

FREQUENTLY ASKED QUESTIONS

regarding the Rezoning Application for Stagecoach Trail Apartments

Prepared by City of Middleton Planning Department -- Revised 10/07/17

Note: This document is not intended to supplant the staff report prepared for this project.

What has changed since the August public hearing? Does a change in the number of apartment units require a new public hearing?

Why isn't the PDD-Infill zoning classification being applied to this project?

In considering the proposed development, is the City disregarding its Tax Incremental District #5 guidelines?

Are the Historic Pheasant Branch Crossing Design Guidelines being drafted to accommodate the Stagecoach project?

Is the building scale and setback out of place on this site, in this neighborhood?

How will stormwater run-off affect the conservancy?

What about the fate of the trees currently located on the property?

Are there any other negative environmental impacts on the conservancy?

Isn't traffic going to be problem?

Why here? What makes this an appropriate site for a 46-unit apartment building?

Why can't the property be added to the Conservancy?

Does the City have a conflict of interest in planning to purchase parcels for a conservancy trailhead at the same time as reviewing the apartment building proposal?

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Prepared by City of Middleton Planning Department, 10/06/17

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What has changed since the August public hearing? Does a change in the number of apartment units require a new public hearing?

The developer has reduced the number of dwelling units from 48 to 46 (by combining a studio and one-bedroom units into a three-bedroom unit, on two floors) as well as revised the building design to address the components of the Historic Pheasant Branch Crossing Design Guidelines that have been drafted by the City. The site layout, building footprint, impervious surface area, and gross rentable square footage of the project have not substantively changed—therefore, planning staff have determined that no new public hearing is necessary for this rezoning application. As always, interested residents will continue to have an opportunity to comment via email as well as in person at the beginning of the Common Council meeting at which the rezoning request will be considered.

Why isn't the PDD-Infill zoning classification being applied to this project?

The City of Middleton's zoning ordinance does not require the use of the PDD-Infill category for a project of this size, and indeed there is ample precedent for the use of either PDD category for a project encompassing an area of less than 100,000 sq. ft.

Section 10.82 of the zoning code states,

The Planned Development District provides a regulatory framework to encourage improved environmental design by allowing flexibility in the development of land while insuring compliance with the basic intent of the Zoning Ordinance and with the City Master Plan. The Planned Development District has no "set" standards and specifications. Developers can propose uses or combination of uses and configurations of intensity and density of development. Through a process of Plan Commission review, public hearing and Common Council review and approval, accompanied by discussions with developers and, as appropriate, with other interested parties, an agreement is reached between the property owner and the City of Middleton. The details of this

agreement constitute the zoning controls of the property. These controls have the same legal force and effect as to standard zoning requirements.

*To achieve the community benefits of PDD zoning, it is generally true that the project size should be large enough to allow clustering and to establish a coherence of design. Parcels less than 100,000 sq. ft. are presumptively too small to be approved, **but small projects may still be submitted and considered.** (emphasis added)*

The use of “may” (versus “shall”) gives City officials the ability to determine whether it is appropriate to use PDD-Infill zoning, which is described in Sec. 10.94:

Planned Development District-Infill (PDD-I) standards and regulations have been created for the purpose of allowing flexibility to accommodate infill and redevelopment on parcels less than 100,000 square feet. Parcels of more than 100,000 square feet should comply with the normal PDD regulations. The application procedures and review criteria for the PDD-I are the same as those outlined for the basic PDD District in addition to the following provisions.

The PDD-I District is referred to as an "infill" zoning regulation because it is intended to be used in situations where new development or redevelopment is proposed within an already developed area or neighborhood. Mixed use may be allowed to the extent that no land use conflicts will result. It is a basic public expectation that landowners requesting the use of the PDD-I District will develop designs that exceed the standards of the basic use districts in terms of site design, building architecture, landscape design and construction materials. The extent of variation or exception that will be allowed by the City Plan Commission will be dependent on how well the above stated planning expectations are expressed in the proposed development plan.

The developer of the Stagecoach project applied to rezone the property to PDD. Mr. Klein’s initial rezoning application in early 2017 pertained to six parcels totaling 102,783 sq. ft. (6612 through 6630 Century Ave.). At the time, the Plan Commission and Common Council denied his request to rezone the properties to PDD, citing concerns with the scale of the proposed 83-unit apartment building and compatibility with surrounding land uses. Subsequently, Mr. Klein decided to reduce the size of the project to encompass three parcels totaling 51,400 sq. ft. Although the number of dwelling units had decreased by over 40%, the project remained similar in concept and planning staff felt the developer’s request to rezone from R2 to PDD remained appropriate.

