

# Mayor and City Council Agenda Item Request

**Meeting Date: 11/16/2015**

**Type: Public Hearing**

**Call to Podium:**

Trudy Schwarz

**Agenda Item Title:**

Annexation Petition X-7089-2015 of Approximately 8.28 Acres of Land, for the Properties Known as the Potomac Valley Shopping Center and Adjacent Road Rights-of-Way, Located Adjacent to the Present Corporate Limits at the Southeast Quadrant of Quince Orchard Road (MD Route 124) and Darnestown Road (MD Route 28), Gaithersburg, Maryland

**Responsible Staff and Department:**

Trudy Schwarz, Community Planning Manager  
Greg Mann, Planner II  
Martin Matsen, Planning Chief  
John Schlichting, Dir., Planning & Code Administration

**Desired Outcome from Council:**

Conduct Public Hearing. Staff recommends that the record be held open for 30 days until 5 P.M. on Wednesday, December 16, 2015, with anticipated policy discussion on Monday, January 4, 2016.

Public Hearing History	
Introduction Date:	9/8/2015
Advertisement Date :	10/8/2015
	10/15/2015
Public Hearing Date:	11/16/2015
Record Held Open Date:	12/16/2015
Policy Discussion Date:	1/4/2016
Anticipated Adoption Date:	

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**SUPPORTING BACKGROUND ON NEXT PAGE**

# Mayor and City Council Agenda Item Request

## Supporting Background Information:

An annexation petition has been filed by Miles & Stockbridge, PC, on behalf of Darnestown Valley-WHM LP and Darnestown Valley Petroleum WHM, LLC owner of the Potomac Valley Shopping Center, located south of Darnestown Road and adjacent to the City's corporate limits. It should be noted, the Potomac Valley Shopping Center north of Darnestown Road is located within the City's municipal boundary. The area proposed for annexation is located at the southeast quadrant of the interstation of Darnestown Road (Maryland Route 28) and Quince Orchard Road (Maryland Route 124.) The addresses for the properties include: 122110, 12114, 12116, 12118, 12120, 12126, 12130, 12132, 12136, 12140, 12146, 12150, 12154, 12158, 12162, 12166, and 12168 Darnestown Road. The Applicant's petition (Exhibit 2 with Attachments 2-A through 2-S) requests that the City annex approximately 8.28 acres of land from Montgomery County into the City. The area of annexation includes Potomac Valley Shopping Center, which consists of Parcel C and parts of Parcel D and F, totaling 4.6734 acres of land. The petition also includes 2.3209 acres of right-of-way for Darnestown Road (Maryland Route 28) and 1.2934 acres of right-of-way for Quince Orchard Road (Maryland Route 124.)

In addition to the annexation request, the petition also proposes rezoning the subject property from the Montgomery County Neighborhood Retail (NR) Zone to the City's Mixed Use Development (MXD) Zone. This is in conformance with the Land Use Element of the 2009 Master Plan of the City of Gaithersburg, which recommends that The Potomac Valley Shopping Center properties have a land use designation of Commercial-Office and be zoned MXD. The properties are located within the City's Maximum Expansion Limits as identified within the Municipal Growth Element of the 2003 Master Plan. The application includes a Sketch Plan (Exhibit 2-R), an MXD Justification Statement (Exhibit 2-Q) and an Annexation Plan (Exhibit 3) for providing services for the properties.

Mayor Ashman has verified that the petition meets State requirements for the application to move forward. The verification includes a letter from the Montgomery County Board of Elections and two memorandums from City Attorney Board (Exhibit 5).

The annexation petition resolution (Exhibit 7) was introduced by the Mayor and City Council on September 8, 2015 (Exhibit 23). The Planning Commission reviewed the request, which included a staff analysis (Exhibit 13), at their October 7, 2015, meeting. On October 21, 2015, the Planning Commission recommended approval of the annexation petition and zoning the properties in the MXD (Mixed Use Development) Zone (Exhibit 31).

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (MNCPPC) are scheduled to review this annexation request at their November 12, 2015 meeting. Staff will convey their recommendation at the public hearing. Staff will also have the County Council tentative schedule to review this matter at the time of the hearing.

