

Testimony – Magruder/Potomac Valley Shopping Center
Annexation by the City of Gaithersburg
November 16, 2015

Good evening, I appreciated the opportunity to speak on behalf of the many communities that, although we are not in Gaithersburg's City limits, are affected by the City's annexation of the Potomac Valley Shopping Center. I am speaking on behalf of the following communities:

1) Willow Ridge, 2) Hidden Ponds, 3) Orchard Hills

Together our communities represent 100s of residences. We share a common goal to ensure that our communities have the best education, transportation and services available. This goal, I believe, is also shared by the City of Gaithersburg's Mayor, City Council and Planners. With that in mind, we raise the following concerns:

1) The intersection of Route 28 and Quince Orchard Road is now quite complicated. There are different jurisdictions with different zoning, there are two different planning areas for the county, with another corner already in the city. The two annexations plus rezoning of all three corners to MXD simplifies the whole area and makes it welcoming to a developer. We are concerned about the long-term vision for redevelopment of the area as a gateway to the City of Gaithersburg as mentioned in the Gaithersburg Master Plan. This area was designed for suburban living and there is low density and agricultural reserve to the west. We would be concerned if there were efforts to have dense commercial/residential mix use developments. The local roads and schools are already overcrowded.

2) We request that the City expand the notification area for development and redevelopment. Almost no one lives within 200' of the Magruder property that is being annexed. It would be in the interests of the surrounding community if the City follows the county's policy on notifications: "The applicant also must send written notice to abutting and confronting property owners, and to homeowners associations and civic associations within a one-mile radius." From here: http://www.montgomeryplanning.org/info/participating_effectively.shtm#FindOut

3) Any development in the Quince Orchard Cluster concerns us due to school overcrowding. Our concerns are exacerbated by the City's new APFO which results in the development moratorium not being triggered until a project causes 150% school overcapacity. Residential development on the Magruder property would currently feed Rachel Carson ES and Rachel Carson is currently at 147% overcapacity. Even though the current plans have no residential component, the community is concerned about MXD zoning on this property, which could allow for residential development in the future.

4) We support the Magruder property's current commercial uses. Because of the impact on schools and roads, we would not support any future residential development on that site. As stated earlier, we would like ample notice to our communities regarding redevelopment of this property.

AGENDA ITEM #5F
November 17, 2015

Introduction

MEMORANDUM

November 13, 2015

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst 

SUBJECT: Introduction – Resolution concerning the City of Gaithersburg’s request to reclassify the WHM LLC and Darnestown Valley Petroleum WHM LLC property (12130, 12140, and 12110 Darnestown Road) from the NR 0.75, H 45 zone to the City’s Mixed Use Development (MXD) zone (Annexation No. X-7089)

Background

The City of Gaithersburg is proposing to annex approximately 8.28 acres of land located at the southeastern quadrant of Darnestown Road and Quince Orchard Road. The site is currently classified in the NR 0.75, H 45 zone in Montgomery County. The maximum density allowed under its current zoning a Floor Area Ratio of .75.

Under the annexation proposal, the Potomac Valley Shopping Center properties would be reclassified to the City’s MXD zone, which allows a mix of residential and commercial uses consistent with its current zoning. The proposed zoning would allow the same density. The approval of the proposed zoning by the County Council is not required. The Council does not have the authority to prevent the annexation.

Planning Board Recommendation

In its report to the Council, the Planning Board will indicate that the proposed zoning is consistent with its current zoning and the approval of the Council is not required.

Next Step

The attached resolution, which acknowledges the situation described by the Planning Staff, will be on the Council’s December 1, 2015 agenda for action.

Mayor and City Council
X-7089-2015
Ex. 45

The Packet Contains

© Number

Draft Resolution

1 - 2

Planning Staff Memorandum

3 - 12

Resolution No.:
Introduced: November 17, 2015
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President Leventhal at the request of the City of Gaithersburg

SUBJECT: Approval of the City of Gaithersburg's request to reclassify the WHM LLC and Darnestown Valley Petroleum WHM LLC property (12130, 12140, and 12110 Darnestown Road) from the NR 0.75, H 45 zone to the City's Mixed Use Development (MXD) zone (Annexation No. X-7089)

Background

1. The Local Government Article, Section 4-416 of the Annotated Code of Maryland provides that no municipality annexing land may, for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan without express approval of the County Council. The law defines substantial higher density as exceeding its current allowed density by 50% or more.
2. The WHM LLC and Darnestown Valley Petroleum WHM LLC property is within the Maximum Expansion Limits of the City of Gaithersburg.
3. The City of Gaithersburg is proposing to annex approximately 8.28 acres of land located at the southeastern quadrant of Darnestown Road and Quince Orchard Road. The site is currently classified in the NR 0.75, H 45 zone in Montgomery County. The maximum density allowed under its current zoning is a Floor Area Ratio of .75.
4. Under the annexation proposal, the WHM LLC and Darnestown Valley Petroleum WHM LLC property would be reclassified to the City's MXD zone, which allows a mix of residential and commercial uses consistent with its current zoning. The proposed zoning would allow the same density. The approval of the proposed zoning by the County Council is not required.
5. On November 12, 2015, the Montgomery County Planning Board recommended approval consistent with the recommendations of the November 12, 2015 Planning Staff report.

6. On December 1, 2015, the County Council reviewed Annexation No. X-7089 and agreed with the Planning Board's conclusion that Council approval was not required.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

The Council acknowledges the authority of the City of Gaithersburg to approve Annexation No. X-7089 and rezone the property MXD.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC, Annexation No. X-7089

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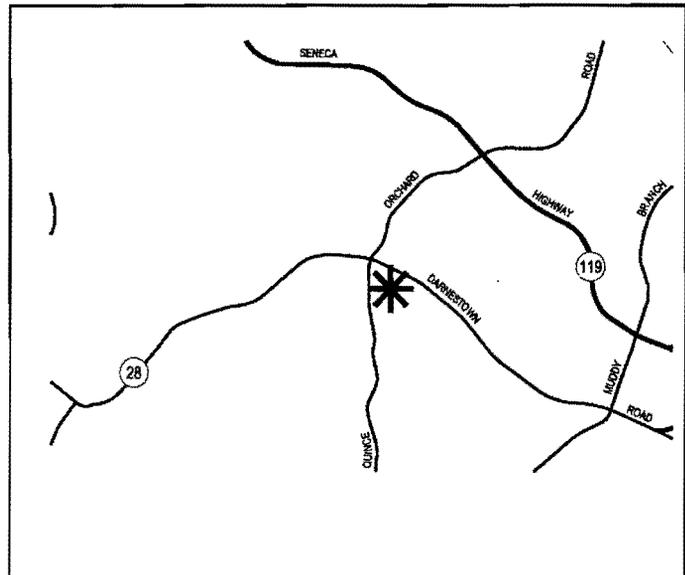
Frederick Vernon Boyd, Master Plan Supervisor, Area 3 Division, fred.boyd@montgomeryplanning.org, 301-495-4654
Kipling Reynolds, Chief, Area 3 Division, kipling.reynolds@montgomeryplanning.org, 301-495-4575

