GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

KURI BROTHERS, INC., Appellant, v. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS, Appellee, and ADVISORY NEIGHBORHOOD COMMISSION 3F, and CHARLES E. SMITH RESIDENTIAL, Intervenors.	:	Appeal No. 16947

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PRE-HEARING STATEMENT OF INTERVENOR,
CHARLES E. SMITH RESIDENTIAL

The Intervenor, Charles E. Smith Residential, by and through undersigned counsel respectfully submits the following Pre-Hearing Statement.

I. Factual Background

It is beyond dispute that Kuri Brothers, Inc. ("Appellant") and its predecessors have been operating an illegal repair garage at the subject property for at least thirteen (13) years. Over this period, the operators of the illegal repair garage have resisted and ignored repeated reasonable attempts by the Department of Consumer and Regulatory Affairs ("DCRA") to enforce the applicable zoning restrictions which prohibit an automotive repair garage at this location.

BZA
Case No. 16947
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO.16947
EXHIBIT NO.32

In 1990, Koo L. Yuen and Van Ness, Inc. (predecessors to Appellant, Kuri Brothers, Inc.) were cited for operating a fifteen (15) bay repair garage without a certificate of occupancy. In 1992, an Administrative Law Judge upheld the violation, ordered DCRA to vacate the certificate of occupancy, and ordered the operators to "immediately cease and desist operation of the automobile repair business. See Exhibit A. On appeal to the Board, the Administrative Law Judge's decision was affirmed in March 1998. See Exhibit B.

In August 1998, Kuri Brothers, Inc. (as successor to Mr. Yuen) knowing that ongoing operation of a repair garage (now with twenty-one (21) service bays) was not permitted, submitted an application for a new certificate of occupancy for "automotive service center". The Zoning Regulations do not define or any way permit an "automotive service center". On April 27, 1999, a Zoning Inspector once again cited the operators for operating an illegal repair garage without the required certificate of occupancy. Appellant challenged the Notice of Infraction and, in December 1999, the violation was affirmed by an Administrative Law Judge who also ordered that operation of the repair garage cease and desist. See Exhibit C.

In May 2002, the Board granted Appellant's appeal and reversed the Administrative Law Judge's December 1999 decision. In doing so, the Board clearly instructed DCRA that the appropriate remedy for Appellant's continuing operation of an illegal repair garage was to revoke the "automotive service center" certificate of occupancy. See Exhibit D.

In accordance with the Board's guidance, DCRA proceeded to personally serve Appellant with a Notice of Intent to Revoke Certificate of Occupancy Number B001816757 ("Automotive Service Center"). See Exhibit E. Appellant did not timely respond to the Notice to Revoke and DCRA subsequently revoked the Certificate of Occupancy. At about the same time, Appellant had received yet another certificate of occupancy (CO33951 dated May 15, 2002) based on a

change of ownership of the subsequently revoked Automotive Service Center certificate of occupancy. By letter dated September 6, 2002, DCRA notified Appellant and Mr. Yuen that both certificates of occupancy were cancelled, should be surrendered, and continued operation of the illegal repair garage was prohibited. See Exhibit F.

Notwithstanding repeated orders to cease illegal operations by DCRA over the last thirteen (13) years, Appellant and/or Mr. Yuen remain undeterred and continue to operate an illegal twenty-one (21) bay repair garage immediately adjacent to a high-density residential area.

II. Appellant's Pre-Hearing Statement is Fatally Flawed

In this Appeal, the Board's review is de novo. The Appellant bears the burden of proof in bringing this appeal, but has not provided the Board with any documentation or other supporting evidence. The Appellant's Pre-Hearing Statement is fatally flawed and does not comply with the Board's procedural requirements under 11 DCMR § 3112.10. Instead, the Appellant lamely provides a laundry list of documents that may be introduced at the hearing, but refused to provide the Board and other parties copies of those documents claiming they are in the "public record". It was the Appellant's duty to provide those documents rather than forcing the Board and other parties to undertake this investigative project. Accordingly, the Board should exclude Appellant from entering any of the documents listed, but not provided, into to the record at the hearing or soliciting testimony related to those documents.

III. Intervenor's Witnesses and Evidence

At the hearing, Intervenor expects to introduce the following witnesses:

1. Representative of Charles E. Smith Residential;
2. Representative of Van Ness South Tenant's Association; and

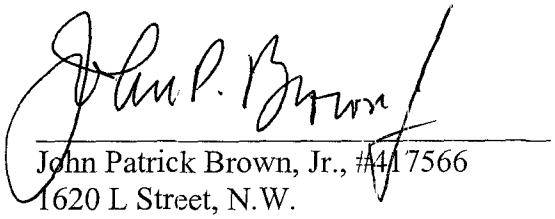
3. Such other witnesses and supporting documentation required to respond to Appellant's case.

IV. Conclusion

For the foregoing reasons and as supported by testimony and related documents at the hearing, Intervenor respectfully requests that this Appeal be DENIED.

Respectfully submitted.

GREENSTEIN DELORME & LUCHS, P.C.



John Patrick Brown, Jr., #417566
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036

Counsel for Intervenor
Charles E. Smith Residential

203484

CERTIFICATE OF SERVICE

I hereby certify that, on April 1, 2003, a true and correct copy of Pre-Hearing Statement of Intervenor, Charles E. Smith Residential, was mailed, first-class, postage prepaid, to:

Tamir Damari, Esq.
1025 Connecticut Avenue, N.W.
Suite 220
Washington, D.C. 20036

Matthew J. Green, Jr., Esq.
DCRA
Office of Compliance
951 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002

Advisory Neighborhood Commission 3F
P.O. Box 39290
Washington, D.C. 20016-9290

203484

John Patrick Brown, Jr.

Attachment 4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
613 G STREET, N.W., SUITE #729
P.O. BOX 37140
WASHINGTON, D.C. 20013

DEPARTMENT OF CONSUMER
AND REGULATORY AFFAIRS

vs. 92-OAD-1683-E

YUEN L. KOO, PRESIDENT
VAN NESS INC.
C/O Peter T. Meszoly, Esquire
Stohlman, Beuchert, and Egan, Chartered
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Respondent

DECISION AND ORDER

BACKGROUND

This matter came before Rohulamin Quander, Attorney Examiner/ALJ (the ALJ), the Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), on May 20, 1992, on the allegation that the Respondent was operating a repair garage without a certificate of occupancy (C of O), in violation of Title 11, D.C. Municipal Regulation (DCMR) 3203.1. The Respondent denied the allegation. While the ALJ had the matter under advisement, DCRA filed a Motion to Reopen the Record on June 23, 1992, to receive additional evidence that allegedly was not available at the time of the initial hearing. The hearing on the Motion to Reopen the Record

was conducted on September 10, 1992.

