TROUTMAN SANDERS MAYS & VALENTINE LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1660 INTERNATIONAL DRIVE
SUITE 600, TYSONS CORNER
MCLEAN, VIRGINIA 22102-3805
www.troutmansanders.com
TELEPHONE: 703-734-4334
FACSIMILE: 703-734-4340

Howard J. Ross
howard.ross@troutmansanders.com

Direct Dial: 703-734-4333
Direct Fax: 703-734-4340

November 21, 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 BZA's meeting on November 6, 2001, the Board deferred making a decision in this matter until its meeting on Tuesday, December 4, 2001 so that ANC3D could review the architectural drawings in this matter with the understanding that Mr. Pande was applying for a Special Exception consistent with these revised drawings. I made arrangements for the architect to supply the Commission with full scale architectural drawings (the same presented to the BZA at its initial public hearing on this case, and the same presented to ANC3D at its meeting on October 3, 2001). In its letter of November 12, 2001, ANC3D has confirmed that these drawings were reviewed with this understanding.

Immediately following the BZA's decision on November 6 to defer a decision in this matter, I contacted Mr. Pande and his architect (Ms. Randy Davis-Ahmann) to see if they would be available to attend the ANC3D meeting the following night in the event that any questions arose. On such late notice, neither party was able to attend because of prior engagements. However, I made arrangements for Ms. Davis-Ahmann to be available by telephone from 7:30 p.m. until 10:00 p.m. during the ANC3D meeting of Wednesday, November 7, 2001. I also invited the Commission to advise me of any questions that remained unanswered at the conclusion of the ANC meeting (a copy of my November 7, 2001 correspondence to ANC3D to that effect is attached). Neither Ms. Davis-Ahmann nor I were contacted.

While all concerned would have been pleased to have the parties resolve this matter, it is clear that such a consensus was, and is, not possible because those neighbors opposing the structure do not want anything resembling a carport in their neighborhood. The only alternative

BZA
Case No. 16710
Exhibit No. 50

Board of Zoning Adjustment
District of Columbia
CASE NO.16710
EXHIBIT NO.50

suggested by those neighbors opposing Mr. Pande's position was that presented by Mr. Koczela in his October 18, 2001 letter to the ANC3D, where he suggested that Mr. Pande "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". As noted in my October 25, 2001 correspondence to the BZA, this alternative is simply not viable because of the particular topography of Mr. Pande's property.

In its letter of November 12, the ANC states that the proposed structure is "intrusive", "incompatible with the neighborhood", and that it "would stand out like an eyesore on a quiet residential street". Simply put, the position of the neighbors in opposition to Mr. Pande is that anything resembling a carport in this neighborhood is "intrusive", "incompatible with the neighborhood", and "would stand out like an eyesore on a quiet residential street". While these are subjective matters determined by one's perspective, we must take issue with these contentions. There is absolutely no visual intrusion into any of the neighbors' yards approaching the subject property from the north, or standing directly in front of the property. If one were to drive up Hawthorne Place from the south, there would be a split second during which the proposed structure would rise some three (3) feet above the existing fence, and a portion of the structure would momentarily block the observer's view of a portion of Mr. Kennedy's home. Moreover, as noted during the original public hearing in this matter, and as noted in my correspondence of October 25, 2001 to the BZA, Mr. Pande has taken pains to ensure that the size of the porte cochere was minimized (consistent with its function to protect the wheelchair lift from the elements), and that its design would be in harmony with the architectural elements of the neighborhood. The new structure was moved back 6 feet from the existing canopy, and the height was lowered some 3 feet at the front. 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 proposed structure is neither an eyesore, nor would it adversely impact "a quiet residential street".

The BZA should not ignore what those neighbors in opposition apparently have ignored -- this Special Exception is sought out of necessity, to accommodate a neighbor with a disability. Mr. Pande has explored all other alternatives, and is relying on his architect who has stated that the subject plans present the only practical solution to his needs. As Mr. Pande stated at the original hearing in this matter, he cannot care for his mother in this house without the Special Exception he is seeking.

