

## **Guiding Principles for Certificates of Occupancy and Predate Letters issued in Contravention of State or Village Zoning Code:**

### **A. Definitions**

**Current Owner** person(s) and/or entities (LLC, Corporation, partnership or other business association or trusts) with a current fee title interest in certain property and persons or entities related to and/or having a financial interest in and/or a business affiliation with the holder of current fee title, including but not limited to those which may have had a previous fee title ownership interest in that property.

**Prior Owner** person(s) who and/or entities (LLC, Corporation, partnership, trusts or other business association) which previously held fee title interest in property with no current financial interest in and/or business affiliation with and/or otherwise unrelated to any Current Owner.

**Compliance Period** the latter of (i) 90 days from the date of the Current Owner's receipt of the Building Inspector's determination on zoning compliance or (ii) in the event of an appeal of the Building Inspector's determination to the ZBA and/or application for variance, 60 days after the Building Inspector's decision is affirmed by the ZBA and/or denial of the variance or (iii) in the event of a judicial challenge by any party, 60 days from the expiration of any stay issued by a court during the pendency of such judicial proceeding or (iv) a reasonable period for completion of substantial renovations if required which time period must be authorized on a case by case basis by the Building Inspector and which period shall in no event exceed one year from the date of Current Owner receipt of the Building Inspector's determination on zoning compliance. Such Compliance Period may be extended by the Building Inspector upon good cause shown.

**Clearly Erroneous Certificate of Occupancy or Predate Letter** a certificate of occupancy or predate letter issued without a rational legal and/or factual basis.

**B. Village Policies Pertaining to Certificates of Occupancy and Predate Letters which Contravene the NYS Uniform Fire Protection and Building Code, NYS Energy Code or the Village Zoning Code**

- 1. Certificates of Occupancy or Predate Letters issued in contravention of NYS Uniform Fire Protection and Building Code or NYS Energy Code issued to a Current Owner or Prior Owner of residential, mixed-use or commercial property:** If the Building Inspector determines (in consultation with the Village Attorney or other designated Counsel) determine that a certificate of occupancy or predate letter was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Building Inspector within statutorily provided time frames, the Building Inspector shall revoke such certificate.
- 2. Certificates of Occupancy or Predate Letters issued which are determined to be ‘clearly erroneous’ in contravention of Village Zoning Code issued to a Prior Owner of residential, mixed-use or commercial property:**

If the Building Inspector determines (with advice of Village Attorney/Special Counsel) that a clearly erroneous certificate of occupancy or predate letter has been issued to a Prior Owner of the property and that the Prior Owner expanded the use of the property in violation of the Zoning Code, the Current Owner, upon receipt of the Building Inspector’s determination, shall to the maximum extent practicable, as determined by the Building Inspector, return the property to its legal use prior to the expiration of the Compliance Period.<sup>1</sup> Under these circumstances, a new certificate of occupancy shall be issued superseding the clearly erroneous certificate of occupancy or predate letter. Failure by the Current Owner to return the property to its legal use within the Compliance Period shall result in the revocation of the clearly

---

<sup>1</sup> Bulk, area and parking violations would be cured to the maximum extent practicable under the circumstances

erroneous certificate of occupancy or predate letter and the institution of legal proceedings, as appropriate, to terminate the illegal use.

Notwithstanding the foregoing, provided that the Current Owner (I) has not further illegally expanded the use of the property; (ii) has not made any misrepresentation or false statement in securing the erroneously issued CO or predate letter; and (iii) had no knowledge, actual or constructive, prior to acquiring title, that the use of the property violated the Building Inspector, the erroneously issued certificate of occupancy or predate letter shall not be revoked if, within 30 days of the end of the Compliance Period, the Current Owner files a Declaration against the property in the Westchester County Clerk's Office<sup>2</sup> providing for the restoration of the property to its legal use, as determined by the Building Inspector as set forth in the notice provided hereunder under Section B.1.. Triggers for restoration obligations shall include:

- Any sale or conveyance of the Property or portion thereof other than to an entity in which such Current Owner has complete ownership.
- Upon the later of the death of Current Owner(s) and prior to any conveyance by the executors, heirs, trustees, successors or assigns. Such restoration must be completed within one year of death of Current Owner regardless of whether the Property is conveyed. (Current Owner is a person or persons.)
- Prior to sale or conveyance of the Property, or any conveyance of an interest in such business entity to any third party (Current Owner is a business entity.)
- Prior to any conveyance of any interest in the Property, from a trust or estate planning entity to any third party. (Current Owner is a trust or other estate planning entity.)
- Any transfer where the beneficial ownership interest has changed. (Current owner conveys shares, membership interest or partnership interest to a third party).
- Any further alteration or expansion of the use would require a variance under Section 110-34 of the Village Code.

---

<sup>2</sup> Proof of recording to be filed with the Building Department

The Declaration shall be deemed satisfied and shall be released of record by a properly filed release filed in the Westchester County Clerk's Office stating that the property has been restored to its legal use.

**3. Certificates of Occupancy or Predate Letters issued which are determined to be 'clearly erroneous' in contravention of the Village Zoning Code to a Current Owner of residential, mixed-use or commercial property**

Where the Building Inspector determines (with advice of Village Attorney or designated Counsel) that a clearly erroneous certificate of occupancy or predate letter has been issued to the Current Owner and the Current Owner has illegally expanded the use based upon that clearly erroneous certificate of occupancy or predate letter, upon receipt of the Building Inspector's determination which shall clearly set forth what the legal uses are, the Current Owner, within the Compliance Period, shall either (a) return the property to its legal use and eliminate all zoning violations resulting in the issuance of a new certificate of occupancy superseding the clearly erroneous certificate of occupancy or predate letter; or (b) the use may be restored to the use that existed when the current owner purchased the property provided that prior to such purchase there existed a valid certificate of occupancy or predate letter for such use<sup>3</sup>. In the event the Current Owner fails to restore the property to one of the use(s) set forth in (a) or (b) above prior to the expiration of the Compliance Period, the clearly erroneous certificate of occupancy or predate letter shall be revoked and further legal proceedings initiated, as appropriate, to terminate the illegal use.

---

<sup>3</sup> In such latter case, the use would be treated as a preexisting nonconforming use with any further alteration or expansion requiring a variance from the ZBA under 110-34 of the Village Code. Bulk, area and parking violations should be cured to the maximum extent practicable under the circumstances.

**4. 4. Certificates of Occupancy or Predate Letters issued to a Current Owner or Prior Owner of residential, mixed-use or commercial property, which have not been determined to be clearly erroneous when issued and pursuant to which a present use has been established that contravenes the current Zoning Code**

Where the Building Inspector has issued a certificate of occupancy or predate letter that has resulted in the illegal expansion of a use that was previously legal (by either a Prior Owner or the Current Owner) but said certificate of occupancy or predate letter has not been determined to have been clearly erroneous at the time it was issued, the existing use shall be permitted to remain, but any further alteration or expansion of the use shall require a variance from the ZBA under Section 110-34 of the Village Code.

**5. No Certificate of Occupancy or Predate Letter issued or signed.**

Where, without the benefit of a signed certificate of occupancy or a predate letter, the Current Owner or a Prior Owner has illegally expanded the uses of the property, the property shall be restored to a legal use under the existing Zoning Code within the Compliance Period and all other zoning violations eliminated. In the event the Current Owner fails to restore the property to the legal use prior to expiration of the Compliance Period, legal action shall be taken to terminate the illegal use and ensure compliance.