

CHURCHES

Continued from Page A-1

in congregations that spark discussion and change, Voelkel said.

Discussion took off among Christians after Feb. 25, when the Rev. Marcel Guarnizo of St. John Neumann Catholic Church in Gaithersburg publicly denied to offer communion to Barbara Johnson of Washington, D.C., at her mother's funeral, after learning she was a lesbian, said Lauve H. Steenhuisen, a professor in the Department of Theology at Georgetown University.

The Archdiocese of Washington responded in a statement Feb. 27 that it was looking into the incident. Guarnizo later was barred from ministry and withdrawn from his assignment at St. John Neumann because of "intimidating behavior toward parish staff and others that is incompatible with proper priestly ministry," according to a March 9 archdiocese statement.

The Catechism of the Catholic Church states that tradition always has declared "homosexual acts are intrinsically disordered."

Voelkel said the official policy of the Catholic Church is unlikely to change, but the event definitely got people talking.

It was a wake-up call for Christians, she said.

"Homosexuals are saying, finally," she said, "[they are saying] you do not see the prejudice that is hurled at us every day. ... Finally the prejudice is displayed, along with the power. Finally it is made overt."

Open and affirming

About 7 miles west of St. John Neumann, at United Church of Christ of Seneca Valley in Germantown, Pastor Carolyn L. Roberts said anyone is welcome at the communion table.

Although the church has been welcoming to the LGBT community since it was established in 1984 — after two years of discussion — in 2007 it wrote a statement to officially become "open and affirming" through the UCC Coalition for LGBT Concerns in 2007.

The church takes the Bible seriously, but not literally, which allows it to interpret Scripture to be relevant to today's society, Roberts said.

"We don't feel that God spoke way back in ancient history and then quit talking," Roberts said. "We believe that God continues to talk to us in the present."

About 70 people attend serv-

ices at UCC Seneca Valley every Sunday, and about 10 percent are openly gay, Roberts said.

Beth Lauriat and her partner, Laura Lineberger, of Montgomery Village, said they have found a home at the church.

Raised in UCC churches, Lauriat said she is lucky to not have faced the rejection she sees others face.

"I probably would have chosen not to come out at church, or stopped going, but I don't really know because that really wasn't my experience," Lauriat said.

More churches will become open, as society continues to change, Steenhuisen said.

Steenhuisen, who has a doctorate in sociology of religion from the University of California, Berkeley, currently teaches five courses at Georgetown, including one called religion in America. She visits local congregations to teach about homosexuality in religion.

As the population ages, churches with traditional beliefs will lose members, she said.

"I think that younger people have more open views," she said. "I think that there are a lot of pressures on congregations to become more opening and more welcoming."

In a study conducted in July 2011 by the Public Religion Research Institute that surveyed 3,000 people in the U.S., there was a 20 percent gap between people ages 18 to 29 and 65 and older on public policy measures concerning rights for gays and lesbians.

About six in 10 people ages 18 to 29 favor allowing gay and lesbian couples to marry, while three in 10 seniors favor it.

Steenhuisen thinks denominations are having to change in response to their congregations.

"[People] are getting more open-minded, because they have gays and lesbians in their own families, and they see finally that the church is not [open-minded], and they are putting pressure [on] the church to change."

Since her ex-husband annulled their marriage in the Catholic Church, Capozzi has been excommunicated from the church, she said.

Now at Open Door, her partner, Sara Jocham, wraps her arm around her as they pray each Sunday.

They share a songbook and sing gospel music, exchanging occasional smiles.

"I don't believe everyone has to go to church to be spiritual or anything like that," Capozzi said. "But I get to be me there. And I like to share my faith."

jbondeson@gazette.net

LAND

Continued from Page A-1

proposed for use for a new school to Montgomery Soccer Inc. to turn it into soccer fields. The 20 acres on Brickyard Road has been an organic farm for 30 years, but the Potomac master plan — a document that guides regional development — calls for more soccer or recreational fields.

In addition to the Brickyard tract, Leventhal cited Leggett's decision to sell the former police headquarters on Research Boulevard for \$3.2 million, about \$6 million less than the council anticipated, as questionable.

Those opposed to Leventhal's measure see it as an invasion of executive powers defined in the county charter and a barrier to successful development negotiations.

The county charter vests executive power in the county executive while county code regulates the selling and leasing of land stating: "The County Executive may ... dispose of

County-owned real property not currently programmed, except those properties ..."

The bill violates the charter by unilaterally allowing the council to veto the sale or lease of land, according to County Attorney Mark Hansen and Clifford Royalty, chief of the division of Zoning, Land Use and Economic Development.

"Council staff seems to be unaware that the concept of check and balance runs in at least two directions — not just checking the executive power," Hansen later wrote to Council President Roger Berliner (D-Dist. 1) of Potomac. "The authority the charter vests in the executive to implement the laws of the county acts as a balance against the unchecked concentration of power in the legislative branch."

Other critics, including Georgette Godwin, president and CEO of the Montgomery County Chamber of Commerce, argued the bill would weaken negotiations by increasing the number of county negotiators from one to 10.

"Council staff seems to be unaware that the concept of check and balance runs in at least two directions — not just checking the executive power."

Mark Hansen, county attorney

Six members of the council have sponsored Leventhal's bill.

At issue in the bill is a provision that would give the council approval of "all material terms" of land sales and leases for properties valued at more than \$100,000, including "the price or rent to be paid and any associated economic incentives."

A proposed amendment to the bill would limit council oversight to approving or disapp-

proving when a property is no longer needed, prohibiting the executive from selling or leasing any county property at less than full-market value without a council waiver, and allowing the council 30 days to comment on the proposed terms of any sale or lease before a deal is negotiated.

Additional amendments to the bill would exempt sales or leases for projects that provide affordable housing above the minimum requirement, and sales and leases of park-managed properties.

On Thursday, the Governmental Operations and Fiscal Policy committee began working to tweak the two-page bill, and will make recommendations on the proposed amendments.

With all but Councilman Philip M. Andrews (D-Dist. 3) of Gaithersburg present, the three-member committee agreed to recommend the council exempt park-managed property from the bill. It will continue its discussion this month.

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NOTICE OF PUBLIC HEARING
The Mayor and Council of the City of Gaithersburg will conduct a joint public hearing on X-184, filed by Sears, Roebuck and Company, on
MONDAY
MAY 21, 2012
AT 7:30 P.M.
or as soon thereafter as this matter can be heard in the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland.
The application requests annexation of 27.89 acres of land adjacent to the present corporate limits, known as the Sears Property, located at 16331 & 16401 Shady Grove Road. The application requests a reclassification of the subject property from the current Montgomery County Research and Development (R&D) Zone to the Mixed Use Development (MXD) Zone in the City of Gaithersburg, Maryland.
Further information may be obtained from the Planning and Code Administration Department at City Hall, 31 South Summit Avenue, between the hours of 8 a.m. and 5 p.m., Monday through Friday.
Trudy W. Schwarz, Community Planning Director
Planning and Code Administration
mg

SAVE THE DATE
(and help support Hospice Caring's program services)
APRIL 21: 2nd Annual Fashion Show
Join us on Saturday, April 21 from 1 to 4 pm for our 2nd Annual Benefit Fashion Show at the Hospice Caring Cottage. Clothing and accessories will be provided by Alicia L. in Frederick. Reservations are only \$30. Email pennyg@hospicecaring.org or call 301-990-8904.
APRIL 25: Employee Recognition Day Benefit
In honor of Employee Recognition Day Outback Steakhouse in Germantown is proud to once again offer a benefit luncheon for Hospice Caring. Seating at noon and 1:30 pm. Only \$22 per person. Space is limited. For reservations call Outback at 301-353-9499.
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# CELEBRATIONS

Wednesday, April 11, 2012 • Page A-14



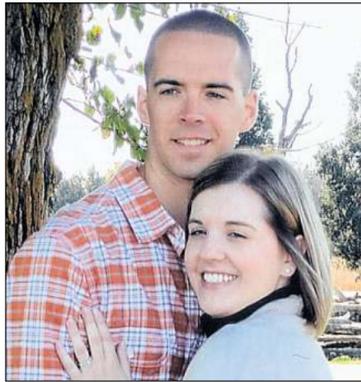
## Baines, Andrews

Melodee Baines and Ned Andrews of Portsmouth, Va., announce their engagement.

The bride-to-be, formerly of Damascus, is the daughter of Robin M. Murray of Medina, Ohio, and Joseph Baines of Norman Park, Ga. She will earn a Ph.D. in international studies from Old Dominion University in August 2012.

The prospective groom is the son of Carolyn and Andy Andrews of Oliver Springs, Tenn. He holds a law degree from the University of Virginia and practices as a public defender.

The couple will be married on Aug. 4 in Washington, D.C.



## Stricklin, Cover

Rick and Amy Cover of Gaithersburg are pleased to announce the engagement of their son, Steven Andrew Cover, to Nicole Christine Stricklin. Nicole is the daughter of Debbie Stricklin of Boardman, Ohio, and Mark Stricklin, also of Boardman, Ohio.

The bride-to-be is a graduate of Poland Seminary High School and a 2009 graduate of West Virginia University. She is employed by the Department of Justice.

The prospective groom is a graduate of Northwest High School and a 2009 graduate of West Virginia University. He is a career firefighter with the Howard County Fire Department.

The couple is planning an October 2012 wedding.



## Berkheimer, Graeves

Dan and Linda Berkheimer of Brookeville announce the engagement of their daughter, Staci Berkheimer, to Kyle Graeves, son of Scott and Nancy Graeves of Brookeville.

The bride-to-be is a graduate of Sherwood High School and a graduate of Paul Mitchell Cosmetology School in Rockville. She is currently employed as a stylist at Bubbles in Olney.

The prospective groom is a graduate of Sherwood High School. He received his associate degree from Montgomery College and attended Towson University. He is currently employed at Graeves Auto and Appliance in Olney.

A September wedding is being planned.



## Simpson, Bramstedt

Karen and Glenn Simpson of Potomac announce the marriage of their daughter, Joan Thayer Simpson, to Norman William Bramstedt, son of Jane and Rick Bramstedt of Laveen, Ariz.

The couple was married on April 16, 2011, at The Thursday Club in San Diego, Calif., in an outdoor ceremony overlooking Ocean Beach (Point Loma), Calif. Aaron Simons officiated. Mason Westlund was the flower girl.

The bride is a 1997 graduate of Wootton High School and a 2001 graduate of Boston University. The groom graduated from Oyster River High School in New Hampshire and is a 2002 graduate of the University of New Mexico.

The bride is currently an elementary school teacher at The Warren Walker School in La Mesa, Calif., and the groom is a real-estate associate with Sotheby's in San Diego, Calif.

After a wedding trip to Italy and Croatia, the couple resides in San Diego, Calif.

## RELIGION HIGHLIGHTS

### ONGOING

**Chancel choir auditions and rehearsals** are held at 7:30 p.m. Thursdays at Liberty Grove Methodist Church, 15225 Old Columbia Pike, Burtonsville. Call 301-421-9166 or visit [www.libertygrovechurch.org](http://www.libertygrovechurch.org).

**'Healing for the Nations'** will be held at 7 p.m. every first and third Saturday of the month at South Lake Elementary School, 18201 Contour Road, Gaithersburg. Sponsored by King of the Nations Christian Fellowship,

the outreach church service is open to all who are looking for hope in this uncertain world. Prayer for healing available. Translation into Spanish and French. Call 301-251-3719. Visit [www.kncf.org](http://www.kncf.org).

**Geneva Presbyterian Church** holds potluck lunches at 11:30 a.m. the second Sunday of each month at 11931 Seven Locks Road, Potomac. There is no fee to attend. All are welcome to bring a dish to share; those not bringing dishes are also welcome. Call 301-424-4346.

## HEALTH CALENDAR

### WEDNESDAY, APRIL 11

**Healthy Choices**, a 10-week structured program to help individuals learn a non-diet lifestyle approach to weight management, will be held Wednesdays from 7-8 p.m., beginning April 11 at Suburban Hospital, 8600 Old Georgetown Road, Bethesda. The fee is \$145. Call 301-896-3939.

**"Ask the Dietitian,"** free phone sessions with certified dietitians are offered from 9 to 11 a.m. Wednesdays via the Senior Nutrition Hotline. Call 240-777-1100.

**A Pre-Operative Spine Class** will be offered from 2-3 p.m. Wednesdays, April 11 to June 27 at Suburban Hospital, 8600 Old Georgetown Road, Bethesda. Spine patients - lower, mid-back and neck (cervical) - learn about pre-operative preparation and post-operative care prior to surgery. Free. Call 301-896-3939.

**Bone Basics: Osteoporosis** will be held from 4-5 p.m. April 11 at Suburban Hospital, 8600 Old Georgetown Road, Bethesda. Learn more about the prevention, diagnosis and treatment of osteoporosis and their relationship to overall bone and joint health. Also May 9 and June 13. Free. Call 301-896-3939.

### THURSDAY, APRIL 12

**Tai Chi for Health series** runs from 6 to 7:30 p.m. Thursdays to April 26 at MedStar Montgomery General Hospital, 18101 Prince Phillip Drive, Olney. The cost is \$65; registration and pre-payment required. Call 301-774-8881.

**Infant Care** will be held from 7-9:30 p.m. at MedStar Montgomery General Hospital, 18101 Prince Phillip Drive, Olney. The class is designed to give a com-

plete head-to-toe look at how to care for your little one and provide you with hands-on experience. Topics include bathing, feeding, diapering, safety issues and much more. \$30. Registration required. 301-774-8881.

### FRIDAY, APRIL 13

**Gentle Yoga for Seniors** will be held from 10:15 to 11 a.m. at the Bethesda Regional Service Center, 4805 Edgemoor Lane, 2nd Floor, Bethesda. Visit [www.suburbanhospital.org](http://www.suburbanhospital.org)

### SATURDAY, APRIL 14

**Babysitting Plus CPR** will be held from 9 a.m. to 1 p.m. at MedStar Montgomery General Hospital, 18101 Prince Phillip Drive, Olney. The cost is \$65; registration and pre-payment are required. Call 301-774-8881.

**Movement, Stretch & Strength** is set for 10 to 11 a.m. Saturdays to May 19. The cost is \$20 per six-week session at Holy Cross Hospital Resource Center, 9805 Dameron Drive, Silver Spring. An additional class will be held from 4:30 to 5:30 p.m. April 17 to May 29 for \$40 per session. Call 301-754-8800 or visit [www.holycrosshealth.org](http://www.holycrosshealth.org).

**Home Alone** will be held from 9 a.m. to noon at MedStar Montgomery General Hospital, 18101 Prince Phillip Drive, Olney. This class helps prepare 8- to 11-year-olds to spend brief periods of time alone. The Home Alone class will provide skills to help them be safe when there is no adult supervision including answering the door, telephone, calling 911, making a pizza bagel in microwave, and other helpful tools. \$35. Registration and payment required. 301-774-8881.

## PLACING AN ANNOUNCEMENT

The Gazette prints engagement and wedding announcements, with color photographs, at no charge, as a community service. Text should be limited to 100 words and typed in paragraph form, with a daytime phone number included. Photos should be professional quality. Wedding announcements should be submitted no later than 12 months after the wedding. Send to: The Gazette, 9030 Comprint Court, Gaithersburg, MD 20877. Montgomery County celebrations are inserted into all Montgomery County editions.

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**MONDAY  
MAY 21, 2012  
AT 7:30 P.M.**

or as soon thereafter as this matter can be heard in the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland.

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Further information may be obtained from the Planning and Code Administration Department at City Hall, 31 South Summit Avenue, between the hours of 8 a.m. and 5 p.m., Monday through Friday.

Trudy W. Schwarz, Community Planning Director  
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The Gazette

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# Germantown student wins 'green' essay competition

Seneca Valley High School senior **Oran Lichtman** recently earned high praise and \$100 for winning this year's WeGreen USA essay competition.

Lichtman received citations from state Sen. **Karen Montgomery** and Montgomery County Councilwoman **Valerie Ervin** (D-Dist. 5) of **Silver Spring** for his essay, which focused on the viability of community supported agriculture programs in Germantown. His paper argues that such programs — where customers pay directly for the harvesting of produce from vendors — could be expanded in the area through a wider commitment to helping to fund local farms.

Lichtman was honored at an official ceremony March 29. WeGreen USA is a nonprofit group based in Montgomery County that supports energy efficiency. Its members regularly speak at local events to promote its initiatives, such as distributing rainwater barrels and the essay competition.



**People and Places**  
ALEX RUOFF



PHOTO FROM JENNIFER HOSEY

(From left) County Councilwoman Valerie Ervin (D-Dist. 5) of Silver Spring, Seneca Valley High School senior Oran Lichtman, and WeGreen USA President Neeta Datt. Lichtman recently won WeGreen USA's annual essay contest.

volunteers to help with their annual Rake the Lake cleanup of Whetstone Lake in **Montgomery Village**.

The April 21 event will provide an opportunity to clean trash and debris from the lake and the landscape around it.

Volunteers will meet starting at 9 p.m. at the boathouse located next to the lake, accessible from Islandside Drive in Montgomery Village.

For more information about the event or Friends of Whetstone Lake, visit [www.friendsofwhetstonelake.org](http://www.friendsofwhetstonelake.org).

### Rake Whetstone Lake for Earth Day

Organizers with Friends of Whetstone Lake are searching for

### Local stores support autism awareness

Several businesses in

**Gaithersburg and Germantown** are raising funds for research in honor of April as autism awareness month.

The events are organized by research advocate Autism Speaks, a national organization that helps fund research of autism.

Participants include the **Kentland**-based women's boutique, Clover, and Imagine, a retail clothing store in **Gaithersburg**. Both are offering discounts to customers who donate to Autism Speaks.

For more information about Autism Speaks or for a list of participating businesses in Montgomery County, visit [www.autismspeaks.org](http://www.autismspeaks.org).

### Meals on Wheels seeks drivers

Organizers with the **Gaithersburg** chapter of Meals on Wheels say they have an urgent need for volunteer drivers.

Drivers would deliver hot lunches and cold dinners weekdays around midday to elderly residents and shut-ins in the Gaithersburg area.

Pickups are between 10:45 and 11:30 a.m. at Asbury Methodist Village on Russell Avenue on weekdays. Deliveries typically take about one hour to complete. Training for drivers is provided.

Meals on Wheels is a volunteer-run organization that provides meals to the elderly and disabled.

Those interested are asked to call Meals on Wheels Gaithersburg at 301-216-4200 or **Mary Casamento** at 301-253-4626.

### Campus congratulations

**William Scott Gregory** of **Gaithersburg** was accepted into the National Society of Collegiate Scholars in January.

The society is the nation's only interdisciplinary honors organization for first- and second-year college students.

### Children help Giant raise money for cancer research

Giant Food is working with two local children to help raise

money for pediatric cancer research.

Starting April 13 Giant Food will sell special \$1 scratch off cards, with all proceeds going to benefit the Pediatric Oncology Division at Johns Hopkins Kimmel Cancer Center in Baltimore and the Children's Cancer Foundation, Inc., a research initiative.

To help promote the event, Giant Foods has selected four children who are patients at the Kimmel Center. One is 11-year-old **Mercedes Opoku** of **Germantown**, who has leukemia and loves dancing. Another is 16-year-old **Neha Kundagrami** of **Gaithersburg**, who has Lymphoma and enjoys cooking.

The cards can be bought at nearly any Giant Food location. For more information, visit [www.giantfood.com](http://www.giantfood.com).

### Germantown hosts special needs trike-a-thon

A group that works to connect children with disabilities in the county with special, adaptive equipment is hosting a Trike-a-thon fundraiser April 28 in **Germantown**.

Equipment Connections for Children is organizing the ride, which is open to all children and all kinds of cycles. Children in wheelchairs are welcome to join the fun with a "stroll-a-thon," alongside those in cycles.

The event includes a silent auction for a \$1,000 gift certi-

cate good for the purchase of an adaptive bicycle. There also will be games, music and a bake sale.

A minimum donation of \$10 per child is requested for those participating in the event.

The event is slated to begin at 11 a.m. at the Germantown Community Center, 18905 Kingsview Road, Germantown.

For more information, visit [www.equipmentconnectionsforchildren.org](http://www.equipmentconnectionsforchildren.org).

### Gaithersburg rec guide now available

Copies of the Spring 2012 Leisure Times, the city of **Gaithersburg's** guide to recreation programs and services, is now available at city facilities.

It is mailed to most households in Gaithersburg, but also can be found at [www.gaithersburgmd.gov/classes](http://www.gaithersburgmd.gov/classes).

For more information about the city's Department of Parks, Recreation, and Culture, visit [www.gaithersburgmd.gov/recrexpress](http://www.gaithersburgmd.gov/recrexpress) or call 301-258-6350.

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NOTICE OF PUBLIC HEARING

The Mayor and Council of the City of Gaithersburg will conduct a joint public hearing on X-184, filed by Sears, Roebuck and Company, on

MONDAY  
MAY 21, 2012  
AT 7:30 P.M.

or as soon thereafter as this matter can be heard in the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland.

