September 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 –Wesley Theological Seminary (WTS) Campus Plan: Neighbors for a Livable Community (NLC) – Spring Valley-Wesley Heights Citizens Association (SVWHCA) Reply To WTS September 1 Filing

Dear Chairman Hood and Commissioners:

The core issue in the above-referenced case is the Zoning Commission's application of ***Subtitle X, Chapter 1, Section 101.4*** of the DC Zoning Regulations governing Campus Plans:

"The Campus Plan Process shall not serve as a process to create general commercial activities or developments <u>unrelated to the mission of the applicant.</u>" *(Subtitle X, Chapter 1, Section 101.4)*

The unambiguous language of this regulation seems to have been written to prevent the commercial uses of university-owned land for transactions exactly like Wesley's proposal to enter into a 99-year ground lease with Landmark Properties, a commercial developer of luxury student housing, to build a student residence facility on the Wesley campus primarily for the use of American University (AU) students.

At its review of the Wesley Campus Plan on July 14, 2022, Chairman Anthony Hood invited parties to comment on the Commission's deliberations. Chairman Hood also called on Neighbors for a Livable Community (NLC) and the Spring Valley-Wesley Heights Citizens Association (SVWHCA), as a joint party in the case, to suggest "alternatives" to the controversial Wesley-Landmark deal.

Although we understand and empathize with the July 14 comments made by Chairman Hood and Commissioner Robert Miller and the uncertainty expressed by Commissioner Joseph Imamura, NLC-SVWHCA concurs with the remarks made by Commissioner Peter May.

The September 1 Wesley filing asserts the precedent that any university-proposed project on university-owned land can be justified as long as it generates badly needed revenue. If adopted by the Commission, this precedent would eliminate a highly significant campus plan guardrail related to the use of university-owned land for on-campus commercial development and render *Subtitle X, Chapter 1, Section 101.4* meaningless.

As Wesley states in its September 1 filing, the "increasing economic pressures on higher education are not unique to Wesley." This case will open the gates for colleges and universities in residential zones throughout the District of Columbia to utilize their land in ways not anticipated or allowed under the existing campus plan regulations as a way to generate more revenue. Wesley's September 1 filing argues that maximizing its revenue is the ultimate arbiter of its mission.

No matter the spin, the story, or even the sympathy generated by Wesley's religious affiliation/history, the only question before the Commission is whether Wesley's campus plan meets the requirements of the Campus Plan regulations. As Commissioner May stated on July 14, the applicant acknowledges the proposed commercial residential building is primarily intended to house AU students and, therefore, is not within the educational mission of Wesley. This is not a question of "semantics," as suggested by Chairman Hood on July 14. **No matter the spin by Wesley or Commissioners, housing AU students on the Wesley campus is not part of Wesley's mission.** The regulatory language is very clear and Wesley's Campus Plan does not meet the standards of ***Subtitle X, Chapter 1, Section 101.4***.

Under pressure from the Commission, Wesley also finally acknowledged the proposed commercial apartment building will be taxed differently from any other existing student resident apartment housing/dorm – not just on its campus – but on the campus of any university in the District of Columbia that provides housing solely for its own students.

The Commission's July 14 deliberations tracked many of the same views initially expressed by NLC and SVWHCA Board members when we first learned in 2018 – nearly four years ago – of Wesley's plan to enter into a ground lease with a commercial student housing developer. As we wrestled with this project over the years, our concerns focused initially on the future of Wesley's property if the Seminary decided to relocate and the potential loss of an academic institution that has been a relatively good next door neighbor – in large part because of the quiet, if not sleepy, level of activity at this graduate-level educational institution.

But, the Wesley-Landmark proposed commercial venture targeted primarily to undergraduate AU students will change the fundamental character of Wesley's campus and establish a precedent that could have consequences for any neighborhood in the District of Columbia that houses a college or university campus. It violates the guardrails for use of university-owned land established in ***Subtitle X, Chapter 1***. According to Wesley, if a project generates revenue – especially given that all colleges and universities, and students and their families – are feeling the financial pinch of higher education – the campus plan zoning regulations can simply be ignored.

