ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

Paul A. Tummonds, Jr.
202-663-8873
paul.tummonds@shawpittman.com

February 18, 2004

By Mail

D.C. Zoning Commission
441 4th Street, N.W.
Second Floor
Washington, DC 20001
Attn: Mr. Alberto Bastida

Re: Zoning Commission Case No. 02-50
St. Luke's Condominiums, LLC (Square 1935, Lot 815)
PUD Covenant Recorded in the D.C. Land Records

Dear Mr. Bastida:

On behalf of St. Luke's Condominiums, LLC (the **"Applicant"**) enclosed please find a certified copy of the PUD Covenant for the above-mentioned case that was recorded in the D.C. Land Records on February 17, 2004. This Covenant is being sent to your Office in order to satisfy Condition No. 10 of Z.C. Order No. 02-50.

If you have any questions or comments, please feel free to call me at (202) 663-8873.

Sincerely,

Paul A. Tummonds, Jr.

Enclosure

cc: John Wood Bolton (By fax, w/o encl.)

Document #: 1380848 v.1

ZONING COMMISSION
District of Columbia
Case 02-50
Exhibit 53

ZONING COMMISSION
District of Columbia
CASE NO. 02-50
EXHIBIT NO. 53

PUD COVENANT

THIS COVENANT, (this "**Covenant**") is made as of this 26th day of January, 2004, by and between SAINT LUKE'S CONDOMINIUMS, LLC, a District of Columbia limited liability company (the "**Developer**"), ST. LUKE'S UNITED METHODIST CHURCH, a District of Columbia non-profit corporation (the "**Church**") and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "**District**").

W I T N E S S E T H:

WHEREAS, the Developer and the Church presented an application to the District of Columbia Zoning Commission (hereinafter referred to as the "Zoning Commission") for a proposed project on Lots 817 and 818 (former Lot 815) in Square 1935, premises located at the intersection of Wisconsin Avenue and Calvert Street, N.W. (such properties hereinafter referred to as the "Subject Site"); and

WHEREAS, Developer intends to develop a portion of the Subject Site, consisting of Lot 817 for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No. 02-50 effective November 14, 2003 in Zoning Case No. 02-50;

WHEREAS, prior to the execution and recordation of this Covenant, the Church conveyed Lot 817 to the Developer;

WHEREAS, the Church is the owner of Lot 818;

WHEREAS, said Chapter 24 and Order No. 02-50 further requires that Developer and the Church enter into this Covenant with the District of Columbia assuring development and operation of the Project as approved by the Zoning Commission in Order No. 02-50 and all modifications, alterations or amendments thereto; and

WHEREAS, with the recordation of this Covenant, pursuant to Section 2408.15 of the Zoning Regulations, the Zoning Map of the District of Columbia is amended such that the Subject Site shall be deemed to be located in the Naval Observatory ("NO")/R-5-B Zone District.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY
FEB 17 2004
Recorder of Deeds, D.C.

Doc# 2004021857

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Planned Unit Development and Amendment to the Zoning Map under Order No. 02-50 effective November 14, 2003, in Zoning Case No. 02-50 (as the same may be amended and/or modified from time to time, the "Order"), are incorporated herein by reference and made a part hereof as Exhibit A and shall be considered a part of this Covenant. The Project will be developed and used in accordance with the plans approved by said Order and in accordance with conditions and restrictions contained in said Order, subject to such changes thereto as the Zoning Commission and/or the Zoning Administrator of the District of Columbia may authorize. Developer covenants that it will use the Project only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time to Construct Planned Unit Development. If Developer should fail to file for a building permit and to commence construction of the approved Project within the time specified in Sections 2408.8 and 2408.9 of the Zoning Regulations and the Order, the Zoning Commission may duly consider an application for an extension of time for good cause shown.

3. Default. In the event that Developer fails to file for a building permit and to commence construction of the approved Project within the time specified in Sections 2408.8 and 2408.9 of the Zoning Regulations and the Order or within any extension of time granted by the Zoning Commission for good cause shown, the benefits granted by the Order shall terminate pursuant to Section 2408.14 of the Zoning Regulations.

4. Future Conveyance. Developer, who as of the date of the recordation of this Covenant will be the owner of Lot 817, covenants that if any conveyance of all or any part of the Project takes place before completion of the Project in accordance with the approvals of the Zoning Commission as aforesaid, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Project in accordance with the terms and conditions of this Covenant. Notwithstanding the foregoing, the obligations of the purchasers of individual residential units shall be limited to compliance with those conditions and restrictions regarding the use of the units

as set forth in the Order, and such purchasers of individual units shall have no responsibility or liability for the development of the Project.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.

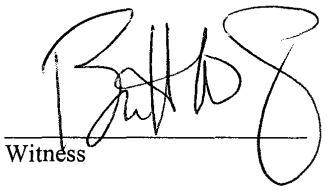
6. Recordation. Developer and Church shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be extinguished without the prior written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the Zoning Commission, or in the event of a lapse of said Order by its terms, the District shall, upon the request of Developer, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

[signatures on following pages]

IN WITNESS WHEREOF, Saint Luke's Condominiums, LLC has as of the day and year first above written, caused this Covenant to be signed by Robert R. Montagne, Jr., Manager of Walnut Street, LLC, the Sole Member of Walnut – St. Luke's, LLC, Manager of Saint. Luke's Condominiums, LLC, a District of Columbia limited liability company, and does hereby appoint the said Robert R. Montagne, Jr. to be its attorney-in-fact, and in its name to acknowledge and deliver this Covenant according to law.



