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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

KURI BROTHERS, INC.,

Appellant,

vs.

**DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS,**

Appellee.

Appeal No . 17444A

AMT 11-23 PM 9:52
DC OF ZONING
17444A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Kuri Brothers, Inc. ("Appellant"), by and through its undersigned counsel Stanley H. Goldschmidt and Roetzel & Andress, LPA, respectfully submits the following Proposed Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

The Premises

1. The subject property is known as 4225 Connecticut Avenue N.W. (the "Premises") and is located in Square 2051, Lot 0007, in the C-3-A zone district. The C-3 District is designed to accommodate major business and employment centers supplementary to the Central Business District¹.
2. The Premises has six to eight gas pumps, a small express food mart and two service bays with lifts. An additional bay² serves both as an office area and as a flat service bay³.
3. An automobile fueling station offering automotive services has been situated on the Premises since at least 1930 when it was operated as a Texaco service station. It remained a Texaco service station through the late 1980s⁴ until the site became a Van Ness Auto Care service station⁵.

¹ 11 DCMR § 740.1

² Appellant testified that a "flat bay" is like a home car garage and is without lifting capacity. See, Board Hearing Transcript of November 28, 2006, ("Transcript"), pg 364, lines 4 -13. Cited excerpts from the Transcript are attached hereto as Exhibit A.

³ See, Transcript pg 314, lines 11- 17.

⁴ See, Transcript pg 313, lines 6 - 22.

⁵ See, Transcript pg 314, lines 1 - 4.

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4. Historically, operators of the gas station at the Premises have, continuously, and without interruption, conducted automobile repairs ancillary to the provision of gasoline. The provision of such ancillary repair services at gas stations is specifically permitted by 11 DCMR § 701.5⁶: “other service or retail use *similar* to that provided for under 701.1 *including assemblage and repair* clearly incidental to the conduct of a permitted service ... shall be permitted in a C-1 District as a matter of right.” (emphasis added).

The Appellant

1. Appellant, a corporation organized under the laws of the District of Columbia corporation, is the owner and operator of “Van Ness Auto Care”⁷ a business which is located on the Premises.
2. Van Ness Auto Care provides a critical service to the community by offering gasoline at discount prices. Van Ness Auto Care has elected to be unaffiliated with any major oil company in an effort to keep consumer fuel prices low.⁸
3. Van Ness Auto Care’s operations provide a critical service to the community by offering repair services in a manner consistent with the public policy goals of the District of Columbia as articulated in D.C. Code § 36-304, which provides for a moratorium on the conversion of full service retail service stations to limited service retail service stations. It is well worth noting that greater than ten thousand people in the 20008 zip code are customers of Van Ness Auto Care.⁹
4. Christopher Kuri has been in the service station/auto repair business for 25 years. During this time, Mr. Kuri has worked at a variety of gas stations and has experience servicing automobiles and Montgomery County police cars¹⁰. Consequently, Mr. Kuri’s experience renders Mr. Kuri well qualified to speak on the subject of the service station/auto repair business.
5. Appellant’s initial involvement with the Premises related exclusively to the operation of the repair bays.¹¹ Subsequently, Appellant commenced to operate the gasoline pumps.¹²
6. Appellant operates two service bays at the Premises under the following Certificates of Occupancy:

⁶ The corresponding section applicable to the C-3 District is found at 11 DCMR § 741.4, which provides: “[o]ther service or retail use similar to that allowed in §§ 741.2 and 741.3 shall be permitted in a C-3 District, including assemblage and repair clearly incidental to the conduct of a permitted service or retail establishment on the premises.”

⁷ See, Transcript pg 312, line 20 to pg 313, line 5.

⁸ See, Transcript pg 314, lines 5 – 13.

⁹ See, Transcript pg 336, lines 4 – 15.

¹⁰ See, Transcript pg 312, lines 6 - 11.

¹¹ See, Transcript pg 352, lines 10 - 18.

¹² See, Transcript pg 373, line 1 to pg 374, line 5.

- a. Certificate of Occupancy No. 33914, containing a permitted use as an “Automotive Service Center”; and
 - b. Certificate of Occupancy No. 186535, containing a permitted use as a “Motor Vehicle Fueling [Station]”.
7. Appellant operates a retail gasoline station at the Premises under Certificate of Occupancy No. 186535, containing a permitted use as a “Motor Vehicle Fueling [Station]”.
 8. Appellant operates a food mart at the Premises under Certificate of Occupancy No. 42622, containing a permitted use as a “Retail Convenience Store/Deli”.
 9. The Zoning Administrator of the Department of Consumer and Regulatory Affairs (“DCRA”) by “Notice of Revocation of Certificate of Occupancy Number 33914” (the “Notice”), dated August 4, 2005, revoked Certificate of Occupancy No. 33914 for an Automotive Service Center. In pertinent part, the Notice states:

The C of O authorized Kuri Brothers Inc. to use the premises...as an automobile service center.¹³ Subsequent to the issuance of the C of O, DCRA concluded that an automobile service center was not an appropriate use in a C-3-A zone. It then revoked C of O #B00181657 for [an] automobile service center issued to Kuri Brothers several years earlier for that same operation at a different location, 4221 Connecticut Avenue...On July 1, 2003, in BZA Appeal No. 16947, the...Board of Zoning Adjustment upheld DCRA’s decision to revoke C of O #B00181657.
 10. An appeal of this revocation was filed by Appellant on September 29, 2005 and a number of hearings were held. At the April 26, 2006 hearing, this Board continued the hearing on the 4225 Premises until September 19, 2006, which was subsequently extended until October 3, 2006. This hearing also had to be postponed since at noon on the day of the October 3rd hearing, Appellee caused a warrant to be issued for the arrest of Christopher Kuri, the President of Appellant Kuri Brothers, Inc. Mr. Kuri was arrested, handcuffed, incarcerated, and spent a night in jail for this alleged zoning infraction. The Attorney General of the District of Columbia subsequently dropped all charges. Due to Mr. Kuri’s inability to attend the hearing, this Board, over Appellee’s objection, further continued the hearing for the 4225 Premises.¹⁴
 11. The Board of Zoning Adjustment held a public hearing concerning the instant appeal on November 28, 2006.

¹³ In fact, the Certificate of Occupancy bearing “Permit No. CO 33914” contains a “Automotive Service Center” permitted use and not an “Automobile Service Center” permitted use as indicated in the Notice.

¹⁴ See, Transcript pg 281, lines 14 – 22.

Work Performed on the Premises

1. Only minor mechanical work is performed on the Premises. The work performed at Van Ness Auto Care is the same type as that performed at neighboring stations¹⁵ and includes: scheduled annual maintenance work, warranty work and the same variety and type of work performed by Jiffy Lube, Meineke, Midas, etc.¹⁶
2. In particular, respondent's work includes:
 - a. oil changes, exhaust and brakes;¹⁷
 - b. tune ups, air conditioning, fluids, tires, omission tests and addressing failed D.C. inspections;¹⁸ and
 - c. electrical repairs¹⁹ and heating.²⁰
3. Appellant's work does not include:
 - a. engine building, transmission building, heavy truck repairs, heavy equipment repairs, body work, painting or major collision work;²¹
 - b. alignment,²² engine overhauls, or transmission repairs;²³
 - c. rebuilding or reconditioning work;²⁴ and
 - d. gasket head overhauls, gasket head milling, transmission overhauls, the disassembling and remanufacturing of transmissions, and engine piston work.²⁵
4. Cars requiring major repairs are referred to other shops as a convenience to the customer.²⁶

¹⁵ See, Transcript pg 315, lines 8 - 12.

¹⁶ See, Transcript pg 347, lines 1 - 4.

¹⁷ See, Transcript pg 314, line 20 to pg 315, line 1.

¹⁸ See, Transcript pg 34, lines 11 - 17.

¹⁹ By "electrical repairs" Christopher Kuri meant: light bulbs, radio fuses and NOT the installation of an entire wiring harness. See, Transcript pg 377, lines 8 -22.

²⁰ See, Transcript pg 369, lines 9 - 11.

²¹ See, Transcript pg 318, lines 4 - 18.

²² See, Transcript pg 370, line 21 to pg 371, line 3.

²³ See, Transcript pg 368, line 1 - 22 and pg 371, line 17 to pg 369, line 8.

²⁴ See, Transcript pg 383, lines 10 - 13.

²⁵ See, Transcript pg 345, line 2 to pg 346, line 2.

²⁶ See, Transcript pg 319, line 6 to pg 320, line 6.

5. The only work performed on trucks would be to repair flat tires.²⁷
6. There is no equipment in the service bays which would allow heavy or large scale work²⁸.
7. The Sales & Invoice Summary²⁹ indicates an average customer bill of \$311.50,³⁰ which clearly demonstrates that Appellant could not be doing heavy repairs.
8. The *hiring practices, training and supervision* of Appellant's technicians preclude its employees from performing major repairs.
 - a. Hiring. Appellant only hires technicians with a skill set compatible with minor repairs. A technician certified in, or with experience in, heavy repair work would not be hired. Furthermore, Appellant does not advertise for, nor would it hire, technicians with 10 – 20 years of experience in a transmission shop.³¹
 - b. Training. Appellant's technicians have not been trained and do not have the requisite acumen to perform major repairs.³² Appellant testified that when the technicians are hired they receive instruction concerning the type of work that is performed and how it is handled.³³
 - c. Supervision. Appellant's technicians attend monthly meetings during which time the work being performed is discussed. Further, Mr. Kuri testified that he is present most of the time to supervise the work being performed, in that he works approximately sixty hours per week.³⁴ Consequently, Appellant's employee supervision precludes its employees from performing major repairs.

The Office of the Zoning Administrator Created the Category "Automotive Service Center"

1. Appellant has always sought to be in full compliance with the Zoning Regulations.³⁵ In fact, in or about 1994, Christopher Kuri approached the then current Zoning Administrator, Toye Bello, to ensure such compliance.
2. At this initial meeting, Appellant described the repair work being performed at 4225 to Mr. Bello. Mr. Bello was intimately familiar with this type of operation and had been to

²⁷ See, Transcript pg 346, lines 3 – 11.

²⁸ See, Transcript pg 365, lines 16 - 20.

²⁹ See, Appellant's Exhibit 12, submitted to the Board of Zoning Adjustment at the Public Hearing of November 28, 2006.

³⁰ For the first eleven months of the year 2006. See, Transcript pg 343, lines 3 - 22.

³¹ See, Transcript pg 348, lines 2 – 13.

³² See, Transcript pg 349, line 12 to pg 350, line 7.

³³ See, Transcript pg 362, line 7 to pg 363, line 14.

³⁴ See, Transcript pg 367, line 17 to pg 368, line 3.

