NEIGHBORS FOR A LIVABLE COMMUNITY
Washington, D.C.

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

February 6, 2025

Mr. Anthony J. Hood, Chairman
D.C. Zoning Commission
441 4th Street NW, 2nd Floor
Washington, D.C. 20001

Re: Zoning Commission Case No. 24-09: Wesley Seminary Text Amendments/Zoning Commission Authority

Dear Chairman Hood and Members of the Commission:

Neighbors for a Livable Community (NLC) and the Spring Valley – Wesley Heights Citizens Association (SVWHCA) respectfully submit these comments **and** recommendations in the above-referenced text amendment case in response to a Notice of Proposed Rulemaking (NPRM) published in the ***DC Register (DCR)*** on January 17, 2025. The origin of this text amendment case is ***Z.C. Case No. 23-08(1)*** – the 2022-2032 Wesley Theological Seminary Campus Plan. NLC and SVWHCA are a joint party in the Campus Plan case. The Commission acknowledged a linkage between the Campus Plan and the text amendments cases as part of deliberations in ***Z.C. 24-09*** on December 19, 2024.

As published in the NPRM, the text amendments to ***Subtitle C, Section 1006*** and ***Subtitle X, Section 101*** of the District of Columbia Zoning Regulations provide **unparalleled** regulatory relief in the Wesley Campus Plan case. The text amendments establish **precedent** for commercializing property now designated for education uses. The Commission's objective is to enable a new revenue stream for Wesley and a financial windfall – in the form of a sweetheart deal – for Landmark Properties, a national commercial developer of off-campus luxury student apartment buildings.

Since it moved to its current site in 1959 on the hilltop adjacent to the Spring Valley neighborhood, Wesley has stated it is one of the leading Methodist-affiliated schools for seminary education in the nation. During this time, Spring Valley has become and remains one of the most desirable places to live in the city. Wesley and Spring Valley residents have been long-standing good and supportive neighbors. This support has even extended to matters involving District agencies in which NLC and SVWHCA have consistently advocated on behalf of Wesley, especially in zoning cases – until this case.

ZONING COMMISSION
District of Columbia
CASE NO.24-09
EXHIBIT NO.65

Wesley first informed the neighbors of its intent to pursue this commercial venture more than **eight** years ago. Wesley sought and received permission from the Commission to delay its Campus Plan filing because its first commercial partner walked away from the project.

As part of its Campus Plan application filed **three** years ago ***(Z.C. Case No. 22-13)***, Wesley stated a need to "thrive in place" or it would be forced to leave its current Spring Valley location. However, Wesley furnished no evidence demonstrating a financial need. Wesley's mechanism to "thrive in place" is a student apartment building, which it has labeled a "dormitory," to house primarily American University (AU) students. The new housing, through a ground lease between Wesley and Landmark, would be built, owned, and managed by Landmark Properties. This commercial venture on the Wesley campus is not consistent with ***Subtitle X*** and ***Subtitle C*** of the Zoning Regulations – and not permitted under the ***Subtitle B*** definitions for education use. For that reason, NLC and SVWHCA have opposed Wesley's Campus Plan for the first time in Wesley's history.

This text amendment case is now the third go-around in a trifecta of cases ***(Z.C. 22-13; Z.C. 23-08/23-08(1); and Z.C. 24-09)*** for what has been – and continues to be – a "hard" case, as Commissioners describe it. When Commissioner Robert Miller argued against using a text amendment to approve the Landmark project in ***Z.C. Case No. 23-08(1)***, he invoked the old adage, a "hard case can make bad law." ***(Transcript, Page 20, Z.C. Public Meeting, November 9, 2023)*** **Making "bad law" is precisely what the Commission is doing in this text amendment case.**

Feeling that the applicant needs help to survive at the current site, Commissioners suggested other zoning mechanisms for the applicant to consider, including a Planned Unit Development (PUD) and a text amendment. Citing Wesley's religious affiliation, the Commission has accepted the applicant's claim of financial need in the absence of evidence. This is reflected in Commissioner Miller's remarks during the Commission's December 19 deliberations, when he said the following: "We know that seminaries and religious institutions have struggled to remain in the city. We want them to remain in the city." ***(Transcript, Page 212, Z.C. Public Meeting, December 19, 2024.)***

Yet, the fulsome record in this trifecta of cases includes testimony from the applicant stating that Wesley is **not** at risk of closing its doors; that its financial status is strong and that even its enrollment is on the rise; but that it wants to take advantage of its Spring Valley location to monetize the value of its land and grow its revenue base. This may seem like a sound financial strategy; but the applicant has sought approval for a project that is not permitted under the city's zoning regulations, as the applicant and the applicant's counsel had to know long before filing the Campus Plan application. In this case, the applicant has even adopted the playbook of sports moguls by threatening to relocate if the concessions it seeks from the city are not provided.

