

The respondent Patricia A. Lee was issued two summonses.

Summons # 039537783Z was issued for a violation of section BC 3307.1; Pedestrian protection does not meet code specifications. Pedestrian portion does not meet code specifications BC 3307.6.4.8. observe at exp. 1 & 4. Under side of SWH passageway not illuminated by electric light (inoperable shed electric light fixtures) during no daylight as per code NC 3307.6.4.8 creating a hazard condition to people walking under SWS.

Summons # 039537784K was issued for a violation of section BC 105.8.2 BC 106.8.2; TEMP construction equip/installation on side expired permit (shed) observe SWS in place at exp. 1 & 4 upon review of department record. Observe that permit B00431468-I1-SH has expired on 12-02-21.

Attorney Frank Tamborino appeared for the respondent.

Taylor Barje appeared for the Petitioner, DOB.

I/O Jose Ortega appeared for the Petitioner, DOB.

The respondent challenged service.

The Petitioner submitted an affidavit of service and photographs. See Petitioner's Exhibit 1.

The affidavit of services for both summonses states, "waited several minutes no one authorized to receive copy of vio". A copy of the notice of violation was posted at the "front entrance to building."

The I/O stated that he recalled writing the summons for a light complaint. The sidewalk shed was erected and by code, it should have lighting when it becomes nighttime so the pedestrians can see any tripping hazards and if someone is hiding.

The I/O testified that he was there at 4:30 AM, to make sure the lights were working at night. The lights were not working.

He normally tries to see if the entrance doorbell rings. If no one answers, then he waits for tenants to come and if no one comes out, he waits and then posts the summons.

The I/O testified that he waited several minutes, and nobody was present at the time. He did not run into a person to talk to. He submitted an image (# 7607) that shows a sign that says, "Atlantic Ave." and on the right side is the DOB vehicle in front of a commercial building on the first floor. The commercial space on the first floor was not open at the time. The gates were rolled down in front of the property. He showed another image (# 7614) that showed that the violation was posted on the entry door to the residential side of the building. He stated that he rang the doorbell, and no one answered. He waited ten minutes to see if anyone had come out of the building. He waited and no one came out of the door, and no one was there. There was no one in the vicinity whom he could have asked questions of; if they were authorized to accept service or if there was a property owner or manager who could accept service.

The respondent stated that the I/O waited in front of the area for 10 minutes and asked the I/O if he called the phone number on the sign of "Country Kitchen Restaurant".

The I/O stated that the phone numbers on the business sign go to the business and not to a cell phone; it would be futile. No one is there to answer, the photograph shows that the business is closed.

The respondent stated that he does not agree with the I/O's assumption but understands what the I/O stated.

The Petitioner asked the respondent where in the Charter does it state that calling someone is required.

The Petitioner submitted an appeals decision which held that no one is required to call the superintendent. So, if someone is not required to call the superintendent, then certainly they do not need to call a store. See DOB v. 876 LLC The Shire Corp. Appeal No. 2300643 (August 31, 2023). The Petitioner stated that in 876 LLC, the court found that the I/O did not need to call the superintendent for a reasonable attempt at service.

In 876 LLC, the Board found that "the IO made a reasonable attempt to personally serve the summons. The IO supplemented his affirmation of service by testifying that, at the time of service, he looked for the building management and the superintendent, and finding neither, affixed the summons on an interior lobby wall of the building. The Board finds that the IO's testimony, implicitly credited by the JHO, was sufficient to establish that he made a reasonable attempt to personally serve the summons, notwithstanding that he did not describe in detail his search for the building management and the superintendent." "As for Respondent's representative's argument on appeal that an inquiry as to the presence of an authorized person was necessary, the IO's search formed an adequate basis for his determination that there was not such a person present." "Further, Respondent's representative did not challenge the efficacy of the IO's search by claiming there was in fact an authorized person in the premises to accept the summons at the time of service. Nor does the Charter require an IO to query a tenant who provided access to the premises as to whether they are authorized to accept service of a summons not yet drafted." "Finally, the Board finds no merit in Respondent's representative's argument the IO should have attempted to deliver the summons to the superintendent by calling the telephone number posted on a sign in the lobby. Per Charter § 1049-a(d)(2), the IO was only required to make a reasonable attempt to deliver the summons to a person "in the premises" upon whom service may be made under CPLR § 311-a. Respondent's evidence was insufficient to establish that the superintendent was in fact in the premises at the time of issuance, as the photograph submitted was illegible." See Poonam Apartments, LLC, 2200257 (finding personal service proper, despite issuing officer's failing to call the telephone number posted for superintendent, where it indicated superintendent was at a different premises address). Accordingly, the Board affirmed the JHO's decision sustaining a Class 1 violation of Code."

