

NEIGHBORS FOR A LIVABLE COMMUNITY

Washington, D.C.

SPRING VALLEY – WESLEY HEIGHTS CITIZENS ASSOCIATION WASHINGTON, D.C.

JOINT STATEMENT BY NEIGHBORS FOR A LIVABLE COMMUNITY (NLC) AND THE SPRING VALLEY-WESLEY HEIGHTS CITIZENS ASSOCIATION (SVWHCA)

**Zoning Commission Case No. 24-09:
Wesley Theological Seminary Text Amendments
November 11, 2024**

INTRODUCTION AND SUMMARY

Neighbors for a Livable Community (NLC) and the Spring Valley-Wesley Heights Citizens Association (SVWHCA) jointly submit this testimony in the above-referenced case. Wesley Theological Seminary (Wesley) proposes two text amendments, so Landmark Properties, a commercial developer, can build and operate a 659-bed student apartment building on the Wesley Campus primarily for American University (AU) students. As the Office of Planning (OP) states in this case (*Exhibit 10*), Wesley's application acknowledges that the Landmark project is a commercial activity not permitted under the Campus Plan regulations.

The proposed text amendments are intended to establish a **carve-out** for Landmark that circumvents multiple generally applicable Zoning Regulations. This **spot zoning** would give unprecedented special access to Landmark for the developer's commercial use of Wesley's land that is not permitted under the Campus Plan (*Subtitle X, Chapter 1*) and Inclusionary Zoning (IZ) (*Subtitle C, Chapter 10*) rules and is inconsistent with the property's underlying RA-1 zoning.

NLC and SVWHCA oppose both text amendments for the following reasons:

1. The text amendment process is not an appropriate mechanism to provide the regulatory relief required for approval of Landmark's commercial use of Wesley's campus and on property with an underlying RA-1 zone designation (*Page 5*);
2. The proposed Campus Plan text amendment to *Subtitle X, Section 101* still does not permit Commission approval of Landmark's commercial use of Wesley's campus (*Page 6*);
3. The proposed Inclusionary Zoning text amendment to *Subtitle C, Chapter 10* – and the last-minute alternative IZ text amendment proposed by Wesley – are not necessary as Landmark reports that the developer may attempt to meet its IZ requirement off-site – although IZ would not be required at all if the proposed text amendment is approved (*Page 8*);

4. The Future Land Use Map (FLUM) and the Generalized Policy Map do not support Landmark's proposed commercial use of Wesley's Campus (*Page 9*);
5. Based on OP's set down report in this case (*Exhibit 10*), an analysis of the Landmark proposal through a racial equity lens demonstrates the project will not promote the District's racial equity objectives (*Page 10*);
6. The proposed text amendments are inconsistent with the Land Use and Educational Facilities Elements of the Comprehensive Plan (*Page 12*);
7. The proposed text amendments are inconsistent with other adopted public policies and related programs, including the District's affordable housing policy (*Page 14*);
8. The Commission's approval of the text amendments would adversely impact public confidence in the integrity of the zoning process (*Page 14*); and
9. The petition filed by Wesley on behalf of the Landmark commercial project is legally insufficient (*Page 15*).

This is the third case and application submitted by Wesley Theological Seminary for Landmark Properties to build, own, and operate the proposed luxury student apartment building. This case must be viewed within the context of Wesley's proposed 2023-2033 Campus Plan mandated by the D.C. Zoning Regulations (*Subtitle X, Chapter 1*).

History shows that NLC and SVWHCA have been strong advocates for Wesley. Landmark's proposed commercial use of Wesley's land, which exceeds the commercial limits permitted under the zoning rules, is so egregious that NLC and SVWHCA have opposed the Landmark plan in the two previous related cases heard by the Commission. The Landmark commercial project also is "objectionable to neighboring property" (*Subtitle X, Section 101.2*). Although Landmark is now trying another alternative zoning process in this case, the commercial project being proposed is unchanged.

With \$10 billion in assets, Landmark owns and operates approximately 100 off-campus student housing properties in 28 states. What makes this project unique for Landmark is that the developer proposes to use the property of one educational institution to target the student housing market of a different educational institution. The proposed new AU housing on Wesley's campus will constitute 72 percent of the Wesley campus build-out. **Landmark's commercial use will be the dominant use of Wesley's land.** The Campus Plan rules were written specifically to prevent this scope of commercial use on campus property.

Landmark's commercial building also would not be permitted in an RA-1 zone, which is the underlying zoning for the property. The commercial building also exceeds the development standards for an RA-1 zone (*Subtitle F, Chapter 2*) making it objectionable to neighboring property. Commission approval of this customized change in the 2016 Zoning Regulations for Landmark's commercial gain would be nothing short of a corporate give away.

Wesley's current Campus Plan was originally set to expire in December 2019. Neighbors first learned from Wesley about its proposal to commercialize the use of its campus in 2017 – five years

before Wesley's 2023-2033 Campus Plan application was submitted to the Zoning Commission. Neighbors expressed concern then about the proposal. Because Wesley's first commercial partner withdrew, NLC and SVWHCA supported a request by Wesley to the Commission for a one-year extension of its Campus Plan through December 2020. Subsequently, Landmark was recruited by Wesley as its commercial partner. Wesley's new Campus Plan application was delayed again due to the onset of COVID-19. Wesley sought and received four 6-month extensions of its Campus Plan through June 2022.

