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Converting retail space to distribution spaces - by Leah Rubega & William Squires

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The continued decline of big box retailers, particularly in the wake of COVID-19, has left large spaces in malls and shopping plazas vacant. In the wake of the increasing availability of spaces with large footprints, there has been a growing trend towards converting such spaces into warehousing, distribution, e-commerce, light manufacturing (i.e., assembly), and other similar uses. As landlords and tenants both look to transform former retail spaces to be used for alternative industrial uses, land use regulations and restrictions should be carefully considered. Such considerations include, but are not limited to, the following:

Malls and retail centers are often located in commercial zoning districts, which typically permit uses such as retail, dining, entertainment and offices. Fulfillment and distribution centers, warehouses, e-commerce and light manufacturing uses are typically classified as industrial or light industrial. Converting to such industrial uses in commercial zoning districts may require zoning relief, a change to the zoning map, and/or an amendment to zoning ordinances (in many jurisdictions, each of these actions would require a supermajority vote).

In some cases, malls or shopping centers were developed pursuant to a master plan, planned development, or other special plan approved for the entire shopping area, and specific uses are permitted under the plans. The applicable plan may have to be modified depending on what uses are permitted under such plans, which may require additional site plan review by the municipal planning office or applicable zoning or planning board.

Some municipalities may be hesitant to permit industrial and fulfillment centers in areas historically used for retail or mixed uses. Such municipalities – if they are willing to amend the zoning ordinance – would likely restrict the type of light industrial uses allowed and may require that such industrial uses be permitted only by special permit. Therefore, after successfully seeking an amendment to a zoning ordinance, the applicant would then have to obtain a special permit (usually from a zoning board, planning board or city council) which would require a public hearing. The issuing board would have the authority to place what they deem to be necessary conditions and restrictions on the industrial use.

There are also differences in traffic between retail and industrial uses. It is likely that there is not as much traffic generated from fulfillment or distribution centers than from retail uses, and there is also less parking needed. However, most fulfillment or warehouses involve large trucks, coming and going from the centers potentially up to 24 hours a day, 7 days a week. There will also be different requirements regarding loading areas, turn-around/back-up areas, travel lanes and parking spaces, as well as parking vehicles overnight.

Tenants and landlords should carefully consider these and other potential land use and zoning obstacles when evaluating whether to convert former retail space into warehousing, distribution, e-commerce, light industrial or similar other uses. The best way to plan for and navigate around those potential obstacles is to work with land use professionals, including attorneys, architects and engineers.

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