

From: Trudy Schwarz
To: "[Katie Rapp](#)"; [Naomi Yount \(NaomiYount@Westat.com\)](mailto:Naomi.Yount@Westat.com); [Bill and Carol Scott \(scott97@comcast.net\)](mailto:scott97@comcast.net); [Steve Gammarino \(steve.gammarino@gmail.com\)](mailto:Steve.Gammarino@gmail.com)
Subject: Magruder Annexation Update- 4-12-2016
Date: Thursday, April 14, 2016 9:47:00 AM
Attachments: [Agenda Item Request Form - X-7089-2015 - announce closing of the Record 2-19-2016 FINAL-SIRE.pdf](#)
[X-7089-2015 Location Map-REVISED AREA.pdf](#)
[X-7089-2015 Ex 221 - Annexation Agreement -Darnestown Valley DRAFT Highlight- 4-8-16.pdf](#)

Katie, Naomi, Carol, Steve,

As you know the record for the Magruder Annexation, X-7089-2015 was reopened on March 7, 2016. The City was waiting for documents from one of the property owners in order to finalize the annexation agreement and annexation. Those documents have been received. Please read the attached "Agenda Item Request Form" and view the revised Location Map of the Annexation, which discusses the changes to the annexation. I have attached the revised Annexation Agreement for your convenience, however that Exhibits attached to the agreement are too large to email. They can be viewed on the City's website (link below). They are Exhibits 221 – 226.

Here is a link to the City Project page for this application

<http://www.gaithersburgmd.gov/government/city-projects/potomac-valley-shopping-center-annexation>

This will be discussed at the **April 18, 2016**, Mayor & City Council meeting at City Hall Council Chambers which starts at 7:30 pm. The agenda for that meeting will be posted on the City's Web site by Friday evening. This item is scheduled towards the end of the meeting under Staff Guidance. There are several items on prior to this item, so I don't plan to arrive until 8:30 pm. This item could be on anytime between 8:45 PM and 9:30 PM. These are estimations of the time.

Steve would you kindly notify the HOA Presidents listed on the letter of December 14, 2015 to Mayor Ashman. Unfortunately, their emails were not listed.

Please email me if you have any questions.

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

tschwarz@gaithersburgmd.gov

www.gaithersburgmd.gov

inGaithersburg delivers the latest City news every week. [Subscribe online today.](#)

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

Mayor and City Council
X-7089-2015
Ex. 230

Mayor and City Council Agenda Item Request

Meeting Date: 4/18/2016

Type: Staff Guidance

Call to Podium:

Trudy Schwarz

Agenda Item Title:

Request a Motion to Announce the Closing of the Record for Annexation Petition X-7089-2015, the Annexation of Approximately 8.28 Acres of Land Located Adjacent to the Present Corporate Limits and to Establish MXD (Mixed Use Development) Zoning for Said Land, Known as the Potomac Valley Shopping Center, Located at the Southeast Corner of the intersection of Quince Orchard Road (MD Route 124) and Darnestown Road (MD Route 28), Gaithersburg, Maryland and Adjacent Road Rights-Of-Way

Responsible Staff and Department:

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

Desired Outcome from Council:

Make a motion to close the record on X-7089-2015 in 14 days on May 2, 2016 at 5 p.m.)

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
Record Reopened:	03/07/2016
Record Held Open Date:	Indefinitely
Policy Discussion Date:	
Anticipated Adoption Date:	

SUPPORTING BACKGROUND ON NEXT PAGE

Mayor and City Council
X-7089-2015
Ex. 228

Mayor and City Council Agenda Item Request

Supporting Background Information:

On March 7, 2016, the Mayor and City Council, at the request of the applicant for annexation X-7089-2015, reopened the record for the annexation petition in order for them to finalize the terms of the annexation with all applicable property owners. The applicant will be submitting revised documents that will be posted on the City's web site by Monday, April 11, 2016. Additionally, the documents will be submitted to the Mayor and City Council in a separate document.

The provided documents will include the following: a revised annexation agreement, revised property descriptions and boundary maps, and a revised sketch plan. The revised annexation agreement does reduce the total allowable building height from ten (10) stories to five (5) stories as was originally requested by the applicant. The existing County zoning allows similar height allowances.

The reason behind the revised property boundaries are because M&T Bank, who owns one of the parcels, did not want to be annexed into the City or have the property rezoned to the MXD zone. City staff and the applicant have had phone conferences with M&T Bank's New York headquarters and it was their preference to remain in Montgomery County. Therefore the bank property of 0.231 acres and the associated right-of-way in front of the parcel have been removed from the annexation petition.

