PHED Committee #1
July 18, 2016

MEMORANDUM

July 13, 2016

TO: Planning, Housing, and Economic Development Committee

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst

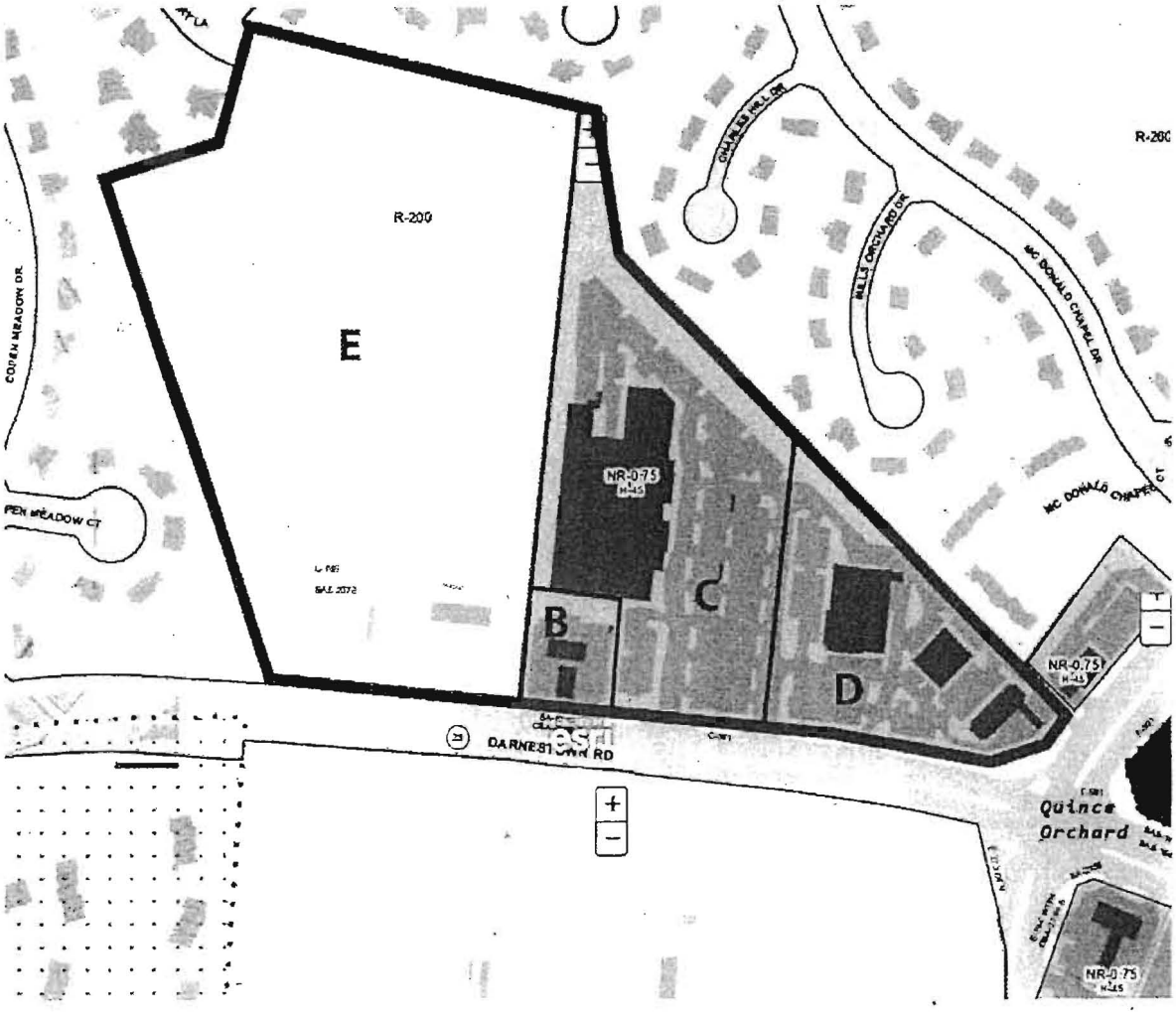
SUBJECT: Resolution concerning the City of Gaithersburg's request to reclassify the Johnson Properties (12201, 12251, 12301, and 12311 Darnestown Road) for the R-200 and NR 0.75, H 45 zones to the City's Mixed Use Development (MXD) zone (Annexation No. X-7067)

Background

The City of Gaithersburg is proposing to annex approximately 23.45 acres of land located at the northwest quadrant of Darnestown Road and Quince Orchard Road. The site is currently classified in two zones. The NR 0.75, H 45 zone is on 9.97 acres of the proposed annexation (parcels B, C, and D). The R-200 zone covers 13.99 acres of the proposed annexation area (parcel E). The zoning code would currently allow 34 housing units in the R-200 portion of the site. The NR zone would allow 40 housing units plus 228,077 square feet of non-residential floor area.[1] The combined total allowed dwelling units is 74 units.

Under the annexation proposal, the Johnson Properties would be reclassified to the City's Mixed Use Development (MXD) zone, which allows a mix of residential and commercial uses. The proposed zoning, limited by the "binding elements" of the annexation and proposed sketch plan, would allow 110 housing units and 10,000 square feet of commercial floor area in addition to the 90,000 square feet of floor area on site.[2] All of the proposed single-family detached and townhouse units would be located on the portion of the site zoned R-200. The additional 10,000 square feet of non-residential floor area is proposed on the NR zoned area.

[1] 90,000 square feet of floor area of the total 228,077 square feet is existing.
[2] 150% of the 74 (the total number of dwelling units allowed under current zoning) is 111. The applicant had previously proposed 305 housing units and 375,000 square feet of additional commercial floor area.



The Local Government Article, Section 4-416 of the Annotated Code of Maryland provides that no municipality annexing land may, for a period of 5 years following annexation, place that land in a zoning classification that 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. The law defines substantially higher density as exceeding its current allowed density by 50% or more.

Planning Board Recommendation

The Planning Board transmitted the following comments for the Council's consideration:

1. *The development proposed with the annexation petition does not include land uses that are substantially different than authorized uses under the zoning and is not more than 150% of the density that could be generated for the entire property under current zoning.*

2. *The applicant is committing to be subject to certain "binding elements consistent with the Sketch Plan such as single-family and townhouse uses only, a maximum of 110 units (including Moderately Priced Dwelling Units and Workforce Housing Units), and a minimum size open space of at least one acre." (April 25, 2016 letter from Stuart Barr, Esq. representing the applicants).*

The Board noted Planning Staff's conclusion:

> *Based on the analyses contained in this report, Staff determines that, per Subtitle 4-416(b) of the Maryland State Annotated Code, the development proposed with this revised annexation petition will not contain substantially different uses than currently allowed and is not substantially higher (more than 50%) than what would granted in accordance with the zoning classifications of Montgomery County at the time of annexation.*[3]

The Chair's transmittal letter said:

