

MEMORANDUM

October 12, 2017

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Bill 24-17, Land Use Information – Burial Sites; and SRA 17-01, Approval Procedures – Burial Sites

Subdivision Regulation Amendment (SRA) 17-01, Approval Procedures – Burial Sites, lead sponsors Councilmember Rice, Council President Berliner, and Councilmember Leventhal, and co-sponsors Councilmembers Navarro, Huckler, and Elrich, was introduced on June 27, 2017. SRA 17-01 would require burial sites identified in the inventory to be respected in the subdivision approval process. Although there are state requirements for the removal of human remains and for registered cemeteries, currently there are no specific references in County code dealing with cemeteries or burial sites. There are no obligations for developers to do archaeological research on their sites based on County law.¹

Bill 24-17 was also introduced on June 27. It would require the Planning Board to establish and maintain an inventory of burial sites. Under Bill 24-17, the Planning Board would be required revise that inventory annually as research reveals additional sites or errors in prior research.

Once identified as a burial site, under SRA 17-01, the burden shifts to the subdivision applicant to research and delineate the boundary of the burial site. The burial site would be protected from development unless that protection would amount to “taking” the property.

The Planning Board and Planning staff recommended approval of SRA 17-01 and Bill 24-17 with amendments. The Planning Board recommended allowing for more flexibility in determining when it is appropriate to relocate buried remains. The Board also recommended revisions to the inventory of burial sites to allow changes whenever they are discovered, not just annually. Beyond the Bill and SRA, the Board recommended the appointment of a special advisory committee to comprehensively explore additional legislation concerning burial sites and archaeological resources.

The Council held a public hearing on September 12, 2017. In general, testimony supported the approval of SRA 17-01 as the Council’s first step in protecting burial sites. A number of people wanted to protect

¹ The use of federal or state funds does trigger an obligation on the part of the active public agency to do proactive investigations. This process is required by Section 106 of the National Historic Preservation Act of 1966 (NHPA). Projects requiring review include actions with direct federal or state funding sources, permits, licenses, or other action with state or federal involvement.

burial sites in all development processes. Testimony suggested burial site protections for situations like the Macedonia Baptist Church, where a sketch plan application was in process when the issue of preserving a burial ground was raised.² Some testimony wanted to impose an obligation on developers to research burial sites on every development without regard to its identification on an inventory. There was testimony both for and against Planning Board discretion to allow the relocation of burial sites. Additional recommendations raised in testimony are addressed as issues below.

Issues

Should all action on SRA 17-01 and Bill 24-17 be postponed until more comprehensive legislation is developed?

Testimony from the Historic Preservation Commission recommended a delay in approving Bill 24-17 and SRA 24-17 until a more comprehensive approach can be developed by a specially-appointed committee.

In Staff's opinion, the Historic Preservation Commission is favoring the perfect over the good. By the judgment of testimony from organizations devoted to preserving burial sites, historic preservationists and virtually all other testimony received, Bill 24-17 and SRA 17-01 are good first steps in burial site preservation.

In both physics and legislative action, there are two notable forces at work: inertia and entropy.³ In the absence of inertia, entropy wins. **Staff recommends proceeding through the approval process of Bill 24-17 and SRA-17.**

Should the inventory of burial sites be restricted to where the Planning Board is authorized to approve subdivisions?

Under Bill 24-17, the Planning Board must establish in an inventory of burial sites each site "located in an area of the County where the Planning Board is authorized to approve a subdivision."⁴ As proposed, the inventory triggers actions under the subdivision process. The Council and the Planning Board lack zoning and subdivision authority in Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove. The Council has some authority, but no zoning and land use authority in these jurisdictions; the Planning Department has absolutely no authority in these municipalities. An inventory of burial sites that included these municipalities would be an academic exercise. **Staff does not recommend expanding the geographic scope of the inventory.**

Should all subdivision applications be the subject of Phase I and Phase II archaeological studies?

SRA 17-01 would require preservation of a burial ground and archaeological investigations only when the site was identified on the Planning Board's inventory of burial sites. A site not on the inventory would not have any obligation to do any archaeological investigation. Testimony recommended requiring all subdivision applicants to do archaeological research before proceeding.

² The cemetery is not the subject of a preliminary plan application. There is a significant volume of written testimony looking for the Council to avoid the situation that developed regarding the Macedonia Baptist Church.

³ "In high school, when I first heard of entropy, I was attracted to it immediately. They said that in nature all systems are breaking down, and I thought, 'What a wonderful thing; perhaps I can make some small contribution to this process, myself.'" George Carlin

⁴ Bill 24-17 lines 39-41.

Archaeological investigations have 2 phases to determine the existence of any resources on a site going back to prehistoric times. The goal of a Phase I archaeological survey is to determine the presence or absence of archaeological resources within a project area.

A Phase I investigation consists of a combination of background research and fieldwork designed to identify resources and define site boundaries within a given project area. During the Phase I investigation, the entirety of the project area must be studied. Phase I investigations entail detailed archival and background research as to the possibility of a burial site. Phase I fieldwork also includes at least an on-site survey of the site and may include some limited digging. The use of specific field methods and techniques is dependent upon the type of ground cover present, the topographic setting, and the amount of observed disturbance. The Phase I study indicates whether a resource may be on the site.⁵ If there is some evidence of a burial site, a Phase II investigation would be required for the area in which the site is thought to be located.

A Phase II archaeological investigation is conducted to determine the exact extent of the resource. A Phase II study may include: evaluating areas of moderate and high artifact densities and determining the surface and subsurface limits of the site. The field methods and techniques may include systematic, controlled surface collection, shovel tests, hand-excavated test units, and use of remote sensing techniques (ground penetrating radar). Field investigations should be designed to retrieve the information necessary without seriously impacting the contextual integrity of the site.

Some archaeological information is available without costly research. A chain of title can be done fairly easily. The state maintains a registry of archaeological resources that is available to professionals without additional research. Because of the sensitivity of archaeological site information, access to archaeological site location data is restricted. It is generally available only to those who meet the Secretary of the Interior's Professional Qualification Standards. The availability of historic libraries and church histories can also reduce the cost of research.

