NEIGHBORS FOR A LIVABLE COMMUNITY
Washington, D.C.

Oral Testimony Of Blaine Carter
On Behalf Of Neighbors For A Livable Community
Zoning Commission Case No. 24-09:
Wesley Theological Seminary Text Amendments
November 18, 2024

My name is Blaine Carter. I am a Spring Valley resident and live on University Avenue near the Wesley Theological Seminary campus, and serve as a Board member of Neighbors for a Livable Community (NLC).

NLC opposes both of the text amendments proposed by Wesley. The text amendments proposed in this case are nothing short of spot zoning.

These text amendments are the latest attempt by Wesley and Landmark to secure approval of a project that clearly is not permitted under the 2016 Zoning Regulations. The Commission is being asked to change the zoning rules for Landmark to use university land for the developer's commercial speculation. In this case, a commercial developer is seeking to exploit the zoning process to operate a profit-making business on a college campus.

NLC has partnered again in this case with the Spring Valley-Wesley Heights Citizens Association (SVWHCA) on a joint statement that was submitted early last week for your review. I hope you already have reviewed that statement and the detailed analysis underlying NLC's conclusions.

As you know, NLC has testified previously before the Commission on two occasions opposing the luxury student apartment building on the Wesley campus for AU students. Landmark Properties, a developer of off-campus luxury student apartment buildings, will build, own, and manage the property. With $10 billion in assets, Landmark owns and operates approximately 100 off-campus student housing

properties in 28 states. The Landmark property is a commercial activity not permitted under the Campus Plan rules. The new Landmark operation will constitute 72 percent of the developed space on the Wesley campus. Wesley students will play a ***de minimis*** role in this building. This building is a revenue enhancement measure for Wesley and a huge financial bonanza for Landmark Properties. It is not germane to Wesley's educational mission.

In its report filed late last week, the Office of Planning (OP) said that, if approved, Wesley's proposed Campus Plan text amendment would clarify that the Landmark project is not a commercial use. OP appears very confused as this contradicts what OP wrote in the Set-down Report when they said the text amendment acknowledged the Landmark project was a commercial use. As the Commission should know, a commercial activity is a commercial activity – no language can will it away – unless OP is intent on altering the legal definition of commercial activity to be used across the city. Although it may be convenient for OP to ignore the commercial nature of the Landmark project, the commercial elephant has been sitting in this room since Wesley filed its application in this matter on March 17, 2022.

Wesley and Landmark do not cite any city-wide problem that would justify the proposed rules changes. No evidence has been presented by Wesley or Landmark that there is a demand among AU students for the Landmark building. Landmark is seeking to leverage the District's Campus Plan rules – with Wesley's help – to compete directly with AU's student housing program.

Although AU and Wesley have reported discussing this project over the last three years, a recent filing by AU in this case states clearly that AU is not partnering with Wesley or Landmark. AU states it is focused on its own housing program, including changing its housing policies to require students to live on campus for two years. Currently, no such requirement exists.

Wesley also has not demonstrated a need for a 659-bed facility to house its own students. In fact, Wesley's on-campus student population has declined steadily over the last 19 years as has demand for on-campus housing by its students.

These text amendments are being proposed in hopes that you will approve the Landmark project as part of Wesley's 2023 Campus Plan application. Yet, the proposed text amendments do not provide a viable pathway for Commission 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 this project is to engage in a city-wide process to rewrite the Campus Plan rules and other related regulations, including the IZ rules and the use definitions in ***Subtitle B, Chapter 2***.

If the Commission is determined to change its rules, 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.

The Zoning Commission has delayed taking action in this case for nearly three years. In that time, a Campus Plan case has morphed into a PUD case, which has now morphed into a text amendment case. At times, Commissioners have said generally the zoning regulations are not "perfect." Commissioners also have used words, like "unique," "hard," and "unconventional" to describe this case. Wesley's proposal is an anomaly if for no other reason than it is not permitted under the zoning rules. In fact, the number of zoning issues presented by this case increase with each new application filed by Wesley.

Rather than being imperfect, the 2016 Campus Plan regulations were crafted very carefully and skillfully – with extensive legal analysis and community input – to ensure the correct balance of commercial activity on a university campus in a residential neighborhood. These regulations have proven successful in protecting low density residential neighbors from university-driven commercial

encroachment. Likewise, the IZ regulations were crafted carefully to ensure that the District's affordable housing goals would not fall victim to developers trying to avoid meeting their IZ requirements.

In its latest proposal, Wesley and Landmark have suggested meeting its IZ requirement by substituting a financial contribution that falls far short of the costs of providing IZ for an apartment building of the size proposed by Landmark – and far short of the extraordinary regulatory relief being sought.

Two alternative IZ text amendments have been proposed recently – one by Wesley and one just last Thursday by OP – long after ANC 3D and 3E held their monthly public hearings to review this case. These alternatives have turned this hearing process upside down. The public has had no time to examine or assess the alternatives. OP's draft alternative seems so significantly different from the original and alternative text amendments proposed by Wesley creating even more confusion in what has already been a chaotic and convoluted process. Given these 11th hour proposals, the Commission should allow more time for review by neighbors and the ANCs – and for the two ANCs to engage directly with their constituents. The Zoning Regulations include timelines for public notice and review for a reason. Throwing alternative text amendments into the pot at the last minute does not make for a transparent process.

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. Rewriting the rules for a single applicant should not be an option when the applicant's proposal deviates so egregiously from the zoning standards.

Zoning regulations should be predictable. Spot zoning, like that proposed by these text amendments, is anything but predictable. Approval of these regulations will undermine both the

Campus Plan and IZ rules and serve as a precedent – not only in Campus Plan cases, but in any case in which an applicant offers vague assertions of a need to "thrive." This case is distinguished by the applicant's failure to provide any evidence of a financial hardship or, in the words of the zoning regulations, that the applicant is being denied economically viable use of its land.

For all the reasons cited in this testimony and in our comprehensive joint statement with SVWHCA, NLC calls on the Commission to reject these two text amendments.

Finally, let me conclude by saying we have reached out both to ANC 3D and 3E in this case in recent months. On the other hand, Wesley has chosen – as has been its practice in this case over the last year – to limit its engagement solely to the ANCs and has not engaged with NLC or SVWHCA. Wesley has put its focus consistently on winning its case – without regard to neighbors' concerns. We respectfully request that you give due consideration to the issues we have outlined in our written and oral testimony.