

June 8, 2022

Mr. Anthony J. Hood, Chairman

D.C. Zoning Commission

One Judiciary Square

441 4<sup>th</sup> Street NW, 2<sup>nd</sup> Floor

Washington, D.C. 20001

**RE: Zoning Commission Case No. 22-13 – Application of the Wesley Theological Seminary for Approval for a Campus Plan – Applicant’s Failure To Comply With Pre-Hearing Obligations**

Dear Chairman Hood and Members of the Commission:

In the above referenced case, the Wesley Theological Seminary has made several procedural errors that were brought to our attention as a result of a June 1, 2022 filing by Wesley with the Zoning Commission (*Exhibit 17A*) listing witnesses for the June 13, 2022 hearing. Neighbors for a Livable Community (NLC) and the Spring Valley-Wesley Heights Citizens Association (SVWHCA) believe these procedural errors will prejudice NLC-SVWHCA.

Wesley’s June 1 filing of witnesses was past the deadline for submission in this case. According to the Commission’s rules, Wesley was required to submit a list of witnesses, including expert witnesses with their resumes and a summary of their testimony, prior to the scheduling of the public hearing. (*Subtitle Z, Chapter 401*) The same provision in the Zoning Regulations provided Wesley with another opportunity to make this filing as a “modification” of its application no later than 20 days before the public hearing, which would have been May 24. We recognize that this option would have been “legal fiction” as Wesley could not “modify” a witness list that it had never provided.

Not only was the filing late, but the filing also provided only the topics for the witness testimony, not a summary of the testimony, as required.

**In short, Wesley’s filing of its witness list was both untimely and insufficient.**

Wesley explained in its June 1 filing that it had “inadvertently” not included the list of witnesses in its pre-hearing statement. Even if filed with its pre-hearing statement, the witness list still would have been filed later than required under the Commission’s rules.

*Subtitle Z, Section 401.8* required that the applicant also file 30 days prior to the June 13 public hearing any traffic or transportation reports in support of the application along with the resume of any expert who prepared the report. Wesley filed its Comprehensive Transportation Review (CTR) (*Exhibits 15A, B, and C*) on May 31 – less than two weeks before the public hearing.

Our concern – and the reason for this letter – is that we believe Wesley’s late and insufficient June 1 filing will prejudice NLC and SVWHCA. In a subsequent filing made by Wesley on June 2 in this case (*Exhibit 17*), Wesley stated that its list of expert witnesses was determined for “fully responding to the groups who have recently requested party status in opposition.”

Only one party status application in opposition has been filed in this case – and it has been filed jointly by NLC and SVWHCA. In the May 27 party status application, NLC and SVWHCA provided a detailed summary of its proposed testimony indicating that our testimony would focus almost exclusively on commercial land uses permitted under a Campus Plan. If Wesley had submitted its filings on time – at least 20 days before the hearing date, as required by the regulations – the Seminary would not have been aware of the details of our testimony when they prepared their witness list.

In its June 1 filing, Wesley proffered Mr. Shane Dettman, who is employed by Holland & Knight, as an expert witness to discuss “Permitted Uses under Campus Plan, Comprehensive Plan, Racial Equity.” The description of Mr. Dettman’s testimony in *Exhibit 17A* falls far short of a “summary,” as required in the Zoning Regulations, and fails to provide any information to the parties or the public on the nature of Mr. Dettman’s testimony. The Zoning Regulations require a summary so that all parties and non-parties will know the substance of the witness testimony prior to the hearing; the factual basis on which an expert opinion will be based; and enable parties to prepare their case and non-parties to prepare their testimony to focus on the issues presented in the case.

The proffer for Mr. Dettman is not only late and timed following the summary of the NLC-SVWHCA testimony detailed in our May 27 party status application, but it also violates both the letter and the spirit of the Commission’s rules by not including a summary of Mr. Dettman’s testimony.

It is particularly problematic and prejudicial for Wesley to offer any expert witness to testify on “Permitted Uses under a Campus Plan” when Wesley has submitted nothing in the record in this case at this date about “Permitted uses under a Campus Plan.” If Wesley had contemplated our testimony in advance of the party status filing, shouldn’t Wesley have included the information about “Permitted uses under a Campus Plan” as part of its application and, at least, its pre-hearing statement?

In fact, the Zoning Compliance sections in Wesley’s application and pre-hearing statement do not even address provisions in the Zoning Regulations related to “Permitted uses under a Campus Plan.” There is nothing in the record from Wesley that even references the commercial use issue and provisions of the 2016 Zoning Regulations stressed by NLC-SVWHCA in our joint party status application.

