

LAW OFFICES OF

KNOPF & BROWN

401 EAST JEFFERSON STREET
SUITE 206
ROCKVILLE, MARYLAND 20850
(301) 545-6100

FAX: (301) 545-6103

E-MAIL BROWN@KNOPF-BROWN.COM

WRITER'S DIRECT DIAL

(301) 545-6105

DAVID W. BROWN

February 21, 2019

Via Email Only

gwen.wright@montgomeryplanning.org

Gwen Wright, Planning Director
Montgomery County Planning Department
Maryland – National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: **Takoma Junction**
Preliminary Plan No. 120190150; Site Plan No. 820190090

Dear Planning Director Wright:

I write on behalf of Community Vision for Takoma, a group of Takoma Park residents who have been closely monitoring the process leading to the Takoma Junction preliminary and site plan applications (the "Applications") referenced above that were recently accepted by the Planning Department as complete, with DRC review scheduled for March 19, 2019. Community Vision for Takoma requests that you promptly either (1) reverse the determination that the Applications are sufficiently complete to commence the staff/DRC review process; or (2) suspend that process until the applicant, Neighborhood Development Company ("NDC"), has demonstrated compliance with the most fundamental of requirements: authorization of the landowner to file the Applications.¹

1. NDC Lacks Authorization From the City of Takoma Park to Proceed

After one or more false starts, NDC elected to submit to the Planning Department two versions of the Applications. The Justification Statements accompanying the Applications state that while NDC is submitting for review a plan for 40,762 sq ft of development on the subject property (the "Property"), it is also submitting "Supporting Drawings" for a plan for a 52,794 sq ft development of the Property using FAR Averaging. Statements at 4 n. 2. The Statements assert

¹ The Subdivision Ordinance requires as a pre-condition to Preliminary Plan review that an applicant own or be authorized to develop the subject property. § 50-4.1.A.2 ("The subdivider must own the property or be authorized by the owner to file the application."). This requirement is also applicable to Site Plans. § 59-7.3.1.B.1 ("An applicant must own the subject property or be authorized by the owner to file the application.").

Gwen Wright, Planning Director
Montgomery County Planning Department
Maryland – National Capital Park and Planning Commission
February 21, 2019
Page 2

that NDC has been authorized to file the Applications “as reflected on the submitted plans.” Statements at 3. This unsubstantiated claim is incorrect.

Whether or not it is sometimes proper for the Planning Department to accept for simultaneous review two different plans for the same property, it should not have done so in this case, wholly apart from the fact that the larger, purchased-FAR alternative is flatly unlawful.² The owner of the property, the City of Takoma Park (the “City”), did not authorize NDC to submit a plan for a 40,762 sq. ft building. The City’s July 2018 Resolution 2018-41 authorized a Development Agreement with NDC whereby NDC was to submit a development plan for the Property for the larger, unlawful building. It did not authorize NDC to submit two plans or a plan for the smaller building that NDC recently advised Mayor Stewart is the “by-right plan” that it is “now moving forward with.” Letter, NDC to Mayor Kate Stewart (Feb. 19, 2019)(copy attached).

Any doubt about the scope of the City’s authorization has been conclusively resolved in a recent letter from City Manager Ludlow to the members of the City Council of February 20, 2019 (copy attached). Ms. Ludlow states that the City learned of the FAR limitation on the Property “after the project had received the approval from City Council to move into the County development review process.” She goes on to explain her current expectation that if the Applications go through the DRC process, that “may lead to other changes in the configuration of the building or the site plan” and that “the Council will want to see if the revised plans meet its goals for the project and still adhere to the terms of the Development Agreement.” She urges that the Council require NDC attend a Council meeting “to present its modified plan,” after which “the Council can consider a resolution on the revised plan.”

