

June 6, 2022

Mr. Anthony J. Hood, Chairman
D.C. Zoning Commission
One Judiciary Square
441 4th Street NW, 2nd Floor
Washington, D.C. 20001

RE: Zoning Commission Case No. 22-13 – Application of the Wesley Theological Seminary for Approval for a Campus Plan

Dear Chairman Hood and Members of the Commission:

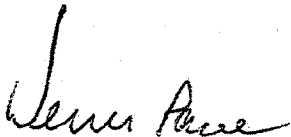
Neighbors for a Livable Community (NLC) and the Spring Valley-Wesley Heights Citizens Association (SVWHCA) believe the 2022 Wesley Theological Seminary Campus Plan that is the subject of the above-referenced case is not in harmony with the 2016 Zoning Regulations of the District of Columbia. NLC and SVWHCA have reached this conclusion after a comprehensive review of the Zoning Regulations.

The centerpiece of the proposed campus plan is the construction of a new 659-bed commercial student apartment building sized and scaled to provide housing primarily for students of American University (AU), not Wesley's students. As proposed in the Campus Plan application, Wesley plans to enter into a ground lease with Landmark Properties, a commercial developer of off-campus student apartment buildings; Landmark will build, own, lease, and operate the 659-bed student apartment building on the Wesley campus primarily for students of American University (AU).

In this filing, we provide the Zoning Commission with a copy of the Zoning Compliance Analysis we have completed for this case to outline how and why we have reached the conclusion that the ground lease and the commercial activity stemming from the ground lease with Landmark is not permitted under the current Zoning Regulations.

Thank you for the opportunity to provide this information for the Commission's review.

Sincerely,



Dennis Paul, President
Neighbors for a Livable Community

S/William F. Krebs
DC Bar No. 960534
Interim President and Counsel
Spring Valley-Wesley Heights Citizens Association
Counsel, Neighbors for a Livable Community

Wesley Theological Seminary Campus Plan – Z.C. Case No. 22-13

Zoning Compliance Analysis Prepared By

Neighbors For A Livable Community (NLC) And The Spring Valley-Wesley Heights Citizens Association (SVWHCA)

June 6, 2022

Introduction

The centerpiece of the 2022 Wesley Theological Seminary (WTS) Campus Plan (*Z.C. Case No 22-13*) is the construction of a 659-bed student apartment building that will be owned and operated by a for-profit national commercial developer of student apartment housing primarily to meet a market demand for housing from students of American University (AU), not the Wesley Theological Seminary. This special use commercial real estate development is not permitted under the 2016 DC Zoning Regulations governing “commercial activities or developments” on college/university campuses. **How this case is resolved by the Zoning Commission will establish a significant precedent for colleges and universities operating in the city, the residential neighborhoods surrounding those colleges and universities, and the city as a whole.**

Summary

1. As part of a ground lease agreement, WTS proposes a special use commercial real estate development in which Landmark Properties, a commercial developer of off-campus student apartment buildings, will develop, own, market, and operate a 659-bed student apartment building on the Wesley campus as a special use commercial real estate activity or development designed in size and scale to meet primarily the market demand for housing students from AU, not to meet housing demand from WTS students.
2. The 2016 DC Zoning Regulations limit commercial activities/developments on college campuses to “ancillary commercial uses” (*Subtitle B, Chapter 2, Section 200 (j)(2)*) or “customarily incidental” uses (*Subtitle X, Chapter 1, Section 101.3*). Although student housing is an allowable use of land on a college campus, it is considered a primary use (*Subtitle B, Chapter 2, Section 200 (j)(1) and Section 200 (j)(2)*), not an “ancillary” or “customarily incidental” use.
3. The proposed new student apartment housing is not being developed or sized to meet a market demand from WTS students as WTS enrollment continues to decline along with the demand for housing. WTS students were able to fill only 40 percent of WTS’s existing 165 beds on campus prior to the onset of the COVID-19 pandemic.
4. Even if the Commission would determine that the DC Zoning regulations do **not** limit commercial uses, as suggested by *Subtitle B, Chapter 2, Section 200 (j)(2)* and *Subtitle*

X, Chapter 1, Section 101.3, the commercial activity/developments proposed by WTS still would not be allowable. *Subtitle X, Chapter 1, Section 101.3(b)* states:

“The total floor area of all commercial uses, including basement or cellar space, shall occupy no more than 10 percent of the gross floor area of the total campus plan floor area.”

