Article - Local Government

§4–401.

(a) Subject to subsections (b) and (c) of this section, the legislative body of a municipality may enlarge its boundaries by annexation as provided in this subtitle.

(b) The power of annexation applies only to land that:

(1) is contiguous and adjoining to the existing boundaries of the municipality; and

(2) does not create an unincorporated area that is bounded on all sides by:

(i) real property presently in the boundaries of the municipality;

(ii) real property proposed to be in the boundaries of the municipality as a result of the proposed annexation; or

(iii) any combination of real property described in item (i) or (ii) of this item.

(c) A municipality may not annex land that is in another municipality.

§4–402.

An annexation proposal may be initiated by:

(1) the legislative body of the municipality as provided in § 4–403 of this subtitle; or

(2) a petition in accordance with § 4–404 of this subtitle.

§4–403.

(a) Subject to subsection (b) of this section, an annexation resolution may be introduced in the legislative body of the municipality in accordance with:

(1) the requirements and practices applicable to its legislative enactments; and

(2) the requirements of § 4–303(a) of this title.

(b) Before an annexation resolution is introduced, the legislative body shall obtain consent from:

(1) at least 25% of the registered voters who are residents in the area to be annexed; and

(2) the owners of at least 25% of the assessed valuation of the real property in the area to be annexed.

(c) The annexation resolution:

(1) shall describe by a survey of courses and distances the exact area to be annexed;

(2) may also describe by landmarks and other well–known terms the exact area to be annexed; and

(3) shall contain a complete and detailed description of the conditions and circumstances that apply to:

(i) the change in boundaries; and

(ii) the residents and property in the area to be annexed.

§4–404.

(a) Subject to § 4–413 of this subtitle, an annexation petition shall be signed by:

(1) at least 25% of the registered voters who are residents in the area to be annexed; and

(2) the owners of at least 25% of the assessed valuation of the real property in the area to be annexed.

(b) After an annexation petition is presented to the legislative body of the municipality, the presiding officer of the legislative body shall verify:

(1) the signatures on the petition; and

(2) that the petition meets the requirements of subsection (a) of this section.

(c) (1) After verifying compliance with the requirements of this section, the presiding officer of the legislative body promptly shall cause a resolution proposing the change of boundaries as requested by the petition to be introduced in the legislative body.

(2) The annexation resolution shall conform to the form and content requirements of this subtitle.

§4–405.

(a) An annexation resolution shall provide that the residents in the area to be annexed and their property shall be added to the municipality, generally subject or not, as applicable, to specific provisions of the municipal charter.

(b) (1) Notwithstanding subsection (a) of this section, an annexation resolution may provide, for stated periods and under specific conditions, special treatment of the residents in the area to be annexed and their property as to:

(i) rates of municipal taxation; and

(ii) municipal services and facilities.

(2) After an annexation resolution takes effect, any change in the provisions for special treatment for stated periods and under specific conditions may be made only by a resolution enacted under this subtitle.

§4–406.

(a) After an annexation resolution is introduced, the chief executive and administrative officer of the municipality shall publish notice in accordance with the requirements of this section that:

(1) briefly and accurately describes the proposed annexation and the applicable conditions and circumstances; and

(2) specifies the date, time, and place that the legislative body sets for the public hearing on the proposed annexation.

(b) (1) Public notice of the annexation resolution shall be published:

(i) 1. at least four times; or

2. if the total area of the proposed annexation is 25 acres or less, at least two times;

(ii) at not less than weekly intervals; and

(iii) in at least one newspaper of general circulation in the municipality and the area to be annexed.

(2) The public hearing shall be:

(i) set no sooner than 15 days after the final required publication of the public notice; and

(ii) held in the municipality or the area to be annexed.

(c) Immediately after the first publication of the public notice, the municipality shall provide a copy of the public notice to:

(1) the governing body of the county in which the municipality is located; and

(2) any regional or State planning agency with jurisdiction in the county.

(d) The county and any regional or State planning agency with jurisdiction in the county has the right to be heard before the public at the hearing on the proposed annexation.

(e) (1) The public hearing may be rescheduled for or continued to a later date not more than 30 days after:

(i) the date when the hearing was originally scheduled; or

(ii) the date on which the hearing began but was not completed.

(2) If the hearing is rescheduled or continued, public notice shall be published:

(i) at least 7 days before the date of the rescheduled or continued hearing; and

(ii) in a newspaper of general circulation in the municipality and the area to be annexed.

(3) The public notice shall:

(i) briefly and accurately describe the area to be annexed; and

(ii) specify the date, time, and place of the rescheduled or continued public hearing.

§4–407.

(a) After a public hearing, the legislative body of a municipality may enact an annexation resolution in accordance with its normal legislative procedure.

(b) The annexation resolution may not take effect until at least 45 days after its enactment.

§4–408.

(a) Subject to § 4–413 of this subtitle, at any time within 45 days after enactment of an annexation resolution, at least 20% of the registered voters who are residents in the area to be annexed may petition the chief executive and administrative officer of the municipality in writing for a referendum on the resolution.

(b) After a petition is presented to the chief executive and administrative officer, the officer shall verify:

(1) the signatures on the petition; and

(2) that the petition meets the requirements of subsection (a) of this section.

(c) After verifying compliance with the requirements of this section, the chief executive and administrative officer, by proclamation, shall suspend the effectiveness of the annexation resolution pending the results of the referendum.

§4–409.

(a) At any time within 45 days after enactment of an annexation resolution, at least 20% of the qualified voters of the municipality may petition the chief executive and administrative officer of the municipality in writing for a referendum on the resolution.

(b) After a petition is presented to the chief executive and administrative officer, the officer shall verify:

(1) the signatures on the petition; and

(2) that the petition meets the requirements of subsection (a) of this section.

(c) After verifying compliance with the requirements of this section, the chief executive and administrative officer, by proclamation, shall suspend the effectiveness of the annexation resolution pending the results of the referendum.

§4–410.

(a) At any time within 45 days after enactment of an annexation resolution, the governing body of the county or counties in which the municipality is located, by at least a two–thirds majority vote, may petition the chief executive and administrative officer of the municipality for a referendum on the resolution.

(b) After verifying compliance with the requirements of this section, the chief executive and administrative officer, by proclamation, shall suspend the effectiveness of the annexation resolution pending the results of the referendum.

§4–411.

(a) The chief executive and administrative officer of the municipality shall schedule a referendum on the annexation resolution and publish notice of the date, time, and place at which the referendum will be held.

(b) The referendum shall be held:

(1) no sooner than 15 days and no later than 90 days after notices of the referendum are published; and

(2) at one or more places in:

(i) the municipality, for the referendum in the municipality; and

(ii) the area to be annexed, for the referendum in that area.

(c) Public notice of the referendum shall be published:

(1) twice at not less than weekly intervals; and

(2) in at least one newspaper of general circulation in the municipality and the area to be annexed.

§4–412.

(a) The governing body of a municipality, by ordinance, resolution, or regulation, may provide for conducting and tabulating the results of a referendum held under this subtitle.

(b) (1) The annexation resolution shall be submitted to:

(i) a referendum of the qualified voters of the municipality if the petition for referendum was presented by the residents of the municipality;

(ii) subject to § 4–413 of this subtitle, a referendum of the registered voters who are residents in the area to be annexed if the petition for referendum was presented by the residents of the area to be annexed; or

(iii) separate referendums of the voters specified in items (i) and (ii) of this paragraph if a petition for referendum was presented by the residents of the municipality and the residents in the area to be annexed.

(2) A petition for referendum presented by the governing body of a county shall be acted on in the same manner as a petition for referendum presented by the residents of the area to be annexed.

(c) The ballot shall:

(1) contain a summary of the annexation resolution; and

(2) provide for the voter to indicate a choice for or against the annexation resolution.

(d) (1) If only one petition for a referendum is filed and if a majority of the persons voting on the annexation resolution vote for the resolution, the resolution takes effect on the 14th day after the referendum.

(2) (i) If a referendum is conducted for both the residents of the municipality and the residents in the area to be annexed, the votes cast for the two referendums shall be tabulated separately to show the votes cast in the municipality and the area to be annexed.

