

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Appellee

v.

KURI BROTHERS, INC.

Appellant

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Appeal No. 17444

**APPELLANTS' REVISED PRE-HEARING INFORMATION REPORT AND REQUEST
TO SUBMIT PRE-HEARING BRIEF ON OR BEFORE JULY 20, 2006**

Appellant, Kuri Brothers, Inc. ("Appellant"), by and through Tamir Damari, its undersigned counsel, hereby files this Revised Pre-Hearing Information Report and Request to Submit Pre-Hearing Brief on or Before July 20, 2006 and states as follows:

As this Board is aware, the instant appeal stems from the revocation by the District of Columbia Department of Consumer and Regulatory Affairs (the "DCRA") of Appellant's Certificates of Occupancy for two premises located at 4221 and 4225 Connecticut Avenue NW, Washington, DC. At the April 26, 2006 hearing on this matter, this Board dismissed the Appellant's appeal with respect to 4221 Connecticut Ave for lack of subject matter jurisdiction, and concomitantly re-scheduled the hearing pertaining to the revocation of Appellant's Certificate of Occupancy for 4225 Connecticut Avenue, NW for September 19, 2006. During this same hearing, this Board directed Appellant to file, on or before July 17, 2006, a detailed outline of the arguments Appellant wishes to assert on appeal. The instant filing is intended to comply with this

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EXHIBIT NO. 21

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mandate.

At the hearing, Appellant intends to proffer the following arguments:

1. That the DCRA proffers no factual evidence in support of its contention that Appellant's Certificate of Occupancy (the "Certificate of Occupancy") for 4225 Connecticut Avenue NW (the "Premises") was issued in error;

2. That the DCRA misstates the facts by representing in its August 4, 2005 Notice of Revocation that it determined that an Automobile Service Center was "not an appropriate use in a C-3-A Zone."

3. That the DCRA's current claim that an Automobile Service Center is not an appropriate use in a C-3-A Zone is belied by the positions taken by the DCRA throughout prior proceedings relating to the Appellant; thus, the DCRA is judicially estopped from taking this position in the instant appeal.

4. Neither this Board, nor the District of Columbia Court of Appeals, has ever determined that an Automobile Service Center is not a permitted use in a C-3-A zone.

5. That the DCRA's present contention that it cannot create use designations which are not defined in Title 11 of the District of Columbia Municipal Regulations, ignores the DCRA's past practice, where it has routinely created new use classifications for automotive-related facilities.

6. That the DCRA's revocation of Appellant's Certificate of Occupancy prejudices Appellant, because it prevents Appellant from conducting business activities that it would otherwise be permitted to conduct at the Premises.

7. Even assuming *arguendo* that the DCRA's issuance of a Certificate of Occupancy to Appellant for an Automobile Service Center was an error, the doctrine of

laches prevents the DCRA from revoking this Certificate of Occupancy.

Appellant reserves the right to timely supplement this disclosure.

At the hearing of this matter, Appellant intends to introduce the following evidence:

1. Photographs and/or plans of the Premises.
2. Certificates of Occupancy issued to the Appellant on February 17, 2000 and May 14, 2002, authorizing Appellant to occupy the Premises.
3. The DCRA's "Declaration of Use" for a "Gasoline Service Center".
4. The August 4, 2005 Notice pursuant to which the DCRA purported to revoke Appellant's Certificate of Occupancy.
5. The DCRA's Notice pursuant to which it purported to revoke Appellant's Certificate of Occupancy No. B00181657.
6. Excerpts from prior hearings before this Board on January 28, 2003 and April 8, 2003 during which time the DCRA effectively acknowledged the validity of an "Automobile Service Center" use classification.
7. Certificates of Occupancy for other automotive-related facilities in the District of Columbia, containing use designations not found in Title 11 of the District of Columbia Municipal Regulations.

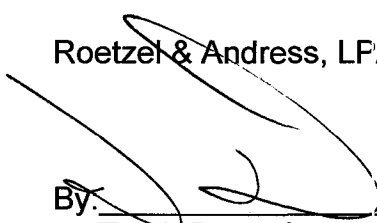
Appellant reserves the right to timely supplement this disclosure.

In order to comply with this Board's directive to Appellant to provide it with "as much detail as possible" regarding the arguments Appellant intends to proffer at the September 19, 2006 hearing, Appellant proposes to file a Pre-Hearing Brief on or before July 20, 2006, a copy of which will be served on all parties via hand-delivery. This Brief

will set forth the Appellant's arguments in greater detail, and will attach all of the exhibits the Appellant intends to introduce at the hearing. Appellant hopes that the submission of this Brief well in advance of the September 19, 2006 hearing will facilitate the September 19 hearing and will vitiate the need for Appellant to file a post-hearing Brief (unless the DCRA or the ANC proffers additional evidence requiring rebuttal by Appellant).

Respectfully submitted,

Roetzel & Andress, LPA

By. 

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Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent via U.S. mail, postage prepaid, this 17th day of July, 2006, to the following:

Matthew Green, Esq.
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Department of Consumer and Regulatory Affairs
941 North Capitol Street N.E., Suite 9400
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Catherine W. Wiss, Chairperson
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Tamir Damari