# Mayor and City Council Agenda Item Request

This application has a City Project Page at  
<http://www.gaithersburgmd.gov/government/city-projects/potomac-valley-shopping-center-annexation>

The Annexation petitioners are represented by Ms. Casey Cirner of Miles & Stockbridge, PC and William (Bill) Magruder.

## Attachments:

Location Map

Planning Commission Recommendation (Ex. 31)

Staff Analysis and Annexation Plan – Revised (Ex. 27)

Index of Memoranda and Exhibits

**From:** Trudy Schwarz  
**To:** ["wookyluvr2002@yahoo.com"](mailto:wookyluvr2002@yahoo.com)  
**Cc:** [Councilmember.Katz@montgomerycountymd.gov](mailto:Councilmember.Katz@montgomerycountymd.gov); ["COUNCILMEMBER.RICE@MONTGOMERYCOUNTYMD.GOV"](mailto:COUNCILMEMBER.RICE@MONTGOMERYCOUNTYMD.GOV)  
**Subject:** Questions about the Magruder property annexation X-7089-2015  
**Date:** Thursday, November 12, 2015 12:07:00 PM  
**Attachments:** [image001.png](#)

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Good morning Ms. Rapp:

Rob Robinson forwarded your questions below concerning the Magruder property annexation (X-7089-2015).

**ADDING A RESIDENTIAL COMPONENT:** If someone decides that a Residential component should be added to sketch plan of the property, the City Code requires that the Mayor and City Council and Planning Commission conduct a joint public hearing. These types of hearing require that the property be posted with signs and notices of public hearing be sent to properties within 200 feet of the Magruder property. In order to speak at the hearing, a person just needs to attend the meeting and raise their hand to speak and come to the microphone when called upon by the Mayor. Currently, the City does not require signing up to speak at a public hearing. Although from time to time, the City does have a sign-up sheet available the night of the hearing. This helps the Mayor keep the meeting orderly. Each speaker is required to state their name (and spell their name) and address for the record. Generally, there is a 3 minute time slot allowed.

**WRITTEN COMMENTS:** As you can imagine, the packages for the public hearing on November 16, 2015 have already been prepared and sent out. It should be posted on the City's Mayor and Council agenda page by late this afternoon. The staff has recommended that the Mayor and Council hold their record open until 5 pm on Wednesday, December 16, 2015. So the deadline for submitting written comments is 5 pm on Wednesday, December 16, 2015.

**PUBLIC TESTIMONY:** As mentioned above, public testimony is welcome at the public hearing on November 16<sup>th</sup>. In order to speak at the hearing, a person just needs to attend the meeting and raise their hand to speak and come to the microphone when called upon by the Mayor. Currently, the City does not require signing up to speak at a public hearing. Although from time to time, the City does have a sign-up sheet available the night of the hearing. Each speaker is required to state their name (and spell their name) and address for the record. Generally, there is a 3 minute time slot allowed.

I hope that these answers assist you in understanding the public process in the City of Gaithersburg. Would be so kind as to forward this to Munish Mehra and Lindsay Hoffman, their email addresses did not come through in the forwarded email.

Sincerely,  
Trudy



Trudy M. W. Schwarz, CFM | Community Planning Manager  
Planning & Code Administration  
City of Gaithersburg | 31 S Summit Avenue | Gaithersburg, MD 20877  
P (301) 258.6330 ext. 2119 | F (301) 258.6336  
[www.gaithersburgmd.gov](http://www.gaithersburgmd.gov)

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The opinions expressed in this message are not necessarily those of the City of Gaithersburg Staff, Mayor or Council

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**From:** Katie Rapp [<mailto:wookyluvr2002@yahoo.com>]  
**Sent:** Wednesday, November 11, 2015 8:02 PM  
**To:** Rob Robinson  
**Cc:** [COUNCILMEMBER.KATZ@MONTGOMERYCOUNTYMD.GOV](mailto:COUNCILMEMBER.KATZ@MONTGOMERYCOUNTYMD.GOV); [COUNCILMEMBER.RICE@MONTGOMERYCOUNTYMD.GOV](mailto:COUNCILMEMBER.RICE@MONTGOMERYCOUNTYMD.GOV);  
Munish Mehra; Lindsay Hoffman

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**Subject:** Re: Questions re Johnson property

Hi Rob,

Please respond to my question #5 below regarding the gateway concept. I would like to understand what is meant by that and how it applies to the properties on all the corners of the 28/QO intersection surrounding Quince Orchard High School as indicated in the Gburg Master Plan.

