

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Rockland Holding Corporation
I, or we, the legal owner... of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the hereto described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an... DR-1... zone to an... BL (Parcel 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212

The Board would be hard pressed to cite a tract of land that has received the development study that has been made at the subject property.

Without further comment upon the presentation of this case, the Board would like to cite its charge in the subject instance, same being simply and solely to decide whether or not the County Council erred on March 24, 1971 when they zoned the subject property D.R. 1 in its entirety, and/or whether or not there has been substantial change in the character of the neighborhood since March 24th of 1971 to warrant the requested reclassifications. As agreed by both sides, the granting of the special exceptions requires the fulfillment of the provisions of Section 502.1 of the Zoning Regulations, and in addition same are directly incident to the granting of the reclassifications. These five special exceptions will be discussed later in this Opinion.

The first principal expert witness for the Petitioner was William Winstead, a representative of the Rouse-Wates Corporation. Mr. Winstead told the Board of the contingent contract relationship between Rouse-Wates and the Rockland Holding Corporation, and furthermore, he described to the Board that if this petition were successful, the Rouse-Wates Corporation would develop the subject property in line with six major goals that related to the good land development of this entity.

Following Mr. Winstead to the stand on behalf of the Petitioner was a Jervis H. Dorton, who was employed by the Rouse Company as a land planner and architect. He further discussed the proposed development.

On the third day of hearings the Petitioner ventured into the proof of error and/or change portion of his case, presenting Norman E. Gerber, Chief of the Community Planning Division of the Department of Planning of Baltimore County. Mr. Gerber cited the various aspects of the subject proposal which met with the approval of both the Planning Staff and Planning Board at various stages through the history of this petition, up to and including the present. Mr. Gerber was questioned by the Protestants and the Board as to whether or not his feelings were really devoted to the specific plan offered by the Rouse-Wates Corporation, or in fact represented a general development plan for the subject land, whether or not same would be developed by Rouse-Wates, and Mr. Gerber clearly indicated

that he was in favor of a development at the subject property at or near the density proposed by the Rouse-Wates Corporation, whether or not said company was involved in the development of same. His opinion was not especially keyed to this one development proposal that was specifically before the Board at this time. Mr. Gerber stated that he would favor the reclassification of the subject property as proposed in general and not specifically tied to the Rouse-Wates plan. There was expressed a concern to Mr. Gerber in reference to the B.L., as to whether or not it would be spot zoning. The Board can not conditionally zone same for the village center concept as proposed, but the B.L., if granted, would be available to any single site use that might desire B.L. land for any one of many uses. The question was whether or not same would represent good land planning. It was Mr. Gerber's opinion that considering all aspects of this location, this small 9.4 acre parcel would not be tantamount to spot zoning. He felt that the small B.L. zoning here was consistent with the overall policies of the Guide Plan and of the policy of the Planning Staff at this time.

An ecological planner, one M. Richard Nalbadian, of Philadelphia, followed Mr. Gerber to the stand on behalf of the Petitioner. His testimony was primarily oriented to the storm water runoff that would be created when the subject property was developed. The same was thorough and complete, and would seem to satisfy anyone that the proper development of the subject property as proposed would not present a problem in the local or regional streams from a storm water runoff standpoint. Petitioner's Exhibits No. 30 and No. 31 graphically illustrate some of the discussions presented to the Board by this witness.

The fourth day of testimony brought to the stand on behalf of the Petitioner Robert A. Relyea, a civil engineer with Green Associates, Inc., of Towson. Mr. Relyea's testimony dealt with the availability of public water and the availability of public sanitary sewer to the subject site. In the opinion of this Board his testimony was a most critical factor in the determination of the conclusion reached in this case, particularly as his testimony related to the availability of sanitary sewer. It would be unfair to attempt to detail his testimony, considering in the mind of this Board its importance to this deci-

sion. Suffice it to say that same was detailed and evidenced a good attention to the problems that exist in this case by the witness, Mr. Relyea. Two questions unanswered by Mr. Relyea concern the Board; one, being the fact that no apparent consideration was given to the overall sewer demands that might be anticipated within Baltimore City itself, and secondly and more specifically concerning immediate future City problems as they relate to the Jones Falls interceptor. What, if any, impact will the now progressing plan of the Village of Cold Spring have upon the capacity of the City side of the Jones Falls interceptor? It would seem that these factors would be very important in the decision making process of the County, i.e. both the County Council and subsequent zoning authorities considering this problem.

Concerning the sanitary sewer situation, both sides readily acknowledge the fact that the entire Jones Falls interceptor is now under a complete building moratorium, as same is not capable of handling any more additional waste water flow at all. Both sides also readily acknowledge that the County is now putting into the Jones Falls interceptor at the City line approximately four and one-half million gallons per day in excess of the amount which the County had contractually agreed to enter into the system at the City line. Again, both sides agreed that without correction of this problem the development of the Rockland tract in March 24th, 1971 or now would be a practical impossibility. The center of the controversy concerning the sanitary sewer revolves around the completion of a diversionary system which would relieve the Jones Falls interceptor and "enable" same to handle some additional sewage outflow. At the time of the map adoption, the various component parts of the diversionary system were in the discussion stage. Since that time contracts have been let for a portion of same and the completion of the system is now being discussed. The controversy involves perhaps the timing of the completion of this diversionary system. Both sides agree that when the diversionary system is completed there will be, from a practical standpoint, room in the Jones Falls interceptor for some additional sewage waste water outfall. At this point in time the County has executed contracts, and construction is under way for the Long Quarter pumping station and the Long Quarter forced main. The proposed Green Ridge interceptor has not yet been let

for bids and hence it would be difficult to accurately forecast the completion date for this part of the diversionary system. All four of the component parts of the diversionary system, including a Texas force main which has also not been let for construction bids, will be necessary before the diversion system would function, and as cited above, when this diversionary system is completed, the Jones Falls interceptor will likely become available again for the reception of additional sewage. The timing for the diversion system is the critical factor; whether same may be characterized as being a reasonable probability fruition in the foreseeable future is a question to be decided by this Board, and of course was a question in the mind of the Council at the time of the adoption of the use map. Again at this point in time, there can be no doubt that the diversionary system construction is under way and will be completed. The only doubt that is difficult to determine at this time is the question of when.

Bernard M. Willemain, a recognized land planner, testified on behalf of the Protestants, and disagreed with some of the timing data presented by the Petitioner's witness, Mr. Relyea. Petitioner's Exhibit No. 33 and Protestants' Exhibit E emphasize to some degree the differing testimony presented by the witnesses for each side concerning sanitary sewer problems. Petitioner's Exhibits No. 35 and No. 36 are also pertinent to this sanitary sewer situation.

The ninth witness for the Petitioner was Herbert R. Pitt, a civil engineer employed by Green Associates, Inc. He presented testimony on behalf of the Petitioner concerning the traffic situations at the subject property, as might be created if the subject petition were granted. Petitioner's Exhibits No. 38 through No. 44 deal with the traffic study.

The fifth day brought to the stand, on behalf of the Petitioner, one David A. Wallace, an architect, urban designer and planner from Philadelphia. Mr. Wallace testified at length for the best part of two days and generally summarized the basic reasoning for the petition. He was the concluding witness for the Petitioner.

Concerning the Protestants' presentation, as previously mentioned, Bernard M. Willemain testified as an expert witness on behalf of the Protestants. In addition,

Nathan L. Cohen, a member of the Board of Trustees, Treasurer and member of the Executive Committee of the Park School, testified in opposition to the granting of these reclassifications on behalf of the Park School. Mr. Cohen cited the potential increase in traffic and the safety and environmental effects of the subject petition, particularly considering the location of the Park School immediately contiguous with the subject proposal. He also specifically cited the entrance to Park School on Old Court Road and the effect of increased traffic at this entrance. Same was described as an extremely hazardous point of ingress and egress.

Dr. Paul Madison Leard, a resident of Old Court Road, testified in opposition to the granting of this petition. Dr. Leard is also the Vice President of the Old Court-Greenspring Improvement Association. Said organization is in opposition to the granting of this petition.

After carefully reviewing the testimony and evidence in this case, it is the judgment of this Board that the requested reclassifications and special exceptions shall be denied in toto. The reasons for the denying of these reclassifications and special exceptions will be discussed below beginning with the reasoning for the decision concerning the denial of the requested B.L. zoning classification.

It is the judgment of this Board that the reclassification to B.L. as requested by the Petitioner, of 9.4 acres would be tantamount to spot zoning. Despite the best evidence presented by the Petitioner, there is absolutely no need for a commercial neighborhood center at this location, except perhaps considering any possible need that might at some future time be created by some sort of higher density development on the Johnson tract than exists at present, of course, the use at present being predominantly vacant and containing the few isolated homes owned and/or occupied by the Johnson family. There would be no other evidence, in the opinion of this Board, that could possibly warrant the isolated singling out of this pinpointed 9.4 acres of commercial zoning in this particular spot. Same, in the opinion of the Board, would be completely inconsistent with the 1980 Guide Plan, and would not represent good land planning at this time. For these reasons, the Board sees no error on the part of the County Council in

not granting any commercial zoning at this particular location, nor can the Board find any evidence of significant change in the character of the neighborhood to warrant the granting of the requested B.L. zoning classification. The sole evidence that would indicate that the same would in any way represent good land planning would be that evidence presented by Dr. Wallace and other witnesses for the Petitioner which was oriented almost completely to the needs of the proposed Rouse-Wates development. This Board cannot use these reasons for prematurely granting commercial zoning. Considering the neighborhood as it exists today, with but a small number of single family residences, one can conceive of no possible need for any commercial zoning.

As to the request for the 10.5 reclassification of the 66.25 acres, the Board would cite the following: The Board sees nothing inconsistent with D.R. 1 zoning on the subject property, as same correlates and reflects the thinking of the 1980 Guide Plan and the intent and purpose of the establishment of the urban/rural demarcation line. In fact, the same, carefully read, would seem to indicate the opposite, in that there would be good, logical, sound land planning reasonings for keeping the fringes of this particular sector in a low density classification. Hence if one would, as this Board is forced to do, disregard the specific proposal of the Rouse-Wates Corporation, it is difficult to say that council erred in their deliberations and conclusions on March 24, 1971 when they placed the subject property in toto in a D.R. 1 classification.

The Board, of course, as previously mentioned, is particularly impressed with the testimony and evidence concerning the sanitary sewer situation. As mentioned before, the system at this time is closed and a diversionary system is planned which at some future date will reopen the Jones Falls interceptor to some additional waste water flows. A prime question is when? Reflecting as to whether or not the Council erred in adopting a low density classification for the subject property on March 24, 1971, the Board thinks not. The Board can readily imagine that if the Council, singly and solely settled upon the sanitary sewer situation as it existed before them in March of 1971, this single reason could have been sufficient in the mind of this Board to warrant the Council's keeping this property at a low density. At that time, the diversionary system was not under construction and was

certainly off somewhere into the future. As we face it today, whether or not this developing diversionary system by itself could constitute substantial change in the character of the neighborhood, the Board thinks not. Frankly, almost three years after the adoption of the existing use maps by the Council, the diversionary system is far from complete. Two elements of four have yet to be let for construction bids. The Board agrees that there is no doubt that the diversionary system will at some future time be completed, and when that future time comes about, some additional sewer outflow into the Jones Falls interceptor will be acceptable. The magnitude of this additional outflow is not tremendous, and it is significant to note that little apparent consideration has been given to additional needs in Baltimore City, including, but not limited to, the ongoing plans of Cold Spring. This sanitary sewer situation as it existed in March of 1971 could, in the eyes of this Board, have been the reason for the low density zoning of the subject property, and hence reason to deny the reclassifications as requested then by the Petitioner; and in addition, even considering the progress that has been made in this diversionary system, this Board is not ready to say that the Jones Falls interceptor will on any given fixed date be able to accept the sewerage from the subject property. So as an evidence of substantial change in the character of the neighborhood that is required by law as a premise for the granting of such reclassification, the Board is unimpressed. The Board does not feel that the existing conditions of the completion of the diversionary system is sufficient evidence of substantial change in the character of the neighborhood at this time to warrant the requested reclassifications.

The traffic potentially generated by a development of this magnitude is not to be discounted. While same could likely eventually be assimilated into the community without catastrophic effects, it is not fair to say that same would not significantly change the basically residential single family characteristic of this general neighborhood. Hence, the magnitude of the traffic generation anticipated by the size of the proposal, if this reclassification would be granted, would be one element that would tend to discourage such intensified land use at this site.

In summary, concerning the residential reclassification, the Board does not

feel that the Petitioner has overcome the burden that the maps as adopted in March of 1971 carry a strong presumption of correctness, nor has there been evidence of substantial change in the character of the neighborhood to warrant this reclassification. It is noted that the existing D.R. 1 classification seems to this Board to be consistent with the 1980 Guide Plan, the Northwest Area Sector Plan, and the Regional Planning Staff suggestions as adopted in 1972. In addition, it seems reasonable that one cannot ignore the existing sanitary sewer problems which at the present time have completely shut down the Jones Falls interceptor; nor would it be unreasonable to consider carefully the traffic situations as they exist at the subject property, the existing roads and the potential impact of a new development of this size that would be generated by the reclassification in the subject instance. Any or all of the above points could have been the factors of final determination in the mind of the County Council, when in March of 1971 they zoned the subject property D.R. 1; considering same this Board can find no error on the part of the Council in rendering that judgment as the same affects the subject property. The subject neighborhood itself has certainly changed in no way since March of 1971, and perhaps the only change worthy of any consideration on behalf of the Petitioner is the development to some degree of the diversionary sanitary sewer system. However, in the mind of this Board, this factor does not come close to being a change of sufficient character to warrant the reclassification in the subject instance.

As to the special exceptions, all five of same shall be denied. Each are tied intricately to the reclassification of the subject property. It is the judgment of this Board that the reclassifications are not warranted; hence, the special exceptions shall be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 22nd day of February, 1974, by a majority of the County Board of Appeals ORDERED, that the reclassifications from D.R. 1 to D.R. 10.5 and D.R. 1 to B.L. zones petitioned for, be and the same are hereby DENIED; and it is

FURTHER ORDERED, that the Special Exceptions for Community Recreation Area and Community Facilities petitioned for, be and the same are hereby DENIED.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John A. Slowik, Chairman

Walter A. Miller, Jr.

DISSENT

The undersigned member of the Board dissents in toto from the decision and Order of the majority of the Board in this case, and will file an opinion stating the reasons for said Dissent as quickly as possible.

W. Giles Parker

Dated February 22, 1974

RE: PETITION FOR RECLASSIFICATION AND SPECIAL EXCEPTION
E/S and W/S of Falls Road between the Baltimore County Beltway and Jones Falls Expressway - 3rd and 9th Districts
Rockland Holding Corporation - Petitioner
NO. 73-231-RX (Item No. 21)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

The Petitioner requests a Reclassification for Parcel No. 1 and Parcel No. 2 from a D.R. 1 Zone to a B.L. Zone; Parcel No. 3 from a D.R. 1 Zone to a D.R. 10.5 Zone; and a Special Exception for Parcel Nos. 3, 1, 4, 1, 4, 2, 4, 3, and 5, 1 for Community Buildings, Swimming Pools, and other Civic, Social, Recreational or Educational Uses. This property, containing 65.3 acres of land, more or less, is located on the east side and west side of Falls Road between the Baltimore County Beltway and Jones Falls Expressway in the Third and Ninth Election Districts of Baltimore County.

At the inception of the hearing on the matter, the Petitioner withdrew the request for a Reclassification from a D.R. 1 Zone to a B.L. Zone on Parcel No. 1. Furthermore, the Petitioner submitted his case based on the recommendations of the Baltimore County Planning Board and did not produce any other testimony.

The decision of the Zoning Commissioner must be based upon the evidence produced at the hearing and take into consideration the recommendations of the Baltimore County Planning Board. Since the Petitioner failed to produce any evidence upon which a favorable decision could be based, the Zoning Commissioner finds that the Comprehensive Zoning Map as adopted on March 24, 1971, was not in error. The Comprehensive Zoning Map is presumed to be correct and the burden of proving error is borne by the Petitioner. The Petitioner failed to meet this burden. There was no evidence to show any substantial change in the character of the neighborhood.

Boards of Baltimore County, Maryland, and here, comprehensive development is planned by the Petitioner. The availability of water, sewage disposal facilities, and appropriate access to the site justifies the requested Reclassifications and Special Exceptions.

15. The modern demand for townhouse and apartment facilities was not anticipated by Baltimore County authorities and thus inadequate provision was made in this area for land so classified as to make the construction of such apartments and townhouses feasible.

16. The failure of the Baltimore County Council to zone such land as requested was error for the reasons assigned above.

17. The great increase in demand for such townhouse and apartment facilities since map adoption is, itself, a change justifying Reclassification.

18. The improvements to the Baltimore County Beltway completed or under construction represent changes sufficient to justify reclassification.

By reason of the errors cited, and other errors attendant to the classification to the subject land as DR-1 and by reason of the changes in the area, these Reclassification requests and Special Exception requests are made.

W. Lee Thomas,
Attorney for Petitioner

Furthermore, that the Petitioner did not produce any evidence that the request for the Special Exception would not be in conflict with the prerequisites set forth in Section 502.1 of the Baltimore County Zoning Regulations.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 22 day of April, 1973, that the Petitioner having withdrawn his request for a B.L. Zone on Parcel No. 1 at the time of the hearing, the same is hereby DISMISSED with prejudice.

It is further ORDERED that the Reclassification on Parcel Nos. 2 and 3 be and the same is hereby DENIED and that the property or area be and the same is hereby continued as and to remain a D.R. 1 Zone for Parcel Nos. 2 and 3; and the Special Exception for Community Buildings, Swimming Pools, and other Civic, Social, Recreational or Educational Uses for Parcel Nos. 3, 1, 4, 1, 4, 2, 4, 3, and 5, 1 be and the same is hereby DENIED.

H. D. Miller
Zoning Commissioner of
Baltimore County

-2-

PETITION FOR RECLASSIFICATION FROM DR-1 TO BL ZONES AND TO A DR-10.5 ZONE AND FOR SPECIAL EXCEPTIONS FOR COMMUNITY BUILDINGS, SWIMMING POOLS AND OTHER CIVIC, SOCIAL, RECREATIONAL OR EDUCATIONAL USES by Rockland Holding Corporation, a Maryland corporation, (Properties located on the East and West sides of Falls Road, South of the Baltimore County Beltway in the 3rd and 9th Election Districts)

BEFORE THE
ZONING COMMISSIONER
FOR
BALTIMORE COUNTY

MEMORANDUM

The existing DR-1 classification, as established by the Baltimore County Zoning Maps on the land for which reclassification is requested, is erroneous for the following reasons, among others:

1. This land, bounded in part by the Baltimore County Beltway and the Jones Falls Expressway and amply serviced by area roads, enjoys excellent access and its development, as proposed, would not place an undue burden on any such area roadways.
2. The improvement of the Baltimore County Beltway, begun approximately 15 years ago and continuing as of this date, has further increased accessibility to the tract.
3. The present construction of a "fly-way" over the Baltimore County Beltway connecting Charles Street Avenue and I-83 near the subject property further will improve traffic flow upon its completion in approximately one year.
4. A 27" sanitary sewer line is at the Eastern boundary of the tract and available to serve the tract.
5. The Slaughterhouse Run 18" sanitary sewage disposal system provides sewage disposal facilities for the tract.

ROBERTSON, MUELLER,
THOMAS & McLEAN
PLANNERS
100 N. PENNA. AVE.
TOWSON, MD. 21204
682-1800

6. The Moores Run sewer line is available for use including its 18" sanitary sewage disposal facilities.

7. The Jones Falls interceptor consisting of 24" and 8" lines is available to serve the tract.

8. 12" water line facilities along Old Court Road and 16" water facilities along Jones Falls Road serve the subject tract.

9. A Baltimore County fire station is located adjacent to the tract, thus providing fire protection for improvements to be constructed on the tract.

10. Parcel #1, for which 100,000 square feet of office space is planned because of its proximity to the Baltimore County Beltway and the topography of the land, is not susceptible to residential development but is available for office building use.

11. Parcel #2, for which BL zoning is requested, is to provide retail commercial space to serve the development and the immediate surrounding area. At present, commercial facilities to serve the area do not exist.

12. Parcel #7 for which DR-10.5 classification is requested, is abutted on the East and South by lands classified DR-16, on the West by the Park School, and on the North by other lands of the Petitioner. In addition, apartment developments are either completed or are under construction south of Parcel #3.

13. The Special Exception requests for community recreation areas are to provide amenities such as swimming pools and tennis courts for those who will become residents on the Petitioner's tract.

14. The need for comprehensive development of large tracts of land is recognized by the various Planning and Zoning Agencies and

ROBERTSON, MUELLER,

THOMAS & McLEAN
PLANNERS
100 N. PENNA. AVE.
TOWSON, MD. 21204
682-1800

DOLLENBERG BROTHERS
Regional Professional Engineers & Land Surveyors
708 WASHINGTON AVENUE AT YORK ROAD
TOWSON, MD. 21204

OFFICE COPY

September 27, 1972

Description to accompany Zoning Petition
on the property of Rockland Holding Corporation
Parcel No. 2 - Proposed Zoning BL

All that piece or parcel of land situated, lying and being in the Third Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point distant North 35 degrees 22 minutes 28 seconds West 419.77 feet from the corner formed by the intersection of the northwest side of Old Court Road with the southwest side of Falls Road and running thence the seven following courses and distances: West 422.50 feet, South 45 degrees 49 minutes East 250.40 feet, South 50 degrees 06 minutes West 342.57 feet, North 42 degrees 27 minutes 15 seconds East 440 feet and North 11 degrees 40 minutes West 522.59 feet to the place of beginning.

Containing 9.00 Acres of land more or less.

Being the property of the petitioners herein as shown on a plat filed with the Zoning Department.



DOLLENBERG BROTHERS
Regional Professional Engineers & Land Surveyors
708 WASHINGTON AVENUE AT YORK ROAD
TOWSON, MD. 21204

OFFICE COPY

September 27, 1972

Description to accompany Zoning Petition
on the property of Rockland Holding Corporation
Parcel No. 3 - Proposed Zoning DR 10.5

All that piece or parcel of land situated, lying and being in the Third Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point on the westernmost right of the Jones Falls Expressway at a point distant South 21 degrees 41 minutes 27 seconds East 1130.00 feet from the corner formed by the intersection of the western side of the Jones Falls Expressway with the southwest side of the Falls Road and running thence the seven following courses and distances: South 50 degrees 06 minutes West 342.57 feet, North 42 degrees 27 minutes 15 seconds East 440 feet and North 11 degrees 40 minutes West 522.59 feet to the place of beginning.

Containing 46.00 Acres of land more or less.

Being the property of the petitioners herein as shown on a plat filed with the Zoning Department.



CASE NO. 73-231-RX:
PETITION OF ROCKLAND HOLDING CORPORATION
FOR ZONING RECLASSIFICATION FROM D.R. 1
TO 46 ACRES OF D.R. 10.5 ZONING, 9.4
ACRES OF B.L. ZONING, AND FOR SPECIAL
EXCEPTIONS FOR COMMUNITY BUILDINGS,
SWIMMING POOLS, ETC.
OF
BALTIMORE COUNTY

CASE NO. 74-57-R:
PETITION OF ROCKLAND HOLDING CORPORATION
FOR ZONING RECLASSIFICATION FROM D.R. 1
TO 20.25 ACRES OF D.R. 10.5 ZONING
OF

...000...

PROTESTANTS' MEMORANDUM

Rockland Holding Corporation, Petitioner, is the owner of a 371 acre tract of land (the "Property") located for the most part in the southwestern quadrant of the Jones Falls Expressway-Beltway interchange, in the third and ninth election districts of Baltimore County. The Property is presently zoned D.R. 1 and is subject to a conditional sales contract with Rouse-Wates, Incorporated ("Rouse"), the proposed developer of the Property should the rezoning petition be granted. Protestants include (i) the individual taxpayers and owners of residential properties in the area to be adversely affected by the requested reclassification (see Exhibits O and P and stipulation concerning Mr. and Mrs. William L. Houser), and (ii) the Park School, located adjacent to the southwestern boundary of the Property and separated from the northwestern portion of the Property by Old Court Road.¹

¹ Counsel for the Park School and for Mr. and Mrs. Houser have authorized the undersigned counsel to submit this memorandum on behalf of all Protestants.

-2-

Petitioner's emphasis in this proceeding has been to attempt to prove original error or mistake in the Baltimore County Council's classification of the subject Property as D.R. 1. But, viewing Petitioner's evidence at its best and even assuming, for purposes of argument only, that its evidence is uncontradicted, we submit that Petitioner's evidence falls far short of the "strong" type of evidence required by the Court of Appeals in order to overcome the "strong" presumption of correctness which attaches to comprehensive rezoning.

The testimony of and exhibits introduced by Messrs. Winstead andorton (as well as portions of the testimony of Dr. Johnson and Dr. Wallace) were addressed to the "attractiveness" of the Rouse proposal for the development of the Johnson Property. The Board was told that the historic village will be preserved, that there will be 72% of existing open space and 76% of existing trees preserved, that there will be no significant impact on the existing ecological and wildlife characteristics of the Property, and so forth. There are two uncontroverted responses to such testimony. First, the same benefits can be achieved by a well-designed cluster-type development under the existing D.R. 1 zoning. Second, and most important, the "attractiveness" of the Rouse proposal is legally irrelevant. In Garin v. Board of County Commissioners, 244 Md. 106, 109 (1966), Judge Oppenheimer stated for the Court:

"Almost all of the evidence offered before the Board by the appellants went to the advantages of the proposed development of the tract and to show that the proposed land uses would be the best to which the land could be put. There was voluminous

-5-

The two petitions have been consolidated by Petitioner on this appeal from the Zoning Commissioner's denial of each petition at two separate hearings at which Petitioner failed to present any evidence other than submitting the Planning Board's recommendation with respect to the first petition. The consolidated petitions request a zoning reclassification to 66.25 acres of D.R. 10.5, 9.4 acres of B.L., and for 5 special exceptions for community buildings, swimming pools and other recreational and social uses. If the petitions are granted, Petitioner and Rouse propose to construct 985 dwelling units (comprised of townhouses and garden apartments), a shopping center (30,000 square feet of retail space; 30,000 square feet of office space), a car care center, and the described recreational facilities requested in the special exceptions.