Wesley submitted an application for its 2023-2033 Campus Plan on March 17, 2022 (*Z.C. Case No. 22-13*). The Commission avoided taking action in the case. Commissioners expressed concern that the commercial uses proposed in the Campus Plan were not permitted under *Subtitle X, Sections 101.3 and 101.4*. Commissioners noted that a Planned Unit Development (PUD) might be feasible. Wesley then submitted a PUD application on March 31, 2023 (*Z.C. Case No. 23-08*). As part of setting down that case, the Commission directed Wesley to withdraw its application in *Z.C. Case No. 22-13* and file a new campus plan application. Wesley filed its new Campus Plan application which included the PUD on June 14, 2023 (*Z.C. Case No. 23-08(1)*).

Again, the Commission avoided taking action in the Campus Plan-PUD case because Landmark's proposed commercial use did not meet the zoning standards for a PUD. Although the PUD process allows certain flexibility, it does not permit flexibility on uses (*Subtitle X, Section 303.1*) and cannot be used to circumvent the Campus Plan rules (*Subtitle X, 300.2*). Wesley has now submitted an application for two text amendments (and a last-minute alternative) to exempt Landmark from the zoning rules that limit the commercial use of Wesley's property, including the Commission's IZ rules.

Throughout this lengthy 3-year process, Wesley has sought numerous extensions and continuances that have delayed resolution of this case. **Rather than making substantive changes to its proposal so the Campus Plan case can be resolved and closed, Landmark and Wesley, as the formal applicant, continue to cherry-pick the rules for a zoning process they hope will lead to the commercial project's approval.**

The solution they now propose is a flagrantly inappropriate exemption from the rules that apply to every other college and university in the District of Columbia. These rules were carefully and deliberately crafted by the Commission with extensive public input to protect residential neighborhoods from the misuse of residentially-zoned land that can also be used by colleges and universities. The commercial limits in the rules prevent colleges and universities from using the "education use" designation (*Subtitle B, Chapter 2*) for commercial activities that encroach on the residential character of the neighborhood.

This case proposes a text amendment to *Subtitle X, Chapter 1* that exempts Wesley/Landmark from the commercial use limits in the Campus Plan rules and a second text amendment to *Subtitle C, Chapter 10* that exempts Wesley/Landmark from the Inclusionary Zoning requirements that apply to the proposed apartment building. (Wesley proposed a last minute alternative IZ text amendment in a November 4 pre-hearing statement that would exempt Wesley/Landmark from some of the off-site IZ rules.) The text amendments are being proposed only because the proposed Landmark building cannot meet the standards in the 2016 Zoning Regulations for Campus Plans (*Subtitle X, Chapter 1*), Inclusionary Zoning (*Subtitle C, Chapter 10*), and Planned Unit Developments (*Subtitle X, Chapter 3*).

Wesley and Landmark do not cite any city-wide problem that would justify the proposed rules change. Wesley's only rationale for the text amendments is that it wants to "thrive" without defining or demonstrating – through evidence – what that means other than to threaten relocating if Landmark is unable to commercialize the use of Wesley's campus.

In effect, the Commission is now being asked to change the zoning rules so Landmark can use university land for the developer's commercial speculation. No evidence has been presented by Wesley or Landmark that there is a demand among AU students for the Landmark building. Landmark, a private developer, is seeking to use the Campus Plan process to compete directly with AU's student housing program.

The Landmark project would have an adverse financial impact on AU, which has reported serious financial issues in recent years, by taking potential housing revenue for AU and diverting it to Landmark Properties. In fact, Landmark's use of Wesley's property to house AU students potentially could open the door to *tortious interference* litigation.

In a conversation about the Landmark proposal, Matthew Bennett, AU's Vice President and Chief Communications Officer, advised NLC on November 4, 2024 that AU was focused on housing its students on its campus consistent with AU's 2021-2031 Campus Plan previously approved by the Commission. AU's Campus Plan includes construction of new dormitories to house 500 additional undergraduate students at the western edge of the AU Campus along University Avenue. With Commission approval of the Landmark building, an additional 1,000 AU undergraduate students would be housed next to single family homes on University Avenue. Concentrating so much student housing at this location would be objectionable to neighboring property under the Campus Plan rules (*Subtitle X, Section 101.2*).

Based on the evidence in Wesley's related Campus Plan and PUD cases, Wesley has no need for additional student housing. Wesley's on-campus student population has declined steadily over the last 19 years as has the demand for on-campus housing by its students. Consequently, Wesley has closed some of its dorm space and deferred maintenance of the property. Wesley has been unable even to fill the beds in its New Residence Hall opened in 2014. In 2014, Wesley told the Commission its New Residence Hall would enable it to "thrive." Landmark's commercial use proposal is an acknowledgement that Wesley was wrong in 2014.

Without a sufficient number of its own students, Wesley would exist primarily to ensure Landmark benefits from the financial windfall of ongoing commercial access to Wesley's land. No evidence has been presented to the Commission that Landmark's commercial building will enable Wesley to thrive or that Wesley has explored any alternatives to Landmark's proposed commercial use of the land as a means to "thrive."

