

June 17, 2022

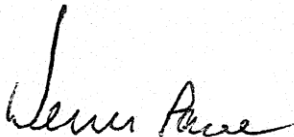
Mr. Anthony J. Hood, Chairman
D.C. Zoning Commission
One Judiciary Square
441 4th Street NW, 2nd Floor
Washington, D.C. 20001

RE: Zoning Commission Case No. 22-13 – Application of the Wesley Theological Seminary for Approval for a Campus Plan – NLC-SVWHCA Testimony By Blaine Carter As Delivered On June 13

Dear Chairman Hood and Members of the Commission:

Attached is the printed version of oral testimony delivered by Neighbors for a Livable Community (NLC) and the Spring Valley-Wesley Heights Citizens Association (SVWHCA), a joint party, as delivered at the June 13, 2022 hearing in the above referenced case.

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

Certificate Of Service

We hereby certify that on June 17, 2022, this was delivered via electronic mail to the following:

Mr. John Patrick Brown, Jr.
Greenstein DeLorme & Luchs
jpb@gdllaw.com

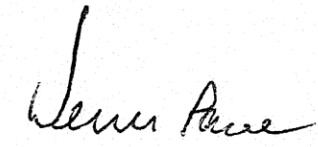
Ms. Jennifer Steingasser
Office of Planning
Jennifer.steingasser@dc.gov

Mr. Aaron Zimmerman
D.C. Department of Transportation
Aaron.zimmerman@dc.gov

Mr. William Clarkson
Spring Valley Neighborhood Association
wclarksonv@gmail.com

ANC 3D
3D@anc.dc.gov

ANC 3E
3E@anc.dc.gov



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

COMBINED NLC-SVWHCA ORAL TESTIMONY

June 13, 2022

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

TESTIMONY OF Blaine D. Carter

**On Behalf Of Neighbors for a Livable Community and the
Spring Valley-Wesley Heights Citizens Association**

ZONING COMMISSION of THE DISTRICT OF COLUMBIA

Zoning Commission Case NO. 22 - 13

Monday, June 13, 2022 – 4:00 PM

Good evening Chairperson Hood and members of the Zoning Commission. Thank you for the opportunity to testify on behalf of NLC and SVWHCA. My name is Blaine Carter and I currently live at 3718 University Ave NW in Spring Valley where I have lived for the past 20 years; my house is just outside the 200-foot notification radius for Wesley Theological Seminary (WTS).

I was born in the District of Columbia, have been a DC resident and taxpayer for at least forty (40) years, and I have worked as a project manager in the commercial real estate industry for 38 years, first at JBG Properties and then at Louis Dreyfus Property Group/PGP Development LLC. Over the past 22 years my work has been on the following downtown projects: the Washington Convention Center, the SEC Headquarters at Station Place and the Capitol Crossing Project over a portion of I-395. Both Station Place and Capitol Crossing required PUDs that came before the Zoning Commission.

I am testifying today as a Board member of NLC and I am asking you to reject the Wesley Theological Seminary (WTS) Campus Plan application. We believe that the plan, as proposed, is not in harmony with the general purpose and intent of the Zoning Regulations; fails to comply with the commercial provisions in Subtitle X, Section 101 of the Campus Plan rules; and, if approved, will result in conditions objectionable to neighboring property. Even more

importantly, we believe approval of this plan will set a precedent that may harm residential neighborhoods across the city where colleges and universities are located. If this plan is approved, the Zoning Commission will give colleges and universities a green light to commercialize their on-campus tax-exempt property located in residential zones for the sole purpose of increasing their financial prospects and their bottom line.

I. Overview:

The centerpiece of this plan is a 659-bed commercial student apartment building that will be built, owned, leased, and managed by Landmark Properties, a commercial developer of off-campus student apartments. If this project is approved, the city will be subsidizing a commercial developer and giving that commercial developer an unfair advantage in the marketplace because they will be able to build and profit from tax-exempt land reserved by the city solely so colleges and universities have the privilege of advancing the public's interest in higher education.

NLC and SVWHCA have jointly submitted two filings in this case which focus in detail on the zoning issues surrounding commercial use on a college campus. My testimony will focus on compliance with Chapter 1, Section 101.4 and 101.3 of Subtitle X of the 2016 DC Zoning Regulations.

