

**From:** [christopher burant](#)  
**To:** [All Alders](#)  
**Subject:** please accept Zning change  
**Date:** Monday, June 20, 2022 9:42:37 PM

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Alderman Allders;

I am the owner of 212 Merry St. The RedPine House.

Please accept the Zoning change the zoning of 222 Merry St from TR-U2 to TR-U1 tomorrow.

Sincerely,

Christopher X. Burant

**From:** [John](#)  
**To:** [All Alders](#)  
**Subject:** support zoning 222-230 Merry St. to TR-U1  
**Date:** Tuesday, June 21, 2022 9:32:58 AM

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Dear Alders,

I live on the near east side, two blocks from Merry Street. I ask you to please support item 71221, Alder Benford's proposal to change the zoning of 222-230 Merry St from TR-U2 to TR-U1.

I have seen that property flooded by the river multiple times and runoff from that property contributes to flooding on adjacent property. Since that property is in the floodplain of the river, density should not be increased. Furthermore a higher density structure would be inconsistent with the character of Merry Street.

There are many sites in our neighborhood suitable for higher density housing, which I support. This is not one of those locations.

Thank you for supporting Alder Benford's proposal.

Sincerely,

**From:** [Bill Connors](#)  
**To:** [All Alders](#); [Mayor](#)  
**Cc:** [Stouder, Heather](#)  
**Subject:** Proactive Downzoning of 222 and 230 Merry St on Tonight's Agenda  
**Date:** Tuesday, June 21, 2022 11:08:04 AM

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Mayor Rhodes-Conway and Alders:

I am writing to express Smart Growth's support for placing on file, without prejudice, the proposed proactive (preemptive) downzoning of 222 and 230 Merry Street, Legistar #71221, which is item 7 on the agenda for your meeting this evening. Smart Growth supports placing on file, without prejudice, and opposes adopting this ordinance based on the principle that the city government should not proactively downzone property over the objection of the property owner based on a plan when the property owner had no notice during the planning process that the plan would become the basis for rezoning its property. Smart Growth urges you to follow the wise recommendation of the Plan Commission and place this ordinance on file, without prejudice.

When the city government engaged in the planning process for the current Comprehensive Plan, the city government's policy and practice was not to proactively rezone property to match the plan (except when the city government was adopting a new zoning code with a new array of zoning districts). During that planning process, the city government provided no notice to property owners that the rules were changing and that the Comprehensive Plan would become the basis for proactively rezoning their properties. If the city government had given such notice during the planning process, property owners would have had an incentive to engage in the planning process to defend their current zoning.

Furthermore, the June 7 staff memo to the Plan Commission about this proposed ordinance indicates that the current zoning district for these parcels, TR-U2, is consistent with the Low Residential (LR) land use designated for these parcels in the Comprehensive Plan: "The TR-U1 District and TR-U2 District may both be used to implement the Low Residential land use category." Consequently, there is no need to downzone these parcels to TR-U1 to become consistent with the Comprehensive Plan—the current TR-U2 zoning already is consistent with the Comprehensive Plan.

In addition, adopting this ordinance would be another example of the city government's saying one thing and doing the opposite when it comes to addressing Madison's housing crisis. The Common Council recently adopted an ordinance increasing the number of housing units that can be included in a development or redevelopment project while qualifying as a permitted use in a variety of housing and mixed-use districts, including the TR-U1 and TR-U2 districts, to encourage more housing development. This proposed ordinance would effectively reverse that recent ordinance for these parcels.

The corner of Winnebago Street and Merry Street also is in the area that would be covered by the transit-oriented development (TOD) overlay zoning district, which the Plan Commission and Transportation Policy and Planning Board have been working on. This corner has been identified as a location where higher-density residential development is desired because of its proximity to transit. One of parcels covered by this ordinance, 230 Merry Street, is directly adjacent to the parcel at the southwest corner of Winnebago Street and Merry Street.

Finally, the property owner testified to the Plan Commission that it is working on a redevelopment project proposal which would combine the parcel on Merry Street that contains a parking lot (230 Merry St) and some adjacent parcels on Winnebago Street, which it also owns. It would be wise to wait to see the property owner's proposal before making any decision about rezoning the parking-lot parcel on Merry Street.

Smart Growth urges you to follow the Plan Commission's recommendation and place this ordinance on file, without prejudice. Adopting this ordinance would set an ugly precedent.

Bill Connors  
Executive Director  
Smart Growth Greater Madison, Inc.  
608-228-5995 (mobile)  
[www.smartgrowthgreatermadison.com](http://www.smartgrowthgreatermadison.com)

25 W Main St - 5th Floor, Suite 33  
Madison, WI 53703

**From:** [Joseph Degnitz](#)  
**To:** [All Alders](#)  
**Subject:** Merry St zoning....6/21/22  
**Date:** Monday, June 20, 2022 6:32:21 PM

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Caution: This email was sent from an external source. Avoid unknown links and attachments.

Please vote to protect the Merry St area, neighborhood and beautiful, wildlife-filled riverfront.

Please be sure to set up the zoning so large-scale developments do not destroy the neighborhood's beauty and protect the incredible trees, animals and wild diversity that is found there.

