

NEIGHBORS FOR A LIVABLE COMMUNITY

Spring Valley – Wesley Heights

Citizens Association

Z.C. Case No. 23-08(1): Oral Testimony

May 12, 2025

Thomas M. Smith

Chairman Hood and Members of the Commission,

Neighbors for a Livable Community (NLC), established in 1987, and the Spring Valley Wesley Heights Citizens Association, established in 1952, are a joint party in this case. My name is Thomas Smith and I am here tonight on behalf of Dennis Paul and William Krebs, the Presidents of the groups. I am joined by Blaine Carter and former ANC Commissioner Alma Gates, with whom I served for ten years on ANC 3D, six of them as chair, representing the Spring Valley neighborhood.

Today marks the Commission's 5th public hearing on the Wesley Campus Plan and marks the 5th time we have testified on this application. Neighbors have volunteered much time over the last three years to assess and address the many issues in a case that Commissioner Iamura often has referred to as zoning gymnastics.

We realize that the Commission wants to find a way to approve this unprecedented Campus Plan despite its many fault lines. After the last three years of opposing this plan, we believe even more that the Commission's approval of this case will have significant and unintended consequences for American University and its finances, the neighbors, and the city as a whole.

We heard nothing new tonight from Wesley. Wesley's arguments are a repeat of their testimony in 2022 during the first campus plan case, in 2023 during the PUD case, and in 2024 in the text amendment case. You did not approve the Campus Plan in 2022. You did not approve the PUD in 2023. The question before you tonight is whether the text amendments you created – and that have not yet

been published – resolve all the legal problems that have prevented you from approving this Plan up to this point.

Based on the record in this case, the answer is No. The core zoning issues in this case have not changed since Wesley’s application was first filed on St. Patrick’s Day, 2022. The Zoning Regulations still present at least three major obstacles to approval.

1. The 659-bed Landmark apartment building primarily for AU tenants is unrelated to the educational mission of Wesley which is inconsistent with *Subtitle X, Section 101.4*;
2. Based on the standards for review established as a matter of law by the D.C. Court of Appeals in *Durant v. District of Columbia Zoning Commission*, Wesley’s plan is inconsistent with the Future Land Use Map (FLUM) and the Comprehensive Plan; and
3. The Campus Plan presents objectionable conditions for neighboring properties as well as AU, including exploiting AU’s students for Landmark’s and Wesley’s financial gain, inconsistent with *Subtitle X, Section 101.2*.

Wesley’s and OP’s filings and testimony seem to suggest that this Campus Plan case already has been decided by virtue of the Commission’s approval of two text amendments in *Z.C. 24-09*. Wesley and OP point to the Commission’s approval of a text amendment to *Subtitle X* to argue erroneously that the Landmark project is not a commercial venture. The text amendment would not have been necessary if the project was not commercial.

- This is a commercial business because Landmark will enter into lease agreements with individual tenants enrolled as students at AU, a neighboring institution outside Wesley’s campus boundaries. **The Wesley-Landmark commercial venture is targeted to students who do not share Wesley’s educational objectives and are not enrolled in a course of study that will lead to an academic degree from Wesley, which is required under *Subtitle B*.**

- The Landmark commercial development will constitute 72.8 percent of the occupiable square feet at Wesley making it the dominant use of Wesley’s campus. The amount of facility space for Wesley students will actually decline by 23 percent over current levels under this Plan.

The Commission may be able to exempt Landmark from the commercial limits of **Subtitle X** through a text amendment, but it cannot and did not redefine the word “commercial” so as to obscure the commercial nature of the Landmark project. It is precisely the commercial nature and scope of the Landmark project that puts Wesley’s Campus Plan application at odds with **Subtitle B** of the Zoning Regulations. Because it is inconsistent with **Subtitle B**, it is inconsistent with the FLUM and the Comprehensive Plan, which Commissioner Gates will address in her testimony.

But, let me turn this over to Blaine Carter. A resident of the District for more than 40 years, Mr. Carter has lived on University Avenue in Spring Valley for the past 23 years. He has worked in the commercial real estate industry for 41 years, including on such projects as the Washington Convention Center, the SEC Headquarters, and Station Place. He is testifying tonight on behalf of NLC and the SVWHCA.

