

CANAL VIEW HOA

Zoning Commission
Testimony
On
Case No. 08-21, Canal Parc
March 16, 2009

1

ATHENA GROUP, LLC Seeks:

- PUD Designation
(leeway from matter-of-right standards)
- Rezoning of 2/3 of Property
(R-1-B to R-5-A)

2

Zoning Commission Task:

Assess value of exchange

Departure from
matter-of-right standards vs. Public benefits

11DCMR 2400.2

3

STATUTORY TEST

"Judge, balance and reconcile
the relative value of the project
amenities and public benefits offered"

against the

"degree of development
incentives requested"

in light of any identified

"potential adverse effects"

11 DCMR 2403.8

4

PUBLIC BENEFIT CRITERIA

- Commendable in number or quality
- Superior features
- Significantly greater benefit to immediate neighborhood or public in general
- OP Finding - "Exceptionally light"

11 DCMR 2403.6, 2403.7

5

ANNOTATED TABLE

- Must show relief sought from matter-of-right standards
- Must detail how public benefits are superior in quality and quantity to typical development

11 DCMR 2403.12

6

ZONING COMMISSION

CASE No. 08-21

EXHIBIT No. 69

ATHENA APPLICATION

- Annotated Table inadequate
- Project narrative avoids
 - Comparative analysis of public benefits
 - Minimizes or misstates relief sought from matter-of-right standards
- Treats application as a routine project plan, not PUD/ Rezoning application

7

MATTER-OF-RIGHT EVALUATION

- Essential to balancing test
- Must show deviations from R-1-B for 2/3 of property and from R-5-A for 1/3 of property

Lot-by-Lot

- R-5-A - Buildings 1 & 2 & Lots 34-37, Building 6 (23 lots)
- R-1-B - Buildings 3, 4, 5 & rest of Building 6 (14 lots)

8

DEVIATIONS FROM MATTER-OF-RIGHT

- Lot occupancy (11 DCMR 403.2)
- 36/37 lots exceed 40% (many by more than 50%)
 - 5/6 buildings exceed 40%

Athena uses a "single lot" test, but this is not by right (11 DCMR 2516.1) (special exception)

- Athena also falls special exception requirements
- 25' internal streets (11 DCMR 2516.6(b))
 - 60' dia. turning area (11 DCMR 2516.6(c))
 - Front yard = rear yard (11 DCMR 2516.5(b))
 - only 2 lots or 1 building comply

9

DEVIATIONS FROM MATTER-OF-RIGHT

- Rear Yards - 26/37 lots do not comply (11 DCMR 404.1(b)) Deviations are 10-28% or more
- Side Yards - 5/9 lots do not comply (11 DCMR 405.4, 405.9) Deviations are 11-96%
- Building Height - R-1-B- 9/14 - 4 stories (3 stories and 40' both zones) 4/14 - over 40' (11 DCMR 400.1) - R-5-A - 23/24 - 4 stories 3/23 - over 40'

10

DEVIATIONS FROM MATTER-OF-RIGHT

Minimum Lot Dimensions

R-1-B - 5000 sq. ft. = 16
(11 DCMR 401.3)

R-5-A - 1800 sq. ft./lot = $\frac{22}{38}$
(11 DCMR 401.5)

[theoretical maximum - no streets/ sidewalks/wetlands]

Athena 37/38

11

DEVIATIONS FROM MATTER-OF-RIGHT

FAR (No PUD, No Rezoning) (11 DCMR 402.4)

R-1-B - None
R-5-A - .9
Athena
R-5-A - 62,834 sq. ft. GFA ÷ 40,315 sq. ft. GA =
1.56 FAR = 73% excess over R-5-A limit

FAR (PUD, No Rezoning) (11 DCMR 2405.2)

R-1-B - .4 X 80,629 sq. ft. GA = 33,252
R-5-A - 1.0 X 40,315 sq. ft. GA = 40,315
73,567 PUD Limit
Athena: GFA = 118,534 sq. ft. = 61% excess over PUD limit

FAR (PUD, Rezoning) (11 DCMR 2405.2)

FAR - 1.0 = 120,994 sq. ft.
GFA = 118,534 = .98 FAR

12

DENSITY

- Not defined in 11 DCMR
- Dictionary: "the average number of units per space unit...a housing density of 10 houses per acre"
- R-1-B - 5000 Sq. Ft. lot size = 8 units/acre
- R-5-A - 1800 Sq. Ft. lot size = 23 units/acre

