

# Item 4A - Correspondence

**From:** [Kaufman, Connie](#)  
**To:** [MCP-Chair](#)  
**Cc:** [Hisel-McCoy, Elza](#); [Mencarini, Katherine](#); [Girard, Erin E.](#)  
**Subject:** Regulatory Plan Extension Request for Takoma Junction  
**Date:** Friday, August 27, 2021 12:36:37 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image005.png](#)  
[image006.png](#)  
[Takoma Junction - NDC Response Ltr. 8-27-2021.pdf](#)  
[Takoma Junction - Regulatory Plan Extension Request.pdf](#)

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Sent on behalf of Erin E. Girard, Esq.

**Connie Kaufman**

*Legal Practice Assistant*

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For COVID-19 information and resources, please visit our [Coronavirus Task Force page](#).

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Erin E. Girard  
301-517-4804  
[egirard@milesstockbridge.com](mailto:egirard@milesstockbridge.com)

August 27, 2021

Casey Anderson, Chair  
and Members of the Montgomery County Planning Board  
Maryland-National Capital Park and Planning Commission  
2425 Reddie Drive  
Wheaton, MD 20902

Re: Regulatory Plan Extension Request for Takoma Junction: Site Plan No. 820190090 ("Site Plan") and Preliminary Plan No. 120190150 ("Preliminary Plan")

Dear Chairman Anderson and Members of the Montgomery County Planning Board:

On behalf of our client, NDC Takoma, LLC ("NDC"), attached please find a Regulatory Plan Extension Request for the above-referenced Site and Preliminary Plan applications. As explained more fully below, while we understand there may be some fatigue regarding the long pendency of these applications and the extensions necessary to date, especially given the degree of community involvement, the delays and need for the extensions were entirely outside the control of NDC, who has consistently and aggressively pursued a timely review of the applications. To deny the requested extension and trigger a dismissal of the applications at this point in time would therefore be grossly unfair to NDC, who has expended substantial time and money into the project to date, and continues to do so in the hope of resolving all outstanding issues.

At the time the applications were originally submitted on February 14, 2019, NDC had no reason to believe that the review process would span over two and a half years, with the vast majority of the delay being caused by the State Highway Administration ("SHA").<sup>1</sup> Although the plans and traffic study associated with the applications were distributed to SHA in preparation for the March 19, 2019 Development Review Committee meeting, SHA unilaterally suspended its review of all project materials just prior to DRC in order to conduct a "Takoma Junction Vision Study," which study did not conclude until January of this year. Although SHA thereafter approved the traffic study for the project on March 8<sup>th</sup>, it failed to provide any comments on the proposed lay-by and site design until April 13<sup>th</sup>. Disappointingly, the comments provided on that date ignored basic information contained in the application materials, made assumptions unsupported by facts, provided half-

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<sup>1</sup> For ease of reference, we attach hereto the outline previously prepared by Staff in support of the fourth extension request in April of this year that demonstrates the long delays in SHA's review of the applications.

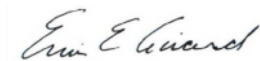
answers, and required another submittal, generating a new 30 days review period. Although NDC attempted to correct SHA's misunderstandings in its resubmission, a second letter from SHA on May 24<sup>th</sup> continued to rely on incorrect assumptions and misinformation as a basis for its responses. So frustrating and grievous were these responses that NDC then took the extraordinary step of demanding a meeting with Secretary Slater himself to try to establish a more timely and efficient way to discuss and respond to the issues being raised by SHA. Despite all these efforts, and the promises of Secretary Slater and SHA Administrator Smith that review and response timeframes would be timely, however, SHA continues to fail to adhere to its own review timelines, and NDC is still awaiting a full set of comments from SHA on its latest resubmission on July 16, 2021.

NDC continues to believe that the issues identified by SHA can be resolved satisfactorily and the sight distance and proposed layby approved. While we understand that, during the pendency of SHA's review, the City of Takoma Park has issued a negative recommendation on the applications, NDC firmly believes that an SHA approval would warrant the City's reconsideration of its recommendation, which was based in large part on the belief that SHA would not approve the layby. *See City of Takoma Park Resolution No. 2021-19, Lines 34-35* ("Whereas, Council reserves the option to reopen the review of the site plan as new information is provided by NDC or by MDOT-SHA or other reviewing agencies.")