The record, as to the Motion to Reopen, closed on October 5, 1992, by which time each side had submitted proposed findings for the ALJ to consider as a part of his deliberations.

Several observers from the general public and representatives from Goodyear, Inc., attended the hearing, but none testified on behalf of either party. Participating at the hearing or the subsequent oral argument on the Motion to Reopen the Record were: Koo L. Yuen, Respondent (the Respondent); Peter T. Meszoly, Esquire, Respondent's legal counsel; Melanie Saunders, Esquire, DCRA's legal counsel; Gus Aluko, Zoning Inspector, DCRA; Thomas Farah, Chief Zoning Inspector, DCRA; and James Delgado, Inspector, Business Inspection Division, DCRA.

ISSUES

There are two issues to be decided:

1. Should DCRA's Motion to Reopen the Record be granted.

2. Does the total record presented herein support a conclusion that the Respondent is misusing his existing certificate of occupancy (C of O), by operating an automobile repair garage without authority for that activity.

MOTION TO REOPEN THE RECORD

The initial hearing was held on May 20, 1992. While the ALJ had the matter under advisement, and before he issued his Decision and Order, DCRA filed a Motion to Reopen the Record, seeking leave to

submit allegedly new, relevant evidence concerning the types of automotive repairs being conducted by the Respondent at the business site. The Motion hearing was held on September 10, 1992.

The Respondent vehemently opposed the Motion, noting that DCRA's belated decision that other and different evidence would be preferable to that initially presented, amounts to two bites at the apple. The Respondent argued that DCRA should not be allowed to go back and "fix" the evidence to suit its case, using photographs taken by Mr. Delgado on or about May 28, 1992.

DCRA argued that the disputed new evidence concerning what kind of auto service the Respondent was providing, was simply not available on the date of the citing official's March 12, 1992, initial visit.

DCRA also argued that the Respondent admitted, during the initial hearing, that he was conducting "minor" auto repairs rather than "major" auto repairs which required a type of C of O he did not possess. This admission was allegedly a surprise to DCRA, which then sought independent evidence to verify the exact nature of the ongoing repair activity. DCRA reaffirmed its initial conclusion that the Respondent's services were exceeding his C of O's limitations.

In the interest of judicial economy, the ALJ allowed Mr. Delgado to testify to expand on his previously submitted affidavit and to present the five (5) photographs he took during his May 28, 1992, visit to the Respondent's premise. All parties were advised that both his testimony and the photographs were received, subject to

the ALJ's determination whether to grant or deny the Motion to Reopen the record.

In his September 10, 1992, testimony, Mr. Delgado gave the details of his May 28, 1992, unannounced visit to the Respondent's place of business. He found, based upon the nature of the repairs being made, that the Respondent was engaging in automobile repairs beyond the scope allowed by the existing C of O.

To both the ALJ's and Respondent counsel's inquiry as to why this information was not presented during the initial hearing, DCRA maintained that the photographic evidence had not previously been created. Inspector Delgado was only directed to inspect and photograph the premises after the original infraction hearing had taken place, as the extent of the work the Respondent was performing was not fully realized until the Respondent made certain statements during the initial hearing which prompted further investigation.

DCRA further maintained that because the Respondent was represented by counsel at both the initial and motion hearings, and afforded ample opportunity to cross examine Inspector Delgado, and to introduce rebuttal evidence, the Respondent did not suffer any deprivation of his legal rights in this matter, and that reopening the record provides a more complete record and serves the ends of essential justice.

It is well established that in the absence of legislative restriction, administrative agencies have the inherent power to reopen, to modify, or to rehear a case, as long as the power to do so

is exercised reasonably. Posner v. Martin, 135 A 2nd 156 (D.C. Mun. App, 1957).

The ALJ is not convinced that the supposedly "new" evidence was unavailable and could not have been obtained prior to the May 20, 1992 hearing. In addition, the Respondent was previously known to DCRA as a possible C of O law violator, having been found fully liable in his prior case held before Attorney Examiner/ALJ Coles Ruff, in 90-OAD-1726-E, issued July 17, 1990.

Having taken the entire situation into consideration, the ALJ will deny DCRA's Motion to Reopen the Record and will render his decision based solely upon the evidence presented at the May 20, 1992, hearing and the respective Memorandums of Law submitted by counsel.

FINDINGS OF FACT

1. Respondent, Koo L. Yuen, is the President of Van Ness, Inc., which operates a Texaco service station under the trade name of Van Ness Car Care Center at 4225 Connecticut Avenue, N.W. and an auxiliary auto service facility in leased space in the basement of 4221 Connecticut Avenue, N.W., Washington, D.C., with entrance through the alley behind the building. (Testimony of Respondent)

2. 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. Both automobile dealerships were located in C3-A zones. Automobile dealerships are allowed as a matter of right in that zone, and had C of O's for that operation. (Testimony of Respondent; 11 DCMR 721.3(d); ALJ research on utilization history of premise)

3. The Respondent also operates as an independent dealer for the Goodyear Company, and is listed in periodic Goodyear Company advertisements as providing quality Goodyear tires and auto service. (Government Exhibit #3C)

4. The Respondent also places periodic automobile service advertisements in newspapers of general circulation, including the Uptown Citizen, advertising 21 automobile bays available for service and repairs of all types and kinds of automobiles. (Testimony of Farah; Government Exhibit #3B)

5. Although the nature of the automobile servicing provided varies from printed advertisement to advertisement, typically they state that the Respondent will provide "quality tires", "auto service", "oil change, chassis lube and oil filter", "preventative maintenance check", and "service and repairs", and is an "import and domestic car specialist". (Government's Exhibit #3B, 3C, and #4)

6. On May 10, 1989, the Respondent filed an application for the C of O for the 4221 Connecticut Avenue, N.W., address, listing the proposed use at item 10 on the application form as, "Automobile sale and sale of accessory [sic] including installation." At item 30, "prior use", the Respondent noted that the use was unchanged.

(Respondent Exhibit #1)

7. Because of the prior use history of this premises for the sale of automobiles by other businesses, C of O #B156843 was issued on May 10, 1989, (the date of the application), without an on site inspection by DCRA staff. The C of O lists the purpose as "Retail sale [sic] of automoble [sic] and accessories including Instalation [sic]." (Respondent Exhibit #2)

8. ALJ Coles B. Ruff's Decision and Order in 90-OAD-1726-E (NOI #9053), was issued after a full evidentiary hearing into allegations that this Respondent was operating an automobile repair garage without a C of O. (Government Exhibit #1)

9. The key facts found by ALJ Ruff are the same as found here, namely:

a) 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;

b) 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.

