

Ordinance No: 2019-12  
Introduced by Town Council: 08/12/2019  
Public Hearing: 08/28/2019  
Enacted:  
Effective:

ORDINANCE  
AUTHORIZING THE SALE OF LAND OCCUPIED BY A MAIN BUILDING  
AT 409 FIFTH AVENUE CONSTRUCTED IN PART ON  
LAND OWNED BY THE TOWN OF WASHINGTON GROVE

**WHEREAS**, Article XVII of the Washington Grove Code of Ordinances provides a process by which the Council may by ordinance sell certain Town-owned land on which a portion of a main building has been constructed after a request for purchase is submitted to the Town Office by the owner of the main building;

**WHEREAS**, George W. O'Connor and Carolyn M. O'Connor, are owners of the property at 409 Fifth Avenue ("Property") also known as Lots 8, 9, 10, and half of an alley, all in Block numbered 17 in the subdivision known as "Washington Grove", as per plat thereof recorded in Plat Book 1, Plat 20 of the Land Records of Montgomery County, Maryland, Tax Account Number 09-00780357.

**WHEREAS**, a portion of the main building at 409 Fifth Avenue is located on Town-owned land as here and after defined, to wit, a portion of an existing porch comprising 69.1 square feet, more or less, on Fifth Avenue;

**WHEREAS**, the Owners have submitted a request for purchase of the Town-owned land under Article XVII, accompanied by four copies of an identification plat.

**WHEREAS**, it is in the Town's interest to maintain the historic character of the Fifth Avenue streetscape, which depends on the retention of the porch of the house in substantially the same form and extent as presently existing;

**WHEREAS**, the Property is considered a contributing resource to the Washington Grove Historic District;

**WHEREAS**, the Secretary of Interior's Standards for Historic Preservation as represented in the National Park Service's Preservation Briefs #45 - Preserving Historic Wood Porches, #47- Maintaining the Exterior of Small and Medium Size Historic Buildings, and #16 - The Use of Substitute Materials on Historic Building Exteriors, provide the guidance for actions that retain the historic integrity of historic structures;

**WHEREAS**, copies of the said request for purchase have been forwarded to the Planning Commission and the Historic Preservation Commission for actions and recommendations as stipulated in Article XVII;

**WHEREAS**, the Council has received and considered recommendations from the Planning Commission and the Historic Preservation Commission regarding the aforesaid request for purchase;

**WHEREAS**, the Council seeks to assure current and future property owners that the Town's remaining interest is in retaining the historic integrity of the historic structure occupying the land to be purchased, rather than recovering ownership of the land itself;; and

**WHEREAS**, it is in the interest of the Town and the owner to resolve any future instance of noncompliance with the covenants imposed as part of this conveyance, and the Council is determined to provide a fair and reasonable negotiation process for remedying the non-compliance, such process to precede any legal action.

**NOW THEREFORE, BE IT ORDAINED AND ENACTED**, by the Mayor and Council of the Town of Washington Grove:

**Section 1. Authorization for Sale of Town-Owned Land.**

- A. The Council hereby finds and declares that the following Town-owned land ("Town-Owned Land") is no longer needed for a public purpose: the parcel as described in a metes and bounds description attached hereto and incorporated herein by reference as Exhibit A, and in an Identification Plat attached hereto and incorporated herein by reference as Exhibit B.
- B. The Council hereby declares that the description of the dimensions and materials of the structures on Town-Owned Land is documented in attached Exhibit C, which is incorporated herein by reference, and which is composed of drawings, photos, history, and a list and narrative description of the historic integrity features currently extant.
- C. The Council hereby declares the Town-Owned Land as abandoned and eligible for sale to Owner as stipulated in Article XVII.
- D. The Mayor is hereby authorized to execute an appropriate deed ("Deed") conveying a fee simple interest in the Town-Owned Land to the Owner of the Property for a total of \$69.10 based on a sales price of \$1.00 per square foot.
- E. The Deed for sale of the Town-Owned Land will affirmatively require the Owner and any successor or assigns to strictly adhere to the following covenants, which will run with the land and be enforceable by the Town against the Owner and any successor or assigns:
  - 1. Only the structure, or portion thereof, currently located on the Town-Owned Land and referenced in the metes and bounds/plat identification and description of the structure submitted with the Owner's application, may be maintained, repaired, replaced or

reconstructed. Any repair, reconstruction or replacement shall adhere to the same dimensions and historic character described in Exhibit C without enlargement of any non-compliance, shall require a building permit but only to the extent that a permit is otherwise required under existing Town ordinances or county or state laws, and shall comply with all Town ordinances.

- a. Ordinary maintenance and repairs, as defined in the Washington Grove Zoning Ordinance, may be made without a building permit.
  - b. Major alterations (e.g., additions that increase the square footage of a building or structure or increase the footprint of the building) are not considered ordinary maintenance and repairs.
  - c. Modifications to or repair/replacement of any structural or historic feature requires that the applicant demonstrate to the Council in advance of any work that the action will not result in reduction to either the structural or historic integrity of the portion of the house on Town-Owned Land. The Town Council must authorize by vote in advance of any such work.
  - d. The Mayor must be notified of modifications to or repair/replacement of any structural or historic feature in advance of any actual work on the structure.
  - e. Applications for building permits must be submitted to the Washington Grove Planning Commission for approval.
  - f. Upon receipt of any application for a building permit which will involve any change to a structure or site visible from any public way, the Planning Commission promptly shall forward a complete copy of the same to the Historic Preservation Commission for review and comment.
2. The Town-Owned Land may not be used to meet minimum building lot square footage requirements, percentage of lot coverage requirements, or set back requirements
  3. The Town has the right to enforce, by any proceeding at law or in equity, including injunction, all restrictions, terms, conditions, covenants and agreements imposed upon the transfer of the Property, and/or the Owner, pursuant to the provisions of the Deed. Further that the Town would not have an adequate remedy at law and would be entitled to bring an action in equity for specific performance to enforce the terms of the Deed and that The Town shall be entitled to reimbursement for all reasonable costs of enforcement including reasonable attorneys' fees if the Town prevails in any such action against the Owner.
  4. Once discovered, the Town will notify the current Owner of any claim of non-compliance. The parties shall have sixty (60) days following notification to negotiate an agreement specifying actions to bring the property into compliance. In the event of a failure of the Owner to engage in negotiation, or the parties to reach agreement on

corrective action that is then completed as agreed, the Town may take enforcement action as as set forth herein.

F. The owners shall bear all costs of the sale of the Town-Owned Land, the preparation and recordation of the Deed and the lot line adjustment required to reflect the transfer.

**Section 2. EFFECTIVE DATE:** This Ordinance shall become effective thirty (30) days from the date of enactment hereof in the absence of a petition by qualified voters as set forth in Section 15 of the Charter of the Town.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

TOWN OF WASHINGTON GROVE

\_\_\_\_\_  
Mayor Date

ATTEST:

\_\_\_\_\_  
Town Clerk Date