

## City of Gaithersburg Annexation Petition No. ANX-9683-2023

### Casey Property

#### Description

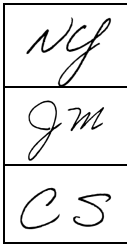
An annexation petition from the City of Gaithersburg for a vacant five-acre property that is located west of South Frederick Avenue (MD 355), north of I-370 and south of O'Neill Drive.

No. ANX-9683-2023  
Completed: 01-17-2024

MCPB  
Item No. 6  
1-25-2024

Montgomery County  
Planning Board  
2425 Reddie Drive  
Floor 14  
Wheaton, MD 20902

## Planning Staff



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### LOCATION

North of I-370, west of South Frederick Avenue (MD 355) and south of O'Neill Drive

### MASTER PLAN

2021 *Shady Grove Sector Plan*

### ZONE

CRT 0.75 C-0.25 R-0.75 H-80

### PROPERTY SIZE

5.25 acres

### APPLICANT

City of Gaithersburg

### ACCEPTANCE DATE

December 6, 2023

### REVIEW BASIS

Maryland Code



### Summary:

- Staff recommends approval of the annexation petition and the transmittal of comments to the City of Gaithersburg.
- A vacant property is included in the annexation.
- The property is within the maximum expansion limits of the City of Gaithersburg.

## SUMMARY

Staff recommends approval of the annexation petition and the transmittal of comments to the City of Gaithersburg's Mayor and Council and the Montgomery County Council. The property is within the City of Gaithersburg's Maximum Expansion Limits (MEL), and the petition proposes the City's Corridor Development (CD) zone for the property. The proposed zone has land uses similar to the existing Commercial Residential Town (CRT) zone and the proposed densities are not substantially higher for the property. The 2021 *Shady Grove Sector Plan* acknowledges the potential annexation of the property into the City of Gaithersburg and supports residential development.

## BACKGROUND AND LOCATION

The vacant five-acre property is located north of I-370, west of South Frederick Avenue (MD 355) and south of O'Neill Drive. The Rosedale Apartments, Casey Community Center and the Rosemont residential community are located to the north (Figure 1). The City of Gaithersburg's municipal limits are adjacent to the site proposed for annexation. O'Neill Drive is within the City limits and provides access to the property.

The Eugene B. Casey Foundation owns the subject site and the adjacent Rosedale Apartments, which are to the immediate north and west. The Rosedale Apartments, built in 1972, consist of 192 multifamily residential units on two parcels in the City's Medium Density Planned Residential (R-18 and R-20) Zones. There are no regulated affordable units at the Rosedale Apartments. Currently, the Rosedale development serves residents who earn between 40 percent to 60 percent of the Area Median Income (AMI).