Witness

SAINT LUKE'S CONDOMINIUMS, LLC,
a District of Columbia limited liability company
By: Walnut - St. Luke's, LLC, Manager
By: Walnut Street, LLC, Sole Member

By: RL+R. MT 4.
Robert R. Montagne, Jr., Manager

State of Virginia
County of Fairfax

I, Mellissa A. Haynes, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Robert R. Montagne, Jr., Manager of Walnut Street, LLC, the Sole Member of Walnut – St. Luke's, LLC, Manager of St. Luke's Condominiums, LLC, a District of Columbia limited liability company, party to the foregoing PUD Covenant bearing date as of the 26th of January, 2004, the said Robert R. Montagne, Jr. being named as attorney-in-fact for said organization in the foregoing and annexed PUD Covenant, personally appeared before me and, being personally well known to me as such attorney-in-fact, acknowledged said PUD Covenant to be the act and deed of said organization and that he delivered the same as such.

GIVEN under my hand and seal this 26th day of January, 2004.

Mellissa A. Haynes
Notary Public

My commission expires: 3/31/04

IN WITNESS WHEREOF, St. Luke's United Methodist Church has as of the day and year first above written, caused this Covenant to be signed by Anne Yarbrough, its Pastor, and in its name to acknowledge and deliver this Covenant according to law.

ST. LUKE'S UNITED METHODIST CHURCH

WITNESS/ATTEST:

By: _____
Anne Yarbrough
Its: Pastor

State of District of Columbia
County of _____

I, Guenet Fesseha a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Anne Yarbrough, Pastor of St. Luke's United Methodist Church, party to the foregoing PUD Covenant bearing date as of the 26th of January, 2004, the said Anne Yarbrough, personally appeared before me and, being personally well known to me, acknowledged said PUD Covenant to be the act and deed of said organization and that she delivered the same as such.

GIVEN under my hand and seal this 22nd day of January, 2004.

_____
Notary Public

My commission expires: _____.

GUENET FESSEHA
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires September 30, 2005

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

DISTRICT OF COLUMBIA
a Municipal Corporation

By: _____
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Sheryl Hobbs Newman, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing PUD Covenant bearing date of the 13th day of February, 2004 and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 13th day of February, 2004.

_____
Notary Public, D.C.

My commission expires: TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires April 14, 2007

_____
Approved as to Legal Sufficiency
Assistant Corporation Counsel, D.C.

JOINDER BY MORTGAGEE

The undersigned Riggs Bank N.A. hereby joins in this PUD Covenant to evidence its consent to the terms and provisions of said PUD Covenant and to confirm that the lien of that certain Purchase Money Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated January 22, 2004 and recorded among the Land Records of the District of Columbia on January 23, 2004 as Instrument Number 2004011297 (the "Deed of Trust") is hereby subordinate and subject in all respects to the said PUD Covenant. The undersigned Riggs Bank N.A. hereby authorizes and directs Casey Brill and Robert Hughlett, Trustees under the said Deed of Trust to execute and join in this instrument.

RIGGS BANK N.A., a national banking association

By: _____
Name: Jeffrey S. Geifman
Title: Vice President

~~State of~~ District of Columbia
~~County of~~ _____

I, Katherine L. Hays, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Jeffrey S. Geifman, who is the Vice President of Riggs Bank N.A., party to the foregoing PUD Covenant bearing date as of the 26th of January, 2004, the said Vice President being named as attorney-in-fact for said organization in the foregoing and annexed PUD Covenant, personally appeared before me and, being personally well known to me as such attorney-in-fact, acknowledged said PUD Covenant to be the act and deed of said organization and that he delivered the same as such.

GIVEN under my hand and seal this 13th day of February, 2004.

_____
Notary Public
KATHERINE L. HAYS
Notary Public District of Columbia
My Commission Expires October 31, 2005

My commission expires: _____

JOINDER BY TRUSTEES

The undersigned Casey Brill and Robert Hughlett, as Trustees under the Deed of Trust referred to hereinabove hereby join in this PUD Covenant to evidence their consent to the terms and provisions of said PUD Covenant and to confirm that the lien of said Deed of Trust is hereby subordinate and subject in all respects to the said PUD Covenant.

Casey Brill (SEAL)
Casey Brill, Trustee

(SEAL)
Robert Hughlett, Trustee

~~State of~~ District of Columbia
~~County of~~ _____

I, Katherine L. Hays, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Casey Brill and Robert Hughlett, parties to the foregoing PUD Covenant bearing date as of the 26th of January, 2004, the aforesaid individuals personally appeared before me and, being personally well known to me as such and acknowledged said PUD Covenant to be their act and deed.

GIVEN under my hand and seal this 13th day of February, 2004.

Katherine L. Hays
Notary Public
KATHERINE L. HAYS
Notary Public District of Columbia
My Commission Expires October 31, 2005

My commission expires: _____

Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

DISTRICT OF COLUMBIA, ss:

I attest and certify that I am the Director of the District of Columbia Office of Zoning, and that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of the following records that are in my custody and possession in my official capacity:

Fifteen page Order No. 02-50 of the Zoning Commission of the District of Columbia, dated September 8, 2003, in Case No. 02-50.

JERRILY R. KRESS, FAIA
Director
Office of Zoning

Signed and sworn to before me this 24th *day of* November, *2002.*

Betty J. Williams
NOTARY PUBLIC, D.C.