³⁵ See, Transcript pg 328, line 3 to pg 331, line 15.

the premises. "... Auto Zone sells only accessory parts and all this stuff is found in Auto Zone. And it's the same list that I ... basically told Mr. Bello [sic] back when I got the C of O. Well, he had asked me what I did, and I showed him this type of list."³⁶

3. As a result of Mr. Bello's consideration of Appellant's operations at the Premises, Appellant was issued a certificate of occupancy for an "Automobile Service Center."
4. Mr. Bello and a number of DCRA inspectors made numerous site visits and developed a complete picture of the work performed. "They saw what they saw. They – you know, we were clarifying the C of O. They – they – it's not that they didn't know. They came to my gas station many times. I've had so many inspectors come out, sometimes two a week, and one of them, everyone of them before they left said we don't see anything wrong, everything's fine, and they'd leave."³⁷
5. On or about May 14, 2002, Appellant wishing to ensure that the operations were in strict compliance with D.C. law, returned to the DCRA Permit Center and re-applied for a certificate of occupancy for an "Automotive Service Center."³⁸ At the time Appellant was issued its May 14, 2002 Certificate of Occupancy for an "Automotive Service Center", it submitted an application³⁹ that specified that Appellant intended to use the premises for auto repair and included a list of all of the equipment used in "repair services."
6. The application that resulted in the issuance of the Certificate of Occupancy illustrates that the Appellant has, from the outset, disclosed to the Zoning Administrator the type of work it intended to perform at the Premises. Furthermore, the equipment listed is incompatible with the performance of major repair work. Additionally, the application illustrates that the work described has always been the work performed on the Premises.⁴⁰
7. Following the issuance by the Court of Appeals of the District of Columbia of the decision in D.C. BZA v. Kuri Brothers, 891 A.2d 241, 247 (D.C. 2006) in which the Court stated "[a]lthough the term "automobile service center" is not defined in the zoning regulations, and its precise scope may be subject to some uncertainty . . ." Appellant wrote to the Zoning Administrator on several occasions and sought the Zoning Administrator's interpretation of "Automotive Service Center" so as to understand which activities were permitted. Instead of answering Appellant's repeated queries, the Zoning Administrator caused a warrant to be issued for the arrest of Christopher Kuri on October 3, 2006.⁴¹

³⁶ See, Appellant's Exhibit 2, submitted to the Board of Zoning Adjustment at the Public Hearing of November 28, 2006. See, Transcript pg 523, lines 5 – 22 and pg 425, lines 1 - 5.

³⁷ See, Transcript pg 534, lines 2 - 9.

³⁸ See, Transcript pg 357, line 14 to pg 358, line 14.

³⁹ See, Appellant's Exhibit Five, submitted to the Board of Zoning Adjustment at the Public Hearing of November 28, 2006. See, Transcript pg 323, lines 9 – 21 and pg 326, line 20 to pg 327, line 11.

⁴⁰ See, Transcript pg 325, lines 10 – 20.

⁴¹ See, Transcript pg 281, lines 21 - 22.

8. Three certificates of occupancy with the Automobile Service Center permitted use were issued by three separate Zoning Administrators. The most recent was issued on May 14, 2002.⁴²

Additional Evidence

1. Van Ness Auto Care has four suppliers: Pal Auto Parts, JK Auto Parts, Car Quest and Olympic Auto Parts. Of these suppliers, Car Quest is the largest.⁴³
2. A letter from Car Quest dated October 30, 2006 confirms that Car Quest only sells Appellant automotive parts for tune-ups and light mechanical work.⁴⁴
3. A letter from Olympic Auto Parts dated October 25, 2006 confirms that Olympic Auto Parts only sells automotive parts for tune-ups and light mechanical work to Appellant,⁴⁵ with an emphasis on parts for foreign automobiles.
4. It is important to note that a particular part can serve a role in making either a minor or major repair. Appellant only use the parts supplied to it to make minor repairs. To this end, Mr. Kuri testified that “[j]ust because you put a tie rod in, doesn’t mean you’re rebuilding a front end. That’s accessories. It’s a small part. Just because you put a spark plug in doesn’t mean you’re rebuilding an engine. You know, you can drive to any gas station from coast-to-coast and any gas station considers this light repair work.”⁴⁶
5. The remaining suppliers provided the same variety of auto parts,⁴⁷ i.e., automotive parts for tune-ups and light mechanical work only.

Community Impact

1. The only complaint Appellant has ever received from its neighbors came from ANC Commissioner Karen Perry.⁴⁸ In contrast, Appellant has eighteen employees⁴⁹ and ten thousand customers residing in the 20008 zip code alone.⁵⁰

⁴² Certificate of Occupancy Nos. 181657, 33914 and 33951.

⁴³ See, Transcript pg 315, line 13 to pg 316, line 20.

⁴⁴ See, Appellant’s Exhibit 5, submitted to the Board of Zoning Adjustment at the Public Hearing of November 28, 2006. See, Transcript pg 317, lines 3 – 8.

⁴⁵ See, Appellant’s Exhibit 2, submitted to the Board of Zoning Adjustment at the Public Hearing of November 28, 2006. See, Transcript pg 317, line 9 to pg 318, line 3.

⁴⁶ See, Transcript pg 524, lines 11 - 21.

⁴⁷ Christopher Kuri testified that Van Ness Auto Care received the “same exact stuff” from the remaining suppliers. See, Transcript pg 319, lines 2 - 5.

⁴⁸ See, Transcript pg 333, lines 14 - 17.

⁴⁹ See, Transcript pg 360, lines 14 - 20.

⁵⁰ See, Transcript pg 336, lines 4 - 15.

2. The business is based on the model of the customer dropping off a car in the morning on the way to work and picking up the car by the end of the day. When there are too many cars to be worked on simultaneously, the excess cars are parked in the neighboring underground garage, and not on the neighborhood streets.⁵¹
3. It is typical for there to be between three and twenty cars on the Premises on any work day.⁵²
4. During the course of Appellant's involvement with the Premises, the Premises has never been cited by the District of Columbia Department of the Environment.

II. CONCLUSIONS OF LAW

Introduction

1. The Zoning Administrator by "Notice of Revocation of Certificate of Occupancy Number 33914," dated August 4, 2005, revoked Certificate of Occupancy permit 33914 for an Automotive Service Center on the basis of it having been issued in error.
2. The Zoning Administrator asserts two arguments in support of the view that the Certificate of Occupancy was issued in error. Neither are valid. They are:
 - a. First, as found in 11 DCMR § 3203.8, the phrase "established by this title" has the meaning "*expressly* established by this title", *i.e.*, 11 DCMR § 3203.8 requires that a Certificate of Occupancy contain a use expressly listed in the Zoning Regulations.
 - b. Second, the term "Automotive Service Center" cannot be understood to have any meaning other than a "repair garage" and consequently, the Appellant's Certificate of Occupancy had to have been issued in error since the operation of a "repair garage" in this zoning district requires a special exception or variance.
3. The revocation was not issued on the basis that the activities performed on the Premises were *beyond the scope* of activities which are permitted to be performed under an "Automotive Service Center" Certificate of Occupancy. To take such a stance directly contradicts the position that the Certificate of Occupancy was issued in error. It is axiomatic that any determination regarding the proper scope of a Certificate of Occupancy for an Automotive Service Center necessarily pre-supposes that such a Certificate was validly issued.
4. The activities performed on the Premises fall within the scope of activities permitted to be performed at an Automotive Service Center and do not include major repairs.
5. The revocation of Appellant's Certificate of Occupancy is contrary to the public policy and the law of the District of Columbia, which seeks to preserve retail service stations

⁵¹ See, Transcript pg 342, lines 1 - 10.

⁵² See, Transcript pg 358, line 19 to pg 359, line 5.

offering automobile repair services through a moratorium on the conversion of full service retail service stations to limited service retail service stations.

6. The Zoning Administrator has failed to meet the requirement articulated by the D.C. Court of Appeals “that the regulations be applied uniformly ... all owners being treated alike.” Dupont Circle Citizens Ass’n v. D.C. Zoning Comm., 355 A.2d 550, 559 (D.C. 1976). Consequently, the actions of the Zoning Administrator are discriminatory.

A. The Requirements of 11 DCMR § 3203.8 In Conjunction With 11 DCMR § 721.4

1. 11 DCMR § 3203.8⁵³ does not require that a designated use on a Certificate of Occupancy be a use expressly established by the Zoning Regulations. Instead, § 3203.8 provides that “[t]he use shall be designated on the certificate of occupancy in terms of a use classification that is established by [the Zoning Regulations]. ...” This must be understood to include uses that are both expressly established, *i.e.*, are expressly set forth in the Zoning Regulations, and uses that can properly be implied from the Zoning Regulations. 11 DCMR § 721.4.
2. The Zoning Administrator contends that his predecessors issued the “Automotive Service Center” Certificate of Occupancy in error. In support of this contention, the Zoning Administrator advances the language of 11 DCMR §3203.8, which he interprets to require that all Certificates of Occupancy contain only those uses listed in the Zoning Regulations. The Zoning Administrator, however, failed to call as witnesses any of the prior administrators who he allegedly claimed issued the certificates of occupancy in error. In contrast, the Appellant called Gladys Hicks, the Acting Zoning Administrator from 1994 to 1999 whose testimony will be discussed infra.
3. In the alternative, the Zoning Administrator interprets 11 DCMR § 3203.8 to mean that the Zoning Administrator may issue Certificates of Occupancy containing certain uses in addition to those listed in the Zoning Regulations under the authority of 11 DCMR § 721.4. In such instances, the Zoning Administrator requires that such “non-listed uses” be clearly linked on the Certificate of Occupancy to one or more listed uses, *i.e.*, those expressly provided in the Zoning Regulations.
4. The Zoning Administrator is not permitted to add language to the Zoning Regulations, *i.e.*, add the word “expressly” to 11 DCMR § 3203.8. Neither the Zoning Administrator nor the Board of Zoning Adjustment⁵⁴ is empowered to amend the Zoning Regulations.⁵⁵
5. 11 DCMR § 721.4 requires the Zoning Administrator permit similar uses to those

⁵³ 11 DCMR § 3203.8 provides that “[a]ny use that is authorized by a certificate of occupancy may be established and continued pursuant to the terms of the certificate and the provisions of this title in effect on the date that the certificate is issued, subject to the following conditions: (a) The use shall be designated on the certificate of occupancy in terms of a use classification that is established by this title. ...”

⁵⁴ D.C. Code § 6-641.07 (e) reads: “The Board of Adjustment shall not have the power to amend any regulation or map.”

⁵⁵ “The Zoning Commission is the body having exclusive jurisdiction over amendments to the Zoning Regulations.” Watergate West, Inc. v. DC BZA, 815 A.2d 762 (D.C. 2003)

expressly set forth in the Zoning Regulations. 11 DCMR § 721.4⁵⁶ provides: “[o]ther service or retail use similar to that permitted in §§ 721.2 and 721.3, including assemblage and repair clearly incidental to the conduct of a permitted service or retail establishment on the premises, shall be permitted in a C-2 District *as a matter of right*.” (emphasis added). To suddenly disallow such uses would be in contradiction of the Zoning Regulations and would have a significant impact on a broad range of businesses.

6. 11 DCMR § 721.4 precludes the interpretation that permitted uses must be expressly set forth in the Zoning Regulations. A fundamental rule of statutory construction requires that every part of a statute be presumed to have some effect, and not be treated as meaningless unless absolutely necessary. Further, it is a fundamental maxim of statutory construction that a statute will be interpreted so as to be internally consistent. Dupont Circle Citizens Ass’n v. DC BZA, 749 A.2d 1258 at FN 12 (D.C. 2000).
7. It is a well-established principle of statutory construction that different provisions within the same statute should be construed together, Flemming v. U.S., 546 A.2d 1001, 1005 (D.C. 1988); D.C. Dep’t of Human Servs. v. Bicksler, 501 A.2d 1, 6 (D.C. 1985); and a particular term should be assumed to have a consistent definition throughout a statute, Carey v. Crane Serv. Co., Inc., 457 A.2d 1102, 1108 (D.C. 1983). A particular section should not be divorced from the rest of the Zoning Regulations. In Heckler v. Chaney, 470 U.S. 821, 829 (U.S. Sup. Ct. 1985), the Supreme Court stated the common-sense principle of statutory construction that sections of a statute generally should be read “to give effect, if possible, to every clause ...”. Further, in D.C. v. Gould, 852 A.2d 50, 54 (D.C. 2004), the Court of Appeals stated that “[a] basic principle [of statutory construction] is that each provision of the statute should be construed so as to give effect to all of the statute’s provisions, not rendering any provision superfluous.” (internal citations omitted).
8. Further, as the Court of Appeals stated in Citizens Ass’n of Georgetown v. D.C. Bd. of Zoning, 642 A.2d 125 (D.C. 1994):

[W]e have said that “[w]hen interpreting any portion of an act, the statutory meaning of a term or phrase must ‘be derived not from the reading of a single sentence or section, but from consideration of [the] entire enactment against the backdrop of its policies and objectives.’” Carey v. Crane Serv. Co., 457 A.2d 1102, 1105 (D.C. 1983) (quoting Don’t Tear It Down v. Pennsylvania Ave. Dev. Corp., 206 U.S.App.D.C. 122, 128, 642 F.2d 527, 533 (1980)).
9. The Zoning Administrator’s interpretation of a Zoning Regulation is reversible where inconsistent with the regulation.⁵⁷ When the language of a regulation is unambiguous, the Zoning Administrator and the Board of Zoning are bound by the plain meaning of that language and may not assign a construction that amounts to holding that the Zoning

⁵⁶ The corresponding section applicable to the C-3 District is found at 11 DCMR § 741.4, which provides: “[o]ther service or retail use similar to that allowed in §§ 741.2 and 741.3 shall be permitted in a C-3 District, including assemblage and repair clearly incidental to the conduct of a permitted service or retail establishment on the premises.”

