

RECOMMENDATION

**Ordinance 09-105
Application 2009-0122-S/Z**

MILLTOWN SQUARE

December 15, 2009

DESCRIPTION

Location: South side Limestone Road west side Milltown Road, and north side Old Limestone Road

Councilperson: Timothy P. Sheldon, Council District 9

Rezoning: 8.56 acres from S (Suburban) to CN (Commercial Neighborhood)

Applicant: Irvin G. Klair II, Trustee (L/O)
Milltown, LLC (E/O)

ZONING PATTERN

Located at the intersection of Limestone Road and Milltown Road and with frontage on Old Limestone Road, the property abuts several different residential and nonresidential zoning districts. CN zoning is across Limestone Road to the north while several separate ON zoning districts exist to the west on Limestone Road, to the north across Limestone Road, to the east across Limestone Road, and to the south along Milltown Road. Another ON zoned parcel is further east on Milltown Road.

Residential zoning classifications include S adjacent to the south and east across Old Limestone Road and Milltown Road and NC21 to the west across Old Limestone Road. An NC40 residential zoning designation is further south of the site. NCap and NCth are northwest of the site across Limestone Road and an NCap zoning district is located on the northeast corner of Milltown Road and McKennans Church Road. The surrounding neighborhoods which extend well beyond the intersection are all of the single-family detached housing type and zoned NC6.5.

The zoning district pattern described above was established primarily between 1964 (Milltown Shopping Center) and 1980 (most recent new ON site). This pattern corresponded to the build-out of many nearby neighborhoods including Lindell Village, Heritage Park, Limestone Square, Sherwood Park and Limestone Gardens (to name a few) and the need to provide services to this expanding population. Except for a minor expansion to the Dougherty Funeral Home ON zoning in 1989 and a more recent H Overlay on Old Limestone Road in June 2008, the zoning in this area has remained relatively stable. DelDOT expanded and rebuilt SR 7 and the Milltown Road intersection about twenty years ago to accommodate the growing demand.

DEVELOPMENT PATTERN

The existing land use pattern at the intersection of Limestone, Milltown, McKennans Church, and Old Limestone Roads is complex mix of both residential and nonresidential uses. At one end of the scale are about fifteen low density large lot single family detached homes along both Old Limestone and Milltown Roads and Thunder Hollow. The Cynwyd Club Apartment complex represents the high end of the scale with a density of about 29 du's per acre.

Across Limestone Road, the Milltown Shopping Center and Valero Gas Station with approximately 42,215 square feet of commercial space on 4.54 acres and the Pike Creek Sports Medicine Office Complex with about 37,000 square feet of office space in several buildings represents the high end of nonresidential uses in the area. Other surrounding and less intense nonresidential uses include two funeral homes, several small office developments on Milltown Road, the Limestone Presbyterian Church, the Harmony Grange Hall, and the Delaware National Guard offices in a former school building off Fawkes Drive in Sherwood Park II.

This intersection is into one of several commercial service nodes along the Limestone Road corridor including, Limestone Road and Kirkwood Highway, Pike Creek Shopping Center, and Limestone Road and Valley Road in Hockessin. This intersection with its broad mix of residential, commercial and office uses provide services and employment to many in the area. The intersection and general area is also well-served by DART, with bus routes running along both SR 7 and Milltown Road and providing service both to and from Newark and Wilmington. As a result, the area and surrounding community is well served by the existing commercial, office and service uses easily accessible by those with or without cars. The area is clearly a valuable and important node within the Millcreek community providing shopping, employment, worship, residential variety, and transit services; and requires the utmost care and planning as it continues to evolve and develop.

An interesting side note to the zoning and development pattern described above is the different sense one gets when the intersection is viewed from an air photo. While the intersection and the surrounding uses and traffic can be described as chaotic at times, the area south of Limestone Road on both sides of Milltown Road and including Old Milltown Road gives one the sense of a quiet rural setting. This area of single family homes on large lots has a very real sense of calm and tranquility compared to the complexity of the area north of Limestone Road.