10. The Respondent presented copies of C of O's of several other automobile repair garages, all of which, according to the Respondent, were located in areas zoned C2-A.

CONCLUSIONS OF LAW

DCRA v. YUEN L. KOO, ET AL, 92-OAD-1683-E

1. The Respondent has again violated 11 DCMR 3203.1, by operating an automobile repair operation in a C3-A zoned area, without the mandatory C of O for that particular use at this site.

2. The ALJ sees no real difference between this present case and the fact pattern of the 1990 Decision and Order, which case resulted in the Respondent being held fully liable for the same offense.

3. While the Respondent was not represented by counsel in the 1990 matter, the instruction advising him of his appeal rights were clearly stated. Yet, he elected not to appeal the prior Order, but instead simply ignored the directive.

4. This ALJ incorporates by reference the prior Decision and Order, and its reasoning, and concludes that a C of O issued for retail sale of automobiles and accessories, including installation, is not a blank check to engage in what the Respondent himself calls "minor" automobile repairs.

5. The Respondent presented copies of C of O's of several other automobile repair businesses which are operating in largely residential areas, but which are located in zones designated as C2-A, a more restrictive zone than the Respondent's current C3-A location. However, the Respondent presented no evidence whether any of these businesses sought or obtained a Board of Zoning Adjustment (BZA) variance for the use of their locations, or might have been allowed to remain at these locations on the basis that the site use was established prior to 1958 (i.e. grandfathered in), and therefore

allowed under a special exception.

6. 11 DCMR 801.7(h) establishes the use and operation of an automobile repair garage as a matter of right in a C-M district only. The operation of Respondent's type of business in a more restrictive zone requires that the Respondent's business site have either a C of O granted via a BZA variance, or is entitled to the grandfathered in exception. In either circumstance, the history of the granting of the C of O would have been appropriately reflected in the DCRA application record.

7. Both retail and service businesses which are allowed as a matter of right in C2-A zones (a more restrictive zone than the C3-A) can generally operate in the C3-A zone, since the latter is less restrictive than the former.

8. The Respondent's C of O application failed to reflect the diverse nature of the business he was undertaking. Instead, the Respondent has intentionally clouded the issue, by claiming that because retail sales of automobiles and accessories, including installation, is allowed, as a matter of right in a C2-A zone, he can also operate that same type of business in the less restrictive C3-A zone as a matter of right.

9. His reasoning is faulty, having been based upon the premise that he is operating a retail automobile sales business in addition to the repairs that he is making. But his automobile sales business is essentially a fiction. The Respondent admitted that only three to four used cars are sold per month, generally as the result of some

exchange between customers, frequently initiated by virtue of both parties having had automobile repairs made at the Respondent's business.

10. The Respondent advertises that he had 21 automobile service bays available for service and repair. Nowhere in any of the advertisements presented at the hearing or submitted to the record, does either the statement "automobile sales" or "sale of automobile accessories including installation" appear. Instead, the Respondent testified on direct that he performed the following alleged "minor" repairs; automotive maintenance; service to air conditioning systems; tire sales, installation, and servicing; battery and head lamp installation; brake service; tuneups; fan belts; and "all things traditionally done at Jiffy Lube and Precision Tune."

11. The Respondent denied that he performed any "major" repairs, i.e. engine removal, overhaul, and rebuilding; body or fender repairs; transmission work; upholstery; or automotive painting; etc. However, the type of automobile work his company does perform, including his very aggressive advertising effort, attracts enough business to keep his 21 services bays in operation.

12. The Respondent thus operates an automobile repair business, without the proper C of O, and is trying to pass off the legal requirements by maintaining that he is a retail automobile sales and accessories business.

13. The Respondent is well aware that a C of O is both site and use specific, and that a business owner cannot change the

characteristic and use of the premise as he has done here.

14. In addition, the plain meaning of a C of O for retail sales of automobiles and accessories, including installation, does not permit the party holding the C of O to engage in a comprehensive line of automobile repairs, even if in the so-called "minor" repair category. Likewise, the automobiles being repaired or serviced were, by the Respondent's own admission, not those initially sold by this business, and are, therefore, not a subordinate part of the principal business.

15. In the Respondent's 1990 case, and again in the present matter, the Respondent attempts to place great emphasis upon the supposedly accessory installation aspect of his business, taking the position that the installation and repair of brakes, tune ups, air conditioning, etc., were really providing accessories for the vehicles in his shop.

16. Webster's Dictionary defines "accessory" as:

> an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else (auto accessories)

17. 11 DCMR 199.1 defines "Repair Garage" 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, equippings or repair.

18. The plain meaning of these two definitions clearly underscores that the Respondent's business is a "repair garage" and not a retail sale of automobiles and accessories, plus installation.

Respondent's election not to perform all of the categories of auto repair, including engines and transmission overhaul or rebuilding, does not lessen the fact that he has been and continues to operate an automobile repair business, for which he had no C of O.

19. No matter what the Respondent calls his business, it is an automobile repair garage, and cannot be operated at this C3-A zoned location without a site and use specific C of O, which would apparently require a BZA approved variance. The Respondent's C of O is clearly invalid.

20. The ALJ concludes 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, 1989. The Respondent's utilization at the site must be subordinate to the stated purposes of the C of O, but it is obvious that Respondent is not engaging in either the retail sale of automobiles, other than on rare occasions, nor is he operating an automobile accessory, including installation, business.

ORDER

Accordingly, it is this 23rd day of November, 1992,

ORDERED that DCRA's Motion to Reopen the Record is **DENIED**; and it is

FURTHER ORDERED that the Respondent, Koo L. Yuen, President, Van Ness, Inc., and Van Ness, Inc., is found to be fully liable for violation of the Certificate of Occupancy laws of the District of Columbia, with a full fine of $500, and court cost of $25 to be

imposed, a total of $525; and it is

FURTHER ORDERED that the Building and Land Regulation Administration, DCRA, is directed to take immediate steps to vacate Certificate of Occupancy #B156843; and it is

FURTHER ORDERED that the Respondent immediately cease and desist the operation of the automobile repair business at 4221 Connecticut Avenue, N.W., 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.

Rohulamin Quander,
Administrative Law Judge, D.C.

IMPORTANT NOTICE

Respondent's failure to appeal this decision or to arrange for payment of all fines, penalties, and costs within fifteen (15) calendar days of service of this decision shall operate to suspend automatically the license or permit until the assessment is paid, thereby subjecting the Respondent to subsequent and enhanced violations or unpermitted activity.

APPEAL RIGHTS

This decision is final. The Respondent may appeal this decision if the Respondent feels that the decision is erroneous. Complete information concerning appeal procedures is available from the Office of Civil Infractions, DCRA, 613 G Street, N.W., Seventh Floor, Washington, D.C. 20001, (202) 347-8530.

All notices of appeal must be submitted within fifteen (15) calendar days of the date of service of this decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

KOO L. YUEN AND
VAN NESS INCORPORATED

APPELLANT

v.

BZA NO. 93-0006-CI
(OAD NO. 92-1683-E)

DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS (DCRA)

APPELLEE.

DECISION AND ORDER

PROCEDURAL MATTERS:

Appellants filed a notice of appeal on December 22, 1992 from the ALJ's decision upholding DCRA's fine. Appellants filed a second notice of appeal on May 28, 1993 from the ALJ's decision not to grant a stay of his 1992 order pending appeal. A transcript of those proceedings became available in February 1994. On April 8, 1994, a Motion to Intervene was filed by the Advisory Neighborhood Commission (ANC) 3F, JMB/Van Ness Limited Partnership, and Van Ness South Tenants Association, Inc., to which appellant objected. The Motion to Intervene was granted. On December 6, 1994, appellant filed a Motion for Extension of Time to File Argument and Motion for Oral Argument, to which the intervenors objected. The Motion for Oral Argument was granted. On January 3, 1995, the intervenors filed a Motion To Strike the appellant's Opposition to Motion for Intervention and Reply to Opposition of Movant Intervenors. The intervenors' Motion to Strike was denied. On January 5, 1995, appellant requested 30 minutes for each side to present oral argument, which was objected to by DCRA and the intervenors. The request was denied.

DECISION

This case involves fines and sanctions levied on appellant for operating a repair garage without a certificate of occupancy. (11 DCMR 3203.1). This matter was heard on May 20, 1992, before Administrative Law Judge Rohulamin Quander (hereinafter "The ALJ") of the Office of Adjudication, Department of Consumer and Regulatory Affairs. The Decision and Order of the ALJ, dated November 23, 1992, affirmed the Notice of Infraction; fined the appellant a total of $525.00, which included $25.00 court costs; ordered that the Building and Land Regulation Administration, DCRA, vacate Certificate of Occupancy No. B156843; and ordered the appellant to immediately cease and desist the operation of the automobile repair business at 4221 Connecticut Avenue, N.W., until such time as a proper certificate of occupancy is obtained. On February 23, 1993, the ALJ denied all post hearing motions. The decisions of the ALJ came to be heard before the Board of Zoning Adjustment (BZA) on April 5, 1995, on the transcripts of record, the briefs filed, and arguments of counsel. For the reasons set forth in this Decision and Order, the BZA affirmed the decision of the ALJ and denied the appeal.

The appellant was charged with a violation of 11 DCMR Section 3203.1 for using the premises of 4221 Connecticut Avenue, N.W., Washington, D.C. as a repair garage without a certificate of occupancy. The general prior use of the property had been an automobile dealership with an automotive service facility in the basement level. The appellant contends that in 1989 he went to obtain a certificate of occupancy and described the intended use of the garage to the zoning staff person as an automotive service station. He claims that at that time, he was told that the use he described was a matter-of-right use permitted in a C-3-A zone and, therefore, he applied for and was issued the type of certificate of occupancy that the staff person directed him to obtain (Certificate of Occupancy number B156843, "Retail Sale of Automobiles and Accessories Including Installation"). In 1990, the appellant was cited for a violation of 11 DCMR 3203.1 after an inspector observed an auto repair shop with 15 repair bays being conducted on the premises, which exceeded the use permitted by the certificate of occupancy that appellant had been issued. The appellant was ordered to pay $525.00, which included court costs for operating an automobile repair garage without a certificate of occupancy. On March 13, 1992, a citation was issued after the garage was again visited by a DCRA inspector. On his visit, the inspector observed 15 repair bays, car parts, tire storage, and a total of 14 cars. Upon further inspection, he found that Certificate of Occupancy No. B156843 was for "Retail Sale of Automobiles and Accessories Including Installation" and did not authorize an automobile repair shop. The inspector felt that what he observed amounted to major repair work constituting an automobile repair shop, far exceeding the sale and installation of car accessories permitted by the certificate of occupancy. Appellant claimed that he was providing only minor repairs and that these minor repairs were similar to those performed at other automobile repair garages which had similar certificates of occupancy and were actually located in more restrictive zones. He further claimed that most of his repair activity involved the installation of accessories for the vehicles in his shop. Appellant did admit, however, that he sold an average of only four cars per month.

The citation charged appellant with "operating a repair garage without a certificate of occupancy" in motion of 11 DCMR 3203.1. This matter was heard by the ALJ on May 20, 1992, and the Decision and Order issued by the ALJ on November 23, 1992 determined that: the appellant failed to reflect the diverse nature of the business he was undertaking when first obtaining his certificate of occupancy; the appellant's claim of operating an automobile sales business is a fiction; and, the appellant operates an automobile repair business as his principal business for which he does not have a certificate of occupancy. Therefore, the ALJ concluded that the appellant was fully liable for violation of the certificate of occupancy laws of the District of Columbia for operating an automobile repair business without a valid certificate of occupancy. The appellant filed a timely appeal with this Board. The ANC-3F, JMB/Van Ness Limited Partnership and the Van Ness South Tenants Association, Inc. were permitted to intervene in this case and presented both their and the government's case during oral arguments.

On appeal, the appellant contended that the ALJ erred in determining that provision of minor automobile maintenance services is a use unauthorized by a certificate of occupancy for "Retail Sale of Automobiles and Accessories, Including Installation." To support his claim, appellant advanced arguments to the effect that: the Zoning Administrator had long interpreted the Zoning Regulations as allowing uses like his (claiming the language in the Zoning Regulations clearly encompasses tires and batteries as being in the class-automobile accessories); other similarly operated facilities that perform the same functions as does appellant's facility are permitted to operate under a less restrictive C of O; the ALJ did not consider the evidence; automobile accessories is a term of art in the automobile industry; under the restrictive interpretation applied by the ALJ, many other auto businesses would now have to obtain new certificates of occupancy; and, it is possible to have multiple principle uses for a business, as long as they are all permitted zoning uses.