Despite its claims of needing more financial resources to thrive in place, the applicant has woefully failed in all three cases, including this case, to provide any evidence of financial need to warrant the relief they have requested.

And that is the critical problem in this case: the Commission's action is not supported by the record of evidence in this or the other two related cases. The regulatory relief provided through the proposed rulemaking is stunning in its breadth and not justified.

After reviewing the newly revised text amendments published in the NPRM, NLC and SVWHCA remain strongly opposed to the Commission's action for the following reasons:

1. The Commission's decision to move forward with the text amendments is not grounded in the record or the facts of this case and is, consequently, arbitrary and capricious ***(Pages 6-8)***;

2. The Commission failed to consider the impact of its action on American University (AU) ***(Page 8)***;

3. The Zoning Commission's decision to defer until the Campus Plan process a determination of the IZ standard to be applied to Wesley in the Campus Plan case invites, if not encourages, a legal challenge ***(Pages 8-11)***; and

4. The Commission's action does not meet evidentiary thresholds established by legal precedents ***(Pages 11-12)***.

For these reasons, NLC and SVWHCA recommend that the Commission decline approval of the two text amendments. Other recommendations can be found on *Page 5* of this filing.

The specific text amendments approved by the Zoning Commission on December 19, 2024 were not made available to the public until January 7, 2025. The Zoning Commission, itself, did not have an opportunity to review the specific text amendment language prior to approving it at the December 19 public meeting since it was drafted by Zoning Counsel **after** the Commission's deliberations and vote.

With these text amendments, the Commission approves Landmark's scheme to designate land intended for non-profit education use to build, manage, and own a new profit-generating rental housing business targeted primarily to AU students on Wesley's campus. Landmark's commercial business venture will comprise 72 percent of the build-out on the Wesley campus – far in excess of the 10 percent of gross floor area permitted for commercial uses as part of the current Campus Plan rules. Landmark, which stands to gain even more than Wesley from this sweetheart deal, is not even required to appear as an applicant or co-applicant before this Commission.

The NPRM is an acknowledgement by the Commission that the student housing project proposed by Wesley **is** a commercial enterprise not permitted under the zoning regulations. In fact, the text amendment shields Wesley from the reasonable ***Subtitle X*** commercial restrictions on the use of its property. In taking this action, the Commission ignores the public engagement that led to the decision to clarify and strengthen these restrictions as part of the 2016 Rewrite of the Zoning Regulations (ZRR).

The regulations governing commercial uses on a college campus were a keystone of the 2016 ZRR for communities located in close proximity to college and university campuses in the District. The Commission is cavalier to dismiss this commercial language enhancement that was added in the ZRR that it now proposes will not apply to Wesley. The language was intended specifically to prevent the type of project now being proposed by Wesley and Landmark.

The Wesley-Landmark project triggers ***Subtitle C*** Inclusionary Zoning (IZ) requirements simply because the proposed building does not fit the definition of a dormitory under DC regulations, as shown

by ANC 3E in testimony to the Commission **(*Exhibit 61A1)***. As the current IZ regulations stipulate, the ***Subtitle C*** IZ rules would not be applicable if the proposed housing were related specifically and in its entirety to the not-for-profit educational mission of the applicant.

Rather than serve as a fix for a deficiency in the Campus Plan and IZ regulations applicable to all universities in the District, the proposed text amendments are, as Commissioner Miller acknowledged during the Commission's December 19 deliberations, designed to create a **special carve-out** in the zoning regulations that would "allow for this use (e.g. the Landmark housing project) with this text amendment." ***(Page 21, December 19, 2024 Transcript.)*** This carve-out will permit a commercial use incompatible with Wesley's educational mission and with neighboring property, including AU. This carve-out, which is not justified by the facts in the case record, amounts to **arbitrary spot zoning**.

In its consideration of these text amendments, the Commission's sole focus was the impact on Wesley's ability to secure approval of its Campus Plan – not the impact on neighboring property, including AU; the viability of the Wesley-Landmark project; the impact of the Commission's action on other colleges and universities located in the District and their surrounding neighborhoods; or the impact on the integrity of the generally applicable rules approved through rulemaking.

