

Ordinance No.: 18-31
Subdivision Regulation Amendment No.: 17-01
Concerning: Approval Procedures – Burial sites
Draft No. & Date: 6 – 10/27/17
Introduced: June 27, 2017
Public Hearing: September 12, 2017
Adopted: October 31, 2017
Effective: July 1, 2018

**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>

OPINION

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, Hucker, 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.

In its report to the Council, the Montgomery County Planning Board recommended that the SRA be approved with amendments. The Planning Board recommended allowing for more flexibility in determining when it is appropriate to relocate buried remains.

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 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. 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.

The matter was refer to the Planning, Housing and Economic Development Committee. The Committee conducted worksessions on October 16 and October 25, 2017. The Committee recommended:

- requiring protection of any burial sites known to the applicant, without regard to the burial site inventory;
- the same treatment for seen and unseen and burial sites;
- greater specificity on the meaning of “historical and archeological best practices”;
- Planning Board discretion on staking out burial sites;
- greater specificity for the developer-produced on-site inventory;
- Planning Board discretion on how to maintain and preserve burial sites during and after development;
- Planning Board discretion to allow the relocation of a burial site.

The District Council reviewed Subdivision Regulation Amendment No. 17-01 at a worksession held on October 31, 2017 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 17-01 will be approved as amended.

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 of which the applicant has actual
38 notice or constructive notice or that is included in the
39 Montgomery County Cemetery Inventory.

40 * * *

41 **Section 4.2. Approval Procedure**

42 * * *

- 43 D. *Required Findings.* To approve a preliminary plan, the Board must find that:
- 44 1. the layout of the subdivision, including size, width, shape, orientation
45 and density of lots, and location and design of roads is appropriate for
46 the subdivision given its location and the type of development or use
47 contemplated and the applicable requirements of Chapter 59;
- 48 2. the preliminary plan substantially conforms to the master plan;
- 49 3. public facilities will be adequate to support and service the area of the
50 subdivision;
- 51 4. all Forest Conservation Law, Chapter 22A requirements are satisfied;
- 52 5. all stormwater management, water quality plan, and floodplain
53 requirements of Chapter 19 are satisfied; [and]
- 54 6. any burial site of which the applicant has actual notice or constructive
55 notice or that is included in the Montgomery County Cemetery
56 Inventory and located within the subdivision boundary is approved
57 under Subsection 50-4.3.M; and
- 58 [6]7. any other applicable provision specific to the property and necessary
59 for approval of the subdivision is satisfied.

60 * * *

61 **Section 4.3. Technical Review**

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

64 * * *

65 M. Burial sites

66 1. When a proposed preliminary plan includes a burial site of which the
67 applicant has actual notice or constructive notice or that is identified on
68 the Montgomery County Cemetery Inventory within the site, the
69 applicant must satisfy the following requirements:

70 a. [[If there is no surface evidence of the burial site, the]] The
71 applicant must use [[historical and archeological best practices]]
72 the Montgomery County Planning Board Guidelines for Burial
73 Sites to establish the location of the burial site. [[The]] Unless
74 Planning Department Staff believes that vandalism concerns
75 dictate otherwise, the corners of the burial site must be staked in
76 the field before preliminary plan submittal. [[The]] If required,
77 the stakes must be maintained by the applicant until preliminary
78 plan approval.

79 b. An inventory, that may include photographs, of existing burial
80 site elements (such as walls, fences, gates, landscape features,
81 fieldstones, grave locations, and tombstones) and their condition
82 must be submitted as part of the preliminary plan application.

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

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

89 [[e.]] The burial site must be protected by arrangements sufficient to
90 assure the Planning Board of its future maintenance and
91 preservation, as specified in the Montgomery County Planning
92 Board’s guidelines for burial sites.

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

95 3. [[Without regard to Subsection 2, if the Planning Board determines that
96 an accommodation of the burial site with the development cannot be
97 accomplished without denying the property owner reasonable use of
98 their entire property, then the Planning Board may approve a plan for
99 development with the appropriate treatment of the burial site under
100 State law.]] Except under circumstances identified in Subsection 4, a
101 burial site and graves must remain where they are found.

102 4. The Planning Board may determine that it is necessary to allow the
103 relocation of a burial site if:

104 a. the retention of the burial site would result in denying the
105 property owner reasonable use of their property;

106 b. the location of necessary infrastructure cannot be achieved; or

107 c. the possible improvements to the visibility and accessibility of
108 the site by the relocation of graves make relocation appropriate.

109 5. Any Planning Board approval to allow the relocation of remains is
110 conditioned on the State Attorney’s approval to allow the relocation
111 under State law.

112

* * *

113

Sec. 3. Effective Date. This amendment takes effect on July 1, 2018.

114

115 *Approved:*

116

117

Isiah Leggett

7/10/17

118 Isiah Leggett, County Executive

Date

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

120

Linda M. Lauer

11/14/17

Linda M. Lauer, Clerk of the Council

Date