

MEMORANDUM FOR THE RECORD

From: Charlie Challstrom
Subject: Request from Marc and Peggy Hansen
Date: September 14, 2020

On August 16, 2020, Marc and Peggy Hansen submitted a request to the Mayor and Council to terminate four restrictive covenants associated with their property (Lots 1-5, Block 5) located at 201 Chestnut Avenue. The four restrictive covenants in question resulted from 1950 and 1978 conveyances of the Hansen property that once belonged to Peggy's father, Philip H. Winter.

The 1950 Conveyance – The three covenants imposed with the 1950 deed to Philip H. Winter are:

- (1) *“That any building, other than necessary out-buildings, erected on said land shall cost not less than five thousand (\$5,000.00), and shall conform to building lines established for the street or avenue upon which said building fronts.”*
- (2) *“That the said land or any improvements erected, or to be erected thereon, shall not be used for mercantile, manufacturing, or mechanical purposes, but solely used as a dwelling house.”*
- (3) *“For the purposes of sanitation and health, the grantees, their heirs and assigns, shall and will not sell, rent, lease, or in any manner dispose of said land, or any improvements thereon, to anyone of a race whose death rate is of a higher percentage than that of the white or Caucasian race.”*

With the 1950 conveyance of Lots 1-5, Block 5, the Town retained ownership of a 25-foot strip along the eastern side of all five lots along Chestnut Road.

In 1964, the Mayor and Council adopted and enacted the first Code of Ordinances, including Article VII, Zoning. As stated in the Hansen request, this Zoning Ordinance imposes uniform development and use rules for all property in Town, thus precluding the first two covenants.

In his book “Washington Grove 1873-1937 – a history of the Washington Grove Camp Meeting Association” Phil Edwards provided the connection of restrictive covenants to the transition from a camp meeting association to a municipal government. Phil states: *“These covenants were eventually adopted and remained on the deeds well into the 1950’s; the third one was actively used to discourage blacks, Jews, orientals, or native Americans, for that matter, from seeking to settle in the Grove. The exclusivity of the Grove as envisioned by its founders, at least in their promotional literature, was intended to support the utopian ideal of a homogeneous community of persons with common beliefs. The third covenant reduced that lofty notion to the language of bigotry, and left little doubt as to its contemporary purpose.”*

Such covenants have been discussed recently by the PC in the context of the Housing element for our Master Plan, and a growing awareness of use of these covenants in Washington Grove and other communities. While researching restrictive covenants, I have not yet discerned a Town governmental action that would “terminate” these three covenants, be appropriate for filing in the Land Records for Montgomery County, and be discoverable during title searches for other properties in Washington Grove.

Recommendation: The Town should obtain legal advice and guidance to evaluate the way ahead for Town action to terminate this set of restrictive covenants.

The 1978 Conveyance – In 1978, the Town conveyed ownership of the retained 25-foot strip to Philip H. Winter, with a restrictive covenant and a reserved easement with the sale:

- (1) *That building set-back requirements will continue to be measured from the present boundary lines of Lots 1-5.*
- (2) *The Town reserved an easement of an arc with a 20-foot radius at the intersection of Oak Street and Chestnut Road for the purpose of “promoting highway and traffic safety” and for “road improvements”.*

Marc and Peggy have requested that the Town terminate all three covenants from 1950, and the first covenant from 1978. They did not ask that the Town relinquish the traffic safety easement.

Background for 1978 Covenant – I recently received pdf files of 1977 and 1978 Town Council minutes from Patricia Patula to help compile an updated summary of issues. The following pdf files are attached, most compiled using the 1977 and 1978 information provided

1977-07-13 Don McCathran Letter to Marc Hansen referral to Evans
1977-07-13 TC Minutes - letter to Marc Hansen - referral to Evans
1977-09-28 Evans Memorandum - 25-ft Strip - Chronology - Issues
1977-12-14 TC Minutes - Council Vote re 25-ft Strip - Sale Restrictions
1978-01-05 Hansen Letter - Two Proposals Acceptable to Phil Winter
1978-01-11 Res 1-78 Ordinance for Disposal of Town Property - 25-ft Strip
1978-01-11 TC Minutes - Council Acceptance of Contract w Phil Winter
1999-05-31 Edwards Book - Washington Grove 1937-1977 - Pages 95-98
2020-08-16 Hansen Request re Restrictive Covenants

The Robert Evans memo, dated September 28, 1977 provides a history of the 25-foot strip and a chronology of related events. In the history, Robert Evans concludes the Town acquired the strip “possibly to be reserved for later road-widening” which did not happen. The chronology includes a 1961 PC recommendation, a 1964 bid by Mr. Winter and bid rejection by Council, a 1969 deed that was not executed, a 1970 offer not accepted, 1975 communication from Mr. Winter’s attorney Marc Hansen, a 1976 PC suggestion the “Council may want to offer the property for sale to Mr. Winter at a fair market price to be determined by Council.” In the final entry – “1977: Mr. Hansen writes Mayor Edwards raising questions of abandonment and adverse possession, but in the spirit of compromise, offering \$1,000 as a purchase price. Mayor Edwards turns matter over to Mayor McCathran; Mayor McCathran and Mr. Hansen exchange letters.”

Town Council minutes for December 14, 1977, report that Mayor McCathran stated it would be reasonable to retain a truncated corner at Oak Street “and to stipulate that building restriction set-backs shall be measured from the line that presently divides the Town held strip from the remainder of the lots owned by Mr. Winter.” Council voted 3-Yes, 1-No, 1-abstained, that “the strip be offered to Mr. Winter for 25¢ per sq.ft. and that the Town retain the truncation at Oak Street and stipulate that the building line should be established as recommended by the Mayor.”

The Marc Hansen letter to Mayor McCathran, dated January 5, 1978, conveys “*two proposals, either being acceptable to Phil*” and both proposals included the building line restriction as recommended by the Mayor. Resolution No. 1-78, enacted January 11, 1978, and the 1978 Deed, confirm Council acceptance of the first offer in Marc Hansen’s 1978 letter, including the building line covenant that Marc and Peggy Hansen are now asking to be terminated.

Recommendation: The Town should evaluate the public need to continue the restricted use of this 25-foot strip, and if deemed appropriate, proceed with an ordinance to authorize a deed to remove the restrictive covenant for the 25-foot strip.