LEGAL TESTS

The legal standard by which the Petitioner's evidence must be viewed is set forth in Stratakis v. Beauchamp, 268 Md. 643, 652-53 (1973), a zoning case arising out of Baltimore County since the adoption of the comprehensive rezoning map and Bill 100 on March 24, 1971:

"While, in recent years, we have had occasion to enumerate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced...." (Emphasis in original.)

and plausible testimony as to the attractive nature of the plans for the area involved but, as we held in Macdonald v. Board of County Commissioners, 238 Md. 549, 555, 210 A.2d 325, 328 (1965): [I]t is not the proposed treatment of a particular tract within the broad territory encompassed by the original zoning plan which governs; the impingement of the proposed rezoning upon the general plan is the criteria. Nor does the approval of the reclassifications by the Planning and Zoning Commission supplant the Board's responsibility to make its own decisions...."

With respect to the three categories of original error cases set forth above, two of such categories are wholly inapplicable on this appeal. Petitioner does not assert that there was a technical "slip of the pen" in the comprehensive rezoning map adopted on March 24, 1971 by the County Council. In addition, Petitioner's own witnesses refute any claim that the existing D.R. 1 classification deprives it of "all" reasonable use of the Property, taking into consideration the flexibility of housing types and clustering placement permitted under Bill 100. Dr. Johnson testified that both the present Rouse proposal and a Rouse proposal for a D.R. 1 development would yield the same economic gain to Petitioner (the nine Johnson-related families comprising Rockland Holding Corporation). Mr. Winstead testified that apartments and townhouses (both permitted under the existing D.R. 1 classification) could be rented for up to \$1,000 per month or sold for up to \$100,000 respectively. Dr. Wallace admitted on cross examination that the Property could be developed under the existing zoning and that such zoning does not deprive Petitioner of all reasonable use of its land.

The essence of Petitioner's case, as symbolized by Dr. Wallace's testimony, is that the present Rouse proposal and requested rezoning (as well as the more intense Rouse proposal before the

-6-

See also Trainer v. Lipchin, 269 Md. 667 (1973); Valenzia v. Zoning Board of Howard County, No. 87, Sept. Term 1973 (Dec. 4, 1973, reported in The Daily Record on January 18, 1974); Mavor and Council of Rockville v. Henley, 268 Md. 469 (1973). "And the burden of proving change or mistake which rests on the applicant is quite onerous." Rockville v. Henley, *supra*, 268 Md. at 473. See also Stratakis v. Beauchamp, *supra*, 268 Md. at 653.

A. ERROR

During the hearing Petitioner suggested that "confusion" existed in the Maryland Court of Appeals decisions regarding the distinction between the type of evidence relevant to prove original error or mistake and the type of evidence relevant to prove change in the character of the neighborhood. Protestants respectfully submit that a thorough reading of the Court of Appeals decisions of the past decade reveals a definite distinction between evidence constituting original error as opposed to evidence constituting change in the character of the neighborhood.

There are basically three types of cases in which original error or mistake has been held to justify a rezoning classification.

1. A technical mistake in drawing the maps, i.e. a slip of the pen. See e.g., Mack v. Crandall, 244 Md. 193 (1966).
2. A zoning classification which is confiscatory in that it deprives the landowner "of all reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone...." Stratakis v. Beauchamp, *supra*, 268 Md. at 654. (Emphasis in original.) See also Rockville v. Henley, *supra*.

-3-

County Council on March 24, 1971) is more "appropriate" for the Property than the existing D.R. 1 zoning, i.e. the Property is suitable to a higher and better use than presently permitted under its existing zoning --- a conclusion which is legally "irrelevant" for purposes of establishing error or mistake in the comprehensive rezoning. Rockville v. Henley, *supra*, 268 Md. at 476.

With respect to the third category of "error or mistake" Petitioner apparently claims that the County Council erred in not adequately recognizing a need for townhouses and multifamily dwellings and supporting commercial facilities in the northwest sector of Baltimore County encompassing the subject Property, taking into account the proposed sewerage diversionary system aimed at alleviating the overburdened Jones Falls sewer interceptor. Again, without even considering, for the moment, the contradicting evidence offered by Protestants, we submit that the evidence produced by Petitioner before the Board on this issue simply is not "strong" enough to overcome the "strong" presumption of correctness attaching to the March 24, 1971 comprehensive rezoning map.

As to the alleged "need" for townhouses and multifamily dwellings, Dr. Wallace referred to, but failed to introduce, a report of Morton Hoffman and Associates, cited in the Planning Board minutes dated September 18, 1969 (Exhibit #49). Yet the reference to Morton Hoffman's study in these minutes pertained only to the Planning Board's "recommending medium- and high-rise apartment zoning in three community or town centers, Catonsville, Pikesville, and Towson, in line with the recommendations of the Planning Board's consultant, Morton Hoffman, who had projected

-7-

268 Md. at 476; Valenzia v. Howard County, *supra*; Germonco v. Board of Appeals of Baltimore County, 257 Md. 706 (1970); Pahl v. Board of Appeals of Baltimore County, 237 Md. 294 (1965). Provided that the existing zoning permits a reasonable use of the land, two corollaries to the confiscatory principle are that (a) it is immaterial that the requested zoning would yield a greater profit to the landowner, and (b) "the fact that the highest and best use for a piece of property is something other than that which the present zoning allows is, by itself, irrelevant." Rockville v. Henley, *supra*, 268 Md. at 476. See also Valenzia v. Howard County, *supra*.

3. The zoning authority, at the time of its adoption of a comprehensive map, failed to take into consideration and provide for then present needs and trends, taking into consideration matters and circumstances which were then reasonably probable of fruition in the foreseeable future. See Miller v. Abraham, 239 Md. 263, 274 (1965) (no error found in Baltimore County Council's not providing for a shopping center on Old Court Road when little, if any, weight was to be given to proposed road improvements which were not reasonably probable of fruition in the foreseeable future at the time of the comprehensive rezoning). See also Surkovich v. Doub, 258 Md. 263 (1970); County Commissioners of Cecil County v. Phillips, 255 Md. 229 (1969); Jobar Corp. v. Rodgers Forge Community Association, 236 Md. 106 (1964). Mere hindsight that a different zoning classification or boundary line may have been more desirable is no basis for finding original error. See e.g., Dahl v. Board of Appeals of Baltimore County, 258 Md. 157 (1970).

-4-

that a limited amount of this kind of development would occur by 1975...." (Exhibit #49, page 4) (Emphasis added.) Dr. Wallace cited no portion of the Hoffman report pertaining to the neighborhood surrounding the Johnson Property. Nor did Dr. Wallace produce any facts or statistical data of his own to support his allegation of "need". He merely relied on his own "visual inspection" of the neighborhood and alluded to a Regional Planning Council existing land use map, which he failed to produce even after the Board expressed a desire to see such a map.

Protestants submit that Dr. Wallace's bald conclusions as to the "need" for townhouses and apartments in the subject neighborhood should be wholly disregarded for two principal reasons. First, his opinion is wholly devoid of any substantive supportive facts. As stated in Stratakis v. Beauchamp, *supra*, 268 Md. at 655:

"But, as we have held, an opinion, even that of an expert, is not evidence strong or substantial enough to show error in the comprehensive rezoning or confiscation unless the reasons given by the expert as the basis for his opinion or other supporting facts relied upon by him are, themselves, substantial and strong enough to do so. Creswell v. Baltimore Aviation, [257 Md.], *supra* at 721; Westview Park v. Haves, 256 Md. 375, 382, 261 A.2d 164 (1970); Smith v. Co. Comm'rs of Howard Co., *supra*, at 284."

Second, the alleged "need" for townhouses and multifamily dwelling units was in fact met by the County Council when it enacted Bill 100 to go in effect simultaneously with the enactment and adoption of the comprehensive rezoning map on March 24, 1971. For the first time in the history of Baltimore County, a great variety of dwelling units were and are now permitted in any D.R. residential zone, with the further advantage of permitting the clustering of develop-

-8-

ment to maximize the use of the best-suited portions of a tract for development while leaving the remaining portions as open space. Thus, under Bill 100, Section 1801.1(A)(1), the following types of dwellings are permitted as of right in any D.R. zone: single family detached and semi-detached houses; single family group, patio, and side-and-back attached houses; two family houses; town-house apartment buildings; and garden apartment buildings.

With respect to the alleged "need" for a shopping center on the subject Property, the record is devoid of any facts demonstrating that such a need exists at the present time, let alone on March 24, 1971. The inappropriateness of the requested 9.4 acres of commercial zoning (B.L.) on the Johnson Property will be discussed, *infra*, in greater detail. Suffice it to say at this point that the only "need" for commercial zoning would be a "need" created by the Rouse proposal itself through its injection of 985 dwelling units in a neighborhood presently comprised of only 61 residences. The proposed Northwest Sector Master Plan proposing a neighborhood shopping center in the vicinity of the Property, which is referred to in the Planning Board recommendation (Exhibit #1), has never been officially adopted by any County agency; moreover the proposed Northwest Sector Plan included in the Planning Board's publication of November 24, 1970 (Exhibit H) accompanying the public hearings on the proposed maps did not refer to such a shopping center.

Petitioner further appears to contend that the current progress of the Long Quarter-Texas sewerage diversionary system is somehow evidence of original error. Petitioner argues that the

-9-

alleged "need" for townhouses and apartments should not have been rejected by the County Council because of the overburdened Jones Falls sewerage interceptor due to the relief to that interceptor alleged to be forthcoming by construction of the diversionary system. Petitioner's own testimony and evidence, however, clearly show that, at the time of the comprehensive rezoning, the diversionary system could by no stretch of the imagination have been characterized as being reasonably probable of fruition in the foreseeable future, the test set forth in the cases cited above.

As of March 24, 1971, the various components of the diversionary system were merely in the discussion stage. No contracts had been entered into by the County with respect to the construction of any of the components, and, therefore, the actual completion and operation of the system was not foreseeable in the near future at the time of the adoption of the comprehensive rezoning map. On the contrary, it was not until September 24, 1973, two and a half years later, that the County executed contracts for the construction of the Long Quarter pumping station and Long Quarter force main. Mr. Relyea, Petitioner's sewer and water expert, estimated that the construction of these facilities would not be completed until late 1974 or 1975. Yet the proposed Green Ridge interceptor, which is essential to the operation of the Long Quarter facility, has not even been subject to construction bids as of this date and, therefore, no completion date can be forecast. Similarly, no bids for construction have been let for the construction of the Texas station force main, which is essential to the operation of the Texas pumping station. Since all of these components must be

-10-

completed before the diversionary system is capable of diverting sufficient flow from the Jones Falls interceptor to bring the County within its agreed upon allotment of the capacity of the interceptor, it is readily apparent that the current absence of construction contracts on several of the components demonstrates that the completion of the diversionary system was not reasonably foreseeable as of March 24, 1971 by any rational standard.

B. CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD

Petitioner also appears to claim that the diversionary system constitutes a change in the character of the neighborhood sufficient to justify the requested classification. But this approach, too, even assuming Petitioner's proof to be unchallenged, badly misses the mark.

The three steps necessary to prove a change in the character of the neighborhood are as follows:

1. The area reasonably constituting the "neighborhood" of the subject property must be defined;
 2. There must have been changes in the neighborhood since the comprehensive rezoning; and
 3. Such changes must have resulted in a change in the character of the neighborhood.
- See Clayman v. Prince George's County, 266 Md. 409, 417 (1972); Montgomery v. Board of County Commissioners for Prince George's County, 256 Md. 597, 602 (1970).

The neighborhood has been delineated in this case as being confined within the following boundaries: the Jones Falls

-11-

Expressway to the east, the beltway to the north, Greenspring Avenue to the west, and the Arundel quarry and high dividing ridge to the south (physically separating the Property from the Twin Ridge apartment complex).

The only change in the neighborhood alleged by Petitioner is the sewerage diversionary system. There are two principal reasons why the sewerage diversionary system does not constitute a change in the character of the neighborhood. The primary reason is that unlike typical examples of "changes" which have been relied on in the Maryland cases as changing the character of the neighborhood (such as the construction of major roadways, the introduction of commercial facilities in a residential neighborhood, etc.), the provision of underground sewerage facilities does not in any manner affect the character of a neighborhood. The recent Maryland cases recognize this fact. In France v. Shapiro, 248 Md. 335, 343 (1968) the Court stated:

"Nor should an improvement in water and sewerage facilities, standing alone, be taken as a change of conditions affecting the neighborhood." 2

See also Howard Research and Development Corp. v. Zoning Board of Howard County, 263 Md. 380, 386 (1971); Sukovitch v. Roub, 258 Md. 263, 274 (1970); Chatham Corp. v. Beltram, 252 Md. 578, 585 (1969).

² The only type of case in which the availability of water and sewer has been considered as a change is where there are also additional overt changes, such as significant road construction, which in fact change the character of the neighborhood. See e.g., White v. County Board of Appeals, 219 Md. 136 (1959).

-12-

With respect to the issue of whether the availability of water and sewer is a factor in providing commercial zoning in a residential neighborhood, the Court stated in Clayman v. Prince George's County, supra, 266 Md. at 419:

"The District Council first found that sewerage for the emerging subdivision had become available since the comprehensive zoning was adopted in 1960. We have held, however, that the availability of sewer and water services does not result in a change in the character of the neighborhood in that these services are equally important to residential as to commercial development...."

Second, as indicated above, the evidence is that only some of the components of this system are under construction, while other components have not even been bid or contracted for as of this date. Until the entire system is at least under construction, and actually in operation, it is premature to characterize the diversionary system as a change. See Wells v. Pierpont, 253 Md. 554, 565, (1969) (dissenting opinion of Judge Barnes, in which he analyzes the cases dealing with public improvements as "changes" and concludes that until the utility in question is actually constructed, it is premature to determine whether there has been a change in the character of the neighborhood).

Petitioner may have suggested that the construction of the Twin Ridge apartment complex is relevant to the issue of "change in character of the neighborhood". The Twin Ridge complex is not, however, in the same neighborhood as the Johnson Property, the high ridge at the southern tip of the Johnson Property being a natural divide between the two neighborhoods. Even if Twin Ridge were in the same neighborhood, the construction of the apartments, which

-13-

commenced as early as 1969, is in accord with the development contemplated by the comprehensive rezoning map. In Prince George's County v. Presbick, 263 Md. 217, 228 (1971), the Court discussed this issue as follows:

"This Court has frequently recognized that the development of an area along the lines contemplated in the original comprehensive zoning is not such a change as would support the finding of a substantial change in the character of the neighborhood...."

From the foregoing discussion, Protestants submit that taking Petitioner's evidence at its best and uncontradicted, Petitioner has failed to prove by "strong" evidence original error or mistake or a change in the character of the neighborhood to overcome the "strong" presumption of correctness attaching to the March 24, 1971 comprehensive rezoning. Accordingly, the requested rezoning classifications should be denied.

C. SPECIAL EXCEPTIONS

Furthermore, the special exceptions requested by Petitioner should be denied since, as Dr. Wallace testified, the special exceptions are "locked into" the present Rouse proposal. Counsel for Petitioner made no effort to elicit testimony separating the special exceptions from the requested rezoning. Indeed, without the requested rezoning, there is no need or useful purpose to be served by granting the special exceptions, which are much more extensive than any D.R. 1 development could reasonably require. Absent the development of the Rouse proposal, there are no access roads to service the special uses sought by Petitioner.

-14-

The only testimony in the record concerning the special exceptions was elicited in response to questions by the Board with regard to whether the requirements of Section 502.1 of the County Zoning Regulations would be satisfied. As noted above, Dr. Wallace answered such questions in the affirmative with the qualification that the special exceptions be "locked into" the Rouse proposal. Mr. Willemain testified that he saw no problem with the special exceptions as long as the special uses serve only the Johnson Property development and provided that the Board impose proper conditions on the uses. If the requested rezoning is denied, there is no proposal before the Board for a D.R. 1 development which would enable the Board to impose the type of conditions alluded to by Mr. Willemain. Absent any probative evidence in the record pertaining to the nature and effect of the special exceptions, Protestants submit that the bald conclusions of the expert witnesses in response to the Section 502.1 inquiry by the Board is insufficient to support the granting of the special exceptions. See Turner v. Hammond, 270 Md. 41, 55 (1973).

PROTESTANTS' EVIDENCE

Not only does Petitioner's evidence fail to prove original error or change, but Protestants' evidence wholly rebuts whatever limited strength Petitioner's case may have when considered alone.

A. PLANNING BOARD RECOMMENDATIONS

Petitioner places great reliance on the recommendations

-15-

of the Baltimore County Planning Board in support of the Rouse proposal, except for the 100,000 square foot office building which Petitioner has subsequently abandoned. See Exhibits 1 and 2. However the recommendations of a planning board are subject to the same analysis of probative value as any other form of evidence. See Heiler v. Prince George's County, 264 Md. 410 (1972); Chapman v. Montgomery County Council, 259 Md. 641 (1970).

Nowhere in the Planning Board's recommendations supporting the Rouse proposal is there any statement or inference to the effect that there was error in the comprehensive rezoning or that there has been a change in the character of the neighborhood. Indeed, Mr. Gerber, who is the Chief of the Community Planning Division and who had a significant role in the preparation of the Planning Board recommendations, testified that the Planning Board does not even take error and/or change into consideration in making its recommendations. Very simply, the Planning Board recommendations are irrelevant to the issues before the Board since such recommendations are concerned with the attractiveness of the Rouse proposal and the highest and best use for the Johnson Property, both of which considerations being legally irrelevant.

B. 1980 GUIDEPAN

Mr. Willemain, a highly qualified expert in the fields of city and site land planning with extensive experience in the planning and zoning procedures of Baltimore County, testified that the existing D.R. 1 zoning of the Property is consistent with not only the 1980 Guideplan, but also the Northwest Sector plan of

-16-

November 1970 and the plan adopted in 1972 by the Regional Planning Staff.

Petitioner contends that the present Rouse proposal, as well as the 1971 proposal, is consistent with the 1980 Guideplan for Baltimore County (Exhibit #22), adopted on June 15, 1972, more than a year after the adoption of the comprehensive rezoning map. Although Protestants submit that both the former and present Rouse proposals are in fact inconsistent with the 1980 Guideplan, the Board should not overlook the fact that, regardless of the consistency or inconsistency with the Guideplan, a finding on this issue is not probative evidence of error or change, as those terms are used in the zoning law described hereinabove.

Petitioner contends that the Rouse proposal accords with the open space policies (Nos. 18 and 19) of the 1980 Guideplan. Yet, as Mr. Gerber testified, the Johnson Property is situated at the fringe of a community center proposed to be located at the Arundel quarry site on Greenspring Avenue. The Sector-town-community-neighborhood urban development pattern set forth in the 1980 Guideplan contemplates more intense residential and commercial development in the first three centers and less intense development radiating from such centers. See Policy Nos. 5, 6 and 7. To permit the development of 985 dwelling units and 9.4 acres of commercial development on the Johnson Property, at the fringe of a community center, is wholly inconsistent with the aims and policies of the 1980 Guideplan. A well-designed D.R. 1 development, on the other hand, could preserve an equal if not greater amount of open space while, at the same time, preserving the integrity of the urban

-17-

development plan described in the 1980 Guideplan.

Petitioner also asserts that the Johnson Property is within the 1972 urban-rural demarcation line (URDL) and therefore is appropriately located for more intense development. Yet the comments preceding and subsequent to Policy No. 1 of the Guideplan (providing in part for development of vacant land within the 1972 URDL) refute Petitioner's claim. The introductory language to Policy No. 1 states in pertinent part:

"...The aims of the policies on urban growth are to organize and enhance present and future development in the County's urban area, allowing urban development only in selected, limited areas that are now rural; the latter areas are shown on the Guideplan Map." (Emphasis added.)

The Guideplan then refers the reader to a map on page 4 entitled "Growth Areas 1970-1980" which indicates that the "only selected, limited areas" mentioned above are located in the town planning areas of Timonium, Reisterstown and Liberty. The Comment to Policy No. 1 explains this limited designation of growth areas as follows:

"...On the other hand, although there is clearly enough land within the urban-rural demarcation line to accommodate growth through the seventies, there is not necessarily enough land to offer adequate choice in location to both developer and resident; it is for this reason that there should be limited expansion of the urban area in the town planning areas of Timonium, Reisterstown, and Liberty." (Emphasis added.)

It is readily apparent from a glance at the map on page 4 of the Guideplan, that the Johnson Property is not located within any of the only three limited select areas for more intense development within the 1972 URDL. The logical inference to be drawn from

-18-

this fact is that the Johnson Property, as presently zoned, constitutes a portion of the land described in the 1980 Guideplan as being sufficient enough "to accommodate growth through the seventies."

Finally, Dr. Wallace testified that the County Council erred in 1971 in not zoning the Johnson Property in accord with Rouse's 1971 proposed development. He testified that that proposal was "appropriate" for the Johnson Property, and it is consistent with the 1980 Guideplan. Yet Dr. Wallace's testimony flies in the face of the express language of the 1980 Guideplan. The Rouse proposal before the County Council in March 1971 contemplated 33 acres of commercial zoning, including a 200,000 square foot office building and a 100,000 square foot shopping center.³ Dr. Wallace described such a commercial complex as an appropriate "neighborhood" shopping center, a "neighborhood" being defined by Bill 100 and the 1980 Guideplan as consisting of approximately 1,000 to 3,000 families or 6,000 persons.

Yet the magnitude of the 1971 Rouse commercial proposal fits squarely within the 1980 Guideplan's description of a community shopping center. The comment to Policy No. 7 on page 5 of the Guideplan states:

"The community consists of three to five neighborhoods grouped around a number of public facilities clustered together with a cohesive

³ In addition the 1971 Rouse proposal included the car care center, 18 acres of D.R. 16, 240 acres of D.R. 5.5, 5 acres of D.R. 2, and 70 acres of D.R. 1.

-19-

shopping center of 25 to 35 acres. The total population might range from 20,000 to 30,000 persons or more...." (Emphasis added.)

As noted previously, even the present Rouse proposal for commercial zoning is inappropriate for the Johnson Property. The neighborhood is a small concentration of predominantly single-family dwellings, there being only 61 homes and 252 people in the neighborhood. There is no need for any commercial zoning in this exclusively residentially zoned neighborhood, the only purported need being that created by the bootstrap effect of the Rouse proposal itself. Moreover to inject commercial zoning in a neighborhood comprised primarily of D.R. 1 zoning may well amount to illegal "spot zoning". See Huitt v. County Commissioners of Baltimore County, 220 Md. 48, 57 (1959); Huff v. Board of Zoning Appeals of Baltimore County, 214 Md. 48, 57 (1957).

C. SEWERAGE

The reason why the sewerage diversionary system does not prove either error or change has already been discussed above. Nevertheless it is important to note the weaknesses in Mr. Relyea's testimony concerning the alleged relief of the Jones Falls interceptor to be afforded by the diversionary system.

Even Mr. Relyea admitted that the Jones Falls interceptor is presently overloaded. By agreement with Baltimore City, the County is allotted an average daily flow of 6.4 million gallons per day (mgd) of sewerage into the interceptor as measured at the City line. Yet the County is presently averaging 10.92 mgd, thus exceeding its allotment by 4.5 mgd. As Mr. Willemain testified, the County

-20-

was also exceeding its allotted flow as early as August 1969 when the State Secretary of Health and Mental Hygiene imposed a conditioned moratorium on the County (as well as the City) with respect to the Jones Falls interceptor system. See Exhibit U.⁴

Mr. Relyea nevertheless testified that the diversionary system will alleviate the problem by diverting approximately 6 mgd of sewerage from the Jones Falls interceptor. In order to achieve this maximum benefit, however, all of the components (Long Quarter, Texas, Green Ridge) of the system must be completed and operational. For example, he testified that the Long Quarter-Green Ridge component, when completed, would only divert 3.49 mgd from the Jones Falls interceptor, which diversion would still leave an excess of 1 mgd in the interceptor. As noted previously, even though the Long Quarter pumping station and force main are under construction, no contracts have been let for the Green Ridge gravity sewer, let alone the Texas station force main.

Finally, Mr. Relyea did not see fit even to investigate the effect of additional sewerage from the County on the Jones Falls interceptor within Baltimore City, and whether the County's allotment may even be decreased because of the proposed construction in the City of such projects as Cold Spring. The problem of the overburdened Jones Falls interceptor is common to both Baltimore City and Baltimore County. Fortunately the County Council apparently

⁴ A more stringent moratorium has been ordered by the State Secretary of Health with respect to the Jones Falls sewerage system as of November 13, 1973. See Exhibit V.

-21-

recognized its responsibility to both political subdivisions when it zoned the properties in the Johnson Property neighborhood D.R. 1, the effect of which will be to minimize the additional flow of sewerage into the Jones Falls interceptor system.

D. TRAFFIC

Petitioner has produced expert testimony to the effect that the proposed development will not cause any severe traffic problems which would not otherwise have occurred as a result of the normal development of the Property. As a preliminary matter, it should be noted that evidence of traffic impact is irrelevant to the issues of original error and change, but instead goes to the issue of granting the rezoning once error and/or change have been proven. While proof of error and/or change may justify a zoning reclassification, such proof does not compel a reclassification if the general welfare of the community will be adversely affected. See Wier v. Witney Land Co., 257 Md. 600, 616 (1970); Messenger v. Board of County Commissioners, 259 Md. 693, 704 (1970).

There are several traffic problems presented by the Rouse proposal which, if granted, will adversely affect the neighboring community. Mr. Nathan Cohen, testifying on behalf of the Park School, pointed out the safety hazard of leaving the school and entering Old Court Road. There are two sharp turns, one to the left and one to the right of the school exit, which restrict the motorist's view of cars approaching the school exit on Old Court Road. Neither of these dangerous curves are within the portion of Old Court Road to be widened by the Petitioner. The increased

-22-

traffic generated by the Rouse development on Old Court Road during the morning peak hour traffic flow presents a serious threat to the safety of motorists entering and leaving Park School, as well as to the students and faculty members who bicycle to school on Old Court Road, a narrow two-lane roadway with no shoulder. The same egress hazard will confront the residents of Old Court Road west of the Property, as testified to by Dr. Leand on behalf of the Old Court Greenspring Improvement Association.

Falls Road, north and south of the proposed development, is already operating at approximately 100% of its C level of capacity, and the additional traffic generated by the Johnson Property will add to this problem. The same is true with respect to the Ruxton Road interchange with the Jones Falls Expressway. Although Petitioner asserts that signalization of this interchange will alleviate the problem, there is no probative evidence that the flow of traffic on the Expressway will accommodate the traffic entering the Expressway from the southbound ramp. With respect to alleviating the problems on Old Court Road and Falls Road, Mr. Willemain testified that there are no planned improvements by the State or County to such roads within the foreseeable future.