The intervenors argued that repair is the primary use of the premises. The intervenors presented two responses to the appellant's argument that the Zoning Regulations were misinterpreted. First, the intervenors contended that the Zoning Regulations were correctly interpreted by the ALJ. To support this contention, they offered the following arguments:

a) The Zoning Regulations, as enacted by the Zoning Commission, distinguish between a repair garage and the retail use and sale of automobile accessories including installation. There is, however, no evidence that the appellant is selling auto parts. Instead, the intervenors believe that he is selling the service of automobile repair.

b) The sale of automobile accessories is listed as retail use; however, what the appellant is operating is a service establishment.

c) The attempt to pass out catalogues and other evidence which appellant presented is an attempt to introduce new evidence which is not of record, was not of record below and therefore, should be rejected and not considered.

d) The record clearly reflects that the principal activity in the establishment is not retail sale of automobile parts or accessories. Instead, the parts or accessories are incidental to providing the advertised service of different kinds of automobile services or repairs. This is not a permitted use.

e) The previous user of the basement, the automobile dealership, had actually occupied two to three stories of the structure, not just the basement. Therefore, in terms of previous uses, the repair garage was an incident to the permitted use of an automobile dealership. Thus, in renting just the repair garage premises and using it only as such, the appellant has made the garage into the primary use and the sale of autos and auto accessories an incidental use. This constitutes a change of use.

f) There is no evidence of record that the appellant is selling auto parts, but there is evidence of advertised repair service. In addition, the appellant does not deny that the advertisement is for an automobile repair service.

The intervenors further argued that this appeal was brought in an improper forum. The Board is being asked to reinterpret Zoning Regulations. This action, therefore, should be appealed under the Zoning Enabling Act and not the Civil Infractions Act. Thus, it is unnecessary to determine whether the interpretation of the ALJ was correct.

The intervenors' final argument was that the appellant's actions denied the community a special exception hearing at which time they would have been given the opportunity to express their beliefs as to the impact of the use on the surrounding area.

The Board rejects the appellant's argument and notes that the appellant's establishment is clearly a repair shop based on the evidence and testimony as to the extent of the repairs done. New evidence presented by the appellant cannot be admitted, as this is not a de novo hearing. In addition, the neighbors' concerns regarding appellant's disregard of a previous notice of infraction is a factor to be considered. This Board concludes that the ALJ correctly determined that there was sufficient evidence to establish the fact that the sale of automobiles was incidental to the other uses of the premises. Therefore, even if accessories were sold, their sale and installation was merely incidental to the real and principal use of the property, repair. The Board further concludes that the ALJ was correct to conclude that this was not a car dealership of any sort, nor was this establishment operated for the principal use of sale of accessories. Therefore, the ALJ did not err in determining that the scope and type of automobile repair and maintenance services provided by the appellant was not authorized by a certificate of occupancy for "Retail Sale of Automobiles and Accessories, Including Installation." The evidence of record supports the ALJ's finding that sale of autos and accessories are incidental to the principal use of the premises as a repair shop. This, in and of itself, is a sufficient basis upon which to conclude that the type of certificate of occupancy appellant had was improper.

ORDER

The Board notes that the appellant had continued to operate his facility and therefore, the Board's takes no action on the appeal of the ALJ's decision to deny the appellant's Motion to Clarify Order or Stay of Sanctions Pending Appeal.

Having considered the record of the hearing before the ALJ and the decision of the ALJ, the Board of Zoning Adjustment finds that there was substantial evidence to support the decision and the amount of the fine. Accordingly, the Board of Zoning Adjustment **ORDERS** that the decision of the ALJ be **AFFIRMED.**

VOTE: 5-0 (Laura M. Richards, Maybelle Taylor Bennett, Susan Morgan Hinton, Craig Ellis to affirm; Angel F. Clarens to affirm by absentee vote).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: MAR 30 1998

bza93-0006-C1/AZ/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 93-0006-CI
OAD NO. 92-1683-E

As Director of the Board of Zoning Adjustment, I certify and attest that on MAR 30 1998 a copy of the decision entered on that date in this matter was mailed first class, postage prepaid to each party in this case, and who is listed below:

W. David Watts, Director
Department of Consumer and
Regulatory Affairs
614 H Street, N.W., Suite 1120
Washington, D.C. 20001

Koo L. Yuen
4225 Connecticut Avenue, N.W.
Washington, D.C. 20008

Office of the Corporation Counsel
Consumer Affairs Division
441 4th Street, N.W., Sixth Floor
Washington, D.C. 20001

Charles R. Braun, Esquire
3816 Windom Place, N.W.
Washington, D.C. 20016

Peter T. Meszoly, Esquire
William Utermohlen, Esquire
Stohlman, Beuchert, Egan and Smith
1775 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006

Charlotte Parker, Esquire
Assistant Corporation Counsel
441 4th Street., Room 6N13
Washington, D.C. 20001

Attested By: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

Date: MAR 30 1998

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
941 NORTH CAPITOL STREET, N.E, SUITE # 9100
WASHINGTON, D.C. 20002
TEL. (202) 442-8167

DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Petitioner

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

V.

Kuri Brothers, Incorporated

Respondent

DECISION AND ORDER

Procedural History

Respondent Kuri Brothers Incorporated, was issued Notice of Infraction #033729 of April 27, 1999, for operating an automobile repair garage within a C-3-A zoned area without a Certificate of Occupancy. At the request of the Respondent, a hearing was held before the Honorable Lennox J. Simon, Administrative Law Judge (ALJ), D.C. Department of Consumer and Regulatory affairs (DCRA), Office of Adjudication (OAD) on August 11, 1999. The hearing was convened pursuant to DCRA Civil Infractions Act of 1995, D.C. Law6-42, D.C. Code6-2701et seq; and the D.C. Administrative Procedures Act, D.C. Code, Sec. 1-1501 et seq

Present at the hearing were: Yvonne Rockett, Zoning inspector; Tore Bello, Zoning technician; Michael D. Johnson, Zoning Administrator; Matther Green, Jr, Esquire, Counsel for DCRA; Priscilla M. Ford, Receiver / intervener; Pat Brown, Esquire and James Sadowski, Esquire, Counsel for Receiver; Kris Kuri, Respondent; Stephen Hessler, Esquire, counsel to Respondent; and Koo Yuen/ Vaness, Incorporated, Respondent's landlord.

