

Bureau of Environmental Health  
7178 Columbia Gateway Drive, Columbia, MD 21046  
(410) 313-2640 Fax (410) 313-2648  
TDD (410) 313-2323 Toll Free 1-866-313-6300  
website: www.hchealth.org

Penny E. Borenstein, M.D., M.P.H., Health Officer

March 16, 2005

MEMORANDUM

TO:

Greg Altieri  
Altieri Homes  
9017 Red Branch Road  
Suite 201  
Columbia, MD 21045

FROM:

Brian Baker, R.S. *BB*  
Well and Septic Program  
Bureau of Environmental Health

RE:

12904 Folly Quarter Road  
Map 22, Grid 16, Parcel 96

The Howard County Health Department recommends that the demolition permit for the referenced parcel be issued.

A report from G. Edgar Harr Well Drilling suggests that the existing well on the lot has been properly sealed.

Altieri Homes will have any existing septic system components, such as a drywell or septic tank, pumped out by a scavenger truck and filled with dirt or other suitable material.

Please call our office if any additional wells or septic system components are found during the demolition and rebuilding process.

Cc: File

HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
Division of Land Development

DATE: 8-1-05

DPZ File No. WP-06-005

Department of Planning and Zoning

- Transportation Planning
- Historic Preservation
- Public Service and Zoning Administration
- Research
- Address Coordinator

- Environmental and Community Planning (Ag Pres/Route 1)
- Development Engineering Division
- Other
- File

(BA-541-D)

Agencies

- Soil Conservation District
- Department of Inspections, Licenses & Permits
- Department of Fire and Rescue Services
- State Highway Administration
- Health Department
- Public School System
- Recreation and Parks
- WSSC
- MD Aviation Administration

- Tax Assessment
- Verizon
- BGE
- Cable TV
- Police
- MTA
- Finance
- DPW, Real Estate Services
- DPW, Construction and Inspection
- DPW, Bureau of Utilities

RE: Altieri / Misc Property

ENCLOSED FOR YOUR →  Signature Approval  Review & Comments  Files  
 THE ENCLOSED →  Original  Pre-Packaged Plan Set

Plans	# of Sheets	Supplemental Documents
<input type="checkbox"/> Sketch Plan	_____	<input type="checkbox"/> Wetlands Report
<input type="checkbox"/> Prel Equiv Sketch Plan	_____	<input type="checkbox"/> Soils/Topo Map/Drain Area Map
<input type="checkbox"/> Preliminary Plan	_____	<input type="checkbox"/> FSD/FCP/Worksheet and Application
<input type="checkbox"/> Final Plat/Plat of Easement/RE Plat	_____	<input type="checkbox"/> Declaration of Intent (Forest Cons)
<input type="checkbox"/> Final Constr Plans (RDS)	_____	<input type="checkbox"/> Drainage and/or Computation/Pond Safety Comps
<input type="checkbox"/> Final Development Plan	_____	<input type="checkbox"/> Preliminary Road Profiles
<input type="checkbox"/> Site Development Plan	_____	<input type="checkbox"/> APFO Roads Test/Mitigation Plan/Traffic Study
<input type="checkbox"/> Landscape Plan/Supplemental Plan	_____	<input type="checkbox"/> Noise Study
<input type="checkbox"/> Grading Plan	_____	<input type="checkbox"/> Sight Distance Analysis/Speed Flow Study
<input type="checkbox"/> House Type Revision/Walk-Thru Red-Line	_____	<input type="checkbox"/> Floodplain Study
<input type="checkbox"/> Water and Sewer Plan	_____	<input type="checkbox"/> Stormwater Management Comps/Geo-Tech Report
<b>Applications</b>		<input type="checkbox"/> Industrial Waste Survey (DPW)
<input checked="" type="checkbox"/> Waiver Petition Applic/Exhibit	_____	<input type="checkbox"/> Road Poster Form Letter
<input type="checkbox"/> Planning Board Application	_____	<input type="checkbox"/> Response Letter
<input type="checkbox"/> ASDP/CSDP Application	_____	<input type="checkbox"/> Perc Plat
<input type="checkbox"/> DED Application/Checklist	_____	<input type="checkbox"/> Scenic Road Exhibits
<input checked="" type="checkbox"/> <del>DED</del> Fee Receipt/Deeds/Cost Estimate	_____	<input type="checkbox"/> Deeds
		<input type="checkbox"/> Photographs
		<input type="checkbox"/> Retaining Wall Comps/Details
		<input type="checkbox"/> Poster/Community or HDC Meeting Information
		<input type="checkbox"/> Route 1 Details/Summary

