



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 5
6/26/03

DATE: June 20, 2003
TO: Montgomery County Planning Board
VIA: Joseph R. Davis, Chief JRD
Development Review Division
FROM: Richard A. Weaver, Senior Planner RAW
Development Review Division

REVIEW TYPE: Zoning Text Amendment
PURPOSE: To consider an amendment to the Zoning Ordinance to allow as a permitted use up to two (2) burial sites on the premises of a place of worship located in the RE-2 zone meeting specific conditions.

TEXT AMENDMENT: No. 03-12
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Council President Subin and Councilmember Praisner
INTRODUCED DATE: June 3, 2003

PLANNING BOARD REVIEW: June 26, 2003
PUBLIC HEARING: July 8, 2003; 1:30 pm

STAFF RECOMMENDATION: DO NOT APPROVE TEXT AMENDMENT

PURPOSE OF THE TEXT AMENDMENT

To permit up to two (2) burial sites on the premises of a place of worship in the RE-2 Zone, under certain conditions

PROPOSAL

This amendment proposes to modify Section 59-C-1.31 ("Land Uses" (d) "Services": "Churches, memorial gardens, convents, monasteries and other places of worship") of the

Montgomery County Zoning Ordinance and would allow, as a permitted use, the creation of up to two (2) burial sites on the premises of a House of Worship in the RE-2 Zone, under certain conditions. While churches, memorial gardens, convents, monasteries and other places of worship are permitted uses in all agricultural and residential zones, cemeteries are only allowed in the RDT, Rural, RC, RS and RE-2 Zones as a special exception use. They are not allowed as a permitted use (unless grandfathered) in any zone in the County.

Pursuant to Section 59-G-2.12 (attached), there are specific conditions that must be met when consideration is given to requests for cemeteries in the specified zones. It is noted that the reviews of cemeteries (and family burial sites) are solely delegated to the District Council under (Section 59-G-1.13). This is the only special exception use that must be decided by the District Council.

ANALYSIS

This text amendment was introduced by the County Council, sitting as the District Council, at the request of a church. As noted above, the text amendment would be a modification to the section of the Zoning Ordinance that pertains to churches, memorial gardens etc. and not to the sections pertaining specifically to cemeteries. The proposal reads as follows:

“Subject to any applicable health protection provisions of the State and County Codes, up to 2 grave sites may be established on the premises of the place of worship, if (1) the premises of the place of worship consists of at least 10 contiguous acres, (2) the grave site is setback at least 100 feet from any adjoining residential property line, and (3) in an area not served by public water and sewer, water table tests are conducted to assure that there is adequate filtration of drainage between burial depth and level of high water table. The use of the premises of a place of worship for a grave site must be recorded in the land records of Montgomery County.”

The RE-2 Zone is a residential zone, and while development patterns in this zone tend to be more rural in nature than the zones allowing higher density, there is a clear suburban, residential character that has evolved in most RE-2 subdivisions. The potential for conflict between local land/homeowners and applicants for proposed burial sites remains a real possibility. The current special exception review afforded cemetery applications in the RE-2 Zone allows public participation through the public hearing process. Staff is concerned that the loss of the public hearing process, as the text amendment would allow, is not to the benefit of the general public. Staff notes that currently all requests for cemetery uses, including family burial sites, are required to proceed through a public hearing process before the Hearing Examiner with a decision by the District Council. Staff does not find any merit for departing from the special exception process and concludes that the current approval criteria, as outlined in Section 59-G-2.12, provides for a higher level of scrutiny for cemetery proposals and is the minimum that should be considered in these decisions.

RECOMMENDATION

Staff does not support the proposed text amendment to permit up to two (2) burial sites on the premises of a house or worship located in the RE-2 Zone as a permitted use. Staff believes that the existing special exception provisions provide appropriate safeguards to the public to assure that a cemetery use will be compatible with the surrounding uses. Staff is not comfortable with the proposed text amendment, even with the limitation on the number of burial sites, the minimum tract area and the 100-foot setback.


AGENDA ITEM #7.1
June 3, 2003

Introduction

MEMORANDUM

May 30, 2003

TO: County Council

FROM: Ralph D. Wilson, Senior Legislative Analyst 

SUBJECT: Introduction – ZTA 03-12, Burial sites in the RE-2 zone

Councilmembers Subin and Praisner will introduce ZTA 03-12 to allow up to 2 burial sites on the premises of a place of worship located in the RE-2 zone. Under the ZTA, the premises of the place of worship would have to consist of at least 10 contiguous acres, and certain other requirements would have to be met. Consistent with the requirement for a family burial site, the grave sites would have to be recorded in the land records of Montgomery County.

