

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING  
Z.C. CASE NO. 24-09<sup>1</sup>**

**The Wesley Theological Seminary of the United Methodist Church  
(Text Amendments to Subtitle C § 1006 and Subtitle X § 101)  
February 27, 2025**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2018 Repl.)), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2013 Repl.)), received a petition from The Wesley Theological Seminary of the United Methodist Church (Petitioner or Wesley) and hereby gives notice of its adoption of amendments to Subtitle C § 1006 and Subtitle X § 101 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the text at the end of this notice.

**PREFACE**

The Commission is not required to explain its reasoning in rulemaking cases.<sup>2</sup> However, it is doing so in this case because there was considerable public interest in this case and the Commission wants to make clear that it carefully considered the various issues raised.

**PETITION**

The proposed amendments, as revised after the Commission postponed the public hearing from October 17, 2024 to November 18, 2024, at the Petitioner's request, to allow the Petitioner additional time to work with the community and Advisory Neighborhood Commission (ANC) 3E, and incorporating the Office of Planning's (OP) suggested revisions<sup>3</sup> to the amendments, would do the following:

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<sup>1</sup> For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 24-09.

<sup>2</sup> A statement of basis and purpose is not required by the District of Columbia Administrative Procedures Act in rulemaking cases (*See* D.C. Official Code § 2-505(a), *District of Columbia Hosp. Ass'n v. Barry*, 498 A.2d 216 (D.C. 1985)). Nor is it required by the Zoning Act (*See* D.C. Official Code §§6-641.01-.05). This is in contrast to a contested case, where the Commission is required to issue an order that contains findings of fact and conclusions of law for each contested issue (*See* D.C. Official Code §2-509(e), *Lee v. District of Columbia Zoning Commission*, 411 A.2d 635 (1980)).

<sup>3</sup> On May 30, 2024, the Petitioner submitted its originally proposed language that would amend Subtitle C § 1001.6(c) to exempt housing exclusively for Wesley and American University students, faculty, or staff that is constructed on Wesley's campus as approved by a campus plan from the IZ program; and would add a new Subtitle X § 101.5 to clarify that the referenced housing on Wesley's campus would not be construed as subject to the commercial use and activity restriction in Subtitle X § 101.4 of the campus plan regulations (Exhibit [Ex.] 2B). Then in a November

- Add a new § 1006.10 to Subtitle C § 1006, OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING, requiring Petitioner to provide off-site Inclusionary Zoning (IZ) at a minimum set-aside of eight percent (8%) or ten percent (10%) depending on construction type in Ward 3 as an enforceable condition to its 2025-2035 Campus Plan further processing to construct university housing on its campus and allowing the Commission to waive<sup>4</sup> certain requirements for the off-site IZ; and
- Add a new § 101.5 to Subtitle X § 101, CAMPUS PLANS, clarifying that university housing exclusively for use by Wesley and American University students, faculty, and staff on Square 1600, Lot 819 is not to be construed as subject to a commercial use or activity restriction as described under Subtitle X § 101.4 of the campus plan regulations if approved by the Commission as part of a campus plan.

(See Petitioner’s originally proposed amendment language at Ex. 2B; Petitioner’s postponement request at Ex. 17; Petitioner’s subsequent alternative language proposals at Ex. 21 and 22; and OP’s suggested revisions at Ex. 28.)

### **BACKGROUND AND WESLEY CAMPUS**

The proposed text amendments are intended to provide clarification on IZ requirements and to provide clarification on the applicability of commercial use and activity restrictions as both relate to a new approximately 659-bed university housing building proposed on Wesley’s campus that would house Wesley and American University (AU) students and their immediate families, and is the principal part of the Wesley 2025-2035 Campus Plan application,<sup>5</sup> which is currently pending before the Commission. (See Z.C. Case No. 23-08(1)).

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4, 2024 submission, the Petitioner subsequently proposed alternative text initiated in consultation with ANC 3E. As an alternative to amending Subtitle C § 1001.6(c) and exempting the dormitory on Wesley’s campus from the IZ program, the subsequent proposal would instead add a new Subtitle C § 1006.10 requiring Wesley to provide off-site IZ units located in Ward 3 or “substantially equivalent” financial subsidies, as a condition to a campus plan approval of the aforementioned dormitory (Ex. 21). On November 6, 2024, the Petitioner filed a second submission with a subsequent proposal to change the amendment to Subtitle X § 101.5 to replace the phrase “dormitory” with “purpose built student housing building” (Ex. 22). Then on November 14, 2024, OP filed a hearing report suggesting revised language to the Petitioner’s subsequent proposals, both to Subtitle C § 1006.10 and Subtitle X § 101.5 (Ex. 28). As further explained in the OP hearing report (Ex. 28), the main difference between the Petitioner’s subsequent proposal to Subtitle C § 1006.10 and OP’s suggested revision is that the latter would require Wesley to provide off-site IZ in Ward 3 (with a waiver of some of the off-site IZ requirements of Subtitle C § 1006) as a condition of the campus plan further processing approval to construct a dormitory on Wesley’s campus; and would not give Wesley an option to provide “substantially equivalent” financial subsidies in lieu of providing off-site IZ in Ward 3. The main difference between the Petitioner’s subsequent proposal to Subtitle X § 101.5 and OP’s suggested revision is that the latter would replace the phrase “A dormitory providing housing” with “University housing.” (Ex. 28). In its presentation and at the November 18, 2024, public hearing, the Petitioner stated it agreed with OP’s suggested revision to Subtitle X § 101.5 and expressed general support for OP’s suggested revision to Subtitle C § 1006.10 while stating its desire for additional flexibility with respect to providing the required off-site IZ by and through qualified third parties as opposed to Wesley directly providing the off-site IZ (Ex. 36).

<sup>4</sup> As further discussed below, at final action, the Commission decided to amend the proposed text of Subtitle C § 1006.10 to remove discretion to determine that Wesley can meet its off-site IZ requirement by decreasing its IZ set-aside, while retaining the discretion to determine that the IZ requirement can be met by increasing the IZ set-aside or through a financial contribution to a Ward 3 affordable housing provider.

<sup>5</sup> In March 2022, Wesley filed a campus plan application (see Z.C. Case No. 22-13) for its 2022-2032 Campus Plan which proposed a new university housing building that would house both Wesley and AU students. After a public

The approximately 8.77-acre Wesley Theological Seminary campus is located at 4500 Massachusetts Avenue, N.W. in the Northwest quadrant of the District; and is bounded by Massachusetts Avenue to the northeast; AU's main campus to the southeast and southwest; and University Avenue to the northwest. The Wesley campus is located within the boundaries of ANC 3E; and is located directly across the street from ANC 3D.

### **OP SETDOWN REPORT**

On July 15, 2024, OP filed a setdown report (OP Setdown Report) recommending the Commission set down the original petition<sup>6</sup> text amendment language (at Exhibit 2B of the case record) for a public hearing and concluding that the proposal would not be inconsistent with the Comprehensive Plan (CP) Maps, Citywide Elements and the Rock Creek West Area Element, including when viewed through a racial equity lens (Ex. 10).

### **ANC SETDOWN FORM**

In response to the Petition, ANC 3D filed a setdown form with an attached letter stating it believes the Petition is ready to be set down for a hearing (Ex. 9).

The Commission did not receive an ANC setdown form from ANC 3E.

### **SETDOWN**

At its July 25, 2024, public meeting, the Commission considered the Petition and the ANC 3D setdown form<sup>7</sup> and voted to set down the Petition for a public hearing as a rulemaking case.<sup>8</sup>

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hearing and several public meetings, the Commission determined it could not proceed with the case; and Wesley withdrew its application and decided to seek approval of the campus plan and university housing building through a joint campus plan and PUD application. In June 2023, Wesley re-filed its campus plan application (*see* Z.C. Case No. 23-08(1)) with minor changes and simultaneously filed a new PUD application (*see* Z.C. Case No. 23-08) which, among other things, requested special exception relief and flexibility from the IZ program requirements to allow Wesley to administer a privately-run IZ program for Wesley and AU students at the new university housing building. The Commission held two public hearings in September and October 2023 and was unable to proceed with final action for various reasons, including concerns that a text amendment was needed to clarify the IZ requirements applicable to the university housing building and resolve ambiguity around whether the university housing building was subject to the commercial use and activity restrictions of the campus plan regulations. The campus plan application (Z.C. Case No. 23-08(1)) remains pending, and the PUD application (Z.C. Case No. 23-08) has been withdrawn.