WAS:  Received  Tentatively Approved  Recorded  
 Received and Revised  Approved On 8-1-05

COMMENTS: \_\_\_\_\_ SRC/Comments Due By: 8-25-05

1/KP  
8/25/05 Check, initial and return to the Department of Planning and Zoning if plan is approved with no comments. mef  
 DPZ STAFF INITIALS \_\_\_\_\_

CLEAR INFO

# WAIVER PETITION APPLICATION

Date Submitted/Accepted           AUG 1 2005           DPZ File Number           WP-06-005          

**I. Site Description**

Subdivision Name/Property Identification:           Altieri/Niese Property            
Location of property:           12924 Folly Quarter Road, Ellicott City, Maryland 21042            
(Street Address and/or Road Name)

Residential	Residential
(Existing Use)	(Proposed Use)
22	16
(Tax Map No.)	(Grid/Block No.)
RR-DEO	7.0 ac. + 2.69 ac. = 9.69 ac.
(Zoning District)	(Total Site Area)

Provide a brief site history including reference to all previously submitted or currently active plans on file with the County (subdivision plans, Board of Appeals petitions, waiver petitions, etc.)  
          The property is currently the subject of an administrative appeal from a letter ruling by DPZ on March 8, 2005. The appeal was assigned BA case No. 541-D and is currently on the unscheduled docket.          

**II. Waiver Request**

In accordance with Section 16.104 of the Howard County Subdivision and Land Development Regulations, the Department of Planning and Zoning, in conjunction with the Subdivision Review Committee **may grant waivers or modifications to the minimum requirements stipulated within the Regulations if it is determined that extraordinary hardships or practical difficulties may result from strict compliance with the regulations, or if it is determined that the regulations may be served to a greater extent by an alternative proposal.**

In the area below, the petitioner shall enumerate the specific numerical section(s) from the Subdivision and Land Development Regulations for which a waiver is being requested and provide a brief summary of the regulation. Attach a separate sheet if additional information is appropriate.

Section Reference No.	Summary of Regulation
1. 16-120(c)(2)	Lot Lay-out; Minimum Frontages; Single Family Detached
2. Former 16-102(b)	Exempt Divisions and Mergers for Residentially Zoned Properties
3. _____	_____
4. _____	_____
5. _____	_____

# **Exhibit A**

## **SUPPLEMENT TO WAIVER PETITION APPLICATION**

Petitioner Daren B. Altieri through his attorneys William E. Erskine and David A. Carney, pursuant to Section 16.104 of the Howard County Subdivision and Land Development Regulations hereby petitions the Department of Planning and Zoning in conjunction with the Subdivision Review Committee to grant a waiver from the strict compliance with Section 16-120 (c)(2) of the Subdivision and Land Development Regulations which specifies minimum lot frontages on approved streets within a public right-of-way providing access to a property intended for use as a single family detached dwelling. Your Petitioner also requests permission for an adjoinder transfer as permitted by former Section 16-102(b) of the subdivision regulations.

### **Request for Waiver of Frontage Requirement**

The Petitioner believes that in light of the very unique circumstances which are set forth below, strict compliance with Section 16-120(c)(2) will result in extraordinary hardships and practical difficulties for the Petitioner. Further, strict compliance with the regulations will not secure the public interest, nor will it promote the intent of the regulations, namely to promote the health, safety, and general welfare of the residents of Howard County.

