

MULTIFAMILY PROPERTIES

Quarterly

Law

Considerations to convert hotel or office to apts.

Among many challenges brought about by COVID-19, changing community needs have illuminated growing underutilization and vacancy among commercial buildings. With the recent drop in hotel occupancy and office tenants reconsidering how much space they need due to the pandemic, some owners are considering converting the use of their existing building to multifamily. While some properties are excellent candidates for such a conversion, there are some potential obstacles that must be considered before committing to convert a property to multifamily.

If the underlying zoning does not allow for multifamily as a permitted use, the property would need to be rezoned to approve the change in use, which requires a public hearing before the local governing body. The process for obtaining approval of a new use can be time-consuming and could range from three months to over a year. Even when the underlying zoning allows for multifamily, often the site plan must be amended to account for the change. Depending on the nature of the change, this could be either a minor amendment, which may require only administrative approval, or a major amendment, which could require one or more public hearings before either a planning board or in some cases the local governing body. Conversations with city staff early in the process can shed light



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on the nature of the approval that will be required for the specific project and the time frame it likely will take to obtain such approval.

While jurisdictions differ, parking requirements for multifamily are higher than for hotel or office use. Thus, many buildings do not have sufficient parking for conversion of the use. The amount of required parking for multifamily most often is based on the number of units and size of each unit, whereas for hotel or office use it is more frequently determined by the number of rooms or square footage. While there are some variances allowed, owners should consider whether they are close to having the required parking or if there is additional space on the property that could be used to expand parking to meet these requirements.

While many hotel units have bathrooms in the room, far fewer have kitchens. A remodel to make the unit a true apartment may require significant interior work. Similarly, any office building looking to convert to multifamily will need to ensure the structure of the building will work for multifamily, as most will require gutting of the



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entire building to allow for each unit to have bedrooms, bathrooms and a kitchen. Conversions need to account for different building code requirements, including fire sprinklers, fire walls and emergency access. Utility meters also may need to be added.

Depending on the jurisdiction, there may be additional water or sewer tap fees required.

Owners should consider reaching out to city staff early to determine the appetite elected officials and staff may have toward a change in the use. Even when the underlying zoning allows for multifamily, if the city has discretionary decisions in the approval process, staff could make it more or less difficult or even prevent the conversion. City staff can help owners better understand what the city will require in order to approve the change in use. The nature of these requirements can be very informative for owners trying to decide if such a conversion makes economic sense for the particular property.

Some cities are reluctant to approve permanent changes to the use when they believe the current use will be important for the area in a few years, believing

that the demand for office or hotel will return to prepandemic rates. Further, converting a commercial property to residential significantly impacts the amount of property, sales and lodging taxes the local government may receive. Currently, commercial property is taxed at 29% and multifamily is taxed at 7.15%. Some municipalities specifically analyze and consider the impact to their long-range fiscal plans in evaluating potential land use approvals. Notably, we have found that inclusion of affordable housing in the project can make it more appealing to the city, and the city more likely to consider variances or other flexibility to facilitate the project proceeding.

Colorado Gov. Jared Polis' office is convening stakeholders to understand these challenges and evaluate whether any state action to remove barriers could make these projects more successful. Local control over land use decisions and the variety of individual zoning and building codes across jurisdictions may be difficult hurdles to overcome.

Ultimately, while some hotels and office buildings are good candidates for conversion to multifamily, the zoning and site requirements for the property must be analyzed closely as they may be obstacles to conversion. ▲

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