

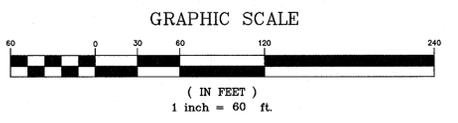
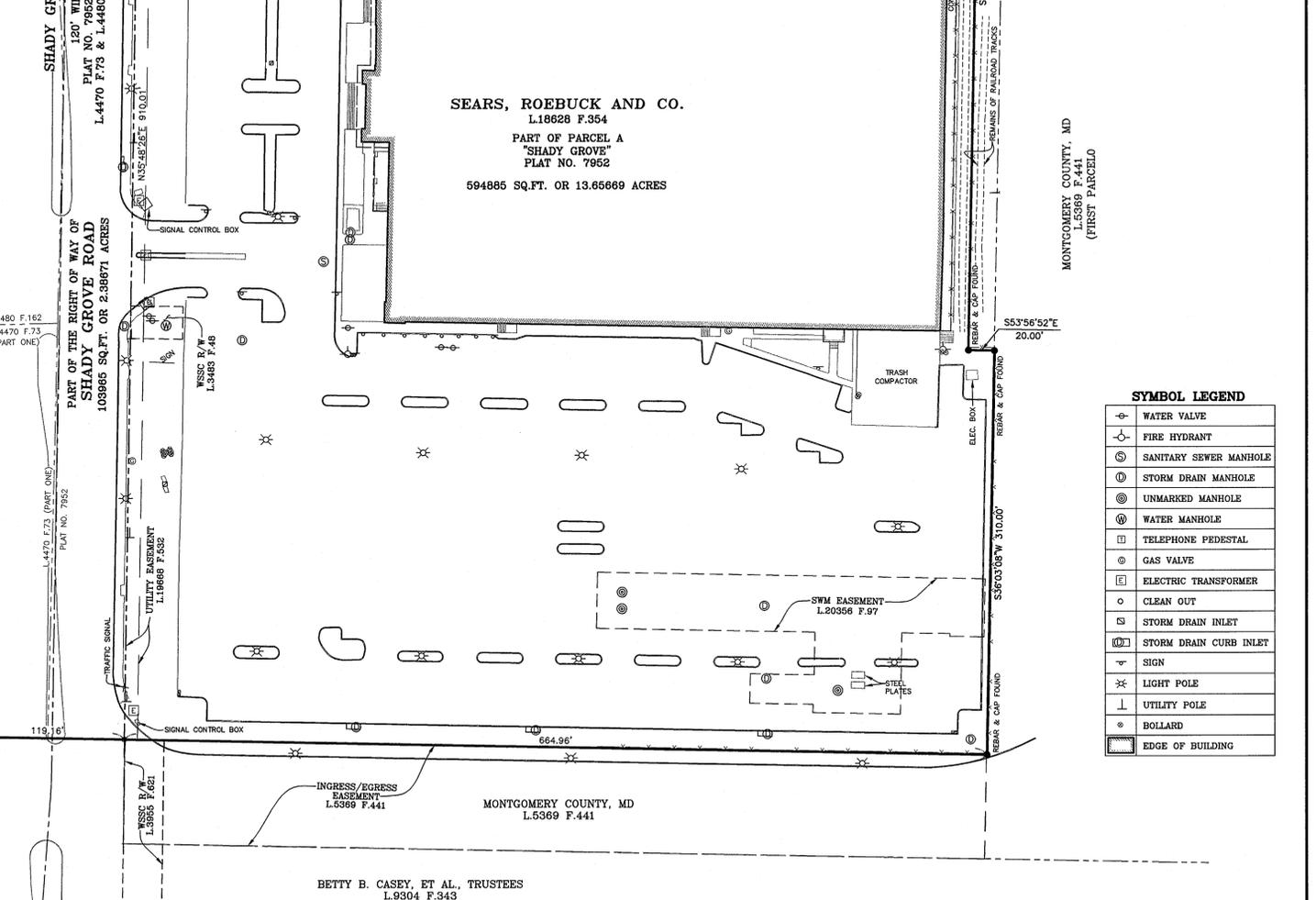
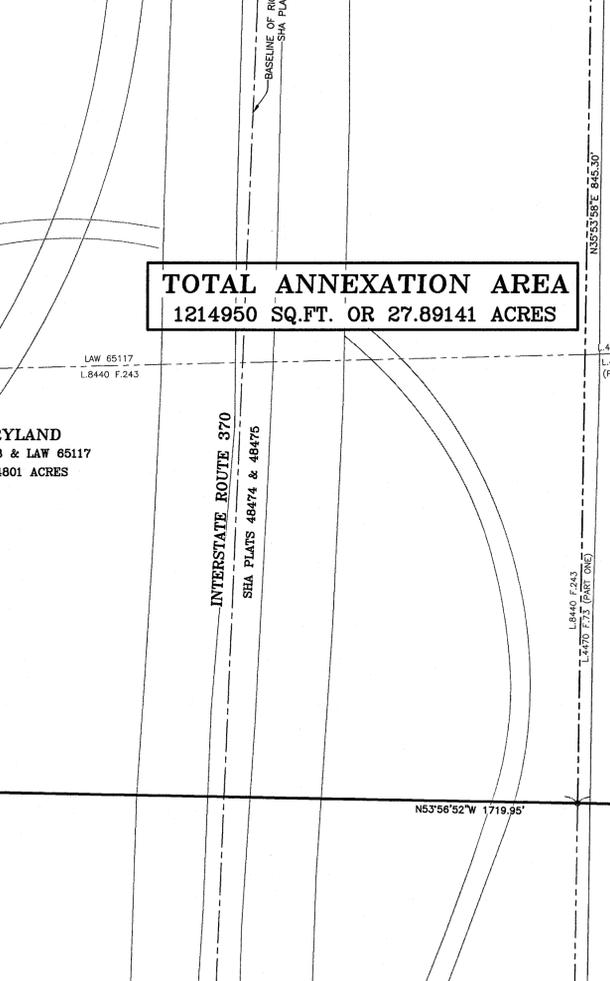
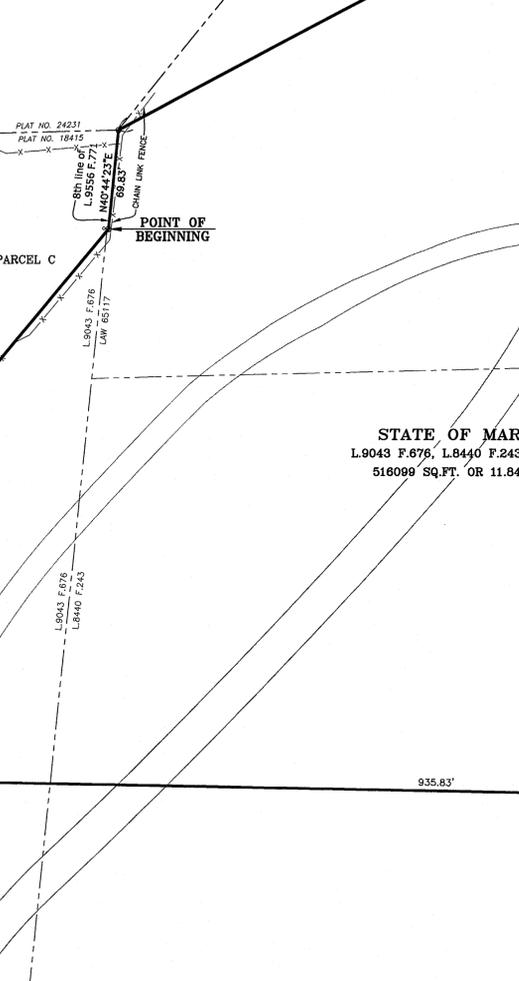
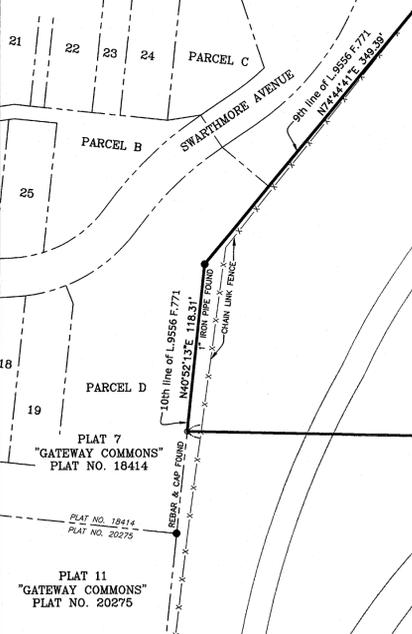
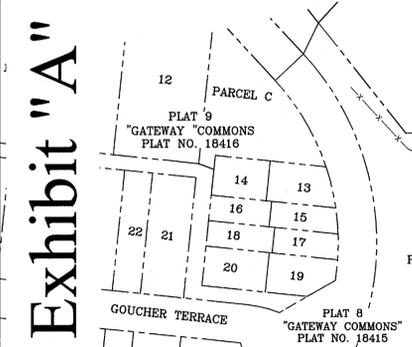
Surveyor's Certificate

