

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**

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

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**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”

<b>Boldface</b>	<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:*

1        **Sec. 1.** Chapter 50 is amended as follows.

2                               \*   \*   \*

3        **Division 50.2. Interpretation and Defined Terms**

4                               \*   \*   \*

5        **Section 2.2. Definitions**

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

9                               \*   \*   \*

10       **B.**

11                               \*   \*   \*

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

14        Burial site: A physical location where human remains were buried in the earth, or  
15        entombed in a mausoleum or columbarium. A burial site includes a cemetery, but  
16        does not include the sprinkling of ashes from cremated remains.

17                               \*   \*   \*

18        **Article II. Subdivision Plans**

19        **Division 50.4. Preliminary Plan**

20        Except for an administrative or minor subdivision submitted under Divisions 50.6  
21        and 50.7, the subdivider must submit a proposed subdivision to the Board for

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

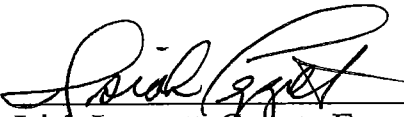
**Sec. 3. Effective Date.** This amendment takes effect on July 1, 2018.

114

115 *Approved:*

116

117



7/10/17  
Date

118 Isiah Leggett, County Executive

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

120



11/14/17

Linda M. Lauer, Clerk of the Council

Date