The Petitioner offers the following facts and circumstances for consideration. In the summer of 2004, your Petitioner and his family decided to relocate their residence from Elkridge, Maryland to another area within Howard County. In December, 2004, your Petitioner contracted to purchase a parcel of land consisting of 2.689 acres of land located on Old Rolling Road in Western Howard County. The purpose for buying this particular parcel was to secure a building lot for the construction of single family detached dwelling to be used personally by your

Petitioner as his family residence. This parcel of land is directly adjacent to another parcel of land owned by the Petitioner's brother, Greig Altieri. The intent was that both families and their children would reside side by side. It should be noted that the Altieri brothers are in the business of building homes, however, these particular properties were acquired solely for their personal residential use and not for investment or resale.

The particular parcel purchased by Daren Altieri was acquired from adjoining property owners Henry E. Niese and Paula G. Niese in consideration of Four Hundred Thousand Dollars (\$400,000.00). The subject parcel (Parcel 565) was originally created by deed dated January 21, 1971. This deed was accepted for recordation on February 10, 1971 and was recorded among the land records for Howard County in Liber 550, Folio 391. Shortly after purchasing the property Mr. Altieri began the process of obtaining the necessary permits required to construct his home. He obtained the necessary permits to drill a well and to conduct percolation tests for the septic field. After successfully drilling a well and completing all percolation tests, Mr. Altieri applied for a building permit in order to begin construction of his new home. It was at this point that Mr. Altieri first became aware that there was a problem relating to the "legitimacy" of his lot.

Because Mr. Altieri was experiencing a delay in the approval of his building permit he wrote to the Department of Planning and Zoning and requested a determination of whether this lot was a legal lot eligible for a building permit. In response, he received a letter dated March 8, 2005 from Mr. George Beisser, Chief, Howard County Division of Public Service and Zoning Administration informing him that in the opinion of the Department, Mr. Altieri's property was "not a valid separate lot and does not qualify for building permit authorization for a single-family detached dwelling." See attached Exhibit B. Mr. Beisser explained in his letter that it was the Department's interpretation that the deed which created the lot in 1971 was a "conveyance to

adjoining land owners.” As such, the deed did not in the opinion of the Department create a separate legal lot, but rather merely changed the relative sizes of the sending and receiving parcels. Regrettably for Mr. Altieri, there was not any merger language in the January 21, 1971 deed (attached hereto as Exhibit C) which would have presented a “red flag” to a subsequent purchaser that the parcel of land described in the deed was not legally a separate lot. The status of the lot was further obscured by the fact that the minimum lot size in 1971 was only one acre in the RR district. Therefore, it was not unreasonable for Mr. Altieri to believe that the 2.69 acre lot was a valid, separate and buildable lot at the time it was created

In order to protect the Petitioner’s interest while these matters were being investigated, undersigned co-counsel William E. Erskine filed an Administrative Appeal of the March 8, 2005 letter ruling. That appeal has been assigned BA Case No. 541-D and is currently on the unscheduled docket. It is the Petitioner’s desired approach to legitimize this lot through the subdivision process. Obtaining a waiver from Section 16-120 (c)(2) is a necessary prerequisite for this undertaking. The Petitioner feels that the requested waiver is fully justifiable in light of the unique and isolated circumstances of this case. Without the requested waiver, Mr. Altieri will certainly suffer extraordinary hardships and practical difficulties. Succinctly stated, he cannot without the waiver pursue his goal of legitimizing his lot through the subdivision process. He will essentially be the unwitting owner of 2.69 acres of land that would have no reasonable use whatsoever. He could not use it for residential purposes without a building permit. Nor could he use it for any other economically viable use including farming. The lot is patently too small to be farmed in an economical manner.