⁵⁷ Dupont Circle Citizens Ass’n v. D.C. BZA at 1262.

Commission did not mean what it actually has stated.

10. Under the authority of 11 DCMR § 721.4, the Zoning Administrator is authorized to issue Certificates of Occupancy containing uses not expressly set forth in the Zoning Regulations⁵⁸ but which are “similar to [a use expressly set forth], including assemblage and repair clearly incidental to the conduct of a permitted service or retail establishment on the premises ... *as a matter of right*”. (emphasis added)
11. The judgment of prior Zoning Administrator Toye Bello must be given due deference by this Board and must be considered valid and binding. The mere fact that the present Zoning Administrator disagrees with the decision of his predecessors is not grounds to reverse the decision of a predecessor. Moreover, the previous decision maker (Bello) was actively involved in the investigation of the Premises and the decision to issue a certificate of occupancy.
12. Mr. Bello knew that “repair garage” existed as a permitted use in the Zoning Regulations. The only reasonable inference to be drawn is that Mr. Bello created the category “Automotive Service Center” under the authority of 11 DCMR § 721.4.
13. The modern circumstances of auto repair industry have markedly evolved from 1958 when the Zoning Regulations went into effect, in that there has been an important industry wide shift away from major auto repair work toward electronic and computerized work.⁵⁹ Repairs performed today emphasize adjustment and fine tuning over heavy repair. In 1958, automobiles did not come standard with air conditioning or automatic transmission, automobile reliability was relatively poor, the catalytic converter had not yet been invented, emission control standards were non-existent and carburetors were

⁵⁸ MR. ROSENBERG: When you were Acting Zoning Administrator did you issue Certificates of Occupancy for uses not designated in the code?

MS. HICKS: Yes. Under the broad heading of retail and service establishments that are many uses which are not designated and under Section 721.4 the Board -- well, the Zoning Commission gave a little bit leeway for those uses that are similar, that have similar categories under retail and service establishments to be designated by the Zoning Administrator.

MR. ROSENBERG: And why did that come about?

MS. HICKS: Well, we have -- in today's time, we have uses that were not about during May 12th, 1958 when the zoning regulations went into effect. Like cell phone sales and service use, computer use and service use.

See, Transcript pg 415, line 19 to pg 416, line 20.

⁵⁹ See, Transcript pg 341, lines 18 - 22.

ubiquitous, the commercialization of fuel injection systems then being decades away.

14. Consequently, 11 DCMR § 721.4 requires the Zoning Administrator to permit uses which are “similar to [a use expressly set forth in the Zoning Regulations], including assemblage and repair clearly incidental to the conduct of a permitted service or retail establishment on the premises ... as a matter of right”. That is, the issuance by the Zoning Administrator of a certificate of occupancy for the “Automotive Service Center” is not erroneous.
15. In support of this position, Gladys Hicks, the Acting Zoning Administrator for the District of Columbia from 1994 through 1999, testified before this Board that the DCRA has the authority to issue certificates of occupancy with use designations that are not identified or defined in Title 11 of the District of Columbia Municipal Regulations under the authority of 11 DCMR § 721.4.⁶⁰
16. Further, the current Zoning Administrator testified at the Board of Zoning Adjustment public hearing of November 28, 2006 that he had issued such a Certificate of Occupancy that very day.⁶¹
17. Since the Zoning Administrator in fact has such authority, then the Certificate was not issued in error. Instead, the current Zoning Administrator’s position is no more than that he disagrees with the decision of his predecessors. At its core, the error alleged to have occurred is not that the Zoning Administrator’s predecessors abused their discretion, just that the Zoning Administrator disagrees with their exercise of discretion. 11 DCMR § 721.4 cannot be understood to hold the citizens of the District of Columbia to the whims of each successive (Acting) Zoning Administrator.
18. Reading “expressly” into 11 DCMR § 3203.8 is without justification, perverts the intended meaning of the Zoning Regulations and subverts the statutory and regulatory intent expressed therein.

B. The Distinction between Minor and Major Repairs

1. The District of Columbia Municipal Regulations distinguishes between minor and major repairs, with the phrase “minor repairs” appearing not less than seventeen times in the Regulations⁶².
 - a. The phrase “minor repair” is defined in the District of Columbia Municipal Regulations⁶³.

⁶⁰ See, Transcript pg 415, line 19 to pg 416, line 20.

⁶¹ See, Transcript pg 450, lines 11 - 16.

⁶² See, e.g., 9 DCMR § 472.8, 10A DCMR § 304.2, 11 DCMR § 106.9, 11 DCMR § 922, 12A DCMR § 105.2.2.1, 12A DCMR 105.2.2.3(5), 12A DCMR § 2.2.4, 12J DCMR § EX-411.2.1, 13 DCMR § 110.6 (c), 13 DCMR § 3005.8, 13 DCMR § 3212.2, 13 DCMR § 3430, 14 DCMR § 9209.3 (b) (2), 17 DCMR § 204.4 (c), 18 DCMR § 2400.5 (b), 20 DCMR § 2704.6 and 20 DCMR § 3199.

⁶³ 20 DCMR § 3199

- b. The phrase “minor repair” is used in the Zoning Regulations at 11 DCMR § 199.1.
 - c. While the phrase “minor repair” is not expressly defined within the District of Columbia Municipal Regulations, Title 11, § 199.2 (g) provides “[w]ords not defined in this section shall have the meaning given in Webster’s Unabridged Dictionary.”
2. “Repairs” are not “per se” the sole province of “Repair Garages” *e.g.* The Zoning Regulations specifically state that “the *minor repair* of tires, batteries, or other automobile accessories”,⁶⁴ which may also be performed in a repair garage, are expressly permitted to be performed in a gasoline service station (emphasis added).⁶⁵
 3. The Zoning Administrator’s position that “a repair is a repair” could lead to the absurd result that windshield wipers could only be replaced at repair garages and would also eliminate such companies as Meineke, Midas and Jiffy Lube from doing business in the District of Columbia.
 4. The Zoning Administrator repeatedly confuses the requirement of a special exception for a “repair garage” in the C-3 zone with a putative requirement of a special exception to engage in *any* “repair” activity.⁶⁶
 5. Thus, the Zoning Administrator’s position that there is no distinction between light and heavy repairs, *i.e.*, “it was all auto repair”⁶⁷ and a “[r]epair is a repair”⁶⁸, is plainly flawed.
 6. The activities performed on the Premises do not include major repairs. The performed activities fall within the scope of activities permitted to be performed at an Automotive Service Center.⁶⁹
 7. The repair work being undertaken by Appellant at the Premises are no different that those being done at any other motor vehicle fueling station in the District of Columbia which offers repairs.⁷⁰ There was no evidence or testimony presented by the Zoning Administrator to the contrary.

C. An Automotive Service Center Must Have a Meaning Distinct from that of a Repair Garage

1. To state that all activities permitted to be performed in a repair garage are therefore not permitted to be performed elsewhere is a *non sequitur*. Further, the argument that

⁶⁴ 11 DCMR § 199

⁶⁵ Id.

⁶⁶ See Transcript pg 454, line 20 to pg 455, line 13.

⁶⁷ See, Transcript pg 486, lines 2 – 8.

⁶⁸ See, Transcript pg 520, line 4 to pg 521, line 6.

⁶⁹ See, Transcript pg 315, lines 8 - 12.

⁷⁰ Id.

“Repair Garages/Automobile Service Centers” are “interchangeable and mean the same thing and should be treated as the same entity”⁷¹ is invalid.

2. It is on this clearly erroneous understanding of the Regulations that the Board is being asked to confirm the revocation of a Certificate of Occupancy. The issue before the Board, and its jurisdiction in this appeal, is restricted solely toward resolving the question of whether the specific basis stated in the Notice of Revocation is valid.
3. A fundamental maxim of jurisprudence requires a presumption favoring an interpretation that the Certificate of Occupancy was validly issued by the prior Zoning Administrator, *i.e.*, that same was not “issued in error.”⁷²
4. Accordingly, the phrase “Automotive Service Center” must be understood to allow activities beyond those which may be performed at an gasoline service station but short of all of those activities which may be performed at a repair garage.⁷³

D. Beyond the Scope of Activities Permitted to be Performed

1. The Zoning Administrator argues that that activities performed on the Premises went beyond the scope of those uses performed at an “Automotive Service Center.”
2. This argument was not raised in the Notice of Revocation and thus is not a proper consideration for this Appeal. The issue before the Board in this appeal is restricted solely toward resolving the question of whether the specific basis stated in the Notice of Revocation is valid.
3. The proper issue before this Board is whether Certificate of Occupancy 33914 was issued in error, as stated in the Notice of Revocation. Notwithstanding this explicit reason, the Zoning Administrator now tries to argue that the issue before this Board is “whether [Appellant] was operating as a repair garage *outside the scope* of its Certificate of Occupancy.”⁷⁴ (emphasis added) If the issue was scope, then the Notice of Revocation should have indicated that Certificate of Occupancy 33914 was being revoked for that reason.
4. The Office of the Zoning Administrator has, on a number of occasions,⁷⁵ indicated that the DCRA has the authority to issue a certificate of occupancy with the use designation of “Automotive Service Center.” Therefore, it could not have been issued in error. To take the position that the activities performed at the Premises were *beyond the scope* of activities which are permitted to be performed under an “Automotive Service Center”

⁷¹ Appellee’s Memorandum of Facts and Conclusions of Law in Case No. 99-OAD-1821E.

⁷² See also, Gulf Oil Corp. v. Hickel, 435 F.2d 440 (D.C. Cir. 1970).

⁷³ D.C. Code § 199.1 defines a repair garage as: “a building or other structure, or part of a building or structure, with facilities for the repair of motor vehicles, including body and fender repair, painting, rebuilding, reconditioning, upholstering, equipping, or other motor vehicle maintenance or repair.”

⁷⁴ Appellee’s Brief In Support of Appellee’s Motion For Summary Judgment, at 2.

⁷⁵ See, e.g. Board Hearing Transcript of January 28, 2003, pg 139, line 25 to pg 140, line 21.

contradicts the position that the Certificate of Occupancy was issued in error. After all, it is axiomatic that any determination regarding the proper scope of a Certificate of Occupancy for an Automotive Service Center necessarily pre-supposes that such a Certificate was validly issued.

