

Testimony of Advisory Neighborhood Commission 3D
Commissioner Ann Haas, (SMD 3D09)
Commissioner Thomas Ditonto (SMD 3D05)
Before the Zoning Commission
December 1, 2008 & February 12, 2009

Application 08-21

ADVICE OF ADVISORY NEIGHBORHOOD COMMISSION 3D

Advisory Neighborhood Commission 3D (ANC 3D) passed a resolution 7-1-0 at a properly noticed special meeting on November 11, 2008, with a quorum present, to support the application for a Planned Unit Development (PUD) at 4460 MacArthur Blvd., NW, of The Athena Group, LLC (the applicant) for "Canal Parc" with a number of conditions.

Following the December 1, 2008, Zoning Commission Hearing and directions given by the Zoning Commission, the applicant made revisions to the proposal documented in a January 21, 2009, submission. ANC 3D reviewed this new submission and at the ANC's properly noticed, regularly scheduled February 4, 2009, monthly meeting, with a quorum present, discussed the revisions with the applicant and voted to reaffirm the ANC's November 11, 2008, resolution with an additional condition.

(EXHIBIT 1)

General concerns expressed at meetings with the applicant have centered around height and density, protection of the existing wetlands/stream "Waters of the United States" and the overall impacts of the project size on MacArthur Boulevard and the surrounding neighborhood. The zoning for the parcel is R-5-A along MacArthur Blvd,

ZONING COMMISSION
District of Columbia
CASE NO. 08-21
EXHIBIT NO. 53
ZONING COMMISSION
District of Columbia
CASE NO. 08-21
EXHIBIT NO. 53A1

NW and R-1-B for the remainder of the property. In June 2008, when the applicant filed for a proposed change in use from the 1971 PUD, the site reverted to its original zoning.

The ANC agrees that residential use is the highest and best use for these parcels. However, the applicant has not met its burden of proof (11 DCMR 2403.2) to be awarded the extra height, density and flexibility requested. The ANC has proposed improvements to the project through the conditions presented in the ANC's amended resolution, which along with other items could make the project qualify under the PUD regulations and allow the Zoning Commission to approve the application.

The Zoning Regulations of the District of Columbia require the applicant to propose 1) a high quality development that provides public benefits (11 DCMR 2400.1), 2) public benefits that are proportional to the flexibilities (yard and lot occupancy requirements primarily) or incentives (additional height and density) requested (11 DCMR 2400.3); 3) public benefits that are superior features that benefit the surrounding neighborhood or public in general to a significantly greater extent than would likely result from matter-of-right development (11 DCMR 2403.6); and 4) public benefits that are superior in quality and quantity to typical developments of the type proposed (11 DCMR 2403.6). The Zoning Regulations also require the applicant to provide specific information (11 DCMR 2403.11 & 2403.12) for the Zoning Commission to judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case (11 DCMR 2403.8).

As will be documented in the following testimony, the public benefits, features and quality of the applicant's proposal are no greater than matter-of-right developments

at this price point and would, in fact, set a harmful precedent on building height and number of stories (even while the applicant attempts to misinform the Zoning Commission and the public on the neighboring buildings' heights – Exhibit 10). In addition the proposed project will seriously threaten the “Waters of the United States.”

HISTORY OF THIS APPLICATION

Initially the applicant filed for a Modification of the previous PUD (ZC Order No. 21, January 21, 1971.) The Zoning Commission realized that the project was more than a modification. When the applicant (apparently) re-filed, the Zoning Commission scheduled the public hearing on the current case #08-21, without a set-down hearing.¹

One of the results of this procedure (ultra vires of 11 DCMR 2402.5) is the multiple filings by the applicant. Each succeeding filing neither stated what it was replacing nor was consistent in format. The applicant filed submissions dated July, 2008; October 30, 2008; November 14, 2008; December 1, 2008, (two items – the Public Hearing PowerPoint presentation, and a single page unsigned document titled ‘Matter-of-Right Zoning Parameters’, apparently an attempt to comply with 11 DCMR 2403.11, which was not served on the Parties); and January 21, 2009. Also the applicant has provided the ANC with 3 different PowerPoint presentations dated October 1, 2008; November 5, 2008; and February 4, 2009. In addition the applicant has provided the ANC with at least 4 large format (36” x 22”) plan drawings which do not appear in the record.

In the interest of clarity the ANC requests that the applicant furnish a totally updated set of internally consistent materials providing all the information required by 11 DCMR Chapter 24 and 11 DCMR 2516. The applicant has changed the location of the

¹ Transcript Case No. 08-21, December 1, 2008, Hearing, pages 35-53

‘affordable’ units and indicated different grading/landscaping especially near the “Waters of the US” without complying with the requirements for updated detailed plans. This additional critical information should trigger a new public hearing either as a continuation of this hearing, a second stage PUD or a hearing under 11 DCMR 2516.3(b).

With the current collection of information it is not possible to discern the latest plan and render a thorough judgment on whether the regulatory requirements have been fulfilled, nor is there any way for an approval based upon the existing record to be implemented under 11 DCMR 2409.

In addition to this serious concern about just what the current proposal is, the ANC is also concerned about comments made by Zoning Commissioners at the December 1 hearing regarding conditions making the project economically infeasible and statements such as, “I don’t want to kill it.”² The applicant has also indicated some proposed conditions are deal breakers. Testimony about conditions ‘killing’ the project³ is *ultra vires* of any legal, statutory, or regulatory standards for approval.

According to the PUD regulations, the burden of proof is upon the applicant, not the ANC or the neighbors to meet the regulatory standards. Overbuilding a site, especially allowing 4-story residents where there are currently none thereby setting a dangerous precedent is inconsistent with the Comprehensive Plan and is a detriment to the neighborhood and city as a whole⁴. Let us remember that approval of a PUD grants

² Transcript December 1, 2008 hearing Case 08-21, page 50

³ Transcript December 1, 2008 hearing Case 08-21, page 46, line 4

⁴ DC Comprehensive Plan, Page 2-24, Citywide Elements:

Creating Successful Neighborhoods: Guiding Principles

8. 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 in which 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. 218.1

wealth. In return for such a grant, a developer has responsibilities that speak to the public interest and long-term well-being of the community. The ANC recognizes that this valuable property will be redeveloped. The ANC would like to see this happen in a manner that creates a legacy not a burden.

HISTORY OF THE PROJECT SITE

In 1971, a psychiatric hospital, [The] Psychiatric Institute of Washington, was approved for the subject site.⁵ The land use designation for Lot 836 in Square 1356 was rezoned from R-1-B to R-5-A under an approved PUD application. **(EXHIBIT 2)** Subsequently, the site became the home of Riverside Hospital, an adolescent psychiatric facility that vacated the premises in mid-2008.

The Athena Group first appeared before ANC 3D on December 5, 2007 and presented plans for a modified PUD with 41 townhomes and an interior courtyard on the existing PUD site; and, for a Map Amendment to rezone a majority of the property from R-1-B to R-5-A. The applicant added three lots on Langan Way to expand the PUD. **(EXHIBIT 3)**

On June 9, 2008, the Zoning Commission reviewed the Athena Group's Application and declined to set down Case No. 07-15A for a modification to an existing PUD and further Map Amendment. Rather, the Commission recognized the proposed change in use for a 38 year-old PUD case and recommended a new application be filed and appropriate filing fees paid. At the same hearing, the Office of Planning noted "the neighbors adjacent to the site had many concerns regarding the density, the height, preservation of wet lands and flood plains, views, and traffic."⁶

⁵ ZC Order No. 21, January 21, 1971.

⁶ Transcript, June 9, 2008, ZC 70-15A

Zoning-Commission Application No. 08-21, dated July 2008, was filed to use the land area of the original PUD and to further extend it to include newly purchased property currently located in the R-1-B Zone District (the three lots on Ligan Way). The application seeks to rezone the entire property area to R-5-A; and, to replace the existing psychiatric hospital with 37 three- and four-story single-family townhomes, including two “affordable” units. The proposed development is described on the Athena website in the following manner: (<http://www.theathenagroup.com/home/index.html>):

*Canal Parc will be a luxury townhouse development situated on just under 3 acres. Located in an affluent residential neighborhood off Canal Road in the Palisades area of Northwest Washington, D. C., this site will contain approximately 37 **three-story** townhome units with upscale finishes and additional options available to buyers. The development will offer residents an **exclusive** park and garden, walking paths, and private parking. Ideally located, Canal Parc is within walking distance to Georgetown, the C&O Canal and an abundance of neighborhood shops and restaurants. (Emphasis Added)*

THE PROJECT SITE AND ITS RELATIONSHIP TO THE NEIGHBORHOOD

In the immediate Foxhall Road area, two large tracts, that collectively comprised 35 acres of forested land, have been approved for theoretical lot subdivisions within the past four years. Phillips Park and the old Brady Estate at 1801 Foxhall are currently under construction in the R-1-A and R-1-B Zone Districts respectfully. The 77 single-family homes in these two developments will range in price from \$2M upwards.

