



Appeal No. 2501500 DOB v. The Rita Cohen Irrevocable Tru January 29, 2026

APPEAL DECISION

The appeal of Respondent, premises owner, is **granted**.

Respondent appeals from a recommended decision by Judicial Hearing Officer (JHO) E. Garcia, dated October 29, 2025, sustaining a Class 2 violation of § 28-118.3.2 of the Administrative Code of the City of New York (Code) for occupancy in a manner contrary to that allowed by Department of Buildings (DOB) records. Having fully reviewed the record, the Board finds that the JHO’s decision is not supported by the law and a preponderance of the evidence. Therefore, the Board finds as follows:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
39141033Z	Code § 28-118.3.2	In Violation	Reversed – Dismissed	\$0

BACKGROUND

In the summons, the issuing officer (IO) affirmed on March 11, 2025, at 3620 Marolla Place, Bronx, as follows:

I observed the premises being used as a group home with 11 beds, with no Letter of No Objection from the Department of Buildings on file.

At the telephonic hearing held on October 24, 2025, the attorney for Petitioner, DOB, relied on the IO’s affirmed statements in the summons. In support, Petitioner’s attorney submitted photographs taken by the IO, including one of an Operating Certificate issued by the New York State Office of Children and Family Services on June 9, 2022, for an 11-bed group home; records to show that the premises was a two-family dwelling; and DOB complaint records. Respondent’s representative argued that the premises was occupied consistently with its legal occupancy as a two-family dwelling, with an adult maintaining a common household with children in each dwelling unit. In support, Respondent’s representative submitted a letter from the vice president of Rising Ground Inc., the nonprofit organization operating the group home at the premises, in which the vice president avers that each of the two dwelling units is occupied in the same manner that a family would, with no locks on bedroom doors and shared kitchen and bathroom facilities. Petitioner’s attorney argued that use of the premises as a group home was contrary to the legal use as a two-family dwelling.

In her decision sustaining the charge, the JHO found that the arrangement of 11 beds for unrelated individuals was not consistent with the legal occupancy of the premises as a two-family dwelling.

On appeal, Respondent’s representative reiterates that the premises is occupied as a two-family dwelling, as legally approved, with an adult maintaining a common household with four or five children in each apartment.

Petitioner did not answer the appeal.

ISSUE ON APPEAL

The issue on appeal is whether Respondent's use of the premises as an 11-bed group home was contrary to the legal occupancy of the premises as a two-family dwelling.

APPLICABLE LAW

Code § 28-118.3.2 provides:

No change shall be made to a building, open lot or portion thereof inconsistent with the last issued certificate of occupancy or, where applicable, inconsistent with the last issued certificate of completion for such building or open lot or which would bring it under some special provision of this code or other applicable laws or rules, unless and until the commissioner has issued a new or amended certificate of occupancy.

Section 202 of the Building Code (BC), found in Title 28 of the Code, defines "dwelling, two-family," in pertinent part, as "[a]ny building or structure designed and occupied exclusively for residence purposes on a long-term basis for more than a month at a time by not more than two families."

BC § 202 defines "family," in pertinent part, as:

1. A single person occupying a dwelling unit and maintaining a common household with not more than two boarders, roomers or lodgers;
2. Two or more persons related by blood, adoption, legal guardianship, marriage or domestic partnership; occupying a dwelling unit and maintaining a common household with not more than two boarders, roomers or lodgers;
3. Not more than three unrelated persons occupying a dwelling unit and maintaining a common household;
4. Not more than three unrelated persons occupying a dwelling unit in a congregate housing or shared living arrangement and maintaining a common household;
5. Members of a group home;
6. Foster children placed in accordance with provisions of the New York State Social Services Law, their foster parent(s), and other persons related to the foster parents by blood, marriage or domestic partnership; where all residents occupy and maintain a common household with not more than two boarders, roomers or lodgers; or
7. Up to seven unrelated students enrolled at a single accredited college or university occupying a student apartment and maintaining a common household pursuant to a lease, sublease, or occupancy agreement directly with such college or university[.]

BC § 202 defines "group home" as:

A facility for the care and maintenance of not fewer than seven nor more than 12 children, supervised by the New York State Board of Social Welfare, and operated pursuant to and meeting any additional construction requirements of Section 374-C of the New York State Social Services Law and applicable regulations of the New York State Department of Social Services. Such a facility occupied by more than 12 children shall be classified as Group I-1.

ANALYSIS

For the following reasons, the Board reverses the JHO's decision.

On this record, the Board finds that Respondent's use of the premises as an 11-bed group home was not contrary to the legal occupancy of the premises as a two-family dwelling. It was undisputed that the cited premises is legally authorized as a two-family dwelling, defined under BC § 202 as any building designed and occupied for long-term residence purposes by not more than two families. It was also undisputed that Respondent was occupying the premises as an 11-bed group home. Per BC § 202, "family" is defined to include members of a group home. Consequently, contrary to Petitioner's attorney's assertion at the hearing, the use of the premises as an 11-bed group home was not contrary to its legal occupancy as a two-family dwelling. As the Board is dismissing the charge on this ground, it need not address Respondent's representative's other argument on appeal.

Accordingly, the Board reverses the JHO's decision sustaining a Class 2 violation of Code § 28-118.3.2 and dismisses this charge.

By: OATH Appeals Division