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**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS' PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW IN BOARD OF ZONING
ADJUSTMENT APPEAL NO. 17444A
Kuri Brothers, Inc.**

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 as "Automobile Service Center."

HEARING DATES: October 3, 2007 and November 28, 2007

DECISION DATE: April 3, 2007

DECISION AND ORDER

INTRODUCTION

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 ("DCRA/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.

FINDINGS OF FACT

1. Appellant Kuri Brother's Inc. is located at 4225 Connecticut, Ave., NW, a C-3-A District.
2. On May 15, 2002, the Department of Consumer and Regulatory Affairs ("Appellee") issued Certificate Occupancy No. 33951 to Kuri Brothers, Inc.
3. Certificate of Occupancy No. 33951 authorized the use of Appellant's premises as an "Automobile Service Center." The use designation of an "Automobile Service Center" is not a use classification established by the Zoning Regulations of the District of Columbia.
4. Appellee, subsequent to the issuance of the Certificate of Occupancy, concluded that an "Automobile Service Center" was not an appropriate use in a C-3-A District and is not a use classification established by the Zoning Regulations of the District of Columbia.

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5. Appellee also determined that the actual use was as a “repair garage.”
6. On August 4, 2005, Appellee served its Notice of Revocation to Appellant for Certificate of Occupancy No. 33951.
7. Appellant testified that the use at 4225 Connecticut Ave., NW, was identical to the use at 4221 Connecticut Ave, NW.
8. Appellant’s use at 4221 Connecticut Ave., NW, was held to be a repair garage which is not a permitted use in a C-3-A District. See, *Kuri Brothers, Inc. vs. DC Board of Zoning Adjustment and Archstone Smith Communities, LLC*, 891 A.2d 241 (2006 D.C. App.).
9. Appellant testified that it continues to use the premises at 4225 Connecticut Ave., NW, in the same manner that it used the premises at 4221 Connecticut Ave., NW, which was determined an impermissible use.
10. Appellant continues to use the premises as a repair garage in a C-3-A District area. More specifically, appellant presented evidence that it secured auto parts from Olympic Auto Parts. The evidence showed that the auto parts included tune-up parts, spark plugs, wire sets and ignition items, brake parts, cooling systems, water pumps, fan belts, timing belts, suspension repair parts, thermostats and hoses which are outside the permitted usage.
11. Appellant testified that they ordered and used parts from Olympic Auto Parts for their 4225 Connecticut Ave, NW location. The items include tune-up parts, spark plugs, wire sets and ignition items, brake parts, cooling systems, water pumps, fan belts, timing belts, suspension repair parts, thermostats and hoses.
12. A repair garage is defined in 11 DCMR § 199.1, 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.”
13. *Kuri Brothers, Inc. vs. DC Board of Zoning Adjustment and Archstone Smith Communities, LLC*, 891 A.2d 241 (2006 D.C. App.) held that the Board was correct in determining that the use constituted a repair garage which is prohibited in a C-3-A District. The Court affirmed the Board’s holding that the tune-up parts, spark plugs, wire sets and ignition items, brake parts, cooling systems, water pumps, fan belts, timing belts, suspension repair parts, thermostats and hoses constitutes automotive maintenance and repair.
14. In the C-3-A District, a “repair garage” is only permitted by special exception pursuant to 11 DCMR § 743.1. The Appellant does not have a special exception to operate a repair garage at 4225 Connecticut Ave., N.W. Appellant never applied for a special exception or a variance.
15. The Board finds that the use at 4225 Connecticut Ave., NW is a repair garage engaging automotive maintenance and repair, including, brake work, tune-ups, water pump installation, cooling system repair, electrical repair, suspension repair, replacing timing belts, etc.

CONCLUSIONS OF LAW

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(1) (2001 ed.) to hear and decide appeals where it is

alleged that there is error in any order, requirement, decision, determination, or refusal made by the Zoning Administrator in the enforcement of the Zoning Regulations. This appeal is properly before the Board pursuant to 11 DCMR §3100.2.

The Appellant is operating a repair garage in violation of 11 DCMR § 199 which 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." The Board upholds DCRA's revocation of the Certificate of Occupancy.

Based on the evidence submitted, which included photographs of the Appellant and the Appellant's testimony, it is clear that the Appellant is engaging in automotive maintenance and repair which includes, brake work, tune-ups, water pump installation, cooling system repair, electrical repair, suspension repair, replacing timing belts, etc. Automotive maintenance and repair is included in the definition of a repair garage. Therefore, the Appellant is in violation of 11 DCMR § 743.1 which disallows the operation of a "repair garage" in a C-3-A District area without a special exception from the Board.

Based on the evidence submitted and the holding in *Kuri Brothers, Inc. vs. DC Board of Zoning Adjustment and Archstone Smith Communities, LLC*, 891 A.2d 241 (2006 D.C. App.), the appeal should be denied.

In view of the foregoing, the Board concludes that the Zoning Administrator was correct in revoking the Certificate of Occupancy No. 33951 based on its determination that the "Automobile Service Center" was in fact a "repair garage" which is an impermissible use in a C-3-A district without first obtaining a special exception or variance from the Board.

Accordingly, it is **ORDERED** that this appeal is **DENIED**.

VOTE: _____, to deny the appeal;

_____, to sustain the appeal)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

FINAL DATE OF ORDER: _____, 2007

PURSUANT TO 11 DCMR §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER

11DCMR §3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER
IT BECOMES FINAL.

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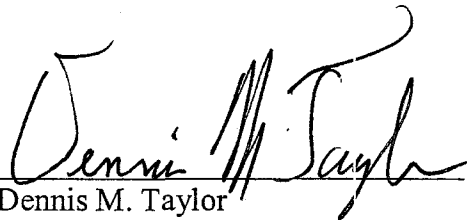
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing proposed Decision and Order was served by first class mail, postage prepaid, this 23rd day of March 2007, to the following:

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