

Form 125 — Exhibit 1
(Revised 03/15/02)

Case No.

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

APPEAL

Notice: Click Here for Appeal Form Instructions

Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken

from the administrative decision of:*

Neil A. Stanley, Acting Zoning Administrator

made on*

August 4, 2005

, to the effect that*

The Certificate of Occupancy (33951) for...

4221 Connecticut Avenue, N.W. Washington, DC was revoked.

Address(es)* of Affected Premises	Square(s)*	Lot(s)*	Zoning Districts*
4221 Connecticut Avenue N.W. Washington, DC 20008	2051	5	C-3-A

Present Use of Property:*

Automobile Service Center

Proposed Use of Property:*

N/A

Owner of Property:*

Jemal's Van Ness, LLC

Telephone No.:*

(202) 638-6300

Name, address and telephone number of lessee: 4215-4221 Connecticut Ave, N.W. Wash, D.C. 20008

Kuri Brothers, Inc. 4225 Connecticut Avenue, N.W. Washington, DC 20003
(202) 966-5955

Name, address and telephone number of appellant, if other than owner:

Kuri Brothers, Inc. 4225 Connecticut Avenue, N.W. Washington, DC 20003
(202) 966-5955

State specifically manner in which appellant is aggrieved by the administrative decision, and the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal. See Attached

Date:*

September 29, 2005

Signature:

* If appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

To be notified of hearing and decision:
(Appellant or Authorized Agent)*BOARD OF ZONING ADJUSTMENT
District of Columbia

Name:*

Tamir Damari 1025 Connecticut Avenue, N.W.

220

CASE NO.

17444

(202) 625-0600

20008
20036

EXHIBIT NO.

1

Board of Zoning Adjustment
District of Columbia
CASE NO. 17444
9/27/2005
EXHIBIT NO. 1

Address:*		City:*	Washington, DC	State:*		Zip:*	20036
Phone No.:	(202) 625-0600	Fax No.:	(202) 338-6340	E-Mail:	TDamari@ralaw.com		
ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.							

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PETITION FOR APPEAL

Petitioner, Kuri Brothers, Inc. ("Petitioner"), by and through Tamir Damari, its undersigned counsel, hereby files this Petition for Appeal, contesting the final determination of the District of Columbia Department of Consumer and Regulatory Affairs (the "DCRA") on August 4, 2005 (the "Notice of Revocation") revoking Petitioner's Certificate of Occupancy No. 33951 (the "Certificate of Occupancy") for 4221 Connecticut Avenue, NW, Washington, DC 20008 (the "Premises").

At this time, Petitioner's grounds for appeal include the following:

1. To the extent the Notice of Revocation is based upon factual determinations made during the course of prior proceedings between the Petitioner and the DCRA in connection with the DCRA's revocation of Certificate of Occupancy No. B00181657, such reliance does not support the revocation of the Certificate of Occupancy at issue in the present matter, since the DCRA's prior revocation of Certificate of Occupancy No. B00181657 is subject to a pending appeal before the District of Columbia Court of Appeals.

2. To the extent the Notice of Revocation is based upon the erroneous factual assumption that "DCRA concluded that an automobile service center was not an appropriate use in a C-3-A zone...the...Board of Zoning Adjustment upheld DCRA's decision to revoke C of O #B00181657", it was issued in error. The above-quoted assertion incorrectly suggests that the DCRA and/or the District of Columbia Board of Zoning Adjustment (the "BZA") made a "blanket" determination that automobile service centers are *per se* invalid in C-3-A zones. In point of fact, neither the DCRA, nor the BZA, made any such *per se* determination (indeed, in its decision upholding the DCRA's revocation of Certificate of Occupancy No. B00181657, the

BZA reached the *opposite* conclusion, tacitly acknowledging that automobile service centers *are* permitted in C-3-A zones).

Contrary to the DCRA's suggestion in its Notice of Revocation, the BZA's affirmance of the DCRA's decision to revoke Certificate of Occupancy No. B00181657, rather than being based upon a *per se* determination that automobile service centers were not permitted in C-3-A zones, was based upon certain observations made by DCRA representatives regarding the Petitioner's purported use of the Premises in 2002, to the effect that the Petitioner was operating the Premises *outside the scope* of a permitted use for an "Automobile Service Center". Aside from the fact that these factual determinations are subject to a pending appeal before the District of Columbia Court of Appeals, they have no bearing on the instant case, since there are no facts alleged in the Notice of Revocation which in any way support the inference that the Premises are *currently* being used outside the permissible scope for an Automobile Service Center.