Some counties require archaeological investigations under certain circumstances. In Anne Arundel County, when a parcel or project area is deemed to have a high potential for resources, a survey may be required to identify potentially significant resources. Similarly, in Prince George's County, before the submittal of a preliminary plan of subdivision, potential applicants are encouraged to contact the Historic Preservation staff for an evaluation of archaeological potential and a finding as to whether an archaeological investigation is needed.⁶ Howard County maintains an inventory of burial sites. It requires additional research for those sites and any other sites found.⁷

While the cost of Phase I varies, depending upon conditions and other variables, it typically costs between \$1,500 and \$6,000. Variables may include: size of property, number of buildings, complexity of the current/historical use, integrity of the site, cultural affiliations, or other conditions.⁸

⁵ A phase II study also evaluates an archaeological site's eligibility for inclusion in the National Register of Historic Places (NRHP).

⁶ SRA 17-01 and Bill 24-17 are modelled after the Prince George's County code.

⁷ Howard County has a Cemetery Preservation Advisory Board to determine the existence of a burial site that is not on the inventory.

⁸ Acting Historic Preservation Supervisor, Phillip Estes, Planning Department staff; Jennifer Stabler, Ph.D., Archeology Planner Coordinator, M-NCPPC, Historic Preservation Section, provided the following:

The cost of the Phase I surveys does vary quite a bit depending on the size of the property and the types of field methods that will be used. The background historical research should be done first. In our office, I have usually done a chain of title

Some people who recommended archaeology for all subdivisions, also wanted a public hearing on Phase I and Phase II studies (with notice to interested parties).⁹ That would add time and cost to an applicant.

As proposed, an applicant for a site on the inventory would be required to do an archaeology study to pin down the burial area. The issue for the Council is whether the obligations of a developer should be triggered by the inventory or whether every site in the County should be obligated to do additional research.

Staff favors keeping the initial research burden on the Planning Board and imposing burdens on the private sector only when there is a reason to do so.

Should the protection requirement of the proposed SRA be applied to other steps in the development process?

If one considers that most zoning is applied by the Council without a landowner's application, the subdivision process is generally the first step in the development process. A requirement to only preserve sites in the subdivision process will not include all land undergoing development. The SRA only applied to preliminary plans. It does not apply to projects that have preliminary plan approval but have not gone to record plat.¹⁰

There are other steps in the development process outside of subdivisions. A sketch plan or site plan approval may be required. A ZTA would need to be introduced to require burial site protection in those processes.¹¹ Actions at building permit would also require separate legislation.¹²

and some basic background research that I hand off to the consultant archaeologists. I do that to help me to determine if a Phase I survey should be done on the property and to determine what resources might be present. The archaeologists usually do a pedestrian walk over of the property to identify areas for further testing. Steep slopes are generally visually examined but are not further tested with shovel test pits. The level areas are generally subjected to further testing. If there are plowed fields on the property, the archaeologists will generally perform a surface survey and identify artifacts visible on the surface. This should be combined with some shovel test pits to determine the stratigraphy of the site. In wooded areas or areas with vegetative cover, the archaeologists will generally dig shovel test pits at a set interval (50 ft. in Prince George's County) and screen for artifacts.

⁹ Testimony also indicated that the State of Georgia required a Phase I review and a Phase II review, if warranted, for all property. Staff could only locate a statute from Georgia that required investigation when development was proposed on a known cemetery site:

Georgia Code Section 36-72-4 G

No known cemetery, burial ground, human remains, or burial object shall be knowingly disturbed by the owner or occupier of the land on which the cemetery or burial ground is located for the purposes of developing or changing the use of any part of such land unless a permit is first obtained from the governing authority of the municipal corporation or county wherein the cemetery or burial ground is located, which shall have authority to permit such activity except as provided in Code Section 36-72-14.

¹⁰ A high percentage of land in the County has been through the subdivision process; however, it is common for new development or redevelopment to require a new subdivision (resubdivision) before proceeding.

¹¹ Although the Council is authorized to regulate zoning and subdivisions, the approval process is different. Zoning changes are approved without the involvement of the Executive. Subdivision approvals either require the Executive's approval or a Council override of an Executive veto.

¹² The building permit process is purely administrative. There are no public hearings. DPS staff interprets code but it does not decide contested subjective issues. Burial sites discovered during construction are subject to state law on the removal of human remains.

The later in the development process that the County requires changes due to the discovery of a burial ground, the more burdensome it is on a developer, but more burial sites will be preserved. The physical requirements for retaining a newly discovered burial site past preliminary plan may require redoing previously made decisions about what goes where on a site. Stopping a building permit application is extremely burdensome. On the other hand, once a grave is relocated, it will never be returned.

Staff would recommend approving SRA 17-01 and Bill 24-17 with amendments.¹³ Future legislative action is not precluded by the approval of SRA 17-01.

What should happen if a burial site is not on the inventory but is discovered before Planning Board action?

As introduced, a burial site that is not on the inventory and discovered during development would be subject to state law.¹⁴ The Bill puts the burden on the Planning Department to develop and add to an inventory of sites as it deems appropriate.

Howard County has a process to examine the validity of claims made during the development approval process. Howard County has a Cemetery Preservation Advisory Board to help the Planning Department determine the existence of a burial site that is not on the inventory. That procedure is not included in SRA 17-01 or Bill 24-17.

The program as proposed gives an incentive to everyone to forward their research on burial sites to Planning staff as soon as it is developed. It creates a disincentive for last-minute disclosures. **Staff favors these incentives and disincentives but would recommend more than an annual update of the inventory, as addressed below.**

Should the proposed inventory be updated more than annually?

Perhaps a little history on the Montgomery County Cemetery Inventory posted on the Planning Board's website is in order. The Montgomery County Historic Preservation Commission (HPC) awarded a grant to Peerless Rockville and Historic Takoma in 2004 for the first phase of the cemetery inventory project. An initial database was created of all known cemeteries. Dedicated volunteers began the work of surveying each one. In 2005, Phase II built on the database, expanding it and working on a GIS map showing the locations of each cemetery and creating a list of the County's most threatened cemeteries.¹⁵

¹³ In the words of Yoda, "Do or not do, there is no try." There may be some wisdom in "doing" the newly proposed program for subdivisions first and then considering what to do next.

