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## Death Need Not Part Owners and Their Pets: Regulating Pet Cemeteries Through Zoning Regulation

Patricia E. Salkin

*Touro Law Center*, [psalkin@tourolaw.edu](mailto:psalkin@tourolaw.edu)

Sydney Gross

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# ZONING AND PLANNING LAW REPORT

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## DEATH NEED NOT PART OWNERS AND THEIR PETS: REGULATING PET CEMETERIES THROUGH ZONING REGULATION

Sydney Gross\* and Patricia Salkin\*\*

### I. Introduction

Pet ownership in the United States has grown substantially over the years.<sup>1</sup> In the past, when a family pet died, it was typically buried in the back yard or cremated by the local veterinarian who might return the ashes to the owner if requested. Today the relationship between people and their pets is different. In many cases pets are treated like members of the family, and a growing number of people wish to be buried alongside their pet either in a burial ground for human remains or for animal remains. Others wish to inter their pets in a specially designated pet cemetery where they can visit regularly.

#### A. GROWTH OF THE PET INDUSTRY IN THE UNITED STATES

Sixty-seven percent of households in the United States own a pet, up 11% from the first year of the National Pet Owner Survey in 1988.<sup>2</sup> A 2017 survey revealed that one third of millennials who purchase their first home prioritize yard space for their dog as a motivating factor in selecting their home, putting the interests of their pet above even the birth of a child.<sup>3</sup> In fact, one psychology professor suggested that pets are becoming a replacement for children.<sup>4</sup> It is reported that that pet owners may spend on average \$9,000 to \$13,000 on their pet over its lifetime.<sup>5</sup> In 2020, Americans' spending on pets reached a record high of \$95.7 billion dollars for things including: food, supplies and over-the-counter medicine, veterinary care, live animal purchases and pet services such as grooming and boarding.<sup>6</sup> Because of the value

people place on their pets, and the desire to increase the lifetime of their furry companions, the pet pharmaceutical industry has been growing at a rate of 5% each year,<sup>7</sup> and it is predicted to reach \$69 billion by the end of 2020,<sup>8</sup> while the pet insurance industry grew 17.5% in 2017,<sup>9</sup> and is expected to double by 2022.<sup>10</sup> Pets are now being described as, and treated like people—their owners put clothes on them, pets go to daycare, people buy food and products for their pets that sound like things they would purchase for human children and in one recent poll, “76% of owners classify their pets as ‘beloved members of the family,’ compared to the 19% who responded that they’re ‘well cared for, but still considered animals.’”<sup>11</sup>

Today there are pet walking services and pet care services that are accessible to owners right at their fingertips. Apps such as Rover<sup>12</sup> and Wag<sup>13</sup> are just two of the most popular services that provide owners with a caring individual to walk a dog when the owner is stuck at work late or with a care-

taker when an owner needs to get away for the weekend. Airlines and trains permit small pets to travel with their owners, and even hotels market themselves as being pet friendly.<sup>14</sup> “With more and more pet owners taking their pets with them when they leave the house, whether traveling, exercising, or just running errands, demand for products that make it easier and safer for pets to accompany their owners is surging.”<sup>15</sup>

It should come as no surprise that people want to bury their beloved family pets in cemeteries that look like final resting places for themselves. The New York State Legislature recognized this stating, “. . . the relationships that humans develop with other members of the animal kingdom that are taken into our homes and kept as pets are unique and special. These relationships can enrich our lives and increase our happiness. Even after the death of a pet, human attachment to the memory of the pet often remains very strong and many people feel the need to memorialize their love for their animal by burying their pet in a pet cemetery.”<sup>16</sup>

## B. PET CEMETERIES

According to the International Association of Pet Cemeteries, there are about 800 pet cemeteries in the United States,<sup>17</sup> and the oldest pet cemetery known is located in Hartsdale, New York.<sup>18</sup> The cemetery, which is listed on the National Register of Historic Places,<sup>19</sup> has been in existence since 1896 and it is the resting place for more than 80,000 pets.<sup>20</sup> It is the only pet cemetery among the 2,698 cemeteries on the register.<sup>21</sup> According to Kevin Moriarty, a historian for the register, “It was in the early 20th century that pets began to be considered family members rather than livestock.”<sup>22</sup> The Illinois Pet Cemetery in Hannover Park was established in Illinois in 1926 by a veteran

**Editorial Director**  
Erbayne W. Jarvis, Esq.  
**Contributing Editors**  
Patricia E. Salkin, Esq.

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of World War I who got the idea from seeing pet cemeteries in France during his service.<sup>23</sup> In 1996, the state of Pennsylvania became the only state with a statewide pet memorial to honor and remember pets that touched their owners' lives, which as of today contains the names of more than 24,000 pets etched into the memorial.<sup>24</sup> In June 2019, a cemetery in Bakersfield, California announced that it would allow people to bury their household pets, but not barnyard animals, on the cemetery land.<sup>25</sup> The District of Columbia also saw its first pet cemetery late spring 2019.<sup>26</sup>

People are willing to move to states where they will be allowed to be buried with their pets.<sup>27</sup> While state laws typically do not prohibit the burial pets on private property,<sup>28</sup> pet cemeteries offer an alternative for people who treat their pets as family. Left unregulated, pet cemeteries can pose a host of problems for neighbors and for the people who have entrusted the cemetery operators with the remains of their beloved pets.<sup>29</sup>

## II. Regulation of Pet Cemeteries by States

While states regulate cemeteries and burial sites, most states do not yet specifically address the regulation of pet cemeteries. What follows are some examples illustrative of the types of regulations that do exist.