Campus Plan Request/ WTS's Intended Deal Structure:

Wesley is proposing a 306,517 square foot student apartment building as part of its Plan primarily to house AU students. Only a nominal number of Wesley students are expected to use the building. Wesley's own declining enrollment and housing numbers indicate it is likely to be a far more nominal use than Wesley states in its application. This single proposed building will comprise 73 percent of the gross floor area of the total campus build-out. To say this building will dominate the campus is an understatement.

1. The building will be constructed, owned, leased and managed by a Commercial Developer of student apartment housing; beds/rooms will be leased directly to individuals that happen to be enrolled students at American University or WTS – and possibly their families.
2. Landmark has transformed a typically institutional function of constructing student housing by privatizing it into a commercial function. Although their properties have been located off-campus in the past, this building will be on-campus, but primarily serving the residents, not of Wesley, but of AU.
3. WTS intends to enter into a 99-year ground lease with Landmark Properties for an upfront fee and recurring periodic rent payments.
4. Neither WTS nor AU will be involved in the transactions between the end users and Landmark Properties; these will be private commercial agreements /leases.
5. This is a commercial apartment building for students that is cloaked under the moniker/veil of a student dormitory because the only stipulation for renting rooms/beds to these individuals is that they be enrolled students of WTS or American University.
6. As WTS already has a surplus of on-campus housing capacity for its student body, this development is clearly targeted at the American University student body.

WTS's application did not even address the issues covered in DC Zoning code sections regarding commercial uses in this case. That changed on Friday in response to NLC-SVWHCA filings. There is not a single reference to this building as a commercial activity in the Wesley application. There is not even a single reference to the words "commercial" or "commercial uses" – or even whether this building is a permitted use under the regulations in their application. Wesley would have you consider this project as if its commercial use was not at issue in this case. That is simply an incorrect interpretation of the zoning regulations. It confounds reality to suggest that this building is

not a commercial activity/development simply because Wesley suggests housing is considered an allowable use under the zoning regulations. If it looks like a commercial development, quacks like a commercial development, it is a commercial development.

Let me be very clear. Although we agree the regulations consider housing to be an allowable land use on a campus, we do not believe that the regulations intend to grant any college or university unlimited authority to commercialize and/or monetize its on-campus land use. And if there was any doubt as to the intent of the zoning regulations in this regard, Subtitle X, Section 101.4 makes it clear that **any and all** commercial uses on a campus are limited.

In reviewing allowable land uses on campus, we believe Subtitle B, Section 200 can be interpreted as limiting commercial uses on a campus only to ancillary uses. Subtitle X, Section 101.3 focuses on “customarily incidental” commercial uses and seems to support that argument. In other words, the regulations establish a commercial category, but they limit it to ancillary or “customarily incidental” uses. As Wesley testified tonight, there are student serving businesses on campus and they are allowed under the commercial use designation in Subtitle B and Subtitle X and are typical of the commercial activities allowed and taking place on college campuses across the city.

While Wesley argues that this dorm not a commercial activity, they then pivot to arguing that—well if it is a commercial activity, it is still allowable because it needs the money resulting from this project to help it achieve its mission. If the Zoning Commission believes that Subtitle B and Subtitle X do not limit commercial uses to ancillary or customarily incidental uses, Subtitle X, Section 101.4 should get your attention. That provision clearly states 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.”

In that regard, Wesley suggests that the building is an allowable commercial use because a nominal number of Wesley students will live there. In fact, Wesley's declining enrollment makes it circumspect that even a nominal number of Wesley students will be housed in the new apartment building. Wesley would have us believe that 185 of its students will live on campus split between the new, proposed building and its existing facility built in 2014. Less than 100 Wesley students have been housed in the Wesley dorms annually since 2014 – and only 66 were housed on campus during the 2018-2019 academic year filling only 40 percent of the available housing. These are pre-COVID numbers. It is simply unrealistic – it is an exaggeration – to suggest that Wesley will house 185 of its students on campus, including 109 in the commercial apartment building.

In fact, the 5-to-1 ratio of AU students to Wesley students in the new, proposed student apartment building best demonstrates this building is not intended to meet the needs of Wesley students, is not being built for its students, and, therefore, is unrelated to Wesley's educational mission. Its size and scale – which is contributing to the objectionable conditions for neighbors – has been determined on the basis of housing AU students. It is not aligned with Wesley's housing needs; it is aligned with earning profits.

