

# Legal and business considerations when developing retail space for senior care facilities

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Repurposing existing real estate is a common occurrence. Less common, but expanding, are the innovative solutions beginning to occur to address empty real estate — particularly shopping malls — as in-store purchases become less common in the age of the internet and Amazon deliveries.

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There have been some noteworthy conversions of large retail space into health care facilities. One such successful example is the Vanderbilt Medical Center in Nashville, Tenn., an 880,000-square-foot, mixed-use medical office center located in a former indoor shopping mall.

In Irondequoit, N.Y., a vacant mall is being used to accommodate senior housing, an adult day care center and a community center funded with a bond issuance approved by the town's voters, with an eye toward multi-generational use.

Repurposing these vacant spaces is a credible, smart and often cost-saving idea, as these structures are typically ideally located near hospitals and shopping, have existing parking spaces, and have large spaces for the expansion of care. Many health care and senior housing providers can satisfy their increasing interest to offer more community-based services with this type of infrastructure.

There are items of concern when repurposing existing retail space for health care use, however. In most indoor shopping malls, there are limited windows along the expanse of the retail space as indoor

stores often have a solid external wall. Health care and senior housing providers would want to renovate to add natural light into the space. Additionally, the HVAC and ventilation systems may not be adequate for housing and medical purposes. Mall systems are built to accommodate the entire space, without any regard for unique medical needs, so the zoning and regulatory requirements for these systems would need to be researched during any due diligence phase.

There may be several additional renovations that are necessary to bring the building up to code for its purpose as well as to comply with the regulatory requirements governing the type of facility. Plumbing, adequate roof structure to accommodate additional systems, water pressure, and a determination of which systems might be able to be re-used are all items client providers will need to review in order to have confidence in the choice of space.

The regulatory landscape will necessarily drive the requirements for building out these spaces. Due to the expense of a complete retrofit of updates to meet code or regulatory requirements, it is worth discussing innovative solutions with both zoning and regulatory officials early in the process to see if there are less expensive workarounds to meet the intent of the requirements.

In addition to the physical plant considerations long-term care or other health care providers need to consider if they want to develop retail space for their purposes, it is worthwhile to consider whether ownership or tenancy is right for the development. It may be more beneficial for your client to locate a landlord with an existing development looking to innovate in this manner and retrofit the space needed as a tenant rather than as a landowner.

Some medical facilities, such as the Vanderbilt Medical Center, are the marquee inhabitants of these large spaces and have the wherewithal to obtain the required capital to build out the space as necessary. Other small providers, particularly in the long-term care and senior housing spaces, may not be similarly situated but would want to take advantage of the location, availability of space, and nearby amenities. In this situation, these smaller providers are better situated to be tenants under a ground lease with another developer owning and managing the space — which ideally would be geared toward the senior communities of the future — walkable spaces with care facilities, housing, shopping, and entertainment.

Some existing malls are choosing to add medical facilities and entertainment venues to their existing retail operations to create a more organic customer base for the retail operations. In Roseville, Minn., rather than retreating out of concern that retail space may be on the downward trend, the owner of the Rosedale Center mall development is expanding the footprint to include office space, medical office space, active-adult (55+) living units, a hotel, entertainment venues and other features to make the space a community gathering place rather than simply a mall.

As the senior population in the United States continues to expand over the next decade, this demographic will likely continue to request and prefer accommodations — whether skilled nursing, assisted living, independent living or any sort of extended care or living situation — and be in a space that provides other care amenities and even additional entertainment amenities. Advising your clients on the historical slate of issues that have arisen as others have forayed into this space is critical, as are early and regular conversations with the necessary parties involved in regulatory considerations surrounding the build-out.

### About the author



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