The application requests annexation of 27.89 acres of land adjacent to the present corporate limits, known as the Sears Property, located at 16331 & 16401 Shady Grove Road. The application requests a reclassification of the subject property from the current Montgomery County Research and Development (R&D) Zone to the Mixed Use Development (MXD) Zone in the City of Gaithersburg, Maryland.

Further information may be obtained from the Planning and Code Administration Department at City Hall, 31 South Summit Avenue, between the hours of 8 a.m. and 5 p.m., Monday through Friday.

Trudy W. Schwarz, Community Planning Director  
Planning and Code Administration  
mg

The Gazette

Serving Maryland Communities since 1959

Publication Date: 04/18/2012

# O'Malley: Special session likely in May

**Budget, gaming should be addressed separately, gov says**

BY DANIEL LEADERMAN AND DANIELLE GAINES STAFF WRITERS

The General Assembly is likely to convene in a special session in May to address the budget, while gaming expansion could be taken up in yet another session later this summer, according to the governor.

A breakfast meeting Tuesday morning between Gov. Martin O'Malley and legislative leaders appeared to end without resolving the disagreement over the state's budget, but both O'Malley and Senate President Thomas V. Mike Miller Jr. said reconvening in mid-May was likely.

O'Malley told reporters gathered at a State Board of Education meeting in Baltimore that he wanted to hold a meeting with his staff and budget negotiators from each chamber this week.

A budget resolution is necessary before May 23, when the state's Board of Public Works will meet to consider \$130 million in cuts required to balance the "doomsday budget," O'Malley said.

"We probably need to resolve this budget issue separate and apart from issues affecting the future of gaming in Maryland, and we need to resolve those budget issues quickly," O'Malley said in Baltimore. "We're kind of under the clock right now. Either we resolve the budget in the next couple of weeks, or those cuts go into effect."

If the budget is resolved in May, the General Assembly could

reconvene to consider gambling bills in August, which would be early enough to allow a ballot question on the matter.

"I think that both issues deserve a hearing and some resolution," O'Malley said. "I think that what made this session very disappointing, frustrating by the end was considering both of those issues at the same time."

Linking gaming with the budget makes reaching consensus "very, very hard to find on either," he continued.

A special session could cost about \$25,000 per day, according to the Department of Legislative Services.

The governor met with House Speaker Michael E. Busch (D-Dist. 30) of Annapolis and Miller (D-Dist. 27) of Chesapeake Beach for a little more than an hour in Annapolis on Tuesday morning, but neither indicated that a budget compromise had been struck.

Budget negotiations between the House and Senate stalled regarding whether income taxes should be raised for those making less than \$100,000. The stalemate, which some say became entwined with the question of whether to expand gambling in the state, prevented lawmakers from passing a tax package to accompany the budget bill before the legislature adjourned April 9.

If the legislature does not act, a default budget with more than \$500 million in cuts will take effect July 1.

The governor has previously said that he will not convene a special session unless there is consensus on the spending plan.

Miller proposed a compromise Friday that would lower the threshold for the increase from

an adjusted gross income of \$100,000 for a single filer to an adjusted gross income of \$75,000, which Miller said would correspond to an overall income of \$100,000.

Busch said the tax rates were not discussed at Tuesday's meeting.

"At the end of the day, it's about determining a budget that would affect counties and different subdivisions in the state," Busch said. "I have to take the opportunity to sit down with the leaders in the House and see if there's a coalition we can build if, in fact, we do come back for a special session."

Miller said the meeting was productive and that everyone was smiling. "We agreed to come together and have a special session and have this matter resolved in mid-May," he told reporters, but did not provide further details.

House Republicans have already expressed opposition to holding a special session, arguing it is not worth the cost to taxpayers and that the state should accept the default budget.

# Gaithersburg Train Days



BRIAN LEWIS/THE GAZETTE

Andrew O'Brien, 3, and his mother Melanie O'Brien of Montgomery Village watch the electric model trains at Gaithersburg Train Days on Saturday at the Community Museum in Olde Towne Gaithersburg. Families could view the model train displays, tour a caboose filled with local train history, visit the 1918 steam locomotive on display in the adjacent History Park, and shop for train-related items in the museum gift shop.

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# Gaithersburg man killed in crash

**Car struck tree; case still under investigation**

BY KATE S. ALEXANDER STAFF WRITER

Montgomery County Police are investigating a crash that claimed the life of a Gaithersburg man Saturday evening.

Immar E. Serpas, 30, of Gaithersburg was killed when the 2006 Nissan Altima he was driving struck a tree near the intersection of Midcounty Highway and Montgomery Village Avenue in Montgomery Village, according to a police press release.

No other vehicles were involved in the 10 p.m. crash, police said. Serpas was the only person in the car at the time of the crash.

Preliminary investigation revealed that the vehicle, driven southbound by Serpas, left the

road, went into the center median and struck the tree.

Serpas was pronounced dead at the scene.

Police are still investigating circumstances surrounding the crash and have asked that any witnesses contact the Collision Reconstruction Unit at 301-840-2432, according to the release.

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**Sept 23 - Oct 4 Norsk Hostfest in Minot, North Dakota**  
12 days / 11 nights \$1892 per person (double occupancy) The highlight of this tour is this Scandinavian Festival. Many Scandinavians settled in this area & this has become a very popular event with so many very popular artists like the Gaithers, Vince Gill & Danny O'Donnell entertaining. There is lots of good food available and crafts and shopping. A number of other interesting sights on the way out and home. A visit will be made to the birthplace of Judy Garland, have a dinner cruise and visit the cranberry bogs at harvest time.

**Oct 8 - 12 Vermont for Fall Foliage, Kitzhof Inn, West Dover, VT**  
5 days / 4 nights \$694 per person (double occupancy) Vermont has beautiful fall foliage, especially with the red maples. We head north to Hildene's (Robert Todd Lincoln's home) visiting the home and gardens. A visit to the Adam's Farm is always a fun stop, followed by a visit to the Friesians of Majesty (horses). 4 breakfasts, 3 lunches & 4 dinners included.

**Dec 3 - 7 Holiday Lights, Sights and Sounds, Sharonville, Ohio**  
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**Dec 11 - 15 Christmastime in Myrtle Beach**  
There have been many changes in Myrtle Beach, all for the better. A 1.2 mile boardwalk has been added (our hotel overlooks it), new shows and the nights of a Thousand Candles adds so much to the Christmas season. A new light show synchronized to music is a great attraction. \$699 PP DBL 5 days / 4 nights 4 breakfast & 4 dinners included.

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**NOTICE OF PUBLIC HEARING**

Notice is hereby given that a Public Hearing will be held on May 7, 2012 at 7:30 PM at Poolesville Town Hall, 19721 Beall Street, Poolesville, Maryland for the purpose of receiving public comment concerning Resolution 005-12, which proposes to add a quarterly sewer fee pursuant to Poolesville Code §16.51. Copies of this Resolution are available at Town Hall.

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**NOTICE OF PUBLIC HEARING**

The Mayor and Council of the City of Gaithersburg will conduct a joint public hearing on X-184, filed by Sears, Roebuck and Company, on

**MONDAY**  
**MAY 21, 2012**  
**AT 7:30 P.M.**

or as soon thereafter as this matter can be heard in the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland.

The application requests annexation of 27.89 acres of land adjacent to the present corporate limits, known as the Sears Property, located at 16331 & 16401 Shady Grove Road. The application requests a reclassification of the subject property from the current Montgomery County Research and Development (R&D) Zone to the Mixed Use Development (MXD) Zone in the City of Gaithersburg, Maryland.

Further information may be obtained from the Planning and Code Administration Department at City Hall, 31 South Summit Avenue, between the hours of 8 a.m. and 5 p.m., Monday through Friday.

Trudy W. Schwarz, Community Planning Director  
Planning and Code Administration  
mg

**The Gazette**  
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**Publication Date: 04/25/2012**

**Introduction**

**MEMORANDUM**

July 20, 2012

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Introduction – Resolution to approve the City of Gaithersburg’s request to express approval for the reclassification of the Sears Great Indoors Property from the R&D to MXD zone (Annexation Petition X-184)

**PHED Recommendation:** On June 11, the Committee recommended approval of the City of Gaithersburg’s request to express approval for the reclassification of the Sears Great Indoors property from the R&D to MXD zone (Annexation Petition X-184) if the Council could be assured that residential development would not occur on the annexed property. The proposed zoning would allow residential uses next to the principle entrance to the County’s Solid Waste Transfer Station. Given that Sears has unilaterally determined to place a restrictive covenant on its property that would preclude residential use of the property for as long as the transfer station remains an operative use on the adjoining property, the Committee believes that express approval of the MXD zone is appropriate.

The Committee notes that the determination by Sears to self-restrict the future use of its property is not a condition of the proposed annexation into the City of Gaithersburg. The Council is not in a position to grant or deny any annexation request made by a municipality.

**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. The property adjoins the County’s Solid Waste Transfer Facility. The entrance road to the Facility is the western boundary of the Sears property.

Mayor and City Council  
X-184  
Exhibit #75

## 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.

## 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:

	<b>Montgomery County R&amp;D Zone</b>	<b>City of Gaithersburg MXD Zone</b>
<b>Uses</b>	Residential not permitted (except caretaker residence)	Residential permitted
<b>Retail</b>	Severely restricted - 5% of building FAR	Retail permitted
<b>Density</b>	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.<sup>1</sup> The Council cannot prohibit the annexation. Planning Board Staff and the Maryland Department of Planning found that the uses allowed in the MXD are substantially different than uses allowed in the R&D zone. Retail uses and residential uses are substantially different from the uses allowed by the R&D zone.<sup>2</sup> 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.<sup>3</sup> 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,

---

<sup>1</sup> 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 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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. 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."

Rockville is now pursuing the annexation of Shady Grove Road. This will be the subject of a Rockville Planning Board worksession on July 25. It will be addressed by the Mayor and Council on September 10, 2012. If Rockville annexes Shady Grove Road before Gaithersburg annexes the Sears property, then Gaithersburg would not be able to annex the Sears property, because the property would no longer be contiguous and adjoining Gaithersburg.

### **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.<sup>4</sup>
- 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

---

<sup>4</sup> This condition cannot be implemented because of the zone proposed for the site by the City of Gaithersburg. The proposed zone would allow residential development. The City may not prohibit a use allowed in the proposed zone as part of their action to annex the property.

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 was 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.<sup>5</sup> 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<sup>6</sup>, 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.

## **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 from 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.<sup>7</sup> 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 require that land annexed by a municipality be "contiguous and adjacent".<sup>8</sup>

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

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> § 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 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.

“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.”<sup>9</sup>

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 waterway, even if the annexed land would be separated completely from the original city or town limits by that body of water.<sup>10</sup> 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.<sup>11</sup>

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 of 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

<sup>9</sup> 82 Op. Md. Attorney General (Op. No. 97-05) (1997).

<sup>10</sup> Anne Arundel County v. City of Annapolis, 352 Md. 117.

<sup>11</sup> Mayor & Council of Berlin v. Barrett, 136 Md. App. 676 (1999).

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 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.

**The Committee recommended 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 not legal. Gaithersburg may not prohibit a use permitted in the property's new zone as a condition of annexation.

- 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 County standards; however, this is a good reminder that sidewalks are important.

<u>This packet includes</u>	<u>© Page</u>
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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:

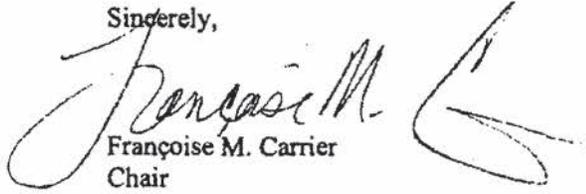
The annexation petition should be approved with conditions:

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.

The Honorable Roger Berliner  
May 4, 2012  
Page Two

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

**Sears Property Gaithersburg Annexation Request X-184**

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-  Steve Findley, Planner Coordinator, Area 2 Planning Division, [Steve.Findley@montgomeryplanning.org](mailto:Steve.Findley@montgomeryplanning.org), 301-495-4727
-  Joshua Sloan, Planner Supervisor, Area 2 Planning Division, [Joshua.Sloan@montgomeryplanning.org](mailto:Joshua.Sloan@montgomeryplanning.org), 301-495-4597
-  Glenn Kreger, Chief, Area 2 Planning Division, [Glenn.Kreger@montgomeryplanning.org](mailto:Glenn.Kreger@montgomeryplanning.org), 301-495-4653

Completed: 4/19/12

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**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).

**X-184  
Sears Property**

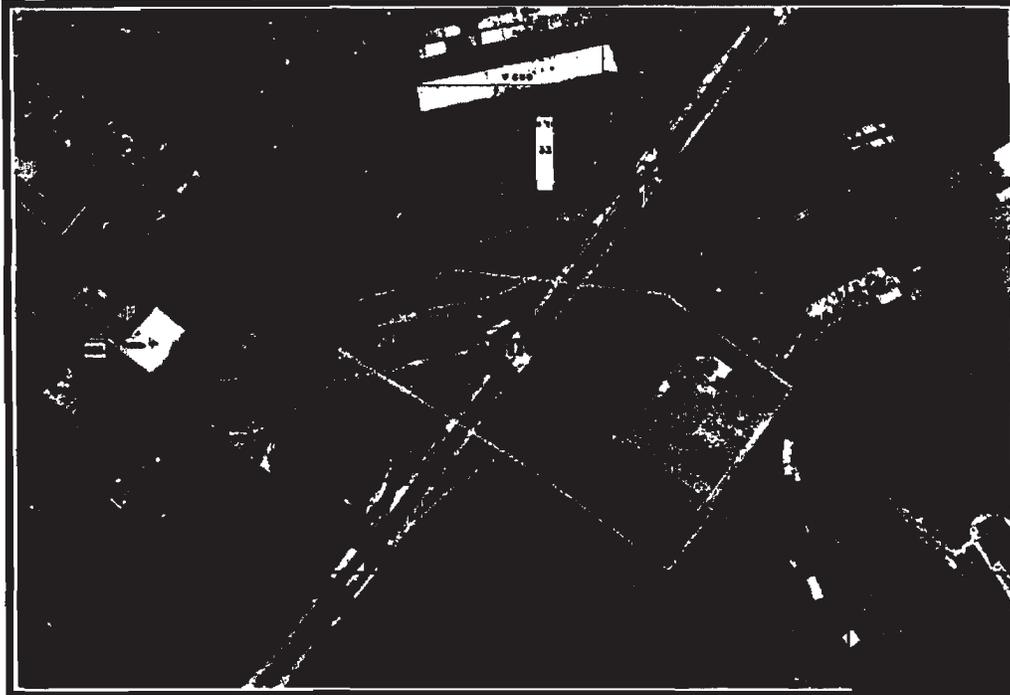


MSJ North Star  
(2018) (AUG 2018)

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City of Gaithersburg  
Planning and Public Works  
10000  
Gaithersburg, MD 20878  
www.gaithersburg.org



*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:

<i>Summary of R&amp;D and MXD Zones</i>		
	<b>Montgomery County R&amp;D Zone</b>	<b>City of Gaithersburg MXD Zone</b>
<b>Uses</b>	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
<b>Density</b>	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.

<b>Site</b>	16331 and 16401 Shady Grove Road, Gaithersburg, MD	
<b>Account</b>	768845	
<b>Tax District</b>	09	
<b>Assessed Value</b>	\$14,285,000	
<b>Assessed value divided by 100</b>	\$142,850	
<b>Tax Class</b>	42	
<b>Tax</b>	<b>Rate</b>	<b>Tax Revenue</b>
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)



**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).

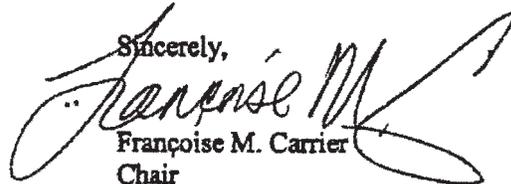
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Mr. Greg Ossont  
February 28, 2011  
Page Two

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

**COMMUNICATION: PLANNING COMMISSION**

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**MEMORANDUM TO:** Planning Commission

**FROM:** Trudy M. Walton Schwarz, Community Planning Director

**DATE:** March 15, 2012

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

Application for annexation of approximately 27.89 acres (595,029 square feet) of land, known as the Sears Property (The Great Indoors and Sears Service Center & Repair), located at 16331 & 16401 Shady Grove Road, and adjacent road rights of way, adjacent to the present corporate limits. The application requests a reclassification of the subject property from the current Montgomery County Research and Development (R&D) Zone to the Mixed Use Development (MXD) Zone in the City of Gaithersburg, Maryland.

**APPLICANT:**

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

**APPLICANT'S REPRESENTATIVE:**

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



**OWNERS:**

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

Maryland State Highway Administration

Montgomery County Rights of Way

**LOCATION:**

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



**TAX MAP REFERENCE:**

Tax Sheet: FS 563 and GS 123  
Tax Parcel ID Number: N606

**BACKGROUND:**

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

Articles 23A and 66B of the *Maryland Annotated Code* and Chapter 24 (Zoning) of the City of Gaithersburg Code outline the requirements and process for a proposed annexation. The Planning Commission is required to review the proposed annexation and associated rezoning and land use plan for consistency with the City's master plan<sup>1</sup>, and provide a recommendation to the Mayor and City Council at least 15 days prior to the required Mayor and City Council public hearing<sup>2</sup>. 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<sup>3</sup>. 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

<sup>1</sup> Article 66B, Section 1.02 Maryland Annotated Code

<sup>2</sup> Section 24-9 Gaithersburg City Code

<sup>3</sup> 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*<sup>4</sup>, 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:

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<sup>4</sup> 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:**

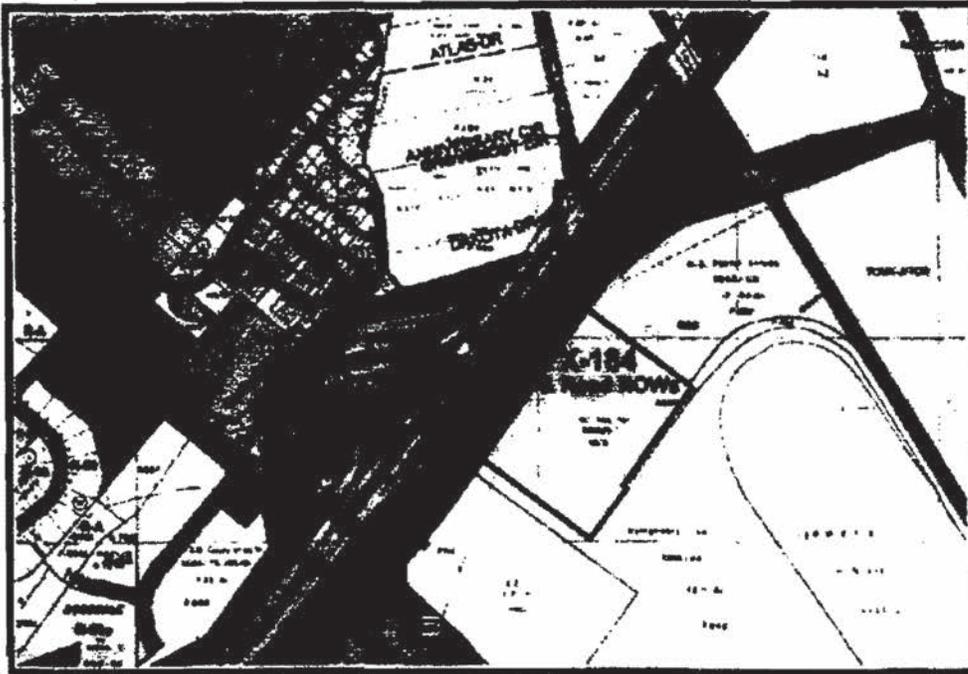
- *Adopt Commercial/Industrial-Research-Office land use designation, if annexed*
- *Recommend CD or MXD Zoning, or a future zone that facilitates sustainable development standards, if annexed*

**SURROUNDING LAND USES:**

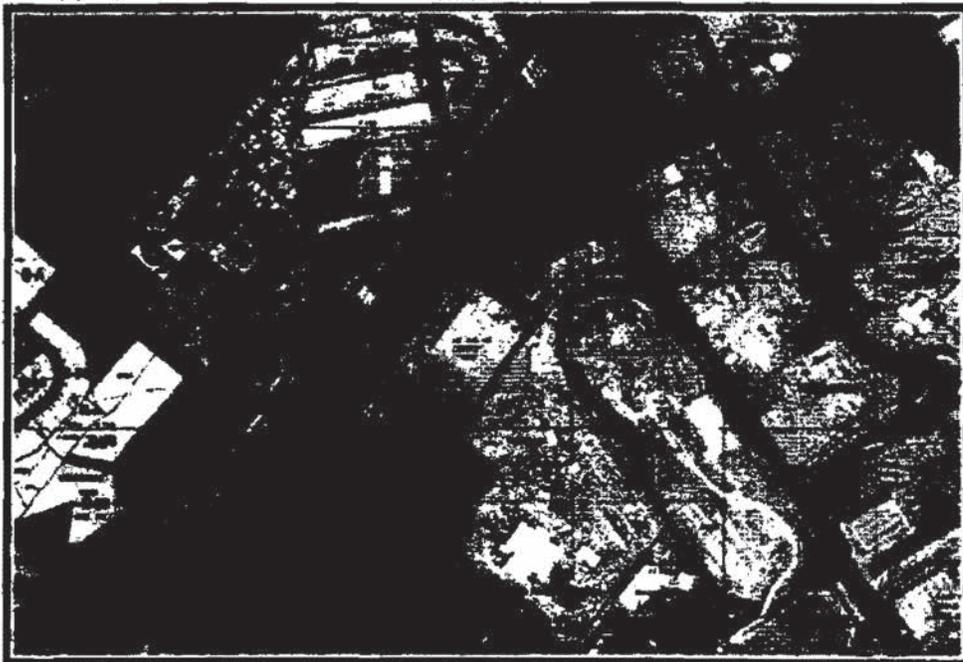
Northeast of the property is the U.S. Postal Distribution Center and Post Office at Shady Grove, which is zoned R&D in Montgomery County. North of the CSX Railroad right of way is the County Service Park, which is zoned Transit Oriented, Mixed Use Zones (TOMX-2). The TOMX-2 Zone surrounds the WMATA property (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.<sup>5</sup> 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.<sup>6</sup> 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.