> *The Planning Board agreed with its Staff that Section 4-416(b) of the State Annotated Code* ***may*** *be interpreted to analyze the property to be annexed either as two separately zoned pieces of land or as one comprehensive tract. While* ***the Board did not formally commit to either of these approaches****, it recognized that under both interpretations of the law, the overall unit yield on the entire property will be the same. However, under the former interpretation the density would have to be spread over entire Property. The Planning Board also noted that even under the narrower interpretation of law the County Council could not deny the annexation request; it could only delay rezoning of the Property to the City's MXD Zone. [Emphases added]*

Correspondence

The vast majority of correspondence noted by the Planning Board opposed annexation and increased density. Community members assert the following:

1. The proposed development would increase traffic and safety concerns in an area that is already congested.
2. Annexation will create an area that is a part of the City of Gaithersburg surrounded on all sides by neighborhoods and resources that are not part of the City of Gaithersburg.
3. The proposed development would increase school enrollment for the elementary, middle and high schools in schools that are already overcrowded. The City of Gaithersburg's new Adequate Public Facilities Ordinance (APFO) standard of 150% per each school (Thurgood Marshall Elementary, Ridgeview Middle School, and Quince Orchard High School) is inconsistent with Montgomery County's APFO standard of 120% per cluster (Quince Orchard Cluster).
4. The City of Gaithersburg could approve development exceeding the current proposal.

Some people supported the annexation and increased density as smarter urban development that blends with its context.

[3] The Planning Staff report was thorough in the math of zoning density, but did not offer any written bread crumbs as to how the analyst reached that legal conclusion.

Issues

Is the annexation prohibited due to the configuration of the property relative to the border of Gaithersburg?

None of the land north of the intersection of Darnestown Road and Quince Orchard Road is currently in the City of Gaithersburg. The proposed annexation is on the northwest corner of Darnestown Road (Route 28) and Quince Orchard Road. Property on the northeast corner of the intersection is in the City of Gaithersburg. About 100 linear feet of the Johnson property reaches to the corner of the intersection. The annexation would be like a peninsula of land surrounded by County property.

State law does not allow annexation under some circumstances:

> 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.[4]

*In Staff's opinion, the annexation is **not** prohibited by state law.* The Court of Appeals found that this text allowed a peninsula shape to be annexed.[5] The statute only prohibits unincorporated areas completely surrounded on all sides by the incorporated area of the annexing municipality.

Is the proposed annexation within 150% of the density of its current zoning?

The Planning Staff report to the Planning Board included the following table:

Parcels/Current Zoning	Maximum Development Allowed Under Current Zoning	Proposed Development
R-200 Portion, Parcel E (609,404.4 sf or 13.99 acres)	Up to 34 units (with MPDU) (Section 59.4.4.7.C, optional method—13.99 x 2.44 units per acre)	110 units
NR 0.75 H 45 Portion, Parcels B, C, & D (434,433 sf or 9.97 acres)	Up to 40 units and 228,077 sf of non-residential floor area*	100,000 sf non-residential floor area (90,000 sf existing plus 10,000 sf proposed)
Total Development on the Entire Property	74 units and 228,077 sf non-residential	110 units and 100,000 sf non-residential

*Maximum of 325,825 sf non-residential at full 0.75 FAR, or 288,077 sf of non-residential (70 %) and 97,747 sf of residential (maximum 30%), which could yield 40 units at 2,400 sf average per unit.

[4] Local Government Article § 4-401(b).

[5] ANNE ARUNDEL COUNTY, Maryland et al. v. CITY OF ANNAPOLIS et al. 352 Md. 117 (1998)
The county brought action against the city to challenge an annexation leaving an unincorporated area of peninsula surrounded by water on three sides. The Court of Appeals decided that: (1) annexing a peninsula and leaving it surrounded by water on three sides and city on the other did not create a prohibited enclave; and (2) a peninsula surrounded by water on three sides and city on the remaining side remained contiguous to the remainder of the county.

The total density of all land on the proposed annexation area is within 150% of the total density within the property's current zoning. It exceeds 150% of the current density on the R-200 portion of the site. State law says:

> *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. [Emphases added]*

Staff could not find any case law that would help with an interpretation of this code. Staff does not know of any previous time that this issue has been a matter of Council concern. Development on the annexed land speaks to the total development on the total area being annexed, but the zoning classifications are unique to individual parcels of land. The legislative history of the annexation law did not address a situation where the area proposed for annexation was in two or more zones. The General Assembly was dealing with massive annexations (and the use of annexation to avoid adequate public facility laws). To deal with this situation, the 2006 amendments to the code gave counties additional authority to have their current zoning retained for 5 years and defined the circumstances under which the proposed zoning would be considered substantially higher.

Statutory interpretation is an art form that should not include the insertion of words not present in the text. The Planning Staff interpretation that the standard is 150% of total zoning density on the property being annexed requires the insertion of the words into the statute. It would need an added phrase such as "in accordance with the **total density of** the zoning classification**s**". The need to add words to the statute to address the interpretation makes that interpretation untenable. The black letter of the statute requires a comparison of density "in accordance with the zoning classification of the county applicable at the time of annexation."

The Planning Board did not reach any conclusion on how the statute should be interpreted.[6] *In Staff's opinion, the most reasonable interpretation is one that requires a view of each zoning classification on the ground (and not the combined density of the current zoning).*

Can density be averaged between the R-200 and the NR zones?

The zoning code divides all zones into 6 major categories: Agricultural, Rural Residential, Residential, Commercial/Residential, Employment, and Industrial. The R-200 zone is in the category of Residential zones. NR is an Employment zone. There are rules for all zones in Division 4.1. That Division is silent on density averaging or clustering. Clustering or density averaging is prohibited between major zoning categories but is a concept allowed within major zoning categories.

Division 4.4 covers Residential zones. It allows clustering development between "different zones" when the zones are contiguous.[7] The section that allows clustering refers to all zones in the Residential category. The code speaks to the "allowed number of units."[8] Non-residential zones express density in terms of floor area ratios and not units. There are no numbers of specifically "allowed units" in

[6] Conclusions can be hard to reach. For example, if you took all the economists in D.C. and laid them end to end starting at the Washington Monument, they would be more comfortable but they too would not reach a conclusion.
[7] Section 4.4.2.B.2.
[8] Section 4.4.2.B.2.d.

Employment zones. The other reasonable interpretation is that the phrase "different zones" refers to different zones within the Residential classification of zones.

To allow R-200 zone density to be clustered with an Employment zone would contradict the clustering provision for Employment zones. Division 4.6 covers Employment zones. The requirement for the NR zone allows FAR averaging "over 2 or more directly abutting or confronting properties in one or more Employment zones."[9] This section is more explicit than the clustering provision in the Residential zone. It does not allow clustering outside of its own zoning category.

The proposed annexation, if addressed as the total residential density for the entire area, would amount to a clustering or density averaging between an NR zone and the R-200 zone. The Zoning Ordinance does not allow density transfers between the R-200 zone and the NR zone. *In Staff's opinion, density averaging between an NR zone and a residential zone is not in accordance with the zoning classification. Under Local Government §4-416, the proposed annexation requires the express approval of the Council to avoid retaining the same zoning density for 5 years.*

What are the Master Plan's land use and density recommendations?