As part of the community engagement process, Wesley even has refused to discuss allowable commercial uses saying only that it had a legal memorandum stating that the uses it proposes are allowable. That memorandum has not been entered into the record of this case as of this date and we have no way of knowing whether Mr. Dettman will testify consistent with that memorandum.

Wesley’s application and its pre-hearing statement suggest that Wesley has felt no need to provide evidence as part of its application on the permitted uses under a Campus Plan, including commercial uses – that is, until NLC and SVWHCA filed its party status application in this case.

By proffering Mr. Dettman as an expert witness to testify on “Permitted uses under a Campus Plan,” Wesley, in effect, is seeking to rebut our testimony before NLC-SVWHCA even have the opportunity to testify. The effect also is that Wesley will be providing new information that parties and other individuals participating in the case will have had no opportunity to review in advance of the hearing. We believe that, too, will be prejudicial.

We have other concerns about the late proffer for Mr. Dettman as an expert witness. Based on the sparse information provided by Wesley about Mr. Dettman’s testimony, Mr. Dettman is being proffered as an expert on questions of law, not the facts presented as evidence in the case. It is the role and responsibility of Wesley’s officially designated legal representative to address matters of law in the case, not an expert witness.

Mr Dettman would not be participating in the case as part of Wesley's legal representation as he might in other cases before the Commission as part of the Holland & Knight legal team. Moreover, Mr. Dettman is not an attorney and, despite his experience in planning, would not seem to fit the category of an expert to address matters of law in this case.

Although we would prefer Wesley had adhered to the Commission's procedural rules, we do not have the same objections about the other witnesses listed in the June 1 filing. The filing does not include a summary of their testimony, but the topics they are expected to address have been outlined in Wesley's Campus Plan application and pre-hearing statement. Although Wesley did not provide the Commission with a copy of the CTR in a timely way, the community was provided a copy of the CTR by Wesley on May 11 prior to its late filing with the Commission. Consequently, we do not believe that the late and insufficient June 1 proffer for any of the other witnesses are likely to be prejudicial.

Wesley's failure to file according to the rules of the Commission is inexplicable. We are not suggesting that Wesley's untimely and insufficient filings are anything other than inadvertent or by error; but the effect is the same as if they were intended to provide Wesley with a strategic advantage in this case.

**In considering a remedy to address Wesley's procedural errors in this case and the prejudicial impact on NLC and SVWHCA and other individuals participating in this case, we ask the Commission to exclude Mr. Dettman from appearing as an expert witness in this case because (a) he is not a proper witness; (b) information about his testimony has not been provided in a timely or sufficient way; and (c) Wesley has provided no information as part of its application concerning permitted uses, including permitted commercial uses, under a Campus Plan that is the subject of Mr. Dettman's testimony.**

Under other circumstances, we might agree to delay the hearing in order to give Wesley more time to modify its plan to try to cure the defects noted in this letter; but, as we have suggested in this letter, we have no objection to Wesley's late proffer of other witnesses given that Wesley's application and pre-hearing statement appear to include information that we presume will be the substance of their testimony. However, we do not believe a delay will have any effect on Mr. Dettman's inability to opine on matters of law in this case.

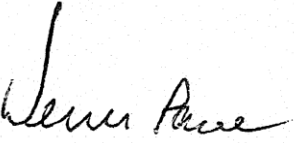
We realize that Wesley submitted a motion (*Exhibit 17*) on June 2 seeking a waiver of the Commission's rules to accept its June 1 filing. (*We note that the sequence of the June 1 and*

*June 2 filings was reversed in the log and makes it appear that Wesley actually filed its list of witnesses after a motion was filed first asking the Commission to accept the late filing. But, Wesley noted that it filed the motion at the suggestion of Office of Zoning staff.) Wesley chose to serve us a copy of that motion even though we are not a party in the case at the time of filing.*

As a courtesy to Wesley and a demonstration of goodwill, we also will serve a copy of this filing to Wesley, which we realize is not required since we have not yet been designated a party in the case.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Paul". The signature is written in a cursive style with a large initial "D".

Dennis Paul, President  
Neighbors for a Livable Community

S/William F. Krebs  
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**Certificate Of Service**

We hereby certify that on June 8, 2022, this letter was delivered via electronic mail to the following:

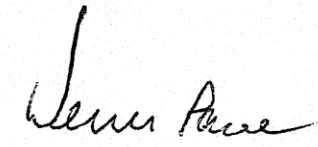
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