Respondent, premises owner, appeals from a recommended decision sustaining a violation of Section 28-105.1 of the Administrative Code of the City of New York (Code) for work without a permit. In the summons, the issuing officer (IO) affirmed that on January 17, 2017, he observed at Respondent's premises "[i]nstalled 2 business signs made of metal [at] [e]xp[osure] #2, approx[imately] 4' x 12', and 4'x 7.' Big sign reads 'Kerekes Bakery & Restaurant Supplies.' Other sign reads 'Visit our Showroom across the Street 6103 15 Ave.'" The IO stated there was no permit on record for the signs.

The hearing

At the hearing, the attorney for Petitioner, Department of Buildings, relied on the sworn statements of the IO.

Respondent's representative asserted that the signs pre-existed Respondent's purchase of the property in June 1998, and that res judicata applied because the same issue was decided in favor of Respondent in 2015. In support, he submitted the following: a recorded deed showing that the property transferred to Respondent and his wife on June 9, 1998; affidavits of Isaac Nove, Yitzchak Filip, and Jacob Fisher, each stating that the same two signs have been on the bakery's building since before the date of Respondent's ownership; and an OATH hearing decision issued on November 23, 2015 dismissing a Code Section 28-105.1 violation against respondent 6103 15th Avenue.

The hearing officer, noting that the notarized letters varied as to the wording of the signs, and failed to state that the signs contained the word "restaurant," concluded that Respondent purchased at least one new sign. She also noted that the prior decision related to a different address, 6103 rather than 6016 15th Avenue, and sustained the violation.

Issue presented on appeal

The issue on appeal is whether Respondent refuted the charge by establishing that the signs were a pre-existing condition.

Applicable law

Code Section 28-105.1 provides, in pertinent part, that it shall be unlawful to erect or install any sign on a building or structure without first obtaining a permit.

The appeal

On appeal, Respondent's representative argues again that it established a defense of pre-existing condition based upon the recorded deed showing that Respondent has owned the property since June 1998, and affidavits from area residents who, despite some understandable vagueness about the wording, all stated that the same two signs have existed at the property prior to Respondent's purchase. Respondent also asserts, contrary to the hearing record, that the decision from 2015, relating to a separate property address, was submitted to show that the business advertised in the signs observed by the IO has been

operating for quite some time and at both locations. He points out that the address of the prior violation is the one advertised as the showroom address across the street in one of the signs observed by the IO. Respondent argues that the charge here should be dismissed based upon the evidence that the signs predated Respondent's ownership of the premises.

Petitioner did not answer the appeal.

The Board's determination

Having fully reviewed the record, the Board finds that the hearing officer's decision is not supported by the law and a preponderance of the evidence and grants the appeal.

The Board finds Respondent's evidence of a pre-existing condition sufficient to establish a defense to the charge. The Board has held that "affidavits from friends, neighbors and long-term residents . . . may be relied on to establish an affirmative defense of pre-existing conditions where the affiants describe when and why they made their observations and their observations are sufficiently detailed to establish that certain conditions pre-existed a respondent's purchase." *See NYC v. Shangyu Chen* (Appeal No. 1100378, September 22, 2011). Here, Mr. Nove's affidavit stated that he has lived a few blocks away from the cited premises since 1995, and since that time the "same old signs" reading "kerekas and showroom" have been on the bakery side wall. In his affidavit, Mr. Filip stated that he has lived about a half mile away from the cited premises since the beginning of 1998, and since that time two large signs reading "Kerekes Bakery and Supplies" and "something about the showroom" have been on the bakery's building. In his affidavit, Mr. Fisher stated that he has resided at the same address for twenty years and passes the bakery every day, and since that time the signs on the building reading "showroom across the street" and "Kerekes bakery & supplies" have always been there. The Board credits the sworn and notarized statements of Mr. Nove, Mr. Filip, and Mr. Fisher attesting to the presence of the two signs on the cited premises prior to Respondent's acquisition of the property in June 1998 and finds any variations in wording between the sign copy as noted on the summons and in the affidavits to be inconsequential. It further finds that their observations are sufficiently detailed to establish a defense of pre-existing condition.

As to the 2015 hearing decision submitted by Respondent's representative, the Board notes that the doctrine of res judicata, asserted by Respondent's representative at the hearing, only applies to a subsequent charge against the same respondent. It further notes that the number and construction of the signs described in that hearing decision are not the same as observed by the IO here.

Accordingly, the Board reverses the hearing officer's decision and dismisses the summons.

Additional information from OATH records (not in original decision)

Master NOV #	Name of Respondent's counsel or other authorized representative (if any)
35225891H	