



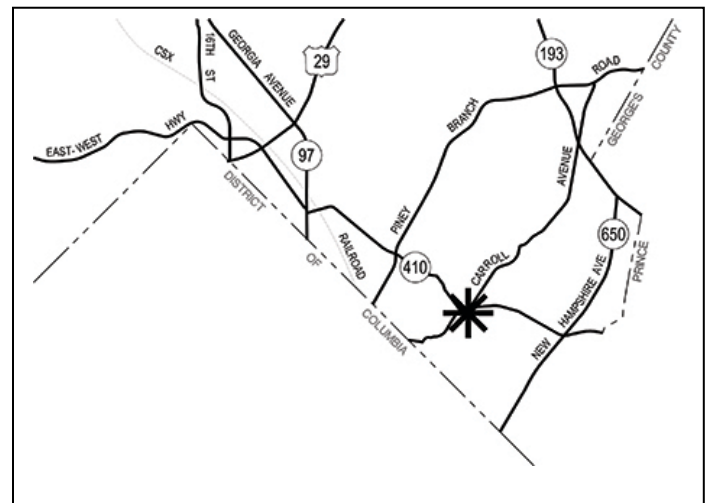
Takoma Junction, Preliminary Plan 120190150 and Site Plan 820190090 – Regulatory Extension Request #5

- [GB] Grace Bogdan, Planner Coordinator, DownCounty, Grace.Bogdan@montgomeryplanning.org, 301.495.4533
- [SD] Stephanie Dickel, Supervisor, DownCounty, Stephanie.Dickel@montgomeryplanning.org, 301.495.4527
- [M] Elza Hisel-McCoy, Chief, DownCounty, Elza.Hisel-McCoy@montgomeryplanning.org, 301.495.2115

Staff Report Date: 09.03.21

Description

- Fifth request to extend the review period, from September 16, 2021 to January 20, 2022, for one lot for up to 40,762 square feet of commercial uses.
- Located on the south side of Carroll Avenue at its intersection with Ethan Allen Avenue in the City of Takoma Park
- 1.25 acres
- NR-0.75 H-50 and Takoma Park/East Silver Spring Commercial Revitalization Overlay zones
- 2000 Takoma Park Master Plan
- Applications accepted on February 14, 2019
- Applicant: NDC Takoma Junction LLC
- Chapter 50, Chapter 59, Chapter 22A



Section 50.4.1.E of the Subdivision Regulations provides a 120-day limit for preliminary plan hearings. Similarly, Section 59.7.3.4.C provides a 120-day limit for site plan hearings. The Planning Board may, however, extend these periods. To date, the Planning Board has extended the review periods four times for these applications – on June 13, 2019; January 9, 2020; September 24, 2020; and April 29, 2021 – from June 13, 2019, ultimately to September 16, 2021.

The Applicant is requesting a fifth extension to allow the review period to extend until January 20, 2022. As detailed in the attached request by the Applicant, the Project has been under review for the past two-and-a-half years, and has yet to receive approval from the State Highway Administration for access, sight distance and the proposed layby on Carroll Avenue associated with the Takoma Junction applications. The Applicant believes that the issues identified by SHA can be resolved satisfactorily with additional time.

With regard to access, SHA issued a letter on June 21, 2021 rejecting the sight distance analysis for access and layby design. On June 23, 2021, the Takoma Park City Council voted to disapprove the Project, as reflected in Resolution 2021-19 (Attachment C). On August 19th, 2021, SHA issued an additional letter, in draft form, rejecting the layby design.

Upon receiving the Applicant's request to again extend the review period, Staff reached out to the City of Takoma Park for their position on this additional extension request. The City responded (Attachment D) with reference to the Resolution of disapproval of the Project.

As indicated in the attached project chronology, updated since the previous extension request, Staff has not seen any indication from SHA that they will approve either the sight distance review necessary for site access from Carroll Avenue or the on-street layby loading space on Carroll Avenue. Further, as mentioned above, the City of Takoma Park has not only voted to recommend denial of the regulatory applications, but has also declined to support the requested extension. Staff recommends **DENIAL** of the extension requests.

Attachment A: Application chronology

Attachment B: Fifth Extension request

Attachment C: City of Takoma Park Resolution 2021-19

Attachment D: City of Takoma Park extension request comment

Attachment A: Application chronology

2019

- February 14: Applications accepted as complete
- March 18: State Highway Administration (SHA) e-mail that they will not conduct TIS or plan reviews until completion of “Takoma Junction Vision Study”, expected to be complete “fall of 2019”
- March 19: DRC
- May 21: First Preliminary Consultation at Historic Preservation Commission (HPC)
- June 13: Planning Board extends review period from June 13, 2019 to January 9, 2020, to accommodate SHA study schedule
- August 14: Second HPC Preliminary Consultation
- October 23: Third and final HPC Preliminary Consultation – no further review until after Planning Board review

