

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Planning Commission

FROM: Trudy M. Walton Schwarz, Community Planning Director
Gregory Mann, Planner

DATE: October 1, 2015
October 8, 2015 – Amended

SUBJECT: Staff Analysis & Annexation Plan
X-7089-2015 – Potomac Valley Shopping Center
Casey L. Cirner and Stephen J. Orens, Miles & Stockbridge, PC
for Darnestown Valley – WHM LP and Darnestown Valley
Petroleum, LLC

Application for annexation of approximately 8.28 acres of land, known as the Potomac Valley Shopping Center, located at 12110, 12114, 12116, 12118, 12120, 12126, 12130, 12132, 12136, 12140, 12146, 12150, 12154, 12158, 12162, 12166, and 12168 Darnestown Road, and adjacent road rights of way, adjacent to the present corporate limits. The application requests a reclassification of the subject property from the current Montgomery County Neighborhood Retail (NR 0.75) Zone to the Mixed Use Development (MXD) Zone in the City of Gaithersburg, Maryland.

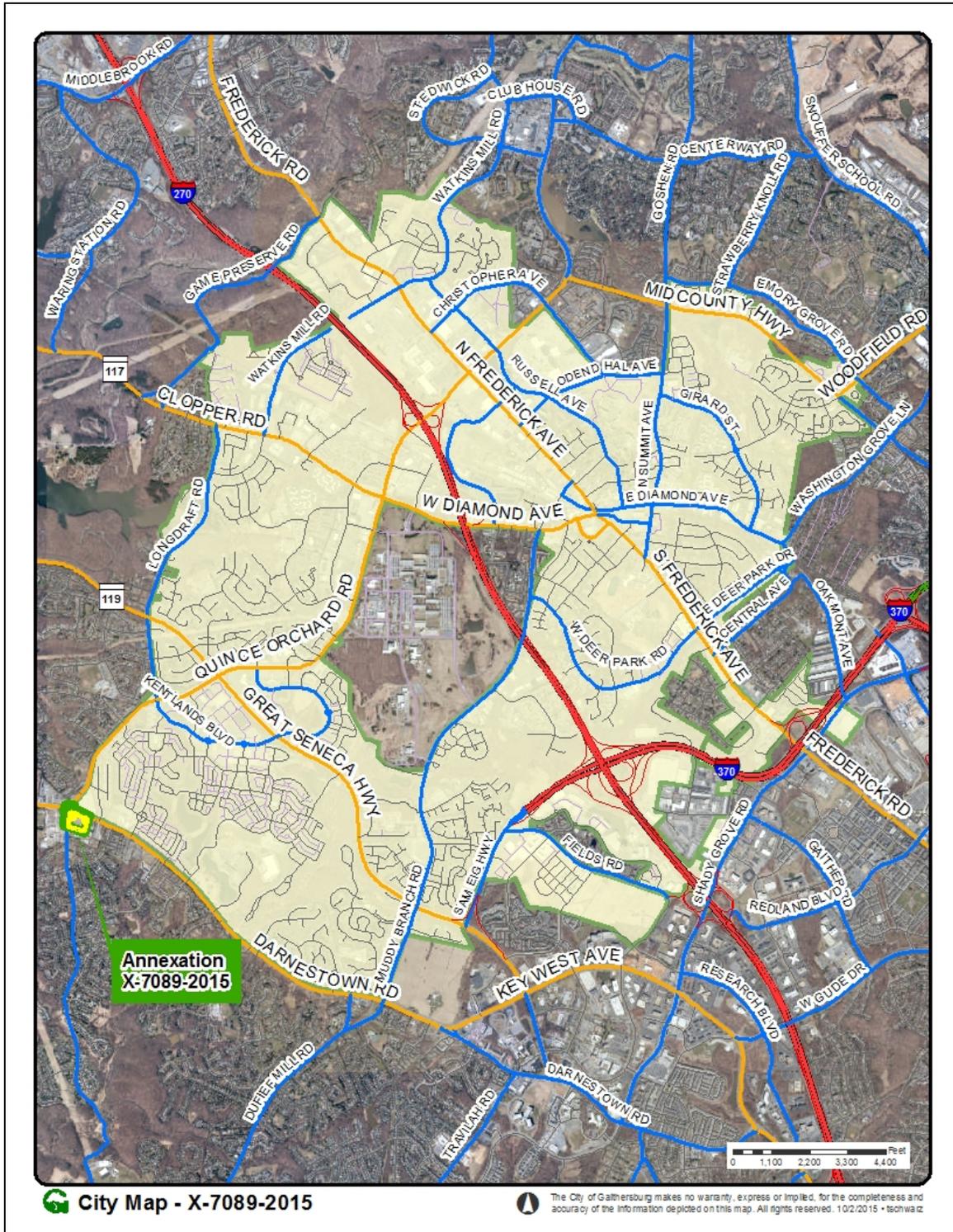
APPLICANT/OWNER:
William P. Magruder, Darnestown Valley – WHM LP and Darnestown Valley Petroleum
WHM, LLC
12165 Darnestown Road
Gaithersburg, MD 20878

APPLICANT'S REPRESENTATIVE:
Stephen J. Orens and Casey L. Cirner, Miles & Stockbridge, PC
11 N. Washington Street, Suite 700
Rockville, MD 20850

TAX MAP REFERENCE:
Tax Sheet: ES 562
Tax Parcel ID Numbers: 06-00401632, 06-00401643, 06-02300505

LOCATION:

The subject property is located at the southeast quadrant of the intersection of Darnestown Road (Maryland Route 28) and Quince Orchard Road (Maryland Route 124).



The petition requests the annexation of approximately 8.2877 acres of land, consisting of three (3) parcels and two (2) road rights-of-ways (ROW). The areas of annexation consist of Parcel C and parts of Parcel D and F comprised of approximately 4.6734 acres of land. The petition further includes 2.3209 acres of ROW for Darnestown Road (Maryland 28) and 1.2934 acres of ROW for Quince Orchard Road (Maryland 124). The roadways and parcels are adjacent and contiguous to the current City limits. Should the properties be annexed into the City the roadways would continue to be maintained by the Maryland State Highway Administration (SHA).



Exhibit 8 - Location Map

BACKGROUND:

The Applicants, Darnestown Valley-WHM, LP and Darnestown Valley Petroleum WHM, LLC, have submitted a petition for annexation, X-7089-2015, to the City. As part of the annexation request, the Applicant is requesting a rezoning from the Neighborhood Retail (NR 0.75) Zone to the City of Gaithersburg Mixed Use Development (MXD) Zone.

The Local Government Article and Land Use Article of the *Maryland Annotated Code and Chapter 24 (Zoning) of the City of Gaithersburg Code* outline the process and requirements for a proposed annexation. The Planning Commission is required to review

the proposed annexation and associated rezoning and land use plan for consistency with the City's Master Plan, and provide a recommendation to the Mayor and City Council at least 15 days prior to the required Mayor and City Council public hearing¹. The Mayor and City Council are required to hold a public hearing prior to making a final decision on the requested annexation and zoning. The public hearing before the Mayor and City Council is scheduled for November 16, 2015.

EXISTING LAND PHYSICAL CHARACTERISTICS AND NATURAL RESOURCES INVENTORY/FOREST STAND DELINEATION:

As part of this application, the Applicant has submitted a previously approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) plan (ENV-1195-2012)². This roughly rectangular site, which is located at the corner of Quince Orchard Road and Darnestown Road, is a currently improved site containing a retail strip center, three (3) standalone commercial pad sites and a gas station.

According to the approved NRI/FSD, there are four (4) specimen trees on the properties with a diameter of 24 inches or more. Additionally, there are no rare, threatened, or endangered species observed, identified or known to occur on the properties, and the properties do not contain any floodplains, wetlands, highly erodible, unsuitable, and unsafe soils, steep slopes, or cultural or historic features.

MASTER PLAN HISTORY:

Montgomery County Master Plan

The subject properties are part of the *Montgomery County Potomac Subregion Master Plan*³, located within the North Potomac Community Area. The *Potomac Subregion Master Plan*, which was approved and adopted in 2002, made no specific recommendations for the subject parcels.

Darnestown Road (between Riffle Ford Road and Muddy Branch Road), as discussed in the Transportation portion of the *Potomac Subregion Master Plan*, is master planned as a major highway road with a ROW of 120 feet. Further, Quince Orchard Road (between Dufief Mill Road and Darnestown Road) is master planned as an arterial road with a ROW of 80 feet. Both roadways currently meet or exceed the required rights-of-way. Should the properties be annexed into the City, the roadways would continue to be maintained by Maryland SHA.

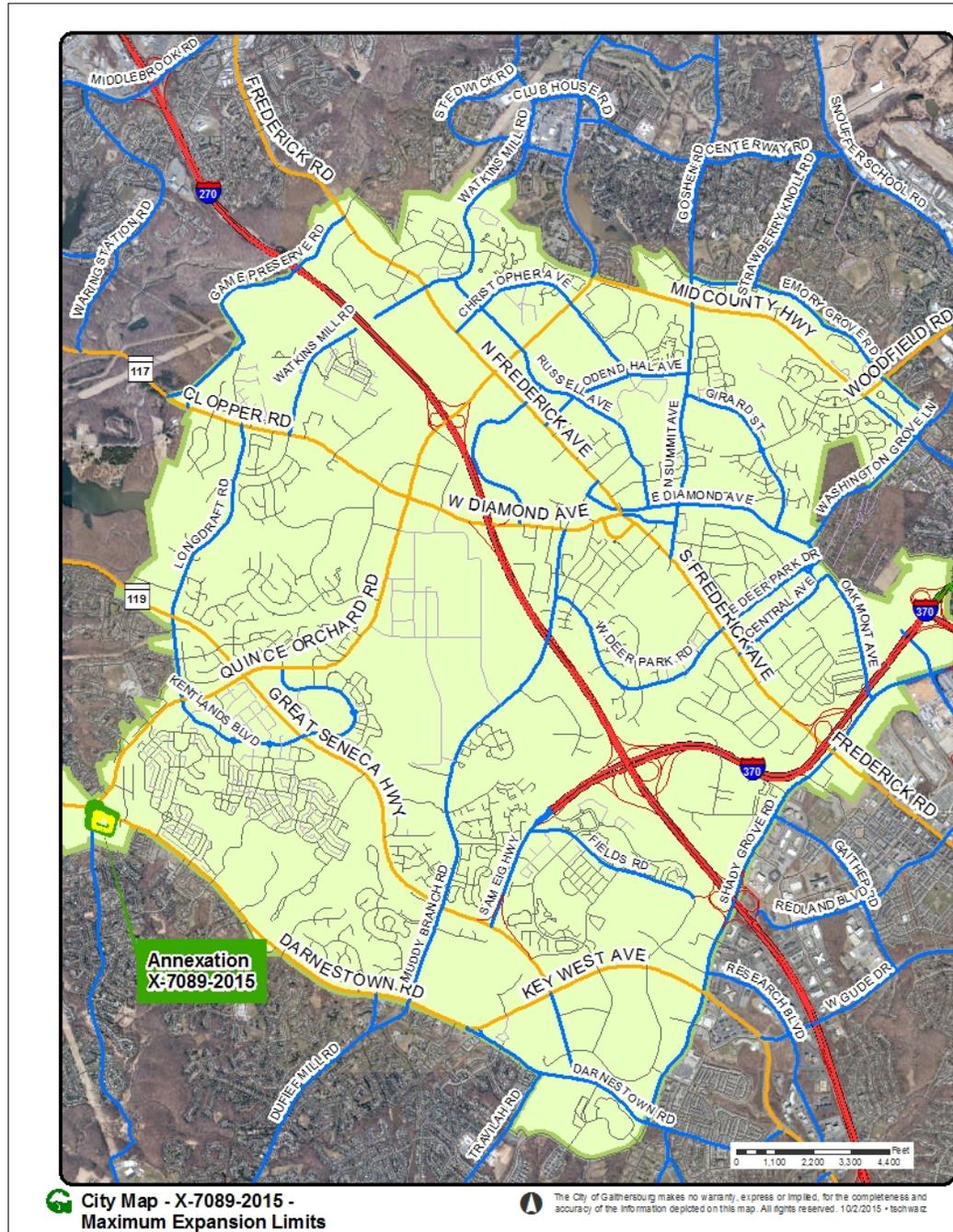
¹ Section 24-9 Gaithersburg City Code

² Exhibit 2-N – Natural Resources Inventory

³ Exhibit 2-L – Excerpts from Montgomery County 2002 Potomac Subregion Master Plan

City of Gaithersburg

The subject properties were not identified within the 1997 *City of Gaithersburg Master Plan* or the 2003 *City of Gaithersburg Master Plan Land Use Element*. However, the 2003 *City of Gaithersburg Master Plan Municipal Growth Element* (adopted 2009) did identify this area within the City's maximum expansion limits (MEL)⁴.



⁴ Exhibit 2-J – Excerpts from the 2003 *City of Gaithersburg Master Plan Municipal Growth Element*

The subject properties are included in the 2009 *City of Gaithersburg Master Plan Land Use Element* as map designation 17⁵ which recommends, if annexed, zoning the property MXD (Mixed Use Development) and adopting the Commercial-Office land use designation. The 2009 *Master Plan* further states:

“This 4.7-acre area includes parcels that are located within the City’s Maximum Expansion Limits, are contiguous with the City’s current boundary, and could be annexed without creating an enclave. The property owner has expressed interest in having the land annexed into the City. The property is currently surrounded by a mix of commercial and institutional uses.”

Applicable Strategic Direction: Planning, Economic

Land Use and Zoning Actions:

- *Adopt Commercial -Office land use designation, if annexed*
- *Recommend MXD Zoning, if annexed⁶*

The 2009 *City of Gaithersburg Master Plan Transportation Element* describes both Darnestown Road (between Muddy Branch Road and Quince Orchard Road) and Quince Orchard Road (between Darnestown Road and Twin Lakes Drive) as major arterial roads with a ROW of 120 feet. As mentioned previously, roadways would continue to be maintained by the Maryland SHA, should the property be annexed into the City.

The 2009 *Process and Overview Element*, while not making specific recommendations for this property, did establish the following Guiding Strategies that are applicable to this petition:

- Explore opportunities for those areas located within the City’s Maximum Expansion Limits.
- Limit new development where public utilities, facilities, and services cannot be established without unduly burdening the existing service provision or users.
- Focus redevelopment opportunities on underutilized sites
- Include a mix of uses to create seven days a week activity with a balanced mix of commercial and residential uses
- Limit new development where public utilities, facilities, and services cannot be established without unduly burdening the existing service provision or users. Continue to enforce the Adequate Public Facilities Ordinance (APFO) and update requirements periodically, if needed
- Adhere to the tenets of New Urbanism with aesthetic considerations in accordance with the urban design policies within the Master Plan – Smart Growth Policy Document for new housing development and re-development.

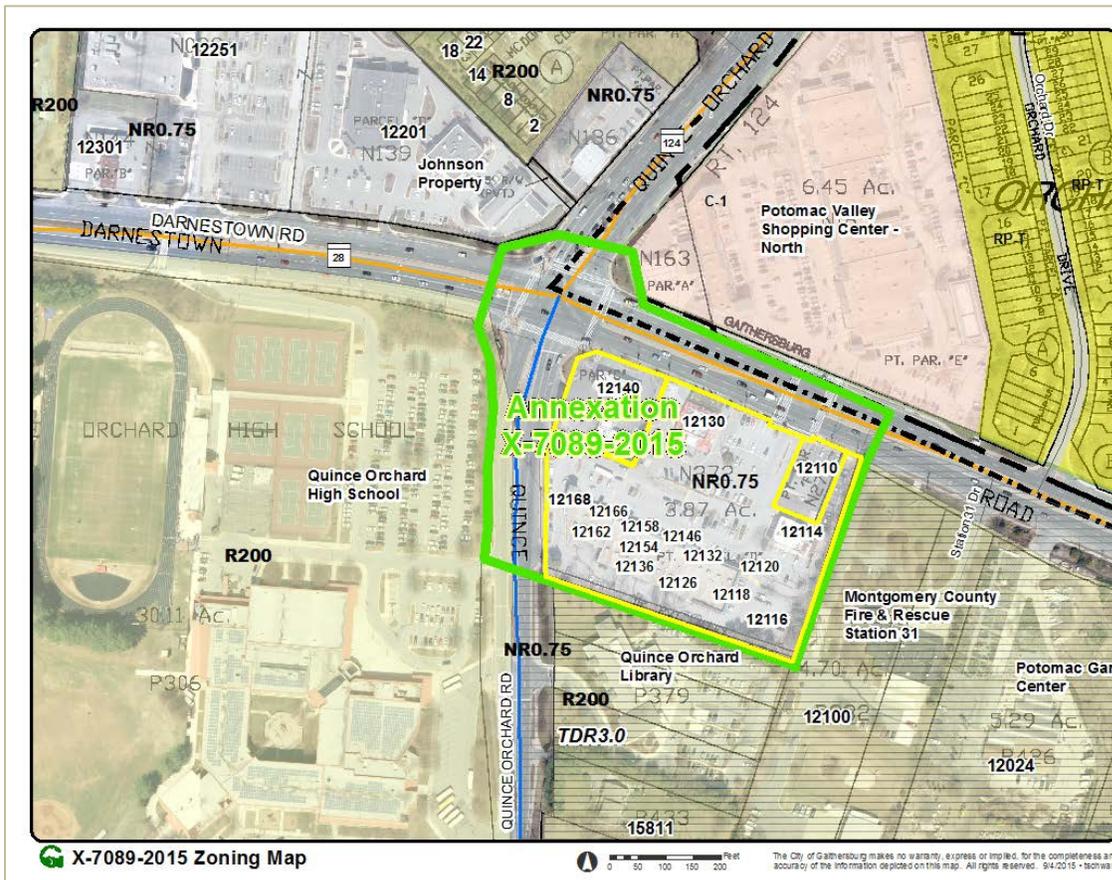
⁵ Exhibit 2-J – Excerpts from the 2009 *Land Use Element of the City of Gaithersburg Master Plan*