<sup>6</sup> As noted above, prior to the November 18, 2024 public hearing, OP submitted a hearing report which recommended certain revisions to the Petitioner's originally proposed text amendments (Ex. 28). The OP hearing report included an analysis of the proposed text amendments, with OP's suggested revisions, which is further discussed below.

<sup>7</sup> The record reflects a letter (Ex. 12) submitted by Neighbors for a Livable Community and the Spring Valley-Wesley Heights Citizens Association (collectively, NLC-SVWHCA) alleging several errors and flaws in the OP Setdown Report. In accordance with the requirements of Subtitle Z § 500.9, the Commission can only consider the petition, the recommendations of OP, and the ANC Setdown Form of the affected ANC(s) in determining whether to set down a petition for a public hearing. Therefore, the Commission did not consider the content of the letter submitted by NLC-SVWHCA in deciding to set down the Petition for a hearing.

<sup>8</sup> The originally submitted Petition mistakenly described the proposed text amendments as a contested case. However, the Petitioner subsequently filed a letter clarifying that the proposed text amendments should be designated as a rulemaking case (Ex. 11). When setting down the Petition for a hearing at its July 25, 2024 public meeting, the Commission affirmed its designation of the case a rulemaking case and not a contested case.

## **NOTICE**

Pursuant to Subtitle Z § 502, the Office of Zoning (OZ) sent notice of the originally scheduled October 17, 2024 public hearing on August 19, 2024, and published notice of the public hearing, in the August 30, 2024, issue of the *District of Columbia Register* (71 DCR 010610 *et seq.*) as well as on the calendar on OZ's website (Ex. 14-16).

On September 27, 2024, the Petitioner filed a letter requesting a postponement of the originally scheduled public hearing from October 17, 2024, to November 18, 2024, to allow time for the Petitioner to work with OP, ANC 3D, ANC 3E, and other interested parties (Ex. 17). The Commission approved the postponement request on October 1, 2024.

On October 16, 2024, OZ sent notice of the rescheduled November 18, 2024 public hearing, and published notice of the rescheduled public hearing in the October 25, 2024 issue of the *District of Columbia Register* (71 DCR 012888 *et seq.*) as well as on the calendar on OZ's website (Ex. 18-20).

## **PETITIONER'S PREHEARING SUBMISSION**

As noted above, the Petitioner filed a prehearing submission on November 4, 2024 requesting—as an alternative to its originally proposed text amendment to Subtitle C § 1001.6(c) exempting a dormitory on Wesley's campus from the IZ program—new text under Subtitle C § 1006.10, which would require Wesley to provide off-site IZ units located in Ward 3 or “substantially equivalent” financial subsidies as a condition to a campus plan approval of the dormitory, with a waiver of certain requirements under Subtitle C §§ 1006.1-1006.3(a) (Ex. 21). On November 6, 2024, the Petitioner filed a supplemental prehearing submission requesting a revision to its proposed amendment to Subtitle X § 101.5 to replace the word “dormitory” with “purpose-built student housing building” in response to negotiations with ANC 3E (Ex. 22).

## **OP HEARING REPORT**

On November 14, 2024, OP filed a hearing report<sup>9</sup> (OP Hearing Report and, together with the OP Setdown Report, the OP Reports) suggesting revisions<sup>10</sup> to the Petitioner's alternative Subtitle C § 1006.10 text and Subtitle X § 101.5 text (Ex. 28). The main difference between the Petitioner's alternative Subtitle C § 1006.10 text and OP's suggested revision is that the latter would require Wesley to provide off-site IZ in Ward 3 (with a waiver of some of the off-site IZ requirements of Subtitle C § 1006) as a condition of the campus plan further processing approval to construct a dormitory on Wesley's campus; and would not give Wesley an option to provide “substantially equivalent” financial subsidies in lieu of providing off-site IZ in Ward 3. The main difference between the Petitioner's Subtitle X § 101.5 text and OP's suggested revision is that the latter would replace the phrase “A dormitory providing housing” with “University housing” (Ex. 28).

The OP Hearing Report concluded that the proposed text amendments, with the revisions recommended by OP to include new text added to Subtitle C § 1006.10 and amendments to Subtitle

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<sup>9</sup> OP requested a waiver to file its hearing report less than ten (10) days before the November 18, 2024 public hearing, which the Commission granted at the start of the hearing.

<sup>10</sup> As further discussed below, the Petitioner stated at the November 18, 2024, public hearing that it generally agreed with OP's suggested revisions to Subtitle X § 101.5 and Subtitle C § 1006.10 but requested flexibility to provide the required off-site IZ under Subtitle C § 1006.10 by and through qualified third parties (Ex. 36).

X § 101.5, are not inconsistent with the Comprehensive Plan maps and policies, including when viewed through a racial equity lens (Ex. 28).

### **OP REPORTS**

A summary of the contents of the OP Reports follows (Ex. 10, 28). Many of the contents of the OP Reports are directly quoted in the following summary.

Wesley requests text amendments to allow both Wesley and American University students and their families to be housed in a new university housing building on the Wesley Campus. On balance, OP finds that the proposed text amendments in conjunction with the Wesley Campus Plan (Z.C. Case No. 23-08(1)) would be not inconsistent with the Comprehensive Plan and would allow Wesley to “thrive in place.” Wesley has been up front about their need to find a steady revenue source to allow the university to continue providing Master’s and Doctoral-level education for graduate-level students studying theology and related subjects. The dormitory that could be built as a result of these text amendments would be the primary source of the funds and would be achieved through a ground lease enabling a private company to construct a new 219-unit, 659-bed dormitory that would be occupied primarily by Wesley and American University students and their immediate families. The proposed text amendment is narrowly confined to the Wesley campus and to be implemented the housing would have to be approved by the Commission through further processing of the campus plan. OP supports the targeted nature of the amendments to only apply to Wesley and would provide the opportunity for Wesley to provide housing for their students, faculty and staff as well as those from American University. These amendments, narrowly tailored, would enable Wesley to meet their needs through the provision of on-campus student housing and comply with the IZ regulations through off-site IZ.

### **COMPREHENSIVE PLAN: CP MAPS**

#### ***Future Land Use Map (FLUM) and Generalized Policy Map (GPM)***

Both the FLUM and GPM designate Wesley’s campus for Institutional use, which is defined as:

***Institutional:** This designation includes land and facilities occupied and used by colleges and universities, large private schools, hospitals, religious organizations, and similar institutions. While included in this category, smaller institutional uses such as churches are generally not mapped, unless they are located on sites that are several acres in size. Zoning designations vary depending on surrounding uses. Institutional uses are also permitted in other land use categories (10-A DCMR § 227.18).*

*The Generalized Policy Map also identifies . . . major institutional land uses. The fact that these areas are not designated as Conservation, Enhancement, or Land Use Change Areas does not mean they are exempt from the Comprehensive Plan or that their land uses will remain static. . . . Much of the land identified as institutional on the map represents colleges and universities; change and infill can be expected on each campus consistent with campus plans. . . . Policies in the Land Use and the Educational Facilities Elements address the compatibility of such uses with surrounding neighborhoods (10-A DCMR § 225.22).*



The OP Reports concluded that the Petition would not be inconsistent with the FLUM's and GPM's designation of Institutional for the Wesley campus, as the "development proposed under the campus plan would be institutional use buildings on a campus of higher learning and would not be available for occupancy by the general public." (Ex. 10, 28).

#### **COMPREHENSIVE PLAN: CITYWIDE ELEMENTS**

The OP Reports stated that the Petition is, on balance, not inconsistent with the Citywide Elements of the Comprehensive Plan. OP concluded that the proposed text amendments would further policies of the Land Use, Transportation, Housing, Economic Development, Parks Recreation and Open Space, Urban Design, and Educational Facilities Elements (Ex. 10, 28).

#### **Land Use**

The proposed text amendments would not be inconsistent with the policies of the Land Use Element of the Comprehensive Plan. Wesley has worked with the ANC and the community during the campus plan and PUD processes and the present text amendment to address issues related to the proposed dormitory and overall development of the campus plan. Wesley has worked to minimize potential impacts on the neighboring low density residences by reducing the height of the proposed dormitory and limiting views and light spillage from the upper stories of dormitory onto adjacent residences.

