

Tuesday, April 24, 2018

Chairperson Appointee Frederick L. Hill  
Board of Zoning Adjustments  
441 4<sup>th</sup> Street, NW, Suite 200S  
Washington, DC 20001  
bzsubmissions@dc.gov

**Re: Case No. 19377, Application of The Boundary Companies and The Missionary Society at 3015 4<sup>th</sup> St. NE**

Dear Chairperson Hill and Members of the Board:

I am a resident of Ward 5, an attorney who works in the criminal justice system from an office in Ward 2, and a parent of two current students and one future student at Lee Montessori. I write to oppose the current application of the Boundary Companies and the Missionary Society (“Applicants”) for zoning special exceptions at 3015 4<sup>th</sup> St NE (Case Number 19377). I oppose the application specifically for its request to create a “gated” community within Ward 5 with private streets that are closed to vehicular, pedestrian, and bicycle traffic.

Other submissions have explained why such communities are problematic, why the loss of open, green spaces is undesirable, and the issues that the development will present with traffic patterns and the like—I do not repeat those discussion here. I write to provide anecdotal evidence of how these so-called private streets have operated in Ward 5 and why the creation of such streets should not be repeated.

More specifically, a development with purported private streets, Chancellor’s Row, has been tried and tested in close proximity to the Applicants’ proposed development site. Chancellor’s Row’s assertion that its streets are private has created conflict and hostility and exposed biases, implicit or explicit, particularly on the basis of race, of a number of homeowners and residents in the development. While it is my understanding that these homeowners are in the minority, they have become the voice of the Board of Directors and the Homeowners Association. Their biases are unfortunately common, even in as diverse and progressive a place as the District of Columbia, and this Board should carefully examine how the “private” street aspect of Chancellor’s Row has affected the neighboring residential and school communities before approving Applicants’ request to create additional private streets in the immediately adjacent area, encircling the schools with private developments.

Such an examination should lead this Board to conclude that gated communities and private streets do not belong in the District of Columbia, and especially not in Ward 5 situated in close proximity to the District’s public and public charter schools. I urge the Board of Zoning Adjustment to implement the DDOT recommendation to condition approval of any special exceptions on the Applicants’ grant of public

access easements over the streets and sidewalks within the development. I further request the Board to refer the application to the Office of Human Rights to seek input on ways to minimize unintended discriminatory effects on people who live, work, or visit the District of Columbia.

### **The Creation of “Private” Streets in Close Proximity to the Applicants’ Proposed Site of Development**

In its application to the Zoning Commission for approval of the Chancellor’s Row development, EYA represented that “[t]here will be no gates or barriers preventing members of the public from gaining access to the site. An interconnected street grid network disperses automobile traffic and facilitates pedestrian movement, connecting the homes to the public streets and integrating the entire development into the existing neighborhood; it does not create a self-contained suburban-style village.” Application to D.C. Zoning Commission in Case No. 07-27, at 12 (Sept. 14, 2007). In its Order approving the development, the Zoning Commission noted that the “project will be integrated with the neighborhood and will benefit the community as a whole. Neighborhood residents [of Brookland/Edgewood] will be able to enjoy the large Corner Park [that is located in the middle of the development],” which was also described as a “primary *public* open space.” Z.C. Order No. 07-27, at 5, 11 (Nov. 10, 2008). The Zoning Commission approved this application, citing the promised benefits to the neighboring communities in its Findings of Fact and Conclusions of Law.

The development was not required to grant explicit public access easements over its streets and sidewalks, however, and the privately maintained streets require permits for parking. The failure to provide explicit public access has led Chancellor’s Row’s HOA to represent that its streets are completely private, and, ironically, the HOA has even requested that this Board require Applicants to construct a literal gate between Chancellor’s Row and the schools, in clear violation of its representations to the Zoning Commission. *See* Letter from Douglas M. Bregman on behalf of the Chancellor’s Row Board of Directors to BZA 2 (Apr. 20, 2018) (“All of the streets in Chancellor’s Row are private. They . . . were not intended to be open to the general public.”) (“Bregman Letter”); *id.* at 4 (requesting imposition of condition that “Applicant shall install a manually operated wrought-iron gate, with stone pillars on each end” on the drive that connects Chancellor’s Row to the Lee Montessori drop-off loop).

