



ISSUANCE 126

DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES
60 HUDSON STREET, NEW YORK, NY 10015

CHARLES M. SMITH, Jr., R.A., Commissioner

GEORGE E. BERGER, P.E.
Assistant Commissioner
Building Construction

TECHNICAL
POLICY AND PROCEDURE NOTICE #14/88

To: BOROUGH SUPERINTENDENTS

From: GEORGE E. BERGER
Assistant Commissioner *GEB*

Date: August 31, 1988

Re: Documentation In Support of Existing Use

Section 12-10 of the Zoning Resolution defines a nonconforming use as any lawful use which does not conform to the applicable use regulations of the district in which it is located and a noncomplying building to be a building which does not comply with all applicable bulk regulations.

Section 52-61 of the Zoning Resolution states that with the exception of certain Use Group 6 uses, a nonconforming use that has been discontinued for a period of two (2) years shall thereafter be used only for a conforming use.

When an application is filed for legalization of an existing condition, it is examined for compliance with present-day Building Code and Zoning requirements. Should an application not comply with the Building Code or Zoning Resolution, the applicant may submit proof that when the building was built, it was built in compliance with the relevant Building Code and Zoning Resolution in effect at that time. Similarly, in response to any complaint received by this Department regarding an alleged illegal use, an owner may submit proof of continual noncomplying usage.

The following shall be a guideline, in order of preference, for the acceptable documentation in support of such existing use for legalization or proof of continual nonconforming use:

- a) Records or documentation from any City Agency. Such records may include, but not be limited to, tax records, multiple dwelling registration cards, I cards from HPD and cabaret licenses.
- b) Records, bills, documentation from public utilities indicating name and address of business and time period bills cover.
- c) Any other documentation or bills indicating the use of the building, such as telephone ads, commercial trash hauler invoices, liquor licenses, etc.
- d) Only after satisfactory explanation or proof that the documentation pursuant to (a), (b) or (c) does not exist, affidavits regarding the use of a building will be accepted to support either an application for legalization or as proof concerning whether or not a prior nonconforming use was continual per ZR 52-61. However, where such affidavits are submitted, they may be accepted only after the Borough Superintendent has reviewed them with close scrutiny. If such affidavits are accepted, all other affected persons shall have an opportunity to respond to such affidavits.

Where an occupancy is being challenged, the Borough Superintendent shall make the determination as to what is the proper use of the premises. If a Borough Superintendent believes that there has been a lapse of a prior nonconforming use which will require an application to the Board of Standards and Appeals for revocation or modification of the Certificate of Occupancy, as per Operational PPN #16/87, such matter should be referred to the General Counsel's Office.

Distribution List Attached