

Form 150 (Revised 04/29/02)		Case No. 17444A	
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">☆☆☆ _____ ☆☆☆</div> <div> BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA </div> <div style="text-align: center;">☆☆☆ _____ ☆☆☆</div> </div>			
MOTION Notice: Click Here for Motion Form Instructions			
Applicant, Appellant, Appellee, Party, Intervener*		Applicant, Appellant, Appellee, Party, Intervener*	
Kuri Brothers, Inc.		VS	
		Department of Consumer and Regulatory Affairs	
Motion of:* (state what you want the Board to do)			
Stay the enforcement of the Order to Cease All Business Operations issued by the Department of Consumer and Regulatory Affairs pending a decision by the Board on its appeal. Appellant also requests the Board to hold an immediate hearing regarding this motion.			
Points and Authorities:* (state the each and every reason why the Board should grant your motion, including relevant references to the Zoning Regulations or Map)			
See attached documents			
CERTIFICATE OF SERVICE			
I hereby certify that on this* 13th		day of* November	
		I served a copy of the forgoing Motion on each	
entity that has requested party status; or entities that have been granted party status – on the above referenced BZA case via*			
☒	First-class Mail	☐	Hand Delivery
☐	Other*	(ATTACH A LIST OF PARTIES SERVED)	
Signature: <i>[Signature]</i>			
Print Name:* Stanley H. Goldschmidt		Firm/Organization:* Roetzel & Andress, LPA	
Address:* 1025 Connecticut Avenue, N.W., Suite 220	City:* Washington	State:* District of Columbia	Zip:* 20036
* In the event an authorized agent files a motion on the behalf of the maker of the motion, a letter signed by the maker of the motion authorizing the agent to act on his/her behalf shall accompany the notice of application.			
To be notified of hearing and decision: (Maker of Motion or Authorized Agent)*			
Name:* Stanley H. Goldschmidt			
Address:* 1025 Connecticut Avenue, N.W., Suite 220	City:* Washington	State:* District of Columbia	Zip:* 20036
Phone No.:* (202)625-0600	Fax No.: (202)338-6340	E-Mail: sgoldschmidt@ralaw.com	
ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.			

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17444A

EXHIBIT NO. 29

2006 NOV 13 PM 2:36

D.C. OFFICE OF ZONING

RECEIVED

Board of Zoning Adjustment
 District of Columbia
 CASE NO. 17444
 EXHIBIT NO. 29
 11/19/2006

The Motion to Stay and the Points and Authorities in Support have been served on the following individuals:

Richard S. Love, Esquire
Chief, Equity Section I
Office of the Attorney General for the District
of Columbia
441 4th Street N.W., 6th Floor South
Washington, D.C. 20001

Matthew Green, Esquire
Office of the General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street N.E., Suite 9400
Washington, D.C. 20002

Catherine W. Wiss, Chairperson
Advisory Neighborhood Commission 3F
4401A Connecticut Avenue NW
Box 244
Washington, D.C. 20008-2322



Stanley H. Goldschmidt

2349 v_01 \ 114572.0003

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

KURI BROTHERS, INC.,

Appellant,

vs.

**DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS,**

Appellee.

APPEAL NO. 17444A

**POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STAY THE
ENFORCEMENT OF THE ORDER TO CEASE ALL BUSINESS OPERATIONS
ISSUED BY THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**

I. RELEVANT FACTS

The instant case arises out of the improper and unauthorized interference by Appellee, the District of Columbia Department of Consumer and Regulatory Affairs (the “DCRA”) through its Office of the Zoning Administrator with the business of Appellant, Kuri Brothers, Inc. Specifically, the DCRA has shut down Appellant’s business operations at 4221 Connecticut Avenue NW, Washington, DC (the “4221 Premises”) on the purported grounds that Appellant was “erroneously” issued a Certificate of Occupancy that authorized Appellant to operate an “Automobile Service Center.” At all times relevant hereto, Appellant’s business at the 4221 Premises has been primarily the limited repair of motor vehicles. There has always been a car dealership performing repair work on motor vehicles, on these premises since the 1930s.

On August 4, 2005, the DCRA transmitted a Notice of Revocation to the Appellant, purporting to summarily revoke Appellant’s Certificate of Occupancy 33951, which permitted Appellant to operate an “Automobile Service Center” at the Premises (“Certificate of Occupancy 33951”). Appellee’s grounds for revocation stated that the certificate had been “issued in error.”

