

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF ROBERT PACANO, : Case No. S-2761
D/B/A WOODSTONE GROUP, LLC : OZAH No. 10-11
:
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A hearing in the above-entitled matter was held on
June 27, 2014, commencing at 9:42 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue,
Rita Davidson Memorial Hearing Room, Rockville, Maryland
20850 before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

David Gardner, Esq.
600 Jefferson Plaza, Suite 308
Rockville, Maryland 20852

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Mike Razavi				
By Mr. Gardner:	42			
Robert Pacano				
By Mr. Gardner:	91			

E X H I B I T S

Exhibit No.		Marked/Received
39	Affidavit of posting	15
40(a)	Draft amended consent agreement	16
40(b)	E-mail exchange	16
41	Technical staff slide presentation to the Planning Board	41
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43	Forest conservation plan with easement area outlined in pink	77
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1-44	All exhibits received in evidence	128

P R O C E E D I N G S

1 MR. GROSSMAN: This is a public hearing in the
2 matter of Robert Pacano, doing business as Woodstone Group,
3 LLC, Board of Appeals No. S-2761, OZAH No. 10-11, an
4 application for a landscape contractor special exception
5 under Code Section 59-G-2.30.00. Petitioner seeks a special
6 exception to permit operation of a landscaping business on a
7 4.5-acre site located at 28621 Ridge Road, Mount Airy,
8 Maryland, in the RDT zone. The subject site is located on
9 Parcel 233 in a primary management area. Landscape
10 contractors are permitted by special exception in the RDT
11 zone.

12
13 This hearing is conducted on behalf of the Board
14 of Appeals. My name is Martin Grossman. I'm the Hearing
15 Examiner, which means I will take evidence and write a
16 report and recommendation to the Board of Appeals, which
17 will make the decision in this case. Will the parties
18 identify themselves for the record, please?

19 MR. GARDNER: Good morning, Mr. Grossman. David
20 Gardner. I'm the attorney on behalf of Roberto Pacano,
21 operating as Woodstone --

22 MR. PACANO: Landscape.

23 MR. GARDNER: -- Landscaping, Inc.

24 MR. GROSSMAN: It says, Woodstone Group, LLC, is
25 what it says on that.

1 MR. GARDNER: Woodstone Group, LLC. Roberto is
2 seated to my right, to your left. Also with me is Mike
3 Razavi, seated to my left, to your right. He is the
4 engineer who prepared the plans --

5 MR. GROSSMAN: Okay.

6 MR. GARDNER: -- and he will be testifying about
7 the plans this morning.

8 MR. GROSSMAN: All right.

9 MR. GARDNER: Do they need to be sworn in or
10 anything?

11 MR. GROSSMAN: I will in just a minute, but
12 ordinarily I look to see if there's anybody in the audience
13 who wishes to testify. I note for the record that there is
14 nobody in the audience today. Let me explain a little bit
15 about the nature of the proceedings, Mr. Pacano.

16 MR. PACANO: Uh-huh.

17 MR. GROSSMAN: We're a combination of formality
18 and informality. It's formal in the sense that we operate
19 pretty much the way a courtroom does: witnesses are sworn
20 in; they're subject to cross-examination if anybody were
21 here to cross-examine; there's a court reporter, who's
22 taking everything down; there will be a transcript of the
23 case; we follow rules of evidence except it's a little bit
24 more relaxed in administrative proceedings in that some
25 hearsay, if it's otherwise reliable and probative, can be

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1 admitted, but pretty much it operates like a courtroom.
2 And this is a case involving a request for a
3 special exception, which is not exactly what it sounds like.
4 It's not a variance from the code. It is a conditional use,
5 which is what it's called under the new zoning ordinance
6 that will take effect at the end of October of this year.
7 That is, it's a use that's permitted if conditions are met
8 that are specified in the statute. There are general
9 conditions that apply to almost all special exceptions, and
10 there are specific ones that apply to this particular type
11 of special exception, landscape contractor, and so it's the
12 obligation of the applicant to demonstrate that he, she, or
13 it meets all of those requirements.
14 MR. PACANO: Uh-huh.
15 MR. GROSSMAN: All right. Let me turn to a couple
16 of preliminary matters here. There is an errata sheet. I
17 presume you've seen it, Mr. Gardner, with the technical
18 staff --
19 MR. GARDNER: Yes.
20 MR. GROSSMAN: -- to the technical staff report.
21 It was listed in the Planning Board letter, which is Exhibit
22 38, and as a separate sheet, Exhibit 37(a) in the file.
23 I've made those corrections in ink on the technical staff
24 report that's in the file, Exhibit 34, just so we have --
25 the record that's in the file has the corrected technical

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1 staff report. I just wanted to note that on the record, and
2 I've initialed next to each change I made, in ink.
3 Okay. Also, the petitioner's name is listed on
4 the application as Robert Pacano, doing business as
5 Woodstone Group, LLC. The property owner's name is listed
6 as Jose R. Pacano. Are they the same person, Mr. Gardner --
7 MR. PACANO: Yes.
8 MR. GROSSMAN: -- Mr. Pacano? Yes.
9 MR. GARDNER: Yes. Roberto and what was it,
10 Robert R.?
11 MR. RAZAVI: Jose.
12 MR. PACANO: It's Jose, actually, but yes.
13 MR. GROSSMAN: All right. So for an answer to
14 that, since you're answering, let me swear the witnesses in.
15 Mr. Pacano and Mr. Razavi, would you raise your right hands,
16 please?
17 (Witnesses sworn.)
18 MR. GROSSMAN: Okay. So now let's get the answer
19 to that question again. Is Robert Pacano the same as Jose
20 R. Pacano?
21 MR. PACANO: Yes, sir.
22 MR. GROSSMAN: So your middle name is Robert? Is
23 that the idea?
24 MR. PACANO: Yes. Uh-huh.
25 MR. GROSSMAN: Okay. All right. I think that is

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1 sufficient, although if you -- if there's any questions,
2 Mr. Gardner, you could submit something in writing on that
3 point because the record does indicate -- Mr. Razavi.
4 MR. RAZAVI: I just want to point out for the
5 record that my full name is Mohammad Razavi but I --
6 MR. GROSSMAN: Okay.
7 MR. RAZAVI: -- also go as Mike Razavi in the
8 business.
9 MR. GROSSMAN: Okay. I'm not sure how we have you
10 listed. Let's see. Yes, actually it is noted here. I see
11 on my notes it says, Mohammad, parens, Mike Razavi.
12 MR. RAZAVI: Yes. Correct.
13 MR. GROSSMAN: Okay. All right. Okay. It's more
14 significant in terms of the owner of the property, because
15 the owner of the property has to give his consent --
16 MR. RAZAVI: I understand.
17 MR. GROSSMAN: -- to this proceeding and it wasn't
18 entirely clear from the record that the owner was the same
19 as the applicant.
20 MR. RAZAVI: I understand.
21 MR. GROSSMAN: Okay.
22 MR. GARDNER: Well, I think the applicant is Jose
23 R. Pacano, D/B/A Woodstone Group, LLC, and the deed is the
24 name Jose R. Pacano.
25 MR. GROSSMAN: No. The application I have --

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1 MR. GARDNER: No?
2 MR. GROSSMAN: -- actually lists -- this Exhibit 1
3 in the file lists petitioner as Robert Pacano, D/B/A
4 Woodstone Group, LLC, Exhibit 1.
5 MR. GARDNER: I don't know. I just have in my
6 title -- oh, I see: In the matter of Robert Pacano.
7 MR. GROSSMAN: That's why I raised the question,
8 and then below it says the name of the owner is Jose R.
9 Pacano.
10 MR. GARDNER: Yes.
11 MR. GROSSMAN: So that's why I raised the
12 question, just to make sure that the record is clear.
13 MR. GARDNER: So do we have to formally change the
14 name of the petition, or is it a non-matter?
15 MR. GROSSMAN: I don't think it matters --
16 MR. GARDNER: Okay.
17 MR. GROSSMAN: -- as long as the record is
18 clear --
19 MR. GARDNER: Good.
20 MR. GROSSMAN: -- that we're talking about the
21 same person. My concern was just that --
22 MR. GARDNER: Okay.
23 MR. GROSSMAN: -- we have something in the record
24 that clearly indicates -- and you might want to submit a
25 writing of that -- that clearly indicates that the applicant

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1 is the property owner and that Robert Pacano, as listed as
2 the petitioner here, is Jose R. Pacano --
3 MR. GARDNER: All right.
4 MR. GROSSMAN: -- to avoid any, any issues.
5 Okay. Next item I wanted to mention is the
6 application lists the applicable zoning ordinance as
7 59-G-2.30 paren c. That may once have been the labeling of
8 it, but actually now, under the current code, it's listed as
9 -- the applicable section is 59-G-2.30.00. So that's what
10 we're talking about here.
11 Next thing, we need an electronic copy in Word of
12 the amended statement of operations, Exhibit 31(a). I know
13 you submitted a number of electronic copies. I don't see --
14 I see your amended statement in support of the application,
15 but I don't see your amended statement of operations
16 electronically. So I need a copy of that electronically --
17 MR. GARDNER: Okay.
18 MR. GROSSMAN: -- in Word, Microsoft Word, please.
19 MR. GARDNER: Amended statement of operations in
20 Word?
21 MR. GROSSMAN: Yes.
22 MR. GARDNER: Okay. I know we submitted these a
23 few weeks ago.
24 MR. GROSSMAN: Right. You submitted the
25 electronic copies of almost, I think, everything else that I

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1 needed. That was the one thing I didn't see that --
2 MR. GARDNER: I apologize.
3 MR. GROSSMAN: -- I need in electronic form.
4 MR. GARDNER: Okay.
5 MR. GROSSMAN: And I didn't see in the record --
6 and maybe I'm wrong; you can point it out to me if I am
7 wrong -- I didn't see a copy of that draft amended consent
8 agreement in the record. I see it in electronic form, but I
9 didn't see a copy of it on the exhibit list --
10 MR. GARDNER: Well, it should be --
11 MR. GROSSMAN: -- am I incorrect about that?
12 MR. GARDNER: It should be --
13 MR. GROSSMAN: Because I printed out a copy from
14 the electronic form. I take it, it hasn't been signed yet
15 because --
16 MR. GARDNER: Correct.
17 MR. GROSSMAN: -- it's not finalized, but --
18 MR. GARDNER: It can't be finalized until after
19 this hearing is -- until after he receives approval.
20 MR. GROSSMAN: Right, but to avoid a legal problem
21 under Constellation Potomac case, we want to make sure that
22 when the Board of Appeals acts on this, assuming, if they
23 approve it, that they're approving an agreement that has the
24 same language as what we would finally sign, and so we need
25 it in the record.

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1 MR. GARDNER: I have a copy. I'd be happy to
2 offer it today.
3 MR. GROSSMAN: Yes, I printed it out. I printed
4 it out so we have a copy, assuming --
5 MR. GARDNER: It was also attached, I might add,
6 to the staff report.
7 MR. GROSSMAN: Okay.
8 MR. GARDNER: The Planning Board staff report has
9 an appendix with a copy of it attached.
10 MR. GROSSMAN: Okay.
11 MR. GARDNER: If you'll give me a moment, I could
12 find it there. I think I submitted it probably
13 electronically to Elsabett Tesfaye, the staff --
14 MR. GROSSMAN: Yes, and you submitted it
15 electronically to me too. I have the electronic copy.
16 MR. GARDNER: -- and she attached it somewhere to
17 her staff report. Here it is. It's Attachment B --
18 MR. GROSSMAN: Okay.
19 MR. GARDNER: -- to the Planning Board staff
20 report.
21 MR. GROSSMAN: I see it.
22 MR. GARDNER: Do you see that?
23 MR. GROSSMAN: I do.
24 MR. GARDNER: Okay.
25 MR. GROSSMAN: Let's, assuming it's the same,

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1 identical as the one you submitted electronically to me --
2 MR. GARDNER: Yes, it is.
3 MR. GROSSMAN: Okay. Let's -- I did print it out
4 -- let's mark it as an exhibit --
5 MR. GARDNER: All right.
6 MR. GROSSMAN: -- and have it in the record of
7 this case.
8 MR. GARDNER: Very well. As a separate exhibit, I
9 agree, that would make everything easier. And I also note
10 Exhibit 9 -- where's that, Exhibit 9? Okay. That's the
11 e-mail from Gene von Gunten, oh, okay, early on, and then
12 there was a later e-mail from Gene von Gunten, indicating
13 that he had seen this. There it is. It's Attachment, also
14 Attachment B to the staff report. I don't know if that
15 e-mail has been or needs to be introduced as a separate
16 exhibit today.
17 MR. GROSSMAN: You mean the e-mail, the e-mail
18 we're talking about from DPS, saying that they would agree
19 to it?
20 MR. GARDNER: Yes.
21 MR. GROSSMAN: Let's see. I think -- what's the
22 exhibit number on that that you have?
23 MR. GARDNER: It's Attachment B to the staff
24 report.
25 MR. GROSSMAN: All right.

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1 MR. GARDNER: Do you follow me?
2 MR. GROSSMAN: Yes, I do, but hold on one second.
3 MR. GARDNER: It's the first -- Attachment B is a
4 constellation or a compilation of exhibits relating to that
5 consent order --
6 MR. GROSSMAN: Right.
7 MR. GARDNER: -- the first one being a May 20,
8 2014, e-mail from Gene von Gunten, Manager, Well and Septic
9 Section, indicating that he accepts the amended consent
10 agreement that we're about to introduce as a separate
11 exhibit.
12 MR. GROSSMAN: Okay.
13 MR. GARDNER: And then --
14 MR. GROSSMAN: I was just looking to see if we
15 actually had that as a separate exhibit already. Let's see.
16 MR. GARDNER: Yes, I don't see it. Perhaps --
17 MR. GROSSMAN: But I think it, given its
18 significance, it would be a good idea. Do you have that, a
19 copy of that handy?
20 MR. GARDNER: Bear with me.
21 MR. GROSSMAN: Okay.
22 MR. GARDNER: I have the amendment to the consent
23 agreement. I don't know. I don't know if you pulled it
24 out, but I have one that I could offer up if you want to put
25 an exhibit number on it, just --

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1 MR. GROSSMAN: Yes, I actually, I printed one out.
2 MR. GARDNER: Good. Okay. Either way.
3 MR. GROSSMAN: So I printed one out from your
4 electronic copy. So --
5 MR. GARDNER: But let me look and see if I have
6 the e-mail then --
7 MR. GROSSMAN: For that purpose.
8 MR. GARDNER: -- that you're discussing. I think
9 I printed it out last night, if you'd bear with me a minute.
10 MR. GROSSMAN: Sure. While we're doing that, I'll
11 note that an affidavit of posting has been supplied and
12 that's Exhibit 39.
13 (Exhibit No. 39 was marked
14 for identification.)
15 MR. GARDNER: I have a copy of the e-mail we're
16 referring to, which is May 20th.
17 MR. GROSSMAN: Okay.
18 MR. GARDNER: If we could separately identify that
19 as an exhibit.
20 MR. GROSSMAN: Okay. Yes, I think that would be
21 good. All right. So now we'll have, Exhibit 40(a) will be
22 the amended consent agreement draft, and Exhibit 40(b) will
23 be the e-mail exchange, including the e-mail on May 20,
24 2014, from Gene von Gunten, manager of Well and Septic
25 Section of DPS, saying that the amended agreement is

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1 acceptable to the Department of Permitting Services pending
2 any revisions made necessary by the Hearing Examiner's
3 decision, so have those.
4 (Exhibit Nos. 40(a) and
5 40(b) were marked for
6 identification.)
7 MR. GARDNER: Mr. Grossman, I noted that you
8 started with 40(a) and (b), and my list of exhibits from
9 this morning went up through 38. Could I ask what 39 is?
10 MR. GROSSMAN: Yes. 39 is the affidavit of
11 posting.
12 MR. GARDNER: Okay. Thank you.
13 MR. GROSSMAN: Sure. Is Gene von Gunten a man or
14 woman? Do you know?
15 MR. RAZAVI: Man.
16 MR. GARDNER: Man.
17 MR. GROSSMAN: Okay.
18 MR. GARDNER: Been with the county for many, many
19 years.
20 MR. RAZAVI: Yeah, very nice guy.
21 MR. GARDNER: And I don't know if I should mention
22 this, but just for the record, that Exhibit 30, no, excuse
23 me, 40(a) is an amendment to the consent agreement, which is
24 in the record as Exhibit 30(b)(8).
25 MR. GROSSMAN: Yes. I saw that, that --

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1 MR. GARDNER: Okay.
2 MR. GROSSMAN: -- I saw the original was in
3 there --
4 MR. GARDNER: Yes.
5 MR. GROSSMAN: -- okay, when I went over the case
6 file. Okay.
7 MR. GARDNER: A very unusual circumstance.
8 MR. GROSSMAN: Yes. Okay. Let me ask you, does
9 the petitioner agree to all the conditions specified in the
10 technical staff report, Exhibit 34, as adopted and corrected
11 by the Planning Board in Exhibit 38 and as changed by me
12 regarding Nos. 4 and 5, which I'm going to read to you?
13 So I want to -- so my question will be, does the
14 petitioner agree to these conditions? And right now from
15 technical staff the condition reads that the applicant must
16 enter into an agreement with the Board of Appeals to limit
17 impervious surfaces to no more than 8.7 percent. Actually,
18 the Board sets conditions. I'd never seen it enter into an
19 agreement. I'm not sure it actually has the authority to do
20 that. And so --
21 MR. GARDNER: Yes. That wording, I think, was
22 very unusual. I don't think it's --
23 MR. GROSSMAN: Yes, I would change it.
24 MR. GARDNER: -- I don't think he enters into an
25 agreement. I think what he does is he submits this

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1 application, which contains a representation that he is
2 bound by, that the --
3 MR. GROSSMAN: Right.
4 MR. GARDNER: -- impervious surfaces will be less
5 than 8.7 percent --
6 MR. GROSSMAN: Right.
7 MR. GARDNER: -- and my engineer is here to say
8 that the number is, I think, 8.64 percent, and he agrees to
9 be bound by that.
10 MR. GROSSMAN: Right, and I would change this No.
11 4 to say that the, that the Board of -- that there will be a
12 Board of Appeals condition that --
13 MR. GARDNER: Number 4 of which report now?
14 MR. GROSSMAN: This is No. 4 of the staff's
15 recommended conditions. They have --
16 MR. GARDNER: Got you.
17 MR. GROSSMAN: -- they had 15 of them --
18 MR. GARDNER: Yes.
19 MR. GROSSMAN: -- and some of them were modified
20 by the --
21 MR. GARDNER: Yes.
22 MR. GROSSMAN: -- by the Planning Board. I've
23 included those modifications in there, but also, I would
24 change No. 4 to say that there would be a condition from the
25 Board of Appeals that petitioner must limit impervious