The City of Middleton has extensive experience with rezoning smaller (re)development sites to PDD and PDD-Infill—in fact, there have been approximately two dozen projects encompassing less than 100,000 sq. ft. of land since 1990. In about half of those instances, the City allowed the use of regular PDD zoning, particularly for projects exceeding 50,000 sq. ft. (see inventory in the appendix). During this time, the City approved **regular PDD zoning** for:

- The 92,537 sq. ft. Solitude Condos, which shares a 400 ft. long border with the conservancy and is located just a few hundred feet northwest of the Stagecoach site.

- The Parmenter Circle Phase 2 building, which consists of 74 units on 57,118 sq. ft. (a reasonably comparable lot size to the Stagecoach site). That project has a density of 56 units/acre, a floor area ratio of 1.37, and impervious surface of 61%.
- Six projects smaller in area than the Stagecoach development site.

The City’s interpretation of the use of PDD-Infill has remained consistent during this time. Then-City Attorney Bruce Kaufmann wrote on January 18, 1995, that “The Plan Commission has the option, if it wishes to do so from a policy perspective, to utilize the PDD-Infill section to accommodate a PDD on a small lot, such as a 10,000 sq. ft. lot. This is a policy decision as to whether or not they desire to use PDD-Infill for the smaller lots.” According to Brian Vandewalle, a planning consultant who has worked with Middleton since the 1970s, the original intent of the PDD-Infill zoning classification was to apply it to redevelopment projects encompassing commercial lots bordering University Ave. (most of those lots are shallow in depth and are largely impervious with little open space). In practice, about half of the projects zoned PDD-Infill have been located in the downtown area, and many have entailed site redevelopment. While it certainly is reasonable to view Mr. Klein’s proposal as a redevelopment project, the majority of the land area actually has never been developed given that the existing dilapidated structures are located close to Century Avenue.

Of course, not utilizing PDD-Infill for rezoning the site does not preclude the City from applying the basic standards listed in Sec. 10.94. Regardless of the size or zoning classification of the Stagecoach project, the City is undertaking its customary, thorough review by staff and pertinent city committees. Given the City’s extensive experience with PDD zoning, adherence to stringent stormwater regulations, and demonstrable commitment to minimizing environmental impacts, the revised proposal should not be required to be held to different standards than the original rezoning request.

In summary, based on both City ordinances and longstanding practice, the use of PDD-Infill zoning is at the discretion of the applicant and the City. The Common Council is not obligated to use the PDD-Infill category to rezone the Stagecoach development site.

In considering the proposed development, is the City disregarding its Tax Incremental District #5 guidelines?

Not at all. TIF Project Plans never *recommend* development intensities – only zoning can do that. TIF plans are a road map to implement a financial economic development tool. They are not neighborhood plans. The density numbers from page 35 of the TIF No. 5 Project Plan are development projections to justify and/or evaluate public improvement expenditures. These development assumptions / projections are always conservative. Increment (additional development) can occur anywhere in the district.

Are the Historic Pheasant Branch Crossing Design Guidelines being drafted to accommodate the Stagecoach project?

Quite the opposite—the initiative to develop design guidelines is the direct result of public feedback and city officials’ interest in encouraging (re)development projects that complement the existing historical structures in this area. The development of the draft guidelines has actually helped spur the Stagecoach developer to modify his proposed building design.

At the direction of the Plan Commission and Common Council, Planning staff continue to work with Vandewalle & Associates, the City’s planning consultant, to finalize design guidelines for the Historic Pheasant Branch Crossing concept plan, which was approved by the Council on 9/19/17. The Plan Commission has referred a draft of the guidelines to the Landmarks Commission, the Water Resources Management Commission, and the Conservancy Lands Commission. The Landmarks Commission met on 10/2/17 and took the following action:

Moved by Strassburg, seconded by Martin, in general to endorse the Historic Pheasant Branch Crossing design guidelines with the understanding that the City should be sensitive to the massing of buildings and streetscaping should be used to identify and enhance the area. Motion carried (4-1 with Baker opposed).

The WRMC and CLC are scheduled to review the guidelines at their respective meetings on 10/18/17 and 10/25/17. Thereafter, the Plan Commission will review committee recommendations and recommend a final document for approval by the Council.