Although there may be many reasons for the push for truly private streets, biases, implicit or explicit, appear to be at least one motivating factor. At the time when the DC Public Charter School Board (“DC PCSB”) was reviewing the applications of Lee Montessori and Washington Leadership Academy (“WLA”) to lease the space at the St. Paul’s College building, residents of Chancellor’s Row expressed opposition to the schools in writing and at a public hearing. It is my understanding that the majority, if not all, comments were in opposition to WLA’s application. The DC PCSB website

shows the majority of students at WLA are black and economically disadvantaged (i.e. eligible for the Free and Reduced-Price Meal (FARM) program) and a large number commute from Wards 7 and 8. See D.C. Public Charter School Board, *Washington Leadership Academy*, <http://www.dcpcsb.org/school/washington-leadership-academy> and links. Based on this opposition, the Chancellor's Row leadership forced the administrators of the schools to agree to instruct the students, family, staff, and visitors to the schools to access school grounds through one particular path through Chancellor's Row, via Hamlin Street, closing off the Jackson Street side to the public and neighboring community, in direct contradiction to EYA's statements to the Zoning Commission. As is admitted by the Chancellor's Row HOA, DC PCSB did not condition approval on adherence to this so-called "traffic management plan," see Bregman Letter at 2, and the schools' cooperation has been voluntary.

This creation of "private" streets has meant that the only other access point to the schools from the Brookland/CUA metro station or the surrounding neighborhood is by going all the way around the site to 4<sup>th</sup> Street and up the hill in front of the schools. A short sidewalk was erected on the Hamlin Street side of Chancellor's Row with the purported purpose of improving pedestrian access to the schools, and yet, this sidewalk does not have ramps and is therefore not accessible to those with certain physical disabilities or families that require the use of strollers. This path through Hamlin Street approximately doubles the time to walk from the metro to the schools, which for me as a resident of Brookland, is a nuisance, but for others, such as students (who are as young as 3 years old), family, staff, and visitors who are commuting from Wards 7 or 8 or beyond, the impact can be significant.

### **The Consequences of the Approval of "Private" Streets Absent a Public Access Easement**

The self-created private streets of Chancellor's Row have caused friction in the community and have encouraged homeowners and residents to discriminate, most charitably due to implicit biases or at worst due to racism, against specifically black students, families, staff, and visitors to the schools and Ward 5 residents. Such discrimination has occurred under the guise of self-policing and preserving the privacy of the streets and sidewalks. The Chancellor's Row Board of Directors has encouraged the residents of Chancellor's Row to "flag[] incidents [of vehicular and pedestrian traffic 'associated with the schools'] when they happen" and further asked residents to "provide [the Chancellor's Row Board of Directors] with a description of the encounter and picture if you can safely take one." Email from John Anderson, on Behalf of the Chancellor's Row Board of Directors to Chancellor's Row Owners/Residents (Sept. 19, 2017) (attached below). To my knowledge, this call for self-policing has led to reports of and the circulation of images and videos mainly, if not solely, of black children, specifically students of WLA, and black adult staff, family, and/or visitors to the schools, even those who are accessing school grounds via Hamlin Street as instructed.

Having read the zoning documents thoroughly and understanding my rights as a neighbor and community member under those documents, I, an Asian American woman, personally have walked to Lee Montessori using the Jackson Street access through Chancellor's Row. I have never been stopped. Nor has a picture of my kids, who are half Asian and half white, been taken. Nor has my white Brazilian au pair been stopped. Nor have my white neighbors who have children at Lee Montessori. My former au pair who was from France but of African descent (i.e. black), however, was stopped on multiple occasions by residents of Chancellor's Row and told she could not walk through the Jackson Street side. The discrimination practiced by the residents of Chancellor's Row and not only condoned but encouraged by the development's Board of Directors is disturbing, not least of which because it violates the core values that the District holds of eliminating discrimination against any resident, visitor, or worker in the District. Development that will foreseeably encourage this type of behavior should not be permitted.

