GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

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Application No. 16710 of Vinay Pande, pursuant to 11 DCMR § 3104.1, for a special exception under section 223 to allow the construction of a canopy over a driveway and stairway leading to a one-family dwelling that does not comply with the side yard requirements (section 405) in an R-1-B District at premises 5210 Klingle Street, N.W. (Square 1438, Lot 44).

HEARING DATES: July 10, 2001; October 16, 2001

DECISION DATE: November 6, 2001; December 4, 2001

ORDER DENYING APPLICATION

Vinay Pande filed an application with the Board of Zoning Adjustment on February 23, 2001, pursuant to 11 DCMR § 3104 for a special exception under § 223 to permit an addition to a detached one-family dwelling in an R-1 District, where the addition would not conform to the minimum side yard requirements of § 405. The applicant is represented in these proceedings by Troutman Sanders. After hearing the case, the Board voted 2 – 2 – 1, with one member not seated and not voting, on a motion to approve the application. Therefore, the motion was lost for a lack of a majority vote, and the application denied.[1]

Notice of Application and Notice of Hearing. By memoranda dated April 17, 2001, the Office of Zoning advised the Zoning Administrator; the D.C. Office of Planning; Advisory Neighborhood Commission (ANC) 3D, the ANC for the area within which the subject property is located; the ANC commissioner for the affected Single-Member District; and the Ward 3 Councilmember of the filing of the application.

The Board scheduled a public hearing on the application for July 10, 2001. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on May 24, 2001, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 3D notice of hearing. Notice of hearing was also published in the *D.C. Register* on May 25, 2001, at 48 DCR 4655. On May 25, at the applicant's request, the Board continued the public hearing to October 16, 2001. The Board announced the new hearing date at the May 25 hearing. Notice of the October 16 public hearing was also published in the *D.C. Register* on September 7, 2001, at 48 DCR 8426, and on

[1] Under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code § 6-641.07(h) (2001)), "The concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order." *See also* 11 DCMR § 3125.2. When the Board is unable to dispose of a motion to approve an application by virtue of a 2 – 2 – 1 vote, the effect of the vote is to deny the application. *See Morrison v. District of Columbia Bd. of Zoning Adjustment*, 422 A.2d 347, 349 (D.C. 1980).

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September 14, 2001, at 48 DCR 8590. The applicant's affidavit of posting indicates that on September 17, 2001, a zoning poster was placed on the property on the Hawthorne Place frontage, in plain view of the public.

Requests for Party Status: The Board granted party status to John and Elaine Kennedy pursuant to 11 DCMR § 3106.3, finding that their interests would be more significantly, distinctively, or uniquely affected by the proposed special exception than those of persons in the general public, since the Kennedys own the adjacent property on Hawthorne Place.

Applicant's Case. The applicant originally applied for a special exception to permit, after the fact, the construction of a canopy or awning over the driveway that provides access to Hawthorne Place and the walkway to the side entrance of the main dwelling. During the course of the proceedings, the applicant amended his application to propose the construction of a wooden porte cochere, with a covered stairway and a mechanical wheelchair lift leading to the side entry. This decision and order concerns the porte cochere and covered stairway as shown in the drawings labeled A-1 to A-3, dated October 1, 2001. The applicant states that his mother requires the wheelchair lift to access the dwelling, and that the porte cochere and covered stairway would protect the wheelchair lift from the elements.

D.C. Office of Planning (OP) Report. OP did not submit a report in this case.

ANC Report. In its report dated June 18, 2001, ANC 3D, at a regularly scheduled monthly meeting with a quorum present, voted against a special exception for the existing awning. The ANC urged the applicant and the neighbors to try and work out an acceptable compromise.

In a second report dated October 9, 2001, ANC 3D indicated that at a regularly scheduled monthly meeting with a quorum present, the ANC confirmed its earlier position. The ANC recommended that the applicant tear down the existing awning and work with his immediate neighbors to arrive at a design that would be proportionate in height and not infringe upon his neighbors' use and enjoyment of their property.

A third report dated October 18, 2001, expressed concerns over the plans that had been submitted and questioned whether variance relief was required. The ANC indicated that it believed the awning should be torn down before any plans for a new structure are considered.

A fourth report from the ANC dated November 12, 2001, indicates that at a regularly scheduled meeting with a quorum present, the Commission voted to oppose the granting of a special exception to permit the construction of the porte cochere. The ANC pointed out that the long, southeast side of the porte cochere is located on the side property line, where an eight-foot side yard would typically be required. As a result, the ANC believes the ten-foot, ten-inch roof would visually intrude into the front yard of the next door neighbor. In addition, the porte cochere is set back two feet from the rear property line. The ANC concluded that the proposed structure would be incompatible with the neighborhood, which has no garages abutting the sidewalk, and would constitute an eyesore. The ANC indicated that regardless of whether

special exception or variance relief is required, the application should be denied since the proposed structure is not in harmony with the neighborhood, would adversely affect the use of neighboring properties, and would significantly intrude upon the character, scale, and pattern of houses along the street. The ANC renewed its request that the Board order the dismantling of the existing awning, which was built without a permit and which the ANC alleges is in violation of zoning requirements.