Case Summary

- This text amendment case cannot be viewed independent of the Wesley Campus Plan case ***(Z.C. 22-13)*** and the Wesley PUD and Campus Plan case ***(Z.C. 23-08/23-08(1))***, especially since Commissioners suggested to Wesley in those cases that a text amendment may be the only way for the Commission to approve the Landmark project.

- This is a **hard** case and presents a dilemma for the Commission:

    (a) The applicant, a not-for-profit educational institution which happens to have a religious affiliation, is applying for a carve-out in the regulations to permit Landmark Properties to use the applicant's land to establish, own, and manage a commercial business to compete with AU for AU's student housing market;

    (b) AU is a central figure in the case, yet is not collaborating on the project and has stated it does not need the new Landmark building to house its students;

    (c) The applicant justifies the text amendment request on the basis of needing to "thrive in place" and threatens to move from the Spring Valley site if the application is not approved; and

    (d) Landmark's commercial use, which is intended to compete with AU for AU's students, will be the dominant use of Wesley's land.

- The case is made even harder for the Commission by the applicant's refusal to provide any documentation of its financial need for a special carve-out in the regulations; in failing to demonstrate financial need, the applicant has failed to meet the **burden of proof** required for the Commission to justify the text amendments.

- In extending a helping hand to the applicant to navigate the hard issues presented in the case, a well-intentioned Commission may have short-circuited and sacrificed a balanced and full review of the hard issues in this case.

- The overwhelming majority of public witnesses testifying at the November 18 public hearing in this case objected to the text amendments and raised questions about the proposed language. As proposed, the text amendments include many deficiencies – some of which were addressed in our pre-hearing statement ***(Exhibit 27)***; in formal testimony on November 18 ***(Exhibits 29 and 30)***; and some that are specifically addressed in this NPRM response.

- **Based on the record in this case, there is no basis for these text amendments.** At no time in this case has Wesley documented a need for these text amendments, as the Commission acknowledged in its December 19 deliberations despite taking action to move the text amendment process forward. The decision by the Commission to approve these text amendments, as proposed, is arbitrary and capricious.

Recommendations

Although NLC and SVWHCA believe strongly that the applicant has not met its burden of proof in this case and that the Commission should reject the proposed text amendments, NLC and SVWHCA offer the following recommendations for the Commission's consideration should the Commission decide to proceed.

- At a minimum, NLC and SVWHCA strongly encourage the Commission to revise the ***Subtitle C*** IZ text amendment to specify the IZ standards that Wesley will be required to meet rather than punt the decision to the Campus Plan process. As drafted, this IZ text amendment is legally vague and contradictory. NLC and SVWHCA recommend the Commission withdraw the IZ text amendment and direct Wesley to submit a proposal that defines how the IZ mandate will be met.

- In order to determine an appropriate amount of offsite IZ and/or or monetary contribution to meet the applicant's IZ obligation as part of this project, the applicant should provide for review a preliminary estimate of project development costs for the Landmark building to include information demonstrating how to calculate/determine the monetary value of an IZ bed as if the IZ was provided on-site.

- The Commission should defer further action until Wesley has submitted evidence of financial need to justify the text amendments it seeks. The public should be given an opportunity to comment on any new evidence submitted by the applicant either through a filing for the record, or preferably, a public hearing. If evidence is not provided, the Commission should instruct Wesley to develop a Campus Plan consistent with the city's existing regulations and processes.

- This text amendment case was a missed opportunity for the Commission to examine the Campus Plan rules in light of possible financial strains on all colleges and universities and the role that student housing plays in the overall finances of a university. The Commission should defer

further action in this case in order to initiate a citywide rulemaking to assess whether the type of carve-out sought by Wesley should be available to all colleges and universities in the District.

1. The Commission's Decision to Move Forward on the Proposed Text Amendments Is Not Grounded in the Record or the Facts.

The Commission took action in this case on December 19, 2024 without first reviewing the specific language of the text amendment that it approved. The Commission did not have the benefit of public comments on the language prior to it being published in the January 17 NPRM. The Commission also selectively rejected requests to reopen the record for public comment on alternative language proposed between the November 18 public hearing and the December 19 deliberations by the Office of Planning (OP), ANC 3D, and ANC 3E. In effect, the Commission shut out the community from commenting on new proposals in advance of the Commission's deliberations.