As Commissioner May said on July 14, this project is a "straight up commercial apartment building" that does not "fit" with Wesley's purpose since the development will **not** provide housing primarily for its own students, but instead for AU students. Contrary to Chairman Hood's comments and as further evidenced in Wesley's September 1 filing, the Wesley-Landmark proposal **is** an "end-run" around the campus plan zoning regulations and not permitted.

In its September 1 filing, Wesley also seeks to argue that the project is not a commercial venture citing practices by other universities in the District of Columbia to rent their on-campus housing to non-students during summer periods when the bulk of students are on break. The use of on-campus housing during summer months is not comparable in any way to Wesley's plan to contract with a commercial

developer of student housing for 99 years to house non-Wesley students year round. Wesley's comment seems intended to distract the Commission from the real issues at play in this case.

Approval of the Wesley-Landmark commercial deal would **contort** the campus plan regulations in a way as to render them meaningless. Approval would set a precedent, as Commissioner May said; would remove any guardrails on the commercialization of campus property; and result in selective application of the Commission's rules based on whatever standard a majority of five Commissioners may deem to apply at the time. It is important to note that this Commission first reviewed any potential precedents that might guide its deliberations in this case; future Commissions will do the same.

There is nothing in the record in this case that supports the Commission approving this deal. Reasons for approving this project cited during the July 14 deliberations (albeit well-intentioned) are not grounded in the record or consistent with applicable zoning regulations.

Commissioner Miller highlighted previous action the Commission has taken in cases involving churches as a precedent for approving this project. Contrary to comments in Wesley's September 1 filing, Z.C. 22-13 is not a case involving a Church/Congregation seeking to develop its own property to continue operating in the District of Columbia. **Wesley may be religiously affiliated, but it is appearing before the Commission as an educational institution in a Campus Plan zoning proceeding.** Wesley is not a Church; it does not operate as a Church ministering broadly to the public at large or a defined community; it is an academic institution governed by the Campus Plan regulations in ***Subtitle X, Chapter 1*** of the Zoning Regulations. This case is unrelated to other zoning cases involving development of Church property that were **not** decided on the basis of Campus Plan zoning regulations. **As the Commission acknowledged, there is no precedent applicable to Z.C. 22-13.**

Commissioner Miller asked where will the AU students housed in the new commercial luxury apartment building live, if not on the Wesley Campus? They will live on the AU campus or in other

rental housing in the neighborhood. Sadly, Wesley's September 1 filing perpetuates misinformation planted first in this case by the Office of Planning (OP) that some AU students are required to live on campus. Commissioner Miller referenced this same misinformation to justify support for this project.

The Commission's approved-AU Campus Plan (both past and present) requires that AU make on-campus housing available for a certain percentage of students; but it DOES NOT MANDATE that AU students actually live in that housing. This is not a difference in semantics or interpretation; it has real world consequences and may help to explain why AU has refused to discuss this project – involving its own students – with Wesley. By approving this luxury apartment building, the Commission will position Wesley and Landmark to COMPETE with AU to house AU's own students. Is that fair to AU, especially now that the Commission has given AU approval to build an additional 500-700 new student beds that AU has claimed will meet its on-campus housing needs over the next ten years?

And, as we raised during the recently concluded AU Campus Plan proceedings, why has there been no coordination between the institutions on this project as part of the campus planning process?

Wesley's September 1 filing perpetuates and reinforces the false and misleading information that some AU students are mandated to live in AU on-campus housing. After four years of discussion with Wesley about this project, we know with certainty that Wesley is aware that AU does not mandate any group of AU students to live in AU's on-campus housing. It appears Wesley is so desperate to win approval for this project that it will agree to include language in the final Order proffered by OP that it knows is false and misleading.

