

The Committee of 100

on the Federal City



BY IZIS

February 7, 2025

Mr. Anthony J. Hood, Chairman
DC Zoning Commission
One Judiciary Square
441 4th St. N.W., Second Floor
Washington, D.C. 20016

Re: Z.C. Case No. 24-09

Notice of Proposed Rulemaking for Wesley Seminary

Dear Chairman Hood and Members of the Commission:

The Committee of 100 on the Federal City (C100) offers these comments in response to a Notice of Proposed Rulemaking (NPRM) published in the DC Register on January 17, 2025. The origin of the text amendments is a proposal by the Wesley Theological Seminary (Wesley) to enter into a ground lease with a for-profit developer (Landmark Properties) under which Landmark would construct, own, manage and profit from a nine-story, 659-bed, luxury apartment building on the Wesley campus. Approximately 570 of the 659 residents of the apartment building would be American University students, not Wesley students, faculty or staff.

The text amendments would exempt Wesley from two fundamental zoning regulations – one requiring new residential developments to set aside a specific amount of affordable housing (as set forth in 11-C DCMR §1001 et seq) and another prohibiting other than incidental use of campus property for commercial purposes (as set forth in 11-X DCMR §101.3). Any proposal to exempt Wesley from these central zoning requirements should be subject to strict scrutiny and pass a high hurdle. The proposed text amendments do not clear this hurdle and should be rejected.

C100's specific comments are set forth after this intro. Here is a summary:

- Wesley has stated that it needs this relief in order to “thrive in place.” The Zoning Commission (Commission) has accepted this bold assertion even though it acknowledged that there is no proof of need in the record. Wesley throughout this extended process that has spanned three separate but related zoning cases has declined to provide any evidence of financial need.

- A waiver of the fundamental commercial use restriction in the Campus Plan regulations would gut the long-standing compact between residential neighborhoods and campuses. The text amendment is backdoor zoning.
- American University, which has complied with its campus plan and the required planning process, will be victimized by this text amendment. AU has a plan to house its students, including building more campus housing if needed. Allowing Wesley to compete with AU's housing plans is unfair and would establish an unpredictable tension between and among campuses. This is not a benign text amendment; there are profound consequences of favoring one campus over all others.
- While Inclusionary Zoning (IZ) does not apply to a college's own dorms, the Zoning Commission acknowledged that Wesley proposes commercial housing, which requires IZ. On IZ, the text amendment is not just incredibly vague; it offers Wesley a blank slate with hardly any standards.
- The text amendment not only would permit Wesley to build the least amount of required IZ off-site or make a low-ball financial contribution to another developer to satisfy the IZ requirement, given the proposed language authorizing a lower amount, it could be used to provide no affordable housing at all.
- The text amendment does not address the question of how any off-site IZ condition will be enforced.

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.”

This regulation embraces the principle of establishing land use compatibility between college campuses and surrounding residential neighborhoods. It was carefully crafted to protect residential neighborhoods and to address potential town-gown conflicts. A nine-story apartment building on the Wesley campus housing approximately 570 American University undergraduates

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

would violate this condition. It would change the nature of both Wesley Seminary, which currently enrolls 186 graduate-level students full time (plus part time graduate students enrolled in short term programs) and the neighborhood. The proposed apartment building will occupy approximately 72 percent of the gross floor area of Wesley's total campus floor area. Thus, Landmark's commercial use of the Wesley campus will be the dominant use of Wesley's land. The 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. This regulation addressing town-gown conflicts 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. It would also establish precedent for more commercial penetration of college campuses.² The Commission should not override the established restrictions.

C100 also believes the Commission should look ahead and consider what could happen if Landmark cannot fill the rooms in the building with American University students. Could the building become a white elephant? The record shows that American University has made it clear to ANC3E that AU has no need for a private external housing provider to meet AU's housing goals and that they are moving to a two year on-campus housing requirement for undergraduates.³ We understand this policy will take effect for the upcoming academic year. Also, AU's campus plan allows it to add 500 new beds if the need arises.⁴ The Wesley series of cases clearly demonstrate that campus housing is a money maker. We have to assume that AU will build those dorms for its students if the need arises. Further, AU's undergraduate enrollment is down by almost 500 students this year.⁵

Do Wesley and Landmark have contingency plans if demand for the beds is less than projected? If so, what are they? Will Landmark lease the vacant suites to any tenant willing to pay, just to students attending schools elsewhere, or to the City as a temporary shelter?

The Commission Should Direct Wesley to Come Up with a Specific Enforceable Plan on How the IZ Requirement Will Be Satisfied

The Inclusionary Zoning text amendment provides that Wesley shall provide off-site IZ located in Ward 3 as an enforceable condition of its 2022-2032 Campus Plan further processing and that various requirements generally applicable to off-site IZ may be waived by the Zoning Commission. While the text amendment provides that the minimum amount of IZ required by Subtitle C §1003.1 or §1003.2 shall apply, it also states that the Zoning Commission shall have

² There are statements in the record that this is a targeted approach that cannot be replicated. We disagree. One obvious example of where it could be applied would be in the context of Trinity University and Catholic University.