I hereby certify that this Annexation Plat is correct; that it is a boundary survey of part of Parcel A as shown on a plat of subdivision entitled "Parcel A - Sears Addition to Shady Grove" and recorded among the Land Records of Montgomery County, Maryland as Plat Number 7952; part of the right of way for Interstate Route 370 as shown on State of Maryland - Department of Transportation - State Highway Administration - State Roads Commission Right of Way Plats Numbered 48474 and 48475; and part of the right of way for Shady Grove Road. Parcel A - Sears Addition to Shady Grove being all of the property acquired by Sears, Roebuck and Co., a New York corporation, from Consortium One, L.P., a Delaware limited partnership, Marc F. Solomon, David B. Fink, Susan H. Fink, and Solomon Family Limited Partnership, by a deed dated December 6, 2000 and recorded among the Land Records of Montgomery County, Maryland in Liber 18628 at folio 354. The right of way for Interstate Route 370 being 1) part of the property acquired by the State of Maryland, to the use of the State Highway Administration of the Department of Transportation, from Robert Huyett Teunis, Betty Lu Teunis, Ralph Dewey Teunis, Jr., and Doris Douglas Teunis by a deed dated September 20, 1989 and recorded among the Land Records of Montgomery County, Maryland in Liber 9043 at folio 676; 2) part of the property acquired by State Roads Commission of the State Highway Administration, acting for and on behalf of the State of Maryland, from Betty Brown Casey, Sole Surviving Trustee of the Betty Brown Casey Trust, et al, by consent inquisition in the Circuit Court for Montgomery County, Maryland and recorded among the Land Records of Montgomery County, Maryland in Liber 8440 at folio 243; and 3) part of the property acquired by the State Roads Commission of the State Highway Administration acting for and on behalf of the State of Maryland, from Kenneth O. Peters as described in a Writ of Possession, Law No. 65117, dated April 4, 1985 and filed in the Circuit Court for Montgomery County, Maryland. The right of way for Shady Grove Road being 1) all of the land dedicated to public use as shown on the aforementioned Plat Number 7952; 2) part of the property acquired by Montgomery County, Maryland from Virginia K. Casey Vianich by a deed dated October 24, 1973 and recorded among the Land Records of Montgomery County, Maryland in Liber 4470 at folio 73; and 3) all of the property acquired by Montgomery County, Maryland from Kenneth O. Peters and Ethel E. Peters by a deed dated December 10, 1973 and recorded among the Land Records of Montgomery County, Maryland in Liber 4480 at folio 162.