Both of these projects are providing at least a 25 Foot buffer around wetlands and other environmentally sensitive areas.

Just south of 1801 Foxhall Road lies Colony Hill, an established community of 43 homes that reflect the distinctive architecture of the 13 original Colonies.

Just south of Colony Hill is Foxhall Village, a historic neighborhood of English Tudor homes built in the 1920s and zoned R-3. In advertising its new development, Boss

and Phelps described Foxhall Village as, "situated on a high, gently rolling tract of land, desirably removed from the noise and bustle of the City Proper -- yet within three miles of Washington's main business districts."

A strip of Foxhall Road below P Street that extends to the intersection with MacArthur Boulevard is zoned R-1-B

Directly northwest and abutting the rear of the proposed development site, lies a fourteen year old R-1-B development known as Canal View, a theoretical lot subdivision of 22 single-family detached homes. This project was approved November 17, 1993 and Modified May 27, 1994, under BZA Orders No.15743 and 15743M (**EXHIBIT 4**). The five acres of land occupied by Canal View was originally split zoned R-1-B and R-5-A and was upzoned to R-1-B to provide larger building lots. In addition, the 40-foot height of the houses was measured to the top of the roof rather than to the ceiling of the top story to protect the viewshed from surrounding Federal parkland. (Condition No. 8: "The maximum height of each house shall not exceed the height set forth in the table marked as Exhibit No. 58 of the record. The height shall be measured from the curb at the middle of the front of the house to the highest point of the roof. Any architectural embellishments, such as towers, parapets, etc., shall be included within the maximum height...")

In 2004 three additional homes were built along Laverock Place, NW. The original plan was to construct five homes on a single subdivided lot but when the ANC, Foxhall Community Citizens' Association and Palisades Citizens' Association objected to the crowding and density, the developer revised plans and built three homes (with a

reduced rear yard on at least one of the homes) that were eventually included in the Canal View Homeowners Association.

PUD EVALUATION STANDARDS (Title 11 DCMR Chapter 24)

- **2400.1 “...high quality developments that provide public benefits.”**
- **2400.2 “...provided, that the project offers a commendable number or quality of public benefits and that it protects and advances the public health, safety, welfare, and convenience.”**
- **2400.3 “A comprehensive public review by the Zoning Commission of the specific development proposal is required in order to evaluate the public benefits offered in proportion to the flexibility or incentives requested and in order to establish a basis for long-term public control over the specific use and development of the property**
- **2403.3 The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.**
- **2403.6 “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.**

The impact of the proposed subject development has been a concern for the community from its initial presentation in 2006. The project has morphed from a 132 unit condominium into a 41 unit townhome development into the current 37 three- and four-story townhome PUD. Approval of an R-5-A PUD with theoretical lot subdivision, that seeks flexibility for lot occupancy, height of buildings, rear and side yard setbacks and a MAP Amendment, would allow more density than would be permitted under matter of right development. Nowhere does the applicant explain why the flexibility is necessary, but assumes approval makes it appropriate for the site.

FAILURE TO PROVIDE INFORMATION REQUIRED TO CONSIDER PUD

Indeed, the applicant has failed to fulfill the requirement of 11 DCMR 2403.11 & 2403.12 to provide adequate information on the exact extent of flexibility required. The

proffered December 1, 2008, table (Case No. 08-21, Exhibit 35) fails to provide the appropriate level of detail – individual lot information. Nowhere has the applicant provided a site plan with readable dimensions of all proposed lots with dimensioned building footprints so the Zoning Commission and the public can determine the magnitude and veracity of the claims for the flexibility the applicant seeks.

Exhibit 35 also misstates the allowable “Matter-of-Right” development in the R-5-A District – only detached or semi-detached single family dwellings are allowed as Matter-of-Right development in the R-5-A Districts. Exhibit 35 alleges that attached dwellings and apartment houses are allowed as matter of right. The applicant’s proposed attached rowhouses (and apartments, not proposed here) require a special exception under 11 DCMR 353.

It appears the Office of Planning (OP) has overlooked the major requirements of zoning review standards since in its November 21, 2008, Final Report Memorandum. On page 5 of this memorandum, OP “*recommends the applicant provide such table to adequately assess the flexibility the applicant is requesting and also to better evaluate the amenity package.*” OP submitted a February 2, 2009 Supplemental Report Memorandum which states that OP has approved the aforementioned Exhibit 35. ANC 3D considers it inadequate and inaccurate. OP provided the detailed lot-by-lot table required by Sec 2403.11 as Attachment 3 of its November Memorandum, but this table is out of date since the applicant changed the locations of the ‘affordable’ units and has yet to provide additional detailed site plans to evaluate the accuracy of the Sec. 2403.11 table.

In OP’s November Memorandum, OP also asked for:

- “Justification for the requested flexibility to reduce the side yard and rear yard requirements.
- “A map showing the delineation of each lot and dimensions and a table show how each lot meets the zoning requirements.
- “Details of proposed low impact development elements.”

Unless this information was provided but not served on all parties, especially the ANC, OP has simply dropped its request without any explanation. The ANC certainly agrees the information requested is required and necessary before proceeding further and certainly before any approval by the Zoning Commission.

The ANC refers the Zoning Commission to, and hereby includes the following by this reference, the information on deviations from matter-of-right standards on pages 4-9 of the testimony submitted by counsel on behave of the Canal View Homeowners Association, a party to this matter, dated February 2, 2009, and filed with the Zoning Commission.

- ***2403.4 The commission shall find that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.***

The relationship between the proposed development and elements of the Comprehensive Plan is addressed in its own section of this report.

Although OP now claims in its February Memorandum the proposal is not inconsistent with the Comprehensive Plan and recommends approval, OP has not provided persuasive arguments for its change of mind.

Two issues related to this project are at odds: the developer's need for additional density and height, and the community's need for appropriate density and height that would protect the character of the neighborhood.

The proposed townhome building that would face the curb line of MacArthur Boulevard (Building 1) would be pulled forward to hug the building restriction line and its nine units would provide a sense of mass or density that the hospital does not currently convey. There are large areas of lawn and open space around the hospital that provide light and air to neighboring properties. Building 6, (Lot 37), now faces MacArthur Boulevard at a height of 47 to 49 feet and will eclipse the height of the existing townhomes immediately to the east by at least 20 feet. Even new elevations provided by the developer show this building clearly as four stories, an unprecedented street façade for this neighborhood.⁷ The front of building 6 would be equal to 25% of the total length of the façade of Building 1 along MacArthur Boulevard.

Both OP Memorandums overlook this four-story wall along MacArthur Boulevard in stating that the higher buildings are internal to the development.

In reviewing the application, it is immediately clear there is little greenspace at the front of Building 1 to soften the streetscape along MacArthur Boulevard. Indeed, it appears that 3 healthy, mature Willow Oaks now in the Public Parking (the area of the public space right-of-way between the inside edge of the sidewalk and the property line) would be lost to the proposed design and construction of Building 1's projections into public space. A similar sense of density exists across the street with the townhomes that gained approval when lower Palisades was in Ward 2 and a different ANC and when environmental and quality of life sensibilities were quite different. There is too little

⁷ October 30, 2008. The Athena Group, Supplemental Submission, Drawing #42.

green space provided to break up the massing or wall of buildings, and lot coverage that line the street.⁸ Without explanation and without any cite to a Comprehensive Plan provision, OP says the proposed fronting directly on MacArthur “would help to activate that portion of the corridor...”

The overall streetscape panorama provided by the Applicant in the July 2008 submission indicates there are no existing four story buildings, commercial or residential, along MacArthur Boulevard or the immediate subject area. This is true. The additional height requested under the PUD would be precedent-setting and is inconsistent with any of the special exceptions or matter of right developments that relate to the area. As noted earlier under **Exhibit 4**, the single family homes constructed in the abutting Canal View development are “40 feet at the highest point of the roof.”

The applicant’s December Hearing PowerPoint presentation (OZ Exhibit #36) misinforms the Zoning Commission and the public in its slide titled “Building Heights” by suggesting that there are buildings across MacArthur Blvd exceeding 40 feet in height. This is simply not true (exhibit 10, Slide 1).

The proposed four story residences are completely unprecedented in this neighborhood and building 4 would tower over neighboring houses at Canal View (Exhibit 10, Slide 2). Similarly Building 6 would tower over the adjoining existing townhomes to the east. Building 5 would impact the existing grass filtration of storm water runoff. (Exhibit 10, Slide 3)

2403.6 “Public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent

⁸ July 2008. The Athena Group, Exhibit A, #14.

than would likely result from development of the site under the matter-of-right provisions of this title.

The applicant presented a summary of its proffered Public Benefits and Amenities in its December 1, 2009, PowerPoint presentation. The following a summary and response to this presentation. These Public Benefits are required to be 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.

