

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

November 24, 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, ANC 3E's primary concern with this project has been affordable housing, both the amount of the fee the developer must pay in lieu of providing onsite IZ, and how the fee would be spent.

Today I'm going to briefly review the case background. Then I'll address how much in fairness Landmark should pay as an in-lieu fee and introduce the testimony of our valuation expert, Kris Adhikari. After that I'll discuss an option for where the in-lieu fee should go and introduce the testimony of Patrick McAnaney from Somerset Development, an affordable housing developer who, with the right assistance, has the opportunity to build 75 units of housing at 50% AMI in our neighborhood. Finally, I'll say more about the Somerset project as well as an alternative option.

To review, after it became clear that Landmark's PUD would not succeed along with its novel proposal to provide "Student IZ," we suggested to Landmark that it consider funding offsite IZ.

We worked with Wesley/Landmark and OP to explore options for producing offsite affordable housing in Ward 3. We suggested that one option 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 expressed particular interest in LISC funding the Somerset project as an initial low-interest loan.

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 have been the most straightforward approach for Wesley/Landmark to realize 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 they didn't share.

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. Wesley/Landmark generalize from this that developers in general don't want to consider adding additional IZ

The project in question, though, already includes 33% IZ. So, 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*.

Given how few attempts Wesley/Landmark made to try to buy down market rate units to IZ, one could infer that *\$8 million dollars is just not enough to buy down comparable market rate housing in Ward 3 to IZ levels*.

I'm going to speak more later about OP's 11th hour recommendation to give the in-lieu fee to DHCD, but I need to highlight now a sentence from OP's report about this. The report lists three *different* uses DHCD is considering to create

rental housing at 60% AMI or ownership units at 80% AMI, and with regard to all of them the report states: “DHCD concluded that it will be necessary to blend the funds with additional subsidies in order achieve the required square feet.”

This is proof positive that \$8 million would *never* have been enough to buy down comparable market rate housing in Ward 3 to IZ levels. Whatever other difficulties finding a suitor Landmark might or might not have faced doesn’t matter, because the *insurmountable* difficulty is that they *weren’t offering enough money* to create the *minimum* amount of IZ required.

There is no good reason to indulge their desire to offer this insufficient sum. Landmark is a publicly-traded REIT, and Wesley, though it is a non-profit, is getting a tremendous benefit accorded to no other non-profits in the city, many of whom could argue that they provide a greater service to the public good. The only reason to single out Wesley for this remarkable privilege requiring a literal change to DC law comes down to mere chance – they have some extra land next to another educational institution.

Instead, the ZC should be requiring *more* than the value of the minimum value of IZ, precisely because it is singling out one non-profit from the large universe of non-profits in DC for unique financial benefit.

It's no counterargument that this is just a so-called "dorm," because it's not. Wesley/Landmark's own evidence in the PUD proceeding demonstrated that their proposed Apartment Building, to be built using educational zoning via text amendment, will be without precedent in DC, in its sister jurisdictions Maryland and Virginia, and, in fact in any state near DC. Indeed, out of nearly 6000 post-secondary schools in the United States, Landmark and Wesley in a prior proceeding could apparently locate *only two schools* with dormitories that served students other than their own.¹ The minute number of exceptions proves the general rule that dormitories are buildings operated by or at the behest of an educational institution to serve *its* students *alone*.

Rather than a dorm, this is a commercial residence that serves students. If Wesley owned property across from AU as an investment and sold it Landmark for use as an apartment building primarily serving AU's students, there would be no question that it was an apartment building and not a dorm. There is no metaphysical transformation of the building by moving it across the street to Wesley's campus, only the substitution of permissive institutional zoning for stricter residential zoning.

¹ See "Applicant's Post-Hearing Submission," in ZC #23-08 at Exhibit 6, (submitted as Ex 58).

Note also that, repeatedly, AU has made clear – albeit politely -- that it doesn't want, much less need, such an arrangement. Rather, AU has stated that it already requires its freshmen and sophomores to live on campus and is spending over \$100 million to make living on campus in its housing attractive. Landmark's apartment, then, will *compete with* actual AU student housing.