Thank you,

JOSEPH DEGNITZ  
Madison

**From:** [Megan Gilfillan](#)  
**To:** [All Alders](#)  
**Subject:** Common Council Vote on item #7  
**Date:** Tuesday, June 21, 2022 1:38:07 PM

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Dear Alders,

Please vote for item #7 on today's agenda, to lower the zoning for 222 Merry. Myself and the signers of this letter are the current residents of the adjacent lot, and officers of Red Pine Coop. We believe the height and look of the new building will have a very strong impact on the livability of the neighboring residences. The current height and massing of the building is such that it is concealed by the tree line, yielding privacy to both 222 and 212 Merry.

If there are more stories to 222 Merry, it will create light pollution, especially along the northwest edge. The current massing is such that if anyone in the apartments leaves lights on, it has little effect on anyone else. If the building were much taller, and without 3-dimensional depth, it would create an oppressive atmosphere. There is nothing more beautiful than a starry lit sky in the heart of the city. Of being able to sleep soundly with the windows able to have daylight shine through them and be in harmony with the rhythms of nature.

I think that any new apartment dwellers would actually benefit from all of these suggestions, by the way!

Furthermore, any new construction should fit in well with the surrounding neighborhoods and adhere to a sense of scale and aesthetic appeal. To be frank, most of the new construction in Madison is very cold and looks computer-generated. Merry street has been a haven for me since I have lived here to escape this type of architecture, which bombards the senses and leaves no public spaces or green paths.

Keeping the building zoning less dense is the starting point to prevent this from happening, as these patterns of design are interrelated.

This is my personal opinion, which is also shared by my roommates (who are more like family) in the neighboring housing coop. It may seem lengthy, informal or fastidious, but I chose to write in this language to convey the real impact your decision have on real people, and how much we care.

I really am concerned about the quality of life for myself, my housemates and the entire neighborhood. I am not against new construction, but against rather the way it

is implemented. I need to express my opinion about this matter, because it is very important to me and will impact my life tremendously. Architecture is one of the most overlooked places where we can transform our relationship to nature and each other. It has the ability to transform the global climate crisis, but instead is mainly used for capital gains (have you heard of the movie Don't Look Up?) I implore you please take this letter into consideration, and create something that will contribute to the beauty that has so far been preserved on our beloved street.

Best,

Megan Gilfillan

Signed by Elliott Gilfillan, Sophia Heimerl, Hillary Mitchell, and Zach Seaborne

Red Pine Coop, Inc.  
212 Merry Street  
Madison, WI  
53704

**From:** [Pilar Gomez-Ibanez](#)  
**To:** [All Alders](#); [Benford, Brian](#)  
**Subject:** Support for Legistar 71221, rezoning 222 & 230 Merry Street  
**Date:** Tuesday, June 21, 2022 1:51:51 PM

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Dear Alders,

I support Legistar 71221, Alder Benford's proposal to rezone 222 & 230 Merry Street from TR-U2 to TR-U1.

The proposal is not, as its opponents have suggested, a sneaky move to avoid multi-family housing by a neighborhood that already embraces it, but a straightforward move to correct the zoning for 222 & 230 Merry by bringing it in line with the Comprehensive Plan. TR-U1 is more consistent with Merry Street's Low Residential designation, which received repeated and careful review by the Plan Commission and the Common Council during the Comp Plan process. After the Council increased permitted densities in 2021, this is especially true.

At Plan Commission, concerns were raised about preemptive downzoning. Preemptive downzoning is in fact exactly what's needed here, to ensure that by-right development in this LR area will not be markedly out of line with the Comprehensive Plan's intent. The Planning Division supports this rezoning. The point of thoughtful planning is not density at all costs, but the right density in the right place.

Finally, the physical location of these Merry Street parcels is relevant. The parcels are on low-lying land on the east bank of the Yahara River, prone to flooding. The area was sandbagged in the 2018 flood. With climate change intensifying, this spot will never be appropriate for larger redevelopment. I urge you to consider this bigger picture, so our city can build smarter, more resilient density in the face of climate change.

Thank you for your time and consideration.

Respectfully,

Pilar Gomez-Ibanez  
1326 Dewey Court  
Madison, WI 53703

**From:** [Amie Heeter Yoga & Meditation](#)  
**To:** [All Alders](#)  
**Subject:** I support the file 71221 zoning change from TR-U2 to TR-U1 for 222 and 230 Merry St and here's why  
**Date:** Tuesday, June 21, 2022 5:17:03 PM

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Good evening,

As you consider whether to pass the proposed zoning designation of 222 and 230 Merry St on file, please recognize the unique aspects of this small one block street area as being part of the green space river corridor *and* its proximity to the major bike path and pedestrian school crossing zones that take place here. I have lived on Merry St for 3 years and very nearby on Rogers St (the one block portion saddled between Williamson and Jenifer Streets) for the 10 years before that. This is a special, heavily utilized pedestrian corridor on both sides of the river way, and I'm concerned as a parent of kids that attend and have attended Marquette and O'Keefe Middle School that if a larger development were to go in than what already exists, the safety of those walking and riding bikes would be a real issue to account for as heavier density and therefore crossing car traffic would be inevitable. There are other issues at play, but as Madison grows its population, I think protecting green space and preserving the pedestrian safety of this unique corridor is important for Madison's long term interests. This spot already has safety issues with cross traffic turning left out of Merry St.