The proposed text amendments would further the Land Use Element policies listed below:

- *Policy LU-2.1.11: Residential Parking Requirements;*
- *Policy LU-2.1.5: Support Low-Density Neighborhoods;*
- *Policy LU-2.3.5: Institutional Uses;*
- *Policy LU-3.3.1: Transportation Impacts of Institutional Uses; and*
- *Policy LU-3.3.2: Corporate Citizenship.*

#### **Transportation**

The proposed text amendments are not inconsistent with the policies in the Transportation Element of the Comprehensive Plan as the campus plan and its Transportation Management Plan outlines that transportation improvements would include the promotion of bicycle, pedestrian, and shuttle bus usage. The proposed plan would include enhanced pedestrian pathways and adds long-term and short-term bicycle parking on campus including electric charging stations for vehicles, e-bikes/scooters. The new dormitory would increase on-campus parking, but the impact of this would be addressed through the de-bundling parking from dorm-room rental, by prohibiting student, faculty and employee parking on residential streets, and by other measures to encourage the use of mass transportation and alternatives to private vehicles. The proximity of the Tenleytown-AU Metro station and the access that both public transit and the AU shuttle system provide to the area near the campus would help diminish the need for private-vehicle dependency.

The proposed text amendments would further the Transportation Element policies listed below:

- *Policy T-1.1.8: Minimize Off-Street Parking;*
- *Policy T-2.4.1: Pedestrian Network;*
- *Policy T-2.4.2: Pedestrian Safety;*
- *Policy T-3.1.1: TDM Programs; and*

- *Policy T-5.2.2: Charging Infrastructure.*

### Housing

The proposed dormitory, although only serving students, faculty and staff and their immediate families, would have a variety of unit sizes to accommodate one to five beds. The building would also have family-sized units to accommodate students and their immediate families.

The proposed text amendments would further this Housing Element policy:

- *Policy H-1.1.9: Housing for Families.*

### Economic Development

The proposed text amendments are not inconsistent with the Economic Development Element as the revenues developed under the proposed campus plan would allow the Seminary to remain open and continue providing employment and other opportunities to District residents. A relatively high percent of Wesley students, graduates and employees are non-White, and Wesley engages in community outreach and support from both its main campus and its rented space at Mount Vernon Square. The revenues would help to keep Wesley financially solvent and able to continue its educational and outreach programs.

The proposed text amendments would further the Economic Development Element policies listed below:

- *Policy ED-1.1.1: Core Industries;* and
- *Policy ED-2.4.1: Institutional Growth.*

### Parks Recreation and Open Space

The proposed text amendments would allow for the continued operation of the university with a campus plan that would include a new playground which would be accessible to the nearby neighborhood and the preservation of fifty-five percent (55%) of the campus as green open space as part of the campus plan proposal.

The proposed text amendments would further this Parks Recreation and Open Space Element policy:

- *Policy PROS-4.2.1: Institutional Open Space.*

### Urban Design

The new dormitory would be taller and larger than any nearby residence. However, it would be at least three-hundred feet (300 ft.) from the nearest residences. Its materials would be compatible with those of the existing campus building and the surrounding neighborhood. The final design of the dormitory would be subject to approval as further processing of the campus plan.

The proposed text amendments would further this Urban Design Element policy:

- *Policy UD-2.2.4: Transitions in Building Intensity.*

### Educational Facilities

The approval of the proposed text amendments to allow the dormitory would enable a decrease in rental pressures that students place on private housing stock by developing dormitory space not only for Wesley students and their families, but also for American University students and their immediate families. These students and their families would otherwise be seeking market rate housing. The campus plan proposes expanding support to the community as it would give access to the campus with a neighborhood-oriented playground. The Seminary also sponsors an internship program that brings students to work at various non-profit and community organizations throughout the District. Seminary students and graduates assist the mission of many churches in the District.

The proposed text amendments would further these Educational Facilities Element policies:

- *Policy EDU-3.2.2: Corporate Citizenship;*
- *Policy EDU-3.2.4: Universities as Community Partners;*
- *Policy EDU-3.3.3: Universities as Large Landowners and Campus Plan Requirements;*
- *Policy EDU-3.3.4: Student Housing;*
- *Policy EDU-3.3.5: Transportation Impacts of Colleges and Universities;*
- *Policy EDU-3.3.6: Faculty Housing;*
- *Policy EDU-3.3.10: University-Community Task Force; and*
- *Policy EDU-3.3.11: Access to Recreational, Educational, and Cultural Opportunities.*

### **COMPREHENSIVE PLAN: ROCK CREEK WEST AREA ELEMENT**

The Wesley campus is located within the Rock Creek West Area Element of the Comprehensive Plan. The OP Reports concluded that the proposed text amendments would not be inconsistent with the Rock Creek West Area Element. The campus plan proposes taller buildings than in the existing campus plan. However, the new dormitory should be relatively harmonious with the nearby neighborhood and the adjacent American University. When viewed through a racial equity lens, it is not envisioned or expected that the additional housing on campus for students would have any impact on the cost of housing in the Rock Creek West Planning Area.

The proposed text amendments would further this Rock Creek West Area Element policy:

- *Policy RCW-1.1.8: Managing Institutional Land Uses.*

### **POTENTIAL CP INCONSISTENCIES**

The OP Reports noted that the proposed text amendments may be viewed as being potentially inconsistent with certain policies that encourage rehabilitation of older buildings before demolition (Policy LU-2.1.4) and the development of net-zero, energy efficient housing (Policy H-1.6.5) (Ex. 10, 28).

This concludes the summary of the OP Reports.

### **COMPREHENSIVE PLAN: RACIAL EQUITY**

The Comprehensive Plan requires the Commission to apply the standard of review applicable to the proposed text amendments through a racial equity lens (10-A DCMR § 2501.4-2501.6, 2501.8). Consideration of equity is intended to be based on the policies of the Comprehensive



Plan, and part of the Commission’s consideration of whether the text amendment is “not inconsistent” with the Comprehensive Plan, rather than a separate determination about a zoning action’s equitable impact.

The Comprehensive Plan Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality (10-A DCMR § 213.6). Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (10-A DCMR § 213.7). The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions (10-A DCMR § 213.9).

The Comprehensive Plan Implementation Element suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. Consistent with the Comprehensive Plan guidance, the Commission utilizes a Racial Equity Analysis Tool (Tool) in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The revised Tool requires submissions from Petitioners and OP analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable (Part 1); a submission from Petitioner including information about its community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from OP including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3).

#### OP

As required by the Commission’s Tool, the OP Reports provided Racial Equity Analyses that responded to Part 1 of the Tool as summarized above. The OP Reports also provided disaggregated race and ethnicity data for the Rock Creek West Planning Area, in which Wesley’s campus is located, in response to Part 3 of the Tool (Ex. 10, 28). Based on this data, the OP Reports made the following observations about the Planning Area (Ex. 10, 28):

##### Disaggregated Race and Ethnicity Data:

- During the 2012-2016 and 2018-2022 time periods, “the Rock Creek West Planning Area had the highest percentage of White residents and lowest percentage of Black or African American residents of all ten planning areas in the District. However, the numbers and percentage of Asians, Some other Race, Two or more Race and Hispanic residents rose in terms of numbers and percentage of the population from 2016 to 2022.”;
- Rock Creek West residents maintained a higher median income than the District as a whole between 2016 and 2022, but the data reveals specific nuances when disaggregated by race and ethnicity. “Between 2016 and 2022, the median income for White households rose at a higher rate compared to that of the Planning Area as a whole; while the median income for Black or African American families decreased by 16.8%—representing one of only two planning areas (along with Central Washington) where the median income of Black or African American families did not increase during this time period.”; and

- “In 2012-2016, the Rock Creek West Planning Area had the second highest percentage of owner-occupied housing of all the District’s planning areas; however, only 29.3% of Black or African American households were in owner-occupied housing, compared to 59.8% of White households in the Planning Area. During 2018-2022, owner occupancy in the Planning Area decreased slightly to 54% while the Districtwide owner occupancy had a slight increase to 41.5%. Homeownership for Two or More Races and Asians were the only two groups showing increases in homeownership with Two or More Races showing a significant increase of 17.5%. Over 70% of Black households rent as opposed to own.”

The OP Reports noted that “the Rock Creek West Planning Area has the least amount of dedicated affordable housing and therefore the most ambitious target for meeting the Mayor’s 2025 affordable housing goal of 1,990 new affordable units. The Deputy Mayor for Planning and Economic Development provided an update at the end of February 2024 which shows that the Rock Creek West Planning Area has made the least amount of progress of the District’s 10 planning areas in meeting the goal, achieving only 10.1% of the target. The proposed text amendment would not affect the few affordable housing opportunities in the Rock Creek West Planning Area except that they would create an opportunity for additional dormitory space leaving non-university housing available for other neighborhood residents instead of for students.” (Ex. 10, 28).