TECHNICAL ADVISORY AGENCY REVIEW

Comments received from agencies participating on the Technical Advisory Committee (TAC) were general in nature and did not identify any major problems or issues. The following agencies provided comments:

- DNREC – Tank Management Branch
- DNREC – Division of Fish and Wildlife
- Delaware Health and Social Services – Office of Drinking Water
- New Castle County Department of Special Services
- Delaware Transit Corporation (DART), a Division of DelDOT
- Delaware Department of Transportation (DelDOT)

At the request of the applicant, DelDOT contracted with an independent engineering firm to prepare a Traffic Impact Study (TIS). The TIS was found to conform to DelDOT Rules and Regulations and DelDOT accepted the TIS report (dated September 14, 2009) and concurred with the recommendations. While traffic issues will continue to be discussed in some detail throughout this report, the TIS concluded that the project can be accommodated within the existing transportation infrastructure subject to several on/off-site transportation improvements.

BACKGROUND & ANALYSIS

Applicant Presentation. The preliminary plan proposes a mixed use development with commercial, office and residential uses. The total GFA proposed is 100,418 square feet (sf.) with 32,392 sf. assigned to the residential uses, including sole use of a 9,690 sf. parking garage, 27,770 sf. for commercial retail and a restaurant, and 40,256 sf. for office uses. The percentage breakdown is 32% residential, 28% commercial retail and restaurant, and 40% office use and is within the required mixed use percentages contemplated by County Code.

At the Planning Board Public Hearing on December 2, 2009, William Rhodunda, the applicant's representative acknowledged that while there is almost total public opposition to this proposal, the rezoning and preliminary plan is consistent with the mix of zoning districts and land uses that abut and surround this intersection. He noted that Milltown Square will contain far more landscaped and open space areas (4.29 acres or 50.1%) than any of the older existing developments including, Milltown Square Shopping Center, Pike Creek Sports Medicine Office Complex, and the other nearby office developments. Mr. Rhodunda explained that the high percentage of open space was accomplished utilizing three-story buildings and structured parking all of which he noted are encouraged as part of mixed use developments in the 2007 Comprehensive Plan Update.

The applicant highlighted the plan's orientation to its Limestone Road frontage and noted that all of the three-story buildings were more than four hundred feet distant from any of the residential homes on Old Limestone Road. While surface parking areas would be closer to Old Limestone Road, the extensive existing vegetation in addition to that required by County Code would render the parking lots nearly invisible to Old Limestone Road residences. Mr. Rhodunda

acknowledged that a planned entrance/exit point on Old Limestone Road leading to Milltown Road was very contentious within the community, but the TIS suggested that the access/egress would be important to the overall flow and impact on the transportation network.

Mr. Rhodunda noted that the 2007 Comprehensive Plan Update seeks to promote a strong economy throughout the County with continued growth of healthy and sustainable development. He reviewed an economic impact report completed for this development which suggested that there is a need for certain neighborhood service uses that will compliment the area rather than compete against similar uses nearby. Mr. Rhodunda commented on the TIS and noted that the applicant would be complying with all of the recommendations suggested. He also indicated that the TIS was consistent with Livable Delaware strategies regarding infill and mixed use in areas where all infrastructure is in place and of sufficient capacity to accommodate the development.

Mr. Rhodunda showed that the plan is sensitive to the historic William Montgomery House on Old Limestone Road with no development or disturbance onsite within a four hundred foot buffer zone surrounding the home. The plans design maintains the natural buffer. With respect to historic resources on-site, a professional historic planner will survey the property and prepare a report on the historic saw mill and barn with documentary pictures and written descriptions.

Mr. Rhodunda commented that he and the applicant have attended several community meetings to discuss the proposal in hopes of finding some areas for compromise and some helpful comments for a better design and layout. He reported that the community was and remains completely against this and any other project that might propose anything in excess of a few residential homes on the 8.56 acres. He reminded the Board that this site is clearly a candidate for infill development and that a major objective of the 2007 Comprehensive Plan Update is for infill mixed use projects that provide a diversity of housing, mixed neighborhood uses, walkability, and mobility friendly designs to encourage access to, from, and throughout the site.

