

TESTIMONY OF JONATHAN BENDER, ANC 3E03, IN ZC CASE #23-08(1)

May 12, 2025

Good afternoon Mr. Chair and fellow Commissioners. I am Jonathan Bender, ANC 3E03 and Chair, ANC 3E. I am here to present the testimony of ANC 3E. Thank you for the opportunity to speak this afternoon.

As you know, our primary concern regarding this project is affordable housing. From the beginning, which for us was two full years ago, we've supported this project in principle. Although we can think of uses for this land that would better expand housing opportunities in Ward 3, we agree that it's desirable for Wesley to be able to monetize part of its property to help it stay in AU Park. The problem has been how to ensure that Wesley/Landmark provides the kind and quantity of affordable housing that this commercial project merits.

Near the end of the Applicant's ill-fated PUD, ANC 3E suggested that Wesley and Landmark fund actual offsite affordable housing instead of its ill-conceived student IZ plan. Wesley/Landmark ultimately came to agree with this suggestion. But then announced they would spend \$8 million dollars, and no more, on procuring offsite IZ.

We believe, with reason, that that number isn't close to enough to create even 8% IZ at 60% AMI, much less the 10% that is now *minimally* required, much less additional IZ consistent with the extraordinary relief the Applicant needs.

I'll return to the money issue, but if I may I'd like to provide some additional historical background.

After it became clear the PUD would fail, we worked with Wesley/Landmark and OP to explore options for producing offsite affordable housing in Ward 3. After talking with a local affordable housing provider and others, we concluded that one option to help produce affordable housing could be the establishment of a revolving loan fund for the Ward.

We spoke to LISC about this and asked them to draft a brief proposal for such a fund, which we shared with Wesley and Landmark.

We also worked with the Wesley/Landmark to explore options for buying down market rate housing units, in either new construction or existing buildings, to IZ. This would certainly be the most straightforward approach for Wesley/Landmark to realize their IZ offsite requirements, at whatever level the ZC ultimately set. It would let the *market* determine the cost of producing comparable offsite IZ.

Unfortunately, Wesley/Landmark didn't take much initiative to explore this option. So far as we know, the few developers of new construction they spoke with were solely those we identified. To our knowledge, at least one of the developers, UIP, was open to trying to do a deal with Wesley/Landmark. Wesley/Landmark abandoned discussions with this developer for reasons that weren't shared with us.

Wesley/Landmark spoke to another developer, Donahoe, about a project at 4201 Garrison Street, NW. They say Donahoe told them that adding IZ units beyond the level already Donahoe intended to provide could harm the viability of a project. In their filings here, Wesley/Landmark generalize from this that developers in general don't want to consider adding additional IZ

The project in question, though, is being done pursuant to DC's High-Area Needs Tax Abatement (HANTA) and includes 33% IZ. Thus, that project stands for the proposition that a developer in Ward 3 can build or market a viable project with *at least one third of the units subject to IZ*.

Now, in addition to the many new units on their way in Ward 3, the Ward is filled with *existing* high-rise apartment buildings. There are scores of potential buildings in which market rate units could be bought down to IZ. To our

knowledge, however, Wesley/Landmark hasn't tried to negotiate rent buy-downs of market rate units to IZ with any owners of existing residential buildings.

Given how few attempts Wesley/Landmark made to try to buy down market rate units to IZ, ANC 3E believes the most reasonable inference is that *\$8 million dollars is just not enough to buy down comparable market rate housing in Ward 3 to IZ levels.*

Note that when Wesley/Landmark sought to make these deals, it intended to use a construction method for the student apartment building that would necessitate at least 8% IZ. It now plans to use a method requiring a minimum of 10% IZ. Yet it continues to offer only the \$8 million that apparently was insufficient to buy down market rate units to 8% IZ.

And as we've argued throughout, because this project requires extraordinary relief, that relief should require IZ well beyond the bare minimum.

The likely source of Wesley/Landmark's \$8 million proffer is worth considering. During and after Wesley/Landmark's PUD, ANC 3E objected to the amount of underground parking they proposed to build. We believed they were

building many more spaces than would be needed just to avoid objections from neighbors. Ultimately, after it was clear the PUD would not be approved, Wesley and Landmark agreed with ANC to eliminate a level of parking, or about 95 spaces.

Soon afterwards, Wesley/Landmark shared their proposal to spend \$8 million for offsite affordable housing. At a public meeting, a participant asked the obvious question – where did the \$8 million come from? Landmark’s counsel replied, without hesitation, that the \$8 million dollars represented the savings from eliminating the level of parking. Landmark’s counsel later tried to walk that back, claiming that number didn’t include offsetting fees for the spaces which would make it a wash, but that doesn’t seem right. The space would be unlikely to have been used, at least without substantial discounts. Indeed, this is evidence by their removal.