On September 29, 2005, Petitioner timely appealed the DCRA's revocation of the Certificate of Occupancy to the Board of Zoning Adjustment (the "BZA")—appeal number 17444A—on the grounds, *inter alia*, that the DCRA, by summarily revoking the Certificate of Occupancy without affording Petitioner a hearing, deprived Petitioner of its due process rights. This appeal was accepted by the BZA.

On April 25, 2006, a hearing was held before the BZA on the Appellant's administrative appeal. At the conclusion of this hearing, the BZA voted to dismiss the Appellant's appeal of the DCRA's revocation of the Certificate of Occupancy, on the grounds that the BZA lacked jurisdiction to adjudicate the Appellant's due process claim. On May 4, 2006, Appellant filed a Petition for Review before the District of Columbia Court of Appeals (the "Court of Appeals"). This appeal, however, was dismissed on June 29, 2006 because the appeal was apparently taken from a non-final order. In other words, the Court of Appeals determined that Appellant could not appeal the decision of the BZA until such time as the BZA took further action on appeal number 17444A. To date, the BZA has not acted, and Appellant still waits, hopefully not in vain, for a final order to be issued by the BZA.

The District of Columbia Court of Appeals in *Kuri Brothers, Inc. v. D.C. Board of Zoning Adjustment*, 891 A.2d 241, 247 (D.C. 2006) implicitly ruled that the DCRA had the authority to issue certificates of occupancy – such as the one for the 4221 Premises (i.e., an Automobile Service Center) even though this designation is not technically found in the DC Zoning Regulations.¹ Accordingly, after the issuance of this opinion, the Appellant wrote several letters to the District of Columbia Zoning Administrator inquiring as to the uses permitted in an Automobile Service Center so that Appellant could ensure that it was operating within the scope

¹ The DC Court of Appeals did not rule that the certificate of occupancy for an Automobile Service Center was issued in error.

of its certificate of occupancy. The Zoning Administrator failed to respond to these requests and, therefore, on May 18, 2006, Appellant filed a Verified Complaint with the Superior Court (which it subsequently amended as of right on August 25, 2006), requesting declaratory and injunctive relief. Nevertheless, while the Amended Complaint and this BZA appeal remained pending, Appellee, still without having responded to Appellant's several requests to define the uses permitted at an Automobile Service Center, incredulously issued an Order to Cease All Business Operations² (the "Order to Cease") on Friday, September 29, 2006, with respect to the 4221 Premises, and caused the arrest and incarceration of Christopher Kuri, the President of Appellant on October 3, 2006. Appellant's business operations have been curtailed since October 3, 2006 at the 4221 Premises. Appellant's livelihood and the livelihood of its approximately fifteen employees have been put at risk by this conduct.

On November 8, 2006, the Superior Court entered its decision dismissing the Verified Complaint and denying Kuri Brothers' injunctive relief. However, it must be noted that in doing so, the Superior Court took no position on the merits of Appellant's claim. The decision was based purely on jurisdictional grounds – i.e., that "a party aggrieved by an action of the DCRA must first appeal to the DCRA itself...To challenge the DCRA's final action the party must then appeal to the BZA."

As a result, Appellant Kuri Brothers is now filing this Motion for Stay before the BZA to prohibit the DCRA from enforcing its Order to Cease.

² A copy of the Order to Cease All Business Operations is attached hereto as Exhibit 1.

II. LAW AND ARGUMENT

A. The Board Should Stay the Enforcement of the Order to Cease because the Grounds Upon Which it Is Based Are Improper.

Appellee BZA purportedly revoked Appellant's Certificate of Occupancy 33951 because it was "issued in error." Notwithstanding this express grounds for revocation, Appellee BZA has repeatedly focused on whether Appellant Kuri Brothers was operating within the scope of that certificate, rather than focusing on whether it had the authority to issue such a certificate. And for good reason. Appellee and this Board have, on a number of occasions, implicitly and explicitly, indicated that the DCRA indeed has the authority to issue a certificate of occupancy with the use designation of "Automobile Service Center" (consistent with the District of Court of Appeals decision in *Kuri Brothers, Inc. v. D.C. Board of Zoning Adjustment, supra*). Therefore, it could not have been issued in error.