(ii) If in both referendums a majority of the persons voting on the annexation resolution vote for the resolution, the resolution takes effect on the 14th day after the referendum.

(iii) If two referendums are held, the annexation resolution is void unless a majority in both referendums vote for the resolution.

(e) The municipality shall pay for a referendum held under this subtitle.

§4–413.

If fewer than 20 residents in an area to be annexed are eligible to sign a petition for annexation and vote in a referendum under this subtitle, any person, including the two or more joint owners of jointly owned property, who owns real property in the area to be annexed may sign the petition and vote in the referendum.

§4–414.

(a) (1) The chief executive and administrative officer of a municipality that has annexed property shall send a copy of the annexation resolution with the new boundaries to:

(i) the clerk or similar official of the municipality;

(ii) the clerk of the court in any county in which the municipality is located;

(iii) the Department of Legislative Services in accordance with paragraph (2) of this subsection; and

(iv) for any municipality located in the regional district, the Maryland–National Capital Park and Planning Commission.

(2) The annexation resolution shall be sent to the Department of Legislative Services within 10 days after the resolution takes effect.

(b) Each official or agency that receives an annexation resolution under subsection (a) of this section shall:

(1) keep on record the resolution with the new boundaries; and

(2) make the resolution available for public inspection during regular business hours.

§4–415.

(a) In addition to, but not as part of, an annexation resolution, the legislative body of the municipality shall adopt an annexation plan for the area to be annexed.

(b) Except as provided in subsection (e) of this section, for an annexation that began before October 1, 2009, the annexation plan shall:

(1) contain a description of the land use pattern proposed for the area to be annexed, which may include a county master plan already in effect for the area;

(2) describe the schedule to extend each municipal service performed in the municipality at the time of the annexation to the area to be annexed;

(3) describe the general methods by which the municipality anticipates financing the extension of municipal services to the area to be annexed; and

(4) be presented so as to demonstrate the available land for public facilities that may be considered reasonably necessary for the proposed use, including facilities for schools, water or sewage treatment, libraries, recreation, or fire or police services.

(c) Except as provided in subsection (e) of this section, for annexation that begins on or after October 1, 2009, the annexation plan shall be consistent with the municipal growth element of the comprehensive plan of the municipality.

(d) For purposes of subsections (b) and (c) of this section, an annexation begins when a proposal for annexation is initiated by:

(1) resolution under § 4–403 of this subtitle; or

(2) petition under § 4–404 of this subtitle.

(e) (1) On or after October 1, 2009, a municipality may submit an annexation plan under subsection (b) of this section if the municipality is granted an extension for the inclusion of a municipal growth element under § 3–304 of the Land Use Article.

(2) After the expiration of a final extension granted under § 3–304 of the Land Use Article for the inclusion of a municipal growth element, an annexation plan shall be submitted in accordance with subsection (c) of this section.

(f) At least 30 days before the public hearing on an annexation resolution required under § 4–406 of this subtitle, a copy of the annexation plan shall be provided to:

(1) the governing body of any county in which the municipality is located;

(2) the Department of Planning; and

(3) any regional or State planning agency with jurisdiction in the county.

(g) (1) The annexation plan shall be open to public review and discussion at the public hearing on the annexation resolution.

(2) An amendment to the annexation plan does not:

(i) amend the proposed annexation resolution; or

(ii) cause a reinitiation of the annexation procedure then in process.

§4–416.

(a) (1) Notwithstanding § 4–104(f) of this title, if an area is annexed to a municipality that has planning and zoning authority at the time of annexation, the municipality shall have exclusive jurisdiction over planning, subdivision control, and zoning in the area annexed.

(2) Paragraph (1) of this subsection does not grant any planning or zoning power or subdivision control to a municipality that is not authorized to exercise planning or zoning power or subdivision control at the time of annexation.

(b) Without the express approval of the county commissioners or county council of the county in which the municipality is located, for 5 years after an annexation by a municipality, the municipality may not allow development of the annexed land for land uses substantially different than the authorized use, or at a substantially higher density, not exceeding 50%, than could be granted for the proposed development, in accordance with the zoning classification of the county applicable at the time of the annexation.