### A. OHIO

The State of Ohio allows for pet cemeteries on no less than three acres of land.<sup>30</sup> Further, the State requires cemetery owners to collect a fee of not less than \$50 per burial plot purchased, and such funds are to be deposited into a dedicated endowment fund to be used, “. . . only for the maintenance,

supervision, improvement, and preservation of the grounds, lots, markers, memorials, buildings, equipment, statuary, and other real and personal property of the pet cemetery and for the payment of real property taxes.”<sup>31</sup> Further to ensure that once the pet cemetery is established it cannot be used for other purposes, a restriction must be placed on the deed that may be only be removed by a Court.<sup>32</sup>

### B. NEW YORK

A pet cemetery is defined in New York State law as “. . . any land, place, structure, facility or building provided by any person for a fee, whether or not for profit, to veterinarians or members of the general public for use, or reservation for use, for the permanent interment or inurnment above or below ground of pet remains.”<sup>33</sup> A pet crematorium is defined as, “. . . any land, place, structure, facility or building provided by any person for a fee, whether or not for profit, to veterinarians or members of the general public for the cremation of pets.”<sup>34</sup> “*Cremains*” is defined as, “. . . ashes and other residue recovered after the completion of cremation, which may include residue of foreign matter that may have been cremated with the human remains.”<sup>35</sup>

To be license in New York, a pet cemetery must bury five or more animals per year, and consist of at least five acres of real property in total area (this requirement is waived for pet cemeteries or pet crematoriums in existence prior to January 14, 1993).<sup>36</sup> Further, the law states, “Nothing contained in this section shall restrict any town, village or city from enacting any local law which provides for an area requirement greater than as set forth herein.”<sup>37</sup>

Pet cemetery owners must also establish a



trust fund for the permanent operation and maintenance of the cemetery in the amount of \$12,000 before the acceptance of any monies as annual maintenance fees,<sup>38</sup> and the owners are required to file a dedication restricting the real property be used only for the operation of a pet cemetery.<sup>39</sup> The state also requires zoning approvals with all applications for a license to operate a pet cemetery.<sup>40</sup> Owners of pet cemeteries are also required under State law to notify customers about the hours the cemetery will be open for people to visit their pets.<sup>41</sup>

Additionally, in 2014 under newly adopted regulations, pet cemeteries were prohibited from accepting or charging a fee for human burials and could not advertise such a service.<sup>42</sup>

### C. VIRGINIA

In 2014, Virginia allowed for the burial and pet and human remains together, subject to the following: “(1) the pet must be considered a companion animal under Virginia law, (2) the pet must have its own casket and cannot be interred with human remains, and (3) the combined section of the cemetery must be clearly marked. The pet remains must be in their own caskets, so funeral directors are working with specialty companies that make containers in pet sizes.”<sup>43</sup> However, perhaps in the unintended consequences of this law, one woman wrote in her estate planning documents that she was to be buried with her dog, and as a result, the healthy dog was euthanized to be interred with the owner.<sup>44</sup>

## III. Burying People and Pets Together

Not all states allow people and their pets to be buried together. For example, in New Jersey, pets are not allowed to be buried in

human cemeteries,<sup>45</sup> however in certain cases pet owners can be buried or have their ashes scattered in a pet cemetery where their pet is buried.<sup>46</sup> In 2011, the New York State Division of Cemeteries issued a ruling prohibiting a pet cemetery from allowing people to be buried with their pets.<sup>47</sup> At the time, the Hartsdale Pet Cemetery already had the remains of about 700 humans buried with about 75,000 pets.<sup>48</sup> The cemetery had to stop the practice as a result of the ruling, upsetting many people who had made plans to be buried alongside their pets.<sup>49</sup> New regulations adopted in 2014 allow human remains to be buried in pet cemeteries subject to the following:

- (a) neither the property owner nor the pet cemetery identifies, advertises, or otherwise promotes the pet cemetery or the property as a place for disposition of cremains;
- (b) neither the property owner nor the pet cemetery solicits, encourages or entices customers of the pet cemetery to dispose of cremains in the pet cemetery;
- (c) neither the property owner nor the pet cemetery charges a fee in relation to the disposition of cremains;
- (d) customers seeking to dispose of cremains in the pet cemetery are charged the same amounts for lots and for the disposition of pet remains as are charged to customers who do not seek to dispose of cremains in the pet cemetery;
- (e) the pet cemetery provides the following printed notice:
  - (1) when a customer inquires about disposing of cremains in the pet cemetery, but before the customer commits to purchasing a lot with

the right to dispose of cremains;  
and

- (2) when a person with custody or control over cremains makes arrangements for the disposition of the cremains at the pet cemetery, but before such arrangements are finalized. The printed notice must be in 14 point bold font and must be contained in a document separate from all other forms and documents provided to the customer or the person making arrangements:

“This property is not a cemetery for human cremains.

Cremains disposed of on this property WILL NOT be covered by the protections and legal rights granted by New York State Law to cremains disposed of in a cemetery.

The family and descendants of the deceased WILL NOT be covered by the protections and legal rights granted by New York State Law to the family and descendants of deceased persons whose cremains are disposed of in a cemetery such as mandatory records of burials, rights of memorialization and restrictions on removals.

There is NO ASSURANCE under New York State Law that this property will be maintained in its current condition and for its current purpose.

There is NO ASSURANCE under New York State Law that this property will not be sold or transferred to another owner, or that access to this property will remain open to you, the family or the descendants of the deceased.

There is NO ASSURANCE under New York State Law that any burial plots or memorials for cremains on this property will be maintained or preserved for any period of time.