[theoretical maximum - no streets/sidewalks/wetlands]

13

THEORETICAL PROJECT DENSITY (W/O STREETS/SIDEWALKS)

- R-1-B - 16 Units
- R-5-A - 22 Units
38 Units

14

DENSITY

- Claimed matter-of-right density

R-1-B	12
R-5-A	<u>14</u>
	26
- Proposed density 37
- Increase in density 11 = 42%
- Understated due to
 - Construction in wetlands
 - Cross-zone encroachment

15

ATHENA "DENSITY"

- Lot Occupancy -- 28%
- FAR -- .98
- Neither is the chosen quantitative measure
- Common sense:
 - land value most affected by # dwelling units
 - external impacts most affected by # units
- Imagine R-1-B - Based PUD on project site
 - 24 single-family homes
 - 4 stories each
 - No streets/sidewalks/wetlands
 - FAR = .98 or more
 - Lot Occupancy = 30% or more

Would 24 SFH have more impact than 37 townhomes?

16

CANAL VIEW POSITION

- IS IN HARMONY WITH ANC, PCA, FCCA
- CANAL VIEW **OPPOSES** THE DEVELOPMENT AS CURRENTLY PLANNED
- WOULD SUPPORT A PLAN WHICH INCLUDES CONDITIONS
 - AS SUBMITTED IN OUR LETTER OF NOVEMBER 12, 2008
 - AS INCLUDED IN THE TESTIMONY SUBMITTED THIS EVENING
- PRIMARY CONCERNS:
 - DENSITY
 - HEIGHT
 - WETLANDS
 - IMPACT ON CANAL VIEW COMMUNITY AND PRIVATE PROPERTY

17

CANAL PARC LOCATION

- THE PUD APPLICATION, SITES THE DEVELOPMENT IN THE 'NEAR NORTHWEST' AREA OF THE COMPREHENSIVE PLAN
 - GEORGETOWN, DUPONT AND LOGAN CIRCLES
 - 'WHERE DEVELOPMENT PATTERN IS ONE OF THE MOST DENSE' IN DC
- SITE ACTUALLY IN THE 'ROCK CREEK WEST' AREA OF COMPREHENSIVE PLAN, DESCRIBED AS:
 - 'STABLE, ATTRACTIVE NEIGHBORHOODS.....PREDOMINANTLY SINGLE FAMILY HOMES'
 - 'ISSUES OF HEIGHT, SCALE, CHARACTER AND DENSITY REMAIN A SOURCE OF CONCERN'

18

ZONING & HEIGHT

- AT LEAST 2/3rd OF THE APPLICANT'S SITE IS CURRENTLY ZONED **R-1-B, SINGLE FAMILY**
- THE SITE IS BOUNDED ON THE SOUTHEAST BY THE 2 SINGLE FAMILY LINGAN WAY HOMES
- BOUNDED ON THE WEST AND SOUTH BY CANAL VIEW SINGLE FAMILY HOMES,
 - **40 FT HIGH TO THE TOP OF THE ROOF**
 - MANDATED BY BZA ORDER OF 11/17/93, REGARDING APPLICATION 15743, IN WHICH BZA STATES:
 - **'THE PALISADES NEIGHBORHOOD IS PRIMARLY A LOW-DENSITY RESIDENTIAL NEIGHBORHOOD'**

(SEE ANC FEB 12 HEARING SUBMISSION, EXHIBIT #4)

19

HEIGHT

- **CANAL VIEW HOMES OVERLOOKING THE RIVER**
 - ARE BUILT ON LAND LEVEL WITH MACARTHUR BLVD
 - ARE 40 FT IN HEIGHT TO THE TOP OF THE ROOF
 - ARE, ON AVERAGE, 145 (+/- 2 FT) ABOVE SEA LEVEL
- **BUILDING 4, LOT 27**
 - IS AT THE REAR OF CANAL PARC
 - ON LAND WHICH IS APPROXIMATELY **30 FT LOWER** THAN MACARTHUR BLVD
 - IS 143.95 FT ABOVE SEA LEVEL IN HEIGHT
- **CANAL PARC, LOT 27, WILL BE 10+ FT HIGHER THAN THE CLOSEST CANAL VIEW HOMES!!!**

