

# Delaware growth: In Greenville, it's about code interpretation

Land-use officials say law allows for tear-downs; residents say no

BY CHAD LIVENGOOD • THE NEWS JOURNAL • AUGUST 22, 2010

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In addition to dramatically changing the neighborhood, a developer is trying to construct a 180-foot residential high-rise in Greenville by using a building code meant for enlarging existing structures, not creating new ones, a citizens group says.

The debate focuses on plans by Stoltz Real Estate Partners of Bala Cynwyd, Pa., to tear down the Wells Fargo Advisors building in the Greenville Center shopping complex and replace it with a 12-story residential and retail high-rise and seven-story parking garage.

Because the shopping center's buildings are classified as structures that do not conform to modern standards, land-use attorneys say the county's Board of Adjustment would have to grant Stoltz a waiver to construct something six times the size of the existing structure.

But critics say county planners have already granted back-door administrative waivers to Stoltz, raising new questions about how the county scrutinizes development under the Unified Development Code (UDC).

"The sections that allow for expansion, they don't allow you to tear it down," said Chris Koyste, an attorney for Citizens for Responsible Growth, the civic group that is fighting the development.

The county land-use staff sees it differently.

Because Stoltz proposes to expand one of the retail buildings on the site, the developer has the right to completely tear down the Wells Fargo building and construct a residential tower under the expansion clause, said David Culver, general manager of the county Land Use Department.

"This is all one parcel. So each individual building is not its own parcel," Culver said.

Stoltz attorney Pam Scott agrees with Culver and maintains her client's project meets all code requirements.

Culver said the new building is allowed under county laws as long as it meets modern codes, which require upgrades in the facility's stormwater management and landscaping, among other things.

CRG still contends that Stoltz doesn't qualify to build the new tower because county code states a building



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Bill Rowe, a retired engineer who lives in the Greenville Manor neighborhood, shows where a proposed 180-foot tower would stand in the current footprint of the Wells Fargo building in the Greenville Center complex. (The News Journal/GINGER WALL)

### The Greenville Center plan

The Wells Fargo building will be razed and a 12-story residential tower, a seven-story parking garage and a retail center will be built.



can be torn down and replaced only if it's declared "to be a hazard," which it is not.

"They're, in effect, creating a new section ... that says you can tear down buildings" and build a new one, said Koyste, a former chairman of the county's board of adjustment, which grants waivers for such discrepancies.

"They're not given that right, but they're claiming that right," Koyste added. "You can't just tear down a building and put up another one."

CRG's legal research was aided by County Councilman Bob Weiner, who used his position to obtain documents for the constituent group.

Weiner's actions set off an unresolved debate within the administration and County Council about whether council members should be subject to open-records laws and 50-cent-per-page charges for documents, like regular citizens.

Using donations from area residents, CRG also hired its own land-surveying firm to independently verify whether Stoltz's property meets modern setback distance requirements.

Merestone Consultants of Wilmington concluded the nearest home is less than 4 inches short of the 100-foot setback requirement. Stoltz's plans say the building is more than 109 feet from the property line to the home of Tony Lunger, at Ardleigh Drive and Buck Road.

Unlike Stoltz's preliminary plans, which got county approval, Merestone's surveyors certified their results, staking their professional credentials and reputation on the measurements.

For the project to get final approval, Stoltz's engineering firm, Apex Engineering in Newport, must submit a certified survey, Culver said.

Stoltz spokesman Tom Gailey said the company will do so.

But if the setback is under 100 feet, county code says the distance from Stoltz's building to its own property line "shall be at a minimum equal to the height of the proposed building," or 180 feet if the developer chooses to build that high.

Culver also has administrative authority to waive the four-inch discretion, which CRG opposes.

"This is supposed to be our forever home, but now I'm not so sure," said Lunger, 39, who moved to Greenville Manor from Washington five years ago.

Richard Beck, a member of CRG and a land-use attorney at Morris James LLP, said the four-inch setback discrepancy and the county's interpretation of the code are important because they're being done under the state's "by-right" laws.

Those statutes afford property owners the right to develop property as they see fit, so long as it's up to code.

"If you're going to live by the 'by-right' sword, you're going to die by the 'by-right' sword," Beck said.

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"To me, it would ruin Greenville," Rowe said. (The News Journal/SUCHAT PEDERSON)



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Tony Lunger, in his backyard, describes the proposed new location of the post office. Janssen's grocery store can be seen over his back fence. His home is the closest dwelling to the Greenville Center shopping center, where developer Stoltz Real Estate Partners plans to construct a 12-story building on the site of the current Wells Fargo building. (The News Journal/GINGER WALL)



Chris Koyste, attorney for the citizens group, says a new code was essentially created.



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Aerial views of Greenville's retail district shows the site of a proposed 180-foot residential tower in the Greenville Center shopping complex. (The News Journal/ROBERT CRAIG)

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