Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

October 9, 2001

Ms. Sheri Pruitt
Secretary,
Board of Zoning Adjustment
441 4th Street NW
Washington DC 20001

Re: BZA# 16710 – 5210 Klingle Street NW

Dear Ms. Pruitt:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on Wednesday, October 3, 2001 at Sibley Memorial Hospital's Ernst Auditorium. Proper notice of this meeting was published in the Northwest Current and notices were placed around the neighborhoods. A quorum (4) was present at all times.

One of the items on the agenda was revisiting BZA #16710 in which Mr. Vanay Panday Is seeking to a special exception to allow the construction of a canopy over a driveway and stairway leading to a single family dwelling that does not comply with the side yard requirements in an R-l-B District at a home which he owns at 5210 Klingle Street NW.

Mr. Pande came before ANC3D at our June 6, 2001 meeting and on June 18, 2001we wrote the BZA a letter (attached) stating our position that we did not approve of the canopy and made certain findings and observations.

We suggested that Mr. Pande speak with his neighbors and find out exactly what would be acceptable to them and then hire an architect to prepare drawings which would need to be approved by the neighbors before he came before us again.

Mr. Pande did indeed hire an architect who prepared drawings but he failed to get the approval of the neighbors who are most directly affected by the present canopy.

After much discussion and after hearing from both Mr. Pande and his attorney as well as neighbors, the Commission voted 4-0-0 to send this letter to the BZA stating that we still stay with our former letter in which we suggest that he tears down the present structure and work with the "line of sight" neighbors.

The new cover must be proportionate in height and length and must not infringe on the use and enjoyment of neighbors on their property.

We feel that Mr. Pande is very willing to try and accommodate the neighbors while still providing adequate coverage for his mothers' sliding chair and we expressed this fact and

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Exhibit 38

invited him to return once the present structure has been torn down completely and he can provide the neighbors with a plan to which they will agree.

Thank you for giving our decision the "great weight" to which it is entitled under DC law.

Sincerely,

Eleanor Roberts Lewis

Eleanor Roberts Lewis
Chair, ANC3D

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April 19, 2002

Response to motion for Reconsideration in Case # 16710 from ANC3D04
Commissioner John W. Finney

In his letter to the Board, Mr. Ross sets forth three reasons for reconsideration of the earlier decision by the Board. Let me respond to them in order:

1. *The mayoral appointee who joined the Board after the case was heard and decided should be permitted to review the record and cast a vote breaking the 2-2 tie vote by which the special exception was denied.*

In effect, the loser in this case is asking for a second bite on the apple. And if permitted to do so, he will expose an apple full of worms for the Board in terms of precedent. The case was duly argued before a four-member Board and duly decided. No objection was raised, within the Board or by the appellant, that there was a vacancy on the Board. By the Board's rules, the tie vote meant that the motion for a special exception was denied. That is a binding decision on the part of the Board. Now the loser wants to reopen the case by involving a Board member who was not on the Board when the case was heard and decided. If granted, the Board would be establishing a precedent for reopening innumerable cases in which not all Board members might have been present or voting. Its case load is heavy enough without permitting second bites on the apple.

2. *Neighbors in opposition have not shown that the proposed porte cochere (or car port) would have a "substantially adverse effect" on the use or enjoyment of their properties.*
The appellant must not have read the ANC3D letter of Nov. 12 or listened to the testimony of neighbors. There is ample, persuasive testimony that the car port would have a substantial, adverse effect upon neighboring property. Permit me to quote from the ANC letter:

"In part the commission's objections were based upon the location of the porte cochere. On examining the drawings, we discovered that the long, southeast side of the porte cochere is located right on the property line where normally an eight-foot setback would be required. The result is that the side and the 10-foot, 10-inch-high roof the porte cochere visually intrudes into the front yard of the next door neighbor, John Kennedy. We were further disturbed that on the Hawthorne St. entry, the porte cochere is set back only two feet from the property line, where a 25-foot setback would be required under the zoning provisions for a rear yard.

"These findings contributed to the larger conclusion that the proposed structure is intrusive upon its neighbors on Hawthorne, incompatible with a neighborhood that has no garages butting directly upon the sidewalk and that it would stand out like an eyesore on a quiet, residential street."

I think it is fair to conclude that it was demonstrated there would be a "substantially adverse effect" by the ANC commission whose views are to be accorded "great weight" in such judgments.

A question also arises as to who has the burden of proof in such a case? Does not the party requesting a special exception have the burden of proof in demonstrating that there would be no adverse impact? If so, the appellant can not slough off the burden of proof by making an unsupported claim that the neighbors have not demonstrated an adverse impact.