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1 surfaces to no more than 8.7 percent. So that's one of the
2 changes.
3 MR. GARDNER: And my client agrees to that.
4 MR. GROSSMAN: Right. And the second change is in
5 Item No. 15, which I would have it read this way: The
6 applicant must submit a copy of the approved and executed
7 amended consent agreement with the Department of Permitting
8 Services, parens, with no substantive change from the draft
9 in Exhibit, right now that's Exhibit 40(a) --
10 MR. GARDNER: Which number is that, Your Honor?
11 MR. GROSSMAN: This is No. 15 --
12 MR. GARDNER: Okay.
13 MR. GROSSMAN: -- of their listed conditions.
14 MR. GARDNER: And you're saying within 45 days?
15 MR. GROSSMAN: Well, no. I'm just saying --
16 MR. GARDNER: Or 30 days?
17 MR. GROSSMAN: I left it 30 days. I'm just --
18 MR. GARDNER: Okay.
19 MR. GROSSMAN: -- saying that the exhibit -- I
20 just put the exhibit number in my proposed change.
21 MR. GARDNER: With no substantial changes --
22 MR. GROSSMAN: Yes, no substantive changes --
23 MR. GARDNER: -- from the exhibit introduced?
24 MR. GROSSMAN: -- from the draft, Exhibit 40(a),
25 into the record of this application within 30 days after the

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1 effective date of the Board of Appeals' decision. So
2 that --
3 MR. GARDNER: My client agrees to that.
4 MR. GROSSMAN: -- essentially, it's incorporated,
5 it's the Board of Appeals incorporating the draft agreement
6 into its requirements --
7 MR. GARDNER: Right.
8 MR. GROSSMAN: -- because there is a case out
9 there that says -- that creates a doubt, at least in dicta,
10 of the Board of Appeals setting tentative conditions that
11 are dependent on subsequent actions that are not approved
12 yet by the Board. So this way, I think, we can avoid that
13 legal issue.
14 MR. GARDNER: Okay. My client agrees to that,
15 and --
16 MR. GROSSMAN: Okay.
17 MR. GARDNER: -- the reason it's there, just for
18 the record, is that the county attorney would not sign this
19 until after you grant an approval. So, basically, it gives
20 me 30 days from the day you grant approval --
21 MR. GROSSMAN: Right.
22 MR. GARDNER: -- to get the county attorney to get
23 it signed and then submitted into the record.
24 MR. GROSSMAN: I don't actually grant anything. I
25 make recommendations. The Board --

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1 MR. GARDNER: The Board grants it if --
2 MR. GROSSMAN: Yes.
3 MR. GARDNER: -- after the Board approves your
4 recommendations.
5 MR. GROSSMAN: Right, if it approves it.
6 MR. GARDNER: What?
7 MR. GROSSMAN: All right. And --
8 MR. GARDNER: Well, after the Board approves this
9 application, put it that way.
10 MR. GROSSMAN: If the Board approves the
11 application.
12 MR. GARDNER: If the Board.
13 MR. GROSSMAN: I don't want to assume anything.
14 That's their authority. Okay. So, Mr. Pacano, you agree to
15 Conditions 1 through 15 as set forth in the technical staff
16 report, as amended by the Planning Board letter and as
17 amended just now by me?
18 MR. PACANO: Yes, sir.
19 MR. GROSSMAN: Okay. All right. Let's turn then
20 to -- any other preliminary matters, Mr. Gardner?
21 MR. GARDNER: No, Your Honor.
22 MR. GROSSMAN: Okay. Do you have an opening
23 statement you wish to make?
24 MR. GARDNER: I'll just briefly make an opening
25 statement, because I think you'll want to hear from the

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1 witnesses. Your Honor, I know, has read this and I
2 appreciate that; so I know that you're very familiar with
3 this application.
4 MR. GROSSMAN: I am.
5 MR. GARDNER: Let me state on the record, I guess,
6 first, that one of the issues that Park and Planning was
7 concerned about, and I know you might have been concerned
8 about -- and I'd like to say, I appreciate this, your
9 office's patience in waiting for this application -- is that
10 my client filed this back in 2010. He bought this property
11 in 2006, not knowing anything about zoning and land use in
12 Montgomery County, and I think you've probably seen this
13 before.
14 MR. GROSSMAN: Yes.
15 MR. GARDNER: He bought what he thought was a
16 perfect agricultural use to operate a landscape contracting
17 business out of -- has a barn in the back, has a nice pond.
18 He didn't realize that the pond is a liability, not an
19 asset, because it means there's a stream going through the
20 property and therefore there's a stream buffer and you can't
21 use the majority of this property. It has a little house in
22 the front, which was very dilapidated when he bought it.
23 MR. GROSSMAN: Right.
24 MR. GARDNER: He began operating a landscape
25 contracting business. The owner before him was running some

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1 kind of business out of this place. He had trucks and
2 operation going on. So my client saw it; he thought, this
3 is perfect for what I want to do. He never lived in the
4 house, never planned to live in the house, and he's always
5 operated it as the business part of his -- office part of
6 his business.
7 There's a little road then that winds through the
8 property, a little gravel driveway, across the stream to a
9 barn in the back that has gravel parking associated next to
10 it that he's been using for his trucks and his employees.
11 There's two little sheds on the property, one next to the
12 barn in back, and there's one in the front alongside the
13 low-gravel driveway that he uses for storage of equipment.
14 So when he bought it, he thought he'd just
15 continue the business, and then, of course, the zoning
16 people from Montgomery County came in, and they told him
17 that this is not a permitted use, and he found my office and
18 we applied. He went through about a year and a half of work
19 on this, and he didn't realize, I think, when he bought it
20 and when he was going through the planning process, how
21 difficult this property would be to get a landscape
22 contracting special exception through the county and how
23 much of it he had to give up to any use as a way of
24 continuing the limited use that he's seeking.
25 So it sort of, you know, got held up for about a

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1 year and a half while he was working with Park and Planning,
2 and then about a year and a half ago we resumed the actions
3 of trying to get this approved. And it took -- and you'll
4 hear from Mr. Razavi -- many, many meetings with staff and
5 with the environmental people at Park and Planning to come
6 up with a plan that satisfied their environmental division,
7 that we were preserving and protecting as much of the
8 property as possible. And what the end result is, is
9 actually a net benefit for the environment.
10 Right now the property is primarily an open field
11 with grass, alongside a small stream and a pond. There is a
12 large .9-acre forest stand in the back and a small
13 .5-acre --
14 MR. RAZAVI: .05.
15 MR. GARDNER: -- .05-acre forest stand below the
16 pond embankment. When this is done, he is going to add to
17 the property .8 acres of additional forest, essentially a
18 50-foot strip of forest alongside the stream where there's
19 currently a small number of trees but mostly just grass, and
20 .7 acres of native meadow, which is basically another
21 50-foot strip, where available, alongside the forest. That
22 is going to substantially improve the environmental -- what
23 would be the word?
24 MR. PACANO: Aspect.
25 MR. GARDNER: Aspect of the property, because

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1 currently it's in the PMA; it's in the Patuxent River --
2 MR. RAZAVI: Management Area.
3 MR. GARDNER: What?
4 MR. RAZAVI: Patuxent Management Area.
5 MR. GARDNER: Patuxent Management Area, which has
6 a .10 percent impervious surface requirement.
7 MR. RAZAVI: No, 10 percent requirement.
8 MR. GARDNER: Ten percent impervious surface
9 requirement. The current property has 12.9 percent
10 impervious surfaces, and that's not because my client did
11 anything. He just walked into this property and continued
12 using it as is. When he is done, he's going to reduce it to
13 8.64 percent impervious surfaces, so from 12.9 to 8.64
14 percent, which will be accomplished by removing 7,039 square
15 feet of gravel parking in the back, which is right in the
16 PMA and within the stream valley buffer, and removing 1263
17 square feet of gravel in the front, which is outside the
18 stream valley buffer but still within the PMA. So a total
19 of 8,301 square feet of impervious surfaces will be removed
20 which will leave, when he's done, 10,593 square feet.
21 So he's substantially improving the environmental
22 impact of this property by not only adding forest, adding
23 native meadow, but remove impervious surfaces. And what the
24 challenge was, is when we went to Park and Planning, the
25 original thought was, get it below 10 percent, because

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1 that's what the PMA requires. Mr. Razavi came up with a
2 plan that got it below 10 percent. My client agreed to
3 that, reluctantly, but he was required to, and then we were
4 told, no, that's not good enough, we want you to get it down
5 to the minimum required, and that's when my client sort of
6 balked, but we came back and we did that.

7 I think now he understands. The goal was not just
8 to get it below 10 percent, but because part of the active
9 uses are within the stream valley buffer -- the part in back
10 by the barn is within the stream valley buffer but has
11 always been there; it's been there for many, many years --
12 they were, Park and Planning were willing to allow that to
13 continue provided he get this not only below 10 percent but
14 down to the minimum necessary to conduct his business.

15 That was the goal and that's what he did, and he
16 did that by removing gravel in the front to get it down to
17 two parking spaces, and that's an interesting challenge
18 because in the front there are currently, I think, four or
19 five parking spaces. We wanted three, but three requires
20 that they be at least 50 feet back of the roadway, which is
21 required for a parking facility in connection with a
22 landscape contracting business or any -- yes. So Park and
23 Planning said we will allow two because those are in
24 connection with a home and you have allowed two parking
25 spaces in connection with a single-family home, so we'll

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1 allow two spaces, even though they're within the 50-foot
2 setback. So he agreed. He will be removing gravel and only
3 having two, and then most recently we were told that one of
4 them needs to be the handicap parking space. So he's
5 agreed. He will make one of those a handicap parking space,
6 and there's ample space there. That's not an issue; it's
7 just, he's going to have to remove this. And he's agreed
8 also to put curb stops. So they will be delineated with
9 curb stops on the gravel.

10 The tree in front will be removed, and we're
11 seeking a variance for that. We submitted a letter for a
12 variance on that, which is --

13 MR. GROSSMAN: I presume that was granted at the
14 time that the --

15 MR. GARDNER: It was granted by the Planning
16 Board.

17 MR. GROSSMAN: Planning Board.

18 MR. GARDNER: I guess you don't have to deal with
19 that.

20 MR. GROSSMAN: I don't have the documentation. I
21 do need the documentation of the grant of both the tree
22 variance and the forest conservation plan. That's not in
23 the record yet.

24 MR. GARDNER: Okay.

25 MR. GROSSMAN: I understand orally from technical

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1 staff that the Planning Board approved those, but --

2 MR. GARDNER: Right.

3 MR. GROSSMAN: -- but we do need something in the
4 record, demonstrating that.

5 MR. GARDNER: Yes, the forest conservation plan
6 and the tree variance. Okay.

7 MR. GROSSMAN: Right, the approvals of them.

8 MR. GARDNER: Yes. Thank you very much. We
9 submitted a letter. We were advised that that was
10 necessary; so we submitted that letter, seeking a tree
11 variance, which is, I -- should be in the record somewhere.
12 Oh, here it is. It's (e), here it is, 30(e).

13 MR. GROSSMAN: Okay.

14 MR. GARDNER: And the reason for the tree variance
15 -- I guess if I don't need to belabor it, I won't -- but
16 basically, there's a tree, you'll see in pictures. It's got
17 a very small grass area below it, which is nowhere near
18 contiguous with the tree root system, and it's been impacted
19 over the years by the fact that it's surrounded by gravel,
20 et cetera, and it's dying and it's dangerous because it will
21 fall onto the house. So they've agreed to remove that, and
22 my client intends to do that as part of the removal of the
23 gravel, and he'll place all that in grass --

24 MR. GROSSMAN: Okay.

25 MR. GARDNER: -- and improve the front of the

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1 property.

2 Now, in the rear of the property -- so the two
3 parking spaces are going to be used in front strictly for
4 two office employees of the home, which, at the present
5 time, he intends to be he and his wife. They are the ones
6 that run the business out of the house. And while I'm on
7 the front, let me continue with the consent agreement.

8 MR. GROSSMAN: Right.

9 MR. GARDNER: There was a consent agreement signed
10 and filed in 1999 by the prior owner because they had a
11 septic field on the property which, in part, was located on
12 the adjoining property, and when it had problems, they
13 needed to redo it and they got the Well and Septic Division
14 involved. And Well and Septic said, we need you to move it
15 all onto your property and, because you don't have
16 sufficient area for this to operate properly, we're going to
17 permit you to put it where it is currently, which is in the
18 front, under the gravel, with a condition that there'll be
19 no expansion of the home beyond the current use. And it was
20 an experimental system, but it's been working fine, with no
21 problems.

22 So when my client sought to build this special
23 exception on the property or receive an application of
24 approval for a special exception, we were put in contact
25 with Gene von Gunten, the manager of Well and Septic, and

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1 we've worked with him to come up with a solution. And he
2 has agreed -- and the evidence is in the record -- that the
3 current use of the home as a -- well, the allowed use of the
4 home as a home, although it's not being used as one, would
5 actually generate more sewer and water than the use of this
6 as a special exception for no more than eight employees. So
7 he said, basically, that he would agree to amend the consent
8 agreement to allow us to continue to use it as a special
9 exception with the condition that it not be used for more
10 than eight employees of the business, and that's what is in
11 the amendment to the consent agreement, which is now offered
12 and introduced as 40(a) --
13 MR. GROSSMAN: Right.
14 MR. GARDNER: -- as Exhibit 40(a).
15 MR. GROSSMAN: It wouldn't be used as a home,
16 that's the condition --
17 MR. GARDNER: Yes.
18 MR. GROSSMAN: -- as long as it's being used as an
19 office.
20 MR. GARDNER: As a special exception. Now, I did
21 put in the language that if he -- as long as it's being used
22 in connection with the landscape contracting operation, the
23 plumbing in the house may be used by a maximum of eight
24 persons, including the owner and any employees of the
25 business.

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1 MR. GROSSMAN: Hopefully not at one time.
2 MR. GARDNER: No, that's true. And we would --
3 the original one said there'll be no, or I think this one
4 said there'll be no, yes, and no -- and the house may not be
5 used as a residence, and no washing machine may be connected
6 to the plumbing, because a washing machine generates a whole
7 lot of effluent. So --
8 MR. GROSSMAN: Right.
9 MR. GARDNER: -- there'll never be a washing
10 machine, even with the office there. It's just going to be
11 used as, basically, a toilet and a sink --
12 MR. GROSSMAN: Right.
13 MR. GARDNER: -- and maybe some little, you know,
14 coffee machine or what have you --
15 MR. GROSSMAN: Okay.
16 MR. GARDNER: -- you know, the kitchen for limited
17 purposes such as that. Nobody sleeps there. Nobody takes
18 showers there. Nobody uses their washing there. So it has
19 a lot less impact on the septic than it would if it was a
20 home, and he's agreed to that, and we intend to draft -- we
21 intend to get this signed by the Planning Board, excuse me,
22 by the county attorney and the director of the Department of
23 Permitting Services. It's been approved by the manager of
24 Well and Septic, and he's indicated it won't be any problem.
25 We agree to get that signed and submitted to your office

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1 within 30 days of the approval of the special exception if
2 this is approved by the Board of Appeals.
3 So that's, that's basically what will happen at
4 the front of the home. Let me continue a little bit more on
5 the front of the home.
6 MR. GROSSMAN: By the way, if I recall, there was
7 a problem with the soil, didn't perc sufficiently to expand
8 the septic; is that --
9 MR. GARDNER: Yes.
10 MR. GROSSMAN: -- is that correct?
11 MR. GARDNER: Yes.
12 MR. GROSSMAN: The soil doesn't perc, the septic
13 won't work, is what I usually say. But --
14 MR. GARDNER: Well, that's why there's an
15 experimental septic, which is a little smaller, the field,
16 basically. There's a tank that's normal size, but the field
17 is not as large as, I guess, what they want normally. So
18 they allowed him to put a -- not us, but the prior owner --
19 a smaller field so --
20 MR. GROSSMAN: Okay.
21 MR. GARDNER: -- as an experimental system.
22 MR. GROSSMAN: I mean, if DPS is satisfied with
23 it --
24 MR. GARDNER: Yes.
25 MR. GROSSMAN: -- I don't have a problem with it.

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1 MR. GARDNER: Right. Now, while we're on that
2 subject, you'll also learn that the stream valley buffer,
3 according to the maps at Park and Planning, are 150 feet
4 from the stream, which takes it basically all the way to the
5 house, and environmental agreed that we're going to allow a
6 100-foot stream buffer on the -- I don't know. What side is
7 this? North? South? What side is this? Is this -- the
8 western side of the property where the house is. That's
9 north; this is west, right?
10 MR. GROSSMAN: Yes, I see the diagram doesn't have
11 north on the top.
12 MR. RAZAVI: No, it's to the -- it's actually to
13 the northwest.
14 MR. GARDNER: To the northwest. Yes, it's --
15 MR. GROSSMAN: Yes. My feeling is, all diagrams,
16 since some of us are so, brains are so tuned in to north
17 being up --
18 MR. RAZAVI: Up.
19 MR. GROSSMAN: -- that we always hope that every
20 diagram has north at the top. It makes it easier for us to
21 focus.
22 MR. GARDNER: We just assume that when we look at
23 something, don't we?
24 MR. GROSSMAN: Yes. I just --
25 MR. RAZAVI: We try for that, but sometimes it

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1 doesn't work out.
2 MR. GROSSMAN: I --
3 MR. GARDNER: So to the northwest, where the house
4 is, essentially, it's 100 foot, will be placed in a forest
5 conservation easement, which is the area that contains the
6 meadow and the forest. To the south side, the entire thing,
7 basically, is within the stream valley buffer. The stream
8 valley buffer will actually go to, whatever it's called,
9 south. What side is this? The south, no, the east.
10 MR. RAZAVI: That's to the east.
11 MR. GARDNER: To the east where the existing
12 forest is -- right, you put that on there -- the stream
13 valley buffer actually goes all the way to the edge of the
14 property, and all of it is going to be contained within
15 that. So that's all protected except for the impervious
16 surface areas, which are the actual use of the property, and
17 Mr. Razavi, I guess, can discuss this far better than I.
18 MR. GROSSMAN: Okay.
19 MR. GARDNER: So that's a little basic overview,
20 and the reason Park and Planning agreed that we, that they
21 would permit 100 foot to be used as a stream valley buffer,
22 essentially, is because the additional space contains the
23 existing well and some actual space, so that if this septic
24 were ever to fail in the future, there'd be some land area
25 that a new septic could potentially be constructed on. So

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1 they agreed to that as part of the forest conservation
2 approval, plan approval, and then I'll continue onto the
3 rear of the property.
4 The reason -- again, we sought to get to the
5 limit, the minimum amount of impervious surfaces necessary
6 to conduct the business, and we did that as follows:
7 Basically, there'll be eight, five trucks and three
8 trailers. Those five trucks and three trailers will be
9 parked on the parking area, the eight spaces -- which will
10 be designated with wheel stops, as shown on the site plan --
11 to the west -- is it west?
12 MR. RAZAVI: No. That would be east.
13 MR. GARDNER: East. To the east side, adjoining
14 the two-story frame building.
15 MR. RAZAVI: To north of the building.
16 MR. GARDNER: North of the building.
17 MR. RAZAVI: Yeah.
18 MR. GARDNER: Very good. To the north of the
19 building. Now, there's four more spaces which are parallel
20 spaces. They will not be used for parking of the trucks and
21 trailers, but they will be left open for use by the
22 employees that come and go from the property on a daily
23 basis. The six employees, because there's eight maximum,
24 Mr. Grossman --
25 MR. GROSSMAN: Yes.