Any relief to Old Court Road by the proposed interchange at Old Pimlico Road and the Expressway and the connector road between Old Court Road and Old Pimlico Road must be ignored. Mr. Gerber produced a letter dated November 5, 1973 from Mr. Davis (Chief Engineer of the State Highway Administration) to Mr. Kaltenbach (Director of County Public Works) stating that federal funds for such an interchange would not be available. See Exhibit B.

-23-

Absent federal funding (comprising 90% of road costs), Mr. Gerber admitted that it would be difficult to find the funds necessary to construct such an interchange, particularly in view of the fact that State highway funds are already committed through 1978. Moreover the restrictive covenants admitted over Protestants' objection provide that the connector road between Old Court and Old Pimlico Roads will not be constructed until the construction of the Old Pimlico Road interchange with the Expressway. See Exhibit #5, paragraph 8.⁵

Finally, as Mr. Willemain testified, the only access roads to the proposed development are Old Court and Falls Roads, both of which are narrow country roads except for the small portion of each proposed to be widened within the development. The Beltway and Jones Falls Expressway do not provide access to the proposed development.

CORRECTNESS OF D.R. 1 ZONING

Although the onerous burden of proof in this case is on Petitioner to prove error and/or change, and despite the fact that Petitioner has failed to produce the "strong" evidence necessary to overcome the "strong" presumption of correctness attaching to the 1971 comprehensive rezoning, Protestants submit that the record in this case affirmatively supports the correctness of the County

⁵ The restrictive covenants are not, of course, admissible to prove the limitations on the development of the Property agreed to by Petitioner and Rouse since the law is clear that conditional zoning is illegal. See Montgomery County v. National Capital Realty Corp., 267 Md. 364, 375 (1972).

-24-

Council's decision to zone the Johnson Property D.R. 1.

Petitioner would have us believe that the only basis for the Council's decision is found in an excerpt from the Council's minutes of March 24, 1971 in which Councilman Huddles purportedly based his decision on the enormity of the project and the number of people opposed to the Rouse proposal.⁶ Protestants were not permitted to rebut such a tenuous inference by introducing Councilman Huddles' testimony as to his efforts with respect to investigating the merits of the 1971 Rouse proposal, his numerous meetings with representatives of both sides of the issue, and his reasons for voting to place the Property in a D.R. 1 zoning classification.

However, in view of the presumption of correctness attaching to comprehensive rezoning, it must be presumed that the reasons adduced at the hearings, primarily through the testimony of Mr. Willemain, in this case for the propriety of D.R. 1 zoning must have entered into the Council's decision. There are several valid reasons for the Council's placing the Johnson Property in a D.R. 1 zoning classification:

1. As noted above, there are serious traffic and sewerage problems in the neighborhood comprising the Johnson Property. Even if the Council was informed that such problems could be overcome by road improvements and sewerage diversions, nevertheless it was a legislative value judgment for the Council to make. There can be

⁶ With respect to the number of people opposed to the project, it should not be overlooked that a Rouse brief submitted to the County Council prior to March 24, 1971, referred to an Exhibit E containing copies of over 1,000 signature cards and letters of people supporting the Rouse proposal. See Exhibit D.

-25-

no dispute over the fact that a well-designed D.R. 1 development will contribute less to the traffic and sewerage problems than both the 1971 and current Rouse proposals. Thus the Council may have properly decided to restrict development on the Johnson tract rather than seek to obtain the upper limits of the highest and best use for the property.

2. As noted previously any purported need for townhouses and apartments in this neighborhood was satisfied by the flexibility permitted under Bill 100, which went into effect simultaneously with the adoption of the map on March 24, 1971. Obviously the Council viewed Bill 100 and the map as one package, designed to alleviate many of the restrictions formerly placed on residential zones in Baltimore County.

3. Taking a look at the small size of the neighborhood and the small number of people residing therein, the Council properly concluded that not only was the 1971 Rouse proposal for a community-size shopping center wholly inappropriate, but that there was in fact no need for any commercial zoning in the neighborhood.

4. The Council may have properly decided that it did not want to change the character of the neighborhood, the boundaries of which have been previously described. Ever since the neighborhood became developed, it has retained the character of a single-family rural-residential neighborhood with a narrow tree-lined country road providing the main access to the residences set off from the road. Both Mr. Cohen, for Park School, and Dr. Leand expressed concern over the fact that the intrusion of the high-density and commercial aspects of the Rouse proposal not only would destroy the

-26-

existing character of the neighborhood, but could also lead to further high-density and commercial reclassifications along Old Court and Falls Road, thus triggering the domino effect characteristic of the strip zoning which blights other areas of the County as well as other political subdivisions. The statement of Judge McWilliams in the recent case of Valencia v. Howard County, supra, perhaps best summarizes the position of Protestants in this case:

"...we see evidence of a firm intention to maintain the enclave as a residential area despite the fact that some nonconforming uses still survive. Whether such an intention comports wisdom is not our concern. If the proper authorities want it that way then, in these circumstances, they have the right and the power to make it so."

CONCLUSION

For the reasons stated herein, Protestants respectfully submit that the decisions of the Zoning Commissioner be affirmed, and that the Petitioner's requests for D.R. 10.5 and B.L. zoning and for special exceptions be denied.

Stephen H. Sachs

Jay L. Morstein

Frank, Bernstein, Conway & Goldman
1360 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
Telephone: 301-547-0500

Attorneys for Protestants

-27-

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January 1974, copies of the foregoing Memorandum were hand delivered to W. Lee Thomas, Esquire, 102 West Pennsylvania Avenue, Towson, Maryland 21204; John W. Hessian, III, Esquire, 102 West Pennsylvania Avenue, Towson, Maryland 21204; and Donald N. Rothman, Esquire, 1200 Carrett Building, Baltimore, Maryland 21202.

Stephen H. Sachs

-28-

Preamble	1
A. Proof of Original Error is Overwhelming	6
1. Land History	7
2. Ownership	8
3. Single unit development	8
4. Request made of Rouse Company	8
5. Rouse Company involvement	8
6. Baltimore County Planning Staff plans	9
7. Development of tract in accord with such plans	9
8. Dr. David A. Wallace's comments as to error by the County Council	10
9. Comments by other witnesses as to error by the County Council	13
10. Specific testimony	16
a) Dr. David A. Wallace - Ecology	16
b) Mr. Richard Walbandian - Storm water	17
c) Mr. Herbert Plitt - Traffic	18
d) Mr. Robert Relyea - Water and Sewer	21
e) Dr. David A. Wallace - Land Planning	24
f) Mr. Norman Gerber - Planning and Zoning	27
g) Mr. Bernard Willemain - Disagreement	29
B. Presumption of Reasonableness is Rebutted	30
1. All recommendations were for adoption of Petitioner's plan	30
2. Task facing the County Council	30
3. Zoning by plebiscite is improper	33
C. Requested reclassifications are in the public interest	34
1. Public benefit	34
2. In accordance with planning goals	35
3. Unusual public benefits	35
D. There has been change sufficient to justify reclassification	36
E. The Request for Special Exceptions	37
Conclusion	38

ROCKLAND HOLDING CORPORATION, : BEFORE THE COUNTY BOARD
RECLASSIFICATION PETITIONS : OF APPEALS FOR
AND REQUEST FOR SPECIAL :
EXCEPTIONS, E/S and W/S of : BALTIMORE COUNTY
Falls Road Between Baltimore :
County Beltway and Jones : Cases No. 73-231-RX
Falls Expressway - 3rd and : 74-57-R
9th Districts - No. 73-231-RX :
(Item #21) and No. 74-57-R :
(Item #12)

MEMORANDUM OF LAW AND FACT

The principal test of whether a tract of land in Maryland should or should not be rezoned is set forth in Kracke v. Weinberg (Dictum) 197 Md. 294 (1951) and in Wakefield v. Kraft, 202 Md. 136, 141 (1953). The rules established by these and by numerous later cases place upon Petitioners the burden of proving that the original zoning of the tract was arbitrary, capricious, discriminatory or illegal. The Petitioner must also rebut the presumption that the original zoning was well planned. In Wakefield, at 141, it was stated: "... it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood was changed to an extent which justifies the amendatory action." If such mistake or change is proven, then the presumption is rebutted and reclassification must be granted.

The County Board of Appeals has discretion in determining the existence of error to justify zoning reclassification and its findings will not be reversed by the Courts unless such findings are considered "clearly erroneous" by the Courts. Finney v. Halle, 241 Md. 274 (1966).

Proof presented to the zoning body (such as the County Council on map adoption or this Board on petition) may, however, be so strong as to require the zoning body to grant the rezoning sought. In such case, if the zoning body neglects its duty and denies rezoning contrary to the evidence in the case, the courts will reverse the zoning body.

In the case of Board of County Commissioners of Prince George's County, Maryland, et al. v. Oak Hill Farms, Inc., 232 Md. 274 (1963), it was definitively stated that a zoning authority may not ignore the facts and base a denial of reclassification on surmise or conjecture. If such is attempted, this arbitrary and capricious action of the zoning authority will require court intervention by way of a court order to grant reclassification. In Oak Hill, the County Commissioners of Prince George's County, acting as a zoning body, refused to rezone a 21-acre tract of land for high density apartment use. The Circuit Court, upon appeal by the property owner, reversed the action of the County Commissioners. On subsequent appeal by the County Commissioners and aggrieved neighbors, the Court of Appeals affirmed the action of the Circuit Court in directing reclassification. The Court of Appeals made reference to three principal factors:

1. The technical staff of the Planning Commission had recommended denial of apartment zoning;
2. The Planning Commission, after further investigation, rejected the technical staff recommendation and reported unanimously to the Council that it believed the

-2-

"reclassification of the subject property to the R-10 zone would provide the best possible use of these properties;"

3. Acknowledged experts testified as to the strong need for high density land use; that the best use of the land was for high-rise apartments and, further, that this use would be in harmony with the planned future development of the neighboring area and would not adversely affect the welfare, health or safety of the community.

The Circuit Court found that the technical staff report was contrary to the evidence in the case and dealt largely in abstractions without meaningful specifics. The Court further found that the Planning Commission, in possession of more specific information, had properly recommended to the zoning authority that the reclassification be granted. The zoning authority's subsequent refusal to accept that recommendation was clearly erroneous in that by so doing, they acted against the weight of the evidence. Such action by the zoning authority was unsupported by substantial evidence and was, therefore, arbitrary and capricious. The Court of Appeals agreed with the Circuit Court's finding of unsubstantiality of evidence and with its subsequent conclusion that the Council's action was arbitrary and capricious. Reclassification was therefore directed.

The parallel between Oak Hill and the instant case is obvious. The principal difference is that in Oak Hill some minor justification for the zoning authority's negative action would be found

-3-

in the negative technical staff report while, in the instant case, there is no justification to be found anywhere in the record for the negative action of the Baltimore County Council in ignoring Petitioner's request, the specific recommendations of the Baltimore County Planning Staff and a unanimous Baltimore County Planning Board recommendation.

In the case of Bosley, et al. v. Hospital for Consumptives of Maryland, et al., 246 Md. 197, reclassification of a tract of land in Baltimore County, Maryland, was granted by this Board and affirmed by the Baltimore County Circuit Court and by the Maryland Court of Appeals. The underlying reason for reclassification was, in part, error on the part of the County Commissioners (then the zoning authority) in that the zoning classification in which they placed the property was inconsistent with the circumstances and with the knowledge that the County Commissioners had, or had available to them, at the time of classification.

In the instant case, there appears a more compelling example of inconsistency: that all evidence presented or available demands classification in accordance with Petitioner's request. In Bosley, the findings of the Circuit Court for Baltimore County as adopted by the Court of Appeals, were that " . . . there was a lack of careful consideration for this particular property at the time of the adoption of the map; and certainly that there was no consideration of it in the light of Goucher Boulevard as it came to be laid out." The same lack of careful consideration underlying the Bosley decision is manifestly evident in the case at

-4-

issue as is brought forth most forcefully by the testimony of Norman Gerber, Chief of Community Planning of the Baltimore County Department of Planning and Zoning and Dr. David A. Wallace and by the testimony of Mr. Toporovitch as to the huge mass of material rained upon the County Council between December, 1970, and March, 1971.

The case of Surkovich, et al. v. Doub, et al., 258 Md. 263 (1969) considered in general the question of mistake in original zoning and, at 271, laid down the rule that " . . . one of the main concepts of zoning . . . is that there should be a comprehensive, long-range view of the entire area." The County Council in our Rockland Holding Corporation case has obviously not followed this "main concept" of zoning and, in fact, its action results in the tearing asunder and destruction of the entire concept. The Council's action ignores the concept of increased density within the urban-rural demarcation line and the concept of a neighborhood shopping facility within the Johnson tract as deemed necessary by the Planning Board and planning authorities and thus such Council action, if unchanged, would negate all long-range planning for the area as established by the Baltimore County Department of Planning and Zoning and by the Baltimore County Planning Board. The inevitable result of the Council's capricious action would be that the residents of that area of the County would be denied needed neighborhood shopping facilities and medium density residential facilities and that the Rockland tract, even though within the urban-rural demarcation line (which presupposes residential development at greater density than one dwelling unit

-5-

per acre) served by all necessary utilities and with excellent road access, would be denied an appropriate use recommended by all experts and would be "passed over" in the process of ordinary development within the urban-rural demarcation line. All such results would be in contravention of the well-established, long-range, comprehensive plans made for the area by all of the planning and zoning experts and authorities employed by Baltimore County primarily to ensure proper long-range comprehensive development of the County.

We respectfully submit that the overwhelming evidence presented favors and requires the classifications requested here by Petitioner and, further, that the Petitioner has (A) proven error in original zoning; (B) rebutted the presumptions of reasonableness and permanency of the Council's zoning of the subject tract as DR-1; and (C) shown clearly that the reclassification is in the public interest and is in complete accordance with the long-range planning concepts of the Baltimore County Planning and Zoning authorities.

A. PROOF OF ORIGINAL ERROR IS OVERWHELMING

In order to properly examine the action of the Baltimore County Council and their erroneous, arbitrary and capricious failure to follow the recommendations of their own Planning Staff and Planning Board by retaining the subject land in a DR-1 classification, we must look both to the evidence that was actually available to aid the County Council in the decision-

-6-

making process and to whether or not the County Council utilized and considered such evidence as was available.

The evidence available to the Baltimore County Council was, in substance, the same evidence presented to the Staff of the Baltimore County Department of Planning and Zoning, to the Zoning Subcommittee of the Baltimore County Planning Board, to the Baltimore County Planning Board and to this Board. Although obviously the facts presented to each of these entities necessarily varied in minor detail, in totality the facts presented to all of the entities named were identical. As Dr. David A. Wallace testified, there are necessarily minor differences and refinements which occur during the development planning stage and these minor differences and refinements have, in fact, occurred here between the first presentation in 1969 to the Staff of the Baltimore County Office of Planning and Zoning and to this Board. However, as stated by Dr. Wallace under intensive cross-examination, the plan presented to this Board is essentially the plan presented to the Baltimore County Planning Staff prior to map adoption in March, 1971, and, in fact, prior to the adoption by the Baltimore County Planning Board of a sector zoning map which would have granted medium density residential use and neighborhood shopping facility use to portions of the land of the petitioner.

Summarized, the facts presented included the following:

1. The subject tract of land has been owned by the Johnson family for over 150 years; but, because of successive life estates, was not available for ultimate development until the last two remaining life tenants died in the mid-1960's.

-7-

2. Upon the death of the last two remaining life tenants, the tract passed into the ownership and possession of nine individual members of the Johnson and Garrett families.

3. The families, because of their long ownership of the land (and the expressed intent of several of them to remain in residence on the land), determined that the land should be developed as a single unit rather than in piecemeal fashion, believing that development under a single unit would preserve as much as possible of existing amenities.

4. The families approached the Rouse Company because of their belief that the Rouse Company was a responsible, astute developer and would consider development of the land in order to retain as much green space as possible and inconvenience neighboring land owners to the minimal degree.

5. After preliminary ideas and plans had been formulated by the Rouse Company, it was determined that the land should be developed not under the plan which would give to the land owners and the developer the maximum profit; but, rather, under the plan which would preserve approximately 75% of the area in its present state, which would provide visually pleasing, clustered development, which would retain intact the historic village of Brooklandville, which would provide needed neighborhood shopping facilities and which would inconvenience area residents in the least degree.

-8-

6. The Baltimore County technical staff and experts, having been informed that the land was available for development and recognizing that the tract was perhaps the most extensive tract available for development within the urban-rural demarcation line, was of the opinion that the tract should: (a) in conjunction with other tracts within the urban-rural demarcation line, be developed at a density greater than DR-1, the suggested density being between two DU's per acre and six DU's per acre; and (b) should contain a neighborhood shopping center and service center near the intersection of Old Court and Falls Roads to serve the neighborhood.

7. The proposed medium density development and neighborhood shopping and service facilities are now and were, prior to March, 1971, in accordance with all of the comprehensive planning and zoning goals recommended by the technical staff and experts employed by Baltimore County, Maryland, and accepted by the Baltimore County Planning Board. The proof of this categorical statement is found in the fact that the technical staff and experts, as well as the Baltimore County Planning Board, have unanimously and consistently recommended that the classifications, which are the subject of the instant petition, be granted. In fact, as mentioned by Mr. Gerber, the technical staff and Planning Board independently recommended a neighborhood shopping center at or near the intersection of Old Court and Falls Roads and did so in accordance with their stated planning goals which were first announced in 1969 and which were known, generally accepted and contained in preliminary 1980 Guide Plans in existence prior to

-9-

March, 1971. The codification and official acceptance of the 1980 Guide Plan in June of 1972, is, of course, nothing more than final adoption of the procedures which had been in effect and which had been followed for several years prior to March of 1971. A further announced zoning policy is that there shall be more intensive residential development within the urban-rural demarcation line. The Rockland tract is entirely within the urban-rural demarcation line. That fact has been recognized by all of the planning and zoning staff and experts since well before March, 1971. As can be seen from the comments of the Baltimore County Planning Board and Staff (Petitioner's Exhibits 1 and 2), the Rockland property remains within the urban-rural demarcation line and its development as proposed would comply with the planning and zoning goal thus established. Compatibility of the Petitioner's plan with the projected plan of the Zoning Advisory Staff and with the reports of planning bodies is recognized as an important element in zoning reclassification requests, whether zoning reclassification requests made at the time of map adoption, such as March, 1971, or reclassification petitions subsequently filed, such as the petitions which are before this Board. Among the numerous cases which so hold are: Dill, et al., v. The Jobar Corporation, 242 Md. 16 (1966); Suburban Properties, Inc., v. Mayor and Council of Rockville, 241 Md. 1 (1965); and Board v. Oak Hill Farms, supra.

8. Error by the Baltimore County Council was perhaps most graphically illustrated by Dr. Wallace during questioning as to whether or not the majority of the Baltimore County Council, in their March, 1971, decision

-10-

committed error. In stating emphatically both under direct and cross-examination by opposing counsel and the Board that the Baltimore County Council did commit error and was arbitrary and capricious and unreasonable in its action, Dr. Wallace made two observations. He first stated that, if the statement made by Councilman Huddles to the effect that a majority of neighboring residents were against reclassification was the justification for the denial for reclassification, then that, in itself, was error since zoning is not to be by a plebiscite of neighbors and good planning, while not ignoring neighboring residents' wishes, is not bound by such wishes.

Dr. Wallace's second comment is, however, of even greater importance. He stated, in essence, that in his professional opinion the Baltimore County Council did commit error and he further stated that it was obvious from his extensive and comprehensive review of all documents and other evidence available that the error springs from one of two causes. He stated that either the Council did not have presented to it all information which was so efficiently gathered by their own Planning Staff and Planning Board or the information gathered by their Planning Staff and Planning Board as well as the voluminous studies obtained by experts employed by the Petitioner, although presented to the County Council, was either ignored by the County Council or misunderstood by them. If the former is, in fact, the case, then the error on the part of the Council is found in their failure to gather and to consider all relevant information. He added that had the Council so gathered the information available and

-11-

considered it, they could not correctly have classified Petitioner's property in a DR-1 classification. If the latter is, in fact, the case, then, in that event, error by the Council is found either through their ignoring of the data or their misunderstanding of it. Dr. Wallace, under intensive cross-examination both by counsel and the Board, stated again and again that he can come to no other conclusion than that the County Council did commit error and did act in an arbitrary, capricious and unreasonable manner. He spoke at great length about his investigation techniques, stating that he undertook an independent investigation and did not rely solely on the Planning Board data and information nor on the planning procedural criteria relied on by the Planning Board as a basis for their recommendations. Dr. Wallace made it very clear that as a result of his independent investigation, he came to the inescapable conclusion that the Baltimore County Council majority had committed error. He continued by stating that he then determined that the Planning Staff and Planning Board had arrived at the same recommendation for reclassification on the basis of their independent investigation and, although he was pleased to have confirmation of his conclusions by the conclusions of all of the Baltimore County Staff and experts and of the Baltimore County Planning Board, it was not needed by him to make his independent finding of grievous error and arbitrary, capricious and unreasonable acts.

The credentials of Dr. Wallace are not only impressive but startling. Had Dr. Wallace never heard of Baltimore County before taking the stand, his education, his years of experience,

-12-

the honors bestowed upon him by his profession and his teaching credentials are such that his opinion should be accorded extremely great weight. The fact, of course, is that Dr. Wallace has been intimately involved with planning of the Baltimore County area for over ten years. Federal, State and municipal agencies have recognized his ability and have utilized his services as have private groups with the task of recommending development and zoning plans for neighboring areas, including the Green Spring-Worthington Valley immediately to the north of the subject property. Dr. Wallace, who prepared the Charles Center plan, the Baltimore central business district plan, the Mt. Vernon renewal plan, the Jones Falls Park plan, the Inner Harbor plan for the Baltimore harbor, the metrocenter plan, the Chesapeake Bay study and the plan for the Green Spring and Worthington Valleys, by merely reciting a list of such tasks, evidences his intimacy with the Rockland tract and the surrounding property. Further proof of his vast knowledge of the area, if such proof is needed, is found in his comprehensive, complete and rational answers to questions proposed to him by counsel for both sides and by this Board. Considering the comprehensive environmental study presented to this Board (Petitioner's Exhibit 46), we can truthfully say that Dr. Wallace knows every rock and tree on the Rockland property.

9. As impressive as was the testimony of Dr. Wallace, the Petitioner need not and does not rely solely on such testimony; rather, there is a wealth of other testimony proving conclusively the error committed by the County Council. Mr. Jervis Dorton, Mr. Richard Malbandian, Mr. Herbert Plitt and Mr. Robert Relyea,

-13-

all experts in specific facets of land planning, use and development, testified as to their respective professional specialties. In each instance, their testimony as to their specific respective areas was to the effect that if the Council refused to reclassify the property as recommended by the Planning Staff and Board because of the Council's belief of the unavailability or inadequacy of storm drain provisions or roads or sewer facilities, then the Council committed error in so basing their refusal to reclassify. The rationale, of course, is that such utilities and the road network are, in fact, available to the site and are, in fact, adequate to serve the proposed development. Although the testimony of these mentioned witnesses will be discussed at greater length below, it is important to recognize that their testimony can be considered as similar to individual ladder rungs on which Dr. Wallace was later able to partially rely in constructing a whole ladder. Whereas Dr. Wallace viewed and considered each and every facet of good planning procedure in arriving at his opinion that error was committed, these four named special experts were limited to opinions dealing specifically with their respective specialties. Their testimony, however, is of perhaps equal importance in that, taken together, their testimony, by excluding all possible legitimate reasons for County Council refusal to reclassify, has, in effect, proven conclusively that since all legitimate reasons are eliminated, the Council must have reached its decision not to reclassify on the basis of erroneous data or because of erroneous conclusions from the data presented. Further, and of perhaps major importance, is the uncontradicted fact that the Baltimore County Planning Staff

-14-

experts, who are trained in planning and zoning matters and who have the prime responsibility of formulating policy and making professional recommendations both to the Planning Board and to the County Council, unanimously recommended that the Council grant both the medium density residential zoning and the zoning necessary to construct a neighborhood shopping facility. These Planning Staff recommendations made prior to March, 1971, have remained consistent since that time as evidenced by the present recommendations of the Planning Staff recommending approval of this Petitioner's two petitions (Petitioner's Exhibits 1 and 2). We were fortunate in having Mr. Norman Gerber, from the Baltimore County Planning Staff, testify before the Board as to the Planning Staff and Planning Board recommendations. Mr. Gerber, whose testimony indicated his familiarity with the Rockland property, testified in substance that all Baltimore County planners who considered the Rockland property were unanimous in their recommendations for adoption of both increased density and neighborhood shopping center zoning. He testified at length as to the underlying reasons behind these recommendations, including conformity with the proposed sector master plan, conformity with the announced purposes and goals of the urban-rural demarcation line and conformity with the demonstrated need for a neighborhood shopping facility near the intersection of Old Court and Falls Roads. Mr. Gerber further testified that the Planning Board so recommended the zoning requested in March, 1971, by the Petitioner and again requested today. Finally, Mr. Gerber, under cross-examination by counsel for the Protestants and by the Board, stated emphatically, without qualification, that the road network

-15-

which will serve the Rockland property is sufficient and that development of the Rockland property would not clog or congest neighboring roads and, further, that all utilities necessary were available now and were available in 1971, or were in such planning stage or construction stage that they should have been considered available by the County Council in their deliberations. The testimony of Mr. Gerber will be discussed at greater length below.