Thank you,  
Amie Heeter (229 Merry St)

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**Amie Heeter**  
Yoga and Meditation Instructor  
photographer  
[www.amieheeter.com](http://www.amieheeter.com)  
**608-957-3327**

*"Don't ask what the world needs, ask what makes you come alive and go do it.  
Because what the world needs is people who have come alive."*  
-Howard Thurman

**From:** [Dawn Hinebaugh](#)  
**To:** [All Alders](#)  
**Cc:** [Dawn Hinebaugh](#)  
**Subject:** Support: Agenda #71221  
**Date:** Monday, June 20, 2022 4:11:59 PM

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Hello,

I am writing in support of agenda item #71221 for a change in the zoning of 222-230 Merry St from TR-U2 to TR-U1. We need to keep zoning in line with how we live and want to live. This zoning change would be a positive to the local neighborhood.

This is supported by the local community. Thank you!

Dawn Hinebaugh

**From:** [alvin@homelandgarden.com](mailto:alvin@homelandgarden.com)  
**To:** [All Alders](#)  
**Subject:** Item 71221  
**Date:** Tuesday, June 21, 2022 8:24:33 AM

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Hi

I am writing in support of Alder Benford's Item 71221 in changing the zoning of 222-230 Merry St. from TR-U2 to TR-U1.

In watching the Plan Commission meeting of 6/13/2022, Kevin Firchow of the city's planning division indicated that the city staff is in favor of this rezoning from TR-U2 to TR-U1. It also seems to fit more into the city's comprehensive plan of low residential.

There seemed to be some concern of "pre-emptively" rezoning an area. To me, though, it would make more sense to zone more in accordance to what the city would like to see, so that when developers plan they do so accordingly. Why wait for a building proposal that would fit TR-U2, but not TR-U1, and then argue to make the change in zoning, saying the city wanted the lower density in the first place.

I also do worry about the flooding of the area along the Yahara River.

Thank you  
Alvin Hishinuma  
E. Dayton Street.

**From:** [Linda](#)  
**To:** [All Alders](#)  
**Cc:** [Haas, Michael R](#)  
**Subject:** 222-230 Merry Legistar 71221  
**Date:** Monday, June 20, 2022 2:20:49 PM  
**Attachments:** [Legistar 71221 222 and 230 Merry.pdf](#)

Caution: This email was sent from an external source. Avoid unknown links and attachments.

As you consider whether to follow Plan Commission's recommendation to place the rezoning of 222 and 230 Merry Street on file, please consider the potential future impact. Or, better yet, ask the City Attorney.

Currently, if a property owner in Low Residential wanted to rezone to TR-U2, it would almost certainly be found incompatible with the Comprehensive Plan and denied – LR allows for 15 DU/acre (30 in select locations) while TR-U2 allows for 124 DU/acre. Yet the Plan Commission, as reflected in the Plan Commission report, "felt that the existing TR-U2 zoning could generally implement the Low Residential (LR) land use recommended for the site by the Comprehensive Plan ..." Or, as said by the Commissioner who made the motion to place on file without prejudice: "While the TR-U1 may be closer to the Comprehensive Plan, both TR-U1 and TR-U2 are accepted as zoning designations for this area of the Comprehensive Plan for Low Residential" and "the property with the existing zoning can meet the Comprehensive Plan."

The Merry properties are the only TR-U2 located in a LR area. This anomaly hasn't served as precedent for TR-U2 being allowed in LR. However, now that the matter has been brought to the Council's attention, that would likely change. If the Council accepts the Plan Commission's reasoning, the Council is saying that TR-U2 fits in any LR area. (The average single-family lot size is about 10,000 square feet which would allow for a 28 unit building up to 4 stories/52 feet if zoned TR-U2.)

TR-U1 is not a perfect zoning classification for the Merry properties. TR-U1 would allow for a density of 37 DU/acre and 24 units at 222 Merry, and 55 DU/acre and 16 units at 230 Merry. But at least TR-U1 could be viewed as a compromise between TR-U2, which the properties have held for almost 10 years, and TR-V2, the classification to which the properties should have been assigned (TR-V2 allows over 12 units as a conditional use, with a density of 29 DU/acre). As a compromise, this would not set a precedent for allowing TR-U1 in all LR.

Attached is a document which provides more detail, including the following.

- The land use designations where TR-U2 is located.
- All properties were rezoned in connection with the zoning code rewrite. The staff methodology found that TR-U2 was appropriate for only the High Density Residential land use. Comparably sized buildings to 222 Merry were rezoned to SR-V2 or TR-V2. (Except for Merry Street, TR-U1 and TR-U2 were only assigned to buildings where there was a cluster of TR-U1/TR-U2.)
- The Comprehensive Plan provisions regarding LR and permitted density, with details on how the Merry Street properties have the potential to far exceed the permitted density.
- Several Plan Commissioners expressed an opinion that the proper time to consider downzoning is in connection with a development proposal. Under state law, an application is reviewed based on existing requirements - downzoning cannot be required.

Wisconsin statutes, section 66.10015(3) requires a 2/3 vote to enact a down zoning ordinance.