Wesley has submitted no evidence in any of the three cases that would justify the text amendments, which makes Wesley's application in this case legally insufficient under the Commission's rules (*Subtitle Z, Chapter 3*). Given that amending the zoning regulations is such an extraordinary step, the Commission should expect – if not demand – such evidence be presented and subjected to a thorough assessment and analysis. Wesley's threat to relocate, however, also fosters a discussion about

other potential uses for Wesley's campus, including housing that is consistent with the property's RA-1 zoning designation and whether such use of the property may offer greater benefits to the city.

Like its Campus Plan and PUD applications, Wesley's text amendment application is defective. In this case, Landmark, through Wesley, proposes to use the text amendment process to paper over a substantive deviation from the rules to achieve the regulatory relief it unsuccessfully sought in *Z.C. Case Nos. 22-13 and 23-08/23-08(1)*. As drafted, the proposed text amendments are seriously flawed, as outlined in this testimony, and even conflict with other zoning rules. As this testimony indicates, the proposed text amendments also are inconsistent with the Comprehensive Plan and District policy.

Wesley's proposed text amendments do not provide a path forward for approval of the Landmark project. No matter what end-runs Wesley and Landmark attempt around the 2016 Zoning Regulations, the only way the Commission can approve the Wesley-Landmark project is to engage in a city-wide process to rewrite the Campus Plan rules (*Subtitle X, Chapter 1*) and other related regulations, including the IZ rules (*Subtitle C, Chapter 10*) and the use definitions (*Subtitle B, Chapter 2*).

If the Commission wants to review regulations pertinent to the commercialization of university-owned land, it should do so in a comprehensive and deliberative way. The Commission should be expected to assess whether **all** colleges and universities in the District of Columbia need more flexible use of their land to allow commercial uses not permitted in the 2016 Zoning Regulations, not just consider text amendments applicable to one school that has yet to demonstrate its request is justified.

The Commission should reject the two text amendments that are the subject of this case. In this case, a commercial developer is seeking to exploit the zoning process to operate a profit-making business on a college campus. That makes this case precedent-setting. **After this three-year circuitous route of review, debate, and deliberation on the Landmark project, a decision by the Commission to approve such flawed and deficient text amendments as a means of providing regulatory relief for Wesley/Landmark will shake public confidence in the integrity of the District's zoning process.**

1. The text amendment process is not an appropriate zoning mechanism to provide the regulatory relief required for approval of Landmark's commercial use of Wesley's campus and on property with an underlying RA-1 zone designation.

The text amendment process is not an appropriate mechanism for approval of the Landmark project. NLC and SVWHCA believe text amendments should seek to change zoning language that is applicable to all properties with similar uses – in this case, all colleges and universities in the District of Columbia. This is not what Wesley is proposing in its text amendment application.

In this case, Wesley is seeking an entitlement that conflicts with the clear language of the zoning regulations. The proposed text amendments – and the special customized regulatory relief Wesley seeks – demonstrate yet again that the Landmark project is an anomaly that is stunning in its deviation from the approved uses on a college or university campus in the District of Columbia. The Landmark project is not consistent or in harmony with the 2016 Zoning Regulations. The public has a right to expect that Wesley's proposed 2023-2033 Campus Plan application (*Z.C. Case No. 23-08(1)*) is reviewed, evaluated, and adjudicated by the Commission on the basis of the rules in effect when the application was filed and public hearings were held.

The Zoning Regulations already include mechanisms that provide opportunities for regulatory relief if certain standards can be achieved. So far, Wesley has offered no evidence that the regulatory relief it seeks is justified. Instead, Wesley has offered conflicting messages that its future is secure, but that it needs to commercialize the use of its land or relocate. Wesley's land is located in a residential neighborhood on property that is zoned RA-1. According to the Zoning Regulations, RA-1 zoning "provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments." (*Subtitle F, Chapter 1, Section 101.4*) Landmark's commercial use of the property is "not compatible with adjoining residential uses" as required in *Subtitle F, Section 101.3(b)* or the institutional uses permitted in the RA-1 zone.

Many colleges and universities across the country, including religious affiliated schools like Wesley, are facing financial challenges that are requiring them to reassess their overall operations. If there are issues in higher education that necessitate a land use rules change within the District of Columbia, the Commission should open a proceeding to explore what zoning changes may be needed. The approach sought by Wesley opens the door to spot zoning and a patchwork of self-serving regulatory relief in the form of customized text amendments that make the Campus Plan rules in *Subtitle X, Chapter 1* meaningless.

2. The proposed Campus Plan text amendment to Subtitle X, Section 101 still does not permit Commission approval of Landmark's commercial use of Wesley's campus.

Wesley proposes the following text amendment to *Subtitle X, Section 101* adding a new *Section 101.5*:

"A dormitory providing housing exclusively for Wesley Theological Seminary and American University students, faculty, and staff on Square 1600, Lot 819 shall not be subject to the commercial activity restrictions in this Section if approved by the Zoning Commission as part of a campus plan."

Wesley recently submitted a supplemental pre-hearing filing changing the word "*dormitory*" to "*purpose built student housing building*."

As drafted, the text amendment is seriously flawed and demonstrates the inherent problems in using the text amendment process to achieve the regulatory relief the Landmark project requires. Following are three real case scenarios that highlight the inherent flaws in Landmark's text amendments.

a. Wesley's Proposed Text Amendment Is A Classic Catch-22

The proposed text amendment to *Subtitle X, Section 101* states that the Landmark project "shall not be subject to the commercial activity restrictions in this Section **IF** approved by the Commission as part of a campus plan." Without Campus Plan approval, the commercial exemption for Landmark, as proposed in the text amendment, cannot be approved by the Commission.