My Commission expires February 14, 2006

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 02-50
Case No. 02-50
(Consolidated Planned Unit Development and Amendment to the Zoning Map for St. Luke's Condominiums, LLC)
September 8, 2003

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on June 30, 2003 to consider an application from St. Luke's Condominium, LLC for the consolidated review and approval of a planned unit development and an amendment to the Zoning Map of the District of Columbia within the Naval Observatory Precinct Overlay ("NO") District from NO/R-1-B to NO/R-5-B for Lot 815 in Square 1935 located at the intersection of Wisconsin Avenue and Calvert Street, N.W, pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR §3022.

FINDINGS OF FACT

1. The property that is the subject of these applications, located at the intersection of Wisconsin Avenue, N.W. and Calvert Street, N.W. (Lot 815, Square 1935), is owned by the St. Luke's United Methodist Church (hereinafter the "Church"). St. Luke's Condominiums, LLC (hereinafter the "applicant") and the Church have entered into a contract for the applicant to purchase the property. The applicant filed an application with the Zoning Commission ("Commission") on December 12, 2002 for review and approval of a planned unit development ("PUD") and a related amendment to the Zoning Map of the District of Columbia.

2. The Zoning Commission unanimously agreed to set the case down for a public hearing at its February 24, 2003 public meeting. The Zoning Commission held a public hearing on the above-mentioned applications on June 30, 2003, which was conducted in accordance with the provisions of 11 DCMR §3022.

3. At the June 30, 2003 public hearing, the Commission granted party status to Advisory Neighborhood Commission ("ANC") 3B, the ANC adjacent to the property, and to the Massachusetts Avenue Heights Citizens Association ("MAHCA"), as a party in

RSN

support. ANC 3C, in which the property is located, is automatically a party to this application.

4. The project site is Lot 815 in Square 1935 (the "Subject Property"). The Subject Property is located in the Glover Park/Massachusetts Avenue Heights neighborhood of Ward 3. It consists of approximately 78,000 square feet of land and is located in the low-density residential land use category as shown on the District of Columbia Generalized Land Use Map. The Subject Property is generally situated at the northeast corner of Wisconsin Avenue and Calvert Street, N.W. The Subject Property includes 118 feet of frontage along Wisconsin Avenue and 322 feet of frontage on Calvert Street. The Subject Property exhibits a ten-foot change in grade from the northern edge of the site to the southern edge of the property. (Exhibit 20, Pre-Hearing Statement of the Applicant ("Statement") pp. 1, 4.)

5. The general area surrounding the Subject Property includes large apartment buildings and the Russian Embassy on the western side of Wisconsin Avenue, across Wisconsin Avenue from the property, which are located in a R-5-B District. The Savoy Hotel, located immediately to the north of the Subject Property, is a non-conforming use and structure under the current NO/R-1-B Zone District. Single-family homes are located to the north and east of the Subject Property. The Guy Mason Recreation Center and playing fields are located to the south and east of the Subject Property, and a two-story office building for the International Union of Operating Engineers, Local 99 is located directly across Calvert Street from the Subject Property, on the southeast corner of the intersection of Wisconsin Avenue and Calvert Street. A neighborhood serving commercial area is located immediately south of the Subject Property on Wisconsin Avenue. (Exhibit 20, Statement p. 5.)

6. The Subject Property is currently improved with the St. Luke's United Methodist Church building and parking lot on the eastern portion of the Subject Property. The Church contains approximately 14,348 square feet of gross floor area and cellar area. (Exhibit 20, Statement p. i). The Church building and parking lot will remain, and the parking lot will receive enhanced landscaping as a result of the PUD.

7. The applicant seeks to construct a residential project on the Subject Property that will have four stories plus an English basement and be oriented along the street frontages. The measured height of the project will be 40 feet and will comply with the height restrictions of the Naval Observatory Precinct Overlay District. The project will include a maximum of 44 residential units with a mix of one, two, and three bedroom units ranging in size from 800 – 2,300 square feet. (Exhibit 20, Statement p. 6., Testimony of Bill Hellmuth, Transcript of June 30, 2003 Zoning Commission Public Hearing ("Tr.") pp. 19-22, 56.)

RSN

8. The project will have a total gross floor area of approximately 85,000 square feet. The density of the Subject Property will be approximately 1.27 FAR (which includes the Church building that has approximately 14,348 square feet of gross floor area, excluding cellar area). The project will have a lot occupancy of approximately 36%. The project will include two levels of below-grade parking that will contain 104 parking spaces for the residents of the project and their guests. The parking spaces and loading areas will be accessed from Calvert Street. The loading areas will be located inside the building, as will the HVAC compressor units for each dwelling unit. Trash and refuse will be stored within the building on the below-grade parking levels. The project will also include an environmentally sensitive "green" roof area that will consist of approximately 5,000 square feet. The "green" roof will reduce the heat island effect of the project and will provide a more visually appealing view for residents of the project visiting the roof top terrace, as well as neighboring property owners who will be able to see the roof of the project. (Exhibit 20, Statement pp. 6-7, Testimony of Bill Hellmuth; Tr. p. 21, Testimony of J. Bolton, Tr. p. 24.)

9. The applicant also proposes to amend the Zoning Map in order to change the Zone District of the Subject Property from NO/R-1-B to NO/R-5-B. The Naval Observatory Precinct Overlay District is mapped in combination with the underlying zoning district and was "established to promote the public health, safety, and general welfare on land adjacent to or in close proximity to the highly sensitive and historically important Naval Observatory". (Exhibit 20, Statement p. 1.) The NO/R-1-B District permits a maximum height of 40 feet (3 stories) and a maximum lot occupancy of 40%. There is no established maximum floor area ratio ("FAR") for the NO/R-1-B District, but a lot must have a minimum area of 5,000 square feet and a minimum width of 50 feet. The NO/R-5-B District permits a maximum height of 40 feet, a maximum lot occupancy of 60% and a maximum density of 1.8 FAR. (Exhibit 20, Statement pp. 5-6.)