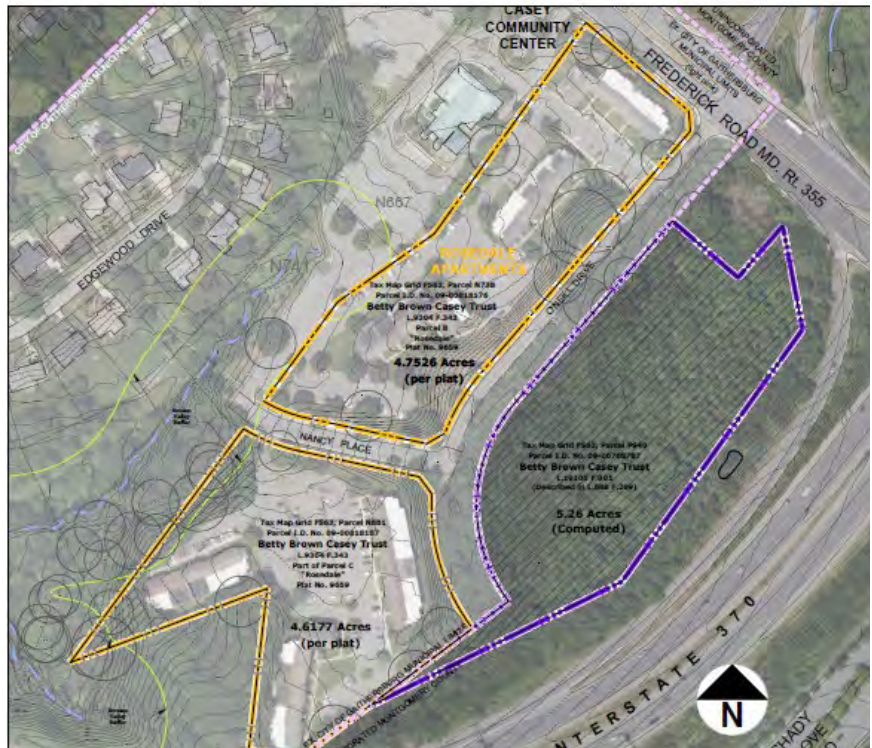


Figure 1: Proposed annexation property (shown in purple) and the Rosedale Apartments (shown in yellow)

## ANNEXATION PROPOSAL

The Eugene B. Casey Foundation seeks annexation of a vacant five-acre property (Parcel 940), which is located at the northwestern intersection of Shady Grove Road, I-370 and South Frederick Avenue (MD 355) into the City of Gaithersburg from Montgomery County (Figure 2). The property is adjacent to the existing municipal limits of the City of Gaithersburg and the property proposed for annexation is in Gaithersburg's Maximum Expansion Limits (MEL) (Figure 3).

The annexation petition proposes using the city's Corridor Development (CD) zone for the property to facilitate a three-phased redevelopment with the adjacent Rosedale Apartments (Figure 4). A rezoning of the Rosedale Apartments to the CD zone is contemplated after the annexation. The petitioner also states that conducting a comprehensive redevelopment with one approving jurisdiction is preferred rather than two independent approving bodies. In addition, a uniform zoning classification would facilitate shared parking for the three properties, implementing stormwater and environmental requirements and other development provisions.

