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Perspectives

Zombie Malls – Part 2: Bringing Dead Shopping Venues Back to Life Through Multifamily Development – Parking is the Key to Mall Multifamily Development

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Abstract

As more retail activity goes online with Ecommerce and given the fact that the U.S. is over retailed, mall owners/developers are looking for ways to revitalize and monetize their real estate by adding multifamily to create a mixed-use environment. One of the main drivers of this effort is parking reduction, as developers and retailers have come to the realization that most shopping centers are over parked. There are many things to consider when attempting to incorporate apartments in a shopping area, not the least of which are regulatory issues and private land controls of other tenants/users in the center.

Introduction

In Part 1, this article looked at the over-retailed status of the United States and many malls are dying particularly in the C and D categories, partly because of e-commerce, but mainly through the demise of department stores. and causes for the glut of retail real estate. As mall owners deal with this issue, they are turning to “extension strategies” to not only preserve value and reinvigorate these assets, but also to monetize the real estate and maximize its worth. One of those extension strategies is adding multifamily to dying malls and utilizing excess parking is one way of accomplishing that.

Parking is the Key to Developing Multifamily Projects in Existing Malls.

One of the major drivers of mall owners/developers desiring to add multifamily components to their malls is the fact that most of the malls in the US are over parked. As outlined herein, one significant way that mall companies are seeking to redevelop their assets is through the addition of apartment complexes.

According to Animesh, “Shopping centers are redefining themselves in this era of changing economic times and demographics. The early days of larger closed malls surrounded by a sea of asphalt are history. Malls built in open fields are now surrounded by residential neighborhoods and a variety of businesses. As malls have redefined themselves, so has parking. The new developments are being constructed on what was once prime parking for shoppers.” [1]

The International Council of Shopping Centers states, “Shopping center owners replacing department stores or adding apartments, hotels or offices to their properties are among those actively engaged in evaluating parking requirements. Typically, a department store’s decline exacerbates an overabundance of parking. Yet, replacement users such as grocery stores, restaurants or entertainment venues may require even more parking than the original department store, even if only during certain periods of the day or on weekends.” [2]

“Easy access, high visibility, a sense of personal security, and adequate, convenient parking are all preconditions for successful retailing. Without them, retail is likely to fail regardless of how sophisticated the shopping environment or the high quality of the tenants. Parking is arguably the most important of these requirements because today’s consumers, conditioned by their experiences with suburban shopping centers, expect nothing less than a guaranteed space close to their destination every time they shop. So, it is important to get the parking right—but getting it right means more than just ensuring the right amount of parking in the right place.” [3]

Parking Ratios

To convert unused parking areas or the repurposing of department store parcels or other areas of the malls previously utilized as retail space to multifamily, it is important to understand the concept of parking ratios. The parking ratio is defined as, “The relationship of space used for parking and necessary vehicular and pedestrian movement to land area covered by buildings or space within the buildings. This relationship can be expressed in the number of car spaces per 1,000 square feet of rentable area.” [4] Rentable area is often called gross leasable area or GLA. GLA is normally the total area that a shopping

online and in the classroom at various institutions for over 25 years.

center leases to tenants or is available for leasing; the square footage of a shopping center can generate income by being leased to tenants. [5]

Displacement and parking of the multifamily is an important consideration for shopping center developers looking to add apartments or condominiums to the center. The displacement of parking to accommodate the multifamily will be covered by the parking ratio reduction outlined herein, infra. What must be factored in is parking the multifamily that will be constructed.

Changing Mindset Regarding Parking Ratios and Parking Requirements for Shopping Centers

In the early days of shopping malls, local zoning requirements typically established the parking needs of the development. They were based on parking ratios for development, such as offices (x spaces per 1,000 square feet of GLA), retail (y spaces per 1,000 square feet of GLA), restaurants and theatres (z spaces per seat). [6]

With increasing mixed use, shared parking analysis has become more important to determine the parking spaces needed. For example, parking spaces used on weekdays by office workers can be used on evenings and weekends by movie goers.[7] (see also ULI article, p. 26. [8]).

As previously indicated, many malls are overparked. "The traditional parking ratios of five spaces or so per 1,000 square feet are antiquated for a variety of reasons," said Brad Sanders, a CBRE senior managing director based in Cleveland. "Parking is no longer one size fits all; it's driven by the specific needs and peak demand times of each of the users." [9]

Local government agencies establish parking ratios to ensure that there is adequate parking to accommodate what is constructed, such as a new multifamily development. Parking requirements will vary by building type.

