

ETNA MAP OF METROPOLITAN AREA

REVISIONS
BY DATE
Plumtree
MAY 4 1970

SCALE
1" = 200'

LOCATION
LOCH RAVEN
RESERVOIR
AREA

SHEET
U-SW
R-NW
16-A

R.C. 4

R.C. 4

R.C. 5

R.C. 4

R.C. 4

D.R. 1

D.R. 1

D.R. 3.5

R.C. 5

R.C. 5

R.C. 4

SCALE 1" = 200'

Revised: Oct 28, 1985
Planned Metropolitan Survey
has been completed by the
County Surveyor's Office
on October 28, 1985.
Official Survey of Public Property

DEVELOPMENT DESIGN PROJECT
RIVERVIEW HILLS
1107 KENILWORTH AVE
TOMSON, MARYLAND 21088
(301) 522-0720

1980 TOWN OF JONES
ACT 100
OCT 28, 1985
BLL 10
17780, 1985, 1985, 1985, 1985
CHAIRMAN COUNTY COUNCIL



ENGINEERING MAP OF METROPOLITAN AREA

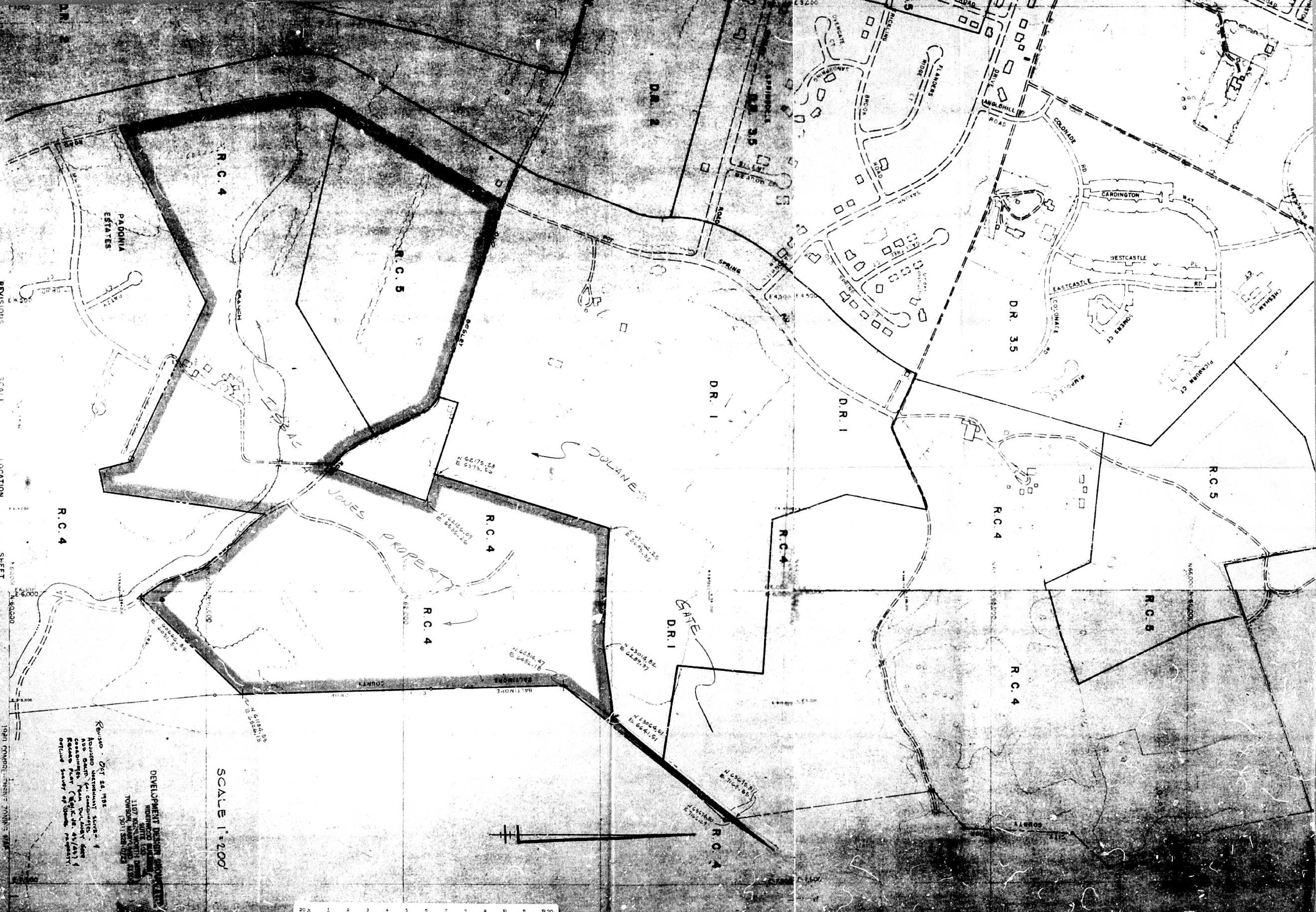
REVISIONS
BY DATE
SCALE
1" = 200'

LOCATION
LOCH RAVEN
RESERVOIR
SHEET
NE
16-A

DEVELOPMENT DESIGN AND CONSTRUCTION
1107 N. BROADWAY
ANN ARBOR, MI 48106
(313) 963-0723

Revised: Oct 24, 1981
Approved: [Signature]
100% COMPLETE, FINISHED, TYPING, ETC.
ALL DATA FOR CONSTRUCTION
AND RECORDS FROM THIS SET
SHALL BE THE PROPERTY OF
THE CLIENT AND NOT TO BE
REPRODUCED OR COPIED
WITHOUT WRITTEN PERMISSION
OF THE ENGINEER.

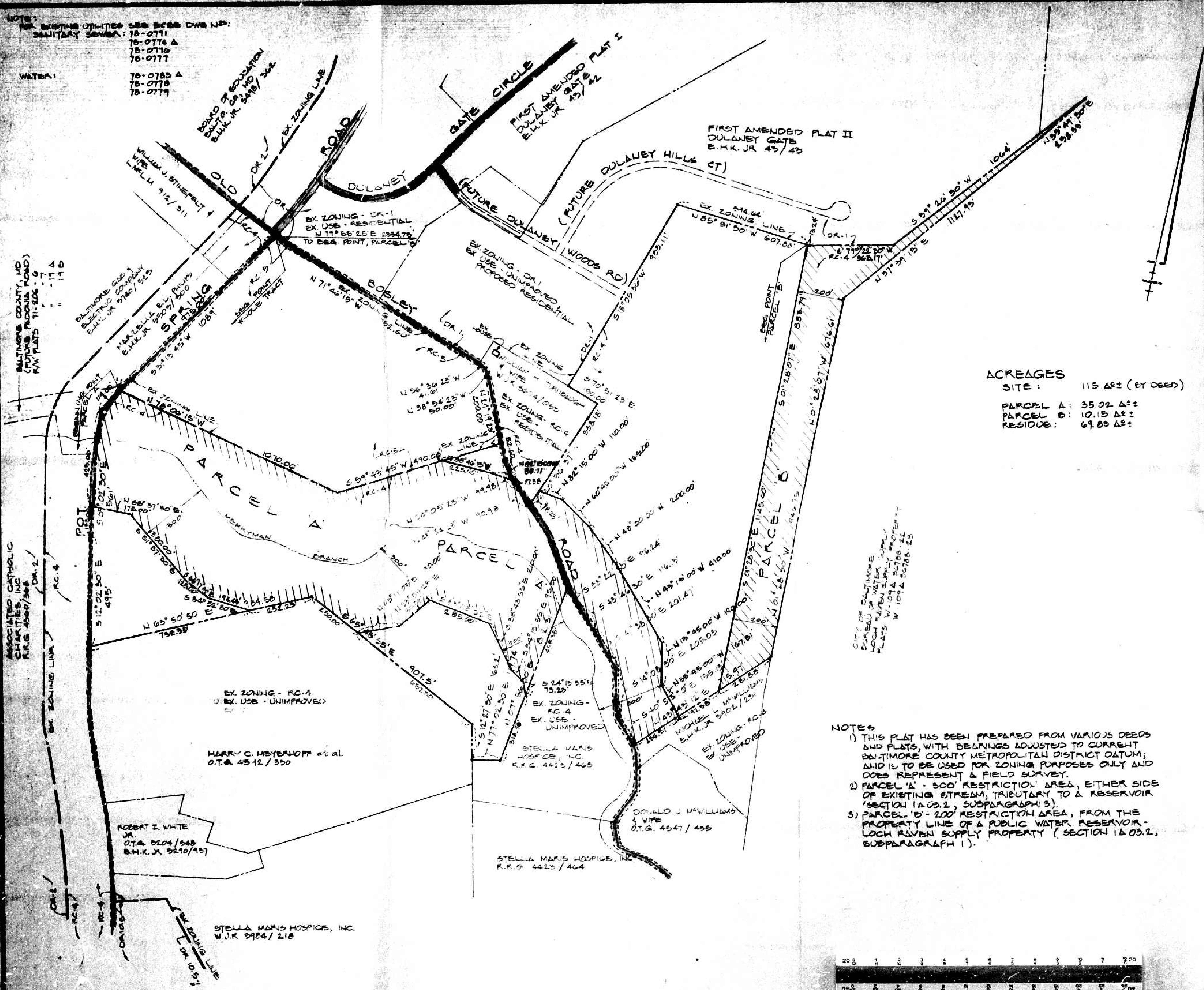
SCALE 1" = 200'



NOTE:
FOR EXISTING UTILITIES SEE DEEDS AND NOS.
SANITARY SEWER: 78-0771
78-0774 A
78-0776
78-0777
WATER: 78-0783 A
78-0778
78-0779

BALTIMORE COUNTY, MD
(FUTURE FLOOD ROAD)
R.M. PLATS 71-206 - 9
71-207 - 17 A
71-208 - 19 B

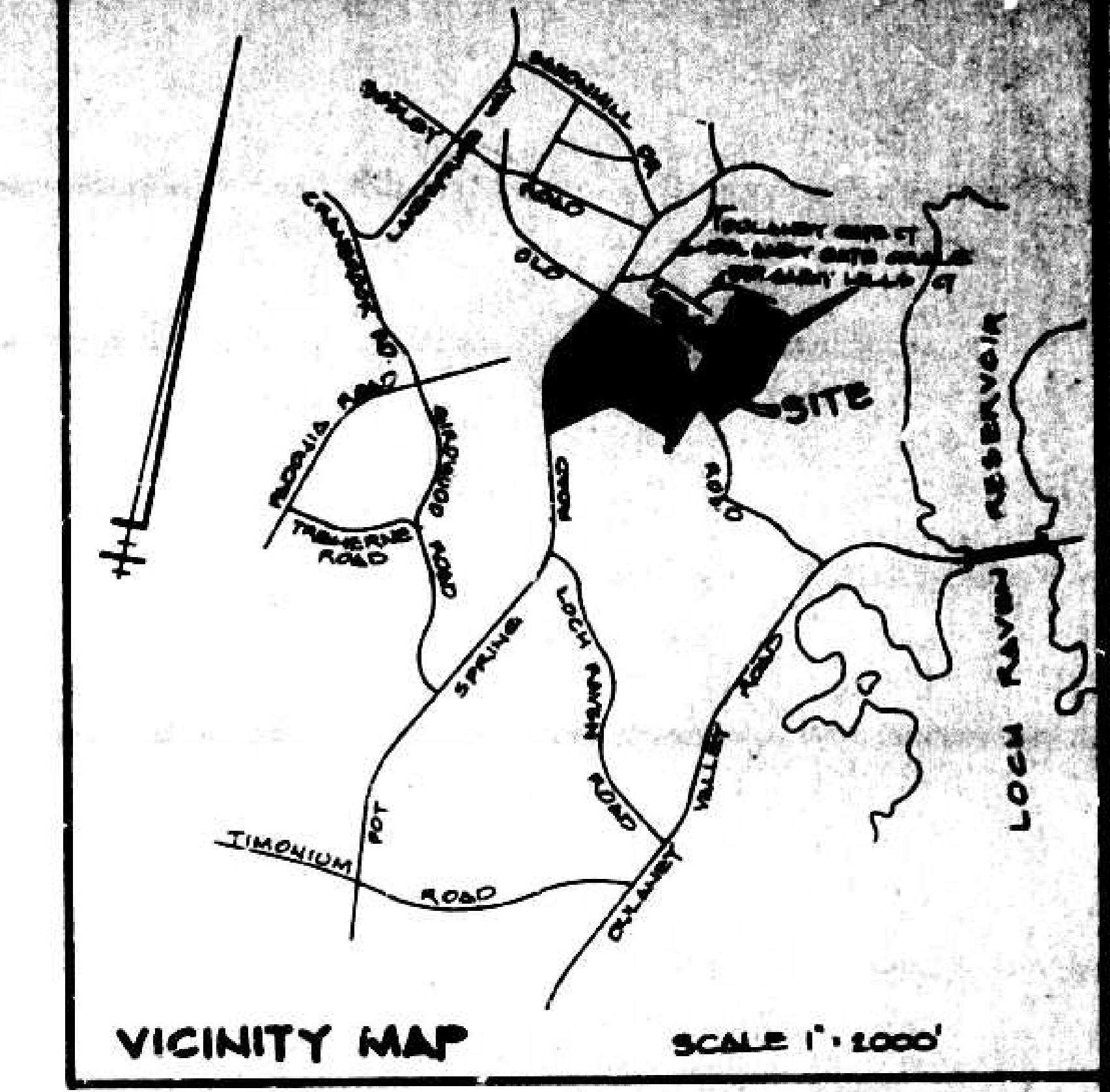
ASSOCIATED CATHOLIC
CHARITIES, INC.
R.R.G. 4460/468
DR. 2



ACREAGES

SITE:	115.48± (BY DEED)
PARCEL A:	35.02 A±
PARCEL B:	10.15 A±
RESIDUE:	69.88 A±

- NOTES
- 1) THIS PLAT HAS BEEN PREPARED FROM VARIOUS DEEDS AND PLATS, WITH BEARINGS ADJUSTED TO CURRENT BALTIMORE COUNTY METROPOLITAN DISTRICT DATUM; AND IS TO BE USED FOR ZONING PURPOSES ONLY AND DOES REPRESENT A FIELD SURVEY.
 - 2) PARCEL 'A' - 500' RESTRICTION AREA, EITHER SIDE OF EXISTING STREAM, TRIBUTARY TO A RESERVOIR (SECTION 1A03.2, SUBPARAGRAPH 3).
 - 3) PARCEL 'B' - 200' RESTRICTION AREA, FROM THE PROPERTY LINE OF A PUBLIC WATER RESERVOIR - LOCH RAVEN SUPPLY PROPERTY (SECTION 1A03.2, SUBPARAGRAPH 1).



PLAT TO ACCOMPANY
ZONING PETITION
FOR
RECLASSIFICATION FROM EXISTING RC-4 &
RC-5 ZONE TO DR-5.5 ZONE
ISSAC A. JONES PROPERTY

BALTIMORE COUNTY, MD
SCALE 1" = 200'

ELECTION DISTRICT NO. 8
DATE: JUNE 1, 1982
REVISED: JUNE 9, 1982



Item #261



DEVELOPMENT DESIGN GROUP, LTD.
1107 KENILWORTH DRIVE
TOWSON, MARYLAND 21204
PHONE (410) 524-5757

PM 2

ISAAC A. JONES	*	IN THE
and	*	CIRCUIT COURT
D. & R. JOINT VENTURE,	*	FOR
a Maryland Limited Partnership	*	BALTIMORE COUNTY
Plaintiffs	*	IN EQUITY
v.	*	
BALTIMORE COUNTY, MARYLAND	*	
Defendant	*	CASE NO.: 108029
* * * * *		

AMENDMENT TO AMENDED BILL OF COMPLAINT

Isaac A. Jones and D & R Joint Venture, Plaintiffs, by Charles F. Obrecht, Jr. and OBRECHT AND OBRECHT, their Solicitors pursuant to Maryland Rule 320, hereby amend their Amended Bill Of Complaint by adding the following subparagraphs e. and f. to Paragraph 19 of the Amended Bill Of Complaint.

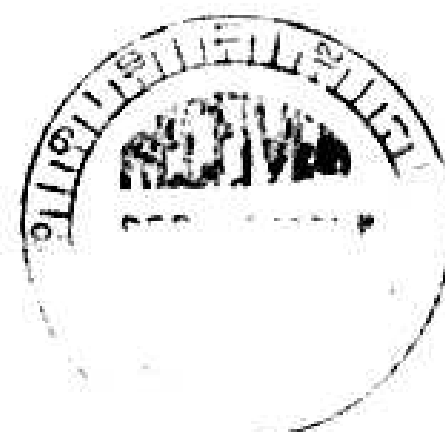
19. e. The downzoning of part of the Plaintiffs' property to RC-4 (Watershed Protection) violated the stated purpose of such zones as set forth in Section 1A03.1B as follows:

"The R.C.4 zoning classification is established pursuant to the legislative findings set forth above, in order to provide at least minimum protection for our watersheds by establishing certain criteria with regard to development so as to more effectively prevent water contamination and pollution."

The current RC-4 zoning of the subject property, however, is more detrimental to the reservoir than its development at higher densities where the use of the available public utilities and storm water management techniques will actually decrease physical, bacteriological and chemical pollution and improve the water quality of the reservoir.

f. The downzoning of part of the Plaintiffs' property to RC-5 (Rural Residential) also violated the stated purposes of that zoning. The purposes of RC-5 zones were based upon legislative findings which are erroneous and have no application to the subject property.

EXHIBIT D



Section 1A04.1A of the Zoning Regulations provides:

- "1. Declaration of findings. It is found
 - a. That the rural residential development that has occurred in Baltimore County heretofore has been of a scattered and generally disorderly nature;
 - b. That this form of development constitutes a wasteful use of land and is fiscally expensive to serve with respect to the provision of basic services;
 - c. That in some cases lot sizes are inadequate to assure long term adequacy of on-lot sewer and water systems; ...
 - e. That specific areas which are highly suitable for rural residential development do exist and
 - f. That these areas are adequate to accommodate anticipated future growth and that future growth should be directed to these areas."

The applicable purposes of RC-5 zoning are stated in Section 1A04.1B of the zoning regulations and they are to:

- "1. Provide for rural-residential development in suitable areas in which basic services are not anticipated.
2. Eliminate, scattered and generally disorderly patterns of future rural-residential development. ..."

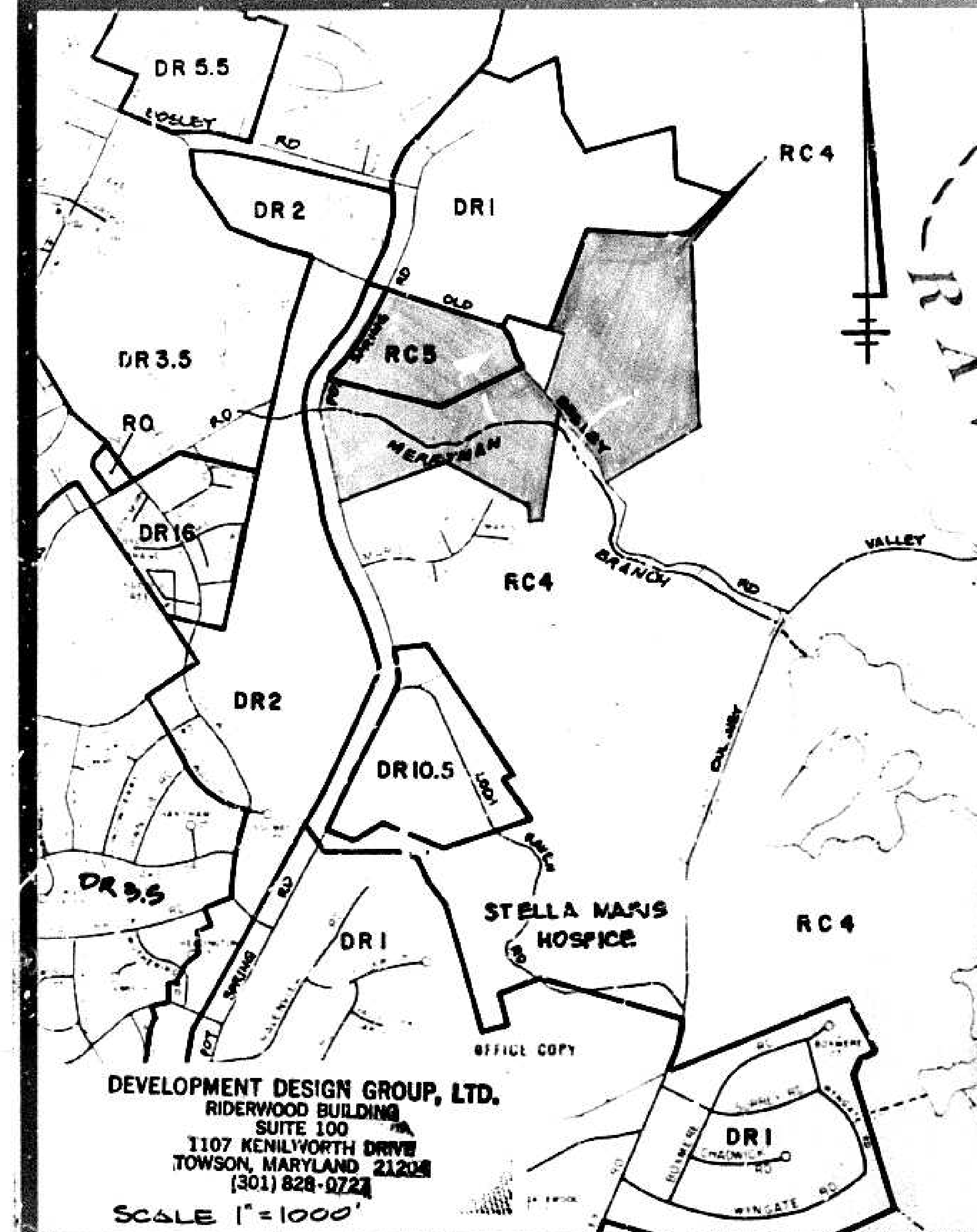
The subject property is totally unsuitable for RC-5 zoning because basic services are already there. Development of this property would not contribute to scattered or disorderly development because the surrounding area is already developed at higher densities as set forth in paragraph 1-14 of the Amended Bill Of Complaint. Higher density zoning for the subject property would not be wasteful and would not be fiscally expensive to the County to serve with basic services, again because such services have already been provided to the area.

Charles F. Obrecht, Jr.
 Charles F. Obrecht, Jr.
 OBRECHT AND OBRECHT
 906 Mursey Building
 Baltimore, Maryland 21202
 Phone: 685-6938
 Attorney for Plaintiffs

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 1981, a copy of the foregoing Amendment To Amended Bill Of Complaint was mailed, postage prepaid, to Michael H. McMahon, Assistant County Solicitor, Mezzanine-Court House, Towson, Maryland 21204, Attorney for Defendant.

Charles F. Obrecht, Jr.
 Charles F. Obrecht, Jr.
 Attorney for Plaintiffs



1 hypothesis as identified or articulated, to wit, that there
2 error, and given the hypothesis that the Board would find that
3 a reclassification to a D.R. zone would be the appropriate
4 action of the Board, in the face of the statements in the
5 master sewer and water plan, the Board would have the authority
6 to grant any such relief, and to implement that consideration
7 we would propose that by a combination of stipulation and per-
8 haps live testimony from, for instance, the Health Department
9 or Baltimore County as to its present policy, that the record
10 with regard to that isolated issue, or sole issue I should say,
11 be assembled and presented to the Board for consideration.

12 If the Board should find that it does have the
13 authority to grant the relief by some action, as for example
14 amending the master sewer and water plan, then of course the
15 Board would so hold; and then schedule the case for a trial on
16 the factual issues as to whether or not error does, in fact,
17 exist; and if it does exist, what is the appropriate relief.

18 Acting on that hypothesis that we would assemble
19 on March 15, and the Board finds it would be perilous to grant
20 any such relief, even though it should find such relief would
21 be appropriate, then the Board would proceed to so rule; and

1 would therefore deny the petition to create an appealable
2 Order on that issue; and that is, I think, a fairly compre-
3 hensive statement of what we discussed, and what we are
4 submitting to the Board as a procedural approach to this case.

5 MR. OBRICHT: And I agree with that.

6 Could we go off the record? Could we go off the
7 record for just a minute?

8 (Discussion off the record.)

9 MR. HESSIAN: Let's go back on the record.

10 THE CHAIRMAN: What is LA003?

11 MR. HESSIAN: Off the record.

12 (Discussion off the record.)

13 MR. HESSIAN: During the conference, Mr. Chairman,
14 the question of the impact of the portion of the regulations
15 which apply to R.C. zones, and generally says that no petition
16 can be accepted for a reclassification, other than to another
17 R.C. zone, can even be accepted unless it can be demonstrated
18 that there is planned service for the property being considered
19 within two years from the date of the filing of the petition --

20 Our discussion revolved around the legal impact of
21 that.

1 Our consistent position before the Circuit Court
2 a position in which we were joined by the County Solicitor, is
3 that the action of the Court of Appeals and Holdings of the
4 Court of Appeals in the "Hope" case renders that portion of
5 the Baltimore County Zoning Regulations a nullity and of no
6 force and effect.

