MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:
May 21, 2012

CALL TO PODIUM:
Trudy Schwarz

RESPONSIBLE STAFF:
Trudy Schwarz, Community Planning Director

AGENDA ITEM:
(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
X	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other: Courtesy Review

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	03/05/2012
Advertised	04/04/2012
	04/11/2012
	04/18/2012
	04/25/2012
Hearing Date	05/21/2012
Record Held Open	
Policy Discussion	

TITLE: Annexation X-184 – Public Hearing

Public Hearing of a Resolution authorizing the Annexation of approximately 27.89 acres of land adjacent to the present corporate limits, located at 16331 & 16401 Shady Grove Road and adjacent road rights of way, and generally referred to as the Sears property, which includes the Great Indoors facility and the Sears Service Center & Repair

SUPPORTING BACKGROUND:

An application has been filed by Linowes and Blocher, on behalf of Sears and Roebuck Co., petitioning the City to annex approximately 27.89 acres of land from Montgomery County into the City. The area of annexation consists of Part of Parcel A, containing approximately 13.66 acres, and public rights of way for I-370 and Shady Grove Road, containing approximately 14.23 acres. The property is located west of Shady Grove Road and north of the intersection of South Frederick Avenue and Shady Grove Road at 16331 & 16401 Shady Grove Road.

The annexation petition requests annexation of the property and rezoning from Montgomery County's Research and Development (R&D) Zone to the City's Mixed Use Development (MXD) Zone. The property is located within the City's Maximum Expansion Limits as identified within the Municipal Growth Element of the 2003 Master Plan.

The annexation petition was introduced by the Mayor and City Council on March 5, 2012. The Planning Commission reviewed the request, including a staff analysis (Exhibit #36), at their March 21, 2012, meeting. On April 18, 2012, the Commission recommended approval of the annexation petition and designation of the property as MXD (Mixed Use Development) Zone. See Exhibit #47.

-Continued-

DESIRED OUTCOME:

Conduct Public Hearing.

Staff recommends that the record be held open for 45 days until 5 P.M. on Monday, July 5, 2012, with anticipated policy discussion on August 6, 2012.

Mayor and City Council
X-184
Exhibit #51

MAYOR & COUNCIL AGENDA COVER SHEET

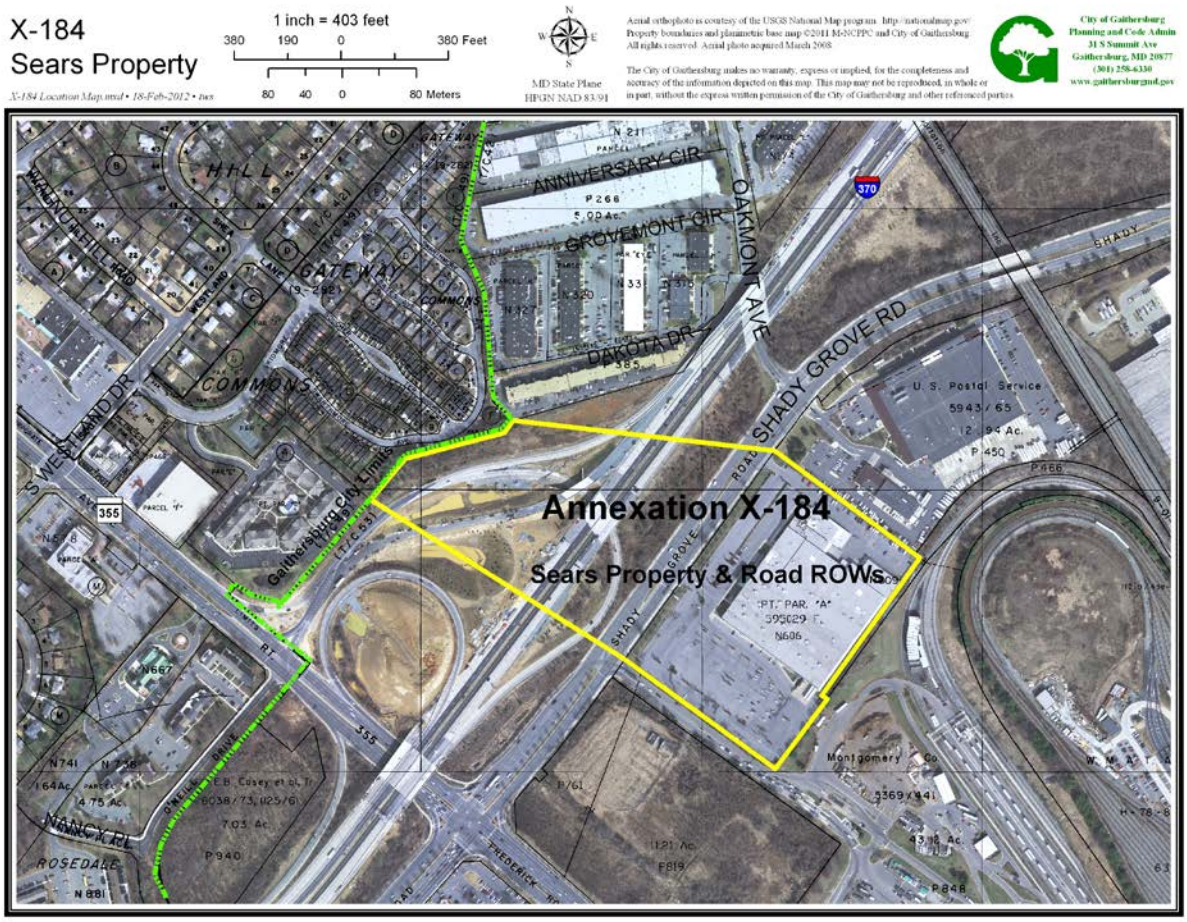
SUPPORTING BACKGROUND CONTINUED:

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (MNCPPC) reviewed this annexation request on April 26, 2012, and transmitted a recommendation of approval on May 4, 2012 (Exhibit #49). The petitioner has submitted a draft annexation agreement, which is designated as Exhibit #50.

The Petition is tentatively scheduled to be heard by the Planning, Housing and Economic Development (PHED) committee of the Montgomery County Council on Monday, June 11, 2012. The County Council is tentatively scheduled to review this matter at their Tuesday, June 26, 2012, meeting.

Attachments:

Index of Memoranda and Exhibits, please note that Exhibit 31 is duplicative of Exhibits 1 - 30.



(Exhibit 37)

From: Lynn Board
To: Trudy Schwarz
Subject: FW: Public Hearing Record for Great Indoors Annexation
Date: Wednesday, May 16, 2012 10:52:27 AM
Attachments: image001.png
image002.png

FYI.

Lynn

From: Doris Stokes
Sent: Wednesday, May 16, 2012 10:14 AM
To: Lynn Board
Subject: FW: Public Hearing Record for Great Indoors Annexation

FYI

Doris R. Stokes
Municipal Clerk
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877
301-258-6310
dstokes@gaithersburgmd.gov

From: LMoran@rockvillemd.gov [mailto:LMoran@rockvillemd.gov]
Sent: Wednesday, May 16, 2012 10:06 AM
To: Doris Stokes
Subject: RE: Public Hearing Record for Great Indoors Annexation

Doris:

Good morning.

Thank you for your reply. This is very helpful information.

Thanks,

Linda

Linda Moran
Assistant to the City Manager
City Manager's Office
City of Rockville
111 Maryland Avenue
Rockville, MD 20850
P: 240-314-8115
F: 240-314-8289
e-mail - lmoran@rockvillemd.gov
www.rockvillemd.gov

Mayor and City Council
X-184
Exhibit 052

Doris Stokes ---05/16/2012 10:02:42 AM---Good morning Linda, The public hearing is scheduled for Monday, 5/21, record held open for 45 days u

From: Doris Stokes <DStokes@gaithersburgmd.gov>
To: "LMoran@rockvillemd.gov" <LMoran@rockvillemd.gov>
Date: 05/16/2012 10:02 AM
Subject: RE: Public Hearing Record for Great Indoors Annexation

---

Good morning Linda,

The public hearing is scheduled for Monday, 5/21, record held open for 45 days until 5 p.m. on Monday, 7/5, with anticipated policy discussion on Monday, 8/6.

Doris R. Stokes
Municipal Clerk
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877
301-258-6310
dstokes@gaithersburgmd.gov

From: LMoran@rockvillemd.gov [mailto:LMoran@rockvillemd.gov]
Sent: Wednesday, May 16, 2012 9:29 AM
To: Doris Stokes
Subject: Public Hearing Record for Great Indoors Annexation

Doris:

Good morning. The Gaithersburg Planning and Code Department indicated that you are the staff member who could let me know how long the public hearing record is going to be open on this matter. I am aware that the Public Hearing on this item is scheduled for the 5/21/12 Gaithersburg Mayor and Council meeting.

Thank you in advance for any assistance that you can provide.

Thanks,

Linda

Linda Moran
Assistant to the City Manager
City Manager's Office
City of Rockville
111 Maryland Avenue
Rockville, MD 20850
P: 240-314-8115
F: 240-314-8289
e-mail - lmoran@rockvillemd.gov
www.rockvillemd.gov

From: Trudy Schwarz
To: "LMoran@rockvillemd.gov"
Subject: Great Indoors Annexation
Date: Wednesday, May 16, 2012 2:21:00 PM

Ms. Moran,
I am the project coordinator for the Annexation Petition of Sears (Great Indoors). I would be happy to help you if you have any questions about the petition. The City has a web site concerning the petition at the following link:
http://www.gaithersburgmd.gov/poi/default.asp?POI_ID=2115&TOC=311;1260;2115;

Sincerely,
Trudy

Trudy M. Walton Schwarz, CFM
Community Planning Director
Planning and Code Administration
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877
Phone: 301-258-6330
Fax: 301-258-6336
City Web Site: www.gaithersburgmd.gov

Get weekly e-mail updates of upcoming City meetings and events by registering for myGaithersburg at www.gaithersburgmd.gov/mygaithersburg

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

Martin O'Malley
Governor

Anthony Brown
Lt. Governor

MDP
Maryland Department of Planning

Richard Eberhart Hall
Secretary

Matthew J. Power
Deputy Secretary

FAX COVER SHEET

To: Bobbi @ P+Z

Fax: 301-258-6336

From: M. Paone

Fax: 410-767-4480

Phone: 410-767-4554

Date: 5-21-12

Number of Pages (Including Cover Sheet) 3

COMMENTS:

IF YOU HAVE DIFFICULTY RECEIVING THIS FAX OR HAVE QUESTIONS, PLEASE CALL 410-767-4500. THANK YOU.

Mayor and City Council
X-184
Exhibit #54

301 West Preston Street Suite 1101 Baltimore, Maryland 21201-2305
Tel: 410.767.4500 Fax: 410.767.4480 Toll Free: 1.800.767.6272 TTY Users: Maryland Relay
Internet: www.MDP.state.md.us

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Maryland Department of Planning

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

May 8, 2012

The Honorable Sidney Katz and Gaithersburg City Council Members
31 South Summit Avenue
Gaithersburg, Maryland 20877

Subject: X-184 Sears Property Annexation

Dear Mayor Katz:

Thank you for providing the Maryland Department of Planning (MDP) with information pertaining to the X-184 Sears Property Annexation to the City of Gaithersburg. We reviewed this proposed annexation and offer the following comments for consideration.

As you are aware, Article 23A, as amended by House Bill 1141, specifies that the new zoning for the annexed land cannot be substantially different from the existing County zoning, without the express consent of the County Commissioners. In reviewing this annexation request, we concur with Montgomery County's assertion that the proposed MXD zoning designation is substantially different than the uses allowed by the existing R & D zoning designation. Should the annexation be approved, be advised that the five-year rule comes into effect, which means that development plans with uses not allowed by the existing R & D zone and/or density greater than 0.525 FAR is prohibited for five years.

We noted that the subject property was designated by Montgomery County as a Priority Funding Area (PFA) and our Department concurs with that designation. Land annexed into a municipality does not automatically become or remain a Priority Funding Area. The opportunity for land annexed into the City to become a Priority Funding Area is subject to the requirements specified in the Finance and Procurement Article §5-7B-02, as amended by HB1141. We recommend that the City look at this annexation and all future annexations in the context of the Finance and Procurement Article §5-7B-02 to determine eligibility for State funding of growth related projects.

While the subject annexation property lies within Gaithersburg's MEL, it is also within the City of Rockville's MEL. Defending the assertion that Shady Grove Road should be the logical boundary between the two cities, the City of Rockville formally requested that the City of Gaithersburg remove this property from its MEL in a letter dated March 23, 2011. Montgomery County also asserted its position that the property be located in Rockville's MEL in a letter dated July 9, 2010. All of this is predicated on the existence of a Memorandum of Understanding between Montgomery County and the Cities of Rockville and Gaithersburg dated July 23, 1992. In consideration of this information, MDP urges all three parties to work together on this annexation request to reach a collaborative and workable solution prior to the public hearing.

301 West Preston Street • Suite 1101 • Baltimore, Maryland 21201-2305
Telephone: 410.767.4500 • Fax: 410.767.4480 • Toll Free: 1.877.767.6272 • TTY Users: Maryland Relay
Internet: www.planning.maryland.gov

If you have any questions concerning these comments or if we can be of further assistance, please contact me at (410) 767-4553, or our regional planner, Steve Allan, at (410) 767-4572.

Sincerely,

Peter Conrad

Peter G. Conrad, AICP
Director, Local Government Assistance

cc: Rich Josephson, MDP
Amanda Conn, MDP
Steve Allan, MDP

Attachments

From:	Mike Paone
To:	Trudy Schwarz
Subject:	FW: Message from "RNP002673405716"
Date:	Monday, May 21, 2012 1:50:17 PM
Attachments:	201205211325.pdf

Letter to City Council regarding annexation X-184 Sears Property.

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Maryland Department of Planning

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

May 8, 2012

The Honorable Sidney Katz and Gaithersburg City Council Members
31 South Summit Avenue
Gaithersburg, Maryland 20877

Subject: X-184 Sears Property Annexation

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Mayor and City Council
X-184
Exhibit #56

301 West Preston Street • Suite 1101 • Baltimore, Maryland 21201-2305
Telephone: 410.767.4500 • Fax: 410.767.4480 • Toll Free: 1.877.767.6272 • TTY Users: Maryland Relay
Internet: www.planning.maryland.gov

If you have any questions concerning these comments or if we can be of further assistance, please contact me at (410) 767-4553, or our regional planner, Steve Allan, at (410) 767-4572.

Sincerely,

Peter Conrad

Peter G. Conrad, AICP
Director, Local Government Assistance

cc: Rich Josephson, MDP
Amanda Conn, MDP
Steve Allan, MDP

Attachments

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 31, 2012

To: Nancy Floreen, PHED Chair

From: Isiah Leggett, County Executive

Subject: City of Gaithersburg Annexation, Great Indoors Property

I am writing to share with you my position on the proposed annexation and rezoning of the Great Indoors Property on Shady Grove Road.

Upon review, it was noted that the Sears, Roebuck and Company has petitioned the City of Gaithersburg to annex approximately 28 acres into the municipal boundaries. The properties include the Great Indoors parcel as well as significant portions of State of Maryland/State Highway Administration (SHA) and Montgomery County rights-of-way. The amount of SHA and Montgomery County rights-of-way proposed to be annexed is significant and I ask that you review this action to ensure that the inclusion is both logical and appropriate. As you know, despite that fact that Shady Grove Road is a State road, it is a County operated and maintained roadway over which we must maintain operational control and I would like assurances that the City does not intend to exert operational controls within the Shady Grove Road right-of way.

As you are also aware, the property abuts the Montgomery County Shady Grove Processing Facility and Transfer Station. The Transfer Station handles approxuimately 750,000 tons of solid waste each year and handles virtually all of the solid waste generated by the County and its municipalities. It is a seven-day a week operation and generates nearly 1,000 vehicle trips through the Shady Grove entrance each day. A yard waste management area and natural wood waste grinding lot are adjacent to the Sears property. Activities in these areas are inherently noisy and a potential source of fine wood particles under certain conditions. The 2006 Shady Grove Sector Plan noted that the Sears site is not appropriate for residential development due to public health and other concerns given its proximity to the Transfer Station and the site was subsequently rezoned to the Research and Development (R&D) zone.

Mayor and City Council
X-184
Exhibit #57

As you are well aware, I am a strong advocate for housing with affordable housing being of particular interest to me. I must however, raise my serious concerns to you about the fact that the proposed Mixed Use Development zone (MXD) permits residential development. I agree with the Planning Board's recommendation that the City of Gaithersburg should not approve residential uses on this property due to its proximity to the Solid Waste Transfer Station.

While it is my understanding that neither the City nor the Petitioner is suggesting that residential redevelopment is appropriate at the site and that the Petitioner's legal counsel is considering options that will provide assurances to all stakeholders that no residential will be developed in the future, those assurances are not available at this time. Without those assurances I do not support the proposed annexation and rezoning.

If you have any questions, please contact Greg Ossont, Deputy Director, Dept. of General Services at 240-777-6192 or greg.ossont@montgomerycountymd.gov

cc: Roger Berliner, Council President
Sidney A. Katz, Gaithersburg Mayor
Francoise Carrier, Plaming Board Chair
Phyllis Marcuccio, Rockville Mayor
Angel L. Jones, Gaithersburg City Manager
Marc Hansen, County Attorney
Bob Hoyt, Director DEP
Art Holmes, Director DOT
David Dise, Director DGS

From:	Lynn Board
To:	county.council@montgomerycountymd.gov
Cc:	Jeff.Zyontz@montgomerycountymd.gov; Trudy Schwarz; Girard, Erin E. - EEG
Subject:	Sears Annexation
Date:	Monday, June 04, 2012 3:02:31 PM
Attachments:	Montgomery County Council - Sears Annexation 6 4 12.pdf

---

County Council Members:

Attached please find a letter from the City Manager regarding the Sears Annexation Petition, which is scheduled to be considered by the PHED Committee on June 11, 2012.

N. Lynn Board,
City Attorney
City of Gaithersburg
31 S. Summit Avenue
Gaithersburg, MD 20878
(301) 258-6310
lboard@gaithersburgmd.gov

Mayor and City Council
X-184
Exhibit #58

Gaithersburg
A CHARACTER COUNTS! CITY

June 4, 2012

Council President Berliner
and Members of the Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Sears, Roebuck and Co. Petition for Annexation
Into the City of Gaithersburg – Petition X-184

Dear President Berliner and Members of the Montgomery County Council:

On behalf of the City of Gaithersburg, I am requesting your support of the Petition for Annexation filed by Sears, Roebuck and Co. ("Sears") to annex the property located at 16331 Shady Grove Road ("Property") into the corporate boundaries of Gaithersburg and for the County to waive the five-year development prohibition under Md. Ann. Code Article 23A §19(c)(1) for land uses substantially different from the permitted uses under the Research and Development ("R&D") zone to permit new development of the Property with retail uses.

As you are aware, the existing retail use on the Property, The Great Indoors, is a grandfathered use and the County R&D zoning does not permit general retail uses. While the City supports the vision of the Shady Grove Sector Plan, we also feel that it is in both, the City and County's, best interests to retain a viable retail use on this property as currently there is not a demand for R&D space in this area. The City believes that the MXD zoning of the Property will provide the flexibility to allow a retail use of the Property consistent with the current use once the Great Indoors closes while providing oversight to ensure quality development and design. We do concur with both the County staff and Planning Board's position that residential use of the Property is not appropriate so long as the adjacent Transfer Station remains. By granting a waiver of zoning consistency for the Property, we can maintain an economically viable use on the Property while ensuring the long-term vision for the region.

While there has been some concern raised with the inclusion of this Property within Gaithersburg's Maximum Expansion Limits ("MEL"), it must be noted when the City submitted its draft Municipal Growth Element of its Master Plan to the County for comment, neither the Office of the County Executive, in its letter of December 1, 2008, nor the Montgomery County Planning Board, in its letter of December 24, 2008, expressed any concern with the inclusion of

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2038
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@gaithersburgmd.gov • www.gaithersburgmd.gov

MAYOR
Sidney A. Katz

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

CITY MANAGER
Angel L. Jones

Mayor and City Council
X-184
Exhibit #59

the Property in Gaithersburg's MEL. It should be further noted that while the Property also is within Rockville's MEL, it is not contiguous to Rockville and annexation into Rockville would require annexation of the Transfer Station and other properties to meet the contiguous requirement. Since the Property is included in the City's properly adopted MEL, it is eligible for annexation.

In addition, Annexation Petition X-184 includes annexing portions of the rights-of-way of Interstate I-370 and Shady Grove Road. The City has no intention of exerting operational controls within either the right-of-way of Shady Grove Road or the I-370 right-of-way. In the past, the City has annexed several properties which include rights-of-way of both the County and the State without exerting operational controls on the roadways. Please be assured that this policy continues to be the intent of the City for the Sears/Great Indoors Property annexation.

For the aforementioned reasons, the City is requesting your support of this Annexation Petition and approval of the applicant's request to waive the five year prohibition to permit new development of the Property under the City's MXD zone. Let's work together to ensure that this Property remains economically viable.

Sincerely,

Angel L. Jones,
City Manager

From:	Girard, Erin E. - EEG
To:	"jeff.zyontz@montgomerycountymd.gov"
Cc:	Dalrymple, C Robert - CRD; Trudy Schwarz; Lynn Board; Tony Tomasello; "Marianne L. Simonini (Marianne.Simonini@searshc.com)"; "James Terrell (James.Terrell@searshc.com)"
Subject:	Letter to the County Council Regarding Annexation Petition X-184
Date:	Monday, June 04, 2012 3:33:45 PM
Attachments:	Sears letter.pdf

Jeff,

Attached please find the letter to the County Council that we are delivering by hand this afternoon. Let me know if you have any questions.

Erin E. Girard, Esq.
Linowes and Blocher LLP
7200 Wisconsin Avenue Suite 800
Bethesda, MD 20814
301.961.5153 (office)
301.654.2801 (fax)
egirard@linowes-law.com
http://www.linowes-law.com

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Internal Revenue Service Circular 230 Disclosure: As provided for in Treasury regulations, advice (if any) relating to federal taxes that is contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any plan or arrangement addressed herein.

Mayor and City Council
X-184
Exhibit #60

LINOWES AND BLOCHER LLP
ATTORNEYS AT LAW

June 4, 2012

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com
Erin E. Girard
301.961.5153
egirard@linowes-law.com

Council President Berliner
And Members of the Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council President Berliner and Members of the Montgomery County Council:

We represent Sears, Roebuck and Co. ("Sears"), owner of The Great Indoors Property, located at 16331 Shady Grove Road ("Property") and the petitioner in Gaithersburg Annexation Petition X-184 ("Petition"). The purpose of this letter, to the extent necessary,[1] is to request that the County Council expressly waive the restrictions of Md. Ann. Code art. 23A. § 19(c)(2) to allow the City of Gaithersburg ("City") to consider redevelopment plans for the Property pursuant to the requirements and limitations of the City's MXD zone (the zone designated by the City) upon its annexation into the City.

The Property is currently developed with The Great Indoors, a home-improvement showcase center that is scheduled to be closed later this month as part of a national business decision impacting this chain of stores, a Sears appliance repair center, Sears administrative offices, and associated parking, all of which were developed in or around 1966 in the County's I-1 zone. In 2006, Montgomery County comprehensively rezoned the Property to Research and Development ("R&D"), which does not permit general retail uses. Notwithstanding the clear retail use of the Property, The Great Indoors use was grandfathered as "building material and supply" in the R&D zone, severely restricting any potential reuse of the existing building for other retail uses under the grandfathering provision. The lack of demand for R&D space in the area, currently and for the forseeable future, coupled with the restrictions on retail uses on the Property, renders the current R&D zone for the Property very problematic. Although Sears reached out to County officials in the fall of 2010 to assess the County's interest in helping Sears achieve more flexibility for the reuse of its Property outside of the comprehensive planning process (the Shady Grove Sector Plan recommends large employment parks for this area, which is not realistic for the forseeable future), those efforts were unproductive.

---

[1]We believe that a strong case can be made (and we do not concede the issue) that the City's MXD zone and the County's R&D zone are not substantially different, and thus the City's consideration of any new development plans would not require a waiver. Regardless, we focus herein on why the County should not object to any such new development plans upon annexation.

Mayor and City Council
X-184
Exhibit #61

Given the City's historic identification of the Property as being within its maximum expansion limits (reconfirmed as recently as 2009), Sears filed the Petition with the City on January 12, 2012, seeking annexation into the City and classification in its MXD zone. Through the proposed annexation, Sears hopes to achieve more short-term flexibility to allow for viable uses of the existing improvements until the market will support redevelopment of the Property, as envisioned by the County Sector Plan and allowed under the City's MXD zone. In the near term, Sears would like to maintain its repair center and administrative offices on the Property and find a retail or other nonresidential user for the remainder of the existing improvements. Maintaining active use of the existing improvements on the Property, thereby allowing the Property to continue to contribute to the tax base of the County, would seem to be in the public interest.

Under Md. Ann. Code art. 23A. § 19(c)(1), once annexed, the City would not be allowed, for a period of five years, to permit development of the Property for "land uses substantially different than the use authorized, or at a substantially higher, not to exceed 50% density than could be granted" under the existing County zone without the express approval of the County Council (see footnote 1 above). To best achieve its objectives, and in what we believe are the best interests of the County and City to ensure the Property remains active and revenue-producing, Sears is requesting that the County expressly waive this five year prohibition, subject to the limitations on density and residential use discussed below, to allow for the continued nonresidential (primary retail and office) use of the Property.

The Planning Board considered the Petition on April 26th and, in its discussion, concluded that general retail uses should not be considered "substantially different" uses under Md. Ann. Code art. 23A. § 19(c)(1), given the existing retail use of the Property. Under such a conclusion, the five year prohibition noted above would not apply to development of retail uses on the Property. On the other hand, the Planning Board noted that residential uses should be considered substantially different, and so indicated in its May 4, 2012 letter to the County Council. In that letter, the Planning Board recommended approval of the Petition subject to the following conditions, which Sears responds to in turn:

1. *Approval of new development plans with substantially different uses (such as residential) and/ or density greater than 0.525 FAR is prohibited for five years.*

As noted above, it was the conclusion of the Planning Board in its discussion that development of general retail uses on the Property would not be "substantially different" than the existing uses, and Sears agrees with this conclusion. However, to the extent that the County Council determines otherwise, Sears is requesting that the prohibition on such different uses be waived. Sears has also repeatedly stated on the record that it does not intend to put any residential uses on the Property for as long as the Transfer Station exists to the south, and would therefore agree to

such a prohibition for the five year term immediately following annexation. With regard to density, Sears is willing to agree to the density cap suggested by Staff and the Planning Board for the five year term following annexation.

2. *The City of Gaithersburg should not approve plans for residential uses on this property due to proximity to the Solid Waste Transfer Station.*

As noted above, Sears does not have any plans to develop the Property with residential use for the forseeable future.

3. *The Applicant must satisfy the Adequate Public Facility test if the site is redeveloped in a way that generates more peak hour trips than the existing retail use of 204,490 square feet of gross floor area.*

Once annexed, adequate public facilities review would be administered by the City according to its rules and regulations, and Sears would comply with all City requirements in this regard.

4. *The Applicant must enter into a Trip Mitigation Agreement with the City and the Montgomery County Department of Transportation (MCDOT) to participate in the Greater Shady Grove Traffic Management District in order to achieve the transit ridership goal of the Shady Grove Sector Plan.*

As part of any redevelopment, Sears would agree to enter into a Trip Mitigation Agreement with the City.

5. *The Applicant must upgrade the existing sidewalk along Shady Grove Road. Upgrades should include a relocated sidewalk with a tree panel, lead-in sidewalks, and handicapped ramps.*

Because Shady Grove Road is and will remain a County-maintained road, any redevelopment of the Property would necessarily involve coordination of right-of-way improvements, including sidewalks, with MCDOT and would need to comply with MCDOT standards. This condition would therefore be met in any case upon any redevelopment of the Property, and is therefore unnecessary at this time.

Based on the foregoing, and the commitments that Sears is willing to make regarding limitations on density and residential uses within the five year term immediately following annexation, Sears requests, to the extent necessary, that the County Council exercise its authority under Md. Ann. Code art. 23A. § 19(c)(2) to waive the five year prohibition to permit new development of the Property, as applicable, under the City's MXD zone.

Thank you for your consideration of this information. We will be present at the June 11th Planning, Housing and Economic Development Committee meeting and the June 26th Council meeting to address any questions you may have. In the meantime, if you have any questions, or require any additional information, please feel free to contact us.

Very truly yours,

LINOWES AND BLOCHER LLP

C. Robert Dalrymple

C. Robert Dalrymple

Erin E. Girard

Erin E. Girard

cc: Mr. Tony Tomasello
Lynn Board, Esq.
Ms. Trudy Schwarz
Jeff Zyontz, Esq.
Mr. James Terrell
Marianne Simonini, Esq.

B. **T-405, An Ordinance to Amend Chapter 24 of the City Code, Entitled, "Zoning," Article V, Entitled, "Site Development Plans," § 24-169, Entitled, "Submission; Fee; Requirements of Plan," to Amend Subsections §§ 24-169(a), 24-169(b), and 24-169(c)**

Community Planning Director Schwarz presented the above ordinance. On March 19, 2012, the Mayor and City Council held a work session regarding proposed modifications to the requirements for submission of a traffic study, and sponsored the proposed amendment. A hearing was held on April 16, 2012. The amendment will modify the timing for submission of a preliminary and final traffic study to more closely align with the level of entitlements granted, and the level of trip generation which triggers the submission of a traffic impact study. At their May 2, 2012 meeting, the Planning Commission recommended adoption of the ordinance.

Motion was made by Council Member Spiegel, seconded by, Council Member Sesma, that T-405 – AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE V, ENTITLED, "SITE DEVELOPMENT PLANS," § 24-169, ENTITLED, "SUBMISSION; FEE; REQUIREMENTS OF PLAN," TO AMEND SUBSECTIONS §§ 24-169(a), 24-169(b), AND 24-169(c) (Ordinance No. O-04-12), be adopted.

Vote: 4-0

X. PUBLIC HEARING

A. **X-184, Sears Property - Resolution Authorizing the Annexation of Approximately 27.89 Acres of Land Adjacent to the Present Corporate Limits, Located at 16331 & 16401 Shady Grove Road and Adjacent Road Rights of Way, and Generally Referred to as the Sears Property, which includes the Great Indoors facility and the Sears Service Center & Repair**

Community Planning Director Schwarz presented the application filed by Linowes and Blocher, on behalf of Sears and Roebuck Co., petitioning the City to annex approximately 27.89 acres of land from Montgomery County into the City. The area of annexation consists of Part of Parcel A, containing approximately 13.66 acres, and public rights of way for I-370 and Shady Grove Road, containing approximately 14.23 acres. The property is located west of Shady Grove Road and north of the intersection of South Frederick Avenue and Shady Grove Road at 16331 & 16401 Shady Grove Road. The annexation petition requests annexation of the property and rezoning from Montgomery County's Research and Development (R&D) Zone to the City's Mixed Use Development (MXD) Zone. The property is located within the City's Maximum Expansion Limits as identified within the Municipal Growth Element of the 2003 Master Plan. The annexation petition was introduced by the Mayor and City Council on March 5, 2012. The Planning Commission reviewed the request, including a staff analysis at their March 21, 2012, meeting. On April 18, 2012, the Commission recommended approval of the annexation petition and designation of the property as MXD (Mixed Use Development) Zone. The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (MNCPPC) reviewed this annexation request on April 26, 2012, and transmitted a recommendation of approval on May 4, 2012. The petitioner has submitted a draft annexation agreement, which is designated as Exhibit #50. The Petition is tentatively scheduled to be heard by the Planning, Housing and Economic Development (PHED) committee of the Montgomery County Council on Monday, June 11, 2012. The County Council is tentatively scheduled to review this matter at their Tuesday, June 26, 2012 meeting.

