

The Dangerous Precedent of Intentionally Creating Non-Conforming Uses

3618-3650 Milwaukee St, Madison

Leo Ritter & Co, LLC

History of City Policy on Non-Conforming Uses

Current City Policy:

- Create as few existing non-conforming uses as possible when a property is rezoned.
- Policy developed over multiple years and public meetings as part of the City's zoning code rewrite process (2009-2013).
- Policy respects both existing land use rights and provides predictability.
- Policy utilizes zoning districts that are both consistent with adopted plans and allow existing uses to minimize non-conformities.

Proposed Change:

- Creates both a non-conforming use and structure for the Amazon Parcel.
- Treats the Milwaukee Street Area Plan as a "Rezoning Plan" regardless of whether such rezoning creates non-conforming existing uses.
- District chosen for the Amazon parcel is argued as "most" consistent for that particular parcel and ignores non-conformity creation.
- Does not follow past precedent on City-led rezonings to use zoning districts that are *both* consistent with Area Plan and minimize non-conformities.
- City Planning Staff Memo highlights alternative district that achieves both.
- Staff Memo also cautions: "the creation of nonconforming uses and structures can affect the ability of a property owner to obtain financing, the interest rate for said financing, the insurance policies and coverage that lenders may require a property owner with a nonconforming use or structure to carry, and potential increased cost for those policies."
- This new policy will negatively impact valuations (and tax assessments) of impacted properties as a new "Dark Store" on steroids situation will be created.