Staff is recommending that the Mayor and City Council announce the closing of the record for X-7089-2016 to be on Monday, May 2, 2016. This will allow all interested parties 14 days to evaluate the proposed revisions and submit written testimony. Staff will also notify interested residents and HOAs (both in the City and County) concerning the submission of new documents posted on the web site by April 12, 2016. Staff will also be meeting with M-NCPPC and County Council staff prior to the Mayor and City Council Meeting.

Staff proposes tentatively scheduling the Policy Discussion on Annexation Petition X-7089-2015 on May 16, 2016.

BACKGROUND

The annexation petition was filed by Miles & Stockbridge, PC, on behalf of Darnestown Valley-WHM LP and Darnestown Valley Petroleum WHM, LLC, owners of the Potomac Valley Shopping Center, located south of Darnestown Road and adjacent to the City's corporate limits. It should be noted that the portion of 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 corner of the intersection of Darnestown Road (Maryland Route 28) and Quince Orchard Road (Maryland Route 124.) The addresses for the properties include: 12110, 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 the southern portion of the 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

Mayor and City Council Agenda Item Request

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 0.75) 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 Revised Sketch Plan (Exhibit 52), an MXD Justification Statement (Exhibit 2-Q) and an Annexation Plan (Exhibit 3) for providing services for the properties.

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 establishing zoning of the properties as MXD (Mixed Use Development) Zone (Exhibit 31). The Mayor and City Council conducted the public hearing on the application on November 16, 2015 and closed the record of the application on December 16, 2015.

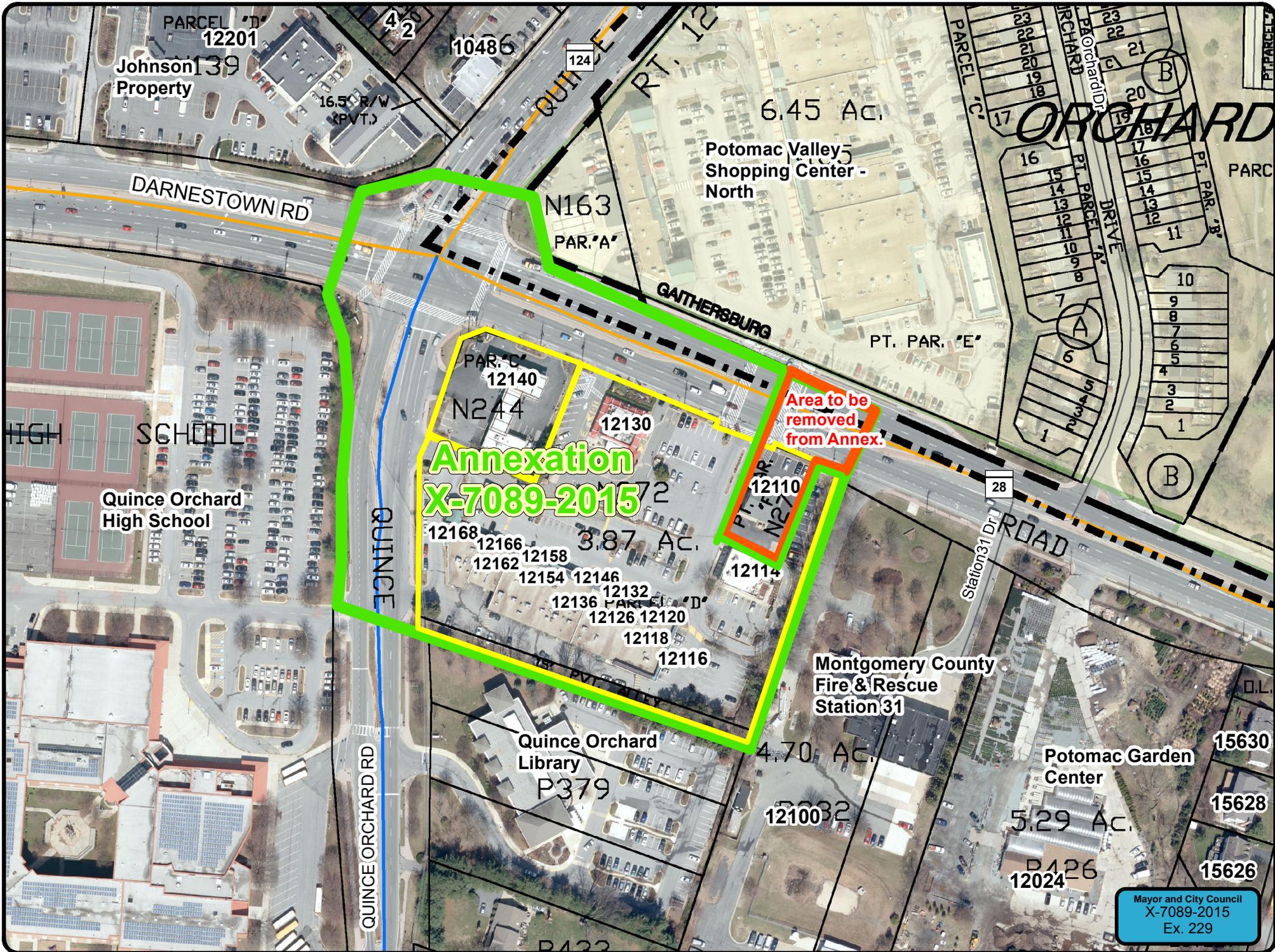
The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (MNCPPC) reviewed this annexation request at their November 12, 2015 meeting and acknowledged the authority of the City to annex the property (Exhibit 40). The Montgomery County Council, sitting as the District Council for that portion of the Maryland - Washington Regional District in Montgomery County, Maryland, on December 1, 2015, approved a resolution acknowledging the authority of the City of Gaithersburg to approve Annexation No. X-7089 [2015] and rezone the property to the City's Mixed Use Development (MXD) Zone (Exhibit 49).