10. The proposed project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's neighborhoods;
- Respecting and improving the physical character of the District; and
- Preserving and ensuring community input. (Exhibit 20, Statement p. 21-22.) The project is also consistent with many Major Elements of the Comprehensive Plan, including: the Housing Element, the Urban Design Element, and the Ward 3 Element. (Exhibit 20, Statement pp. 22-26.)

RSM

11. The Generalized Land Use Map includes the Subject Property in the low density residential land use category. The Commission notes that the Generalized Land Use Map is intended to serve as a "general" map and is not intended to serve as a parcel by parcel limitation on permitted development. The Commission agrees with the Office of Planning's statement that, "The proposed moderate density residential use is not inconsistent with the Map, which outlines the predominant uses for the area but does not preclude the existence of other residential unit types if appropriate. (Exhibit 15, OP set-down report at p. 3.)

12. The applicant offered testimony and evidence from Robert R. Montagne, Jr. and John Wood Bolton, Jr., on behalf of St. Luke's Condominiums, LLC, and Anne Yarbrough, Pastor of the St. Luke's United Methodist Church. Bill Hellmuth, of Hellmuth, Obata, Kassabaum, one of the project architects testified as an expert in the field of architecture and the Commission also heard testimony from Rostand Edwards and Craig Studdert, of Niles Bolton Associates, members of the project architectural team.

13. Robert Montagne addressed the applicant's development process with respect to this project and the early and significant outreach that was made to ANC 3C and ANC 3B, various neighborhood organizations (including MAHCA and the Glover Park Citizens Association ("GPCA")), and adjacent property owners. Mr. Montagne noted that as a result of that process, the project received the support of MAHCA, GPCA, and ANC 3C; ANC 3B did not object to the project. (Testimony of R. Montagne, Tr. pp. 13-15.)

14. Pastor Yarbrough discussed the Church's role in the neighborhood, the process that Church undertook in selecting a developer to develop a portion of the Church's property and the benefits that the project will provide, not only to the Church, but also to the neighborhood and the District of Columbia. As a result of this development, the Church will have the necessary financial resources to continue funding for the following programs and ministries:

- St. Luke's Shelter – The first small transitional shelter for homeless men in Ward 3. This ministry of the Church provides a dinner meal 365 days a year that is served by neighbors, members of nearby churches and synagogues, and several Wisconsin Avenue restaurants and grocers.

- St. Luke's Kitchen – a new program that will begin in 2004 that will provide job training in restaurant skills for homeless men and women. This program has been strongly embraced and supported by the community.

RSN

Grate Patrol – Once a month the Church prepares and distributes 150 meals to men and women living on D.C. streets.

(Exhibit 20, pp. 16-17, Testimony of A. Yarbrough, Tr. pp. 15-17.)

15. As addressed in the applicant's pre-hearing statement and through the testimony of Mr. Bolton, the following public benefits and project amenities will be created as a result of this project.

- Housing – The project will create 44 for-sale residential units on the subject property. In addition, the applicant will make a contribution of $150,000 to the District of Columbia Affordable Housing Production Trust Fund for the creation of affordable housing units throughout the District of Columbia. (Exhibit 20, p. 12; Testimony of J. Bolton, Tr. p. 24.)

- Urban Design and Architecture – The proposed project has been carefully designed to provide both a gateway to the Massachusetts Avenue neighborhood and to act as an appropriate transition between the higher density development along Wisconsin Avenue and the single-family houses to the east. The building façade has been designed to incorporate the most attractive attributes of houses and townhouse buildings in the District of Columbia. The degree of articulation and treatment of the façade are appropriate for this site. The proposed project also includes significant landscaping enhancements for the Church and Church parking lot, as well as an interior landscaped courtyard for the residents of the new building and their guests. (Exhibit 20, pp. 13-14; Testimony of B. Hellmuth, Tr. pp. 18-22; Testimony of J. Bolton, Tr. pp. 24-25.)

- Site Planning – The proposed project has been carefully designed and oriented to the western third of the Subject Property at the intersection of Wisconsin Avenue and Calvert Street and will create a sense of vitality along its street frontages. The project has been designed to maintain an appropriate lot occupancy for the NO/R-5-B Zone District. (Exhibit 20, pp. 14-15, Testimony of B. Hellmuth, Tr. pp. 18-22.)

- Effective and Safe Vehicular and Pedestrian Access – The proposed project will not increase traffic volumes beyond capacity at the Calvert Street/Site Driveway, Calvert Street/36th Street, Wisconsin Avenue/Calvert Street, or Wisconsin Avenue/Davis Street intersections. The applicant's traffic expert concluded that vehicle queues will not interfere with traffic entering or exiting the driveway to the parking garage and loading area of the project. Moreover, the applicant has agreed with MAHCA to provide two parking spaces per residential unit, as well as 16 spaces for visitors and staff. All parking is provided below grade. (Exhibit 20, pp. 15-16, Exhibit E.)

