

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

APRIL 1, 2008

+ + + + +

The Regular Public Meeting  
convened in Room 220 South, 441 4th Street,  
N.W., Washington, D.C. 20001, pursuant to  
notice at 9:30 a.m., Ruthanne G. Miller,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson  
MARY OATES WALKER, Board Member  
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CURTIS L. ETHERLY, JR., Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.  
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

HARRIET TREGONING, DIRECTOR  
JENNIFER STEINGASSER  
JOEL LAWSON  
TRAVIS PARKER  
STEPHEN MORDFIN  
KAREN THOMAS  
MAXINE BROWN-ROBERTS  
DOUGLAS WOODS  
STEVEN COCHRAN  
ARTHUR ROGERS  
MATT JESICK  
ARTHUR JACKSON  
STEPHEN RICE

The transcript constitutes the  
minutes from the Public Meeting held on April  
1, 2008.

<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>CALL TO ORDER:</u>	
Ruthanne Miller . . . . .	4
<u>MOTION FOR MODIFICATION OF APPROVED PLANS AND WAIVER OF THE SIX-MONTH TIME REQUIREMENT</u>	
<u>APPLICATION NO. 17474-A</u> . . . . .	6
<u>Vote to approve</u> . . . . .	16
<u>FAMILY PLACE</u>	
<u>APPLICATION NO. 17728</u> . . . . .	17
<u>Vote to approve</u> . . . . .	37
<u>DISTRICT-PROPERTIES.COM, LLC</u>	
<u>APPLICATION NO. 17701</u> . . . . .	39
<u>Vote to approve</u> . . . . .	56
<u>DISTRICT-PROPERTIES.COM, LLC</u>	
<u>APPLICATION NO. 17702</u> . . . . .	58
<u>Vote to approve</u> . . . . .	66
<u>FRANCIS FABRIZIO AND GLEN THOMAS</u>	
<u>APPLICATION NO. 17724</u> . . . . .	68
<u>Vote to approve</u> . . . . .	80
<u>ADJOURN</u> Ruthanne Miller . . . . .	82

1

2

P-R-O-C-E-E-D-I-N-G-S

3

10:13 a.m.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

CHAIRPERSON MILLER: Good morning, ladies and gentlemen. This meeting of the Board of Zoning Adjustment will come to order. My name is Ruthanne G. Miller, and joining me today is Mr. Curtis Etherly to my far right representing the Zoning Commission. Vice-Chair, Mr. Marc Loud, is not here today. He would normally be sitting to my right.

To my left Ms. Mary Oates Walker will be joining us shortly. Then Mr. Shane Dettman follows. Next to Mr. Dettman is Mr. Cliff Moy from the Office of Zoning, Sherry Glazer from the Office of Attorney General, and Ms. Beverley Bailey from the Office of Zoning.

Joining me to my right is Mr. Marc Loud who is the Vice-Chair. To my left is Mr. Shane Dettman, member of the Board. With us today also are Lori Monroe from the Office of

1 Attorney General, Cliff Moy and Beverley  
2 Bailey from the Office of Zoning.

3 Copies of today's meeting agenda  
4 are available to you and are located to my  
5 left in the wall bin near the door. We do not  
6 take any public testimony at our meetings  
7 unless the Board asks someone to come forward.

8 Please be advised that this  
9 proceeding is being recorded by a court  
10 reporter and is also webcast live.  
11 Accordingly, we must ask you to refrain from  
12 any disruptive noises or actions in the  
13 hearing room. Please turn off all beepers and  
14 cell phones at this time.

15 Does the staff have any  
16 preliminary matters?

17 MR. MOY: I think it's best to  
18 handle any preliminary matters on a case-by-  
19 case basis.

20 VICE-CHAIRPERSON MILLER: Okay. I  
21 just want to make an announcement. Those of  
22 you who have a schedule or meeting agenda, we

1 are going to make one change and that is we  
2 are going to hear Application No. 17728 of  
3 family Place second as Mr. Etherly is  
4 participating on the first case and that case  
5 so we'll go in that order and then the rest  
6 will remain the same.

7 I think we are ready for the first  
8 decision and that would be No. 17474-A.

9 MR. MOY: Yes. Good morning,  
10 Madam Chair and members of the Board. The  
11 first case for decision, as you said, is  
12 request for a Motion for Modification of  
13 Approved Plans and Waiver of the Six-Month  
14 Time Requirement. This is to Application No.  
15 17474-A, pursuant to section 3129 of the  
16 Zoning Regulations.

17 If the Board will recall, this is  
18 to the original application that was approved  
19 by the Board, Application 17474 of ASR Group,  
20 Inc. as amended.

21 That was pursuant to 11 DCMR  
22 3103.2 for a variance from the lot occupancy

1 requirements under section 772, a variance  
2 from the residential recreation space under  
3 section 773, a variance from section 2115.2  
4 that any accessory parking area or parking  
5 garage with 25 or more required parking spaces  
6 may designate up to 40 percent of the required  
7 parking spaces for compact cars, and a special  
8 exception, pursuant to 11 DCMR 3104.1 and  
9 411.3 requiring that rooftop elements be  
10 placed in one enclosure.

11 This was to allow the construction  
12 of a new 326-unit apartment building in the C-  
13 2-A District at premises 1300 Rhode Island  
14 Avenue. That's in Square 3956, Lot 801.

15 The applicant filed this request  
16 on March 4, 2008 and this is identified in the  
17 case folders as Exhibit 34. Madam Chair,  
18 there were no other filings in the record on  
19 this application. Essentially staff will say  
20 that the Board is to act on the requested  
21 relief to waive the required six-month time  
22 period pursuant to 3129.3.

1                   Second, if the Board chooses to  
2                   grant the request to waive the six-month time  
3                   period, then the Board is to act on the merits  
4                   of the request for the modification of  
5                   approved plans pursuant to section 3129.7.  
6                   That completes the staff's briefing, Madam  
7                   Chair.

8                   CHAIRPERSON MILLER: Thank you,  
9                   Mr. Moy.

10                  First, I want to say that Mr.  
11                  Etherly and I both participated on that case.  
12                  I heard the case and deliberated, the order  
13                  that is being sought for modification. I  
14                  believe Mr. Dettman has read the record but  
15                  you might just want to state that for the  
16                  record.

17                  MEMBER DETTMAN: Thank you, Madam  
18                  Chair. It was actually my predecessor that  
19                  actually originally sat on the hearing, John  
20                  Mann. Being that I'm his replacement and the  
21                  need for a quorum, I did read the record in  
22                  its entirety.



1 CHAIRPERSON MILLER: Okay. Thank  
2 you. Then we can proceed, I think, with the  
3 first preliminary issue and that is waiver of  
4 the six-month time requirement to file for  
5 modification of approved plans pursuant to  
6 section 3129.3. Request for modification of  
7 plans must be received no later than six  
8 months from the issuance of the final order.

9 The order in this case was issued  
10 on June 6, 2006. The applicant filed a  
11 request for modification on March 4, 2008,  
12 which is almost two years later. Not quite  
13 but close. However, we have authority under  
14 our rules pursuant to 3100.5 to waive  
15 provisions of the chapter for good cause shown  
16 wherein the judgment of the Board the waiver  
17 will not prejudice the rights of any party and  
18 is not otherwise prohibited by law.

19 The applicants, I believe,  
20 characterize the good cause in this case that  
21 it took time to redesign a project and improve  
22 the economics of the project in light of a

1 change in the market that has taken place, in  
2 particular the market with respect to  
3 condominiums.

4 No party has opposed the  
5 modification and there is no indication that  
6 waiver will prejudice the rights of any party  
7 so I would be in favor of granting the motion  
8 to hear this even though it's later than six  
9 months.

10 COMMISSIONER ETHERLY: Second it,  
11 Madam Chair.

12 CHAIRPERSON MILLER: Okay. I  
13 think that is the consensus of the Board. We  
14 can proceed with the merits of this case.  
15 They are requesting a modification of approved  
16 plans. They want to change it from  
17 condominiums to apartments and in so doing  
18 they have made changes to the plans to make  
19 the units more appropriate for apartments and  
20 to provide changes in the lobby such as the  
21 leasing office and management office that are  
22 more appropriate for an apartment building.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 They are increasing the number of units from  
2 326 to 333.

3 The standard here is set forth in  
4 3129.7. It says, "Approval of request for  
5 modification of approved plans shall be  
6 limited to minor modifications that do not  
7 change the material facts the Board relied  
8 upon in approving the application."

9 Regs really only go to minor and  
10 they don't really differentiate minor and  
11 major but they do lead us to look at whether  
12 material facts relied upon the Board are being  
13 affected. The applicant has pointed out that  
14 it doesn't change the material facts upon  
15 which the zoning relief was approved.

