

**AN OVERVIEW OF  
COMMERCIAL CONVERSION:  
A VIABLE SOLUTION TO AMERICA’S  
CURRENT HOUSING CRISIS?**

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## INTRODUCTION

Cities implement zoning laws with the primary objectives of enhancing the visual appeal of exterior structures, ensuring safety, and regulating the construction of buildings in specific areas. While these laws are constitutionally sound and designed for the public good,<sup>1</sup> they inadvertently contribute to socioeconomic discrimination. The enforcement of these laws often discriminates against non-traditional,<sup>2</sup> low income,<sup>3</sup> and minority families.<sup>4</sup> This discriminatory impact can lead to the displacement of these families, creating a widening gap between the lower class and those with greater wealth.

One significant consequence of zoning laws is the spatial separation of different types of housing, particularly the forced segregation of multi-family housing from single-family housing.<sup>5</sup> This separation has substantial implications for the overall housing supply.<sup>6</sup> By restricting the placement of multi-family housing,

<sup>1</sup> See *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386-87 (1926).

<sup>2</sup> Vanessa de la Torre, *8 Adults, 3 Children, 1 House – And a Big Zoning Dispute in Hartford*, HARTFORD COURANT (Nov. 20, 2014, 10:37 PM), <https://www.courant.com/2014/11/20/8-adults-3-children-1-house-and-a-big-zoning-dispute-in-hartford/> [<https://perma.cc/2CVU-GVND>] (discussing the attempt by the city at forcing out a family of eleven from their Hartford home because they violated an ordinance that only allowed those who were “related by blood, marriage, civil union, or legal adoption” to co-habitate).

<sup>3</sup> Jaelynn Grisso, *Code Violations Can Be Double-edged Sword for Low-income Residents*, MATTER NEWS (June 4, 2021, 2:31 PM), <https://www.matternews.org/community/developus/code-violations-can-be-double-edged-sword-for-low-income-residents> [<https://perma.cc/YB9E-PEEH>] (describing how zoning regulations disproportionately impact low-income families through code violations that low-income families struggle to pay and keep up with).

<sup>4</sup> Allison Shertzer, Tate Twinam & Randall P. Walsh, *Race, Ethnicity, and Discriminatory Zoning* 5-6 (Nat’l Bureau of Econ. Rsch., Working Paper No. 20108), [https://www.nber.org/system/files/working\\_papers/w20108/w20108.pdf](https://www.nber.org/system/files/working_papers/w20108/w20108.pdf) [<https://perma.cc/7WH5-XKP8>] (discussing the history of zoning’s impact on racial segregation, the ban of racial zoning and the continuance of racial zoning through indirect methods).

<sup>5</sup> Nathaniel Meyersohn, *The Invisible Laws that Led to America’s Housing Crisis*, CNN BUSINESS (Aug. 5, 2023, 3:12 AM), <https://www.cnn.com/2023/08/05/business/single-family-zoning-laws/index.html> [<https://perma.cc/F24N-ZA7F>].

<sup>6</sup> *Id.*

zoning laws limit the diversity of housing options in various neighborhoods.<sup>7</sup> This limitation proves particularly detrimental in areas where demand for affordable housing is high.<sup>8</sup>

The discriminatory nature of zoning enforcement can manifest in various ways. For instance, certain zoning regulations might favor larger, more expensive single-family homes over more affordable multi-family housing options.<sup>9</sup> As a result, low-income families, minority communities, and even middle-class families often find themselves disproportionately affected by zoning practices, facing obstacles in accessing suitable housing.<sup>10</sup>

This ultimately results in a reinforcing cycle of socioeconomic disparities, where disadvantaged communities are more likely to be subjected to zoning practices that limit their housing options and contribute to their displacement. This situation further deepens the divide between socioeconomic classes.

While zoning laws aim to organize urban development for the benefit of the public, it is crucial to critically examine their unintended consequences and explore ways to mitigate their discriminatory impact. Addressing these issues may involve reassessing zoning regulations, promoting inclusive housing policies, and working towards equitable urban development practices that foster socioeconomically diverse and integrated communities. This Comment endeavors to tackle these challenges by proposing a single solution: the commercial conversion of vacant properties.

Part I recounts the background and history of zoning in the United States. This section addresses the problems that zoning resolved in addition to the issues it caused. Further, part expounds upon the constitutionality of zoning.

Part II addresses the issues that zoning causes in the modern age, specifically how zoning laws affect housing prices and create

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Alexander von Hoffman, *Single-Family Zoning: Can History Be Reversed?*, JOINT CTR. FOR HOUS. STUD. HARVARD UNIV. (Oct. 5, 2021), <https://www.jchs.harvard.edu/blog/single-family-zoning-can-history-be-reversed> [<https://perma.cc/LJX5-W7PQ>] (“To ensure that new development would serve only high-income brackets, suburbs commonly imposed large minimum house-lot sizes, often up to three acres but sometimes upwards of ten.”).

<sup>10</sup> *Id.*

housing shortages. Part III then proposes commercial conversion as a viable solution to the housing shortage caused by zoning laws, laying out guidelines for cities on how they can implement rezoning and incentives to create a solution to the housing shortage. Part IV presents examples of commercial conversion at work in cities like Seattle, Washington and Memphis, Tennessee, and states such as California and New York. Lastly, Part V looks at the most prominent argument against commercial conversions and how municipalities have responded.

Commercial conversion is not an exclusive solution to the U.S. housing crisis, and this Comment does not attempt to raise commercial conversion as the only or final solution. Commercial conversion simply represents one solution of many, and this Comment lays out how conversions can provide housing, how cities and states are currently applying the solution, and how cities overcome limitations to conversions.

#### I. THE IMPACT OF ZONING REGULATIONS ON THE HOUSING MARKET

Zoning emerged as a significant issue in the early 1900s, driven by homeowners' efforts to preserve their property values amidst the construction of towering skyscrapers and polluting factories built by industrial companies near their residential neighborhoods.<sup>11</sup> To address this concern, cities implemented zoning regulations to safeguard the ability of homeowners and housing developers to profitably sell their residential properties.<sup>12</sup> Prior to the establishment of zoning laws, disputes between neighbors had to be settled in court.<sup>13</sup>

As the number and size of buildings increased, maintaining control over developers became increasingly challenging.<sup>14</sup> Notably, cities like New York experienced controversies surrounding

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<sup>11</sup> Amanda Erickson, *The Birth of Zoning Codes, a History*, BLOOMBERG (June 19, 2012 7:02 AM), <https://www.bloomberg.com/news/articles/2012-06-19/the-birth-of-zoning-codes-a-history> [<https://perma.cc/W2ZZ-LST9>] (Zoning emerged as a result of American's "Not in My Back Yard" attitudes towards the economic growth of their cities causing an escalation in zoning ordinances.).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (allowing citizens to address their concerns through city planning meetings allowed concerns to be met faster than a civil trial could be resolved).

<sup>14</sup> *Id.*

structures such as the forty-two-story Equitable Building, which cast extensive shadows over surrounding buildings.<sup>15</sup> The construction of the Equitable Building in 1915 led to the introduction of the United States' inaugural Zoning Resolution in 1916.<sup>16</sup> This resolution imposed limits on building heights and delineated residential areas in New York.<sup>17</sup>

The success of this resolution in addressing urban development challenges prompted other growing cities across the country to adopt similar measures to manage their expanding populations.<sup>18</sup> Thus, the early 1900s marked the beginning of the widespread implementation of zoning regulations in the United States.

### A. *The Constitutionality of Zoning*

The swift implementation of zoning regulations raised concern among landowners, who argued that they possessed constitutional rights to determine land use.<sup>19</sup> Landowners were worried that the government might have the authority to seize their property based on aesthetic zoning laws, which could potentially designate their homes as non-compliant with the municipality's code standards which could, in turn, end in the taking of their property.<sup>20</sup> In areas where zoning prohibited multi-family housing, families were anxious about possibly being forced to relocate to districts that necessitated a substantial commute.<sup>21</sup> Legal challenges to these

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<sup>15</sup> *City Planning History*, NYC PLANNING, <https://www.nyc.gov/site/planning/about/city-planning-history.page?tab=2%C2%A0> [https://perma.cc/M6XK-TTY5] (last visited Apr. 10, 2024).