Many jurisdictions are embracing the concept that less parking is required for malls and shopping centers than was previously mandated. They accept the aforementioned retailer concept of a lower required parking ratio. Proximity to mass transit is one of the other important drivers of this movement (see also "Zoning and Other Jurisdictional Issues, infra).

According to Litman, "Many recent housing affordability strategies highlight the importance of reducing parking requirements. These reflect a paradigm shift: the old paradigm assumed that parking should be abundant and free; the new paradigm recognizes that too much parking is as harmful as too little and that parking should be managed and priced for efficiency. In response, some jurisdictions are eliminating minimum parking requirements, many are significantly reducing those requirements, and most jurisdictions are starting to encourage more efficient parking management." [10]

Most shopping center peripheral multifamily parcels are not of a sufficient size to accommodate surface parking for all apartments or condominiums. These developments are usually on parcels of a size that mandate structured parking often with the multifamily built around a parking deck or with the parking deck serving as a podium for the multifamily constructed above. Each jurisdiction will have its own standards for parking multifamily, and proximity to mass transit will impact the amount of parking required (see Kokemuller [11]).

A good example of this is Prince Georges County, Maryland. The previous zoning code for Prince Georges County required that shopping centers be more than 750,000 square feet of GLA park at a ratio of four spaces for every 1,000 square feet of GLA. [12] In 2014, Prince Georges County began a complete revision of the County Zoning Code, which was enacted through legislation in October 2018. [13] The new Zoning Code ordinance required the County to adopt a Comprehensive Sectional Map Amendment to make the Code effective, which was done in November 2020.[14]

Mall at Prince Georges [15] in Hyattsville, Maryland, which is in Prince Georges County, is a shopping center that benefitted from being in a jurisdiction that adopted a more reasonable standard for and approach to required parking. Under the old code, Mall at Prince Georges was, under the aforementioned County Zoning Code and Comprehensive Section Map, zoned M-U-I (Mixed Use Infill) and had to park at the aforementioned four spaces for every 1,000 square feet of GLA ratio. [16]

That being the case, Mall at Prince Georges would not be able to add multifamily to the center unless the owner could get a variance (see infra) from the parking requirement or mothball or demolish some of the existing GLA to allow for multifamily to be developed. Under the new Prince Georges County Zoning Code, however, Mall at Prince Georges will also be zoned R-10: Multifamily High Density Residential, which provides suitable sites for high density residential in proximity to commercial and cultural centers.

Additionally, under the new Prince Georges County Zoning Code and the Comprehensive Sectional Map Amendment, Mall at Prince Georges will be designated as RTO-H (Regional Transit-Oriented High-Intensity). Mall at Prince Georges is specifically named in the new ordinance as RTO-H, [17] which means that it is located within a quarter mile of a Metrorail (Washington DC metro area mass transit system, supplied). Under RTO-H, there will be no minimum parking requirements for Mall at Prince Georges, and the owner will be permitted to develop multifamily at the center, as the new Zoning Code has freed up land previously utilized as parking fields for this shopping mall. [18]

Two Important Factors in Determining Parking Requirements and Changes

There are two critical elements regarding parking that shopping center developers/owners must consider when analyzing a proposed addition of multifamily to a retail venue: regulatory requirements and controlling documents.

A. Zoning and Other Jurisdictional Issues

As previously indicated, most jurisdictions where malls are located have enacted zoning codes that control the development and operation of these facilities. In addition to the private restrictions placed on shopping centers through reciprocal easement agreements and other like kind documents (see infra), the public restrictions regarding malls through zoning and other governmental land use controls are extremely impactful to the redevelopment of mall properties.

One problem is that many of these retail centers are not in areas zoned for multifamily uses. In fact, many jurisdictions specifically prohibit apartments and condominiums in these zones. The main method that developer owners utilize to obtain jurisdictional approvals for multifamily in zones where it is otherwise not permitted is through a change to the zoning code by text amendment or zoning overlay. [19]

There are several other ways for multifamily to be developed in an otherwise prohibited zone or in a zone that is not permitted. These include variances, special use exceptions and conditional use permits.

