

## **Testimony of Josh Silver**

### **Cemeteries - Requirements for Sale or Transfer or Government Acquisition (HB1354)**

I appreciate the opportunity to submit testimony on this critical matter. I also want to commend Delegate Simmons for his introduction of several bills aimed at preserving historic cemeteries that are vulnerable to desecration. In addition to the bill being considered today, he has introduced bills to provide funding for the preservation of abandoned cemeteries and to promote better information gathering regarding the location and status of these cemeteries in our state.

We commend the intention of HB1354 to ensure that descendant communities are front and center in discussions and decisions regarding the disposition of vulnerable and abandoned cemeteries. We caution, however, that we cannot support this bill unless it safeguards judicial recourse in situations in which descendant communities believe that their cemeteries face the likelihood of desecration.

It is our understanding that Delegate Simmons supports an amendment to his bill that would mandate court consideration of a sale of a cemetery or a disposition of an abandoned cemetery when a descendant community believes that the Director of Cemeteries has rendered an inequitable decision regarding a disposition of a cemetery. This amendment must become part of this bill in order to secure the support of the Bethesda African Cemetery Coalition (BACC).

### **Background of My Involvement and the BACC**

I am a lifelong resident of Bethesda, Maryland. Although I am almost 61 years old, I did not know about the existence of the Moses African Cemetery on River Road near Little Falls Parkway about two miles from my house until three years ago. In other words, I had spent almost 58 years in the community and had no idea that a vibrant African American community with churches, a Rosenwald school, residences, and farms had been displaced through a combination of KKK violence and public sector discrimination.

I did not know that the Moses African Cemetery had existed during slavery and afterwards during the Jim Crow era until the trustees of White's Tabernacle, a burial society, sold the cemetery in 1958 to Dr. Leo Furr who transferred the property to a developer. Subsequently, the development of light industry and multifamily rental properties desecrated the cemetery by literally building right on top of it and resulted in the unearthing and disposal of several bodies. During this time of violent segregation and discrimination, the displaced community could not stop the desecration.

Members of the Macedonia Baptist Church, including the pastor, his wife and Harvey Matthews, a parishioner and member of the descendant community, formed the Bethesda African Cemetery Coalition (BACC) to halt the desecration of the Moses African Cemetery. Their vision involved not just a halt to the desecration but the establishment of a museum and memorial that would be housed in proximity to the cemetery. This memorialization would correct a failure by Montgomery County and its education system that resulted in the county's citizens remaining ignorant of the history of resilient African American communities fighting vicious discrimination. A museum and memorial would educate not only residents but visitors from

around the country and overseas as to the richness of the community that farmed and provided soldiers during wars and construction workers for projects on the United States Mall. Instead of learning about this at age 58, I would have been educated as an elementary school kid in the 1970s if the cemetery had been preserved and memorialized decades ago. How much richer all of us would have been if proper memorialization had occurred decades ago.

While the Moses Cemetery would appear to be an obvious cultural treasure and beneficial for the economic development of Bethesda, elected officials and local public agencies became indifferent and hostile to the BACC's efforts at preservation. The Montgomery County's Housing Opportunities Commission (HOC) acquired the land containing Moses African Cemetery, rebuffed BACC, and has been trying to sell the land and the multifamily rental property to a private developer.

BACC had to resort to the courts to fight this desecration. The journey has been arduous. BACC won in circuit court only to lose in the appellate court. The Maryland Supreme Court then ruled that while Maryland law did not mandate a court settlement, common law allowed the BACC to pursue its case and remanded the case back to the circuit court. It is our understanding that the circuit court is now empowered to render a final decision and consider BACC's demands for equitable relief including the establishment of a museum and memorial. The courts have established unequivocally that at least 200 bodies lie underneath a parking lot serving the Westwood Apartments currently owned by HOC.

### **Why Court Recourse Must be Mandatory**

It is imperative to honor the 200 bodies paved over by a parking lot and stop the desecration of Moses African Cemetery. That is why BACC and its supporters believe that Maryland law must be amended to make mandatory judicial recourse when descendant communities are striving to protect their cemeteries. We cannot rely on the vagaries of common law nor the good graces of local or state government. Marginalized communities are likely to continue suffering erasure and desecration of cemeteries if judicial recourse is not required.

Currently, HB 1354 deletes language that established judicial recourse as an option, not a requirement. It thus takes a significant step backwards in protecting marginalized communities. Instead of the courts, the bill established a process for sale of cemeteries and disposition of abandoned cemeteries that appoints the Director of Cemeteries as the final arbiter. While the Director may render fair and equitable decisions in some cases, there is no guarantee that this will always be the case. The conscientiousness and fairness of directors will vary. Good governance and fair dealing require checks and balances to protect against abusive outcomes. This is where mandatory recourse to the judiciary system is needed to protect the interests of marginalized and victimized communities.

### **Other Elements of HB 1354**

Regarding other elements of the bill:

- *Public notice requirements:* I support the robust public notice requirements including the notice of cemetery sales for nine consecutive weeks in a newspaper and a 60-day notice

requirement for placing a prominent sign on the cemetery site. Pending sales should also be listed on the website of the Office of Cemetery Oversight

- *Public hearings:* The bill should be amended to require the Director of Cemetery Oversight or its staff to preside over hearings rather than the property owner selling the cemetery. The impartiality of the selling owner is questionable, and it is off-putting to have the owner preside over a hearing.
- *Define preservation plan:* The definitions section of the bill should define a preservation plan. Elements of the plan should be respectful and professional re-internment when necessary and/or preservation of parts of the cemetery when required. The public should have an opportunity to comment on a draft of the preservation plan.
- *Disposition of abandoned cemetery:* The draft bill encourages localities to find descendant communities or nonprofit organizations that would acquire abandoned cemeteries. After a reasonable period of time, the Director of Cemeteries can arrange for reinternment of remains to a reputable cemetery. The period of time is undefined. It should be at least a year.

## **Conclusion**

In the face of daunting odds, the BACC has fought valiantly and appears to be on the cusp of victory. The struggle has been poignant, searing, and draining. It should not be this hard to preserve a cemetery and the history of a displaced, victimized, but incredibly resilient community. It should not be a struggle but should have been a fair and respectful process of recompense, redress, and memorialization.

Unfortunately, justice, empathy, common sense, or even enlightened self interest that understands the economic development and cultural value of cemetery preservation is not ever-present. To preserve our community's richness and history, judicial recourse must be made mandatory when a descendant community believes that a cemetery would be desecrated or belittled into a small corner of a piece of land.

I am Jewish and cannot tell you how upsetting this desecration is. I empathize because of the history of genocide and displacement of Jews across the centuries. Can we all strive to do better and preserve the richness of our local history – its triumphs as well as its tribulations. Only then will we achieve a better tomorrow full of love and not repeat the injustices and hatreds of yesterday.

Respectfully submitted

Josh Silver

Resident of Merrimack Park, Bethesda, Maryland