10. In addition to proving to this Board that the County Council majority did commit error in their March, 1971, decision as to the Rockland property, it is the duty of Petitioner to prove to this Board that the requested special exceptions, if granted, will meet the six tests specifically established by Section 502.1 of the Baltimore County Zoning Regulations. In fact, the evidence establishing that these six tests are met is equally applicable when considering whether or not the requested reclassifications would have an adverse effect on neighboring residents. In meeting its responsibilities, the Petitioner presented evidence proving:

a) That they undertook and commissioned a massive ecological planning study of the Rockland property in order to determine what effect, if any, the proposed development would have on the area, both immediate and distant. As Dr. Wallace testified, without contradiction, that study included the study and analysis of ground water, surface water, soil, plants, wild life, natural resources, drainage management, accessibility and utilities available. Petitioner's Exhibit 46 is a comprehensive report on all facets of the study. In each instance the conclusion is that the proposed development of the Rockland

-16-

property will not have an adverse effect on near or distant neighbors, and, in truth, in several instances, will have a beneficial rather than a detrimental effect. One of the principal beneficial effects is the saving of approximately 75% of the existing forest and other ground cover in its present state. Another advantage is retention of the existing stream valley system and the improvement of such system by modest collection ponds. There can be no doubt that from all aspects of development as described above, benefit rather than detriment will flow from the proposed development of the land by Petitioner. The Protestants made absolutely no attempt to contradict this testimony.

b) Mr. Malbandian, with the technical advice of Dr. Schaake of the Massachusetts Institute of Technology, specifically studied storm water characteristics of the land comprising the Rockland tract and of the entire watershed regions of which the Rockland tract is a part. Mr. Malbandian's testimony is based not only on his general experience, but on the results of a computer simulation model of run-off of the entire region as commissioned by Mr. Malbandian and completed by Dr. Schaake. Mr. Malbandian's uncontradicted testimony is that the proposed development will retain existing storm water run-off areas and the addition of planned collection ponds will lessen the impact of peak hour run-off of ground water into the Jones Falls System. His testimony is that, at present, peak run-off from the property into the Jones Falls System is unimpeded, whereas, following development by the Petitioner, ground water will be retained in collection ponds

-17-

until after the passage of the peak run-off from upstream areas, at which time such ground water will be released into the Jones Falls. Mr. Malbandian further testified that Petitioner's planned development has taken into account the flood plain requirements of the Baltimore County Office of Planning and Zoning and of the Baltimore County Bureau of Public Works and that 100-year flood plain requirements have, in all instances, been observed.

c) Mr. Plitt testified as to the intensive investigation he undertook in determining adequacy of the area road network. As explained, he first determined the actual traffic counts at seven separate locations in and immediately adjacent to the Rockland tract. He next determined from the official records of the State Highway Administration and from the Baltimore County Department of Traffic the expected increase in area traffic by the year 1980. Included, of course, in this increase anticipated by 1980 was an increase in traffic expected to flow from the Rockland property if developed in a DR-1 classification. Mr. Plitt, then, by the use of standard traffic engineering and planning tools, determined traffic generation to be expected from residential and commercial usage of the Rockland property as proposed by the Petitioner. Mr. Plitt's findings, presented both in tabular and plat form, are graphic and easily understood. Perhaps the most important exhibit presented is Petitioner's Exhibit No. 42, which indicates the peak-hour traffic expected by the year 1980, including, of course, all of the elements above described. That plat-bar chart delineates the traffic then expected and also indicates the capacity at a C-design level of each of the area roads. In every case, save one, the traffic that can be anticipated by 1980 is adequately handled at a C-design level. The one exception is Falls Road, which by 1980 will, by the normal growth of traffic not including traffic

-18-

generated by development of the Johnson property, be one or two percentage points over capacity at a C-design level. Two things should here be remembered. First, Falls Road, even by 1980, will not be beyond its actual physical capacity. If unimproved, it may be reduced to a D-design level of capacity, but it will still have the physical capacity to carry the traffic. Second, as stated by Mr. Plitt, it is the intention of the State Highway Authorities when the traffic on Falls Road warrants it, to improve Falls Road to the extent necessary to retain a C-design traffic level on Falls Road. The operable words here are, of course, "when the traffic on Falls Road requires it." Several witnesses, including Mr. Plitt, have testified that roads and utilities are not over-designed but, rather, are expanded or improved only when traffic so requires. Mr. Plitt has investigated and determined that such will be done when needed. Mr. Plitt's testimony on this point is substantiated and reinforced by similar testimony from Mr. Gerber.

Mr. Plitt's testimony in this case, as has been true with the testimony of all other witnesses for Petitioner, has been "with the warts on" and he, along with other witnesses, has testified that their instructions from the Petitioner were to imagine and discuss the worst possible situations that might arise - the feeling being that if the worst situation is solvable, then the Petitioner's proposal, which presents lesser problems, is obviously capable of solution. In presenting his testimony "with the warts on," Mr. Plitt mentioned the possibility that the northbound and southbound ramps from Ruxton Road to and from the Jones Falls Expressway might, in the future, be overcrowded. The simple solution is, of course, signalization of these ramps. Signalization, according to Mr. Plitt, would completely eliminate the possibility of problems on the ramps and on Ruxton Road and the State Highway Administration will signalize the ramp when and if

-19-

such becomes necessary. According to Mr. Plitt, sums for such signalization are not budget items inasmuch as signalization, expanding or improving shoulders of roads and other minor matters are paid for from general funds always available to the State Highway authorities for such improvements. Again, when and if needed, signalization will occur.

It is important to remember that the Petitioner's proposal includes enlargement of Old Court Road and Falls Road within the confines of the Petitioner's property. This is of obvious benefit both to the area and to travellers on area roadways. The Petitioner's proposal would, in effect, eliminate some of the problems anticipated by 1980 on Falls Road. The relocation of the intersection of Old Court and Falls Road would again improve the area roadways by making turning movements easier and by eliminating existing bends in the road immediately adjacent to that intersection.

Finally, as to Mr. Plitt, we should point out that a minor portion of his testimony was misunderstood, although it is believed that such misunderstanding was clarified by Dr. Wallace in his subsequent testimony. Some doubt arose as to whether or not traffic movements relating to the car care center were included in Mr. Plitt's computations. A correct understanding of Mr. Plitt's testimony and Dr. Wallace's comprehensive testimony on this point makes it absolutely clear that such movements were considered and were contained on the exhibits used by Mr. Plitt. It is clear that vehicles utilizing the car care center are either driven by residents directly from their homes to the center and back, or by residents utilizing the car care center in the middle of more comprehensive shopping or service trips, or by non-Rockland property residents using the area road network. As was explained, in those instances where Rockland property residents used the car care center,

-20-

ROYSTON, MUELLER,
THOMAS & MCGLEEN
SUITE 800
100 W. PENNA. AVE.
TOWSON, MD. 21204
682-1800

ter, those trips were accounted for in the residential trips estimated to emanate from townhouses or apartments and shown on Petitioner's Exhibit 40. Those trips have then been counted whether or not the trips are solely to the car care center or are part of more extensive shopping or service trips. In the case of car care center use by other than Rockland property residents, those trips are contained in the 1980 estimated projections furnished us by the State Highway authorities and the Baltimore County Department of Traffic. To specifically assign additional traffic movements to the car care center would be a duplication of traffic movements and would be incorrect.

d) Mr. Relyea reported on two topics - the availability of water and the availability of sanitary sewer. As to the first, facts presented, both by oral testimony and by Exhibits Nos. 33 and 34, are uncontradicted. It need only be said that even with full development of the Rockland property as proposed, there is sufficient water volume and sufficient water pressure to serve the development without decreasing either volume or pressure to the detriment of neighboring residents relying on the same water system. At one point, Mr. Relyea mentioned that the quantity of water available would be approximately eight to ten times the amount needed to serve both the Rockland property and the general area. At another point in his testimony, Mr. Relyea mentioned that while it may be necessary for the Petitioners to install, at their own expense, storage tanks to provide sufficient pressure on the Petitioner's land, under no circumstances would neighboring residents experience pressure deficiency following development of the Rockland land as proposed.

Mr. Relyea's second task was to investigate, consider and report on the availability of sanitary sewer to serve the Rockland property. His testimony is, in substance, as follows. The Jones

-21-

ROYSTON, MUELLER,
THOMAS & MCGLEEN
SUITE 800
100 W. PENNA. AVE.
TOWSON, MD. 21204
682-1800

Falls System, into which both the Slaughterhouse and Moore's Branch Sanitary Systems discharge, is, at present, receiving approximately 4.5 million gallons per day in excess of the amount which Baltimore County is allowed to discharge into the system by agreement with Baltimore City. He readily admitted that, without correction, development of the Rockland tract as proposed or, in fact, development of any tract within the Jones Falls watershed, would be impractical. However, he presented to this Board specific, comprehensive and uncontradicted testimony to the effect that the County is presently constructing a system to divert from the Jones Falls System waste water emanating from the Cockeysville, Texas, Timonium and Green Ridge areas. Such diversion will be through the existing Mine Bank System and through the southeastern portion of the County to the Back River treatment plant. Immediately upon completion of this diversionary system, sewage from the areas mentioned, which presently flows into the Jones Falls System, would be so diverted and there will be a reduction of effluent into the Jones Falls System of six million gallons per day. There would, therefore, be approximately 1,480,000 gallons per day unused of the Baltimore County allocation. Following development of the Rockland property as proposed by Petitioners, the average per-day flow from the Rockland property would be approximately 265,000 gallons - a minor percentage of the excess capacity available following diversion (Petitioner's Exhibit No. 35).

Mr. Bernard J. Willemain, a land planner who testified for the Protestants, did not disagree with Mr. Relyea as to the effect of the diversionary system but did disagree with the time schedule announced by Mr. Relyea.

In order for this Board to consider utilities not presently in operation in determining whether or not capacity is

-22-

ROYSTON, MUELLER,
THOMAS & MCGLEEN
SUITE 800
100 W. PENNA. AVE.
TOWSON, MD. 21204
682-1800

present, there must be assurance that the proposed new utilities, including this diversion, are reasonably probable of fruition in the foreseeable future. We acknowledge this burden and we have met this burden. The diversionary system illustrated on Petitioner's Exhibit No. 36 will be completed in the foreseeable future and such fact was known prior to March of 1971. The diversionary system is an inter-related system with each part thereof dependent on the others and the system must be considered as a whole. The Long Quarter pumping station, forcemain and outfall are fully planned, large sums of money have been spent on such planning, all monies necessary have been allocated, contracts have been let and construction has started. Completion time is 360 working days from September 24, 1971. The Green Ridge interceptor, Timonium interceptor and Texas forcemain portions have all been planned and designed, construction is included in the 1973-1974 Baltimore County Budget and sums in excess of \$1,900,000 have been allocated for construction. The Spring Branch outfall portion of the system is now being designed and, as an integral part of an integrated system, it must be considered that this outfall will be built. To reach any other conclusion as to this small portion of the integrated system would mean that sums in the millions of dollars would be spent needlessly and a system 98% completed would be allowed to lie unused.

Cases establishing that construction "reasonably probable of fruition in the foreseeable future" must be considered by the Zoning authorities include Rohde, et al v. County Board of Appeals for Baltimore County, et al, 234 Md. 239 (1964) and Trustees of McDonough Educational Fund and Institute, etc., et al v. Baltimore County, Maryland, et al, 221 Md. 550 (1960). In the McDonough case the Court of Appeals in considering proposed roadways said, at pages 570-571:

-23-

"Of course, the county council was not confined in its deliberations upon the recommended new comprehensive plan exclusively to the roadways then in existence. If this were so it would destroy many of the advantages of zoning. A comprehensive plan, as we have stated above, is specifically designed to control and direct the use of land and buildings according to present and planned future conditions. We think the council was entitled to consider any proposed new highways, that were reasonably probable of fruition in the foreseeable future in determining the proper classifications for the subject property."

Cases illustrating the importance of the availability of utilities serving property for which classification has been requested include Finney v. Halle, supra (change) and Trustees of McDonough Educational Fund and Institute, Etc., et al v. Baltimore County, Maryland, et al, supra (error).

We believe that the diversion system must be considered as being "reasonably probable of fruition in the foreseeable future," both now and prior to March, 1971. The testimony presented is to the effect that such system was anticipated and should have been considered by the County Council in March of 1971 and, if such diversion were ignored by the Council majority, then that was erroneous.

e) Dr. Wallace, in addition to his substantiation of Mr. Plitt's testimony and in addition to his specific conclusions as to error on the part of the County Council, testified as an expert land planner. His testimony revealed that, in reaching his conclusions he relied not only on his extensive firm staff, but obtained substantiation of data and substantiation of his tentative conclusions from other experts, including those employed by Baltimore County in the Department of Planning and Zoning and those retained by the Petitioner. Dr. Wallace testified that he

-24-

ROYSTON, MUELLER,
THOMAS & MCGLEEN
SUITE 800
100 W. PENNA. AVE.
TOWSON, MD. 21204
682-1800

considered alternate land usages on the Rockland tract and that, in his opinion, the proposed use was the most desirable use of the tract, advancing therefor, among other reasons, the fact that the proposed use retained approximately 75% of the existing forest, the proposed use was in accordance with County needs including the need for a neighborhood shopping and service facility, the fact that the use was in accordance with the proposed sector master plan for this area of Baltimore County and the fact that the Rockland tract was located within the urban-rural demarcation line adequately served by roadways and utilities and fits the criteria established for development within the urban-rural demarcation line. His explanation of investigatory procedures that he undertook to confirm his opinion is more fully set forth above, but it should be reemphasized that his independent investigation led him to the conclusions that the developer's proposal was well suited to the tract and that this independent opinion was substantiated by similar opinions of the Baltimore County Planning Staff and Board. He further stated that he had investigated and examined the criteria established by the Baltimore County Department of Planning and Zoning, and used by them in making their recommendations to the Council, and he is of the opinion that the criteria used represent good planning criteria which should be, and were, followed by the Planning Staff and the Planning Board but were obviously ignored by the County Council. Dr. Wallace made specific mention of the Hoffman reports referred to in the minutes of the Baltimore County Planning Board and he informed this Board that Hoffman, who was a consultant expert to the Baltimore County Planning Board, was a recognized expert in his field, was well known to Dr. Wallace and, in fact, had acted jointly with Dr. Wallace on planning tasks. Mr. Hoffman, yet another expert whose findings and conclusions should have been available to and should have been considered by the

-25-

ROYSTON, MUELLER,
THOMAS & MCGLEEN
SUITE 800
100 W. PENNA. AVE.
TOWSON, MD. 21204
682-1800

County Council, recommended to the Planning Board the adoption of the concept of neighborhood shopping centers.

Dr. Wallace stated that, in his opinion, the County Council examined some of the data and information available but that the majority came to an erroneous conclusion. He stated emphatically that all of the data to which they could have referred led to the conclusion that the Planning Board recommendation prior to March of 1971 was the proper recommendation and should have been followed. He stated that, in his opinion, the Baltimore County Planning Staff did a "marvelous job" in their task concerning County-wide rezoning and that their conclusions as to the Rockland tract were correct. He followed by stating that, in terms of the technical data available and the interpretation of that data, the Council should rely on their Staff and, if they cannot rely on their Staff, they should get a new Staff. He continued by saying that his investigation shows that the Council was informed as to the proposed 1980 Guide Plan and the specific working drafts thereof which are not materially different from the 1980 Guide Plan adopted in June of 1972 and that he believes the Council, even though knowing of the Guide Plan, misconstrued it and thereby committed error.

In his comments on the minutes of the County Council meeting of March 24, 1971, Dr. Wallace made it clear that "counting noses is not a valid basis for zoning." He specifically stated that zoning by plebiscite is not good planning and that the courts of almost every jurisdiction with which he is familiar, including Maryland, have so held. Dr. Wallace concluded by saying, "The development potential of this tract is so great that I feel other County Councils or other zoning boards would not have committed this same error. The Council may have had the ability

-26-

ROYSTON, MUELLER,
THOMAS & MCGLEEN
SUITE 800
100 W. PENNA. AVE.
TOWSON, MD. 21204
682-1800

to decide as it did, but by so deciding, it committed error - their decision violates good planning practices and, in fact, violates common sense."

f) Mr. Norman Gerber, who is the Chief of Community Planning of the Baltimore County Office of Planning and Zoning, was very familiar with the Rockland property and with the zoning procedures undertaken prior to March, 1971, and is familiar with the present zoning procedures. He testified at length to the effect that the entire Planning Staff and a unanimous Planning Board, prior to March, 1971, recommended adoption of the Petitioner's plan as both appropriate development for the land and as serving neighborhood need. He stated, for example, that the development of the property as proposed both in 1971 and today would comply with the 1980 Guide Plan and that, even if no specific plans were proposed for the Rockland tract by the Petitioner, the Planning Staff and Board still would have recommended reclassification to medium density residential and to a limited area of commercial zoning necessary to provide neighborhood shopping facilities. Insofar as the Planning Staff is concerned, the amenities proposed for the tract are attractive, but they did not enter into the decision-making process of the Planning Staff. Among the considerations which were recognized were that the zoning requested by Petitioner "is zoning we felt was needed to satisfy a need - for example, the need for a commercial convenience shopping area to serve the area." In response to a specific question by Mr. Reiter, Mr. Gerber stated that limited commercial zoning on the Rockland tract was recommended long before 1971 and even before the Planning Staff had notice or knowledge of the Rockland plan and proposal. The recommendation as to commercial zoning was made to satisfy a need. Mr. Gerber further emphasized, in answer to a question by Mr. Parker, that

-27-

the Planning Staff recommendations to the Planning Board, which were ultimately accepted, were based on an overview of the entire area including, but not limited to, the Rockland tract, and concluded by stating that in cycle zoning the Staff was, of course, aware of the proposed Rockland development; however, at the time of the initial recommendations for increased density and commercial zoning by the Planning Staff before March of 1971, the Staff was not aware of the Rockland development plans. He also mentioned that he and the Planning Staff feel the same way today as to the tract as they did when they made their specific recommendations to the Planning Board, and that feeling is that the zoning requested should be granted. In response to a question by Mr. Slowik as to whether or not the Planning Staff and Mr. Gerber felt the requested zoning was premature, Mr. Gerber stated that he did not believe the request was premature in that all utilities are, or will be, available and that fact was known to the Planning Staff. Further, the few problems that did exist were capable of solution and are being solved as is necessary. In response to a question of clarification posed by Mr. Reiter, Mr. Gerber stated that the Jones Falls Interceptor and the Gwynn Falls situation should not have been a factor in denying reclassification. Later, in response to a question posed by Mr. Sachs, he acknowledged that the granting of most building permits is temporarily suspended in the Jones Falls area, but stated that this presents no problem insofar as proper planning is concerned since the development proposed cannot begin until building permits are granted - the tacit rationale being, obviously, that whether it takes three months or nine months to again begin issuing building permits is immaterial in that comprehensive planning must consider the future as well as the present and it is obvious that development cannot occur until the prohibition is lifted. In response to a further question by Mr. Parker as to availability of utilities,

-28-

STEVENS, MUELLER,
THOMAS & MCGHEE
SUITE 200
140 W. PENNA. AVE.
TOWSON, MD. 21204
822-1900

ties, Mr. Gerber stated that the Rockland tract would have been placed in an RDP or other holding zone in March of 1971 if the Planning Staff felt utilities and roadways were not readily available.

It must be emphasized that the wise and extensive testimony of Mr. Gerber comes not from the Petitioner's expert consultant, but rather from Baltimore County's own Planning Staff - the very Staff charged with the duty of advising the Planning Board and the County Council. The testimony of Mr. Gerber as to Planning Staff recommendations and the reasons therefor are compelling evidence of the error committed by the County Council. Had they relied on their own Planning Staff, they would not have retained the Rockland tract in a DR-1 classification. Whether their failure to so rely on the Planning Staff was through ignorance of the Staff recommendations or through their refusal to consider the Staff evidence and recommendations, the result was error and an arbitrary, capricious and illogical finding. The record admits no other possibility.

g) Mr. Bernard Willemain, a land planner and witness for the Protestants, disagreed with Mr. George E. Gavrelis, Director of the Baltimore County Office of Planning and Zoning, disagreed with Mr. Norman Gerber, the Chief of Community Planning of that Office, disagreed with the expert consultants retained by Baltimore County, disagreed with the Baltimore County Planning Staff, disagreed with the Baltimore County Planning Board and its subcommittees, disagreed with Dr. Wallace and, in general, disagreed with all testimony presented. The justification or rationale for such disagreement is not shown in the record and the testimony of Mr. Willemain, who does have a background in land planning but is admittedly not an expert in the fields of traffic

-29-

STEVENS, MUELLER,
THOMAS & MCGHEE
SUITE 200
140 W. PENNA. AVE.
TOWSON, MD. 21204
822-1900

engineering, sanitary sewer engineering or hydrology, should be given little, if any, weight.

**B. THE PRESUMPTION OF
REASONABLENESS OF THE
MARCH 24, 1971, COUNCIL ACTION
HAS BEEN REBUTTED**

1. As above set forth, all experts, all staff reports and recommendations and all Planning Board recommendations prior to March 24, 1971, were for increased density and a small area of commercial zoning on the Rockland tract. There is nothing in the record evidencing substantial contrary recommendations or advice on which the Council could have relied in reaching its majority decision. This alone is sufficient to rebut the presumption of reasonableness.

2. The Board is aware of the immense nature of the task facing the Baltimore County Council in the months immediately prior to March, 1971. A complete zoning reclassification of one of the largest counties in the United States is an awesome task, even if performed by a large body of experts who are able to devote their full time and attention to the task. The Baltimore County Council, however, consists not of experts, but of lawyers, insurance agents and businessmen whose duties as Councilmen are part time only. During the period in question, they necessarily attended to their own business affairs and, on a part-time basis, governed the County. In addition, they were asked to adopt a radically different new set of zoning reclassifications and definitions. Simultaneously, they were considering an operating budget for the County and, if these tasks were not sufficient, they were then charged with reclassifying every acre of privately-owned

-30-

STEVENS, MUELLER,
THOMAS & MCGHEE
SUITE 200
140 W. PENNA. AVE.
TOWSON, MD. 21204
822-1900

land in the County. Under these circumstances, it was impossible for them to adequately perform their duty of reclassifying every tract of land without relying extensively on the technical staff and the experts in and retained by the Baltimore County Department of Planning and Zoning. It must be remembered that the full-time assignment of the Planning Staff for over a year prior to March, 1971, was consideration of and recommendation of zoning reclassifications for March 24, 1971, map adoption. We know that the Council did not rely on the experts and technical staff, thus we must examine the opportunity available to the Council for independent consideration and determination of appropriate zoning for the Rockland tract. The following are admitted facts:

- (1) The County Council did not receive all reports, data and zoning recommendations from the Planning Staff or Board until late December, 1970, just three and one-half months prior to final map adoption.
- (2) There were "thousands" of separate tracts of land to be considered by the Council.
- (3) In the northwest sector alone there were approximately 87 contested matters which were considered by the Council at their public hearing of March 9, 1971, just 15 days before map adoption.
- (4) The public meeting held was extremely well attended and speakers were heard as to the majority of contested tracts of land.
- (5) According to Mr. Willemain, various people spoke for "almost 25 minutes" as to the Rockland tract and, as the minutes of that meeting (which are in

-31-

the record) indicate, those who spoke were either neighborhood residents who supported or opposed the reclassification as lay persons, not expert witnesses, or employees of the developer who spoke as to what they hoped to accomplish and not as to the technical details of availability of sewer, water, roads, etc.

- (6) No expert witnesses were allowed by the County Council to present their opinions and findings as to the Rockland tract. Mr. Plitt, who attempted to speak as an expert witness, was arbitrarily stopped by the Chairman of the Council and allowed to say nothing more than that he "favored the reclassification."

In addition to this 25 minutes of innocuous comments from both sides, each individual Councilman may have given some consideration to the technical data available; however, such consideration, if any, was necessarily minimal. The evidence is that, during the subject three and one-half month period, there were at least eight full file drawers of material on County re-zoning reclassifications for the Councilmen to read, consider, investigate, discuss and ultimately act upon. It is obviously impossible for any member of the Council to devote to that ocean of data the time and attention necessary.

Consider, for example, that the Ruxton-Riderwood Improvement Association, a community group, spent in excess of 1,000 man hours considering only the Johnson proposal. Consider further that this Board sat for seven hearing days for the purpose

-32-

STEVENS, MUELLER,
THOMAS & MCGHEE
SUITE 200
140 W. PENNA. AVE.
TOWSON, MD. 21204
822-1900

of taking expert testimony and receiving in excess of 70 exhibits. The total estimated hours involved in presenting the facts to this Board was approximately 30 hours, or 1,800 minutes. All but a very small percentage of these minutes were devoted to presentation of facts which were, or should have been, available to the Council for its consideration in March of 1971. It again seems obvious that the pertinent data and facts could not have received proper consideration in the 25 minutes allotted during the public hearing or in such minimal amounts of time that might have been available to the Council thereafter.

The Council could not and did not give sufficient study to the important questions presented, but, instead, relied on a purported head count in reaching its decision, a method completely improper under the law.

3. The "exercise of the police power in zoning regulations cannot be governed by a plebiscite of neighbors or for their benefit." (citing cases) Walker v. Talbot County, 208 Md. 72 (1954). The Maryland courts for over 20 years have adhered to the statement quoted directly above. It has always been recognized that good zoning procedures and decisions require more than a head count. Consequently, the Maryland Court of Appeals, in cases of rezoning by petition, Mettee, et al. v. County Commissioners of Howard County, et al., 212 Md. 357 (1957), the issuance of permits, Venner v. Tribbitt, 190 Md. 6 (1947) and in cases involving original zoning by County or area map as in Walker v. Talbot County, supra, has uniformly prohibited zoning by plebiscite. If there is one clear pronouncement in Maryland cases relating to zoning, it is that zoning so based on plebiscite is improper and

-33-

the court or board so basing its decision will invariably be reversed by the Appellate Court. The case of Mayor and Council of Rockville v. Cotler, 230 Md. 335 (1963) is most appropriate. There the land owners applied for industrial zoning for a tract of land. The Mayor and City Council held a public hearing and thereafter adopted a resolution which zoned the subject tract as residential despite the recommendations by two planning commissions whose experts testified at the hearing. The Maryland Court of Appeals had no difficulty in finding that the residential rezoning was arbitrary, discriminatory and unreasonable. The Court said at page 340, "it flew in the face of facts developed at the hearing and without any showing of adequate cause therefor, it deprived the appellees of the use of part of their property for which it was best suited. Here we find elements of a decision being based upon a plebiscite of neighbors, which is not permissible (citing cases)." The Court of Appeals in Cotler could just as well be speaking of the decision reached by the County Council in the instant case.

Parentetically, it is possible that the Council even erred in its "nose count." The evidence presented, both orally and by exhibit (specifically Protestant's Exhibits I, J, K, L, M and N) indicate that just as many, if not more, neighbors were in favor of the reclassification recommended by all experts than were opposed. It is, therefore, possible that the Council not only used an erroneous method of reaching its decision, but used erroneous data to justify its use of such erroneous method.

