



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039111949L et al. (1 Summons) DEPT OF BUILDINGS, -against- YAN YUN GUAN Hearing Date: 12/03/2024 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039111949L	Dismissed	04/18/2024	2057 WEST 8 STREET Brooklyn

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

Findings of Fact & Conclusions of Law

Respondent YAN YUN GUAN appeared at a remote telephonic hearing on 12/3/2024 by Phoebe Dossett, Esq. of the Nacmias Law Firm.

Petitioner NYC Dept. of Buildings appeared by Deanna Burbridge, Esq. This case had been adjourned for the issuing officer who did not appear at the hearing. The parties agreed to proceed without the issuing officer.

Respondent is charged with a Class 3 violation of NYC Adm. Code 28-301.1. It is alleged that Respondent failed to maintain the building and all parts thereof in a Code-compliant manner. It is alleged that "At time of inspection observed at expo. #1

created curb cut so as a portion of the curb is lowered enabling a vehicle access to the property and expo. #2 created a shared driveway with adjacent property approx. 7' wide and contrary to ZR 25-62 and BC 3202.2.2.4.

Ms. Dossett moved to dismiss the Summons arguing that Petitioner has not established a violation of NYC Adm. Code 28-301.1.

In *DOB v. Stanfa Giuseppe*, Appeal No. 2301760 (January 25, 2024) Respondent was issued 2 Summonses – one for illegally parking inside a yard behind a locked gate with illegal off-street parking (OSP), the other for illegal sidewalk cut approximately 8 ft. The Board cited the following sections of law:

Code § 28-301.1 provides, in pertinent part, that “[t]he owner shall be responsible at all times 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 of the Building Code (BC), found in Title 28 of the Code, provides, in pertinent part, that “[t]he 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.”

BC § 406.10 provides: Except where specifically provided for in the New York City Zoning Resolution, all curb cuts and driveways shall be constructed in accordance with Sections 406.10.1 and 406.10.2.1 All sidewalks and driveways or portions thereof that are structurally supported shall be designed for loads prescribed in Chapter 16. BC § 406.10.1 provides: 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, except that on corner lots and lots with street frontage length of 50 feet (15 240 mm) or less, the curb cut may commence 30 inches (762 mm) from the side lot line...”

The Board held that “Petitioner failed to establish either charge of Code § 28-301.1. Petitioner’s case of the violations rests solely on the IO’s affirmed statements on the summonses. In the first summons, the IO alleged that an off-street parking space at the side yard was contrary to BC § 3202.2.2.4 and ZR § 25-62. BC § 3202.2.2.4 sets forth requirements for curb cuts and is inapplicable to this summons. ZR § 25-62.1 permits accessory off-street parking spaces within or to the side or rear of buildings containing residences in certain residential district. However, Petitioner offered no evidence of the residential district in which the cited premises was located. In the second summons, the IO alleged that an approximately 8-foot curb cut at exposure 1 was contrary to BC § 3202.2.2.4 and ZR § 25-63.1. BC § 3302.2.2.4 provides that the lowering of a curb for the purpose of providing a driveway must comply with the requirements contained in BC § 406.10, which in turn states that, except as specifically provided for in the ZR, all curb cuts must be constructed in accordance with BC § 406.10.1. BC § 406.10.1 requires that a curb cut, including splays, have a minimum length of 10 feet and not exceed 30 feet...Here, the curb cut met the ZR minimum length and did not exceed 30 feet, and no evidence was provided by Petitioner to show that the other requirements of BC § 406.10.1 were unmet or that the curb cut otherwise created a hazard. Consequently, the Board concludes that Petitioner failed to make out either violation of Code § 28-301.1 by showing that off-street parking space or the curb cut was not code-compliant or unsafe...Accordingly, the Board reverses the JHO’s decisions sustaining Class 3 violations of Code § 28-301.1 and dismisses these charges.”

In the instant case Respondent’s motion to dismiss the Summons is granted. I find Petitioner has not established a violation of NYC Adm. Code 28-301.1 as it failed to show that the curb cut, and shared driveway were not Code-compliant or unsafe. It failed to show how the curb cut and shared driveway were not in compliance with 28-301.1, or how they were not in compliance with BC 3202.2.2.4 or ZR-25-62. Petitioner offered no evidence of the residential district in which the cited premises was located.

I find Petitioner has not established a prima facie violation of NYC Adm. Code 28-301.1.

Accordingly, the Summons is dismissed.

[Signature]

12/11/2024

12/11/2024

Jerilyn F. Rubin, Hearing Officer

Date