A variance is a request of an Authority Having Jurisdiction (AHJ) [20] to deviate from current zoning requirements. If granted, it permits the owner to use the land in a manner not otherwise permitted by the zoning ordinance. It is not a change in the zoning law as with the aforementioned text amendment. Instead, it is a specific waiver of requirements of the zoning ordinance. [21]

“Typically, variances are granted when the property owner can demonstrate that existing zoning regulations present a practical difficulty in making use of the property. Each municipality has rules for variance requests. Usually, the landowner seeking the variance files a written application for a variance and pays a fee. Normally, the requests go first to a zoning board. The zoning board notifies nearby and adjacent property owners. The zoning examiner may then hold a hearing to determine if the variance should be granted. The applicant may then be required to appear before the governing body of the municipality (such as a city council) for the final determination.” [22]

“A special exception seeks permission to do something that the zoning ordinance permits only under certain special circumstances, e.g., a retail store over 5000 square feet is permitted in the zone so long as certain parking, drainage and design criteria are met.” [23] A variance seeks permission to do something that the ordinance does not permit, e.g., to locate the commercial business in an industrial zone (formerly termed a “use” variance), or to construct the new building partially within the side set-back line (formerly termed an “area” variance); and the standards for any variance without distinction are the subject of much judicial interpretation and flux.” [24]

A conditional use permit is a zoning exception that allows the property owner to use his land in a way not otherwise permitted within the particular zoning district.[25]

“The prime difference between a special exception and a conditional use is the entity making the decision. Special exceptions are granted by the zoning hearing board. Conditional uses are granted by the governing body of a municipality. Both uses require a public hearing prior to any approval or disapproval.” [26]

It is important to understand that jurisdictions are not legally obligated to change their zoning ordinances to allow for multifamily in Shopping Center or Business Center zoning districts. They are also not obligated to grant variances, special use exceptions or conditional use permits.

What it comes down to most often is the willingness of the jurisdiction to accept multifamily in a Shopping Center or Business Center zone. According to Danzinger, “Among the complications for adding residential into the mall mix is the need to involve local governments in the process. ‘Changing the core use of the mall property creates a somewhat complicated process,’ Jay Rollins, managing principal of JCR Capital explains. “It typically requires a partnership with local municipalities and other officials to obtain proper zoning and determine a site plan. While malls are generally well suited for a transition into multifamily housing, many communities may find this process too complex of an undertaking.” [27]

In addition, most jurisdictions have enacted comprehensive plans to control development (see Mall at Prince Georges discussion, supra). As another example, at Willow Grove Park Mall in North Philadelphia, Pennsylvania Real Estate Investment Trust would like to add an apartment complex; however, Willow Grove Park Mall [28] is zoned Business Center (BC), and multifamily is not permitted. At Plymouth Meeting Mall in Plymouth Meeting, Pennsylvania, the center is the zoned Shopping Center (SC), and apartments and condominiums are not on the list of allowable uses. As of the writing of this article, formal requests for governing authority regulatory changes have not been approved, although the process is ongoing.[29]

When faced with these situations where zoning either prohibits or does not permit multifamily uses, owners/developers must go through a zoning change or other regulatory procedure to obtain the ability to locate multifamily on their properties. Grant Gary, president of brokerage services at the Fort Worth, Texas–based Woodmont Co. states, “Retailers, landlords and developers are collaborating more than in previous times,” he said. “They’re embracing change and are exploring how to work with cities to drive traffic and allow shopping centers to evolve.” [30]

B. Documents and Control Parties

The other important consideration in redeveloping malls by adding multifamily components are the Controlling Documents (Controlling Documents). These documents are also sometimes referred to as REAs (Reciprocal Easement Agreements), OEAs (Operating and Easement Agreements) or ECRs (Easements, Conditions and Restriction Agreements). [31] These types of Controlling Documents are private land control agreements between parties as opposed to public land controls referenced supra such as zoning, subdivision regulations, building codes, housing codes, curb-cut permit systems, and historic preservation laws. [32]

An REA is defined as, “An agreement between the owners of two or more parcels of property granting one another reciprocal rights to the use of their respective parcels for such things as parking, access, signage, and the like. In most shopping centers, the anchor stores have significant input and control over the rights and obligations granted or restricted under an REA, which could include items ranging from the use of land to development and design controls, such as permitted parking ratios. REA in place may be recorded in the public land records.” [33]

It is the second sentence in the REA definition that makes things interesting for shopping center owners seeking to develop multifamily at malls. In the heyday of mall development, department stores were given free land, free site work and often a cash payment to build their buildings. In giving department stores these valuable items, shopping center developers also included in the controlling documents what the land could and could not be utilized for, restrictions or prohibited use clauses. Often, provisions explicitly stated that multifamily use was prohibited.

