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THE BOARD OF ZONING ADJUSTMENT
441 4th Street, NW
Washington, DC 20001

In the Matter of

BZA No. 17444A

KURI BROTHERS, INC.
APPELLANT,

Vs.

DEPARTMENT OF CONSUMER
AND REGULATORY AFFAIRS,
APPELLEE.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS'
MEMORANDUM AND POINTS OF AUTHORITY ON THE ISSUE OF THE
APPLICABILITY OF KURI BROTHERS, INC. vs. DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENTS AND ARCHSTONE SMITH
COMMUNITIES, LLC.

INTRODUCTION

The Board of Zoning Adjustments ("Board") requested the parties to brief the issue of whether the D.C. Court of Appeals ("Court") decision in the matter of *Kuri Brothers, Inc. vs. D.C. Board of Zoning Adjustments and Archstone Smith Communities, LLC*, (891 A. 2d 241; 2006 D.C. App.) is applicable to the appeal of 4225 Connecticut Ave., NW, Appeal No. 17444A of Kuri Brothers, Inc. pursuant, to 11 DCMR § 3100.2, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs to revoke the Certificate of Occupancy for the use of the premises at 4225 Connecticut Avenue, NW, Washington, DC ("4225 premises").

BOARD OF ZONING ADJUSTMENT
District of Columbia

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Board of Zoning Adjustment
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STATEMENT OF FACTS

Kuri Brothers (“Appellant”) filed this appeal with the Board on September 30, 2005, challenging the decision of the Zoning Administrator (“ZA”) for the Department of Consumer and Regulatory Affairs (“Appellee”) to revoke the Appellant’s Certificate of Occupancy. The Appellant’s argue that the revocation was an “improper and unauthorized interference by the Appellee, through its Office of the Zoning Administrator with the business of the Appellant.”

In response, Appellee asserts that it issued Appellant a Certificate of Occupancy authorizing it to operate an automotive service center in a C-3-A District. Subsequent to the issuance of the Certificate of Occupancy, Appellee determined that the actual use was of an automotive repair garage which is not an allowable use in a C-3-A District. Previously, the Board found that the same use at 4221 Connecticut Avenue, NW was an automotive repair garage which is an impermissible use.

ARGUMENT

The Board should uphold the decision of the Zoning Administrator to revoke the Appellant’s Certificate of Occupancy No. B33914 as this case does not differ factually from *Kuri Brothers, Inc. vs. D.C. Board of Zoning Adjustments and Archstone Smith Communities, LLC*, 891 A. 2d 241 (2006 D.C. App.).

The D.C. Court of Appeals in *Kuri Brothers, Inc. vs. D.C. Board of Zoning Adjustments and Archstone Smith Communities, LLC*, 891 A. 2d 241 held that the Petitioner, the current Appellant, operated a “repair garage” outside the scope of its Certificate of Occupancy. The Court held that the “Petitioner’s property at 4221 Connecticut Ave., NW is in an area zoned ‘C-3-A’.” *Kuri Brothers, Inc.*, 891 A. 2d 241,

247. “Operation of a ‘repair garage’ is not permitted in a C-3-A zone, without a special exception (or variance) from the BZA.” *Kuri* 891 A.2d at 247. The Court further cited the Zoning regulations for a repair garage as, 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.” *Id.* at 247. The Court also held that, “the permissible use as a matter of right in this zone include “automobile and truck sales and automobile accessory sales, including installations. *Id.*

The Court concluded that the Petitioner operated a “repair garage” within the meaning of the definition of the regulation. The Court based its holding on the “documented history” of the Certificate of Occupancy. *Id.* This “documented history” referenced by the Court took notice of the fact that DCRA “created the category of ‘Automobile Service Center’ to facilitate Appellant’s declared intent to sell small automobile parts and make installations of same.” *Id.*, n5. The Court went on to indicate that the Notice of Intent to Revoke the Certificate of Office stated that “[t]his facilitation did not include or permit any major automotive engine, body work or other automotive garage functions.” *Id.* Consequently, the appellant’s continued business activity at this location is contrary to the assurances given to the Appellee in order to secure its Certificate of Occupancy.

