Massive Development Potential Unlocked with New "Adaptive Reuse" Amendments to RI Zoning Statutes

Description

By Michael L. Mineau

Following up on recent PSH Land Use Client Alerts on June 26, 2023 and August 22, 2023, an important collection of bills were passed through both houses of the Rhode Island state legislature in June and signed into law. These new laws, which will mostly become effective January 1, 2024, significantly change many aspects of land use and real estate development law and procedures in Rhode Island, as well as encouraging development of more residential housing units. This article is the next in a series focusing on each new law individually.

2023-H 6090A and 2023-S 1035A amend R.I. Gen. Laws §§ 45-24-31 and 45-24-37, which are part of the Rhode Island Zoning Enabling Act of 1991, to define "adaptive reuse" and allow for adaptive reuse of existing commercial structures into residential developments. These statutory amendments may not have received quite as much attention as some of the other legislative changes which were part of this legislative package, but they may be some of the most impactful in encouraging the development of more residential housing units in the state.

Starting on January 1st, conversion of at least fifty percent (50%) of the gross floor area of any commercial building into residential units now "shall be a permitted use and allowed by specific and objective provisions of a zoning ordinance", except where otherwise prohibited by a previously-recorded environmental land use restriction imposed by the DEM or EPA. The possibilities for new residential development are extraordinary under these relatively concise statutory amendments.

As discussed below, in addition to qualifying adaptive reuses now being statutorily permitted as "by right" uses, residential developers will be able to take advantage of generous density bonuses and, importantly, a limit on off-street parking requirements to no more than one (1) space per dwelling unit. There will be two categories of adaptive reuse projects: i) high density developments which will require a percentage of the units to be for low- and moderate-income residents; and ii) other adaptive reuse developments which will have no such requirement. The conditions for each type of adaptive reuse project are discussed in turn below:

High Density Developments

For adaptive reuse projects meeting all of the following criteria, municipalities must now allow for high density development and may not limit density to less than fifteen (15) dwelling units per acre:

- The project must be limited to the existing building footprint, except that the footprint may be expanded to allow for upgrades related to compliance with applicable building and fire code requirements and the provision of necessary utilities;
- The development must include at least twenty percent (20%) low- and moderate-income housing; and
- The development must have access to either public water and sewer services or adequate private water and wastewater treatment systems.

Other Adaptive Reuse Developments

For all other adaptive reuse projects:

- The allowable density will be equal to the maximum allowed density that meets applicable minimum

housing standards; and
- The development must have access to either public water and sewer services or adequate private water and wastewater treatment systems.

Additional Provisions

For all adaptive reuse projects:

- Existing building setbacks shall remain and shall be considered legal nonconforming, but no additional encroachments shall be permitted into any nonconforming setback, unless otherwise allowed by zoning ordinance or relief is granted by the applicable authority; and
- The height of the existing structure, if it exceeds the maximum height of the zoning district, may remain and shall be considered legal nonconforming, and any rooftop construction shall be included within the height exemption.

In summary, while the new adaptive reuse amendments provide some examples of potential commercial buildings which may be converted (*i.e.*, offices, schools, religious facilities, and medical buildings), the possibilities are endless for potential conversion projects. This is particularly true in the case of existing commercial buildings on substandard lots or which are dimensionally nonconforming. Projects which may have previously been impracticable due to the need for multiple forms of zoning relief may now be entirely permitted by right without any zoning relief being necessary.

For more information on these new changes to land use and zoning law in Rhode Island, please connect with PSH land use attorney, Michael L. Mineau. Partridge Snow & Hahn LLP is available to answer questions about these important new legislative changes. For additional information and resources, visit the firm's Development, Land Use & Zoning page.

Date Created
November 17, 2023