



## City of Takoma Park, Maryland **TAKOMA JUNCTION DEVELOPMENT AGREEMENT QUESTIONS AND ANSWERS SHEET**

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Takoma Park City Council, recognizing the importance of the Takoma Junction, purchased the property adjacent to the Takoma Park Silver Spring Co-op in 1995 for the primary purposes of stabilizing the small commercial district and facilitating the revitalization of the overall area. Twenty years later, on April 13, 2015 following a year-long solicitation process, the Council selected Neighborhood Development Company, LLC (“NDC”) to partner with them to redevelop the site. The firm was chosen from a field of seven following a careful evaluation of the expertise, financial capacity, and overall vision of the individual development firms. The Council’s overarching redevelopment goal for the site was to select a proposal that, *“would act as a stimulus to the commercial district and locally-owned, independent businesses, improve the aesthetic appeal of the district, and be contextually sensitive and environmentally sustainable.”*

As the project progresses, the conversion of the current parking lot into a usable space with new commercial activity, public amenities, and green features will create an active space for members of the community and provide a desired economic boost to the businesses located within this small commercial district. In addition, the redevelopment and long term lease of the lot will provide revenue to the City through rent, real property tax, and business personal property tax.

To facilitate the process of redeveloping the site, a Development Agreement has been negotiated which is to be presented at Council’s July 13 meeting. The following are questions members of the community may have about the Development Agreement along with responses to each. If you have additional questions not covered in this list, please submit them using the comment form on the project page: [takomaparkmd.gov/junction](http://takomaparkmd.gov/junction).

### **The Development Agreement includes references to two other documents: a Ground Lease and a Letter of Intent. What is the difference between these agreements?**

- Development Agreement: A contract between a local jurisdiction and a developer which details the obligations of both parties and the terms and conditions that will govern development of a specific property. A signed Development Agreement is binding on both parties and provides assurances that the development conditions that have been negotiated will not change during the term of the agreement. For purposes of the Takoma Junction redevelopment project, the Development Agreement will be signed by the City and NDC prior to any work beginning.
- Ground Lease: A long-term lease, typically 99 years, which involves land and is often entered into to advance a development or redevelopment project. The Ground Lease will

be signed by the City and NDC within two years following execution of the Development Agreement.

- Letter of Intent (“LOI”): A non-binding agreement outlining the broad, general terms upon which a landlord and tenant would enter into a lease agreement. For purposes of this project, the Letter of Intent would be signed by NDC and the Takoma Park Silver Spring Co-op (“Co-op”).

### **What is included in the Takoma Junction Development Agreement?**

The draft Development Agreement is typical of many agreements of this nature. It outlines the expectations of the City and NDC, providing a road map that highlights the City’s priorities for the redevelopment of the site. It includes aspects of the development process such as the anticipated leasing structure, how community residents will be engaged in the development of elements of the planned project, the steps to be taken to develop and finalize the site plan, and expectations regarding negotiations with the Co-op. It also includes remedies that may be taken in the event that either party terminates the agreement.

Prior to the finalization of the Development Agreement, the Council will be required to pass a resolution authorizing its execution by the City Manager.

### **What are the general terms and conditions of the Ground Lease that have been negotiated?**

NDC’s original proposal included the acquisition of the property for the sum of \$100,000. The Council, having determined that it would like greater control over the long term use of the site than it would have if the property were sold outright, advocated for the long term lease of the property.

Under the terms of the draft Ground Lease, included as “Exhibit C” to the Development Agreement, the City will retain ownership of the property with NDC assuming ownership of all improvements. The Ground Lease will remain in effect for a period of 99 years. It will not be signed until such time as NDC has secured construction financing for the project, but not later than two years from the date of the execution of the Development Agreement. For example, if the Development Agreement is signed in August, 2016, the Ground Lease will be executed on or before July, 2018. It would remain in place until 2115.

### **How much in rent will NDC pay to the City?**

Over the course of the 99 year Ground Lease, the City will receive a total of roughly \$20 million in lease payments, an average of just over \$200,000 a year during the term of the proposed lease. The lease rate escalates over time, so the first ten years of rental income averages \$20,400 per year, increasing to an average of \$38,500 during Year 11 through Year 20, \$52,000 in Year 21 through Year 30, etc.