Wesley reports that the new Landmark commercial student apartment building will have a gross floor area of 306,157 square feet. The total build-out of gross floor area proposed in the 2022 Campus Plan is 417,203 square feet. The commercial Landmark building will comprise roughly 73 percent of the gross floor area of the total campus plan floor area – well above the 10 percent ceiling outlined in the 2016 Zoning Regulations.

5. DC Zoning regulations stipulate that even “customarily incidental” commercial use must be related to fulfilling the university’s educational mission (*Subtitle X, Chapter 1, Section 101.3(a)*). Providing housing for AU students on the WTS campus is not consistent with the WTS mission “to equip persons for Christian ministry and leadership in the church and the world, to advance theological scholarship, and to model a prophetic voice in the public square.”
6. DC Zoning Regulations state clearly that “the campus plan process shall not serve as a process to create general commercial activities or developments unrelated to the educational mission of the applicant.” (*Subtitle X, Chapter 1, Section 101.4*.) The stated educational mission of WTS is “to equip persons for Christian ministry and leadership in the church and the world, to advance theological scholarship, and to model a prophetic voice in the public square.” Housing AU students as part of a special use commercial real estate development is not consistent with this mission and, therefore, not permitted under the 2016 DC Zoning Regulations.
7. The WTS Campus Plan fails to address how the special use commercial real estate development will comply with the city’s Inclusionary Zoning rules (*Subtitle C, Chapter 10*).
8. The proposed WTS Campus Plan does not meet the requirements of the Zoning Regulations because uses identified in the Plan will be located so as to become objectionable for neighboring property. (*Subtitle X, Chapter 1, Section 101.2*).

Detailed Analysis Of Relevant Zoning Regulations

A. The proposed 659-bed student dorm is a special use commercial real estate development made possible through a ground lease agreement between WTS and Landmark Properties, a commercial developer of student apartment housing.

1. As part of a 99-year ground lease proposed by WTS, the 659-bed student apartment housing (dorm) building would be owned, operated, and marketed for profit by Landmark Properties, a commercial developer of off-campus student apartment buildings, which in

2021 entered into a joint venture with Blackstone Real Estate Investment Trust, a publicly registered non-traded REIT sponsored by private equity giant The Blackstone Group (NYSE:BX).

2. Although targeted and marketed primarily to students of American University, not WTS students, Landmark will own and operate this special use commercial real estate development on a college campus on land owned by WTS and is, therefore, subject to the zoning regulations related to campus plans.
3. As outlined in the Campus Plan application, Landmark, the commercial developer, not WTS, will be the sole responsible party for all the components of this special use commercial real estate development from construction to market analysis to setting rental fees to building management and all other undertakings intended to maximize profit consistent with a commercial residential real estate use. In return, Wesley will receive upfront and recurrent payments from Landmark making this clearly a commercial transaction.
4. The lease agreements for the new student apartment housing will be between Landmark and individuals. Neither WTS nor AU will be involved in the lease agreements. Landmark is assuming the market risk of renting/leasing the beds/rooms because it believes there is an underserved captive market demand among AU students. WTS emphasizes in its Campus Plan proposal that the building is targeted to AU students. The WTS Campus Plan application even cites as the market competition for the new Landmark building the specific names of other nearby off-campus **commercial** residential rental apartment buildings (e.g. “The Berkshire” and “Avalon at Foxhall”). (*Z.C. Case No. 22-13, Exhibit 3, Page 32*).

B. DC Zoning Regulations Impose Limits on On-Campus “Commercial Activities or Developments.”

1. A dormitory is an allowable land use on campus, but the commercial student apartment building to be developed by Landmark Properties as part of the WTS Campus Plan is a commercial venture that is not permitted under the 2016 DC Zoning Regulations.
2. *Subtitle B, Chapter 2 (Use Categories), Section 200 (j)(1) and Section 200 (j)(2)* outline the allowed uses on land owned by colleges and universities. Primary uses include dormitories just as they include research facilities and classroom teaching.
3. *Subtitle B, Chapter 2, Section 200 (j)(2)*, however, includes descriptive and qualifying language that limits commercial uses on campus by specifying that only “ancillary commercial uses” are allowable. “Ancillary uses” are not defined in the Zoning Regulations. Webster’s defines “ancillary” as a subordinate function, not a primary function. Ancillary uses might be equivalent to a coffee shop located on campus; food service; or a store that sells campus logo wear. These are the types of commercial uses anticipated in the language and the Zoning Regulations’ legislative history, not housing for students from another educational institution. If housing can be commercialized on a

college campus, then **all** uses of the land can be commercialized. We do not believe this is the intent of the zoning regulations or in harmony with the regulations.

