

Respondent, premises owner, appeals from a recommended master decision and order finding: a violation of Section 32-63 of the New York City Zoning Resolution (ZR) for having an outdoor advertising company (OAC) sign in a prohibited zoning district; two violations of Section 28-204.4 of the Administrative Code of the City of New York (Code), each for failing to comply with a commissioner's order to file a certificate of correction (CC); and two violations of Code Section 28-211.1, each for filing a CC containing a material false statements. In the notices of violation (NOVs), the issuing officer (IO) affirmed that on March 29, 2014, he observed the following with respect to an OAC sign at the premises:

- NOV 350 938 39Z (2014 ZR violation): Respondent had an OAC sign (described as "Vans") prohibited in a C6-1 zoning district;
- NOV 349 727 88M (88M): Respondent failed to comply with the commissioner's order to file a CC with the Department of Buildings (DOB) for NOV 348 929 93L (predicate 93L) issued on February 1, 2011, which charged Respondent identically to the 2014 ZR violation;
- NOV 349 727 89Y (89Y): Respondent failed to comply with the commissioner's order to file a CC with the DOB for NOV 349 388 61K (predicate 61K), issued on April 26, 2011, which charged Respondent identically to the 2014 ZR violation;
- NOV 350 938 40X (40X): Respondent filed a CC for predicate 93L on January 7, 2014 that contained material false statements in that the condition described as corrected continued to exist; and

(NOV 350 938 41H (41H)): Respondent filed a CC for predicate 61K on January 7, 2014 that contained material false statements in that the condition described as corrected continued to exist.

The hearing

At the hearing, Petitioner's attorney submitted a document showing three photographs taken on the date of violation of the sign painted on the wall at the premises cited in the 2014 ZR violation. The sign depicted read "Living Off The Wall" above the words "A Vans Documentary Series" and took up what appears to be the upper two-thirds of a three-story building's side wall on a corner property. Respondent's attorney argued that the details on the NOV did not provide adequate notice of the charge and claimed that an incorrect section of law was cited because the sign was not located in a C6-1 district as alleged. Petitioner's attorney contended that because the sign was located in the MX-8 special mixed-use district,¹ it was subject to C6-1 district sign regulations.

¹ The MX-8 mixed-use district covers the Greenpoint-Williamsburg area of Brooklyn shown on NYC Zoning Maps 12C, 12D, 13A and 13B. The effective date of its designation was September 28, 2004.

In presenting the two failure-to-comply and two false-certification violations, Petitioner's attorney submitted one set of documents submitted to DOB for predicate 93L and another for predicate 61K (collectively, the 2011 predicates). The sets included a CC and Respondent's owner's statement, both sworn to on December 16, 2013. The statements attest for each predicate that "illegal signage has been removed, thereby correcting the violation [sic] condition." The sets also included the January 2, 2014 sworn statement of Ashley Wilson, on the letterhead of her employer, Colossal Media Group (Colossal),² attesting "with regard to" four NOV's citing the premises that "all signage has been painted over" as of that date and that a Colossal employee had "completed the coat out of the wall."³ The "regard to" NOV's included the 2011 predicates.⁴ Ms. Wilson also enclosed a photograph of the painted-over side wall at the premises which she described as taken on January 2, 2014 and "showing the signage has been removed." Petitioner's evidence also included its approval of each CC.

Respondent's attorney contended its evidence showed that the CCs and accompanying documents were truthful. Respondent's witness, a Colossal employee, testified that Vans, which he described as a brand of clothing and sneakers catering to the skateboarding community, typically rents the wall at the premises for a year at a time; over the course of a year it changes the sign three or four times so that a series of signs is painted annually, and a particular sign may be changed and later repeated. He testified that the "Living Off the Wall" slogan shown on the sign cited in the 2014 ZR violation was "not around" in 2011. Respondent's attorney contended that this evidence proved the cited sign was painted after the sign removal attested to in the CCs and thus refuted the presumption that the sign was the same violating condition certified as corrected. Therefore, she argued, the CC did not contain a material false statement: when they were filed, the Vans sign at the premises had been painted over and the premises wall coated out.

In response, Petitioner's attorney stated that Respondent's evidence did not prove that the sign whose removal was attested to as removed by January 2, 2014 was the same as cited in the 2011 predicates; rather a new Vans sign had been painted on the same wall in the intervening period.

The hearing officer sustained the five NOV's. As to the 2014 ZR violation, the hearing officer found that the sign was prohibited because the premises was located in the MX-8 special mixed-use district. As to the failure-to-comply violations, he credited Respondent's evidence, finding that Respondent "continued to display signs at the cited location throughout 2012 and 2013 and has done so in 2014"; therefore, the January 2014 sign removal failed to correct the 2011 predicates. As to Respondent's material false statement violations, "[t]he material falsity is tying its 2014 coat out to 2011 NOV's."

