

Dep't of Buildings v. 610 Mead Street, Bronx

OATH Index No. 815/12 (Jan. 26, 2012)*

Evidence established that premises located within a district zoned for residential use is being used for automobile repairs, dead storage of motor vehicles, and junk salvage storage, in violation of the New York City Zoning Resolution and without a certificate of occupancy permitting those uses. Closure recommended.

* subsequent history: prior to trial, the building owner had agreed to remove all unlicensed and unregistered vehicles, auto salvage parts and auto equipment and to restore the premises to its permitted legal use by February 11, 2012. Petitioner reported that respondent was found to be in compliance at an inspection conducted after February 11, 2012, so no action was taken.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF BUILDINGS

Petitioner

- against -

**OWNER, OCCUPANTS AND MORTGAGEES OF
610 MEAD STREET, BRONX, NEW YORK**

Respondents

REPORT AND RECOMMENDATION

INGRID M. ADDISON, *Administrative Law Judge*

This proceeding was referred pursuant to section 28-212.5 of the New York City Administrative Code. Petitioner, the New York City Department of Buildings (“Department”), alleges that premises located at 610 Mead Street in the Bronx, also known as Block: 4026, Lot: 5, is located in a district zoned for residential use, and is being used for the dead storage of motor vehicles, automobile repairs, and junk salvage storage, in violation of the New York City Zoning Resolution (ALJ Ex. 1). To abate the nuisance, the Department seeks an order of closure against the premises.

At a hearing on January 25, 2012, respondent-owner appeared and entered into a stipulation of settlement with the Department in which he admitted to the allegations and

resolved to have the observed uses discontinued by February 11, 2012 (Pet. Ex. 2). The respondent occupants and mortgagees did not appear. The Department presented proof that it served the non-appearing parties with the petition and notice of hearing, pursuant to section 28-212.4 of the Administrative Code. *See* Admin. Code § 28-212.4 (Lexis 2011). That proof satisfied the jurisdictional prerequisite for finding the occupants and mortgagees in default (Pet. Ex. 1). The hearing proceeded in the form of an inquest during which the Department relied solely on documentary evidence. I held the record open for the Department to produce a certified tax map. The record closed on January 26, 2012.

For the following reasons, I find that the premises is located in a residential district and has been used for commercial and manufacturing uses, in violation of the New York City Zoning Resolution and the valid certificate of occupancy for the premises.

Accordingly, I recommend closure of the driveway and yard of the premises commensurate with the terms of the stipulation agreement, and in a manner that will not preclude ingress to and egress from the residential portions of the premises.

ANALYSIS

The Department presented certified reports of six inspections of the subject premises, conducted by Inspectors Nigel Sampson and Martin Steigman over a two-year period from June 22, 2009 through September 22, 2011 (Pet. Exs. 3-8). Attached to all the reports were photographs of the driveway and yard of the premises depicting: a damaged vehicle with its front end removed (Pet. Ex. 3); two cars in different stages of repair with one elevated on a jack, and one without a license plate (Pet. Ex. 4); automobile parts and miscellaneous garbage in the rear yard (Pet. Ex. 5); an unlicensed van and an unlicensed passenger vehicle, different from that observed in petitioner's exhibits 3 and 4, and four tires at the rear of the property (Pet. Ex. 6); an unlicensed vehicle in the driveway (Pet. Ex. 7); and two unlicensed vehicles in the driveway, and junk storage and automobile parts in the rear yard (Pet. Ex. 8). Petitioner argued that the storage of unlicensed motor vehicles constitutes dead storage because such vehicles cannot be legally driven on the streets of New York.

The Department introduced a certified tax map (Pet. Ex. 9) and a zoning map (Pet. Ex. 10), which showed the lot to be located within an R5 residential zone. The Department also submitted a certificate of occupancy for the premises which showed a two-family dwelling on

the first and second floors of the building on the lot, with a one-car garage at the first floor, and household storage and a boiler room at the cellar of the premises (Pet. Ex. 11). Finally, petitioner introduced excerpts from the zoning resolution which classifies automobile repairs and the dead storage of automobile as use group 16 commercial uses, and junk salvage storage as a use group 18 manufacturing use. Neither commercial nor manufacturing uses are permitted as-of-right in residential districts (Pet. Ex. 12).

In sum, petitioner's proof established that the premises is being used for commercial and manufacturing uses, in violation of the zoning resolution and the valide certificate of occupancy for the premises.

FINDINGS AND CONCLUSIONS

1. Service was sufficient to entitle petitioner to proceed in the absence of respondent occupants and mortgagees.
2. The premises has been used for automobile repairs, the dead storage of motor vehicles and junk salvage storage.
3. The premises is located in a residential zone which does not permit as-of-right commercial or manufacturing uses.
4. The certificate of occupancy for the premises permits residential uses only.
5. The use of the premises for automobile repairs, dead storage of motor vehicles and junk salvage storage violates the zoning resolution and the certificate of occupancy for the premises.

RECOMMENDATION

In light of my findings, I recommend closure of the premises pursuant to section 28-212.2 of the Administrative Code. *See* Admin. Code § 28-212.2 (Lexis 2011). Closure is to be commensurate with the terms of the stipulation agreement which the Department executed with the owner of the premises, and is to be effected in a way that will not impede access to the residential portions of the premises.

Ingrid M. Addison
Administrative Law Judge

January 26, 2012

SUBMITTED TO:

ROBERT D. LIMANDRI
Commissioner

APPEARANCES:

ALEX BERGER, ESQ.
Attorney for the Petitioner

JOSEPH DODD,
Owner of the premises

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
Assignee of the premises

U.S. BANK NATIONAL ASSOCIATION
Assignee of the premises

DRIVEWAY AND YARD OCCUPANTS