TO District of Columbia Office of Zoning

FROM: Concerned Citizens of North Michigan Park

RE November 22, 2004 Public Hearing for Case No 04-11 (PUD and Related Map Amendment @ Square 3788, Part of Lot 811- 611 Emerson Street, NE) Testimony of Concerned Citizens of North Michigan Park

CCNMP is an association of concerned citizens who reside in the North Michigan Park neighborhood, which is in close proximity to the proposed Planned Unit Development (PUD) by Rocky Gorge at 611 Emerson Street, NE. CCNMP has requested to appear and participate as a party in the public hearing for case 04-11, scheduled for public hearing on November 22, 2004. CCNMP will appear through legal counsel of the University of the District of Columbia, David A Clarke School of Law, Community Development Law Clinic Rocky Gorge has proposed to add 75 townhomes on Emerson Street NE and to have the part of Lot 811-611, the industrial site, rezone for residential houses use only.

On November 8, 2004, the Office of Planning issued a final report for Case No 04-11, that recommended final approval for this application, finding the following amenities package to have exceeded the required degree of zoning relief necessary to meet the standards for PUD approval under the Zoning Regulations:

1 Two (2) affordable housing units marketed at 85% of the Washington Area Median Income, these units are to remain "affordable" for a period of 20 years
2. Proposed pedestrian streetscape improvements to be constructed along 6th Street NE, details of improvements will be added to public record prior to final action
3. $15, 000 contribution to the Lamond-Riggs Library.
4. $15,000 contribution to North Michigan Park Civic Association for the North Michigan Park Community Center
5 $12, 000 contribution to the North Michigan Park Civic Association for "Welcome to North Michigan Park" signs

Approval of this proposal was granted primarily on the basis that this applicant satisfied various goals in the Comprehensive Plan relating to Fort Totten Special Treatment Area and Development Opportunity, Housing Opportunity and the above listed public amenities CCNMP strongly disagrees that this amenities package exceeds the required degree of zoning relief necessary to meet the standards for PUD approval articulated in Chapter 24 of the Planned Unit development procedures In fact we find that it minimally meets these standards, and does not pass the amenities balancing test set forth under § 2403 8 We therefore, requests this application be approved only with the modifications set forth herein and with careful consideration of the following policy reasons

ZONING COMMISSION
District of Columbia
Case 04-11
Exhibit 39

ZONING COMMISSION
District of Columbia
CASE NO.04-11
EXHIBIT NO.39

Ft Totten Special Treatment Area: Designated Areas for Improvements and Other Policy Concerns

The Fort Totten Metrorail Special Treatment Area straddles the CSX Railroad tracks and extends from Riggs Road on the north to Buchanan Street N W on the south The area is bordered on the north by an auto dealership, auto paint shop, radio station and cabinet craftsman shop and on the south and west by established warehouse, petroleum storage and industrial uses Further to the north there is a shopping center A stable residential community lies to the east. Much of the industrially zoned parcels located adjacent to the residential community in the east portion of the area are buffered from residential uses by residentially zoned property that is owned by the commercial and industrial companies but unused. Development on the industrially zoned parcels and the available three (3) acres, owned by the Washington Area Transit Authority (WMATA), proposed for joint development, must be sensitive to the surrounding communities and established land uses (§ 1630.1)

Policies related to the Fort Totten Metro station Special Treatment designation include·

1 Maximizing Metrorail access and leveraging;

The proposed PUD does not maximize Metrorail access or leveraging. If anything, this development will add to increase in traffic congestion to this area, which will substantially interfere with access to the Fort Totten Metro station

2 Developing unused industrial land for medium density residential and commercial mixed uses,

This objective is not fulfilled with the proposed development, because this development actually creates moderate density residential use without commercial use This makes mixed uses of the site impossible for development of this unused industrial land. (Below please find suggested options to make this development become a mixed commercial and residential use site)

3 Increase the residential component to strengthen local commercial establishments along Riggs Road, NE;

This development does not increase the residential component of Riggs Road, but instead is increasing the residential component for Emerson St and 7th St NE, which is not a part of the Ft. Totten Metrorail housing opportunity area as describe above

4 Create a mini-in-town community,

This development only increases the residential component of Emerson and 7th Street In order for this proposal to create a mini-town community an adopted

commercial element and more open space, must be included in the proposal (Below please find alternative options identified to satisfy this policy objective.)