While ordinarily, the Planning Department’s review process does not look behind an applicant’s *prima facie* claim of landowner authorization, it has a special responsibility to do so in this case, given the patent lack of such authorization here, and given that the City as landowner is also a municipality within Montgomery County that does not have independent authority under a municipal zoning ordinance and is therefore dependent on the Planning Board for proper application of planning, zoning and subdivision laws within the City. Further, allowing the review process to continue in this case would be an improper use of public resources. Acceptance of a

² While the Statements state that the option of purchasing FAR for the larger plan is being “pursued,” it is simply not an available option. The Property is not subject to FAR Averaging under § 59-4.6.2.B of the Zoning Ordinance. The Property is reported as having a gross lot area of 54,350 sq ft, so the density “allowed by the property’s zone,” § 59-4.6.2.B.2.d., is $.75 \times 54,350 = 40,762$ sq ft. In other words, the project is already at the maximum density allowed by the NR-0.75 zone in which it is located. The density cannot be increased above the mapped limit of 0.75 FAR with FAR purchased from any of the adjoining or confronting employment zone properties (in this case, in the NR zone), because of the presence of vacant residential (R-60) property abutting the Property. § 59-4.6.2.B.2.d.

plan for staff review should occur only when the Planning Department has been provided an application that not only fulfills all submission requirements, but demonstrates at least *prima facie* compliance with the substantive standards of approval. Hardly the least of these requirements is that the landowner's developer agent has not misrepresented its authorization to proceed. In addition, Manager Ludlow's letter appears to treat your review process as a mechanism to obtain advisory opinions on basic elements of project design. That is a misuse of the resources you and your staff rely upon. Such basic staff consultation should precede, not follow plan submission, because once a plan is submitted it is no longer an inchoate design. Instead, it becomes a non-hypothetical matter of real public interest and concern, as this letter readily demonstrates.

2. NDC is Relying on a Roadway Reconfiguration That the City Has Not Approved

NDC states that it "is actively working with the State Highway Administration ('SHA') to address the intersection of Carroll, Ethan Allen and Sycamore Avenues." Preliminary Plan Statement at 8,9 (addressing compliance with § 50-4.2.D.2.&3.); Site Plan Statement at 17 (addressing site plan findings required under § 59.7.3.4.E.2.g.&h.). The Traffic Study supporting the Applications acknowledges that this intersection requires "major improvements" to bring it to an acceptable level of service. *Id.* at 28-29. In other words, on its face the Traffic Study demonstrates a lack of compliance under the cited Subdivision and Zoning Ordinance criteria. The Study presents in Appendix H one option for improving the operation of this intersection, but this appears to have no more of a City imprimatur than NDC's "by-right" building. In the same vein, the Applications fail to mention that the City is currently engaged with SHA in the planning and execution of a "Vision Study," the very purpose of which is to consider whether, if at all, any realignment of the intersection is acceptable or advisable.³

Conclusion

It is simply not appropriate for the Planning Department and all of the constituent agencies to expend time and resources to review Applications that the property owner has not reviewed and approved for submission. This defect is heightened in this case by the Applications' critical dependence on correcting a roadway configuration problem likely to have impacts in the City both near and beyond the immediate location of the Property. Similarly, Community Vision for Takoma and others who question the viability of this project should not have to expend their time and resources on opposing it until NDC demonstrates that the Applications are City-authorized and that they at least *prima facie* comply with the standards of approval.

³ Presumably, any ultimate roadway configuration would have to address, if even possible, the dramatic sight distance defect in the project's proposed vehicular access/egress configuration. The submitted Sight Distance Evaluation concludes that "Sight distance to the left is restricted by southward curve of Carrol [sic] Avenue. Sight distance does not meet per Arterial Classification." The numbers are stark: the minimum safe distance is 350 feet; the actual number is 188 feet, a shortfall of over 46%.

Gwen Wright, Planning Director
Montgomery County Planning Department
Maryland – National Capital Park and Planning Commission
February 21, 2019
Page 4

Please let me know what further information you would like me to provide, and what action, if any, will be taken in response to my request.