4. This limit for on-campus commercial activity is reinforced in *Subtitle X, Chapter 1 (Campus Plans, School Plans, and Medical Campus Plans), Section 101.3*, which specifically includes descriptive language limiting allowable commercial activity on campus as being “customarily incidental to a university use.” The Zoning Regulations recognize a “customary incidental use” (*Subtitle B, Chapter 1, Section 100*) as an “accessory use,” which is also defined in the Zoning Regulations as being “subordinate” to the primary use. This definition is consistent with a precedent finding by the Connecticut Supreme Court in *Lawrence v. Zoning Board of Appeals, 158 Conn 509*.
5. In effect, these provisions of the DC Zoning Regulations indicate that commercial activities or developments on a college campus, including the special use commercial real estate development proposed by WTS, are not permitted under the DC Zoning Regulations if they are a primary use of campus land, which, according to the regulations, includes student housing.

C. Other Applicable Zoning Limitations

1. Even if the Commission would determine that the DC Zoning regulations do **not** limit commercial uses, as suggested by *Subtitle B, Chapter 2, Section 200 (j)(2)* and *Subtitle X, Chapter 1, Section 101.3*, the commercial activity/developments proposed by WTS **still** would not be allowable. *Subtitle X, Chapter 1, Section 101.3(b)* states:

“The total floor area of all commercial uses, including basement or cellar space, shall occupy no more than 10 percent of the gross floor area of the total campus plan floor area.”

Wesley reports that the new Landmark commercial student apartment building will have a gross floor area of 306,157 square feet. The total build-out of gross floor area proposed in the 2022 Campus Plan is 417,203 square feet. The commercial Landmark building will comprise roughly 73 percent of the gross floor area of the total campus plan floor area – well above the 10 percent ceiling outlined in the 2016 Zoning Regulations.

2. *Subtitle X, Chapter 1, Section 101.3(a)* stipulates that there must be a “demonstrated and necessary relationship between the (commercial) use and the university functions.” There is no relationship between the “commercial use” of this property and “university functions.” We acknowledge that Wesley will receive revenue as part of this commercial transaction, which is neither a “function,” defined by Webster as a “purpose;” nor is the revenue a “use” identified in *Subtitle B, Chapter 2*. The Wesley Campus Plan case is a zoning case about land use and Wesley’s desire to monetize its land and the land’s proximity to AU, which will result in a commercial enterprise and commercial profits primarily to serve AU students, not Wesley students.

3. The 659-bed special use commercial real estate development proposed by WTS is being built and marketed primarily to house students from another institution – American University – as acknowledged in the WTS Campus Plan application (*Z.C. Case No. 22-13, Exhibit 3, Page 32*). The proposed campus plan ground lease proposal creates a commercial activity or development that is unrelated to the educational mission of the applicant because it will provide a service primarily to a population that the Seminary simply does not have reason to service, according to its mission.

4. **WTS students are not a market for this new student apartment building; a 659-bed housing facility is not needed to meet the needs of Wesley students. In fact, the number of students enrolled at WTS and living in existing WTS on-campus housing has and continues to decline since the 2006 WTS Campus Plan.** Based on pre-COVID numbers provided by WTS (and the most recent numbers available from WTS), WTS students used only 40 percent of WTS’s existing 165 beds on campus – or a total of 66 beds – in the 2018-2019 academic year. Modifications of the current WTS Campus Plan in 2016 and 2017 show that WTS has had excess housing capacity since 2014 once it first opened a new 76-bed dorm. According to WTS, the enrollment of students in Fall 2021 who used the Spring Valley Campus (both full-time and part-time) was only 258 Masters students. *(Some of the 172 D.Min. students come to campus for a two week session between semesters while others attend special tracks overseas, so they do not add to WTS’s housing needs.)*

5. **WTS proposes in its 2022 Campus Plan to have a maximum of 735 on-campus beds – nearly three times the number of enrolled students using the campus during the traditional academic year.** The numbers further demonstrate that the special use commercial real estate development to be owned and operated by Landmark is not being built to meet WTS students’ market demand or needs. The size of the building has been determined on the basis of the end-product revenue needed to make this project financially viable for Landmark and for Wesley; the size and scale of the building has not been determined on the basis of meeting WTS students’ needs for housing. In fact, Wesley students’ needs are a *de minimis* factor in the planning for this building. In short, the building size and scale is nothing more than a case of the tail wagging the dog.

6. *Subtitle X, Chapter 1, Section 101.4* states clearly that “the campus plan process shall not serve as a process to create **general commercial activities or developments** unrelated to the educational mission of the applicant.” The authors of this provision must have anticipated the type of special use commercial real estate project proposed by WTS in its 2022 Campus Plan.
 - The stated educational mission of WTS is “to equip persons for Christian ministry and leadership in the church and the world, to advance theological scholarship, and to model a prophetic voice in the public square.” Housing AU students as part of a special use commercial real estate development is not consistent with this mission.