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Zoning Text Amendment No: 03-12
Concerning: Grave sites on premises of a
place of worship in RE-2 zone
Draft No. & Date: 1 – 5/27/03
Introduced: June 3, 2003
Public Hearing: July 8, 2003; 1:30 PM
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**

By: Councilmembers Subin and Praisner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- allowing up to 2 grave sites on the premises of a place of worship,
under certain circumstances.

By amending the following section of the Montgomery County Zoning
Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-1
Section 59-C-1.31.

“RESIDENTIAL ZONES, ONE-FAMILY”
“Land uses”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
*Underlining indicates text that is added to existing laws
by the original text amendment.*
*[Single boldface brackets] indicate text that is deleted from
existing law by the original text amendment.*
*Double underlining indicates text that is added to the text
amendment by amendment.*
*[[Double boldface brackets]] indicate text that is deleted
from the text amendment by amendment.*
** * * indicates existing law unaffected by the text amendment.*

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. Division 59-C-1 is amended as follows:

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

* * *

59-C-1.31. Land uses.

* * *

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	RMH 200
(d) Services.										
* * *										
Churches, memorial gardens, convents, monasteries and other places of worship.	P*	P	P	P	P	P	P	P	P	P

* Subject to any applicable health protection provisions of the State and County Codes, up to 2 grave sites may be established on the premises of a place of worship, if: (1) the premises of the place of worship consist of at least 10 contiguous acres, (2) the grave site is setback at least 100 feet from any adjoining residential property line, and (3) in an area not served by public water and sewer, water table tests are conducted to assure that there is adequate filtration of drainage between burial depth and level of high water table. The use of the premises of a place of worship for a grave site must be recorded in the land records of Montgomery County.

Sec. 2. Effective date. This ordinance becomes effective immediately upon Council adoption.

This is a correct copy of Council action.

Mary A. Edgar, CMC
Clerk of the Council



Resolution No:
Introduced: June 3, 2003
Adopted:

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

By: District Council

Subject: Notice of Public Hearing on Zoning Text Amendment 03-12

Background

1. Section 59-H-9.3 of the Montgomery County Ordinance requires that, within thirty days of introduction of any text amendment, the Council act by resolution to set a date and time for public hearing on the proposed amendment.
2. Zoning Text Amendment No. 03-12, which would amend the Zoning Ordinance to allow up to 2 grave sites on the premises of a place of worship, under certain circumstances, was introduced on June 3, 2003.

Action

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 resolution:

Legal notice will be given of the public hearing to be held on July 8, 2003 at 1:30 p.m., in the Council Hearing Room, Stella Werner Council Office Building, Rockville, Maryland, for the purpose of giving the public an opportunity to comment on the proposed amendment.

This is a correct copy of Council action.

Mary A. Edgar, CMC
Clerk of the Council

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MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

Article 59-G

Sec. 59-G-2.12. Cemetery and family burial site.

- (a) Subject to any applicable health protection provisions of the State and County Codes, a cemetery, family burial site or other place for the burial of the dead may be allowed; provided, that:
- (1) The proposed location is compatible with adjacent land uses, existing or proposed highways and any other elements or factors deemed to affect the public health, safety and welfare of the inhabitants of the area.
 - (2) All grave sites must be sufficiently set back to establish a buffer between the site and surrounding properties. The buffer area so created must be suitably landscaped with trees and shrubs.
 - (3) If the subject property is located in an area not served by public water and sewer, water table tests must be conducted to assure that there is adequate filtration of drainage between burial depth and the level of high water table.
 - (4) Any cemetery lawfully existing prior to the effective date of this ZTA [May 6, 2002] is a conforming use, and may be extended, enlarged, or modified by special exception subject to the provisions set forth in this section.
- (b) A family burial site is allowed only as an accessory use on a residentially developed property and may only be approved on a lot or parcel that is appropriate to the circumstances and is at least 25 acres in size. A family burial site must be set back at least 100 feet from any adjoining residential property and at least 50 feet from an existing street or from a proposed street, as shown on a master or sector plan. The use of any property for a family burial site must be recorded in the land records of Montgomery County.

(Legislative History: Ord. No. 10-9, § 3; Ord. No. 10-57, § 1; Ord. No. 10-85, § 7; Ord. No. 13-85, §3; Ord. No. 14-47, § 1)

Sec. 59-G-2.12.1. Chancery and International Organization.

A special exception may be granted for a chancery or an international organization subject to the following conditions: