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May 11, 2009

The Honorable Anthony Hood, Chairman
District of Columbia Zoning Commission
441 4th Street, N.W.
Washington, DC 20004

Re: **Zoning Commission Case Number 08-21**
Athena Group LLC – Consolidated Review of a Planned Unit
Development and Related Map Amendment at Square 1356

Dear Chairman Hood:

This letter is submitted on behalf of the Canal View Homeowners Association ("Canal View") in response to the May 7, 2009 letter of Phil Feola, Esquire, to you on the above-referenced matter, received in the mail over the weekend.

Mr. Feola writes, after the submission deadline, to "clarify" a claimed "legal inaccuracy" in Canal View's submission of May 5, 2009. In fact, Mr. Feola has clarified nothing; he has only sown confusion and expressed a view inconsistent with Athena's position throughout this proceeding. Mr. Feola claims that "there is no residential development [is] *sic*. permitted in the R-5-A Zone District as a matter-of-right, including detached and semi-detached dwellings." However, Athena has all along been advocating that the Canal Parc project should be approved because it has satisfied its obligation to demonstrate, under PUD evaluation standards, that the public benefits and amenities compare favorably to the degree of departure from matter-of-right standards requested. 11 DCMR 2403. Now, at the eleventh hour, Athena is claiming there are no matter-of-right standards against which to judge the R-5-A- zoned portion of the application.

The Commission should reject Athena's latest claim and proceed, as recommended in Canal View's May 5th letter, to obtain reliable independent advice, scrutinized for legal correctness, on what would be a maximum matter-of-right plan for the land in Canal Parc. This would include separate matter-of-right analyses for the R-5-A and R-1-B portions. For the R-5-A portion, that analysis would be real, not illusory as Athena now suddenly claims. Under 11 DCMR 353.1 [mistakenly referenced as 353.3 in our May 5th letter], the Zoning Regulations provide for special exception review by the BZA of "all new residential developments, **except those comprising all one-family detached and semi-detached dwellings....**"(emphasis added). Unless the emphasized language is to be regarded as meaningless, it can only mean that one-

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family detached and semi-detached dwellings are permitted as of right in the R-5-A zone, a use permitted without special exception approval.

Mr. Feola ignores this provision to argue that because Section 401.3 requires the BZA to prescribe a minimum lot area and width for residential development in the R-5-A zone, no use is matter-of-right in the zone. This argument is nonsensical, inconsistent with the position taken by Athena all along, and inconsistent with Section 353.1. Section 401.3 is easily harmonized with Sections 353 and 2403 to permit an evaluation of a PUD proposal for the R-5-A zone against a matter-of-right proposal for that zone. Plainly, the BZA would have no basis for denial of approval of R-5-A lot sizes and widths under Section 401.3 if they complied with the standards prescribed in **that very section** for one-family detached and one-family semidetached dwellings. Specifically, while listed in connection with less dense residential zoning categories, those standards are unequivocal and universal: 5000 sq. ft./50 feet as minimum lot area/width for one-family detached dwellings, and 3000 sq. ft./30 feet for one-family semi-detached dwellings.

The obvious reference frame for assessing deviations from R-5-A matter-of-right development for PUD purposes would therefore be to look to the more permissive of these two standards for lot area/width. It makes no sense to conclude there is no frame of reference at all. Looking at the approximately one-acre R-5-A-zoned portion of the subject property, the 3000 sq. ft. lot size translates into a theoretical maximum number of 14 semi-detached dwellings. Architect David Mitchell concluded that 8 such units was the most that could practically be achieved, which when added to the 10 matter-of-right units in the R-1-B-zoned portion, totaled 18 matter-of-right dwelling units. But even if one ignored practicalities and assumed 14 semi-detached units could be achieved, the grand total of R-1-B/R-5-A units would be 14 + 10, or 24 units. Under Mr. Mitchell's plan, the dwelling unit increase sought by Athena is a 100% increase, from 18 to 36 [erroneously described as a 77.77% increase in our May 5th letter]. Under a more theoretical R-5-A matter-of-right plan, the increase in the number of units is 12, from 24 to 36, or a 50% increase. Either way, the increase is substantial, and Athena's claim of no increase (but rather a decrease from 39 matter-of-right dwelling units to 36 actual units) is completely unfounded.

In short, the Commission should reject the conclusion offered by Mr. Feola: that "the site plan submitted by the Applicant is not misleading and is an accurate representation of what could be permitted on the Property." The reality is that even if it Athena's plan does reflect optimistically what the BZA might approve as a special exception, it is very misleading in depicting what the BZA would be obliged to approve as a matter of right.

Sincerely yours,



David W. Brown

Certificate of Service

I certify that the foregoing document was delivered by hand delivery, first-class mail, or email on May 11th, 2009, to the following addresses:

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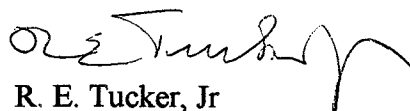
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