There is NO ASSURANCE under New York State Law that any cremains disposed of on this property will remain for any period of

time in the location they were disposed, or on this property at all.”<sup>50</sup>

The 2014 law was limited to pet owner remains being placed on the grounds of a pet cemetery, but in 2016, Governor Cuomo signed a law allowing pet cremated remains to be buried in not for profit cemeteries.<sup>51</sup> The new law does not require cemeteries to allow for the burial of pet remains, but it authorizes cemeteries to decide whether or not they wish to do so long as the burial of pet remains are incidental to the burial of human remains.<sup>52</sup> To make sure this is followed, the Department of State advises, “At the very least, this means the purpose for every grave, crypt or niche is for the interment of human remains; the interment of pet cremated remains can only be secondary to that purpose, and it must not appear to lot owners or visitors that the primary purpose of any grave, crypt or niche is for the interment of pet cremated remains.”<sup>53</sup> There is a procedure in the law that not-for-profit cemeteries must follow if they wish to allow pet remains to be buried along with human remains.<sup>54</sup> It includes a vote of all lot owners and an amendment to the cemetery’s rules and regulations.<sup>55</sup> The law does not apply to religious cemeteries.

This is significant since few states allow for this option.<sup>56</sup> For example, Florida allows for cremated pet remains to be interred with human remains so long as the pet ashes are separated from the human remains.<sup>57</sup> In New Jersey, human remains can be buried with a pet only in a pet cemetery.<sup>58</sup> Oregon law allows human cemeteries to accept cremated pet remains on a case by case basis,<sup>59</sup> and Pennsylvania allows a cemetery to have sections for humans and pets or both.<sup>60</sup> Virginia allows for pet and human remains to be buried alongside each other only if the pet

was a companion animal and is buried in its own casket.<sup>61</sup>

## IV. Regulating Pet Cemeteries Through Local Zoning

### A. REPORTED CASE LAW

Little has been litigated related to zoning and pet cemeteries but a couple of interesting cases from Pennsylvania and Ohio may be instructive. One case looked at whether a pet cemetery can be considered an accessory use to a pet funeral home<sup>62</sup> and the other case involves a nuisance issue, regarding the question of whether the pet cemetery was a non-conforming.<sup>63</sup>

In Pennsylvania, the Court had to decide whether to uphold a decision of a local government denying a request for permission to locate a pet cemetery on a piece of land.<sup>64</sup> In this case the Board approved an application for a pet funeral home, but with respect to the request for a pet cemetery the Board said, “. . . a pet cemetery is not an accessory use to a pet funeral home and since the Zoning Ordinance does provide for cemeteries in a Rural District, the applicant's request for a pet cemetery as an accessory use is hereby denied.”<sup>65</sup> The Court said that the “findings of the board are insufficient to justify denial of an accessory use, and because the board has made no findings on (1) whether a pet cemetery is of the same character as a traditional cemetery; (2) whether a pet cemetery can be a subordinate use to a pet funeral home, and (3) whether a pet cemetery is usually found with pet funeral homes,” and they send it back to the Board to make further findings.<sup>66</sup>

In the Ohio case, neighbors brought a private nuisance claim to permanently restrain the operation a pet cemetery.<sup>67</sup> On ap-

peal, the court noted, “. . . several individuals testified that there is a considerable amount of traffic that runs back to the cemetery along a drive . . . there was testimony that indicated that the lights and noise from the cars are disruptive.”<sup>68</sup> One individual, who has a pet buried there, testified that she has visited the cemetery as early as six in the morning and as late as nine o'clock at night.<sup>69</sup> Neighbors testified that rain water often collects over the graves, that the water runs off into their yards, and that their children sometimes play in that water.<sup>70</sup> They further testified that although their drinking water has not been found to have been contaminated by the cemetery, they are constantly worried that it will become contaminated and that, as a result, their property will be rendered worthless.<sup>71</sup> The owner of the pet cemetery was unable to testify that she buries the animals in accordance with health department procedures to assure that their water will not be contaminated.<sup>72</sup> Finally, there was some testimony that the property values in the neighborhood have already been hurt because of the existence of the graveyard.<sup>73</sup> While the appeals court said that the neighbors did suffer harm, they remanded the case on zoning grounds for the lower court to consider whether the Horns were entitled to nonconforming use status for the pet cemetery.<sup>74</sup>

### B. THE NEED FOR ZONING REGULATION

While some municipalities allow for backyard burial of pets, in other jurisdictions it is prohibited due to environmental concerns.<sup>75</sup> As one author commented, “There's a saying in the pet cemetery business that people bury people because they have to, but they bury pets because they want to.”<sup>76</sup> Surprisingly, nationally only a handful of local governments have enacted

zoning laws to address this use. Local governments can regulate various aspects of pet cemeteries including: defining what they are (e.g., distinctions between cemeteries just for human remains, cemeteries just for pet remains, or the availability of both); identifying areas within the municipality where pet cemeteries are allowed either as of right or subject to special permit; and providing for minimum cemetery size, landscaping and other requirements. What follows are examples of how some municipalities are regulating this use.