¹⁴ Maryland Criminal Law Code § 10-402

- (a) Except as provided in subsections (b) and (f) of this section, a person may not remove or attempt to remove human remains from a burial site.
- (b) Subject to subsection (c) of this section, the State's Attorney for a county may authorize in writing the removal of human remains from a burial site in the State's Attorney's jurisdiction:
 - (1) to ascertain the cause of death of the person whose remains are to be removed;
 - (2) to determine whether the human remains were interred erroneously;
 - (3) for the purpose of reburial; or
 - (4) for medical or scientific examination or study allowed by law.
- (c) (1) Except as provided in paragraph (4) of this subsection, the State's Attorney for a county shall require a person who requests authorization to relocate permanently human remains from a burial site to publish a notice of the proposed relocation in a newspaper of general circulation in the county where the burial site is located.

¹⁵ The project was peer reviewed by local historians and cemetery experts, including Mike Dwyer, Linda Layman, Jim Sorensen, Eileen McGuckian, and Janet Manuel, for accuracy and completeness.

This web-available mapped inventory has not been updated since its creation.¹⁶ The Planning Board has not adopted the inventory in any form, except for hosting the information on its website. There has been no qualified archaeological staff to evaluate any later research for including or correcting the boundaries of sites.

The Bill as introduced requires that the inventory be maintained and updated annually. The Planning Board must establish a procedure for a person to request the addition of a burial site to the inventory (or the removal of a site if a more detailed archeological study indicates the absence of a burial site or a smaller site). The procedures must include an outreach program.¹⁷ This new program should allow the Planning Board to consider any facts sufficient to determine the validity of sites on the inventory it approves and justification for any future revision to that inventory.¹⁸ Staff agrees that it is too limiting to restrict the inventory to annual updates. **Staff recommends a revision to Bill 24-17 to require at least an annual update to the inventory and whenever facts warrant an update.**

Testimony suggested a public hearing on burial site decisions. There is nothing to prevent the Planning Board from holding a hearing whenever it approves or updates the inventory. It is the Board's practice to be open in its decision making.

Is there too much or not enough discretion to determine when the removal of human remains is appropriate?

There is a provision in SRA 17-01 for very limited Planning Board discretion, to allow state law to regulate the removal of human remains:

Without regard to Subsection 2, if the Planning Board determines that an accommodation of the burial site with the development cannot be accomplished without denying the property owner reasonable use of their entire property, then the Planning Board may approve a plan for development with the appropriate treatment of the burial site under State law.¹⁹

This provision mirrors a similar provision in the Howard County Code. It allows a burial site relocation only when to do otherwise would result in the public "taking" of the property from the owner. Testimony objected to the flexibility in this provision.

Some historians and archaeologists believe that there are never circumstances where human remains should be removed. There was testimony to require the permission of descendants to relocate graves.

¹⁶ <http://montgomeryplanning.org/planning/historic/montgomery-county-cemetery-inventory/>

¹⁷ Bill 24-17:

The Planning Board must maintain, and revise as appropriate, an inventory of burial sites located in the County. The inventory must:

- (A) include each burial site located in an area of the County where the Planning Board is authorized to approve a subdivision;
- (B) include a map and a description of each burial site including ownership information when available;
- (C) be made available to the public electronically; and
- (D) be updated annually.

The Planning Board must establish a procedure for a person to request the addition of a burial site to the inventory. The procedures must include an outreach program.

¹⁸ When there is a reason to do so, it would be the obligation of the Planning Board to determine if there is sufficient evidence to add a burial site to the inventory. Exactly what that evidence is to warrant inclusion is left to the Planning Board's judgment.

¹⁹ Lines 88-93.

A zero tolerance for grave relocation would, at some point in the future, result in a Court ordering the County to pay for burial sites that it may not wish to own. Unless the **Council wants a program to purchase burial sites, Staff recommends at least retaining the flexibility in SRA-17-01 as it was introduced.**

The Planning Board requested more flexibility to allow the removal of graves. Planning staff believes that deleting the word “entire” before the word “property” gives the Board that desired flexibility. There may be situations where it would be reasonable for the Planning Board to approve appropriate grave relocation under State law, even if the *entire* property has a reasonable use.

There is also testimony that recommended amending the provision in SRA 17-01 because it is too inflexible; the provision only applies to avoid a “taking” of the property. In Prince George’s County, there are requirements for the preservation of a cemetery only when “there are no plans [by the developer] to relocate human remains to an existing cemetery.” The Prince George’s County provision is far more permissive than SRA 17-01. In blackletter code, the developer may choose to move graves; it is not the Planning Board’s option to allow these moves. This is a bridge too far, in Staff’s opinion.

Testimony suggested giving the Planning Board more flexibility to approve the relocation of a burial site “if the Planning Board determines that the burial site can be better honored and more accessible through relocation and accommodation of the burial site elsewhere either within the development.” This is far less discretion than that written into the Prince George’s County law, but far more discretion than in SRA 17-01 as introduced.

If the Council **trusts** the Planning Board to make the judgment to determine when (if ever) grave sites are more accessible by relocation, it is a reasonable revision, given the competing goals in any development.²⁰ The phrase “better honor” may be too subjective. Planning staff may wish to comment on that point. Any such decision by the Board to allow relocation would be controversial.²¹

Should there be a Cemetery Advisory Board?

Neither SRA 17-01 nor Bill 24-17 as introduced establish an advisory committee. Howard County established a Cemetery Preservation Advisory Board to advise the Planning Board on the existence of a previously unknown burial site:

The Department of Planning and Zoning, in consultation with the Cemetery Preservation Advisory Board, shall determine if the discovered area ... above is a cemetery²²

There was testimony to allow a newly created board the authority to amend the inventory instead of the Planning Board. That is more authority than Howard County granted to its board. This makes sense only if the Council *distrusts* the Planning Board, which is not the case.