(c) Notwithstanding § 4–204 of the Land Use Article and if the county expressly approves, the municipality may place the annexed land in a zoning classification that allows a land use or density different from the land use or density specified in the zoning classification of the county or agency with planning and zoning jurisdiction over the land prior to its annexation applicable at the time of the annexation.

Sec. 24-9. - Zoning of annexed areas.

Zoning for any area annexed to the city shall be established by a resolution simultaneously with the adoption of the annexation resolution required by the Annotated Code of Maryland, 1957, Article 23A, section 19. The city council shall hear zoning recommendations for the subject area during the required hearing for annexation: The city planning commission shall submit its written recommendation to the city council at least fifteen (15) days prior to the hearing.

(Ord. No. O-2-65, art. 1, § 5; Ord. No. O-4-65, § 1)

Charter reference— Zoning of annexed areas, § 21(h-1).

Mayor and City Council
X-7067-2015
57

From: borrok@gmail.com
To: Rob Robinson
Subject: Johnson family Development
Date: Thursday, November 05, 2015 9:56:29 PM

Hello, Just in case I don't make it to any of the public hearings I wanted to send an email voicing my opposition to the proposed development on the Johnson Family property by 28 & QO.

I was recently made aware of this possible 180 unit housing project that may be constructed near me. This strikes me as a huge development that will impact the area in a number of negative ways. For example, our schools in this area are already over capacity, and traffic at this intersection is terrible at times. As a resident, of the immediate vicinity, I would like to say I am against this annexation and construction.
I am hoping my concerns and those of my neighbors do not fall on deaf ears.
thank you for your time.
Jack Borrok
Sioux Ln
Gaithersburg

Sent from my iPhone

From: Barr, Stuart R.
Subject: Johnson Property - Proposed Annexation - Please see attached letter
Date: Friday, November 06, 2015 6:32:06 PM
Attachments: Johnson Letter November 6 2015.pdf

Dear neighbors of the Johnson Property [northwest corner of Darnestown Road and Quince Orchard Road]:

Since the community outreach meeting on October 27th, many questions have been raised, many concerns have been expressed, and many communications have been sent. Please see the attached letter, which we hope provides some helpful information (though we do not expect that it will address every concern or necessarily change any preferences for the property).

You are receiving this message because you attended the community outreach meeting or provided your email address. If you would like your email address removed from this distribution list, or if you know of someone else who would like to be added, please let me know.

Thanks very much, Stuart Barr

--

Stuart R. Barr - Attorney
Lerch, Early & Brewer, Chtd. ideas that work
3 Bethesda Metro Center - Suite 460 - Bethesda, MD 20814
Tel: (301) 961-6095 Fax: (301) 347-1771 - srbarr@lerchearly.com
Cell: (571) 213-2354
Bio: www.lerchearly.com/team/stuart-r-barr
Vcard: www.lerchearly.com/team/stuart-r-barr-vcard

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From: Barr, Stuart R.
Sent: Friday, October 30, 2015 4:39 PM
Subject: Johnson Property - Proposed Annexation

Dear neighbors of the Johnson Property [northwest corner of Darnestown Road and Quince Orchard Road]:

On behalf of the Johnson Family, I want to thank you again for attending the community outreach meeting on October 27th at the property. Thank you for your participation, comments, questions, and concerns. Many good questions were asked about the project and good suggestions were made, and our team is considering everything that was discussed. As promised, we are attaching the powerpoint presentation that was provided that evening.

You are receiving this message because you attended the community outreach meeting and provided your email address. As we move forward, if you would like your email address removed

from this distribution list, or if you know of someone else who would like to be added, please let me know.

