

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N/S Corbett Road, 900' E of		
Corbett Village Lane	*	ZONING COMMISSIONER
(1822 Corbett Road)		
	*	FOR
8 th Election District		
3 rd Council District	*	BALTIMORE COUNTY
Richard T. Moreland, et ux, <i>Legal Owners</i>	*	Case No. 2010-0260-SPH
Charles G. Pepin, et ux, <i>Contract Purchasers</i>		
<i>Petitioners</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Richard T. Moreland, and his wife, Mary-Agnes Moreland. The Petitioners request a special hearing to approve the non-density transfer of 3.619-acres of land from the subject property to the contract purchasers and owners of an adjacent parcel at 1732 Corbett Road¹, and to amend the previously approved special hearing in Case No. 2006-0508-SPH, to allow the construction of a barn as shown on the site plan. The subject property and requested relief are more particularly described on the redlined site plan, which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief were Richard T. Moreland, property owner, and Bruce E. Doak, the registered property line surveyor with Gerhold, Cross & Etzel, Ltd., who prepared the site plan for this property. Charles G. Pepin, owner of the adjacent parcel that would receive the non-density transfer, appeared and participated by testifying as to his intended use of the property and plans to build a 30' x 60' bank

¹ Charles G. Pepin and Ellen J. Pepin, adjacent property owners (west side), own four (4) parcels of land totaling 17 acres. Their circa 1894 completely renovated historic 2-½ story home is located on the north side of Corbett Road on 3.46 acres. On the south side of Corbett Road, the Pepin's own three (3) parcels that form a 13-acre tract of pastureland used agriculturally for raising horses.

barn² (illustrated on Petitioners' Exhibit 4) that would be used agriculturally for the stabling of his horses. There were no Protestants or other interested persons present; however, it is worthy to note that Kirsten Burger, 1906 Corbridge Lane, was unable to attend for personal reasons. She wrote the undersigned expressing concerns associated with the environmental impacts of cutting down trees and adding an additional impervious surface structure on the land. B.C.Z.R. Section 1A08.1B provides for the legislative goals of preserving and protecting eco-system functions and limits (1A08.6B[6]) impervious surfaces for non-residential development to no more than 10% of any lot.

Testimony and evidence offered disclosed that the subject property is an irregular shaped parcel located on the north side of Corbett Road, 660 feet west of Gunpowder Falls Road, between Falls Road and Corbett Village Lane in Monkton. The property contains a gross area of 16.165 acres, more or less, zoned R.C.7 and is improved with a 6,447 square foot, two-story dwelling built in 2007 and positioned on the northern or rear portion of the lot. The Moreland's, when initially purchasing the property in June 2004, intended to raze the two (2) existing tenant dwellings and construct a barn in their place. *See* Case No. 06-508-SPH that was decided by the undersigned on June 15, 2006 and is incorporated by reference herein. Mr. Moreland stated that although the tenant houses have been removed as planned, the barn was never built.

The Moreland's and Pepin's have entered into an agreement to transfer the 3.619-acre parcel from the Moreland's holdings to Charles and Ellen Pepin in conjunction with the uses on the Pepin's properties. As set forth above, testimony indicated the Pepin's own approximately 17 acres of land improved with two (2) single-family dwellings, accessory structures and pastureland. The land that will be transferred from the Moreland property is unimproved except

² A style of barn noted for its accessibility, at ground level, on two separate levels.

for an existing driveway and largely wooded. Approximately 200 feet of the existing macadam driveway that extends from Corbett Road to the proposed bank barn location will continue to be used by Charles Pepin. As illustrated on the site plan, the remaining 350 feet that extends further to the north from the barn location to the Moreland's driveway will be removed reducing the existing impervious surface area. Evidence and photographs (*See Exhibits 2A through 2I*) demonstrate the existing conditions and a stand of mature hardwood trees that run along the northern side of Corbett Road. The bank barn will be set back some 150 feet is buffered by surrounding trees. It was stated that the trees at the barn's location behind the stand of hardwoods consist mostly of pines that have grown together and are currently in a state of dying and fading fast. This testimony was corroborated by Vance Cole, a Maryland Certified Professional Horticulturist, who states in pertinent part,