²⁰ Some who testified have no trust in the Board regarding burial sites and would like all authority in this area to be vested in a newly-created board.

²¹ https://www.washingtonpost.com/local/dozens-of-bodies-buried-next-to-mgm-casino-outside-washington-will-be-moved/2017/09/26/935e99da-9fd4-11e7-84fb-b4831436e807_story.html?utm_term=.1ca4b05810ea

²² Howard County Code, Title 16, Subtitle 13 Section 16.1305.

There is nothing to prevent the Planning Board from establishing and having the advice of an advisory board if it chooses to do so. **The Planning Board has the flexibility to establish and maintain the burial site inventory and to use any advice in doing so.**

Should the Council establish a special advisory committee to determine the need for additional legislation to add protection to burial sites to other steps in the development process?

Testimony from the Planning Board suggested approval of what is before the Council and a study using a special advisory committee to determine if the protections should be expanded to other steps in the process.

Staff notes that the Planning Board is always free to recommend ZTAs and Bills for introduction at any time. The Board is also free to get advice from any source without regard to whether that source is a consultant, residents, or committees that it establishes. **Staff would not recommend Council establishment of a special committee.**

Should the protection for a burial site include maintenance?

As introduced, the burial site must be protected by arrangements sufficient to assure the Planning Board of its future *maintenance* and preservation.²³ The technical changes recommended by the Planning Board deleted a requirement for continued maintenance because that requirement is within the concept of preservation. The Committee may wish to hear more on that subject from Planning staff.

Can the Bill guarantee funding to staff the SRA's requirements?

SRA 17-01 and Bill 24-17 should not be approved without consideration of their fiscal impact. The fiscal impact provided by OMB concluded that the up-front cost would be \$156,000 to \$260,000, with staff being reassigned to this task for the existing work complement. In the alternative, it would require the addition of one staff member at \$118,300 annually, with an additional \$36,000 to equip the new employee. (Prince George's County has a full-time employee devoted to this work.) Staff believes that there will be up-front costs to develop the inventory AND a continuing need to review sites as they file for subdivision applications and develop the research on additional sites. It is unrealistic to assume that after the initial establishment of the inventory, no additional staff will be required. There are no qualified archaeologists on the Planning Department's payroll.

Testimony wanted guaranteed funding of staff support for developing and maintaining the cemetery inventory. This is not possible. The Council makes budget decisions in the annual budget process.

²³ Line 78 and 86 delete maintenance but require protection.

Are technical revisions warranted?

The following are specific changes to SRA 17-01, suggested by testimony, that are technical in nature.

Line #	Description of the Change	Staff Comments
Line 54	add "boundary" after "subdivision"	Staff does not object to this change.
Line 67	delete "If there is no surface evidence of a burial site"	Staff recommends this change; it avoids unequal treatment for different surface conditions.
Line 68	replace "historic and archaeologic best practices" with "appropriate measures"	Staff does not recommend this change. The replacement was suggested because the phrase is an undefined term; it may require extraordinary measures. Staff finds that historic and archaeologic best practices are well-documented.
Line 72	at the beginning of the sentence add "Unless Planning staff believes that vandalism concerns dictate otherwise,"	Staff recommends this change to avoid looting in particular situations.
Line 73	after inventory add "that may include photographs"	Staff recommends this change.
Line 74	after such as add "grave locations" and "fences"	Staff recommends this change.
Line 79	delete "fence or wall must be maintained or provide" and add "manner", then add "must be provided" at the end of the sentence	Staff recommends this change; it leaves the issue of how the site should be delineated to the Planning Board.

This packet contains:

Bill 24-17	<u>Circle #</u> 1 – 4
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Bill No. 24-17
Concerning: Land Use Information -
Burial sites
Revised: June 27, 2017 Draft No: 6
Introduced: June 27, 2017
Expires: December 27, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Rice, Council President Berliner and Councilmember Leventhal
Co-Sponsors: Councilmembers Katz, Navarro, Council Vice-President Riemer and Councilmember
Elrich

AN ACT to:

- (1) require the Planning Board to establish and maintain an inventory of burial sites in the County; and
- (2) generally amend the law relating to land use information function of the Planning Department.

By amending

Montgomery County Code
Chapter 33A, Planning Procedures
Sections 33A-17

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 33A-17 is amended as follows:

Article 4. Land Use information functions

33A-17. [Land use information functions] Information and referral services.

(a) The Planning Board must provide ~~[[informational]]~~ information and referral services on County land use and related regulatory functions to interested members of the public. The services to be provided include technical assistance and information on:

- (1) master plans, including pending amendments;
- (2) zoning, including pending cases and pending text amendments;
- (3) subdivision control, including pending applications and amendments to Chapter 50;
- (4) growth policy and related regulatory requirements;
- (5) federal, state, and local environmental regulations; and
- (6) related administrative, regulatory, or legislative procedures applicable to the Planning Board, Office of Zoning and Administrative Hearings, Historic Preservation Commission, Board of Appeals, other County regulatory agencies, Washington Suburban Sanitary Commission, and County Council.

(b) A resource library must be maintained that contains:

- (1) relevant laws, regulations, and administrative procedures;
- (2) appropriate zoning and other maps;
- (3) administrative and legislative hearing schedules;
- (4) significant administrative and judicial land use decision; and
- (5) master plans, policy documents, planning studies, and other appropriate reference materials.

(c) All County departments, offices, and agencies must provide the planning department with:

(1) requested materials (other than confidential documents) to ensure the availability to the public of current information[,]; and

(2) the location and telephone number of the person or persons to whom inquiries may be referred.

(d) (1) In this subsection, a burial site means a physical location where human remains were buried in the earth, or entombed in a mausoleum or columbarium. A burial site includes a cemetery, but does not include the sprinkling of ashes from cremated remains.

