

DEVELOPMENT AGREEMENT/GROUND LEASE QUESTIONS

Can we get an exact date on the anchor tenant 18-month period? It appears from the City website that the Council signed off on NDC seeking another anchor tenant on January 11, 2017.

On January 11, 2017, the City Council approved Resolution #2017-3, exercising its option to authorize the solicitation of an alternative anchor tenant and authorizing Neighborhood Development Company LLC (NDC) to commence seeking a letter of intent with another anchor tenant for the Takoma Junction project other than the Takoma Park Silver Spring Co-op. NDC was formally notified of the Council's action on January 25, 2017. As detailed in Section 4 of the Development Agreement, NDC has 18 months from the date of notification to execute a lease with an alternative tenant.

The deadline for execution of the required lease is July 11, 2018.

There is language in the Development Agreement about the potential to terminate the agreement if NDC doesn't line up an anchor tenant within 18 months after the Co-op is no longer going to be anchor tenant. It isn't entirely clear to me when that 18 month period comes to an end and what would happen at that point.

The City has the right, under the terms detailed in Section 4 of the Development Agreement (Agreement), to terminate the Agreement and the Ground Lease in the event NDC has not executed a lease with an alternative anchor tenant by the July 11, 2018 deadline. On February 26, 2018, due to the need to finalize the draft site plan before the building can be marketed to prospective tenants, NDC requested an extension to identify and execute a lease with an alternative anchor tenant. The revised deadline proposed by NDC is July 11, 2019.

Failure to meet the July 11, 2018 deadline is not automatic grounds for the termination of the Agreement or the Ground Lease. The Council has three options:

- 1) to acknowledge that NDC is unable to meet the July 11 deadline and defer action terminating the Agreement until the July 11, 2019 deadline requested by NDC has passed;
- 2) to amend the Development Agreement extending the deadline for execution of the required lease for an additional twelve month period; or
- 3) to terminate the Development Agreement and the Ground Lease after the July 11, 2018 deadline has passed, following the issuance of a ten day notice to NDC of the decision to terminate.

Staff recommends formal Council acknowledgement of NDC's request for an extension of

this deadline and deferment of any action to terminate the Agreement until July 2019.

I believe NDC is supposed to start paying rent on June 1. What happens if there isn't an approved site plan by that date?

The Ground Lease, entered into upon execution of the Development Agreement, becomes effective July 21, 2018 (no later than 720 days after the effective date of the Development Agreement as stipulated in Section 1. Definitions – Lease Commencement Date). Under the terms of the Lease, NDC will be required to begin paying rent at that time (Section 4.1 – Payment of Rent).

The Development Agreement and Ground Lease do not require approval of the Draft Combined Site Plan prior to the commencement of the Ground Lease or the payment of rent.

With NDC holding title to the Johnny's property (which is also the site of the proposed entrance/exit from the parking lot), we may want to take steps to ensure that access to the site (perhaps under a future owner) isn't impeded. Has any consideration been given to having an easement guaranteeing access for the life of the ground lease, or in some other way having NDC give control of the Johnny's property to the City?

NDC has entered into a purchase agreement with the owner of the Takoma Auto Clinic which, according to the project schedule submitted February 26, 2018, would be finalized in August 2018. To address the ownership issue, prior to the finalization of the Combined Site Plan by the Montgomery County Planning Board, the City and NDC will need to enter into a legal agreement either creating a partnership or separate condominium “ownership” areas within the development site.