**C. ALTHOUGH OF MINOR CONSIDERATION
IN ZONING MATTERS, THE EVIDENCE IS
UNCONTRADICTED THAT THE ZONING RECOMMENDED
BY THE PLANNING STAFF AND PLANNING BOARD
PRIOR TO MARCH, 1971, AND REQUESTED
BY THE PETITIONER TODAY IS IN THE
PUBLIC INTEREST AND IS IN ACCORD WITH
APPLICABLE LONG-RANGE PLANNING
CONCEPTS OF BALTIMORE COUNTY**

1. The testimony of Mr. William Winstead as to the benefit to be realized by Baltimore County from the planned Johnson

-34-

STEVENS, MUELLER,
THOMAS & MCGHEE
SUITE 200
140 W. PENNA. AVE.
TOWSON, MD. 21204
822-1900

development is without contradiction. Petitioner's Exhibit 7 shows a potential annual benefit to the County of approximately three-quarters of a million dollars. The data comprising such exhibit is also uncontradicted.

2. Positive proof that the proposed development was, in March, 1971, and is today, in accordance with long-range planning goals of Baltimore County is found in the contraverted fact that Mr. Gavrelis, his principal aide, Mr. Gerber, the entire Planning Staff and the entire Planning Board of Baltimore County all recommended acceptance of the Petitioner's proposed development plan. Even the disagreeing Mr. Willemain so testified. Such facts alone are sufficient to show compliance with the plan, for who can better know the long-range development plans for our County than the very public officials and employees charged with the duty of formulating and implementing such plans. In such case, the testimony of Dr. Wallace, who agrees that such long-range plans are here followed, seems almost superfluous. Compatibility of a Petitioner's plans with the projected plans of zoning officials and with the reports of planning bodies is recognized as an important element in zoning reclassification requests. Among the numerous cases which so hold are Dill, et. al. v. The Jobar Corporation, 242 Md. 16 (1966); Suburban Properties, Inc. v. Mayor and Council of Rockville, 241 Md. 1 (1965) and Board v. Oak Hill Farms, supra.

3. Succinct mention should be made of several specific and unusual benefits provided by Petitioner's plan. Specifically, the preservation of the historic village and the retention of open space in excess of 75% of the land area are of incalculable value

-35-

STEVENS, MUELLER,
THOMAS & MCGHEE
SUITE 200
140 W. PENNA. AVE.
TOWSON, MD. 21204
822-1900

STEVENS, MUELLER,
THOMAS & MCGHEE
SUITE 200
140 W. PENNA. AVE.
TOWSON, MD. 21204
822-1900

STEVENS, MUELLER,
THOMAS & MCGHEE
SUITE 200
140 W. PENNA. AVE.
TOWSON, MD. 21204
822-1900

to Baltimore County and its citizens and such preservation and retention are rarely found.

**D. THERE HAS BEEN A CHANGE
WHICH ALONE WOULD
JUSTIFY RECLASSIFICATION**

It is not necessary to cite Court of Appeals cases to this Board where statements are made that it is difficult at times to differentiate between error and change. This Board is aware that, in some instances, the same circumstances can be said to represent both error and change. Such is the case here. The diversionary sanitary sewer described at length by Mr. Relyea and commented upon by Dr. Wallace and Mr. Gerber is such a set of circumstances teetering on the borderline between change and error. We contend, and the record shows, that this diversionary system should have been considered by the County Council prior to its March, 1971, decision and that, if it had been so considered, the requested reclassification should have been granted. However, if we assume only for the sake of argument that the diversionary system prior to March, 1971, had not proceeded to the point where it should have been considered by the Council, then it must follow that the diversionary system which is now under construction represents a dramatic change in the entire area surrounding the Rockland property and a specific dramatic change affecting the Rockland property. Again, if we assume only for the sake of argument that consideration of the diversionary system was premature in March, 1971, and, therefore, the Rockland tract could not then be zoned for medium density residential and limited commercial use, what can be a more dramatic change since map adoption than a new sewer system available to serve the Rockland

-36-

property so that both medium density residential and commercial use are now appropriate, proper and possible? What change could be more dramatic than reducing sewage flow into an overtaxed line by 6,000,000 gallons per day with the result that the existing line is thereafter not only capable of taking all sewage directed to it, but enjoys excess capacity of over 1,500,000 gallons per day? Remember only 285,000 gallons per day of such excess capacity is expected to be utilized by development of the Rockland property as proposed by Petitioner. It is impossible not to recognize this fact as a dramatic change unless it is determined that such diversionary system was, in March of 1971, in such advanced planning or design stage so that it should have been considered by the County Council as being in existence and thereby available to serve the Rockland property. Under either set of circumstances, i.e., error or change, the diversion itself is more than sufficient to justify the granting of the Petitioner's requests by this Board. The disagreeing Mr. Willemain, while contending that the diversion is not a change, proffered no substantiation for his casual opinion.

E. THE REQUEST FOR SPECIAL EXCEPTIONS

Dr. Wallace's testimony standing alone is sufficient to allow this Board to grant the requested special exceptions for amenities. His testimony established that the six requirements of Section 502.1 of the Baltimore County Zoning Regulations are and would be met. Even the disagreeing Mr. Willemain, under intensive cross-examination by Board members, ultimately admitted that the Petitioner's requests for special exceptions were well founded and the granting thereof would be appropriate.

-37-

CONCLUSION

Petitioner respectfully suggests that it has met all burdens of proof imposed on it; that it has proven irrefutable error on the part of the County Council; that it has proven how such error was caused by Council inaction or inattention; that it has proven the incorrectness of the initial presumption of legislative validity; that it has proven that substantial change has occurred which alone justifies reclassification and that it has proven that the proposed development is in the public interest. Petitioner therefore requests that this Board reverse the actions of the Zoning Commissioner for Baltimore County and grant the reclassifications and special exceptions requested by Petitioner in the consolidated petitions.

W. Lee Thomas
W. Lee Thomas
Attorney for
Rockland Holding Corporation

-38-

DOLLENBERG BROTHERS
Regional Professional Engineers & Land Surveyors
709 WASHINGTON AVENUE AT YORK ROAD
TOWSON, MD. 21204

September 27, 1972

Description to accompany Zoning Petition
on the property of Rockland Holding Corporation

Parcel No. 5.1 - Proposed Zoning - Special Exception
for Community Recreation Area.

All that piece or parcel of land situate, lying and being in the Third Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point distant South 34 degrees 37 minutes 49 seconds East 217.56 feet from the corner formed by the intersection of the east right of way line of Falls Road with the south right of way line of the Baltimore Highway and running thence the four following courses and distances viz: South 67 degrees 45 minutes 41 seconds East 206.71 feet, North 2 degrees 14 minutes 47 seconds East 217.71 feet, North 47 degrees 45 minutes 13 seconds East 206.71 feet, North 2 degrees 14 minutes 47 seconds East 206.71 feet to the place of beginning.

Containing 1 Acre of land.

Being the property of the petitioners herein as shown on a plat filed with the Zoning Department.



DOLLENBERG BROTHERS
Regional Professional Engineers & Land Surveyors
709 WASHINGTON AVENUE AT YORK ROAD
TOWSON, MD. 21204

September 27, 1972

Description to accompany Zoning Petition
on the property of Rockland Holding Corporation
Parcel No. 4.3 - Proposed Zoning - Special Exception
for Community Facility.

All that piece or parcel of land situate, lying and being in the Third Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at the corner formed by the intersection of the southeast side of Fall Court Road with the southwest side of Falls Road and running thence and binding on the southwest side of Falls Road South 33 degrees 56 minutes 40 seconds East 240 feet, thence leaving said Falls Road and running the five following courses and distances viz: South 42 degrees 27 minutes 15 seconds East 152 feet, North 56 degrees 03 minutes East 255 feet, North 42 degrees 27 minutes 15 seconds East 360 feet, North 11 degrees 46 minutes East 522.59 feet and Due East 111.13 feet to the southeast side of Falls Road and thence binding on the southeast side of said road the four following courses and distances viz: South 6 degrees 59 minutes 40 seconds East 41.62 feet, South 17 degrees 40 minutes 50 seconds East 139.77 feet, South 25 degrees 56 minutes 30 seconds East 179.04 feet and North 13 degrees 56 minutes 40 seconds East 45.50 feet to the place of beginning.

Containing 4.42 Acres of land more or less.

Being the property of the petitioners herein as shown on a plat filed with the Zoning Department.



DOLLENBERG BROTHERS
Regional Professional Engineers & Land Surveyors
709 WASHINGTON AVENUE AT YORK ROAD
TOWSON, MD. 21204

September 27, 1972

Description to accompany Zoning Petition
on the property of Rockland Holding Corporation

Parcel No. 3.1 - Proposed Zoning - Special Exception
for Community Recreation Area.

All that piece or parcel of land situate, lying and being in the Third Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point distant South 13 degrees 18 minutes 15 seconds East 2010.69 feet from the corner formed by the intersection of the westernmost right of way line of the Jones Falls Expressway with the southwest side of the Falls Road and running thence the four following courses and distances viz: South 13 degrees 18 minutes 15 seconds East 206.71 feet, North 76 degrees 41 minutes 45 seconds East 206.71 feet, North 13 degrees 18 minutes 15 seconds East 206.71 feet and South 76 degrees 41 minutes 45 seconds East 206.71 feet to the place of beginning.

Containing 1 Acre of land more or less.

Being the property of the petitioners herein as shown on a plat filed with the Zoning Department.



DOLLENBERG BROTHERS
Regional Professional Engineers & Land Surveyors
709 WASHINGTON AVENUE AT YORK ROAD
TOWSON, MD. 21204

September 27, 1972

Description to accompany Zoning Petition
on the property of Rockland Holding Corporation

Parcel No. 4.1 - Proposed Zoning - Special Exception
for Community Recreation Area.

All that piece or parcel of land situate, lying and being in the Third Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point distant South 73 degrees 34 minutes 34 seconds East 1704.27 feet from the corner formed by the intersection of the northwest side of Old Court Road with the southwest side of Falls Road and running thence the four following courses and distances viz: Due East 206.71 feet, Due North 206.71 feet, Due East 206.71 feet and Due South 206.71 feet to the place of beginning.

Containing 1 Acre of land.

Being the property of the petitioners herein as shown on a plat filed with the Zoning Department.



DOLLENBERG BROTHERS
Regional Professional Engineers & Land Surveyors
709 WASHINGTON AVENUE AT YORK ROAD
TOWSON, MD. 21204

September 27, 1972

Description to accompany Zoning Petition
on the property of Rockland Holding Corporation

Parcel No. 4.2 - Proposed Zoning - Special Exception
for Community Recreation Area.

All that piece or parcel of land situate, lying and being in the Third Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point distant South 49 degrees 29 minutes 31 seconds East 1220.38 feet from the corner formed by the intersection of the westernmost right of way line of the Jones Falls Expressway with the southwest side of the Falls Road and running thence the four following courses and distances viz: South 41 degrees 45 minutes 41 seconds East 206.71 feet, South 36 degrees 15 minutes East 206.71 feet, North 31 degrees 45 minutes East 206.71 feet and North 36 degrees 15 minutes East 206.71 feet to the place of beginning.

Containing 1 Acre of land.

Being the property of the petitioners herein as shown on a plat filed with the Zoning Department.



LAW OFFICES
HESSIAN & IGLEHART
SUITE 302-ALEX. BROWN & SONS BUILDING
102 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

TELEPHONES
AREA CODE 410
828-0711
828-0440

April 2, 1973

S. Eric DiNenna, Esquire
Zoning Commissioner of Baltimore County
County Office Building
Towson, Maryland 21204

Re: Rockland Holding Corporation
73-231-RX

Dear Mr. DiNenna:

Please enter my appearance in this proceeding on be-
half of William L. Hower and Mary Belle Hower, his wife, owners
of the improved fee simple property known as No. 1804 Indian Head
Road, Burton, Baltimore County, Maryland.

Very truly yours,

William L. Hower
W. L. Hower, III

JMH:vh

ROYSTON, MUELLER, THOMAS & McLEAN

CARROLL W. ROYSTON
ANTHONY MUELLER
W. LEE THOMAS
R. TAYLOR McLEAN
EDWARD A. REED
E. HARRISON STONE
MELTON R. SMITH, JR.
C. E. KUNGELHOFF, JR.
MARVARET F. MAHONEY

SITE 800
100 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

AREA CODE 410
823-1800

April 13, 1973

Zoning Commissioner
County Office Building
Towson, Maryland 21204
ATTN: S. Eric DiNenna

RE: Petition for Reclassification and Special
Exception S/S and W/S of Falls Road
between the Baltimore County Beltway and
Jones Falls Expressway - 3rd and 9th
Districts Rockland Holding Corporation -
Petitioner
NO. 73-231-RX (Item No. 21)

Dear Mr. Commissioner:

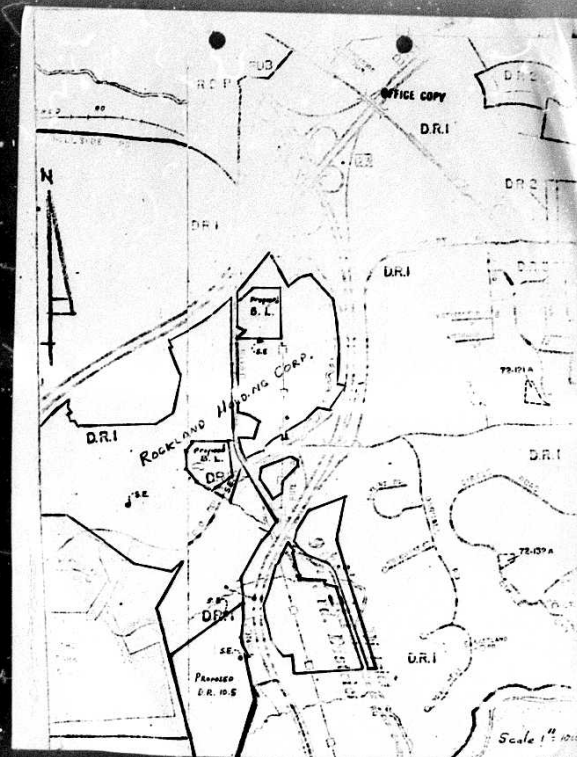
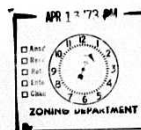
Please enter an Appeal on behalf of Rockland Holding
Corporation, the Petitioner in the above entitled matter,
from your decision of April 6, 1973, to the Baltimore
County Board of Appeals.

A check in the amount of \$70 is enclosed.

Very truly yours,

W. Lee Thomas
W. Lee Thomas

WLT:gs
Enclosure



Maryland Department of Transportation
State Highway Administration

Harry R. Hughes
Secretary
David H. Fisher
Administrator

October 17, 1972

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Reclassification Oct. 1972
Property Owner: Rockland Hold-
ing Corporation
Location: 817' from Intersection
of Falls Road (Route 25)
and Baltimore Beltway
Present Zoning: D.R.1
Proposed Zoning: Reclass from
D.R. 1 to D.R. 10.5
Districts 3 and 9
No. Acre: 1 acre

Dear Mr. DiNenna:

The subject plan reflects improvements to the Jones Falls -
Baltimore Beltway Interchange that is being studied.

The plan indicates a realignment of Old Court Road. This
proposal must be studied and approved by the State Highway Administration.
It will be the developer's responsibility to improve both Old Court and Falls
Roads. The extent of the improvements would be determined at a later date.

The location of the proposed points of access from Old Court
Road appear to be acceptable.

The southernmost proposed point of access from Falls Road into
the Village Center is in an area of poor stopping sight distance. The access
point must be located 275' to the north. The middle access point from Falls
Road to the recreational facility is in an area of poor stopping sight distance,
and must be located 100' to the north. The northernmost points of access from
Falls Road to the Office Park and area opposite are in an area of poor stopping
sight distance and must be located 140' to the north. The plan must ultimately
be revised.

The points of access will be subject to approval and permit from
the State Highway Administration.

The 1971 average daily traffic on Old Court Road is 3,100 vehicles.
The 1971 average daily traffic on Falls Road is 3,450 vehicles.

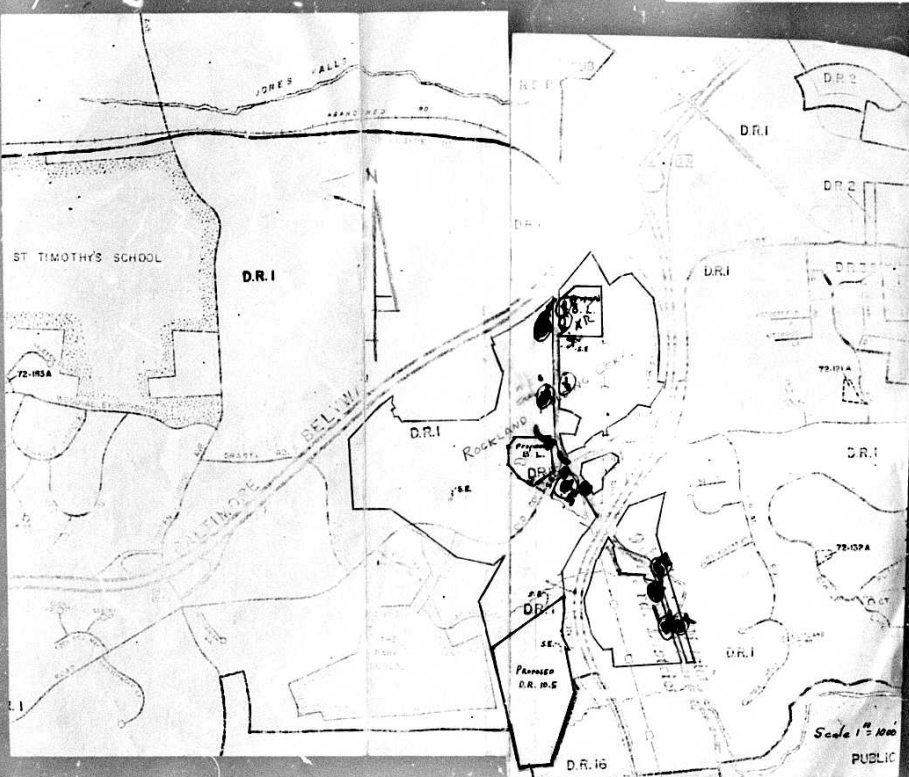
Very truly yours,

Charles Lee, Chief
Development Engineering
Section

John E. Mayers
John E. Mayers
Asst. Development Engineer

CLJ:JMH

P.O. Box 717 / 300 West Preston Street, Baltimore, Maryland 21203



BALTIMORE COUNTY, MARYLAND
JEFFERSON BUILDING TOWSON, MARYLAND 21204

DEPARTMENT OF TRAFFIC ENGINEERING
EUGENE A. CLIFFORD, P.E.
Director
Wm. T. Malin
Senior Traffic Engineer

October 30, 1972

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Cycle Zoning IV
Item 21 - ZAC - Oct. 72 to Apr. 73
Property Owner: Rockland Holding Corp.
Falls Road & Beltway
Reclass. from DR 1 to DR 10.5
District 3 & 9

Dear Mr. DiNenna:

The subject petition is requesting a zoning reclassification from
DR 1 to DR 10.5 and from DR 1 to BL. As presently zoned, the entire site
would generate approximately 4,350 trips per day. The entire site with the
proposed zoning changes would generate approximately 17,560 trips per day.

The entire site, if developed with the uses as shown on the plan,
would generate approximately 12,830 trips per day.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate

NSF:nc

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

November 15, 1972

W. Lee Thomas, Esq.,
102 W. Pennsy. and Avenue
Towson, Maryland 21204

RE: Reclassification Petition
Item #1
Rockland Holding Corporation - Petitioner

Dear Mr. Thomas:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The following comments are a result of this review and inspection.

The subject property for the most part is located in the southwestern quadrant of the Jones Falls Expressway and the Baltimore Beltway, in the 3rd and 9th Districts of Baltimore County. The property is traversed by two m- for roadways, those being Falls Road running north and south and Old Court Road running east and west. The entire property contains approximately 400 acres, of which three smaller parcels are the subject of this petition.

Parcel No. 1 is located on the west side of Falls Road immediately south of the Baltimore Beltway and is requesting a Reclassification of DR 1 to Business Local for 9.90 acres of land. The proposed use of this property will be for professional offices and is anticipated to be developed with approximately 100,000 square feet of office space and 400 parking spaces. Parcel No. 2 is located on the northwest corner of Falls Road and Old Court Road and is requesting a change from D.R. 1 to D.R. 10.5 and Old Court Road which is proposed to be developed as a retail shopping complex. The third parcel is located at the southernmost tip of the Junction tract and currently does not front on a public road. This parcel is being requested for a Reclassification from DR 1 to DR 10.5 and contains 46.00 acres.

Included in this petition are requests for special exceptions for five community recreation centers that are strategically located throughout the proposed development. Four of the five would contain one acre parcels. The fifth parcel is located immediately adjacent to Parcel No. 2 and contains 1/2 acre of land.

This Committee, after an in depth review of the submitted plans and descriptions, and after a meeting and presentation by representatives of the House-Notes Planning and Consulting firm, each dependent represented on this Committee has taken into consideration what they consider to be the salient factors

W. Lee Thomas, Esq.,
Item #1
Page 2
November 15, 1972

regarding this petition and they are reflected in the attached comments.

Because of the magnitude of the proposed development and understanding the complexities of designing a coordinated development of this type, this Committee has accepted this petition for filing even though it does not precisely reflect all of the items required, i.e., setbacks, water and sewer lines, street right of ways, etc., as outlined in the Zoning Commissioner's Rules and Procedures. We do, however, feel that the submitted plans do present a clear enough proposal for the Zoning Commissioner to determine the appropriateness of the reclassifications and special exceptions. We, of course, remind the petitioner that should this proposal be approved or any future development be undertaken, it is subject to the approval of a development plan which carries the force and effect of law.

This petition is accepted for filing on the date of the enclosed filing certificate. However, all corrections to site plans as requested shall be submitted to this office prior to Thursday, February 1, 1973 in order to allow time for advertising. Failure to comply may result in this petition not being scheduled for a hearing. Notice of the hearing date and time, which will be between March 1, 1973 and April 15th, 1973 will be forwarded to you in the near future.

Very truly yours,
John L. Dillon, Jr.
JOHN L. DILLON, JR.,
Zoning Advisory Committee

JJD:JS

Enclosure

Item #21 (Cycle Zoning IV Oct. 1972 - April 1973)
Property Owner: Rockland Holding Corporation
Page 3
October 24, 1972

Water Comments: (Cont'd)

Therefore, a study of the water supply system to determine the extent of reinforcements and/or supplementation that may be required to provide adequate water supply for the proposed development must be conducted in conjunction with the proposed development prior to execution of a Public Works Agreement.

After the Petitioner, or his engineer, furnishes the Water Design Group of the Bureau of Engineering with the water requirements, including fire flows, that Group jointly with the Baltimore City Water Division, will determine the extent of improvements needed to reinforce the offsite water supply system.

It is conceivable that reinforcements to the offsite water supply system will have to be constructed to serve the total ultimate development of the subject property. Therefore, the development of this property may have to be staged or coordinated with the construction of adequate water supply facilities.

Very truly yours,

William H. Dyer, P.E.
WILLIAM H. DYER, P.E.,
Chief, Bureau of Engineering

END:RAB:RND:SS

5-SE Key Sheet
0-100 & 100
NW 9 & 100 C Top
60 Tax Map

cc: J. Tremer

Attachments

Baltimore County Fire Department



Towson, Maryland 21204
812-7118

J. Austin Deitz
Chief

Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Mr. *Eric DiNenna*, Acting
Zoning Advisory Committee

Re: Property Owner: Rockland Holding Corporation

Location: 817' from Intersection of Falls Road and Baltimore Beltway

Item No. 21 Zoning Agenda IV ZONING CYCLE

Gentlemen: October 1972 - 1973 (April)

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "m" are applicable and required to be corrected or incorporated into the final plans for the property.

- (x) 1. Fire hydrants for the referenced property are required and shall be located at intervals of 300 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead-end condition shown at EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
- (x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "The Life Safety Code", 1970 Edition prior to occupancy.
- () 6. Site plans are approved as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

Reviewed: *John L. Dillon, Jr.* Noted and Approved: Deputy Chief
Planning Group
Special Inspection Division
Fire Prevention Bureau

als
4/25/72

Baltimore County, Maryland
Department of Public Works
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

James H. Dyer, P.E., Chief
WILLIAM H. DYER, P.E., CHIEF

October 24, 1972

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #21 (Cycle Zoning IV Oct. 1972 - April 1973)
Property Owner: Rockland Holding Corporation
817' from Intersection of Falls Rd. & Baltimore Beltway
Present Zoning: D.R. 1
Proposed Zoning: Reclass. from D.R. 1 to D.R. 10.5
District: 3rd and 9th No. Acres: 65.30 acres

Dear Mr. DiNenna:

The following comments are furnished in regard to the plans submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highway Comments:

The Baltimore Beltway, Jones Falls Expressway, Falls Road and Old Court Road, Falls Road westerly, are State Roads; therefore, all development adjacent to these roads will be subject to the requirements and regulations of the State Highway Administration.

Old Court Road, Falls Road easterly, and Huxton Road are existing roads maintained by the Bureau of Highways. County Road is an existing private road constructed by the State Highway Administration as a service road for access to those parcels of land covered by the construction of the Baltimore Beltway.

We are generally in accord with the horizontal alignment for Pleasant Cross Road (indicated on the plan as Proposed 80-foot Right-of-Way); however, the intersection with Falls Road should coincide and be continuous with Huxton Road. Pleasant Cross Road is proposed to be improved as a public road consisting of a 50-foot wide closed roadway section within a 70-foot minimum right-of-way in conjunction with the proposed development of this property. The plan must be revised in accordance with the alignment indicated on the attached 500-foot scale prints.

The proposed development of this property is of such magnitude that the need and requirements for public or private, including right-of-way and paving widths, horizontal and vertical alignment, etc., will be fully determined and resolved at such time that the Developer files a preliminary plan for review by the Joint Subdivision Planning Committee.

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF HEALTH



JEFFERSON BUILDING
TOWSON, MARYLAND 21204

October 12, 1972

DONALD A. ROOP, M.D., M.P.H.
DEPUTY STATE AND COUNTY HEALTH OFFICER

Mr. S. Eric DiNenna, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Reclassification, Zoning Advisory Committee
Meeting, October 4, 1972, are as follows:

Property Owner: Rockland Holding Corporation
Location: 817' from Intersection of Falls Road and Baltimore Beltway
Present Zoning: D.R. 1
Proposed Zoning: Reclassification to D.R. 10.5
District: 3 and 9
No. Acres: 1 acre

Metropolitan water and sewer must be extended to site.

Food Service Comments: If a food service facility is proposed, complete plans and specifications must be submitted to the Division of Food Protection, Baltimore County Department of Health for review and approval.

Air Pollution Comments: The building or buildings on this site may be subject to a permit to construct and a permit to operate any and all fuel burning and processing equipment. Additional information may be obtained from the Division of Air Pollution and Industrial Hygiene, Baltimore County Department of Health.

