

Kirk Eby

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**From:** Susan Llareus -MDP- <susan.llareus@maryland.gov>  
**Sent:** Tuesday, June 13, 2023 10:31 AM  
**To:** Rob Robinson; Kirk Eby  
**Cc:** Kronenberg, Robert; Sanders, Carrie; Michael Hackman; McVary, Jessica; Yearwood, Nkosi; Chuck Boyd -MDP-; Sarah Diehl -MDP-; Joseph Griffiths -MDP-  
**Subject:** Fwd: City of Gaithersburg Notice of Annexation  
**Attachments:** Attachements.pdf; Boyd X-9510-2023.pdf; MDP Anex Rev Ltr Gaithersburg Walnut Hill Section One.pdf

This email is from an EXTERNAL source. Please use caution when opening attachments, clicking links, or responding.

Good morning Rob,

Attached is our review letter in regard to the Walnut Hill Section One Annexation and the submission materials. We have had numerous email conversations relating to the complicated comparison of FAR (as a function of the density) with your staff and Montgomery County relating to Section 4-416(b) of the Local Government Article. I understand that the two planning departments are working together to analyze the proposal. We have numerous internal obligations and field work this week and decided to complete the letter rather than holding up the local process.

Please let me know if you have any questions or concerns.

Thank you,

Susan

----- Forwarded message -----

**From:** Rob Robinson <[Rob.Robinson@gaitthersburgmd.gov](mailto:Rob.Robinson@gaitthersburgmd.gov)>  
**Date:** Tue, May 16, 2023 at 4:21 PM  
**Subject:** City of Gaithersburg Notice of Annexation  
**To:** Chuck Boyd <[CBoyd@mdp.state.md.us](mailto:CBoyd@mdp.state.md.us)>  
**Cc:** Susan Llareus -MDP- <[susan.llareus@maryland.gov](mailto:susan.llareus@maryland.gov)>

Hi Chuck and Susan, attached are the official notification materials for a pending annexation into the City. Feel free to touch base with any questions,

Rob

Rob Robinson III, AICP CEP

FCA Qualified Professional

Long Range Planning Manager

City of Gaithersburg

240-805-1072



**Susan Holm Llareus, PLA, ASLA**  
**Regional Planner for Maryland Capital Region**  
**Planner Supervisor**  
**Maryland Department of Planning**  
301 W. Preston St., Suite 1101  
Baltimore, MD 21201  
(410) 767-6087/ (877) 767-6272  
[susan.llareus@maryland.gov](mailto:susan.llareus@maryland.gov)

[Please take our customer service survey.](#)

[Planning.Maryland.gov](http://Planning.Maryland.gov)

[Census.Maryland.gov](http://Census.Maryland.gov)

<https://facebook.com/MDPlanning>



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## Maryland DEPARTMENT OF PLANNING

June 13, 2023

The Honorable Jud Ashman, Mayor  
The City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, MD 20877

Dear Mayor Ashman:

Thank you for providing the Maryland Department of Planning (MDP) with information pertaining to the Walnut Hill Section One annexation. Planning has reviewed your submission and offers the following comments for consideration.

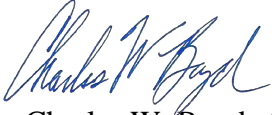
As you are aware, §4-416(b) of the Local Government Article specifies that the new zoning for the annexed land cannot be substantially different from the existing county zoning, without the express consent of the Montgomery County Council. It is the MDP's view that the density/intensity comparison between the county and municipal zoning is unclear and that the county and city should meet to make the determination of whether the municipal zoning is inconsistent with the county. If the county determines the proposed zoning is substantially different and/or substantially higher density, MDP recommends that the city seek a waiver from Montgomery County prior to annexation, if it wants to allow development of the annexed land within the next five years for land uses substantially different than those authorized uses in accordance with applicable county zoning, as provided in §4-416 of the Local Government Article. Please see MDP's attached Annexation Review for further details of our analysis.

The property proposed for annexation is currently located in a county-certified Priority Funding Area (PFA). Based on MDP's review of the annexation, the subject property appears eligible to remain designated as a PFA upon annexation. Upon the effective date of Resolution X-9510-2023, and once MDP has received official notification of the annexation from the Department of Legislative Services, MDP will confirm that no changes have occurred since our initial review and affirm the Municipal PFA eligibility of the property. If Gaithersburg does not want the annexation parcel to be considered for designation as a Municipal PFA, then the city should notify MDP prior to the effective date of the annexation.