(2) The Planning Board must maintain, and revise as appropriate, an inventory of burial sites located in the County. The inventory must:

(A) include each burial site located in an area of the County where the Planning Board is authorized to approve a subdivision;

(B) include a map and a description of each burial site including ownership information when available;

(C) be made available to the public electronically; and

(D) be updated annually.

(3) The Planning Board must establish a procedure for a person to request the addition of a burial site to the inventory. The procedures must include [[a]]an outreach program.

Approved:

Roger Berliner, President, County Council

Date

54 *Approved:*

55

56

57 Isiah Leggett, County Executive Date

58 *This is a correct copy of Council action.*

59

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61 Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 24-17

Land Use Information – Burial Sites

DESCRIPTION: The Bill would require the Planning Board to establish and periodically update an inventory of burial sites.

PROBLEM: In the absence of an inventory land disturbances may unknowingly violate burial sites.

GOALS AND OBJECTIVES: Provide an inventory of burial sites with an opportunity to update information. The Bill is a companion to Subdivision Regulation 17-01 which accommodates burial sites in the subdivision process.

COORDINATION: Planning Department

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Jeff Zyontz, Senior Legislative Analyst, 240-777-7896

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Not applicable

5



ROCKVILLE, MARYLAND

MEMORANDUM

July 17, 2017

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 24-17, Land Use Information - Burial Sites

[Handwritten signatures and initials over the FROM and SUBJECT lines]

Please find attached the fiscal and economic impact statements for the above-referenced legislations.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Jennifer Nordin, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

Fiscal Impact Statement
BILL 24-17, Land Use Information – Burial Sites

1. Bill Summary

Bill 24-17 requires the Maryland National Capital Park and Planning Commission (M-NCPPC) Planning Board to create and maintain an inventory of burial sites in Montgomery County. This Bill is a companion to Subdivision Regulation 17-01 which includes burial sites in the subdivision approval process.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No impact to revenues.

M-NCPPC estimates ongoing expenditures for one new Planner Coordinator position (\$118,300) and first year expenditures for supplies (\$36,000); however, the Office of Management and Budget (OMB) believes the upfront workload to create an inventory can be completed by a contractor and the ongoing workload is manageable through existing staffing levels.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

No impact to revenues.

M-NCPPC estimates ongoing expenditures for one full-time staff position and first year expenditures for supplies (vehicle, computer, furniture).

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Personnel Costs	\$118,300	\$118,300	\$118,300	\$118,300	\$118,300	\$118,300
Operating Expenses	\$36,000	\$0	\$0	\$0	\$0	\$0

Alternatively, OMB estimates the upfront workload can be completed in the first year by a contractor (\$156,000 - \$260,000 based on an hourly rate of \$75-\$125) and the ongoing workload can be absorbed by existing staff.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Personnel Costs	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$156,000- 260,000	\$0	\$0	\$0	\$0	\$0

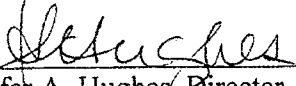
4. An actuarial analysis through the entire amortization period for each bill/regulation that would affect retiree pension or group insurance costs.

Not applicable.

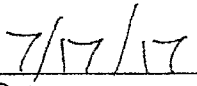
5. Later actions that may affect future revenue and expenditures if the bill/regulation authorizes future spending.

Not applicable.

6. An estimate of the staff time needed to implement the bill/regulation.
M-NCPPC estimates one new position is needed to complete information assessments, fieldwork, mapping; and evaluations of development applications.
Alternatively, OMB estimates the upfront workload can be completed by a contractor and the ongoing workload can be absorbed by existing staff.
7. An explanation of how the addition of new staff responsibilities would affect other duties.
M-NCPPC estimates one new position will complete the workload and existing staff duties will not be affected.
Alternatively, OMB estimates the upfront workload can be completed by a contractor and the ongoing workload can be absorbed by existing staff.
8. An estimate of costs when an additional appropriation is needed.
Not applicable.
9. A description of any variable that could affect revenue and cost estimates.
Not applicable.
10. Ranges of revenue or expenditures that are uncertain or difficult to project.
Not applicable.
11. If a Bill is likely to have no fiscal impact, why that is the case.
Not applicable.
12. Other fiscal impacts or comments.
Not applicable.
13. The following contributed to and concurred with this analysis,
Karen Warnick, MNCPPC
Diane Jones, DPS
Greg Ossont, DGS
Emil Wolanin, DOT
Timothy Goetzinger, DHCA
Jennifer Nordin, OMB



Jennifer A. Hughes, Director
Office of Management and Budget



Date

Economic Impact Statement
Bill 24-17, Land Use Information – Burial Sites

Background:

This legislation would require the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission to establish and maintain an inventory of burial sites in the County. Subdivision Regulation 17-01 would require that such burial sites identified in the inventory be respected in the subdivision approval process.

1. The sources of information, assumptions, and methodologies used.

There are no sources of information, assumptions, or methodologies used in the preparation of the economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

Not applicable.

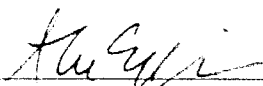
3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Bill 24-17 would have no economic impact on employment, spending, savings, investment, incomes, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

Bill 24-17 would have no economic impact because it establishes and maintains an inventory of burial sites which does not have an impact on employment, spending, savings, investment, incomes property values.

5. The following contributed to or concurred with this analysis: David Platt and Robert Hagedoorn, Finance.



Alexandre A. Espinosa, Director
Department of Finance



Date

Subdivision Regulation Amendment No.: 17-01
Concerning: Approval Procedures – Burial sites
Draft No. & Date: 3 – 6/27/17
Introduced: June 27, 2017
Public Hearing:
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsors: Councilmember Rice, Council President Berliner, and
Councilmember Leventhal
Co-sponsors: Councilmembers Navarro, Hucker, and Elrich

AN AMENDMENT to:

- 1) define burial sites;
- 2) require the identification of burial sites on preliminary plan applications;
- 3) require approved preliminary plans to appropriately preserve burial sites; and
- 4) generally add provisions to protect and preserve burial sites in the subdivision approval process.

