

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