Res. 06-09

# ANC 3F RESOLUTION

## REVOCATION OF KURI BROTHERS CERTIFICATE OF OCCUPANCY

## APPEAL TO THE BZA

## CASE NO. 17444

Advisory Neighborhood Commission 3F
*North Cleveland Park, Forest Hills, and Tenleytown*
4401-A Connecticut Avenue, N.W., PMB 244
Washington, D.C. 20008-2322

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DCRA
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ZONING ADMINISTRATOR

**WHEREAS**, ANC 3F received notice from the Board of Zoning Adjustment that Kuri Brothers, Inc. has filed an appeal contesting the final determination of the District of Columbia Department of Consumer and Regulatory Affairs revocation of Petitioner's Certificate of Occupancy (No. 33914), for an Automobile Service Center/Motor Vehicle Fueling, at 4225 Connecticut Avenue, N.W., and contesting the determination of the District of Columbia Department of Consumer and Regulatory Affairs to revoke Certificate of Occupancy (No. 3351) for an Automobile Service Center, at 4221 Connecticut Avenue, N.W., both dated August 4, 2005.

WHEREAS, the premises 4221 and 4225 Connecticut Avenue, N.W. (Square 2051, Lot 5) is within ANC 3F in Single Member District 3F02, and

WHEREAS, the properties are in different ownership with 4221 Connecticut Avenue, N.W., being a building owned by Jemal's Van Ness, LLC, and 4225 Connecticut Avenue, N.W., being a gas station on a parcel owned by Van Ness, Inc., and

**WHEREAS**, Kuri Brothers, Incorporated, a subtenant of Koo Yuen, Koo Yuen, and Van Ness Auto Care have knowingly been operating a repair garage in violation of the C-3-A zoning which prohibits a repair garage and in violation of the certificates of occupancy for the premises at 4221 Connecticut Avenue; and

WHEREAS, ANC 3F first brought the service bays and repair garage to the attention of DCRA in 1989, following the rental of the basement of 4221 Connecticut Avenue by Koo Yuen; and

WHEREAS, the lease for the basement premises signed by Mr. Yuen states, "the subject property shall be utilized for the sole purpose of parking vehicles,"

WHEREAS, Koo Yuen was first issued a Notice of Infraction #9053 on April 25, 1990, for operating an automobile repair garage without a certificate of occupancy, and

WHEREAS, Coles B. Ruff, Attorney Examiner at DCRA, held a hearing on NOI #9053, found that Van Ness Auto Care was operating 15 service bays in the basement of 4221 Connecticut Avenue, N.W., in violation of their C of O for "Auto Sales and Sale of Accessory Including Installation without a proper certificate of occupancy and in violation of the C-3-A zoning which prohibit an automobile repair garage, and Mr. Ruff further details how and why Koo Yuen's operation is different from the New Car Showroom that previously occupied the space; and

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WHEREAS, the defendant Koo Yuen, owner of Van Ness Auto Care, paid the fine in 1992, and continued operating the service bays in violation of the zoning regulations and did not apply for a special exception to the zoning from the Board of Zoning Adjustment, and

WHEREAS, Koo Yuen expanded the business from 15 service bays to 21 service bays; and

WHEREAS, DCRA again issued a civil infractions notice, Case No. 92-0AD-1683-E, March 1992, for operating the same prohibited automobile repair garage, and

WHEREAS, this matter came before Rohulamin Quander, Attorney/ALJ, Office of Adjudication, on May 20, 1992, and

WHEREAS, ALJ Quander found that the key facts found by ALJ Ruff were the same as found in this case namely: (a) that prior to the respondent's use of the basement space, the same area, plus the upper floors had been utilized as Pontiac and Nissan dealerships, until 1988, specializing in the sale of new and used automobiles, and the servicing of automobiles, many of which had been sold to customers by those same dealerships, allowed under the C-3-A zone; (b) that the respondent does not sell new cars, although he occasionally sells used cars on behalf of his repair customers, which service is a small part of his business; (c) the respondent advertises his business in the yellow pages as an auto repair business, but does not mention auto sales or auto accessory sales and installation in those advertisements; and (d) that unauthorized automobile repair is the Respondent's principal business, and that this operation is not subordinate and incidental to the stated reason for which the C of O was issued on May 10, 1992; and

WHEREAS, ALJ Quander also found that "the respondent's C of O applications had intentionally clouded the diverse nature of the business he was undertaking;" and ordered "that the Building and Land Regulation Administration take immediate steps to vacate Certificate of Occupancy #B156843, and further ordered that the respondent immediately cease and desist the operation of the automobile repair business at 4221 Connecticut Avenue basement, until he obtains a proper Certificate of Occupancy for the use of said premise as a repair garage, including a Board of Zoning Adjustment variance, if applicable."