Robert Dalrymple and Erin Girard, Linowes and Blocher, LLP, representing Sears, Roebuck and Co., owner of The Great Indoors property, spoke on the application.

Mayor and City Council
X-184
Exhibit #62

James Terrell, representing the applicant Sears and Roebuck Co., stated that the applicant is entertaining proposals and the annexation would give flexibility for the use of the building. Sears has been on the property since 1965.

Mr. Dalrymple discussed the purpose of the annexation and the agreement which is to allow flexibility and to continue being an income producing property. The applicant is looking to minimize the levels of approvals and have any improvements go through the City's MXD process, limit the fees for the processing, and a 5-year tax abatement on the municipal tax when annexed into the City. Stated that the county was not helpful in having a productive use of the property and proposed zoning of the property which would lead to a five-year moratorium. The matter is scheduled to go before the County Park and Planning Board. Rockville is opposed to the annexation and has its expansion limits. He added that the applicant disagrees with Rockville's timeline vision for the property. Further mentioned that he is a life-long resident of the area and county his dad always referred to the Sears property in Gaithersburg.

Mayor Katz noted that the building has always had a Gaithersburg address and that for Rockville to annex the property; other county properties would have to be annexed.

Erin Girard covered some of the more technical requirements mentioned in their January 12th petition and February 14th letter covering the MXD Zone. She stated that the MXD Zone process would ensure that it is compatible with direct access to Shady Grove Road and existing highway, water and sewer use.

Council Vice President Spiegel questioned the value of the 5-year municipal tax abatement. Received the response of $37,000/year. Spoke on the County Planning Board prohibiting residential use. The applicant has no intentions of residential use for the property. He mentioned that there is a case limiting the use of the property.

Council Member Drzyzgula questioned the justification and benefits to Gaithersburg for the tax abatement. Mr. Dalrymple asked that the City look beyond the five-years and see future revenue to redevelop the property in the City.

Council Member Ashman referred to the Memorandum of Understanding (MOU) that exists. City Attorney Board responded that there is a 1992 MOU that talks about future annexations of the property, but it talks in general terms. There are provisions asking the jurisdictions to work together, to look at future expansions, and to ensure that any annexation have adequate public facilities and other methods for going forward. Stated that there are no specific requirements as far as designation of what areas would be appropriate for one jurisdiction or another to annex. The agreement does express a spirit of cooperation between the jurisdictions. She pointed out that Gaithersburg did adopt its Maximum Expansion Limits to include said property before Rockville. Rockville did express during a recent meeting to have a future discussion on the MOU.

Speaker from the public:

1. Richard Arkin, 121 Selby Street, spoke in favor of the annexation due to the 5-year moratorium, benefits down the road, offers flexibility now and future MXD zone, and access to the Shady Grove Station. Stated that Gaithersburg definitely has a historic claim on the property. He spoke on the post office property. Council Member Drzyzgula clarified that the post office is not closing.

There were no other speakers at the hearing.

Motion was made by Council Member Ashman, seconded by, Council Member Drzyzgula, that the City Council hold the record open for 45 days until 5 p.m. on Thursday, July 5, 2012, with anticipated policy discussion on Monday, August 6, 2012.

Vote: 4-0

XI. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at approximately 9 p.m.

Respectfully submitted,

Doris R. Stokes
Doris R. Stokes
Municipal Clerk

City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

240-314-5000
TTY 240-314-8137

June 5, 2012

The Honorable Roger Berliner
President, Montgomery County Council
100 Maryland Avenue
Rockville MD 20850

Re: Sears Site – 16331 and 16401 Shady Grove Road

Dear President Berliner:

Thank you for the opportunity to comment on the petition for the City of Gaithersburg to annex the properties located at 16331 and 16401 Shady Grove Road, owned by the Sears Corporation, as the County Council considers its position on this matter.

The City of Rockville is strenuously opposed to Gaithersburg's annexation of this property, which is appropriately located within Rockville's Maximum Expansion Limits (MEL). Shady Grove Road is the logical long-term boundary between Rockville and Gaithersburg; accordingly, Rockville opposes any proposed annexation by another municipality on the Rockville side of Shady Grove Road.

Rockville is expressing its position to Gaithersburg in the attached letter (Attachment A). Our position is consistent with the County Executive's objection, expressed in his May 31, 2012, letter (Attachment F); with the Maryland Department of Planning's letter (Attachment C) urging the parties to work together to find a workable solution in advance of the public hearing (and, by extension, the annexation itself); and with the Planning Board's July 9, 2010, letter (Attachment D) supporting the appropriateness of this site being in Rockville's Maximum Expansion Limits.

Rockville's Mayor and Council provided testimony to Gaithersburg of the same nature last year, as Gaithersburg was preparing an update to the Land Use Element of its Master Plan. That March 23, 2011, letter is provided as Attachment D.

Rockville wishes to continue the long-term excellent relationship between the two cities and Montgomery County. In that spirit, we propose that Rockville and Gaithersburg convene a working group, which would include Montgomery County, for the purpose of reviewing and potentially updating the 1992 Memorandum of Understanding (Attachment E) that was developed as guidance for future annexations. It is clear that, as our cities are in such close proximity to each other, we must engage further and with greater frequency on this topic in order to establish a renewed and mutually satisfactory understanding.

We request that the County Council support Rockville's effort to firmly establish the boundary between the two cities at Shady Grove Road. We urge you to take all appropriate actions to object to this proposed annexation and work with the cities of

MAYOR
Phyllis Marcuccio

COUNCIL
John F. Hall, Jr.
Tom Moore
Bridget Donnell Newton
Mark Pierzchala

ACTING CITY MANAGER
Jennifer Kimball

CITY CLERK
Doug Barber

CITY ATTORNEY
Debra Yerg Daniel

Mayor and City Council
X-184
Exhibit #63

Rockville and Gaithersburg to develop an MOU for guidance on future proposed annexations.

Thank you for your attention to this testimony.

Sincerely,

Mayor Phyllis Marcuccio

Councilmember John F. Hall, Jr.

Councilmember Tom Moore

Councilmember Bridget Donnell Newton

Councilmember Mark Pierzchala

The Mayor and Council of Rockville

Cc: Montgomery County Executive Isiah Leggett
Montgomery County Councilmembers
Montgomery County Planning Board
City of Gaithersburg Councilmembers
City of Rockville Planning Commission
Jenny Kimball, Acting City Manager, City of Rockville
Angel Jones, City Manager, City of Gaithersburg

Attachments

City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

240-314-5000
TTY 240-314-8137

June 5, 2012

The Honorable Sidney A. Katz
Mayor, City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877-2098

Re: Sears Site – 16331 and 16401 Shady Grove Road

Dear Mayor Katz:

Thank you for the opportunity to comment on the annexation petition for the City of Gaithersburg to annex the properties located at 16331 and 16401 Shady Grove Road, owned by the Sears Corporation. Let us preface these remarks by stating that we genuinely value the cooperative efforts and mutually supportive relationship that our communities have established over many years, and we are hopeful that the City of Rockville's testimony on the pending matter, which are of grave concern to us, may be received and accorded your highest consideration in the context of that spirit of longstanding cooperation.

As you may recall, Rockville's Mayor and Council provided testimony during your consideration of an updated Land Use Element of Gaithersburg's Master Plan. Our testimony of March 23, 2011 is Attachment A to this letter.

Our position remains the same as it was last year: in short, the logical long-term boundary between Rockville and Gaithersburg is Shady Grove Road and that boundary should be firmly established. Therefore, Rockville strenuously objects to Gaithersburg's annexing the property in question and any other properties on the Rockville side of Shady Grove Road. Further, Gaithersburg's annexation of this property would create a significant obstacle to Rockville's access to other portions of our Maximum Expansion Limits, which are also south of Shady Grove Road. Accordingly, we respectfully - but firmly - request that Gaithersburg refrain from annexing 16331 and 16401 Shady Grove Road.

Given the positions expressed by the State, County Executive and Planning Board, the proposed annexation surprised and dismayed our Mayor and Council. Rockville's position is consistent with the concern expressed by the Maryland Department of Planning (MDP) in its May 8, 2012 letter to Gaithersburg (Attachment B), in which MDP urged that the parties (Gaithersburg, Rockville and Montgomery County) work together to find a workable solution on this matter prior to the public hearing. It is also consistent with the County Executive's objection to the annexation in his May 31, 2012 letter to the County Council (Attachment C); and the position of the Montgomery County Planning Board in its July 9, 2010 letter to Mayor Marcuccio (Attachment D), in expressing support for Rockville's position that it is "...appropriate that the United States Postal Service, Great Indoors, and the vacant Casey 3 properties along Shady Grove Road be included in the {Rockville} MEL."

MAYOR
Phyllis Marcuccio

COUNCIL
John F. Hall, Jr.
Tom Moore
Bridget Donnell Newton
Mark Pierzchala

ACTING CITY MANAGER
Jennifer Kimball

CITY CLERK
Doug Barber

CITY ATTORNEY
Debra Yerg Daniel

Mayor and City Council
X-184
Exhibit #63 - A

Further, in the spirit of good neighbors, Rockville wishes to continue the long-term excellent relationship between our cities. To that end, we propose that Rockville and Gaithersburg convene a working group, which would at times include Montgomery County, for the purpose of reviewing and potentially updating the 1992 Memorandum of Understanding (attached) that was developed as guidance for future annexations. It is clear that, as our cities are in such close proximity to each other, we must engage further and with greater frequency on this topic in order to establish a renewed and mutually satisfactory understanding.

Thank you for your attention to this testimony.

Sincerely,

Mayor Phyllis Marcuccio

Councilmember John F. Hall, Jr.

Councilmember Tom Moore

Councilmember Bridget Donnell Newton

Councilmember Mark Pierzchala

The Mayor and Council of Rockville

Cc: Montgomery County Executive Isiah Leggett
Montgomery County Councilmembers
Montgomery County Planning Board
City of Gaithersburg Councilmembers
City of Rockville Planning Commission
Jenny Kimball, Acting City Manager, City of Rockville
Angel Jones, City Manager, City of Gaithersburg

Attachments

Maryland Department of Planning

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

May 8, 2012

The Honorable Sidney Katz and Gaithersburg City Council Members
31 South Summit Avenue
Gaithersburg, Maryland 20877

Subject: X-184 Sears Property Annexation

Dear Mayor Katz:

Thank you for providing the Maryland Department of Planning (MDP) with information pertaining to the X-184 Sears Property Annexation to the City of Gaithersburg. We reviewed this proposed annexation and offer the following comments for consideration.

As you are aware, Article 23A, as amended by House Bill 1141, specifies that the new zoning for the annexed land cannot be substantially different from the existing County zoning, without the express consent of the County Commissioners. In reviewing this annexation request, we concur with Montgomery County's assertion that the proposed MXD zoning designation is substantially different than the uses allowed by the existing R & D zoning designation. Should the annexation be approved, be advised that the five-year rule comes into effect, which means that development plans with uses not allowed by the existing R & D zone and/or density greater than 0.525 FAR is prohibited for five years.

We noted that the subject property was designated by Montgomery County as a Priority Funding Area (PFA) and our Department concurs with that designation. Land annexed into a municipality does not automatically become or remain a Priority Funding Area. The opportunity for land annexed into the City to become a Priority Funding Area is subject to the requirements specified in the Finance and Procurement Article §5-7B-02, as amended by HB1141. We recommend that the City look at this annexation and all future annexations in the context of the Finance and Procurement Article §5-7B-02 to determine eligibility for State funding of growth related projects.

While the subject annexation property lies within Gaithersburg's MEL, it is also within the City of Rockville's MEL. Defending the assertion that Shady Grove Road should be the logical boundary between the two cities, the City of Rockville formally requested that the City of Gaithersburg remove this property from its MEL in a letter dated March 23, 2011. Montgomery County also asserted its position that the property be located in Rockville's MEL in a letter dated July 9, 2010. All of this is predicated on the existence of a Memorandum of Understanding between Montgomery County and the Cities of Rockville and Gaithersburg dated July 23, 1992. In consideration of this information, MDP urges all three parties to work together on this annexation request to reach a collaborative and workable solution prior to the public hearing.

Mayor and City Council
X-184
Exhibit 63 - B

301 West Preston Street • Suite 1101 • Baltimore, Maryland 21201-2305
Telephone: 410.767.4500 • Fax: 410.767.4480 • Toll Free: 1.877.767.6272 • TTY Users: Maryland Relay
Internet: www.planning.maryland.gov

If you have any questions concerning these comments or if we can be of further assistance, please contact me at (410) 767-4553, or our regional planner, Steve Allan, at (410) 767-4572.

Sincerely,

Peter Conrad

Peter G. Conrad, AICP
Director, Local Government Assistance

cc: Rich Josephson, MDP
Amanda Conn, MDP
Steve Allan, MDP

Attachments

Attachment C

MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

July 9, 2010

The Honorable Phyllis Marcuccio
Mayor, City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

SUBJECT: Municipal Growth Element of the City of Rockville's Comprehensive Master Plan

Dear Ms. Marcuccio:

At our regular meeting on July 8, 2010, the Montgomery County Planning Board reviewed the City of Rockville's proposed Comprehensive Master Plan Amendment to include Municipal Growth and Water Resources Elements, as required by the State of Maryland.

The Planning Board approved the technical staff recommendation to modify the proposed Maximum Expansion Limits (MEL). David B. Levy, Chief of Long Range Planning and Redevelopment for the City, informed the Board that no portion of Rock Creek Regional Park is included in the MEL. Therefore, the third comment in the enclosed technical staff report is deleted from our recommendation.

The Board supports Montgomery County Executive Isiah Leggett's recommendation to exclude the Montgomery County Service Park (CSP) from the proposed expansion limits. The County has spent significant public resources on property acquisition to redevelop the CSP into a mixed use urban village as recommended in the Shady Grove Sector Plan. We believe it is more appropriate that the United States Postal Service, Great Indoors, and the vacant Casey 3 properties along Shady Grove Road be included in MEL. The Planning Board also supports Montrose Road as the logical terminus to the City's expansion limits.

Thank you for the opportunity to review and comment on the Municipal Growth Element of the City of Rockville's Comprehensive Master Plan.

Sincerely,

Françoise M. Carrier
Chair

Enclosure: Staff Report

cc: David Hill, Chair
Planning Commission

Mayor and City Council
X-184
Exhibit #63 - C

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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Attach D

City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

240-314-5000
TTY 240-314-8137

March 23, 2011

Mayor Sidney A. Katz and Council
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877-2098

Dear Mayor Katz:

Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

Thank you for inviting the City of Rockville to comment on the Draft Land Use Element of the City of Gaithersburg's 2009 Master Plan. We appreciate the effort that your staff has put into this very professional document and applaud the overall product.

However, there is one portion of the document with which the City of Rockville must take exception. The draft element includes a stated intention to annex the site of the former Great Indoor store into Gaithersburg, which is found at Map Designation #18. This property lies to the south of Shady Grove Road and, per the attached map, within the City of Rockville's adopted Maximum Expansion Limits (MEL). The Montgomery County Planning Board supported Rockville's placement of this site within our MEL. It is our firm view that Shady Grove Road is the logical physical boundary between our neighboring jurisdictions, in conformance with the spirit of the Memorandum of Understanding (MOU) signed by Rockville, Gaithersburg and Montgomery County in 1992 (attached). Gaithersburg's annexing any properties south of Shady Grove Road would constitute piecemeal annexation.

The City of Rockville therefore requests that the City of Gaithersburg

MAYOR
Phyllis Marcuccio

COUNCIL
John B. Britton
Piotr Gajewski
Bridget Donnell Newton
Mark Pierzchala

CITY MANAGER
Scott Ullery

CITY CLERK
Glenda P. Evans

CITY ATTORNEY
Debra Yerg Daniel

D - 150 YEARS

Mayor and City Council
X-184
Exhibit #63 - D

Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

remove this property from its MEL and retain Shady Grove Road as the physical boundary between our two Cities.

Sincerely,

Phyllis Marcuccio, Mayor

John B. Britton, Councilmember

Piotr Gajewski, Councilmember

Bridget Newton, Councilmember

Mark Pierzchala, Councilmember

Cc: Scott Ullery, Rockville City Manager
Angel Jones, Gaithersburg City Manager
Greg Ossont, Director, Planning and Code Administration
Susan Swift, Director, Community Planning & Development Services
David B. Levy, Chief of Long Range Planning
Ann Wallas, Planner III
Kirk Eby, Planner
Rollin Stanley, M-NCPPC
Glen Kreger, M-NCPPC
Nkosi Yearwood, M-NCPPC

Attachments:

Attachment A - Montgomery PB testimony re Rockville MGE
Attachment B - Mou between Rockville, Gaithersburg and Montgomery County

FACT SHEET

Memorandum of Understanding Between Montgomery County and the Cities of Rockville and Gaithersburg

The following is the full text of the Memorandum of Understanding about Urban Growth Areas that was signed by the Montgomery County Executive and the Mayors of Rockville and Gaithersburg. This document was signed on July 23, 1992.

All parties to this Memorandum of Understanding share the conviction that the area's quality of life is dependent upon the maintenance of economic vitality. It is the economic base that helps provide the resources to support the services which make living in this area so attractive.

In order for Rockville, Gaithersburg, and Montgomery County to continue to enjoy the quality of life people have come to expect, it is essential that all jurisdictions support well-managed economic development and housing initiatives which will be mutually advantageous to all parties, and agree to the goals and principles of the General Plan.

Therefore, the Montgomery County Executive and the County Council of Montgomery County, sitting as the District Council, the Mayor and Council of the City of Rockville, and the Mayor and Council of the City of Gaithersburg agree to the following:

1. The City Councils, the County Council, and the Executive agree to work cooperatively to determine logical urban growth areas and to established boundaries which will serve as guidelines for a twenty-year planning horizon regarding:
   1) Land use and required commu nity facilities,
   2) Capital investment responsibili ties, and
   3) Logical and efficient operating service areas.

2. Montgomery County will base its position of support on annexations upon the above three considerations and the designation of logical urban growth areas by Rockville and Gaithersburg. The Cities and the County will develop procedural guidelines for handling annexation agreements.

3. Rockville and Gaithersburg recognize the County's goal of requiring adequate public facilities in order to assure managed growth and acknowledge their accountability for the cooperative achievement of such goals. Within its boundaries each City will, however, assume responsibility for and determine how those goals should be measured and attained. It is the mutual intent of all parties that project funding and staging will relate to the timing of public facility availability and to that end will consult with each other as necessary to assure attainment of desired goals.

4. The County recognizes the ability of the two Cities to develop and implement public interest solutions to growth management concerns. City or County development plans for land located within the urban growth areas and on adjacent areas should seek to achieve the land use, transportation, and staging objectives of each of the affected jurisdictions, as defined in duly Approved and Adopted master, Sector, or Neighborhood Plans. Every effort should be made by all parties to reconcile any differences in those objectives.

5. The City Councils, the County Council, the Executive, and the Montgomery County Planning Board agree to work on a cooperative basis in the development of plans and programs, including development districts, that affect parcels within the

Mayor and City Council
X-184
Exhibit #63 - E

urban growth areas. Changes in land uses, staging, or zoning proposals for parcels within the urban growth areas will only be undertaken after the participation and consultation of the other parties. Any land annexed by either Gaithersburg or Rockville should include a staging component in the annexation agreement.

6. Rockville and Gaithersburg endorse the R & D Village concept outline in the Shady Grove Study Area Adopted Plan as being in the best interest of both Cities and the County.

7. Rockville and Gaithersburg recognize the importance of creative development initiatives such as Moderately Priced Dwelling Units (MPDU) and Transferable Development Rights (TDR). The Cities will continue to utilize these and other appropriate innovative concepts to further the common development goals for the area.

8. The Cities will cooperate in a master traffic control plan and transportation (including transit) system for the County.

9. The principles contained within this Memorandum are meant to apply to all future actions pertaining to land in the Cities or on or near the Cities' borders.

10. We recognize the importance of moving ahead on an early basis to establish a schedule of action and agree to meet frequently on these important issues.

Attachment F

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 31, 2012

To: Nancy Floreen, PHED Chair

From: Isiah Leggett, County Executive

Subject: City of Gaithersburg Annexation, Great Indoors Property

I am writing to share with you my position on the proposed annexation and rezoning of the Great Indoors Property on Shady Grove Road.

Upon review, it was noted that the Sears, Roebuck and Company has petitioned the City of Gaithersburg to annex approximately 28 acres into the municipal boundaries. The properties include the Great Indoors parcel as well as significant portions of State of Maryland/State Highway Administration (SHA) and Montgomery County rights-of-way. The amount of SHA and Montgomery County rights-of-way proposed to be annexed is significant and I ask that you review this action to ensure that the inclusion is both logical and appropriate. As you know, despite that fact that Shady Grove Road is a State road, it is a County operated and maintained roadway over which we must maintain operational control and I would like assurances that the City does not intend to exert operational controls within the Shady Grove Road right-of way.

As you are also aware, the property abuts the Montgomery County Shady Grove Processing Facility and Transfer Station. The Transfer Station handles approxuimately 750,000 tons of solid waste each year and handles virtually all of the solid waste generated by the County and its municipalities. It is a seven-day a week operation and generates nearly 1,000 vehicle trips through the Shady Grove entrance each day. A yard waste management area and natural wood waste grinding lot are adjacent to the Sears property. Activities in these areas are inherently noisy and a potential source of fine wood particles under certain conditions. The 2006 Shady Grove Sector Plan noted that the Sears site is not appropriate for residential development due to public health and other concerns given its proximity to the Transfer Station and the site was subsequently rezoned to the Research and Development (R&D) zone.

Mayor and City Council
X-184
Exhibit #63 - F

As you are well aware, I am a strong advocate for housing with affordable housing being of particular interest to me. I must however, raise my serious concerns to you about the fact that the proposed Mixed Use Development zone (MXD) permits residential development. I agree with the Planning Board's recommendation that the City of Gaithersburg should not approve residential uses on this property due to its proximity to the Solid Waste Transfer Station.

While it is my understanding that neither the City nor the Petitioner is suggesting that residential redevelopment is appropriate at the site and that the Petitioner's legal counsel is considering options that will provide assurances to all stakeholders that no residential will be developed in the future, those assurances are not available at this time. *Without those assurances I do not support the proposed annexation and rezoning.*

If you have any questions, please contact Greg Ossont, Deputy Director, Dept. of General Services at 240-777-6192 or greg.ossont@montgomerycountymd.gov

cc: Roger Berliner, Council President
Sidney A. Katz, Gaithersburg Mayor
Francoise Carrier, Planning Board Chair
Phyllis Marcuccio, Rockville Mayor
Angel L. Jones, Gaithersburg City Manager
Marc Hansen, County Attorney
Bob Hoyt, Director DEP
Art Holmes, Director DOT
David Dise, Director DGS

City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

240-314-5000
TTY 240-314-8137

June 5, 2012

The Honorable Sidney A. Katz
Mayor, City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877-2098

Re: Sears Site – 16331 and 16401 Shady Grove Road

Dear Mayor Katz:

Thank you for the opportunity to comment on the annexation petition for the City of Gaithersburg to annex the properties located at 16331 and 16401 Shady Grove Road, owned by the Sears Corporation. Let us preface these remarks by stating that we genuinely value the cooperative efforts and mutually supportive relationship that our communities have established over many years, and we are hopeful that the City of Rockville's testimony on the pending matter, which are of grave concern to us, may be received and accorded your highest consideration in the context of that spirit of longstanding cooperation.

As you may recall, Rockville's Mayor and Council provided testimony during your consideration of an updated Land Use Element of Gaithersburg's Master Plan. Our testimony of March 23, 2011 is Attachment A to this letter.

Our position remains the same as it was last year: in short, the logical long-term boundary between Rockville and Gaithersburg is Shady Grove Road and that boundary should be firmly established. Therefore, Rockville strenuously objects to Gaithersburg's annexing the property in question and any other properties on the Rockville side of Shady Grove Road. Further, Gaithersburg's annexation of this property would create a significant obstacle to Rockville's access to other portions of our Maximum Expansion Limits, which are also south of Shady Grove Road. Accordingly, we respectfully - but firmly - request that Gaithersburg refrain from annexing 16331 and 16401 Shady Grove Road.

Given the positions expressed by the State, County Executive and Planning Board, the proposed annexation surprised and dismayed our Mayor and Council. Rockville's position is consistent with the concern expressed by the Maryland Department of Planning (MDP) in its May 8, 2012 letter to Gaithersburg (Attachment B), in which MDP urged that the parties (Gaithersburg, Rockville and Montgomery County) work together to find a workable solution on this matter prior to the public hearing. It is also consistent with the County Executive's objection to the annexation in his May 31, 2012 letter to the County Council (Attachment C); and the position of the Montgomery County Planning Board in its July 9, 2010 letter to Mayor Marcuccio (Attachment D), in expressing support for Rockville's position that it is "...appropriate that the United States Postal Service, Great Indoors, and the vacant Casey 3 properties along Shady Grove Road be included in the {Rockville} MEL."

MAYOR
Phyllis Marcuccio

COUNCIL
John F. Hall, Jr.
Tom Moore
Bridget Donnell Newton
Mark Pierzchala

ACTING CITY MANAGER
Jennifer Kimball

CITY CLERK
Doug Barber

CITY ATTORNEY
Debra Yerg Daniel

Mayor and City Council
X-184
Exhibit #64

Further, in the spirit of good neighbors, Rockville wishes to continue the long-term excellent relationship between our cities. To that end, we propose that Rockville and Gaithersburg convene a working group, which would at times include Montgomery County, for the purpose of reviewing and potentially updating the 1992 Memorandum of Understanding (attached) that was developed as guidance for future annexations. It is clear that, as our cities are in such close proximity to each other, we must engage further and with greater frequency on this topic in order to establish a renewed and mutually satisfactory understanding.

Thank you for your attention to this testimony.

Sincerely,

Mayor Phyllis Marcuccio

Councilmember John F. Hall, Jr.

Councilmember Tom Moore

Councilmember Bridget Donnell Newton

Councilmember Mark Pierzchala

The Mayor and Council of Rockville

Cc: Montgomery County Executive Isiah Leggett
Montgomery County Councilmembers
Montgomery County Planning Board
City of Gaithersburg Councilmembers
City of Rockville Planning Commission
Jenny Kimball, Acting City Manager, City of Rockville
Angel Jones, City Manager, City of Gaithersburg

Attachments

Attachment A

City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

240-314-5000
TTY 240-314-8137

March 23, 2011

Mayor Sidney A. Katz and Council
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877-2098

Dear Mayor Katz:

Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

Thank you for inviting the City of Rockville to comment on the Draft Land Use Element of the City of Gaithersburg's 2009 Master Plan. We appreciate the effort that your staff has put into this very professional document and applaud the overall product.

However, there is one portion of the document with which the City of Rockville must take exception. The draft element includes a stated intention to annex the site of the former Great Indoor store into Gaithersburg, which is found at Map Designation #18. This property lies to the south of Shady Grove Road and, per the attached map, within the City of Rockville's adopted Maximum Expansion Limits (MEL). The Montgomery County Planning Board supported Rockville's placement of this site within our MEL. It is our firm view that Shady Grove Road is the logical physical boundary between our neighboring jurisdictions, in conformance with the spirit of the Memorandum of Understanding (MOU) signed by Rockville, Gaithersburg and Montgomery County in 1992 (attached). Gaithersburg's annexing any properties south of Shady Grove Road would constitute piecemeal annexation.

The City of Rockville therefore requests that the City of Gaithersburg

MAYOR
Phyllis Marcuccio

COUNCIL
John B. Britton
Piotr Gajewski
Bridget Donnell Newton
Mark Pierzchala

CITY MANAGER
Scott Ullery

CITY CLERK
Glenda P. Evans

CITY ATTORNEY
Debra Yerg Daniel

Mayor and City Council
X-184
Exhibit #64 - A

Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

remove this property from its MEL and retain Shady Grove Road as the physical boundary between our two Cities.

Sincerely,

Phyllis Marcuccio, Mayor

John B. Britton, Councilmember

Piotr Gajewski, Councilmember

Bridget Newton, Councilmember

Mark Pierzchala, Councilmember

Cc: Scott Ullery, Rockville City Manager
Angel Jones, Gaithersburg City Manager
Greg Ossont, Director, Planning and Code Administration
Susan Swift, Director, Community Planning & Development Services
David B. Levy, Chief of Long Range Planning
Ann Wallas, Planner III
Kirk Eby, Planner
Rollin Stanley, M-NCPPC
Glen Kreger, M-NCPPC
Nkosi Yearwood, M-NCPPC

Attachments:

Attachment A - Montgomery PB testimony re Rockville MGE
Attachment B - Mou between Rockville, Gaithersburg and Montgomery County

Maryland Department of Planning

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

May 8, 2012

The Honorable Sidney Katz and Gaithersburg City Council Members
31 South Summit Avenue
Gaithersburg, Maryland 20877

Subject: X-184 Sears Property Annexation

Dear Mayor Katz:

Thank you for providing the Maryland Department of Planning (MDP) with information pertaining to the X-184 Sears Property Annexation to the City of Gaithersburg. We reviewed this proposed annexation and offer the following comments for consideration.

As you are aware, Article 23A, as amended by House Bill 1141, specifies that the new zoning for the annexed land cannot be substantially different from the existing County zoning, without the express consent of the County Commissioners. In reviewing this annexation request, we concur with Montgomery County's assertion that the proposed MXD zoning designation is substantially different than the uses allowed by the existing R & D zoning designation. Should the annexation be approved, be advised that the five-year rule comes into effect, which means that development plans with uses not allowed by the existing R & D zone and/or density greater than 0.525 FAR is prohibited for five years.

We noted that the subject property was designated by Montgomery County as a Priority Funding Area (PFA) and our Department concurs with that designation. Land annexed into a municipality does not automatically become or remain a Priority Funding Area. The opportunity for land annexed into the City to become a Priority Funding Area is subject to the requirements specified in the Finance and Procurement Article §5-7B-02, as amended by HB1141. We recommend that the City look at this annexation and all future annexations in the context of the Finance and Procurement Article §5-7B-02 to determine eligibility for State funding of growth related projects.

While the subject annexation property lies within Gaithersburg's MEL, it is also within the City of Rockville's MEL. Defending the assertion that Shady Grove Road should be the logical boundary between the two cities, the City of Rockville formally requested that the City of Gaithersburg remove this property from its MEL in a letter dated March 23, 2011. Montgomery County also asserted its position that the property be located in Rockville's MEL in a letter dated July 9, 2010. All of this is predicated on the existence of a Memorandum of Understanding between Montgomery County and the Cities of Rockville and Gaithersburg dated July 23, 1992. In consideration of this information, MDP urges all three parties to work together on this annexation request to reach a collaborative and workable solution prior to the public hearing.