The OP Reports concluded that, because the Petition is a text amendment, “it can be difficult to assess” the racial equity impacts of the proposal at this time; however, “the potential impacts—positive or negative—of development on the campus would be assessed as part of the campus plan and in more detail at the time of Further Processing for the proposed new dormitory.” The OP Reports noted that the student housing development that would be facilitated by the proposed text amendment “may have a marginally positive impact on the affordability of housing in Rock Creek West by freeing up market rate units now rented by students who may relocate to the Wesley campus.” (Ex. 10, 28).

The OP Reports also stated that “Wesley’s mission promotes racial equity” as it has been active in racial and social justice outreach programs and in educating graduates who minister to minority communities. “Given the careers led by Seminary graduates and the outreach the Seminary engages in within the District, the retention of the Seminary may also contribute to racial equity. While some of the student body pursue academic careers, most are trained for careers in service to others. The Seminary actively engages its graduates in virtual and in-person training to advance community engagement skills and provides real time assistance to events promoting racial and social justice. It also runs an internship program placing Wesley and other theological students as interns in churches throughout the District. The revenues that would be generated by the proposed new dormitory would help the Seminary to continue providing these programs that promote racial equity.” Notably, the Seminary’s students and staff are more racially diverse than the nearby residential areas. Currently, approximately “34% of Wesley’s students identify as Black as do 18% of the administration, 25% of the faculty, and 7% of other staff.” (Ex. 10, 28).

#### Petitioner

As required by the Commission’s Tool, the Petitioner’s submissions provided Racial Equity Analyses that responded to Parts 1 and 2 of the Tool (Ex. 2C). In response to Part 2 of the Tool,

the Petitioner provided information regarding its community outreach and engagement efforts. The Petitioner states it began its outreach for its campus plan proposing a new student housing building in 2019. The Petitioner provided a list of approximately thirty-nine (39) meetings held with the Community Liaison Committee (CLC) and ANCs 3D and 3E between 2019 and 2024 (Ex. 2C).

After the Petition was filed on May 30, 2024, and following the Commission's vote on July 25, 2024, to set down the Petition for public hearing, the Petitioner continued its engagement with the affected ANCs. The Petitioner's community engagement resulted in changes to the proposed text amendments to include adding a new Subtitle C § 1006.10 that would require the Petitioner to provide off-site IZ in Ward 3 (or a substantially equivalent contribution to a Ward 3 affordable housing provider) in connection with the proposed university housing building, as described above (Ex. 21, 22).

### **PUBLIC COMMENTS**

Prior to the November 18, 2024 public hearing, the Commission received comments/testimony and heard testimony in support and in opposition to the proposed amendments, citing various arguments (Ex. 9, 12, 23-25, 27, 29-35A, 37-51, 53). The comments and testimony in opposition raised the following issues concerning the Petition:<sup>11</sup>

- The Petition Constitutes Illegal Spot Zoning: The proposed text amendments constitute illegal spot zoning because they grant the Petitioner a carve-out to construct a commercial university housing building on its campus that primarily serves to generate revenue for the Petitioner and its developer;
- Text Amendment Process is Inappropriate: The Petitioner's proposal to construct a university housing building on its campus requires "extraordinary relief" which cannot be achieved through the text amendment process. Approving the Petition would create a bad precedent that could motivate other educational institutions to apply for similar carve-outs from the Zoning Regulations and/or IZ program;
- University Housing Building is a Commercial Use / Activity: The Petitioner's proposed university housing building is a commercial use and/or activity that is unrelated to Wesley's educational mission and is not permitted under the campus plan regulations;
- IZ Exemption Lacks Detail: The proposed text amendments lack clarity about how the Petitioner would satisfy the IZ requirements, either by providing off-site IZ in Ward 3 or through a financial contribution. Some comments argued that if Wesley provides off-site IZ, then it should provide more than the minimum required amount (i.e., more than the standard eight percent (8%) or ten percent (10%) depending on construction type). Some comments also noted that there are existing processes for obtaining relief from the IZ requirements, which Wesley could pursue instead of this text amendment;

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<sup>11</sup> The following list of issues is intended to summarize the main issues raised in opposition to the proposed text amendments and is not intended to be exhaustive. The comments and testimony in opposition also raised various other arguments which are not listed here, including arguments relating to the Petitioner's separate campus plan application (Z.C. Case No. 23-08(1)) (which is currently pending) and Planned Unit Development application (Z.C. Case No. 23-08) (which has been withdrawn). As further discussed below, the Commission's approval of this text amendment is based solely on consistency with the Comprehensive Plan and other adopted public policies and active programs related to the subject text (*see* Subtitle X § 1300.2). Therefore, the arguments raised by the opposition which are outside the scope of this rulemaking case are not summarized here.

- Comprehensive Plan Inconsistency: The proposed text amendments are inconsistent with the Comprehensive Plan and other adopted public policies and programs related to the site.
  - Specifically, NLC-SVWHCA argued that the proposed text amendments are inconsistent with the Comprehensive Plan’s FLUM and GPM designations for the site as Institutional, since they would facilitate the construction of a commercial use, i.e., the university housing building (Ex. 12, 27, 29);
  - NLC-SVWHCA also argued that the proposed text amendments are inconsistent with certain Land Use Element policies (LU-1.2.4, LU-2.1.1, LU-2.3, LU-2.3.1, LU-2.3.7, LU-2.3.8) that emphasize the need to expand affordable housing in the District, retain compatibility with neighborhood character, and limit non-conforming uses by institutions; and Educational Facilities Element policies (EDU-3.3.2, EDU-3.3.10) that encourage universities to respect the character and quality of life in surrounding areas and engage with the community to address its concerns on proposals to amend the Zoning Regulations (*Id.*); and
  - NLC-SVWHCA also argued that the proposed text amendments are inconsistent with the affordable housing goals for Rock Creek West since they would not produce any new affordable housing (*Id.*);
- Racial Equity: The proposed text amendments will not further the District’s racial equity goals since they would not promote long-term homeownership in Rock Creek West for non-white households;
- Legal Insufficiency: The Petitioner has not demonstrated on the record that it is facing serious financial instability and would need to relocate if it does not obtain this relief. Some comments suggested that the Petitioner should sell part of its campus property and/or purchase a commercial property elsewhere to use for student housing purposes; and
- Impact on AU: The proposed student housing facility that would be facilitated by the Petition would compete with AU for student revenue. Therefore, the text amendment should not proceed without substantive input from AU.

In addition, ANC 3D submitted comments and testimony in support of the proposed text amendments and recommending the Commission approve the Petition (Ex. 23, 33, 35, 35A, 46).

ANC 3E submitted comments and testimony to the record (Ex. 25, 53) raising the following issues regarding the proposed text amendments:

- The proposed amendments as originally proposed (Ex. 2B) would provide a blanket IZ exemption and set a bad precedent;
- While the Petitioner’s alternative Subtitle C § 1006.10 language (requiring off-site IZ in Ward 3) is an improvement over the originally proposed amendment to Subtitle C § 1001.6(c) which would have exempted the proposed university housing building from the IZ program entirely, it is still problematic because it would allow the Petitioner the option of making an “equivalent” financial contribution—and there is uncertainty about how that equivalency would be determined. ANC 3E noted that the Petitioner has previously proposed making an \$8 million contribution towards affordable housing production, which the ANC claims is insufficient and should be supplemented by actual off-site IZ units; and
- The Petitioner should be required to provide off-site IZ that exceeds the minimum required amount (i.e., more than the eight percent (8%) or ten percent (10%) depending on

construction type) and/or be required to provide IZ at deeper levels of affordability because it is requesting extraordinary relief to approve an unprecedented commercial university housing building.

### **PUBLIC HEARING**

At the November 18, 2024 public hearing,<sup>12</sup> the Commission heard testimony from the Petitioner, OP, and the Spring Valley Neighborhood Association in support of the Petition. In its presentation, the Petitioner stated it agreed with OP's suggested revision to Subtitle X § 101.5 and expressed general support for OP's suggested alternative Subtitle C § 1006.10 text while stating its desire for additional flexibility with respect to providing the required off-site IZ by and through qualified third parties as opposed to Wesley directly providing the off-site IZ (Ex. 36).