First, the simple fact that certificates of occupancy for "Automobile Service Centers" were issued to the Appellant on three different occasions, and by three different individuals, belies Appellee's claim of "error." It strains credulity for the DCRA (the very body entrusted with enforcing the Zoning Regulations) to now claim that three different individuals "coincidentally" made the same "error" on three separate occasions. Instead, the only reasonable interpretation of the Appellee's actions is to conclude that the certificates were validly issued following the Appellee's reasoned assessment of the Zoning Regulations.

Second, Appellee's authority to issue a Certificate of Occupancy for an Automobile Service Center is supported by the sworn testimony of its own representatives. For example, at an August 11, 1999 hearing before the OAD, Toye Bello, who was a Zoning Administrator of the DCRA, testified regarding the circumstances surrounding the issuance of Certificate of

Occupancy No. 181657 (the first Certificate of Occupancy issued to Appellant for an Automobile Service Center):

Q: And what is your function with the District government?

A: I'm a Zoning Engineer, and I review building permits, Certificate of Occupancies [sic.], and all the duties as a Zoning Technician.

Q: So if a person were to submit an application for a Certificate of Occupancy, would the final approval fall on you?

A: That's correct.

Q: And you would review them; is that right?

A: That's correct.

Q: Do you get involved with other aspects of zoning questions, such as instructions to zoning inspectors?

A: Yes, I do.

Q: All right. I'm going to direct your attention to Government's Exhibit 3-A and B. Now, you've been present during the course of this proceeding; is that right?

A: Yes, sir.

Q: And this document was identified as a Certificate of Occupancy for 4221 Connecticut Avenue. What was the purpose of that Certificate of Occupancy? For what purpose was it issued?

A: *The automobile service center.*

Q: *And is that a result of anything?*

A: *Its [sic.] as a result of my review of application, Exhibit 3-B, in tandem with the previous records of user premises.*

Q: *So in other words . . . did you cause this designation, if you will, on the Certificate of Occupancy to be placed there? That is the designation of auto service center.*

A: *Well, as a reflection of the previous permitted use on the premises, yes, that's correct.*³

³ See August 11, 1999 hearing transcript, attached hereto as Exhibit 2, at 92-93 (emphasis added).

Thus, the testimony of Mr. Bello, in and of itself, plainly establishes that Appellee's repeated issuances of Certificates of Occupancy for Automobile Service Centers were not the result of error. Instead, the issuances were a discretionary determination made by experienced zoning specialists at the DCRA, based upon a thorough consideration of the Zoning Regulations and the history of the use of the 4221 Premises. Furthermore, it should be noted that Mr. Bello was the Zoning Administrator that issued Certificate of Occupancy Number 33951 to Appellant with the use designation "Automobile Service Center," on May 15, 2002.

Appellee's after-the-fact claim that Certificate of Occupancy 33951 was issued in error is further undermined by testimony adduced during a January 28, 2003 hearing before the BZA pertaining to the revocation of Certificate of Occupancy No. 181657. At this hearing, counsel for the DCRA expressly stated that the *sole* basis upon which the DCRA sought to revoke this Certificate of Occupancy was on account of Appellant's conducting business activities *beyond the scope* of this Certificate, thereby *effectively conceding* that the Certificate itself was validly issued:

CHAIRMAN GRIFFIS: *[T]he pertinence of what the appeal is based on goes to . . . why the certificate of occupancy was actually revoked . . . I am not clear on this, what the definitive element is that will be the substance of the appeal . . . Let me just hear from Mr. Green [counsel for the DCRA] briefly. Then I'll stop this.*

MR. GREEN: All right. Again, and I direct the Board's attention to the notice of intent to revoke the certificate of occupancy. What took place here was simply an attempt at accommodating a business merchant

CHAIRMAN GRIFFIS: Okay. Without getting too far into a lot of detail.

MR. GREEN: Yes, I understand. *Now doing major auto engine repair work did not fall within the scope of this understanding. Consequently, we have the issuance of this notice of intent to revoke the certificate of occupancy.*

CHAIRMAN GRIFFIS: Because of the operating outside the scope.