16 We granted relief in this case for  
17 lot occupancy, residential recreation  
18 requirements, some variance from parking  
19 requirements related to compact cars and roof  
20 structures. This does not affect any of the  
21 relief that was granted. Nor does it create  
22 any additional relief.

1 Nor does it skim away some of -- I  
2 was looking at the transcript from our hearing  
3 and what we looked at in the project and it  
4 doesn't seem to affect that either, some of  
5 the amenities such as the balconies that went  
6 to the lot occupancy.

7 It doesn't take those away. We  
8 were talking about how that contributed to  
9 quality of life. It doesn't look like it  
10 affects any of the material facts or the  
11 relief that was granted.

12 I have one more comment and then  
13 I'll open this up to others. The applicants  
14 make a statement in their footnote saying  
15 that, "Although the final order for the  
16 application was for a 326-unit building, as  
17 plans were finalized the number of units was  
18 reduced to 323 units. Accordingly, the total  
19 number of units is increasing from 323 to 333  
20 units but only seven more than originally  
21 approved."

22 This isn't an issue for us for a

1 decision but I have a concern with that  
2 statement in that they seem to indicate that  
3 they were going to be changing the floor plans  
4 anyway. To me that flags that probably should  
5 have come back to us as a minor modification  
6 as well. That really would have been minor  
7 but I'm not aware of rules that allow that  
8 kind of change to the plans without a minor  
9 modification. I just want to make that  
10 comment. It's just a comment in response to  
11 their footnote.

12 Okay. Any other comments on the  
13 motion for modification?

14 COMMISSIONER ETHERLY: Madam  
15 Chair, I would just like to echo all of your  
16 sentiments with respect to this minor  
17 modification request. I, too, agree with you  
18 with regard to the concern for footnote No. 1  
19 on page 2. That was quite interesting. Let's  
20 hope that is not too much of a habit.

21 On the issue of habit, I did want  
22 to highlight this is, indeed, a modification

1 scenario that I am sure this Board may very  
2 well see more of as we continue to deal with  
3 the fallout from both the general economy as  
4 well as just the overall housing market in  
5 general.

6 I believe that typically these  
7 types of changes perhaps won't be as easy and  
8 as straightforward as this, again, for all the  
9 reasons you set forth, most importantly being  
10 no material change to the relief being sought  
11 by the applicant here.

12 This minor modification, I  
13 believe, does, in fact, rise to that level but  
14 I would hazard to guess as we move forward  
15 more and more developers are going to be  
16 confronted with the potential need to retool  
17 or redesign.

18 As you indicated with respect to  
19 footnote No. 1 no matter how "minor" or modest  
20 they think the modification may be, it is  
21 definitely hoped by this member that  
22 applicants indeed come before this Board to

1 make any substantial changes, any changes, to  
2 what is otherwise approved by the Board.

3 Thank you, Madam Chair.

4 CHAIRPERSON MILLER: Thank you. I  
5 also want to comment on that just a little bit  
6 further. There is an ongoing process right  
7 now of reexamining the Zoning Regulations that  
8 the Office of Planning and the Office of  
9 Zoning are organizing and the public is  
10 included in the process.

11 In that process there may come  
12 about a need to differentiate between what is  
13 a minor modification and what is a more major  
14 modification or perhaps the Zoning  
15 Administrator might have a certain degree of  
16 flexibility or whatever. As far as I know  
17 right now there isn't that flexibility.

18 Okay. Anything else? All right.  
19 Then I will move approval. The motion for  
20 modification of approved plans and waiver of  
21 the six-month time requirement to Application  
22 No. 17474-A pursuant to section 3129 of the

1 Zoning Regulations.

2 COMMISSIONER ETHERLY: Second it,  
3 Madam Chair.

4 CHAIRPERSON MILLER: Further  
5 deliberation? All those in favor say aye.

6 ALL: Aye.

7 CHAIRPERSON MILLER: All those  
8 opposed? All those abstaining? Would you  
9 call the vote please.

10 MR. MOY: Yes, Madam Chair. Staff  
11 would record the vote as three to zero to two.  
12 This is on the motion of the Chair, Ms.  
13 Miller, to approve the motion and also approve  
14 waiver of the six-month time requirements.  
15 Seconded by Mr. Etherly. Also in support Mr.  
16 Dettman and we have two members not  
17 participating and not voting on this  
18 application or this motion.

19 CHAIRPERSON MILLER: As there is  
20 no party in opposition it can be a summary  
21 order.

22 MR. MOY: Very good. Thank you.



1 CHAIRPERSON MILLER: Thank you.

2 MR. MOY: The next application is  
3 Application No. 17728 of Family Place pursuant  
4 to 11 DCMR 3104.1, for a special exception for  
5 a community service center. The last center  
6 was approved under BZA Order No. 16910. The  
7 special exception would be under section 334,  
8 in the R-5-B District at premises 3309 16th  
9 Street, N.W. which in Square 2676, Lot 469.

10 On March 11, 2008 the Board  
11 completed public testimony, closed the record,  
12 and scheduled its decision on April 1, 2008.  
13 The Board requested supplemental information  
14 from the applicant and staff is prepared to go  
15 into that detail if the Board so desires.  
16 The filing from the applicant was provided and  
17 is identified in your case folders as Exhibit  
18 36 dated March 24.

19 Madam Chair, we also have an  
20 additional filing from ANC-1 which was not one  
21 of the documents the record was kept open for  
22 so the Board may wish to look at that as a

1 preliminary matter.

2 At any rate, that filing is  
3 identified in your case folders as Exhibit 35.  
4 The Board is to act on the merits for the  
5 special exception relief. I think at this  
6 point staff will complete its briefings, Madam  
7 Chair.

8 CHAIRPERSON MILLER: Okay. Thank  
9 you very much. Why don't we just deal with  
10 the first preliminary issue of whether to  
11 accept the ANC letter. I would suggest that  
12 we should accept it. We can leave open the  
13 record for it as we always do because they are  
14 an integral party to this and they, in fact,  
15 did participate, I believe. At least an ANC  
16 rep in the meeting perhaps. Anyway, I think  
17 there is good cause for that and no prejudice  
18 to any party.

19 COMMISSIONER ETHERLY: Madam  
20 Chair, I most certainly have no objection to  
21 the acceptance of the ANC letter. Just for  
22 purposes of clarity will we be accepting the

1 letter as an expression of the opinion of the  
2 ANC or of the single member district  
3 commissioner, the SMD commissioner?

4 CHAIRPERSON MILLER: I'm just  
5 going to take a look at that letter and see if  
6 it meets the great weight or whether it was  
7 just from the ANC commissioner from the single  
8 member district or the entire ANC.

9 COMMISSIONER ETHERLY: It would  
10 appear to be from the commissioner. This is  
11 more detail rather than substance oriented.  
12 I think, as you indicated, it is entirely  
13 consistent with the testimony that was  
14 provided by the ANC so I'm comfortable perhaps  
15 either way.

16 Perhaps just for the sake of  
17 clarity maybe just as a representation of the  
18 SMD commissioner's position but, again, I  
19 don't think it is in any way consistent with  
20 the testimony that was provided by the ANC  
21 pursuant to its report in the first hearing on  
22 this matter.

1 CHAIRPERSON MILLER: Okay. I  
2 think it appears to me, and I don't know how  
3 others read this letter, that it is written by  
4 this single member district commissioner and  
5 doesn't reflect that there was a vote taken at  
6 a duly noted meeting. It's no big deal  
7 though. I think it's a very important letter  
8 to have from the commissioner that represents  
9 the area that is most impacted.

10 Again, I'm not sure if Mr. Moy  
11 noted this but I might as well off hand. We  
12 also had an earlier letter from both the chair  
13 and the ANC commissioner for the single member  
14 district dated July 11, 2007, in support.

15 Okay.

16 That's our preliminary matter then.  
17 So Family Place is seeking a special exception  
18 for a community service center under section  
19 334. They have been operating under several  
20 Board orders for the last 27 years, I believe.  
21 They apparently serve a very valued part of  
22 this community.

1           They provide family counseling,  
2           guidance, social services to low income  
3           expectant and new mothers in the neighborhood.  
4           They have been operating well for the most  
5           part in the community.

6           What happened, I believe, at the  
7           hearing we heard a few concerns with respect  
8           to some impacts like bulk trash in the  
9           backyard and loitering on the property. Not  
10          by their clients but just when they weren't  
11          there and some very minor but adverse  
12          situations.

13          Anyway, what happened at the last  
14          hearing was that the neighbors and the  
15          applicant and the ANC commission, I believe,  
16          all decided to get together and work out  
17          conditions that they thought would work and  
18          would address the adverse impacts. They did  
19          that and they have submitted that to us.

20          I think what we can do is somewhat  
21          go over the test for the special exception,  
22          although I don't think we have to spend too

1 much time on it because they have been  
2 operating in the community and very  
3 successfully so I don't think there is a big  
4 issue here.

