TESTIMONY OF
PAULA E. NICKENS
BEFORE THE
BOARD OF ZONING ADJUSTMENT

May 18, 2004

RE: **Application Number 17148**
(Request for Zoning Variance)
3034 Clinton Street, N.E. (Square 4319, Lot 72)
Applicant: Marshall Heights Community Development Corporation

Good Afternoon:

My name is Paula Nickens. I live at 3024 Clinton Street, NE. I am a native Washingtonian. I am here today to re-emphasize the points I made at the April 20, 2004 hearing on this matter, to express my and the community's continued opposition to this variance request, and most importantly, to point out to the board the continuing arrogance of the Marshall Heights Community Development Corporation and the fact that they have not adequately demonstrated that they can meet the burden of proof as required by the D.C. Code.

During my April 20, 2004 appearance, I laid out for you the three-prong test that Marshall Heights is required to prove in order to be granted the variance requested in their application. They failed to meet that test in their initial submission and unfortunately for them, they still fall far short of the requirement in their revised submission.

BZA
Case No. 17148
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
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I will focus first on Marshall Height's inability to meet the *Burden of Proof* and why their application must be denied. Marshall Heights has failed to demonstrate in any manner, that it can satisfy the letter or the spirit of the law.

In attempting to address the required *Burden of Proof,* Marshall Heights starts off by quoting D.C. Code Annotated, Section 5-424(g)(3)(1981). Pursuant to this Section, Marshall Heights must meet both a "practical difficulties" test and an "undue hardship" test.

A careful review of the D.C. Code reveals that Marshall Heights meets neither.

First, to satisfy the "practical difficulties" test, Marshall Heights must show that strict compliance with existing zoning requirements would be unduly burdensome.

> That's a tough test for Marshall Heights. First of all, unlike the average land owner, or person seeking to purchase property, Marshall Heights has had a piece of prime property handed to them, at the expense of taxpayers; and without consideration for others interested in purchasing the property.
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> Consequently, they start out ahead. Yet, they have chosen to take the less expensive route; and have shown that they are not interested in developing the property. Instead of considering the less intrusive,

more feasible approach to building a conforming house on donated land they choose to infringe upon existing property owners by squeezing a non-conforming house on the smallest part of the lot.

They seek to deprive homeowners on both sides of the property of space that they have enjoyed for years and more importantly, is otherwise guaranteed to them under the protection of the law. Not to mention, one of the existing property owners is here today, and has testified that he is interested in purchasing the land, improving the entire lot, and upgrading his property value; and has been denied due process in the acquisition of the land.

Secondly, to satisfy the "undue hardship" test Marshall Heights must show that existing zoning regulations prohibit the use of the property in a conforming, productive manner that would yield a fair and reasonable return as a result of ownership of the property.

Marshall Heights can't meet this test at all. First of all, there is nothing that would prohibit offsetting the property, building the house further back and performing the necessary excavation and land improvements to enhance the entire lot, positively upgrading surrounding property values and the community as a whole. Considering the upfront capital that Marshall Heights would have to invest in acquiring this property, the financial impact of making these improvements to the property would be minimal and would not significantly affect their rate of return.

Most interestingly, Marshall Heights has not demonstrated that it even owns the property. In fact, if we are to believe them, their ownership of the property is contingent upon receiving this variance. A direct application of the "undue hardship" provision of the law effectively means that Marshall Heights lacks standing in this application.

The only persons that would suffer any "difficulties or hardship" as a result of this variance would be surrounding property owners and the community as a whole. Both adjacent property owners would have to adjust to living in smaller spaces, which could have the reverse affect of decreasing their property value, and the community at large would have to continue living with unimproved property.

We would much rather see the owner of that property take an interest in the community and a long term interest in the property, not a prevailing concern with the immediate rate of investment return.

To grant Marshall Heights this variance would be a flagrant violation of the public trust.

First, there is no justification for granting relief. Marshall Heights has offered no credible reason for seeking relief, other than to avoid expenses that a reasonable property owner with a stake in his or her community, concerned about the value of his or her property would normally expect to encounter when purchasing and developing property.

