Testimony of Karen Perry, ANC 3F
before the Board of Zoning Adjustment in
BZA Appeal ~~16937~~ 16947
DCRA Revocation of Certificate of Occupancy issued to Kuri Brothers
Tuesday, April 8, 2003

Mr. Griffis, members of the Board. My name is Karen Perry and I'm the ANC Commissioner for 3F02, representing the area and the residents affected by the operation of the service bays at 4221 Connecticut Avenue. ANC 3F has been involved with DCRA and the BZA for more than 13 years in seeking zoning compliance at 4221 Connecticut Avenue, the site of the service bays, and at 4225 Connecticut Avenue, the site of the gas station owned by Koo Yuen and now sublet to Kuri Brothers, which serves as the office for Van Ness Auto Care. (The two properties have different owners.) This case is of great importance to our ANC and to the many businesses in our area operating in compliance with the zoning regulations and their C of O's.

Tab 1 of my statement is the unanimous resolution ANC 3F filed with the Board on November 4, 2002, asking you to uphold DCRA's decision to revoke the C of O issued to Kuri Brothers for an automobile service center and detailing ANC 3F's history with the site and our consistent and repeated objections to the illegal operations at the premises, in violation of the C-3-A zoning.

In order to have a complete picture, a brief background is in order. When Koo Yuen purchased the gas station property at 4225 Connecticut Avenue, it was a small, full service gas station with two service bays. He expanded and enlarged the station and converted an existing service bay into an office for Van Ness Auto Care, another service bay was converted to a car wash, a trailer was placed in the rear of the gas station property without a permit and was being used without a certificate of occupancy, and other structures were added with all construction work taking place during the night and early morning hours without building permits.

At the same time, in 1989, Mr. Yuen signed a lease with the owners of 4221 Connecticut Avenue to use the basement, which later became the site of the service bays in question. As I shall later explain, the lease agreement that Mr. Yuen signed provided that the area "presently used for parking shall be utilized for the sole purpose of parking vehicles." But Mr. Yuen followed a very different tack.

ANC 3F first became involved in this case when residents complained about the construction, the horns, car alarms, and the use of the basement in an adjacent building for a repair garage. At that time I was the President of the Van Ness South Tenants' Association and not an ANC Commissioner. I was appointed by the ANC to serve on a neighborhood negotiating committee to try and resolve the differences.

It is now 13 years later .... I am beginning my fifth term as an ANC Commissioner ... and, once again, I am the president of the Van Ness South Tenant Association. The use of the basement at 4221 Connecticut Avenue has now been through three adjudicating law judges and has been the subject of two BZA hearings, plus a scheduled hearing (to appeal the first ALJ decision) that did not take place because on the very day of the hearing Mr. Yuen paid the fine and the hearing was canceled by the BZA. In spite of all the ALJ decisions, the BZA rulings,

BZA
Case No. 16947
Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO.16947
EXHIBIT NO.34A1

the revocation notices, the cease and desist notices, without stays being granted, there has never been a day when the repair garage has been closed. We are hoping this is the last hearing and that this matter can finally be resolved today.

ANCs do not get noticed on the C of Os issued by DCRA so it is impossible for us to appeal erroneous C of Os to the BZA in a timely fashion. Our recourse is to complain to DCRA and, when we are correct, for DCRA to issue a fine under the Civil Infractions Act. When the fine is appealed, a hearing is held before an ALJ and ANCs are not noticed of the hearings, nor are we allowed to participate as parties. So ANC 3F welcomes the opportunity to testify here today. Our residents cannot understand why DCRA keeps issuing C of Os to the same individuals for the use of the basement at 4221 Connecticut Avenue when it has become abundantly clear that no matter what classification is applied to the C of O, the operation is and has been an automobile repair garage.

Since no pre-hearing statement was filed in this case, the only thing I had to go on in preparing my statement was the appeal document our ANC received earlier in this case (at the end of September 2002), and the statement filed by Kuri Brothers in connection with the appeal of ALJ Simon's Order previously heard by this Board. Because Kuri Brothers is arguing laches and estoppel and has stated that the site has always been used as a repair garage, it is important that the Board have an understanding of the properties involved and their history.

So, on Thursday, January 23, just before our last hearing, by appointment, I spent the afternoon at the D.C. Archives. Attached in Tab 2 is a brief history of the site dating back to 1940, including the certificates of occupancy for the basement of 4221 Connecticut Avenue.

Tab 3 is the use variance obtained for the site, the first commercial district, in 1940, granting Flood Motors who paid $3.50 a foot for the land, permission to use a rear entrance to the building they constructed in 1935, in order to service a few cars. Flood Motors testified that it would repair only the cars that it sold. The BZA order is conditioned on all repairs being made to new cars only.

While I do not have a complete copy, ALJ Ruff in his decision in 1992, indicated when the existing building was constructed by Flood Motors in 1964, they received a certificate of occupancy for automobile sales and a repair garage following a BZA decision in 1965 (BZA #8250). That decision is also in Tab 3. It should be noted that at the time this area was virtually undeveloped, with Flood Motors even applying for the permit to build the sidewalk in front of their business. The Van Ness complex (of three apartment houses and one commercial building) had yet to be built. Tab 4 contains not-too-good pictures of the site, showing proximity to apartments and the alley entrance.

In all cases prior to the rental of the basement by Kuri Brothers in 1989, the use of the rear entrance and the basement for repairs was in conjunction with the use of the site as an automobile dealership, a use permitted in the C-3-A zone. In each case car repairs were incidental and subordinate to the primary business of selling cars. In each case the car dealerships located at 4221 Connecticut Avenue had their entrance on Connecticut Avenue. In this case, Kuri Brothers does not hold a license as an automobile dealer and the only entrance to his business at 4221 Connecticut Avenue is from a 16 foot wide alley.

As you can see in the chart, DCRA issued the first of many civil infraction fines to Koo Yuen in 1989. At that time there were 15 service bays, more service bays than were at the site when the site was occupied by the Nissan Dealership. DCRA also began seeking after-the-fact building permits for the construction that took place at 4225 Connecticut Avenue, including the Office for Van Ness Auto Care. My research at DC Archives still did not turn up any permits, in spite of a Compliance Order dated September 9, 1993, which states under #3, "*Apply for construction permits for the Office. Inspections of the site and a review of all building permits for the site indicate that a service bay was converted to office use without the necessary building permits for such conversion. You are hereby ordered to submit the necessary plans, plat and application and obtain a building permit or remove the office use within 15 days of receipt of this Order.*" Tab 5 is the compliance order.

The civil infractions fine was appealed and the case was heard and decided by ALJ Coles Ruff, who ruled in July 1990, that Koo Yuen was operating a repair garage in violation of zoning and the C of O issued. While this case was still pending, Koo Yuen again filed for and received a C of O for automobile sales and installation of accessories in May of 1990, this time in the name of Van Ness Auto Care. DCRA again issued a fine under the Civil Infractions Law for operating a repair garage in violation of the issued C of O. This case was heard by ALJ Quander on May 20, 1992, only by the time he heard the case, the number of service bays jumped from 15 to 21. Copies of ALJ Ruff's decision and ALJ Quander's decision are in Tab 6 and Tab 7, as well as ALJ Quander's denial of a request to stay his cease and desist order. In each case the ALJ ruled that the C of O for automobile sales and accessories and installation was being violated and that Koo Yuen was operating a repair garage. They further ruled that Koo Yuen although he did not hold a permit to sell cars, sold maybe 3 or 4 cars a month on behalf of clients using his service garage at 4225 Connecticut Avenue and therefore the repair garage was a principal business not permissible in the C-3-A zoned district without special exception or variance approval from the BZA. Neither Koo Yuen or Kuri Brothers has ever applied for a special exception.