Mayor and City Council
X-184
Exhibit #64 - B

301 West Preston Street • Suite 1101 • Baltimore, Maryland 21201-2305
Telephone: 410.767.4500 • Fax: 410.767.4480 • Toll Free: 1.877.767.6272 • TTY Users: Maryland Relay
Internet: www.planning.maryland.gov

If you have any questions concerning these comments or if we can be of further assistance, please contact me at (410) 767-4553, or our regional planner, Steve Allan, at (410) 767-4572.

Sincerely,

Peter G. Conrad, AICP
Director, Local Government Assistance

cc: Rich Josephson, MDP
Amanda Conn, MDP
Steve Allan, MDP

Attachments

Attachment C

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 31, 2012

To: Nancy Floreen, PHED Chair

From: Isiah Leggett, County Executive

Subject: City of Gaithersburg Annexation, Great Indoors Property

I am writing to share with you my position on the proposed annexation and rezoning of the Great Indoors Property on Shady Grove Road.

Upon review, it was noted that the Sears, Roebuck and Company has petitioned the City of Gaithersburg to annex approximately 28 acres into the municipal boundaries. The properties include the Great Indoors parcel as well as significant portions of State of Maryland/State Highway Administration (SHA) and Montgomery County rights-of-way. The amount of SHA and Montgomery County rights-of-way proposed to be annexed is significant and I ask that you review this action to ensure that the inclusion is both logical and appropriate. As you know, despite that fact that Shady Grove Road is a State road, it is a County operated and maintained roadway over which we must maintain operational control and I would like assurances that the City does not intend to exert operational controls within the Shady Grove Road right-of way.

As you are also aware, the property abuts the Montgomery County Shady Grove Processing Facility and Transfer Station. The Transfer Station handles approxuimately 750,000 tons of solid waste each year and handles virtually all of the solid waste generated by the County and its municipalities. It is a seven-day a week operation and generates nearly 1,000 vehicle trips through the Shady Grove entrance each day. A yard waste management area and natural wood waste grinding lot are adjacent to the Sears property. Activities in these areas are inherently noisy and a potential source of fine wood particles under certain conditions. The 2006 Shady Grove Sector Plan noted that the Sears site is not appropriate for residential development due to public health and other concerns given its proximity to the Transfer Station and the site was subsequently rezoned to the Research and Development (R&D) zone.

Mayor and City Council
X-184
Exhibit #64 - C

As you are well aware, I am a strong advocate for housing with affordable housing being of particular interest to me. I must however, raise my serious concerns to you about the fact that the proposed Mixed Use Development zone (MXD) permits residential development. I agree with the Planning Board's recommendation that the City of Gaithersburg should not approve residential uses on this property due to its proximity to the Solid Waste Transfer Station.

While it is my understanding that neither the City nor the Petitioner is suggesting that residential redevelopment is appropriate at the site and that the Petitioner's legal counsel is considering options that will provide assurances to all stakeholders that no residential will be developed in the future, those assurances are not available at this time. Without those assurances I do not support the proposed annexation and rezoning.

If you have any questions, please contact Greg Ossont, Deputy Director, Dept. of General Services at 240-777-6192 or greg.ossont@montgomerycountymd.gov

cc: Roger Berliner, Council President
Sidney A. Katz, Gaithersburg Mayor
Francoise Carrier, Planning Board Chair
Phyllis Marcuccio, Rockville Mayor
Angel L. Jones, Gaithersburg City Manager
Marc Hansen, County Attorney
Bob Hoyt, Director DEP
Art Holmes, Director DOT
David Dise, Director DGS

Attachment D

MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

July 9, 2010

The Honorable Phyllis Marcuccio
Mayor, City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

SUBJECT: Municipal Growth Element of the City of Rockville's Comprehensive Master Plan

Dear Ms. Marcuccio:

At our regular meeting on July 8, 2010, the Montgomery County Planning Board reviewed the City of Rockville's proposed Comprehensive Master Plan Amendment to include Municipal Growth and Water Resources Elements, as required by the State of Maryland.

The Planning Board approved the technical staff recommendation to modify the proposed Maximum Expansion Limits (MEL). David B. Levy, Chief of Long Range Planning and Redevelopment for the City, informed the Board that no portion of Rock Creek Regional Park is included in the MEL. Therefore, the third comment in the enclosed technical staff report is deleted from our recommendation.

The Board supports Montgomery County Executive Isiah Leggett's recommendation to exclude the Montgomery County Service Park (CSP) from the proposed expansion limits. The County has spent significant public resources on property acquisition to redevelop the CSP into a mixed use urban village as recommended in the Shady Grove Sector Plan. We believe it is more appropriate that the United States Postal Service, Great Indoors, and the vacant Casey 3 properties along Shady Grove Road be included in MEL. The Planning Board also supports Montrose Road as the logical terminus to the City's expansion limits.

Thank you for the opportunity to review and comment on the Municipal Growth Element of the City of Rockville's Comprehensive Master Plan.

Sincerely,

Françoise M. Carrier
Chair

Mayor and City Council
X-184
Exhibit #64 - D

Enclosure: Staff Report

cc: David Hill, Chair
Planning Commission

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

100% recycled paper

FACT SHEET

Memorandum of Understanding Between Montgomery County and the Cities of Rockville and Gaithersburg

The following is the full text of the Memorandum of Understanding about Urban Growth Areas that was signed by the Montgomery County Executive and the Mayors of Rockville and Gaithersburg. This document was signed on July 23, 1992.

All parties to this Memorandum of Understanding share the conviction that the area's quality of life is dependent upon the maintenance of economic vitality. It is the economic base that helps provide the resources to support the services which make living in this area so attractive.

In order for Rockville, Gaithersburg, and Montgomery County to continue to enjoy the quality of life people have come to expect, it is essential that all jurisdictions support well-managed economic development and housing initiatives which will be mutually advantageous to all parties, and agree to the goals and principles of the General Plan.

Therefore, the Montgomery County Executive and the County Council of Montgomery County, sitting as the District Council, the Mayor and Council of the City of Rockville, and the Mayor and Council of the City of Gaithersburg agree to the following:

1. The City Councils, the County Council, and the Executive agree to work cooperatively to determine logical urban growth areas and to established boundaries which will serve as guidelines for a twenty-year planning horizon regarding:
   1) Land use and required commu nity facilities,
   2) Capital investment responsibili ties, and
   3) Logical and efficient operating service areas.

2. Montgomery County will base its position of support on annexations upon the above three considerations and the designation of logical urban growth areas by Rockville and Gaithersburg. The Cities and the County will develop procedural guidelines for bandling annexation agreements.

3. Rockville and Gaithersburg recognize the County's goal of requiring adequate public facilities in order to assure managed growth and acknowledge their accountability for the cooperative achievement of such goals. Within its boundaries each City will, however, assume responsibility for and determine how those goals should be measured and attained. It is the mutual intent of all parties that project funding and staging will relate to the timing of public facility availability and to that end will consult with each other as necessary to assure attainment of desired goals.

4. The County recognizes the ability of the two Cities to develop and implement public interest solutions to growth management concerns. City or County development plans for land located within the urban growth areas and on adjacent areas should seek to achieve the land use, transportation, and staging objectives of each of the affected jurisdictions, as defined in duly Approved and Adopted master, Sector, or Neighborhood Plans. Every effort should be made by all parties to reconcile any differences in those objectives.

5. The City Councils, the County Council, the Executive, and the Montgomery County Planning Board agree to work on a cooperative basis in the development of plans and programs, including development districts, that affect parcels within the

Mayor and City Council
X-184
Exhibit #64 - E (1)

urban growth areas. Changes in land uses, staging, or zoning proposals for parcels within the urban growth areas will only be undertaken after the participation and consultation of the other parties. Any land annexed by either Gaithersburg or Rockville should include a staging component in the annexation agreement.

6. Rockville and Gaithersburg endorse the R & D Village concept outline in the Shady Grove Study Area Adopted Plan as being in the best interest of both Cities and the County.

7. Rockville and Gaithersburg recognize the importance of creative development initiatives such as Moderately Priced Dwelling Units (MPDU) and Transferable Development Rights (TDR). The Cities will continue to utilize these and other appropriate innovative concepts to further the common development goals for the area.

8. The Cities will cooperate in a master traffic control plan and transportation (including transit) system for the County.

9. The principles contained within this Memorandum are meant to apply to all future actions pertaining to land in the Cities or on or near the Cities' borders.

10. We recognize the importance of moving ahead on an early basis to establish a schedule of action and agree to meet frequently on these important issues.

FACT SHEET

Memorandum of Understanding Between Montgomery County and the Cities of Rockville and Gaithersburg

The following is the full text of the Memorandum of Understanding about Urban Growth Areas that was signed by the Montgomery County Executive and the Mayors of Rockville and Gaithersburg. This document was signed on July 23, 1992.

All parties to this Memorandum of Understanding share the conviction that the area's quality of life is dependent upon the maintenance of economic vitality. It is the economic base that helps provide the resources to support the services which make living in this area so attractive.

In order for Rockville, Gaithersburg, and Montgomery County to continue to enjoy the quality of life people have come to expect, it is essential that all jurisdictions support well-managed economic development and housing initiatives which will be mutually advantageous to all parties, and agree to the goals and principles of the General Plan.

Therefore, the Montgomery County Executive and the County Council of Montgomery County, sitting as the District Council, the Mayor and Council of the City of Rockville, and the Mayor and Council of the City of Gaithersburg agree to the following:

1. The City Councils, the County Council, and the Executive agree to work cooperatively to determine logical urban growth areas and to established boundaries which will serve as guidelines for a twenty-year planning horizon regarding:
   1) Land use and required commu nity facilities,
   2) Capital investment responsibili ties, and
   3) Logical and efficient operating service areas.

2. Montgomery County will base its position of support on annexations upon the above three considerations and the designation of logical urban growth areas by Rockville and Gaithersburg. The Cities and the County will develop procedural guidelines for handling annexation agreements.

3. Rockville and Gaithersburg recognize the County's goal of requiring adequate public facilities in order to assure managed growth and acknowledge their accountability for the cooperative achievement of such goals. Within its boundaries each City will, however, assume responsibility for and determine how those goals should be measured and attained. It is the mutual intent of all parties that project funding and staging will relate to the timing of public facility availability and to that end will consult with each other as necessary to assure attainment of desired goals.

4. The County recognizes the ability of the two Cities to develop and implement public interest solutions to growth management concerns. City or County development plans for land located within the urban growth areas and on adjacent areas should seek to achieve the land use, transportation, and staging objectives of each of the affected jurisdictions, as defined in duly Approved and Adopted master, Sector, or Neighborhood Plans. Every effort should be made by all parties to reconcile any differences in those objectives.

5. The City Councils, the County Council, the Executive, and the Montgomery County Planning Board agree to work on a cooperative basis in the development of plans and programs, including development districts, that affect parcels within the

Mayor and City Council
X-184
Exhibit #64 - E (2)

urban growth areas. Changes in land uses, staging, or zoning proposals for parcels within the urban growth areas will only be undertaken after the participation and consultation of the other parties. Any land annexed by either Gaithersburg or Rockville should include a staging component in the annexation agreement.

6. Rockville and Gaithersburg endorse the R & D Village concept outline in the Shady Grove Study Area Adopted Plan as being in the best interest of both Cities and the County.

7. Rockville and Gaithersburg recognize the importance of creative development initiatives such as Moderately Priced Dwelling Units (MPDU) and Transferable Development Rights (TDR). The Cities will continue to utilize these and other appropriate innovative concepts to further the common development goals for the area.

8. The Cities will cooperate in a master traffic control plan and transportation (including transit) system for the County.

9. The principles contained within this Memorandum are meant to apply to all future actions pertaining to land in the Cities or on or near the Cities' borders.

10. We recognize the importance of moving ahead on an early basis to establish a schedule of action and agree to meet frequently on these important issues.

PHED Committee #1
June 11, 2012

MEMORANDUM

June 7, 2012

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney

SUBJECT: City of Gaithersburg Annexation Petition (X-184), Sears Property

Staff Recommendation

In the absence of the authority to deny the annexation, the Council should not approve the request to rezone the property from R&D zoning to Gaithersburg's MXD zone.

Further, the Council should recommend to the Mayor and Council of Gaithersburg an annexation agreement with the petitioner that requires: 1) prohibiting any residential use of the property; 2) prohibiting any new development from building any more retail floor area than the 204,490 that currently exists on the site; 3) a condition that the developer must improve the sidewalk adjoining the site when any new development proceeds; and 4) assurance from the Mayor and Council of Gaithersburg that it will not exert any operational control of Shady Grove Road.

Background

Area

The City of Gaithersburg is proposing to annex approximately 27.9 acres of land located near the southeastern quadrant of Frederick Road (MD 355) and Shady Grove Road. (The private property in the proposed annexation consists of 13.7 acres. More than half of the area proposed for annexation is comprised of State and County right-of-way.) The property is included in the maximum expansion limits of both Gaithersburg and Rockville.

Existing and proposed development

The applicant is proposing to continue using the existing building as general retail and warehouse, as was approved by Montgomery County. The plan submitted 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.

Mayor and City Council
X-184
Exhibit #65

Sector Plan

The Shady Grove Sector Plan is the applicable sector plan. The Sector Plan limits the FAR to .35 for non-residential uses and does not allow any dwelling units. The Plan did not recommend residential development because of the site's proximity to the County's solid waste transfer station. (The total dwelling unit limit in the Sector Plan was also due to a concern for adequate school capacity.) The Sector Plan makes the following recommendations specific to this property (Sector Plan page 26):

- Provide technology, research and development, and office uses to create a technology corridor.
- Orient buildings toward street frontages and screen parking from Shady Grove Road.
- Ensure that any redevelopment of the site preserves and enhances the pedestrian environment of Shady Grove Road.
- Rezone this site from I-1 to R&D with an [option to apply the] I-3 standard method zone [by Local Map Amendment].
- 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.

Zoning

Under the annexation proposal, the Sears property would be reclassified to the City's MXD (Mixed-Use District) zone, which allows a mix of residential and commercial uses.

The following summarizes the differences between the R&D and the MXD Zone:

	Montgomery County R&D Zone	**City of Gaithersburg MXD Zone**
Uses	Residential not permitted (except caretaker residence)	Residential permitted
Retail	Severely restricted - 5% of building FAR	Retail permitted
Density	Max. density 0.5 FAR (Sector Plan limits to 0.35)	Max. density 0.75 FAR (Specific project or site densities to be established during site plan approval)

Annexation authority

Article 23A, Section 9(c) 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 by the current zoning, without express approval of the County Council.[1] The Council cannot prohibit the annexation. The

[1] Maryland Code 23A§9(c):

(1) A municipal corporation which is subject to the provisions of Article XI-E of the Maryland Constitution may not amend its charter or exercise its powers of annexation, incorporation or repeal of charter as to affect or impair in any respect the powers relating to sanitation, including sewer, water and similar facilities, and zoning, of the Washington Suburban Sanitary Commission or of the Maryland-National Capital Park and Planning Commission. Except that where any area is annexed to a municipality authorized to have and having then a planning and zoning authority, the municipality shall have exclusive jurisdiction over planning and zoning and subdivision control within the area annexed; provided nothing

Planning Board found that MXD is a substantially different zone than R&D. Retail use is a substantially different use than allowed by the R&D zone.[2] The density allowed under the R&D zone must be consistent with the master plan. The Master Plan recommends a maximum density of .35 FAR. The proposed MXD zone has an FAR limit of .75.[3] Under this situation, in the absence of the Council's express approval, the current zoning must remain in force to 5 years from the date of annexation.

County Executive Recommendation

In a letter to Committee Chair Floreen, the County Executive noted the proximity of the site to the adjoining Solid Waste Transfer Station. He did not support the proposed annexation and rezoning to the MXD zone that would generally allow residential use in the absence of assurance that the City will not approve residential use on the property. In addition, he noted the significant amount of State and County right-of-way under consideration for annexation. He asked the Council to review this action to ensure that the inclusion is both logical and appropriate. The Executive in particular would like assurances that the City does not intend to exert operational controls within the Shady Grove right-of-way.

Rockville's Recommendation

The Mayor and Council of Rockville sent a letter of testimony to Gaithersburg objecting to their inclusion of this property in their then-proposed amendment to the Land Use Element of their master plan. It is Rockville's firm view that Shady Grove Road is the logical physical boundary between Rockville and Gaithersburg, in conformance with the spirit of the Memorandum of Understanding (MOU) signed by Rockville, Gaithersburg, and Montgomery County in 1992. In Rockville's opinion, the annexation of any property south of Shady Grove Road by Gaithersburg would constitute piecemeal annexation. It is Rockville's position that the land south/southeast of the I-370 and Shady Grove Road corridor is appropriately in Rockville's Maximum Expansion Limits, and should not be incorporated by Gaithersburg's. Furthermore, the City objects to the fact that Gaithersburg made no attempt to work cooperatively with all MOU parties, per commitments made in the MOU. The Mayor and Council urged the Council to "take all appropriate actions to object to this proposed annexation and work with the cities of Rockville and Gaithersburg to develop an MOU for guidance on future proposed annexations."

---

in this exception shall be construed or interpreted to grant planning and zoning authority or subdivision control to a municipality not authorized to exercise that authority at the time of such annexation; and further provided, that no municipality annexing land may for a period of five years following an annexation, permit development of the annexed land for land uses substantially different than the use authorized, or at a substantially higher, not to exceed 50%, density than could be granted for the proposed development, in accordance with the zoning classification of the county applicable at the time of the annexation without the express approval of the board of county commissioners or county council of the county in which the municipality is located.

(2) If the county expressly approves, the municipality, without regard to the provisions of Article 66B, §4.05(a) of the Code, may place the annexed land in a zoning classification that permits a land use or density different from the land use or density specified in the zoning classification of the county or agency having planning and zoning jurisdiction over the land prior to its annexation applicable at the time of the annexation.

[2] A May 8, 2012 letter from the Maryland Department of Planning advised the Mayor and Council of Gaithersburg that the MXD designation is substantially different than the uses allowed in the existing R&D zoning, and the 5 year rule comes into effect unless the County Council approves the change.

[3] The maximum FAR that would not represent a substantial change in density would be .525 FAR. The Planning Board recommended using .525 as the limit on density for 5 years.

Planning Board's Recommendation

At its regular meeting on April 26, 2012, the Montgomery County Planning Board reviewed the City of Gaithersburg Annexation Petition No. X-184 for the Sears property. At the conclusion of the hearing, the Planning Board (Commissioners Carrier, Wells-Harley, Presley, and Dreyfuss) unanimously voted to APPROVE the transmittal of the following comments:

The annexation petition should be approved with conditions:

1) Approval of new development plans with substantially different uses (such as residential) and/or density greater than 0.525 FAR is prohibited for five years.
2) The City of Gaithersburg should not approve plans for residential uses on this property due to proximity to the Solid Waste Transfer Station.
3) The Applicant must satisfy the Adequate Public Facilities test if the site is redeveloped in a way that generates more peak hour trips than the existing retail use of 204,490 square feet of gross floor area.
4) The Applicant must enter into a Traffic Mitigation Agreement with the City and the Montgomery County Department of Transportation (MCDOT) to participate in the Greater Shady Grove Traffic Management District in order to achieve the transit ridership goal of the Shady Grove Sector Plan.
5) The Applicant must upgrade the existing sidewalk along Shady Grove Road. Upgrades should include a relocated sidewalk with a tree panel, lead-in sidewalks, and handicapped ramps.

When Gaithersburg proposed including this property in their maximum expansion limits, the Planning Board recommended the following to the Mayor and Council of Gaithersburg:

> The City should consider the removal of [sites south of Route 28] from the Maximum Expansion Limits. The boundary should be located at logical natural or physical features that respect community identity and do not weaken the County's economic vitality. The City should not promote piecemeal annexation of properties, even at the owner's request. MD 28 and I-370 provide a physically identifiable edge that would not further split properties in the County's jurisdiction.

Gaithersburg's Recommendation

Gaithersburg staff determined that the proposed petition for annexation, X-184, complies with the City's Master Plan. In their opinion, 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, Gaithersburg staff supports the proposed annexation to increase the 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 the City's municipal growth boundary. Gaithersburg Staff concluded that the proposed annexation will not unduly burden existing public facilities.

The Gaithersburg City Council conducted a public hearing on May 21, 2012. The record for that hearing is being held open until July 5, 2012. Gaithersburg staff has tentatively scheduled a policy discussion on the annexation for August 6, 2012.

In a letter to the Council dated June 4, the Gaithersburg City Manager, Angel Jones, asked the Council to approve the change in zoning as a way to avoid retaining the R&D zoning for 5 years. She noted that neither the Planning Board nor the Executive expressed concern about Gaithersburg's proposed Maximum Expansion Limits in 2008. In partial response to the Executive's comments, she indicates that the City has no intention of exercising operational control of the right-of-way proposed for annexation.

Petitioner's Point of View

In 2006, Montgomery County comprehensively rezoned the property to Research and Development ("R&D"), which does not permit retail uses. With The Great Indoors use being grandfathered as part of the comprehensive rezoning, Sears did not participate in the County's Master Plan process to the extent it should have to ensure greater flexibility in the use of the property until alternative uses envisioned by the County's master plan for the area are viable. The lack of demand for R&D space in the area, currently and for the foreseeable future, renders the R&D zone very problematic for the property. Through the proposed annexation, Sears hopes to achieve more flexible and realistic zoning for the property and, to that end, is requesting MXD zoning from the City, consistent with the recommendation of the City's Land Use Plan. Such a zone will allow for viable uses within the existing improvements on the property until the market will support redevelopment of the property. The applicant believes, therefore, that the proposed annexation benefits both Sears and the City, with the City being ensured of future tax revenue from the property and Sears being given the flexibility it needs to keep the property productive.

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 of Gaithersburg's Master Plan.

In a June 4, 2012 letter to the Council, the applicant's attorney responded to the Planning Board's recommendations.[4] The letter suggested that, based on the property owner's commitment to not increase density or produce a residential development for a 5 year term following annexation[5], the Council should express their approval of the change in zoning. In the applicant's view, Gaithersburg's standards should apply to determine adequate road capacity and trip mitigation agreements. As for sidewalks on Shady Grove Road, the Maryland Department of Transportation's requirement should obviate the need for that requirement, in their opinion.

[4] The applicant does not concede that the MXD zone and the R&D zone are substantially different. In spite of reserving that argument, their letter argues that the County should not object to annexation.

[5] A conversation with the applicant's attorney indicated a willingness to put this commitment in a binding form if that is what is necessary to secure the Council's approval for the rezoning.

Staff Comments and Recommendations

Does the Council have any role in this annexation?

Maryland code gives the Council a role when the proposed development of the annexed land is for land uses substantially different than the use authorized by the current zoning. Unless the Council agrees with the proposed rezoning, the current zoning remains in force for 5 years.

The Great Indoors store was approved as a "building material and supply use" in the I-1 zone. That use is not allowed in the site's current R&D zone.[6] The Gaithersburg annexation, as requested by the applicant to allow general retail use, would be substantially different from its current zoning.

Are there "other actions" that the Council could take to object to the proposed annexation as requested by the City of Rockville?

There is nothing in Maryland law that would allow the Council to affirmatively prohibit an annexation. The Maryland Code does requires that land annexed by a municipality be "contiguous and adjacent".[7]

In 1997, the Attorney General opined that more than a literal interpretation of the "contiguous and adjoining" provision was required:

> "A literal construction of statutory text, however, must not sacrifice the legislative objective ... If annexation would result in a unified sense of community identity between the municipality and the annexed land, the annexation would likely be approved by the courts. If, however, the land and the municipality lack commonality, the annexation would likely be disapproved. "[8]

The Attorney General believed the General Assembly wanted a municipal corporation to be a unitary entity. A court described a unitary entity as "a collective body of inhabitants, gathered together in one mass, with recognized and well-defined external boundaries which gathered the persons inhabiting the area into one body, which is not separated by remote or disconnected areas."

The Attorney General's opinion notwithstanding, the Court of Appeals took a very literal approach to the provision when it determined that municipal corporations may extend their boundaries across a

---

[6] Trudy M. Schwarz, Gaithersburg Community Planning Director, indicated in a March 15, 2012 memorandum to the Planning Commission that "the applicant is proposing to continue using the existing building as general retail and warehouse as was approved by Montgomery County." The Department of Permitting Services informed staff that the building was only approved for a building material and supply use.

[7] § 19. Annexation

(a) Legislative body authorized to enlarge corporate boundaries. -- The legislative body, by whatever name known, of every municipal corporation in this State may enlarge its corporate boundaries as provided in this subheading; but this power shall apply only to land:
   (1) Which is contiguous and adjoining to the existing corporate area; and
   (2) Which does not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the municipality, real property proposed to be within the corporate limits of the municipality as a result of the proposed annexation, or any combination of such properties.

The County Attorney stated in a footnote to a 2006 memorandum that the Crown Farm Annexation did not "appear to raise the issue concerning the contiguous and adjoining requirement imposed under §19(a)(1). The reasons why that the Crown Farm Annexation did not raise that issue is not discussed in the memorandum. The County Attorney did not believe that the Attorney General's 1997 opinion on this general subject area was relevant because it addressed the contiguous and adjoining requirement.

[8] 82 Op. Md. Attorney General (Op. No. 97-05) (1997).

waterway, even if the annexed land would be separated completely from the original city or town limits by that body of water.[9] In 1999, the Court of Special Appeals, in a case that related more to owner consent, found that for the purposes of getting owner consent, a municipality cannot annex multiple non-contiguous areas in a single annexation proceeding without obtaining the minimum consent from each contiguous area to be annexed.[10]

The Council could question whether a situation (where the acreage of right-of-way proposed for annexation exceeded the acreage of private property) met the standard of contiguous and adjoining. The Council could also question whether the proposed annexation met the General Assembly's objective of having something in common with the municipality, other than adding to the City's tax base. Staff would not want to speculate on the outcome of any such litigation.

Every annexation presents its own unique set of facts, but the Council's past actions on annexations has not been adversarial.

Does the annexation of property south of Shady Grove Road make geographic sense?

The July 23, 1992 Memorandum of Understanding among the County Executive, the City of Gaithersburg, and the City of Rockville includes the following provision:

> The City Councils, the County Council, and the Executive agree to work cooperatively to determine logical urban growth areas and to established boundaries which will serve as guidelines for a twenty-year planning horizon regarding:
>
> 1) Land use and required community facilities,
> 2) Capital investment responsibilities, and
> 3) Logical and efficient operating service areas.
>
> Montgomery County will base its position of support on annexations upon the above three considerations and the designation of logical urban growth areas by Rockville and Gaithersburg.

The Planning Board recommended retaining I-370 as a physically identifiable edge in its recommendations to the City of Gaithersburg on its 2009 Draft Land Use Plan. The City of Rockville objects to the proposed annexation. It is Rockville's firm view that Shady Grove Road is the logical physical boundary between Rockville and Gaithersburg. In Rockville's opinion, the annexation of any property south of Shady Grove Road by Gaithersburg would constitute piecemeal annexation. The Executive asked the Council to be satisfied that the annexation is both logical and appropriate. It is hard to ignore the fact that the I-370 interchange and Shady Grove Road create a physical barrier that separates the Sears site from the remainder of Gaithersburg.

Staff recommends that the Council should not agree with the proposed annexation, because it would result in an illogical and inefficient operating service area for the City of Gaithersburg.

Should some uses on the property be limited or prohibited?

The property is immediately north of the Solid Waste Transfer Station. The access road for the transit station is on the western boundary of the subject property. The Shady Grove Sector Plan did not

[9] Anne Arundel County v. City of Annapolis, 352 Md. 117
[10] Mayor & Council of Berlin v. Barrett, 136 Md. App. 676 (1999).

contemplate any residential use of the property. In a recent annexation to the City of Rockville, the Reed Brothers' Property, the Council agreed with a change in zoning that allowed residential development. In this case, the Applicant is not seeking residential development, at least for the first 5 years after annexation; however, the County Executive was not satisfied by the assurances he received by May 31, 2012 concerning the prohibition of any future residential use.

Staff recommends prohibiting residential development on the property.

The Shady Grove Sector Plan concluded that retail was not a good long-term use for the Sears property. In the long term, retail uses would be replaced by more employment intensive uses. Under the MXD zone in Gaithersburg, future retail use could be as much as 60 percent of the floor area of the entire project (.75 maximum FAR). That provision would allow a maximum of 268,547 square feet of retail floor area as part of a proposed 447,580 square foot development. Staff does not recommend allowing more retail floor area on the site, as retail does not conform to the Shady Grove Master Plan's land use recommendation.

The current retail use is a non-conforming use that can continue. It may not expand. Any replacement for The Great Indoors store must also be a building material and supplies use. If the use lapses for more than 6 months, it would likely not be allowed to be reestablished.

Staff recommends limiting the retail floor area allowable on the site.

If Gaithersburg can change the zoning in 5 years, why not allow a change of zoning now?

The Council lacks the authority to disapprove an annexation. The Council can only make sure that the zoning does not change for 5 years if it believes that it is in the public interest to do so. Five years after the City annexes the property, the City can zone the property in any manner. There are 2 reasons for the Council to deny this rezoning:

1) The 5 year waiting period may dissuade petitioners from proceeding with the annexation.
2) Denial gives the strongest notice possible to the City of Gaithersburg that rational boundaries are in the public interest.

Assuming that the City of Gaithersburg wishes to proceed with the annexation, Staff would not recommend allowing any more permissive zoning than currently exists on the site. Staff and the Planning Board recommend an annexation agreement with the petitioner that requires:

1) prohibiting any residential use of the property;
2) prohibiting any new development from building any more retail floor area than the 204,490 that currently exists on the site;
3) an adequate public facilities test for any development; and
4) that any new development must include improving the sidewalk adjoining the site.

The County Executive and staff would also ask the City to give assurance to the County that it will not exert operational control over Shady Grove Road.

Should the Council endorse other Planning Board recommended conditions of annexation?

The Planning Board recommendations are followed by staff comments:

1) Approval of new development plans with substantially different uses (such as residential) and/or density greater than 0.525 FAR is prohibited for five years.

   Comment: This is an unnecessary condition if the Council denies the requested rezoning. If the Council approves the rezoning, then this condition is appropriate. However, because the Sears site is not recommended for retail use in the Shady Grove Sector Plan, the current retail space should not be allowed to expand.

2) The City of Gaithersburg should not approve plans for residential uses on this property, due to proximity to the Solid Waste Transfer Station.

   Comment: This condition in the annexation agreement is appropriate under any circumstance. It is not helpful to the continued operation of the Solid Waste Facility if the limit on residential use is only for 5 years.

3) The Applicant must satisfy the Adequate Public Facilities test if the site is redeveloped in a way that generates more peak hour trips than the existing retail use of 204,490 square feet of gross floor area.

   Comment: Gaithersburg's adequate public facilities ordinance considers intersections outside of their jurisdiction and has in the past (Crown Farm) required the developer to make improvements subject to the State or County's approval. This condition is not necessary.

4) The Applicant must enter into a Traffic Mitigation Agreement with the City and the Montgomery County Department of Transportation (MCDOT) to participate in the Greater Shady Grove Traffic Management District in order to achieve the transit ridership goal of the Shady Grove Sector Plan.

   Comment: If the property is incorporated, it should follow Gaithersburg's rules.

5) The Applicant must upgrade the existing sidewalk along Shady Grove Road. Upgrades should include a relocated sidewalk with a tree panel, lead-in sidewalks, and handicapped ramps.

   Comment: It is true that the Sears property would have to meet SHA standards; however, this is a good reminder that sidewalks are important.

