

Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D

P.O. Box 40846
Palisades Station
Washington, D.C. 20016

April 6, 2009
By hand delivery

Mr. Anthony Hood,
Chairman, DC Zoning Commission
Suite 200/210S
441 4th Street NW
Washington DC 20001

**RE: Subject: Zoning Commission Case Number 08-21 (Athena Group, LLC:
Consolidated Review of a Planned Unit Development and Related Map Amendment @
Square 1356)**

Dear Chairman Hood:

The ANC held several meetings with the public, with its advisors, with the developer and its architects, and with the interested community groups to discuss the Planned Urban Development (PUD) proposed by the Athena Group for this property. Those meetings, particularly the meetings since the last Zoning Commission hearing on March 16, 2009, were held in an attempt to come together on a proposal with which all could be satisfied. We were not able to reach such an agreement.

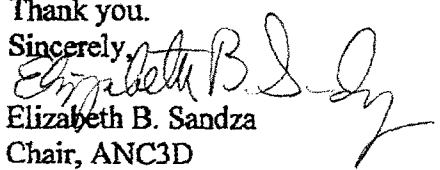
Therefore, when Advisory Neighborhood Commission 3D held its properly noticed and regularly scheduled monthly meeting on Wednesday, April 1, 2009 at Sibley Memorial Hospital's Ernst Auditorium, with all Commissioners present at all times, the Commissioners voted unanimously to notify you that ANC 3D does not support the latest version of the Canal Parc proposal for all of the reasons stated in its resolution of Nov. 11, 2008 and amended on February 4, 2009.

While we appreciate Athena's efforts to work with the ANC, they have not satisfied the concerns we expressed in our resolution.

ANC3D requests that the Zoning Commission give its determination the great weight to which it is entitled in your decision.

Thank you.

Sincerely,


Elizabeth B. Sandza
Chair, ANC3D

Cc: Phillip Feola

ZONING COMMISSION
District of Columbia

CASE NO.

EXHIBIT NO.

08-21
80

2009 APR -6 PM 2:13

**Submission of Advisory Neighborhood Commission 3D
Before the District of Columbia Zoning Commission**

Application 08-21

**Post-Hearing Memorandum and
Suggested Findings of Fact and Conclusions of Law**

As stated in the cover letter to this memorandum from ANC 3D Chair Elizabeth Sandza, the ANC has not been able to reach agreement with the applicant and has voted to not support the application. The ANC provides the following suggested Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

Matter-Of-Right Development Under Existing Zoning

The subject Property is located in both the R-1-B and R-5-A Districts.

The R-1 District “is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes.” (11 DCMR § 200.1.) Residential buildings in the R-1-B Zone District may be constructed to a maximum height of 40 feet as a matter-of-right and may contain no more than three stories. (11 DCMR § 400.1.) The regulations require a minimum lot area of 5,000 square feet for all structures other than a public school. (11 DCMR § 401.3.) The minimum lot width in the R-1-B is 50 feet for all structures other than a public school. (11 DCMR § 401.3.) The maximum lot occupancy in R-1-B is 40% for all structures other than a church or public school. (11 DCMR § 403.2.)

The R-5 Districts are general Residence Districts. (11 DCMR § 350.1.) “In R-5-A Districts, only a low height and density shall be permitted...” (11 DCMR § 350.2.) While uses permitted in an R-4 District are permitted as a matter-of-right, “all new residential developments, except those comprising all one-family detached or semi-detached dwellings, shall be reviewed by the Board of Zoning Adjustment as special exceptions under § 3104 in accordance with the standards and requirements in this section.” (11 DCMR § 353.1.) However 11 DCMR §§ 2405.7 & 2405.8 allows the Zoning Commission in considering a PUD application to approve any use that is permitted as a special exception without separate Board of Zoning Adjustment approval and without applying the special exception standards normally applied by the Board.

Matter-of-Right Development Under Proposed R-5-A Zoning

The applicant seeks to have the subject Property rezoned from R-1-B and R-5-A to all R-5-A. The R-5-A District allows residential buildings to be built to a maximum height of 40 feet and no more than three stories. (11 DCMR 400.1.) Minimum lot area and width are to be prescribed by the Board or in this case by the Zoning Commission (§401.3 and §2405.7. In the R-4 District, minimum lots size for rowhouse developments such as proposed here is 1,800 square feet and the minimum lot width is 18 feet. (11 DCMR § 401.3.) The maximum floor area ratio in the R-5-A District is 0.9 for all structures. (11 DCMR § 402.4.)

