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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17444
EXHIBIT NO. 19

Board of Zoning Adjustment
District of Columbia
CASE NO. 17444
EXHIBIT NO. 19

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# 1

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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**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

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

# 2

HISTORY OF 4221 CONNECTICUT AVENUE AND CERTIFICATES OF OCCUPANCY

| DATE | USER | AREA | C of O | ALJ DECISION | BZA DECISION |
|---|---|---|---|---|---|
| 1935 | Flood Motor | | regular gasoline and repair garage | | |
| 1940 | Flood Motor | | | | granted use variance to extend building and use a rear entrance, conditioned on the fact that all repairs to be incidental to new cars only. |
| 1961 | Flood Pontiac | Lot & Building | sale of new & used cars | | |
| 1964 | Flood Pontiac | Permit to raze 2-story building piece-by-piece | | | |
| 1964 | Flood Pontiac | Permit to build 3-story building for office, dealership, and public storage garage | | | |
| 10/7/65 | Flood Pontiac | pt. of 1st fl. & garage applied: 7/7/65: Basement-repair garage 1st floor-automobile sales | auto sales & repair garage | | C of O issued pursuant to BZA order 8250, dated 6/22/65, that the enclosure on the roof for service equipment will harmonize with the main structure in architectural character, material & color. |
| 5/5/71 | Flood Pontiac | | auto sales & repair garage accessory to auto sales | | |
| 5/4/83 | Conn. Ave. Datsun | First, parking levels one-three | Automobile sales and service | | |
| 10/28/86 | Conn. Ave. Nissan | First, Basement Levels 1, 2, 3 | Motor Vehicle Dealer | | |
| 3/21/89 | 4221 Associates | Basement leased to Koo Yuen. Letter states "that the existing portions of the subject property presently used for parking shall be utilized for the sole purpose of parking vehicles. Your premises shall have access to the existing 116 parking spaces on the property." | | | |

| DATE | USER | AREA | C of O | ALJ DECISION | BZA DECISION |
|---|---|---|---|---|---|
| 3/22/89 | Koo L. Yuen | Basement | Automobile sale and sale of accessory including installation | ALJ Coles Ruff<br>OAD #90-1726-E<br>July 17, 1990<br>• Ruled operating a repair garage in violation of C of O. DCRA to take steps to revoke.<br>• Koo Yuen did not sell new cars.<br>• Did not check change of use in applying for C of O. | Appealed to BZA. Day of BZA hearing, Mr. Yuen paid fine. BZA canceled hearing.<br><br>Never ceased operating. Never applied for special exception from BZA. |
| 5/10/89 | Van Ness, Inc. | Basement | Retail sale of automobile & accessories including installation. | ALJ Rohulamin Quander<br>92-OAD-1683-E<br>• Incorporated ALJ Ruff's decision that (1) Respondent does not sell new cars, although he occasionally sells used cars on behalf of his customers, which service is a small part of his business. (2) The respondent advertises his business in the yell pages as a repair business, but does not mention auto sales or auto accessory sales and installation in ads.<br>• Koo Yuen liable for $525 fine.<br>• DCRA to take immediate steps to vacate C of O #B156843<br>• Respondent immediately cease and desist operation. | Koo Yuen and Van Ness Incorporated filed a notice of appeal on December 22, 1992 from ALJ decision upholding fine. Filed a second notice of appeal on May 28, 1993 from ALJ's decision not to grant a stay of 1992 order.<br><br>Verbal Decision: May 3, 1995 to uphold ALJ Decision.<br><br>BZA Written Order #93-006-CI, dated <u>March 30, 1998</u><br>• ALJ was correct to conclude this was not a car dealership of any sort, nor was this establishment operated for the principal use of sale of accessories.<br>• Evidence supports the ALJ;s finding that sale of autos and accessories are incidental to the principal use of the premises as a repair shop. |

| DATE | USER | AREA | C of O | ALJ DECISION | BZA DECISION |
|---|---|---|---|---|---|
| Continued from Page 2 | | | | December 22, 1992<br>Filed Motion to Stay<br><br>Motion Denied by ALJ Quander Feb. 22, 1993 | • The Board notes that the appellant had continued to operate his facility and therefore the Board takes no action on the appeal of the ALJ's decision to deny the appellant's Motion to Clarify Order or Stay of Sanctions Pending Appeal. |
| 6/2/89 | 4221 Conn. Ave. Assoc. Ltd. | Bldg. Renovation to Create Lease Commercial Spaces | | | |
| 1/98 & '99 | Building in Bankruptcy. Greenstein, DeLorme & Luchs represent Court appointed Receiver, Grubb and Ellis. Building eventually purchased by Douglas Jemal from Bankruptcy Court. | | | | |
| 4/21/98 | Van Ness Auto Care | Basement | Automobile Service Center | | |
| 8/8/98 | | Basement | Automobile Service Center | ALJ Lennox Simon<br>99-00AD-1821-E<br>December 27, 1999<br>• Respondent has an invalid certificate of occupancy for an "automobile service center." An automobile service center is not a defined or recognized term under the D.C. Zoning Regulations and denotes the same type of activity which is prohibited in a C-3-A zoned area, repair garage.<br>• The current and longstanding use of the basement has been an automobile repair garage. In 1992, ALJ Quander made a finding that the lessor, Mr. Yuen/Van Ness Inc. operated an | Decision appealed to the BZA<br><br>Hearing Held March 19, 2002<br><br>BZA Order: May 22, 2002<br><br>• Reversed ALJ Simon<br>• That a Certificate of Occupancy cannot be issued for a Repair Garage in a C-3 District without a special exception, but that it was not within the ALJ's purview to declare the Certificate of Occupancy invalid.<br>• In that same ruling, the Board stated that DCRA's remedy was to "revoke the Certificate of Occupancy, after giving notice."<br><br>BZA Appeal #16947, Kuri Brothers vs. DCRA for |

| | | | | | |
|---|---|---|---|---|---|
| Continued | | | | automobile repair garage in the basement of the property. Decision affirmed by BZA.<br>• On 4/21/98, the lessor, Mr. Yuen/Van Ness, Inc., after the BZA ruled against him, filed a new application for a C of O and indicated that the new operation would be "Automobile Service Center" even though no such entity existed in the Zoning Regulations.<br>• Kuri Brothers, Inc. (sub-lessor) has elected to "piggyback" upon this "Automobile Service Center" concept.<br>• That Kuri Brothers Cease and Desist the Operation of an automobile repair garage at 4221 Connecticut Avenue. | Revocation of C of O #16947.<br><br>BZA held de novo hearing and denied appeal. Order dated September 8, 2003. Kuri Brothers appealed to the DC Court of Appeals |
| 5/15/02 | Kuri Brothers | Basement | Automotive Service Repair | | C of O issued while preceding case on appeal to BZA. Revoked in letter dated 9/6/02 |

DISTRICT OF COLUMBIA COURT OF APPEALS
PETITION FOR REVIEW FROM THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT (BZA No. 16947)

Petitioner: Kuri Brothers
Argued: October 19,2004
Decided: February 2, 2006

Decision: The District of Columbia Court of Appeals 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."

# 3

*Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.*

**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 03-AA-1032

KURI BROTHERS, INC.,
PETITIONER,

v.

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT,
*RESPONDENT*,

AND

ARCHSTONE SMITH COMMUNITIES, LLC,
INTERVENOR.

Petition for Review from the
District of Columbia Board of Zoning Adjustment
(BZA No. 16947)

(Argued October 19, 2004 Decided February 2, 2006)

*Tamir Damari*, with whom *Stanley H. Goldschmidt* was on the brief, for petitioner.

*Stacy L. Anderson*, Assistant Attorney General, with whom *Robert J. Spagnoletti*, Attorney General for the District of Columbia, and *Edward E. Schwab*, Deputy Attorney General, were on the brief, for respondent.*

*John Patrick Brown, Jr.*, and *Stephanie A. Baldwin* submitted a statement in lieu of brief on behalf of intervenor.

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* At the time the briefs were filed, Ms. Anderson was called Assistant Corporation Counsel and Messrs. Spagnoletti and Schwab were called Corporation Counsel and Acting Deputy Corporation Counsel, respectively. Since that time, however, the Mayor of the District of Columbia has issued an executive order re-designating the Office of Corporation Counsel as the Office of the Attorney General for the District of Columbia. *See* Mayoral Order No. 2004-92, 51 D.C. Reg. 6052 (May 26, 2004) (citing D.C. Code § 1-204.22 (2) & (11) (2001)). We employ the titles applicable at the time of this opinion's publication.

Before RUIZ and GLICKMAN, *Associate Judges*, and TERRY, *Senior Judge*.**

GLICKMAN, *Associate Judge*: This case is before us on the petition of Kuri Brothers, Inc., for review of a Board of Zoning Adjustment (BZA) decision affirming the revocation by the Department of Consumer and Regulatory Affairs (DCRA) of petitioner's Certificate of Occupancy (#B00181657) to use premises located at 4221 Connecticut Avenue, N.W., as an "Automobile Service Center." 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 (hereinafter, "C of O") and not permitted in its zoning district without a special exception. We affirm.

Preliminarily, because petitioner's counsel informed us at oral argument that the DCRA had issued a new, superseding C of O to petitioner for the premises in question, we directed the parties to submit supplemental briefs addressing whether the instant petition for review was moot. In their supplemental briefs, petitioner and respondent agree that the petition is not moot and that we should reach the legal questions presented. The new C of O (#CO33951), which merely reflected a change of property ownership, was issued six weeks before DCRA issued the Notice of Intent to Revoke its precursor, #B00181657. As a direct and immediate consequence of the subsequent revocation of #B00181657, DCRA declared C of O #CO33951 cancelled as well. In view of that cancellation, we accept the parties' position that the instant petition for review is not moot.

In asking us to reverse the BZA, petitioner claims that the revocation of C of O #B00181657

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** Judge Terry was an Associate Judge of the court at the time of argument. His status changed to Senior Judge on February 1, 2006.

was procedurally flawed, not supported by substantial evidence in the record, and barred by laches. Our review of the BZA's determination is limited. We defer to the BZA's interpretation of the zoning regulations unless its interpretation is plainly wrong or inconsistent with the governing statute. *See, e.g., Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1242 (D.C. 1993). We must affirm the BZA's factual findings so long as they are based on substantial evidence in the record. *See, e.g., George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, 831 A.2d 921, 931 (D.C. 2003). Ultimately, we must sustain the BZA's action unless it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." D.C. Code § 2-510 (a)(3)(A) (2001). However, "although we accord weight to the agency's construction of the statutes which it administers, the ultimate responsibility for deciding questions of law is assigned to this court." *George Washington Univ.*, 831 A.2d at 931 (internal citations omitted).

For the following reasons, we reject petitioner's claims.

1. Denial of a Hearing before the DCRA Office of Adjudication. DCRA's official Notice of Intent to Revoke C of O #B00181657 charged petitioner with operating an automobile repair garage in violation of both the C of O and applicable zoning regulations. The Notice advised petitioner that in order to challenge the proposed revocation, "you must request a hearing in writing within fifteen (15) days of your receipt of this Notice," and that "if you do not request a hearing within the time specified in this notice, . . . you shall be deemed to have admitted the validity of the charges and specifications stated in this notice and a final notice of revocation will be entered against

you." The Notice was served on petitioner on June 28, 2002, but petitioner failed to request a hearing until twenty-four days later, on July 22, 2002. The only explanation that petitioner offered for its untimely response was that "Koo Yuen, the real party in interest in this matter (the owner of the property) was out of the country and was not apprised of this matter until approximately July 15, 2002." Chief Administrative Law Judge Little of the Office of Adjudication ("OAD") denied petitioner's request for a hearing as untimely. DCRA thereupon issued a final notice of revocation and subsequently directed petitioner and Mr. Yuen to discontinue all business activity at 4221 Connecticut Avenue, N.W.

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. Neither the zoning statute nor the regulations governing C of O revocations expressly entitled petitioner to a hearing before the DCRA on the revocation of its C of O. Instead, the regulations seemingly contemplated summary revocation by the DCRA on ten days' notice with a right of appeal to (and a hearing before) the BZA. *See* 12A D.C.M.R. (former) §§ 118.4.6, 118.5.[1] Nonetheless, presumably to comply with the requirements of due process, DCRA offered petitioner the opportunity to request a hearing before the OAD at which DCRA would have borne the burden of proof.[2] In doing so, DCRA evidently (and

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[1] Subsequent to the BZA's decision in this case, the cited regulations were amended and renumbered as 12A D.C.M.R. §§ 110.5.6, 110.6. *See* 51 D.C. Reg. 368 (Jan. 9, 2004).

[2] The Notice of Intent to Revoke cited former D.C. Code § 1-1509 (a) (recodified without change as D.C. Code § 2-509 (a) (2001)), which provides for hearings in "contested cases," i.e., agency proceedings "in which the legal rights, duties, or privileges of specific parties are required

(continued...)

not unreasonably) opted to follow the established procedure for adjudicating infraction notices under the Civil Infractions Act of 1985, *see* D.C. Code § 2-1802.01 *et seq.* (2001). The Civil Infractions Act procedure, which plainly satisfied the demands of due process, requires a respondent served with a notice of infraction to answer it within fifteen calendar days in order to contest it and request a hearing. *See* D.C. Code § 2-1802.01 (b)(8), (9); § 2-1802.02 (e). If, "without good cause," the respondent fails to answer within that time frame, it waives its right to contest the charge and "shall be liable" for the established penalty (a civil fine, under the Act). D.C. Code § 2-1802.02 (f); *see also* D.C. Code § 2-509 (a) (providing that "any contested case may be disposed of by . . . default"). In the present case, petitioner ran afoul of these provisions: petitioner did not respond to the revocation notice in fifteen calendar days, and it did not show "good cause" for its failure to do so. Petitioner's justification, that Mr. Yuen was out of the country, simply did not explain why petitioner was unable to request a hearing in Mr. Yuen's absence (nor why Mr. Yuen's input was needed, why he was "the real party in interest" when he merely was petitioner's landlord, or why he could not be contacted more promptly).

2. Alleged Procedural Irregularities in the BZA Hearing. 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

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[2](...continued)
by any law . . . , or by constitutional right, to be determined after a hearing . . . ." D.C. Code § 2-502 (8) (2001). Arguably, petitioner was entitled to a hearing on the revocation of its C of O as a matter of constitutional right.

ruling prejudiced petitioner. We therefore would not reverse even if we were to conclude that the BZA had erred. *LCP, Inc. v. District of Columbia Alcoholic Bev. Control Bd.*, 499 A.2d 897, 903 (D.C. 1985) (under the prejudicial error rule, "reversal and remand is required only if substantial doubt exists whether the agency would have made the same ultimate finding with the error removed") (internal quotation marks and citations omitted). In fact, however, the challenged procedural rulings were not erroneous.

The BZA heard petitioner's appeal of the revocation of its C of O pursuant to its general review authority under D.C. Code § 6-641.07 (f) (2001); *see also* 11 D.C.M.R. § 3200.2. Implementing that authority, 12A D.C.M.R. (former) § 118.5 expressly provided that "[a]ny person aggrieved by the action of the Director [of DCRA] granting, withholding, or revoking a Certificate of Occupancy may appeal the action to the Board of Zoning Adjustment, pursuant to D.C. Code Subsection 5-424 (F) (1981) [which was recodified without change in 2001 as D.C. Code § 6-641.07 (f)], and the District of Columbia Zoning Regulations." In "all appeals and applications" to the BZA, the Zoning Regulations provided for evidentiary hearings in which "the burden of proof shall rest with the appellant or applicant." 11 D.C.M.R. §§ 3117, 3119.

