

The Palisades Citizens Association
Post Office Box 40603 • Palisades Station • Washington, DC 20016
Phone/Fax: 202-363-7441 • www.palisadesdc.org

May 4, 2009

VIA HAND DELIVERY

Mr. Anthony Hood
Chairman
D.C. Zoning Commission
441 Fourth Street, 2nd Floor
Washington DC 20001

Re: Zoning Commission Case No. 08-21 (Athena Group LLC - Consolidated Review of a Planned Unit Development and Related Map Amendment @ Square 1356)

Dear Chairman Hood:

As requested at the Zoning Commission's public meeting of April 13, the Palisades Citizens Association (PCA) is pleased to provide you with the following responses to both the issues raised and to the Applicant's submission to you of April 23, 2009:

(1) Compliance with Section 2403.8 - Balance between Amenities and Degree of Incentives Requested Above Matter-of-Right:

a. Inadequate description of relief requested: In its April 23rd submission to you, the applicant continues to gloss over the significant relief requested in its application. The table provided is apparently designed to minimize, not maximize, the communication of meaningful information. Their requests are intentionally vague to obscure the true relief needed for this project. Likewise the amenities claimed are significantly light and do not result in significant benefits for the surrounding community and the public at large.

b. Unsubstantiated, vague amenities: A number of questions about the amenities arise that have not been addressed by the commission, including:

- How does the applicant claim that it will provide \$750,000 "above what is required" in environmental benefits?

ZONING COMMISSION
District of Columbia

CASE NO.

08-21

EXHIBIT NO.

23

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- What specifically is the applicant proposing when it allocates \$50,000 to MacArthur Boulevard Beautification? How will these improvements be completed?

c. Vast underestimation of relief requested: Meanwhile, the PCA takes great exception to the Applicant's characterization of what constitutes matter of right. In its April 23rd submission, the Applicant claims that "there is no matter of right in the R-5-A Zone; all new development requires BZA review."

This is not the case. DCMR Title XI, section 353.1 states "In R-5-A districts, all new residential developments, **except those comprising all one family detached and semi-detached dwellings**, shall be reviewed by the Board of Zoning Adjustment." A more accurate description of their "matter of right" estimates would be "not-by-right, by special exception." Incidentally, one of the approval standards for any BZA action, among others, is that a proposed development "shall not affect adversely the present character or future development of the neighborhood [410.12 (b)]."

Therefore, the true matter of right should be based on the number of, best case, semi-detached dwellings that could be built matter of right. Architect David Mitchell has reviewed the Applicant's matter of right proposals and concludes that eight semi-detached dwellings would be possible as a matter of right in the portion of the property identified as R-5-A, in conformity with Zoning Regulations. A copy of the correct matter of right as developed by Mr. Mitchell and his supporting memorandum is attached.

According to this corrected matter-of-right plan, the Applicant could build a total of 18 dwelling units. This calculation means that **the actual relief requested is dramatically greater than what the Applicant has claimed**, and in no way approaches the superior standard called for in Planned Unit Development regulations.

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(2) Treatment of Affordable Housing Units:

The applicant seeks to qualify this request as "Architectural" treatment, but the real goal and request made by ANC 3D and the community (and cited by the Zoning Commission on April 13) is that "the two affordable housing units shall be indistinguishable in exterior appearance from other housing within the development." The units are an incredible 14 feet across and **much smaller than the rest of the development**. This was not what the Zoning Commission (and the community) requested.

(3) Density and Height, Volumetric Study:

The Zoning Commission provided additional time for the community and the Applicant to come to agreement on these two critical issues. **Unfortunately, the Applicant has chosen to make no modifications to its current proposal**, despite the entreaties of the Commission and the community at large.

After the April 13 hearing, we approached the Applicant's counsel and informed him that we were ready to sit down at any time to discuss a compromise. No compromise was offered in the April 23rd submission.

In the absence of any offer of compromise from the Applicant, on April 30, representatives of the community agreed to make an approach to the developer regardless. **ANC 3D, the PCA, Foxhall Community Citizens Association, and Canal View Homeowners agreed to a compromise offer** in which the community would not press on the conditions that have always been attached, but would have two final requirements:

- The height of all dwellings shall not exceed three stories, and
- The maximum number of units shall not exceed 32 units.