The Master Plan does not have a legislatively required role in an annexation, but it may inform the Council on where the public interest lies. The Master Plan may recommend future floating zones, but the statute refers to the zoning classification of the County, applicable at the time of the annexation.

The Johnson Properties are included in the 2010 Great Seneca Science Corridor Master Plan. That plan has the following to say concerning this area:

> *Quince Orchard and Longdraft Roads divide the County from the City of Gaithersburg. The City's 2009 Maximum Expansion Limits (MEL) include extensive areas in the vicinity of Quince Orchard. This Plan does not support annexation, which would alter the logical boundaries that currently divide the County and the City and could result in the loss of potential sites for County parks, as occurred when the Crown Farm was annexed into the City of Gaithersburg.*[10]

The Master Plan included text specific to the Johnson property:

> *Consideration should be given, but not limited to the Johnson property at 12311 Darnestown Road. The Johnson family owns the largely vacant R-200 14-acre parcel on Darnestown Road along with the adjacent C-1 commercial property. Ideally, a new local park would provide two rectangular fields for active recreation. If the R-200 parcel is not acquired as an active recreation park site, the parcel may be appropriate for residential use including single family detached and townhouse units. Townhouse development could be requested through a Local Map Amendment.*[11]

The Planning Board's transmittal letter had the following to say on the Master Plan's park acquisition and land use issues:

> *The 2010 Great Seneca Science Corridor Master Plan recommended that the R-200 portion of the Johnson Property be acquired for park land but stated that residential use would be*

[9] Section 4.6.2.B.2.
[10] Great Seneca Science Corridor Master Plan (2010), page 57.
[11] Ibid, page 61.

appropriate if the land could not be acquired for recreation. The Parks Department has been unsuccessful in its effort to acquire Parcel E, but the Applicant has proffered a commitment to provide a significant open space, consistent with the Master Plan. This may not happen if the property is required to wait 5 years before rezoning.

The Great Seneca Science Corridor Master Plan was written in the context of the 2010 Zoning Ordinance. In the 2010 Zoning Ordinance, townhouse density ranged from 6 units per acre to 15 units per acre. Considering only the R-200 portion on the Johnson property, the proposed density is less than 8 units per acre. If the entire annexation area is considered, the overall residential density would be 3.2 units per acre.

What is known about the adequacy of transportation facilities?

The Johnson property is located at the intersection of Quince Orchard Road and Darnestown Road (Route 28). It is served by 2 different Ride On bus routes. Each route has 30 minute service. In its submission to the City of Gaithersburg, the applicant included the following information:

Transportation. The roadway network surrounding the Property and the proposed internal vehicular and pedestrian circulation systems will be safe, adequate and efficient. Bus service currently exists along Darnestown Road and Quince Orchard Road, with stops near the Property.

If the property remained in the County, more information concerning the adequacy of transportation facilities would be available with a local map amendment application. The Planning Staff report for November 12, 2015 had this to say:

The site is located in the North Potomac Policy Area that has inadequate roadway and transit capacity. If developed under the County's subdivision regulations and TPAR test, it will have to make a payment to the Montgomery County Department of Permitting Services equal to 50% of its transportation/development impact tax...

The Master Plan recommends Darnestown Road (State route MD 28) to be a 4-lane major highway with a 120-foot wide right-of-way and a shared-use path (bike and pedestrians) along the site's frontage. The current right-of-way along the Darnestown Road frontage is sufficient to meet the master plan requirements. *Planning Staff recommended that the Applicant replace the existing 5-foot wide sidewalk with a 2.5-foot wide green buffer panel and construct the master-planned 10-foot wide shared-use path with a buffer to be in compliance with the Countywide Functional Bikeways Master Plan.* This requirement would not require more right-of-way.

To satisfy the Master Plan's Transportation Demand Management (TMD) recommendation, the site's annexation will expand the northwestern corner of the boundary of the Greater Shady Grove TMD. *The Planning Staff recommended a requirement that the applicant enter into a Traffic Mitigation Agreement with the City and the Montgomery County Department of Transportation.* This would comply with the Master Plan requirements to participate in the TMD. It would assist the City and County in achieving and maintaining its non-auto driver mode share of 18%.

All development in the City is subject to the County's transportation impact tax. Under a memorandum of understanding with the County, taxes paid by development in the City may only be used on specified projects in the city.

What is known about the adequacy of school facilities?

The Property is located within the Thurgood Marshall Elementary School, Ridgeview Middle School, and Quince Orchard High School attendance areas. The proposed development of the western 14 acres would pass the Adequate Public Facilities test for school capacity in the County, and a residential project could move forward if the property remained in the County. *The project would require a school facility payment under the Council's Subdivision Staging Policy.* The Elementary School capacity in the Cluster is currently at 112.3%, and High School capacity is currently at 108.3%.[12]

All development in the City is subject to the County's school impact tax. Unlike the transportation impact tax, school impact tax funds may be used anywhere in the County. The Subdivision Staging charge is applied in the subdivision process. Development in Gaithersburg does not pay that charge.

Should the Council give its express approval of the proposed rezoning?

The Planning Board Chair suggested that approving the annexation is in the County's interest. In the Board's opinion, the provision in the binding elements of the annexation for a minimum one acre of open space was consistent with the area master plan. The Board's letter noted that the development proposed to the City after a 5 year retention of the current zoning may not be as generous. There was also a hint in their recommendation that they thought clustering the residential development on the R-200 portion of the site was not a terrible idea.

The Great Seneca Science Corridor Master Plan did not support annexations in this area, particularly because of the loss of potential park land. Given the Parks Department's unsuccessful efforts to acquire land and the provision of a minimum one acre open space, this master plan recommendation seems less forceful. The residential density proposed is within the master plan recommended density.

Single-family homes proposed in the applicant's sketch plan will back to existing single-family homes. If the proposed sketch plan raised any compatibility concerns with its neighbors, neither the Planning Board nor the Planning Staff noted such problems.

Refusing to approve the proposed annexation would have unknown consequences. The applicant may choose to remain in the County and apply for a rezoning in the County by a local zoning map amendment. The applicant may move forward with annexation and try to persuade the Gaithersburg Council that the express authority of the Council is unnecessary to pursue their current plans. The applicant may continue with annexation into Gaithersburg and ask the City for much more density after 5 years.

The Council may agree with the Planning Board that this annexation agreement, with its binding elements, may be as good as it is going to get.

---

[12] Planning Staff Report to the Planning Board, November 12, 2016. That memorandum considered FY15 numbers. The applicant's representative detailed and updated this information. Projected school enrollement for the 28 single-family detached and 82 townhouse units in the plan would be 29.5 elementary school students, 12 middle school students, and 13.3 high school students. In the Quince Orchard cluster, the High School is projected at 110% capacity and the Middle School is projected at 87.6% capacity. The Elementary School is projected at 113% capacity. The representative concluded, "We thus meet the County School test subject to payment of the School Facilities Payment at both the High and Elementary levels."

What are the Council's options?

1. The Council may conclude that the proposed annexation is allowed by law without its express approval of the rezoning.

   If the annexation is for substantially the same land use and is at substantially the same density, not exceeding 50% more than with the zoning classification of the County applicable at the time of the annexation, then the Council's explicit approval of the rezoning is not required.