The Commission also heard testimony in opposition to the Petition, reiterating many of the arguments summarized above. The Commission granted permission for individuals and organizations who testified at the November 18, 2024 public hearing, to submit their written testimony to the case record following the hearing (*See* Ex. 44, 45A, 46-51, 53, 54).

Based on the comments/testimony filed to the case record and the testimony at the public hearing, the Commission requested post-hearing submissions at the conclusion of the public hearing, specifically:

- A submission from the Petitioner with (i) information on how off-site IZ is treated in neighboring jurisdictions, including a discussion of examples in DC or elsewhere of private partnerships with developers to construct student housing, and (ii) a discussion of whether Wesley can commit to providing more than a ten (10%) off-site IZ set-aside;
  - A submission from ANC 3E, including suggestions for alternative amendment language to the proposed new Subtitle C § 1006.10 to potentially increase the off-site IZ set-aside above the minimum IZ requirements under the Zoning Regulations (i.e., eight percent (8%) or ten percent (10%) depending on construction type);
  - A response from the Petitioner to ANC 3E's alternative amendment language; and
  - A response from OP to both the Petitioner's and ANC 3E's submissions.<sup>13</sup>
- (*See* post-hearing submissions at Ex. 54, 55, 58, 60, 61).

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<sup>12</sup> At the start of the November 18, 2024 public hearing, the Commission considered as a preliminary matter a request from some of those in opposition to the Petition (*see, e.g.*, Ex. 30) to further postpone the public hearing and/or re-issue a revised notice of public hearing with updated text reflecting the revisions to the proposed text amendments suggested by OP in its report (Ex. 28). The Commission considered the request and made a procedural decision to proceed with the public hearing and not further postpone the public hearing or re-issue a revised notice of public hearing. The Commission based its decision on the fact that the public hearing had already been postponed once from its original October 17, 2024 date, to allow the Petitioner additional time to work with the community, ANC 3E, and OP on refining its proposed text amendment language based on the input received. In addition, the Commission noted that the public would have an opportunity to comment on the proposed text amendments, notwithstanding OP's revisions, after a Notice of Proposed Rulemaking is published. Therefore, the Commission saw no benefit to further delay or re-notice the public hearing and proceeded with the public hearing.

<sup>13</sup> On November 17, 2024, NLC-SVWHCA submitted a request (Ex. 43) to keep the record open for thirty (30) days following the November 18, 2024 hearing, to allow the public to provide comments on OP's and the Petitioner's revisions to the proposed text. The Commission denied this request on the basis that a thirty (30) day comment period would be permitted after the Notice of Proposed Rulemaking is published for public comments. On



### **POST-HEARING SUBMISSIONS**

On November 25, 2024, the Petitioner submitted a post-hearing statement (Ex. 55) with responses to what the Commission requested at the public hearing. In its response, the Petitioner stated it generally accepts OP's proposed alternative to add a new Subtitle C § 1006.10 (requiring Wesley to provide an off-site IZ set-aside of eight percent (8%) to ten percent (10%) depending on the construction type in Ward 3) and urges the Commission to not increase the set-aside requirement, as recommended by ANC 3E and some of those in opposition. The Petitioner stated the Commission should retain its discretion to determine a minimum off-site IZ requirement at a later stage when the campus plan and furthering processing applications are evaluated. The Petitioner's post-hearing statement also provided examples of comparable private-partnership campus housing buildings at other universities; a summary of off-site affordable housing programs in nearby jurisdictions; and a preliminary IZ analysis based on the proposed student housing facility's construction type, which would require an IZ set-aside of eight percent (8%).

On November 25, 2024, ANC 3E submitted a post-hearing statement (Ex. 54) proposing two (2) separate revisions to OP's alternative Subtitle C § 1006.10 text:

- Version "A" would specify the amount of IZ to be provided in the text of Subtitle C § 1006.10. Specifically, the proposed text would require an off-site IZ set-aside of eight percent (8%) multiplied by a factor of one and five-tenths percent (1.5%) (which the ANC states results in a total set-aside of 12 and five-tenths percent (12.5%)), with ten percent (10%) of the off-site units set aside at thirty percent (30%) Median Family Income (MFI); sixty percent (60%) set aside at fifty percent (50%) MFI; and thirty percent (30%) set aside at sixty percent (60%) MFI; and
- Version "B" would permit the Commission to determine the amount of off-site IZ required during a further processing for the campus plan, which would in no case be less than the minimum IZ requirements. In addition, the Commission could further specify the MFI levels of the IZ units required.

On December 9, 2024, the Petitioner submitted a response<sup>14</sup> (Ex. 58) to ANC 3E's post-hearing submission stating that it does not agree with the ANC's proposed Version "A" or Version "B" revisions to Subtitle C § 1006.10. Instead, the Petitioner requested the Commission adopt OP's recommended Subtitle C § 1006.10 language without ANC 3E's suggested edits. The Petitioner argued that OP's language sets a minimum standard for the provision of off-site IZ while also allowing the Commission to impose a higher standard if it deems it appropriate. The Petitioner also stated that it is premature to impose a different or higher standard for the off-site IZ and that the Commission is best posed to do so after further negotiations among the parties about the specifics of Wesley's off-site IZ program.

On December 13, 2024, OP submitted a supplemental report (Ex. 60) with responses to what the Commission requested at the hearing. In its report, OP stated it has reviewed ANC 3E's proposed

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December 12, 2024, NLC-SVWHCA submitted a request to reopen the record (Ex. 59) to accept a filing from NLC-SVWHCA, alleging that the post-hearing ANC and Petitioner filings have raised new issues not addressed at the hearing. This request was denied by the Commission.

<sup>14</sup> The Petitioner's response to ANC 3E's filing was originally due on December 3, 2024. However, the Petitioner submitted a request (Ex. 56) to extend this deadline to December 9, 2024, which was granted.

revisions to its Subtitle C § 1006.10 language and does not support either Version “A” or Version “B” of the ANC’s proposed changes. OP explained that the IZ program is based on offsetting the cost of IZ by granting bonus density. In this case, there is no established nexus to justify a higher IZ requirement as recommended by ANC 3E, since no bonus density is being proposed for Wesley’s student housing building. Furthermore, OP cannot support ANC 3E’s proposal to allow the Commission to specify the MFI of future IZ units at further processing because doing so would be “contrary to the premise of predictability and transparency.” OP recommended the Commission approve its revised Subtitle C § 1006.10 text as reflected in the OP Hearing Report. OP’s supplemental report also included a summary of information regarding adjacent jurisdictions’ requirements related to off-site affordable housing; whether university housing for students was subject to affordable housing requirements in those jurisdictions; and examples of universities in the area where dormitories were built by private developers.

On December 5, 2024, ANC 3D filed a letter (Ex. 57)<sup>15</sup> in response to ANC 3E’s proposed edits to the text amendment. ANC 3D recommended the Commission not accept ANC 3E’s proposed Version “A” text since it would be premature to set an IZ set-aside requirement. However, ANC 3D did recommend the Commission adopt ANC 3E’s Version “B” text which would allow for flexibility to decide the affordable housing set-aside within the context of the campus plan.

On December 16, 2024, ANC 3E filed a report with attachments (Ex. 61-61A2) responding to the Petitioner, OP, and ANC 3D submissions and stating that, without ANC 3E’s edits, the OP proposed text will not permit the Commission to require Wesley to provide any additional off-site IZ. ANC 3E noted that ANC 3D supports its Version “B” edits. ANC 3E also stated that the continued use of the term “dormitory” is inaccurate as the proposed facility will not exclusively serve Wesley students.

### **PROPOSED ACTION**

At proposed action on December 19, 2024, based on the case record, the public hearing testimony, and the post-hearing submissions received, the Commission stated that it wanted to adopt OP’s suggested revisions to the text amendments and add new language to the proposed Subtitle C § 1006.10 granting the Commission broad discretion to determine satisfaction of the off-site IZ set-aside requirement at the campus plan further processing authorizing construction of university housing on Wesley’s campus. Specifically, the Commission wanted discretion to include raising or lowering the off-site IZ set-aside requirement as stated in the new Subtitle C § 1006.10; and/or requiring Wesley to make a financial contribution, deemed sufficient by the Commission, to an organization(s) to construct new affordable housing exclusively in Ward 3. The Commission also stated that it wanted to change references to “dormitory” in the proposed amendments to “university housing.” The Commission authorized the Office of Zoning Legal Division (OZLD) to draft the new amendment language to Subtitle C § 1006.10 as described by the Commission at proposed action, in coordination with OP and the Petitioner; and authorized publication of a Notice of Proposed Rulemaking including the amended language.