Switching gears, I have a question about the Magruder property annexation (X-7089-2015).

Although there is currently no residential component requested by the Magruder for that property, once it is annexed and rezoned MXD can they or someone who purchases the property from them add a residential component? What is the process for that, notifications, hearings, etc?

I see there is a hearing about the Magruder property on Monday, 11/16. Is there a deadline for submitting written comments? What is the process for residents who wish to speak at that hearing?

Thanks,

Katie Rapp



Maryland Department of Planning

Larry Hogan, Governor  
Boyd Rutherford, Lt. Governor

David R. Craig, Secretary  
Wendi W. Peters, Deputy Secretary

November 13, 2015

Trudy M.W. Schwartz  
Community Planning Manager  
City of Gaithersburg Planning and Code Administration  
31 South Summit Avenue  
Gaithersburg, Maryland 20877-2038

Dear Ms. Schwartz:

Thank you for providing the Maryland Department of Planning (MDP) with information pertaining to the X-7089-2015 Potomac Valley Shopping Center Properties annexation petition. We have reviewed your submission and offer the following comments for consideration.

As you are aware, the §4-416(b) of the Local Government Article specifies that the new zoning for the annexed land cannot be substantially different from the existing county zoning, without the express consent of the Montgomery county council. In reviewing this annexation request, it is the Department's view that the proposed municipal zoning appears to be consistent with the current county zoning from a use and/or density perspective, as the proposed municipal zoning district meets the density requirements. It is recommended that the City of Gaithersburg confer with Montgomery County to confirm consistency of zoning, as provided in §4-416 of the Local Government Article. Please see MDP's attached Annexation Review for further details of our analysis.

The property proposed for annexation is currently located in a County-certified Priority Funding Area (PFA). Based on MDP's review of the annexation and the proposed zoning, the subject property appears eligible to remain designated as a PFA upon annexation. Upon the effective date of Resolution X-7089-2015, and once we have received official notification of the annexation from the Department of Legislative Services, MDP will confirm that no changes have occurred since our initial review and affirm the Municipal PFA eligibility of the property. If the City of Gaithersburg does not want the annexation parcel to be considered for designation as a Municipal PFA, then the City should notify MDP prior to the effective date of the annexation.

Enclosed you will find important information concerning post annexation notification and participation in the Census Bureau's Boundary and Annexation Survey. The City should follow the appropriate procedures so that the annexed property is legally established as part of the incorporated municipality. To expedite MDP's updating of the PFA status, please send Steve Allan, our regional planner, a copy of the notification transmitted to the Department of Legislative Services.

If you desire further assistance please contact the regional planner, Steve Allan, at (410) 767-4572.

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City of Gaithersburg  
Annexation Review of X-7089-2015  
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Cordially,



David R. Craig  
SECRETARY

cc: John Schlichting, Planning Director  
Peter Conrad, Director of Local Planning Assistance  
Steve Allan

Attachments: MDP Annexation Review  
Municipal Reporting Responsibilities Following Annexation

## Annexation Review

### **Municipality: Gaithersburg**

**Name of Annexation and Resolution Number:** Potomac Valley Shopping Center properties  
(Resolution #7089-2015)

**Size of Parcels:** 8.28 ± acres (12110, 12114, 12116, 12118, 12120, 12126, 12130, 12132, 12136, 12140, 12146, 12150, 12154, 12158, 12162, 12166 and 12168 Darnestown Road).

**Public Hearing Date:** November 16, 2015

**Current County Zoning District and Allowable Density:** NR 0.75

Purpose of the NR Zoning District: Neighborhood retail.