PUD Standards for R-5-A

Under the PUD Standards, the maximum allowable height for a building is 60 feet and development may have a density of 1.0 FAR. (11DCMR § 2405.1 & 2405.2.)

Exceptions To Building Lot Control (Residence Districts)

The applicant seeks to have two or more buildings erected on the current single subdivided lot. Section 2516 of the Zoning Regulations allow for this as a special exception or as previously noted as part of a PUD application (§2405.7). Section 2516 has several provisions that the applicant seeks flexibility from: front yards equivalent to required rear yards (§2516.5(b)); required rear yards (§2516.5(c)); covenanted means of ingress and egress in rear yards (§2516.6(a)); 25 feet width streets and alleys (§2516.6(b)); a turning area with a diameter of not less than sixty feet (§2516.6(c)) and providing the detailed plans required by §§3202.2 and 3202.3 (§2516.4).

Incorporation By Reference The Post-Hearing Memorandum Of Canal View Homeowners Association

The Commission finds that the Analysis provided in this submission Part III is persuasive.

Requested Flexibility

The Post-Hearing Memorandum Of Canal View Homeowners Association, Part III shows the requested flexibility to be:

Lot Occupancy. Exhibit D shows that every one of the 36 lots exceeds the 40% lot occupancy requirement (applicable in both the R-1-B and R-5-A zones). The crowding of the theoretical lots is especially acute in Buildings 1 and 2, where lot occupancy ranges from 71% to 88% on 14 of 19 lots, i.e., close to or exceeding double the statutory maximum.

Rear and Side Yards. Exhibit D reveals that none of the 36 houses will comply with the rear yard requirement (20' in the R-5-A zone and 25' in the R-1-B zone). The percentage deviations sought are as follows: 77.5% on lots 1-19; 46% on lots 20-28; 32.8% on lots 29-30; 28% on lots 31-34; and 10% on lots 35-37. As for side yards, Exhibit D details that of the 13 lots with side yards, 12 of them, or 92%, are below the required minimum size for both zones (8'), with deviations ranging from 15% to 43.75%. Exhibit D also identifies 8 lots with the 8' side yard requirement where there is no side yard provided at all (lots 21-23, 26-27, & 32-34).

Front Yards. Lots 11-37 have a front yard requirement of 20'. Exhibit D discloses that of these 27 lots, 25, or 92.6%, do not comply with the front yard requirement. The deviations sought range from 42.5% to 62.5%.

Building Height. The matter-of-right building height requirement is 3 stories and 40' in both the R-1-B and R-5-A zones. Exhibit D confirms that of the 14 lots in the R-1-B zone, the buildings proposed for 9 lots, or 64%, fail to comply with the three story height requirement (lots 25-33). Four of these lots, or 29%, exceed the 40' height requirement by 2' (lots 26, 27, 32, & 33). As for

the 22 lots in the R-5-A zone, 11 lots, or 50%, have proposed 4-story buildings, another major deviation from matter-of-right requirements. In addition, 3 of these lots (34-36), or 13.6%, also exceed the height limit by a foot or two. Matter-of-right buildings must comply with both height criteria.

Minimum Lot Dimensions. The R-1-B zone has a minimum lot dimension of 5000 sq. ft. § 401.3. The R-5-A zone has no minimum under this provision, but elsewhere it is made clear that the R-5-A zone must provide 1800 sq. ft. per lot, either on the lot or in common space. § 401.5. Based on the square footage in each zone, as shown on Exhibit D, and ignoring space for streets and sidewalks, this requirement would translate to 16 single-family lots on the R-1-B property and 22 row houses on the R-5-A property, for a total of 38 dwelling units. This significantly overstates the number of matter-of-right minimum sized lots that could be achieved, since a site plan would have to be prepared showing a layout of streets and sidewalks, as well as proposed construction that avoided the wetlands on the site. The current plan nonetheless squeezes in 36 dwelling units and streets and sidewalks, or over 94.7% of a “theoretical” development devoid of internal streets. Thus, while use of a theoretical subdivision under § 2516 makes it difficult to quantify the deviation from minimum lot size with precision, it is clear that the deviation is substantial.

Floor Area Ratio. There is no FAR requirement in the R-1-B zone; the requirement is .9 in the R-5-A zone. § 402.4. Exhibit D discloses that all 22 lots in the R-5-A zone exceed the .9 FAR requirement. Of these, 20 have more than double the FAR limit of gross floor area, and of these, ten are at least triple the limit, with 5 lots (2, 4, 5, 7 & 8) at a remarkable 367% of the FAR gross floor area limit. In the R-1-B zone, there is no FAR requirement. The Applicant argues that there is an “FAR Equivalent” for the R-1-B zone of 1.2. It derives this from multiplying the lot occupancy standard of 40% times the number of stories allowed (3) to produce 1.2. To combine these restrictions and equate them with an FAR requirement is wholly speculative and unsubstantiated by anything in the Zoning Regulations. Indeed, in the experience of the undersigned, it is highly unlikely that any jurisdiction in the country that controls residence size with an FAR requirement would tolerate an FAR in the 1.2 magnitude range for a low-density single-family zone such as R-1-B. The closest-to-home example is Alexandria, which just happens to have a single-family residential zone mirroring the R-1-B in lot size – 5000 sq. ft. That zone, denominated the R-5 zone, has an FAR of .45. Alexandria Zoning Ordinance § 3-406 (B). In fact, the Commission does not even have to look across the Potomac for guidance. Roughly congruent to the Alexandria standard, the District of Columbia prescribes a .4 FAR for the R-1-B zone for approval of a PUD in that zone. § 2405.2. It is nonsense to suggest that outside a PUD, where there is less, not more, leeway, the standard would be three times more liberal. Even so, if one were to assume, extremely generously, and contrary to the implication of the PUD limitation, that the District would be twice as generous as Alexandria if they cured the FAR omission in the R-1-B zone, producing an FAR of .9, congruent with the R-5-A standard, not one of the 19 R-1-B lots would come remotely close to meeting the standard, nor do any of them pass the “1.2 equivalent” standard, either.

The explanation for the proposed development of the Property with this substantially excessive gross floor area is readily apparent. As detailed in Part II above, the Applicant has, in effect, attempted to “build” on streets and sidewalks by including them in the land from which a stated percentage of gross floor area can be extracted for development. Doing so contravenes the Zoning Regulations for the reasons detailed, and produces the sort of lot-by-lot overdevelopment that the

Applicant has now been obliged, at long last, after many requests for the required Annotated Table, to disclose.

The requested height flexibility which would allow 4 story buildings introduces a height precedent in the neighborhood of four story buildings which is inconsistent with the Comprehensive Plan.

Public Benefits and Amenities

The Commission finds very few superior features benefiting the surrounding neighborhood or the public in general.

While aspects of the proposal appear to be high quality, the applicant has provided no evidence that these aspects are significantly greater than similarly marketed housing in matter-of-right developments. The applicant has failed to provide in the annotated table required by §2403.11 a showing as to how the public benefits offered are superior in quality and quantity to typical developments of the type (luxury single family housing) proposed (§2403.12).

The applicant has failed to provide any evidence that the urban design, architecture, landscaping and site planning are superior in quality and quantity to a significantly greater extent than typical developments of luxury single family housing.

The Applicant on the one hand argues that individual theoretical lots need not comply with lot and yard size requirements since green space has been consolidated, yet then claims this aggregated open space is a public benefit. The applicant has provided no assurances or legal covenants that these alleged 'public spaces' will actually be open to the public as the applicant has promised to the ANC and others. (see also the Post-Hearing memorandum of Canal View Homeowners Association.)

The applicant has failed to provide any evidence that the project's narrower than usually required private street width and lack of either two means of ingress and egress or a 60 foot turn around provides effective vehicular and pedestrian access to a significantly greater extent than a matter-of-right development

The applicant has not provided a signed First Source Agreement with the District of Columbia Department of Employment Services nor will it be participating in the Certified Business Enterprise (CBE) program offered by the District of Columbia Department of Small and Local Business Development as recommended by the Office of Planning.

The applicant is providing two units of affordable housing for households with an income of 80% of the Area Median Income. These two units are distinguishable in size, height, number of stories, width and length from the adjoining units. which is inconsistent with the City Wide Element of the Comprehensive Plan which states, "Affordable housing should be indistinguishable from market rate housing in its exterior appearance.

The applicant's claim of 'universal design' is only an option offered to pre-construction homebuyers and available on only some of the units (Applicant's Oct 30, 2008 submission)

The applicant has provided no support for its claim of a benefit of 'Beautify MacArthur Boulevard' or evidence of how this would be accomplished other than bricked sidewalks. The applicant has provided no evidence that it is to a significantly greater extent than that which is required by current public space regulations.

