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TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS
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ANC 3E POST-NPRM REPORT IN ZC 24-09

Near the end of its deliberations, the Zoning Commission shifted from considering the Applicant's request and advice from the ANCs and OP to approving an outcome that none of them sought. If the ZC makes the proposed rule permanent, it would set a terrible precedent and set back Inclusionary Zoning in DC. The Zoning Commission should instead either adopt ANC 3E's "Option B", or a variant set forth below that allows the ZC flexibility to accept any housing-related proffer *beyond* the minimum offsite IZ specified in both the Applicant's revised petition and OP's final report.

OP Proposed Text that Preserved the Integrity of DC's IZ Program

The Office of Planning, reflecting the District's commitment to Inclusionary Zoning, particularly in underserved Ward 3, proposed, *inter alia*, the following text:

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).¹

OP's proposed text protected the integrity of DC's IZ program while providing Wesley and Landmark substantial leeway to create the minimum required IZ units.² Landmark, an expert developer, would need only to contract with a residential or mixed-use projects in Ward 3 to subsidize the creation of the appropriate quantity of IZ from what would otherwise be market-rent units.

Wesley and Landmark, to their Credit, Adopted OP's Proposed Text

The Applicant adopted and supported OP's proposed language for Sec. 1006.10:

Wesley **reconfirms its previously [sic] acceptance of the OP alternative text amendment.** . . .

The OP proposal is consistent with the Zoning Regulations and maintains the integrity of the established minimum standards imposed for IZ.³

¹ Ex. 28 at 2

² In a Dec. 13, 2024 Supplemental Report, OP reaffirmed its support for this position, stating that it "continues to recommend the proposed text that will allow the Applicant to provide *not less than* the required IZ set aside." Ex. 60 at 4 (emphasis added).

³ Ex. 58 at 1 (emphasis added).

The Applicant contended that this language would require the minimum IZ but permit the ZC to require more:

Wesley believes that the “no less than” standard enforces a minimum standard that is currently applicable to all new projects, but also allows the Zoning Commission to exercise its discretion at the Campus Plan phase to impose a higher standard that it deems appropriate under all the circumstances.⁴

Thus, Applicant’s request to the Zoning Commission was that it be required to comply with the “minimum standard that is currently applicable,” but that the ZC be able to require *more* than the *minimum standard*.

ANC 3E Sought the same Outcome as Applicant but Recommended Language More Likely to Achieve the Shared Goal

ANC 3E’s sole objection to the language proposed by OP and Applicant was that it did not appear to provide definite authority to the ZC, in the course of a campus plan proceeding, to require *more* than the minimum IZ in light of the extraordinary relief Wesley and Landmark require to go forward with their project.

After 3E raised this concern during the hearing, the ZC asked ANC 3E to submit proposed text language that would allow the ZC to require provision of *more* than the minimum required IZ. ANC 3E provided two language options, one of which, “Option B,” is as follows:

1006.10

Notwithstanding anything else in this Subtitle or Subtitle X, 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~~ university housing exclusively for use by Wesley Theological Seminary and American University students, faculty, and staff on Square 1600, Lot 819 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, t~~The off-site IZ provided shall be of an amount to be determined by the Zoning Commission during further processing but ~~be~~ no less than Subtitle C, §1003.1 or §1003.2 requirements, as applicable, and subject to the requirements of Subtitle C, §§ 1006.5 -1006.9. ~~The Zoning Commission may further specify the MFI of the inclusionary zoning units herein required.~~⁵

ANC 3D, our sister ANC, supported the approach contained in Option B.⁶

Thus, both ANCs, OP, and the Applicant supported an approach that would require Wesley and Landmark to provide, as a minimum, actual offsite IZ at the set-aside level otherwise required by law. Moreover, both ANCs and the Applicant endorsed an approach that would permit the ZC to require more

⁴ *Id.* At 2

⁵ The redline and strikeout in this paragraph shows differences from OP’s proposed language.

⁶ See Ex. 57 at 2. Because ANC 3D, the Applicant, and OP all supported an approach that would permit the ZC to require more than the minimum IZ during the campus plan process, we do not further discuss Option A, which permitted the ZC to specify increased IZ in the text amendment.

IZ than the minimum – but not less -- at a level to be determined during the campus plan process. No other commenters asked the ZC to permit the Applicant to provide less than the minimum IZ otherwise required or to permit a donation in lieu of creating actual IZ.

The ZC should return to the approach sought by OP, Applicant, and the ANCs

For reasons unclear, the ZC disregarded all formal comments and crafted language that would permit the ZC to (1) require *less* than the minimum IZ otherwise required by law, and (2) permit Wesley and Landmark to make a donation – the size of which might not be tied to the cost of creating a specified amount of IZ – to an affordable housing group in lieu of actually creating offsite IZ (“NPRM Language”). The NPRM Language begins by quoting the OP text, but then continues with a “notwithstanding the foregoing language” clause that permits the ZC entirely to vitiate the OP language. The NPRM language is thus internally inconsistent, and tries to reconcile two irreconcilable approaches, one which maintains the integrity of the established minimum standards imposed for IZ, and one which would abandon the integrity of the minimum standards. ANC 3E respectfully urges the ZC in the strongest terms not to adopt the NPRM Language as written.