The undersigned, being a licensed surveyor, personally prepared or was in responsible charge of the preparation and the survey work reflected in this boundary survey, in compliance with the requirements set forth in "COMAR" Title 09, Subtitle 13, Chapter 06, Regulation 12.

Vicinity Map: 1" = 1000'

- Notes:**
- This survey is in the Maryland Coordinate System (NAD 83/91, SPCS Zone 1900, US feet), based on GPS and conventional survey measurements. Controlling stations are Washington Suburban Sanitary Commission NAD 83 Traverse Stations 19963 and 20332. Average project elevation is 520 US feet, and the average combined scale/elevation factor for the site is 0.99993951. Station 19963: North 527366.301 / East 1265750.290 Station 20332: North 533644.946 / East 1261566.309
 - Adjoining property information is from Maryland Department of Assessment and Taxation records.
 - Physical features within Parcel A - Shady Grove, the curb lines of Shady Grove Road along the frontage of Parcel A, and fences along the perimeter of the property surveyed were field located by Rodgers Consulting, Inc. Paved areas within the right of way of Interstate Route 370 and the median and northerly curb lines on Shady Grove Road were digitized from aerial photography and are shown for reference only.
 - This survey was prepared with the benefit of an owner's policy of title insurance for Parcel A - Sears Addition to Shady Grove, prepared by Commonwealth Land Title Insurance Company, dated December 14, 2000 and having Policy Number 00-000220. Title reports were not furnished for the State of Maryland properties.



| REVISION | DATE | REVISION | DATE |
|----------|------|----------|------|
| | | | |
| | | | |
| | | | |

PREPARED FOR:
Sears Holdings
c/o Dept. 36475 B2-112A
3333 Beverly Road
Hoffman, IL 60179-0001

Boundary Survey and Annexation Plat

RODGERS
CONSULTING

Knowledge • Creativity • Enduring Values

19847 Century Boulevard
Suite 200
Germantown, Maryland 20874
Ph: 301.948.4700 (Main)
Ph: 301.253.6509 (Frederick)
F: 301.948.6256
www.rodgers.com

| BY | DATE |
|-----------|-------------|
| BASE DATA | FIELD 09/11 |
| DESIGNED | TPQ 10/11 |
| DRAWN | AEW 10/11 |
| REVIEWED | TPQ 10/11 |

RODGERS CONTACT:
RELEASE FOR _____
BY _____ DATE _____

Properties Acquired By
**Sears, Roebuck and Co., The State of
Maryland, and Montgomery County, Maryland**

Including Part of the Dedicated Right of Way of Shady Grove Road
Gaithersburg (9th) Election District, Montgomery County, Maryland

SCALE: 1" = 60'
JOB No. 1123A
DATE: OCT. 2011
SHEET No. 1 OF 1



CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877
Telephone: 301-258-6330

NOTICE OF PUBLIC HEARING

The City of Gaithersburg Mayor and Council will conduct a public hearing at the time and place noted below.

Meeting: MAYOR AND CITY COUNCIL
Application Type: ANNEXATION
File Number: X-184
Location: 16331 & 16401 SHADY GROVE ROAD
Applicant: SEARS, ROEBUCK AND COMPANY,
Development: RETAIL AND WAREHOUSE DEVELOPMENT
Day/ Date/Time: MONDAY, MAY 21, 2012
Place: COUNCIL CHAMBERS, GAITHERSBURG CITY HALL
31 SOUTH SUMMIT AVENUE

*****IMPORTANT *****

This is a proposal to annex 27.89 acres of land adjacent to the present corporate limits, known as the Sears Property, located at 16331 & 16401 Shady Grove Road. The application requests a reclassification of the subject property from the current Montgomery County Research and Development (R&D) Zone to the Mixed Use Development (MXD) Zone in the City of Gaithersburg, Maryland. This is an opportunity to publicly participate, other than providing written testimony, which must be submitted before the public hearing record closes. Contact the Planning and Code Administration City Planner (listed below) at (301) 258-6330 if you should have any questions and/or to learn more about this process and your ability to offer testimony and input.

View Mayor and City Council and Planning Commission meetings live on Gaithersburg Television, Comcast Channel 13 within the City limits, or via streaming video at www.gaithersburgmd.gov/tv. Meetings are rebroadcast for one week on television, and are archived within 24 hours for viewing at any time on the City's website.

