



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Mathew Whitening 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons# : 039081499Z et al. (1 summonses) DEPT OF BUILDINGS, -against- I.J.R. REALTY HOLDING LLC Hearing Date : 11/14/2024 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount :	0.00	Community Service(Hr):	Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039081499Z	Dismissed	03/15/2023	664 CONEY ISLAND AVENUE, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B302	28-301.1	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

Respondent I.J.R. REALTY HOLDING LLC., appeared by authorized representative Matthew Whitening via telephone hearing on 11/14/2024. The petitioners appeared by Malka Amar.

The summons alleges a class 3 violation of 28-301.1, "ATI observed the sidewalk curb in front expr1 approx 10 ft from corner of Ave C & Coney I. Ave has been illegally cut approximately 10ft lowering a portion of the sidewalk enabling a vehicle access to the property. C.C maintained without DOB approval & contrary to BC 3202.2.2.4 & ZR 25-631.

The Petitioners submitted into evidence a PDF file containing photographs and construction plan/schematic, marked petitioners exhibit A. The petitioners also called the issuing officer/inspector Micheal Colbert to testify. The inspector stated the following. While he was at the site, he noticed that there was a larger than normal curb cut on the sidewalk from Avenue C and Coney Island Avenue, which is depicted in Petitioners exhibit A. Upon looking up the schematic from the work site, he noticed that the petitioners did not have a permit to make such a curb cut. The inspector stated, that looking at the schematic in Petitioners exhibit A, the sidewalk in question is an unbroken curb, which means the plans did not include a curb cut on the sidewalk. The Representative for Respondents did not deny there was a curb cut but stated that the Respondents deny that the curb cut was made by them. The Representative submitted into evidence a permit NYC debt of Design and Construction marked Respondents exhibit 1. The Representative explained that the City of New York commissioned a company to do work on the very sidewalk that is being cited to in the summons, so it must have been done by the City of New York. The inspector on rebuttal highlighted that the permit is for installation of sidewalk and curb restoration, but not a curb cut, and in fact, on the exhibit 1, the permits states that there were no cuts made (Cuts:0). On rebuttal the inspector further stated that the photos in exhibit A show pink pedestrian ramps, which would indicate that work was done on them. The inspector stated this must be the work that the permit is alluding too. The inspector further highlighted that the curb concrete is the same color as the sidewalk concrete, which would indicate that the work was done by the same persons who did the work at the site, however that is a different color than the work done from the pedestrian ramps, which would indicate that the persons who did work on the pedestrian ramp, were not the same persons who did the work on the illegal curb cut. The petitioners further argued on rebuttal, that even if the Respondents did not make the curb cut, they are still responsible as the property owners, to keep the property in a code compliant manner.

The Law:

Section 28-301.1 states,

All buildings and all parts thereof and all other structures shall be maintained in a safe condition. All service equipment means of egress, materials, devices, and safeguards that are required in a building by the provisions of this code, the 1968 building code or other applicable laws or rules, or that were required by law when the building was erected, altered, or repaired, shall be maintained in good working condition. Whenever persons engaged in building operations have reason to believe in the course of such operations that any building or other structure is dangerous or unsafe, such person shall forthwith report such belief in writing to the department. The owner shall be always responsible to maintain the building and its facilities, and all other structures regulated by this code in a safe and code-compliant manner and shall comply with the inspection and maintenance requirements of this chapter.

Section 3202.2.2.4 states,

The lowering of any curb or the change of grade of any sidewalk for the purpose of providing a driveway across such curb or sidewalk shall be constructed in accordance with the specifications prescribed in Section 406.10.

Section 406.10 states,

For the purpose of this section, a curb cut shall include all splays when determining the total length of cut curb. All curb cuts shall comply with the following requirements:

- 1.The aggregate length of curb cuts shall not exceed 60 percent of any street frontage 100 feet (30 480 mm) or less in length. No single curb cut shall exceed 30 feet (9144 mm) in length, and there shall not be more than two curb cuts on any street frontage 100 feet (30 480 mm) or less in length. The minimum distance between two curb cuts shall be 5 feet (1524 mm).

- 2.For each 50 feet (15 240 mm) of street frontage length over 100 feet (30 480 mm), an additional curb cut no greater than 30 feet (9144 mm) in length may be permitted.

3.No curb cut shall commence within 8 feet (2438 mm) of a side lot line.

Exceptions:

1.For open parking lots on corner lots and on lots with street frontage length of 50 feet (15 240 mm) or less, the curb cut may commence no less than 30 inches (762 mm) from the side lot line.

2.In open or enclosed parking garages where a level landing having a minimum dimension of 20 feet (6096 mm) is provided at the discharge point of all ramps at the street level within the property line, the curb cut may commence no less than 30 inches (762 mm) from a side lot line.

2.No curb cut, including splays, shall be less than 10 feet (3048 mm) in length.

Here, while the Court does give credit to the statements made by the inspector, the court does not believe that the petitioners established the violation charged by the preponderance of the evidence. The Court notes that the violation alleged to here is not a work without a permit violation. Here, the Petitioners argue that the curb cut is not code compliant, and the two codes specified in the summons is ZR 25-631 and BC 3202.2.2.4. For ZR 25-631, the rule alludes to different rules per zoning sections. Here, the petitioners did not establish through testimony or otherwise, which zone the property belongs. For BC 3202.2.2.4, the rule states 4 ways in which a curb is code compliant. Here, the inspector's testimony geared towards a cut on the sidewalk that was not in a schematic/plan that was pulled by DOB. The petitioners did not allude to which of the 4 ways listed in BC 3202.2.2.4 was violated, and the summons does not describe in which way the rule is violated. Therefore, the Respondent is not in violation of the summons alleged, and the summons is dismissed.



11/21/2024

11/21/2024

Muminur Rahman, Hearing Officer

Date