5 "334.2, a community service center  
6 shall be located so that it's not likely to  
7 become objectionable to neighboring properties  
8 because of noise or other objectionable  
9 conditions."

10 It has been operating here, as I  
11 stated before, for a very long time not  
12 generating noise as far as I recall hearing in  
13 the hearing. Most of their activities are  
14 inside. The objectionable activities, I  
15 think, I just mentioned and they are going to  
16 be mitigated by the conditions and those dealt  
17 with trash and loitering.

18 Basically that's what I recall. I  
19 know we talked about lighting as well. There  
20 is not a traffic problem because most of the  
21 individuals that come by walking or use public  
22 transportation. They are not making any

1 structural changes. That's in 334.3.

2 "333.4, the use shall be  
3 reasonably necessarily convenient to the  
4 neighborhood in which it is proposed to be  
5 located." They do serve families in the  
6 neighborhood. That's who their clients are.  
7 Others that they serve outside the  
8 neighborhood come by public transportation for  
9 the most part. It's a nonprofit organization.  
10 We have evidence in the record of that.  
11 Certificate from the IRS.

12 The basic 3104s, you know, that  
13 would be in harmony with general intent and  
14 purposes of the Zoning Regulations. This  
15 community service is permitted in this zone  
16 subject to the Board's approval and it has  
17 been operating there for a long time, as I  
18 said.

19 I don't want to dwell too much on  
20 these because they are really not at issue but  
21 Office of Planning support, they say community  
22 service centers are not inconsistent in

1 moderate density residential areas. In fact,  
2 I think the history shows this is doing very  
3 well where it is and serving a great function  
4 for the community.

5 Do you want to address lighting,  
6 Mr. Walker? Oh, I guess we'll get to that in  
7 conditions as well. There was a question  
8 about, again, the loitering and the safety and  
9 we talked about lighting at the hearing. I  
10 think that is addressed in the proposed  
11 conditions.

12 We have letters in support from  
13 neighbors. The only opposition that we heard  
14 was really at the hearing and the parties have  
15 gotten together and suggested proposed  
16 conditions so I think we can turn to them  
17 unless anyone has any more comments about  
18 whether they meet the special exception test.

19 I'm looking at the proposed  
20 conditions of approval that are attached to  
21 the March 24, 2008 submission by the  
22 applicant. Also in that submission the



1 applicant says that there was a meeting to  
2 discuss the community concerns at the property  
3 on March 18, 2008. Neighbors were there,  
4 board of directors, the representative.

5 Okay. Let's skip along to the  
6 term because I think that is referenced in  
7 this letter and it is the number one  
8 condition. The first condition proposed says,  
9 "Approval shall be for a term of five years."  
10 There was discussion at the hearing at to  
11 whether they should have a longer term because  
12 they have been operating in this community for  
13 so long with basically a very good history.

14 However, the applicant has  
15 withdrawn that request and is proposing five  
16 years because I think that is what they got  
17 agreement in the community for. The only  
18 reason, I think, is -- well, not the only  
19 reason. I can't say that.

20 One of the reasons is that there  
21 were these concerns about trash and loitering  
22 and they would like -- the ANC would like to

1 see that these get resolved. Then five years  
2 later if all of this is resolved, then they  
3 may take a different position with respect to  
4 a term.

5 Is everyone in favor of going  
6 along with the five-year term? Okay. There  
7 shall be two parking spaces provided on site.  
8 Any objections to that? Okay. The hours of  
9 operation shall be from 9:00 a.m. to 7:30 p.m.  
10 Monday through friday with occasional meetings  
11 on weekend or week nights. Any concerns?

12 The number of full-time employees  
13 shall not exceed 13. No. 5, there shall not  
14 be more than 45 persons participating at the  
15 center unless this number is otherwise reduced  
16 by building codes. I have a little concern  
17 with the way this is written and I would like  
18 to propose different language that I think  
19 goes to the same point and open that for  
20 discussion.

21 That would be this shall be a  
22 maximum of 45 persons on site at one time or

1 something like that. I found it confusing,  
2 first of all, the reference to the building  
3 code starting with, "Unless this number is  
4 otherwise reduced by building code."

5 If you set a maximum or something  
6 and the building code is a lower number for  
7 some reason, then it would be the building  
8 code number. I mean, I'm not sure if we have  
9 to say that unless others think we do.

10 Then I found it confusing about  
11 not more than 45 persons participating at the  
12 center. I didn't know what participating  
13 meant. I don't know if anybody else has a  
14 better feel for whether we say at one time  
15 whether that changes the meaning here. It  
16 seems more measurable than participating. I  
17 don't know how you measure who is  
18 participating and who is not, whether anybody  
19 is even going to be counting.

20 I think the number might go to if  
21 they have certain programs or something that's  
22 the number of people they have in the building

1 at one time. Anyway, I don't want to dwell on  
2 this too much. I can just leave it at, "There  
3 shall be no more than 45 persons on site at a  
4 time." Do you have any reference? All right,  
5 I won't change the language too much. I'll  
6 just say, "There shall be no more than 45  
7 persons on site at a time."

8 Okay, 6. "Trash shall be picked  
9 up from the center two times per week. Bulk  
10 trash shall be kept inside the building and  
11 shall not be placed outside more than 24 hours  
12 before removal is scheduled."

13 Okay. Trash was a big issue, as I  
14 said, before. That was one of the most  
15 objectionable impacts that the neighbors were  
16 concerned about. It seems to me if this is  
17 how they all have resolved it that's fine.  
18 Okay. It's enforceable and it's clear. Okay.

19 Seven is the lighting issue. Do  
20 you want to look at that?

21 MEMBER WALKER: Sure, I will  
22 address that as this was my issue, I believe.

1 The way the condition is currently phrased is,  
2 "Dawn to dusk lighting shall be installed and  
3 maintained." For clarity I believe it should  
4 read dusk to dawn.

5 CHAIRPERSON MILLER: Okay. I  
6 would agree with that.

7 Eight, "New bilingual (English and  
8 Spanish) signage shall be placed and  
9 maintained on the front porch indicating (a)  
10 that donations are accepted only during  
11 regular business hours, and (b) there is to be  
12 no loitering."

13 Again, this goes to those two  
14 issues that were of greatest concern, the  
15 loitering and the accumulation of bulk trash.  
16 This is how they have addressed it and that  
17 looks like a good solution to me.

18 Okay, nine. "The Family Place  
19 shall hold a meeting with its neighbors on a  
20 quarterly basis to discuss operations of the  
21 center. Such meetings shall be advertised by  
22 flyer to all homes in the 3,300 block of 16th

1 Street, N.W. and to the Advisory Neighborhood  
2 Commission 1A and the single member district  
3 commissioner for ANC-1A-05.

4 Further, the Family Place shall  
5 submit an annual report to the Board of Zoning  
6 Adjustment listing date, time, and attendees  
7 of such meetings, community concerns noted at  
8 such meetings, and any actions taken or  
9 changes in operations made in response to  
10 community concerns. Copies of the annual  
11 report shall be made available to participants  
12 of such quarterly meetings." Comments?

13 First of all, BZA doesn't take in  
14 annual reports of this type. We have seen  
15 this in other proposed conditions and have  
16 eliminated them or changed them. Basically  
17 the BZA only looks at information related to  
18 cases when the case is actually before it for  
19 some reason.

20 However, this information, I  
21 think, is valuable to keep track of in the  
22 event that any of the parties want to bring

1 the information, for instance, to our  
2 enforcement officer if they feel there has  
3 been a violation or if the applicant in the  
4 future wants to show compliance in a later  
5 case or have its documentation.

6 I would propose certainly the part  
7 that says, "The Family Place shall submit an  
8 annual report to the Board of Zoning  
9 Adjustment." We could say that the Family  
10 Place -- I don't know. We could say that the  
11 Family Place shall produce an annual report  
12 listing those things and then say, "Copies of  
13 the annual report shall be made available  
14 to..." I would put in there for sure like  
15 ANC-1A and to participants of such quarterly  
16 meeting.

17 So I think it would read, that  
18 sentence that I'm changing, "Further, the  
19 Family Place shall produce an annual report  
20 listing date, time, and attendees of such  
21 meetings, community concerns noted at such  
22 meetings, and any actions taken or changes in

1 operation made in response to community  
2 concerns. Copies of the annual report shall  
3 be made available to ANC-1A and to  
4 participants of such quarterly meetings." Any  
5 comments on that?

6 COMMISSIONER ETHERLY: I must  
7 admit, Madam Chair, I'm still struggling  
8 somewhat with kind of the challenge of  
9 enforcing such a clause, if you will.