Case Study

Amazon Distribution Center



3630-3650 Milwaukee Street, Madison

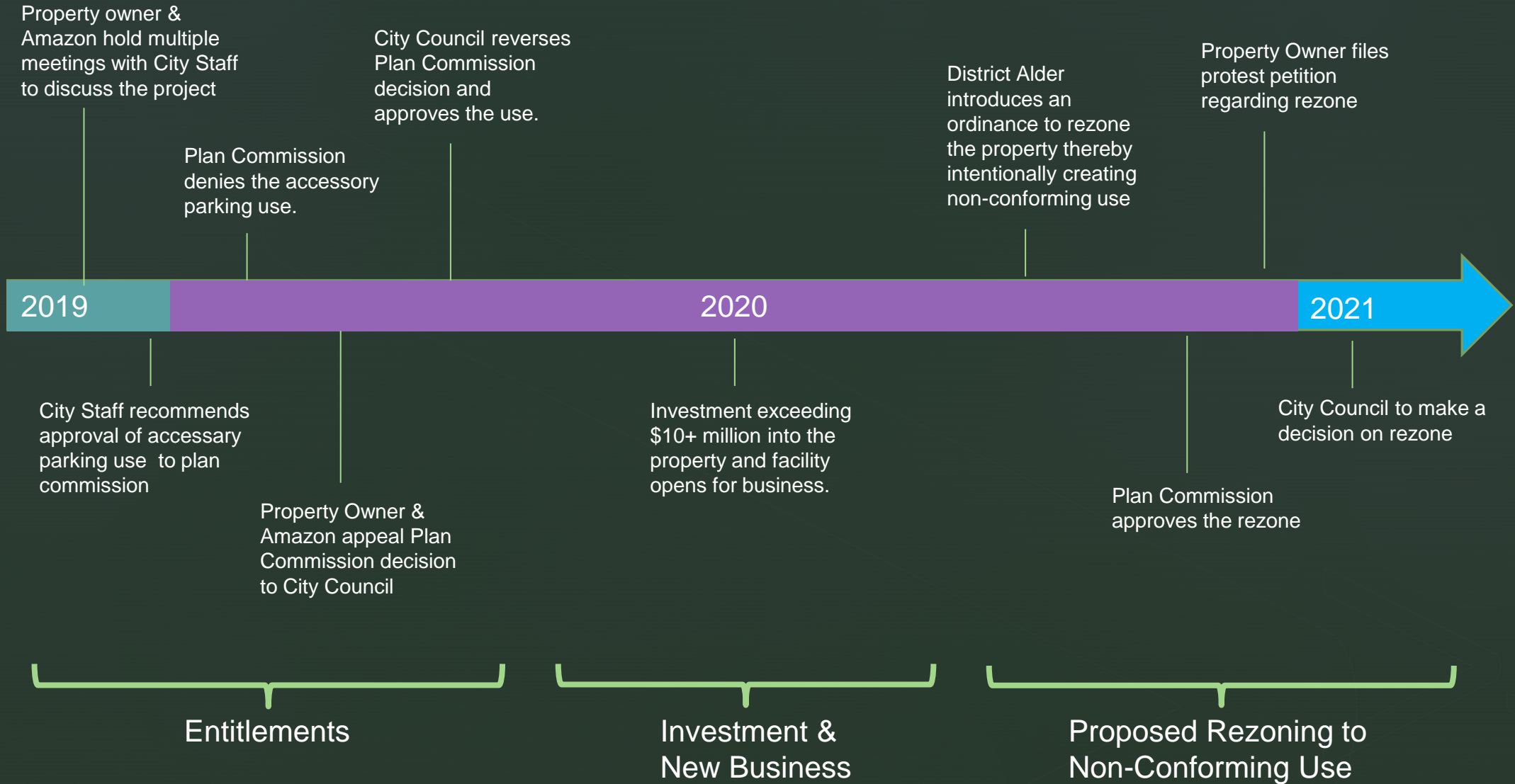
Project Overview

- 3650 Milwaukee Street is zoned Industrial Limited (IL) and had been occupied by Swiss Colony from 1978-2018.
- Upon Swiss Colony vacating, the property was marketed for lease for over a year before negotiating a long-term lease with Amazon for a distribution facility.
- To meet the parking needs required by Amazon, adjacent land was purchased by the property owner to be incorporated into the project. Although the distribution facility use was permitted by right, the newly acquired land parcel was subject to a demolition permit deed restriction requiring City approval for any future use.