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1 MR. GARDNER: -- two are going to park at the
2 house, six are going to go to the back of the property,
3 okay, and frankly, my client will tell you that he never
4 expects six to come and go because the employees he had
5 almost always carpool. He's likely to have two or three
6 cars, but in the unlikely eventuality that actually all six
7 have a separate vehicle, there are four parallel spaces for
8 them to park where there's actually a number 4. You can see
9 that on this. I don't know why that number 4 is there, but
10 it is. What does that --
11 MR. RAZAVI: It means four spaces.
12 MR. GARDNER: Four spaces --
13 MR. RAZAVI: Yeah.
14 MR. GARDNER: -- okay, great. The four spaces are
15 designated on the exhibit, and then the eight spaces are
16 designated. And then what's going to happen is, cars come
17 and go every day, excuse me, trucks, because all the
18 business is conducted off site --
19 MR. GROSSMAN: Right.
20 MR. GARDNER: -- so at least one truck and one
21 trailer are going to leave this site every day, and those
22 two spaces then will be dual-use spaces. The two cars that
23 come for the two employees will park in those two spaces
24 that were exited by the truck and the trailer that just
25 left, and that's, again, if my client ever has the maximum

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1 eight trucks and trailers that he's seeking. Currently he
2 has three trucks and three trailers, but he's seeking a
3 maximum of five --
4 MR. GROSSMAN: Right.
5 MR. GARDNER: -- so that he has a little room for
6 expansion in the future.
7 MR. GROSSMAN: And this area you're talking about
8 is the area that's marked right next to Pavement to be
9 Removed and then there's the number 4, is that --
10 MR. GARDNER: Yes.
11 MR. GROSSMAN: -- on the east of the property?
12 MR. GARDNER: Precisely.
13 MR. GROSSMAN: Okay.
14 MR. GARDNER: And that 4 designates the four --
15 MR. RAZAVI: Spaces.
16 MR. GARDNER: -- parallel parking spaces.
17 MR. GROSSMAN: Right.
18 MR. GARDNER: And so by doing that in that way, we
19 reduce this to the very minimum number of parking spaces
20 that he would need for this, and he was able to add the
21 Pavement to be Removed area, which was important to Park and
22 Planning staff and environmental, alongside the pond to make
23 as much of that, which currently goes right up to the lip of
24 the pond -- I think within two or three feet, it's gravel,
25 which is obviously not, not a very wise environmental plan,

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1 but it was done years ago by the prior owner of the
2 property, and he'll remove that. He's already moved some of
3 it, but he didn't want to remove more of it because that
4 would be a violation of, you know, of the Permitting
5 Services' rules, until this special exception was approved.
6 He's going to remove as much of that as possible and still
7 permit him to have enough space for these 12 parking spaces
8 and for vehicles to come and go to the two-story frame
9 barn --
10 MR. GROSSMAN: Okay.
11 MR. GARDNER: -- and that's how we got it down to
12 8.64 percent; from 10 percent, would have left a lot more of
13 this gravel. And while you're looking at that drawing, when
14 you look at the barn and you look at the little frame shed
15 next to it, you'll see beyond that: Area to be Cleared and
16 Reforested. Are you with me? To the south of the barn --
17 MR. GROSSMAN: Okay. Yes.
18 MR. GARDNER: -- the large area to be cleared and
19 reforested --
20 MR. GROSSMAN: Yes.
21 MR. GARDNER: -- 4,675 square feet.
22 MR. GROSSMAN: Right.
23 MR. GARDNER: Yes. That all currently is gravel,
24 and he's going to give up all that gravel and has agreed to
25 reforest it. Now, you asked, I believe -- no. Elsabett

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1 Tesfaye asked or Jo Ann Kishter asked if there would need to
2 be a permit from -- who is it? Well and Septic?
3 MR. RAZAVI: DPS.
4 MR. GARDNER: DPS in order to clear. Originally
5 it was unclear because there's a 5,000-square-foot --
6 MR. RAZAVI: Requirement.
7 MR. GARDNER: -- requirement, no, exception. If
8 you have 5,000/less, you don't need a permit --
9 MR. GROSSMAN: Right, you don't need a permit,
10 right.
11 MR. GARDNER: -- but there will be more than
12 5,000, even though it's a small amount out front, a small
13 amount out back. You can see, 4600 in back, you know, but
14 they said, yes, you'll need a permit, and he's willing to
15 get that, but they do not require a --
16 MR. RAZAVI: Stormwater management.
17 MR. GARDNER: -- stormwater management plan to be
18 submitted because all he's doing is removing gravel; he's
19 not adding any.
20 MR. GROSSMAN: Okay.
21 MR. GARDNER: So there won't be a requirement of a
22 well and septic -- of stormwater management, and while we're
23 on that subject, he's not making any changes to any of the
24 structures; they're all staying the way they are. The only
25 thing he's doing, construction-wise, is removing gravel,

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1 which improves the environmental impact of this site,
2 environmental condition, I guess, is the best word, of the
3 site, lessens its impact because he's removing impervious
4 surfaces, adding forest. He's doing all good things. I
5 mean, it's a win-win. He gets what he wants, the
6 county/environment gets what they want, and in general, I
7 think, everyone benefits from this plan being approved, and
8 with that said, I think I'll start my testimony.
9 MR. GROSSMAN: All right. One other thing. I
10 assume that you wish to adopt the findings made by the
11 technical staff --
12 MR. GARDNER: Yes.
13 MR. GROSSMAN: -- in its report as part of your
14 evidence?
15 MR. GARDNER: Yes --
16 MR. GROSSMAN: Okay.
17 MR. GARDNER: -- and the transmittal report from
18 the Planning Board.
19 MR. GROSSMAN: All right. That's Exhibits 34 and
20 38.
21 MR. GARDNER: Yes. And if Your Honor would like,
22 there was a -- I would like to offer this as another
23 exhibit. What number would we be up to? Forty --
24 MR. GROSSMAN: I think we're up to 41.
25 MR. GARDNER: 41. This is the slide presentation

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1 that was put on by Elsabett Tesfaye at the hearing before
2 the Planning Board.
3 MR. GROSSMAN: Okay.
4 MR. GARDNER: I have it electronically. I can
5 forward it to you because you may want to use some of it --
6 MR. GROSSMAN: Okay.
7 MR. GARDNER: -- I don't know, as part of your
8 decision.
9 MR. GROSSMAN: That would be helpful.
10 MR. GARDNER: And I can also submit the portions
11 of the slide presentation that was, that was done by Jo Ann
12 Kishter in connection with the -- would this be 42?
13 MR. GROSSMAN: Yes, if it's something --
14 MR. GARDNER: Yes.
15 MR. GROSSMAN: -- in addition. So 41 is technical
16 staff slide presentation to the Planning Board. Okay.
17 (Exhibit No. 41 was marked
18 for identification.)
19 MR. GARDNER: And 42 is technical staff --
20 portions of technical staff presentation to the Planning
21 Board on the final forest conservation plan.
22 MR. GROSSMAN: Okay.
23 MR. GARDNER: One second. And I think these
24 actually summarize very well their rather lengthy staff
25 report, and this is three pages, Your Honor. It has --

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1 MR. GROSSMAN: Okay.

2 MR. GARDNER: -- two exhibits and a summary of the

3 findings.

4 MR. GROSSMAN: Okay.

5 MR. GARDNER: It's not in color. Their

6 presentation was in color, but I didn't print it in color.

7 I will forward an electronic version to your office in

8 color. I don't know if it matters.

9 MR. GROSSMAN: Okay. So this is the technical

10 staff's summary and diagrams re, for the Planning Board, re

11 forest conservation plan. By the way, what the Planning

12 Board approved, was that a preliminary forest conservation

13 plan or is that a final plan?

14 (Exhibit No. 42 was marked

15 for identification.)

16 MR. RAZAVI: It's a final.

17 MR. GROSSMAN: Okay. Okay.

18 MR. GARDNER: Thank you. With that done, I would,

19 I would call Mr. Razavi.

20 MR. GROSSMAN: Okay. And you've already been

21 sworn, Mr. Razavi. So if you want to proceed, counsel.

22 MR. GARDNER: Yes.

23 DIRECT EXAMINATION

24 BY MR. GARDNER:

25 Q Please state your name.

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1 A Mohammad Razavi, also known as Mike Razavi.

2 Q Mr. Razavi, where are you employed?

3 A RAZTEC Associates, Incorporated.

4 Q And what does that company do?

5 A Business of providing civil engineering,

6 consulting services, preparation of plans for land

7 development projects.

8 Q Are you a civil engineer?

9 A Yes, sir.

10 Q And can you give us your professional

11 designations?

12 A I am a professional engineer, registered in the

13 State of Maryland.

14 Q Okay. And how long have you been doing this type

15 of work?

16 A Twenty-eight years.

17 Q And were you employed in connection with this

18 project?

19 A Yes, I was.

20 Q By whom?

21 A By Mr. Pacano.

22 Q And in that regard, what did you do? What, just

23 generally, what were you asked to do?

24 A We were asked to provide plans and consulting

25 services in relation to obtaining approval of forestry

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1 requirements in general -- forest stand delineation, forest

2 conservation -- and also aid in the preparation of site

3 plans for this special exception application request.

4 Q And all the plans had been submitted in this, in

5 this case, were prepared by you or under your direction?

6 A Under my direction and by me.

7 Q And they included the final forest conservation

8 plan?

9 A Yes.

10 Q And that's submitted in the record as 30(b)(5).

11 Was that approved by the Planning Board at their hearing in

12 June?

13 A Yes.

14 Q And --

15 MR. GROSSMAN: Let's hold off for one second.

16 Let's deal with the expert qualification first.

17 MR. GARDNER: Okay.

18 MR. GROSSMAN: Is there a résumé in the file for

19 Mr. Razavi or --

20 MR. GARDNER: I don't believe so. Do we need one?

21 BY MR. GARDNER:

22 Q Do --

23 A I don't have one with me.

24 Q Do you have a CV with you?

25 A No.

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1 Q Where did you go to school?

2 A University of Minnesota.

3 Q And when did you graduate?

4 A 1986.

5 Q With a degree in?

6 A Bachelor of civil engineering.

7 Q Okay. When were you qualified as a civil

8 engineer?

9 A I obtained my license in 1997.

10 Q From where?

11 A State of Maryland.

12 Q And what is that license?

13 A It's a professional engineer's license in the

14 State of Maryland.

15 Q Okay. And what does that allow you to do?

16 A Provide engineering services, including design,

17 preparation of plans, signatory to plans, as allowed by the

18 state.

19 Q Okay. And that permits you to prepare site plans?

20 A Plans and land development plans.

21 Q And to --

22 MR. GROSSMAN: Have you ever testified as an

23 expert before?

24 THE WITNESS: I have not.

25 MR. GROSSMAN: Okay.

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1 BY MR. GARDNER:
2 Q Okay. Are you an expert in the field of
3 engineering services?
4 A I believe I am.
5 Q No, don't say, I believe. Are you?
6 A I am, yes.
7 Q Okay. And you've been operating as an engineer
8 since 19 what?
9 A 86 --
10 Q Okay.
11 A -- but as a professional engineer since 1997;
12 prior to 1997, under the guidance of other civil engineers
13 in my profession.
14 Q Okay.
15 MR. GROSSMAN: Do you have your license number, by
16 the way?
17 THE WITNESS: Yes, 22742. It's actually on the
18 plans too. Oh, no, it's not on those plans because those
19 are forest conservation plans. On the site plan, it should
20 be.
21 MR. GROSSMAN: Okay. I see a seal on here. Is
22 this your seal and a signature, dated 4/9/14, on Exhibit
23 30(f), the special exception plan?
24 THE WITNESS: Is it of the site plan, Your Honor?
25 Yes.

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1 MR. GROSSMAN: Well, we've labeled it the special
2 exception plan.
3 THE WITNESS: Yes.
4 MR. GROSSMAN: Okay. I don't see a number there,
5 but -- not, at least not on the, on the seal.
6 THE WITNESS: There should be a box --
7 MR. GROSSMAN: Okay.
8 THE WITNESS: -- above the seal --
9 MR. GROSSMAN: Okay.
10 THE WITNESS: -- which says --
11 MR. GROSSMAN: I see. License No. --
12 THE WITNESS: Yes.
13 MR. GROSSMAN: -- 22742?
14 THE WITNESS: Yes.
15 MR. GROSSMAN: Expires June 15, 2014?
16 THE WITNESS: At the time, but of course, it's
17 been extended to June 15, 2016, and I have --
18 MR. GROSSMAN: Okay.
19 THE WITNESS: -- a copy of my license. I can show
20 you.
21 MR. GROSSMAN: Do you have that with you?
22 THE WITNESS: Yes --
23 MR. GROSSMAN: Okay. Yes, that would be good,
24 just so --
25 THE WITNESS: -- I have a small portion, wallet

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1 portion.
2 MR. GROSSMAN: All right. Just because the one
3 that's stamped on --
4 THE WITNESS: No problem, yeah.
5 MR. GROSSMAN: -- the plan is expired now. So --
6 THE WITNESS: Yeah. It just expired a couple
7 weeks -- it would have expired a couple of weeks ago, but of
8 course, before that I extended it.
9 MR. GARDNER: Here's the license, Your Honor.
10 MR. GROSSMAN: Okay. Okay. Thank you.
11 BY MR. GARDNER:
12 Q Do you regularly work with the staff at Park and
13 Planning for Montgomery County?
14 A I do.
15 Q In connection with what type of work?
16 A Anything to do with land development projects,
17 including subdivision plans, site plans; in this situation,
18 special exception plans.
19 Q How many special exceptions have you involved in
20 in Montgomery County before this, if you know?
21 A I don't recall.
22 Q Okay. How many preliminary plans, or are you
23 going to give me the same answer, you don't recall?
24 A Many, many.
25 Q Okay.

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1 MR. GROSSMAN: I think I've heard sufficient.
2 MR. GARDNER: Okay.
3 MR. GROSSMAN: I'll note for the record that I've
4 reviewed Mr. Razavi's license extension and it does indicate
5 extension until June of 2016, and I take it you're offering
6 Mr. Razavi as --
7 BY MR. GARDNER:
8 Q Now, when you do the forest --
9 MR. GARDNER: I'm sorry. I didn't mean to
10 interrupt.
11 MR. GROSSMAN: Well, I take it you're offering
12 Mr. Razavi --
13 MR. GARDNER: Yes.
14 MR. GROSSMAN: -- as an expert in civil
15 engineering?
16 MR. GARDNER: Yes.
17 THE WITNESS: Yes.
18 MR. GROSSMAN: All right. And given the
19 background he's described and his licensing by the State of
20 Maryland, I accept him as an expert in civil engineering.
21 MR. GARDNER: So now next time he's asked the
22 question he can say he was accepted.
23 MR. GROSSMAN: You'll be able to say you've
24 testified as an expert.
25 BY MR. GARDNER:

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1 Q Do you like that?
2 A Yes, I do.
3 Q All right. Now, when you do a forest conservation
4 plan, you do it as the supervisor of someone else, correct?
5 A Yes. Forest conservation plans need to be
6 prepared under the guidance and approval of a qualified
7 professional environmental consultant which is qualified by
8 the State of Maryland. In that practice, what we do is we
9 prepare all the plans, the drawings that you would see, and
10 it's reviewed and signed by the qualified professional,
11 which all of our forest conservation and forest stand
12 delineation plans are consulted by Klebasko Environmental,
13 who is a, the gentleman, the company, small firm that
14 provides those services to us, but we prepare the actual
15 plans. We put it all together, we have knowledge of it, he
16 reviews it, and under his guidance we're able to provide
17 those services.
18 Q And his name is listed on that forest --
19 A Yes.
20 Q -- conservation plan, correct?
21 A Yes, Michael J. Klebasko, yes.
22 MR. GROSSMAN: I see that and that's on Exhibit
23 19(a)(1), and let me just jot that down.
24 BY MR. GARDNER:
25 Q All right. Now, just briefly -- I mean, I'm going

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1 to ask you in a minute to go through this plan --
2 A Sure.
3 Q -- which I've put up on an easel. Before you do
4 that, just briefly, would you walk us through the history of
5 this application, what you were asked to do by Planning
6 Board staff, what solutions were reached, and what changes
7 were made in the plan over time to do that?
8 A Initially, when we first started out, a natural
9 resource and forest stand delineation plan was prepared,
10 again, under the guidance of Klebasko Environmental, to
11 provide, provide an inventory of what existed on the site.
12 Once that was established and the plan was approved by Park
13 and Planning, the next step was to provide a forest
14 conservation plan.
15 MR. GROSSMAN: All right. NRI/FSD --
16 THE WITNESS: Yes, sir.
17 MR. GROSSMAN: -- was prepared by Mr. Klebasko?
18 THE WITNESS: Yes.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: A forest conservation plan was
21 prepared so that we could determine what the requirements
22 were to bring this property, so to speak, up to grade in
23 terms of all the environmental issues and the fact that it
24 was in the PMA zone and satisfy the requirements. The PMA
25 generally calls for a 10 percent cap on impervious cover on

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1 any site, and it was determined that the existing conditions
2 exceeded that 10 percent cap. So one of the initial issues
3 was to try and provide the reduction of existing impervious
4 conditions to below the 10 percent cap.
5 During that process, it was also determined, I
6 believe through a meeting, if I recall, that Park and
7 Planning --
8 BY MR. GARDNER:
9 Q Now, the time period we're referring to is when?
10 A On here?
11 Q Well, we originally filed this in August of 2009.
12 A I think it would have been probably around early
13 2009, prior to the filing.
14 Q Okay.
15 A So it was about that time frame. I don't have the
16 exact dates memorized, but it was about that date.
17 Q And then we asked to have this postponed in
18 February of 2010. Do you remember that?
19 A The special exception application?
20 Q Yes. Yes. So some --
21 A I do remember that you requested that. I don't
22 remember the exact date.
23 Q Okay. But is it around that time frame --
24 A Yes.
25 Q -- we're referring to?