The applicant has shown no evidence of a binding commitment to contribute to the Palisades Community Fund.

The applicant has provided a summary construction management plan.

The applicant will provide a bike rack for each unit.

The applicant states that one public benefit is enhanced stormwater management, but has provided no evidence that it is to a significantly greater extent than that which is required by current regulations or a matter-of-right development.

The applicant proposes to 'restore and clean' the wetland.

The applicant has testified that it will provide no additional uniform buffer since none is required by current regulations.

The applicant's latest (March 30, 2009) site grading plan shows that grading would occur right up to the wetland boundary and would increase the slope of the hill going up to the existing houses on Lingan Way.

Testimony by the ANC wetlands expert witness, Julie Moore, indicated that the existing wetland was functional and that the applicant's proposed "enhancement" could do more harm than good. Ms Moore also testified that the current wetland area design while an improvement over previous designs still is 'pretty narrow corridor for that wetland to have to function in.' Ms Moore testified that a 25 foot buffer between the stream margin and any new construction would be minimum and is being followed in other nearby developments.

Ms Moore also testified that the increased runoff especially from the sand filter discharge directly into the wetlands will be harmful for the wetlands and subsequently downstream impacts from additional sedimentation into the Potomac River drainage.

Consistency With The Comprehensive Plan

The District of Columbia Comprehensive Plan Generalized Policy Map shows this property to be in a Neighborhood Conservation Area (with some institutional use primarily resulting from the past use as a hospital).

The District of Columbia Comprehensive Plan Future Land Use Map shows this property to be in 3 different use categories:

The existing R-5-A strip along MacArthur Blvd. is ***Moderate Density Residential*** which defines the District's row house neighborhood as well as its low rise garden apartment complexes. It also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings.

The current site of the hospital is Institutional and according to the Office of Planning, this is because of the immediate past use as a hospital. The map guidelines indicate that a change of use should be comparable in density or intensity to those in the vicinity.

All of the portion of the property southeast of Lingan Way extended, including all of Building Five are shown as Park, Recreation and Open Space

Introduction

The Comprehensive Plan is designed to chart development in the District of Columbia for 20 years, from 2005 to 2025. "The Comprehensive Plan will have many far-reaching effects on everyone who lives or works in the District. It will affect where development occurs; where green space, recreation facilities and parks are improved; and how neighborhoods are conserved and enhanced as desirable places."

The Plan recognizes that land is precious. Washington is the third most congested region in the country, after Los Angeles and San Francisco.

Development creates tension as growth pressures increase, making it even more important to have sound land use policies and development review procedures, the Plan says.

Linking land use decisions to transportation capacity will remain important, mandating regional planning and coordination to forge effective solutions, the Plan says. In environmental changes, the Plan notes that

"Urbanization over the last 200 years has compromised almost every aspect of this environment, leaving us with one of the most polluted rivers in the country, air quality that fails to meet Federal standards, and a city where heavy tree cover has declined by more than half in the last 30 years alone." The Plan calls for protecting "the earth, water, air, and biotic resources and restoring them where they have been degraded by past human activities. In particular, reforestation of the District and maintenance of its tree cover should be emphasized to sustain the District's reputation as one of America's 'greenest' cities."

In the future "green" building and "low impact development" will need to be the norm rather than the exception."

One policy is to conserve and enhance neighborhoods as desirable places to live. Under the "Guiding Principles for Creating Successful Neighborhoods," the Plan says:

"The residential character of neighborhoods must be protected, maintained, and improved. Many District neighborhoods possess social, economic, historic, and physical qualities that make them unique and desirable places to live. These qualities can lead to development and redevelopment

pressures that threaten the very qualities that make the neighborhoods attractive. These pressures must be controlled through zoning and other means to ensure that neighborhood character is preserved and enhanced.”

In other words, development without adequate concern for context, scale, and natural amenities may result in compromising the very qualities that made the neighborhood desirable—“loving it to death.”

This is the essence of the proposal being considered.

Land Use Element (Chapter 3) The Comprehensive Plan provides that, “because the land use element integrates the policies and objectives of all the other District Elements, it should be given greater weight than the other elements as competing policies in different elements are balanced.” (10 DCMR § 300.2.)