Blaine Carter

There are so many problems with this Campus Plan proposal that the zoning gymnastics reference seems inadequate. This case has twisted what is usually a straightforward campus planning process into a pretzel – and not even a good pretzel. Let’s focus on the uncomfortable facts in this case.

First, Wesley argues in its pre-hearing statement that the Landmark building is a “legitimate university use.” A dormitory housing AU students may be a “legitimate university use” on AU’s campus, but not on Wesley’s campus. OP overreaches by stating in its May 2, 2025 report (***Exhibit 85***) that the Commission already “affirmed” in ***Z.C. Case No. 24-09*** that housing AU students is part of Wesley’s educational mission. This conclusion is not supported by the facts and the record in ***Z.C. 24-***

09 or by the language of the text amendment, as provided in the OP report, which is focused solely on limiting Wesley's exposure to the commercial restrictions in *Subtitle X. The Landmark building is unrelated to the educational mission of Wesley and therefore does not comply with Subtitle X, Section 101.4.*

- The number of AU tenants housed on Wesley's Campus will be seven times greater than the Wesley students housed on campus. Wesley has mothballed one student dormitory on its campus and converted another from double occupancy rooms to single occupancy rooms – all due to a lack of demand or need. Of the 172 beds authorized by Wesley's current Campus Plan, only 86 are occupied currently, according to Wesley. Wesley does not need the proposed building except to achieve its objective of improving its cash flow.
- Landmark acknowledges as part of its independent market analysis that its primary target for the building is the AU student population. Wesley has long been and continues to be a primarily commuter school with little demand for on-campus housing. Only about 19 percent of its students live on campus, according to Wesley.
- The sole purpose of this commercial venture is to make money for Landmark and Wesley. Money is the driving force in this Campus Plan proposal.

Second, what makes this case so egregious is that Landmark (at Wesley's bidding) is seeking to exploit – for its commercial business purposes – the development flexibility reserved for universities through the Campus Plan process that would allow the development standards for the land's underlying RA-1 zoning to be exceeded. With approval of Wesley's Campus Plan, the Commission would be gifting Landmark with the unprecedented privilege to access the AU student housing market and to compete unfairly with AU's on-campus housing program and other commercial rental buildings in the neighborhood.

Third, the IZ solution proposed by Wesley is vague, unenforceable, and embarrassingly inadequate.

- Wesley’s proposed IZ solution seeks to evade the requirements of the Zoning Regulations in favor of a minimal financial contribution not linked to any specific affordable housing units – all under the guise that Wesley is not in the business of development. Its partner, Landmark, which will build, own, and manage this building, is in the development business – and will benefit significantly from approval of this project.
- Both Landmark and Wesley have presented conflicting information in this case on the origins of the proposed \$8 million contribution. Landmark has stated in community meetings that the \$8 million figure for IZ is equivalent to savings incurred from reducing the underground parking at the new development on the Wesley Campus. In its pre-hearing statement, Wesley claims the \$8 million figure is the equivalent of providing nearly 24,615 sf of IZ space (about 10.97 percent of the net residential gross floor area of the Landmark building) at a construction cost of \$325/sf.
- At a minimum, the IZ should be based not solely on construction costs of the Landmark student housing, but overall project costs, including the land cost, financing costs, and soft costs (e.g. architectural/mechanical/civil, transportation, permit, code consultant costs). In short, Landmark and Wesley are not providing the entire financial picture.
- The Commission should demand more of Wesley and Landmark, if this project is approved. Any financial contribution should be based on what it would cost to deliver new affordable housing for D.C. residents, not the lower costs that Landmark states will apply to student apartments.

Fourth, Wesley’s Campus Plan is inconsistent with *Subtitle X, Section 101.2* because it would create objectionable conditions affecting neighbors and AU. These objectionable conditions are outlined in our pre-hearing statement at *Exhibit 88*, but include parking, campus security, number of students,

and stormwater containment; and Wesley's attempt to poach AU's students for its financial gain, which is especially objectionable at a time when AU is experiencing its own serious financial challenges.

Fifth, AU is still not actively engaged in this Campus Plan process after more than three years. Wesley continues to insist that AU will engage when AU is ready. Not being ready after three years speaks more than we could ever say to this Commission. Anything less than AU's full-throated endorsement of the Landmark project is reason for the Commission to reject this application, as proposed.

