

LEGAL ISSUES

# Md.'s second-highest court weighs fight over historic Black cemetery

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Maryland's second-highest court began weighing Thursday an emotionally charged dispute over whether a developer can purchase a Montgomery County apartment building where a historic Black cemetery is buried beneath a parking lot.

A coalition that includes descendants of people buried in the [Moses Macedonia African Cemetery](#) has been fighting for more than six years to preserve and honor the dead interred next to Bethesda's Westwood Tower Apartments. It sued last year to halt the \$51 million sale, arguing that state law required a court to approve the transfer.

A Montgomery County judge agreed last year and issued a preliminary injunction, but the county's Housing Opportunities Commission (HOC), which owns the site, appealed the stay to the state's Court of Special Appeals, saying it didn't believe it had to seek permission from a judge to complete the sale.

Dozens of supporters of the Bethesda African Cemetery Coalition packed the courtroom as attorneys for the coalition and the commission argued Thursday morning over what Maryland law required.

The case is one of a number of heated debates across the country about the fate of historic Black cemeteries, some of which have fallen into disrepair or lie in the path of development projects.

The hearing revolved around a 1924 Maryland law that seeks to offer protections for gravesites in cases where someone wants to repurpose a burial ground. The law states “the court shall order” a review and notify the public in such instances. The attorneys spent much of the hearing sparring over whether “shall” means a court review is mandatory or discretionary.

Steven Lieberman, an attorney for the coalition, said the state law was meant to protect the dead, who can’t speak for themselves.

“We all know what’s going to happen in five or 10 years — they are going to put up another building,” Lieberman said. “But state law requires those 200 people underneath that parking lot be heard.”

Frederick Douglas, an attorney for the commission, said there were no plans to disturb the graveyard and that the commission had discretion about whether to seek court approval before selling the apartment building. Douglas also said area residents would have the ability to weigh in on any redevelopment project when it goes before the county’s planning commission.

“This is a case about whether the HOC can sell its property,” Douglas said.

The three-judge panel appeared skeptical of the commission’s position at times, but it did not issue a ruling Thursday. Lieberman said the panel will probably issue a finding on the appeal of the preliminary injunction in a matter of weeks or months.

The cemetery and the nearby Macedonia Baptist Church are some of the last vestiges of a Black community that once thrived around Westbard on River Road from before the Civil War into the 20th century. Many who lived in the area worked on Montgomery County farms and plantations.

The cemetery was operating in the first half of the 20th century, but all signs of it were removed when the Westwood Towers project commenced in the 1960s.

A 2017 report by an archaeological consulting firm hired by Montgomery County used old newspaper clippings, death records and other materials to conclude a Black cemetery existed beneath the Towers parking lot. It is unclear exactly how many people are buried there.

Harvey Matthews, who grew up near the cemetery, said during a news conference outside of the courthouse after the hearing that he and others used to play there as teenagers. He called the community that lived in the area the “lost colony.” He said he would continue to speak out in favor of preserving the cemetery.

“Somebody has to take a stand for those who have gone on to glory,” Matthews said.

Before Matthews spoke, members of the coalition recited the names of people believed to be buried in the graveyard and when they died.

“Charles R. Brown. February 1929,” one said and the crowd responded with the Yoruba word for producing change:  
“Ashe!”