More information about the annexation, including the exhibits, is available on the City's Web page at

<http://www.gaithersburgmd.gov/government/city-projects/potomac-valley-shopping-center-annexation>

Attachment:

Location Map



**Annexation
X-7089-2015**

Area to be removed from Annex.

Mayor and City Council
X-7089-2015
Ex. 229

X-7089-2015 Location Map-REVISED AREA



The City of Gaithersburg makes no warranty, express or implied, for the completeness and accuracy of the information depicted on this map. All rights reserved. 4/1/2016 • tschwarz

ANNEXATION AGREEMENT
(X-7089-2015)

THIS ANNEXATION AGREEMENT (“Agreement”) is made this ____ day of _____, 2016, by and between DARNESTOWN VALLEY – WHM LP, a Maryland limited partnership and DARNESTOWN VALLEY PETROLEUM – WHM, LLC, a Maryland limited liability company, both having their principal offices at 12165 Darnestown Road, Gaithersburg, Maryland 20878 (“WHM”), THE CITY OF GAITHERSBURG, a municipal corporation of the State of Maryland, and THE MAYOR AND COUNCIL OF GAITHERSBURG (collectively, “City”) having their principal offices at 31 South Summit Avenue, Gaithersburg, Maryland 20877.

WHEREAS, WHM is the fee simple owner of approximately ~~4.33154.44~~ acres or ~~188,681~~193,406 square feet of property generally located in the southeast quadrant of the intersection of Darnestown Road (Maryland Route 28) and Quince Orchard Road (Maryland Route 124) and known of record as: (i) Parcel D pursuant to that plat recorded among the Land Records for Montgomery County, Maryland as Plat No. 11291 (Parcel “N727” on Tax Map ES 562) and further defined as Part of Parcel D due to an acquisition by the State Highway Administration in the Deed recorded among the Land Records for Montgomery County, Maryland at Liber 13900, folio 589; and (ii) Parcel C pursuant to that plat recorded among the Land Records for Montgomery County, Maryland as Plat No. 9255 (N244 on Tax Map ES 562); (collectively the “Subject Property”); and

WHEREAS, WHM has petitioned the City to annex the Subject Property, as well as certain portions of the abutting right of way of Darnestown Road (Maryland Route 28) and Quince Orchard Road (Maryland Route 124), which together total approximately ~~7.65027.614~~

acres of land, as more particularly described on Exhibit “A” attached hereto and incorporated herein (collectively the “Property”), into the corporate boundaries of the City of Gaithersburg pursuant to Annexation Petition No. X-7089-2015 (“the Petition”); and

WHEREAS, the Property is contiguous to and adjoins the existing corporate boundaries of the City and annexation of the Property as proposed does not create any unincorporated area bounded on all sides by (i) real property presently within the corporate limits of the municipality, (ii) real property proposed to be within the corporate limits of the municipality as a result of the proposed annexation, or (iii) any combination of such properties; and

WHEREAS, pursuant to the requirements of Subtitle 4 of the Local Government Article of the Annotated Code of Maryland, 2013 Replacement Volume (the “Code”), the City has verified the signatures on the Petition and ascertained that the entities signing the Petition are the owners of not less than twenty-five percent (25%) of the assessed valuation of real property located in the area to be annexed and constitutes not less than twenty-five percent (25%) of the persons who reside in the area to be annexed, and who are registered as voters in Montgomery County (the “County”) electives in the precincts in which the territory to be annexed is located; and