Completed: 11/05/15

Description

Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC, Annexation No. X-7089

- Request to annex 8.28 acre Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC properties into the City of Gaithersburg and rezone the parcels from the County's NR 0.75 H 45 Zone to the City of Gaithersburg's MXD Zone
- Located at 12110, 12130 and 12140 Darnestown Road (MD 28) in Gaithersburg, MD, within the area of the 2002 *Potomac Subregion Master Plan*
- Filed July 14, 2015
- Applicant: Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC
- Action required for the City of Gaithersburg public hearing on November 16, 2015



Summary

Technical staff recommends approval to transmit the following comments to the City of Gaithersburg and the Montgomery County Council for a public hearing on November 16, 2015:

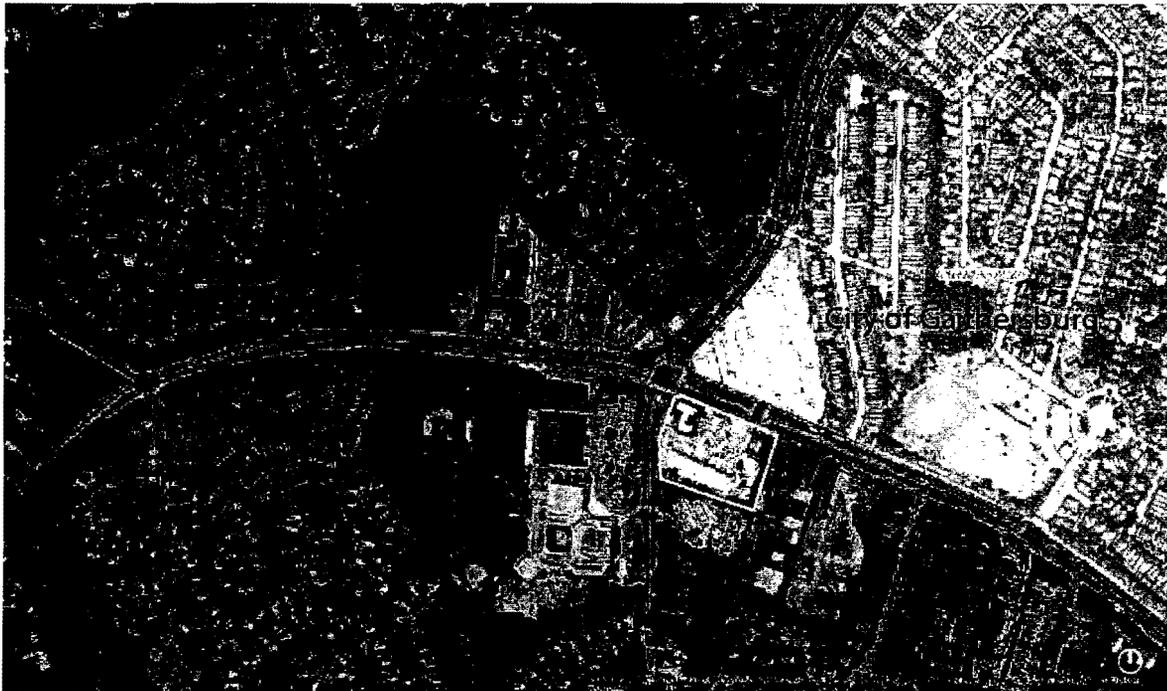
1. The City of Gaithersburg need not refer the Petition to the Montgomery County Council for its review or approval. The Petition proposes uses and densities in the City's MXD Zone that are consistent with those allowed in the Employment Office (EOF) Zone currently in place.

BACKGROUND AND LOCATION

The Site of the proposed annexation is located at the intersection of Darnestown and Quince Orchard Roads, and carries the addresses of 12130, 12140 and 12110 Darnestown Road. It is owned by two entities associated with the Magruder family—Darnestown Valley—WHM, LP and Darnestown Valley Petroleum WHM, LLC. It is part of the Potomac Subregion and is included in the 2002 *Potomac Subregion Master Plan*. The Site consists of three recorded lots, which total 4.67 acres, and portions of the rights-of-way of Darnestown and Quince Orchard Roads, totaling 3.61 acres. The overall area to be considered for annexation is 8.28 acres. Figure 1 shows the site and its vicinity.

The intersection of Darnestown and Quince Orchard Roads is dominated by commercial retail and institutional uses, with residential uses surrounding the commercial area. The developed portion of the Site is occupied by the Potomac Valley South Shopping Center, which totals about 40,700 square feet of gross floor area. To the north, across Darnestown Road and east of the intersection, are the Shops of Potomac Valley North and one-family residential development. This area is in the City of Gaithersburg. To the south is the Quince Orchard Library and one-family residential development. To the east is the Potomac Garden Center, which has a special exception/conditional use in the R-200 Zone, and additional one-family residential development. Quince Orchard High School is across Quince Orchard Road to the west, along with additional one-family development. North of Darnestown Road and west of the intersection are the Johnson's nursery properties, mixed residential and commercial properties that are the subject of a Gaithersburg annexation petition currently under review.