Land Use Element Policy LU-2.1.4: Rehabilitation Before Demolition. In redeveloping areas characterized by Vacant, abandoned, and underutilized older buildings, general encourage rehabilitation and adaptive reuse of existing buildings rather than demolition.

Land Use Element Policy 2.1.3

“Recognize the importance of *balancing goals* to increase the housing supply and expand neighborhood commerce with parallel goals to *protect neighborhood character*, preserve historic resources, and *restore the environment*. The overarching goal to ‘create successful neighborhoods’ in all parts of the city requires an emphasis on *conservation* in some neighborhoods and revitalization in others” [emphasis added].

Land Use Element Policy 2.1.5

“*Protect and conserve the District’s stable, low-density neighborhoods and ensure that their zoning reflects their established low-density character*. Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect *low-density character, preserve open space, and maintain neighborhood scale*” [emphasis added].

Promoting neighborhood conservation is at the top of the list! The element focuses on appropriate uses and densities. This site is low-density residential. Mature trees along MacArthur Boulevard provide character and environmental services—benefiting air quality and helping to prevent the heat-island effect. Rather than restoring trees, this proposal plans to remove them and re-plant very small, very young specimens.

The Canal Parc proposal is inconsistent with the Land Use Element of the Comprehensive Plan.

Housing Element

Housing Quality Policy H 1.1.5

Affordable housing “should be indistinguishable from market-rate housing . . . and should address the need for open space and recreational amenities . . .”

Canal Parc meets neither of these criteria. The 14-foot wide affordable housing units are clearly different—that is, narrower—than their 18-foot neighbors, and are clearly not as high as they are. Viewed from the back, they have a single garage rather than a double garage as their neighbors do.

Open space is in short supply in Canal Parc. If the central park *is* 7,700 square feet and the figure-eight shaped area *is* 12,000 square feet, that adds up to the equivalent of four R-1-B lots. Let’s remember that two-thirds of this property is zoned R-1-B. How could 36 families enjoy the area as green space? Beyond that, the area is supposed to be available for *public* enjoyment.

The Canal Parc proposal is inconsistent with the Housing Quality Policy of the Housing Element of the Comprehensive Plan.

Parks, Recreation, and Open Space Element

Meeting the Needs of a Growing City: Parks, Recreation, and Open Space Element Policy 1.4

The Comprehensive Plan notes that “growth is taking place straining the ability of facilities to meet neighborhood needs.” Further, it notes that “open space may also be set aside within new projects through development agreements in planned unit development amenity packages. . . Such open space should be useable and accessible to address open space needs of the area.”

Action: Parks, Recreation and Open Space Element Policy 1.4.A

“Study the feasibility (including potential fiscal and economic effects) of adopting a park impact fee that would require residential developers to help Cover the cost of parkland acquisition and improvement. Such a fee would be based on a standard amount per dwelling, or square foot, with the proceeds used to acquire or improve nearby parkland.”

Recreational Facility Development Policy 2.1.1

“Improve the physical and psychological health of District residents by providing a variety of recreational and athletic facilities.”

The Canal Parc proposal is inconsistent with the Parks, Recreation, and Open Space Element Policy of the Comprehensive Plan.

Urban Design Element

The Urban design policy is to “enhance the beauty and livability of the city by protecting its historic design legacy, *reinforcing the identity of its neighborhoods, harmoniously; integrating new construction with existing buildings and the natural environment*, and improving the vitality, appearance, and security of streets and public spaces” [emphasis added].

Canal Parc does not “reinforce the identity of [the] neighborhood.” In fact, it injects totally different elements—multi-story buildings with tiny or non-existent yards—that are out of context with the neighborhood.

Canal Parc is far from “harmoniously integrating new construction with existing buildings and the natural environment.” It stands out markedly from its neighbors and is likely to pose a threat to the natural environment.

Rather than helping to keep the neighborhood livable, it imposes a towering presence and removes the green space setback that allows light and air on the property close to MacArthur Boulevard. It is also very likely to cast a shadow on its Foxhall Mews neighbors to the east, denying *them* light and air by virtue of its tall structures.

The “vitality” that the project proponents suggest is at the expense of the character of the neighborhood provided by mature trees.

Designing for Successful Neighborhoods—Urban Design Infill Development 2.2.7

“Regardless of neighborhood identity, overpowering contrasts in scale, height, and density should be avoided as infill development occurs.”

