

4-19-07

ORDINANCE NO. 26727

An ordinance changing the zoning classification on the following property:

BEING a tract of land in City Block 5088, fronting approximately 122.00 feet on the south line of West Northwest Highway between Midway Road and Lemmon Avenue, and containing 2.629 acres,

by establishing Historic Overlay District No. 130 (Garvin Cemetery); providing procedures, regulations, and preservation criteria for structures and property in the district; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the Charter of the City of Dallas, the state law, and the ordinances of the City of Dallas, have given the required notices and have held the required public hearings regarding the rezoning of the property hereinafter described; and

WHEREAS, the city council finds that the Property is an area of historical, cultural, and architectural importance and significance to the citizens of the city; and

WHEREAS, the city council finds that it is in the public interest to establish this historic overlay district; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the zoning classification is changed by establishing Historic Overlay District No. 130 on the property described in Exhibit A ("the Property"), which is attached to and made a part of this ordinance.

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SECTION 2. That the Property consists of three tracts, Tracts A, B, and C, as described in Exhibit B, which is attached to and made a part of this ordinance.

SECTION 3. That the establishment of this historic overlay district shall not affect the existing underlying zoning classification of the Property, which shall remain subject to the regulations of the underlying zoning district. If there is a conflict, the regulations in this ordinance control over the regulations of the underlying zoning district.

SECTION 4. That a person shall not alter the Property, or any portion of the exterior of a structure on the Property, or place, construct, maintain, expand, demolish, or remove any structure on the Property without first obtaining a certificate of appropriateness or certificate for demolition or removal in accordance with the Dallas Development Code, as amended, and this ordinance. All alterations to the Property must comply with the preservation criteria attached to and made a part of this ordinance as Exhibit C.

SECTION 5. That the building official shall not issue a building permit or a certificate of occupancy for a use on the Property until there has been full compliance with this ordinance, the Dallas Development Code, the construction codes, and all other ordinances, rules, and regulations of the City of Dallas.

SECTION 6. That the director of development services shall correct Zoning District Map No. G-6 in the offices of the city secretary, the building official, and the department of development services to reflect the changes in zoning made by this ordinance.

SECTION 7. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000. In addition to punishment by fine, the City may, in accordance with state law, provide civil penalties for a violation of this ordinance, and institute any appropriate action or proceedings to prevent, restrain, correct, or abate the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, demolition, or removal of a building, structure, or land on the Property.

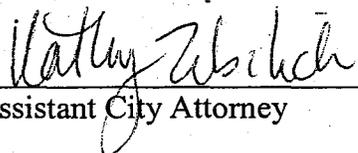
SECTION 8. That the zoning ordinances of the City of Dallas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 9. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 10. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By 
Assistant City Attorney

Passed APR 25 2007

**EXHIBIT A
PROPERTY DESCRIPTION
GARVIN CEMETERY**

BEING a tract of land situated in the WILSON BAKER SURVEY, Abstract No. 54, in the City of Dallas, Dallas County, Texas; being in City BLOCK 5088; and being more particularly described as follows:

BEGINNING at an iron pipe at an inside corner of the Southerly line of the Sherwood East Addition, an addition to the City of Dallas as recorded in Vol. 512, pg. 2023, MRDCT, said Beginning Point being N 64 degrees 15'00" E, 51.00 feet from the most Westerly Southwest corner of said Addition;

THENCE, along said property boundary in the following 14 courses:

N 41-39-49 E, a distance of 314.93 feet;
S 38-49-45 E, a distance of 149.04 feet;
N 85-7-1 E, a distance of 141.07 feet;
N 4-43-1 W, a distance of 70.33 feet;
N 1-53-31 W, a distance of 232.15 feet;
N 1-53-31 W, a distance of 59.00 feet;
N 1-53-30 W, a distance of 61.67 feet;
N 68-48-24 E, a distance of 31.06 feet;
N 2-5-24 W, a distance of 109.96 feet;
N 69-42-17 E, a distance of 122.00 feet;
S 0-12-47 E, a distance of 265.94 feet;
S 18-27-0 W, a distance of 262.00 feet;
S 20-44-30 W, a distance of 225.71 feet;
N 88-49-55 W, a distance of 403.52 feet

to THE POINT OF BEGINNING, and containing 114,132.627 square feet or 2.629 acres of land, more or less.

