



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

**MCPB**  
**Item # 1C**  
**5-3-2012**

**MEMORANDUM**

**DATE:** April 19, 2012

**TO:** Montgomery County Planning Board

**VIA:** Catherine Conlon, Supervisor  
D.A.R.C. Division *CC*  
(301) 495-4542

**FROM:** Stephen Smith, Senior Planner *SS*  
D.A.R.C. Division  
(301) 495-4522

**SUBJECT:** Rescission of previously approved subdivision plat

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The following subdivision record plat is recommended for rescission of approval as outlined herein:

**220091090 Dufresne Overlook**

**Plat Name:** Dufresne Overlook  
**Plat No.:** 220091090  
**Location:** Located on the west side of Georgia Avenue (MD 97), approximately 3,500 feet south of New Hampshire Avenue (MD 650)  
**Master Plan:** Agricultural and Rural Open Space Master Plan, Olney Master Plan  
**Plat Details:** RDT zone; three child lots, private well, private septic  
**Applicant:** Shirley and J. Stevens Dufresne

**Staff Recommendation:** Rescission of the approval of Plat No. 220091090

By resolution dated June 3, 2008, the Planning Board denied Pre-Preliminary Plan No. 720060540 to create three child lots and a farm remainder in the Agricultural Reserve.

The Applicants appealed the Board's denial to the Circuit Court for Montgomery County. By order dated December 22, 2008, and as clarified by a further order dated May 15, 2009, the Circuit Court (1) reversed the Board's decision, (2) deemed Pre-Preliminary Plan No. 720060540 to be approved, and (3) ordered the Board to approve the plat effectuating the subdivision.

On June 18, 2009, as required by the Circuit Court's orders, the Board voted to approve Plat No. 220091090 (Attachment A). The staff memorandum that accompanied the record plat in the Board's June 18 consent agenda explained that recommendation for approval of the plat was based solely on the Circuit Court orders:

Staff notes that Pre-Preliminary Plan No. 720060540, and the associated Forest Conservation Plan, have not been approved by either staff or the Planning Board as of the date of this report. The recommendation for approval of this minor subdivision is based solely on the fact that the Planning Board is subject to a Court Order dated December 22, 2008, and further clarified in an Order dated May 14, 2009, in Montgomery County Circuit Court Case No. 288643V, requiring the Planning Board to approve the plat application for this subdivision within 30 days of its submission. Staff notes that this matter is currently on appeal before the Court of Special Appeals, and that the approval of this plat will be revoked if the Planning Board prevails in the appeal.

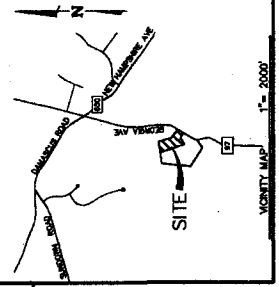
The Board appealed the Circuit Court's orders to the Maryland Court of Special Appeals, which upheld the Board's denial of the Pre-Preliminary Plan and reversed the Circuit Court's decision. The Applicants filed a petition for certiorari in the Maryland Court of Appeals, seeking review of the Court of Special Appeals's decision. The Court of Appeals denied the applicants' petition for certiorari, bringing the litigation to an end.

As required by the Court of Special Appeals, on April 12, 2012, the Circuit Court vacated its decision reversing the Planning Board's denial of the Pre-Preliminary and ordering the Board to approve the plat. The Circuit Court's April 12 order (Attachment B) further affirmed the

Planning Board's denial of the Pre-Preliminary Plan. Thus, there is no approved subdivision plan on the subject property.

Because there is no approved subdivision plan for this property, the plat that the Board approved on June 18, 2009 is illegal. Therefore, the Board should rescind its prior approval of Plat No. 220091090.

PLAT No. 23982



TAX MAP No. HV

**SURVYOR'S CERTIFICATE**

We hereby certify that the plat shown herein is correct, that it is a subdivision of part of the land conveyed by Joseph Dufresne and Shirley M. Dufresne to Shirley M. Dufresne, KATHY GONDAK, ALICE MILEY, VICTORIA DUNFRESNE (deceased), and J. STEVEN DUNFRESNE by deed dated May 1, 1998, of Folio 539, of the Land Records of Montgomery County, Maryland, to Lot 1, Lot 2, and Lot 3, of the subdivision shown on the plat, and that the boundaries and other boundary matters set in it are in accordance with the provisions of the Maryland Surveyors' and Land Surveyors' Act, Chapter 29 of the Code of Maryland Annotated, Article 27, Sections 2-201 through 2-208, and that the area shown on the plat is 432,312 square feet or 9.92231 acres, including 1,885 square feet of street dedication.