Urban design, architecture, landscaping, & site planning:

All of these aspects appear to be high quality, but are indistinguishable, let alone significantly greater, than matter-of-right developments in this price point. The applicant touts this development as “luxury” townhomes with upscale finishes and additional options for buyers.⁹ The applicant has provided no evidence that these aspects are significantly greater than a similarly marketed *luxury* matter-of-right development. It is the applicant’s burden to do this. The ANC or any other party has no burden to show a similar matter-of-right development with this high quality to refute any claims by the applicant that these features are *significantly greater*. And in fact as the ANC is advising and as is described later, **significantly greater** would at a minimum require the conditions proposed to improve the green/open spaces and protection for the wetland/stream habitat.

Effective vehicular and pedestrian access.

⁹ As described on the Athena website: (<http://www.theathenagroup.com/home/index.html>) and shown on page 6 of this testimony

The applicant is actually proffering significantly lesser features here with 20 foot widths on the internal roads without required turnarounds. Sidewalks accessing the buildings from MacArthur Blvd are practically nonexistent. There are no sidewalks in front of Buildings 3, 4, 5, & 6 for residents, visitors or neighbors using the allegedly proffered access to the parks.

Employment and training opportunities

This feature is again fairly standard and the applicant has not signed any agreements as requested by OP

Housing and affordable housing

Again housing is no different than matter-of-right except for numbers of units which as has been demonstrated creates its own problems. The applicant should get no credit for 'affordable' housing since the distinguishable size of the units is inconsistent with the Comprehensive Plan

Environmental benefits,....

This is discussed later in the testimony.

Uses of special value to the neighborhood or the District.

Other benefits that advance policies of the Comprehensive Plan

The applicant fails to articulate details for either of these alleged Public Benefits. If the applicant is claiming the neighbors will have free access to the parks, then why has the applicant failed to provide any written assurances of this? And, why does the applicant tout on its website that these parks are for the exclusive use of the residents?¹⁰

¹⁰ As described on the Athena website: (<http://www.theathenagroup.com/home/index.html>) and presented on page 6 of this testimony.

The applicant has clearly failed in meeting the standard of Public Benefits. Its offered amenities also fail the balancing standards of the Zoning regulations.

On the top of page 9 of the November 21, 2008, OP Memorandum, OP states:

“OP feels the amenity package is relatively light when balanced against the flexibility requested. The matter-of-right development would be a much lower density of single family detached and semi-detached units. In addition to the unit increase proposed by the PUD, the proposal includes private streets at a much narrower right of way than public street construction and dedication. Many of the items listed as amenities are not fully detailed, the level of commitment is unclear, and appear to be the expected quality and practice for a development such as this. OP encourages the developer to increase the proposed amenity package.”

OP’s February Memorandum restates that the amenity package is relatively light when balanced against the flexibility requested. This should in and of itself require OP to recommend not approving the project under 11 DCMR Chapter 24, yet somehow OP recommends approval. OP then takes a very unfair swipe at the ANC and attempts *ultra vires* to shift the burden and blame onto the ANC for not proposing additional amenities. In fact, through the proposed conditions, the ANC has provided advice that does meet the standards of Chapter 24 by creating a better balance of flexibilities and amenities (See 11 DCMR 2403.8.)

ANC 3D, which supports the proposal with conditions, believes the project is either unfavorable without a reduction of height and density and a minimum twenty-five (25) foot buffer between the designated Waters of the US and all structures (including any retaining walls) and buildings; or, is capable of being mitigated by the adoption of

the ANC's conditions in its resolution of November 11, 2008, as amended on February 4, 2009. (EXHIBIT 1)

At the December 1 Hearing the Applicant's PowerPoint presentation (OZ Exhibit #36) lists the following "Additional Benefits and Amenities" in one of the slides

a) Affordable Units. Two affordable units, now located in building one would serve households in the Washington, DC area that have an Area Median Income of 80%. Statistically, the two units represent 5.4% of total units proffered or 1.1% of the total land area. These two affordable units are only 14 feet wide and as such are noticeably different (approx. 25% narrower) from their surrounding neighbors in spite of the fact the Comprehensive Plan City Wide Element states: "affordable housing should be indistinguishable from market rate housing in its exterior appearance."¹¹ Title 11, § 2605.3 further directs, "All inclusionary units shall be comparable in exterior design, materials and finishes to the market-rate units." In addition these two units are 3 stories instead of the 4 stories of neighboring units and have a noticeably different roof line. Even OP in its February Supplemental Memorandum states: *"The applicant proposes two affordable units in Building 1 that would not have a fourth floor or roof terraces. Since the buildings are not very high, the forth floor of the other units would be visible and the gap would bring attention to these affordable units when viewed from MacArthur Boulevard and from Building 2."* The current proposal will lead to creating a social neighborhood stigma for these residents, just the opposite of the "community" the developer alleges to foster.

¹¹ Comprehensive Plan, Housing Element H-1.1.6

It is worth noting that when the developer reduced the number of units in the overall project, two of the units eliminated were affordable units, or to put it in perspective, the developer is offering fewer public benefits.

The applicant should get no credit for these units. They are inconsistent with the Comprehensive Plan and they are of no greater (certainly not *significantly greater*, the regulatory standard) extent than would likely result from Matter-of-Right development.

b) Green Design. The applicant says it will meet the bronze standards for Leadership in Energy and Environmental Design (LEED) of the US Green Building Council and similar standards of the National Association of Home Builders. This should be made an enforceable condition of any PUD approval to count.

If the applicant were really interested in 'Green Design,' it would propose an adaptive reuse of the existing building, provide the buffer for the critical wetlands/stream habitat, and add green space to help absorb water on a site that is planned to be almost 54 percent impervious.

The applicant has provided no discussion of building reuse, or if this option is truly not feasible, has provided no discussion on clean demolition and potential beneficial reuse of the demolition material.

In addition, a segment of the alley that also serves as the only rear yards for both Buildings 1 and 2, would make use of a strip of pervious pavers and is referred to as a Chicago-style, green alley. However the applicant makes no mention of how this alley, to be bounded on both sides with 4 story tall buildings, would be maintained during ice and snow storms. No sunlight will reach the alley to melt the snow or ice. There are grade changes on this alley. Only some great physical labor or chemical melt-away or

energy use will allow access during winter weather events. No provision for this is included.

A series of green landscape amenities, including a butterfly garden, rain garden and park-like “wetlands overlook” would also be provided. To help clean and enhance the existing wetlands, the applicant will replant it with a majority of native plants and tree species throughout the site. The ANC expert witness will testify that any claims to ‘clean and enhance’ the existing wetlands through ‘replanting’ could cause more harm than good. Surprisingly the wetland/stream habitat is quite healthy with at least two springs occurring with macro invertebrate species. Wetland vegetation is present even outside the line of wetland demarcation. This current condition could be enhanced by providing the requested 25 feet buffer from the wetland for all structures including retaining walls.

ANC 3D asks that an additional 5,000 square feet of green space be added to the project site as an amenity to help maintain the sense of light and air that currently exists on the hospital property and also serve to control stormwater. The applicant indicates that it somehow came up with this figure – an additional 5,000 square feet.¹² Yet since we have no detailed drawings with dimensions, it is hard to say where the 5,000 square feet came from. This western park in the Rendered Site Plan in the January Submission looks just the same as in the Rendered Site Plan in the October Submission.

The developer provided a Supplemental Submission to the Zoning Commission, dated November 14, 2008, purporting to detail the National Green Building Program Designer’s Report. ANC 3D is very leery of this *self-graded* scoring tool. As an example, Section 4.1.11 at the bottom of page 6 and top of page 7 awards the project the maximum points for a non-existent “Innovative wastewater technology used.” The

¹² Transcript December 1, 2008 hearing Case 08-21, page 86

project will connect to DC WASA sanitary sewers for wastewater. It appears that the scorer is confusing the stormwater system for the wastewater system. It is unclear as to the veracity of the other items and how compliance would be guaranteed.

The applicant's January 2009 submission does provide the requested information on green buildings and another self-graded LEEDS evaluation that doesn't add up to the minimum 40 points.

For this element to be considered to be '*significantly greater*' than that provided by a 'matter-of-right' development at this price point, a good-faith example of environmental sensitivity would be compliance with the sustainability improvements proposed for the Zoning Regulations Rewrite initiative.

Require new development to establish and maintain 25' □ 100' vegetated buffers¹³

The National Park Service and the District of Columbia Department of the Environment have also expressed concern about the ability to capture all run-off from the site. Installing rain barrels or cisterns could also contribute to a significantly greater benefit.

