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October 25, 2001

Ms. Sheri Pruitt
Secretary, Board of Zoning Adjustment
441 – 4th Street, N.W.
Washington, D.C. 20001

Re: BZA No. 16710 – 5210 Klingle Street, N.W.

Dear Ms. Pruitt:

At the conclusion of the October 16, 2001 hearing on this matter, the Board left the record open until Friday, October 19, 2001 in order to receive neighbors' comments on the proposed plan for a structure to protect a chairlift for Mr. Pande's wheelchair-bound mother. The October 18, 2001 correspondence from ANC3D, and the letters from those neighbors opposing the structure, go well beyond the expressed purpose for which the BZA left this record open. In fact, very little of these additional filings provide the specific comments on the proposed structure solicited by the BZA (they simply indicate that they don't want any structure that would violate the zoning requirements). In the event that the BZA wishes to consider the additional points raised in the filings of October 19, 2001, this correspondence is intended to respond to all of these points. They are addressed in turn below.

1. The ANC's Restated Position. The ANC suggests that I may have left the Board with the impression that the ANC had approved the proposed structure. I never intended to suggest that that was the case. What Mr. Pande and I did intend to convey to the Board was simply that the plans presented to the Board were the same plans presented to ANC3D at its meeting on October 3, 2001.

As was stated at the hearing on October 16th, Mr. Pande followed up on the ANC's original suggestion that he hire an architect to prepare drawings for a revised structure. He did this to the best of his ability and in perfect good faith. He spoke with three (3) architects, and spent a great deal of time and money, in order to come up with a structure that was consistent with the character of the neighborhood, and yet provided the minimum structure necessary to function as protection for the chairlift.

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As was also stated at the hearing, Mr. Pande has explored all other alternatives, and is relying on his architect who stated that the subject plans present the only practical solution to his needs. Those neighbors in opposition to the plans have made it clear that they don't want any structure that would violate the zoning regulations. Thus, it is meaningless for the ANC to suggest that Mr. Pande should come up with a plan for a structure that would be acceptable to his neighbors. Clearly, he cannot care for his mother in this house without the Special Exception he is seeking.

The ANC also suggests that there was some confusion as to whether Mr. Pande was applying for a Special Exception consistent with the revised drawings. It is difficult to understand why there would be any such confusion. As the ANC concedes in its letter of October 9, 2001 to the BZA, the Board suggested that Mr. Pande hire an architect and prepare drawings for a revised structure and Mr. Pande did so. Once the plans were prepared, they were sent to Commissioner Finney and Mr. Pande's next door neighbor, Mr. Kennedy. Mr. Pande spoke with Mr. Kennedy and understood that Mr. Kennedy would be good enough to distribute copies of the plans to the other opposing neighbors. For whatever reason, Mr. Kennedy failed to do so, so Mr. Pande delivered copies of the plans to the opposing neighbors directly.

It is a bit disingenuous for the Board to now say that the October 16th hearing was for the purpose of reviewing an application for a "Special Exception" to allow construction of a canopy and that "as the ... hearing progressed, the Board turned to consideration [of a new structure]". The Board itself suggested that Mr. Pande prepare plans for a revised structure, and the entire discussion at the October 3rd ANC meeting was, at the insistence of the ANC Board, to review the new plans (the same plans that were presented to the BZA on October 16th). In fact, I originally attempted to address the application generally at the ANC's meeting of October 3, but Chairperson Lewis said that the purpose of the meeting was to review the new plans, and Mr. Pande then proceeded to explain the plans to the Board and the neighbors, and answer their questions. As was its prerogative, the ANC Board considered, but rejected, the drawings because Mr. Pande failed to get the approval of his neighbors. If the neighbors had approved of these drawings, and the ANC indicated its approval to the BZA, would they then still complain that the BZA's notice misstated the purpose of the hearing? Of course not – ANC3D and all of Mr. Pande's neighbors were well aware that Mr. Pande was seeking a special exception based on the new plans.