Respectfully Submitted,

Linda Lehnertz

## 1. Locations of TR-U2 and TR-U1 and GFLU land use designations

There is not any TR-U2 zoned property in an area designated as Low Residential on the GFLU map *except* for these two Merry Street properties. There is not even any TR-U2 in Low-Medium Residential. The breakout of land use designations for TR-U2 properties is as follows\*:

- 2 Low Residential
- 9 Medium Residential
- 14 High Residential
- 1 Neighborhood Mixed Use
- 1 Community Mixed Use
- 60 campus area (some High Residential but mostly Special Institutional)

\*The data table I have is a year old, so there may have been a few changes.

There is only one location where TR-U2 even abuts a Low Residential area. That is 515 Pinney, which is in the area designated for medium density residential in the 2009 Royster-Clark Special Area Plan. (This was a 60 acre planning area. The TR-U2 buildings were slated to be located between the commercial area on Cottage Grove and the residential area to the north, and the actual TR-U2 buildings were approved/constructed prior to the construction of single family housing.)

In contrast there are a number of locations where properties zoned TR-U1 abut areas designated Low Residential, and a few locations where TR-U1 is actually in a Low Residential area.

## 2. Past rezoning

The zoning code was repealed and recreated effective 1/2/2013. As part of that process, properties were required to be rezoned to the new zoning classifications. Staff prepared a methodology, which was approved by the Zoning Code Rewrite Advisory Committee on 6/2/2011. That methodology compared zoning classifications to the GFLU map, and found that TR-U2 was appropriate for only High Density Residential land use.

Zoning Code Rewrite  
DRAFT Process and Schedule, Public Participation and Mapping Methodology Memorandum  
June 15, 2011

3. **Comparison of Comprehensive Plan Recommendations and Corresponding Zoning Districts.** In considering numbers 1 and 2 above, staff have identified the following zoning districts that most closely match Comprehensive Plan Recommendations. When choosing among districts that would be consistent with the Comprehensive Plan (see table below), take into account neighborhood plans, existing zoning, the existing and surrounding land uses, and development form.

Comprehensive Plan Recommendations	Likely Corresponding Zoning Districts
LDR Low Density Residential (<16 du/ac)	SRC1-3, TRC1-4, SRV1, TRV1, NMX, TRP, C
MDR Med. Density Res. (16-40 du/ac)	TRC4, TRV1-2, TRU1, SRV1-2, NMX, TRP, C
HDR High Density Res. (41-60 du/ac)	TRU1-2, MXC, NMX, TSS, TRP
NMU Neighborhood Mixed Use	NMX, TSS, MXC, CCT
CMU Community Mixed Use	CCT, MXC, TSS
RMU Regional Mixed Use	CCT, MXC
GC General Commercial	CCT, CC
RC Regional Commercial	CC
E Employment	TE, SE, EC SEC, IL, UA
I Industrial	IL, IG
P Parks and Open Space	C, UA
A Agriculture	A, UA
SI Special Institutional	CI, Residential Districts, C
AP Airport	AP
C Campus	CI

<https://madison.legistar.com/View.ashx?M=F&ID=1777591&GUID=2D23D84B-144F-4D02-8DEA-C608BBF14FFD>

The rezoning process resulted in 25 multi-family buildings with 20 through 30 units being rezoned. (To obtain just those properties that are comparable to 222 Merry, I excluded: lots with more than one building; vacant lots; downtown district buildings since those have separate zoning designations; buildings constructed as planned developments; and, buildings in commercial or employment zones.)

A few trends emerge from review of the rezonings (table attached).

- 19 properties were rezoned to SR-V2 or TR-V2 (depending upon suburban or more urban location). Both of these zoning designations permitted more than 8 units as a conditional use.
- 6 properties were rezoned to TR-U1 or TR-U2. 5 of the 6 properties were located in areas with clusters of TR-U1/TR-U2 buildings.
- Only 222 Merry was not part of a TR-U2/TR-U1 cluster.

This, I believe, raises the question of whether the Merry Street properties were properly zoned TR-U2. Perhaps, like the 4 properties on Pine/Beld that were “downzoned” in 2021 from CC-T to TR-C2 (Legistar 66234) due to a mapping error made in January 2013, the TR-U2 for the Merry properties was also a mapping error.

### **3. Comprehensive Plan**

The designation of Low Residential for the Merry Street area was specifically discussed at three Plan Commission meetings during the Comprehensive Plan process. Low-Medium Residential was initially proposed by staff and rejected by the Plan Commission. A later proposal to change the designation of the west side of Merry Street to Low-Medium Residential (because of 222 Merry) was ultimately rejected by the Plan Commission.

The Comprehensive Plan, page 17, makes clear that existing multifamily buildings in Low Residential areas, such as 222 Merry, are not required to be transitioned to single-family or duplex development (“Similarly, it is not the intention of this Plan that any existing multifamily that may be in the “Low Residential” district must be transitioned to single-family or duplex development ...”) 222 Merry is developed, 230 Merry is vacant. The Comprehensive Plan, page 20, states: “any infill or redevelopment that occurs within an LR area should be compatible with established neighborhood scale, and consistent with any relevant sub-area plan.”

The table on page 20 of the Comprehensive Plan allows for small multifamily buildings only in specified Low Residential areas: “Permitted in select conditions at up to 30 DU/ac and three stories, generally along arterial streets or where these types of buildings are already present or planned within an adopted sub-area plan as part of a pattern of mixed residential development.” The existing 222 Merry building is at 34 DU/acre.

