

**Remarks of
William Spence Spencer
President
Palisades Citizens Association**

**March 16, 2009
Before the Zoning Commission of the District of Columbia
Anthony Hood, Chairman**

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

Mr. Chairman:

Thank you for giving the Palisades Citizens Association the opportunity to speak about a project that could have a strong impact on our neighborhood. Whether that impact is negative or positive depends on the willingness of the developers to work closely with the community to address our concerns.

First, I want to say that the PCA has made clear to the developers that it would support this application as long as several conditions were met. My neighbors formally adopted this position because we retain the highest respect for the applicant and felt sure that we could reasonably work out some type of accommodation that could lead to a harmonious, profitable development.

Even after trying to dialogue with the developers for months with no real, significant movement from them, we still kept hope alive that some kind of deal could be struck. In response to your direction at the last hearing, we invited Athena to a meeting two weeks ago to discuss a possible compromise. The united community leaders of the PCA, Foxhall Citizens, and Canal View Homeowners offered them – in writing in advance of that meeting - considerable concessions in return for some movement on their part.

Sadly, I must report that Athena would not agree to make a single change to their plans. They stated that the project would not be commercially viable if they budged even a little in the direction that the neighborhood groups wanted them to move, and said that if they had to so compromise, they would rather abandon the project. And perhaps they should.

Background

The PCA – and the rest of the neighborhood - has sought to work with the applicant since the beginning, starting with the developer's presentation of the project to the full membership of the PCA in December, 2007.

More than sixteen months later, I must say with great regret that the applicant has done nothing to address our concerns, aside from the slight reduction in the total number of units (from 41 to 37) and a 50 percent cut in proposed low income housing (from four to

ZONING COMMISSION
CASE No. 08-21
EXHIBIT No. 68

two). We now believe that the developer never intended to offer a compromise that would address the obvious problems with this project.

The biggest single problem is that this application is unsupported by DC's master plan and its regulations. The proposed PUD is not of an appropriate scale for the neighborhood, and endangers the present character and future development of the neighborhood. I have broken my remarks into seven different sections:

1. Which Neighborhood Are We Talking About?

Let's start with the most obvious issue first: the developer claims that the proposed density of the Project is appropriate for the neighborhood, and that "the 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."

The applicant then uses the Near Northwest Area Element of the comprehensive plan, which includes Dupont and Logan Circles, Shaw, and Georgetown, to demonstrate how this project would be in harmony with the larger neighborhood.

The problem with such an approach is that applicant is using the wrong neighborhood. This project is not located in the Near Northwest Area Element, but rather in the Rock Creek West Area Element, which notes:

"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."

The decision to use the wrong Area Element is not a minor matter. It is, in fact, a mischaracterization of the vision of Palisades and other Rock Creek West neighborhoods. To be clear, it is not that we object to the vision of the Near Northwest Area Element. Rather, it is that we want our neighborhood to remain consistent in character, and that means that the developer should not attempt to impose a concept fundamentally in conflict with the existing vision of our neighborhood.

2. Building Height

This project would most likely be a better fit in Georgetown or Dupont Circle – maybe this is why developer chose not to talk about Rock Creek West. One of the critical concerns we raised is building height. Without exception, commercial and residential structures along this part of MacArthur Boulevard are two and three stories high, set back from the street. For example, the height of neighboring Canal View homes is 40 feet to the top of the roof.

This project – by calling for buildings that are out of scale with their surroundings – clearly endangers the “present character and future development” of the neighborhood. It would create a canyon effect on the street, and future development would likely emulate this out-of-whack scale, further threatening the environmental fabric of the community. The Comprehensive Plan requires compatible density and character of the neighborhood, and – while the project may fit in Kalorama, it certainly does not fit in with the Palisades.

3. Density

Another major concern surrounds density. The applicant has attempted to cloud the issue by not providing the Zoning Commission with required data as required in DCMR 2403.11, which sets out the requested specific relief from matter-of-right standards and requirements, among other things.

It is the developers’ responsibility to provide this information. The applicant has the burden to provide that a project provides superior amenities.

Density affects schools, emergency response, safety, infrastructure, traffic, parking, environmental health, and neighborhood character, among other things. 37 families – who are rich enough to afford a home estimated to cost between \$1.3 and \$1.7 million dollars – will cause significant strains on the infrastructure of the Palisades.

Let me turn to a specific aspect of density, and that is traffic. The proposed development is yards away from the crucial intersection of MacArthur Boulevard, Foxhall Road, and Canal Road. The nearest Metro stop is Foggy Bottom, about two miles away. The PCA has been informed that current levels of bus service will be cut back further, and only westbound buses pass in front of the development. 37 units at this choke point on MacArthur will make an already bad situation worse, and should parking overflow from the project into MacArthur Boulevard, it will make an already difficult commute even tougher.

Time does not permit me to go into similar detail about other density concerns, but that should not be regarded by commissioners as meaning they are not significant. I would be happy to provide members additional information in writing. The current density as proposed clearly endangers the present character and future development of the neighborhood.

4. Wetlands

Another area of concern is wetlands and protecting the environment. The applicant says that it will preserve the existing wetlands on the property, but still insists on walls and other structures that are as close as four feet to the wetlands themselves.