5. The function of the Zoning Administrator is to administer, interpret and enforce the Zoning Regulations.⁷⁶ In carrying out their trade or business, business owners who have been issued certificates of occupancy necessarily rely on the Zoning Administrator's interpretation of the Zoning Regulations. As a result, revocations predicated on error should be issued sparingly.
6. Revocations predicated on error raise due process concerns under the best of circumstances. The present Zoning Administrator contends that in issuing the certificates of occupancy, three of his predecessors⁷⁷ erred in their interpretation of the regulations. The present Zoning Administrator is arguing now, before this Board, both that these certificates were issued in error and that Appellant's activities go beyond the scope permitted under the certificate issued. These are inconsistent positions that the Board cannot condone as they clearly violate Appellant's due process rights, in that, it is not permissible for the Zoning Administrator to maintain contradictory interpretations.
7. That the DCRA⁷⁸ "created the category of "Automobile Service Center" to facilitate [Appellant's] efforts", establishes that the issuance of the "Automobile Service Center" classification was the result of a deliberate decision by the DCRA and not the result of "error".
8. The simple fact that certificates of occupancy for Automotive Service Center were issued to the Appellant on three different occasions, and by three different zoning administrators, belies the Zoning Administrator's claim of "error." It is not credible that the DCRA, the very body entrusted with enforcing the Zoning Regulations, to now claim that three different administrators made the same "error" on three separate occasions.
9. The Zoning Administrator's repeated issuances of Certificates of Occupancy for Automotive Service Centers were not the result of error. Instead, the issuances were a discretionary determination made by experienced zoning specialists at the DCRA, based upon a thorough consideration of the Zoning Regulations and the history of the use of the 4225 Premises.

E. Revoking Appellant's Certificate of Occupancy is Contrary to the Law and Public Policy of the District of Columbia

1. The law of the District of Columbia mandates a moratorium on the conversion of full

⁷⁶ See generally, DCMR Title 11 (Zoning).

⁷⁷ The mere fact that the present Zoning Administrator disagrees with the decision of his predecessors is not grounds to reverse the decision of a predecessor especially here, where the previous decision maker (Bello) was actively involved in the investigation and the decision to issue a certificate of occupancy.

⁷⁸ See, Transcript pg 299, lines 12 – 16.

service retail service stations to limited service retail service stations.

2. D.C. Code § 36-304.01(c) provides:

No person who is an operator of any full service retail service station⁷⁹ on or after April 19, 1977 ... shall substantially reduce the number, types, quantity, or quality of the repair, maintenance, and other services, including the retail sale of motor fuels, petroleum products, and automotive products, previously offered. Such operators shall maintain the retail service station's existing garages, service bays, work areas, and similar areas in a fully operational condition and reasonably equipped to perform repair, maintenance, and service work on motor vehicles, including the provision of a qualified individual or individuals who is or are capable of performing repair, maintenance, and service work on motor vehicles during a reasonable number of hours per day and of days per week.

3. D.C. Code § 36-305.01 requires that the statutory provisions of the moratorium be liberally construed to carry out the public policy of the District of Columbia.⁸⁰
4. As such, the revocation of Appellant's Certificate of Occupancy is contrary to the public policy of the District of Columbia in that said revocation would cause Appellant to "substantially reduce the number, types, quantity, or quality of the repair, maintenance and other services . . . offered."⁸¹
5. More important, the revocation of Appellant's Certificate of Occupancy is contrary to the law of the District of Columbia. D.C. Code § 36-304.01(c) is superseding after-enacted law⁸² relative to the statutory authority⁸³ enabling the promulgation of the Zoning

⁷⁹ D.C. Code § 36-304.01 (a) defines a "full service retail service station" to mean:

...any retail service station location which provides a garage, service bay, work area, or similar enclosed area for repairing, maintaining, servicing, or otherwise working on motor vehicles, or any service islands. Such repair, maintenance, and service work may include, but is not limited to, the installation or replacement of batteries, tires, fan belts, lights, brakes, water pumps, mufflers and other parts and accessories and the performance of motor oil changes, lubrications, wheel alignments, tune-ups, tire repairs, brake adjustments, and general repair and maintenance work and services.

⁸⁰ D.C. Code § 36-305.01 reads:

This chapter shall constitute a statement of the public policy of the District of Columbia. The provisions of this chapter shall be liberally construed in order to effectively carry out the purposes of this chapter in the interests of the public health, safety, and welfare.

⁸¹ D.C. Code § 36-304.01(c).

⁸² RETAIL SERVICE STATION AMENDMENT ACT OF 2004, Law 15-297, Act 15-693 was approved January 4, 2005 and provides, in pertinent part:

<< DC CODE § 36-304.01 >>

(1) Subsection (b) is amended by striking the phrase "until October 1, 2005".

Regulations. As the Court of Appeals recently held in George Washington Univ. v. D.C. BZA, 831 A.2d 921, 943 (D.C. 2003), “[where there is a conflict] the more specific statute governs the more general one, and the later supersedes the earlier.” Thus, to the extent Zoning Regulations are inconsistent with the D.C. Code § 36-304.01(c), the moratorium statute controls.

6. As a result of the moratorium on the conversion of full service retail service stations to limited service retail service stations, the actions of the Zoning Administrator are prohibited by law.

F. The Actions of the Zoning Administrator Amount to Impermissible Discrimination

1. The actions of the Zoning Administrator are arbitrary and inequitable. The Court of Appeals stated in Dupont Circle Citizens Ass’n v. D.C. Zoning Comm’n, at 559 that “[t]he Act requires... that the regulations be applied uniformly to all property throughout a district, all owners of the same class being treated alike.”⁸⁴
2. To be clear, Appellant’s contention is that the Zoning Administrator has not uniformly applied the Zoning Regulations, which is distinct from the argument that the Zoning

(2) Subsection (c) is amended by striking the phrase "until October 1, 2005".

...

"(2) Any owner or operator of a retail service station who converts or causes the conversion of the retail service station without procuring an exemption pursuant to this section shall be guilty of a civil infraction, subject to a penalty of \$20,000, and the license to operate the retail service station shall be suspended or revoked until such time as operation comes into compliance with this act. The Mayor may adjust the fine by rulemaking.

"(3) Any owner or operator of a retail service station which, as of the effective date of the Retail Service Station Amendment Act of 2004, has been converted into a non-full service facility in violation of this section, shall have 90 days to either restore the facility to full service or obtain an exemption from the from the Gas Station Advisory Board pursuant to subsection (d) of this section. Any owner or operator who fails to comply with the provisions of this subsection shall be subject to a penalty of not less than \$5,000 per day."

...

⁸³ D.C. Code § 6-641.01.

⁸⁴ The statutory language enabling the promulgation of the Zoning Regulations by the Zoning Commission is found at D.C. Code § 6 - 641.01.

[T]o regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes; and for the purpose of such regulation said Commission may divide the District of Columbia into districts or zones of such number, shape, and area as said Zoning Commission may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, conversion, maintenance, and uses of buildings and structures and the uses of land.

...All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in 1[sic] district may differ from those in other districts.

Administrator is selectively enforcing the Regulations.⁸⁵ While prosecutorial discretion is appropriate in certain criminal contexts, it is another matter for a Zoning Administrator to continue to issue similarly allegedly erroneous certificates of occupancy to others while seeking to revoke Appellant's on the basis of the same alleged error, *i.e.*, that the permitted use is not expressly provided in the Zoning Regulations.

3. The Zoning Administrator has not applied the regulations uniformly where he has issued, and continues to issue (including on the very day of the Board of Zoning Adjustment hearing),⁸⁶ Certificates of Occupancy containing uses not expressly set forth in the Zoning Regulations. At the same time, the Zoning Administrator has sought to revoke Appellant's Certificate of Occupancy because the use contained on that certificate is not expressly set forth in the Zoning Regulations.
4. By applying a narrower interpretation of 11 DCMR § 3203.8⁸⁷ to Appellant and by choosing not to give full effect to 11 DCMR § 721.4,⁸⁸ the Zoning Administrator has exceeded the scope of his authority and has committed reversible error in that the Zoning Administrator has not met the requirement "that the regulations be applied uniformly", recognized by the Court of Appeals in Dupont Circle Citizens Ass'n. v. DC Zoning Comm'n.⁸⁹
5. The language of the Zoning Regulations expressly requires "that the regulations be applied uniformly."⁹⁰
6. Consequently, the Zoning Administrator's actions are discriminatory and raise equal protection concerns.⁹¹

Conclusion

1. The Automotive Service Center Certificate of Occupancy was not issued in error.
2. The argument that that activities performed on the Premises went beyond the scope of those uses performed at an "Automotive Service Center" was not raised in the notice of revocation and cannot be considered.
3. The Zoning Administrator has not established that the activities performed on the

⁸⁵ In particular, this argument is distinct from the argument that the Zoning Administrator has failed to enforce its interpretation against other holders of Certificates of Occupancy, which contain either i) uses not expressly set forth in the Zoning Regulations and/or ii) same with adjacent reference to a use expressly set forth in the Zoning Regulations.

⁸⁶ See, Transcript pg 450, lines 11 - 16.

⁸⁷ 11 DCMR § 3203.8 is applicable to all districts and classes and kinds of buildings.

⁸⁸ 11 DCMR § 721.4 is applicable to C-2 and C-3 Districts. See also 11 DCMR § 741.4, which is applicable to C-3 Districts.

⁸⁹ Dupont Circle Citizens Ass'n v. DC Zoning Com'm. at 559.

⁹⁰ Dupont Circle Citizens Ass'n v. DC Zoning Com'm. at 559.

⁹¹ See, Bolling v. Sharpe, 347 U.S. 497, 498-499 (1954).

Premises were beyond the scope of those uses permitted to be performed at an “Automotive Service Center.” Moreover, the activities performed on the Premises did not go beyond the scope of those uses permitted to be performed at an “Automotive Service Center.”

4. The revocation of Appellant’s Certificate of Occupancy is contrary to the public policy and laws of the District of Columbia which seeks to preserve retail service stations offering automobile repair services.
5. The actions of the Zoning Administrator are impermissibly discriminatory.
6. Therefore, the Notice of Revocation must be quashed.

Respectfully submitted,



Stanley H. Goldschmidt

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Suite 220

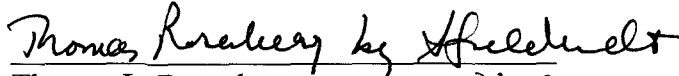
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served upon the following parties U.S. Mail, postage prepaid this 23rd day of March, 2007:

Matthew J. Green, Jr.
Assistant Attorney General
Department of Consumer and Regulatory Affairs
Office of the General Counsel
941 North Capitol St., N.E.
Washington, D.C. 20001

Ms. Karen Perry
Advisory Neighborhood Commission 3F
3003 Van Ness St. N.W.
W118
Washington DC 20008



Stanley H. Goldschmidt

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GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

NOVEMBER 28, 2006

+ + + + +

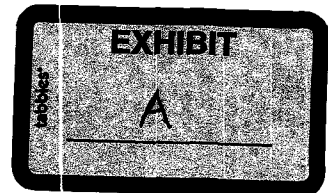
The Public Hearing convened in
Room 220 South, 441 4th Street, N.W.,
Washington, D.C., 20001, pursuant to notice
at 9:30 a.m., Geoffrey H. Griffis,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Chairperson
MICHAEL G. TURNBULL	Commissioner (AOC)



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1 what I have to say if we don't get to that.
2 And I suppose Mr. Pine could or my wife could,
3 if she can sign in, too, if that's all right.

4 CHAIRPERSON GRIFFIS: Absolutely.

5 MR. KRUGHOFF: Okay.

6 CHAIRPERSON GRIFFIS: We'll make
7 sure that we get that into the record before
8 you leave 11:30. As you'll see, this goes
9 very quickly.

