before I was employed by Burgis Associates.  
17 I was a planning director for a Morris County  
18 community for about 11 years or so where I also held  
19 the title of zoning officer. That's what I do in my  
20 day job.

21 MR. FULPER: We'll accept him as an  
22 expert.

23 Q. Mr. Lydon, have you had a chance to  
24 review the application submitted by Brookmill Farm,  
25 A-Z Property Management and the Vernors in this

1 signature page wasn't provided to the board. We can  
2 provide that. Mr. Lydon testified he is the author  
3 and can verify it as such.

4 MR. FULPER: All right.

5 Q. Going back to my question, in fact,  
6 the documents that you reviewed in preparation of  
7 this report are enumerated on pages 1 and 2,  
8 correct?

9 A. That's correct.

10 Q. Directing you to page 2 of your  
11 report --

12 A. Yes, page 2.

13 Q. -- what was your overall conclusion  
14 about the application in this matter?

15 A. Our primary observation was that the  
16 application needs a D-1 type variance. By D-1, I'm  
17 referring to the clause in municipal land use law  
18 4055 D-C -- D-1 use. It's a use in our estimation  
19 which is not permitted under the West Amwell  
20 Township zoning ordinance. We do not believe it's  
21 an assembly use.

22 Q. Let me interrupt you there. Why is  
23 it your position that this does not meet the  
24 definition of an assembly use?

25 A. Because of the temporal nature of the

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1 primary aspect of the use, which is the tent.  
2 Q. Are there any other non-permanent  
3 facilities as part of the application that you are  
4 aware of?  
5 A. Non-permanent? I believe that's the  
6 primary temporal facility on the site.  
7 Q. Are you aware of any permanent  
8 bathroom facilities for the banquet?  
9 A. They were not described on the plans.  
10 I've heard some testimony about them tonight. I  
11 don't believe they are shown on the plan which has  
12 been marked B-4, so I really have a hard time  
13 understanding exactly what they are. I don't know  
14 if the facility leaves the site or if they are  
15 pumped and then the facility stays on the site. But  
16 it would appear that at least the effluent is not  
17 permanent.  
18 Q. And based on the documents reviewed  
19 but as well as the testimony you've heard at the  
20 last few meetings, are you aware of any permanent  
21 lighting, heating, cooling or kitchen facility  
22 regarding the banquet use?  
23 A. I am not familiar. I'm not aware of  
24 any that are proposed, nor am I aware of any  
25 permanent parking facilities that are proposed that

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1 are going to be constructed on the site.  
2 Q. Now, you were present earlier this  
3 evening when you heard testimony about the  
4 contiguous building area and the debate about that,  
5 correct?  
6 A. Yes, I was.  
7 Q. Have you had a chance to review the  
8 map prepared by Mr. Smith's engineering firm  
9 regarding the calculation of the buildable area?  
10 A. Yes. I believe it has been marked in  
11 evidence tonight.  
12 Q. As B-5?  
13 A. I believe so. I believe it's still  
14 on the easel, if I may.  
15 Q. Do you agree with the conclusions of  
16 the buildable area as demonstrated in that map, B-5?  
17 A. No. We took a preliminary review of  
18 it and we believe the buildable areas as shown on  
19 this exhibit are more extensive than they really  
20 are. Let me say this: We believe that this exhibit  
21 overstates the buildable areas on the property and  
22 in fact.  
23 Q. Did you, in fact, prepare a new map  
24 showing --  
25 MR. LAKIND: I object to this. He's