Current designs for Building 1 and its projections into Public Space will also require removal of three large mature Willow Oaks currently living in the 'parking' portion of Public Space.

c) Building Design. The design of the Athena townhomes is superior in terms of architectural qualities and choice of building materials, although how much different than the quality of Matter-of-Right homes in this price point is not documented anywhere. In addition, the height of some of the proposed buildings does not respect the height of

¹³ <https://www.communicationsmgr.com/projects/1355/docs/Dec%2015%20meeting.pdf> slide 27

surrounding buildings or the character of the neighborhood. The developer can apply the same good design and materials to complement the neighborhood at a height of 40 feet and three stories.

d) Universal Design. The developer claims that “Universal Design” is a benefit and amenity, but a careful reading of the October Submission makes it clear that this will be an option offered to pre-construction homebuyers. It is unclear how an added cost option is a benefit or amenity that helps the neighborhood.

e) Beautify MacArthur Boulevard. The applicant proposes to replace the open green yard and existing hospital with a row of well designed townhomes that would “assume a prominent location along MacArthur Boulevard;” and, has committed to improving the appearance of the boulevard as it nears the intersection of Foxhall and Canal Roads. The improvement plan for MacArthur Boulevard has not been revealed. It is not clear how much of the proffered benefits to the streetscape are over and above what DDOT will require of any development.

As mentioned before, current designs for Building 1 and its projections into Public Space will also require removal of three large mature Willow Oaks currently living in the ‘parking’ portion of Public Space (Exhibit 10, Slide 5).

While beautification is an amenity for the neighborhood in general, it is also an amenity for the project in enhancing its context.

The developer has been advised by ANC 3D and OP that the amenities package is very slim and that it is difficult to distinguish between what is being required of the developer

by DC agencies and what is a true public benefit. OP notes, “the amenity package appears light when balanced against the flexibility requested.”

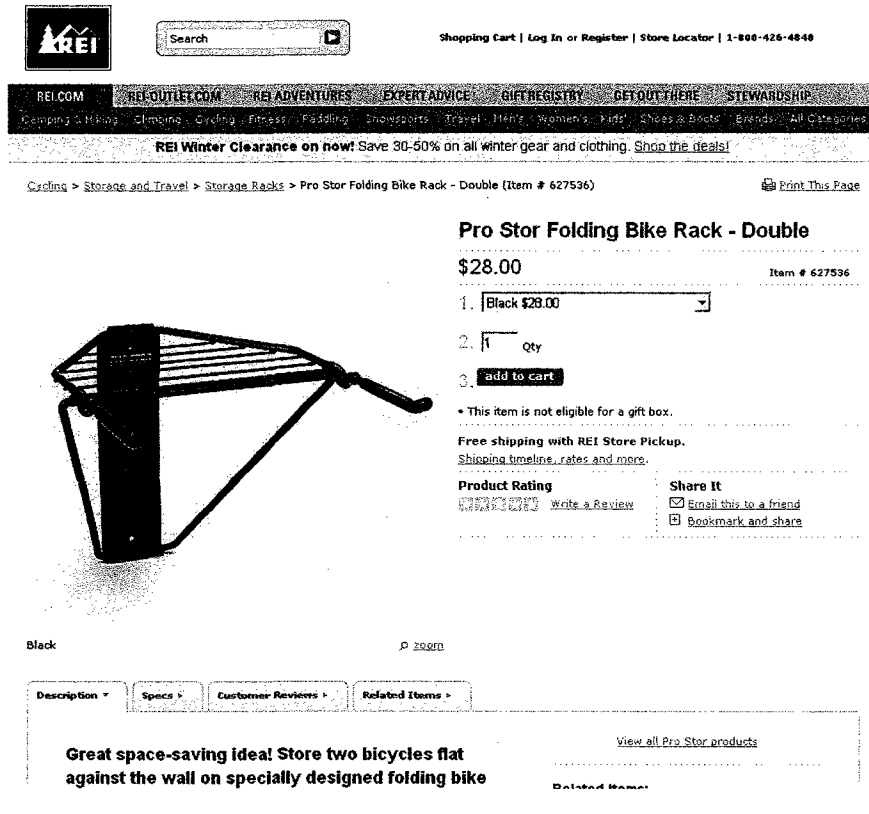
f) Contribution to Palisades Community Fund. It is unclear what this contribution would be, and in any event the ANC does not consider contributions to substitute for tangible on-site improvements beyond a Matter-of-Right development.

g) First Source agreement. OP in its November memorandum states that the applicant should provide a signed agreement with DC Department of Employment Services before the Zoning Commission takes a final vote. To the ANC’s knowledge this signed agreement has not been served on the parties.

On page 8 of the November 21 OP report, OP states “the applicant would not be participating in the Certified Business Enterprise (CBE) program offered by the Department of Small and Local Business Development to engage the District’s small and local businesses in the proposed development...” This position is reaffirmed in OP’s February Supplemental Memorandum. Here is a major incentive, yet the applicant has decided not to support a program that provides additional jobs and tax funds for the District. OP goes on to say, “OP strongly encourages participation in this program, especially for projects that are requiring PUD approval.”¹⁴

¹⁴ Memorandum, November 21, 2008. Office of Planning Final Report – ZC #08-21 (Canal Parc), page 8.

h) **Bike Racks for each homeowner.** This gets how much credit?



i) **Restoring and Cleaning Wetlands.** As previously mentioned our expert witness will indicate that what the wetland/stream needs is to be left alone. Yes there is trash and debris, but an applicant committed to this would already have cleaned this up. The applicant mocks the existence of natural springs and has done nothing to determine how its proposed retaining walls, even the newly designed ones will interfere with the groundwater hydrology that feeds the existing springs.

j) **Enhanced Stormwater Management System, including use of Permeable Pavers.** It remains unclear how 'enhanced' this system is compared with current and planned regulations for stormwater runoff. Building 2 shows no downspout collection system and it is unclear without further detail drawings to ensure that storm events will

not overflow the system and/or carry additional containments from roadways into the wetlands.

Why are the sidewalks not permeable?

COMPLIANCE WITH SECTION 353 – NEW R-5-A DEVELOPMENT (2403.11)

Rowhouse development under Section 353 requires a special exception and provides many of the same criteria provided under the theoretical lot subdivision, Section 2516. Section 353.4 notes: *The Board shall refer the application to the DC Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the future residents of the project and the surrounding neighborhood.*

This section, perhaps more than any other, envelops the concerns of Advisory Neighborhood Commission 3D. Later in this submission there is a discussion of the applicant's traffic report, parking and its potential impacts on the environment. Throughout this submission the term, "density" has been highlighted as has the "height" of what is being proposed on surrounding buildings. As noted earlier and shown through the applicant's panorama of MacArthur Boulevard, what is being proposed in terms of height and density does not relate to the context of the surrounding neighborhood.¹⁵

Light and air are important considerations in a low-to moderately dense development area. The juxtaposition of Buildings one and two, with a "Chicago-style" alley as a rear yard provide a sense of density. There is little set back or open space between these two buildings. Further, the only time the sun will hit the green pervious

¹⁵July 2008. The Athena Group, Visual Panorama of MacArthur Boulevard, Exhibit A, #11-22

center paving strip is at high noon in the summer. Applicant's shadow study indicated that otherwise the open space between these buildings will be shaded most of the day. See the previous discussion of impacts on ice and snow.

The wetland area would be channeled between two retaining walls and it too will be in semi-shade except at high noon. This condition will do little to provide suitable growing conditions for plantings meant to cleanse the wetland.

Section 353 also requires review by additional District agencies such as the DC Public Schools and the DC Department of Housing and Community Development. Development of an R-5-A PUD for attached rowhouses, especially of this density, should fully comply with Section 353 review requirements.

A required report from the Homeland Security Fire and Emergency Medical Services Department cites, "The DCFEMS would be negatively impacted due to the Fire aerial ladder apparatus turning radius on the development's proposed Streets A & B, because dead end fire access roads/lanes on Street B are prohibited unless an approved turnaround is installed..."¹⁶ It appears that the DCFEMS had concerns regarding the minimum road width provided, dead end streets and no turnaround for emergency vehicles.

But wait; now the DCFEMS doesn't have a problem. Unless the Zoning Commission has access to information that the parties do not, there has been nothing given to indicate just what the DCFEMS is relying upon except more bollards. DCFEMS is pretty light in its explanation, again relying on unknown submissions and undisclosed Fire Codes. Is the Zoning Commission comfortable with the requirements of these codes? Again no detailed site plan fully dimensioned has been provided. A keen eye can

¹⁶Memorandum, November 10, 2008. DCFEMS – ZC #08-21 (Canal Parc).

discern a bit of widening of the intersection of Street A and Street B in the January submission. In response to a question at the ANC 3D meeting on February 4, 2009, a representative of the applicant indicated that there will be fire hydrants internal to the project, but are they shown on any drawing?