By amending

Montgomery County Code
Chapter 50 “Subdivision of Land”
Section 50.2 “Interpretations and Defined Terms”
Section 50.4 “Preliminary Plan”

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by introduced Subdivision Regulation Amendment.</i>
[Single boldface brackets]	<i>Deleted from existing law by introduced Subdivision Regulation Amendment.</i>
<u>Double underlining</u>	<i>Added to the Subdivision Regulation Amendment by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the Subdivision Regulation Amendment by amendment.</i>
* * *	<i>Existing law unaffected by Subdivision Regulation Amendment.</i>

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:

22 approval in the form of a preliminary plan before the submission of a plat. The plan
23 must show graphically, and supporting documents must demonstrate, the data
24 needed for the Board to make the findings required by this Article.

25 **Section 4.1. Filing and Specifications**

26 * * *

27 B. *The drawing.* The subdivider must submit a preliminary plan drawing in a
28 form required by regulations of the Board. Details and information must
29 include:

30 * * *

31 7. graphic representation of the proposed subdivision, including:

32 * * *

33 j. lines showing the limits of each zone, if the property is located
34 in more than one zone; [and]

35 k. all existing topography, structures, and paving on adjoining
36 properties within 100 feet[.]; and

37 l. location of any burial sites included in the Montgomery County
38 Cemetery Inventory.

39 * * *

40 **Section 4.2. Approval Procedure**

41 * * *

42 D. *Required Findings.* To approve a preliminary plan, the Board must find that:

- 43 1. the layout of the subdivision, including size, width, shape, orientation
44 and density of lots, and location and design of roads is appropriate for
45 the subdivision given its location and the type of development or use
46 contemplated and the applicable requirements of Chapter 59;
- 47 2. the preliminary plan substantially conforms to the master plan;
- 48 3. public facilities will be adequate to support and service the area of the
49 subdivision;
- 50 4. all Forest Conservation Law, Chapter 22A requirements are satisfied;
- 51 5. all stormwater management, water quality plan, and floodplain
52 requirements of Chapter 19 are satisfied; [and]
- 53 6. any burial site included in the Montgomery County Cemetery Inventory
54 and located within the subdivision is approved under Subsection 50-
55 4.3.M; and
- 56 [6]7. any other applicable provision specific to the property and necessary
57 for approval of the subdivision is satisfied.

58 * * *

59 **Section 4.3. Technical Review**

60 In making the findings under Section 4.2.D, the Board must consider the following
61 aspects of the application.

62 * * *

63 M. Burial sites

- 64 1. When a proposed preliminary plan includes a burial site identified on
65 the Montgomery County Cemetery Inventory within the site, the
66 applicant must satisfy the following requirements:
- 67 a. If there is no surface evidence of the burial site, the applicant
68 must use historical and archeological best practices to establish
69 the location of the burial site. The corners of the burial site must
70 be staked in the field before preliminary plan submittal. The
71 stakes must be maintained by the applicant until preliminary plan
72 approval.
- 73 b. An inventory of existing burial site elements (such as walls,
74 gates, landscape features, fieldstones, and tombstones) and their
75 condition must be submitted as part of the preliminary plan
76 application.
- 77 c. The placement of lot lines must promote long-term maintenance
78 of the burial site and protection of existing elements.
- 79 d. An appropriate fence or wall must be maintained or provided to
80 delineate the burial site. The design of the proposed enclosure
81 and a construction schedule must be approved by the Planning
82 Board, before the approval of a record plat.
- 83 e. The burial site must be protected by arrangements sufficient to
84 assure the Planning Board of its future maintenance and
85 preservation.
- 86 2. The Planning Board must require appropriate measures to protect the
87 burial site during the development process.



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

6

OFFICE OF THE CHAIR

September 12, 2017

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Subdivision Regulation Amendment No. 17-01 & Bill 24-17

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Subdivision Regulation Amendment No. 17-01 and Bill 24-17 at its regular meeting on September 7, 2017. By a vote of 5:0, the Planning Board recommends approval, with amendments, of the subdivision regulation amendment and bill to establish burial site procedures for Montgomery County. The Board believes that the legislation as introduced provides a good start to addressing burial procedures but also has several concerns that will require additional deliberation beyond those addressed in the technical staff report. The Board recommends that the language in the SRA pertaining to the standard for when burial sites must be preserved (Section 4.3.M.3.), be modified to reflect a recognition that in some cases it is appropriate to relocate buried remains even when leaving remains in place would not deprive the owner of all economic use of the property. The Board further commented that the legislation needs to address processes for historically marginalized groups, and to make clear the scope of archaeological work. The Planning Board also believes that the proposed annual update of the Cemetery Inventory would not be sufficient and therefore recommends that updates occur as burial sites are discovered. The Board recommends that the County establish a special advisory committee with wide representation to more comprehensively explore additional legislation surrounding burial sites and archaeological resources, without delaying the processing of SRA 17-01 and Bill 24-17.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, September 7, 2017.

Casey Anderson
Chair

CA:GR

17

AS MODIFIED BY THE PLANNING BOARD ON 9/7/2017

Subdivision Regulation Amendment No.: 17-01
Concerning: Approval Procedures – Burial sites
Draft No. & Date: 2 – 6/2/17
Introduced: June 27, 2017
Public Hearing:
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsors: Councilmember Rice, Council President Berliner, and
Councilmember Leventhal

AN AMENDMENT to:

- 1) define burial sites;
- 2) require the identification of burial sites on preliminary plan applications;
- 3) require approved preliminary plans to appropriately preserve burial sites; and
- 4) generally add provisions to protect and preserve burial sites in the subdivision approval process.

By amending

Montgomery County Code
Chapter 50 “Subdivision of Land”
Section 50.2 “Interpretations and Defined Terms”
Section 50.4 “Preliminary Plan”

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by introduced Subdivision Regulation Amendment.</i>
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22 approval in the form of a preliminary plan before the submission of a plat. The plan
23 must show graphically, and supporting documents must demonstrate, the data
24 needed for the Board to make the findings required by this Article.