Moreover, the proposed housing units will increase demand for restaurants, retail and other commercial development without providing any increase in availability of these services, and without increasing retail services and opportunities for current ward residents

Mixed Use Development

The Zoning Commission found that the Clark Realty proposal will contain approximately 10,000 square feet of ground floor retail space, located Galloway Street, N.E . This proposal does provide the requisite commercial and residential mix uses, however, the Rocky Gorge project only increases the residential component without offering a contribution to the commercial component required for this section of Ward 5.

> 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.

CCNMP believes the Rocky Gorge project should be required to add to the commercial component of the neighborhood by offering to bring in a child/elderly care development center or a coffee shop to occupy the 10,000 square feet retail space in the Clark Realty project We believe this additional benefit will strengthen their application and will provide a superior feature to this proposed PUD. A child/elderly care center or coffee shop will benefit the surrounding neighborhood and the general public to a significantly greater extent than would likely result from development of the site under the matter of right provisions found in the PUD regulations. This addition to the project will create a mini-town environment and address the growing needs of the youth and elderly in the community. Furthermore, the Clark development and the Rocky Gorge development will inevitably increase the family based population in this area. These projects should look to mitigate this adverse affect by providing facilities that accommodate this increase and that provide special value to this neighborhood.

Additionally, CCNMP has requested "park like" facilities to be included within Rocky Gorge's proposed amenities package to provide for a place for the young children to play. The developer has proposed donating 15, 000 to the local recreation center The community recreation center is at 13th and Emerson, which is just short of a mile. Many neighbors are concerned about having a place for the small children to play. Currently, small children are found playing on Emerson street, which will now have significantly more traffic as a result of the Rocky Gorge Development. CCNMP has spoken with the developer about an inclusion of a park within the green space provided on the site of the development The developer has expressed concern that a park would create a possible attractive nuisance which would subject them to possible liability CCNMP understands that the developer must guard against possible liabilities and

recognizes that one of the green spaces within the development is near the Fort Totten railroad tracks. CCNMP would like the developer to consider developing either an offsite location within ¼ of a mile of the site to construct a park settings geared toward small children or to modify this request and to address the mixed residential and commercial aspect for Ward 5 CCNMP also proposes that the developer should attempt to procure a "Chucky Cheese" or some other form of child play business to occupy the 10,000 square feet retail space projected in the Clark Realty development. These two developers can have a joint venture development that will benefit the surrounding community who will be adversely affected by the construction of their developments.

To address the historic preservation of the structure of the neighborhood the CCNMP suggest a community deferred maintenance plan- a plan for home owners in this neighborhood to get improvements done on their homes This could be done through a foundation in which Rocky Gorge could contribute money and then be directors of the foundation or this could be done through the DC Department of Community Development and Housing. This could be a loan program in which home owners could get a low financial rate for home improvement loans These homes were built between 1950 and 1955, some of the homes are in desperate need of improvements. This will create a much need public amenity that will benefit these immediate neighbors of the propose site. Preserving the neighborhoods historic features of these homes will add to the aesthetic features of the neighborhood and the Rocky Gorge development.

Increase in Housing in North Michigan Park Inconsistent with Ward 5's Vision Statement

The final report from the Office of Planning noted that there were plans to develop a mixed-use development on part of the Fort Totten Metrorail station parking area. Clark Realty has proposed to construct 297-365 multi-family dwelling units in five structures on approximately 5 6 acres, with 4 to 5 story buildings. The Rocky Gorge development has proposed increasing the residential component of Ward 5 by adding 75 townhouse dwellings to the area Together, these proposed developments substantially increase residential housing within this neighborhood cluster by approximately 440 units. This increase in residential housing is inconsistent with the vision of Ward 5 and the housing goals for the North Michigan Park neighborhood

