

June 8, 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 – Reply To Applicant’s June 9 Filing On Applicant’s Failure To Comply With Pre-Hearing Obligations

Dear Chairman Hood and Members of the Commission:

After reviewing the applicant’s June 9 filing in the above referenced case, Neighbors for a Livable Community (NLC) and Spring Valley-Wesley Heights Citizens Association (SVWHCA) believe a response is warranted.

By stating in its June 9 filing that its untimely and insufficient June 1 proffer of expert witnesses in this case was driven by the NLC-SVWHCA May 27 joint party status application, the applicant validates the concerns we raised in our June 8 filing: (1) Wesley now appears to have intentionally filed its proffer of expert witness late and timed to follow the deadline for submission of party status application filings; (2) Wesley developed a list of expert witnesses based on the summary of testimony required and included in the NLC-SVWHCA party status application for the purpose of reviewing our filing and rebutting our testimony before it was even provided; (3) Wesley identified expert testimony that would not be based on evidence already submitted in the case as part of its application; and (4) Wesley’s proffer of Mr. Shane Dettman as an expert witness was **both** untimely and insufficient because it failed to provide a summary of testimony for Mr. Dettman, who was proffered as an expert witness on Permitted Campus Uses. In that filing, we stated – and now even more strongly believe – that these errors would be prejudicial to our case.

Wesley now seeks to justify its error by saying it has a right “to provide a detailed response to the Zoning Commission through Mr. Dettman’s expert testimony.” Wesley also indicates it plans to use Mr. Dettman both for direct testimony and rebuttal testimony.

Wesley failed to include any evidence or analysis as part of its application that the land uses identified in its Campus Plan are permitted (or not permitted) under the 2016 Zoning Regulations of the District of Columbia. For example, there is not even a reference to the words “commercial” or “permitted uses” in its application. Wesley had an opportunity, if not an obligation, to outline to the Commission as part of its application materials and pre-hearing statement the evidence/analysis they believe will demonstrate that the uses outlined in the Wesley Campus Plan are allowable. It made none. It now seeks to modify its application in response to the substance of the summary of our testimony and subsequent submissions.

It is not lost on us that Wesley has now introduced 78 pages of additional evidence in the record in this case less than one week before the hearing. This information should have been introduced at least twenty days before the hearing if Wesley thought it was relevant to prove its case. This filing compounds the procedural errors that we believe will be prejudicial.

As Wesley noted in its June 9 filing, we were provided on May 10, 2022 a copy of a memorandum from Holland & Knight, coauthored by Mr. Dettman, that has never been discussed as part of the community engagement process – except to state that such a memo existed. Moreover, we had no way of knowing whether this memo covered issues that Wesley would present as part of this case as (a) it was not generated by Wesley’s stated legal representative and (b) it had never been filed in the case until NLC-SVWHCA raised issues about Wesley’s procedural errors being prejudicial to our case and to testimony from other interested members of the public.

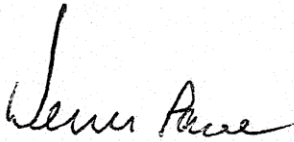
We welcome a full discussion of whether the land uses proposed by Wesley as part of its Campus Plan are permitted under the Zoning Regulations; but we also request that Wesley be required to play by the rules. Wesley may be within its rights to “provide a detailed response” to our opposition, but as part of Rebuttal. Wesley is not entitled to the right to modify its application less than one week before a hearing to include information or analysis that should have been included as part of its application or added in a timely way consistent with the procedural rules outlined in the regulations.

Our objections to Mr. Dettman as not being a proper expert witness still stand and we believe even more so in light of Wesley’s June 9 filing to the Commission that his exclusion is the best legal remedy to address Wesley’s procedural errors in this case. Mr. Dettman is being

proffered to address matters of law that Wesley has not addressed as part of its application; and Mr. Dettman, who is not part of Wesley's legal team to our knowledge, is not an attorney and would not seem to fit the category of an expert despite his experience in planning to address matters of law in this 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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Interim President and Counsel
Spring Valley-Wesley Heights Citizens Association
Counsel, Neighbors for a Livable Community

Certificate Of Service

We hereby certify that on June 10, 2022, this letter was delivered via electronic mail to the following:

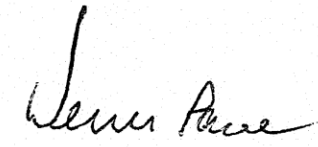
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