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 proposed to be built. 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, Landmark shared its 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. Days after the meeting, Landmark's counsel 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 evidenced by their removal.

So, we have an idea how Landmark came up with its \$8 million offer and we know from DHCD's finding that "it will be necessary to blend the funds with additional subsidies in order achieve the required square feet" that \$8 million is less than the bare minimum value. But what *is* the value of IZ at different levels?

To answer that question, ANC 3E had little choice but to engage an expert witness. Our next witness will be that expert, Kris Adhikari.

You have Mr. Adhikari's CV, which shows his extensive experience in conducting valuation assessments for real estate. We'd like respectfully to ask that the ZC treat him as an expert in residential real estate valuation of this sort and listen to his testimony now on valuation here.

[Testimony by Kris Adhikari]

Mr. Adhikari's findings are consistent with DHCD's findings. Eight million dollars is *not* enough. Even the bottom estimate Mr. Adhikari described is almost \$2 million more than what Wesley/Landmark has offered. And that value is for

the *minimum* 10% IZ, without any adjustment for the extraordinary relief Wesley/Landmark would receive.

Having presented expert testimony as to valuation of in-lieu payments, let's turn now to the question of who should get the payments. For more than a year Wesley / Landmark has told you that they and the ANC have been looking into funding either or both of two affordable housing providers. One of these two would be a revolving loan fund for Ward 3 affordable housing administered by LISC. The other would be an all-affordable building right in our ANC to be built by Somerset Development across from a Metro station. This would be the first all affordable building in our ANC available to non-seniors. Funding for this project would likely have come through LISC, and been paid back over time to allow LISC to revolve the funds to other projects.

The point person for this project at Somerset, Patrick McAnaney, has kept in touch with us and Landmark for a long time about this project. The project has faced a variety of difficulties, but Mr. McAnaney tells us now that his modeling shows that Somerset, if it receives certain funds from DHCD, could complete the full project with an additional payment of about \$10 million. Mr. McAnaney is here today and will now testify about the project.

[Testimony by Patrick McAnaney]

ANC 3E and the community it serves strongly want to see the Somerset project happen. It could provide about 75 desperately-needed units at 50% AMI on our ANC's main street. The affordable units, diagonally across from a Metro station and on a major bus route, would be as transit oriented as one could imagine. And the project would drive economic development in Friendship Heights, an area hurt badly by the pandemic and just now starting to recover.

Moreover, the Zoning Regulations require that offsite IZ be built close to the project responsible for the offsite IZ. Although the text amendment waived that requirement to allow flexibility, the policy intention of the regulation remains. For this reason, among others, the ZC should prioritize actual construction of affordable housing *inside* the boundaries of ANC 3E – and we know of no other candidate right now besides the Somerset project.

The \$10 million it would take to make the Somerset project happen is at the very low end of the estimates our expert provided. It would involve no actual premium for the extraordinary relief the ZC has bestowed on Wesley / Landmark. But we believe that *if* we can make this project happen in relatively short order, it is a reasonable compromise.

We raised this proposal with Wesley and Landmark last week. They said they'd give the proposal serious consideration and wanted to talk to Mr. McAnaney. Subsequently, Mr. McAnaney told me he had an encouraging conversation with Wesley and Landmark.

I followed up with Wesley / Landmark. Landmark's counsel responded that they had subsequently spoken to OP and DHCD who saw not reason to "complicate the situation" by tying money to the Somerset project and that Somerset was free to apply for DHCD assistance in January. Landmark's counsel then made clear that they would not offer more than \$8 million.

The combined stance of OP, DHCD, and Landmark greatly reduces the possibility that the Somerset project will happen. Two of the three options DHCD is considering – including their preferred one -- wouldn't involve supporting new development at all. Even under the other option, DHCD might decide another project or projects elsewhere in the Ward should receive the money.