Sincerely yours,



David W. Brown

/enclosure

cc: Elza Hisel-McCoy, MNCPPC
Scott Pomento, SHA
Erin Girard, Esq., Linowes and Blocher



Neighborhood
Development
Company

February 19, 2019

Mayor Kate Stewart
City Council of Takoma Park Takoma
Park, MD 20912

Via email

Dear Mayor Stewart and City Council,

We are writing to provide you with an update on the progress of the Takoma Junction project as we proceed through the Montgomery County planning process.

As we began our pre-submittal consultations with County officials last fall, we were informed that our ongoing assumption that the rear part of the City owned lot (lot 39, zoned R60), could not be combined with the front part of the lot (zoned NR) in order to provide the density we assumed in our site plan presentations to Council. In essence, by right the site would allow a project approximately 17% smaller. We decided the best course of action would be approach adjoining properties in the Junction area to see if they would be willing to sell excess development rights (commonly called "Air Rights"), which they could not use but could be transferred to the project. We spent about 3 months on this effort; ultimately, we could not reach agreement with the property owners to purchase these rights. We are now moving forward with a by-right plan. Throughout this process we have kept City Staff fully apprised of our activities and thinking.

The by-right plan takes square footage from the rear of the project at both the ground and second floor. There are slight changes to the parking garage to make it more efficient, but the size will remain similar to the original parking plan. The green area will remain the same. We decided not to alter the front façade, setbacks, public areas and ingress / egress – we felt that these were the most important areas that gave the plan its character and made it "work" – providing the right balance of public space, commercial vibrancy and pedestrian flow. Our vision for the Junction is not altered – a place that is inclusive, diverse, entrepreneurial, thriving, beautiful and funky.

As we move forward through the various County reviews, including Historical Preservation, we expect minor alterations to the plan at the request of the various agencies involved. We expect these to be completed by late Spring. We are happy to report back to you at the conclusion of this process, or come in now for an interim update if you would prefer.

Sincerely,

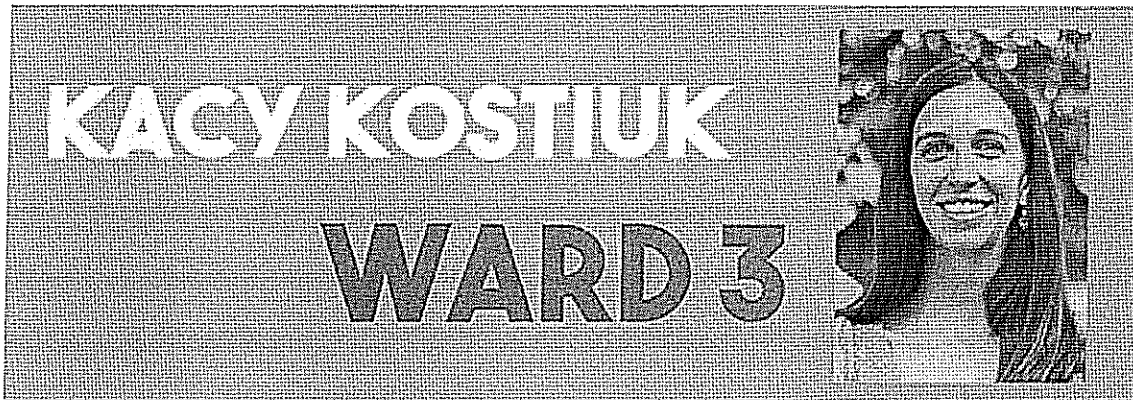
Adrian G Washington
CEO and Founder

[Subscribe](#)

[Past Issues](#)

[Translat](#)

[View this email in your browser](#)



Dear Ward 3 folks,

Due to the weather, the City Council meeting has been canceled tonight. We'll work on rescheduling the agenda items for future meetings. (Apologies for the late notice on this.)