Wesley acknowledges in its November 4, 2024 pre-hearing statement (*Exhibit 21*) that the language, as drafted, establishes a two-step procedure for consideration of the Landmark project within the Campus Plan process. First step: the project must be approved as part of a Campus Plan based on the standards for Campus Plan approval, including the commercial limits in *Subtitle X, Sections 101.3 and 101.4*. Second step: the Landmark project's exemption from the commercial limits in *Subtitle X, Section 101* would be triggered only after the Commission approves the Campus Plan.

As we know from the records in *Z.C. Case Nos. 22-13 and 23-08/23-08(1)*, the Commission does not have the authority to approve the Landmark project as part of a Campus Plan because it conflicts with the commercial limits in *Subtitle X, Section 101*. Campus Plan approval is required by the text amendment before the commercial relief can be granted.

Like the classic definition of a Catch-22, the text amendment creates a problematic situation in which the Commission is prevented from doing what Wesley and Landmark want the Commission to do until the Commission has taken other action; the Commission cannot take that other action because the Landmark project is not permitted under the Campus Plan rules. Wesley spins this fact by stating that the text amendments are not "self-executing" (*Exhibit 21*). This Catch-22 is not just the product of bad writing; it is a reflection of the extraordinarily awkward deviation from the rules that Wesley and Landmark are seeking in this case.

b. Subtitle X, Section 101.4 Would Still Not Permit Landmark Building Approval

Subtitle X, Section 101.4 unambiguously (1) limits commercial uses on a college campus; and (2) constrains developments "unrelated to the educational mission of the applicant." Landmark's building still would not be permitted under *Subtitle X, Section 101.4* because the development on Wesley's property is intended primarily for AU students.

Wesley states its mission is "to equip persons for Christian ministry and leadership in the church and the world, to advance theological scholarship, and to model a prophetic voice in the public square." It is not part of Wesley's mission to meet the housing needs of AU students. It is also not part of Wesley's mission to (a) provide housing for non-Wesley students or (b) position a private developer to compete in the student housing marketplace on its behalf.

As the records in *Z.C. Case Nos. 22-13 and 23-08/23-08(1)* demonstrate, Wesley's students play a *de minimis* role in the Landmark building.

c. Proposed Text Amendment Conflicts With Use Definitions In Subtitle B

Wesley's use of its property is only permitted for its educational uses as defined in *Subtitle B, Chapter 2*. Landmark's commercial project will comprise 72 percent of the build-out on Wesley's land. Landmark is proposing to redefine the primary use of the land which is zoned either for residential use (consistent with an RA-1 zone) or for a college or university's own use. *Subtitle B, Chapter 2, Section 200(j)* defines education use by a college/university as "an institution of higher educational or academic learning providing facilities for teaching and research, offering courses of general or specialized study leading to a degree, and authorized to grant academic degrees."

Landmark's commercial use of **72 percent** of the built-out facilities to house non-Wesley students on the Wesley Campus would not qualify as an educational use under **Subtitle B, Chapter 2**. The proposed text amendment, therefore, is not in harmony with **Subtitle B, Chapter 2**. The Landmark building would still need to meet the standards of an educational use as defined in the Zoning Regulations for the Commission to approve the Landmark project.

3. The proposed Inclusionary Zoning text amendment to Subtitle C, Chapter 10 – and the last-minute alternative IZ text amendment proposed by Wesley – are not necessary as Landmark reports that the developer may attempt to meet its IZ requirement off-site – although that would not be required at all if the proposed text amendment is approved.

Wesley proposes the following text amendment to *Subtitle C, Chapter 10, Section 1001.6* by adding the words in bold italics to the existing rule:

*“The requirements of this chapter shall not apply to: (c) Housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff, **or housing developed on Square 1600, Lot 819 exclusively for Wesley Theological Seminary and American University students, faculty, or staff if approved by the Zoning Commission as part of a Campus Plan.**”*

First, the IZ text amendment is subject to the same Catch-22 that plagues the Campus Plan text amendment. The language proposed would exempt Landmark from the IZ requirements once the Campus Plan is approved. But, the Campus Plan cannot be approved because it is inconsistent with the commercial limits in *Subtitle X, Section 101.3 and 101.4*. The Commission also may not have the authority under the Campus Plan rules to require IZ as a condition of Campus Plan approval.

Second, Wesley proposes a text amendment that will exempt Landmark's housing from the Inclusionary Zoning mandates outlined in *Subtitle C, Chapter 10* of the Zoning Regulations. The text amendment includes no language committing Landmark to provide IZ off site. Wesley's petition does not include a specific plan for Landmark to provide IZ off site or offer any information to indicate it has engaged with the District Department of Housing and Community Development (DHCD) on an off-site IZ proposal.

If the text amendment is approved, the Landmark project could go forward without any commitment by Landmark or Wesley to provide IZ.