That has resulted in new text amendment language that is significantly different from that which was the subject of the Commission's November 18 public hearing.

In deliberations on December 19, 2024, the Commission failed to outline a cogent or reasoned rationale based on the record of evidence for its decision to "move forward" in this case. The primary focus of the Commission's deliberations on December 19 was to consider an IZ standard that would be applied to Wesley. The Commission decided at the meeting to make **no** decision on a specific IZ standard to be applied to Wesley and push the decision down the road to the Campus Plan case.

The Commission's deliberations did not include a discussion and assessment of the text amendments' consistency with the Comprehensive Plan, as required by the Zoning Regulations. The Commission's actions also circumvent the standards for **special exception** or **variance relief** within the existing regulations that the applicant could seek as an alternative to the proposed text amendments. Throughout this process, the Commission has never even probed Wesley or OP for a reason why the relief it seeks is not possible through the existing zoning processes.

The basis for the Commission's action in this case can be found in remarks made by Commissioners Miller and Gwen Wright during the December 19 deliberations. Commissioner Tammy Stidham and Chairman Anthony Hood limited their statements to saying they had nothing to add or that they agreed with the comments by Commissioners Miller and Wright.

The record of ***Z.C. 24-09*** and ***23-08(1)*** document Commissioner Miller's consistent support for the Wesley-Landmark project based on Wesley's religious affiliation and threats to relocate if the Landmark housing project is not approved. In his statement of support to "move forward" with the text amendment at the December 19 deliberations, Commissioner Miller said he did not want to "speculate" whether the text amendments were necessary for Wesley to "thrive in place." He even acknowledged that the Commission did not have the financial information in the record "to make that determination." ***(Pages 20-21, December 19, 2024 Transcript)***

Despite acknowledging the lack of evidence in the record, Commissioner Miller justified his support for the text amendments by expressing his feeling that Wesley needed a revenue stream generated by "non-Wesley residents in this facility" to support Wesley's ability to "stay where they are."

Commissioner Wright offered an alternative – wishful – rationale. She stated it "makes a lot of sense to provide housing on a piece of land that can support two institutions that happen to be next door to each other, both of which have on-campus students who need housing and it just makes sense for the institutions to collaborate." ***(Pages 21-22, December 19, 2024 Transcript).*** **But, AU is not an applicant in this case; and AU has indicated as part of the record in this case that it is not collaborating with Wesley or Landmark on this project.** ***(Exhibit 24).*** AU and Wesley may be neighbors, but they are separate institutions with their own separate missions, Boards of Trustees, executive management teams and staff, and Campus Plans.

The Commission's decisions in zoning cases should be based on facts and evidence, not feelings and wishes.

What does not make sense in this case is that the case is still moving forward when AU is not collaborating in the Wesley-Landmark business deal involving AU's own students. As the record indicates, ANC 3E Chair Jonathan Bender has testified that AU has advised ANC 3E that it has no need for the housing provided by this project ***(Exhibit 53)***. In fact, little has changed since Chair Bender noted in ***Z.C. 23-08/23-08(1)*** that "there is a great deal of tension between the two institutions regarding this project." ***(Page 158, September 11, 2023 Transcript)***

NLC and SVWHCA have been calling on the Commission to encourage AU-Wesley collaboration in this project as part of their Campus Plans at hearings dating back nearly four years ago to the Commission's review of the 2021 AU Campus Plan approved on July 8, 2021.

Chairman Hood has consistently called on the neighbors over the last three years to offer alternatives to the text amendments for Wesley to "thrive in place." Although he did not follow through, he said at the November 18 public hearing in this case that he would ask that question of opponents yet again. The record shows that NLC and SVWHCA have answered that question time and time again offering multiple alternatives.

For example, NLC-SVWHCA have suggested Wesley take a more collaborative approach to mirror the relationship on other Methodist-related campuses, like Duke and Emory, that would enable Wesley to merge with AU; or for Wesley to enter into a collaborative agreement with another not-for-profit university to use its land, similar to the recent agreement between the New York City-based General Theological Seminary and the Nashville, Tennessee-based Vanderbilt University. ***(See Appendix)***

Rather than putting the burden on opponents to offer a solution to a problem Wesley has yet to document, the Commission should require the applicant, who bears the legal burden of proof under the Commission's rules, to:

- Justify with documentation why Wesley is proposing a project so beyond the scope of what is permitted in the zoning regulations as to require a major change in the zoning rules;
- What other alternatives for "thriving in place" Wesley has examined that would not require a text amendment; and

- Provide a thoughtful and comprehensive analysis of why these other alternatives are not viable.