ANC 3D Chair Betsy Sandza communicated our offer to Applicant's counsel on May 1. **To date, the Applicant has not responded to our offer.**

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The community has sought -- from the beginning -- flexibility from the Applicant, and the Applicant has been unwilling or unable to make significant changes, despite our approaches. I am attaching for your records our letter to the Applicant of February 27, which illustrates our bona fides and represents only one specific effort to seek community-friendly changes to the proposal.

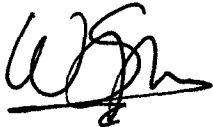
Actions are what matter, not words. The Applicant has declined to engage on community concerns in a significant way. The tremendous amount of relief requested is not offset by significant public benefits and amenities, and the project endangers the present character and future development of the neighborhood.

The neighbors from Foxhall Road to the District Line are united in opposition to this application and are disappointed - after almost a year and a half of talk - in the unwillingness of the Applicant to seriously engage the community.

We urge the Zoning Commission to uphold the original intent of a Planned Unit Development: to provide a waiver of zoning rules in exchange for a superior public benefit, and **vote to oppose this project** that is not in harmony with the Palisades and the Comprehensive Plan.

If there is anything you may need from the Palisades Citizens Association on this or any other matter, we are at your service.

Very truly yours,

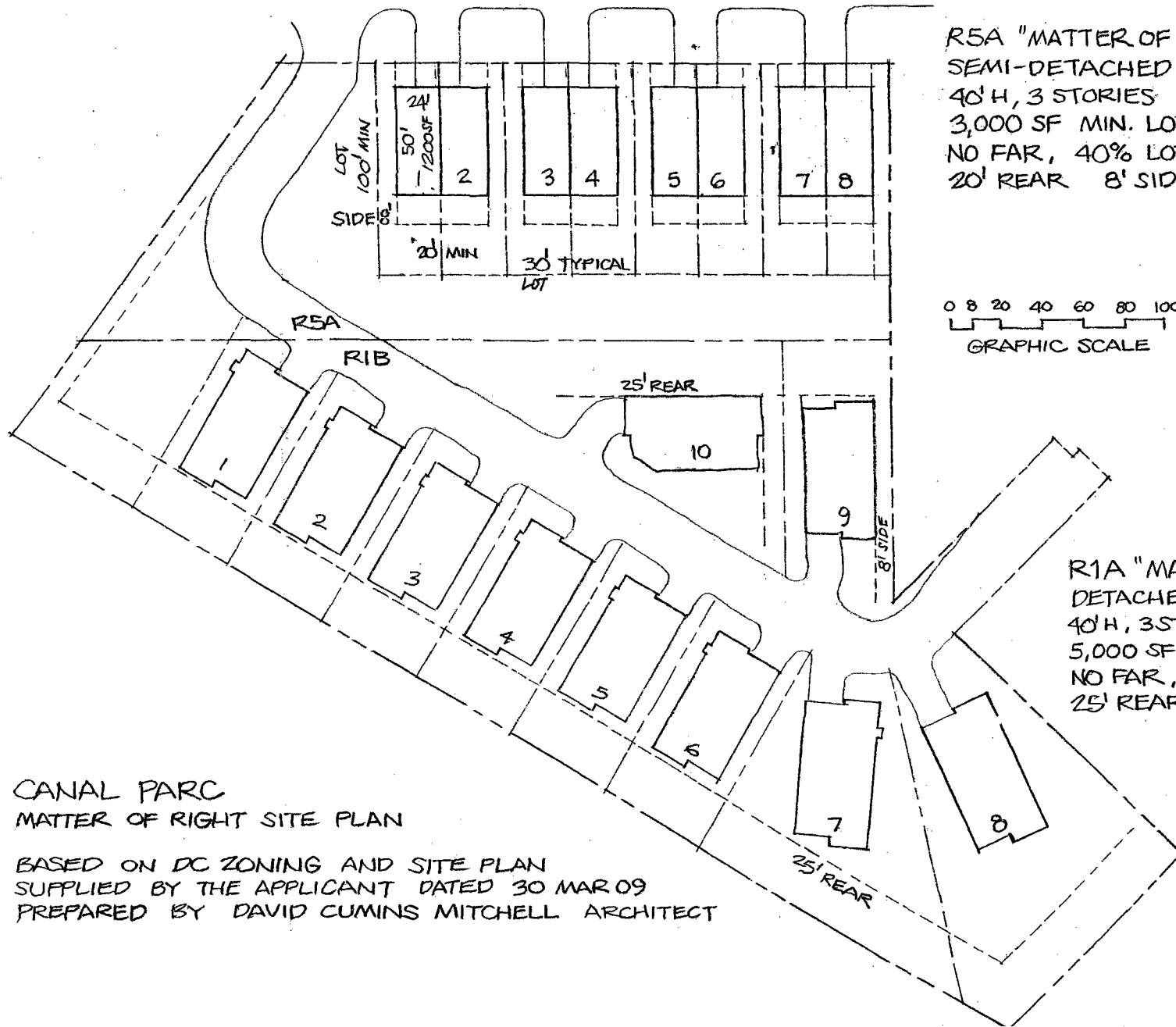


William Spence Spencer
President

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Cc: Phil Feola, Pillsbury Winthrop Shaw Pittman LLC
Gary Cohen, Willco Residential
Mary Cheh, Councilmember, Ward Three
Jennifer Steingasser, Office of Planning
Maxine Brown-Roberts, Office of Planning
Cornish Hitchcock, Esq.
ANC 3D Commissioners
Gene Tucker, Canal View Homeowners Association
Robert Avery, Foxhall Community Citizens Association

MACARTHUR BOULEVARD NW



R5A "MATTER OF RIGHT" = 8 DUs
 SEMI-DETACHED DWELLINGS R2
 40' H, 3 STORIES
 3,000 SF MIN. LOT 30' MIN. W (x 100')
 NO FAR, 40% LOT OCCUPANCY (1,200 SF)
 20' REAR 8' SIDE YARDS

0 20 40 60 80 100
 GRAPHIC SCALE

R1A "MATTER OF RIGHT" = 10 DUs
 DETACHED DWELLINGS
 40' H, 3 STORIES
 5,000 SF MIN. LOT 50' MIN. W (x 100')
 NO FAR, 40% LOT OCCUPANCY (2,000 SF)
 25' REAR 8' SIDE YARDS

CANAL PARC
 MATTER OF RIGHT SITE PLAN

BASED ON DC ZONING AND SITE PLAN
 SUPPLIED BY THE APPLICANT DATED 30 MAR 09
 PREPARED BY DAVID CUMINS MITCHELL ARCHITECT

TOTAL = 18 DUs

DESIGN1

24 April 2009

William Spence Spencer
4836 MacArthur Boulevard NW
Washington DC 20007

re CANAL PARC PUD BY-RIGHT SITE PLAN 23 April 09
DC Zoning Commission Case # 08-21

Dear Spence,

As discussed and requested by you, I have reviewed the above named document as submitted by the Applicant in the supplemental post-hearing submission. In analyzing the plan, I used the matrix provided, which in turn was verified by DCMR Title 11, Zoning Regulations

Traditionally, matter-of-right presentations have been used by developers and their planners as the ultimate weapon for gaining support for a PUD. The most recent offering by the Applicant (23 April 09) showing a twenty-nine unit apartment building and ten single-family houses is a good example of this practice. It is saying, if you don't get in line and vote for our PUD, look what we can do.

The nine (1-9) single-family units meet the zoning code, however unit 10 has an Inadequate rear yard. Unit 1 proposes a curious condition in that it straddles the R5A, R1B property line. The box shown as the apartment building is a most offensive Blight on the land. Presumably it would be refined, if it would ever be seriously considered. The aerial perspective shows something akin to an ugly 1960s government office building. Such a structure would naturally have horizontal relief, balconies, a proper entrance and many elements protruding from the roof. The single-family houses appear monstrous in the aerial provided. At a full three stories, on a slab, they are out of scale and character with the neighboring Canal View houses. Unfortunately they are modeled after the two houses at the end of Lingan Road. It would be more in keeping with the neighborhood if they were two stories plus a basement and a roof with dormers. The apartment building shown is an affront to any viewer. As shown, the drawing is a nasty threat used as a tool to fly in the face of PUD opposition.

Ultimately the presentation puts the whole matter-of-right discussion in a strange light, in that by the Applicant's admission, "there is no matter-of-right in R5A."

Finally, I stand by my earlier statements regarding parking. The apartment layout Calls for 29 spaces for 29 units. As previously stated, in practice this would be woefully inadequate. I strongly suggest as many as 58 spaces. Without adequate on-site parking, the pressure for street parking, which at times is non-existent, will spread through out the neighborhood. This will make for a goodly number unhappy neighbors and residents.

continued

202 363 3200

FAX 202 337 0653

202 333 4133

4836 MACARTHUR BLVD NW

WASHINGTON DC 20007



24 April 2009 CANAL PARC BY-RIGHT SITE PLAN REVIEW page 2

Thanks again for this opportunity to assist you. Should you have any questions or wish to discuss this matter in greater detail, please contact me.