> 1600 2 Ward residents envision a future where the stable neighborhoods are protected and enhanced, to improve the quality of life in poorer neighborhoods Ward 5 will be an attractive and secure place in which to live, work, and raise a family
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> 1600.3 Neighborhoods like Michigan Park, *North Michigan Park* . have a strong sense of community and visual identity. *Few changes* are envisaged here. These neighborhoods will be protected from excessive traffic, commuter parking, noise and litter and be buffered from the negative impacts of new commercial, industrial, and other nonresidential development Places of historic significance,

gateways, parks and open space, and special streets and places will be enhanced to *provide a more attractive setting and quiet refuge from daily living*

1600 4 Other neighborhoods like Brentwood, Ivy City, Trinindad, Eckington, Bloomingdale, Truxton Circle, and Hanover Place will benefit from new and rehabilitated housing, increased retail and public services, and expanded employment opportunities

When read together 1600 3 and 1600 4, clearly identify the neighborhoods that would benefit from expanded residential development The North Michigan Park area envisaged only few residential changes Whereas, parks and open space are encouraged, along with a need to enhance and provide an attractive setting and quiet refuge from daily living.

Furthermore, the housing objectives for Ward 5, again suggest stimulation for the production of new housing, in Fort Lincoln and Ivy City, not in the North Michigan Park neighborhoods. However, the housing objectives do identify a need to provide incentives for improving housing coupled with the opportunity to address the needs of the elderly and persons with disabilities.

Ward 5 Housing Opportunity for Elderly, Disabled, and Low Income Persons

Although the Fort Totten Metrorail Station is also designated as a Housing Opportunity Area, § 1609 1, the housing objectives are intended to meet the needs of all the ward's residents, including the elderly and persons with disabilities, § 1608 1, as well as expanded housing for low and moderate income families, § 1609.1

The Rocky Gorge proposal, which sits on one of the few potential parcels available for development around the Fort Totten Metro Station, does not meet any of these objectives. While it will provide 75 units of housing, they are aimed toward upper-income individuals and families. None of the units are targeted for the elderly, people with disabilities, or low to moderate income families.

To address this deficiency within the applicants proposed amenities package the Office of Planning proposed adding two (2) affordable housing units marketed at 85% of the Washington Area Median Income. These units are to remain "affordable" for a period of 20 years as a housing provision to strengthen the applicant's proposal Under § 2499, Affordable Housing is considered "housing where the occupant is paying no more than thirty-five percent (35%) of gross income for gross housing costs, excluding utility costs." If the required housing is provided for home ownership, § 2404 states the Commission shall have the authority to devise and adopt suitable provisions appropriate to each case; provided, that

(1) The provisions shall be consistent with the intent of the Comprehensive Plan housing linkage legislation, and

(2) The Commission shall consider whether to require the applicant to legally mandate recapture of subsidy funds by the housing sponsor from the home

owner if the dwelling unit is sold to a person or household that does not qualify as low or moderate income during a twenty (20) year period after the original occupancy of the dwelling unit, so that the housing sponsor may re-use the funds for other affordable housing projects, and

CCNMP request the proposed "Two (2) affordable units . to remain "affordable" for a period of 20 years" to be targeted solely to low income occupants, such as the elderly, disabled, and families receiving government assistance for living, to be set aside for a perpetual indefinite period.

The Proposed PUD Does Not Provide Adequate Public Amenities

The proposed PUD development also does not provide a sufficient number of quality of public benefits and convenience as required by PUD regulations, 11 DCMR § 2400 *et seq* Section 2400 2 of the PUD regulations expresses that the "overall goal is to permit flexibility of development and other incentives, .. 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. The proposed development fails to provide any public benefit with respect to most of the categories enumerated in 11 DCMR §2403. To address this deficiency CCNMP has requested the following.

