



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
1/4/07



MEMORANDUM

DATE: December 22, 2006

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Subdivision Supervisor (301-495-4542)
Development Review Division *CC*

REVIEW TYPE: Subdivision Review Waiver
APPLYING FOR: Request for Waiver of Chapter 50, Section 50-20 (a)

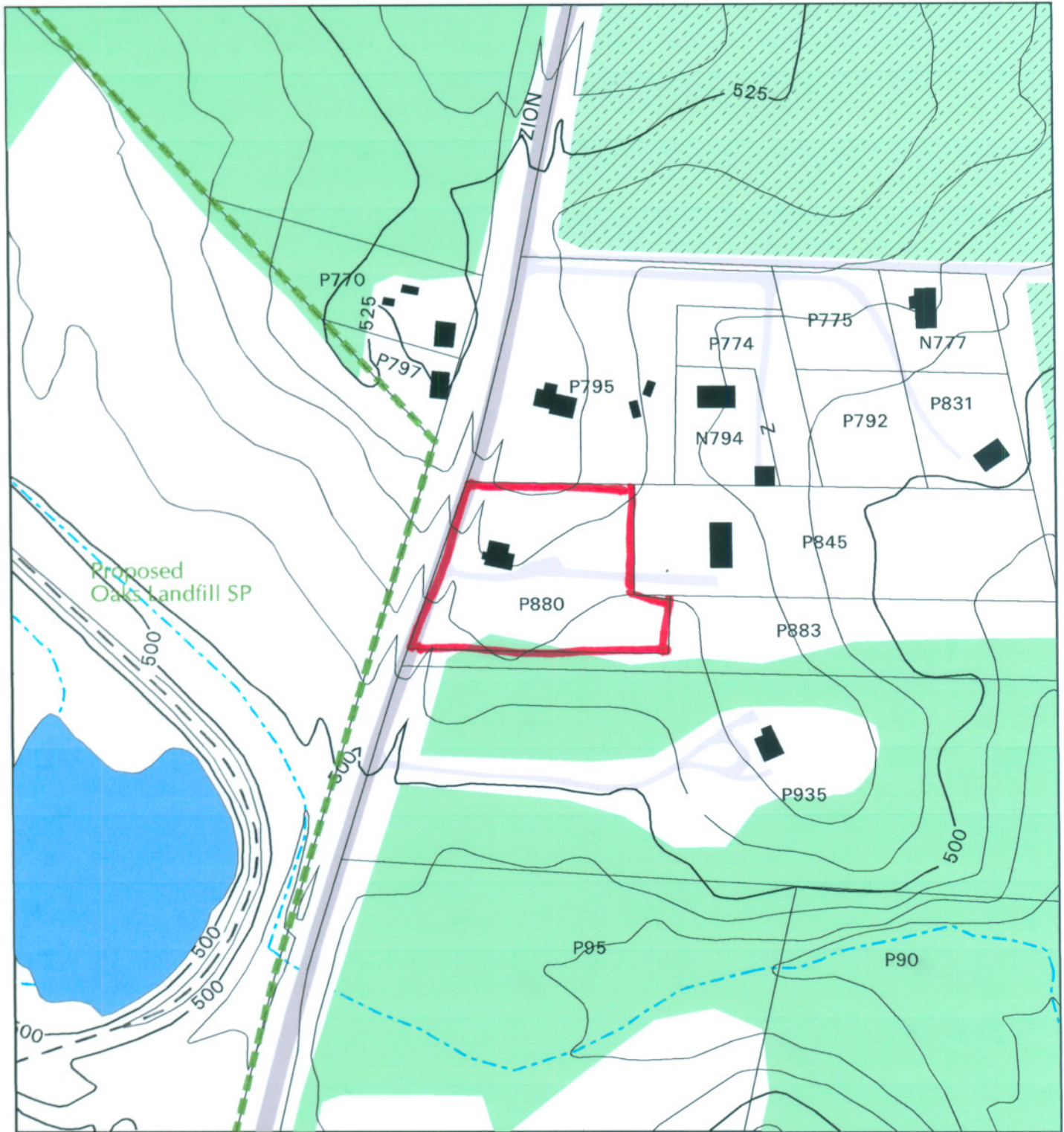
PROJECT NAME: Dutton Property
CASE #: 2007-02
REVIEW BASIS: Chapter 50, Sec. 50-38 (a)(1), Montgomery County Subdivision Regulations