CITY OF GAITHERSBURG

By: 

Trudy Schwarz, Community Planning Director
Planning and Code Administration

SEE LOCATION MAP ON REVERSE SIDE

Mayor and City Council
X-184
Exhibit #33

NOTICES SENT THIS 14th DAY OF MARCH, 2012, TO:

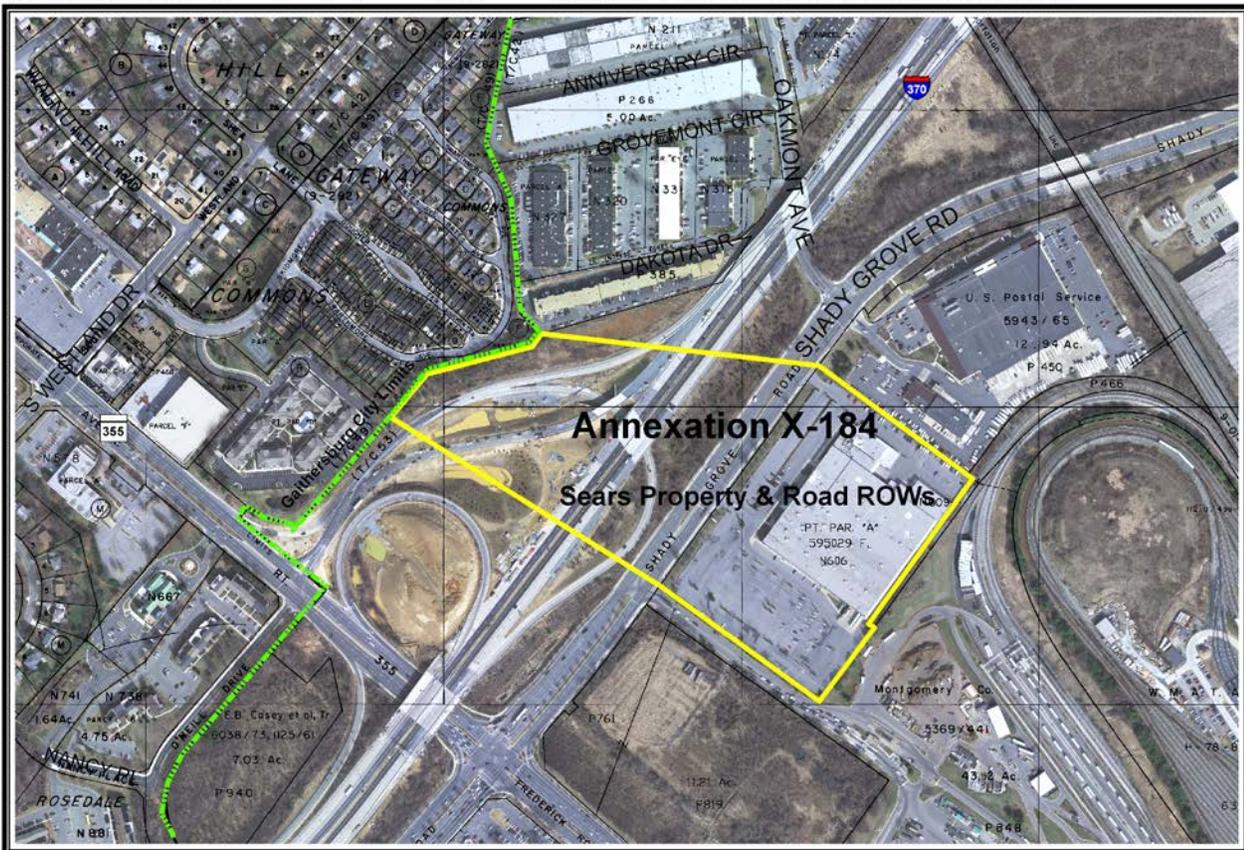
APPLICANT AND INTERESTED PARTIES

(A list of interested parties and agencies is available in the file in the Planning and Code Administration.)

MAYOR AND COUNCIL

PLANNING COMMISSION

LOCATION MAP





March 14, 2012

The Honorable Isiah Leggett
Montgomery County Executive
101 Monroe Street, 2nd Floor
Rockville, Maryland 20850

Re: X-184 - Sears Property Annexation to the City of Gaithersburg

Dear Mr. Leggett:

The City of Gaithersburg has received a petition for annexation for the Sears Property and public rights of way located at 16331 and 16401 Shady Grove Road. This letter serves as official notification, as required by Article 23A, that the Mayor and City Council is tentatively scheduled to hold a public hearing regarding the proposed annexation on May 21, 2012. In accordance with Article 23A, advertising for the public hearing will begin on April 4, 2012. Attached is a copy of the official public notice, the outline for extension of public facilities, and the annexation plan.

The subject property encompasses approximately 27.89 acres of land. The annexation petition includes a development plan that includes the existing development of 204,490 square feet. You may contact me or Lauren Pruss with any questions you may have regarding the application.