### C. EXAMPLES OF ZONING REGULATIONS FOR PET CEMETERIES

Most zoning laws do not address cemeteries in great detail, nonetheless the more specific use of pet cemeteries. For example, the Town of Islip, NY does not define a cemetery but allows for the use of cemeteries.<sup>77</sup> Even where there is a definition of a cemetery, it is often limited to burial of humans such as in the City of Yonkers, NY where a cemetery is defined as, “Property used for interring the human dead.”<sup>78</sup> The Township of Chester, NJ defines a cemetery as “Any land of place dedicated for use, used or intended to be used, for the interment of human dead in the ground, in a mausoleum or crypt, and a crematory located in the cemetery and a columbarium for cinerary interments, or lands held for burial purposes.”<sup>79</sup>

The Town of Bethlehem, NY defines two types of cemeteries.<sup>80</sup> The first type is a “family cemetery.”<sup>81</sup> This is defined as “the use of a portion of private property for the disposal or burial of decided human beings in a grave restricted to members of the immediate family of the property owner.”<sup>82</sup> The second type of cemetery is a “public cemetery.”<sup>83</sup> This cemetery is defined as “a place that is estab-

lished, maintained, managed, operated or improved and which is dedicated to and used or intended to be used for final disposition of human remains and their memorialization and in which burial plots and rituals are available for purchase by the general public.”<sup>84</sup> Perhaps the emerging issue of pet cemeteries provides an opportunity for local governments to pay increased attention to the subject of cemeteries generally through zoning and land use regulations. In their general definition of “cemetery” the Township of East Coventry, PA includes pet cemeteries by stating, “Cemetery: Land used or intended to be used for the burial of the deceased, including crematories, mausoleums, mortuaries and pet cemeteries when operated in conjunction with the cemetery and located on such land as used for the cemetery.”<sup>85</sup>

#### 1. SPECIFICALLY DEFINING PET CEMETERIES

The Township of Union, PA defines pet cemetery as “A cemetery for animals, typically for cats and dogs.”<sup>86</sup> The Borough of Ben Avon, PA defines it as, “A non-human cemetery in which household pets may be buried,”<sup>87</sup> and the Township of Hamilton, NJ defines it as “land used or intended to be used for the burial of the remains of pet animals and dedicated for said purposes,”<sup>88</sup> The Town of Perth, NY defines a pet cemetery as, “land together with any structures, facilities, buildings appurtenant thereto provided to members of the public for use or reservation for use for the individual interment above or below ground of pet remains. This does not include land used exclusively for landfilling or the communal burial of pets but does include an area where a portion of the land is used for the communal burial of pets.”<sup>89</sup> Meanwhile, the Township of Northville, MI defines pet cemeteries as being,

“. . . for the expressed purpose of providing a gravesite and/or permanent marker/remembrance of deceased animals, typically household pets,”<sup>90</sup> and the Town of Lenox, NY defines pet cemetery as, “Any plot of ground used either by a profit or nonprofit organization for the burial and/or disposal of deceased animals; a service for which a charge is made or a donation accepted. This does not apply when the animals to be buried lived on the premises and/or were the property of the resident of said premises.”<sup>91</sup>

## 2. DESIGNATING ZONING DISTRICTS THAT ALLOW PET CEMETERIES

A number of municipalities allow for the placement of pet cemeteries in residential districts. For example, a number of towns in New York allow pet cemeteries to be located in a residential district subject to a special use permit,<sup>92</sup> as does the City of Havre de Grace, MD.<sup>93</sup> While the Township of Adams, PA allows for pet cemeteries subject to special exception uses in residential zones, the zoning ordinance provides, “. . . no pet cemetery shall be within or abutting a cemetery used for human burial.”<sup>94</sup>

The City of Fair Grove, MO allows for pet cemeteries in an agricultural district subject to a conditional use permit.<sup>95</sup> Similarly, the Town of Lenox, NY also allows pet cemeteries to be located in an agricultural district subject to a special use permit,<sup>96</sup> as well as in a joint agricultural and residential district.<sup>97</sup> Municipalities may also permit pet cemeteries to be located in businesses and/or commercial districts. For example, the Town of Lenox, NY allows pet cemeteries to be located in a business/commercial district subject to a special use permit.<sup>98</sup>

The Town of Wilton, NY allows for pet cemeteries in two commercial districts.<sup>99</sup> In

the Township of Manalapan, NJ pet cemeteries are permitted in limited business districts provide it does not include cremation facilities.<sup>100</sup> Interestingly, the Township of Washington, NJ does not specifically allow for pet cemeteries in its zoning code but it does specifically prohibit pet cemeteries on lands where there are animal kennels, pounds and shelters in the commercial industrial district,<sup>101</sup> and the Borough of Bergenfield, NJ prohibits pet cemeteries on private property.<sup>102</sup>

## 3. MINIMUM SIZE REQUIREMENTS FOR PET CEMETERIES

Another consideration for local governments is the size of pet cemeteries. The Town of Brookhaven, NY requires a minimum of five acres for the siting of a pet cemetery.<sup>103</sup> Additionally, the ordinance provides that, “The minimum front yard shall not be less than 300 feet in width, and no building, structure or grave shall be located within 50 feet of any road frontage, side yard or rear yard.”<sup>104</sup> The Town of Wilton, NY specifies that in a commercial district a minimum of 120,000 square feet is required for a pet cemetery, but in the residential zone, the Town requires that there only be a minimum of 40,000 square feet with a 35% minimum amount of green space.<sup>105</sup>

## 4. SPECIALLY DESIGNATING A PET CEMETERY DISTRICT

The Town of Brookhaven, NY established a special zoning district for pet cemeteries in December 1991 to protect the land where people’s pets were buried from future residential and business development.<sup>106</sup> It’s provisions below, address some of the concerns from residents including the desire for a guarantee that once a pet cemetery opens it will stay as a pet cemetery and not change

use for a long time, which in the town of Brookhaven is 50 years. The zoning district regulations also reference the Suffolk County rules governing pet cemeteries discussed earlier.