ZONE: RE-2
LOCATION: Located on the east side of Zion Road, approximately 1,200 feet south of its intersection with Riggs Road

MASTER PLAN: Olney
APPLICANT: Ms. Kellie Dutton
ATTORNEY: Miller, Miller and Canby

FILING DATE: November 27, 2006
HEARING DATE: January 4, 2007

DUTTON PROPERTY (SRW200702)



Map compiled on December 22, 2006 at 2:26 PM | Site located on base sheet no - 229NW05

NOTICE

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

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Key Map



N



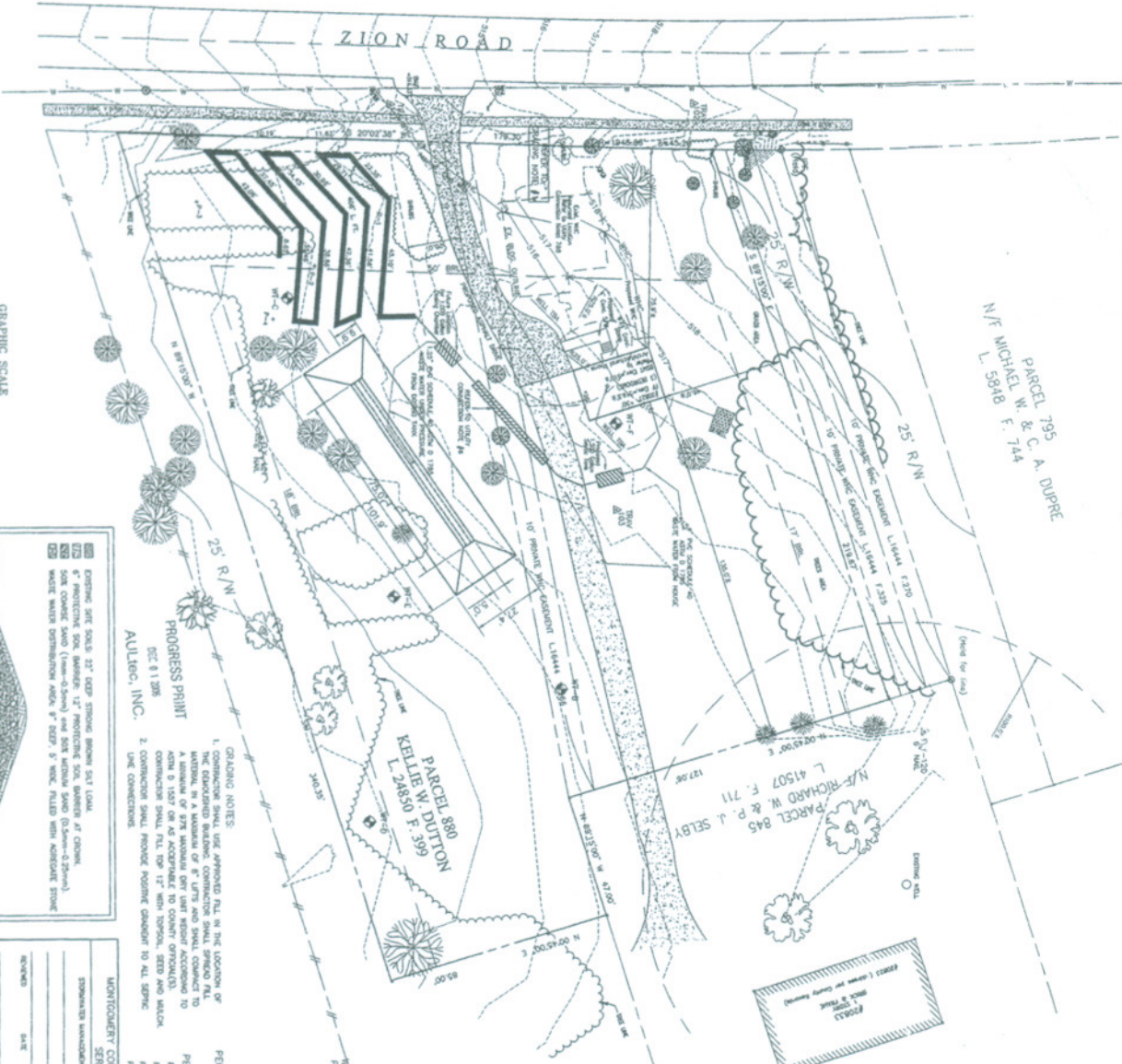
Research & Technology Center



1 inch = 200 feet
1 : 2400



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PROGRESS PRINT
DEC 11 2005
AULtec, Inc.

GRADING NOTES
1. CONSTRUCTION SHALL USE APPROVED FILL IN THE LOCATION OF...
2. THE EXISTING BUILDING CONSTRUCTION SHALL BE MAINTAINED...
3. ALL WORK SHALL BE ACCORDING TO THE...
4. CONSTRUCTION SHALL FILL TOP 12" WITH TOPSOIL, SEED AND MULCH.
5. CONNECTION SHALL PROVIDE POSITIVE DRAINAGE TO ALL SERVICE LINE CONNECTIONS.

WATER TABLE TEST RESULTS:
PERFORMED APRIL 11, 2005
W1-B GROUND WATER @ 6'
W1-C GROUND WATER @ 10'
W1-D GROUND WATER @ 15'
W1-E GROUND WATER @ 20'
W1-F GROUND WATER @ 25'
W1-G GROUND WATER @ 30'
W1-H GROUND WATER @ 35'
W1-I GROUND WATER @ 40'
W1-J GROUND WATER @ 45'
W1-K GROUND WATER @ 50'

PROPOSED SHALLOW TRENCH SEPTIC SYSTEM AND RESERVE SAND MOUND SYSTEM SPECS
1. PROVIDE 1,500 GALLON 3 COMPARTMENT TRENCH SYSTEM.
2. PROVIDE 12" DIA. SAND MOUND WITH 2' DIA. SAND MOUND.