7 That issue has not been formally presented to the
8 Board for its ruling.

9 However, speaking for Mr. Zimmerman and myself and
10 Mr. Freller, we will state to you that the issue will not be
11 raised either before this Board or in any appellate proceeding,
12 as being our assumption that the "Hope" case does, in fact,
13 render that portion of the Regulations a nullity, and there
14 would be no viable legal issue.

15 MR. OBRICHT: That is fairly said; and I have one
16 other issue which we did not discuss because we were talking
17 about these other ones for a long time.

18 Let me bring this up.

19 Off the record.

20 (Discussion off the record.)

21 MR. HESSIAN: Mr. Chairman, as a result of the

1 off-the-record discussion conducted in your presence between
2 counsel, it is further agreed that an additional issue, to
3 whether in view of the provision contained in the Regulations
4 with regard to development within a specified number of feet
5 of certain types of streams, the Board would be prevented from
6 granting the requested D.R. reclassification.

7 MR. OBRICHT: On those parcels that are within
8 300 feet.

9 MR. HESSIAN: On that acreage which is within the
10 apparently prescribed area.

11 MR. OBRICHT: Dealing with Regulation LA03.2.

12 I would like to, in order to simplify things, go
13 ahead and hear that issue also on the Fifteenth, and with the
14 reservation that after that, if the Board can hear the entire
15 case on the other issue involving the county master sewer and
16 water plan, that perhaps we would forego this issue in the
17 hopes of getting a hearing on the merits.

18 MR. HESSIAN: What is that? Tell me about the
19 Fifteenth, what are you -- what do you or what don't you want
20 the Board to decide?

21 MR. OBRICHT: I would like the Board to decide the

1 county master sewer and water plan issue, and the issue
2 regarding Regulation LA03.2.

3 MR. HESSIAN: Which is?

4 MR. OBRICHT: Which is the regulation prohibiting
5 rezoning in certain areas next to streams and watershed lines.
6 What I am saying is that if the Board decides that
7 it can hear the -- if the Board decides that the first issue,
8 i.e., the county master sewer and water plan issue, does not
9 bar us from obtaining the requisite zoning, assuming we proved
10 our case; and at the same time rules it cannot grant zoning
11 within 300 feet of the stream and 200 feet of the watershed,
12 that we may wish to drop that issue in the hopes of obtaining
13 the requisite zoning on the remaining property and on the
14 remaining issues.

15 MR. HESSIAN: Yes. All right. That is more of
16 a guidance.

17 You are approaching that more from the point of
18 view of being a guidance rule rather than a valid issue.

19 MR. OBRICHT: That's correct. If the Board decides
20 it can grant our relief, assuming we prove our case on the
21 master county water and sewer plan issue, we may not wish to

1 take an appeal from an Order that says we cannot ask for our
2 rezoning on areas within 300 feet of the stream; although in
3 either case the Order would be final.

4 MR. ZIMMERMAN: That is a legal question.

5 MR. OBRICHT: That is what we are asking the Board
6 to determine.

7 MR. HESSIAN: Let's go off the record.

8 (Discussion off the record.)

9 MR. OBRICHT: With regard to the issue under
10 Regulation LA3 --

11 Wait a minute. Let me make sure I got it right.

12 (Continuing) -- LA03.2, we will withdraw that
13 issue from consideration on March 15th, and handle it at
14 a trial and hearing on the merits should that come about, as
15 a part of our normal prosecution of the case.

16 MR. HESSIAN: All right. So then now we are
17 confined to the two issues?

18 That is what will be heard on March 15th?

19 MR. ZIMMERMAN: I would like to clarify on the
20 first and second issues. We are dealing with Section 250.172
21 which talks about the findings that are required before any

1 property is reclassified; and that section says that in
2 "Any finding of such a change or error and any finding that
3 the prospective reclassification is warranted may be made only
4 upon consideration of factors relating to the purposes of the
5 Zoning Regulations and maps".

6 I was quoting there. The section then goes on to
7 list a number of factors, one of which is "consistency of the
8 current and prospective classifications with the Master Plan,
9 the county plan for sewerage and water-supply facilities, and
10 the Capital Program".

11 And as I understand it, the petitioner here wants
12 a preliminary ruling under the facts of this case, limited by
13 the facts presented at our preliminary hearing, whether he is
14 precluded as the Latin speakers would say, vel non, from
15 a reclassification, precluded by the sewer, water and sewer
16 plan situation itself from getting a reclassification, assuming
17 all other factors would permit him to get the reclassification.

18 Is that a fair --

19 MR. HESSIAN: That is pretty fair, right.

20 All right. Now can we go off the record again?

21 (Discussion off the record.)

1 (Whereupon, the pre-trial conference was ended at
2 11:10 o'clock p.m.)

BE IT FURTHER RESOLVED, that supplementary to and in conformity with the Master Plan, the agencies of Baltimore County engage in an ongoing process which includes water, sewer, and solid waste management planning, management of the coastal zone of Baltimore County, designation of areas of critical state concern, specific area plans, and plans devoted to capital improvements and other facilities. It is intended that such plans, upon enactment by the County Council and as amended from time to time shall be incorporated in the Master Plan by reference.

BE IT FURTHER RESOLVED, that the County Council intends to approve a land use map to be part of the Master Plan concurrently with the adoption of the 1980 Comprehensive Zoning maps.

BE IT FURTHER RESOLVED, that the Planning Board forward to the Council, upon completion of the elements governing growth in each of the Growth Areas, a recommendation on the method of ensuring that all development actions made by the public and private sectors are in conformance with the master plan goals, objectives and elements as adopted by the County Council.

AND BE IT FURTHER RESOLVED, that previous Master Plans adopted by the Planning Board and/or the County Council are rescinded to the extent that they are inconsistent with the Baltimore County Master Plan 1979-1990.

WATER SUPPLY PLAN DESIGNATIONS

Areal Designation

- W-1 EXISTING SERVICE AREA
Metropolitan facilities are available to 90% or more of the properties in these areas.
- W-3 CAPITAL FACILITIES AREA (1-6 years)
Capital facilities are required and are possible within the framework of the 6-year Capital Program; subject to annual budgeting, neighborhood petitions, determination of health hazards, and the negotiation of Public Works Agreements.
- W-5 MASTER PLAN AREA (7-10 years)
Capital facilities are required and are intended within the framework of the Baltimore County Master Plan.
- W-6 AREAS OF FUTURE CONSIDERATION
Areas to be considered in the design of major facilities for growth and development beyond 1990.
- W-7 NO PLANNED SERVICE (NPS)
Areas of planned low-density growth (Resources Conservation Zoning) for which Metropolitan facilities extensions are not planned or intended.

EXHIBIT B

Sept., 1981

III-1.02

SEWERAGE PLAN DESIGNATIONS

Areal Designation

- S-1 EXISTING SERVICE AREA
Metropolitan facilities are available to 90% or more of the properties in these areas.
- S-3 CAPITAL FACILITIES AREA (1-6 years)
Capital facilities are required and are possible within the framework of the 6-year capital program; subject to annual budgeting, neighborhood petitions, determination of health hazards and the negotiation of Public Works Agreements.
- S-5 MASTER PLAN AREA (7-10 years)
Capital facilities are required and are intended within the framework of the Baltimore County Master Plan.
- S-6 AREAS OF FUTURE CONSIDERATION
Areas to be considered in the design of major facilities for growth and development beyond 1990.
- S-7 NO PLANNED SERVICE (NPS)
Areas of planned low-density growth (Resources Conservation Zoning) for which Metropolitan facilities extensions are not planned or intended.

September, 1982

IV-1.02

MRS. SUDER: Whereas, upon the termination of the hearing held this morning a meeting of all counsel and all Board members was held in the Board's Office.

It was agreed by all parties concerned and/or their attorneys that this Board will receive legal memorandums on the issue as to whether or not this Board has the power to grant petitioner's ultimate request; i.e. a reclassification from R.C. to D.R.; and that this Board will decide the issue as to whether or not we have the power to grant the reclassification prior to an anticipation of petitioner proceeding on the merits.

(Whereupon, the meeting terminated.)

- 4 -

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PRE-TRIAL CONFERENCE

IN THE MATTER OF
THE PETITION OF
D & R JOINT VENTURE and
ISAAC JONES,
Old Bosley and Pot Spring
Roads,
8th District.

Item #269

Monday, February 7, 1983, Towson, Maryland

HEARING ROOM - COURTHOUSE

10:20 A.M.

APPEARANCES:

CHARLES F. OBBECHT, JR., Esq.,
on behalf of the Petitioners.
DAVID PRELLER, JR., Esq.,
on behalf of the Protestants.
JOHN W. HESSIAN, III, Esq., People's Counsel,
on behalf of Baltimore County, Maryland.
PETER MAX ZIMMERMAN, Esq., Deputy People's Counsel,
on behalf of Baltimore County, Maryland.

REPORTED BY: Carol Ann Beresh - Board of Appeals,
Courthouse, Towson, Maryland 21204

THE CHAIRMAN: This morning we are having a pre-trial conference on D & R Joint Venture, and the reason we are having the conference this morning is because it is a complicated and expected to be lengthy case, and this conference is to establish decisions on procedural matters only.

We will take no pertinent facts pertaining to the case itself.

MR. HESSIAN: Mr. Chairman, we have used the time between approximately 9:00 o'clock and now, which is approximately 10:00 o'clock --

THE CHAIRMAN: 10:20.

MR. HESSIAN: (Continuing) -- 10:20 for discussions between counsel and representatives of the interested parties so -- in an effort to distill and extract from the general case any overwhelming issue that we saw, so that if at all possible we could conserve the Board's time and focus the Board's attention on any such major issue; and ask for a decision on that -- on any such major issue, and perhaps get that issue focused without having a number of days of listening to testimony that may not have a bearing on that underlying issue.

We feel that we have identified in this case such

an issue.

The Board's authority to grant reclassifications is spelled out in Section 2.58 --

MR. ZIMMERMAN: 258.1.

MR. HESSIAN: Generally it is bifurcated into two very clear subdivisions.

First, the Board must find error in the present classification as therein defined.

Second, the Board, assuming that it does affirmatively find error, must then proceed to consider the petitioner's proposal for a new classification.

In this case the element of the designation of this property as a "no planned service area" in the Baltimore County master sewer and water plan, raises the issue that, assuming for the purpose of this statement, that the petitioner does, in fact, show error, whether the Board in the face of that statement in the master sewer and water plan would have the authority to grant him any relief in the D.R. zoning regime.

To reach that issue it can, of course, find in the second division or area that the Board must treat, will

require -- will otherwise require that you hear several days of testimony devoted to the question of error, and devoted to the question of the petitioner's concepts and counter-concepts as to the proper zoning, assuming that error would be found.

What we suggest to the Board is that we single out and identify the issue of whether in the face of the statement in the master water or master sewer and water plan, that even if the Board should find on the basis of all the testimony that the present zoning classification is in error, and that relief to the petitioner is appropriate, and that relief in the form of one of the D.R. zones is, in fact, the proper relief, the Board may very well find that it is precluded from -- precluded from granting that relief, being prohibited from so doing by the provisions of the master sewer and water plan.

The question that is disturbing us is whether or not, in fact, the Board could grant such relief at the end of several or more days of testimony.

We would like, therefore, to utilize the first hearing day that's scheduled, which I believe to be March 13, to have -- to address the Board and have the Board take under consideration the sole question of whether or not given the

protection of the laws, in violation of the state (Article 24, Declaration of Rights, and Article III, Section 40) and federal constitutions (5th and 14th amendments). This is so because:

a. the cost of development for any use allowed in RC Zones, or for any residential use at a density of less than two units per acre is vastly disproportionate to the return competitively possible from such uses in light of prevailing construction and development costs, the fact that the property is not suitable for individual septic or well water systems, and the cost and availability of financing. These costs are disproportionate to the point that the property cannot be devoted to residential or other use under any RC Zone and only zoning which would allow densities of two units per acre or greater would permit the property to be used so as to obtain revenues after development (including the use of a pumping station for sewerage) and in addition provide a reasonable return for the property's use.

b. The downzoning of Plaintiffs' property bears no real and substantial relationship to the public health, comfort, order, safety, convenience, morals and general welfare. Likewise, the Master Plan, to the extent approved by the County Council, does not guide or accomplish a coordinated, adjusted and harmonious development of the Plaintiffs' property which maintains property value previously established, as required by the Baltimore County Charter (Section 523) and the Baltimore Co. Code (Section 22-15).

c. The downzoning of Plaintiffs' entire property to RC Zones at the same time that 40 acres of Stella Maris property was upzoned to DR-10.5 instead of an RC Zone violates the due process (both procedural and substantive) and equal protection clauses of the federal constitution (5th and 14th amendments) and the due process clauses of the State Constitution (Article 24, Declaration of Rights), since there is no rational basis for which

E. And for such other and further relief as the nature of this case may require.

Charles F. Obrecht, Jr.
Obrecht and Obrecht
906 Munsey Building
Baltimore, Maryland 21204
Phone: 685-6938
Attorney for Plaintiffs

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 1981, a copy of the foregoing Amended Bill Of Complaint was hand delivered to Michael H. McMahon, Assistant County Solicitor, Mezzanine - Court House, Towson, Maryland 21204, Attorney for Defendant.

Charles F. Obrecht, Jr.
Attorney for Plaintiffs

the Plaintiffs' land should be restricted while the Stella Maris property should not. The ordinance unlawfully classifies the property of the Plaintiffs differently than the property of Stella Maris without any reason that is related to achievement of the County's objectives.

d. The unconstitutional taking of the Plaintiffs' land by downzoning to RC Zones was accomplished for the stated public purpose of the zoning as set forth in Regulation 1A00.2 (Bill No. 98-75) as follows:

"(b) [to] protect both natural and man-made resources from compulsory effects of specific forms and densities of development;

The downzoning of the property results in an inverse condemnation for which the Plaintiffs have not been compensated in violation of 5th and 14th amendments of the U.S. Constitution and Article III Section 40 of the State Constitution.

20. The downzoning also violated the stated purpose of the Master Plan for Baltimore County as recommended by the Planning Board and was, therefore, erroneous. That Plan states that

"Urban growth should be accommodated by development within the Urban-Rural Demarcation Line. This line delineates those areas that are presently zoned, or are planned to be zoned within five years. Its purpose is to establish a boundary between rural and urban land, protecting the non-urban character of the rural areas and preventing urban development. This development should be encouraged in those areas where the range of public and commercial facilities can readily be made complete. Leapfrogging development should be discouraged as economically and socially wasteful. Presently existing gaps in the urban systems created by past leapfrogging should be filled, in order to reduce the financial waste of extending services to outlying urban pockets." (Emphasis added)

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1979, Legislative Day No. 22

RESOLUTION NO. 71-79

Mr. Norman W. Lauenstein, Councilman

By the County Council, November 19, 1979

WHEREAS, by Article XI-A of the Maryland Constitution the General Assembly is authorized to provide a grant of "express powers" to counties that form a charter government; and

WHEREAS, by Article 25A, Section 5 of the Annotated Code of Maryland, the General Assembly has designated the "express powers" to be granted to charter counties, which powers include the power to enact local laws for the protection and promotion of public health, safety and welfare, relating to planning, zoning and subdivision and to pass all ordinances, resolutions or bylaws that may be necessary and proper to execute and enforce any of the powers expressly enumerated; and

WHEREAS, the people of Baltimore County in accordance with the Constitution and Laws of the State of Maryland have adopted, ordained and established the Baltimore County Charter; and

WHEREAS, pursuant to provisions of the Charter and of the County Code, the County is responsible for planning for the future growth and development of the County, including the preparation of a Master Plan; and

WHEREAS, pursuant to Section 523 of the Baltimore County Charter, the Master Plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the County; and

WHEREAS, the Charter provides that the Office of Planning and Zoning prepare and revise a Master Plan at least every ten years, the previous such revision being accomplished in 1975; and

WHEREAS, pursuant to Section 523 of the Baltimore County Charter, the County Council has the responsibility to accept or modify, and then adopt by

EXHIBIT A

Although the land use element of the recommended Baltimore County Master Plan 1979-1990 was not adopted by the County Council, the Planning Board nonetheless used it as a guide in preparing the proposed 1980 comprehensive zoning maps.

21. Development of the Plaintiffs' property would "fill in" the gap of undeveloped property along the east side of Pot Spring Road. The pattern of development in the area has already been set, under DR-1, DR-2, DR-10.5 and DR-3.5 zoning.

22. At the time of the comprehensive zoning, the Council failed to take into account the then existing facts, as set forth in paragraphs 19, 20 and 21 hereof, so that its action was based upon misapprehension and was therefore erroneous. In addition, the Council failed to take into account the then existing projects or trends which were reasonably foreseeable of fruition in the future when it downzoned the Plaintiffs' property, thus compounding its error.

JURISDICTIONAL ALLEGATIONS

23. The jurisdiction of this Court is invoked because of the two general attacks on the validity of Bill No. 186-80 and because the Plaintiffs are without any administrative remedy. Bill No. 98-75 enacted by the County Council on November 7, 1975 effective December 22, 1975, created a new Article 1A of the Baltimore County Zoning Regulations and Sections 1A00, through 1A04 thereunder. Section 1A00.3 entitled "Rezoning" provides:

"A. Filing of rezoning petition.

1. No petition to reclassify an R.C. Zone or part thereof as other than an R.C. Zone may be accepted for filing by the Zoning Commissioner unless -

a. The Capital Program, duly adopted Baltimore County master or comprehensive plans, and the 'county plan' required under Article 43, Section 387C of the

resolution, a Master Plan which it receives from the Office of Planning and Zoning and

WHEREAS, the County Council has caused to be prepared by consultants and staff, at great expense to the taxpayers of Baltimore County, a comprehensive growth management planning study which has been accomplished over the past three years; and

WHEREAS, the elements of said planning study together comprise a Master Plan, containing objectives, policies and standards, and a composite of mapped and written proposals serving as a guide for the physical development of the County; and

WHEREAS, the Planning Board of Baltimore County has held public hearings on the Master Plan and on the elements thereof and has recommended the adoption of certain elements of that Plan; and

WHEREAS, the Office of Planning and Zoning has submitted to the County Council a Master Plan, entitled "Recommended Baltimore County Master Plan 1979-1990", with accompanying map entitled "Baltimore County Master Plan Land Use Plan"; and

WHEREAS, the County Council has held a public hearing on the Master Plan on September 11, 1979.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Master Plan submitted by the Office of Planning and Zoning and adopted by the Baltimore County Planning Board, including mapped and written proposals, are hereby amended and modified, and as so amended and modified, are hereby adopted and declared to incorporate and be comprised of the following written and mapped components, which will serve as a guide for the development of the County, and which may be subject to such further modifications as deemed advisable by the Baltimore County Council:

"Baltimore County Master Plan 1979-1990" Written Components, maps, criteria and addendum thereto, as follows:

Annotated Code of Maryland 1957 with amendments as codified in the 1971 Replacement Volume and 1974 Cumulative Supplement, show that the property under petition is to be served by public sewerage and water-supply systems within two years after the date the petition is submitted."

24. Under Section 1A00.3, the Plaintiff is barred from filing a petition to obtain DR-2 zoning because the master plans and the "county plans" do not show that his property is to be serviced by public sewerage and water-supply systems within two years from the date hereof. In any event, the Board has no power to change the zoning without considering its consistency with the master plan, county plan and the capital program. (Baltimore County Code Section 2-40.1 (j))

25. Without the right to institute administrative proceedings to obtain rezoning, Plaintiffs are denied the right to appellate administrative review and has no recourse but to apply to the courts to protect their constitutional rights. Delay incident to having to attempt to proceed through a useless administrative process will cause the continuation of irreparable injury to the Plaintiffs.

WHEREFORE THE PLAINTIFFS PRAY:

A. That Bill No. 186-80 be declared invalid.

P. That the Defendant, its agents, servants and employees and all those acting in concert with them be enjoined from enforcing Bill No. 186-80 against the Plaintiffs.

C. That the Defendant be enjoined from placing Plaintiffs' property in any zoning classification more restrictive than DR-2.

D. In the alternative, that the Defendant be required to pay to the Plaintiffs an amount of money equal to the fair market value of the property as if zoned DR-2 less its fair market value under the present zoning.

Baltimore County Growth Management Program Physical Development Plan, Part I, Land Use Elements.	SECTION I
Baltimore County Growth Management Program Physical Development Plan, Part II, Transportation Element.	SECTION II
Baltimore County Growth Management Program Housing and Community Preservation Plan.	SECTION III
Baltimore County Growth Management Program Open Space and Recreation Plan.	SECTION IV
Baltimore County Growth Management Program Public Facilities Plan, Part I, Community Services.	SECTION V
Baltimore County Growth Management Program Public Facilities Plan, Part II, Utilities.	SECTION VI

BE IT FURTHER RESOLVED, that, using the Baltimore County Master Plan 1979-1990 herein adopted as a guide, the County Council intends to proceed with development of an overall growth management program for the implementation of the Master Plan, said program to include revised zoning maps, zoning rules and regulations, subdivision rules and regulations, a capital improvements program, community plans, including but not limited to Owings Mills and Whitemarsh, and such other legislation, regulations, policies and programs as may be necessary; and

BE IT FURTHER RESOLVED, that until said overall growth management program and implementation measures can be adopted, the Office of Planning and Zoning, the Baltimore County Council and all other departments, agencies and officials of the County, in the exercise of any powers, authority, duties or responsibilities related to actions impacting on land use, growth or development, including planning, zoning and subdivision activities, in the County, shall consider the objectives, policies and standards of the Master Plan.

BE IT FURTHER RESOLVED, that all programs and construction projects initiated by the County be in concert with or further the goals and objectives stated in the Master Plan adopted in this resolution, and further that the Director of the Office of Planning and Zoning make such a determination AN EVALUATION of each and every such project and program and forward said determination EVALUATION to the County Executive and the County Council for their approval CONSIDERATION.

IN THE MATTER OF THE APPLICATION OF D & R JOINT VENTURE and ISAAC JONES FOR RECLASSIFICATION FROM R.C. 4 and R.C. 5 and D.R. 1 to D.R. 3.5 OLD BOSLEY ROAD AND POT SPRING ROAD 8th DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

NO. R-83-189

ORDER OF DISMISSAL

Petition of D & R Joint Venture and Isaac Jones for reclassification from R.C. 4, R.C. 5 and D.R. 1 to D.R. 3.5 on property located on Old Bosley Road and Pot Spring Road, in the Eighth Election District of Baltimore County.

WHEREAS, by letter dated January 25, 1983, the Board of Appeals notified the parties of record in the above entitled matter that the case is considered moot; and

WHEREAS, this decision is based on an opinion of the Baltimore County Attorney's office stating that any zoning case requesting reclassification of property pending before the Board on the date the new zoning maps are adopted is moot; and

WHEREAS, the Board has not received a reply from its letter of January 25, 1983, within thirty (30) days as requested;

THEREFORE, the Board will, on its own Motion, dismiss the within petition.

IT IS HEREBY ORDERED, this 28th day of March, 1983, that said petition be and the same is declared moot and the petition DISMISSED.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Keith S. Frantz, Acting Chairman
Leroy E. Courrier
William R. Evans

5. The Plaintiffs' property was zoned R-40 (now classified as DR-1) by the County Comprehensive Zoning Maps of 1955. In 1971, it was zoned DR-1 (Density-Residential, one dwelling unit per acre as was R-40).

6. In 1975, the County created Resource Conservation Zones (RC Zones) in an effort to among other things, discourage "urban sprawl", protect both natural and man made resources, and to protect areas desirable for more intensive future development by regulating undesirable forms of development in these areas.

7. After the creation of RC Zones and by the County Comprehensive Zoning Maps of 1976, the area to the east of Plaintiffs' property extending to the Loch Raven Reservoir was zoned RC-4 (Resource Conservation - watershed protection) but the Plaintiffs' property remained DR-1.

8. Public water and sewer service is available to all property surrounding the Plaintiffs' property except to the east thereof, and can readily be completed to serve the Plaintiffs' property.

9. The property borders the Metropolitan District Line. This line is established by the Baltimore County Code (Sections 34-11 to 34-38) to provide for public water and sewer services by agreement with Baltimore City.

10. The property is also within the Urban-Rural Demarcation Line as established on the County's unadopted land use map. This line delineates those areas of the County that are presently provided with public sewerage or are planned to be so served within five years.

