

To the Board of Zoning Adjustment:

Per Vice Chair Carlton Hart's direction at the April 25, 2018, BZA Hearing in the above referenced case (**The Boundary Companies and The Missionary Society of St. Paul the Apostle**), additional written testimony may be submitted until the record closes in the case. Accordingly, I submit the following supplement to my previously submitted testimony, Exhibit #74 (Letter in Opposition from Peter Poon).

During the April 25, 2018, BZA Hearing, attorney for the Applicant, Mr. Jeff C. Utz, testified regarding the 2008 PUD application for the then-proposed development of the now-existing Chancellor's Row townhome community (Z.C. Case No. 07-27) which sits directly adjacent to the site currently under consideration by the BZA. The Missionary Society of St. Paul had/has Applicant status, as owner and seller of the property, in both the prior Z.C. Case No. 07-27 and the current Case No. 19377.

Mr. Utz references Exhibit 40 from Case No. 07-27, specifically Slide 21: **'Open Space Plan.'** See **Attachment A**. He testified as follows (starting at hour 2:05:20 of the video-recorded April 25, 2018, hearing):

"This page that's showing is the most detailed, kind of the best exhibit to speak to this condition that we're talking about today.... There are actually **THREE (3) HUES OF GREEN** here and one hue of grey. The two darker hues of green were the operative colors that were intended to really be focused on by this exhibit. The **DARKER GREEN** is private open space.... The proposed public open space [**MEDIUM GREEN**] is ... communal greens, or areas shared commonly by the HOA.... When you look through the record there is no covenant or obligation ... that would otherwise obligate the subject site for this BZA case [denoted by **LIGHT GREEN** shading on the 'Open Space Plan' slide] to remain open.... [The **LIGHT GREEN** shaded space] was shown just to provide a reference for the project.... There was no obligation saying this will be open space into perpetuity or anything like that."

Mr. Utz is technically correct that no *explicit* covenant was established in Case No. 07-27 that obligated the **LIGHT GREEN** shaded area of the 'Open Space Plan' (i.e., the property proposed for development in current Case No. 19377) to remain open into perpetuity. However, setting aside the technicality of any explicit covenant or lack thereof, Vice Chair Hart pressed the Applicant to consider, "Was there an understanding that that [obligation to keep the undeveloped land open] might be there?" In response, Mr. Utz stated, "I don't see how that could arise from the record."

In fact, as set forth in my previous submission in this case (Exhibit #74), the record *unambiguously* shows that the Applicant *testified before the Zoning Commission in a public hearing* that the **LIGHT GREEN** shaded area would remain open, that keeping the **LIGHT GREEN** shaded area open was understood as an off-set to the "sardine-like" design proposed for the Chancellor's Row development, and that final approval for Chancellor's Row was premised on preserving the **LIGHT GREEN** shaded area from development.

Z.C. Case No. 07-27, July 17, 2008, transcript of Public Hearing; testimony of Mr. Jack McLaurin on behalf of the Applicant. Note that references to '4<sup>th</sup> Street' below refer to the top perimeter of the 'Open Space Plan,' Attachment A.

- The "idea of consolidating the [Chancellor's Row] development ... is to maintain these viewsheds that the Paulists currently have. If you have driven by the site on 4<sup>th</sup> Street, it's just a spectacular openness of green space that will be maintained" (p.24).
- "[A]s you're driving down [4<sup>th</sup>] Street, you still experience the open space and the natural slope.... You still experience the open space and you have this wonderful vista of the college" (p.29).

- “Regarding open space, ... this [Exhibit 40, Slide 21 ‘Open Space Plan’] is a plan that is color coded.... The sort of the **LIGHT GREEN** is the Paulist property, which remains untouched” (p.32).
- “[T]he way the property is used today, the community does come in and basically, you know, use some of the open space to play, to throw footballs, throw softballs, and I think that is the intention of the Paulists to allow that community use to continue, especially on the broader areas of the campus” (p.116).
- In the final slide of Exhibit 40, the Applicant provided a rendering of the proposed Chancellor’s Row development *from the perspective of 4<sup>th</sup> Street* (i.e., the **LIGHT GREEN** shaded area of Slide 21). See Attachment B. This final impression presented to the Zoning Commission shows an expansive, open, and unencumbered viewshed to the front of St. Paul’s College and proposed Chancellor’s Row townhomes, featuring mature trees and clusters of neighbors enjoying the undeveloped land.