3. PROVIDE 4" DIA. SAND MOUND WITH 2' DIA. SAND MOUND.
4. PROVIDE 12" DIA. SAND MOUND WITH 2' DIA. SAND MOUND.
5. PROVIDE 12" DIA. SAND MOUND WITH 2' DIA. SAND MOUND.
6. PROVIDE 12" DIA. SAND MOUND WITH 2' DIA. SAND MOUND.
7. PROVIDE 12" DIA. SAND MOUND WITH 2' DIA. SAND MOUND.
8. PROVIDE 12" DIA. SAND MOUND WITH 2' DIA. SAND MOUND.
9. PROVIDE 12" DIA. SAND MOUND WITH 2' DIA. SAND MOUND.
10. PROVIDE 12" DIA. SAND MOUND WITH 2' DIA. SAND MOUND.

PERFORMED SEPTEMBER 16, 2005
P-1 PASSED - SAMPLERS @ 5', 8', 9', 10', 11', 12', 13', 14', 15', 16', 17', 18', 19', 20', 21', 22', 23', 24', 25', 26', 27', 28', 29', 30', 31', 32', 33', 34', 35', 36', 37', 38', 39', 40', 41', 42', 43', 44', 45', 46', 47', 48', 49', 50', 51', 52', 53', 54', 55', 56', 57', 58', 59', 60', 61', 62', 63', 64', 65', 66', 67', 68', 69', 70', 71', 72', 73', 74', 75', 76', 77', 78', 79', 80', 81', 82', 83', 84', 85', 86', 87', 88', 89', 90', 91', 92', 93', 94', 95', 96', 97', 98', 99', 100'

ZONING NOTES
1. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.
2. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.
3. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.
4. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.
5. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.
6. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.
7. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.
8. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.
9. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.
10. CURRENT ZONING: RE-2 - RESIDENTIAL, ONE-FAMILY.

MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES APPROVED FOR:			
STANDARD REVIEWER	REQUIREMENTS	ADMINISTRATIVE REQUIREMENTS	DATE
REVIEWED	REVIEWED	REVIEWED	REVIEWED
REVIEWED	REVIEWED	REVIEWED	REVIEWED
REVIEWED	REVIEWED	REVIEWED	REVIEWED

DATE	DESCRIPTION
February 4, 2005	Initial Review
April 21, 2005	Final Review
December 21, 2005	Final Review
December 21, 2005	Final Review
December 21, 2005	Final Review

AULtec, Inc.
7895 Cessano Avenue, Suite D
Gothtersburg, MD, 20879
Tel: (301) 947-4800 Fax: (301) 947-4811
E-mail: info@aultec.com
AULtec, Inc. is a Subsidiary of Parsons & Parsons a US Construction & GPS Consultant

SITE IMPROVEMENT AND GRADING PLAN
LIBER 24850, FOLIO 399
PARCEL 850, MAP HV2.1
3067 ZION ROAD
GAITHERSBURG, MARYLAND 20822
MONTGOMERY COUNTY, MARYLAND

SHEET 3 OF 6
C-2





Attachment C

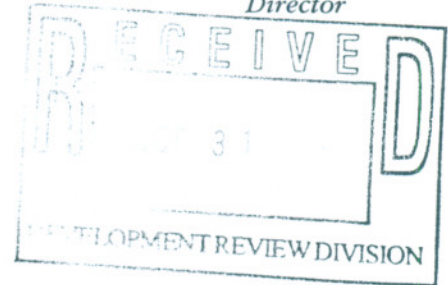
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Douglas M. Duncan
County Executive

Elizabeth B. Davison
Director

October 27, 2006

Richard A. Weaver, Subdivision Coordinator
Development Review Division
Montgomery County Department of
Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910-3760



BY FAX/FIRST CLASS MAIL

Re: 20827 Zion Road
Gaithersburg, MD 20882
Owner: Kellie Dutton

Dear Mr. Weaver:

As a follow-up to your conversation with Ms. Kellie Dutton on October 25, 2006, please be advised of the following details regarding her property. Ms. Dutton was approved for a replacement home loan from the Department of Housing and Community Affairs (DHCA) on August 23, 2004. The County's Homeowners' Replacement Loan Fund (Fund) was established in 1979 and is codified in Chapter 56, Article II, of the Montgomery County Code. The purpose of this Fund is to make direct loans to homeowners of low income, whose present homes are in such a state of disrepair that it is not cost effective to rehabilitate the house. In addition, another purpose of the Fund is to eliminate existing conditions of deterioration or obsolescence. Such is the case of the property that Ms. Dutton inherited from her mother, Ms. Beulah Selby Jones. Ms. Dutton inherited this property in 2003.

As of this date, the following actions have been taken in good faith to move this applicant toward her goal of demolishing the current severely dilapidated house and constructing a modest replacement home:

1. Site plan filed on 8-23-06 and refiled on 9-8-06;
2. Perk tests performed since 8-16-05 and approved by DPS on 4-29-06;
3. Application approved for a replacement home loan on 8.23.04;



Division of Housing and Code Enforcement

Code Enforcement
FAX 240/777-3701

Moderately Priced
Dwelling Unit
240/777-3709

Housing Development
and Loan Programs
240/777-3691

Landlord-Tenant Affairs
240/777-3691

4. Construction documents prepared and ready to be filed pending site approval;
5. Demolition Permit for removal of the existing dilapidated house is ready to be filed pending DPS site plan approval;
6. The subject property has been and still is referred to as a parcel and was lawfully deeded to Ms. Dutton in October 2003;
7. The property meets the zoning requirement of RE-2 Zone; and
8. Ms. Dutton's goal is to get a record plat in the near future.

