

THE BIGGEST TRICK of the TRADE: VIEWPOINT *Getting a Permit*



**A decade ago,
the renovator was seen
as a community hero.
Now you are viewed
as a threat,
says the author,
who brought many
buildings such as
the one pictured
above back to life
in Boston's South End.**

by Carl Lizio

There's a new element—perhaps monster would be a better word—in your projects whose costs overshadows all the familiar day-to-day costs; it's more expensive than the worst overrun nightmares and causes longer delays than the bitterest of winters. This article started out to be about the tricks of the trade in renovating I've picked up over the last fifteen years. Today, though, the biggest "trick" of all is getting your approvals and permit to build. Often the start of construction signals the half-way point in the overall project.

Not long ago, if you, the renovator, came into a neighborhood and redeveloped the vacant mill or those empty houses down the block, or changed a rundown gas station into a busy little strip center, you were a hero, welcome for the improvements and new taxes you brought. Today, things are different. You can be seen as a threat and an annoyance, and subjected to exhaustive reviews and meetings, ongoing scrutiny and, in the extreme, a shutdown. Hundreds of hours and tens of thousands of dollars can be spent in the preparatory stage while the permit is still a distant dream.

The New Influences

What are the new influences and how, by understanding them, can you deal with them to your advantage?

The explosion in real estate values has given local property owners more value to protect. Simultaneously, renovation has been an active trend for more than two decades. In some areas most of the rundown buildings have been rehabbed already. This spotlights those remaining—both for you and for the bureaucracies that have evolved to scrutinize their reuse.

Your response has to be higher levels of presentation quality and product quality than has been expected in the past. And because you'll have to recover these higher costs, this often means pioneering new high prices for that area.

Increased density naturally brings about its own resistance to further development—once-urban wastelands have become thriving neighborhoods. In other words, now that I've got mine, I'm automatically entitled to cry, "Enough!" Density is a legitimate issue, though, and perhaps the most sensitive one everywhere. It incites a "them versus us" mentality, conjures up fear of overcrowding, and on a day-to-day basis impacts traffic and parking. A \$75,000 two-bedroom condo can produce as many new cars as a \$300,000 two-acre colonial—but there's more of them. There's no complete answer to this one, but a good traffic study, good traffic management, and shuttles to public transit can help. As in dealing with any of the issues that come up, sell your project on its overall merits.

A corresponding surge in participatory democracy has resulted in a mass of historic and environmental guidelines.

Local community members show up at meetings, contribute money, form active committees, hire lawyers and consultants, and elect like-minded politicians. Actually, this is to the developer's advantage. At least he can start the game with the important players on the field and get a reasonably accurate sense of his chances early on when the costs are lowest. Herein lies the key to successfully coping with this complicated approval process.

Work Within the Rules

Start by determining what you can do by right rather than by appeal. That is, find out what you can build under current use and occupancy regulations. When you can work within the current use and occupancy, you have a tremendous asset.

Assuming a change of occupancy is needed, contact the appropriate elected official, such as the area's city councilor. As an elected official he's more likely than an appointed official to be able to introduce you to the key players, update you on the area's history of involvement, arrange a meeting and provide you with feedback.

You can talk informally and individually to the key players, perhaps get invited to the regular meeting for questions and answers, and thereby learn the rules of engagement. At this point, you should identify your allies and opponents and get an early feel for your chances for success. Be reasonable to deal with, and you can begin quietly building the strength of your position.

Bear in mind that the neighbors are usually right. They may surprise you with good ideas about what should be built, what government channels can be opened to you, and even who the likely market is.

The concerns they express will later have to be addressed formally—and with professional studies—before the permit-granting authority. Listen carefully when they bring up worries about wetlands, chemical waste, burdening of sewer systems and water supplies, shrinking availability of parking, traffic flows, sunlight blockage, privacy and sensitive reuse of historic buildings. Remember, they live there every day.

If you can address their qualms, they can be your greatest proponents. If you don't, your project may be doomed.

Do as much preliminary fact-finding as you can before hiring the experts—lawyers, engineers, etc. These early meetings will provide you your marching orders and allow you to decide whether to proceed at all. Be sure you can afford the up-front costs and delays before committing to the project. You can starve to death financially while waiting for the permit on a profitable project. Your financial planning cannot ignore this new reality. Whereas formerly the change of occupancy and permit were almost a given, today they're treated like a privilege. Your bank

understands this.

No longer is it possible to buy property in blind anticipation of a permit. At the same time, rare is the seller who doesn't have a fine appreciation of the highest value of his or her property. The dead giveaway is when the owner speaks not in terms of a four-story mill but in terms of square footage (a brokers' invention). There's no stopping a seller's imagination on the issue of price. Yet rare is the seller who'll secure for you the permit that justifies the quoted price.

Protect Yourself

To bridge the gap, use an option or purchase agreement with a self-defense clause covering exactly what you propose to achieve. If you don't get the permit, your money's refunded. Temper this with a proportion clause: at 100 approved units, buyer will pay \$1,200,000; at 80 units, buyer will pay \$1,000,000, etc. This is where imaginative lawyers come in handy.

This way, you're forced to spend soft costs up-front on someone else's property. But it's a lot less risky than undertaking the use and occupancy changes on your own nickel.

The only time this works is when you're able to buy a property on the

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existing cash flow. You can pursue your change at leisure without worrying about that horrible interest payment every month. You also have the tactical advantage of leaving the decrepit old building as is while negotiating for the permit with which you'll improve it.

An acquaintance of mine bought a nasty old commercial building in a nice residential area and made the mistake of immediately tearing it down. Had he left it alone, the neighbors would have lined up to help him get his permits for the intended twelve townhouses. But now the lot is free of the blight and the neighbors are newly blessed with a clean, fenced half-acre field (which they seeded). Since they have no motivation whatsoever to lose their field, two years of meetings have passed and the developer is still not close to his permit. If he ever gets it, it'll be for a lot fewer than twelve units and his profit will have disappeared.

Don't make the same mistake. Understand that public relations and politics are half of your work. If you understand the rules of the new reality, gear up to work within them, and protect yourself to minimize your risk, you can be in a business with fewer competitors, who are selling higher-priced and probably more profitable products. Good luck! ■

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