Swimming Pool Comments: Two complete sets of plans and specifications of the pool and bathhouse must be submitted to the Baltimore County Department of Health for review and approval.

Department of Water Resources Comments: If lubrication work and oil changes are performed at this location, revised plans must be submitted showing method providing for the elimination of waste oil in accordance with the Department of Water Resources requirements.

Very truly yours,

Thomas H. Devlin
THOMAS H. DEVLIN, Director
BUREAU OF ENVIRONMENTAL SERVICES

Item #21 (Cycle Zoning IV Oct. 1972 - April 1973)
Property Owner: Rockland Holding Corporation
Page 2
October 24, 1972

Storm Drain Comments:

The Baltimore Beltway, Jones Falls Expressway, Falls Road and Old Court Road, Falls Road westerly, are State Roads; therefore, drainage requirements as they affect these roads come under the jurisdiction of the State Highway Administration.

No provisions for accommodating storm water or drainage have been indicated on the subject plan; however, storm drainage studies, facilities and easements or flood plain reservations will be required in connection with the development of this property.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damage to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Sediment Control Comments:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Drainage studies and sediment control drawings will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading or building permits.

Sanitary Sewer Comments:

The Slaughterhouse Branch, Moores Branch and Jones Falls Interceptor sewers exist through this property as shown on the subject plan. Therefore, it is assumed that public sanitary sewerage can be made available to serve this property by extension of the public sewers available. However, a sanitary sewerage study will be required in connection with the development of this property, prior to execution of a Public Works Agreement, to ascertain the extent of reinforcements and/or supplementation that may be required to provide adequate sewage disposal facilities for the proposed development. If ultimate sewage flows from the proposed development exceed those allowed in the previous design of the various interceptor sewers involved, the development of this property may have to be staged or coordinated with the construction of adequate facilities.

The State Health Department must give approval prior to improving this site.

Water Comments:

The subject property is generally situated along the division between the Western 3rd and Eastern 3rd Zones of Water Supply. A 16-inch water main exists in Falls Road, which main is part of the Eastern 3rd Zone system. An 8-inch water main exists in Pleasant Cross Road, south of this property, and is part of the Western 3rd Zone system. Although public water supply is available to serve this property, supplementary pumping facilities will be required to provide adequate pressure to any structure or facilities with elevations above the limits of the respective water zones.

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

A. V. Guimby
Acting Director
Baltimore County Office Building
111 N. Chesapeake Ave.
Towson, Md. 21204
(410) 321-1111

October 25, 1972

Mr. S. Eric DiNenna, Zoning Commissioner
Zoning Advisory Committee
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Item #21, IV Zoning Cycle, October 1972-April 1973, are as follows:

Property Owner: Rockland Holding Corporation
Location: 817' from Intersection of Falls Road and Baltimore Beltway
Present Zoning: D.R. 1
Proposed Zoning: Reclass. from D.R. 1 to D.R. 10.5
District: 3 and 9
No. Acres: Parcel #1 - D.R. 1 to B.L. - 9.90 acres
Parcel #2 - D.R. 1 - B.L. - 9.40 acres
Parcel #3 - D.R. 1 - D.R. 10.5 - 46.00 acres

This office will not make a comment at this time, as the plan as submitted does not lend itself to specific detailed comments.

Very truly yours,

John L. Guimby
John L. Guimby
Planner I
Project Planning Division
Office of Planning and Zoning

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: October 23, 1972

Mr. S. Eric Dillman
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #21
Property Owner: Rockland Holding Corporation
Location: 817' from intersection of Falls Road and Baltimore Celtury
Present Zoning: D. R. 1
Proposed Zoning: Recline from D.R. 1 to D.R. 10.5

District: 3 and 9
No. Acres: Parcel #1 - D.R. 1 to B.L. - 9.90 acres; Parcel #2 - D.R.1
- B.L. - 9.40 acres; Parcel #3 - D.R.1 - D.R. 10.5 - 16.00
acres

Dear Mr. Dillman:

The existing zoning could yield approximately 17 Elementary, 19
Junior High, and 23 Senior High pupils while a change of part of the
acreage to D.R. 10.5 could yield approximately 314 Elementary, 113 Junior
High, and 78 Senior High students. The proposed acreage for B.L. would not
yield any students.

Very truly yours,
W. Mick Putrowich
W. Mick Putrowich
Field Representative

WMP:in

CERTIFICATE OF PUBLICATION

TOWSON, MD. March 15, 1973
THIS IS TO CERTIFY that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper printed
and published in Towson, Baltimore County, Md., on the
15th day of March, 1973, at the time and place before the
day of March, 1973, the day of publication
appearing on the 15th day of March,
1973.

THE JEFFERSONIAN

Cost of Advertisement, \$

CERTIFICATE OF PUBLICATION

BALTIMORE COUNTY, MD. March 30, 1973
THIS IS TO CERTIFY that the annexed advertisement was
published in THE TIMES, a weekly newspaper printed and published
in Baltimore County, Md., once in each of the
successive weeks before the 31st
day of April, 1973, the first publication
appearing on the 15th day of March, 1973

THE TIMES

Cost of Advertisement, \$ 35.00
P.O. # 9745
Reg. No. C 8678

John M. Martin

Schools servicing this area (based on September 20, 1972 enrollment):

	Capacity	Enrollment	%
Ruxton Elementary	100	103	+3
Towson Junior	1080	1078	+38
Towson Senior	1775	1918	+173

ITEM #21

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 924 3rd Date of Posting: March 10, 1973
Posted for: Rockland Holding Corporation
Petitioner: Rockland Holding Corporation
Location of property: Falls Rd. Between Baltimore Rd. and
Baltimore Rd. and Baltimore Rd. and Baltimore Rd.
Location of Sign: Falls Rd. Between Baltimore Rd. and Baltimore Rd.
Remarks: Falls Rd. Between Baltimore Rd. and Baltimore Rd.
Posted by: Robert L. Dillman Date of return: March 10, 1973

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 924 3rd Date of Posting: April 19, 1973
Posted for: Rockland Holding Corporation
Petitioner: Rockland Holding Corporation
Location of property: Falls Rd. Between Baltimore Rd. and
Baltimore Rd. and Baltimore Rd. and Baltimore Rd.
Location of Sign: Falls Rd. Between Baltimore Rd. and Baltimore Rd.
Remarks: Falls Rd. Between Baltimore Rd. and Baltimore Rd.
Posted by: Robert L. Dillman Date of return: April 30, 1973

W. Lee Thomas, Esq.,
188 W. Pennsylvania Avenue
Towson, Md. 21204

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received and accepted for filing

this 13th day of October 1972.

The attached Petition for a Special Exception will be accepted on the 4th day of February, 1973.

S. Eric DiNenna
Zoning Commissioner

Petitioner Rockland Holding Corporation

Petitioner's Attorney W. Lee Thomas

Reviewed by M. J. Bell
Chairman
Advisory Committee

Item 21

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received this 29th day of

Sept. 1972. Item # _____

S. Eric DiNenna
Zoning Commissioner

Petitioner Rockland Submitted by Milton Smith

Petitioner's Attorney W. Lee Thomas Reviewed by J. Bell

* This is not to be interpreted as acceptance of the Petition for assignment of a hearing date.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

Revenue Division
COURT HOUSE
TOWSON, MARYLAND 21204

FILED

County Board of Appeals
(Zoning)

To: Mr. Patrick Donnelly

PROPERTY TO ACCOUNT NO. 01.712

QUANTITY

RETURN THIS INVOICE WITH YOUR REMITTANCE
DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS

TOTAL AMOUNT

\$ 7.50

Copies of documents from Zoning Files #73-61-R and #73-321-RX and #74-57-R

15 sheets @ 50¢ per sheet

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

MAIL TO OFFICE OF FINANCE, REVENUE DIVISION
COURTHOUSE, TOWSON, MARYLAND 21204

PETITION MAPPING PROGRESS SHEET

FUNCTION	Well Map		Original		Duplicate		Tracing		200 Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, CA										
Reviewed by: <u>J. Bell</u>	Revised Plans: Change in outline or description Yes _____ No _____									
Previous case: _____	Map # _____									

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 8295

DATE April 23, 1973 ACCOUNT 01-662

AMOUNT \$70.00

DISTRIBUTION
WHITE - CASHIER
W. Lee Thomas, Esquire
Cost of Appeal on Case No. 73-231-RX
E/S and S/S of Falls Road between the Baltimore
County Beltway and Jones Falls Expressway - 3rd
and 9th Districts
The Rockland Holding Corporation - Petitioner

YELLOW - CUSTOMER

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 8312

DATE May 1, 1973 ACCOUNT 01-662

AMOUNT \$20.00

DISTRIBUTION
WHITE - CASHIER
W. Lee Thomas, Esquire
Cost of Posting Property for Case No. 73-231-RX
E/S and S/S of Falls Road between the Baltimore
County Beltway and Jones Falls Expressway - 3rd
and 9th Districts
Rockland Holding Corporation - Petitioner

YELLOW - CUSTOMER

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 5763

DATE May 6, 1972 ACCOUNT 01-662

AMOUNT \$50.00

DISTRIBUTION
WHITE - CASHIER
Messrs. Royston, Mueller, Thomas & McLean
102 V. Penna. Ave.
Towson, Md. 21204
Petition for Classification for Rockland
Holding Corp.

YELLOW - CUSTOMER

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 8247

DATE April 2, 1973 ACCOUNT 01-662

AMOUNT \$258.88

DISTRIBUTION
WHITE - CASHIER
Messrs. Royston, Mueller, Thomas & McLean
102 V. Penna. Ave.
Towson, Md. 21204
Advertising and posting of property for Rockland
Holding Corp.

YELLOW - CUSTOMER

JOHNSON PROPERTY DEVELOPMENT
UTILITIES STUDY
BALTIMORE COUNTY, MARYLAND

PREPARED FOR:
ROUSE - WATES INCORPORATED
COLUMBIA, MARYLAND

NOVEMBER, 1972

GREEN ASSOCIATES, INC.
ENGINEERS ARCHITECTS PLANNERS
TOWSON, MARYLAND

UTILITY EVALUATION REPORT ON JOHNSON PROPERTY

I. FIRE PROTECTION

- A. There is adequate fire protection for 10-story buildings. The fire equipment that responds to the first alarm is as follows:
1. Engine Co. No. 14 - Brooklandville
 2. Engine Co. No. 2 - Pikesville
 3. Engine Co. No. 221 - Pikesville Volunteer
 4. Engine Co. No. 1 - Towson
 5. Ladder Truck No. 1 - Towson
 6. Night Service - Pikesville Floodlight

II. WATER SUPPLY

- A. Existing Water - There is a 16" water main along Falls Road and a 12" main along Old Court Road from Falls Road to Park School.
- B. Additional water service is indicated on the County's Master Plan which includes a 20" line on Greenspring with 16" lines connecting to the Falls Road line north and south of the Beltway, which would complete the loop that would ultimately serve the Johnson Property.
- C. The latest pressure recordings taken on the 16" line at Falls Road and Old Court Road show that there are average pressures of 100 p.s.f. as recorded by the City of Baltimore.
- D. Design Flows for the proposed development are as follows:

Daily Peak Flow 1.7 M.G.D.
Fire Flow 1.5 M.G.D.

TOTAL 3.2 M.G.D.

- E. Further studies of the existing water system indicate adequate supply of water to serve the proposed development.

III. POPULATION

- A. Residential population was found by assuming 3.5 persons for every dwelling unit.
- B. Commercial population was based on 36 persons per 1,000 square feet.
- C. Car Care Center population was found by assuming it will be open 12 hours a day with 22 cars coming in every hour. One person per car is taken but it is assumed that only half of these will be using water.

1. Residential	2760
2. Offices	560
3. Commercial	2160
4. Car Care Center	132

E. Flow - The following sewage flows per person is used:

1. Residential	90 gallons/day/person
2. Offices	50 gallons/day/person
3. Commercial and Car Care Center	25 gallons/day/person
4. Infiltration	800 gallons/day/person

IV. SEWERAGE

- A. Studies of the existing sewerage system indicate that the Slaughter House and Moores Branch will be capable of serving the entire Johnson property development. Pumps may be required at different locations.
- B. Studies show that when ultimate development within the drainage areas of Slaughter House and Moores Branch are completed the watershed might generate flows which could exceed the carrying capacity of the interceptors. However, at present, the Slaughter House Branch and the Moores Branch are operating way under their available capacities.
- C. The limiting section of the Jones Falls Interceptor consists of a 27" diameter line located in the vicinity of the Rockland Beach and Dye Company.
- D. The development will produce the following flows based upon population data described above.

	Johnson Property	Ultimate Flow
1. Moores Branch	1.5	4.89
2. Slaughter House Branch	0.3	4.56
3. Jones Falls Interceptor	1.8	9.65

RECORD COPY

Contract No. A91204

Date 8-6-1973

DO NOT TAKE APART, MARK,
OR MUTILATE

JOHNSON PROPERTY DEVELOPMENT
TRAFFIC STUDY
BALTIMORE COUNTY, MARYLAND

PREPARED FOR:
ROUSE - WATES INCORPORATED
COLUMBIA, MARYLAND

AUGUST 6, 1973

GREEN ASSOCIATES, INC.
ENGINEERS ARCHITECTS PLANNERS
TOWSON, MARYLAND

TABLE OF CONTENTS

	Page
PURPOSE	1
PRESENT ZONING	1
PROPOSED LAND USES	1
(a) Baltimore County - Proposed Zoning	1
(b) Rouse Company - Original Proposal	2
(c) Rouse-Wates - Revised Proposal	2
TRIP GENERATION RATES	2
TOTAL DAILY TRIPS	3
TRIP DISTRIBUTION	4
PROJECTED TRAFFIC VOLUMES	5
TRAFFIC IMPACT ANALYSIS	5
CONCLUSIONS AND RECOMMENDATIONS	11
ILLUSTRATIONS	

- Figure 1 - Location Map
- Figure 2 - Identification of Road System Alternatives
- Figure 3 - Trip Distribution and Projected Traffic No Interchange at Jones Falls Expressway and Pinlico
- Figure 4 - Trip Distribution and Projected Traffic Interchange at Jones Falls Expressway and Pinlico
- Figure 5 - Trip Distribution and Projected Traffic No Major Improvements to Off-Site Roads
- Figure 6 - Location of Traffic Counters
- Table 1 - 1973 24-hour traffic volumes for location shown in Figure 6

PURPOSE

Plans are presently being developed by Rouse-Wates Incorporated for the development of the Johnson Property, consisting of residential units, a village center, and a car care center. This property is located only two miles north of the Baltimore City Line in the southwest quadrant of the Baltimore Beltway and the Jones Falls Expressway (Figure 1). It is expected that this development will be completed between 1975 and 1980. It is the purpose of this study to analyze the projected traffic and its impact on roads within and outside the development area and to recommend improvements of on-site and if required, off-site roads.

PRESENT ZONING

The property is presently zoned DR-1. This type of zoning permits the construction of one dwelling unit per acre and would allow 350 dwelling units on available land.

PROPOSED LAND USES

The following proposals have been made for the development of the Johnson Property:

- (a) Original Land Use suggested by Baltimore County
(Proposed Comprehensive Land Use Map)

Residential
1,188 Dwelling Units (R-40, R-20, R-10, R-6, R-A)
Commercial (Light Manufacturing)
1,100,000 square feet

(b) Original Rouse Company Proposal

<u>Residential</u>	
Elevator Apartments	350 Units
Garden Apartments	800 Units
Town Houses	<u>500 Units</u>
	1,650 Units

<u>Commercial</u>	
Inn	200 rooms
Office Park	200,000 square feet
Village Center	100,000 square feet
Car Care Center	1

(c) Revised Land Use By Rouse-Wates

<u>Residential</u>	
Town Houses	475 Units
R.A. (Apartments)	<u>513 Units</u>
	988 Units

<u>Commercial</u>	
Village Center	
Retail Space	50,000 square feet
Office Space	30,000 square feet
Car Care Center	1

TRIP GENERATION RATES

The trip generation rates used in this study are based upon the Trip Generation Studies by the Maryland State Highway Administration and Baltimore

County Traffic Engineering Department. The rates for certain commercial and uses are based upon data presented in publications by the Highway Research Board and the EMO Foundation. The rates used are as follows:

Apartment (High Rise)	5.0 Trips/D.U.
Garden Apartments	6.5 Trips/D.U.
Town Houses	6.5 Trips/D.U.
R-40	12.4 Trips/D.U.
R-20	12.4 Trips/D.U.
R-6	10.5 Trips/D.U.
R-4	6.5 Trips/D.U.
R-10	9.2 Trips/D.U.

Development types and Zoning Classifications stated above are as presented in the Maryland State Highway Administration "Trip Generation Study". For the purpose of this study they should be considered interchangeable with the classifications recently adopted by Baltimore County.

Village Center	
Retail Space	40 Trips/1,000 Sq. Ft.
Office Space	12 Trips/1,000 Sq. Ft.
Car Care Center	22 Trips/hour

TOTAL DAILY TRIPS

The total daily trips which would be generated by each of the three land use proposals outlined above are as follows:

LAND USE PROPOSAL	TRIPS		
	Residential	Commercial	Total
Existing Conditions	4,340	-----	4,340
Baltimore County - Original Proposed Zoning	11,540	13,200	24,740
House Company - Original Proposal	10,200	7,604	17,804
House-Water - Revised Proposal	6,424	2,360	8,784

It is interesting to note that the currently proposed plan by House-Water for this property will produce 65% less traffic than the plan originally proposed by Baltimore County and 51% less traffic than the earlier House Company proposal.

TRIP DISTRIBUTION

The above traffic was assigned to the road system in this vicinity according to BMTAS (Baltimore Metropolitan Area Transportation Study) with the following alternatives being considered:

- Construction of new Old Court Road to Old Plimlico Road, Improvement of Old Plimlico Road with an extension westward to Greenspring Avenue and no interchange at the Jones Falls Expressway and Old Plimlico Road.
- Construction of new Old Court Road to Old Plimlico Road, Improvement of Old Plimlico Road with an extension westward to Greenspring Avenue and an interchange at the Jones Falls Expressway and Old Plimlico Road.
- No major improvements or additions to the off-site road system.

The various alternatives are indicated on Figure 2.

PROJECTED TRAFFIC VOLUMES

The ADT (Average Daily Traffic) and DHV (Design Hour Volume) for the road system in the vicinity of the Johnson property were developed using traffic data from Maryland State Highway Administration (MSHA) for the year 1990, factored for design year 1980. This traffic was combined with the traffic volumes generated by the Johnson Property development as proposed by House-Water. In combining with the Maryland State Highway traffic volumes, the trips for the Johnson property assumed in State's study were replaced with trips generated for the proposed development (8,784 vehicle trips per day).

It is assumed, based on other studies in similar urban developments, that 15% of the trips originating in the Johnson property development will remain in the development area because of shopping, employment and gasoline service facilities within the development.

The traffic volumes for the three alternative road systems are shown on Figures 3, 4 and 5.

TRAFFIC IMPACT ANALYSIS

The impact of the development of the Johnson property upon the road system was evaluated using the 1980 projected traffic volumes and the alternative road systems stated above.

The developers plan to improve Falls Road and Old Court Road and construct a portion of New Old Court Road within the limits of their property. Old Court Road is planned to be relocated southwest in the vicinity of Falls Road so that a high standard channelized intersection can be developed without

encroaching upon historic buildings along Falls Road. Recommendations regarding improvements to on-site roads if followed will provide a high level of service for traffic moving both within and through the site.

The Existing Road System - (Assuming no major improvements to off-site roads.)

The assignment of the 1980 traffic to this alternative is shown on Figure 3. The projected traffic for each road which serves as access to the Johnson property is shown. As indicated by the Legend in that figure, the traffic numbers show (1) The current Average Daily Traffic for each road and (2) the 1980 projected traffic for each road assuming the Johnson estate would be developed as presently zoned (D.R.-1) and (3) the additional traffic which would be contributed by the development of the Johnson estate as herein proposed and (4) the Total Projected Traffic. The impact of the Johnson property development in terms of the Average Daily Traffic can be noted on each road in the area.

The Jones Falls Expressway through its interchange at Ruxton Road serves as the major access route to this property, approximately 50% of the trips generated by the Johnson property will use this interchange. 1980 traffic on the two ramps will be approximately ~~4,000~~ 3,500 vehicles per day.

The intersections of the interchange ramps at Ruxton Road are the critical areas. Left turning vehicles entering the southbound ramp from Ruxton Road during the A.M. peak hour and entering Ruxton Road from the northbound ramp during the P.M. peak hour constitutes the greatest demands upon capacity. During the A.M. peak hour, for example, the 1980 projections indicate that 727 vehicles per hour will come from the east on Ruxton Road to turn south on the Jones Falls Expressway.

This traffic originates in the Ruxton-Ridewood areas and other areas further east and constitutes the greatest demand upon the interchange during the morning peak. During the same A.M. peak hour, traffic coming from the west to go south on the Jones Falls Expressway, including traffic originating on the Johnson site will be approximately 462 vehicles per hour.

During the P.M. peak hour the returning work trips use the northbound ramp from the Jones Falls Expressway to Ruxton Road. During this time the greatest volume of traffic will be moving in an easterly direction and will therefore be going through the ramp intersection to Old Court Road or right turning onto Ruxton Road. The smaller volume (approximately 362 v.p.h.) will be turning left onto Old Court Road toward the Johnson site.

Assuming both ramp intersections on Ruxton Road will be signalized we estimate that sufficient capacity is available to accommodate the projected volumes.

Old Court Road and Ruxton Road - East of the Development: The section of Old Court Road from the Jones Falls Expressway to Joppa Road is a 24 foot wide road with 10 foot wide shoulders. It was constructed by the Maryland State Highway Administration as part of the Jones Falls Expressway project and has a good alignment and grade. This section of the road can readily accommodate traffic in excess of 10,000 vehicles per day.

Joppa Road from east of its intersection with Old Court Road to Thornton Road has recently been widened to approximately 40 feet. From Thornton Road east to Bellona Avenue it is predominately a 20 foot wide pavement with no shoulders. Roadside obstructions are within two feet from the edge of the pavement and sight distance is restricted along this length. The recent widening of Joppa Road did

not affect its intersection at Old Court Road.

The intersection of Old Court Road with Joppa Road appears to be the most restrictive feature of this route. The number of vehicles that can pass through this intersection can readily be accommodated on any other section of Old Court Road. The capacity of the Old Court Road approach to this intersection is estimated at 575 vehicles per hour or in terms of two way daily traffic; 9,600 vehicles per day. This intersection is operating at approximately 87% of its possible capacity.

Ruxton Road from the Jones Falls Expressway to Bellona Avenue is similar in character to Joppa Road east of Thornton Road, 20 foot wide pavement, no shoulders, roadside obstructions located within two feet of the edge of the road and restrictive sight distance in many areas. This road is presently carrying approximately 3,600 vehicles per day or about 42% of its possible capacity.

Current traffic on the two routes is not in excess of their capacities.

Only a small percentage of the traffic generated by the Johnson property development is oriented to the Ruxton-Ridewood Area and in no case do they constitute an overload to the existing facilities.

To permit a better understanding of the effect of the Johnson property development upon traffic flow on roads east of the Jones Falls Expressway outside the development, we have evaluated the traffic conditions during the A.M. and P.M. peak hours. At these times "Home to Work" and "Work to Home" trips constitute the major portion of all traffic.

During the A.M. peak hour the greatest number of vehicles traveling on both Old Court Road and Ruxton Road east of the Jones Falls Expressway are westbound, primarily work trips headed for the Jones Falls Expressway. Of the relatively few employment opportunities that will exist on the Johnson property,

it is estimated that 85% will be satisfied by people living east of the development who will be using Old Court Road and Ruxton Road. The remaining trips for the employment will be travelling on Falls Road, Old Plimlico Road, Extension of Old Court Road, and the Jones Falls Expressway. Therefore, the development of the Johnson property will contribute approximately 7 and 5 vehicles on Old Court Road and Ruxton Road respectively during the peak hours. These are very small volumes compared to total traffic on the road and will have no significant effect on the traffic operation.

The greatest contribution by the development of the Johnson property to both Ruxton Road and Old Court Road east of the Jones Falls Expressway will be non-work trips, shopping, social and recreational trips for example. These take place during off peak hours when travel demand is relatively light and will have no adverse effect upon traffic operations.

Old Court Road - West of the Development: The present road is similar in character to Old Court Road east of the Jones Falls Expressway. Except for the extreme curve and grade near the western limits of the Johnson property, the road has a better alignment and grade than the section of Old Court Road east of the Jones Falls Expressway.

The road presently carries approximately 3,802 vehicles per day. The 1980 projected daily traffic including the traffic generated by the development of the Johnson site is 5,284.

The most restrictive section of Old Court Road appears to be that section near the western limits of the Johnson property mentioned above where the road has a 21° horizontal curve and a 9% grade. Our analysis of this section indicates

that the capacity here approximately 528 in one direction during peak hour traffic conditions. The projected peak hour volume will be 320 vehicles.

Other sections of Old Court Road appear to have adequate capacity. However, during the peak hours some delays could occur because of turning vehicles operating on Old Court Road without the benefit of left turn lanes. During all other times there will be sufficient gaps in the traffic flow to permit turns to and from Old Court Road without affecting traffic operations.

Falls Road - North of the Development: The traffic generated by the Johnson property will use Falls Road to the north primarily as a route to the Baltimore Beltway. The projected 1980 traffic volume on Falls Road to the north of the Johnson property is 10703 vehicles per day. Presently the road carries 6,186 vehicles per day.

In terms of daily capacity we estimate that the projected volume will be approaching capacity of the existing road.

Falls Road - South of the Development: This road like others in the area is a very old road. Its pavement width and roadside conditions vary along its length. One of the most restrictive sections is in the vicinity of the Rockland Bleach and Dye Company. Here the alignment is poor and roadside obstructions and parked vehicles are very close to the pavement.

The road presently carries 9,455 vehicles per day. The projected 1980 traffic volume is 12,140 vehicles per day. This volume will exceed the capacity of the road in its present condition. The Maryland State Highway Administration includes the improvement of Falls Road in its 20 year needs program. The improvement, however, is not in a current construction program and the State Highway

Administration indicates that programming of the improvement will depend upon the further development of traffic generators that affect the route.

Improved Alternative Road Systems - Assuming the road system is improved as described in (b) above, the greatest impact upon traffic will be reduction in volumes on existing Old Court Road and on the interchange at Ruxton Road. Although 1980 traffic volumes were within capacity of these facilities, such improvements would create a higher level of service throughout the system. The traffic projections based on this road system is shown on Figure No. 4.