We are requesting a letter of waiver from the requirements of Chapter 50 as stated in Section 50-33, Waivers. We are requesting this waiver for the following reasons:

1. The proposed replacement dwelling is not inconsistent with the purposes and objectives of the General Plan;
2. It is not adverse to the public interest; and
3. A waiver is the minimum necessary to provide relief from the requirements.

I am respectfully requesting your assistance in facilitating the granting of this waiver so that the proposed replacement house can be constructed. Any assistance will be greatly appreciated. If you need further information, please call me at 240-777-3654.

Sincerely,



Joseph T. Giloley, Chief

Cc: Scott Reilly, Assistant Chief Administrative Officer, Montgomery County
Delores Kinney, Senior Planner
Kellie Dutton, Homeowner

S:\Files\recurring\Housing\Chief\Kellie Dutton.doc



Attachment D
RECEIVED
1443
NOV 06 2006

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

OFFICES OF THE COUNTY EXECUTIVE

Douglas M. Duncan
County Executive

Bruce Romer
Chief Administrative officer

November 3, 2006

Mr. Royce Hanson, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Dear Mr. Hanson: 

Montgomery County has approved Ms. Kellie Dutton, 20827 Zion Road, Gaithersburg, for a replacement home loan from the Department of Housing and Community Affairs (DHCA). I am requesting the assistance of the Montgomery Planning Board in helping the County and Ms. Dutton proceed with the construction of a replacement home at this location by waiving certain processes and fees.

The County's Homeowners' Replacement Loan Fund (Fund) makes direct loans to homeowners of low income, whose present homes are in such a state of disrepair that it is not cost effective to rehabilitate the house. In addition, another purpose of the Fund is to eliminate existing conditions of deterioration or obsolescence. Such is the case of the property that Ms. Dutton inherited from her mother, Ms. Beulah Selby Jones in 2003.

As of this date, the following actions have been taken in good faith to move this applicant toward her goal of demolishing the current severely dilapidated house and constructing a modest replacement home:

1. The subject property has been and still is referred to as a parcel and was lawfully deeded to Ms. Dutton in October 2003;
2. A replacement home loan was approved on August 23, 2004; and executed on February 22, 2005;
3. The site plan filed on August 23, 2006 and re-filed on September 8, 2006;
4. Perk tests were performed on August 16, 2005 and approved by the Department of Permitting Services April 29, 2006;
5. Construction documents have been prepared and are ready to be filed pending site approval;
6. Demolition Permit for removal of the existing dilapidated house is ready to be filed pending site plan approval; and
7. The property meets the zoning requirement of RE-2 Zone.



101 Monroe Street • Rockville, Maryland 20850
240/777-2500, TTY 240/777-2544, FAX 240/777-2517
www.montgomerycountymd.gov



5

Mr. Royce Hanson, Chair
November 3, 2006
Page 2

As noted, however, the property has never been subdivided and platted. Due to the extended period of time that has elapsed since the original loan approval, construction costs have increased and Ms. Dutton's pre-construction costs have mounted. The program serves persons of limited income and Ms. Dutton is at the limit of the amount of loan she can afford. We are therefore requesting a waiver of the subdivision process and fee, and the preliminary plan and plat process and fees.

The waivers will support the County's Homeowners' Replacement Loan Program by enabling Ms. Dutton to reconstruct her home on property that has been in her family for more than 100 years. I believe that the waiver of these processes is in the public interest and will provide necessary relief from requirements that will otherwise impede Ms. Dutton's ability to remain a homeowner on this property.

Thank you for your consideration of this request. If you need further information, please contacting Mr. Joseph Giloley, Chief of Housing and Code Enforcement at 240-777-3654 or at joe.giloley@montgomerycountymd.gov.