The pet cemetery business district allows the following permitted uses:

- A. Any premises wherein the business of operating a pet cemetery is engaged in. The business of operating a pet cemetery is defined as an enterprise whereby any person holds himself out, directly or indirectly, as being able, or who offers or undertakes, by any means or method to dispose of pet remains by earth burial, entombment, interment, cremation or other means.
- B. Other customary accessory uses and buildings, provided that such uses are clearly incidental to the principal use, including but not limited to a pet clinic and one residence to be occupied by a caretaker.<sup>107</sup>

In addition, the pet cemetery business district regulations provide special requirements for pet cemeteries as follows:

- A. All pet cemeteries shall be operated in conformance with the licensing requirements of the County of Suffolk concerning the licensing of pet cemeteries and pet crematoriums.
- B. In addition to any other requirements contained in this Chapter 85 governing a change of zone, any premises zoned as a pet cemetery may not be changed to another land use category on petition of the property owner unless written notice has been sent by certified or registered mail, return receipt requested, to each and every owner of a pet that has been buried or interred on

the premises. Should a petition in opposition to said change in land use classification be submitted by 25% or more of the owners of pets buried or interred on said premises, the Town Board may not change the land use classification except by a three-quarters vote of the entire membership of said Board.

- C. No site plan or certificate of occupancy shall be issued for a use other than a pet cemetery or its accessory uses until a period of not less than 50 years from the date of the last burial or interment of a pet on the site has elapsed unless said new use is designed, constructed and maintained in such a manner as not to disturb any existing graves, mausoleums, vaults or other receptacles in which pet remains have been stored.
- D. Pet cemeteries shall only be permitted within the PC Business District.<sup>108</sup>

## 5. REGULATING PET CEMETERIES THROUGH SPECIAL USE PERMITS

Municipalities that specifically authorize pet cemeteries by special permit, should provide detailed standards or conditions that must be met. For example, the Township of Douglass, PA allows for public/pet cemeteries by conditional use or special exception in any district subject to:

- A. A 20-foot wide landscape screen is required along the side and rear lot lines. The landscaping shall consist of a minimum of one row of trees planted on 10-foot centers and having a minimum height at planting of four feet.
- B. Structures and facilities associated with the internment, operation and maintenance of the cemetery shall be setback 75 feet from any property line.



Maintenance buildings and service areas shall have a landscape screen, as in paragraph A., above.

- C. Street trees shall be required and shall be planted 40 feet on center along all streets.
- D. Refuse areas shall be completely fenced enclosed and provided with a landscape screen, as in paragraph A., above.<sup>109</sup>

The City of Compton, CA allows for pet cemeteries subject to conditional use permits with the same set of requirements for all conditional use permits.<sup>110</sup> The Town of Lenox, NY allows for planning boards to grant special use permits for pet cemeteries on the following three conditions:

- A. Application for special use permit shall include the approval and signatures of 50% of all property owners and 50% of all the adult population within a one-half-mile radius of the proposed site;
- B. A 40-foot side and rear yard setback from adjoining properties and a 300-foot setback from all public highways shall be observed.
- C. Application for a special use permit shall include the written opinion and approval of the New York State Health Department as to the burial procedures necessary with regard to the proposed site.<sup>111</sup>

The zoning law of the Town of Wilton, NY states that pet cemeteries are allowed as a special use provided: (1) Such use and operation shall be in conjunction with a veterinary hospital. (2) Submission of a plot plan and rendering of the proposed use shall be required. (3) Natural buffers shall be replaced between any adjacent residence and the cemetery. (4) Site plan review and ap-

proval from the Wilton Planning Board shall be required. (5) Aesthetic aspects shall be observed.<sup>112</sup>

## V. Conclusion

The recent explosion in pet industry products and services, coupled with the increase in the number of households with pets and pet owners' behaviors that treat their furry companions as members of the family has led to an increased interest in pet cemeteries. This trend should be noticed by more local governments who have the authority to enact thoughtful regulations to appropriately plan and allow for burial of family pets in the community.

## ENDNOTES:

\*Sydney Gross is a 2020 graduate of Touro Law Center and has accepted a position as an Assistant Corporation Counsel with the NYC Law Department. This article is based on an article by the author published in the New York Zoning and Planning Law Report (May/June 2019) entitled, "Regulating Pet Cemeteries in New York."

\*\*Patricia Salkin is Provost for the Graduate and Professional Divisions of Touro College and Professor of Law at Touro Law Center.

<sup>1</sup>2019-2020 APPA National Pet Owners Survey, available at: [https://www.americanpetproducts.org/press\\_industrytrends.asp](https://www.americanpetproducts.org/press_industrytrends.asp)

<sup>2</sup>2019-2020 APPA National Pet Owners Survey, available at: [https://www.americanpetproducts.org/pubs\\_survey.asp](https://www.americanpetproducts.org/pubs_survey.asp)

<sup>3</sup>Jean Segner, SunTrust Survey: Mortgages Are Going to the Dogs, (July 26, 2017) <http://newsroom.suntrust.com/2017-07-26-SunTrust-Survey-Mortgages-Are-Going-to-the-Dogs>

<sup>4</sup>Abha Bhattarai Millennials Are Picking Pets Over People, The Washington Post, Business (September 13, 2016) <https://www.washingtonpost.com/news/business/wp/2016/09/13/millennials-are-picking-pets-over-peop>

le/?noredirect=on&utm\_term=.72556bfb36ad (Quoting Jean Twenge a Psychology professor at San Diego State University)

<sup>5</sup>Paul Sullivan, “Pets are Like Family, But as Health Costs Rise, Few Are Insured That Way,” NYT (October 12, 2018) <https://www.nytimes.com/2018/10/12/your-money/pets-health-costs-veterinarians.html>

<sup>6</sup>American Pet Products Association, <https://www.americanpetproducts.org/pressreleasedetail.asp?id=205> (February 27, 2020).

