



Question of the Month: What are the zoning issues when converting an office building to residential use? by Christopher Wright

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The latest zoning dilemma in New York City is the conversion of large commercial office buildings to residential use. This issue has been driven by the pandemic and the work from home trend, which has generated vacancies in office buildings. The good news is that the use regulations of the NYC Zoning Resolution (the ZR) allows most high-density commercial zoning districts to have both commercial and residential usage. The bad news is that the ZR imposes very different size and bulk regulations depending on whether a building is built for commercial or residential usage.

One particular area of significant zoning differences between commercial and residential buildings are open space requirements. For example, residential buildings require a 30 ft. rear yard. This requirement provides both open space for residents as well as the required distance to provide adequate light and air to living room and bedroom windows facing the rear. Commercial buildings only require a 20 ft. rear yard because light and air is not deemed essential for an office. Many of us have worked in windowless offices. Therefore, any office building constructed with a 20 ft. rear cannot be converted to residential use as that would violate both the 30 ft. rear yard requirement and the 30 ft. light and air requirement.

Another open space zoning regulation to consider is the cap on maximum lot coverage for residential buildings. This cap requires at least 30% to 40% of building's tax lot to be open space. Commercial buildings do not have any lot coverage cap. The only required open space is the 20 ft. rear yard. As a result, a commercial building that only provides the minimally required 20 ft. rear yard and otherwise covers the rest of the tax lot will most likely not provide the required 30-40% of open space required to convert it to residential use.

In addition to these open space requirements, there are other bulk issues that need to be taken into consideration when considering a commercial to residential conversion. Zoning floor area and height and setback requirements can vary depending on whether a building was constructed as commercial or residential. Most business centers (Midtown, Long Island City, etc.) are zoned for mixed use, which permits commercial, residential or a mix of both uses on the same tax lot. However, these zoning districts often permit more floor area for a commercial building than a residential building. If such a commercial building is built to its maximum commercial floor area, then only a portion of that building can be converted to residential, that is, no more than the maximum permitted residential floor area. The balance must remain commercial and thereby creates a mixed use development. In addition, buildings constructed for commercial use may not comply with the height and set back regulations of a residential building. Therefore, even though the ZR may permit an as-of-right use change from commercial to residential, that does not waive these bulk zoning requirements.

To add to the complexity, every commercial building is constructed differently in terms of height, setback, floor area and open space. This makes the adoption of a general conversion rule to serve all such buildings problematic. In realty, it requires a customized solution to convert these buildings to residential and there is no current provision in the ZR that address this specific issue. For example, a prior solution to a similar problem was the creation of the Special Lower Manhattan

District to allow conversion of old obsolete office buildings to residential use. These buildings were not modern and had smaller floor plates. This allowed for an easier conversion to residential use because all of the new apartments could reach the perimeter windows and, therefore, satisfy light and air requirements. Conversion of modern buildings, which typically have large floor plates, is more problematic in terms of reaching the perimeter windows needed to satisfy light and air requirements. Consequently, a customized zoning amendment will need to be enacted to detail the exact process to facilitate these conversions.

Another problem is timing. Changing the ZR can take years of analysis and public hearings. However, the city planners need a solution quickly to address the current vacancy issue. In addition, the NYC Building Code has different regulations depending on whether a building is commercial or residential or mixed use, which adds another layer of regulations that would need to be amended to facilitate a conversion.

One possible solution is creating a planning board that can address these buildings one at a time. The NYC Board of Standards and Appeals (BSA) currently hears zoning and building code cases for single tax lots seeking relief on a case-by-case basis. Perhaps the BSA can be the proper venue. Until then, the owners of these commercial buildings need to carefully analyze the zoning and building code obstacles to a conversion and look for creative solutions within their immediate control.

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