



## Sears Property Gaithersburg Annexation Request X-184

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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.

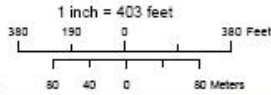
## Location and Background

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



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*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	
<i>Tax</i>	<i>Rate</i>	<i>Tax Revenue</i>
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.

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### 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)