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<sup>15</sup> While no post-hearing response was requested from ANC 3D, the Commission allowed the report into the record since ANCs are generally allowed to submit reports prior to the Commission taking final action.

**VOTE (December 19, 2024): 4-0-1**

(Tammy Stidham, Robert E. Miller, Anthony J. Hood, and Gwen Marcus Wright to approve; Joseph Imamura, not present, not voting)

**NCPC REFERRAL AND PUBLICATION OF NOTICE OF PROPOSED RULEMAKING (NOPR)**

The Commission referred the proposed text amendment to the NCPC on December 19, 2024, for the thirty (30)-day review period required by § 492(b)(2) of the District Charter (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2)); D.C. Official Code 6-641.05 (2018 Repl.)) (Ex. 62).

NCPC staff filed a February 7, 2025 report, stating that it found the proposed text amendments would not be inconsistent with the *Comprehensive Plan for the National Capital* and would not adversely impact any other identified federal interests (Ex. 66).

OZ published a Notice of Proposed Rulemaking in the January 17, 2025<sup>16</sup> issue of the *District of Columbia Register* (72 DCR 000405 *et seq.*) (Ex. 63, 64).

**COMMENTS IN RESPONSE TO THE NOPR (AND COMMISSION RESPONSES)**

Comments were submitted in response to the NOPR by ANC 3E, NLC-SVWHCA, the Committee of 100, the Washington Interfaith Network, and two individuals (Ex. 65, 67-71). The comments largely reiterated some of the arguments in opposition that were raised prior to and at the November 18, 2024 public hearing, including the following:

- The Petition constitutes illegal spot zoning that would set a bad precedent;
- Wesley has not provided evidence of its financial hardship;
- The proposed text amendments, as revised, should not grant the Commission broad discretion to potentially allow Wesley to provide less off-site IZ than required by the Zoning Regulations (or a financial contribution in lieu of the IZ units); and
- The proposed text amendments do not address how the off-site IZ condition will be enforced.

In addition, ANC 3E submitted a report (Ex. 70) stating that it opposes the proposed text amendments as published in the NOPR because it would allow the Commission to have the discretion to determine that the Petitioner can satisfy the off-site IZ requirement by providing fewer off-site IZ units than required or a financial contribution in lieu of providing off-site IZ. ANC 3E stated that the Commission should only have the discretion to require Wesley to provide more off-site IZ if deemed appropriate at further processing. Therefore, ANC 3E recommended the Commission adopt either its previously proposed Version “B”<sup>17</sup> text or new alternative Subtitle C § 1006.10 text which would give the Commission discretion to require an IZ set-aside above the

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<sup>16</sup> Contrary to the assertion made by some opponents, the Commission was not required to allow time for public comment on the proposed text amendment language it authorized at proposed action prior to publishing the NOPR. In accordance with the District of Columbia Administrative Procedure Act and the Zoning Regulations, the NOPR was published in the *District of Columbia Register* on January 17, 2025, and the Commission did not take final action on the text amendments until February 27, 2025, once 30 days from publication of the NOPR had elapsed; therefore, interested persons were afforded the requisite 30 days to submit views after notice of the proposed rule was published in the *District of Columbia Register*, and the Commission considered the views expressed prior to taking final action (*See* D.C. Official Code § 2-505(a) (2013 Repl.)); *see also* Subtitle Z § 604.1).

<sup>17</sup> The previously proposed Version “B” text would give the Commission discretion to both require a higher IZ set-aside than the minimum required and further specify the MFI of the required IZ units.

minimum amount required if deemed appropriate. If the Commission is not persuaded to adopt either of these options, ANC 3E requested the Commission approve OP's original alternative Subtitle C § 1006.10 text, which does not include any discretion for the Commission to increase or decrease the off-site IZ set-aside requirement; and/or require Wesley to make a financial contribution towards Ward 3 affordable housing (Ex. 70).

The Commission acknowledges the comments received in opposition to the proposed text amendments and the comments received in opposition to the NOPR. Ultimately the Commission finds most of the opposition comments unpersuasive for the reasons explained below. The Commission first states the general opposition comment followed by its response:<sup>18</sup>

- The Petition Constitutes Illegal Spot Zoning<sup>19</sup>: The Commission concludes the Petition is not illegal spot zoning. While the proposed text amendments are arguably primarily beneficial to Wesley, the Commission finds that the proposed text amendments are not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject text, based on the OP Reports summarized above and the Conclusions below;
- Text Amendment Process is Inappropriate: The Commission concludes that the text amendment process is not inappropriate to address the unique situation presented by the proposed university housing building within Wesley's campus plan proposal. The Commission disagrees with the assertion that the proposed text amendments are extraordinary relief because they meet the applicable standard of review, under Subtitle X § 1300.2 (i.e., they are not inconsistent with the Comprehensive Plan). The Commission believes the proposed text amendments will provide clarity and predictability as to the affordable housing requirements and the applicability of the commercial use and activity restrictions as both relate to Wesley's proposed university housing building. In addition, the Commission does not believe the proposed text amendments will create a bad precedent, since the specific facts of this case are unique and not replicated elsewhere in the District, to the Commission's knowledge. Specifically, Wesley's main campus is located directly adjacent to AU's main campus; therefore, housing Wesley and AU students and their immediate families in the same university housing building and providing for the IZ requirement triggered by this arrangement to be satisfied off-site in Ward 3 (with consideration that Wesley is not an affordable housing provider) is unique to these factual circumstances. Without these text amendments, IZ would still apply to a university housing building for both Wesley and AU students, faculty, and staff, but there would be less clarity or predictability for the public and the Petitioner about how such IZ requirements would be satisfied. Further, without these amendments, the Commission's intent as to the applicability of the commercial use or activity restrictions, under Subtitle X § 101.4, to the proposed university housing building for both Wesley and AU students, faculty, and staff, would not be clear;

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<sup>18</sup> The following is not intended to be an exhaustive list of every issue, but rather a summary of the main issues raised by the opposition and the Commission's responses to each.

<sup>19</sup> The D.C. Court of Appeals has held that to constitute illegal spot zoning, the Commission's action: "(1) must pertain to a single parcel or limited area ordinarily for the benefit of a particular property owner or specially interested party; and (2) must be inconsistent with the city's comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulation, i.e., the public health, safety, and general welfare." (*See Daro Realty v. District of Columbia Zoning Commission*, 581 A.2d 295 (D.C. 1990)).

- Student Housing Building is a Commercial Use/Activity: The Commission is not persuaded by arguments that Wesley’s proposed university housing building is a commercial use or activity that is prohibited by the campus plan regulations. The Commission acknowledges there has been confusion about whether the Subtitle X § 101.4 restrictions apply to Wesley’s proposed university housing building; and whether the building constitutes a “commercial use.” With these amendments, the Commission intends to clarify that a university housing building that exclusively houses students, faculty, and staff of Wesley and AU and their immediate family members, is not to be construed as being subject to the commercial use or activity restrictions of Subtitle X § 101.4 if approved as part of a campus plan;
- IZ Exemption Lacks Detail: The Commission does not believe the text amendments grant Wesley a blanket exemption from the IZ requirements.<sup>20</sup> On the contrary, the text of Subtitle C § 1006.10 requires Wesley to satisfy off-site IZ requirements as an enforceable condition to its 2025-2035 campus plan further processing to construct a university housing building on its campus. The off-site IZ requirement as stated in the text of Subtitle C § 1006.10 requires a minimum set-aside of eight percent (8%) or ten percent (10%) depending on construction type 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, consistent with the minimum IZ requirements under the Zoning Regulations. The Commission does not believe that the text of Subtitle C § 1006.10 needs to impose a higher baseline IZ set-aside and/or deeper levels of affordability, as suggested by some of those in opposition. The Commission agrees with the conclusions in the OP Supplemental Report (Ex. 60) that the nexus between bonus density offered in exchange for an additional/higher IZ set-aside does not exist in these factual circumstances as no bonus density is available to Wesley; therefore, the Commission disagrees with automatically requiring Wesley to provide a higher IZ set aside and/or deeper levels of affordability than the minimums required under the Zoning Regulations. The Commission believes it is appropriate for the final details about Wesley’s satisfaction of its off-site IZ requirement to be addressed at the further processing stage. Accordingly, the text of Subtitle C § 1006.10 provides that an enforceable condition for satisfaction of the off-site IZ requirement be tied to the campus plan further processing because construction of the proposed university housing building will not be permitted unless the Commission approves a further processing application and issues a final written order for that separate case. The Commission therefore retains discretion in the text of Subtitle C § 1006.10 to determine whether Wesley can satisfy its off-site IZ requirement by alternative means, either by providing additional IZ or through making a financial contribution to a Ward 3 affordable housing provider. The Commission further notes, in response to some comments raised that expressed uncertainty about how IZ units would be administered and enforced, that if Wesley satisfies its off-site IZ requirement by providing off-site IZ units, those off-site IZ units would be subject to a covenant and administered in accordance with the District’s IZ Program as defined by the Inclusionary Zoning Act, per Subtitle C § 1006.7. The text of Subtitle C § 1006.10 requires any off-site IZ units provided by Wesley to comply with the requirements of Subtitle C §§ 1006.5-1006.9;

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<sup>20</sup> The original petition text amendment language (Ex. 2B) proposed amendments that would have amended Subtitle C § 1001.6(c) to exempt housing exclusively for Wesley and American University students, faculty, or staff from IZ Program requirements; however, those proposed amendments are no longer being pursued, as the petition was revised to no longer include any proposed changes to Subtitle C § 1001.6(c).