Assuming the road system is improved as described in (a) above, the greatest impact will be reduced volumes on Old Court Road. The interchange at Ruxton Road will continue to carry approximately 50% of traffic generated by the Johnson property. As stated above, we estimate that the interchange, with signalization, can handle the projected volumes. The traffic projections based on this road system is shown on Figure 3.

The construction of a Relocated Old Court Road from the existing road south to Old Pimlico Road, as shown on Figure 3, is most probable. The developer plans to construct the major portion as part of this system and another portion of roadway that could serve this purpose presently exists through the Timber Ridge development. The construction of this road would make a significant reduction to traffic volumes on Old Court Road.

CONCLUSIONS AND RECOMMENDATIONS

A summary of the conclusions reached in this study are as follows:

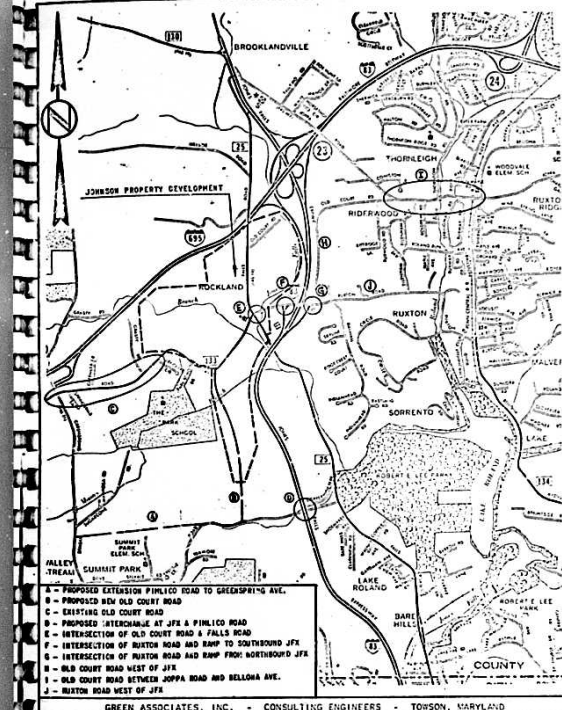
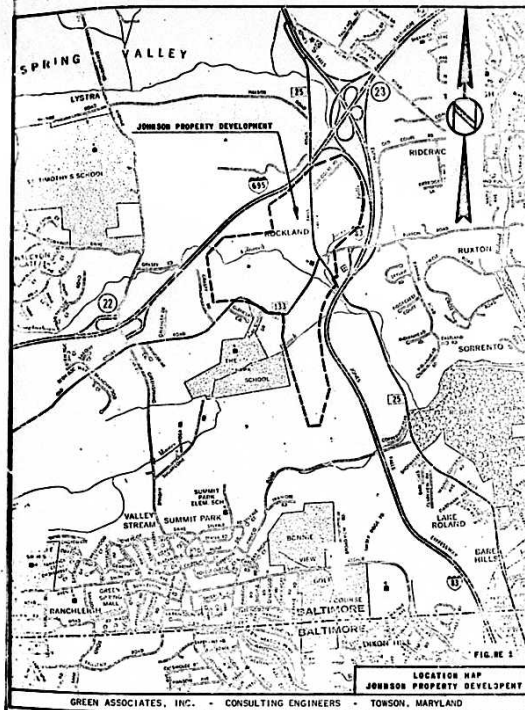
- Development of the Johnson property will increase traffic on all roads in the area; however, the increase is not

significant and will probably be exceeded by the normal growth of traffic in the area.

- The greatest impact will occur at the interchange at the Jones Falls Expressway and Ruxton Road. It is concluded that the present interchange improved with signalization will have adequate capacity to accommodate the projected volumes. The ability of the Ruxton Road interchange to accommodate increased traffic depends to a great extent upon the ability of the Jones Falls Expressway to accommodate increased traffic. It is assumed that sufficient capacity will remain on the Expressway to allow movements to and from the Ruxton Road interchange ramps.
- The impact of increased traffic volumes on Old Court Road, Ruxton Road and Falls Road will not adversely effect traffic operations and will not result in volumes in excess of the capacity of these routes.

Recommendations - Based upon our findings, we recommend the improvement of Falls Road and Old Court Road to two lanes in each direction without a median on an 80 foot right-of-way within the Johnson property development. The intersection of Falls Road and Old Court Road should be two full lanes in each direction with separate turning lanes.

The needs study by the Maryland State Highway Administration (MSHA) recommends the improvement of Falls Road to two lanes in each direction. This recommendation is based on MSHA traffic projections, which includes the traffic growth of this area as well as in the region.



-11-

-12-

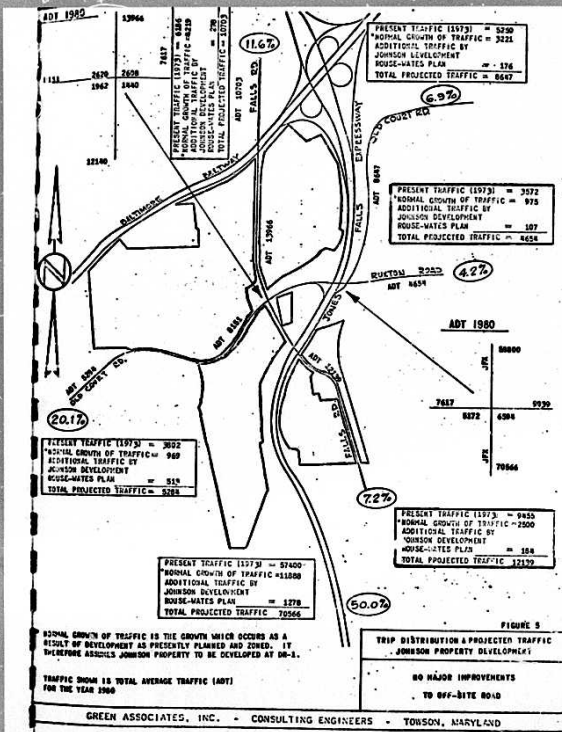
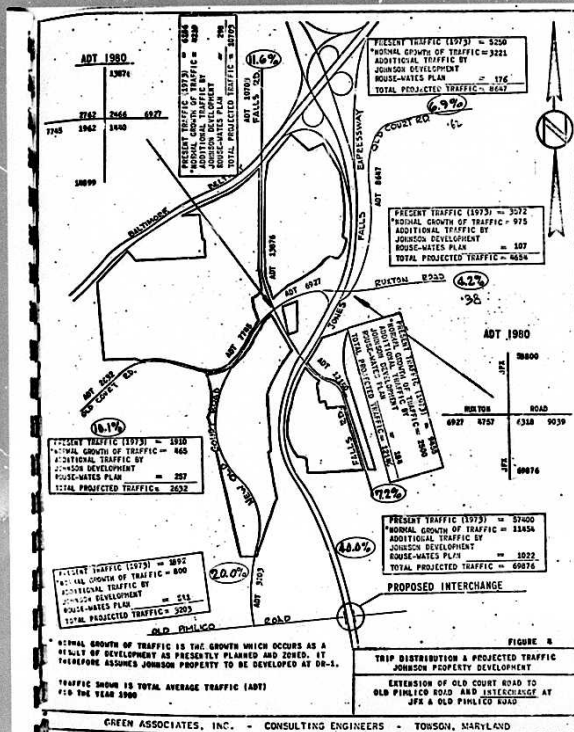
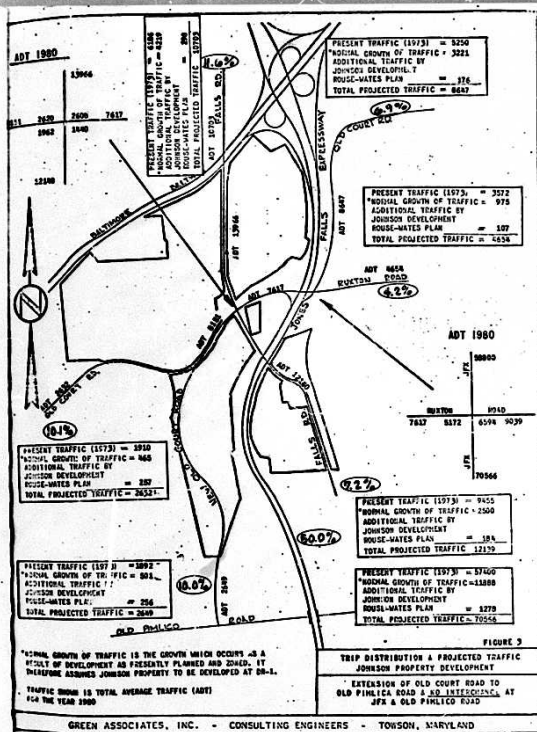


TABLE 1
JULY 1973 - 24 HOUR TRAFFIC VOLUME

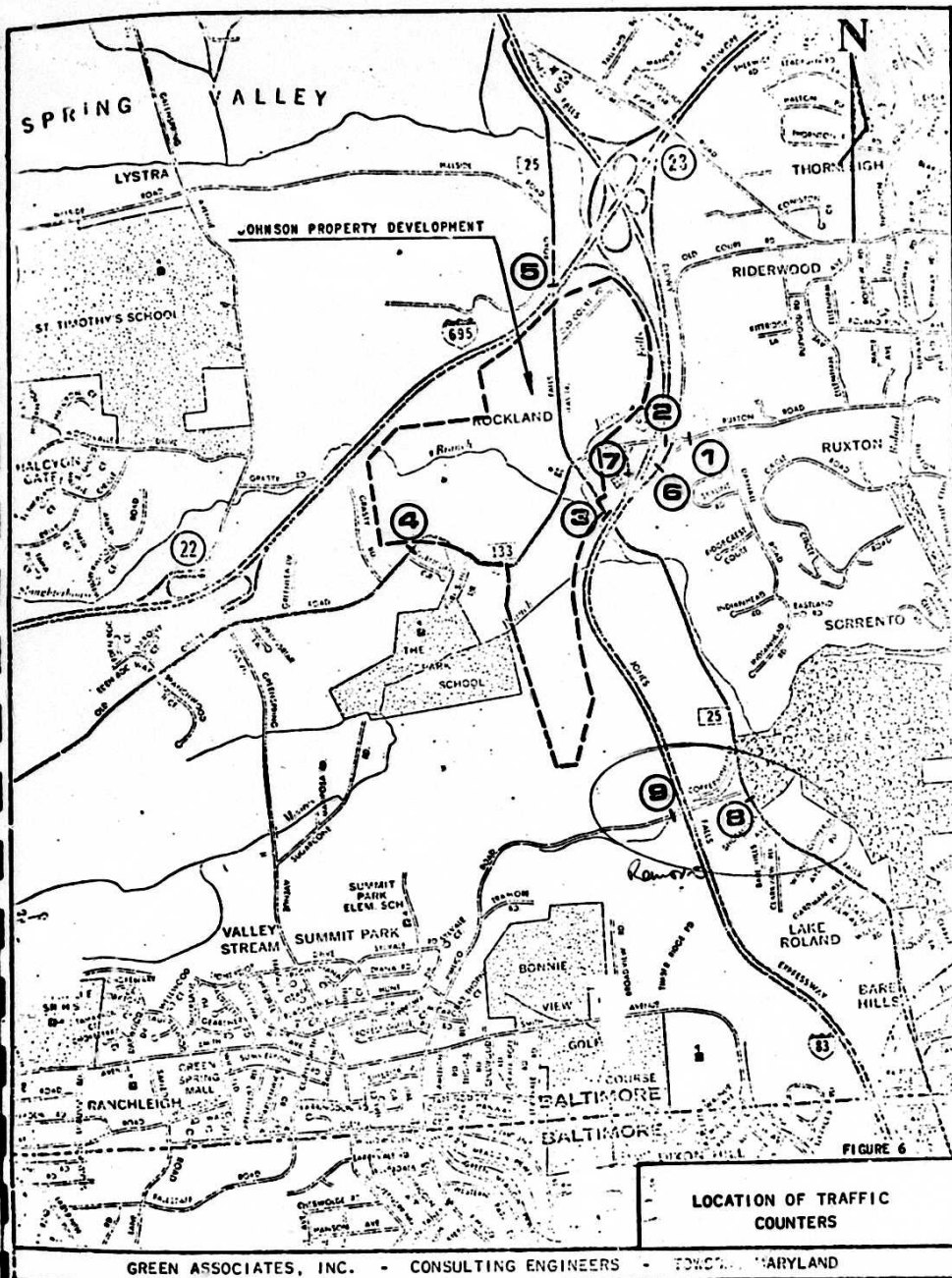
LOCATION*	24 HOUR TRAFFIC VOLUME
1	3572
2	5635
3	9455
4	3802
5	6186
6	2404
7	1803
8	7488
9	1491

*LOCATIONS

1. RUXTON ROAD EAST OF JONES FALLS EXPRESSWAY.
2. OLD COURT ROAD EAST OF JONES FALLS EXPRESSWAY.
3. FALLS ROAD SOUTH OF THE PROPERTY LINE.
4. OLD COURT ROAD WEST OF THE PROPERTY LINE.
5. FALLS ROAD NORTH OF THE PROPERTY LINE.
6. NORTHBOUND RAMP FROM JONES FALLS EXPRESSWAY.
7. SOUTHBOUND RAMP TO JONES FALLS EXPRESSWAY.
8. FALLS ROAD SOUTH OF OLD PIMLICO ROAD.
9. OLD PIMLICO ROAD WEST OF FALLS ROAD.

TABLE 1

GREEN ASSOCIATES, INC. - CONSULTING ENGINEERS - TOWSON, MARYLAND



ZONING PLAT
PLAT OF PROPERTY
OF
ROCKLAND HOLDING CORPORATION
LOCATED IN
3RD - 9TH DISTRICTS - BALTIMORE COUNTY, MD.

1 AREA IDENTIFICATION No.	②-B.L.	②-B.L.
2 AREA USE	100,000 SQ. FT. OFFICE SPACE ① 25,000 SQ. FT. ON GROUND FLOOR ② 75,000 SQ. FT. ON UPPER FLOORS 100,000 SQ. FT. TOTAL	1 RETAIL COMMERCIAL, GROUND FLOOR; 60,000 SQ. FT. OFFICE SPACE; SECOND FLOOR; 40,000 SQ. FT. 2 AUTOMOTIVE SERVICE STATION
3 EXISTING ZONING	D.R. 1	D.R. 1
4 PROPOSED ZONING	BL.	BL.
5 GROSS RESIDENTIAL AREA		
6 AREA	9.90 ACRES	9.40 ACRES
7 DESIGNED F.A.R.	0.23	0.24
8 PERMITTED F.A.R.	3.0	3.0
9 PARKING SPACES REQUIRED	OFFICE SPACE 1 SPACE PER 300 SQ. FT. GROUND FLOOR 1.97 SPACES 1 SPACE PER 300 SQ. FT. UPPER FLOOR 1.32 SPACES 230 SPACES	1 RETAIL COMMERCIAL 60,000 SQ. FT. ① 1 SPACE PER 200 SQ. FT. = 300 SPACES 2 OFFICE SPACE (2ND FLOOR) 40,000 SQ. FT. ① 1 SPACE PER 500 SQ. FT. = 80 SPACES 380 SPACES
10 PARKING SPACES PROVIDED	400 SPACES	446 SPACES

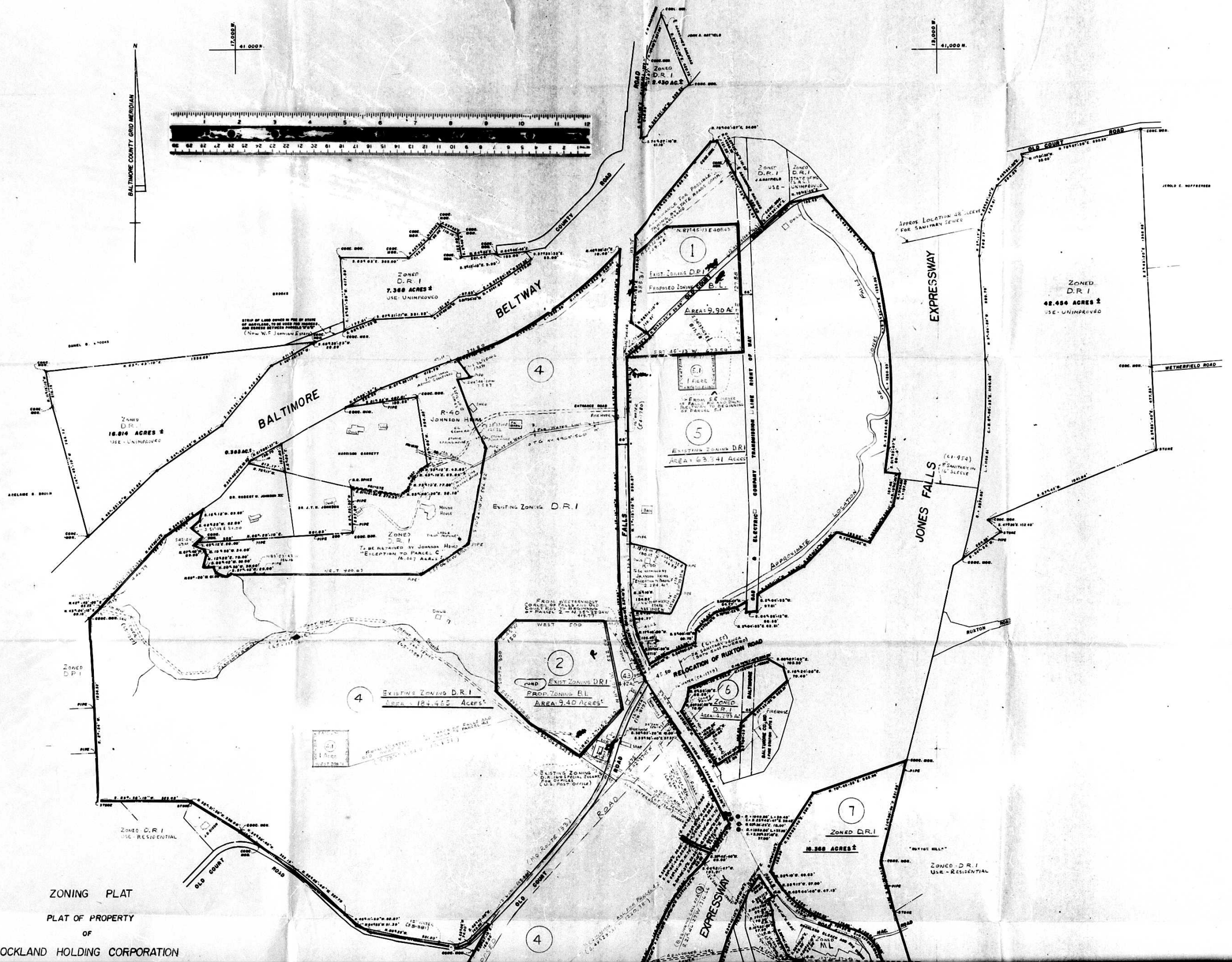
- 11 HEIGHT TENTS SHALL BE IN CONFORMANCE WITH THE BALTIMORE COUNTY ZONING REGULATIONS
- 12 BUILDING SET-BACK SHALL BE IN CONFORMANCE WITH BALTIMORE COUNTY ZONING REGULATIONS
- 13 PAVING (WIDTH AND TYPE) SHALL BE IN CONFORMANCE WITH BALTIMORE COUNTY ZONING REGULATIONS
- 14 EXITS - IT IS ANTICIPATED THAT APPROX. 2 ENTRANCES FROM OLD COURT RD.; APPROX. 2 ENTRANCES FROM PROPOSED ROAD AND 4 ENTRANCES FROM FALLS ROAD WILL BE REQUIRED AND PROVIDED TO SERVE THIS SITE.

1 AREA IDENT No.	③ D.R. 10.5	④ (5) (6) (7) (8) D.R. 1	⑨ SE	⑩ SE	⑪ SE	⑫ SE	⑬ SE
2 AREA USE	TOWNHOUSES	TOWNHOUSES AND APARTMENTS	COMMUNITY RECREATION AREA (POOL, TENNIS CT)	COMMUNITY RECREATION AREA (POOL, TENNIS CT)	COMMUNITY RECREATION AREA (POOL, TENNIS CT)	COMMUNITY RECREATION AREA (POOL, TENNIS CT)	COMMUNITY RECREATION AREA (POOL, TENNIS CT)
3 EXISTING ZONING	D.R. 1	D.R. 1 D.R. 10.5 (PART CHANGED)	D.R. 1	D.R. 1	D.R. 1	D.R. 1	D.R. 1
4 PROPOSED ZONING	D.R. 10.5	NO CHANGE	D.R. 10.5 (PART CHANGED)	D.R. 10.5 (PART CHANGED)	D.R. 10.5 (PART CHANGED)	D.R. 10.5 (PART CHANGED)	D.R. 10.5 (PART CHANGED)
5 GROSS RESIDENTIAL AREA	46.0 AC	305.21 ACRES	1 ACRES	1 ACRES	1 ACRES	1 ACRES	4.42 ACRES
6 NET AREA							
7 DESIGNED DENSITY GROSS NET TOTAL UNITS							
8 PERMITTED DENSITY GROSS NET TOTAL UNITS	10,500 U/AC 483 DU	1 DU PER ACRES 205 DU					
9 PARK SPACES REQUIRED	175 SPACES DU 1540 SPACES	2 SPACES PER DU 610 SPACES					
10 PARK SPACES PROVIDED	645 SPACES	610 SPACES	PARKING PROVIDED	PARKING PROVIDED	PARKING PROVIDED	PARKING PROVIDED	PARKING PROVIDED



SCALE: 1" = 200' SEPTEMBER 27, 1972
DOLLENBERG BROTHERS
SURVEYORS & CIVIL ENGINEERS
709 WASHINGTON AVENUE
TOWSON MARYLAND

N
BALTIMORE COUNTY GRID MERIDIAN



ZONING PLAT

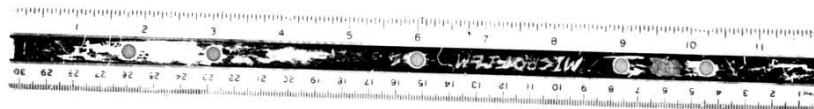
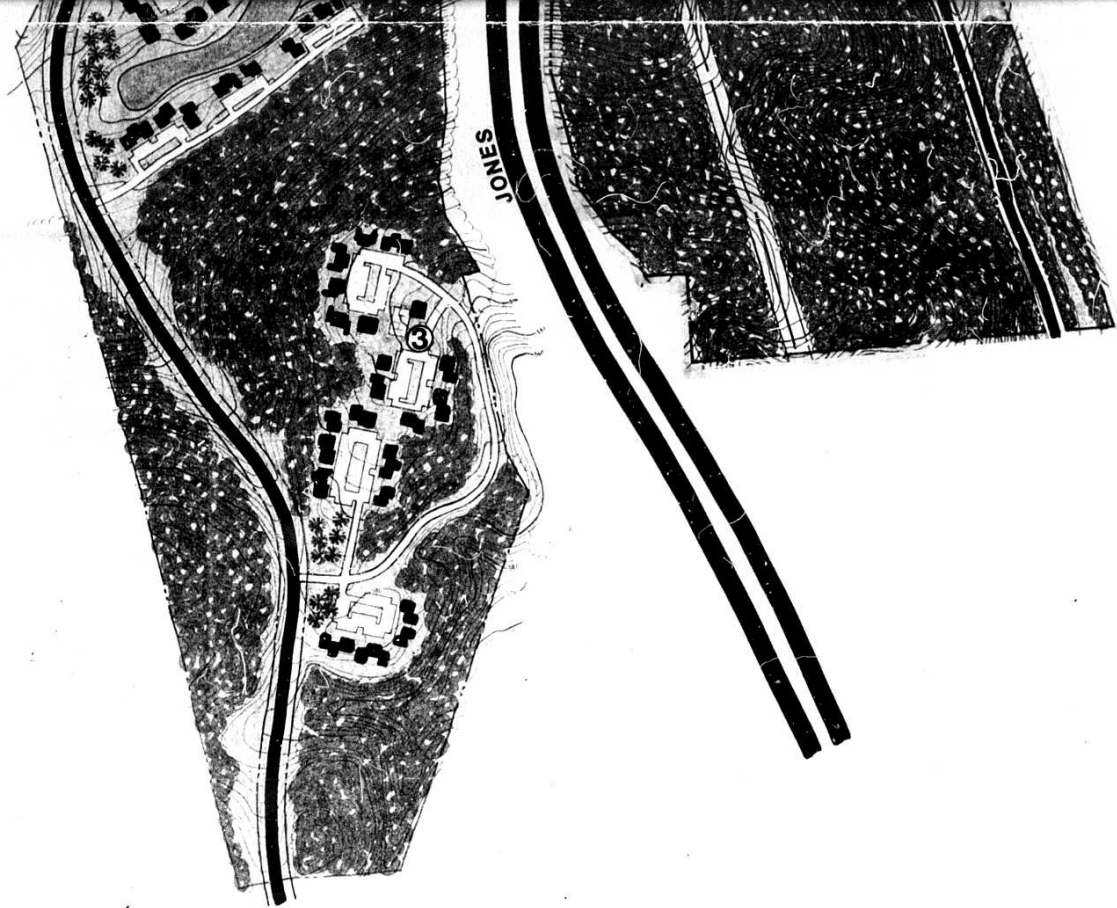
PLAT OF PROPERTY

OF

ROCKLAND HOLDING CORPORATION

LEGEND

- 1 - HISTORIC VILLAGE
- 2 - COMMUNITY FACILITY
- 3 - RECREATIONAL FACILITIES
- 4 - VILLAGE CENTER
- 5 - CAR CARE
- 6 - OFFICE PARK
- 7 - ELEMENTARY SCHOOL