Mr. Rhodunda concluded his presentation noting that the County has had several rezoning requests on Limestone Road from the PA line to Kirkwood Highway and that the Department of Land Use has developed a strong argument towards maintaining the integrity of the SR 7 corridor and protecting it from haphazard, inappropriate nonresidential rezonings that could ultimately convert Limestone Road to another Kirkwood Highway or Concord Pike. He noted that growth was expected at the four commercial growth areas along SR 7, including the Valley Road intersection, Pike Creek Shopping Center area, the Milltown Road intersection, and at Kirkwood Highway. Mr. Rhodunda suggested that this development with transit available in all directions is consistent with the County's goal to encourage infill at already developed nodes where growth can be accommodated utilizing the existing infrastructure.

Planning Board Member Questions. Ms. Anderson asked for a clarification regarding traffic flow on Old Limestone Road due to the proposed access. Mr. Ramesh Batta, the applicants engineer noted that Old Limestone Road will continue to operate as it has historically for the residences along that road, but that motor vehicles arriving or leaving the Milltown Square site will be directed onto Old Limestone Road with access only to and from Milltown Road.

Mr. Singer requested a confirmation that the level of service on the area roads would remain at LOS D or better once the site was fully developed. Mr. Batta confirmed this to be true. Mr. Singer also sought clarification that the site could accommodate the necessary tree replantings dependent upon the number of specimen trees removed. Mr. Batta explained that many of the specimen trees will not be disturbed and that regardless all necessary replantings can be accommodated on site. With respect to a question of a bus shelter location, Mr. Batta noted that it would be on Milltown Road beyond the Old Limestone Road entrance.

Public Comments. Twenty seven persons spoke in opposition to the rezoning proposal. There were five state elected officials, ten residents from Old Limestone Road, three persons representing local civic associations and 9 other individuals. Most highlighted the existing conditions on SR 7 and the congestion problems at the Milltown Road intersection. It was noted that traffic safety related to the high speed at which many of the vehicles approach the area from Pike Creek is further complicated by the fact that once past the Arundel intersection, the number of left turns and driveway cuts increases substantially. Add the pass through commuting traffic on SR 7 headed to Kirkwood Highway and I-95 to the three local schools nearby (Dickinson and McKean High Schools and St. Johns) and the number of motoring teenagers; and, it becomes quite evident, as the public suggests, that the roadways at and around this intersection have and will continue to have a high accident rate. Many suggested that if the project is approved, the U-turns required and recommended by DelDOT will only make matters worse. Several questioned the findings of the LOS impacts in the TIS and noted that if the study had shown an increase of as little one-tenth of one percent to the proposed traffic delay calculated in the TIS, that a LOS E would have been the result. The residents have hired an independent traffic consultant who sent a letter to DelDot requesting answers to his concerns regarding the results.

Residents on Old Limestone Road displayed slides and pictures of the character of their area and suggested that this character will be lost if the development is built and the access to Old Limestone Road is constructed. They noted that the current flow limitations on Old Limestone Road is because of a safety issue identified years ago where it intersects with Milltown Road. They suggested the proposed access for the shopping center will re-establish and exacerbate this problem. The residents also highlighted noise, lighting, drainage, and other visual issues if the center is built. In addition, they suggested that access to their homes will be made worse and may require U-turns on Limestone Road in some instances.

Karen Peterson, State Senator representing the 9th Senatorial District, explained her interpretations of spot zoning, strip zoning and infill. She suggested that the harm done to the residents of Old Limestone Road by a character change and traffic impact for the benefit of this property owner is a clear demonstration of illegal spot zoning. She and others characterized the area south of Limestone Road as low density residential and without the congestion and higher density that has enveloped most of the surrounding area. With respect to infill, Senator Peterson and others acknowledged that while the 2007 Comprehensive Plan Update supports and promotes such activity, it does so only when it is in harmony with the adjacent community. They suggested the property is more appropriately developed in character with the uses and

density on Old Limestone Road which will also have little to no impact on SR 7. Senator David P. Sokola, Speaker of the House Robert F. Gilligan, and Representatives Nick T. Manolakos and Michael J. Ramone also spoke in opposition to the application and submitted written comments.