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1 not an engineer. He's a planner.  
2 MR. LYDON: That's correct. I am a  
3 planner, and we have dealt with things like steep  
4 slopes, and I don't believe you need to be an  
5 engineer to determine steep slopes. I don't believe  
6 you need to be an engineer to determine -- to be  
7 able to read and interpret a map, and what we did  
8 was we scanned an earlier version of B-5, and we  
9 just looked, as the township engineer, board  
10 engineer did as to certain areas of the site, and  
11 there appear to be numerous areas that were included  
12 as buildable that we believe on a more careful look  
13 would be determined to be, in fact, non-buildable.  
14 MR. PALILONIS: I have to rule on the  
15 objection here. Our engineer, do you have any --  
16 what is your understanding of who can determine what  
17 buildable area is?  
18 MR. DECKER: I don't think it's  
19 limited to just an engineer's opinion. A planner, I  
20 believe, is capable of evaluating that.  
21 MR. KYLE: It's mapping. Planners  
22 deal with maps every day.  
23 MR. FULPER: So the board can depend  
24 on his testimony for this situation?  
25 MR. KYLE: I think he needs to

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1 describe the methodology that he used to come up  
2 with these areas, which he's going to do, but --  
3 MR. DECKER: Planners are familiar  
4 with critical areas and how they are mapped and so  
5 forth.  
6 MR. FULPER: You can continue to  
7 testify.  
8 Q. Were you, Mr. Lydon, involved in the  
9 creation of this new map?  
10 A. Yes, I was. It was done under my  
11 supervision by someone else at the office who is a  
12 licensed planner, and they took the map and using  
13 the critical features, I believe that's the term,  
14 the name of the term in the ordinance, critical  
15 environmental areas, they talk about, among other  
16 things, slopes of 25 percent or greater measured  
17 over even ten-foot intervals, and I think this is  
18 what the board engineer was specifying in this  
19 larger area which is identified as building area  
20 three, for instance. There is a band of steep  
21 slopes which is excluded on the eastern or the  
22 northern part of that buildable area, but yet as you  
23 look at B-5, it continues through all the way  
24 through the buildable area, as depicted on B-5. And  
25 we found that in other areas as well. Maybe this

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1 should be marked.  
2 MR. TROFIMOV: Yes, let's mark this.  
3 This will be O-2.  
4 (Exhibit O-2, Map, is received and  
5 marked for identification.)  
6 A. I will date it and put my initials,  
7 November 28th. So we found using the definition  
8 West Amwell Township zoning ordinance is that we  
9 came up with more than three discreet areas, and we  
10 came up with smaller total area, and I think that's  
11 significant, because it shows how fragmented the  
12 property is. And I agree with the board's  
13 conclusion earlier that you have to use a definition  
14 of buildable area which talks about contiguous  
15 areas.  
16 And the other thing I would point  
17 out, these are not connected properties. These are  
18 as isolated as you can get. And the fact that they  
19 are isolated shows, is shown on B-5, the applicant's  
20 exhibit, where he identifies them by different  
21 numbers. If, in fact, these were contiguous, they  
22 would be one number. They are isolated. You've got  
23 the creek going through it. How could you be more  
24 isolated than that? So these are discreet parts of  
25 the site, which we believe have been overestimated,

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1 so we don't believe that that area No. 3, which is  
2 depicted as 3.7 acres, is nearly that large. And in  
3 fact --  
4 MR. FULPER: Do you have those acres?  
5 Have you done that calculation?  
6 MR. LYDON: I think I might, Mr.  
7 Chairman. We didn't get that far, but certainly I  
8 can provide them to the board and to the applicant.  
9 But in support of what the board  
10 engineer mentioned earlier, we believe that the  
11 property really is fragmented and not nearly as  
12 buildable as depicted on Exhibit B-5. And I think  
13 it's significant enough to change some of the  
14 analysis that's going on here, and clearly they are  
15 isolated buildable areas.  
16 Q. As part of this application, did you  
17 do an analysis of the so-called positive criteria  
18 and negative criteria related to the D-I use  
19 variance application?  
20 A. Yes, we did.  
21 Q. Now, regarding the positive criteria,  
22 what is your conclusion based upon reviewing all the  
23 documents in the applicable law regarding the lack  
24 or the positive criteria that is of this  
25 application?

