



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



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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

ATTACHMENT 1

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> |
| [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 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.

AGENDA ITEM 5C
June 27, 2017
Introduction

MEMORANDUM

June 23, 2017

TO: County Council
FROM: Jeffry L. Zyontz,  Senior Legislative Analyst
SUBJECT: **Introduction:** Bill 24-17, Land Use Information – Burial Sites

Bill 24-17, Land Use Information – Burial Sites, sponsored by Lead Sponsors Councilmember Rice, Council President Berliner and Councilmember Leventhal, is scheduled to be introduced on June 27. A public hearing will be scheduled at a later date.

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.

| This packet contains: | <u>Circle #</u> |
|----------------------------|-----------------|
| Bill 24-17 | 1 |
| Legislative Request Report | 4 |

Bill No. 24-17
Concerning: Land Use Information -
Burial sites
Revised: June 20, 2017 Draft No: 5
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

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:

- 28 (1) requested materials (other than confidential documents) to ensure
- 29 the availability to the public of current information[,]; and
- 30 (2) the location and telephone number of the person or persons to
- 31 whom inquiries may be referred.

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

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

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

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

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

45 (D) be updated annually.

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

50 *Approved:*

51

52

53 Roger Berliner, President, County 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