11. Although the County's Capital Program has already provided water and sewerage facilities for the area surrounding Plaintiffs' property on three sides, as a part of the downzoning, the County changed its plans for utility service to the subject property such that the Baltimore County master or comprehensive plans, and the "county plan" required under Article 43, Section 387C of the Annotated Code of Maryland, show

ISAAC A. JONES and D. & R. JOINT VENTURE, a Maryland Limited Partnership 12605 Dulany Valley Road Phoenix, Maryland 21131

Plaintiffs

BALTIMORE COUNTY, MARYLAND

Defendant

CASE NO.: 108029

AMENDED BILL OF COMPLAINT

Isaac A. Jones and D. & R. Joint Venture, Plaintiffs, by Charles F. Obrecht, Jr. and OBRECHT AND OBRECHT, their Solicitors, for their Bill Of Complaint against Baltimore County, Maryland, a body corporate and politic, allege:

This Amended Bill Of Complaint is filed for the purpose of enjoining the Defendant from enforcing the Comprehensive Zoning Ordinance, County Bill No. 186-80 against the Plaintiffs. The intervention of this Court of Equity is sought because, County Bill No. 186-80 was invalidly enacted in contravention of Section 523 of the Baltimore County Charter, and for other reasons and because the Plaintiffs have no administrative remedy, all as more fully explained hereinafter

EXHIBIT C

that water service is not to be available to the Plaintiffs' property for 3 to 5 years, and that sewer service is not contemplated for the property for any specific time in the future.

12. By County Bill No. 186-80, adopted on October 14, 1980, effective on December 10, 1980, the County Council downzoned the Plaintiffs' property from DR-1 to RC-4 (Resource Conservation - watershed protection) and RC-5 (Resource Conservation - Rural - Residential). The said ordinance was a part of the comprehensive rezoning of Baltimore County for 1980.

13. County Bill 186-80, while downzoning the subject property, upzoned approximately 40 undeveloped acres of the adjacent Stella Maris property to DR-10.5 as set forth in paragraph 3b.

14. The said new comprehensive zoning ordinance, Bill No. 186-80, is unconstitutional and invalid both generally and as it specifically applies to the Plaintiffs' property.

UNCONSTITUTIONALITY OF BILL NO. 186-80 - IN GENERAL

15. Section 523 of the Baltimore County Charter provides as follows:

"Sec. 523. The master plan and the zoning maps.

(a) Definition and implementation of the master plan. The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county. Upon receipt of the master plan from the office of planning and zoning, the county council shall accept or modify and then adopt it by resolution.

(b) Definition and implementation of the zoning maps. The zoning maps shall show the boundaries of the proposed districts, divisions and zones into which the county is to be divided consistent with the master plan. Upon receipt of the zoning maps from the office of planning and zoning, the county council shall accept or modify and then adopt it by legislative act. (Bill No. 83, 1978, 83)

(Approved by voters Nov. 7, 1978. Effective Dec. 8, 1978).

BACKGROUND INFORMATION

1. Plaintiff, Isaac A. Jones, is and for many years has been the owner of approximately 115 acres of real estate located in the Third Councilmanic District of Baltimore County, improved by two single family dwellings, and a barn. In March of 1981, Plaintiff, D. & R. Joint Venture purchased about 65 acres thereof. The sale was financed by a non-recourse mortgage and the only security for the payment thereof is the property itself. The contract was made initially under prior zoning when utilities were contemplated for the property and was later renewed in reliance upon the fact that under its current zoning the property cannot be used and that, therefore, it would have to be rezoned. Elsewhere in this Amended Bill Of Complaint, facts are alleged which show that the property was erroneously zoned and that its current zoning is confiscatory and unreasonable. The property is located adjacent to and east of the intersection of Pot Spring Road and Old Bosley Road and extends from the north and south sides of Old Bosley Road.

2. The property is essentially, open pastureland, tillable farm land with some woodland on a hill north of Old Bosley Road.

3. The neighborhood setting of the said property is as follows:

a. Adjacent to and east of Pot Spring Road, and north of Old Bosley Road and the Plaintiffs' property, is a 110 acre tract developed for 110 single family dwellings known as the development of Dulany Gate. The eastern boundary of that development is closer to the Loch Raven Reservoir than the subject property.

Section 22-1 of the Baltimore County Charter defines the terms "comprehensive land use plan", "master plan" and "zoning map" as follows:

"a. Comprehensive land use plan means that part of the master plan which expresses in mapped form with written explanation the objectives of the planning board as to the currently existing and as to the future use of land in the county.

b. Master plan means a composite of the mapped and written proposals for the systematic physical development of the county, which plan shall have been adopted by the planning board under section 22-12 of this Code, and shall have the scope specified in section 22-13 of this Code.

c. Zoning map means a chart or map, or series of charts or maps, which sets forth the currently permissible uses to which privately owned land in the county may be put, and which has been adopted by ordinance of the county council in the manner hereinafter in this title provided. (Bill No. 80, 1960; Bill No. 48, 1963, 83; Balto. Co. Code, 1968, § 22-1)"

16. By resolution of the Baltimore County Planning Board dated July 26, 1979, a final report entitled "Baltimore County Master Plan 1979-99" was approved for transmittal to the County Council. On that same date, the Planning Board also adopted the land use map as a part of the aforesaid report, also for transmittal to the County Council.

17. The County Council, by resolution No. 71-79, dated Nov. 19, 1979, purportedly adopted the Master Plan, both written and mapped portions in accordance with Section 523 of the Charter. In fact, the County Council failed to adopt the mapped portion of the "Master Plan" and in fact it only resolved to "approve a land use map to be a part of the Master Plan concurrently with the adoption of the 1980 Comprehensive Zoning maps." Although the

b. Extending south of the subject property and south of Old Bosley Road is a large tract of land containing about 300 acres, improved by approximately 250 apartments known as St. Elizabeth's Hospice Apartments, the Stella Maris Retirement Home, housing about 800 people, Villa Maria, a village for children, an Elementary School and athletic playing fields. Approximately 40 undeveloped acres of this property is zoned for 10.5 dwelling units per acre and another 30 acres is zoned for 1 unit per acre.

c. The property across Old Bosley Road from the Dulany Gate development contains Springdale Community consisting of single family dwellings, the Topfield Apartments, the Topfield Townhouses, and a public Junior High School site.

d. Adjacent to and immediately west of Pot Spring Road to the west of the subject property is a small eleven acre unimproved tract owned by the Baltimore Gas and Electric Company mostly zoned for two units per acre and the property to the west of that tract has been and is being developed into apartments and townhouses.

e. The property extending westward from Pot Spring Road, south of Old Bosley Road, is improved by St. Vincent's Infant Home and the Gallagher Center for Unwed Mothers with apartments improving the adjacent property to the west.

4. The Plaintiffs' property is the only downzoned undeveloped property in the area, east of Pot Spring Road leaving a gap, between the Stella Maris tract, 40 acres of which is zoned RC-10.5, as aforesaid, and the development of Dulany Gate, which "leapfrogged" to the north.

comprehensive zoning maps were adopted, no land use map was ever adopted. The failure of the County Council to adopt a "Master Plan" as mandated by the Charter, renders the enactment of the zoning maps void, because the zoning maps presented by the office of planning and zoning to the county council, must be consistent with an already adopted master plan, and there was and is no such plan. In addition, the zoning map submitted by the office of planning and zoning to the county council was inconsistent with the master plan recommended by the planning board but never adopted by the county council.

18. The comprehensive zoning purportedly accomplished by Bill No. 186-80 is invalid in general also because when viewed in light of the surrounding neighborhood, it effectively singles out the Plaintiffs' property to bear a disproportionate economic burden. Most of the surrounding property was either already developed at a density of one or more units per acre or is zoned for one or more units per acre. This is especially evidenced by the granting of DR-10.5 zoning to the owner of the Stella Maris property adjacent to the Plaintiffs' property under the same Bill No. 186-80. The effect of Bill No. 186-80, in essence, is to impose upon the Plaintiffs' property the full burden of the downzoning, rather than upon the public at large. The result is a violation of the equal protection clause of the 14th amendment of the U.S. Constitution.

UNCONSTITUTIONALITY OF BILL NO. 186-80 - AS APPLIED

19. Bill No. 186-80 is unconstitutional as applied to the Plaintiffs' property in that the application of the ordinance deprives the Plaintiffs of all reasonable use of the property, and is arbitrary, unreasonable, capricious and confiscatory, thereby depriving Plaintiff of his property without procedural and substantive due process of law and also depriving Plaintiffs of the equal

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204
June 17, 1983

Charles F. Obrecht, Jr., Esquire
Obrecht and Obrecht
906 Munsey Building
Baltimore, Md. 21202

Re: Case No. R-83-189
D & R Joint Venture and
Isaac Jones

Dear Mr. Obrecht:

Enclosed herewith is a copy of the Answer to Motion for Reconsideration of Memorandum of Opinion passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

Encl.

cc: David Daneker
The Spring Valley Garden Club
William D. Savitsky
Jeanette Lagorio
Merrill J. Frank
Larry Macks
David J. Preller, Jr., Esquire
W. E. Hammond
J. E. Dyer
N. E. Gerber
J. G. Hoswell
Board of Education
John W. Hession, III, Esquire

COUNTY BOARD OF APPEALS
Room 219 Court House
Towson, Md. 21204
July 19, 1983
Hearing Room 218

NOTICE OF POSTPONEMENT

CASE NO. R-83-189 D & R JOINT VENTURE and
ISAAC JONES
Old Bosley Rd. and Pot Spring Rd.
8th District
RC 4 and RC 5 and DR 1 and DR 3.5

The above case set for hearing on Tuesday, Aug. 9, Wednesday, Aug. 10, and Thursday, Aug. 11, 1983, at 10 a.m., HAS BEEN POSTPONED by the Board at the request of Counsel for Petitioners. This case will be reset in its normal sequence at which time Petitioners must indicate to the Board their intention to either proceed with the case or dismiss their Petition.

cc: Charles F. Obrecht, Jr., Esq. Counsel for Petitioners
David Daneker Petitioner
Spring Valley Garden Club Protestants
William Savitsky "
Dulaney Gate Comm. Assn. "
Jeanette Lagorio "
Springlake Assoc. "
Merrill J. Frank "
Springdale Comm. Assn. "
Larry Macks "
David J. Preller, Jr., Esq. Counsel for Protestants
J. W. Hession, Esq. People's Counsel
W. Hammond
J. Dyer
N. Gerber
J. Hoswell
Bd. of Education

June Holmen, Secy.

IN THE MATTER OF THE : BEFORE
APPLICATION OF :
D & R JOINT VENTURE and : COUNTY BOARD OF APPEALS
ISAAC JONES :
FOR RECLASSIFICATION FROM : OF
RC-4 and RC-5 and DR-1 :
to DR 3.5 : BALTIMORE COUNTY
ON PROPERTY LOCATED ON : No. R-83-189
OLD BOSLEY RD. AND :
POTSPRING RD. :
8th DISTRICT :

ANSWER TO MOTION FOR RECONSIDERATION
OF MEMORANDUM OF OPINION

Pursuant to Petitioner's Motion for Reconsideration of Memorandum of Opinion, hand delivered to this office on June 14, 1983, and People's Counsel having indicated no objection, it is this 17th day of June, 1983, ORDERED that the Motion be and is hereby GRANTED for the purpose of determining the question concerning the validity of the statutes in question cited in said Motion. (Emphasis added)

After a decision by the Board concerning the validity of the two statutes in question has been reached, the case may then proceed on its merits if the Petitioner elects said option.

IT IS FURTHER ORDERED by the County Board of Appeals, this 17th day of June, 1983, that its Order of June 8, 1983, be and it is hereby suspended pending reconsideration pursuant to said Motion.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman
John W. Hession, III
John W. Hession, III, Esq.
Larry Macks
Larry Macks
John L. Suder
John L. Suder

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204
March 16, 1983

NOTICE OF ASSIGNMENT

CONTINUED HEARING

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. R-83-189
(Item #12 - Cycle IV)

D & R JOINT VENTURE and
ISAAC JONES

Reclassification from RC 4 and RC 5 and DR 1
to DR 3.5

Old Bosley Road and Pot Spring Road

8th District

ASSIGNED FOR:

TUESDAY, JULY 5, 1983 at 10 a.m.
WEDNESDAY, JULY 6, 1983 at 10 a.m.
TUESDAY, JULY 12, 1983 at 10 a.m.
WEDNESDAY, JULY 13, 1983 at 10 a.m.
THURSDAY, JULY 14, 1983 at 10 a.m.

cc: Charles F. Obrecht, Jr., Esq.
David Daneker
The Spring Valley Garden Club
William D. Savitsky, Secretary
Dulaney Gate Community Assn.
Jeanette Lagorio, President
Springlake Association
Merrill J. Frank, President
Springdale Community Assn.
John W. Hession, III, Esq.
Mr. W. E. Hammond
Mr. J. E. Dyer
Mr. N. E. Gerber
Mr. J. G. Hoswell
Board of Education
Larry Macks

Counsel for Petitioners
Petitioner
Protestants
"
"
"
People's Counsel
Requested Notification

Edith T. Eisenhart, Adm. Secretary



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

January 25, 1983

Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, MD 21202

Re: Case No. R-83-189
D & R Joint Venture and
Isaac Jones

Dear Mr. Obrecht:

As the Petitioner, or representative thereof, in the above referenced case, you are hereby advised that said case now pending before the Board of Appeals is considered moot. This decision is based on an opinion of the Baltimore County Attorney's office concluding that any reclassification case pending before this Board on the date of the adoption of new comprehensive zoning maps is moot.

Therefore, unless you present written objection to the Board within thirty (30) days from the date hereof, an Order of Dismissal shall be executed by this Board.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman

WTH:te

cc: David Daneker
David J. Preller, Jr., Esquire
The Spring Valley Garden Club
William D. Savitsky
Jeanette Lagorio
Merrill J. Frank
Larry Macks
Phyllis Cole Friedman
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Gerber
James G. Hoswell
Board of Education



County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

June 21, 1983

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. R-83-189

D & R JOINT VENTURE and
ISAAC JONES

Old Bosley Rd. and Pot Spring Rd.

8th District

RC 4 and RC 5 and DR 1 to DR 3.5

ASSIGNED FOR:

TUESDAY, AUGUST 9, 1983, at 10 a.m.
WEDNESDAY, AUGUST 10, 1983, at 10 a.m.
THURSDAY, AUGUST 11, 1983, at 10 a.m.

cc: Charles F. Obrecht, Jr., Esq. Counsel for Petitioners
David Daneker Petitioner
D & R Joint Venture
Spring Valley Garden Club Protestants
Wm. D. Savitsky "
Jeanette Lagorio "
Merrill J. Frank "
J. W. Hession, Esq. People's Counsel
Larry Macks "
David J. Preller, Jr., Esq. Counsel for Protestants
W. Hammond
J. Dyer
N. Gerber
J. Hoswell
Bd. of Education

June Holmen, Secy.



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

March 28, 1983

Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, MD 21202

Re: Case No. R-83-189
D & R Joint Venture and
Isaac Jones

Dear Mr. Obrecht:

Enclosed herewith is a copy of the Order of Dismissal passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

Enclosure

cc: David Daneker
The Spring Valley Garden Club
William D. Savitsky
Jeanette Lagorio
Merrill J. Frank
David J. Preller, Jr., Esquire
Phyllis C. Friedman
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Gerber
James G. Hoswell
Bd. of Education
Larry Macks

What we have here is zoning which is inconsistent with the Master Plan as originally enacted, but consistent with a later water and sewer supply designation allegedly incorporated into the Master Plan by reference. It is up to the Board to decide on the merits, whether the requested zoning is to be granted to make it consistent with the Master Plan as enacted but inconsistent with a later water and sewer designation, or whether the requested zoning is to be denied thus allowing zoning which is inconsistent with the Master Plan as enacted but consistent with a later water and sewer supply designation to continue. If the Board has the power to do either, it has the power to do both.

2. Whether an administrative remedy is barred by a "procedural" regulation which prohibits the filing of a Petition, or by a substantive regulation which prohibits the remedy is of no consequence. Either regulation allows the Board to be bypassed and if one is unconstitutional, so is the other.

Sincerely yours,

Charles F. Obrecht, Jr.

CFO:ams

cc: David J. Preller, Jr., Esquire
Peter Max Zimmerman, Esquire

Rec'd. 5/4/83 - 10:45 a.m.
J.A.

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204

June 8, 1983

Charles F. Obrecht, Jr., Esq.
906 Munsey Building
Baltimore, Md. 21202

Re: Case No. R-83-189
D & R Joint Venture and
Isaac Jones

Dear Mr. Obrecht:

Enclosed herewith is a copy of the Memorandum of Opinion passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Encl.

cc: Mr. David Daneker
The Spring Valley Garden Club
William D. Savitsky
Jeanette Lagorio
Merrill J. Frank
J. W. Hession, Esq.
Board of Education
Larry Macka
W. Hammond
J. Dyer
N. Gerber
J. Maxwell
cc: Preller 5/5

CITED LEGAL SECTIONS

a. The Capital Program, duly adopted Baltimore County master or comprehensive plans, and the "county plan" required under Article 43, Section 387C of the Annotated Code of Maryland 1957, with amendments as codified in the 1971 Replacement Volume and 1974 Cumulative Supplement, show that the property under petition is to be serviced by public sewerage and water-supply systems within TWO years after the date the petition is submitted; (Bill No. 98-75)

1A03.2 - Rezoning by petition. (Bill Nos. 98-75; 178-79)

No petition for reclassification of property in an R.C. 4 zone may be granted unless a registered professional engineer, architect, landscape architect, or land surveyor first certifies: (Bill Nos. 98-75; 178-79)

1. That the parcel of land under petition lies at least 200 feet from the property line of any public water reservoir; (Bill No. 178-79)
2. That the parcel lies at least 300 feet from any 1st - or 2nd order or greater stream that flows directly into a public water reservoir; (Bill No. 178-79)
3. That the parcel lies at least 300 feet from any 3rd - order or greater stream that flows directly or indirectly into a public water reservoir; (Bill No. 178-79)

CITED LEGAL SECTIONS

Baltimore County Code
1981 Cumulative Supplement

Sec. 2-58.1. Delegation to board of appeals of interim power to change zoning classification of property; method of interim zoning reclassification; method for early action on reclassification due to public interest or emergency.

(j) Before any property is reclassified pursuant to this section, the board of appeals must find:

- (1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified, or that the last classification of the property was established in error; and
- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

Sec. 602. Powers and functions of county board of appeals.

The county board of appeals shall have and may exercise the following functions and powers:

(e) The county board of appeals shall have original and exclusive jurisdiction over all petitions for reclassification.

Baltimore County Zoning Regulations

Section 1A00 - General Provisions: All R.C. Classifications (Bill No. 98-75)

1A00.3 - Rezoning.

A. Filing of rezoning petitions. (Bill No. 98-75)

1. No petition to reclassify an R.C. zone or part thereof as other than an R.C. zone may be accepted for filing by the Zoning Commissioner unless - (Bill No. 98-75)

IN THE MATTER OF THE APPLICATION OF D & R JOINT VENTURE and ISAAC JONES FOR RECLASSIFICATION FROM RC 4 and RC 5 and DR 1 to DR 3.5 ON PROPERTY LOCATED ON OLD BOSLEY RD. AND POT SPRING RD. 8th District

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. R-83-189

MEMORANDUM OF OPINION

On March 15, 1983, a hearing was held before the Baltimore County Board of Appeals on petitioners' request for a reclassification. The purpose of this hearing was to decide whether or not this case should be heard on its merits. People's Counsel submitted that the case should not be heard on its merits because Sections 1A00.3.A.1.a and 1A03.2 of the Baltimore County Zoning Regulations preclude the Board from granting petitioners' requested relief. Petitioner maintained that the above referred to Sections, when considered in combination with Baltimore County Code Section 2.58.1 and Charter Section 602.e, do not preclude the Board from granting the relief requested pursuant to his petition for reclassification. Copies of the above noted Sections are attached hereto.

At that time, it was agreed between parties that legal memoranda would be submitted on the sole issue as to whether or not the above noted Sections would ultimately bar the Board from reclassifying the subject property. After careful consideration of the memos submitted by both parties and the above noted Sections, the Board regrets that it has no choice but to advise petitioner that it finds that under these statutes his requested reclassification must be denied.

Property in question is currently zoned RC 4 and RC 5. Prior to October, 1980, the entire parcel was zoned DR 1 and the then existing water and sewer plan indicated these services projected to this site within a 3 to 5 year span. During the comprehensive map process of 1980, the Baltimore County Council rezoned the parcel to RC 4 and RC 5. The Baltimore County Zoning Regulations 1A00.3.A.1.a prohibited him

IN THE MATTER OF THE APPLICATION OF D & R JOINT VENTURE and ISAAC JONES FOR RECLASSIFICATION FROM RC 4 and RC 5 and DR 1 to DR 3.5 ON PROPERTY LOCATED ON OLD BOSLEY RD. AND POT SPRING RD. 8th District

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. R-83-189

MOTION FOR RECONSIDERATION OF MEMORANDUM OF OPINION

D & R Joint Venture and Isaac Jones, Petitioners by their attorneys, OBRECHT AND OBRECHT, Charles F. Obrecht, Jr., request that the Board of Appeals reconsider its decision of June 8, 1983 and rule that Baltimore County Zoning Regulations 1A00.3.A.1.a and 1A03.2 are in fact invalid and unconstitutional and order that this case proceed to a hearing on the merits of the Petitioners case presently scheduled for July 5, 6, 12, 13, and 14, 1983. The reasons for this request are as follows:

1. The Petitioners are entitled to a hearing on the merits of their case since Section 602E of the County Charter provides that this Board of Appeals has original and exclusive jurisdiction over all zoning reclassification petitions.
2. The subject regulations purportedly bar the Board of Appeals from granting any relief to the Petitioner's contrary to said section 602E.
3. If the Board of Appeals rules these regulations invalid, then this case can proceed on the merits. Should the Peoples Counsel then challenge the Board of Appeals' ruling as to such invalidity, then these Petitioner's will at least have had their hearing on the merits and the Circuit Court could uphold the Board of Appeals or not as it sees fit.
4. In any event, if the Petitioners are prevented from obtaining a hearing on the merits, then the appeal process could

D. & R. Joint Venture and Isaac Jones
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from filing a petition for a reclassification of the site, since he did not meet the two year requirement for water and sewer service, so in March 1981 suit was filed in the Baltimore County Circuit Court seeking relief. In January, 1982, the Baltimore County Council removed the 3 to 5 year plan for projected water and sewer service to this parcel and placed it into the "no plan" category. In June, 1982, as a result of the suit filed in the Circuit Court in March 1981, The Honorable Paul A. ... ruled that a petition for reclassification must be filed with the Baltimore County Board of Appeals and the petition that now exists was to be filed. In November, 1982, The Honorable James Langrell heard legal arguments regarding this petition and ordered that the Baltimore County Board of Appeals must hear the case.

After careful consideration of all these facts and all applicable regulations, the Board has no choice but to determine that Sections 1A00.3.A.1.a and 1A03.2 preclude the Board from ultimately granting the requested relief. Thus, even if petitioner was able to prove change or error as would be required in Section 2.58.1, this Board would still be precluded from granting petitioners' request by reason of the existence of these two sections.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Mar. and Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett, Chairman

Date: June 8, 1983

James L. Suder

Leroy B. Spurrer

cause more delay and more expense all without the Petitioners having this Board of Appeals rule on the merits.

5. If the Board of Appeals grants the rezoning and an appeal follows, the Petitioners would then only have to incur the expense of defending one appeal rather than two. That is, a later five day hearing on the merits before the Board of Appeals could be appealed again. In other words, by revising the decision of June 8, 1983 now, Petitioners and Peoples Counsel, as the case may be, will only be burdened with one appeal (on the constitutional issues) instead of two possible appeals (one on constitutional issues and a later one on the merits).

6. If this Board of Appeals does not grant the rezoning requested, it would be up to the Petitioners to appeal or not as time and funding allow. In any event, Peoples Counsel will not be denied the opportunity to raise any issue it wishes on an appeal which might resolve both the constitutional and merits issues.

7. Other reasons for this request will be set forth if the hearing hereinafter requested is held.

WHEREFORE, The Petitioners request that the Board of Appeals reconsider its decision of June 8, 1983, reverse itself, and rule that the said regulations are unconstitutional and thus proceed with a hearing on the merits as originally scheduled. Petitioners also request an immediate hearing on this request.

Charles F. Obrecht, Jr.
OBRECHT AND OBRECHT
906 Munsey Building
Baltimore, Maryland 21202
Phone: 685-6938
Attorney for Petitioners

CERTIFICATION OF SERVICE

I HEREBY CERTIFY That on this 14th day of June, 1983, a copy of the foregoing Motion For Reconsideration Of Memorandum Of Opinion was mailed, postage prepaid, to Peter Max Zimmerman, Deputy Peoples Counsel, Room 223, Court House, Towson, Maryland 21204.

if successful, return to the Board for rezoning. Such a proposition, in addition to piling more unjustifiable delays upon the Petitioners, puts the cart before the horse. As is stated in HE 49-505 (a) (1), the County Plan is to provide for expansion and extension of public facilities in a manner consistent with county and local comprehensive land use plans. The Petitioners requested, as was their right, a change in the land use plan for the subject property. Once such change is granted, the law as herein set forth, provides for change in the County Water and Sewer Plan to become consistent with such amended land use plan.

Since People's Counsel so strenuously urged the Court to send this case back to the Board of Appeals, it is unconceivable to the Petitioners that he can now be urging this Board to send Petitioners back to Court for the purpose of attacking the County water and sewer plan. The Petitioners, after more than two years, seek only to have a hearing on the merits of their Petition. They intend to prove that RC4 and RCS zoning is erroneous, that the proper zoning of this property is DR3.5 with the use of public utilities already in the ground adjacent to the property. There is simply no reason for a County sewer and water designation, adopted as a result of the erroneous downzoning, to stand in the way of the Board's power to correct the erroneous zoning and thus set the stage for the proper amendment to the County Plan as provided by law. As the Court of Appeals said in District Land Corporation v. WSSC, supra:

"All the provisions of section 387c [Now HE 9-501 et seq.] apply prospectively to events in future, and do not authorize the County Council to deny sewer service where the sewer has already been constructed under a previously approved sewer program". (Emphasis added)

The Petitioners, therefore, in the interest of having their case finally heard on the merits, request that the Board proceed with such hearing and, upon proof of error and other factors, grant

the requested zoning notwithstanding any inconsistency between the requested zoning and the current County Water and Sewer Plan.

11. BCZR 1A03.2 IS UNCONSTITUTIONAL SINCE IT SUMMARILY DENIES THE BOARD OF APPEALS THE POWER TO GRANT TO THE PETITIONERS THEIR PRIOR ZONING AND THUS VIOLATES THE COUNTY CHARTER.

It was agreed by the parties that BCZR 1A03A.1.a. was unconstitutional because it prohibited any owner of RC zoned land to petition for any zoning other than RC unless the County sewer and water plan designated the property for public facilities within two years of the filing of the petition. The effect of this regulation was to deny relief to any such Petitioner regardless of the existence or magnitude of any error in zoning such property RC in the first place. Hope v. Baltimore County, 288 Md. 656, 421 A.2d 576, (1980) involved a County Code Section which attempted to give a landowner the right to appeal a decision of the Planning Board directly to the Circuit Court. The Court of Appeals held the Code Section conflicted with Section 602 of the Charter which provided for the Board of Appeals to hear all appeals from County agencies and was therefore unconstitutional. Likewise, under BCZR 1A03.A, an owner of DR1 zoned property could petition for any reclassification and the Board could grant it, but once that same owner's property was downzoned to RC, he would no longer have any right to even petition the Board of Appeals for DR zoning. This would be so even where the downzoning was erroneous and even where rezoning might be justified on the grounds of change in the neighborhood.

Landowners in the position of the Petitioners are likewise barred by BCZR 1A03.2 from obtaining a reclassification of property into any zone other than RC if:

- (1) the property is zoned RC and
- (2) the property lies within 300 feet of a stream or 200 feet from a property line of a reservoir.

The effect of both regulations mentioned is that once a landowner loses DR zoning, erroneously or not, he can no longer regain such DR zoning or any other zoning, other than RC. This restriction on the Board's power conflicts with the provisions of 602 of the County Charter which gives the Board original and exclusive jurisdiction over all reclassification petitions, and for this reason, it is unconstitutional and should not be applied to summarily foreclose the relief requested by Petitioners.

Giving effect to these regulations would be tantamount to giving the Circuit Court jurisdiction to hear reclassification cases without presentation to the Board of Appeals. It was precisely this argument that was made by the Petitioners to the Circuit Court and opposed by the People's Counsel. The Court, nevertheless sent the case back to the Board without ruling on the regulations.

If BCZR 1A03A.1.a. is to be ignored by the Board as being unconstitutional based upon the holding in the Hope v. Baltimore County case, supra, then BCZR 1A03.2 is likewise unconstitutional and must be ignored.

Conclusion

The Petitioners want a hearing on the merits of their Petition unencumbered by regulations which prohibit relief out-of-hand regardless of the merits. In that light the Petitioners here have taken a position in favor of the Board having the power to grant the requested relief even though they took a contrary position in the Circuit Court. The People's Counsel argued that the Petitioners should be challenging the County water and sewer plan in Court. It is fundamentally unfair for People's Counsel now to tell the Petitioners, who have waited for two years to get this far, that this Board cannot grant the requested relief after all and that they must go back to Court without a hearing. For the reasons stated

above, the Board should recognize that the inconsistency between the requested zoning and the County Plan for sewer and water should have no bearing upon the land use decision that the Board should make. In addition, the Board should rule that BCZ Regulations 1A03.A.1.a. and 1A03.2 are unconstitutional and have no application to the subject petition.

Respectfully submitted,

Charles F. Obrecht, Jr.
OBRECHT AND OBRECHT
906 Munsey Building
Baltimore, Maryland 21202
Phone: 685-6938
Attorney for Petitioners

CERTIFICATION OF SERVICE

WE HEREBY CERTIFY that on this 14th day of April, 1983, a copy of the foregoing Memorandum of Law was mailed, postage prepaid, to Peter Max Zimmerman, Esquire, 507 Alex Brown Building, 102 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for People's Counsel and David J. Preller, Jr., Esquire, Suite 200, 15 Charles Plaza, Baltimore, Maryland 21201, Attorney for Dulaney Gate.

Charles F. Obrecht, Jr.
Attorney for Petitioners

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Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 229, COURT HOUSE
TOWSON, MARYLAND 21204

TEL. 484-2100

JOHN W. NEWMAN, III
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

April 22, 1983

The Honorable
William T. Hackett, Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: D & R Joint Venture, et al
#R-83-159 (Item 12, Cycle IV)

Dear Mr. Hackett:

In reply to the Petitioners' Memorandum of Law, the following points should be considered:

1. Master Plan Consistency. The Petitioners have ignored Section 523 of the Baltimore County Charter and the case law pertaining to enacted master plans. Their idea that the Master Water and Sewer Plan is dependent upon zoning puts the cart before the horse and certainly is not supported by any provisions of the Health-Environmental Article of the Maryland Code. (Memorandum Pages 6-9)

Their discussion of the Basic Services Maps is also irrelevant. (Memorandum Pages 9-11) These maps function to defer development pending provision of adequate facilities. They supplement the Master Plan and Comprehensive Zoning Map and constitute a separate part of the County program for growth management. The law does in fact allow a property owner to petition for amendment of a basic services map, but that in any event is not at issue here. BCZR 4A02.3 (Bill 178-79, as amended, Bill 186-81)

Petitioners cite the Pinker case, but that is not in point. On April 14, 1983, the Court of Special Appeals heard oral argument, and a decision can be expected within the next four to six weeks. We will forward it to the County Board of Appeals as soon as it is received.

2. Constitutionality of BCZR 1A03.2. This issue was not included as part of the pre-hearing review, but we nevertheless will address it now. Unlike BCZR 1A03A, 1a, this provision does not purport to avoid the jurisdiction of the County

The Honorable
William T. Hackett, Chairman
County Board of Appeals

April 22, 1983

Board of Appeals. Rather, it defines substantive requirements which are applied by the Board. They do no violence to the holding of Hope v. Baltimore County that the Board should not be bypassed.

The provision in question has already been applied by the Board without difficulty in reclassification cases. There is no conflict with the original jurisdiction over reclassification petitions. Indeed, the application of BCZR Section 1A03.2 is well within the usual province of the administrative body. It has the established effect of requiring the Board to deny on the merits so much of a petition for reclassification of an R.C. 4 zone to other than R.C. which fails to meet its substantive requirements.

3. Fairness. The Petitioners acknowledge at page 13 that their "position in favor of the Board having the power to grant the requested relief" is "a contrary position" from the position they took in the Circuit Court. At the same time, Petitioners claim it to be "fundamentally unfair" for People's Counsel now to say that the Board "cannot grant the requested relief after all and that they must go back to court without a hearing."

Unfortunately, the Petitioners have misunderstood the position of the People's Counsel. This office has readily maintained that the Board of Appeals has the power, indeed the sole and original power, to grant zoning relief in Baltimore County in this or any other case of request for change. Clearly, the Circuit Court was right to reject the request that the court assume original jurisdiction over a zoning reclassification controversy.

The question presented now goes to the merits of the pending reclassification. In this context, upon the stipulation of fact, it appears that the Master Plan consistency requirement should cause the petition to be denied on the merits. The Petitioners have not pointed to any fact to be presented at an evidentiary hearing which would overcome the Master Plan problem. Otherwise stated, while the Board could certainly go ahead with an evidentiary hearing, the facts presented so far indicate that the conclusion should be to deny the petition.

The Petitioners also apparently complain that the People's Counsel is unfair to suggest that they might seek a change in the Master Plan in order to support their zoning request. The Petitioners failed to seek direct judicial review of their Master Plan designation at the time the "no planned service" designation was placed on their property. At present, however, they have pending a request that the County Council amend the designation to allow for public water and sewer service.

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County Board of Appeals

April 22, 1983

The People's Counsel, in an effort to facilitate the processing of this petition and review of this case, has suggested that the Petitioners might wish to follow through on the request for Plan amendment in order to solve this specific problem and better their chances of a favorable decision. If the Petitioners choose not to wait for the outcome of their Plan amendment request, the Board can certainly decide the pending case on its merits.

The Board of Appeals has resolved Master Plan issues in a number of recent cases. It appears to the People's Counsel simply that the facts here would call for a denial on the merits, whether now or at the end of a lengthy hearing, because of the apparent inconsistency.

4. The Last Word. Everyone agrees that the Board of Appeals has jurisdiction and is competent to decide the substantive merits of this case. It is no different in most respects from every other reclassification petition to come before the Board in the ordinary course of business.

To be sure, this case does feature the rather obvious problem of conflict between the requested zoning and the duly enacted Master Plan of Baltimore County. As a result of this conflict, the petition ought to be denied. It seems reasonable to this office that it be denied now. Undertaking a more extensive hearing would occupy the record with evidence which would not affect the outcome and, therefore, would just be a waste of time. The Master Plan problem would not disappear and would require the Board to deny this petition, whether the hearing lasts fifteen minutes or fifteen days.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

cc: Charles F. Obrecht, Jr., Esquire
David J. Preller, Jr., Esquire

PMZ:sh

LAW OFFICES OBRECHT AND OBRECHT

906 MUNSEY BUILDING
BALTIMORE, MD 21202

CHARLES F. OBRECHT, JR.
GEORGE F. OBRECHT, III

April 28, 1983

AREA CODE 301
685-6938

The Honorable
William T. Hackett, Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21202

RE: D & R Joint Venture, et al
#R-83-159 (Item 12, Cycle 4)

Dear Mr. Hackett:

I want to set forth a few points for the Board to consider in response to People's Counsel's Hearing Memorandum filed in the captioned case.

1. People's Counsel has missed the point of the Petitioner's claim. Petitioners do not doubt that Master Plan consistency is a consideration in a reclassification case and the Petitioners will show that the current zoning is in fact not consistent with the purported Master Plan as enacted by Bill No. 71 - 79. Even assuming, as alleged by the People's Counsel that the Sewer and Water planning is "supplementary to" and is to be "in conformity with", the Master Plan, the People's Counsel does not mention the extent of this Board's power to change the zoning where sewer and water planning is inconsistent with the enacted Master Plan, but consistent with erroneous comprehensive zoning.

The situation in this case is as follows:

- (a) Erroneous zoning to RC4 & RCS in 1980. (assumed for purposes of the issue presented)
- (b) Such zoning was inconsistent with the Master Plan as enacted by Bill No. 71 - 79. (a fact assumed for purposes here out subject to proof on the merits.)
- (c) Such downzoning was inconsistent with the then W - 1, S - 3 water and sewer plan designation.
- (d) In January, 1982, the water and sewer plan designations were changed to "no planned service" (W - 7, S - 7).
- (e) Such W - 7, S - 7 designations were inconsistent with the Master Plan as enacted by Bill No. 71 - 79, but consistent with the new but erroneous RC4 and RCS zoning.

effort to be heard after almost 2 years of delay, maintained their position that the two regulations and Section 2-58.1j of the Code prohibited the Board from hearing and/or granting the relief sought.

It has subsequently been generally agreed, however, that BCZR 1A00.3.A.1.a. does in fact violate the Charter by prohibiting even the filing of a Petition in a situation such as the Petitioners' case and should therefore not be applied to the Petitioners. Similarly, the Petitioners believe that BCZR 1A03.2, which prohibits any reclassification of 45 acres of their property, likewise violates the Charter and should likewise not be applied to the Petitioners in the instant case.

On February 8, 1983, a pre-hearing conference was held (among Chairman Hackett, Peoples Counsel, and Petitioners counsel) during which it was agreed that the Petitioners, this Board and other parties should not be required to proceed to present the entire five day case to the Board if the result would be only the Board's ruling that it could not grant any relief as a matter of law, regardless of the merits of Petitioners case. It was therefore agreed to present to the Board, for preliminary determination, the issue of whether the Board had the authority to grant the relief requested assuming the Petitioners had the necessary proof of error to support their requested reclassification. As to the regulation prohibiting rezoning of 45 acres covered by BCZR 1A03.2, the Petitioners agreed to present that issue at the hearing on the merits now scheduled for July, 1983. The Petitioner, however, saw no purpose in delaying such determination, and prior to the hearing, they requested leave to present that additional issue at the preliminary hearing.

On March 15, 1983 a hearing before the Board of Appeals was held and the issue of the authority of the Board to grant the requested reclassification under Code Section 2-58.1j and BCZR 1A03.2 was

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Board of Appeals in areas where adequate public facilities are available, must come first and the County Plan designations later. To understand the reasons for this, it is necessary to set forth the reasons for, the nature of, and the law relative to, the County Plan for sewer and water.

Section 9-502 of the Health-Environmental Article (HE) of the Annotated Code of Maryland requires the County to adopt a County plan dealing with water and sewer systems. Such plan must be submitted to the Secretary of the Department of Health and Mental Hygiene. Under HE 99-504 the County Plan must delineate those areas of the County where community water and sewer systems must be provided, where multi-use systems may be installed, and where individual systems may be installed and used during an interim period pending availability of programmed systems.

The County Plan, under HE 99-505 must provide for the "orderly expansion and extension of community and multiuse (water and sewer) systems, ... in a manner consistent with all applicable county and local comprehensive land use plans ..." (Emphasis added)

The Plan likewise must provide for adequate sewerage treatment facilities to prevent the discharge of inadequately treated sewerage into any water or otherwise provide for safe and sanitary treatment of sewerage. (HE 99-505).

The State Department of Health & Mental Hygiene is, by HE 99-506, authorized to promulgate Rules and Regulations to, among other things

"(1) provide for control, limitation, or prohibition of installing or using individual or community water supply or sewerage systems. ...

"(4) Require consideration of the present and future density of population, size of lots, contour of the land, porosity and absorbency of

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presented. This Memorandum of Law is filed in accordance with the request of the Board for such memoranda from all parties.

Statement Of Facts

The Petitioners own 115 acres of land at Old Bosley and Pot Spring Roads. Until 1980 the property was zoned DR-1 or the equivalent. It borders on the Loch Raven Reservoir property line and a stream runs through the property south of Old Bosley Road. 45 acres of the subject property lies within 300 feet of the stream and 200 feet of the Loch Raven Reservoir property line. Adequate public water and sewer facilities are physically available adjacent to the property and these facilities serve the neighboring developments of Dulaney Gate, Springdale, the Topfield Apartments, Stella Maris, Topfield Townhouses and others.

In 1980 when the property was downzoned to RC4 and RC5, the County Water and Sewer plan designated this property for immediate priority for water service and 3 - 5 year priority for sewer service. Apparently, to make the County Water and Sewer Plan consistent with the new RC zoning of the property the County Council amended the plan in January of 1982 and designated this property for "no planned service". Thus, the requested DR3.5 zoning would be inconsistent with the County Plan as it now exists.

Questions Presented

1. Assuming that the last classification of the property was established in error, and assuming that the requested zoning is warranted by that error, and assuming all other considerations for finding that such reclassification is warranted favor such a finding, is the Board of Appeals barred from granting the requested zoning solely on the grounds that requested zoning is inconsistent with the County's plan for sewerage and water supply?

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the soil, ground water conditions and variations in ground water conditions ... including availability of water from unpolluted aquifers, type of construction of community water supply and sewerage systems, size of proposed development, and other pertinent factors:

(5) Require the installation of community water supply, sewerage, or solid waste disposal systems, and the connection of all premises to them or the service of all premises by them if the systems are reasonably necessary giving due consideration to the factors set forth in item (4) of this section and these systems shall be designed to permit connection to a larger system when the larger system becomes available;

(6) Permit individual water supply and sewerage system in areas where community water or sewerage systems are neither available nor required to be installed under item (5) of this section provided that:

(i) The individual water supply or sewerage systems are found by the department to be adequate and safe for use during the period before a community water supply or sewerage system is scheduled to become available;

(ii) Adequate provisions are made prior to or at the time of the installation of the individual systems to permit the discontinuance of their use and the connection of the premises served by them to the community water supply or sewerage system, in as economical and convenient a way as can be foreseen ... (Emphasis added)

Pursuant to such power to promulgate rules and regulations, the Department has provided, by Regulation 10.03.26, that no individual water or sewer system will be allowed in areas where:

(1) existing community systems are adequate.
(2) where such systems are under construction or in final planning stage..
(3) where such improvements are given immediate priority.

With the provisions of Code Section 2-58.1j, and the quoted state law and regulations in mind, and with the knowledge that adequate public water and sewer systems are physically available at the subject property, it becomes clear that individual wells and septic systems should not be permitted on that site. As is stated

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11. Is BCZR 1A03.2 unconstitutional where it summarily prohibits the Board of Appeals from granting any DR classification of Petitioners' 45 acres of land and thus prevents the Petitioners from even regaining the prior DR classification for such 45 acres of land?

1. ASSUMING THAT THE LAST CLASSIFICATION OF THE PROPERTY WAS ESTABLISHED IN ERROR, AND ASSUMING THAT THE REQUESTED ZONING IS WARRANTED BY THAT ERROR, AND ASSUMING ALL OTHER CONSIDERATIONS FOR FINDING THAT SUCH RECLASSIFICATION IS WARRANTED FAVOR SUCH A FINDING, THE BOARD OF APPEALS IS NOT BARRED FROM GRANTING THE REQUESTED ZONING SOLELY ON THE GROUNDS THAT THE REQUESTED ZONING IS INCONSISTENT WITH THE COUNTY'S PLAN FOR SEWERAGE AND WATER SUPPLY.

Section 2-58.1.j. of the County Code provides in pertinent part as follows:

"Before any property is reclassified pursuant to this section, the board of appeals must find (1) ... that the last classification of the property was established in error; and (2) that the prospective reclassification of the property is warranted by that ... error. Any finding of such ... error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulation and maps, including, but not limited to, all of the following: population trends; availability and adequacy of present and proposed transportation facilities; water supply facilities; sewerage, solid-waste-disposal facilities; schools; recreational facilities; and other public facilities; compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water supply facilities, and the capital program." (Emphasis added)

The issue in this case is whether the known inconsistency between the requested DR3.5 zoning and the county plan, standing alone, bars the Board from granting the requested zoning under Code section 2-58.1.j. The Petitioners assert that it does not for two reasons. First, Section 2-58.1.j. contains no requirement that the Board must find that each listed subject of consideration must have a positive impact on whether the requested zoning is warranted by the error that

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at page 24 of the Land Use Element of the Master Plan, in order to limit pollution of the scarce public water supply, very low densities and intensity of use should be permitted in areas which drain into reservoirs. "except where public sewer and public water are to be supplied". The hang up in this case is the County Plan which, because most of the property was downzoned to RC4, (Watershed Protection) designates the property in a "no planned service" area notwithstanding the availability of public utilities. That designation is consistent with RC zoning, which we have assumed was erroneous, and it allows the use of individual wells and septic systems in an environmentally sensitive area where adequate public systems are physically available for use. It is precisely upon this point that Petitioners base one of their claims of error.

The County Plan can be amended, but only by the County Council under BCZR 4A02.3.E.3. (Bill No. 178-79). The County Council can amend the maps in case of error upon consideration:

"of the purposes of the zoning regulations and maps, including factors set forth in subsection 2-40.1(5) [now 2-58.1.j.] (Council Bill 46-79)" (Emphasis added)

Interestingly, the County Council can change the maps upon consideration of the same elements as the Board must consider in changing zoning. That is, if this Board changes the zoning the County plan will then become inconsistent with such zoning and the County council will have reason to change the County Plan under Code section 2-58.1.j. and BCZR 4A02.3.E.3.

It follows that it is the zoning or land use decision which must come first; the water and sewer plan is then changed accordingly. This conclusion is further supported by BCZR 4A02.1 which provides, in part:

"Basic service maps are hereby established to regulate nonindustrial development in those

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we have assumed exists in this case. An interpretation to that effect would result in the Board having literally no power to grant any reclassification because it would be a rare case indeed where all such considerations would simultaneously have a positive effect in a particular case. For example, if all such considerations must be positive, the County Planning Board or the Office of Planning and Zoning would be in a position to block each and every Petition For Reclassification. If that were the case, there would be no need for a Board of Appeals.

This Board must consider pertinent recommendations of the Planning Board and the Office of Planning and Zoning, but may nevertheless grant a reclassification even where such recommendations are unfavorable. See Case No. R-82-73 Petition For Reclassification Of The Property Of Lawrence D. Pinkner, M.D., et al. before the Board of Appeals. That Petitioner requested BR zoning for property which had been downzoned to RC4. The Planning Staff recommended against the new zoning and the Board of Appeals agreed. On appeal to the Circuit Court, however, Misc. No. 14/8/82-M-3 the Court reversed the decision of the Board, holding that the Board was erroneous in its interpretation of the law and the facts. The point is, no one consideration with a negative impact on the question of whether requested zoning is warranted can bar the Board's power to grant such requested zoning.

The second reason for the Petitioner's assertion that the known inconsistency between the requested zoning and the County plan does not bar the Board's power in this case is that the County plan designation for sewer and water service is dependent upon the zoning, and such designations, in areas where adequate facilities are available, are changed to become consistent with the zoning and not vice versa. That is, zoning, either by the County Council or by the

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underserved areas to a degree commensurate with the availability of these facilities. Basic service maps are not permanent, and will be reviewed annually with reports to the County Council." (Emphasis added)

Zoning is not limited by the basic service maps. Once a land use decision is made, either by the Council or this Board, the Basic service maps are to be amended accordingly. The Board is given the authority to make land use decisions under Code section 2-58.1.j. and Charter Section 802. If that power were to be limited by Basic Service map designations, then the County Council could simply zone by use of the Basic Service Maps and the Board of Appeals would be powerless to change the zoning. Such a situation would violate the County Charter provision giving this Board all power and authority to change zoning under state and county law. As was said in District Land Corporation v. WSSC, 266 Md. 301, 292 A.2d 695 (1972) when it dealt with former Article 41 section 307 C (now HE 99-501 et seq), such provisions do not "confer power upon the County Council to deny sewer service where the sewer has already been constructed". As was also said by the Court in Kanfer v. Montgomery County, 55 Md. App. 715, 373 A.2d 5 (1977) when it upheld a reclassification of zoning:

"... the facts here do not present a case where rezoning would necessitate extension of sewerage and other public facilities into altogether undeveloped areas. This is not a case where denial of rezoning might be justified on the grounds of public expense." [citations omitted]

There is no provision in the law for the Petitioners here to seek a change in the Basic Service Maps. In fact, they have no standing to do so. See Smoke Rise, Inc. v. WSSC, 400 F. Supp. 1369 (1975). There are, however, provisions to change the zoning of the property by way of the Board of Appeals. See Article 25 A Section 5(u) of the Annotated Code of Maryland and Section 802 of the Baltimore County Charter. The Peoples Counsel argued that the Petitioners must proceed in Court to challenge the Basic Service Maps, and then,

-10-

The Petition filed requested a reclassification to DR3.5. On November 19, 1982, Judge Langrall heard legal argument regarding the issues of the Petitioners' lack of administrative remedy resulting from the regulations and Code section previously mentioned. Without ruling on the effect of these laws, Judge Langrall again stayed the Court's jurisdiction to allow the Petition to be heard before the Board of Appeals. At that Court hearing, the Petitioners, in their

9. No water well shall be located within 10 ft. of any property line, easement, right-of-way, etc.
10. Abandonment of private water and sewerage system
- a. When public water is extended to an area, all improved properties must make connection. All new lots must be connected and bear like with clean earth. If a property owner desires to use a drilled well for lawn sprinkling, he may do so provided it is a potable supply and protected from all source of pollution.
- b. Spring supplies are not desirable and should be abandoned, however, it may be used for other purposes other than drinking providing it is protected from all source of pollution.
- c. Under no circumstances shall a private water supply be re-connected to a public supply.
- D. Well water in water/heat pump systems

The fact that water withdrawn from underground aquifer is relatively constant in temperature makes it desirable as an energy source. This can be accomplished through the use of Water/Air Heat Pump systems. In recognition of the need for alternative energy sources, the decision has been made by the Baltimore County Department of Health to allow the use of such systems. However, preservation of groundwater quality and quantity, bacteriologically, chemically and thermally is mandated by its present and future use as a drinking water supply.

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204
DONALD I ROOP M.D. M.P.H.
DEPUTY STATE & COUNTY HEALTH OFFICER

March 10, 1983

The Honorable William T. Hackett
Chairman, Baltimore County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: D & R Joint Venture, et al.,
Petitioners
Zoning Case # R-83-189

Dear Chairman Hackett:

The Bureau of Environmental Services has had occasion to review the referenced matter with regard to its existing policy where an unspecified D.R. zoning reclassification would be granted in a no planned water and sewer service area. Use of the reclassified area would be subject to State Regulations concerning individual water supply and sewage disposal systems for homes where public water supply and sewerage systems are not available, under COMAR 10.17.02 and COMAR 10.17.03 and subject to the Bureau's Policy Manual, relevant parts of which are attached. The Bureau is responsible for enforcing the beforementioned State Regulations.

Further, if rezoning is allowed, use of the property is subject to a Hydrogeologic Study and an Environmental Effects Report, as provided by Section 22-55 (B) (9) of the Subdivision Regulations and Section 34-1 of the Baltimore County Code.

Very truly yours,

Ian J. Forrest, Director
Bureau of Environmental Services

IJF:mh

Attachment

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

March 11, 1983

Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, Maryland 21202

Re: Petition for Reclassification
SE/corner of Pot Spring & Old Bosley Roads
D & R Joint Venture - Petitioners
Case No. R-83-189 Cycle IV - Item #12

Dear Mr. Obrecht:

This is to advise you that \$373.66 is due for advertising and posting of the above property.

Please make the check payable to Baltimore County, Maryland, and remit to Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,

WILLIAM E. HAMMOND
Commissioner

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

No. 117641

DATE 3/27/83 ACCOUNT R-83-189-008

AMOUNT \$373.66

RECEIVED Charles F. Obrecht, Jr., Esquire
FROM: Advertising & Posting Case R-83-189

125-00003736612 8102A

VALIDATION OR SIGNATURE OF CASHIER

February 15, 1983

Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, Maryland 21202

NOTICE OF HEARING

Re: Petition for Reclassification
SE/corner of Pot Spring & Old Bosley Roads
D & R Joint Venture - Petitioners
Case No. R-83-189 Cycle IV - Item #12

TIME: 10:00 A.M.

DATE: Tuesday, March 15, 1983

PLACE: Room 218, Courthouse, Towson, Maryland

cc: Springdale Community Association
c/o Merrill J. Frank, President
P. O. Box 194
Cockeysville, Maryland 21030

Springlake Association
c/o Jeanette Lagorio, President
2519 Girdwood Road
Timonium, Maryland 21093

Dulaney Gate Community Association, Inc.
c/o William D. Savitsky, Secretary
4 Dulaney Gate Court
Cockeysville, Maryland 21030

Spring Valley Garden Club
c/o 910 Coteswood Circle
Cockeysville, Maryland 21030

People's Counsel

William T. Hackett
Chairman
County Board of Appeals

February 15, 1983

Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, Maryland 21202

NOTICE OF HEARING

Re: Petition for Reclassification
SE/corner of Pot Spring & Old Bosley Roads
D & R Joint Venture - Petitioners
Case No. R-83-189 Cycle IV - Item #12

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Cockeysville, Maryland 21030

Spring Valley Garden Club
c/o 910 Coteswood Circle
Cockeysville, Maryland 21030

People's Counsel

William T. Hackett
Chairman
County Board of Appeals

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS
FROM R.C. 4 AND R.C. 5 TO
D.R. 3.5 ZONE, SE Corner
Pot Spring Rd. and Old Bosley Rd.,
Cth District

D & R JOINT VENTURE, et al., : Case No. R-83-189 (Item 12, Cycle IV)
Petitioners

HEARING MEMORANDUM

At the request of the County Board of Appeals, People's Counsel for Baltimore County files this Memorandum.

I. An Enacted Master Plan

Prior to 1978, there was no legal provision in Baltimore County for a Master Plan adopted by the legislature. In this context, the "comprehensive plan" then existing, was approved by the Baltimore County Planning Board and was a guide in the comprehensive zoning process. Nottingham v. Baltimore County, 266 Md. 339 (1972); Chapman v. Montgomery County, 259 Md. 641 (1970); and Pattay v. Board of Commissioners for Worcester County, 271 Md. 352 (1974).

In 1973, following recommendation of a duly constituted charter revision commission, the County Council approved, and the electorate adopted new Section 523 of the Baltimore County Charter. This provided for the first time that the County Council would adopt a written Master Plan, and that the zoning maps should be "consistent with the master plan." (Bill No. 83-73)

A new attitude toward the legal significance of the Master Plan developed also through a series of court decisions. Gaster v. Board of County Commissioners of Cecil County, 285 Md. 233 (1979); Coffey v. Md. Nat'l Cap. P. & P. Comm., 293 Md. 24 (1982); and Md. Nat'l Cap. P. & P. Comm. v. Washington Business Park Assoc., 294 Md. 302 (1982). All acknowledged the position of priority of master plans bearing the legislative imprimatur.

- 2 -

To be sure, these cases all presented questions going to the consistency of subdivision plans with the master plan rather than a direct confrontation with the zoning map. In this context, Judge Smith suggested that such a confrontation might be treated differently:

"Given those facts we believe the Commission should have an opportunity to address the issue here with knowledge of the fact that in Coffey we have held that when the Prince George's County subdivision regulations require that a subdivision plan comply with a master plan, that plan is not considered a mere guidepost or set of recommendations as in zoning matters." Washington Business Park, supra, 294 Md., at 316.

This dictum does not, however, lead to the conclusion that the Master Plan in Baltimore County remains as a mere guide in zoning matters. Judge Smith was not faced with a provision similar to Section 523 of the Baltimore County Charter.

Accordingly, it is submitted that the plain language of the Baltimore County Charter together with the reasoning of the Court of Appeals in the recent master plan cases, calls for a new interpretation of the legal significance of the Master Plan in Baltimore County. The key to this interpretation is the requirement of consistency. Courts generally have held the word "consistent" to mean "not contradictory, compatible, accordant, harmonious, congruous, and compatible." Ryan v. Roach Drug Co., 239 P. 912; Baldwin-Hatch v. Kammerlahr, 242 N.W. 661. The New York court in Vischer v. Hudson River R. Co., N.Y., 15 Barb. 37, formulated this test:

"Can the requirements of both the charter and the general act be followed out and complied with in one case?"

In other cases involving charter and constitutional provisions and consistency requirements, such definitions as "subject to, restrained by, and not hostile to" have been implied. City of Wewoka v. Kodman, 46 P.2d 334; State v. Superior Court for Spokane County, 126 P. 920. The only pertinent Maryland case which our research has disclosed is Snyder v. Greenbaum and Assoc., 38 Md. App. 144 (1977). There, the word "inconsistency" as used in the Uniform Commercial Code was held to mean "absence of reasonable harmony."

- 3 -

II. The Master Water and Sewerage Plan - A Part of the Master Plan

The Baltimore County Master Plan 1979-90 was adopted in Resolution No. 71-79 on November 19, 1979 (copy attached). The resolution provided for an ongoing process including water and sewer planning supplementary to and in conformity with the Master Plan, with the intention that such plans as amended from time to time shall be incorporated in the Master Plan by reference. Chapter II of the Baltimore County Water and Sewerage Plan confirms its integral relationship to the Master Plan. Accordingly, zoning must be consistent with the Water and Sewerage Plan.

In the zoning regulations process, the County Council has further provided for consideration of "consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program." Baltimore County Code Section 2-58.1(i). In this respect, the Code parallels the Charter. The County Board of Appeals is compelled by law, therefore, to render a decision which is in reasonable harmony with and not hostile to the intent of the provisions of the Water and Sewerage Plan.

III. An Apparent Inconsistency between Zoning Proposed by Petitioners and the Water and Sewerage Plan

It is undisputed that the County Water and Sewerage Plan places Petitioners' property in a "no planned service" (NPS) category. The Water and Sewerage Plan designations for no planned service, W-7 and S-7, are defined as appertinent to:

"Areas of planned low-density growth (Resource Conservation Zoning) for which Metropolitan facilities extensions are not planned or intended."

(See copy attached.) The County Council has reinforced these designations by providing that the reclassification of an R.C. zone to other than an R.C. zone involves a showing that the property is to be serviced by public water and sewer within two years. BCZR Section 1A00.3A1.a. The apparent result is that a reclassification of the Petitioners' property to other than an R.C. zone would be inconsistent with the Master Plan.

ERROR

The downzoning of the Jones tract was accomplished in error and the reclassification proposed is warranted by that error all because:

1. The purpose of RC4 zoning, i.e. the protection of the watershed is in fact defeated where development under higher densities using public facilities will actually decrease pollutants running off of the property and into the Loch Raven Reservoir.
2. The downzoning is incompatible with the professed goals of the County for fringe development areas and it instead attempts to restrict this property as a rural area even though public utilities with excess capacity are available at the site, also adequate transportation, solid-waste-disposal facilities, schools and recreational facilities are available. Development under DR3.5 zoning is compatible with the present and projected development and character of the surrounding area; and it is consistent with the current portion of the Master Plan purportedly passed by the County Council, as that plan relates to fringe development areas.
3. The downzoning was discriminatory in that it singled out the Jones tract to bear a disproportionate economic burden of purportedly protecting the watershed (which it does not) as evidenced by the fact that 40 acres of Stella Maris's nearby property was upzoned to allow densities of more than 3 times the density here requested. That is, Stella Maris has 40 acres of DR10.5 plus 30 acres of DR1 zoning which allows a total density on the 40 acre tract of 11.5 units per acre. There was and is no rational basis for which the subject property was downzoned while the Stella Maris property was upzoned.
4. The downzoning deprives the owners of all reasonable use of the property and was arbitrary, unreasonable, capricious, and confiscatory. It bears no real and substantial relationship

-2-

to the public's health, comfort, order, safety, convenience, morals and general welfare and it does not guide or accomplish a coordinated, adjusted and harmonious development of the property which maintains property values previously established.

5. The County Council failed to take into account the then existing facts, as herein set forth, such that its action was based upon misapprehension. The County Council also failed to take into account the then existing projects or trends which were reasonably foreseeable of fruition in the future.

SUMMARY

For the foregoing reasons the owners request reclassification of the subject property to DR3.5 zoning.

Charles F. Obrecht, Jr.
OBRECHT AND OBRECHT
906 Monsey Building
Baltimore, Maryland 21202
Phone: 685-6938
Attorney for Petitioners

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

107834

DATE 4/17/72

AMOUNT 31-442

52.00

FOR Cash on Hand

PAID TO 429

BY 8 P. [Signature]

VALIDATION OR SIGNATURE OF CASHIER

-3-

BALTIMORE COUNTY DEPARTMENT OF HEALTH
BUREAU OF ENVIRONMENTAL SERVICES
POLICY MANUAL

This manual outlines the policies followed by the Bureau to enforce the various State and local laws and regulations under which it functions.

A. Policies relating to public swimming pools.

1. Whenever a pool becomes prejudicial to the health of people, the Health Department shall order the pool closed until all necessary corrections are made.

B. Private Sewage Disposal

1. For tile field systems, soil tests must be conducted at a depth of three feet, and a pit must be excavated to a total depth of seven feet for observation.
2. A tile field system shall not be deeper than three feet below the ground surface.
3. If a tile field system is proposed, an area of 50 feet from the dripline of the trees shall be cleared.
4. For seepage pit systems, soil tests must be conducted at a depth of six feet, and a pit must be excavated to a minimum depth of 16 feet for observation.

-2-

5. Additional tests may be required if rock or ground water are encountered which may interfere with the installation of a disposal system as 10,000 sq. ft. of usable area are required for the initial system and area for expansion. The system shall be constructed a minimum of four feet above ground water or rock.
6. A minimum of two tests shall be conducted on each lot within the 10,000 sq. ft. area - one on the high side and one on the low side of the disposal system area.
7. Special precaution must be taken to protect water wells where percolation drawdowns are less than two minutes.
8. No disposal system shall be closer than 100 feet of a stream.
9. No disposal system area shall be located within a 100 year flood plain.
10. There shall be a minimum of four vertical feet of effective area for seepage pit systems and a minimum of two vertical feet of effective area for tile fields.
11. No sewage ejection for pumping septic tank effluent will be permitted for new installations.

-3-

12. Due to seasonal change in the ground water table, soil tests are restricted to February 1st through April 30th in the coastal plain area. The coastal plain area is that area generally east of Pulaski Highway.
13. New construction or installation of privies in Baltimore County is prohibited except for temporary use as determined by the approving authority.
14. No part of a disposal system or area for expansion shall be located within ten feet of any easement, right-of-way, etc.
15. The top of the septic tank shall not be deeper than 18 inches below grade. This is to facilitate maintenance.
16. Soil evaluations results are valid for three years after which they become void without notice. New soil evaluations are then required. Additional tests may not be necessary if it is determined that adequate information is available.
17. All subdivisions and individual lots recorded prior to March 3, 1972, must comply with the following requirements:
 - a. A minimum of 5,000 sq. ft. of usable area will be required.

-4-

- b. Where water wells are involved, they shall be a minimum of 100 ft. from any disposal system and areas for expansion. Wells must be 100 ft. apart and a minimum of 40 ft. from buildings.
 - c. The percolation drawdown rate must be within two to six minute range.
 - d. All lots will be processed on an individual basis to determine if sewage disposal systems and/or water wells can be installed in accordance with good engineering practices.
 - e. When, upon review of the application, the Approving Authority is satisfied that the proposed design is adequate, approval will be granted for construction of a private sewage disposal system.
 - f. When, upon review of the application, the Approving Authority is convinced that the proposal design is inadequate, or soil and geological conditions are such as to preclude safe and proper operation of the desired installation(s), the lot will be disapproved.
18. All subdivisions and individual lots recorded after March 3, 1972, must comply with the 10,000 sq. ft. requirement for the installation of private sewage disposal systems.

-5-

3. Private Water Supply

1. All well locations shall be approved by the Approving Authority prior to drilling. Wells must produce potable water and meet the specifications and yield requirements of the Department of Natural Resources and/or Baltimore County Department of Health prior to sale of any lot in Baltimore County requiring a private water supply or the approval of a Building Permit.
2. Wells must be drilled a minimum depth of 100 ft. in the Piedmont area, west of the fall line. East of the fall line may be less.
3. Yield Test
 - a. All wells drilled for domestic use shall be tested for yield as provided below:
 1. The pump and related equipment shall be placed in the well and the static water level measurement recorded.
 2. Pumping shall begin at a high rate of withdraw (+ 8gpm) until the water level drops to a point, close to the bottom of the well.
 3. When the water level reaches this point the pump rate shall be adjusted so that the water level remains constant (i.e., pumping out any water which is flowing into the well).

-6-

4. The pump rate and water level should be checked every fifteen minutes and recorded.
- b. The criteria for approval shall be a minimum yield of one gallon per minute for six hours continuous pumping after the well has been pumped out as provided in a.2., above.
- c. As some wells may exceed the minimum standard, the pump test can be terminated early as provided below:
 1. Any well which cannot be pumped out after 3 hours pumping at a high rate as provided in a.2., will be considered acceptable.
 2. Any well which yields an average of 4 gallons per minute or greater for 3 hours continuous pumping, after the well has been pumped out as provided in a.2., will be considered acceptable.
4. Wells must be a minimum of 100 ft. from any source or potential source of pollution.
5. Wells must be 100 ft. or more apart.
6. Wells must be at least 40 ft. from any building.
7. Non-productive wells must be backfilled with concrete, or neat cement to a minimum depth of 75 ft. and/or to the collar of the well if less than 75 ft.
8. Backfilled water wells must be a minimum of 50 ft. from any part of a sewage disposal system or area for expansion.

This description has been prepared by means of various deed and plats, with bearings adjusted to current Baltimore County Metropolitan District datum, and is to be used for zoning purposes only, and does not represent a field survey.



Richard B. Williams, President
Wayne E. Maisenholder
Land Surveyor

(301) 828-0727

May 28, 1982
June 9, 1982 (revised date)

Description to Accompany Zoning
Petition for Reclassification from
Existing RC-4 Zone & RC-5 Zone to
DR 3.5 Zone.

Isaac A. Jones Property
115.0 Acres - (By deed residue)

Beginning for the same at the intersection of the center lines of Old Bosley Road and Pot Spring Road, and running thence in or near the bed of Pot Spring Road the three following courses viz: (1) South 31°13'45" West 1089 feet, (2) South 9°02'30" East 561 feet and (3) South 12°02'30" East 495 feet, thence leaving said road and running with the outline, the five following courses viz: (4) North 63°50'50" East 984.58 feet, (5) South 65°48'55" East 907.5 feet, (6) South 12°27'30" East 163.2 feet, (7) North 77°02'30" East 119.74 feet, and (8) North 7°56'30" East 812.31 feet to a point on or near the center line of Old Bosley Road, running thence on or near the center line of said road, the five following courses viz: (9) South 36°22'30" East 96.24 feet, (10) South 48°46'30" East 116.13 feet, (11) South 41°38'30" East 201.47 feet, (12) South 14°08'30" East 205.05 feet and (13) South 40°53'30" East 155.13 feet, thence leaving said road and running with the outline (14) North 43°43'12" East 715.97 feet, thence continuing to bind on said outline, and binding or intending to bind along a part of the westerly boundary of the City of Baltimore Bureau of Water Supply Loch Raven Supply Property, the four following courses viz: (15) North 1°28'30" West 946.75 feet, (16) North 1°28'07" West 676.61 feet, (17)

ENCLOSURE COPY

Development Design Group, Ltd.

Riderwood Building
Suite 100
1107 Kenilworth Drive
Towson, Maryland 21204

North 37°39'15" East 1127.23 feet and (18) North 35°49'30" East 258.33 feet, running thence, leaving said Water Supply boundary, and continuing to bind on the outline, the six following courses viz: (19) South 39°26'30" West 1064 feet, (20) South 77°22'30" West 365.17 feet, (21) North 85°31'30" West 607.88 feet, (22) South 18°05'36" West 933.11 feet, (23) South 70°51'23" East 150.00 feet and (24) South 20°56'37" West 538.18 feet to a point on or near the center line of said Old Bosley Road, running thence on or near the center line of said road, the six following courses viz: (25) North 43°54'23" West 90.98 feet, (26) North 34°05'23" West 99.98 feet, (27) North 24°19'23" West 400.00 feet, (28) North 38°54'23" West 50.00 feet, (29) North 56°36'23" West 41.61 feet and (30) North 71°46'15" West 1052.60 feet to the place of beginning.

Containing 115.0 acres of land more or less. (By deed residue)

This description has been prepared by means of various deeds and plats, with bearings adjusted to current Baltimore County Metropolitan District Datum, and is to be used for zoning purposes only, and does not represent a field survey.



Development Design Group, Ltd.

Riderwood Building
Suite 100
1107 Kenilworth Drive
Towson, Maryland 21204

(301) 828-0727

June 2, 1982

Certification to accompany Zoning Petition
for reclassification of Property in an R.C. 4 zone
Within the Isaac A. Jones Property

Pursuant to section 1A03.2 (rezoning by petition, R.C. 4 zone) of the Baltimore County Zoning Regulations, this is to certify to the following:

- 1) That the parcel of land under petition lies at least 200 feet from the property line of any public water reservoir. That portion of said within the 200 foot restrictive area is indicated as Parcel 'B' as shown on the accompanying Zoning plat and a separate description of said Parcel 'B' is also enclosed (10.15 acres²).
- 2) There are no first or second order streams on the subject site that flow directly into a public reservoir.
- 3) A third order stream (Merryman Branch) flows through the subject site. A 300 foot restrictive area on either side of said stream has been established and is delineated on the accompanying Zoning plat as Parcel 'A', and a separate description of said Parcel 'A' is also enclosed (37.70 acres²).
- 4) Combined on site examination and comparison to the 200 scale photogrammetric topo maps indicate that no more than 30% of the parcel contains slopes of more than 20%.
- 5) That portion of the subject parcel which would within a 100 year flood plain would only occur within a part of Parcel 'A' (item 3 above).
- 6) After reviewing the environmental impact statement prepared by Rummel, Klepper & Kahl for this parcel, reclassification from R.C. 4 and R.C. 5 zones to DR 3.5 zone would require public water and sewer facilities, a much improved situation from acceptable septic systems and private water well permitted under current zoning. Based on current use of the parcel and on current permitted use, the water quality in the watershed and the reservoir would

tend to improve under DR 3.5 development. Additionally, should future development take place under the requested DR 3.5 zone, Stormwater Management facilities, properly designed, and subject to State and County approval, would tend to improve water quality in the watershed and the reservoir.

Wayne E. Maisenholder
Wayne E. Maisenholder
LS 10565



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Paul Solomon Date: July 27, 1982

FROM: Nicholas R. Comodari

SUBJECT: D & R Joint Venture Property
Ed/Cor. Pot Spring and Old Bosley Roads

Enclosed are an environmental impact statement and a statement in response to Section 1A03.2 of the zoning regulations. These documents were filed with this office because the above referenced property is proposed to be rezoned from an R.C. 4 and R.C. 5 zone to a D.R. 3.5 zone.

Please review these documents and submit written comments as soon as possible. Until I receive these comments, I will be unable to schedule this matter for a hearing.

Thank you for your anticipated cooperation.

Nicholas R. Comodari
Nicholas R. Comodari
Chairman
Zoning Plans Advisory Committee

ENCLOSURE

Enclosures

cc: Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, Maryland 21202

LAW OFFICES OBRECHT AND OBRECHT

906 MUNSEY BUILDING
BALTIMORE, MD. 21202

AREA CODE 301
882-6626

CHARLES F. OBRECHT, JR.
GEORGE F. OBRECHT, III

June 14, 1982

Mr. Norman Gerber
Director of Planning Department
of Baltimore County
County Courts Building
401 Bosley Avenue, Room 406
Towson, Maryland 21204

Dear Mr. Gerber:

I represent D & R Joint Venture and Isaac Jones with regard to their Petition For Reclassification of 115 acres of property at Pot Spring and Old Bosley Roads. A copy of the Petition filed today with the Board of Appeals is enclosed.

This case began in March of 1981 in the Circuit Court because of a regulation which prohibited us from filing with the Board of Appeals. The regulation prohibits the filing of petitions by all landowners which request reclassification from an RC zone to zones other than RC under certain circumstances present in this case. After many lengthy motions and memoranda had been filed, counsel for the parties, i.e. Mike MacMahon, Esquire for Baltimore County, Peter Max Zimmerman, Esquire, the Deputy Peoples Counsel and I, agreed, after consultation with Judge Alpert, to proceed to the Board of Appeals on certain issues with a provision for retention of jurisdiction by the Court. A Consent Decree to that effect was signed by Judge Alpert and all counsel on April 30, 1982. A copy of the Decree is attached for your easy reference.

Because of the long delay that my clients have experienced while attempting to solve some of the complex issues involved in this case, and because of the question as to whether certain regulations prohibited the Board from accepting this Petition, and others like it, the Petitioners believe that this is a case which merits exemption from the normal cycle under Section 2-58.1 of the Baltimore County Code.

On behalf of my clients therefore, I respectfully request the opportunity to present this issue to the Planning Board at the earliest possible time. I request that this Petition be certified by the Planning Board to the County Council as one on which early action is manifestly required in the public interest.

If further information is needed, I will be happy to supply it.

Sincerely yours,

Charles F. Obrecht, Jr.

CFO:ams
Enclosures

IN THE MATTER * BEFORE THE
OF * BOARD OF APPEALS
ISAAC JONES * OF
and * BALTIMORE COUNTY
D & R JOINT VENTURE *
Petitioners * Petition No.:

STATEMENT IN SUPPORT OF PETITION FOR RECLASSIFICATION

FACTUAL BACKGROUND

The property which is the subject of this Petition is 115 acres of land located east of the intersection of Old Bosley Road and Pot Spring Road in the Third Councilman's District. Until 1980, the property was zoned DR1. The neighborhood surrounding the property consists of single family dwellings, apartments, townhouses, the Stella Maris Retirement Home, an Elementary School and athletic playing fields. All development in the area has been accomplished in zones ranging from DR1 to DR10.5. In 1980, almost all property in neighborhood from the Loch Raven Reservoir to Pot Spring Road was downzoned to RC4, watershed protection. Public water and sewer lines are actually in the ground at or near the subject property and are readily extendable to the property.