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1 A Yes, it is.
2 Q Okay. 2009/2010.
3 A So during, I believe it was during a meeting, it
4 was determined that Park and Planning also wanted some
5 additional determination of what to do within the stream
6 valley buffer and what would be allowed in terms of keeping,
7 keeping certain portions of the site outside of the stream
8 valley buffer, because it was, from what I recall, it was my
9 understanding that the stream valley buffer, as established,
10 would require reforestation, and basically, that's how the
11 project moved forward, towards that end.
12 Later on it was -- we went through a couple of
13 submissions of plans, forest conservation plans, and during
14 that process, it was a matter of basically, almost
15 perfecting the plan to the point of what Park and Planning
16 wanted and what they thought they could live with and
17 approve as part of a final forest conservation plan.
18 So it kind of evolved. I guess that's the best
19 term for it. It evolved, and it was later determined that
20 the forest conservation plan should be modified to show
21 absolutely what was needed by the applicant to use the site
22 for his business and for his practice, and that's when we
23 arrived at the requirement of what would be reforested, how
24 much impervious area would need to be removed, which is now
25 down about 8.64 percent, and what parts of the site needed

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1 to be reforestation, what part of the site needed to be
2 meadow outside the reforestation. For example, the
3 embankment of the pond to the south of the property is --
4 because it's an embankment to a pond, Park and Planning did
5 not want that to be reforested; they wanted it just to be
6 meadow conditions. So we modified plans to provide that
7 requirement, and we basically, over time, arrived at a
8 situation where we are now with the way the plan was
9 approved by Park and Planning a few weeks ago.

10 Q So basically, getting back to that, I asked that
11 this be continued in February. There was a meeting with the
12 Planning Board in January of 2010, just before -- with the
13 staff. Do you recall that?

14 A Yes.

15 Q Okay. And is that where they indicated that they
16 wanted this reduced beyond the 10 percent, to the minimum
17 necessary?

18 A I believe that was about the time frame, yes.

19 Q Okay. And then that's what led to us asking it be
20 continued so that we could rework the plan?

21 A That's correct.

22 Q Okay. And then you continued your work with the
23 applicant and staff to rework the plan?

24 A That's correct.

25 Q Leading eventually to the plan that was submitted

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1 in April of 2014?

2 A Yes.

3 Q And that's the final plan now?

4 A Yes.

5 Q Okay. What, generally, does that provide?

6 A You mean the plan as it stands now?

7 Q Yes.

8 A It provides a reforestation of 0.8 acres, a meadow
9 area of 0.7 acres, removal of impervious areas that result
10 in a reduction of percentage from 12.67 percent to 8.64
11 percent, so that's approximately a third of the existing
12 impervious area, and removal of a dead tree in front of the
13 site next to, or in front of the existing building, and
14 placement of a portion of the site in reforestation, and
15 that's about it.

16 Q Now, why don't you step up here, and I put up on
17 this easel a copy of Exhibit 30 paren 6. This is the final
18 site plan, is it?

19 A Yes.

20 Q Okay. This is a large copy. I don't know how
21 best to do this so that Mr. Grossman can follow along.

22 MR. GROSSMAN: Well, I have a copy here. So I can
23 follow along.

24 MR. GARDNER: Okay.

25 BY MR. GARDNER:

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1 Q You didn't bring a pointer, did you? You don't
2 have one of those nice --

3 MR. GROSSMAN: I have a laser pointer, if that'll
4 help.

5 MR. GARDNER: Do you? Oh, sweet.

6 BY MR. GARDNER:

7 Q Laser pointer.

8 A Yes, sir.

9 Q So, as you go through this, you want to stand to
10 the side so that --

11 A Yes.

12 Q -- he can watch what we're doing, I guess.

13 A Okay.

14 Q So is this the final site plan?

15 A Yes, it is.

16 Q Okay. Why don't you show us on the very front,
17 why don't you walk us through the front of the property,
18 beginning with the house.

19 A This is the house in the front of the property.
20 This general area, gravel area, is the entry to the site and
21 the existing, the existing parking area in front of the
22 house.

23 MR. GROSSMAN: All right.

24 BY MR. GARDNER:

25 Q And what changes are going to be made to that?

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1 A The changes are, if you look at this hatched area,
2 this hatched area is an area that encompasses the tree No.
3 5. The tree itself will be removed because it's dead. The
4 hatched area is the gravel area that will be modified to
5 become grass area, so this portion, and you will see it
6 encompassed by the LOD to the outside of the tree. And the
7 hatched area, in general, itself, will be an area that will,
8 the gravel will be removed out of, and it will be grassed as
9 a, sort of a non-impervious area.

10 MR. GROSSMAN: So just for the record, the part
11 you're pointing to is the southwest corner of the lot?

12 THE WITNESS: It's more to the -- yes. I would
13 say west of the lot.

14 BY MR. GARDNER:

15 Q Southwest corner?

16 A Southwest of the lot, yes, sir, southwest.

17 MR. GROSSMAN: Okay. And it's adjacent to Ridge
18 Road, correct?

19 THE WITNESS: It's adjacent to Ridge Road, that's
20 correct.

21 MR. GROSSMAN: Okay.

22 BY MR. GARDNER:

23 Q All right. And there'll be two parking spaces
24 installed there?

25 A Yes, there will be two parking spaces --

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1 Q With curb stops, as shown?
2 A -- with curb stops, as shown, installed.
3 Q And one of those will be a handicapped space?
4 A Yes. The striping to the right indicates a
5 handicapped space, because handicapped spaces in general,
6 well, not in general, specifically, are wider and require an
7 additional eight-feet-wide area for van-accessible. So when
8 you're providing handicapped spacing in a limited number,
9 meaning that it's only one in this case, you always provide
10 the van-accessible as opposed to a car-accessible handicap,
11 and we've done that in this, for this particular site.
12 MR. GROSSMAN: What's the meaning of the big X on
13 top of the house?
14 THE WITNESS: The X on -- the X is through the
15 tree.
16 MR. GROSSMAN: I see.
17 THE WITNESS: It is meaning removal of the tree.
18 That's how Park and Planning requires removal of trees to be
19 shown on plans.
20 MR. GROSSMAN: Okay. It looks like it's sitting
21 right in the middle of the house. Does that mean --
22 MR. GARDNER: Well, the house is --
23 BY MR. GARDNER:
24 Q Show him where the house is.
25 A The house is behind, behind the tree.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: It's a dashed, sort of rectangular
3 structure, and it's got the words Two-Story Frame and No.
4 28621 in the center of it.
5 MR. GROSSMAN: I see. Okay.
6 BY MR. GARDNER:
7 Q All right. Now, the existing septic is under that
8 gravel area?
9 A Yes, the existing septic is under that gravel
10 area. It's an existing septic system that's been there, I'm
11 not sure for how long but quite a while.
12 Q And there's a consent agreement?
13 A Yes.
14 Q On the record?
15 A Yes.
16 Q Which says what, essentially?
17 A It says that the septic can be continued to be
18 used by the building for the use of a landscape contractor's
19 business given that there's eight employees only.
20 Q That's the one that we've proposed?
21 A Yes.
22 Q And that was approved by who?
23 A Gene von Gunten at Montgomery County DPS.
24 Q You've worked with him, haven't you?
25 A Yes, I have, many years.

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1 Q You actually put me in touch with him?
2 A Yes.
3 Q Okay. What is his role in connection with Well
4 and Septic for Montgomery County?
5 A Mr. von Gunten is the chief of the Well and Septic
6 Division of Montgomery County, Department of Permitting
7 Services, Rockville.
8 Q So he's the head guy?
9 A Yes, he is.
10 Q And he knows what well and septic --
11 MR. GROSSMAN: He can't testify as to what --
12 MR. GARDNER: Okay. Fair enough.
13 MR. GROSSMAN: -- the gentleman knows.
14 MR. GARDNER: All right.
15 BY MR. GARDNER:
16 Q All right. Now, walk us through now the gravel
17 driveway as it goes to the back of the property.
18 A The driveway starts with a small wind towards the
19 back, but it straightens out towards the back of the site.
20 It crosses a culvert that connects the stream to this
21 existing large pond, which I believe is a farm pond, is what
22 we call it in the business --
23 MR. GROSSMAN: I'm sorry. You call it a farm
24 pond?
25 THE WITNESS: Yeah.

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1 MR. GROSSMAN: Okay. What does that mean?
2 THE WITNESS: It's not a stormwater management
3 pond, in other words.
4 MR. GROSSMAN: I see. Okay.
5 THE WITNESS: But the stream feeds into the pond,
6 and the gravel driveway crosses across it for access to the
7 rear of the lot, and --
8 BY MR. GARDNER:
9 Q Now, while we're on the pond --
10 A Yes.
11 Q -- are any changes in the pond being proposed?
12 A The only changes to the pond are to the east of
13 the pond. Gravel around the pond will be removed and that
14 area will become a meadow area, and four trees will be
15 planted to supplement the four or five trees that exist in
16 the area around the pond.
17 Q And the embankment for the pond is located where?
18 A The embankment to the pond is located to the south
19 of the pond and to the south of the property, near the
20 property line to the --
21 Q Will any changes be made to that?
22 A The changes in that area will be to meadow that
23 area, as required by Park and Planning, and --
24 Q What state is it currently in?
25 A I believe now it's more of a grassy-type area.

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1 Q And why is it meadow rather than forest?
2 A It's meadow because Park and Planning does not
3 have a policy -- has a policy that they do not want
4 reforestation on embankments or ponds.
5 Q Okay. So meadow won't damage that?
6 A Yes. Yes.
7 Q But forest would?
8 A Yes.
9 Q Potentially?
10 A Potentially.
11 Q Okay.
12 MR. GROSSMAN: How deep is that pond? I see the
13 elevation. I just don't know the depth.
14 MR. GARDNER: I don't think anybody's noted the
15 depth.
16 MR. GROSSMAN: Not that it's critical. I was just
17 curious.
18 THE WITNESS: I don't believe we have that
19 information, Your Honor.
20 MR. PACANO: Like, four or five feet deep.
21 BY MR. GARDNER:
22 Q All right. And while we're on this subject,
23 there's elevation shown on this drawing?
24 A Yes, topography is shown.
25 Q And the back of the property where the active work

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1 is going to be conducted by this special exception, is that
2 higher or lower than the street?
3 A The back of the property is lower than the street
4 by approximately seven feet.
5 Q Okay.
6 MR. GROSSMAN: So when you talk about the back of
7 the property, Mr. Gardner, you're talking about the eastern
8 side? What are you talking about --
9 MR. GARDNER: Yes.
10 MR. GROSSMAN: -- what are you referring to when
11 you say the back of the property?
12 THE WITNESS: Meaning the gravel area in the back?
13 BY MR. GARDNER:
14 Q The gravel area next to the barn, which is on
15 which side of the property? Is that to the east?
16 A To the west.
17 Q No.
18 MR. GROSSMAN: No.
19 THE WITNESS: Well, yes, to the east of the
20 property, east.
21 MR. GROSSMAN: When you say the back of the
22 property, you're talking about the property, the east of the
23 property up to the forest conservation easement? Is that
24 what you're referencing?
25 THE WITNESS: Your Honor, could you repeat that

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1 question?
2 MR. GROSSMAN: You referred to the eastern part,
3 the back of the property --
4 THE WITNESS: Back of the property, I referred to.
5 MR. GROSSMAN: -- and so you're talking about the
6 eastern portion of the property up to the forest
7 conservation easement? Is that what you're saying?
8 THE WITNESS: Yes. Yes, sir.
9 BY MR. GARDNER:
10 Q And that's lower than the street?
11 A Yes, it is.
12 Q Is it visible from motorists passing on the
13 roadway?
14 A I believe it is, yes.
15 Q Okay. But do they have a clear view or an
16 obstructed view?
17 A I don't think it's obstructed. It, you know --
18 Q Will it be after the forest is planted?
19 A It probably will be, yes.
20 MR. GROSSMAN: It probably will be obstructed, or
21 it probably will --
22 THE WITNESS: Obstructed, yes --
23 MR. GROSSMAN: Okay.
24 THE WITNESS: -- due to the, due to all the
25 reforestation.

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1 BY MR. GARDNER:
2 Q And how far is it from the street to that area,
3 the active-use area next to the barn, I call it, in the rear
4 of the property?
5 A If I may use the scale, I can --
6 MR. GROSSMAN: Sure.
7 THE WITNESS: -- give you --
8 MR. GROSSMAN: And, Mr. Gardner, when you refer to
9 the barn, are you talking about what's referenced as a
10 two-story frame building on the plan --
11 MR. GARDNER: I am, but --
12 MR. GROSSMAN: -- on the eastern side?
13 MR. GARDNER: -- if you want the witness to answer
14 that.
15 BY MR. GARDNER:
16 Q Is this the barn, the two-story frame building
17 referenced on the eastern side?
18 A Yes, it is.
19 MR. GROSSMAN: All right. I just want to make
20 sure the record is clear about what you're referring to.
21 MR. GARDNER: Certainly.
22 THE WITNESS: From the street to the barn, it's
23 about 300 feet.
24 MR. GROSSMAN: Okay.
25 BY MR. GARDNER:

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1 Q And that's true, also, for those eight parking
2 spaces --
3 A Yes.
4 Q -- located on the drawing?
5 A Yes.
6 Q Now, let's talk about this area now where the
7 parking is, and go ahead and describe it.
8 A This area was -- currently it's a bigger gravel
9 area, and that can be seen by the area to be cleared and
10 reforested, which is about 4,675 square feet, and it extends
11 to the edge of the pond on this area, general area here.
12 MR. GROSSMAN: All right. When you say this
13 general area, the record --
14 THE WITNESS: Meaning to the -- meaning to the
15 east of the pond.
16 MR. GROSSMAN: Okay. So the area to be cleared
17 and reforested that you're talking about, of --
18 THE WITNESS: Is to the --
19 MR. GROSSMAN: -- 4,675 square feet, is to the
20 south of the barn or --
21 THE WITNESS: Yes, sir, exactly.
22 MR. GROSSMAN: -- two-story frame building --
23 THE WITNESS: Yes.
24 MR. GROSSMAN: -- and to the east of the pond?
25 THE WITNESS: Yes.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: That general area will become
3 reforested by removing of gravel initially and then
4 reforested, and the area to the east of the pond will not be
5 reforested, but the gravel will be removed --
6 MR. GROSSMAN: Right.
7 THE WITNESS: -- and it will be meadow and some
8 landscaping done in the form of planting four trees.
9 MR. GROSSMAN: Okay.
10 BY MR. GARDNER:
11 Q There's some trees there already, right?
12 A Yes, there are some trees there already.
13 Q Five are shown?
14 A There are five trees shown that are there.
15 Q So there'll be nine when this is completed?
16 A Yes.
17 Q Okay.
18 A And the rest of the gravel area is to remain as
19 is, enough, sufficient area to provide eight parking spaces
20 that are headed Parking Spaces for the Business, and at the
21 edge of the new meadow area, there'll be four parking spaces
22 that are parallel spaces to be provided for employees'
23 personal cars.
24 Q And is that, as you understand it, the minimum
25 that are necessary for Mr. Pacano --

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1 A Yes.
2 Q -- to operate this business from this site?
3 A Yes, that is the minimum required.
4 Q And was that the goal that was, that was sought by
5 the Planning Board staff in connection with this
6 application?
7 A Yes. They wanted to limit the amount of
8 imperviousness to the extent possible and to provide just
9 enough that would be required by the business needs of
10 Mr. Pacano.
11 Q And after these various consultations and
12 back-and-forths that went on for all those years, was that
13 goal reached?
14 A I believe it was, yes.
15 Q Okay. And staff was satisfied?
16 A Yes, they we're.
17 Q And now, going with the barn, there's a little
18 shed behind it to the south. Can you point that out?
19 A This here.
20 Q And will that remain?
21 A That shed is to remain, yes.
22 Q And then there's an area to the north of the barn,
23 just to the north of the barn. Yes, right in that area
24 here. Is that where Mr. Pacano proposes to keep any bags --
25 A Yes. That -- yes.

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1 Q -- outdoor storage?
2 A Exactly.
3 Q Of what type of materials?
4 A Top soil, compost, mulch.
5 Q And it'll all be kept in bags, mulch?
6 A It will all be kept in bags and mulch.
7 Q All right. And the barn is going to be used for
8 what?
9 A The barn will be used for storage purposes,
10 mostly.
11 Q All right. And the trucks and trailers will be
12 parked where?
13 A The trucks and trailers will be parked in the
14 spaces provided, which has the number 8 in the middle.
15 Q Okay. And the four spaces that are parallel
16 spaces will be used for what?
17 A Those spaces will be used for the purpose of
18 parking by the employees --
19 Q Okay.
20 A -- and their personal cars.
21 Q And the eight spaces will be -- will there be curb
22 stops, and are they shown on your drawing?
23 A Yes. The curb stops are shown by the sort of
24 bolder straight lines that are shown within the parking
25 spaces.