2020

- January 9: Second Planning Board extension of review period, to September 30, 2020; SHA Vision Study not complete and no TIS or plan review comments
- July 20: NDC makes first post-DRC ePlans resubmittal
- August 3: Planning returns ePlans Preliminary Plan review task to NDC to address still-outstanding issues
- August 17: Planning returns ePlans Site Plan review task to NDC to address still-outstanding issues
- September 24: Third Planning Board extension of review period, to April 29, 2021; SHA Vision Study not complete and no TIS or plan review comments
- November 2: SHA issues TIS comment letter
- November 6: NDC resubmits Preliminary and Site Plan drawings for review
- November 27: Planning returns ePlans Preliminary Plan review task to NDC to address still-outstanding issues
- December 8: Planning returns ePlans Site Plan review task to NDC to address still-outstanding issues

2021

- January 5: SHA releases Takoma Junction Vision Study, originally expected Fall 2019
- January 15: NDC submits final drawings in ePlans
- March 8: SHA approves TIS
- March 12: SHA letter to City Manager committing to review layby within 30 days
- April 12: Takoma Park City Council holds begins final review of Takoma Junction applications, expected to culminate in a May 5, 2021 final vote
- April 13: SHA issues letter rejecting layby as designed
- April 13: In response to SHA letter, Takoma Park City Manager announces indefinite postponement of City Council review of applications
- April 29: Planning Board approves extension request through September 16, 2021
- June 16: SHA issues letter rejecting sight distance analysis and layby as designed
- June 23: Takoma Park City Council votes to disapprove Project
- August 19: SHA issues draft letter not approving layby

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 _____.



Erin E. Girard
 301-517-4804
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”).¹ 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 8th, it failed to provide any comments on the proposed lay-by and site design until April 13th. Disappointingly, the comments provided on that date ignored basic information contained in the application materials, made assumptions unsupported by facts, provided half-

¹ 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.

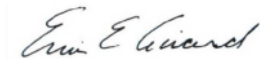
answers, and required another submittal, generating a new 30 days review period. Although NDC attempted to correct SHA's misunderstandings in its resubmission, a second letter from SHA on May 24th continued to rely on incorrect assumptions and misinformation as a basis for its responses. So frustrating 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 matter² 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

² 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.

1 Introduced by: Councilmember Kovar
2

3 **CITY OF TAKOMA PARK, MARYLAND**

4
5 **RESOLUTION 2021-19**

6
7 **RECOMMENDING DISAPPROVAL**
8 **OF TAKOMA JUNCTION DEVELOPMENT SITE PLAN**
9 **BY THE MONTGOMERY COUNTY PLANNING BOARD**
10

11 WHEREAS, with Council Resolution 2018-41 in July 2018, the Takoma Park City Council
12 authorized the submission of plans by the Neighborhood Development Company,
13 LLC, for redevelopment of properties in Takoma Junction on the south side of
14 Ethan Allen Avenue (MD 410) at the intersection with Carroll Avenue (MD 195);
15 and
16

17 WHEREAS, most of the properties involved in the redevelopment project are owned by the City
18 of Takoma Park (“City”) and one property is privately owned, but under contract
19 for purchase; and
20

21 WHEREAS, there have been governmental and community studies about how to improve the
22 economic viability, environmental sustainability, and attractiveness of the Takoma
23 Junction neighborhood commercial area since 1983, and the properties owned by
24 the City were purchased in 1995 for the purposes of stabilizing and facilitating the
25 revitalization of the area; and
26

27 WHEREAS, in January 2014, the Council released a competitive Request for Proposals for
28 development of the property in a manner that would “act as a stimulus to the
29 commercial district and locally-owned, independent businesses; improve the
30 aesthetic appeal of the district; and be contextually sensitive and environmentally
31 sustainable;” and
32

33 WHEREAS, the Council selected Neighborhood Development Company, LLC (“NDC”) to
34 develop the project, and a Development Agreement and Ground Lease were
35 approved by the Council in July 2016 through Resolution 2016-26; and
36

37 WHEREAS, from January 2014 through July 2018, there was a high level of public participation,
38 discussion and sharing of information about the project, including 32 Work
39 Sessions with public comments, three Listening Sessions, three Open Houses
40 (including an on-site pop-up Open House), design meetings with over 200
41 attendees regarding form and character and access and mobility, and over 600
42 written public comments in 2018 alone; and
43