As a preliminary matter Prior to the hearing, Grubb & Ellis Management Services, Inc., court appointed Receiver of the subject property located at 4221 Connecticut Avenue, N. W., Washington, D.C., through its attorney James Sadowski, Esquire, of the law firm of Greenstein, Delorme and Luchs, LLC, moved to intervene in this action, and be permitted to present evidence and testimony at this hearing. The Receiver contended that it had a clear interest in the proceedings because the lessor of the premises obtained an improper certificate of occupancy, and the sub-lessor then "piggybacked" upon the improperly issued Certificate of Occupancy and obtained their own Certificate of Occupancy for an "Automobile Service Center". The (ALJ) after hearing the proffers of all parties involved denied this motion thereby disallowing intervention and proceeded with the hearing on the merits..

ISSUES PRESENTED

Whether Respondent was operating an automobile repair business on April 27, 1999, at 4221 Connecticut Avenue, N.W. without a Certificate of Occupancy in violation of Title 11 DCMR 3203.1?

FINDINGS OF FACT

After a careful evaluation and analysis of the evidence and information, the ALJ finds as a matter of fact that:

1. Respondent Kuri Brothers is incorporated under the laws of the District of Columbia, and Is located at 4221 Connecticut Avenue., N.W., (basement level) N.W., Washington, D.C.

2. On August 12, 1998, Certificate of Occupancy No. B00181657 was issued to the Kuri Brothers, Inc. at 4221 Connecticut Avenue N.W., (basement level) for the purpose of operating an "Automobile Service Center". (Gov't. Exhibit No. 3A)

3. The subject property located at 4221 Connecticut Avenue, N.W. Washington D.C. is located in a C-3-A zone area, and is owned by Koo Yuen / Van Ness Incorporated. Respondent Kuri Brothers., Inc, has subleased its basement space from Koo Yuen/Van Ness Inc.

4. The subject property located at 4221 Connecticut Ave., N.W., is under the control of Grubb & Ellis Management Service, Inc., who were appointed receivers on January 8, 1998, by the D.C. Superior Court to manage the premises.

5. The Zoning Regulations distinguished between a repair garage and a retail use, and the sale of automobile accessories including installation. (Testimony of Inspector Rockett)

6. On April 27, 1999, DCRA's Zoning inspector Yvonne Rockette conducted an inspection of Respondent's business and personally observed Respondent's employees working on automobiles: repairing head lights and engaging in under the hood mechanical repair work. As a consequence, NOI #03283 in the amount of $500.00 was issued to Respondent. (Testimony of Inspector Rockett)

7. Respondent's automobile repair garage is located in a zone C-3-A.area in Washington, D.C., and, Zone C-3-A does not permit the operation of an automobile repair garage. Only areas Zoned for C-M industrial will permit the operation of an automobile repair garage (Testimony of Inspector Rockett)

8. Respondent is engaged in the business of offering automobile repair services however, Respondent does not have a certificate of occupancy which permits the operation of an automobile repair garage at its current location. (Testimony of Inspector Rockett and Gov't. Exhibit #3A & 3B)

CONCLUSIONS OF LAW

9. The Respondent has an invalid Certificate of Occupancy for an "Automobile Service Center." While an "Automobile Service Center" is not a defined or recognized term under the D.C. Zoning Regulations. The term denotes the same type of activity which is prohibited in a C-3-A zoned area, repair garage."

10. The current and longstanding use of the basement space at the subject property has been as an automobile repair garage. In a previous Decision and Order issued November 22, 1992, ALJ Rohulamin Quander made a finding that that the lessor, Mr. Yuen/Van Ness, Inc. operated an automobile repair garage in the basement of the property without a valid Certificate of Occupancy. This decision was subsequently affirmed by the D.C. Board of Zoning Adjustment (BZA) in an opinion written March 30, 1998.

11. On April 21, 1998,the lessor, Mr. Yuen/Van Ness, Inc., after the BZA ruled against him, filed a new application for a Certificate of Occupancy and indicated that the new operation would be an "Automobile Service Center" even though no such an entity existed in the D.C. Zoning Regulations. The Respondent Kuri Brothers Inc, (sub-lessor) has elected to "piggyback" upon this "Automobile Service Center" concept used by mr. Yuen/Van Ness, Incorporated.

12. The purpose of the D.C. zoning regulations is to insure the protection of the health welfare and safety of the public by bring order to the location of businesses and residential dwellings. In the instant matter "Repair Garages/Automobile Service Centers" 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.

13. Pursuant to Title 11 DCMR 3203.1, it is unlawful to use any structure, land , or any part of any structure, or land for any purpose other that a one family dwelling until a Certificate of Occupancy has been issued to the person stating that the use complies with the provision of this title and the D.C. building code.

14. 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 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.

15. 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.

16. The ALJ finds the testamentary and documentary evidence of the Government witnesses to be very credible

17. Respondent is a violation of 11 DCMR 3203.1, by operating his automobile repair garage at 4221 Connecticut Avenue, N.W. Washington, D.C. without a Certificate of Occupancy which permits such operation.

ORDER

Therefore it is Ordered this 27th day of December 1999, that NOI#032834 is hereby and the same is Upheld. Fine imposed is $500.00, Court cost is $40.00, for at total assessment of $540.00 made payable to the District of Columbia Treasurer.

FURTHER ORDERED: that Respondent Kuri Brothers, Inc Cease and Desist the operation of its Automobile repair garage at 4221Connecticut Avenue, N.W., until such time that its obtains an exception from the District of Columbia Board of Zoning Adjustment.

Lennox J Simon
Administrative Law Judge, D.C.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
941 NORTH CAPITOL STREET, NE ROOM 9100
P.O. BOX#37149
WASHINGTON, DC 20013-7200
TELEPHONE (202) 442-8167

Pat Brown, Esquire
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, NW
Suite #900
Washington, DC 20036

NOI No: #32834

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order rendered on 12/27/99 for the above referenced case was Mailed postage prepaid on 12/29/99 to the respondent at the address listed above.

Stacey Washington for
~~Belva D. Newsome~~, Chief Administrative Law Judge

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Appeal No. 00-0001 (No. 99-OAD-1821-E) of the administrative determination of Lennox J. Simon, Attorney Examiner/ALJ, Department of Consumer and Regulatory Affairs ("Appellee"), Office of Adjudication, made on December 27, 1999, finding Kuri Brothers, Inc. ("Appellant") in violation of 11 DCMR § 3203.1 – Building used as other than a single family dwelling without a certificate of occupancy (Auto Repair Garage).

DECISION AND ORDER

This case involves a notice of infraction (#0033729) for operating an automobile repair business without a Certificate of Occupancy, in violation of 11 DCMR § 3203.1, on April 27, 1999. The notice of infraction was issued pursuant to 11 DCMR § 3203.1, which prohibits the use of a building as other than a single family dwelling without a certificate of occupancy.