⁶ Modified from original Staff Analysis to correct recommended Zoning designation per *Land Use Master Plan*

- Incorporate the City’s Smart Growth Principles to encourage high quality development and redevelopment. Thoughtful design techniques should be considered to protect natural resources, utilize existing infrastructure, and promote traditional neighborhood design.

SURROUNDING LAND USES AND ZONING:

The surrounding neighborhood consists of a variety of commercial and institutional land uses. Potomac Valley Shopping Center North, which is located within the City of Gaithersburg, is located to the north of the property and is zone C-1 (Local Commercial). The properties located to the east, west, and south are all located within Montgomery County and are zoned R-200. The R-200 area to the south and the east has been identified as a receiving area Transfer of Density Rights for three units (TDR-3), meaning that the property was developed at a greater density than what is allowed in the R-200 Zone. The surrounding properties consist of the Rockville Volunteer Fire Department to the east, the Quince Orchard Library to the south, and Quince Orchard High School to the west.



ZONING:

Existing Montgomery County Zoning

The subject property is currently zoned Neighborhood Retail - NR 0.75 H-45 in Montgomery County⁷.

Substantial Change

Pursuant to Local Government Article of the *Maryland Annotated Code*, Subtitle 4-400, Subsection 4-416(b) states:

“Without the express approval of the ... 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

City Staff will be working with the Maryland-National Capital Park and Planning Commission (MNCPPC) – Montgomery County Planning Department (MCPD), to evaluate the proposed annexation and zoning.

Proposed City Zoning

The Applicant has requested that the subject properties, if annexed into the City, be zoned MXD. It is the objective of this zone to establish procedures and standards for the implementation of the Master Plan Land Use recommendations for comprehensively planned, multi-use projects. It is also intended that this zone provide a more flexible approach to the comprehensive design and development of multi-use projects than the procedures and regulations applicable under the various conventional zoning categories. In so doing, it is intended that this zoning category be utilized to implement existing public plans and pertinent City policies in a manner more closely compatible with City plans and policies than may be possible under other zoning categories. The specific purposes of this zone as listed in Section 24-160D.1 of the City Code as:

(a) To establish standards and procedures through which the land use objectives and guidelines of approved and adopted master plans can serve as the basis for evaluating an individual development proposal, as well as ensuring that development proposed will implement the adopted master plan and other relevant planning and development policies and guidelines for the area considered for MXD zoning.

⁷ Exhibit 2-K – Montgomery County Certified Zoning Map

(b) To encourage orderly, staged development of large scale comprehensively planned multi-use developments by providing procedures for various zoning and plan approvals, including development phasing.

(c) To encourage design flexibility and coordination of architectural style of buildings and signage.

(d) To ensure the integration and internal and external compatibility of applicable residential and nonresidential uses by providing a suitable residential environment that is enhanced and complemented by uses such as commercial, recreational, open space, employment and institutional uses and amenities within a multi-use development. A multi-use development is defined as a single parcel or a group of contiguous parcels of land zoned MXD which, among the various parcels comprising that contiguous area, include residential, commercial, recreational, open space, employment and institutional uses and amenities.

(e) To assure compatibility of the proposed land uses with internal and surrounding uses by incorporating higher standards of land planning and site design than could be accomplished under conventional zoning categories and to provide a superior quality of development exceeding that which could be achieved under conventional zoning regulations and procedures.

(f) To encourage the efficient use of land by: locating employment and retail uses convenient to residential areas; reducing reliance upon automobile use and encouraging pedestrian and other nonvehicular circulation systems; retaining and providing useable open space and active recreation areas close to employment and residential populations; and providing for the development of comprehensive nonvehicular circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas, and public facilities.

(g) To provide a superior natural environment by the preservation of trees, natural topographic and geologic features, wetlands, watercourses and open spaces.

(h) To allow development only in a phased or staged fashion to ensure the adequacy of the provision of public facilities and the concurrent implementation of community amenities.

Additionally, the MXD allows a commercial/employment density of up to a Floor Area Ratio (FAR) of 0.75, similar to what is allowed in Montgomery County's NR 0.75 Zone.

PUBLIC FACILITIES:

The City of Gaithersburg's Adequate Public Facilities Ordinance (APFO) establishes requirements related to water and sewer service, emergency services, traffic impacts, and school capacity that must be met for development to occur. As the APFO relates to annexations, Section 24-244 of the City Code states:

"This article [XV. Adequate Public Facilities] shall not apply to any development that has received schematic development plan approval, preliminary site plan approval, or final site plan approval prior to the effective date of this article. Additionally, when a property is subject to an annexation agreement, any provision of this article that is contrary to the annexation agreement shall not be applicable."

Water and Sewer Service:

The subject property currently has Washington Suburban Sanitary Commission (WSSC) water and sewer categories of W-1 and S-1, respectively. These category designations mean the property is currently served by both water and sewer service and any development could expand those services. Further, the *2003 Municipal Growth Element* and the *2009 Water Resources Element* both affirmed that there is sufficient water and sewer supply capacity for growth area developments within the City's approved Maximum Expansion Limits. The Applicant is proposing to keep the current use type on the property. Therefore, the job demand should continue to be maintained. Future density for a mixed use development will be evaluated at the time of redevelopment of the property. The current development proposal to maintain the existing building footprints and use types with some modifications has sufficient water and sewer capacity. There is also sufficient water and sewer capacity for additional future development of the property.

Emergency Services:

The City's APFO requires that any development project be served by at least two (2) fire stations with a ten (10) minute response time. The Potomac Valley Shopping Center property is within the ten (10) minute response areas of Montgomery County Department of Fire and Rescue Services Stations 31 (immediately adjacent to the property on Darnestown Road), 8 (Montgomery Village Avenue) and 32 (Travilah).

Traffic

The City's Traffic Impact APFO states that applications for development approvals shall be subject to the adopted Gaithersburg Traffic Impact Study Standards regulations⁸. It further states that no application for development approval shall be approved unless it complies with the requirements of Traffic Impact Study Standards regulations, or the Applicant has obtained a determination from staff that the standards are not applicable to the Applicant's proposed development. The adopted Traffic Impact Study Standards require a traffic impact study (TIS) for any new development or redevelopment that generates thirty (30) or more total weekday trips in the AM and/or PM peak hours⁹. The Traffic APFO is evaluated at Schematic Development Plan application. At this time, the Applicant is proposing to continue the existing use on the site.

Schools

The subject property lies within the Quince Orchard Cluster of the Montgomery County Public School (MCPS) system, which includes the following schools: Rachael Carson Elementary, Lakelands Park Middle School, and Quince Orchard High School. The current plan does not propose any housing on this property. Any future plans, should they include any residential use, would need to comply with the City's requirement for adequate school capacity.

PROPOSED USE / SITE PLAN:

Current Site Plan - The Applicant is proposing to continue using the existing shopping center¹⁰ as a commercial site (including the following uses: retail, restaurant, gas station, office (including medical office), and instructional uses (such as a driving school, dance studio or other similar uses). The property proposed for annexation contains a strip shopping center and four "pad sites" which include a gas station, two fast-food restaurants, and a bank. The total site includes 39,097 square feet of commercial uses. The property contains 238 parking spaces. Using the City's parking ordinance, 166 parking spaces are required for the center.

⁸ Section 24-245

⁹ Regulation 01-07

¹⁰ Exhibit 2-S –Existing Conditions



Two Story Retail/Office/Driving School



Retail Shops

Future Use - Sketch Plan – The Applicant has submitted as part of the Annexation Petition a Sketch Plan¹¹ as required for MXD Zoned properties. This sketch plan proposes future development to include two components:

- Commercial Focus – Designated in Pink
- Office/Commercial – Designated in Orange

The Applicant has defined Commercial Uses to include the following uses: retail, restaurant, gas station, office, dance studio, instructional uses such as a driving school, dance studio or other similar uses.)