10 There is most certainly no  
11 disagreement from me with regard to the spirit  
12 of the intent behind the language as it's  
13 drafted currently and I most certainly recall  
14 there was quite a bit of discussion about  
15 ensuring that an ongoing dialogue continued to  
16 take place between the applicant and members  
17 of the community. Just the enforceability of  
18 being able to ensure that there is compliance  
19 on a ongoing basis with the provision of an  
20 annual report I'm somewhat ambivalent.

21 I would perhaps be more  
22 comfortable with simply leaving it at the



1 mandate regarding the meeting to ensure that  
2 takes place and then essentially leave it to  
3 the applicant and the members of the community  
4 to work out the details and the parameters of  
5 the type of information that is exchanged in  
6 that meeting.

7 I mean, I'm open to some  
8 discussion about it most certainly but it just  
9 seems perhaps that it might be a bit unwieldy  
10 for us to get into that level of detail.

11 CHAIRPERSON MILLER: Well, I think  
12 that is a valid point because I'm looking at  
13 this and it looks to me like it's almost like  
14 minutes to the meeting. If part of the point  
15 was submitting it to us and we are not taking  
16 it, that might be a reason for taking it out.

17 Part of my concern here is they  
18 agreed to these conditions. This is what they  
19 want to do. I have no problem with taking it  
20 out because they want to do this they can keep  
21 their minutes. What do others think?

22 Before I pass, I do think that the

1 meeting is actually the most important.

2 COMMISSIONER ETHERLY: Absolutely.  
3 My suggestion would be simply striking  
4 everything after the second sentence. "The  
5 Family Place shall hold a meeting with its  
6 neighbors on a quarterly basis to discuss  
7 operations of the center.

8 Such meeting shall be advertised  
9 by flyer to all homes in the 3300 block of  
10 16th Street, N.W. and to the Advisory  
11 Neighborhood Commission 1A and the single  
12 member district commissioner for ANC-1A-05."  
13 Then conclude there.

14 It would most certainly not just  
15 for the purposes of being clear about the  
16 Board's desire regarding the spirit of this  
17 condition and all of the conditions, it would  
18 be most certainly I'm sure the Board's sense  
19 that as full and as active a dialogue as  
20 possible takes place at that meeting between  
21 the ANC, members of the community, and  
22 particular residents of that particular block.

1 CHAIRPERSON MILLER: Others?

2 MEMBER WALKER: Madam Chair, I  
3 agree. I think all the parties have agreed to  
4 keep minutes and to disseminate them. It does  
5 not need to be included in the conditions  
6 here. Recalling from the hearing, I think the  
7 important thing was that there be a dialogue  
8 with the neighbors on a quarterly basis and  
9 from an enforcement standpoint that is all  
10 that should be included here.

11 CHAIRPERSON MILLER: Okay. So  
12 it's the consensus of the Board that we will  
13 strike the language starting with "further."  
14 I agree. I think it's a very good suggestion  
15 because the purpose of the conditions is that  
16 they be clear, that they be enforceable, that  
17 they are to mitigate any adverse impacts.

18 That part of the condition really  
19 isn't. Anybody who wants to keep minutes can  
20 keep minutes. The most important thing is  
21 that meeting and they had such a very  
22 successful one, I think, leading up to this

1       that is a good example. Okay. Anything else  
2       on this case?

3                   COMMISSIONER ETHERLY: Madam  
4       Chair, I'll just say very quickly I don't  
5       think it needs to be further specified in the  
6       conditions. I was tempted to highlight it  
7       when we discussed the issue of lighting but I  
8       don't think it needs to be specified.

9                   I'll just note I recall from the  
10      hearing testimony that there was discussion  
11      about a ramp for disabled access that was kind  
12      of off to the side of the yard and there was  
13      some reference to that area especially  
14      creating a little bit of a dark cul-de-sac  
15      where you may have some loitering activity  
16      from time to time.

17                  Again, I don't think it's  
18      necessarily important to carve that out  
19      specifically but I will just kind of highlight  
20      that as part of the Board's deliberations that  
21      as the lighting is addressed most certainly if  
22      we could be sure that there is attention paid

1 to that particular area, of course, I think  
2 that would be important. Again, I don't think  
3 it needs to be included specifically in the  
4 condition. It's already captured in the  
5 lighting that we discussed. Thank you.

6 CHAIRPERSON MILLER: I also want  
7 to note that there was discussion about a  
8 fence in the front as being another factor  
9 that was going to mitigate against the  
10 loitering problem. We all decided at that  
11 hearing that there was a need for a condition  
12 on that. Actually that was just going to be  
13 happening.

14 Anything else? In which case I  
15 will move approval for Application No. 17728  
16 of the Family Place pursuant to 11 DCMR  
17 section 3104.1 for a special exception for a  
18 community service center under section 334 at  
19 premises 3309 16th Street, N.W. as  
20 conditioned.

21 COMMISSIONER ETHERLY: Second,  
22 Madam Chair.

1 CHAIRPERSON MILLER: Further  
2 deliberation? All those in favor say aye.

3 ALL: Aye.

4 CHAIRPERSON MILLER: All those  
5 opposed? All those abstaining? Would you  
6 call the vote, please.

7 MR. MOY: Yes, Madam Chair. Staff  
8 would record the vote as four to zero to zero.  
9 This is on the motion of the chair, Ms.  
10 Miller, to approve the application as  
11 conditioned, seconded by Mr. Etherly. Also in  
12 support of the motion Mr. Loud and Ms. Walker.

13 Madam Chair, we also have an  
14 absentee vote from another participant, Mr.  
15 Loud. His vote is to approve the application  
16 as such conditions as the Board may impose.  
17 His only comment is that he was not in favor  
18 of the condition that would require the  
19 applicant to submit a quarterly report to the  
20 Board of Zoning Adjustment. That would give  
21 the resulting vote of five to zero to zero.

22 CHAIRPERSON MILLER: Thank you.

1 This can be a summary order as well as there  
2 is no party in opposition.

3 MR. MOY: Thank you.

4 CHAIRPERSON MILLER: Thank you.

5 MR. MOY: The next application for  
6 decision is Application No. 17701 of District-  
7 Properties.com, LLC, pursuant to 11 DCMR  
8 3104.1, for a special exception to allow the  
9 construction of -- the amendment is for a 17-  
10 unit apartment building under section 353 in  
11 the R-5-A District at premises 2825 Robinson  
12 Place, S.E. This is in Square 5875, Lot 862.

13 At the Board's decision meeting on  
14 March 4, 2008, the Board postponed its  
15 decision for the second time and rescheduled  
16 its decision to April 1. Essentially the  
17 Board received a file on March 4th from the  
18 Washington Legal Clinic for the Homeless, Inc.

19 The record was closed on January  
20 15, 2008, however, except for supplemental  
21 information requested by the board of the  
22 applicant. At the March 4th public meeting,

1       however, the Board allowed the Washington  
2       Legal Clinic to file argument as to reasons  
3       why the Board should waive its rules to reopen  
4       the record to allow the filing.

5               The two filings in the record,  
6       Madam Chair, is first from the Washington  
7       Legal Clinic and is identified in your case  
8       folders as Exhibit 35 dated March 18, 2008.  
9       With the record being open an additional month  
10      the Board did receive a requested filing from  
11      the District of Columbia Housing Finance  
12      Agency dated March 21, 2008. That document is  
13      identified in your folders as Exhibit 36.

14             The Board is to act on the merits  
15      of the request for a special exception under  
16      section 353 after it takes action on the  
17      filing from the Washington Legal Clinic. That  
18      completes the staff's briefing, Madam Chair.

19             CHAIRPERSON MILLER: Thank you,  
20      Mr. Moy.

21             Why don't we proceed with our  
22      preliminary matter first. That is the request



1 by the Washington Legal Clinic for the  
2 Homeless for the Board to delay its decision  
3 on this case. In general they ask us to delay  
4 until there is a plan in place for the Parkway  
5 Overlook property which is an abutting  
6 property.

7 They say in their March 18, 2008  
8 filing that they hope to have -- it is the  
9 Washington Legal Clinic for the Homeless and  
10 the Tenants Association for buildings on this  
11 property that they hope to have a  
12 redevelopment plan in place in the coming  
13 months.

14 There might be a potential impact  
15 on that plan by the relief being granted in  
16 this case. That is basically what their  
17 request is. We got the request at the last  
18 hearing and we weren't exactly sure what it  
19 was about so actually the Board, I think, by  
20 consensus if not granting a motion, did waive  
21 the rules to consider their request.

22 Now we are at the point where we

1 are considering their request further whether,  
2 in fact, to delay the proceedings any further  
3 until they have their plan finalized. That  
4 would involved -- I just want to say this  
5 again. This is a waiver of our rules as our  
6 record was closed.

7 We also did take in the request by  
8 the housing agency which went to the same  
9 issue but it still wasn't clear to us what the  
10 issue was but we did delay it to give them  
11 time to articulate what the issue was and  
12 that's what we have.