Permitted Uses in the NR Zoning District: Restaurants, retail, service establishments, office and various other commercial uses

**Proposed Municipal Zoning:** MXD Zoning District

Purpose of the Municipal MXD Zoning District: Mixed use development

Permitted Uses in the Municipal MXD Zoning District: Commercial, retail and residential development

**Is proposed Municipal zoning consistent with the County Zoning?:**

From a use perspective the proposed City of Gaithersburg zoning appears to be consistent with the County zoning. Existing commercial and office uses are expected to continue.

The proposed City of Gaithersburg zoning is commercial, and appears to be consistent with the County commercial zoning.

**Is the County expected to grant a waiver?**

Not applicable

**Issues of State Interest:**

None

**Is property in a Designated Growth Area?**

The subject property is in a County Growth Areas, and it is located in the City of Gaithersburg's Municipal Growth Element.

**Property is/is not eligible to become a Priority Funding Area:**

The property is currently in a county PFA, and it its sewerred.

**MDP Reviewer: S. Allan**

**Date Submitted: November 4, 2015**

## **MUNICIPAL REPORTING RESPONSIBILITIES FOLLOWING ANNEXATION**

### **State Municipal Reporting Responsibilities**

There are municipal reporting responsibilities that are determined by State law requiring the municipality to promptly submit certain information after an annexation is approved:

1. The Local Government Article, section § 4-414, Annotated Code of Maryland, requires that municipalities send a copy of the annexation resolution with the new boundaries to the Maryland Department of Legislative Services if an annexation is approved. The copy of the annexation resolution with the new boundaries shall be sent within 10 days after the resolution takes effect to State Department of Legislative Services, Legislative Division, 90 State Circle, Annapolis, Maryland 21401; and
2. State law requires that upon annexation approval, the chief executive and administrative officer of a municipality that has annexed property forward the annexation resolution and map with the new boundary to the local municipal clerk, Clerk of the Court in the county or counties in which the municipal corporation is located and, for those municipalities in Montgomery and Prince George's County, to the Maryland-National Capital Park and Planning Commission.

### **Census Bureau Boundary and Annexation Survey**

To ensure that persons residing on annexed land are counted as part of the municipal population, the U.S. Census Bureau's periodically mails to all municipal corporations a Boundary and Annexation Survey (BAS).

Following an annexation, no immediate action is required. The Census Bureau will notify the person who has been identified by the municipality as the contact person by mail and/or e-mail. Municipalities may submit boundary corrections or changes through the Bureau's free Partnership software. In the past the U.S. Census Bureau mailed out the BAS survey on a varying schedule based on the population size of the incorporated town. The mayor or other municipal officials must complete the BAS, update the maps and certify that the boundary shown reflects the legal corporate limits as of January 1 of the survey year. Boundary information must be returned to the Census Bureau by March 1<sup>st</sup> of the survey year to be properly recorded for the Census Bureau's annual population estimates and American Community Survey products. The 2016 BAS will begin in December 2015.

The purpose of the Survey is to obtain the most accurate boundary information, including boundary changes due to annexations, detachments, mergers, or other reasons. These boundary changes are incorporated into the Census Bureau's files and used for tabulating Census data. The BAS information is used to provide an appropriate record for reporting the results of the decennial and economic censuses, and annual surveys such as the Population Estimates Program and the American Community Survey.

Questions regarding the Census Bureau's Boundary and Annexation Survey or assistance in submitting the BAS may be referred to Jane Traynham at the Maryland Department of Planning at 410-767-4394 or [jane.traynham@maryland.gov](mailto:jane.traynham@maryland.gov).

Additional information about the Census Bureau's BAS program is available at the following link <http://www.census.gov/geo/partnerships/bas.html?cssp=SERP>

**From:** [Gregory Mann](#)  
**To:** [Trudy Schwarz](#)  
**Subject:** RE: Annexation Sign Posting Photos  
**Date:** Monday, November 16, 2015 12:23:05 PM

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Trudy,

The signs for the Mayor and City Council Public Hearing were posted on October 27, 2015. Below is a link to the photos.

