



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# : 039121498K et al. (2 summonses) DEPT OF BUILDINGS, -against- PEREZ, DAVID Hearing Date : 11/5/2025 Hearing Location : Remote Type of Hearing : By Telephone
--	---

Total Penalty Amount :	1,125.00	Community Service(Hr):	Not Applicable
------------------------	----------	------------------------	----------------

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039121498K	Sustained	08/10/2024	32-27 34 STREET, Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B202	28-301.1	Sustained	625.00

Total Penalty for Summons: 625.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE	
039121499M	Sustained	08/10/2024	32-27 34 STREET, Queens	

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B303	28-118.3.2	Sustained	500.00

Total Penalty for Summons: 500.00

Findings of Facts & Conclusions of Law

Phoebe Dosset appeared as the authorized representative of the named respondent and Kimberly Manas appeared for the Petitioner.

Summons 039121498K cites a violation of 28-301.1 and summons 039121499m cites a violation of 28-118.3.2

The Petitioner submitted the certificate of occupancy, the complaint, and photos.

As to 99m, the respondent contended that 2020 certificate of occupancy did not prohibit the parking so the condition was not contrary to DOB records.

The Petitioner contended that off street parking must be on the certificate of occupancy, and here, it was not.

I find the sworn account of the issuing officer to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. The certificate of occupancy does not allow for a parking spot at the front of the premises. It appears as well that the photos show the vehicle is an alleyway, rather than a regular driveway. In Appeal No. 2001219 DOB v. K & S Way LLC January 14, 2021, it was held that "On this record, the Board finds that Petitioner established the violation of Code § 28-118.3.2. Petitioner may establish a violation by showing that the occupancy on the date of violation was contrary to that allowed by an authoritative DOB document, or by showing that such occupancy would bring the premises under "some special provision of this code or other applicable laws or rules." Here, the C of O does not authorize accessory off-street parking on the front of the cited premises, and therefore the parking of vehicles there was contrary to the C of O. See DOB v. Elzbieta D. Pietrzak, Appeal No. 2000865 (October 8, 2020). Further, per §§ 25-621 and 25-622 of the New York City Zoning Resolution, accessory off-street parking spaces are prohibited at the front of residential buildings, except that accessory off-street parking spaces are permitted in a driveway directly leading to a garage in specified semi-detached and detached buildings."

Accordingly, the summons is sustained.

As to 98k, the respondent contended that the underlying condition that made the curb cut non code compliant was a violation of a zoning law provision. However, curb cuts under 10 feet are allowed in this residential district. In the alternative, she argued that the cut had been there since 1931, prior to the enactment of the 1968 code, and as such was grandfathered in.

In support of these claims, she submitted a Zola map and tax records and relied on the case of Appeal No. 2500466 DOB v. Imani, Jonathan Y May 29, 2025.

The Petitioner rested on the record and offered no arguments in rebuttal.

I find the sworn account of the issuing officer and the Petitioner's other evidence to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. The issue is not, as was argued by the respondent, whether a 10 foot curb cut can be legal pursuant to the zoning rules because either the zoning district allows for it, or because it was legally installed under a prior code and then grandfathered in.

Had that been the issue, then I might have found for respondent. Rather, here there was an observation of a ten foot curb cut but the certificate of occupancy from 2020, which is the latest controlling document, does not allow for any curb cut whatsoever. As such, while there may be circumstances (for cases referencing applicable zoning rules) where a ten foot curb cut is permitted in some districts, or is otherwise properly "grandfathered" in, here, those circumstances do not apply.

In Appeal No. 2100496 DOB v. Bethlehem Church June 24, 2021, it was held that

"The Board affirms the hearing officer's decision. The Board finds that Petitioner established the Code § 28-301.1 charge based upon the unpermitted installation of a curb cut and parking pad on Respondent's property. Code § 28-301.1 requires that a premises owner maintain the building and its facilities and all other structures in a safe and code-compliant manner. While the ZR may state whether off-street parking is allowed in a particular zoning district, and BC § 406.7.6 the maximum length of a curb cut, and Respondent's representative argues that they should have been cited to make out a violation,

neither is material here. Nor is the absence of photos or of the specific recollection of the curb cut and parking pad determinative where Respondent does not dispute their existence. Instead, the charge is that Respondent had no authorization for either at its premises. Contrary to Respondent's representative's assertions, the Board has previously held that the existence of an unauthorized curb cut and off-street parking at a premises constitutes a failure to maintain the premises in violation of Code § 28-301.1, whether because the curb cut and parking pad were installed without a permit, see *DOB v. Rosa M. McGovern, Trustee*, Appeal No. 1801876 (March 7, 2019), or because the premises CO does not authorize the off-street parking observed. See *DOB v. Anna Cheng*, Appeal No. 2100050 (March 17, 2021); cf., *Hamida Haque*, 1201087 (finding occupancy of premises contrary to CO violation where CO did not authorize cited parking pad). Here, it is undisputed that the CO does not authorize the front of Respondent's premises for off-street parking and that there was no permit for installation of either the curb cut or the parking pad. On both bases their presence rendered the premises not Code compliant and therefore in violation of Code § 28-301.1.

Furthermore, while the curb cut may have existed as far back as 1931, the tax records, in and of themselves, do not establish that the premises was legally built that way, or that such curb cut had been authorized

Even if it had, however, here, the 2020 certificate of occupancy states as follows:

"This certifies that the premises described herein conforms substantially to the approved plans and specifications and to the requirements of all applicable laws, rules and regulations for the uses and occupancies specified. No change of use or occupancy

shall be made unless a new Certificate of Occupancy is issued.

This document or a copy shall be available for inspection at the

building at all reasonable times.

Due to the issuance of a new certificate of occupancy, the building would have undergone major renovations or a change in occupancy in 2020. As such, because of such major change in the premises, the curb cut would have needed to be addressed in the new plans. Here, there were no plans submitted that would have established that the Department had acknowledged or approved the ongoing existence of the curb cut, if it were in fact there at the time, or allowed for a new one. In fact, insofar as the certificate of occupancy further did not allow for on site parking, the reasonable inference is that both the parking issue and the curb cut were not addressed in the plans.

For all the foregoing reasons, the summons is sustained.



11/05/2025

11/05/2025

Amy Jill Baranoff, Judicial Hearing Officer

Date