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

OFFICE OF THE CHAIR

May 4, 2012

The Honorable Roger Berliner
President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

Dear Council President Berliner:

At its regular meeting on April 26, 2012, the Montgomery County Planning Board reviewed the City of Gaithersburg Annexation Petition No. X-184 for the Sears/Great Indoors property. At the conclusion of the hearing, the Planning Board (Commissioners Carrier, Wells-Harley, Presley, and Dreyfuss) unanimously voted to APPROVE the transmittal of the following comments:

The annexation petition should be approved with conditions:

1. Approval of new development plans with substantially different uses (such as residential) and/or density greater than 0.525 FAR is prohibited for five years.
2. The City of Gaithersburg should not approve plans for residential uses on this property due to proximity to the Solid Waste Transfer Station.
3. The Applicant must satisfy the Adequate Public Facility test if the site is redeveloped in a way that generates more peak hour trips than the existing retail use of 204,490 square feet of gross floor area.
4. The Applicant must enter into a Traffic Mitigation Agreement with the City and the Montgomery County Department of Transportation (MCDOT) to participate in the Greater Shady Grove Traffic Management District in order to achieve the transit ridership goal of the *Shady Grove Sector Plan*.
5. The Applicant must upgrade the existing sidewalk along Shady Grove Road. Upgrades should include a relocated sidewalk with a tree panel, lead-in sidewalks, and handicapped ramps.

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

We hope our comments will be helpful to the Council as it considers this annexation petition.

Sincerely,

Françoise M. Carrier
Chair

FMC:sf:ha

cc: Sidney Katz, Mayor, City of Gaithersburg
Greg Ossont, Deputy Director, Montgomery County Department of General Services

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

MCPB
Item No.
Date: 4/26/12

Sears Property Gaithersburg Annexation Request X-184

Steve Findley, Planner Coordinator, Area 2 Planning Division, Steve.Findley@montgomeryplanning.org, 301-495-4727

Joshua Sloan, Planner Supervisor, Area 2 Planning Division, Joshua.Sloan@montgomeryplanning.org, 301-495-4597

Glenn Kreger, Chief, Area 2 Planning Division, Glenn.Kreger@montgomeryplanning.org , 301-495-4653

Completed: 4/19/12

Description

Annexation request by the City of Gaithersburg, including rezoning from the R&D zone to Gaithersburg's MXD zone:

- Area includes 16331 and 16401 Shady Grove Road, Gaithersburg, MD and various rights-of-way;
- On 27.89 acres, in the R&D zone, within the Shady Grove Sector Plan area;
- Request submitted March 15, 2012.

Summary

- The petition proposes new zoning that includes uses substantially different than the uses allowed by the existing zoning and recommended in the 2006 Approved and Adopted Shady Grove Sector Plan.
- The maximum density permitted under the proposed zone is more than double the recommended density in the Sector Plan and is greater than the density permitted in the existing zone.
- Staff recommends approval of the annexation, but recommends that the five-year restriction on approving development plans with substantially different uses or densities be expressly asserted by the County Council.
- Staff further recommends that the annexation plan prohibit residential uses on this site.
- This property lies within the approved Maximum Expansion Limits of both the City of Rockville and the City of Gaithersburg. The City of Rockville objects to this annexation petition.

Recommendations

Approve annexation petition with conditions:

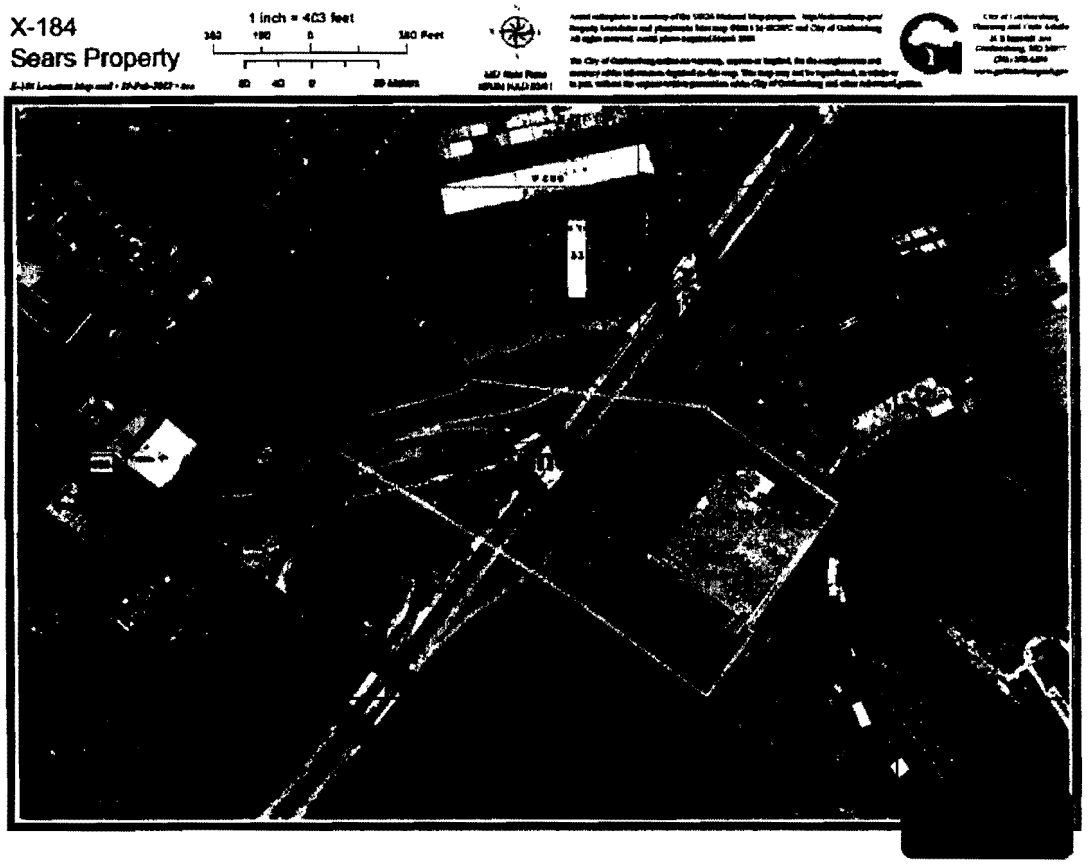
- Approval of new development plans with uses not allowed in the R&D zone and/or density greater than 0.525 FAR is prohibited for five years.
- Residential uses are prohibited due to proximity to the Solid Waste Transfer Station.
- Applicant must satisfy the Adequate Public Facility test if the site redevelops beyond the existing retail use of 204,490 square feet of gross floor area.
- Applicant must enter into a Traffic Mitigation Agreement with the City and MCDOT to participate in the Greater Shady Grove Traffic Management District in order to achieve the transit ridership goal of the *Shady Grove Sector Plan*.
- Applicant must upgrade the existing sidewalk along Shady Grove Road. Upgrades to include a relocated sidewalk with a tree panel, lead-in sidewalks, and handicapped ramps.

Location and Background

The 13.66-acre Sears property is located at 16331 and 16401 Shady Grove Road, Gaithersburg, northeast of the intersection of Shady Grove Road and Frederick Road (Route 355). The property is bounded on the southwest by the Casey property, on the northeast by the U.S. Post Office property, and on the south by the Montgomery County Solid Waste Transfer Station. The total property proposed for annexation includes portions of two road rights-of-way in order to achieve a connection to the City of Gaithersburg municipal boundary: an 11.84-acre portion of the State Highway right-of-way for Interstate 370 and a 2.39-acre portion of the Montgomery County right-of-way for Shady Grove Road. Both right-of-way areas lie to the east of the Sears property. The total area of property included in the annexation request is approximately 27.89 acres (595,029 square feet). The property lies within the Shady Grove Sector Plan area.

The existing uses on the site, including the Great Indoors retail store, total 204,490 square feet of retail and warehouse development plus surface parking. The retail uses, which were developed under the previous I-1 zone, are grandfathered under the R&D zone that was applied pursuant to the Shady Grove Sector Plan.

The Planning Board reviewed the proposed Maximum Expansion Limits (MEL) for the City of Gaithersburg in February 2011. At that time, the Planning Board recommended that this property not be included in Gaithersburg's MEL, stating that "The boundary should be located at logical natural or physical features that respect community identity and do not weaken the County's economic vitality. The City should not promote piecemeal annexation of properties, even at the owner's request" (Attachment 1). Ultimately, the City voted to include the property in their MEL (Attachment 2).



Annexation Area & Vicinity

Annexation Proposal

Sears, Roebuck and Company has filed an annexation petition (X-184) with the City of Gaithersburg for the subject property (Attachment 3). This petition will reclassify the property from Montgomery County's Research and Development (R&D) zone to the City of Gaithersburg's Mixed Use Development (MXD) zone. The petitioner is not currently proposing any changes to the existing uses.

Annexation Plan

To approve an annexation petition, Section 19(o) of the Annotated Code requires the municipality to create an annexation plan. The Annotated Code states that the annexation plan must include the following elements:

(1) In addition to, but not as part of the resolution, the legislative body of the municipal corporation shall adopt an annexation plan for the area proposed to be annexed.
(2) The annexation plan shall be open to public review and discussion at the public hearing, but amendments to the annexation plan may not be construed in any way as an amendment to the resolution, nor may they serve in any manner to cause a re-initiation of the annexation procedure then in process.

(3) (i) A copy of the annexation plan shall be provided to the governing body of the county or counties in which the municipal boundary is located, the Department of Planning, and any regional and State planning agencies having jurisdiction within the county at least 30 days prior to the holding of the public hearing required by this section.

The Montgomery County Planning Department received a copy of the annexation plan on March 15, 2012, which is more than 30 days prior to the May 21 public hearing.

The Annexation Plan (Attachment 4), prepared in accordance with the requirements of the Annotated Code of Maryland, covers:

- the proposal;
- an analysis of existing land characteristics including a Natural Resources Inventory/Forest Stand Delineation and surrounding land uses; and
- an examination of pertinent sections of Montgomery County's *Shady Grove Sector Plan* and Gaithersburg's *2003 City of Gaithersburg Master Plan Municipal Growth Element, Transportation Element* and *Land Use Element*, existing and proposed zoning, public facilities, and infrastructure.

Gaithersburg Planning staff found the proposal to be in conformance with the City's Master Plan. Their report states that the annexation will promote the City's economic development, diversify the local economy, allow redevelopment on underutilized sites, promote mixed uses and increase the City's tax base. City staff also notes that the proposed annexation will improve the City's jobs-to-housing ratio (City of Gaithersburg staff recommendation, Annexation Plan page 12).

A public hearing on the proposed annexation will be held before the Mayor and City Council on May 21, 2012.

Annexation Analysis

Master Plan and Zoning

The Sears/Great Indoors property is located within the 2006 *Approved and Adopted Shady Grove Sector Plan* ["Sector Plan"] area in the "Shady Grove Road Technology Corridor" (Attachment 5). The Sector Plan makes the following recommendations specific to this property (Sector Plan page 26):

- Provide technology, research and development, and office uses to create a technology corridor.
- Orient buildings toward street frontages and screen parking from Shady Grove Road.
- Ensure that any redevelopment of the site preserves and enhances the pedestrian environment of Shady Grove Road.
- Rezone this site from I-1 to R&D with an [option to apply the] I-3 standard method zone [by Local Map Amendment].
- 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.

Annotated Code of Maryland

Annexation Criteria

Article 23A, Section 19 of the Annotated Code of Maryland establishes standards for evaluating annexation proposals. The code states that:

> The legislative body, by whatever name known, of every municipal corporation in this State may enlarge its corporate boundaries as provided in this subheading; but this power shall apply only to land:
> (1) Which is contiguous and adjoining to the existing corporate area; and
> (2) Which does not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the municipality, real property proposed to be within the corporate limits of the municipality as a result of the proposed annexation, or any combination of such properties.

This annexation petition meets these two requirements of the Annotated Code. As noted above, however, meeting the "contiguous and adjoining" test requires that portions of two public road rights-of-way must also be annexed into the City of Gaithersburg, because the road rights-of-way lie between the subject property and the Gaithersburg municipal boundary to the east. Including the road rights-of-way in the annexation, the property will lie within the corporate limits of the City of Gaithersburg and the Maximum Expansion Limits ["MEL"] for the City.

Substantially Different Zoning and Land Use

The Annotated Code restricts changes to land use and zoning following an annexation. Article 23A, Section 9(C)(1) states that:

> ...no municipality annexing land may for a period of five years following an annexation permit development of the annexed land for land uses substantially different than the use authorized, or at a substantially higher, not to exceed 50%, density than could be granted for the proposed development, in accordance with the zoning classification of the county applicable at the time of the annexation without the express approval of the board of county commissioners or county council of the county in which the municipality is located.

Section 9(2) to the Annotated Code further states that:

> If the county expressly approves, the municipality, without regard to the provisions of Article 66B, Section 4.05(a) of the Code, may place the annexed land in a zoning classification that permits a land use or density different from the land use or density specified in the zoning classification of the county or agency having planning and zoning jurisdiction over the land prior to its annexation applicable at the time of the annexation.

Both the permitted uses and the permitted density in the County's R&D zone and the City's MXD zone are substantially different. The following table summarizes these differences:

Summary of R&D and MXD Zones		
	Montgomery County R&D Zone	**City of Gaithersburg MXD Zone**
Uses	Residential not permitted (except caretaker residence)	Residential permitted
	Retail severely restricted – limited to site-serving and no more than 5% of building FAR.	Retail permitted
Density	Max. density 0.5 FAR (Sector Plan limits to 0.35)	Max. density 0.75 FAR (Specific project or site densities to be established during site plan approval)

Because both the density and uses proposed in the City's MXD zone would be substantially different than those permitted in the County's R&D zone, no development of the annexed land could be approved for five years following the annexation without the express approval of the Montgomery County Council, per Article 23A, Section 9(C)(1) of the Annotated Code of Maryland.

Environment

A Natural Resources Inventory/Forest Stand Delineation was approved by the City of Gaithersburg for this property in association with this application. The NRI/FSD reports no forest or significant trees, streams or their buffers, floodplains or their buffers, or wetlands or their buffers on the site. No rare, threatened or endangered species or cultural or historic resources are known to exist on the site. The site drains to the Upper Rock Creek watershed, which is a Use Class IV stream in this area.

The major environmental issues affecting use of this property are noise, light, and odor.

The Sector Plan notes that excessive noise is a significant issue within the Plan area and supports "noise-compatible site design along Shady Grove Road, MD 355, Metro and CSX rail lines, the Solid Waste Transfer Station, and Roberts Oxygen" (p. 109). Noise sources include road noise from Shady Grove Road and nearby I-370, trucks and heavy equipment operating at the transfer station and post office distribution center, and railway operations within the WMATA site and transfer station.

The approved NRI/FSD states that light pollution sources include lights within the transfer station, the post office distribution center, and along Shady Grove Road.

The Sector Plan states that "odors emanating from the Solid Waste Transfer Station are an additional air quality concern in the Shady Grove Sector Plan area (p.109). The Sector Plan further notes the importance of the Solid Waste Transfer Station and "the need to maintain its current location due to its use of the rail system for exporting solid waste (p. 55).

To avoid creating conflicts between incompatible land uses, residential development should not be placed adjacent to the transfer station.

Transportation

The subject property fronts on Shady Grove Road, which is a six–lane, divided major highway with a minimum right-of-way of 150 feet. No traffic study is required for this petition since no change to the existing uses is proposed. The City of Gaithersburg Traffic Impact Adequate Public Facilities Ordinance, cited in the Annexation Plan, notes 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" (p.10).

The subject property is located within the boundaries of the Greater Shady Grove Transportation Management District and *Shady Grove Sector Plan*. According to the Sector Plan, the goal for employee trips is to have at least 12.5% transit ridership. Any redevelopment must participate in the Shady Grove Transportation Management District and should provide streetscape improvements along Shady Grove Road in keeping with the recommendations of the Sector Plan.

The primary transportation issue associated with this petition is that contiguity with the City of Gaithersburg municipal boundary cannot be achieved without also annexing both State and County road rights-of-way. On March 29, 2012, M-NCPPC staff requested input on the proposed right-of-way annexation from Montgomery County D.O.T., Maryland S.H.A., and Montgomery County Fire and Rescue. No response has been received as of the date of this report.

County Revenue Implications

The following table lists taxes currently paid on the property. Items highlighted in yellow, totaling $12,285 annually, are revenues that will be lost to the County if the property is annexed.

Site	16331 and 16401 Shady Grove Road, Gaithersburg, MD	
Account	768845	
Tax District	09	
Assessed Value	$14,285,000	
Assessed value divided by 100	$142,850	
Tax Class	42	
Tax	*Rate*	*Tax Revenue*
General County Tax	0.713	$101,852
State Tax	0.112	$15,999
Municipal District Tax		$0
Transit Tax	0.038	$5,428
Fire District Tax	0.121	$17,285
Advanced Land Acquisition Tax	0.001	$143
Metropolitan Tax	0.048	$6,857
Regional Tax	0.017	$2,428

Recreation Tax	0.018	$2,571
Storm Drainage Tax	0.003	$429
Total Special Service Area Tax	0.246	$35,141
Total Tax Rate	1.0710	$152,992

Source: Tax rates from Montgomery County Department of Finance, 2011 Levy Year Real Property Tax Rate Schedule (July 1, 2011 through June 30, 2012); assessed value from State Department of Assessments and Taxation (SDAT).

Conclusion

The petition proposes new zoning that includes uses substantially different than the uses allowed by the existing zoning and recommended in the Approved and Adopted Shady Grove Sector Plan. In addition, the maximum density permitted under the proposed zone is more than double the recommended density in the Sector Plan and is greater than the density permitted in the existing zone. Staff recommends approval of the annexation, but recommends that the five-year restriction on approving development plans with substantially different uses or densities be expressly asserted by the County Council. Further, residential uses, which are permitted under the proposed MXD zone, are incompatible with the adjacent Solid Waste Transfer Station due to noise, light, and odor issues; staff therefore recommends that the annexation plan prohibit residential uses on this site.

SF:ha: M:\Area 2 Division\Findley\Final GaithersburgSearsGreatIndoorsAnnexation 3- april 17 2012

Attachments

1. Letter to Greg Ossont, dated February 28, 2011, from Françoise Carrier
2. City of Gaithersburg Municipal Growth 2003 Master Plan (excerpts)
3. Letter to City of Gaithersburg Mayor and Council, dated January 12, 2012, from Linowes and Blocher LLP
4. Memo to Planning Commission from Trudy M. Walton Schwarz
5. March 2006 Approved and Adopted Shady Grove Sector Plan (excerpts)

Attachment 1

MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

February 28, 2011

Mr. Greg Ossont, Director
Planning and Code Administration
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877-2098

SUBJECT: Draft 2009 Land Use Plan

Dear Mr. Ossont:

At its regular meeting on February 25, 2011, the Montgomery County Planning Board reviewed the City of Gaithersburg Draft 2009 Land Use Plan. At the conclusion of the hearing, the Planning Board (F. Carrier, M. Wells-Harley and J. Alfandre) unanimously voted to **APPROVE** the transmittal of the following comments:

1. The City of Gaithersburg should follow the procedures of the Annotated Code of Maryland, Article 23A, Section 9 in reference to annexation and zoning. As you know, for five years following any annexation, land uses and density of newly annexed properties may not be substantially different from those under County zoning at the time of the annexation, unless the Montgomery County Council provides its express approval.

2. The City should consider the removal of Map Designations #18, 36, and 37 from the Maximum Expansion Limits. The boundary should be located at logical natural or physical features that respect community identity and do not weaken the County's economic vitality. The City should not promote piecemeal annexation of properties, even at the owner's request. MD 28 and I-370 provide a physically identifiable edge that would not further split properties in the County's jurisdiction.

3. The proposed land use designation and zone for Map Designation #21 are appropriate, if annexed, provided that the commercial/employment/industrial uses are limited to land confronting the major highways, Muddy Branch Road and Diamond Avenue. The Land Use Element Update should recognize and protect the natural features of the site.

4. The proposed land use designations and zones for Map Designations #16, 17, and 20 are appropriate. The Land Use Element Update should recognize the needs of improved stormwater management, reduced impervious surfaces, and increased tree planting with the redevelopment of the Walnut Hill Shopping Center (Map Designation #17).

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

100% recycled paper

5. The Open Space land use designation should be expanded to preserve high quality forest on Map Designation #29.

6. The proposed land use designation and zone for Map Designation #39 aligns with the vision for the adjacent Life Science Center as expressed in the Great Seneca Science Corridor Plan. The City should continue to promote mixed-use development and the provision for the Corridor Cities Transitway (CCT) station.

7. The proposed Commercial-Office-Residential land use designation and Corridor Development zone for Map Designation #19 is substantially different than the current zoning under County jurisdiction. Unless waived by the County Council, development inconsistent with County zoning cannot occur within five years of annexation. The Planning Board supports this change to achieve the goals outlined in the Land Use Element Update.

8. Continued coordination is desirable between Planning Department staff and the City regarding the increased development envisioned on Lakeforest Mall and adjacent properties to assess the impacts on surrounding properties and the circulation network.

The Planning Board appreciates the opportunity to review this document and looks forward to working closely with you and your staff in the future.

Sincerely,

Françoise M. Carrier
Chair

FMC:mb:ha

Enclosure

Gaithersburg

City of Gaithersburg

LAND USE PLAN

A Master Plan Element

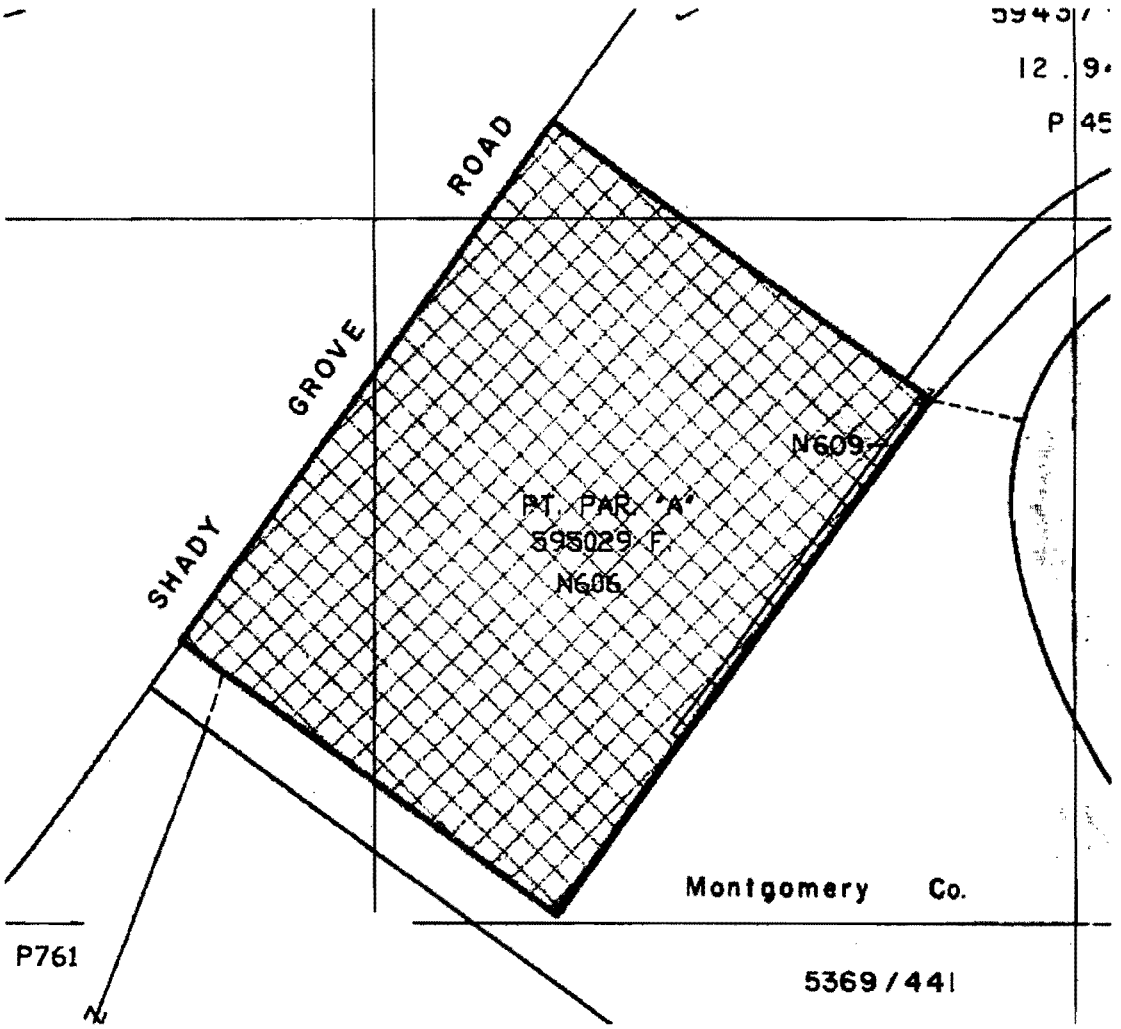
Published December 20, 2011

2009

MASTER PLAN

(13)

18. Tax Map GS13 Parcels N606 and N609



This 13.7-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.

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

14

Attachment 2

Gaithersburg

2003

MASTER PLAN

City of Gaithersburg

MUNICIPAL GROWTH

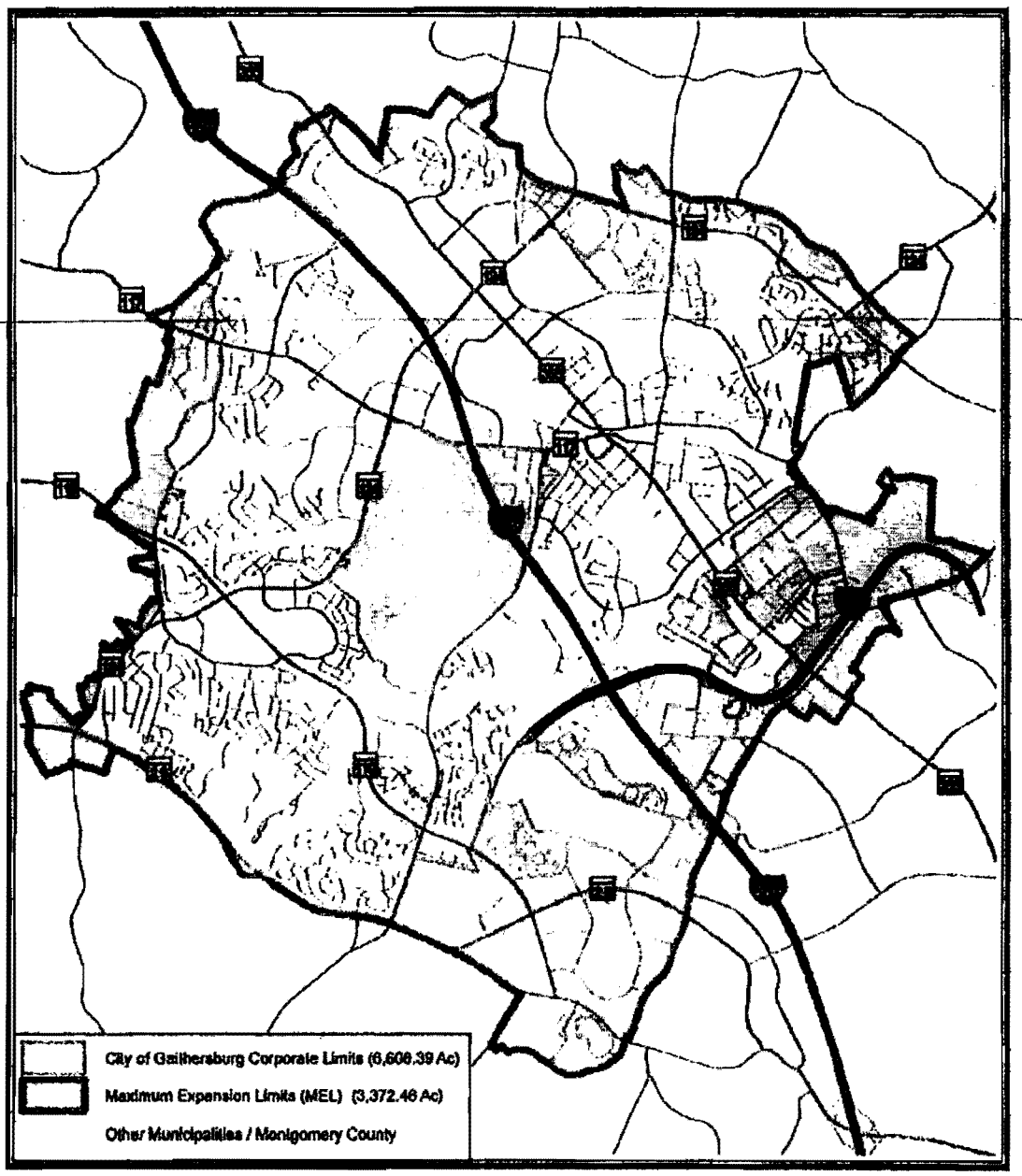
A Master Plan Element

Adopted April 6, 2009

Published April 14, 2009

(15)

Map 2: Maximum Expansion Limits (MEL) for Gaithersburg

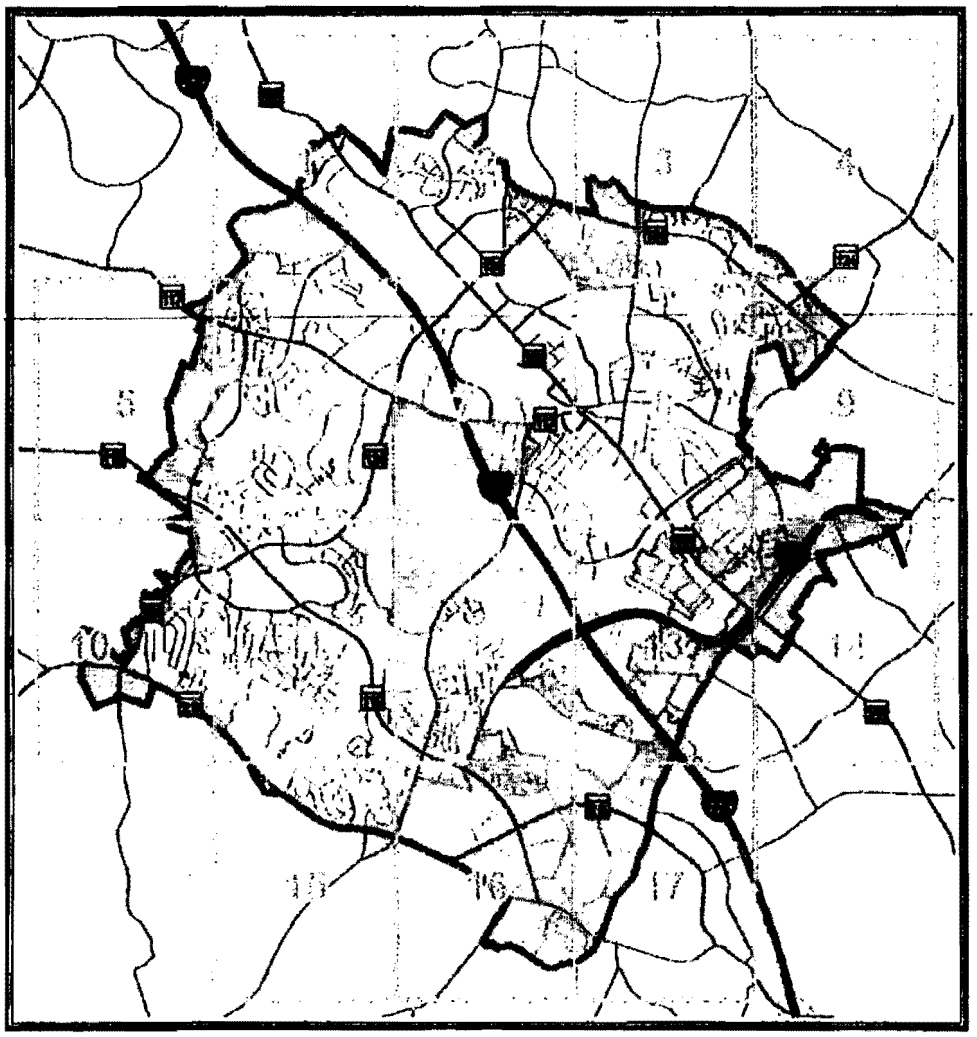


Please refer to Appendix A for more detailed maps of properties within the MEL.