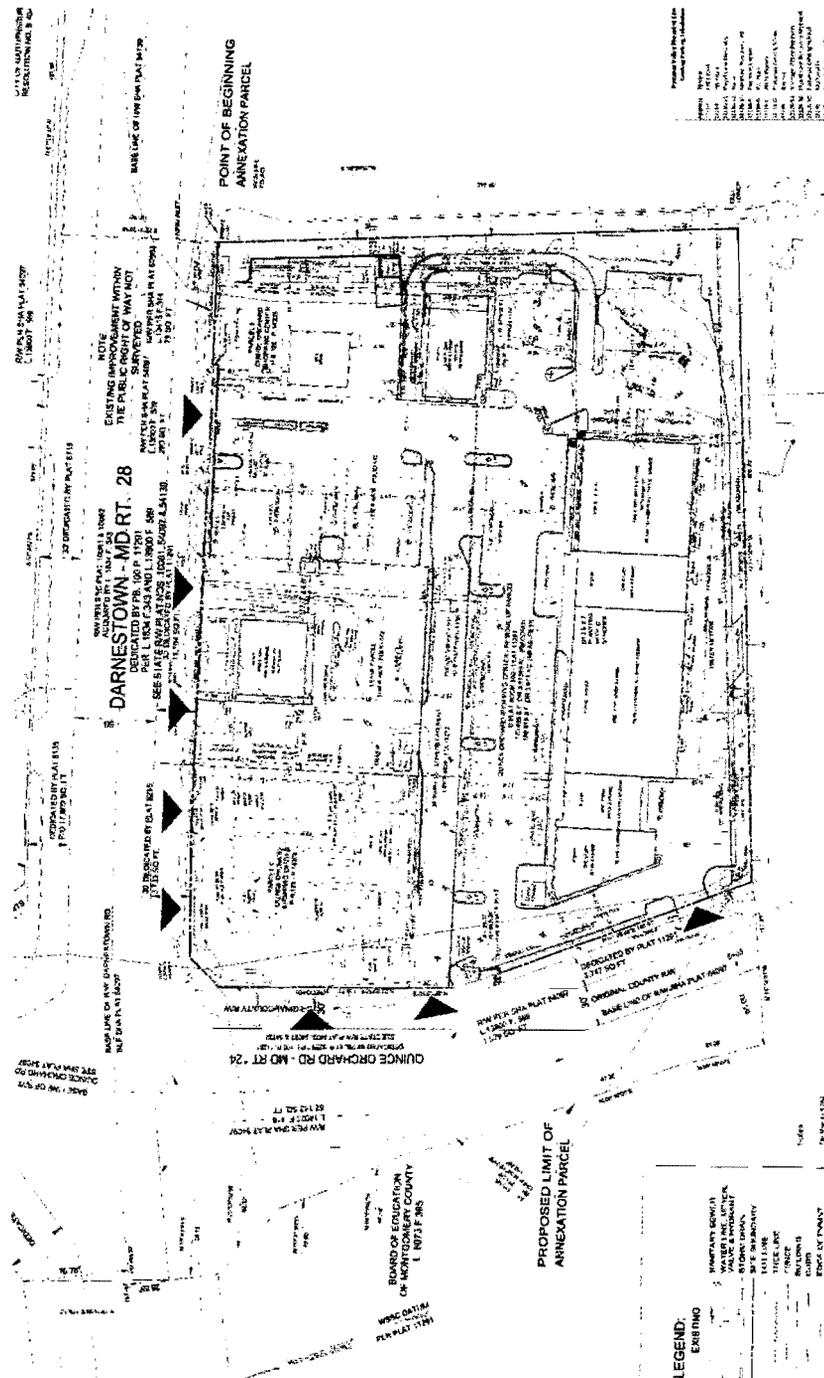
Figure 1: Vicinity



Prior to the county's zoning conversion, the developed portion of the Site was located in the Convenience Commercial (C-1) Zone. It is now in the Neighborhood Retail (NR) Zone, with a maximum

density of 0.75 and a maximum height of 45 feet. The high school and all nearby residential neighborhoods in the county are in the R-200 Zone. In Gaithersburg, the Potomac Valley North center is the city's Local Commercial (C-1) Zone and the adjacent residential neighborhoods are in the Medium Density Residential (RP-T) Zone, a medium density residential zone. Figure 2 shows the shopping center's site plan.

Figure 2: Existing Shopping Center Site Plan



(5)

ANNEXATION PROPOSAL

The Petitioners--Darnestown Valley—WHM, LP and Darnestown Valley Petroleum WHM, LLC—submitted the annexation request, seeking annexation into the City of Gaithersburg and reclassification of their property to the city's Mixed Use Development (MXD) Zone. The Petitioners have no immediate plans for redevelopment of the property.

The Gaithersburg City Council will hold a public hearing on the annexation proposal on November 16, 2015. The city's Planning Commission reviewed the Petition on October 7, 2015 and recommended its approval on October 21, 2015. The Planning Commission concluded that the Petition was consistent with the City's Master Plan; that the area proposed for annexation was within the City's Maximum Expansion Limits; and that it would not burden existing public facilities. The Planning Commission also concluded that the Petition met the City's goals of "promoting economic development, diversifying local economy to allow a variety of uses, allowing for redevelopment opportunities on underutilized sites, promoting a mix of uses for '24/7 activity' and increasing the City's tax base."

MASTER PLAN AND ZONING

The Site is located in the Potomac Subregion and is currently guided by the *2002 Potomac Subregion Master Plan*. It is in North Potomac, a part of the subregion discussed separately in the Plan. The Plan recognizes that North Potomac is the most densely populated part of the subregion and that its residents "are striving to create a clear identity for their community and are seeking needed local community services, such as a recreation center." (p. 69) The Plan does not make specific recommendations for the Site. The Plan makes no recommendations regarding potential annexations.

The 2009 *City of Gaithersburg Master Plan Land Use Element* includes the Site, which is designated as area 17. The Plan recommends that, should the properties be annexed, they should be placed in the MXD (Mixed-Use Development) Zone, and also put in that zone's Commercial-Office land use designation.

The properties are in the county's NR Zone. This new zone was placed on the properties in October 2014 as part of the comprehensive revision to the County's Zoning Ordinance. The properties had been in the C-1, or Convenience Commercial Zone. The NR Zone, like the C-1 Zone before it, provides commercial uses and services with a neighborhood orientation that, in general, require frequent purchases and auto access. The maximum NR density for the Site is 0.75 FAR, with a maximum building height of 45 feet. The NR Zone allows some residential development, but limits such uses to a maximum of 30 percent of a project's gross floor area.

The MXD Zone is Gaithersburg's primary mixed use zone. It is designed to implement master plan recommendations for "comprehensively planned, multi-use projects" that would include residential, commercial, recreational, open space, employment and institutional uses. The zone allows any residential use allowed by right in the city's residential zones, and a broad range of commercial, employment and industrial uses, with maximum allowable amounts of each type of use. Residential

densities are set in the applicable master plan and confirmed in the review of a sketch plan. Non-residential densities generally may not exceed 0.75 FAR.

