Testimony of Karen Perry before the BZA
Tuesday, November 28, 2006
on Motion to Reopen Service Bays at 4221 Connecticut Avenue

ANC 3F does not support the motion to stay the enforcement of the order to cease all business operations at 4221 Connecticut Avenue.

First, we feel it important to challenge some of the erroneous statements made in this brief since we feel this case will once again be appealed. First, on page one, the brief states "that there has always been a car dealership performing repair work on motor vehicles, on these premises since the 1930's." That is not true. There has not been a car dealership in the 4215 - 4221 office building since at least 1988. This fact is borne out by the decisions of ALJ's Ruff in 1990 and Quander in 1992. Prior to that time there was a car dealership that occupied the entire building and repairs were incidental to the sale of new cars. Neither Koo Yuen or Kuri Brothers has ever owned or operated a new car dealership at 4221 Connecticut Avenue so we even question the original c of o given to Koo Yuen for Retail Sales of automobiles and installation of accessories.

Second, contrary to the statement on page 2 that the Court of Appeals implicitly ruled that the DCRA had the authority to issue certificates of occupancy – such as the one for the 4221 premises i.e., an automobile service center) even though this designation is not technically found in the D. C. Zoning Regulations, our reading of the order is quite different. The Court of Appeals stated, "Although the term "automobile service center" is not defined in the zoning regulations, and its precise scope may be subject to some uncertainty, the BZA concluded that it was not intended and could not be construed to allow operation of a repair garage. This conclusion is supported in our view, by substantial evidence in the record, including the documented history of the C of O. Petitioner concedes, as it must, that its C of O did not authorize it to have a repair garage." In the footnote, the Court stated, "Petitioner's C of O thus did not comply with the requirement that "the use shall be designated on the certificate of occupancy in terms of a use classification that is established by this title, i.e., Title 11." In another footnote, the Court also stated "If the C of O were construed to authorize such a use without the required special exception, it would have been invalid and subject to revocation as having been issued in error. 12A DCMR (former) Section 118.4.3.

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Third, we object to the inclusion into evidence of only two pages of a brief from August 11, 1999 before the DCRA Office of Adjudication. Toye Bello has never been sworn in nor has he testified before this BZA. I spent yesterday in your offices and pulled the entire transcript of this hearing, which some of you may remember since it became an appeal to you of a decision by ALJ Lennox Simon. Your case file number is 00-0001. But if it is going to be permitted, we would like to see all of Toye Bello's statement entered into the record. It begins on page 92 and goes to page 143. In the full statement Toye Bello repeatedly says although he caused the designation, automobile service center, it was never to be construed to permit automobile repairs and that this was explained to the applicant. He further states he was not aware of the BZA decisions regarding the term automobile service center or he would not have created this designation. This document is in your files, but if you would like I would be happy to xerox those pages and make them part of the record today.

Fourth, the affidavit of Ms. Hicks. In no way does Ms. Hicks state that the zoning administrator has the authority to create a zoning category that in essence changes the zoning and allow a use not permissible in a zoning category --- in this case an automobile repair garage in a C-3-A zone.

In Barry v. Washington Post Company, 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.

We do not feel the applicant has met this test. First, Kuri Brothers has not shown that they are likely to prevail on the merits. DCRA closed the service bays following the BZA ruling in Appeal No. 16947, upheld by the District of Columbia Court of Appeals. This ruling followed a de novo hearing in which the BZA found, through testimony, that Kuri Brothers was operating a repair garage in violation of zoning and exceeding the scope . Kuri Brothers is now arguing in this brief that because the BZA verbally voted on April 25, 2006, to dismiss the Appellant's appeal of another C of O for the same use, an automobile service center, that Kuri Brothers was denied its due process rights. We do not agree. While the original case was on appeal to the Court of Appeals, Kuri Brothers knowing that ALJ Lennox Simon and the BZA had both ruled that an automotive service center was not a recognized term in the zoning regulations, but signified the same use as a repair garage, once again applied for and received a C of O for an

automotive service center. We do not believe the facts in this case will be any different from the facts in the previous case and in all previous cases going back to 1990. While Kuri Brothers tries to claim change in ownership of the business, Koo Yuen is shown as an officer of the Kuri Brothers Corporation. So we believe it has been all smoke and mirrors and deception that the property has changed ownership or the use has changed. Whether it be the C of O's first issued to Koo Yuen for Retail sales of automobiles plus installation, even though he never sold cars, or the automobile service center designation, these applicants have had due process going back to 1990. In each case an automobile repair shop was being operated.

The second test is irreparable injury. To quote from a previous request for a stay before ALJ Quander, he stated, "although the respondent might sustain some economic loss and personal embarrassment if he were shut down, mere potential economic loss does not justify the Respondent's continuation of his operation. He quoted the following from Virginia Petroleum Jobbers Association v. Federal Power Commission, 104 U.S. App. D.C. 106 110, 259 F2d 921, 925 (1958), "The key word in this consideration is irreparable and mere injuries however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough." We must remind the BZA that when Koo Yuen was first cited for operating outside the scope of the C of O, there were only 15 service bays. Now we have 21 service bays. By being able to operate for the past 16 years, we do not feel they have suffered any economic loss.

Our ANC does not believe that the third test of opposing parties will not be harmed by the stay has been adequately addressed. The fourth test is that the public interest favors granting the stay. We also feel that the respondent has failed to demonstrate how granting his request would not be a disservice to the public interest. Our ANC, representing the community as a whole, has been requesting since 1989 that the applicable zoning regulations be enforced. The purpose of the zoning regulations is to insure the protection of the health, welfare and safety of the public. A repair garage/automobile service center produces exhaust fumes, noise and pollution and it is the reason such entities are located in industrial zones. In this case there is a 625 unit high-rise apartment building only 16 feet away. We fail to see how granting a stay would serve the public interest. In addition we feel it impedes the D.C. governments ability to enforce its own laws.