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1 Q Moving to the rear, there is a -- what is that
2 area?
3 A This area?
4 Q To the east of the property.
5 A To the east of the property, this large area,
6 which is approximately .9 acres, is an existing forest stand
7 that will remain as a forest stand -- it's pretty steep, as
8 shown on this plan -- and this will become part of the
9 forest conservation easement.
10 Q And there's also little forest stands elsewhere on
11 the property?
12 A The forest stand in here, called, labeled as
13 Forest Stand 1B, is .05 acres. That forest stand --
14 Q And that's to the south?
15 A Is to the south of the pond, right up against the
16 southern property line of the site.
17 MR. GROSSMAN: The extreme southeast corner of the
18 property.
19 THE WITNESS: Yes.
20 BY MR. GARDNER:
21 Q All right. Now, those two forest stands existing
22 constitute how many acres total?
23 A .95 acres.
24 Q And they're going to be supplemented by forest
25 where?

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1 A They're going to be supplemented by forest around
2 the stream in this area.
3 Q And that's to the north side of the pond?
4 A To the north side of the pond, and the supplement
5 itself will be to both the northwest and northeast of the
6 pond.
7 Q How many feet from the pond, I mean, from the
8 stream?
9 A Fifty feet from the stream.
10 Q Okay. And then to the east of that forest -- to
11 the east of that, between that forest and the existing
12 forest, what is that area?
13 A That will be meadow area and it will --
14 Q Native meadow?
15 A Yes, native meadow area.
16 Q Okay. And so there'll be a continuous area
17 between the stream all the way to the what, eastern border
18 of the property that will either be forest or native meadow,
19 correct?
20 A That's correct, yes.
21 Q All right. And then to the west of this new
22 forested area will be more --
23 A Meadow.
24 Q -- what? Meadow?
25 A Yes.

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1 Q How wide?
2 A Fifty feet.
3 Q Okay. So there'll be a total of how many feet
4 from the stream on the east side of the property? Would --
5 A A hundred feet.
6 Q Okay. And of either forest or meadow?
7 MR. GROSSMAN: When you say on the east --
8 THE WITNESS: Yes.
9 MR. GROSSMAN: -- east side of the property, you
10 mean on the west side of the property?
11 THE WITNESS: West. West side.
12 MR. GARDNER: No. No.
13 THE WITNESS: West. This area.
14 MR. GARDNER: Yes, west. I apologize.
15 MR. GROSSMAN: All right. So just so the record
16 is clear here, the area of reforestation you've just been
17 talking about, there's some immediately to the northwest of
18 the pond --
19 THE WITNESS: Yes.
20 MR. GROSSMAN: -- adjacent to the pond, and then
21 across the gravel drive there's also an area of
22 reforestation to the north of the gravel drive, which is
23 north of the pond, is that correct?
24 THE WITNESS: That's correct.
25 MR. GROSSMAN: Okay.

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1 BY MR. GARDNER:
2 Q And that extends out 100 feet from the stream,
3 correct?
4 A Yes.
5 Q All right. The pond now, as we go from -- where
6 is the stream valley and the pond? I mean, where is -- you
7 know what? Did I say that --
8 A The stream valley? The stream valley buffer is
9 set at 100 feet from the existing stream, the edge of
10 existing stream.
11 Q And when you go through the pond, there is no
12 stream but you take what --
13 A Yes, 50 feet.
14 Q -- the center line of a pond?
15 A Yes, approximate center line of the pond and also
16 50 feet out on each side.
17 Q So is there 100 feet from the center line of that
18 pond that's going to be preserved?
19 A Well, the pond itself takes up --
20 Q The pond itself is within the stream valley
21 buffer.
22 A Yes. The pond itself -- from the center of the
23 pond to the edge of the pond is 75 feet, and then there's an
24 extra 25 feet that has been designated to be placed in the
25 easement as reforested.

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1 Q And that's how you achieve the 100-foot --
2 A Yes.
3 Q -- stream valley buffer from the center of the
4 pond?
5 A Yes, correct.
6 Q And that area then to the west of the pond will be
7 placed in what?
8 A In a Category 1 Forest Conservation Easement.
9 Q And reforested?
10 A And reforested.
11 Q Okay. Now, show us then, when you're done with
12 all this, where is the forest conservation easement going to
13 be --
14 A Okay.
15 Q -- the lines of that.
16 A If I can show on that exhibit, because I've
17 highlighted it. It's a very good --
18 Q This is --
19 MR. GROSSMAN: By the way, do you have something
20 that shows where the stream is that feeds the pond?
21 THE WITNESS: The stream that feeds the pond is to
22 the north of the pond.
23 MR. GROSSMAN: Okay. Is that depicted on the
24 special exception plan or only on the --
25 THE WITNESS: Yes, it is. The stream itself is

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1 this, this stream here that feeds the pond.
2 MR. GROSSMAN: All right. So you're depicting
3 it --
4 THE WITNESS: As a --
5 MR. GROSSMAN: -- it apparently bisects the area
6 that's to be reforested on the northern --
7 THE WITNESS: Yes, that's correct.
8 MR. GROSSMAN: -- northwestern side of the
9 property?
10 THE WITNESS: That's correct, Your Honor.
11 MR. GROSSMAN: Okay.
12 MR. GARDNER: There was a forest, final forest
13 conservation plan exhibit, Exhibit 42, this little drawing,
14 at the slide show presented at the Planning Board.
15 MR. GROSSMAN: Okay.
16 MR. GARDNER: Perhaps you could use that. Do you
17 have it before you, Mr. Grossman?
18 MR. GROSSMAN: I see it.
19 BY MR. GARDNER:
20 Q Using this exhibit, tell Mr. Grossman where the
21 stream is and the forest and the meadow and --
22 A The stream is here, Your Honor.
23 MR. GROSSMAN: Okay. Yes, bisecting the --
24 THE WITNESS: Yes.
25 MR. GROSSMAN: -- the area to be reforested.

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1 THE WITNESS: That's correct.
2 MR. GARDNER: I think that's why this is a nice
3 little exhibit. It --
4 MR. GROSSMAN: Right.
5 MR. GARDNER: -- shows very clearly where the
6 forest and meadow is.
7 MR. GROSSMAN: Right. Okay. Thank you.
8 BY MR. GARDNER:
9 Q Okay. Now, you're showing us the stream valley,
10 or the conservation easement?
11 A Yes. I basically took the forest conservation
12 plan and highlighted in pink the area that is encompassed by
13 the forest conservation easement, which --
14 MR. GROSSMAN: All right. Is that on the exhibit
15 that's in the file, the pink outline, or is that -- should
16 we make that a new exhibit?
17 MR. GARDNER: No, it's not on any exhibit. I
18 think it's --
19 BY MR. GARDNER:
20 Q What did you do? Is it shown on the exhibit?
21 A The line is shown, but it's not shown in pink.
22 MR. GROSSMAN: Right.
23 MR. GARDNER: He's just --
24 THE WITNESS: The line is shown by the box, which
25 is significant because that's the forest conservation sign,

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1 and a -- dashed with three dots, that's presented in the
2 legend here as a Category 1 Forest Conservation Easement.
3 MR. GARDNER: However, we'll be happy to
4 supplement the record with this.
5 MR. GROSSMAN: Yes. I think that it's --
6 MR. GARDNER: I'll give it a number.
7 MR. GROSSMAN: Since it's --
8 MR. GARDNER: What number?
9 MR. GROSSMAN: It'll be 43.
10 MR. GARDNER: Okay. I'm putting EX43 on the upper
11 right-hand corner, Your Honor.
12 MR. GROSSMAN: All right. And that'll be the
13 forest conservation plan with easement area outlined in
14 pink.
15 (Exhibit No. 43 was marked
16 for identification.)
17 MR. GARDNER: Now, this has a cover sheet, Your
18 Honor, the final forest conservation plan. I don't know if
19 you want the whole thing or take the cover sheet off.
20 MR. GROSSMAN: Well, yes, we can just use the
21 page. I suppose that has been changed.
22 THE WITNESS: Now, this is not a signed plan.
23 It's just something that I printed last night to --
24 MR. GROSSMAN: Right. We can just use the --
25 BY MR. GARDNER:

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1 Q No, leave it up here. You can -- because you're
2 showing him --
3 MR. GARDNER: Do you want us to hand it up now?
4 MR. GROSSMAN: If you're not using it anymore,
5 that'd be fine.
6 BY MR. GARDNER:
7 Q Do you need to refer to it anymore, Mr. Razavi?
8 A No.
9 Q Okay.
10 MR. GROSSMAN: All right. So I called it draft
11 forest conservation plan with easement area outlined in
12 pink.
13 MR. GARDNER: In pink --
14 MR. GROSSMAN: So -- yes.
15 MR. GARDNER: -- so it makes it nice and easy to
16 follow.
17 MR. GROSSMAN: Right. I think we lost your
18 witness below the, below the desk.
19 THE WITNESS: I'll just hold this up for you.
20 MR. GROSSMAN: Thank you. Thank you, Mr. Razavi.
21 THE WITNESS: You're welcome, sir.
22 BY MR. GARDNER:
23 Q Now, when this is all completed, do you have an
24 impervious surface level table attached to that?
25 A I do. There's an exhibit here that we also have

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1 pre-tagged that shows --
2 MR. GARDNER: That's, I believe, in the record,
3 Your Honor, as a part of this exhibit.
4 MR. GROSSMAN: Part 2 of the --
5 MR. GARDNER: Yes.
6 MR. GROSSMAN: -- forest conservation plan.
7 BY MR. GARDNER:
8 Q And explain that.
9 A What this exhibit shows is the impervious area
10 that will be removed, and you'll see a designation of Lot A
11 and Lot B. By that we mean parking lot. The tables here
12 show that in Parking Lot A, which is purely in the front --
13 and we went over this earlier -- which is the area inside
14 the hatched area inside, the TBR means to be removed, and
15 that's approximately 1,262 square feet.
16 MR. GROSSMAN: Are you looking now -- what plan
17 are you looking at now?
18 THE WITNESS: This is an exhibit prepared. It's
19 called the Impervious Area Exhibit.
20 MR. GROSSMAN: Okay. I don't think that's in the
21 record. I mean, you have the forest conservation plan.
22 THE WITNESS: Okay.
23 MR. GROSSMAN: Is that something you've submitted
24 previously?
25 MR. GARDNER: I thought so. I thought it was

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1 attached to the site plan.
2 BY MR. GARDNER:
3 Q Is that what you're saying?
4 MR. GROSSMAN: Oh, well, let me see if it's
5 attached to this. I was looking at the forest conservation
6 plan.
7 MR. GARDNER: The site plan is 30(b)(6).
8 MR. GROSSMAN: All right. Let's see.
9 MR. GARDNER: Can we find 30(b)(6)?
10 MR. GROSSMAN: This is the special exception plan,
11 30(f), and let's see. Let me see if --
12 THE WITNESS: This is an exhibit by itself.
13 MR. GARDNER: All right. Well, we'll make it a
14 new exhibit.
15 MR. GROSSMAN: Let me see if it's already in the
16 record. 30(b)(6), you say?
17 MR. GARDNER: Yes.
18 MR. GROSSMAN: All right. Let me look in my file.
19 MR. GARDNER: Well, that's the site landscape
20 development plan. That's it.
21 MR. GROSSMAN: Hold on a second. There are some
22 additional plans in here; so you can see if it's among
23 these.
24 MR. GARDNER: This is the original. No, this
25 is --

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1 MR. GROSSMAN: Yes, I thought so. And let me look
2 in here for 30(b)(6).
3 MR. GARDNER: These are the early ones.
4 MR. GROSSMAN: All right. Here's 30(c). Here's
5 30(b)(8), 30(b)(4). Ah. Okay. So we have small copies.
6 30(b)(6) are small copies of this.
7 MR. GARDNER: This is page 2 of -- 1 of 1.
8 THE WITNESS: 1 of 1. Okay. Then maybe this
9 wasn't in the record.
10 MR. GROSSMAN: Well, I do have, I have small
11 copies of it, I think, is what we have.
12 MR. GARDNER: Do you have the 1 of 1?
13 MR. GROSSMAN: I have 30(b)(6). I have 1 of 2, 2
14 of 2, and maybe -- let's see what this is. No.
15 MR. GARDNER: Okay. So we'll introduce this then.
16 MR. GROSSMAN: Okay.
17 MR. GARDNER: Do you want the big copy of this
18 then, 30(b)(6)?
19 MR. GROSSMAN: I guess so since we've been
20 referring to it, whatever you referred to as an exhibit.
21 We'll call that Exhibit 44.
22 MR. GARDNER: I had it as 36, but we'll make this
23 44?
24 MR. GROSSMAN: Well, it's not, it doesn't seem to
25 be in the file as --

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1 MR. GARDNER: Well, no. This is the big copy of
2 the small copy that you --
3 MR. GROSSMAN: No, I don't think so. If that says
4 1 of 1, I don't have anything in there under 30 --
5 MR. GARDNER: No, the -- I'm confusing you, Your
6 Honor. 2 of 2 is a big version of 30(b)(6) --
7 MR. GROSSMAN: Okay.
8 MR. GARDNER: -- and then the 1 of 1 is a new
9 exhibit. So if you'd like to have the big copy of 30(b)(6),
10 we'll be happy to give you that.
11 MR. GROSSMAN: Okay. All right. So Exhibit 44 is
12 -- and what is that now depicting?
13 THE WITNESS: It's depicting the impervious area
14 cover.
15 MR. GROSSMAN: Okay. So 44 is Impervious --
16 THE WITNESS: Impervious Area Exhibit is what we
17 call it.
18 MR. GROSSMAN: -- Area --
19 THE WITNESS: Exhibit.
20 MR. GROSSMAN: -- Exhibit is 42, or 44 rather.
21 MR. GARDNER: And I'm just going to hand up the
22 big copy of 30(b)(6) so you --
23 MR. GROSSMAN: Right. Well, I'm calling it
24 something else. I'm calling it, so we --
25 MR. GARDNER: Oh, you're going to call it

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1 something else now?
2 MR. GROSSMAN: Because it's --
3 MR. GARDNER: All right.
4 MR. GROSSMAN: -- a different exhibit. So we're
5 going to call it Exhibit 44.
6 MR. GARDNER: I don't know if you need these or
7 put these back --
8 MR. GROSSMAN: Yes, we'll put them back in the
9 file because they're part of the record.
10 MR. GARDNER: Those are the only exhibits --
11 MR. GROSSMAN: Right. That's what I thought they
12 were.
13 MR. GARDNER: That was the whole original set --
14 MR. GROSSMAN: Right.
15 MR. GARDNER: -- that's been completely replaced.
16 MR. GROSSMAN: Right.
17 MR. GARDNER: Right?
18 MR. GROSSMAN: Okay.
19 MR. GARDNER: Okay. So now we have this new
20 exhibit --
21 MR. GROSSMAN: Exhibit 44.
22 MR. GARDNER: -- is number what, Your Honor?
23 MR. GROSSMAN: Well, the one that I just, you just
24 handed me is Exhibit 44. What are you looking at now?
25 MR. GARDNER: Now, 45 is going to be Sheet 1 of 1,

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1 the Impervious Surface Exhibit.
2 MR. GROSSMAN: That's what I just thought you were
3 handing me.
4 THE WITNESS: No. You handed him something else,
5 and he thought you were handing him this.
6 MR. GARDNER: No, I handed you a big copy of the
7 site plan.
8 MR. GROSSMAN: Of the new site plan?
9 MR. GARDNER: Yes.
10 MR. GROSSMAN: Oh, well, we don't need that as
11 a --
12 MR. GARDNER: You don't need --
13 MR. GROSSMAN: -- I have the, I have the site
14 plan. That's in the record. That's not --
15 THE WITNESS: So this is --
16 MR. GROSSMAN: -- I thought you were handing me
17 the Impervious Area Exhibit.
18 MR. GARDNER: No. This --
19 THE WITNESS: This is 44 then. This is Exhibit
20 44.
21 MR. GROSSMAN: Okay. Yes, mark that as 44.
22 MR. GARDNER: We'll mark it as 44.
23 MR. GROSSMAN: Impervious Area Exhibit. Okay.
24 (Exhibit No. 44 was marked
25 for identification.)

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1 BY MR. GARDNER:
2 Q Describe Exhibit 44 for His Honor.
3 A The purpose of this was to show -- Park and
4 Planning asked for it -- the purpose was to show how and
5 where the reduction in impervious area was to take place to
6 reach the 8.64 percent coverage that we were proposing. So
7 this exhibit was prepared for that purpose.
8 There are two major areas where there is reduction
9 in impervious cover. One is in the front of the property to
10 the west, southwest of the property, in front of existing
11 house; and, as shown before, the area that encompasses Tree
12 5 and -- which is hatch. This general area here is labeled
13 as Lot 8, meaning Parking Lot 8, TBR means to be removed,
14 and this is the area that will see the reduction in
15 impervious cover. The gravel, existing gravel, will be
16 removed and replaced by grass.
17 MR. GROSSMAN: Okay. And I take it that this
18 Impervious Area Exhibit has already been shared with
19 technical staff?
20 THE WITNESS: Yes. Yes. They asked for it.
21 Coming across the driveway, existing driveway, we arrive at
22 Parking Lot B, shown as Lot B here, and again, the
23 impervious cover/gravel area which is existing/to be removed
24 is shown by Lot B, TBR, meaning to be removed, which is this
25 area and also edge of the pond, existing pond, in this area,

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1 and these are all shown in the to-be-removed chart that we
2 have here. The, the rear, which is to the east, east of the
3 pond, the amount of removal is approximately 7,039 square
4 feet --
5 MR. GROSSMAN: Okay.
6 THE WITNESS: -- and then going back to the front
7 again, the amount of impervious area to be removed is 1,262
8 square feet.
9 MR. GROSSMAN: Okay.
10 BY MR. GARDNER:
11 Q In fact, Park and Planning asked you specifically
12 to prepare this to assist them in evaluating this proposal,
13 didn't they?
14 A Yes, they did.
15 Q I think, as you were having meetings with them --
16 A Yes.
17 Q -- this is one of the requirements that they
18 placed on my client.
19 A Yes, they asked for this.
20 Q Okay.
21 MR. GARDNER: So we'll offer this, Your Honor, as
22 Exhibit 44.
23 MR. GROSSMAN: Okay.
24 BY MR. GARDNER:
25 Q Now, does that adequately summarize the

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1 application and the changes that are being made to the site
2 by the applicant --
3 A Yes, it does.
4 Q -- in connection with this?
5 A Yes.
6 Q All right. And one of the issues that was raised
7 by the Planning Board staff was consistency with the
8 Damascus Master Plan, and they pointed out that the plan
9 recommends that special consideration should be taken to
10 preserve, preservation of long vistas when considering
11 special exceptions in rural areas. Are there any long
12 vistas along the subject property?
13 A I'm trying to recall. Are you referring to long
14 vistas into the site or along the site on the road frontage?
15 Q Along the site on the road frontage.
16 A Well, given that the road frontage is, I'm not
17 sure how many square feet, but maybe this can show,
18 approximately 470 feet as you drive in a northerly
19 direction, there is somewhat of a vista.
20 Q Was this at a low end of Ridge Road or a high end?
21 A It is on the lower end of Ridge Road.
22 Q Right. So what Planning Board staff came up with,
23 their analysis, there are no long vistas along the subject
24 property, the use is located at an elevation lower than the
25 surrounding uses --

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1 A Right. That's accurate.
2 Q -- is that accurate?
3 A That's accurate.
4 Q Viewing vistas from the road is restricted by the
5 topographical nature of the property.
6 A Correct.
7 Q So this isn't going to be seen by people from a
8 long way away?
9 A No. No. No.
10 Q Okay. And people along Ridge Road, looking back
11 into the barn area, are they going to see it very clearly?
12 A No.
13 Q And it said, their connection -- they found most
14 activities are located at the rear portion of the property,
15 distance from the road; adjoining properties are buffered by
16 existing forest, natural topography, and distance. Do you
17 agree with that?
18 A Yes.
19 Q Okay. And the goal of the PMA was to reduce
20 imperviousness to below 10 percent. Was that achieved here?
21 A Yes, it was.
22 Q Okay.
23 A Or it will be.
24 Q What?
25 A Yes.