MR. GREEN: *He operated outside the scope.*

CHAIRMAN GRIFFIS: Okay, that's all I need.⁴

By virtue of this colloquy, this Board established the axiomatic premise that any determination regarding the proper scope of a Certificate of Occupancy for an Automobile Service Center necessarily pre-supposes that such a Certificate was validly issued.

Finally, Ms. Gladys Hicks, the Acting Zoning Administrator for the District of Columbia from 1994 through 1999, signed an Affidavit as recently as **October 26, 2006**, stating that the DCRA has the authority to issue certificates of occupancy with use designations that are not identified or defined in Title 11 of the District of Columbia Municipal Regulations.⁵

It follows that if "Automobile Service Center" is a valid use designation, then Appellee has the authority to issue the certificate. Thus, based on the sworn testimony of *not one but two* former Zoning Administrators of DCRA, it could *not* have been issued in error.

The issue of scope now becomes relevant, but only in one limited context. This Board must determine the scope of conduct that may be performed under a certificate of occupancy with the use designation of "Automobile Service Center." This issue has *never* been addressed by either this Board or any of the courts in the District of Columbia. The District of Columbia Court of Appeals in *Kuri Brothers, Inc. v. D.C. Board of Zoning Adjustment, supra* (emphasis added), stated: "Although the term 'automobile service center' is not defined in zoning regulations, 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."

As stated above, in an effort to facilitate a definition of the scope of an "Automobile Service Center" without litigation efforts, Appellant contacted Appellee on several occasions in

⁴ See January 28, 2003 hearing transcript, attached hereto as Exhibit 3, at 139-40 (emphasis added).

⁵ Affidavit of Gladys Hicks, attached hereto as Exhibit 4, at ¶ 4.

writing and asked that the scope of activities in an Automobile Service Center be defined.⁶ Appellee never responded. Instead, Appellee outrageously issued the Order to Cease and subsequently effectuated the arrest and incarceration of Mr. Kuri. It is extremely inequitable for Appellee to be permitted to force Appellant to cease *all* operations when it could simply inform Appellant what activities are permitted under the valid use designation of an “Automobile Service Center.”

The grounds upon which Appellee’s Order to Cease were based are improper because Appellee has the authority to issue certificates of occupancy with the use designation of “Automobile Service Center.” This Board should stay its enforcement until the merits of this claim are considered, or at the very least until a valid definition as to the proper scope of use is provided.

B. The Board Should Stay the Enforcement of the Order to Cease because a Failure to do so Would Cause Appellant Irreparable Harm.

Each day Appellant’s business is prohibited from operations, the likelihood increases that Appellant’s business will completely cease operation. *See* Affidavit of Christopher Kuri ¶ 12.⁷ Appellant’s approximately fifteen employees will lose their jobs. *Id.* ¶ 13. Each of these potential outcomes is a real possibility rather than speculation. The competitive automobile service business is, to a significant extent, a personal service business, where the likelihood of recurring business is based principally upon the trust reposed by the automobile owner in the business-operator. Appellant has continuously operated its business at the 4221 Premises for the past twelve years, and has, during that time, developed substantial client goodwill with a significant client base. If the BZA declines to issue the stay, and the DCRA is thereby permitted

⁶ A copy of the letters are attached hereto as Exhibit 5.

⁷ A copy of the Affidavit is attached hereto as Exhibit 6.

to indefinitely terminate the Appellant's business at the 4221 Premises, the goodwill developed by the Appellant through years of effort will be irredeemably lost by virtue of (among other things) the stigma the Appellant will suffer as a result of being "closed down" by the DCRA.

Furthermore, if the DCRA is permitted to terminate Appellant's business operation, then Appellant's client base (who are for the most part unfamiliar with the nuances of zoning laws and how these laws affect the 4221 Premises) will invariably "assume the worse" about Appellant; i.e., that Appellant's business was closed by the DCRA due to shoddy or unethical treatment by Appellant of its customers. Once Appellant's business is tainted with such a "scarlet letter," even if it thereafter re-opens, it will be nearly impossible for Appellant to recover from the adverse effect of such a taint.

With this Motion, Appellant seeks only to maintain the status quo and stay the enforcement of the Order to Cease until such time as this Board and/or the Court of Appeals can decide the questions before it properly and thoroughly. By this Motion, Appellant is not asking the Board to overturn, forever, the decision of the DCRA. To the contrary, Appellant is asking this Board simply to maintain the status quo until it can resolve the issues before it.