Lease payments will remain flat at \$10,000 per year for the first five years of the lease. This base rent is scheduled to increase at a rate of 3% per year beginning Year 6. The lease payment will be increased by 25% in Year 33 and by another 25% in Year 66.

If the Development Agreement is executed in August 2016, the first lease payment will be made no later than July 2018.

**What other forms of revenue will the City receive from this development?**

In addition to the rental payment, NDC will be responsible for paying real property taxes on the building and on the revenue-generating areas of the site once the Ground Lease is signed. Based on the current assessed value and using the current tax rate, the property taxes, for the property in its current state, will be an estimated \$11,300 per year. This figure does not account for the value that will be added – and taxed – once the project is completed. The City will also receive business personal property tax on furnishings, inventory and machinery, as applicable, from the commercial tenants in the new development.

**How does the Co-op factor into the Development Agreement?**

The importance of the role of the Co-op in the Junction and in the community has been emphasized throughout the redevelopment process. The Council affirmed its support of the Co-op as an anchor tenant and community asset, setting a clear expectation from the beginning of the solicitation process that the selected developer would work with the Co-op to facilitate its continued presence in the Junction. Specifically, the draft Development Agreement asks that a Letter of Intent (LOI) be entered into between NDC and the Co-op within four months of the execution of the Development Agreement. Additional time may be given to complete negotiations at the request of either party.

The LOI, and any future agreement that NDC and the Co-op may enter into is a private business transaction.

**The Co-op has publicly stated that its priorities are customer parking, deliveries, and the continued operation of the store during construction. Are their concerns addressed in the Development Agreement?**

The Development Agreement does not specifically address the Co-op's concerns and, to some extent are more appropriately addressed in the anticipated Letter of Intent being negotiated between the Co-op and NDC. The location and configuration of future customer parking opportunities and the means by which deliveries will be made will be addressed more specifically during the development and finalization of the site plan.

**What happens if NDC and the Co-op are unable to negotiate a Letter of Intent?**

In the event that NDC and the Co-op are unable to reach an agreement and finalize a LOI detailing the Co-op's involvement in the planned project, the City could encourage the parties to participate in a facilitated mediation. The Development Agreement states that in the event NDC and the Co-op are have not reached agreement on a LOI after 120 days from the effective date, the City can authorize an additional 30 days for further negotiations or authorize NDC to begin looking for another primary tenant. If another tenant is sought, NDC will have to provide reasonable accommodations for the continued operation of the Co-op. NDC would not be permitted to lease any portion of the project to another food co-op or grocery store while the Co-op continues to operate in its current location.

**What other businesses will be located in the new development?**

When determining to proceed with the redevelopment of the property, the Council recognized the importance of creating a retail tenant mix featuring local and regional businesses. The Council has been clear in its preference for the inclusion of local businesses in the development. NDC is actively looking for businesses that will revitalize the area, bring in new customers and enhance the "third space" of the Junction. We anticipate that NDC will begin negotiations with potential tenants once the Development Agreement has been executed with leases finalized closer to the completion of the project.

Recognizing that not all local and regional businesses are appropriate to achieve the City Council's redevelopment goals for the site, the Ground Lease includes a listing of types of businesses that cannot be located on the site (identified in Exhibit "C" of the Ground Lease). The list includes but is not limited to pawn shops, check cashing store or "payday" loan operations, gun shops, medicinal marijuana dispensaries, or adult entertainment facilities.

**What is the process for community input? When will it happen?**

The Council will establish, at NDC's suggestion, an advisory committee, which will assist in developing the process for community engagement. The committee will clarify the aspects of the project's design which will benefit from community input and identify the best means for engaging community members in the development process. Working with the committee, NDC will hold community meetings to gain input on specific aspects of the plan. Appointments to the Community Consultation Process Advisory Committee are tentatively scheduled to be considered by the Council on July 27. More detailed information on the Committee and the application process are available online at [takomaparkmd.gov/junction](http://takomaparkmd.gov/junction).

**What role will Takoma Park residents play in this process? Will NDC be required to get approvals from Montgomery County? Will the project be reviewed by other agencies?**

There are several opportunities for community input during the development process. NDC will be required to go through Montgomery County's site plan review process prior to beginning construction. Community input is required before the application can be submitted for County review. There is also an opportunity for community members to provide comment on the [www.takomaparkmd.gov/junction](http://www.takomaparkmd.gov/junction)

project during the public hearing that will be held before the Montgomery County Planning Board. The Board will not consider the application until after the public comment period has ended. The Council will, as with other projects, facilitate the process offering additional opportunities for public comment at meetings where the site plan will be discussed.