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1 Q Are we going to preserve the existing forest, the
2 .9 acres?
3 A Yes, we are.
4 Q Okay. We're going to add .8 acres of forest?
5 A That's accurate.
6 Q .7 acres of meadow plantings?
7 A Yes.
8 Q Okay. And there's no new construction or
9 modification of existing structures?
10 A No new construction or modification, no --
11 Q Okay.
12 A -- existing structures.
13 Q All right. And the final forest conservation was
14 submitted in connection with Chapter 22(a), the Forest
15 Conservation Law?
16 A Yes.
17 Q And it's been approved by the staff?
18 A Yes.
19 Q And the Planning Board?
20 A Yes.
21 Q Okay. And, in your opinion, does this conform to
22 all the applicable requirements and regulations for a
23 landscape contracting special exception in Section 59-G-2.3
24 of the Montgomery County Code?
25 A Yes, it does.

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1 MR. GROSSMAN: To the extent that you can opine on
2 the --
3 THE WITNESS: Yes.
4 MR. GROSSMAN: -- engineering portion.
5 THE WITNESS: Yes, exactly.
6 MR. GARDNER: Right.
7 BY MR. GARDNER:
8 Q And the development standards under the RDT zone?
9 A Yes.
10 Q Okay.
11 MR. GARDNER: I have no further questions.
12 MR. GROSSMAN: All right. I have no questions
13 either. Thank you.
14 THE WITNESS: All right. Thank you.
15 MR. GROSSMAN: Thank you.
16 MR. GARDNER: I will call Mr. Pacano. Can he
17 leave? I think he had something he had to go to today.
18 MR. GROSSMAN: Yes. I don't think that we have
19 any further thing --
20 MR. GARDNER: I have no reason to keep him.
21 MR. GROSSMAN: -- I'll leave that to you.
22 MR. RAZAVI: All right.
23 THE REPORTER: Mr. Grossman, I have several
24 questions for him --
25 MR. GROSSMAN: All right.

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1 THE REPORTER: -- so can we take a short break?
2 MR. GROSSMAN: Sure. Let's take a five-minute
3 break, and we'll come back in five minutes, at 25 after
4 11:00.
5 (Whereupon, at 11:18 a.m., a brief recess was
6 taken.)
7 MR. GROSSMAN: Then we are back on the record.
8 MR. GARDNER: Thank you. Thank you, Mr. Grossman.
9 I'll call my next witness.
10 DIRECT EXAMINATION
11 BY MR. GARDNER:
12 Q Would you please state your name?
13 A Jose Roberto Pacano.
14 MR. GROSSMAN: All right. And, Mr. Pacano, you've
15 already been sworn in.
16 THE WITNESS: Yes.
17 BY MR. GARDNER:
18 Q Now, when we originally filed this application, as
19 we pointed out earlier, it was filed in the name of Roberto
20 Pacano, correct?
21 A Yes.
22 MR. GROSSMAN: Actually, it was filed in the name
23 of --
24 MR. GARDNER: Oh.
25 MR. GROSSMAN: -- Robert Pacano.

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1 MR. GARDNER: Robert Pacano.
2 BY MR. GARDNER:
3 Q Do you also go by Robert?
4 A Well, that's the first I hear, but it's always
5 been Roberto, but I guess, you know --
6 Q Okay. But the --
7 MR. GROSSMAN: We changed your name to protect the
8 innocent here. Exhibit 1 is where I'm looking at, and the
9 name listed for the petitioner is Robert Pacano, D/B/A
10 Woodstone Group, LLC.
11 BY MR. GARDNER:
12 Q Okay. Now --
13 MR. GROSSMAN: So just that we clarify that that
14 is, you are known as Robert Pacano, Roberto Pacano, Jose R.
15 Pacano. All of those are yours, is that correct?
16 THE WITNESS: Yes. Yes, sir.
17 MR. GROSSMAN: All right. And you're still under
18 oath from earlier.
19 BY MR. GARDNER:
20 Q Now, the deed, which was presented as Exhibit
21 30(b)(1), is this a copy of the deed to the property?
22 A Yes, it is.
23 Q All right. And you are the owner, Jose R. Pacano?
24 A Yes, I am.
25 Q All right. Now, it says that you, D/B/A, doing

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1 business as Woodstone Group, LLC, correct?
2 A That's correct, yes.
3 Q What is Woodstone Group, LLC?
4 A It's a landscaping company.
5 Q And are you the owner of that?
6 A Yes, I am.
7 Q Okay. And you intend to use this property located
8 -- give us the address.
9 A 28621 Ridge Road, Mount Airy, Maryland 21771.
10 Q You intend to use that for what type of business?
11 A For landscaping business.
12 Q Landscape contracting business?
13 A Yes, right.
14 Q Okay. And staff has indicated that that's going
15 to be the normal landscape contracting business.
16 A Uh-huh.
17 Q What does that mean to you? What kind of business
18 are you going to operate?
19 A Well, my business, it's -- we provide landscaping
20 services to customers in Montgomery County, and I use the
21 property as a base for my company, where I can keep my
22 trucks and equipments. My employees would come in the
23 morning, drive in -- and they carpool, for the most part --
24 will take their designated trucks and go out, off the
25 property to do, perform the work that we have for that day.

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1 They return at the end of the day, park the trucks, the
2 equipments, and then they drive off on their cars --
3 MR. GROSSMAN: Okay.
4 THE WITNESS: -- and that's my, my operation on a
5 daily basis.
6 MR. GROSSMAN: All right.
7 MR. GARDNER: Just for the record, Your Honor,
8 30(b)(2) --
9 MR. GROSSMAN: Yes.
10 MR. GARDNER: -- is that Impervious Surface
11 Exhibit that we just gave you the big version of.
12 MR. GROSSMAN: Okay.
13 MR. GARDNER: I just realized that.
14 MR. GROSSMAN: All right.
15 MR. GARDNER: So we did introduce it earlier,
16 but --
17 MR. GROSSMAN: Okay.
18 MR. GARDNER: -- now you have the big version --
19 MR. GROSSMAN: Okay.
20 MR. GARDNER: -- because this one might not have
21 been very easily, to be read, and --
22 MR. GROSSMAN: Right.
23 MR. GARDNER: -- if I haven't given you an
24 electronic copy, I could try.
25 MR. GROSSMAN: Okay. That would be helpful.

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1 MR. GARDNER: I mean, I don't -- I think it's
2 actually a great exhibit.
3 MR. GROSSMAN: Okay.
4 MR. GARDNER: It probably summarizes better than
5 any of the others --
6 MR. GROSSMAN: Okay.
7 MR. GARDNER: -- what's going on with the
8 impervious surfaces.
9 BY MR. GARDNER:
10 Q So you're not conducting any of the work on site,
11 correct?
12 A No. I --
13 Q You're not repairing trucks on site?
14 A No.
15 Q All right. You're not storing equipment on site?
16 A No.
17 Q No. Excuse me. You're not --
18 A Equipment, yes.
19 Q -- you're not storing debris on site?
20 A No.
21 Q All right. One of the staff requirements was that
22 all debris from customers' jobs are taken to the landfill
23 facility or the transfer station, correct?
24 A And that's what we do. We take it over to Shady
25 Grove.

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1 Q All right. Now, you have currently how many
2 trucks?
3 A Three trucks.
4 Q What are the size?
5 A An F-150, F-250, and an F-550.
6 Q Now, the F-150 I think we all know of. It's just
7 a --
8 A It's a small pickup truck.
9 Q Okay. The F-250 is what?
10 A It's also a small pickup truck, just with a little
11 more power to pull a trailer.
12 Q And as I understand it, F-150 stands for one ton;
13 250 is two ton?
14 A Right.
15 Q And that is the load capacity of the truck?
16 A That's the load capacity.
17 Q All right. And a 550 means it can -- load
18 capacity of five tons?
19 A That's correct.
20 Q But a 550 is -- what do you call that? How do you
21 describe it?
22 A A dump truck.
23 Q It's a small dump truck?
24 A It's a small dump truck.
25 Q Okay. And is that normally filled with mulch so

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1 you can take it to customers' properties?
2 A Correct, and also to extract debris, landscape
3 debris from that property to be dumped at the station.
4 Q All right. And you've agreed to that condition.
5 You won't bring it back to the site and store it there?
6 A No, I don't, no.
7 Q Now, you want to supplement these trucks with two
8 more, correct?
9 A In the future, yes.
10 Q And what are those going to be?
11 A Most likely another, another one of those F-550 --
12 Q Yes.
13 A -- and one more small pickup truck, 250 --
14 Q Okay.
15 A -- the F-250.
16 MR. GROSSMAN: Are those set forth in the
17 statement of operations --
18 MR. GARDNER: Yes, they are.
19 MR. GROSSMAN: -- as amended? Okay.
20 MR. GARDNER: Yes.
21 BY MR. GARDNER:
22 Q And the statement of operations says the business
23 will utilize up to five trucks. The business currently has
24 three trucks, which include one 550, one 250, one 150, and
25 when you're done, you'll have one 150, two 250s, and two

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1 550s, right?
2 A That is correct.
3 Q In addition, you'll utilize three trailers. Do
4 you have three trailers now?
5 A No. I have two trailers.
6 Q But you want to have permission to utilize up to
7 three, correct?
8 A Correct, yes.
9 Q And you've asked for one 16-foot enclosed and two
10 14-foot open trailers.
11 A That is correct.
12 Q What do you have now?
13 A I have two 14 open trailers.
14 Q Now, when you say enclosed, what does that mean?
15 Describe it.
16 A Well, it's a trailer that is literally enclosed so
17 that you --
18 Q It's like a wire mesh-type thing?
19 A Like a wire mesh-type thing, yes.
20 Q Okay. And those, what are they used for?
21 A To carry lawn mowers and equipments for all
22 maintenance.
23 Q To customer sites?
24 A To customer sites, yes.
25 Q Which are off site?

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1 A They are all off site, yes.
2 Q All off site. Okay.
3 A Uh-huh.
4 Q Additionally, you indicate the business will
5 utilize six mowers, including three tractors, three
6 walk-behind lawn mowers?
7 A Uh-huh.
8 Q Plus an assortment of trimmers, blowers,
9 spreaders, aerators, shovels, chain saws, hoses, and various
10 and sundry landscaping tools, correct?
11 A That is correct.
12 Q And one snowplow?
13 A Right.
14 Q For the one-ton pickup truck?
15 A Right.
16 Q And all of that will be inside the barn?
17 A The equipments, yes.
18 Q Okay. And is that what the barn will be used for,
19 the storage of that equipment?
20 A That's what the barn is currently used for and
21 will be used for.
22 Q All right. The trucks and the trailers will be
23 parked outside?
24 A Outside.
25 Q And they'll be parked on these eight parking

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1 spaces that are delineated on the site plan?
2 A That is correct.
3 Q To the east, with that number 8 on them?
4 A Right.
5 Q Okay. And the four parallel spaces that are shown
6 on the site plan --
7 A Uh-huh.
8 Q -- on the area that's being added, a grassy area
9 that's being added to the east of the pond --
10 A Uh-huh.
11 Q -- those four parking spaces, the parallel spaces,
12 will be used for what?
13 A For employees' cars. They're dual utility -- when
14 the trucks leave, they can park their cars in that location.
15 Q Okay. But the parallel spaces won't be used for
16 trucks; they'll just be used for cars --
17 A Just for the cars, yes.
18 Q -- is that correct?
19 A That is correct.
20 Q And you've agreed to that?
21 A Yes, sir.
22 Q Okay. So you're going to ask that the trucks and
23 the trailers all be parked in those eight spaces?
24 A Eight spaces, yes.
25 Q And you've agreed to put curb stops on them,

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1 correct?
2 A Right, uh-huh.
3 Q And the four parallel spaces will be used strictly
4 for?
5 A For their personal cars.
6 Q Okay. And then two of those spaces will be dual
7 use, that the truck and trailer leave during the day to
8 allow employees to park in them?
9 A That is correct.
10 Q Now, do you have customers ever come to the site?
11 A Never.
12 Q Okay. So the people that are using the back of
13 the site, as we call it, the back, which is behind the pond
14 next to the --
15 A Yeah, to the barn.
16 Q -- barn, are all going to be used strictly by
17 employees of the business?
18 A That is correct, yes.
19 Q And for the parking of the trucks and trailers?
20 A Right.
21 Q Now, you've agreed, also in connection with that,
22 to reduce the number of parking spaces in the front of the
23 property, correct?
24 A Correct.
25 Q And by the front, we mean the area along Ridge

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1 Road where the house is?
2 A Right.
3 Q Okay. And how many spaces will be left when you
4 reduce that?
5 A Two.
6 Q Okay. One of those, you've agreed, will be a
7 handicapped space?
8 A Right.
9 Q And you asked for a variance to remove the tree.
10 A That is correct.
11 Q Why did you ask for that?
12 A The tree is deteriorated, and it poses a threat to
13 the house if we have a storm, and it's not in good shape,
14 the tree.
15 Q All right. And when you remove that, you're going
16 to replace that with what?
17 A Grass.
18 Q Okay. And the areas of impervious surface that
19 you've seen on the impervious surface diagram that was
20 introduced earlier this morning by Mr. Razavi --
21 A Uh-huh.
22 Q -- you've agreed to remove all those areas of
23 impervious surface?
24 A Yes, I have.
25 Q And you've agreed to get a permit before you do

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1 that?
2 A Right.
3 Q Okay.
4 A Yes.
5 Q And after they're removed, you're going to replace
6 them with what?
7 A With grass.
8 Q Okay. And I think meadow in the area in back,
9 next to the pond, correct?
10 A Next to the pond would be -- yeah, I'm sorry,
11 yeah.
12 Q Native meadow, right?
13 A Right, yes.
14 Q Okay. And the area in front, with grass?
15 A Right. That's front, yes.
16 MR. GROSSMAN: Let's go back to the parking for a
17 second. Your amended statement of operations indicates
18 three parking spaces in front of the house.
19 MR. GARDNER: Yes. That -- it does, Your Honor.
20 I -- we've agreed to change it to two.
21 MR. GROSSMAN: Okay. And so you need to amend the
22 amended statement --
23 MR. GARDNER: Right.
24 MR. GROSSMAN: -- so that your statement of
25 operations --

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1 MR. GARDNER: Can I do that by letter, or you
2 actually want me to write a new amended statement and file
3 it?
4 MR. GROSSMAN: Well, I think it's good to have one
5 document --
6 MR. GARDNER: Okay.
7 MR. GROSSMAN: -- that is the statement of
8 operations. So you can call it --
9 MR. GARDNER: I'll do a second amended?
10 MR. GROSSMAN: Yes, second amended or final
11 statement of operations, and whatever is the operation
12 conditions --
13 MR. GARDNER: Okay.
14 MR. GROSSMAN: -- should be specified in there.
15 MR. GARDNER: I will be happy to do that, Your
16 Honor, and we will change that to two, and there's one other
17 change to it.
18 MR. GROSSMAN: Okay.
19 MR. GARDNER: I don't mean to interrupt if there
20 was something else.
21 MR. GROSSMAN: No, no, that's all. What is the
22 other one?
23 BY MR. GARDNER:
24 Q On the statement of operations, the hours of
25 operation you agreed to were 7:00 a.m. to 7:00 p.m. --

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1 A Uh-huh.
2 Q -- Monday through Saturday. Now, staff did not
3 like the Saturday being as early as 7:00 and as late as
4 7:00 --
5 A Uh-huh.
6 Q -- so you agreed to change that to 8:00 a.m. to
7 5:00 p.m., correct?
8 A 8:00 to 5:00 p.m., yes, uh-huh.
9 MR. GARDNER: And we're going to submit that as
10 well. That's the other change, Your Honor.
11 MR. GROSSMAN: Okay.
12 MR. GARDNER: It'll say, Friday, 7:00 to 7:00,
13 Monday through Friday, and then Saturday it'd be 8:00 a.m.
14 to 5:00 p.m. That was in the staff conditions, but I'll --
15 MR. GROSSMAN: I see that, yes.
16 MR. GARDNER: -- I'll file a final amended
17 statement to -- a final statement to indicate that.
18 MR. GROSSMAN: Okay.
19 BY MR. GARDNER:
20 Q And you've also agreed to change the parking
21 spaces located in front of the home to two --
22 A Uh-huh.
23 Q -- and one of which will be a handicapped parking
24 space, yes?
25 A Yes.