<sup>16</sup> *Id.* (discussing how New York City citizens' concerns over their property values being affected by rising skyscraper set in motion the United States' first zoning ordinance, which simply controlled the height of buildings and designated districts for residential purposes but became the golden model for communities throughout the country).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* While cities were adopting New York's first zoning ordinance, New York was constantly amending theirs in order to keep up with its growing city, therefore revolutionizing land use in the United States. *Id.*

<sup>19</sup> *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 380-84 (1926).

<sup>20</sup> *Berman v. Parker*, 348 U.S. 26, 28-32 (1954).

<sup>21</sup> George Washington University, *Longer Commutes Affect the Cost of Living in Large Cities More than Zoning Restrictions*, PHYS.ORG (Jul. 22, 2022), <https://phys.org/news/2022-07-longer-commutes-affect-large-cities.html> [https://perma.cc/3S8Y-XQ5X].

zoning regulations, including cases such as *Berman v. Parker*<sup>22</sup> and *Village of Euclid v. Ambler Realty Co.*,<sup>23</sup> emerged as attempts to address and contest the perceived infringement on property rights and the potential impacts on residents.

1. *Village of Euclid v. Ambler Realty Co.*

In *Village of Euclid v. Ambler Realty Co.*, the Supreme Court declared in a 6-3 decision that land-use zoning banning the construction of homes other than single-family homes was constitutional.<sup>24</sup> This decision established the practice of land-use zoning in the United States. The Supreme Court's reasoning was based in public welfare as the village council wanted to separate "trades, industries, apartment houses, two-family houses, single family houses, etc." into separate locations.<sup>25</sup> The council separated single family housing from multifamily housing into different classes of districts.<sup>26</sup> Single family housing was separated into its own district with public parks and railways, while apartment housing was grouped with "hotels, churches, schools, public libraries, museums, private clubs, community center buildings, hospitals, sanitariums, public playgrounds, and recreation buildings, and a city hall and courthouse."<sup>27</sup>

The Supreme Court did not offer a precise definition regarding the concept of public welfare. Still, it did establish that the foundation of zoning regulations lies within a continually evolving scope.<sup>28</sup> The Court emphasized the absence of a clear "precise delimitation" to delineate the boundaries of public welfare.<sup>29</sup> As part of its discussion, the Court enumerated various aspects falling within this broad scope, including the prevention of population congestion, the right to a tranquil residence, facilitation of local transportation, maintenance of an orderly district, police protection, and the implementation of fire, safety, and traffic

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<sup>22</sup> 348 U.S. 26 (1954).

<sup>23</sup> 272 U.S. 365 (1926).

<sup>24</sup> *Id.* at 394-96.

<sup>25</sup> *Id.* at 379-80.

<sup>26</sup> *Id.* at 380-81.

<sup>27</sup> *Id.* at 380.

<sup>28</sup> *Id.* at 387.

<sup>29</sup> *Id.*

regulations.<sup>30</sup> In essence, the Court held that employing police power to establish zones for residential and commercial properties, based on the belief that this separation would mitigate the harms associated with industrial business, constituted a legitimate use of governmental authority.<sup>31</sup>

However, the Supreme Court included in its discussion the labeling of multi-family housing or apartments as parasitical and a destroyer of residential character.<sup>32</sup> The Supreme Court whittled apartment houses down to simply a nuisance that deprived children of open air and space enjoyed by those in “more favored localities” while failing to realize the future damage done to families living in those nuisances.<sup>33</sup> This line of reasoning neglected the flexibility inherent in the concept of public welfare, as acknowledged by the Court itself.<sup>34</sup> The Court’s characterization of apartment homes implied that residents in such homes should not be afforded the same legal protections and rights granted to those residing in single-family zones, a viewpoint that raises questions about the equitable application of zoning regulations and the protection of individual rights across different housing types.

Decades later, discussions persist regarding the motivations behind the Supreme Court’s landmark decision affirming the constitutionality of land-use control. Some scholars posit that the decision was influenced by political pressures to regulate the influx of immigrants, African Americans, and low-income families opting for dense multi-family housing.<sup>35</sup> This argument finds support in the Court’s deliberations in *Village of Euclid*, where there is evident disapproval of apartment housing, primarily associated with the

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<sup>30</sup> *Id.* at 392-93.

<sup>31</sup> *Id.* at 389-90.

<sup>32</sup> *Id.* at 394.

<sup>33</sup> *Id.* at 394-95.

<sup>34</sup> *Id.* at 387 (“The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions”).

<sup>35</sup> Richard H. Chused, *Background to Village Euclid v. Ambler Realty Co.*, in A PROPERTY ANTHOLOGY 129, 132 (1997).

societal groups that authorities sought to control.<sup>36</sup> Despite the Supreme Court's argument that zoning regulations are constitutional when rooted in public welfare, it appears that this rationale predominantly benefits those who can afford single-family homes.

## 2. *Berman v. Parker*

In *Berman v. Parker*, the Supreme Court ruled that requiring landowners to comply with aesthetic zoning laws was within the limits of the Constitution.<sup>37</sup> This decision granted local governments the authority to condemn "blighted" properties and allow the sale of the property to private developers.<sup>38</sup> The Court's reasoning was narrowly construed to allow condemning property only if it was necessary to clear or prevent slums, specifically clearing areas that were "injurious to the public health, safety, morals and welfare" of the public.<sup>39</sup> The stipulation of the sale is that the property be used to serve a "public purpose," which includes promoting the "physical, aesthetic, sanitary, or economic quality of an area."<sup>40</sup> Further, only just compensation for the property is required under the Fifth Amendment, which allows the taking of private property for public use and purposes as long as the property owner is justly compensated.<sup>41</sup> Ultimately, the Court held that the use of zoning laws to condemn property that is harmful to public health, taking the property, and then selling it to private parties who will use the property for a public purpose is fully within the limits of the Constitution.<sup>42</sup>

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<sup>36</sup> See F. John Devaney, *Tracking the American Dream: 50 Years of Housing History from the Census Bureau: 1940 to 1990*, CURRENT HOUS. REPS. 28 (1994) <https://www.huduser.gov/portal/Publications/pdf/HUD-7775.pdf> [<https://perma.cc/2LML-X5AC>] (citing statistics showing white Americans as having the highest percentage of homeowners while minority groups often fall far behind).

<sup>37</sup> 348 U.S. 26 (1954).

<sup>38</sup> *Id.* at 35.

<sup>39</sup> *Id.* at 31.

<sup>40</sup> Daniel Liston, *Summary of Berman v. Parker*, OLR RSCH. REP. (Apr. 10, 2013), <https://www.cga.ct.gov/2013/rpt/2013-r-0211.htm> [<https://perma.cc/2NR8-MC5K>].

<sup>41</sup> U.S. CONST. amend. V ("nor shall private property be taken for public use, without just compensation"). See also Liston, *supra* note 36.

<sup>42</sup> Liston, *supra* note 40.



The decision in *Berman* had “catastrophic” consequences.<sup>43</sup> Thousands of individuals were displaced in the name of “urban renewal” or the promotion of economic development.<sup>44</sup> Just like *Euclid*, *Berman*’s outcome primarily affected minorities. Wendell E. Pritchett analyzes the Court’s use of the word “blight” and its racial connotations:

The role of blight terminology in restricting racial mobility has also been under-appreciated by legal scholars. Blight was a facially neutral term infused with racial and ethnic prejudice. While it purportedly assessed the state of urban infrastructure, blight was often used to describe the negative impact of certain residents on city neighborhoods. This “scientific” method of understanding urban decline was used to justify the removal of blacks and other minorities from certain parts of the city. By selecting racially changing neighborhoods as blighted areas and designating them for redevelopment, the urban renewal program enabled institutional and political elites to relocate minority populations and entrench racial segregation. *Berman* was decided just six months after *Brown v. Board of Education*, but while *Brown* receives more attention, *Berman* was equally influential in shaping American race relations. The urban renewal program played a crucial role in redistributing urban populations and creating additional obstacles to efforts to achieve integration.<sup>45</sup>

This division of races and socio-economic classes forced a greater divide between an already divided nation. The purpose of the *Berman* decision was described by the Court as the good of public welfare, but the Court’s analysis of the term “public” covertly omitted minorities.<sup>46</sup>

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<sup>43</sup> Ilya Somin, *Two More Worthy Additions to the “Anticanon” of Constitutional Law—Berman v. Parker and Euclid v. Ambler Realty*, REASON (Sept. 21, 2021, 12:54 PM), <https://reason.com/volokh/2021/09/21/two-more-worthy-additions-to-the-anticanon-of-constitutional-law-berman-v-parker-and-euclid-v-ambler-realty/> [https://perma.cc/4GHB-4ME6].

