

Respondent, commercial tenant, appeals from that part of a recommended master decision sustaining three Class 2 violations of Section 32-655 of the New York City Zoning Resolution (ZR) for sign exceeding permitted height in a specified commercial district. In the three summonses dated November 23, 2015, the issuing officer (IO) stated “sign in C5-3 district exceeds maximum allowable height of 25 feet above curb. Sign is approximately 37 feet above curb level. The three signs are identified as Victoria’s Secret sign #2, #3, and #4, respectively.”

The hearing

At the hearing, the IO testified that he inspected the premises, occupied as a Victoria’s Secret store, took measurements and photographs of the signs, and wrote a report. The attorney for Petitioner, Department of Buildings (DOB), submitted the IO’s photographs and report, along with a site plan diagram and zoning diagram into evidence. Respondent’s attorney moved to dismiss the three summonses, arguing that ZR Section 32-655 only appears as a Class 1 violation in the DOB penalty schedule found in Section 102-01(k) of Title 1 of the Rules of the City of New York (RCNY) and therefore may not be charged as a Class 2 violation. Respondent cited the Board’s decision in *NYC v. Helen Katchis* (Appeal No. 1100967, January 26, 2012) in support of its motion.

In his recommended master decision sustaining the violations, the hearing officer found that a Class 1 violation of ZR 32-655 pertains only to outdoor advertising signs, but ZR 32-655 by its definition applies to all outdoor signs. He therefore found that ZR 32-655 may be charged as a Class 2 violation for signs other than outdoor advertising signs pursuant to the miscellaneous provisions of the DOB penalty schedule, reasoning that to find otherwise would mean that outdoor non-advertising signs could never be found in violation of ZR 32-655.

Issue on appeal

The issue on appeal is whether Petitioner may charge a violation of ZR Section 32-655 as a Class 2 infraction under the DOB penalty schedule classification for miscellaneous violations of the ZR.

Applicable law

ZR Section 32-62 provides that in C5 districts, “signs *other than advertising signs* are permitted subject to the provisions of the following sections:

* * * *

Section 32-65 (Permitted Projection or Height of Signs)

* * * *

[Emphasis supplied.]

ZR Section 32-65 provides that in C5 districts, “all permitted signs are subject to the applicable regulations of this Section.”

ZR Section 32-655 provides that in a C5-3 district, no permitted sign shall extend above curb level at height greater than 25 feet.

The appeal

On appeal, Respondent's attorney argues that the violations were improperly charged as Class 2 under miscellaneous infraction code B2A2 for outdoor signs exceeding the maximum allowable height above the curb level pursuant to ZR Section 32-655, as DOB may only charge a violation of ZR Section 32-655 as a Class 1 violation under infraction code B169 pertaining to outdoor advertising company (OAC) signs pursuant to the DOB penalty schedule.

In its answer, Petitioner's attorney argues that pursuant to DOB penalty schedule, Petitioner is authorized to charge respondents for illegal display of outdoor signs as either Class 1 or Class 2 violations, with Class 1 violations carrying significant financial penalties when respondents are charged as an OAC, and Class 2 violations carrying substantially lower penalties when respondents are not charged as an OAC for illegal display of accessory and non-advertising outdoor signs.

The Board's determination

Having fully reviewed the record, the Board finds that the hearing officer's decision is supported by the law and a preponderance of the evidence and denies the appeal.

Respondent does not dispute that the three signs in question extended above the curb level at a height greater than 25 feet in violation of ZR Section 32-655. It only argues that pursuant to the DOB penalty schedule, Petitioner may only charge ZR Section 32-655 as a Class 1 violation with respect to an OAC sign, and that Petitioner failed to prove or allege that the signs in question were OAC signs. Respondent is correct that the three summonses do not allege that the signs are OAC signs. However, ZR Section 32-655 by its definition applies only to permitted signs, which in a C5 district excludes advertising signs. *See NYC v. OTR Media Group Inc.* (Appeal No. 1301129, March 27, 2014) (finding ZR Section 32-655 charge not applicable to OAC sign in zoning district where advertising signs are not permitted). The Board therefore finds that the charges were properly classified by Petitioner under infraction code B2A2 specifically provided for Class 2 miscellaneous outdoor sign violations of the ZR or Building Code in the DOB penalty schedule, found at 1 RCNY Section 102-01(k).

Accordingly, the Board affirms the part of hearing decision sustaining three charges of ZR Section 32-655 and imposing civil penalties of \$2,400 for each charge, for total civil penalties of \$7,200.

Additional information from OATH records (not in original decision)

Master NOV #

35171613R

Name of Respondent's counsel or other
authorized representative (if any)

Rosenberg & Estis, P.C.