Sincerely,

Trudy M. Walton Schwarz, CFM
Community Planning Director
Planning and Code Administration

TWS/mg

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098
301-258-6300 • FAX 301-258-6149 • TTY 301-258-6430 • cityhall@gaitersburgmd.gov • www.gaitersburgmd.gov

MAYOR
Sidney A. Katz

CITY COUNCIL MEMBERS
Jud Ashman
Cathy C. Drzyzgula
Henry F. Marraffa, Jr.
Michael A. Sesma
Ryan Spiegel

CITY MANAGER
Angel L. Jones



March 14, 2012

The Honorable Roger Berliner, President
Montgomery County Council
6th Floor
100 Maryland Avenue
Rockville, Maryland 20850

Re: X-184 - Sears Property Annexation to the City of Gaithersburg

Dear Mr. Berliner:

The City of Gaithersburg has received a petition for annexation for the Sears Property and public rights of way located at 16331 and 16401 Shady Grove Road. This letter serves as official notification, as required by Article 23A, that the Mayor and City Council is tentatively scheduled to hold a public hearing regarding the proposed annexation on May 21, 2012. In accordance with Article 23A, advertising for the public hearing will begin on April 4, 2012. Attached is a copy of the official public notice, the outline for extension of public facilities, and the annexation plan.

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Community Planning Director
Planning and Code Administration

TWS/mg

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Ryan Spiegel

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Angel L. Jones



March 14, 2012

Françoise Carrier, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20850

Re: X-184 - Sears Property Annexation to the City of Gaithersburg

Dear Chairwoman Carrier:

The City of Gaithersburg has received a petition for annexation for the Sears Property and public rights of way located at 16331 and 16401 Shady Grove Road. This letter serves as official notification, as required by Article 23A, that the Mayor and City Council is tentatively scheduled to hold a public hearing regarding the proposed annexation on May 21, 2012. In accordance with Article 23A, advertising for the public hearing will begin on April 4, 2012. Attached is a copy of the official public notice, the outline for extension of public facilities, and the annexation plan.

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Sincerely,

Trudy M. Walton Schwarz, CFM
Community Planning Director
Planning and Code Administration

TWS/mg

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Ryan Spiegel

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Angel L. Jones



March 14, 2012

Glenn Kreger, Acting Chief
Planning Area 2
Montgomery County Planning Department
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: X-184 - Sears Property Annexation to the City of Gaithersburg

Dear Mr. Kreger:

The City of Gaithersburg has received a petition for annexation for the Sears Property and public rights of way located at 16331 and 16401 Shady Grove Road. This letter serves as official notification, as required by Article 23A, that the Mayor and City Council is tentatively scheduled to hold a public hearing regarding the proposed annexation on May 21, 2012. In accordance with Article 23A, advertising for the public hearing will begin on April 4, 2012. Attached is a copy of the official public notice, the outline for extension of public facilities, and the annexation plan.

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Sincerely,

Trudy M. Walton Schwarz, CFM
Community Planning Director
Planning and Code Administration

TWS/mg

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301-258-6300 • FAX 301-258-6149 • TTY 301-258-6430 • cityhall@gaitersburgmd.gov • www.gaitersburgmd.gov

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Michael A. Sesma
Ryan Spiegel

CITY MANAGER
Angel L. Jones



March 14, 2012

Mr. Peter Conrad
Director of Local Government Assistance
Maryland Department of Planning
301 West Preston Street, Suite 1101
Baltimore, Maryland 21201

Re: X-184 - Sears Property Annexation to the City of Gaithersburg

Dear Mr. Conrad:

The City of Gaithersburg has received a petition for annexation for the Sears Property and public rights of way located at 16331 and 16401 Shady Grove Road. This letter serves as official notification, as required by Article 23A, that the Mayor and City Council is tentatively scheduled to hold a public hearing regarding the proposed annexation on May 21, 2012. In accordance with Article 23A, advertising for the public hearing will begin on April 4, 2012. Attached is a copy of the official public notice, the outline for extension of public facilities, and the annexation plan.

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Sincerely,

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Michael A. Sesma
Ryan Spiegel

CITY MANAGER
Angel L. Jones



March 14, 2012

Mr. Steve Allan
Maryland Department of Planning
301 West Preston Street, Suite 1101
Baltimore, Maryland 21201

Re: X-184 - Sears Property Annexation to the City of Gaithersburg

Dear Mr. Allan:

The City of Gaithersburg has received a petition for annexation for the Sears Property and public rights of way located at 16331 and 16401 Shady Grove Road. This letter serves as official notification, as required by Article 23A, that the Mayor and City Council is tentatively scheduled to hold a public hearing regarding the proposed annexation on May 21, 2012. In accordance with Article 23A, advertising for the public hearing will begin on April 4, 2012. Attached is a copy of the official public notice, the outline for extension of public facilities, and the annexation plan.

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Sincerely,

Trudy M. Walton Schwarz, CFM
Community Planning Director
Planning and Code Administration

TWS/mg

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MAYOR
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CITY MANAGER
Angel L. Jones

Outline of Public Facilities

X-184

The subject property (Part of Parcel A, parcel N606) of annexation petition X-184, located at 16331 & 16401 Shady Grove Road, including public rights of way was identified and included in the Maximum Expansion Limits (MEL) approved in the adopted City of Gaithersburg 2003 Municipal Growth Element in April of 2009.

A. Municipal Services

All existing services will be provided to the subject parcels proposed for annexation. These services will be available immediately on the effective date of annexation.