ANC 3E has tried for many months to negotiate with Wesley/Landmark an amount of financial support for affordable housing that all parties could agree was reasonable. At least some Zoning Commissioners have encouraged this negotiation. Despite our efforts, Wesley/Landmark has never offered *a penny*

more than the \$8 million dollars that apparently represents the savings from eliminating likely-unneeded underground parking.

Wesley/Landmark now propose to spend their \$8 million on a version of the Ward 3 development bank proposal that ANC 3E originally invited LISC to develop.

We don't object *per se* to this use of the money. It was, after all, the ANC that initially sought a proposal from LISC. And in fact, we believe that something like the LISC proposal could do a lot of good.

A concern, however, is that the LISC proposal would not *create* IZ in a comparable building, as would buying-down market rate units to IZ.

The LISC proposal would instead loan small sums (small relative to the total cost of a project) to projects that are heavily subsidized by taxpayer funds. This is apples to the oranges of IZ, where the cost of the units created is borne wholly by the private sector (and the units are required to be affordable for the life of the project). It would be a fool's errand to try to draw a precise comparison between taxpayer-subsidized units "facilitated" via a LISC loan to private-sector units actually created for the life of a project pursuant to IZ.

Again, that doesn't mean the LISC project couldn't do a lot of good, but now we're back to the task of determining what financial contribution is appropriate instead of letting the market take care of that.

Wesley/Landmark at present contend that the \$8 million they offer would cover the cost of more than 10% IZ, based on a valuation of \$325 per sq. foot. They don't cite the source of this number in their pre-hearing statement, but they explained by e-mail that it represents their anticipated construction costs.

None of us on ANC 3E is a real estate valuation expert. But even we understand that the (asserted) cost of construction on Wesley/Landmark's own building *doesn't* represent the cost to procure *offsite* IZ units. Developers and owners look at the ability of property to generate a return on investment. The cost to buy down a unit from market rate to 60% AMI would be no less than the opportunity cost of foregoing the income lost for the life of the project. That number is almost certainly going to be a lot more than the mere cost of construction.

As we noted during the text amendment case, we have reviewed the analysis of an expert in real estate valuation showing that the value of Wesley/Landmark's original IZ requirement, 8%, was approximately \$16 million.

Even with sensitivity analysis in Wesley/Landmark's favor, the value was approximately \$12 million. Wesley/Landmark's current IZ requirement is 10%, suggesting that the value of that amount of IZ would be more than 20% higher than \$16 million.

That expert didn't want to testify in a ZC hearing concerning valuation. Experts in the development field tend not to want to challenge numbers from a fellow developer in public. To advocate properly for the public interest, ANC 3E will thus likely need to locate, hire, and pay for an expert witness to testify at Further Processing.

If the ZC decides that Wesley/Landmark's offsite IZ obligations should be satisfied through funding a LISC-administered Ward 3 revolving loan fund, there's certainly no reason to limit the funding to the \$8 million that Wesley/Landmark saved by eliminating unneeded parking.

LISC itself at one point sent Wesley/Landmark a proposal for \$12 million. A vast gap exists between the number of affordable units needed and the number that exist, particularly in Ward 3. It's clear that LISC can productively employ as much additional money as can be provided to them.

Again, this project required a change to the Zoning Code just for Wesley/Landmark, a change without precedent in DC. They could not proceed under an ordinary campus plan or even under a full-blown PUD.

This is extraordinary relief by any measure, and it should require provision of extraordinary affordable housing benefits.

Even were the ZC to accept Wesley/Landmark's unfounded claim that its \$8 million proffer covers the value of a 10% IZ requirement, and the ZC should not accept this claim, the ZC should require well beyond the value of 10% IZ. The most recent PUD in our ANC involved almost 16% IZ, including units at 50% and 30% AMI. The minimum IZ required for that project was 8%. It would thus be more than appropriate for the ZC to require Wesley/Landmark similarly to provide payment equivalent to at least 15% IZ.

We respectfully ask the ZC to ensure, that at further processing, the Applicant proffers extraordinary affordable housing benefits in light of the extraordinary relief it has received. Between now and then, If the Zoning Commission still hopes to see ANC 3E and the Applicant reach consensus about what should happen, we respectfully ask you to signal as part of the main Campus

Plan deliberations that you expect to require considerably more than \$8 million dollars for affordable housing.

Finally, we have some minor concerns about the draft conditions that we expect to work out, which are reflected in Exhibit 2 to our resolution, but Commissioner Quinn is here to answer any questions about those you may have.

Thank you again, Mr. Chair and Commissioners, for the opportunity to testify this afternoon. I would be pleased to respond to any questions you may have.

ANC 3E¹

by Jonathan Bender
Chairperson

¹ ANC 3E authorized by resolution the undersigned as well as Commissioners Quinn and Graff to represent it in all proceedings in this matter. ANC 3E approved that resolution at its meeting on May 8, 2025 which was properly noticed and at which a quorum was present. The resolution was approved by a vote of 7-0-0. Commissioners Bender, Cohen, Ali Gianinno, Graff, Hall, Mitchell, and Quinn were present.