

Ordinance No: 2021-01
Accepted by Planning Commission: 01/06/2021
Introduced by Town Council: 01/11/2021
Two Newspaper Advertisements: 02/18/2021
02/25/2021
Public Hearing: 03/08/2021
Enacted: 03/08/2021
Effective: 04/08/2021

ORDINANCE
AMENDING THE WASHINGTON GROVE ZONING ORDINANCE
TO TERMINATE CERTAIN RESTRICTIVE COVENANTS AND
TO AUTHORIZE RELATED LEGAL INSTRUMENTS SUITABLE FOR
RECORDATION
IN THE LAND RECORDS OF MONTGOMERY COUNTY

PART 1. Background:

- A. In August 2020, Marc and Peggy Hansen requested that the Town of Washington Grove (“Town”) terminate three restrictive covenants imposed on their property (201 Chestnut Avenue) and similarly situated property in the Town. The Town had imposed three restrictive covenants on 201 Chestnut Avenue by way of a deed dated October 31, 1950. The deed was between the Town and Philip and Catherine Winter; the deed conveyed to the Winters the property at 201 Chestnut Avenue, less a 25-foot strip along Chestnut Road. In the 1950 deed, the Winters (on behalf of themselves and their successors in title) promised the Town:
1. That any buildings, other than necessary out-buildings, erected on said land shall cost not less than \$5,000, 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; and
 3. For the purpose 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.
- B. The Town and its predecessor in title, the Washington Grove Association of the District of Columbia and Maryland, imposed through deeds conveying numerous properties, which are currently owned by Town residents, three covenants substantially similar to the three covenants imposed on 201 Chestnut Avenue – *i.e.* restrictive covenants that impose:
1. Building cost restrictions.
 2. Mercantile/manufacturing/mechanical use restrictions; and
 3. Racially based restrictions on who may own or lease property in the Town.
- C. In September 2020, the Mayor and Council referred the Hansen request to the Town’s Planning Commission.
- D. In November 2020, the Planning Commission reported back to the Mayor and Council, concurring with a statement that the Washington Grove Zoning Ordinance imposes uniform

development and use rules for all property in Town. The Planning Commission concluded Town action is justified to terminate the first two 1950 restrictive covenants imposed on the property located at 201 Chestnut Avenue (regarding building cost restrictions and mercantile/manufacturing/mechanical use restrictions) and all similar restrictive covenants imposed on other properties within the Town. The Planning Commission also noted that the U.S. Supreme Court ruled in 1948 that certain racially restrictive covenants were not enforceable, and in 1968, with the passage of the federal Fair Housing Act, writing racially restrictive covenants into deeds became illegal. The Planning Commission concluded that Town action is justified to terminate the 1950 racially restrictive covenant imposed on the property at 201 Chestnut Avenue, and all similar racially restrictive covenants imposed on other properties within the Town.

- E. The Washington Grove Zoning Ordinance is Article VII of the Code of Ordinances, and all subsequent Section references are to Article VII. The application for zoning text amendment was filed and accepted pursuant to Section 13. The Planning Commission accepted the application for a text amendment to the Washington Grove Zoning Ordinance on January 6, 2021. The proposed zoning text amendment involves adding a new Section 2.4 to (1) terminate a set of three restrictive covenants imposed on property by the Town (or its predecessor in title, the Washington Grove Association of the District of Columbia and Maryland) by way of deeds that include (a) building cost restrictions; (b) mercantile/manufacturing/mechanical use restrictions; and (c) racially-based restrictions (collectively, “Restrictive Covenants”); and (2) authorize the Mayor, at the request of an owner of property burdened by the Restrictive Covenants, to execute on behalf of the Town legal instruments suitable for recordation in the Land Records of Montgomery County that reflect the Town’s termination of the Restrictive Covenants.

PART 2. The Town Council adopts the following opinion:

A public hearing regarding the proposed zoning text amendment was held on March 8, 2021. At this hearing concerned residents testified. After consideration of the public record, the Town Council concludes that amending the Washington Grove Zoning Ordinance to terminate the Restrictive Covenants is in the public interest because it promotes the uniform application of development and use regulations within the Town. In addition, the amendment is in the public interest because it formally repeals an unconstitutional racial restriction on who may own a property interest within the Town.

PART 3. The Town Council enacts the following amendment to the text of the Washington Grove Zoning Ordinance, adding Section 2.4 to read as follows:

2.4 Termination of Restrictive Covenants and Authorization for Certain Legal Instruments

- A. In this Section “Restrictive Covenants” means a set of three restrictive covenants imposed on property by the Town (or its predecessor in title, the Washington Grove Association of the District of Columbia and Maryland) by way of a deed that includes: (1) building cost restrictions; (2) mercantile/manufacturing/mechanical use restrictions; and (3) racially based restrictions on who may own an interest in property.
- B. The Restrictive Covenants are terminated.
- C. The Mayor of the Town is hereby authorized, at the request of an owner of property burdened by the Restrictive Covenants, to execute on behalf of the Town a legal instrument

suitable for recordation in the land records of Montgomery County if the instrument: (1) reflects the Town's termination of the Restrictive Covenants; and (2) is prepared by and recorded in the land records at the owners' expense.

PART 4. 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.

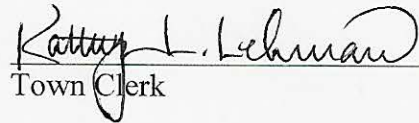
ENACTED THIS 8th DAY OF MARCH, 2021.

TOWN OF WASHINGTON GROVE



Mayor

ATTEST:

 26 MARCH 2021
Town Clerk Date