Instead, the Commission appears to be operating as zoning counsel for Wesley-Landmark suggesting other alternative mechanisms (first a PUD and then a text amendment) to circumvent the Commission's own rules.

2. The Commission Did Not Consider The Impact of its Action on American University.

The Commission did not take into account the impact of the text amendments on AU, including the financial impact that has been documented in the record. This is a noteworthy oversight by the Commission. Since this case began, AU has reported a decline of almost 500 undergraduate students in 2024-2025 and increasing deficits requiring financial and even programmatic cutbacks. AU can ill afford to lose revenue from student housing. Wesley is seeking to boost its treasury by targeting AU students. The Landmark deal may seem like a sound financial strategy for Wesley in the short-term, but it is akin to a **hostile raid** on AU's revenue (and customer) base.

The Commission's approval of these text amendments enables Landmark to leverage its Wesley location to compete with AU for limited student housing revenue from AU's own students. The potential for this project to succeed is hindered further by AU housing policies adopted recently. AU is now requiring **all** of its freshmen and sophomore students to live in AU dormitories on the AU campus. This will further shrink the market for the Landmark project. Junior/senior-year students at AU are also unlikely to prefer living in a heavily monitored and regulated housing environment like that proposed by Landmark on the Wesley campus.

3. The Zoning Commission's Approach to IZ Invites a Legal Challenge in the Campus Plan Case.

A. The text amendments are inconsistent with *Subtitle B, Chapter 2, Section 200(j)* of the Zoning Regulations.

Most of the Commission's deliberations in this case were focused on IZ, which would not have been necessary if the Landmark-Wesley project fit the traditional category of a "dormitory" or "university housing." As Commissioner Wright acknowledged during the December 19 deliberations, IZ would not be required for a traditional dormitory on the Wesley Campus if the housing were intended for the exclusive use of Wesley students. Her comments (1) underscore that there is nothing "traditional" about the Landmark student luxury apartment building, and (2) highlight the legal difficulties in mandating an IZ requirement as a condition of a Campus Plan, as proposed by the text amendments.

Subtitle B, Chapter 2 defines the allowable education uses on university-owned land. The Landmark building does not fit the "Education, College/University" use definition in ***Subtitle B, Chapter 2, Section 200(j)*** of the Zoning Regulations because it is a commercial use that will dominate the Wesley campus. **There is no legal basis for conditioning a campus plan on an IZ requirement**

associated with this building because this building would not be permitted under the land use definitions in the Zoning Regulations. The text amendments do not override the ***Subtitle B*** limits.

Despite revising the text amendment reference to the building from a "dormitory" to "university housing," the Commission's December 19 deliberations skirted the fundamental issue in this case: that the Landmark-Wesley project is a commercial project.

How the Commission and the applicant choose to spin the Landmark building is irrelevant because – despite the "university housing" descriptor assigned by the Commission in this case – the Landmark-Wesley building is by definition and function a commercial project. Why would the applicant submit an application to shield the Landmark building from the *Subtitle X* commercial restrictions – and why would the Commission even consider the application – if the Landmark project is not in fact a commercial use?

As we have stated previously in this case, it cannot be reasonably disputed that the effect of Wesley entering into a ground lease agreement with Landmark, a commercial developer, is to monetize its land and transform the allowable student campus housing use into a commercial activity marketed and targeted to a population with little connection to the Seminary.

The *Subtitle B* use designations have consistently been interpreted by the Commission as applying to facilities where students are authorized to receive a degree from that college or university based on their enrollment in a course of study at that college/university.

Nothing in the proposed text amendment addresses the dissonance with ***Subtitle B***. Further exacerbating the ***Subtitle B*** land use issue is the fact that Landmark's commercial use on the Wesley Campus will be so dominant as to comprise 72 percent of the build-out on Wesley's land.

The Wesley-Landmark building will not be owned by Wesley. It will not be managed by Wesley. It will not even exclusively house Wesley students. Wesley's students will be a ***de minimis*** factor in the use of this building. With 72 percent of its build-out on the applicant's campus devoted to proposed student housing for AU students, only about one-fourth of the facilities on Wesley's campus will be directed to its educational mission.