10 MR. KRUGHOFF: Right.

11 CHAIRPERSON GRIFFIS: Okay. That
12 being said, I would tend to agree that Mr.
13 Krughoff's, I would not support to establish
14 the party status in that I believe the
15 elements of issue and concern that are brought
16 up are very important, and actually are the
17 substance of which we will be reviewing the
18 entire application. That he has brought it
19 forth I think is important for that testimony
20 to come in. But I do not see that it positions
21 him in any unique or distinct manner, but
22 rather just illuminates those elements that we

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1 going to have DCRA also address this and the
2 ANC, what's the actual action that you're
3 asking us to stay or what is the nexus of the
4 decision of the action that should be stayed?

5 MR. ROSENBERG: Sure. Sure. We are
6 asking this Board to stay the order that was
7 issued on September 29, 2006, although it says
8 2005 on it, to cease all business operations
9 at 4221.

10 CHAIRPERSON GRIFFIS: The
11 September 29th is the date of the DCRA
12 decision?

13 MR. ROSENBERG: Right. Absolutely.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. ROSENBERG: That was the order
16 we are asking to cease all operations on that.

17 What happened subsequent, so that
18 you're aware, we address it in our motion but
19 what happened subsequent to that, as you know,
20 four days later after December 29th we were
21 here. And we know the unfortunate
22 circumstances that occurred on that day.

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1 and I repeat, the Department of Consumer and
2 Regulatory Affairs is a multi-headed
3 organization with multiple responsibilities.
4 Zoning is only a part of that responsibility.

5 Based on this body revoking the
6 Certificate of Occupancy, based on the fact
7 that at 4221 continuing 4225 the Appellants
8 have engaged in outlaw activity. What is that
9 outlaw activity? Operating outside the scope
10 of a Certificate of Occupancy. Operating a
11 repair facility, a repair garage. That's
12 what's going on here. Regardless of how we
13 try to couch it in automotive service center
14 or whatnot, which again was an accommodation
15 based on the information given to our zoning
16 people that they were going to do what?
17 Change light bulbs, that they were going to
18 sell windshield wiper blades and other minor
19 accessories. That was what was told to our
20 people.

21 That also was what you heard in
22 the last hearing. Unfortunately what the

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1 MR. ROSENBERG: How long have you
2 been in the business of service
3 station/automobile repair?

4 MR. KURI: It's been just over 25
5 years.

6 MR. ROSENBERG: And prior to
7 operating Kuri Brothers what were you doing?
8 What type of work were you doing?

9 MR. KURI: I worked at a couple
10 of D.C. gas stations, Montgomery County police
11 cars, Manhattan Porche.

12 MR. ROSENBERG: Are you one of the
13 brothers of Kuri Brothers?

14 MR. KURI: Yes, I am.

15 MR. ROSENBERG: And who is the
16 other?

17 MR. KURI: John Kuri.

18 MR. ROSENBERG: He's your brother?

19 MR. KURI: Yes.

20 MR. ROSENBERG: Tell us we see
21 reference as the Van Ness Auto Care. What is
22 Van Ness Auto Care?

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1 MR. KURI: That's my trade name
2 for Kuri Brothers.

3 MR. ROSENBERG: Is that what you
4 operate it as?

5 MR. KURI: Yes.

6 MR. ROSENBERG: Now how long has
7 at 4225 Connecticut, how long has that
8 property been a gas station or doing minor
9 repairs?

10 MR. KURI: Since the 1930s.

11 MR. ROSENBERG: What was it in
12 1930?

13 MR. KURI: A Texaco gas station
14 and service station.

15 MR. ROSENBERG: And from then
16 until when did it serve as a Texaco station?

17 MR. KURI: I believe it stayed
18 until about mid to late '80s as a Texaco.

19 MR. ROSENBERG: And how do you
20 know that?

21 MR. KURI: Documents that I've
22 seen.

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1 MR. ROSENBERG: And then after it
2 was a Texaco station, is that when it became
3 Van Ness?

4 MR. KURI: That's correct.

5 MR. ROSENBERG: Is Van Ness Auto
6 Care affiliated as far as the gasoline part of
7 the business with any major gas company?

8 MR. KURI: No. We got rid of the
9 major brands to keep the price of the fuel
10 low.

11 MR. ROSENBERG: Now, let's talk
12 about the work that is performed at 4225. Tell
13 us what exists at 4225 Connecticut Avenue?

14 MR. KURI: We have about six to
15 eight gas pumps, little food mart for to-go
16 food and two mechanic -- two bays with lifts.
17 One bay is an office area and a flat bay.

18 MR. ROSENBERG: And what type of
19 work is performed in these two bays?

20 MR. KURI: Just light mechanical
21 work. Repairs, service. Just oil changes,
22 tune-ups, exhaust, brakes; things of that

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1 matter.

2 MR. ROSENBERG: Do you change
3 fluids?

4 MR. KURI: Yes.

5 MR. ROSENBERG: Do you take off
6 and install tires?

7 MR. KURI: Yes, we do.

8 MR. ROSENBERG: What's the
9 difference between what you do and what's done
10 at other gas stations in the neighborhood?

11 MR. KURI: Nothing at all. All the
12 service stations do the same work as we do.

13 MR. ROSENBERG: Now, for the work
14 you do how many suppliers of material do you
15 have?

16 MR. KURI: We have four suppliers.

17 MR. ROSENBERG: Yes. And who are
18 these suppliers?

19 MR. KURI: We have Pal Auto Parts,
20 JK Auto Parks, Car Quest and Olympic.

21 MR. ROSENBERG: Mr. Griffis, we
22 have a few documents, and we can pass them

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1 out. We've got a copy, I think, for everybody.

2 CHAIRPERSON GRIFFIS: Do we have
3 copies for the other participants?

4 MR. ROSENBERG: Yes. Absolutely.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. ROSENBERG: Okay. Chris,
7 behind Tab 1 in these documents that we've
8 introduced there's a letter from Car Quest.
9 And you said what is Car Quest?

10 MR. KURI: They sell automotive
11 parts.

12 MR. ROSENBERG: And is that one of
13 your suppliers?

14 MR. KURI: Yes.

15 MR. ROSENBERG: Are they your
16 largest supplier or what's the story?

17 MR. KURI: Yes. They're the
18 biggest supplier in the area that supplies
19 parts to all the repair facilities in the
20 area.

21 MR. ROSENBERG: Did you solicit
22 this letter from Car Quest?

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1 MR. KURI: No, they offered it to
2 me.

3 MR. ROSENBERG: Okay. And it
4 says, in part, Car Quest does sell Van Ness
5 and Van Ness is you?

6 MR. KURI: Yes.

7 MR. ROSENBERG: Automotive parts
8 for tune-ups and light mechanical.

9 Beginning with behind Tab 2 this
10 is from Olympic Auto Parts. And what does
11 Olympic provide to you?

12 MR. KURI: The same type of parts,
13 just more of a foreign type of car.

14 MR. ROSENBERG: And it's a little
15 bit longer letter and I'm sure everybody can
16 read it. But what did you understand the
17 letter to mean as far as what they're selling
18 you parts for to do what kind of work?

19 MR. KURI: It indicates that the
20 parts that they sell us are all for minor
21 repair on all vehicles.

22 MR. ROSENBERG: It says, in part,

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1 the President of Olympic Auto Parts says it's
2 been involved in the repair industry for 35
3 years. Heavy duty repairs including engine
4 and transmission building. Do you engine and
5 transmission building?

6 MR. KURI: No, we do not.

7 MR. ROSENBERG: Do you do repairs
8 to heavy trucks and equipment?

9 MR. KURI: No.

10 MR. ROSENBERG: Do you do body
11 work?

12 MR. KURI: No.

13 MR. ROSENBERG: Do you paint cars?

14 MR. KURI: No.

15 MR. ROSENBERG: If a car comes in
16 smashed up and it's got dents all over the
17 place, do you repair it?

18 MR. KURI: No, we don't.

19 MR. ROSENBERG: And it indicates
20 that you do not purchase any parts from
21 Olympic to do that kind of work, is that
22 accurate?

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1 MR. KURI: That's correct.

2 MR. ROSENBERG: Well these are two
3 of your four suppliers. What do you get from
4 the other two suppliers?

5 MR. KURI: The same exact stuff.

6 MR. ROSENBERG: Well what happens
7 if somebody comes in and they need this
8 heavier work?

9 MR. KURI: If somebody needs it as
10 far as engine work, we just push them to the
11 side and tell them to go somewhere else.

12 As far as if they needed something
13 heavy like their transmission, we change the
14 fluid and if there's no damage to it that that
15 doesn't take care of it, then we can do
16 something which is a sublet, which we'll -- we
17 have one of the transmission shops come with
18 a tow truck, pick it up, take it to their
19 facility, do the repair and then bring it back
20 and drop it off.

21 MR. ROSENBERG: Why do you do
22 that?

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1 MR. KURI: Because we don't do
2 that type of work.

3 MR. ROSENBERG: Is that more of a
4 convenience to the customer so they don't
5 have to go to multiple places?

6 MR. KURI: For them, yes.

7 MR. ROSENBERG: Now, as far as the
8 bays goes, just so we're all clear. As far as
9 the bays go, distinguish the bays at 4225 from
10 the bays at 4221.

11 MR. KURI: Well, 4225 we have two
12 electric lifts and hydraulic lifts. Downstairs
13 we have maybe about eight electric lifts and
14 then a couple of flat bays and a --

15 MR. ROSENBERG: When you say
16 "downstairs," that's 4221?

17 MR. KURI: That's correct.

18 MR. ROSENBERG: So that's
19 underground?

20 MR. KURI: Yes.

21 MR. ROSENBERG: Now are you
22 familiar with some of the other repair shops

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1 deliberations for decisions anything that is
2 not jurisdictional for what we're discussing
3 here.

4 Let's go ahead --

5 MR. GREEN: I trust your judgment,
6 and that of the Board, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Thank you
8 for saying it on the record.

9 MR. ROSENBERG: Tab 5, what is
10 this, Chris?

11 MR. KURI: That's an application
12 for the business license.

13 MR. ROSENBERG: And does the
14 business a result in the Certificate of
15 Occupancy.

16 MR. KURI: Yes.

17 MR. ROSENBERG: Just so we're
18 clear, on page 1 we see two different types of
19 handwriting. The handwriting on the right that
20 lists your name and your brother's name and
21 Mr. -- is that your handwriting?

22 MR. GREEN: Again, Mr. Chairman,

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1 and license issuance goes to this appeal?

2 MR. GREEN: Yes.

3 CHAIRPERSON GRIFFIS: Okay. Why
4 don't we hit the license first.

5 MR. ROSENBERG: Mr. Griffis, the
6 issue seems to be, as we discussed before we
7 commenced, what is the work that is being done
8 at 4225.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. ROSENBERG: And that's exactly
11 what this goes to, and it goes to the fact
12 that we have shared, we have told the Zoning
13 Administrator from day one that this is the
14 work we were doing, it's the only work we've
15 done. And they approved it. And their
16 determination that their certificate was
17 issued in error is wrong.

18 And two, the work has always been
19 light duty work. And this is simply saying
20 let's let him continue.

21 MR. GREEN: Mr. Chairman, the more
22 proper document would be an application for a

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1 zoning -- you know, Certificate of Occupancy.
2 That application would be the more proper
3 document.

4 Also, a copy of the Certificate of
5 Occupancy because it designates on it what its
6 purposes are. Therefore, those are the proper
7 documents, not this one.