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<sup>5</sup> Exhibit #16

<sup>6</sup> 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<sup>7</sup>. 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<sup>8</sup>.

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<sup>7</sup> Section 24-245

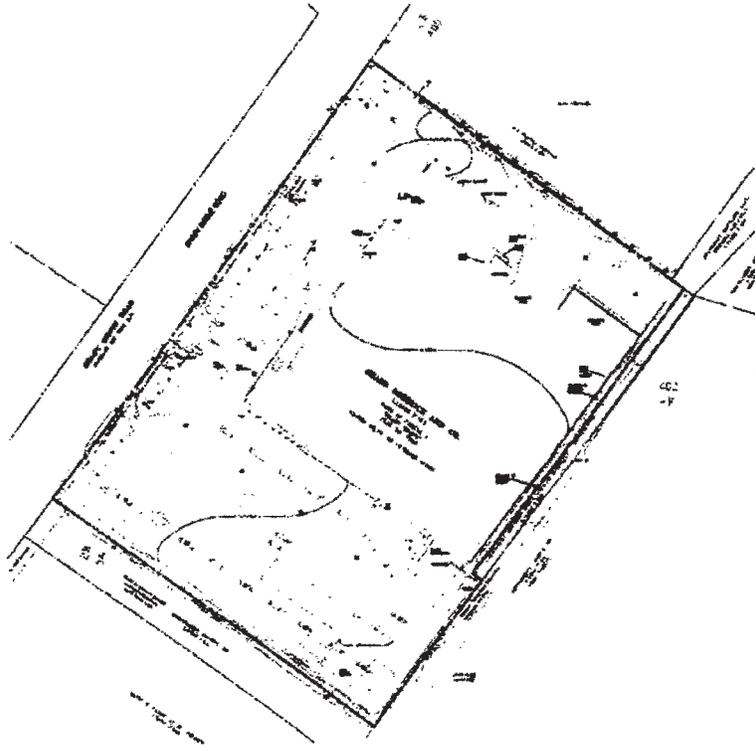
<sup>8</sup> Regulation 01-07

**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.

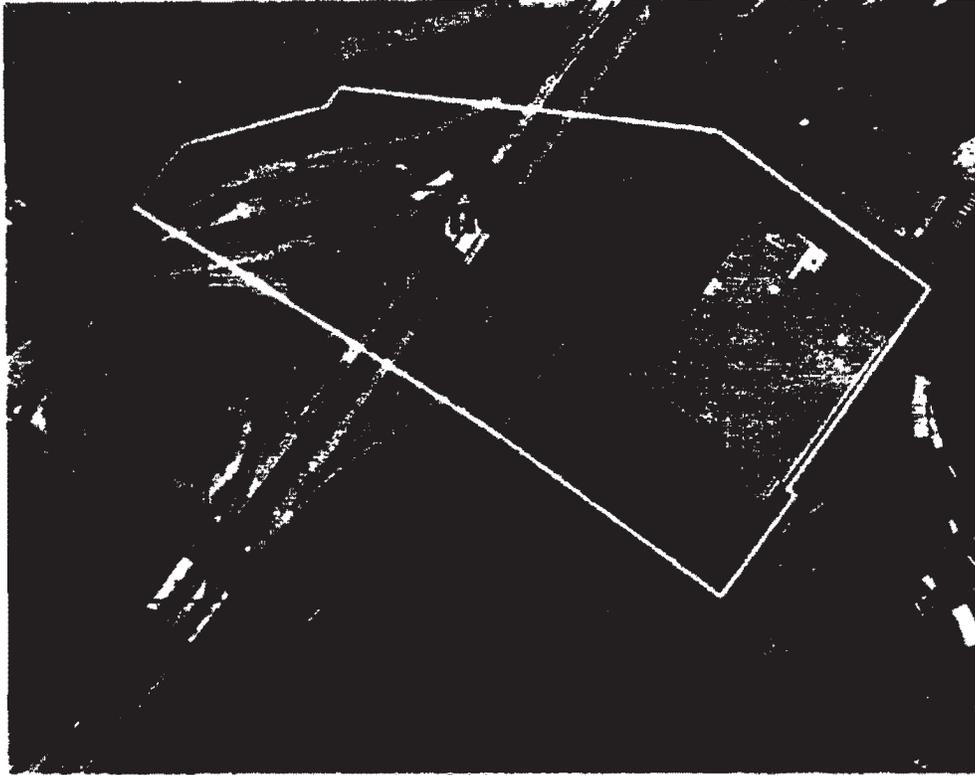
**PROPOSED USE / SITE PLAN:**

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<sup>9</sup>, 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

<sup>9</sup> 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.



City of Rockville  
111 Maryland Avenue  
Rockville, Maryland  
20850-2864  
www.rockvillemd.gov

240-314-6000  
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 Gajewald  
Bridget Donnell Newton  
Mark Pierschala

CITY MANAGER  
Scott Ullery

CITY CLERK  
Glenda P. Evans

CITY ATTORNEY  
Debra Yerg Denial



Mayor Sidney A. Katz and Council  
March 23, 2011  
Page 2 of 2

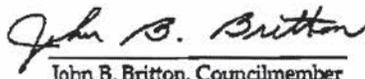
Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

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

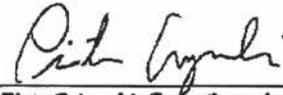
Sincerely,



Phyllis Marcuccio, Mayor



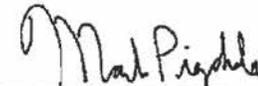
John B. Britton, Councilmember



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



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 approximately 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.



Nancy Floreen, PHED Chair

May 31, 2012

Page 2

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](mailto: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



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

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MAYOR  
Sidney A. Katz

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

CITY MANAGER  
Angel L. Jones

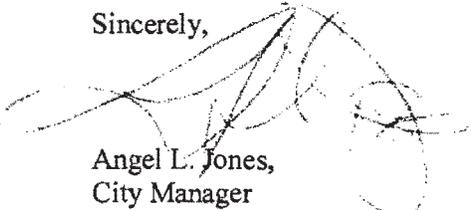
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the Property in Gaithersburg's MEL. It should be further noted that while the Property also is within Rockville's MEL, it is not contiguous to Rockville and annexation into Rockville would require annexation of the Transfer Station and other properties 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

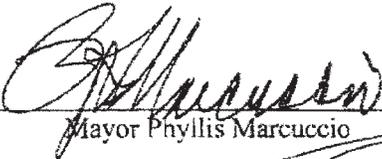
CITY ATTORNEY  
 Debra Yerg Daniel

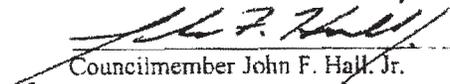
The Honorable Roger Berliner  
June 5, 2012  
Page 2 of 2

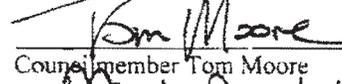
Rockville and Gaithersburg to develop an MOU for guidance on future proposed annexations.

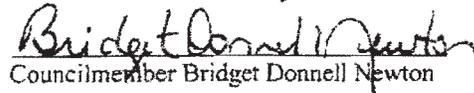
Thank you for your attention to this testimony.

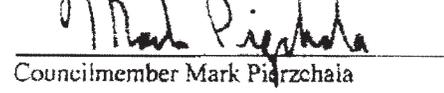
Sincerely,

  
Mayor Phyllis Marcuccio

  
Councilmember John F. Hall, Jr.

  
Councilmember Tom Moore

  
Councilmember Bridget Donnell Newton

  
Councilmember Mark Piarzchała

**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.

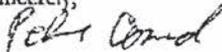
We noted that the subject property was designated by Montgomery County as a Priority Funding Area (PFA) and our Department concurs with that designation. Land annexed into a municipality does not automatically become or remain a Priority Funding Area. The opportunity for land annexed into the City to 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.

May 8, 2012  
Page 2  
The Honorable Sidney Katz

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

Resolution No.: \_\_\_\_\_  
Introduced: July 24, 2012  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND**

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By: District Council

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**SUBJECT:** Approval of the City of Gaithersburg's request to express approval for the reclassify the Sears Great Indoor's Property from the R&D to MXD (Annexation Petition X-184)

**Background**

1. 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 which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan without express approval of the County Council.
2. 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.)
3. 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.
4. The property is included in the maximum expansion limits of both Gaithersburg and Rockville.
5. 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.
6. The Planning Staff, in a memorandum to the Planning Board completed of April 19, 2012, found that 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.

7. On April 26, 2012, the Montgomery County Planning Board reviewed Annexation Petition No. X-184. The Board unanimously voted to recommended approval of the annexation if it included a condition that the City of Gaithersburg not approve plans for residential uses on the subject property due to proximity to the Solid Waste Transfer Station.
8. In a letter to the Mayor and Council of Gaithersburg dated May 8, 2012, the Maryland Department of Planning agreed with the Planning Staff that 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.
9. On July 11, 2012, the Planning, Housing, and Economic Development Committee reviewed the annexation petition and recommended approval of the City of Gaithersburg's request to express approval for the reclassify the Sears Great Indoor's property from the R&D to MXD (Annexation Petition X-184) if the Council could be assured that residential development would not occur on the annexed property.
10. The owner of the property to be annexed has unilaterally decided to place a restrictive covenant on its property that would preclude residential use of the property for so long as the transfer station remains an operative use on the adjoining property.
11. On July 24, 2012, the County Council reviewed Annexation Petition X-184 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee. The Council concluded that would give its express approval to the proposed reclassification of the Sear's Great Indoors property from the R&D to the MXD.

### Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland approves the following resolution:

Under Article 23A Section 9(c) of the Annotated Code of Maryland, the District Council approves the reclassification by the City of Gaithersburg of the Sears Great Indoors Property from the County's Research and Development (R&D) zone to the City's Mixed Use Development (MXD) zone.

This is a correct copy of Council action.

---

Linda M. Lauer, Clerk of the Council

**From:** [Lynn Board](#)  
**To:** [county.council@montgomerycountymd.gov](mailto:county.council@montgomerycountymd.gov)  
**Cc:** [Jeff.Zyontz@montgomerycountymd.gov](mailto:Jeff.Zyontz@montgomerycountymd.gov)  
**Subject:** Resolution Concerning Sears Property Annexation  
**Date:** Friday, July 20, 2012 3:18:56 PM  
**Attachments:** [Montgomery County Council - Sears Annexation 7 20 12.pdf](#)

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County Council Members:

Attached please find a letter from the Acting City Manager regarding the annexation of the Sears property by the City of Gaithersburg. A Resolution concerning City of Gaithersburg annexation petition: Sears Property, Shady Grove Road is scheduled for Introduction at your Tuesday, July 24th meeting.

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

Mayor and City Council  
X-184  
Exhibit #76



July 20, 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 request from Sears, Roebuck and Co. (“Sears”) 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 County’s Research and Development (“R&D”) zone to permit continued use of the Sears Property at 16331 Shady Grove Road (“Property”) with retail uses similar to The Great Indoors use. The City will consider annexation of the Sears Property into the Gaithersburg corporate boundaries and zoning of the Property on August 6, 2012.

As you are aware, the 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 the City and County’s best interests to retain a viable use on this property as, at the present time, there is not a demand for R&D space in this area. The City believes that the proposed MXD zoning of the Property will provide the flexibility to allow a retail use of the Property consistent with the Great Indoors use, while providing oversight to ensure quality development and design. In the City, development under the MXD zone requires review and approval by both the City’s Planning Commission and the Mayor and Council, providing additional review to ensure that the use of the Property is consistent with the surrounding properties, including the County’s Transfer Station.

The City strongly concurs 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 in its current location. It is our understanding the Sears is working on a restrictive covenant that would prohibit residential use of the property.

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MAYOR  
Sidney A. Katz

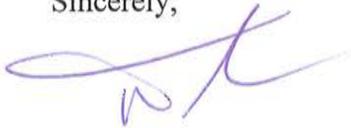
COUNCIL MEMBERS  
Jud Ashman  
Cathy C. Drzyzgula  
Henry F. Marraffa, Jr.  
Michael A. Sesma  
Ryan Spiegel

ACTING CITY MANAGER  
Tony Tomasello

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. This is an important economic development initiative as having an empty building along the Shady Grove corridor does not benefit anyone.

For all of these reasons, the City is requesting your approval of the applicant's request to waive the five year prohibition of development to permit reuse of the Property under the City's MXD zone. Let's work together to keep this Property economically viable.

Sincerely,



Tony Tomasello,  
Acting City Manager

Cc Mayor Sidney A. Katz  
City Council Members  
John Schlichting  
Lynn Board  
Trudy Schwarz  
Jeff Zyontz



July 27, 2012

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

Re: Resolution to approve the City of Gaithersburg's request to express  
Approval for the reclassification of the Sears Great Indoors Property  
From the R&D to MXD zone (Annexation Petition X-184)

Dear President Berliner and Members of the Montgomery County Council:

In order to clarify some of the issues related to the Resolution to approve the City of Gaithersburg's request to express approval for the reclassification of the Sears Property located at 16331 Shady Grove Road from the R&D to the MXD zone that is scheduled for your July 31, 2012 Agenda, the City is submitting additional background materials for your consideration.

Article 23A, Section 19 of the Annotated Code of Maryland grants the authority to municipalities to annex land into their corporate boundaries provided the land is contiguous and adjoining to the existing corporate boundaries and does not create an enclave. A petition for annexation may be initiated by either the legislative body of the municipality or by persons who reside in or own the area to be annexed. In either circumstance, there must be consent to annex by not less than 25% of the registered voters residing on the property and owners of not less than 25% of the assessed value of the property. By state statute, the County plays no role in the decision of whether or not a municipality annexes property.

The County may play a role in the zoning of property upon annexation. While Article 23A, Section 9 of the Annotated Code of Maryland provides that municipalities that have planning and zoning authority have "exclusive jurisdiction over planning and zoning and subdivision control within the area annexed," the statute restricts municipalities annexing land for a period of 5 years following annexation from permitting "development of 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 under the applicable county zoning classification at the time of annexation. Section 9 does allow municipalities to place annexed land in a zoning classification that permits a land use or density different from the land use or density permitted in

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MAYOR  
Sidney A. Katz

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

ACTING CITY MANAGER  
Tony Tomasello

Mayor and City Council  
X-184  
Exhibit #77

the county during that 5 year period if the county expressly approves. It is this express approval that the City and Sears are seeking from the County.

Specifically with regard to the proposed annexation of the Sears Property below is a brief overview of the process for the annexation of this property.

- April 6, 2009 – Following a December 1, 2008 public hearing, the City of Gaithersburg adopted the Municipal Growth Element of its 2003 Master Plan, which includes Maximum Expansion Limits (MEL) that encompasses the Sears Property. While the County Executive, Maryland National Capital Park and Planning Commission (M-NCPPC) and the Maryland Department of Planning all submitted letters into the record for Gaithersburg’s Municipal Growth Element, none raised any concern regarding the inclusion of the Sears Property in Gaithersburg’s MEL. (See attached letters.)
- November 3, 2010 – The Gaithersburg City Attorney opined that the Sears Property met the contiguous and adjoining requirement of Section 19 of Articles 23A of the Annotated Code of Maryland for the purpose of annexation. (See attached Memorandum.)
- December 13, 2010 – The City of Rockville adopted the Municipal Growth Element of its 2002 Master Plan and for the first time its MEL included the Sears Property.
- January 12, 2012 – Sears submitted its Annexation Petition to Gaithersburg, initiating the annexation process
- March 5, 2012 – Following verification that Sears met the 25% registered voter and assessed value requirement, the Gaithersburg Mayor and Council introduced Annexation Petition X-184 for annexation of the Sears Property.
- March 12, 2012 – The Gaithersburg Planning Commission discussed the Annexation at their public meeting and moved to hold their record open until April 11, 2012.
- April 18, 2012 – The Gaithersburg Planning Commission recommended approval of the Sears Annexation and zoning the Property to MXD.
- April 26, 2012 – The M-NCPPC considered the Annexation and recommended approval of the annexation petition with several conditions.
- May 21, 2012 – Following notices in the Gaithersburg Gazette on April 4, 11, 18 and 25, 2012, the Gaithersburg Mayor and City Council held a public hearing on the Sears Annexation and moved to hold their record open until July 5, 2012.
- June 11, 2012 – The Montgomery County Council Planning Housing & Economic Development Committee (PHED) considered the request to approve the zoning of the Property at the time of annexation to the City’s MXD zone.

- August 6, 2012 - The Sears Annexation is scheduled for policy discussion by the Gaithersburg Mayor and City Council.

The City hopes that this information will assist you to approve its request to approve the reclassification of the zoning of the Property at the time of annexation from the R&D zone to permit an economically viable reuse of the Property under the City's MXD zone. City representatives will be present at your July 31<sup>st</sup> meeting should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "N. Lynn Board". The signature is written in a cursive, flowing style.

N. Lynn Board,  
City Attorney

Cc Mayor Sidney A. Katz  
City Council Members  
Tony Tomasello  
John Schlichting  
Trudy Schwarz  
Jeff Zyontz



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

December 1, 2008

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

Dear Mayor Katz: 

I am writing in regard to the September 24<sup>th</sup> draft of the "City of Gaithersburg Municipal Growth: A Master Plan Element," which I understand you and the Gaithersburg City Council will be reviewing tonight.

The Master Plan Element, once approved, will pave the way for the City to annex properties in the Maximum Expansion Limits (MEL) shown throughout the document. Some properties depicted in the MEL represent enclaves of development, which for a variety of reasons, may make sense for the City to want to annex. However, I remain extremely concerned about the inclusion of prime commercial and institutional assets in the MEL which comprise the heart of the County's technology corridor, most notably, the Shady Grove Life Sciences Center, the Belward campus, the campuses of the University of Maryland and The John Hopkins University, the Center for Advanced Research in Biotechnology, the Maryland Technology Development Center, the Human Genome Sciences headquarters complex, and the Public Services Training Academy site.

Some 30 years ago, Montgomery County set out to establish itself as a global hub for biotechnology research and development, related technological advancements and higher education academic excellence. Through perseverance, capital investment, advocacy at the State level, and partnerships with the private and academic sectors, the vision developed for the Shady Grove Life Sciences Center, the properties surrounding this core area, and the entire 270 technology corridor has become reality. Enhancing the life sciences industry and emerging forms of technology has been a key component of the County's economic development strategy for over three decades, and today remains at the core of our business development plan. By including the aforementioned properties in the MEL, you will be undercutting the County's ability to fully cultivate the industry and land which have for years been driving our economic vision.

Mayor and City Council  
X-184  
Exhibit #71

**JOINT**  
**EXHIBIT**  
16  
MP-2-08

While the 270 technology corridor – and developments such as the Life Sciences Center – has been blessed with an abundance of skilled professionals, an entrepreneurial spirit, and coveted Federal and private centers of excellence, it is important to acknowledge the huge capital investment the County has made in establishing this life sciences hub. Specifically, Montgomery County has:

- purchased close to 300 acres for the world-renowned Shady Grove Life Sciences Center, whose land value today approximates \$150 million;
- donated 85 acres of land to the University of Maryland and The Johns Hopkins University for their academic campuses and for the Center for Advanced Research in Biotechnology (CARB);
- infused over \$17 million in infrastructure for the Life Sciences Center and for Hopkins' Belward Campus;
- constructed Hopkins' first academic building (a \$12 million capital outlay), and financed the construction of CARB;
- developed and continues to operate the \$10 million Maryland Technology Development Center, a business incubator for life sciences companies; and
- advocated at the State level for major capital investments in the University of Maryland, Johns Hopkins and CARB by continually highlighting these assets in the County's state legislative priorities.