As the record in the Wesley-Landmark cases document, this project is a first of its kind even for Landmark which builds **off-campus** "luxury" student housing on "raw or undeveloped" land within three miles of universities with more than 10,000 students.

On-campus student housing is part of the not-for-profit educational mission of a university. The Landmark building is independent of Wesley's non-profit mission. In this case, Wesley is giving access to its land – for a price – for a commercial profit-driven company to enter the D.C. student housing market and use the applicant's campus as part of a separate profit-making business targeting students who are not enrolled at Wesley and who are instead seeking a degree from another nearby university.

B. The IZ standard in this case should be commensurate with the relief provided in the text amendments.

The text amendment approved by the Commission and published as part of the NPRM would allow Wesley and Landmark to meet its IZ obligations through a **minimum** off-site set aside in Ward 3. The breadth of relief granted by the text amendments is anything but "minimum." In fact, it is extraordinarily broad. It should be a given that relief from the IZ requirement be set at a level commensurate with the extraordinary relief granted. **Many of the comments submitted to the Commission requested a much higher level of IZ, not the minimal amount made possible by the text amendment, which pursuant to the amendment's terms could be diluted even further.**

C. An option to enable Wesley to meet its IZ obligation through a monetary contribution would enable Wesley to circumvent its affordable housing obligations in this case.

The Commission also wanted the flexibility to enable Wesley to meet its IZ obligations alternatively through a financial contribution to an organization "that will facilitate the construction of new affordable housing." Given that Wesley is not in the construction business, the Commission's approved language sets the stage for the Commission to accept Wesley's proposal for a minimum contribution to some public interest organization with the objective of helping increase affordable housing in Ward 3. Wesley's application fails to specify whether the contribution would be made by Wesley or Landmark.

Wesley has proposed a shockingly low $8 million contribution. This token gesture by the applicant does not ensure any affordable housing will result from the Landmark project. That should be unacceptable to the Commission, especially given the breadth of relief the Commission is prepared to grant through the use of this text amendment process.

In the case of a contribution as an alternative means for meeting the IZ requirement, the Campus Plan rules would only apply to Wesley's act of making the contribution – not whether the contribution would actually result in additional affordable housing.

If the Commission's concern is only that the contribution is made, the focus in this proceeding on IZ is a charade. As proposed, the text amendment language fails to protect the intent or the integrity of the Commission's IZ rules.

D. The Commission's approach to off-site IZ, as stipulated in the text amendment, would lead to Campus Plan conditions that are unenforceable.

In a campus plan case like this, the off-site property – where the IZ would be provided – would not be subject to a Campus Plan Order. The property would not fall within the campus boundaries and, therefore, could not be subject to conditions of a Campus Plan. **Conditions imposed on third parties in a Campus Plan case are simply not enforceable.**

Furthermore, it is incongruous that a decision on IZ would be made as part of a Campus Plan Further Processing, as suggested by the IZ text amendment. It is uncertain whether the Campus Plan rules even permit consideration of IZ as part of a Campus Plan review. If the Commission can

overcome that legal hurdle, the idea of resolving the IZ issue during Further Processing makes no sense. How the IZ issue is addressed by Wesley is specific to a determination by the Commission that the Campus Plan presents no "objectionable conditions" under ***Subtitle X, Section 101.2***. If IZ does not present an objectionable condition, then what is the basis for conditioning the Campus Plan with an IZ mandate? If an IZ solution is to be offered as a condition of Campus Plan approval, it would require an acknowledgement and showing that the IZ issues in this case present an "objectionable condition" that requires a mitigation solution prior to Further Processing.

E. The Commission should develop the standard for Wesley's compliance with the IZ requirement through the text amendment process instead of punting this to the Campus Plan process.

The text amendment should define how IZ will work in this case and specify the standard the Commission expects Wesley to meet as part of its Campus Plan application rather than punt the issue to the Campus Plan case, as the Commission has decided. The only criteria set for the standard to be applied to Wesley is that it be an "enforceable" condition of the Campus Plan, according to the text amendment language. The text amendment's vague language does not make clear what would constitute an "enforceable" condition.

As written, the text amendment includes no specific standard for review to guide the Commission when considering as part of the Campus Plan process whether Wesley's IZ proposal is consistent with the new rules the Commission now wants to adopt. **The Commission wants to develop the standard for review as part of its Campus Plan review.** So, there is no way of measuring Wesley's IZ proposal against a zoning requirement/standard.