3. *The Federal Fair Housing Act requires a special exception be approved as a reasonable accommodation to a handicapped person.*

No one—neighbors, ANC commissioners, or the BZA—wants to deny Mr. Pande's mother an ability to live in that house. They can build a ramp if they want. They can build an acceptable cover for the ramp if they want. The Fair Housing Act does NOT entitle Mr. Pande to build a cover in the form of a car port for his car. There are other, simpler ways to protect any chair lift. I noted one on a recent visit to the World War II carrier *Yorktown* in Charleston, S.C. A long flight of stairs takes the visitor from the dock to the hangar deck of the carrier. For the handicapped, there is a long stainless steel tube along the railing that carries a chair lift in either direction. The only protection against the elements—which with the salt air are certainly much worse than those on Hawthorne-- was a canvas cover for the chair lift.

I am sure that if Mr. Pande came forward with a simpler, smaller design for protecting the chair lift, the neighbors would find it acceptable. What they find objectionable is a large, unnecessary car port that visually intrudes upon neighbors.

Also, by introducing the Federal Fair Housing Act, the appellant raises a procedural question. I do not remember the law being cited in the earlier hearing. Do the Board's rules of procedures allow an applicant to raise a new issue in a motion for reconsideration? I would be surprised in they do. If permitted, the appellant would get a third bite at the apple.

I assume that ANC3D, in particular ANC3D04, is still a party to the case. If so, I plan to be present at the BZA meeting on May 7 that will consider Mr. Ross' motion. Meanwhile, I hope you give my views the "great weight" they deserve.

Sincerely yours,

John W. Finney
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ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
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Washington, D.C. 20016

Nov. 12, 2001

re: BZA Application #16710

Ms. Sheri Pruitt
Secretary
Board of Zoning Adjustment
441 4th St. NW
Washington, D.C. 16710

Dear Ms. Pruitt:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on Wednesday, Nov. 7, 2001 at Sibley Memorial Hospital. A quorum of at least four commissioners was present at all times.

The commission wants to thank the Board for giving the Commission time to view the scaled architectural drawings for the porte cochere for which Vinay Pande is asking for a special exemption so he can have it built in the backyard of his residence at 5210 Klingle Street NW. At the direction of Harold Ross, Mr. Pande's attorney, the drawings–the same presented to the BZA at its initial public hearing on the case–were supplied to the commission on the day of its meeting. Unfortunately, neither Mr. Ross or Mr. Pande was able to attend the meeting, so it was not possible to have the discussions suggested by Chairman Griffis that might lead to an agreement between the contesting parties.

The commission members studied the scaled drawings at some length, and the examination of the proposed structure and its location but reinforced the commission's opposition to construction of the proposed porte cochere (or car port). Reaffirming its earlier position, the commission voted 5-0 in opposition to the granting of a special exception for construction of the structure.

In part, the commission's objection were based upon the location of the porte cochere. On examining the drawings (sheet no. 1), we discovered that the long, southeast side of the porte cochere is located right on the property line where normally an eight-foot setback would be required. The result is that the side and the 10-foot, 10-inch-high roof of the porte cochere visually intrude into the front yard of the next door neighbor, John Kennedy. We were further disturbed to find on studying the drawing that on the Hawthorne St. entry, the porte cochere is set back only two feet from the property line, where a 25-foot setback would be required under the zoning provisions for a rear yard..

These findings contributed to the larger conclusion that the proposed structure is intrusive upon its neighbors on Hawthorne, incompatible with the neighborhood which has no garages butting directly upon the sidewalk, and that it would stand out like an eyesore on a quiet residential street.

The commission also found it important that collectively the neighbors on Hawthorne oppose the proposed building, as they did the existing awning, as you will see in letters sent by neighbors to be found in your file on the case. At our meeting on Nov. 7, one resident on Klingle Street stood up to volunteer that not all neighbors on Klingle have no objection to the structure–an impression left by the applicant at your hearing. When it comes to such serious variations from zoning setbacks as presented in this case, we believe the objections of neighbors become of ever greater importance and should be given serious consideration.

We leave it to you to decide whether under zoning law, the case should be considered as as a special exception under #3104 of the zoning code rather than as a variance under #3103 of the code. But whether it be by special exception or by variance, we strongly urge that neither be granted for a structure that is not in harmony with the neighborhood, would adversely affect use of neighboring properties and would significantly intrude upon the character, scale and pattern of houses along the street. We also renew our request that the board order the dismantling of the existing awning, which was built without a permit and in violation of zoning requirements.

We urge the BZA to give our recommendation the "great weight" to which it is entitled under law.

Sincerely,

Eleanor Roberts Lewis

Chair, ANC3D