(16)

15. Appendix A: Detailed Maps of MEL, Growth Areas, Zoning

Index of Detailed Appendix Map Sheets



Legend Key for Appendix Map Sheets

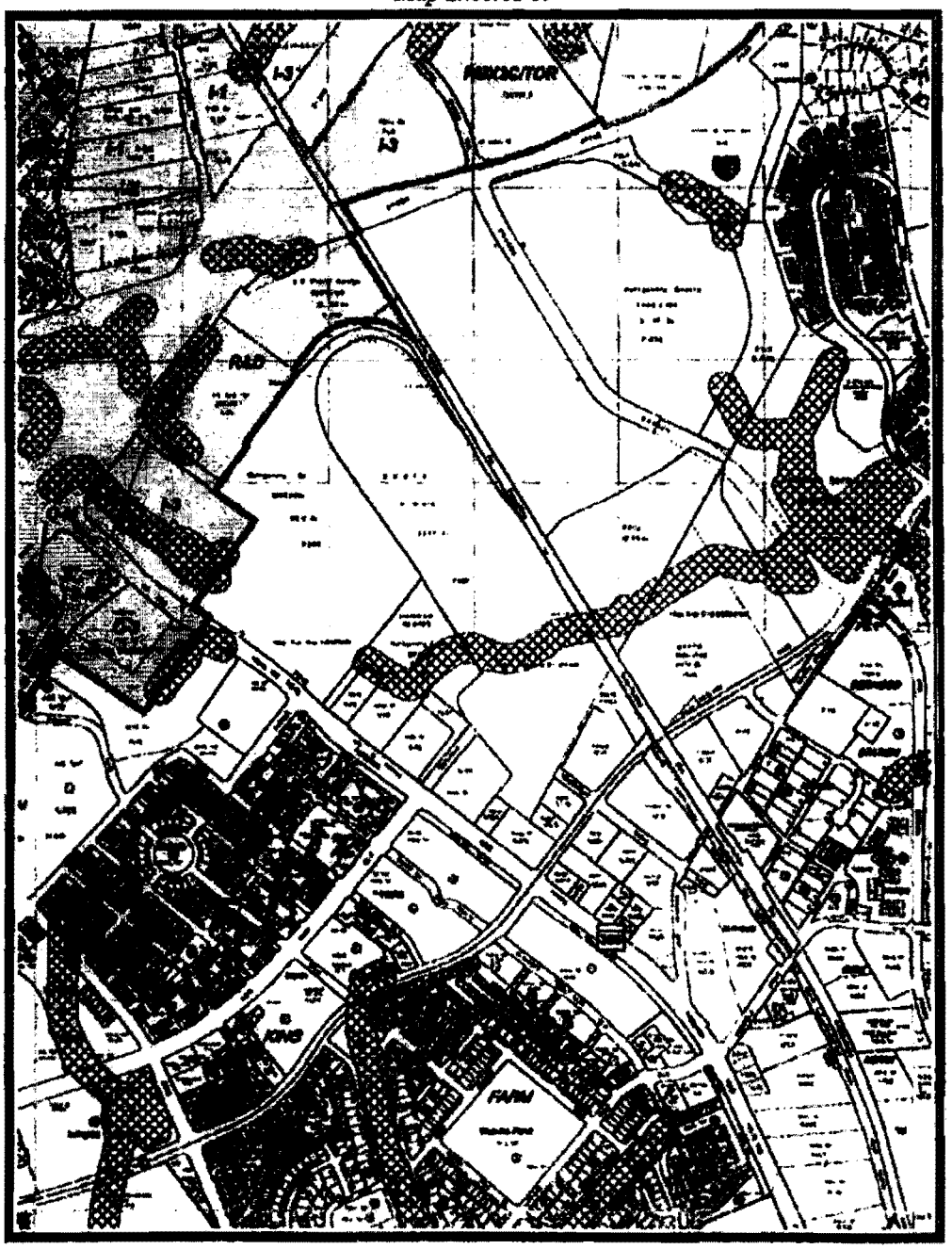
- City of Gaithersburg Corporate Limits
- Maximum Expansion Limits (MEL)
- Other Municipalities / Montgomery County
- R-90 City Zoning
- R200 County Zoning
- Growth Areas - City
- Growth Areas - MEL
- Map Sheet Border
- Non-Buildable Environmental Areas

17

Map Sheet A-14

Map Sheet A-09

Map Sheet A-13



(18)

LINOWES AND BLOCHER LLP
ATTORNEYS AT LAW

January 12, 2012

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com
Erin E. Girard
301.961.5153
egirard@linowes-law.com

City of Gaithersburg Mayor and Council
31 South Summit Avenue
Gaithersburg, MD 20877

Dear Mayor Katz and Councilmembers:

On behalf of our client, Sears, Roebuck and Co. ("Sears"), owner of The Great Indoors Property, located at 16331 Shady Grove Road ("Property"), enclosed please find a Petition for Annexation and supporting materials seeking annexation of the Property into the corporate boundaries of the City of Gaithersburg ("City"). The Property is identified as property number 18 in the approved and adopted 2009 amendment to the City's Land Use Plan, and is recommended therein for annexation into the City.

The Property is currently developed with The Great Indoors, a home-improvement showcase center, an appliance repair center, and associated parking, all of which were developed on or around 1966. The Property is serviced by two points of access from Shady Grove Road, is relatively flat, with no significant environmental features, and is currently adequately served by all public utilities.

In 2006, Montgomery County comprehensively rezoned the Property to Research and Development ("R&D"), which does not permit retail uses. With The Great Indoors use being grandfathered as part of the comprehensive rezoning, Sears did not participate in the County's Master Plan process to the extent it should have to ensure greater flexibility in the use of the Property until alternative uses envisioned by the County's master plan for the area are viable. The lack of demand for R&D space in the area, currently and for the forseeable future, renders the R&D zone very problematic for the Property. Through the proposed annexation, Sears hopes to achieve more flexible and realistic zoning for the Property and, to that end, is requesting MXD zoning from the City, consistent with the recommendation of the City's Land Use Plan. Such a zone will allow for viable uses within the existing improvements on the Property until the market will support redevelopment of the Property. We believe, therefore, that the proposed annexation benefits both Sears and the City, with the City being ensured of future tax revenue from the Property and Sears being given the flexibility it needs to keep the Property productive.

Thank you for your attention to this request. If you have any questions, or require any additional information, please feel free to contact us.

Very truly yours,

LINOWES AND BLOCHER LLP

C. Robert Dalrymple

C. Robert Dalrymple

Erin E. Girard

Erin E. Girard

cc: Mr. Tony Tomasello
Lynn Board, Esq.
Mr. James Terrell
Marianne Simonini, Esq.

**L&B 1709196v1/00472.0002

Exhibit "A"

(14)

Vicinity Map: 1" = 1000'

GRAPHIC SCALE

TOTAL ANNEXATION AREA
1214960 SQ.FT. OR 27.89141 ACRES

SEARS, ROEBUCK AND CO.

STATE OF MARYLAND

MONTGOMERY COUNTY, MD

REVISION	DATE	REVISION	DATE

PREPARED FOR:
Sears Holdings
c/o Dept. 16475 B2-112A
3333 Beverly Road
Hoffman, IL 60179-0001

Boundary Survey
and
Annexation Plat

CONSULTING

	BY	DATE
DATE DATA	FIELD	09/11
DRAWN	TRG	10/11
REVIEW	ACB	10/11
REVISED	TRG	10/11

RELEASE FOR

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" = 80'
JOB NO. 11234
DATE OCT 2011
SHEET NO. 1 OF 1

Attachment 4

CPC FORM

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

[redacted]

OWNERS:

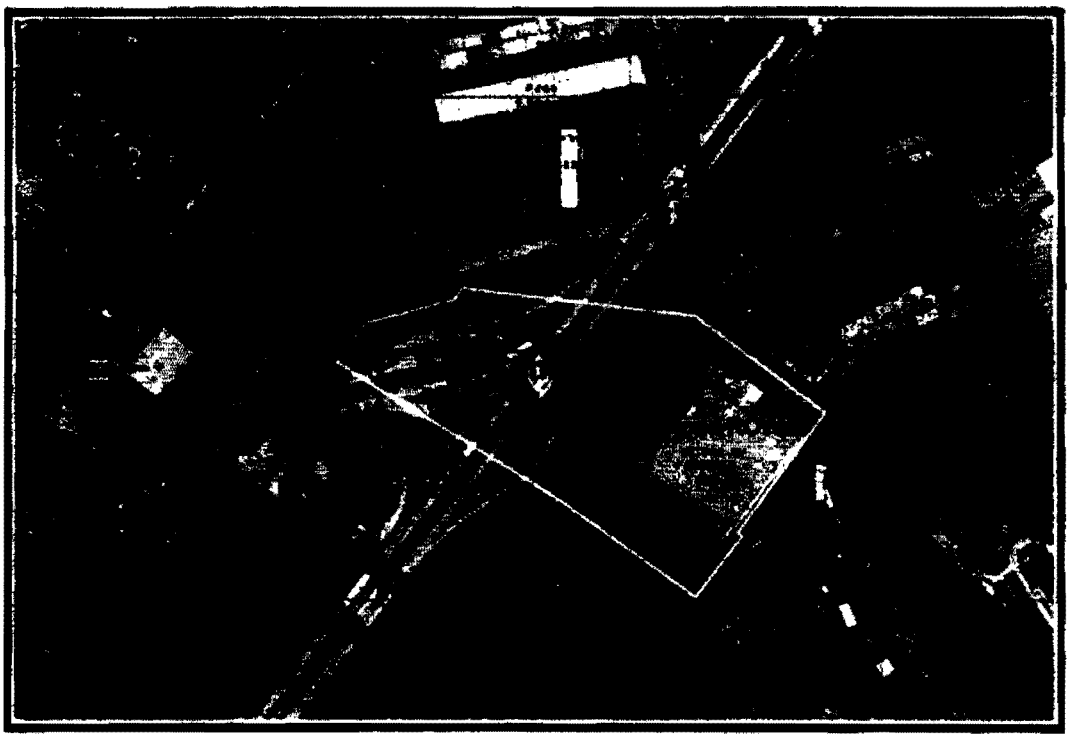
Sears, Roebuck and Company
3333 Beverly Road BC 102B-A
Hoffman Estates, Illinois 60179

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 plan[1], and provide a recommendation to the Mayor and City Council at least 15 days prior to the required Mayor and City Council public hearing[2]. 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 Application[3]. 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:

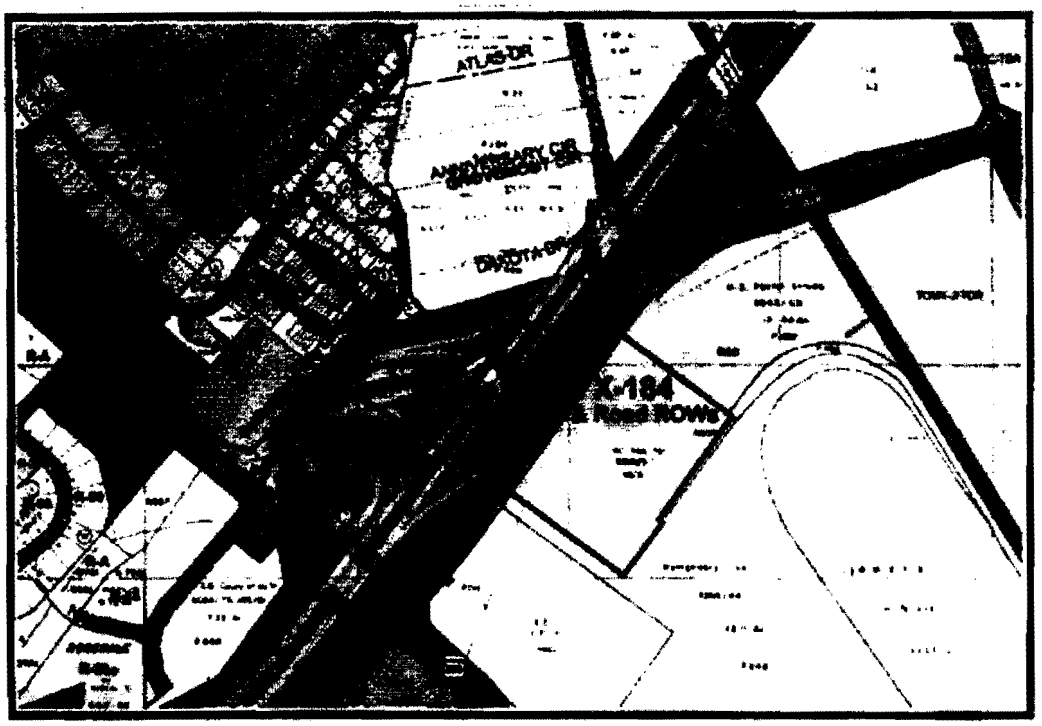
- *Adopt Commercial/Industrial-Research-Office land use designation, if annexed*
- *Recommend CD or MXD Zoning, or a future zone that facilitates sustainable development standards, if annexed*

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.



Immediately Surrounding Area

Transit Oriented, Mixed Use Zones (TOMX) surrounding Shady Grove METRO

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 regulations[7]. 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[8].

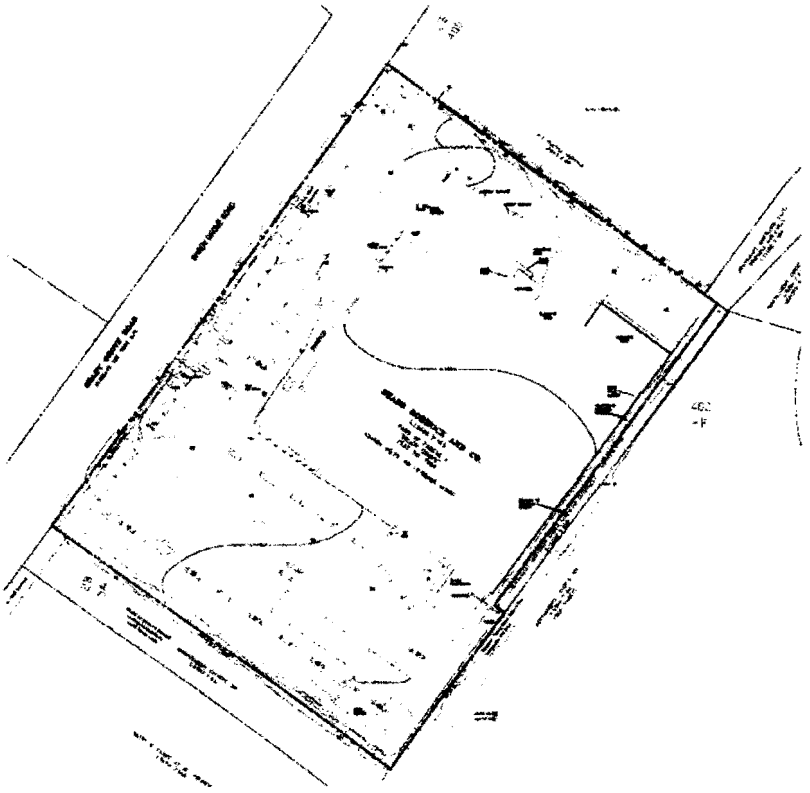
[7] Section 24-245
[8] Regulation 01-07

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.

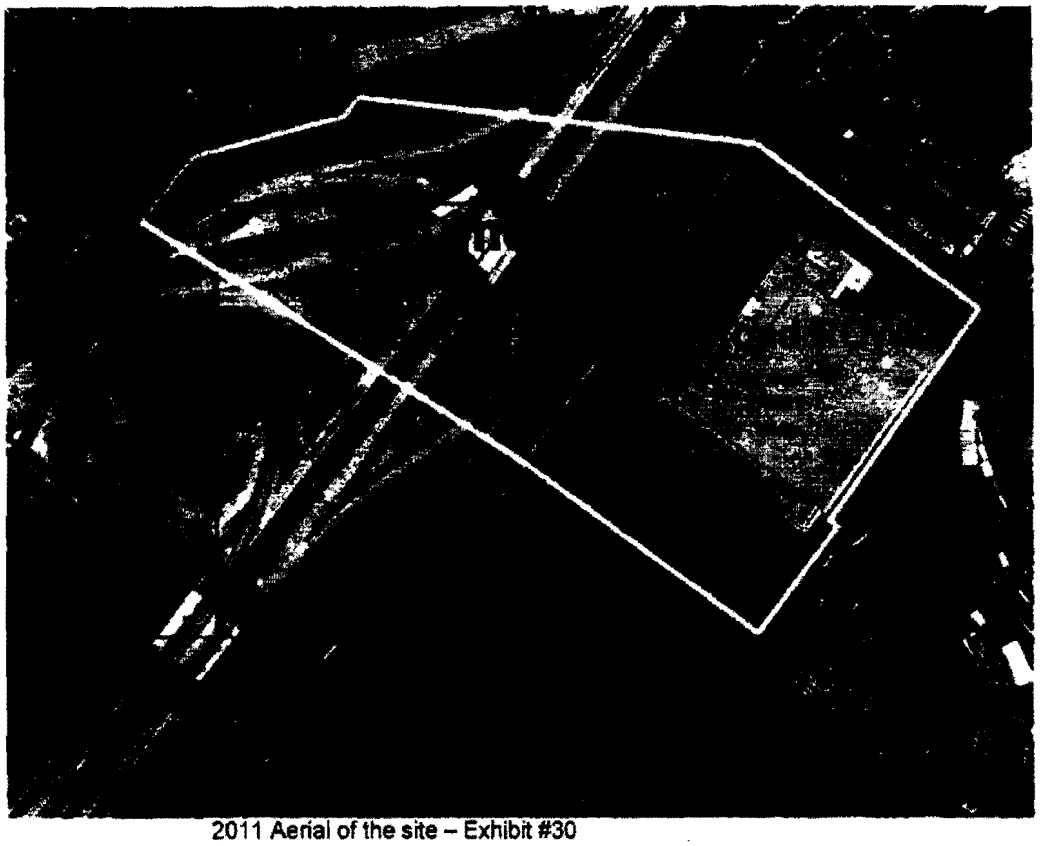
PROPOSED USE / SITE PLAN:

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 J[9], 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.

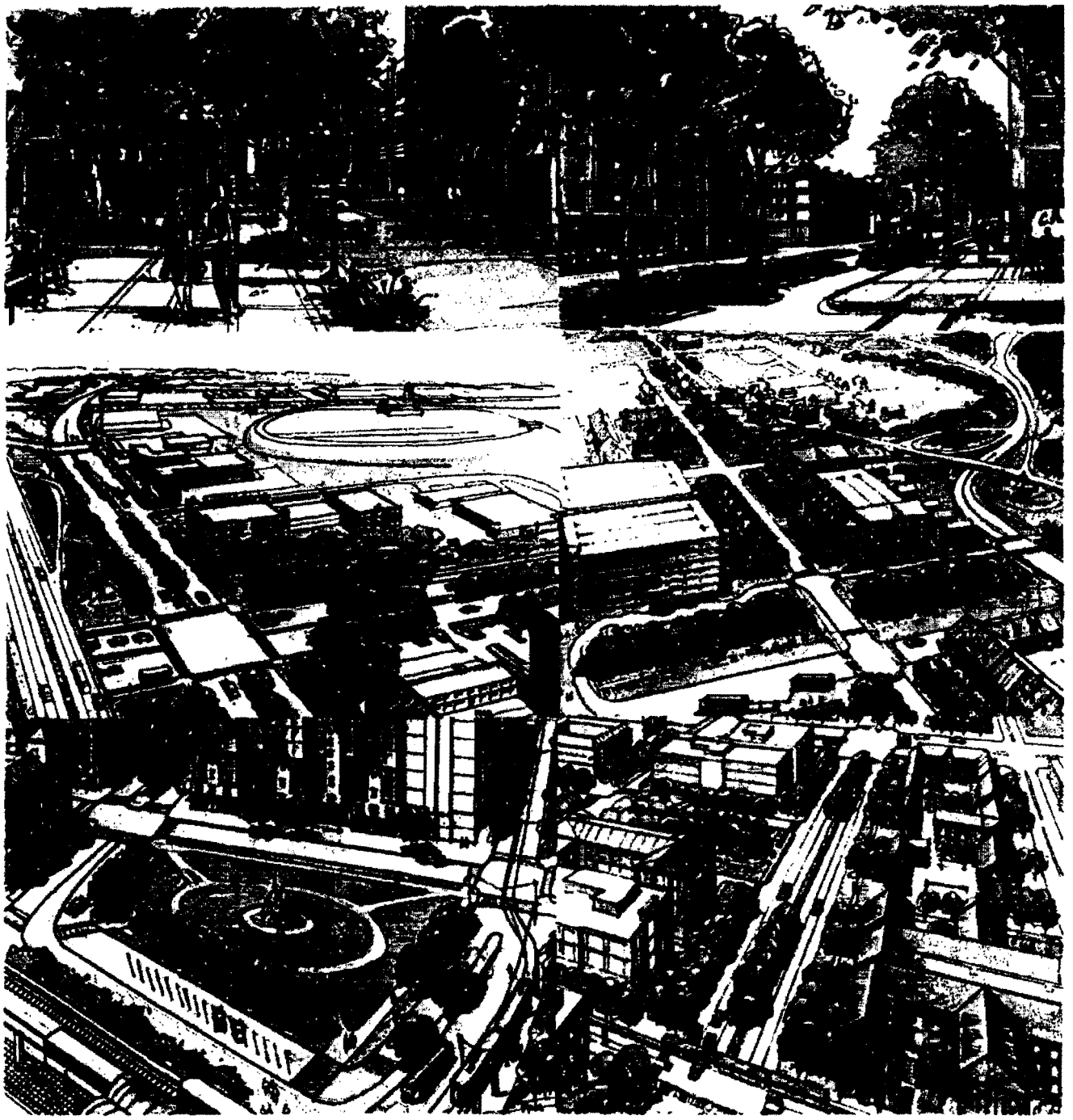
MARCH 2006

Attachment 5

APPROVED AND ADOPTED

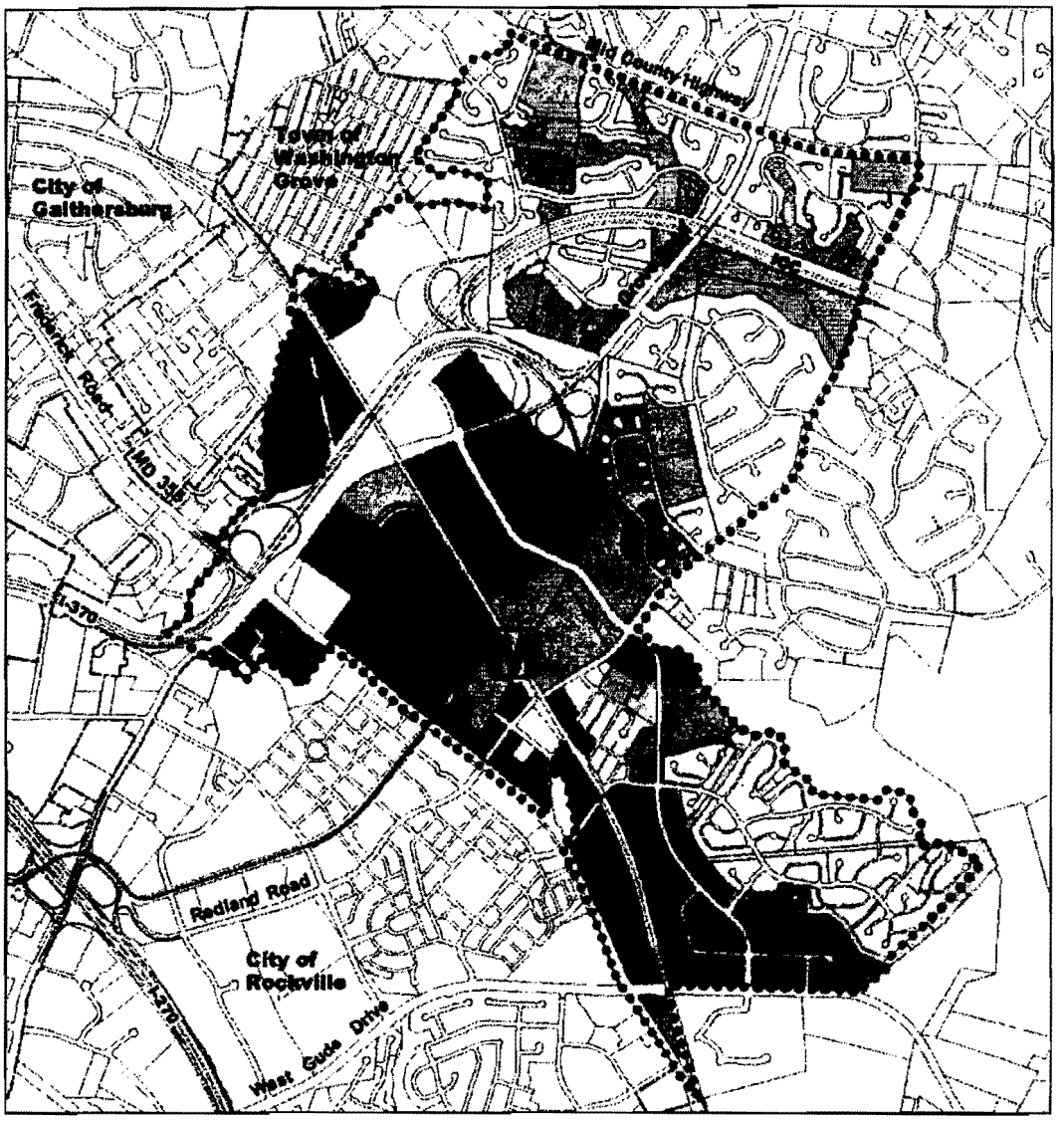
SHADY GROVE

SECTOR PLAN



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

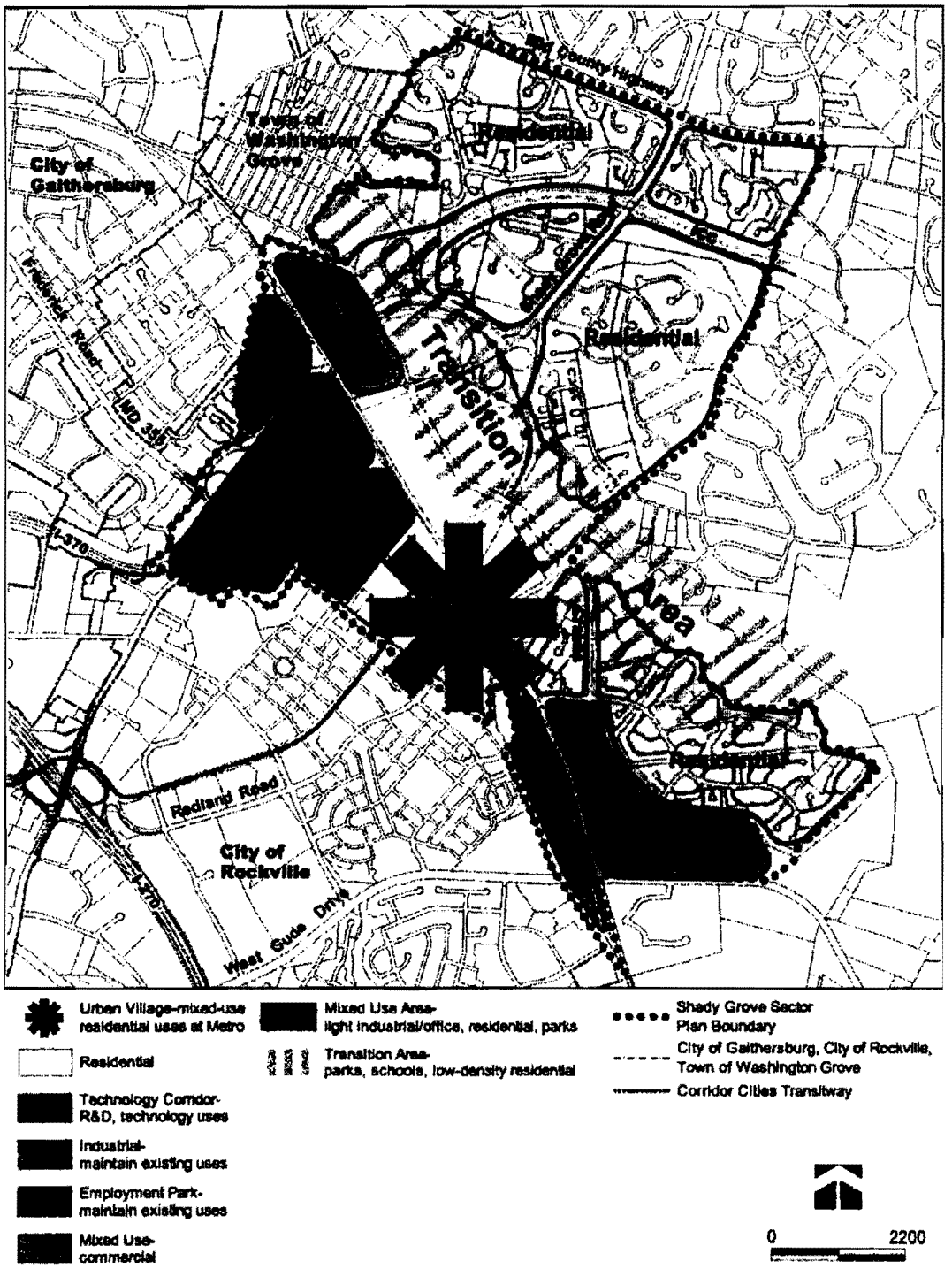
Existing Land Use



Residential, Single-Family
Residential, Townhouse
Residential, Multi-Family
Commercial (Office, Retail, Service)
Office/Industrial Park
Industrial (Auto Dealership/Service, Warehousing, Building Supplies)
WMATA Parking
Institutions (Private and Public)
Public Parkland and Open Space
Private Open Space
Vacant Land
Shady Grove Sector Plan Boundary
City of Gaithersburg, City of Rockville, Town of Washington Grove
Corridor Cities Transitway
Shady Grove Metro Station

0 2200

Land Use Vision



VISION

Today, Shady Grove is a transit hub, an industrial center, and home to 2,600 households. Historically farmland, the area along the railroad tracks evolved into an industrial center with the Shady Grove Metro Station at its core in the late 1970's and early 1980's, while residential communities emerged further to the east. More recently, residential and commercial growth along MD 355 has increased along with redevelopment pressure. The 1977 Sector Plan envisioned this area as being primarily industrial.