<sup>44</sup> *Id.*

<sup>45</sup> Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 6 (2003) (footnotes omitted).

<sup>46</sup> See 348 U.S. 26, 32 (1954) (“the role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one.”).

*B. Why Do We Have Zoning Laws?*

In both *Euclid* and *Berman*, the Supreme Court's primary reasoning was rooted in the concept of the public welfare of the community. In *Berman*, the Supreme Court defined public welfare as "broad and inclusive," encompassing aspects such as creating beautiful, clean, healthy, and well-patrolled communities.<sup>47</sup> On the other hand, in *Euclid*, the Supreme Court characterized the definition of public welfare as incapable "of precise delimitation."<sup>48</sup> As previously discussed, this definition includes considerations ranging from the ability of the police to protect specific districts to homeowners' rights against nuisances.<sup>49</sup>

As outlined in Part I(A)(1), zoning regulations are constitutional under the police power of local governments if they are not deemed unreasonable or arbitrary and are related to the public welfare of the community.<sup>50</sup> The term "public welfare" is broad, and one's land use rights are constantly in flux, expanding and contracting in tandem with societal changes.<sup>51</sup> Consequently, zoning regulations evolve to adapt to these changes.

The overarching goal of zoning regulations is to ensure the protection of the health and safety of citizens. They achieve this by preventing industrial businesses from encroaching into residential areas, mitigating nuisances that could impact property values, and addressing other community-related concerns. While these effects of zoning regulations are beneficial in safeguarding public welfare, they have also been identified as contributors to America's ongoing housing crisis.<sup>52</sup> The tension lies in balancing the public welfare goals achieved through zoning with the potential negative impacts on housing accessibility and affordability, highlighting the complex interplay between regulatory measures and their consequences in the realm of urban development.

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<sup>47</sup> 348 U.S. 26, 33 (1954).

<sup>48</sup> 272 U.S. 365, 387 (1926).

<sup>49</sup> *Id.* at 387-88.

<sup>50</sup> *See supra* Section I(A)(1).

<sup>51</sup> *See Euclid*, 272 U.S. 365; *see also Berman*, 348 U.S. 26 (both cases discuss the broadness of the term "public welfare" and its application to various land issues via zoning regulations).

<sup>52</sup> Meyersohn, *supra* note 5.

## II. ZONING AS THE CAUSE OF AMERICA'S CURRENT HOUSING CRISIS

Despite the constitutional requirement that zoning laws be connected to the public welfare of the community, in practice, they have sometimes produced outcomes contrary to this goal, particularly evident in the escalation of housing prices which have led to the displacement of families from urban areas.<sup>53</sup> One illustration of this is the adoption of zoning regulations that prohibit multi-family housing. In the landmark *Euclid* decision, the Supreme Court characterized apartment housing construction as parasitical, asserting that multi-family dwellings intensify nuisances and undermine the “residential character” of communities.<sup>54</sup> This decision catalyzed the rise of single-family housing and the discouragement of more affordable multi-family development.<sup>55</sup> Such zoning decisions result in a scarcity of affordable housing options, leaving low-income families with limited alternatives.<sup>56</sup> Often, they find themselves forced to relocate to more rural areas with fewer zoning restrictions, albeit at the cost of longer travel commutes, thereby increasing their financial strain.<sup>57</sup>

In effect, while zoning laws are intended to serve the public welfare, certain regulatory decisions have inadvertently contributed to housing affordability challenges, perpetuating a cycle of housing scarcity, rising prices, and the displacement of

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<sup>53</sup> De la Torre, *supra* note 2.

<sup>54</sup> 272 U.S. at 394-95.

<sup>55</sup> Eric Jaffe, *Is It Time to End Single Family Zoning?*, MEDIUM (Feb. 6, 2020), <https://medium.com/sidewalk-talk/is-it-time-to-end-single-family-zoning-56233d69a25a> [<https://perma.cc/94F5-FMLR>].

<sup>56</sup> *History and Breakdown of US Euclidean Zoning Regulations*, REDTHOMES <https://redthomes.com/blog/understanding-euclidean-zoning-and-its-history/> [<https://perma.cc/HQV4-TCB3>] (referring to zoning laws that allows only one type of land use in specific zones as “Euclidian” after the infamous *Euclid* decision which labeled this type of zoning constitutional.) However, these Euclidian zoning laws came with a price: limited housing and segregation by class and race.

<sup>57</sup> See Evelyn Blumenberg & Madeline Wander, *Housing Affordability and Commute Distance*, 44 URB. GEOGRAPHY 1454 (2023) <https://www.tandfonline.com/doi/full/10.1080/02723638.2022.2087319> [<https://perma.cc/ME6M-ARTE>] (explaining the correlation between housing affordability and the cost of commuting).

vulnerable communities.<sup>58</sup> This highlights the need for a careful and nuanced reevaluation of zoning regulations to strike a better balance between community interests and housing accessibility.

In 2019, a staggering seventy-five percent of residential land was exclusively designated for single-family detached homes.<sup>59</sup> This prevalence can be traced back to pivotal legal decisions such as *Village of Euclid v. Ambler Realty Co.* and *Berman v. Parker*, as well as the prevailing sentiment during that era that denser and more communal housing was considered a nuisance.<sup>60</sup> The impact of these decisions and the concurrent societal attitudes contributed to the establishment of single-family zoning, which effectively prohibits various other types of housing, including apartments, senior housing, multi-unit low-income housing, and student housing.<sup>61</sup> Such exclusive zoning practices limit the diversity of housing options within a given area; single-family zoning precludes the coexistence of a varied mix of households, hindering the creation of inclusive and multifaceted communities.<sup>62</sup> Moreover, this type of zoning exerts pressure on individuals or families whose lifestyles or housing needs do not align with the characteristics of single-family zones. As a result, they may find themselves marginalized, pushed out, or, in extreme cases, displaced, as their housing preferences and requirements do not conform to the rigid constraints imposed by single-family zoning regulations.<sup>63</sup>

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<sup>58</sup> Jenny Schuetz, *To Improve Housing Affordability, We Need Better Alignment of Zoning, Taxes, and Subsidies*, BROOKINGS (Jan. 7, 2023), <https://www.brookings.edu/articles/to-improve-housing-affordability-we-need-better-alignment-of-zoning-taxes-and-subsidies/> [https://perma.cc/VF2R-ZEYM] (discussing the impact of zoning on the housing market, especially zoning limitations on multi-family housing in three-quarters of the land in the majority of the United States).

<sup>59</sup> Emily Badger & Quoc Trung Bui, *Cities Start to Question an American Ideal: A House With a Yard on Every Lot*, N.Y. TIMES (June 18, 2019), <https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html> [https://perma.cc/E5GE-2LUX].

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Richard V. Reeves & Dimitrios Halikias, *How Land Use Regulations Are Zoning out Low-Income Families*, BROOKINGS (Aug. 16, 2016), <https://www.brookings.edu/articles/zoning-as-opportunity-hoarding/> [https://perma.cc/VNL8-CPMJ] (quoting Jason Furman, chairman of the CEA, “Zoning regulations and other local barriers to housing development [can] allow a small number of individuals to capture the economic benefits of living in a community, thus limiting diversity and mobility.” (alteration in original)).

<sup>63</sup> *Id.*

This situation underscores the need to reevaluate zoning practices to foster more inclusive and diverse communities that accommodate a range of housing options, lifestyles, and socioeconomic backgrounds. Balancing the preservation of community character with the promotion of housing diversity is crucial to addressing the challenges arising from exclusive zoning policies.

Aesthetic zoning regulations contribute to the displacement of families from cities, albeit for a different reason: visual preferences. Unlike other zoning regulations that focus on land use or structure type, aesthetic zoning is concerned with controlling the appearance of structures.<sup>64</sup> While this control aims to enhance the visual appeal of developments, it also introduces economic implications that can lead to housing unaffordability and displacement.<sup>65</sup> Under aesthetic zoning, developers must allocate additional funds for the beautification of their properties to align with prevailing aesthetic trends. This financial investment in the visual appeal of projects, while intended to enhance the overall aesthetics of the community, has the unintended consequence of escalating rental prices. As developers pass on the costs of meeting aesthetic standards to tenants, rent prices for individuals residing in these aesthetically regulated projects soar.<sup>66</sup>

The resultant increase in rental costs can reach financially prohibitive levels for low-income individuals and, in larger cities, even for those in the middle class.<sup>67</sup> Consequently, the rising costs associated with complying with aesthetic standards exacerbate the housing affordability crisis, displacing individuals and families unable to meet the heightened financial demands of these aesthetically regulated properties.<sup>68</sup> In essence, while aesthetic zoning aims to improve the visual appeal of urban areas, its

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<sup>64</sup> Jesse Ibanez, *What Is Aesthetic Zoning?*, GREENHOUSE GRP. (Feb. 3, 2023), <https://thegreenhousegroupinc.com/what-is-aesthetic-zoning/> [https://perma.cc/L2Z3-EYGH].