   The land uses proposed are clearly within the uses allowed by the property's current zoning. The TOTAL density proposed is within 150% of the COMBINED property's total density. The density on the R-200 portion of land only is higher than 150% of the allowed density on the R-200 zoned land.

   If the Council agrees with Planning Staff that the proposed zoning is allowed by law, *Staff would still recommend a resolution to that effect for the benefit of the applicant and the City of Gaithersburg.*

2. The Council may conclude that the public interest is best served by express approval of the proposed zoning.

   Whether or not the proposed density exceeds 150% of the property's current zoning, the Council may give its approval to the proposed density. Express approval by the Council may be for any density. This approval avoids the issue of whether the 150% of current density provision applies to each zoning category or to the total land area.

   The Council's approval may be conditional on satisfying such requirements as the transportation recommendations of Planning Staff.

3. The Council may conclude that its express approval is required and it may decline to give that express approval.

   If the Council believes that the proposed annexation is not in the public interest, it may withhold its express approval of the proposed rezoning. This would not stop the applicant from proceeding with the annexation. It would retain the current zoning limits for 5 years. Thereafter, the City could decide to change the zoning as it sees fit.

The Packet Contains	**© Number**
Planning Board Recommendation	1 – 3
Planning Staff Memorandum	4 – 11
Applicant's Letter	12 – 15

F:\Zyontz\ANNEXATION\Gaithersburg - Johnson Properties\PHED memo annex. pet. Johnson property to Gaithersburg July 18 2016.doc

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

OFFICE OF THE CHAIR

July 6, 2016

The Honorable Nancy Floreen, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

SUBJECT: City of Gaithersburg Revised Annexation, X-7067-2015, for Johnson Property

Dear Council President Floreen:

At its regularly scheduled meeting on June 23, 2016, the Montgomery County Planning Board reviewed the revised Annexation petition, X-7067-2015, for the Johnson Property located at 12201, 12251, 12301, and 12311 Darnestown Road in Gaithersburg, within the 2010 *Great Seneca Science Corridor* (GSSC) *Master Plan* area. Within this 23.45-acre Property, Parcel E is currently zoned R-200 while the remaining parcels are zoned NR 0.75 H45.

The Planning Board received presentations from the planning staff, the Property owner and their representatives, and heard testimony in opposition from citizens and civic associations from the surrounding area. The Board also received more than 210 emails and approximately three phone calls expressing the concerns of the adjoining communities with respect to traffic and safety, an increase in school enrollment in a cluster that is already overcrowded, significant change in the character of the area, and inconsistency with the recommendations of the GSSC Master Plan. They also questioned how the development of 110 townhomes could be allowed on Parcel E that is currently zoned R-200. (In Montgomery County, development of Parcel E could only be approved for up to 34 single-family units under the MPDU optional method of development. In an annexation, the annexing municipality cannot approve development exceeding 150% of what would be allowed under the County zoning for 5 years without the approval of the County Council.) In addition to those who testified that the proposed annexation should be denied, there were others who asked that, in accordance with the State annexation law, the Property should be prohibited from being rezoned to the City's MXD Zone after it is annexed into the City. The Planning Board received six emails supporting the proposed development, stating that it offers smarter urban development that blends with its context.

The Planning Board recognized that its review of annexation cases is limited to a determination of whether the proposed uses and density were substantially different from

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

what could be achieved under the current zoning. The Board also considered whether the Property is contiguous to the City's incorporated limits.

Some of the citizens' testimony stated that, contrary to the Staff's analysis contained in the attached report, the current split zoning of the Property necessitated that the density calculations for the R-200 and the NR zoned portions be kept separate so that the comparison of Parcel E's existing and proposed density is limited to that piece of land only and not aggregated with the rest of the property zoned NR. The Applicant's proposal calculates the overall density for the Johnson Property rather than evaluating the densities for the differently zoned parcels separately; this approach was reflected in the staff report.

The Planning Board agreed with its Staff that Section 4-416(b) of the State Annotated Code may be interpreted to analyze the property to be annexed either as two separately zoned pieces of land or as one comprehensive tract. While the Board did not formally commit to either of these approaches, it recognized that under both interpretations of the law, the overall unit yield on the entire Property will be the same. However, under the former interpretation, the density would have to be spread out over the entire Property. The Planning Board also noted that, even under the narrower interpretation of the law, the County Council could not deny the annexation request; it could only delay the rezoning of the Property to the City's MXD Zone for five years.

The 2010 GSSC Master Plan recommended that the R-200 portion of the Johnson Property be acquired for park land, but stated that residential use would be appropriate if the land could not be acquired for active recreation. The Parks Department has been unsuccessful in its efforts to acquire Parcel E, but the Applicant has proffered a commitment to provide a significant open space, consistent with the Master Plan recommendations for this Property. This may not happen if the Property is required to wait for five years before being rezoned.

On a motion by Commissioner Fani-Gonzalez, seconded by Vice-Chair Wells-Harley, with Commissioner Presley and Chairman Anderson voting in favor of the motion, and Commissioner Dreyfuss absent, the Board unanimously recommended approval to transmit the following comments to the Montgomery County Council for your consideration:

1. The development proposed with the annexation petition does not include land uses that are substantially different than the authorized uses under the current zoning and is not more than 150% of the density that could be generated for the entire Property under the current zoning.

2. The applicant is committing to be subject to certain "binding elements consistent with the Sketch Plan such as single-family and townhouse uses only, a maximum of 110 units (including Moderately Priced Dwelling Units and Workforce Housing Units), and a minimum size open space of at least one acre." (April 25, 2016 letter from Stuart Barr, Esq. representing the applicants.)

Thank you for the opportunity to provide the Planning Board's comments on this annexation petition.

Sincerely,

Casey Anderson
Chair

CA:mb:ha
cc: Rob Robinson, Long Range Planning Manager, City of Gaithersburg

Attachment: Staff Report

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

MCPB
Item No.
Date: 6-23-16

Revised Johnson Property, Annexation, X-7067-2015

Michael Bello, Planner Coordinator, Area 2 Division, Michael.Bello@montgomeryplanning.org, 301-495-4597

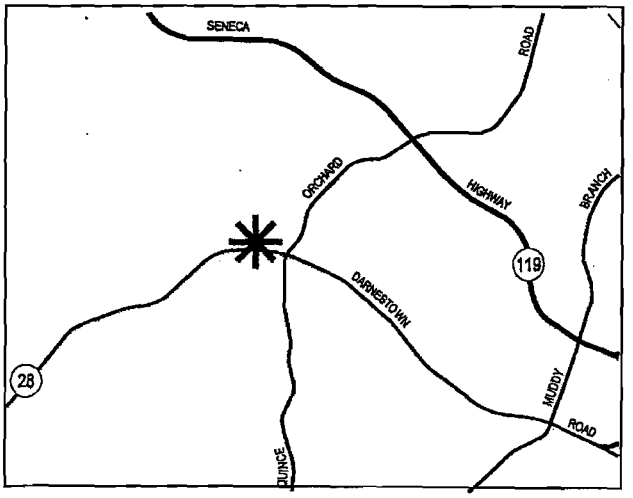
[KA] Khalid Afzal, Supervisor, Area 2 Division, Khalid.Afzal@montgomeryplanning.org, 301-495-4650

[GK] Glenn Kreger, Chief, Area 2 Division, Glenn.Kreger@montgomeryplanning.org, 301-495-4653

Completed: 6-15-16

Description

- Request to annex approximately 23.45-acre Johnson Property into the City of Gaithersburg and rezone the parcels from the County's R-200 and NR 0.75 H 45 zones to the City of Gaithersburg's MXD Zone.
- Located at 12201, 12251, 12301, and 12311 Darnestown Road (MD Route 28) in Gaithersburg, Maryland within the area of the 2010 *Great Seneca Science Corridor Master Plan (GSSC).*
- Filed April 25, 2016.
- Applicant: Johnson Family Enterprises, LLC and Three Amigos Real Estate, LLC.
- The City of Gaithersburg has not yet published a hearing date for this Application.