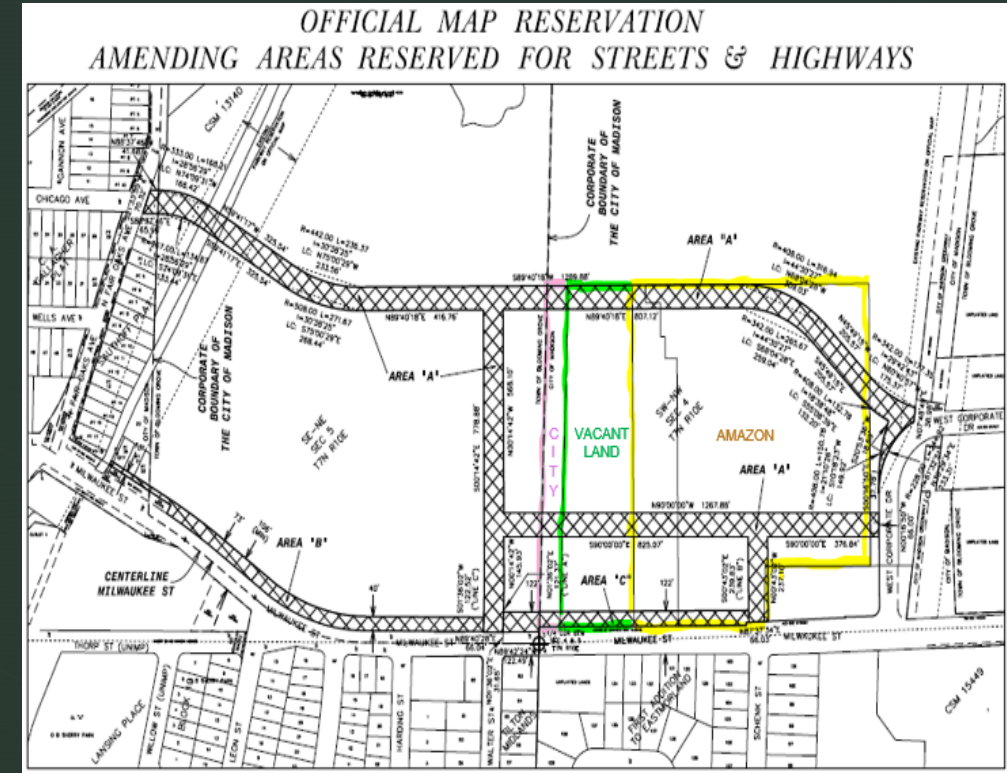
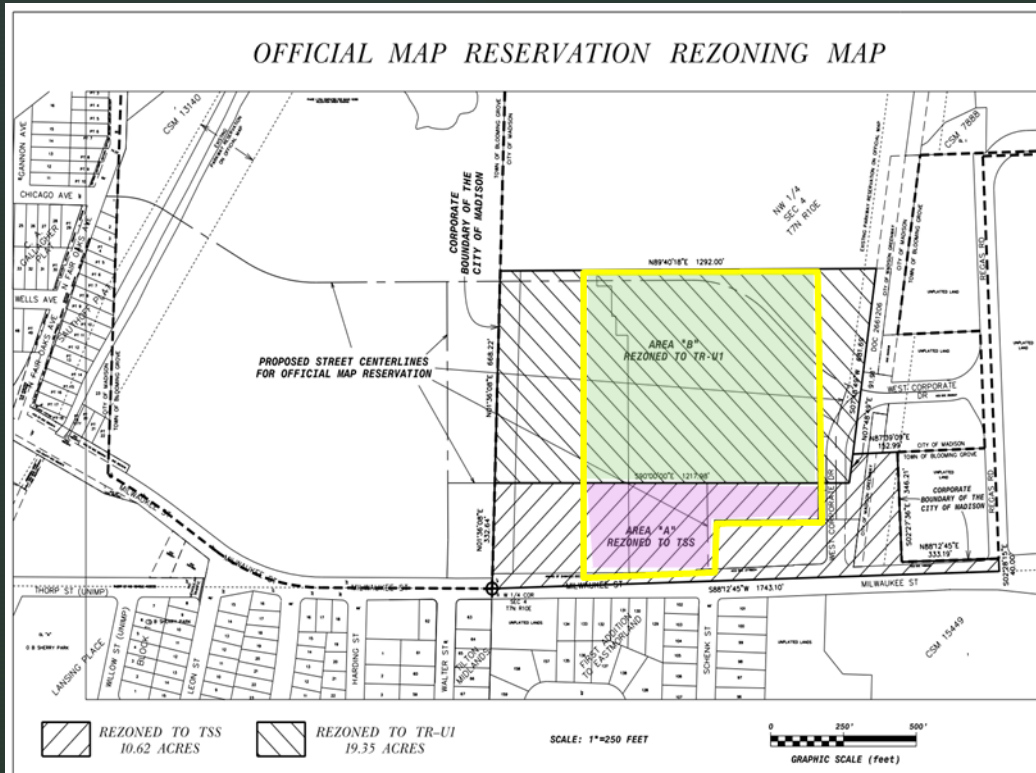
- After a long and rigorous city process, the project received all approvals necessary to proceed in early 2020.
- Significant improvements were made to the property with investment exceeding \$10+ million made by Landlord and Tenant; and hundreds of new jobs brought to Madison upon opening of the facility.
- **THE DISTRICT ALDER, WHO WAS OPPOSED TO THE PROJECT THROUGHOUT THE PROCESS, PUTS FORTH AN ORDINANCE TO REZONE THE PROPERTY AND MAKE THE FACILITY NON-CONFORMING IMMEDIATELY AFTER AMAZON OPENS FOR BUSINESS.**