This matter was heard on August 11, 1999. The opinion of the Administrative Law Judge ("ALJ") assigned to this case, Mr. Lennox J. Simon, was issued on December 27, 1999, upheld the issuance of the notice of infraction.

On March 19, 2002, a hearing on this appeal was held before the Board. Representing the Appellant was Tamir D. Damari, Esq., from the Law Offices of Stanley H. Goldschmidt. Representing the Appellee was Matthew J. Green, Esq.

Requests for intervention were submitted to the Board by ANC 3F, Van Ness South Tenant's Association, Inc., and Charles E. Smith Residential. All three requests were denied during the Board's March 19, 2002, hearing by a vote of 3 to 1 to 1, with one member not present, not voting.

At its decision meeting of April 2, 2002, the Board voted 3 to 0 to 2 to grant the appeal, with two members not present, not voting.

Background

On August 12, 1998, Certificate of Occupancy No. B00181657 was issued to the Kuri Brothers, Inc. at 4221 Connecticut Avenue, N.W., basement level, for the purpose of operating an "Automobile Service Center" in a C-3-A District. The term "Automobile Service Center" is neither used nor defined in the Zoning Regulations. The ALJ for this case found that an

"Automobile Service Center" was the same thing as a "Repair Garage"[1] and that both terms should therefore "be treated as the same entity". (Finding of Fact #12).

The ALJ also found that the Appellant had an invalid Certificate of Occupancy (Conclusion of Law #9) noting a Repair Garage is not permitted as a matter of right in a C-3 District. The ALJ therefore concluded that the Appellant was operating his automobile repair garage "without a Certificate of Occupancy which permits such operation" (Conclusions of Law #17) and upheld the notice of infraction.

DECISION

This appeal of the ALJ's decision was brought pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 2-1803.01, *et seq.* (2001)) ("Civil Infractions Act"). The Board's review is based on the record established before the ALJ. The Board "shall set aside any . . . order that is without the observance of procedure required by law or regulations . . . or any order that is unsupported by a preponderance of the evidence on the record." D.C. Code § 2-1803.03.

The first issue confronted by the Board in this appeal was whether to grant requests for intervention by a citizen group, a real estate company, and the local ANC. All three requests were denied. Neither the Civil Infractions Act nor the Zoning Regulations[2] provide for intervention in civil infraction appeals.

This action is an appeal of a civil infraction fine, which was assessed only against the Appellant. Moreover, even if there was an interest at stake, the requestors did not go so far as to assert that DCRA could not adequately protect their interests.

Turning to the merits of the appeal, the Board finds that the ALJ for this case erred in upholding the notice of infraction issued to the Appellant because DCRA did not observe the procedure required by DCRA's own regulations.

As stated on the notice of infraction, the Appellant was cited for "Operating an Auto Repair Business [without] a Certificate of Occupancy", in violation of 11 DCMR § 3203.1. The Appellant was issued, and submitted into the record a copy of, its certificate of occupancy for "Automobile Service Center". Because the ALJ concluded that the Automobile Service Center and Repair Garage are one in the same, and that Appellant was operating a Repair Garage on his

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[1] Repair Garage is defined 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." 11 DCMR § 199.1.

[2] The Zoning Regulations provide for intervention in limited circumstances, in the Board's discretion, in appeals under the Zoning Act, D.C. Code § 6-641.07(f) and (g)(1) (2001), the representation or administration of the Zoning Act, 11 DCMR § 3112.15, but do not expressly provide for intervention in civil infraction appeals which were brought under the Civil Infractions Act, D.C. Code §§ 2-1803.02.

premises, the ALJ should have concluded that the Appellant's use was covered by its existing Certificate of Occupancy. Thus, the notice of infraction was issued in error.

The ALJ strays from the proper course when he declares in his order that the Appellant's Certificate of Occupancy is invalid. Although it is true that a Certificate of Occupancy cannot be issued for a Repair Garage in a C-3 District without a special exception, it is not within the ALJ's purview in this case to declare the Certificate of Occupancy to be invalid. Doing so is akin to revoking the certificate, which can only be done through the proper procedures.

Section 118.4.3 of the District of Columbia Construction Code Supplement (1999), title 12, DCMR, provides that "Any certificate of occupancy . . . shall be revoked by the Director, after notice, if due to any material circumstance, it is found to have been issued in error." Such notice is not only required by the above regulation, but also by the Due Process clause of the Constitution. *See, e.g., Transportation Leasing Co. v. Department of Empl. Servs*, 690 A.2d 487 (D.C. 1997) ("We have held that in general, an individual is entitled to fair and adequate notice of administrative proceedings that will affect his [or her] rights, in order that he [or she] may have an opportunity to defend his [or her] position.") (quoting *Ridge v. Police & Firefighters Retirement and Relief Bd.*, 511 A.2d 418, 424 (D.C. 1986). Any such revocation may then be appealed to the Board. Section 118.5 of the District of Columbia Construction Code Supplement (1999), title 12, DCMR; D.C. Code § 6-641.07 (2001).

The Board wishes to stress that DCRA therefore has a remedy in this situation, i.e., it may revoke the Certificate of Occupancy, after giving notice. However, issuing a notice of infraction for not having a Certificate of Occupancy before the revocation procedures are completed is premature.

Based on the above, it is hereby:

ORDERED that the appeal is **GRANTED** and the decision of the ALJ is **REVERSED**.

Vote: 3-0-2 (Geoffrey H. Griffis, David W. Levy, and Curtis Etherly to Grant; Carol J. Mitten not present, not voting; Anne M. Renshaw not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER MAY 2 2 2002

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
OFFICE OF THE ADMINISTRATOR

June 27, 2002

PERSONAL SERVICE

Kuri Brothers, Inc., t/a Automobile Service Center
4221 Connecticut Ave, NW
Washington, D.C. 20008

Koo Yuen, Registered Agent
4522 Albermarle Street, NW
Washington, D.C. 20016

NOTICE OF INTENT TO REVOKE CERTIFICATE OF OCCUPANCY NUMBER B001816757

This is official notice to you that the Department of Consumer and Regulatory Affairs, Building and Land Regulation Administration (the "Department") proposes to revoke Certificate of Occupancy Number B001816757, issued to Kuri Brothers, Incorporated. The subject property is owned by Koo Yuen/Van Ness Incorporated. Said certificate was issued on or about August 12, 1998, and authorized Kuri Brothers, Incorporated to operate an "Automobile Service Center", at the premises located at 4221 Connecticut Avenue, NW, in a C-3 zone area.