Wesley's application offers a vague suggestion that Landmark may contribute \$8 million for off-site IZ. Wesley's November 4 pre-hearing statement acknowledges that it is still working after all these months “to formulate a plan.” Wesley spins the \$8 million figure vaguely as the “cost of compliance.” **(Exhibit 21) Landmark has advised that the \$8 million represents savings it will incur from reducing the parking within the building; the \$8 million amount has no correlation with the value of the IZ that Landmark otherwise would be required to provide.**

Third, if Landmark seeks to meet its IZ obligations off-site, as Wesley's application implies, the text amendment to *Subtitle C, Chapter 10* is not necessary. *Subtitle C, Chapter 10, Section 1006*

already provides a mechanism for Wesley to meet its IZ requirement off-site and provides flexibility for applicants who may be unable to comply with the existing rules.

Wesley's November 4, 2024 pre-hearing filing proposed a last-minute alternative, which acknowledges that its amendment to ***Subtitle C, Chapter 10, Section 1001.6*** would not be necessary if Landmark seeks to meet its IZ obligations off-site. The alternative amendment is as follows:

"The requirements of Subtitle C, Sections 1006.1 – 1006.3(a), may be waived for off-site inclusionary units located in Ward 3 or financial subsidies therefor that are substantially equivalent, but not less than Subtitle C, Section 1003.2 requirements for housing developed on Square 1600, Lot 819 exclusively for Wesley Theological Seminary and American University students, faculty, and/or staff as a condition to a campus Plan and subject to the requirements of Subtitle C, Sections 1006.5 – 1006.9."

This last-minute alternative was not shared publicly prior to Wesley's November 4 filing (***Exhibit 21***) and has not been subject to rigorous public review. Based on our review and analysis, this text amendment also would not be necessary. Wesley proposes to exempt the Landmark building from some of the standards that permit off-site IZ, specifically those that require a showing of "economic hardship." ***Subtitle C, Chapter 10, 1007*** already provides a mechanism for relief from these standards rendering the text amendment unnecessary. ***Subtitle C, Chapter 10, 1007*** gives broad authority to grant partial or complete relief from the IZ requirements.

The proposed alternative is indicative of the special treatment that Wesley is seeking for its commercial partner to circumvent existing processes to secure the full scope of regulatory relief needed for approval of the Landmark project. Wesley's proposal continues to change at this late date in order to address problems that continuously arise with its text amendment approach and language.

Fourth, Wesley testified in ***Z.C. Case No. 22-13 and 23-08/23-08(1)*** that its students would benefit from the affordable housing units in the Landmark building mandated through the IZ rules. That was one of Wesley's major selling points for this project. Under the new off-site plan intimated by Landmark, neither Wesley students nor AU students will benefit from the otherwise applicable affordable housing requirements.

4. The Future Land Use Map (FLUM) and the Generalized Policy Map do not support Landmark's proposed commercial use of Wesley's campus.

Landmark's commercial use of Wesley's property to house AU students is inconsistent with the Future Land Use Map (FLUM) and the Generalized Policy Map. Currently, the FLUM designates Wesley's property as institutional. **Landmark's commercial use of the land will constitute 72 percent of the developed property on the Campus making it the dominant use of Wesley's land.**

This commercial use is not consistent with the institutional designation for the site and, in effect, remaps Wesley's land use from institutional to commercial.

The Landmark housing proposed for the site is also not consistent with the underlying RA-1 zone designation for the property. Landmark will own the building; manage the commercial uses of the

building; and derive commercial profits from the building. According to *Subtitle B, Chapter 2* of the zoning regulations, college and university use of land in the RA-1 zone is permitted solely for “teaching and research, offering courses of general or specialized study leading to a degree, and authorized to grant academic degrees” for the students enrolled at the college or university. (*Subtitle B, Chapter 2, Section 200.2 (j)*)

Landmark’s proposed building would not comply with the height limits for the RA-1 zone if Landmark was not being given the unusual opportunity to use the Campus Plan rules as a subterfuge for the commercialization of Wesley’s campus to target the AU student housing market. No commercial OR residential development of the size proposed by Landmark would be consistent with the RA-1 development standards for this property or the educational uses outlined in *Subtitle B, Chapter 2*.

5. Based on OP’s Set Down Report in this case (Exhibit 10), an analysis of the Landmark proposal through a racial equity lens demonstrates the commercial project will not promote the District’s racial equity objectives.

The Comprehensive Plan requires the Commission to analyze Wesley’s text amendment application through a racial equity lens. As the Office of Planning (OP) stated in its set-down report, the racial equity analysis is a “tool for identifying and addressing structural inequalities and ensuring that all members of the community, regardless of race or ethnicity, can benefit” (*Exhibit 10*).

OP’s thorough and detailed racial equity analysis in this case concluded that the text amendments:

- Would have **no impact** on the goal of promoting racial equity (*Exhibit 10, Page 12*); and
- Would do nothing to promote increased long term home ownership in the Rock Creek West (RCW) Planning Area for non-white households (*Exhibit 10, Page 14*).

OP noted the major benefit of the text amendments may be limited to preserving Wesley as a “viable institution,” although Wesley testified in *Z.C. Case Nos. 22-13 and 23-08/23-08(1)* that its institutional viability is not at risk.

a. Text Amendments Would Lead To Changes In The Physical Environment By Diluting Racial Diversity On Wesley’s Campus

Wesley reports that its student body enrollment is 41 percent white; 34 percent African-American; 9 percent Asian; and 5 percent International students. The addition of 550 **or more** AU students on the Wesley Campus would make Wesley look more like AU. The overall AU student body demographic is 56 percent white, 12 percent Hispanic, and 8 percent African American.