By approving this plan, the Commission also will tip the scales in favor of Landmark to gain a competitive advantage over owners of other neighborhood commercial multi-tenant apartment buildings that have long depended financially on students who, as part of the neighborhood rental housing market,

prefer to live off campus independent of institutional student housing rules or the constraints and additional costs imposed by the university.

As much as we empathize with comments made by Chairman Hood about the need to ensure racial equity and fairness in the Commission's actions, his July 14 comments were misdirected to the Spring Valley neighborhood. **We do not believe the record supports the conclusion that this project contributes either to racial equity or fairness in the District of Columbia and sells that goal short.** Chairman Hood cites ***Exhibit 42***, Wesley's Closing Argument, which included information not previously submitted as evidence and subject to scrutiny, to suggest that failure to approve this plan will inhibit the ability of minority students to "come into this neighborhood" and afford the cost of attending AU. Wesley's September 1 filing restates its Closing Argument. Yet, there is nothing in the record of this case that building this commercial student apartment building for AU students on the Wesley Campus will make attending either AU **or** Wesley more affordable or result in more diversity which is largely the product of university admissions policies.

If the Commission is concerned that high costs prevent minority students from attending AU or Wesley, then the concerns about equity and fairness should be directed to those institutions; and the campus plan process is a means to do that, but one the Commission has **not** chosen to use to address the issue of admissions policies and overall tuition and housing costs. Wesley and Landmark state this new project will be "luxury" student housing and luxury comes with a price. Wesley and Landmark are not proposing to build "affordable housing" for students or anybody else. And in fact, Wesley has noted that the cost of this luxury housing will exceed the costs it charges for Wesley students living in Wesley's newest existing residence facility built only 8 years ago (and never fully occupied), which now will be reserved solely for the use of Wesley students.

As the September 1 Wesley filing further demonstrates, Wesley continues to be silent on how it will meet the inclusionary zoning requirements tied to this commercial project; it was NLC and SVWHCA which first raised these issues ***(Exhibit 26)*** in this case, not Wesley. As if the IZ requirements were merely an afterthought, neither Wesley nor the Office of Planning (OP) have offered any hint about how the city's inclusionary zoning rules will apply to a commercial on-campus student residence facility – let alone one that is being tailored to meet the housing needs of students from a separate educational institution – AU.

If the inclusionary zoning requirement is central to Chairman Hood's argument – although he made no comments about IZ at the July 14 deliberations – then the Commission has an **obligation** to demand answers from Wesley and Landmark **before** voting on this project on how the IZ requirements will be met to assess whether the project lives up to the hopes and expectations that the Chairman has expressed. Unlike other cities, the District of Columbia does not have a student-tailored affordable housing program. The city's inclusionary zoning rules were not written with an eye to apply to student housing – just to ensure that students were not excluded from eligibility in new commercial apartment buildings located off campus.

IZ was never a factor in the AU Campus Plan which proposed the addition of new AU-owned on-campus student housing for 500-700 students. But, it is a factor with Wesley because of the commercial nature of this project. But, IZ would not be applied to the existing Wesley-owned and operated residential facility built just 8 years ago.

Like Chairman Hood, we applaud the commitment to diversity and equity that was expressed by Wesley in its Closing Argument ***(Exhibit 42)***; and we further recognize the United Methodist Church's ongoing commitment to racial healing within the Church through the work of its General Commission

on Religion and Race established in 1968 once the Church ended its official policy supporting segregation.

For purposes of this case, we wish Chairman Hood had given more attention to – or at least acknowledged – ***Exhibit 48 (Pages 14-16)*** in which NLC-SVWHCA applied the ***Commission's Racial Equity Tool*** specifically to assess Wesley's Campus Plan proposal. As that analysis concluded, there is nothing in the record in this case which suggests the proposed commercial student apartment building will advance the racial equity goals outlined in the Comprehensive Plan. And, in fact, the Wesley-Landmark deal will lead to more inequities – whether based on race or the ability to pay or the school that the student is attending.