The proposal features four-story townhouses up to 47 feet tall, buildings totally out of scale with their context. Neighboring townhouses, flats, apartments, condos, semi-detached houses, and detached houses do not meet either of those characteristics.

Immediately adjacent is Canal View, a 5-acre group of single-family detached houses that are only 38 feet tall to the top of the roof! Interestingly, the Canal View developer opted to forego creating semi-detached houses or seeking a special exception to build row houses in the R-5-A portion of the site along MacArthur Boulevard, but instead got the entire parcel rezoned to R-1-B for single-family detached houses. The lots average 7,000 square feet. According to the District of Columbia’s real property database, the Canal View Homeowners Association has 65,000 square feet of open space.

Not one lot in Canal Parc is 5,000 square feet. In fact, 5 lots from building 1 or 2A or 2B could fit easily on one 5,000 square-foot lot.

On the 5-acre Canal View site, the developer built 19 houses in 1993. (A new developer added 3 more years later.) For comparison, on the 2.7-acre Canal Parc site, the applicant proposes to build 36 houses, almost twice as many houses on property about half the size for easily three times the density—almost four times the density!

On these all of issues, the proposal is found wanting.

The Canal Parc proposal is inconsistent with the Urban Design Element of the Comprehensive Plan.

Rock Creek West Area Element

“The Rock Creek West Area Element’s most outstanding characteristic is its stable neighborhoods. These include predominantly single family neighborhoods like Spring valley, Forest Hills, American University Park, and Palisades.”

Residents in the Rock Creek West Area Element are “concerned about the effects of unrestrained development.” The focus in this area is properly on growth controls, rather than growth incentives. *“The need to appropriately control and guide growth, and to protect neighborhoods, remains a top priority throughout the community and is a major theme of this element”*[emphasis added].

Planned Unit Developments have resulted in “density bonuses that are beyond what many residents find acceptable. The potential impact of density increases on schools, emergency response and safety, infrastructure, traffic, parking environmental health, and neighborhood character lead residents to conclude that the only acceptable growth rate is one which matches infrastructure capacity.”

The Comprehensive Plan mentions high volumes of traffic, with congestion along major corridors such as “Connecticut Avenue, Massachusetts Avenue, Western Avenue, Military Road, River Road, *MacArthur Boulevard, and Canal Road*” [emphasis added.]

“The preservation and improvement of the natural environment is also a high priority in Rock Creek West. The community is fortunate to have one of the densest tree canopies in the city, several community gardens, and the Capital Crescent Trail. . . However, development on the fringes of the parks has caused erosion and diminished water quality and views in some places. Tree and slope overlay zones have been created in several locations to address this issue.”

“Much of Rock Creek West retains a small town character today. The area’s attractive and well-kept housing stock, tree-lined streets, neighborhood-oriented shopping districts, and well-used parks and public facilities make this one of the most desirable parts of the city.”

Rock Creek West Neighborhood Conservation Policy 1. 1. 1.

“Protect the low-density, stable residential neighborhood west of Rock Creek Park and recognize the contribution they make to the character, economy and fiscal stability of the District of Columbia. Future development in both residential and commercial areas must be carefully managed to address infrastructure constraints and protect and enhance the existing scale, function, and character of these neighborhoods.”

Again, Canal Parc is out of scale with its surroundings and out of character with them. Its four-story buildings could set the tone for what happens along MacArthur Boulevard and elsewhere in the community. In particular, two-story “flats” nearby could be the next target for a new standard for development, eliminating affordable housing and displacing their residents.

Rock Creek West Infill Development Policy 1. 1. 4

This section refers to heights and densities and mentions “buffers” to protect existing residential areas from noise, odors, shadows, and other impacts. We mentioned the towering building 6 earlier, with its shadow on Foxhall Mews.

Rock Creek West Managing Transportation Demand Policy 1. 1. 11

This section speaks to reducing the volume of vehicle trips generated by new development so that it “does not unreasonably degrade traffic conditions. . . This policy is essential to protect and improve the quality of life and the residential character of the area.”

At Canal Parc, building a multiple of the allowable “by-right” houses, even with a Zip car and bicycle racks designed to encourage that mode of transportation, is not a reasonable approach to “reduce the volume of vehicle trips generated by new development.”

The reasonable approach is to reduce the proposed development so that it is consistent with its context and *then* provide bike racks and other features to decrease traffic. Incidentally, MacArthur Boulevard does not have bicycle lanes at this time. Whether it will have them remains to be seen. Indeed, the same uncertainty applies to Foxhall Road and Canal Road, particularly because of the space required for bicycle lanes. And the D5 Bus is being discontinued.