NDC therefore requests that the Board grant NDC the additional time necessary to bring this matter to an appropriate resolution and not compound the prejudice it has experienced through the unprecedented actions of SHA in this matter<sup>2</sup> by dismissing the applications prematurely simply due to political pressure or project fatigue.

Thank you for your consideration of this request. We will be available during your consideration of this request to address any questions you may have.

Sincerely,



Erin E. Girard

Encl.

cc: Elza Hisel-McCoy  
Katherine Mencarini

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<sup>2</sup> As has been acknowledged by Technical Staff, the review process followed by SHA in this matter has varied wildly from its treatment of all other Montgomery County projects, and its decision to defer review of the proposed lay-by and site design until the very end of the process, when all other agencies had concluded their reviews, has been highly prejudicial.



**Montgomery County Planning Department**  
Maryland-National Capital Park and Planning Commission

Page 1 of 2

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## REGULATORY PLAN EXTENSION REQUEST

☐ Request #1

☐ Request #2

☒ Request #5

### M-NCPPC Staff Use Only

File Number		MCPB Hearing Date	
Date Received			

**Plan Name:** Takoma Junction

**Plan No.** 120190150; 82C1 90090

This is a request for extension of:

☐

Project Plan

☐

Sketch Plan

☒

Preliminary Plan

☒

Site Plan

The Plan is tentatively scheduled for a Planning Board public hearing on: 09/16/2021

The Planning Director may postpone the public hearing for up to 30 days without Planning Board approval. Extensions beyond 30 days require approval from the Planning Board.

### Person requesting the extension:

☐ Owner, ☒ Owner's Representative, ☐ Staff (check applicable.)

Erin Girard

Miles & Stockbridge, P.C.

Name

Affiliation/Organization

11 North Washington Street, Suite 700

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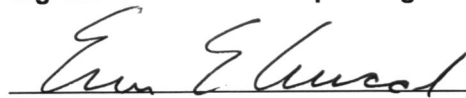
E-mail

We are requesting an extension for 4 months until 01/20/2022

Describe the nature of the extension request. Provide a separate sheet if necessary.

The Applicant is continuing to work with the State Highway Administration to address various issues. Although the Applicant had hoped to address and resolve the outstanding issues with SHA in time for a September hearing, the Applicant is still awaiting comments from SHA on its latest submission and will therefore need additional time to review and address any comments received. It is the Applicant's hope that this will be the final extension needed for the applications.

**Signature of Person Requesting the Extension**

  
Signature

8/26/21  
Date

**Extension Review**

*Planning Director Review for Extensions 30 days or less*

I, the Planning Director, or Director's designee, have the ability to grant extensions of the Planning Board public hearing date of up to 30 days and approve an extension of the Planning Board public hearing date from \_\_\_\_\_ until \_\_\_\_\_.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

*Planning Board Review for Extensions greater than 30 days*

The Montgomery County Planning Board reviewed the extension request on \_\_\_\_\_ and approved an extension for more than 30 days of the Planning Board public hearing date from \_\_\_\_\_ until \_\_\_\_\_.

**From:** [Tracy Duvall](#)  
**To:** [MCP-Chair](#)  
**Subject:** Takoma Junction (Agenda items 4a & 4b): please reject extension and proposal  
**Date:** Sunday, September 12, 2021 2:47:19 PM

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**[EXTERNAL EMAIL]** Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Anderson:

I am writing to support the staff's recommendations and the City of Takoma Park's position regarding Takoma Junction (Agenda Items 4a & 4b). Both the extension and the plan should be rejected.

I live directly across Columbia Ave from the proposed garage, so I have paid close attention to NDC's proposal and to its methods. In general, I would welcome a modest development in the parking lot, if it could meet the good planning standards that the City and County have set. Unfortunately, NDC's proposal does not come close. It:

- relies on a dangerous and traffic-snarling location for truck deliveries and a dangerous driveway location, both of which the SHA has rejected repeatedly
- creates a parking deficit of at least 70 spaces, endangering nearby businesses
- significantly reduces the wooded area and the number of trees
- imposes a parking garage on a residential area – not screened by vegetation, thanks to a fire-access lane
- greatly increases truck and other traffic on residential streets
- worsen delays at an already overburdened intersection, resulting in life-threatening delays to emergency vehicles from the fire station
- exacerbates stormwater-management problems, and
- fails to provide sufficient public gathering space.