The flat-roof building design as proposed by the Stagecoach developer in August did not meet several of the design criteria articulated in the Guidelines. Subsequently, the design team has worked with city Planning staff to revise the building elevations through several iterations as documented in Klein’s 10/03/17 letter to the city. Planning staff believe that the latest design provides a sufficient basis for approving the project at the General Implementation Plan stage, recognizing that all the specific design details will be addressed as part of the Specific Implementation Plan. Staff anticipates that the Council will adopt the design guidelines in November.

Is the building scale and setback out of place on this site, in this neighborhood?

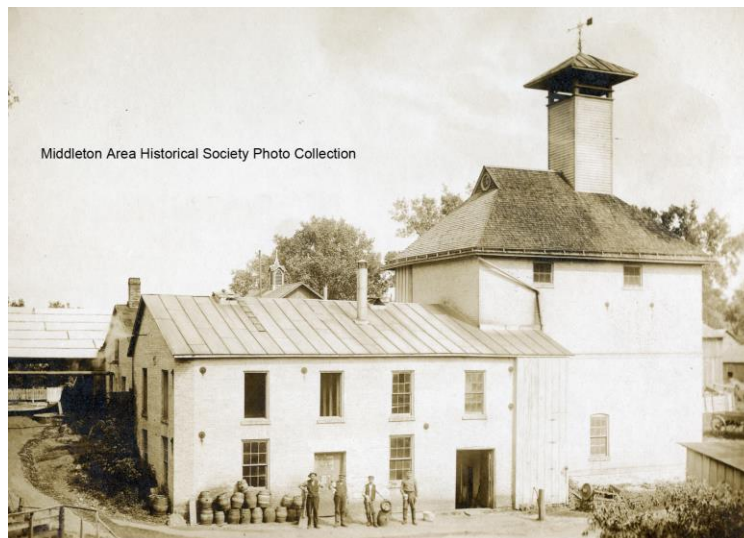
As was the case with the Middleton Hills commercial development in the early 2000s, building design—particularly mass and height—are key concerns. The developer has modified the architectural style of the building design so that the rooflines, windows and other key elements meet the draft Historic Pheasant Branch Crossing design guidelines. According to the City’s planning consultant, these are the most important design elements to achieve the area’s historic feel. The use of various building materials will help keep the building from appearing monolithic.

Setback: The building will have 124 ft. of frontage along Century Avenue and be set back about 30 feet from the existing sidewalk (or about 25 ft. from the future path planned to replace the sidewalk). By comparison, the front façade and wall of the UW Credit Union building (located about 1,000 ft. to the west) have about 160 ft. of frontage and are set back only a few feet, and the front façade of the former Copps grocery store (located about 1,300 ft. to the east) measures 170 ft. long and is set back about 33 feet. The VFW building and nearby single family homes have front setbacks ranging from 15 to 30 feet.

Building Height: Building height is defined in the zoning code to be the distance measured from the mean ground level immediately adjoining the front of the structure to the top of the cornice of a flat roof...or to the midpoint of the highest gable on a pitched or hip roof. Using this definition, the building height is 43'6" from the average grade plane at the front of the structure. Due to the sloping topography, the east side of the building will be taller, with a significant portion of the garage level exposed. Through plantings of trees and bushes, the appearance of this side of the building can be softened.

It has been stated that "all other zoning in the City except B-4 restricts maximum height to 35 feet or 3 stories." This is a misleading statement. Yes, B-4 is the only districted where a taller height (up to 60 ft.) is permitted by right (albeit with Plan Commission approval following Fire District input), but there are several examples in Middleton of residential buildings located in PDDs that exceed a height of 35 feet. Unlike Middleton Glen, however, the Stagecoach building would not be situated atop a hill overlooking other residences. The building's height will not be nearly as noticeable. Sheet A-991 in the developer's May submittal illustrates how apartments on the third level would be at approximately the same elevation as the second story of the house on the northeast corner of the Old Middleton/Century intersection.

Although the change from a flat roof to a pitched roof increases the height of the proposed building, historical photographs indicate that a brewery that stood in this area many decades ago had a tower that exceeded a height of three stories. Clearly, there is historical precedent for taller structures in this area, and the draft design guidelines state that buildings "should be a minimum of two stories and a maximum of four stories." Furthermore, "Buildings are encouraged to have the appearance of a two or three story structure."



How will stormwater run-off affect the conservancy?