COMPLIANCE WITH COMPREHENSIVE PLAN – Citywide Elements 2403.4

Framework Element ²⁰⁰

One of the most well documented trends to affect the District over the last five decades is the loss of population...Looking forward, the city expects household size to continue falling through 2010, and then stabilize...The District is expected to continue to be a magnet for the region's young professionals and empty nesters. Its ability to attract families with children rests largely on its ability to improve the quality of public education and address basic issues like crime, service provision, and housing affordability.

The Framework Element creates the landscape for other sections of the Comprehensive Plan; and; lays out the “big picture” of life across the District of Columbia. Indeed, there are areas of the city eager and ripe for growth and development while some areas have experienced significant growth and development for many years. Providing new housing is consistent with the underlying zoning of the property.

Land Use Element/Neighborhood Infill Development ³⁰⁷

Infill development on vacant lots is strongly supported in the District of Columbia, provided that such development is compatible in scale with its surroundings and consistent with environmental protection and public safety objectives. In residential areas, infill sites present some of the best opportunities in the city for “family” housing and low- to moderate-density development...In both residential and commercial settings, infill development must be sensitive to neighborhood context. High quality design standards should be required, the privacy of neighboring structures should be respected, and density and scale should reflect the desired character of the surrounding area.

The proposed development includes two affordable units that represent only 5.4% of the total units proffered (37) or 1.1% of the overall land area (1,316 of 121,000 square

ft.). In addition, 35 single family townhomes would be provided. The massing of the proposed buildings on a site that has given the public a sense of open space because the hospital was set back from the street and well landscaped to seclude the building front from public view, would provide a wall of solid mass. **(EXHIBIT 2, Conditions 8 and 9)** The massing of Building 1 and especially the four story side of Building 6 at the front of MacArthur Boulevard are inconsistent and insensitive to adjacent development and neighborhood context.

AREA ELEMENT OF THE COMPREHENSIVE PLAN

The applicant sites the location of the development in the Near Northwest Area Element which includes the areas of Georgetown, Dupont and Logan Circles, Burleith Foggy Bottom and Shaw; and, where the development pattern is one of the densest in the city. On page nine (9) of the July narrative the applicant notes, “The proposed density of the Project is appropriate for the Property...[T]he townhouses are pulled close to the street’s edge to give a neighborhood feel to the street similar to that of Corcoran or Church Streets in the Dupont Circle neighborhood.”

If something seems amiss, it is! The Athena Project is not located in the Near Northwest Area but rather in the Rock Creek West Area Element which is described as:

“The area was one of the only parts of the city to experience an increase in population during the 1990s, adding about 2,000 residents while the city as a whole lost over 30,000 people. Population has continued to increase since 2000. The 2005 population is estimated at 85,800, or about 15 percent of the city’s total.” 2303.1

“Rock Creek West’s most outstanding characteristic is its stable, attractive neighborhoods. These include predominantly single family neighborhoods like Spring Valley, Forest Hills, American University Park, and Palisades...Although these communities retain individual and distinctive identities, they share a commitment to proactively addressing land use and development issues and conserving neighborhood quality.” 2300.2

While the proposed scale, density and height of the project are consistent with housing on Corcoran or Church Streets in the Dupont Circle neighborhood, they are inconsistent with the MacArthur Boulevard area and Palisades neighborhoods. The wall of townhomes pulled close to the street with stairs extending into public space would overpower the low density surrounding area. To fully understand the scope of what is being proposed it is necessary to take a second look at the photo panorama of existing development along both sides of MacArthur Boulevard. Without exception, commercial and residential structures along this segment of MacArthur Boulevard are two and three stories high, have the required setbacks and respect the building restriction line along the street.¹⁷ Also, the height of neighboring Canal View homes as mentioned earlier is 40 feet to the top of the roof. (EXHIBIT 4)

“Residents of the Rock Creek West Planning Area remain deeply concerned about growth. While there is support for development on underutilized sites along the major corridors, issues of height, scale, character, and density remain a source of concern as well as a source of debate within the community...The reliance on planned unit developments (PUDs) has brought neighborhood amenities but has also 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.” 2307.3

Athena’s proposal represents a clear example of what zoning regulations are designed to prevent – that is, the “overbuilding of land.” It also represents a clear threat to the “present character and future development” of the neighborhood. Introducing buildings that are four stories and 50-feet high is totally out of character and out of scale

¹⁷ Ibid

with neighborhood context. This would set a new tone for development on MacArthur Boulevard and change the character of a low-density residential neighborhood.

Policy RCW-1.1.1: Neighborhood Conservation

Protect the low density, stable residential neighborhoods 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. 2308.2

Policy RCW-1.1.8: Managing Institutional Land Uses

Manage institutional land uses in the Rock Creek West Planning Area in a way that ensures that their operations are harmonious with surrounding uses, that expansion is carefully controlled, and that potential adverse effects on neighboring properties are minimized. Ensure that any redevelopment of institutional land is compatible with the physical character of the community and is consistent with all provisions of the Comprehensive Plan and the underlying zoning rules and regulations. Densities and intensities of any future development on such sites should reflect surrounding land uses as well as infrastructure constraints and input from the local community. 2308.9

Policy RCW-1.1.9: Protecting Common Open Space

Protect the large areas of green space and interior open spaces that are common in and around the community's institutional uses and its older apartment buildings, such as Cathedral Mansions and the Broadmoor. Where these open spaces are recognized to contribute to the integrity of the site or structure, stringent protection from inappropriate infill shall be maintained. 2308.10

The unjustified density proposed by Athena has led ANC 3D to recommend a height limit of 40' and three stories to maintain the low density, stable residential character of the neighborhood. The Canal View Homeowners Association, Palisades Citizens Association and Foxhall Community Citizens Association have also found the density and height of the Athena project out of scale with neighborhood character and adjacent development. The widths of interior roads, a "Chicago-style" green alley being counted as a rear yard and open space between two buildings, the lack of sufficient on-street parking and some four-story buildings contribute significantly to the density of the proposed development. Rather than address the concerns of the ANC or the Citizens

Associations, the developer has made concessions with individual residents or at the insistence of the Department of the Environment, but has been unwilling to work cooperatively with neighborhood groups to reduce the density or remove the potential impacts on the adjacent wetlands.

All of the above Comprehensive Plan policies require compatible density and character of the surrounding neighborhood. The four story buildings, twenty-foot wide dead-end streets without turn-arounds, “token” side and rear yards, and overcommitted lot occupancies compromise the safety of the project and its quality of life. The heavy traffic on MacArthur Boulevard and the narrowness and congestion of any potential use of Lingan Road at MacArthur is a significant infrastructure constraint.

The developer has told ANC 3D in public meetings that the grounds including the rain garden and walkways, the central park and the wetland overlook and butterfly garden would be open to the public, yet the developer has not included this public access in its submissions nor as a vital condition in the Home Owners’ Association documents in its November Supplemental Submission, Exhibit C.

TRANSPORTATION (2403.9(c))

Traffic congestion and pedestrian safety are also major problems. The radial street pattern results in very high volumes along major corridors, particularly Connecticut, Wisconsin, Massachusetts, and Western Avenues, MacArthur Boulevard, Military Road, River Road, and Canal Road. Local trips combine with commuter traffic to and from the Maryland suburbs and I-495, pushing many intersections beyond their design capacities. As is the case in many parts of the city, major arterials are at Level of Service “D” or “E” during the peak hours, with stop and go traffic...transportation demand management programs for new development, and more efficient use of existing roadways (such as synchronized traffic signals), are needed. 2307.3

Marty Wells' report accurately reflects the traffic conditions that will not improve at the intersection of MacArthur Boulevard and Foxhall Road during morning and evening peak hours with the addition of 37 townhomes. Failing levels of service have existed for sometime as Canal Road acts as a conduit to and from Key Bridge, M Street and Whitehurst Freeway for residents of Virginia, Maryland and the District. Adjusting the timing of lights, the solution offered, is not likely to have any impact as this has been done many times by DDOT. Failing levels of service at the surrounding intersections indicate that few commuters who rely on Canal Road and MacArthur Boulevard are using public transportation.

A major contributor to traffic congestion is a large number of private schools in the area and an additional 77 new residences have been approved for construction on Foxhall Road, along with a high school and a junior high school. Athena has not indicated what measures will be taken to mitigate additional impacts from the proposed development.

The applicant references the Regional Smart Growth Solutions in the Comprehensive Plan and notes, "The development of 37 townhouses along an important bus corridor, will encourage people to live within the District and utilize public transportation resulting in a decrease in automobile traffic. The Plan promotes smart growth as a regional solution, 'a regional strategy of promoting infill, mixed-use and transit-oriented development in urbanized areas is needed to ensure transportation efficiency both in the District and the region.'" 405.3

ANC 3D supports and welcomes every effort to improve transportation in- and outside the community, however lower Palisades is not an appropriate Transit Oriented

Development node. The project site is not, as the applicant implies, near the Dupont Circle Metro stop. The Foggy Bottom Metro stop is about two (2) miles away, past Key Bridge. Tenleytown Metro Station is about 3.2 miles. The development is located outside the quarter-mile suggested for TOD. **(EXHIBIT 5)**

The Athena site is on bus routes. The site is on the D-5 express bus route during morning and evening rush hours. For usual D-6 service, the closest eastbound bus stop is located on Q Street at MacArthur Boulevard, about one-tenth of a mile from the development site. Only westbound buses pass the Athena site so anyone heading into town would need to walk to Q Street.