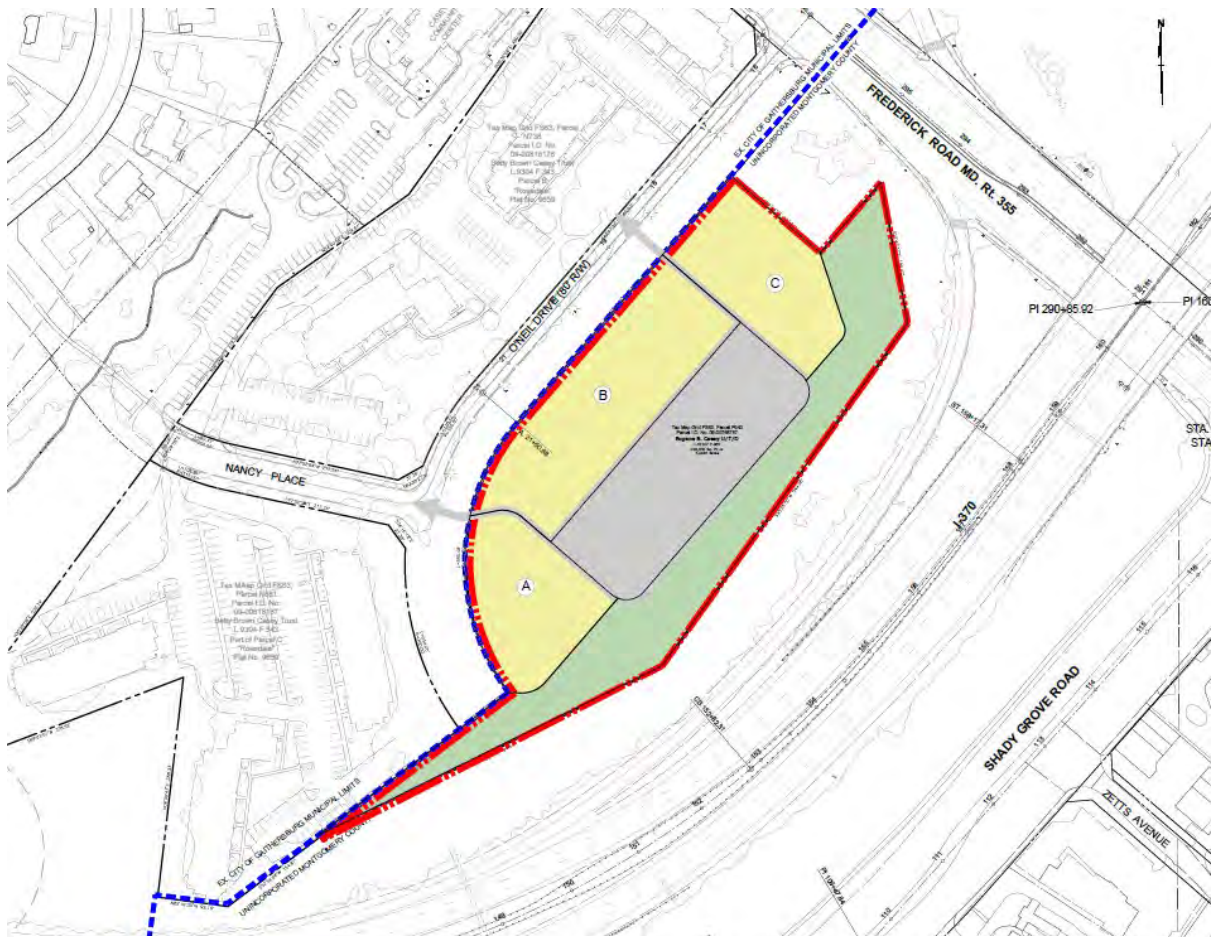


Figure 2: Proposed Annexation Plan

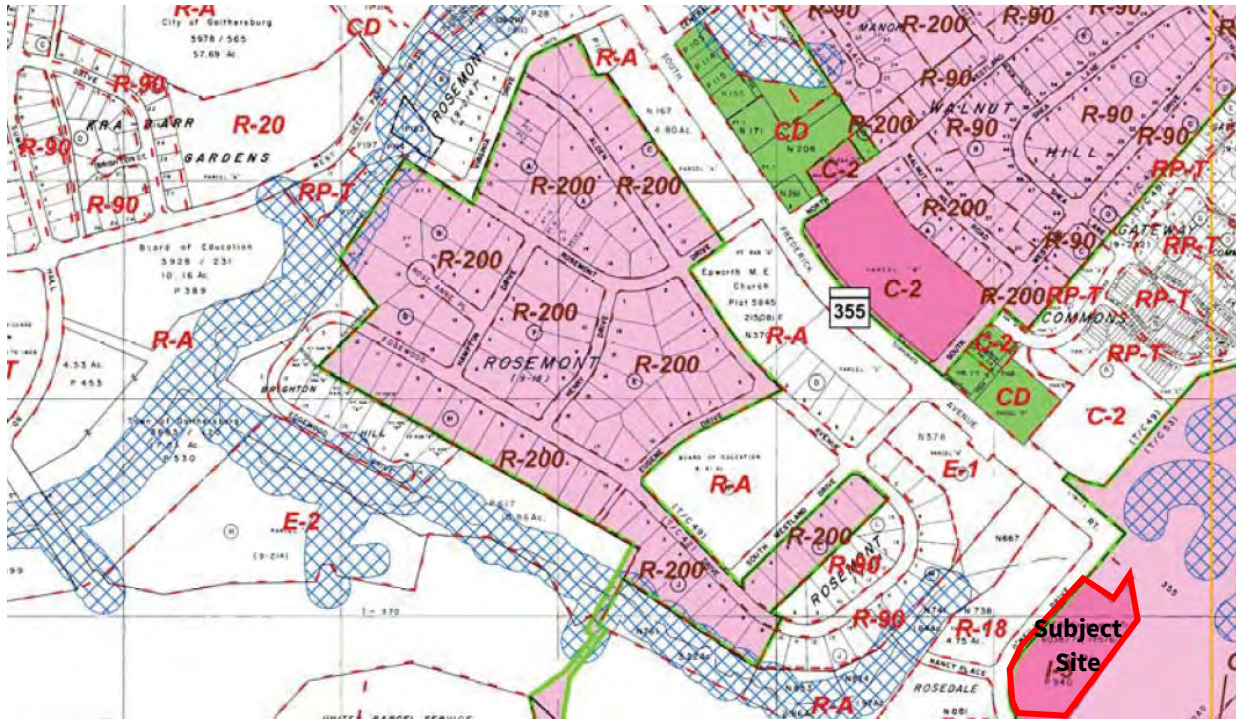


Figure 3: City of Gaithersburg Municipal Growth (2009) - A Master Plan Element - Maximum Expansion Limits

The City's *Master Plan Land Use Element* (2009) identified the vacant property and the adjacent Rosedale Apartments and recommended the adoption of "commercial-office-residential designation for Parcel 940, if annexed" (p.63). The Land Use plan also states the following:

As part of the Southern Residential District of the Frederick Avenue Corridor, a mixed-use project with a balanced mix of commercial/office and residential