8 CHAIRPERSON GRIFFIS: Okay. You
9 seem to be jumping ahead to his own case, Tab
10 6 is the C of O.

11 I see this as relevant. I think we
12 need to continue.

13 As I anticipate, Mr. Kuri, the
14 other motion -- or objection, rather, am I
15 correct in assuming that he's going to testify
16 in addition to what exactly happens on site?

17 MR. ROSENBERG: Yes.

18 CHAIRPERSON GRIFFIS: Okay. Let's
19 move ahead.

20 MR. ROSENBERG: Mr. Kuri,
21 directing your attention to the second to last
22 page of Exhibit 5 it says underneath your

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1 signature, the question that it says "You're
2 not required to answer but for information
3 purposes only, list all types of electronic
4 equipment used in repair services." And it
5 says "Tire balance machine, tire mounting
6 machine, alignment machine, car lift."

7 Do you use those for the types of
8 work you've already described you do or for
9 something different?

10 MR. KURI: The same, that type of
11 work.

12 MR. ROSENBERG: And do you have
13 any other electronic equipment that you use at
14 4225?

15 MR. KURI: We just have some
16 recycling machines.

17 MR. ROSENBERG: That are used for
18 recycling the materials?

19 MR. KURI: Yes.

20 MR. ROSENBERG: This equipment,
21 can this equipment be used to do engine
22 overhauls and repair of vehicles that need

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1 MR. ROSENBERG: And then he typed
2 it up with automotive service center?

3 MR. KURI: That's correct.

4 MR. ROSENBERG: Did he tell you
5 anything to the effect of he was doing this in
6 error or anything of that sort?

7 MR. KURI: No. He made sure that
8 this would take care of everything. He's seen
9 the type -- he's been to our repair shop. He's
10 seen the type of work that we do and he was
11 trying to get it all straightened out.

12 MR. ROSENBERG: When he was at
13 your repair shop and observed the work, were
14 you there with him?

15 MR. KURI: Yes.

16 MR. ROSENBERG: Have you had
17 interaction with the Advisory Neighborhood
18 Commission?

19 MR. KURI: Other than Ms. Perry on
20 four or five occasions, no.

21 MR. ROSENBERG: But you've
22 interaction with Ms. Perry?

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1 She -- it depends on which occasion you ask me
2 on. But she gave me different reasons on why
3 she was closing me down.

4 COMMISSIONER PERRY: I disagree.
5 I've got to stop, because that is not true.

6 CHAIRPERSON GRIFFIS: Right. I'm
7 not sure where we're going with this.

8 COMMISSIONER PERRY: That is not
9 true. And I can produce another ANC
10 commissioner who was with me at the time I
11 spoke to Mr. Kuri, and --

12 CHAIRPERSON GRIFFIS: Right. I
13 hear the objection.

14 MR. ROSENBERG: Have you received
15 any complaints from anybody in the community
16 other than Mr. Perry?

17 MR. KURI: No.

18 MR. ROSENBERG: Was Ms. Perry at
19 your site last night taking photographs?

20 MR. KURI: Yes. She -- I was home
21 actually, and I had my employee that's a
22 manager from Mali, he's Muslim, and he -- she

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1 airport or something like that, spoke with the
2 lawyers for a little while, and just had me
3 sign and don't worry about it, and he left.

4 MR. ROSENBERG: Let's talk about
5 the business a little bit more. Your
6 customers, have you -- this is located in
7 which zip code?

8 MR. KURI: 20008.

9 MR. ROSENBERG: Approximately how
10 many customers do you have in zip code 20008?

11 MR. KURI: Over 10,000.

12 MR. ROSENBERG: How do you know
13 that?

14 MR. KURI: I went to my computer
15 and printed up the -- a mailer list.

16 MR. ROSENBERG: Mr. Griffis, we
17 have a copy of that mailer list for the Board
18 and for Mr. Green. We'll provide it to you
19 afterwards. But it lists all the customers in
20 just this one zip code.

21 CHAIRPERSON GRIFFIS: Okay.
22 Right. I still don't understand where that

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1 CHAIRPERSON GRIFFIS: How's that
2 work there. Where they come from and how much
3 of that is done I don't think is germane to
4 us.

5 MR. ROSENBERG: All right. I
6 shall.

7 Mr. Kuri, let's focus on the work
8 that is done there.

9 The work, you know you've
10 indicated before brakes, tune-ups, tire
11 changes, fluid changes, oil changes. If you
12 can elaborate a little bit and kind of just
13 tell us are these things that take 20 minutes,
14 an hour, are the cars there for multiple days.
15 Do you have cars in the street as a result? If
16 you can just tell us a little bit more about
17 the actual repair work?

18 MR. KURI: It's all just -- you
19 know, all the vehicles now. You're not having
20 that much major repairs anyway. It's all being
21 a more electronic types of repairs checking,
22 and lights and stuff.

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1 Everything we do is, you know,
2 pretty much done, our business is based you
3 dropping it off in the morning, you know,
4 before you get on the subway to work and it's
5 done by the end of the day.

6 If there's a car that's -- you
7 know, that there are too many cars that we
8 didn't get done, we'd park them downstairs in
9 the garage, you know, clear the lot and put
10 them down there.

11 All the repairs are just tune-ups,
12 brakes, exhaust, the air conditioner,
13 recycling the fluids in the cars, the
14 transmission fluid. You know, just basic car
15 needs. Tires, brakes, omission tests; things
16 like if you fail D.C. inspection, we can take
17 care of.

18 MR. ROSENBERG: I want to hand you
19 what's behind Tab 12. This is a sales and
20 invoice summary for the company, correct?

21 MR. KURI: That's correct.

22 MR. ROSENBERG: And I think it's

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1 pretty -- is this something you put together?

2 MR. KURI: Yes.

3 MR. ROSENBERG: It's pretty self-
4 explanatory as to most work, but down at the
5 bottom where you've got this summary and it
6 says "Number of invoices and average per
7 invoice," what does that mean?

8 MR. KURI: That basically tells us
9 the average price of each car that left the
10 shop, how much it relates, you know, to their
11 repairs.

12 MR. ROSENBERG: So in other words
13 for the 11 months of 2006 that are contained
14 here, you're charging the customers \$311.50 on
15 average?

16 MR. KURI: That's correct.

17 MR. ROSENBERG: And does that mean
18 that you're doing kind of this light work
19 you've been talking about or something
20 greater?

21 MR. KURI: Yes. It only indicates
22 lights mechanical work.

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1 most. But from the standpoint of comparison's
2 sake, what would you consider heavy work?

3 MR. KURI: Heavy work is things
4 on, like, pick-up trucks and heavier vehicles,
5 for one thing. And then also heavy work is
6 actual head jobs. Like if you burn a head
7 gasket, you know, taking the heads off the car
8 and having the head machine, which is milled.
9 Transmission overhauls, disassembling the
10 whole transmission and repairing it. Taking
11 pistons, you know, people burn out of oil or
12 overheat their engine, have to rebuilt the
13 engine. Those are heavy automotive repairs.

14 BOARD MEMBER ETHERLY: Yes. So in
15 terms of the subject property right now where
16 you get into the guts of the vehicle, that
17 type of work is not taking place on site?

18 MR. KURI: At all.

19 BOARD MEMBER ETHERLY: Okay. No
20 engine refits or total reconstruction?

21 MR. KURI: No. No.

22 BOARD MEMBER ETHERLY: Or what

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1 have you?

2 MR. KURI: No.

3 BOARD MEMBER ETHERLY: And as far
4 as you've said with regard to heavy vehicle
5 type work, large trucks, SUVs or anything like
6 that, I mean --

7 MR. KURI: The only thing we do
8 is, you know, if there's somebody from out of
9 town that has a flat on their -- you know,
10 Winnebago, I guess, we'll help them with a
11 tire to get them out of town. But that's it.

12 BOARD MEMBER ETHERLY: Okay.

13 MR. ROSENBERG: Chris, this is
14 important. So give us, if you can, other
15 examples of things you would not that would
16 qualify as heavy work, if you can?

17 MR. KURI: Any type of -- you
18 know, body work. Any major body work, you
19 know, anything like that, we wouldn't take
20 care of. You know, we basically -- you know
21 we're -- you know, we're doing the service.
22 You know, things you get done on your car once

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1 a year or something like that. Just keeping
2 it, you know, warranting, the same warranty as
3 the dealership would. You know, Meineke, Jiffy
4 Lube, Midas kind of thing.

5 BOARD MEMBER ETHERLY: And how are
6 those decisions about heavy versus light work
7 made? Do you have a specific policy in place
8 that provide guidance to your employees about
9 what work they would accept? Or, let's say for
10 example, I come on the property with what
11 would be considered a heavy work issue. And
12 it is determined that I need a full scale
13 engine rebuild or something along those lines.
14 Who makes the determination or who tells me
15 that that's not what we do here, Mr. Etherly.
16 I'm sorry.

17 MR. KURI: Right. We -- we just
18 actually did that with a customer had a Volvo.
19 And he had engine tapping noise. And before
20 he even took it off the tow truck, I was like,
21 whoa, you know I don't know if we can even --
22 you know, you're wasting your time dropping it

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1 off with me.

2 And, you know, even as far as
3 hiring technicians, we don't hire technicians
4 that even do that type of work. All my
5 technicians I hire are people that do minor
6 repair work, you know. And, you know, check
7 engine lights, you know.

8 If somebody comes in my shop, I've
9 been working in a transmission shop for ten
10 years or 20 years, I'd say I have no work for
11 you. I don't even hire them. I don't even,
12 you know, would advertise for somebody like
13 that.

14 BOARD MEMBER ETHERLY: Okay.
15 Thank you.

16 I apologize for the interruption.

17 MR. ROSENBERG: No, no, no.

18 BOARD MEMBER ETHERLY: I just
19 wanted to get that in context. Thank you.

20 VICE CHAIRPERSON MILLER: I just
21 want to ask a quick question, which is
22 probably in the record, but at the other

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1 location, 4221, did you do the heavy repair
2 work?

3 MR. KURI: No. We did not.

4 VICE CHAIRPERSON MILLER: So is it
5 the work that you're describing that pertains
6 to this locations it's the same as the work
7 that was done at the other location?

8 MR. KURI: Yes, we do.

9 MR. ROSENBERG: I just want to
10 follow up a little bit on what Mr. Etherly
11 said and then probably be done.

12 How do your technicians know where
13 to draw the line between what you're saying
14 they're allowed to do and making sure they
15 don't do anything more?

16 MR. KURI: They are not specialist
17 in that type of work, so they don't even --
18 you know, they can diagnose it. That's --
19 sometimes we can't even diagnose it. That's
20 even the problem. So before we tell you you
21 need an engine and you go somewhere else and
22 they say oh they told me I needed an

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1 there and, you know, I would still have the
2 gas station C of O, you know, to do the gas.
3 Oh, actually, when I did take that over, I
4 didn't have the gas station. I just had the
5 two repair bays. So I just -- you know, I
6 wanted to show that I'm not doing the gas
7 part. That was subleased to somebody else

8 COMMISSIONER MITTEN: Is that the
9 same address?

10 MR. KURI: Yes, same address. But
11 they just had another tenant running the gas
12 station.

13 COMMISSIONER MITTEN: Okay.

14 MR. KURI: And I didn't want to
15 have anything to do with the gas station
16 Certificate of Occupancy because I wasn't
17 doing anything with the gas. I was just doing
18 the automotive part.