<sup>7</sup>Paul Sullivan, “Pets are Like Family, But as Health Costs Rise, Few Are Insured That Way,” NYT (October 12, 2018); available at: <https://www.nytimes.com/2018/10/12/your-money/pets-health-costs-veterinarians.html>

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<sup>12</sup> <https://www.rover.com/>

<sup>13</sup> <https://wagwalking.com/>

<sup>14</sup>See, <https://petfriendlytravel.com/>

<sup>15</sup>Durable Dog and Cat Petcare Products, 2<sup>nd</sup> Edition. (October 2, 2018) <https://www.packedfacts.com/Durable-Dog-Cat-Petcare-Products-Edition-11905708/>

<sup>16</sup>New York State Department of State Division of Licensing Services, Operation of Pet Cemeteries and Pet Crematoriums (June 2016) <https://www.dos.ny.gov/licensing/lawbooks/PET-CEM.pdf>

<sup>17</sup>Pet Burial and Cremation Service, College Foundation (2018) <https://www1.cfnc.or>

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<sup>18</sup>Dana Schulz, America’s Oldest and Largest Pet Cemetery Is in Update NY, 6SQFT, (June 26, 2015) <https://www.6sqft.com/americas-oldest-and-largest-pet-cemetery-is-in-upstate-ny/>

<sup>19</sup>Associated Press, N.Y. Pet Cemetery Deemed Historic, USA Today (September 29, 2012) <https://www.usatoday.com/story/news/nation/2012/09/29/new-york-pet-cemetery/1602643/>

<sup>20</sup>Mike Bencivenga, Stephen Cioffi, Sara G. Macias & Jamie Nguyen, Take a Tour of the Oldest Pet Cemetery: Its in Hartsdale, ABC 7 News, (October 27, 2017) <https://abc7ny.com/society/see-the-famous-pet-cemetery-where-celebrity-pets-are-buried/2553212/>

<sup>21</sup>Associated Press, N.Y. Pet Cemetery Deemed Historic, USA Today (September 29, 2012) <https://www.usatoday.com/story/news/nation/2012/09/29/new-york-pet-cemetery/1602643/>

<sup>22</sup>Associated Press, N.Y. Pet Cemetery Deemed Historic, USA Today (September 29, 2012) <https://www.usatoday.com/story/news/nation/2012/09/29/new-york-pet-cemetery/1602643/>

<sup>23</sup> <https://www.chicagotribune.com/entertainment/ct-ent-pet-cemeteries-20171026-story.html>

<sup>24</sup>See, Pennsylvania Pet Memorial at <https://www.pastatepetmemorial.com/>

<sup>25</sup>Tori Cooper, “Greenlawn Cemetery Now Allowing Customers to Bury Pets,” 23ABC-News (June 2019). See, <https://www.turnto23.com/news/local-news/greenlawn-cemetery-now-allowing-customers-to-bury-pets> (visited October 2019).

<sup>26</sup>“ . . . people will be able to secure final resting places for their beloved pets at the historic Congressional Cemetery, where officials plan to open the Kingdom of Animals section next month. Cemetery President

Paul Williams says the section will span about third of an acre at the 35-acre cemetery and will accept all pets, ranging from birds to alligators. The cemetery calls this an extension of its popular members-only dog walking group, whose volunteers have revived the grounds over the past two decades. The group costs about \$235 per year and \$50 per dog to join. Burial prices will range from \$500 to \$1,500.” <https://www.usatoday.com/story/news/50-states/2019/05/17/stevie-wonder-pet-cemetery-songwriter-jamboree-news-around-states/39487727/>

<sup>27</sup>Indina Nash, Pets for an Eternity? It's OK at Vale Cemetery, The Daily Gazette, (October 15, 2017) <https://dailygazette.com/article/2017/10/15/pets-for-an-eternity-it-s-ok-at-vale>

<sup>28</sup>See, Chris Raymond, The Realities You Should Consider Before Burying a Pet, Verywell Health (Updated January 21, 2020). See <https://www.verywellhealth.com/is-it-legal-to-bury-my-pet-in-my-backyard-1131938>

<sup>29</sup>See for example, Alison Knezevich and the Baltimore Sun, Balt. Co. pet cemetery poses challenge for neighbors, officials, The Baltimore Sun (Aug. 13, 2012). See <https://www.baltimoresun.com/maryland/baltimore-county/bs-md-co-pet-cemetery-20120813-story.html>

<sup>30</sup>OH. Rev. Code 961.03.

<sup>31</sup>OH. Rev. Code 961.04.

<sup>32</sup>OH. Rev. Code 961.05.