This Sector Plan envisions Shady Grove as a mixed-use community with a new residential focus at the Metro station, one that makes best use of Metro proximity and relocates industrial uses to more efficient sites. Relocation of the County Service Park is a major goal and provides new housing opportunities close to Metro. The Plan recognizes that residential change has already begun with the King Farm across MD 355 and continues that traditional neighborhood pattern.

The Sector Plan proposes a mix of housing types to serve the County's diverse population. It also offers employment opportunities, building on the existing concentration of advanced technology and biotechnology industries by creating opportunities for expansion. Shady Grove will offer residents a variety of community-serving retail designed to enhance community life and sociability. Residents will be able to visit bookstores, enjoy nearby restaurants, or the convenience of a dry cleaner at the Metro station. Shady Grove is not envisioned as a major retail center given the proximity of major shopping centers along MD 355.

New development will enhance the Derwood community, which will continue as a quiet, residential enclave with access to the Metro station, and to new parks, schools and neighborhoods. Views will be enhanced by screening and streetscaping. Building heights will form a compatible transition to neighboring communities.

A network of bikeways and sidewalks will make Shady Grove a more pedestrian-oriented place by improving access from Derwood neighborhoods to Metro, shopping areas, and parks. Residents will find walking along tree-lined streets and using bike paths as convenient as driving. Those that live too far from Metro to walk or cycle will be able to use expanded kiss-n-ride facilities or Ride-On bus service to the Metro station.

Shady Grove will be a greener community with a significant amount of new parks and urban open spaces. A series of parks are recommended in the transition area between the Derwood community and the Metro station area. Tree-lined streets will provide shade and green relief. Streetscape treatments including extensive landscaping will be emphasized along all roadways.

Recognizing growth and housing demands, and the need to address alternative travel options, this Sector Plan strives to create a balanced community that provides more housing close to transit and jobs, provides business opportunities, and creates a more convenient and attractive environment for residents and employees. The Sector Plan also recommends staging development to coincide with adequate public facilities.

The Plan recommends a mixed-use community at the Metro station, establishes a technology corridor along Shady Grove Road, and creates a transition area of parks, schools, and other public institutions.

These distinct elements recognize the needs of both existing and new communities while promoting a walkable environment and improving access throughout the planning area (see Land Use Vision map).

Redevelopment of industrial areas to residential uses significantly changes the ratio of jobs to housing in the planning area and is proposed to increase Metro ridership, provide more housing in the I-270 Corridor, and to enhance the existing residential communities.

GOALS

This Sector Plan has the following goals:

- Balance the need for higher density housing at the Metro station with the need to buffer adjacent Derwood communities. Limit development to 6,340 new housing units for the entire plan area, including workforce housing, transferable development rights (TDRs), and moderately priced dwelling unit (MPDU) bonus density.
- Contribute to the preservation of the Agricultural Reserve by providing TDRs on the County Service Park, WMATA properties, the Derwood Bible Church site, the Grove Shopping Center site, and Metro West and Metro South properties that have a maximum base density of 1.6 FAR.
- Organize future development into a series of defined and attractive neighborhoods around the Metro Station.
- Provide civic uses, public open space, and recreation to serve the needs of employees and residents.
- Include guidelines that provide a variety of housing types and achieve a diversity of households.
- Coordinate the proposed land use changes with open space and streetscape recommendations that encourage transit use and create an attractive community.
- Encourage transit ridership and better manage traffic congestion.
- Balance development with the capacity of the transportation system and public facilities.

PLAN POLICIES

The following polices have guided this Plan's recommendations. They are designed to encourage Shady Grove's evolution from an industrially oriented, commercial edge adjacent to the Derwood community into an attractive transit-and pedestrian-oriented community.

Housing in the I-270 Corridor

This Sector Plan responds to the high market demand for housing by recommending a substantial increase in housing within walking distance of the Metro station. The Plan encourages housing choices that benefit from Metro proximity, including affordable housing, a component of luxury housing, family-friendly units, live-work units (where residents live above their shop or office), and senior housing. A range of housing types with Metro access will offer options for singles, couples, families, and elderly residents. This Plan recommends:

- Maintaining and protecting the existing residential neighborhoods of Derwood.
- Increasing the number and variety of multi-family units within walking distance to Metro.
- Increasing the number of single-family attached units within walking distance to Metro.
- Locating sites for senior housing within walking distance to Metro.
- Providing incentives that encourage developers to provide the maximum amount of affordable housing, including Moderately Priced Dwelling Units (MPDU) and market rate units.

A Mixed-Use Urban Village at Metro

This Plan establishes a mixed-use urban village at the Metro station providing housing, employment, and retail uses within walking distance of the Metro. Public investment in the Metro system warrants guiding growth to this location. A change from industrial to residential uses will increase transit ridership, ease future traffic congestion, and create an attractive place to live and work in the I-270 Corridor.

The Plan's recommended land use change is supported by the 1992 Maryland Planning Act and by the 1997 Smart Growth Act, which guide development to locations served by transit. New residential growth at a Metro station area also is promoted by the *General Plan* that recommends channeling growth into the development corridors, specifically to the I-270 Corridor. The County Council's 2002 *Transportation Policy Report* also recommends that new residential development be located within the I-270 Corridor at transit stations to improve the Corridor's jobs/housing balance and allow residents to live closer to jobs, thus reducing traffic congestion and travel time. Finally, the County Council's 2003 *Action Plan for Affordable Housing* recommends using underdeveloped land near Metro stations for housing. This Plan recommends:

- Creating a traditional town pattern of interconnected streets, street-oriented buildings, interior structured or below-grade parking, and a network of urban open spaces. Vertically mixed-use buildings with ground floor retail are encouraged.
- Locating taller and higher density buildings to the west side of the Metro station, creating a compatible transition to the Derwood community.
- Establishing a new local park, expanded recreational use of the Crabbs Branch stormwater management pond, and a series of urban open spaces and gathering places for residents and employees.
- Creating a transit center at Metro, and coordinating transit circulation and Metro access with new development to maintain and improve the station's visibility, safety, efficiency, and compatibility for all its users.
- Allowing the possibility for increased transit parking to promote transit ridership.
- Providing adequate schools to serve the residential community in a timely manner to avoid overcrowding existing schools.

Protect the Derwood Residential Communities

The existing community of Derwood forms the eastern edge of the Shady Grove Sector Plan area. Its neighborhoods extend into the Upper Rock Creek planning area. This Plan strives to protect existing communities with a transition area of compatible transitional uses between the Metro station area and the Derwood community. This Plan recommends:

- A pyramid approach to density, locating the tallest and most dense buildings on the west side of the Metro station, stepping down to townhouses and open spaces along the eastern edge of the Metro station area.
- Increasing the woodland edges along the Crabbs Branch Stream and the I-370 interchange to provide visual separation between existing neighborhoods and future development.
- Traffic calming measures on neighborhood roads that experience cut-through traffic.
- Protecting Old Derwood by rezoning adjacent industrial land to residential uses and reducing cut-through traffic with new traffic circles.
- Celebrating the history of Old Derwood and its place in the history of Montgomery County by identifying key sites for consideration as historic resources.
- Noise barriers and extensive landscape treatments along major roadways to mitigate traffic noise.

Employment and the Technology Corridor

The planning area's location at the junction of transit and highways, and the proximity of both office and technology businesses makes this area convenient and attractive for new employment and technology uses. This Plan recognizes the importance of the existing I-270 Technology Corridor and strengthens opportunities by designating a technology corridor along Shady Grove Road. The Plan also recommends redevelopment along MD 355 South in the long term, to achieve a mixed-use character of employment, technology, and housing. This Plan recommends:

- Improving the balance of jobs and housing in the I-270 Corridor to reduce commuting time and congestion.

- Designating an advanced technology and biotechnology corridor along Shady Grove Road to extend the existing adjacent technology character into the planning area.
- Retaining the planning area's existing business parks.
- Relocating County Service Park uses to more efficient locations and providing land uses that increase ridership near the Metro station.
- Allowing public facilities within the technology corridor, if needed. Employment character along the corridor may become more of a mixed use industrial and technology corridor as a result.

Transportation

This Plan strives to minimize future traffic congestion by land use recommendations, an emphasis upon transit usage and reduction in single-occupancy vehicle trips. The proposed roadway network is complemented by a connected system of transit, paths, sidewalks, and bikeways that offer transportation choices. Roadways also contribute to improving the area's visual character with careful attention to their design by incorporating medians, streetscapes and safe crosswalks. This Plan recommends:

- Establishing a transportation management district and coordination with County transit services to increase transit ridership.
- Providing a transit center to coordinate and encourage transit use.
- Redesigning the Metro station's bus, kiss-n-ride, and taxi service to make it a convenient and attractive pedestrian environment.
- Designating roadway classifications that balance through traffic with access to adjacent land uses.
- Creating a network of interconnected local streets that improve Metro access and mobility within and between neighborhoods.
- Providing pedestrian- and bike-friendly street and intersection designs within walking distance of Metro.
- Designating MD 355 within the Metro station area to be developed as an urban boulevard with short blocks and crosswalks to improve pedestrian access.
- New sidewalks and pathways along existing neighborhood streets to improve community access.
- Providing traffic calming measures in neighborhoods that experience cut-through traffic.
- Incorporating the Corridor Cities Transitway (CCT) and a future MARC station as integral parts of the Metro station.
- Locating the CCT maintenance and yard shop outside the Shady Grove Sector Plan area.
- Applying trip mitigation measures as the first priority to achieve level of service standards at intersections.

Transit-and Pedestrian-Oriented Development

The Plan clusters new transit and pedestrian-oriented development around the Metro station area. This type of development is located close to the street with generous sidewalks and streetscaping to create an attractive and convenient pedestrian environment. This Plan recommends:

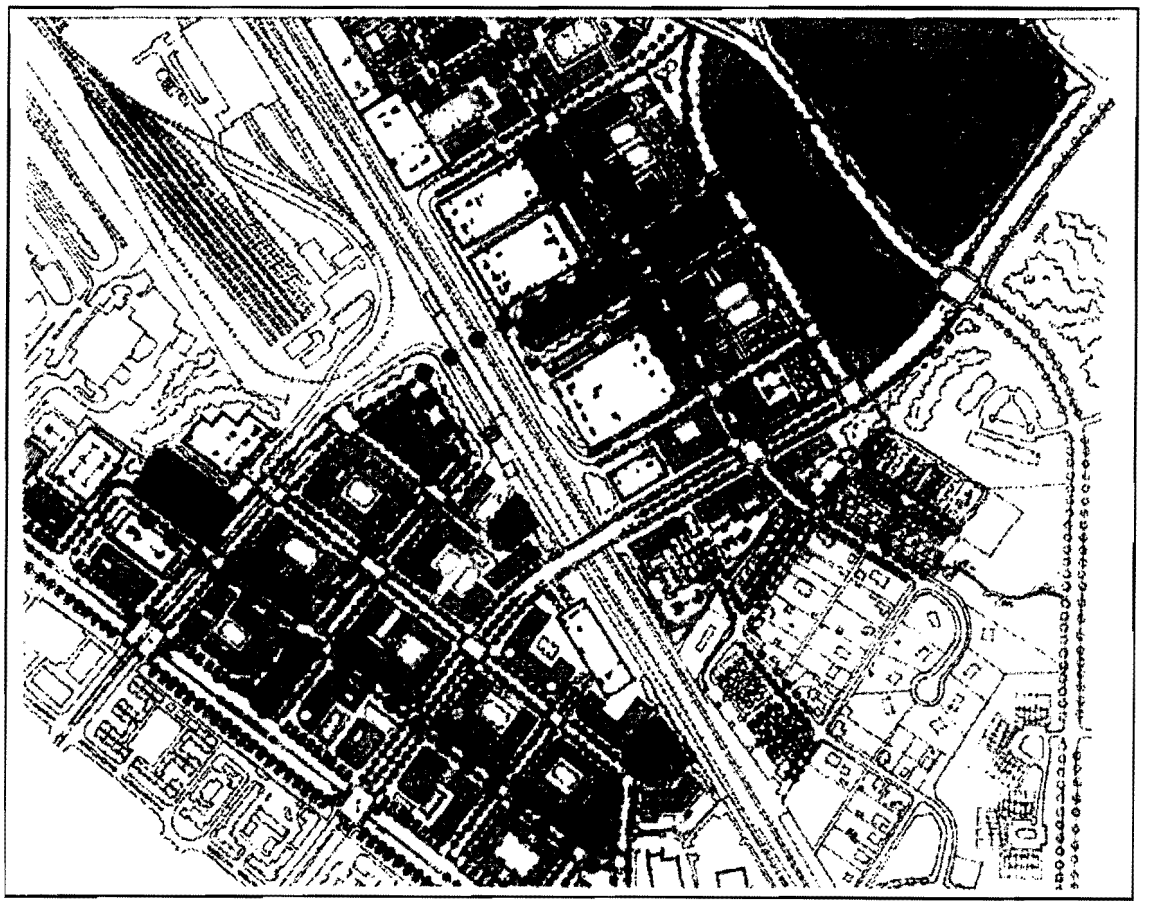
- Establishing a mix of uses in vertically integrated buildings in each Metro station neighborhood to meet retail needs, enhance street life activities, and reduce car dependency.
- Creating a network of short block, walkable streets to serve the Metro station area that facilitates pedestrian and Metro access.
- Achieving an interconnected street system throughout the planning area to improve local access between communities and to Metro.
- Creating a street-oriented development pattern with parking in the rear, internal to the block, or below-grade. Locating building front entrances along the street to reduce walking distances and improve street life.
- Discouraging separation of uses or freestanding buildings that increase walking distances for pedestrians.

Pedestrian Environment and Access
The Plan emphasizes the pedestrian environment, striving to create a safe, convenient, and attractive environment for residents, employees, and commuters. Increased pedestrian access will help reduce car dependency, foster a sense of community, and enhance street life and the community's safety. This Plan recommends:

- Safe streets with generous sidewalks and active uses within the mixed-use areas.
- Convenient and safe connections between neighborhoods, the Metro station area, retail shopping, parks, and schools.
- Safe pedestrian crossings at all major intersections.
- On-street parking along streets with mixed uses to separate pedestrians from moving traffic.
- Extensive streetscaping along all major streets in the Metro station area to create an attractive setting for pedestrians.
- A network of sidewalks and bikeways that provide safe and pleasant routes.

Parks and Open Space
The Plan recommends preserving and enhancing the existing recreational parks and stream valley parks. To meet the increased need for recreation, the Plan recommends providing two new local parks, a nature park, a network of urban open spaces, and a connected bikeway system that provides access to these expanded public facilities.

Park Network



This Plan recommends:

- Creating a series of new parks linked to existing natural areas such as stream valley parks that will form a transition area between the Derwood community and new residential development around the Metro station.
- Developing a minimum of 4 acres for a park south of Shady Grove Road and east of Crabbs Branch Way with additional acreage if ball fields are provided.
- Providing an approximately six-acre active recreation park on Casey 6 if the County Service Park facilities are not relocated there.
- Providing a passive, nature-oriented neighborhood park along Amity Drive.
- Redeveloping the stormwater management pond to provide passive, nature-oriented recreation.
- Providing urban parks, the Town Common and the Town Square, on each side of the Metro station.
- Creating a network of public urban open spaces in each Metro neighborhood that provides recreation for future residents and employees.
- Providing access to the complete park network and connecting Mill Creek residents to the Metro station via a bikeway along Crabbs Branch Way.
- Locating schools adjacent to local parks and natural areas.
- Providing a safe and convenient recreational link to Upper Rock Creek Regional Park.
- Providing natural surface park trail connections to community destinations.

A Green Environment

This Plan endorses a green environment including increased woodland areas, tree-lined streets, green urban parks, and sustainable building technologies. This Plan recommends:

- Establishing a comprehensive streetscape plan that weaves a tree canopy throughout the street network, greening the Shady Grove area.
- Improving water quality with a variety of approaches appropriate to an urban setting.
- Increasing woodland areas where feasible by adding trees to the stream valley network and in highway rights-of-way such as I-370 and the Intercounty Connector.
- Encouraging green building materials and technologies to improve energy efficiency and contribute to environmental quality.
- Providing extensive landscape treatments to visually buffer incompatible uses.

Implementation

This Plan recommends staging future development to ensure that adequate transportation, schools, and other public facilities are provided in a timely fashion. Completing the Plan's recommendations will require relocating County Service Park uses, increased transit service, new schools, and additional parks. This Plan recommends:

- Establishing a staging sequence that establishes Transportation Management District trip mitigation procedures for all staged development.
- Coordinating development with needed public facilities.
- Rezoning land within the planning area to achieve the Plan's vision.
- Encouraging public/private partnerships such as WMATA's joint development efforts and other planning tools.
- Requiring an urban service district to maintain and manage common facilities.
- Requiring a review of adequate public facilities at each stage and a finding by the Planning Board that the next stage can proceed. By Stage 3, if facilities are found to be inadequate, a review of the Sector Plan's recommendations will be required.

Districts and Corridors

Shady Grove Sector Plan Boundary

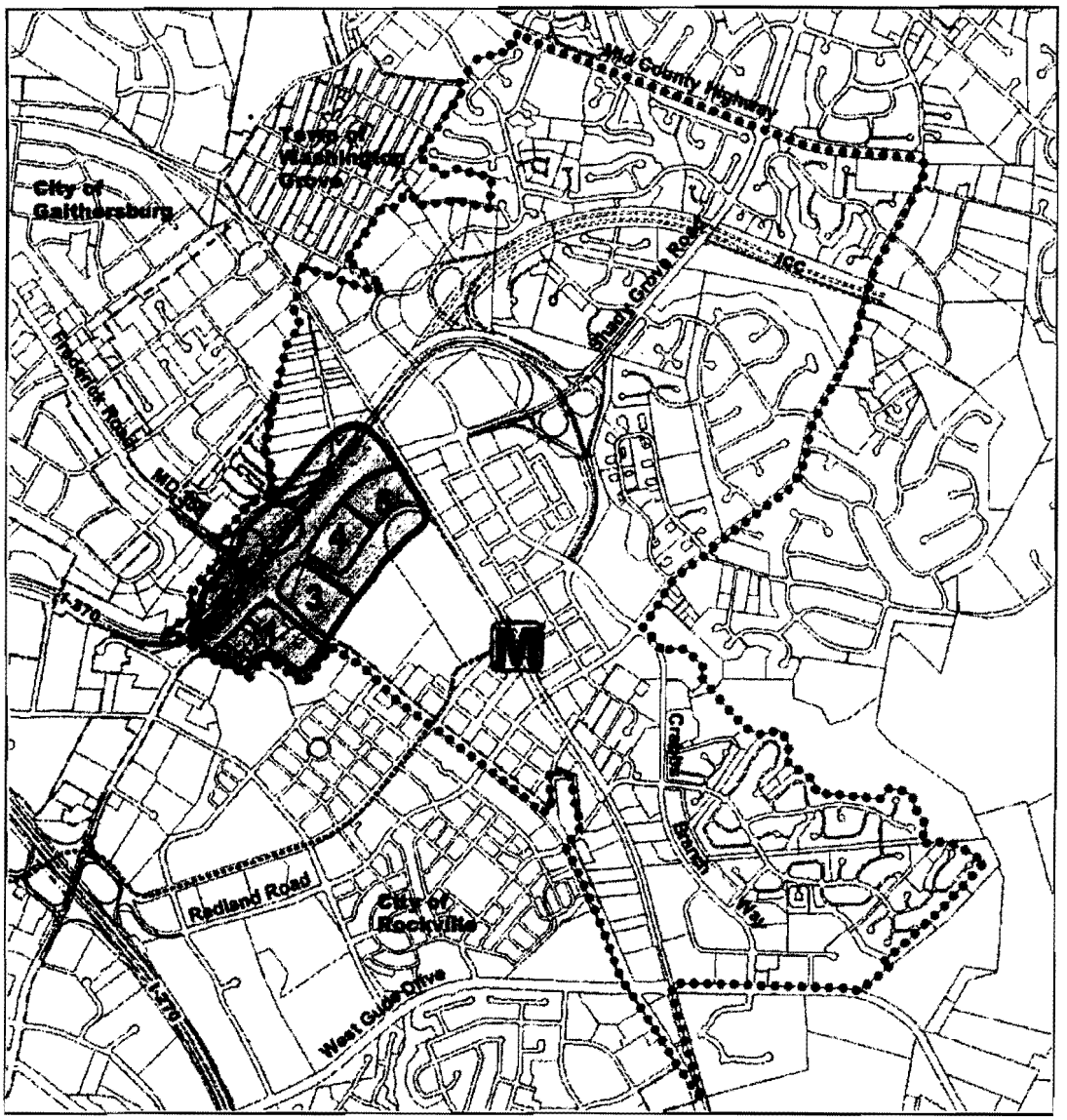
City of Gaithersburg, City of Rockville, Town of Washington Grove

Corridor Cities Transitway

Shady Grove Metro Station

0 2200

Shady Grove Road Technology Corridor



Technology Corridor

1 Shady Grove Plaza
2 Casey Property
3 Casey Property
4 The Great Indoors
5 Post Office

Shady Grove Sector Plan Boundary

City of Gaithersburg, City of Rockville, Town of Washington Grove

Corridor Cities Transitway

Shady Grove Metro Station

0 2200

SHADY GROVE ROAD TECHNOLOGY CORRIDOR

Existing Conditions

Shady Grove Road runs through the planning area from Midcounty Highway to MD 355. At its western end, the corridor is commercial and industrial in character, busy with through traffic to the Metro station and I-370, and truck traffic to the Oakmont industrial area and the Solid Waste Transfer Station. East of I-370, the corridor is bordered by residential communities and gives access to neighborhoods. Reconciling these two characters, preserving pedestrian access, and buffering the residential neighborhoods are challenges for this Plan.

Objectives

- Create opportunities for advanced technology and biotechnology businesses along Shady Grove Road, thus extending the existing pattern in the western end of the corridor.
- Relocate, as much as possible, the corridor's current industrial uses to more appropriate locations to change the character of the roadway.
- Minimize the vehicular and environmental impacts of the Solid Waste Transfer Station.
- Protect the Derwood communities from the noise impacts of Shady Grove Road.
- Improve pedestrian and bicycle access to Metro and between the communities bordering the corridor.
- Enhance the visual and landscape character of Shady Grove Road.
- Protect the existing, adjacent residential neighborhoods.

Concept

This Plan creates a Technology Corridor from MD 355 to the CSX rail line, relocates the County Service Park's industrial uses to allow mixed-use residential redevelopment, and preserves existing communities east of I-370. Industrial and commercial areas north of Shady Grove Road such as the Oakmont Industrial Park will remain industrial areas. Shady Grove Road should be viewed as a major highway that also provides local access and should be improved with extensive landscape treatment to achieve a more positive visual character for the entire corridor. The Plan recognizes that alternative land use recommendations (housing or potential relocation of County Service facilities) on Casey 6 and 7 will create a different character within this area of Shady Grove Road and will need enhanced landscape screening to ensure compatibility.

Land Use and Urban Design Recommendations

Shady Grove Plaza (Site 1)

This existing mixed-use commercial center is located at the southwest corner of MD 355 and Shady Grove Road at the site of the original "shady grove." Some of the original trees remain. This center is not anticipated to undergo significant redevelopment within the life of this Plan although existing zoning does allow substantial additional density. The existing uses include a hotel, a five-story office building, a variety of retail uses, and auto-related services. Several small vacant parcels located at the end of Pleasant Street will likely redevelop with more commercial uses. This Plan recommends:

- Extending Pleasant Street to connect with the street network of the King Farm community as envisioned in the 1990 *Shady Grove Study Area Master Plan*.
- Preserving existing old trees to maintain vestiges of the original "shady grove."
- Any redevelopment within the commercial area to be street-oriented, with direct and safe pedestrian access, and increased shade trees.
- Maintaining the existing commercial and mixed-use zoning.

Casey Property (Vacant Site 2)
Located in the northwest quadrant of MD 355 and I-370, this five-acre site has limited access but still has the potential to contribute to creating a technology corridor. This Plan recommends:

- Providing technology, research and development, or office uses to help establish the technology corridor.
- Orienting buildings toward O'Neill Drive and screening all loading docks and trash areas from view.
- Rezoning this site from R-20 to R&D with an I-3 standard method allowing expanded employment.

Casey Property (Vacant Site 3)
This highly visible site is located at the intersection of MD 355 and Shady Grove Road and is a key redevelopment opportunity in the Corridor. This site is also appropriate for a fire station, needed in this area. Environmental concerns, vehicular and pedestrian access, and building siting need careful consideration to achieve efficient, compatible, and desirable development of the property. This Plan recommends:

- Providing technology, research and development, and office uses to create a technology corridor.
- Preserving existing wetlands, accommodating afforestation along MD 355, and maintaining the required stream buffer.
- Orienting buildings and entrances toward Shady Grove Road and screen all parking facilities from major roads. Site lighting should not produce glare or dominate the night view from the roadway.
- Development along MD 355 is constrained due to traffic and environmental conflicts.
- Rezoning this site from I-1 to R&D with an I-3 standard method allowing expanded employment uses. Housing is not appropriate given the site's proximity to the Solid Waste Transfer Station.
- Ensuring that any redevelopment of the site preserves and enhances the pedestrian environment of Shady Grove Road and MD 355.

The Casey 3 property provides an opportunity within the Shady Grove area to locate a future MCFRS station and possibly ancillary MCFRS facilities. A station at this location would provide easy access to MD 355, I-270, Shady Grove Road and the ICC, as well as the busy service areas of Rockville and Gaithersburg. The site's environmental constraints are extensive and may limit development. Other sites within the vicinity will also be considered during the site evaluation process that meet MCFRS's criteria for location and site suitability. Colocation of the fire station with other necessary public facilities should be explored. This Plan recommends:

- As an alternative to technology or research and development uses on this site, a public fire and rescue station would be appropriate to serve the immediate and surrounding areas.

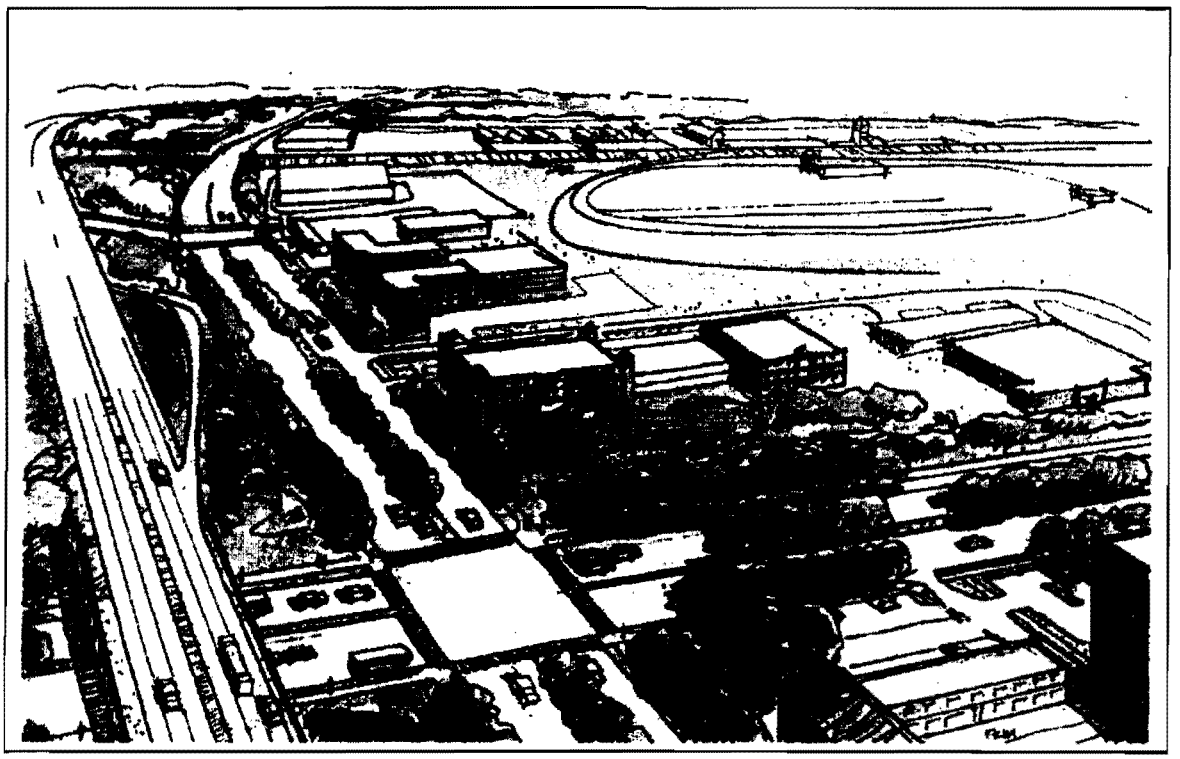
Great Indoors Site (Site 4)
While the current use is a building supply use, this property may eventually have redevelopment potential. At that time, it should contribute to the area's technology uses. This Plan recommends:

- 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.

Post Office Site (Site 5)
This Plan recognizes the importance of the postal distribution center. If the Post Office or a new user decides to redevelop the site, both use and site design should contribute to the Shady Grove Road Corridor's technology emphasis. This Plan recommends:

- Providing technology, research and development, and office uses to create a technology corridor.
- Orienting buildings toward street frontage and screen parking from Shady Grove Road.
- Ensuring that any redevelopment of the site preserves and enhances the pedestrian environment of Shady Grove Road.
- Designing the site to minimize truck traffic on Shady Grove Road.
- Rezoning this site from I-1 to R&D with an I-3 standard method allowing expanded employment uses. Development should not exceed 0.35 FAR to maintain a balance of jobs to housing within the plan area. Housing is not appropriate.

View of Shady Grove Road Technology Corridor



Transportation Management District (TMD)
A transportation management district is a public/private partnership organized to reduce single-occupancy driving by various means including carpooling, subsidizing transit costs, and improving transit service. This Plan recommends:

- Creating a TMD before new development can be approved. (See Implementation section for further discussion.) The TMD should include all businesses and residents in the Shady Grove Policy Area including, if feasible, a larger area such as the Life Sciences Center and the municipalities.
- Reducing peak period vehicle trips in the Shady Grove Policy Area in accordance with Growth Policy Alternative Review Procedures. Strive for a transit ridership goal of 35 percent for residents within the Shady Grove Policy Area, 25 percent for residents elsewhere in the Sector Plan, and 12.5 percent for employees of office development traveling to work.
- Pursuing innovative measures to achieve higher non-auto-driver mode share goals, such as:
  - Providing free or heavily discounted transit passes for new residents;
  - Providing frequent shuttle service between the Metro station and nearby job sites;
  - Providing car-sharing incentives;
  - Encouraging incentive-based casual carpooling;
  - Providing wireless computers to residents to encourage telecommuting;
  - Charging market-rate parking for both residential and commercial developments;
  - Making the minimum off-street parking requirements under the Zoning Ordinance be the maximum allowed;
  - Lowering the minimum off-street parking requirements in the new zone; and
  - Increasing the frequency and efficiency of bus service on the major routes serving the Metro station and employers in the technology corridor.
- Requiring each significant development within the Shady Grove Policy Area, and any development on County-owned property in the policy area, to enter into a Traffic Mitigation Agreement that would result in no more than 50 percent of the residential-related vehicle trips and 65 percent of the non-residential-related vehicle trips that would otherwise be expected. This requirement is described more fully in the Implementation chapter.
- Using minimum parking standards as the maximum allowable parking for development in proximity to Metro to support transit use, to lower development costs, and to constrain the amount of new traffic in the planning area. Support CBD parking standards for the Metro Neighborhoods and Jeremiah Park to encourage transit use.
- Increasing opportunities for shared vehicle parking, employee and residential incentives, and bicycle parking.