¹¹ Exhibit 2-R – Zoning Sketch Plan

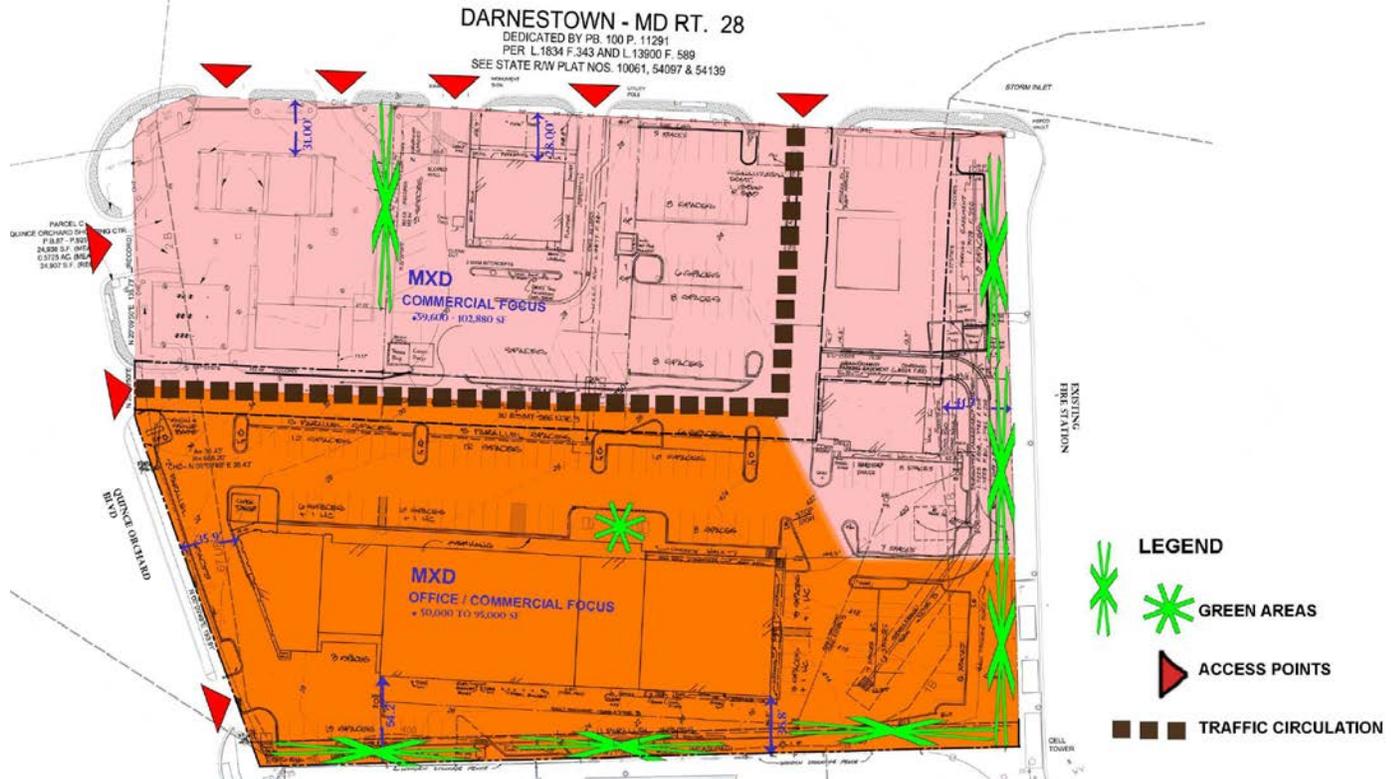


Exhibit 2-R – Sketch Plan

The Plan proposes a maximum Floor Area Ratio (FAR) of 0.75 for the site¹². This calculates to a development capacity of 197,847 square feet. The plan also proposes a minimum of twenty percent (20%) of Green Space. Additionally the plan limits the building height to five stories.

ANNEXATION PLAN

Section 4-415 of the Local Government Article of the *Maryland Annotated Code* requires that a municipality adopt an annexation plan in addition to the annexation resolution. Annexations must be consistent with the City of Gaithersburg’s Municipal Growth Element (see section 4-415(c)). Staff concurs with the Applicant’s Annexation Plan¹³ some of which has been already discussed in this report and recommends the following:

Land Use Patterns:

The Potomac Valley Shopping Center (South) is currently improved with a retail strip center and pad sites that consists of commercial, office, medical, automobile filling station, instructional, restaurant, retail and financial institutional uses. Annexation of the Subject Property is consistent with the Municipal Growth Element of the City of Gaithersburg’s

¹² Amended portion of Staff Analysis

¹³ Exhibit 3 – Annexation Plan

Comprehensive Plan because the Subject Property is included within the City's Maximum Expansion Limits. The proposed zoning classification for the Subject Property is MXD, Mixed Use Development. The proposed MXD zone is recommended for the Subject Property in the Land Use Element of the City of Gaithersburg's Comprehensive Plan, and therefore consistent with the land use pattern envisioned by the City. The Land Use Element provides that:

"This 4.7-acre area includes parcels that are located within the City's Maximum Expansion Limits, are contiguous with the City's current boundary, and could be annexed without creating an enclave. The property owner has expressed interest in having the land annexed into the City. The property is currently surrounded by a mix of commercial and institutional uses."