In 1980, this property and the property of Stella Maris, both then zoned DR1 were the only properties with substantial acreage that remained undeveloped or without approved plans for development. During the County Council hearings in 1980, both Isaac Jones and Stella Maris requested higher density zoning. The Jones tract was downzoned, however, to RC4 and RC5, while 40 acres of Stella Maris property was upzoned to DR10.5, 30 acres remained at DR1 and the remainder was downzoned to RC4.

would add to the bacteriological and other pollution of the receiving waters. Use of individual wells poses the risk of contamination and of running dry. These problems are not associated with the use of public utilities.

FORMER ZONING DEVELOPMENT (DR1)

Development under the former DR1 zoning would require the utilization of available public sewer and water systems and storm water management practices. Although such practices would considerably reduce the pollutant discharges to Loch Raven reservoir to levels below that currently existing, the sewerage system cost of \$7,200 pro-rated to each dwelling unit would be prohibitive and not feasible.

PROPOSED ZONING DEVELOPMENT (DR2)

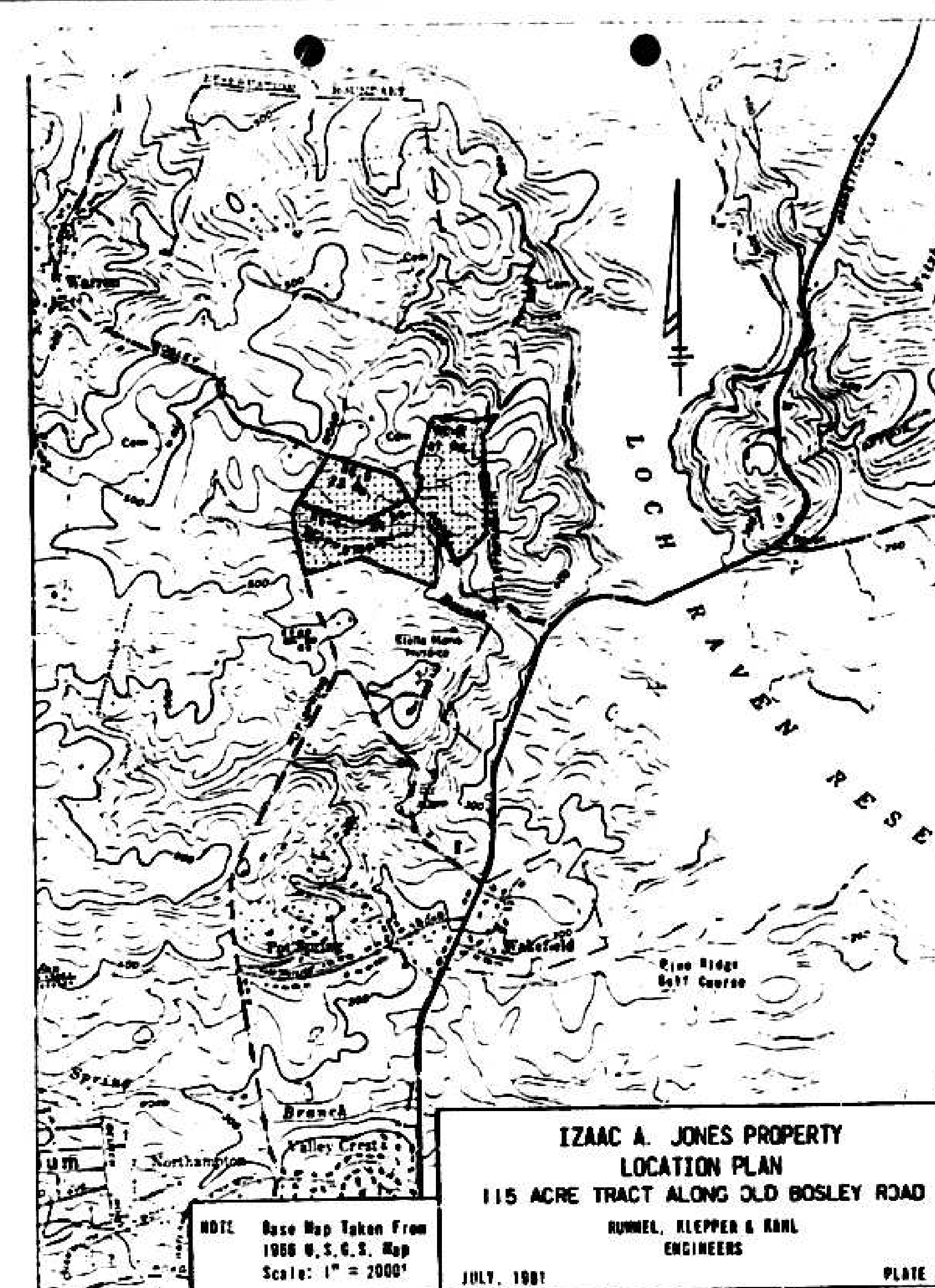
Development under DR2 zoning, which requires the use of available public utilities and storm water management will reduce the pollutant run-off from the site resulting in improved water quality of Loch Raven reservoir. A public sewerage system can be constructed for this site at the proposed zoning densities at a cost of \$4,200 per dwelling unit, only about 20% more than the total cost of such a system to serve the number of dwelling units allowed under DR1 zoning. Consequently development under DR2 zoning is economically feasible. Storm water management design in accordance with best management practices will reduce sedimentation and accompanying pollutant run-off, and a public sewerage system will eliminate the possibility of raw sewage discharges. The use of public water facilities will eliminate the potential problems associated with wells during periods of drought.

-10-

CONCLUSIONS

1. The pollutant run-off from agricultural uses of the Jones property has an adverse effect on the water quality of the Loch Raven reservoir which could increase with more intensive agricultural uses.
2. Development under current RC4 and RC5 zoning will introduce new elements of risks from failing septic tank systems, well contamination, and an increase in storm water run-off rates.
3. The results of this study show that development under DR2 zoning with the use of public utilities, soil erosion and sediment control, and storm water management design features conceptualized herein will actually reduce pollutant run-off from the site resulting in less adverse impact on the water quality of Loch Raven reservoir than current land use or development under existing or former zoning.

-11-



PETITION MAPPING PROGRESS SHEET

FUNCTION	Well Map		Original		Duplicate		Tracing		GDS 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: <i>[Signature]</i>	Revised Plans: Change in outline or description ☐ Yes ☐ No									
Previous case: <i>[Signature]</i>	Map # <i>[Signature]</i>									

whole tract, the three following courses viz: (8) South 39°26'30" West 1094 feet, (9) South 77°22'30" West 365.17 feet and (10) North 85°31'30" West 13.24 feet to the place of beginning.

Containing 10.15 acres of land more or less.

This description has been prepared by means of various deeds and plats, with bearings adjusted to current Baltimore County Metropolitan District datum, and is to be used for zoning purposes only, and does not represent a field survey.



Development Design Group, Ltd.

Riderwood Building
Suite 100
1107 Kenilworth Drive
Towson, Maryland 21204

Richard B. Williams, President
Wayne E. Mosenholder
Land Surveyor

(301) 828-0727

May 25, 1982
Revised June 9, 1982

Description of Parcel 'A'
300 foot restriction area, either side of existing stream, tributary to a Reservoir (Section 1A03.2 Subparagraph 3)
10.15 Acres ±
Within the Isaac A. Jones Property

Beginning for the same at a point in or near the bed of Pot Spring Road, said point being South 31°13'45" West distant 975.00 feet from the intersection of the center lines of said Pot Spring Road and Old Bosley Road, and being at the corner of the existing zoning line separating the RC-4 zone and the RC-5 zone, running thence in or near the bed of said Pot Spring Road, the two following courses viz: (1) South 31°13'45" West 114 feet and (2) South 9°02'30" East 423 feet, thence leaving said road, running the four following courses viz: (3) North 88°37'30" East 175.00 feet, (4) South 51°57'30" East 380.00 feet, (5) South 66°17'30" East 125.00 feet and (6) South 84°52'30" East 194.43 feet to intersect the outline of the whole tract, thence binding on part of said outline the two following courses viz: (7) North 63°50'50" East 252.23 feet and (8) South 65°48'55" East 250.00 feet, thence leaving said outline and running the six following courses viz: (9) North 65°11'05" East 190.00 feet, (10) North 33°59'28" East 180.53 feet, (11) South 83°03'55" East 285.00 feet, (12) South 36°48'55" East 210.00 feet, (13) South 54°13'55" East 95.00 feet and (14) South 24°13'55" East 73.23 feet to intersect the

Development Design Group, Ltd.

Riderwood Building
Suite 100
1107 Kenilworth Drive
Towson, Maryland 21204

Richard B. Williams, President
Wayne E. Mosenholder
Land Surveyor

(301) 828-0727

May 26, 1982

Description of Parcel 'B'
200 foot Restriction Area from the property line of Public Water Reservoir (Loch Raven Water Supply) (Section 1A03.2 Subparagraph 1)
10.15 Acres ±
Within the Isaac A. Jones Property

Beginning for the same at a point on the outline of the whole tract, said point being North 77°55'25" East distant 2334.75 feet from the intersection of the center line of Pot Spring Road and Old Bosley Road, running thence, leaving said outline, by lines parallel to and distant 200 feet at right angles from the westerly boundary of the City of Baltimore Bureau of Water Supply Loch Raven Supply Property, the two following courses viz: (1) South 1°28'07" East 883.79 feet and (2) South 1°28'30" East 1145.40 feet to intersect the outline of the whole tract, thence binding on part of said outline (3) North 43°43'12" East 281.88 feet to a point on said westerly boundary of the Water Supply Property, running thence, continuing to bind on part of the outline of the whole tract, and binding or intending to bind on said westerly boundary of the Water Supply Property, the four following courses viz: (4) North 1°28'30" West 546.75 feet, (5) North 1°28'07" West 676.61 feet, (6) North 37°39'15" East 1127.93 feet and (7) North 35°49'30" East 258.33 feet, thence leaving said Water Supply Boundary and continuing to bind on part of the outline of the

-2-

outline of the whole tract, thence binding on part of said outline (15) North 7°56'30" East 498.35 feet to a point on or near the center line of Old Bosley Road, running thence on or near the center line of said road, and continuing to bind on part of the outline of the whole tract, the five following courses viz: (16) South 38°22'30" East 96.24 feet, (17) South 48°46'30" East 116.13 feet, (18) South 41°38'30" East 201.47 feet, (19) South 14°08'30" East 205.05 feet and (20) South 40°53'30" East 155.13 feet, thence leaving said road, continuing to bind on part of the outline of the whole tract (21) North 43°43'12" East 236.51 feet thence leaving said outline and running the six following courses viz: (22) North 33°45'00" West 167.81 feet (23) North 13°45'00" West 190.00 feet, (24) North 43°15'00" West 410.00 feet (25) North 48°00'00" West 200.00 feet, (26) North 60°45'00" West 165.00 feet and (27) North 82°15'00" West 110.00 feet to intersect the outline of the whole tract, thence binding on part of said outline, (28) South 20°56'37" West 78.23 feet to a point on or near the center line of Old Bosley Road, thence, continuing to bind on part of said outline, and binding on or near the center line of said road the two following courses viz: (29) North 43°54'23" West 90.98 feet and (30) North 34°05'23" West 17.38 feet, running thence leaving said outline, and said road, the two following courses viz: (31) North 82°15'00" West 88.11 feet and (32) North 58°46'15" West 225.00 feet, to intersect the aforementioned zoning line which separates the RC-4 zone and the RC-5 zone, thence binding on said zoning line, the two following courses viz: (33) South 59°43'45" West 490.00 feet and (34) North 78°06'15" West 1070.00 feet to the place of beginning.

Containing 35.2 acres of land more or less.

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

Your Petition has been received this 16 day of June, 1982
Filing Fee \$ 50 Received: ☒ Check ☐ Cash ☐ Other

1269
Petitioner: D & R Joint Venture Submitted by: C. Gault
Petitioner's Attorney: [Signature] Reviewed by: [Signature]
William E. Hammond, Zoning Commissioner

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

that existing before development and b) for each combination of mitigating measures, there can be a net reduction in surface run-off as compared to the surface run-off prior to development.

As will appear from this report, agricultural use or any development under current zoning will have a greater adverse effect on water quality than development under DR2 zoning. Four alternatives will be evaluated and compared. They are: agricultural use, to identify "before" conditions; and development under present RC4 and RC3 zoning, development under the former DR1 zoning, and development under the proposed DR2 zoning to identify "after" conditions.

FACTUAL BACKGROUND

The Jones tract as shown on Plate I attached hereto, comprises 115 acres of land divided by Old Bosley Road. The 47 acres north of Old Bosley Road and 45 acres to the south, located approximately 1800 feet east of Pot Spring Road, are now zoned RC4, Watershed Protection. The remaining 23 acres fronting on and southeasterly of the intersection of Pot Spring and Old Bosley Road are now zoned RC3, Rural Residential. Prior to October, 1980, the 115-acre area under study was zoned DR1, Density Residential. Only a small portion of the total tract has slopes of 20% or greater. This portion is wooded and will not be disturbed. The northernmost 15 acres or so of the 47 acre parcel north of Old Bosley Road, drains northerly at about a 5% grade flowing into an existing storm management pond constructed to handle a 100 year storm and then to an unnamed tributary to the Loch Raven reservoir. The remaining 100 acres slopes at grades varying from 2% to 7% to Merryman Branch which passes through the 45-acre RC4 zoned portion before discharging downstream into Loch Raven reservoir. Approximately 10 acres of the site are wooded, and of the remaining farmable acres, 60 are being cultivated and 45 remain in pasture with considerable manure because it is used for boarding horses.

Development under the present RC4 zoning would allow 3 acre lots provided that the average density of one dwelling unit for each 5 acres is maintained. Because of the lay of the land and other subdivision restrictions, only 15 dwelling units would be allowed for the 92 acres of RC4 zoned land. Density requirements for the 23 acres zoned RC3 allow for one acre lots provided the average density of two dwelling units per three acres is maintained. Because of the lay of the land and other subdivision restrictions, only 13 dwelling units would be allowed for the 23 acres of RC3 zoned land. Development of the total 115 acres under present zoning would permit 28 dwelling units.

Public utilities are available in Pot Spring Road and are accessible to the property, but the cost of extending them for the limited 28 units is prohibitive. Development under current zoning, therefore, would require the use of individual wells and septic systems, although such development may not be cost effective from a marketing or other standpoint. Soil conditions and rock formations indicate that the use of wells and septic systems may be costly and otherwise undesirable, if not impossible. Recurring drought conditions cast doubt on the desirability of using wells where public water is available.

Development under previously existing DR1 zoning would permit up to 115 dwelling units. One method of development under this zoning would be 92 units clustered on the 47-acre site north of Old Bosley Road, with 13 units clustered in a small area on the northwestern most portion of the 23 acres southeast of the intersection of Old Bosley Road and Pot Spring Road, and 8 units clustered in a small area on the flatland south of Merryman Branch next to the Stella Maris property. There are already two dwellings units on the property toward the east of the 45 acres of RC4 zoned property. The cluster development cannot meet minimum area requirements for wells and septic tank systems. Thus, development under DR1 would require utilizing available public utilities. In addition to the normal gravity collection

and transport system, the sewerage system would necessarily require a pumping station to convey sewage via a force main, to the county sewer in Pot Spring Road. The sewerage cost alone of about \$7,200 per dwelling unit would render development under DR1 economically unfeasible.

Development under DR2 zoning also would require a sewage pumping station in addition to the normal gravity collection and transport systems, but the sewerage cost of about \$4,300 for each of 230 units allowed under DR2 zoning would be economically feasible. Public water service could be extended with adequate pressure to serve the site without additional water pumping facilities. Development under DR2 zoning would result in clustering 207 units on the 47-acre parcel north of Old Bosley Road and developing the remaining area south of Old Bosley Road the same as outlined for the DR1 zoning, that is, 13 units and 8 units respectively clustered on flatland areas. Thus, Merryman Branch would be untouched and the average density of the 68 remaining acres would be the same as if it were zoned RC4 and RC3.

Currently, in its undeveloped state, the property is situated such that storm water, contaminated by herbicides, pesticides, fertilizer, sediment and other pollutants because of the property's use for agriculture and horse farming, drains from most of the property into Merryman Branch. Some storm water drains from the property north of Old Bosley Road, northward, to the storm water management pond constructed for a 100 year storm and then into Loch Raven reservoir. Some portion of the contaminated storm water flows into the wooded area to the east of the property north of Old Bosley Road, and then the storm water from that portion of the property flows southward under Old Bosley Road and into Merryman Branch, all as mentioned before.

CONCEPTUAL APPROACH TO MITIGATION OF WATER QUALITY IMPACTS

In the evaluation of the various development alternatives, the amount of the annual surface run-off and infiltration prior to development can be compared to the estimated amounts of surface run-off and infiltration generated after development. In all alternative developments, the amount of surface run-off on site will increase to some degree, but the amount and composition of the pollutant loads carried by the run-off will vary.

Since the amount and composition of pollutant loads carried by storm water run-off varies as a function of land use, and since changes in land use frequently involve trading one set of potential pollution problems for another, the potential for adverse impacts to water quality within the Loch Raven watershed have been a major factor leading to various alternative zonings. The primary storm water pollutants affecting downstream water quality of the reservoir are sediment load, nutrients which contribute to the growth of algae in the reservoir, bacterial pollution, and roadway related pollution.

Agricultural use of the property, in its current undeveloped state, results in run-off composed of herbicides, pesticides, fertilizer and organic matter and is the primary non-point source of bacterial pollution and sediment load. Agricultural use is a major source of nutrients which contribute to the growth of algae in the reservoir.

The stated purpose of RC4 zoning, which all but 23 acres of the property is zoned, is Watershed Protection. The stated purpose of RC3 zoning, Rural Residential, is to provide for development in suitable areas where public utility services are not anticipated. As mentioned before, public utilities are available to the site. Development under these zonings involves the use of individual septic tank systems on large lots. The large lots can also support large individual vegetable gardens, orchards and stable facilities having the same pollutant effect on storm water run-off as the

agricultural use of the undeveloped site. There have been recent concerns that septic tank systems allow pollutants from household cleaners into the ground water. The unpredictable nature of private management of septic systems often results in system failures and in contamination of surface and ground water. Individual agricultural uses of land and failing septic tank systems are major sources of nutrient pollutants which contribute to the growth of algae in the reservoir. On-site storm water management may be waived for subdivisions of two acre lots or larger residential developments and, in all probability will not be required for development of the study site under present RC4 and RC3 zoning.

Development under DR1 or DR2 zoning requires storm water management and the use of public water and sewer systems which can be made readily available at the property. A public gravity collection and lateral sewer system has a decided advantage over septic tank systems with respect to water quality impacts. As noted before, the cost of providing the public sewer systems pro-rated over each unit allowed by DR1 zoning is prohibitive, but is economically feasible under the densities allowed by DR2 zoning. Septic tank systems are not applicable for either DR1 or DR2 zoning because of area requirements per disposal facility per dwelling unit and because of the related proximity to well water supplies.

The use of public sewer facilities for development under DR2 zoning has the obvious beneficial effect on water quality over development under current zoning by eliminating the use of individual septic tank systems. The risk of nutrient run-off, contamination of surface and ground water from failed systems, and contamination of ground water from pollutants in household cleaners is thus eliminated.

Proper operation and maintenance of the public sewer systems, coupled with good preventative maintenance, will preclude adverse impact on this environment as a result of facilities constructed for this site development. A pumping station will be required to transport the sewage from the study site via a force main to the County

sewer in Pot Spring Road. Pumping stations and force mains are designed and constructed using available state of the art, and applicable regulations for their design, construction, maintenance and operation provide excellent reliability of operation. Baltimore County has established an enviable record of reliable sewage pumping service throughout the County. Its record within the Loch Raven watershed has continually improved with the state of the art, availability of improved equipment, increased experience and training of its personnel. A public sewer system including those requiring pumping stations will have no adverse effects on water quality of the Loch Raven reservoir.

Storm water management required by development under DR2 zoning utilizing designs in accordance with best management practices, can reduce the amount of sediment that would normally leave the site by about 70%. Because of the correlation between sediment reduction and the control of pollutants, storm water management required for DR2 development would considerably reduce the sediment and associated pollutant discharge from the site and thus improve water quality. Therefore, water quality of the Loch Raven reservoir would be better served by development of the study area to a density which would require storm water management and use of public water and sewer facilities.

Detention ponds to limit the peak discharge rate after development to no more than the discharge rate before development are the principal requirements of Baltimore County's storm water management program, an effect which will not be accomplished under RC4 and RC3 zoning. This mitigating measure can reduce or maintain existing off-site storm water run-off rates. Detention ponds, however, allow an increase in the total off-site run-off volume after development. The use of detention ponds, thus would correct part of the potential hydrologic imbalance, but depletion of ground water would occur if no other mitigating measures were included. Other storm water management and mitigating measures, which can reduce the

quantity of run-off and the sediment and associated pollutants reaching the receiving waterway, may include:

- 1) Carrying surface drainage over vegetated areas or through vegetated swales instead of pipes or lined gutters.
- 2) Grading shallow flat containment swales in landscaped areas such as surrounding parking areas to retain storm run-off. Water retained in the swales will either infiltrate to the ground water or be consumed by evapotranspiration.
- 3) Retention of native vegetation that requires no fertilizer application, or selection of grasses and other ground cover varieties that would require minimal fertilizer application.
- 4) Utilizing flat parking area gradients to retain a volume of water until it evaporates.
- 5) Installing porous pavement over well drained soil.
- 6) Constructing drainage systems to direct roof run-off into permeable soils underlying the buildings and parking areas.

The cluster development on higher, flatland areas for this property will minimize topographic changes and require very little grading. Lawn area, although it does not contaminate run-off to the extent that agricultural use does, will be kept to a minimum by retention of native vegetation and reforestation. Development of the acreage south of Old Bosley Road into smaller lots will likewise reduce lawn area and minimize topographic changes. Use of native vegetation requiring no fertilizer and a selection of grasses and other ground cover requiring minimal fertilizer application will further reduce any adverse water quality impact if the property is developed at the higher density.

Adequate technology, enforcement legislation and supervision of methodology currently exists to protect the water quality of the receiving stream during and after construction of the proposed development through field testing and implementation of an Erosion and Sedimentation Control Plan and Storm Water Management. Protection of the downstream water quality will be accomplished through these techniques.

The potential for transport of particulates to the receiving streams through increased pollutant concentration will be minimized by the infiltration occurring within graded containment swales. Although there is variation in the intensity during the early phases of a storm, experience and tests indicate storms of certain intensity characteristics will produce a "first flush" where a high percentage of pollutants are transported. These swales will contain the "first flush" of the run-off thus allowing the run-off with the highest potential for pollutant concentration to infiltrate and percolate through the soil before reaching the ground water or the receiving stream. This also improves the quality of vegetation by increasing available soil moisture.

During the actual development under DR2 zoning, the defined design features will be incorporated to assure full implementation of the best management practices and to accomplish the stated goals. In any event, the specifics of this plan will be subject to the approval by the Baltimore County Health Department as part of the normal subdivision process.

SUMMARY

The study area is presently delivering excessive quantities of sediment to the Loch Raven reservoir which include pollutants and nutrients which have an adverse effect on water quality and increase the cost of drinking water treatment. These adverse effects would increase with more intensive agricultural uses.

PRESENT ZONING DEVELOPMENT (RC4 & RC3)

Development under the present zoning would necessarily increase sediment and accompanying pollutants to Loch Raven reservoir and the resulting adverse effect on water quality would be exacerbated. The use of septic systems and their inherent record of problems and failures particularly after about 7 to 10 years of operation

ISAAC A. JONES
Plaintiff
v.
BALTIMORE COUNTY, MD.
Defendant
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
IN EQUITY
155/117/108029

ORDER

This case having come on for hearing on all open motions and preliminary matters, and the pleadings having been read and considered, and counsel for all parties having been heard, it is this 30th day of August, 1982, ORDERED, ADJUDGED, AND DECREED, that these proceedings be and are hereby stayed pending the following:

1. That this action be, and hereby is, stayed pending further Order of Court.
2. That this stay shall be without prejudice to the rights of any of the parties to these proceedings.
3. That the purpose of the stay herein is to afford the Plaintiff the opportunity to file and prosecute a Petition for rezoning classification on the subject property in accordance with applicable law.
4. In the event that Plaintiff is unable to obtain under applicable law an exemption from the zoning cycle process currently in force in Baltimore County for his said Petition for zoning reclassification, Plaintiff may then immediately apply to the Court for dissolution of this stay and return of the matter to the active docket.

Seen and approved:

Attorney for Plaintiff

Michael W. Mahan
Assistant County Solicitor for Defendants,
Baltimore County, Maryland.
Deputy County Clerk

Judge



Mr. William E. Hammond
Zoning Commissioner
Baltimore County Government
County Office Building
Towson, Maryland 21204

Mr. Hammond:

Reference the 115 acre parcel of property at Old Bosley & Pot Spring Roads owned by Mr. Isaac Jones and D & R Joint Venture. Perhaps you could answer my questions about the proposed rezoning of the aforementioned land:

1. The property currently has three zoning classifications - RC4, RC5, and DR1. Does the requested change to DR3.5 mean that apartments/condominiums/townhomes could be built? Or would single family homes be built?
2. Does DR3.5 mean 3 1/2 dwelling units per acre on each of the 115 acres, or does it mean an average of 3 1/2 units per acre (i.e. 402 units on 80 acres with the remaining 100 acres uninhabited)?