Several community members questioned the economic arguments for the project noting that there are examples of vacant storefronts, offices and empty apartments in the area. They also supported the safety concerns from proposed changes to traffic patterns on Old Limestone Road with respect to school bus traffic and service vehicles. Several also noted the impact the Harmony Grange teen nights have on SR 7 and the potential draw this development might have on these teens. Another issue was possible groundwater contamination to the private residential wells of Limestone Road; and, the owner of the historic William Montgomery house was concerned that construction vibration could impact his home.

Applicant Rebuttal.

The applicants noted that many characterized the development as a shopping center. It is a mixed use development with 28% as retail and restaurant, 32% residential and 40% office use. As such it is not a shopping center in the traditional sense, but rather a low impact, mixed use development to complement the neighborhood and shopping center across SR 7, and which will have little to no visual impact on the residents across Old Limestone Road. With respect to the topography of the site and the height of the three story buildings, it is expected that the existing and proposed vegetation will virtually eliminate the structures from view.

The applicants also addressed several TIS issues and noted that the traffic counts were done during the morning rush, the evening rush and on both Saturday and Sunday. The study is in compliance with DelDOT guidelines and that regardless of who prepared it, the results would have been the same. With respect to the current speeding problems on SR 7, the applicants agreed that it is a common occurrence and a law enforcement issue. Finally, with respect to the use of U-turns by DelDOT, the applicants note that DelDOT uses this method of traffic control all along Limestone Road from Valley Road through to Kirkwood Highway and beyond.

Materials Submitted During the Extended Open Record.

The Department received eleven additional emails and/or correspondence. DelDOT responded with a letter to the Department that they would not be reacting to the critique of the TIS report by Derrick Kennedy with Orth-Rodgers and Associates before the Planning Board Business Meeting, but a response would come prior to the County Council rezoning hearing. Mr. Kennedy also submitted a follow-up letter to DelDOT with additional issues to consider.

Except for a submission by the applicant, all other emails and letters were opposed to the project. The main issues continue to be traffic on SR 7, access to Milltown Road, orientation of the project and changes to the character of the Old Limestone Road area, and that this is not an infill project as defined by the 2007 Comprehensive Plan Update.

In the applicant's submission, they continued to reiterate that the public's portrayal of the project as a shopping center or strip mall is false and misleading. It is clearly a mixed used project as contemplated by the 2007 Comprehensive Plan Update with only 28% or 27,780 sf. as commercial retail. The mix of uses are well within the intent of the transitional nature of the CN zoning district and the public's opinion of the adverse traffic impacts are not consistent with the finding from DelDOT. The submission provides added detail for the reasons the rezoning meets the specific standards for zoning map amendment in Section 40.31.410.

Department Analysis. The Department of Land Use has long lobbied to maintain the integrity of the Limestone Road corridor. Existing and new commercial services at specific nodes and intersections have been encouraged so that the remainder of the highway can remain residential and open with as few driveway cuts and added intersections as possible. While the SR 7 corridor from Pennsylvania to SR 2 and beyond has seen several minor intrusions and nonresidential developments approved over the years, the basic premise to keep retail services to a few core areas has been maintained. At the moment, there are commercial centers at Valley Road, Pike Creek, Milltown Road, and Kirkwood Highway. As the population has increased and the need arose, several of these centers have seen expansions. Commercial uses and rezonings have expanded along Limestone Road from the Pike Creek Shopping Center north to SR 72 and south of Kirkwood Highway with a new shopping center.

