

Marc and Peggy Hansen
201 Chestnut Ave.
Washington Grove

Charlie and Mary Challstrom
503 McCauley St.
Washington Grove

April 10, 2022

Dear Mayor and Town Council:

The Town Council is about to undertake its review of the Planning Commission's proposed *Comprehensive Plan 2022: Town of Washington Grove Maryland* (Plan). Under Maryland law, the Council "may adopt, modify, remand, or disapprove: (i) the whole plan or part of the plan."¹

We write to urge the Council to exercise its authority to reject two provisions of the Plan: (1) a proposal to enact a historic preservation ordinance; and (2) a proposal to permit eating and drinking establishments in the commercial corner as a special exception use.

What is included in the Plan matters very much because (by adopting the Plan) the Town is committing itself to implement the provisions of the Plan. Maryland Law provides that the Town "shall ensure the implementation of the visions, the development regulations element, and the sensitive areas element of the plan."²

We would be remiss if we did not acknowledge the impressive effort that has gone into the creation of the draft Plan. The volunteer efforts of those who put the draft Plan together should be commended.

Brief Summary

¹ Md. Code, Land Use, Sec. 3-204.

² Md. Code, Land Use, Sec. 3-303.

- I. The Plan presents no clear justification for recommending the enactment of a historic preservation ordinance. While rightly lauding the eclectic nature of the Town’s residential housing stock (which has been created over the decades by Grove homeowners expressing their personal aesthetic choices when improving their homes), inexplicably the Plan proposes to fossilize this creative energy by interposing a potential bureaucratic veto into this process. Moreover, a historic preservation ordinance is unfair because it imposes (supposedly for the benefit of the public at large) an involuntary financial burden on individual property owners.

- II. Allowing eating and drinking establishments into the commercial corner risks creating significant vehicle and pedestrian traffic, litter, odors, and noise. In the 1980’s, the Town experienced the deleterious effects of a high-volume, high-intensity use with the operation of a 7-Eleven store in the commercial corner—the Town should not be exposed to a repetition of this type of use that is incompatible with the residential character of the Town.

Historic Preservation

The Plan appropriately notes that “Generations of Washington Grove residents have acted as stewards of the Town’s historic buildings and landscape. The result has been a community with an extraordinary sense of place.”³ The Plan accurately, we believe, concludes that “Washington Grove's historic character is an economic driver for the Town. Its small scale, **unique architecture**, parks, woods, its lake and other outdoor recreation spaces, and unique layout all attract potential home buyers and increase the value of homes.”⁴ (Emphasis added)

After meticulously supporting the foregoing conclusions, the Plan logically recommends that the Town should “Encourage individuality of

³ Plan, p. 99.

⁴ Plan, p. 100.

design as it contributes to the eclectic composition of the Town.”⁵ But inexplicably, the Plan then veers away from this logic to recommend that the Town, “After assessment of risks to the contributing resources, enact a municipal historic preservation ordinance tailored to the resources and execution abilities of the Town.”⁶

The Council should remove this recommendation from the Plan for the following reasons:

- 1) As the Plan notes, the housing in the Grove is "highly eclectic".⁷ This is part of the charm of the Grove, and the Plan rightly lauds the eclectic nature of the houses in the Grove.

The Grove became this way because individuals have been free to project (by additions and other remodeling projects) their individual ascetic tastes through their own homes. This has clearly turned out well.

Given this track record, the Plan advances no justification for recommending that the Town government be empowered to impose its judgments on a homeowner by exercising a veto on what improvements that an owner decides to make to her or his home.

- 2) A historic preservation ordinance will impose a financial burden on the owner of the property deemed to be historic by the Town—this burden will vary widely within the Town depending on the nature of one’s home and will be imposed without regard to the financial resources of the home’s owner.⁸ It is simply wrong for the Town to impose an involuntary financial burden on an

⁵ Plan, p. 105.

⁶ Plan, p. 106.

⁷ The Plan identifies 23 architectural styles in the Town. Plan, p. 103.

⁸ The Plan states that 177 out of 225 of the Town’s homes are contributing historic resources; hence, an astounding 78% of the Grove’s housing stock will likely be subject to the regulation of a historic preservation ordinance. Plan, p. 105-106.

individual property owner to achieve a perceived benefit that presumably benefits the Town as a whole.

3) As noted, the architecturally eclectic nature of the homes in the Grove is an important asset that makes the Town both unique and charming. This eclecticism is the result of hundreds of homeowners making innovative improvements to their homes over decades. Subjecting this creativity to the veto authority of a Historic Preservation Commission is inconsistent with nurturing the forces that have brought the Grove to where it is today.