<sup>65</sup> Vanessa Brown Calder, *Zoning, Land-Use Planning, and Housing Affordability*, CATO INST. (Oct. 18, 2017), <https://www.cato.org/policy-analysis/zoning-land-use-planning-housing-affordability> [https://perma.cc/63AB-L5YY].

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Beth Osborne, *Blame Zoning, Not Public Transportation, for Displacement*, SHELTERFORCE (Dec. 2, 2019), <https://shelterforce.org/2019/12/02/blame-zoning-not-public-transportation-for-displacement/> [https://perma.cc/VF2D-NKWA].

inadvertent impact on housing affordability underscores the need for a balanced approach that considers both aesthetic concerns and the socioeconomic diversity of communities to prevent unintended displacement and housing disparities.

Research indicates that zoning regulations significantly exacerbate the current housing crisis by constraining housing supply through stringent development regulations, consequently leading to soaring housing prices.<sup>69</sup> One compelling study revealed that for each regulation imposed in California cities, there is a corresponding 4.5 percent increase in costs for owner-occupied housing and a 2.3 percent increase in rental housing.<sup>70</sup> The impact is particularly pronounced in the realm of multi-family housing, affecting cities such as Manhattan, San Francisco, and San Jose, where apartment costs may surge by up to fifty percent.<sup>71</sup> This housing crisis manifests in various ways, including low-income families being unable to afford homeownership, struggling to meet the demands of code violations, and experiencing a sharp rise in rental prices.<sup>72</sup> The implications are not uniform across all cities; some are hit harder than others, especially in areas with high demand and limited housing supply.<sup>73</sup>

Given the compelling evidence linking zoning regulations to the housing crisis, the question becomes: What is the solution? Addressing this crisis necessitates a comprehensive approach that involves reevaluating and potentially reforming zoning regulations. This might include streamlining development processes, promoting mixed-use zoning, and encouraging the construction of affordable housing units. Additionally, policymakers could explore innovative solutions such as inclusionary zoning, density bonuses, and other measures aimed at balancing the need for community development

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<sup>69</sup> Calder, *supra* note 65.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> A more in-depth discussion, see Ali Foyt, *Legal Obstacles to Affordable Housing Development*, 56 HOUS. L. REV. 505 (2018); Mekonnen Firew Ayano, *Tenants without Rights: Situating the Experiences of New immigrants in the U.S. Low-Income Housing Market*, 28 GEO. J. ON POVERTY L. AND POL'Y 159 (2021).

<sup>73</sup> See generally Jeff Hamann, *Top 10 Metros with the Largest Housing Shortages*, JANOVER (Sep. 7, 2023), <https://www.multifamily.loans/apartment-finance-blog/top-10-metros-with-the-largest-housing-shortages/> [<https://perma.cc/KF4B-UACZ>] (listing the top ten cities with housing shortages and the amount of housing units needed to remedy the crisis).

with the imperative of ensuring housing affordability for a diverse range of residents. In essence, the solution lies in a strategic and adaptive overhaul of zoning regulations to foster more inclusive, affordable, and sustainable housing practices.

### III. IS COMMERCIAL CONVERSION THE ANSWER?

Public policy experts and academics have presented commercial conversion as a potential solution to address the increasing vacancies in commercial spaces after the COVID-19 pandemic.<sup>74</sup> This approach not only addresses the challenge of filling empty buildings but also holds promise in alleviating the ongoing housing crisis.<sup>75</sup> There is approximately one billion square feet of empty office space in the United States.<sup>76</sup> These buildings are currently deteriorating without any current purpose. Transforming these structures into residential homes would not only provide much-needed housing for areas experiencing shortages but also repurpose these empty buildings, giving them a meaningful use.

Commercial conversions are part of a broader term known as “adaptive reuse,” which involves repurposing old buildings into

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<sup>74</sup> Shawn Moura, *A Fresh Look at Office Conversions*, NAIOP (2022), <https://www.naiop.org/research-and-publications/magazine/2022/summer-2022/business-trends/a-fresh-look-at-office-conversions/> [https://perma.cc/BZD5-R4EU] (describing how the decline in demand of office buildings after COVID-19 led to an increase in interest in commercial conversions).

<sup>75</sup> See generally, Franklin Thornton, *Commercial to Residential? White House Highlights Programs that Could Help Vacancies in Downtowns*, SMART GROWTH AM. (Dec. 6, 2023), <https://smartgrowthamerica.org/commercial-to-residential-white-house-highlights-programs-that-could-help-vacancies-in-downtowns/#:~:text=According%20to%20the%20guidebook%2C%20if,families%2C%20local%20businesses%2C%20and%20community> [https://perma.cc/LMV3-RTQ8] (discussing the White House’s efforts to make commercial conversions a viable solution to the housing crisis); Jeff Ostrowski, *Will Your Next Home Be a Former Office?*, BANKRATE (Aug. 17, 2023), <https://www.bankrate.com/real-estate/office-to-condo-conversions/> [https://perma.cc/RCK3-C7TG]; *Can Repurposing Really Be the Solution to the Housing Crisis?*, PROP. F. (Dec. 7, 2023), <https://www.property-forum.eu/news/can-repurposing-really-be-the-solution-to-the-housing-crisis/17501> [https://perma.cc/C5UF-6XUN] (discussing commercial conversions and their impact on the housing market).

<sup>76</sup> Dorothy Neufeld, *Visualizing 1 Billion Square Feet of Empty Office Space*, VISUAL CAPITALIST (Jul. 7, 2023), <https://www.visualcapitalist.com/visualizing-1-billion-square-feet-of-empty-office-space/> [https://perma.cc/P96U-USTZ].

something new.<sup>77</sup> Whether transforming a hotel, factory, school, or office building, adaptive reuse or commercial conversion aims to repurpose buildings for uses which provide higher value than their current function. For the sake of clarity, this Comment will use the term “commercial conversion.”

While some skeptics question the feasibility of commercial conversion, suggesting a lack of viable buildings and a limited number of developers willing to invest in such projects, data shows that between January 2002 and December 2021, approximately 28,000 residential rental units were successfully created through commercial conversion initiatives.<sup>78</sup> Notably, 40% were conversions from office buildings, 15.5% from factories, 12.8% from hotels, and 9% from warehouses.<sup>79</sup>

Land use rights are constantly evolving.<sup>80</sup> Thus, restrictions on property rights are created based on society’s current needs.<sup>81</sup> As times have changed, a pressing need for a shift in zoning regulations has emerged. The focus should no longer be on whether commercial conversion is an actionable solution, but rather on exploring what steps cities and states can take to integrate conversion into their community development plans and zoning resolutions.

## A. Commercial Conversion Limitations

### 1. Era of Building Construction

Commercial conversion projects must meet certain architectural requirements for conversion to be possible. These requirements can vary from flexible to hard requirements with no leeway. Developers and architects first assess the time in which the building was built. Early 20th-century buildings offer the most

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<sup>77</sup> *What Is Adaptive Reuse Architecture and Why It’s Important*, MASTERCLASS (Jun. 7, 2021), <https://www.masterclass.com/articles/adaptive-reuse-architecture-guide> [https://perma.cc/G8T2-4FYB].

<sup>78</sup> William B. Millard, *Site Selection Criteria for Commercial-to-Residential Conversions: Evaluating Buildings, Locations, and Communities*, ARCHITECTURAL REC. 3 (Feb. 2023).

<sup>79</sup> *Id.*

<sup>80</sup> Jerry L. Anderson, *Property Rights in Historical Perspective*, in PROPERTY RIGHTS: A PRIMER 13 (Oct. 2001).