WHEREAS, pursuant to the provisions of Section 4-404 of the Local Government Article of the Code, a resolution has been introduced by the City proposing to change the municipal boundaries of the City of Gaithersburg as requested in the Petition (the “Resolution”); and

WHEREAS, pursuant to Section 4-406 of the Local Government Article of the Code, all required public notices and hearings pertaining to the proposed annexation have been published and conducted by the City; and

WHEREAS, the City has found and determined that annexation of the Property will: (i) promote the City's goal of annexation within the City's maximum expansion limits; (ii) promote the themes of the City of Gaithersburg 2009 Land Use Plan; and (iii) permit the City to control any future redevelopment of the Subject Property; and

WHEREAS, the City intends to annex the Property as requested by WHM; and

WHEREAS, the WHM has requested and the City has recommended that the Subject Property be placed in the MXD, Mixed-Use Development Zone (the "MXD Zone") and by resolution the City intends to zone the Subject Property to the MXD Zone; and

WHEREAS, pursuant to Section 4-416 of the Local Governmental Article of the Code, the Montgomery County Council has expressly acknowledged the authority of the City of Gaithersburg to approve the Petition and reclassify the Subject Property from the NR – 0.75 H-45, Neighborhood Retail Zone to the MXD Zone; and

WHEREAS, the MXD Zone will permit the continuation of the existing and similar uses on the Subject Property, providing WHM some flexibility to adaptively accommodate customers and tenants of the Subject Property within its existing improvements and allowing the Subject Property to remain viable and responsive to changing market conditions until such time as the Subject Property is redeveloped; and

WHEREAS, the parties desire to set forth the terms, conditions and agreements relating to the annexation of the Property into the corporate boundaries of the City of Gaithersburg in an enforceable contract pursuant to this Agreement.

NOW, THEREFORE, and in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the parties agree as follows:

1. RECITALS. The recitals set forth above are incorporated herein and made a part hereof as if fully set forth herein.

2. ZONING. Concurrent with the adoption of the Resolution, the City will, by resolution, classify the Property in the City's MXD Zone (Chapter 24 of the City Code, Article III, Division 19, Section 24-160D11, *et seq.*; ("MXD Zone").

3. LAND USE.

(a) WHM and the City agree that under the MXD Zone, the existing improvements, including without limitation, all structures, site design, parking spaces and areas, and uses shown on the Existing Conditions Plan attached hereto and made a part hereof as Exhibit "B" ("Existing Improvements") shall be annexed into Gaithersburg as lawful and conforming development, construction, uses and buildings on the Subject Property. The City acknowledges the following special exceptions at the Subject Property, approved by the Montgomery County Board of Appeals, as uses allowed by right in the MXD Zone: (i) Special Exception S-354 [S-354-A, S-354-B, S-354-C] for a drive-in restaurant operated as a McDonalds; (ii) Special Exception Case No. S-1249 for a drive in restaurant operated as a Wendy's; and (iii) Special Exception Case No. CBA-2158-B for an automobile filling station. Additional or new uses, as permitted in the MXD Zone, such as retail, commercial and office uses, including medical/dental offices, existing uses at the Subject Property (as listed on Exhibit "B") and uses similar thereto, and tutoring and instructional uses, such as driving schools, dance studios or other similar uses, may be introduced and implemented at the Subject Property through the permitting process. The City agrees to issue use and occupancy permits for all the existing (as listed on Exhibit "B"), uses at the Subject Property following the requisite inspection(s); provided that all existing uses (as listed on Exhibit "B") shall be inspected and

reviewed for compliance with the laws, codes, building codes, and regulations in effect on the date that Montgomery County issued the existing use and occupancy permit for said use. The City agrees to waive all fees for the issuance of use and occupancy permits for all existing uses or improvement at the Subject Property (as listed on Exhibit “B”) and to confirm thereunder the annexation of said uses and improvements as lawful and conforming development, construction, uses and buildings on the Subject Property under the City of Gaithersburg Code. Any other new uses permitted in the MXD zone that are introduced at the Subject Property may require the amendment of certain approved plans.