In the appeal of ALJ Quander's decision by Koo Yuen, the BZA received the appeal in 1992. It heard the case in 1995. It issued its written decision on March 30, 1998, upholding ALJ Quander. That order is under Tab 8.

Having exhausted his appeal rights in that case, Koo Yuen, a.k.a. Van Ness Auto Care, went back to DCRA and received a Certificate of Occupancy for an "Automobile Service Center" on April 21, 1998. Four months later, with the property now leased to Kuri Brothers by Koo Yuen, Kuri Brothers received a Certificate of Occupancy on August 28, 1998, for an "Automobile Service Center" piggy-backing on the certificate previously issued.

By this time 4221 Connecticut Avenue was in the Bankruptcy Court. Greenstein, DeLorme and Luchs, acting on behalf of the Receiver, contacted ANC 3F and wrote to the head of the Building and Land Regulation Administration. That letter is in Tab 9 and states that the premises were being used as a repair garage in violation of the zoning and indicated the Receiver's concern that these inherently dangerous industrial activities were taking place in the basement of a building in close proximity to a high density residential complex.

That letter triggered yet another inspection and another Civil Infractions Fine for operating a repair garage in violation of the C of O. Kuri Brothers appealed and the case was

heard by ALJ Simon. ALJ Simon in his ruling, dated December 27, 1999, in Tab 10, ruled that Kuri Brothers had an invalid Certificate of Occupancy in that an "Automobile Service Center" is not a defined or recognized term 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, a repair garage. ALJ Simon stated "that the purpose of the D.C. zoning regulations is to insure the protection of the health, welfare and safety of the public by bringing order to the location of businesses and residential dwelling. In this matter, "Repair Garages/Automobile Service Center" produce exhaust fumes, noise and pollution and that this is the reason such entities are located in industrial zones." As in the previous rulings by ALJ's Ruff and Quander, ALJ Simon referred to the continued use of the site as a repair garage and made the distinction between an automobile repair garage and the sale and installation of automobile accessories, with Webster's defining "accessory" as "an object or device not essential in itself but adding to the beauty, convenience or effectiveness of something else (auto accessories)."

Kuri Brothers through counsel appealed the decision. As you will remember ANC 3F, the Van Ness South Tenants Association, and the owners of Van Ness South requested permission to intervene in the case, but our motions were denied. In your ruling dated May 22, 1992, also in Tab 10, the BZA indicated, "That a Certificate of Occupancy cannot be issued for a Repair Garage in a C-3 District without a special exception, but that it was not within the ALJ's purview to declare the Certificate of Occupancy invalid." In that same ruling, the Board ruled that DCRA's remedy was to "revoke the Certificate of Occupancy, after giving notice." DCRA took your advice and issued a Notice of Intent to Revoke the Certificate of Occupancy on June 27, 2002, stating that the Department created the category of Automobile Service Center, but that it did not include or permit any major automotive engine, body work, or other automotive garage functions and that by making major repairs and doing engine work, Kuri Brothers operated outside the scope of this Certificate of Occupancy. However, it t should be noted that after your verbal decision and while we were awaiting the written order, DCRA again issued a C of O to Kuri Brothers, this time for Automotive Service Repair. A letter was sent on September 6, 2002, canceling that C of O.

In the statement to the BZA prior to this hearing, counsel for Kuri Brothers stated he planned to introduce the brief from the ALJ Simon case into evidence. In it, counsel for Kuri Brothers, argued that the Certificate of Occupancy was valid because Zoning Technician Bello approved the application for an Automobile Service Center knowing that "auto repair" would be performed on the premises; that he caused the designation "automobile service center" to be placed on the C of O as a reflection of the previously permitted uses on the premises; and that Mr. Bello exercised discretion in using the language because "the zoning codes allow for the zoning administrator to determine what constitutes other like uses, wherein there isn't specific language dealing with that particular use in the code." The brief further quotes from Mr. Bello's testimony before ALJ Simon stating that "When Mr. Bello was asked what specific sorts of activities could be performed at an 'automobile service center,' he stated that "sales of auto parts, sales of auto accessories and installation of such - your wipers, your wiper blades, that sort of thing, but not a repair garage."

ANC 3F believes that the Zoning Administrator has no authority to create a new zoning category, such as "automobile service center," which is not a defined or recognized term under the Zoning Regulations. (There was already in zoning a category for the sale of automobile accessories and installation and two such C of O's had already been issued to Mr. Yuen. Had

the previous uses of the site been reviewed, as my testimony and the chart in Tab 2 show, the previous uses were for automobile dealerships that occupied the entire building, not just the basement, and where automobile repair was secondary to the sale of new and/or used cars.)

Counsel for Kuri Brothers also states that the Appellant has invested substantial energy and capital to develop its business over the last seven years and that it is unlikely that Appellant would be able to find alternative locations in the Van Ness/Cleveland Park area that could replicate the benefits it now enjoys in its present location such as convenient access to Metro and frontage on a major route into downtown Washington, D.C. However, counsel for Kuri Brothers fails to state that the office, which has the street frontage is located at 4225 Connecticut Avenue, the gas station, and was constructed without a building permit in violation of D.C. law and that service bays were added to 4221 Connecticut Avenue without a building permit.

Attached to my testimony as Tab11 are two advertisements for Van Ness Auto Care. The first from the February 22, 2002 City Paper, and the second a flyer distributed at about the same time near Dupont Circle. Also included is the business card for Van Ness Auto Care Center stating some of their services and showing a picture of the service bays in the basement of the building. All of these documents show that Van Ness Auto Care, whether Koo Yuen or Kuri Brothers is operating an automobile repair garage and the services provided go beyond what Mr. Bello stated he envisioned when he created the automobile service center designation.

In the appeal papers earlier in this case, Kuri Brothers argues laches and estoppel. As ANC 3F understands the issue, the equitable doctrine of laches prevents the enforcement of stale claims. In the context of Board of Zoning Adjustment appeals, the doctrine asks whether the appellant has slept on his rights so as to make a determination against the property owner unfair. Counsel for Kuri Brothers also argues arguendo that assuming the Appellant is engaged in the kinds of auto repairs described in the zoning definition of "repair garage," the doctrine of estoppel bars the District of Columbia from enforcing Zoning provisions which it has for so long ignored and that in D.C. v. Cahill, 54F. 2nd 453 (1931), the Court of Appeals of the District of Columbia applied the estoppel doctrine to protect an applicant's good faith reliance on a zoning inspector's issuance of a building permit.

While the Civil Infractions and BZA process in each case has been long and very frustrating for ANC 3F and its residents, we do not feel that DCRA, the ANC, the Tenants Association, or the owners of Van Ness South have slept and, therefore, do not feel a case for laches can be made. These groups have actively pursued all remedies available to them in each case.

A case cannot be made for estoppel either. With good reason, counsel for Kuri Brothers has used the terms "Van Ness Auto Care", "Koo Yuen" and "Kuri Brothers" interchangeably in his brief. But Van Ness Auto Care and Koo Yuen do not have "clean hands," and have been aware of the neighborhood's objection to the use of the basement at 4221 Connecticut Avenue as a repair garage since 1989 and they were well aware of the rulings of ALJ's Ruff and Quander and the BZA decision of 1998, thus just as in the case of Murray v. District of Columbia Board of Zoning, 572 A.2d 1055, 1058 (D.C. 1990), the Court stated that a property owner who made commitments for architectural plans upon receiving the Zoning Administrator's ruling, despite knowledge of neighborhood opposition, invites application of the self-created hardship doctrine

and precludes application of estoppel given the likelihood that the Zoning Administrator's ruling would be appealed.