Sincerely,

David Cumins Mitchell
Architect

202 363 3200

FAX 202 337 0653

202 333 4133

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February 27, 2009

Mr. Philip Feola
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington DC 20007

BY FAX: 202-663-8007

Re: Zoning Commission Case No. 08-21 (Athena Group LLC -
Consolidated Review of a Planned Unit Development and
Related Map Amendment @ Square 1356

Dear Phil:

As discussed this afternoon, the greater Palisades community, represented by the Palisades Citizens Association (PCA), Foxhall Community Citizens Association (FCCA), and the Canal View Homeowners Association (Canal View HOA) look forward to sitting down with you on Saturday at the Palisades Library at 9:30 am.

While these three community organizations feel strongly that Athena's application is unsupported by D.C.'s master plan and its regulations; and that the proposed PUD is not of an appropriate scale for the neighborhood, at the direction of the Zoning Commission, these groups are willing to propose the following good faith, global compromise of their positions.

These groups will withdraw their opposition to Athena Application No. 08-31 and support it, if Athena will conclude a binding commitment that it would make the following amendments in its proposal:

- 1. Height:** No building shall be higher than 40 feet to the top of its roof, nor be more than three stories.
- 2. Density:** Reduce the number of units per acre to a 15 percent net increase over the number of units allowed as a matter of right under 11 DCMR Chapter 4. Increase the number of interior street parking spaces. Make interior roads at least 25 feet wide, with a conforming 60 foot turnaround for delivery and emergency vehicles.

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3. Wetlands: In compliance with best practices regarding construction near wetlands in D.C., at least a 25-foot setback would be maintained from all structures (including new retaining walls) from the wetlands boundary at all points. Maintenance and preservation of the wetlands, stream and existing Canal View retaining wall would remain the responsibility of the developer. Therefore, the developer would post a bond to pay for any damage it causes, during and after construction, to the wetlands and/or Canal View wall caused by its construction.

4. Green Spaces and Public Access: All green spaces proposed in Athena's application shall be protected in perpetuity as open space and open to the public, not just to Canal Parc residents, through the development's homeowners' agreement.

These compromises are offered, subject to the groups reviewing and agreeing to whatever revisions to the development's plans that these agreements will precipitate.

These opposing groups feel strongly that Athena's application does not compensate the community, through amenities, for these proposed compromise variances, and that certainly it has not offered adequate amenities for the community for what it is proposing in its current PUD application. These groups are hopeful that if agreement can be reached on the above four items, then Athena will consider offering the City amenities such as the following:

A. Beautification of Lower MacArthur Boulevard: Developer should develop and execute a beautification plan for the area of MacArthur Boulevard between Foxhall and Q Street, in consultation with the DC government, especially the DC Department of Transportation. A DC-government approved beautification plan should be submitted to the PCA, Canal View HOA and FCCA for approval by all organizations within 12 months of execution of an agreement on amenities, and all improvements should be completed within 24 months thereafter. The plan should include standardization of street furniture, new streetlights, improved bus shelters, sidewalks, underground power lines and street paving as recommended by DDOT and PEPCO and the PCA, Canal View HOA and FCCA. Appropriate ongoing maintenance would be included in the Canal Parc Homeowners Agreement.

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B. Supporting the Surrounding Community: The Developer should provide critical funding to ensure that the Palisades neighborhood can make other improvements to further offset the negative aspects of the development including: an \$85,000 contribution to the Friends of Hardy for the benefit of the Hardy Recreation Complex; a \$125,000 contribution to the Palisades Community fund to provide improvements to the Palisades Recreation Center, the broader MacArthur streetscape, and other neighborhood amenities such as bike racks and street furniture; a one time \$25,000 contribution to the Canal View Home Owners Association, and a three-year contribution of \$25,000 per year to Palisades Village to better care for Palisades Seniors.

Please let me know if you have any questions about this offer of compromise. We look forward to discussing it further with you tomorrow.

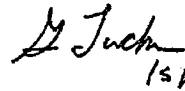
Very truly yours,



William Spencer
President
PCA



Robert Avery
President
FCCA Board



Gene Tucker
President
Canal View HOA