B. Land Use

The proposed zoning is the MXD (Mixed Use Development) Zone. If this land use is deemed to be substantially different from the approved and adopted land use in the *Gaithersburg and Vicinity Master Plan (adopted in 1985, and amended in 1988 and 1990)*, prepared by the Maryland-National Capital Park and Planning Commission, the consent of the County Council will be sought.

C. Public Facilities

The City of Gaithersburg 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.”

The applicant intends to enter into an annexation agreement with the City of Gaithersburg. As such specific requirements, if any, resulting from this annexation petition, will be promulgated within the agreement to be negotiated between the property owner and the City of Gaithersburg. The following provides an analysis of public facilities related to this petition:

Mayor and City Council
X-184
Exhibit #35

Water and Sewer Service:

The subject property currently has 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 footprint 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 Sears property is within the ten (10) minute response areas of Montgomery County Department of Fire and Rescue Services Stations 3, 8 and 28.

Traffic Analysis:

The City's Traffic Impact APFO states that applications for development approvals shall be subject to the adopted Gaithersburg Traffic Impact Study Standards regulations. 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 hours.

Schools:

The subject property lies within the Gaithersburg Cluster of the Montgomery County Public School (MCPS) system, which includes the following schools: Washington Grove Elementary, Forest Oak Middle School, and Gaithersburg 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.

D. Financing of Facilities

The City anticipates that the extension of all municipal services to the parcels can be financed from the funds currently appropriated.

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Planning Commission

FROM: Trudy M. Walton Schwarz, Community Planning Director

DATE: March 15, 2012

SUBJECT: Staff Analysis & Annexation Plan
X-184 – Sears/The Great Indoors Property
Robert Dalrymple & Erin Girard, Linowes & Blocher, LLP, for
Sears, Roebuck and Company

Application for annexation of approximately 27.89 acres (595,029 square feet) of land, known as the Sears Property (The Great Indoors and Sears Service Center & Repair), located at 16331 & 16401 Shady Grove 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 Research and Development (R&D) Zone to the Mixed Use Development (MXD) Zone in the City of Gaithersburg, Maryland.

APPLICANT:

James Terrell
Sears, Roebuck and Company
3333 Beverly Road BC 102B-A
Hoffman Estates, Illinois 60179

APPLICANT'S REPRESENTATIVE:

Robert Dalrymple and Erin Girard
Linowes and Blocher, LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814

OWNERS:

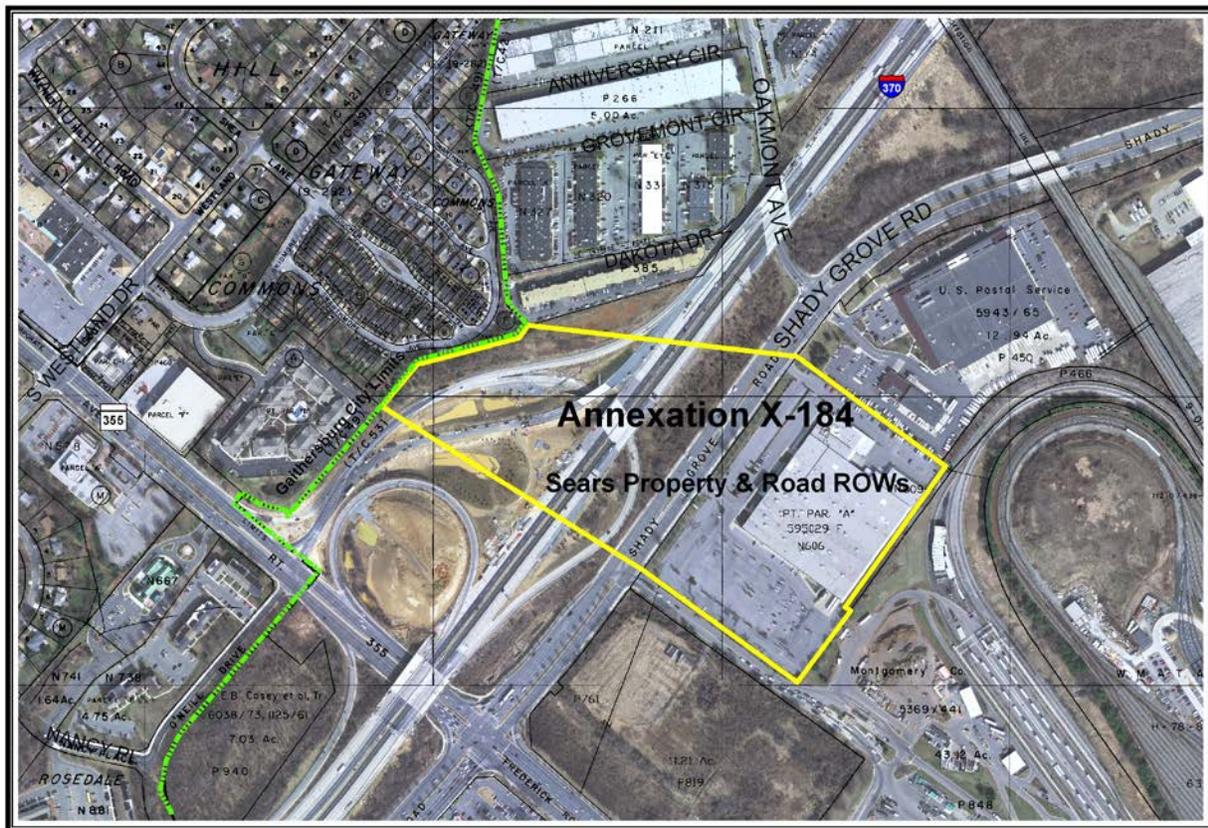
Sears, Roebuck and Company
3333 Beverly Road BC 102B-A
Hoffman Estates, Illinois 60179