Enclosed you will find important information concerning post annexation notification and participation in the Census Bureau's Boundary and Annexation Survey. The City of Gaithersburg should follow the appropriate procedures so that the annexed property is legally established as part of the incorporated municipality. To expedite MDP's updating of the PFA status, please send Susan Llareus a copy of the notification transmitted to the Department of Legislative Services.

If you desire further assistance please contact regional planner, Susan Llareus at (410) 767-6087 ([susan.llareus@maryland.gov](mailto:susan.llareus@maryland.gov)) or Sarah Diehl at (410) 767-4547 ([sarah.diehl@marylandgov](mailto:sarah.diehl@marylandgov)).

Sincerely,



Charles W. Boyd, AICP  
Director, Planning Coordination

cc: Rebecca L. Flora, AICP Secretary of Planning  
John Schlichting, Director, City of Gaithersburg Planning & Code Administration  
Tanya Stern, Acting Montgomery County Planning Director  
Joe Griffiths, Manager Local Assistance and Training  
Susan Llareus, Planner Supervisor, Regional Planner for Maryland Capital Region  
Sarah Diehl, Southern Maryland Regional Planner

Attachments: Maryland Department of Planning Annexation Review  
Municipal Reporting Responsibilities Following Annexation  
Municipal Charter or Annexation Resolution Reposition Form

# Annexation Review Walnut Hill Section One

<b>Municipality</b>	Gaithersburg
<b>Name of Annexation</b>	Walnut Hill Section One
<b>Resolution Number</b>	X 9510-2023
<b>Size of Parcels</b>	9.63 Acres
<b>Is the property contiguous in accordance with Section 4-401?</b>	Yes
<b>Public Hearing Date</b>	9/5/2023
<b>Current County Zoning</b>	Commercial Residential Town - CRT
<b>Existing Density</b>	2.25 FAR

## **Purpose of the Current County Zoning District**

The annexation property is currently zoned CRT (Commercial Residential Town) 2.25, C 1.5, R .75, H-45 commercial zone pursuant to the Montgomery County Zoning Ordinance. According to the zoning ordinance, the CRT zone in general permits a mix of residential and nonresidential uses at varying densities and heights. The zones promote economically, environmentally, and socially sustainable development patterns where people can live, work, recreate, and access services and amenities. The application of the CRT zone is appropriate where impacts can be mitigated by co-locating housing, jobs, and services. The intent of the CRT zone is to:

1. implement the recommendations of applicable master plans;
2. target opportunities for redevelopment of single-use commercial areas and surface parking lots with a mix of uses;
3. encourage development that integrates a combination of housing types, mobility options, commercial services, and public facilities and amenities, where parking is prohibited between the building and the street;
4. allow a flexible mix of uses, densities, and building heights appropriate to various settings to ensure compatible relationships with adjoining neighborhoods;
5. integrate an appropriate balance of employment and housing opportunities; and
6. standardize optional method development by establishing minimum requirements for the provision of public benefits that will support and accommodate density above the standard method limit.

Additionally, the zoning ordinance notes the CRT zone is intended for small downtown, mixed-use, pedestrian-oriented centers and edges of larger, more intense downtowns. Retail tenant ground floor footprints are limited to preserve the town center scale. Transit options may include light rail, Metro, and bus.

## **Permitted Use in the Current County Zoning District**

Permitted uses include nursery (retail), residential (single-unit, two-unit, townhouse, and multi-family living), residential care facility up to 16 persons, charitable, philanthropic, or cultural institutions, day care facilities up to 30 persons, private educational institutions, private playgrounds/outdoor areas, private clubs, religious assembly, restaurant establishments, hotel and motel lodging, medical and dental facilities - including laboratories, office space - including research and development, structured parking, conference center, health clubs and facilities, retail/service establishments up to 50,000 SF, accessory commercial uses including amateur radio facilities (up to 65 ft. in height) and live/work units, artisan manufacturing and production, railroad tracks, below ground pipeline and distribution lines, and accessory structures.