- If redeveloped at current TR-U2 parameters (36 unit maximum), the allowed density is 56 DU/acre. If the transit overlay is adopted as presented to Plan Commission, a redevelopment could go to 79 units, with a density of 123 DU/acre and 5 stories.
- Contrast that to TR-U1. 222 Merry currently has an allowed density of 37 DU/acre (since TR-U1 has a 24-unit permitted use maximum). Even under the transit overlay, it could have 37 units, for a density of 57 DU/acre.
- 230 Merry does not have an existing building, so the Comprehensive Plan exemption for existing buildings is inapplicable. 230 Merry is not located on an arterial street, nor is it covered by a neighborhood plan. Arguably, it should be required to adhere to the 1-4 units required for Low Residential under the Comprehensive Plan. However, one could also argue that this empty lot is in an area “where these types of buildings are already present.” TR-U2 (whether current or under transit overlay) provides a density of 122 DU/acre while TR-U1 provides a density of 55 DU/acre.

- Cleary, TR-U1 provides a density that is currently much better aligned with the Comprehensive Plan's maximum 30 DU/acre and, most likely, will be far better aligned under a future transit overlay. The following table reflects the difference.

<b>Current</b>	acres	TR-U1	TR-U2
		DU/acre	DU/acre
222 Merry	0.642	37	56
230 Merry	0.286	55	122
<b>TRANSIT OVERLAY</b>	acres	TR-U1	TR-U2
		DU/acre	DU/acre
222 Merry	0.642	57	123
230 Merry	0.286	55	122

As a side note, Bill Connors' written comments complain how the owner was not given notice during the Comprehensive Plan process that the land use designation could result in rezoning. It is worth noting that that 2018 Comprehensive Plan did not change the land use designation. The 2006 Comprehensive Plan GFLU map had the Merry Street area, including 222 and 230 Merry, as Low Density Residential (0-15 units/acre) – the same designation as the 2018 GFLU.

#### **4. Neighborhood Plans**

The Comprehensive Plan permits greater density in Low Residential areas if allowed under an adopted sub-area plan.

At Plan Commission, the property owner discussed the neighborhood plan in his testimony. He said that the Merry Street properties are listed as medium to high density residential. That is not true. The neighborhood plan, the *Marquette-Schenk-Atwood Neighborhood Plan*, recommends "new medium-high density housing to the west of Thornton Avenue on existing industrial lands." Thornton is west of the Yahara River, while the Merry Street properties are to the east of the river. The neighborhood plan, like other neighborhood plans, does not discuss redevelopment for the residential areas. Additionally, this plan is from 1994, when the terms medium or high residential had an entirely different meaning. Elsewhere in the plan, an example is provided for what was meant by medium-high residential – that example had a density of 23 DU/acre.

#### **5. Preemptive Downzoning**

Preemptive downzoning prevents by-right redevelopment that is inconsistent with the Comprehensive Plan. As shown above, TR-U2 is inconsistent with the Comprehensive Plan. 222 Merry could be redeveloped tomorrow at 36 units, and 230 Merry at 35 units, for a total of 71 units in two buildings, and the Plan Commission would have no oversight. Is 71 units, with an overall density of 76 DU/acre, consistent with the Comprehensive Plan? Or is TR-U1 a better fit with a total of 40 units between the two buildings and a density of 43 DU/acre? (Had 222-230 been zoned TR-V2 - like other 20-30 unit multifamily buildings - a total of 26 units would be a permitted use on the two properties, for a density of 26 DU/acre.)

#### **6. Downzoning in connection with a proposal**

The owner talked about his vision for a project involving his Winnebago properties and half of 230 Merry. He testified that if the TR-U1 designation is adopted, he would not be able to do the project.

First, that is not true. The two Winnebago properties, 1626 and 1628, are zoned TR-C4, with a maximum of 5 units total. Any redevelopment will require him to come to Plan Commission and

Council for rezoning, and he will need to obtain approval to consolidate lots, and also may need conditional use approvals. There is nothing preventing 230 Merry from again being rezoned to allow for a development that meets Comprehensive Plan/ordinance standards.

Second, the talk of a development proposal seemed to muddy the discussion at Plan Commission. Various Commissioners made comments indicating that the time to look at downzoning is when the Plan Commission has a specific proposal before the Commission. However, that cannot happen - the Plan Commission cannot downzone in connection with a development proposal. Once an application has been filed, the Plan Commission is required under state law to assess the application under the existing zoning category.

Wis. Stats. 66.10015(2)(a): “[With limited, inapplicable exceptions] if a person has submitted an application for an approval, the political subdivision shall approve, deny, or conditionally approve the application solely based on existing requirements, unless the applicant and the political subdivision agree otherwise. An application is filed under this section on the date that the political subdivision receives the application.”

Nor will Plan Commission necessarily review any particular proposal. The whole point of the upzoning ordinance was to increase by-right development. As discussed above, the owner could currently build two multi-family buildings with a total of 71 units and an overall density of 76 DU/acre under TR-U2. Once an application has filed for a building permit, the owner becomes entitled to the zoning classification – downzoning is not possible.

“Wisconsin follows the bright-line building permit rule that a property owner's rights do not vest until the developer has submitted an application for a building permit that conforms to the zoning or building code requirements in effect at the time of application.” *McKee Family I, LLC v. City of Fitchburg*, 2017 WI 34, ¶4.