Bus Service

This Plan recommends:
- Improve pedestrian access from neighborhoods to bus stops.
- Support increased Ride-On bus service to increase transit convenience and ridership, especially to community destinations such as local shopping and schools, and particularly Magruder High School. Consider private/public shuttle bus service to meet local access needs.
- Provide further study of MD 355 transit improvements to connect activity centers with development and to better serve transit needs.

Transit Center at the Metro Station
The number of different travel modes serving the Metro station, and the addition of a substantial number of new residents and businesses, warrants the creation of a well-coordinated, multi-modal transit center. The mix of uses and transportation functions are complex and will require on-going management and maintenance to benefit all users.

This Master Plan recommends that within the Shady Grove Sector Plan area the ICC be constructed along the Master Plan alignment, consistent with the Master Plan of Highways as amended by the 1985 Upper Rock Creek Master Plan and subsequent area master plans along the ICC right-of-way for Gaithersburg Vicinity (1990), Aspen Hill (1994), Fairland (1997), and Cloverly (1997). This Master Plan also provides some level of flexibility to allow a Western Connector to be constructed within the ICC right-of-way, based on the results of recent state and local planning studies, including the Planning Board's 2002 Transportation Policy Report.

MD 355

MD 355 runs from Friendship Heights to Clarksburg. Within urban metro areas, the roadway is treated as an Urban Boulevard, divided with a median, requiring slower speeds, enhanced with streetscape and emphasizing pedestrian safety and access. This urban character should be achieved along MD 355 between the Solid Waste Transfer Station and Indianola Drive, and is consistent with road character in Rockville and Gaithersburg. This Plan recommends:

- Maintaining classification as a Major Highway with six lanes and a median. Outside the Metro Neighborhoods, establish a recommended minimum right-of-way of 150 feet but only require right-of-way dedication from adjacent properties at such time when these properties are subdivided or resubdivided and changed from their current uses to incorporate residential, office, or mixed uses.
- Creating an Urban Boulevard character between Indianola Drive and the entrance to the Solid Waste Transfer Station. Maintain the existing 120-foot right-of-way with additional space through a public improvement easement for adequate sidewalks. Roadway design characteristics will include features appropriate for Metro areas with significant pedestrian traffic, such as increased streetscape improvements, slower travel speeds, short intersection spacing, and minimized pedestrian crossing distances at intersections.
- Minimizing direct driveway access from MD 355. The proposed street system is designed to consolidate access to side streets. If driveways are allowed because no alternative access is feasible, use driveway aprons, not corner curb returns. Driveway ramps must reach the level of adjacent sidewalks to maintain a safe sidewalk for pedestrians. Avoid driveways with defining curbs and medians that increase pedestrian exposure to turning vehicles and that encourage high speed turning movements.
- Maximizing pedestrian safety, especially at intersections, by minimizing pedestrian crossing distance, increasing pedestrian time to cross, and ensuring adequate sight distances.
- Allowing short block lengths intersecting MD 355 in the Metro station area (see Commercial Business Streets for Metro Neighborhoods maps). Shorter block lengths better accommodate residential development, improve Metro access by increasing the number of possible routes to the station, and create a more pedestrian-friendly environment.
- Providing the recommended streetscape improvements.

Shady Grove Road

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.

Streetscape Plan

The Shady Grove plan area needs a safe and an attractive pedestrian environment that encourages Metro use, contributes to social interaction, and provides a setting for public life. Currently, walking to Metro or nearby parks is challenging and unpleasant due to the lack of sidewalks and streetscape improvements. This Plan recommends an extensive network of streetscaping, sidewalks, trails, and crosswalks to improve the pedestrian environment and enhanced streetscaping in the Metro Neighborhoods. The recommended streetscape improvements for Metro Neighborhoods are depicted on the illustration entitled Proposed Street Cross Sections for the Metro Neighborhoods create an attractive setting for pedestrian and business activity, reinforce the stability of existing neighborhoods, and promote the vitality of the new Metro Neighborhoods.

Objectives

- Encourage walking by creating an attractive pedestrian environment that improves access to Metro and other destinations.
- Strengthen community identity by developing streetscapes that distinguish each of the Metro Neighborhoods and the Metro station area.
- Reinforce the street hierarchy by achieving a higher level of streetscape improvements within the Metro station area and in areas of significant pedestrian activity.
- Increase greenery to improve attractiveness and environmental quality by planting closely spaced street trees within the Metro Neighborhoods.
- Improve pedestrian safety with street lighting that also contributes to community character and identity.
- Reduce visual clutter and create attractive street corridors by means such as coordinating public signage and encouraging attractive commercial signage.
- Maintain streetscape improvements through public/private partnerships.

Concept

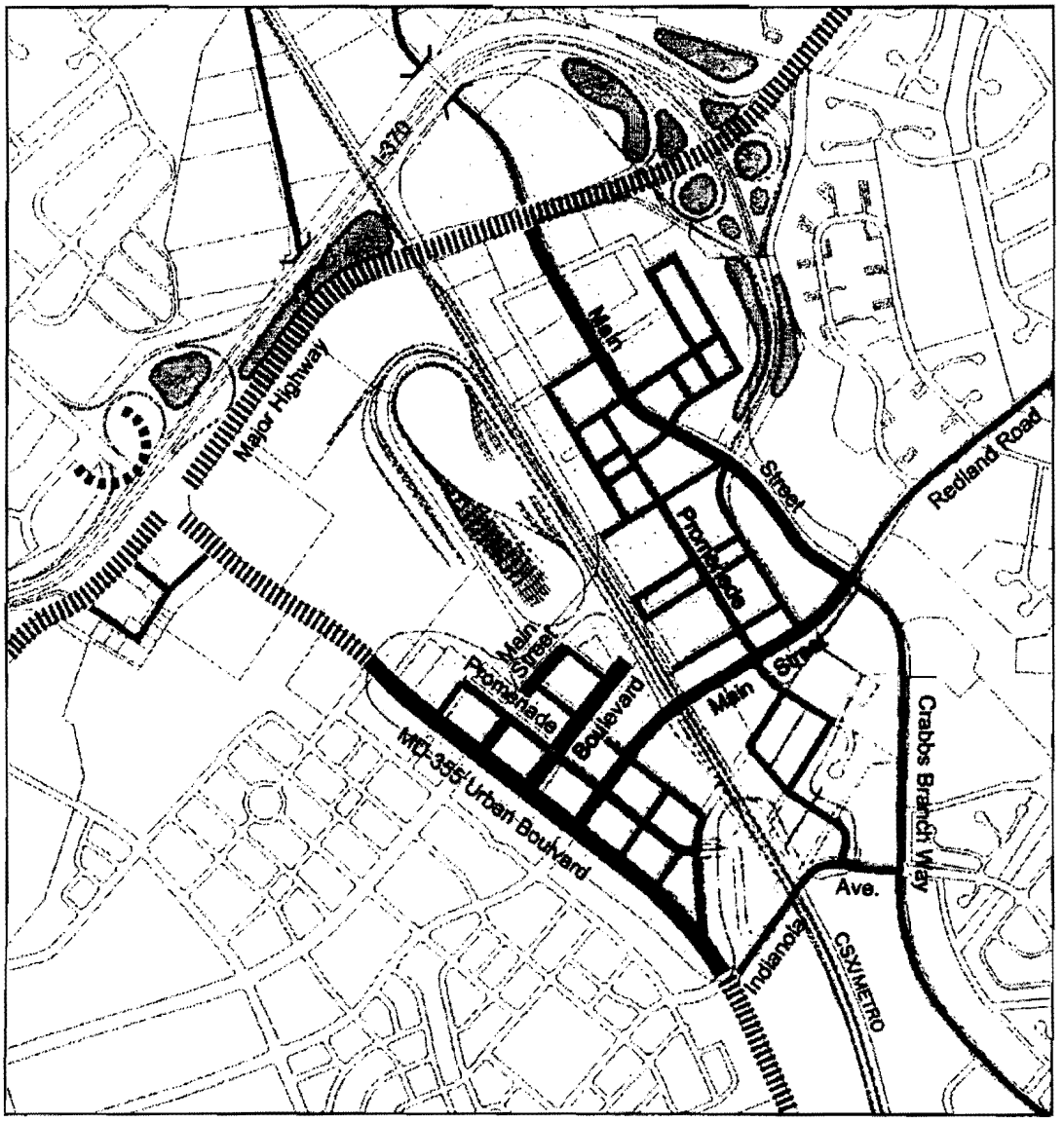
The streetscape concept enhances the existing corridors of Shady Grove Road and MD 355, and creates a new district of streetscape improvements centered in the Metro Neighborhoods. This concept supports the Plan's land use recommendations. A major theme of the streetscape concept is "re-greening the Shady Grove" to create an attractive setting for existing and new communities. A separate document, the *Shady Grove Streetscape Plan*, will include detailed specifications on streetlights, street tree species, paving, and other streetscape elements (see Streetscape Plan map and Proposed Cross-sections map).

Shady Grove Road Corridor

This Plan recommends:

- Upgrade Shady Grove Road with sidewalks, lighting, and extensive landscaping and street trees to create a green, attractive setting along its entire length.
- Reforest the right-of-way between I-370 and Shady Grove Road to increase the amount of greenery in the Corridor.
- Create a naturalized landscape within the I-370 interchange with Shady Grove Road and along both sides of the Metro access road to provide a greater sense of the natural environment.

Streetscape Plan



Gateway

Urban Boulevard

Major Highway

Main Street

Promenade

Local Streets

Woodland Treatments

Bridge Crossings

Area with upgraded streetscape treatment

Not to Scale

Redevelopment of the planning area also presents opportunities for stream restoration work in the Metro station area. These efforts should be coordinated with the Montgomery County Department of Environmental Protection's recently completed *Rock Creek Watershed Feasibility Study* (2001). This Plan recommends:

- Reforesting the buffers along the Use IV tributary of Upper Rock Creek, on Casey Property 3.
- Protecting the stream buffer and retain as much additional forest as possible where this stream resurfaces east of the Solid Waste Transfer Station.
- Increasing landscaping wherever feasible, and encourage the use of low-impact development techniques, green roofs, parking lot planting, and other initiatives to address stormwater quality without occupying land needed for development.
- Designing the passive recreation area at the stormwater management ponds to preserve the ponds' and reforestation areas' environmental functions. Work with the County Department of Environmental Protection.

Wetlands

There are about 40 acres of wetlands in and immediately adjacent to the planning area. Some are on privately owned land north of I-370, near the intersection of Shady Grove Road and MD 355, and within the ICC right-of-way. The remaining wetlands are in parkland at Crabbs Branch and Rock Creek. This Plan recommends:

- Protecting high quality wetlands by maintaining or managing the land and adjoining habitats as natural areas. Intrusions into these natural areas by man-made features, including paved paths or trails, should be avoided as much as possible.
- Wetlands and associated buffers on developable or re-developable properties, at a minimum as defined in the *Environmental Guidelines*, should be protected through the application of conservation easements or through public ownership as parkland.
- Do not use natural wetlands as controls for stormwater runoff from developed land.
- Compiling a detailed inventory of the planning area's degraded wetlands and identify opportunities for restoration and enhancement.
- Mitigating the unavoidable wetland impacts of development with programs such as publicly funded stream restoration projects, volunteer projects, or developer funded off-site improvements.

Noise

Excessive noise has a significant effect on the quality of life in any community, and particularly in Shady Grove, which has significant noise volumes from several sources. Shady Grove Road, MD 355, I-370, the CSX Railroad, Metro, and stop-and-go traffic contribute to noise, along with stationary noise sources such as Roberts Oxygen and the Solid Waste Transfer Station. The proposed ICC will be an additional significant noise source.

Montgomery County can mitigate and minimize the noise impact of both stationary and mobile noise sources. The noise ordinance regulates stationary sources such as heating and air conditioning units, construction activity, noise producing land uses, and neighborhood annoyances. The Planning Board uses master plan and regulatory review to implement noise reduction strategies and protect residential properties from mobile sources. Strategies to minimize transportation noise on new development include compatible land uses, buffers, external mitigation techniques, and internal mitigation.

Effective noise control will ensure the sustainability of the planning area as a desirable place to live, work, and conduct business. Roads, streetscapes, residences, and public areas must be designed and located to maximize noise attenuation. This Plan recommends:

- Supporting noise-compatible site design along Shady Grove Road, MD 355, Metro and CSX rail lines, the Solid Waste Transfer Station, and Roberts Oxygen.
- Incorporating compliance with the Adopted County Noise Control Ordinance (Chapter 31B of the County Code) and the Planning Board's *Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development.*
- Incorporating noise mitigation strategies along Shady Grove Road and I-370 and for residential uses along the Metro Access Road as part of redevelopment of the County Service Park if noise levels are found to exceed appropriate standards and guidelines.
- Investigating the feasibility of eliminating the CSX train whistle as a noise source through CSX policy changes or changes in the at-grade crossing.
- Wherever possible, locating structured parking adjacent to CSX tracks to mitigate noise.

Air Quality

Montgomery County currently does not meet the National Ambient Air Quality Standards set by the Environmental Protection Agency, creating health concerns stemming from exposure to ground level ozone. The main sources of these pollutants are utilities and other industries, motor vehicles, small gasoline powered engines, and small businesses using solvents, cleaning solutions, paints, and insecticides. In the Washington region, motor vehicles account for 30 to 40 percent of the ozone.

After they are emitted, these pollutants can travel several miles before reacting to form ozone. Accordingly, multi-jurisdiction strategies are needed to address ozone. Montgomery County must continue ongoing initiatives to reduce emissions. At the master plan level, these initiatives should include transportation demand management strategies that encourage people to reduce motor vehicle trips and miles traveled. Providing residential units close to transit can contribute significantly to this reduction.

Odors emanating from the Solid Waste Transfer Station are an additional air quality concern in the Shady Grove Sector Plan area. This Plan recommends:

- Designating new development and redevelopment to minimize the need for motor vehicle trips.
- Limiting Metro parking to help improve air quality.
- Providing safe and convenient pedestrian and bicycle access to Metro, community retail centers, recreation, and employment areas within the Shady Grove planning area, and link this system to regional trail networks.
- Providing incentives for transit use to minimize single-occupant vehicle travel.
- Working with the Solid Waste Transfer Station to control odors by eliminating or relocating its yard waste processing area or through other innovative measures.

Guthrie, Lynn

From: Berliner's Office, Councilmember
Sent: Friday, May 04, 2012 1:20 PM
To: Montgomery County Council
Subject: FW: Comments on Proposed Annexation of Great Indoors Property into the City of Gaithersburg - Additional Attachment
Attachments: 20120426_Sears_CityofRockville.pdf

From: Findley, Steve [mailto:Steve.Findley@montgomeryplanning.org]
Sent: Friday, May 04, 2012 1:06 PM
To: Berliner's Office, Councilmember
Cc: skatz@gaithersburgmd.gov; Ossont, Greg; tschwarz@gaithersburgmd.gov
Subject: FW: Comments on Proposed Annexation of Great Indoors Property into the City of Gaithersburg - Additional Attachment

Dear Council President Berliner:

This attachment should be added to the earlier email transmission conveying the Planning Board's opinion on the proposed annexation of the Great Indoors property into the City of Gaithersburg. This attachment was not included in the first transmission due to file size concerns. Once again, please do not hesitate to contact us if you have any questions or concerns. Thank you.

Steve Findley
Planner Coordinator, Area 2 Planning Division
M-NCPPC, Montgomery County, MD
301-495-4727

Findley, Steve

From: DLevy@rockvillemd.gov
Sent: Friday, April 13, 2012 5:35 PM
To: Findley, Steve
Cc: SSwift@rockvillemd.gov; AWallas@rockvillemd.gov; MTewari@rockvillemd.gov; Yearwood, Nkosi
Subject: Gaithersburg Annexation Proposal of Great Indoors Site
Attachments: MandC Letter of Testimony re LU 032211.pdf; Attachment C MoU between Rockville, Gaithersburg and Montgomery County.PDF; Attachment D - Rockville MEL.pdf; Attachment E Montgomery PB testimony re Rockville MGE.PDF

Steve --

Nkosi Yearwood alerted me that you are the staff assigned to be working on the annexation proposal that Gaithersburg is processing, for the Great Indoors site south/southeast of Shady Grove Road.

We wanted to make sure that you are aware that Rockville has commented to the City of Gaithersburg on this topic. The Mayor and Council of Rockville sent a letter of testimony to Gaithersburg in objection to their including this property in their then-proposed amendment to the Land Use Element of their master plan. I am attaching a few relevant items, so that we can understand the background and position.

First is the testimony submitted by Rockville's Mayor and Council. Second is the language of the Memorandum of Understanding (MoU) between Montgomery County and the cities, which was to guide coordination on annexation of properties. Third is a map of our northern area MEL from our adopted Municipal Growth Element. I have also added Montgomery County's testimony on our MGE, as it specifically mentions the site (the "Great Indoors").

(See attached file: MandC Letter of Testimony re LU 032211.pdf)(See attached file: Attachment C MoU between Rockville, Gaithersburg and Montgomery County.PDF)(See attached file: Attachment D - Rockville MEL.pdf)(See attached file: Attachment E Montgomery PB testimony re Rockville MGE.PDF)

Rockville's position remains that the land south/southeast of the 370 and Shady Grove Road corridor is appropriately in Rockville's Maximum Expansion Limits, rather than Gaithersburg's. Furthermore, we know of no attempt by Gaithersburg to work cooperatively with all MoU parties, per commitments made within the MoU. We have made our point of view known to the Maryland Department of Planning.

Please don't hesitate to call or discuss as you are preparing the staff document for the Planning Board.

Thanks.
David

David B. Levy
Chief of Long Range Planning and Redevelopment
Dept. of Community Planning and Development Services
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850-2364
Desk: 240-314-8272
Main: 240-314-8200
dlevy@rockvillemd.gov

David B. Levy
Chief of Long Range Planning and Redevelopment
Dept. of Community Planning and Development Services
City of Rockville
111 Maryland Avenue

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www.rockvillemd.gov

240-314-5000
TTY 240-314-8137

March 23, 2011

Mayor Sidney A. Katz and Council
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877-2098

Dear Mayor Katz:

Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

Thank you for inviting the City of Rockville to comment on the Draft Land Use Element of the City of Gaithersburg's 2009 Master Plan. We appreciate the effort that your staff has put into this very professional document and applaud the overall product.

However, there is one portion of the document with which the City of Rockville must take exception. The draft element includes a stated intention to annex the site of the former Great Indoor store into Gaithersburg, which is found at Map Designation #18. This property lies to the south of Shady Grove Road and, per the attached map, within the City of Rockville's adopted Maximum Expansion Limits (MEL). The Montgomery County Planning Board supported Rockville's placement of this site within our MEL. It is our firm view that Shady Grove Road is the logical physical boundary between our neighboring jurisdictions, in conformance with the spirit of the Memorandum of Understanding (MOU) signed by Rockville, Gaithersburg and Montgomery County in 1992 (attached). Gaithersburg's annexing any properties south of Shady Grove Road would constitute piecemeal annexation.

The City of Rockville therefore requests that the City of Gaithersburg

MAYOR
Phyllis Marcuccio

COUNCIL
John B. Britton
Piotr Gajewski
Bridget Donnell Newton
Mark Pierzchala

CITY MANAGER
Scott Ullery

CITY CLERK
Glenda P. Evans

CITY ATTORNEY
Debra Yerg Daniel

Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

remove this property from its MEL and retain Shady Grove Road as the physical boundary between our two Cities.

Sincerely,

Phyllis Marcuccio, Mayor

John B. Britton, Councilmember

Piotr Gajewski, Councilmember

Bridget Newton, Councilmember

Mark Pierzchala, Councilmember

Cc: Scott Ullery, Rockville City Manager
Angel Jones, Gaithersburg City Manager
Greg Ossont, Director, Planning and Code Administration
Susan Swift, Director, Community Planning & Development Services
David B. Levy, Chief of Long Range Planning
Ann Wallas, Planner III
Kirk Eby, Planner
Rollin Stanley, M-NCPPC
Glen Kreger, M-NCPPC
Nkosi Yearwood, M-NCPPC

Attachments:

Attachment A - Montgomery PB testimony re Rockville MGE
Attachment B - Mou between Rockville, Gaithersburg and Montgomery County

Attachment A

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

OFFICE OF THE CHAIRMAN

July 9, 2010

The Honorable Phyllis Marcuccio
Mayor, City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

SUBJECT: Municipal Growth Element of the City of Rockville's Comprehensive Master Plan

Dear Ms. Marcuccio:

At our regular meeting on July 8, 2010, the Montgomery County Planning Board reviewed the City of Rockville's proposed Comprehensive Master Plan Amendment to include Municipal Growth and Water Resources Elements, as required by the State of Maryland.

The Planning Board approved the technical staff recommendation to modify the proposed Maximum Expansion Limits (MEL). David B. Levy, Chief of Long Range Planning and Redevelopment for the City, informed the Board that no portion of Rock Creek Regional Park is included in the MEL. Therefore, the third comment in the enclosed technical staff report is deleted from our recommendation.

The Board supports Montgomery County Executive Isiah Leggett's recommendation to exclude the Montgomery County Service Park (CSP) from the proposed expansion limits. The County has spent significant public resources on property acquisition to redevelop the CSP into a mixed use urban village as recommended in the Shady Grove Sector Plan. We believe it is more appropriate that the United States Postal Service, Great Indoors, and the vacant Casey 3 properties along Shady Grove Road be included in MEL. The Planning Board also supports Montrose Road as the logical terminus to the City's expansion limits.

Thank you for the opportunity to review and comment on the Municipal Growth Element of the City of Rockville's Comprehensive Master Plan.

Sincerely,

Françoise M. Carrier
Chair

Enclosure: Staff Report

cc: David Hill, Chair
Planning Commission

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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FACT SHEET

Memorandum of Understanding Between Montgomery County and the Cities of Rockville and Gaithersburg

The following is the full text of the Memorandum of Understanding about Urban Growth Areas that was signed by the Montgomery County Executive and the Mayors of Rockville and Gaithersburg. This document was signed on July 23, 1992.

All parties to this Memorandum of Understanding share the conviction that the area's quality of life is dependent upon the maintenance of economic vitality. It is the economic base that helps provide the resources to support the services which make living in this area so attractive.

In order for Rockville, Gaithersburg, and Montgomery County to continue to enjoy the quality of life people have come to expect, it is essential that all jurisdictions support well-managed economic development and housing initiatives which will be mutually advantageous to all parties, and agree to the goals and principles of the General Plan.

Therefore, the Montgomery County Executive and the County Council of Montgomery County, sitting as the District Council, the Mayor and Council of the City of Rockville, and the Mayor and Council of the City of Gaithersburg agree to the following:

1. The City Councils, the County Council, and the Executive agree to work cooperatively to determine logical urban growth areas and to established boundaries which will serve as guidelines for a twenty-year planning horizon regarding:
   1) Land use and required community facilities,
   2) Capital investment responsibilities, and
   3) Logical and efficient operating service areas.

2. Montgomery County will base its position of support on annexations upon the above three considerations and the designation of logical urban growth areas by Rockville and Gaithersburg. The Cities and the County will develop procedural guidelines for handling annexation agreements.

3. Rockville and Gaithersburg recognize the County's goal of requiring adequate public facilities in order to assure managed growth and acknowledge their accountability for the cooperative achievement of such goals. Within its boundaries each City will, however, assume responsibility for and determine how those goals should be measured and attained. It is the mutual intent of all parties that project funding and staging will relate to the timing of public facility availability and to that end will consult with each other as necessary to assure attainment of desired goals.

4. The County recognizes the ability of the two Cities to develop and implement public interest solutions to growth management concerns. City or County development plans for land located within the urban growth areas and on adjacent areas should seek to achieve the land use, transportation, and staging objectives of each of the affected jurisdictions, as defined in duly Approved and Adopted master, Sector, or Neighborhood Plans. Every effort should be made by all parties to reconcile any differences in those objectives.

5. The City Councils, the County Council, the Executive, and the Montgomery County Planning Board agree to work on a cooperative basis in the development of plans and programs, including development districts, that affect parcels within the

urban growth areas. Changes in land uses, staging, or zoning proposals for parcels within the urban growth areas will only be undertaken after the participation and consultation of the other parties. Any land annexed by either Gaithersburg or Rockville should include a staging component in the annexation agreement.

6. Rockville and Gaithersburg endorse the R & D Village concept outline in the Shady Grove Study Area Adopted Plan as being in the best interest of both Cities and the County.

7. Rockville and Gaithersburg recognize the importance of creative development initiatives such as Moderately Priced Dwelling Units (MPDU) and Transferable Development Rights (TDR). The Cities will continue to utilize these and other appropriate innovative concepts to further the common development goals for the area.

8. The Cities will cooperate in a master traffic control plan and transportation (including transit) system for the County.

9. The principles contained within this Memorandum are meant to apply to all future actions pertaining to land in the Cities or on or near the Cities' borders.

10. We recognize the importance of moving ahead on an early basis to establish a schedule of action and agree to meet frequently on these important issues.

FACT SHEET

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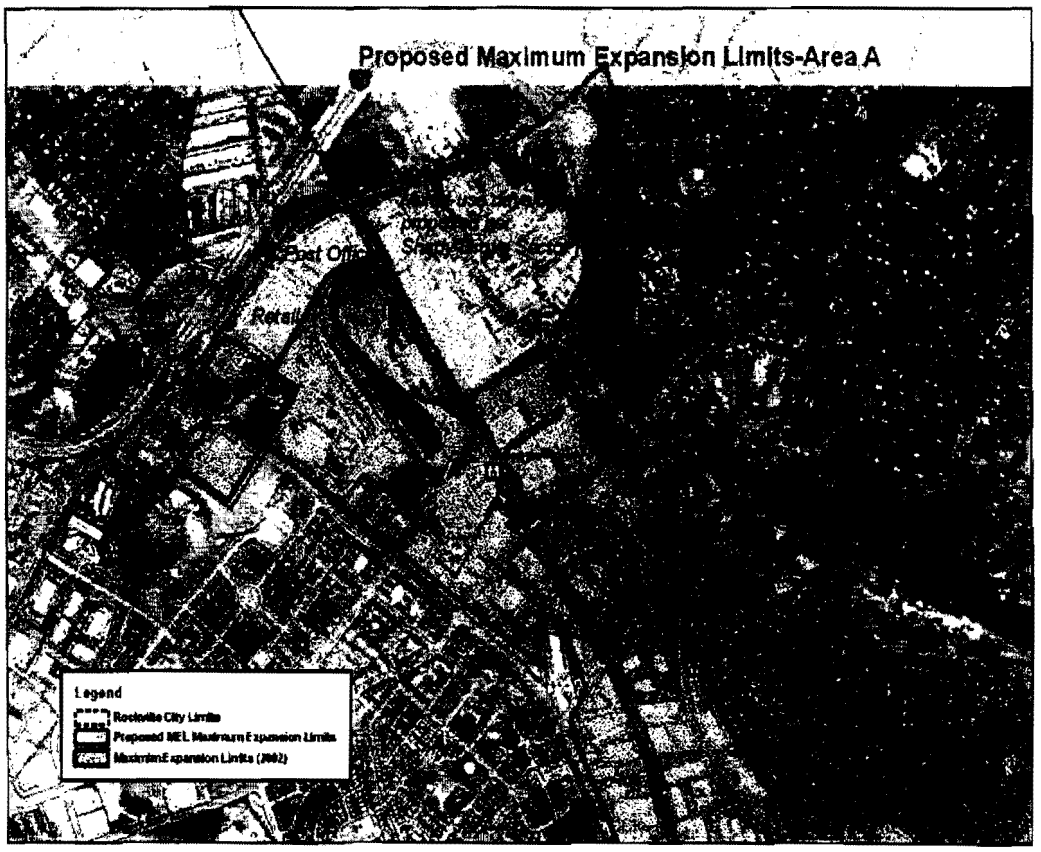
8. The Cities will cooperate in a master traffic control plan and transportation (including transit) system for the County.

9. The principles contained within this Memorandum are meant to apply to all future actions pertaining to land in the Cities or on or near the Cities' borders.

10. We recognize the importance of moving ahead on an early basis to establish a schedule of action and agree to meet frequently on these important issues.

From:
City of Rockville
Adopted
Municipal Growth Element 2010

Attachment D



Attachment E

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

OFFICE OF THE CHAIRMAN

July 9, 2010

The Honorable Phyllis Marcuccio
Mayor, City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

SUBJECT: Municipal Growth Element of the City of Rockville's Comprehensive Master Plan

Dear Ms. Marcuccio:

At our regular meeting on July 8, 2010, the Montgomery County Planning Board reviewed the City of Rockville's proposed Comprehensive Master Plan Amendment to include Municipal Growth and Water Resources Elements, as required by the State of Maryland.

The Planning Board approved the technical staff recommendation to modify the proposed Maximum Expansion Limits (MEL). David B. Levy, Chief of Long Range Planning and Redevelopment for the City, informed the Board that no portion of Rock Creek Regional Park is included in the MEL. Therefore, the third comment in the enclosed technical staff report is deleted from our recommendation.

The Board supports Montgomery County Executive Isiah Leggett's recommendation to exclude the Montgomery County Service Park (CSP) from the proposed expansion limits. The County has spent significant public resources on property acquisition to redevelop the CSP into a mixed use urban village as recommended in the Shady Grove Sector Plan. We believe it is more appropriate that the United States Postal Service, Great Indoors, and the vacant Casey 3 properties along Shady Grove Road be included in MEL. The Planning Board also supports Montrose Road as the logical terminus to the City's expansion limits.

Thank you for the opportunity to review and comment on the Municipal Growth Element of the City of Rockville's Comprehensive Master Plan.

Sincerely,

Françoise M. Carrier
Chair

Enclosure: Staff Report

cc: David Hill, Chair
Planning Commission

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 31, 2012

To: Nancy Floreen, PHED Chair

From: Isiah Leggett, County Executive

Subject: City of Gaithersburg Annexation, Great Indoors Property

I am writing to share with you my position on the proposed annexation and rezoning of the Great Indoors Property on Shady Grove Road.

Upon review, it was noted that the Sears, Roebuck and Company has petitioned the City of Gaithersburg to annex approximately 28 acres into the municipal boundaries. The properties include the Great Indoors parcel as well as significant portions of State of Maryland/State Highway Administration (SHA) and Montgomery County rights-of-way. The amount of SHA and Montgomery County rights-of-way proposed to be annexed is significant and I ask that you review this action to ensure that the inclusion is both logical and appropriate. As you know, despite that fact that Shady Grove Road is a State road, it is a County operated and maintained roadway over which we must maintain operational control and I would like assurances that the City does not intend to exert operational controls within the Shady Grove Road right-of way.