Your Petitioner believes that the intent of the Subdivision regulations will be served to a greater extent by granting the waiver as opposed to requiring strict compliance with the

regulations. As previously stated, the intent of the regulations as set forth in Section 16.101 of the subdivision regulations is to promote the health, safety, and general welfare of the residents of the county. This is exactly what would be accomplished by the granting of this waiver request. In the event that the subdivision of this property is ultimately approved, your Petitioner intends to make improvements to certain gravel sections of the roadway that are currently unpaved. This unpaved area of the roadway is narrow and at times muddy making it more difficult to access during inclement weather. This proposed improvement to the roadway would particularly benefit those persons using the road to the west of your Petitioner's property. In its improved state the roadway will provide greatly improved all weather access to persons using the roadway. The safety of persons residing on or visiting Old Rolling Road will also be enhanced and promoted in light of the improved access now made available for emergency equipment such as fire trucks and rescue vehicles

The property that is the subject matter of this petition is one of approximately 4 parcels that have been served by Old Rolling Road located generally from its juncture on the east across from Glenelg Country School on Folly Quarter Road and terminating at its intersection with Triadelphia Road at a location where Folly Quarter Road and Triadelphia Road connect. The residential parcels fronting on Old Rolling Road generally range in size from 2 acres to 7 acres except for the Howard County, Maryland parcel which has frontage on Folly Quarter Road immediately to the east of the property. That Howard County parcel totaling 66.39 acres abuts the subject parcel and then connects to two other large parcels to the north and east, namely Parcel 31 consisting of 184.94 acres also owned by Howard County as part of Benson Branch Park and Parcel 80 (the Feaga Farm) which contains 106.22 acres and is under an agricultural preservation easement. All of the property abutting the Feaga Farm and the Howard County

parcels between the north side of Old Rolling Road and those parcels have been subdivided in lots generally consistent with the Subdivision Regulations.

At the time in 1961 when the County Commissioners by resolution identified the prescriptive roads that were being maintained by Howard County as public roads, Old Rolling Road was not included as a County maintained prescriptive road. Current Tax Map 22 as highlighted on attached Exhibit D depicts those conditions. The County GIS maps and aerial photographs (attached as Exhibits E and F) also depicts the conditions of Old Rolling Road between its intersection with Folly Quarter to the east and Walt Ann Drive to the west. When Walt Ann Drive was created as part of the Shepherds Glen Subdivision it obviated in part the need for Old Rolling Road and permitted the connection of Parcel Nos. 28, 186, 154, and 172 into Walt Ann Drive in close proximity to its connection to Folly Quarter Road.

Old Rolling Road from its connection location at the driveways for Parcels 173, 183, 191 and Parcel 96 has historically functioned quite well as an improved driveway for a distance of approximately 1250 feet to its eastern most connection point as highlighted on Exhibit \_\_. For all intent and purposes, that driveway functions as well as any common use driveway serving six or less residential properties under current subdivision regulations.

Although Old Rolling Road is a private road, its functions are consistent with the Howard County Design Manual for Roads and it provides safe ingress and egress for the four residential residences that have been utilizing that road since their residential improvements were installed. One of those residences is the replacement home being built on Parcel 96 that is now owned by your Petitioner's brother, Greig Altieri, whose new residence is currently under construction and is nearly complete. If the Waiver is granted, there will only be five residences utilizing the

common use driveway through the bed of Old Rolling Road and little likelihood of further subdivision in light of the subdivision related constraints of other parcels.

**Request for Waiver to Permit Adjoinder Transfer**

At the time that former Section 16.102(b) *Exempt Divisions and Mergers for Residentially Zoned Properties* was eliminated by Council Bill from the subdivision regulations in 2001, the Director of the Department of Planning and zoning indicated that if hardships were created to property owners because of the extinguishment of those provisions, property owners would be permitted to seek waivers on circumstances that were meritorious to permit such adjoinder transfers. In light of the interpretation of DPZ with respect to the January 21, 1971 conveyance by and between William Tucker, et al. and Henry E. Niese, et al., it will be necessary in order for the 2.689 acre parcel to be conforming in terms of size under present regulations that the hatched area shown on the Waiver Plat Exhibit be adjoined to the 2.689 acre parcel. The current regulations now require a minimum lot size of 3 acre lots for non-clustered subdivisions., notwithstanding the fact that in 1971 the subdivision regulations permitted one acre residential parcels for subdivision. If the County in its wisdom determines that the subject parcel needs to be expanded to a minimum size of 3 acres, your Petitioner requests that the Department grant a waiver to permit the conveyance of that adjoinder as described in the attached Waiver Petition Exhibit. Such a waiver is necessary to avoid extreme hardship and practical difficulties. Further, such a proposed use and development is not contrary to any of the 14 principles enumerated in Section 16.101 the subdivision regulations.