- AU has been willing to talk with the neighbors about this project and have told us that they are focused on housing their students on their campus, as they advised the Commission in 2021 when neighbors raised the issue of the Wesley-Landmark building during the AU Campus Plan hearings.
- Wesley's plan to poach AU students for its financial gain comes at a time when AU is dealing with a \$60 million budget deficit that is likely to grow as federal education resources for colleges and universities dry up. AU has been very transparent about its financial challenges – unlike Wesley which is the institution that is asking you – not just to bend your rules – but to throw your rule book out the window.

Sixth, if the Commission approves the Wesley-Landmark apartment building, what happens if the commercial venture is a failure? What happens if they build it, but the students don't come? Residents are deeply concerned that the neighborhood may be left with a non-conforming apartment building on the Wesley Campus.

Finally, this case has required the Commission to bend over backwards to consider approving this commercial operation on Wesley's campus on the basis that Wesley needs to thrive; yet, there is still no evidence in the record of Wesley's financial need. Instead, we have threats to leave – threats that

have been made to the neighbors so often since 2005 that it conjures up memories of the children's fable Chicken Little.

Institutions, like Wesley, add value to our city that cannot always be measured in dollars. As Wesley's and AU's neighbors, we know that better than anybody. Yet, there are limits to what can and should be done to support Wesley at its current site. Wesley's Campus Plan proposes facilities its students simply do not need and that AU says it simply does not want. For its financial gain, Wesley has chosen to become innkeepers and in doing so they need to blast through all the guardrails that exist in the Campus Plan regulations. The very limited text amendments did not solve the regulatory issues in this case. Just like three years ago when Wesley first filed its flawed proposal, the Commission is being asked to cross a red line in this Campus Plan case. The Commission should not be engaged in a regulatory bail-out of Wesley, especially when the facts and the record in the case do not support such action.

Sometimes change is inevitable. As Commissioner Peter May said nearly three years ago – it's just not the Commission's job to find a way to save this institution at this location.

Let me now turn to Alma Gates, a former ANC 3D Chair, ANC Commissioner and a long time neighborhood activist.

Alma H. Gates

The Comprehensive Plan allows the community to predict and understand the course of future public actions and to ensure that the District's resources are used wisely and efficiently. It provides guidance on the choices necessary to make Washington, DC better. The Plan is comprised of two parts: the Federal Elements and the District Elements. Combined, these elements guide development in the District to balance federal and local interests with a collective responsibility for the natural, cultural, economic, and social environments. Many of the elements have local, regional, and national

significance; together they advance Washington, DC's great design and planning heritage for its equitable development through inspiring civic architecture, rich landscapes, distinct neighborhoods, vibrant public spaces, environmental stewardship, and thoughtful land-use management.

Section 1-301.62 of the D.C. Code states that: "(t)he purposes of the District Elements of the Comprehensive Plan for the National Capital are to:

- Define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development;
- Guide executive and legislative decisions on matters affecting the District and its citizens;
- Promote economic growth and jobs for District residents;
- Guide private and public development in order to achieve District and community goals;
- Maintain and enhance the natural and architectural assets of the District; and
- Assist in the conservation, stabilization, and improvement of each neighborhood and community in the District."

For the past three years, the Zoning Commission, ANCs and citizens groups have met to discuss aspects of the purposes and their relationship to Wesley Seminary's Campus Plan. Perhaps the lack of "thoughtful land-use management" best sums up why the Wesley Campus Plan has not been approved despite so much slack has been cut to allow Wesley to reach this point; however, after recent meetings with the Applicant, it is obvious this case is still not ready for approval. If the "devil is in the details," there is serious work needed on the Wesley Campus Plan. Both Mr. Smith and Mr. Carter have highlighted some of the details that need further Zoning Commission attention.

Commercialization of the Wesley campus continues to be a contentious issue for the surrounding community. The construction of what equates to a commercial apartment building on land that has been designated for educational purposes in the midst of R-1-A, R-1-B and RA-1 residentially-zoned land is

of concern for many who live in the neighborhood surrounding the seminary, especially those who reside along University Avenue. There is no longer predictability for homeowners as the Zoning Commission has ignored objectionable conditions associated with the Wesley Campus Plan and has moved forward with approval of land use that is not in keeping with the Comprehensive Plan. Even the two text amendments fail to fully cover the zoning needs of the Seminary.