This Board has earlier held that it reviews the issues de novo, applying the Zoning Regulations only (and not DCRA regulations or procedures). Congress has defined this Board's jurisdiction and powers on appeals. DC Code § 6-641.07 (2001), Paragraph (g)(4), under appeals appears very relevant to this hearing. It states that in exercising the above-mentioned powers, the Board of Adjustment, may, in conformity with the provisions of this subchapter ... reverse or affirm, wholly or partly, or may modify the order, requirement decision, determination, or refusal appealed from or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken."

ANC 3F asks this Board to exercise fully the powers conferred by Congress.

Based on these powers, this Board's de novo review should conclude that the facilities, operations, and occupancy in the basement of 4221 Connecticut Avenue (as described in this record before this Board), are not allowed as of right in the C-3-A zoning district and, therefore, violate the Zoning Regulations of the District of Columbia.

It is interesting to note that when Koo Yuen leased the basement of 4221 Connecticut Avenue in 1989, an agreement with the owner was signed stating, "that the existing portions of the subject property presently used for parking shall be utilized for the sole purpose of parking vehicles. Your premises shall have access to the existing 116 parking spaces on the property." (Tab12). Section 2100 of the Zoning Regulations requires all buildings or structures erected after 1958 to provide parking spaces. By misusing the basement, Kuri Brothers has closed all of the parking formerly provided to the commercial businesses and tenants in this three-story building, putting 4221 Connecticut Avenue in violation of the zoning laws for not providing parking for its leased commercial spaces and their customers.

ANC 3F requests that you deny the appeal of Kuri Brothers, hold that no C of O may issue under the Zoning Regulations (unless Kuri Brothers first seeks and receives a Special Exception), and, therefore, affirm and support DCRA's decision to revoke the C of O issued to Kuri Brothers.

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

HISTORY OF 4221 CONNECTICUT AVENUE AND CERTIFICATES OF OCCUPANCY

| DATE | USER | AREA | C of O | ALJ DECISION | BZA DECISION |
|---|---|---|---|---|---|
| 1935 | Flood Motor | | regular gasoline and repair garage | | |
| 1940 | Flood Motor | | | | granted use variance to extend building and use a rear entrance, conditioned on the fact that all repairs to be incidental to new cars only. |
| 1961 | Flood Pontiac | Lot & Building | sale of new & used cars | | |
| 1964 | Flood Pontiac | Permit to raze 2-story building piece-by-piece | | | |
| 1964 | Flood Pontiac | Permit to build 3-story building for office, dealership, and public storage garage | | | |
| 10/7/65 | Flood Pontiac | pt. of 1st fl. & garage applied: 7/7/65: Basement-repair garage 1st floor-automobile sales | auto sales & repair garage | | C of O issued pursuant to BZA order 8250, dated 6/22/65, that the enclosure on the roof for service equipment will harmonize with the main structure in architectural character, material & color. |
| 5/5/71 | Flood Pontiac | | auto sales & repair garage accessory to auto sales | | |
| 5/4/83 | Conn. Ave. Datsun | First, parking levels one-three | Automobile sales and service | | |
| 10/28/86 | Conn. Ave. Nissan | First, Basement Levels 1, 2, 3 | Motor Vehicle Dealer | | |
| 3/21/89 | 4221 Associates | Basement leased to Koo Yuen. Letter states "that the existing portions of the subject property presently used for parking shall be utilized for the sole purpose of parking vehicles. Your premises shall have access to the existing 116 parking spaces on the property." | | | |

| DATE | USER | AREA | C of O | ALJ DECISION | BZA DECISION |
|---|---|---|---|---|---|
| 3/22/89 | Koo L. Yuen | Basement | Automobile sale and sale of accessory including installation | ALJ Coles Ruff<br>OAD #90-1726-E<br>July 17, 1990<br>• Ruled operating a repair garage in violation of C of O. DCRA to take steps to revoke.<br>• Koo Yuen did not sell new cars.<br>• Did not check change of use in applying for C of O. | Appealed to BZA. Day of BZA hearing, Mr. Yuen paid fine. BZA canceled hearing.<br><br>Never ceased operating. Never applied for special exception from BZA. |
| 5/10/89 | Van Ness, Inc. | Basement | Retail sale of automobile & accessories including installation. | ALJ Rohulamin Quander<br>92-OAD-1683-E<br>• Incorporated ALJ Ruff's decision that (1) Respondent does not sell new cars, although he occasionally sells used cars on behalf of his customers, which service is a small part of his business. (2) The respondent advertises his business in the yell pages as a repair business, but does not mention auto sales or auto accessory sales and installation in ads.<br>• Koo Yuen liable for $525 fine.<br>• DCRA to take immediate steps to vacate C of O #B156843<br>• Respondent immediately cease and desist operation. | Koo Yuen and Van Ness Incorporated filed a notice of appeal on December 22, 1992 from ALJ decision upholding fine. Filed a second notice of appeal on May 28, 1993 from ALJ's decision not to grant a stay of 1992 order.<br><br>Verbal Decision: May 3, 1995 to uphold ALJ Decision.<br><br>BZA Written Order #93-006-CI, dated <u>March 30, 1998</u><br>• ALJ was correct to conclude this was not a car dealership of any sort, nor was this establishment operated for the principal use of sale of accessories.<br>• Evidence supports the ALJ;s finding that sale of autos and accessories are incidental to the principal use of the premises as a repair shop. |

| DATE | USER | AREA | C of O | ALJ DECISION | BZA DECISION |
|---|---|---|---|---|---|
| Continued from Page 2 | | | | December 22, 1992<br>Filed Motion to Stay<br><br>Motion Denied by ALJ Quander Feb. 22, 1993 | • The Board notes that the appellant had continued to operate his facility and therefore the Board 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. |
| 6/2/89 | 4221 Conn. Ave. Assoc. Ltd. | Bldg. Renovation to Create Lease Commercial Spaces | | | |
| 1/98 & '99` | Building in Bankruptcy. Greenstein, DeLorme & Luchs represent Court appointed Receiver, Grubb and Ellis. Building eventually purchased by Douglas Jemal from Bankruptcy Court. | | | | |
| 4/21/98 | Van Ness Auto Care | Basement | Automobile Service Center | | |
| 8/8/98 | | Basement | Automobile Service Center | ALJ Lennox Simon<br>99-00AD-1821-E<br>December 27, 1999<br>• Respondent has an invalid certificate of occupancy for an "automobile service center." An automobile service center is not a defined or recognized term under the D.C. Zoning Regulations and denotes the same type of activity which is prohibited in a C-3-A zoned area, repair garage.<br>• The current and longstanding use of the basement has been an automobile repair garage. In 1992, ALJ Quander | Decision appealed to the BZA<br><br>Hearing Held March 19, 2002<br><br>BZA Order: May 22, 2002<br><br>• Reversed ALJ Simon<br>• That a Certificate of Occupancy cannot be issued for a Repair Garage in a C-3 District without a special exception, but that it was not within the ALJ's purview to declare the Certificate of Occupancy invalid.<br>• In that same ruling, the Board stated that DCRA's remedy was to "revoke the Certificate of Occupancy, after giving notice." |

| | | | | | |
|---|---|---|---|---|---|
| Continued | | | | made a finding that the lessor, Mr. Yuen/Van Ness Inc. operated an automobile repair garage in the basement of the property. Decision affirmed by BZA.<br>• On 4/21/98, the lessor, Mr. Yuen/Van Ness, Inc., after the BZA ruled against him, filed a new application for a C of O and indicated that the new operation would be "Automobile Service Center" even though no such entity existed in the Zoning Regulations.<br>• Kuri Brothers, Inc. (sub-lessor) has elected to "piggyback" upon this "Automobile Service Center" concept.<br>• That Kuri Brothers Cease and Desist the Operation of an automobile repair garage at 4221 Connecticut Avenue. | BZA Appeal #16947, Kuri Brothers vs. DCRA for Revocation of C of O #16947. |
| 5/15/02 | Kuri Brothers | Basement | Automotive Service Repair | | C of O issued while preceding case on appeal. Revoked in letter dated 9/6/02 |

