GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16710-C of Vinay Pande, pursuant to 11 DCMR § 3104.1, 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 at premise 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; December 3, 2002; January 7, 2003

DECISION AND ORDER AFTER SECOND RECONSIDERATION

Vinay Pande filed an application with the Board of Zoning Adjustment ("Board") on February 23, 2001, pursuant to § 3104 of Title 11 of the District of Columbia Municipal Regulations (DCMR) 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 Board scheduled a public hearing on the application for July 10, 2001. This hearing did not take place, but, at the applicant's request, was continued to October 16, 2001. At the October 16, 2001 hearing, adjacent property owners John and Elaine Kennedy were granted party status. Advisory Neighborhood Commission ("ANC") 3D, the ANC for the area within which the subject property is located, was automatically a party, pursuant to 11 DCMR § 3106.2. Both parties opposed the granting of the application.

At its decision meeting on December 4, 2001, the Board voted 2-2-1, with one member not seated, not voting, on a motion to approve the application. The motion to approve was lost for lack of a majority vote. On March 9, 2002, Mr. Pande submitted a motion for reconsideration of his application. On May 14, 2002, after reviewing the motion for reconsideration and the opposition thereto, the Board granted the motion and decided to reconsider the case.

At a special public meeting on May 21, 2002, the full Board reconsidered the application and voted 3-2-0 to approve the special exception. This decision was memorialized by the Board's October 28, 2002 Order granting the special exception application. *See,* October 28, 2002 Order of the District of Columbia Board of Zoning Adjustment in case No.

BZA
Case No. 16710
Exhibit No. 65

Board of Zoning Adjustment
District of Columbia
CASE NO.16710
EXHIBIT NO.65

16710-B. ("Oct. 28 Order") That Order sets forth the history of the case, as well as preliminary matters, findings of fact and conclusions of law.

In November 2002, both parties in opposition, ANC 3D and Mr. Kennedy, requested a second reconsideration of the case, based on their assertion that finding of fact number four in the October 28, 2002 Board Order is incorrect. Finding of fact number four states: "[t]he applicant's mother, who is debilitated by rheumatoid arthritis, resides in the dwelling." Oct. 28 Order at 5. Both ANC 3D and Mr. Kennedy assert that, at all times relevant to this case, the applicant's mother did not reside at the subject property. Their requests indicate that they are seeking reconsideration because finding of fact number four allegedly influenced the Board's decision to grant the application.

PRELIMINARY MATTERS WITH RESPECT TO THE SECOND RECONSIDERATION

Requests for Reconsideration. By letter dated November 5, 2002, ANC 3D requested that the Board reconsider the case, averring that finding of fact number four in the Oct. 28 Order was incorrect. By letter dated November 6, 2002, party in opposition John Kennedy also requested reconsideration based on an error in finding of fact number four.

Parties in Opposition. The applicant's attorney submitted a letter in opposition to the requests for reconsideration which pointed out that the applicant never represented that his mother resided at the property in question.

Notice of Decision Meeting. By letter dated November 7, 2002, the District of Columbia Office of Zoning notified the applicant and both parties that the requests for reconsideration would be taken up by the Board at its December 3, 2002 public meeting.

Decision Meetings. On December 3, 2002, the Board voted on the two requests for reconsideration. The vote was 2-2-1, with one member not seated, not voting. There was no majority vote and the two votes to deny reconsideration were absentee votes. The members casting absentee votes did not have the benefit of any discussion of the reconsideration requests during the public meeting. To rectify this, and because D.C. Official Code § 6-641.07(h) (2001) requires the concurring vote of "not less than a full majority" of the Board for any decision, the Board decided to set a new decision meeting date and to re-vote on the requests. This date was set for January 7, 2003.

On January 7, 2003, the Board voted 3-0-2 to reconsider the case.

FINDINGS OF FACT

1. The Board finds that, at all times relevant to this case, the applicant's mother was not residing at the subject property. Therefore, the Board further finds that finding of fact number four, in its Order in this case dated October 28, 2002, is incorrect.

2. Erroneous finding of fact number four is extraneous to the granting of the applicant's special exception application and was not relied upon by the Board in its decision to grant the application.

CONCLUSIONS OF LAW

Finding of fact number four in the Board's October 28, 2002 Order states: "[t]he applicant's mother, who is debilitated by rheumatoid arthritis, resides in the dwelling." This finding is erroneous because the applicant's mother did not reside in the dwelling at the time of the October 28, 2002 Order, or at any time relevant to this case. There is abundant evidence of this in the testimony and the arguments of applicant's counsel presented at the October 16, 2001 public hearing. *See,* Transcript of October 16, 2002 public hearing at 58, lines 18-20; at 64, line 19; at 65, lines 6-7; at 68-69, lines 25 and 1-2; at 152-153, lines 9-25 and 1-4; and at 154, lines 18-20.

However, finding of fact number four is unnecessary to the Board's decision to grant the special exception application. The Board is empowered to grant special exceptions pursuant to D.C. Official Code § 6-641.07(g)(2) (2001) and 11 DCMR § 3104, where "in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." Section 223 requires that the home addition it authorizes shall not have "a substantially adverse effect" on neighboring property. Section 223 charges the Board to look at issues of light and air and the privacy and enjoyment of neighboring properties, as well as any visual intrusion of the addition upon the "character, scale and pattern" of the neighborhood.

In granting the special exception, the Board considered everything required of it by §§ 3104 and 223. The regulations do not require the Board to consider who is or is not residing on the property in question or for what reason the home addition is being built. Therefore, the granting of the special exception did not in any way hinge on the questions of whether the applicant's mother was or was not residing on the property, or whether she is debilitated. Finding of fact number 4 is simply unnecessary verbiage extraneous to the granting of the special exception application.

Further, at the time the Board decided to grant the application, it understood that the applicant's mother did not reside at the property in question. *See,* Transcript of January 7, 2003 public meeting at 31, lines 1-4. Therefore, its decision was not colored by this error. Nor did the Board rely on the misstated finding of fact in its Conclusions of Law

in the October 28, 2002 Order. The Board granted the special exception based on the record before it and applicable law, and not on the health or whereabouts of the applicant's mother.

For the reasons stated above, the Board **GRANTS** the **REQUEST** for **CONSIDERATION** and, upon reconsideration, **ORDERS** that its October 28, 2002, Order in this case be amended by striking finding of fact number four.

VOTE: **3-0-2** (Geoffrey H. Griffis, Anne M. Renshaw and Curtis L. Etherly, Jr., to grant; David A. Zaidain, not voting not having heard the case, and James H. Hannaham, not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each voting member has approved the issuance of this Order granting reconsideration and amending the Board's October 28, 2002 Order in this case by striking finding of fact number four therefrom.

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

FINAL DATE OF ORDER: MAR 2 5 2003

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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. RSN

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 MAR 25 2003, a copy of the foregoing Decision and Order 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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rsn

ATTESTED BY:

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Director, Office of Zoning