That this final impression, along with the Applicant’s unabashed testimony before the Zoning Commission, had its intended effect is clear from the record:

- DC Department of Housing and Community Development Memorandum (July 8, 2008): “DHCD offers the following reasons for support of the application *based upon the specific information presented in the application*: ... The park-like St. Paul’s Campus will be retained for the portion of the site *fronting on and facing 4<sup>th</sup> Street NE*” (emphases added).
- Zoning Commission Order No. 07-27 (final action to approve the application on November 10, 2008), pp.5-6: “SATISFACTION OF PUD EVALUATION STANDARDS.... The Applicant’s architect, Jack McLaurin, ... noted the importance of open space in the project. (July 17, 2008 Transcript, pp. 21-24.)”
  - Page 24 of the transcript, referenced in the Zoning Commission’s Approval Order immediately above, contains the Applicant’s unqualified assertion that the “spectacular openness of green space” facing 4<sup>th</sup> Street (i.e., the **LIGHT GREEN** shaded area of the Open Space Plan) “will be maintained.”

Thus the record, Mr. Utz’s testimony notwithstanding, unequivocally documents the Applicant’s purported *intent*, and the approving offices’ corresponding *understanding*, that the **LIGHT GREEN** shaded area of the Open Space Plan (now being proposed for development) would remain open and undeveloped as a condition for approving the Chancellor’s Row neighborhood.

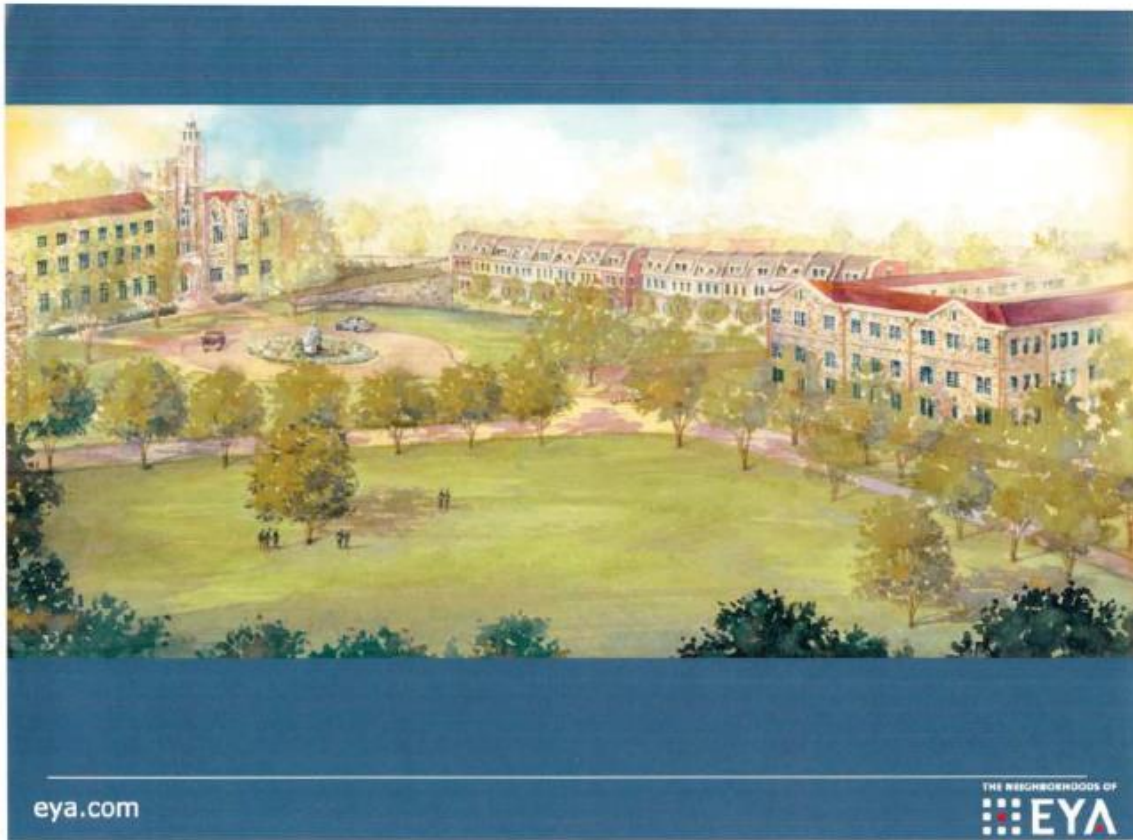
To summarize my previous submission in this Case No. 19377, I strongly oppose the development proposed by the Applicant (1) because of the predictable and detrimental effects it would have on our already highly compact community, (2) because our neighborhood was approved for such highly compact development *premised on* the preservation of the adjoining undeveloped land, and (3) because it would be unjust for the Applicant to profit from the sale and development of that land, given the profit it has already reaped from the Chancellor’s Row development based on its hollow representations.

#### Attachments (2)

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# Open Space Plan





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