GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16710-B 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 under 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 14, 2002, May 21, 2002

DECISION AND ORDER AFTER RECONSIDERATION

Vinay Pande filed an application with the Board of Zoning Adjustment ("Board") 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. [1] The applicant was represented in these proceedings by Troutman, Sanders, Mays & Valentine, LLP.

At the Board's decision meeting of December 4, 2001, a vote was taken on Mr. Pande's application, which was denied for lack of a majority. The Board's order of denial, dated March 1, 2002, explained the denial 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 and not voting due to a vacancy on the Board. 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 operated to deny the application. Therefore, the Board did not dispose of the case on the merits.

On March 9, 2002, Mr. Pande submitted a motion for reconsideration of the denial of his application, citing three grounds for his motion. First, as his application was denied through technical application of the rules, the "interests of justice" would be served by either having the missing Board member review the matter and vote

[1] The application was self-certified pursuant to 11 DCMR § 3113.2. Therefore the Board only considered the merits of the relief requested. Nothing in this order precludes the Zoning Administrator or the Board (in the event of an appeal) from making a subsequent determination that different or additional zoning relief was necessary.

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to approve or disapprove the application or by having the entire five-member Board reconsider the matter and re-vote on it. Second, Mr. Pande averred that his proposed addition would not have a "substantially adverse effect on the use or enjoyment of any abutting or adjacent dwellings," in violation of § 223. Third, Mr. Pande claimed that the Federal Fair Housing Act required the approval of his special exception as it was necessary to provide a reasonable accommodation to a handicapped person. (See 42 U.S.C. § 3604(f)(3)(B)).

As required by 11 DCMR § 3126.8, the Board member who had not originally participated read the transcript and record of Mr. Pande's case in order to be able to properly vote on his motion for reconsideration.

On May 14, 2002, after reviewing Mr. Pande's motion for reconsideration and the opposition thereto, the Board granted the motion and decided to reconsider the case based on the existing record. This would enable the Board to dispose of the case on its merits, with a decision based on findings of fact and conclusions of law.

On May 21, 2002, at a special public meeting, the full Board reconsidered Mr. Pande's case on the merits and, by a vote of 3-2-0, granted his application 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.

PRELIMINARY MATTERS:

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 Mr. Pande's 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 the hearing on Mr. Pande's application. 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 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. At the October 16, 2001 public hearing, the Board granted party status to adjacent property owners John and Elaine Kennedy pursuant to 11 DCMR § 3106.3, finding that their interests would be more significantly, distinctively uniquely affected by the proposed special exception than those of persons in the general public.

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 new structure – 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.

Government Reports. The District of Columbia Office of Planning (OP) did not submit a report in this case.

Advisory Neighborhood Commission (ANC) Report. In its report dated June 18, 2001, ANC 3D, indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted against a special exception for the original 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 original 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 original awning should be torn down before any plans for a new structure were considered.

A fourth report from the ANC dated November 12, 2001, indicated that at a regularly scheduled meeting with a quorum present, the ANC 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.[2]

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

Parties and Persons 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.

Hearings. The public hearing on the application scheduled for July 10, 2001, was continued until October 16, 2001. On October 16, the applicant and his architect presented testimony and evidence. The ANC, Mr. Kennedy, a party, and another neighbor, who was not a party, testified in opposition.

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[2] Although the Board does not have authority to enforce the zoning regulations and therefore cannot order the dismantling of the original awning, a February 15, 2002, letter from Mr. Pande's attorney states that the original awning was to be dismantled in March, 2002.

Decision Meetings. At the Board's meeting on November 6, 2001, the Board deferred making a decision on the application until its meeting on December 4, 2001, to allow the ANC to 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.

On May 14, 2002, after reviewing the motion for reconsideration and the opposition thereto from Mr. Finney, the Board decided to grant the motion and reconsider the case.

At a special public meeting on May 21, 2002, the full Board reconsidered the application on its merits based on the record and granted the application.

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 Hawthorne 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's mother, who resides in the dwelling, is debilitated by rheumatoid arthritis.

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

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

7. The proposed structure will reach to the property line on the south side yard of the dwelling.

8. The proposed structure will reach to six feet of the property line on the north side yard of the dwelling.

9. The proposed structure will 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

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 Relief Sought is Properly Characterized as a Special Exception. 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 Third New International Dictionary. The definitions of the word "addition" given in Webster's Third New International Dictionary (1986) include "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 [section 223].

11 DCMR § 223.1.

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

The Applicant Qualifies for Special Exception Relief. The Board can grant a special exception where, in its judgment, two tests are met. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map," subject in each case to special conditions. 11 DCMR § 3104.1. Because the applicant is requesting a special exception to build an addition to his one-family dwelling in an "R" District, his request is subject to the special conditions set forth in 11 DCMR § 223.2. Section 223.2 states, in pertinent part:

> The addition shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
> (a) The light and air available to neighboring properties shall not be unduly affected;
> (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
> (c) The addition, together with the original building, as viewed from the street, ... shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

11 DCMR § 223.2.

The Board concludes that the proposed structure meets both tests and all the special conditions necessary to grant special exception relief. First, the special exception relief requested here will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." The applicant's architect explained that, responding to neighbors' concerns, she came up with a design that was in keeping with the neighborhood and was unobtrusive. See, Oct. 16, 2001 Board of Zoning Adjustment Public Hearing Transcript at 79-80, ("Oct. 16 Transcript"). She explained that the original canopy projected over the property line by four feet and that the new design placed the structure two feet within the property line, thus reducing the size by six feet. Oct. 16 Transcript at 80. The architect also pointed out that, whereas the original awning was twelve feet high, the new porte cochere, at its highest point, would be 10 feet, 10 inches high, and due to a change of ground elevation, it would be only nine feet high at the

sidewalk. Oct. 16 Transcript at 82-83. Further, the architect stated that although the original awning was made of plastic and metal poles, it would be replaced with a wooden structure with simple wooden posts, wooden railings and architectural grade fiberglass shingles. Oct. 16 Transcript at 81 & 82. Lastly, the architect explained that the new structure would also necessitate some regrading using landscape timbers and masonry retaining walls with stone caps. Oct. 16 Transcript at 83. After reviewing the record and considering the proposed dimensions and appearance of the new structure, as described by the architect, the Board concludes that the new porte cochere meets the first special exception test.

Second, the Board determines that the special exception relief requested here will "not tend to affect adversely, the use of neighboring property." In making this determination, the Board takes into account the three conditions enumerated in § 223.2, quoted above. The Board finds that the light and air available to neighboring properties will not be unduly affected by the new porte cochere, particularly as the porte cochere is to be open, with no walls. See, Oct 16 Transcript at 87 and Board of Zoning Adjustment Public Meeting Transcript of May 21, 2002 at 44. ("May 21 Transcript") The Board also concludes that the use and enjoyment of neighboring properties will not be unduly compromised by the new structure. The immediately adjacent neighbor has a wood stockade fence on the side of his yard adjacent to the new structure which appears to interfere with that neighbor's line-of-sight more than the new structure would. See, May 21 Transcript at 41 and 44. The Board further concludes that, based on its diminished proportions and improved construction materials, the new porte cochere will not visually intrude upon the character, scale and pattern of houses along the street.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception under § 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 (§ 405) in an R-1-B District. It is therefore **ORDERED** that the application be **GRANTED**.

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each voting Board member has approved the issuance of this Order granting the application.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: OCT 2 8 2002

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16710-B

As Director of the Office of Zoning, I hereby certify and attest that on OCT 2 8 2002, a copy of the foregoing Decision and Order in BZA Application No. 16710-B, 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:

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ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
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