Pursuant to 11 DCMR 2403 7, CCNMP proposed that Rocky Gorge fund a Community Restoration Fund that include the following amenities:

1. This fund will be used to improve the landscape the surrounding neighborhood by implanting shrubs, flowers, and other types of complimentary foliage

2. Repair of sidewalks and other neighborhood walkways throughout the neighborhood

3 Adding speed bumps through the neighborhood to mitigate traffic concerns.

4 Improve existing street lighting by adding decorative small light post throughout the neighborhood surrounding the development

5. Improve existing piping and major plumbing lines

6 Add street benches and trash receptacles throughout the neighborhood

7 Expand the proposed green space within the interior of the new development to include benches, lighting, small jungle gym for small children, tables, gazebo, more trees and decorative foliage, and decorative fountains

8 Improve surrounding neighborhood access to the above mentioned green space to be more welcoming to the surrounding neighbors

9. Funding to reimburse property damage to homes caused by the construction

The surrounding community currently needs restoration and maintenance, which would not be provided or assisted by this PUD development CCNMP has spoken with the developer about a community restoration fund The developer's attorney mentioned that they did receive our letters raising this as a viable opportunity to address the public amenity in addition to the existing public benefits The developer stated that they had contacted the Department of Transportation to inquire about opportunities to address these concerns. The developer also stated that they would continue to research the matter and has agreed to investigate the property claims relating to alleged property damage cause by the development's construction.

§ 2403 identifies a public benefits as 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 the PUD regulations Currently, the developer has offered contributions to the Lammond-Riggs Library, to the recreation center, and for signs that display "Welcome to North Michigan Park." These features are directed toward the general public CCNMP does not believe signs are superior features of this proposed PUD Although the contributions to the library and the recreation center may be superior features they do not meet the balancing test requirements The above mentioned contributions to do community restorations creates a project amenity that is beneficial and specifically a functional or aesthetic feature of the proposed development that adds to the attractiveness, convenience, or comfort of the project for **occupants and immediate neighbors.** (emphasis added).

In deciding a PUD application, the Commission shall 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 CCNMP believes that it's proposal modified combined with the existing amenities package to be superior in many ways and would be acceptable in all of the categories found in § 2403 9, and strengthens the existing amenities package by adding to·

1. Urban design, architecture, landscaping, or creation or preservation of open spaces;

The community restoration fund will be contributed by Rocky Gorge, LLC, to the Department of Transportation for management and implementation of landscaping and other improvements to the area

2. Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts,

The community restoration fund includes funding for speed bumps to be placed in the neighborhood to control the impact of the increase traffic concerns.

3 Employment and training opportunities,

If there is a way to allow Clark Realty's commercial space to include a child care/elderly community center, influenced by Rocky Gorge, another developer, or by the Office of Planning, this will increase employment and training opportunities for the surrounding community. Adding this benefit to the community will also provide a form of social services facilities for the youth and elderly. As noted above, there are very few retail and commercial services in this specific area, and CCNMP believes that a mixed residential/commercial development would be more appropriate to the site.

4. Housing and affordable housing;

Previously, we noted the support of additional affordable housing units as welcome additions to this development, including the requirement to maintain these units to be targeted at the elderly and other fixed income/low income households

5. Environmental benefits, such as stormwater runoff controls and preservation of open space or trees,

Currently the developer is studying opportunities to control project construction and storm water management that meet or exceed the LEED standards. CCNMP supports and encourages adoption of this public benefit.

6 Uses of special value to the neighborhood or the District of Columbia as a whole; and Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.

CCNMP believes the existing amenities package in addition to our suggested modifications creates a superior amenities package for this PUD project These combined amenities add special value to this neighborhood and the District as a whole. These amenities further the housing objectives, public facilities objectives, economic development, and land use themes of the Comprehensive Plan. Moreover, these amenities advance the Fort Totten Development Opportunity and Special Treatment policies for mixed residential and commercial use for this area

CCNMP is concerned that if Rocky Gorge's request for a PUD development is granted without the provision of additional public benefits suggested herein, private interests will benefit at the expense of the community CCNMP's proposals for additional public benefits should be a required addition to the proposed amenities package in exchange for the requested flexibility associated with this PUD development

We thank you for attention to this matter and appreciate having the opportunity to make social responsibility and giving back to the community a required consideration for all proposed developments

K Brown (LAM)
Kessela Brown, Student Advocate

CFay (LAM)
Caragh Fay, Student Advocate

Attachment. Statements of witness testifying on behalf of Concern Citizens of North Michigan Park