The DCRA's final notice of revocation specifically informed petitioner that the revocation of its C of O was appealable to the BZA pursuant to D.C. Code § 6-641.07 (f). We reject petitioner's contention that the BZA nonetheless was required by D.C. Code § 6-641.09 and the Civil Infractions Act of 1985 to determine its appeal "on the basis of the record established before the administrative law judge or attorney examiner." D.C. Code § 2-1803.03 (2001). The Civil Infractions Act created

an alternative civil fine system for infractions of D.C. law and amended D.C. Code § 6-641.09 to make this fine system available for zoning violations.[3] *See* D.C. Law 6-42, 32 D.C. Reg. 4450 *et seq.* (Aug. 2, 1985). But DCRA did not seek to impose a civil fine on petitioner in this case; rather, it sought the revocation of petitioner's C of O, a remedy that was not obtainable under the Civil Infractions Act. *See* D.C. Code §§ 2-1801.04, 1802.03 (2001). The appellate review procedures adopted in that Act solely for alternative civil fine proceedings therefore did not apply.[4]

3. The BZA's Finding that Petitioner Operated a Repair Garage Outside the Scope of its

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[3] The Act added the following two sentences to § 6-641.09:

> Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter [D.C. Code Title 6, Chapter 6, subchapter 4, concerning zoning regulations], or any rules or regulations issued under the authority of these sections, pursuant to Chapter 18 of Title 2 [the Civil Infractions Act]. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

The statutorily defined term "infraction" refers to violations for which a civil monetary sanction may be imposed under the Civil Infractions Act. *See* D.C. Code § 2-1801.02. Contrary to petitioner's contention, the second sentence added to § 6-641.09 does not mean that the Civil Infractions Act supplies the only mechanism for enforcing the zoning regulations; the section itself lists other enforcement mechanisms, such as an action in Superior Court.

[4] DCRA cited D.C. Code § 6-641.09 in its final notice of revocation. Even if that arguably incorrect citation initially misled petitioner as to the scope of appellate review, the BZA cured the problem by clarifying the scope of review and granting petitioner additional time to prepare for a *de novo* proceeding.

Title 12A of the District of Columbia Municipal Regulations was amended in January of 2004 to provide that appeals of actions granting, withholding or revoking a certificate of occupancy now may be taken to the BZA pursuant to D.C. Code § 6-641.09. *See* 12A D.C.M.R. § 110.6. Inasmuch as this amendment occurred after the BZA decision in this case, it has no bearing on the issues before us.

Certificate of Occupancy. Petitioner's property at 4221 Connecticut Avenue, N.W., is in an area zoned "C-3-A." Permissible uses as a matter of right in this zone include "automobile and truck sales" and "automobile accessories sales, including installations." 11 D.C.M.R. §§ 721.3 (c), (d); 741.1. Operation of a "repair garage" is not permitted in a C-3-A zone, however, without a special exception (or a variance) from the BZA. 11 D.C.M.R. § 743.1. The zoning regulations define 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." *Id.* at § 199.1.

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. Petitioner's C of O, which it received in August 1998, was for an "automobile service center." Although the term "automobile service center" is not defined in the zoning regulations,[5] and its precise scope may be subject to some uncertainty, 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. Petitioner concedes, as it must, that its

[5] Petitioner's C of O thus did not comply with the requirement that "[t]he use shall be designated on the certificate of occupancy in terms of a use classification that is established by this title [i.e., Title 11] . . . ." 11 D.C.M.R. § 3203.8 (a). According to the Notice of Intent to Revoke the C of O, DCRA "created the category of 'Automobile Service Center' to facilitate" petitioner's declared intent "to sell small automotive parts and make installations of same." The Notice went on to state that "[t]his facilitation did not include or permit any major automotive engine, body work or other automotive garage functions." Petitioner did not contest these assertions.

C of O did not authorize it to have a repair garage.[6] Thus, notwithstanding that the BZA did not undertake to delineate the precise scope of the C of O, the dispositive question before us is simply whether the BZA's further finding, that petitioner was operating a repair garage, was supported by substantial evidence of record.

DCRA inspectors testified that they saw automobile engine and other significant automotive repair work being done on petitioner's premises on multiple occasions. Their testimony was corroborated by photographs of petitioner's garage, copies of work orders, and petitioner's own business card, advertisements and signage offering a full range of auto repair services (e.g., "brakes," "exhaust," "alignment," "transmission," "electrical," "body work," "engine overhauls," "air conditioning/heating") and asserting that petitioner had 21 service bays, ASE certified technicians, and the capability to "service and repair all cars domestic & foreign." Petitioner presented no evidence to counter the showing that it was operating a repair garage within the meaning of the zoning regulations. We have no difficulty concluding that the BZA's finding was amply supported by substantial evidence in the record.[7]

4. Laches. Petitioner's final claim is that the BZA erred in rejecting its defense of laches.

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[6] If the C of O were construed to authorize such a use without the required special exception, it would have been invalid and subject to revocation as having been issued in error. 12A D.C.M.R. (former) § 118.4.3.

[7] Indeed, the one-sided nature of the evidentiary presentation is another reason why petitioner cannot claim that it was prejudiced by the BZA's allocation of the burden of proof. The outcome of the proceeding would have been the same even if the BZA had allocated the burden of proof to DCRA and the intervenors.

Petitioner asserts that the premises at 4221 Connecticut Avenue were in continual and uninterrupted use for certain automotive repair activities from 1940 until 1990, and that DCRA slept on its rights by not attempting to enforce the repair garage prohibition during that fifty-year period. We agree with the BZA that petitioner's claim of unreasonable delay in enforcement is without merit.

"Laches is the principle that 'equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant.'" *American Univ. Park Citizens Ass'n v. Burka*, 400 A.2d 737, 740 (D.C. 1979) (quoting *Russell v. Todd*, 309 U.S. 280, 287 (1940)). The party asserting laches has the burden of establishing both that it was prejudiced by the delay and that the delay was unreasonable. *Sisson v. District of Columbia Bd. of Zoning Adjustment*, 805 A.2d 964, 972 (D.C. 2002). In the zoning context, the defense of laches is judicially disfavored because of the public interest in enforcement of the zoning laws. *Id.* at 971. Accordingly, "[l]aches is rarely applied in the zoning context except in the clearest and most compelling circumstances." *Id.* (internal quotation marks and citations omitted).

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." There is no indication that the automobile dealerships exceeded the allowed scope of the variance. However, after petitioner's predecessor-in-interest, Mr. Yuen, acquired the property in 1989, he stopped maintaining an automobile dealership

on the premises, and the variance for limited repair activities ancillary to new car sales was no longer available to him. DCRA then promptly enforced the prohibition on repair garages against Mr. Yuen via Notices of Infraction issued in April 1990 and March 1992. These enforcement actions were upheld by DCRA administrative judges and, in March of 1998, the BZA. Mr. Yuen did not appeal the BZA's decision, and he appeared to acquiesce in it. He applied the following month for a new C of O to use the property for "automobile sales and automobile accessory sales including installation" – both matter-of-right uses in a C-3-A zone. Thus, when petitioner obtained its C of O in August 1998, as Mr. Yuen's successor, 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.

For the foregoing reasons, we hereby affirm the decision of the BZA to uphold revocation of petitioner's Certificate of Occupancy #B00181657.

*So ordered.*

# 4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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**Appeal No. 16947 of Kuri Brothers, Inc.**, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of J. Gregory Love, Administrator, Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs, of the revocation of a certificate of occupancy (#B00181657) for occupancy that does not conform to the use permitted, "automobile service center", in a C-3-A District at premises 4221 Connecticut Avenue, N.W. (Square 2051, Lot 5).

**Hearing Dates:** April 8, and May 13, 2003
**Decision Date:** July 1, 2003

**ORDER**

Appellant, Kuri Brothers, Inc. ("Kuri Brothers" or "Appellant"), filed this appeal, accompanied by a "Petition for Appeal", on September 11, 2002, with the D.C. Board of Zoning Adjustment ("Board"). Appellant contests the revocation of its Certificate of Occupancy ("C of O") for premises located at 4221 Connecticut Avenue, N.W., Washington, D.C. 20008, in Square 2051, Lot 5, in the C-3-A Zoning District [Exhibit 1]. For the reasons stated below, the appeal is denied.

PRELIMINARY AND PROCEDURAL MATTERS:

By letter dated June 27, 2002 and personally served, the Department of Consumer and Regulatory Affairs ("DCRA") provided Appellant with a Notice of Intent to Revoke Certificate of Occupancy # B00181657 ("Notice to Revoke"). Appellant did not respond to the Notice to Revoke within the fifteen days DCRA indicated in the notice. DCRA then notified Appellant's counsel that Appellant was "deemed to have admitted the validity of the charges" set forth in the Notice to Revoke and revoked the C of O on August 19, 2002.

Appellant's premises are located within the boundaries of Advisory Neighborhood Commission ("ANC") 3F, in Single-Member District 3F02 represented by Commissioner Karen L. Perry. ANC 3F is automatically a party to this proceeding pursuant to 11 DCMR § 3106.2.

By letter dated November 12, 2002, Charles E. Smith Residential filed a request to intervene as a party in opposition to this Appeal. Charles E. Smith Residential owns the Van Ness South apartment building at 3003 Van Ness Street, N.W., immediately across a 16-foot public alley from Appellant's premises, and the Consulate Apartment building at

2950 Van Ness Street, N.W., located within 200 feet of the Appellant's premises. At the April 18, 2003 hearing, the Board granted Charles E. Smith Residential's request to intervene as a party in opposition.

The Board scheduled a public hearing for September 20, 2002 and November 12, 2002, and so notified Appellant [Exhibit 12], DCRA [Exhibit 13], and ANC 3F [Exhibit 14].

ANC 3F submitted a Resolution, approved at a duly-noticed meeting, and with a quorum present, opposing the Appeal [Exhibit 18]. Charles E. Smith Residential also submitted a letter in opposition to the appeal [Exhibit 22].

Appellant filed a request for postponement and rescheduling of the public hearing [Exhibits 15, 16, 17]. Over ANC 3F's opposition [Exhibit 21], the BZA rescheduled the public hearing, finding that the reasons for the rescheduling of the hearing were persuasive.

DCRA and Charles E. Smith Residential made oral motions to dismiss or to affirm on the record on two occasions, April 8, 2003 and May 13, 2003. ANC 3F presented a written motion to affirm and order Appellant to cease and desist, supported by a Memorandum of Law [Exhibit 41]. The Board took these motions under advisement, pending filing of proposed findings of fact and conclusions of law and the rendering of its final decision.

Appellant submitted Appellant's Responses to Exhibits, which listed objections to exhibits being submitted by ANC 3F. To the extent that this submission was intended as a motion to the Board to strike such exhibits from the record it was denied.

On January 28, 2003, the day of the scheduled hearing for this case, only preliminary issues were addressed. The hearings for this case took place on April 8, and May 13, 2003.

Appellant chose to present no formal argument prior to or during the hearings for this case, even after asking that the initial hearing date be postponed. Instead, Appellant asked to be allowed to submit his argument in the context of proposed findings of fact and conclusions of law. Although the Board is not required under its regulations to accept such a submission, the Board chose to allow Appellant an opportunity to spell out any legal arguments he might have, based on the evidence submitted, and thereby present an argument in this case. Many of the arguments listed in Appellant's Petition for Appeal were never presented by Appellant and therefore were not adequately substantiated and thus were not considered. Those that were presented by the Appellant and considered by the Board are addressed below.

At the conclusion of the May 13, 2003, hearing, the record was closed, except the Board set June 24, 2003, as the deadline for submission of proposed Findings of Fact and Conclusions of Law by the parties. While the Appellant's submission more closely resembled a legal brief, it was accepted into the record and considered by the Board in reaching this decision

At its regularly-scheduled meeting on July 1, 2003, the Board denied the Appeal.

FINDINGS OF FACT:

1. Appellant was issued a certificate of occupancy for an "automobile service center" on August 12, 1998 at 4221 Connecticut Avenue, N.W. ("subject property").

2. Automobile service center is not a defined term in the Zoning Regulations.

3. Appellee, DCRA, issued a notice of intent to revoke Appellant's certificate of occupancy for the subject property on June 27, 2002.

4. Appellee issued a final notice of revocation of the certificate of occupancy for the subject property on August 19, 2002.

5. Appellant appealed the DCRA Director's decision to revoke his certificate of occupancy on September 11, 2002.

6. Appellant was advised during the Board's preliminary discussions regarding this case that DCRA's decision to revoke the Appellant's certificate of occupancy was taken pursuant to 12A DCMR § 118.4.

7. Pursuant to 12A DCMR § 118.4.1, a certificate of occupancy may be revoked, "after notice, if the actual occupancy does not conform with that permitted".

8. The subject property is zoned C-3-A.

9. In the C-3-A zone, a repair garage is only permitted by special exception pursuant to 11 DCMR § 743.1.

10. "Automobile accessories sales, including installations" is a permitted use in a C-3-A district.

11. In 11 DCMR § 199.1, a "garage, repair" is defined 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."

12. DCRA and ANC 3F submitted photographs of Appellant's underground space. Those photographs showed automobiles, lifts, other equipment, automotive parts, and vehicles [Exhibits 21 and 35].

13. DCRA and ANC 3F summarized and submitted copies of Appellant's own advertising of services offered at "Van Ness Auto Care", which offered the following: 21 service bays, foreign & domestic car specialist, and diagnostic, tune-up, brake, exhaust, alignment, transmission, and electrical services.

14. ANC 3F also submitted photographs of Appellant's latest advertising sign (taken May 8, 2003) reading: "WE SERVICE & REPAIR ALL CARS DOMESTIC & FOREIGN."

15. DCRA Inspector Anthony Hooks, who testified at the hearing, has the following responsibilities at DCRA: inspection of auto repair garages and monitoring of required licensing for repair garage operations.

16. In the months preceding the date the Notice to Revoke was issued, Inspector Hooks witnessed several vehicles being repaired and saw cars hoisted up on lifts and employees engaged in automobile engine repairs. The Board found Inspector Hooks' testimony with respect to these activities to be credible.

17. Inspector Hooks' photographs taken during his inspection also show that automobile repair activities are taking place on Appellant's property [Exhibit 25].

18. Inspector Hooks submitted into the record Repair Work Orders supplied to him by Chris Kuri, one of Appellant's principals, for repair work ordered by customers during one of days that Inspector Hooks visited the subject property [Exhibit 37].

19. DCRA Inspector Vacylla Williams testified to inspecting the subject property on June 5, 2002 with Inspector Hooks and to witnessing automotive repairs being conducted. The Board found Ms. Williams' testimony to be credible.

20. The notice of intent to revoke the Appellant's C of O details automobile repair and maintenance activities, as witnessed by three different inspectors on four different occasions.

21. Appellant submitted documents [Exhibit 40] that contained the following relevant information:

**May 4, 1983 C of O and Application for 4221 Connecticut Avenue, N.W.**
Owner: Connecticut Avenue Datsun, Inc.
USE: Automobile Sales and Service
Prior use indicated on application: Automobile Sales and Service
Purpose of application: Ownership Change

**October 10, 1986 Application for 4221 Connecticut Avenue, N.W.**
Owner: Connecticut Avenue Nissan, Inc.
USE: Motor Vehicle Dealer
Prior use indicated: Motor Vehicle Dealer
Purpose of application: Ownership Change

**April 24, 1998 C of O and Application for 4221 Connecticut Avenue, N.W.**
Owner: Koo L. Yuen
USE: Automobile Service Center
Use applied for, as stated on application: (Automobile Service Center) Automobile Sales, Automobile Accessory Sales Including Installation
Prior use indicated: Automobile Service Center
Purpose of application: Partial Occupancy - Basement

**August 12, 1998 C of O and Application for 4221 Connecticut Avenue N.W., Basement**
Owner: Kuri Brothers, Inc.
USE: Automobile Service Center
Use applied for, as stated on application: (Auto Repair)/Office Automobile Service Center
Prior use indicated: Auto Repair
Purpose of application: Ownership Change

22. Appellant also presented C of Os and applications for C of Os for locations other than the subject property. Appellant made no showing that these documents are material to this case. The Board therefore finds these documents irrelevant to this Appeal.

23. As demonstrated by ANC 3F Commissioner Karen Perry in her submission and accompanying documentation [Exhibit 34], DCRA has taken enforcement action

against owners of the subject property due to its use as a repair garage as early as 1989, and continuing thereafter.