Maryland State Highway Administration

Montgomery County Rights of Way

LOCATION:

The subject property is located northeast of the intersection of South Frederick Avenue (Maryland Route 355) and Shady Grove Road and southwest of the intersection of Oakmont Avenue and Shady Grove Road. The property consists of one parcel and two road rights of way and is a total of approximately 27.89 acres. The Sears property consists of approximately 13.66 acres, the State Highway (SHA) right of way for I-370 contains approximately 11.84 acres, and the Montgomery County (County) right of way for Shady Grove Road is approximately 2.39 acres. The roadways and the parcel are adjacent and contiguous to the current City limits.



TAX MAP REFERENCE:

Tax Sheet: FS 563 and GS 123

Tax Parcel ID Number: N606

BACKGROUND:

Sears, Roebuck and Co. (Sears) has submitted a petition for annexation, X-184, to the City. As part of the annexation request, the applicant is requesting a rezoning from the County Research and Development (R&D) Zone to the City of Gaithersburg Mixed Use Development (MXD) Zone. Further, a site plan of the current use of 204,490 Square Feet of retail and warehouse use has been submitted as part of the application.

Articles 23A and 66B 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 plan¹, and provide a recommendation to the Mayor and City Council at least 15 days prior to the required Mayor and City Council public hearing². 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 May 21, 2012.

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

A natural resource inventory/forest stand delineation (NRI/FSD) was submitted and approved as part of the X-184 Application³. This somewhat rectangular site currently contains several retail stores and associated parking lots. The topography of this relatively flat site ranges from a high point of 512 feet above sea level at the northern portion of the site, near the entrance of the store, to 500 feet above sea level at the southern corner of the property by the Truck entrance to the County Landfill Transfer Station. There are no steep slopes on the site.

The Natural Resources Conservation Service (NRCS) Web Soil Survey indicates three soil types present on the site: Glenelg Silt Loam, Glenville Silt Loam, and Urban Land. None of these soils are highly erodible, unsuitable or unsafe soils. The majority of the property is Urban Land designation, which applies to areas that are covered with impervious surfaces (buildings and parking lots.)

There is no forest on the property. Landscape trees exist in parking islands and along the perimeter of the property. None of these trees are of significant size. There are no streams observed on the Sears property and FEMA has not mapped any floodplain on or

¹ Article 66B, Section 1.02 Maryland Annotated Code

² Section 24-9 Gaithersburg City Code

³ Exhibit 23

within 100 feet of the property. Additionally, there are neither wetlands on the property nor any dams upstream of the property. The property is within the Upper Rock Creek watershed, in the Use Class IV portion.

There have been no rare, threatened, or endangered species observed, identified or known to occur on or near the site. While the property does receive noise pollution from vehicles on Shady Grove Road and I-370, the trucks and heavy equipment at the transfer station, rail stock moving within the WMATA site and vehicles from the Shady Grove Distribution Center/post office, a noise study was not required as a component of the Natural Resource Inventory. Existing light pollution sources are mostly security derived. The pollution comes from lights within the parking lot, the transfer station, the post office distribution center and along Shady Grove Road.

There are no cultural or historic resources on the site and none mapped in the Adopted Shady Grove Sector Plan of 2006 or the Montgomery County Location Atlas and Index of Historic Sites. There were no significant views on this property.

MASTER PLAN HISTORY:

Montgomery County Master Plan

The *Shady Grove Sector Master Plan*⁴, adopted in 2006, made recommendations for the Sears parcel at the time of redevelopment to contribute to the “area’s technology uses.” The Plan proposed that the site be a part of the Shady Grove Technology Corridor rezoned from I-1 zone to R&D (Research & Development) with an I-3 standard method zone. The property was subsequently comprehensively rezoned to the R&D.

Great Indoors Site (Site 4)

While the current use is a building supply use, this property may eventually have redevelopment potential. At that time, it should contribute to the area’s technology uses. This Plan recommends:

Providing technology, research and development, and office uses to create a technology corridor.

- *Orienting buildings toward street frontage and screening parking from Shady Grove Road.*
- *Ensuring that any redevelopment of the site preserves and enhances the pedestrian environment of Shady Grove Road.*
- *Rezoning this site from I-1 to R&D with an I-3 standard method zone. Development should not exceed 0.35 FAR to maintain a balance of jobs to housing within the plan area. Housing is not appropriate given the site’s proximity to the Solid Waste Transfer Station.*

Shady Grove Road is discussed in the Transportation portion of the Shady Grove Sector Plan:

⁴ Exhibit 17

This road is a major traffic route through the planning area connecting with two interstate highways, I-370 and I-270. Local access is limited to a few connecting streets along Shady Grove Road. This Plan recognizes Shady Grove Road's role in cross-County travel. Improvements should address local pedestrian access, noise impacts, and streetscape character. This Plan recommends:

- *Maintain Major Highway classification with six-lanes, divided, with an increase to a 150-foot right-of-way west of I-370. Increased right-of-way will provide adequate space for pedestrians and streetscape improvements.*
- *Improve Shady Grove Road's overall character with streetscape improvements.*
- *Provide noise walls east of I-370 along residential properties, if found in compliance with the County's noise guidelines.*

City of Gaithersburg

The subject property was identified within the *2003 City of Gaithersburg Master Plan Municipal Growth Element*, which was adopted in April of 2009. The property is included within the City's maximum expansion limits (MEL). This was included at the request of the property owner and also fulfilled the City's Strategic Goals. Additionally, the property is part of a Gaithersburg boundary established by the postal zip code system.