- 1 WHEREAS, this level of public participation and Council consideration informed the adoption
2 of Resolution 2018-41 with its many provisions to guide and assess the final site
3 plan to be prepared and submitted to the Montgomery County Planning Board once
4 the Montgomery County development review process was completed; and
5
- 6 WHEREAS, the agency review of the plans submitted on January 15, 2021 is now nearly
7 complete; and
8
- 9 WHEREAS, many changes to the plans have been made since July 2018 in response to the
10 comments made through the agency review process; and
11
- 12 WHEREAS, the development review process requires the Takoma Park City Council to convey
13 its recommendations on the site plan to the Montgomery County Planning Board
14 prior to Board action; and
15
- 16 WHEREAS, there are additional provisions in City Council Resolution 2018-41 identifying
17 actions or outcomes that do not pertain directly to the Montgomery County
18 Planning Board review and which would need to be addressed separately, such as
19 how the Auto Clinic property will be combined with the remaining property, final
20 City approvals of tree and stormwater plans, and plans for continuity of operations
21 during construction; and
22
- 23 WHEREAS, Maryland Department of Transportation State Highway Administration (MDOT-
24 SHA) has not approved a layby for use for deliveries for this project on State
25 Highway MD-410; and
26
- 27 WHEREAS, no other adequate and safe delivery options that can accommodate large vehicles
28 have been presented that would serve this site and the TPSS Co-op; and
29
- 30 WHEREAS, mediation between NDC and the TPSS Co-op led to an agreement regarding the
31 accommodation of deliveries, which included accommodation of large vehicles;
32 and
33
- 34 WHEREAS, Council reserves the option to reopen the review of the site plan as new information
35 is provided by NDC or by MDOT-SHA or other reviewing agencies; and
36
- 37 WHEREAS, as specified in Resolution 2018-41, NDC added windows and greater detail to the
38 rear façade and placed windows so as to minimize light pollution on nearby
39 residences, but there continues to be concern that the façade or the use of space
40 may need to be addressed to limit noise pollution and other negative impacts to the
41 neighborhood; and
42
- 43 WHEREAS, as specified in Resolution 2018-41, at least 2700 sq. ft. of public gathering space
44 should be provided that is not focused on outdoor dining but is shared space for

1 residents, visitors and anyone else in the public realm and under the longer layby
2 option, 3,850 square feet is provided and under the shorter layby option, 4,500
3 square feet is provided, however, the type and quality of the public space has
4 changed because of adjustments to the layby design; and
5

6 WHEREAS, Resolution 2018-41 specified that public parking will be available for area
7 businesses; and
8

9 WHEREAS, Resolution 2018-41 requires that stormwater will be managed within the project
10 boundary using low-impact development and green infrastructure and treatment
11 will significantly exceed the City's 50% requirement for redevelopment, and the
12 project meets the requirements but, due to design changes for other purposes, the
13 project does not "significantly exceed" the 50% treatment requirement.
14

15 NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF TAKOMA PARK,
16 MARYLAND, recommends the Montgomery County Planning Board disapprove the Takoma
17 Junction Combined Site Plan for the following reasons:
18

- 19 1. The plan has not received approval from the MDOT-SHA for the layby.
20
- 21 2. More work is needed to address the rear façade design in order to have a minimal impact
22 on the residential neighborhood and wooded area behind it and ensure a less intrusive and
23 more visually appropriate design.
24
- 25 3. The plan does not provide 2700 square feet of public space of the type and quality of that
26 included in the plans that were submitted for development review pursuant to Resolution
27 2018-41.
28
- 29 4. The plan does not demonstrate adequate public parking for area businesses as stated in
30 Resolution 2018-41.
31
- 32 5. Stormwater treatment does not significantly exceed the 50% requirement specified in
33 Resolution 2018-41.
34

35 Resolution 2021-19 was adopted by the Council of the City of Takoma Park, Maryland on this
36 23rd day of June, 2021.
37

38 Attest:

39 

40
41
42 Jessie Carpenter, CMC
43 City Clerk
44
45

Balmer, Emily

From: rosalindg
Sent: Tuesday, August 31, 2021 4:00 PM
To: Bogdan, Grace
Cc: kates@takomaparkmd.gov; Hisel-McCoy, Elza; Kronenberg, Robert; Wright, Gwen; Dickel, Stephanie; Jamal Fox; Alexander Cross
Subject: Re: Takoma Junction extension request

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

Good afternoon Grace,

The City is in receipt of the Planning Board Staff's August 27, 2021, inquiry concerning NDC's request for an application extension for the Takoma Junction Project. In response to that inquiry, I refer you to City of Takoma Park Resolution 2021-19, which was previously transmitted to the Planning Board. Please refer to the link that follows for that Resolution:

<https://documents.takomaparkmd.gov/government/city-council/resolutions/2021/resolution-2021-19.pdf>

Thank you,

Rosalind Grigsby

On Fri, Aug 27, 2021 at 2:46 PM Bogdan, Grace <grace.bogdan@montgomeryplanning.org> wrote:

Good Afternoon Roz and Mayor Stewart,

We received an extension request from the Applicant to extend the applications through January 2022, see attached. We told the Applicant we would not recommend approval of the extension request, and will be presenting this to the Planning Board on September 15th prior to the other Takoma Junction applications. We are requesting the City's position on this additional extension as we will need to incorporate that into our staff report to the Planning Board. Could you please respond by next Thursday, September 2nd so we can post the report on September 3rd.

Thanks and have a great weekend,

Grace



Grace Bogdan, AICP

Planner Coordinator, DownCounty Planning Division

Montgomery County Planning Department

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o: 301.495.4533



WE'VE MOVED!

THE NEW PARK AND PLANNING HEADQUARTERS IS NOW LOCATED AT
2425 REEDIE DRIVE, WHEATON, MD 20902