



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division
Decision

Phoebe Dossett, Esc - Nacmias Law Firm, PLLC 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons# : 039535368M et al. (2 summonses) DEPT OF BUILDINGS, -against- J&J DESIGNS INC Hearing Date : 10/10/2025 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
039535368M	Dismissed	12/26/2024	155-15 134 AVENUE, Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B2P7	Misc. BC—Chapter 33	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039535369Y	Dismissed	12/26/2024	155-17 134 AVENUE, Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B2P7	Misc. BC—Chapter 33	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

On December 26, 2024, at 2:40 p.m., the Issuing Officer (I.O.) inspected the property located at 155-15 134th Avenue, Queens, New York and issued Respondent, J&J Designs Inc., the two (2) summonses for violating Misc. Building Code Chapter 33 of the New York City Building Code, a Class 2 violation, for not having adequate tree protection during construction activities.

1. Summons No. 039535368M was issued at 10:18 a.m., to Respondent for failure to provide tree protection at the property located at 155-15 134th Avenue, Queens, New York. The Issuing Officer (I.O.) at the time of inspection a 2-story new building active site with construction work in progress observed at Exposure #1 sidewalk has tree without protection in violation of 3309.10. The I.O. noted that protection meeting the requirement of the NYC Department of Parks and Recreation shall be provided for all such trees.

2. Summons No. 039535369Y was issued at 10:20 a.m., to Respondent for failure to provide tree protection at the property located at 155-17 134th Avenue, Queens, New York. The Issuing Officer (I.O.) at the time of inspection a 2-story new building active site with construction work in progress observed at Exposure #1 sidewalk has tree without protection in violation of 3309.10. The I.O. noted that protection meeting the requirement of the NYC Department of Parks and Recreation shall be provided for all such trees.

Section 3309.10 of the Building Code states that "whenever any building is to be constructed or demolished above the roof of an adjoining building, it shall be the duty of the person causing such work to protect from damage at all times during the course of such work and at his or her own expense the roof, skylights, other roof outlets, and equipment located on the roof of the adjoining building, and to use every reasonable means to avoid interference with the use of the adjoining building during the course of such work, provided such person causing such work is afforded a license in accordance with the requirements of Section 3309.2 to enter and inspect the adjoining building and perform such work thereon as may be necessary for such purpose; otherwise, the duty of protecting the roof, skylights, other roof outlets, and equipment on the roof of the adjoining building shall devolve upon the owner of such adjoining building. Adjoining roof protection shall be secured to prevent dislodgement by wind. Where construction or demolition work occurs at a height of at least 48 inches (1219 mm) above the level of the adjoining roof, adjoining roof protection shall consist of 2 inches (51 mm) of flame-retardant foam under 2 inches (51 mm) of flame-retardant wood plank laid tight and covered by flame-retardant plywood, or shall consist of equivalent protection acceptable to the commissioner, and shall extend to a distance of at least 20 feet (508 mm) from the edge of the building being constructed or demolished."

At the hearing, Jennifer Clouden, Esq., represented Petitioner, NYC Department of Buildings. Phoebe Dossett, Esq., represented the Respondent, J&J Designs Inc. This matter had previously been adjourned for the I.O. Ms. Clouden stated that the I.O. is no longer available and the hearing proceeded.

Ms. Clouden submitted as evidence in support a copy of the summons, affirmation of service, 8 photos of the violating conditions as observed by the I.O., and Appeal number 2100130 (Petitioner's Exhibit 1). Ms. Clouden explained that the 2 properties are located next to each other.

Ms. Dossett responded that Respondent has correction but this is not mitigatable. Next, Ms. Dossett made a motion to dismiss asserting an improper section of law. Respondent is charged with violating a miscellaneous section of the Building Code and OATH cannot uphold a violation to a miscellaneous provision of law. Additionally, the specific section of law in the violation details does not provide Respondent with notice of the specific section Respondent is charged with violating in violation of RCNY Section 6-08(c).

Ms. Clouden stated that the provision of law is on the face of the summons. The Issuing Officer writes 3309.10 in the Violation Details of the summons. Ms. Clouden made a motion to amend the section of law to BC 3309.10, and included a copy of the provision of law as evidence (Petitioner's Exhibit 2).

Ms. Dossett reviewed the section of law and made a second motion to dismiss these 2 summonses as the amended section of law has to do with protection of roofs, not tree protection. This does not conform to the violation details written by the I.O. Petitioner cited to in the summons and amended to the incorrect provision of law.