EXHIBIT B
DESCRIPTION OF TRACTS A, B, AND C
GARVIN CEMETERY

TRACT A

BEGINNING at an iron pipe at an inside corner of the Southerly line of the Sherwood East Addition, an addition to the City of Dallas as recorded in Vol. 512, pg. 2023, MRDCT, said Beginning Point being N 64 degrees 15'00" E, 51.00 feet from the most Westerly Southwest corner of said Addition;

THENCE along the following five courses to the POINT OF BEGINNING:

N 41-39-49 E, a distance of 314.93 feet;
S 38-49-45 E, a distance of 149.04 feet;
N 85-7-1 E, a distance of 141.07 feet;
N 4-43-1 W, a distance of 70.33 feet;
N 1-53-31 W, a distance of 232.15 feet;

THENCE, along said property (Tract A) boundary in the following four courses:

N 1-53-31 W, a distance of 59.00 feet;
N 88-00-00 E, a distance of 59.00 feet;
S 1-53-31 E, a distance of 59.00 feet;
S 88-00-00 W, a distance of 59.00 feet,

to THE POINT OF BEGINNING, and containing 3,480.993 square feet or 0.079 acres of land, more or less.

TRACT B

BEGINNING at an iron pipe at an inside corner of the Southerly line of the Sherwood East Addition, an addition to the City of Dallas as recorded in Vol. 512, pg. 2023, MRDCT, said Beginning Point being N 64 degrees 15'00" E, 51.00 feet from the most Westerly Southwest corner of said Addition;

THENCE along said property (Tract B) boundary in the following seven courses:

N 41-39-49 E, a distance of 314.93 feet;
S 38-49-45 E, a distance of 149.04 feet;
N 85-7-1 E, a distance of 141.07 feet;
N 4-43-1 W, a distance of 70.33 feet;
N 88-00-02 E, a distance of 46.00 feet;
S 20-44-30 W, a distance of 225.71 feet;
N 88-49-55 W, a distance of 403.52 feet,

to THE POINT OF BEGINNING, and containing 60,970.972 square feet or 1.399 acres of land, more or less.

TRACT C

BEGINNING at an iron pipe at an inside corner of the Southerly line of the Sherwood East Addition, an addition to the City of Dallas as recorded in Vol. 512, pg. 2023, MRDCT, said Beginning Point being N 64 degrees 15'00" E, 51.00 feet from the most Westerly Southwest corner of said Addition;

THENCE along the following four courses to the POINT OF BEGINNING:

N 41-39-49 E, a distance of 314.93 feet;
S 38-49-45 E, a distance of 149.04 feet;
N 85-7-1 E, a distance of 141.07 feet;
N 4-43-1 W, a distance of 70.33 feet;

THENCE, along said Tract C property boundary in the following 11 courses:

N 1-53-31 W, a distance of 232.15 feet;
N 88-00-00 E, a distance of 59.00 feet;
N 1-53-31 W, a distance of 59.00 feet;
S 88-00-00 W, a distance of 59.00 feet;
N 1-53-30 W, a distance of 61.67 feet;
N 68-48-24 E, a distance of 31.06 feet;
N 2-5-24 W, a distance of 109.96 feet;
N 69-42-17 E, a distance of 122.00 feet;
S 0-12-47 E, a distance of 265.94 feet;
S 18-27-0 W, a distance of 262.00 feet;
S 88-00-02 W, a distance of 46.00 feet,

to THE POINT OF BEGINNING, and containing 49,741.84 square feet or 1.141 acres of land, more or less.