As we look toward the future, it is important to keep in mind Montgomery County's vested interest in the southernmost properties delineated in the Maximum Expansion Limits area in the draft Master Plan Element. The County continues to own strategic properties in the Life Sciences Center. Our Department of Economic Development markets the Life Sciences Center and adjacent commercial properties to companies wishing to relocate to this biosciences hub. Our successful life sciences incubator has been expanded once, and potential expansions remain on the horizon.

We will continue to advocate for funding for the Corridor Cities Transitway, or CCT, whose alignment and transit stops will be contained within the parcels discussed in this letter. The CCT is critically important to the County and any decisions that could impact it are of significant interest. The County is continuing to invest in this area. The County will be relocating the functions currently at our Public Services Training Academy site and will be making this valuable tract of land available for more appropriate uses that will build on the economic strength of this area.

The Honorable Sidney A. Katz

December 1, 2008

Page 3

The decisions that are made as to the City's Maximum Expansion Limits could have significant impacts upon the County. These impacts include loss of control of a significant element of our economic development strategy as described above, service delivery impacts and irretrievable losses of revenues. For example, as a result of large developments within the City, the County has nearly doubled the size of its 6<sup>th</sup> District Police Station. There are similar impacts upon the delivery of fire and rescue services. In fact, on October 13, 2008, the Department of Fire and Rescue Services provided City Planning Department staff with some suggestions for inclusion in the draft plan.

For all of these reasons, I strongly encourage the City of Gaithersburg, at a minimum, to remove the following tracts of land from the Maximum Expansion Limits in the draft Master Plan Element: the Shady Grove Life Sciences Center, the Belward campus, the campuses of the University of Maryland and The John Hopkins University, the Center for Advanced Research in Biotechnology, the Maryland Technology Development Center, the Human Genome Sciences headquarters complex and the Public Services Training Academy site. The investment we have, and will continue to make in these properties and the enhancement of this life sciences hub dictates that these parcels remain within the County's boundaries.

In addition to this important matter, the County has indicated with respect to previously proposed maximum expansion areas that it is concerned about the loss of moderately priced dwelling units (MPDUs) as a result of possible annexations into the City. The City requires both fewer MPDUs and for shorter durations. Therefore, even for the Maximum Expansion Limit areas to which the County has not specifically objected, the County would like to see the requirements of the County MPDU law applied to any area that ends up being annexed into the City.

Thank you for the opportunity to express my views on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Isiah Leggett". The signature is fluid and cursive, with a large initial "I" and "L".

Isiah Leggett  
County Executive

cc: Henry F. Marraffa, Jr., Vice President, Gaithersburg City Council  
Jud Ashman, Gaithersburg City Council  
Cathy C. Drzyzgula, Gaithersburg City Council  
Michael A. Sesma, Gaithersburg City Council  
Ryan Spiegel, Gaithersburg City Council  
Angel L. Jones, City Manager, City of Gaithersburg  
Greg Ossont, Director, Planning and Code Administration, City of Gaithersburg  
Mike Knapp, President, Montgomery County Council  
Timothy Firestine, Chief Administrative Officer, Montgomery County

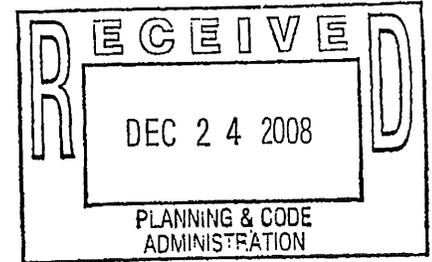


**MONTGOMERY COUNTY PLANNING BOARD**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**OFFICE OF THE CHAIRMAN**

December 22, 2008

The Honorable Sidney A. Katz  
 Mayor, City of Gaithersburg  
 31 South Summit Avenue  
 Gaithersburg, MD 20760



**SUBJECT: Draft Municipal Growth Element**

Dear Mayor Katz:

At its regular meeting on December 18, 2009, the Montgomery County Planning Board discussed the City of Gaithersburg 2003 Master Plan: Municipal Growth Element. Through a motion by Commissioner Alfandre and seconded by Commissioner Cryor, the Planning Board agreed to transmit the following comments to the City of Gaithersburg:

1. The future annexation of the enclave areas is consistent with the City's adopted 1997 Maximum Expansion Limits (MEL) Map. These areas include NIST, Hoyle's Addition, Londonderry, Oakmont, Walnut Hill, Rosemont, Washingtonian Residential, and Washingtonian Industrial Park and are totally surrounded by the City of Gaithersburg. The future annexation of the enclaves by the City of Gaithersburg is appropriate and consistent with forthcoming recommendations of the Gaithersburg West Master Plan.
2. The City should refer all annexation requests to the Planning Board and County Council for review prior to City action on the request. This provides an opportunity to address any proposed rezoning as well as other concerns, such as, the removal of the property from Moderately Priced Dwelling Unit (MPDU) requirements, the Transfer of Development Rights (TDR) program, and the constraints of the Adequate Public Facilities Ordinance (APFO). The 1992 Memorandum of Understanding between Montgomery County and the Cities of Rockville and Gaithersburg may need to be amended to include this requirement.
3. The City of Gaithersburg should include language in future annexation agreements that ensure the continuity of payment of Metropolitan District (Park) taxes after annexation. Despite the Planning Board's repeated request for the City to include this language in its annexation petitions, to date the City has yet to implement this recommendation.
4. The MEL should not include the Traville property which includes the Human Genome Sciences Headquarters complex and a portion of the Traville residential development. This area is an important element to the life science community.

Mayor and City Council  
 X-184  
 Exhibit #72

Joint Hearing - MCC & PC  
 MP-2-08  
 21

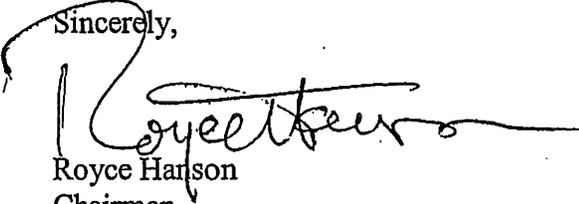
5. MD 28 would be a better boundary between the City of Gaithersburg and the *Potomac Subregion Master Plan* area than private property lines as shown on the proposed MEL Map. MD 28 is physically identifiable and would not split properties in the *Potomac Subregion Master Plan* area. This recommendation is consistent with Draft Municipal Growth Plan objectives.
6. Parcels in the Shady Grove Life Sciences Center (LSC) should remain outside Gaithersburg limits and under the planning and zoning jurisdiction of the County because the County has made a substantial investment in this area as a cornerstone of County economic activity. This includes the Belward property which was shown in the 1997 MEL.
7. There is an overlap between the City of Gaithersburg and the Town of Washington Grove's proposed MEL. Shady Grove Road, I-370, and the CSX railroad tracks are logical boundaries between the two municipalities. Further, there is a deed of dedication conveying the 12.4-acre Casey Mill Property legacy open space to the Maryland-National Capital Park and Planning Commission; therefore, it should not be included within the MEL of any municipality. The Oakmont Industrial Park is the only property in the 2006 *Shady Grove Sector Plan* that should be included in Gaithersburg's proposed MEL.
8. The annexation of the 65-acre McGown property is likely because of the adjacent Watkins Mill Town Center and Casey East projects in the City. The Planning Department staff would like to coordinate planning of this property with the City of Gaithersburg's Planning Department staff.
9. Emory Grove Road should be the boundary of the MEL east of Goshen Road. The annexation of a portion of Montgomery Village is not appropriate because it will split portions of the Montgomery Village Town Sector Zone.
10. The Draft Municipal Growth Plan designates a portion of the Quince Orchard area including the 14-acre vacant Johnson property in the proposed MEL. The annexation of this area does not have a physically identifiable boundary for the City. We are concerned about the possible loss of the potential park site on the Johnson property and recommends this area be excluded from the MEL.
11. The Longdraft Road area should be included within the City's MEL. When development occurs, however, we hope that the City will strive to protect mature trees and provide the environmental safeguards recommended in the 1985 Gaithersburg Vicinity Master Plan.

The Honorable Sidney Katz  
December 22, 2008  
Page Three

12. The Planning Department Staff look forward to a more in-depth discussion of each of the key properties identified for annexation as the City's review of the Draft Municipal Growth Plan continues.

During the meeting the Planning Board emphasized its concern over the inclusion of the Life Sciences Center and part of the Montgomery Village community in its proposed MEL. Finally, the Planning Board would like to thank Greg Ossont, Director, City of Gaithersburg's Planning and Code Administration for his participation in the discussion of the Municipal Growth Element. We look forward to discussing the issues in more detail with you during the City's Municipal Growth Plan work session.

Sincerely,



Royce Hanson  
Chairman

✓ cc: Greg Ossont

RH:cm:nm:ha



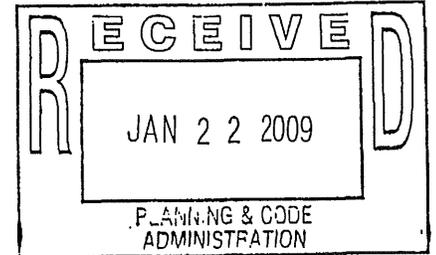
Maryland Department of Planning

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

Richard Eberhart Hall  
Secretary  
Matthew J. Power  
Deputy Secretary

January 20, 2009

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



Dear Mr. Ossont:

Thank you for sending us your draft copy of the *City of Gaithersburg Municipal Growth Element - A Master Plan Element, Draft September 24, 2008*. This draft was also sent to state agencies for their review and comment, and as comments are received, they will be forwarded to you.

The Maryland Department of Planning staff members reviewed the document, and we have enclosed our comments.

We appreciated the opportunity to comment on this latest element to your *Master Plan*. If you have any questions or comments, please contact me at 410-767-4500 or Steve Allan at (410) 767-4572.

Sincerely,

Peter Conrad, AICP  
Director, Local Government Assistance

Enclosure:  
cc: Steve Allan

Mayor and City Council  
X-184  
Exhibit #73

Joint Hearing - MCC & PC  
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**Maryland Department of Planning  
Comments on the 2008 City of Gaithersburg  
Municipal Growth Element - A Master Plan Element**

**Overall**

Thank you for providing the Maryland Department of Planning (MDP) with the opportunity to review the 2008 Town City of Gaithersburg Municipal Growth Element.

**Past Growth Patterns**

The element includes a complete, well researched and thorough analysis of past growth patterns and the distribution of dominant housing types, but only since 1960. Although perhaps lacking a more in-depth analysis of historical trends and issues, this approach seems to be nonetheless appropriate because the population was so small then (3,847), and it is obvious that the main driver of Gaithersburg's growth has been its proximity to Washington DC and its location along the rapidly suburbanizing I-270 corridor. We note that the existing population for the city does not take into account the growth from 2000 through 2008. However, this information appears in Section 3 in Table 4.

**Population Projections/Future Land Use Needs**

This section uses an analysis appropriate for an older urban area that will experience growth through a combination of greenfields, vacant properties and properties with a redevelopment potential. Additional explanation and examples of types of development that constitute the low ratio of improved value to land values would be helpful.

The City has done a good job incorporating a development capacity/build out analysis in the draft MGE. The draft element provides a detailed methodology, estimated population, housing unit and jobs capacity for areas within the Baseline, Pipeline and Growth Areas. However, the absence of population projections make it difficult to determine if there is the proper balance between available land capacity (supply) and the City's anticipated population growth (demand). It does not appear that the City intends for the total land capacity to serve as the projected population; stating that the capacity analysis represents the City's future for the purpose of infrastructure planning. However, if this is the City's intention it should be stated and an explanation provided as to this decision.

Table 9 on page 24 estimates that there is capacity within the City's current corporate limits for an additional 29,492 to 51,986 people or 12,545 to 22,017 housing units; this capacity does not assume that any areas from the MEL (Maximum Expansion Limits) would be annexed. Including these areas would add an additional capacity of 30,785 to 52,838 people and 19,818 to 29,104 housing units. There is a total capacity within the City and MEL for 104,824 people or 43,886 housing units. MDP projections indicate that Montgomery County is projected to grow by 211,900 between 2005 and 2030; therefore the City of Gaithersburg has capacity for nearly half of the projected County growth. It is should be noted that historically the City of Gaithersburg has comprised about 6 percent of the County's total population.

The element suggests a dramatic increase in the jobs to housing ratio. This is to be accomplished through mixed use redevelopment and annexation. Some analysis of the impact of this on the tax base and services would be informative. Some Countywide context, perhaps using county control totals, would provide a perspective on this projected job growth. This chapter also discusses the use of a population factor (person per housing unit at 2.37) but does not indicate whether that factor would be expected to change during the period 2008 – 2030.

### **Public Services and Infrastructure**

The element does estimate the public school impact of forecast growth at both 20 and 32 units/acre density. This section should speak to whether trends would support the same yield of students from housing types and also what the size of type of schools would be need to meet this population growth.

The recreation section suggests that it is unreasonable for the City to meet the State standard recommendation of 30 areas of parkland per 1000 person. Gaithersburg, being located in a rapidly growing region, should include a consideration of facilities that are adjacent to but not operated by the jurisdiction.

### **Resource Lands**

The discussion of the preservation and use of resource lands in the Element is lacking regarding rural buffers and transition areas, but the city has determined that it is an urban, state designated growth area surrounded by built up suburbia. Such determination is consistent with MDP models and guidelines publication #25 (p.18). Major watercourses are mentioned, and natural resource regulations are referred to generally, but not specifically. Map 5 illustrates environmentally sensitive areas, but does not specify the amount of undevelopable acreage affected by steep slopes, wetlands buffers or 100 year floodplains. The Critical Area regulations do not apply.

### **Future Annexations**

Gaithersburg is influenced by the growth and development of Montgomery County. The areas recommended for future growth and annexation (MEL) should have additional explanation as to the benefits of annexation and the impact on the provision of public services to those areas.

MEMORANDUM TO: Greg Ossont, Planning and Code Administration Director

FROM: Lynn Board, City Attorney

DATE: November 3, 2010

SUBJECT: Great Indoors Property Annexation –  
Contiguous and Adjoining Issue

The annexation proposed for the Great Indoors property seeks to annex land into the City of Gaithersburg that currently is physically separated from the current City boundaries by Interstate 370 right-of-way. Other than this right-of-way, there is no intervening land and the interstate right-of-way would be included in the land to be annexed. Based on this circumstance, you have requested an opinion as to whether or not the City may find that the Great Indoors property is contiguous and adjoining for the purposes of annexation.

The Annotated Code of Maryland, Article 23A, §19(a)(1) grants the power to municipal corporations to enlarge their corporate boundaries through the annexation process, but only to land that is “contiguous and adjoining to the existing corporate area.” While the Maryland courts have not directly ruled on the issue of whether an intervening roadway negates the contiguous and adjoining requirement, the Maryland Court of Appeals has found that land separated from a municipal boundary by a waterway was contiguous. *See Anne Arundel County v. City of Annapolis*, 352 Md. 117, 721 A.2d 217 (1998).

The Maryland Attorney General has addressed the “contiguous and adjoining” issue and has found that annexation of State-owned land, including road rights-of-way, is generally permissible. 75 Op. Atty. Gen. 348 (1990); 82 Op. Atty. Gen. 87 (1997). The Attorney General has opined that an area to be annexed is “contiguous” if it would be “in contact” with a municipal boundary and would be “adjoining” if inclusion of the highway ensures that a portion of the annexed property would be “located next to” the municipality. 82 Op. Atty. Gen. 87 (1997).

However, the Attorney General also opined in 82 Op. Atty. Gen. 87 (1997) that the “mere touching of boundaries resulting from a highway annexation does not, in our opinion satisfy the statutory requirement” that a property to contiguous and adjoining. 82 Op. Atty. Gen. 87 at 87. Rather, the municipality must analyze the relationship between the municipality and the property sought to be annexed. In making this determination, the municipality should look at whether the annexation would “result in a unified sense of community identity between the municipality and the annexed land.” 82 Op. Atty. Gen. 87 at 87. An annexation should not create areas of the City that are “separated by remote or disconnected areas.” 82 Op. Atty. Gen. 87 at 90.

In this particular circumstance, the proposed area to be annexed includes the Interstate 370 right-of-way and is not so remote or disconnected from the current City limits to defeat the unified sense of community standard espoused by the Attorney General. Certainly, the land is “in contact” with and is “located next to” the City. Gaithersburg, as well as numerous other municipalities in Maryland, has annexed other land that is physically separated from existing municipal boundaries by a road right-of-way.

Based on the above rationale, it is my opinion that the land proposed for annexation is contiguous and adjoining to the Gaithersburg municipal boundaries for the purposes of annexation and meets this requirement of §19(a)(1) of Article 23A of the Annotated Code of Maryland.

Action

MEMORANDUM

July 27, 2012

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Action – Resolution to approve the City of Gaithersburg’s request to express approval for the reclassification of the Sears Great Indoors Property from the R&D to MXD zone (Annexation Petition X-184)

**PHED Recommendation:** On June 11, the Committee recommended approval of the City of Gaithersburg’s request to express approval for the reclassification of the Sears Great Indoors property from the R&D to the MXD zone (Annexation Petition X-184), if the Council could be assured that residential development would not occur on the annexed property. The proposed zoning would allow residential uses next to the principle entrance to the County’s Solid Waste Transfer Station. Given that Sears has unilaterally determined to place a restrictive covenant on its property that would preclude residential use of the property for as long as the transfer station remains an operative use on the adjoining property, the Committee believes that express approval of the MXD zone is appropriate.

The Committee notes that the determination by Sears to self-restrict the future use of its property is not a condition of the proposed annexation into the City of Gaithersburg. The Council is not in a position to grant or deny any annexation request made by a municipality.

**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. The property adjoins the County’s Solid Waste Transfer Facility. The entrance road to the Facility is the western boundary of the Sears property.

## 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.

## 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:

	<b>Montgomery County R&amp;D Zone</b>	<b>City of Gaithersburg MXD Zone</b>
<b>Uses</b>	Residential not permitted (except caretaker residence)	Residential permitted
<b>Retail</b>	Severely restricted - 5% of building FAR	Retail permitted
<b>Density</b>	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.<sup>1</sup> The Council cannot prohibit the annexation. Planning Board Staff and the Maryland Department of Planning found that the uses allowed in the MXD are substantially different than uses allowed in the R&D zone. Retail uses and residential uses are substantially different from the uses allowed by the R&D zone.<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>1</sup> 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 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.

<sup>2</sup> 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 from the uses allowed in the existing R&D zoning, and the 5 year rule comes into effect unless the County Council approves the change.

<sup>3</sup> 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.

## **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. 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."

Rockville is now pursuing the annexation of Shady Grove Road. This was the subject of a Rockville Planning Board worksession on July 25. It will be addressed by the Mayor and Council on September 10, 2012. If Rockville annexes Shady Grove Road before Gaithersburg annexes the Sears property, then Gaithersburg would not be able to annex the Sears property, because the property would no longer be contiguous and adjoining Gaithersburg.

## **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.<sup>4</sup>
- 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.

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<sup>4</sup> This condition cannot be implemented because of the zone proposed for the site by the City of Gaithersburg. The proposed zone would allow residential development. The City may not prohibit a use allowed in the proposed zone as part of their action to annex the property.

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 was 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.<sup>5</sup> 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<sup>6</sup>, 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.

### **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 from 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.<sup>7</sup> 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 require that land annexed by a municipality be "contiguous and adjacent".<sup>8</sup>

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> § 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.

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.”<sup>9</sup>

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 waterway, even if the annexed land would be separated completely from the original city or town limits by that body of water.<sup>10</sup> 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.<sup>11</sup>

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.

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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 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.

<sup>9</sup> 82 Op. Md. Attorney General (Op. No. 97-05) (1997).

<sup>10</sup> Anne Arundel County v. City of Annapolis, 352 Md. 117.

<sup>11</sup> Mayor & Council of Berlin v. Barrett, 136 Md. App. 676 (1999).

*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 establish 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 of 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 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.

**The Committee recommended 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.

*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 not legal. Gaithersburg may not prohibit a use permitted in the property's new zone as a condition of annexation.

- 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 County standards; however, this is a good reminder that sidewalks are important.

<u>This packet includes</u>	<u>© Page</u>
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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:

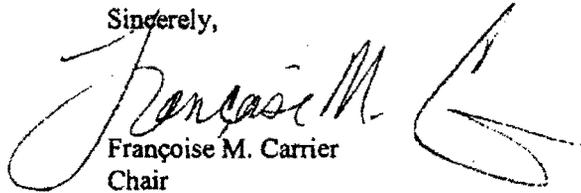
The annexation petition should be approved with conditions:

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.