We wonder if 5th century BCE Athens had a historic preservation ordinance, whether the Athenian equivalent of a HPC would have permitted the Parthenon to have been built at all or if the HPC would have required that the original temple to Athena be meticulously re-built instead of allowing the Parthenon to be constructed.

Without discussion, the Plan recommends that the Town “assess the use of a Historic Preservation Easement program.”⁹ We support this recommendation, but the Plan should flesh out this recommendation with some description on what a Historic Preservation Easement program might look like.¹⁰

Commercial Corner

We share the Plan's goal of making the Corner more visually appealing as a gateway into the Grove.¹¹ We believe much can be accomplished

⁹ Plan, p. 106.

¹⁰ For example, a Historic Preservation Easement program might authorize the Town to identify a limited number of homes that are particularly important historic resources—*e.g.* the Town might select a few homes that are thought to be iconic examples of the Carpenter Gothic style. The Town would then offer to each of the owners of those important historic resources an opportunity to *voluntarily* sell a historic preservation facade easement on her or his home to the Town. The easement would provide that the owner could not make any alteration to the exterior of her or his home without the consent of the Town. The Town could fund the purchase of the easement with a grant program that returned to the owner the *ad valorem* portion of the Town's real property tax until the purchase price of the easement will have been paid.

¹¹ Plan, p. 92-93.

through encouraging public art to be displayed at the Corner—in our view the murals that have been painted at the Corner have added much to making the Corner a more attractive gateway into the Grove.

We are strongly opposed, however, to the recommendation that eating and drinking establishments be added to the list of uses that could be approved through the special exception process. Our reasons for this opposition are:

- 1) To be economically viable, an eating establishment located in the Corner will have to rely on a high-volume sale of take-out convenience foods, like sandwiches or tacos. This, in turn, will lead to a high volume of traffic much like the 7-Eleven generated in the 1980's. To open the door to the possibility of a conflict with another 7-Eleven like business is unwise in our opinion.

An eating establishment that intended to rely on a low number of sit-down diners would simply not be economically viable--especially because the sale of alcohol is prohibited in the Town. Moreover, the rental units in the Corner are small—the spaces are around 1,400 sq. ft; so, the number of diners would by necessity be quite small—meaning a small number of people must pay a high tab (unlikely unless alcohol is served) or there is a high volume of diners.

- 2) The Plan implies that Town residents can rely on the special exception process to protect the residential nature of the Town. The Plan notes that a special exception applicant must show by clear and convincing evidence that the proposed eating establishment will not significantly burden the Town with trash, odors, and traffic.¹²

Leaving aside the difficulty of applying this standard, this requirement is significantly tempered by Section 11.324 of the

¹² Plan, p. 95-96.

Town's Zoning Ordinance. The Board of Zoning Appeals must not deny a special exception based on the "inherent effects" associated with a particular use. An "inherent effect" is a physical and operational characteristic necessarily associated with a particular use.¹³ In the case of an eating establishment odors, food waste, and traffic are all highly likely to be considered an inherent effect. Even though the Plan recognizes the impact of Section 11.324, the Plan nevertheless surprisingly recommends the amendment of the Zoning Ordinance to add eating and drinking establishments as a special exception use in the Corner.

- 3) Imposing conditions on eating and drinking establishments through the zoning ordinance itself is unlikely to provide much in the way of protection to the Town. Reliance on limitations, like limiting the number of vehicle arrivals within an hour and limiting the number of diners/seats, is simply unrealistic.¹⁴ The Town's history of enforcing its ordinances leads us to doubt the ability and willingness of the Town's volunteer government to undertake the arduous task of code enforcement.¹⁵

We support the Plan's retention of the idea of creating a business improvement tax district. A business improvement tax district could impose a special property tax on the Corner, the proceeds of which would be earmarked for the Town to use to fund improvements to the visual appearance of the Corner. These funds would likely incentivize the owner of the Corner to display public art at the Corner; plant trees; or make facade improvements to the Corner.

¹³ This "inherent effects" standard is required by State law. Plan, p. 95.

¹⁴ Plan, p. 95.

¹⁵ Gathering proof of the number of vehicle trips or the number of diners/seats would not be easily accomplished. In addition, once a municipal citation is issued and a conviction obtained, the District Court almost always gives the defendant second and even third chances to rectify the problem. This often requires the municipality to continue to gather evidence of compliance (or non-compliance) and to make several trips to court to demonstrate continuing violations. This can be an exhausting and expensive process for the municipality—even for a municipality with paid staff and in-house attorneys.

We hope our comments will be helpful to the Council as it makes these important decisions.

Sincerely,

Marc Hansen

Marc Hansen

Peggy Hansen

Peggy Hansen

Charlie W. Challstrom

Charlie Challstrom

Mary M. Challstrom

Mary Challstrom

Cc: Peter Nagrod

Georgette Cole