The following table offers a broad comparison of uses in the NR and MXD zones:

Table 1: Project Data Table		
Jurisdiction	Montgomery County	City of Gaithersburg
Zoning District	NR 0.75, H 45	MXD
Permitted Uses	Neighborhood-oriented commercial uses, including retail/services uses, offices and institutional uses; all types of household living uses	Commercial, industrial and employment uses may be mixed with residential uses
Density	Overall maximum density of 0.75 FAR; household living is limited to a maximum of 30 percent of gross floor area	Maximum non-residential density of 0.75 FAR; number of dwelling units to be set at sketch plan

The Petitioner has submitted a Sketch Plan for the properties, which is required by the City's Zoning Ordinance for properties in the MXD Zone. While the Petitioners are not proposing redevelopment of the properties at this time, the Sketch Plan shows that future development would have two components, which are shown in Figure 3. The area shown as a Commercial Focus would be likely to include retail and service uses, and the combined Office/Commercial area would include those commercial uses, as well as general offices. The Sketch Plan proposes a maximum FAR of 0.75 for the site, should it redevelop. The FAR of the Potomac Valley South Shopping Center is approximately 0.15.

ANNOTATED CODE OF MARYLAND

The Annotated Code of Maryland includes a section that outlines the procedures and requirements for the annexation of land by incorporated municipalities.

1. Section 4-401 of the Maryland Code's Local Government Article, titled "Power to enlarge municipal boundaries by annexation," states:

(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.

Land to which power applies

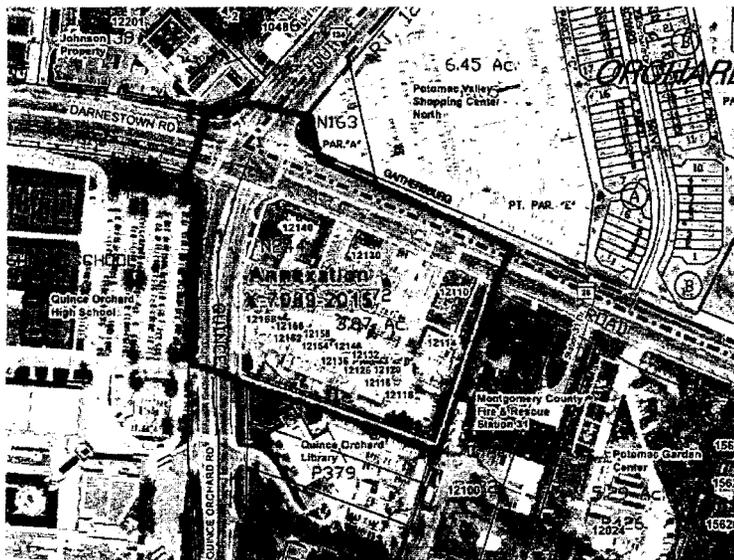
(b) The power of annexation applies only to land that:

- (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.**

Annexation of land in another municipality prohibited

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

The properties proposed for annexation are now part of an unincorporated area of Montgomery County.



When the rights-of-way of Darnestown and Quince Orchard Roads are included, the proposed Petition meets the definitions of "contiguous and adjoining" previously accepted by the state Attorney General. The Petitioners' attorneys have provided citations for the opinion, and the city's Planning Commission endorsed this position when it recommended approval of the Petition. As a result, addition of the Petitioners' properties to the City of Gaithersburg will create land contiguous and adjoining to the existing boundaries, and will not create an

enclave, or unincorporated land surrounded by land inside or proposed to be inside the municipal boundaries.

2. Section 4-406 of the Maryland Code's Local Government Article, titled "Public notice and hearing on resolution," states in relevant part:

“(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.*

Notice to county and planning agencies

(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.*

The City has fulfilled its obligations under this Section. On October 2, 2015, the City of Gaithersburg formally notified the Planning Board that it had received this Annexation Petition. The letter indicated that the Petition had been introduced by the Mayor and City Council on September 8; that the City’s Planning Commission would review the Petition on October 7; that the Commission would make its recommendation to the Mayor and Council on October 21; and that the Mayor and City Council would hold a public hearing on the Petition on November 16, 2015.

3. Section 4-416 of the Maryland Code’s Local Government Article states in relevant part:

Different land use or density

(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.

Gaithersburg need not seek County Council approval of this Petition.

As noted in the Master Plan and Zoning analysis above, Montgomery County’s NR Zone and Gaithersburg’s MXD Zone both allow a mixture of commercial, residential and institutional uses. The City’s Master Plan recommends commercial and office uses for the Petitioners’ properties, and the Sketch Plan submitted with the Petition proposes uses, both current and prospective, that are consistent with that recommendation. The proposed range of uses is substantially similar to the inventory of uses allowed in the NR Zone. The future density proposed for the properties under the MXD Zone, 0.75 FAR, is the same as the maximum allowed in the NR Zone.

PUBLIC FACILITIES AND SERVICES

The Site is in the Quince Orchard Cluster of the Montgomery County Public Schools (MCPS). It is served by Rachel Carson Elementary School, Lakelands Park Middle School and Quince Orchard High School. Because the Petitioners intend to continue the solely commercial activities of the existing shopping center, there is no immediate impact on schools from the proposed annexation. The City’s Planning

Commission notes that future residential uses on the site would have to comply with City Adequate Public Facilities regulations requiring adequate school capacity.

The Site is located in Water Category W-1, and Sewer Category S-1, which means that the property is currently served by both public water and sewer service.

Gaithersburg’s Adequate Public Facilities Ordinance requires that development projects be served by two nearby fire stations, and that response times be 10 minutes or less. The Site can be adequately service by Stations 31, 8, and 32.

ENVIRONMENT

The Petitioners included with their application an approved Natural Resources Inventory/Forest Stand Delineation for their properties. The properties contain four specimen trees with diameters at breast height of 24 inches or more. There are no rare, threatened or endangered species on the site, nor are there floodplains, wetlands, steep slopes, or unsuitable soils. No part of the Site includes a cultural or historic resource.

Any redevelopment proposal on the Site will require the applicant to comply with the City’s Stormwater Management regulations.

TRANSPORTATION

The *Potomac Subregion Master Plan* recommends that Darnestown Road be classified as a major highway with a 120-foot right-of-way and a four-lane divided cross section. The 2005 *Countywide Bikeways Functional Master Plan* recommends a dual bikeway along Darnestown Road. The Potomac Plan recommends that Quince Orchard Road be classified as an arterial, with an 80-foot right-of-way and a two lane cross section. The Bikeways Plan recommends a shared use path on Quince Orchard Road south of Darnestown Road.

