OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

DECISION

Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street 1st Floor Brooklyn,NY 11217	**Summons No:** 039542127R et al. (1 Summons) DEPT OF BUILDINGS, -against- GM 88 DEVELOPMENT CORP **Hearing Date:** 10/06/2026 **Hearing Location:** Remote **Type of Hearing:** By Telephone

Total Penalty Amount:**$2,500.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039542127R	Sustained	07/08/2025	28-08 21 STREET Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B194	BC 3303.4.5 & 27-1018	Sustained	$2,500.00

Findings of Fact & Conclusions of Law

Phoebe Dossett, Esq., appeared as the attorney for the respondent, GM 88 Development Corp, general contractor for the property at 28-08 21 Street, Queens. Kimberly Manas, Esq., appeared as the attorney for the petitioner, the Department of Buildings. Issuing Officer Patrick Cummins, Badge #3055, also appeared for the petitioner.

The summons alleges unsafe storage of materials during construction or demolition. At the time of inspection on an active job site currently at roof level, storage of construction materials observed at exposure 3 on floors from 2 through 5 within 10 feet of unenclosed leading edge, creating a potential hazardous condition site for personnel and event first responders if needed to access site in event of an emergency.

The respondent is charged with Building Code 3303.4.5 and Administrative Code 27-1018. BC 3303.4.5 states, "Storage and safeguarding of materials and equipment during construction or demolition. Material and equipment located at a site during construction or demolition operations shall comply with Sections 3303.4.5.1 and 3303.4.5.2."

BC 3303.4.5.1 provides, "Open and exposed areas. When not being used, material or equipment located on a working deck, unenclosed floor, roof, ground area, or similar exposed area shall be secured against dislodgement by wind or accidental impact."

BC 3303.4.5.2 provides, "Storage near unenclosed perimeters. All material or equipment not being used shall be stored at least 10 feet (3048 mm), measured along all horizontal dimensions, from all unenclosed perimeters of the building or structure. Such material or equipment shall be secured in accordance with the requirements of Section 3303.4.5.1."

BC 3308.1 provides, "Scope. Protection shall be provided along unenclosed perimeters as required by this section and rules promulgated by the commissioner, including but not limited to safety netting systems, guardrail systems, cocoon systems, climbing formwork, and enclosure panels."

BC 3308.7 provides, "Guardrail system. A guardrail system shall be installed, maintained, and provided along all unenclosed perimeters."

Petitioner's attorney submitted evidence, including the affidavit of service.

The inspector testified that he had asked if anyone could receive the summons on behalf of the respondent, and they said no. Regarding the merits, he stated that nothing can be stored on the leading edge of the building because it could blow off, which could be dangerous. He also stated that it also creates a tripping hazard and an obstacle course. The netting was not sufficient because netting is not solid and could be torn; material could go through it or under it.

Respondent's attorney had no questions for inspector. She did not pursue a service challenge. She moved to dismiss the summons because the summons does not establish a prima facie case. BC 3303.4.5, a general scope provision, states that storage has to be in compliance with BC 3303.4.2, which is the relevant provision. They have no enclosed perimeter here, because it was equipped with a guardrail system. There are toe boards, netting and guardrails in place. This is not a prima facie case because there are no unenclosed perimeters here; material is not required to be stored 10 feet away because the guardrail system was in place.

Petitioner's attorney stated that their position is that the area is an unenclosed perimeter. Just because there are guardrails does not make it enclosed. She stood by the violation and recommended the standard penalty.

Respondent's attorney's statements are not persuasive and do not provide a meritorious defense. An unenclosed perimeter is defined as "[a]ny exterior portion of a building that is not solidly enclosed with the permanent façade, including the windows; or any exterior edge of a roof that is not enclosed with its permanent parapet or guard-rail." See, e.g., DOB v. Rising Sun Construction, Appeal Nos. 2600668 & 2600671, August 27, 2026 (an interior staircase does not meet the definition of an unenclosed perimeter as an exterior portion of a building not enclosed by a façade).

I credit the inspector's factual allegations and find that at the time of inspection, uncontained construction materials were being stored on Floors 2-5 within 10 feet of an unenclosed perimeter, which was not solidly enclosed with a permanent façade. I also find that this is a class 1 violation, as the condition of potentially falling materials was immediately hazardous. Accordingly, the summons is sustained and the statutory $2,500 penalty is due.

10/19/2026

10/19/2026

Grace Chen, Judicial Hearing Officer	Date