



Department of Planning & Community & Economic Development

## Planning Division

Heather Stouder, Director

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**TO:** Plan Commission

**FROM:** Heather Stouder, Director  
Timothy M. Parks, Planner

**DATE:** April 12, 2021

**SUBJECT:** Ordinance ID [64610](#) – Rezoning 3650 Milwaukee Street and 102 West Corporate Drive, 15th Ald. Dist., from IL (Industrial–Limited District) to CC-T (Commercial Corridor–Transitional District).

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On March 16, 2021, Ald. Grant Foster, 15th District, introduced Ordinance ID 64610 to rezone two parcels generally located on the north side of Milwaukee Street at West Corporate Drive from IL to CC-T. The purpose of the proposed zoning map amendment is to begin to implement the land use recommendations in the [Milwaukee Street Special Area Plan](#), which was adopted in December 2018 by the Common Council guide future land uses and street networks, transit facilities, bike facilities, street design, and open spaces for the existing and future City of Madison bounded by State Highway 30 on the north, N Stoughton Road (US Highway 51) on the east, the south side of Milwaukee Street on the south, and N Fair Oaks Avenue and Starkweather Creek on the west.

### Previous Request

The new rezoning proposal follows a more expansive effort to rezone nine parcels at 3614-3700 Milwaukee Street and 102-122 West Corporate Drive from CN (Conservancy District), TR-C1 (Traditional Residential–Consistent 1 District), SE (Suburban Employment) and IL (Industrial–Limited District) to TSS (Traditional Shopping Street) District and TR-U1 (Traditional Residential–Urban 1 District) consistent with recommendations in the [Milwaukee Street Special Area Plan](#). The Plan Commission recommended approval of Ordinance File ID [62174](#) at its November 23, 2020 meeting. Following the Plan Commission review, a protest petition was filed by at least 20% of the owners of the land to be rezoned, which required a favorable vote of three-fourths (3/4) of the members of the Common Council voting on the zoning map amendment ordinance in order for it to pass. However, at its February 2, 2021 meeting, the Common Council failed to approve the rezoning request on a 6-13 vote.

### Proposed Rezoning Request

The property to be rezoned CC-T encompasses approximately 17.63 acres of land and includes an 116,240 square-foot Amazon package distribution facility located on a 16.15-acre parcel at 3650 Milwaukee Street and Metro Transit’s East Transfer Point at 102 West Corporate Drive. Package delivery services and transit stations are permitted uses in the proposed CC-T district.

As with any zoning map amendment, notice of the proposed rezoning of the two parcels was published notice in the City’s newspaper of record (Wisconsin State Journal) and notices were mailed to the property owners and occupants within 200 feet of the area subject to the map amendment.

The land to be zoned CC-T is recommended for Community Mixed-Use (CMU) and Medium Residential (MR) in the 2018 Comprehensive Plan Generalized Future Land Use Maps. The Milwaukee Street Special Area Plan primarily recommends Community Mixed-Use development along the Milwaukee Street frontage of the subject parcels, with the rest of the parcels recommended for a combination of (Low-Medium) Residential Mix 1, (Medium) Residential Mix 2, and Parks and Open Space/Stormwater. The Milwaukee Street Special Area Plan also includes an alternative land use plan that allows General Commercial development on the 3650 Milwaukee Street parcel to accommodate construction of a new grocery store on the north side of Milwaukee Street to replace the existing Woodman's grocery store on the south side of Milwaukee Street.

The CC-T zoning proposed for the frontage of the 3650 Milwaukee Street parcel and the 102 West Corporate Drive parcel is consistent with the CMU recommendations in both the Milwaukee Street Special Area Plan and the Comprehensive Plan. The CC-T zoning district would also allow most or all of the residential uses planned for the northern two-thirds of the subject parcels to be developed in a manner that is generally consistent with plan recommendations. However, Planning staff acknowledges that other zoning districts than CC-T may be better for implementing the residential development planned for the property, particularly the small portion of the 3650 Milwaukee Street parcel recommended for (Low-Medium) Residential Mix 1.

#### *Nonconformities Created by the Amendment*

The proposed zoning map amendment will create zoning nonconformities on the parcels to be rezoned, and the Plan Commission should carefully consider the potential impact on the affected properties when making its recommendation on the zoning map amendment to the Common Council. While the existing uses of the two subject parcels are permitted in the proposed CC-T district, the proposed rezoning will create bulk nonconformities that could affect the parcels if approved.

Nonconformities are governed by Subchapter 28M of the Zoning Code, Sections 28.190–28.195, which address nonconforming uses, buildings or structures, and lots, and provide the processes for restoring a nonconforming building or structure and obtaining a certificate of occupancy for a nonconforming use. The purpose of the Nonconformities subchapter is to specify the circumstances and conditions under which these nonconforming uses, buildings, structures, and lots shall be permitted to continue.

In general, a lawful nonconforming use of a building, structure, or land existing on the effective date of the Zoning Code (or an amendment thereto) may be continued although it does not conform to the provisions of the code, provided that structural repairs or alterations to the building do not exceed 50% of the total assessed value of the building, the nonconforming use is not extended or expanded, and the building does not become and remain vacant or the nonconforming use of the land cease for a continuous period of twelve months. A lawful nonconforming building may be continued although it does not conform to the provisions of the Zoning Code with respect to bulk (setback, open space, floor area ratio, height, parking, etc.) provided that any additions or enlargements shall conform to the provisions of the code as amended. Finally, a lawful nonconforming building existing on the effective date of the Zoning Code that has been damaged or destroyed may generally be restored to the size, location, and use that it had immediately before the damage or destruction occurred if the damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation. The size of the restored building or structure may be larger than the size it was immediately before the damage or destruction if necessary for the building to comply with applicable state or federal requirements (such as the Building Code).

Any person having a legal or equitable interest in a property with a nonconforming use shall obtain a certificate of occupancy from the Zoning Administrator. Such person shall present evidence that the use was a lawful permitted or conditional use at the time it originated and was made nonconforming by the adoption of the Zoning Code or any amendment thereto, or was made nonconforming by the Zoning Code in effect at the time the current code was adopted.

The summary of the nonconformities section above is intended to capture the potential effect of the proposed zoning map amendment and is not intended to supplant the full text of the Zoning Code, case law, or Wisconsin statutes. In addition to City Zoning and state law provisions for nonconforming uses and structures, 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.

#### Recommendation

In reviewing the proposed map amendment, the Planning Division believes that the proposed CC-T zoning can implement the mixed-use and residential land uses recommended for the subject area by the Milwaukee Street Special Area Plan and the Comprehensive Plan. While the proposed CC-T district is not the only or best zoning district that could implement the adopted plan recommendations, it would generally allow the development anticipated by the plans. Importantly, while the proposed rezoning may create zoning nonconformities related to the bulk and design of buildings, it avoids the creation of nonconforming uses.

If, following input at the public hearing the Plan Commission can find the standards for zoning amendments met, the Planning Division recommends that the Plan Commission forward Zoning Map Amendment ID 28.022-00496, rezoning properties located at 3650 Milwaukee Street and 102 West Corporate Drive from IL to CC-T, to the Common Council with a recommendation of **approval**.