However, the Milltown/Limestone/McKennans Church Road service area has been an exception to this trend. As noted earlier, the zoning and land use pattern for this area was established in the middle 1960's to around 1980. Except for a major road improvement and use changes within existing storefronts, very little has changed. This proposal will clearly alter the character of the intersection and area and will have impacts well beyond the intersection. However, the argument and debate over how much of an impact and how adverse those impacts might be on the roads, on the shopping center, on Old Limestone Road, and on the general overall character of the area will eventually determine the fate of this proposal.

While much of the debate and disagreement is over traffic counts, traffic safety, and traffic access, these issues are not for New Castle County to decide. The burden of acceptable traffic capacity and impact is the responsibility of DelDot and the County is bound by those decisions. However, that is not to say that the County should disregard the problems and impacts that certain geometric recommendations such as directional flow changes to existing roads, new access points, and the use of U-turns on SR 7 may have. In addition, the County is responsible for the safe and convenient pedestrian movement within residential neighborhoods and nonresidential developments.

While the proposed development is adding over 100,000 sf. of GFA, only 28,000 sf. is for commercial use which is typical of many small neighborhood convenience centers. The rest is for sixteen residential units and just over 40,000 sf. of office uses. This amount of development on 8.5 acres in three-story structures and fronting against a major highway corridor with some structured parking is one alternative to minimize impacts on the land and to screen the majority of the development from surrounding residences. The 2007 Comprehensive Plan Update does

contemplate and encourage infill with mixed use developments that have minimal impact on an area. In this situation, however, with one of two access points on a minor residential street with added traffic exiting onto Milltown Road at a point that has been judged unsafe for many years with minimal traffic is cause for concern.

With respect to spot zoning, the Department suggests that associated case law challenges are much more complex and multifaceted than the public has argued. Spot zoning may be present when (1) a small parcel of land is singled out for special and privileged treatment; (2) the singling out is not in the public interest but only for the benefit of the landowner; and (3) the action is not in accordance with a comprehensive plan. The mixed use development proposed here on consolidated parcels with 1500 linear feet of frontage on a major highway, with transit service available in all directions, located at an intersection already hosting commercial uses, employing mixed use design criteria as defined by the County and State for infill proposals, and where DelDOT has indicated adequate highway capacity exists is not spot zoning.

The Department also researched the term strip zoning and is unaware of any case law on this matter. The term is more generally used to describe a strip commercial shopping center most of which are generally unattractive and promote sprawl. Strip commercial centers are usually one story tall and one store deep, the buildings are arranged linearly rather than clustered, there is no design integration among the individual uses, there is are no provisions for pedestrian safety, and parking is along the street frontage. This project is not a strip commercial center.

Standards for Zoning Map Amendment - Section 40.31.410 of the New Castle County Code

In determining whether a zoning map amendment should be recommended and approved, all of the following factors shall be considered:

A. *Consistency with the Comprehensive Development Plan and the purposes of this Chapter.*

The 2007 Comprehensive Plan Update designates the Milltown Square property as low density residential as it does for most of the other lands zoned S south of this site. If the rezoning is to be approved, the plan designation will need to be amended to community redevelopment. The community redevelopment designation already exists across Limestone Road and in several other nearby locations.

As noted earlier, the Department has long advocated for a development pattern along SR 7 that limits commercial development expansions. While the Department is a very strong proponent for consolidation of parcels when new development is proposed the 2007 Comprehensive Plan Update does contain precautionary language to protect existing neighborhoods. One such statement regarding infill development suggests that new development should respect the character and integrity of existing communities and that density increases while appropriate in some areas and along transit corridors, should not encroach into existing neighborhoods. Herein lays a fundamental point of contention with this rezoning. The community likens the neighborhood character to be that which

exists along Old Limestone Road; while the applicant considers the neighborhood character to also include the 1500 linear feet of frontage on Limestone Road and the entire Milltown/Limestone/McKennans Church Road intersection area.