U.S. News and World Report, which ranks U.S. colleges and universities, reported recently that AU’s diversity ranking has declined significantly over the last year.

Approval of Wesley’s proposed text amendments is unlikely to alter the racial make-up of Wesley’s enrollment; but it would significantly dilute the racial diversity that now characterizes the

student population on the Wesley campus. At the same time, the text amendments would grant Landmark unprecedented access to Wesley's land to build housing for AU undergraduates, who are less racially diverse than the Wesley graduate-level student body.

b. Text Amendments Will Not Impact The Availability Of Affordable Housing In The Surrounding Neighborhoods

Wesley states in its application that the text amendments should be approved because the Landmark project will free up affordable housing in the neighborhood now used by students. Contrary to Wesley's assertions, the proposed Landmark building will not (a) address on-campus housing demand; (b) free up off campus rental housing now being used by AU students; or (c) create more affordable housing. Wesley's claims are speculative rhetoric at best.

Addressing On-Campus Housing Demand

- The demand by Wesley students for on-campus housing has declined continuously since 2006. Wesley has testified its on-campus housing has been woefully undersubscribed from the 220 beds approved in Wesley's 2006 Campus Plan (*Z.C. Case Nos. 05-40, 05-40B*).
- The Commission-approved 2021 AU Campus Plan (*Z.C. Case No. 20-31*) adds 500 new student beds on AU's Campus to meet AU's on-campus housing needs over the next ten years.
- Landmark's luxury commercial student housing will compete with AU's on-campus housing and other off-campus commercial operators of neighborhood rental housing.

Freeing Up Off Campus Rental Housing

- Wesley and Landmark have not provided any information in the record identifying the number or location of AU students that now live off-campus.
- AU does not require any of its students to live on-campus. Students have been a part of the neighborhood rental housing market for decades.
- Students live off-campus for many reasons, including wanting more independence, more control over their surroundings, and to escape on-campus institutional housing. Students also choose to live off-campus for financial reasons: it can be less expensive to live off-campus with a group of friends than live in a dorm on campus.

Creating More Affordable Housing

- Landmark has abandoned any commitment to provide affordable housing units in its new apartment building on the Wesley Campus.
- OP concluded in its set-down report that the proposed text amendments will not lead to more affordable housing to benefit one racial or ethnic group more than another. OP also concluded that the Landmark project will do nothing to promote increased long term home ownership in the RCW Planning Area for non-white households. (*Exhibit 10, Page 1*)
- Based on testimony from Landmark in *Z.C. 22-13 and 23-08/23-08(1)*, the cost of housing at Landmark's proposed building will be as high as the existing commercial residential market and at the high end of on-campus housing now available at AU.

- Comparable rental housing in the neighborhood ranges from \$1,800/month for a studio apartment to \$2,400/month for a 1-bedroom, and \$4,200/month for a 2-bedroom. Landmark would require a 12-month lease for students attending class for 8-9 months of the year. By comparison, AU offers housing on campus for its students ranging from \$4,000 - \$7,000 per semester. Wesley's current housing rates are approximately \$4,300 - \$4,600/semester.

c. Will The Text Amendments Ensure Wesley's Viability?

OP concluded the text amendments may preserve Wesley's institutional viability. **Wesley has testified in the Campus Plan and PUD related cases that its viability as an institution is not at risk.** The references in the case record to Wesley's annual budget increases, grants, and donations reinforce Wesley's testimony that its viability is not dependent on the Landmark building. As part of its application in this case – and as part of the record in the two related zoning cases – Wesley has provided **NO** information to demonstrate that the Landmark commercial venture will secure Wesley's viability.

6. The proposed text amendments are inconsistent with the Land Use and Educational Facilities Elements of the Comprehensive Plan.

Landmark's commercial use of the Wesley campus cannot be viewed in isolation. Landmark's plan to house more than 550 AU students on Wesley's campus adjacent to University Avenue neighbors is in addition to the 500 new student beds already approved by the Commission as part of the 2021 AU Campus Plan (***Z.C. Case No. 20-31***) to be located adjacent to University Avenue low density residential property. Locating housing for more than 1,000 students immediately adjacent to the low density University Avenue residential neighborhood will "become objectionable to neighboring property." This is not permitted under ***Subtitle X, Section 101.2*** of the Zoning Regulations and is also inconsistent with both the Land Use and Educational Facilities Elements of the Comprehensive Plan.

a. Land Use Element of the Comprehensive Plan

The **Land Use Element** emphasizes the importance of providing new housing opportunities; ensuring housing affordability; and promoting racial equity.

- Wesley's text amendments do not expand housing in the District that would be available to all District residents.
- Landmark has testified that the rents for its new units on the Wesley Campus will be no more affordable than existing market rates.
- The project will not address racial equity issues in the neighborhood.
- The amendment to ***Subtitle C, Chapter 10*** will exempt Landmark from the Inclusionary Zoning mandates for the life of this or any other housing project on Square 1600, Lot 819.

The **Land Use Element** emphasizes the importance of retaining neighborhood character.

- The Wesley-Landmark commercial luxury student housing will increase the intensity of use by housing nearly 5 times as many AU undergraduates as Wesley graduate-level seminary students on Wesley's campus.