Thus, unless preemptive rezoning takes place, Plan Commission has little, or no, oversight.

There was some talk at Plan Commission about how Plan Commission only changes zoning in connection with a specific proposal. Plan Commission generally upzones only in connection with a specific proposal since some projects may work while others would not. But Plan Commission has engaged in preemptive upzoning for the Oscar Mayer Special Plan area, and downzoned the Pine/Beld properties.

## **7. Conclusion**

Although preemptive downzoning may not be in line with what the Plan Commission has been doing in other matters, it is the right thing to do for 222 and 230 Merry. TR-U2 is not a Low Residential zoning category. The potential intensity of development (especially if the transit overlay provisions are adopted) exceeds what the Comprehensive Plan permits in a Low Residential district. When a Commissioner asked staff whether TR-U2 was inconsistent with the Comprehensive Plan, staff recited various Comprehensive Plan provisions and said TR-U2 is higher than what is generally recommended as Low Residential. It is not just higher - the answer should have been a “no, it is not compatible.” In fact, it is impossible for the most intense residential zoning classification to be compatible with homes that are permitted to have a maximum of 3 units. And TR-U2 in a Low Residential area has not happened at any location in the City other than on Merry Street. Even TR-U1 does not meet the Comprehensive Plan’s maximum density of 30 DU/acre. However, as said in the staff report, TR-U1 rezoning “would bring the property *more into conformance* with the LR land use category.” (emphasis added)

ATTACHMENT

Address	Property Use	Year Built	Zoning1	Zoning2	Surrounding uses
2121 University Ave	28 unit Apartment	1963	HIS-UH	<b>TR-U1</b>	One of 20 TR-U1 lots on the south side of University Ave.
12 Dempsey Rd	25 unit Apartment	1985	SR-V2	WP-11	TRIANGLE SHAPED, CC ON 2 SIDES
1667 Capital Ave	24 unit Apartment	1962	SR-V1	SR-V2	BETWEEN NMX AND SR-V1
700 W Badger Rd	24 unit Apartment	1968	SR-V2		BETWEEN CC-T AND NON-CITY
2405 Monterey Dr	24 unit Apartment	1966	SR-V2		BETWEEN PARK AND SR-V1
2202 Luann Ln	23 unit Apartment	1998	SR-V2		BETWEEN CC AND PD
4929 Whitcomb Dr	24 unit Apartment	1969	SR-V2		BETWEEN BELTLINE AND SR-C1
5019 Old Middleton Rd	20 unit Apartment	1967	SR-V2	WP-14	BETWEEN NMX, PD AND SE
401 Troy Dr	20 unit Apartment	1965	SR-V2		BETWEEN CI AND SR-C1
2201 Carling Dr	30 unit Apartment	1978	SR-V2		BETWEEN SR-V1 AND VERONA ROAD
1710 Brittany Pl	20 unit Apartment	1996	SR-V2		ABUTS SR-C1 SR-C3 ANDSR-V2
402 Chamberlain Ave	20 unit Apartment	1965	<b>TR-U1</b>		One of 32 TR-U1 lots on the north side of University Ave.
2102 University Ave	28 unit Apartment	1963	<b>TR-U2</b>		One of 4 TR-U2 lots on the north side of University Ave, with TR-U1 to the east and PD/TR-U1/TSS to the west
340 Island Dr	21 unit Apartment	1963	SR-V2		ABUTS PARK AND CC-T
1234 E Mifflin St	24 unit Apartment	1976	TR-V2		SURROUNDED BY TR-V1
1430 Mound St	25 unit Apartment	1927	TR-V2	WP-27	SURROUNDED BY TR-C4
2211 Carling Dr	30 unit Apartment	1978	SR-V2		BETWEEN SR-V1 AND VERONA ROAD
1315 Spring St	20 unit Apartment	1968	<b>TR-U2</b>	WP-27	One of 30 TR-U2, with interspersed PD
336 Norris Ct	21 unit Apartment	1926	<b>TR-U1</b>	WP-24	One of 12 TR-U1 lots, with 5 interspersed TSS

320 Island Dr	21 unit Apartment	1964	SR-V2		ABUTS PARK AND CC-T
2222 Independence Ln	20 unit Apartment	1968	SR-V2		BETWEEN CC-T AND SR-V1
222 Merry St	22 unit Apartment	1964	<b>TR-U2</b>		SURROUNDED BY TR-C4
6214 Schroeder Rd	30 unit Apartment	1986	SR-V2		SE ON 3 SIDES
330 Island Dr	21 unit Apartment	1964	SR-V2		ABUTS PARK AND CC-T
318 Island Dr	20 unit Apartment	1964	SR-V2		ABUTS PARK AND CC-T

**From:** [Linda](#)  
**To:** [All Alders](#)  
**Subject:** My 3 minute testimony  
**Date:** Tuesday, June 21, 2022 8:12:46 PM

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I do know how to press \*6, but for whatever reason it did not work on any of my attempts. This is my testimony.

The bottom line question is whether TR-U2 belongs in a Low Residential Land use area. It does not. First, there is not any TR-U2 zoned property in a Low Residential area except for these two parcels. There is not even any TR-U2 in a Low-Medium Residential area.