Your Petitioner, when he reviewed the title to the parcel created by the 1971 deed, saw nothing in the land records that indicated that the parcel was anything other than a conforming lot which was accessed by a driveway that was depicted on the tax maps of Howard County as Old Rolling Road and was used in function as though it were a either private or public road sanctioned by the County and providing effective ingress and egress to this property

The Petitioner's lot does not abut directly on Old Rolling Road, but will be served by a common driveway easement with his brother in the area shown on the Waiver Petition Exhibit. That driveway extension would be covered by a private common use easement between your Petitioner and his brother.

The Petitioner also feels that the approval of these waiver requests will not be detrimental to the public interest in any way. As previously discussed, improved access to Old Rolling Road will provide significant benefits to persons using the roadway. Further, there are no adverse impacts associated with the granting of the waiver request. The development that may be permitted should the waiver be granted is exceedingly small in scale and intensity as it is limited to one single family detached dwelling. The site area for development consists almost entirely of an open grass field without any significant trees or vegetation or other environmental features. Such a benign use will have no adverse impact on the scenic beauty and natural resources of the county; including wetlands, streams, water quality, topography, forests and other vegetation. Certainly, the granting of the requested waiver will in no way nullify the intent of the subdivision regulations. To the contrary, the approval of these waiver requests will, for the reasons stated, promote the health, safety, and welfare of county residents while providing much needed relief to the Petitioner from the truly extraordinary hardships that otherwise await him.

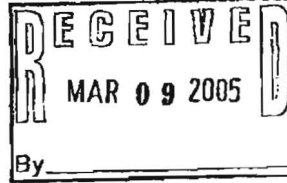


**HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING**  
3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

[www.co.ho.md.us](http://www.co.ho.md.us)  
FAX 410-313-3467  
TDD 410-313-2323

March 8, 2005



Daren Altieri  
9017 Red Branch Road, Suite 201  
Columbia, Maryland 21045

RE: 2.689 Acre Land Area Described in Liber 550,  
Folio 391; Part of Tax Map 22, Grid 16, Parcel  
191 (the "Property")

Dear Mr. Altieri:

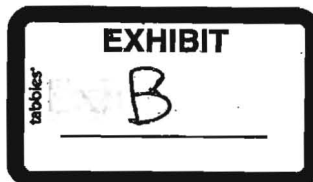
I am writing in response to your letter dated February 25, 2005, regarding the Property referenced above. In your letter, you ask whether the Property is a legal "buildable lot". You submitted several deeds as documentation for this Property.

This Division has evaluated the materials you submitted with your letter, and we have determined that the Property was clearly specified in Liber 550 Folio 391 as a "conveyance to adjoining land owners". Based on this determination, the Property is not a valid separate lot and does not qualify for building permit authorization for a single-family detached dwelling. If you have additional questions, please contact Bob Lalush at 410-313-4344

Sincerely,

George L. Beisser, Chief  
Division of Public Service  
and Zoning Administration

GLB/JRL:jrl  
cc: Steve Rolls



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9829

THIS DEED, Made this *21st* day of *January*,  
1971, by and between WILLIAM E. TUCKER, SR. and LYDIA E. TUCKER,  
his wife, and WILLIAM E. TUCKER, JR. and CLAUDIA H. TUCKER, his  
wife, Grantors, and HENRY E. NIESE and PAULA G. NIESE, his  
wife, Grantees.