- The text amendments would enable Landmark Properties to build, own, and operate a commercial building that (a) would not be permitted as a matter of right under the current underlying zoning on the site; (b) would not be consistent with the FLUM or the Generalized Policy Map; and (c) is not in harmony with District zoning policy or the underlying RA-1 zoning designation.

LU-1.2.4 encourages the development of more housing. *LU – 2.1.1* encourages new housing development on underused property.

- Wesley’s on-campus student population has declined steadily over the last 19 years as has the demand for on-campus housing by its students. Without a sufficient number of its own students, Wesley would exist primarily to ensure Landmark benefits from the financial windfall of ongoing commercial access to Wesley’s land.
- Given its current underlying zoning, the site alternatively could be used to expand new housing, including affordable and workforce housing in Spring Valley if Wesley sells all or a portion of the property. This could prove to be of greater long-term financial benefit to District residents than giving away land use rights to Landmark.

LU – 2.3 stresses that the District should maintain institutional land use compatibility with the surrounding residential neighborhoods and references the changes in the 2016 Zoning Regulations, such as the addition of **Subtitle X, Section 101.4** (which Wesley now seeks to amend), as the means for the District to “ensure land use compatibility.” *LU – 2.3.1* stresses that the District should prevent encroachment of inappropriate commercial uses into residential neighborhoods. *LU - 2.3.7* stresses that institutions should ensure that their use conforms to the underlying zoning of the site particularly to protect neighborhood interests in the future if the land is sold (e.g. “monetized”).

LU – 2.3.8 states the District should limit non-conforming uses by institutions; Landmark’s use of Wesley’s land would be non-conforming.

- The text amendments would result in commercial use of land adjacent to residential neighborhoods not permitted under the 2016 Zoning Regulations.
- Landmark luxury student housing is not needed by Wesley to house Wesley’s students.

b. Educational Facilities Element of the Comprehensive Plan

The **Educational Facilities Element** of the Comprehensive Plan focuses on the relationship between the educational institutions and the residential neighborhoods that surround them. The Comprehensive Plan **Educational Facilities Element** also emphasizes the importance of universities being “good neighbors” and on limiting new developments to those that are “compatible with surrounding neighborhoods.” *EDU – 3.3.2* discourages university actions that would adversely affect the character or quality of life in surrounding residential areas. The Landmark building and the Wesley-Landmark partnership will have an adverse impact on the neighbors living adjacent to Wesley, as outlined by NLC-SVWHCA testimony in *Z.C. Case Nos. 22-13 and 23-08/23-08(1)*. Also, taking housing revenue that might be otherwise paid to AU will have an adverse financial impact on AU.

7. The proposed text amendments are inconsistent with other adopted public policies and related programs, including the District's affordable housing policy.

a. The Proposed Text Amendments To The Campus Plan And IZ Rules Are Not In Harmony With The Intent Of Existing Zoning Policy

- The 2016 Zoning Regulations rewrote zoning policy by expanding restrictions on commercial activities on a college/university campus. ***Subtitle X, Section 101.4*** was added to the regulations in response to OP and neighborhood criticism of the 2011 AU Campus Plan (***Z.C. Case No. 11-07***) which proposed a commercial retail zone unrelated to AU's mission on AU's new East Campus.
- ***Subtitle C, Chapter 10*** exempts colleges/universities from the IZ requirements **only** if the housing is limited to that college/university's own students.

b. Text Amendments Are Inconsistent With Affordable Housing Goals For Rock Creek West

The Mayor set an affordable housing goal of 1,990 new affordable units in the RCW Planning area by 2025. The Deputy Mayor for Planning and Economic Development reported in February 2024 that RCW had met only 10.1 percent of this goal. As OP reported in its set-down report, the text amendments will not produce any new affordable housing in RCW.

The underlying RA-1 zoning of the site offers great potential for expanding affordable and workforce housing in Spring Valley. The Commission's approval of the text amendments could have long term impacts by disrupting and interfering with the marketplace and the potential use of residentially-zoned prime real estate in RCW for more housing.

8. The Commission's approval of the text amendments would adversely impact public confidence in the integrity of the zoning process.

Wesley's text amendment proposal is nothing more than another end-run around the 2016 Zoning Regulations after three years of debate about the Landmark project before the Commission – now in three separate, but nearly identical, cases. The text amendments would provide Wesley **and** Landmark a special privilege available to no other religious-affiliated or secular college/university in the District – and perhaps at the expense of another university. **Landmark Properties, a commercial developer, is seeking text amendments to leverage the Campus Plan rules to divert potential housing revenue from AU to Landmark.** The Commission is being asked in this case to make an unprecedented substantive change in the zoning rules – rules that were established precisely to protect against the type of development on university-owned land that Wesley and Landmark are proposing.

The Wesley-Landmark project has been labeled by the Commission as “unique,” hard,” and “unconventional” when, in fact, it is simply and unambiguously not permitted under the Commission's rules. **The spot zoning made possible by the proposed text amendments is a subterfuge for the commercialization of a university campus and a corporate give away.** ***Subtitle Z, Section 105*** of the 2016 Zoning Regulations emphasizes that members of the Commission should avoid any action which might result in or create the appearance of “affecting adversely the confidence of the public in the integrity of government.”