24. A May 20, 1992 decision by DCRA Administrative Law Judge Rohulahim Quander found that a repair garage was being operated at the subject property.

25. In 1940, the Board granted a variance to Flood Motor Company to expand its existing repair garage. The approval was "subject to the condition that all repairing shall be incidental to the sale of new cars only" (Exhibit 34, Transcript of October 9, 1940, hearing at page 30).

CONCLUSIONS OF LAW:

Pursuant to D.C. Official Code § 6-641.07 (Section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799) (2001 Ed.)), the Board is authorized to hear appeals from any person aggrieved by any "decision based in whole or in part upon any zoning regulation". The decision complained of in this case is the June 27, 2002 decision to revoke the Appellant's certificate of occupancy, pursuant to 12A DCMR § 118.4, which was followed by a final notice of revocation on August 19, 2002. A certificate of occupancy may be revoked, "after notice, if the actual occupancy does not conform with that permitted". 12A DCMR § 118.4.1. Appellant's use of the subject property as a repair garage does not conform to its certificate of occupancy for an "Automobile Service Center". Therefore, the Board finds DCRA's decision to revoke Appellant's certificate of occupancy pursuant to 12A DCMR § 118.4.1 to be proper and denies this appeal. A discussion of these conclusions follows.

1. The scope of review

Appellant has contended throughout the proceeding that the Board is precluded from holding an evidentiary hearing because DCRA has procedures providing for such a hearing when a revocation of a C of O is proposed and that this appeal is governed by the Civil Infractions Act, which limits the Board's scope of review to the record below.

As to the first contention, certainly, if a DCRA revocation hearing had occurred, the Board, as it has done before, could have limited its review to that record. *See Perkins v. District of Columbia Board of Zoning Adjustment,* 813 A.2d 206, 209 (D.C. 2002). Since no hearing was held because the Appellant failed to timely request one, the Board can develop its own record to aid decision making.

The Board's authority to hear appeals from administrative decisions is not limited by the existence of post-decision hearing procedures developed within DCRA. The District of Columbia Court of Appeals has recognized the Board's review authority in similar appeals of DCRA decisions and has further noted that it is the final responsibility of the Board, and not DCRA, to interpret the Zoning Regulations. *See Keefe Co. v. District of Columbia Board of Zoning Adjustment*, 409 A.2d 624 (D.C. 1979); *Association for the Preservation of 1700 Block of N Street, N.W. and Vicinity, et al v. District of Columbia Board of Zoning Adjustment*, 384 A.2d 668 (D.C. 1978).

In Appellant's second contention, Appellant asserts that the Board must confine itself to DCRA's record because DCRA is relying upon a section of the Zoning Act that references the Civil Infractions Act (D.C. Law 6-42; D.C. Official Code § 2-1801 *et seq.*). It is reasoned that since appeals of civil infractions are limited to the record below, this proceeding must be limited accordingly. It is true that DCRA cites D.C. Official Code 6-641.09 (§ 10 of the Zoning Act) as a basis for its action and that the section indicates that violations of the Zoning Act and its regulations may be enforced and adjudicated through the Civil Infractions Act. The problem for the Appellant (and the Board) is that DCRA cites the wrong provision.

DCRA stated in its Notice of Intent to Revoke that "[b]y making major repairs and doing engine work you have operated outside the scope of this Certificate of Occupancy". D.C. Official Code 6-641.09 does not make it unlawful to operate outside the scope of a certificate of occupancy. Rather, that section prohibits undertaking a use without one. The Zoning Regulations do the same. 11 DCMR § 3203.

Thus, since no law or regulation makes it a violation to operate outside the scope of a C of O, as opposed to engaging in a use without one, there can be no civil infraction proceeding brought for doing so. Only the BOCA Supplement specifically refers to the act of operating outside the scope of a C of O, and does so only as a ground for revocation. 12A DCMR § 118. Thus, by asserting that the appellant was operating outside of the scope of its C of O, DCRA limited its enforcement action to revocation under the BOCA Supplement. The Civil Infractions Act is not implicated here because no violation of the Zoning Act or Regulations is directly asserted.

2. Significance of DCRA's erroneous citations.

Appellant was not materially affected by the inaccurate citations. DCRA's inaccurate citations did not have any direct bearing on its course of action in revoking the Certificate of Occupancy. The notice of proposed revocation states the grounds for the action: that the repair garage use being operated at the subject property is not permitted under the existing certificate of

occupancy, as determined by the Zoning Regulations. This complies with the notice requirement of 12A DCMR § 118.4.6, which states that the "Notice of proposed revocation of the Certificate of Occupancy shall be given in writing, setting forth specifically the *grounds* for the action." (emphasis added). Also, DCRA correctly cited to the provision of the Zoning Regulations that requires that a repair garage obtain a special exception in a C-3-A district in order to obtain a C of O for that use. Moreover, Appellant's counsel was ultimately provided with the citation to the authority for DCRA's action, 12A DCMR § 118.4, prior to the hearings for this case, and claimed to have been aware of that subsection prior to the hearing. Lastly, while DCRA's errors might have initially led the Appellant to believe that this should have been treated as a Civil Infractions Act case, Appellant did treat the appeal otherwise, after stating: "[a]ssuming *arguendo* that this Board had the authority to adjudicate this appeal *de novo*. . ." [Exhibit 44 at 16].

3. The Burden of Proof

Appellant has asserted that the Board erroneously applied the burden of proof in this case. The Board, however, finds that the person alleging "that there is an error in any ... decision", D.C. Official Code § 6-641.07 (g)(1), must prove the error alleged. For the purposes of this appeal, the Appellant must show that the notice of revocation fails to demonstrate that a ground for revocation exists. If the notice is facially sufficient, the Appellant may nevertheless show that (1) the facts relied upon by the government were in error; (2) that the government misapplied those facts to the law; or 3) that there is a defense to the charge, such as laches or estoppel. Appellant, here, did not meet its burden of proof in any respect.

4. The Appellant did not meet its burden of proof

The notice, although not a model of clarity, does state enough facts to demonstrate that the Appellant was operating outside the scope of the certificate of occupancy. Notwithstanding DCRA's troubling admission that it "created the category of 'automobile service center' to facilitate the Appellant's efforts", the Board concludes that DCRA did not intend to sanction a use that required a special exception within the zone district, such as a repair garage. Thus, if the notice of revocation showed that the Appellant was operating a repair garage, it follows that they were operating outside the scope of their C of O.

Section 199.1 of the Zoning Regulations define 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 definition is not limited to the categories listed, as suggested by Appellant. The Board therefore must simply determine, from the evidence submitted, whether automobiles are being maintained or repaired at the subject property.

The Board concludes that the facts stated in the notice sufficiently proved that a "repair garage" was the use being undertaken by Appellant. Whatever ambiguity might have existed in the notice, it was dispelled through the testimony of the government's and Intervenor's witnesses. All the activities listed in the Findings of Fact fall under the category of maintenance or repair. The advertisements and pictures submitted into the record also indicate that maintenance and repair activities were central to the Appellant's business.

Because the certificate of occupancy cannot be construed to have lawfully allowed this use and Appellant made no argument that such was the case, the Board concludes that the Appellant was operating outside its scope.

Appellant points to the fact that DCRA did not present any witness qualified to determine whether the activities of the Appellant fit within the category of repair garage. However, the Board, as the body charged with interpreting the Zoning Regulations, is more than able to make such a determination. In fact, it made the same determination with respect to this very property on March 30, 1998 (BZA No. 93-0006-CI).

In sum, Appellant was operating a repair garage in the C-3-A district under a certificate of occupancy that did not allow such a use. Appellant's certificate of occupancy was therefore validly revoked, pursuant to 12A DCMR § 118.4.2, because the actual use, repair garage, did not conform to whatever it was that was permitted (if anything) under his certificate of occupancy.

**Estoppel and Laches**

Appellant's defense, stated in his Proposed Findings of Fact and Conclusions of Law, is that DCRA's revocation of the Certificate of Occupancy was barred by the doctrines of estoppel and laches. The Board finds the Appellant's claims to be without merit.

"[T]he doctrine of equitable estoppel has traditionally not been favored when sought to be applied against a government entity. . . it is accepted that in certain circumstances an estoppel may be raised to prevent enforcement of municipal zoning ordinances." *Saah v. District of Columbia Board of Zoning Adjustment*, 433 A.2d 1114 (D.C. 1981); *see Wieck v. District of Columbia Board of Zoning Adjustment*, D.C.App., 383 A.2d 7, 11 (1978). The elements that must be shown in order to raise an estoppel against enforcement of a zoning regulation are: (1) that a party, acting in good faith, (2) on affirmative acts of a municipal corporation, (3) makes expensive and permanent improvements in reliance thereon, and (4) the equities strongly favor the party seeking to invoke the doctrine. *Wieck v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978).

Furthermore, reliance by the party must be justified. *Nathanson v. District of Columbia Board of Zoning Adjustment*, 289 A.2d 881, 884 (D.C. 1972).

"Laches is a species of estoppel, being defined as the omission to assert a right for an unreasonable and unsatisfactorily explained length of time under circumstances prejudicial to the party asserting laches." *Wieck v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978), quoting 3 RATHKOPF, LAW OF ZONING AND PLANNING, at 67-1 (3d ed. 1972). The two elements of laches are the unreasonableness of the delay and the resulting prejudice to the party asserting the defense. *See, e.g., American University Park Citizens Association v. Burka*, 400 A.2d 737, 741 (D.C. 1979).

Appellant does not establish that any reliance on the actions of the D.C. government would have led him to make expensive improvements in good faith, nor has Appellant shown that any enforcement action was unreasonably delayed.

Appellant, in support of his estoppel claim, points to a 1940 BZA variance approval, issued to Flood Motor Company, to permit the extension of an automobile repair shop and automobile sales and service agency. Appellant points to this evidence, introduced by ANC 3F, in an attempt to establish 1) that a repair garage was functioning on the subject property for 63 years, and 2) a repair garage was approved as a variance and therefore such approval continues to run with the land. As to the first assertion, the record does not indicate that this use was continuing. Appellant submits documentation related to four C of O's for the subject property. The first C of O, in 1983, is for "Automobile Sales and Service". Whenever it was that repair garage use was discontinued, it is clear from the record that it was no longer continuing under the 1983 C of O and was abandoned by virtue of a change in use. And in 1986, a C of O was issued for "Motor Vehicle Dealer," a use even further removed from a repair garage. As to the second contention, the use approved by the BZA in 1940 for Flood Motor Company was "subject to the condition that all repairing shall be incidental to the sale of new cars only" (Transcript of October 9, 1940, hearing at page 30). When the sale of new cars was discontinued at the subject property, the repairs were no longer incidental to the sale of new cars and, therefore, were not permitted under the variance granted. Moreover, the variance was for an *extension* of the repair shop and automobile sales use already in existence. The principal use, therefore, once abandoned, as was indicated by the circumstances discussed above, cannot be resurrected under a variance for a mere extension of that use alone.

More recent events also do not establish a claim for estoppel. The record shows that in 1998, Mr. Koo Yuen applied for a C of O for the subject property. The use applied for

and approved was Automobile Service Center. Nothing in the application or C of O issued indicates that Mr. Yuen was permitted to use the property for automobile maintenance or repairs. In fact, the application itself stated that it was for "(Automobile Service Center) Automobile Sales, Automobile Accessory Sales Including Installation", which does not rationally permit the type of high impact commercial activity associated with automobile maintenance or repair.

As for the C of O at issue in this case, not only was it for Automobile Service Center, not repair garage, it was a mere change of ownership application. The underlying use remained "Automobile Service Center". While the application included the words repair garage in parentheses, and the prior use indicated was "Repair Garage", this was not the use that was stated on the C of O.

Appellant's estoppel claim therefore fails because there was no indication that the government allowed, either actively or passively, a repair garage to operate at the subject property, and therefore any reliance on the government could not be said to have been in good faith.

Turning to Appellant's laches claim, ANC 3F Commissioner Karen Perry points out in her submission and accompanying documentation that DCRA has taken enforcement action against owners of the subject property for use as a repair garage as early as 1990, and continuing thereafter. At least one DCRA Administrative Law Judge's decision (OAD 90-1683-E) reveals that DCRA considered that a repair garage as a principal business at the subject location was not permissible without a special exception or variance approval. This decision was affirmed by the Board, who agreed with the ALJ that the Appellant was operating a repair garage in violation of his C of O. Based on the above, Appellant cannot establish that the government enforcement action in this case was delayed. Appellant's laches claim therefore fails.

Based on the above, it is hereby:

**ORDERED** that the Appeal is **DENIED.** The motions of the Intervenor, DCRA, and ANC 3F are therefore **GRANTED**, in part, and **DENIED**, in part.

**VOTE: 5-0-0** (Geoffrey H. Griffis, Carol J. Mitten, Curtis L. Etherly, Jr., Ruthanne G. Miller, and David A. Zaidain to deny)

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[1] Also, as was pointed out at the hearing, a private party is entitled to bring an enforcement action pursuant to D.C. Official Code § 6-641.09 may do so in reliance on a Board Order.

BZA APPEAL NO. 16947
PAGE NO. 12

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

Each concurring member has approved the issuance of this Order.

**ATTESTED BY:** _____

**JERRILY R. KRESS, FAIA**
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** SEP - 8 2003

UNDER 11 DCMR 3103.1, NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT. CB/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

**BZA APPEAL NO. 16947**

As Director of the Office of Zoning, I hereby certify and attest that on SEP - 8 2003 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Stanley H. Goldschmidt, Esq.
Tamir Damari, Esq.
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Washington, D.C. 20036

John Patrick Brown, Esq.
Charles E. Smith Residential c/o
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Washington, D.C. 20036

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Box 244
Washington, D.C. 20008

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Councilmember Kathleen Patterson
Ward 3
1350 Pennsylvania Avenue, N.W.
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Washington, DC 20004

Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
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**ATTESTED BY:**
**JERRILY R. KRESS, FAIA**
**Director, Office of Zoning**

rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

**BZA APPEAL NO. 16947**

As Director of the Office of Zoning, I hereby certify and attest that on SEP - 8 2003 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, DC 20001

**ATTESTED BY:**

**JERRILY R. KRESS, FAIA**
**Director, Office of Zoning**

rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

**Appeal No. 00-0001 (No. 99-OAD-1821-E)** of the administrative determination of Lennox J. Simon, Attorney Examiner/ALJ, Department of Consumer and Regulatory Affairs ("Appellee"), Office of Adjudication, made on December 27, 1999, finding Kuri Brothers, Inc. ("Appellant") in violation of 11 DCMR § 3203.1 – Building used as other than a single family dwelling without a certificate of occupancy (Auto Repair Garage).

## DECISION AND ORDER

This case involves a notice of infraction (#0033729) for operating an automobile repair business without a Certificate of Occupancy, in violation of 11 DCMR § 3203.1, on April 27, 1999. The notice of infraction was issued pursuant to 11 DCMR § 3203.1, which prohibits the use of a building as other than a single family dwelling without a certificate of occupancy.

This matter was heard on August 11, 1999. The opinion of the Administrative Law Judge ("ALJ") assigned to this case, Mr. Lennox J. Simon, was issued on December 27, 1999, upheld the issuance of the notice of infraction.

On March 19, 2002, a hearing on this appeal was held before the Board. Representing the Appellant was Tamir D. Damari, Esq., from the Law Offices of Stanley H. Goldschmidt. Representing the Appellee was Matthew J. Green, Esq.

Requests for intervention were submitted to the Board by ANC 3F, Van Ness South Tenant's Association, Inc., and Charles E. Smith Residential. All three requests were denied during the Board's March 19, 2002, hearing by a vote of 3 to 1 to 1, with one member not present, not voting.

At its decision meeting of April 2, 2002, the Board voted 3 to 0 to 2 to grant the appeal, with two members not present, not voting.