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1 A. Well, maybe I should just quickly go  
2 through what I believe the responsibility and the  
3 requirements of the applicant are or the performance  
4 on the application on the positive criteria.  
5 I believe this is a D-I application.  
6 It's presented to you as a D-3 application, and I  
7 believe that's wrong. For a D-I application, an  
8 applicant can only secure approval in particular  
9 cases and for special reasons. Proposed use has to  
10 further or carry out a purpose of zoning. And those  
11 are enumerated in 40:55-D-2, and case law identifies  
12 three categories of special reasons. Here the  
13 special reason argument is that I would believe is  
14 that the argument that the applicant would make is  
15 that it's particularly well suited for the proposed  
16 use, and I believe you heard that in the context of  
17 the D-3 application or D-3 proofs that were offered.  
18 Particularly well suited means that the site can  
19 accommodate the proposed use and that the use would  
20 fill a need of the community and that the property  
21 itself is particularly well fitted for the use in  
22 terms of its location, topography and shape.  
23 Q. What's your conclusion based upon  
24 that criteria?  
25 A. I don't believe the applicant can


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1 meet that burden, Mr. Chairman.  
2 Q. Why is that?  
3 A. First of all, I think you have to  
4 look at where the site is and where it's sitting in  
5 the way of transportation at the structure. It's on  
6 Mill Road. That's significant, because Mill Road is  
7 defined in the master plan of Amwell Township. It  
8 describes it as a narrow, curvy, hilly road without  
9 curves and sidewalks for the most part or any part.  
10 Those very real characteristics which are used to  
11 classify Mill Road in your master plan goes on to  
12 make a finding and identification of Mill Road as a  
13 rural local road.  
14 An assembly use, if this was an  
15 assembly use, a banquet facility, which is one of  
16 the terms the applicant's planner has used, is an  
17 intensive land use. They draw large crowds, and I  
18 believe we heard 350 people. They draw employees.  
19 Usually with caterers, you have a number of servers,  
20 because ideally everybody gets served at the same  
21 time. It's not like a restaurant where people come  
22 and leave in waves. Basically everyone shows up in  
23 time. You have to have a lot of employees per  
24 guest, and they generate a lot of traffic.  
25 Don't know where the parking is

1 proposed, because there is no proposed parking. The  
 2 fact that this is on Mill Road, which the master  
 3 plan defines as a rural local road, indicates that  
 4 it's not particularly well suited for the proposed  
 5 use.  
 6 Q. Are there any other unique --  
 7 MR. FULPER: We are going to have to  
 8 stop the hearing for this evening, because of the  
 9 time. We have to be out of the building by 11:00.  
 10 So we are going to have to continue this.  
 11 MR. LAKIND: Can we get a copy of the  
 12 plan that the planner referred to?  
 13 MR. TROFIMOV: The new map?  
 14 MR. LAKIND: The orange map.  
 15 MR. LYDON: We can supply that.  
 16 (A brief recess is taken.)  
 17 MR. FULPER: We are going to hold a  
 18 special meeting January 5th. Meeting is at 7:00.  
 19 We are going to reorganize and then move on to the  
 20 hearing.  
 21 MR. TROFIMOV: January 5th, 7:30  
 22 we'll start?  
 23 MR. FULPER: I did talk to some of  
 24 the residents in the hall.  
 25 Thank you. I appreciate your

1 time.  
 2 (Whereupon the proceedings were  
 3 concluded at 11:00 p.m.)  
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CERTIFICATE

1  
 2  
 3 I, DONNA BRUNCK, a Certified Court Reporter of  
 4 the State of New Jersey, authorized to administer  
 5 oaths pursuant to R.S.41:2-2, do hereby certify that  
 6 the foregoing is a true and accurate transcript of  
 7 the meeting that was taken stenographically by and  
 8 before me at the time, place and on the date herein  
 9 before set forth.  
 10 I DO FURTHER CERTIFY that I am neither a  
 11 relative nor employee nor attorney nor counsel of  
 12 any of the parties or attorneys to this action, and  
 13 that I am not financially interested in the action.  
 14 I DO FURTHER CERTIFY that the within  
 15 transcript format complies with Rule NJ ADC  
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