The record in this and the two related Campus Plan/PUD cases offers no factual basis for approving the amendments. The Zoning Commission is being challenged in this case to decide if established zoning regulations – **approved after extensive public input and legal analysis** – are predictable and mean what they say.

The Wesley-Landmark project is a revenue enhancement measure for Wesley and a huge financial bonanza for Landmark Properties. The Commission’s role is to regulate land use, not to take extraordinary measures to bolster Wesley’s revenue stream, especially through a land use give away, or to create an economic windfall for a private developer, like Landmark. The Commission also should not be party to enabling potential litigation stemming from the Wesley/Landmark project’s tortious interference with AU’s business operations.

Wesley’s only justification for this project is that it needs to “thrive.” But, “thrive” means many things to many people. For a business, thrive usually means growth and success – and all the business planning that makes this possible. For a religious institution, “thrive” means to flourish or prosper spiritually, including being actively engaged in living according to one’s faith. In an educational setting, “thrive” refers to a student’s ability to experience positive growth within their academic environment. Wesley has not supported its use of the “thrive” slogan with any substantive evidence.

As recently as this Fall, Wesley President David McAllister-Wilson acknowledged in its newsletter that Wesley was not facing a crisis of survival. He pointed to “astounding indicators” of financial strength, including that the Seminary had “substantial capital resources;” was “a trusted and favored institution for those individuals and foundations that fund seminaries;” and that Wesley has “a vast network of grateful alumni in 50 states and 20 countries.” He noted that the Landmark building “would make Wesley one of the finest physical campuses in the country” and “also produce significant financial resources from the AU students who will occupy most of the building.”

Approval of the text amendments will set a precedent for future land use cases. Commission approval will open the door for any applicant in the city (not just universities) to cite a desire to “thrive” – or to threaten to relocate (as Wesley has done throughout the hearing process) – as a justification for seeking special land use treatment via a text amendment – and **without** any supporting evidence. With approval of the proposed text amendments, the Commission would acknowledge that District zoning regulations mean nothing and that the process is uncertain, unpredictable, and arbitrary. **If approved, the Commission’s decision will shake public confidence in the integrity of the District’s zoning process.**

9. Wesley’s petition on behalf of the Landmark commercial project is legally insufficient.

Wesley’s application is legally insufficient, according to the 2016 Zoning Regulations. **Subtitle Z, Chapter 3, Section 305.5** of the 2016 Zoning Regulations requires Wesley to provide a statement of the “purposes and objectives” of the text amendment proposal in order for the Commission to understand the “implications of the proposed changes.” Rather than provide any facts to detail the “implications” of the proposed changes, Wesley makes four general **assertions**: the text amendments will (1) address on-campus housing demand; (2) provide economic benefits, including “substantial” new tax revenues; (3) alleviate pressure on the local housing market; and (4) support Wesley’s growth.

Assertions – especially vague assertions – are not facts. Wesley fails to support its assertions with any documentation or evidence that would enable OP, the Zoning Commission, or the public to assess the implications of its proposal, as required under Subtitle Z, Section 305.5.

Wesley has presented no information to the Commission about the implications of its last-minute IZ text amendment alternative. It has not been generally available for public review. The public has not been notified of the proposed new text amendment. The proposed text amendment was not shared with NLC-SVWHCA until a copy of Wesley's November 4 pre-hearing filing (*Exhibit 21*) was submitted to the Commission. Wesley stated in that filing that it had worked with interested parties on the alternative amendment, when in fact NLC-SVWHCA was never even informed by Wesley about the amendment let alone that such discussions were ongoing.

Wesley's application also is awkwardly silent on the impact of the Landmark building on AU. Like many colleges and universities in the wake of the COVID epidemic and declining demand for higher education, AU acknowledged new financial challenges. On-campus housing provides an important, if not critical, revenue stream for colleges and universities. Wesley's application also does not address the impact of its proposal within the context of AU's approved Campus Plan which authorizes AU to build housing for 500 students on its campus. This housing and the Landmark housing – built to house more than 1,000 students – would be located immediately adjacent to the single family homes along University Avenue in the Spring Valley neighborhood.

CONCLUSION

The 2016 Zoning Regulations have skillfully and deliberatively achieved a balance in *Subtitle X, Chapter 1, Section 101* that enables universities to engage in commercial activities on their campus within certain limitations. These regulations have proven successful in protecting low density residential neighborhoods from university-driven commercial encroachment. We do not support the expansion of commercial uses on residentially-zoned land owned by colleges and universities designated for their educational use. The Landmark project is not an appropriate use of Wesley's Campus.

Wesley, the Applicant, has not met its burden of proof to justify the two text amendments in this case. The amendment to *Subtitle X, Chapter 1* is seriously flawed and will not even achieve Wesley's objective. The amendment to *Subtitle C, Chapter 10* – and the last-minute alternative proposed in Wesley's pre-hearing statement (*Exhibit 21*) – are unnecessary because the rules already provide a mechanism for approval of an off-site IZ program, if that is Landmark's intent, and relief from the IZ requirements. The text amendments are inconsistent with the Comprehensive Plan and other adopted District public policies.

At stake in this important case is public confidence in the integrity of the District's zoning process, itself. Adoption of the proposed text amendments will inject a new level of uncertainty and unpredictability in the Commission's application of the zoning rules. This is precisely what makes this case so important and precedent-setting.

Thank you for your consideration.