



THE RETAIL PIVOT

Land Use Considerations Amidst Industry Transformation

Andrea L. Gomes and Andrew R. Morin Hinckley Allen

Contrary to popular belief, brick-and-mortar retail spaces are not dying; they are evolving, and the zoning implications are significant.

In 2023, North American retail vacancy rates declined to record lows, and less than 50 million square feet of new space was delivered to the U.S. retail market. Most of that retail activity was attributed to spaces

of 3,000 square feet or less, which was primarily driven by the demand for quick-service restaurants. Indeed, almost 20 percent of the leasing activity in the fourth quarter of 2023 was attributed to the food and beverage sector alone, including retailers like Starbucks and Crumbl Cookies. As a result, finding quality retail space for lease has become increasingly difficult, forcing many retailers to change how their businesses operate in their existing locations.

And change certainly is necessary, particularly for larger retailers like grocery store chains and “big box” stores. The influx of personal shoppers, curbside pickup and delivery; buy online, pick-up or return in-store policies; Amazon lockers, and “reverse logistics” platforms, like Happy

Returns, a UPS company that handles online product returns for a variety of retailers, have transformed the daily operation and physical footprint of the average retailer. What once was an exclusive retail use has now morphed into some combination of retail, office, warehouse, and logistics uses.

As a result, prior zoning approvals may no longer apply, or retailers may be unable to comply with their current land use approvals. In order to mitigate time and cost, it is key to review the zoning regulations early in the development process, as many of the new features retailers need often trigger the need for compliance with one or more land use standards. For example:

- **Building size** — Some retailers may

need to expand their footprint to accommodate additional deliveries and goods storage, while others will seek to reduce their footprint. Retailers should be cognizant of lease limitations or requirements when adjusting their footprint. For example, there may be a minimum leased floor area requirement or restrictions on subleasing the now-vacant space to another retailer.

- **Parking** — The number of parking spots needed by the retailer may change as a result of shoppers spending less time in stores and, instead, relying on curbside pickup. Designating certain parking areas for curbside pickup or employee parking may be necessary. Additional parking and loading space for deliveries may also be a concern. In some instances, the construction of loading docks and garages may be necessary. If building floor plans are adjusted to accommodate, for example, a reduced retail area in exchange for additional warehousing space, or an area where customers may sit to eat food purchased on-site, regulatory parking requirements may change.

- **Traffic** — The number of traffic trips and the anticipated distribution of traffic in and around the site may change. Retailers should pay particular attention to vehicle and pedestrian circulation in and around their sites. Ensuring that emergency access is preserved is very important. Equally important is the preservation of pedestrian safety as traffic patterns change, particularly in transit-oriented development areas where pedestrian use is high. Retailers who require drive-through windows should pay particular attention to whether drive-throughs are permitted in the zone in question. Local zoning authorities will be concerned with vehicle queuing and circulation if a drive-through is proposed.

- **Signage** — With changes to parking, traffic, and new offerings, new signage will likely be required.

- **Lighting** — Additional or altered lighting to accommodate new features should also be considered, particularly where enhanced lighting can increase security and vehicle and pedestrian safety in and near the retailer's site.

- **Stormwater** — Any increases in building area, parking area, or other impervious surfaces may require updates to the site's stormwater management infrastructure. Complications may arise if the applicable stormwater regulations or standards have changed since the management system was designed and constructed. Some towns may even require updates to the entire system depending on the scale of the proposed improvements. In Connecticut, for example, the state Stormwater Quality Manual was

revised in 2024, incorporating significant changes to stormwater design standards, which would apply to new development projects.

- **Landscaping and Screening** — Zoning regulations often require screening or landscaping measures, such as plantings or fencing, to shield the public's or adjoining property owners' views from parking areas, loading areas, or refuse storage areas. Retailers proposing substantial revisions to the layout of their premises should be aware of these requirements and tailor their development plans accordingly.

- **Related Approvals** — Depending on the scope of work proposed, retailers may need other related approvals, including wetlands, sewer or septic, and health department approvals.

Some retailers will also need to seek amendments to certain zoning approval conditions, such as hours of operation and limitations on delivery frequency. Operations and maintenance or trash management plans may also need to be revised. If deliveries occur off-hours, municipal noise ordinances may become an issue, particularly for retailers located near residential uses.

Failure to plan for these various changes may have far-reaching implications. For example, one study details how the rise of e-commerce goods deliveries has caused a rapid rise in the demand for curbside space, which, when insufficient, may cause traffic congestion issues and result in illegal parking, both of which present possible safety concerns.

Those retailers who have managed to secure new space are not out of the woods either. Retrofitting existing buildings to accommodate a proposed retail use can create similar land use challenges to those listed above, most of which must be addressed before doors open to the public. For example, a new retailer in a multi-tenant plaza could face challenges with shared parking among other tenants. Thus, when selecting a space for lease, retailers should closely evaluate the available shared parking, including the varying peak parking demands among the various tenants. Similarly, retailers may face obstacles if the new space is nonconforming with the current zoning regulations, building code, fire safety code, fire prevention code or Americans with Disabilities Act requirements for accessibility. Some municipalities will require a retailer to bring a nonconforming building into full compliance with the applicable regulations or code if the proposed improvements are more than just cosmetic or surpass a certain threshold (e.g., improvements to more than fifty percent of the building space).

Renewable energy incentives may be an attractive option if greater improvements are necessary.

Given the above, it comes as no surprise that new land use approvals may be required, whether a retailer is retrofitting its existing space to accommodate a new retail experience, or moving to a new building. To add yet another layer of potential complication: it is quite possible that local zoning regulations have not caught up to these new retail trends, thus forcing a retailer-applicant to either plow forward with outdated regulations or seek to revise existing regulations to reflect those trends.

Unfortunately, neither approach is a guaranteed path forward. Land use approvals can be lengthy and complicated, and, at times, contentious. If possible, retailers should incorporate changes to their retail sites in a manner that will not trigger land use review. Determining what modifications will trigger land use review will vary by municipality. If avoiding land use review is not possible, there are often different steps that can mitigate the length of time spent obtaining approvals, such as seeking modifications that require only administrative (staff) approval, which often take less time than an application to a local board or commission. To navigate them successfully, consulting counsel who is familiar with navigating the local land use landscape early on in the development process is key.



Andrea L. Gomes, a Real Estate partner, specializes in land use, environmental, and municipal law. Andrea regularly represents clients before local and state agencies and in state court. She has assisted with obtaining municipal approvals for clients and has counseled municipal agencies with various land use permitting and litigation matters. Andrea may be reached at 860-331-2603 or agomes@hinckleyallen.com.



Andrew R. Morin, a Real Estate associate, specializes in land use, development, environmental, and municipal law. He counsels property developers, collaborates with engineers and consultants, and represents clients before land use agencies. Andrew also brings real property litigation experience to the firm and to his practice. Andrew may be reached at 860-331-2619 or amorin@hinckleyallen.com.