<sup>81</sup> *Id.*



advantages,<sup>82</sup> particularly because of their high ceilings and narrow floorplates.<sup>83</sup> These buildings often come with federal tax credit opportunities, and, since they are already established in the city, they do not require implementation of additional parking.<sup>84</sup> These attributes often make the cost of converting these buildings thirty percent lower than other commercial properties, which is why they are a top prospect for developers looking to convert commercial buildings.<sup>85</sup> However, older buildings often come with surprises, and Peter Bafitis, managing principal of New York firm RKTB and chair of AIA-New York's Housing Committee, stated that one should "be prepared for the unexpected."<sup>86</sup>

## 2. Floorplate Configuration

The second crucial factor for successfully converting a commercial property is the floorplate configuration, with five primary archetypes identified: wedge, cube, L-shaped, blinder, and slight slab.<sup>87</sup> Among these archetypes, the wedge and cube models are typically deemed the most suitable for conversion purposes.<sup>88</sup> The efficiency of the floorplate is deemed "critical" in determining the viability of a commercial property for conversion.<sup>89</sup> If the floorplate fails to meet the established standards for conversion, the feasibility of the entire conversion process may be at risk.

Another vital consideration in evaluating floorplate configuration is the structural load.<sup>90</sup> If a building requires reinforcement of its structural system, this often significantly increases costs. Commercial properties, particularly office buildings, generally have lower structural loads than apartment

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<sup>82</sup> Millard, *supra* note 78, at 4.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 5.

complexes.<sup>91</sup> Consequently, the structural load is a pivotal aspect to assess when determining the feasibility of a conversion. The need for structural reinforcement can substantially impact the overall cost-effectiveness of the conversion, making it essential to carefully evaluate and plan for any necessary modifications to the building's structure.<sup>92</sup> A thorough examination of the floorplate configuration and its associated structural load is imperative to ensure that a commercial property is not only suitable for conversion but also economically viable.

### 3. Rezoning

Adapting regulatory requirements to suit the needs of commercial conversions presents a comparatively more feasible endeavor than undertaking structural alterations to an early 20th-century building. In the context of commercial conversions, a primary regulatory challenge lies in the need to modify the existing zoning of the building—a process commonly referred to as rezoning. This discussion will specifically address how rezoning applies to buildings which are converted from commercial properties to residential or mixed-use purposes. Mixed-use zoning permits the coexistence of commercial and residential activities within a property, fostering a diverse and dynamic utilization of the space.<sup>93</sup> On the other hand, residential zoning is specifically tailored for housing units.

For commercial conversion projects, especially those transitioning to residential use, the rezoning process typically involves multi-family housing, although single-family housing may also be considered. Rezoning is an intricate process that varies

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<sup>91</sup> *Id.* (“Typical residential floorplates with a center double-loaded corridor are around 65 feet wide, allowing apartments up to a 30-foot lease span from corridor to window. With commercial floorplates in the range of 40,000 square feet, or roughly 150 feet by 300 feet . . . ‘You have to carve them out to make them work . . . so adding onto the buildings can be very, very costly’”).

<sup>92</sup> *Id.*

<sup>93</sup> Mike Tolj, *The Complete Guide to Rezoning Commercial Property in 2024*, TOLJ COM. REAL EST. (Jan. 2, 2024), <https://toljcommercial.com/rezoning-commercial-property/> [https://perma.cc/8LG9-ENGJ].

across municipalities, each with a unique set of regulations.<sup>94</sup> However, most cities share a common procedural pattern which entails submitting an application, paying the requisite fees, and the ultimate approval by a governmental entity overseeing zoning matters.<sup>95</sup>

Understanding this standard rezoning procedure is fundamental for stakeholders involved in commercial conversion initiatives. By comprehending and navigating the regulatory landscape, these individuals and entities can facilitate a smoother transition from commercial to residential or mixed-use purposes, aligning their projects with local regulations and promoting community development. This recognition underscores the importance of proactive engagement with regulatory processes when repurposing existing structures to meet contemporary needs.

Rezoning a commercial property is a strategic decision typically arising from the landowner's assessment that the current commercial use is no longer the most optimal or profitable for their property.<sup>96</sup> Once the landowner reaches this conclusion, rezoning involves engaging with the local planning board and formally requesting a change in the zoning designation for their property.<sup>97</sup> This process varies depending on the location and follows a set of procedures defined by the local municipality.<sup>98</sup>

Notably, to initiate the rezoning process, the property owner usually submits an application to the local planning board. The application is typically a formal document that outlines the reasons for the proposed rezoning and presents the intended future use of the property. The application fee is a financial consideration

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<sup>94</sup> Jenny Schuetz, *Is Zoning a Useful Tool or a Regulatory Barrier?*, BROOKINGS (Oct. 31, 2019), <https://www.brookings.edu/articles/is-zoning-a-useful-tool-or-a-regulatory-barrier/> [<https://perma.cc/U8BC-XUDH>] (describing what zoning is and how it regulates housing development).

<sup>95</sup> *How Properties Get Rezoned and Why It's Difficult*, BLDG INSPECTION SERVS., <https://bis-inspections.com/2022/08/12/rezoning-property-from-residential-to-commercial/> [<https://perma.cc/UK9J-ZK8N>] (last visited Apr. 10, 2024).

<sup>96</sup> *Id.*

<sup>97</sup> *How Do You Rezone Property*, DESAUTEL BROWNING L. (Aug. 22, 2018), <https://desautelesq.com/how-do-you-rezone-property/> [<https://perma.cc/42GR-5X2Q>].

<sup>98</sup> *Id.*

accompanying this request determined by the city in which the property is located.<sup>99</sup>

For example, in Nashville, the application fee is \$2,050 with an additional \$4,000 fee for changing the text of the zoning regulation.<sup>100</sup> In Indianapolis, the rezoning fee structure is more complex and is based on factors such as the current zoning classification of the property and the intended new zoning designation.<sup>101</sup> The fee in Indianapolis ranges from \$479 to \$5,499, reflecting the varying costs associated with different zones within the city.<sup>102</sup> These fees serve as a financial commitment from the property owner and are intended to cover the administrative costs associated with processing and evaluating the rezoning application. It's important to note that these fees can fluctuate not only between cities but also within different zones of the same city. This underscores the need for property owners to be aware of the specific regulations and costs applicable to their particular location when considering a rezoning request. In summary, the process of rezoning a commercial property involves a strategic decision by the landowner, a formal application to the local planning board, and payment of associated fees that vary based on the city and the specifics of the rezoning request.<sup>103</sup>

In most cities, a planning commission, board, or council plays a pivotal role as the decision-making body for rezoning matters. In Nashville, for instance, a planning commission evaluates rezoning applications and offers recommendations to the metropolitan council.<sup>104</sup> The metropolitan council, in turn, holds the authority to decide whether to approve or deny the rezoning request.<sup>105</sup> The

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<sup>99</sup> See *Rezone My Property*, METRO. GOV'T NASHVILLE & DAVIDSON CNTY., <https://www.nashville.gov/departments/planning/land-development/rezone-my-property> [<https://perma.cc/Y5VY-Y8D8>] (last visited Apr. 10, 2024).

<sup>100</sup> *Id.*

<sup>101</sup> See *Filing Fee Schedule for the Metropolitan Development Commission* (Jan. 1, 2011), <https://citybase-cmsprod.s3.amazonaws.com/2fa83232be514867ae5f1775ef9ce2a0.pdf> [<https://perma.cc/42P5-5AVN>]; see also *Land Use Petition Forms and Fees: Filing Fees and Land use applications*, IND. DEPT METRO DEV., <https://www.indy.gov/activity/land-use-petition-forms-and-fees> [<https://perma.cc/7Q3H-BQNT>] (last visited May 9, 2024).

<sup>102</sup> *Id.*

<sup>103</sup> See *Rezone My Property*, *supra* note 99; *Fee Schedule*, *supra* note 101.

<sup>104</sup> See *Rezone My Property*, *supra* note 99.

<sup>105</sup> *Id.* (explaining the different zoning classifications, overlays and other criteria one would need to know when submitting an application).

decisions made by these entities are influenced by local sentiments regarding the proposed change and are guided by the goal of ensuring the optimal use of the property.<sup>106</sup>

As stated, the criteria for rezoning decisions are often shaped by the community's attitudes and the vision for the area's development. Property owners seeking rezoning are advised to review the community plan for the region in question.<sup>107</sup> This proactive step ensures that the proposed rezoning aligns with the community's anticipated future needs and aspirations. Aligning with the community plan demonstrates that the conversion fits within the community's overall vision, making it more likely that the rezoning application will be accepted.