The Site is served by two Ride-On routes. Route 56, along Darnestown Road, runs weekdays and weekends about every 30 minutes between Rockville Metro and Lakeforest Transit Center, with a stop on Darnestown Road in front of the Site. Route 76 runs weekdays only about every 30 minutes between Quince Orchard Road and Shady Grove Metro, with rush hour service between Poolesville and Shady Grove. Both routes use the same stop. Should redevelopment occur, Petitioners should work with the Department of Transportation to upgrade the bus stop.

COMMUNITY CONCERNS

Planning staff has received no correspondence on the proposed Petition.

CONCLUSION

Technical staff believes that the proposed annexation can move forward without referral to the Montgomery County Council. The Petition proposes uses and densities in the City’s MXD Zone that are consistent with those allowed in the EOF Zone currently in place. Those uses and densities were consistent when the 2002 *Potomac Subregion Master Plan* reconfirmed them through its Sectional Map Amendment.

Technical staff recommends that this comment be transmitted to the City of Gaithersburg and to the Montgomery County Council.

Attachments

1. Petition of Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC for Annexation
2. Letter from Casey L. Cirner, Miles & Stockbridge PC



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

OFFICE OF THE CHAIR

November 16, 2015

The Honorable George Leventhal, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mr. ^{Boyd}Leventhal:

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.

Sincerely,


Casey Anderson
Chair

Action

MEMORANDUM

November 25, 2015

TO: County Council

FROM: Jeffrey L. Zyontz, ⁹²Senior Legislative Analyst

SUBJECT: Action – Resolution concerning the City of Gaithersburg’s request to reclassify the WHM LLC and Darnestown Valley Petroleum WHM LLC property (12130, 12140, and 12110 Darnestown Road) from the NR 0.75, H 45 zone to the City’s Mixed Use Development (MXD) zone (Annexation No. X-7089)

Background

The City of Gaithersburg is proposing to annex approximately 8.28 acres of land located at the southeastern quadrant of Darnestown Road and Quince Orchard Road. The site is currently classified in the NR 0.75, H 45 zone in Montgomery County. The maximum density allowed under its current zoning is a Floor Area Ratio of .75.

Under the annexation proposal, the Potomac Valley Shopping Center properties would be reclassified to the City’s MXD zone, which allows a mix of residential and commercial uses consistent with its current zoning. The proposed zoning would allow the same density. The approval of the proposed zoning by the County Council is not required. The Council does not have the authority to prevent the annexation.

Planning Board Recommendation

In its report to the Council, the Planning Board will indicate that the proposed zoning is consistent with its current zoning and the approval of the Council is not required.

Resolution

The attached resolution was introduced on November 17, 2015 and is scheduled for action on December 1, 2015.

<u>The Packet Contains</u>	<u>© Number</u>
Resolution	1 – 2
Planning Staff Memorandum	3 – 12
Planning Board Recommendation	13

Resolution No.:
Introduced: November 17, 2015
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President Leventhal at the request of the City of Gaithersburg

SUBJECT: Approval of the City of Gaithersburg's request to reclassify the WHM LLC and Darnestown Valley Petroleum WHM LLC property (12130, 12140, and 12110 Darnestown Road) from the NR 0.75, H 45 zone to the City's Mixed Use Development (MXD) zone (Annexation No. X-7089)

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5. On November 12, 2015, the Montgomery County Planning Board recommended approval consistent with the recommendations of the November 12, 2015 Planning Staff report.
6. On December 1, 2015, the County Council reviewed Annexation No. X-7089 and agreed with the Planning Board's conclusion that Council approval was not required.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

The Council acknowledges the authority of the City of Gaithersburg to approve Annexation No. X-7089 and rezone the property MXD.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC, Annexation No. X-7089

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Frederick Vernon Boyd, Master Plan Supervisor, Area 3 Division, fred.boyd@montgomeryplanning.org, 301-495-4654

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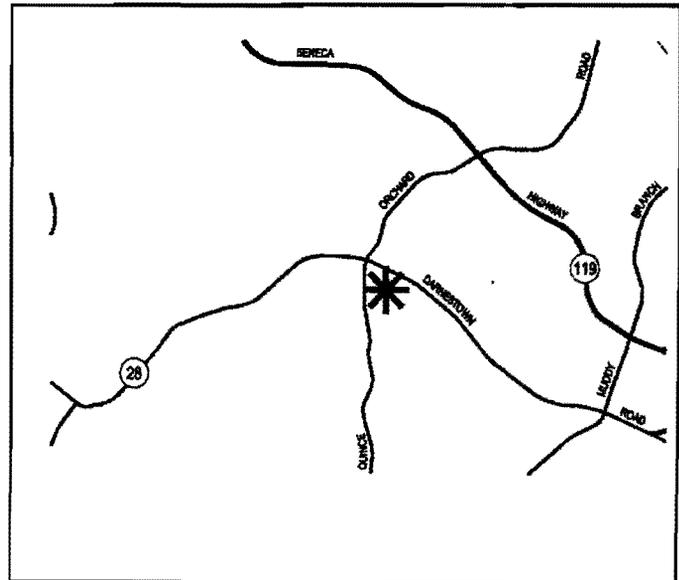
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Completed: 11/05/15