25 **Section 4.1. Filing and Specifications**

26 * * *

27 B. *The drawing.* The subdivider must submit a preliminary plan drawing in a
28 form required by regulations of the Board. Details and information must
29 include:

30 * * *

31 7. graphic representation of the proposed subdivision, including:

32 * * *

33 j. lines showing the limits of each zone, if the property is located
34 in more than one zone; [and]

35 k. all existing topography, structures, and paving on adjoining
36 properties within 100 feet[.]; and

37 l. location of any burial sites included in the Montgomery County
38 Cemetery Inventory.

39 * * *

40 **Section 4.2. Approval Procedure**

41 * * *

42 D. *Required Findings.* To approve a preliminary plan, the Board must find that:

- 43 1. the layout of the subdivision, including size, width, shape, orientation
44 and density of lots; and location and design of roads is appropriate for
45 the subdivision given its location and the type of development or use
46 contemplated and the applicable requirements of Chapter 59;
- 47 2. the preliminary plan substantially conforms to the master plan;
- 48 3. public facilities will be adequate to support and service the area of the
49 subdivision;
- 50 4. all Forest Conservation Law, Chapter 22A requirements are satisfied;
- 51 5. all stormwater management, water quality plan, and floodplain
52 requirements of Chapter 19 are satisfied; [and]
- 53 6. any burial site included in the Montgomery County Cemetery Inventory
54 and located within the subdivision boundary is approved under
55 Subsection 50-4.3.M; and
- 56 [6]7. any other applicable provision specific to the property and necessary
57 for approval of the subdivision is satisfied.

58 * * *

59 **Section 4.3. Technical Review**

60 In making the findings under Section 4.2.D, the Board must consider the following
61 aspects of the application.

62 * * *

63 M. Burial sites

- 64 1. When a proposed preliminary plan includes a burial site identified on
65 the Montgomery County Cemetery Inventory within the site, the
66 applicant must satisfy the following requirements:
- 67 a. If there is no surface evidence of the burial site, the applicant
68 must use historical and archeological best practices to establish
69 the location of the burial site. The corners of the burial site must
70 be staked in the field before preliminary plan submittal. The
71 stakes must be maintained by the applicant until preliminary plan
72 approval.
- 73 b. An inventory, either written or photographic, of existing burial
74 site elements (such as grave locations, walls, gates, landscape
75 features, fieldstones, and tombstones) and their condition must
76 be submitted as part of the preliminary plan application.
- 77 c. The placement of lot lines must promote long-term
78 [[maintenance]] protection of the burial site and [[protection of]]
79 existing elements.
- 80 d. An appropriate [[fence or wall must be maintained or provided]]
81 manner to delineate the burial site must be provided. The design
82 of the proposed enclosure and a construction schedule must be
83 approved by the Planning Board, before the approval of a record
84 plat.
- 85 e. The burial site must be protected by arrangements sufficient to
86 assure the Planning Board of its future [[maintenance and]]
87 preservation.



(SRA 17-01) Approval Procedures – Burial sites; Bill 24-17 Land Use Information - Burial sites

- Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174
- SY Sandra Youla, Senior Planner, HP, FP&P, sandra.youla@montgomeryplanning.org, 301-563-3419
- Pam Dunn, Chief, FP&P, pamela.dunn@montgomeryplanning.org, 301-650-5649

Completed: 8/31/17

Description

Bill 24-17 would require the Planning Board to establish and maintain an inventory of burial sites in the County. Subdivision Regulation 17-01 would require burial sites identified in the inventory to be respected in the subdivision approval process. Specifically, SRA 17-01 would define burial sites, require the identification of burial sites on preliminary plan applications and require approved preliminary plans to appropriately preserve burial sites.

Summary

Staff finds that the proposed legislation in SRA 17-01 and Bill 24-17 is a beginning but believes that the County Council should more comprehensively address the topic of protection for burial sites and archaeological resources, in part by examining other review processes outside of subdivision review. Staff believes that the County could benefit from establishing a special advisory committee with wide representation to more comprehensively explore legislation surrounding burial sites and archaeological resources. In Attachment 1, and as discussed herein, Staff has included several language modifications to the SRA as a starting point.

Background/Analysis

Montgomery County has a long history of occupation and is replete with burial sites, known and unknown, marked and unmarked, maintained and abandoned, and under various types of ownership. Burial sites have a multi-faceted character: they are land uses, archaeological sites, conveyors of history, sensitive cultural resources that are the subject of religious and cultural beliefs, cultural landscapes, on private or public land, abandoned or maintained, operational or not operational, and non-profit or for profit enterprises. Because of their multi-faceted nature, the regulation of burial sites – new and old – is complex. In particular, the identification, documentation, protection, and regulation of existing burial

sites are challenging. In addition to burial sites, Montgomery County also has many historic archaeological resources.

To date, Montgomery County has no explicit local policy governing either archaeological resources or burial sites. Local law and regulation deal with burial sites in limited ways. The Historic Preservation Ordinance and Master Plan for Historic Preservation allow for the designation of historic sites and districts, which may include burial sites and archaeological resources. (Typically, burial sites have been designated as parts of larger complexes, such as churchyards or farms, but there have been exceptions.) The Zoning Ordinance regulates cemeteries as a land use and gives some flexibility to locally designated historic resources. The Parks Department, Montgomery County's largest land owner, by practice seeks to document, protect, and interpret burial sites and archaeological resources on its properties. State and federal law also provide certain limited protections for burial sites and archaeological resources.

In response to these challenges, efforts were made to document burial sites and archaeological resources. The *Montgomery County Cemetery Inventory*, prepared between 2004 and 2009, was created to identify all known burial sites, regardless of whether remains had been relocated from the site or whether the precise location was unknown. The Montgomery County Historic Preservation Commission provided five grants during this period to support the creation and development of the *Cemetery Inventory*. Currently, the *Montgomery County Cemetery Inventory* has no official regulatory status. The Planning Department maintains the webpage and a GIS layer. Additional existing burial sites are discovered on an ongoing basis. In addition, Montgomery Parks Department archaeologists track archaeology sites on parkland countywide, in coordination with Maryland Historical Trust.