19 COMMISSIONER MITTEN: So now is
20 there a single certificate of occupancy or are
21 there two?

22 MR. ROSENBERG: You're asking just

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1 know, she --

2 CHAIRPERSON GRIFFIS: Right.

3 MR. KURI: There was a complete --
4 that's all from that. And I -- you know, I
5 wanted to go down there and just make sure
6 everything was fine. You know, I don't want
7 to -- you know, I'm a mechanic. You know, I
8 can be a mechanic in D.C., Maryland --

9 CHAIRPERSON GRIFFIS: Right. I
10 understand.

11 MR. KURI: It's just I wanted --
12 you know, I went in and said give me what you
13 want to give me.

14 CHAIRPERSON GRIFFIS: Okay.

15 BOARD MEMBER ETHERLY: Mr. Chair,
16 if I could follow up very quickly on a couple
17 of the earlier questions. I just want to kind
18 of put a pin a few things.

19 With respect to if you could, Mr.
20 Kuri, are you able to estimate the number of
21 vehicles that you may have on site at any one
22 time? Feel free for it to be a very broad

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1 respect to your work force, you probably
2 mentioned this during your direct testimony
3 but I just want to make sure I'm clear on
4 this, what are the number of personnel,
5 mechanics or employees, that you currently
6 have at the 4225 site?

7 BOARD MEMBER ETHERLY: Well,
8 currently it's gone down because of what
9 happened.

10 BOARD MEMBER ETHERLY: Okay.

11 MR. KURI: And also the numbers I
12 was giving you was because of what happened.
13 But we have about 12 employees.

14 BOARD MEMBER ETHERLY: And what
15 would you say your normal compliment of
16 employees would be?

17 MR. KURI: Closer to 18.

18 BOARD MEMBER ETHERLY: Closer to
19 18?

20 MR. KURI: Yes.

21 BOARD MEMBER ETHERLY: Okay. And
22 out of that number what is --

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1 BOARD MEMBER ETHERLY: Okay. Of
2 those numbers how many are technicians that
3 actually do vehicular work? Of the, say, 12
4 that you have now or the 18 that you might
5 have on a normal time?

6 MR. KURI: Right. At least ten.

7 BOARD MEMBER ETHERLY: And as you
8 indicated, you typically do not hire as a
9 matter of course employees that are certified
10 in some of the more larger complicated scale
11 work. Okay. I think I'm clear on that.

12 Last question, just again coming
13 back to you probably have no ability
14 necessarily to prevent who comes onto your
15 property with a particular vehicular need.
16 You've indicated that at times and as recently
17 as yesterday, you had a vehicle come onto the
18 property that had a more extensive problem
19 that what you would normally deal with. Do
20 you have a posted policy or are there clear
21 instructions in writing for your employees
22 about the type of work that they should take,

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1 or is simply understood by virtue of your
2 business practice that there's just certain
3 projects that we're just not equipped to deal
4 with?

5 MR. KURI: No, I -- I -- we have
6 meetings almost every month and we go over
7 what's being done, you know, what's cars are
8 here, what's going on. And, you know, they
9 know exactly by what I tell them as to, you
10 know, what type of work. I mean, even when I
11 hire them I tell them this is the type of work
12 that we have. This is the type of work that we
13 do. And, you know, that's how it's handled.
14 Just, you now, through meetings.

15 BOARD MEMBER ETHERLY: Okay.
16 Final question. With respect to the actual
17 facilities that you have on hand at the
18 property, let's kind of -- I just want to be
19 sure I'm clear about the service bays. Are
20 your service bays what would be considered
21 kind of traditional or standard bays? And by
22 that I'm just dealing with my layperson

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1 experience with bays, which fortunately have
2 been very slim and none.

3 MR. KURI: Yes.

4 BOARD MEMBER ETHERLY: But could
5 you describe what is a service bay? What does
6 that entail?

7 MR. KURI: Well, the service bays
8 that we have, you have some that are just flat
9 bays that look no different than your garage.
10 You know, just a flat bay with nothing on it.

11 BOARD MEMBER ETHERLY: So there's
12 no lift capacity for the car to be lifted up?

13 MR. KURI: That's correct.

14 BOARD MEMBER ETHERLY: And the
15 person to get under it or --

16 MR. KURI: That's correct. And
17 other lifts are just -- we have new lifts that
18 lift the car up. And we replaced only lifts
19 that were in the same spots is the old lifts
20 that were probably 30, 40 years old. Whenever
21 one of those went bad, we replaced it -- that
22 same one. But whatever was in a flat bay was

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1 always stayed a flat bay and whatever had a
2 lift, you know --

3 BOARD MEMBER ETHERLY: So how many
4 lifts would you say are on the property?

5 MR. KURI: Which one? Which
6 property?

7 BOARD MEMBER ETHERLY: 4225. Yes.
8 All 4225.

9 MR. KURI: Yes. Two.

10 BOARD MEMBER ETHERLY: Two. Okay.
11 And in terms of just flat bays, how many of
12 those on 4225?

13 MR. KURI: One.

14 BOARD MEMBER ETHERLY: Just one?

15 MR. KURI: Yes.

16 BOARD MEMBER ETHERLY: Okay. And
17 any other type of heavy lifting equipment?
18 What I'm perhaps sneaking around to is is
19 there anything in those bays that allows you
20 to do heavy or large scale work?

21 MR. KURI: No.

22 BOARD MEMBER ETHERLY: Any large

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1 BOARD MEMBER ETHERLY: Okay.

2 MR. KURI: The person that was
3 renting that left and I just took that over.

4 BOARD MEMBER ETHERLY: Okay. And
5 how many -- actually, I don't need to get into
6 that.

7 That concludes my questions, Mr.
8 Chair. Thank you.

9 CHAIRPERSON GRIFFIS: Thank you.

10 MR. ROSENBERG: Mr. Griffis, if I
11 can follow up on just two things?

12 This issue about what the
13 employees know as far as what they can and
14 cannot do. Are you also there most of the day
15 yourself?

16 MR. KURI: Yes. Yes.

17 MR. ROSENBERG: I mean, how many
18 hours a day a day are you there or days a
19 week?

20 MR. KURI: I'm there most of the
21 time and almost 60 hours a week. I had a spin
22 operation, so I as out for a while. But they -

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1 - you know, I have -- you know they know. I
2 have my managers and they know how to handle
3 the business.

4 MR. ROSENBERG: And then just to
5 clear it up because I know there were times
6 when we're putting the two properties
7 together. When you said the vehicles outside
8 were 3 to 15, were you saying that's limited
9 to 4225 or is that both properties?

10 MR. KURI: Basically limited to
11 the 4225.

12 MR. ROSENBERG: Okay.

13 MR. KURI: Yes.

14 MR. ROSENBERG: All right.

15 CHAIRPERSON GRIFFIS: Thank you.

16 Ms. Miller?

17 VICE CHAIRPERSON MILLER: Mr.
18 Kuri, do you do engine overalls at 4225?

19 MR. KURI: No.

20 VICE CHAIRPERSON MILLER: No?

21 MR. KURI: No.

22 VICE CHAIRPERSON MILLER: Did you

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1 do engine overhauls at 4221?

2 MR. KURI: No, I didn't.

3 VICE CHAIRPERSON MILLER: Do you
4 do air conditioning, heating?

5 MR. KURI: I actually can tell you
6 I've never done in my life, even when I worked
7 at other establishments, I never did that type
8 of work.

9 VICE CHAIRPERSON MILLER: Okay.
10 Air conditioning heating repairs?

11 MR. KURI: Yes.

12 VICE CHAIRPERSON MILLER: Both?

13 MR. KURI: Yes.

14 VICE CHAIRPERSON MILLER: Body
15 work?

16 MR. KURI: No. At 4225.

17 VICE CHAIRPERSON MILLER: No at
18 4225?

19 MR. KURI: Well, I didn't
20 understand the question.

21 VICE CHAIRPERSON MILLER: Body
22 work?

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1 MR. KURI: No.

2 VICE CHAIRPERSON MILLER: At 4225
3 you don't do body work or at both?

4 MR. KURI: No. I do not do body
5 work at all.

6 VICE CHAIRPERSON MILLER: And
7 never did?

8 MR. KURI: Yes.

9 VICE CHAIRPERSON MILLER: Okay.
10 Electrical repairs?

11 MR. KURI: Yes.

12 VICE CHAIRPERSON MILLER: I guess
13 I'm assuming your answer would be definitely
14 4225 and then if you want to clarify it you
15 did it at 4221, you'll let me know? I just
16 want to go through a little checklist.

17 MR. KURI: Okay.

18 VICE CHAIRPERSON MILLER:
19 Transmission repairs?

20 MR. KURI: no.

21 VICE CHAIRPERSON MILLER: Okay.
22 Alignment?

1 MR. KURI: At the 4221 we did. At
2 the 4225 we don't because the machine is
3 actually downstairs.

4 VICE CHAIRPERSON MILLER: Okay.
5 And you say you did brakes?

6 MR. KURI: Yes.

7 VICE CHAIRPERSON MILLER: At both.
8 And exhaust?

9 MR. KURI: Yes.

10 VICE CHAIRPERSON MILLER: Okay. I
11 know you've submitted pictures of other
12 service stations that Mr. Green objected to.
13 But I'm curious if you're aware of what their
14 Certificate of Occupancy is for?

15 MR. KURI: I believe it's gasoline
16 service station.

17 VICE CHAIRPERSON MILLER: And --

18 MR. KURI: I'm just saying one of
19 their managers came down and worked for me
20 before all this happened. And --

21 CHAIRPERSON GRIFFIS: Well, are
22 any of those Certificate of Occupancies in Tab

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1 CHAIRPERSON GRIFFIS: There was an
2 operation of the gas station which, by a
3 separate operator which he has taken over some
4 years ago.

5 MR. KURI: Yes.

6 VICE CHAIRPERSON MILLER: Okay.
7 So you don't know that there was a Certificate
8 of Occupancy for that use? You're surmising
9 that there was, is that it?

10 MR. KURI: At the gas station?

11 VICE CHAIRPERSON MILLER: Yes.

12 CHAIRPERSON GRIFFIS: I kind of
13 don't want to say. Correct me if your
14 testimony is not correct. However, I
15 understand the testimony to be, yes, there was
16 a previous Certificate of Occupancy for the
17 use of functions that were going on. In his
18 understanding he did not operate the gas pumps
19 at one time.

20 MR. ROSENBERG: Correct.

21 CHAIRPERSON GRIFFIS: And then
22 took them over. And then in 2002 or some time

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1 before that went down to DCRA to get a
2 reissuance of a Certificate of Occupancy to
3 clarify his functions on the site of 4225, is
4 that correct?

5 MR. KURI: That's correct.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. ROSENBERG: Mr. Griffis, in
8 response to your question, the last three
9 pages behind Tab 14 are Certificate of
10 Occupancy for 5001 Connecticut Avenue and --

11 CHAIRPERSON GRIFFIS: It says
12 "auto repair."

13 MR. ROSENBERG: Right. That is the
14 Amoco station?

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. ROSENBERG: That's the Amoco
17 station we showed you the picture of.

18 CHAIRPERSON GRIFFIS: Okay. So
19 Ms. Miller, that goes to your question of--

20 MR. GREEN: Again, Mr. Chairman,
21 excuse me. I didn't hear that. You said the
22 Amoco down the street, is that correct?

1 MR. KURI: Yes. It's just monthly
2 like, you know, if your car needs an air
3 conditioning recharge or something like that.
4 You know, just putting the Freon into the
5 vehicle.

6 And then heating it's more like
7 cooling flushes and antifreeze flushes.

8 MR. ROSENBERG: And when you said
9 you did in response to Ms. Miller electrical
10 repairs, can you elaborate on that and give us
11 examples of what you meant?

12 MR. KURI: Well, that's a broad,
13 of course, what type of electrical repairs.
14 But it can be, you know, light bulbs. It can
15 be fuses if someone has a radio that's gone
16 out. You know -- you know, light electrical
17 repairs. Not like putting a whole wiring
18 harness in a car.