We will continue to provide updates and additional information. I can be reached at the contact information below. Thanks very much, Stuart Barr

--

Stuart R. Barr - Attorney
Lerch, Early & Brewer, Chtd. ideas that work
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An open letter to our neighbors and the surrounding community from the Johnson Family property owners concerning the proposed annexation and future development of the Johnson property (northwest corner of Darnestown Road and Quince Orchard Road)

November 6, 2015

Dear Neighbors –

Thank you for your interest and for taking the time to be a part of the review process. As many of you are aware, we are proposing to annex our property, approximately 23 acres in size, from Montgomery County into the City of Gaithersburg. A petition for annexation involves a request to place a property within the corporate boundaries of a municipality. If annexed, the property would likely be rezoned from the County's NR-0.75, H-45 and R-200 zones to the City's MXD zone. Our current idea would be to redevelop the property in three general phases beginning with a phase 1 residential development of the westernmost 14 acres. The remaining 9 acres would be redeveloped over the long term as mixed use in two general phases. The County and City are reviewing the application and have not issued any final approvals.

We held a community outreach meeting on October 27th at the property to discuss the idea, listen to concerns, and try to answer questions. Many community members attended, asked good questions, and expressed many concerns. Development in general, particularly in Montgomery County, generates significant interest and questions about what is proposed and potential impacts to the community. We expect and understand these questions and concerns and take them very seriously.

In this letter, we try to provide additional information for those who were not able to attend the community outreach meeting on October 27th and try to address some of the communications that have circulated recently. We are attaching to this letter an aerial photograph showing the property, a proposed phasing plan, and a proposed conceptual plan (called a "Sketch Plan"). These attachments reflect the current idea, but are not by any means final or approved plans.

Existing property conditions.

Our property is approximately 23 acres in size, divided into four parcels, some of which are improved currently with various retail uses (gas station, grocery store, bank, pharmacy, etc.) and some of which is unimproved. The location and configuration of the property is shown on the attached tax map.

For many years, we operated a Johnson's Florist and Garden Center at the corner of Darnestown Road and Quince Orchard Road. About 10 years ago, we planned to relocate the nursery and garden center from the corner to the 14 acre property west of the existing Safeway

and gas station. The community actively participated in the review process and expressed many concerns. Ultimately, after working extensively with the County and community, we received approval for that relocation, but ended up not moving forward with the project due to a substantial increase in construction costs.

Since that time, over the past few years, we have been considering what the most appropriate use would be for the 14-acre property, and we have determined that based on the zoning and master plans, a residential community would be suitable to serve as a transition from the established residential communities surrounding the property to the existing commercial uses.

Current County zone and County master plan.

The phase 1 14-acre property is currently in the County R-200 zone. This is a single-family detached zone that would allow approximately 30 detached units on the property based on the current zoning. The County's Great Seneca Science Corridor Master Plan identified the phase 1 property as a potential site for a public park to provide ball fields for active recreation. If the property is not acquired for an active recreation park site, then the master plan recommends a residential use including single family detached and townhouse units, but without providing a specific recommended density. Townhouses could be approved through a rezoning (called a Local Map Amendment application).