would be appropriate. Commercial uses and density should be focused along Frederick Avenue and Interstate 370. Any redevelopment proposal should consider this location's role as an important gateway into the City of Gaithersburg (p.62).

As shown on Figure 4, phase one of the future redevelopment will be utilized on the property proposed for annexation. The anticipated three phased redevelopment will provide up to 472 multi-family units on the three properties. The development could include a potential neighborhood commercial or institutional use (Figure 5).

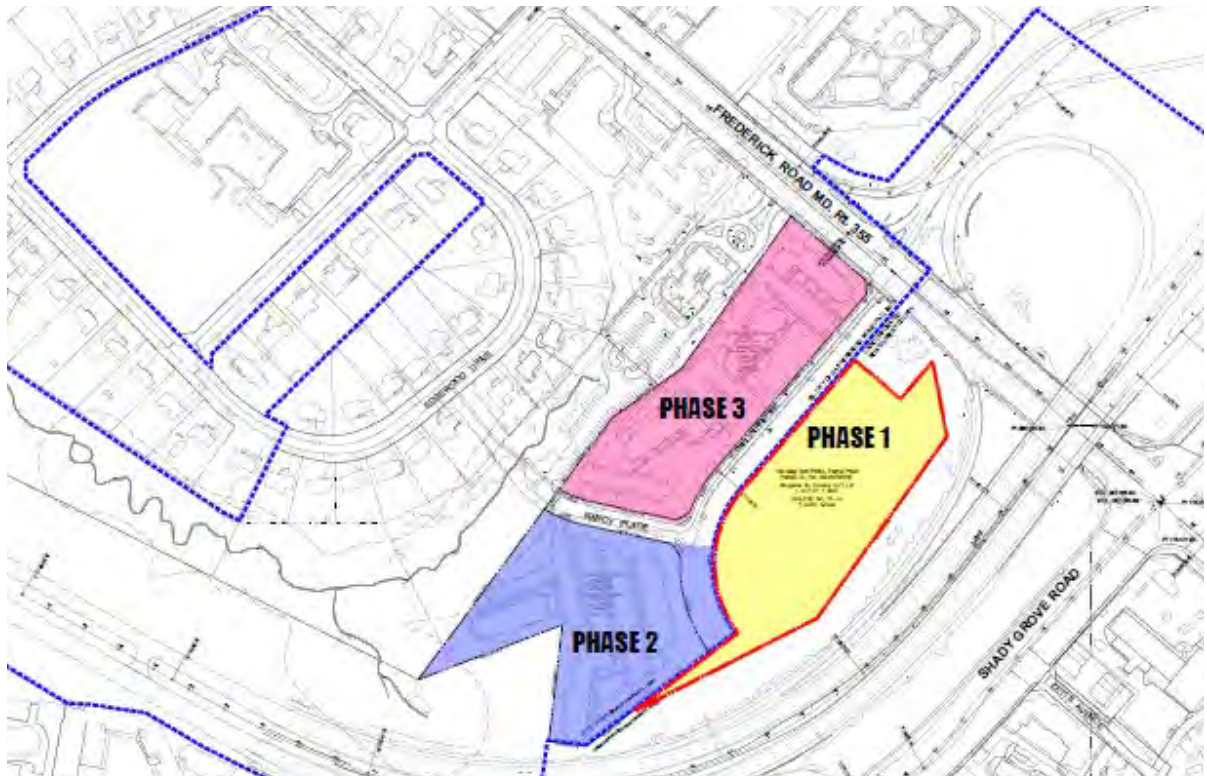


Figure 4: Proposed three phases of the development.