**OWNER'S CERTIFICATE**

Shirley M. Dufresne, Kathy Gonda, Alice Miley and J. Steven Dufresne, owners of the property shown herein, hereby adopt this plat of subdivision; declare the effect of the same to be the grant of a fee simple interest in the land shown on the plat to the persons named therein, subject to the provisions of the Maryland Surveyors' and Land Surveyors' Act, Chapter 29 of the Code of Maryland Annotated, Article 27, Sections 2-201 through 2-208, and to the conditions contained in a document to be recorded hereafter, hereby grant, sell, convey and assign to the persons named therein, subject to the provisions of the Maryland Surveyors' and Land Surveyors' Act, Chapter 29 of the Code of Maryland Annotated, Article 27, Sections 2-201 through 2-208, the land shown on the plat, together with the easements and other boundary matters shown thereon, subject to the terms set forth therein; the owners of this subdivision, its successors and assigns, will cause all necessary documents to be recorded in the Land Records of Montgomery County, Maryland, in accordance with Section 50-24(a)(2) of the Montgomery County Code.

There are no suits, liens, leases, mortgages, or trusts, affecting the property included in this plat of subdivision.

4/15/09  
6/15/09  
6/15/09  
6/15/09

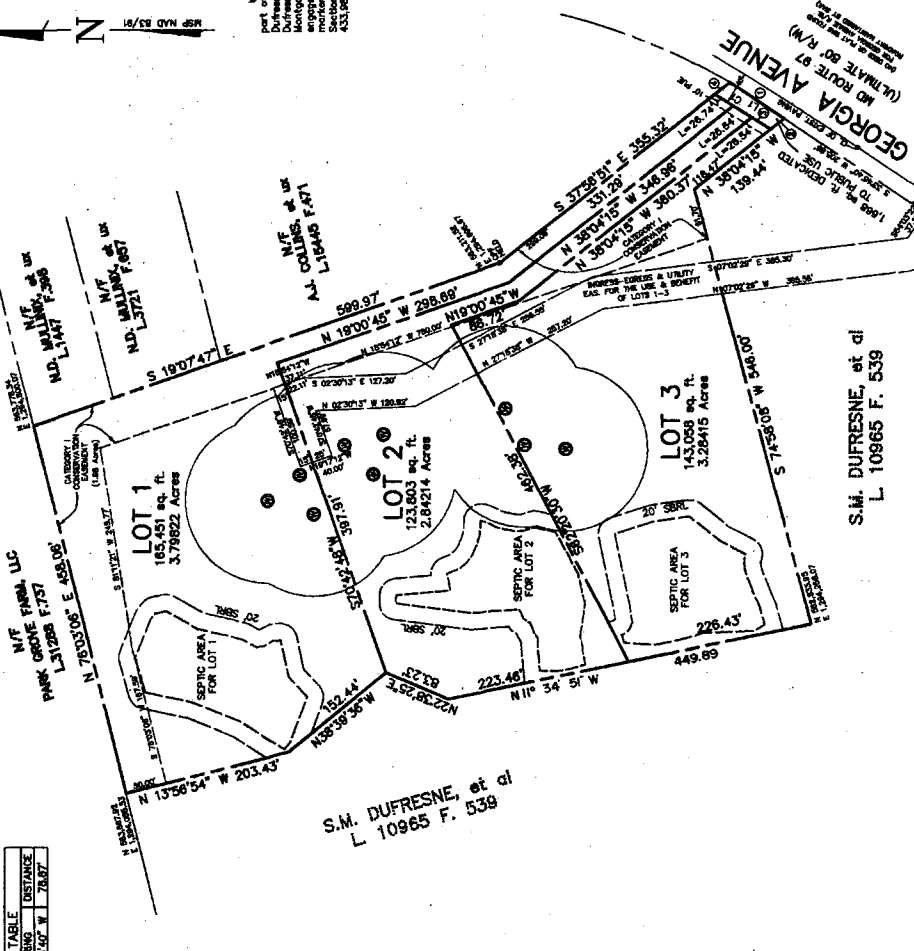
SUBDIVISION RECORD PLAT  
LOTS 1-3  
**DUFRESNE OVERLOOK**  
ELECTION DISTRICT No. 1  
MONTGOMERY COUNTY, MARYLAND  
SCALE: 1" = 100'

**MHG**  
Meade, Hendricks & Glascock, P.A.  
Landscapes Architects - Surveyors  
Phone: 301.770.0400  
Fax: 301.940.0883  
www.mhg.com

**RECEIVED**  
JUL - 9 2009  
Check with the County Court  
Montgomery County, MD

05-246-10  
430-90  
P19389

**LEGEND**  
OP = Open Pipe Found  
PP = Plastic Pipe Found  
R/C = Rubber and Cop



S.M. DUFRESNE, et al  
L. 10965 F. 539

**PLAT TABLE**

Number of Lots	= 3
Area of Lots	= 432,312 sq. ft.
Area of Street Dedication	= 1,885 sq. ft.
Net Area	= 430,427 sq. ft. or 9.92231 acres



**CURVE TABLE**

CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD	BEARING	CHORD
C1	244.63'	78.92'	139.24°	38.87'	31.41'	31° E	78.92'