## Background

On August 12, 1998, Certificate of Occupancy No. B00181657 was issued to the Kuri Brothers, Inc. at 4221 Connecticut Avenue, N.W., basement level, for the purpose of operating an "Automobile Service Center" in a C-3-A District. The term "Automobile Service Center" is neither used nor defined in the Zoning Regulations. The ALJ for this case found that an

BZA
ZONING COMMISSION
District of Columbia
Case 00-0001
Exhibit 33

"Automobile Service Center" was the same thing as a "Repair Garage"[1] and that both terms should therefore "be treated as the same entity". (Finding of Fact #12).

The ALJ also found that the Appellant had an invalid Certificate of Occupancy (Conclusion of Law #9) noting a Repair Garage is not permitted as a matter of right in a C-3 District. The ALJ therefore concluded that the Appellant was operating his automobile repair garage "without a Certificate of Occupancy which permits such operation" (Conclusions of Law #17) and upheld the notice of infraction.

## DECISION

This appeal of the ALJ's decision was brought pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 2-1803.01, *et seq.* (2001)) ("Civil Infractions Act"). The Board's review is based on the record established before the ALJ. The Board "shall set aside any . . . order that is without the observance of procedure required by law or regulations . . . or any order that is unsupported by a preponderance of the evidence on the record." D.C. Code § 2-1803.03.

The first issue confronted by the Board in this appeal was whether to grant requests for intervention by a citizen group, a real estate company, and the local ANC. All three requests were denied. Neither the Civil Infractions Act nor the Zoning Regulations[2] provide for intervention in civil infraction appeals.

This action is an appeal of a civil infraction fine, which was assessed only against the Appellant. Moreover, even if there was an interest at stake, the requestors did not go so far as to assert that DCRA could not adequately protect their interests.

Turning to the merits of the appeal, the Board finds that the ALJ for this case erred in upholding the notice of infraction issued to the Appellant because DCRA did not observe the procedure required by DCRA's own regulations.

As stated on the notice of infraction, the Appellant was cited for "Operating an Auto Repair Business [without] a Certificate of Occupancy", in violation of 11 DCMR § 3203.1. The Appellant was issued, and submitted into the record a copy of, its certificate of occupancy for "Automobile Service Center". Because the ALJ concluded that the Automobile Service Center and Repair Garage are one in the same, and that Appellant was operating a Repair Garage on his

---

[1] Repair Garage is defined 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." 11 DCMR § 199.1.

[2] The Zoning Regulations provide for intervention in limited circumstances, in the Board's discretion, in appeals under the Zoning Act, D.C. Code § 6-641.07(f) and (g)(1) (2001), the representation or administration of the Zoning Act, 11 DCMR § 3112.15, but do not expressly provide for intervention in civil infraction appeals which were brought under the Civil Infractions Act, D.C. Code §§ 2-1803.02.

premises, the ALJ should have concluded that the Appellant's use was covered by its existing Certificate of Occupancy. Thus, the notice of infraction was issued in error.

The ALJ strays from the proper course when he declares in his order that the Appellant's Certificate of Occupancy is invalid. Although it is true that a Certificate of Occupancy cannot be issued for a Repair Garage in a C-3 District without a special exception, it is not within the ALJ's purview in this case to declare the Certificate of Occupancy to be invalid. Doing so is akin to revoking the certificate, which can only be done through the proper procedures.

Section 118.4.3 of the District of Columbia Construction Code Supplement (1999), title 12, DCMR, provides that "Any certificate of occupancy . . . shall be revoked by the Director, after notice, if due to any material circumstance, it is found to have been issued in error." Such notice is not only required by the above regulation, but also by the Due Process clause of the Constitution. *See, e.g., Transportation Leasing Co. v. Department of Empl. Servs*, 690 A.2d 487 (D.C. 1997) ("We have held that in general, an individual is entitled to fair and adequate notice of administrative proceedings that will affect his [or her] rights, in order that he [or she] may have an opportunity to defend his [or her] position.") (quoting *Ridge v. Police & Firefighters Retirement and Relief Bd.*, 511 A.2d 418, 424 (D.C. 1986). Any such revocation may then be appealed to the Board. Section 118.5 of the District of Columbia Construction Code Supplement (1999), title 12, DCMR; D.C. Code § 6-641.07 (2001).

The Board wishes to stress that DCRA therefore has a remedy in this situation, i.e., it may revoke the Certificate of Occupancy, after giving notice. However, issuing a notice of infraction for not having a Certificate of Occupancy before the revocation procedures are completed is premature.

Based on the above, it is hereby:

**ORDERED** that the appeal is **GRANTED** and the decision of the ALJ is **REVERSED**.

**Vote:** 3-0-2 (Geoffrey H. Griffis, David W. Levy, and Curtis Etherly to Grant; Carol J. Mitten not present, not voting; Anne M. Renshaw not voting, not having heard the case).

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

Each concurring member has approved the issuance of this Decision and Order.

**ATTESTED BY:** _____
**Jerrily R. Kress, FAIA**
**Director**

**FINAL DATE OF ORDER** MAY 22 2002

# 5

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

KOO L. YUEN AND
VAN NESS INCORPORATED

APPELLANT.

v.

BZA NO. 93-0006-CI
(OAD NO. 92-1683-E)

DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS (DCRA)

APPELLEE.

DECISION AND ORDER

PROCEDURAL MATTERS:

Appellants filed a notice of appeal on December 22, 1992 from the ALJ's decision upholding DCRA's fine. Appellants filed a second notice of appeal on May 28, 1993 from the ALJ's decision not to grant a stay of his 1992 order pending appeal. A transcript of those proceedings became available in February 1994. On April 8, 1994, a Motion to Intervene was filed by the Advisory Neighborhood Commission (ANC) 3F, JMB/Van Ness Limited Partnership, and Van Ness South Tenants Association, Inc., to which appellant objected. The Motion to Intervene was granted. On December 6, 1994, appellant filed a Motion for Extension of Time to File Argument and Motion for Oral Argument, to which the intervenors objected. The Motion for Oral Argument was granted. On January 3, 1995, the intervenors filed a Motion To Strike the appellant's Opposition to Motion for Intervention and Reply to Opposition of Movant Intervenors. The intervenors' Motion to Strike was denied. On January 5, 1995, appellant requested 30 minutes for each side to present oral argument, which was objected to by DCRA and the intervenors. The request was denied.

## DECISION

This case involves fines and sanctions levied on appellant for operating a repair garage without a certificate of occupancy. (11 DCMR 3203.1). This matter was heard on May 20, 1992, before Administrative Law Judge Rohulamin Quander (hereinafter "The ALJ") of the Office of Adjudication, Department of Consumer and Regulatory Affairs. The Decision and Order of the ALJ, dated November 23, 1992, affirmed the Notice of Infraction; fined the appellant a total of $525.00, which included $25.00 court costs; ordered that the Building and Land Regulation Administration, DCRA, vacate Certificate of Occupancy No. B156843; and ordered the appellant to immediately cease and desist the operation of the automobile repair business at 4221 Connecticut Avenue, N.W., until such time as a proper certificate of occupancy is obtained. On February 23, 1993, the ALJ denied all post hearing motions. The decisions of the ALJ came to be heard before the Board of Zoning Adjustment (BZA) on April 5, 1995, on the transcripts of record, the briefs filed, and arguments of counsel. For the reasons set forth in this Decision and Order, the BZA affirmed the decision of the ALJ and denied the appeal.

The appellant was charged with a violation of 11 DCMR Section 3203.1 for using the premises of 4221 Connecticut Avenue, N.W., Washington, D.C. as a repair garage without a certificate of occupancy. The general prior use of the property had been an automobile dealership with an automotive service facility in the basement level. The appellant contends that in 1989 he went to obtain a certificate of occupancy and described the intended use of the garage to the zoning staff person as an automotive service station. He claims that at that time, he was told that the use he described was a matter-of-right use permitted in a C-3-A zone and, therefore, he applied for and was issued the type of certificate of occupancy that the staff person directed him to obtain (Certificate of Occupancy number B156843, "Retail Sale of Automobiles and Accessories Including Installation"). In 1990, the appellant was cited for a violation of 11 DCMR 3203.1 after an inspector observed an auto repair shop with 15 repair bays being conducted on the premises, which exceeded the use permitted by the certificate of occupancy that appellant had been issued. The appellant was ordered to pay $525.00, which included court costs for operating an automobile repair garage without a certificate of occupancy. On March 13, 1992, a citation was issued after the garage was again visited by a DCRA inspector. On his visit, the inspector observed 15 repair bays, car parts, tire storage, and a total of 14 cars. Upon further inspection, he found that Certificate of Occupancy No. B156843 was for "Retail Sale of Automobiles and Accessories Including Installation" and did not authorize an automobile repair shop. The inspector felt that what he observed amounted to major repair work constituting an automobile repair shop, far exceeding the sale and installation of car accessories permitted by the certificate of occupancy. Appellant claimed that he was providing only minor repairs and that these minor repairs were similar to those performed at other automobile repair garages which had similar certificates of occupancy and were actually located in more restrictive zones. He further claimed that most of his repair activity involved the installation of accessories for the vehicles in his shop. Appellant did admit, however, that he sold an average of only four cars per month.

The citation charged appellant with "operating a repair garage without a certificate of occupancy" in motion of 11 DCMR 3203.1. This matter was heard by the ALJ on May 20, 1992, and the Decision and Order issued by the ALJ on November 23, 1992 determined that: the appellant failed to reflect the diverse nature of the business he was undertaking when first obtaining his certificate of occupancy; the appellant's claim of operating an automobile sales business is a fiction; and, the appellant operates an automobile repair business as his principal business for which he does not have a certificate of occupancy. Therefore, the ALJ concluded that the appellant was fully liable for violation of the certificate of occupancy laws of the District of Columbia for operating an automobile repair business without a valid certificate of occupancy. The appellant filed a timely appeal with this Board. The ANC-3F, JMB/Van Ness Limited Partnership and the Van Ness South Tenants Association, Inc. were permitted to intervene in this case and presented both their and the government's case during oral arguments.

On appeal, the appellant contended that the ALJ erred in determining that provision of minor automobile maintenance services is a use unauthorized by a certificate of occupancy for "Retail Sale of Automobiles and Accessories, Including Installation." To support his claim, appellant advanced arguments to the effect that: the Zoning Administrator had long interpreted the Zoning Regulations as allowing uses like his (claiming the language in the Zoning Regulations clearly encompasses tires and batteries as being in the class-automobile accessories); other similarly operated facilities that perform the same functions as does appellant's facility are permitted to operate under a less restrictive C of O; the ALJ did not consider the evidence; automobile accessories is a term of art in the automobile industry; under the restrictive interpretation applied by the ALJ, many other auto businesses would now have to obtain new certificates of occupancy; and, it is possible to have multiple principle uses for a business, as long as they are all permitted zoning uses.

The intervenors argued that repair is the primary use of the premises. The intervenors presented two responses to the appellant's argument that the Zoning Regulations were misinterpreted. First, the intervenors contended that the Zoning Regulations were correctly interpreted by the ALJ. To support this contention, they offered the following arguments:

a) The Zoning Regulations, as enacted by the Zoning Commission, distinguish between a repair garage and the retail use and sale of automobile accessories including installation. There is, however, no evidence that the appellant is selling auto parts. Instead, the intervenors believe that he is selling the service of automobile repair.

b) The sale of automobile accessories is listed as retail use; however, what the appellant is operating is a service establishment.

c) The attempt to pass out catalogues and other evidence which appellant presented is an attempt to introduce new evidence which is not of record, was not of record below and therefore, should be rejected and not considered.

d) The record clearly reflects that the principal activity in the establishment is not retail sale of automobile parts or accessories. Instead, the parts or accessories are incidental to providing the advertised service of different kinds of automobile services or repairs. This is not a permitted use.

e) The previous user of the basement, the automobile dealership, had actually occupied two to three stories of the structure, not just the basement. Therefore, in terms of previous uses, the repair garage was an incident to the permitted use of an automobile dealership. Thus, in renting just the repair garage premises and using it only as such, the appellant has made the garage into the primary use and the sale of autos and auto accessories an incidental use. This constitutes a change of use.

f) There is no evidence of record that the appellant is selling auto parts, but there is evidence of advertised repair service. In addition, the appellant does not deny that the advertisement is for an automobile repair service.

The intervenors further argued that this appeal was brought in an improper forum. The Board is being asked to reinterpret Zoning Regulations. This action, therefore, should be appealed under the *Zoning Enabling Act* and not the *Civil Infractions Act*. Thus, it is unnecessary to determine whether the interpretation of the ALJ was correct.

The intervenors' final argument was that the appellant's actions denied the community a special exception hearing at which time they would have been given the opportunity to express their beliefs as to the impact of the use on the surrounding area.

The Board rejects the appellant's argument and notes that the appellant's establishment is clearly a repair shop based on the evidence and testimony as to the extent of the repairs done. New evidence presented by the appellant cannot be admitted, as this is not a de novo hearing. In addition, the neighbors' concerns regarding appellant's disregard of a previous notice of infraction is a factor to be considered. This Board concludes that the ALJ correctly determined that there was sufficient evidence to establish the fact that the sale of automobiles was incidental to the other uses of the premises. Therefore, even if accessories were sold, their sale and installation was merely incidental to the real and principal use of the property, repair. The Board further concludes that the ALJ was correct to conclude that this was not a car dealership of any sort, nor was this establishment operated for the principal use of sale of accessories. Therefore, the ALJ did not err in determining that the scope and type of automobile repair and maintenance services provided by the appellant was not authorized by a certificate of occupancy for "Retail Sale of Automobiles and Accessories, Including Installation." The evidence of record supports the ALJ's finding that sale of autos and accessories are incidental to the principal use of the premises as a repair shop. This, in and of itself, is a sufficient basis upon which to conclude that the type of certificate of occupancy appellant had was improper.

## ORDER

The Board notes that the appellant had continued to operate his facility and therefore, the Board's takes no action on the appeal of the ALJ's decision to deny the appellant's Motion to Clarify Order or Stay of Sanctions Pending Appeal.

Having considered the record of the hearing before the ALJ and the decision of the ALJ, the Board of Zoning Adjustment finds that there was substantial evidence to support the decision and the amount of the fine. Accordingly, this Board of Zoning Adjustment **ORDERS** that the decision of the ALJ be **AFFIRMED.**

**VOTE: 3-0** (Laura M. Richards, Maybelle Taylor Bennett, Susan Morgan Hinton, Craig Ellis to affirm; Angel F. Clarens to affirm by absentee vote).

**BY ORDER OF THE BOARD OF ZONING ADJUSTMENT**

**ATTESTED BY:** Madeliene H. Dobbins
**MADELIENE H. DOBBINS**
**Director**

**FINAL DATE OF ORDER:** MAR 30 1998

bza93-0006-CI/AZ/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

**BZA APPLICATION NO. 93-0006-CI**
**OAD NO. 92-1683-E**

As Director of the Board of Zoning Adjustment, I certify and attest that on MAR 30 1998 a copy of the decision entered on that date in this matter was mailed first class, postage prepaid to each party in this case, and who is listed below:

W. David Watts, Director
Department of Consumer and
Regulatory Affairs
614 H Street, N.W., Suite 1120
Washington, D.C. 20001

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4225 Connecticut Avenue, N.W.
Washington, D.C. 20008

Office of the Corporation Counsel
Consumer Affairs Division
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Washington, D.C. 20001

Charles R. Braun, Esquire
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Charlotte Parker, Esquire
Assistant Corporation Counsel
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Washington, D.C. 20001

Attested By: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

Date: MAR 30 1998

# 6

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

| | |
|---|---|
| DCRA<br><br>v.<br><br>KOO L. YUEN | Civil Infraction Appeal<br>OAD No. 90-1726-E |

**WITHDRAWAL OF APPEAL**

In view of the relatively minor fine paid for the subject violation at issue, Appellant Koo L. Yuen hereby withdraws his appeal.

Appellant understands that this withdrawal will be accepted without further proceedings in this matter.