**EXHIBIT C
PRESERVATION CRITERIA
GARVIN CEMETERY**

4000 WEST NORTHWEST HIGHWAY AND 4005 COCHRAN CHAPEL ROAD

1. GENERAL.

- 1.1 All demolition, maintenance, new construction, public works, renovations, repairs, and site work in this district must comply with these preservation criteria.
- 1.2 Any alterations to property within this district must comply with the regulations in Chapter 51A of the Dallas City Code, as amended. In the event of a conflict, these preservation criteria control.
- 1.3 Certificate of appropriateness.
 - a. A person may not alter a site within this district, or alter, place, construct, maintain, or expand any structure on the site without first obtaining a certificate of appropriateness in accordance with Section 51A-4.501 of the Dallas Development Code, as amended, and these preservation criteria.
 - b. The certificate of appropriateness review procedure outlined in Section 51A-4.501 of the Dallas Development Code, as amended, applies to this district.
 - c. Any work done under a certificate of appropriateness must comply with any conditions imposed in the certificate of appropriateness.
 - d. After the work authorized by the certificate of appropriateness is commenced, the applicant must make continuous progress toward completion of the work, and the applicant shall not suspend or abandon the work for a period in excess of 180 days. The Director may, in writing, authorize a suspension of the work for a period greater than 180 days upon written request by the applicant showing circumstances beyond the control of the applicant.
- 1.4 A person may not demolish or remove any structure in this district without first obtaining a certificate for demolition or removal in accordance with Section 51A-4.501 of the Dallas Development Code, as amended.
- 1.5 Preservation and restoration materials and methods used must comply with the Secretary of the Interior's Standards for Rehabilitation and Preservation Briefs published by the United States Department of the Interior, copies of which are available at the Dallas Public Library.

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- 1.6 No person shall allow a structure in this district to deteriorate through demolition by neglect. Demolition by neglect is neglect in the maintenance of a structure that results in deterioration of the structure and threatens preservation of the structure. All structures in this district must be preserved against deterioration and kept free from structural defects. See Section 51A-4.501 of the Dallas Development Code, as amended, for regulations concerning demolition by neglect.
- 1.7 Consult Article XI, "Development Incentives," of the Dallas Development Code, as amended, for tax incentives that may be available in this district.
- 1.8 The period of historic significance for this district is the period from 1875 to 1955.

2. DEFINITIONS.

- 2.1 Unless defined below, the definitions in Chapter 51A of the Dallas City Code, as amended, apply.
- 2.2 APPROPRIATE means typical of the historic architectural style, compatible with the character of this district, and consistent with these preservation criteria.
- 2.3 CERTIFICATE OF APPROPRIATENESS means a certificate required by Section 51A-4.501 of the Dallas Development Code, as amended, and these preservation criteria.
- 2.4 DIRECTOR means the Director of the Department of Development Services or the Director's representative.
- 2.5 DISTRICT means Historic Overlay District No. 130, the Garvin Cemetery Historic Overlay District. This district contains the property described in Section 1 of this ordinance and shown on Exhibit D.
- 2.6 ERECT means to attach, build, draw, fasten, fix, hang, maintain, paint, place, suspend, or otherwise construct.
- 2.7 FENCE means a structure or hedgerow that provides a physical barrier, including a fence gate.
- 2.8 GRADE means the existing ground surface elevation.
- 2.9 GRAVE means the space of ground used or intended to be used for the permanent interment of human remains.

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- 2.10 GRAVE MARKER means a permanent marker that identifies the locations of one or more graves. Grave markers may be stone or metal and typically are inscribed with the name and dates of birth and death. Grave markers can be located at the head or foot of a single grave, or located to mark a collection of graves (family gravesites).
- 2.11 MEMORIAL MONUMENT means a commemorative marker, pylon, or sculpture that memorializes a person, place, or historic event.
- 2.12 PROTECTED means an architectural or landscaping feature that must be retained and maintain its historic appearance, as near as practical, in all aspects.
- 2.13 REINTERMENT means the reburial of human remains.
- 2.14 REMAINS means the body, or parts of the body, of a deceased person.
- 2.15 TRACTS A, B, and C means the portions of the Property described in Exhibit B and shown on Exhibit D.

3. SITE AND LANDSCAPING.

- 3.1 New construction is prohibited in Tracts A and B. New construction is allowed in Tract C.
- 3.2 Activities that require the disturbance of more than six inches (depth) of surface soil in the district require a certificate of appropriateness in advance of the activities. Archeological studies should be considered as part of the certificate of appropriateness to prevent the inadvertent disturbance of unmarked graves.
- 3.3 New sidewalks, walkways, paths, and steps must be constructed of pavers, brick, broom finished concrete, or other appropriate material. Artificial grass, artificially-colored concrete, asphalt, exposed aggregate, and outdoor carpet are not permitted. Crushed gravel, stone, or stone chips may be used at new or replacement sidewalks and paths only when used within a concrete containment or edge band on all sides.
- 3.4 Driveways and parking areas must be constructed of brick, broom finished concrete, or asphalt. Driveways and parking areas are not allowed in Tracts A and B.
- 3.5 Other than sidewalks, walkways, paths, and steps, no structures, driveways, parking areas, service areas, or other hard paving areas are allowed in Tracts A and B.