With over 50% of the site in open space and with all of the buildings oriented towards Limestone Road, the applicant has put forth their best effort to minimize the adverse impacts on Old Limestone Road and to create a transitional character on the site that is both low impact along Old Limestone Road and with highly visible higher impact orientation to Limestone Road. The Department is supportive of the design displayed, but the access point on Old Limestone Road destroys the concept.

B. *Consistency with the character of the neighborhood.*

The plan meets many of the characteristics that New Castle County has intended and suggested for good infill development. The character of this neighborhood is generally defined to include all property within a one-quarter mile radius and which is also commonly and reasonably used to define transit service areas at intersections and, in this case is a wide mix of various uses. However, much of the community and many of the residents are separated from Milltown Square by an eight to ten lane high speed road that at any given time has traffic moving in many directions. And while the plan consolidates and mixes uses within its confines, the ability to get to and from the site both in a motor vehicle and as a pedestrian will be difficult and potentially dangerous at best. Most infill sites contemplated by New Castle County are intended to be more integrated within or on the edge of a neighborhood and more walkable from that neighborhood rather than to be so isolated from many as is caused by Limestone Road.

The Department suggests that while the project is consistent with the character of the larger overall neighborhood that might be considered Milltown, the lack of reasonable safe and secure pedestrian paths to the site from the various communities limits the ability of the site to serve the neighborhood well.

C. *Consistency with zoning and use of nearby properties.*

The Department has historically taken a broad look at an area when debating the merits of a rezoning regarding this factor. The Milltown Square proposal is consistent with the variety of zonings and uses that exist in the Limestone/Milltown/McKennans Church Road larger service area. However, it does propose a major departure from the historical use and zoning of the area along the south side of Limestone Road that has seen virtually no changes to zoning or uses over the past thirty years and may be considered underdeveloped. The subject property with its orientation and high visibility on Limestone Road and with transit services in place is in position (sooner or later) to be developed into something more intense than what presently exists. The property and its location may not always be suited to low density single-family detached homes.

D. Suitability of the property for the uses for which it has been proposed or restricted.

The project has many of the characteristics of an infill project and is situated at a major highway corridor intersection where similar development exists. It is also served by transit that provides day long service to and from Newark and Wilmington and DelDOT has identified the necessary highway improvements. The plan proposes green technology stormwater management techniques that will improve and have no adverse impacts on any downstream properties. However, because of the very location of the subject property the challenges of developing a safe, neighborhood oriented development poses challenges to the suitability of such a development.

E. Effect on nearby properties.

With respect to nearby properties, the only direct potential for adverse impacts are the five residential properties along Old Limestone Road. No other properties directly abut this development although there could be some indirect impact to the three or four properties across Milltown Road opposite the old Limestone Road intersection. The preliminary plan submitted as part of this rezoning is designed to minimize the impact of this development on the five residential parcels on Old Limestone Road. However, there is a fine balancing act in planning and land use decisions that must be made when plans are consistent with both County Plans and planning strategies put forward by the State under the Livable Delaware Program. The Department has concluded that the most troublesome impact of this development is the proposed access configuration on Old Limestone Road. Without this, the flow and direction of traffic would remain unchanged and the visual impact from the project would be significantly reduced. The existing vegetation will be mostly preserved and the landscaped area will be enhanced significantly to eliminate as much of the visual noise and light impact as possible.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department recognizes a good effort by the applicant to design a plan to reduce most of the visual, light, noise, and odor impacts from the residents on Old Limestone Road. Arguments have been made both in support of and in opposition to each of the five rezoning factors that must be considered for a rezoning request. The traffic issues have been resolved by DelDOT and the project can move forward if the County so desires.

The Department has clearly stated that the 8.5 acres with 1500 linear feet of frontage along Limestone Road is not going to remain low density residential forever. However, the Department considers the access to Old Limestone Road as problematic. As noted, Limestone Road is heavily traveled and will most likely need significant safety improvements in the future with or without this development. The Department believes that DelDOT must consider other options to control traffic and allow full turning movements without continued expanded use of

U-turns on SR 7. In addition, the fact remains that traffic traveling south on Limestone Road enters this area at an unsafe and high rate of speed.