13 Basically 3121.5, just for the  
14 record, says that, "The record shall be closed  
15 following the public hearing except that the  
16 record may be kept open for a stated period  
17 for the receipt of specific exhibits,  
18 information, or legal briefs submitted after  
19 the close of the hearing."

20 3129.9 says, "Any material  
21 received by the Board after the close of the  
22 record that bears upon the substance of the

1 appeal or the application shall be returned by  
2 the director and not received into the files  
3 of the Board."

4 Basically, and I am somewhat  
5 repeating myself, but just to be clear it  
6 seems to me we did waive these rules to the  
7 extent that we are considering the request  
8 filed by both the D.C. Housing Finance Agency  
9 and the Washington Legal Clinic for the  
10 Homeless and that these documents are in the  
11 record now.

12 The question now is do we delay  
13 any further based on the arguments that were  
14 presented by Washington Legal Clinic for the  
15 Homeless. They did make a showing in their  
16 filing, I believe, as to the fact that their  
17 tenants did not have notice. They say that  
18 the Parkway Overlook property, all the tenants  
19 had been leaving the property as it's going to  
20 be renovated so they weren't there to see a  
21 placard.

22 What they didn't do to me -- I

1 mean, the standard here again, like we said in  
2 the other case, with waiving rules is we would  
3 be waiving again to postpone or take in more  
4 information on this case. They didn't really  
5 show a good cause, I don't think, as to how  
6 their development is going to impact the case  
7 that -- might develop the case that we are  
8 considering now.

9 They say, "The location of the  
10 lots on which variance are requested directly  
11 in the center of the Parkway Overlook property  
12 raises unique concerns regarding the impact of  
13 the proposed condominium buildings upon the  
14 neighboring property." They don't explain any  
15 of what these concerns might be. To me it's  
16 all very vague.

17 I think at our last decision  
18 meeting we gave them that opportunity to tell  
19 us not only why didn't you have notice but  
20 also why should we substantively keep the  
21 record open for more information and waive our  
22 rules.

1           Then the other aspect of this is  
2           that the Housing Agency, Housing Finance  
3           Agency, I believe which owns these properties,  
4           also asked us to pause but then they have  
5           submitted a letter saying they now have no  
6           basis to object. I just don't see what the  
7           basis is for us to go beyond our normal rules  
8           to keep the record open for this.

9           We have to weigh good cause again  
10          versus prejudice to the applicant. I think in  
11          most of these development cases, if not all,  
12          there is a prejudice of delay to an applicant  
13          with respect to cost. We didn't hear from the  
14          applicant but I think that is a normal factor.

15          The other thing I have to say on  
16          this we will be evaluating the case for  
17          adverse impacts on neighboring properties in  
18          any event. We will be giving it a good look.  
19          If they had some information for us to really  
20          consider, I think the pleading that we  
21          received would have been the pleading that at  
22          least would have been touched upon in some

1 way.

2 Do others have comments?

3 MEMBER DETTMAN: I would agree  
4 with everything that you said, Madam Chair,  
5 with respect to the Washington Legal Clinic  
6 and their first filing and their second filing  
7 sort of alluding to unique concerns. In the  
8 following paragraph it talks about because of  
9 the potential impact of the development on the  
10 subject lots and the redevelopment of the  
11 Parkway Overlook.

12 They mention that there could be  
13 potential impact and they have unique concerns  
14 but never really articulated in either  
15 filings. In a sense they had two shots at  
16 this. They really haven't articulated what  
17 these concerns or what these impacts would be.

18 Secondly, I though in their second  
19 filing, Exhibit No. 35, they made reference to  
20 notice and that their tenants weren't given  
21 adequate notice. I quickly went and looked at  
22 3113.13 talking about the requirement for

1 notice and it talks about mailing the notice  
2 to the applicant and to the owners of all  
3 property within 200 feet.

4 If we look at the submission that  
5 indicates who was given notice, it makes  
6 reference to NHTE Parkway, LP and they are  
7 located in Georgia. That actually is the  
8 owner of the property so the owner of the  
9 property was actually informed and was given  
10 notice.

11 3113.13 actually goes on to talk  
12 about, "In the case of a residential  
13 condominium or cooperative with 25 or more  
14 dwelling units, mail notice may be provided to  
15 the board of directors or to the association,  
16 the condominium, or cooperative." It doesn't  
17 require that the association is notified.

18 I believe that we did find out  
19 that D.C. Housing Finance Agency was notified.  
20 The fact that this just didn't sort of trickle  
21 down to every single tenant of Parkway  
22 Overlook with the sort of uncertainty of where

1 the tenants were at the time. Were they  
2 living there or where they not?

3 I think with respect to the issue  
4 of notice, I think the applicant, the Office  
5 of Zoning, any other involved agencies did the  
6 best they possibly could to get notice out  
7 there. I think the property was properly  
8 posted as well.

9 MEMBER WALKER: Madam Chair, I  
10 agree with Mr. Dettman on the issue of notice.  
11 Going back to the issue of adverse impact, in  
12 both submissions from the Washington Legal  
13 Clinic for the Homeless, they point to the  
14 proximity of the subject lots to the Parkway  
15 Overlook.

16 They suggest that because these  
17 lots are located directly in the center of  
18 these lots that there is necessarily some  
19 impact but I disagree. They haven't made out  
20 the case for this impact and I don't think  
21 that just because there are two parcels of  
22 land in the middle of this development that



1       there is automatically some adverse impact.

2                   CHAIRPERSON MILLER:   Thank you.   I  
3       feel a little bit differently about the notice  
4       issue because I think the placards usually do  
5       notify tenants in an area and the general  
6       public.   I could go to the point that they  
7       didn't have notice and they should have even  
8       though it may not be a requirement in the  
9       regulations that they be actually notified by  
10      mail, etc.

11                   To me it was okay.   So then what?  
12      Now they had notice and now we were actually  
13      looking at their correspondence and there  
14      wasn't anything there really to hang a hat on.  
15      I mean, it's not like we are going to be  
16      looking as to whether a prison could go there  
17      and that might affect residents.   We are just  
18      talking about a residential building.   They  
19      really didn't articulate any potential adverse  
20      impacts that we could even look to.

21                   Like you all said, they had like  
22      two shots at this and they still didn't do it.

1 I think it's way to speculative. I think we  
2 are having trouble imagining so we don't want  
3 to hold up the applicant because we can't even  
4 imagine it.

5 Okay. It is the consensus of the  
6 Board then that we would deny the request to  
7 continue this case and we will proceed with  
8 deliberations on the merits today. Let's do  
9 that.

10 Mr. Dettman, do you want to  
11 proceed on this or start us out on this?

12 MEMBER DETTMAN: Yes, Madam Chair.  
13 Following the hearing we had originally asked  
14 the applicant to go back and sort of look at  
15 a few things related to the plans as they were  
16 drawn up at the hearing. Specifically had to  
17 deal with addressing some of the elevations of  
18 the building and seeing if architectural  
19 changes could be done to allow this building  
20 to relate more with the surrounding  
21 neighborhood.

22 We also left the record open for

1 DCOP to submit a supplemental report based on  
2 the revised plans. DCOP did submit a  
3 supplemental report and the applicant did  
4 submit Exhibit No. 31 which shows the  
5 revisions to the plans.

6 I will address the revised plans  
7 in terms of whether or not they adequately  
8 relate to the neighborhood as I go through the  
9 requirements under 353. 353.1 deals with all  
10 new residential developments in the R-5-A  
11 districts that are not totally comprised of  
12 one-family detached and semi-detached  
13 dwellings that they need to come before the  
14 BZA. This is a proposal to construct a 16-  
15 unit apartment building in an R-5-A district  
16 and is appropriately before the Board.

17 353.2 requires that the  
18 application be referred to --

19 CHAIRPERSON MILLER: Can I jump in  
20 here?

21 MEMBER DETTMAN: Sure.

22 CHAIRPERSON MILLER: We have two

1 District property cases I just want to say.  
2 I will repeat this again when we deliberate on  
3 the record of 17702. It ask that both of  
4 these cases be delayed and we'll do the same  
5 thing in that case.

6 That's not why I'm interrupting  
7 you. I'm interrupting you because I think the  
8 16 units is 17702. I think this is the case,  
9 if I'm not mistaken, that was 20 and they went  
10 down to 17. Correct?

11 MEMBER DETTMAN: You're correct.

12 CHAIRPERSON MILLER: Okay.

13 MEMBER DETTMAN: Given the  
14 similarity of these cases I missed my notes  
15 here.

16 CHAIRPERSON MILLER: Exactly.  
17 Okay.

18 MEMBER DETTMAN: I apologize. So  
19 going back to 353.1 this is the proposal for  
20 a 17-unit apartment building in an R-5-A  
21 district.