And that is what this comes down to – money. This is not a plan for meeting Wesley's educational mission. It is a plan for Wesley to achieve its financial mission – not about **if** it will be able to educate its students – but how they can capitalize on their proximity to AU to transform their campus into a student housing village for a nearby and expanding AU. This is a plan intended to bolster Wesley's financial resources and leverage its land in Spring Valley next to American University for financial gain.

As residents of Spring Valley, we value Wesley's presence in our neighborhood. But this proposal is not one that we can support. Contrary to the assertions made tonight by Wesley

which would broadly define Wesley's educational mission, we believe the zoning rules speak otherwise.

The regulations provide guidance to the Commission to assess whether this project is related to Wesley's educational mission. Since the zoning rules regulate land use, we find the final piece of this jigsaw puzzle in the definition of "use" in Subtitle B, Chapter 1. **The word "use" is unambiguously defined in Subtitle B, Chapter 1 as the "purpose or activity for which a building is occupied." The purpose or activity for which this proposed building is occupied is for housing students, who happen primarily to be enrolled at another institution, not Wesley.** And it is that use – the purpose for which it is being occupied, as the regulation states – that determines whether it is related to Wesley's educational mission. As proposed in this Campus Plan application, the use as a commercial building housing 659 students, the vast majority of whom are AU students, is not related to Wesley's educational mission, nor necessary for Wesley to meet its own housing needs.

For Wesley to suggest that the money it will earn makes this project compliant with Section 101.4 simply is not supported by the totality of the Commission's rules. Compliance with Section 101.4 must be evaluated on the basis of the purpose or activity taking place in the building – and that is housing. Any other purpose or activity other than housing, including Wesley's revenue gain, falls beyond the scope of the regulations and is irrelevant; it is not a standard for review. As we point out in our detailed compliance analysis submitted for the record in this case and contrary to what you may hear from the applicant, Wesley's financial needs are not a relevant factor in determining the outcome of this special exception land use case, according to the 2016 regulations.

This case is not about whether Wesley, as a tax-exempt college, needs the revenue from the business deal or what it might do with the revenue it earns from this commercial venture. After all, Wesley is not claiming a hardship. As we have stated, the decision before the Commission on this special exception application should be decided on the basis of whether a commercially owned and operated residential apartment building which primarily serves students from another university is permitted on Wesley's tax-exempt land.

We encourage the Zoning Commission to reject this application and direct Wesley to develop a new Campus Plan in harmony with the 2016 Zoning regulations.

TESTIMONY OF ALMA HARDY GATES
on Behalf of Neighbors for a Livable Community and the
Spring Valley-Wesley Heights Citizens Association
ZONING COMMISSION of THE DISTRICT OF COLUMBIA
Zoning Commission Case NO. 22 - 13

Monday, June 13, 2022 – 4:00 PM

My name is Alma Gates and I, too, am a Board member of NLC. Let me follow up on Mr. Carter’s testimony with some additional comments. Mr. Dettman has not opined on the evidence in this case, but rather has argued the points of law that were never included in Wesley’s application; and he has done this as an advocate for his client under the guise of expert testimony. But let’s be clear – and cut through the confusion sown by Mr. Dettman in what can only be considered Wesley’s rebuttal – what Wesley is asking this Commission to do is rewrite the 2016 Zoning Regulations on Campus Plans.

Let me address some issues that Mr. Dettman simply gets wrong.

Wesley would have you believe this commercial development should be approved on the basis of two precedents. The first is the Commission’s approval in 2016 for Wesley to house a limited number of non-Wesley students on its campus. Of course, Mr. Dettman ignores the Order in this case in which the Commission justified this action on the basis it was a small number of students – around 50 – not the nearly 569 that are likely under the new commercial apartment building. And he ignores the Commission explanation that it would be limited in duration –

only through 2019 when Wesley's Campus Plan would expire. That hardly measures up to a precedent. Approval also demonstrated an attempt by the community and ANC 3D to bring the Seminary into compliance with its campus plan as the non-seminary students were already living on campus.

Then, he references the Georgetown University-Medstar case. We concur it is a precedent in how the Commission should handle such cases. The Georgetown proposal before the Commission was not ambiguous. The project involved a direct connection between the hospital and the educational mission of the University since the hospital is a teaching hospital that would further the training of students enrolled at Georgetown's medical school. Approval was not justified on the basis of Georgetown University's financial need. If the GU-Medstar precedent is used to justify the Wesley proposal, there is no choice but to say "no" to Wesley's on-campus commercial student apartment building.