One of the discussions at a recent CLC meeting included questions about Further Processing and what legitimately belongs in that camp as it appears some of the most contentious issues will be moved to Further Processing. This is of concern to the immediate neighbors because history has shown that many unintended consequences result when issues are booted to further processing rather than being addressed head-on from the main case hearings and reflected in the final Order.

As the guide for all District planning, the Comprehensive Plan establishes the priorities and key actions that other plans address in greater detail. The broad direction it provides may be implemented through agency strategic plans, operational plans, long-range plans on specific topics (such as parks or housing), and focused plans for small areas of Washington, DC. This is the case for Wesley that is seeking approval of a 10-year Campus Plan focused on its modest campus in northwest.

Clearly, the Comprehensive Plan is not being implemented in terms of priorities and key actions for anyone other than Wesley. While they are required to operate under a Campus Plan, the terms of the plan must reach outside the perimeter of the campus and balance its needs with those of the surrounding residential area. Ninety-foot buildings may exist on other campuses but typically they have a much larger land mass that can accommodate the height and density. Although Wesley removed the building's penthouse, the reconfigured density remains on site. The Wesley seven-story building is shoehorned into a corner of the campus, hoping to be hidden from sight by distant AU dorms, but the low scale buildings on the campus are overshadowed by the proposed addition.

The Land Use Element and policies are given priority in the Comprehensive Plan for good reason. Building mass and height Policy LU-2.1.5: *Support Low-Density Neighborhoods*, directs – “Support and maintain the District’s established low-density neighborhoods and related low-density zoning. Carefully manage the development of vacant land and alterations to existing structures to be compatible with the general design character and scale of the existing neighborhood and preserve civic and open space.” When 72.8 percent of Wesley’s occupiable space will be dedicated to the student apartment building, even with the penthouse removed, the seven-story building remains in conflict with the Land Use Element of the Comprehensive Plan.

On May 26, 2016, the District Court of Appeals issued its judgement, for the third time, in the *District of Columbia Zoning Commission vs. 901 Monroe Street, LLC*, more commonly known as “**Durant**.” I reference **Durant** because there are many similarities between it and the Wesley Campus Plan Application stemming from the interpretation of the Future Land Use Map (FLUM). Although 901 Monroe was for a PUD, it was the interpretation of the density of the FLUM zoning designation vs what was being proposed that resulted in denial of the application.

In the immediate case, **No. 23-08(1)**, the FLUM designates the land use as Institutional. The Office of Planning notes, “The institutional use would be a campus of higher learning, and the proposed additions would continue to be university use in addition to community amenities.” This statement is very misleading. While the current land use is designated institutional and would remain institutional, the building use would change from institutional use to commercial use by virtue of bed rentals to non-Wesley tenants.

Commercial uses of this scale are not permitted in the R-1-A, R-1-B or RA-1 zones, regardless of the fact Wesley has approached this as a matter of right use according to their institutional designation. Even the change in the wording of the approved text amendment fails to fully excuse

Wesley of its use deception. Perhaps former Commissioner Peter May, in acknowledging the difficulties presented in this case, stated the use of the land most succinctly – “there’s not an educational purpose that is specific to housing all the additional people (i.e. AU students) there and the fact that it happens to be next to AU, that’s almost irrelevant.” In other words, Wesley is not using its land to build a facility for its students, it is planning a luxury apartment building for AU students.

A review of the hearing summaries in this case shows that the Zoning Commission rarely mentions the Comprehensive Plan or the FLUM’s definitions; but should be keenly aware that zoning cannot be in conflict with the Comprehensive Plan and its maps. Without question, the proposed land use is in conflict with the FLUM and should not be approved. The Court of Appeals noted, “We normally defer to (an) agency’s decision so long as it flows rationally from the facts and is supported by substantial evidence.” [*Levy v. District of Columbia Rental Hous. Comm’n*, 126 A.3rd 688 (D.C., 2015)] The Court of Appeals would be unable to point to the immediate application and find substantial evidence in the rationale or proceedings to support commercial use in an area designated by the FLUM for institutional use. Nothing in the proposed land use supports Wesley’s educational mission. Moreover, the underlying land use is R1-A, moderate-density residential, generally “characterized by a mix of single-family homes, 2 to 4 unit buildings, row houses and low rise apartment buildings.” It is the medium density residential areas that are “neighborhoods or areas where mid-rise (4-7) story apartment areas are the predominant use. The FLUM designates Durant and Wesley as moderate-density residential – not medium density. And this is the major parallel with Durant – land use.