Dated: July 6, 1992

Respectfully Submitted,

STOHLMAN, BEUCHERT & EGAN, Chartered

By: Peter T. Meszoly

Peter T. Meszoly
William J. Utermohlen
1775 Pennyslvania Avenue, N.W.
Suite 400
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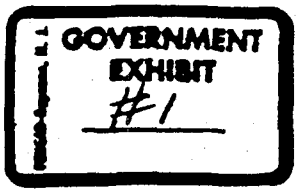
(202) 452-1775

ATTORNEYS FOR APPELLANT

Not Complete




GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Office of Adjudication
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(202) 727-7900

DCRA

vs. OAD # 90-1726-E
NOI # 9053

Koo L. Yeun
4225 Connecticut Avenue, N.W.
Washington, D.C. 20008

## DECISION AND ORDER

This matter was heard by Coles B. Ruff, Attorney Examiner, on June 20, 1990, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code, section 6-2701 et seq. and Mayor's Order 86-38, dated March 4, 1986. The hearing was conducted pursuant to the District of Columbia Administrative Procedure Act, D.C. Code, section 1-1509 et seq.

Present at the hearing were Thomas Farah, Department of Consumer and Regulatory Affairs (DCRA) zoning inspector, D.C. Fire Inspector William Guffy and the respondent Koo L. Yeun.

1990

On April 25, 1990, Mr. Farah issued Notice of Infraction (NOI) #9053 to the respondent. The violation alleged in the NOI was use of a premises as an automobile repair garage without a certificate of occupancy, which is a violation of 11 DCMR 3203.1. The respondent was served with a copy of the NOI pursuant to 1 DCMR 1102.1.

repair

The NOI instructed the respondent to pay the fine imposed or request a hearing within 15 days. The respondent requested a hearing and denied the violation.

## FINDINGS OF FACT

Based upon the evidence introduced at the hearing, the Attorney Examiner finds as follows -

The respondent operates a business repairing automobiles

in the basement of 4221 Connecticut Avenue, N.W. On March 22, 1989, the respondent was issued a certificate of occupancy to use this premises for "Auto Sale and Sale of Accessory Including Installation." On May 10, 1989, a new certificate of occupancy for the premises to be used for "Retail sale of automobile and accessories including installation" was issued to Van Ness, Inc. The respondent is the president of Van Ness, Inc.

Until 1988 this property was operated as a new car dealership in the name "Connecticut Avenue Nissan." The Nissan dealership had its new car show room on the first floor of the building. The dealership also serviced and repaired automobiles in the basement garage.

After the Nissan dealership vacated the building, the respondent leased the basement garage. The first floor is now operated by another party as a retail store. Although the respondent's certificate of occupancy includes auto sales, the respondent does not sell new cars. The respondent does, however, occasionally sell used cars on behalf of his repair customers. These used cars sales are a small part of the respondent's business on the premises. The cars that are sold are usually stored on a outside parking lot behind the building. The respondent does not, however, have a business license for used car sales.

On April 24, 1990, Mr. Farah visited the premises of 4221 Connecticut Avenue, N.W. Mr. Farah observed cars being repaired in the basement and sections of the basement being used for auto body work and storage of auto parts.

Mr. Farah contacted Inspector Guffy, of the D.C. Fire Department and requested the he also inspect the respondent's garage. Inspector Guffy conducted his own inspection on June 1, 1990. Inspector Guffy also observed automobiles being repaired in several places on the premises. He cited the respondent for several fire code violations, which the respondent has corrected.

The respondent advertises his business in the yellow pages as an auto repair business. There is no mention in the advertisement of auto sales or auto accessory sales and installation.

## RESPONDENT'S ARGUMENTS

The respondent has been issued a certificate of occupancy for "Auto Sale and Sale of Accessory Including Installation."

He maintains that his certificate of occupancy allows him to repair automobiles on the premises and that his use of

installation." The respondent did not state what type of automotive accessories he sells. He did, however, say that he repairs automobiles.

The Yellow Pages advertisement for the respondent's business introduced by the government reads:

> "Van Ness Car Care Centre - Service and Repair
> All types and kinds of automobiles."

The advertisement does not mention auto accessory sales.

"Auto repair" is not defined in the zoning regulations either. However, the zoning regulations define a "repair garage" as follows:

> " 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."

It is evident from the testimony of Mr. Farah, Inspector Guffy and the respondent, as well as the respondent's advertisement, that the respondent's business more closes reflects an repair garage rather than automotive sales and accessories sales and installation. Assuming respondent actually sells automotive accessories, these sales as well as used automobile sales are simply incidental to the respondent's primary business. Therefore, the Attorney Examiner concludes that the respondent is actually operating an auto repair garage.

needs ZA approval

Pursuant to 11 DCMR 743.1 a repair garage is only allowed in a C-3-A zone with a special use exception approved by the Board of Zoning Adjustment (BZA). In July 1965, Flood Pontiac Company, apparently the first occupant of the premises, applied for and later received a certificate of occupancy for "automobile sales and repair garage." The certificate of occupancy was apparently approved with consideration of a decision by the BZA in June 1965 (BZA #8250) allowing construction of the building as an "office and garage building."

That certificate of occupancy apparently remained in effect until 1983 when Connecticut Avenue Datson, later known as Connecticut Avenue Nissan, occupied the premises. The use of the premises evidently remained the same - new automotive sales and repairs. However, the new certificate of occupancy was issued for "automobile sales and service." In 1983 a new certificate of occupancy was issued to reflect the name change from Datson to Nissan. The use description was also changed on the certificate of occupancy to "motor vehicle dealer." It is not apparent why the use described in these

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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DEPARTMENT OF CONSUMER
AND REGULATORY AFFAIRS

vs. 92-OAD-1683-E

YUEN L. KOO, PRESIDENT
VAN NESS INC.
C/O Peter T. Meszoly, Esquire
Stohlman, Beuchert, and Egan, Chartered
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Respondent

## DECISION AND ORDER

### BACKGROUND

This matter came before Rohulamin Quander, Attorney Examiner/ALJ (the ALJ), the Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), on May 20, 1992, on the allegation that the Respondent was operating a repair garage without a certificate of occupancy (C of O), in violation of Title 11, D.C. Municipal Regulation (DCMR) 3203.1. The Respondent denied the allegation. While the ALJ had the matter under advisement, DCRA filed a Motion to Reopen the Record on June 23, 1992, to receive additional evidence that allegedly was not available at the time of the initial hearing. The hearing on the Motion to Reopen the Record

was conducted on September 10, 1992.

The record, as to the Motion to Reopen, closed on October 5, 1992, by which time each side had submitted proposed findings for the ALJ to consider as a part of his deliberations.

Several observers from the general public and representatives from Goodyear, Inc., attended the hearing, but none testified on behalf of either party. Participating at the hearing or the subsequent oral argument on the Motion to Reopen the Record were: Koo L. Yuen, Respondent (the Respondent); Peter T. Meszoly, Esquire, Respondent's legal counsel; Melanie Saunders, Esquire, DCRA's legal counsel; Gus Aluko, Zoning Inspector, DCRA; Thomas Farah, Chief Zoning Inspector, DCRA; and James Delgado, Inspector, Business Inspection Division, DCRA.

## ISSUES

There are two issues to be decided:

1. Should DCRA's Motion to Reopen the Record be granted.

2. Does the total record presented herein support a conclusion that the Respondent is misusing his existing certificate of occupancy (C of O), by operating an automobile repair garage without authority for that activity.

## MOTION TO REOPEN THE RECORD

The initial hearing was held on May 20, 1992. While the ALJ had the matter under advisement, and before he issued his Decision and Order, DCRA filed a Motion to Reopen the Record, seeking leave to

submit allegedly new, relevant evidence concerning the types of automotive repairs being conducted by the Respondent at the business site. The Motion hearing was held on September 10, 1992.

The Respondent vehemently opposed the Motion, noting that DCRA's belated decision that other and different evidence would be preferable to that initially presented, amounts to two bites at the apple. The Respondent argued that DCRA should not be allowed to go back and "fix" the evidence to suit its case, using photographs taken by Mr. Delgado on or about May 28, 1992.

DCRA argued that the disputed new evidence concerning what kind of auto service the Respondent was providing, was simply not available on the date of the citing official's March 12, 1992, initial visit.

DCRA also argued that the Respondent admitted, during the initial hearing, that he was conducting "minor" auto repairs rather than "major" auto repairs which required a type of C of O he did not possess. This admission was allegedly a surprise to DCRA, which then sought independent evidence to verify the exact nature of the ongoing repair activity. DCRA reaffirmed its initial conclusion that the Respondent's services were exceeding his C of O's limitations.

In the interest of judicial economy, the ALJ allowed Mr. Delgado to testify to expand on his previously submitted affidavit and to present the five (5) photographs he took during his May 28, 1992, visit to the Respondent's premise. All parties were advised that both his testimony and the photographs were received, subject to

the ALJ's determination whether to grant or deny the Motion to Reopen the record.

In his September 10, 1992, testimony, Mr. Delgado gave the details of his May 28, 1992, unannounced visit to the Respondent's place of business. He found, based upon the nature of the repairs being made, that the Respondent was engaging in automobile repairs beyond the scope allowed by the existing C of O.

To both the ALJ's and Respondent counsel's inquiry as to why this information was not presented during the initial hearing, DCRA maintained that the photographic evidence had not previously been created. Inspector Delgado was only directed to inspect and photograph the premises after the original infraction hearing had taken place, as the extent of the work the Respondent was performing was not fully realized until the Respondent made certain statements during the initial hearing which prompted further investigation.

DCRA further maintained that because the Respondent was represented by counsel at both the initial and motion hearings, and afforded ample opportunity to cross examine Inspector Delgado, and to introduce rebuttal evidence, the Respondent did not suffer any deprivation of his legal rights in this matter, and that reopening the record provides a more complete record and serves the ends of essential justice.

It is well established that in the absence of legislative restriction, administrative agencies have the inherent power to reopen, to modify, or to rehear a case, as long as the power to do so

is exercised reasonably. Posner v. Martin, 135 A 2nd 156 (D.C. Mun. App, 1957).

The ALJ is not convinced that the supposedly "new" evidence was unavailable and could not have been obtained prior to the May 20, 1992 hearing. In addition, the Respondent was previously known to DCRA as a possible C of O law violator, having been found fully liable in his prior case held before Attorney Examiner/ALJ Coles Ruff, in 90-OAD-1726-E, issued July 17, 1990.

Having taken the entire situation into consideration, the ALJ will deny DCRA's Motion to Reopen the Record and will render his decision based solely upon the evidence presented at the May 20, 1992, hearing and the respective Memorandums of Law submitted by counsel.

**FINDINGS OF FACT**

1. Respondent, Koo L. Yuen, is the President of Van Ness, Inc., which operates a Texaco service station under the trade name of Van Ness Car Care Center at 4225 Connecticut Avenue, N.W. and an auxiliary auto service facility in leased space in the basement of 4221 Connecticut Avenue, N.W., Washington, D.C., with entrance through the alley behind the building. (Testimony of Respondent)

2. 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. Both automobile dealerships were located in C3-A zones. Automobile dealerships are allowed as a matter of right in that zone, and had C of O's for that operation. (Testimony of Respondent; 11 DCMR 721.3(d); ALJ research on utilization history of premise)

3. The Respondent also operates as an independent dealer for the Goodyear Company, and is listed in periodic Goodyear Company advertisements as providing quality Goodyear tires and auto service. (Government Exhibit #3C)

4. The Respondent also places periodic automobile service advertisements in newspapers of general circulation, including the Uptown Citizen, advertising 21 automobile bays available for service and repairs of all types and kinds of automobiles. (Testimony of Farah; Government Exhibit #3B)

5. Although the nature of the automobile servicing provided varies from printed advertisement to advertisement, typically they state that the Respondent will provide "quality tires", "auto service", "oil change, chassis lube and oil filter", "preventative maintenance check", and "service and repairs", and is an "import and domestic car specialist". (Government's Exhibit #3B, 3C, and #4)

6. On May 10, 1989, the Respondent filed an application for the C of O for the 4221 Connecticut Avenue, N.W., address, listing the proposed use at item 10 on the application form as, "Automobile sale and sale of accessory [sic] including installation." At item 30, "prior use", the Respondent noted that the use was unchanged.

(Respondent Exhibit #1)

7. Because of the prior use history of this premises for the sale of automobiles by other businesses, C of O #B156843 was issued on May 10, 1989, (the date of the application), without an on site inspection by DCRA staff. The C of O lists the purpose as "Retail sale [sic] of automoble [sic] and accessories including Instalation [sic]." (Respondent Exhibit #2)

8. ALJ Coles B. Ruff's Decision and Order in 90-OAD-1726-E (NOI #9053), was issued after a full evidentiary hearing into allegations that this Respondent was operating an automobile repair garage without a C of O. (Government Exhibit #1)

9. The key facts found by ALJ Ruff are the same as found here, namely:

a) 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;

b) 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.

10. The Respondent presented copies of C of O's of several other automobile repair garages, all of which, according to the Respondent, were located in areas zoned C2-A.

## CONCLUSIONS OF LAW

## DCRA v. YUEN L. KOO, ET AL, 92-OAD-1683-E

1. The Respondent has again violated 11 DCMR 3203.1, by operating an automobile repair operation in a C3-A zoned area, without the mandatory C of O for that particular use at this site.

2. The ALJ sees no real difference between this present case and the fact pattern of the 1990 Decision and Order, which case resulted in the Respondent being held fully liable for the same offense.

3. While the Respondent was not represented by counsel in the 1990 matter, the instruction advising him of his appeal rights were clearly stated. Yet, he elected not to appeal the prior Order, but instead simply ignored the directive.

4. This ALJ incorporates by reference the prior Decision and Order, and its reasoning, and concludes that a C of O issued for retail sale of automobiles and accessories, including installation, is not a blank check to engage in what the Respondent himself calls "minor" automobile repairs.

5. The Respondent presented copies of C of O's of several other automobile repair businesses which are operating in largely residential areas, but which are located in zones designated as C2-A, a more restrictive zone than the Respondent's current C3-A location. However, the Respondent presented no evidence whether any of these businesses sought or obtained a Board of Zoning Adjustment (BZA) variance for the use of their locations, or might have been allowed to remain at these locations on the basis that the site use was established prior to 1958 (i.e. grandfathered in), and therefore

allowed under a special exception.

6. 11 DCMR 801.7(h) establishes the use and operation of an automobile repair garage as a matter of right in a C-M district only. The operation of Respondent's type of business in a more restrictive zone requires that the Respondent's business site have either a C of O granted via a BZA variance, or is entitled to the grandfathered in exception. In either circumstance, the history of the granting of the C of O would have been appropriately reflected in the DCRA application record.

7. Both retail and service businesses which are allowed as a matter of right in C2-A zones (a more restrictive zone than the C3-A) can generally operate in the C3-A zone, since the latter is less restrictive than the former.

8. The Respondent's C of O application failed to reflect the diverse nature of the business he was undertaking. Instead, the Respondent has intentionally clouded the issue, by claiming that because retail sales of automobiles and accessories, including installation, is allowed, as a matter of right in a C2-A zone, he can also operate that same type of business in the less restrictive C3-A zone as a matter of right.

9. His reasoning is faulty, having been based upon the premise that he is operating a retail automobile sales business in addition to the repairs that he is making. But his automobile sales business is essentially a fiction. The Respondent admitted that only three to four used cars are sold per month, generally as the result of some

exchange between customers, frequently initiated by virtue of both parties having had automobile repairs made at the Respondent's business.

10. The Respondent advertises that he had 21 automobile service bays available for service and repair. Nowhere in any of the advertisements presented at the hearing or submitted to the record, does either the statement "automobile sales" or "sale of automobile accessories including installation" appear. Instead, the Respondent testified on direct that he performed the following alleged "minor" repairs; automotive maintenance; service to air conditioning systems; tire sales, installation, and servicing; battery and head lamp installation; brake service; tuneups; fan belts; and "all things traditionally done at Jiffy Lube and Precision Tune."