Sincerely,



Bruce Romer
Chief Administrative Officer

cc: Joseph Giloley, DHCA
Kellie Dutton, Homeowner

Weaver, Richard

From: KellieDutton@aol.com
Sent: Thursday, November 16, 2006 12:54 PM
To: scott.reilly@montgomerycountymd.gov; joe.giloley@montgomerycountymd.gov;
 joe Kemp@starpower.net; Weaver, Richard; bruce.romer@montgomerycountymd.gov;
 douglas.duncan@montgomerycountymd.gov
Subject: Letter sent to Senator Barbara Mikulski from resident/applicant K. Dutton

Kellie L. Dutton

20827 Zion Road ► Gaithersburg, MD 20882 ► 301.670.1234 ► Kelliedutton@aol.com

November 15, 2006

Delivered Via Facsimile: 410.962.4760

Honorable Barbara Mikulski
 United States Senator
 1629 Thames Street
 Baltimore, MD 21231

Greetings Senator Mikulski:

Congratulations on another well earned and deserved term serving the people of the state of Maryland!

I had the pleasure of speaking with Ms. Kimberly Major from your office. Under Ms. Major's direction, I am writing you with the hope of securing your assistance to intervene on my behalf as I attempt to resolve a serious problem that I have encountered with the Department of Permitting Services (DPS), Park & Planning and the Department of Housing and Community Affairs (DHCA). On August 23, 2004, I secured a loan through DHCA to construct my home (A single Family Rehabilitation Loan – 3% loan interest rate) in Gaithersburg, MD.

In this memo, I will attempt to outline my issues as it relates to the numerous obstacles that prevented me from moving forward on the construction of my home. My experiences to date have been horrific and very, disappointing! The allure of this particular program appeared to be designed for someone like myself. My experiences to date have been unpleasant, tasking, unprofessional, unorganized and wasteful!

The subsequent information will detail where and how I need your help today. I can not proceed with my home construction due to the refusal of DPS denying me a permit to build.

I am presently held hostage by the Park and Planning Commission and Montgomery County Code – Chapter 50. Chapter 50 simply requires residents/homeowners to subdivide its land which is located on more than one lot, that crosses a lot line, which is located on the unplatted remainder of a re-subdivided lot, or which is located on an out lot.

- ❖ The original property in question was owned by my grandmother since 1930. Family property for over 100 years!
- ❖ The property under chapter 50 **requires** land to be subdivided prior to the construction of a new home. The law explains: for the reconstruction of a one-family dwelling that is located on part (s) of a previously-platted lot (s), recorded by deed prior to June 1, 1958 must be subdivided or not change its land description after 1959 to not be affected by this law.
- ❖ My home is a NEW construct (due to the dilapidated conditions of the existing dwelling) and there for NOT eligible for a waiver or relief of the County code as described.
- ❖ The office of MD National Capital Park & Planning Commission, under the Authority of the Board **can grant a**

waiver requirement of this Chapter upon a determination that **practical difficulties or unusual circumstances exist** that prevent full compliance with the requirements from being achieved, and that the waiver is: 1. the minimum necessary to provide relief from the requirements; 2. not inconsistent with the purposes and objectives of the General Plan; and 3. not adverse to the public interest. All of the aforementioned requirements are absolutely descriptive of my particular case.

- ❖ The parcel was lawfully deeded to me in December 2003 by my mother to continue a legacy of family traditions and of course home ownership. This property was never subdivided and platted and that is where the problem lies. I will be required to come up with well over \$28,000 to cover additional engineering and M-NCPPC application fees along with an expected 12 to 15 months in construction delays (hence increased construction costs, again).
- ❖ I have met my financial limitations to date. In September, after meeting with DHCA, I was informed that no further funding/money will be granted/extended. Although I understood the agency's decision, this is extremely disappointing and frustrating to me.