Description

Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC, Annexation No. X-7089

- Request to annex 8.28 acre Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC properties into the City of Gaithersburg and rezone the parcels from the County's NR 0.75 H 45 Zone to the City of Gaithersburg's MXD Zone
- Located at 12110, 12130 and 12140 Darnestown Road (MD 28) in Gaithersburg, MD, within the area of the 2002 *Potomac Subregion Master Plan*
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- Applicant: Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC
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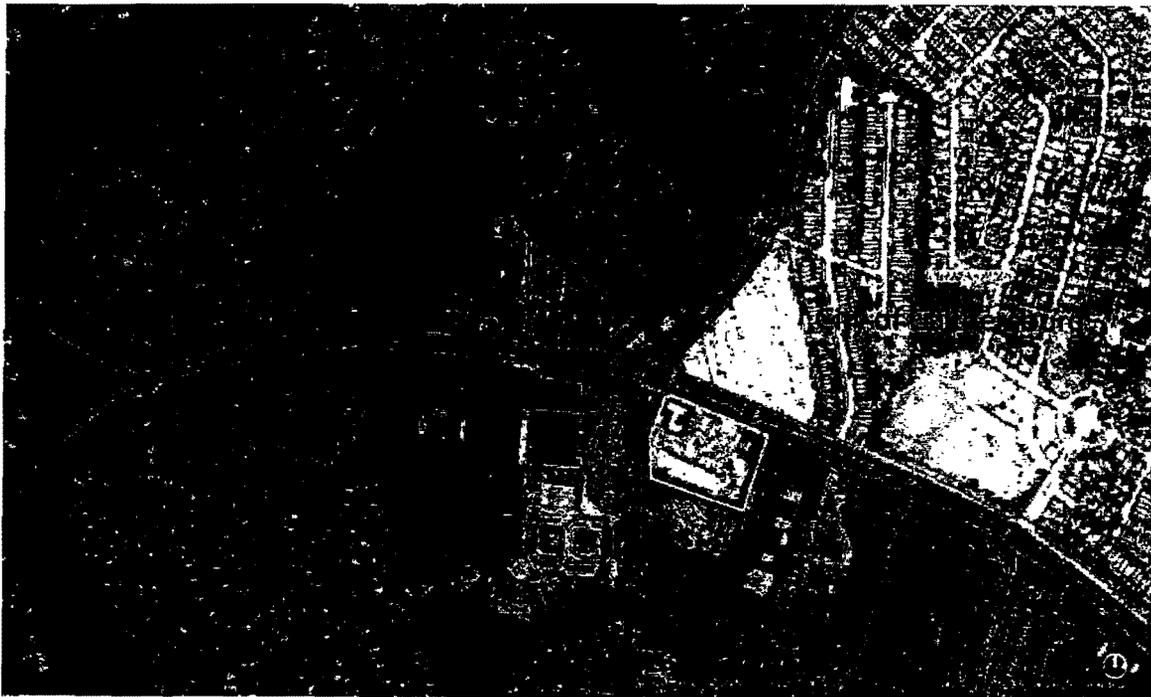
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Figure 1: Vicinity



Prior to the county's zoning conversion, the developed portion of the Site was located in the Convenience Commercial (C-1) Zone. It is now in the Neighborhood Retail (NR) Zone, with a maximum

ANNEXATION PROPOSAL

The Petitioners--Darnestown Valley--WHM, LP and Darnestown Valley Petroleum WHM, LLC-- submitted the annexation request, seeking annexation into the City of Gaithersburg and reclassification of their property to the city's Mixed Use Development (MXD) Zone. The Petitioners have no immediate plans for redevelopment of the property.

The Gaithersburg City Council will hold a public hearing on the annexation proposal on November 16, 2015. The city's Planning Commission reviewed the Petition on October 7, 2015 and recommended its approval on October 21, 2015. The Planning Commission concluded that the Petition was consistent with the City's Master Plan; that the area proposed for annexation was within the City's Maximum Expansion Limits; and that it would not burden existing public facilities. The Planning Commission also concluded that the Petition met the City's goals of "promoting economic development, diversifying local economy to allow a variety of uses, allowing for redevelopment opportunities on underutilized sites, promoting a mix of uses for '24/7 activity' and increasing the City's tax base."

MASTER PLAN AND ZONING

The Site is located in the Potomac Subregion and is currently guided by the *2002 Potomac Subregion Master Plan*. It is in North Potomac, a part of the subregion discussed separately in the Plan. The Plan recognizes that North Potomac is the most densely populated part of the subregion and that its residents "are striving to create a clear identity for their community and are seeking needed local community services, such as a recreation center." (p. 69) The Plan does not make specific recommendations for the Site. The Plan makes no recommendations regarding potential annexations.

The *2009 City of Gaithersburg Master Plan Land Use Element* includes the Site, which is designated as area 17. The Plan recommends that, should the properties be annexed, they should be placed in the MXD (Mixed-Use Development) Zone, and also put in that zone's Commercial-Office land use designation.

The properties are in the county's NR Zone. This new zone was placed on the properties in October 2014 as part of the comprehensive revision to the County's Zoning Ordinance. The properties had been in the C-1, or Convenience Commercial Zone. The NR Zone, like the C-1 Zone before it, provides commercial uses and services with a neighborhood orientation that, in general, require frequent purchases and auto access. The maximum NR density for the Site is 0.75 FAR, with a maximum building height of 45 feet. The NR Zone allows some residential development, but limits such uses to a maximum of 30 percent of a project's gross floor area.

The MXD Zone is Gaithersburg's primary mixed use zone. It is designed to implement master plan recommendations for "comprehensively planned, multi-use projects" that would include residential, commercial, recreational, open space, employment and institutional uses. The zone allows any residential use allowed by right in the city's residential zones, and a broad range of commercial, employment and industrial uses, with maximum allowable amounts of each type of use. Residential

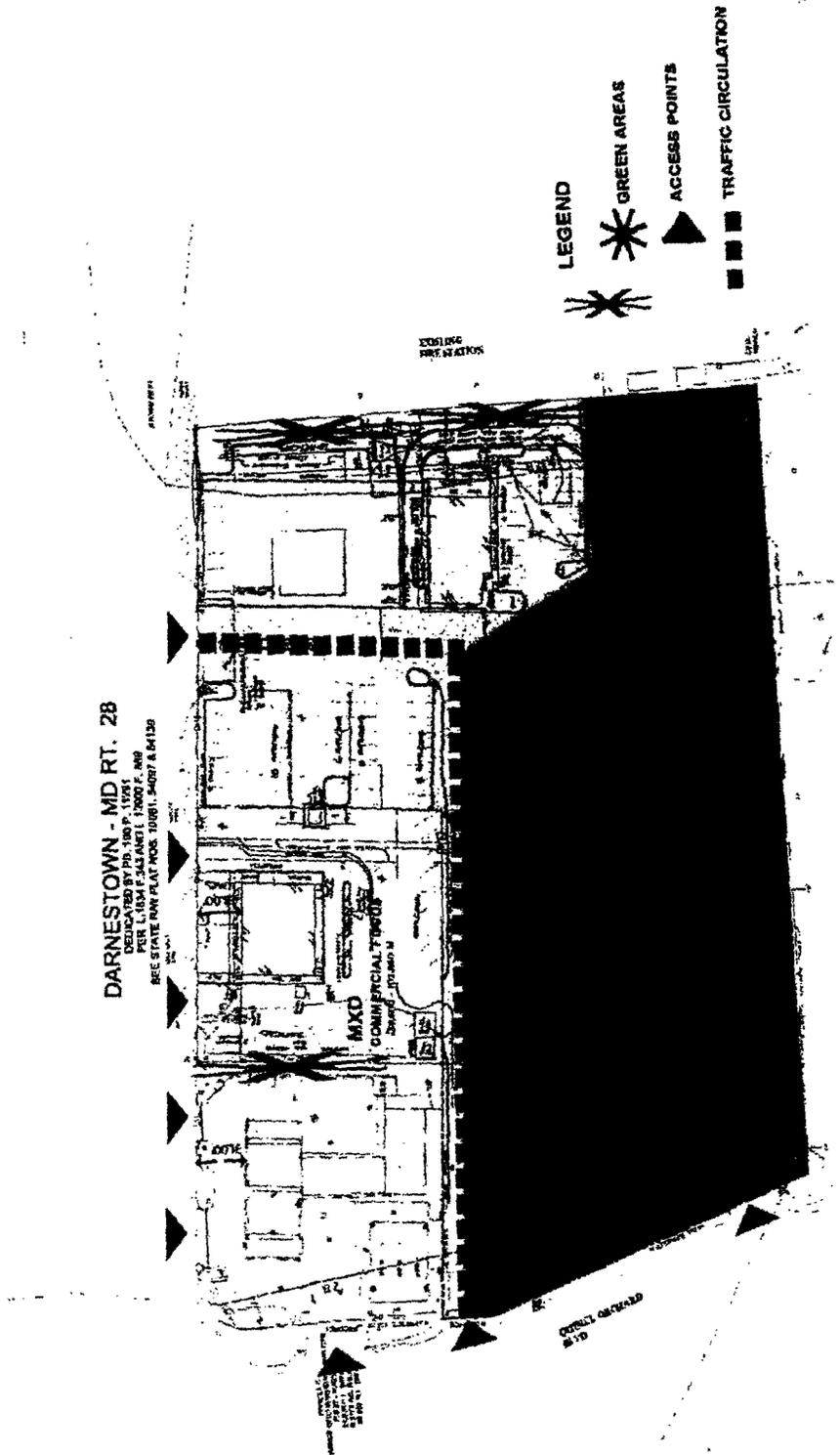
densities are set in the applicable master plan and confirmed in the review of a sketch plan. Non-residential densities generally may not exceed 0.75 FAR.