As Commissioners noted in their July 14 deliberations, Spring Valley has the reputation of being an "affluent" community; as a once-restricted neighborhood, it also has a troubling history of segregation and anti-Semitism prior to the passage of the nation's civil rights laws. Nevertheless, many community leaders in Spring Valley have played prominent roles in working to bridge the racial divide in the District of Columbia even preceding home rule – and will continue to work alongside residents from all parts of the city to do so.

Although Wesley's Campus Plan proposals include a package of neighborhood amenities, NLC and SVWHCA did not ask for them – and our support or opposition to this project would not be based on them. **Given Wesley's financial challenges, we are at a loss to understand why Wesley would even include such proposals as part of its plan or commit even one dollar to providing neighborhood amenities for "affluent" Spring Valley residents.**

But, we also do not believe that the Commission's campus plan regulations should be applied differently across the city based on the neighborhood where the academic institution is located. **The**

Commission's rules matter and their equitable application ensures the credibility of the Commission and the integrity of the city's zoning actions.

We sympathize with Commissioners who want to do all they can to enable Wesley to stay at its location in Spring Valley where it has been since 1958. (Prior to that, it was located in Westminster, Maryland on the campus of the Western Maryland College now known as McDaniel College.) **Wesley's deal with Landmark may seem "savvy," as some Commissioners said, but it also is expressly prohibited by the Campus Plan regulations.** Wesley had every opportunity to outline in this case why its proposal did not run afoul of ***Subtitle X, Chapter 1, Section 101.4*** of the Zoning Regulations; but Wesley was silent on this issue – as it was when discussing the proposal with the neighborhood over a span of nearly 4 years.

As Commissioner May said, it is not the Commission's role to save this institution or address its financial management challenges or even the current or future finances of students and their families; nor is it the role of NLC or SVWHCA. However, as good neighbors, NLC and SVWHCA – over the years – have suggested "alternatives" ***(Exhibit 26, Pages 3-4)*** for Wesley to survive its financial challenges. It is important to understand that Wesley's financial challenges are **not** recent; they preceded the COVID pandemic; and they are not the result of some national economic downturn. As Wesley has said, its economic problems are a consequence of a politically-driven and still-turbulent schism churning within the United Methodist Church stemming from anti-LGBT positions taken by the Church beginning in 1972.

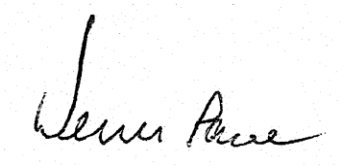
Unquestionably, there are ways for Wesley to stay at its current location without the commercial development of its land by Landmark. Although Commissioner Miller indicated a preference for Wesley to sell its land to AU, we suggested in ***Exhibit 26*** that Wesley formally affiliate with AU similar to United Methodist Schools of Theology that operate at other Methodist-affiliated universities,

including Duke, Emery, and Boston University. Wesley's September 1 filing, which asserts a close relationship with AU (despite the fact that AU has refused to engage with Wesley on this controversial commercial student housing project over the 4-year internal planning process), is further reason for Wesley to explore a formal affiliation with AU.

We also have supported Wesley's earlier proposal to sell off some of its land on University Avenue for residential development. Also, Wesley could sell Lot 819 directly to Landmark. (The proposed commercial student apartment building is planned for Lot 819.) Then, Landmark, the commercial developer that will benefit significantly from this project, could seek any approvals it might need to develop the property directly from the appropriate city entities.

Rather than change or ignore its rules to accommodate Wesley, the Commission should challenge Wesley to submit a plan within the guardrails of the Commission's existing regulations.

Sincerely,



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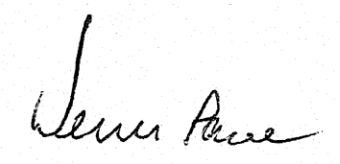

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