Although I have never been stopped by Chancellor's Row residents while walking, I have experienced the overblown hostility of the residents who self-police the development. On February 28, 2018, I received a call from Lee Montessori that my middle child was in pain; I could hear his screams in the background. Leaving a vomiting infant at home with my au pair and believing it was an emergency, I rushed to the school and, it being rush hour, made the decision to drive through Chancellor's Row. I remained in my car until the teacher brought my son and daughter out to me. Nevertheless, a Chancellor's Row resident took extensive photographs of my car despite my explanation to her as to why I was there and even as I rushed to buckle my children into the car. This encounter shook me. I was angry, felt incredibly harassed by a so-called neighbor, and was upset that I had to explain to my children why the woman was taking pictures of us and our car. The situation could very easily have escalated but for the presence of the resident's infant and my own children. And this was a situation where I do not believe prejudice, racism, or bias played a part.

It is not hard to extrapolate from my own personal encounter what could happen in a situation where prejudice, racism, and/or bias, whether implicit or explicit, *are* the motivating factors. As we have unfortunately witnessed throughout the country, such encounters can predictably escalate to involve law enforcement and lead to negative and even fatal impacts on vulnerable members of our society. Indeed, it is my understanding that Chancellor's Row has engaged patrolling of its so-called private streets by Metropolitan Police officers, whose salaries are taxpayer funded, and that these officers are charged not only with enforcing parking but for monitoring the comings and goings of pedestrians through the development. The District and this Board should not approve development that increases the probability that black residents, particularly youth, will be profiled, targeted, and/or criminalized.

It is my understanding that the Applicants do not even pretend that the proposed development's streets would be open to the public. Simultaneously, the proposed development would eliminate the path up the hill from 4<sup>th</sup> Street to the school without replacing it. The students, staff, families, and visitors who wish to access the schools will therefore be limited to a single pathway from public transit or the neighboring community to the school—through the Hamlin Street path through Chancellor's Row, where again, there is not an accessible sidewalk that is intended for that purpose and where residents have implicit or explicit biases against black students, staff, and others. The proposed "gated" community invites discrimination and racial profiling under the guise of policing government-approved private streets. To mitigate potentially grave consequences, this Board should condition approval of zoning special exceptions on the grant of public access easements.

### **Conclusion**

I believe that development is inevitable. But I also know that DC seeks to balance several goals when it comes to development, including maintaining public and green spaces, encouraging diversity of ownership through requirements for affordable housing units in new developments, and also ensuring development does not encourage the violation of the human rights DC recognizes and protects. The Board of Zoning Adjustment and the Zoning Board have the power to ensure that new developments do not adversely affect the existing neighboring communities, including students of Lee Montessori and WLA, and most specifically DC's black residents and students. I ask that the Board of Zoning Adjustment exercise this power to ensure that the students have reasonable access to their schools that do not put them at the mercy of new residents of Ward 5 who may import their biases, prejudices, and potential racism. If the accessibility of neighborhood streets to children, students, family, staff, and visitors, particularly those who are black, deters people from purchasing the proposed townhouses, I believe that is a desired outcome—DC must engage in conscientious development that minimizes discrimination on the basis of the protected traits it has recognized.

Thank you for your time and consideration.

Best regards,

Frances Walters  
1225 Newton St NE  
Washington, DC 20017  
734-883-2911  
fymkim@gmail.com

From: **Theoharis Management LLC** <[ChancellorsRow@theoharis.com](mailto:ChancellorsRow@theoharis.com)>  
Date: Tue, Sep 19, 2017 at 11:41 AM  
Subject: Chancellor's Row HOA: School Traffic Issues  
To: "[ncheolas@gmail.com](mailto:ncheolas@gmail.com)" <[ncheolas@gmail.com](mailto:ncheolas@gmail.com)>

September 19, 2017

Dear Chancellor's Row Owners / Residents,

Occasionally the Board receives notice of issues residents are experiencing with respect to vehicle and foot traffic associated with the schools at arrival and dismissal times. When we do receive notification of an issue, we send those along to the school principals and Tom Porter at Building Hope as they have requested.

However, in order for the Board to fully understand the scope of the issue and effectively communicate this to the schools and Porter we really need your help in flagging these incidents when they happen. With that in mind, as they say, "if you see something, say something" and provide us with a description of the encounter and picture if you can safely take one.

Please understand that this isn't to be punitive or create issues with the schools but rather to create a safe and mutually respectful condition between our community and theirs. This is particularly important as the schools continue to grow that we get these situations resolved now.

Many thanks for your help.

John Anderson,  
*On behalf of the Chancellor's Row Board of Directors*