(b) The City agrees to issue all necessary permits, following application and the payment of the requisite permit application fee, for the replacement/reconstruction (including, without limitation, in the event of total or partial destruction, including, without limitation, due to a fire, casualty or other similar event), alteration, expansion, repair and maintenance of the Existing Improvements and additional or new uses that may be introduced and implemented at the Subject Property; provided such improvements, excluding the alteration, repair, maintenance, replacement/reconstruction of the Existing Improvements on or within the existing footprint(s), conform to the Gaithersburg City Code requirements; and provided further that, the applicable building codes apply to said improvements and proper permits are applied for and issued by the City. WHM and the City further agree as follows:

(i) no further reviews or approvals, except for those associated with applicable building permits and use and occupancy permits as set forth herein, including, without limitation, subdivision plats, forest conservation, and adequate public facilities review and approvals, shall be required for the continued use, replacement/reconstruction of the Existing Improvements on or within existing

footprint(s) (including, without limitation, in the event of total or partial destruction, including, without limitation, due to a fire, casualty or other event) or the alteration, expansion, repair and maintenance of the Existing Improvements. Stormwater management review and approval is not required for the continued use of the Existing Improvements and shall be waived or minimized, to the extent provided by law for the replacement/reconstruction of the Existing Improvements on or within existing footprints

(ii) that for twenty (20) years from the Effective Date of Annexation, no adequate public facilities (APF) review, APF fees, or APF approvals will be required for any replacement/reconstruction of the Existing Improvements on or within the existing footprint(s) (including, without limitation, in the event of total or partial destruction, including, without limitation, due to a fire, casualty or other event), alteration, repairs or maintenance of the Existing Improvements or expansions of the Existing Improvements up to and including twenty percent (20%) of the existing floor area, which totals approximately 39,097 square feet as shown by Exhibit "B"; and

(iii) for twenty (20) years from the Effective Date of Annexation, any forest conservation triggered by any expansion of the Existing Improvements, which requirements cannot be waived by the City, will be limited to the actual expansion area and actual limits of disturbance and, as permitted by law, can be met by means other than on-site reforestation, including, but not limited to, fee-in-lieu and off-site reforestation, and stormwater management triggered by any

expansion of the Existing Improvements shall be minimized to the extent provided by law.

(c) WHM and the City agree that any future expansion of Existing Improvements, at or below twenty percent (20%) as noted in (b) above shall be subject to the procedures and authority of the City Planning Commission to approve an amendment to a final site plan for such development. Such amendment shall not require approval of the Mayor and City Council. WHM and the City agree that any future expansion of Existing Improvements of more than twenty percent (20%) as noted in (b) above shall be subject to the provisions of the MXD Zone.

(d) In no event shall any replacement/reconstruction (including, without limitation, in the event of total or partial destruction, including, without limitation, due to a fire, casualty or other event), expansion, alteration, repair or maintenance of Existing Improvements as noted in (a) – (c) above affect in any way the conforming status of the remaining portions of the use or Existing Improvements or require modifications of the same.

(e) WHM and the City agree that the number, size and configuration of the parking spaces and drive aisles existing at the Subject Property at the time of the Effective Date of Annexation (defined below) satisfy all City standards and requirements of the City. The existing parking spaces at the Subject Property also comply with the American Disabilities Act, except as reflected on Exhibit “B”. WHM and the City further agree that the number of parking spaces provided at the Subject Property satisfies any existing or new or additional retail, commercial and office uses, including medical/dental offices, existing uses at the Subject Property (as listed on Exhibit “B”) and uses similar thereto, and tutoring and instructional uses, such as driving schools, dance studios or other similar uses (as allowed in the MXD Zone)

introduced at the Subject Property prior to any redevelopment of the Subject Property. For purposes of this Agreement, redevelopment is defined as the demolition of all the Existing Improvements and the replacement thereof with a comprehensive development under the MXD Zone. Additional parking spaces and drive aisles installed at the Subject Property, prior to redevelopment, will be sized in accordance with the related standards and requirements shown on Exhibit "B", including, without limitation, the parking aisle and parking space size requirements. WHM and the City agree that parking spaces, including without limitation, additional parking spaces, installed in conjunction with the replacement/reconstruction (including, without limitation, in the event of total or partial destruction, including, without limitation, due to a fire, casualty or other event), alteration, repairs or maintenance of the Existing Improvements or expansion of the Existing Improvements up to and including twenty percent (20%) shall meet the related standards and requirements shown on Exhibit "B", including, without limitation, the parking aisle and parking space size requirements.

