

## ANC 3E SUPPLEMENTAL REPORT IN ZC 24-09

ANC 3E respectfully asks the Zoning Commission (ZC) to reopen the record to allow us to file this supplemental report in response to the recent submissions of Wesley Theological Seminary, the Office of Planning, and our sister ANC, 3D. The ZC recently permitted ANC 3D to submit a supplemental report.<sup>1</sup>

These filings raise several new points and merit at least a brief response.

**1. Wesley and ANC 3D, like ANC 3E, support a mechanism to allow the ZC to require more than the minimum IZ otherwise required.**

ANC 3D asks the ZC in *its* supplemental report (Ex. 57) to adopt ANC 3E's Version B text (*see* Ex. 54). The Applicant, in turn, supports OP's original proposed language, but explicitly states its belief that OP's proposed "no less than" standard would allow the ZC "to exercise its discretion at the Campus Plan phase to impose a higher standard that it deems appropriate under all the circumstances." Ex. 58 at 2. Thus, both ANCs and the Applicant agree there should be a mechanism to allow the ZC to require more than the baseline level of IZ (even if they disagree about the mechanism).

**2. OP's proposed inclusionary zoning text amendment likely will not permit the ZC to require more than the minimum IZ otherwise required.**

Unfortunately, a natural reading of OP's proposed "no less than" language is that the Applicant may satisfy its offsite IZ requirement simply by providing *at least* the minimum IZ otherwise required. OP's proposed text reads as follows:

1006.10 Wesley Theological Seminary shall provide off-site IZ located in Ward 3 as an enforceable condition to its 2022-2032 Campus Plan further processing to construct a dormitory, provided that the requirements of Subtitle C, §§1006.1 - 1006.3(a)-(g), may be waived by the Zoning Commission for the off-site IZ. Depending on construction type, the off-site IZ provided shall be no less than Subtitle C, §1003.1 [8%] or §1003.2 [10%] requirements, as applicable, and subject to the requirements of Subtitle C, §§1006.5 - 1006.9. (Emphasis and brackets added).

OP's proposed language appears to be self-executing; it would be satisfied when the Applicant proffers at least the minimum IZ required by Sec. 1003.1 or 1003.2.

In any event, OP's proposed text contains no obvious authority allowing the ZC to require more than the baseline level of IZ. The Campus Plan process is governed by the Special Exception standard, which focuses on limiting the burden of proposed development and school activity. It does not anticipate providing a special dispensation to a developer for a commercial project, as would be the case here, and thus contains no basis to require IZ. That lack of authority is precisely why ANC 3E offered and was invited to provide sample language to *allow* the ZC to so require.<sup>2</sup>

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<sup>1</sup> The ZC also permitted ANC 3D to enter its filings from the PUD proceedings into the record, and ANC 3E similarly requests permission to enter its filings (attached) into the record for completeness' sake.

<sup>2</sup> OP contends in its most recent supplemental report that the minimum IZ otherwise required is sufficient and OP therefore supports its original proposed language. Accordingly, OP also must believe that its proposed language is

### **3. Tweaks to ANC 3E's proposed language could address concerns raised**

Grafting an IZ determination to a Campus Plan proceeding could be done via rulemaking but is awkward. ANC 3D and the Applicant nonetheless prefer this approach so that the ZC can consider the specifics of the Applicant's development plan when determining how much IZ is appropriate. Instead, the ZC could reopen the rulemaking record for the limited purpose of accepting submissions regarding the specifics of Applicant's development plans and then make an IZ determination in the rulemaking. This would meet ANC 3D and the Applicant's expressed concern while permitting the Campus Plan proceedings to function under the existing rules, governed solely by the Special Exception standard.

Still, the ZC may prefer ANC 3E's Version B. OP objects to Version B. OP believes, correctly, that under Version B, during the Campus Plan proceedings, "the Applicant would submit a proposal for the offsite affordable units, it would be evaluated, and the ZC will make a determination if it is appropriate." Ex. 60 at 3. OP argues that this approach is "contrary to the premise of predictability and transparency." *Id.* Yet, the approach is the *same used in PUD proceedings* that OP routinely participates in without objection. The basis for OP's objection is thus hard to discern.

If OP's concern is that Version B lacks a specific standard for decision, the ZC could add one. It could, for instance, import some or all of the components of PUD standards from Subtitle X Sec. 300.1 *et seq.* Indeed, the Applicant first (unsuccessfully) sought the relief it now seeks through a PUD proceeding, thus voluntarily subjecting itself to PUD standards.

Alternatively, the ZC could add the language Applicant itself stated that it is open to: "The Zoning Commission [may] exercise its discretion at the Campus Plan phase to impose a higher IZ standard that it deems appropriate under all the circumstances." *See* Ex. 58 at 2.

### **4. The term "dormitory" is almost universally understood to apply solely to a building serving only the host institution's students**

The ZC asked the Applicant during the PUD proceedings for a list of on-campus housing serving more than the host institution's students. As discussed in our original resolution, the Applicant was able to identify a total of only 2 such buildings out of more than 5000 post-secondary institutions in the US. The Applicant was apparently able to identify only one more in this proceeding. None were in the DC / MD / VA area, or even on the Eastern Seaboard. *See* Ex. 25 at 7.

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*. This is why such buildings are often accorded more permissive zoning than nearby commercial residential zoning – they serve a strictly educational purpose

It is unimportant whether a university contracts with a private entity to build and operate a dormitory for the university and only *its* students. That is *not* what is at issue here.

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self-executing and that the Applicant could satisfy it simply by meeting the minimum required by Sec. 1003.1 or 1003.2, as applicable.

Neither is the issue here that *AU* wishes to share a dormitory with Wesley. Instead, AU has politely made it clear to the ZC and Wesley that it does *not* want, much less need, such an arrangement.

Rather, Landmark and Wesley want to offer (near) off-campus housing for AU students that *competes with* AU student housing. The purpose is not educational but to make money for Landmark's shareholders, with a payment for the use of the land to Wesley. AU is not in any way a part of this deal.

AU has stated instead that it has excess capacity in its dorms and intends soon to require its freshmen and sophomores to live on campus.

Absent the special dispensation Landmark seeks here to compete with AU to house AU's students Landmark would need to build on a nearby commercial residential lot and to seek a PUD that would almost certainly necessitate significant bonus IZ.

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For all these reasons, and the reasons advanced in our other filings in this matter and the PUD proceedings, the ZC should require a significant IZ bonus from Landmark and Wesley, and it should adopt text language that either specifies the bonus or clearly empowers the ZC to specify it during the Campus Plan proceedings. The ZC could achieve this goal with one of the text Versions ANC 3E submitted in Exhibit 54, perhaps modified as discussed above. ANC 3E continues to believe, however, that the best course is for the ZC to settle the IZ question during the text amendment process.

ANC 3E<sup>3</sup>

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by Jonathan Bender  
Chairperson

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<sup>3</sup> On November 6, 2024, ANC 3E authorized by resolution the undersigned as well as Commissioners Quinn and Ghosh to represent it in all proceedings in this matter. See Exhibit 25. ANC 3E approved that resolution at its meeting on November 6, 2024 which was properly noticed and at which a quorum was present. The resolution was approved by a vote of 8-0-0. Commissioners Jonathan Bender, Diego Carney, Matthew Cohen, Jeffrey Denny, Rohin Ghosh, Ali Gianinno, Amy Hall and Tom Quinn were present.