Second, when the zoning code was rewritten and all property zoning codes were changed, other apartment buildings with 20-30 units were primarily rezoned to SR-V2 or TR-V2. The few buildings rezoned to TR-U1 or TR-U2 were in areas with a cluster of high density buildings. In 2011, planning staff and the Zoning Code Rewrite Advisory Committee determined that TR-U2 most closely matched the “High Density Residential” land use of the Comp Plan recommendations. A zoning classification that matches the most intense residential land use cannot match the least intense residential land use. It could perhaps be that this was a mapping error (like the Pine/Beld properties that were downzoned last year).

Third, should the Council place this on file, it infers that TR-U2 zoning is an appropriate category for ALL Low Residential areas, since the Council would be blessing this zoning. No unique circumstances have been attributed to these parcels, thus there is no reason to claim TR-U2 is okay here but not elsewhere. If TR-U2 is okay in any Low Residential area, a 4 story 28 unit building could be built on the average residential lot.

Fourth, it is not consistent with the Comprehensive Plan. The Low Residential land use allows for a density of 15 DU/acre. In “select conditions” 30 DU/acre is allowed. While the Comp Plan specifically says that an overly large building does not need to be transitioned to single-family or duplexes, the Comp Plan does not grant the right to even greater density.

TR-U2 allows a density of 124 DU/acre, while TR-U1 allows a density of 58 DU/acres. With the number of units currently limited for TR-U2, 222 Merry could not reach this density level, though 230 Merry could. Contrast that to TR-U1, where the respective densities could be 37 DU/acre and 55 DU/acre. Clearly, TR-U1 is much closer, though still in excess, of the Comp Plan maximums.

In addition, the Plan Commission’s recommendation to place on file was based, in part, on a misunderstanding. Various Commissioners indicated a preference to handle any zoning change in connection with an actual proposal. However, once an application has been filed, the City is required under state law to assess the application under the existing zoning category – the City cannot downzone.

**From:** [Jeremy Manheim](#)  
**To:** [All Alders](#)  
**Subject:** 222-230 Merry Legistar 71221  
**Date:** Monday, June 20, 2022 4:01:31 PM

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Dear Alders,

I am writing in favor of the proposal to change 222 Merry St from TR-U2 to TR-U1.

I attended the last Plan Council meeting in which the Council rejected the proposal. I am a bit unclear about the reasoning behind the decision. Members of the Plan Council who voted against the proposal appealed to one of the following three reasons in support of their decision. No other reasons were given.

- 1) *They were against setting a precedent for preemptive “downzoning” instead of waiting until there was a concrete development proposal.*

I am confused. I thought zoning was necessarily preemptive. Indeed, I am told that once a proposal has been made, lowering the zoning designation is prohibited. Let’s charitably assume then that this is not the primary reason for the Council’s decision.

- 2) *At least one member of the council objected to what they saw as Alder Benford’s failure to properly communicate with the property owner.*

While I certainly cannot speak to whether that is true, I don’t see how that could be relevant. Just as, for instance, in a court of law, any deficiencies in one’s legal representation are not themselves reasons for a guilty verdict, any possible shortcomings in this regard do not speak against the merits of changing the zoning.

- 3) *The final reason given was that lowering the zoning designation goes against the Plan Commission’s commitment to increasing population density.*

Now, this certainly sounds like a good reason, and one that I might agree with. However, in the present case, this reason is even more perplexing than the first two.

Does the Plan Commission intend to implement this higher density willy-nilly or by conforming to a plan? Again, charity demands that we assume the latter. But, if that’s case, what plan is there other than the *Comprehensive Plan*? And, if indeed it is the *Comprehensive Plan* that is to provide the blueprint for implementing this higher density, why did the Plan Commission not follow the recommendation of the City Planning Division to change 222 Merry St to TR-U1 since this was more consistent with the *Comprehensive Plan*?

Many thank for considering this issue.

Sincerely,

Jeremy S. Manheim

209 Merry St

**From:** [Cynthia K McCallum](#)  
**To:** [All Alders](#)  
**Subject:** Common Council Meeting Agenda #71222  
**Date:** Monday, June 20, 2022 8:50:46 PM

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Dear Alders,  
Thank you for your time and service.

I concur with other neighbors' comments in opposing the rezoning, and conditional use permit for the 12 story building proposed for 222-232 E. Olin Avenue.

The rezoning requested is inappropriate as this is primarily a residential development, not one for employment.

The proposal doesn't provide for sufficient greenspace. Balconies and City parkland do not meet the requirement for "open space" for residents.

The proposed building is too tall to be so close to the park land. It will stick out significantly on the skyline from Olin-Turville, AEC, Quann and Goodman parks and the view along John Nolen Drive. This proposal is inconsistent in size and appearance with the other properties along the John Nolen corridor south of Lakeside Street. The other buildings are less than 8 stories and blend in with trees along the corridor. I enjoy the view of Madison as I drive down the off ramp from the Beltline to John Nolen. I enjoy the trees and the lakes and do not notice the existing buildings that are either set back from the road or have trees on their property which make the buildings less noticeable. This may be the first view many visitors see of our city as they exit the Beltline.

I have been told this proposed apartment building is necessary because we need more housing. How come the property on University Avenue, where there was a Perkins isn't 12 stories? How come the property on Cottage Grove Road that used to have a Sentry Grocery store isn't 12 stories? Both of these streets have bus service.