Your reply is needed to guide our future position on the matter of zoning reclassification of this land, and thank you for your consideration and cooperation.

Sincerely,

Merrill J. Frank
President

cc: Councilman Jim Smith
Mr. Dutch Ruppersberger
Mr. Charles Glowack

1-27-83
I spoke with Councilman Smith
Bosley & Pot Spring Roads
D & R Joint Venture
was planning to
rezone the property
to DR3.5

PETITION FOR RECLASSIFICATION

8th Election District

ZONING:

Petition for Reclassification

LOCATION:

Southeast corner of Pot Spring and Old Bosley Roads

DATE & TIME:

Tuesday, March 15, 1983 at 10:00 A.M.

PUBLIC HEARING:

Room 218, Courthouse, Towson, Maryland

The Court, Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:

Present Zoning: R.C. 4, R.C. 5 and D.R. 1
Proposed Zoning: D.R. 3.5

All that parcel of land in the Eighth District of Baltimore County

Being the property of D & R Joint Venture, as shown on plat plan filed with the Zoning Department.

Hearing Date: Tuesday, March 15, 1983 at 10:00 A.M.
Public Hearing: Room 218, Courthouse, Towson, Maryland

BY ORDER OF
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

CERTIFICATE OF PUBLICATION

TOWSON, MD. February 24, 1983

THIS IS TO CERTIFY that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md.

One time before the 15th day of March, 1983 the publication appearing on the 24th day of February, 1983.

THE JEFFERSONIAN

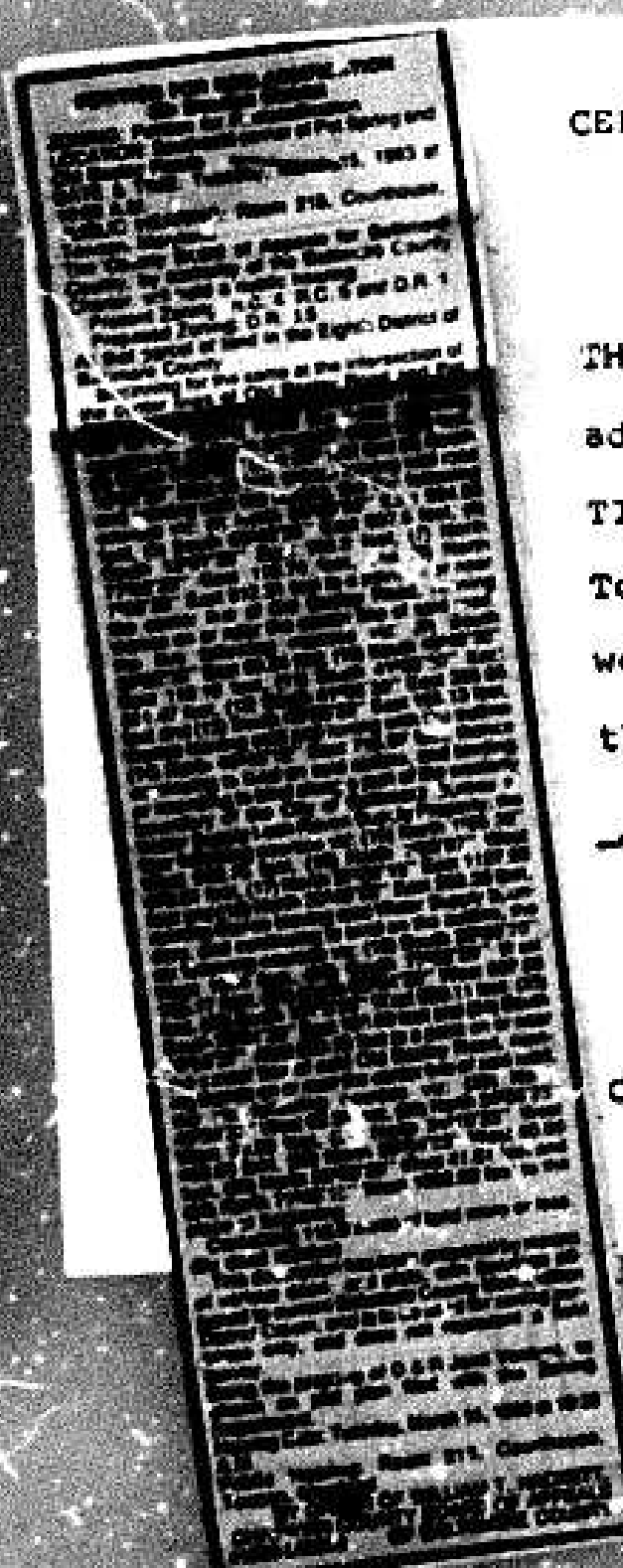
Manager

Cost of Advertisement \$

CERTIFICATE OF POSTING

BOARD OF APPEALS OF BALTIMORE COUNTY
Towson, Maryland

District: 8 Date of Posting: 3/16/83
Posted for: Petition for Reclassification
Petitioner: D & R Joint Venture
Location of property: 2.5/6 Pot Spring and Old Bosley Roads
Location of signs: Signs placed at Pot Spring and Old Bosley Roads, facing each other, north of Pot Spring Road
Remarks: None
Posted by: Ben J. Coleman Date of return: 3/17/83
Number of Signs: 2



CERTIFICATE OF PUBLICATION

TOWSON, MD. 1983

THIS IS TO CERTIFY, that the annexed advertisement was published in THE TOWSON TIMES, a weekly newspaper distributed in Towson, Baltimore County, Md., once a week for successive weeks, the first publication appearing on the 1st day of February 1983.

THE TOWSON TIMES

Cost of Advertisement, \$43.20

RUMMEL, KLEPPER & KAHL consulting engineers

135 N. CALVERT ST. BALTIMORE MD 21202 301-685-3105

1/19/22, 1981

Baltimore County Health Department
County Courts Building
Towson, Maryland 21204

Attention: Mr. Ian J. Forrest, Director
Bureau of Environmental Services

Reference: Isaac A. Jones Property Along
Old Bosley Road

Gentlemen:

This "Report on the Conceptual Approach to Mitigation of Water Quality Impacts From Developing The 115-Acre Isaac A. Jones Property Along Old Bosley Road results from our meeting and discussion on June 1, 1981.

The property is now zoned RC4 and RC5, allowing development of single family dwellings on one acre and larger lots. This report identifies the problems associated with development of this property under its current zoning, and presents an overview of how development at higher densities can actually reduce pollutant run-off from the site resulting in less adverse effects on water quality of Loch Raven reservoir than current land use or development under existing zoning.

I would like to discuss this report with you and would appreciate it if you would contact me after you have had a chance to review it.

Sincerely yours,

RUMMEL, KLEPPER & KAHL

F. Pierce Linaweaver, P.E., Ph.D.
Partner

FPL:ds
81-18
Encl.



CONCEPTUAL APPROACH TO MITIGATION OF WATER QUALITY IMPACTS FROM DEVELOPING THE 115-ACRE ISAAC A. JONES PROPERTY ALONG OLD BOSLEY ROAD, BALTIMORE COUNTY

PRELIMINARY STATEMENT

The "Jones Tract" as the subject property will be referred to, located in the Loch Raven Watershed, has in the past been zoned DR1. There were some unresolved questions about water quality which could be associated with development at the densities allowed by DR1 zoning. The property was rezoned RC4 and RC5, under which development is restricted to single family dwellings on large acreage lots and individual septic and well water systems would be necessary. This report examines the effect of the use of such systems on water quality in the area, and shows how development at higher densities allowed by DR2 zoning will have less adverse impact upon water quality than current land use or development under existing zoning.

SCOPE

This report addresses the subject of storm water quantitative factors, storm water qualitative issues and concerns, mitigation and best management practices that can be incorporated in the various alternative ways that the property can be developed, and the influence of zoning on the use of public utilities versus the use of private individual wells and septic tanks.

The effect of the proposed alternate mitigating measures in various combinations for development under DR2 zoning are evaluated during the preliminary design stage and the actual choice of measures and extent to which each is used would be decided in accordance with County requirements, during final design phase. In that respect, this report does not attempt to quantitatively detail each choice, except to point out that a) the use of the measures discussed can result in no depletion in ground water resources and the maintenance of the hydrologic balance after development to



Baltimore County, Maryland

PEOPLE'S COUNCIL
RM 223, COURT HOUSE
TOWSON, MARYLAND 21204

JOHN W. HESSIAN, III
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

Tel. 404-2100

November 4, 1982

Ms. Joyce Grimm, Director
Circuit Court Assignment Office
Courts Building
Towson, Maryland 21204

RE Isaac A. Jones, et al, Plaintiffs v.
Baltimore County, Md., et al.,
Cir. Ct. Equity 115/117/108029

Dear Ms. Grimm:

The above case has been set in for open motions on Friday, November 26, 1982. Unfortunately, that falls in the middle of Thanksgiving weekend, for which I have plans to be with my family in New York.

Since I am primarily responsible for this case and have attended all Court hearings since the beginning, I must request that it be rescheduled. I would be agreeable to any mutually convenient date which would not cause undue delay.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

cc: Charles F. Chricht, Jr., Esquire
Michael J. McMahon, Esquire

PMZ:sh

Baltimore County, Maryland

PEOPLE'S COUNCIL
RM 223, COURT HOUSE
TOWSON, MARYLAND 21204

JOHN W. HESSIAN, III
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

Tel. 404-2100

January 21, 1983

The Spring Valley Garden Club
c/o 910 Cotwood Circle
Cockeysville, Maryland 21030

RE: D & R Joint Venture, et al.,
Item 12, Cycle IV, 1982

Dear Ladies:

Under date of December 8, 1982, a letter, signed by a number of your members, was sent to the Chairman of the Baltimore County Board of Appeals in which an opinion with regard to this proposed zoning reclassification was expressed. Unfortunately, no individual was designated in this letter as the spokesperson to be contacted.

There have been several developments with regard to the case that I would like to discuss with a representative of your organization. I would therefore greatly appreciate your arranging to have one of your officers call me at her earliest convenience.

Very truly yours,

Shirley M. Hess
Shirley M. Hess
Legal Assistant

Spring Valley Garden Club
c/o 910 Cotwood Circle
Cockeysville, Maryland 21030
December 8, 1982

Mr. William Hackett
Chairman, Baltimore County Board of Appeals
Room 113, 11 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Hackett:

We the undersigned, members of the Spring Valley Garden Club, wish to express to the Zoning Commission of Baltimore County via this communication our dissatisfaction with the petitioned zoning reclassification of the South East Corner of Pot Spring Road and Old Bosley Road in the Central Sector.

Our area, bordered by the Baltimore City watershed property, has been inundated in recent years with apartments, townhomes, and individual homes which we feel are a conservation threat to the community at large.

Since a portion of this 115 acres to be considered for reclassification is at present zoned as Resource Conservation Watershed Protection and is being petitioned to be zoned Density Residential, 3.5, we, as citizens of Baltimore County concerned with the conservation, pollution, and existing wild life of the area, feel that this rezoning petition should be denied by the Zoning Board.

Very truly yours,

The Spring Valley Garden Club

Handwritten notes and signatures in the right margin of the letter to Mr. Hackett.

1/23/83 - letter to D & R joint venture for notification

DULANEY GATE COMMUNITY ASSOCIATION INCORPORATED

November 21, 1982

Mr. William T. Hackett, Chairman
Board of Appeals
Court House
Towson, Maryland 21204

Subject: Zoning Reclassification Request

Reference: D & R Joint Venture Location: S/E Corner Pot Spring Road and Old Bosley Road

Dear Mr. Hackett:

The Dulaney Gate Community Association represents the residents adjacent to the proposed zoning reclassification request area as identified in the reference above. Our homes are in the tract bordering the Northeast Corner of Pot Spring and Old Bosley roads.

The purpose of this letter is to advise you of our concern with regard to the proposed zoning reclassification request and of our intent to present our position with regard to such proposed change.

In order that we may be aware of any and all meetings, conferences and other planned events with regards to this request, we are requesting notification be given upon the establishment of any dates for such gatherings. We wish to be present and have the opportunity to present our position.

We appreciate your interest in having the citizens of Baltimore County have a say in matters affecting their homes and families. You may send any/all such notification to the address shown below.

Very truly yours,

William D. Savitsky
William D. Savitsky, Secretary
4 Dulaney Gate Court
Cockeysville, Md. 21030

Handwritten notes and signatures in the right margin of the letter to Mr. Hackett.

1/23/83 - letter to D & R joint venture for notification

2519 Girdwood Road
Timonium, Maryland 21093
January 28, 1983

Mr. Jack Hessian, Esq. Peoples Council
c/o County Office Bldg.
Towson, Maryland 21204

Dear Sir:

We are very concerned that an application has been made to change the zoning classification of the Old Paradise Horse Farm at Old Bosley Road and Pot Spring Road from RC4, RC5 and DR1 to DR 3.5. This has been requested by D & R Joint Venture and Isaac Jones. This 115 acre plot has been wisely designated as watershed protection.

Our Association opposes this change and requests that you represent the people and to fight any change in zoning. We understand that a pretrial conference is to take place on February 8th of this year at 9:00 a.m. in Room 200 of the County Office Bldg. We have conversed with the zoning people and they also oppose any changes.

We ask that you immediately review this application to determine a plan to fight the change.

We would appreciate it if you would forward to us your opinion and plan of action. We and the other Associations and Councils very much oppose this plan and will appear as witnesses if you feel this would help.

Sincerely,

Jeanette Lagorio
Jeanette Lagorio
President
Springlake Association

CC: B. Bachur
J. Smith
F. Kelly
T. Chamberlain
A. Kuch
E. Sauerbrey
J. Jarosinski, Jr.

2519 Girdwood Road
Timonium, Maryland 21093
January 28, 1983

Honorable Francis X. Kelly
124 Tregaron Road
Timonium, Maryland 21093

Honorable Senator Kelly:

We discussed the matter referenced in the attached letter. We ask that you intercede in this matter to effect a decision desired by us. Mr. Jarosinski reviewed this concern with the Springlake Association, Dulaney Gate Association, Greater Timonium Community Association and ABC Association of Baltimore County Community Association. All are vehemently opposed to the change.

Let us hear from you regarding action you will initiate to help us.

Sincerely,

Jeanette Lagorio
Jeanette Lagorio
President
Springlake Association

CC: Mr. S. Jarosinski, Jr.

DULANEY GATE COMMUNITY ASSOCIATION INCORPORATED

January 29, 1983

Mr. Jack Hessian, Peoples Council #R-83-189
Planning Staff Zoning
County Office Building
Towson, Md. 21204

Subject: Opposition to Proposed Zoning Reclassification Request

Reference: Isaac A. Jones Property
Southeast Corner of Pot Spring and Old Bosley Roads

Dear Mr. Hessian:

Recently our Association became aware of the Petition for Zoning Reclassification Special Exception and/or Variance which was filed on behalf of Mr. Isaac Jones by D & R Joint Venture. This petition requested a change in the present zoning for 115 acres of property located at Pot Spring and Old Bosley Roads from RC 4 and RC 5 to DR 3.5. Dulaney Gate is located on the Northeast corner of Pot Spring and Old Bosley Roads.

The purpose of this letter is to advise you and the Planning Staff Zoning of the opposition to this zoning change by the Dulaney Gate Community Association's membership. On January 20, 1983, that membership met and unanimously confirmed their opposition to that zoning change. To Secretary T. Chamberlain that opposition at the Dulaney Gate Community Association, Inc. to you and those that will be deciding upon this request.

Please confirm your receipt of our Association's opposition to this zoning change by returning the attached copy of this letter with your signature in the attached postage paid envelope to my attention. Thank you.

William D. Savitsky
William D. Savitsky
Dulaney Gate Court
Cockeysville, Md. 21030

Receipt of Letter Acknowledged
Mr. Jack Hessian

Date



COMMUNITY ASSOCIATION

P O BOX 194 • COCKEYSVILLE MARYLAND 21030

February 2, 1983

Mr. John W. Hessian
People's Counsel
Court House
Towson, Maryland 21204

Mr. Hessian:

Regarding the request from D & R Joint Venture (Case #R-83-189, I believe) to rezone the 115 acre parcel of property at Old Bosley & Pot Spring Roads in Cockeysville, the Springdale Community Association is unalterably opposed to this request. It is my understanding there will be a pre-trial hearing on Tuesday, February 8, 1983, which I am planning to attend and will further state my community's position. This letter, however, is for the written record and is for your information and use at this hearing and all subsequent meetings on this matter.

Our opposition to this zoning reclassification is fundamentally based on resource conservation. The property in question is very undulating and contains Merryman's Stream which, as you know, flows into the nearby Loch Raven Reservoir. Any massive change in the property would most certainly deteriorate the quality of water in the stream and in the reservoir. Due to the natural hills on the land, the quality of the soil would also suffer. Our opposition is further based on the loss of "green belt" or "peaceful" land that has gradually occurred in our neighborhood during the past decade or so. Dulaney Springs Golf Course is now just a memory after being transformed into condominiums, apartments, and parking lots. Who has ever heard of taking an enjoyable, peaceful walk through a concentrated housing development?

Thank you for your consideration and cooperation.

cc: Dulaney Gate Comm Assoc
Spring Valley Garden Club

Sincerely,

Marshall J. Frank
Marshall J. Frank
President

LAW OFFICES
OBRECHT AND OBRECHT
808 MUNSEY BUILDING
BALTIMORE, MD. 21202
January 14, 1982

CHARLES F. OBRECHT, JR.
GEORGE F. OBRECHT, III

Mr. Norman Gerber
Director of Planning Department
of Baltimore County
County Courts Building
401 Bosley Ave., Room 406
Towson, Maryland 21204

Dear Mr. Gerber:

I represent D & R Joint Venture with regard to their Petition For Reclassification of 115 acres of property at Pot Spring and Old Bosley Roads. A copy of the Petition filed today with the Board of Appeals is enclosed.

This case began in March of 1981 in the Circuit Court because of a regulation which prohibited us from filing with the Board of Appeals. The regulation prohibited the filing of petitions by all landowners which request reclassification from an RC zone to zones other than RC under certain circumstances present in this case. After many lengthy motions and memoranda had been filed, counsel for the parties, i.e. Mike McMahon, Esquire for Baltimore County, Peter Max Zimmerman, Esquire, the Deputy People's Counsel and I, agreed, after consultation with Judge Alpert, to proceed to the Board of Appeals on certain issues with a provision for retention of jurisdiction by the Court. A Consent Decree to that effect was signed by Judge Alpert and all counsel on April 30, 1982. A copy of the Decree is attached for your easy reference.

Because of the long delay that my clients have experienced while attempting to solve some of the complex issues involved in this case, and because of the question as to whether certain regulations prohibited the Board from accepting this Petition, and others like it, the Petitioners believe that this is a case which merits exemption from the normal cycle under Section 2-58.1 of the Baltimore County Code.

On behalf of my clients therefore, I respectfully request the opportunity to present this issue to the Planning Board at the earliest possible time. I request that this Petition be certified by the Planning Board to the County Council as one on which early action is manifestly required in the public interest.

If further information is needed, I will be happy to supply it.

Sincerely yours,

Charles F. Obrecht, Jr.
Charles F. Obrecht, Jr.

CFO:ams
Enclosures

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1982, Legislative Day No. 17

RESOLUTION NO. 84-82

Mr. James T. Smith, Jr., Councilman
(By request of the County Executive)

By the County Council, August 2, 1982

A RESOLUTION to approve the Planning Board's certification that the zoning reclassification petition, filed on behalf of D&R Joint Venture, et al, for its property at Pot Spring and Old Bosley Roads should be exempted from the regular cyclical procedure of §2-58.1(c) through (h) inclusive of the Baltimore County Code 1978, 1981 Cumulative Supplement, as amended.

WHEREAS, the Planning Board, by resolution dated July 15, 1982 has certified that early action on the subject Petition for Zoning Reclassification filed on behalf of D&R Joint Venture, et al would be in the public interest; and

WHEREAS, the County Council of Baltimore County, in accordance with the provisions of §2-58.1(i) may approve said certification and exempt the Petition for Zoning Reclassification from the regular, cyclic procedures of §2-58.1;

NOW, THEREFORE, BE IT ORDERED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the certification by the Planning Board that early action on said Zoning Reclassification Petition filed on behalf of D&R Joint Venture, et al, be and the same is hereby approved; and

BE IT FURTHER RESOLVED, that the Board of Appeals shall schedule a public hearing on said petition in accordance with §2-58.1(i) of the Baltimore County Code.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
(Brackets) indicate matter stricken from existing law.
Strike indicates matter stricken from bill.
Underline indicates amendments to bill.

ISAAC A. JONES, et al
Plaintiffs
VS.
BALTIMORE COUNTY, MD.
Defendant

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
EQUITY NO. 10889

ORDER

pleadings having been read and considered, and testimony having been taken, and counsel for all parties having been heard, it is this 23 day of November, 1982, ORDERED, ADJUDGED AND DECREED, that these proceedings be and are hereby stayed pending the following:

1. That this action be, and hereby is, stayed pending further Order of Court.
2. That this stay shall be without prejudice to the rights of any of the parties to these proceedings.
3. That the purpose of the stay herein is to provide the Plaintiffs with an opportunity to submit the presentation of their zoning petition for rezoning classification on the subject property in accordance with applicable law before the Board of Appeals of Baltimore County.

James T. Smith, Jr.
James T. Smith, Jr.

BA 10889
Nov 23 1982
CFO:ams
By

NOV 24 1982

34-1
NOV 24 1982

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204

JOHN W. HAZEN, III
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

January 21, 1983

David J. Preller, Jr., Esquire
Preller and Preller
Suite 200, 15 Charles Plaza
Baltimore, Maryland 21201

RE: D & R Joint Venture, et al.,
Item 12, Cycle IV, 1982

Dear Dave:

Let me bring you up to speed with regard to the status of this case. First, on the Board's tentative schedule, the hearing date for the petition is shown as Tuesday, March 15, 1983, at 10 am. This of course is subject to change, and I will keep you apprised, but I think that you had best mark your calendar for that date.

Secondly, the Board is now attempting to shorten up some of these cases by requiring the Petitioner to initially present only such of his evidence that applies to the question of basic error in the map, and thereby let that issue be tried initially. The intention is that the Board will then make an initial determination with the result that if it finds no error, the case will end, but if it does find error, then we will at a later session or sessions battle the question of what the change should be. The Board is therefore going to experiment with the concept of "pre-trial conferences" and "pre-trial agreements" to accomplish this end. This is the first case in which the experiment will be undertaken.

The conference has been assigned for Tuesday, February 8, 1983, at 9 am, in the Board's office here in the Court House. The discussion will of course be restricted to order of proof, and the issue will not itself be addressed. Come along if you want; if not, I'll give you a report.

Sincerely,

John W. Hazen, III
John W. Hazen, III
People's Counsel for Baltimore County

BA 10889
Jan 21 1983
CFO:ams
By

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204

JOHN W. HAZEN, III
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

TEL 464-2168

January 4, 1983

David J. Preller, Jr., Esquire
Preller and Preller
Suite 200, 15 Charles Plaza
Baltimore, Maryland 21201

RE: D & R Joint Venture, et al -
Item 12, Cycle IV, 1982

Dear Mr. Preller:

John W. Hazen, III, People's Counsel, has referred your letter dated November 29, 1982 to me as I have been handling this case. We anticipate a pre-hearing conference sometime in January, followed by a hearing in March, 1983.

I am requesting by this letter that the Board of Appeals notify you of any scheduling in the case and I am available for your information generally on this matter.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

cc: County Board of Appeals
Charles F. Obrecht, Jr., Esquire

BA 10889
Jan 4 1983
CFO:ams
By

LAW OFFICES
PRELLER AND PRELLER
SUITE 200
15 CHARLES PLAZA
BALTIMORE MARYLAND 21201

DAVID J. PRELLER
DAVID J. PRELLER, JR.
THOMAS C. PRELLER
MICHAEL N. LUCIANO
GEORGE SAMOIL

AREA CODE 410
PHONE 781-1488

November 29, 1982

Jack Hazen, Esquire
101 West Pennsylvania Avenue, Suite 603
Towson, Maryland 21204

Dear Jack:

It is my understanding that you are representing the County concerning property located at Southeast Pot Spring and Old Bosley, wherein the owners are attempting to have 115 acres changed from an R.C. 4 R.C. 5 D.R. 1 to a D.R. 3.5.

I represent a community known as Dulaney Gate Community Association, and I live there.

I would appreciate your taking five minutes and giving me an update on the status of this matter, and notifying me of any trial date that you may have.

I hope this letter finds you well.

Very truly yours,

David J. Preller, Jr.
David J. Preller, Jr.