The respondent stated that 876 LLC does not relate to the instant case and is distinguishable. The superintendent is an agent of the respondent. The phone number is directly connected to the respondent. We do not know that the I/O would have found if he had called the phone number on the sign. This would have been a reasonable attempt at service if the I/O had called the phone number on the sign.

The Petitioner submitted an appeals case where the business was pad locked.

The Petitioner submitted appeals case, DOB v. Paper Mill Box Co. Inc. Appeal No. 2201028 (November 17, 2022). The Board stated that "Charter § 1049-a(d)(2) provides that a summons may be affixed in a conspicuous place to the premises where the violation occurred "where a reasonable attempt has been made to deliver such [summons] to a person in such premises upon whom service may be made[.]" (Emphasis added.) Here, it was undisputed that the cited premises was a vacant lot. Petitioner's case on service rests on the IO's affirmation of service, in which he stated that the fence gate at the premises was padlocked, and he posted the summons to the gate. Consequently, the Board finds that the IO satisfied the Charter requirement to make a reasonable attempt to personally serve the summons before resorting to "affix and mail" service. "There is no requirement under the Charter that the IO search for a person to accept service at adjacent properties."

The Petitioner stated that there was no requirement to call a phone number; it is not a requirement to call a superintendent. If the I/O is not required to call a superintendent, then he is not required to call a random business phone number. There is no evidence of how this phone number on the sign relates to the owner.

The respondent stated that it is not a random business phone number, the phone number is from the business.

The respondent also stated that the appeals case, Papermill, is not applicable because it is a vacant lot.

The respondent submitted an appeal, Estate of Waterman v. Jones, Supreme Court, Appeals Decision, Second Department, October 16, 2007, and a photograph of the store. See Respondent's Exhibit A.

The respondent stated that the appeals decisions submitted addresses due diligence for service of process. When the I/O serves a summons, he calls a phone number, and he includes it as a detail; this is to assess whether he served the summons and met the standard of due diligence. A reasonable attempt at service must be made.

The respondent stated that the I/O was standing at the premises for over ten minutes, in front of a sign with a phone number. The I/O made an unfounded assumption that the phone number was useless.

The summons, testimony of the I/O, and evidence submitted by Petitioner are credited.

The respondent did not rebut the charge or provide a legally valid or meritorious defense.

I find that service was proper.

The store was closed. The gates were pulled down.

The I/O went to the residential door and rang the bell. There was no answer. He waited ten minutes for someone to answer or for someone to walk by so he could ask questions about service. No one appeared. He posted the summons.

Pursuant to the case law cited by the Petitioner, the I/O was not required to call the phone number on the sign with the store's name.

The sign had a phone number of "498-0200" next to the business name, which was obviously the telephone number of the store and not a cell number for a contact person, such as the owner or manager.

The respondent stating that we do not know what would have happened if the I/O had called the phone number on the sign is speculative.

The appeals case submitted by the respondent is not applicable. It is a Supreme Court case, and it is not binding on OATH. In addition, the facts of the case are different. In Jones, there was an attempt at personal service at an attorney's place of business in a legal malpractice action. The process server called the number on the outside shingle and did not receive a personal reply or an answering service reply. The process server then mailed the summons to effectuate nail and mail service. The affidavit of service did not state any efforts made to ascertain the defendant's residential address and to serve process at that location.

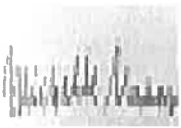
The instant case is distinguishable from Jones, in that in the instant case, the I/O stated his efforts at serving the summons to the respondent and in Jones, the process server did not state any efforts made to serve the defendant.

The merits of the case were not challenged.

The summonses are credited.

The respondent did not rebut the charges or provide a legally valid or meritorious defense.

Accordingly, the summonses are sustained, and standard penalties are imposed; a standard penalty in the amount of \$2,400.00 is imposed for summons # 83Z and a standard penalty in the amount of \$1,250.00 is imposed for summons # 84K.

 06/17/2026	06/17/2026
Michelle Mason, Hearing Officer	Date