

STATE BUILDING CODE INTERPRETATION NO. I-5-04

March 31, 2004

The following is offered in response to your March 11, 2004 letter to me in which you seek a formal interpretation of the requirements of the State Building Code with respect to issuance of a certificate of occupancy.

Question: An existing building, constructed with permits issued under an early edition of the State Building Code has been found, after twenty years, to be occupied without benefit of a certificate of occupancy (C of O). Three of the four tenant spaces have temporary C of O's, while the fourth has none. Evidence exists that inspections were requested by the building owner and performed by individuals no longer employed by the local building department. During a code review of the existing building it was discovered that work beyond the scope of the original permit was completed without benefit of permit or inspection, and that such work is not compliant with either the code in effect at the time of construction or the current code. Under what code should the certificate of occupancy be issued and what is the procedure to be followed?

Answer: There are two distinct issues that must be addressed. First is the issue of the additional work performed without permits or inspections that appears to be non-code-compliant. This work must either be removed (a demolition permit is required if this option is chosen) or permits under the current code applied for and issued; the work corrected to be made code compliant; inspections made; and a C of O issued for the additional work covered by the new permits. (Incidentally, the fact that there is no final C of O for the existing building should not prevent the additional permits from being issued – a code violation in one portion of the building is not grounds for refusing issuance of additional permits)

The second issue can only be addressed after the first is resolved. Once all known violations are corrected, it should be ascertained what issues prevented the issuance of final C of O's in the three units that have temporary C of O's. Once that is accomplished, a final inspection should be made by the local building and fire officials to determine that those issues have been corrected and final C of O's can be issued for those units individually if individual permits were issued for each tenant space. If a single permit was issued it would be appropriate to issue one C of O for the entire building, rather than unit by unit. It may, in fact, be determined that the temporary C of O's were meant to be partial C of O's rather than temporary, and that no code issues remain unresolved in the three units. If it is not possible to determine specific issues that prevented issuance of a final C of O for the three units, final inspections in accordance with the requirements of the permit in effect for the original construction must be made and any discovered violations corrected prior to issuance of a C of O. The C of O should reference the code in effect at the time of permit issuance, not the current code.

The fourth unit (with no temporary C of O) should receive a final inspection in accordance with the requirements of the codes in effect at the time of original permit application. Once it is determined that there are no code issues in that unit, it is appropriate to issue one or multiple final C of O's that cover the entire building (dependant on the number of permits originally issued). The local building and fire official's records should contain notations that although they performed the final inspection for issuance of a C of O under a previous code, all other inspections were performed by others. This makes it clear that they are unaware of any issues that may not be readily apparent, but that were covered by previous inspections. The liability of the inspector performing the final inspection should be limited to those items that can be seen at the finished stage.