20

DENSITY

- **37 UNITS IS THE ATHENA MINIMUM - RESULTING IN A HIGH DENSITY PROJECT**
 - THE **FLOOR AREA RATIO AND LOT OCCUPANCY** COMPUTATIONS BY ATHENA HAVE UTILIZED THE **ENTIRE AREA OF THE PROJECT - INCLUDING THE WETLANDS, WHICH IS NOT BUILDABLE!**
 - IN REALITY
 - **FLOOR AREA RATIO:** ALL 37 TOWNHOMES FAR EXCEED THE 1.0 REQUIREMENT FOR THE THEORETICAL LOTS
 - **LOT OCCUPANCY:** 36 OF 37 TOWNHOMES FAR EXCEED THE 40% MAXIMUM FOR THEORETICAL LOTS
- WE REQUEST THE COMMISSION TO ASSESS DEVIATION FROM **MATTER-OF-RIGHT STANDARDS.**
- TREATING ALL LOTS AND OPEN SPACE AS A SINGLE LOT IS **NOT** A MATTER-OF-RIGHT UNDER DCMR 2516

21

WETLANDS

- ATHENA'S JANUARY 21 SUBMISSION, PG 2, STATES
 - 'PROPOSED RETAINING WALL IS SET BACK AT LEAST TEN FEET'
- IN AT LEAST 2 PLACES IT IS LESS THAN 10 FT, AND **AS LITTLE AS 4 FT** (SEE ATHENA CHARTS 5 & 6)
 - MANY MEASUREMENTS TAKEN FROM THE STREAM CENTER
- THE DESIGN WOULD ARTIFICIALLY 'BOX-IN' THE WETLANDS, AND WOULD SEEM TO BE **COUNTER-PRODUCTIVE** TO A DESIGNATED WETLAND AREA
- CONCERN ABOUT DEVELOPMENT IMPACT ON BOTH FOLIAGE AND WATER MANAGEMENT (QUALITY AND QUANTITY) IN THE WETLANDS (JULIE MOORE TESTIMONY)

22

WETLANDS

- The 'Water Pollution Reduction Amendment Act of 2008', sponsored by Councilmember Mary Cheh, Chair of the Council's Environmental Committee, states:

"Section 6 (c): Riparian Buffers:

- (a) No person may conduct any new land disturbing activity within:
 - (1) 100 feet of a wetland, or
 - (2) Within 35 feet of the Anacostia or Potomac Rivers or any tributary stream"

23

WETLANDS

- IN DISCUSSIONS WITH BOTH OP AND PARK SERVICE PERSONNEL, WE HAVE BEEN ADVISED THAT
 - A DC ZONING REGULATION REVIEW IS IN PROCESS WHICH WILL INCLUDE A DEFINITIVE WETLAND SETBACK. PARA FP.3.6 (c) OF THE DRAFT INCLUDES THE STATEMENT **"NO CONSTRUCTION OR DEVELOPMENT SHALL DISTURB DELINEATED WETLANDS OR LAND WITHIN 35 FT OF DELINEATED WETLANDS"**
- THE PROPOSED DEVELOPMENT SHOULD BE MANDATED TO ABIDE BY THIS SETBACK IN THAT
 - THE PUD STANDARD IS FOR **SUPERIOR PROJECT AMENITIES AND PUBLIC BENEFITS**
- THE COMMISSION SHOULD RIGHTLY EXPECT THE APPLICANT TO TAKE EMERGING ENVIRONMENTAL STANDARDS INTO ACCOUNT, NOT SIMPLY MINIMUM STANDARDS CURRENTLY IN EFFECT

24

POTENTIAL DAMAGE TO CANAL VIEW PROPERTY

- THE SOUTHEAST END OF CANAL VIEW HAS SIGNIFICANT RETAINING WALLS, UP TO 26 FT IN HEIGHT, SUPPORTING COMMUNITY PROPERTY, AND PARTICULARLY THE HOME AT 4610 LAVEROCK PLACE.
 - ANY INCREASE IN EROSION CAUSED BY AN INCREASE IN WATER RUN-OFF **WILL ALSO IMPACT THE VERY IMPORTANT CANAL VIEW RETAINING WALLS AND INDIVIDUAL PROPERTIES.**
- SOME OF OUR HOMEOWNER'S PROPERTIES ABUT THE STREAM AND WETLAND AREAS, AND WOULD BE SUSCEPTIBLE TO WATER INTRUSION CAUSED BY CHANGES IN GRADING OR RUN-OFF.