Trans-Formation: Recreating Transit-Oriented Neighborhood Centers in Washington, DC, A Design Handbook for Neighborhood Residents,¹⁸ recommends a transition between density and residential types. High-density residential or mixed land uses are desirable in the vicinity of transit stations; moderate density residential units are appropriate in the mixed-use zone around transit stations; and, low-density residential dwellings are appropriate farther from the defined transit center.

To further address the need for dependable, convenient bus service to the Palisades area, WMATA recently held two “D” bus meetings to establish ridership patterns on both sides of the city. Attached is a current schedule for buses running between Sibley Hospital and Ivy City. This is not an “express bus” and in fact, it takes 40 minutes to go from Sibley Hospital to Connecticut and K Street and may explain why bus ridership is declining and car ridership is increasing in the Rock Creek West Area of the city. **(EXHIBIT 6)**

¹⁸ 2002, September. *Trans-Formation: Recreating Transit Oriented Neighborhood Centers in Washington, DC*, page 36.

Parking is another issue. Although Athena shows a garage for each unit, some will accommodate only one car. It is not unusual for garages to become storage areas, resulting in residents parking their cars on the street. With only 13 on-street parking spaces for 37 families, it is unclear where visitors, service providers or delivery providers will park. This is another infrastructure issue that would have an impact on the neighborhood.

ENVIRONMENTAL ISSUES 2403.9(h)

Wetland Delineation

The Army Corps of Engineers has determined that the stream and wetland on the property are Waters of the United States and subject to Army Corps jurisdiction. The District Department of the Environment concurs with and honors the Corp's wetland determination. In this case the wetlands included a three foot wide .02 acre, 318 linear feet long stream area that runs along the edge of the property; and, a somewhat larger parcel in the collecting area near the culvert, totaling some .04 acres.

Protective Authorities

As waters of the United States, the wetland and stream on the proposed Canal Parc site are entitled to a variety of environmental and wetland protections. Most prominently, section 404 of the Clean Water Act prohibits the discharge of fill material without a permit and establishes a program to regulate it.

Precedent for ANC Position on 25 Foot Buffer

Two recently approved theoretical lot subdivisions, Phillips Park and 1801 Foxhall Road were mentioned earlier in ANC 3D's testimony. In both cases Waters of

the US (WOUS) were claimed by the Army Corps; and in both cases, 25-foot buffers of undisturbed land around the wetlands were provided. **(EXHIBIT 7).**

In addition the proposed Flood Plain area of the ongoing Zoning Regulation Review proposes a 35 foot buffer: “No construction or development shall disturb delineated wetlands or land within 35 feet of delineated wetlands, which shall be maintained as an easement”

[https://www.communicationsmgr.com/projects/1355/docs/Draft%20FP%20Language\(3\)%20+%20comment%20links.pdf](https://www.communicationsmgr.com/projects/1355/docs/Draft%20FP%20Language(3)%20+%20comment%20links.pdf)

In the Athena case an overall average 10-foot buffer is being provided for a wetland that is equal to or more extensive than either Phillips Park or 1801 Foxhall Road. Although the applicant has reduced the height of retaining walls, it would be difficult to construct such a structure without treading on and damaging the wetlands. In other wetland areas significant re-grading and filling is proposed within the 25 foot buffer.

The waters from the Athena site flow from the project through National Park land and into the Chesapeake & Ohio Canal. Potential impacts of silt runoff into the wetlands during construction are significant and these would affect National Park land and even the canal. The Comprehensive Plan cites conserving the C&O Canal as a theme. In the Phillips Park development silt overflowed routinely into Whitehaven Park and Foundry Branch. Section 404 of the Clean Water Act prohibits the discharge of fill material without a permit and establishes a program to regulate the discharge of dredged or fill material into the WOUS. Section 404’s corresponding regulations require “that no discharge of dredge or fill material shall be permitted if there is a practicable alternative

to the proposed discharge which would have less adverse impact on the aquatic ecosystem.”¹⁹

The District Department of the Environment (DDOE) has responsibility to oversee wetlands under 21 DCMR §1103.2, “wetlands...shall be protected from significant adverse hydrologic modifications, excessive sedimentation, deposition of toxic substances in toxic amount, nutrient imbalances, and other adverse anthropogenic impacts.”

Up to this point, there has been a lack of transparency in discussions regarding the treatment of the wetland and stream. This reluctance is fostered by the fact DDOE doesn’t become involved in applications until they have been approved and conditions are in place. That leaves current environmental questions unanswered. Nevertheless, at the forefront is the proposition that such intensive development could occur so close to the wetland without negative impacts. Even after construction is complete, the retaining walls that run behind Buildings 3 and 4 will have its feet in the wetland area and will not prevent residents from dumping yard waste into the area behind the wall. Even at its reduced height the retaining walls would block the sun from the wetland for a significant period of each day. Four-stories homes would do the same. At the current time the wetland enjoys exposure to sunlight until late in the afternoon when it tucks behind Canal View late in the afternoon.

ANC 3D sought the expertise of Julie H. Moore, a wetlands expert, who has worked actively with the ANC’s Environmental Committee and provided comments in the Phillips Park hearings before the Board of Zoning Adjustment. Clear-cutting the 17-acre Phillips estate, rather than developing the property in five segments, resulted in

¹⁹ 40 CFR 230.10(a).

serious erosion with siltation onto Glover Archbold Park and into Foundry Branch, a tributary to the Potomac River. Last year after a site visit featuring Council member Mary Cheh, the National Park Service staff, DDOE staff, concerned neighbors, and ANC3D members resulted in a stop-work order that generated remedial action. We value Ms. Moore's analysis of the Phillip Park proposal and have attached her comments addressing potential impacts of the Athena proposal following three visits to the property. **(EXHIBIT 8)**

Additional groundwater hydrology studies need to be completed to see how site grading and proposed retaining walls and overlooks with impact on the hydrology of the two springs on the property (Exhibit 10, Slide 4).

Comprehensive Plan

The Environmental Protection Element of the Comprehensive Plan -- E-1.2.5 Wetlands Buffers notes: *"Maintain open space buffers around existing and restored wetlands in order to reduce the likelihood of environmental degradation from urban runoff and human activities."* Additional Comprehensive Plan Elements for conservation of natural areas can be found at

<https://www.communicationsmgr.com/projects/1355/docs/Dec%2015%20meeting.pdf>

The ANC requests that DDOE take another look at the overall design of the project and its impact on the wetlands. As noted earlier in the Phillips Park and 1801 Foxhall BZA Orders, the required setback from the wetlands was 25 feet. The Canal Parc retaining wall and all grading changes should be set back at least 25 feet from the stream to provide greater protection and light. The future of this natural amenity is

threatened by its placement between two retaining walls and the likely sustainability of vegetation is in question if the area is cast in shadow for most of the day.

CONCLUSION

Advisory Neighborhood Commission 3D invited the Athena Group to present its proposed development at four regularly scheduled meetings. A “special meeting” was held on November 11, 2008.. In addition, the ANC sought a site visit with Athena representatives so they could help the ANC understand the plan for various areas of the property including the wetlands. The site visit made it clear that the current proposal does not ensure there will not be negative impact to the wetlands.

The commission requested an underlying zone site plans for the entire property but found the developer’s suggestion far too dense for a site with both R-1-B and R-5-A zoning and without regard to protection of the wetlands/stream “Waters of the US”. Given the preponderance of R-5-A zoning in the area, an R-5-A model was requested. Athena provided the ANC with a site plan showing 43 units, but this was not a ‘Matter-of-Right’ development and would have needed a special exception.. **(EXHIBIT 9)** The Commission was also informed by Athena that an unfavorable vote could lead to the property being sold to another developer.

OP notes in its November 21 letter to the Zoning Commission that “the amenity package is relatively light when balanced against the flexibility requested...Many of the items listed as amenities are not fully detailed, the level of commitment is unclear...OP encourages the developer to increase the proposed amenities package.²⁰” The conditions proposed by ANC 3D dealing with height, density and set backs, protection of the

²⁰ Memorandum, November 21, 2008. Office of Planning Final Report – ZC #08-21 (Canal Parc), page 9.

wetland, additional open spaces, and stormwater management are meant to address the balancing of Public Benefits and amenities for the requested flexibility. The ANC was concerned also about the prospect of the property being flipped because Athena would claim it is unable to realize its anticipated profit margin. Therefore ANC 3D proposes the following conditions:

Condition 1: That any approval by the Zoning Commission of this application, be granted only to The Athena Group, LLC and be made nontransferable. The Map Amendment and PUD approval are only for the instant application of the Athena Group and Zoning Commission approval would not be transferable should the Athena Group not undertake completion of the proposed development.