Rock Creek West Congestion Management Measures Policy 1. 1. 12

“Ensure that land use decisions do not exacerbate congestion and parking problems.”

“Traffic studies and mitigation plans should consider not only the impacts of the project under consideration but the cumulative impact of other projects which also may impact the community, as well as the impact of non-resident drivers using local streets.”

Foxhall Road and MacArthur Boulevard converge about 200 yards from the Canal Parc site. About 200 yards from that intersection, Foxhall Road converges with Canal Road.

According to DDOT’s Palisades Traffic Impact Study of 2002, Canal Road carried 21,000 vehicles a day, with MacArthur Boulevard and Foxhall Road close behind numerically. The Comprehensive Plan comments that this congestion is “pushing many intersections beyond their design capacities.”

Even now, to escape gridlock on Foxhall Road, drivers are using 44th Street—a five-block neighborhood street. As a result, residents have requested a traffic study and are working with DDOT with regard to “traffic calming” devices. It is clear that vehicle numbers have not decreased in seven years.

It is true that construction is going on at 2101 Foxhall Road and 1801 Foxhall Road. When the projects are completed, the community will have six-dozen new houses along with a junior high school and a high school, so it is unlikely that traffic will decrease. We are looking at *cumulative impacts* of development in the immediate area.

To mention parking, although Canal Parc features a garage for each residential unit, on-street parking is limited to 13 spaces. Unlike Foxhall Village, primarily a townhouse development, Canal Parc does not have parking on both sides of the street or driveways that can accommodate at least one car. A policy for new developments is *not* to have a negative impact on neighbors because of consequences such as spillover parking, a very real possibility.

Rock Creek West Area Element Scenic Resource Protection Policy 1.2. 2

“Protect stream valleys, including Rock Creek Park and its tributaries, and Glover Archbold Park.

Foundry Branch is a tributary to the Potomac River. The stream and wetland on the Canal Parc property drain into the C&O Canal and Foundry Branch before reaching the Potomac River.

Rock Creek West Area Element Natural Park Service Areas Policy 1.2. 3

“Protect and enhance the cultural and visitor attractions . . . including the C&O Canal. . . “

Water that leaves 4460 MacArthur Boulevard drains into the C&O Canal. Adequate protection for the stream and wetlands should include a 25-foot wide vegetated buffer and a state-of-the-art stormwater management system, approved by the National Park Service and the District’s Department of the environment.

A note at the end of the Rock Creek West Area Element

See the Environmental Protection Element for additional policies on stream valley parks, limits on impervious surface coverage, expansion of the tree and slope overlay zone, urban forestry, air quality, aircraft noise, and development adjacent to parkland. See the Urban Design Element for policies on conserving natural landform and topography. . .

The Rock Creek West Area Element also identifies a commitment to protect Glover Archbold Park, the Capital Crescent Trail, the Chesapeake and Ohio Canal, and National Park Service property. We will discuss those areas below in the “Environmental Element.”

The Canal Parc proposal is inconsistent with the Rock Creek West Area Element of the Comprehensive Plan.

Environmental Element

Environmental Protection Element

“Trees add economic value to neighborhoods and community identity and pride. Trees add beauty, improve mental health, reduce water pollution, absorb noise, provide oxygen and absorb greenhouse gases. . . “

The applicant proposes to plant a number of 3-inch caliper saplings to help mitigate for the impact of removing large willow oak trees near MacArthur Boulevard as well other on-site specimens that

it has not identified. In fact, magnolia trees and willow trees are part of the tree inventory of this property. Mature trees measure up to 91 inches in circumference.

The Urban Forestry Administration has gone on record as opposing the project as proposed because of the tree removal. Not only are the trees performing the services as described above for the property along congested MacArthur Boulevard, they are preventing erosion by holding soil in place, a significant feature given that the property slopes toward a stream and wetland that would very likely be negatively impacted by pre-construction activities such as grading and filling, not to mention the construction itself.

Environmental Protection Element 1.2.4

“Retain environmentally fragile as such as wetlands on private and public land. . .”

Environmental Protection Element 1.2.5

“Maintain open space buffers around wetlands to reduce the likelihood of environmental degradation from urban runoff and human activities. . .”

Environmental Protection Element 1.3.3

“Reduce sedimentation. . .”