Rather than attempting to build a right-sized, workable development, NDC's proposal requires multiple waivers from good planning regulations. NDC's attitude has been to ignore anything but their desire to maximize square-footage while presenting their plan as a take-it-or-leave-it proposition. Moreover, throughout this process, NDC has demonstrated an alarming level of bullying behavior and apparent mendacity.

For all of these reasons, I urge you to reject both NDC's proposal and their request for an extension. It's time to pull the plug.

Thank you for your attention,

Tracy

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Tracy Duvall, PhD  
7125 Poplar Ave

**From:** [jlandman@mulland.net](mailto:jlandman@mulland.net)  
**To:** [MCP-Chair](#)  
**Cc:** [Bogdan, Grace](#); [Wright, Gwen](#); ["Jamal Fox"](#)  
**Subject:** Agenda Item 4.a.: Takoma Junction, Preliminary Plan 120190150 and Site Plan 820190090 - Regulatory Extension Request #5  
**Date:** Sunday, September 12, 2021 8:45:51 PM

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**[EXTERNAL EMAIL]** Exercise caution when opening attachments, clicking links, or responding.

To Planning Board Chair and Members:

My name is Jessica Landman, and I reside in Takoma Park, Maryland. These comments are submitted on behalf of myself and Community Vision for Takoma, a local civic association, to oppose the applicant's request for a fifth extension of time to revise their application.

We ask that the Planning Board follow the advice of your staff (and the City of Takoma Park, which has also declined to support the developer's request), and deny both the request for an extension and the request for approval of the Plan.

The applicant has been granted four extensions of time. They have made repeated minor revisions to the plan's basic design, each of which has been rejected by the SHA. There has been no indication that they are willing to make any significant revisions to the overall configuration or footprint of the project. Nor has the SHA shown any sign that the developer's 'tweaks' are bring them closer to an approvable version. To the contrary, additional concerns have emerged in the last two iterations.

The fact that the City Council of the City of Takoma Park has now voted unanimously to recommend that the Planning Board not approve the design of *its own development partner* -- on the basis of not only the delivery and safety design flaws cited by the SHA but also other significant design flaws relating to parking, public space and environmental considerations, demonstrate that granting a few additional months for technical 'tweaks' will do nothing but prolong this process unproductively. We urge you to vote no, to proceed with consideration of the project itself, and to vote no on the project, as well.

Thank you very much.

Jessica Landman  
[jlandman@mulland.net](mailto:jlandman@mulland.net)

**From:** [Emanuel Wagner](#)  
**To:** [MCP-Chair](#); [Anderson, Casey](#); [Verma, Partap](#); [Cichy, Gerald](#); [Patterson, Tina](#)  
**Subject:** Comment on Item 4A for September 15, 2021 Agenda of the MCPB  
**Date:** Monday, September 13, 2021 9:53:22 PM  
**Attachments:** [MCPB Comment letter TJ.pdf](#)

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**[EXTERNAL EMAIL]** Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Anderson, dear Board Members Patterson, Cichy and Verma,

I am attaching a letter requesting you granting the applicant an extension of the review process, in order to provide more time to continue to work with SHA on the issues related to the layby for the development. As a member of the SHA review group related to this intersection, I believe SHA has egregiously delayed this project and the developer should not be punished for the delays created by a review agency, possibly due to political interference.

Please grant the extension request. Many of my neighbors and I want this project to move forward, and improve our neighborhood over the parking lot that is currently there.

Thank you very much for your consideration!

Best,

Emanuel Wagner  
Boyd Ave, Takoma Park



September 13, 2021

Montgomery County Planning Board  
2425 Reedie Drive, 14th Floor  
Wheaton, MD 20902

**RE: Letter of Support for Extension of Review Period**

Dear Members of the Planning Board:

I would like to thank you for the opportunity to provide comments on the Takoma Junction development project, and I ask you to vote in favor of extending the review period for the reasons below.

I am a resident of Takoma Park, living a short walk from the Junction, and I was a member of the State Highway Administration's (SHA's) Stakeholder Advocacy Group (SAG) assembled to discuss Takoma Junction, as part of the so called "Takoma Junction Vision Study".<sup>1</sup> I therefore have followed this process closely and spent significant time to provide feedback to SHA.

I am requesting that you allow the developer's request for additional time to continue to meet with SHA to resolve the issues related to the layby delivery of the site plan. That request should be granted as it is not due to the developer's mistakes that a resolution for the layby has not been found, but rather because SHA has been delinquent in providing any meaningful feedback on the project and proposed delivery situation for over two years to the developer. SHA started to do so only few months ago. Such extraordinary delay should be considered in the evaluation of the extension request.