Other Maryland counties have used a variety of approaches, including establishment of a cemetery board (Howard County) and archaeological regulation (Prince George's County). Some have also established cemetery registers. Five counties in Maryland have a cemetery inventory, a cemetery map, and some type of project review -- Anne Arundel, Calvert Co [limited mapping], Charles [has GPS coordinates, not mapped yet], Howard, and Prince George's. Other jurisdictions have some of these critical tools. Currently countywide, Montgomery County only has a cemetery inventory.

Other jurisdictions outside of Maryland have also begun protecting burial sites and archaeological resources. Alexandria had one of the first municipal archaeology ordinances in the country. California modified state law to require local governments to conduct certain types of reviews for archaeological resources.

Ongoing development and redevelopment pressures in Montgomery County continue to exacerbate the challenges of documenting and protecting the County's burial sites and archaeological resources. In response, the County Council introduced SRA 17-01 and Bill 24-17 on June 27, 2017. The Montgomery County Historic Preservation Commission reviewed the proposed legislation at its regular meeting on August 16, 2017 and found it insufficient.

SRA 17-01 Approval Procedures – Burial Sites

As stated above, SRA 17-01:

- defines burial sites (Lines 14-16);
- requires identification of burial sites that are included in the Montgomery County Cemetery Inventory on preliminary plan applications;
- requires approved preliminary plans to appropriately preserve burial sites; and
- generally adds provision to protect and preserve burial sites in the subdivision approval process.

Bill 24-17 Land Use Information – Burial Sites

- requires the Planning Board to establish and maintain an inventory of burial sites in the County;
- The inventory must:
 - (A) include each burial site located in an area of the County where the Planning Board is authorized to approve a subdivision;
 - (B) include a map and a description of each burial site including ownership information when available;
 - (C) be made available to the public electronically; and
 - (D) be updated annually.
- The Planning Board must establish a procedure for a person to request the addition of a burial site to the inventory. The procedures must include an outreach program.

Staff finds that the proposed legislation is a starting point but also believes that additional, more comprehensive measures to protect burial sites and archaeological resources should be considered.

Specifically, the legislation:

- Only addresses subdivision and not other processes that may adversely affect burial sites (such as other development review processes; permitting; and disturbance of burial sites not in conjunction with development review/permits).
- Only provides protections for burial sites on the Montgomery County Cemetery Inventory but not for newly discovered burial sites or sites not yet discovered.
- Only addresses burial sites and not archaeological sites.
- Does not address local enforcement mechanisms, especially for emergency situations.
- Does not address the need for recording locations of burial sites in multiple locations, which helps ensure their continued recognition (e.g. in recorded easements and in sales contracts as a required disclosure under county law; and in deeds, tax assessment data and tax maps, which are under state control).
- Does not address on-site signage and interpretation for burial sites.

Other things to consider are:

- Provision for requisite additional staffing in the Planning Department Historic Preservation Section for an Archaeologist.
- Does not address recommendations in the Cemetery Inventory project, including the need for a Cemetery Preservation Advisory Board.

Staff has also recommended specific clarifications and expressed other general comments concerning the SRA in the section below and in Attachment 1 (SRA 17-01).

Section 4.1. Filing and Specifications

* * *

B. *The drawing.* The subdivider must submit a preliminary plan drawing in a form required by regulations of the Board. Details and information must include:

* * *

7. graphic representation of the proposed subdivision, including:

* * *

1. location of any burial sites included in the Montgomery County Cemetery Inventory.

Comment – Besides the Montgomery County Cemetery Inventory other references such as National, state or local registers of historic places and archaeological sites should be considered.

Section 4.2. Approval Procedure

* * *

D. *Required Findings.* To approve a preliminary plan, the Board must find that:

* * *

6. any burial site(s) included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M; and

Comment: added the word “boundary”. Does not provide protection for newly discovered burial sites or protection for archaeological resources.

Section 4.3. Technical Review

In making the findings under Section 4.2.D, the Board must consider the following aspects of the application.

M. Burial sites

1. When a proposed preliminary plan includes a burial site identified on the Montgomery County Cemetery Inventory within the site, the applicant must satisfy the following requirements:

a. If there is no surface evidence of the burial site, the applicant must use historical and archeological best practices to establish the location of the burial site. The corners of the burial site must be staked in the field before preliminary plan submittal. The stakes must be maintained by the applicant until preliminary plan approval.

Comment: There should be a requirement that a Planning Department staff archaeologist review and approve the submitted historical/archaeological documentation.

b. An inventory, either written or photographic, of existing burial site elements (such as grave locations, walls, gates, landscape features, fieldstones, and tombstones) and their condition must be submitted as part of the preliminary plan application.

Comment: Inventories of burial elements can be written, but this requirement should be expanded to include not only a written inventory but a photographic inventory of burial elements including the date the photos were taken.

c. The placement of lot lines must promote long-term ~~[[maintenance]]~~ protection of the burial site and ~~[[protection of]]~~ existing elements.

Comment: Easements for the burial site and access thereto should be recorded and shown on the record plat. Some counties create lots for burial sites.

d. An appropriate ~~[[fence or wall must be maintained or provided]]~~ manner to delineate the burial site **must be provided**. The design of the proposed enclosure and a construction schedule must be approved by the Planning Board, before the approval of a record plat.

e. The burial site must be protected by arrangements sufficient to assure the Planning Board of its future ~~[[maintenance and]]~~ preservation.

2. The Planning Board must require appropriate measures to protect the burial site during the development process.

Comment: Define "appropriate measures" more fully.

Conclusion

Staff finds that the proposed legislation is a good starting point but believes that the County Council also should comprehensively address other review processes outside of subdivision review that protect burial sites and archaeological resources. Staff believes that the County could benefit from establishing a special advisory committee with wide representation to more comprehensively explore legislation surrounding burial sites and archaeological resources. In Attachment 1, and as discussed herein, Staff has included several language modifications to the SRA as a starting point.

Attachments

1. SRA 17-01 as modified by staff
2. Bill 24-17