Turning Lemons Into Lemonade: Repurposing Struggling Properties to Create Value and Satisfy New Market Demands

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As New Jersey's economy, infrastructure and demographics continue to rapidly evolve, numerous commercial developments have recently become obsolete. Moreover, as one of the most developed states in the country, there are increasingly fewer "green" developable sites available in New Jersey. As a result, the state is littered with formerly thriving suburban office and retail properties – many in prime locations – that are vacant and perceived to be untenable in their current state. These "white elephant" sites, however, can present excellent repurposing or redevelopment opportunities, in light of the limited current supply of developable lands – and despite the record demand for multi-family, mixed-use projects, warehousing/distribution facilities, and modernized office buildings.

Over the past several years, many productive commercial developments have changed hands and/or have received necessary capital investments to remain thriving developments. Still, numerous outdated office and retail properties have been nearly abandoned, their owners unable to lease or sell them in their current condition, and perhaps lacking the vision or resources to reposition the property. As a result, these owners face a difficult economic quandary.

Struggling properties have historically been addressed by either (1) marketing them in their current condition until a new tenant/buyer is found, and thereafter improved based upon the tenant/buyer demands (this approach could either subject any future lease/sale to potential zoning contingencies and/or reduce the market rent/purchase price for the property), or (2) infusing significant cash, resources and time to modernize the asset on a speculative basis in order to make it more attractive for potential tenants/buyers (thus requiring substantial advances by the owner for the benefit of future tenants/buyers, whose preferences and timing are unknown). However, a third option, ***repurposing and/or redeveloping the property for a different use,*** has emerged as an increasingly viable alternative to the traditional approaches mentioned above, in keeping with recent market trends.

Repurposing a property can either partially or completely change the existing use onsite. Examples include converting former anchor boxes in a strip mall to warehouse distribution space, or to alternative entertainment uses such as restaurants, arcades, and movie theaters, or creating a mixed-use center onsite. Similarly, vacant office properties can be repurposed for higher demand uses such a multi-family apartments, warehouses, hotels and other mixed-use developments onsite. Although repurposing may significantly increase the value of a property, it often involves entirely different uses than what currently exist onsite, thus requiring potentially significant zoning approvals to effectuate the plans for the property. More municipalities are working with developers to reposition properties because they recognize that "white elephants" may be repurposed in a variety of ways to align with community interests.

New Jersey law affords many zoning tools for owners to repurpose properties. The Municipal Land Use Law (MLUL) offers traditional zoning protocols, such as site plan approvals, use and bulk variance relief and rezoning, to permit alternative uses to be developed onsite. However, the likelihood of success using traditional zoning methods for new uses is often contingent upon whether a proposed use is "as of right" under the applicable zoning code or whether the variance relief can be justified. Use variance relief, in particular, is highly difficult to justify under the MLUL. As a result, there is a substantially heightened risk that an objector could successfully challenge an approval and/or the grant of use variance relief. In selective cases, the MLUL is a terrific tool for the repurposing, but the law provides additional tools to accomplish that objective.

New Jersey's Local Redevelopment and Housing Law (LRHL) can be the critical statutory tool to enable struggling properties to be repurposed. Indeed, the LRHL lends itself best to form-based zoning and mixed use projects as opposed to the traditional "Euclidean zoning" that exists in most municipalities under the MLUL. The LHRL provides protocols and statutory criteria for a property to be designated as an "area in need of redevelopment", thus permitting the municipality to amend its ordinance and make the proposed use "as of right" onsite. Under the LHRL, a property may qualify as "an area in need of redevelopment" upon "the discontinuance of the use of buildings previously used for commercial, manufacturing, or industrial purposes."

Accordingly, even if a property is in good condition, if it has been vacant for a considerable period of time (e.g., an office building or retail site has been vacant for multiple years), this fact could be a sufficient stand-alone statutory basis to qualify the property as a redevelopment site under New Jersey law. Alternatively, if the site is adjacent to an existing redevelopment area, a property owner could seek to be incorporated into the existing redevelopment plan. In either instance, a property can utilize New Jersey's redevelopment designation process to permit creative or mixed use projects to be developed "as of right", circumventing the need for legally challenging use variance relief under the MLUL. Moreover LHRL projects designated as areas in need of redevelopment qualify for various economic incentives – potentially making an otherwise financially challenging project economically feasible. One of the more notable and common examples is the eligibility of LHRL projects to qualify for the payment in lieu of taxes (PILOT) program, which could substantially reduce the development's property tax obligations upon completion.

Several steps must be undertaken by the municipality under the LHRL in order for a property to be designated as an "area in need of redevelopment," but the numerous benefits and opportunities presented by this designation can result in a successful project, one that was otherwise potentially insurmountable. First, the municipality's Council must adopt a resolution directing the Planning Board to conduct a preliminary investigation as to whether the site qualifies as an "area in need of redevelopment." Then, the Planning Board must commission a preliminary investigation report, conduct a public hearing concerning the potential redevelopment designation, and make recommendations to the Council on whether to include/designate the site as an "area in need of redevelopment." Upon receipt of the Planning Board's recommendation, the Council must then adopt a resolution declaring the site as an "area in need of redevelopment" and prepare and approve a redevelopment plan delineating the new permitted uses and other new zoning requirements for the site. Upon the completion of the redevelopment plan, the Council would adopt the redevelopment plan by Ordinance and make the proposed redevelopment/repurposing of the subject property an "as of right" development, subject to receipt of site plan approvals by the Planning Board.

Owners of struggling commercial properties face many economic hurdles to revitalize their investments. Repurposing commercial properties utilizing the methodology and procedures set forth in the LHRL can afford property owners a more certain path towards achieving their redevelopment plans. However, navigating through the various statutory requirements to obtain the redevelopment designation can be quite challenging. It is critical to assemble an advisory team that includes land use and real estate attorneys with significant zoning, leasing and transactional experience who can assist in the evaluation of properties and address any issues that arise on the road to enhancing the viability and marketability of properties in 2018 and beyond.