The working model was that as anchors of the shopping center development, department stores would attract the small shops, the so-called “O” shops or open GLA between the department stores, which would enable the shopping center developers to charge significant rents to make the proformas for the projects work. The land use controls that were granted to department stores and possibly other users were often significant.

One important exhibit in REAs is the controlling site plan. Once the site plan is approved by the parties and incorporated either by reference or as an exhibit to the REA, it usually cannot be changed without the approval of all parties to the REA. This gives department stores tremendous control over shopping center land use.

Theoretical v. Practical Parking

It is important to understand the difference between theoretical and practical parking, as this is what is driving some of the movement to add multifamily to shopping malls. As previously indicated, in the nascent days of shopping malls, local zoning requirements typically establish the parking needs of the development. They were based on the parking ratios that have been discussed herein. Those zoning requirements often, but not always, were also the basis for the retailer parking requirements that were incorporated into the REA’s discussed supra.

Most of the developers/owners want to utilize excess or otherwise unused parking to develop into areas for apartments and condominiums. The parking areas in question were remote parking or excess land paved to meet zoning codes and retailer REA requirements. The reality, however, is that no customers ever park in these remote parking fields. Occasionally, retailers or malls will have their employees in these areas, and some malls may use trams to transport customers parking in these areas during peak hours or seasons, but they are generally not utilized for parking even during the Black Friday to post New Years’ holiday shopping season.

As indicated by Animesh,[34] long-term users, such as employees, will generally accept longer walking distances from parking areas to their workplace. Short-term users such as customers or visitors expect shorter walking distances. Parking spaces for a specific facility should not be more than seventy-five meters (or approximately 250 feet, supplied) from the facility entrance.”

Retailers and retail developers call this the “Parking Bubble.” This is where the practical parking aspect comes into play. What retailers are mainly concerned about is parking for their customers proximate to their entrance(s). While a 1,000,000 square foot shopping mall may have 5,000 spaces as indicated in the example, infra, if the parking bubble (the area within 250 feet of their entrance) only has 100 usable spaces, large format retailers are not going to approve the location or, if the owner/developer is suggesting changing the configuration of the parking field to accommodate multifamily or some other alteration, that change will likely not be approved by the retailer. It should be noted that most department stores and large format retailers have “no-build/no change” areas incorporated into the applicable site plan through the Controlling Documents, and even if the retailer does not have complete site plan change control, they would be able to dictate what could be developed in those affected areas (see Controlling Documents discussion, infra).

However, parking ratios at new developments over the past decade have declined on average. According to Fuqua Development partner Jeff Fuqua, as mixed-use projects have become more commonplace, Fuqua said he has seen the average number of parking spaces in each of his developments drop by 20%. Fuqua projects now provide four spaces for retail and seven and a half spaces for restaurants per 1,000 square feet. A decade ago, those ratios were 5 and 15, respectively. [35] In that same article, Schenke states that there is some hope that ratios will further decline in the future. Some pin their hopes for the growth of Uber and Lyft and eventually, perhaps, autonomous vehicles. In San Diego, nightclub parking saw a 50% drop thanks to Uber and Lyft, the San Diego Union-Tribune reported earlier this year. [36]

In 2017, the city (Buffalo, supplied) eliminated minimum parking mandates for new developments, leaving it up to developers to figure out how much to provide. A 2021 study revealed that after the repeal, new major developments overall had 21 percent fewer spaces than the minimum parking mandates would have required. [37]

In Fairfax County, VA, the Board of Supervisors, which had previously reduced the retail parking ratio from 5 spaces per 1,000 square feet of mall GLA to 4 spaces further altered the requirement from 4 to 3 parking spaces per 1,000 square feet of GLA — the recommended change from its consultant, Nelson/Nygaa. [38]

Planning.org, in an article about parking multifamily states, “Tinkering with minimum parking requirements is not new. Cities have been fiddling with regulations for decades, sometimes raising them, sometimes lowering them, and sometimes giving variances for specific projects. What’s different now is an evolving understanding that urban lifestyles are changing, traditional parking ratios are outdated, and too much supply can be as harmful as too little.” [39]

Conclusion

One solution to the decline of malls is reducing required parking and adding multifamily to the center. This extension strategy can restore and increase viability of the asset and also make the center more valuable.

In Part 3 of this Article, a hypothetical scenario will be explored for adding multifamily to a shopping center and the effect on not only on the destiny of the asset, but potentially unlocking untapped value.

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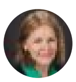

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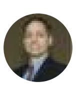

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