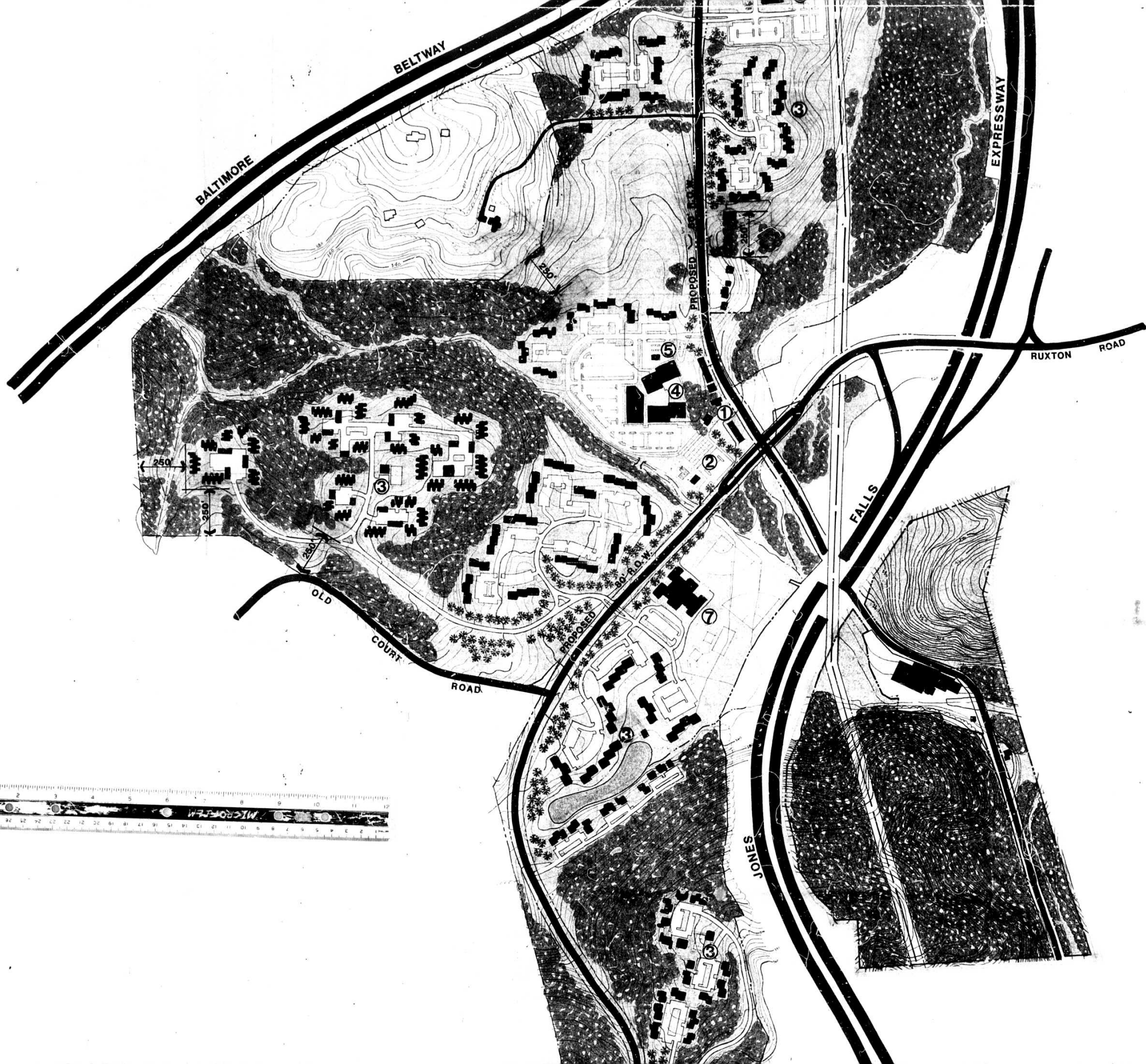
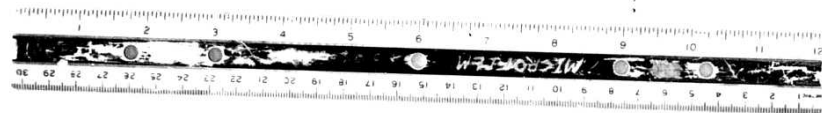


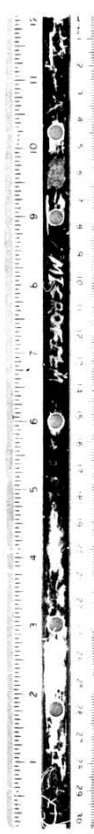
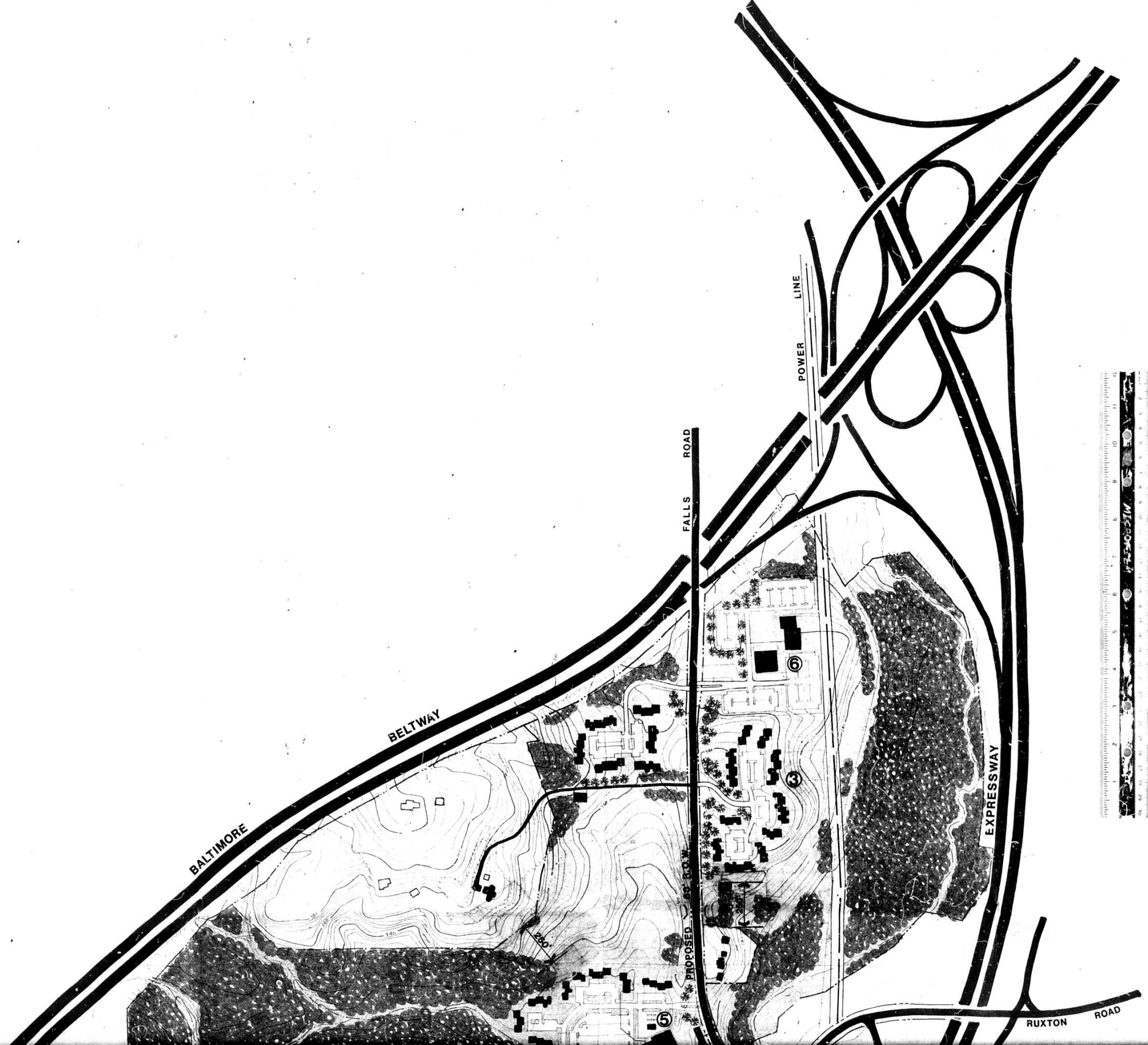
JOHNSON PROPERTY

SCALE



General Site Plan





RE: PETITION FOR RECLASSIFICATION :
from D.R. 1 to D.R. 10.5 and B.L. zones :
SPECIAL EXCEPTIONS for Community :
Recreation Areas and Community Facility :
E/S and W/S of Falls Road between :
Baltimore County :
E/S and W/S of Falls Road between :
Baltimore County :
Jones Falls Expressway :
3rd and 9th Districts :
Rockland Holding Corporation :
Petitioner :
BEFORE :
COUNTY BOARD OF APPEALS :
OF :
BALTIMORE COUNTY :
No. 73-231-RX :
and :
No. 74-57-R

OPINION

This petition involves the properties of the Rockland Holding Corporation. The same are located in the southwestern quadrant of the Beltway and the Jones Falls Expressway. The Falls Road runs between and through these properties. Some are situated in portions of the 3rd and 9th Election Districts of Baltimore County.

This case represents a consolidated hearing upon two petitions filed by the Rockland Holding Corporation. These petitions may be identified as Case No. 73-231-RX and Case No. 74-57-R. An outline of the subject property may be examined as set out on Petitioner's Exhibit No. 8.

The first witness for the Petitioner, Dr. J. T. H. Johnson, told the Board of the ownership of this tract. It seems that the Rockland Holding Corporation is a family entity which represents the nine owners of this property. The subject property has been in the Johnson family since 1690. The Rockland Holding Corporation, as the owner of this property, has entered into a contingent contract of sale with the Rouse-Wates, Inc., it being the desire of the Rouse-Wates Corporation to develop the subject property as proposed in these petitions. The contract of sale is contingent upon the requested zoning reclassifications and special exceptions that are at issue in the subject case. This consolidated petition seeks the reclassification of 9.4 acres to B.L. and approximately 66.25 acres to D.R. 10.5. Each of these tracts is now zoned D.R. 1. The areas proposed in the petition for reclassification are outlined on Petitioner's Exhibit No. 8. Petitioner's Exhibit No. 19 sets out clearly the existing conditions on the Johnson tract. If this Petition be granted, the Rouse-Wates Corporation proposes to develop the Johnson tract as set out on Petitioner's

Rockland Holding Corporation - No. 73-231-RX & No. 74-57-R

sion. Suffice it to say that some was detailed and evidenced a good attention to the problems that exist in this case by the witness, Mr. Relyea. Two questions unanswered by Mr. Relyea concern the Board: one, being the fact that no apparent consideration was given to the overall sewer demands that might be anticipated within Baltimore City itself, and secondly and more specifically concerning immediate future City problems as they relate to the Jones Falls Interceptor. What, if any, impact will the now progressing plan of the Village of Cold Spring have upon the capacity of the City side of the Jones Falls Interceptor? It would seem that these factors would be very important in the decision making process of the County, i.e. both the County Council and subsequent zoning authorities considering this problem.

Concerning the sanitary sewer situation, both sides readily acknowledge the fact that the entire Jones Falls Interceptor is now under a complete building moratorium, as some is not capable of handling any more additional waste water flow at all. Both sides also readily acknowledge that the County is now putting into the Jones Falls Interceptor at the City line approximately four and one-half million gallons per day in excess of the amount which the County had contractually agreed to enter into the system at the City line. Again, both sides agreed that without correction of this problem the development of the Rockland tract in March 24th, 1971 or now would be a practical impossibility. The center of the controversy concerning the sanitary sewer revolves around the completion of a diversionary system which would relieve the Jones Falls Interceptor and "enable" same to handle some additional sewage outflow. At the time of the map adoption, the various component parts or this diversionary system were in the discussion stage. Since that time contracts have been let for a portion of same and the completion of the system is now being discussed. The controversy involves perhaps the timing of the completion of this diversionary system. Both sides agree that when the diversionary system is completed there will be, from a practical standpoint, room in the Jones Falls Interceptor for some additional sewage waste water outfall. At this point in time the County has executed contracts, and construction is under way for the Long Quarter pumping station and the Long Quarter forced main. The proposed Green Ridge Interceptor has not yet been let

Rockland Holding Corporation - No. 73-231-RX & No. 74-57-R

Exhibit No. 21, which is labeled "Land Use Plan - Johnson Property". Examining this petition, one can see that if these reclassifications are granted, it is proposed that the Johnson tract contain approximately 925 apartment and townhouse units. The Petitioner has indicated that approximately half of these would be sold, while the other half would be retained as rental units. In addition, the 9.4 acres of B.L. zoning would be developed as a village center, with approximately 50,000 square feet of retail space and 30,000 square feet of office space, and encompassed within this 9.4 acres would be a parcel with the anticipated use of a car care center. Utilizing the advantages of Bill No. 100, the Petitioner would develop the apartments and townhouses as proposed on Petitioner's Exhibit No. 21. The location of the apartments and townhouses throughout the Johnson tract may be noted on said Petitioner's Exhibit No. 21.

In addition to the reclassification, the Petitioner seeks five (5) special exceptions of varying sizes. Each would be used for community recreation type facilities. Petitioner's Exhibit No. 24 labeled a "Concept Plan", and Petitioner's Exhibit No. 25 labeled "Illustrative Plan", further detail the proposal. Same note the plan to preserve and restore the historic village, the location of a community facility and the other recreation facilities, the village center, the car care center, and a potential county elementary school site. In addition, these Petitioner's Exhibits Nos. 24 and 25 indicate the location of the various residential units throughout the Johnson property.

The presentation of this case before the Board consumed seven full days of hearings. In addition, each side presented complete detailed memoranda of law and fact. This Opinion will not attempt to detail the entire testimony heard by this Board during the seven days; however, the Board will comment upon some of this testimony in order to offer its reasoning for the conclusion and Order which follows. The memoranda previously mentioned do fairly summarize much of the facts presented to the Board in this case. The Board would wish to add that the presentation of this case by both the Petitioner and the Protestants was equal in quality to any such presentation received within the recent memory of the existing Board. The quality of the expert witnesses heard by the Board in this case was outstanding. Their careful attention to detail and candor was particularly impressive.

Rockland Holding Corporation - No. 73-231-RX & No. 74-57-R

for bids and hence it would be difficult to accurately forecast the completion date for this part of the diversionary system. All four of the component parts of the diversionary system, including a Texas force main which has also not been let for construction bids, will be necessary before the diversion system would function, and as cited above, when this diversionary system is completed, the Jones Falls Interceptor will likely become available again for the reception of additional sewage. The timing for the diversion system is the critical factor; whether same may be characterized as being a reasonable probability fruition in the foreseeable future is a question to be decided by this Board, and of course was a question in the mind of the Council at the time of the adoption of the use map. Again at this point in time, there can be no doubt that the diversionary system construction is under way and will be completed. The only doubt that is difficult to determine at this time is the question of when.

Bernard M. Willemain, a recognized land planner, testified on behalf of the Protestants, and disagreed with some of the timing data presented by the Petitioner's witness, Mr. Relyea. Petitioner's Exhibit No. 33 and Protestants' Exhibit E emphasize to some degree the differing testimony presented by the witnesses for each side concerning sanitary sewer problems. Petitioner's Exhibits No. 35 and No. 36 are also pertinent to this sanitary sewer situation.

The ninth witness for the Petitioner was Herbert R. Plitt, a civil engineer employed by Green Associates, Inc. He presented testimony on behalf of the Petitioner concerning the traffic situations at the subject property, as might be created if the subject petition were granted. Petitioner's Exhibits No. 38 through No. 44 deal with the traffic study.

The fifth day brought to the stand, on behalf of the Petitioner, one David A. Wallace, an architect, urban designer and planner from Philadelphia. Mr. Wallace testified at length for the best part of two days and generally summarized the basic reasoning for the petition. He was the concluding witness for the Petitioner.

Concerning the Protestants' presentation, as previously mentioned, Bernard M. Willemain testified as an expert witness on behalf of the Protestants. In addition,

Rockland Holding Corporation - No. 73-231-RX & No. 74-57-R

The Board would be hard pressed to cite a tract of land that has received the development study that has been made at the subject property.

Without further comment upon the presentation of this case, the Board would like to cite its charge in the subject instance, same being simply and solely to decide whether or not the County Council erred on March 24, 1971 when they zoned the subject property D.R. 1 in its entirety, and/or whether or not there has been a substantial change in the character of the neighborhood since March 24th of 1971 to warrant the requested reclassifications. As agreed by both sides, the granting of the special exceptions requires the fulfillment of the provisions of Section 502.1 of the Zoning Regulations, and in addition some are directly incident to the granting of the reclassifications. These five special exceptions will be discussed later in this Opinion.

The first principal expert witness for the Petitioner was William Winstead, a representative of the Rouse-Wates Corporation. Mr. Winstead told the Board of the contingent contract relationship between Rouse-Wates and the Rockland Holding Corporation, and furthermore, he described to the Board that if this petition were successful, the Rouse-Wates Corporation would develop the subject property in line with six major goals that related to the good land development of this entity.

Following Mr. Winstead to the stand on behalf of the Petitioner was a Jervis H. Darton, who was employed by the Rouse Company as a land planner and architect. He further discussed the proposed development.

On the third day of hearings the Petitioner ventured into the proof of error and/or change portion of his case, presenting Norman E. Gerber, Chief of the Community Planning Division of the Department of Planning of Baltimore County. Mr. Gerber cited the various aspects of the subject proposal which met with the approval of both the Planning Staff and Planning Board at various stages through the history of this petition, up to and including the present. Mr. Gerber was questioned by the Protestants and the Board as to whether or not his feelings were really devoted to the specific plan offered by the Rouse-Wates Corporation, or in fact represented a general development plan for the subject land, whether or not same would be developed by Rouse-Wates, and Mr. Gerber clearly indicated

Rockland Holding Corporation - No. 73-231-RX & No. 74-57-R

Nathan L. Cohen, a member of the Board of Trustees, Treasurer and member of the Executive Committee of the Park School, testified in opposition to the granting of these reclassifications on behalf of the Park School. Mr. Cohen cited the potential increase in traffic and the safety and environmental effects of the subject petition, particularly considering the location of the Park School immediately contiguous with the subject proposal. He also specifically cited the entrance to Park School on Old Court Road and the effect of increased traffic at this entrance. Same was described as an extremely hazardous point of ingress and egress.

Dr. Paul Madison Leard, a resident of Old Court Road, testified in opposition to the granting of this petition. Dr. Leard is also the Vice President of the Old Court-Greenspring Improvement Association. Said organization is in opposition to the granting of this petition.

After carefully reviewing the testimony and evidence in this case, it is the judgment of this Board that the requested reclassifications and special exceptions shall be denied in toto. The reasons for the denying of these reclassifications and special exceptions will be discussed below beginning with the reasoning for the decision concerning the denial of the requested B.L. zoning classification.

It is the judgment of this Board that the reclassification to B.L. as requested by the Petitioner, of 9.4 acres would be tantamount to spot zoning. Despite the best evidence presented by the Petitioner, there is absolutely no need for a commercial neighborhood center at this location, except perhaps considering any possible need that might at some future time be created by some sort of higher density development on the Johnson tract than exists at present, of course, the use at present being predominantly vacant and containing the few isolated homes owned and/or occupied by the Johnson family. There would be no other evidence, in the opinion of this Board, that could possibly warrant the isolated singling out of this pinpointed 9.4 acres of commercial zoning in this particular spot. Same, in the opinion of the Board, would be completely inconsistent with the 1980 Guide Plan, and would not represent good land planning at this time. For these reasons, the Board sees no error on the part of the County Council in

Rockland Holding Corporation - No. 73-231-RX & No. 74-57-R

that he was in favor of a development at the subject property at or near the density proposed by the Rouse-Wates Corporation, whether or not said company was involved in the development of same. His opinion was not especially keyed to this one development proposal that was specifically before the Board at this time. Mr. Gerber stated that he would favor the reclassification of the subject property as proposed in general and not specifically tied to the Rouse-Wates plan. There was expressed a concern to Mr. Gerber in reference to the B.L., as to whether or not it would be spot zoning. The Board can not conditionally zone same for the village center concept as proposed, but the B.L., if granted, would be available to any single site use that might desire B.L. land for any one of many uses. The question was whether or not same would represent good land planning. It was Mr. Gerber's opinion that considering all aspects of this location, this small 9.4 acre parcel would not be tantamount to spot zoning. He felt that the small B.L. zoning here was consistent with the overall policies of the Guide Plan and of the policy of the Planning Staff at this time.

An ecological planner, one M. Richard Nalbandian, of Philadelphia, followed Mr. Gerber to the stand on behalf of the Petitioner. His testimony was primarily oriented to the storm water runoff that would be created when the subject property was developed. The same was thorough and complete, and would seem to satisfy anyone that the proper development of the subject property as proposed would not present a problem in the local or regional streams from a storm water runoff standpoint. Petitioner's Exhibits No. 30 and No. 31 graphically illustrate some of the discussions presented to the Board by this witness.

The fourth day of testimony brought to the stand on behalf of the Petitioner Robert A. Relyea, a civil engineer with Green Associates, Inc., of Towson. Mr. Relyea's testimony dealt with the availability of public water and the availability of public sanitary sewer to the subject site. In the opinion of this Board his testimony was a most critical factor in the determination of the conclusion reached in this case, particularly as his testimony related to the availability of sanitary sewer. It would be unfair to attempt to detail his testimony, considering in the mind of this Board its importance to this decision.

Rockland Holding Corporation - No. 73-231-RX & No. 74-57-R

not granting any commercial zoning at this particular location, nor can the Board find any evidence of significant change in the character of the neighborhood to warrant the granting of the requested B.L. zoning classification. The sole evidence that would indicate that the same would in any way represent good land planning would be that evidence presented by Dr. Wallace and other witnesses for the Petitioner which was oriented almost completely to the needs of the proposed Rouse-Wates development. This Board cannot use these reasons for prematurely granting commercial zoning. Considering the neighborhood as it exists today, with but a small number of single family residences, one can conceive of no possible need for any commercial zoning.

As to the request for the 10.5 reclassification of the 66.25 acres, the Board would cite the following: The Board sees nothing inconsistent with D.R. 1 zoning on the subject property, as same correlates and reflects the thinking of the 1980 Guide Plan and the intent and purpose of the establishment of the urban/rural demarcation line. In fact, the same, carefully read, would seem to indicate the opposite, in that there would be good, logical, sound land planning reasonings for keeping the fringes of this particular sector in a low density classification. Hence if one would, as this Board is forced to do, disregard the specific proposal of the Rouse-Wates Corporation, it is difficult to say that counsel erred in their deliberations and conclusions on March 24, 1971 when they placed the subject property in toto in a D.R. 1 classification.

The Board, of course, as previously mentioned, is particularly impressed with the testimony and evidence concerning the sanitary sewer situation. As mentioned before, the system at this time is closed and a diversionary system is planned which at some future date will reopen the Jones Falls Interceptor to some additional waste water flows. A prime question is when? Reflecting as to whether or not the Council erred in adopting a low density classification for the subject property on March 24, 1971, the Board thinks not. The Board can readily imagine that if the Council, singly and solely settled upon the sanitary sewer situation as it existed before them in March of 1971, this single reason could have been sufficient in the mind of this Board to warrant the Council's keeping this property in a low density. At that time, the diversionary system was not under construction and was

certainly off somewhere into the future. As we face it today, whether or not this developing diversionary system by itself could constitute substantial change in the character of the neighborhood, the Board thinks not. Frankly, almost three years after the adoption of the existing use maps by the Council, the diversionary system is far from complete. Two elements of four have yet to be let for construction bids. The Board agrees that there is no doubt that the diversionary system will at some future time be completed, and when that future time comes about, some additional sewer outflow into the Jones Falls interceptor will be acceptable. The magnitude of this additional outflow is not tremendous, and it is significant to note that little apparent consideration has been given to additional needs in Baltimore City, including, but not limited to, the ongoing plans of Cold Spring. This sanitary sewer situation as it existed in March of 1971 could, in the eyes of this Board, have been the reason for the low density zoning of the subject property, and hence reason to deny the reclassifications as requested then by the Petitioner; and in addition, even considering the progress that has been made in this diversionary system, this Board is not ready to say that the Jones Falls interceptor will on any given fixed date be able to accept the sewerage from the subject property. So as an evidence of substantial change in the character of the neighborhood that is required by law as a premise for the granting of such reclassification, the Board is unimpressed. The Board does not feel that the existing conditions of the completion of the diversionary system is sufficient evidence of substantial change in the character of the neighborhood at this time to warrant the requested reclassifications.

The traffic potentially generated by a development of this magnitude is not to be discounted. While same could likely eventually be assimilated into the community without catastrophic effects, it is not fair to say that same would not significantly change the basically residential single family characteristic of this general neighborhood. Hence, the magnitude of the traffic generation anticipated by the size of the proposal, if this reclassification would be granted, would be one element that would tend to discourage such intensified land use at this site.

In summary, concerning the residential reclassification, the Board does not

feel that the Petitioner has overcome the burden that the maps as adopted in March of 1971 carry a strong presumption of correctness, nor has there been evidence of substantial change in the character of the neighborhood to warrant this reclassification. It is noted that the existing D.R. 1 classification seems to this Board to be consistent with the 1980 Guide Plan, the Northwest Area Sector Plan, and the Regional Planning Staff suggestions as adopted in 1972. In addition, it seems reasonable that one cannot ignore the existing sanitary sewer problems which at the present time have completely shut down the Jones Falls interceptor; nor would it be unreasonable to consider carefully the traffic situations as they exist at the subject property, the existing roads and the potential impact of a new development of this size that would be generated by the reclassification in the subject instance. Any or all of the above points could have been the factors of final determination in the minds of the County Council, when in March of 1971 they zoned the subject property D.R. 1; considering same this Board can find no error on the part of the Council in rendering that judgment as the same affects the subject property. The subject neighborhood itself has certainly changed in no way since March of 1971, and perhaps the only change worthy of any consideration on behalf of the Petitioner is the development to some degree of the diversionary sanitary sewer system. However, in the mind of this Board, this factor does not come close to being a change of sufficient character to warrant the reclassification in the subject instance.

As to the special exceptions, all five of same shall be denied. Each are tied intricately to the reclassification of the subject property. It is the judgment of this Board that the reclassifications are not warranted; hence, the special exceptions shall be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 22nd day of February, 1974, by a majority of the County Board of Appeals ORDERED, that the reclassifications from D.R. 1 to D.R. 10.5 and D.R. 1 to B.L. zones petitioned for, be and the same are hereby DENIED; and it is

FURTHER ORDERED, that the Special Exceptions for Community Recreation Areas and Community Facilities petitioned for, be and the same are hereby DENIED.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John A. Slowik
John A. Slowik, Chairman

Walter A. Reiter, Jr.
Walter A. Reiter, Jr.

DISSENT

The undersigned member of the Board dissents in toto from the decision and Order of the majority of the Board in this case, and will file an opinion stating the reasons for said Dissent as quickly as possible.

W. Giles Parker
W. Giles Parker

Dated February 22, 1974