Using Wesley's rationale, a college or university could justify any commercial activity on its campus if it helps fill the institution's pocketbook. For the Commission to apply that standard, the Commission would have to know how the money is being spent over the length of the Plan. This is simply beyond the purview of the Zoning Commission because, in fact, as Subtitle X, Section 101.4 makes clear: the regulations were never intended to allow university unlimited commercial uses to grow its revenue.

In this hearing, the Commission is presented with two very different interpretations of its Zoning rules.

1. NLC believes that this project is a commercial use of Wesley's land. Wesley argues it is not, because any allowed use cannot be commercial even if it is a commercial use.
2. NLC also believes that the only reference to permitted commercial uses in Subtitle B, Section 200 Use Categories is "ancillary commercial uses." Wesley says that housing is not an ancillary use, with which we agree; but Wesley argues that there are no limitations on using campus land for commercial housing developments because housing is a permitted use.
3. If housing is determined to be an ancillary commercial use, we have noted this project still would not be permitted because its size exceeds the 10 percent floor area threshold.
4. We believe Subtitle X, Section 101.4 clearly imposes a limit on allowable commercial use of campus land. Although this commercial project may be related to Wesley's financial objectives and annual fundraising goals, it is not related to its educational mission because (a) it is intended primarily to serve students from another University, not its own, and (b) it does not need the massive building covering 73 percent of its total campus plan floor area to meet the housing needs of its steadily declining enrollment. Wesley is

asking the Commission to conclude that housing five times more AU students than its own is somehow related to Wesley's educational mission. They can't prove that -- so they argue that anything that generates revenue for the Seminary is related to its educational mission. The zoning regulations do not regulate revenue, fundraising, or the financial operations of a college or university -- they regulate land use. And the land use at issue is a commercial student apartment building, not the finances, the financial well-being, the annual fundraising goals, or the financial administrative operations of the Seminary. We would agree that a guaranteed revenue stream from the rentals to AU students will help off-set the financial shortfalls the Seminary is experiencing due to its declining enrollment. However, that is precisely what commercializes the property use. When considering, "This creative ownership structure does not make the proposed dormitory a commercial use, not does it change the land use pattern that already exists on the WTS campus. Albeit on a larger scale, WTS students and immediate family members, and non-WTS students (now solely restricted to AU students)...does not change the fact that the proposed dormitory is a use that falls within the 'Education, College/University' use category and is not a general or ancillary commercial use under ZR 16." While normal dormitory use may be permitted under ZR 16, the land lease

scheme proposed by WTS and Landmark was never anticipated by the Commission or by OP. The structure of “the deal” is what causes this allowable use to move from allowable use to commercial use. Also, it should be noted that WTS is looking ahead to the likelihood that it will have vacancies in the student apartment building and may need to move outside AU for additional rent support.

5. We believe this commercial project is not in harmony with the zoning regulations. Given that we and Wesley are offering different interpretations of the rules, we believe that ANC 3D may have offered a good suggestion: that the Zoning Commission should get a legal opinion on the matter before taking any final action.
6. In his written testimony, Mr. Dettman referenced a December 2019 conversation with the Zoning Administrator (“ZA”) in which the ZA concluded that “a new student residence project which includes units featuring private baths and kitchens and offering occupancy to [non-WTS] students, can be considered a dormitory use, pursuant to the Zoning Regulations. The ZA went on to say “the Commission will be the “ultimate arbiter of the proposed dormitory use specifics” pursuant to the campus plan and further processing procedures. NLC has never said this building was not a dormitory, but we ask the Zoning Commission to determine whether or not

the use of the 569-bed dormitory as a commercial venture is allowable under the Zoning Regulations. After all, what is the relationship between the AU students and WTS since they are not enrolled at WTS? They would only use the building for housing, just as they might use the Berkshire or Avalon Apartments for housing, and we know they are commercial buildings. And, yet another example of the “if it walks like a duck and quacks like a duck, it must be a duck” scenario. Indeed, the use is commercial!

We ask that you not lose sight of the overall impact of this proposed commercial structure. This project is outside the norm – even to the point of involving the Commission’s inclusionary zoning rules. How often does the Commission address inclusionary zoning within the context of a student dorm? Mr. Dettman attempts to normalize this by misstating for the convenience of his argument the intent behind the 2006 Inclusionary Zoning Implementation Act provisions related to student eligibility. Contrary to Mr. Dettman’s assertion, the language in the act was never intended to address IZ eligibility in a campus dorm. The language was about how students could not be excluded from IZ eligibility within newly built commercial residential housing because of their student status. No one anticipated in 2006 that a college or university would be proposing to use its tax-exempt land to partner on a commercial student apartment building on campus such that the city’s IZ rules would be triggered.