DJP/dk

30

LAW OFFICES
OBRECHT AND OBRECHT
808 MUNSEY BUILDING
BALTIMORE, MD. 21202

CHARLES F. OBRECHT, JR.
GEORGE F. OBRECHT, III

December 10, 1982

William T. Hackett, Chairman
County Board of Appeals
Room 219
Court House
Towson, Maryland 21204

RE: Petition for Reclassification - D & R Joint Venture
Filed: June 15, 1982
Cycle IV

Dear Mr. Hackett:

By Order of the Circuit Court for Baltimore County, the reclassification of the property subject to the captioned Petition has been referred to the Board of Appeals. I understand that the Petition is now designated issue No. 12, and that therefore it would normally be heard late in Cycle IV.

I am writing to request that this case be heard first in Cycle IV beginning in March 1983. This case involves BCZR 1A003A and its effect on the filing of Petitions such as this one.

The People's Counsel's office has agreed not to oppose this request and to cooperate with the scheduling. Mr. Roswell, of the Planning Office, has likewise agreed. Even the Planning Board approved this Petition as one on which early action is required, although County Council did not approve an exemption from Cycle IV.

I expect the case to take about 3 days before the Board and hope that the Board will favorably consider this request. I do ask, however, that the case be heard no later than March 17, 1983. On March 18, 1983, my first full one week vacation in 6 years is due to begin. My wife and I are going West for some skiing and we shall return on March 26, 1983. A hearing during the week of March 14, 1983 would be perfect.

It would be helpful if you would schedule a prehearing conference on this case sometime in January. There are a number of procedural issues, the resolution of which prior to a hearing on the merits could save time. The main issue for discussion would be the effect of regulations 1A003.A. and 1A003.B. Other issues would include scheduling and stipulations of fact.

Page Two
William T. Hackett
December 10, 1982

I would appreciate hearing from you on these requests and if you need additional information, please give me a call.

Sincerely yours,

Charles F. Obrecht, Jr.
Charles F. Obrecht, Jr.

CFO:ams

cc: Peter Max Zimmerman, Deputy People's Counsel

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert V. Dubel, Superintendent
Towson, Maryland - 21204
Date: June 28, 1982

Mr. Walter Reiter
Chairman, Board of Appeals
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Item No: 269
Property Owner: D & R Joint Venture
Location: SE/Cor. Pot Spring Road and Old Bosley Road
Present Zoning: R.C. 4 & R.C. 5
Proposed Zoning: D.R. 3.5

School	Enrollment	Capacity	Over/Under
Pot Spring Elementary	516	581	-65
Ridgely Junior High	1005	1294	-289
Dulaney Senior High	1643	1645	-2

Student Yield With:	Existing Zoning	And	Proposed Zoning
Elementary	The plat did not show what the owner intended to do with the land. However, an increase in student population would undoubtedly occur.		
Junior High			
Senior High			

Very truly yours,
W. Nick Petrovich, Assistant
Department of Planning

WNP/bp

ERROR

The downzoning of the Jones tract was accomplished in error and the reclassification proposed is warranted by that error all because:

1. The purpose of RC4 zoning, i.e. the protection of the watershed is in fact defeated where development under higher densities using public facilities will actually decrease pollutants running off of the property and into the Loch Raven Reservoir.

2. The downzoning is incompatible with the professed goals of the County for fringe development areas and it instead attempts to restrict this property as a rural area even though public utilities with excess capacity are available at the site, also adequate transportation, solid-waste-disposal facilities, schools and recreational facilities are available. Development under DR3.5 zoning is compatible with the present and projected development and character of the surrounding area; and it is consistent with the current portion of the Master Plan purportedly passed by the County Council, as that plan relates to fringe development areas.

3. The downzoning was discriminatory in that it singled out the Jones tract to bear a disproportionate economic burden of purportedly protecting the watershed (which it does not) as evidenced by the fact that 40 acres of Stella Maris's nearby property was upzoned to allow densities of more than 3 times the density here requested. That is, Stella Maris has 40 acres of DR10.5 plus 30 acres of DR1 zoning which allows a total density on the 40 acre tract of 11.5 units per acre. There was and is no rational basis for which the subject property was downzoned while the Stella Maris property was upzoned.

4. The downzoning deprives the owners of all reasonable use of the property and was arbitrary, unreasonable, capricious, and confiscatory. It bears no real and substantial relationship

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS
FROM R.C. 4 and R.C. 5 to : OF BALTIMORE COUNTY
D.R. 3.5 ZONE, SE Corner Pot Spring :
Rd. and Old Bosley Road, 8th District : Case No. R-83-189 (Item 12, Cycle IV)
D & R JOINT VENTURE, et al,
Petitioners :

ORDER TO ENTER APPEARANCE

To the Honorable, Members of Said Board:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Deputy People's Counsel

John W. Hession, III
People's Counsel for Baltimore County
Rm. 273, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 28th day of June, 1982, a copy of the foregoing Order was mailed to Charles F. Obrecht, Jr., Esquire, Obrecht and Obrecht, 906 Munsey Building, Baltimore, MD 21202, Attorney for Petitioners; and David J. Preller, Jr., Esquire, Preller and Preller, Suite 200, 15 Charles Plaza, Baltimore, MD 21201, Attorney for Dulaney Gate Community Association.

John W. Hession, III

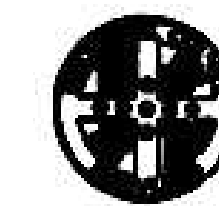
to the public's health, comfort, order, safety, convenience, morals and general welfare and it does not guide or accomplish a coordinated adjusted and harmonious development of the property which maintains property values previously established.

5. The County Council failed to take into account the then existing facts, as herein set forth, such that its action was based upon misapprehension. The County Council also failed to take into account the then existing projects or trends which were reasonably foreseeable of fruition in the future.

SUMMARY

For the foregoing reasons the owners request reclassification of the subject property to DR3.5 zoning.

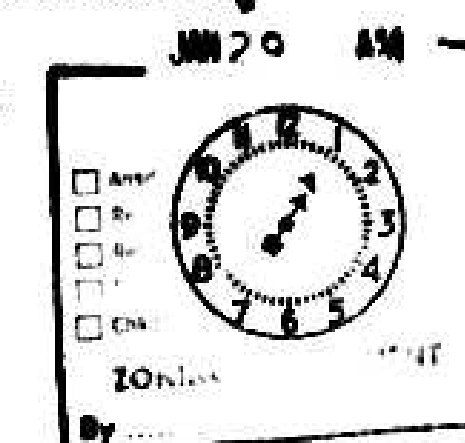
Charles F. Obrecht, Jr.
OBRECHT AND OBRECHT
906 Munsey Building
Baltimore, Maryland 21202
Phone: 685-6938
Attorney for Petitioners



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

January 25, 1983



Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, MD 21202

Re: Case No. R-83-189
D & R Joint Venture and
Isaac Jones

Dear Mr. Obrecht:

As the Petitioner, or representative thereof, in the above referenced case, you are hereby advised that said case now pending before the Board of Appeals is considered moot. This decision is based on an opinion of the Baltimore County Attorney's office concluding that any reclassification case pending before this Board on the date of the adoption of new comprehensive zoning maps is moot.

Therefore, unless you present written objection to the Board within thirty (30) days from the date hereof, an Order of Dismissal shall be executed by this Board.

Very truly yours,

William T. Hackett, Chairman

WTH:ie

cc: David Daneker
David J. Preller, Jr., Esquire
The Spring Valley Garden Club
William D. Saitsky
Jeanette Lagorio
Merrill J. Frank
Larry Mackis
Phyllis Cole Friedman
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Gerber
James G. Hoswell
Board of Education

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Leonard S. Jacobson
TO: County Solicitor
Norman E. Gerber, Director
FROM: Office of Planning and Zoning
SUBJECT: D & R Joint Venture and Isaac Jones Property
Request for exemption from cyclical procedures

Attached please find the subject resolution adopted by the Planning Board at its regular meeting on June 15, 1982. Please prepare the necessary material for the County Council's consideration.

Norman E. Gerber
Norman E. Gerber,
Director of Planning and Zoning

NEG JGH:ie

Attachment

cc: Thomas Toporovich
County Council Secretary - Administrator

John W. Hession, III
People's Counsel

William T. Hackett, Chairman
County Board of Appeals

James E. Dyer
Zoning Supervisor

J.G. Maxwell

BALTIMORE COUNTY PLANNING BOARD RESOLUTION

July 15, 1982

WHEREAS, Pursuant to Subsection 2-58.1 (1) of the Baltimore County Code 1978 as amended, the Baltimore County Planning Board has reviewed the request by D & R Joint Venture and Isaac Jones to exempt from the zoning cycle the subject reclassification petition; and

WHEREAS, The Circuit Court for Baltimore County issued a consent order (entered into by the petitioner's attorney, an Assistant County Solicitor and the Deputy People's Counsel) that states, in part, that court action will be stayed so that the petitioner may "file and prosecute a petition for rezoning classification" and that if the "Plaintiff is unable to obtain...an exemption from the zoning cycle process" he may proceed with the court case; and

WHEREAS, The Planning Board believes that early action is required on this petition to assist in the timely execution of said order; now therefore, be it

RESOLVED, That the Baltimore County Planning Board hereby certifies to the County Council of Baltimore County that early action on the subject Zoning Reclassification Petition would be in the public interest.

I HEREBY CERTIFY that this resolution was duly adopted by the Baltimore County Planning Board at its meeting in Towson, Maryland on July 15, 1982.

DATE: July 16, 1982

Norman E. Gerber, Secretary
Baltimore County Planning Board

Item No. 12 - Cycle No. IV
Petitioner - D. & R. Joint Venture, et al
Reclassification Petition

office has been instructed to proceed with the processing of a petition even if a conflict with the aforementioned section exists.

Included with the enclosed comments from this Committee are those from Mr. Paul Solomon, concerning the submitted environmental impact statement and Section 1A03.2 of the zoning regulations. I suggest that you review these comments, and if you feel any changes are warranted that they be submitted to this office.

By a copy of this letter, I am forwarding your proposal to Mr. Al Barry, Chief of Current Planning for Baltimore City, for his review and comments. If he has any comments, I will request that they be submitted to this office by November 29, 1982 and they will then be forwarded to you.

In view of the fact that the submitted site plan does not indicate a proposed development, the enclosed comments from this Committee are general in nature. If the requested reclassification is granted, more detailed comments from County agencies and the Committee (if a hearing is required) will be written when a proposed development is indicated. For any subdivision information, you may contact Mr. Jack Wimbley at 494-3335.

If you have any questions concerning the enclosed comments, please feel free to contact me at 494-3391. Notice of the specific hearing date which will be between March 1 and June 30, 1983, will be forwarded to you in the future.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: Development Design Group, Ltd.
Riderwood Building, Suite 100
1107 Kenilworth Drive
Towson, Maryland 21204

Mr. Al Barry, Chief Current Planning
Baltimore City Dept. of Planning
8th Floor
222 E. Saratoga Street
Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee Date: October 29, 1982
TO: PAUL J. SOLOMON, Head
FROM: Environmental Planning Section, OPZ
SUBJECT: Review of environmental report prepared by Rumel et al re: the zoning change being requested for the Isaac A. Jones' property

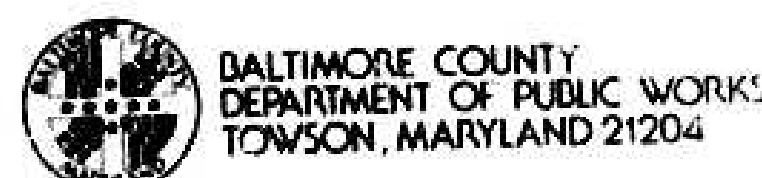
I have reviewed the certification dated June 2, 1982 provided by Development Design Group, Ltd. in regard to the requirements of Section 1A03.2 of the Baltimore County Zoning Regulations. There is some question regarding whether Merryman Branch is a second- or third-order stream which is somewhat academic since the stream does flow directly into Loch Raven Reservoir. A review of floodplain area based on alluvial soils indicates that the floodplain area of the property is extensive. With these supplemental comments, the first five certifications are acceptable.

In regard to Item No. 6 of the certification, I have to conclude that the conclusions made are based on a combination of incorrect information, lack of or inadequate documentation, assumptions, and lack of detail. This environmental report fails to satisfy the requirement as specified in 1A03.2A.3 of the Baltimore County Zoning Regulations.

The environmental impact statement shows that for the purpose of watershed protection, a DR 3.5 designation is more effective than RC 4 (Watershed Protection). Also, this report states that, based on public sewerage cost/unit, DR 3.5 is feasible unlike DR 1, which carries a prohibitive cost. The report states that through the effective utilization of stormwater management practices, any adverse impacts from the urban density permitted by DR 3.5 on the water quality will be mitigated. In addition, the report indicates that at the present time the use of the property as a farm is resulting in significant levels of pollutants being carried into Merryman's Branch which traverses the site and feeds directly into Loch Raven Reservoir.

NJS:vh

Paul J. Solomon
PAUL J. SOLOMON, Head
Environmental Planning Section



HARRY J. PISTEL, P.E.
DIRECTOR

August 2, 1982

Mr. William E. Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #269 (1981-1982)
Property Owner: D & R Joint Venture
S/E Cor. Pot Spring Rd. & Old Bosley Rd.
Acres: 115 District: 8th

Dear Mr. Hammond:

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

Highways:

Pot Spring Road and Bosley Road, existing public roads, are proposed to be improved in the future on 70 and 50-foot rights-of-way, respectively; and, Padonia Road is proposed to be extended easterly from Pot Spring Road to Bosley Road on an 80-foot right-of-way. Further information may be obtained from the Baltimore County Bureau of Engineering, Highway Design and Approval Section.

Sediment Control:

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.

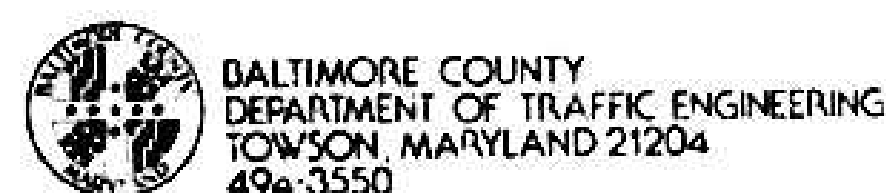
Drainage studies, storm water management drawings and sediment control drawings will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading or building permits.

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

In accordance with the drainage policy, the Petitioner is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall.

Open stream drainage requires a drainage reservation or easement of sufficient width to cover the flood plain of a 100-year design storm. However, a minimum width of 50 feet is required.



STEPHEN E. COLLINS
DIRECTOR

August 25, 1982

Mr. William Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. 269 -ZAC- June 29, 1982
Property Owner: D & R Joint Venture
Location: SE/Cor. Pot Spring Road and Old Bosley Road
Existing Zoning: R.C. 4 & R.C. 5
Proposed Zoning: D.R. 3.5

Acres: 115
District: 8th

Dear Mr. Hammond:

The existing zoning for the 69.83 acre site can be expected to generate approximately 162 trips and the proposed 3.5 zoning for the 115 acre site can be expected to generate approximately 5,000 trips per day.

Very truly yours,

Michael S. Playgan
Michael S. Playgan
Engineering Associate II

MSF/r1j

Item #269 (1981-1982)
Property Owner: D & R Joint Venture
Page 2
August 2, 1982

Storm Drains: (Cont'd)

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages 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.

Water and Sanitary Sewer:

There are public 8-inch water mains in Dulaney Gate Circle and Dulaney Woods Road, and a 12-inch public water main in Pot Spring Road; and, there is public 8-inch sanitary sewerage in these roads.

This property is partly within the Baltimore County Metropolitan District and is within the Urban-Rural Demarcation Line. Baltimore County Water and Sewerage Plans W and S-10B, as amended, indicate respectively, "Immediate Priority" and "Planned Service in 3 to 5 Years".

Very truly yours,

Robert A. Morton
ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

cc: Jack Wimbley

U-SW Key Sheet
61-64 NE 3-5 Pos. Sheets
NE 16A & B Topo
52 Tax Map



HARRY J. PISTEL, P.E.
DIRECTOR

November 4, 1982

Mr. William E. Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #269 (1981-1982)
Property Owner: D & R Joint Venture
S/E Cor. Pot Spring Rd. & Old Bosley Rd.
Acres: 115 District: 8th

Dear Mr. Hammond:

The following amended water and sanitary sewer comments are furnished in regard to the plat submitted for review by the Zoning Advisory Committee in connection with the subject item.

Water and Sanitary Sewer Comments:

This property is partly within the Baltimore County Metropolitan District.

The Baltimore County Water Supply and Sewerage Plan 1983-1990, amended through January 1982, on Maps W and S-10 and 16B, indicate respectively "No Planned Service" in the area.

Very truly yours,

Robert A. Morton
ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

cc: Jack Wimbley

U-SW Key Sheet
61-64 NE 3-5 Pos. Sheets
NE 16A & B Topo
52 Tax Map



DONALD J. ROOP, M.D., M.P.H.
DEPUTY STATE & COUNTY HEALTH OFFICER

August 10, 1982

Mr. William T. Hackett, Chairman
Board of Appeals
Court House
Towson, Maryland 21204

Re: Zoning Reclassification Request

Dear Mr. Hackett:

Comments on Item #269, Zoning Advisory Committee Meeting of June 29, 1982, are as follows:

Property Owner: D & R Joint Venture
Location: SE/Cor. Pot Spring Road and Old Bosley Road
Existing Zoning: R.C. 4 & R.C. 5
Proposed Zoning: D.R. 3.5
Acres: 115
District: 8th

The Baltimore County Department of Health has reviewed the proposed zoning reclassification and has no specific comments regarding same.

Very truly yours,

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

RECEIVED
BALTIMORE COUNTY
Aug 13 11 13 AM '82
COUNTY BOARD
OF APPEALS
BY: [initials]



PAUL H. HENCKE
CHIEF

September 1, 1982

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: D & R Joint Venture

Location: SE/Cor. Pot Spring Road and Old Bosley Road

Item No.: 269 Zoning Agenda: Meeting of June 29, 1982

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" 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 750 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 operation.

() 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 "Life Safety Code", 1976 Edition prior to occupancy.

() 6. Site plans are approved, as drawn.

() 7. The Fire Prevention Bureau has no comments at this time.

REVIEWED BY: [initials] Noted and Approved: [initials]
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/mbl/cm

PETITION FOR ZONING RE-CLASSIFICATION
SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate 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 herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an RC-4 and BCS-2.5 to an R-2.5 zone, for the reasons given in the attached statement; and (2) for a special exception under the said Zoning Law and Zoning Regulations of Baltimore County to use the herein described property for

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Law and Zoning Regulations of Baltimore County:

RECEIVED
BALTIMORE COUNTY
JAN 15 2 37 PM '82
COUNTY BOARD
OF APPEALS
BY:

Property is to be posted and advertised as prescribed by The Baltimore County Code.

D & R Joint Venture
I, the undersigned, agree to pay expenses of above Re-classification, Special-Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: Legal Owner(s):
(Type or Print Name) D & R Joint Venture
Signature: David Daneker, Partner
Signature: Isaac Jones

Street or Box: Isaac Jones
City and State: (Type or Print Name)

Attorney for Petitioner: D & R Joint Venture
Charles F. Obrecht, Jr., Esquire
(Type or Print Name) c/o David Daneker, Partner
1000 Maryland Trust Building
Baltimore, Maryland 21202
City and State

906 Munsey Building
Street or Box: Name and telephone number of legal owner, contract purchaser or representative to be contacted

Baltimore, Maryland 21202 Charles F. Obrecht, Jr., Esquire
City and State Name

Attorney's Telephone No.: 685-6938 685-6938
Telephone No.

BANC-Penn 1

Nicholas B. Commodari
Page 2
January 10, 1983

For these reasons, I urge that the Petition be denied on the basis of its potential impact on water quality and in light of the intention of the "No Planned Service" designation.

If I can be of further assistance, please feel free to contact me.

Sincerely,

Larry Reich

Larry Reich
Director

jh

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

December 8, 1982

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

ofo
Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, Maryland 21202

RE: Item No. 12 - Cycle No. IV
Petitioner - D & R Joint Venture
Reclassification Petition

Dear Mr. Obrecht:

Enclosed please find addendum comments for the above referenced case.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosure

cc: Development Design Group, Ltd.
Riderwood Building, Suite 100
1107 Kenilworth Drive
Towson, Maryland 21204

Mr. Al Barry, Chief Current Planning
Baltimore City Dept. of Planning
8th Floor
222 E. Saratoga Street
Baltimore, Maryland 21202

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

January 12, 1983

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

ofo
Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, Maryland 21202

RE: Item No. 12 - Cycle No. IV
Petitioner - D & R Joint Venture, et al
Reclassification Petition

Dear Mr. Obrecht:

Enclosed please find addendum comments for the above referenced case.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosure

cc: Development Design Group, Ltd.
Riderwood Building, Suite 100
1107 Kenilworth Drive
Towson, Maryland 21204



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
1709 JON. MARYLAND 21204
494-3211

NORMAN E. GENDER
DIRECTOR

December 8, 1982

Mr. William T. Hackett, Chairman
Board of Appeals
Room 219 - Court House
Towson, Maryland 21204

Dear Mr. Hackett:

Comments on Item #12, Zoning Advisory Committee, Zoning Cycle IV, are as follows:

Property Owner: D & R Joint Venture
Location: S/E corner Pot Spring Rd. and Old Bosley Road
Acre: 115
District: 8th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

If the petition is granted, the developer must comply with the Baltimore County Development Regulations (Bill 36-82).

Very truly yours,

John L. Wimbley
John L. Wimbley
Planner III
Current Planning and Development

JLW:eth

CITY OF BALTIMORE

WILLIAM DONALD SCHAFER Mayor



PLANNING COMMISSION

DEPARTMENT OF PLANNING
LARRY REICH Director
4th Floor, 222 East Saratoga Street, Baltimore, Maryland 21202

January 10, 1983

Nicholas B. Commodari, Chairman
Zoning Plans Advisory Committee
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Commodari:

My staff has reviewed the Petition and Site Plan Evaluation Comments and the Environmental Report for Item #12-Cycle No. IV, Reclassification Petition. The property in question is a 115-acre tract of land currently zoned RC-4 and RC-5 located in the Loch Raven watershed. The Petitioner wishes to have the property rezoned to DR 3.5.

Since the Petitioner has not proposed a specific development plan, our comments are necessarily of a general nature. Above all, our concern is for the water quality in Loch Raven reservoir. The RC-4 zone was wisely established by Baltimore County for the purpose of protecting public water supplies. This designation, which limits development to low density residential, is supported by Baltimore City. This support dates back to 1971, with the City's adoption of a "Policy on Future Development within the Gunpowder and Patapsco Watersheds." A zoning change to allow greater density would run counter to the intended purpose of this designation. Second, the area in question has been designated for "No Planned Service" according to the Baltimore County Water Supply and Sewerage Plan. The recommendation of this plan is being incorporated into the Back River Conveyance System 201 Facility Plan. The 201 Facility Plan has designated all RC-4 zoned lands as "No Planned Service" areas. The "No Planned Service" designation functions to inhibit undesirable development in environmentally sensitive areas.

A third concern is that, since the Petitioner has not chosen to submit a development plan, there is no way to obtain reasonable assurances that a developer can and will implement best management practices for stormwater management. In addition, the environmental report prepared by Rummel Klepper and Kahl, which was provided to us for review of the proposed zoning change, is based on an assumption of a change from the RC-4 and 5 classifications to DR 2. The petition requests a change to DR 3.5, which would allow up to 345 rather than 230 units on the 115-acre tract. The report does not provide sufficient analysis of how the higher density would be accommodated with respect to water quality impacts.

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

November 4, 1982

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

ofo
Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Charles F. Obrecht, Jr., Esquire
906 Munsey Building
Baltimore, Maryland 21202

RE: Item No. 12 - Cycle No. IV
Petitioner - D & R Joint Venture, et al
Reclassification Petition

Dear Mr. Obrecht:

This reclassification petition has been timely filed with the Board of Appeals for a public hearing within the October-April reclassification cycle (Cycle IV). It has been reviewed by the zoning office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

If it has been suggested that the petition forms, descriptions, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and/or commenting agencies' standards and policies, you are requested to review these comments, make your own judgement as to their accuracy and submit the necessary amendments to this office before Monday, November 29, 1982. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

The subject of this petition consists of a 115 plus acre tract of land having frontage on the east and south side of Pot Spring and Old Bosley Roads, respectively and on the northeast side of Old Bosley Road southeast of Pot Spring Road. In view of your clients' proposal to reclassify this property to a D.R. 3.5 zone, this hearing is required.

As indicated in our previous conversation, it appears that a very small portion of the property along the north-east side of Old Bosley Road is zoned D.R. 1. Because of this, we decided to include this in the first required advertising of this property. However, the petition forms will have to be changed and initialed to reflect this.

As you are aware, your clients' request is in conflict with Section 1A06.3A, of the zoning regulations, concerning the availability of public water and sewer. In the past this