22 Going forward, 353.2 requires that

1 the application be submitted to the D.C. Board  
2 of Education for comment and recommendation.  
3 The application was referred by DCOZ to the  
4 Board of Education on July 24, 2007. No  
5 report was received. The ability of the  
6 surrounding schools to accommodate any  
7 potential students was not touched upon inside  
8 DCOP's report either.

9 353.3 requires the application to  
10 be referred to DDOT and DHCD for comment and  
11 recommendation. The application was referred  
12 to them. A report was received by DDOT  
13 expressing their support for the project  
14 stating that it will not have an adverse  
15 impact on traffic or parking on the  
16 neighboring residential area. That is Exhibit  
17 24 on the record. A report was also received  
18 from DHCD indicating their support for the  
19 application and that is Exhibit 25 in the  
20 record.

21 353.4 states that the application  
22 shall be referred and analyzed by DCOP for

1 comment and recommendation. DCOP is  
2 recommending -- they actually recommended  
3 approval of the original application. Their  
4 supplemental report, which is Exhibit 32,  
5 based on the revised drawings the Office of  
6 Planning has reviewed and does not have any  
7 objections to the revision of the plans.

8 353.5 just discusses the filing  
9 requirements that the applicant must meet and  
10 it appears we have a full record and that the  
11 applicant has met the filing requirements of  
12 the application and has met the Board's  
13 supplemental filing requirements as well.

14 Jumping over to the general  
15 requirements of a special exception, 3404.1,  
16 which basically deals with making sure that  
17 the application will be in harmony with the  
18 general purpose and intent of the Zoning  
19 Regulations and maps and will not tend to  
20 affect adversely the use and enjoyment of the  
21 neighboring property.

22 This is where I'll talk about the

1 revised plans. It appears that the applicant  
2 has reworked the elevations of the building,  
3 sort of toned down the architectural detail  
4 that was represented in the original plans.  
5 It appears that it does fit in more  
6 appropriately with the surrounding community.

7 Secondly, with respect to adverse  
8 impact on the use and enjoyment of neighboring  
9 properties, typically the Board will look to  
10 impacts to light, air, and traffic when it  
11 comes to seeing a particular application  
12 negatively impacts a surrounding neighborhood.

13 Given the amount of space, open  
14 space that is around the building, it appears  
15 that the parking area is adequately screened  
16 and all the parking is accommodated on site.  
17 It appears that adequate light and air will be  
18 available to this property as well as not have  
19 any negative impacts to the neighboring  
20 properties. With respects to the special  
21 exception requirements under 353 and 3104 it  
22 appears that this application does meet that

1 requirement.

2 CHAIRPERSON MILLER: Thank you.

3 The only thing I would at, I think, at this  
4 point is they come in with 17702 which is like  
5 right across the street and when we were  
6 looking at both plans they didn't really seem  
7 to be in harmony with each other. That was a  
8 topic of discussion at the hearing.

9 They both have come in and I think  
10 they are much more in harmony now with each  
11 other, if not in harmony. That was an aspect  
12 of harmony with neighboring properties.

13 Okay. Any other comments? Okay.  
14 Then I'll move approval of Application No.  
15 17701 of District-Properties.com, LLC pursuant  
16 to 11 DCMR section 3104.1 for a special  
17 exception to allow the construction of a new  
18 17-unit apartment building under section 353  
19 of premises 2825 Robinson Place, S.E. Do I  
20 have a second?

21 MEMBER DETTMAN: Second.

22 CHAIRPERSON MILLER: Further



1 deliberation? All those in favor say aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those  
4 opposed? All those abstaining? Would you  
5 call the vote, please.

6 MR. MOY: Yes, Madam Chair. Staff  
7 would record the vote as three to zero to  
8 zero. This is on the motion of the Chair, Ms.  
9 Miller, to approve the application. Seconded  
10 by Mr. Dettman. Also in support of the motion  
11 Ms. Walker.

12 We have two absentee votes from  
13 two participating members, Madam Chair. The  
14 first is from Mr. Jeffries and his vote is to  
15 approve the application. The second absentee  
16 vote is from Mr. Loud and he also votes to  
17 approve the application.

18 Just a quick read of his one  
19 comment, Madam Chair, where he states, "I am  
20 generally sensitive to the Washington Legal  
21 Clinic March 18, 2008 letter. However, the  
22 Washington Legal Clinic for the Homeless has

1 not demonstrated site control for its clients  
2 or that the Washington Interfaith Network is  
3 signed on in this matter." That would give a  
4 resulting vote of five to zero to zero.

5 CHAIRPERSON MILLER: Thank you. I  
6 believe there is no party in opposition in  
7 this case so this can be a summary order as  
8 well.

9 MR. MOY: Yes. Thank you.

10 CHAIRPERSON MILLER: So we are  
11 ready for the next case when you are.

12 MR. MOY: The next case is  
13 Application No. 17702 of District-  
14 Properties.com, LCC pursuant to 11 DCMR 3104.1  
15 for a special exception to allow the  
16 construction of a new 16-unit apartment  
17 building under section 353 in the R-5-A  
18 District at premises 2836 Robinson Place,  
19 S.E., Square 5875, Lot 861. At its decision  
20 meeting on March 4, 2008, the Board postponed  
21 its decision for the second time rescheduling  
22 its decision on April 1.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           Again, although this is similar to  
2           the previous application 17701, staff would  
3           just conclude by saying that there are two  
4           filings also on the record on this case, one  
5           from the Washington Legal Clinic for the  
6           Homeless identified in your case folders as  
7           Exhibit 32 and a filing from the District of  
8           Columbia Housing Finance Agency dated March  
9           21, 2008, identified as Exhibit 33.

10           Again, the Board is to act on the  
11           merits of the request for the special  
12           exception under 353. That concludes the  
13           staff's briefing, Madam Chair.

14           CHAIRPERSON MILLER: Thank you. I  
15           just want to say briefly for the record in  
16           17702 that we discussed the request for the  
17           Washington Legal Clinic for the Homeless, Inc.  
18           set forth in their March 18, 2008 letter to  
19           keep the record open or to delay a decision in  
20           this case until they have a redevelopment plan  
21           in place in the coming months. We denied the  
22           request in the other case. I think we should

1 deny it in this case.

2 Just in summary, we did go the  
3 extra mile I would say and open the record to  
4 receive even the request and considered the  
5 request of Washington Legal Clinic for the  
6 Homeless and District of Columbia Housing  
7 Finance Agency with respect to possible  
8 impacts on the abutting property known as  
9 Parkway Overlook property.

10 Exhibit 36 -- sorry, that's the  
11 exhibit from 17701. In any event, in a March  
12 21, 2008 letter from the District of Columbia  
13 Housing Finance Agency they say now that they  
14 have had an opportunity to review the case and  
15 they have no basis to object to the case being  
16 considered by the BZA today.

17 We found in the other case and I  
18 think we should find obviously equally so in  
19 this case that Washington Legal Clinic in two  
20 pleadings didn't really set forth the case for  
21 good cause for delaying the case by showing in  
22 any way how their property might be adversely

1 impacted.

2 All they said was it might be. I  
3 think that captures it. Any other comments on  
4 that? Okay. It is defined in this case as  
5 well and we can go to the merits of the  
6 application.

7 Mr. Dettman, would you like to  
8 start us on that?

9 MEMBER DETTMAN: I would be happy  
10 to, Madam Chair, and I'll make sure I have the  
11 right notes here. Just to orient my  
12 colleagues to the correct set of plans in the  
13 record, following the January 15th hearing  
14 much like the previous case that we just  
15 looked at, the Board required the applicant to  
16 sort of go back and revisit some elements of  
17 the building elevations as proposed and  
18 specifically to the materials of the building.  
19 Improve the overall and refine the overall  
20 design of the building to be more consistent  
21 with the surrounding neighborhood.

22 Secondly, this particular property

1 has what appears to be a significant change in  
2 grade going to the rear of the property down  
3 to Jasper Place. The Board also asked the  
4 applicant to modify the design of the rear  
5 retaining walls in order to minimize their  
6 visual impact on adjacent property. The  
7 record was also left open for DCOP to submit  
8 a supplemental report.

9 The applicant did submit revised  
10 plans addressing the architectural details of  
11 the retaining wall. That is Exhibit 28. DCOP  
12 did submit a supplemental report which is  
13 Exhibit 29 in the file.

14 Going to the requirements under  
15 353.1, this is a proposal to construct a 16-  
16 unit apartment building in an R-5-A District,  
17 the reason why it's before the Board. 353.2  
18 requiring the application to be referred to  
19 the D.C. Board of Education. The application  
20 was referred to the Board of Education on July  
21 24th. No report was received and the ability  
22 of the surrounding schools to accommodate any

1 potential students was not touched upon in  
2 DCOP's report.