The City of Middleton’s stormwater runoff (Chapter 26) and erosion control (Chapter 28) regulations are as stringent as any in Dane County. Furthermore, Ken Potter and Warren Gebert—both of whom are highly regarded for their expertise—have served on the City-appointed Water Resources Management Commission for several decades. The WRMC has reviewed the Stagecoach project plans at a couple meetings. On 9/20/17, they reviewed two options for installing a stable conveyance from the site’s storm water management facilities to the creek. They preferred the concept of installing a drop manhole to serve as energy dissipation and extending the pipe beneath an existing sanitary sewer interceptor (that runs along the edge of the conservancy) to a point just above the water surface. They specifically requested that the discharge be set close to the creek’s water surface elevation while providing sufficient buffer distance to account for ice buildup in winter, and to include riprap at the outfall and at the emergency overflow of the bioretention basin, and to angle the last run of pipe so as to meet the creek further downstream at an angle more in line with the direction of creek flow. WRMC members also requested that County staff address as part of their plan review and recommendation report the list of issues provided by Ric Soto, a nearby property owner.

Clearly, best management practices for handling storm water runoff and erosion control have continued to modernize since the approval of other residential developments that have much greater conservancy frontage. There is no reason to believe that these practices cannot properly address a development site with 31% pervious surface area.

What about the fate of the trees currently located on the property?

The developer’s submittal includes a professional inventory of all trees in the northern two-thirds of the development site with a diameter at breast height (DBH) greater than 8 inches. Of the 30 trees inventoried, 20 are considered species (box elder, cottonwood, silver maple) common to the wet, floodplain areas of the adjoining Pheasant Branch Conservancy. According to the City’s forester, some of the 9 black walnut trees may be large and straight enough to have lumber-producing potential. It is worth noting that an aerial photograph from 1955 indicates that the northern half of the development site was largely devoid of tree canopy at the time, meaning most if not all of the surveyed trees are likely less than 65 years old.



Figure 1 Air photo from 1955

The surveyed trees certainly create the impression that they occupy conservancy-zoned land, just as did the trees that formerly occupied other properties that developed along Old Creek and Pheasant Branch Roads. However, no portion of the development site is currently designated a greenway or conservancy. The City has no jurisdiction over tree retention on private property unless there has been some requirement triggered by a subdivision or rezoning action. Thus, absent the conditions associated with PDD zoning, property owners are not obligated to retain any trees on land they own in the city. If the development is allowed to proceed, the City should work with the developer to identify any existing trees that can be saved—particularly those located near the property boundary. Clearly, any tree removal and site grading should take place in a manner that does not affect trees on adjoining land.

Are there any other negative environmental impacts on the conservancy?

The Stagecoach development site has approximately 100 ft. of conservancy frontage. (In comparison, the nearby Conservancy Condos have about 1,700 ft. and Solitude Condos about 400 ft.). The closest delineated wetland is approximately 50 ft. north of the northern property line, and no portion of the property falls within a FEMA-designated 100-year floodplain.

Vegetation removal and ground disturbance will obviously disrupt any wildlife currently active on the site, just like what happens wherever buildings are constructed. However, the development and presence of other buildings along the conservancy's periphery do not appear to have had a deleterious effect on wildlife.

Mike McDowell, a longtime active birder in the Middleton area, has reported to city staff that, "Increased trails, people, leashed dogs, etc., have not impacted Pheasant Branch Conservancy's birds in terms of migratory, breeding, and nesting patterns. In fact, habitat restoration at the Dane County unit has increased numbers and diversity of avian species. The creek corridor portion, including north of Century Avenue, has remained virtually unchanged. There is background decline of certain species, but this has nothing to do with people using the conservancy's trails. Unleashed dogs, however, can and sometimes do pose a threat to birds. (Note: McDowell has not taken a position on the proposed Stagecoach development.)



Isn't traffic going to be problem?

The traffic impact analysis prepared by a City consultant (at developer expense) concluded that site-generated traffic from a 48-unit apartment building will not significantly impact operations along Century. Although the Stagecoach driveway will serve higher traffic volumes than the existing three single family residential homes, the trips generated by this project will not create a noticeable increase in traffic or deterioration in safety. Planning staff had wondered whether it may be necessary to restrict turning movements to right-in/right-out only (similar to what is in place at nearby Middleton Glen), but the TIA report concluded that no on-street modifications are necessary at the Stagecoach driveway entrance and there shouldn't be any sight distance problems. If apartment residents feel uncomfortable making left turns onto or off of the street, then they may choose to adjust their travel plan just as some other residents and business customers along Century already do.

City plans and policies encourage locating multifamily housing in close proximity to urban services so as to reduce travel distances and the number of vehicle-miles traveled. If housing demand were to be accommodated solely on the edges of the community, drivers could easily end up traveling along Century Ave. anyway to access jobs and services.

