

From: Andrew Strongin astrongin@admail.com
Subject: Takoma Junction development - SHA Tracking #19-AP-MO-008-xx
Date: May 28, 2021 at 10:41 AM
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Dear Ms. Rigby,

We have read with interest and alarm NDC's letter dated May 19, 2021. We write in support of SHA's findings that the proposed layby is unsafe, and to address certain factual statements by NDC about this project, with which we have great familiarity, having followed it with great interest from the start. We address, too, additional reasons for SHA to adhere to its rejection of the proposed layby.

1. NDC is Responsible for the Delay in Development Review

It is incorrect to attribute delays in this development review to SHA; the delay is attributable to NDC and its development partner, the City of Takoma Park.

a. NDC Delayed Submission and Acceptance of its Traffic Impact Study

NDC's first Traffic Impact Study ("TIS"), dated December 17, 2018, was rejected without review by Planning staff in March 2019 because NDC's traffic counts were too old. NDC did not resubmit its revised TIS until September 17, 2020. Planning staff and the SHA actively assisted NDC in revising its TIS, which finally was accepted on March 8, 2021. There is no public evidence to suggest that any agency delayed or impaired NDC's opportunity to submit and/or perfect its TIS earlier.

b. City Leadership Requested the Vision Study and then Worked to Scuttle It

It is true that development review was placed on hold in March 2019 due to SHA's decision to conduct a Vision Study. What NDC fails to state is that the City of Takoma Park – NDC's development partner – requested that Vision Study. The Vision Study was released to the public in draft form in February 2020. The study was held for almost a year before its final release on December 31, 2020. There is strong evidence that the Mayor and City Manager privately worked to discredit the Vision Study, displeased apparently that it did not support reconfiguration of the highways – for which there is no plan or funding – which perhaps explains the delay in its release.

c. NDC Ignored Early Indications of Deficiencies in its Layby Proposal

Even as SHA's review proceeded, NDC ignored the opportunity to remediate deficiencies publicly noted by other agencies, notably including the layby. Expert reviews dating back to March 2019 from at least five departments of the County and M-NCPPC presage SHA's determination that the layby is unsafe, including Montgomery County's Department of Transportation and Department of Permitting Services, and the M-NCPPC's offices of Functional Planning & Policy, Area Transportation, and Site Plan review. Memorably, the Chair of the Historic Preservation Commission denigrated the layby proposal as an "abomination." Yet, NDC recently admitted in a letter to the Planning Board that, "Its key elements ... have remained fundamentally unchanged throughout the review process." That is a striking admission. It reflects NDC's failure to revise its plans in ways that address reviewers' concerns – which itself has slowed the overall review process.

d. NDC Has Not Completed Steps Necessary for Development Review

Meanwhile, NDC has not met all steps necessary for completion of development review, quite apart from its interactions with SHA. For example, although NDC engaged in a partial preliminary consultation of its project with the Historic Preservation Commission, it *still* has not completed that process: HPC continues to await a preliminary consultation on the rear of the project never reviewed [1]

...of the project, never reviewed. [1]

e. NDC's Development Partner Still Has Not Conducted its Own Review

Further delay is attributable – to this day and continuing – to the City's own failure to conduct necessary public hearings on the plan; as NDC well knows, the City *never* has reviewed, much less approved, the plan filed with the Planning Board in January 2019. The City first began that process on April 12, 2021. Prior to April 2021, the City's last formal action on NDC's proposal came in July 2018, months before M-NCPPC ever saw it. When SHA rejected the layby on April 13, 2021, the City quickly scrubbed its plan review and has not rescheduled it. It is no answer that the City must await SHA's ruling; the City owns the property, is partnering with NDC, and could have reviewed and approved this plan at any time.

Based on all of the foregoing, it appears that virtually *all* of the delay in development review lies at the feet of NDC and/or its development partner, the City of Takoma Park, for stubbornly pressing and refusing to remediate an ill-conceived, unsafe plan that they have known to be deficient since at least March 2019 when the DRC first met. [2] In any case, any delay in processing this proposal is hardly a basis for approving an unsafe plan.