The text amendment proposes an arbitrary ***"I know it when I see it"*** IZ standard that is neither predictable nor transparent. That is not the way the zoning process is supposed to work. The Zoning Commission is supposed to evaluate applications on the basis of established standards.

F. The IZ text amendment circumvents existing regulations that would enable the Commission to grant the flexibility that Wesley is seeking in this text amendment case.

As we have testified previously, ***Subtitle C, Section 1006*** already provides authority for off-site IZ compliance. ***Subtitle C, Section 1007*** already provides Wesley with the opportunity to seek relief from the requirements outlined in ***Section 1003 (Set Aside Requirements)*** and ***Section 1006 (Off Site Compliance with Inclusionary Zoning)***. The existing regulations provide for an IZ variance process that could be used as an alternative to a text amendment to provide the relief that Wesley seeks. The Commission has not outlined a rationale for a text amendment that circumvents the standards of its existing rules – rules that already could provide the flexibility that Wesley and the Commission are seeking through the text amendment process.

4. The Commission's Action Does Not Meet Evidentiary Thresholds

Although the Commission has broad discretion for zoning, especially as it relates to text amendments, it is still subject to evidentiary thresholds that have been outlined by the D.C. Court of Appeals. In ***Dietrich v. District of Columbia Board of Zoning Adjustment 293 A.2d 470, 473 (DC***

1972), the court said: ***"There must be a demonstration of a rational connection between the facts found and the choice made."***

In ***Blagden Alley Association v. District of Columbia Zoning Commission, 590 A.2d 139, 147 (D.C. 1991),*** the court said, ***"A simple conclusory statement without explanation is insufficient."***

Both cases were cited by the D.C. Court of Appeals in a 2009 ruling to remand a section of the Zoning Commission's Order in the George Washington University Campus Plan case ***"because the Commission did not demonstrate a rational connection between its findings of fact and its conclusion." (Foggy Bottom Association v. District of Columbia Zoning Commission, 979 A.2d 1160 (D.C. 2009).***

The December 19 deliberations do not meet the ***Dietrich*** and ***Blagden Alley Association*** standards. It is also noteworthy that the Commission's December 19 deliberations never even referenced any arguments or issues raised by the public in the November 18 public hearing.

Conclusion: Public Engagement, Predictability, and Transparency

NLC and SVWHCA remain deeply troubled by the Commission's use of the text amendment process in this case to circumvent the zoning regulations and, especially, the limited opportunities for public engagement and participation in this case. As Chairman Hood noted at the November 18 public hearing, text amendments are "normally" an issue for ANCs citywide. ***(Page 39, November 18, 2024 Transcript)*** This case was unreasonably limited to two ANCs when the rule changes have implications for any neighborhood in proximity to a college campus – which would involve more than the two Ward 3 ANCs (ANC 3D and ANC 3E).

The failure to fully engage the public in this case is further exacerbated by the Commission's refusal of two requests to open the record for neighborhood groups despite the Commission's selective willingness to accept an unsolicited filing from ANC 3D after the record was closed. Even ANC 3E noted in its testimony in this case that the last minute switches in language by Landmark and Wesley "impaired the ANC's ability fully to address Landmark's and Wesley's proposal." ***(Exhibit 25)***

In contrast, throughout this process, the Commission has taken the lead in identifying ways for Wesley to move forward and has offered lifeline after lifeline to the Wesley-Landmark commercial partnership – after the applicant failed to meet the standards for a Campus Plan ***(Z.C. Case No. 22-13)*** and when Wesley did not meet the standards for a PUD ***(Z.C. Case No. 23-08/23-08(1)).***

As this 3-year case has evolved – beginning with a traditional Campus Plan case ***(Z.C. Case No. 22-13)*** to a PUD-Campus Plan case ***(Z.C. Case No. 23-08/23-08(1))*** and now to a text amendment case ***(Z.C. Case No. 24-09)*** – we have learned that neighborhoods can no longer trust that the Commission's rules mean what they say or that the rules will not change **during** the case to accommodate the applicant's so-called "unique" needs. The Commission has shown in this case that the zoning rules can change in a heartbeat and are anything but predictable.

