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”
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 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:
Sec. 1. Chapter 50 is amended as follows.

Division 50.2. Interpretation and Defined Terms

Section 2.2. Definitions

All terms used in this Chapter that are defined in Chapter 59 or Chapter 49 have the same meanings as the definitions in those Chapters, unless otherwise defined here. In this Chapter, the following words and phrases have the meanings indicated.

B.

Block: Land area bounded by roads, other rights-of-way, unsubdivided acreage, natural barriers, and any other barrier to the continuity of development.

Burial site: 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.

Article II. Subdivision Plans

Division 50.4. Preliminary Plan

Except for an administrative or minor subdivision submitted under Divisions 50.6 and 50.7, the subdivider must submit a proposed subdivision to the Board for
approval in the form of a preliminary plan before the submission of a plat. The plan
must show graphically, and supporting documents must demonstrate, the data
needed for the Board to make the findings required by this Article.

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:

* * *

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

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

l. location of any burial sites of which the applicant has actual
notice or constructive notice or that is included in the
Montgomery County Cemetery Inventory.

* * *

Section 4.2. Approval Procedure

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

1. the layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59;

2. the preliminary plan substantially conforms to the master plan;

3. public facilities will be adequate to support and service the area of the subdivision;

4. all Forest Conservation Law, Chapter 22A requirements are satisfied;

5. all stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied; [and]

6. any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M; and

7. any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied.

* * *

**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 of which the applicant has actual notice or constructive notice or that is 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]] The applicant must use [[historical and archeological best practices]] the Montgomery County Planning Board Guidelines for Burial Sites to establish the location of the burial site. [[The]] Unless Planning Department Staff believes that vandalism concerns dictate otherwise, the corners of the burial site must be staked in the field before preliminary plan submittal. [[The]] If required, the stakes must be maintained by the applicant until preliminary plan approval.

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

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

   d. [[An appropriate fence or wall must be maintained or provided to delineate the burial site. The design of the proposed enclosure and a construction schedule must be approved by the Planning Board, before the approval of a record plat.]]
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89  [e.] The burial site must be protected by arrangements sufficient to assure the Planning Board of its future maintenance and preservation, as specified in the Montgomery County Planning Board’s guidelines for burial sites.

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

95  3. [[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.]] Except under circumstances identified in Subsection 4, a burial site and graves must remain where they are found.

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

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

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

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

109  5. Any Planning Board approval to allow the relocation of remains is conditioned on the State Attorney’s approval to allow the relocation under State law.
Sec. 3. Effective Date. This amendment takes effect on July 1, 2018.

Approved:

[Signature]

Isiah Leggett, County Executive

This is a correct copy of Council action.

[Signature]

Linda M. Lauer, Clerk of the Council