<sup>33</sup>New York State Department of State, Division of Licensing Services, Pet Cemetery and Pet Crematorium, <https://www.dos.ny.gov/licensing/petcemetery/petcemet.html>

<sup>34</sup>New York State Department of State, Division of Licensing Services, Pet Cemetery and Pet Crematorium, <https://www.dos.ny.gov/licensing/petcemetery/petcemet.html>

<sup>35</sup>19 NYCRR 203.1(b)

<sup>36</sup>Operation of Pet Cemeteries and Pet Crematoriums (June 2016) NY Gen Bus. Law § 750-p

<sup>37</sup>Operation of Pet Cemeteries and Pet Crematoriums (June 2016) NY Gen. Bus. Law § 750-p

<sup>38</sup>Operation of Pet Cemeteries and Pet

Crematoriums (June 2016) NY Gen. Bus. Law § 750-r

<sup>39</sup>Operation of Pet Cemeteries and Pet Crematoriums (June 2016) NY Gen. Bus. Law § 750-n

<sup>40</sup>Operation of Pet Cemeteries and Pet Crematoriums (June 2016) N.Y. Gen. Bus. Law sec. 750-n

<sup>41</sup>Operation of Pet Cemeteries and Pet Crematoriums (June 2016) NY Gen. Bus. Law sec. 750-v

<sup>42</sup>Glenn Blain, New York Pet Owners Can Now Be Buried With Their Deceased Pets, Daily News, (June 17, 2014) <https://www.nydailynews.com/news/politics/pet-owners-buried-dead-pets-article-1.1833826>

<sup>43</sup>Bonnie Kraham, You can be Buried With your Pets, <https://www.recordonline.com/article/20141203/BUSINESS/141209744/101129> (December 4, 2014)

<sup>44</sup> <https://patch.com/virginia/richmond/healthy-dog-euthanized-burial-owner-virginia>

<sup>45</sup>Fox Rothschild, LLP, “State Restrictions on Pet Burials in Cemeteries Can be Hard on Owners,” (July 15, 2019), *citing*, N.J.S.A. 45:27-2 (defining a cemetery as “land or place used or dedicated for use for burial of human remains, cremation of human remains, or disposition of cremated human remains”) (emphasis added). Additionally, The New Jersey Cemetery Board, which is in charge of licensing and regulating non-religious corporation cemeteries, has stated that, based on this definition, “A cemetery, by definition may not accept pets, unless it is exclusively a pet cemetery.” See [https://animallaw.foxrothschild.com/2019/07/15/state-restrictions-on-pet-burials-in-cemeteries-can-be-hard-on-owners/#\\_ftn6](https://animallaw.foxrothschild.com/2019/07/15/state-restrictions-on-pet-burials-in-cemeteries-can-be-hard-on-owners/#_ftn6)

<sup>46</sup>Fox Rothschild, LLP, “State Restrictions on Pet Burials in Cemeteries Can be Hard on Owners,” (July 15, 2019), *citing* N.J.S.A. 26:6-4.2.

<sup>47</sup>Associated Press, NY Tells Pet Cemeteries to Stop Taking In Humans, CBS New York (June 11, 2011) <https://newyork.cbslocal.com/2011/06/11/ny-tells-pet-cemeteries-to-stop-taking-in-humans>

<sup>48</sup>Associated Press, NY Tells Pet Cemeteries to Stop Taking In Humans, CBS New York (June 11, 2011) <https://newyork.cb>

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<sup>49</sup>Laura Ly, Sleeping With the (Gold)Fishes: N.Y. Pet Cemeteries To Accept Pet Owner Remains, CNN, (June 19, 2014) <https://www.cnn.com/2014/06/18/us/new-york-human-pet-cemeteries/index.html?no-st=1544291190>

<sup>50</sup>19 NYCRR 201.19

<sup>51</sup>New York State Department of State, Division of Licensing Services, Pet Cremated Remains FAQ, <https://www.dos.ny.gov/cmt/pet-cremation.html>. Also see <https://www.dos.ny.gov/cmt/bulletins/2017%20Division%20Bulletin%20No.%201.pdf>.

<sup>52</sup>New York State Department of State, Division of Licensing Services, Pet Cremated Remains FAQ, <https://www.dos.ny.gov/cmt/pet-cremation.html>

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<sup>55</sup>New York State Department of State, Division of Licensing Services, Pet Cremated Remains FAQ, <https://www.dos.ny.gov/cmt/pet-cremation.html>

<sup>56</sup>PNNX Staff, N.Y. Close to Allowing Pets to be Buried With Their Owners, News 12 NBC, (June 11, 2016) <https://www.12news.com/article/news/nation-now/ny-close-to-all-owing-pets-to-be-buried-with-their-owners/239866794>

<sup>57</sup>PNNX Staff, N.Y. Close to Allowing Pets to be Buried With Their Owners, News 12 NBC, (June 11, 2016) <https://www.12news.com/article/news/nation-now/ny-close-to-all-owing-pets-to-be-buried-with-their-owners/239866794> citing <https://www.lawserver.com/law/state/florida/statutes/florida-statutes-497-273>

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<sup>62</sup>*Andrews v. Weisenberg Tp. Zoning Hearing Board*, 19 Pa. D. & C.3d 361, 1981 WL 677 (C.P. 1981).

<sup>63</sup>*Miller v. Horn*, 1996 WL 354756 (Ohio Ct. App. 2d Dist. Clark County 1996)

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<sup>68</sup>*Miller v. Horn*, 1996 WL 354756 (Ohio Ct. App. 2d Dist. Clark County 1996)

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<sup>71</sup>*Miller v. Horn*, 1996 WL 354756 (Ohio Ct. App. 2d Dist. Clark County 1996)

<sup>72</sup>*Miller v. Horn*, 1996 WL 354756 (Ohio Ct. App. 2d Dist. Clark County 1996)

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<sup>74</sup>*Miller v. Horn*, 1996 WL 354756 (Ohio Ct. App. 2d Dist. Clark County 1996)

<sup>75</sup>Rebecca J. Huss, *Separation, Custody, and Estate Planning Issues Relating to Companion Animals*, 74 U. Colo L. Rev 181 at 377 (2003)

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<sup>77</sup>Town of Islip Town of Islip (NY) Zoning Code, sec. 68-46.1, Uses Permitted by Special Use Permit after Due Public Hearing, <https://ecode360.com/7703784>