Environmental Protection Element 1.4.3

“Preserve land adjacent to streams and ravines as densely vegetated open space. . .” [E 1.4.3]

The Canal Parc proposal includes only a cursory review of environmental attributes of this site. In fact, the proposal is inconsistent with the policies above.

Rather than a commitment to retain the stream and wetland as a fragile area, the proposal features constructing a retaining wall as close as feet to the area and as far away as 20 feet. Not only is it very unlikely that creating such a structure so close to these attributes will not damage them, the plan disregards precedents set elsewhere in the community. Developments under construction at both the Phillips Estate at 2101 Foxhall Road and the Brady Estate at 1801 Foxhall Road have wetlands protected by 25-foot buffers from the exterior boundary.

Sedimentation, erosion, and runoff are real concerns because they would destroy the quality of the water on site. In addition, they could very well affect the creek on adjacent property of the National Park Service and from there, the Chesapeake and Ohio Canal and the Potomac River, where the water from the property at 4460 MacArthur Boulevard will ultimately go.

The proposal calls for “cleaning” the stream and the wetland by planting native plants. A wetlands expert has testified that the best care that the water features could have is protection—from human disturbance and from water whose quality is compromised and whose quantity is too great for them to manage.

The Canal Parc proposal is inconsistent with the Environmental Element of the Comprehensive Plan.

Office of Planning Report:

While the Office of Planning recommended approval, it stated many concerns which cast doubt on its basis for approval.

In the OP November 21, 2008, report, it found the amenity package to be exceptionally light and many of the items listed as amenities are not fully detailed, the level of commitment is unclear and does not appear to be the expected quality and practice for a development.

In its February 2, 2009, supplemental report, OP still reports that the amenity package is relatively light when balanced against the flexibility requested.

At the February 12, 2009, hearing OP on cross examination indicated that it didn't know how many of the proposed buildings had four stories, that the affordable units appearance would be noticeable from MacArthur Blvd, and could not state that the proffered December 1, 2008, table (exhibit #35) complied with the requirements of §2403.11(c). OP testified that it was not responsible for determining if the applicant's submission complied with the zoning regulations.

CONCLUSIONS OF LAW

Pursuant to the Zoning Regulations, The PUD process is designed to encourage high-quality development that provides 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.)

While providing for greater flexibility in planning and design than may be possible under conventional zoning procedures, the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, nor result in action that is inconsistent with the Comprehensive Plan. (11 DCMR § 2400.4.) The Commission shall find that the proposed PUD is not inconsistent with the Comprehensive Plan. (11 DCMR § 2403.03.)

The applicant shall have the burden of proof to justify the granting of the application according to these standards.

Public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title. (11 DCMR § 2403.6)

In deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered against the degree of development incentives requested and any potential adverse effects according to the specific circumstances. (11 DCMR § 2403.8.)

Upon balancing the benefits with the requested flexibility and bonus density, the Zoning Commission concludes that the applicant has not met its burden of proof. The applicant has not offered superior features to a significantly greater extent than a matter-of-right development.

Providing a 25 foot buffer from the wetlands for all construction activities including grading and retaining walls would be a superior feature to a significant greater extend that a matter-of-right development.

The applicant's two units of affordable housing are distinguishable in size, height, number of stories, width and length from the adjoining units which is inconsistent with the City Wide Element of the Comprehensive Plan which states, "Affordable housing should be indistinguishable from market rate housing in its exterior appearance."

The increased density of four stories in inconsistent with the Comprehensive Plan.

The requested flexibility on FAR exceeds that allowable under the Zoning Regulations.

DECISION

In consideration of the findings of fact and conclusion of law contained in this order, the Zoning Commission for the District of Columbia orders that this application be DENIED.

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Certificate of Service:

- The ANC, through its Consultant Bill Crews, has delivered by first-class mail or email on April 6, 2009, to the following persons at the addresses used in the applicant's March 30, 2009, Certificate of Service.
- Jennifer Steingasser & Maxine Brown-Roberts, DC Office of Planning (except to OP's new address)
- Phil Feola and Christine Roddy, for the applicant at Pillsbury Winthrop Shaw Pittman, LLP
- David Brown, Esq & Gene Tucker for Canal View Homeowners Association
- William Spencer for the Palisades Citizen Association
- Cornish Hitchcock, Esq for the Lingan Way residents
- Councilmember Mary Cheh