19 MR. ROSENBERG: So when you said
20 you do electrical repairs, you were talking
21 about the changing light bulbs?

22 MR. KURI: Yes.

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1 about the parts themselves as if you're --

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. KURI: -- like an alternator
4 warehouse and you're going to rebuild the
5 alternators.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. KURI: Yes, that's what a
8 recondition part is, is rebuilding an existing
9 part off the car.

10 MR. ROSENBERG: And so we're
11 clear, do you do this rebuilding and
12 reconditioning work?

13 MR. KURI: No.

14 CHAIRPERSON GRIFFIS: Interesting.
15 Okay. Good. I don't have anything else.

16 Any other Board questions? Very
17 well.

18 Cross? Yes.

19 MR. GREEN: May I?

20 CHAIRPERSON GRIFFIS: Sure.

21 MR. GREEN: Okay. Thank you.

22 How you doing, Mr. Kuri.

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1 MS. HICKS: I have heard of it
2 before, yes.

3 MR. ROSENBERG: And you sat here,
4 and so we don't need to repeat it, but you
5 heard what Mr. Kuri testified as to the work
6 he does. Is that, from your experience as
7 Acting Zoning Administrator and your other
8 zoning experience, does that constitute light
9 repairs or is that the heavy repair that we're
10 talking about in the CM1/CM2 zones?

11 MS. HICKS: The type of work that
12 he's doing constitutes light repair work,
13 which would be done under an auto care center.
14 And those items would be purchased and have
15 installed, say for instance, windshield wipers
16 maybe tires and have those installed, oil
17 filters, air filters, headlights, rear lights,
18 alignment work, batteries and so forth.

19 MR. ROSENBERG: When you were
20 Acting Zoning Administrator did you issue
21 Certificates of Occupancy for uses not
22 designated in the code?

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1 MS. HICKS: Yes. Under the broad
2 heading of retail and service establishments
3 that are many uses which are not designated
4 and under Section 721.4 the Board -- well, the
5 Zoning Commission gave a little bit leeway for
6 those uses that are similar, that have similar
7 categories under retail and service
8 establishments to be designated by the Zoning
9 Administrator.

10 MR. ROSENBERG: And why did that
11 come about?

12 MS. HICKS: Well, we have -- in
13 today's time, we have uses that were not about
14 during May 12th, 1958 when the zoning
15 regulations went into effect. Like cell phone
16 sales and service use, computer use and
17 service use. So as long as it falls under the
18 general heading of retail and service
19 classifications, those uses are permitted
20 under section 721.4.

21 MR. ROSENBERG: There's been some -
22 - I know Ms. Miller had a question about the

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1 paying for both of those items.

2 VICE CHAIRPERSON MILLER: Okay.

3 Then I think this is my last question.

4 Are you saying that Kuri Brothers
5 falls into 721.3(c) or that it's similar to
6 721.3(c)?

7 MS. HICKS: I think it falls into
8 the category of other service or retail use
9 similar to those permitted under Section
10 721.3(c).

11 VICE CHAIRPERSON MILLER: Thank
12 you.

13 CHAIRPERSON GRIFFIS: Any other
14 questions? Cross?

15 MR. GREEN: Thank you, Mr.
16 Chairman.

17 Ms. Hicks, you talked about an
18 auto care and you also talked about an auto
19 service center. Can you tell me where in the
20 regulations it is listed?

21 MS. HICKS: There's no listing in
22 the D.C. zoning regulations for auto care

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1 not always correctly interpreted, administered
2 or enforced the zoning regulations. And the
3 way I read these together is, and what our
4 current practice is, is that the section that
5 -- again, in C2A but similar to C3A, 721.4
6 "Other services or retail use similar to that
7 permitted in the actual listings of the
8 activities."

9 My contention is is that it is a
10 basis for understanding similar activities or
11 new activities. I just approved today a
12 braiding salon for hair braiding. But what
13 3203.8 requires us to do is also put down the
14 use classification that it's similar to, which
15 would be beauty shop. Same thing with nails,
16 beauty shop.

17 So we put the use that's similar
18 because often times that may impact other
19 licensing requirements, the basic business
20 license, a health license or something, we put
21 that first and then we put in parenthesis the
22 use classification designated in the

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1 conjecture that that's anything to do related
2 to the Certificate of Occupancy that we're --
3 that's the subject of the revocation in
4 today's appeal hearing.

5 So basically what we have is
6 repair garage, building or other structure or
7 part of a building, we read this before,
8 including or motor vehicle maintenance or
9 repair and a gasoline service station.
10 Especially for 4225 an area of land including
11 any structures on the area used for the retail
12 sale of motor fuel and lubricants and
13 incidental services such as lubrication and
14 hand washing of motor vehicles in the sale,
15 installation or minor repair of tires,
16 batteries or other automobile accessories.
17 The term gasoline service station shall not
18 include an automobile laundry or a repair
19 garage.

20 And so my contention is is that is
21 why this was issued in error and why it is
22 properly revoked is that we had gone through

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1 this whole situation with the same facts
2 previously with the automobile service center,
3 and yet a new Certificate of Occupancy was
4 used -- was issued using the term automotive
5 service center ostensibly So to allow auto
6 repairs. And the zoning reg can just not be
7 administered that way -- interpreted or
8 administered in the fact that you can do a
9 gasoline service station, but that that
10 specifically excludes a repair garage. And a
11 repair garage explicitly includes vehicle
12 maintenance and repair; timing belts, brake
13 parts, cooling exhaust, suspension, timing.

14 So that's our contention is that
15 the previous Zoning Administrator erred in
16 reissuing a Certificate of Occupancy that had
17 the term automotive service center when it was
18 clear that that included these types of
19 activities, auto repair. And that was not
20 allowed. That was -- was defined in 1990
21 administrative law judge decision, in a 1992
22 administrative law decision, in BZA cases.

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1 question I think to answer.

2 MR. ROSENBERG: Do you make
3 distinction between light repair and heavy
4 repair --

5 MR. CREWS: I did not distinguish
6 it. You all were distinguishing against it.
7 I'm saying it didn't matter, it was all auto
8 repair.

9 CHAIRPERSON GRIFFIS: I don't
10 understand the question. The question goes to
11 if there's a zoning regulation does he --

12 MR. ROSENBERG: Does he as Zoning
13 Administrator --

14 CHAIRPERSON GRIFFIS: Right.

15 MR. GREEN: -- distinguish between
16 light repair and heavy repair when he issues
17 of Certificate of Occupancy.

18 CHAIRPERSON GRIFFIS: So the
19 interpretation is in the regulation to issue
20 a Certificate of Occupancy is there a
21 designation or is there a determination of
22 light and heavy repair?

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1 really not captured in a definition, let's
2 just say. And then there's repair garage, and
3 that's heavy.

4 And so there's a kind of slippage
5 in terms of our definitions, and maybe that's
6 what a prior Zoning Administrator was trying
7 to do is saying there is some slippage here so
8 I'm going to create this middle category
9 called automobile service center.

10 If that's an appropriate
11 characterization, what's your view on where
12 the line is line for uses that are permitted?
13 And if light repair isn't captured in a
14 definition, how do you treat that, how would
15 you treat it if it's not captured in good
16 language in the definition of gas station or
17 repair garage?

18 MR. CREWS: I don't think that's a
19 good distinction.

20 COMMISSIONER MITTEN: Okay.

21 MR. CREWS: That it's repair.
22 Repair is repair. You're in compliance of

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1 20,000 student head count is 20,000. And so
2 it's repair.

3 And, again, it's because of the
4 definitions that are mutually exclusive.
5 Gasoline service station cannot be a repair
6 garage.

7 What the Appellant is trying to
8 get you to believe that there is some sort of
9 distinction. But the gasoline service station
10 definition I think is pretty clear. It's
11 incidental services including lubrication,
12 sale of tires and batteries and the -- or
13 other automobile accessories. But we're
14 talking about minor repair, sales and
15 installation of automobile accessories.

16 Again, we can't read to be
17 including repair because it specifically says
18 it cannot be repair. And the garage repair
19 says or other motor vehicle maintenance or
20 repair.

21 There's a reason why I think the
22 Zoning Commission made these distinctions.

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1 statement summation from each, the Government
2 if they have, the ANC and then I'll allow you
3 your closings, summations and closing.

4 MR. ROSENBERG: Okay.

5 MR. ROSENBERG: Mr. Kuri, let's go
6 over a couple of things. First let's look at
7 this letter from Olympic, Exhibit 2, Olympic
8 Auto Parts. And I want you to go down that
9 list of categories and parts that Olympic
10 supplies you and tell us what you do in
11 connection with those?

12 MR. KURI: We replace the parts on
13 the cars. I went this almost exactly list
14 with--

15 COMMISSIONER MITTEN: Would you
16 mind pulling the mike closer. I'm just having
17 trouble hearing you.

18 MR. KURI: Okay. It's a replacing
19 of these parts. All these parts are considered
20 accessory parts. It's Auto Zone only sells
21 accessory parts and all this stuff is found in
22 Auto Zone. And it's the same list that I, you

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1 know, basically told Mr. Bellow back when I
2 got the CFO. Well, he had asked me what I
3 did, and I showed him this type of list. And
4 that's how he gave me the CFO.

5 MR. ROSENBERG: Now --

6 MR. KURI: And these aren't any
7 rebuilding parts, as was mentioned before.
8 Just because you put a tie rod in, doesn't
9 mean you're rebuilding a front end. That's
10 accessories. It's a small part.

11 Just because you put a spark plug
12 in doesn't mean you're rebuilding an engine.
13 You know, you can drive to any gas station
14 from coast-to-coast and any gas station
15 considers this light repair work. On your way
16 home stop somewhere and look at the gas
17 station to see, it's all light repair work.
18 It's not major repair work. They don't do
19 those types of major repair work. Those are
20 done in warehouse districts that swap engines
21 and transmissions.

22 COMMISSIONER MITTEN: Can I just,

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1 complete engine overalls, dents, et cetera?

2 MR. KURI: No. No.

3 MR. ROSENBERG: Now, let's talk
4 about the Certificate of Occupancy. As far as
5 the Certificate of Occupancy, and it's behind
6 Tab 6, how many times have you been involved
7 with the Certificate of Occupancy with the
8 Zoning Administrator?

9 MR. KURI: I believe it was twice.

10 MR. ROSENBERG: Why twice?

11 MR. KURI: Because we're having a
12 problem and I wanted to make sure, you know,
13 everything was -- you know, fine with the
14 business and the type of business we were
15 doing.

16 MR. ROSENBERG: What do you mean
17 "we were having a problem?"

18 MR. KURI: We were having problem
19 with the city, I guess. I had the lawyers
20 actually --

21 MR. ROSENBERG: You talking about
22 the issues we're here on today?

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1 inspectors that came out, I never hid anything
2 from anybody. They saw what they saw. They --
3 you know, we were clarifying the CFO. They --
4 they -- it's not that they didn't know. They
5 came to my gas station many times. I've had so
6 many inspectors come out, sometimes two a
7 week, and one of them, everyone of them before
8 they left said we don't see anything wrong,
9 everything's fine, and they'd leave.

10 COMMISSIONER PERRY: We object.
11 Because we don't --

12 MR. KURI: And that's the truth.

13 COMMISSIONER PERRY: And none of
14 them are here. And we don't know that.

15 MR. KURI: I'm telling -- I'm
16 telling you what I saw and my -- my
17 discussions with inspectors.

18 MR. GREEN: But, sir--

19 MR. KURI: And Mr. Bellow, and
20 that's what he's asking me.

21 MR. GREEN: Okay. When you said
22 that and you talked about the windshield wiper

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