(f) The parties acknowledge that redevelopment of the Subject Property shall be pursuant to the provisions of the MXD Zone, presently in effect, or as may be hereinafter amended from time to time. The redevelopment of the Subject Property proposes a commercial and commercial-office land use focus as depicted on the Sketch Plan, attached hereto as Exhibit "C" and made a part hereof, and approved by the City in conjunction with the classification of the Property to the MXD Zone. The City acknowledges and agrees that any future development density shall not be reduced as a result of prior or future dedications, reservations, easements and/or acquisitions for public use, if any. The City further acknowledges and agrees to waive and/or modify the MXD Zone development standards to facilitate the maximum allowable density for the redevelopment of the Subject Property. Said waivers and modifications result in

the application of the following development standards to the Subject Property, unless the City Code, as amended, provides for less restrictive development standards or density at the time of redevelopment of the Subject Property:

Standard	Required	Permitted Following Waivers
§ 24-160D.4(b) Density	FAR 0.75 unless specified otherwise in the master plan or City Code	0.75 FAR (185,513 sf.)* minimum unless a greater density is specified otherwise in the master plan or City Code.
§ 24-160D.6(a) Green Area or Comparable Amenities	25% green space of total area devoted to commercial/employment/industrial uses	20%
§ 24-160D.2 Minimum Area	10 acre minimum	4 acres
§ 24-160D.5(a)(2)(a) Setback From Darnestown Road	100 feet from adjoining property not zoned MXD, unless otherwise approved by City Planning Commn.	15 ft.
§ 24-160D.5(a)(2)(a) Setback From Quince Orchard Road	100 feet from adjoining property not zoned MXD, unless otherwise approved by City Planning Commn.	15 ft.
§ 24-160D.5(a)(2)(a) Setback From Parcel 382, Zoned R-200** (Fire Station)	100 feet from adjoining property not zoned MXD, unless otherwise approved by City Planning Commn.	35 ft.
§ 24-160D.5(a)(2)(a) Setback From Parcel 379, Zoned R-200** (Library)	100 feet from adjoining property not zoned MXD, unless otherwise approved by City Planning Commn.	35 ft.
§24-160D.5(a)(2)(a) Setback from Parcel F Zoned NR-0.75 H-45 Zone ** M&T Bank		5 ft.***
Height	None - adjoining property not recommended for residential land use or not in residential zone	up to 5 stories****

* The total square footage of gross floor area was determined using the gross tract area for the Subject Property as calculated on Exhibit "D", attached hereto and made a part hereof.

**R-200 and NR-0.75 H-45 Zoning Classifications are pursuant to the Digital Zoning Map for the Maryland-Washington Regional District in Montgomery County, Maryland.

***Any requirement for buffer/green space is waived along the boundaries of Parcel F.

***Height to be measured from the street front.

4. MASTER PLAN COMPLIANCE. The City agrees that for thirty (30) years from the Effective Date of Annexation that any revisions to the City's master plans shall be consistent with the terms and conditions of this Agreement and shall make no inconsistent recommendations or recommendations that adversely impact the terms and conditions of this Agreement.

5. ADEQUATE PUBLIC FACILITIES. The City has determined that adequate public facilities including transportation, water, sewer, and City services, are available to serve Existing Improvements on the Subject Property.

6. ANNEXATION FEES. The City agrees to waive any and all fees associated with the processing of the Petition and Agreement, otherwise payable to the City in connection with the annexation of the Property.

7. REBATE OF MUNICIPAL TAXES. For five (5) full tax (fiscal) years, commencing July 1, 2016, the City agrees to fully reimburse the municipal taxes relative to the Subject Property. The City shall reimburse such taxes, via check, within thirty (30) days of receipt of proof of payment from the respective owner of the Subject Property.

8. MISCELLANEOUS. WHM and the City agree to execute any and all such documents and/or to take such actions necessary to carry out the terms and conditions of this Agreement.

9. EFFECTIVE. This Agreement shall not become effective until the Resolution is effective pursuant to Section 4-407 of the Local Government Article of the Code (hereinafter "Effective Date of Annexation"). At any time prior to the Effective Date of Annexation, WHM may withdraw the Petition and any consent previously given to the annexation, and this

Agreement shall be terminated and be of no force and effect and the parties shall have no obligation or liabilities hereunder.

10. SEVERABILITY. The terms and provisions of this Agreement are severable and in the event that any term or provision of this Agreement is invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.

11. ASSIGNMENT. This Agreement shall be assignable, in whole or in part, by WHM to related entities, without the consent of the City, and of its elected officials, employees or agents.

12. BINDING NATURE OF AGREEMENT. This Agreement and all terms, restrictions and conditions contained herein, shall run with the land and be binding upon the respective parties, their heirs, successors, grantees and assigns. Any amendment or modification to this Agreement shall be in writing, executed by the respective parties or their respective heirs, successors, grantees or assigns, and shall be effective upon recordation among the Land Records of Montgomery County, Maryland.