[S:\Plancode\\\_Planning Applications\Annexations\X-7089-2015 Potomac Valley Shopping Center\Notification Signs\Public Hearing](S:\Plancode\_Planning Applications\Annexations\X-7089-2015 Potomac Valley Shopping Center\Notification Signs\Public Hearing)

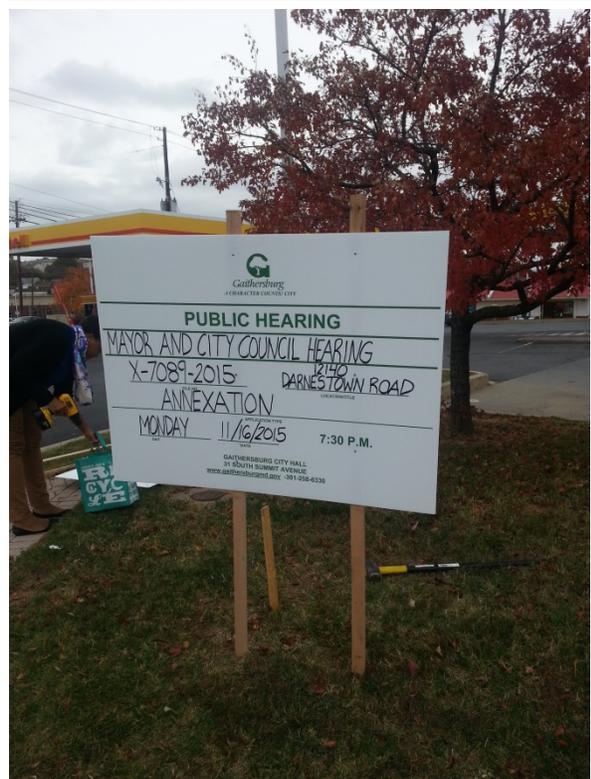
Regards,

***Gregory P. Mann***  
**Planner**

**City of Gaithersburg**  
Planning and Code Administration  
31 South Summit Avenue  
Gaithersburg, MD  
T: 301.258.6330 X2269  
F: 301.258.6336  
[gmann@gaitthersburgmd.gov](mailto:gmann@gaitthersburgmd.gov)  
[www.gaithersburgmd.gov](http://www.gaithersburgmd.gov)

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X-7089-2015 Notice of Public Hearing Signs Posted 10-27-2015





**PUBLIC HEARING**

**MAYOR AND CITY COUNCIL HEARING**  
X-7089-2015 12114-12168 (EVEN)  
ANNEXATION DARNESTOWN ROAD  
GAITHERSBURG

MONDAY 11/16/2015 7:30 P.M.

GAITHERSBURG CITY HALL  
9 SOUTH SUMMIT AVENUE  
GAITHERSBURG, MD 20878  
www.gaithersburgmd.gov 301-258-4330



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**OFFICE OF THE CHAIR**

November 16, 2015

The Honorable Jud Ashman, Mayor  
City of Gaithersburg  
Gaithersburg City Hall  
31 South Summit Avenue  
Gaithersburg, Maryland 20877

Dear Mr. Ashman:

At our regular meeting on November 12, 2015, the Montgomery County Planning Board reviewed the City of Gaithersburg's Annexation Petition X-7089, a request from Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC to include 8.28 acres at the intersection of Darnestown and Quince Orchard Roads within the City's municipal boundaries. The properties are located at 12110, 12130 and 12140 Darnestown Road. The Petition requests the City's MXD Zone for the properties following annexation. The Board reviewed the Petition and asks that this letter be included in the record of the Gaithersburg City Council's November 16, 2015 Public Hearing.

The Planning Board heard a presentation from its Area 3 planning staff and discussed the Petition with planning staff representing the City of Gaithersburg. The Planning Board unanimously voted to support the technical staff recommendation and transmit the following comment to the City Council and to the Montgomery County Council:

*"The County Council need not review the Petition under Section 4-416 of the Annotated Code of Maryland. The land uses and densities proposed under the Petition are not substantially different from those allowed in the existing Neighborhood Retail Zone."*

The Planning Board appreciates the opportunity to review this proposal. If you have any questions, please contact Fred Boyd at (301) 495-4654 or [fred.boyd@montgomeryplanning.org](mailto:fred.boyd@montgomeryplanning.org).

Sincerely,

  
Casey Anderson  
Chair

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