In closing it seems appropriate to refocus the Zoning Commission’s attention on the comments of former Commissioner Peter May who, like the D.C. Court of Appeals, saw the land use for Wesley’s Campus Plan as designated in the FLUM and the zoning regulations in conflict. At the July 14, 2022 Public Meeting of the Zoning Commission, Commissioner May stated, “I think that we would be

looking at this as if it was just an apartment building. Right? And a regular apartment building on campus, with people from outside the campus using it...I don't think it fits into the category of ancillary commercial uses. I think it's a straight up commercial apartment building. It would not be appropriate for us to approve this as part of a campus plan...It would be different in my view, if there were some legitimate reason to have 80 percent of a building occupied by Wesley Students, and then there happens to be some extra capacity, and so that can be leased out to others...But in this circumstance I just don't see how this is anything other than a commercial operation."

Commissioner May, an architect and long-standing member of the Zoning Commission did not hesitate to speak his mind. Unless there was something extraordinary introduced, he did not change his mind. He often took apart an aspect of a zoning case to find a way to make it work and after significant verbal discussion he would issue his findings. That is the pattern followed in the Wesley case when he said, "I just don't think that this works within a campus plan, because it is undoubtedly a commercial venture in my view...We're allowing the university to lease out a portion of its property for this other use. And under the pretend circumstance that it is, quote, 'a dormitory,' and that it is somehow connected to the university's mission. I really don't see how the connection works to the university's mission...This is a way of sort of sneaking in other commercial ventures of a whole range into the campus plan tent, just to be able to get these things done. And I don't think that that's the right way to do it...Maybe Wesley could sell off part of their property and have it redeveloped into some sort of venture that's going to provide money for them in another way, or maybe they just need to sell the property and find another location. I don't think it's our job to find a way to save this institution in this location. I appreciate the creativity, but I don't think that it works within the bounds of the zoning regulations."

It would be a shame and a waste of good, reasonable advice for the current Zoning Commission to ignore their colleague, who spent two years considering the outcome of this commercial venture with

Landmark Properties. Commissioner May saw this application in all its dimensions and questioned, “how is this anything other than a commercial operation.”

Although the text amendments have changed the regulations to permit the commercialization of Wesley’s student housing, there still remains within Campus Planning a regulation that requires this commercial operation to be related to Wesley’s educational mission and it is not.

The Zoning Commission also should keep in mind the **Durant** case and the correlation between it and the Wesley application that is also in conflict with the FLUM designation and the Comprehensive Plan. Institutional properties, especially those belonging to institutions of higher education, need to remain true to their mission and not be allowed to turn any part of their campus into a commercial venture that is not incidental to the mission of the institution.

About Neighbors for a Livable Community

Neighbors for a Livable Community (NLC), a D.C. non-profit corporation registered with the DC Department of Licensing and Consumer Protection (DLCP), formerly the Department of Consumer and Regulatory Affairs (DCRA), was established in 1987 by concerned neighbors of American University (AU) and Wesley Theological Seminary to protect the quiet, long-established neighborhoods surrounding the two institutions, including Spring Valley, American University Park, Fort Gaines, the Palisades, and Wesley Heights.

About the Spring Valley-Wesley Heights Citizens Association

Established as a neighborhood association in 1952 and incorporated in the District of Columbia with the Corporations Division of the DC Department of Consumer and Regulatory Affairs (DCRA), the Spring Valley-Wesley Heights Citizens Association (SVWHCA) has continued throughout the years to be involved in a wide range of land use issues as advocates for neighborhood interests, including historic designation, campus planning, and other zoning issues. The association has been an active player in formal liaison meetings/groups with the Seminary over several decades and is a regular participant in the Community Liaison Committee (CLC) established in Z.C. Order No. 05-40 in 2006.