

# Delaware growth: Classified as redevelopment, project bypasses traffic study

## However, NCCo could require road changes

By CHAD LIVENGOOD • The News Journal • August 22, 2010

The busy intersection of Del. 141 and Lancaster Pike routinely backs up at the height of the evening rush hour, frustrating drivers.

A proposal to transform Barley Mill Plaza at that intersection into a combination of retail, restaurants, offices and high-density residential towers could nearly quadruple the number of vehicles that currently enter and leave the office complex at 5 p.m., [transportation](#) experts estimate.

Stoltz Real Estate Partners' biggest remaining hurdle to getting the controversial project approved is what, if any, road improvements New Castle County would require. [Delaware's](#) Department of Transportation makes recommendations, but only the county can enforce those suggestions, said DeIDOT Secretary Carolann Wicks.

Most large-scale developments must have a traffic-impact study performed, but because this project has been classified as redevelopment, it is enjoying less-stringent traffic standards, thanks to the county's redevelopment code, a Supreme Court case and a legal agreement between DeIDOT and the county that went into effect four days after the developer filed its plans.

It also comes down to what civil engineers refer to as a "level of service," the amount of allowable traffic congestion during peak morning and afternoon [driving](#) hours.

Those levels vary from A for no wait to F for failing.

Level of Service D, the state's rush-hour congestion standard, means drivers are stuck at a light for one entire cycle. Levels E and F mean drivers get stuck for two cycles or more.

On March 31, 2008, and New Castle County entered into a memorandum of understanding requiring Level of Service D for all projects that generate 2,000 [cars](#) or more per day when a traffic-impact study is required.

Yet, while DeIDOT traffic count data show Stoltz's plans, as currently designed, could generate 4,645 [vehicle](#) trips in and out of Barley Mill Plaza at 5 p. m., DeIDOT and the county are not applying this 2,000-car-per-day rule to Barley Mill Plaza.

But because Stoltz filed its plans for Barley Mill Plaza four days before the agreement became effective, Stoltz's "proposal was 'grandfathered.' and not subject to" Level of Service D, according to a letter Wicks wrote to state Sen. Michael Katz in May 2009.

This has angered neighbors and some lawmakers, who have asked New Castle County and DeIDOT to force Stoltz to adhere to the requirement.

"Redevelopment doesn't require a level of service," said David Culver, general manager of the county Land Use Department.

A 2009 Delaware Supreme Court decision affirmed that the county's redevelopment code doesn't require the stringent traffic-impact study, which is

needed to enforce a level of service.

That case involved a property owner trying to stop a new shopping center from being built on the site of the former Sears building at the corner of Del. 273 and Eagle Run Road.

County Executive Chris Coons said requiring a traffic-impact study and a minimum level of service for the roadways in the face of that court ruling would invite a lawsuit from Stoltz.

"I can't just invent or remake law," said Coons, who is a lawyer. "This seems like a situation where there's a very high chance that either the developer or the community will sue either the county or [DelDOT]."

Citizens for **Responsible** Growth, a group formed to oppose Stoltz's plans, is contemplating suing the county and state to halt the projects.

"Somebody is just not willing to take **responsibility** for putting the skids to all of this," said Richard Beck, a land-use attorney and member of CRG.

During the recent legislative session, Katz, a Centreville Democrat whose district includes the Barley Mill Plaza site, sought to require, in law, that DelDOT require Level of Service D for the Barley Mill Plaza project.

But Wicks thwarted the effort in June during a middle-of-the-night hearing on the **bond** bill that funds her agency's infrastructure projects.

"We're being used to stop this," said Williams, the DelDOT spokesman. "There is desperation to stop this."

**Contact Chad Livengood at 324-2832 or [clivengood@delawareonline.com](mailto:clivengood@delawareonline.com).**

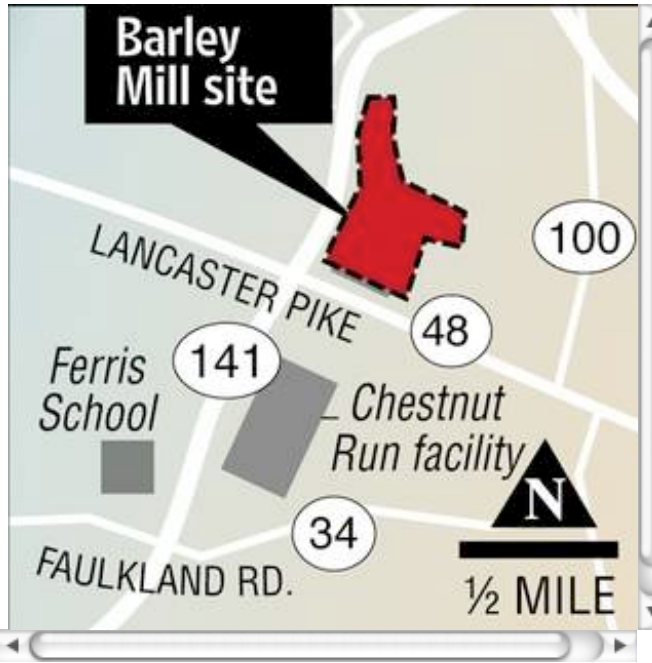


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The Del. 141 and Lancaster Pike intersection often gets backed up at rush hour. New Castle County could require road improvements, but Stoltz has been grandfathered in or level of service. (The News Journal/WILLIAM BRETZGER)



Sen. Michael Katz unsuccessfully sought a Level of Service D for Barley Mill.



#### THE NUMBERS

**2,000 or more:** Vehicle limit that requires a traffic-impact study in New Castle County, set on March 31, 2008, when DelDOT and the county entered into a memorandum of understanding

**4,645:** Vehicle trips in and out of Barley Mill Plaza during the 5 p.m. rush hour with Stoltz's current plans, according to the Delaware Department of Transportation traffic-count data

**1,212:** Vehicles currently leaving Barley Mill Plaza during the 5 p.m. rush hour

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