Maintaining the status quo and allowing Appellant to operate at the 4221 Premises is in everyone's best interests. If Appellant is ultimately successful, then a cessation of its activities for any period of time, no matter how short, is improper. Recognizing that the Board is not being asked to pre-judge the ultimate outcome now, allowing Appellant to operate the 4221 Premises is safer than closing it down and then telling Appellant it can re-open at a later date. This is especially so when a repair facility has operated on this property for over 60 years.

Simply stated, the denial of the relief sought herein will result in the effective destruction of the Appellant's business. While economic harm will result, there is a very real chance that the

harm will be so great so as to cause Appellant's business to terminate its operations. This constitutes irreparable harm. *See, e.g., District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 23 (D.C. 1993) (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (C.A.D.C. 1985)) (“[E]conomic loss does not, in and of itself, constitute irreparable harm,’ unless the ‘loss threatens the very existence of the movant’s business.’”). Finally, there may not be more compelling evidence of irreparable harm than was shown by the Appellee’s unconscionable actions in arresting, handcuffing, and incarcerating Mr. Kuri. The motion for stay must be granted.

III. CONCLUSION

For the foregoing reasons, Appellant, Kuri Brothers, Inc., respectfully requests the Board to issue an Order to stay the enforcement of the Order to Cease All Business Operations until such time as it may hear the issues on the merits.

Respectfully submitted,



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Washington, DC 20036
Telephone: 202.625.0600
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Attorney for Appellant

Of Counsel:

Thomas L. Rosenberg by Special Agent
with permission

Thomas L. Rosenberg

Ohio Bar No. 0024898

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1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



ORDER TO CEASE ALL BUSINESS OPERATIONS

Pursuant to DC Official Code 2001 ed., Section 6-641.09 and Title 11 DCMR Section 3203.8(a), you are directed by the Department of Consumer and Regulatory Affairs (DCRA) to immediately cease and desist from all further business activity at the premises at the rear lower level of 4221 Connecticut Ave. N.W.

This action is taken pursuant to certain facts of record:

1. The Certificate of Occupancy (B00181657) for an "automotive service center" issued on August 12, 1998, has been revoked.
2. The Certificate of Occupancy (CO33951) for an "automotive service center" issued on May 15, 2002 has been revoked
3. There is no valid Certificate of Occupancy for this premises
4. The premises cannot be used for any use other than a single family dwelling without a valid Certificate of Occupancy
5. The Certificate of Occupancy revocations by the Zoning Administrator of DCRA were sustained by the Board of Zoning Adjustment in Appeal no. 1697 dated September 8, 2003.
6. The Court of Appeals for the District of Columbia sustained the decision of the Board of Zoning Adjustment on February 2, 2006.
7. Since these decisions, you have continued to operate a repair garage at this location in violation of DC Official Code 6-641.09.
8. Continued operation at this location will subject you to criminal or civil penalties.

This notification does not constitute any new action on the part of the Zoning Administrator.

Best regards,

Bill Crews

Bill Crews,

Zoning Administrator for the District of Columbia

September 29, 2005

PERSONALLY SERVED THIS

AT 4225 Conn

BY ME *Bill Crews*

29th DAY OF SEPTEMBER
CHRIS KURL

Bill Crews 4:22 pm

DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

941 North Capitol Street, N.E., Suite 2000, Washington, D.C. 20002

Phone: (202) 442-4576 Fax: (202) 442-4871

2

DISTRICT OF COLUMBIA

+ + + + +

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

+ + + + +

OFFICE OF ADJUDICATION

+ + + + +

HEARING

+ + + + +

IN RE:

KURI BROTHERS, INC.
4221 CONNECTICUT AVENUE, NW
WASHINGTON, D.C.

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

Wednesday,
August 11, 1999

Washington, D.C.

BEFORE:

THE HONORABLE LENNOX SIMON,
Administrative Law Judge

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

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1 WHEREUPON,

2 TORE BELLO

3 was called as a witness by Counsel for the Government,
4 having first been duly sworn, assumed the witness
5 stand, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GREEN:

8 Q Mr. Bello, will you state for the record
9 your full name, please?

10 A My name is Tore Bello. I'm a Zoning
11 Technician.

12 Q And by whom are you employed?

13 A District government, the Zoning Division.

14 Q And what is your function with the
15 District government?

16 A I'm a Zoning Engineer, and I review
17 building permits, Certificate of Occupancies, and all
18 of the duties as a Zoning Technician.