The Honorable Roger Berliner  
May 4, 2012  
Page Two

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

**Sears Property Gaithersburg Annexation Request X-184**

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-  Steve Findley, Planner Coordinator, Area 2 Planning Division, [Steve.Findley@montgomeryplanning.org](mailto:Steve.Findley@montgomeryplanning.org), 301-495-4727
-  Joshua Sloan, Planner Supervisor, Area 2 Planning Division, [Joshua.Sloan@montgomeryplanning.org](mailto:Joshua.Sloan@montgomeryplanning.org), 301-495-4597
-  Glenn Kreger, Chief, Area 2 Planning Division, [Glenn.Kreger@montgomeryplanning.org](mailto:Glenn.Kreger@montgomeryplanning.org), 301-495-4653

Completed: 4/19/12

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**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.

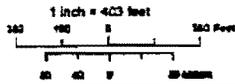
## Location and Background

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.

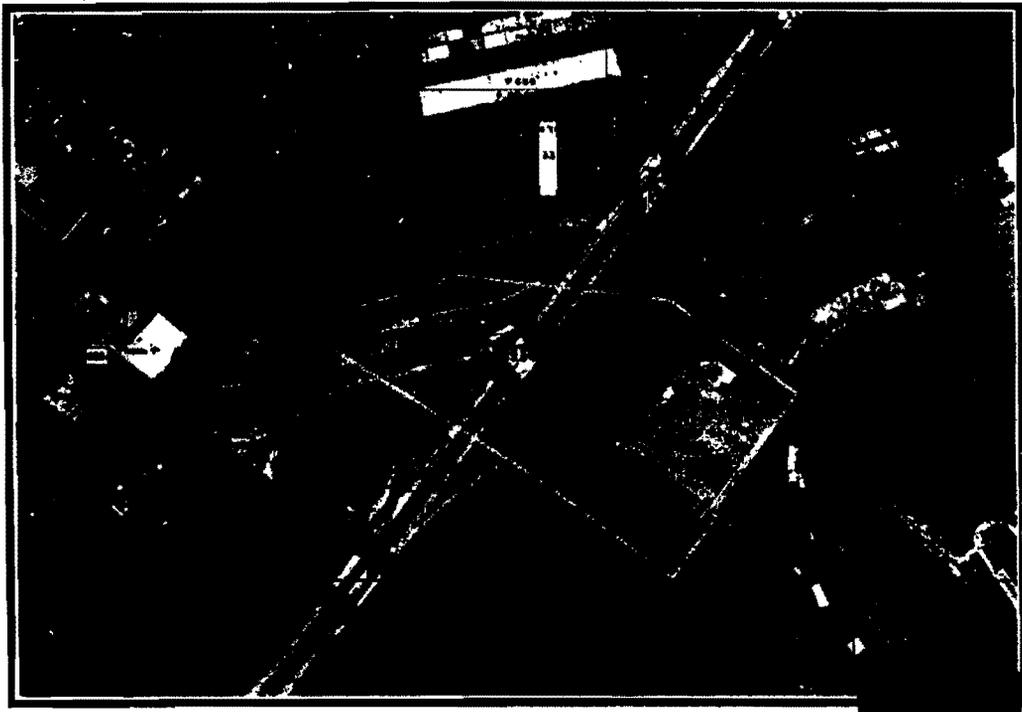
The existing uses on the site, including the Great Indoors retail store, total 204,490 square feet of retail and warehouse development plus surface parking. The retail uses, which were developed under the previous I-1 zone, are grandfathered under the R&D zone that was applied pursuant to the Shady Grove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

**X-184**  
**Sears Property**



When preparing a petition for annexation, the petitioner must provide a map showing the location of the property to be annexed and the proposed zoning district. The map must be drawn to scale and must show the location of the property to be annexed and the proposed zoning district. The map must be drawn to scale and must show the location of the property to be annexed and the proposed zoning district.



*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:

<i>Summary of R&amp;D and MXD Zones</i>		
	<b>Montgomery County R&amp;D Zone</b>	<b>City of Gaithersburg MXD Zone</b>
<b>Uses</b>	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
<b>Density</b>	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.

<b>Site</b>	16331 and 16401 Shady Grove Road, Gaithersburg, MD	
<b>Account</b>	768845	
<b>Tax District</b>	09	
<b>Assessed Value</b>	\$14,285,000	
<b>Assessed value divided by 100</b>	\$142,850	
<b>Tax Class</b>	42	
<b>Tax</b>	<b>Rate</b>	<b>Tax Revenue</b>
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)



**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:

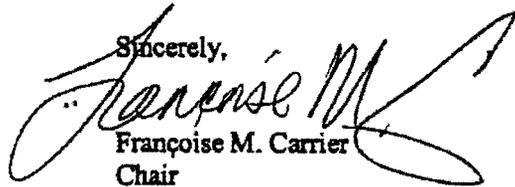
At its regular meeting on February 25, 2011, the Montgomery County Planning Board reviewed the City of Gaithersburg Draft 2009 Land Use Plan. At the conclusion of the hearing, the Planning Board (F. Carrier, M. Wells-Harley and J. Alfandre) unanimously voted to **APPROVE** the transmittal of the following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

Mr. Greg Ossont  
February 28, 2011  
Page Two

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

**COMMUNICATION: PLANNING COMMISSION**

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**MEMORANDUM TO:** Planning Commission  
**FROM:** Trudy M. Walton Schwarz, Community Planning Director  
**DATE:** March 15, 2012  
**SUBJECT:** Staff Analysis & Annexation Plan  
X-184 – Sears/The Great Indoors Property  
Robert Dalrymple & Erin Girard, Linowes & Blocher, LLP, for  
Sears, Roebuck and Company

Application for annexation of approximately 27.89 acres (595,029 square feet) of land, known as the Sears Property (The Great Indoors and Sears Service Center & Repair), located at 16331 & 16401 Shady Grove Road, and adjacent road rights of way, adjacent to the present corporate limits. The application requests a reclassification of the subject property from the current Montgomery County Research and Development (R&D) Zone to the Mixed Use Development (MXD) Zone in the City of Gaithersburg, Maryland.

**APPLICANT:**

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

**APPLICANT'S REPRESENTATIVE:**

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



**OWNERS:**

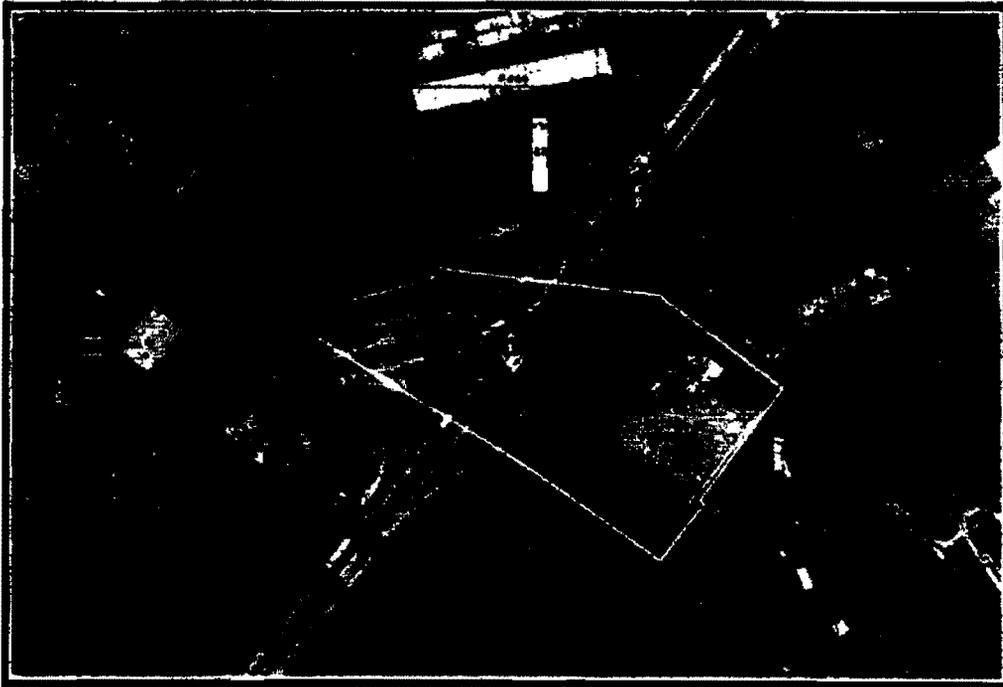
Sears, Roebuck and Company  
3333 Beverly Road BC 102B-A  
Hoffman Estates, Illinois 60179

Maryland State Highway Administration

Montgomery County Rights of Way

**LOCATION:**

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



**TAX MAP REFERENCE:**

Tax Sheet: FS 563 and GS 123  
Tax Parcel ID Number: N606

**BACKGROUND:**

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

Articles 23A and 66B of the *Maryland Annotated Code* and Chapter 24 (Zoning) of the City of Gaithersburg Code outline the requirements and process for a proposed annexation. The Planning Commission is required to review the proposed annexation and associated rezoning and land use plan for consistency with the City's master plan<sup>1</sup>, and provide a recommendation to the Mayor and City Council at least 15 days prior to the required Mayor and City Council public hearing<sup>2</sup>. 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<sup>3</sup>. 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

<sup>1</sup> Article 66B, Section 1.02 Maryland Annotated Code

<sup>2</sup> Section 24-9 Gaithersburg City Code

<sup>3</sup> 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*<sup>4</sup>, 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:

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<sup>4</sup> 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:**

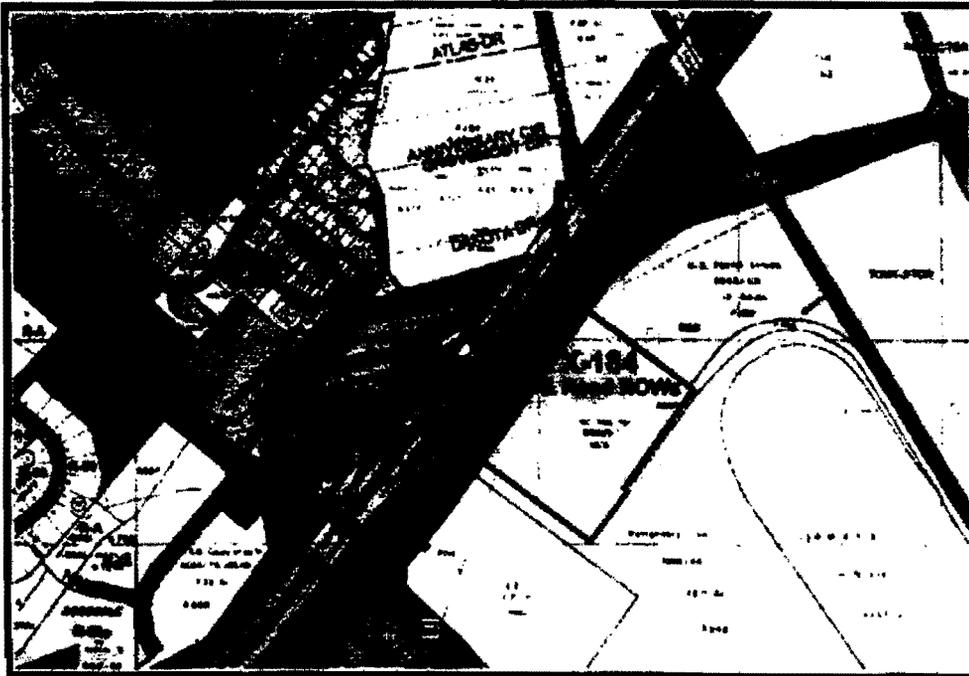
- *Adopt Commercial/Industrial-Research-Office land use designation, if annexed*
- *Recommend CD or MXD Zoning, or a future zone that facilitates sustainable development standards, if annexed*

**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.<sup>5</sup> 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.<sup>6</sup> 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.

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<sup>5</sup> Exhibit #16

<sup>6</sup> 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<sup>7</sup>. 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<sup>8</sup>.

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<sup>7</sup> Section 24-245

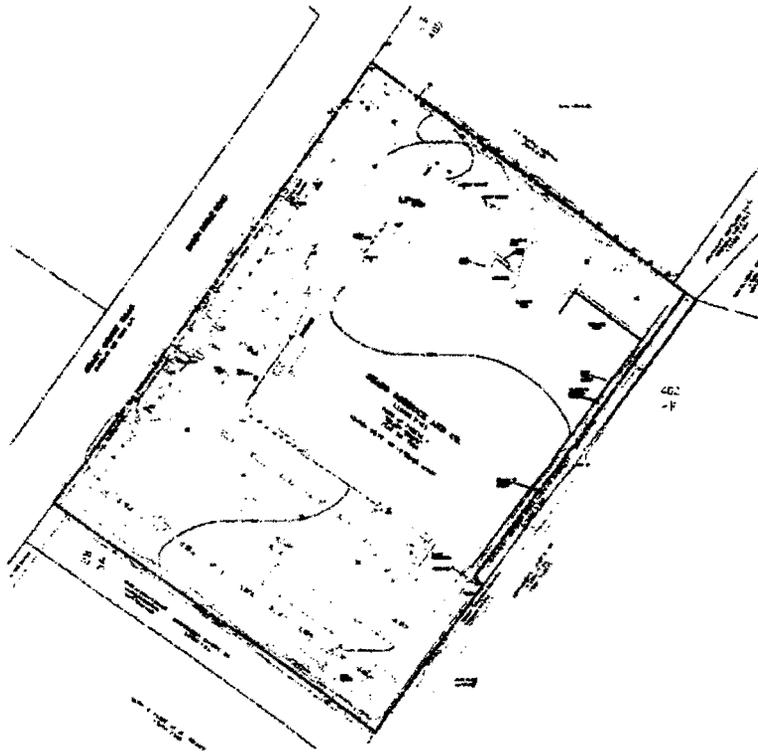
<sup>8</sup> Regulation 01-07

## 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.

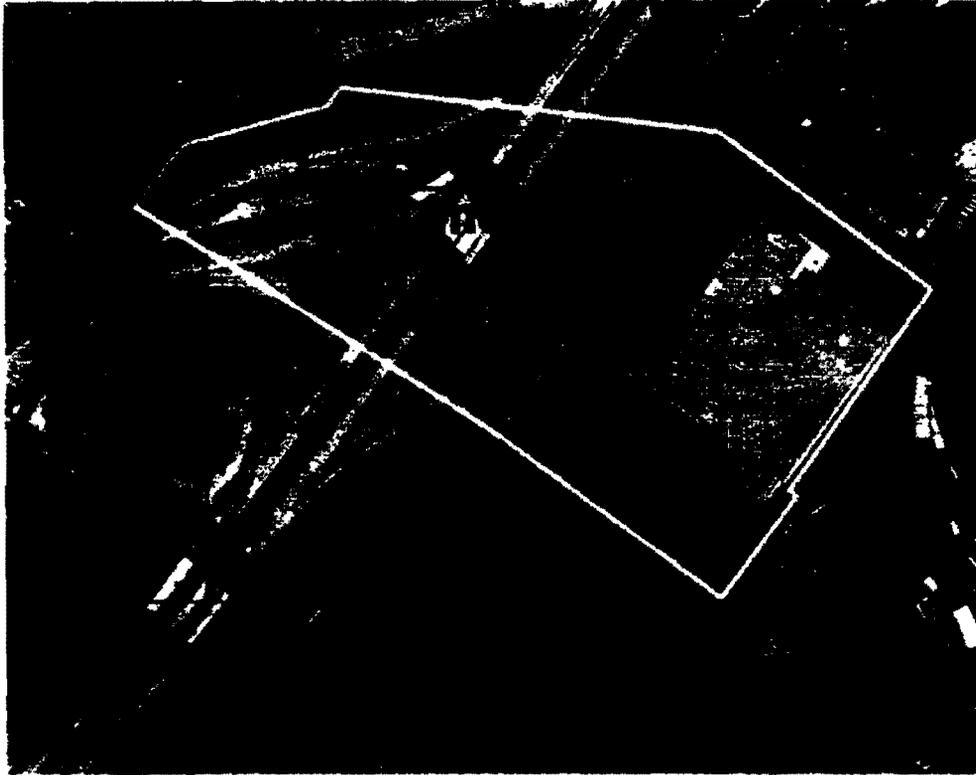
## PROPOSED USE / SITE PLAN:

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<sup>9</sup>, 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

<sup>9</sup> 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.



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

240-314-6000  
TTY 240-314-9137

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 Marcucio

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

**CITY MANAGER**  
Scott Ulsey

**CITY CLERK**  
Glenda P. Evans

**CITY ATTORNEY**  
Debra Yerg Denial



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Mayor Sidney A. Katz and Council  
March 23, 2011  
Page 2 of 2

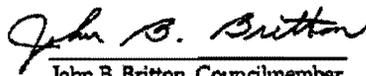
Re: Great Indoors Site (City of Gaithersburg Land Use Map Designation #18)

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

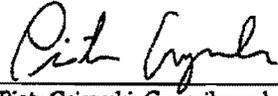
Sincerely,



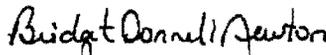
Phyllis Marcuccio, Mayor



John B. Britton, Councilmember



Piotr Gajewski, Councilmember



Bridget Newton, Councilmember



Mark Pierzchała, 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



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 approximately 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.



Nancy Floreen, PHED Chair  
May 31, 2012  
Page 2

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](mailto: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



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@gaitthersburgmd.gov • www.gaitthersburgmd.gov

MAYOR  
Sidney A. Katz

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

CITY MANAGER  
Angel L. Jones

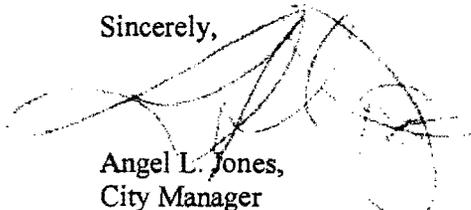
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the Property in Gaithersburg's MEL. It should be further noted that while the Property also is within Rockville's MEL, it is not contiguous to Rockville and annexation into Rockville would require annexation of the Transfer Station and other properties 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 Maseverro

COUNCIL  
 John F. Hall, Jr.  
 Tom Moore  
 Bridget Donnell-Nicewicz  
 Mark Peruchala

ASST. CITY MANAGER  
 Jennifer Kimball

CITY CLERK  
 Doug Barber

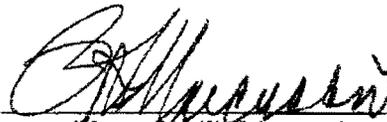
CITY ATTORNEY  
 Debra Yong-Daniel

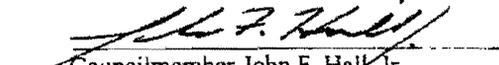
The Honorable Roger Berliner  
June 5, 2012  
Page 2 of 2

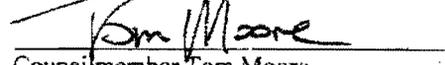
Rockville and Gaithersburg to develop an MOU for guidance on future proposed annexations.

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 Pierzchała

**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.

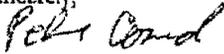
We noted that the subject property was designated by Montgomery County as a Priority Funding Area (PFA) and our Department concurs with that designation. Land annexed into a municipality does not automatically become or remain a Priority Funding Area. The opportunity for land annexed into the City to 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.

May 8, 2012  
Page 2  
The Honorable Sidney Katz

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

Resolution No.: \_\_\_\_\_  
Introduced: July 24, 2012  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND**

---

By: District Council

---

**SUBJECT:** Approval of the City of Gaithersburg's request to express approval for the reclassify the Sears Great Indoor's Property from the R&D to MXD (Annexation Petition X-184)

**Background**

1. 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 which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan without express approval of the County Council.
2. 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.)
3. 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.
4. The property is included in the maximum expansion limits of both Gaithersburg and Rockville.
5. 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.
6. The Planning Staff, in a memorandum to the Planning Board completed of April 19, 2012, found that 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.

7. On April 26, 2012, the Montgomery County Planning Board reviewed Annexation Petition No. X-184. The Board unanimously voted to recommended approval of the annexation if it included a condition that the City of Gaithersburg not approve plans for residential uses on the subject property due to proximity to the Solid Waste Transfer Station.
8. In a letter to the Mayor and Council of Gaithersburg dated May 8, 2012, the Maryland Department of Planning agreed with the Planning Staff that 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.
9. On July 11, 2012, the Planning, Housing, and Economic Development Committee reviewed the annexation petition and recommended approval of the City of Gaithersburg's request to express approval for the reclassify the Sears Great Indoor's property from the R&D to MXD (Annexation Petition X-184) if the Council could be assured that residential development would not occur on the annexed property.
10. The owner of the property to be annexed has unilaterally decided to place a restrictive covenant on its property that would preclude residential use of the property for so long as the transfer station remains an operative use on the adjoining property.
11. On July 24, 2012, the County Council reviewed Annexation Petition X-184 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee. The Council concluded that would give its express approval to the proposed reclassification of the Sear's Great Indoors property from the R&D to the MXD.

#### Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland approves the following resolution:

Under Article 23A Section 9(c) of the Annotated Code of Maryland, the District Council approves the reclassification by the City of Gaithersburg of the Sears Great Indoors Property from the County's Research and Development (R&D) zone to the City's Mixed Use Development (MXD) zone.

This is a correct copy of Council action.

---

Linda M. Lauer, Clerk of the Council

PARCEL ID No.: 09-00768845

### DECLARATION OF USE RESTRICTION

THIS DECLARATION OF USE RESTRICTION ("Declaration") is made as of the 24<sup>th</sup> day of July, 2012, by SEARS, ROEBUCK AND CO., a New York corporation ("Sears").

#### RECITALS:

A. Sears is the fee simple owner of approximately 13.66 acres of property generally located on the south side of Shady Grove Road in Montgomery County, Maryland, between Maryland Route 355 and Oakmont Avenue, as more particularly shown as Lot A on Plat No. 7952, a copy of which is attached hereto and made a part hereof as Exhibit "A", and further defined as Part of Parcel A, due to an acquisition by Northeast Maryland Waste Disposal Authority recorded at Liber 11236 at Folio 694 and dated January 12, 1993 (the "Sears Property"); and

B. Montgomery County, Maryland ("County") is the owner of the Shady Grove Processing and Transfer Facility, a public solid waste transfer station ("Transfer Station") operated by the County on an approximately 43 acre parcel of land (the "County Land") located adjacent to and south of the Sears Property, as shown on Exhibit "B" hereto; and

C. It is generally considered that any use of the Sears Property for residential purposes as long as the Transfer Station remains operational on the County Land would not be a compatible land use appropriate for the surrounding area; and

D. In order to provide the general public with assurance that the Sears Property will not be redeveloped with residential uses as long as the County Land is used for the Transfer Station, Sears wishes to restrict such residential uses on the Sears Property for a limited period of time, as more particularly set forth below.

NOW THEREFORE, in consideration of the premises and the agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sears does hereby agree and declare as follows:

1. The foregoing Recitals to this Declaration are hereby incorporated in and made a part of this Declaration to the same extent as if herein set forth in full.

2. Residential Use Restriction. Sears, as the owner of the Sears Property, on behalf of itself and its successors and assigns, hereby covenants and declares that no portion of the Sears Property shall be developed, leased, rented or occupied for residential use (hereinafter defined) for so long as the Transfer Station remains in operation on the County Land for the benefit of the general public. This restriction shall be a covenant running with the Sears Property.

This Declaration and the restriction contained in this Paragraph 2 shall automatically terminate and be of no further force or effect (without the need for further acknowledgement, consent or action from any party) as of the date upon which the Transfer Station ceases to be operated on the County Land for the benefit of the general public. For purposes hereof, the term "residential use" shall mean and refer to a single-family or multi-family dwelling wherein one or more non-transient persons reside. The term "residential use" shall not include hotels or motels.

3. Miscellaneous. All of the covenants, terms, provisions and conditions herein shall run with the land intended to be burdened thereby, and the Sears Property shall be conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and all of the covenants, conditions and restrictions set forth herein. All of the covenants, terms, provisions and conditions shall apply to, bind and inure to the benefit of Sears, its successors and assigns. Upon conveyance of the Sears Property by the owner thereof, the obligations and liabilities herein provided that accrue on or after the applicable date of conveyance shall automatically become the obligations and liabilities of the party to whom the Sears Property is conveyed. The restriction contained in this Declaration shall be enforceable by injunctive relief in a court of competent jurisdiction.

4. Amendments. This Declaration may be amended or terminated at any time by an instrument in writing executed and acknowledged by Sears and the County.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Sears has signed and sealed this Declaration, as of the day and year first above written.

WITNESS:

SEARS, ROEBUCK AND CO.,  
a New York corporation

[Signature]

By: [Signature]  
Name: James B. Terrell  
Title: Vice President Real Estate



STATE OF Illinois  
COUNTY OF Cook

\* \* \*  
\*  
\* to wit:  
\*

I HEREBY CERTIFY that on this 24<sup>th</sup> day of July, 2012, before the subscriber, a Notary Public of the State and County aforesaid, personally appeared James B. Terrell, known to me to be the person whose name is subscribed to the within instrument, and did acknowledge that he/she executed the same for the purposes therein contained, and signed the name in my presence.

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

[Signature]  
Notary Public

My Commission Expires: 3/21/15



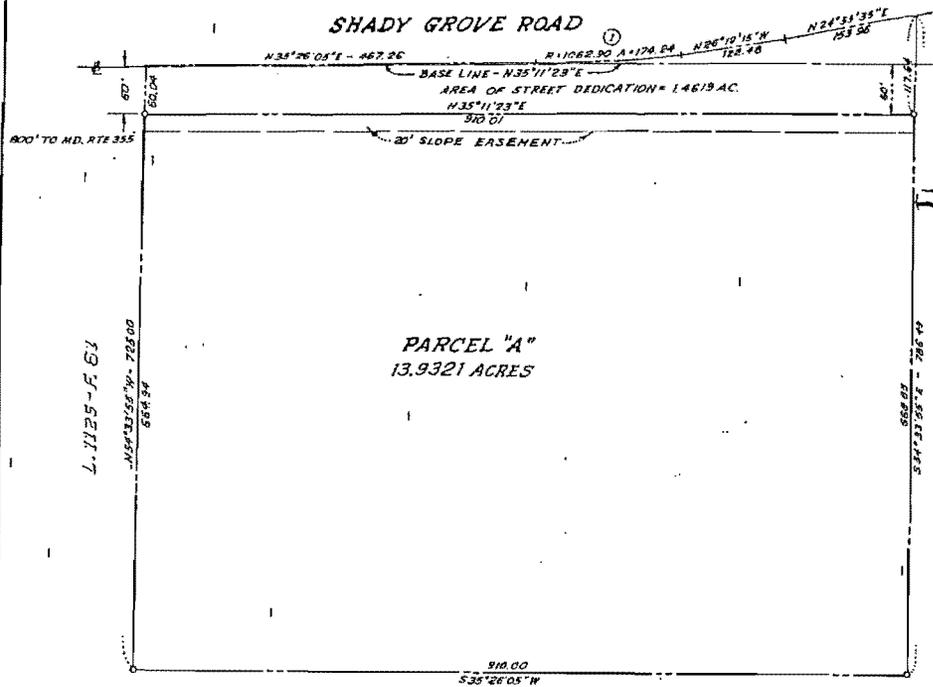
\* \* \*

ATTORNEY CERTIFICATION

I HEREBY CERTIFY that I am an attorney duly admitted to practice before the Court of Appeals of Maryland and that the within instrument was prepared by me or under my supervision.

[Signature]  
Name: Erin E Girard

SHADY GROVE ROAD

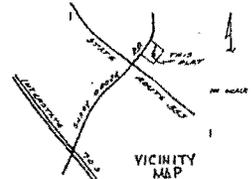


SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON IS CORRECT; THAT IT IS A SUBDIVISION OF ALL OF THE LANDS CONVEYED BY VIRGINIA C. VISHNICH, FORMERLY KNOWN AS VIRGINIA K. CASEY AND HER HUSBAND GEORGE VISHNICH TO JAMES M. CAZANAS, ET AL, BY DEED DATED APRIL 5, 1965 AND RECORDED IN LIBER 3342 AT FOLIO 221 AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND, AND THAT IRON PIPES MARKED THUS  $\odot$  ARE IN PLACE AS INDICATED.  
DATE: JULY 22, 1965.

HOLMEAD FREY & ASSOCIATES

PLAT No 7952  
BY: *James F. Sheehan*  
JAMES F. SHEEHAN  
M.P. REG. NO. 3984



MONTGOMERY COUNTY, MARYLAND  
DEPARTMENT OF PUBLIC WORKS  
APPROVED: Sept. 3, 1965  
AS TO ROAD AND STREET GRADES  
BY: *[Signature]*  
REG. DIRECTOR OF PUBLIC WORKS

FOR PUBLIC SEWER AND WATER SYSTEMS  
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
MONTGOMERY COUNTY PLANNING BOARD

APPROVED: JULY 27, 1965  
*Eugene Jones* *John F. Kibler*  
AC. CHAIRMAN SECRETARY-TREASURER  
M.N.C.P. & P.G. RECORD FILE NO. 193-75

CURVE DATA						
NO.	RADIUS	ARC	$\Delta$	CHD. BEARINGS	CHORD	TAN
1	1062.90	174.24	9°13'50"	N30°49'10"E	171.05	85.80

OWNER'S DEDICATION

WE, JAMES M. CAZANAS, SIDNEY GREENBERG, JOHN R. AMBROGNE AND PHIL DAVID FINE, OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THIS PLAN OF SUBDIVISION, ESTABLISH THE MINIMUM BUILDING RESTRICTION LINE, DEDICATE THE STREET TO PUBLIC USE AND GRANT TO MONTGOMERY COUNTY, MARYLAND, A SLOPE EASEMENT 20' WIDE ON THE LOT SHOWN HEREON WHERE ADJACENT, PARALLEL, AND CONTIGUOUS TO STREET RIGHTS OF WAY LINES. SLOPE EASEMENTS GRANTED HEREON SHALL BE EXTINGUISHED AFTER ALL REQUIRED PUBLIC IMPROVEMENTS ABUTTING SAID EASEMENTS HAVE BEEN LAWFULLY COMPLETED AND HAVE BEEN ACCEPTED FOR MAINTENANCE BY MONTGOMERY COUNTY, MD. OR APPROPRIATE AGENCY.  
DATE: JULY 22, 1965.

L. 1125-F. 61

W.E. Admin *James M. Cazanas* *John R. Ambrogne*  
WITNESS JAMES M. CAZANAS JOHN R. AMBROGNE ATTORNEY IN FACT

W.E. Admin *Sidney Greenberg* *John R. Ambrogne*  
WITNESS SIDNEY GREENBERG JOHN R. AMBROGNE ATTORNEY IN FACT

W.E. Admin *John R. Ambrogne* *John R. Ambrogne*  
WITNESS JOHN R. AMBROGNE JOHN R. AMBROGNE ATTORNEY IN FACT

W.E. Admin *Phil David Fine* *John R. Ambrogne*  
WITNESS PHIL DAVID FINE JOHN R. AMBROGNE ATTORNEY IN FACT

WE ASSENT TO THIS PLAN OF SUBDIVISION:  
DATE: JULY 22, 1965. THE MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY.  
BY: *K. Elmer Weisheit, Jr.*  
K. ELMER WEISHEIT, JR., AGENT

FILED  
SEP 21 1965

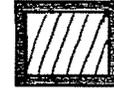
PARCEL "A"  
SEARS ADDITION TO  
**SHADY GROVE**  
GAITHERSBURG ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND  
SCALE: 1" = 100'  
JULY, 1965

HOLMEAD FREY & ASSOCIATES  
SURVEYING & ENGINEERING  
SILVER SPRING, MD.  
388-8464

RECORDED: \_\_\_\_\_  
PLAT BOOK: \_\_\_\_\_  
PLAT NO.: \_\_\_\_\_

65-956  
193-75

Exhibit "B"

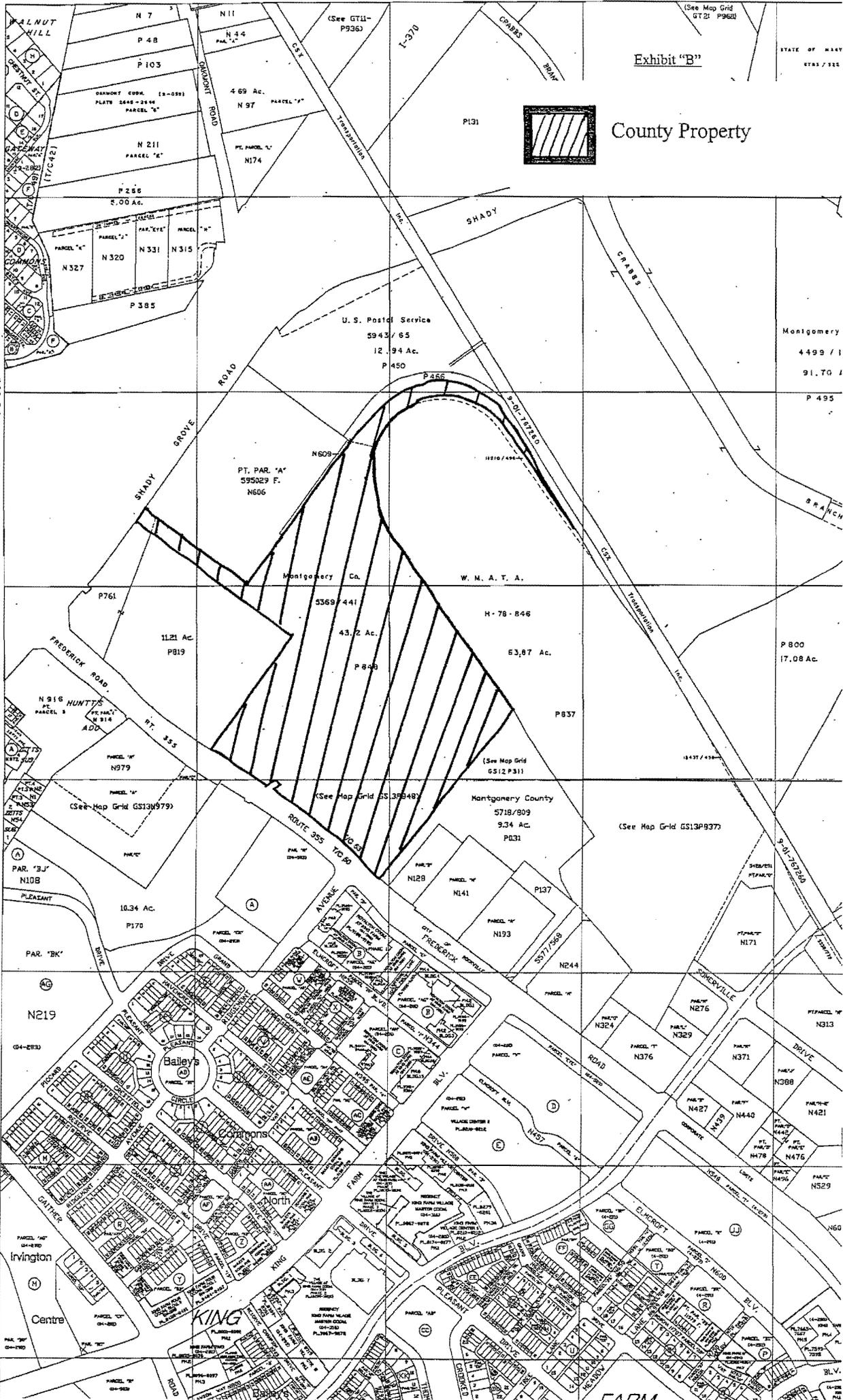


County Property

S 3  
FB 563

S 2  
FB 562

42



**MEMORANDUM**

July 27, 2012

TO: County Council

FROM: Jeffrey L. Zyontz, <sup>JL</sup>Legislative Attorney

SUBJECT: Addendum – Resolution to approve the City of Gaithersburg’s request to express approval for the reclassification of the Sears Great Indoors Property from the R&D to MXD zone (Annexation Petition X-184)

This packet includes  
Letter from Gaithersburg City Attorney

© Page  
1 – 17



July 27, 2012

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

Re: Resolution to approve the City of Gaithersburg's request to express  
Approval for the reclassification of the Sears Great Indoors Property  
From the R&D to MXD zone (Annexation Petition X-184)

Dear President Berliner and Members of the Montgomery County Council:

In order to clarify some of the issues related to the Resolution to approve the City of Gaithersburg's request to express approval for the reclassification of the Sears Property located at 16331 Shady Grove Road from the R&D to the MXD zone that is scheduled for your July 31, 2012 Agenda, the City is submitting additional background materials for your consideration.

Article 23A, Section 19 of the Annotated Code of Maryland grants the authority to municipalities to annex land into their corporate boundaries provided the land is contiguous and adjoining to the existing corporate boundaries and does not create an enclave. A petition for annexation may be initiated by either the legislative body of the municipality or by persons who reside in or own the area to be annexed. In either circumstance, there must be consent to annex by not less than 25% of the registered voters residing on the property and owners of not less than 25% of the assessed value of the property. By state statute, the County plays no role in the decision of whether or not a municipality annexes property.

The County may play a role in the zoning of property upon annexation. While Article 23A, Section 9 of the Annotated Code of Maryland provides that municipalities that have planning and zoning authority have "exclusive jurisdiction over planning and zoning and subdivision control within the area annexed," the statute restricts municipalities annexing land for a period of 5 years following annexation from permitting "development of 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 under the applicable county zoning classification at the time of annexation. Section 9 does allow municipalities to place annexed land in a zoning classification that permits a land use or density different from the land use or density permitted in

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

MAYOR  
Sidney A. Katz

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

ACTING CITY MANAGER  
Tony Tomasello

①

the county during that 5 year period if the county expressly approves. It is this express approval that the City and Sears are seeking from the County.

Specifically with regard to the proposed annexation of the Sears Property below is a brief overview of the process for the annexation of this property.

- April 6, 2009 – Following a December 1, 2008 public hearing, the City of Gaithersburg adopted the Municipal Growth Element of its 2003 Master Plan, which includes Maximum Expansion Limits (MEL) that encompasses the Sears Property. While the County Executive, Maryland National Capital Park and Planning Commission (M-NCPPC) and the Maryland Department of Planning all submitted letters into the record for Gaithersburg's Municipal Growth Element, none raised any concern regarding the inclusion of the Sears Property in Gaithersburg's MEL. (See attached letters.)
- November 3, 2010 – The Gaithersburg City Attorney opined that the Sears Property met the contiguous and adjoining requirement of Section 19 of Articles 23A of the Annotated Code of Maryland for the purpose of annexation. (See attached Memorandum.)
- December 13, 2010 – The City of Rockville adopted the Municipal Growth Element of its 2002 Master Plan and for the first time its MEL included the Sears Property.
- January 12, 2012 – Sears submitted its Annexation Petition to Gaithersburg, initiating the annexation process
- March 5, 2012 – Following verification that Sears met the 25% registered voter and assessed value requirement, the Gaithersburg Mayor and Council introduced Annexation Petition X-184 for annexation of the Sears Property.
- March 12, 2012 – The Gaithersburg Planning Commission discussed the Annexation at their public meeting and moved to hold their record open until April 11, 2012.
- April 18, 2012 – The Gaithersburg Planning Commission recommended approval of the Sears Annexation and zoning the Property to MXD.
- April 26, 2012 – The M-NCPPC considered the Annexation and recommended approval of the annexation petition with several conditions.
- May 21, 2012 – Following notices in the Gaithersburg Gazette on April 4, 11, 18 and 25, 2012, the Gaithersburg Mayor and City Council held a public hearing on the Sears Annexation and moved to hold their record open until July 5, 2012.
- June 11, 2012 – The Montgomery County Council Planning Housing & Economic Development Committee (PHED) considered the request to approve the zoning of the Property at the time of annexation to the City's MXD zone.

- August 6, 2012 - The Sears Annexation is scheduled for policy discussion by the Gaithersburg Mayor and City Council.

The City hopes that this information will assist you to approve its request to approve the reclassification of the zoning of the Property at the time of annexation from the R&D zone to permit an economically viable reuse of the Property under the City's MXD zone. City representatives will be present at your July 31<sup>st</sup> meeting should you have any questions.

Sincerely,



N. Lynn Board,  
City Attorney

Cc Mayor Sidney A. Katz  
City Council Members  
Tony Tomasello  
John Schlichting  
Trudy Schwarz  
Jeff Zyontz

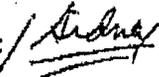


OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

December 1, 2008

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

Dear Mayor Katz: 

I am writing in regard to the September 24<sup>th</sup> draft of the "City of Gaithersburg Municipal Growth: A Master Plan Element," which I understand you and the Gaithersburg City Council will be reviewing tonight.

The Master Plan Element, once approved, will pave the way for the City to annex properties in the Maximum Expansion Limits (MEL) shown throughout the document. Some properties depicted in the MEL represent enclaves of development, which for a variety of reasons, may make sense for the City to want to annex. However, I remain extremely concerned about the inclusion of prime commercial and institutional assets in the MEL which comprise the heart of the County's technology corridor, most notably, the Shady Grove Life Sciences Center, the Belward campus, the campuses of the University of Maryland and The John Hopkins University, the Center for Advanced Research in Biotechnology, the Maryland Technology Development Center, the Human Genome Sciences headquarters complex, and the Public Services Training Academy site.