<sup>78</sup>91 City of Yonkers (NY) Zoning Code, sec. 43-8, Definitions of Terms, <https://ecode360.com/15113897>

<sup>79</sup>Township of Chester (NJ), Zoning Code, sec. 113-305, Cemeteries, See <https://ecode360.com/12403513>

<sup>80</sup>Town of Bethlehem (NY) Ch. 128 zoning Article IV word Usage and definitions § 128-22. See <https://ecode360.com/8993840>

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<sup>85</sup>Township of East Coventry (PA), Municipal Code, Zoning, sec. 27-202. See <https://ecode360.com/31114245>

<sup>86</sup>Township of Union (PA), Zoning, sec 200-10. See <https://ecode360.com/31900390>

<sup>87</sup>Borough of Ben Avon (PA), Municipal Zoning Code, Article III sec. 2000-300. See <https://ecode360.com/31608362>

<sup>88</sup>Township of Hamilton (NJ), Town Code, Part III: Land Use Legislation/Land Development sec. 550-7. See <https://ecode360.com/27523360>

<sup>89</sup>Town of Perth (NY) Zoning Law, Art. 2 Definitions, <http://www.perthny.com/Docume>

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<sup>90</sup>Township of Northville (MI) Zoning, sec. 170-44.1. See <https://ecode360.com/8504629>

<sup>91</sup>Town of Lenox (NY) Zoning Code, Sec. 134-4, Definitions, Pet Cemeteries. See <https://ecode360.com/26965074>

<sup>92</sup>Town of Lenox (NY) Zoning Code, § 134-10 Residential Medium Density District see <https://ecode360.com/26965138>. See also, Town of Greece (NY) Zoning Code, § 211-44, R1-44, R1-18, R1-12, R1-8, and R1-E, Single Family Residential District, See <https://ecode360.com/10840315>; Town of Pawling (NY) Zoning Code, Ch. 215, Attachment 1, Schedule of Permitted Uses, <https://ecode360.com/documents/PA0446/PA0446-215a%20Schedule%20of%20Permitted%20Uses.pdf#search=pets%20cemetery>; and Town of Wilton (NY) Zoning Code, Ch. 129, Attachment 20, Schedule of Permitted Uses, <http://ecode360.com/documents/WI1322/WI1322-129t%20Schedule%20N.pdf#search=pet%20cemeteries>.

<sup>93</sup>City of Havre de Grace (MD), Zoning, Conditional Uses sec. 2015-15 (E). See <https://ecode360.com/8371072>

<sup>94</sup>Township of Adams (PA) Zoning, Article VIII Uses by Special Exception sec. 192-50 (B) (5). See <https://ecode360.com/12753527>

<sup>95</sup>City of Fair Grove (MO), Zoning Regulations, 405.260(B)(2). See, <https://ecode360.com/28434902>

<sup>96</sup>Town of Lenox (NY) Zoning Code, § 134-13 Agricultural District See <https://ecode360.com/26965227>

<sup>97</sup>Town of Lenox (NY) Zoning Code, § 134-14 Agricultural/Residential District see <https://ecode360.com/26965254>

<sup>98</sup>Town of Lenox (NY) Zoning Code, § 134-15 Business/Commercial Neighborhood District See <https://ecode360.com/26965285>

<sup>99</sup>Town of Wilton (NY) Zoning Code, Ch. 129, Attachment 14 and 16, <https://ecode360.com/documents/WI1322/WI1322-129n%20Schedule%20H.pdf#search=pets%20cemeteries> and <https://ecode360.com/documents/WI1322/WI1322-129p%20Schedule%20J.pdf#search=pet%20cemeteries>

<sup>100</sup>Township of Manalapan (NJ), Ch. 95 Development Regulations, sec. 95-

5.5(D)(1)(d). See <https://ecode360.com/10117086>

<sup>101</sup>Township of Washington (NJ), Zoning Code, sed. 285-133. See <https://ecode360.com/7666734>

<sup>102</sup>Borough of Bergenfield (NJ), Sanitary Code sec. 344-44. See <https://ecode360.com/8946067>

<sup>103</sup>Town of Brookhaven (NY) Zoning Code, § 85-536 Minimum Requirements (*Note: the zoning ordinance does grandfather in previously existing pet cemeteries that are less than five acres*) See <https://ecode360.com/8598605>

<sup>104</sup>Town of Brookhaven (NY) Zoning Code, § 85-536 Minimum Requirements see <https://ecode360.com/8598605>

<sup>105</sup>Town of Wilton (NY) Zoning Code Ch. 129, Attachment 20, Schedule of Permitted Uses, <https://ecode360.com/documents/WI1322/WI1322-129t%20Schedule%20N.pdf#search=pet%20cemeteries>

<sup>106</sup>Estelle Landier and Rick Brand, *Pet*

*Cemetery Site Rezoned*, *Newsday* (Jan. 12, 1992).

<sup>107</sup>Town of Brookhaven (NY) Zoning Code, § . 85-535 Minimum Requirements see <https://ecode360.com/8598604>

<sup>108</sup>Town of Brookhaven (NY) Zoning Code, sec. 85-537, Special requirements for pet cemeteries, <https://ecode360.com/8598608>

<sup>109</sup>Township of Douglass (PA), Municipal Code, Zoning, Supplemental Regulations sec. 27-749. See <https://ecode360.com/33369405>

<sup>110</sup>City of Compton (CA), Zoning, sec. 30-26.3. See <https://ecode360.com/35624012>

<sup>111</sup>Town of Lenox (NY) Zoning Code, § 134-65 Pet cemeteries; additional requirements. See, <http://ecode.360.com/2695635>

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