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## **The incredible shrinking parking field and outparcel development**

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Rarely - almost never in fact - does the evolution of governmental regulation favor the developer or property owner. Every so often, however, a trend emerges that presents unique opportunities. We are seeing such a trend in more flexible off-street parking requirements in land use regulations, resulting in an expanded opportunity for outparcel development at existing shopping centers and other retail properties.

Thirty or forty years ago, when many retail properties in the northeast were being developed, the typical zoning ordinance required a massive number of off-street parking spaces for retail uses, usually one for every 200 s/f of gross floor area. These requirements limited development options and were based largely on ill-informed suppositions about the traffic generated by various uses and the presumed need to minimize congestion and on-street parking for safety purposes. Actual experience has shown, however, that the historical parking requirements were overstated, resulting in largely under-utilized parking fields covering wide swaths of area, usually located between the street and buildings in the shopping center - prime areas for outparcel development.

Other factors have also led to a re-thinking of rigid off-street parking requirements by progressive planning departments in a number of municipalities. There is a much greater diversity of uses within shopping centers these days. Where previously retail properties were typically occupied by retailers and restaurants, now we see a much broader mix of uses - e.g., theaters, athletic facilities, medical and dental offices, daycares - which drive atypical traffic patterns. Furthermore, from a planning perspective, the emphasis has shifted from safety considerations to the environmental - decreasing impervious surfaces, reducing storm water runoff, encouraging alternative transportation - and the aesthetic - reducing the visual impact of large parking lots.

The confluence of these factors has resulted in changes in some communities to more flexible parking requirements, usually administered by the planning board. Instead of determining the required on-site parking from an inflexible formula (from which a zoning variance was the only avenue of relief), planning boards increasingly have the discretion to take into account the actual parking needs of the specific uses on the property, the availability of shared parking with abutting properties and nearby on-street parking, the use of compact spaces, and other considerations.

In municipalities that have moved to this more flexible approach to parking, the owners of older shopping centers and retail properties should consider the possibility this may present for outparcel development. In some cases, a different tenant composition than what was present at the time of the original development can be used to justify a reduction in the size of the parking area, which then could be re-purposed for outparcel development. This may be particularly appealing in cases where the tenant base in the shopping center has changed to much less intensive parking uses (e.g., from an anchor retailer to several smaller retail and office users) and the potential outparcel

user is not itself a significant user of parking spaces (e.g., a food establishment serving primarily drive-thru customers).

This approach, of course, will not work in all circumstances. A modification of an existing site plan to reduce the parking area size will require compliance with all current zoning requirements. Although the land use laws may now be more flexible in terms of parking, they may be less forgiving, for example, in terms of open space or green space requirements. Furthermore, although the land use laws may allow a retail property owner to reduce the number of parking spaces, existing tenant leases may require a greater number of parking spaces than the minimum. The quest to create space for outparcel development will require the balancing of several factors.

Depending on the circumstances, it may well be worth the time and effort for the owner of retail property to engage an engineer or land planner, together with legal counsel, to see if there is reasonable possibility of modifying the site's existing layout to reduce the size of the parking lot while increasing the property's developable area.

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