11. The Respondent denied that he performed any "major" repairs, i.e. engine removal, overhaul, and rebuilding; body or fender repairs; transmission work; upholstery; or automotive painting; etc. However, the type of automobile work his company does perform, including his very aggressive advertising effort, attracts enough business to keep his 21 services bays in operation.

12. The Respondent thus operates an automobile repair business, without the proper C of O, and is trying to pass off the legal requirements by maintaining that he is a retail automobile sales and accessories business.

13. The Respondent is well aware that a C of O is both site and use specific, and that a business owner cannot change the

characteristic and use of the premise as he has done here.

14. In addition, the plain meaning of a C of O for retail sales of automobiles and accessories, including installation, does not permit the party holding the C of O to engage in a comprehensive line of automobile repairs, even if in the so-called "minor" repair category. Likewise, the automobiles being repaired or serviced were, by the Respondent's own admission, not those initially sold by this business, and are, therefore, not a subordinate part of the principal business.

15. In the Respondent's 1990 case, and again in the present matter, the Respondent attempts to place great emphasis upon the supposedly accessory installation aspect of his business, taking the position that the installation and repair of brakes, tune ups, air conditioning, etc., were really providing accessories for the vehicles in his shop.

16. Webster's Dictionary defines "accessory" as:

> an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else (auto accessories)

17. 11 DCMR 199.1 defines "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, equippings or repair.

18. The plain meaning of these two definitions clearly underscores that the Respondent's business is a "repair garage" and not a retail sale of automobiles and accessories, plus installation.

Respondent's election not to perform all of the categories of auto repair, including engines and transmission overhaul or rebuilding, does not lessen the fact that he has been and continues to operate an automobile repair business, for which he had no C of O.

19. No matter what the Respondent calls his business, it is an automobile repair garage, and cannot be operated at this C3-A zoned location without a site and use specific C of O, which would apparently require a BZA approved variance. The Respondent's C of O is clearly invalid.

20. The ALJ concludes 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, 1989. The Respondent's utilization at the site must be subordinate to the stated purposes of the C of O, but it is obvious that Respondent is not engaging in either the retail sale of automobiles, other than on rare occasions, nor is he operating an automobile accessory, including installation, business.

**ORDER**

Accordingly, it is this 23rd day of November, 1992,

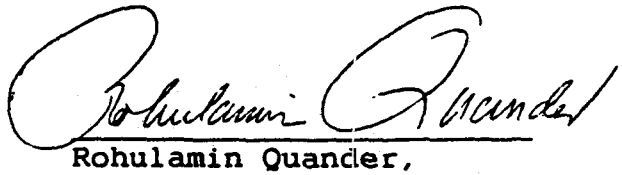
**ORDERED** that DCRA's Motion to Reopen the Record is **DENIED**; and it is

**FURTHER ORDERED** that the Respondent, Koo L. Yuen, President, Van Ness, Inc., and Van Ness, Inc., is found to be fully liable for violation of the Certificate of Occupancy laws of the District of Columbia, with a full fine of $500, and court cost of $25 to be

imposed, a total of $525; and it is

**FURTHER ORDERED** that the Building and Land Regulation Administration, DCRA, is directed to take immediate steps to vacate Certificate of Occupancy #B156843; and it is

**FURTHER ORDERED** that the Respondent immediately cease and desist the operation of the automobile repair business at 4221 Connecticut Avenue, N.W., 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.



Rohulamin Quander,
Administrative Law Judge, D.C.

**IMPORTANT NOTICE**

Respondent's failure to appeal this decision or to arrange for payment of all fines, penalties, and costs within fifteen (15) calendar days of service of this decision shall operate to suspend automatically the license or permit until the assessment is paid, thereby subjecting the Respondent to subsequent and enhanced violations or unpermitted activity.

**APPEAL RIGHTS**

This decision is final. The Respondent may appeal this decision if the Respondent feels that the decision is erroneous. Complete information concerning appeal procedures is available from the Office of Civil Infractions, DCRA, 613 G Street, N.W., Seventh Floor, Washington, D.C. 20001, (202) 347-8530.

All notices of appeal must be submitted within fifteen (15) calendar days of the date of service of this decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
613 G STREET, N.W., SUITE #729
P.O. BOX 37140
WASHINGTON, D.C. 20013

DEPARTMENT OF CONSUMER
AND REGULATORY AFFAIRS

vs. 92-OAD-1683-E

YUEN L. KOO, PRESIDENT
VAN NESS, INC.
c/o Peter T. Meszoly, Esquire
Stohlman, Beuchert, and Egan, Chartered
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Respondent

## DECISION AND ORDER

## MOTION TO CLARIFY ORDER OR STAY SANCTIONS PENDING APPEAL

A Decision and Order was rendered in this matter by Rohulamin Quander, Attorney Examiner/ALJ (the ALJ), Office of Adjudication, Department of Consumer and Regulatory Affairs (CAD, DCRA), on November 23, 1992, which found the Respondent fully liable for violation of 11 DCMR 3203.1, operating an automobile repair garage without a valid certificate of occupancy (C of O) for that activity at that location. Fines totalling $500, plus court costs of $25 were imposed, for a total of $525.

On December 22, 1992, pursuant to 1 DCMR 1119, Respondent filed a Motion to Clarify Order Or Stay Sanctions Pending Appeal, together with a Notice of Appeal. When Advisory Neighborhood

Commission 3F (ANC 3F) belatedly learned of the Decision, their Commission Chairman, Charles R. Braun, was granted leave by Donald J. Sheehy, Chief Administrative Law Judge, OAD, DCRA, to file an Opposition to Respondent's Motion by February 19, 1993.

After a review of the record and evidence contained therein, the Respondent's submission in support of his Motion, and the opposition thereto, the ALJ concludes, for reasons set forth below, that the Motion must be denied.

Barry v. Washington Post Co., 529 A.2d, 319 (D.C. 1987), citing In Re Antioch University, 418 A.2d 105, 109 (D.C. 1980), stated that:

> To prevail on a motion for a stay, the movant must show that he or she is likely to prevail on the merits, that irreparable injury will result if the stay is denied, that opposing parties will not be harmed by the stay, and that the public interest favors granting the stay.

The ALJ believes that the Respondent has failed to meet any of the above guidelines. First, the Respondent has not shown that he is likely to prevail on the merits. Conversely, evidence presented at the hearing revealed possible misrepresentation by the Respondent at the time he obtained his first C of O in 1989. As noted in the Decision and Order, the Respondent is operating a repair garage under the guise of a C of O which states, "Retail sales of automobiles plus installation". The ALJ concluded that the Respondent maintained a fiction for several years to justify his claim to entitlement to the C of O issued in May 1989.

Therefore, because he is operating without the correct C of O

for existing use, despite three prior directives to correct the problem, it is highly unlikely that he can prevail on the merits. The Respondent was previously directed by Joseph Bottner, Zoning Administrator, Bureau of Land Regulation Administration (BLRA), DCRA, to come into zoning compliance. In addition, Coles B. Ruff, Attorney Examiner/ALJ, issued a Decision in 90-OAD-1726-E, on July 17, 1990, which advised the Respondent that he needed Board of Zoning Adjustment (BZA) approval in order to continue his business operation at this location. Then on November 23, 1992, the ALJ herein reiterated the prior directives, holding the Respondent fully liable for his law violations.

Second, the Respondent is hard pressed to show irreparable injury. Although the Respondent might sustain some economic loss and personal embarrassment if he were shut down by DCRA, mere potential economic loss does not justify the Respondent's open and notorious continuation of his operation. In addition, because the Respondent has noted an appeal, DCRA will take no steps to close his operation pending the appeal's outcome. The key word in this consideration is "irreparable" and "[m]ere injuries, however, substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." [1] The ALJ notes that although the Respondent is a repeat offender, he was not cited as such.

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[1] Virginia Petroleum Jobbers Association v., Federal Power Commission, 104 U.S. App. D.C. 106, 110, 259 F2.2d 921, 925 (1958).

Concerning the third (opposing parties will not be harmed by the stay) and fourth criteria (the public interest favors granting the stay), the Respondent's Motion fails to adequately address these two components to justify granting a stay.

The community representatives maintain that their constituency has been and continues to be harmed by the Respondent's ignoring three directives to obtain the correct C of O. This process would require the BZA to reach a decision after hearing and evaluating all of the evidence, which would most certainly include objection from the surrounding community, which has been pursuing this matter for several years.

The Respondent has likewise failed to demonstrate how granting his request for a stay would not be a disservice to the public interest. Since at least 1990, the community has consistently demanded that applicable zoning regulations be enforced. The Respondent's continuous flaunting of this law violation in no way serves the public interest, and impedes the D.C. Government's ability to enforce its own laws.

The Respondent requested a clarification of the initial Decision and Order, expressing concern that the ALJ's Order would be immediately executed upon by BLRA, DCRA, with imminent action to be taken by BLRA to vacate C of O #B156843, and implement a forced closing of the Respondent's automobile repair business, despite the existence of a pending appeal before the Board of Appeals and Review.

Prior to the issuance of this Order, the ALJ verified with the Zoning Division, BLRA, that, pending the outcome of Respondent's appeal, no action will be taken by that office to either vacate C of O #B156843, or to enforce a cessation of the Respondent's business.

## O R D E R

**THEREFORE,** for the foregoing reasons, it is this 22nd day of February, 1993,

**ORDERED,** that the Motion For Stay and the Motion to Clarify Order Or Stay Sanctions Pending Appeal is **DENIED.**

Rohulamin Quander,
Attorney Examiner/ALJ, D.C.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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TEL. (202) 442-8167

DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Petitioner

Case No. 99-OAD-1821-E
Citation No. 032834

V.

Kuri Brothers, Incorporated

Respondent

**DECISION AND ORDER**

Procedural History

Respondent Kuri Brothers Incorporated, was issued Notice of Infraction #033729 of April 27, 1999, for operating an automobile repair garage within a C-3-A zoned area without a Certificate of Occupancy. At the request of the Respondent, a hearing was held before the Honorable Lennox J. Simon, Administrative Law Judge (ALJ), D.C. Department of Consumer and Regulatory affairs (DCRA), Office of Adjudication (OAD) on August 11, 1999. The hearing was convened pursuant to DCRA Civil Infractions Act of 1995, D.C. Law6-42, D.C. Code6-2701et seq; and the D.C. Administrative Procedures Act, D.C. Code, Sec. 1-1501 et seq

Present at the hearing were: Yvonne Rockett, Zoning inspector; Tore Bello, Zoning technician; Michael D. Johnson, Zoning Administrator; Matther Green, Jr, Esquire, Counsel for DCRA; Priscilla M. Ford, Receiver / intervener; Pat Brown, Esquire and James Sadowski, Esquire, Counsel for Receiver; Kris Kuri, Respondent; Stephen Hessler, Esquire, counsel to Respondent; and Koo Yuen/ Vaness, Incorporated, Respondent's landlord.

As a preliminary matter Prior to the hearing, Grubb & Ellis Management Services, Inc., court appointed Receiver of the subject property located at 4221 Connecticut Avenue, N. W., Washington, D.C., through its attorney James Sadowski, Esquire, of the law firm of Greenstein, Delorme and Luchs, LLC, moved to intervene in this action, and be permitted to present evidence and testimony at this hearing. The Receiver contended that it had a clear interest in the proceedings because the lessor of the premises obtained an improper certificate of occupancy, and the sub-lessor then "piggybacked" upon the improperly issued Certificate of Occupancy and obtained their own Certificate of Occupancy for an "Automobile Service Center". The (ALJ) after hearing the proffers of all parties involved denied this motion thereby disallowing intervention and proceeded with the hearing on the merits..

## ISSUES PRESENTED

Whether Respondent was operating an automobile repair business on April 27, 1999, at 4221 Connecticut Avenue, N.W. without a Certificate of Occupancy in violation of Title 11 DCMR 3203.1?

## *FINDINGS OF FACT*

After a careful evaluation and analysis of the evidence and information, the ALJ finds as a matter of fact that:

1. Respondent Kuri Brothers is incorporated under the laws of the District of Columbia, and Is located at 4221 Connecticut Avenue., N.W., (basement level) N.W., Washington, D.C.

2. On August 12, 1998, Certificate of Occupancy No. B00181657 was issued to the Kuri Brothers, Inc. at 4221 Connecticut Avenue N.W., (basement level) for the purpose of operating an "Automobile Service Center". ( Gov't. Exhibit No. 3A )

3. The subject property located at 4221 Connecticut Avenue, N.W. Washington D.C. is located in a C-3-A zone area, and is owned by Koo Yuen / Van Ness Incorporated. Respondent Kuri Brothers., Inc, has subleased its basement space from Koo Yuen/Van Ness Inc.

4. The subject property located at 4221 Connecticut Ave., N.W., is under the control of Grubb & Ellis Management Service, Inc., who were appointed receivers on January 8, 1998, by the D.C. Superior Court to manage the premises.

5. The Zoning Regulations distinguished between a repair garage and a retail use, and the sale of automobile accessories including installation. (Testimony of Inspector Rockett)

6. On April 27, 1999, DCRA's Zoning inspector Yvonne Rockette conducted an inspection of Respondent's business and personally observed Respondent's employees working on automobiles: repairing head lights and engaging in under the hood mechanical repair work. As a consequence, NOI #03283 in the amount of $500.00 was issued to Respondent. (Testimony of Inspector Rockett)

7. Respondent's automobile repair garage is located in a zone C-3-A area in Washington, D.C., and, Zone C-3-A does not permit the operation of an automobile repair garage. Only areas Zoned for C-M industrial will permit the operation of an automobile repair garage (Testimony of Inspector Rockett)

8. Respondent is engaged in the business of offering automobile repair services however, Respondent does not have a certificate of occupancy which permits the operation of an automobile repair garage at its current location. (Testimony of Inspector Rockett and Gov't. Exhibit #3A & 3B)

## CONCLUSIONS OF LAW

9. The Respondent has an invalid Certificate of Occupancy for an "Automobile Service Center." While an "Automobile Service Center" is not a defined or recognized term under the D.C. Zoning Regulations. The term denotes the same type of activity which is prohibited in a C-3-A zoned area, repair garage,"

10. The current and longstanding use of the basement space at the subject property has been as an automobile repair garage. In a previous Decision and Order issued November 22, 1992, ALJ Rohulamin Quander made a finding that that the lessor, Mr. Yuen/Van Ness, Inc. operated an automobile repair garage in the basement of the property without a valid Certificate of Occupancy. This decision was subsequently affirmed by the D.C. Board of Zoning Adjustment (BZA) in an opinion written March 30, 1998.

11. On April 21, 1998,the lessor, Mr. Yuen/Van Ness, Inc., after the BZA ruled against him, filed a new application for a Certificate of Occupancy and indicated that the new operation would be an "Automobile Service Center" even though no such an entity existed in the D.C. Zoning Regulations. The Respondent Kuri Brothers Inc, (sub-lessor) has elected to "piggyback" upon this "Automobile Service Center" concept used by mr. Yuen/Van Ness, Incorporated.

12. The purpose of the D.C. zoning regulations is to insure the protection of the health welfare and safety of the public by bring order to the location of businesses and residential dwellings. In the instant matter "Repair Garages/Automobile Service Centers" produce exhaust fumes, noise and pollution. This is the reason such entities are located in industrial zones. "Repair Garages/Automobile Service Centers" are interchangeable terms, and mean the same thing. Therefore, they should be treated as the same entity.

13. Pursuant to Title 11 DCMR 3203.1, it is unlawful to use any structure, land , or any part of any structure, or land for any purpose other that a one family dwelling until a Certificate of Occupancy has been issued to the person stating that the use complies with the provision of this title and the D.C. building code.

14. The ALJ concludes that the subject Building is zoned C-3-A, which permits specific service, retail, and residential uses as a matter of right. Under the D.C. Zoning Regulations, a repair garage is not permitted use in a C-3-A zone area. "Repair garage is defined in the Zoning Regulations 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 activities.