Summary

This Application is a revision to the first Application reviewed by the Planning Board on November 12, 2015 (Attachment 1).

Staff Recommendation:

Approval to transmit the following comments to the Montgomery County Council and the City of Gaithersburg:

> The development proposed with this Application does not include land uses that are substantially different than the authorized uses under the current zoning and is not more than 150% of the density that could be granted for the entire property under the zoning classifications of Montgomery County at the time of annexation.

PROPERTY DESCRIPTION AND BACKGROUND

The Property, owned by the Johnson Family Enterprises, LLC and Three Amigos Real Estate, LLC, is located at 12201, 12251, 12301, and 12311 Darnestown Road (MD Route 28) and along a portion of the Quince Orchard Road (MD Route 124) right-of-way in Gaithersburg, Maryland. The Property is within the Quince Orchard District of Montgomery County's 2010 *Great Seneca Science Corridor Master Plan*. It consists of approximately 23.45 acres on four separate and adjoining parcels plus a portion of the abutting right-of-way of Quince Orchard Road (MD 124). The parcels are described as Parcel B (0.60 acres), Parcel C (5.45 acres), and Parcel D (3.0 acres), which are owned by Johnson Family Enterprises, LLC; and Parcel E (13.99 acres), which is owned by Three Amigos Real Estate LLC.

The Property is surrounded by a mix of commercial and residential uses. Properties to the north and west are zoned R-200 and are improved with a combination of single-family detached houses and townhomes. The property directly to the south, on the opposite side of Darnestown Road, is zoned R-200 and is improved with the Quince Orchard public high school. The properties to the east are located for the most part within the City of Gaithersburg limits and are zoned C-1 (Local Commercial) and improved with low-density commercial uses.

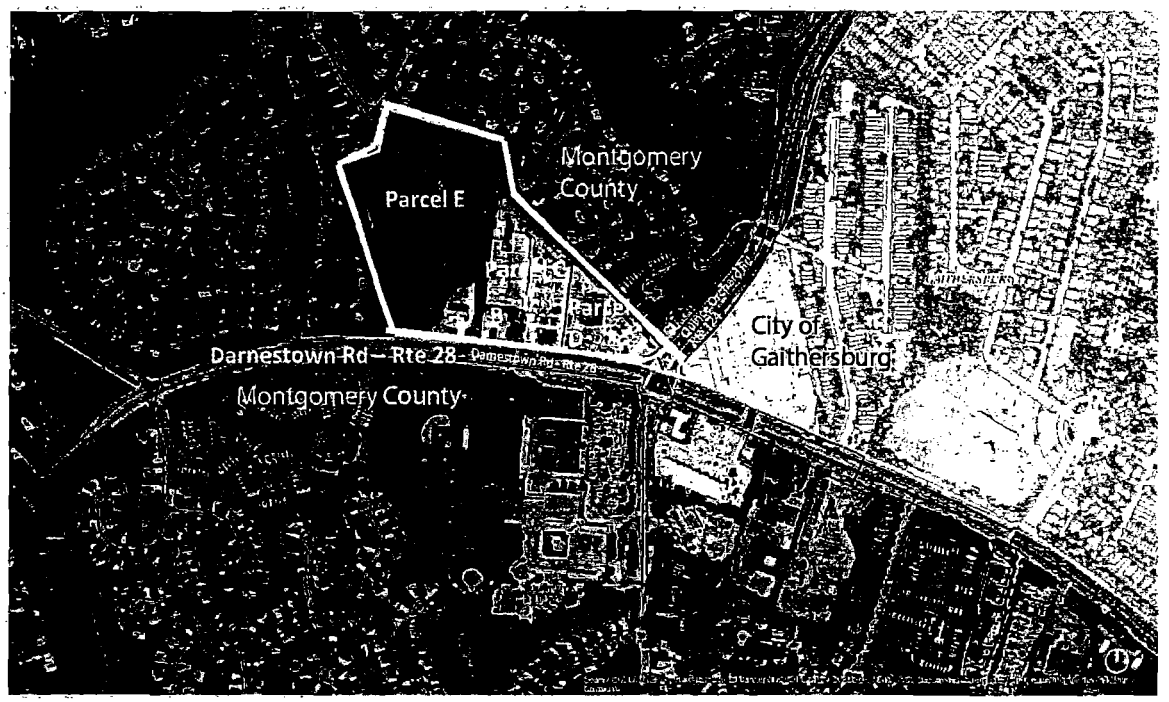


Figure 1 – Parcel Layout and Context

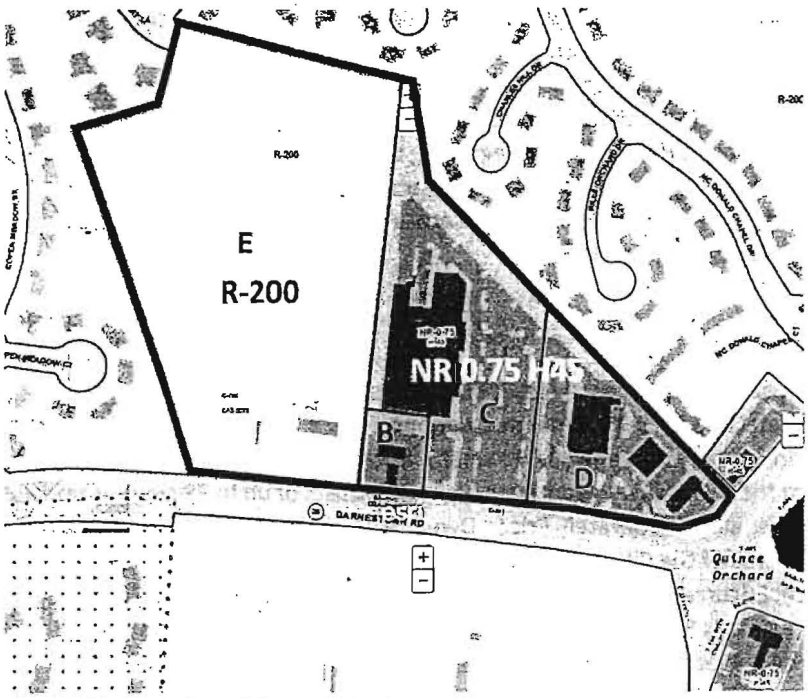


Figure 2 –Parcels and Current Zoning

PREVIOUS PROPOSAL

The Applicant originally filed a petition for Annexation of the Property into the City of Gaithersburg on June 26, 2015. That proposal consisted of a total of 305 units and 375,000 square feet of non-residential space as follows: up to 180 residential units of up to four-stories on the R-200 portion of the Property (Parcel E- Phase one); up to 125 residential units of up to six-stories on the NR 0.75 H45 zoned portion (Parcels B and C - Phase two); and up to 375,000-square feet of commercial development on the remainder of the NR 0.75 H45 zoned portion (Parcel D - Phase three).