Figure 5: Illustrative redevelopment Concept Plan for all three phases of development

## CITY OF GAITHERSBURG MAYOR AND COUNCIL

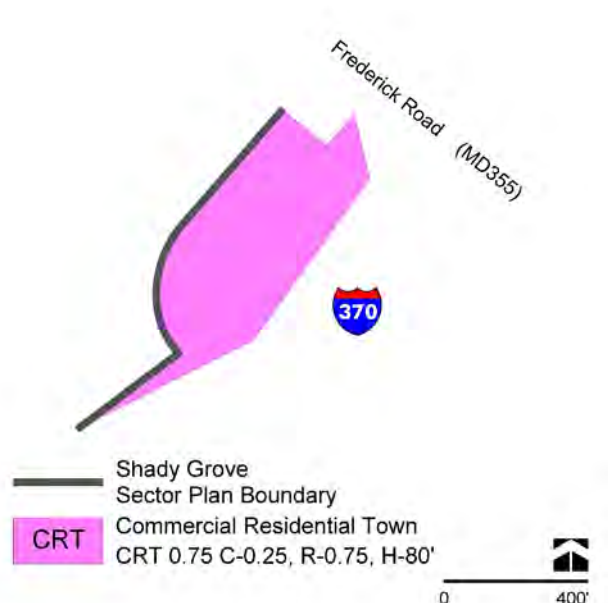
The City of Gaithersburg Council introduced an Annexation Resolution for the proposed annexation on December 4, 2023, and the public hearing on the resolution is tentatively scheduled for April 1, 2024. The Mayor and Council are scheduled to adopt the Annexation Plan at their meeting on May 20, 2024. The City of Gaithersburg Planning staff supports the proposed annexation.

## SHADY GROVE SECTOR PLAN

The potential annexation is in the 2021 *Shady Grove Sector Plan* area. The Sector Plan notes that the subject property is adjacent to the city limits of Gaithersburg and recommends “primarily residential development on this property since it complements the existing residential community to the north and the recommendation for mixed-use development to the south” (p.58). The property was rezoned from the EOF 0.75, H-100 Zone to the CRT 0.75 C-0.25 R-0.75 H-80 Zone (Figure 6).

In addition, the Sector Plan also recommends for the subject property that “efforts should be made to retain portions of the existing forest/wooded area adjacent to the I-370 ramp that will help mitigate noise from adjacent roads and meet the Plan area’s environmental goals” (p.58).

The proposed annexation is consistent with the Sector Plan’s recommendation for this property since residential development is proposed, including the provision of affordable housing, and new landscaping is proposed along I-370.



*Figure 6: Recommended Shady Grove Sector Plan zone for the property.*

The Annotated Code of Maryland establishes the rules and procedures for municipal annexations. Section 4-401 of the Code, titled “Power to enlarge municipal boundaries by annexation,” states that:

Land to which power applies

- (b) The power of annexation applies only to land that:
  - (1) is contiguous and adjoining to the existing boundaries of the municipality; and
  - (2) does not create an unincorporated area that is bounded on all sides by:
    - (i) real property presently in the boundaries of the municipality;
    - (ii) real property proposed to be in the boundaries of the municipality as a result of the proposed annexation; or
    - (iii) any combination of real property described in item (i) or (ii) of this item.

The proposed annexation request adheres to these requirements since the vacant property is adjacent to the existing City of Gaithersburg boundary. The proposed annexation would not create an unincorporated area bounded on all sides by real property within the municipality’s boundaries, and the properties are not within another municipality. Further, the proposed annexation site is within Gaithersburg’s MEL, and it is consistent with the city’s municipal growth element (Figure 3).