The seven-story plus habitable penthouse apartment building far exceeds what is allowed in the RA-1 zone (40 ft, 3 stories).

Even though campuses are permitted additional height for buildings, the WTS Campus Plan significantly exceeds the allowable height in a residential district.



The Wesley application lacks images of the proposed “ghosted dormitory” in photos of the bell tower and the front of the Seminary. The dormitory will tower over both and diminish the iconic views of the campus as seen from Massachusetts Avenue.

While possibly creating objectionable conditions for neighbors, this Campus Plan significantly alters the purpose, mission, use, and fundamental character of the WTS campus by transitioning it from a graduate level training ground for seminarians into a commercial marketplace for housing targeted to students (ages 17 to their mid-20s) from a neighboring university and competing with other commercial residential real estate properties in the neighborhood as well as existing housing at American University.

That is why we object to this proposal submitted by Wesley Theological Seminary.

Thank you for your consideration.

**Oral Testimony Of Mr. Thomas Smith
On Behalf Of Neighbors for a Livable Community (NLC) and the
Spring Valley-Wesley Heights Citizens Association (SVWHCA)
Z.C. Case No. 22-13: Wesley Theological Seminary Campus Plan Application
June 13, 2022**

In the age of COVID, my role was to be the understudy in case either Mr. Carter or Mrs. Gates got sick. Thank God, they did not. But, let me say a few words after hearing the discussion tonight.

As we heard tonight, this is an unprecedented project even for Landmark Properties. They don't do buildings on a college campus. They do only buildings "off campus" or "near a campus." They are a reputable company, but this will be a new project even for them.

I want to suggest the issue of master leases was raised tonight. A university entering into a master lease with a residential apartment building located off campus is not the same as a commercial developer coming on a campus, owning a building, and then renting it primarily to students from another university. In the case of the master lease, the housing is rented through the university at rates set by the university. The commercial developer is never involved in the process except to enter into a contract with the university; but again, this is for a building located off campus.

Wesley's proposal is also not the same as a university owning and operating properties in a commercial zone. Mr. Chairman, I am familiar with the issue you referenced that was brought to your attention by Councilmember Cheh. It was a request from her in response in part to

lobbying from our groups to include language in the regulations that the campus plan rules take into consideration the commercial buildings off campus that the universities own and use. Prior to the current regulations, these off campus commercial buildings were not required to be part of the campus plan. The feeling was that it did not give the full scope of the campus activity impact on the community.

And I would ask you to consider this: a “sports facility” is an allowable use under the campus plan, according to Subtitle B Section 200 – in the Uses section – of the zoning regulations – the same way as housing. Under Mr. Dettman’s scenario that he outlined, a professional sports franchise could enter into a ground lease with a college or university to build a new “sports facility” -- perhaps covering as much ground as this apartment building – 73 percent of the total campus build out. The sports franchise would own the facility and operate it and lease it out to other universities or professional teams. They could give a cut to the university. They could do that at Wesley Seminary, for example. And Wesley Seminary would have no use for it, because they have no sports teams. But, under Mr. Dettman’s scenario, that could be done. There might be people who really like that, including people in the neighborhood. But it is not in harmony with the zoning regulations and it is not what we think of on land reserved for campus plans.

So, in conclusion, let me say: I have worked on these issues for the better part of 40 years. I have been involved in this campus plan since 2018 and with Wesley Campus Plans dating back to 2006 both as an ANC Commissioner, a community activist, and a neighbor of Wesley Seminary. I am no longer a neighbor of Wesley but because of all that involvement, I am working with neighbors on this project.

While there has been a lot of positive discussions back and forth between the Seminary and the neighbors on the plan, the one issue that nobody was ever willing to talk about or address are the commercial provisions in the zoning code and the commercial use aspects of this deal. That issue has been off the table.

But, as neighbors have made clear – and NLC and SVWHCA have said – this is the primary issue – the primary objection – to this campus plan because of the precedent it will create. We like Wesley; they have been good neighbors. **But this is a major issue for the city as a whole and we would be irresponsible to just put our heads in the sand and not ask you to address it.** Thank you.