The Planning Board reviewed the proposed annexation on November 12, 2015, and agreed with its staff's analysis and recommendations (Attachment 1) that:

1. The zoning and the development proposed with the annexation petition includes substantially higher density and uses substantially different than those authorized by the existing zoning.

2. The Council should not approve the development proposed with this annexation petition under Local Government Article Section 4-416(b), since:

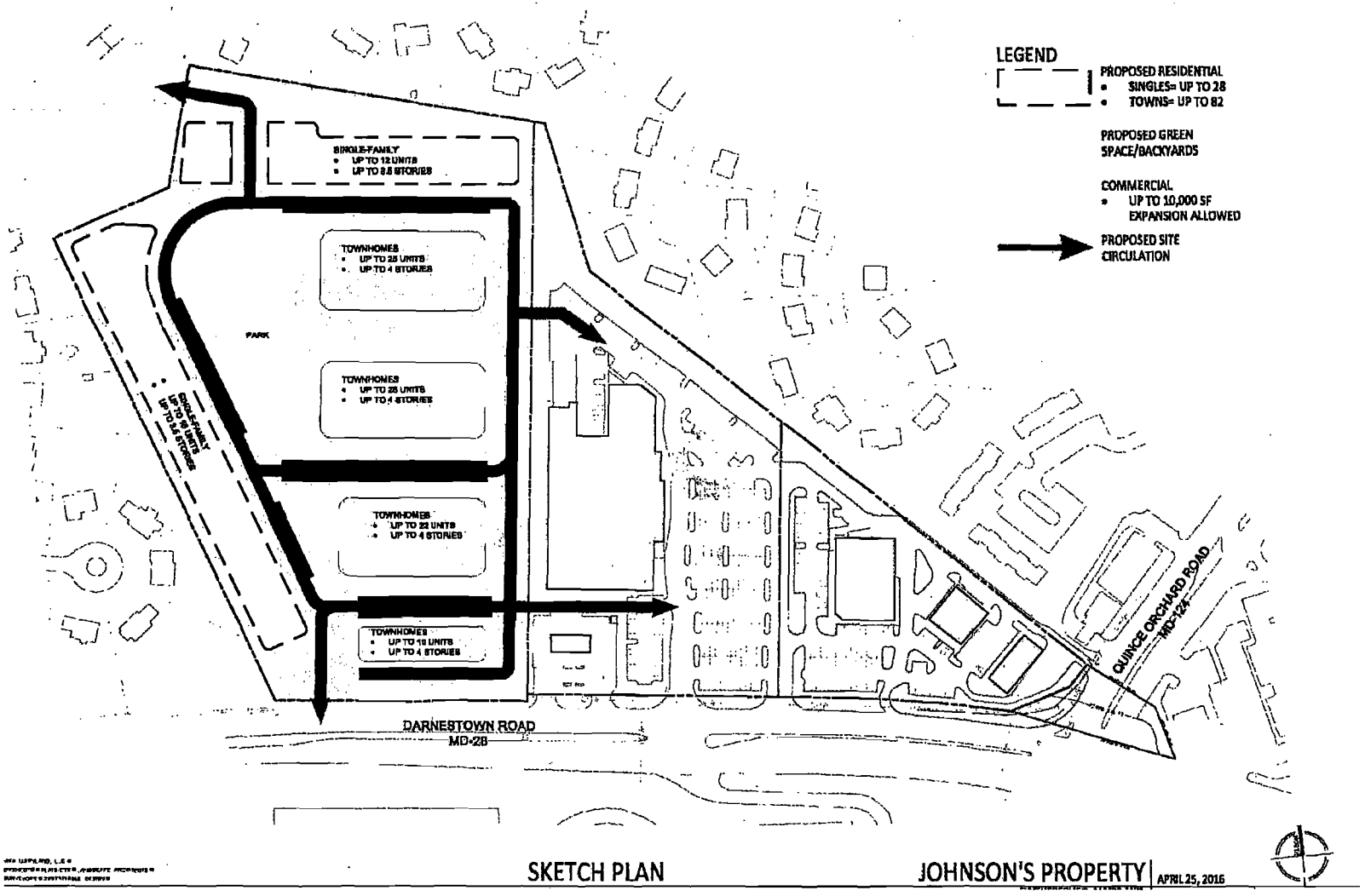
    a) the proposed density and uses are substantially higher and different than those allowed in the existing zone recommended by the 2010 *Great Seneca Science Corridor Master Plan*;
    b) the GSSC Master Plan recommended against annexation of the Property; and
    c) the annexation will create an enclave that will be contiguous to the City of Gaithersburg only through a dedicated right-of-way, but otherwise completely surrounded by Montgomery County.

In December 2015, the Applicant requested a postponement of the Annexation review process to have additional time for community outreach and assessment of the development plan. In a letter dated April 25, 2016 (Attachment 2), the City of Gaithersburg notified the Planning Department that it has received a revised annexation plan and that the City is "reinitiating the City Annexation Process." It further stated that the "Mayor and City Council will hold a public hearing regarding the proposed annexation on a date to be announced following the date that any determination as to "substantial conformance" of the revised annexation plan by the Montgomery County Planning Board is issued and any actions by the Montgomery County Council, if necessary, are conducted."

REVISED PROPOSAL

The Applicant has revised their earlier proposal from a total of 305 housing units and 375,000 square feet of non-residential space to a total of 110 units, a minimum of one acre of multi-use open space, and 100,000 square feet of non-residential use (including 90,000 square feet of existing commercial space to remain). The residential portion of the revised development proposal consists of up to 28 single-family homes and up to 82 townhomes (including Moderately Priced Dwelling Units and Workforce Housing Units complying with the requirements of the City of Gaithersburg). All residential units and multi-use open space are proposed on Parcel E (currently zoned R-200) while 10,000 additional square feet of commercial use will be located on Parcels B, C, and D (currently zoned NR 0.75 H45). The Applicant proposes the annexation plan to be subject to certain "binding elements" such as the mix and total number of proposed units, MPDUs and workforce housing units, and at least one acre of open space.