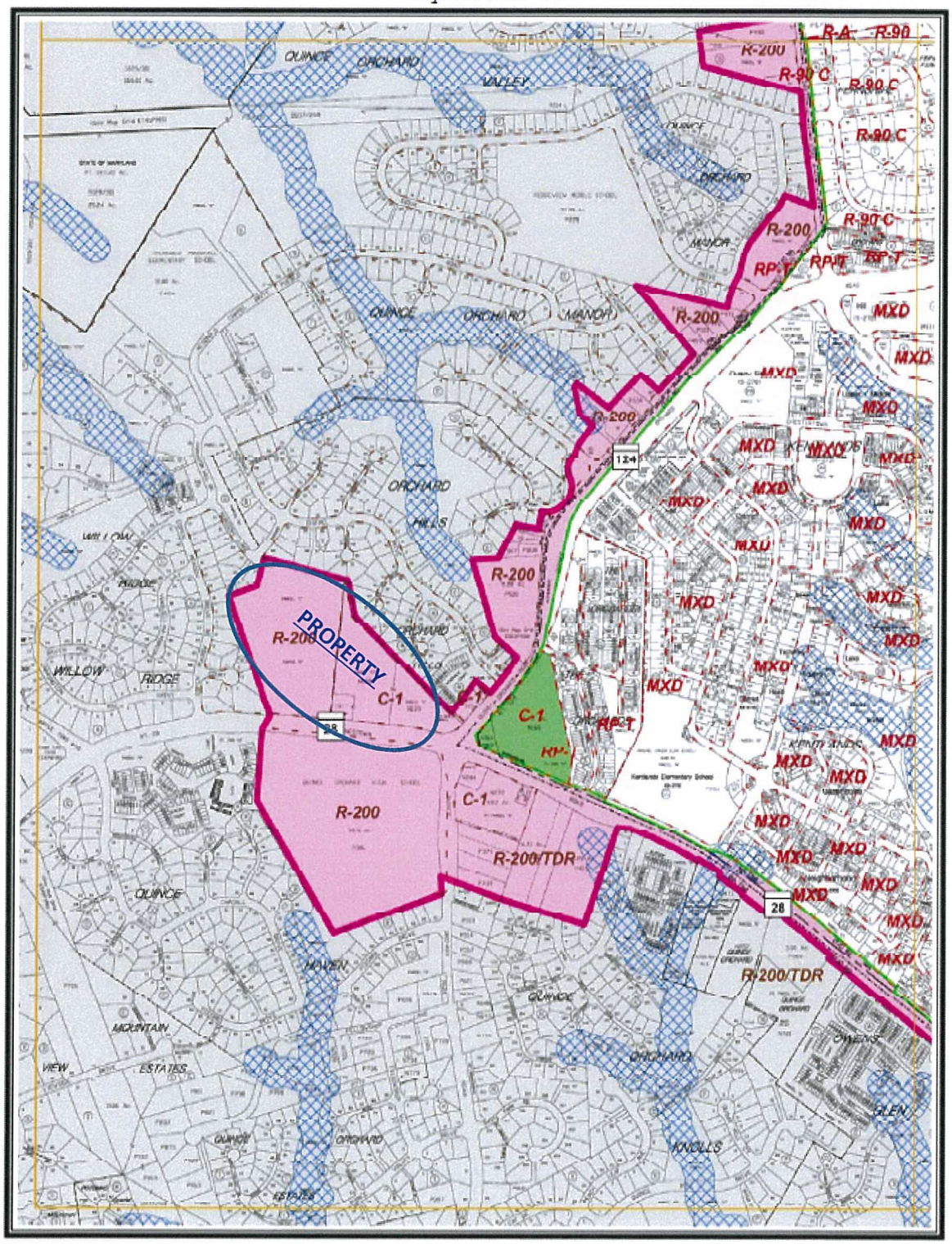
The 9-acre phase 2 and phase 3 properties (the current commercial uses) are currently in the County "Neighborhood Retail" NR-0.75, H-45 zone. This is a neighborhood retail zone that could allow a mix of uses with up to 0.75 FAR (Floor Area Ratio) of commercial density, of which up to 30% can be residential density. This amount of density could allow up to approximately 300,000 square feet on the 9 acres, of which 30% could be residential. The NR zone allows restaurants, retail/service establishments, office and various other commercial uses along with single family, townhouses and multi-unit residential uses.

Proposed City zone and City master plan.

A municipality may only annex a property if it is within the maximum expansion limit ("MEL") of the municipality. The City of Gaithersburg placed all 23 acres within the maximum expansion limit in the City's Growth Element of the 2003 Master Plan (adopted April 2009). The City's 2009 Master Plan Land Use Element recommends that the property be given a commercial-office-residential land use designation and be classified in the City's MXD ("Mixed Use Development") zone, if it is annexed. Importantly, our property is not an outlier, but one property among several around the intersection of Quince Orchard Road and Darnestown Road that was reviewed and incorporated within the MEL through a comprehensive planning process. The current City MEL for this area is shown here:

Map Sheet A-10

Map Sheet A-05



Map Sheet A-11

From: Martin Matsen
To: Rob Robinson
Subject: FW: Johnson Property Proposal
Date: Friday, November 06, 2015 3:08:30 PM

From: Stewart Nickel [mailto:stewart@potomacpctech.com]
Sent: Friday, November 06, 2015 2:54 PM
To: Martin Matsen
Subject: RE: Johnson Property Proposal

This is all new to me so I do not know at what point residents can get involved. While I assume the public hearing on 2/1 is the obvious time for residents to attend and voice their opinions / concerns, I do not know if feedback is accepted prior to this. I also don't know if a vote precedes the public hearing or if the final vote will only occur after the public hearing.