Page 2 – K. Dutton

I spoke with my Senior Planner well over 2 years ago about my property's description in the Land/Records office/files. I made note that my property does NOT have an L (Lot) after its number, but a P (Parcel). I inquired whether or not this was a problem or issue, and was told "not to concern myself with such complicated matters." We never discussed it again UNTIL now.

- ❖ This 2.28 parcel is a part of a 6 acre lot that has been deeded to two other family members. A member of the family presently owns the remaining 4 of the 6 acres. We are zoned RE-2 (1 house per 2 acres). In 1968, my great-grandmother, Willia A. Gassaway gifted part of her land to her to her grandson, to build his home. The land WAS deeded, but NOT subdivided and platted as the 1959 law required; which was already 10 years on the County books. This house was finally erected in 1971 and stands in place today. It appears as if the law was not as important at this time.
- ❖ My struggle to secure a permit to demolish and secure a new building permit has been stopped due to the PROPERTY LAW TAX OF 1959 and exuberant fees associated with subdividing.
- ❖ This law will not allow me to pass 'GO' in 2006/2007, but DID allow/relieve/forgive/waive my relatives of this code. Some 34 years later, the same code has frozen my project.
- ❖ Mr. Bruce Romer, Chief Administrative Officer from the Office of County Executive Douglas Duncan on my behalf, sent a letter to Mr. Royce Hanson, Chairman of Montgomery County Planning Board simply requesting that Park & Planning grant a waiver of the subdivision.
- ❖ The letter also describes the program under DHCA and limitations (serving persons of limited income). To date, we have not received a response from this office. I have been in constant communication with M-NCPPC. The memo was crafted to assure immediate attention to this matter as well as detail the relationship of the two County agencies and its hopeful support. Unfortunately, a slight communication error occurred between the two offices (DHCA & M-NCPPC) and further delays are clearly expected. Upon my follow up with Park & Planning I confirmed that the following MUST take place: 1. Submit the application to subdivide (over \$9k), 2. Submit the site plan and then 3. Secure a place on the M-NCPPC's agenda for the next December board meeting (which is almost full) 4. The Board meets and then arrives at a decision.

Senator Mikulski, I am at the end of the road. This entire process has been less than desirable and some what defeating. I am exhausted, financially, emotionally and spiritually. Although the affordable housing initiative offers a good game plan, in my personal opinion it is tremendously flawed.

I have been tirelessly working on this project for over 3 years! It's as if Montgomery County residents like me (limited income) are not entitled to be treated with respect, let alone afforded with the opportunity to maintain homeownership within an area that my family has resided for generations.

Perhaps governmental agencies should take the time to listen to people LIKE myself to help eliminate so much red tape and wasteful time when it comes to building a home under this particular program. There appears to be an underlining sentiment that we are less than intelligent, lacking of character and not entitled to homeownership. I've worked very hard; I've sacrificed, and put my family first!

May I enlist your assistance? It appears as if I have no place else to turn. I have been put through the ringer with this process. I have researched my case/situation for years; and although my resources are clearly limited, I must conclude

that you are required to be in the HAVE category in order to reside in Montgomery County, MD OR be willing to be treated less than fairly and in a disrespectful manner. I feel like I am 'black-balled'. Every where I turn, it's a County employee who clearly understands my case, but not willing to help me resolve the issues at hand within a reasonable time frame.

I would be delighted to meet you in person so that I may detail every aspect of my experience. Each monthly delay incurs further project costs of which I've already encountered. It is my desire to keep this land and build my home, eventually. My young son, Lance is also entitled to inherit this legacy to reside in, feel safe and be proud of. Of all my struggles, and headaches over this battle, letting Lance down discourages me the most. Every good parent wants to provide for its family and I am no different.

Thanking you in advance for your assistance and cooperation, and I looking forward to hearing from you,
Kellie Dutton

CC: County Executive Office, Douglas Duncan, Scott Reilly, Bruce Romer, Chief Joseph Giloley, Richard Weaver , M-NCPPC, Mr. Joe Kemp, Consultant