RSN

- Uses of Special Value - The applicant has agreed to landscape the traffic island at the intersection of Wisconsin Avenue, Calvert, and 37th Streets to create a definitive "entry" into the Glover Park neighborhood. Further, the applicant has agreed to replace and supplement the existing streetscape in the neighborhood. The applicant has also agreed to make the following financial contributions:

  MAHCA-$100,000 ($50,000 for improvements to Guy Mason Recreation Center – to be determined by The Friends of Guy Mason organization; $50,000 for MAHCA designated neighborhood improvements); and

  ANC 3B Area-$50,000 Prior to the issuance of a certificate of occupancy for the project, the Applicant will donate $25,000 for streetscape improvements within the boundaries of ANC 3B, and will contribute an additional $25,000 as grants to non-profit organizations, selected by ANC 3B, that provide service within the ANC.

(Exhibit 20, p. 19; Testimony of J. Bolton, Tr. p. 25.)

- Revenue for the District – The addition of 44 new households will result in the generation of significant additional tax revenues in the form of property, income, sales, use, and employment taxes for the District, compared to the current use, which provides no real estate tax revenue to the District as church property is exempt from real estate taxes. (Exhibit 20, pp. 17-18, Testimony of J. Bolton, Tr. p. 33.)

- Consistency with the Comprehensive Plan – The project fosters and furthers numerous elements of the Comprehensive Plan as well as numerous major themes of the Comprehensive Plan. (Exhibit 20, pp. 20-26.)

- Environmental Benefits – At the request of various neighborhood organizations, the compressors for the HVAC units will be located below grade in the parking structure. Further, the project will contain a 5,000-square-foot "green" roof surface, which was requested by ANC 3C. (Exhibit 20, p. 17; Testimony of J. Bolton, Tr. p. 25, Testimony of B. Hellmuth, Tr. p. 36.)

- Employment and Training Opportunities – The applicant has entered into a First Source Employment Agreement with the Department of Employment Services (DOES) and will enter into a Memorandum of Understanding with the Local Business Opportunity Commission (LBOC). (Exhibit 20, p. 18, Exhibits 26, 36.)

- Construction Management Agreement - The Applicant entered into a construction management agreement, entitled the "Development and Construction Agreement," with ANC 3B, ANC 3C, and GPCA to guide construction activity on the Subject Property. This agreement was also submitted into the record. (Testimony of J. Bolton, Tr. p. 25, Exhibit 37.)

RSA

16. Bill Hellmuth, recognized by the Commission as an expert in architecture, addressed the thought process that resulted in the proposed building and design. Mr. Hellmuth noted the transitional nature of this site from the commercial areas along Wisconsin Avenue to the south and the more residential sections of Wisconsin Avenue and the Massachusetts Avenue Heights neighborhood to the north and east. Mr. Hellmuth noted that the design of the building sought to incorporate the best aspects of houses and townhouses in the area and thus the building's façade was designed into a series of townhouse-scaled elements, with materials of cast stone, rusticated brick, and French balconies as the building moves from the ground floor to the upper levels. (Testimony of B. Hellmuth, Tr. pp. 18-22.)

17. In response to issues raised by Commissioners during the June 30, 2003 public hearing, the record of the case was left open for the applicant to provide the following materials and information:

- A revised roof plan that would allow residents of the project and their guests access to more of the roof area;
- A site circulation plan;
- A fully dimensioned site and roof plan;
- Copies of photographs of townhouse residences in the neighborhood near the subject property that were presented at the public hearing;
- Information regarding the calculation of the project's FAR if the area of the Church and Church parking lot were not included;
- Information regarding an analysis of NO/R-1-B matter-of-right single-family dwellings on the property; and
- Information regarding an agreement between the applicant and the Department of Public Works for the landscaping and maintenance of the traffic island at the intersection of 37th Street, Calvert Street, and Wisconsin Avenue, and the streetscape along Wisconsin Avenue from Calvert Street to Whitehaven Parkway.

18. The applicant submitted the post-hearing information and materials requested by the Commissioners on July 11, 2003. In this submission, the applicant noted:

- The area of the site that includes the Church and the Church parking lot is an integral part of the PUD application. In fact, the Development Agreement between MAHCA, the applicant, and the Church expressly prohibits the Church from any further development on its portion of the property for a period of 40 years. Thereafter, between the 40th and 65th years following the date that the PUD is approved, only single-family homes are permitted to be constructed on the Church property.

RSV

Nonetheless, if the FAR for the PUD project is calculated using only the area of the property on which the PUD project is located, the density would be 2.78 FAR (85,000 s.f./30,607 s.f.).

- In regards to an analysis of development potential for constructing NO/R-1-B matter-of-right single-family dwellings on the property, early in the due diligence stages of the potential development of the property, it became clear to the applicant that a matter-of-right single-family development on this property was not economically feasible. Thus, the applicant did not engage an architect to design a single-family dwelling development on this site. However, the applicant noted that the 78,000-square-foot property could be developed with 15 single-family homes (78,000 s.f./5,000 s.f.). These 15 houses could, if built to their full envelope, total 93,600 square feet in area, or an effective density for the site of 1.2 FAR. The PUD project has a density (including the Church) of 1.27 FAR.

- The applicant continues to work with the Department of Public Works Public Space Management Division to enter into an agreement regarding the landscaping of the traffic island at the intersection of 37th Street, Calvert Street, and Wisconsin Avenue, as well as the streetscape along Wisconsin Avenue from Calvert Street to Whitehaven Parkway. In the event that the applicant is not able to finalize such an agreement by the end of this month, the applicant requests that the Commission make it a condition of any Order approving this application.

(Exhibit 43.)

19. The Office of Planning (OP), in its report dated June 20, 2003 and through its testimony at the public hearing, recommended approval of the project with conditions. The OP report noted that the proposed PUD and related map amendment is not inconsistent with the requirements of the Comprehensive Plan and will bring needed housing to the District. The OP report also noted that the proposed rezoning promotes a sound land use pattern in the area. (Exhibit 31.)