The issues

The issues on appeal are (1) whether Petitioner established the 2014 ZR violation by proving that the cited sign is prohibited in the zoning district where the premises is located; (2) whether

² According to Respondent's witness, a contract manager for Colossal, it is a "hand paint-only mural and management company."

³ Respondent's witness explained that in the method known in the industry as "coat out," a painted-on sign is removed by painting over it with white paint.

⁴ The Board takes official notice that the other two NOV's (348 685 67Z and 348 685 68K), both issued in 2010, charged a Vans "Blue Moon" sign at the premises in violation of the C6-1 district prohibition.

Respondent established that, because a different sign was observed on March 29, 2014, the violating conditions cited in the 2011 predicates were corrected as of January 2, 2014; and, if not (3) whether Respondent's CCs contained material false statements because it did not correct the violating condition cited in the 2011 predicates.

Applicable law

Under ZR Section 32-63, an advertising sign other than in a C6-5, C6-7, C7, or C8 district is not permitted.

ZR Section 123-40 provides that in special mixed-use districts "the provisions regulating the prohibition of signs in C6-1 Districts . . . shall apply for any sign."

Code Section 28-204.4 provides that it is a violation for a respondent to fail "to comply with an order of the commissioner . . . to correct and to certify correction of a violation."

Code Section 28-211.1 makes it unlawful for any person to make a material false statement in any certificate of correction that such person "knew or should have known to be false."

Code Section 28-211.1.1 provides that where an inspection made within six months after the filing of a certificate of correction finds a condition constituting a violation that is the same as the condition described in the NOV for which such certificate was filed, there is a rebuttable presumption that the condition described in such NOV continued and is the same condition found in the inspection.

The appeal

On appeal, as to the 2014 ZR violation, Respondent's attorney reiterates her hearing argument that Respondent cannot be liable for having signage in a prohibited C6-1 district as it is not located in such district. As to the failure-to-comply and material false-statement NOVs, she contends that the hearing officer misconstrued the evidence, as follows. Ms. Wilson's letter submitted with the CCs was not materially false; it stated that "all signage" on the cited wall was painted over and did not assert that the particular signs were the same as cited in the 2011 predicates. "In order to avoid the presumption set out in [Code S]ection 28-211.1, Respondent must only [prove] that the signage viewed by the IO on March 29, 2014 was not the same signage that was removed or 'coated out' out by Respondent's sign company on January 2, 2014." Ms. Wilson did not claim that no sign was then displayed at that location after the January 2014 coat out, and Petitioner has not demonstrated that the sign observed in March 2014 was the same as had been painted over. Petitioner has the remedy of citing any new illegal signage.

Petitioner, DOB, did not answer the appeal.

The Board's determination

The Board denies Respondent's appeal.

Sign in prohibited zoning district

Regarding the 2014 ZR violation, the Board rejects Respondent's attorney's claim that because the sign is not in a C6-1 district, it was improperly charged. At the hearing, Respondent did not dispute that the sign was located in a special mixed-use district. Pursuant to ZR Section 123-40, an advertising sign in a special mixed-use district is subject to C6-1 district sign regulations. ZR Section 32-63 in relevant part does not permit advertising signs in a C6-1 district. Therefore, the advertising sign at Respondent's premises was properly found in violation of the prohibition against such signs in ZR Section 32-63.

Failure to correct and material false statement proven by ongoing violation

The Board finds that Respondent did not establish that the violating conditions cited in the 2011 predicates were corrected in January 2014 as attested to in its CCs. According to Respondent's witness's testimony, the 2011 predicates cited a different sign from that painted over in January 2014; therefore the 2011 violating conditions were not corrected. The IO's observation of a Vans sign at the cited wall in March 2014 also disproves Respondent's representation; even if the sign cited in 2011 had been painted over, replacing one illegal advertising sign on the cited wall with another would not remove the violating condition cited in the predicates. *See NYC v. Casa Canal Realty Corp.* (ECB Appeal No. 1000467, September 30, 2010) (finding ZR violation not corrected by temporary removal of illegal sign and replacement in a short time by another). Respondent's admitted use of the premises wall for Vans signs in 2012 and 2013, along with the IO's March 2014 observation of a Vans sign painted on the premises wall in March 2014, confirms that the 2011 predicate violations continued unabated. Respondent's CCs and supporting documentation therefore contained material false statements, as the hearing officer found. Respondent's owner knew or should have known that the actions he attested to did not correct the 2011 predicates. Rather, they were performed in the course of the usual replacement of one painted-on Vans sign at the premises with another at least three times a year.

Accordingly, the recommended master decision and order is affirmed.