3. Furthermore, the Petitioner intends to demonstrate at the BZA hearing of this matter that the basis for the decision set forth in the Notice of Revocation is undermined by prior determinations of the District of Columbia government in 1947 and 1964 which explicitly authorize the Petitioner's current uses of the Premises.

4. Finally, Petitioner intends to prove that any contention by the DCRA either that: (i) Automobile Service Centers are *per se* prohibited in a C-3-A zone; or (ii) Petitioner's use of the Premises is outside the permissible scope for an Automobile Service Center, is vitiated by the fact that the DCRA routinely issues and authorizes Certificates of Occupancy for "Automobile Service Centers" for Premises situated in C-3-A zones, in connection with businesses operating in a manner *identical* to the Petitioner's use of the Premises in the case *sub judice*. The evidence will therefore show that the DCRA has arbitrarily, unlawfully and impermissibly sought to

restrict the Petitioner's use of the Premises, in derogation of its own practice and the zoning regulations.

Petitioner expressly reserves the right to modify/supplement its grounds for appeal as the circumstances warrant.

CERTIFICATE OF SERVICE

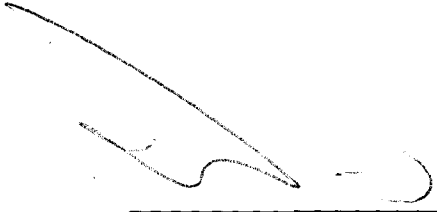
I hereby certify that a copy of the foregoing document was mailed, postage prepaid, this

30 day of September, 2005 to:

Catherine J. Wiss, Chairperson
Advisory Neighborhood Commission
4401A Connecticut Avenue, NW
Box 244
Washington, D.C. 20008-2322

Neil A. Stanley
Acting Zoning Administrator
District of Columbia Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Jemal's Van Ness, LLC
702 H Street NW
Suite 400
Washington, DC 20001



Tamir Damari

CERTIFICATE OF AUTHORITY TO ACT AS COUNSEL

I hereby authorize Tamir Damari and Roetzel & Andress, LPA to act as my counsel with respect to all matters relating to this appeal.

A handwritten signature in black ink, appearing to read 'Christopher Kuri', with a long horizontal line extending to the right.

Christopher Kuri
President, Kuri Brothers, Inc.

Form 125 — Exhibit 1
(Revised 03/15/02)

Case No.

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

APPEAL

Notice: Click Here for Appeal Form Instructions

Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken

from the administrative decision of:*

Neil A. Stanley, Acting Zoning Administrator

made on*

August 4, 2005

, to the effect that*

The Certificate of Occupancy (33914) for...

4225 Connecticut Avenue, N.W. Washington, DC was revoked.

Address(es)* of Affected Premises	Square(s)*	Lot(s)*	Zoning Districts*
4225 Connecticut Avenue N.W. Washington, DC 20008	2051	5	C-3-A

Present Use of Property:*

Automobile Service Center/Motor Vehicle Feuling

Proposed Use of Property:*

N/A

Owner of Property:*

Van Ness, Inc.

Telephone No.:*

(202) 437-5293

Name, address and telephone number of lessee:

Kuri Brothers, Inc. 4225 Connecticut Avenue, N.W. Washington, DC 20008
(202) 966-5955

Name, address and telephone number of appellant, if other than owner:

Kuri Brothers, Inc. 4225 Connecticut Avenue, N.W. Washington, DC 20008
(202) 966-5955State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the
administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal. See Attached

Date:*

September 29, 2005

Signature:

* If appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

To be notified of hearing and decision:
(Appellant or Authorized Agent)*

Name:*

Tamir Damari 1025 Connecticut Avenue, N.W. #220

(202) 425-0600

20008

Address:*		City:*	Washington, DC	State:*		Zip:*	20036
Phone No.:*	(202) 625-0600	Fax No.:	(202) 338-6340	E-Mail:	TDamari@ralaw.com		
ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.							

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PETITION FOR APPEAL

Petitioner, Kuri Brothers, Inc. ("Petitioner"), by and through Tamir Damari, its undersigned counsel, hereby files this Petition for Appeal, contesting the final determination of the District of Columbia Department of Consumer and Regulatory Affairs (the "DCRA") on August 4, 2005 (the "Notice of Revocation") revoking Petitioner's Certificate of Occupancy No. 33914 (the "Certificate of Occupancy") for 4225 Connecticut Avenue, NW, Washington, DC 20008 (the "Premises").