Applicable Strategic Direction: Planning, Economic

Land Use and Zoning Actions:

- *Adopt Commercial -Office land use designation, if annexed*
- *Recommend CD or MXD Zoning, if annexed*

Public Services and Facilities:

As mentioned previously in the Adequate Public Facilities review, the subject property of the annexation is assigned WSSC water and sewer categories of W-1 and S-1, respectively. The site is currently served by public water and sewer services, thereby eliminating the need for the extension and provision of such services by the municipality, or in this case, the Washington Suburban Sanitary Commission.

Montgomery County is responsible for providing public libraries to the County, including the City of Gaithersburg. Although the Subject Property is recommended for non-residential uses, it adjoins the Montgomery County Public Libraries Quince Orchard branch and will certainly be utilized by employees and customers of the property.

The City of Gaithersburg has its own Police Department and through a memorandum of understanding, the Montgomery County Police Department also serves the City of Gaithersburg. Following the annexation, the City of Gaithersburg Police Department will extend services to the Subject Property and the abutting right of way.

The Montgomery County Fire and Rescue Service ("MCFRS") provides fire protection and emergency services to the City of Gaithersburg. As mentioned previously, the Potomac Valley Shopping Center property is within the ten (10) minute response areas of MCFRS Stations 31 (immediately adjacent to the property on Darnestown Road), 8 (Montgomery Village Avenue) and 32 (Travilah). This service will continue to be provided to the property following annexation.

The property is serviced by State Roads, Maryland Routes 28 and 124. These roadways would continue to be maintained by Maryland SHA should the property be annexed into the City.

Cost to the City for Providing Services and Extension of Services

The extension of municipal services to the Subject Property will begin upon annexation. The cost to the City for providing the services to the Subject Property is contemplated within the Maximum Growth Element of the City's Master Plan and included as part of the City's Budget process.

Municipal Growth Element

As mentioned above, the proposed annexation is discussed in the 2003 *City of Gaithersburg Master Plan Municipal Growth Element* (adopted 2009). This document identified this area within the City's Maximum Expansion Limits (MEL) and part of its Growth Areas.

Stormwater Management

The Applicant will be required to comply with the City's Stormwater Management requirements to the maximum extent practicable. This will be part of any development review process for expansion or redevelopment.

Conclusion:

The City of Gaithersburg is a State-designated Priority Funding Area. As such, the City is recognized as having existing infrastructure that would support future development and redevelopment. Future infrastructure needs within the City's designated Growth Areas will be financed through a combination of public and private funds without undue burdens on City residents. The City of Gaithersburg will remain financially stable during future growth periods by coordinating with private developers, Montgomery County, and other agencies that fund public infrastructure. The City with its partners has adequate infrastructure public facilities and financial security to support the annexation of the subject area proposed for annexation.

STAFF RECOMMENDATION AND FINDINGS:

Staff finds that the proposed petition for annexation, X-7089-2015, complies with the City's Master Plan. The annexation will further the City's stated 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. Additionally, staff supports the proposed annexation as it increases area in the City for jobs, which assists in balancing the Jobs to Housing Ratio. The proposed annexation, as identified in the City's adopted Maximum Expansion Limits, will conform to City's municipal growth boundary. Lastly, the proposed

annexation will be not unduly burden existing public facilities as outlined in the Annexation Plan.

The Local Government Article and Land Use Article of the *Maryland Annotated Code and Chapter 24 (Zoning) of the City of Gaithersburg Code* outline the requirements and process for a proposed annexation. The Planning Commission is required to review the proposed annexation and associated rezoning and land use plan for consistency with the City's master plan and adequacy of public facilities, and provide a recommendation to the Mayor and City Council at least 15 days prior to the required Mayor and City Council public hearing. The public hearing before the Mayor and City Council is tentatively scheduled for November 16, 2015.

Staff recommends that the Planning Commission holds their record open for 8 days until 5:00pm on October 15, 2015, and provide a formal recommendation on the annexation petition and annexation plan on October 21, 2015 (fifteen days prior to the Mayor and City Council Hearing.)