The proposed rule would create a disturbing and powerful precedent. Even holding aside the IZ issue, this rule would provide far more sweeping relief to Wesley and Landmark than the ZC has ever provided in an individually-targeted text amendment. Yet, the ZC would go further and amend the Zoning Code to permit a single institution to provide less than the minimum IZ required by law, possibly much less – or even none.

Likewise, the proposed rule would allow a single institution to donate to an organization that “facilitates” IZ construction in lieu of requiring the actual creation of measurable offsite IZ. Indeed, in principle, the rule as written would allow the ZC to release this single institution from any obligation to create IZ or make a donation.

Nothing about this joint venture between a publicly-traded REIT and an educational institution could justify such a dramatic departure from established law. Landmark is a long-established national housing developer. It knows how to negotiate deals for housing and it can certainly negotiate a deal with another developer to buy down market rate units to include in the IZ program.

As discussed in our earlier filings, Landmark stands to make above-market profits here, because it normally must build its student apartment buildings on private property subject to non-institutional zoning. Permitting it to provide less than the minimum required IZ offsite -- and the permission to build offsite itself constitutes substantial relief never granted in a targeted text amendment -- would constitute a gift paid for by lower income DC residents.

Wesley, too, is not extraordinary. There are many, perhaps hundreds, of educational institutions and other non-profits in DC that are land rich and cash poor. Doubtless many of them can present stories as or more compelling as Wesley’s. If the ZC adopts the proposed rule, it should expect a parade of creative requests for relief from other deserving non-profits that want to build for-profit projects on their land without having to create the minimum required IZ, even offsite.

OP’s proposal, by contrast, upholds the affordable housing policies of the Mayor and the District of Columbia. It maintains a vital line. It requires “at a minimum” that the Applicant create actual offsite IZ at the minimum set-aside levels otherwise required. This vindicates two key policies. First, neither this nor

any applicant should be relieved of the need to comply with the IZ set asides as written; those minimums are sacrosanct. Second, DC has no program permitting applicants to make payments in lieu of creating IZ units. Absent creation of such a program, an applicant must actually create IZ.

In PUDs, the ZC has long evaluated and accepted proffers of donations for specific purposes *in addition* to a proffer of creating at least the minimum required IZ. Such an approach would similarly be reasonable here. The NPRM language could be *modified* as follows to achieve that objective:

ANC 3E Alternative NPRM 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 university housing on Wesley's campus, 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 or §1003.2 set-aside requirements, as applicable, and subject to the requirements of Subtitle C §§ 1006.5 - 1006.9 ["Off-site IZ Requirement"]. ~~Notwithstanding the foregoing, and f~~For good cause shown, the Zoning Commission shall have broad discretion to determine that the ~~Off-s~~Site IZ ~~r~~Requirement described in this provision ~~can be satisfied~~may be increased, and to determine that any increase over the minimum set-aside requirements in Subtitle C §1003.1 or §1003.2 may be satisfied by alternative means, includingby increasing ~~or decreasing~~the set-aside requirements ~~described herein in Subtitle C §1003.1 or §1003.2~~ and/or by requiring Wesley to make a financial contribution, deemed sufficient by the Zoning Commission, to an organization(s) that will facilitate the construction of new affordable housing reserved for households at or below 60% of median family income for rental units or at or below 80% of median family income for ownership units exclusively in Ward 3, provided that such alternative means ~~is~~are stated as an enforceable condition to the 2022-2032 Campus Plan further processing to construct university housing on Wesley's campus.

This approach would permit the ZC the same broad latitude it has in PUDs to determine whether a proffer of any kind *beyond* the minimum required IZ is acceptable, while protecting the integrity of DC's long-established minimum set asides.

BE IT RESOLVED

ANC 3E opposes the NPRM language as written. ANC 3E respectfully calls on the ZC to:

1. adopt instead of the NPRM Language the language contained in “Option B,” described in ANC 3E’s filing at Exhibit 57; *otherwise*
2. adopt the “ANC 3E Alternative NPRM 1006.10” set forth above; *otherwise*, as a last resort, if the ZC believes that the extraordinary relief accorded to Wesley could not merit more than the minimum required IZ,
3. adopt OP’s proposed language set forth in Exhibit 28;
4. under no circumstances adopt language that abandons the integrity of minimum IZ standards, either by abandoning the minimum set asides or, worse, abandoning any definable set aside in favor of the ZC’s unbridled discretion to “deem” a contribution “sufficient.”

ANC 3E⁷

**Jonathan
an
Bender**
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by Jonathan Bender
Chairperson

⁷ 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.