Specifically, SHA determined in March 2019 that they will not review the site proposal until the Takoma Junction Vision Study was released.<sup>2</sup> This study was supposed to be released in the fall of 2019, which did not happen. A draft was shared with SAG members in person in February 2020 that included all the elements found in the final version of the report, yet the final study was not released until January 4, 2021, almost a full year after the draft report was shared. No explanation was ever given for that delay. Furthermore, as a participant of that study, I clearly recall that SHA representatives and consultants emphasized that the vision is not discussing the development. The notes allude to this by stating that "this effort is about a transportation vision. It is a larger geographic study, but MDOT SHA understands that development is proposed and encourages the SAG to talk about different scenarios with different solutions."<sup>3</sup> The layby or development were never raised by SHA, and only came up in the context of questions by the SAG members or the public. It is therefore highly confusing that SHA would hold off on the review of the site plan and layby if the site plan or delivery situation was not part of the scope of the vision study.

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<sup>1</sup> [https://roads.maryland.gov/OPPEN/Takoma\\_Junction\\_Vision\\_Study\\_report\\_print.pdf](https://roads.maryland.gov/OPPEN/Takoma_Junction_Vision_Study_report_print.pdf)

<sup>2</sup> [https://documents.takomaparkmd.gov/initiatives/project-directory/Takoma-Junction/20210519-NDC-Response\\_to\\_SHA.pdf](https://documents.takomaparkmd.gov/initiatives/project-directory/Takoma-Junction/20210519-NDC-Response_to_SHA.pdf)

<sup>3</sup> <https://roads.maryland.gov/OPPEN/TJVS-SAG-Meeting-One-Notes.pdf>

The Takoma Park Council voted on the proposal, and the critical issue cited was the lack of SHA approval of the layby delivery situation, which led to their negative recommendation to this Board. Members of the Council expressed concern about approving a site plan that did not receive approval from SHA. Their vote therefore should be viewed in that context, and time should be given to work out a plan that SHA approves that then the Council can vote on.

In the meantime, this intersection is continues to be used unsafely for deliveries, as 18 wheelers and other delivery trucks already park in the travelling lane of Carroll Ave/Ethan Allen Ave for deliveries, see appendix A.

While the lay-by might not be the most attractive solution, deliveries in Old Town Takoma and Washington D.C., where often no lay-by exist, are conducted on a daily basis. A layby at the junction is much less intrusive. I hope SHA and the developer will find a solution that works for this site, and I hope you give them the time needed to come to agreement. The most recent conversations between the developer and SHA seem to indicate that only a few points remain contentious.<sup>4</sup>

I look forward to a positive decision by you to grant the request to extend the review period to address the remaining open questions related to the delivery situation. The Takoma Junction Development project would allow for some badly needed economic infusion and revitalization in this area.

Sincerely,

/s/

Emanuel Wagner  
429 Boyd Ave  
Takoma Park, MD

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<sup>4</sup> [https://documents.takomaparkmd.gov/government/housing-and-community-development/transportation-planning/HCD-20210907\\_19APMO008XX-Concept%20Review.pdf](https://documents.takomaparkmd.gov/government/housing-and-community-development/transportation-planning/HCD-20210907_19APMO008XX-Concept%20Review.pdf)

## Appendix

### Evidence I – Co-Op Delivery Truck Blocking Intersection of Carroll Ave and Ethan Allen Ave



### Evidence II – “Co-Op Delivery Truck Blocking Intersection of Carroll Ave and Ethan Allen Ave





Evidence III – Cash Truck Blocking Intersection of Carroll Ave and Ethan Allen Ave



Evidence IV – Two trucks unloading at a small grocery, sans layby in Washington DC (1864 Columbia Rd, NW)



**From:** [Karen Collins](#)  
**To:** [MCP-Chair](#)  
**Subject:** Takoma Junction  
**Date:** Tuesday, September 14, 2021 12:48:20 PM

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To - Montgomery Co Planning Board

In reference to the Takoma Junction Development Plan, I hope that the Planning Board will do two things :

1. Please deny the Neighborhood Development Company's request for an extension of time for review of the plan.
2. Please vote "No" on the proposed development plan.

Many,many residents in our community oppose this plan due to issues which include the proposed layby (and other safety/traffic issues), storm water management, little public space and destruction of trees in the rear of the lot.

Thank you for your consideration.

Karen Collins