Secondly, Such action would be both detrimental to the public as a whole and would substantially alter the zone plan.

Thirdly, I want to emphasize that Marshall Heights has demonstrated that it does not have any concern for our community or its people. As discussed during the April 20, 2004 Hearing, Marshall Heights has demonstrated a total disregard for existing property owners. They have ignored our request for information and have refused to meet with the community. Likewise, they have displayed a disdain for this Commission. Even after being advised by members of this Commission that they should consult with us and hear our concerns and attempt to work with us, no such meetings or communications have occurred. Yet they have proceeded as though we are irrelevant.

They posted the big 5' X 7' or larger "Home Again" Initiative sign in our community about three weeks ago, as if the variance had been approved.

They stapled the Notice about this Hearing to a tree, in violation of City code prohibiting staples in trees to post signs; and substantially late for timely notice of this meeting.

After being specifically requested by the BZA to file its amended request on or before May 4, 2004, the revised application was not filed until on or about May 8, 2004.

Finally, I want express our (the community) concern about making sure that the record is complete. We believe that we have done all that we can do to demonstrate our willingness to work with Marshall Heights and to make sure that our concerns, as a community, are heard.

Upon receiving notice about this project, we immediately came together as a community and have worked tirelessly to ensure that our interests were protected. We have reached out to Marshall Heights and our Advisory Neighborhood Commission.

District law mandates that ANCs have "great weight". In that we have understood and respected the authority of our ANC we do not want to be victims of the process.

We want you to know what we have done and ask that you give our actions the consideration that it deserves. The following is a chronology of events that have occurred:

- The community has collectively agreed to oppose Marshall Heights' application for zoning variance for all of the reasons stated in my April 20, 2004 testimony, as well as those provided by other members of the community, and for the reasons stated herein.

- The community met with ANC 5A11 on March 9, 2004 and voted to oppose the Application for Zoning Variance requested in Application Number 17148.

- On March 24, 2004, the full ANC 5A unanimously ratified the actions of ANC5A-11 and voted to oppose the Application for Zoning Variance requested in Application Number 17148.

- On March 30, 2004 ANC 5A forwarded a letter by facsimile and lst class mail to the BZA expressing its opposition to the Zoning Variance requested in Application Number 17148.

- On April 20, 2004, ANC Commissioner Margaret Thompson appeared before the BZA on behalf of ANC 5A and testified in opposition to the Zoning Variance requested in Application Number 17148. Additionally, I and other members of the community appeared before the BZA and testified in opposition.

- On May 7, 2004 the members of the community had a follow-up meeting with ANC 5A11, following receipt of Marshall Heights' revised application and reaffirmed its opposition to the requested variance. The opposition was based on the following additional observations:

    - There were no positive changes in Marshall Heights' revised application;

    - Marshall Heights' revised application was more damaging to the adjacent property owners and the community at large;

- Due to the increased width of the proposed house, the side yard variances would have a more negative impact on the adjacent properties;

- On or about April 28, 2004 ANC 5A met and was provided an update by ANC 5A11.

We love our community. We love our environment of single-family homes. We love our trees. We love our space. We have a mixture of homeowners, renters and Section 8, low-income residents.

We have learned that resident property owners are the best neighbors. When individuals purchase property and live in that property, they have a greater stake in upkeep and maintenance. They understand the need to maintain the entire lot. Our experience with developers, and the actions thus far from Marshall Heights, leaves a lot to be desired. Developers traditionally take on a different approach. Like Marshall Heights, they seem more concerned about how much they can make and the financial returns for their organizations. Community concerns are less important.

In closing, we ask that you support the existing homeowners and deny the requested variance for the following reasons:

Marshall Heights Community Development Corporation has failed to:

- Satisfy the required Burden of Proof.
- Operate in "good faith" with residents
- Mitigate the damages to existing property owners.

Again, I want to thanks for you for the opportunity to speak. I will answer any question you may have.

Sincerely,

PAULA E. NICKENS