13. REMEDIES. Any party to this Agreement may seek relief and remedies in any court of competent jurisdiction for the breach or default of the provisions of this Agreement by any other party. The non-breaching party or parties shall be entitled to seek all available legal and equitable remedies and relief from the court, including (but not limited to) specific performance injunctive relief, and damages. The prevailing party or parties in any such litigation shall be entitled to an award of reasonable attorneys' fees, expenses, and court costs. Notwithstanding anything in this Agreement to the contrary, the rights and remedies provided herein are cumulative and not exclusive, and the failure of a party to exercise any said right or

remedy shall not be deemed a waiver or release of any other right or remedy of that party or of any breach or default by the other party.

14. LAND RECORDS. Within sixty (60) business days of the Effective Date of Annexation, this Agreement shall be recorded in the Land Records for Montgomery County, Maryland. The City agrees to request a waiver of the recording fees pursuant to Section 3-602 of the Real Property Article of the Code.

15. AUTHORITY. All parties hereto represent and warrant that the individuals executing this Agreement on their behalves have the full and complete authority to execute this Agreement and that the signatures which appear below bind the respective parties to the terms of this Agreement. The City further represents and warrants that it has the legal authority, right, and power to enter into this Agreement and is bound by its terms.

16. APPLICABLE LAW. It is the intention of the parties that all questions with respect to the construction of this Agreement and rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Maryland.

>>>SIGNATURE PAGES TO FOLLOW>>>

IN WITNESS WHEREOF, each of the parties hereto have executed and delivered this Agreement as of the date first set forth above, as evidenced by their respective signatures and acknowledgements hereto.

WITNESS:

DARNESTOWN VALLEY – WHM LP, a Limited Partnership

By: Darnestown Valley, Inc., a Maryland corporation,

Its: General Partner

By: _____

Name: Walter H. Magruder, Jr.
Title: President

DARNESTOWN VALLEY PETROLEUM – WHM LLC, a Maryland limited liability company

By: _____

Name: Walter H. Magruder, Jr.
Title: Managing Member

STATE OF MARYLAND
COUNTY OF MONTGOMERY, TO WIT:

I HEREBY CERTIFY, that on this ____ day of _____, 20__ before me, a Notary Public of the aforesaid State, personally appeared **WALTER H. MAGRUDER, JR., PRESIDENT OF DARNESTOWN VALLEY, INC.**, a Maryland corporation and **GENERAL PARTNER OF DARNESTOWN VALLEY – WHM LP** and managing member of **DARNESTOWN VALLEY PETROLEUM, LLC**, a Maryland limited liability company, who acknowledged himself to be, was known to me (or satisfactorily proven) to be the person whose name is subscribed to the above and acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires:

WITNESS:

THE CITY OF GAITHERSBURG,
A municipal corporation of the
State of Maryland

By: _____
Name: _____
Title: _____

STATE OF

*

to wit:

*

COUNTY OF

*

I HEREBY CERTIFY that on this _____ day of _____, 201__,
before the subscriber, a Notary Public of the State and County aforesaid, personally appeared
_____, known to me to be the person whose name is subscribed to the
within instrument, and did acknowledge that he/she executed the same for the purposes therein
contained, and signed the name in my presence.

IN TESTIMONY WHEREOF, I have affirmed my official seal the date above written.

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

From: [Zyontz, Jeffrey](#)
To: [Trudy Schwarz](#)
Cc: [#CCL.Councilmembers \(Private\)](#); [#CCL.Confidential Aides](#)
Subject: FW: Potomac Valley Shopping Center Annexation - revision to Petition #7089
Date: Thursday, April 14, 2016 2:02:49 PM
Attachments: [20151201_18-338.pdf](#)

Greetings,

The Council reviewed the petition for the Potomac Valley Shopping Center's (Petition #7089) annexation by the City of Gaithersburg when it approved Resolution 18-338 (attached) on December 1, 2015.

I understand that the petition will be amended only to the extent of excluding the M&T Bank property. The limitations on future construction will not change from the details known to the Planning Board and Council when resolution 18-338 was approved. The only change in the revised petition is the exclusion of the M&T Banks property.

Under these circumstances, there is no legal requirement for any additional action on the part of the Council.