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1 Q Okay. And other than that, those two changes, all
2 of the remaining items set forth in your amended statement
3 of operations are what you intend to do on the site?
4 A Yes.
5 Q Okay. You intend to continue to use the barn for
6 storage, yes?
7 A Yes.
8 Q And the detached shed next to the barn and the
9 shed in front, next to the driveway, for storage?
10 A For storage, yes.
11 Q Okay. You've also agreed -- I don't know if it's
12 in here -- to remove the sign that was located on the shed
13 in the front, correct?
14 A It has been removed already.
15 MR. GARDNER: Your Honor, I don't know if you feel
16 that's needed in here. There was a sign --
17 MR. GROSSMAN: I thought there was something in
18 the, actually, in the statement of operations, saying that.
19 MR. GARDNER: Saying that he's removing the sign?
20 MR. GROSSMAN: I thought so. I know I saw it
21 somewhere.
22 MR. GARDNER: Yes.
23 MR. GROSSMAN: Maybe it was in the staff report.
24 MR. GARDNER: Yes, staff report -- we had a
25 conversation with them where they brought it up.

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1 MR. GROSSMAN: I don't think that has to be
2 separate in the statement of operations, unless it's in
3 there already, because --
4 MR. GARDNER: Yes.
5 MR. GROSSMAN: -- it's not going to be an
6 operation condition; it's just a condition of the, that the
7 Board of Appeals would include --
8 MR. GARDNER: Okay.
9 MR. GROSSMAN: -- as part of -- I think it says
10 here in the conditions, No. 10: There must be no sign
11 identifying the property as landscape contract on the
12 property, and existing wall sign on the side of the small
13 barn must be removed. So it's not really an operation
14 situation. So --
15 MR. GARDNER: Okay.
16 BY MR. GARDNER:
17 Q And you've agreed to remove that sign? You've
18 already done it.
19 A It has been removed already.
20 Q All right. Now, as one of the conditions of this
21 entire project, you understand that you are agreeing not to
22 use the home as a residence?
23 A Right, yes.
24 Q What will the home be used as?
25 A As an office.

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1 Q All right. And you've agreed to the amended,
2 amendment to the consent agreement relating to the septic,
3 correct?
4 A Yes.
5 Q Which is Exhibit 40(a) in the record now?
6 A Uh-huh.
7 Q And you understand that by agreeing to that, you
8 can have no more than eight employees, correct?
9 A Right, yes.
10 Q And that for so long as the property is being used
11 in connection with a landscape contracting operation, the
12 house may not be used as a residence and no washing machine
13 may be connected to the plumbing in the house?
14 A Yes.
15 Q Is there a washing machine there now?
16 A No.
17 Q Okay. And you never intend to install one, right?
18 A No.
19 Q Okay. And it's not being used as a residence now?
20 A No, it's not.
21 Q Okay. Now, let me show you what's been marked as
22 Exhibit 42.
23 MR. GARDNER: Your Honor, if you want to have this
24 before you --
25 MR. GROSSMAN: Okay.

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1 MR. GARDNER: -- 42.
2 BY MR. GARDNER:
3 Q You were at the Planning Board hearing on, I
4 think, June 12th, is that correct?
5 A Yes.
6 Q All right. And you watched the slide show?
7 A Yes, I did.
8 Q And this is a copy of the slide show.
9 A Okay.
10 Q Okay. So I want to walk you through it briefly.
11 A Uh-huh.
12 Q The first picture shows an aerial photograph of
13 your site, correct?
14 A Yes.
15 MR. GROSSMAN: Well, actually, you're looking at
16 41.
17 MR. GARDNER: Yes. If I said 42, I --
18 MR. GROSSMAN: Yes. Okay.
19 MR. GARDNER: -- apologize. I meant 41.
20 MR. GROSSMAN: All right.
21 BY MR. GARDNER:
22 Q Is that an aerial photograph? Does that depict
23 the appearance of the site today?
24 A Yes, uh-huh.
25 Q Okay. And that shows on the upper left the house,

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1 which we call it the front of the site and Ridge Road?
 2 A Yes.
 3 Q And then it shows the pond, and it shows the barn
 4 in what we call the rear of the site, correct?
 5 A Yes.
 6 Q And it shows the current impervious surfaces all
 7 around the barn, including the area to the rear of the barn,
 8 if you will, which is to the south of the site?
 9 A Yes.
 10 Q And that area to the rear of the barn, the south
 11 of the site, is where you're going to remove all of that
 12 impervious surface?
 13 A It has been done already.
 14 Q That's been done already?
 15 A Yes.
 16 Q Okay. But you haven't touched the area --
 17 A No, I haven't, no.
 18 Q -- adjoining the pond or the area in front yet?
 19 A No, no, I haven't.
 20 Q Okay. And I think I already asked you. You know
 21 that you need a permit for that; so you don't want to touch
 22 it until that permit is issued.
 23 A Okay.
 24 Q I think you asked me, actually, if you could do
 25 it, and what was my advice?

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1 A You said no.
 2 Q Not until you get the permit.
 3 A Not until I -- yeah.
 4 Q All right. Now, let me move through this. The
 5 third page of this shows the surrounding area?
 6 A Yes.
 7 Q You're familiar with this area, correct?
 8 A Yes, uh-huh.
 9 Q How would you describe the area around your site?
 10 A Well, it's a rural, per se, area with properties
 11 that are basically the same size as mine. They are large
 12 properties, and for the most part, people have -- basically,
 13 it's like mine on the adjacent property to my land, and so
 14 that's, that's the setting.
 15 Q Well, across the street is an orchard?
 16 A Across the street is an orchard, yes, and it has a
 17 sales stand in the front, where people come in and they buy
 18 products, produces.
 19 MR. GROSSMAN: Okay.
 20 BY MR. GARDNER:
 21 Q All right. It says it's predominantly
 22 agricultural with some single-family detached residential
 23 homes --
 24 A Yes, that's --
 25 Q -- on half-acre and estate-type lots.

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1 A That is correct.
 2 Q Farms and unapproved parcels.
 3 A Right.
 4 Q Okay. Now, on the next page, 4, is another aerial
 5 photograph. Do you see that?
 6 A Yes.
 7 Q That shows the area, I think, in the winter, where
 8 you can see it a little better --
 9 A Right.
 10 Q -- than the first page, correct?
 11 A Uh-huh, yes.
 12 Q Does that also show the current condition of the
 13 property?
 14 A Yes, it does.
 15 Q Okay. Now, moving to the fifth page, it shows a
 16 picture of the front.
 17 A Yes.
 18 Q Now, there's two cars there and a tree?
 19 A Right.
 20 Q And the house?
 21 A Right.
 22 Q All right. And the barn to the -- well --
 23 A That's, yeah, a shed.
 24 Q -- what do you call that? A shed?
 25 A Shed.

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1 Q To the left --
 2 A Yeah.
 3 Q -- with a sign?
 4 A Where the sign was.
 5 Q And you've removed that sign?
 6 A Yes.
 7 Q Now, that house there, is that the condition it
 8 was in when you purchased it?
 9 A It is, yeah. This, it had a roof that was
 10 deteriorating, and that has been redone.
 11 Q So it doesn't look like this anymore?
 12 A It doesn't look, no.
 13 Q No. It looks, looks like --
 14 A The roof is all -- it's a year old, basically.
 15 Q Oh, you have a year-old roof?
 16 A Yes.
 17 Q All right. So you've improved the looks of the
 18 house?
 19 A Absolutely.
 20 Q Absolutely. Okay. Now, the next picture shows,
 21 the fourth page --
 22 A Uh-huh.
 23 Q -- shows a picture from Ridge Road, correct?
 24 A Right, yes.
 25 Q Looking back towards the barn --

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1 A Towards the barn.
2 Q -- in the rear of the property?
3 A Yes.
4 Q And that shows this little stream valley, correct?
5 A Yes.
6 Q To the left of the barn, and the pond is to the
7 right of the barn?
8 A Correct.
9 Q And that's the area, to the left of the barn --
10 the land to the right of the barn where you're going to be
11 reforesting?
12 A Reforesting, uh-huh.
13 Q And will that then lessen any view of the barn
14 from the road?
15 A I think, dramatically.
16 Q Dramatically? Okay.
17 A Yes.
18 Q And this also appears to show that the barn and
19 the pond and -- even more lower than the road, is that
20 accurate?
21 A That is accurate.
22 Q Now, the fourth page shows what you intend to
23 operate there: eight employees, five trucks, three
24 trailers, 14 parking spaces, providing typical landscape
25 services. This summarizes, does it not, what you intend to

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1 do?
2 A Yes, it does.
3 Q And the fifth page, which is what I wanted to get
4 to --
5 MR. GROSSMAN: I think you're beyond the fifth
6 page.
7 MR. GARDNER: I'm sorry. I -- whatever page I'm
8 on, I'll get to this.
9 MR. GROSSMAN: They're not numbered. One, two --
10 MR. GARDNER: No.
11 MR. GROSSMAN: -- three, four, five, six. The
12 proposed development is on page 7.
13 MR. GARDNER: Yes.
14 MR. GARDNER: Okay. Now, 8, Major Issues and
15 Findings, are you with me on that page?
16 MR. GROSSMAN: I am.
17 BY MR. GARDNER:
18 Q Okay. When you were down at the Planning Board
19 and this showed up on the slide show, what was your
20 reaction?
21 A I was speechless, to say the least.
22 Q Why?
23 A Because this is probably a picture taken right
24 after I purchased the property and we were in the process of
25 clearing a lot of that leftover debris there from the

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1 previous owner.
2 Q So this basically is showing what it was like when
3 you bought it, right?
4 A Right, yes.
5 Q And you can see the house in front, the roof looks
6 even worse than it --
7 A Right, yes.
8 Q -- did on that first picture, correct?
9 A That is correct.
10 Q And you fixed that since?
11 A Yes, I have.
12 Q Okay. And in back where it looks like a bomb went
13 off --
14 A Right.
15 Q -- I'm sorry, but, you know, the pile of trash --
16 A Right.
17 Q -- did you clean all that up?
18 A Yes. Yes.
19 Q Okay. So that it looks now like it does --
20 A Like this.
21 Q -- in the first picture, correct?
22 A Yes, it did.
23 Q Okay. You've removed all that, what looked like a
24 trailer that was back there --
25 A Right.

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1 Q -- you removed that?
2 A Yes, sir.
3 Q And you're no longer doing anything active to the
4 right side of the barn, as shown on this picture on page
5 8 --
6 A That is correct.
7 Q -- which is to the south of the barn?
8 A Yes.
9 Q Okay. All right. So you've already somewhat
10 cleaned up and improved the property; is that fair to say?
11 A That is very fair to say.
12 Q Okay. And page 9, where it has the planning
13 staff's findings in connection with the major issues shown
14 on page 8, they first talked about consistency with the
15 master plan and preserving, or paying particular attention
16 to the preservation of long vistas when considering special
17 exceptions in rural areas, and they found that there weren't
18 any affecting your property. Do you agree with that?
19 A I agree with that.
20 Q You understand what they meant -- like, when Ridge
21 Road, up further towards Damascus, there's places where you
22 can see Ridge Road from a long way away --
23 A That is correct.
24 Q -- do you agree with that?
25 A Yes.

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1 Q And so they're very concerned that those areas
2 remain --
3 A As is.
4 Q -- very, very attractive and preserving those
5 vistas. You're not impacting any long vistas with this
6 property, are you?
7 A No.
8 Q In fact, you're not making any changes to any of
9 the physical buildings on the site, is that right?
10 A No, I'm not.
11 Q Okay. The only changes you're making are what?
12 A Are reducing impervious areas, adding more forest
13 and meadowland to improve the ecosystem of the, that pond
14 and the stream around it.
15 Q All right. Thank you.
16 A Uh-huh.
17 Q And you've agreed to be bound by all of the
18 conditions that are -- I think you were already asked this
19 question -- that are set forth in the staff report and, one
20 second, in particular, all the conditions on page 3, with
21 the two changes that Mr. Grossman discussed this morning,
22 correct?
23 A Yes.
24 MR. GROSSMAN: And with the Planning Board.
25 MR. GARDNER: I'm sorry?

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1 MR. GROSSMAN: And the changes included in the
2 Planning Board letter.
3 BY MR. GARDNER:
4 Q And the changes included in the Planning Board's
5 letter?
6 A Yes.
7 MR. GARDNER: Okay. I believe I have no further
8 questions, Your Honor.
9 MR. GROSSMAN: Okay. And, Mr. Pacano, you
10 included some photographs in Exhibit 8 in the file which are
11 captioned, and first of all, did you take these photographs
12 that are in the file, Exhibit 8, the color photographs? Do
13 you have a copy of what was submitted?
14 MR. GARDNER: I probably do. One second.
15 MR. GROSSMAN: It's Exhibits 8(a), (b), (c), (d),
16 and (e).
17 MR. GARDNER: I'm not sure I have them all
18 labeled.
19 MR. GROSSMAN: Okay.
20 MR. GARDNER: If I could borrow --
21 MR. GROSSMAN: Sure. I just want to make sure
22 that the captions that -- did you take these photos in
23 that --
24 THE WITNESS: Yes, we did, yes.
25 MR. GROSSMAN: Okay. And about when did you take

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1 these photos?
2 THE WITNESS: Oh, gosh, this was 2010 perhaps. It
3 was the first --
4 MR. GARDNER: Are these the ones that start with,
5 Front of house on site from Ridge Road?
6 MR. GROSSMAN: Yes.
7 MR. GARDNER: Side of house on site, looking west
8 from site?
9 MR. GROSSMAN: That's correct.
10 MR. GARDNER: Okay. This is exhibit what, Your
11 Honor?
12 MR. GROSSMAN: 8(a) through (e).
13 BY MR. GARDNER:
14 Q Okay. So, yes, did you take these pictures?
15 A Yes, I did.
16 Q When did you take them?
17 A I don't recall the exact date, Your Honor, but it
18 was in the beginning of this process.
19 Q 2009?
20 A 2009 probably.
21 MR. GROSSMAN: Do they accurately reflect the
22 conditions as they exist today?
23 THE WITNESS: At that time, yes.
24 MR. GROSSMAN: How about as they exist today?
25 BY MR. GARDNER:

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1 Q Well, let's start --
2 MR. GROSSMAN: Take a look at them. Take a look
3 at them.
4 MR. GARDNER: Yes.
5 BY MR. GARDNER:
6 Q Let's start with 8(a) --
7 A Yeah.
8 Q -- which is the front of the house on site from
9 Ridge Road.
10 A Uh-huh.
11 Q Okay. What changes, if any, have been made to
12 that?
13 A The roof has been replaced.
14 Q Okay. Now, the side of house on site, looking
15 west from site --
16 A Uh-huh.
17 Q -- any changes?
18 A No.
19 Q That reflects --
20 MR. GROSSMAN: And other than the roof on the top
21 picture, on 8(a), that's, that's accurate today, other than
22 the roof replacement?
23 THE WITNESS: Other than the roof, yes, it's
24 accurate.
25 MR. GROSSMAN: Yes. Okay.

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1 BY MR. GARDNER:
2 Q And you're going to add two curb stops?
3 A Two curb stops, yeah.
4 Q And you're going to remove a lot of that
5 impervious surface?
6 A Right.
7 MR. GROSSMAN: No, I'm just asking, I'm just
8 trying to identify the pictures --
9 MR. GARDNER: Right. Oh, I got you.
10 MR. GROSSMAN: -- to make sure that --
11 THE WITNESS: I'm sorry. Can we go back to that
12 picture for a second?
13 MR. GARDNER: Yes.
14 THE WITNESS: Your Honor, actually, this amount of
15 gravel has been reduced because there's grass planted in
16 front here now.
17 MR. GROSSMAN: Okay.
18 BY MR. GARDNER:
19 Q Okay. So some of the gravel has been reduced --
20 A Yes.
21 Q -- in front of that house?
22 A Yes.
23 MR. GROSSMAN: All right.
24 BY MR. GARDNER:
25 Q And grass installed?

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1 A Uh-huh.
2 MR. GROSSMAN: All right.
3 BY MR. GARDNER:
4 Q Driveway, looking east, do you see that picture?
5 A Yes.
6 Q Does that reflect the condition today?
7 A Let me see. Let me understand this. This is
8 looking --
9 Q This is the gravel driveway, crossing the stream,
10 and you can see off in the distance --
11 A Right, a house.
12 Q -- a neighbor's property.
13 A Well, there is a row of shrubberies that have been
14 planted alongside the driveway now that's not -- I don't see
15 it in the picture.
16 MR. GROSSMAN: Okay.
17 BY MR. GARDNER:
18 Q Other than that, any other changes?
19 A Other than that, no.
20 Q Okay. And then that view of that neighbor's home,
21 looking east --
22 A Uh-huh.
23 Q -- is that going to be obscured by the
24 installation of the forest?
25 MR. GROSSMAN: Well, no. Right now I just want to

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1 identify the photos.
2 MR. GARDNER: Oh, okay. All right.
3 BY MR. GARDNER:
4 Q Barn from Ridge Road --
5 A Uh-huh.
6 Q -- is that the current condition? That's a
7 terrible copy here.
8 A Yeah, from what I can see, yes.
9 MR. GROSSMAN: Do you want to look at the color
10 photos you have in the file?
11 BY MR. GARDNER:
12 Q Here you go. This is a color photo.
13 A Okay. Well, the barn has been painted in the blue
14 color now --
15 MR. GROSSMAN: I see.
16 THE WITNESS: -- and I have added more trees to
17 the, to that embankment here next to the barn.
18 BY MR. GARDNER:
19 Q Those are the --
20 MR. GROSSMAN: Maybe we shouldn't use these photos
21 if they're not accurately depicting the scene anymore. Let
22 me turn to the technical staff report photos and see if we
23 can use those, see if they're more current, because there's
24 no point in going through a lot of photo identification if
25 they're no longer really applicable. All right. On page 5

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1 of the staff report --
2 MR. GARDNER: One second. Yes.
3 MR. GROSSMAN: -- there are four photos on the top
4 and one on the bottom. Starting with the upper left-hand
5 corner as you're facing it --
6 THE WITNESS: Uh-huh.
7 MR. GROSSMAN: -- does that depict the home as it
8 exists today, the house?
9 THE WITNESS: Yes, it is, except, again, for the
10 new roof.
11 MR. GROSSMAN: The new roof. Okay.
12 THE WITNESS: Yes.
13 MR. GROSSMAN: How about the one off of --
14 MR. GARDNER: Upper right?
15 MR. GROSSMAN: -- the top photo on the right?
16 THE WITNESS: Yes, the new color is there. So --
17 MR. GARDNER: The blue barn.
18 MR. GROSSMAN: The new color of the barn. Okay.
19 THE WITNESS: Yeah.
20 MR. GROSSMAN: All right. So that accurately
21 depicts the barn area?
22 THE WITNESS: Yes, it does.
23 MR. GROSSMAN: All right. And then the one on the
24 left, the lower one on the left of the four --
25 THE WITNESS: Uh-huh.