Some 30 years ago, Montgomery County set out to establish itself as a global hub for biotechnology research and development, related technological advancements and higher education academic excellence. Through perseverance, capital investment, advocacy at the State level, and partnerships with the private and academic sectors, the vision developed for the Shady Grove Life Sciences Center, the properties surrounding this core area, and the entire 270 technology corridor has become reality. Enhancing the life sciences industry and emerging forms of technology has been a key component of the County's economic development strategy for over three decades, and today remains at the core of our business development plan. By including the aforementioned properties in the MEL, you will be undercutting the County's ability to fully cultivate the industry and land which have for years been driving our economic vision.



4

The Honorable Sidney A. Katz  
December 1, 2008  
Page 2

While the 270 technology corridor – and developments such as the Life Sciences Center – has been blessed with an abundance of skilled professionals, an entrepreneurial spirit, and coveted Federal and private centers of excellence, it is important to acknowledge the huge capital investment the County has made in establishing this life sciences hub. Specifically, Montgomery County has:

- purchased close to 300 acres for the world-renowned Shady Grove Life Sciences Center, whose land value today approximates \$150 million;
- donated 85 acres of land to the University of Maryland and The Johns Hopkins University for their academic campuses and for the Center for Advanced Research in Biotechnology (CARB);
- infused over \$17 million in infrastructure for the Life Sciences Center and for Hopkins' Belward Campus;
- constructed Hopkins' first academic building (a \$12 million capital outlay), and financed the construction of CARB;
- developed and continues to operate the \$10 million Maryland Technology Development Center, a business incubator for life sciences companies; and
- advocated at the State level for major capital investments in the University of Maryland, Johns Hopkins and CARB by continually highlighting these assets in the County's state legislative priorities.

As we look toward the future, it is important to keep in mind Montgomery County's vested interest in the southernmost properties delineated in the Maximum Expansion Limits area in the draft Master Plan Element. The County continues to own strategic properties in the Life Sciences Center. Our Department of Economic Development markets the Life Sciences Center and adjacent commercial properties to companies wishing to relocate to this biosciences hub. Our successful life sciences incubator has been expanded once, and potential expansions remain on the horizon.

We will continue to advocate for funding for the Corridor Cities Transitway, or CCT, whose alignment and transit stops will be contained within the parcels discussed in this letter. The CCT is critically important to the County and any decisions that could impact it are of significant interest. The County is continuing to invest in this area. The County will be relocating the functions currently at our Public Services Training Academy site and will be making this valuable tract of land available for more appropriate uses that will build on the economic strength of this area.

The Honorable Sidney A. Katz  
December 1, 2008  
Page 3

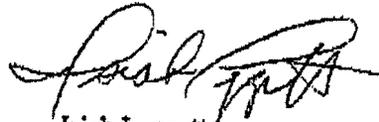
The decisions that are made as to the City's Maximum Expansion Limits could have significant impacts upon the County. These impacts include loss of control of a significant element of our economic development strategy as described above, service delivery impacts and irretrievable losses of revenues. For example, as a result of large developments within the City, the County has nearly doubled the size of its 6<sup>th</sup> District Police Station. There are similar impacts upon the delivery of fire and rescue services. In fact, on October 13, 2008, the Department of Fire and Rescue Services provided City Planning Department staff with some suggestions for inclusion in the draft plan.

For all of these reasons, I strongly encourage the City of Gaithersburg, at a minimum, to remove the following tracts of land from the Maximum Expansion Limits in the draft Master Plan Element: the Shady Grove Life Sciences Center, the Belward campus, the campuses of the University of Maryland and The John Hopkins University, the Center for Advanced Research in Biotechnology, the Maryland Technology Development Center, the Human Genome Sciences headquarters complex and the Public Services Training Academy site. The investment we have, and will continue to make in these properties and the enhancement of this life sciences hub dictates that these parcels remain within the County's boundaries.

In addition to this important matter, the County has indicated with respect to previously proposed maximum expansion areas that it is concerned about the loss of moderately priced dwelling units (MPDUs) as a result of possible annexations into the City. The City requires both fewer MPDUs and for shorter durations. Therefore, even for the Maximum Expansion Limit areas to which the County has not specifically objected, the County would like to see the requirements of the County MPDU law applied to any area that ends up being annexed into the City.

Thank you for the opportunity to express my views on this important matter.

Sincerely,



Isiah Leggett  
County Executive

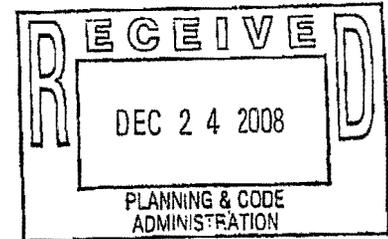


**MONTGOMERY COUNTY PLANNING BOARD**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**OFFICE OF THE CHAIRMAN**

December 22, 2008

The Honorable Sidney A. Katz  
 Mayor, City of Gaithersburg  
 31 South Summit Avenue  
 Gaithersburg, MD 20760

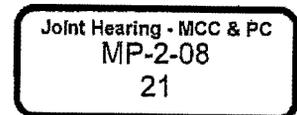
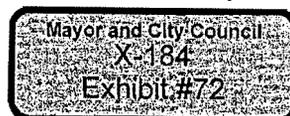


**SUBJECT: Draft Municipal Growth Element**

Dear Mayor Katz:

At its regular meeting on December 18, 2009, the Montgomery County Planning Board discussed the City of Gaithersburg 2003 Master Plan: Municipal Growth Element. Through a motion by Commissioner Alfandre and seconded by Commissioner Cryor, the Planning Board agreed to transmit the following comments to the City of Gaithersburg:

1. The future annexation of the enclave areas is consistent with the City's adopted 1997 Maximum Expansion Limits (MEL) Map. These areas include NIST, Hoyle's Addition, Londonderry, Oakmont, Walnut Hill, Rosemont, Washingtonian Residential, and Washingtonian Industrial Park and are totally surrounded by the City of Gaithersburg. The future annexation of the enclaves by the City of Gaithersburg is appropriate and consistent with forthcoming recommendations of the Gaithersburg West Master Plan.
2. The City should refer all annexation requests to the Planning Board and County Council for review prior to City action on the request. This provides an opportunity to address any proposed rezoning as well as other concerns, such as, the removal of the property from Moderately Priced Dwelling Unit (MPDU) requirements, the Transfer of Development Rights (TDR) program, and the constraints of the Adequate Public Facilities Ordinance (APFO). The 1992 Memorandum of Understanding between Montgomery County and the Cities of Rockville and Gaithersburg may need to be amended to include this requirement.
3. The City of Gaithersburg should include language in future annexation agreements that ensure the continuity of payment of Metropolitan District (Park) taxes after annexation. Despite the Planning Board's repeated request for the City to include this language in its annexation petitions, to date the City has yet to implement this recommendation.
4. The MEL should not include the Traville property which includes the Human Genome Sciences Headquarters complex and a portion of the Traville residential development. This area is an important element to the life science community.



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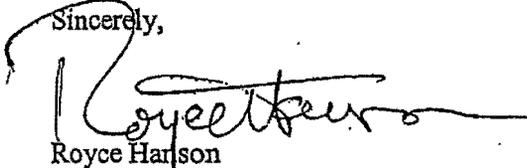
5. MD 28 would be a better boundary between the City of Gaithersburg and the *Potomac Subregion Master Plan* area than private property lines as shown on the proposed MEL Map. MD 28 is physically identifiable and would not split properties in the *Potomac Subregion Master Plan* area. This recommendation is consistent with Draft Municipal Growth Plan objectives.
6. Parcels in the Shady Grove Life Sciences Center (LSC) should remain outside Gaithersburg limits and under the planning and zoning jurisdiction of the County because the County has made a substantial investment in this area as a cornerstone of County economic activity. This includes the Belward property which was shown in the 1997 MEL.
7. There is an overlap between the City of Gaithersburg and the Town of Washington Grove's proposed MEL. Shady Grove Road, I-370, and the CSX railroad tracks are logical boundaries between the two municipalities. Further, there is a deed of dedication conveying the 12.4-acre Casey Mill Property legacy open space to the Maryland-National Capital Park and Planning Commission; therefore, it should not be included within the MEL of any municipality. The Oakmont Industrial Park is the only property in the 2006 *Shady Grove Sector Plan* that should be included in Gaithersburg's proposed MEL.
8. The annexation of the 65-acre McGown property is likely because of the adjacent Watkins Mill Town Center and Casey East projects in the City. The Planning Department staff would like to coordinate planning of this property with the City of Gaithersburg's Planning Department staff.
9. Emory Grove Road should be the boundary of the MEL east of Goshen Road. The annexation of a portion of Montgomery Village is not appropriate because it will split portions of the Montgomery Village Town Sector Zone.
10. The Draft Municipal Growth Plan designates a portion of the Quince Orchard area including the 14-acre vacant Johnson property in the proposed MEL. The annexation of this area does not have a physically identifiable boundary for the City. We are concerned about the possible loss of the potential park site on the Johnson property and recommends this area be excluded from the MEL.
11. The Longdraft Road area should be included within the City's MEL. When development occurs, however, we hope that the City will strive to protect mature trees and provide the environmental safeguards recommended in the 1985 Gaithersburg Vicinity Master Plan.

The Honorable Sidney Katz  
December 22, 2008  
Page Three

12. The Planning Department Staff look forward to a more in-depth discussion of each of the key properties identified for annexation as the City's review of the Draft Municipal Growth Plan continues.

During the meeting the Planning Board emphasized its concern over the inclusion of the Life Sciences Center and part of the Montgomery Village community in its proposed MEL. Finally, the Planning Board would like to thank Greg Ossont, Director, City of Gaithersburg's Planning and Code Administration for his participation in the discussion of the Municipal Growth Element. We look forward to discussing the issues in more detail with you during the City's Municipal Growth Plan work session.

Sincerely,



Royce Harrison  
Chairman

✓ cc: Greg Ossont

RH:cm:nm:ha



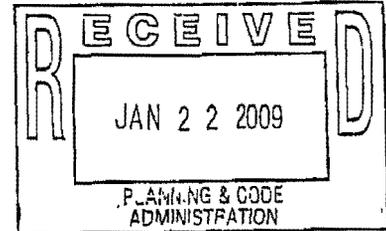
Maryland Department of Planning

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

Richard Eberhart Hall  
Secretary  
Matthew J. Power  
Deputy Secretary

January 20, 2009

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



Dear Mr. Ossont:

Thank you for sending us your draft copy of the *City of Gaithersburg Municipal Growth Element - A Master Plan Element, Draft September 24, 2008*. This draft was also sent to state agencies for their review and comment, and as comments are received, they will be forwarded to you.

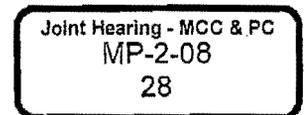
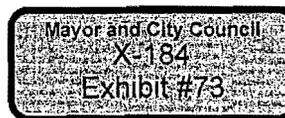
The Maryland Department of Planning staff members reviewed the document, and we have enclosed our comments.

We appreciated the opportunity to comment on this latest element to your *Master Plan*. If you have any questions or comments, please contact me at 410-767-4500 or Steve Allan at (410) 767-4572.

Sincerely,

Peter Conrad, AICP  
Director, Local Government Assistance

Enclosure:  
cc: Steve Allan





Maryland Department of Planning  
Comments on the 2008 City of Gaithersburg  
Municipal Growth Element - A Master Plan Element

**Overall**

Thank you for providing the Maryland Department of Planning (MDP) with the opportunity to review the 2008 Town City of Gaithersburg Municipal Growth Element.

**Past Growth Patterns**

The element includes a complete, well researched and thorough analysis of past growth patterns and the distribution of dominant housing types, but only since 1960. Although perhaps lacking a more in-depth analysis of historical trends and issues, this approach seems to be nonetheless appropriate because the population was so small then (3,847), and it is obvious that the main driver of Gaithersburg's growth has been its proximity to Washington DC and its location along the rapidly suburbanizing I-270 corridor. We note that the existing population for the city does not take into account the growth from 2000 through 2008. However, this information appears in Section 3 in Table 4.

**Population Projections/Future Land Use Needs**

This section uses an analysis appropriate for an older urban area that will experience growth through a combination of greenfields, vacant properties and properties with a redevelopment potential. Additional explanation and examples of types of development that constitute the low ratio of improved value to land values would be helpful.

The City has done a good job incorporating a development capacity/build out analysis in the draft MGE. The draft element provides a detailed methodology, estimated population, housing unit and jobs capacity for areas within the Baseline, Pipeline and Growth Areas. However, the absence of population projections make it difficult to determine if there is the proper balance between available land capacity (supply) and the City's anticipated population growth (demand). It does not appear that the City intends for the total land capacity to serve as the projected population; stating that the capacity analysis represents the City's future for the purpose of infrastructure planning. However, if this is the City's intention it should be stated and an explanation provided as to this decision.

Table 9 on page 24 estimates that there is capacity within the City's current corporate limits for an additional 29,492 to 51,986 people or 12,545 to 22,017 housing units; this capacity does not assume that any areas from the MEL (Maximum Expansion Limits) would be annexed. Including these areas would add an additional capacity of 30,785 to 52,838 people and 19,818 to 29,104 housing units. There is a total capacity within the City and MEL for 104,824 people or 43,886 housing units. MDP projections indicate that Montgomery County is projected to grow by 211,900 between 2005 and 2030; therefore the City of Gaithersburg has capacity for nearly half of the projected County growth. It is should be noted that historically the City of Gaithersburg has comprised about 6 percent of the County's total population.

The element suggests a dramatic increase in the jobs to housing ratio. This is to be accomplished through mixed use redevelopment and annexation. Some analysis of the impact of this on the tax base and services would be informative. Some Countywide context, perhaps using county control totals, would provide a perspective on this projected job growth. This chapter also discusses the use of a population factor (person per housing unit at 2.37) but does not indicate whether that factor would be expected to change during the period 2008 – 2030.

#### **Public Services and Infrastructure**

The element does estimate the public school impact of forecast growth at both 20 and 32 units/acre density. This section should speak to whether trends would support the same yield of students from housing types and also what the size of type of schools would be need to meet this population growth.

The recreation section suggests that it is unreasonable for the City to meet the State standard recommendation of 30 areas of parkland per 1000 person. Gaithersburg, being located in a rapidly growing region, should include a consideration of facilities that are adjacent to but not operated by the jurisdiction.

#### **Resource Lands**

The discussion of the preservation and use of resource lands in the Element is lacking regarding rural buffers and transition areas, but the city has determined that it is an urban, state designated growth area surrounded by built up suburbia. Such determination is consistent with MDP models and guidelines publication #25 (p.18). Major watercourses are mentioned, and natural resource regulations are referred to generally, but not specifically. Map 5 illustrates environmentally sensitive areas, but does not specify the amount of undevelopable acreage affected by steep slopes, wetlands buffers or 100 year floodplains. The Critical Area regulations do not apply.

#### **Future Annexations**

Gaithersburg is influenced by the growth and development of Montgomery County. The areas recommended for future growth and annexation (MEL) should have additional explanation as to the benefits of annexation and the impact on the provision of public services to those areas.

MEMORANDUM TO: Greg Ossont, Planning and Code Administration Director  
FROM: Lynn Board, City Attorney  
DATE: November 3, 2010  
SUBJECT: Great Indoors Property Annexation --  
Contiguous and Adjoining Issue

The annexation proposed for the Great Indoors property seeks to annex land into the City of Gaithersburg that currently is physically separated from the current City boundaries by Interstate 370 right-of-way. Other than this right-of-way, there is no intervening land and the interstate right-of-way would be included in the land to be annexed. Based on this circumstance, you have requested an opinion as to whether or not the City may find that the Great Indoors property is contiguous and adjoining for the purposes of annexation.

The Annotated Code of Maryland, Article 23A, §19(a)(1) grants the power to municipal corporations to enlarge their corporate boundaries through the annexation process, but only to land that is "contiguous and adjoining to the existing corporate area." While the Maryland courts have not directly ruled on the issue of whether an intervening roadway negates the contiguous and adjoining requirement, the Maryland Court of Appeals has found that land separated from a municipal boundary by a waterway was contiguous. *See Anne Arundel County v. City of Annapolis*, 352 Md. 117, 721 A.2d 217 (1998).

The Maryland Attorney General has addressed the "contiguous and adjoining" issue and has found that annexation of State-owned land, including road rights-of-way, is generally permissible. 75 Op. Atty. Gen. 348 (1990); 82 Op. Atty. Gen. 87 (1997). The Attorney General has opined that an area to be annexed is "contiguous" if it would be "in contact" with a municipal boundary and would be "adjoining" if inclusion of the highway ensures that a portion of the annexed property would be "located next to" the municipality. 82 Op. Atty. Gen. 87 (1997).

However, the Attorney General also opined in 82 Op. Atty. Gen. 87 (1997) that the "mere touching of boundaries resulting from a highway annexation does not, in our opinion satisfy the statutory requirement" that a property to contiguous and adjoining. 82 Op. Atty. Gen. 87 at 87. Rather, the municipality must analyze the relationship between the municipality and the property sought to be annexed. In making this determination, the municipality should look at whether the annexation would "result in a unified sense of community identity between the municipality and the annexed land." 82 Op. Atty. Gen. 87 at 87. An annexation should not create areas of the City that are "separated by remote or disconnected areas." 82 Op. Atty. Gen. 87 at 90.

In this particular circumstance, the proposed area to be annexed includes the Interstate 370 right-of-way and is not so remote or disconnected from the current City limits to defeat the unified sense of community standard espoused by the Attorney General. Certainly, the land is "in contact" with and is "located next to" the City. Gaithersburg, as well as numerous other municipalities in Maryland, has annexed other land that is physically separated from existing municipal boundaries by a road right-of-way.

Based on the above rationale, it is my opinion that the land proposed for annexation is contiguous and adjoining to the Gaithersburg municipal boundaries for the purposes of annexation and meets this requirement of §19(a)(1) of Article 23A of the Annotated Code of Maryland.

## MEMORANDUM OF UNDERSTANDING

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 establish 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.

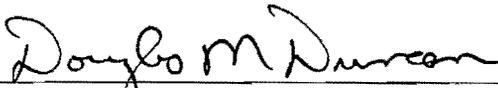
3. Rockville and Gaithersburg recognize the County's goal of requiring adequate public facilities in order to assure managed growth and acknowledge their accountability for the cooperative achievement of such goals. Within its boundaries each City will, however, assume responsibility for and determine 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 outlined in the Shady Grove Study Area Adopted Plan as being in the best interest of both the 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.

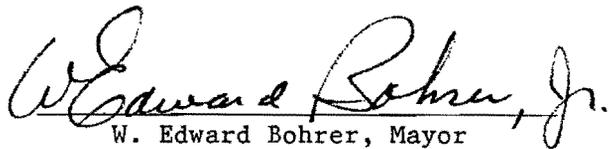
Dated this 23<sup>rd</sup> day of July in the year 1992.



Neal Potter  
County Executive



Douglas M. Duncan, Mayor  
City of Rockville



W. Edward Bohrer, Mayor  
City of Gaithersburg

MEMO TO: Mayor and City Council

VIA: John Schlichting, Director  
Planning & Code Administration

FROM: Trudy M.W. Schwarz, CFM  
Community Planning Director

DATE: July 31, 2012

SUBJECT: Annexation Petition X-184, Sears/Great Indoors

Prior to the City Council taking action on the subject petition, staff recommends that the Council reopen the record of X-184 to receive a number of documents that have been received after the closing of the record. The record of the public hearing of X-184 closed on Thursday, July 5, 2012. The following documents were received after the record-holding period and are attached to this memorandum:

- Notices of Public Hearing as published in *The Gaithersburg Gazette* (4-4-2012, 4-11-2012, 4-18-2012, & 4-25-2012)
- Montgomery County Council Staff Analysis 7-20-2012 for July 24 County Council Meeting
- Email and Letter to Montgomery County Council from Acting City Manager Tony Tomasello - Sears Annexation 7-20- 2012
- Letter to County Council from City Attorney Board 7-27-2012
- Montgomery County Council Staff Analysis July 31, 2012 County Council Meeting (including Draft Resolution of Approval)
- Montgomery County Council Staff Analysis July 31, 2012 County Council Meeting Addendum
- Resolution of Approval of the Montgomery County Council to reclassify the Sears Great Indoors' property from the R&D to MXD (Annexation Petition X-184) – July 31, 2012 (to be distributed when received from the County)
- This memo

Mayor and City Council  
X-184  
Exhibit #80

Resolution No.: 17-530  
Introduced: July 24, 2012  
Adopted: July 31, 2012

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND**

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By: District Council

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**SUBJECT:** Approval of the City of Gaithersburg's request to express approval for the reclassification of the Sears Great Indoors Property from the R&D zone to the MXD zone (Annexation Petition No. X-184)

**Background**

1. 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 which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan without express approval of the County Council.
2. 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 rights-of-way.)
3. 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.
4. The property is included in the maximum expansion limits of both the City of Gaithersburg and the City of Rockville.
5. 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.
6. Planning Staff, in a memorandum to the Planning Board completed April 19, 2012, found that the petition proposes new zoning that includes uses substantially different from the uses allowed by the existing zoning and recommended in the 2006 Approved and Adopted Shady Grove Sector Plan.