WHEREAS, an appeal to the BZA was filed on December 22, 1992, and again on May 28, 1993, in May 1992, from ALJ Quander's decision; and

WHEREAS, the Board of Zoning Adjustment, by BZA Order No. 93-0006-CI, dated March 30, 1998, affirmed the decision of the Office of Adjudication and ALJ Quander, and

WHEREAS, Koo Yuen and his subtenant, Kuri Brothers continued to operate a repair garage, and

WHEREAS, Kuri Brothers, Incorporated, a subtenant of Koo Yuen, still operating as Van Ness Auto Care, was issued Notice of Infraction #033729, dated April 27, 1999, for operating an automobile repair garage within a C-3-A zoned area without a Certificate of Occupancy, and

WHEREAS, by Order dated December 27, 1999, the Office of Adjudication, ALJ Lennox Simon, once again, found that the Property was being occupied illegally this time by the Subtenant, Kuri Brothers. Specifically, the order held that the Kuri Brothers had an invalid Certificate of Occupancy for an "Automobile Service Center", a term that is not a defined or recognized under the

D.C. Zoning Regulations and that the term denotes the same type of activity which is prohibited in a C-3-A zoned area, repair garage, and which is not permitted under the D.C. Zoning Regulation, 11 DCMR 741, without a valid certificate of occupancy. As background, the ALJ cited that in 1998, the lessor, Mr. Yuen/Van Ness, Inc., after the BZA ruled against him in 1998, filed a new application for a C of O and indicated that the new operation would be an Automobile Service Center, even though no such entity in zoning existed. Kuri Brothers, Inc, (sub-lessor) elected to "piggyback" upon this concept. Administrative Law Judge Simon ordered the Subtenant to cease and desist operations at the Property unless and until it obtained special exception approval for use through the Board of Zoning Adjustment, and

WHEREAS, for at least 16 years, the Tenant, Koo Yuen, and his subtenant, Kuri Brothers, have been operating an automobile repair garage at the 4221 Connecticut Avenue Property illegally and have expanded the illegality from fifteen service bays to twenty-one service bays, showing a substantial and deliberate pattern and practice of illegal conduct, and

WHEREAS, this illegality has now been heard by 3 different Adjudicating Law Judges, and twice by the BZA, first in April 1995, and then a de novo evidentiary hearing in 2002-2003, and, in both cases, the BZA issued a ruling upholding the decision of DCRA that these service bays were operating without a proper certificate of occupancy, that an automobile service center is not a recognized term in the zoning regulations, and that a repair garage is in violation of the C-3-A zoning at the site.

WHEREAS, Kuri Brothers, Inc. appealed BZA Order No. 16947, dated September 2003, to the District of Columbia Court of Appeals, and

WHEREAS, the Appeal was argued on October 19, 2004, and decided on February 2, 2006, and

WHEREAS, the District of Columbia Court of Appeals, addressing each contention, upheld the determination of the BZA, and stated that: " The BZA found that revocation was warranted because petitioner was operating an automobile repair garage, a use outside the scope of petitioner's Certificate of Occupancy, and not permitted in its zoning district without a special exception. We affirm.," and " for the following reasons, we reject petitioner's claim:

1. " Petitioner contends that the BZA erred in upholding DCRA's revocation of its C of O because petitioner was denied an evidentiary hearing before the DCRA. We do not agree, for petitioner was afforded due process and its rights were not violated. "
2. "Petitioner appealed the revocation of its C of O to the BZA. Over petitioner's objection, the BZA held a de novo evidentiary hearing (instead of restricting its review to the administrative record) and allocated the burden of proof to petitioner (instead of to DCRA). In light of petitioner's procedural default before the DCRA, neither ruling prejudiced petitioner" ..... " We therefore would not reverse even if we were to conclude the BZA had erred. In fact, however, the challenged procedural rulings were not erroneous."
3. The petitioner contended that the BZA's finding that the petitioner operated a repair garage outside the scope of its Certificate of Occupancy. The Appeals Court stated, "Petitioner was never granted a special exception or variance to operate a repair garage at 4221 Connecticut Avenue, nor did its C of O purport to authorize such a use.....the BZA concluded that it was not intended and could not be construed to allow operation of a repair garage. This conclusion is supported, in our view, by

substantial evidence in the record, including the documented history of the C of O .....We have no difficulty concluding that the BZA's finding was amply supported by substantial evidence in the record."

4. "Petitioner's final claim is that the BZA erred in rejecting its defense of laches.....The circumstances necessary to support a laches defense are absent here. In particular, the record belies petitioner's claim that enforcement action was unreasonably delayed. Until 1990, there was no enforcement action to be taken because the property was occupied by a succession of automobile dealerships – a matter-of-right use – that were granted a limited variance by the BZA to perform repairs "incidental to the sale of new cars only." However, after Mr. Yuen acquired the property in 1989, he stopped maintaining an automobile dealership at 4221 Connecticut Avenue, and the variance for limited repair activities ancillary to new car sales was no linger available to him....DCRA had been enforcing the zoning regulations for almost a decade and petitioner could not reasonably have relied on DCRA's supposed acquiescence in the operation of a repair garage at 4221 Connecticut Avenue."

**WHEREAS**, this ongoing activity, only allowed in Industrial Zoning, poses an on-going public health and safety danger to the residents of the adjoining residential apartment building, and

**WHEREAS**, the service office for customers is located at the 4225 Connecticut Avenue site and houses two service bays for automobile repair and employees of the automobile repair business also drive cars to the 18-19 service bays located in the basement of 4221 Connecticut Avenue, accessed only from the back alley of the property;

**THEREFORE, BE IT RESOLVED**, that ANC 3F, requests the Board of Zoning Adjustment, uphold the decision of the Zoning Administrator to vacate Certificate of Occupancy No. 33914 for an Automobile Service Center/Motor Vehicle Fueling, at 4225 Connecticut Avenue, N.W., and Certificate of Occupancy No. 3351 for an Automobile Service Center, at 4221 Connecticut Avenue, N.W., both dated August 4, 2005.

BE IT FURTHER RESOLVED, based on the history of behavior and activities of Koo Yuen, Kuri Brothers, Van Ness Auto Care, that the BZA instruct DCRA not to issue any more C of O's for the use of the basement at 4221 Connecticut Avenue to Koo Yuen, Kuri Brothers, Van Ness Auto Care, or any successor subtenants for any purpose other than "parking" as contained in the March 21, 1989, lease arrangement.

BE IT FURTHER RESOLVED, ANC 3F does not object to the use of 4225 Connecticut Avenue, N.W., as a motor vehicle fueling station with two service bays for minor repairs.

BE IT FURTHER RESOLVED, that ANC 3F respectfully requests that the Office of the Inspector General, investigate and determine how and why DCRA has repeatedly erred in issuing Certificates of Occupancy for an Automobile Service Center at premises 4221 Connecticut Avenue, N.W., a term not defined or recognized under the D.C. Zoning Regulations, and which denotes the same type of activity prohibited in a C-3-A zoned area, and further requests that the Office of the Attorney General immediately begin proceedings to close this illegal operation.

BE IT FURTHER RESOLVED, that ANC 3F, send a copy of this resolution and supporting documentation to the Office of Council member Kathy Patterson, with a request that it be forwarded to the Committee on the Department of Consumer and Regulatory Affairs under the oversight of Council member Jim Graham for further investigation.

BE IT FURTHER RESOLVED THAT ANC 3F will exercise its right to party status in this case and that Commissioners Karen Perry and Carl Kessler, along with former ANC Chairman and Commissioner David Bardin, who had been involved in this case in 2002-2004, have been designated as ANC 3F's representatives before the Board of Zoning Adjustment.

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Adopted April 10, 2006, by a vote of 7-0-0, at a duly noticed public hearing with a quorum present (4 being a quorum)

Cathy Wiss, Chair

Mital Gandhi, Secretary