The instant matter before the Board is exactly the same as in *Kuri Brothers, Inc.* Appellant mislead the Zoning Administrator in the 4221 appeal of its true intentions and has done so in the instant matter. The facts are same, therefore the conclusion must be the same. The current use is prohibited by 11 DCMR §743.1 which states that,

“[o]peration of a repair garage is not permitted in a C-3-A zone ... without a special exception approved by the Board of Zoning Adjustment.” 11 DCMR §743.1. While 11 DCMR § 199.1 defines a repair garage as “a building or other structure, or part of a building or structure, with facilities for repair of motor vehicles, including body and fender repair, painting, rebuilding, reconditioning, ..., equipping, or other motor vehicle maintenance, or repair”. It is clear from the record, and the Appellant’s own testimony that the Appellant in the instant matter is performing the same prohibited activities at the 4225 Premises, therefore the same result should occur, sustain the revocation of the Certificate of Occupancy.

Moreover, Appellant testified before the Board that the prohibited business operation conducted at the 4221 Premises included brake work and rotor replacement, water pump replacement, tune-ups, and electrical work, all defined by the Court as prohibited activity. and it continues at the 4225 Premises. In the instant matter, the Appellant testified that they secured repair and replacement parts from Olympic Auto Parts. This testimony supported by exhibits clearly established that the parts ordered from Olympic Auto Parts were used at the 4225 and 4221 Premises. Furthermore, the Appellant testified that the same work done at 4221 Premises was also done at the 4225 Premises. In other words, these parts at both locations were for “other automotive garage functions” as the Court of Appeal said or “. . . other motor vehicle maintenance or repair” *Id.* n5. as pointed out in 11 DCMR §199, all prohibited uses.

Based on the similar evidence, in the same C-3-A Zone, the Board can only come to one conclusion, that conclusion is that *Kuri Brothers, Inc. vs. D.C. Board of Zoning*

Adjustments and Archstone Smith Communities, LLC is applicable and the result is the same, the Certificate of Occupancy revocation is proper.

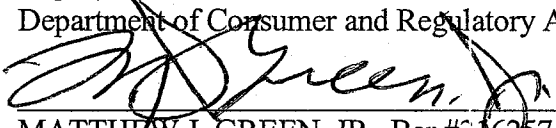
WHEREFORE, the Board must apply the holding in *Kuri Brothers, Inc. vs. D.C. Board of Zoning Adjustments and Archstone Smith Communities, LLC*, to the instant matter, therefore, the Board must deny the appeal and sustain the decision of the Zoning Administrator to revoke the Certificate of Occupancy.

Respectfully Submitted

JILL STERN
General Counsel
Department of Consumer and Regulatory Affairs



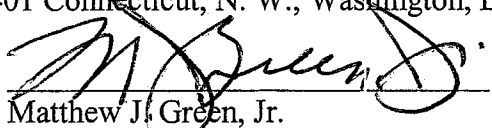
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Certificate of Service

I hereby certify that a copy of the foregoing Department of Consumer and Regulatory Affairs' Memorandum and Points of Authority on the Issue of the Applicability of *Kuri Brothers, Inc. vs. District of Columbia Board of Zoning Adjustments and Archstone Smith Communities, LLC*. was sent this 23rd day of March via U. S. Mail postage pre paid to Daniel B. Midsvidy, Esq. and Stanley H. Goldschmidt, Esq. located at 1025 Connecticut Ave., N.W., Washington D.C., 20036 and Catherine W. Wise, Chairman, Advisory Neighborhood Commission 3F, 4401 Connecticut, N. W., Washington, D.C., 2008-2322.



Matthew J. Green, Jr.
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