2. NDC Lacks Authorization to Limit the Layby Use to Small Trucks Using Hand Carts

Notwithstanding the foregoing, NDC sought in its April 23, 2021, request for reconsideration to limit use of the layby to smaller trucks using hand carts, to the exclusion of deliveries by semi-trucks using pallet jacks. NDC holds to those limits in its May 19, 2021, submission (which includes a May 18, 2021, letter from The Traffic Group). NDC's Development Agreement with the City of Takoma Park – which is the basis of its authority to seek SHA's approval of the proposed layby – requires accommodation of deliveries by semi-trucks and pallet jacks before, during, and after any construction of the proposed development. NDC's recent effort to disrupt that delivery requirement led to entry of a temporary injunction against NDC by the Circuit Court for Montgomery County, which remains in place. The City of Takoma Park publicly supports the court's ruling, reflecting its ongoing support for deliveries by semi-trucks using pallet jacks. So far as the public record shows, NDC lacks authorization to restrict use of the proposed layby to smaller trucks using hand carts.

3. The Trash Removal Plan is Unsafe

There is yet another reason to reject the layby, which bears emphasis: By design, it is meant to accommodate also waste collection via four-yard dumpsters. The proposal is to push/pull these dumpsters across a sidewalk, down a five-foot wide ramp, which is only six inches wider than typical four-yard dumpsters. The dumpsters are to travel down this nearly 8% slope, unbelievably, to its terminus at the existing Grant Ave crosswalk, where there is an ADA ramp to the highway surface. If the dumpsters somehow can navigate those dangers without running free into the roadway or, worse, over a schoolchild or other pedestrian waiting to cross the highway at that very location, we are left to wonder how the dumpsters are to be emptied. A frontloader in the layby seemingly is impossible: The egress from the layby looks to feature a 45-degree curb bordered by vegetation and there are no planned curb-cuts. Is the plan really to have the dumpsters pushed out into the travel lane, into the crosswalk, where a frontloader will lift and empty them?

Conclusion

To support an overly large development, NDC seeks an exception to the normal safety-related requirement of on-site delivery, to construct a layby that multiple departments and agencies find will impair public safety and which is obviously unsafe. The layby – which is proposed only because NDC insists on a development so large that it requires multiple waivers of applicable zoning requirements – should have been a non-starter even *before* appropriate consideration was given to its supremely difficult location, adjacent as it is to crosswalks, intersections, traffic signals, sidewalks, and bike lanes.

In closing, we ask that SHA adhere to its well-founded and well-documented rejection of the layby, supported as it is by all of the other expert reviews. There is no good reason and no good time for SHA to provide any letter of support for NDC's ill-conceived, unsafe Site Plan and Preliminary Plan. NDC's request of May 19, 2021, should be rejected.

Sincerely,

Andrew Strongin
Jessica Landman
Martha Anderson
Nadine Bloch
Paul Chrostowski
Kathryn Desmond
Karen Elrich
Robert Goo
Paul Huebner
Dennis Huffman
Susan Katz Miller
Byrne Kelly
Joseph Klockner
Bruce Kozarsky Cynthia Mariel
Roger Schlegel
Susan Schreiber
Megan Scribner
Betsy Taylor

[1] <https://montgomeryplanning.org/wp-content/uploads/2019/10/II.A-7221-Carroll-Avenue-Takoma-Park.pdf>. See, e.g., p. 3 (“Rear elevations and perspectives from Columbia Avenue should be provided for the next preliminary consultation.”).

[2] <https://eplans.montgomeryplanning.org/UFS/19017/61411/Takoma%20Junction%20Staff%20Comments%20Preliminary%20Plan%20120190150%2020200814.pdf/Takoma%20Junction%20Staff%20Comments%20Preliminary%20Plan%20120190150%2020200814.pdf>. See also, <https://eplans.montgomeryplanning.org/UFS/19017/61411/32-DRC-120190150.pdf/32-DRC-120190150.pdf>.