15. Pursuant to 11 D.C.M.R. §199, pp. 1-17 (July 1995) (Definitions), a repair garage is only permitted as a matter of right in the C-M Industrial District, and is subject to the standard of external effects, including noise, emissions of fumes, vibrations, and other external effects.

16. The ALJ finds the testamentary and documentary evidence of the Government witnesses to be very credible

17. Respondent is a violation of 11 DCMR 3203.1, by operating his automobile repair garage at 4221 Connecticut Avenue, N.W. Washington, D.C. without a Certificate of Occupancy which permits such operation.

## ORDER

Therefore it is Ordered this 27th day of December 1999, that NOI#032834 is hereby and the same is Upheld. Fine imposed is $500.00, Court cost is $40.00, for at total assessment of $540.00 made payable to the District of Columbia Treasurer.

FURTHER ORDERED: that Respondent Kurt Brothers, Inc Cease and Desist the operation of its Automobile repair garage at 4221Connecticut Avenue, N.W., until such time that its obtains an exception from the District of Columbia Board of Zoning Adjustment.

Lennox J Simms
Administrative Law Judge, D.C.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
941 NORTH CAPITOL STREET, NE ROOM 9100
P.O. BOX#37149
WASHINGTON, DC 20013-7200
TELEPHONE (202) 442-8167

Pat Brown, Esquire
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, NW
Suite #900
Washington, DC 20036

NOI No: #32834

## CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order rendered on 12/27/99 for the above referenced case was Mailed postage prepaid on 12/29/99 to the respondent at the address listed above.

Stacey Washington for
~~Belva D. Newsome~~, Chief Administrative Law Judge

# 7

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RICHARD W. LUCHS
JUDITH R. GOLDMAN
JACQUES B. DeHUY
JEFFREY H. GELMAN
ALAN E. WEITZ
STEPHEN H. ABRAHAM
LEWIS F. MORSE
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NEW YORK, NEW YORK 10025
(212) 864-1099
FACSIMILE (212) 666-1535

January 21, 2000

VIA HAND DELIVERY

Mr. Armando M. Lourenco
Administrator, Building and Land
Regulation Administration
Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.E.
Room 2000
Washington, D.C. 20002

Re: Illegal Automobile Repair Garage in the Basement of 4221 Connecticut Avenue, N.W. (the "Property")

Dear Mr. Lourenco:

This law firm represents Grubb & Ellis Management Services, Inc., the Receiver appointed by Court order to manage this commercial property owned by 4221 Connecticut Avenue Associates Limited Partnership ("Landlord").

On behalf of the Receiver, I want to bring to your immediate attention and enlist the Department of Consumer and Regulatory Affair's ("DCRA") assistance in responding to a serious and longstanding public health and safety issue. The Property is leased by the Landlord to Van Ness, Inc. ("Tenant") and currently occupied by Kuri Brothers, Inc. which purports to be an authorized subtenant ("Subtenant"). The Property has been used continuously in violation of the Zoning Regulations which prohibit an automobile repair garage in a C-3-A zone.

This illegal use of the property as an automobile repair garage with fifteen (15) service bays has been on-going since at least 1990 when the Tenant was first fined for operating without the required certificate of occupancy. Again, in March 1992, the Tenant was issued a citation for operating the same prohibited automobile repair garage. On May 20, 1992, the Office of Adjudication found the Tenant had been operating an automobile repair garage without a certificate of occupancy and ordered that such use immediately cease and desist. Subsequently, after years of procedural delays by the Tenant, the Board of Zoning Adjustment on March 30, 1998 upheld the decision of the Office of Adjudication. Copy of BZA Order attached.

By order dated December 27, 1999 (attached), the Office of Adjudication once again found that the Property was being occupied illegally; this time by the Subtenant. Specifically, the order held that the Property was being used as an automobile repair garage which is not permitted under the D.C. Zoning Regulations, 11 DCMR 741, without a valid certificate of occupancy. Further, the Administrative Law Judge ordered the Subtenant to cease and desist operations at the Property unless and until it obtains special exception approval for use of the Property from the Board of Zoning Adjustment. To date, the Subtenant continues to operate the illegal automobile repair garage at the Property.

For at least ten (10) years, the Tenant and its successor have been operating an automobile repair garage at the Property illegally despite the District's on-going enforcement efforts. This is not simply a technical violation, but a substantial and deliberate pattern and practice of illegal conduct which poses an on-going and increasing public health and safety danger. It is the Receiver's concern that these inherently dangerous industrial activities are taking place in the basement of a building in close proximity to a high density residential area in such a way as to pose imminent safety concerns to the repair workers, occupants of the adjoining residential and commercial buildings and the community-at-large.

GREENSTEIN DELORME & LUCHS, P.C.



The Receiver is pursuing all its remedies under the lease to correct this serious situation, but believes that the full range of enforcement measures, including health, fire, environmental, building and other agency inspections are warranted to address this serious public safety concern.

At your earliest opportunity, we would like to meet with you and the members of DCRA's compliance and inspection sections to discuss the appropriate enforcement measures. I will contact your office to set up this meeting as soon as possible.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

JPB/dmh
Enclosure 125434

cc: The Honorable Anthony A. Williams
The Honorable Kathy Patterson, Ward 3, City Council
Mr. Lloyd J. Jordan, Dir., DCRA
Mr. Vincent Ford, DCRA
Mr. Philip Kogan, ANC 3F
Ms. Priscilla M. Ford, Grubb & Ellis (w/o encl.)
Abraham J. Greenstein, Esq. (w/o encl.)
Richard W. Luchs, Esq. (w/o encl.)
James D. Sadowski, Esq. (w/o encl.)

# 8

4221 CONNECTICUT AVENUE ASSOCIATES LIMITED PARTNERSHIP
C/O RELM, INC.
6931 ARLINGTON ROAD
SUITE 503
BETHESDA, MARYLAND 20814
(301) 654-2822

March 21, 1989

Mr. Koo Yuen
Van Ness
4221 Connecticut Avenue, N.W.
Washington, D.C. 20006

Re: Basement
4221 Connecticut Avenue, N.W.
Washington, D.C.

Dear Mr. Yuen,

This letter shall set forth our agreement that the existing portions of the subject property presently used for parking shall be utilized for the sole purpose of parking vehicles. Your premises shall have access to the existing 116 parking spaces on the property.

Sincerely,

Steve Rubin
General Partner

SR/md

Agreed and Accepted

By

# 9

2056 - #417-4221 - Conn Ave NW
Lot 801

Variance - Part 3
Use - First com. List. - Extend
auto Repair shop
granted - 10/9/40
Condition - all repairs to
be incidental to new cars only.

E.D. 235-246-3

Mr. Coe: Do you think there will be a demand for enclosed garages?

Mr. Ghent: No. (There followed a lengthy discussion as to lot occupancy, sewer, water, etc.)

Mr. Nolen: I would like to have the net area of property and the number of units and the density. Second, I would like to see in connection with the assumption that streets were put through there what the side yard in observance of the 2 inches for each foot of building length would be, and how much would have to be taken off to see the deficiency in each case. Third, if you had a street running straight xxxx through to another street and figuring the building as fronting on that street what deficiency would be in the rear yard, then we could find what the variance would be.

Mr. Ghent: As to the parking we would provide for 360 or 400 cars.

APPEARING IN OPPOSITION:

None.

The Chairman directed the Secretary to read the notice of appeal #417 which he read as follows:

Public Hrg.

"417. Appeal of the Flood Motor Company, for a variance from the use provisions of the First Commercial District to permit the extension of an automobile repair shop and automobile sales and service agency on lot 801, square 2051 at 4221 Connecticut Avenue, N.W.".

APPEARING IN FAVOR:

Mr. Meigs, Architect.

Mr. Clouser: This set of plans was filed for a regular gasoline and repair garage. The plans were checked for front entrances. Automobile access to the rear of the lot which is closer than 25 feet to residential property. They were informed they/we couldn't accept the plans under those conditions.

Mr. Meigs: The alley is not graded at the present time. This building was erected in 1935 under the old zoning set up where permissions were required and the building occupied xxxx at that time by the owner in good faith and with access to the rear as well as to the street. Under the change in the zoning law the owner

has been permitted to occupy a greater percentage of the lot which is for sales and servicing of new cars. In occupying that greater percentage we are going to be cut of from access to the alley which is valuable to the owner in this business.

Mr. Nolen: How do you mean cuttoff?

Mr. Meigs: If we are not permitted to have doors in the rear of the building so cars c n come from the alley for servicing. (Presents chart showing present provisions for access as to what they would like to obtain).

Mr. Nolen: Did the original permit cover the entire use of the land?

Mr. Flood: I bought the land knowing the front was commercial and knowing the rear 50 feet was zoned residential. That was changed and now the whole thing is commercial. Further than that I didn't have encugh money to build anymore than I had. I need space for servicing new cars principally.

Mr. Nolen: What kind of activities are in the hop.

Mr. Flood: My principal income is from the sale of new and used cars. It seems you have to service new cars and that is all I am interested in the present appeal. I don't solicit people at all. All I want is space for approximately two more cars so I can work on them a little more. I don't have enough service space in the present set up. I paid 3½ dollars a foot and under the present law I can't use it, unless you give permission for a door on the alley.

Mr. Nolen: Under your proposed development can you keep your shop activities 25 ~~fmx~~ feet from the alley?

Mr. Flood: Yes.

APPEARING:

Mr. J. Sanders, Chairman, Zoning Committee,
Forest Hills Citizens Association.

Mr. Sanders: I was asked to come dow and after looking over the ground I didn't see any serious objection although our association has gone on record to stop increasing any commercial zoning. I don't believe from my personal standpoint

that it is a serious matter. I was asked to oppose any further encroachment. I don't believe this is a serious encroachment. If you can restrict it to that kind of shop and not have further repairs I don't think anyone would object. I don't want to oppose it strenously except for our association who did not understand it thoroughly.

The Chairman directed the Secretary to read the notice of appeal #418 which he read as follows:

"418. Appeal of the Trustees of the Masonic Lodge on behalf of Schlegel and Golden, tenants, for permission to establish an automobile sales service agency at the northeast corner of Maple and Carroll Sts., N. W., lot 808, square 3356."

APPEARING IN FAVOR:

Mr. William J. Collin,
604 Ellen St. Takoma Park, Md.

Mr. Clouser: This building is in place and they want to change the entrance.

Mr. Collin: We have a Dodge agency about a block from this and our idea is to move in there with a new car show room. We want it for new car service.

Mr. Coe: No repairs to fenders or body work?

Mr. Collin: No sir.

Mr. Nolen: You would have no objection to it being limited to new car service?

Mr. Collin: No sir. The service is in the rear.

APPEARING IN OPPOSITION:

Mr. W. H. Parson, Chairman, Zoning Committee,
Citizens Asscciation of Takoma, D.C.

Mr. Parson: They sent me to request that the appeal if granted be restricted to servicing of new cars only in the interior. Maple Street is very narrow and if there would be a situation of cars pulling up and servicing in the street it would be bad or any repair business conducted at night would become objectionable. We request that the appeal be restricted to the servicing of new cars and that it be in the building itself.

Mr. Blake:

I move that the following Order be entered:

ORDERED:

That the appeal of the Flood Motor Company, for a variance from the use provisions of the First Commercial District to permit the extension of an automobile repair shop and automobile sales and service agency on lot 801, square 2051 at 4221 Connecticut Avenue, N. W., be granted for the following reasons:

As a result of an inspection of the property by the Board, and from the records and the evidence adduced at the hearing, the Board finds the following facts:

(1) Appellant's property was acquired and improved for use as an automobile sales service agency, and the permission to extend this use to the entire lot is before the Board as a variance only by reason of the fact that automobile openings have been provided at the rear of the building. Were it not for that feature of the plans the appeal could have been filed as a special exception. An examination of the plans as they relate to the building already in place indicates that the removal of these rear openings would impose exceptional hardship upon the owner by reason of the fact that the existing structure is so narrowly constructed as to preclude the necessary maneuvering area for automobiles.

(2) As a result of an inspection of the property by the Board, and from the records and the evidence adduced at the hearing, the Board finds that by reason of exceptional shallowness and shape of the specific property, that the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties, and undue hardship upon the owner of the property. It further finds that relief can be granted without substantial detriment to the public good, and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map.

(3) There was no objection to the granting of this appeal registered at the public hearing.

This order shall be subject to the condition that all repairing shall be incidental to the sale of new cars only.

Mr. Lindholm: I second the motion. Unanimously carried.

# 10

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF COMPLIANCE

Thursday

Mr. Koo L. Yuen, President
Van Ness, Inc.
4225 Connecticut Avenue, N.W.
Washington, D.C. 20016

SERVE: Anthony Chowney, Registered Agent
4225 Connecticut Avenue, N.W.
Washington, D.C. 20016

COMPLIANCE ORDER

RE: 4225 Connecticut Avenue, N.W.

Dear Mr. Yuen:

Please be advised that you are in violation of the District of Columbia Code, Section 5-426, which governs building permits and reads in pertinent part as follows:

> "It shall be unlawful to erect, construct, reconstruct, covert or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit..."

After on-site inspections and a review of Departmental records regarding 4225 Connecticut Avenue, N.W., it has been determined that you have failed to obtain the necessary building permits for several structures on the premises. Therefore, you are hereby ordered to:

1. Remove the storage trailer: Inspections of the site confirm the presence of a trailer which is being used for storage. No building permit was obtained prior to placing this structure on the premises. This structure must be removed within fifteen (15) days of receipt of this Order.

2. Cease operation of the car wash: Inspections of the site and a review of all building permits for the site indicate that a service bay was converted to a car wash without the necessary building permits for such conversion. In addition, the operation of the car wash is deemed to create an unsafe condition for the vehicular and pedestrian traffic in the immediate neighborhood due to the unavailability of resevoir space for cars in line for

the car wash. The car wash operation must be discontinued within 24 (twenty-four) hours of receipt of this Order.

3. Apply for construction permits for the Office: Inspections of the site and a review of all building permits for the site indicate that a service bay was converted to office use without the necessary building permits for such conversion. You are hereby ordered to submit the necessary plans, plat and application and obtain a building permit or remove the office use within 15 (fifteen) days of receipt of this Order.

4. Removal of air hose and vacuum from public space: You are ordered to remove the air hose and vacuum from public space within 15 (fifteen) days of receipt of this Order.

Your failure to comply with this Order within the prescribed time periods set forth will result in this matter being immediately directed to the Office of Corporation Counsel for appropriate action. Noncompliance with the provisions of this Order may result in the imposition of severe penalties. In addition to providing for injunctive and other appropriate relief, D.C. Code, Section 5-426 provides for fines of "$100 per day for each and every day such violation shall continue."

If you have any questions, please direct your inquiries to Miriam Hellen Jones, Esq., Enforcement Officer, on (202) 727-7770.