Traveling from the Pike Creek area, SR 7 becomes a limited access downhill high-speed road and once past the light at Arundel, the corridor closes in quickly and driveways and curb cuts to churches, offices, shopping centers and other uses become very common. Once through the Limestone/Milltown Road intersection, the highway gets even more congested with nearly thirty homes and driveways fronting directly on SR 7. And if the traffic from Pike Creek has had clear sailing through the signals at Arundel and Milltown Roads, the speed only slows approaching Kirkwood Highway. While another light may be unpopular, it might be a way to help increase the safety of the highway by decreasing the speed approaching this area. Timing and coordination of the signals at the Arundel, Milltown Square and Milltown Road intersections should be possible given the software technology available today.

The Department has considered the *Standards for Zoning Map Amendment* in Section 40.31.410, A through E, the proposed plan, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are not met by this proposal.

The Department of Land Use recommends **DENIAL** of Ordinance 09-105.

PLANNING BOARD RECOMMENDATION

At its business meeting held on December 15, 2009 the Planning Board considered the recommendation offered by the Department of Land Use. The Planning Board agreed with the Department of Land Use analysis and reasoning and on a motion by Mr. McDowell and seconded by Mr. Weinberg voted to recommend **DENIAL** of Ordinance 09-105. The motion passed by a vote of **7-0-1-1** (*YES: Anderson, MacArtor, McDowell, Singer, Udo, Weinberg, Wilson; NO: None; ABSTAIN: McGlinchey; one vacant position*).

In a discussion preceding the vote the following comments were offered by the Board:

Mr. Weinberg commented that while he agreed with the Department that the design of the mixed use development is good and meets several stated County goals and objectives regarding such development, he also supported the Department's conclusion that traffic issues and the adverse impacts on the neighborhood character clearly outweighed any community benefits.

Mr. Udo requested a clarification with respect to DelDOT's approval of the TIS and their recommendation that the project can move forward and the Department's opinion that traffic safety is one of several major deficiencies with respect to the rezoning proposal. Mr. Culver explained that while DelDOT has determined that there are no Level of Service (LOS) issues, the Department has serious concerns related to traffic safety, the speed of the highway, the access to Old Limestone Road, and the concern for pedestrian safety trying to access the site. The LOS level is a County Code concurrency issue and the project meets this requirement.

Mr. Singer commented on a statement in the applicant's TIS report dated September 14, 2009, that Old Limestone Road would become one-way northbound to eliminate cut through traffic. Mr. Singer suggested that this statement is false and misleading; and, that in truth, the existing one-way traffic on Old Limestone Road was put in place years ago to eliminate the entry of traffic from Old Limestone Road onto Milltown Road at a point too close to the SR 7 intersection. Mr. Singer agreed with the Department analysis that a re-establishment of this conflict is unwarranted and is one of several flaws to the rezoning proposal.

Mr. Singer also expressed concern with the emphasis being placed on the percentages of uses within the mixed use development. He reminded everyone that the TIS and the LOS concurrency issue passed by only one-tenth of one percent and suggested that once the property is rezoned to CN, even minor changes to the balance of the residential, office and commercial mix could change the LOS and more adversely affect the community.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this rezoning would not promote the convenience, order, and welfare of the present and future inhabitants of this state.

NOTE: The applicant is advised that pursuant to Section 40.31.113 F of Chapter 40 of the New Castle County Code (UDC), the preliminary plan associated with this rezoning cannot proceed to County Council until it addresses all the issues identified in the TAC Report and TAC report letter dated October 29, 2009, and the conditions noted in this recommendation report. The preliminary plan must be deemed "approvable" by the Department of Land Use prior to County Council action.

NOTE: It is the applicant's responsibility to coordinate with the Clerk of County Council and the sponsor of the ordinance as to the date and time of the County Council hearing on this application.

[SIGNED 12/28/09]

[SIGNED 1/5/10]

Victor Singer, Chair
Planning Board

David M. Culver, General Manager
Department of Land Use