20. The OP Report states: "The proposed development of the site is not contrary to the purpose of the Naval Observatory Overlay. The proposed R-5-B District permits a flexibility of design and all types of urban residential developments at a moderate height and density. The applicant is requesting a rezoning to the R-5-B zone with a PUD to accommodate a multi-dwelling use on the site in keeping with the urban nature of Wisconsin Avenue." In addition, the OP Report notes: "The R-5-B District on the property will allow the development to be at a scale that does not negatively impact the existing residences and is consistent with the intensity of the adjacent neighborhood. The proposed map amendment coupled with the accompanying PUD is intended to

RSN

facilitate a site-specific project and the assurance of a quality development." (Exhibit 31 at p. 3, Testimony of M. Brown-Roberts, Tr. pp. 63-64.)

21. The OP report concluded that the PUD fully satisfied the purpose and standards for a PUD outlined in 11 DCMR Chapter 24. The OP report noted that the proposed development will be constructed on a property that is currently underutilized and will aid in the objective to increase the number of residents in the City. The OP report also noted that the building itself will contribute to improving the character of the community as well as providing amenities that will benefit the community directly. (Exhibit 31, p. 4, Testimony of M. Brown-Roberts, Tr. p. 64.)

22. The OP report also noted the project's consistency with the Comprehensive Plan. OP concluded:

> "The proposed moderate density residential planned unit development is not inconsistent with the Comprehensive Plan, which outlines the predominant uses for the area but does not preclude the existence of other residential unit types if appropriate. OP believes that single-family detached units would be an inappropriate use for this location based on the fact that it is an infill site, oriented to Wisconsin Avenue, and is surrounded by high-density residents and commercial uses."
>
> "Further, this location is more appropriate for apartments because of its orientation with Wisconsin Avenue, a busy thoroughfare. A multi-unit building at this location will be more compatible to the adjacent retail, office, and high-rise residential uses at this intersection. The proposed apartment will be of a lower scale and elevation than the existing apartment building across Wisconsin Avenue and the adjacent Savoy Hotel. The proposed building and church will provide a transition to the single-family residences to the east." (Exhibit 31, p. 4.)

The OP report also highlighted the project's compliance with the Major Themes of the Comprehensive Plan, including: stabilizing the neighborhood; respecting and improving the physical character of the neighborhood; and preserving and ensuring community input. The OP report also noted consistency with numerous provisions of the Housing Element and the Ward 3 Element of the Comprehensive Plan. (Exhibit 31, pp. 5-6, Testimony of M. Brown-Roberts, Tr. pp. 64-65.)

23. The District Department of Transportation (DDOT) submitted a report dated June 18, 2003, which concluded that the project would have a negligible impact on existing traffic conditions while providing substantial amount of parking. In this report, DDOT also stated that:

- the number of peak-hour trips anticipated to be generated by the proposed development would have a negligible impact on the existing traffic conditions;

RSN

- the developer's estimate that 20% of all AM and PM peak hour external person-trips will be made by means other than private automobiles, such as Metrobus, Metrorail, or walking was appropriate; and

- the applicant's provision of two parking spaces for each residential unit and additional spaces for guests of the residents will result in minimal, if any, parking impact on the surrounding neighborhood. (Exhibit 29.)

24. The DDOT report also noted that it had requested that the developer study the possibility of adding a traffic lay-by lane on Calvert Street for drop-off and pick-up of residents of the project and their guests, as well as for deliveries to the residents of the project. DDOT concluded that such a lay-by was impractical for the following reasons:

- such a lay-by would misalign the sidewalk;

- the lay-by would have to be constructed too close to Wisconsin Avenue and cause queues of two or more cars to block access to the lane;

- left-turns onto southbound Wisconsin Avenue would be required to make an abrupt maneuver that is potentially unsafe; and

- deliveries can be made from the loading dock driveway that is located a short distance to the east of the potential lay-by lane.

For all of these reasons, DDOT advised that the lay-by not be constructed. (Exhibit 29.)

25. ANC 3C adopted a unanimous resolution in support of the project at its March 24, 2003 public meeting. The ANC resolution noted the support that the project received from MAHCA and GPCA, the Agreement between MAHCA and the applicant, and the provision of a 5,000-square-foot "green roof" as benefits of the project. The ANC resolution also recommended that a lay-by on Calvert Street be approved to minimize any traffic congestion on Calvert Street that may result from vehicles discharging visitors to the building. Finally, the ANC resolution noted that it would consult with the applicant and other interested parties to create a construction management agreement to submit into the record. (Exhibit 18.)

26. The Massachusetts Avenue Heights Citizens Association (MAHCA), a party in support of the application, by written submission and testimony at the June 30, 2003 public hearing, supported the project. Paul Cunningham, on behalf of MAHCA, noted that, in the 20 years he has lived in this neighborhood, this was the first project that he was able to support. Mr. Cunningham noted the negotiation process that occurred between MAHCA and the applicant, and he commended the applicant for listening to the community's concerns. Mr. Cunningham stated that the design of the project will be beneficial to the neighborhood, that it establishes an appropriate transition between the

RSL

more dense housing and commercial activity to the south and west and the Massachusetts Avenue Heights neighborhood, and the amount of parking spaces provided is appropriate. (Testimony of Paul Cunningham, Tr., pp. 72-76.)

27. ANC 3B, by written submission, noted that it adopted a resolution on March 13, 2003 of no opposition to the project. In written testimony to the Commission, ANC 3B noted that it has great concerns regarding the failure to provide an adequate driveway for short-term parking and delivery. (Exhibits 17 and 42.)

28. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits, 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD and amendment to the Zoning Map of the District of Columbia. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, yards, or courts. The final project presented to the Commission does not request any areas of flexibility from the strict application of the Zoning Regulations.

The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development. The Commission finds that this PUD project provides a significant public benefits and community amenities package. The Commission believes that this project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Subject Property would provide. Approval of the PUD and the related change in zoning from NO/R-1-B to NO/R-5-B is not inconsistent with the

RSA

Comprehensive Plan for the National Capital and the purposes of the Zoning Act. Moreover, the Commission finds that the project is in fact entirely consistent with numerous themes and elements of the Comprehensive Plan.

This residential development will contribute vitality and help strengthen the Glover Park/Massachusetts Avenue Heights neighborhood. The Commission concludes that the mass of the project is appropriately oriented to the portion of the Subject Property, the intersection of Wisconsin Avenue and Calvert Street, that is best suited for additional development. The proposed height and massing of the project will complement and be compatible with the existing mix of uses along Wisconsin Avenue. The project provides an appropriate transition from the major arterial of Wisconsin Avenue, with high-rise apartment buildings, to the Church building and single-family homes to the east. The Commission commends the applicant for its extensive outreach to the community during the development process for this project.

The Commission concludes that approval of the application will promote orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia. The development of this PUD is compatible with citywide goals, plans, and programs and the development patterns in the area. The proposed PUD will allow for appropriate residential development of underutilized property along a major thoroughfare. The production of multi-family housing on the Subject Property is fully consistent with the City's goals of increasing housing opportunities in the City.

The Commission takes note of Advisory Neighborhood Commission (ANC) 3C's resolution in support of the project and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. In addition, the Commission notes the support that the project has received from MAHCA and the general lack of opposition to the project.

The Commission also recognizes that ANC 3B, the adjacent ANC, adopted a resolution of no opposition to the project, yet has concerns regarding the lack of a lay-by lane on Calvert Street. Based on the DDOT Report, the Commission has determined that the proposed lay-by lane on Calvert Street is not appropriate and will not require the inclusion of such a lay-by lane for the project.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of these applications for consolidated review of a Planned Unit Development and a related amendment of the Zoning Map from NO/R-1-B to NO/R-5-B for Lot 815 in Square 1935. The approval of this PUD and change in zoning is subject to the following guidelines, conditions, and standards:

RSN

1. The PUD shall be developed in accordance with the plans and materials submitted by the applicant marked as Exhibits 38 and 43 of the record, as modified by the guidelines, conditions, and standards of this order.

2. In accordance with the plans and materials noted above, the approved PUD shall consist of a residential project that includes 44 residential units occupying 85,000 square feet of gross floor area with a density of approximately 1.27 FAR, a building height of 40 feet, and 104 total parking spaces, with two parking spaces conveyed with each residential unit (for a total of 88 parking spaces) and 16 parking spaces for guests.

3. The terms of the Development and Construction Agreement between the applicant, GPCA, ANC 3C, and ANC 3B, submitted into the record as Exhibit 37, are incorporated herein.

4. The applicant shall provide the following off-site amenities:

- Contribution of $150,000 to the Housing Production Trust Fund, such contribution shall be made by the applicant prior to the issuance of a building permit for the construction of this project;

- Donation of $50,000 to be used in the ANC 3B area of which $25,000 will be for streetscape improvements and $25,000 will be distributed as grants to non-profit neighborhood organizations that provide services in ANC 3B, such contribution shall be made by the applicant prior to the issuance of a certificate of occupancy for the project. ANC 3B will not receive any financial contribution directly, but will select the non-profit organizations that provide services in ANC 3B; and

- Donation of $100,000 to MAHCA, of which $50,000 will be for improvements to the Guy Mason Recreation Center with such improvements to be determined by the Friends of the Guy Mason organization, and $50,000 for neighborhood improvements, such contribution shall be made by the applicant prior to the issuance of a certificate of occupancy for the project.

5. The applicant shall enter into an agreement with the Department of Public Works that addresses the manner in which the traffic island at the intersection of Wisconsin Avenue, Calvert Street, and 37th Street will be landscaped and maintained, as well as appropriate streetscape improvements to Wisconsin Avenue between Calvert Street and Whitehaven Parkway, costs of which shall not exceed $25,000 in accordance with Condition No. 4 listed above.

RSV

6. The applicant shall enter into a Memorandum of Understanding with the Department of Human Rights and Local Business Development. Copies of all filings with the Department of Human Rights and Local Business Development shall be provided to the Office of Zoning.

7. The First Source Employment Agreement with the Department of Employment Services, submitted into the record as Exhibit 36, is incorporated herein.

8. The change of zoning from NO/R-1-B to NO/R-5-B for the Subject Property shall be effective upon the recordation of a covenant as required by 11 DCMR § 2409.3.

9. No building permit shall be issued for the PUD until the applicant has recorded a covenant in the land records of the District of Columbia, between the applicant and the District of Columbia that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the applicant and all successors in title to construct and use the Subject Property in accordance with this order, or amendment thereof by the Zoning Commission.

10. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the applicant has filed a certified copy of the covenant with the Office of Zoning.

11. The consolidated PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, applicant must file for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this order.

12. The applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also 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.

RSV

For the reasons stated above, the Commission concludes that the applicant has met the burden, it is hereby **ORDERED** that the applications be **GRANTED**.