Jeff Zyontz, Esq.
Senior Legislative Analyst

Mayor and City Council
X-7089-2015
Ex. 231

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

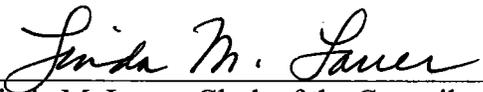
1. The Local Government Article, Section 4-416 of the Annotated Code of Maryland provides that no municipality annexing land may, for a period of five years following annexation, place that land in a zoning classification that permits a land use substantially different from the use for the land specified 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

From: Trudy Schwarz
To: ["Bill and Carol Scott"](#)
Cc: wookylvr2002@yahoo.com; [Naomi Yount \(NaomiYount@Westat.com\)](mailto:NaomiYount@Westat.com); [Steve Gammarino \(steve.gammarino@gmail.com\)](mailto:Steve.Gammarino@gmail.com)
Subject: RE: Magruder Annexation Update- 4-12-2016
Date: Friday, April 15, 2016 9:56:00 AM

Hi Carol,

On Monday, April 18, 2016, the Mayor and City Council (MCC) will only discuss whether to close the record on May 2, 2016. This would mean that they will accept written testimony until 5 PM on May 2, 2016. There will be no testimony taken from the Mayor and City Council on April 18, 2016.

If the MCC agree to close the record, Policy Discussion will be tentatively scheduled on May 16, 2016. At that meeting the MCC will discuss whether or not to approve the annexation. They will not be taking any testimony at that meeting.

Also, please know that the City's MXD zone requires any development proposals to have a public hearing with the Mayor and City Council at the Schematic Development Plan/Preliminary Review and public meeting with the Planning Commission at the Final Site Plan. During these reviews the Mayor and Council and the Planning Commission along with staff evaluate the impact on traffic and propose mitigation measures.

I hope this answers your questions. If you have more, please contact me.

Please note that this is for the Magruder Property (Potomac Valley Shopping Center-South) only.

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
tschwarz@gaithersburgmd.gov
www.gaithersburgmd.gov

inGaithersburg delivers the latest City news every week. [Subscribe online today.](#)

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

From: Bill and Carol Scott [mailto:scott97@comcast.net]
Sent: Friday, April 15, 2016 8:40 AM
To: Trudy Schwarz
Subject: Re: Magruder Annexation Update- 4-12-2016

Hi Trudy,

Thanks for the information. Can you please clarify the process here for me? Your email says it will be "discussed" - what does that mean? At the bottom of the page on the link you provided it says the following:

Mayor and City Council
X-7089-2015
Ex. 232

On Monday, April 18, 2016, the Mayor and City Council will consider closing the record of Annexation X-7089-2015 for the submission of written testimony. Staff is recommending that the record be closed on May 2, 2016 (see Exhibit 228). Comments may be sent to planning@gaitthersburgmd.gov.

Does that mean they will accept comments until May 2 and vote at next month's meeting, or will they be voting on the annexation/rezoning proposal this Mon (4/18)?

Thanks again,
Carol

From: "Trudy Schwarz" <TSchwarz@gaitthersburgmd.gov>
To: "Katie Rapp" <wookyuvr2002@yahoo.com>, "Naomi Yount (NaomiYount@Westat.com)" <NaomiYount@Westat.com>, "Bill and Carol Scott (scott97@comcast.net)" <scott97@comcast.net>, "Steve Gammarino (steve.gammarino@gmail.com)" <steve.gammarino@gmail.com>
Sent: Thursday, April 14, 2016 9:47:35 AM
Subject: Magruder Annexation Update- 4-12-2016

Katie, Naomi, Carol, Steve,

As you know the record for the Magruder Annexation, X-7089-2015 was reopened on March 7, 2016. The City was waiting for documents from one of the property owners in order to finalize the annexation agreement and annexation. Those documents have been received. Please read the attached "Agenda Item Request Form" and view the revised Location Map of the Annexation, which discusses the changes to the annexation. I have attached the revised Annexation Agreement for your convenience, however that Exhibits attached to the agreement are too large to email. They can be viewed on the City's website (link below). They are Exhibits 221 – 226.

Here is a link to the City Project page for this application

<http://www.gaitthersburgmd.gov/government/city-projects/potomac-valley-shopping-center-annexation>

This will be discussed at the **April 18, 2016**, Mayor & City Council meeting at City Hall Council Chambers which starts at 7:30 pm. The agenda for that meeting will be posted on the City's Web site by Friday evening. This item is scheduled towards the end of the meeting under Staff Guidance. There are several items on prior to this item, so I don't plan to arrive until 8:30 pm. This item could be on anytime between 8:45 PM and 9:30 PM. These are estimations of the time.

Steve would you kindly notify the HOA Presidents listed on the letter of December 14, 2015 to Mayor Ashman. Unfortunately, their emails were not listed.

Please email me if you have any questions.
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

tschwarz@gaithersburgmd.gov

www.gaithersburgmd.gov

inGaithersburg delivers the latest City news every week. [Subscribe online today.](#)

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