## **Proposed Municipal Zoning**

C-2, General Commercial and CD, Corridor Development

## **Purpose of the Proposed Municipal Zoning District**

16531 S Frederick Ave is proposed to be placed in the C-2 Zone, General Commercial. According to the City of Gaithersburg Zoning Ordinance, the purpose of the C-2 zone is "to include commercial uses serving the regional and local area, together with normal supplemental uses and other uses compatible with a cohesive and attractive shopping and office area."

8939 and 8941 N Westland Drive is proposed to be placed in the CD Zone, Corridor Development. According to the City of Gaithersburg Zoning Ordinance, the purpose of the CD zone is to:

"(a) Encourage a form of development, consistent with the goals and provisions of the respective master plans for the city that will achieve the physical characteristics necessary to enhance the economic vitality, planned visual character and quality of life within an identified transportation corridor in the city.

(b) Create a more attractive and cohesive development pattern and to enhance the city's sense of place through the creation of individual character associated with the corridor in the applicable corridor master plan.

(c) Encourage development and redevelopment and renovation of declining or underutilized properties along the corridor.

(d) Encourage the use of consistent, compatible and attractive architecture, streetscape and visual themes.

(e) Create a streamlined process for zoning and plan approvals.

(f) Provide an appropriate scale of development and mix of retail, service, employment and residential uses as recommended in the applicable corridor plan."

### **Permitted Use in the Proposed Municipal Zoning District**

The C-2 and CD zones allow for many of the same uses as the county's CRT zone. The C-2 zone permits uses such as retail stores, personal service businesses, banks, offices, restaurants, private clubs, lodges, and fitness centers, animal hospitals, repair and businesses services, cocktail lounges, theaters, and indoor recreational facilities, funeral homes, research facilities- including laboratories, child and/or adult day care centers, fire stations, auto service centers, hotels, and motels; most notably it does not permit residential development. The zoning in the CD zone is extremely flexible in that it allows most uses except for a few prohibited such as automobile repair shops, pawn shops, self-service storage facilities, and industrial uses such as production/manufacturing/assembly/processing and the storage or usage of heavy trucks and equipment.

### **Are the permitted uses in the proposed municipal zoning similar to those in the county zoning? Both**

Yes and no. From a use perspective, the proposed city zoning classifications of C-2 (General Commercial) and CD (Corridor Development) are generally consistent with the existing county classification of CRT because the allowable commercial uses from each of the perspective zoning classifications are similar in nature. It is important to note the C-2 zone (16531 South Frederick Avenue, Shopping Center) does not permit residential uses as allowed in the county zoning. Zone CD (proposed for 8939 and 8941 North Westland Drive) permits residential development.

### **Is the permitted density in the proposed municipal zoning similar to density permitted in the county zoning? Both**

Yes and no. It is the MDP's view that the the density/intensity comparison between the county and municipal zoning is unclear and that the county and city should meet to make the determination of whether the municipal zoning is inconsistent with the county.

### **County waiver recommended? Yes**

If the county determines the proposed zoning is substantially different and/or substantially higher density, MDP recommends that Gaithersburg seek a waiver from Montgomery County prior to annexation.

### **Issues of State interest:**

N/A

### **Is the property in a Designated Growth Area? Yes**

The annexation property is within the boundaries of the City's designated Maximum Expansion Limits (MEL) as shown in the Municipal Growth Element of the City's 2003 Master Plan, adopted April, 2009.

### **Is the property eligible to become a Priority Funding Area? Yes**

The annexation property is currently located in a county certified Priority Funding Area (PFA).

### **Maryland Department of Planning Reviewer:**

**Date Submitted:** 5/16/2023



## **MUNICIPAL REPORTING RESPONSIBILITIES FOLLOWING ANNEXATION**

### **State Municipal Reporting Responsibilities**

There are state law municipal reporting responsibilities requiring the municipality to promptly submit certain information after an annexation is approved:

1. The Local Government Article, section § 4-414, Annotated Code of Maryland, requires that municipalities send a copy of the annexation resolution with the new boundaries to the Maryland Department of Legislative Services if an annexation is approved. Please copy the Maryland Department of Planning so that we are aware of the approved annexation boundaries.