Section 4-406 of the Maryland Code, titled “Public notice and hearing on resolution,” states in part:

- (a) After an annexation resolution is introduced, the chief executive and administrative officer of the municipality shall publish notice in accordance with the requirements of this section that:
  - (1) briefly and accurately describes the proposed annexation and the applicable conditions and circumstances; and
  - (2) specifies the date, time, and place that the legislative body sets for the public hearing on the proposed annexation.

Section 4-406 also provides specific noticing requirements for commercial property owners. It states the following:

- (b) After an annexation resolution is introduced, the chief executive or the administrative officer of the municipality shall notify commercial property owners in the area to be annexed of:
  - (1) all personal property taxes and fees imposed by the municipality; and
  - (2) the date, time, and place that the legislative body sets for the public hearing on the proposed annexation.

The City of Gaithersburg has notified the property owner, who is supportive of the annexation petition.

### Notice to County and Planning Agencies

(d) Immediately after the first publication of the public notice, the municipality shall provide a copy of the public notice to:

- (1) the governing body of the county in which the municipality is located; and
- (2) any regional or State planning agency with jurisdiction in the county.

The December 5, 2023, submission from the City of Gaithersburg serves as the public notice to the Montgomery County Planning Department, which Section 4-406 of the Maryland Code requires. Gaithersburg's Mayor and Council introduced an Annexation Plan on December 4, 2023 and set the tentative public hearing on the Annexation Resolution for April 1, 2024.

### Different Land Use and Density

The Annotated Code, planning and zoning authority (Section 4-416), places some limits on changes in land use and zoning when a property is annexed from the county into a municipality. It states the following:

- (b) Without the express approval of the county commissioners or county council of the county in which the municipality is located, for 5 years after an annexation by a municipality, the municipality may not allow development of the annexed land for land uses substantially different than the authorized use, or at a substantially higher density, not exceeding 50%, than could be granted for the proposed development, in accordance with the zoning classification of the county applicable at the time of the annexation.

The proposed annexation will place the vacant property into the city's Corridor Development (CD) Zone. The main purpose of the CD Zone, as noted in Gaithersburg's Zoning Ordinance, is to "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" (Section 24-160G.1.a). The zone also seeks to "encourage development and redevelopment and renovation of declining or underutilized properties along the corridor" (Section 24-106G.1.d). The CD zone permits a range of non-residential and residential uses, including multi-unit living. It is similar to the county's CRT zone, which also permits various residential and non-residential uses. Building heights in the CD zone are limited between 35 feet to 65 feet, depending on if the development is in a residential, commercial or entertainment district.

Based on the CRT zone, the property could accommodate up to 171,517 gross square feet of development at 0.75 FAR. The Annotated Code permits up to 50 percent more potential development increasing the FAR up to 1.125 and development up to 254,826 square feet. The annexation proposal will not exceed the 254,826 square feet of development, which is consistent with the Annotated Code requirement.

## AFFORDABLE HOUSING

The 2021 *Shady Grove Sector Plan* recommends providing a broad range of housing choices to meet the housing needs of a diverse workforce, including requiring "15 percent moderately priced dwelling units (MPDUs) as the highest priority public benefit for all new residential development" (p.69). The Sector Plan also supports higher percentages of MPDUs on publicly owned properties, such as 25 percent on WMATA and up to 30 percent on County properties.

The annexation petitioner states that the existing Rosedale Apartments rental rates are "affordable to tenants with incomes ranging from \$38,000 to \$52,000 without any regulatory agreement requiring such an affordable covenant. Given the Foundation's mission to upgrade the multi-family units with a continued emphasis on affordability for City residents, and the opportunity to provide upward mobility through some additional market-rate units at the Property, the Project will be operated by a charitable mixed-income housing organization, which will restrict 75 percent of the units to occupancy by qualified low- and moderate-income residents (50-60 percent AMI as defined by IRS Rev. Proc.96-32). The petitioner anticipates that 75 percent of the development will be affordable to tenants earning 60 percent AMI and the remaining 25 percent of units will be market-rate units". The percentages of affordable housing associated with the future development will far exceed the county's affordable requirements and further the goals of the Sector Plan. An annexation agreement between the property owner and the City of Gaithersburg will specify the percentages and range of affordable housing associated with the future redevelopment.