The following table offers a broad comparison of uses in the NR and MXD zones:

Table 1: Project Data Table		
Jurisdiction	Montgomery County	City of Gaithersburg
Zoning District	NR 0.75, H 45	MXD
Permitted Uses	Neighborhood-oriented commercial uses, including retail/services uses, offices and institutional uses; all types of household living uses	Commercial, industrial and employment uses may be mixed with residential uses
Density	Overall maximum density of 0.75 FAR; household living is limited to a maximum of 30 percent of gross floor area	Maximum non-residential density of 0.75 FAR; number of dwelling units to be set at sketch plan

The Petitioner has submitted a Sketch Plan for the properties, which is required by the City's Zoning Ordinance for properties in the MXD Zone. While the Petitioners are not proposing redevelopment of the properties at this time, the Sketch Plan shows that future development would have two components, which are shown in Figure 3. The area shown as a Commercial Focus would be likely to include retail and service uses, and the combined Office/Commercial area would include those commercial uses, as well as general offices. The Sketch Plan proposes a maximum FAR of 0.75 for the site, should it redevelop. The FAR of the Potomac Valley South Shopping Center is approximately 0.15.

Figure 3: Sketch Plan



ANNOTATED CODE OF MARYLAND

The Annotated Code of Maryland includes a section that outlines the procedures and requirements for the annexation of land by incorporated municipalities.

1. Section 4-401 of the Maryland Code's Local Government Article, titled "Power to enlarge municipal boundaries by annexation," states:

(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.

Land to which power applies

(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.*

Annexation of land in another municipality prohibited

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

The properties proposed for annexation are now part of an unincorporated area of Montgomery County.



When the rights-of-way of Darnestown and Quince Orchard Roads are included, the proposed Petition meets the definitions of "contiguous and adjoining" previously accepted by the state Attorney General. The Petitioners' attorneys have provided citations for the opinion, and the city's Planning Commission endorsed this position when it recommended approval of the Petition. As a result, addition of the Petitioners' properties to the City of Gaithersburg will create land contiguous and adjoining to the existing boundaries, and will not create an

enclave, or unincorporated land surrounded by land inside or proposed to be inside the municipal boundaries.

2. Section 4-406 of the Maryland Code's Local Government Article, titled "Public notice and hearing on resolution," states in relevant part:

"(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.*

Notice to county and planning agencies

(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.*

The City has fulfilled its obligations under this Section. On October 2, 2015, the City of Gaithersburg formally notified the Planning Board that it had received this Annexation Petition. The letter indicated that the Petition had been introduced by the Mayor and City Council on September 8; that the City's Planning Commission would review the Petition on October 7; that the Commission would make its recommendation to the Mayor and Council on October 21; and that the Mayor and City Council would hold a public hearing on the Petition on November 16, 2015.

3. Section 4-416 of the Maryland Code's Local Government Article states in relevant part:

Different land use or density

(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.

Gaithersburg need not seek County Council approval of this Petition.

As noted in the Master Plan and Zoning analysis above, Montgomery County's NR Zone and Gaithersburg's MXD Zone both allow a mixture of commercial, residential and institutional uses. The City's Master Plan recommends commercial and office uses for the Petitioners' properties, and the Sketch Plan submitted with the Petition proposes uses, both current and prospective, that are consistent with that recommendation. The proposed range of uses is substantially similar to the inventory of uses allowed in the NR Zone. The future density proposed for the properties under the MXD Zone, 0.75 FAR, is the same as the maximum allowed in the NR Zone.

PUBLIC FACILITIES AND SERVICES

The Site is in the Quince Orchard Cluster of the Montgomery County Public Schools (MCPS). It is served by Rachel Carson Elementary School, Lakelands Park Middle School and Quince Orchard High School. Because the Petitioners intend to continue the solely commercial activities of the existing shopping center, there is no immediate impact on schools from the proposed annexation. The City's Planning

Commission notes that future residential uses on the site would have to comply with City Adequate Public Facilities regulations requiring adequate school capacity.

The Site is located in Water Category W-1, and Sewer Category S-1, which means that the property is currently served by both public water and sewer service.

Gaithersburg's Adequate Public Facilities Ordinance requires that development projects be served by two nearby fire stations, and that response times be 10 minutes or less. The Site can be adequately service by Stations 31, 8, and 32.

ENVIRONMENT

The Petitioners included with their application an approved Natural Resources Inventory/Forest Stand Delineation for their properties. The properties contain four specimen trees with diameters at breast height of 24 inches or more. There are no rare, threatened or endangered species on the site, nor are there floodplains, wetlands, steep slopes, or unsuitable soils. No part of the Site includes a cultural or historic resource.