3 353.3 referring the application to  
4 DDOT and DHCD. The application was referred  
5 to those two agencies. A report was received  
6 by DDOT expressing their support for the  
7 project stating that it will not have an  
8 adverse traffic or parking impact on the  
9 neighboring residential area. That is Exhibit  
10 23. Exhibit 24 is the report submitted by  
11 DHCD indicating that they support the  
12 application as well.

13 353.4 is the referral to DCOP for  
14 analysis and recommendation. DCOP was in  
15 favor of the application as originally  
16 proposed and in their supplemental report they  
17 indicate their continued support for the  
18 project with respect to the building facades,  
19 the revised building facades and the redesign  
20 of the retaining wall.

21 353.5 discussing filing  
22 requirements and the applicant has met the

1 filing requirements of 353.5.

2 Finally jumping over to the  
3 general special exception requirements under  
4 3104 with respect to impacts on neighboring  
5 properties, the use and enjoyment of  
6 neighboring properties, and in harmony and  
7 with the general purpose and intent of the  
8 zone plan, much like the previous case, 17701,  
9 the architectural relationship between the two  
10 buildings seems to be a little bit more  
11 consistent.

12 The facades have been reworked to  
13 sort of tone down the architectural design of  
14 the building and it seems to be more  
15 appropriate with the surrounding neighborhood.  
16 The redesign of the retaining walls seems to  
17 be appropriate with its relation to Jasper  
18 Place and the surrounding neighborhood.

19 The last page of Exhibit 28 shows  
20 the rear elevation of the building, the view  
21 from Jasper Place. You can see that the  
22 material of the retaining wall is going to be



1 made of brick and there is significant  
2 landscaping to sort of mask the visual impact  
3 of the retaining wall on that side of the  
4 property. It appears that the application  
5 also meets the requirements of 3104.1 as well.

6 CHAIRPERSON MILLER: I'm not sure  
7 if you said this but Office of Planning did  
8 find that the multi-family in-fill development  
9 is aligned with the general intent of the  
10 comprehensive plan, the Zoning Regulations,  
11 and the zoning map.

12 DHCD also found that it was  
13 consistent with a small garden apartment and  
14 townhouse scale of the adjoining neighborhood  
15 just in case you didn't say that. It just  
16 seems like -- I mean, these are the aspects  
17 that we are looking at. When I think back  
18 about the Washington Legal Clinic for the  
19 Homeless it was just hard to see what adverse  
20 impact this could have.

21 In any event it does, I think,  
22 meet the requirements of 353. Any other

1        comments? I do think both of them are much  
2        better as a result of the discussion at the  
3        hearing and when they went back to the drawing  
4        board in consultation with the Office of  
5        Planning.

6                    MEMBER DETTMAN: Madam Chair, if  
7        there are no further comments or deliberation,  
8        I would move to approve Application 17702 for  
9        a special exception to allow the construction  
10       of a new 16-unit apartment building under  
11       section 353 in the R-5-A District at premises  
12       2825 Robinson Place, S.E.

13                   CHAIRPERSON MILLER: Second. I  
14       guess I would also add as further deliberation  
15       I think in the other case as well while Office  
16       of Planning didn't hear from the Department of  
17       Education, I think the number of units is a  
18       fairly modest amount so that one could  
19       conclude that the school system could absorb  
20       the number of students that could possibly  
21       live in those units.

22                   Anything else? Okay. All those

1 in favor say aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those  
4 opposed? All those abstaining?

5 MR. MOY: Staff would record the  
6 vote as three to zero to zero. This is on the  
7 motion of Mr. Dettman to approve the  
8 application per the requested relief.  
9 Seconded by Ms. Miller, the Chair. Also in  
10 support of the motion Ms. Walker.

11 As in the previous case, Madam  
12 Chair, we have two absentee votes again from  
13 Mr. Loud and Mr. Jeffries both to approve the  
14 application. Again, on Mr. Loud's comment  
15 similar to the previous case. I'll read it  
16 again since this is a separate application.

17 He states, "I am generally  
18 sensitive to the Washington Legal Clinic March  
19 18, 2008 letter. However, the Washington  
20 Legal Clinic has not demonstrated that its  
21 clients have site control or that the WIN has  
22 signed on as a development partner or

1 background in this case." Again, the  
2 resulting vote would be five to zero to zero.

3 CHAIRPERSON MILLER: Thank you. I  
4 would also say there is no party in opposition  
5 so this can be a summary order. I mentioned  
6 this before but the ANC is automatically a  
7 party and I believe in both these cases,  
8 certainly this one, there was no report from  
9 the ANC.

10 MR. MOY: Thank you. The last  
11 case for decision in the public meeting this  
12 morning, Madam Chair, is Application No.  
13 17724. This is of Francis Fabrizio and Glen  
14 Thomas pursuant to 11 DCMR 3104.1, for a  
15 special exception to allow the construction of  
16 eight row dwellings under section 353. This  
17 is in the R-5-A District at premises northwest  
18 corner of the intersection of 50th Street and  
19 Fitch Place, N.E. This is in Square 5181,  
20 Lots 40-43, 55 and 803.

21 On February 26, 2008, the Board  
22 completed public testimony, closed the record,

1 and scheduled its decision on April 1, 2008.  
2 The Board requested supplemental information  
3 from the applicant. That filing from the  
4 applicant is identified in your case folders  
5 as Exhibit 32 dated March 24, 2008.

6 The Board is also in receipt of a  
7 filing from the Department of Housing and  
8 Community Development, a memorandum dated  
9 March 6, 2008. That document is identified as  
10 Exhibit 31. The Board is to act on the merits  
11 of the special exception relief to Section  
12 353. That concludes the staff's briefing,  
13 Madam Chair.

14 CHAIRPERSON MILLER: Thank you.  
15 This, again, is a multi-family development  
16 coming under Section 353 of our regulations  
17 which provides that all new residential  
18 developments except those comprising all one-  
19 family detached and semi-detached dwellings  
20 shall be reviewed by the Board of Zoning  
21 Adjustment as a special exception under 3104  
22 in accordance with the standards and

1 requirements in this section, specifically in  
2 the R-5-A District.

3 That is where we are. The  
4 applicant has revised the plans after  
5 discussion of the original plans at the  
6 hearing and I believe worked with the Office  
7 of Planning. The Office of Planning is in  
8 support of this application.

9 One of the issues we looked at at  
10 the hearing was the configuration of the lots  
11 and the applicant has come back with a new  
12 proposal which we can discuss. They also  
13 revised the landscaping plan to include the  
14 types and species of trees, fencing and  
15 lighting.

16 Then they also included some floor  
17 plans and they included some really great  
18 pictures I think of samples of paving and  
19 fencing and trees and lighting. That is what  
20 is before us to evaluate. Should we start  
21 with a discussion of the lots? Do my Board  
22 members have comments on the lots? I think,

1 first of all, Ms. Walker had some concerns  
2 originally that parts of the lots maybe were  
3 separated from other parts of the lots.

4 MEMBER WALKER: Yes, Madam Chair,  
5 on the original drawings there were some parts  
6 of certain lots that were separated from --  
7 there was space between the back of the lot  
8 and the main portion of the lot. There was  
9 some concern about whether property owners  
10 would maintain these small tracts of land that  
11 were some distance away from the main portion  
12 of their lots.

13 The revised plans have redrawn the  
14 lot lines so that now those tracts of land in  
15 the northwest corner of the parcel are  
16 assigned more clearly to certain lots. There  
17 are fences that clearly show the lines of  
18 demarcation so that property owners will more  
19 likely maintain these green spaces.

20 There was some concern about the  
21 easement for cars and the ability to move  
22 around easily in the space. I think that

1       these revised plans have tried to address  
2       that. It appears there is actually slightly  
3       more space.

4               Perhaps Mr. Dettman is in a better  
5       position to make that assessment but it  
6       appears that the parking lot area and the  
7       easement area is slightly larger in the  
8       revised plans than in the initial plans that  
9       were submitted.

10              MEMBER DETTMAN: Madam Chair, I  
11       just had a few comments on the revised  
12       drawing. I'm in general support of the  
13       project. I am in support of the project and  
14       will be voting for it when that time comes.  
15       I think there potentially could be a million  
16       ways you could draw up this easement. The way  
17       it's drawn up here may not be the way I would  
18       have done it.

19              In the absence of alley access and  
20       an oddly shaped lot, it is always difficult to  
21       try to provide access into a site so that you  
22       can get to your parking in the rear of your



1 properties with respect to parking and fire  
2 and safety and trash pickup and what have you.

3 Then there is also the issue that  
4 you don't want to create a bunch of curb cuts  
5 so I think the location of the curb cut along  
6 50th Street it may already be there but if  
7 it's not, it's the appropriate place for it.

8 So the revised plan accomplishes  
9 and I think satisfies the concerns that the  
10 Board raised at the hearing. Thinking about  
11 sort of the overall development of the area,  
12 I would have rather seen the easement drawn to  
13 the extreme western lot line to the back of  
14 the lot.