Project Timeline



Proposed Rezoning and Road Reservation

After Project Approval, Redevelopment Investment and New Business Commenced Operation



Amazon parcel as outlined above is currently zoned IL. Split zoning is being proposed with the northern portion of the site to be rezoned to TR-U1 and the southern portion of the site to be rezoned to TSS.

Under the proposed new zoning districts, the Amazon use and facility will become non-conforming.

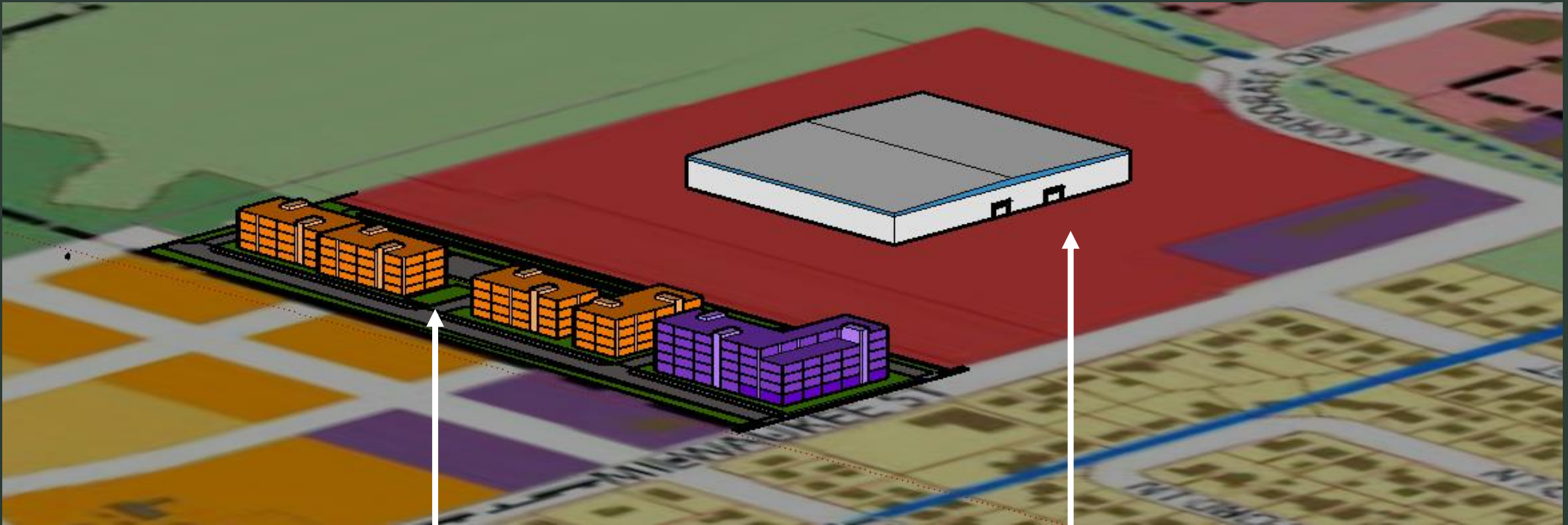
Map 2: Properties most likely to change.



Long viewed as a prime candidate for redevelopment, the now-vacant former Swiss Colony warehouse (3650 Milwaukee Street) is owned by the Leo Ritter Trust. The 15 acre parcel contains a 200,000 square foot industrial building which is being marketed for lease to new tenants. The property is zoned IL and could be occupied by any permitted use in that category.

To the east of the Voit property are two adjacent parcels owned by the Duren family (3618 and 3630 Milwaukee Street), which are listed for sale. Just under nine acres total, the property is quite deep with a relatively limited amount of frontage on Milwaukee Street. One property is zoned TR-C1, a residential category, while the other is zoning IL (industrial limited), which allows light industrial uses.

Concept Plan Layout Over Special Area Plan Alternative



3618 Milwaukee St
Future Affordable Housing

3630-3650 Milwaukee St
Amazon Distribution Center

Current Status & Ramifications

Amazon Distribution Facility

The proposed new zoning district for Amazon's recently approved new facility makes the business at the newly renovated property occupied by Amazon a non-conforming use.

The staff report indicated another district (CC-T) is also consistent with the special area plan and package delivery is permitted use thereby avoiding a non-conforming use.

The district alder opposes CC-T believing the proposed districts are *more* consistent with the neighborhood plan.

Plan Commission deadlocked 4-4 to approve CC-T but approves the motion to rezone as recommended by the district alder to create a non-conforming use.

Common Council to take up the rezoning recommendation on January 5th, 2021.

If adopted, this would create precedent and change current City Policy that tries to minimize the creation of non-conforming uses.

If this policy becomes acceptable, any controversial development project going through the process and gaining approval will have a real risk of a new neighborhood plan being adopted thereafter to pave the way for rezoning of the property to effectively eliminate those approvals.

Negative Impacts of Non-Conforming Uses

Punitive to Business

- Prohibits businesses from expanding and disincentives growth and investment.
- Restricts future use of the facility to only the business/tenant's specific current use (IE package delivery).

Diminishes Property Value

- Limits ability to maintain buildings as repairs or alternations may not exceed 50% of total assessed value.
- Provides for property tax challenges thereby decreasing tax base to the City.

Destroys Marketability

- If building becomes vacant or the nonconforming use of the land ceases for a continuous period of twelve months, then the use becomes prohibited entirely.
- Accordingly, non-conforming use status reduces number of potential tenants and marketability.
- Result is vacant building or below market lease to existing tenant in depreciating asset.

Negative Impacts of Non-Conforming Uses

Creates Financing Issues

- Prudent lenders require zoning conformance in order to obtain market rate loans.
- Non-conformance results in either (i) inability to get financing entirely, or (ii) an increase in interest rates, reduction in loan-to-value, reduction in loan duration, and additional guaranty or collateral requirements.

Creates Insurance Issues

- A nonconforming building that is damaged or destroyed may generally be restored to the size, location, and use that it had immediately before the damage or destruction occurred but only if the damage or destruction was caused by the following: violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
- The size of the restored building or structure must comply with applicable state or federal requirements (such as the Building Code) which may or may not be possible on the rezoned lot.