Condition 2: Building three shall be 38 feet and three stories high to the top of the roof; all other buildings and units shall be limited to 40 feet and three stories in height. Building 3 abuts existing homes on Laverock Place and therefore needs to be set back, no taller than 38 feet and three stories high to the top of the roof to ensure it does not negatively impact the Laverock Place residents.

Condition 3: In advance of construction and in cooperation with the US Army Corps of Engineers and the District of Columbia's Department of the Environment, the entire delineated wetland area shall be reflagged; and, the delineated area, including the stream, shall be flagged and protected in perpetuity through a conservation easement by a uniform setback of 25 feet from all structures and other human interference from the outermost wetland boundary, in the event there is disagreement on such boundary. The setback is the minimum distance between any structure or any human interference (grading) and the entire wetland area. It would be

impossible to preserve the wetland area if the retaining wall is encroaching on a protected area. The protections needed for the future life of the wetland also include sufficient light and air which are not being proffered at this time. It is unclear how construction grading and retaining walls will interfere with the existing two, perhaps more, natural springs on the property.

Condition 4: The width of interior roads shall be a minimum of 25 feet. This is a safety issue and a requirement for all theoretical lots subdivisions. The applicant has not indicated why a required road width cannot be supplied.

Condition 5: An ample turn-around shall provide access for all types of emergency vehicles. This condition would follow upon Condition 4 and require a turn around area for emergency vehicles. Again, the applicant has not indicated why a turn around area cannot be supplied and HSEMS has indicated they find the missing turn around problematic for their purposes.

Condition 6: The site shall contain 25 on-street parking spaces for guest vehicles and service and delivery vehicles. An increase in the number of on-street parking spaces from 13 to 25 is necessary to prevent any spill over parking on neighborhood streets.

Condition 7: The two affordable housing units shall be indistinguishable from other housing within the development. Both the Comprehensive Plan and the Zoning Code (Title 11) provide protections for affordable housing units and require all affordable housing to be indistinguishable in its exterior finish from market rate housing.

Condition 8: The total amount of impervious lot coverage shall not be greater than 50 percent for the entire project. Uncontrolled sheet flow and stormwater runoff into

the wetland are of concern given more than 53 percent surface coverage will be impervious.

Condition 9: By means of a covenant on the title to the land, the proffered green spaces—i.e., the central plaza, butterfly garden, rain garden and walking path, identified by dimensions and GPS and having a combined total of 13,500 square feet, shall be protected in perpetuity as open space and non-developable land open to the public. To guarantee the proffered green spaces will remain open to the public for future enjoyment, and there is no expansion into areas set aside as open space, the Athena Group would provide a covenant to be attached to the deed of each homeowner and noted in the Home Owners Association document.

Condition 10: That the developer shall not be limited to his design that includes a fountain in the central park. This condition relieves the developer of the requirement that a fountain be installed in the central park area. It was recognized that the fountain may well be a liability given the presence of children. It was also felt that it would not serve the same purpose throughout all seasons of the year

Condition 11: That the developer be required to post a bond to pay for any damage to the existing retaining wall on the West side of the wetlands and to pay for any damage incurred by Athena's construction before, during or after development. In its February supplemental memorandum OP reports that it recommended assessments of the wall and acceptance of responsibility for repairing damages by the applicant. OP and Canal View HOA report the applicant has verbally agreed to such an arrangement.

Condition 12: At a minimum, amenities shall include:

- a) An additional 5,000 square feet of green space on site shall be protected as described in condition #9 and open to the public.
- b) Hiring a landscape architect to design and oversee implementation of the beautification of lower MacArthur Boulevard – that is the area along MacArthur Boulevard from its intersection with Foxhall Road to its intersection with Que Street.
- c) It is the hope of ANC 3D that the developer will give consideration to contributing to organizations that improve the quality of life in the Palisades and will enhance the project. *It is important to note that representatives of Palisades Village, the Friends of Hardy Recreations Center and the Palisades Community Fund made presentations on behalf of their organizations at the Special Meeting on November 11.*

FINAL ADVICE

The Athena Group has not met its burden of proof for the flexibility it seeks through a PUD and Map Amendment. As noted earlier, two issues related to this project are at odds: the developer's need for additional density and height, and the community's need for appropriate density and height that would protect the character and habitat of the neighborhood. The protection of the neighborhood is the responsibility of the Zoning Commission applying the Zoning Regulations and the Comprehensive Plan. The Zoning Commission and the public need clear, definitive plans, specifications, written commitments, and supporting documentation before a final decision can be advised upon and decided. Based upon the record and testimony in the case so far, ANC 3D advises the Zoning Commission that the applicant has not meet its burden of proof in this case.

The greater height, density and flexibility sought are inconsistent with the Comprehensive Plan. While this is a high quality development, the requested height, density, and flexibility comes up exceptionally light when balanced with the applicant's proffered public benefits which are not superior in a significantly greater extent than a matter-of-right development.

ANC 3D advises the Zoning Commission to direct the applicant to revise the proposal to comply with the conditions in the ANC's amended resolution of February 4, 2009, (**EXHIBIT 1**) and serve the parties with a completely consolidated set of detailed plans, elevations, and all other required material. The Zoning Commission should continue this hearing until a date after the new proposal is served on the parties and the parties have adequate time for review and consultation. When the hearing reconvenes, each party should have similar time as for the hearing so far.

ANC 3D appreciates the *great weight* given to this advice by the Zoning Commission.

Thank you.

EXHIBIT 1

RESOLUTION of ANC 3D Regarding: Zoning Commission

Case No. 08-21, 4460 MacArthur Boulevard, N.W.

Application of The Athena Group, LLC

Whereas, the Comprehensive Plan for the National Capital ("Comprehensive Plan") repeatedly terms unbuilt private land a "precious and scarce resource" for the Rock Creek Area West Element, because such land constitutes only one percent of D.C.'s total land mass.

Whereas, the Comprehensive Plan notes that trees add economic value to neighborhoods, community identity and pride.

Whereas, the Comprehensive Plan states, "Parks and Recreation and Open Space are key features of a successful neighborhood."

Whereas, the Comprehensive Plan notes that growth is taking place, straining the ability of park facilities to meet neighborhood needs.

Whereas, the Comprehensive Plan states that, like land itself, parks and recreation areas are limited and precious resources.

Whereas, the Comprehensive Plan states, "Open space may also be set aside within new projects through development agreements in planned unit development amenity packages."

Whereas, the Planned Urban Development Code Section 2403.6 states: "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."

Now Therefore, in an effort:

- (1) To meet the goals of the Comprehensive Plan and the Planned Urban Development Code,
- (2) to enhance the proposed project with adequate required public benefit, and
- (3) to protect the wetlands on the property and the neighborhood's character,

ANC 3D supports the proposal of The Athena Group, LLC for consolidated review and approval of a Planned Unit Development (PUD) and a PUD-related R-5-A map amendment for property located at 4460 MacArthur Boulevard (Square 1356, Lots 28, 929, 932, 933) with the following conditions:

- 1) That any approval by the Zoning Commission of this application, be granted only to The Athena Group, LLC and be made nontransferable.
- 2) Building three shall be 38 feet and three stories high to the top of the roof; all other buildings and units shall be limited to 40 feet and three stories in height;

3) In advance of construction and in cooperation with the U. S. Army Corps of Engineers and the District of Columbia's Department of the Environment, the entire delineated wetland area shall be reflagged; and the delineated area, including the stream, shall be flagged and protected in perpetuity through a conservation easement by a uniform setback of 25 feet from all structures and other human interference from the outermost wetland boundary, in the event there is disagreement on such boundary;

4) The width of interior roads shall be a minimum of 25 feet.

5) An ample turn-around shall provide access for all types of emergency vehicles;

6) The site shall contain 25 on-street parking spaces for guest vehicles and service and delivery vehicles,

7) The two affordable housing units shall be indistinguishable from other housing within the development;

8) The total amount of impervious lot coverage shall not be greater than 50 percent for the entire project;

9) By means of a covenant on the title to the land, the proffered green spaces—i.e., the central plaza, butterfly garden, rain garden and walking path, identified by dimensions and GPS and having a combined total of 13,500 square feet, shall be protected in perpetuity as open space and non-developable land open to the public

10) That the developer shall not be limited to his design that includes a fountain in the central park.