Given its location within the Takoma Park Historic District, the project will also require review by the Takoma Park Façade Advisory Board and the Montgomery County Historic Preservation Commission prior to the issuance of necessary building permits. Additional public comment opportunities are available during each of these required approval steps.

### **When will the redevelopment be completed?**

NDC has provided a timeline for the project which estimates almost four years from the execution of the Development Agreement to completion and occupancy of the building. The estimate includes about a year for Montgomery County's review in order to obtain permits, several months for environmental remediation, and about 18 months for construction. The Development Agreement provides for revisions to the schedule if needed to accommodate unexpected circumstances.

### **The proposal submitted by NDC prior to its selection by the Council included a variety of features including customer parking for area businesses, residential units, public space, various green features, and improved pedestrian access. Are these features still included in the plan? What will they look like?**

The specific features and design elements of the project will be finalized during the site plan process. NDC will, as detailed in the Development Agreement, and in consultation with the City, employ all reasonable measures available to incorporate the following features in the completed project: the construction of a LEED gold or higher building and the incorporation of green strategies in the site plan, the incorporation of residential units, the creation of an accessible outdoor space devoted to year-round public use, and parking options for area businesses not located on the site.

### **What will happen to the wooded area on Columbia Avenue?**

There are no current plans to develop the residentially-zoned lot on Columbia Avenue beyond limited landscaping and the eradication of invasive growth. More specific details regarding the use of the wooded area will be available as the site plan is finalized.

### **How will the redevelopment impact traffic at the Junction?**

As part of the development process established by the Montgomery County Planning Board, NDC will be required to conduct a traffic study that examines the immediate area and the impact of the additional traffic generated by the project. Additionally, the City is working with the Maryland State Highway Administration to examine alternatives to the pressures on the

intersection of Ethan Allen and Carroll Avenues.

The Junction will continue to have access to a Capital Bikeshare station and the numerous bus lines that serve the area will continue to provide multi-modal transportation alternatives in the neighborhood. The specific location of these features will be established as the site plan is developed.

### **What are the terms for Termination or Default?**

The Development Agreement includes points where with the City or NDC could terminate and/or default, with resulting consequences. These points include:

- If, despite good faith negotiations, NDC and the City cannot agree on an approved project schedule, either party can terminate the Development Agreement.
- If either party is in breach of what was agreed upon in the Development Agreement or regarding a main task identified in the project schedule - a default - the other party can terminate the agreement.
- If NDC is unable to secure an anchor tenant, the City can terminate the agreement.
- If the City does not notify NDC of its intention to remedy objectionable physical conditions on the site within 45 days of learning of the conditions, NDC can terminate the agreement.
- If, despite good faith negotiations, NDC and the City are unable to agree on Draft Site Plan and Preliminary Plan by the deadline provided in the Project Schedule, either party can terminate the agreement.
- If the site is impacted by an unforeseen act of nature (Force Majeure) for six months or more, either party can terminate the agreement.

### **What would happen in the case of a default or the termination of the Development Agreement or the Ground Lease?**

Regardless of which party defaults, neither the City nor NDC is entitled to receive monetary damages. If NDC were to default before construction on the project begins, they must turn over all the materials, studies, permits, etc. to the City. If they were to default after construction on planned site improvements has started, the City could collect under the performance bond in order to complete the project.

If the City defaults, while NDC is not entitled to any monetary damages, they could compel the City to correct the default.

### **Can NDC sell the project?**

The Development Agreement allows NDC to sell the project with the express prior written consent of Council. The exception to this requirement is if ownership of the development and

the Ground Lease were transferred to an entity affiliated with NDC such as an LLC created by NDC to facilitate completion of the development. In the event the Council was to approve the sale of the project, the City would retain ownership of the property.

**How can I track the status of the project once the Development Agreement is signed?**

Information about the project is available on the City's web site at [takomaparkmd.gov/junction](http://takomaparkmd.gov/junction). Interested parties are encouraged to check the page for regular updates as the project progresses.