GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16710-A 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 DATES: November 6, 2001; December 4, 2001; May 7, 2002

ORDER GRANTING MOTION FOR RECONSIDERATION

Pursuant to 11 DCMR § 3126, the applicant, Vinay Pande, timely filed a motion for reconsideration of the Board of Zoning Adjustment's final Order Denying Application, dated March 1, 2002. Mr. Pande is seeking a special exception to permit an addition to a one-family dwelling.

John W. Finney, the Commissioner for Advisory Neighborhood Commission Single-Member District 3-D-04, filed a letter with the Board on April 23, 2002, opposing the motion for reconsideration. Mr. Finney is not a party in this case and the letter was filed more than seven days after the filing of the motion. However, the Board waived the procedural requirements of § 3126.5 to include Mr. Finney's letter in the record.

On May 14, 2002, after reviewing the motion and the opposition thereto from Mr. Finney, the Board determined to grant the motion and reconsider the case. Reconsideration based on the existing record will enable the Board to dispose of this case on the merits, with a decision based on findings of fact and conclusions of law.

Mr. Pande's application was denied on the basis of a 2 – 2 – 1 vote, with two members voting to approve the application, two members opposed, and one member not seated due to a vacancy on the Board and therefore not voting. Because favorable action on an application requires "the concurring vote of not less than a full majority of the members of the Board," D.C. Code § 6-641.07(g) (2001), the tie vote operated to deny the application. *See also* 11 DCMR § 3125.2; *Morrison v. District of Columbia Bd. of Zoning Adjustment*, 422 A.2d 347, 349 n.5 (D.C. 1980).

In the *Morrison* case, the Board had split on a 2 – 2 vote on a motion to vacate a final order. The Board then deferred any further action on the case and asked the fifth member, who

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had previously abstained due to a conflict of interest, to vote. The matter that had created the conflict of interest had since been resolved, and the fifth member was able to vote, with the result that the full Board was able to reconsider the motion and issue a final order on the application. The District of Columbia Court of Appeals recognized in *Morrison* that by reconsidering the motion with all five members voting, the Board was able to dispose of the case on the merits. Otherwise, the application would have been denied through the technical operation of the rules, without any determination by the Board as to the findings and conclusions that would support the granting or denial of the application. *See id.* at 349.

Based upon the above, the Board concludes that it would be appropriate to reconsider Mr. Pande's application for a special exception to permit the full Board to determine whether to grant or deny the application. Therefore, it is **ORDERED** that the applicant's motion for reconsideration is **GRANTED.** The Board will reconsider the application based upon the record at a special public meeting on May 21, 2002.

VOTE: 3 – 2 – 0 (Geoffrey H. Griffis, James H. Hannaham, and Curtis L. Etherly, Jr.,[1] to grant; Anne M. Renshaw and David W. Levy, opposed).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Order Granting Motion for Reconsideration.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

DATE OF ORDER: MAY 17 2002

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND 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.

[1] As required by § 3126.8, Mr. Etherly read the transcript and record prior to the May 7, 2002, public meeting for purposes of voting on the motion for reconsideration.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16710-A

As Director of the Office of Zoning, I hereby certify and attest that on MAY 17 2002, a copy of the foregoing Decision and Order in BZA Application No. 16710, was mailed first class, postage prepaid, or delivered via inter-agency mail to each party and public agency who appeared and participated in the public hearing and who is listed below:

Howard J. Ross
Troutman Sanders Mays & Valentine LLP
1600 International Drive, Suite 600
McLean, VA 22102

John and Elaine Kennedy
5538 Hawthorne Place, N.W.
Washington, D.C. 20016

John W. Finney, Chair
Advisory Neighborhood Commission 3D
P.O. Box 40846
Washington, D.C. 20016

Honorable Kathleen Patterson
Councilmember Ward 3
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Room 107
Washington, D.C. 20004

Ellen McCarthy, Deputy Director
Development Review Division
D.C. Office of Planning
801 North Capitol Street, N.E., Suite 4000
Washington, D.C. 20002

Denzil Noble, Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning