ANC 3F

3F01 - Phil Kogan
3F02 - Karen L. Perry
3F03 - Robert V. Maudlin
3F04 - David J. Bardin
3F05 - Doug Mitchell
3F06 - Cathy Wiss
3F07 - Todd Strauss

Advisory Neighborhood Commission 3F
NORTH CLEVELAND PARK / FOREST HILLS

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November 4, 2002

Mr. Geoffrey H. Griffis, Chairman
Board of Zoning Adjustment
441 Fourth Street, N.W.
Washington, D.C. 20002

Dear Mr. Griffis:

Attached is ANC 3F's resolution in BZA Appeal Case No. 16947 supporting the decision of the Building and Land Regulation Administration to revoke the Certificate of Occupancy for Kuri Brothers to operate an automobile service center at 4225 Connecticut Avenue.

ANC 3F adopted the resolution by a vote of 7-0-0, with a quorum present, at a duly noticed public meeting on October 21, 2002.

Sincerely,

Karen Lee Perry

Karen Perry
for ANC 3F

Attachment

BZA
Case No. 16947
Exhibit No. 18

e-mail: anc3f@juno.com
web site: www.ANC3F.org
ANC 3F, P.O. Box 39290, Washington, DC 20016-9290 Phone: 202.362.6120 • Fax: 202.686.7237

Board of Zoning Adjustment
District of Columbia
CASE NO.16947
EXHIBIT NO.18

Res. 02-36

ANC 3F RESOLUTION

REVOCATION OF KURI BROTHERS CERTIFICATE OF OCCUPANCY

APPEAL TO THE BZA

CASE NO. 16947

Advisory Neighborhood Commission 3F
North Cleveland Park, Forest Hills, and Tenleytown
P. O. Box 39290
Washington, D.C. 20016-9290

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 revoking Petitioner's Certificate of Occupancy (No. B001816757), pursuant to a Notice of Intent to Revoke Certificate of Occupancy dated June 28, 2002.

WHEREAS, the premises 4221 Connecticut Avenue, N.W. (Square 2051, Lot 5) is within ANC 3F in Single Member District 3F02, 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 and in violation of the certificates of occupancy for this premises; 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 12 years, the Tenant, Koo Yuen, and his subtenant, Kuri Brothers, have been operating an automobile repair garage at the 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 once by the BZA in April 1995, at which time the BZA issued a ruling upholding the decision of the Adjudicating Law Judges in 1998, that these service bays were operating without a certificate of occupancy and in violation of the C-3-A zoning,

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,

BE IT RESOLVED, that ANC 3F, requests the Board of Zoning Adjustment, uphold the decision of the Administrator of the Building and Land Regulation Administration, to vacate the Certificate of Occupancy #B00181657, and

ANC 3F FURTHER REQUESTS, 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 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 for the use of the basement at 4221 Connecticut Avenue.

BE IT FURTHER RESOLVED THAT ANC 3F will exercise its right to party status in this case and that David Bardin and Karen Perry have been designated as ANC 3F's representative before the Board of Zoning Adjustment.

Adopted October 21, 2002, by a vote of 7-0-0 at a duly noticed public hearing with a quorum present.

Phil Kogan, Acting Chair

David J. Bardin, Secretary