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Amending a Certificate of Occupancy

By **Stephen Varone, AIA** and **Peter Varsalona, PE**

Our cooperative on the Upper East Side of Manhattan plans to renovate two residential units on the ground floor of the building by extending the space in the back and converting them to doctors' offices. Would this require amending the existing Certificate of Occupancy? The units have been vacant for several months.

The New York City Department of Buildings (DOB) requires building owners to amend the existing Certificate of Occupancy (C of O) under any one of three conditions:

Change of use: The building or any space in it changes from what it was originally designed for, such as when a residential property/unit converts fully or partially (mixed use) to a commercial one or vice-versa. Converting a basement or cellar into a lunch room or community center is another example of a change of use. If more than 75 people are expected to gather at one time, a place of assembly permit is also required.

Change of egress: One or more entrances or exits are closed off and/or new ones are created. An example would be when a side door to a building is sealed off and a new opening is built in back. New York City building code requires at least two means of egress.

Change of occupancy: The occupancy of an area in the building increases, such as by dividing up existing apartments to make more units. Conversely, a typical apartment combination would not require an amended C of O because such work does not increase the number of units, or the type of use or means of egress of that space.



Converting the use of a residential space to a commercial one (or vice-versa) requires an amended Certificate of Occupancy.

Zoning Analysis

Because the units on the ground floor of your building were built for residential use (it doesn't matter how long they've been vacant) and are now planned for medical offices, your board will have to obtain an amended C of O for converting to a mixed-use (residential/commercial) building. The first step is to have your engineer or architect conduct a zoning analysis of your building to determine whether commercial or community facility use is allowable in that zone.

As part of this feasibility study, the architect/engineer will determine the building's floor area ratio (FAR). Each zone has its own FAR, and changes to your building cannot exceed that number unless approved by the governing city agencies, most commonly the Board of Standards & Appeals and the City Planning Commission. Changing the use of an existing space but not the area would not increase the FAR, but the board's plan to extend the space out past the back of the building may be limited depending on the FAR in that zone.

The next step is for the architect to submit the plans for the proposed alterations to the DOB (and the Landmarks Preservation Commission if the building is in designated historic district) as part of the work permit process. The DOB will review the plans, looking for what it calls "life safety" issues, such as fire protection, proper lighting and ventilation, means of egress, handicap accessibility, etc. If any part of the completed work differs significantly from the original scope, amended as-built plans should be subsequently submitted to the DOB for review and approval.

As the work is completed, the board will have to hire licensed engineers to conduct controlled inspections on various required items, such as a structural stability test, a sprinkler test, a mechanical test for ventilation, and a fire stopping for wall penetrations. The completed project must also be signed off separately by department divisions of the DOB, such as construction, plumbing, electrical, and elevators. Usually, an expeditor hired by the contractor or the building's engineer or architect contacts the DOB to arrange for the necessary inspections.

Violations and Open Applications

Even after the completed alteration work passes DOB inspection, the department may not issue an amended C of O if the building has outstanding DOB or Environmental Control Board violations filed against it. Examples of building violations that may delay the issuance of the amended C of O include missing annual boiler or elevator inspections, performing construction work without a sidewalk shed or work permit, failing to install smoke and/or carbon monoxide detectors in apartments, and miscellaneous outstanding local law violations. In addition, if the building has any "open applications" on file—i.e., previous work that was not formally signed off by the project engineer or architect—that will put the C of O process on hold.

So, for example, if smoke detectors are not installed in every apartment or the building never completed an exterior repair project for which it had filed a DOB work permit, then the building will not be issued an amended C of O until the open violations and applications are cleared. Your engineer or architect can research which outstanding violations and open applications are filed against the building and help the board in getting them cleared.

It's not uncommon for buildings to have a slew of outstanding violations and open applications against it, which can delay the C of O approval, turning it into a long, drawn out affair. By the time the violations are abated, the unfinished projects signed off, and the amended C of O granted, six months to a year or longer can pass. In the meantime, the newly constructed space cannot be legally used for its new purpose.

To assist the building industry and reduce the steps and time required to obtain a new or amended C of O, the DOB initiated a pilot program in April 2004 that allows the process to move ahead even if the building has certain outstanding violations or open applications filed against it. This fast track initiative currently applies only to buildings in Manhattan, and the violations or open applications cannot be hazardous or affect the building's life safety systems, such as structural or mechanical alterations, sprinklers, egress, fire alarms, or sidewalks.

But an open application for an apartment combination project that involved removing a non-load-bearing wall, for example, or a violation for failing to post a permit for a sidewalk shed taken down long ago would not be cause enough to deny the building a new or amended C of O, provided all other requirements were satisfied. The DOB weighs each open application request on a case-by-case basis, and fines or penalties for violations waived strictly for the C of O application would still have to be paid and cleared with the department.

For construction or renovation work done on multiple floors of a building, a temporary C of O can be obtained for each floor as the work is completed. Temporary C of Os are issued for a maximum of 90 days, and a permanent C of O would eventually have to be obtained for the building as a whole.

Remember that even if an individual building resident undertakes alteration work that will require an amended C of O, such as turning his or her apartment into an office, the C of O is nonetheless issued to the building corporation for the entire building, and not to the individual resident. (The resident, of course, should get approval from the board before beginning any such project.)

The fee for obtaining a new or amended C of O is currently \$100, which does not include the filing fee for the DOB work permit (approximately 1% of the construction cost) and other associated filing fees.

By taking the proper steps to make sure all the DOB requirements are properly addressed, you can avoid delays in obtaining a C of O and put the renovated space to its new use as soon as possible.

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