25

POTENTIAL DAMAGE TO CANAL VIEW PROPERTY

- CONCERNS REGARDING THE POTENTIAL FOR DAMAGE TO CANAL VIEW PROPERTY DURING CONSTRUCTION:
 - CONSTRUCTION EQUIPMENT INCURSION ONTO CANAL VIEW PROPERTY (FALLING CRANES) OR OTHER EVENTS CAUSING DAMAGE
 - HEAVY TRUCKS USING LAVEROCK PLACE AS A TURN-AROUND OR WAITING AREA, DAMAGING THIS PRIVATELY MAINTAINED ROADWAY.
- AS VERBALLY AGREED BY ATHENA HERE ON DECEMBER 1ST, AND AS RECOMMENDED BY OP, WE REQUEST THAT ATHENA BE REQUIRED TO ENTER INTO AN AGREEMENT
 - INDEMNIFYING CANAL VIEW RETAINING WALLS
 - OTHER COMMUNITY AND PRIVATE PROPERTY
 - DUE TO DAMAGE CAUSED BY CONSTRUCTION/POST-CONSTRUCTION CHANGES IN WATER RUN-OFF AND EROSION, SITE GRADING OR WATER MANAGEMENT EFFECTS

26

TRAFFIC

- NARROW 20 FT STREET WIDTHS, WITHOUT ADEQUATE TURN-AROUND AREA, DOES NOT TAKE INTO ACCOUNT A REALISTIC VIEW OF DAILY LIFE IN A HIGH END DEVELOPMENT ON MACARTHUR BLVD:
 - CANAL VIEW RESIDENTS **DO NOT AGREE** WITH THE FINDINGS OF THE APPLICANT'S TRAFFIC STUDY.
 - HOSPITAL TRAFFIC WAS MINIMAL, AND OFF HOURS, AS COMPARED TO THAT PROJECTED BY THE DEVELOPMENT
- THERE IS NOT REASONABLE INGRESS, EGRESS AND PARKING FOR ROUTINE DELIVERY SERVICES, TRASH TRUCKS, AND MOVING VANS
- THE LIMITED PARKING SPACES FOR RESIDENTS AND GUESTS **WILL CAUSE OVERFLOW ONTO MACARTHUR BLVD AND LAVEROCK PLACE**

27

MISCELLANEOUS

- CHART 27 OF THE MARCH 13TH ATHENA SUBMISSION SHOWS THE BLDG 3 & 4 REAR YARD SETBACK AS 39.2 FT
 - CHARTS 6 & 7 SHOW THE REAR YARDS TO BE 12 FEET, WHICH INCLUDES A 2 FT SHRUB, LEAVING A **USABLE YARD OF 10 FT**
- CHART 26 CONTAINS 'BUILDING HEIGHT TABULATIONS'
 - MISSING IS ANY VALUE FOR HEIGHT ABOVE 'MEAN SEA LEVEL'
 - MSL IS THE ONLY MEASUREMENT ALLOWING A COMPARISON OF THE ACTUAL TOPS OF ROOFS AS COMPARED TO NEARBY BUILDINGS
- WE HAVE MET WITH ATHENA MANY TIMES IN ATTEMPTS TO COME TO AGREEMENT
 - UNKNOWN TO US AS IT WAS ONGOING, TWO OF OUR HOMEOWNERS ENTERED INTO **INDIVIDUAL AGREEMENTS** WITH ATHENA, DETRACTING FROM OUR ABILITY TO NEGOTIATE

28

CURRENT STATUS

- TOGETHER WITH THE PCA AND FCCA, CANAL VIEW HOA HAS FORMALLY OFFERED ATHENA AN OPPORTUNITY TO REACH A COMPROMISE AGREEMENT
 - CONTRARY TO THE ATHENA RESPONSE DATED MARCH 11TH, **WE DO NOT AGREE** THAT THE DEVELOPER HAS 'SATISFIED MANY OF THESE REQUESTS'
 - THE CHANGES MADE IN THE PLAN HAVE NOT ADDRESSED OUR PRIMARY CONCERNS TO ANY APPRECIABLE DEGREE
- AS STATED IN ALL THE DOCUMENTS SUBMITTED TO DATE BY THE ANC AND THE ABOVE ORGANIZATIONS, AND ALL THEIR TESTIMONIES, OF PRIMARY IMPORTANCE ARE:
 - DENSITY
 - HEIGHT
 - WETLANDS
 - GREENSPACE