“I am aware of the proposed siting of the barn, to the right, just off the driveway at the top of the first rise. It is about where the stand of pine starts. The Timber located on the proposed barn site is primarily Eastern White Pine, *Pinus strobus*. It is obvious, by the straight rows and tight spacing of the trees, that the stand was planted as a Christmas tree farm. This use was lost a long time ago. The pines are so close to maturity and have shaded and thinned themselves to the point that they are what we call ‘tiger tailed’. All their growth is at the top without supporting branching below. This top heavy situation is hazardous . . . ”. *See* Petitioners' Exhibit 6.

At this point, the Moreland's wish to formally transfer the property to Mr. and Mrs. Pepin, and the conveyance is not for the purpose of transferring any density, but merely to provide additional land to be used accessory to the productive pastureland in use on the south side of Corbett Road and the stabling of horses. If approved, Petitioners provided testimony that the conveyance will not be detrimental to the health, safety or general welfare of the surrounding R.C.7 zoned locale. Mr. Pepin further stated that he has discussed this proposal with both Valleys Planning Council and Sparks-Glencoe Community Planning Council who claim

jurisdiction over this area of Baltimore County. Neither organization opposed the transfer and contemplated improvements.

A Zoning Advisory Committee (ZAC) comment received on May 11, 2010 from Wallace Lippincott, Jr., on behalf of the Department of Environmental Protection and Resource Management (DEPRM), stated in pertinent part that,

“The Land Preservation Section raises concern that the request to subdivide off 3.619 acres of forest including forest buffer as being contrary to the purposes of the zone – specifically 1A08.1.B.1 and 2 . . . the fact that the zone provides for limiting lot size to 25 acres is additional argument that the proposed subdivision is contrary to the purposes of the zone” (Emphasis Added).

He further questions the transfer of the proposed barn use as he, upon his review, saw no evidence of any agricultural need for a barn. Mr. Doak rebutted these concerns and felt that Mr. Lippincott did not realize that the intended Moreland barn as contemplated in the approval in Case No. 06-508-SPH was never built. He disputed that the transfer and property line adjustment would fragment the existing forest. Mr. Pepin stated his substantial efforts to protect the prime and productive soils in the area and that the non-density transfer would assist his present use of pasturing horses. Petitioners’ Exhibit 6 seems to bring logic or consistency to accomplish the goals of both DEPRM, Ms. Burger and Petitioners. DEPRM objects to the 16.165 acre property owned by the Moreland’s being divided into 12.546 and 3.619 acre parcels. However, Petitioners’ Exhibits 1 and 5 show that Charles and Ellen Pepin own, in addition to the 3.46 acre adjoining lot, an additional 13.5 acres of surrounding land associated with 1732 Corbett Road’s agricultural use. The transfer of the 3.619 acre parcel would result in his holdings increasing to 20.619 acres, more or less. Consequently, I will approve this transfer with the condition that its use be restricted to agricultural purposes.³

³ This approval for a non-density transfer is consistent with this Commission’s Order in Case No. 04-020-SPH.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 25th day of May 2010, that the Petition for Special Hearing to approve the conveyance of a 3.619-acre parcel from the land of Richard T. and Mary-Agnes Moreland to Charles G. and Ellen J. Pepin (owners of an adjacent tract) for non-density purposes, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED;

IT IS FURTHER ORDERED that the request to amend the previously approved special hearing in Case No. 2006-0508-SPH, to allow the construction of the barn as shown on the site plan and photographs received in this case as Exhibits 1 and 4 respectively, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The relief granted herein is strictly for the non-density transfer of 3.619 acres for agricultural purposes, and that no residential structures, residential support, or accessory structures (other than the proposed barn) be allowed to be located on this portion of land. In other words, the relief granted herein is strictly for a non-density transfer and there are no density or development rights associated with this conveyance. There are no rights of subdivision associated with this transfer.
- 3) Within one hundred twenty (120) days of the date of this Order, new Deeds shall be recorded in the Land Records of Baltimore County referencing this case and incorporating the conditions and restrictions of this Order.

- 4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

_____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County