- 3.6 No path or walkway may be extended over a grave.
- 3.7 Outdoor lighting must be appropriate. Light poles may not exceed 16 feet in height.
- 3.8 Except for reinterments, the grade of any area in Tract A and B should not be changed. After a reinterment is completed, the grade of that area must be restored.
- 3.9 Landscaping.
- a. Landscaping must be appropriate, enhance the district and surroundings, and may not obscure significant views of protected memorial monuments and fences.
 - b. A certificate of appropriateness is required to remove any trees or shrubs, or to install any landscaping material.
 - c. No new or replacement shrubs or trees may be planted on a grave.
 - d. No new destructive or invasive ground cover, such as Boston Ivy or Asian Jasmine, may be planted on or allowed to extend over a grave.
- 3.10 Fencing.
- a. Perimeter fencing of the Property is allowed. Fences must be appropriately located for a cemetery setting, 70 percent open, and may not exceed six feet in height. Decorative metal is preferred.
 - b. Dumpsters must be screened by brick, stone, wood, or a combination of materials.
 - c. Replacement fences at individual gravesites or at a collection of graves (family gravesites) may be allowed only if evidence exists that there was a fence at that location, and adequate documentation exists that may be used as a guide for reconstruction. Replacement fences must match the material, design, style, and height of the original fence as near as possible.
- 3.11 Replacement curbs are allowed in Tract A around a collection of graves (family gravesites). Replacement curbs must match the material, design, style, and height of the original curb. Pink granite may not be used as curb material.

4. GRAVE MARKERS AND MEMORIAL MONUMENTS.

- 4.1 Existing grave markers and memorial monuments are protected in Tracts A and B.
- 4.2 It is recommended that existing, or relocated, grave markers and memorial monuments be preserved and restored and that damaged grave markers and memorial monuments be repaired.
- 4.3 The identification of unidentified graves is encouraged. Following research to determine the deceased or other pertinent information, marking of unidentified graves is encouraged.
- 4.4 It is encouraged that grave markers that are no longer in place, missing, or irreplaceably damaged be replaced with grave markers that are similar in design, material, color, and size to the original grave markers at that location. Granite grave markers are not permitted.
- 4.5 If the design of the original grave marker is not known, new flat grave markers may be used, similar to the veteran replacement grave markers already installed.
- 4.6 Texas Historical Commission grave markers may be placed at graves.
- 4.7 New replacement family grave markers may be used.
- 4.8 No new vertical memorial monuments may be erected in Tracts A and B, but new historic markers that provide details of the history of Garvin Cemetery or the individuals buried there are permitted.

5. BURIALS AND REINTERMENTS.

- 5.1 Unmarked graves might be located within the bounds and immediate vicinity of Garvin Cemetery. See Section 3.2 regarding ground-disturbing activities.
- 5.2 In the event that human remains, or artifacts suggestive of the presence of a grave, are encountered during any activity, the site of the discovery must be secured, the city historic preservation staff must be notified, and all ground-disturbing activities in the immediate area must cease. A certificate of appropriateness to restore the site or relocate the grave must be obtained before any activities can resume.

- 5.3 Any future relocation of marked or unmarked graves must be conducted according to the Texas Historical Commission guidelines for preserving historic cemeteries, coordinated with the state archaeologist, and if required, done pursuant to a Texas antiquities permit.
- 5.4 Reinterment within the district is allowed in Tract A, or in Tract C as close as possible to Tract A, subject to compliance with all applicable laws related to cemeteries and reinterment. Locations of proposed reinterments must be reviewed through the certificate of appropriateness process.

6. PROTECTED ELEMENTS.

- 6.1 The following elements are considered important features and are protected:
 - a. Grave markers.
 - b. Memorial monuments.
 - c. Historic gravesite fences.
 - d. Historic site (Tracts A and B).

7. CONSERVATION, REPAIR, AND MAINTENANCE OF EXISTING GRAVE MARKERS AND MEMORIAL MONUMENTS.

- 7.1 It is encouraged that existing grave markers and memorial monuments be cleaned on a regular basis, but not more than once every 18 months.
- 7.2 Routine cleaning of grave markers and memorial monuments that are in good condition must be done by washing with water, then softly brushing with mild detergent, then thoroughly rinsing with water.
- 7.3 Grave markers that have a friable or surgery surface; a grainy surface that readily falls away; or other indications that the stone is delicate, brittle, or otherwise vulnerable should not be cleaned.
- 7.4 Removal of lichen and algae from grave markers or memorial monuments that are in good condition must be done by thoroughly soaking the stone with water and then using a wood scraper to gently remove the biological growth. It may be necessary to repeat this process several times to fully remove lichen or algae.
- 7.5 If a grave marker falls or is otherwise damaged, a temporary grave marker must be installed at the grave marker location before the damaged grave marker is removed for repair.