## PUBLIC SCHOOLS

The property proposed for annexation is in the Montgomery County Public Schools (MCPS) Gaithersburg Cluster. This cluster has eight elementary schools, two middle schools, and a high school. All elementary schools are within their program capacities for the current six-year Capital Improvement Program (CIP), FY23-28. Similarly, both middle schools are within their program capacities for the six-year CIP and into the future. Gaithersburg High School is currently above its program capacity, and it will remain above its capacity in the long-term. The new high school capacities will be established when the new Crown High School is opened in 2027. Both middle schools, Forest Oak and Gaithersburg, are within their enrollment projections. Harriett Tubman and Rosemont are the only two elementary schools, which exceed their program capacities per the Superintendent's FY25-30 CIP. Future redevelopment of the property will be subject to the city's Adequate Public Facilities Ordinance (APFO).

## ENVIRONMENT

The 2021 *Shady Grove Sector Plan* recommends a broad strategy to further environmental sustainability, including increased tree canopy, advancing sustainable design measures, and promoting biological diversity. Specifically, the Sector Plan recommends that “efforts should be made to retain portions of the existing forest/wooded area adjacent to the I-370 ramp that will help mitigate noise from adjacent roads and meet the Plan area’s environmental goals” (p.58). The proposed annexation plan (Figure 2) illustrates a wooded area adjacent to the I-370 ramp. There are no streams or wetlands on the subject site.

## TRANSPORTATION

The vacant property proposed for annexation directly fronts onto O’Neill Drive and Nancy Place. There is no access from MD 355 and I-370. A small portion of the property is adjacent to MD 355.

The Montgomery County Department of Transportation (MCDOT) is conducting a bus rapid transit (BRT) study, MD 355 Central, which is between Montgomery College in Rockville and Montgomery College in Germantown. Final design for the BRT is anticipated in FY25 and construction is anticipated by FY28. A BRT stop is proposed near MD 355 and Shady Grove Road, and another is proposed further north at South Westland Drive. Montgomery County’s Ride On Routes 55, 59 and 101 provide public transit services along MD 355. The property is within a mile from the Shady Grove Metro Station entrance.

The 2021 Sector Plan endorses Vision Zero as an overall mobility principle to promote “a safe walkable and bikeable street network...” (p.124). MD 355 is included in the county’s High Injury Network (HIN). The Sector Plan notes that the MD 355 and Shady Grove Road intersection has “multiple turn lanes and dedicated right turn lanes that contribute to creating a challenging walking environment for pedestrians and transit riders” (p.134). The future redevelopment of the subject property and Rosedale Apartments will be evaluated under the city’s Adequate Public Facilities Ordinance (APFO).

## COMMUNITY CORRESPONDENCE

As of the date of this memorandum, Planning staff has received no written community correspondence on the proposed annexation. The petitioner presented the annexation request to the Shady Grove Sector Plan Implementation Advisory Committee on December 6, 2023. Committee members and attendees expressed concerns that the recommendations to implement the proposed public amenities in the Sector Plan area and to relocate the Montgomery County Public Schools (MCPS) Bus Depot along Crabbs Branch Way have not occurred. In addition, several attendees expressed concerns about the traffic impacts, especially at MD 355 and Shady Grove Road, when the property is developed. Meeting attendees were supportive of the affordable housing associated with the development.

## CONCLUSION

The proposed annexation is consistent with the Annotated Code of Maryland municipal annexation provisions. The annexation petition substantially complies with uses authorized in the county's CRT zone and the recommendations in the 2021 *Shady Grove Sector Plan*. The proposed density in the CD zone is not substantially higher than the current zone, and the properties are within the City of Gaithersburg's Maximum Expansion Limits. Planning staff recommends approval to transmit comments to the City of Gaithersburg and to the Montgomery County Council.