For these reasons, understanding and responding to the needs and desires of the community are crucial elements in streamlining the application process. This is because the decision-making entity considers the input and preferences of the community when assessing the viability of a rezoning request. A well-supported proposal that resonates with the community's needs and wants is more likely to garner approval.

An illustrative example of community acceptance can be found in Minneapolis, where the City Council voted 12-1 to rezone every single-family zone simultaneously.<sup>108</sup> This decision was widely accepted as it facilitated the construction of multi-family housing, offering the potential for lots of 5,000 square feet to be converted into multi-family housing units.<sup>109</sup> This resulted in the creation of almost 6,200 additional housing units in the area, demonstrating how a forward-thinking rezoning decision can positively impact housing availability and community development.<sup>110</sup>

The rezoning of an entire single-family zone in Minneapolis serves as an example of blanket rezoning or "upzoning," a strategy wherein cities implement comprehensive rezoning plans to address

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<sup>106</sup> *Id.* (suggesting that property owners requesting a change meet with neighbors and council members who would be affected by the zoning change).

<sup>107</sup> *Id.*

<sup>108</sup> Miguel Otárola, *Minneapolis City Council Approves 2040 Comprehensive Plan on 12-2 Vote*, STAR TRIB. (Dec. 7, 2018, 10:22 PM), <https://www.startribune.com/minneapolis-city-council-approves-2040-comprehensive-plan-on-12-1-vote/502178121/> [https://perma.cc/HS3W-BT8M].

<sup>109</sup> Badger & Bui, *supra* note 59.

<sup>110</sup> *Id.*

housing crises. This process involves the city planning department voting to rezone entire districts, often transitioning single-family zones to multi-family zones to permit the construction of duplexes or fourplexes.<sup>111</sup> Upzoning allows for a one-time blanket rezone of an entire municipality. This option arguably represents a more sustainable approach, as property owners can avoid fees and the long process of rezoning. Various cities in states like California and Oregon have adopted this approach; even Vancouver is considering similar measures.<sup>112</sup>

Just as the public must approve applications to rezone property, they must also approve the city's decision to upzone entire zones. For example, the Montclair community in Denver did not approve of one councilman's proposal to upzone a portion of the community.<sup>113</sup> As a result, the council cancelled the plan to upzone.<sup>114</sup> The negative response to the plan came from the community's strong attitudes against density and the possible destruction of the neighborhood's character and infrastructure.<sup>115</sup> While the plan to upzone was cancelled, individual applications could still be accepted and typically approved.<sup>116</sup> This example showcases the power the local community holds when making zoning decisions, whether it be blanket rezoning or zoning applications by individual landowners. Further, it seems in this case that individual applications are more likely to be accepted than blanket upzoning.

Despite the trend towards upzoning, critics argue against the rapid and blanket rezoning of historically single-family zoned areas.<sup>117</sup> Similar to the community of Montclair, Colorado, they contend that allowing multi-family housing in these areas may lead

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<sup>111</sup> Daniel Herriges, *What Would Mass Upzoning \*Actually\* Do to Property Values?*, STRONG TOWNS (Jan. 19, 2022), <https://www.strongtowns.org/journal/2022/1/18/what-would-mass-upzoning-actually-do-to-property-values> [<https://perma.cc/NM57-ZFYN>].

<sup>112</sup> Douglas Todd, *Douglas Todd: B.C.'s Blanket Upzoning Comes with 10 Problems*, VANCOUVER SUN (June 3, 2023), <https://vancouversun.com/opinion/columnists/douglas-todd-blanket-upzoning-comes-with-10-problems> [<https://perma.cc/UL5A-2G3X>].

<sup>113</sup> Desiree Mathurin, *Blanket ADU Rezoning is Not Coming to the Montclair Neighborhood*, DENVERITE (May 9, 2023, 11:09 AM), <https://denverite.com/2023/05/09/montclair-accessory-dwelling-unit-rezoning/> [<https://perma.cc/YQB7-X5MA>].

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Herriges, *supra* note 111.

to a decrease in land value.<sup>118</sup> Such arguments are rooted in historical perspectives shaped by decisions like those in the Supreme Court cases *Village of Euclid* and *Berman*, as well as concerns from an era when industrialism and towering buildings were viewed unfavorably.<sup>119</sup> However, the contemporary context differs, with developers more likely to repurpose existing structures like office buildings or old high schools into apartments rather than construct towering skyscrapers in single-family neighborhoods.<sup>120</sup>

It's fair to argue that blanket upzoning might not be the ideal approach for commercial conversions, as not every commercial property is necessarily suitable for such purposes. However, adopting blanket upzoning for commercial properties into mixed-use zones might prove more effective and efficient. This approach would allow for the flexibility of both commercial and residential usage within the same property. When converting commercial buildings into multi-family housing, the primary challenge lies in ensuring the property meets residential code standards. Consequently, for commercial conversion purposes, rezoning is often best determined on a case-by-case basis, taking into consideration the unique characteristics and suitability of each building for the intended use.

#### 4. Code Requirements

In addressing limitations on commercial conversions, the most formidable challenges often arise from code requirements. Unlike obtaining approval from the community and planning board for rezoning,<sup>121</sup> code requirements are not subjective assessments based on aesthetics or property values. The primary objective of

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<sup>118</sup> Herriges, *supra* note 111.

<sup>119</sup> See *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 392-93 (1926); see also *Berman v. Parker*, 348 U.S. 26, 33-35 (1954).

<sup>120</sup> See Megan Shouse, *This Group of Millennials Bought an Old High School—And You Can Live in It*, HOUSE BEAUTIFUL (Oct. 10, 2023, 3:00 PM), <https://www.housebeautiful.com/lifestyle/entertainment/a45495362/millennials-turn-abandoned-high-school-into-apartments/> [https://perma.cc/T7F2-UHWU] (reporting on three investors who purchased an old high school for \$100,000 and spent \$3.3 million to convert the building into 31 apartments, with rent starting at \$1,175).

<sup>121</sup> Ahmad Abu-Khalaf & Ray Demers, *Converting Offices to Housing: Regulatory and Market Challenges*, ENTER. (Apr. 10, 2023), <https://www.enterprisecommunity.org/blog/converting-offices-housing-regulatory-and-market-challenges> [https://perma.cc/VUE9-AMVJ].

code requirements is safety.<sup>122</sup> If a building falls short of meeting these safety standards, the costs associated with achieving compliance can be prohibitively high for a developer. Moreover, code requirements are closely connected with the architectural constraints discussed above in Part III(A)(i)-(ii).

Code requirements are intricately linked with zoning, wherein commercial and residential properties are subject to distinct sets of regulations. Generally, commercial properties face less stringent code requirements compared to residential properties. Consequently, the major expenses associated with commercial conversions often stem from the efforts required to bring the building up to code for residential purposes.

The divergence in code requirements between commercial and residential structures becomes apparent during the conversion process. Converting a commercial space, such as an office building, into a residential space necessitates significant modifications to ensure compliance with residential code standards. As previously noted, many of these requirements are non-negotiable, meaning strict compliance is mandatory. However, it's worth noting that exemptions may be applicable to certain requirements imposed by the city that are not rooted in safety regulations.

For those aspects governed by non-negotiable codes, adherence is imperative with little room for flexibility.<sup>123</sup> The challenge lies in ensuring that the commercial building undergoes substantial alterations to meet residential code specifications, thereby guaranteeing safety and compliance with regulations. This nuanced process underscores the complexity and careful consideration required to navigate the interplay between zoning and code requirements during commercial conversions.

## 5. Private Use Restrictions

A potential, though infrequent, constraint on property conversions arises from deed restrictions, which persist regardless

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<sup>122</sup> See generally LINDA R. ROWAN, CONG. RSCH. SERV., R47665, BUILDING CODES, STANDARDS, AND REGULATIONS: FREQUENTLY ASKED QUESTIONS (2023).

<sup>123</sup> Abu-Khalaf & Demers, *supra* note 121.



of changes in property ownership.<sup>124</sup> Deed restrictions are typically implemented to safeguard the profitability of the business operating within a building. Large retail entities such as Target, Walmart, or Macy's might have deed restrictions in place to prevent competing businesses from establishing themselves in close proximity.<sup>125</sup> Some deed restrictions go further by attempting to influence the types of consumers in the area through limitations on certain types of businesses.<sup>126</sup> Deed restrictions on commercial properties are fundamentally geared towards maintaining the property's commercial viability. Consequently, issues related to converting a building to a residential property should be minimal, unless the deed explicitly prohibits residential units.