Ms. Clouden then moved to amend the section of law to 3309.11 which is for protection of trees. As to certifying correction, summons 69Y was disapproved on 3/14/25.

Ms. Dossett said that 3309.11 is a different section of law that what was on the face of the summons and what Ms. Clouden made a motion to amend. Petitioner failed to establish a prima facie violation of either BC Section 3309.10 or 3309.11.

I credit the testimony and documentary evidence submitted in this matter by the representatives for the Petitioner and Respondent. I hereby grant Respondent's motion to dismiss summons numbers 039535368M and 039535369Y for citing and amending to the incorrect provision of law. Building Code Section 3309.10 does not conform with the violation details which alleges no tree protection. The summons is defective on its face.

Accordingly, summons no. 039535368M and 039535369Y are Dismissed.



10/16/2025

10/16/2025

Eva Marie Russo-Lane, Hearing Officer

Date

IF YOU ARE FOUND IN VIOLATION, AND ARE NOT ELIGIBLE OR DO NOT CHOOSE COMMUNITY SERVICE, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION DATE OR 35 DAYS IF MAILED.

- To pay by mail, send a check or money order to the Dept. of Finance Commissioner, P.O. Box 307, Peck Slip Station, New York, NY 10272. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number on the check or money order.
- To pay in person, bring a check, money order or credit card and this decision to any OATH Hearings Division location between 8:30 a.m. to 4:30 p.m.
- To pay online using a credit or debit card, go to www.nyc.gov/citypay/oath

If you do not pay the penalty, the City may: (1) file papers with the Civil Court ("docket a judgment"), (2) charge you a late fee, and (3) continue attempts to collect the debt.

CAN I DO COMMUNITY SERVICE?

If your summons is for the type of offense that gives you a Community Service option you can choose to complete Community Service instead of paying a penalty. Your decision will give you that option. You have to complete your Community Service by the deadline in the decision or else you will end up owing the penalty. You can even do your Community Service on the day you receive your decision.

COMPLETION OF COMMUNITY SERVICE

The Help Center will arrange for you to complete your Community Service. The Help Center is run by the Ombudsperson/*Pro Se* Clerk at OATH and is located at each Hearing Division in all five boroughs. To schedule your Community Service, call, email or visit a Help Center location.

How to Contact the Help Center to Schedule Community Service:

Manhattan: (212) 436-0845 CSmanhattan@oath.nyc.gov
 Brooklyn: (718) 923-6216 CSbrooklyn@oath.nyc.gov
 Queens: (718) 393-6044 CSqueens@oath.nyc.gov
 Bronx: (718) 503-5565 CSbronx@oath.nyc.gov
 Staten Island: (718) 876-2314 CSstatenisland@oath.nyc.gov

If you complete your Community Service by the deadline in the decision, you will receive a Certificate of Completion and will not have to pay a penalty. If you need an extension to complete your Community Service, please contact the Help Center.

If you do not complete your Community Service by the deadline, you will have to pay the penalty.

NON-DISCLOSURE FOR SUMMONSES ELIGIBLE FOR COMMUNITY SERVICE

If you either completed the Community Service or paid the penalty, OATH will remove your identifying information from public records related to your case.

If you do not complete the Community Service or pay the penalty, your identifying information may remain on public records related to your case.

IF YOU DISAGREE WITH THE DECISION, YOU MAY APPEAL IT

To submit your appeal, you **MUST** use OATH's online or mail-in appeal forms available on OATH's website at www.nyc.gov/oath/appeal. Instructions for filing an appeal may be found on the form and OATH's website.

Your appeal **MUST** be received by the OATH Hearings Division **within 30 days** of the decision date, or 35 days if the decision was mailed to you.

To appeal you **may need** to pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, available on OATH's website.
- If you are eligible and choose to perform Community Service instead of paying the penalty, you do not have to pay the penalty or complete the Community Service to appeal.

APPEAL BY ENFORCEMENT AGENCY

If you wish to answer an appeal filed by an enforcement agency, you **MUST** use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website.

Your answer must be received **within 30 days** of the date of the enforcement agency's appeal, or 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty or, if eligible, complete Community Service even if your case was originally dismissed after the hearing.

For more information,
 visit OATH's website www.nyc.gov/oath
 or call 1-844-OATH-NYC

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