



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 039042007L et al. (1 Summons) DEPT OF BUILDINGS, -against- GARCIA, WANDA Hearing Date: 09/12/2025 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
039042007L	Dismissed	06/01/2021	1330 PROSPECT AVENUE Bronx

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

Findings of Fact & Conclusions of Law

Frank Tamberino, Esq. appeared for Respondent. Petitioner DOB did not appear within 30 minutes after notification. Petitioner was emailed at 11:07am. The hearing began at 11:40am.

Respondent was cited for violating AC 28-301.1 for an existing curb cut that was extended 14 feet without DOB approval and DOT specifications creating a hazard to pedestrians.

Mr. Tamberino argued for dismissal on 3 grounds. First, he argued that a prior summons was issued to Respondent for the same violation. A decision was issued on the merits. Second, he challenged service and argued that the IO made no attempt

to serve a natural person. He stated that Respondent resided at the cited premises. Third, he argued that the curb cut was installed with a permit, and the permit was signed off in 1992. Mr. Tamberino submitted Appeal Decision No. 1100289 to support his res judicata argument, Appeal Decision No. 2201550 on service, DOB Document Overview reflecting curb cut permit sign off, photos of the premises, and the Oath decision for the prior summons reflecting a dismissal based on the merits (Exhibit A).

The affirmation of service states that "female resident refused to accept violation on behalf of property owner." I find service was defective as it does not indicate what questions were asked, and if the IO had determined if the Respondent was present. I also credit Respondent's evidence that the job for the curb cut was signed off in 1992. The summons is dismissed.

Viven Chiu

09/15/2025

09/15/2025

Viven Chiu, Hearing Officer

Date