Why here? What makes this an appropriate site for a 46-unit apartment building?

Proximity to neighborhood services (e.g., a grocery store, bank, restaurants), excellent transit service (by suburban standards)¹, immediate access to the Pheasant Branch Conservancy and the backbone of the City's trail network, and removal of blighted structures—all these characteristics make this a highly appropriate site for a multi-family residential building.

Why can't the property be added to the Conservancy?

To the City's knowledge, this is the first time one individual owns the five parcels located immediately west of Pheasant Branch Creek. Prior to the Stagecoach development concept, no one had secured all these parcels, the City had not budgeted funds to purchase them, and no local or regional plan called for these properties to be added to the conservancy. However, the City has

¹ There are very few bus stops in Middleton that provide the same, high level of bus service as those located within a 5-minute walk of the development site. During the morning peak travel period, bus stops around the Century/Branch intersection have direct service every 30 minutes to downtown Madison (via the Branch/University corridors) and Middleton's business parks (via the Airport Rd./Pleasant View Rd./Deming Way and points south in Madison), with service operating in reverse every 30 minutes during the afternoon peak period.

secured a \$172,250 WisDNR Stewardship Grant to purchase the two parcels immediately east of the development site in order to establish a trailhead that would help accommodate parking demand at this popular entrance to the conservancy. The developer has indicated a willingness to sell the two parcels to the City for the price he paid, which is more than the appraised price. It will be up to the Common Council to determine whether that is an acceptable price.

Does the City have a conflict of interest in planning to purchase parcels for a conservancy trailhead at the same time as reviewing the apartment building proposal?

No. Public officials as stewards of public trust and are obligated to put the public's interest before their own. The City has long protected the conservancy, and has worked to develop an outstanding trail network for the benefit of the public.

Plans for this regional trailhead have been adopted for at least 8 years. The properties remain in private ownership because the City has yet to secure funds for the purchase of these properties. In 2009, the City unsuccessfully applied for a Knowles-Nelson Stewardship grant to purchase the properties. The City Council has considered purchasing the properties every year since 2009 during their annual budget process but lacked a supplemental funding source. In 2015 the City unsuccessfully applied again for a Knowles-Nelson Stewardship grant to purchase the properties. The funds were finally awarded in early 2017 (for an application submitted in 2016).

Prior to receiving an award of funding for the Knowles-Nelson grant, Mr. Klein purchased the properties and indicated to City staff that he planned to develop them. Staff negotiated with Mr. Klein in the hopes that he would consider selling the properties to the City for use as a trailhead. The Knowles-Nelson grant process does not allow the use of condemnation for land acquisition projects that receive this type of funding. In other words, the only way to acquire these properties from Mr. Klein – and obtain stewardship grant funding to help pay the costs – is on a willing-seller, willing-buyer basis. Mr. Klein agreed to sell the two parcels to the City at his exact cost of \$475,000. (On a separate but related note, the recently approved State Transportation Budget includes a provision that takes away the rights of municipalities to exercise eminent domain to build bike paths, bike lanes, and sidewalks. It is unclear if this provision would extend to “trailheads” but at this time the City has no plans to use eminent domain to acquire the trailhead properties).

In development projects, the City routinely negotiates with developers about a myriad of issues, including the provision of public amenities as part of the review process. To provide a current example, City staff has asked for a north/south and east/west road to be accommodated as part of the Treysta Middleton Market project that is currently being reviewed. The City is negotiating with T. Wall Properties to purchase some property for a downtown plaza, which is independent of the rezoning for the Middleton Center redevelopment. Staff negotiated with the developers of Market West Apartments, and ultimately the City agreed to swap land that would accommodate a public parking lot for the City and a dog park for the private development. In the case of this development, Mr. Klein does not stand to gain anything from the sale of his property. The City is

proposing to acquire it at his exact acquisition cost. Mr. Klein is agreeing to make his development area smaller.

The mixed-income apartment building that is being proposed is consistent with City plans, policies, and initiatives. (See the section in the staff report on consistency with City and regional plans, policies, and initiatives for detailed information). Redevelopment of these blighted properties was included in the TIF No. 5 Project Plan and redevelopment is needed in order to provide funding for other public improvements – including trail projects within the TIF district. Without TIF increment, these projects will be competing for limited capital funding with other City projects like roads projects and park improvements.

In other words, it's not a conflict of interest because it has long been included in public plans, and because it is in the public interest to acquire those two parcels.