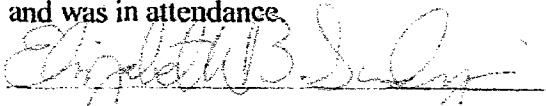
11.) At a minimum, amenities shall include:

a) An additional 5,000 square feet of green space on site shall be protected as described in condition #9 and open to the public;

b) Hiring a landscape architect to design and oversee implementation of the beautification of lower MacArthur Boulevard—that is the area along MacArthur Boulevard from its intersection with Foxhall Road to its intersection with Que Street

c) It is the hope of ANC3D that the developer will give consideration to contributing to organizations that improve the quality of life in the Palisades and will enhance the project;

This Action was taken at a special meeting of ANC 3D, at 7 p.m. on November 11, 2008 at Sibley Hospital Auditorium after proper notice was published in the Northwest Current and posted on the Palisades Listserv. The applicant received written and oral notice of the meeting and was in attendance.



ANC 3D Chair Elizabeth B. Sandza

November 11, 2008

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

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

RECEIVED
D.C. OFFICE OF ZONING
2008 NOV 21 PM 2:13

November 20, 2008

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

Advisory Neighborhood Commission 3D intends to participate at the Zoning Commission's hearing on December 1, 2008, to consider the above mentioned case.

With a quorum present at all time and after proper notice in *The Northwest Current*, the ANC Website, Palisades Listserv, and postings throughout the neighborhood, the ANC heard presentations by the Athena Group to build townhouses on the Riverside Hospital property at 4460 MacArthur Boulevard, Northwest.

Athena appeared before the ANC on December 5, 2007; and later to present a new submission on October 1, and November 5, 2008. The ANC also toured the site with representative of Athena on October 13, 2008. At a special Meeting on November 11, 2008, the Commission voted 7-1-0 to approve the application for an R-5-A Map Amendment and Planned Unit Development with conditions. The single vote opposing the PUD was from Commissioner Nan Wells, who said that the proposed project was too dense for the neighborhood.

Considering the present character and future development of the neighborhood, the ANC is concerned about:

- Four-story buildings that would be up to 50 feet tall in a neighborhood with only three-story buildings;
- The absence of adequate setbacks in front yards, side yards and rear yards;
- Impacts on wetlands that abut National Park Service land and drain under Canal Road and into the Chesapeake and Ohio Canal;
- Stormwater management of a 2.7-acre property that would be more than 53 percent impervious, and the impact of runoff on the wetlands;

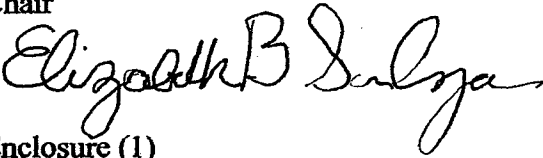
- Safety issues resulting from a single-entrance development featuring only 20-foot wide roads with dead-ends and no turnaround for emergency vehicles;
- A limited number of parking spaces—that is, 13—for guests and for service and delivery vehicles for three-dozen houses; and
- Added traffic congestion already acknowledged as an issue in the area

Alma Gates, vice chair and Ann Haas, single member district commissioner will represent Advisory Neighborhood Commission 3D at the Zoning Commission hearing on December 1, 2008. Bill Crews, our land use consultant, will assist. We also plan to provide a written opinion about wetland protection from conservation biologist Julie H. Moore, who has 37 years of field experience and a Master's degree in Botany from the University of North Carolina. The ANC requests an hour to present its case.

I am enclosing a copy of the resolution passed on November 11, 2008.

Sincerely,

Elizabeth B. Sandza
Chair

A handwritten signature in cursive script, reading "Elizabeth B. Sandza".

Enclosure (1)

cc: Maxine Brown-Roberts by email
Phil Feola by email

February 5, 2009

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:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on Wednesday, February 4, 2009 at Sibley Memorial Hospital's Ernst Auditorium. A quorum (5) was present at all times. Notice of the meeting was published on the website, in the Northwest Current Newspaper and on the Palisades Listserv.

One of the items on the agenda was the amendments to the application by the Athena Group, LLC for Canal Parc at 4460 MacArthur Blvd. NW. The Athena Group made a presentation of its changes and the Commission asked several questions. Several residents also asked questions and made comments about the amendment. After thorough consideration and deliberation, ANC3D decided to endorse its November 11, 2008 Resolution, with one amendment, the addition of a new condition 11 requiring Athena to post a bond to pay to correct any damage caused to an existing retaining wall near the wetland on the property. The amenities conditions were moved to #12.

ANC3D will appear and present testimony at the Zoning Commission's hearing on February 12, 2009. Commissioner Ann Haas will represent ANC3D with the assistance of others.

ANC3D requests that the Zoning Commission give its resolution and zoning commission presentation the great weight to which it is entitled in your decision.

Thank you.

Sincerely,


Elizabeth B. Sandza
Chair, ANC3D

**AMENDED RESOLUTION of ANC 3D Regarding: Zoning Commission
Case No. 08-21, 4460 MacArthur Boulevard, N.W.
Application of The Athena Group, LLC**

Whereas, the Comprehensive Plan for the National Capital ("Comprehensive Plan") repeatedly terms unbuilt private land a "precious and scarce resource" for the Rock Creek Area West Element, because such land constitutes only one percent of D.C.'s total land mass.

Whereas, the Comprehensive Plan notes that trees add economic value to neighborhoods, community identity and pride.

Whereas, the Comprehensive Plan states, "Parks and Recreation and Open Space are key features of a successful neighborhood."

Whereas, the Comprehensive Plan notes that growth is taking place, straining the ability of park facilities to meet neighborhood needs.

Whereas, the Comprehensive Plan states that, like land itself, parks and recreation areas are limited and precious resources.

Whereas, the Comprehensive Plan states, "Open space may also be set aside within new projects through development agreements in planned unit development amenity packages."

Whereas, the Planned Urban Development Code Section 2403.6 states: "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."

Now Therefore, in an effort:

- (1) To meet the goals of the Comprehensive Plan and the Planned Urban Development Code,
- (2) to enhance the proposed project with adequate required public benefit, and
- (3) to protect the wetlands on the property and the neighborhood's character,

ANC 3D supports the proposal of The Athena Group, LLC for consolidated review and approval of a Planned Unit Development (PUD) and a PUD-related R-5-A map amendment for property located at 4460 MacArthur Boulevard (Square 1356. Lots 28, 929, 932, 933) with the following conditions:

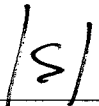
- 1) That any approval by the Zoning Commission of this application, be granted only to The Athena Group, LLC and be made nontransferable.

- 2) Building three shall be 38 feet and three stories high to the top of the roof; all other buildings and units shall be limited to 40 feet and three stories in height;
- 3) In advance of construction and in cooperation with the U. S. Army Corps of Engineers and the District of Columbia's Department of the Environment, the entire delineated wetland area shall be reflagged; and the delineated area, including the stream, shall be flagged and protected in perpetuity through a conservation easement by a uniform setback of 25 feet from all structures and other human interference from the outermost wetland boundary, in the event there is disagreement on such boundary;
- 4) The width of interior roads shall be a minimum of 25 feet.
- 5) An ample turn-around shall provide access for all types of emergency vehicles;
- 6) The site shall contain 25 on-street parking spaces for guest vehicles and service and delivery vehicles,
- 7) The two affordable housing units shall be indistinguishable from other housing within the development;
- 8) The total amount of impervious lot coverage shall not be greater than 50 percent for the entire project;
- 9) By means of a covenant on the title to the land, the proffered green spaces—i.e., the central plaza, butterfly garden, rain garden and walking path, identified by dimensions and GPS and having a combined total of 13,500 square feet, shall be protected in perpetuity as open space and non-developable land open to the public
- 10) That the developer shall not be limited to his design that includes a fountain in the central park;
- 11) That the developer be required to post a bond to pay for any damage to the existing retaining wall on the West side of the wetlands and to pay for any damage incurred by Athena's construction before, during or after development;
- 12) At a minimum, amenities shall include:
 - a) an additional 5,000 square feet of green space on site shall be protected as described in condition #9 and open to the public;
 - b) Hiring a landscape architect to design and oversee implementation of the beautification of low MacArthur Boulevard—that is the area along

MacArthur Boulevard from its intersection with Foxhall Road to its intersection with Que Street

- c) It is the hope of ANC3D that the developer will give consideration to contributing to organizations that improve the quality of life in the Palisades and will enhance the project.

This Action was taken at a special meeting of ANC 3D, at 7 p.m. on November 11, 2008 at Sibley Hospital Auditorium after proper notice was published in the Northwest Current and posted on the Palisades Listserv. The applicant received written and oral notice of the meeting and was in attendance.



ANC 3D Chair Elizabeth B. Sandza
November 11, 2008

The Amendments to this Resolution were made at the regularly scheduled meeting of ANC3D at Sibley Hospital's Auditorium on February 4, 2009. Proper notice was published in the Northwest Current and posted on the Palisades Listserv. The applicant received written and oral notice of the meeting and was in attendance.



Elizabeth B. Sandza, ANC3D Chair
February 4, 2009