

**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

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 17444A

EXHIBIT NO. 30

2006 NOV 20 PM 12:11

D.C. OFFICE OF ZONING

RECEIVED

**MEMORANDUM IN OPPOSITION TO APPELLEE'S MOTION FOR SUMMARY
JUDGMENT**

Appellant, Kuri Brothers, Inc. ("Appellant"), by and through Stanley H. Goldschmidt and Roetzel & Andress, LPA, its undersigned counsel, respectfully requests the Board to deny the Motion for Summary Judgment filed by Appellee, Department of Consumer and Regulatory Affairs ("Appellee"), on October 2, 2006. The reasons are set forth below.

I. INTRODUCTION

As an initial matter, Appellant notes that the Board of Zoning Adjustment Rules of Practice and Procedure do not authorize the filing of motions for summary judgment. Moreover, the Superior Court Rules of Civil Procedure—specifically Rule 56, which expressly provides for motions for summary judgment—is neither applicable nor binding on the Board. Accordingly, Appellant submits that Appellee's Motion is improper and should therefore be denied. However, in the event that the Board determines it is a valid motion, Appellant responds to Appellee's arguments below.

On August 4, 2005, Appellee issued a Notice of Revocation of Certificate of Occupancy 33914 for an "Automobile Service Center," which was issued to Appellant's business located at 4225 Connecticut Ave., N.W. ("4225 Premises"). The Notice of Revocation indicated that the

Board of Zoning Adjustment
District of Columbia
CASE NO. 17444
EXHIBIT NO. 30

reason for the revocation was because it had been “issued in error.” Notwithstanding this explicit reason, Appellee now tries to argue that the issue before this Board is “whether Appellant was operating as a repair garage outside the scope of its Certificate of Occupancy.” (Appellee Brief, at 2 (emphasis added)). This is a total mischaracterization of the issue before this Board. If the issue was scope, then the Notice of Revocation should have indicated that Certificate of Occupancy 33914 was being revoked for that reason, and that reason alone. The proper issue before this Board is whether Certificate of Occupancy 33914 was issued in error.

Additionally, Appellee, in its Motion, relies on facts regarding another property—the property located at 4221 Connecticut Ave., N.W. (“4221 Premises”)—in support of its contention that the Certificate of Occupancy issued for the 4225 Premises was issued in error. The evidence with respect to the 4221 is totally irrelevant to this property and this appeal.

This Board must see through the “smoke screen” created by Appellee in its baseless Motion for Summary Judgment and accordingly deny the Motion.

II. STATEMENT OF FACTS

Appellant’s business at the 4225 Premises is comprised of two distinct components: (1) a gas station located at the north end of the property; and (2) a repair center consisting of two bays at the south end of the property. On May 14, 2002, Appellant was issued Certificate of Occupancy 33914 for an “Automobile Service Center.”

The Premises are located in a C-3-A Zone, which is “designed to accommodate major business and employment centers supplementary to the Central Business (C-4) District.” (11 DCMR 740.1). It is undisputed that certain automotive-related facilities, such as “Gasoline Service Stations” predating May 12, 1958, are permitted in a C-3-A zone. Historically, operators of the gas station at the 4225 Premises have conducted automobile repairs ancillary to the provision of gasoline. The provision of such ancillary repair services at gas stations is

specifically permitted by 11 DCMR 701.5: “other service or retail use similar to that provided for under 701.1 including assemblage and repair clearly incidental to the conduct of a permitted service . . . shall be permitted in a C-1 District as a matter of right.” (emphasis added). Additionally, at the time Appellant was issued its May 14, 2002 Certificate of Occupancy for an “Automobile Service Center,” it submitted an application that specified that Appellant intended to use the premises for auto repair.¹

On or about August 4, 2005, Appellee served upon Appellant a “Notice of Revocation of Certificate of Occupancy Number 33914” (the “Notice”). In pertinent part, the Notice states:

The C of O authorized Kuri Brothers Inc. to use the premises...as an automobile service center. Subsequent to the issuance of the C of O, DCRA concluded that an automobile service center was not an appropriate use in a C-3-A zone. It then revoked C of O #B00181657 for [an] automobile service center issued to Kuri Brothers several years earlier for that same operation at a different location, 4221 Connecticut Avenue...On July 1, 2003 in BZA Appeal No. 16947, the...Board of Zoning Adjustment upheld DCRA’s decision to revoke C of O #B00181657.

The Notice further stated that the revocation of Certificate of Occupancy 33914 was being undertaken “pursuant to 12A DCMR 110.5.3...authorizing the Director to revoke a Certificate of Occupancy that has been issued in error.” *Id.* Notably, the Notice did not state that Appellant was violating the Regulations in any manner.

An appeal of this revocation, as well as the revocation of the certificate of occupancy at the 4221 Premises, was filed by Appellant and a number of hearings were held. At the April 26, 2006 hearing this Board dismissed Appellant’s appeal as to the 4221 Premises based on lack of jurisdiction; however, it continued the hearing on the 4225 Premises until September 19, 2006, which was subsequently extended until October 3, 2006. This hearing also had to be postponed, but not by choice. At noon on the day of the October 3rd hearing, Appellee caused a warrant to

¹ A copy of the application is attached hereto as Exhibit 1.

be issued for the arrest of Christopher Kuri, the President of Appellant Kuri Brothers, Inc. Mr. Kuri was arrested, handcuffed, incarcerated, and spent a night in jail for this alleged zoning infraction. Due to Mr. Kuri's inability to attend the hearing, this Board, over Appellee's objection, further continued the hearing for the 4225 Premises.

III. LAW AND ARGUMENT

A. Standard of Review

The Board of Zoning Adjustment is an administrative review Board that is not bound to follow the civil rules adopted in the Superior Court. The Board's rules of procedure do not allow motions for summary judgment to be filed with the Board and likewise do not indicate any standards of review. Additionally, Appellee, in its Motion, does not reference any standard of review that this Board should employ when considering the Motion. Accordingly, while this Board is not bound by the Superior Court Rules of Civil Procedure, the Board may find the standards within those Rules instructive when considering Appellee's Motion and this Memorandum.

Under SCR-Civ. 56, summary judgment is appropriate where there is no genuine issue of material fact and that the movant is therefore entitled to judgment as a matter of law. *See Blyther v. Pentagon Fed. Credit Union*, 182 A.2d 892, 894 (D.C. 1962); *Atkins v. Indus. Telecommunications Ass'n, Inc.*, 660 A.2d 885, 887 (D.C. 1995). "Summary judgment is a lethal weapon, and courts must be mindful of its aims and targets and beware of overkill in its use." *Brunswick Corp. v. Vineberg*, 370 F.2d 605, 612 (5th Cir. 1967); *see also Tippens v. Celotex Corp.*, 805 F.2d 949, 952-53 (11th Cir. 1986) ("Summary judgment is such a lethal weapon, depriving a litigant of a trial on the issue, caution must be used to ensure only those cases devoid of any need for factual determinations are disposed of by summary judgment.").

“Summary judgment is appropriate only when the record, viewed in the light most favorable to the non-moving party, establishes that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” *Young v. Interstate Hotels and Resorts*, 906 A.2d 857 (D.C. 2006) (internal quotations omitted). The United States Supreme Court has established that “at the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Viewing the facts most favorable to Appellant, the Board should deny Appellee’s motion for summary judgment.

B. The Board Should Deny Appellee’s Motion for Summary Judgment because the Issue upon which it is Based is Improper.

Appellee purportedly revoked Appellant’s Certificate of Occupancy 33914 because it was “issued in error.” Notwithstanding this express ground for revocation, Appellee’s Motion incorrectly states that the issue before the Board is whether Appellant is operating within the scope of its Certificate of Occupancy. Appellee has repeatedly dodged the issue of whether it has the authority to issue a certificate of occupancy with “Automobile Service Center” as a use designation. Appellee, interestingly, has good reason to distort the true nature of this appeal—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.” 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 former Zoning Administrator for 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 at the 4221 Premises):

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.*²

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 4225 Premises.

Appellee's after-the-fact claim that Certificate of Occupancy 33914 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 Plaintiff'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.

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

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.³

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.⁴

It follows that if "Automobile Service Center" is a valid use designation, then Appellee has the authority to issue the certificate. Thus, it could *not* have been issued in error. The basis upon which Appellee's Motion relies is incorrect and is an attempt to distract the Board from focusing on the true issue of this appeal. Accordingly, the Board must deny its Motion for Summary Judgment.

C. The Board Should Deny Appellee's Motion for Summary Judgment because it Relies on Irrelevant Facts.

Nearly the entire argument submitted by Appellee in its Motion is centered on factual circumstances that are irrelevant to the instant appeal. The activity that occurs at the 4221 Premises is wholly distinct from what occurs at the 4225 Premises. To be sure, the 4221 Premises is located in the basement of a building and includes over 20 service bays. In stark

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

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

contrast, the 4225 Premises contains a gas station and only two service bays. It is utterly disingenuous for Appellee to haphazardly claim that “there is not a dimes worth of difference between what happened factually in the Boards finding at 4221 Conn. Ave., N.W. and what is apparent at 4225 Conn. Ave., N.W.” Appellant disputes this loose conclusory statement and submits that genuine issues of material fact exist as to the activities at the 4225 Premises.

IV. CONCLUSION

For each of the foregoing reasons, Appellant respectfully requests that the Board deny the Motion for Summary Judgment.

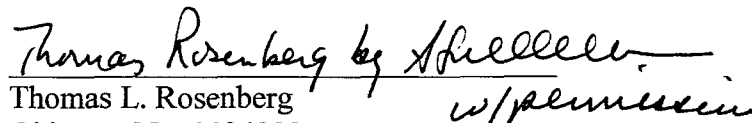
Respectfully submitted,



Stanley H. Goldschmidt
D.C. Bar No. 376482
Roetzel & Andress, LPA
1025 Connecticut Avenue, NW
Suite 220
Washington, DC 20035
Telephone: 202.625.0600
Facsimile: 202.338.6340

Attorney for Appellant

Of Counsel:

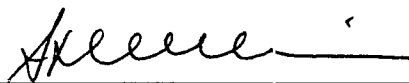

w/permission

Thomas L. Rosenberg
Ohio Bar No. 0024898
Roetzel & Andress, LPA
National City Plaza
Twelfth Floor
155 East Broad Street
Columbus, OH 43215
Telephone: 614.463.9770
Facsimile: 614.463.9792
Email: trosenberg@ralaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served upon the following parties via U.S. Mail, postage prepaid this 20th day of November, 2006:

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



Stanley H. Goldschmidt

2359 v_01 \ 114572.0003

1



MASTER BUSINESS LICENSE PROGRAM

BUSINESS LICENSE CENTER

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

District of Columbia Government

P.O. BOX 1234, WASHINGTON, D.C. 20002

Federal ID No:

old Corp. Div
5/15/2002

Please Read Instructions Carefully Before Completing This Application

SECTION A: TYPE AND PURPOSE OF APPLICATION

Type of License: (✓) Place a check mark next to your selection)

☐ Master Business License A	☐ Master Business License B
--	--

Purpose of Application: (✓) Place a check mark next to your selection)

☐ Open New Business	☐ Add Endorsement To Existing License
☐ Open Business At New Location	☐ Transfer of ABC Establishment License
☐ Transfer License To New Ownership	

SECTION B: BUSINESS OWNERSHIP OR INDIVIDUAL TO BE LICENSED

1. Name of Applicant (If Corporation or Partnership, Complete the Box to the Right) Kuri Brothers, INC.		1a. Partnership or Incorporating Information Corporation ☒ Partnership ☐ Limited Liability Comp ☐	
2. Trade Name of Business, If Any Van Ness Auto Care		President or Partner	Name Chizma Kuri
3. Applicant Address Street: 12030 Chase Crossing Circle Telephone: 202 494-1190 Suite: #204			Address: 12030 Chase Crossing Circle
City/State: Rockville, MD Zip Code: 20852			Telephone #: 202 494-1190 Zip Code: 20852
4. Billing Name Kuri Brothers, INC. Telephone: 202 966-5955		Vice Pres. or Partner	Name John F. Kuri
5. Billing Address Street: 4225 Connecticut Ave. N.W. Suite: 			Address: 2217134 014 Bldg. Rd
City/State: Washington, D.C. Zip Code: 20008			Telephone #: 301 924-0289 Zip Code: 20832
6. Business Fax Number 202 244-4207	7. Business E-Mail Address:	Secretary/Treasurer	Name Koo Yoon
8. Corporation or Non-Resident Applicant Agent's Name, Address and Telephone #:			Address: 1522 Albemarle St NW
			Telephone #: 20016

5/15/2002
10/31/2002
Bryan
442-4311

SECTION C: INFORMATION ABOUT THE PREMISES WHERE BUSINESS IS LOCATED

1. Address of Premises Applied For 4225 Connecticut Ave. N.W.		2. Quad NW	3. Ward	4. ANC:	5. Zone C3A
6. Certificate of Occupancy Number	7. Home Occupancy Number	8. Date Approved	9. Lot 5	10. Square 2051	

SECTION D: TYPE OF LICENSE ENDORSEMENT(S)

Description of Business Activity	Related Business Code
1. Auto Repair	
2.	
3.	
4.	
5.	

SECTION E: INFORMATION ABOUT THE BUSINESS

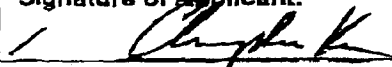
1. Vehicle	Make	Year	Identification Number	License Tag	State	Tare Weight	Capacity
2. Additional D.C. Locations						Certificate of Occupancy #	
Address:							
Address:						Certificate of Occupancy #	
Address:						Certificate of Occupancy #	
3. Indicate Number Of	Billiard Tables		Bowling Alleys		Bulk Fuel Meter Device		Bulk Fuel Storage Tank
Cigarette Vending Machines		Food Vending Machines		Game Boards		Gasoline Dispensing Hoses	
Mechanical Amusement Machines			Parking Square Feet			Restaurant Seats	
4. Resident Manager		Telephone:		4a. Apt. Units	4b. Rooming Units	4c. Hotel/Motel Rooms	
Name:		Apt.					

SECTION F: INFORMATION ABOUT EMPLOYEE TO BE LICENSED

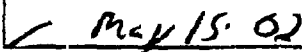
1. Name of Company To Employ Licensee						2. UI Number (If applicable)		
3. Address of Company						4. Signature of Owner or Manager		
5. Date of Birth	Month	Date	Year	Height	Weight	Color of Hair	Color of Eyes	Place of Birth
6. Driver's License Number						State		Expiration Date
7. If non-resident, list name and D.C. Address of person to receive notices								
Name:				Address:				

SPACE FOR ADDITIONAL INFORMATION

Signature of Applicant:



Date:



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

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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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3

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	Commissicner
--------------	--------------

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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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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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 I. FISHER

NEXT SCHEDULED EVENT:

**Deadline for Discovery Requests –
October 24, 2006**

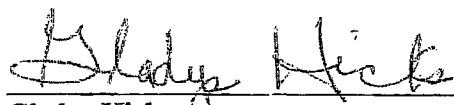
AFFIDAVIT OF GLADYS HICKS

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

2223 v_01 \ 114572.0003

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**

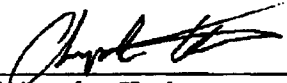
AFFIDAVIT OF CHRISTOPHER KURI

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

1. I am, and at all times relevant was, the President of Plaintiff Kuri Brothers, Inc.
2. Kuri Brothers, Inc.'s principal place of business is located at 4225 Connecticut Avenue NW, Washington D.C. ("4225 Premises").
3. Kuri Brothers, Inc. operates a portion of the business at the basement level of a property located at 4221 Connecticut Avenue NW, Washington D.C. ("4221 Premises").
4. For approximately the past twelve (12) years, Kuri Brothers, Inc.'s business has been known as Van Ness Auto Care.
5. Kuri Brothers, Inc. subleases the 4221 Premises from Van Ness, Inc., which leases the 4221 Premises from Jemal Van Ness, LLC, successor to 4221 Connecticut Avenue Associates Limited Partnership.
6. On or about May 15, 2002, I applied for and received a Certificate of Occupancy for the 4221 Premises with a use designation "Automobile Service Center." (Certificate of Occupancy No. 33951).
7. Kuri Brothers, Inc. employs approximately fifteen (15) employees.
8. The competitive automotive 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.

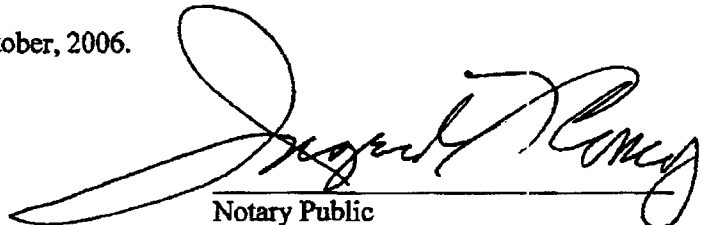
9. Over the past twelve (12) years, Kuri Brothers, Inc. has developed substantial client goodwill and a significant client base.
10. Since issuance and enforcement of the Order to Cease All Business Operations, which was issued by the District of Columbia Department of Consumer and Regulatory Affairs (the "DCRA"), Kuri Brothers, Inc. has suffered with its customers.
11. Each day that Kuri Brothers, Inc. is prohibited from operating, the goodwill that has been gained over the past twelve (12) years decreases.
12. Each day that Kuri Brothers, Inc. is prohibited from operating, the likelihood increases that the business will completely cease operations.
13. If Kuri Brothers, Inc. ceases its business operations, all fifteen (15) employees will lose their jobs.
14. If Kuri Brothers, Inc. is forced to shut down for a period of time, even if it were to re-open in the future, the harm done to its goodwill and client base (who would certainly find similar business elsewhere), and the loss of fifteen (15) employees, would render it nearly impossible for Kuri Brothers, Inc. to recover.
15. The enforcement of the Order to Cease All Business Operations threatens the very existence of the business of Kuri Brothers, Inc.
16. Between February and April 2006, my attorneys have, on several occasions, contacted the DCRA, in writing, to inquire as to the scope of a certificate of occupancy bearing a use designation "Automobile Service Center." Copies of these letters are attached as **Exhibit A**. The DCRA has never responded to these letters to advise me as to the scope of activities permitted at an Automobile Service Center.
17. Despite having been validly issued a certificate of occupancy that allows for an Automobile Service Center, and having reasonably inquired as to the scope of permissible activity under the certificate of occupancy, Bill Crews of the DCRA, along with the District of Columbia Police, appeared at the 4221 Premises to place me under arrest on the afternoon of October 3, 2006. I immediately called my attorney, Stanley H. Goldschmidt.
18. My attorney spoke to Bill Crews, while he was at the 4221 Premises and prior to my arrest, and indicated that the business at the 4221 Premises would cease operations in compliance with the Order to Cease All Business Operations.
19. Despite the assurance from both my attorney and me to henceforth comply with the Order to Cease All Business Operations, Bill Crews insisted on my arrest and incarceration.
20. Bill Crews then facilitated my being handcuffed and placed in leg irons. I was thereby arrested and incarcerated overnight.

FURTHER AFFIANT SAYETH NOT.



Christopher Kuri

Subscribed and sworn to before me, a Notary Public in the and for the District of
Columbia on this 11th day of October, 2006.



Notary Public
My Commission Expires: 9/30/08

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