Through its action in this case, the Commission already has sent a signal to every college and university in the District and every other developer or large institution: if you want a project that is not

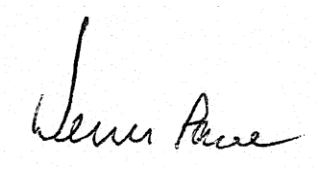
permitted under the existing regulations, make a threat to leave the District, as Wesley has done; no documentation is necessary to support that threat; and create a text amendment to carve out a change in the regulations that suits your needs despite the impact on affected neighboring property owners.

At the November 18 public hearing, Chairman Hood lamented and expressed frustration that this case has dragged on for three years. The only reason this case has dragged on for three years is because (a) the applicant failed to meet its burden of proof; and (b) the Commission, in its zeal to help Wesley, failed to take the only action it could, based on the facts and the record: that is, **to reject Wesley's Campus Plan and direct Wesley to refile a Campus Plan consistent with the Zoning Regulations.**

NLC and SVWHCA have been working on campus plan issues for at least 40 years. This case has been like none in which we have been involved. This text amendment case has been jarring because it upends a carefully and prudently balanced – and proven to be mostly effective – Campus Plan zoning process that is supposed to be rooted in standards; and, consequently, this case regrettably raises questions about the Commission's commitment to a set of zoning regulations that are predictable and a process for review that is transparent.

Thank you for this opportunity to comment.

Sincerely,



Dennis Paul, President
Neighbors for a Livable Community

S/William F. Krebs
DC Bar No. 960534
Interim President and Counsel
Spring Valley-Wesley Heights Citizens Association
Counsel, Neighbors for a Livable Community

Appendix: Another Alternative To Thrive In Place – General Theological Seminary Inks Agreement With Vanderbilt University

Tennessee's Vanderbilt University expands to New York, takes over Manhattan seminary

Hadley Hitson
Nashville Tennessean

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Vanderbilt University's nationwide footprint is expanding to New York City.

The school, which announced an expansion to southern Florida earlier this month, said Thursday that it entered into a lease agreement with The General Theological Seminary to take over its historic campus in the Chelsea neighborhood — including 13 buildings and approximately 150,000 square feet.

Vanderbilt is still in the process of receiving approval for the lease and any future programming from New York state government.

“To properly provide a transformative education to our students, and help our scholars and researchers achieve their greatest ambitions and most meaningful impact, we must make the broadest and richest range of opportunities available to them — wherever those opportunities exist,” Chancellor Daniel Diermeier said in a statement. “As home to leading institutions in finance, media, technology and the arts, and as a jumping-off point to the rest of the world, New York offers unbounded opportunities.”

Vanderbilt University reported that approximately 7,800 alumni and 740 current students live in or are from the New York area.

Last year, the university created a "regional administrative hub" in New York for its Development and Alumni Relations, the Office of Career Advancement and Education and the Office of Enrollment Affairs. That office will relocate to the Chelsea campus.

The university said other programming details are still in the early stages and would be pending state approval. A faculty advisory committee has convened to discuss how best to utilize the campus, led by Vice Provost for Undergraduate Education Tiffiny Tung. Undergraduate cost of attendance is $94,000, according to Vanderbilt's website and its Opportunity Vanderbilt program provides financial aid to applicants from households that earn less than $150,000 a year.

The General Theological Seminary plans to continue limited operations on the Chelsea campus with two-week intensive classes and maintaining some office space. Vanderbilt emphasized that the seminary will remain a completely separate entity, despite their proximity on the campus.

"This agreement ensures that GTS will maintain a year-round presence and will continue to provide future leadership for The Episcopal Church in our historic home," GTS President Ian Markham said in a statement. "We believe that Vanderbilt shares our commitment to be a strong partner to the neighborhood and local community."

New York isn't the only city Vanderbilt is eyeing for its growth plans.

Earlier this month, Vanderbilt also advanced its plan to build a 300,000-square foot graduate campus in West Palm Beach, Fla. On Sept. 5, the West Palm Beach City Commission gave the university seven parcels of land worth at least $12.8 million, according to the Palm Beach Post.

The university told the Palm Beach Post that its outpost there would focus on finance and technology degrees, planning to enroll around 1,000 students and employ between 100-150 faculty members.

Vanderbilt estimated that the campus will generate $7.1 billion in economic activity over the next quarter century and create 5,600 one-time construction jobs.

Both potential new campuses fit into Vanderbilt's ongoing mission to “bring the world to Vanderbilt and Vanderbilt to the world.”

Hadley Hitson covers trending business, dining and health care for The Tennessean. She can be reached at hhitson@gannett.com. To support her work, subscribe to The Tennessean.