19 Q So if a person were to submit an
20 application for a Certificate of Occupancy, would the
21 final approval fall on you?

22 A That's correct.

23 Q And you would review them; is that right?

24 A That's correct.

25 Q Do you get involved with other aspects of

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1 zoning questions, such as instructions to zoning
2 inspectors?

3 A Yes, I do.

4 Q All right. I'm going to direct your
5 attention to Government's Exhibit 3-A and B. Now,
6 you've been present during the course of this
7 proceeding; is that right?

8 A Yes, sir.

9 Q And this document was identified as a
10 Certificate of Occupancy for 4221 Connecticut Avenue.
11 What was the purpose of that Certificate of Occupancy?
12 For what purpose was it issued?

13 A The automobile service center.

14 Q And is that a result of anything?

15 A It's as a result of my review of
16 application, Exhibit 3-B, in tandem with the previous
17 records of user premises.

18 Q So in other words, you reviewed this --
19 did you cause this designation, if you will, on the
20 Certificate of Occupancy to be placed there? That is
21 the designation of auto service center.

22 A Well, as a reflection of the previous
23 permitted use on the premises, yes, that's correct.

24 Q All right. And the previous use on the
25 premises is governed by what, sir?

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GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 28, 2003

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 11:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

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BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL MITTEN	Commissioner
--------------	--------------

COMMISSION STAFF PRESENT:

Beverly Bailey	Office of Zoning
Clifford Moy	Office of Zoning
John K.A. Nyarku	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Karen Thomas	Office of Planning
--------------	--------------------

D.C. OFFICE OF CORPORATION COUNSEL:

Lori Monroe, Esq.
Corey Buffo, Esq.
Alan Bergstein, Esq.

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WASHINGTON, D.C. 20005-3701

C-O-N-T-E-N-T-S

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1 fact that the work being done in the 21 bays is simply
2 incidental to installing things that people buy.

3 So it's a very interesting hypothetical
4 question, but -- and we take the position that there
5 was no such category they could have issued.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. BARDIN: But the fact -- You have to
8 decide cases in terms of the facts of the case.
9 You're not writing laws here. You're not passing
10 regulations.

11 CHAIRPERSON GRIFFIS: I agree.

12 MR. BARDIN: You are not the Zoning
13 Commission. So I don't think anything is going to
14 turn on that issue that you are now discussing.

15 CHAIRPERSON GRIFFIS: It is going to turn
16 on it, because the pertinence of what the appeal is
17 based on goes to what the intent -- why the
18 certificate of occupancy was actually revoked, and
19 maybe I am wasting people's time, but I am not clear
20 on this, what the definitive element is that will be
21 the substance of the appeal. And that is --

22 MR. BARDIN: As I --

23 CHAIRPERSON GRIFFIS: Let me just hear
24 from Mr. Green briefly. Then I'll stop this.

25 MR. GREEN: All right. Again, and I

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WASHINGTON, D.C. 20005-3701

1 direct the Board's attention to the notice of intent
2 to revoke the certificate of occupancy.

3 What took place was simply an attempt at
4 accommodating a business merchant. In this particular
5 instance, we have something called an automotive
6 service center at the premises, and it was the
7 understanding between what was represented to the
8 agency by the Appellant that he wanted to install and
9 sell small auto parts, and at that time the
10 understanding was, well, maybe a light bulb here or
11 there, and that was it.

12 CHAIRPERSON GRIFFIS: Okay. Without
13 getting too far into a lot of detail.

14 MR. GREEN: Yes, I understand. Now doing
15 major auto engine repair work did not fall within the
16 scope of this understanding. Consequently, we have
17 the issuance of this notice of intent to revoke the
18 certificate of occupancy.

19 CHAIRPERSON GRIFFIS: Because of the
20 operating outside the scope?

21 MR. GREEN: He operated outside the scope.

22 CHAIRPERSON GRIFFIS: Okay, that's all I
23 need.

24 MR. GREEN: That's it.

25 CHAIRPERSON GRIFFIS: Good. Everyone

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4

IN THE DISTRICT OF COLUMBIA SUPERIOR COURT
(Civil Division)

KURI BROTHERS, INC.,

Plaintiff,

vs.