15 That is where you would have  
16 accessed your parking in the event in the  
17 future that they wanted to tie the existing  
18 alley on the west side into this easement.  
19 That could be done.

20 Nonetheless, that's not what is  
21 before the Board and I think with respect to  
22 my concerns about trash pickup and fire and

1 safety and traffic impacts and appropriate  
2 access into the site, I think what is drawn up  
3 is adequate.

4 CHAIRPERSON MILLER: Okay. Do you  
5 have any comments in particular on the  
6 landscaping plan anyone? I think they did a  
7 good job of portraying it for us and it looks  
8 to me to be adequate with respect to trees and  
9 green space and the type of pavement that's  
10 shown.

11 In their supplemental filings that  
12 they have given us examples of, I think they  
13 paint a good picture to be able to at least  
14 get a real idea of what this is going to look  
15 like. I think it looks very nice.

16 Office of Planning, who is more  
17 familiar with the surrounding area, has also  
18 weighed in and says that it is certainly  
19 adequate and is compatible with the  
20 development in the area. Okay. If we don't  
21 have any other general comments, I'll just  
22 look at the -- the Office of Planning has gone

1 through 353 somewhat in the nature that Mr.  
2 Dettman did the last time.

3 We already hit 353.1 which is why  
4 we are looking at this as a new multi-family  
5 residential development. Then the rest are  
6 Board referrals. The Board referred it to the  
7 Office of Planning and Office of Planning is  
8 in full support. We have a memo from the  
9 Department of Transportation and they have  
10 determined that it won't have significant  
11 impact on traffic and parking.

12 Okay. The regular special  
13 exception criteria, will it be compatible with  
14 and in harmony with the development pattern in  
15 the surrounding neighborhood. Office of  
16 Planning found that it would and that it would  
17 not negatively affect the use of neighboring  
18 property regarding air and light, traffic  
19 circulation and noise.

20 No ANC comments were submitted in  
21 this case, nor were there comments from other  
22 area residents. The Office of Planning found

1 this to be consistent with the comprehensive  
2 plan. I don't think I anything really more to  
3 add on this. Does anybody else?

4 MEMBER DETTMAN: Madam Chair,  
5 maybe just a point of clarification. I have  
6 Exhibit 29 as well as Exhibit 22 which seems  
7 to be some sort of correspondence from the  
8 ANC. I'm not exactly sure where the ANC ended  
9 up. I'm sorry, not 22, 25.

10 CHAIRPERSON MILLER: I have 25.  
11 Do you have another one?

12 MEMBER DETTMAN: Yes. There's an  
13 exhibit 29 here which I didn't have in my file  
14 either.

15 CHAIRPERSON MILLER: Okay.  
16 Actually, I recall now the ANC was somewhat a  
17 topic of conversation at the hearing as well.  
18 We received a January 18, 2008 letter, Exhibit  
19 25. It says, "Dear Director Chris. The  
20 Advisory Neighborhood Commission 7C is in  
21 receipt of the above-numbered BZA application  
22 and will respond to it in full prior to the

1 hearing date.

2           However, we are opposed to the  
3 granting of an exception in this matter. You  
4 will receive within the allotted time frame a  
5 detailed response as required in 3115 Advisory  
6 Neighborhood Commission reports N3115.1.

7 Sincerely, Catherine Woods, commissioner for  
8 ANC-7C."

9           This is a letter from the  
10 commissioner for the single member district,  
11 I believe. In any event, it's not on  
12 letterhead and it's not pursuant to a vote  
13 taken at a public meeting so it's not to be  
14 afforded necessarily great weight but it is a  
15 correspondence from an ANC commissioner that  
16 we have.

17           Then we have Exhibit No. 29  
18 addressed to Ms. Chris from Catherine Woods as  
19 well. I think I'm going to read it because we  
20 need to determine how to deal with the ANC in  
21 this case. "The purpose of this letter is  
22 twofold. First, Mr. Glen Thomas and one of

1 his representatives Mr. Conners met with the  
2 ANC-7C and some members of the community on  
3 Thursday, 14 February, 2008 to discuss the  
4 above-numbered application.

5 The Commission reminded Mr. Glen  
6 that a vote of no denying the appeal was  
7 registered at the ANC-7C community meeting on  
8 8 November, 2007 and again at the executive  
9 meeting in January 2008.

10 This application was also  
11 discussed at the Capital View Civic  
12 Association in November 2007. Today nothing  
13 has changed. Mr. Thomas and his  
14 representative agreed to meet again in the  
15 near future with the Commission to discuss  
16 other possibilities for the site in question.

17 Secondly, we are requesting that  
18 the hearing with the Board of Zoning scheduled  
19 for either 26 February, 2008 (according to Mr.  
20 Thomas) or for some time in March 2008  
21 according to information received from BZA, be  
22 continued until further notice pending the

1 outcome of further meetings between Mr. Thomas  
2 and his representative and the Advisory  
3 Neighborhood Commission 7C."

4 Okay. That was our preliminary  
5 issue with the hearing whether to postpone it  
6 and we decided not to postpone it at that  
7 time. They weren't at the hearing, the ANC.  
8 The applicant, I guess, gave their story of  
9 their attempts to discuss the plans with the  
10 ANC. Again, this isn't on letterhead.

11 This isn't a vote wither but it is  
12 in our records so it's not to be necessarily  
13 afforded great weight. There aren't really  
14 issues. If we were to give it great weight,  
15 we would be addressing the issues raised in  
16 the letter and we don't really need to do  
17 that. They are not substantive to this  
18 application in any event. Okay. Thank you.

19 I don't know if anyone else has  
20 anything more so say on this application. To  
21 me it looks like an attractive development  
22 that fits well into its community and serves

1 the purpose of providing needed housing in the  
2 District and it looks attractive to me.

3 Office of Planning is in support.  
4 ANC doesn't have a report on record. DDOT  
5 found that there were no adverse impacts that  
6 it could determine from this. Anything else?  
7 Okay.

8 Then I would move approval of  
9 Application No. 17724 of Francis Fabrizio and  
10 Glen Thomas pursuant to 11 DCMR section 3104.1  
11 for a special exception to allow the  
12 construction of eight row dwellings under  
13 section 353 at premises northwest corner of  
14 the intersection of 50th Street and Fitch  
15 Place, N.E. Do I have a second?

16 MEMBER WALKER: Second.

17 CHAIRPERSON MILLER: Further  
18 deliberation? All those in favor say aye.

19 ALL: Aye.

20 CHAIRPERSON MILLER: All those  
21 opposed? All those abstaining?

22 MR. MOY: Staff would record the



1 vote as three to zero to zero. This is on the  
2 motion of the Chair, Ms. Miller, to approve  
3 the application, seconded by Ms. Walker.  
4 Supporting the motion is Mr. Dettman.

5 We have, Madam Chair, an absentee  
6 vote from Mr. Loud who also participated on  
7 the application and his vote is to approve the  
8 application so this would give a resulting  
9 vote of four to zero to one, the one being no  
10 Zoning Commission member so, again, it's four  
11 to zero to one.

12 CHAIRPERSON MILLER: Okay. Now we  
13 get to the question of whether this can be a  
14 summary order or not, whether there is a party  
15 in opposition or not. Let me just say this  
16 for our consideration. One is the ANC is  
17 automatically a party in any case.

18 On the other hand, I think they  
19 have to participate in the case to be  
20 recognized as a party. We don't have an ANC  
21 report in this case. We have letters from a  
22 single member district commissioner, I

1 believe, in any event that weren't voted on at  
2 a public meeting. That was duly noted.

3 I would think this could be a  
4 summary order but I would like to open this up  
5 for a discussion and/or comment by the Office  
6 of Attorney General Ms. Glazer if she has a  
7 comment.

8 MS. GLAZER: The only comment that  
9 I have, Madam Chair, I concur that I think it  
10 could be a summary order but perhaps the Board  
11 might insert a provision or sentence or two  
12 regarding the ANC letter and the fact that  
13 they did not participate. Any other comments?

14 Well, how about this will be a  
15 summary order and we could have a footnote or  
16 something with respect to the ANC. We'll  
17 leave flexibility to the Office of the  
18 Attorney General to perhaps address the ANC  
19 issue if it is determined to be appropriate.

20 MS. GLAZER: Understood.

21 CHAIRPERSON MILLER: Okay, good.  
22 Is that the consensus of the Board? Okay.

1       Then I think that concludes this case. Do we  
2       have any other items on this morning's meeting  
3       agenda?

4                     MR. MOY: No, Madam Chair.

5                     CHAIRPERSON MILLER: Then this  
6       meeting is adjourned.

7                     (Whereupon, at 11:49 a.m. the  
8       meeting was adjourned.)

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