29

CURRENT STATUS

- FROM OUR PERSPECTIVE, THE **PUD PROCESS** IS BEING USED TO **CIRCUMVENT** THE INTENT AND PURPOSES OF THE ZONING REGULATIONS
 - THE APPLICANT HAS NOT COMPLIED WITH MANY OF THE APPLICABLE DCMR ZONING REGULATIONS
 - AN EXTREMELY LARGE NUMBER OF FLEXIBILITIES ARE BEING REQUESTED
 - THE **PUBLIC BENEFITS AND AMENITIES** ARE TOTALLY OUT OF SCALE WITH THE SPECIFICS OF THE CURRENT DEVELOPMENT PLAN, ESPECIALLY CONSIDERING ALL THE 'FLEXIBILITIES'
- A REVISED PLAN **WITH FEWER UNITS AND THREE 'ABOVE GRADE' FLOORS PER UNIT**
 - WOULD ELIMINATE MOST, IF NOT ALL, OF THE CURRENTLY NEEDED 'FLEXIBILITIES'
 - WOULD BE A BETTER FIT WITH THE CHARACTER OF THE IMMEDIATE NEIGHBORS AND THE PALISADES

30

CANAL VIEW POSITION

- **WE WOULD BE HAPPY TO HAVE ATHENA DEVELOP THIS PROPERTY**
 - **GIVEN A PLAN WITH DENSITY, HEIGHT, AND SETBACKS COMPATIBLE WITH THE COMPREHENSIVE PLAN**
- **WE WOULD SUPPORT AN R-5-A DEVELOPMENT PLAN REVISION WHICH INCLUDES:**
 - **THE ANC 'CONDITIONS'**
 - **THE PCA 'CONDITIONS', AND**
 - **THE CANAL VIEW 'CONDITIONS'**
 - **AS SHOWN IN OUR SUBMISSIONS TO DATE**
- **WE RESPECTFULLY URGE THE COMMISSION TO PUT GREAT WEIGHT ON OUR CONCERNS AND CONSIDER THE POTENTIAL NEGATIVE IMPACT OF THE CURRENT ATHENA PLAN ON THE PALISADES COMMUNITY**

CONDITIONS (Requesting organization(s) are listed at the end of each 'Condition')

1. That any approval by the Zoning Commission of the application be granted only to The Athena Group, LLC and be made nontransferable; (ANC, PCA, CV HOA)
2. Building Number 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; (ANC, PCA, CV HOA)
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. 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; (ANC, PCA, CV HOA)
4. The width of interior roads shall be a minimum of 25 feet; (ANC, PCA, CV HOA)
5. An ample turn-around shall provide access for all types of emergency vehicles; (ANC, PCA, CV HOA)
6. The site shall contain 25 on-street parking spaces for guest vehicles and service and delivery vehicles **and each unit shall have two parking spaces**; (ANC, PCA, CV HOA; except that the portion in **bold** is not included in ANC Conditions)
7. The two affordable housing units shall be indistinguishable from other housing within the development; (ANC, PCA, CV HOA)
8. The total amount of impervious lot coverage shall not be greater than 50 percent for the entire project; (ANC, PCA, CV HOA)
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**; (ANC, PCA, CV HOA; except that the portion in **bold** is **not** included in the CV HOA Conditions)
10. That the developer shall not be limited to his design that includes a fountain in the central park; and (ANC, PCA, CV HOA)
11. That the developer will collaborate closely with representatives of the **Canal View Homeowners Association and the Palisades Citizens Association** to mitigate traffic impacts over the life of the project and especially during construction. (PCA, CV HOA, except that the portion in **bold** is not included in the PCA Conditions)

12. That the Canal View HOA shall have input to the Canal Parc Construction and Traffic Management Plans. (CV HOA)

13. That Athena be required to enter into a formal indemnification agreement with the Canal View Homeowners Association regarding protection of Canal View homes, retaining walls, yards, fences, roads and other Canal View properties, from any damage caused by construction efforts, or any resulting affects due to changes made in the land area or grading due to the project.

This agreement must include:

- Provisions that Athena will pay for legal assistance to the Canal View Homeowners Association for preparation and/or review of such legal agreements(s).
- Provisions for establishment of an Escrow Account by Athena to ensure funds are available to make necessary repairs for items covered under the legal agreement(s).
- Any unused amounts of the Escrow Account would be returned in full to Athena at completion of both construction and an agreed upon timeframe after completion of construction. (CV HOA)

In addition, amenities shall include:

- a) An additional 5,000 square feet of green space on site shall be protected and open to the public; (ANC, PCA, CV HOA)
- 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 Q Street; and (ANC, PCA, CV HOA)
- c) Contributions to organizations that improve the quality of life in the Palisades and will enhance the project. (ANC, PCA, CV HOA)