A link to the timeline is definitely helpful but please help me understand the process.

Thanks.

Stewart Nickel
Potomac Computer Services
www.PotomacPCTech.com
(240) 447-7507 - Cell
(301) 407-1967 - Office

From: Martin Matsen [mailto:mmatsen@gaithersburgmd.gov]
Sent: Friday, November 06, 2015 2:47 PM
To: Stewart Nickel <stewart@potomacpctech.com>
Subject: RE: Johnson Property Proposal

Dear Mr. Nickel,

Please keep an eye on the City's Project page at the link below;

http://www.gaithersburgmd.gov/government/city-projects/johnson-annexation-x-7067-2015

This page will contain the needed information regarding the City's process and meeting dates.

Best Regards, Marty

Martin Matsen, AICP
Planning Division Chief
City of Gaithersburg
31 S. Summit Ave.
Gaithersburg, MD 20877

Phone: (301) 258-6330 ext-2123
Mobile: (240) 444-7976

Fax: (301) 258-6336

mmatsen@gaithersburgmd.gov

From: Stewart Nickel [mailto:stewart@potomacpctech.com]
Sent: Friday, November 06, 2015 2:35 PM
To: Martin Matsen
Subject: RE: Johnson Property Proposal

We recourse do we as members of this community have? Attending the Public hearing on 1/1/16? And how are potential date changes communicated to people like myself who want to be present whenever possible to present reasons why the community does not want this to be approved?

Stewart Nickel
Potomac Computer Services
www.PotomacPCTech.com
(240) 447-7507 - Cell
(301) 407-1967 - Office

From: Martin Matsen [mailto:mmatsen@gaithersburgmd.gov]
Sent: Friday, November 06, 2015 2:31 PM
To: Stewart Nickel <stewart@potomacpctech.com>
Subject: RE: Johnson Property Proposal

Dear Mr. Nickel,

Thank you for your email and it has been added to the record of the proposed Johnson Annexation. The record will be reviewed by both the Planning Commission and the Mayor and Council as they deliberate on this matter. I've attached our estimated timeline, and the dates that are now set are the Montgomery County Planning Board meeting on November 12th, Gaithersburg Planning Commission recommendation meeting on December 2nd, and the Mayor and Council Public Hearing on February 1, 2016. All these dates are subject to change, but they won't be any earlier. A Project Page for the Johnson Annexation is now online at our City's website, and it will be updated as information becomes available:

http://www.gaithersburgmd.gov/government/city-projects/johnson-annexation-x-7067-2015

Best Regards – Marty

Martin Matsen, AICP
Planning Division Chief
City of Gaithersburg
31 S. Summit Ave.

Gaithersburg, MD 20877

Phone: (301) 258-6330 ext-2123
Mobile: (240) 444-7976
Fax: (301) 258-6336

mmatsen@gaithersburgmd.gov

From: Stewart Nickel [mailto:stewart@potomacpctech.com]
Sent: Friday, November 06, 2015 11:34 AM
To: Martin Matsen
Subject: FW: Johnson Property Proposal

Please let me know if this falls under the County Council or the City of Gaithersburg since the Johnson's are apparently trying to get the land annexed to bypass the County already rejecting their rezoning application.

Stewart Nickel
Potomac Computer Services
www.PotomacPCTech.com
(240) 447-7507 - Cell
(301) 407-1967 - Office

From: Stewart Nickel
Sent: Friday, November 06, 2015 11:14 AM
To: 'Councilmember.Floreen@montgomerycountymd.gov'
<Councilmember.Floreen@montgomerycountymd.gov>
Subject: Johnson Property Proposal

I was told by Kirill that the Johnson proposal falls under the County Council since initial zoning was already approved for the property. The community is very much against the expansion / rezoning proposal and I am trying to determine a) if the review / approval process does fall under the County Council, b) if so, who is the primary contact on the Council for community members to contact and c) if it does not fall under the County Council, who / what does it fall under?

Please let me know.

Thanks.

Stewart Nickel
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(240) 447-7507 - Cell
(301) 407-1967 - Office