- Comprehensive Plan Inconsistency: For the reasons discussed above, the Commission has concluded that the text amendments are on balance not inconsistent with the Comprehensive Plan maps and policies, including when viewed through a racial equity lens. The Commission has acknowledged certain potential Comprehensive Plan inconsistencies but concludes that those inconsistencies are outweighed by the text amendments' overall consistency with other policies and goals, for the reasons discussed in the summary of the OP Reports above and the Conclusions below;
- Racial Equity: The Commission believes that the text amendments are not inconsistent with the District's racial equity goals. The Commission is persuaded by OP's finding in its reports that the text amendments will have a minimal or slightly beneficial impact on racial equity since it is limited to Wesley's campus housing for its students and AU's students. The Commission acknowledges the disaggregated race and ethnicity data presented by OP showing disparities in population, median income, and homeownership between White and Black or African American households in the Rock Creek West Planning Area. The Commission is hopeful that the creation of more on-campus housing options will make available more off-campus housing options in Ward 3 and lessen rental cost pressures for residents of color in Rock Creek West, as further discussed in the summary of the OP Reports above and in the Conclusions below;
- Legal Insufficiency: The Commission notes Wesley's testimony that it is pursuing this Petition to facilitate its campus plan and primarily an on-campus housing building to generate revenue so it can remain financially solvent and further its educational mission while staying at its current campus location. The Commission acknowledges that there are alternative solutions available to Wesley, which include selling off part or all of its campus and/or relocating its campus entirely. Nonetheless, the Commission reviews and approves petitions for text amendments based solely on the standard of Subtitle X § 1300.2, which is consistency with the Comprehensive Plan and other adopted public policies and active programs related to the subject text. The Commission concludes that the Petition is not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to it for the reasons discussed in the summary of the OP Reports above and the Conclusions below; and
- Impact on AU: The Commission has requested input from AU regarding this proposal and the proposed university housing building, but readily acknowledges that it cannot compel AU to participate in this case nor is AU's input necessary for the Commission to approve this Petition. The Commission notes that a letter was submitted by AU's Vice President and Chief Communications Office (Ex. 24) which affirms that AU is cognizant of Wesley's situation and "look[s] forward to continuing [its] engagement with Wesley."

The Commission also acknowledges the opposition comments to the NOPR raised in ANC 3E's supplemental report (Ex. 70). As discussed in greater detail in the Conclusions below, the Commission is persuaded by ANC 3E's argument that granting itself discretion to allow a lower off-site IZ set-aside (i.e., below the required eight percent (8%) or ten percent (10%) depending on construction type) for Wesley to satisfy the off-site IZ requirement is contrary to the Commission's intent. Accordingly, the Commission has removed discretion for it to lower the off-site IZ set-aside requirement from the final text amendment language adopted in this case.

## CONCLUSIONS

Subtitle X § 1300.2 requires the Commission to find that the text amendment petition is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject text.

### Text Amendments are Not Inconsistent with the Comprehensive Plan

The Commission concludes that the text amendments, as published in the Notice of Proposed Rulemaking and as further revised at final action, are not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject text. The Commission is persuaded by OP's findings in its reports that the text amendments will further many Comprehensive Plan policies related to preserving institutions such as Wesley and allowing them to grow while respecting neighborhood character and context. The Commission believes the text amendments will facilitate Wesley's plans to seek and obtain approval of a campus plan which includes a new university housing building that will house both Wesley and AU students and their immediate families, while requiring Wesley to meet the requirements of the IZ program through satisfaction of the off-site IZ requirements stated in the text of Subtitle C § 1006.10 or by alternative means, either by providing additional IZ or through a financial contribution to a Ward 3 affordable housing provider. The Commission notes that any of these would contribute towards affordable housing in the Rock Creek West Planning Area in furtherance of the Mayor's 2025 affordable housing goals.

The Commission acknowledges arguments from some in opposition that the proposed text amendments are inconsistent with the Comprehensive Plan's FLUM and GPM designations for the Wesley campus; certain Land Use Element policies (e.g., LU-1.2.4, LU-2.1.1, LU-2.3, LU-2.3.1, LU-2.3.7, LU-2.3.8) and Educational Facilities Element policies (e.g., EDU-3.3.2, EDU-3.3.10); and the affordable housing goals for Rock Creek West. The Commission also acknowledges that OP identified potential inconsistencies with Comprehensive Plan policies that encourage rehabilitation of existing buildings (LU-2.1.4) and the development of net-zero, energy efficient housing (H-1.6.5). However, the Commission concludes that, on balance, these potential Comprehensive Plan inconsistencies are outweighed by the text amendments' consistency with other Comprehensive Plan policies that would be advanced, as cited by the OP Reports summarized above. The Commission agrees with the conclusions in the OP Reports that the text amendments would not significantly affect affordable housing opportunities in the Rock Creek West Planning Area, but they would create an opportunity for additional on-campus student housing and leave off campus housing available for neighborhood residents other than students. The Commission believes the text amendments will enable Wesley to develop its institutional campus in a manner that is respectful and responsive to the surrounding area.

### Racial Equity

The Commission agrees with the OP Reports that the proposal will advance Comprehensive Plan racial equity policy goals and objectives, primarily because the proposal will facilitate Wesley's plans to develop its campus with a new university housing building and also ensure compliance with IZ requirements through an off-site IZ requirement, which will contribute towards affordable housing in Rock Creek West. The Commission finds that OP's racial equity analysis in its reports adequately addresses the components of the Commission's revised Racial Equity Analysis Tool and includes disaggregated race and ethnicity data for the Rock Creek West Planning Area, in

which Wesley's campus is located. The Commission also finds the Petitioner adequately addresses the Tool and includes information on its community outreach and engagement efforts.

*Disaggregated Race and Ethnicity Data:* OP's racial equity analysis included data from the 2012-2016 and 2018-2022 time periods showing that the Planning Area had the lowest percentage of Black residents compared to all other planning areas in the District. In addition, the median income data reveals disparities between the median incomes and homeownership rates for White households compared to Black or African American households. The Commission acknowledges that the racial equity impacts of the proposed text amendments are difficult to assess. However, the Commission is hopeful that Wesley's proposal could potentially decrease rental pressures in the Rock Creek West Planning Area by facilitating the development of housing for Wesley and AU students who might otherwise rent available housing in the immediate neighborhood. The Commission is also hopeful that the proposed text amendments will lead to the creation of affordable housing units in Ward 3 by ensuring that Wesley satisfies the off-site IZ requirements for the proposed university housing building.

*Community Outreach and Engagement:* The Petitioner engaged the public by participating in multiple meetings with the CLC, ANC 3E, and ANC 3D. In response to these meetings, the Petitioner amended its proposed text amendments to include alternative text that would require the Petitioner to provide off-site IZ in connection with the proposed university housing building. This is an improvement over the originally proposed text amendments, which would have exempted the university housing building from the IZ program entirely. The Commission commends ANC 3E and ANC 3D for offering their comments on the Petition throughout the text amendment process and encourages the Petitioner to continue engaging with the ANCs and community stakeholders as it proceeds with its campus plan and further processing applications. In summary, the Commission believes that the Petitioner's community outreach and engagement was adequate.