- 7.6 Grave markers that have broken into two or more pieces must be repaired using standards accepted by the Association for Grave Stone Studies (278 Main Street, Suite 207, Greenfield, MA 01301, ph. 413-772-0836 or <http://www.gravestonestudies.org>) or in "A Graveyard Preservation Primer" by Lynette Stranstad.
- 7.7 Fallen or broken grave markers may not be repaired by embedding them (typically face up) in concrete or using metal splints because both methods are detrimental to the integrity of the stone.
- 7.8 Lawnmowers without bumpers and weedwhackers with metal wire may not be used directly around grave markers and memorial monuments as these cause irreversible damage to the stone when they strike or touch the stone. Lawnmower bumpers, fabricated from rubber tires or inner tubes, may be attached to lawnmowers to provide a buffer between the machine and the grave markers and memorial monuments. Weedwhackers with soft nylon whips may be used around grave markers and memorial monuments.
- 8. NEW CONSTRUCTION.**
- 8.1 New construction is prohibited in Tracts A and B.
- 8.2 New construction is allowed in Tract C. New construction must allow public access to Tract A. New construction must be set back from Tract A a minimum of 12 feet. All other zoning requirements apply.
- 9. SIGNS.**
- 9.1 Only premise signs, park signs, cemetery identification signs, street signs, interpretive signs, movement control signs, and historic markers may be erected, and only if the sign is sensitive and compatible with the district.
- 9.2 All signs must comply with the provisions of the Dallas City Code, as amended.
- 10. ARCHEOLOGICAL STUDIES.**
- 10.1 Any archeological studies must have a certificate of appropriateness prior to any ground-disturbing activities. A registered professional archaeologist or a physical anthropologist must conduct any archeological studies in accordance with the Texas Historical Commission guidelines for preserving historic cemeteries.

11. ENFORCEMENT.

- 11.1 A person who violates these preservation criteria is guilty of a separate offense for each day or portion of a day during which the violation is continued, from the first day the unlawful act was committed until either a certificate of appropriateness is obtained or the property is restored to the condition it was in immediately prior to the violation.
- 11.2 A person is criminally responsible for a violation of these preservation criteria if:
- a. the person who owns part or all of the property knowingly allows the violation to exist;
 - b. the person who is the agent of the property owner or is an individual employed by the agent or property owner, is in control of the property, knowingly allows the violation to exist, and fails to provide the property owner's name, street address, and telephone number to code enforcement officials;
 - c. the person who is the agent of the property owner or is an individual employed by the agent or property owner, knowingly allows the violation to exist, and the citation relates to the construction or development of the property; or
 - d. the person knowingly commits the violation or assists in the commission of the violation.
- 11.3 Any person who adversely affects or demolishes a structure in this district in violation of these preservation criteria is liable pursuant to Section 315.006 of the Texas Local Government Code for damages to restore or replicate, using as many of the original materials as possible, the structure to its appearance and setting prior to the violation. No certificates of appropriateness or building permits will be issued for construction on the site except to restore or replicate the structure. When these restrictions become applicable to a site, the Director shall cause to be filed a verified notice in the county deed records and these restrictions shall be binding on future owners of the property. These restrictions are in addition to any fines imposed.
- 11.4 Prosecution in municipal court for a violation of these preservation criteria does not prevent the use of other enforcement remedies or procedures provided by other city ordinances or state or federal laws applicable to the person charged with or the conduct involved in the offense.

12. RESOURCES FOR ADDITIONAL INFORMATION.**“Conservation of Cemetery Structures”**

Dennis, John R.; article included in Preservation Plan for Plano Historic Cemeteries. Report produced by Geo-Marine, Inc. (Plano, Texas), September 2000.

Conservation of Building and Decorative Stone Volumes 1 and 2

Ashurst, John and Francis G. Dimes, Editors. London, Butterworth-Heinemann, 1990.

Maintenance of Outdoor Sculpture: Who's Job Is It?

Program at the 20th Annual Meeting of the American Institute of Conservation (AIC), June 2-3, 1992, Buffalo, NY.