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1 MR. GROSSMAN: -- together, does that accurately
2 depict what?
3 THE WITNESS: The conditions today, for the most
4 part.
5 BY MR. GARDNER:
6 Q Is that the gravel driveway, leading from the
7 house to the rear?
8 A To the rear, exactly.
9 MR. GROSSMAN: Okay. And the one on the right
10 bottom --
11 THE WITNESS: Uh-huh.
12 MR. GROSSMAN: -- what does that depict?
13 THE WITNESS: That's a picture taken from the
14 street, showing the shed.
15 MR. GROSSMAN: Okay. This is --
16 BY MR. GARDNER:
17 Q In the front of the property?
18 A In the front of the property, yes.
19 MR. GROSSMAN: The street being Ridge Road, you
20 mean?
21 THE WITNESS: Right, yes.
22 MR. GROSSMAN: Okay. All right. And on the
23 bottom of that same page, there's an aerial photo labeled
24 Subject Site. Does that accurately depict the site?
25 THE WITNESS: Yeah, except for the color, that

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1 it's still red, yeah.
2 MR. GROSSMAN: The color of the barn, which is
3 red. All right. All right.
4 MR. GARDNER: Just for the record, I went through
5 41, Your Honor, and I think he identified some of those
6 pictures as well --
7 MR. GROSSMAN: Right.
8 MR. GARDNER: -- which I'll send to you on a
9 PDF --
10 MR. GROSSMAN: Okay. Yes. We actually --
11 MR. GARDNER: -- if you're looking for pictures.
12 What?
13 MR. GROSSMAN: Yes, there were a number of things
14 like that that we'll talk about in a second, but --
15 MR. GARDNER: Sure.
16 MR. GROSSMAN: All right. And the photos that we
17 talked about in Exhibit 8(a) through (e), they accurately
18 depicted the scene as it existed back in 2010 when you took
19 them?
20 THE WITNESS: Yes, sir.
21 MR. GROSSMAN: Okay. All right.
22 MR. GARDNER: Actually, 2009.
23 THE WITNESS: '9, actually.
24 MR. GROSSMAN: 2009 when you took them?
25 MR. GARDNER: '9, yes.

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1 MR. GROSSMAN: Okay. All right. Okay. Let's --
2 all right. Are there any additional exhibits, other than
3 the ones we've discussed, that you're going to be
4 submitting?
5 MR. GARDNER: No, Your Honor.
6 MR. GROSSMAN: All right. I presume you wish
7 Exhibits 1 through 44 and any supplemental exhibits that you
8 submit in reference to our discussion --
9 MR. GARDNER: Yes.
10 MR. GROSSMAN: -- to be admitted into evidence?
11 MR. GARDNER: Yes, I do, absolutely.
12 MR. GROSSMAN: All right. They're so admitted.
13 (Exhibit Nos. 1-44 were
14 received in evidence.)
15 MR. GARDNER: Thank you.
16 MR. GROSSMAN: So now the things to be submitted
17 -- the Planning Board determination regarding the forest
18 conservation plan and the tree variance, need to submit
19 that.
20 MR. GARDNER: Yes.
21 MR. GROSSMAN: A document indicating that the
22 names that we've discussed of Mr. Pacano are all the same
23 individual.
24 MR. GARDNER: Okay.
25 MR. GROSSMAN: The amended statement of -- further

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1 amended statement of operations --
2 MR. GARDNER: Yes.
3 MR. GROSSMAN: -- both in hard copy and in Word.
4 MR. GARDNER: Yes.
5 MR. GROSSMAN: PDFs of technical staff's two slide
6 presentations and Exhibit 44, which is the Impervious Area
7 Exhibit.
8 MR. GARDNER: Okay. You may already have 44, the
9 Impervious Surface Exhibit, on a PDF, but I'll --
10 MR. GROSSMAN: And --
11 MR. GARDNER: -- either way, I'll make sure you
12 have it --
13 MR. GROSSMAN: Okay.
14 MR. GARDNER: -- or resubmit it.
15 MR. GROSSMAN: All right.
16 MR. GARDNER: Okay.
17 MR. GROSSMAN: The further amended statement of
18 operations will have two parking spaces in front and the
19 hours on Saturday will be changed to 8:00 to 5:00, right?
20 MR. GARDNER: Yes.
21 MR. GROSSMAN: And, also, PDFs or JPGs of the
22 photos in Exhibit 8.
23 MR. GARDNER: PDF or JPGs --
24 MR. GROSSMAN: Of the photos.
25 MR. GARDNER: -- of photos in Exhibit 8?

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1 MR. GROSSMAN: Right.
2 MR. GARDNER: Okay.
3 MR. GROSSMAN: He probably has them. Usually,
4 they're -- they're electronically taken these days. So --
5 MR. GARDNER: No. These are --
6 MR. GROSSMAN: They're not? They weren't taken by
7 an electronic -- by a digital camera?
8 THE WITNESS: Not at that time, no.
9 MR. GROSSMAN: All right.
10 MR. GARDNER: I've got whatever. I got the
11 photos. I suppose I could try copying them and sending it
12 PDF, but I don't know how the clarity will be.
13 MR. GROSSMAN: That's all right. You don't have
14 to do that. I'll copy whatever I need to copy if you don't
15 have it.
16 MR. GARDNER: Okay. So I don't have to do that
17 one then? Thank you.
18 MR. GROSSMAN: No. Okay. Let's see if there's
19 anything else on my little agenda here. I take it you're
20 not going to have any sale of plant materials or garden
21 supplies or equipment? You're not going to sell any of that
22 stuff --
23 THE WITNESS: No. No, sir.
24 MR. GROSSMAN: -- from the, from your site?
25 THE WITNESS: No.

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1 MR. GROSSMAN: Okay. Okay. Is there anything
2 else that you want to cover, Mr. Gardner, and do you have a
3 closing statement you want to make?
4 MR. GARDNER: I can make a brief closing. I think
5 this case was very well reviewed by staff, and we certainly
6 want to adopt the staff's findings, which, I think, go, in a
7 very comprehensive way, to review all the requirements of
8 the zoning ordinance. 59-G-2.3 has the general requirements
9 -- actually, the specific requirements, which include two
10 acres. This property is clearly larger than two acres.
11 It's four-and-a-half acres.
12 MR. GROSSMAN: 59-G-2.30.00, that's what it --
13 that's what is the current code. You may be looking at an
14 old code.
15 MR. GARDNER: Yes, 59- -- when I filed this, it
16 was a different number -- G-2.300. The --
17 MR. GROSSMAN: G-2.30.00.
18 MR. GARDNER: 30.0, yes.
19 MR. GROSSMAN: .00.
20 MR. GARDNER: .00.
21 MR. GROSSMAN: There is a .0 there too. That's
22 another thing, and the current, if you just say 2.30, it
23 becomes, it's a different special exception. So --
24 MR. GARDNER: Now, it's got, it's four-and-a-half
25 acres, is provided that it requires two acres. The minimum

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1 setback for parking and loading is 50 feet, excluding
2 parking for the existing dwelling, which is the two spaces
3 that are allowed for the existing dwelling that are in the
4 front of the site, and he's agreed to limit the spaces, as
5 he's indicated, to those two spaces and not use any of the
6 existing spaces and to remove those and add grass, reducing
7 the impervious surfaces. The other parking spaces are in
8 the rear, which are clearly beyond the 50-foot requirement.
9 The Board can limit the number of spaces provided
10 to preclude adverse impact on adjoining uses under 2.30.00
11 parens 3. Staff has limited them to the eight, or to 12 in
12 the rear and two in the front, a total of 14, which, as he's
13 indicated, is the minimum that are needed for him to both
14 operate his business and expand it -- very limited
15 expansion. Only eight employees and five trucks and three
16 trailers is all that he's ever going to seek to be allowed
17 to use on this property.
18 He has agreed to the forest conservation
19 requirements of the county, and he's had that approved.
20 Water quality plan is not applicable because he's not making
21 any changes to the site. A sign, he can have an --
22 MR. GROSSMAN: The water quality plan is not
23 applicable because it's not a special protection area. So
24 -- water quality plans only apply to special protection
25 areas.

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1 MR. GARDNER: Oh, okay. Oh, okay. I'm thinking
2 of a stormwater plan. He's not required --
3 MR. GROSSMAN: Stormwater plan, right.
4 MR. GARDNER: -- to submit one because he's not
5 adding any -- he's not making any changes to the structures
6 on the site.
7 MR. GROSSMAN: I understand.
8 MR. GARDNER: But thank you. The identification
9 sign, which he's allowed, he's not going to even use, and
10 the reason for that is that people don't come to his site.
11 This is just --
12 MR. GROSSMAN: Right.
13 MR. GARDNER: -- an off-site business. You know,
14 maybe once in a while somebody's going to visit his office
15 to look at his plans, but they're never going to go back to
16 the barn. It's strictly an off-site business. So it has
17 extremely limited impact on the neighborhood as a result.
18 MR. GROSSMAN: Mr. Pacano, when do your trucks
19 leave in the morning?
20 MR. PACANO: What time, you mean?
21 MR. GROSSMAN: Yes.
22 MR. PACANO: Usually by 7:30, 8 o'clock they
23 leave.
24 MR. GROSSMAN: Okay.
25 MR. GARDNER: These hours are --

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1 MR. GROSSMAN: How many trucks would be leaving
2 each morning?
3 MR. PACANO: Currently two, Your Honor.
4 MR. GARDNER: Up to five.
5 MR. PACANO: It will be up to five in the future,
6 but yes.
7 MR. GROSSMAN: Okay. And in the evening, when do
8 they come back?
9 MR. PACANO: By 6:30, 7 o'clock they are back.
10 MR. GROSSMAN: All right. So you'd have two now
11 coming back and then potentially up to five coming back?
12 MR. PACANO: Right, exactly.
13 MR. GROSSMAN: Okay. All right.
14 MR. GARDNER: Now, this is a permitted use. It
15 meets all the standards and requirements to grant a special
16 exception. It is consistent with the general plan for the
17 development of the district, including the master plan.
18 Staff discussed -- we've put on testimony about protecting
19 rural vistas in the rural areas of Damascus. This is at a
20 low area of Ridge Road. I think the reason for that is,
21 when you have the high rural vistas where you can see for a
22 long distance, because there's a lot of farms up there, they
23 want to preserve that, that old rural vista where those
24 farmlands exist, and this isn't one of those areas. It's in
25 sort of a low area of Ridge Road; there's forest in the

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1 area. So there is no rural vista that needs to be
2 preserved, and staff has so found. So it doesn't impact
3 adversely that part of the master plan and therefore, I
4 believe, is consistent with the master plan, doesn't have
5 any specific requirements about special exceptions other
6 than that language.
7 It's in harmony with the general character of the
8 neighborhood. This existing use was there before he
9 purchased, and it was uglier, I mean, as we pointed out. I
10 said it looked like a bomb had gone off. He bought it. He
11 fixed it up. I think he's shown himself to be a good
12 neighbor. He's doing his best to improve the site, and when
13 he's done, the environment and the neighborhood is going to
14 benefit.
15 It won't be detrimental to the value, use, and
16 peaceful enjoyment of neighboring properties, to the
17 contrary. It's actually going to increase the value of the
18 properties adjoining him by, by increasing the size of the
19 forest, diminishing any view of the activities in back,
20 creating a native meadow habitat, and improving the impact
21 on the environment from this property.
22 As far as objectionable use, vibration, fumes,
23 et cetera, as he's indicated, he's not going to sell plants;
24 he's not going to do any active uses from the site except
25 people coming and going. The lights are limited to two

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1 motion sensor lights on the existing dwelling and one on
2 the, proposed, on the barn in the rear. The debris from the
3 site is going to all be removed and taken to the transfer
4 station.
5 There is no evidence of other special exceptions
6 in the immediate vicinity. It will not adversely affect the
7 health, safety, or welfare of residents or visitors to the
8 site. It's been established for some time. There's no
9 indication that the current use has had any negative impact
10 to anyone, either people there or people visiting or people
11 in the neighborhood. There is adequate sewer and water,
12 which is adequate for use of the site as a landscaping
13 contracting business, which he's agreed to limit himself to
14 do in the future. He doesn't need a sediment control
15 permit. He doesn't need a preliminary plan because he's not
16 making any changes to the existing dwellings.
17 Transportation. Staff's agreed that there is no
18 Local Area Transportation Review because he doesn't generate
19 30 or more trips. Even, at most, he'd have eight visitors
20 -- eight employees and five trucks. That'll be 13 trips in
21 the morning and 13 trips in the evening, at the most. I
22 don't think they all come in at any one-hour period, but if
23 they did, that would be the worst.
24 As far as the standards and requirements for a
25 landscaping contracting business, we've already indicated

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1 all of the -- all the areas for parking and loading of
2 trucks and equipment will be a minimum of 50 feet from the
3 property line. The only parking in front will be cars for
4 the office, none of the trucks, none of the trailers --
5 MR. GROSSMAN: I understand.
6 MR. GARDNER: -- just the two cars, which he's
7 allowed as part of the existing attached single-family
8 dwelling.
9 The limitation of the Board of the parking I've
10 already addressed. They're limiting it to 14, which he's
11 agreed to. He's agreed to no sale of plant materials. The
12 Board can regulate hours of operation, which the Planning
13 Board has done, the staff has done. He's agreed to 7:00
14 a.m. to 7:00 p.m. Monday through Friday, and 8:00 a.m. to
15 5:00 p.m. on Saturdays, which was done because staff wanted
16 him to be a little more restrictive on Saturdays since it's
17 in some residential -- it's not really a very big
18 residential area, but just to the, I guess, north of him
19 there's a couple homes. So he's limited that use. Right
20 across, you can see on the picture, on 24 of the staff
21 report, is the, is the orchard and the, and the stand for
22 sale of agricultural supplies. So if he has some people
23 coming and going on Saturday, that's not going to be unusual
24 in that neighborhood, where that type of activity already
25 takes place.

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1 In summary, I think he's done a very excellent job
2 of trying to work with staff to come up with a solution
3 that, as I called it earlier, is a win-win. It's a win for
4 the environment, it's a win for the area, and of course,
5 it's a win for him because he -- or the neighborhood -- and
6 it's a win for him because he gets to continue to use this
7 property for a somewhat low-scale landscaping contracting
8 business, as landscaping contracting businesses go in this
9 county.

10 To have only eight employees on four-and-a-half
11 acres is a very low-scale business, and I don't know the
12 percentage, but when you're done looking at this site,
13 probably 85 percent of it is unusable. He's only going to
14 be using about 15 percent of the site, the little area in
15 front where the house is and then the gravel driveway to the
16 small area in back, where he's going to continue to park his
17 vehicles, and when he's finished installing all the forest
18 and meadow and keeping the existing forest, it's going to be
19 a very -- it's maybe not invisible, but it's as close to
20 invisible as you can make it on this site.

21 So with all that under consideration, we'd ask
22 that this special exception be approved by Your Honor and by
23 your -- that you recommend it be approved to the Board of
24 Appeals and that the Board of Appeals grant this special
25 exception.

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1 MR. GROSSMAN: Okay. And how much time do you
2 need, how many days do you need to submit the additional
3 materials before we close the record?

4 MR. GARDNER: Well, I don't have a problem with
5 mine. The problem is getting that approval from Park and
6 Planning.

7 MR. GROSSMAN: Right.

8 MR. GARDNER: I mean, I could agree to submit what
9 you asked me to submit in the next seven days, but as far as
10 the documentation, the forest conservation plan and the tree
11 variance plan being approved, I don't know the status of
12 that. I don't know if that's a formal document that they
13 grant -- they've drafted yet or not. If it's there, I'll
14 get it and get it to you in seven days, but if it's not,
15 then I guess I could tell you that I need additional time
16 for that within seven days.

17 MR. GROSSMAN: Right. If there's something, if
18 there's something that, even if it's not the official
19 resolution, if it's something that comes from the Planning
20 Board, saying that they voted to approve it --

21 MR. GARDNER: Okay.

22 MR. GROSSMAN: -- on X date, both of those items,
23 the forest conservation plan and the tree variance plan,
24 then I would accept that for the --

25 MR. GARDNER: Okay.

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1 MR. GROSSMAN: -- for the record, as long as we
2 have some documentation from them that they've approved it.
3 So, I mean, we could say 10 days, if you want --

4 MR. GARDNER: Okay.

5 MR. GROSSMAN: -- and is that a reasonable --

6 MR. GARDNER: Very well.

7 MR. GROSSMAN: -- way to go?

8 MR. GARDNER: Absolutely. I'm going to try to do
9 it this afternoon.

10 MR. GROSSMAN: Okay. And so that would be --
11 today's the 27th -- so that would be the 7th of July, which
12 is a Monday. Is that --

13 MR. GARDNER: That's fine.

14 MR. GROSSMAN: Okay. I mean, if you need more
15 time --

16 MR. GARDNER: I'll send you an e-mail.

17 MR. GROSSMAN: -- send me something, but --

18 MR. GARDNER: Thank you.

19 MR. GROSSMAN: Okay. So record to close July 7,
20 2014, and all the documentation to be submitted by then.
21 Okay. All right.

22 MR. GARDNER: And I'd just like to add, as I said
23 at the beginning, I appreciate your patience in allowing him
24 this time to get this done and rescheduling the hearings.

25 MR. GROSSMAN: I've turned into a very patient guy

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1 because I just conducted a hearing that went 36 days. So --

2 MR. GARDNER: Oh. Was that the school case?

3 MR. GROSSMAN: No. This is Costco.

4 MR. GARDNER: Oh, that one.

5 MR. GROSSMAN: All right. Okay. So I think
6 that's it. Is there anything else?

7 MR. GARDNER: No. Thank you.

8 MR. GROSSMAN: Okay. Then we are adjourned.

9 MR. PACANO: Thank you, Your Honor.

10 MR. GROSSMAN: Thank you, Mr. Pacano.
11 (Whereupon, at 12:18 p.m., the hearing was
12 adjourned.)
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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of Robert Pacano, D/B/A Woodstone Group, LLC
Special Exception No. S-2761
OZAH No. 10-11

By:

Wendy Campos, Transcriber

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