Figure 3 – Revised Sketch Plan



SKETCH PLAN

JOHNSON'S PROPERTY | APRIL 25, 2016

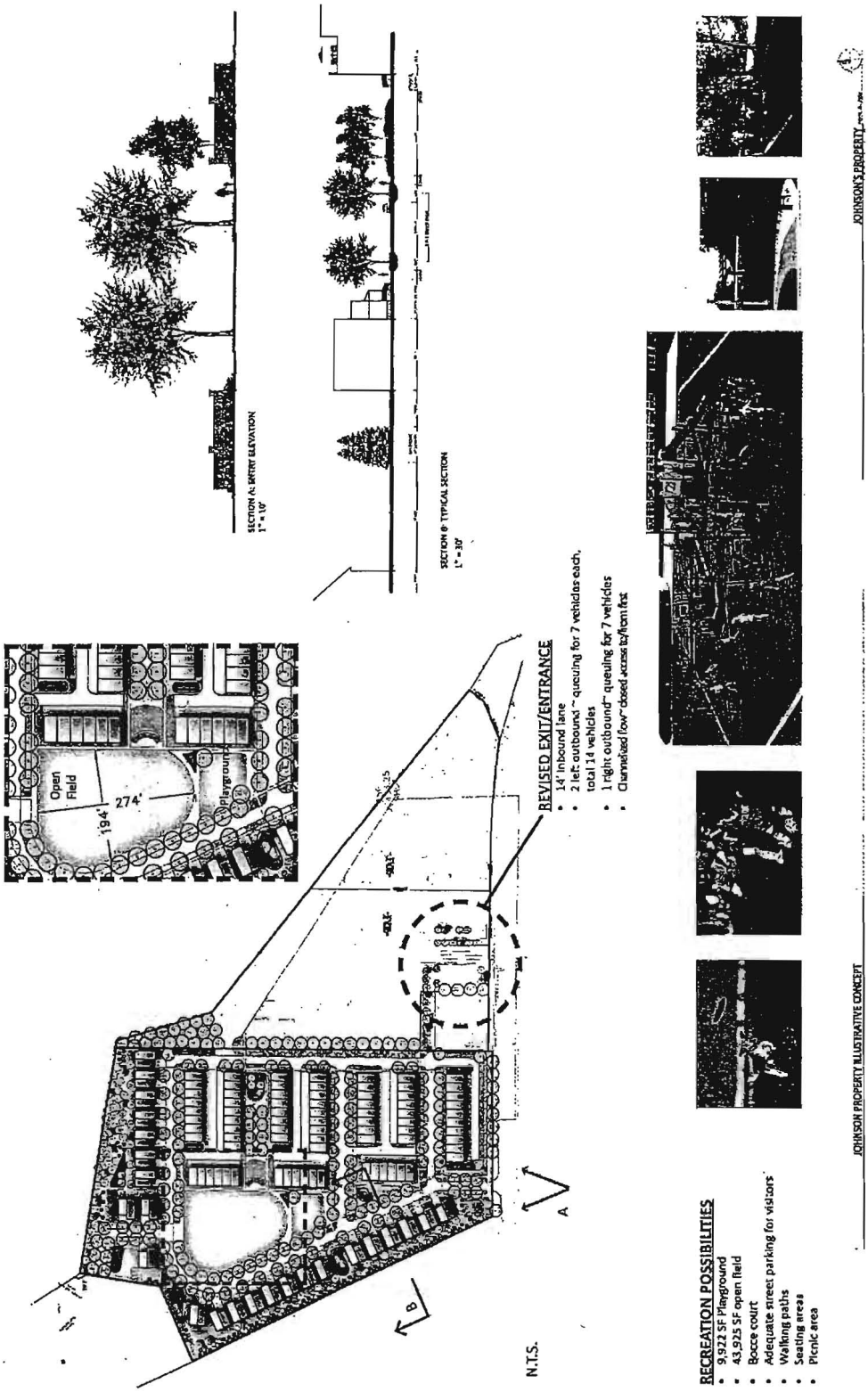


Figure 4 – Revised Illustrative Plan

ANALYSIS AND FINDINGS

All previous analysis and findings regarding the *Great Seneca Science Corridor Master Plan* Master Plan, Public Facilities and Services, Environment, and Transportation as reviewed by the Planning Board on November 12, 2015 (Attachment 1) remain valid. This report focuses only on the zoning analysis of the revised square footage of development and how it meets Section 4-416 of the Maryland Code's Local Government Article, which states in relevant part:

Different land use or density
(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 following table provides a comparison of what could be approved under the current zoning and the proposed development after annexation:

Table 1- Project Data Table

Parcels/Current Zoning	**Maximum Development Allowed Under Current Zoning**	**Proposed Development**
R-200 Portion, Parcel E (609,404.4 sf or 13.99 acres)	Up to 34 units (with MPDU) (Section 59.4.4.7.C, optional method—13.99 x 2.44 units per acre)	110 units
NR 0.75 H 45 Portion, Parcels B, C, & D (434,433 sf or 9.97 acres)	Up to 40 units and 228,077 sf of non-residential floor area*	100,000 sf non-residential floor area (90,000 sf existing plus 10,000 sf proposed)
Total Development on the Entire Property	74 units and 228,077 sf non-residential	110 units and 100,000 sf non-residential

*Maximum of 325,825 sf non-residential at full 0.75 FAR, or 288,077 sf of non-residential (70.%) and 97,747sf of residential (maximum 30%), which could yield 40 units at 2,400 sf average per unit.

Table 1 shows that the total proposed development is not greater than 50% of what could be allowed on the entire property under the current zoning:

Maximum residential units on the entire property under current zoning =	74
1.5 times the maximum under current zoning (74 x 1.5) =	111
Proposed residential units on the entire property =	110
Maximum non-residential on the entire property under current zoning =	228, 077 square feet
Proposed non-residential on the entire property =	100,000 square feet

COMMUNITY OUTREACH

The Applicant has undertaken the following community outreach efforts over the past few months:

- One-on-one meetings with local civic and community leaders, including the leaders of the Willow Ridge Civic Association, North Potomac Civic Association, Hidden Ponds and Orchard Hills Homeowners Association.
- Meetings with the representatives of the Quince Orchard Cluster, as well as the principals and PTSA presidents of both Quince Orchard High School and Thurgood Marshall Elementary School.
- Small group meetings with adjoining homeowners and the Darnestown Civic Association.
- On February 23, 2016, the Applicant held a community workshop.
- On March 22, 2016, the Applicant held a community wide meeting to present an updated plan based on the input received from previous meetings.
- A website was created – www.johnsonpropertyannexation.net – that includes a contact form where residents can submit questions and comments.
- Email updates to send invitations to community meetings and respond to questions and concerns.

Staff received approximately 180 letters and emails opposing the annexation petition. Of the 180 opposing correspondence, approximately 165 community members assert the following:

1. The proposed development would increase traffic and safety concerns in an area that is already congested.
2. Annexation will create an area that is a part of the City of Gaithersburg surrounded on all sides by neighborhoods and resources that are not part of the City of Gaithersburg.
3. The proposed development would increase school enrollment for the elementary, middle and high schools in schools that are already overcrowded. The City of Gaithersburg's new Adequate Public Facilities Ordinance (APFO) standard of 150% per each school (Thurgood Marshall Elementary, Ridgeview Middle School, and Quince Orchard High School), is inconsistent with Montgomery County's APFO standard of 120% per cluster (Quince Orchard Cluster).
4. Concerns persist regarding the increased residential density.
5. The City of Gaithersburg could approve development exceeding the current proposal.