2001 - #417-4221 - Conn Ave NW
Lot 801

Variance - Part 3
Use - First com dist. - Extend
auto Repair shop
granted - 10/9/40
Condition - all repairs to
be incidental to new cars only.

E.D. 235246-3

Mr. Coe: Do you think there will be a demand for enclosed garages?

Mr. Ghent: No. (There followed a lengthy discussion as to lot occupancy, sewer, water, etc.)

Mr. Nolen: I would like to have the net area of property and the number of units and the density. Second, I would like to see in connection with the assumption that streets were put through there what the side yard in observance of the 2 inches for each foot of building length would be, and how much would have to be taken off to see the deficiency in each case. Third, if you had a street running straight through to another street and figuring the building as fronting on that street what deficiency would be in the rear yard, then we could find what the variance would be.

Mr. Ghent: As to the parking we would provide for 360 or 400 cars.

APPEARING IN OPPOSITION:

None.

The Chairman directed the Secretary to read the notice of appeal #417 which he read as follows:

"417. Appeal of the Flood Motor Company, for a variance from the use provisions of the First Commercial District to permit the extension of an automobile repair shop and automobile sales and service agency on lot 801, square 2051 at 4221 Connecticut Avenue, N.W.".

APPEARING IN FAVOR:

Mr. Meigs, Architect.

Mr. Clouser: This set of plans was filed for a regular gasoline and repair garage. The plans were checked for front entrances. Automobile access to the rear of the lot which is closer than 25 feet to residential property. They were informed they/we couldn't accept the plans under those conditions.

Mr. Meigs: The alley is not graded at the present time. This building was erected in 1935 under the old zoning set up where permissions were required and the building occupied at that time by the owner in good faith and with access to the rear as well as to the street. Under the change in the zoning law the owner

has been permitted to occupy a greater percentage of the lot which is for sales and servicing of new cars. In occupying that greater percentage we are going to be cut of from access to the alley which is valuable to the owner in this business.

Mr. Nolen: How do you mean cutoff?

Mr. Meigs: If we are not permitted to have doors in the rear of the building so cars can come from the alley for servicing. (Presents chart showing present provisions for access as to what they would like to obtain).

Mr. Nolen: Did the original permit cover the entire use of the land?

Mr. Flood: I bought the land knowing the front was commercial and knowing the rear 50 feet was zoned residential. That was changed and now the whole thing is commercial. Further than that I didn't have enough money to build anymore than I had. I need space for servicing new cars principally.

Mr. Nolen: What kind of activities are in the hop.

Mr. Flood: My principal income is from the sale of new and used cars. It seems you have to service new cars and that is all I am interested in the present appeal. I don't solicit people at all. All I want is space for approximately two more cars so I can work on them a little more. I don't have enough service space in the present set up. I paid 3½ dollars a foot and under the present law I can't use it, unless you give permission for a door on the alley.

Mr. Nolen: Under your proposed development can you keep your shop activities 25 ~~fmx~~ feet from the alley?

Mr. Flood: Yes.

APPEARING:

Mr. J. Sanders, Chairman, Zoning Commissee,
Forest Hills Citizens Association.

Mr. Sanders: I was asked to come dow and after looking over the ground I didn't see any serious objection although our association has gone on record to stop increasing any commercial zoning. I don't believe from my personal standpoint

that it is a serious matter. I was asked to oppose any further encroachment. I don't believe this is a serious encroachment. If you can restrict it to that kind of shop and not have further repairs I don't think anyone would object. I don't want to oppose it strenously except for our association who did not understand it thoroughly.

The Chairman directed the Secretary to read the notice of appeal #418 which he read as follows:

> "418. Appeal of the Trustees of the Masonic Lodge on behalf of Schlegel and Golden, tenants, for permission to establish an automobile sales service agency at the northeast corner of Maple and Carroll Sts., N. W., lot 808, square 3356."

APPEARING IN FAVOR:

Mr. William J. Collin,
604 Ellen St. Takoma Park, Md.

Mr. Clouser: This building is in place and they want to change the entrance.

Mr. Collin: We have a Dodge agency about a block from this and our idea is to move in there with a new car show room. We want it for new car service.

Mr. Coe: No repairs to fenders or body work?

Mr. Collin: No sir.

Mr. Nolen: You would have no objection to it being limited to new car service?

Mr. Collin: No sir. The service is in the rear.

APPEARING IN OPPOSITION:

Mr. W. H. Parson, Chairman, Zoning Committee,
Citizens Association of Takoma, D.C.

Mr. Parson: They sent me to request that the appeal if granted be restricted to servicing of new cars only in the interior. Maple Street is very narrow and if there would be a situation of cars pulling up and servicing in the street it would be bad or any repair business conducted at night would become objectionable. We request that the appeal be restricted to the servicing of new cars and that it be in the building itself.

Mr. Blake:

I move that the following Order be entered:

ORDERED:

That the appeal of the Flood Motor Company, for a variance from the use provisions of the First Commercial District to permit the extension of an automobile repair shop and automobile sales and service agency on lot 801, square 2051 at 4221 Connecticut Avenue, N. W., be granted for the following reasons:

As a result of an inspection of the property by the Board, and from the records and the evidence adduced at the hearing, the Board finds the following facts:

(1) Appellant's property was acquired and improved for use as an automobile sales service agency, and the permission to extend this use to the entire lot is before the Board as a variance only by reason of the fact that automobile openings have been provided at the rear of the building. Were it not for that feature of the plans the appeal could have been filed as a special exception. An examination of the plans as they relate to the building already in place indicates that the removal of these rear openings would impose exceptional hardship upon the owner by reason of the fact that the existing structure is so narrowly constructed as to preclude the necessary maneuvering area for automobiles.

(2) As a result of an inspection of the property by the Board, and from the records and the evidence adduced at the hearing, the Board finds that by reason of exceptional shallowness and shape of the specific property, that the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties, and undue hardship upon the owner of the property. It further finds that relief can be granted without substantial detriment to the public good, and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map.

(3) There was no objection to the granting of this appeal registered at the public hearing.

This order shall be subject to the condition that all repairing shall be incidental to the sale of new cars only.

Mr. Lindholm: I second the motion. Unanimously carried.

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING--June 16, 1965

Appeal #8250 Julian McDowell, et al. appellants.

The Zoning Administrator District of Columbia, appellee.