Mayor and City Council  
X-184  
Exhibit #81

7. On April 26, 2012, the Montgomery County Planning Board reviewed Annexation Petition No. X-184. The Board unanimously voted to recommended approval of the annexation if it included a condition that the City of Gaithersburg not approve plans for residential uses on the subject property due to proximity to the Solid Waste Transfer Station.
8. In a letter to the Mayor and Council of Gaithersburg dated May 8, 2012, the Maryland Department of Planning agreed with Planning Staff that the petition proposes new zoning that includes uses substantially different from the uses allowed by the existing zoning and recommended in the 2006 Approved and Adopted Shady Grove Sector Plan.
9. On June 11, 2012, the Planning, Housing, and Economic Development Committee reviewed the annexation petition and recommended approval of the City of Gaithersburg's request to express approval for the reclassification of the Sears Great Indoors property from the R&D zone to the MXD zone (Annexation Petition No. X-184), if the Council could be assured that residential development would not occur on the annexed property.
10. The owner of the property to be annexed has unilaterally decided to place a restrictive covenant on its property that would preclude residential use of the property for so long as the transfer station remains an operative use on the adjoining property.
11. On July 31, 2012, the County Council reviewed Annexation Petition No. X-184 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee. The Council concluded that would give its express approval to the proposed reclassification of the Sear's Great Indoors property from the R&D zone to the MXD zone.

**Action**

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland approves the following resolution:

Under Article 23A Section 9(c) of the Annotated Code of Maryland, the District Council approves the reclassification by the City of Gaithersburg of the Sears Great Indoors Property from the County's Research and Development (R&D) zone to the City's Mixed-Use Development (MXD) zone.

This is a correct copy of Council action.

  
\_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

**ANNEXATION AGREEMENT  
(X-184)**

THIS ANNEXATION AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between SEARS, ROEBUCK AND CO., a New York corporation, having its principal office at 3333 Beverly Road, Hoffman Estates, Illinois 60179 (“Sears”), THE CITY OF GAITHERSBURG, a municipal corporation of the State of Maryland, and THE MAYOR AND COUNCIL OF GAITHERSBURG (collectively, “City”) having their principal offices at 31 South Summit Avenue, Gaithersburg, Maryland 20877.

WHEREAS, Sears is the fee simple owner of approximately 13.66 acres of property generally located on the south side of Shady Grove Road, between Maryland Route 355 and Oakmont Avenue, as more particularly shown as Lot A on Plat No. 7952, and further defined as Part of Parcel A due to an acquisition by Northeast Maryland Waste Disposal Authority recorded at Liber 11236 at Folio 694 and dated January 12, 1993, attached hereto and made a part hereof as Exhibit “A” (the “Subject Property”); and

WHEREAS, Sears has petitioned the City to annex the Subject Property, as well as certain portions of the I-370 and Shady Grove Road rights-of-way, which together total approximately 27.89 acres of land, as more particularly described on Exhibit “B” attached hereto and made a part hereof (collectively, the “Property”), into the corporate boundaries of the City of Gaithersburg pursuant to Annexation Petition No. X-184 (the “Petition”); and

WHEREAS, the Property is contiguous to and adjoins the existing corporate boundaries of the City and annexation of the Property as proposed does not create any unincorporated area 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; and

WHEREAS, pursuant to the requirements of Section 19(c) of Article 23A of the Annotated Code of Maryland, 1957, 2010 Replacement Volume (the “Code”), the City has verified the signatures on the Petition and ascertained that the entity signing the Petition is the owner of not less than twenty-five percent (25%) of the assessed valuation of real property located in the area to be annexed and constitutes not less than twenty-five percent (25%) of the persons who reside in the area to be annexed, and who are registered as voters in Montgomery County (the “County”) electives in the precincts in which the territory to be annexed is located; and

WHEREAS, pursuant to the provisions of Section 19(c) of Article 23A of the Code, a resolution has been introduced by the City proposing to change the municipal boundaries of the City of Gaithersburg as requested in the Petition (the “Resolution”); and

WHEREAS, pursuant to Section 19(d) of Article 23A of the Code, all required public notice and hearings pertaining to the proposed annexation have been published and conducted by the City; and

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

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

WHEREAS, the City has recommended that the Subject Property be placed in the MXD, Mixed-Use Development Zone and, in a resolution, intends to place the Subject Property in the MXD Zone; and

WHEREAS, pursuant to Section 9(c) of Article 23A of the Code the Montgomery County Council has expressly approved the reclassification of the Subject Property from the R&D, Research and Development Zone to the MXD Zone; and

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

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

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

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

2. ZONING.

Concurrent with the adoption of the Resolution, the City will, by resolution, classify the Subject Property in the City's MXD Zone (Chapter 24 of the City Code, Article III, Division 19, Section 24-160D1., *et seq.*; "MXD Zone").

3. LAND USE.

(a) Sears and the City agree that under the MXD Zone, the existing improvements and uses shown on the Existing Conditions Plan attached hereto and made a part hereof as Exhibit “C” (“Existing Improvements”) may be retained on the Subject Property. Additional retail and office components may also be introduced on the Subject Property, as permitted in the MXD Zone. The City agrees to issue all necessary permits for such uses as provided in subsection (b) below.

(b) Sears and the City agree that no further reviews or approvals, except for those associated with applicable building alteration and use and occupancy permits, shall be required for the continued use of the Existing Improvements for retail, service and office uses, including, but not limited to, forest conservation, stormwater management, and adequate public facilities review and approvals. Sears and the City further agree that no adequate public facilities review, fees, or approvals will be required for any expansion of Existing Improvements up to ten percent (10%) of existing floor area. Sears and the City agree that any forest conservation and/or stormwater management requirements triggered by such expansion of the Existing Improvements, which requirements cannot be waived by the City, will be limited to the actual expansion area and actual limits of disturbance and can be met by means other than on-site reforestation or stormwater management, including, but not limited to, fee-in-lieu or waiver payments and off-site reforestation or stormwater management.

(c) Sears agrees that any future expansion of Existing Improvements of ten percent (10%) or below the expansion noted in (b) above shall be subject to the procedures and authority of the City Planning Commission to approve an amendment to final site plan for such development.

(d) Sears and the City agree that any future expansion of the Existing Improvements beyond the ten percent (10%) or redevelopment of the Subject Property shall be pursuant to the provisions of the MXD Zone, presently in effect, or as may be hereinafter amended from time to time. The City acknowledges and agrees that any future development density shall not be reduced as a result of dedications, reservations and/or acquisitions for public use, if any.

4. MASTER PLAN COMPLIANCE. The City agrees that any revisions to the City's master plans shall be consistent with the terms and conditions of this Agreement and shall make no additional or inconsistent recommendations for a period of ten (10) years following the date of this Agreement.

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

6. PERMIT FEES AND PROCESSING. For a period of ten (10) years from the date of this Agreement, the City agrees to waive and not require Sears to pay any required building permit fees otherwise due and payable to the City in the ordinary course of processing building and use and occupancy permits for up to a ten percent (10%) expansion of the floor area of Existing Improvements. The City further agrees that all necessary permits related to such expansion shall be given priority review status by the City without additional fee.

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

8. REBATE OF MUNICIPAL TAXES. For a period of five (5) years from the date of this Agreement, for any fiscal year (July 1-June 30) during which the Existing Improvements on the Subject Property are more than 50% vacant for greater than 50% of that fiscal year the City agrees to fully rebate municipal taxes payable relative to the Subject Property. The City shall rebate such taxes, via check, within thirty (30) days of their transfer by the County to the City.

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

10. EFFECTIVE. This Agreement shall not become effective until the Resolution is effective pursuant to Article 23A, Section 19 of the Annotated Code of Maryland (hereinafter "Effective Date of Annexation"). At any time prior to the Effective Date of Annexation, Sears may withdraw the Petition and any consent previously given to the annexation, and this Agreement shall be terminated and be of no force and effect and the parties shall have no obligations or liabilities hereunder.

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

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

13. BINDING NATURE OF AGREEMENT. This Agreement and all terms, restrictions and conditions contained herein, shall run with the land and be binding upon the

respective parties, their heirs, successors, grantees and assigns. Any amendment or modification to this Agreement shall be in writing, executed by the respective parties or their successors, grantees or assigns, and shall be effective upon recordation among the Land Record of Montgomery County, Maryland.

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

15. LAND RECORDS. Within ten (10) business days of the Effective Date of Annexation, this Agreement shall be recorded in the Land Records of Montgomery County, Maryland.

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

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

WITNESS:

SEARS, ROEBUCK AND CO.,  
a New York corporation

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\* \* \*

DRAFT

STATE OF  
COUNTY OF

\*  
\* to wit:  
\*

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

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

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

WITNESS:

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

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF

\*  
\* to wit:  
\*

COUNTY OF

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

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

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

**From:** [Sidney Katz](#)  
**To:** [John Schlichting](#); [Trudy Schwarz](#)  
**Subject:** FW: Statement on your annexation vote.  
**Date:** Monday, August 06, 2012 8:58:21 AM

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FYI

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**From:** Tom Moore [mailto:thmoore.cc@gmail.com] **On Behalf Of** Tom Moore  
**Sent:** Monday, August 06, 2012 12:31 AM  
**To:** Sidney Katz; Henry Marraffa - External; Michael Sesma; Cathy Drzyzgula; Jud Ashman; Ryan Spiegel  
**Subject:** Statement on your annexation vote.

Sid, Ryan, Jud, Cathy, Henry, Mike:

I wanted to make sure you had the opportunity to read my statement regarding your vote tonight:

[Gaithersburg's Destructive Drive Toward Annexing Sears](#)

I hope that each of you takes it to heart. I am sorry that I cannot be there to deliver it to you in person tonight.

Please add the statement to the record of your proceedings in this matter.

Regards,

Tom

-----  
**Tom Moore**  
Councilmember  
City of Rockville  
[tmoores@rockvillemd.gov](mailto:tmoores@rockvillemd.gov)  
240-314-8292 (office)  
240-753-0811 (cell)

Mayor and City Council  
X-184  
Exhibit #83

<http://councilmembermoore.org/?p=57>

COUNCILMEMBER Tom Moore  
CITY OF ROCKVILLE, MD

Posted on **August 5, 2012** by **Tom**

## Gaithersburg's Destructive Drive Toward Annexing Sears

Tomorrow night, Gaithersburg's elected officials – Mayor Sidney Katz, Vice President Ryan Spiegel, and Councilmembers Jud Ashman, Cathy Drzyzgula, Henry Marraffa, and Mike Sesma – are preparing to wreak serious, unnecessary, and perhaps permanent damage upon the relationship between their city and the City of Rockville.

They are voting Monday night, Aug. 6, on whether to annex to Gaithersburg 28 acres of property on the Rockville side of Shady Grove Road. The City of Rockville has attempted to block this move in a variety of ways without success.

Maryland gives unusually strong powers to municipalities that want to annex property. There is nothing the City of Rockville, Montgomery County, or the State of Maryland can do to stop this process, and time is short.

All that can be done at this point is to appeal to the propriety of Gaithersburg's leaders and to make sure that Sid, Ryan, Jud, Cathy, Henry, and Mike understand just how much their proposed action has disappointed and angered Rockville's leadership – and just how much it will damage the relationship between their city and the City of Rockville. Not *might* damage, or *could* damage, but **will** damage the relationship. Those of us on the Rockville side who thought we had solid personal relationships with members of Gaithersburg's Mayor and Council feel quite personally burned.

To put it simply, Gaithersburg is betraying its friend and neighbor. Rockville's leaders consider this proposed annexation to be a deeply threatening move against our vitally important long-term interests. The City of Rockville will have to think long and hard about how and whether it can work with the City of Gaithersburg in the future. I find it difficult to believe that the taxes Gaithersburg will gain from this parcel will be worth it.

To annex this property, Gaithersburg is violating the formal agreement it has had in place with the City of Rockville for over twenty years, and violating the informal understanding that has been in place for far longer than that. Shady Grove Road has *always* been considered the natural boundary between the two municipalities – a line reinforced by the relatively recent addition of Interstate 370 snaking between them. Perhaps the best indication of where everyone understood the border to be is the sign that adorns the south side of the I-370 bridge as it crosses Rockville Pike:



For a city to annex a parcel, it has to be contiguous to the city in some way. The Sears property doesn't come close to touching Gaithersburg at the moment. Gaithersburg aims to connect to the parcel by annexing right of way down Rockville Pike, *right past this sign*, hanging a turn onto Shady Grove Road, and proceeding until it touches the Sears property on the Rockville side of the road. It's a perfectly legal maneuver, but it's exactly the kind of thing that friends do *not* do to each other.

That Gaithersburg's path to this property runs right past the city's own welcome sign is a telling sign that this property should be Rockville's.

Rockville's leadership responded too slowly to this threat, and I take full responsibility for my part in that. Looking back, I think that we were slow to recognize this threat for what it was because we simply couldn't believe that Gaithersburg would strike against Rockville's interests so brazenly.

Gaithersburg Mayor Sidney Katz told [Gaithersburg Patch](#) something amazing, and, I think, very revealing the other day. The two cities have had a "memorandum of understanding" (MOU) (found [here](#)) in place since 1992 that governs how the cities will confer with each other when approaching issues like this.

Gaithersburg appears to believe all its obligations to behave honorably toward its neighboring city expired with the agreement late last month:

*"By not voting to annex the property until after its expiration, Gaithersburg did not violate the memorandum, Katz said."*

**This is absolutely outrageous.** All of this was timed to happen *two weeks* after Gaithersburg believed a *20-year agreement* expired? Who *does* that? No one I want to do business with. Does Gaithersburg intend to stab its neighbors in the back the very first moment they think they can get away with it in *every* instance, or just *this* one? What else should Rockville be preparing for?

Plus, Gaithersburg did indeed violate the memorandum. Provision 5 reads:

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

Needless to say, when Gaithersburg embarked upon its plan to annex this land (and change its zoning), it utterly failed to consult or participate with the other parties to the MOU. A final vote on an annexation is not when the matter is “undertaken” – this has been in the works for months if not longer.

Moreover, the memorandum of understanding simply did *not* expire on July 23, 2012, as Gaithersburg seems to believe. While Provision 1 of the MOU mentions a “twenty-year planning horizon” with which the parties to the agreement were working, and the agreement was indeed signed on July 23, 1992, it does not suggest that the “planning horizon” is an expiration date. The MOU is *not* limited to twenty years. Provision 9 makes this crystal-clear:

*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.*

**All** future actions. **All** of them, until the parties to the Agreement together agree to do something else, which we have not done.

Since Rockville belatedly sprang into action on this, we have pursued four paths simultaneously:

**1. Change Sears’ mind on applying to Gaithersburg.** *We met with Sears’ attorneys and put our best case forward, but Sears decided to stay the course it started when Gaithersburg approached the company and offered annexation.*

**2. Look to Montgomery County to change the zoning.** *Sears was not interested in this option, which would have taken too long.*

**3. Block Gaithersburg’s annexation via our own annexation of Shady Grove Road itself.** *We made a valiant attempt to draw a line between the cities here, but we have not been able to catch up to Gaithersburg’s procedural schedule.*

That leaves us one last chance at this stage:

**4. See if we can persuade Gaithersburg’s leaders to change their minds.**

Rockville’s Mayor and Council have been in touch with Gaithersburg’s leaders formally and informally, asking them to change course. So far, they have declined to do so.

I cannot emphasize enough how aggressive Rockville considers Gaithersburg’s move to be, and how much it shatters the trust the cities have built for decades. Gaithersburg’s proposed annexation endangers the long-term future and shape of the City of Rockville. Threats to a city do not get more elemental than this.

**Sid, Ryan, Jud, Cathy, Henry, and Mike:** You still have the opportunity to avoid making this mistake. Please consider your actions very carefully here. Our cities have worked exceptionally well together at times over the years, and competed honorably for residents and businesses at other times. Please do not bring this productive period to an ugly close. Both cities deserve better.

Until you vote Monday night, you still have time to do the right thing. I urge you to do so.

Tom Moore  
Rockville City Council

**From:** [Cathy Drzyzgula](#)  
**To:** [Trudy Schwarz](#)  
**Subject:** FW: Statement on your annexation vote.  
**Date:** Monday, August 06, 2012 11:37:54 AM

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From: Cathy Drzyzgula  
Sent: Monday, August 06, 2012 7:44 AM  
To: Tom Moore; Sidney Katz; Henry Marraffa - External; Michael Sesma; Jud Ashman; Ryan Spiegel  
Subject: RE: Statement on your annexation vote.

Your message will be added to our record. Please attend or watch our meeting to hear our point of view.

Cathy Drzyzgula  
Councilmember  
Gaithersburg

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From: Tom Moore [thmoore.cc@gmail.com] On Behalf Of Tom Moore [tmoore@rockvillemd.gov]  
Sent: Monday, August 06, 2012 12:31 AM  
To: Sidney Katz; Henry Marraffa - External; Michael Sesma; Cathy Drzyzgula; Jud Ashman; Ryan Spiegel  
Subject: Statement on your annexation vote.

Sid, Ryan, Jud, Cathy, Henry, Mike:

I wanted to make sure you had the opportunity to read my statement regarding your vote tonight:

Gaithersburg's Destructive Drive Toward Annexing Sears <<http://councilmembermoore.org/?p=57>>

I hope that each of you takes it to heart. I am sorry that I cannot be there to deliver it to you in person tonight.

Please add the statement to the record of your proceedings in this matter.

Regards,

Tom

-----  
Tom Moore  
Councilmember  
City of Rockville  
tmoore@rockvillemd.gov <<mailto:tmoore@rockvillemd.gov>>  
240-314-8292 (office)  
240-753-0811 (cell)

Mayor and City Council  
X-184  
Exhibit #84

**From:** [Sidney Katz](#)  
**To:** [Tom Moore](#); [Henry Marraffa - External](#); [Michael Sesma](#); [Cathy Drzyzgula](#); [Jud Ashman](#); [Ryan Spiegel](#)  
**Cc:** [John Schlichting](#); [Lynn Board](#); [Trudy Schwarz](#)  
**Subject:** RE: Statement on your annexation vote.  
**Date:** Monday, August 06, 2012 9:37:02 AM

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Tom,

As Cathy has previously emailed you this morning, we will include your email in our record.

I do believe that it should be noted, that I believe, there are several inaccuracies in your statement.

Regards,  
Sidney

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**From:** Tom Moore [mailto:thmoore.cc@gmail.com] **On Behalf Of** Tom Moore  
**Sent:** Monday, August 06, 2012 12:31 AM  
**To:** Sidney Katz; Henry Marraffa - External; Michael Sesma; Cathy Drzyzgula; Jud Ashman; Ryan Spiegel  
**Subject:** Statement on your annexation vote.

Sid, Ryan, Jud, Cathy, Henry, Mike:

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Regards,

Tom

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**Tom Moore**  
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240-314-8292 (office)  
240-753-0811 (cell)

Mayor and City Council  
X-184  
Exhibit #85

**From:** [Tom Moore](#)  
**To:** [Sidney Katz](#)  
**Cc:** [Henry Marraffa - External](#); [Michael Sesma](#); [Cathy Drzyzgula](#); [Jud Ashman](#); [Ryan Spiegel](#); [John Schlichting](#); [Lynn Board](#); [Trudy Schwarz](#); [mayorcouncil@rockvillemd.gov](#)  
**Subject:** Re: Statement on your annexation vote.  
**Date:** Monday, August 06, 2012 10:02:46 AM

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Sid,

Thank you.

If there are inaccuracies in the statement, I absolutely want to know about them.

Tom

On Aug 6, 2012, at 9:37 AM, Sidney Katz <[SKatz@gaitthersburgmd.gov](mailto:SKatz@gaitthersburgmd.gov)> wrote:

Tom,

As Cathy has previously emailed you this morning, we will include your email in our record.

I do believe that it should be noted, that I believe, there are several inaccuracies in your statement.

Regards,  
Sidney

---

**From:** Tom Moore [mailto:[thmoore.cc@gmail.com](mailto:thmoore.cc@gmail.com)] **On Behalf Of** Tom Moore  
**Sent:** Monday, August 06, 2012 12:31 AM  
**To:** Sidney Katz; Henry Marraffa - External; Michael Sesma; Cathy Drzyzgula; Jud Ashman; Ryan Spiegel  
**Subject:** Statement on your annexation vote.

Sid, Ryan, Jud, Cathy, Henry, Mike:

I wanted to make sure you had the opportunity to read my statement regarding your vote tonight:

[Gaithersburg's Destructive Drive Toward Annexing Sears](#)

I hope that each of you takes it to heart. I am sorry that I cannot be there to deliver it to you in person tonight.

Please add the statement to the record of your proceedings in this matter.

Regards,

Tom

Mayor and City Council  
X-184  
Exhibit #86

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**Tom Moore**

Councilmember

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**Tom Moore**

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