Complications are more likely to surface when developers opt for mixed-use conversions, introducing commercial businesses alongside residential units. However, these challenges need not impede the conversion process entirely. Developers facing such hurdles have the flexibility to seek alternative commercial buyers or lessees for the commercial spaces within the building. This adaptability allows for the resolution of potential conflicts with existing deed restrictions, ensuring that the conversion can proceed while addressing any concerns related to the commercial aspects of the property. Overall, while deed restrictions may pose some limitations, they are navigable obstacles that can be addressed through strategic planning and negotiation during the conversion process.

#### IV. EXAMPLES OF COMMERCIAL CONVERSION AT WORK

Commercial conversion is not merely a theoretical concept proposed by economists; rather, it is a practical solution that numerous cities and states across the U.S. have actively embraced and implemented. This approach offers a tangible and tested response to the evolving needs and dynamics of urban development. The successful implementation of commercial conversion strategies underscores their viability and effectiveness as a real-world

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<sup>124</sup> *How Will Deed Restrictions Affect Your Commercial Property?*, CORFIELD FELD LLP (Apr. 19, 2021), <https://www.corfieldlaw.com/blog/2021/04/how-will-deed-restrictions-affect-your-commercial-property/> [<https://perma.cc/FCR2-TXYW>].

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

solution, reflecting a growing recognition of their potential benefits in fostering sustainable urban growth and repurposing underutilized spaces.

### *A. Seattle*

Seattle is moving towards a plan to implement zoning regulations that allow commercial conversions. In an effort “to determine what kind of legislation, regulatory modifications . . . incentives, budget, and partnerships” would be needed to implement commercial conversion projects, the mayor of Seattle created a design competition in which architecture teams submitted ideas on how they would convert downtown office spaces into multi-family housing.<sup>127</sup> The winning competitors received \$7,500–\$10,000 in awards for their ideas which were used to start planning for possible future commercial conversions.<sup>128</sup>

### *B. New York*

Commercial conversion projects are already underway in New York City, and some have already been completed. One type of zoning law implemented by New York is the Multiple Dwelling Law which authorizes artists to work and live in their space.<sup>129</sup> The law allows specific districts to be converted for mixed use.<sup>130</sup> This allows residents to work and live in the same space, filling empty spaces and creating more housing units. Additionally, New York has enacted a Hotel and Commercial Conversion program which gives second mortgage financing at a lower cost to support commercial conversions in New York.<sup>131</sup>

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<sup>127</sup> Kurt Schlosser, *Seattle Mayor Reveals Top Ideas in Potential Plan to Convert Some Downtown Office Space to Housing*, GEEK WIRE (June 7, 2023, 9:45 AM), <https://www.geekwire.com/2023/seattle-mayor-reveals-top-ideas-in-potential-plan-to-convert-some-downtown-office-space-to-housing/> [https://perma.cc/6YP8-B8P7].

<sup>128</sup> *Id.*

<sup>129</sup> NYC BLDGS., RESIDENTIAL CONVERSIONS – MULTIPLE DWELLINGS LAW, ARTICLES 7B & 7C 2 (2016), [https://www.nyc.gov/assets/buildings/pdf/code\\_notes\\_residential\\_conversions.pdf](https://www.nyc.gov/assets/buildings/pdf/code_notes_residential_conversions.pdf) [https://perma.cc/W9JM-WXMH].

<sup>130</sup> *Id.*

<sup>131</sup> *See Hotel and Commercial Conversions Program*, NEW YORK STATE: HOMES AND CMTY. RENEWAL, <https://hcr.ny.gov/hotel-and-commercial-conversions-program> [https://perma.cc/E8RX-VNKQ] (last visited Mar. 28, 2024).

### C. California

California has embraced a very progressive approach to commercial conversion, initiating a program which can be utilized statewide. The California Department of Housing and Community Development granted \$736 million to fund Homekey, a program to “rapidly expand housing for persons experiencing homelessness or at risk of homelessness, and who are, thereby, disproportionately impacted by and at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases.”<sup>132</sup> Homekey focuses on hotels, commercial buildings, and any other buildings with existing uses that are viable for conversion to residential housing suitable for the program’s target population.<sup>133</sup> In Round Two of the program, two adaptive reuses of commercial structure projects were awarded more than \$16 million which provided for forty-seven housing units.<sup>134</sup> One structure was for homeless youth and the other provided permanent supportive housing for those homeless and with a disability.<sup>135</sup> The permanent housing funding by Homekey was part of an even bigger plan in Santa Cruz County to provide a solution to the housing crisis.<sup>136</sup>

### D. Memphis

As evidenced above, larger cities are the most often used examples of commercial conversions at work; however, smaller urban areas are catching on. Memphis implemented a twelve-year Payment in Lieu of Tax (“PILOT”) incentive for the developer who purchased a fifteen-story commercial property in the heart of the

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<sup>132</sup> Homekey, *Program Background*, CALIFORNIA DEP’T HOUS. & CMTY. DEV. (2024), <https://www.hcd.ca.gov/grants-and-funding/homekey/program-background> [https://perma.cc/K9SD-4MPV].

<sup>133</sup> Homekey *Eligibility*, CALIFORNIA DEP’T HOUS. & CMTY. DEV. (2024), <https://www.hcd.ca.gov/grants-and-funding/homekey/eligibility> [https://perma.cc/7G2C-9PNV].

<sup>134</sup> Homekey, *Homekey Round 2 Awards*, CALIFORNIA DEP’T HOUS. & CMTY. DEV. (2022), <https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/homekey/homekey-round-2-awards.pdf> [https://perma.cc/7MEU-5QG9].

<sup>135</sup> *Id.*

<sup>136</sup> Homekey, *HCD Partners to Help Santa Cruz Adopt Housing Element*, CALIFORNIA DEP’T HOUS. & CMTY. DEV. (March 12, 2024), <https://www.hcd.ca.gov/about-hcd/newsroom/hcd-partners-to-help-santa-cruz-adopt-housing-element> [https://perma.cc/G45U-PWMR].

city.<sup>137</sup> The property will be zoned as mixed-use and will include retail and residential space.<sup>138</sup> Additionally, the city is taking steps to ensure affordable housing is available to residents by requiring that at least twenty percent of the units meet affordable housing standards.<sup>139</sup> This will create approximately thirty-six affordable units out of the potential 181 apartments.<sup>140</sup>

In addition to the efforts noted above, the top ten cities converting old offices into apartments collectively transformed almost 7,000 buildings in 2020 and 2021.<sup>141</sup> These examples are evidence that commercial conversions offer a viable solution to the housing crisis, addressing the shortage by providing homes in various regions across the United States.

## V. ARE COMMERCIAL CONVERSIONS WORTH IT?

### A. *The Market Argument*

The opposition surrounding commercial conversions arises from the notion that the limited availability of office space for conversion is insufficient to address the housing crisis, primarily due to these spaces being concentrated in high-rent areas.<sup>142</sup> For example, only about three percent of New York office buildings would meet the qualifications for apartment conversion.<sup>143</sup> It's worth noting that conversions falling outside these criteria often

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<sup>137</sup> Jay Jones, *PILOT Approved for Developer to Turn Midtown Landmark into Mixed-Use Commercial, Residential Property*, LOC. MEMPHIS (June 13, 2023, 3:59 PM), <https://www.localmemphis.com/article/news/community/midtown-union-centre-converted-mix-use-commercial-and-residential-property/522-320c9213-074e-42bb-8e50-b8c867d1e735> [<https://perma.cc/7HMU-3F8V>].

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> Jennifer Liu, *The Top 10 Cities Turning Old Office Buildings into Apartments—Take a Look Inside*, CNBC (Nov. 26, 2021, 10:34 AM), <https://www.cnbc.com/2021/11/26/the-top-10-cities-turning-old-office-buildings-into-apartments.html> [<https://perma.cc/YFX2-DAFK>].

<sup>142</sup> Jeffrey Havsy et al., *Why Office-to-Apartment Conversions Are Likely a Fringe Trend at Best*, MOODY'S ANALYTICS (Apr. 7, 2022), <https://cre.moodyanalytics.com/insights/cre-trends/office-to-apartment-conversions/> [<https://perma.cc/A3RC-EGJS>].