At this time, Petitioner's grounds for appeal include the following:

1. The Notice of Revocation, rather than being based upon any factual determinations pertaining to Petitioner's *present* use of the Premises *at issue*, is based *entirely* upon the DCRA's and Board of Zoning Adjustment's prior revocation of a certificate of occupancy (certificate of occupancy No. B00181657) issued for a *different* premises; i.e., 4221 Connecticut Avenue NW, Washington, DC. In addition to the fact that the DCRA's revocation of certificate of occupancy No. B00181657 was based upon purported observations made several years ago, and the fact that this revocation is subject to a pending appeal before the District of Columbia Court of Appeals, this revocation simply has no bearing on the validity of the Certificate of Occupancy, since 4221 Connecticut Avenue and 4225 Connecticut Avenue are distinct properties which have, at all relevant times, been used for different purposes and which have been subject to different zoning regulations (arising, *inter alia*, from the fact that the Premises has at all relevant times been used as a motor vehicle fueling station as well as an Automobile Service Center). As such, the revocation of certificate of occupancy No. B00181657 is immaterial to the instant case.

2. To the extent the revocation of the Certificate of Occupancy is based upon the erroneous factual assumption that “DCRA concluded that an automobile service center was not an appropriate use in a C-3-A zone...the...Board of Zoning Adjustment upheld DCRA’s decision to revoke C of O #B00181657”, it was issued in error. Aside from the fact that the revocation of certificate of occupancy No. B00181657 has no bearing on the validity and scope of the Petitioner’s permitted use of the Premises (for the reasons described above), the above-quoted assertion incorrectly suggests that the DCRA and/or the BZA made a “blanket” determination that automobile service centers are *per se* invalid in C-3-A zones. In point of fact, neither the DCRA, nor the BZA, made any such *per se* determination (indeed, in its decision upholding the DCRA’s revocation of Certificate of Occupancy No. B00181657, the BZA reached the *opposite* conclusion, tacitly acknowledging that automobile service centers *are* permitted in C-3-A zones).

Contrary to the DCRA’s suggestion in its Notice of Revocation, the BZA’s affirmance of the DCRA’s decision to revoke Certificate of Occupancy No. B00181657, rather than being based upon a *per se* determination that automobile service centers were not permitted in C-3-A zones, was based upon certain observations allegedly made by DCRA representatives regarding the Petitioner’s purported use of 4221 Connecticut Avenue in 2002, to the effect that the Petitioner was operating the 4221 Connecticut Avenue outside the scope of a permitted use for an “Automobile Service Center”. Aside from the fact that: (i) these factual determinations are subject to a pending appeal before the District of Columbia Court of Appeals; and (ii) they stem from alleged observations made several years ago, the purported observations made by DCRA representatives regarding the Petitioner’s purported use of 4221 Connecticut Avenue in 2002, is

not probative, to *any* extent, on the issue of whether the adjacent Premises in being operated within the permitted scope of its Certificate of Occupancy.

3. Alternatively, the Petitioner intends to demonstrate at the BZA hearing of this matter that the basis for the decision set forth in the Notice of Revocation is undermined by prior determinations of the District of Columbia government in 1947 and 1964 which explicitly authorize the Petitioner's current use of the Premises.

4. Finally, Petitioner intends to prove that any contention by the DCRA either that: (i) Automobile Service Centers are *per se* prohibited in a C-3-A zone; or (ii) Petitioner's use of the Premises is outside the permissible scope for an Automobile Service Center, is vitiated by the fact that the DCRA routinely issues and authorizes Certificates of Occupancy for "Automobile Service Centers" for Premises situated in C-3-A zones, in connection with businesses operating in a manner *identical* to the Petitioner's use of the Premises in the case *sub judice* . The evidence will therefore show that the DCRA has arbitrarily, unlawfully and impermissibly sought to restrict the Petitioner's use of the Premises, in derogation of its own practice and the zoning regulations.

Petitioner expressly reserves the right to modify/supplement its grounds for appeal as the circumstances warrant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed, postage prepaid, this

30 day of September, 2005 to:

Catherine J. Wiss, Chairperson
Advisory Neighborhood Commission
4401A Connecticut Avenue, NW
Box 244
Washington, D.C. 20008-2322

Neil A. Stanley
Acting Zoning Administrator
District of Columbia Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Van Ness, Inc.
6406 Whittier Court
Bethesda, MD 20817



Tamir Damari

348.1.114572.0003

CERTIFICATE OF AUTHORITY TO ACT AS COUNSEL

I hereby authorize Tamir Damari and Roetzel & Andress, LPA to act as my counsel with respect to all matters relating to this appeal.

A handwritten signature in black ink, appearing to read 'Christopher Kuri', is written over a horizontal line.

Christopher Kuri
President, Kuri Brothers, Inc.

345.1.114572.0003