As you are also aware, the property abuts the Montgomery County Shady Grove Processing Facility and Transfer Station. The Transfer Station handles approxuimately 750,000 tons of solid waste each year and handles virtually all of the solid waste generated by the County and its municipalities. It is a seven-day a week operation and generates nearly 1,000 vehicle trips through the Shady Grove entrance each day. A yard waste management area and natural wood waste grinding lot are adjacent to the Sears property. Activities in these areas are inherently noisy and a potential source of fine wood particles under certain conditions. The 2006 Shady Grove Sector Plan noted that the Sears site is not appropriate for residential development due to public health and other concerns given its proximity to the Transfer Station and the site was subsequently rezoned to the Research and Development (R&D) zone.

As you are well aware, I am a strong advocate for housing with affordable housing being of particular interest to me. I must however, raise my serious concerns to you about the fact that the proposed Mixed Use Development zone (MXD) permits residential development. I agree with the Planning Board's recommendation that the City of Gaithersburg should not approve residential uses on this property due to its proximity to the Solid Waste Transfer Station.

While it is my understanding that neither the City nor the Petitioner is suggesting that residential redevelopment is appropriate at the site and that the Petitioner's legal counsel is considering options that will provide assurances to all stakeholders that no residential will be developed in the future, those assurances are not available at this time. Without those assurances I do not support the proposed annexation and rezoning.

If you have any questions, please contact Greg Ossont, Deputy Director, Dept. of General Services at 240-777-6192 or greg.ossont@montgomerycountymd.gov

cc: Roger Berliner, Council President
Sidney A. Katz, Gaithersburg Mayor
Francoise Carrier, Planning Board Chair
Phyllis Marcuccio, Rockville Mayor
Angel L. Jones, Gaithersburg City Manager
Marc Hansen, County Attorney
Bob Hoyt, Director DEP
Art Holmes, Director DOT
David Dise, Director DGS

Gaithersburg
A CHARACTER COUNTS! CITY

June 4, 2012

Council President Berliner
and Members of the Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Sears, Roebuck and Co. Petition for Annexation
Into the City of Gaithersburg – Petition X-184

Dear President Berliner and Members of the Montgomery County Council:

On behalf of the City of Gaithersburg, I am requesting your support of the Petition for Annexation filed by Sears, Roebuck and Co. ("Sears") to annex the property located at 16331 Shady Grove Road ("Property") into the corporate boundaries of Gaithersburg and for the County to waive the five-year development prohibition under Md. Ann. Code Article 23A §19(c)(1) for land uses substantially different from the permitted uses under the Research and Development ("R&D") zone to permit new development of the Property with retail uses.

As you are aware, the existing retail use on the Property, The Great Indoors, is a grandfathered use and the County R&D zoning does not permit general retail uses. While the City supports the vision of the Shady Grove Sector Plan, we also feel that it is in both, the City and County's, best interests to retain a viable retail use on this property as currently there is not a demand for R&D space in this area. The City believes that the MXD zoning of the Property will provide the flexibility to allow a retail use of the Property consistent with the current use once the Great Indoors closes while providing oversight to ensure quality development and design. We do concur with both the County staff and Planning Board's position that residential use of the Property is not appropriate so long as the adjacent Transfer Station remains. By granting a waiver of zoning consistency for the Property, we can maintain an economically viable use on the Property while ensuring the long-term vision for the region.

While there has been some concern raised with the inclusion of this Property within Gaithersburg's Maximum Expansion Limits ("MEL"), it must be noted when the City submitted its draft Municipal Growth Element of its Master Plan to the County for comment, neither the Office of the County Executive, in its letter of December 1, 2008, nor the Montgomery County Planning Board, in its letter of December 24, 2008, expressed any concern with the inclusion of

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2038
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@gaithersburgmd.gov • www.gaithersburgmd.gov

MAYOR
Sidney A. Katz

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

CITY MANAGER
Angel L. Jones

the Property in Gaithersburg's MEL. It should be further noted that while the Property also is within Rockville's MEL, it is not contiguous to Rockville and annexation into Rockville would require annexation of the Transfer Station and other properties to meet the contiguous requirement. Since the Property is included in the City's properly adopted MEL, it is eligible for annexation.

In addition, Annexation Petition X-184 includes annexing portions of the rights-of-way of Interstate I-370 and Shady Grove Road. The City has no intention of exerting operational controls within either the right-of-way of Shady Grove Road or the I-370 right-of-way. In the past, the City has annexed several properties which include rights-of-way of both the County and the State without exerting operational controls on the roadways. Please be assured that this policy continues to be the intent of the City for the Sears/Great Indoors Property annexation.

For the aforementioned reasons, the City is requesting your support of this Annexation Petition and approval of the applicant's request to waive the five year prohibition to permit new development of the Property under the City's MXD zone. Let's work together to ensure that this Property remains economically viable.

Sincerely,

Angel L. Jones,
City Manager

City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

240-314-5000
TTY 240-314-8137

June 5, 2012

The Honorable Roger Berliner
President, Montgomery County Council
100 Maryland Avenue
Rockville MD 20850

Re: Sears Site – 16331 and 16401 Shady Grove Road

Dear President Berliner:

Thank you for the opportunity to comment on the petition for the City of Gaithersburg to annex the properties located at 16331 and 16401 Shady Grove Road, owned by the Sears Corporation, as the County Council considers its position on this matter.

The City of Rockville is strenuously opposed to Gaithersburg's annexation of this property, which is appropriately located within Rockville's Maximum Expansion Limits (MEL). Shady Grove Road is the logical long-term boundary between Rockville and Gaithersburg; accordingly, Rockville opposes any proposed annexation by another municipality on the Rockville side of Shady Grove Road.

Rockville is expressing its position to Gaithersburg in the attached letter (Attachment A). Our position is consistent with the County Executive's objection, expressed in his May 31, 2012, letter (Attachment F); with the Maryland Department of Planning's letter (Attachment C) urging the parties to work together to find a workable solution in advance of the public hearing (and, by extension, the annexation itself); and with the Planning Board's July 9, 2010, letter (Attachment D) supporting the appropriateness of this site being in Rockville's Maximum Expansion Limits.

Rockville's Mayor and Council provided testimony to Gaithersburg of the same nature last year, as Gaithersburg was preparing an update to the Land Use Element of its Master Plan. That March 23, 2011, letter is provided as Attachment D.

Rockville wishes to continue the long-term excellent relationship between the two cities and Montgomery County. In that spirit, we propose that Rockville and Gaithersburg convene a working group, which would include Montgomery County, for the purpose of reviewing and potentially updating the 1992 Memorandum of Understanding (Attachment E) that was developed as guidance for future annexations. It is clear that, as our cities are in such close proximity to each other, we must engage further and with greater frequency on this topic in order to establish a renewed and mutually satisfactory understanding.

We request that the County Council support Rockville's effort to firmly establish the boundary between the two cities at Shady Grove Road. We urge you to take all appropriate actions to object to this proposed annexation and work with the cities of

MAYOR
Phyllis Marcuccio

COUNCIL
John F. Hall, Jr.
Tom Moore
Bridget Donnell Newton
Mark Pierzchala

ACTING CITY MANAGER
Jennifer Kimball

CITY CLERK
Doug Barber

CITY ATTORNEY
Debra Yerg Daniel

Rockville and Gaithersburg to develop an MOU for guidance on future proposed annexations.

Thank you for your attention to this testimony.

Sincerely,

Mayor Phyllis Marcuccio

Councilmember John F. Hall, Jr.

Councilmember Tom Moore

Councilmember Bridget Donnell Newton

Councilmember Mark Pierzchala

The Mayor and Council of Rockville

Cc: Montgomery County Executive Isiah Leggett
Montgomery County Councilmembers
Montgomery County Planning Board
City of Gaithersburg Councilmembers
City of Rockville Planning Commission
Jenny Kimball, Acting City Manager, City of Rockville
Angel Jones, City Manager, City of Gaithersburg

Attachments

City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

240-314-5000
TTY 240-314-8137

June 5, 2012

The Honorable Sidney A. Katz
Mayor, City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877-2098

Re: Sears Site – 16331 and 16401 Shady Grove Road

Dear Mayor Katz:

Thank you for the opportunity to comment on the annexation petition for the City of Gaithersburg to annex the properties located at 16331 and 16401 Shady Grove Road, owned by the Sears Corporation. Let us preface these remarks by stating that we genuinely value the cooperative efforts and mutually supportive relationship that our communities have established over many years, and we are hopeful that the City of Rockville's testimony on the pending matter, which are of grave concern to us, may be received and accorded your highest consideration in the context of that spirit of longstanding cooperation.

As you may recall, Rockville's Mayor and Council provided testimony during your consideration of an updated Land Use Element of Gaithersburg's Master Plan. Our testimony of March 23, 2011 is Attachment A to this letter.

Our position remains the same as it was last year: in short, the logical long-term boundary between Rockville and Gaithersburg is Shady Grove Road and that boundary should be firmly established. Therefore, Rockville strenuously objects to Gaithersburg's annexing the property in question and any other properties on the Rockville side of Shady Grove Road. Further, Gaithersburg's annexation of this property would create a significant obstacle to Rockville's access to other portions of our Maximum Expansion Limits, which are also south of Shady Grove Road. Accordingly, we respectfully - but firmly - request that Gaithersburg refrain from annexing 16331 and 16401 Shady Grove Road.

Given the positions expressed by the State, County Executive and Planning Board, the proposed annexation surprised and dismayed our Mayor and Council. Rockville's position is consistent with the concern expressed by the Maryland Department of Planning (MDP) in its May 8, 2012 letter to Gaithersburg (Attachment B), in which MDP urged that the parties (Gaithersburg, Rockville and Montgomery County) work together to find a workable solution on this matter prior to the public hearing. It is also consistent with the County Executive's objection to the annexation in his May 31, 2012 letter to the County Council (Attachment C); and the position of the Montgomery County Planning Board in its July 9, 2010 letter to Mayor Marcuccio (Attachment D), in expressing support for Rockville's position that it is "...appropriate that the United States Postal Service, Great Indoors, and the vacant Casey 3 properties along Shady Grove Road be included in the {Rockville} MEL."

MAYOR
Phyllis Marcuccio

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John F. Hall, Jr
Tom Moore
Bridget Donnell Newton
Mark Pierzchala

ACTING CITY MANAGER
Jennifer Kimball

CITY CLERK
Doug Barber

CITY ATTORNEY
Debra Yerg Daniel

Further, in the spirit of good neighbors, Rockville wishes to continue the long-term excellent relationship between our cities. To that end, we propose that Rockville and Gaithersburg convene a working group, which would at times include Montgomery County, for the purpose of reviewing and potentially updating the 1992 Memorandum of Understanding (attached) that was developed as guidance for future annexations. It is clear that, as our cities are in such close proximity to each other, we must engage further and with greater frequency on this topic in order to establish a renewed and mutually satisfactory understanding.

Thank you for your attention to this testimony.

Sincerely,

Mayor Phyllis Marcuccio

Councilmember John F. Hall, Jr.

Councilmember Tom Moore

Councilmember Bridget Donnell Newton

Councilmember Mark Pierzchala

The Mayor and Council of Rockville

Cc: Montgomery County Executive Isiah Leggett
Montgomery County Councilmembers
Montgomery County Planning Board
City of Gaithersburg Councilmembers
City of Rockville Planning Commission
Jenny Kimball, Acting City Manager, City of Rockville
Angel Jones, City Manager, City of Gaithersburg

Attachments

Attachment B

Maryland Department of Planning

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

May 8, 2012

The Honorable Sidney Katz and Gaithersburg City Council Members
31 South Summit Avenue
Gaithersburg, Maryland 20877

Subject: X-184 Sears Property Annexation

Dear Mayor Katz:

Thank you for providing the Maryland Department of Planning (MDP) with information pertaining to the X-184 Sears Property Annexation to the City of Gaithersburg. We reviewed this proposed annexation and offer the following comments for consideration.

As you are aware, Article 23A, as amended by House Bill 1141, specifies that the new zoning for the annexed land cannot be substantially different from the existing County zoning, without the express consent of the County Commissioners. In reviewing this annexation request, we concur with Montgomery County's assertion that the proposed MXD zoning designation is substantially different than the uses allowed by the existing R & D zoning designation. Should the annexation be approved, be advised that the five-year rule comes into effect, which means that development plans with uses not allowed by the existing R & D zone and/or density greater than 0.525 FAR is prohibited for five years.

We noted that the subject property was designated by Montgomery County as a Priority Funding Area (PFA) and our Department concurs with that designation. Land annexed into a municipality does not automatically become or remain a Priority Funding Area. The opportunity for land annexed into the City to become a Priority Funding Area is subject to the requirements specified in the Finance and Procurement Article §5-7B-02, as amended by HB1141. We recommend that the City look at this annexation and all future annexations in the context of the Finance and Procurement Article §5-7B-02 to determine eligibility for State funding of growth related projects.

While the subject annexation property lies within Gaithersburg's MEL, it is also within the City of Rockville's MEL. Defending the assertion that Shady Grove Road should be the logical boundary between the two cities, the City of Rockville formally requested that the City of Gaithersburg remove this property from its MEL in a letter dated March 23, 2011. Montgomery County also asserted its position that the property be located in Rockville's MEL in a letter dated July 9, 2010. All of this is predicated on the existence of a Memorandum of Understanding between Montgomery County and the Cities of Rockville and Gaithersburg dated July 23, 1992. In consideration of this information, MDP urges all three parties to work together on this annexation request to reach a collaborative and workable solution prior to the public hearing.

301 West Preston Street • Suite 1101 • Baltimore, Maryland 21201-2305
Telephone: 410.767.4500 • Fax: 410.767.4480 • Toll Free: 1.877.767.6272 • TTY Users: Maryland Relay
Internet: www.planning.maryland.gov

If you have any questions concerning these comments or if we can be of further assistance, please contact me at (410) 767-4553, or our regional planner, Steve Allan, at (410) 767-4572.

Sincerely,

Peter G. Conrad, AICP
Director, Local Government Assistance

cc: Rich Josephson, MDP
Amanda Conn, MDP
Steve Allan, MDP

Attachments

Attachment C

MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

July 9, 2010

The Honorable Phyllis Marcuccio
Mayor, City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

SUBJECT: Municipal Growth Element of the City of Rockville's Comprehensive Master Plan

Dear Ms. Marcuccio:

At our regular meeting on July 8, 2010, the Montgomery County Planning Board reviewed the City of Rockville's proposed Comprehensive Master Plan Amendment to include Municipal Growth and Water Resources Elements, as required by the State of Maryland.

The Planning Board approved the technical staff recommendation to modify the proposed Maximum Expansion Limits (MEL). David B. Levy, Chief of Long Range Planning and Redevelopment for the City, informed the Board that no portion of Rock Creek Regional Park is included in the MEL. Therefore, the third comment in the enclosed technical staff report is deleted from our recommendation.

The Board supports Montgomery County Executive Isiah Leggett's recommendation to exclude the Montgomery County Service Park (CSP) from the proposed expansion limits. The County has spent significant public resources on property acquisition to redevelop the CSP into a mixed use urban village as recommended in the Shady Grove Sector Plan. We believe it is more appropriate that the United States Postal Service, Great Indoors, and the vacant Casey 3 properties along Shady Grove Road be included in MEL. The Planning Board also supports Montrose Road as the logical terminus to the City's expansion limits.

Thank you for the opportunity to review and comment on the Municipal Growth Element of the City of Rockville's Comprehensive Master Plan.

Sincerely,

Françoise M. Carrier
Chair

Enclosure: Staff Report

cc: David Hill, Chair
Planning Commission

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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City of Rockville
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240-314-5000
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March 23, 2011

Mayor Sidney A. Katz and Council
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877-2098

Dear Mayor Katz:

Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

Thank you for inviting the City of Rockville to comment on the Draft Land Use Element of the City of Gaithersburg's 2009 Master Plan. We appreciate the effort that your staff has put into this very professional document and applaud the overall product.

However, there is one portion of the document with which the City of Rockville must take exception. The draft element includes a stated intention to annex the site of the former Great Indoor store into Gaithersburg, which is found at Map Designation #18. This property lies to the south of Shady Grove Road and, per the attached map, within the City of Rockville's adopted Maximum Expansion Limits (MEL). The Montgomery County Planning Board supported Rockville's placement of this site within our MEL. It is our firm view that Shady Grove Road is the logical physical boundary between our neighboring jurisdictions, in conformance with the spirit of the Memorandum of Understanding (MOU) signed by Rockville, Gaithersburg and Montgomery County in 1992 (attached). Gaithersburg's annexing any properties south of Shady Grove Road would constitute piecemeal annexation.

The City of Rockville therefore requests that the City of Gaithersburg

MAYOR
Phyllis Marcuccio

COUNCIL
John B. Britton
Piotr Gajewski
Bridget Donnell Newton
Mark Pierzchala

CITY MANAGER
Scott Ullery

CITY CLERK
Glenda P. Evans

CITY ATTORNEY
Debra Yerg Daniel

Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

remove this property from its MEL and retain Shady Grove Road as the physical boundary between our two Cities.

Sincerely,

Phyllis Marcuccio, Mayor

John B. Britton, Councilmember

Piotr Gajewski, Councilmember

Bridget Newton, Councilmember

Mark Pierzchala, Councilmember

Cc: Scott Ullery, Rockville City Manager
Angel Jones, Gaithersburg City Manager
Greg Ossont, Director, Planning and Code Administration
Susan Swift, Director, Community Planning & Development Services
David B. Levy, Chief of Long Range Planning
Ann Wallas, Planner III
Kirk Eby, Planner
Rollin Stanley, M-NCPPC
Glen Kreger, M-NCPPC
Nkosi Yearwood, M-NCPPC

Attachments:

Attachment A - Montgomery PB testimony re Rockville MGE
Attachment B - Mou between Rockville, Gaithersburg and Montgomery County

FACT SHEET

Memorandum of Understanding Between Montgomery County and the Cities of Rockville and Gaithersburg

The following is the full text of the Memorandum of Understanding about Urban Growth Areas that was signed by the Montgomery County Executive and the Mayors of Rockville and Gaithersburg. This document was signed on July 23, 1992.

All parties to this Memorandum of Understanding share the conviction that the area's quality of life is dependent upon the maintenance of economic vitality. It is the economic base that helps provide the resources to support the services which make living in this area so attractive.

In order for Rockville, Gaithersburg, and Montgomery County to continue to enjoy the quality of life people have come to expect, it is essential that all jurisdictions support well-managed economic development and housing initiatives which will be mutually advantageous to all parties, and agree to the goals and principles of the General Plan.

Therefore, the Montgomery County Executive and the County Council of Montgomery County, sitting as the District Council, the Mayor and Council of the City of Rockville, and the Mayor and Council of the City of Gaithersburg agree to the following:

1. The City Councils, the County Council, and the Executive agree to work cooperatively to determine logical urban growth areas and to established boundaries which will serve as guidelines for a twenty-year planning horizon regarding:
   1) Land use and required commu nity facilities,
   2) Capital investment responsibili ties, and
   3) Logical and efficient operating service areas.

2. Montgomery County will base its position of support on annexations upon the above three considerations and the designation of logical urban growth areas by Rockville and Gaithersburg. The Cities and the County will develop procedural guidelines for handling annexation agreements.

3. Rockville and Gaithersburg recognize the County's goal of requiring adequate public facilities in order to assure managed growth and acknowledge their accountability for the cooperative achievement of such goals. Within its boundaries each City will, however, assume responsibility for and determine how those goals should be measured and attained. It is the mutual intent of all parties that project funding and staging will relate to the timing of public facility availability and to that end will consult with each other as necessary to assure attainment of desired goals.

4. The County recognizes the ability of the two Cities to develop and implement public interest solutions to growth management concerns. City or County development plans for land located within the urban growth areas and on adjacent areas should seek to achieve the land use, transportation, and staging objectives of each of the affected jurisdictions, as defined in duly Approved and Adopted master, Sector, or Neighborhood Plans. Every effort should be made by all parties to reconcile any differences in those objectives.

5. The City Councils, the County Council, the Executive, and the Montgomery County Planning Board agree to work on a cooperative basis in the development of plans and programs, including development districts, that affect parcels within the

urban growth areas. Changes in land uses, staging, or zoning proposals for parcels within the urban growth areas will only be undertaken after the participation and consultation of the other parties. Any land annexed by either Gaithersburg or Rockville should include a staging component in the annexation agreement.

6. Rockville and Gaithersburg endorse the R & D Village concept outline in the Shady Grove Study Area Adopted Plan as being in the best interest of both Cities and the County.

7. Rockville and Gaithersburg recognize the importance of creative development initiatives such as Moderately Priced Dwelling Units (MPDU) and Transferable Development Rights (TDR). The Cities will continue to utilize these and other appropriate innovative concepts to further the common development goals for the area.

8. The Cities will cooperate in a master traffic control plan and transportation (including transit) system for the County.

9. The principles contained within this Memorandum are meant to apply to all future actions pertaining to land in the Cities or on or near the Cities' borders.

10. We recognize the importance of moving ahead on an early basis to establish a schedule of action and agree to meet frequently on these important issues.

Attachment F

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 31, 2012

To: Nancy Floreen, PHED Chair

From: Isiah Leggett, County Executive

Subject: City of Gaithersburg Annexation, Great Indoors Property

I am writing to share with you my position on the proposed annexation and rezoning of the Great Indoors Property on Shady Grove Road.

Upon review, it was noted that the Sears, Roebuck and Company has petitioned the City of Gaithersburg to annex approximately 28 acres into the municipal boundaries. The properties include the Great Indoors parcel as well as significant portions of State of Maryland/State Highway Administration (SHA) and Montgomery County rights-of-way. The amount of SHA and Montgomery County rights-of-way proposed to be annexed is significant and I ask that you review this action to ensure that the inclusion is both logical and appropriate. As you know, despite that fact that Shady Grove Road is a State road, it is a County operated and maintained roadway over which we must maintain operational control and I would like assurances that the City does not intend to exert operational controls within the Shady Grove Road right-of way.

As you are also aware, the property abuts the Montgomery County Shady Grove Processing Facility and Transfer Station. The Transfer Station handles approxuimately 750,000 tons of solid waste each year and handles virtually all of the solid waste generated by the County and its municipalities. It is a seven-day a week operation and generates nearly 1,000 vehicle trips through the Shady Grove entrance each day. A yard waste management area and natural wood waste grinding lot are adjacent to the Sears property. Activities in these areas are inherently noisy and a potential source of fine wood particles under certain conditions. The 2006 Shady Grove Sector Plan noted that the Sears site is not appropriate for residential development due to public health and other concerns given its proximity to the Transfer Station and the site was subsequently rezoned to the Research and Development (R&D) zone.

As you are well aware, I am a strong advocate for housing with affordable housing being of particular interest to me. I must however, raise my serious concerns to you about the fact that the proposed Mixed Use Development zone (MXD) permits residential development. I agree with the Planning Board's recommendation that the City of Gaithersburg should not approve residential uses on this property due to its proximity to the Solid Waste Transfer Station.

While it is my understanding that neither the City nor the Petitioner is suggesting that residential redevelopment is appropriate at the site and that the Petitioner's legal counsel is considering options that will provide assurances to all stakeholders that no residential will be developed in the future, those assurances are not available at this time. Without those assurances I do not support the proposed annexation and rezoning.

If you have any questions, please contact Greg Ossont, Deputy Director, Dept. of General Services at 240-777-6192 or greg.ossont@montgomerycountymd.gov

cc: Roger Berliner, Council President
Sidney A. Katz, Gaithersburg Mayor
Francoise Carrier, Planning Board Chair
Phyllis Marcuccio, Rockville Mayor
Angel L. Jones, Gaithersburg City Manager
Marc Hansen, County Attorney
Bob Hoyt, Director DEP
Art Holmes, Director DOT
David Dise, Director DGS

LINOWES AND BLOCHER LLP
ATTORNEYS AT LAW

June 4, 2012

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com
Erin E. Girard
301.961.5153
egirard@linowes-law.com

Council President Berliner
And Members of the Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council President Berliner and Members of the Montgomery County Council:

We represent Sears, Roebuck and Co. ("Sears"), owner of The Great Indoors Property, located at 16331 Shady Grove Road ("Property") and the petitioner in Gaithersburg Annexation Petition X-184 ("Petition"). The purpose of this letter, to the extent necessary,[1] is to request that the County Council expressly waive the restrictions of Md. Ann. Code art. 23A. § 19(c)(2) to allow the City of Gaithersburg ("City") to consider redevelopment plans for the Property pursuant to the requirements and limitations of the City's MXD zone (the zone designated by the City) upon its annexation into the City.

The Property is currently developed with The Great Indoors, a home-improvement showcase center that is scheduled to be closed later this month as part of a national business decision impacting this chain of stores, a Sears appliance repair center, Sears administrative offices, and associated parking, all of which were developed in or around 1966 in the County's I-1 zone. In 2006, Montgomery County comprehensively rezoned the Property to Research and Development ("R&D"), which does not permit general retail uses. Notwithstanding the clear retail use of the Property, The Great Indoors use was grandfathered as "building material and supply" in the R&D zone, severely restricting any potential reuse of the existing building for other retail uses under the grandfathering provision. The lack of demand for R&D space in the area, currently and for the forseeable future, coupled with the restrictions on retail uses on the Property, renders the current R&D zone for the Property very problematic. Although Sears reached out to County officials in the fall of 2010 to assess the County's interest in helping Sears achieve more flexibility for the reuse of its Property outside of the comprehensive planning process (the Shady Grove Sector Plan recommends large employment parks for this area, which is not realistic for the forseeable future), those efforts were unproductive.

[1]We believe that a strong case can be made (and we do not concede the issue) that the City's MXD zone and the County's R&D zone are not substantially different, and thus the City's consideration of any new development plans would not require a waiver. Regardless, we focus herein on why the County should not object to any such new development plans upon annexation.

Given the City's historic identification of the Property as being within its maximum expansion limits (reconfirmed as recently as 2009), Sears filed the Petition with the City on January 12, 2012, seeking annexation into the City and classification in its MXD zone. Through the proposed annexation, Sears hopes to achieve more short-term flexibility to allow for viable uses of the existing improvements until the market will support redevelopment of the Property, as envisioned by the County Sector Plan and allowed under the City's MXD zone. In the near term, Sears would like to maintain its repair center and administrative offices on the Property and find a retail or other nonresidential user for the remainder of the existing improvements. Maintaining active use of the existing improvements on the Property, thereby allowing the Property to continue to contribute to the tax base of the County, would seem to be in the public interest.

Under Md. Ann. Code art. 23A. § 19(c)(1), once annexed, the City would not be allowed, for a period of five years, to permit development of the Property for "land uses substantially different than the use authorized, or at a substantially higher, not to exceed 50% density than could be granted" under the existing County zone without the express approval of the County Council (see footnote 1 above). To best achieve its objectives, and in what we believe are the best interests of the County and City to ensure the Property remains active and revenue-producing, Sears is requesting that the County expressly waive this five year prohibition, subject to the limitations on density and residential use discussed below, to allow for the continued nonresidential (primary retail and office) use of the Property.

The Planning Board considered the Petition on April 26th and, in its discussion, concluded that general retail uses should not be considered "substantially different" uses under Md. Ann. Code art. 23A. § 19(c)(1), given the existing retail use of the Property. Under such a conclusion, the five year prohibition noted above would not apply to development of retail uses on the Property. On the other hand, the Planning Board noted that residential uses should be considered substantially different, and so indicated in its May 4, 2012 letter to the County Council. In that letter, the Planning Board recommended approval of the Petition subject to the following conditions, which Sears responds to in turn:

1. *Approval of new development plans with substantially different uses (such as residential) and/ or density greater than 0.525 FAR is prohibited for five years.*

As noted above, it was the conclusion of the Planning Board in its discussion that development of general retail uses on the Property would not be "substantially different" than the existing uses, and Sears agrees with this conclusion. However, to the extent that the County Council determines otherwise, Sears is requesting that the prohibition on such different uses be waived. Sears has also repeatedly stated on the record that it does not intend to put any residential uses on the Property for as long as the Transfer Station exists to the south, and would therefore agree to

such a prohibition for the five year term immediately following annexation. With regard to density, Sears is willing to agree to the density cap suggested by Staff and the Planning Board for the five year term following annexation.

2. *The City of Gaithersburg should not approve plans for residential uses on this property due to proximity to the Solid Waste Transfer Station.*

As noted above, Sears does not have any plans to develop the Property with residential use for the forseeable future.

3. *The Applicant must satisfy the Adequate Public Facility test if the site is redeveloped in a way that generates more peak hour trips than the existing retail use of 204,490 square feet of gross floor area.*

Once annexed, adequate public facilities review would be administered by the City according to its rules and regulations, and Sears would comply with all City requirements in this regard.

4. *The Applicant must enter into a Trip Mitigation Agreement with the City and the Montgomery County Department of Transportation (MCDOT) to participate in the Greater Shady Grove Traffic Management District in order to achieve the transit ridership goal of the Shady Grove Sector Plan.*

As part of any redevelopment, Sears would agree to enter into a Trip Mitigation Agreement with the City.

5. *The Applicant must upgrade the existing sidewalk along Shady Grove Road. Upgrades should include a relocated sidewalk with a tree panel, lead-in sidewalks, and handicapped ramps.*

Because Shady Grove Road is and will remain a County-maintained road, any redevelopment of the Property would necessarily involve coordination of right-of-way improvements, including sidewalks, with MCDOT and would need to comply with MCDOT standards. This condition would therefore be met in any case upon any redevelopment of the Property, and is therefore unnecessary at this time.

Based on the foregoing, and the commitments that Sears is willing to make regarding limitations on density and residential uses within the five year term immediately following annexation, Sears requests, to the extent necessary, that the County Council exercise its authority under Md. Ann. Code art. 23A. § 19(c)(2) to waive the five year prohibition to permit new development of the Property, as applicable, under the City's MXD zone.

Thank you for your consideration of this information. We will be present at the June 11th Planning, Housing and Economic Development Committee meeting and the June 26th Council meeting to address any questions you may have. In the meantime, if you have any questions, or require any additional information, please feel free to contact us.

Very truly yours,

LINOWES AND BLOCHER LLP

C. Robert Dalrymple

C. Robert Dalrymple

Erin E. Girard

Erin E. Girard

cc: Mr. Tony Tomasello
Lynn Board, Esq.
Ms. Trudy Schwarz
Jeff Zyontz, Esq.
Mr. James Terrell
Marianne Simonini, Esq.

From:	Zyontz, Jeffrey
To:	Floreen, Nancy; Leventhal, George; Elrich, Marc
Cc:	Jablow, Judy; Vitale, Patricia; Tibbitts, Dale; Trudy Schwarz; DLevy@rockvillemd.gov; Sloan, Joshua; Russ, Gregory; Girard, Erin E. - EEG
Subject:	Sears Property Annexation - Monday PHED meeting June 11 - 2:00 PM 7th Floor Conference Room COB.
Date:	Friday, June 08, 2012 8:48:50 AM

Hi,

There will be representatives from Gaithersburg, Rockville, Planning Staff, the Executive, and the applicant at the PHED Committee's worksession. All parties will be available to answer any questions the Committee might have.

I regret that my staff recommendation includes a recommendation that is NOT supported by case law. An annexation agreement can NOT restrict land uses that are allowable in the zone applied by the municipality. My recommendation to not allow residential use on the Sears property by a provision in the annexation agreement would NOT be sustained. (I thank the applicant's attorney for pointing this out to me in advance of the PHED meeting.)

There is a way to achieve that result (beyond 5 years); Gaithersburg could apply a zone to the property that did not permit residential uses.

Jeff Zyontz
Legislative Attorney
Montgomery County Council
240 777 7896

Mayor and City Council
X-184
Exhibit #66