<sup>143</sup> *Id.*

incur higher costs compared to new constructions.<sup>144</sup> Developers, naturally inclined to prioritize cost considerations, face a dilemma when contemplating projects that don't align with the readily available percentage of buildings suitable for conversion. This dilemma is exacerbated by the potential escalation of rental prices, directly influenced by the elevated costs associated with conversions that fall outside the prescribed parameters.<sup>145</sup>

Engaging in commercial conversions frequently entails economic challenges that necessitate additional financial support, often through public funding, to ensure successful outcomes.<sup>146</sup> While overcoming structural hurdles is feasible, it is not without substantial costs. A comprehensive study focused on downtown San Francisco, where forty percent of properties are deemed suitable for conversion,<sup>147</sup> revealed that the majority of such conversions in the area would incur costs ranging from \$472,000 to \$633,000 per unit.<sup>148</sup> It's crucial to emphasize that these conversion costs, although significant, compare favorably to the expense associated with new construction, particularly in the realm of affordable housing. New construction averages approximately \$1.2 million per unit.<sup>149</sup> This underscores the potential cost-effectiveness of commercial conversions as a means of addressing housing

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<sup>144</sup> Emma Waters, *Converting Vacant Offices to Housing: Challenges and Opportunities*, BIPARTISAN POL'Y CTR. (July 31, 2023), <https://bipartisanpolicy.org/explainer/vacant-offices-housing-conversion/> [<https://perma.cc/EQ59-WZ43>].

<sup>145</sup> *Id.*

<sup>146</sup> See *infra* note 148; see also Tracy Hadden Loh et al., *Myths About Converting Offices Into Housing—And What Can Really Revitalize Downtowns*, The Brookings Institution (Apr. 27, 2023), <https://www.brookings.edu/articles/myths-about-converting-offices-into-housing-and-what-can-really-revitalize-downtowns/> [<https://perma.cc/67R4-FVSE>].

<sup>147</sup> Mike Ege, *Costly.' Complex.' SF Supervisors Hear Warnings on Office-to-Housing Conversions*, SAN FRANCISCO STANDARD (Apr. 3, 2023, 7:05 PM), <https://sfstandard.com/2023/04/03/costly-complex-sf-supervisors-hear-warnings-on-office-to-housing-conversions/> [<https://perma.cc/VXM9-BEV7>].

<sup>148</sup> Tracy Hadden Loh et al., *Myths About Converting Offices into Housing—And What Can Really Revitalize Downtowns*, BROOKINGS (Apr. 27, 2023), <https://www.brookings.edu/articles/myths-about-converting-offices-into-housing-and-what-can-really-revitalize-downtowns/> [<https://perma.cc/7DP7-ZHL5>].

<sup>149</sup> *Affordable Housing in SF Can Cost up to \$1.2M Per Unit*, REAL DEAL (San Francisco) (Sept. 28, 2022, 8:30 AM), <https://therealdeal.com/sanfrancisco/2022/09/28/affordable-housing-in-sf-can-cost-up-to-1-2m-per-unit/> [<https://perma.cc/4D76-D6J2>].

shortages. Thus, when it relates to the affordability of converting commercial properties, the key challenge lies in securing public funding to bridge the financial gap. Without such support, developers may be hesitant to commit to conversions, recognizing the financial feasibility and the critical need for external assistance to make these projects economically viable in alleviating the housing crisis.

Cities are actively promoting the conversion of commercial properties into residential spaces by leveraging tax abatements as a powerful incentive for property owners.<sup>150</sup> A notable example is Washington, D.C., which enacted the Downtown Tax Abatement program in July 2022.<sup>151</sup> This program extends tax abatements for twenty years to property owners seeking to convert their commercial properties into residential spaces, subject to specific conditions.<sup>152</sup> These conditions stipulate that the conversion must yield a minimum of ten housing units, with at least fifteen percent designated as affordable housing in accordance with the Inclusionary Zoning Program. Moreover, thirty-five percent of construction and operation costs must be contracted with certified business enterprises, a first-source agreement is required, the mayor must issue a project approval letter specifying the abatement amount, and the property must be within the designated area.<sup>153</sup> Adhering to these conditions allows for substantial savings, amounting to up to \$6.8 million in the 2027 fiscal year, with a four percent annual increase each following year.<sup>154</sup> Cities are thus strategically employing tax programs to mitigate the costs associated with conversions—a relatively modest investment

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<sup>150</sup> Alicia B. Clark et. al., *Government Programs Incentivize Office Property Conversions*, BALLARD SPAHR (May 17, 2023), <https://www.ballardspahr.com/insights/alerts-and-articles/2023/05/government-programs-incentivize-office-property-conversions> [https://perma.cc/V899-LR8J] (showing that San Francisco, New York, Chicago, California, Wisconsin, and Washington, D.C. have provided tax incentives for developers wanting to convert commercial properties to residential housing).

<sup>151</sup> Daniel Miktus & James T. (Trav) Clark, *Washington, D.C. to Provide Tax Abatements for Conversions to Residential Properties*, AKERMAN (Feb. 15, 2023), <https://www.akerman.com/en/perspectives/washington-dc-to-provide-tax-abatements-for-conversions-to-residential-properties.html> [https://perma.cc/FNL3-XYQR].

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

considering the magnitude of the housing crisis affecting American cities.

Furthermore, at the state level, additional measures such as waiving development fees and streamlining zoning changes aim to incentivize developers to undertake office-to-housing conversions.<sup>155</sup> These incentives not only encourage developer commitment to conversions but also contribute to keeping housing prices in check, as many of them mandate that a certain percentage of units be retained as affordable housing.<sup>156</sup>

### CONCLUSION

While zoning laws have been criticized as contributors to the current housing crisis, they have also demonstrated their potential as a solution to address and alleviate this crisis. One innovative strategy which showcases the remedial capacity of zoning is commercial conversion—a practical and effective means of providing much-needed housing in communities facing acute shortages. To utilize this strategy, however, local governments must revise zoning laws to permit the reclassification of commercial zones as residential, allowing developers to repurpose commercial properties for housing.

Enabling such commercial conversion can have several positive outcomes. First, it has the potential to contribute to a reduction in housing prices within the area, addressing one of the core issues of the housing crisis. Moreover, converting commercial spaces into residential units can substantially increase available

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<sup>155</sup> Alex Zielinski, *Portland City Council Approves Incentives to Help Convert Office Buildings into Apartments*, OPB (Mar. 15, 2023, 4:57 PM), <https://www.opb.org/article/2023/03/15/portland-oregon-housing-city-council-apartments-vacant-office-buildings-conversion-incentives/> [https://perma.cc/SRT3-HN8S]. The Portland City Council in Portland, Oregon exempts development fees for developers wanting to convert commercial buildings. *Id.* This policy could save developers up to \$3 million and will be implemented until 2027. *Id.*

<sup>156</sup> See Jones, *supra* note 137 (reporting on Memphis, Tennessee's use of incentives for conversions and its stipulation of a percentage of affordable housing); Zielinski, *supra* note 155 (reporting on Portland City Council's requirement that multifamily housing with at least twenty plus units must keep a certain percentage of affordable units); Collin Kelley, *City of Atlanta Buys Office Building for Affordable Housing Conversion*, ROUGH DRAFT ATLANTA (Feb. 18, 2023, 4:30 AM), <https://roughdraftatlanta.com/2023/02/18/city-of-atlanta-buys-office-building-for-affordable-housing-conversion/> [https://perma.cc/GZQ7-EHL9] (noting the City of Atlanta plans to convert 2 Peachtree into a "mixed-income, mixed-use site").

housing stock, meeting the growing demand for housing in many communities. This benefits prospective homeowners and contributes to a more diverse and vibrant local housing market.

Commercial conversions also yield noteworthy economic advantages. By facilitating the transformation of underutilized commercial properties, local governments can revitalize abandoned or obsolete spaces, thereby bringing in revenue and mitigating losses associated with vacant office buildings. This adaptive reuse not only transforms the physical landscape of communities but also has the potential to foster economic growth.

Beyond the economic impact, commercial conversions generate significant social benefits. Adapting buildings to serve new residential purposes brings homes closer to places of work and leisure, enhancing community cohesion. This proximity helps to bridge the gap between living and recreational spaces, fostering a sense of community and revitalizing neighborhoods.

In summary, embracing commercial conversion through thoughtful adjustments to zoning laws presents a practical and multifaceted solution to the housing crisis. By repurposing commercial properties into residential spaces, communities can simultaneously address housing shortages, stimulate economic growth, and promote social cohesion—a comprehensive approach towards mending the challenges posed by the housing crisis.