Metals in America's Historic Buildings: Uses and Preservation Treatments

Gayle, Margot, David W. Look, AIA and John G. Waite. Washington, DC, National Park Service, 1980.

Keeping It Clean, Removing Exterior Dirt, Paint, Stains and Graffiti from Historic Masonry Buildings

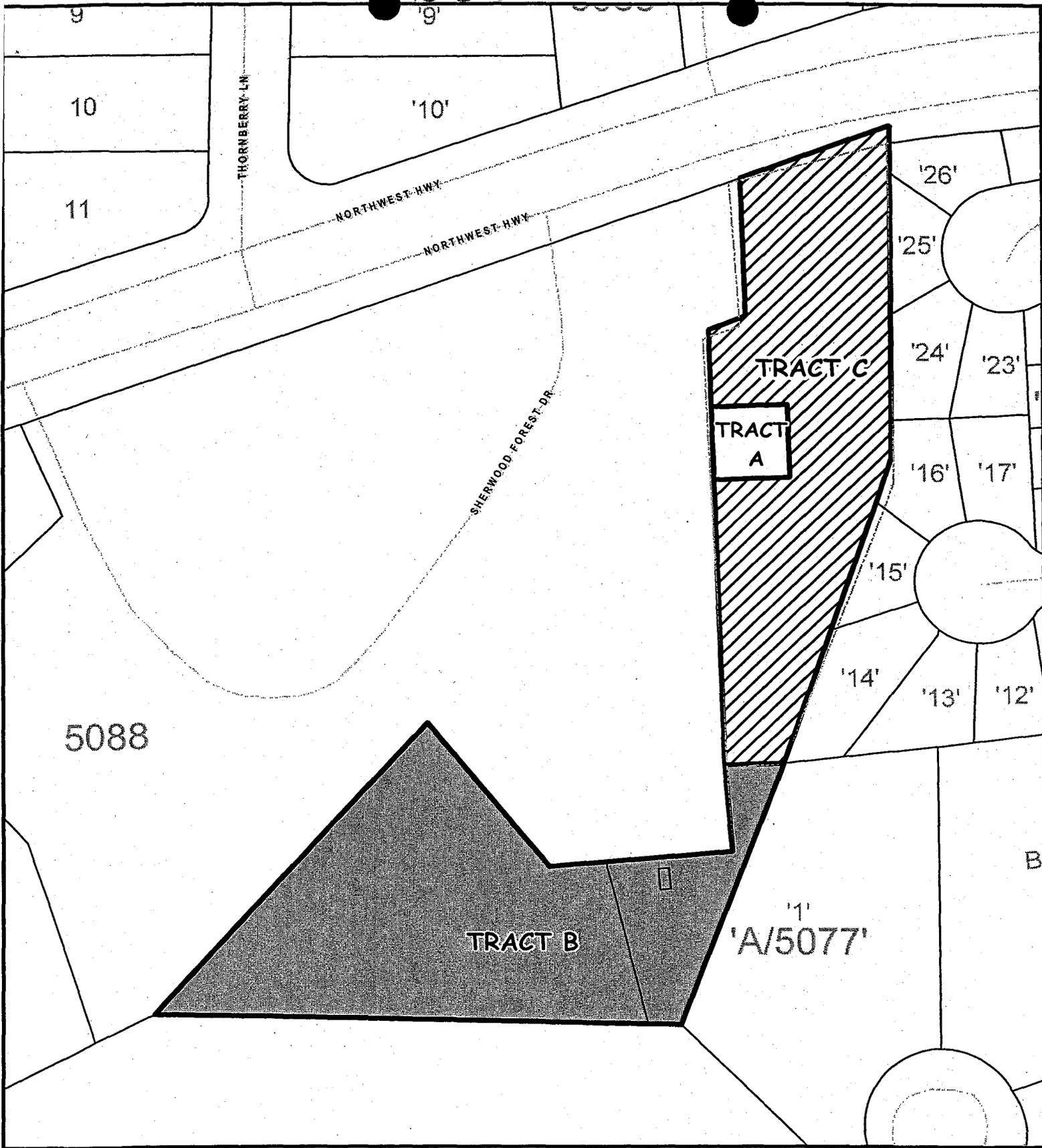
Grimmer, Anne E. Washington, DC, National Park Service, 1990.