On motion duly made, seconded and unanimously carried the following Order was entered on June 22, 1965:

ORDERED:

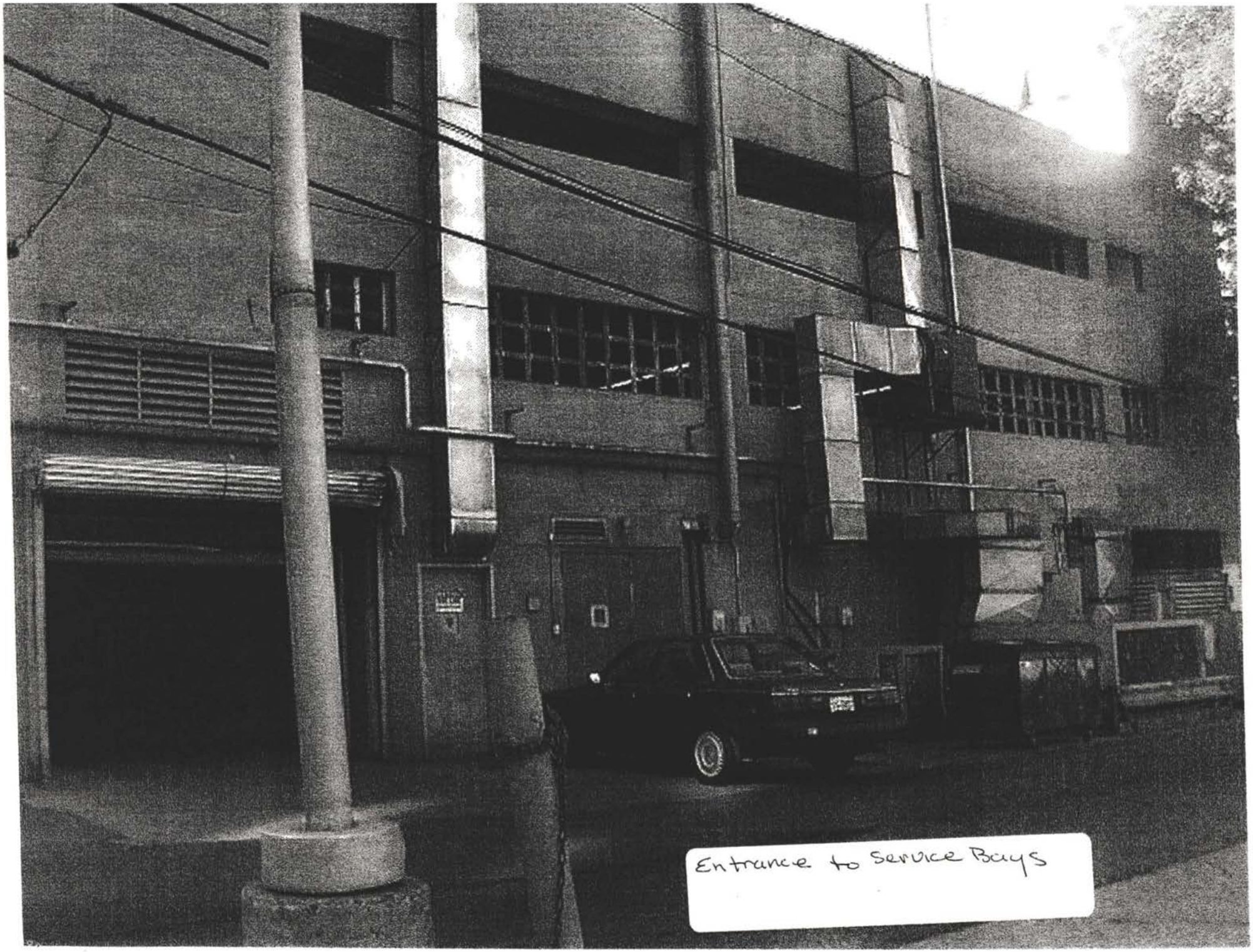
That the appeal to erect office and garage building with roof structures in accordance with Section 3308 of the Zoning Regulations at 4201 Connecticut Avenue, N.W., lots 802 and 803, square 2051, be granted for the following reasons:

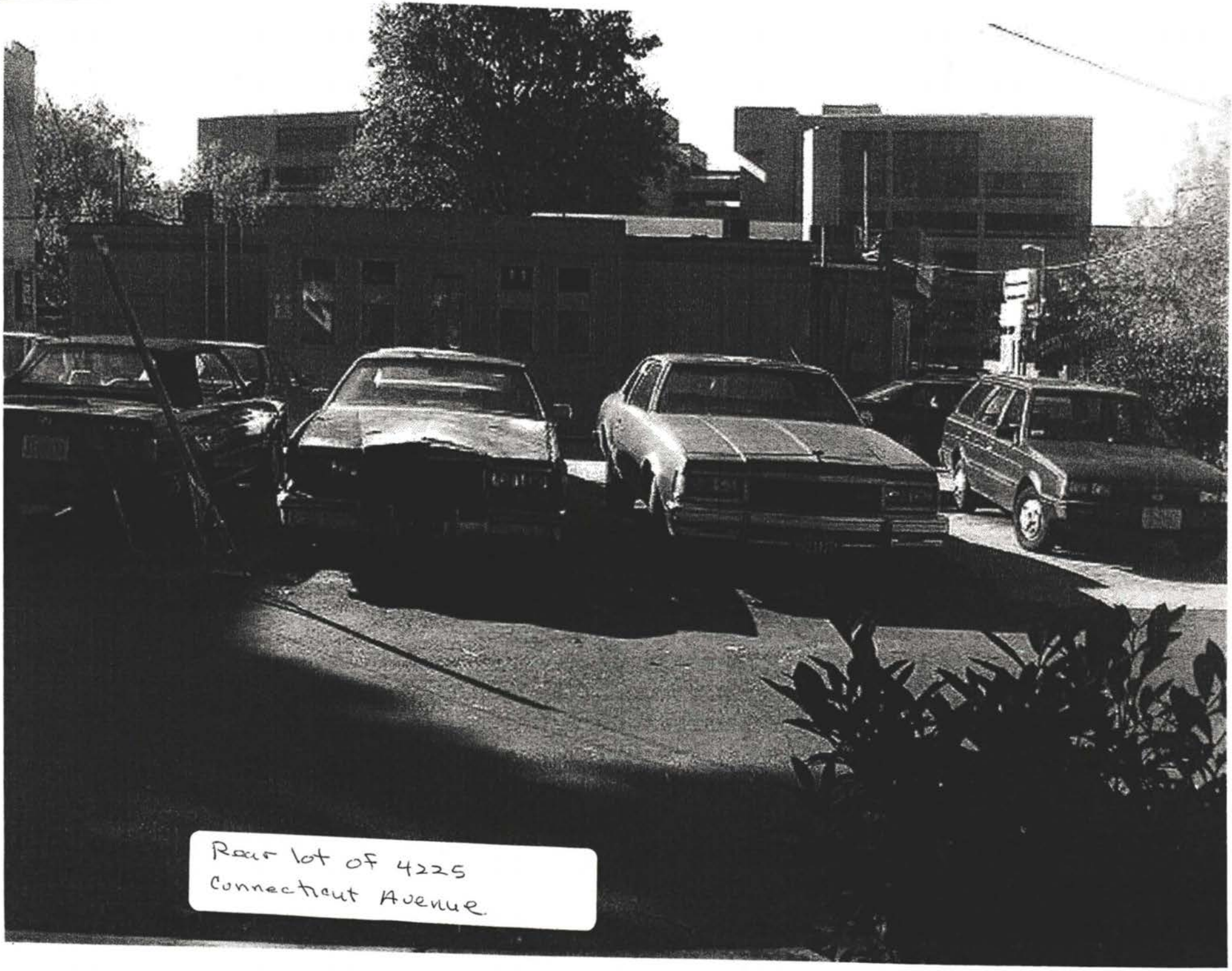
(1) From the records and the evidence adduced at the hearing, the Board finds that the enclosure on the roof of this proposed office and garage building for service equipment will harmonize with the main strucutre in architectural character, material and color.