And that's the thing. DHCD's sudden decision to substitute itself for LISC and not to consider an option in which the Somerset project would take priority disregards and disrespect the ANC and community in which the Wesley/Landmark project will be located. The Wesley / Landmark project was originally styled as a

PUD. The ANC and the community it represents typically get the opportunity in PUD negotiations to work out amenities and mitigation with the applicant if possible. Amenities are supposed to be located in the relevant ANC's boundaries as is affordable housing.

The text amendment in this case occurred only because a PUD alone was not enough for the Wesley/Landmark project to go forward. If anything, the emphasis on community decision making should be stronger now.

But that's not how things played out. The first we heard about DHCD's desire to direct the in-lieu payment to itself was on November 9, two weeks before this hearing. All DHCD communicated about its intention was a couple of vague paragraphs sent to Landmark's counsel who forwarded them to us.

Then on November 14, one week before the hearing in this matter, OP filed its report. There, *OP recommended* that Landmark's in-lieu payment go to DHCD.

Ironically, OP prefaces this recommendation by stating:

The implementation of providing the off-site units from the donation has gone through several reiterations and there have been many discussions between Wesley, ANC-3E, ANC-3D and community organizations as well as between Wesley, OP and the Department of Housing and Community Development (DHCD) regarding how to structure and administer the donation.

Yes, that's true – until now. OP had absolutely *no* discussions with ANC 3E about the money going to DHCD before formally recommending that the money in fact does so. DHCD held no discussions with us either.

DHCD has come in at the very last moment and, with OP's blessing, seeks to decide by itself how this money will be allocated despite what the community wants and what more than a year of work and negotiation has promised.

We respectfully urge you, Mr. Chair and fellow Zoning Commissioners, to listen to the *community* and its representatives and ensure that one of the following two options is adopted.

The first option is the one we just discussed involving Somerset. Under this option, 1) Wesley/Landmark would make a \$10 million contribution through DHCD that would be earmarked for Somerset's project, through DHCD, 2) with the understanding that it would be paid back to DHCD under negotiated terms that allow Somerset's project to pencil, and that DHCD would in turn use the repaid money solely for one or more of the purposes outlined in the recent OP report, and (3) that Somerset's project would also receive sufficient other funding from DHCD to make the project pencil.

We've already discussed the great and concrete benefits completion of the Somerset project would confer on our community and people who earn less than 50% AMI who want to join our community, as well as how reasonable an in-lieu fee of \$10 million would be to Landmark.

On the other hand, as you have seen in submitted testimony and as you will likely hear more during citizen group testimony, several of our citizen groups are deeply skeptical of DHCD and urge that it have no part in administering these funds.

Press reports suggest that DHCD recently may have forfeited tens of millions of federal housing funds for no good reason. The HPAP program has come in for particular criticism. DC's Council Chair has stated "DHCD is a mess."

We believe that *if*, and only if, we can as a community see the Somerset project go forward in the relatively near term, that it's reasonable for the funds to be administered by DHCD. Among other things, Somerset's project cannot go forward without DHCD funding beyond Landmark's in-lieu contributions.

We share the community's general concerns about DHCD's recent missteps, but we believe that the benefit the Somerset project would confer would outstrip the risks involved in the money being paid back to DHCD. Based on conversations

we have had with representatives of citizen groups, we believe that most or all will ultimately support this option, again, *if* and only if it leads to Somerset project to go forward soon.

If this first option can't go forward, then we join these community groups in urging that the money go to LISC. Furthermore, we ask that you direct Landmark to an in-lieu fee at or close to the value of 15% IZ, a figure that is frequently seen in PUDs.

It's clear that the parties will need time to finalize whatever option is selected. In the meantime, this Commission has to weigh in clearly on where the money should go and how much should be spent. Otherwise, momentum will probably ensure that \$8 million, a sum insufficient to provide even the minimum IZ, will go to DHCD, whose priorities for the funds will likely take little or no account of this community's priorities. That would be a bad outcome. Please don't let it happen.

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 3E²

Digitally signed by
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by Jonathan Bender
Chairperson

² 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 public meeting on November 13, 2025 which was properly noticed and at which a quorum was present. The resolution was approved by a vote of 5-0-0. Commissioners Bender, Graff, Hall, Mitchell, and Quinn were present.