

The Committee of 100
on the Federal City



BY IZIS

November 14, 2024

Mr. Anthony J. Hood, Chairman
D.C. Zoning Commission
One Judiciary Square
441 4th Street, N.W., Second Floor
Washington, D.C. 20001

Re: Z.C. Case No. 24-09
Petition for Text Amendments to Subtitle C, §1006.6(c) and Subtitle X, §101

Dear Chairman Hood and Members of the Commission:

The Committee of 100 on the Federal City (C100) offers these comments in opposition to Wesley Theological Seminary's (Wesley's) petition to the Zoning Commission (the Commission) for two text amendments to exempt itself from two fundamental zoning regulations. Case No. 24-09. While not on the Commission's agenda for the November 18 meeting, the text amendments are intended to facilitate subsequent approval of Wesley's proposed 2023-2033 Campus Plan. The Committee of 100 believes that approval of the proposed text amendments would undermine the integrity of DC's zoning process.

The central element of Wesley's proposed campus plan is the proposal to construct a nine-story, 659-bed, luxury apartment building on the Wesley campus. Approximately 570 of the 659 residents of the apartment building would not be Wesley students, faculty or staff. Wesley states that these new residents will be students attending another school, but neither Wesley nor the Commission can compel or guarantee the resident makeup, and as long as the residents aren't Wesley students the housing venture is a violation of the campus plan rules. Landmark Properties, a for-profit developer, will own the building, manage rental of the units, and derive commercial profit from the venture. Wesley will receive an undisclosed share of the rents.

The proposed text amendments would exempt the proposed apartment building from two zoning regulations: (i) the prohibition on other than incidental use of campus property for commercial purposes, as set forth in 11-X DCMR §101.3; and (ii) the requirement that the proposed apartment project comply with the inclusionary zoning requirements set forth in 11-C DCMR §1001 et seq. These two fundamental zoning regulations are at the heart of the campus plan and

affordable housing requirements set forth in the Zoning Regulations. Any proposal to exempt Wesley from these central requirements should be subject to strict scrutiny and pass a high hurdle. The proposed text amendments are spot zoning proposals that would undermine the integrity of the zoning process generally, and the campus plan and IZ rules in particular. They should be rejected.

The Exemption from the Prohibition on Commercial Use Should Be Rejected

Section 11-X DCMR §101.3 states that: “Any commercial use customarily incidental to a university use in an R, RF, or RA zone¹, or as an adjunct use to a university building, shall be subject to the following conditions:

- (a) There shall be a demonstrated and necessary relationship between the use and the university functions;
- (b) The total floor area of all commercial uses, including basement or cellar space, shall occupy no more than ten percent (10%) of the gross floor area of the total campus plan floor area;
- (c) The commercial use shall be located so that it will not become objectionable to non-university residential neighbors due to hours of operation, noise, parking, loading, lighting, trash, or other operational characteristics that are not customarily associated with a residential use.”

Wesley concedes its plan violates (a) and (b), and on its face it will violate (c). By applying for an exemption from the limitation on commercial use, Wesley is conceding that the construction of a nine-story apartment building housing approximately 570 persons who will not be affiliated with Wesley is a commercial use and a violation of 101.3(a).

Also, if approved, the proposed apartment building will occupy approximately 72 percent of the gross floor area of Wesley’s total campus floor area, which violates 101.3(b). Further, the addition of 570 residents to the Wesley campus will change the nature of a campus which, in 2022, had 454 graduate students, with 186 enrolled full-time students. If approved, Landmark’s commercial use of the Wesley campus will be the dominant use of Wesley’s land.

Further, the proposed apartment building does not satisfy the requirements of 11-X DCMR §101.3(c). This regulation embraces the principle of establishing land use compatibility between college campuses and surrounding residential neighborhoods, which was carefully crafted to protect residential neighborhoods. The commercial use exemption was strengthened as part of the 2016 Zoning Regulation rewrite. This restriction is reinforced by the paramount Land Use Element of the Comprehensive Plan, which states that the District, and by implication, the Commission, should prevent the encroachment of inappropriate commercial uses into residential areas. LU – 2.3.1. Wesley’s proposed exemption, if approved, would create an objectionable condition unrelated to Wesley’s mission, in direct contravention to the purpose of the regulation in question, which is to limit the disturbance caused by commercial activity in residential areas.

¹ The Wesley campus and the proposed apartment building are located in a RA-1 zone.

This regulation is central to the campus plan rules. Approval of the exemption would be a fundamental change that would erode the campus plan rules for Landmark's benefit. The Commission should not override the restrictions.

Wesley's plan also violates 11-F DCMR §101.4, which stipulates that RA-1 zoning "provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments." Instead, Wesley plans to develop multi-family housing. Suggesting that some students may live in the new housing does not change the fact that this will be commercial housing with no relevance to any campus plan authorization. It is simply commercial market rate housing.

The Exemption from Inclusionary Zoning Requirements Should be Rejected as Being More than "Incidental" or "Adjunct" to an Existing University Building

DC's regulations require residential developments with more than 10 units to set aside a certain amount of the gross floor area for residents having income of less than a specified percentage of the Area Median Income (AMI). 11-C DCMR §1001 et seq. The regulations include certain generally applicable exemptions that have been approved through rulemaking. One exemption is "housing developed by or on behalf of a local college or university exclusively for its students, faculty or staff." 11-C DCMR §1001.6(c). Wesley admits that this exemption is inapplicable to the Wesley/Landmark project, as roughly 86 percent of the residents of the apartment building will not be students, faculty or staff of Wesley. Knowing that it is ineligible for the IZ exemption, Wesley makes the extraordinary request that the ZC exempt it anyway.