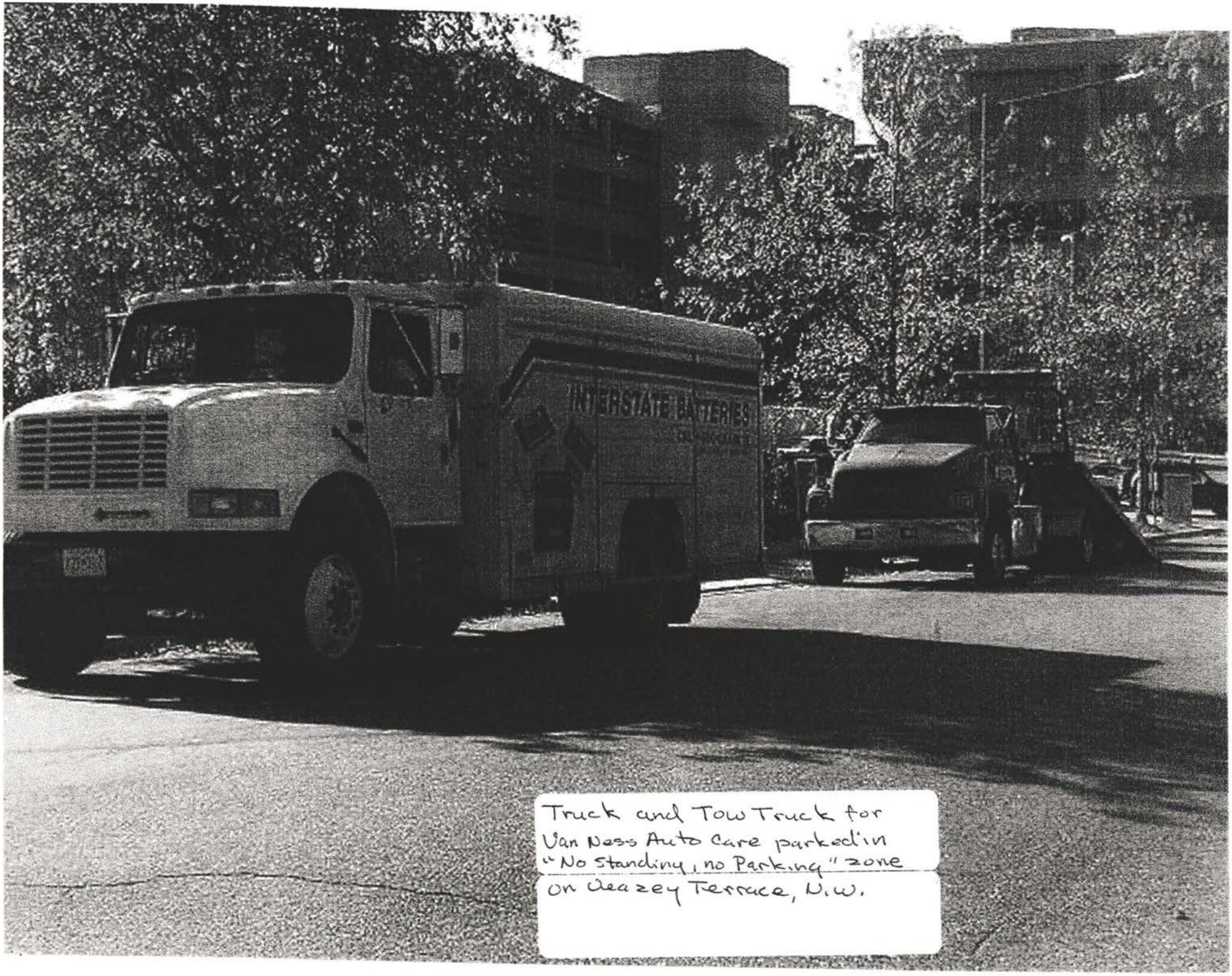
(2) There was no objection to the granting of this appeal registered at the public hearing.

Front of 4225 Connecticut Avenue showing office and Van Ness South

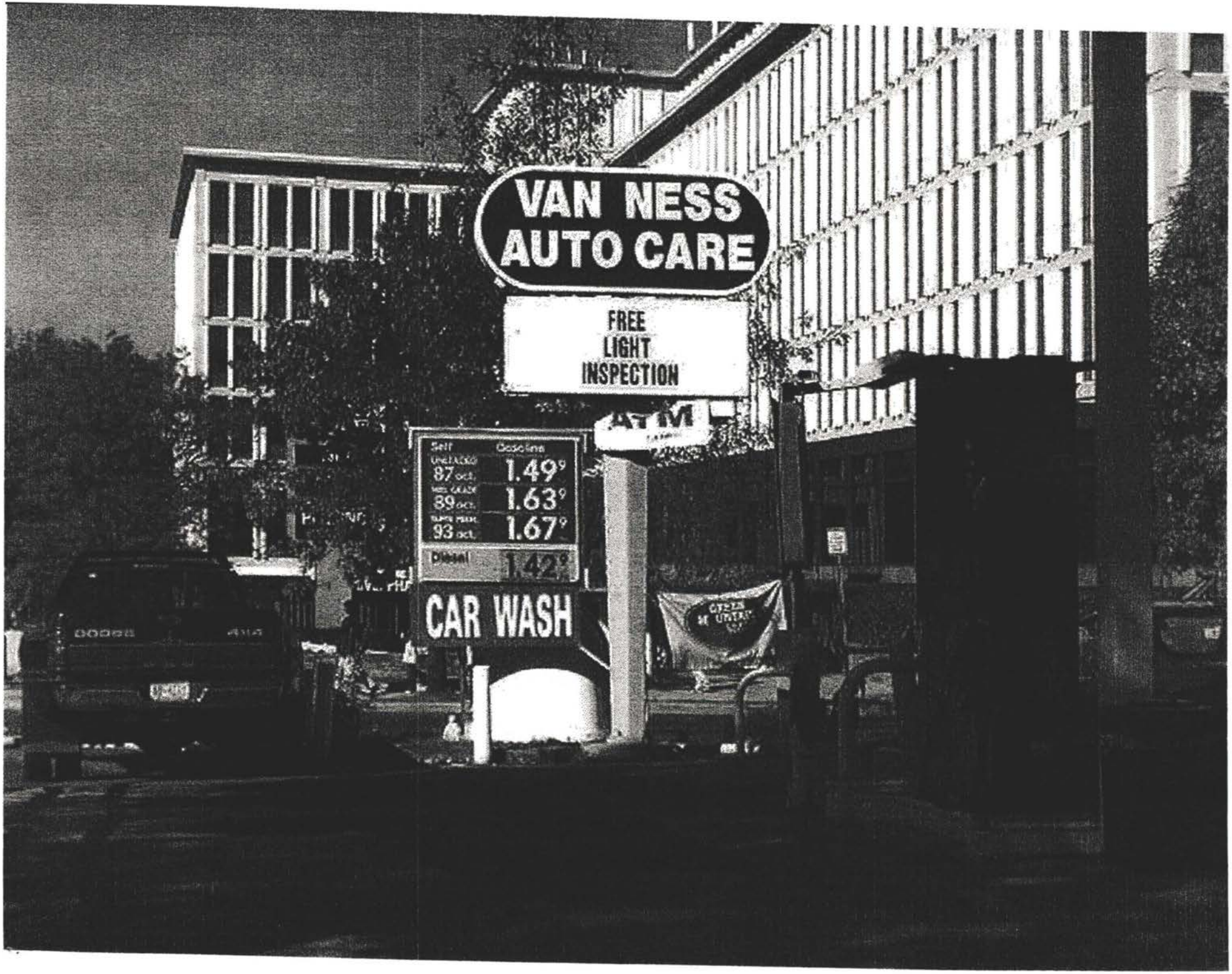



Entrance to Service Bays


Rear lot of 4225
Connecticut Avenue




Truck and Tow Truck for Van Ness Auto Care parked in "No Standing, no Parking" zone on Reazey Terrace, N.W.