**LINE TABLE**

LINE	BEARING	DISTANCE
L1	S. 33°45'40" W	78.87'
L2	N. 38°04'15" W	20.97'
L3	R=244.63'	L=79.92'
L4	S. 37°56'51" E	24.03'

- Notes:**
- This property is zoned R07.
  - The plat shown herein is subject to the requirements of Chapter 29A of the Montgomery County Code and the requirements of the Montgomery County Planning Board and appropriate agreements prior to issuance of a subdivision control permit.
  - This plat conforms with the requirements of Section 50-30A of the Montgomery County Subdivision Regulations, being Chapter 29 of the Code of Maryland Annotated, Article 27, Sections 2-201 through 2-208, and that the area shown on the plat is 432,312 square feet or 9.92231 acres, including 1,885 square feet of street dedication.
  - Septic Building Restrictions have been subject to change only with Montgomery County Department of Permitting and Inspections. Septic areas are designed for a 2 bedroom house.
  - Unless expressly contemplated by the plan or approved, all terms, conditions, agreements, limitations, and requirements associated with any permit, license, approval, or other authority issued by the Montgomery County Planning Board are intended to survive and shall be enforceable by the recording of this plat. The official public record of this plat is the original plat as recorded and available for public review during normal business hours.
  - This plat is not intended to show any matter affecting or restricting the ownership and use of the property. This Plat is not intended to represent an examination of title or to depict or note all matters affecting title.
  - Coordinates shown herein are based on the Maryland State MAD 83 datum and the National Grid system. The scale factor for the area is 0.999999983.
  - To convert the grid coordinates to ground/surface coordinates, divide the grid coordinates by the combined scale factor.
  - The distances shown on this plat are as measured on the ground/surface. To convert the ground/surface distances to grid distances, multiply the ground/surface distances by the combined scale factor.
  - Pre-Preliminary Plan No. 720060340 entitled "Dufresne Property" and the Preliminary Plan No. 720060340 entitled "Dufresne Property" each single family residential lot shown on the plat are off-record lots of a subdivision shown on the plat of Folio 539 of the Land Records of Montgomery County, Maryland, dated 6/15/09 ("Affidavit"). Lots 1-3 herein (inclusive) are taken out of a parcel described in Liber 10965 of Folio 539 ("Parent Parcel"), and the Parent Parcel retains the (S) 70th.
  - Lots 1-3 herein (inclusive) are created pursuant to Chapter 50-C-3.14(a)(4) to be created for use for a one-family residence by a child, or the spouse of a child, of the property owner(s).

**AREA TO BE DEDICATED TO THE MARYLAND STATE HIGHWAY ADMINISTRATION**

LINE	COURSE	DISTANCE
1	S. 33°45'40" W	78.87'
2	N. 38°04'15" W	20.97'
3	R=244.63'	L=79.92'
4	S. 37°56'51" E	24.03'

DEDICATION AREA  
1,885 SQ. FT. OR 0.04300 ACRES  
SHOWN THUS:

FOR PRIVATE WELL AND SEPTIC SYSTEMS ONLY

THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION  
MONTGOMERY COUNTY PLANNING BOARD

APPROVED: *[Signature]* SECRETARY-TREASURER  
DATE: *June 18, 2009*

APPROVED: *[Signature]* DIRECTOR

MALGP & P.C. RECORD FILE No. **635-80**

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, MARYLAND

THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION  
**RECEIVED**  
APR 13 2012  
OFFICE OF THE GENERAL COUNSEL  
MONTGOMERY REGIONAL OFFICE

DUFRESNE, ET AL.

v.

THE MONTGOMERY  
COUNTY PLANNING BOARD

Case No. 288643-V

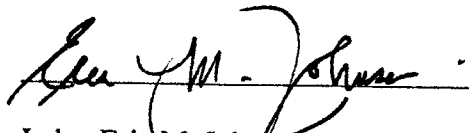
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**ORDER**

In accordance with the September 13, 2011 opinion and the November 14, 2011 mandate issued by the Maryland Court of Special Appeals of Maryland in *Montgomery County Planning Board v. Shirley Dufresne, et al.*, Case No. 2621, September Term, 2008, it is hereby

ORDERED that this Court's December 22, 2008 order and the accompanying memorandum opinion reversing the Montgomery County Planning Board's June 3, 2008 resolution denying Pre-Preliminary Plan No. 720060540 (Resolution No. 08-58), as clarified by this Court's May 15, 2009 order, are hereby VACATED; and it is further

ORDERED that Montgomery County Planning Board Resolution No. 08-58 denying Pre-Preliminary Plan No. 720060540 is hereby AFFIRMED.

  
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Judge Eric M. Johnson

**ENTERED**

APR 12 2012  
u  
Clerk of the Circuit Court  
Montgomery County, Md.

Eric M. Johnson  
Judge