Persons and Parties in Support. The applicant submitted letters and statements in support from several neighbors in support of the application.

Persons and Parties in Opposition. John and Elaine Kennedy opposed the special exception based on the proximity of the proposed porte cochere to their property and its effect on their line of sight. They pointed out that while the special exception was sought for the applicant's side or rear yard, the proposed addition would be adjacent to their front yard.

Other neighbors complained that the existing awning is unsightly and out of character with the neighborhood. They stated that the proposed porte cochere would intrude upon the character, scale, and pattern of the adjacent and nearby dwellings that front on Hawthorne Place.

Decision Meetings. At the Board's decision meeting on November 6, 2001, the Board deferred making a decision on the application until its meeting on December 4, 2001, so that the ANC could review the architectural drawings in this case.

On December 4, 2001, the Board voted 2 – 2 – 1, with one member not seated, not voting, to approve the application. The motion to approve the application was lost for lack of a majority vote, and the application deemed denied.

FINDINGS OF FACT

1. The property that is the subject of this application is Lot 44 in Square 1438, with a street address of 5210 Klingle Street, N.W.

2. The property is an irregular shaped lot that fronts on Klingle Street. A portion of the rear yard opens onto Hawthorne Place.

3. There is a 50-foot driveway leading to Hawthorn Place. The driveway slopes steeply downward toward the dwelling, and there are 13 steps leading downward to the side entrance of the dwelling.

4. The applicant proposes to install a motorized chairlift from the driveway to the dwelling. To protect the chairlift from the elements, the applicant would construct a carport to cover the driveway and a covered stairway.

5. The proposed porte cochere and covered walkway would be joined to the dwelling to provide covered access to the rear entrance of the dwelling.

6. The proposed structure would be constructed in the applicant's rear yard; however, the applicant's rear yard abuts the front yard of the adjacent property on Hawthorne Place.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11 DCMR §§ 223 and 3104.1 to construct an addition to a one-family dwelling in an R-1-B District, where the addition will not comply with the side yard requirements of § 405. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

The ANC and several neighbors question whether the zoning relief sought in this case is properly characterized as a variance or special exception. While the majority of special exceptions provided by the Zoning Regulations involve uses, certain special exception provisions authorize the Board of Zoning Adjustment to grant relief from the area restrictions of the Zoning Regulations. In 1998, the Zoning Commission adopted § 223 of the Zoning Regulations, authorizing the Board to approve, as special exceptions, additions to one-family dwellings and flats that do not conform to certain area restrictions, including the minimum side yard requirements. *See* Notice of Final Rulemaking, 45 DCR 1446 (1998), as amended by Notice of Final Rulemaking, 48 DCR 8983 (2001).

The Zoning Regulations do not contain a definition of the word "addition." Under § 199.2, words not defined in the regulations have the meanings given in *Webster's Unabridged Dictionary*. The definition of the word "addition" given in *Webster's Third New International Dictionary* (1986) includes "a part added to or joined with a building to increase available space" and "facilities, structures, equipment, or other property added to what is already in service." The Board therefore concludes that the proposed porte cochere and covered walkway, which would be added to or joined with the existing main dwelling, constitute an "addition." Under § 223.1:

> An addition to a one-family dwelling or flat, in those Residence Districts where a flat is permitted, that does not comply with all of the applicable area requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted [as a special exception] if approved by the Board of Zoning Adjustment in accordance with § 3104.1, subject to the provisions of this section [§ 223].

Therefore, the Board concludes that the application is properly filed as a request for a special exception.

The ANC also requests the Board to order the existing canopy dismantled. Under § 11 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 801; D.C. Code § 6-641.10(a) (2001)),

the Mayor is authorized to enforce the Zoning Regulations. *See also* 11 DCMR § 3200.1. The enforcement of the Zoning Regulations is presently assigned to the Department of Consumer and Regulatory Affairs through Reorganization Plan No.1, effective March 31, 1983, D.C. Code ch. 15 (2001). The ANC should therefore direct its requests for enforcement to the Department of Consumer and Regulatory Affairs, Office of the Zoning Administrator.

Finally, the Board was unable to resolve whether the Applicant met the conditions listed under §§ 223 and 3104 for special exception approval. As a result, the motion to approve this application failed for lack of a majority vote..

It is hereby **ORDERED** that the application be **DENIED.**

Vote: 2 – 2 – 1 (Geoffrey H. Griffis and James H. Hannaham, to grant; Anne M. Renshaw and David W. Levy, to deny; the third mayoral appointee not sitting, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each voting member has approved the issuance of this Order Denying Application.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: MAR - 1 2002

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 16710

As Director of the Office of Zoning, I hereby certify and attest that on MAR - 1 2002, a copy of the foregoing Decision and Order in BZA Application No. 16710 was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing and who is listed below:

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ATTESTED BY:

JERRILY R. KRESS, FAIA
Director