The developers must take seriously their responsibility for stewardship of the land. The current plan does not comply best practices already identified by the Canal View

Homeowners Association. The Potomac Gorge is one of the most beautiful parts of our region, and the property abuts National Parkland. The developer – by ignoring best practices when it comes to wetlands preservation – is endangering not merely the present character and future development of the neighborhood, but also is not protecting our very limited natural resources.

5. Credibility

It is also important to discuss the developers' credibility with the neighborhood and even city officials. The applicant has consistently misportrayed the level and quality of dialogue on this project with the city and the community. Commissioners should consider the dubious track record of the applicant as they listen to the claims that the developers have significantly reduced density or how they have satisfied many community requests. A few examples:

- The applicant claimed that “Canal View Homeowners” supported the project when this was not the case. In fact, we understand that two homeowners in Canal View concluded side agreements with the applicant, and the developer has paid at least two homeowners money for their support.
- Following Athena's assurances that the retaining wall that protects Canal View homes would be protected and repaired as necessary at these hearings, Athena provided a draft agreement to protect the wall. After the developers made oral and written support for the rest of the project as proposed a formal condition for protection of the wall, neighbors were unable to sign.
- At a Zoning Commission hearing on December 1, a letter from Councilmember Mary Cheh supporting accommodations for current homeowners on Lingan Road, was described by the applicants counsel as a “letter of support” for the project.
- For our part, the developers have misrepresented the position of the Palisades Citizens Association in communications with the city. In one example, they maintained to the Office of Planning that the PCA was supporting the development, and that a PCA letter of support would follow. That is absolutely false.

The applicant has made the dubious claim that it has held 40 meetings with the community, but this should be looked at in the context of what appears to be a consistent effort at forum shopping. The reality is that its assertion of responsiveness to community concerns or even outright community support, are not supported by the facts.

6. Compromise

Most recently, the developer summarily rejected any compromise at all with the community. Taking our cues from the suggestion of the Zoning Commission to articulate a compromise, the Presidents of the Palisades Citizens Association, Canal View

Homeowners, and Foxhall Community Citizens Association developed a common, unified set of possible compromises and amenities.

We sent the developers a letter on February 27 outlining our effort to conduct a real negotiation, focusing on the three central issues: building height, density, and wetlands. The three community leaders then sat down with the developers' representatives the next morning and we explained what we were trying to do.

We stressed that we all supported the project with conditions because we felt that a compromise could build a better, more harmonious project, and that the proposals outlined in our letter were hopefully starting points for a project that could add to the fabric of the neighborhood and meet the goals of the developers.

Five days ago we received their response. They rejected any compromise, and rejected any further discussion. They stressed that the project "is not economically viable with less than 37 units or shorter buildings," and that no compromise was possible.

This is a colossal opportunity lost for both the developer and the community.

The economic viability argument was one that the developers gave me in a meeting that was held close to ten months ago. It is clear that over the ten months of claims that they would work with the community and dozens of meetings, they never really intended to compromise with the community. And sadly, the correspondence caps a consistent pattern of dissembling that characterized almost all of our interactions with the developer – interactions we pursued seriously and in good faith.

Our Advisory Neighborhood Commission has placed copies of our letter and the developers' response in the public record.

7. Subsidized Overdevelopment

As you know, the PUD process is designed to encourage "*high quality developments that provide public benefits.*" The logic behind this law is to allow for zoning rules to be waived so that the community and general public could accrue something so compelling that it is in the community's interest to waive their protections.

We are not opposed to property owners being able to develop property as they see fit, in accordance with the laws of the District of Columbia. Had the applicant sought to build a matter-of-right development, there would have been a minimal response from the surrounding community. This has been the case with a number of developments in the Palisades.

But the developer seeks the privileges of a Planned Unit Development with none of the responsibilities. Where is the public benefit? The fact that even negotiations over a possible compromise were rejected for solely for "economic viability" reasons speaks volumes.

The near-complete absence of community benefits – refurbishing the lower MacArthur Boulevard streetscape or supporting a project that assists Palisades’ seniors are examples of support that could make a positive difference -- illustrates that the developers’ accountants have taken over, and they seek to use the relaxed zoning that a PUD offers strictly as a way to maximize their own profit, regardless of any benefits the general public could receive.

In effect, the applicant is asking the City to provide the financing the developer lacks to build this project, since they by their own admission could not build a profitable matter of right development. The effective undercapitalization of this project should set off warning bells for the Commission, especially in these times of economic uncertainty.

There are other costs as well: congested streets, strained infrastructure, depleted emergency response, and crowded schools.

This project represents a clear example of what zoning regulations are designed to prevent – the overbuilding of land. Most of all, this development does not meet the standards required to be a Planned Unit Development. The fabric of our neighborhood is compromised, and the only group that appears to benefit are the developers. The community gets nothing. The developers apparently never intended to compromise throughout their interaction with the City and the surrounding community.

The neighbors from Foxhall Road to the District Line are united in their clear concerns. We urge the Zoning Commission to uphold the original intent of a Planned Unit Development: to provide a waiver of zoning rules in exchange for a superior public benefit.

Approval of this application would mean the District was writing a check to developers who refused to respond to taxpayers’ concerns. Please act in a manner consistent with the law’s stated intent and in support of the will of the community it will most directly affect.

Thank you.