³ Exhibit 53, p.3.

⁴ Case No. 20-31.

⁵ We also point out that construction has started on a building three blocks from AU's main campus and next door to AU's Spring Valley building at 4801 Massachusetts Ave. This building, being constructed on the lot formerly occupied by the SuperFresh grocery and other retail, will have 234 apartments. As in the case of other apartment buildings in the Mass Ave. corridor, it is likely that AU students will be tenants.

broad discretion to determine that the IZ requirement can be satisfied by alternative means, including:

- increasing or decreasing the set aside requirements, and/or
- requiring Wesley to make a financial contribution deemed sufficient by the Zoning Commission. [Emphasis added]

C100 has several issues with this text amendment. First, it is exceedingly vague. In response to an alternative text amendment proposed by Wesley, the Office of Planning stated that “OP has reviewed the Applicant’s Alternate Language and cannot support the language regarding ‘or financial subsidies therefor that are substantially equivalent, but not less than Subtitle C, §1003.2 requirements’” because the language is “entirely too vague.”⁶ By comparison, the text amendment in the NPRM is not just vague; it offers Wesley a blank slate with hardly any standards.

Second, the text amendment is internally contradictory. It states that “the off-site IZ provided shall be no less than the Subtitle C §1003.1 or §1003.2 set aside requirements, as applicable.” However, it then goes on to say that the Commission can decrease the set aside requirements. [Emphasis added in both cases.] This is simply doublespeak. The import is that Wesley could get extraordinary zoning relief without any quid pro quo.

Third, the text amendment provides that the IZ proffer shall be an enforceable condition in Wesley’s Campus Plan further processing covering the construction of university housing on the Wesley Campus. While one can argue that this approach merely defers resolution of this important issue (kicks the can down the road), the problem is more serious. What jurisdiction does the Zoning Commission have to review Wesley’s proposed solution once Wesley is in the further processing stage? One would expect that the issues debated then will pertain to the details of the proposed residential building, not off-site IZ. Further, who will enforce the IZ requirement once a plan is approved? We fail to see how enforcement would be handled during administration of the approved Campus Plan. Finally, there’s no mention of the Department of Housing and Community Development, which normally administers IZ.

Fourth, it seems clear from the text amendment that Wesley is likely to propose meeting the IZ requirement by directly or indirectly making a financial contribution to a developer, perhaps an affordable housing developer. There is evidence in the record that Wesley is thinking about an \$8 million contribution. Is this the right amount? Since it is being suggested by Wesley, it should be treated skeptically. Relatedly, is an \$8 million contribution the right amount given the extraordinary and unparalleled zoning relief requested? Several parties, including ANC3E, have stated that any financial contribution should be much larger. The ANC’s position should be given great weight.

What standards should be used to determine what size contribution is equivalent to the eight or ten percent minimum IZ commitment generally required? At a minimum, the Commission

⁶ Exhibit 28, p.1

should establish a formula or calculation that can be used to set the dollar amount of the contribution. One calculation that makes sense to us is set forth in footnote 2.⁷

Fifth, as noted, the NPRM's text amendment provides that the general IZ requirements in Subtitle C §1006.1 -1006.3(a)-(g) may be waived. This grant of waiver authority is astounding in its scope and, in our experience, is unprecedented. The further processing stage is the wrong forum to resolve critical issues involving the waiver of IZ requirements that could end up serving as District-wide precedent.

In short, the Commission should withdraw the proposed text amendment and direct Wesley and the Office of Planning, with the assistance of the ANC's and community organizations, to develop a specific, definitive plan for addressing the IZ issue. The Commission should not just kick this can down the road.

Conclusion

For the reasons explained above, the Committee of 100 strongly recommends that the Commission decline to approve the two text amendments. Each represents a substantial departure from generally applicable rules. The Zoning Commission should refrain from rewriting the rules whenever a particular rule provides a hurdle to approval of a specific project. This case raises the question of why we have rules.

Please feel free to contact me if you have any questions.

Shelly Repp

Chair, Committee of 100

202-494-0948; chair@committeeof100.net

⁷ Here's one methodology that relies on Wesley's original plan of proving student-based IZ and is based on the specifics of this case. Since 570 of the 659 beds in the dormitory will be rented to non-Wesley students, an amount equivalent to 10 percent of those beds (or 57 beds) should be set-aside as affordable (assuming the set aside requirements of Subtitle C §1003.1 apply in this case). The cost of providing these affordable beds would then equal 57/659 of the total cost of the building cost. The resulting number would represent the cost of providing affordable beds in the dormitory. It could be used to set the amount of the required payment for off-site IZ.