Arguing in the alternative does not change the fact that Wesley is searching for a persuasive argument. One proposed text amendment provides for an exemption for "housing developed on Square 1600, Lot 819 [part of the Wesley campus] exclusively for Wesley Theological Seminary and American University students, faculty or staff if approved by the Zoning Commission as part of a campus plan." Given that, once built, it will be hard for Wesley/Landmark to limit the housing for AU students², this is likely an illusionary promise.

Wesley suggests that it may contribute \$8 million for off-site IZ in Ward 3. Wesley's November 4, 2024, pre-hearing statement indicates that it is still working on an off-site IZ plan. There appears to be no meat to this suggestion, **but importantly there is no basis in DC law which would allow Wesley/Landmark to buy its way out of its inclusionary zoning obligation.**

Wesley/Landmark includes a general and speculative description of LISC's business model in the November 4 filing, indicating that LISC might be a possible payee. The description is in the nature of a marketing piece and does not contain a specific commitment from LISC, the terms of any agreement with LISC, or the terms of LISC's affordable housing programs. Since neither Wesley/Landmark nor the proposed text amendments commit Landmark to provide IZ, it is premature for the Commission to grant the extraordinary relief requested by Wesley from the

² It is significant that the American University has declined to support Wesley/Landmarks' proposal.

affordable housing requirements in the DC regulations before the Commission and the public are provided the details of the agreement with LISC and afforded an opportunity to comment.

While C100 as a matter of principle believes Wesley/Landmark should not be permitted to buy its way out of having to comply with its inclusionary zoning obligation, the basis for the proffered \$8 million needs to be explained. Landmark presumably will be the source of the payment. In presentations before the neighborhood, Wesley/Landmark have indicated that the number reflects the savings to Landmark from reducing the parking it had originally proposed. ANC 3E previously argued that the original proposal was overparked. Accordingly, Wesley reduced the parking, with the result being that the project needs one less parking level. This saved Landmark money. Wesley now refers to the figure vaguely as a “cost of compliance” with the IZ mandate. This is nonsense. IZ compliance is not premised on what a developer feels it can spend to maintain its bottom line. IZ compliance has a cost which is why the regulations provide bonus density. Here however, Wesley disregards the IZ program rules and states that \$8M should buy its way out of compliance. Why \$8M, why not \$18M or more? Bottom line, even if the Commission were to accept one of the alternatives proposed by Wesley, the \$8 million figure is preposterous. A new 659-unit residential building would have to contain a least 53 affordable units, the bare eight percent minimum required by IZ. Any monetary payment should represent an equivalent commitment.

A second alternative text amendment relies on provisions in the Zoning Code which authorize the Board of Zoning Adjustment to permit some or all of the IZ set-aside requirement to be met by off-site construction. 11-C DCMR §1006. However, here too, Wesley seeks an exemption from several of the requirements of Section 1006. Specifically, they seek to avoid providing a specific economic analysis that compliance with IZ would impose an economic hardship, which is a central condition of Section 1006.1. Dating back to its application for its 2023-2033 Campus Plan two and half years ago, and throughout the various iterations of the campus plan, Wesley has adamantly refused to provide an economic analysis revealing its financial situation. Wesley should not be able to request such extraordinary relief while not being transparent about its financials (or its arrangement to buy its way out of inclusionary zoning). Wesley/Landmark also must address the fate of the building if Wesley, notwithstanding good faith efforts to survive, finds itself forced to close (or move) during the useful life of the apartments. Given Wesley’s unsupported claims, this is not a fanciful suggestion. Will the neighborhood simply be stuck with an apartment building that contravenes the Comprehensive Plan and the Zoning Rules?

Wesley also seeks exemption from the requirements of Section 1006.3(a), which provides that any off-site development be in the same census tract as the residential development. The existing zoning regulations allow this restriction to be waived, but only if the offsite development is owned by the applicant. That will not be the case here. It is reasonable to conclude that Wesley does not want to comply with campus plan housing regulations, and it doesn’t want to comply with IZ affordable housing regulations. Wesley is asking the ZC to carve out a series of exemptions because it thinks it is entitled. There is no other explanation for the level of relief and the manipulation of the zoning regulations being sought here.

We feel obligated to mention there are other provisions in Section 1006 that Wesley is not asking be waived, including limiting the off-site development to new construction, a prohibition on the off-site development from receiving development subsidies from the Federal or District government, and a restriction which would prevent the off-site development from having more than 30% of its gross floor area occupied by inclusionary units (this would prevent the off-site development from being all affordable). These restrictions could prove problematic for any affordable housing project receiving support from LISC or any other vehicle receiving funds from Landmark for affordable housing.

C100 is aware that the Office of Planning, in an 11th hour filing, has offered a third alternative proposal on IZ. In the filing, OP agrees with many of C100's criticisms stated above of the two alternatives offered by Wesley. However, like the two alternatives offered by Wesley, the alternative offered by OP would allow Wesley/Landmark to circumvent existing zoning rules with many of their conditions. C100 believes this is an abuse of the zoning process and should be rejected.

Since we know nothing about what off-site projects might be funded under any of the alternatives (including OP's), or the terms thereof, it is premature for the Zoning Commission to grant Wesley any waivers from the IZ or off-site IZ provisions.

Conclusion

Wesley is asking for extraordinary relief that would exempt it from two fundamental provisions of the Zoning Code. These rules all received extensive review when adopted. An applicant before the Zoning Commission should not simply seek an exemption through the text amendment process whenever the zoning rules provide a roadblock to the applicant's plans. The petition here undermines the integrity of the zoning process and should be rejected.

Please contact any of us if you have questions. Thank you.

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