### **FINAL ACTION**

At its February 27, 2025 public meeting, the Commission addressed the comments submitted in response to the NOPR. The Commission acknowledged concerns that the text amendments, as published, would allow the Commission to potentially determine that Wesley can satisfy its off-site IZ requirement by providing a lower IZ set-aside than required as a minimum under the Zoning Regulations. The Commission agreed that it was not its intent to allow Wesley to decrease its off-site IZ set-aside requirement and decided to remove that discretion from the final text amendment language, while retaining discretion to determine that the IZ requirement can be met by increasing the IZ set-aside or through a financial contribution to a Ward 3 affordable housing provider.

### **“Great Weight” to the Recommendations of OP**

The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 504.6 (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).

The Commission finds persuasive OP's recommendation that the Commission adopt the Petition, as revised to include OP's alternative Subtitle C § 1006.10 language and edits to Subtitle X § 101.5 and concurs in OP's judgment. The Commission notes that it has added additional language to

Subtitle C § 1006.10 granting it discretion to determine that Wesley’s off-site IZ requirement can be satisfied by raising the requirement and/or requiring Wesley to make a financial contribution to a Ward 3 affordable housing provider. While OP has not opined on these additions, the Commission believes they are beneficial and address the concerns raised by ANC 3E while also providing for the flexibility to assess Wesley’s satisfaction of off-site requirements at further processing when more details about the proposed university housing facility will be presented.

### **“Great Weight” to the Written Reports of the ANCs**

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 505.1. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted)).

ANC 3D submitted several letters and reports (Ex. 23, 33, 35, 35A, 46, 57) recommending approval of the Petition. The Commission is persuaded by ANC 3D’s arguments for its support and concurs in its judgment. The Commission notes that ANC 3D recommended adopting ANC 3E’s proposed Version “B” text of Subtitle C § 1006.10 on the basis that it would allow the Commission the flexibility to determine the appropriate IZ set-aside at the campus plan further processing stage. While the Commission ultimately did not approve ANC 3E’s Version “B” text, it did amend Subtitle C § 1006.10 to grant it flexibility to determine that the off-site IZ requirements can be satisfied by increasing the IZ set-aside. Therefore, the Commission believes that the text amendments, as adopted, preserve the general flexibility recommended by ANC 3D.

ANC 3E submitted several letters and reports (Ex. 25, 53, 54, 61-61A2, 70) in response to the Petition, as revised, raising various issues and concerns. The Commission responds to the ANC’s issues and concerns as follows:

- ANC Issue/Concern: The proposed text amendments would provide a blanket IZ exemption and set a bad precedent:
  - Commission’s Response: The Commission acknowledges ANC 3E’s concern but believes that this Petition responds to a unique scenario in that Wesley’s proposed campus plan offers an opportunity to provide on-campus student housing for both its students and AU’s students, while also furthering affordable housing production in Ward 3. The Commission does not believe the Petition, as revised, provides a “blanket IZ exemption”; on the contrary, the text of Subtitle C § 1006.10, as revised, will require Wesley to satisfy off-site IZ requirements by providing off-site IZ equivalent to the standard IZ requirement in Ward 3 or through alternative means, either by providing additional IZ or by making a financial contribution to a Ward 3 affordable housing provider. The Commission does not believe the Petition will set a bad precedent for other universities in the District, as Wesley’s location, directly adjacent to AU, and the relationship between the two universities is atypical and distinct;

- ANC Issue/Concern: The discretion in Subtitle C § 1006.10 to allow Wesley to make a financial contribution in lieu of providing off-site IZ is vague and unsupported by evidence:
  - Commission's Response: The Commission acknowledges ANC 3E's concern but nonetheless believes that it is beneficial to retain discretion to allow Wesley to satisfy its off-site IZ requirement through a financial contribution to a Ward 3 affordable housing provider. The Commission notes that further processing is the stage at which authorization to construct any specific buildings or structures approved in a campus plan occurs (*see* Subtitle X § 101.9). Therefore, retaining discretion to determine the final details of Wesley's satisfaction of off-site IZ requirements to this stage is appropriate, given the various timing and market specific logistics associated with affordable housing development. The Commission is also cognizant of the fact that, because Wesley is not an affordable housing provider, there may be unforeseen financial and administrative difficulties with requiring Wesley to satisfy the off-site requirement with construction of IZ units in Ward 3. Therefore, the discretion to allow Wesley to meet its off-site IZ requirement through a financial contribution provides the Commission with the flexibility to ensure that Wesley can satisfy its off-site IZ requirement in connection with the construction of its university housing building;
- ANC Issue/Concern: The Petitioner should be required to provide off-site IZ that exceeds the minimum required amount (i.e., more than the eight percent (8%) or ten percent (10%) depending on construction type) and/or be required to provide IZ at deeper levels of affordability:
  - Commission's Response: The Commission acknowledges ANC 3E's concern but does not believe at this time that Wesley should be required to provide off-site IZ in excess of what is required by the standard IZ requirements. The Commission is persuaded by OP's statement in its hearing report that the IZ program is intended to offset the cost of IZ with bonus density. Here, there is no bonus density available to Wesley or other relief that would justify a higher or deeper IZ set-aside. Therefore, the Commission can find no nexus that would justify a higher or deeper IZ requirement at this time. Nonetheless, the Commission notes that it is reserving discretion for itself under Subtitle C § 1006.10 to determine at further processing how Wesley satisfies its off-site IZ requirement; and
- ANC Issue/Concern: The Commission should adopt ANC 3E's Version "B" Subtitle C § 1006.10 text as proposed in its post-hearing submission (Ex. 54); or adopt ANC 3E's alternative Subtitle C § 1006.10 text as proposed in its comment on the Notice of Proposed Rulemaking (Ex. 70); or adopt OP's original alternative Subtitle C § 1006.10 text:
  - Commission's Response: The Commission acknowledges ANC 3E's concern but believes that its revisions to the proposed text at final action address ANC 3E's concern about retaining discretion for the Commission to increase the IZ set-aside requirement over minimum set-aside requirements under the Zoning Regulations. As discussed above, the Commission believes that the discretion to determine that Wesley can satisfy its requirement by increasing the IZ requirement or providing a financial contribution is appropriate. The Commission was persuaded by ANC 3E's concern about the need for discretion to determine that Wesley can meet its requirement by decreasing the off-site IZ set-aside; therefore, the Commission removed that discretion at final action.




At its February 27, 2025 public meeting, the Commission voted to take **FINAL ACTION** to adopt the Petition, as revised to remove the discretion to determine that the off-site IZ set-aside requirement can be satisfied by decreasing the IZ set-aside requirement, and to authorize the publication of a Notice of Final Rulemaking.

**VOTE (February 27, 2025): 5-0-0**

(Robert E. Miller, Joseph Imamura, Anthony J. Hood, Tammy Stidham, and Gwen Marcus Wright to approve.)

The complete record in the case can be viewed online at the Office of Zoning's Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 24-19 shall become final and effective upon publication in the *District of Columbia Register*; that is, on July 25, 2025.

  
ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE “ACT”). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE ACT, THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

### **TEXT AMENDMENT**

The amendments to the text of the Zoning Regulations are as follows:

#### **I. Amendment to Subtitle C, GENERAL RULES**

**Section 1006, OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is amended by adding a new § 1006.10 to read as follows:**

- 1006.10 Wesley Theological Seminary shall provide off-site IZ located in Ward 3 as an enforceable condition to its 2025-2035 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. Notwithstanding the foregoing, and for good cause shown, the Zoning Commission shall have broad discretion to determine that the off-site IZ requirement described in this provision can be satisfied by alternative means, including increasing the set-aside requirements described herein 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 stated as an enforceable condition to the 2025-2035 Campus Plan further processing to construct university housing on Wesley's campus.

**II. Amendment to Subtitle X, GENERAL PROCEDURES**

**Section 101, CAMPUS PLANS, of Chapter 1, CAMPUS PLANS, SCHOOL PLANS, AND MEDICAL CAMPUS PLANS, of Subtitle X, GENERAL PROCEDURES, is amended by adding a new § 101.5 and renumbering the subsequent §§ 101.5 through 101.16 to §§ 101.6 through 101.17 to read as follows:**

- 101.5 University housing exclusively for use by Wesley Theological Seminary and American University students, faculty, and staff on Square 1600, Lot 819 shall not be subject to the commercial use or activity restrictions in this section if approved by the Zoning Commission as part of a campus plan.
- 101.5-  
101.16 Renumber to 101.6 to 101.17.