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D.C. OFFICE OF ZONING
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March 8, 2002

Jerrily R. Kress, FAIA, Director
Government of the District of Columbia
Board of Zoning Adjustment
Office of Zoning
441 - 4th Street, N.W., Suite 210
Washington, D.C. 20001

Re: Board of Zoning Adjustment No. 16710 - 5210 Klingle Street, N.W.

Dear Director Kress:

This correspondence will serve as a motion for reconsideration of the March 1, 2002 decision of the Board of Zoning Adjustment in the above-captioned matter. This motion for reconsideration is made pursuant to the provisions of Section 3126 of the District of Columbia Municipal Regulations. The grounds for this motion are set forth hereinbelow. The relief sought is an approval of the Special Exception requested in this application.

Brief Summary of Facts.

This matter concerns the application of a Mr. Vinay Pande for a Special Exception to applicable D.C. zoning regulations so that he may construct an addition to protect a motorized wheelchair lift from the elements. After his purchase of the property, Mr. Pande's mother developed a severe case of rheumatoid arthritis, and her doctor recommends the construction of a wheelchair lift which would carry Ms. Pande's wheelchair from the driveway to the main entrance way of the house. As noted in the March 1, 2002 Order, there is a 50-foot driveway leading to the subject property, the driveway then slopes steeply towards the home, and there are 13 steps leading downward to the side entrance of the dwelling. Mr. Pande contacted several architects to design an appropriate addition, and the plans submitted to the BZA represent his architect's professional opinion as to the minimum addition necessary to protect the wheelchair lift. As Mr. Pande repeatedly stated at the hearing in this matter, he cannot care for his mother in this house without the Special Exception he is seeking.

BZA
Case No. 16710
Exhibit No. 52

Board of Zoning Adjustment
District of Columbia
CASE NO.16710
EXHIBIT NO.52

Grounds for the applicant's motion for reconsideration are as follows:

1. **The third mayoral appointee not sitting and not voting in this matter should be allowed to review the file, and break the deadlock between the four sitting and voting members.**

As noted in the Order, Board Members Griffis and Hannaham voted to grant the application for a Special Exception, and Board Members Renshaw and Levy voted to deny. The third mayoral appointee was not sitting and not voting. As a result, the motion to approve the application failed for lack of a majority vote. In the interests of justice, and so that the Board may resolve whether this applicant met the conditions for a Special Exception, it is respectfully requested that the third mayoral appointee review the file in this matter and vote to approve or disapprove the application. Alternatively, we would request that the entire 5 member Board reconsider the file and vote to approve or deny the application.

2. **Those neighbors in opposition to the application for the Special Exception have not shown that the addition will have a "substantially adverse affect" on the use or enjoyment of their property.**

As noted in the Order, certain of Mr. Pande's neighbors complained that the proposed addition would be "intrusive" and "unsightly", and his next door neighbors, John and Elaine Kennedy, also opposed the addition because of its affect on their line of sight. As noted in the November 21, 2001 correspondence from Mr. Pande's counsel to the BZA, these are subjective matters with which Mr. Pande must take issue. As was stated in the November 21, 2001 correspondence, 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 subject 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. By any reasonable standard, these factors do not rise to the "substantially adverse affect on the use or enjoyment of any abutting or adjacent dwellings" prohibited by Section 223 of the D.C. Code of Municipal Regulations. Moreover, as the record makes plain, Mr. Pande has taken pains to ensure that the size of the addition was minimized (consistent only 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 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 homes along Hawthorne Place. The proposed addition is neither an eyesore nor would it adversely impact (much less have a "substantially adverse affect on") the neighborhood.

3. **The Federal Fair Housing Act requires the Special Exception be approved as a reasonable accommodation to a handicapped person.**

Again reiterating what was stated in the November 21, 2001 correspondence, the BZA should not ignore what Mr. Pande's neighbors apparently have ignored - *i.e.* that 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 meet his needs.

The BZA Order does not address the requirements of the Federal Fair Housing Act, as set forth in the November 21, 2001 correspondence. Among other things, the Fair Housing Act provides that unlawful discrimination includes:

> "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

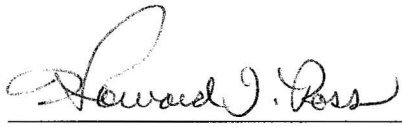
42 U.S.C. § 3604(f)(3)(B).

In *Groome Resources, Ltd., L.L.C. v. Parrish of Jefferson*, 52 F.Supp2d. 721 (U.S.D.Ct. Eastern District of Louisiana 1999, affirmed on appeal), Groome Resources applied for a variance from the local zoning ordinance so that a group home for individuals afflicted with Alzheimer's disease could be constructed in a neighborhood zoned for single family homes. The local civic association opposed the variance as inconsistent and incompatible with a neighborhood of single family homes. The District Court found that the requested variance was reasonable and necessary to allow handicapped individuals to have an equal opportunity to live in residential settings of their choice, and required the town to approve the variance.

Just as in the Groome Resources case, the Fair Housing Act requires the approval of the Special Exception sought in the present case - the addition is a reasonable accommodation to Mr. Pande's disabled mother, necessary to give her an equal opportunity to use and enjoy her home.

* * *

Based on the foregoing, the applicant respectfully requests that this motion for reconsideration be granted, and that the third mayoral appointee review the file in this matter and vote to approve or disapprove the application for a Special Exception; or, in the alternative, that the entire five (5) member Board reconsider the March 1, 2002 Order and render a decision based on the existing file in this matter.



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CERTIFICATE OF SERVICE

I certify that on this 8th day of March, 2002 a copy of the foregoing motion for reconsideration was delivered by first-class mail, postage prepaid to:

John and Elaine Kennedy
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