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. Continue to enforce the Adequate Public Facilities Ordinance (APFO) and update requirements periodically, if needed.
- Utilize the City's 'Smart Growth' principles to encourage high quality infill redevelopment.

The *2009 City of Gaithersburg Master Plan Transportation Element* delineates Shady Grove Road as a 150-foot wide Major Arterial. The roadway is to contain six through lanes.

The *2009 City of Gaithersburg Master Plan Land Use Element* discussed the property and identified as Map Designation 23. The following land use or zoning recommendations for this parcel:

This 13.8-acre area contains a large one-story retail building (The Great Indoors) with a large surface parking lot. This property is within the City's Maximum Expansion Limits, is contiguous with the City's current boundary, and could be annexed without creating an enclave. This property is currently surrounded by a mix of warehouse and industrial uses.

Applicable Strategic Direction: Planning, Economic

Land Use and Zoning Actions:

- *Adopt Commercial/Industrial-Research-Office land use designation, if annexed*
- *Recommend CD or MXD Zoning, or a future zone that facilitates sustainable development standards, if annexed*

SURROUNDING LAND USES:

Northeast of the property is the U.S. Postal Distribution Center and Post Office at Shady Grove, which is zoned R&D in Montgomery County. North of the CSX Railroad right of way is the County Service Park, which is zoned Transit Oriented, Mixed Use Zones (TOMX-2). The TOMX-2 Zone surrounds the WMATA property (Shady Grove METRO Station) and the County's Transfer Station, which are zoned I-1 (as shown on the second zoning map). Southeast of the property is the truck entry road to the Transfer Station, which is also zoned I-1. South of the road is the Casey Property, which is vacant and does include existing wetland and a stream. This property is zoned I-3 and is in the County jurisdiction.

West of the proposed annexation area are City zoned properties. These include the Hyatt House hotel, which is zoned C-2 (General Commercial), and the Gateway Commons subdivision, which is zoned RPT (Medium Density Residential). Gateway Commons includes a mix of unit types including townhouses, back-to-back townhouse units and detached single-family units.

Northwest, across Shady Grove Road and I-370 is the Oakmont Industrial Park, which is zoned I-1 in the County. This includes a mix of retail, warehouse and industrial businesses.

ZONING:

Existing Montgomery County Zoning

The subject property is currently zoned R&D (Research & Development) in Montgomery County.⁵ The R&D does not permit retail uses, so the current use of the Great Indoors is a grandfathered use in the County. The R&D Zone generally allows technology and research and development uses.

Substantial Change

It should be noted that per Article 23A, Subsection 9(c) of the Maryland Annotated Code:

“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 or plans . . . without the express approval of the . . . County council in which the municipality is located.”

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.

Proposed City Zoning

The applicant has requested that the Sears parcel be zoned MXD (Mixed Use Development), if annexed into the City.⁶ It is the objective of this zone to establish procedures and standards for the implementation of 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 and to a degree more closely compatible with said City plans and policies than may be possible under other zoning categories. The specific purposes of this zone are:

- (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.

⁵ Exhibit #16

⁶ Exhibits #1 - 3

(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.

The MXD Zone would allow the current use to remain productive until the market would support redevelopment. It would allow for the City and the property owner to have more flexibility to create vibrant mixed use development. The proposed zoning is in conformance with the *2009 Master Plan Land Use Element*.

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 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 footprint 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 Sears property is within the ten (10) minute response areas of Montgomery County Department of Fire and Rescue Services Stations 3, 8 and 28.

Traffic

The City's Traffic Impact APFO states that applications for development approvals shall be subject to the adopted Gaithersburg Traffic Impact Study Standards regulations⁷. 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 hours⁸.

⁷ Section 24-245

⁸ Regulation 01-07

Schools

The subject property lies within the Gaithersburg Cluster of the Montgomery County Public School (MCPS) system, which includes the following schools: Washington Grove Elementary, Forest Oak Middle School, and Gaithersburg 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:

The applicant is proposing to continue using the existing building as general retail and warehouse as was approved by Montgomery County. The plan submitted, Exhibit J⁹, shows 204,490 square feet of gross floor area for the existing building. According to the calculations on the plan, the building requires 783 parking spaces. The site includes 810 parking spaces.



Portion of Existing Conditions - Exhibit #19

⁹ Exhibit #19



2011 Aerial of the site – Exhibit #30

STAFF RECOMMENDATION AND FINDINGS:

Staff finds that the proposed petition for annexation, X-184, 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 burdening existing public facilities.

Articles 23A and 66B 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 scheduled for May 21, 2012.

Staff recommends that the Planning Commission hold their record open for 21 days until 5:00pm on April 11, 2012, and provide a formal recommendation on the annexation petition on April 18, 2012.