Staff has also received approximately five emails supporting the current annexation. The email messages state that the current proposal offers smarter urban development that blends with its context.

CONCLUSION

Based on the analyses contained in this report, Staff determines that, Per Subtitle 4-416(b) of the Maryland State Annotated Code, the development proposed with this revised annexation petition will not contain substantially different uses than currently allowed and is not substantially higher (more than 50%) than what could be granted in accordance with the zoning classifications of Montgomery County at the time of annexation.

Attachments:
1. Johnson Property Annexation X-7067-2015 Staff Report dated November 5, 2015
2. Revised petition for Annexation into the City of Gaithersburg dated April 25, 2016
3. Community Letters

LERCH EARLY & BREWER
ideas that work

Attorneys at Law
3 Bethesda Metro Center, Suite 460
Bethesda, MD 20814
www.lerchearly.com
Stuart R. Barr

Tel. (301) 961-6095
Fax (301) 347-1771
srbarr@lerchearly.com

July 8, 2016

BY E-MAIL AND FIRST CLASS MAIL

The Honorable Nancy Floreen, President
and Members of the Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Petition for Annexation into the City of Gaithersburg – Johnson Property
Approximately 23.45 acres - Northwest corner of Darnestown Road (MD Route 28) and Quince Orchard Road (MD Route 124)

Dear President Floreen and Members of the Council:

Later this month, the Council will review a petition from the Johnson Family to annex its 23 acre property into the City of Gaithersburg. The Johnson Family has owned the property for generations, operated a nursery and garden center for many years, and has maintained very deep ties with the surrounding community. The annexation petition originally was scheduled for the Council's review late last year. In order to address comments with respect to the initial application, we requested a postponement of the annexation review process for additional community outreach and an opportunity to prepare a revised plan. A substantially revised plan is now before the Council – with Park and Planning Staff and Planning Board agreement that the plan meets County annexation requirements (*see* Attachment 1) – and we respectfully request the Council's support.

Revised Plan

Over the past few months, we conducted multiple group meetings and many more informal conversations as part of our community engagement. As a result of that outreach, we have studied questions raised by community members primarily involving density, school capacity, open space, and transportation. Based on these outreach efforts, we submitted a

substantially revised plan. When compared with the original plan submitted with the annexation petition, the revised plan:

- Reduces the maximum number of residential units from 305 to 110. (The 110 units are proposed as a mix of up to 28 single-family homes and up to 82 townhomes and will include Moderately Priced Dwelling Units and Workforce Housing Units.)
- Eliminates all proposed multi-family housing (185 units).
- Reduces maximum additional commercial space from 285,000 square feet to only 10,000 square feet.
- Preserves the existing height of commercial space.
- Substantially increases proposed park and open space.
- Reconfigures proposed site circulation, which will likely result in greater separation between proposed single-family units on the north and west perimeter of the property and adjoining properties; and
- Provides signalized access to Darnestown Road for the existing community through Nursery Lane.

Request for Council Support of Revised Plan

We ask for County Council support for two reasons: (1) the proposed development satisfies the provisions of the Maryland Code under which cities like Gaithersburg are allowed to annex areas within their designated Maximum Expansion Limits, and (2) the plan reflects an appropriate mix of uses and density for this important infill site.

In terms of annexation, this property has been within the City of Gaithersburg's Maximum Expansion Limits for years with a City Master Plan designation of mixed use. The proposed development of the annexed land meets applicable annexation requirements because it does not include land uses that are substantially different than the uses allowed under County zoning, nor does it propose development at a substantially higher density (more than 50% greater). As noted by the Maryland Department of Planning, the Park and Planning Commission legal staff, its planning staff and the Planning Board, the annexation meets this requirement. Under current County zoning, 50% greater residential density would result in 111 units and the plan proposes 110. In terms of commercial development, 50% greater density would result in approximately 342,000 total square feet while the plan proposes only 100,000 square feet—the existing 90,000 square feet plus up to 10,000 square feet of additional area.

In addition, we note that the County's recent Great Seneca Science Corridor Master Plan provides two alternative recommendations for the property. It reconfirms the NR (neighborhood retail) zoning on the eastern portion which would allow a mix of retail and residential development. At the same time, for the western portion of the site, it recommends either County purchase of the property for park purposes or, alternatively, indicates that it would be appropriate for a rezoning to allow a mix of single-family and townhouse units on that portion of the property. This is exactly what the proposed development would include. The only difference is that the applicant actually is agreeing to limit commercial development on the eastern portion of the site, now zoned NR, to less than one-third of its potential under existing County zoning. Therefore, it meets the annexation requirements.

Secondly, we believe that the proposed development is comparable to what would be proposed under a County townhouse rezoning application consistent with the alternative recommendation in the Master Plan. The proposed townhouse density under the revised plan is fewer than 8 units per acre, which compares favorably with many infill townhouse rezonings, including some in this immediate area, where densities of 8-15 units per acre have been approved. As in many of those cases, the mix of townhouse and single-family units on the western portion of this property will serve as an appropriate transition between both commercial uses to the east and institutional uses to the south (as well as two multi-lane highways), on the one hand, and, on the other, the existing single-family development further to the north and west. The proposed plan will further assist in addressing County population growth forecasts and the desire to locate new housing in more developed areas, rather than expanding at locations farther out from the major centers of activity. In that respect, this property is very convenient to jobs in the Life Sciences Center and the I-270 Technology Corridor, including those in both the cities of Gaithersburg and Rockville. The proposed development will further provide important MPDUs and workforce housing in an area of the County where there is a particular shortage of such units. Finally, the property is extremely walkable to neighborhood shopping, all three schools (high, middle and elementary) and has bus service connections to major activity centers and Metro.

We believe that the project will be a very well-designed, smart growth, pedestrian-friendly, and environmentally sensitive residential community with generous open space and a variety of unit types for a variety of life styles. We spent a significant amount of time studying the open space. The proposed open space of at least one acre with a combination of a ball field and park would be available for public use at no cost to the County. As shown on the plan, larger single family detached lots are provided on the perimeter of the property to promote compatible relationships with existing homes and provide an appropriate transition to the commercial portions of the property along Darnestown Road. We believe that townhome units, as allowed in the County Master Plan, are appropriate towards the interior of the site. The proposed development passes adequate public facilities for schools under both the County and City of Gaithersburg tests.

As hard as we have tried, we have not been able to earn the support of everyone within the surrounding community, but we believe that the revised plan is a good plan, is appropriate

for the site, and is compatible with the surrounding community. We are thankful for the support that we have earned (*see* Attachment 2 for examples of letters of support).

If you have any questions or need any additional information, please let us know. Thank you very much for your consideration.

Very truly yours,

Stuart R. Barr

Robert R. Harris

Attachments:

1. Comments from Montgomery County Planning Board dated July 6, 2016
2. Examples of Letters of Support

cc: Jeffrey Zyontz