I also want to share a letter that was sent by NDC to the City yesterday. It can be found [here](#) (scroll down and click on the link called "corrected letter" in the first section).

I have been asking for further information from the City Manager regarding both this letter and the smaller plan submitted by NDC. At the end of this message is information she has provided in response to some of these questions.

I want to emphasize that despite what NDC's letter says, City staff were not kept fully apprised during this process, and neither was the Council. I am incredibly frustrated with NDC for what I see as failed communication and cooperation.

At this point, I am continuing to seek more information and contemplate next steps.

Best,

Kacy

[Subscribe](#)[Past Issues](#)[Translat](#)

Information from the City Manager:

"Dear Councilmembers,

I have seen a number of email posts about the change in the NDC Takoma Junction project that questions what happened. Some of the more troubling comments question staff's role and competence or ethics.

First, as I have shared through my City Manager Comments and the posts on the Takoma Junction project page, the change in the zoning for the site (to NR) in 2014 restricted development options that were previously available and continue to be available in most other zones. In particular, the restriction of transferable development rights (TDRs) to just adjacent properties in the NR zone for the purpose of determining the allowable building size was eliminated. This change was not highlighted when the NR zone was created, and was not known by City staff. It appears that it was not previously known by County planning staff either. NDC and its experienced development legal firm did not know until they had their zoning consultant doublecheck every detail in their application.

This zoning information on the floor area ratio (FAR or building mass) limit was learned after the project had received the approval from City Council to move into the County development review process.

When NDC learned that its floor area ratio (FAR) was too large for the NR-zoned site, they looked to purchase transferable development rights (TDRs) from adjacent parcels in the NR zone. They also considered pursuing a zoning text amendment to allow transferable development rights from the Healey Surgeons building, which is in a different zone. These efforts to purchase TDRs were ultimately unsuccessful.

Part of the reason staff had urged the City Council to approve having the plan move forward into the County's review process was to be able to find out information from the various departments and agencies that must examine the plans in detail. City staff are not experts in a number of development review areas, such as zoning, utility or fire department requirements. The information learned from the Development Review Committee (DRC) may lead to other changes of the configuration of the building or site plan. Once this information is identified, the Council will want to see if the revised plans meet its goals for the project and still adhere to the terms of the Development Agreement. Most of the information from the County departments and other agencies and utilities will be learned in the March 19th DRC meeting. There may still be requests for additional information from NDC made at that meeting, but enough information on aspects of the plan that may need to be changed should become known at that time. Soon after the DRC

[Subscribe](#)[Past Issues](#)[Translat](#)

meeting, I recommend that NDC come to a Council meeting to present its modified plan and City staff can share comments learned from the DRC meeting.

Some time after that, the Council can consider a resolution on the revised plan. The resolution can be a recommendation to the Planning Board to "approve" or "approve with conditions" the revised plan, or it can be a resolution to withdraw the application and/or end the project. In any event, the resolution would be based on detailed information that is not available at this time.

Second: What has been the role of City staff? Should they have known of the zoning FAR restrictions? Have they known information and not shared it with the Council and public? Have they acted unethically?

City staff function as both champions of the project as an economic development project with a legal City partner and as technical staff reviewers. We have been careful to keep those roles separate and, in particular, to provide objective technical planning information.

City staff did not know of the restrictions on TDRs as part of the FAR calculations for the project. However, we were aware of a different unfortunate provision of the NR zone: the lack of the option to gain additional building size or similar in return for additional public benefits, including larger community space, the addition of public art, or the provision of other public goods. For that reason, City staff had advocated against zoning the property NR during the 2014 County Zoning update.

Staff has worked very hard to share information in a transparent way. We provide an enormous amount of information on the website, we asked for weekly updates from NDC that are posted on the website and we have promptly notified the Council when we have learned new information.