In fact, the Federal Fair Housing Act mandates that the District reasonably modify its policies, practices or procedures to avoid discrimination on the basis of disability. In our original brief in support of this application we noted the following illustration from the Technical Assistance Manual for the Americans with Disabilities Act:

> "A municipal zoning ordinance requires a setback of twelve feet from the curb in a central business district. In order to install a ramp to the front entrance of a pharmacy, the owner must encroach on the setback by three feet. Granting a variance in the zoning requirement may be a reasonable modification of town policy."

Section II-3.6100 of the Technical Assistance Manual.

Although the analogy is clear, the American with Disabilities Act does not apply to private residences. However, I have since spoken with a Mr. John E. Levan, Sr, an Equal Opportunity Specialist with the U.S. Department of Housing and Urban Development in Philadelphia, Pennsylvania (telephone number 215 656-0662, Ext. 3262), who advised me that the Fair Housing Act does apply to private residences in the District of Columbia because the District is the recipient of Federal Block Grant funds. As the recipient of such funds, Federal law mandates that the District assess its policies, practices and procedures to ensure that the same are not an impediment to the provisions of the Fair Housing Act. HUD's Fair Housing Planning Guide specifically includes zoning and land use policies and practices as an item that requires this assessment.

Federal Regulations promulgated under the Fair Housing Act provide that :

> "it shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling."

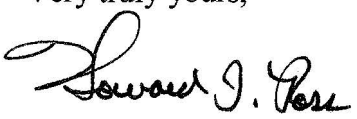
CFR Section 100.203(a).

Also, case law has held that the Fair Housing Act requires counties and municipalities to make reasonable accommodations in their generally applicable zoning ordinances when necessary to give a handicapped person equal opportunity to use and enjoy a dwelling. Groome Resources, Ltd., L.L.C. vs. Parish of Jefferson, 52 F.Supp2d. 721 (U.S.D.Ct. Eastern District of Louisiana 1999, affirmed on appeal).

The structure proposed by Mr. Pande is just what the Fair Housing Act requires -- it provides a reasonable accommodation to the applicant's disabled mother in order to give her access to her home.

Because Mr. Pande has met his burden of showing entitlement for Special Exception relief, and because the relief is mandated under the Fair Housing Act, the Special Exception should be granted.

Very truly yours,



Howard J. Ross

HJR/bn

cc: ANC3D
Mr. Jack Kennedy

TROUTMAN SANDERS MAYS & VALENTINE LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1660 INTERNATIONAL DRIVE
SUITE 600, TYSONS CORNER
MCLEAN, VIRGINIA 22102-3805
www.troutmansanders.com
TELEPHONE: 703-734-4334
FACSIMILE: 703-734-4340

Howard J. Ross
howard.ross@troutmansanders.com

Direct Dial: 703-734-4333

November 7, 2001

Advisory Neighborhood Commission 3-D
c/o Beverly Monroe

RE: BZA No. 16710-5210 Klingle Street, N.W.

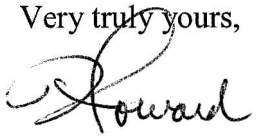
Dear Beverly:

Yesterday, the Board of Zoning Adjustments deferred a decision in this matter until its meeting on December 4, 2001, so that the ANC 3-D and Mr. Pande's neighbors could again review the plans for Mr. Pande's proposed structure, and send their comments on such structure to the Board. Unfortunately, neither Mr. Pande nor the architect, Ms. Randy Davis-Ahman, are available to attend the meeting tonight. No disrespect is intended by their absence. On the contrary, Mr. Pande remains ready willing and able to address the concerns of his neighbors and the ANC 3-D consistent with his need to protect the chair lift for his mother.

In order to facilitate the review of these plans at tonight's meeting, I made arrangements with the architect to hand deliver a full-size set of the drawings to Commissioner Finney (who confirmed that he received the drawings this morning). Ms. Davis-Ahman has also indicated that she will attempt to be available by telephone (301-864-1334) if the Commission or the neighbors have any questions. Additionally, as I advised Mr. Finney this morning, if there are any questions that remain unanswered at the conclusion of the meeting tonight, please have those questions sent to me and I will promptly provide answers.

Would you be good enough to read this correspondence at the meeting tonight and extend our apologies for not being able to be present at the meeting on such short notice? As always, thank you for your courtesies.

Very truly yours,



Howard J. Ross

HJR:neh