The copy of the annexation resolution, along with the Municipal Charter Or Annexation Resolution Reposition Form (below), with the new boundaries shall be sent within 10 days after the resolution takes effect to:

State Department of Legislative Services  
Legislative Division  
90 State Circle  
Annapolis, Maryland 21401

2. State law requires that upon annexation approval, the chief executive and administrative officer of a municipality that has annexed property forward the annexation resolution and map with the new boundary to the local municipal clerk, Clerk of the Court in the county or counties in which the municipal corporation is located and, for those municipalities in Montgomery and Prince George's County, to the Maryland-National Capital Park and Planning Commission.

## **Census Bureau Boundary and Annexation Survey**

To ensure that persons residing on annexed land are counted as part of the municipal population, the U.S. Census Bureau periodically mails to all municipal corporations a Boundary and Annexation Survey (BAS).

Following an annexation, no immediate action is required. The Census Bureau will notify the person who has been identified by the municipality as the contact person by mail and/or e-mail. Municipalities may submit boundary corrections or changes through the Bureau's free Partnership software. In the past, the U.S. Census Bureau mailed out the BAS survey on a varying schedule based on the population size of the incorporated town. The Mayor or other municipal officials must complete the BAS, update the maps and certify that the boundary shown reflects the legal corporate limits as of January 1 of the survey year. Boundary information must be returned to the Census Bureau by March 1<sup>st</sup> of the survey year to be properly recorded for the Census Bureau's annual population estimates and American Community Survey products.

The purpose of the Survey is to obtain the most accurate boundary information, including boundary changes due to annexations, detachments, mergers, or other reasons. These boundary changes are incorporated into the Census Bureau's files and used for tabulating Census data. The BAS information is used to provide an appropriate record for reporting the results of the decennial and economic censuses, and annual surveys such as the Population Estimates Program and the American Community Survey.

Maryland Department of Planning can assist municipalities in updating their boundary information. Questions regarding the Census Bureau's Boundary and Annexation Survey or assistance in submitting the BAS may be referred to Alfred Sundara at the Maryland Department of Planning at 410-767-4002 or [alfred.sundara@maryland.gov](mailto:alfred.sundara@maryland.gov).

Additional information about the Census Bureau's BAS program is available at the following link <https://www.census.gov/programs-surveys/bas.html>

## MUNICIPAL CHARTER OR ANNEXATION RESOLUTION REPOSITION FORM

Section 4-109 of the Local Government Article of the Annotated Code of Maryland requires municipal officials to deposit certain municipal documents with the Department of Legislative Services. Please use this registration form for each resolution that alters the charter or the boundaries of your municipal corporation. Complete a separate form for each resolution, and mail the entire text of the resolution, along with this form to:

Georgeanne Carter, Legislative Counsel  
Municipal Resolution Reposition  
Department of Legislative Services  
90 State Circle  
Annapolis, MD 21401-1991

_____	_____
Municipal Corporation	County(ies)
_____	
Name and Title of Official Submitting this Resolution	
_____	_____
Address	Phone
_____	_____
	Date of Submitting this Resolution*
_____	
_____	_____
Resolution Number	Date Enacted by Legislative Body
	_____
	Effective Date**

1) *For an annexation resolution*, state the charter section (e.g., boundary description section, appendix) that is amended \_\_\_\_\_ OR state the charter section (e.g., general powers section) pursuant to which the property is annexed \_\_\_\_\_. (*Enclose a copy of the metes and bounds description of the complete boundaries of your municipal corporation that includes the newly annexed property, including the number of acres and the point of beginning coordinates for the newly annexed property.*)

*For a charter resolution*, state whether the entire charter is repealed and a new charter is adopted \_\_\_\_\_ OR state the specific section(s) that is added, repealed, renumbered, or repealed and reenacted with amendments \_\_\_\_\_.

2) Number of votes cast by the legislative body for \_\_\_\_\_ and against \_\_\_\_\_ this resolution.

3) Will this resolution be petitioned to referendum? \_\_\_\_\_

If "yes", date of the referendum election (if known) \_\_\_\_\_.

\* *A resolution should be submitted to the Department of Legislative Services 10 days after the effective date of the resolution (§ 4-109(b) of the Local Government Article). Generally, provided that a resolution is not petitioned to referendum, the effective date for a charter resolution is 50 days after enactment (§ 4-304(c) of the Local Government Article), and for an annexation resolution is no earlier than 45 days after enactment (§ 4-407 of the Local Government Article).*