DISTRICT OF COLUMBIA,

Defendant.

CASE NO. 06-3864

CALENDAR: #2

JUDGE GERALD L. FISHER

NEXT SCHEDULED EVENT:

Deadline for Discovery Requests

October 24, 2006

AFFIDAVIT OF GLADYS HICKS

Gladys Hicks, being first duly cautioned and sworn according to law, deposes and says that she has personal knowledge of the facts contained in this Affidavit and that she is competent to testify as to the matters stated herein as following:

1. I currently undertake contract zoning reviews for the firm of Bello, Bello and Associates, which is located at 900 Second Street NE, Suite 6, Washington, DC.
2. Bello, Bello and Associates is a development consultation company that is designed to assist medium to large scale developers, businesses, and home owners in traversing the regulatory process with consistency and predictability.
3. I was the Acting Zoning Administrator for the District of Columbia Department for Consumer and Regulatory Affairs (the "DCRA") from approximately November 1994 through 1999.
4. It is my belief that the DCRA has the authority to issue certificates of occupancy with use designations that are not identified or defined in Title 11 of the District of Columbia Municipal Regulations.

I hereby certify, under penalties of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated October 26, 2006

Gladys Hicks
Gladys Hicks

2223 v_01 \ 114572.0003

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1025 CONNECTICUT AVE NW
SUITE 220
WASHINGTON, DC 20036-5405
202.625.0600 MAIN
202.333.6340 FAX
tdamari@ralaw.com

February 7, 2006

VIA HAND DELIVERY

Mr. Neil A. Stanley
Acting Zoning Administrator
Government of the District of Columbia
Department of Consumer and Regulatory Affairs
941 North Capitol Street N.E., Suite 2000
Washington, DC 20002

Re: 4221 Connecticut Avenue NW, Washington, DC

Dear Mr. Stanley:

Our law firm represents Kuri Brothers, Inc. ("Kuri") in connection with its occupancy of 4221 Connecticut Avenue NW, Washington, DC (the "Premises"). As you know, on or about May 15, 2002, the District of Columbia Department of Consumer and Regulatory Affairs (the "DCRA") issued a Certificate of Occupancy to Kuri (Certificate of Occupancy #33951) to occupy the Premises as an "Automobile Service Center". However, by letter dated August 4, 2005, your office purported to revoke Certificate of Occupancy #33951, on the grounds that "an automobile service center [is] not an appropriate use in a C-3-A zone." On or about September 29, 2005, Kuri timely appealed this revocation by your office, and this appeal is scheduled to be heard by the District of Columbia Board of Zoning Adjustment (the "BZA") on April 26, 2006.

During the interim period, however, the District of Columbia Court of Appeals issued an opinion pertinent to this matter, wherein it affirmed a July 1, 2003 decision by the BZA to revoke a Certificate of Occupancy (Certificate of Occupancy #B00181657) which had previously been issued in 1998 for the Premises to be operated as an "Automobile Service Center". A copy of this decision is attached hereto for your convenience. While we do not agree with the opinion of the Court of Appeals, we respect it as the legal pronouncement of the highest adjudicative body in the District of Columbia.

The recent decision by the Court of Appeals in connection with Certificate of Occupancy #B00181657 is directly relevant to the disposition of Certificate of Occupancy #33951. In the course of reaching its decision, the Court of Appeals acknowledged that the designation of the Premises' use under Certificate of Occupancy #B00181657, "Automobile Service Center", while not defined under the D.C. Code or

February 7, 2006

Page 2

under the District of Columbia Code of Municipal Regulations, is a lawful use in a C-3-A zone (the zone classification for the Premises). This conclusion (which is consonant with prior determinations by the BZA and by the DCRA itself) undermines the very basis upon which your office purports to revoke Certificate of Occupancy #33951; i.e., that an Automobile Service Center is not permitted in a C-3-A zone.