WITNESSETH THAT in consideration of the sum of Five  
Dollars (\$5.00) and other good and valuable considerations, the  
receipt of which is hereby acknowledged, the said WILLIAM E.  
TUCKER, SR. and LYDIA E. TUCKER, his wife, and WILLIAM E. TUCKER,  
JR. and CLAUDIA H. TUCKER, his wife, do hereby grant and convey  
unto the said HENRY E. NIESE and PAULA G. NIESE, his wife, as  
tenants by the entireties, their assigns, the survivor of them,  
his or her heirs and assigns, in fee simple, all that lot or  
parcel of ground situate and lying in the Third Election Dis-  
trict of Howard County, Maryland, and described as follows:

BEGINNING for the same at an iron pipe heretofore  
set at the end of the second or North 47 degrees 47 minutes  
East 208.97 foot line of that land, the land herein described  
being a part thereof, which by deed dated November 23, 1965  
and recorded among the Land Records of Howard County in Liber  
No. 446, folio 226, etc., was granted and conveyed by Joseph  
H. Clark, et al., to William E. Tucker, Sr., et al., and run-  
ning with the third and fourth lines of the said land, as now  
surveyed, (1) North 45 degrees 09 minutes West 208.70 feet to  
an iron pipe heretofore set, (2) North 47 degrees 47 minutes  
East 590.00 feet to an iron pipe heretofore set, thence leav-  
ing the said outlines with the first of two lines of division  
now made, (3) South ~~30~~ 30 degrees 06 minutes East 213.06 feet to  
an iron pipe now set, (4) South 47 degrees 47 minutes West  
534.73 feet to the point of the beginning, containing 2.689  
acres of land, more or less.

IK  
WET  
C.H.K.  
263  
WT

BEING part of the parcel of land which by deed  
dated November 23, 1965, and recorded among the Land Records  
of Howard County in Liber W.H.H. No. 446 folio 226, was granted  
and conveyed by J. H. Clark, et al. to the said WILLIAM E.  
TUCKER, SR., et al., in fee simple.

TOGETHER with the buildings and improvements thereupon  
erected, made or being and all and every the rights, alleys,  
ways, waters, privileges, appurtenances and advantages, to the  
same belonging or any wise appertaining.



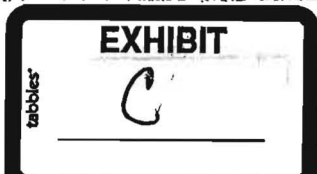
TAX \$ 36.00 REC. # 9829  
STATE PROPERTY TRANSFER

FEB 10 1971

WET  
CLEAR

DATE: FEB 10 1971  
TRANSFER TAX PAID

\$ 72.00



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TO HAVE AND TO HOLD the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; unto and to the proper use and benefit of the said HENRY E. NIESE and PAULA G. NIESE, his wife, as tenants by the entireties, their assigns, the survivor of them, his or her heirs and assigns, in fee simple.

AND the said Grantors hereby covenant that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

WITNESS the hands and seals of said grantors.

WITNESS:

<u><i>Rene B. Skelan</i></u>	<u><i>William E. Tucker, Sr.</i></u> (SEAL) William E. Tucker, Sr.
	<u><i>Lydia E. Tucker</i></u> (SEAL) Lydia E. Tucker
<u><i>Rene B. Skelan</i></u>	<u><i>William E. Tucker, Jr.</i></u> (SEAL) William E. Tucker, Jr.
	<u><i>Claudia H. Tucker</i></u> (SEAL) Claudia H. Tucker

STATE OF MARYLAND, COUNTY OF HOWARD, to wits:

I HEREBY CERTIFY, That on this 21<sup>st</sup> day of January, 1971, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared WILLIAM E. TUCKER, SR. and LYDIA E. TUCKER, his wife, and WILLIAM E. TUCKER, JR. and CLAUDIA H. TUCKER, his wife, the above named grantors, and they acknowledged the foregoing Deed to be their act.

AS WITNESS my hand and Notarial Seal.



*Irene B. Skelan*  
Notary Public

My Commission expires 1/1/74.

THIS CONVEYANCE is exempt from Subdivision Regulations as a conveyance to adjoining land owners, pursuant to Section 223(a) of the Code of Public and Local Laws of Howard County, 1965 edition.

*Mari & G. E. Skeland, atty*