VAN NESS
AUTO CARE
FREE
LIGHT
INSPECTION
ATM
Self Gasoline
87 oct. 1.49⁹
89 oct. 1.63⁹
93 oct. 1.67⁹
Diesel 1.42⁹
CAR WASH


PARK
PHONE
LOWEST
DRY CLEANERS

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

Thursday

Mr. Koo L. Yuen, President
Van Ness, Inc.
4225 Connecticut Avenue, N.W.
Washington, D.C. 20016

SERVE: Anthony Chowney, Registered Agent
4225 Connecticut Avenue, N.W.
Washington, D.C. 20016

**COMPLIANCE ORDER**

RE: 4225 Connecticut Avenue, N.W.

Dear Mr. Yuen:

Please be advised that you are in violation of the District of Columbia Code, Section 5-425, which governs building permits, and reads in pertinent part as follows:

> "It shall be unlawful to erect, construct, reconstruct, ... covert or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit..."

After on-site inspections and a review of Departmental records regarding 4225 Connecticut Avenue, N.W., it has been determined that you have failed to obtain the necessary building permits for several structures on the premises. Therefore, you are hereby ordered to:

1. Remove the storage trailer: Inspections of the site revealed the presence of a trailer which is being used for storage. No building permit was obtained prior to placing this structure on the premises. This structure must be removed within [illegible] days of receipt of this Order.

2. Cease operation of the car wash: Inspections of the site and a review of all building permits for the site indicate that a service bay was converted to a car wash without the necessary building permits for such conversion. In addition, the operation of the car wash is deemed to create an unsafe condition for vehicular and pedestrian traffic in the immediate neighborhood due to the unavailability of reservoir space for cars in line for

the car wash. The car wash operation must be discontinued within 24 (twenty-four) hours of receipt of this Order.

3. Apply for construction permits for the Office: Inspections of the site and a review of all building permits for the site indicate that a service bay was converted to office use without the necessary building permits for such conversion. You are hereby ordered to submit the necessary plans, plat and application and obtain a building permit or remove the office use within 15 (fifteen) days of receipt of this Order.

4. Removal of air hose and vacuum from public space: You are ordered to remove the air hose and vacuum from public space within 15 (fifteen) days of receipt of this Order.

Your failure to comply with this Order within the prescribed time periods set forth will result in this matter being immediately directed to the Office of Corporation Counsel for appropriate action. Noncompliance with the provisions of this Order may result in the imposition of severe penalties. In addition to providing for injunctive and other appropriate relief, D.C. Code, Section 5-426 provides for fines of "$100 per day for each and every day such violation shall continue."

If you have any questions, please direct your inquiries to Miriam Hellen Jones, Esq., Enforcement Officer, on (202) 727-7770.

Sincerely,

[redacted] . Gordon
Acting Chief

cc: Hampton Cross, Acting Director

Patricia Montgomery
Acting Administrator
Building & Land Regulation Administration

727-7140

Not Complete




GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Office of Adjudication
Suite 729
613 G Street, N.W. - Seventh Floor
P.O. Box 37140
Washington, D.C. 20013-7200
(202) 727-7900

DCRA

vs. OAD # 90-1726-E
NOI # 9053

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

## DECISION AND ORDER

This matter was heard by Coles B. Ruff, Attorney Examiner, on June 20, 1990, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code, section 6-2701 et seq. and Mayor's Order 86-38, dated March 4, 1986. The hearing was conducted pursuant to the District of Columbia Administrative Procedure Act, D.C. Code, section 1-1509 et seq.

Present at the hearing were Thomas Farah, Department of Consumer and Regulatory Affairs (DCRA) zoning inspector, D.C. Fire Inspector William Guffy and the respondent Koo L. Yeun.

1990

On April 25, 1990, Mr. Farah issued Notice of Infraction (NOI) #9053 to the respondent. The violation alleged in the NOI was use of a premises as an automobile repair garage without a certificate of occupancy, which is a violation of 11 DCMR 3203.1. The respondent was served with a copy of the NOI pursuant to 1 DCMR 1102.1.

repair

The NOI instructed the respondent to pay the fine imposed or request a hearing within 15 days. The respondent requested a hearing and denied the violation.

## FINDINGS OF FACT

Based upon the evidence introduced at the hearing, the Attorney Examiner finds as follows -

The respondent operates a business repairing automobiles

in the basement of 4221 Connecticut Avenue, N.W. On March 22, 1989, the respondent was issued a certificate of occupancy to use this premises for "Auto Sale and Sale of Accessory Including Installation." On May 10, 1989, a new certificate of occupancy for the premises to be used for "Retail sale of automobile and accessories including installation" was issued to Van Ness, Inc. The respondent is the president of Van Ness, Inc.

Until 1988 this property was operated as a new car dealership in the name "Connecticut Avenue Nissan." The Nissan dealership had its new car show room on the first floor of the building. The dealership also serviced and repaired automobiles in the basement garage.

After the Nissan dealership vacated the building, the respondent leased the basement garage. The first floor is now operated by another party as a retail store. Although the respondent's certificate of occupancy includes auto sales, the respondent does not sell new cars. The respondent does, however, occasionally sell used cars on behalf of his repair customers. These used cars sales are a small part of the respondent's business on the premises. The cars that are sold are usually stored on a outside parking lot behind the building. The respondent does not, however, have a business license for used car sales.

On April 24, 1990, Mr. Farah visited the premises of 4221 Connecticut Avenue, N.W. Mr. Farah observed cars being repaired in the basement and sections of the basement being used for auto body work and storage of auto parts.

Mr. Farah contacted Inspector Guffy, of the D.C. Fire Department and requested the he also inspect the respondent's garage. Inspector Guffy conducted his own inspection on June 1, 1990. Inspector Guffy also observed automobiles being repaired in several places on the premises. He cited the respondent for several fire code violations, which the respondent has corrected.

The respondent advertises his business in the yellow pages as an auto repair business. There is no mention in the advertisement of auto sales or auto accessory sales and installation.

## RESPONDENT'S ARGUMENTS

The respondent has been issued a certificate of occupancy for "Auto Sale and Sale of Accessory Including Installation."

He maintains that his certificate of occupancy allows him to repair automobiles on the premises and that his use of

installation." The respondent did not state what type of automotive accessories he sells. He did, however, say that he repairs automobiles.

The Yellow Pages advertisement for the respondent's business introduced by the government reads:

> "Van Ness Car Care Centre - Service and Repair
> All types and kinds of automobiles."

The advertisement does not mention auto accessory sales.

"Auto repair" is not defined in the zoning regulations either. However, the zoning regulations define a "repair garage" as follows:

> " 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."

