

ANC 3F RESOLUTION
 REVOCATION OF KURI BROTHERS CERTIFICATE OF OCCUPANCY
APPEAL TO THE BZA
CASE NO. 17444

RECEIVED

D.C. OFFICE OF ZONING

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

SEP 26 PM 2:49

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 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 BZA held a hearing on April 25, 2006, and denied the appeal of Kuri Brothers for the automobile service center at 4221 Connecticut Avenue, N.W., and ordered a separate hearing for the revocation of the permit for an Automobile Service Center at 4225 Connecticut Avenue, N.W.; and

WHEREAS, the premises 4225 Connecticut Avenue, N.W. (Square 2051, Lot 7) is within ANC 3F in Single Member District 3F02, and

WHEREAS, Kuri Brothers, in 2000, applied for and received a Certificate of Occupancy for a Motor Vehicle Fueling Station at 4225 Connecticut Avenue; and,

WHEREAS, in 2002, Kuri Brothers, knowing that the Certificates of Occupancy for an automobile service center at 4221 Connecticut Avenue, had been denied after being the subject of numerous hearings before DCRA adjudicating law judges and several BZA cases, decided to split the Motor Vehicle Fueling Station and create a separate business for an automobile service center at 4225 Connecticut Avenue; and

WHEREAS, on May 14, 2002, Kuri Brothers, Inc., applied for a Certificate of Occupancy for an automotive service center at 4225 Connecticut Avenue, indicating a change of ownership, even though no such business existed at this site previously and this new business was the office of the gas station for the service bays located at 4221 Connecticut Avenue; and

WHEREAS, Kuri Brothers, Incorporated, Koo Yuen, and Van Ness Auto Care have repeatedly been cited and have known since 1990 that operating a repair garage in a C-3-A Zone is a violation of the zoning as stated in an Order for 4221 Connecticut Avenue, dated December 27, 1999, wherein ALJ Lennox Simon found that the Property was being occupied illegally this time by the Subtenant, Kuri Brothers. Specifically, the order held that 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; and

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WHEREAS, ALJ Lennox, in his Order, dated December 27, 1999, regarding 4221 Connecticut Avenue, which is also true for 4225 Connecticut Avenue, stated;

1. "The purpose of the D.C. zoning regulations is to insure the protection of the health, welfare and safety of the public by bringing order to the location of businesses and residential dwellings. In this matter, 'Repair Garages/Automobile Service Center' 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."
2. "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 a 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."
3. "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."

WHEREAS, ANC 3F, does not support the applicant's claim of laches and estoppel;

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 at 4225 Connecticut Avenue, N.W., at 4221 Connecticut Avenue, N.W., and

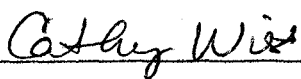
BE IT FURTHER RESOLVED, that ANC 3F does not object to a Motor Vehicle Fueling Station at 4225 Connecticut Avenue, with the two existing service bays, for minor repairs incidental to a gas station; and

BE IT FURTHER RESOLVED, that ANC 3F respectfully requests that the Office of the Attorney General, investigate and determine how and why DCRA has repeatedly erred in issuing Certificates of Occupancy for an Automobile Service Center, 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 Karen Perry has been designated as ANC 3F's representative before the Board of Zoning Adjustment.

Adopted September 18, 2006, by a vote of 4-0-1 at a duly noticed public hearing with a quorum present (4 being a quorum)


Cathy Wiss, Chair


Dan Klibanoff, Secretary