Any redevelopment proposal on the Site will require the applicant to comply with the City's Stormwater Management regulations.

TRANSPORTATION

The *Potomac Subregion Master Plan* recommends that Darnestown Road be classified as a major highway with a 120-foot right-of-way and a four-lane divided cross section. The 2005 *Countywide Bikeways Functional Master Plan* recommends a dual bikeway along Darnestown Road. The Potomac Plan recommends that Quince Orchard Road be classified as an arterial, with an 80-foot right-of-way and a two lane cross section. The Bikeways Plan recommends a shared use path on Quince Orchard Road south of Darnestown Road.

The Site is served by two Ride-On routes. Route 56, along Darnestown Road, runs weekdays and weekends about every 30 minutes between Rockville Metro and Lakeforest Transit Center, with a stop on Darnestown Road in front of the Site. Route 76 runs weekdays only about every 30 minutes between Quince Orchard Road and Shady Grove Metro, with rush hour service between Poolesville and Shady Grove. Both routes use the same stop. Should redevelopment occur, Petitioners should work with the Department of Transportation to upgrade the bus stop.

COMMUNITY CONCERNS

Planning staff has received no correspondence on the proposed Petition.

CONCLUSION

Technical staff believes that the proposed annexation can move forward without referral to the Montgomery County Council. The Petition proposes uses and densities in the City's MXD Zone that are consistent with those allowed in the EOF Zone currently in place. Those uses and densities were consistent when the 2002 *Potomac Subregion Master Plan* reconfirmed them through its Sectional Map Amendment.

Technical staff recommends that this comment be transmitted to the City of Gaithersburg and to the Montgomery County Council.

Attachments

1. Petition of Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC for Annexation
2. Letter from Casey L. Cirner, Miles & Stockbridge PC



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

OFFICE OF THE CHAIR

November 16, 2015

The Honorable George Leventhal, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mr. Leventhal:

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.

Sincerely,


Casey Anderson
Chair

13

From: [Linda Green](#)
To: [Planning External Mailing](#)
Subject: Magruder Annexation
Date: Sunday, December 06, 2015 6:39:03 AM

To whom it may concern,

I am writing this letter in opposition to the City of Gaithersburg's annexation of the Magruder property at Quince Orchard Rd and 28. There are several reasons that this annexation would negatively impact the local community. Mainly, this annexation would allow for developers to build much higher density housing than is currently allowed for. The schools in this area are already over crowded and would be very challenged to accommodate a large influx of students that this would cause.

This section of Rt 28 is already overburdened with traffic, including a major bottleneck at 28 and Riffleford Rd during rush hour times. Major traffic pattern changes would be required in order to accommodate a major population change.

Finally, this is not a change that would benefit the MC residents in this area. There are currently several very local areas under construction (ie- downtown Crowne) for higher density housing and limited recreational space. (Hopefully this will be considered for the Johnson's property). The MC residents in this area (myself included) do not need or want a "Gateway to Gaithersburg" at this corner.

Linda Green
12559 Carrington Hill Drive
Gaithersburg, MD 20878
301-963-1341

Mayor and City Council
X-7089-2015
Ex. 47

From: [Jeanette Janota](#)
To: [Planning External Mailing](#)
Subject: Darnestown Road and Quince Orchard Road....development
Date: Monday, December 07, 2015 10:06:22 AM

I have lived in Willow Ridge (Off 28, between Quince Orchard and Riffle Ford) for nearly 20 years. During that time, traffic has gotten worse and worse, particularly west bound on 28 during the evening rush hour where four lanes turn into two. Additionally, making a left turn from my development onto 28 East during either the morning or evening rush hours is a dangerous proposition. There is no safety island for protection, and it's challenging to get across all lanes of traffic. Compounding the heavy traffic, this intersection is where traffic facing west on 28 make their U turns to go into Quince Orchard High School's parking lot, since a U turn is not allowed at the light at the Safeway. Traffic is too high already; additional development would only worsen a horrific situation.

Please consider traffic when deciding what to do about a "Gateway to Gaithersburg" at 28 and 124, although, for the life of me, I can't imagine how this corner could remotely be considered a gateway to the distant city of Gaithersburg.

Jeanette Janota
12537 Fostoria Way
Gaithersburg (or Darnestown or North Potomac), MD 20878

Mayor and City Council
X-7089-2015
Ex. 48

Resolution No.: 18-338
Introduced: November 17, 2015
Adopted: December 1, 2015

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President Leventhal at the request of the City of Gaithersburg

SUBJECT: Approval of the City of Gaithersburg's request to reclassify the WHM LLC and Darnestown Valley Petroleum WHM LLC property (12130, 12140, and 12110 Darnestown Road) from the NR 0.75, H 45 zone to the City's Mixed Use Development (MXD) zone (Annexation No. X-7089)

Background

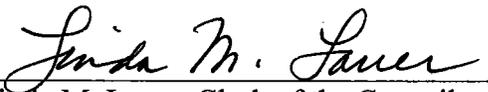
1. The Local Government Article, Section 4-416 of the Annotated Code of Maryland provides that no municipality annexing land may, for a period of five years following annexation, place that land in a zoning classification that permits a land use substantially different from the use for the land specified in the current and duly adopted master plan without express approval of the County Council. The law defines substantial higher density as exceeding its current allowed density by 50% or more.
2. The WHM LLC and Darnestown Valley Petroleum WHM LLC property is within the Maximum Expansion Limits of the City of Gaithersburg.
3. The City of Gaithersburg is proposing to annex approximately 8.28 acres of land located at the southeastern quadrant of Darnestown Road and Quince Orchard Road. The site is currently classified in the NR 0.75, H 45 zone in Montgomery County. The maximum density allowed under its current zoning is a Floor Area Ratio of .75.
4. Under the annexation proposal, the WHM LLC and Darnestown Valley Petroleum WHM LLC property would be reclassified to the City's MXD zone, which allows a mix of residential and commercial uses consistent with its current zoning. The proposed zoning would allow the same density. The approval of the proposed zoning by the County Council is not required.
5. On November 12, 2015, the Montgomery County Planning Board recommended approval consistent with the recommendations of the November 12, 2015 Planning Staff report.
6. On December 1, 2015, the County Council reviewed Annexation No. X-7089 and agreed with the Planning Board's conclusion that Council approval was not required.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

The Council acknowledges the authority of the City of Gaithersburg to approve Annexation No. X-7089 and rezone the property MXD.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council