On July 31, 2003, the Zoning Commission approved the applications by a vote 5-0-0 (Carol J. Mitten, James H. Hannaham, Anthony J. Hood, John G. Parsons, and Peter G. May to approve).

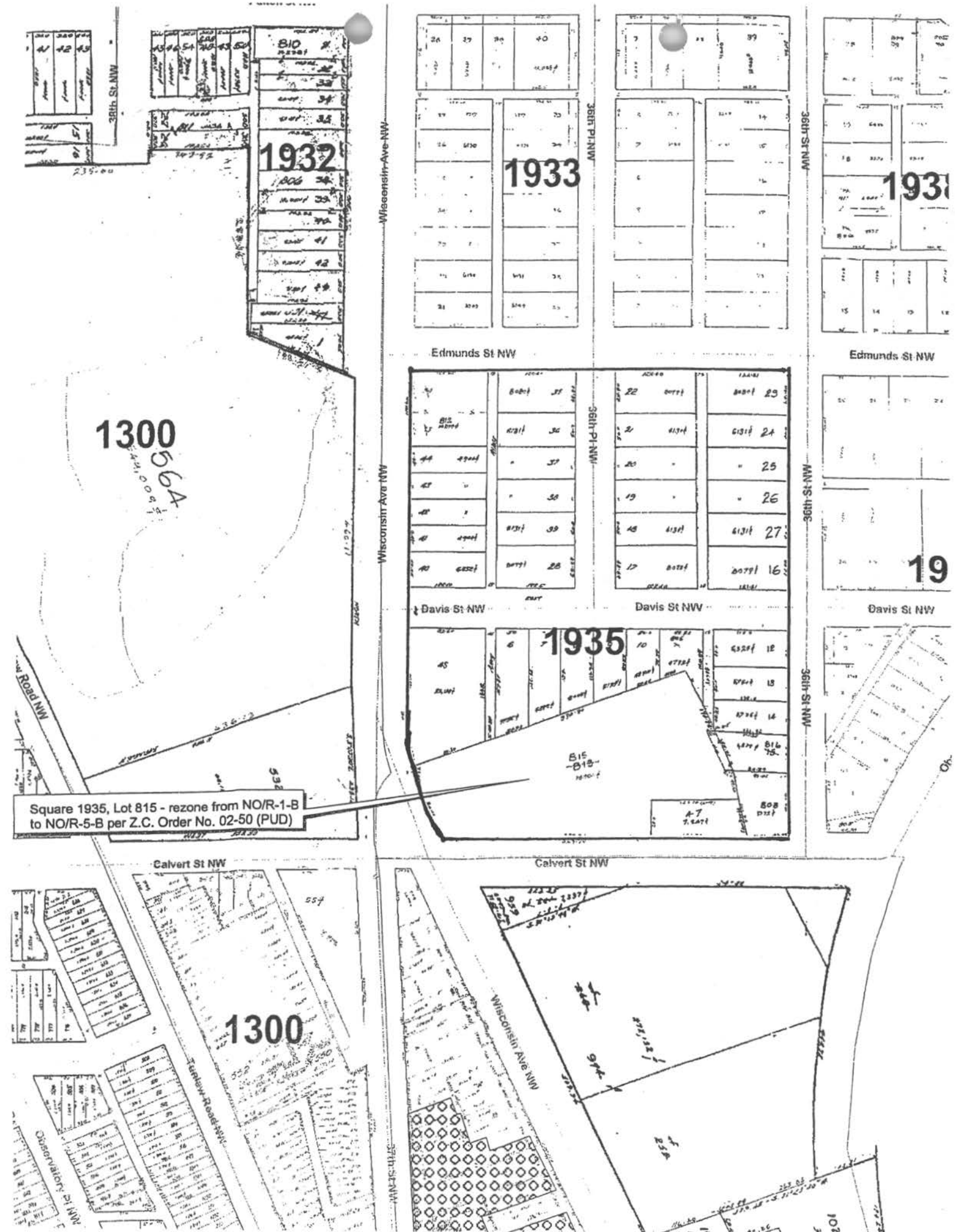
This order was adopted by the Zoning Commission at its public meeting held on September 8, 2003, by a vote of 5-0-0 (John G. Parsons, Peter G. May, Carol J. Mitten, Anthony J. Hood, and James H. Hannaham to adopt).

In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon publication in the D.C. Register on NOV 14 2003.

Carol J. Mitten
CAROL J. MITTEN
Chairman
Zoning Commission

Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director
Office of Zoning

RSN


1932
1933
1935
1300
564
38th St NW
Wisconsin Ave NW
36th Pl NW
36th St NW
Edmunds St NW
Davis St NW
Calvert St NW
Road NW
Observatory Pl NW
Tunlaw Road NW
37th St NW
Square 1935, Lot 815 - rezone from NO/R-1-B to NO/R-5-B per Z.C. Order No. 02-50 (PUD)

Doc# 2004021857
Book:
Pages:
Filed & Recorded
02/17/2004 03:19:26 PM
LARRY TODD
RECORDER OF DEEDS
WASHINGTON D.C. RECORDER OF DEEDS
RECORDING $ 101.00
SURCHARGE $ 6.50

RETURN TO:

PAUL A. TUMMONDS, ESQ.
SHAW PITTMAN, LLP
2300 N STREET, N.W.
WASHINGTON, DC 20037

Doc# 2004021857
Book:
Pages:
Filed & Recorded
02/17/2004 03:19:26 PM
LARRY TODD
RECORDER OF DEEDS
WASHINGTON D.C. RECORDER OF DEEDS
RECORDING $ 101.00
SURCHARGE $ 6.50