At the time of the Certificate of Occupancy's issuance, you informed the Department that the corporation's intent was to sell small automotive parts and make installations of same. The Department created the category of "Automobile Service Center" to facilitate your efforts. This facilitation did not include or permit any major automotive engine, body work or other automotive garage functions. By making major repairs and doing engine work you have operated outside the scope of this Certificate of Occupancy as well as the zoning requirements for this location. This notice is issued pursuant to D.C. Code § 1-1509(a). The charge and specifications in support of this action are as follows:

CHARGE I

You are in violation of 11 DCMR §101.5, which states in pertinent part that: "No building, structure, or premises shall be used, and no building, structure, or part of a building or structure shall be constructed, extended, moved, structurally altered, or enlarged except in conformity with this title."

You are operating an "automobile repair garage" located in a zone C-3 area, such a business operation is not permitted as a "matter of right" pursuant to11 DCMR §743.1 and requires approval from the Board of Zoning Adjustment.

SPECIFICATION A. On or about April 27, 1999, DCRA Zoning Inspector Yvonne Rockett conducted an inspection of the Respondent's business and personally observed Respondent's employees repairing automotive head lights and engaging in under the hood auto- motive mechanical repairs.

SPECIFICATION B. On or about January 3, 2002, DCRA Investigator Anthony Hooks conducted an investigation of the Respondent's business and personally observed Respondent's employees performing automotive engine repairs.

SPECIFICATION C. On or about May 12, 2002, DCRA Investigator Anthony Hooks conducted an investigation of the Respondent's business and personally observed Respondent's employees performing automotive engine repairs.

SPECIFICATION D. On or about June 5, 2002, DCRA Investigators Anthony Hooks and Vacylla Williams conducted an investigation of the Respondent's business and personally observed that the premises were open for business and that there were eight vehicles in various states of auto repair. The Investigators also observed the Respondent's employees accepting automotive repair receipts and vehicles for repair.

You have the right to challenge this proposed action to revoke your certificate of occupancy. In order to exercise this right you must request a hearing in writing within fifteen (15) days of your receipt of this Notice. Your request should be mailed first class U.S. mail postage pre-paid and

addressed to E. Savannah Little, Chief Administrative Law Judge, Department of Consumer and Regulatory Affairs, Office of Adjudication, 941 North Capitol Street, N.E., Suite 9100, Washington, D.C. 20002. Alternatively, you may hand-deliver your written request for a hearing to the same address within fifteen (15) calendar days of your receipt of this notice.

Additionally, if you decide to challenge this proposed action, please send a copy of your request for a hearing, pleading or other written communication in this case to Matthew J. Green, Jr., Agency Counsel, Office of the General Counsel, Department of Consumer and Regulatory Affairs, 941 North Capitol Street, N.E., Suite 9400, Washington, D.C. 20002. Please note that if you do not request a hearing within the time specified in this notice, or if you fail to appear at a scheduled hearing, you shall be deemed to have admitted the validity of the charges and specifications stated in this notice and a final notice of revocation will be entered against you. Should you request a hearing, you will be notified by the Office of Adjudication of the hearing date and time. You may appear personally at such hearing and be represented by legal counsel. You have the right to produce witnesses and evidence and to cross examine witnesses against you, to examine evidence produced, and to have subpoenas issued on your behalf to require the production of witnesses and evidence.

If you or any witness you intend to call, is deaf or because of a hearing impediment or language barrier cannot readily understand or communicate the spoken English language, you or your witness may apply to the Office of Adjudication for the appointment of a qualified interpreter.

If you have any questions, you may contact, Karen M. Edwards, General Counsel, Office of Compliance, on (202) 442-8475.

J. Gregory Love, Administrator
Building and Land Regulation
Administration

cc: David Clark, Director
Karen M. Edwards, General Counsel
E. Savannah Little, Chief Administrative Law Judge
Denzil Noble, Acting Zoning Administrator

PERSONAL SERVICE STAMP

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Personally served upon Chris Barnard

by the undersigned this 28 day of June, 2002.

[ ] Personal Service Attempted (Date_____ Time_____).
Comments _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Administrator

September 6, 2002

PERSONAL SERVICE

Kuri Brothers, Inc., t/a Automobile Service Center
4221 Connecticut Ave, NW
Washington, D.C. 20008

SERVE:

Koo Yuen, Registered Agent
4522 Albermarle Street, NW
Washington, D.C. 20016

RE: 4221 Connecticut Ave., NW

NOTICE TO DISCONTINUE BUSINESS ACTIVITY

Dear Mr. Koo Yuen:

Pursuant to D.C. Code, 2001 ed., §6-641.09 and Title 11 DCMR §3203.8(a), you are directed to discontinue all business activity at 4221 Connecticut Ave., NW, Washington, D.C. 20008, effective immediately. You were issued a Final Notice on August 22, 2002, which required you to surrender Certificate of Occupancy #B00181657 within 48 hours of receipt of that Final Notice to the Department of Consumer and Regulatory Affairs, Building and Land Regulations Administration.

On May 14, 2002, you made application and received on May 15, 2002, Certificate of Occupancy #CO33951. In this new application you indicated a change in ownership, yet the application still indicated the corporate name as Kuri Brothers, Inc.

In this new application under proposed use of premises, you indicated Automotive Service Repair, yet this is the same usage which was found to be impermissible under Certificate of Occupancy #B00181657, thereby resulting in its revocation.

Please be advised that Certificate of Occupancy #CO33951 is hereby **CANCELLED** as it was issued pursuant to the same conditions and requirements for the issuance of Certificate of Occupancy #B00181657 which is in a **REVOKED** status. You are thereby directed to surrender Certificate of Occupancy #CO33951 to the Department Representative who presents this Notice. You are further directed to surrender Certificate of Occupancy #B00181657 to the Department Representative who presents this Notice.

Please be further advised that any continued use of the property without the proper certificate of occupancy will result in the forwarding of your case to the Office of the Corporation Counsel for immediate criminal prosecution, pursuant to D.C. Code, 2001 ed., §6-641.09.

If you have any further questions, please call Karen M. Edwards, General Counsel, Office of the General Counsel (202) 442-8404. Thank you for your prompt attention and cooperation in this matter.

Sincerely,

J. Gregory Love
Administrator

cc: David A. Clark, Director
Theresa Lewis, Deputy Director for Operations
Karen M. Edwards, Esq., General Counsel

PERSONAL SERVICE

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Personally served upon Chris Kuri

by the undersigned this 6 day of September 2002

[ ] Personal Service Attempted (Date) Time 3:2

Comments

Steven S. Allen