I am taken aback by some claims (even from NDC!) that staff has known information at a point earlier than we did, in fact, know it. Regarding the move to a plan for a smaller building in the County review process, here is the timeline:

Between the time the City Council acted on the NDC plan and the beginning of the submission to the County, staff was made aware that NDC was looking to pursue TDRs. When NDC was just about to begin submitting the plan to the County, we learned, and shared with the public, that the submission to the County was for the plan approved by Council but that that plan would require TDRs to meet zoning building size requirements and that the information on the source of the TDRs was not included. Later, we

[Subscribe](#)[Past Issues](#)[Translat](#)

were informed that there was a delay in the acceptance of the plans for review by the County because the County wanted to see a "by right" plan – a plan of a building of the size without the additional square footage TDRs could bring. We were told that both the City Council-approved plan with all of the details and the smaller plan would be considered by the DRC. We promptly shared that information with Council and the public. We were then surprised when the application was not "accepted" for review on the date when we had been told by County staff it would likely occur - Tuesday, February 12. Even in my City Manager Comments of February 13, I mentioned that we expected the plans to be accepted and made public shortly.

On Thursday, February 14, we learned from NDC that, rather than having the City Council-approved plan with all of the details and a smaller plan, the plan of the somewhat smaller building would be the primary plan for review by the DRC. Even at that time, we still thought that NDC might pursue some TDRs or a zoning text amendment.

Because the news that the plans for the smaller building were to be the primary plans for review was quite different than I had shared with the Council, I asked NDC for a letter to the Council explaining the situation.

Yesterday, February 19, City staff received a letter from Adrian Washington of NDC that stated that they were only pursuing the smaller plan, that NDC had known this since late January and that City staff had been kept fully in the loop on all of this information. I was quite upset. I asked NDC for a revised letter that took out the reference to knowing this information in late January, as that was completely not true. While we certainly had not been kept in the loop on all information by NDC, a sentence to that effect was kept in a revised letter that was submitted.

I immediately sent the revised letter to the Councilmembers to give a head's up before having the information posted on the City's website. Unfortunately, when we posted the information on the City's website, we accidentally posted the first letter. The letter has since been replaced with the correct one.

At no time has my staff ever acted unethically on this project (or any other project). We pride ourselves on following the tenets of our professional associations as planners and managers. We greatly respect the role of the Council and the public on making decisions with full information in the best interest of the community.

[Subscribe](#)[Past Issues](#)[Translat](#)

As we move forward, we will continue to try to find ways to learn and share information promptly. I will be working with Council and NDC on better communication methods for this project.

Also, we have a new staff member, Samira Cook Gaines, our new Economic Development Manager. Her assistance on working with small and larger business owners should help protect and enhance our existing business community as we advance Council goals on this and other initiatives.

I would have shared this information as part of my City Manager Comments at a Council meeting tonight, but the Council meeting was canceled due to the weather. I wanted to go ahead and share it with you so you can help address the questions you are hearing from your constituents. Please let me know if there is additional information you would like to know.

Best,

Suzanne "

Resources

[Ward 3 neighborhoods and listservs](#)

[Main Street Takoma events calendar](#)

[City Council meeting agendas](#)

[Takoma Park City calendar](#)

[Attend or watch a City Council meeting](#)

[Takoma Langley Crossroads events calendar](#)

[Takoma Park City Projects page](#)

[Subscribe to receive police bulletins & view the police bulletin archive](#)

[Attend a meeting or join a city committee](#)

[Senior Resources: Village of Takoma Park and Resource List](#)

[Report a problem to the city using the MyTKPK phone app](#)

[Archive of previous Ward 3 weekly updates](#)

[Weekly City Manager updates](#)

Copyright © 2018 Kacy Kostiuk, All rights reserved.

You are receiving this because you opted in.

Important Privacy Notice: All correspondence, including emails, to or from City of Takoma Park agencies, officials, and employees is subject to the Maryland Public Information Act and may be disclosed to the public.