In its letter to the BZA, the ANC also questions whether Mr. Pande has applied for a Special Exception or a Variance. As noted in the original application, pursuant to Section 223 of the D.C. Code of Municipal Regulations, the Board of Zoning Adjustment may grant "special exceptions for reasonable additions to single family dwellings where the strict tests associated

with an area variance are unattainable". *See* Notice of Final Rulemaking, 45 DC Reg. 1446 (March 13, 1998). Special Assistant Richard Nero reached the same conclusion in his April 11, 2001 memo to the file, indicating that a variance under Section 405 was not required, but that a special exception would be appropriately sought. In any event, we believe Mr. Pande is fully entitled to a variance under Section 31 of 3.2 of the D.C. Code of Municipal Regulations as well, which gives the BZA the power to grant variances "where by reason of ... extraordinary or exceptional situations or conditions of a specific piece of property, the strict application of any regulation adopted under D.C. Code Annotated Sections 5-413 to 5-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...".

Finally, the ANC sets out its fear that the neighbors, the ANC and the Zoning Board are not starting from a common point in considering the subject plans. In fact, there was, and is, only one (1) set of plans at issue here, *i.e.* the plans labeled A-1 through A-3. This is made crystal clear by the attached statement from Mr. Pande's architect, Randy Davis-Ahmann.

2. Alternatives to the Plans. In his letter of October 17, 2001, Mr. Jack Kozcela questions the need for a cover over Ms. Pande's chairlift. Mr. Pande was advised by the wheelchair lift companies with whom he spoke that a cover would be necessary to protect the chairlift from the elements. Among other things, he was advised that the accumulation of snow or ice on the lift's tracks could keep the chairlift from operating. Mr. Pande has no natural affinity, or a secret agenda, for a carport, but rather, as should have been abundantly clear at the hearing, seeks only that structure necessary to protect the lift from the elements.

In Mr. Kozcela's October 18, 2001 transmittal letter to ANC3D, he suggested that Mr. Pande could "simply excavate his drive starting at the curb and run it straight down to the rear door of the house, thus eliminating any need for a structure of any kind". Mr. Kozcela goes on to state that "[Mr. Pande's] failure to investigate that alternative leaves me still to wonder about his intentions". In fact, Mr. Pande and his architect did investigate this alternative (as well as a number of other alternatives). As Ms. Davis-Ahmann makes clear in her attached statement, the absolute maximum grade for all vehicles should not exceed 17%, and the particular topography of Mr. Pande's property would produce a grade of 40%, way out of compliance with established site-planning standards.

3. Conclusion. Mr. Pande seeks a Special Exception to the applicable zoning regulations so that he may build the structure set forth on drawings A-1 through A-3. As illustrated in the plans, the structure would violate the 8 foot side yard requirement, and the 25 foot rear yard requirement. Such a structure is required in order to appropriately protect the wheelchair lift, and comply with the applicable safety code.

It is indeed unfortunate that a few of Mr. Pande's neighbors make him out to be a scofflaw, unconcerned with the law, and without any feeling for his neighbors or the neighborhood. Nothing could be farther from the truth. As he testified under oath, Mr. Pande specifically asked the original contractor if any permits were required, and was told no. He never intended to violate the zoning regulations. He has expended an inordinate amount of time and money in an attempt to satisfy his neighbors' concerns. The structure requested uses simple painted wood posts and wood railings with an architectural grade laminated fiberglass roof, all designed to be in harmony with the architectural elements of the porches at a number of the houses along Hawthorne Place. The wood, posts and railings are just like those features of his next door neighbor, Mr. Kennedy's, home.

Mr. Pande makes this application out of necessity, so that he may live at 5210 Klingle Street with his wheelchair-bound mother.

The ANC's opinion deserves great deference, and it is the ANC's prerogative not to approve an application for a special exception unless the proposed structure is acceptable to all neighbors, but that is not the legal requirement for a special exception. Mr. Pande has met his burden of showing entitlement for special exception relief, and we respectfully request that the BZA grant Mr. Pande a special exception so that the may build the structure set forth in drawings A-1 through A-3.

Sincerely,



Howard J. Ross

HJR/bn
cc: ANC3d
Mr. Jack Kennedy