It is evident from the testimony of Mr. Farah, Inspector Guffy and the respondent, as well as the respondent's advertisement, that the respondent's business more closes reflects an repair garage rather than automotive sales and accessories sales and installation. Assuming respondent actually sells automotive accessories, these sales as well as used automobile sales are simply incidental to the respondent's primary business. Therefore, the Attorney Examiner concludes that the respondent is actually operating an auto repair garage.

needs ZA approval

Pursuant to 11 DCMR 743.1 a repair garage is only allowed in a C-3-A zone with a special use exception approved by the Board of Zoning Adjustment (BZA). In July 1965, Flood Pontiac Company, apparently the first occupant of the premises, applied for and later received a certificate of occupancy for "automobile sales and repair garage." The certificate of occupancy was apparently approved with consideration of a decision by the BZA in June 1965 (BZA #8250) allowing construction of the building as an "office and garage building."

That certificate of occupancy apparently remained in effect until 1983 when Connecticut Avenue Datson, later known as Connecticut Avenue Nissan, occupied the premises. The use of the premises evidently remained the same - new automotive sales and repairs. However, the new certificate of occupancy was issued for "automobile sales and service." In 1983 a new certificate of occupancy was issued to reflect the name change from Datson to Nissan. The use description was also changed on the certificate of occupancy to "motor vehicle dealer." It is not apparent why the use described in these

4221 CONNECTICUT AVENUE ASSOCIATES LIMITED PARTNERSHIP
C/O RELM, INC.
6931 ARLINGTON ROAD
SUITE 503
BETHESDA, MARYLAND 20814
(301) 654-2822

March 21, 1989

Mr. Koo Yuen
Van Ness
4221 Connecticut Avenue, N.W.
Washington, D.C. 20006

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

Dear Mr. Yuen,

This letter shall set forth our agreement that the existing portions of the subject property presently used for parking shall be utilized for the sole purpose of parking vehicles. Your premises shall have access to the existing 116 parking spaces on the property.

Sincerely,

Steve Rubin
General Partner

SR/md

Agreed and Accepted

By _____

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,

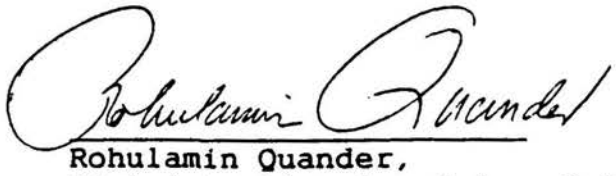
**ORDERED** that DCRA's Motion to Reopen the Record is **DENIED**; and it is

**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
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

MOTION TO CLARIFY ORDER OR STAY SANCTIONS PENDING APPEAL

A Decision and Order was rendered in this matter by Rohulamin Quander, Attorney Examiner/ALJ (the ALJ), Office of Adjudication, Department of Consumer and Regulatory Affairs (OAD, DCRA), on November 23, 1992, which found the Respondent fully liable for violation of 11 DCMR 3203.1, operating an automobile repair garage without a valid certificate of occupancy (C of O) for that activity at that location. Fines totalling $500, plus court costs of $25 were imposed, for a total of $525.

On December 22, 1992, pursuant to 1 DCMR 1119, Respondent filed a Motion to Clarify Order Or Stay Sanctions Pending Appeal, together with a Notice of Appeal. When Advisory Neighborhood

Commission 3F (ANC 3F) belatedly learned of the Decision, their Commission Chairman, Charles R. Braun, was granted leave by Donald J. Sheehy, Chief Administrative Law Judge, OAD, DCRA, to file an Opposition to Respondent's Motion by February 19, 1993.

After a review of the record and evidence contained therein, the Respondent's submission in support of his Motion, and the opposition thereto, the ALJ concludes, for reasons set forth below, that the Motion must be denied.

Barry v. Washington Post Co., 529 A.2d, 319 (D.C. 1987), citing In Re Antioch University, 418 A.2d 105, 109 (D.C. 1980), stated that:

> To prevail on a motion for a stay, the movant must show that he or she is likely to prevail on the merits, that irreparable injury will result if the stay is denied, that opposing parties will not be harmed by the stay, and that the public interest favors granting the stay.

The ALJ believes that the Respondent has failed to meet any of the above guidelines. First, the Respondent has not shown that he is likely to prevail on the merits. Conversely, evidence presented at the hearing revealed possible misrepresentation by the Respondent at the time he obtained his first C of O in 1989. As noted in the Decision and Order, the Respondent is operating a repair garage under the guise of a C of O which states, "Retail sales of automobiles plus installation". The ALJ concluded that the Respondent maintained a fiction for several years to justify his claim to entitlement to the C of O issued in May 1989.

Therefore, because he is operating without the correct C of O

for existing use, despite three prior directives to correct the problem, it is highly unlikely that he can prevail on the merits. The Respondent was previously directed by Joseph Bottner, Zoning Administrator, Bureau of Land Regulation Administration (BLRA), DCRA, to come into zoning compliance. In addition, Coles B. Ruff, Attorney Examiner/ALJ, issued a Decision in 90-OAD-1726-E, on July 17, 1990, which advised the Respondent that he needed Board of Zoning Adjustment (BZA) approval in order to continue his business operation at this location. Then on November 23, 1992, the ALJ herein reiterated the prior directives, holding the Respondent fully liable for his law violations.

Second, the Respondent is hard pressed to show irreparable injury. Although the Respondent might sustain some economic loss and personal embarrassment if he were shut down by DCRA, mere potential economic loss does not justify the Respondent's open and notorious continuation of his operation. In addition, because the Respondent has noted an appeal, DCRA will take no steps to close his operation pending the appeal's outcome. The key word in this consideration is "irreparable" and "[m]ere injuries, however, substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." [1] The ALJ notes that although the Respondent is a repeat offender, he was not cited as such.

---

[1] Virginia Petroleum Jobbers Association v., Federal Power Commission, 104 U.S. App. D.C. 106, 110, 259 F2.2d 921, 925 (1958).

Concerning the third (opposing parties will not be harmed by the stay) and fourth criteria (the public interest favors granting the stay), the Respondent's Motion fails to adequately address these two components to justify granting a stay.

The community representatives maintain that their constituency has been and continues to be harmed by the Respondent's ignoring three directives to obtain the correct C of O. This process would require the BZA to reach a decision after hearing and evaluating all of the evidence, which would most certainly include objection from the surrounding community, which has been pursuing this matter for several years.

The Respondent has likewise failed to demonstrate how granting his request for a stay would not be a disservice to the public interest. Since at least 1990, the community has consistently demanded that applicable zoning regulations be enforced. The Respondent's continuous flaunting of this law violation in no way serves the public interest, and impedes the D.C. Government's ability to enforce its own laws.

The Respondent requested a clarification of the initial Decision and Order, expressing concern that the ALJ's Order would be immediately executed upon by BLRA, DCRA, with imminent action to be taken by BLRA to vacate C of O #B156843, and implement a forced closing of the Respondent's automobile repair business, despite the existence of a pending appeal before the Board of Appeals and Review.

Prior to the issuance of this Order, the ALJ verified with the Zoning Division, BLRA, that, pending the outcome of Respondent's appeal, no action will be taken by that office to either vacate C of O #B156843, or to enforce a cessation of the Respondent's business.

**O R D E R**

**THEREFORE,** for the foregoing reasons, it is this 22nd day of February, 1993,

**ORDERED,** that the Motion For Stay and the Motion to Clarify Order Or Stay Sanctions Pending Appeal is **DENIED.**

Rohulamin Quander,
Attorney Examiner/ALJ, D.C.