Ancient and Historic Metals, Conservation and Scientific Research

Scott, David A., Jerry Podany, and Brian B. Considine, Editors. Proceeding from a Symposium by the J. Paul Getty Museum, November 1991. Getty Trust Publications, Getty Conservation Institute, 1995.

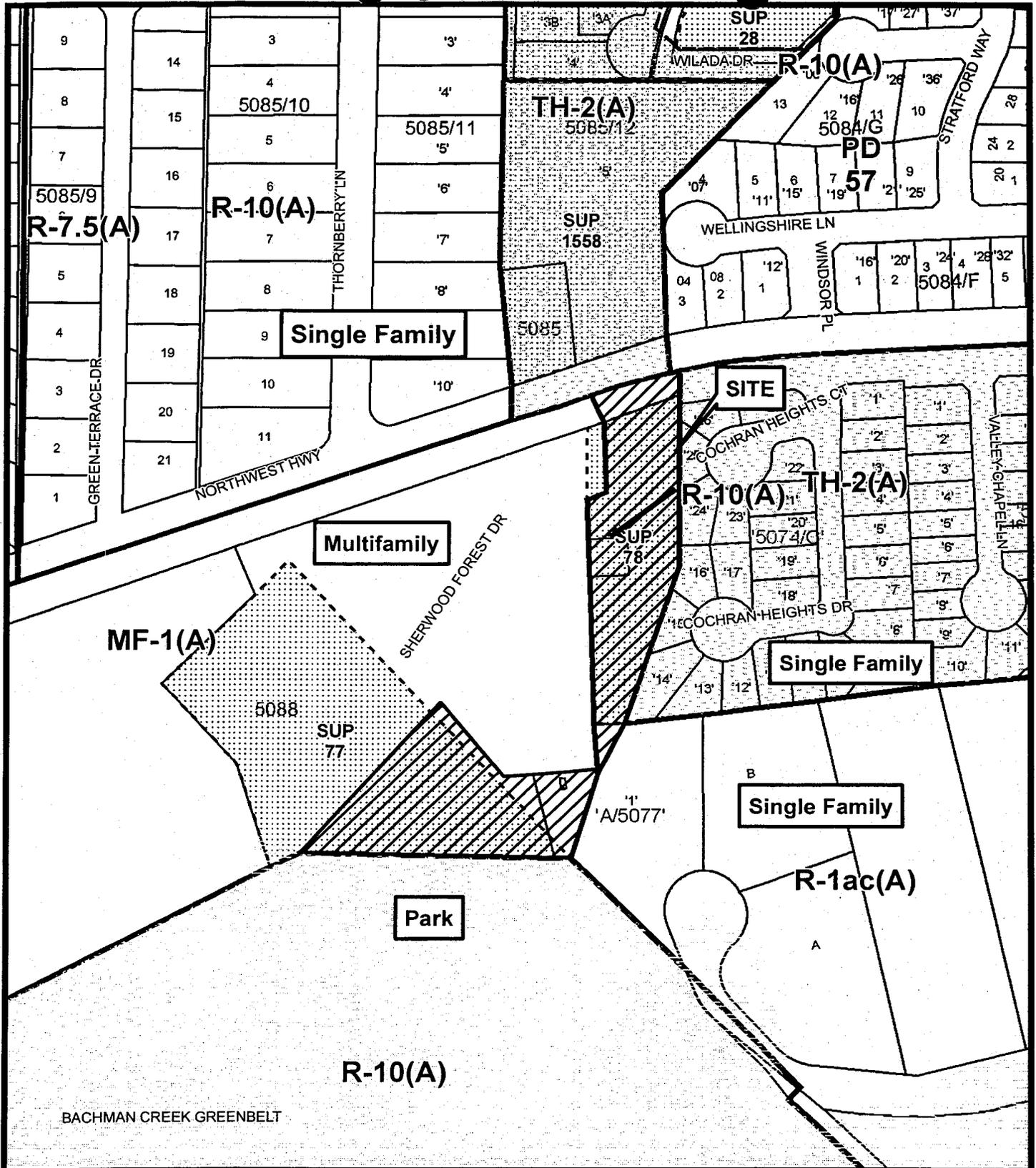
A Graveyard Preservation Primer

Stranstad, Lynette (American Association for State and Local History Book Series) Alta Mira Press, 1995.



**EXHIBIT D
GARVIN CEMETERY
TRACT MAP**

Matched to Parcel06 lines



1:2,400

ZONING AND LAND USE

Map no: G-6

Case no: Z067-156 JA