7. WTS states in its Campus Plan application that the ground lease and the resulting Landmark-owned and operated special use commercial real estate development project will enable it to “thrive in place financially.” But, the Seminary also states that “the reason for this development is **not** for Wesley to survive,” but has hinted that it may need to relocate to a different location. Although this may be regrettable, it is not a standard for approval of a special exception zoning case.

D. Inclusionary Zoning

1. The proposed development by Landmark and WTS would be subject to the city’s Inclusionary Zoning (IZ) requirements, as outlined in *Subtitle C, Chapter 10* of the 2016 Zoning Regulations. The WTS Campus Plan application is silent on how the proposed commercial student housing apartment development will meet IZ requirements.
2. *Subtitle C, Chapter 10, Section 1001.6(c)* of the 2016 Zoning regulations exempts the following from the city’s IZ regulations: ***“Housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff.”***
3. For the Landmark and WTS proposed student apartment housing to be exempt from IZ regulations, it must be developed **exclusively and only** for WTS students, faculty, or staff. It is not; instead, the proposed building will be used primarily by students of AU.

E. Objectionable Conditions

1. The proposed WTS Campus Plan does not meet the requirements of the Zoning Regulations because uses identified in the Plan will be located so as to become objectionable for neighboring property. (*Subtitle X, Chapter 1, Section 101.2*).
2. The proposed location and use of the new student apartment residence building on the WTS Campus for students of AU is likely to become objectionable because of the number of students, including AU undergraduate students, and the increased intensity of use of the campus.
3. Because the 75-foot tall Landmark commercial building will sit on top of the hill overlooking Spring Valley homes, the impacts of the building height, including lighting, will have the most significant impact on those who live closest to the Seminary. The height will also distract and obscure the overall aesthetics of the Wesley Campus. The new Landmark commercial building will be higher and tower over the Chapel and Bell Tower altering the skyline and the very iconic neighborhood images that Wesley has offered over the years.
4. The WTS Campus Plan significantly alters the purpose and use of the WTS campus **transitioning it from a graduate-level training ground for seminarians into a commercial marketplace for student housing** targeted to students from a neighboring

university and competing with other commercial residential real estate rental properties in the neighborhood. Under the terms of the Campus Plan, the overall number of students on the WTS Campus will increase three-fold.

5. The increased intensity of use resulting from the addition of new student housing not targeted to WTS students may add to neighboring traffic and create added public safety risks tied to the use of the Massachusetts Avenue entrance and exit.
6. The WTS Campus Plan fails to offer any plan for how the addition of multiple new structures on the campus will address already serious stormwater issues that impact nearby residential homes. ***Subtitle Z, Section 302(f)(3)*** requires WTS to file a plan for mitigating impacts tied to stormwater flow as part of its application. No such plan has been included in the application. The WTS Campus Plan does not even set any basic standards for how the Plan, as a whole, will mitigate stormwater impacts.

Conclusion

The agreement between Landmark and WTS that is the centerpiece of the WTS Campus Plan – resulting in the development of the commercial student apartment building – is intended solely for the purpose of leveraging WTS land resources to cross subsidize Wesley Seminary’s shortfall in income from other traditional and fundamental sources, including its students’ tuition and housing fees. **Wesley is seeking to use a commercial means to correct a problem in the fundamentals of its financial model.**

As Wesley states in its Campus Plan application, it is choosing to leverage its “physical resources” – its land – to compensate for its financial shortfall (***Z.C. Case No. 22-13, Exhibit 3, Page 7***). **WTS does not need to build a new 659-bed student apartment facility for its students – and would not do so absent the ground lease agreement with Landmark and the commercial activity/development stemming from the ground lease.** The commercial development proposed in the WTS Campus Plan is in conflict with the DC Zoning Regulations governing land use by colleges and universities in the District of Columbia.

The city’s campus plan zoning regulations were not written to ensure profits for commercial developers or to secure the long-term financial well-being of struggling educational institutions by commercializing land that would otherwise be used for residential purposes. The zoning rules were established to allow and regulate educational use of residentially zoned property and, in so doing, protect the land use interests of the residents of the District of Columbia. **The WTS ground lease and the commercial activity stemming from the ground lease with Landmark, as proposed in the WTS Campus Plan, therefore, is not permitted under the 2016 Zoning Regulations of the District of Columbia.**