Neither the DCRA, the BZA nor the District of Columbia Court of Appeals has ever precisely defined which types of repair activities are permitted in an Automobile Service Center. The only matter that is abundantly clear is that the permissible range of repair activities lies somewhere between the range of activities permitted under a certificate of occupancy for "Automobile Accessory Sales Including Installation" (which, under the Code of Municipal Regulations, is permitted in a C-3-A zone as a matter of right) and the range of activities permitted under a certificate of occupancy for a "Repair Garage" (which all parties acknowledge is not permitted in a C-3-A zone). Otherwise, certificates of occupancy for "Automobile Service Centers" (which have been issued not only to Kuri but to other businesses in the District of Columbia) would be completely superfluous.

I am therefore writing your office to request a detailed determination in writing as to precisely which repair activities are permitted under a certificate of occupancy for an Automobile Service Center, so that my client can be in compliance therewith. Your prompt response will be greatly appreciated.

Sincerely,

ROETZEL & ANDRESS, LPA

Tamir D. Damari

TDD

Enclosure

1039.1.114572.0003



1025 CONNECTICUT AVE NW
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February 23, 2006

VIA HAND DELIVERY

Mr. Neil A. Stanley
Acting Zoning Administrator
Government of the District of Columbia
Department of Consumer and Regulatory Affairs
941 North Capitol Street N.E., Suite 2000
Washington, DC 20002

Re: 4221 Connecticut Avenue NW, Washington, DC

Dear Mr. Stanley:

Our law firm represents Kuri Brothers, Inc. ("Kuri") in connection with its occupancy of 4221 Connecticut Avenue NW, Washington, D.C. (the "Premises"). Kuri is presently in possession of a Certificate of Occupancy (#33951) to occupy the Premises as an "Automobile Service Center". However, pursuant to a letter dated August 4, 2005, your office purported to revoke Certificate of Occupancy #33951. This determination was timely appealed by Kuri to the District of Columbia Board of Zoning Adjustment (the "BZA") and is scheduled to be heard by the BZA on April 26, 2006.

On February 7, 2006, I transmitted a letter to you requesting a detailed determination in writing as to precisely which repair activities are permitted under a certificate of occupancy for an Automobile Service Center, so that my client can be in compliance therewith. I have yet to hear back from you. Please contact me as soon as possible to address the request made in my February 7 letter.

My thanks in advance for your prompt attention to this matter.

Sincerely,

ROETZEL & ADDRESS, LPA

Tamir D. Damari

TDD



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April 6, 2006

VIA U.S. MAIL

Mr. Neil A. Stanley
Acting Zoning Administrator
Government of the District of Columbia
Department of Consumer and Regulatory Affairs
941 North Capitol Street N.E., Suite 2000
Washington, DC 20002

FILE

Re: 4221 Connecticut Avenue NW, Washington, DC

Dear Mr. Stanley:

Please respond to my prior letters of February 7, 2006 and February 23, 2006 with regard to the above-referenced property. Thank you.

Sincerely,

ROETZEL & ADDRESS, LPA

Tamir D. Damari

TDD

1139.7.114572.0003



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April 26, 2006

VIA HAND DELIVERY

Bill Crews
Zoning Administrator for the District of
Columbia
941 North Capitol Street N.E., Suite 2000
Washington, D.C. 20002

FILE

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

Dear Mr. Crews:

As you know, I represent Kuri Brothers, Inc. ("Kuri Brothers"), the operator of premises located at 4221 Connecticut Avenue N.W., Washington, D.C. (the "Premises"). I am in receipt of your letter of yesterday which you hand-delivered to me at the inception of yesterday's BZA hearing regarding the Premises.

While I disagree with your assertion that an "Automobile Service Center" is not an allowable use on an officially issued certificate of occupancy" (since, among other things, the DCRA and various judicial bodies have, on repeated occasions, acknowledged the validity of such a use classification), I am amenable to meeting with you, at your earliest convenience, to discuss this matter further and hopefully reach a resolution. I am presently available to meet on every day during the next two weeks except for May 2, 2006.

Please respond to this letter as soon as possible to advise me of the dates upon which you are available to meet. I also ask that, pending the conclusion of our meeting, you forego taking any additional enforcement action against Kuri Brothers.

Sincerely,

ROETZEL & ANDRESS, LPA

Tamir D. Damari

TDD
1461.1.114572.0003

CLEVELAND TOLEDO AKRON COLUMBUS CINCINNATI WASHINGTON, D.C. TALLAHASSEE ORLANDO FORT MYERS NAPLES

www.ralaw.com

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THERE IS NO DOCUMENT FOR THIS EXHIBIT