Sincerely,

Theodore J. Gordon
Acting Chief

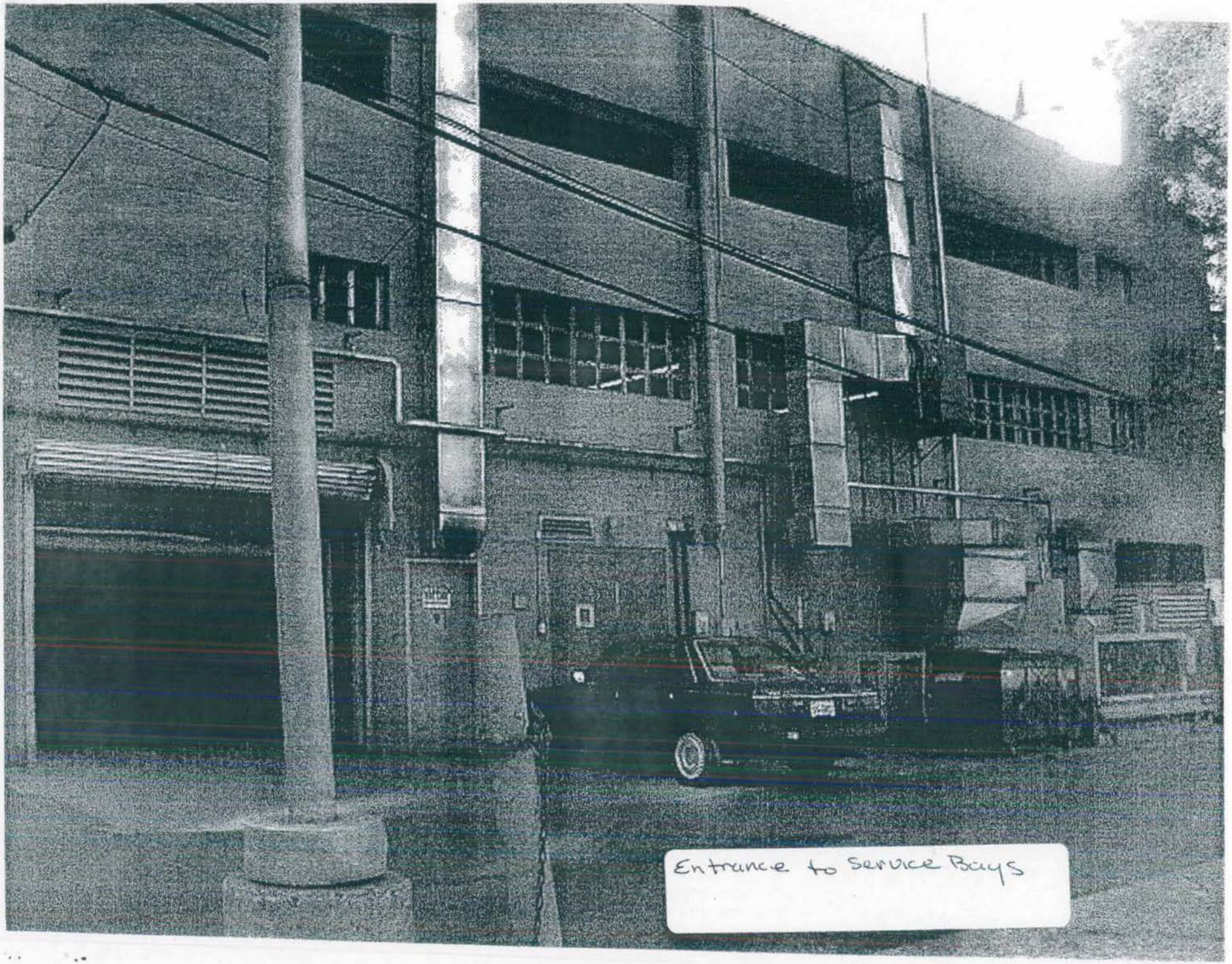
cc: Hampton Cross, Acting Director

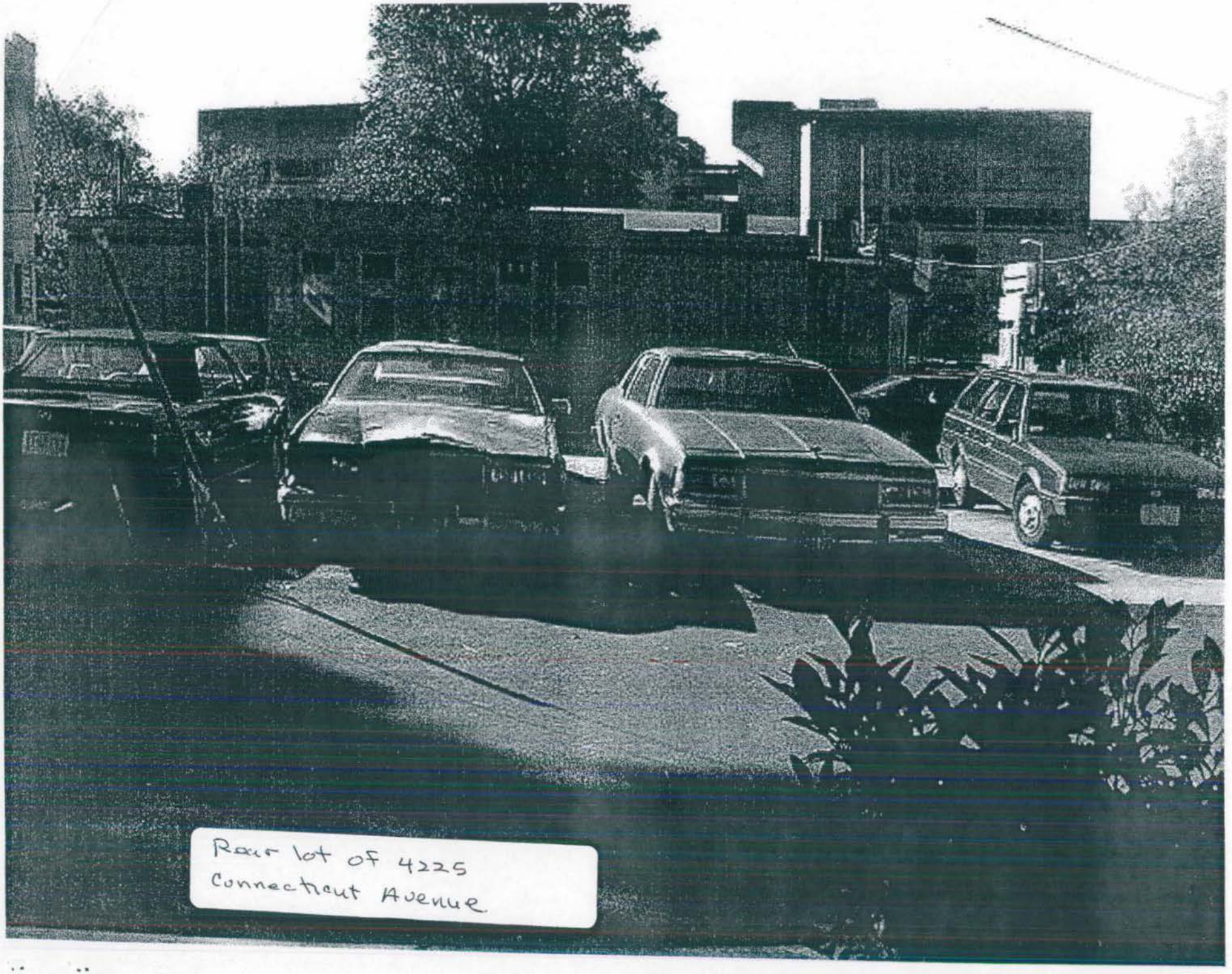
Patricia Montgomery
Acting Administrator
Building & Land Regulation Administration

727-7140

# 11

Front of 4225 Connecticut Avenue showing office and Van Ness South


Entrance to Service Bays

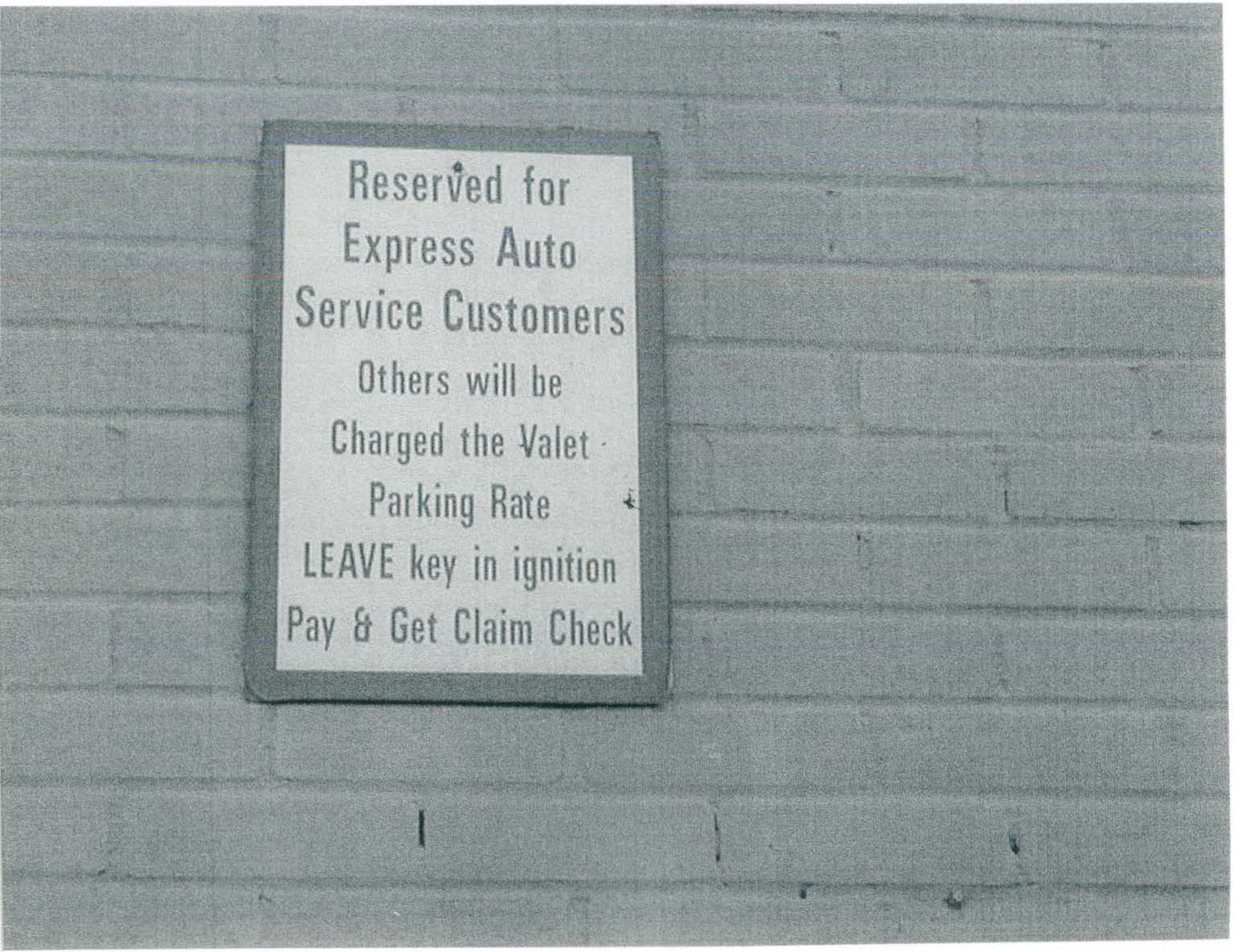

Rear lot of 4225
Connecticut Avenue

Truck and Tow Truck for Van Ness Auto Care parked in "No Standing, no Parking" zone on Reazey Terrace, N.W.

VAN NESS
AUTO CARE
FREE
LIGHT
INSPECTION
ATM
Self Gasoline
87 oct. 1.49⁹
89 oct. 1.63⁹
93 oct. 1.67⁹
Diesel 1.42⁹
CAR WASH

PARK
LOWEST
AUTO CAR
EBESSY CLEANERS

VAN NESS
AUTO
SALES
RELIABLE,
CLEAN USED CARS
NOTICE


Reserved for
Express Auto
Service Customers
Others will be
Charged the Valet
Parking Rate
LEAVE key in ignition
Pay & Get Claim Check

1022 M Street Southeast,
Washington, DC 20003
(202) 543-4211

1601 New York Avenue Northeast,
Washington, DC 20002
(202) 529-0214

1018 Bladensburg Rd Ne,
Washington, DC 20002
(202) 388-5046

Northwest Auto Repairs
5420 New Hampshire Avenue
Northwest, Washington, DC 20011
(202) 722-8863

Panic Auto Repairs
2201 Channing Street Northeast,
Washington, DC 20018
(202) 529-5330

Paul's Auto Repair
2800 10th Street Northeast,
Washington, DC 20017
(202) 529-3191

Petrovitch Auto Repair Inc
2303 14th Street Northwest,
Washington, DC 20009
(202) 387-5871

Potomac Auto Services
1271 1st Street Southeast,
Washington, DC 20003
(202) 484-1611

Rayco Auto Service
7998 Georgia Avenue Silver Spring,
MD 20910
(301) 588-8262

Raygoza's Auto Repair
1454 Church Street Northwest,
Washington, DC 20005
(202) 483-8550

Rhode Island Avenue Service Center
420 Rhode Island Avenue
Northwest, Washington, DC 20001
(202) 232-4097

Riley's Auto Center
Your Radiator Expert
920 W Street Northwest,
Washington, DC 20001
(202) 667-0330

Rock Creek Exxon Service Station
1827 Adams Mill Road Northwest,
Washington, DC 20009
(202) 234-0422

Rodriguz Auto Service
3422 Georgia Avenue Northwest,
Washington, DC 20010
(202) 829-3560

Salvo Auto Repair & Exchange
1900 Bladensburg Road Northeast,
Washington, DC 20002
(202) 636-1605

Sangare's Auto Repair
822 H Street Northeast,
Washington, DC 20002
(202) 544-0626

Singletary's Auto Body Repairs
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1358 Florida Avenue Northeast,
Washington, DC 20002
(202) 388-3400

Sons of Otis Auto Repair
2251 Fairlawn Avenue Southeast,
Washington, DC 20020
(202) 581-5073

Spotless Auto Detailing
4501 Bowen Road Southeast,
Washington, DC 20019
(202) 583-2575

Suburban Transmissions
9160 Bursa Road, Laurel, MD
20723
(301) 362-1200

T-A Auto Repair
1900 Bladensburg Road Northeast,
Washington, DC 20002
(202) 832-5395

Talley's Automotve Repairs
233 Van Buren Street Northwest,
Washington, DC 20012
(202) 291-3377

T Street Auto Services
2410 T Street Northeast,
Washington, DC 20002
(202) 398-8869

Ten Auto Service
2300 Pennsylvania Av Se,
Washington, DC 20500
(202) 575-1598

The Shop Auto Repair
1219 13th Street, Northwest,
Washington, DC 20005
(202) 289-1400

Thomas Car Service Center
1821 14th Street Northwest,
Washington, DC 20009
(202) 387-1666

Tommy's Auto Clinic of Upper
Marlboro Inc
15005 Old Marlboro Park, Upper
Marlboro, MD 20772
(301) 627-4100

Touch Of Love Car Wash Detail
Service Inc
4451 Burroughs Av Ne,
Washington, DC 20500
(202) 396-0096

Trans Auto Service
2106 Rhode Island Avenue
Northeast, Washington, DC 20018
(202) 529-1712

Uptown Auto Parts
Best Automobile Parts & Supplies
Today
6239 Georgia Avenue Northwest,
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(202) 723-1993

URSO Auto Service
Also Accepts Auto Painting
1317 4th Street Northeast,
Washington, DC 20002
(202) 546-2311

Value Auto Service Inc
4140 Georgia Avenue Northwest,
Washington, DC 20011
(202) 722-1841

Van Ness Auto Care
4225 Connecticut Avenue
Northwest, Washington, DC 20008
(202) 966-5955

Victor Auto Service Inc
1021 Brentwood Road Northeast,
Washington, DC 20018
(202) 529-5566

Volvo & Mercedes Motor Cars
Serving You Just Right
Washington, DC 20001
(202) 265-7235

Washington Automatic Transmission
Service
4451 Nnne Hln Brrghs Avenue,
Washington, DC 20019
(202) 396-3636

Washington Jaguar Auto Center
720 Rhode Island Avenue
Northeast, Washington, DC 20018

Youngin's Automotive Service
1940 Montana Avenue Northeast,
Washington, DC 20002

Zee Auto Repair
2205 14th Street Northwest,
Washington, DC 20009

EXHIBIT "B"

21
SERVICE
BAYS

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LATEST DIAGNOSTIC • TUNE-UP • BRAKES
EXHAUST • ALIGNMENT • TRANSMISSION
ELECTRICAL • DETAILING • TOWING SERVICE

# VAN NESS AUTO CARE

4225 Connecticut Avenue, N.W.
Washington, DC 20008
Across from UDC & Next to Van Ness Metro
Tel. (202) 966-5955