Please do not permanently ruin the view along John Nolen and Olin-Turville Park; do not approve the rezoning of the properties.

Sincerely,

Cynthia K. McCallum  
705 South Shore Drive  
Madison, WI 53715

**From:** [Dan Melton](#)  
**To:** [All Alders](#)  
**Subject:** Common Council Agenda Item 7 — 222 Merry Street  
**Date:** Tuesday, June 21, 2022 11:52:48 AM

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Caution: This email was sent from an external source. Avoid unknown links and attachments.

Re: Common Council Agenda Item 7, June 21, Please SUPPORT the proposal to change the zoning of 222 Merry Street from TR-U2 to TR-U1

Thank you,  
Dan Melton  
2138 LaFollette Avenue  
Madison WI 53704

**From:** [Marc Ott](#)  
**To:** [All Alders](#)  
**Cc:** [council](#); [Randy Christianson](#)  
**Subject:** 220-230 Merry Street  
**Date:** Tuesday, June 21, 2022 8:04:55 AM  
**Attachments:** [220-230 Merry Street Letter to Common Council.pdf](#)

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Common Council Members and Staff,

Please find the attached letter that we would like added to the public comments for 220-230 Merry Street, legistar # 71221, Common Council agenda # 7.

Thank you,

Marc Ott

Director of Quality Control | Vice President



Madison | Milwaukee | Denver

direct 608.442.3867

general 608.241.9500

learn more [www.jla-ap.com](http://www.jla-ap.com)

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June 20, 2022

City of Madison – Common Council

Re: 220-230 Merry Street  
Legistar No. 71221

Common Council Members and Staff,

JLA is representing the property owner of 220-230 Merry Street, Apex Investment Group in working on a redevelopment options for the subject property and adjoining properties 1626 & 1628 Winnebago Street. The project team has met with both City of Madison staff and Alder Brian Benford to present the redevelopment plans and receive feedback. We are currently working to set up a meeting date with the Marquette Neighborhood Association P&D.

During our meeting with Alder Benford he expressed support of the redevelopment plans. The core of the plans would be to keep the existing 22 unit apartment building (222 Merry Street), keep the neighborhood scale and feel on Merry Street, and locate the new density along Winnebago street which we feel is most appropriate.

The property owner and project team are opposing the proactive downzoning at this time to allow us the time needed to continue to work with the neighborhood, Alder, and City staff on the current redevelopment proposal.

Thank you for your time.

Sincerely,

Marc Ott  
Director of Quality Control | Vice President  
JLA Architects, LLC

**From:** [Rita Ruona](#)  
**To:** [All Alders](#)  
**Date:** Monday, June 20, 2022 8:02:51 PM

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Merry Street, where I live, must remain special and green. Therefore, I support the TR-U1 proposal & sincerely hope you do, too.  
Thank-you

**From:** [annewalker@homelandgarden.com](mailto:annewalker@homelandgarden.com)  
**To:** [All Alders](#)  
**Subject:** agenda item 71221--Merry St  
**Date:** Monday, June 20, 2022 11:56:43 AM  
**Attachments:** [WPM\\$EQZP.PM\\$](#)

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Dear Alders,

I strongly support agenda item 71221, Alder Benfords proposal to rezone 222-230 Merry St from TR-U2 to TR-U1. Merry St, and specifically this location, was addressed during the City of Madison Comprehensive Plan process. During the process, the Plan Commission voted unanimously for a low residential density for Merry and surrounding area. Council supported and a Low Density designation was incorporated into the *City of Madison Comprehensive Plan*.

One of the issues that neighbors have raised for years is the flooding we are experiencing in the area. The first flood I experienced in our neighborhood was in 1993. There have been many since, including 2018 when the National Guard, City Staff, and volunteers sandbagged residences on the river side. The pictures you will see in the link below are from 2004. Please note that the National Guard was also needed to help sandbag new developments as well, specifically The Marling.

<https://www.dropbox.com/sh/0324io8kok1n0k5/AABHFtxnK7zoEUgBcPjwATNaa?dl=0>

Also included in the link is a map which illustrates land in the area which is highly erodible. That land includes public access along the Yahara River. This is a wonderful and unique location. One such factor which makes this area unique **is** its ability to flood. The Yahara River is where quite a bit of run-off is diverted from other parts of the neighborhood. This can cause the river to rise. We are also just downstream from the Tenney Locks. When Lake Mendota gets too high, the Locks are opened. This does not necessarily mean that there is room for the water below. When Lake Monona likewise gets full, I have literally seen the Yahara River reverse direction and flow up toward the Locks.

While I support additional infill in our neighborhood and the City, I also believe in building a resilient city. I support Alder Benfords resolution, as does former Alder Rummel and City Staff. I ask you to do the same.

An additional comment and concern. As a city, we need more housing, and especially more affordable housing. Increasingly in our neighborhood though, we are losing what is affordable for new housing which is not. I also worry that in our present drive to build more, that there is less incentive, at times, to care for the buildings and homes that exist at present, especially if what an owner might prefer is to build something larger. This is a concern we have expressed as a neighborhood for a long time and one that remains relevant today.

Respectfully,

Anne Walker  
Winebago and Merry