



**Johnson Property, Annexation, X-7067-2015**

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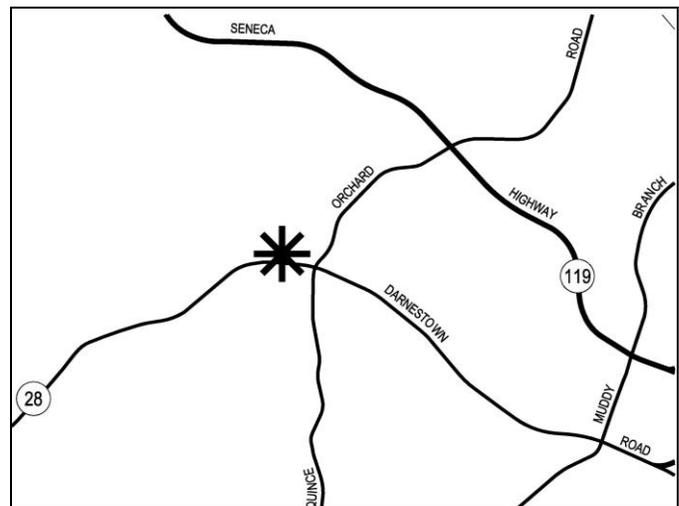
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Completed/Revised: 11-5-15

**Description**

- Request to annex 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 June 26, 2015.
- Applicant: Johnson Family Enterprises, LLC and Three Amigos Real Estate, LLC.
- Action required for the City of Gaithersburg public hearing on November 16, 2015. Comments to the City’s Planning Commission are due by November 20, 2015 in order to be considered at their December 2 meeting. The City Council’s public record will remain open through their February 1, 2016 public hearing.



**Summary**

Staff recommends approval to transmit the following comments to the Montgomery County Council and the City of Gaithersburg for a public hearing on November 16, 2015:

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 County 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 GSSC Master Plan;
- b) the GSSC Master Plan recommended against annexation of the Site; 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.

## BACKGROUND AND LOCATION

The Site, 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 Quince Orchard Road (MD Route 124) right-of-way in Gaithersburg, Maryland. The Site 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 Site is surrounded by a mix of commercial and residential uses. Properties to the north and west of the Site are zoned R-200 and are improved with a combination of single-family detached houses and townhomes. The property directly to the south of the Site, 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

## ANNEXATION PROPOSAL

The Johnson Family Enterprises, LLC and Three Amigos Real Estate, LLC, (the Applicant) filed the proposed annexation petition with the City of Gaithersburg to reclassify the Site from the County's R-200 and NR .75, H 45 zones to the City's Mixed Use Development Zone (MXD). The Applicant has proposed a conceptual development plan to be completed in three phases: up to 180 residential units of up to four-stories in Parcel E (Currently zoned R-200) during Phase one; up to 125 residential units of up

to six-stories on Parcels B and C (Currently zoned NR 0.75 H45) in Phase two; and up to 375,000-square feet of commercial development on Parcel D (Currently zoned NR 0.75 H45) during Phase three.

The City of Gaithersburg ~~Mayor and Council submitted a statement dated June 26, 2015 in support of accepted the~~ annexation petition and ~~a~~ conceptual plan on June 30, 2015 (see Attachment). ~~A public hearing is scheduled for November 16, 2015. The City's Planning Staff, Mayor, and City Council support the petition and MXD designation on the Site since~~ The applicant's statement in support of the annexation petition states that *"The Property is within the maximum expansion limit of the City of Gaithersburg, as depicted in the Growth Element of The City's 2003 Master Plan, adopted April 2009. The proposed development on the Property is consistent with the Master Plan recommendations, fulfills the purposes and requirements of the MXD zone, and is compatible with the surrounding community."*

The City's Planning Commission will ~~also hold a public hearing and transmit~~ discuss their ~~recommendation comments~~ to the ~~Mayor and City~~ Council on December 2, 2015. The City Council will hold their public hearing on February 1, 2016.

## MASTER PLAN AND ZONING

The Site is located within the Quince Orchard district of the 2010 *Great Seneca Corridor Master Plan*, which recommends against annexation of this property. One of the Master Plan's recommendations is to:

*"Meet the recreation needs of the GSSC area by identifying and acquiring a site for a new local public park in the Quince Orchard area and requiring the dedication of parkland for new parks and open spaces in the LSC Districts."* (GSSC Master Plan, page 10.)

On page 61, the Master Plan states:

*"The 1985 Gaithersburg Vicinity Master Plan and the 1990 Shady Grove Study Area Master Plan both recommended a 10-acre local park on the Crown Farm, which has since been annexed into the City of Gaithersburg and is no longer available for a County park site. 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."*

The Montgomery County Department of Parks Staff confirms that the Johnson Family did not accept the Department's offer to purchase Parcel E. Parks Staff is concerned that if this annexation occurs the Master Plan's goal of supplying more parks in the Quince Orchard Area may not be achieved. This occurred previously with the Crown Farm annexation to the City of Gaithersburg. Parks Staff believes there are unmet recreation needs in the area and there are no other large, suitable properties.

On page 13, the GSSC Master Plan states:

*"In 2009, the City of Gaithersburg established a new MEL as part of its adopted Municipal Growth Element. The City's new MEL includes nearly all of the GSSC Master Plan area, including the Life Sciences*

*Center. This Master Plan recognizes that future annexations may occur and that annexing properties surrounded by municipalities would help create coherent boundaries.*

*Ideally, the boundaries between the County and the municipalities would be logical and well-defined, following roads or natural features such as streams. This Plan strongly opposes annexation of any portion of the Life Sciences Center, which is not an enclave. Over the past 30 years, the County has invested substantial resources to create and develop the LSC. Annexing any of the LSC would leave the County without control of a significant element of its economic development strategy and create irretrievable revenue losses.”*

The Site will be contiguous with the City of Gaithersburg only through a small area of the Quince Orchard Road right-of-way, previously dedicated by the applicant. This annexation will create an area that will be technically contiguous to the City of Gaithersburg, but completely surrounded by Montgomery County.

On page 57, the Great Seneca Science Corridor Master Plan states that:

*“The communities in the westernmost part of the Plan area are Quince Orchard, Orchard Hills, Willow Ridge, and Parkridge. The Plan recommends that these residential neighborhoods be maintained and preserved.*

*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.”*

The GSSC Master Plan designates five enclaves that are completely or nearly completely surrounded by the City of Gaithersburg, within the City’s Maximum Expansion Limits (MEL), that could be considered for annexation (GSSC Master Plan, page 66). This Site is not one of the five enclaves.

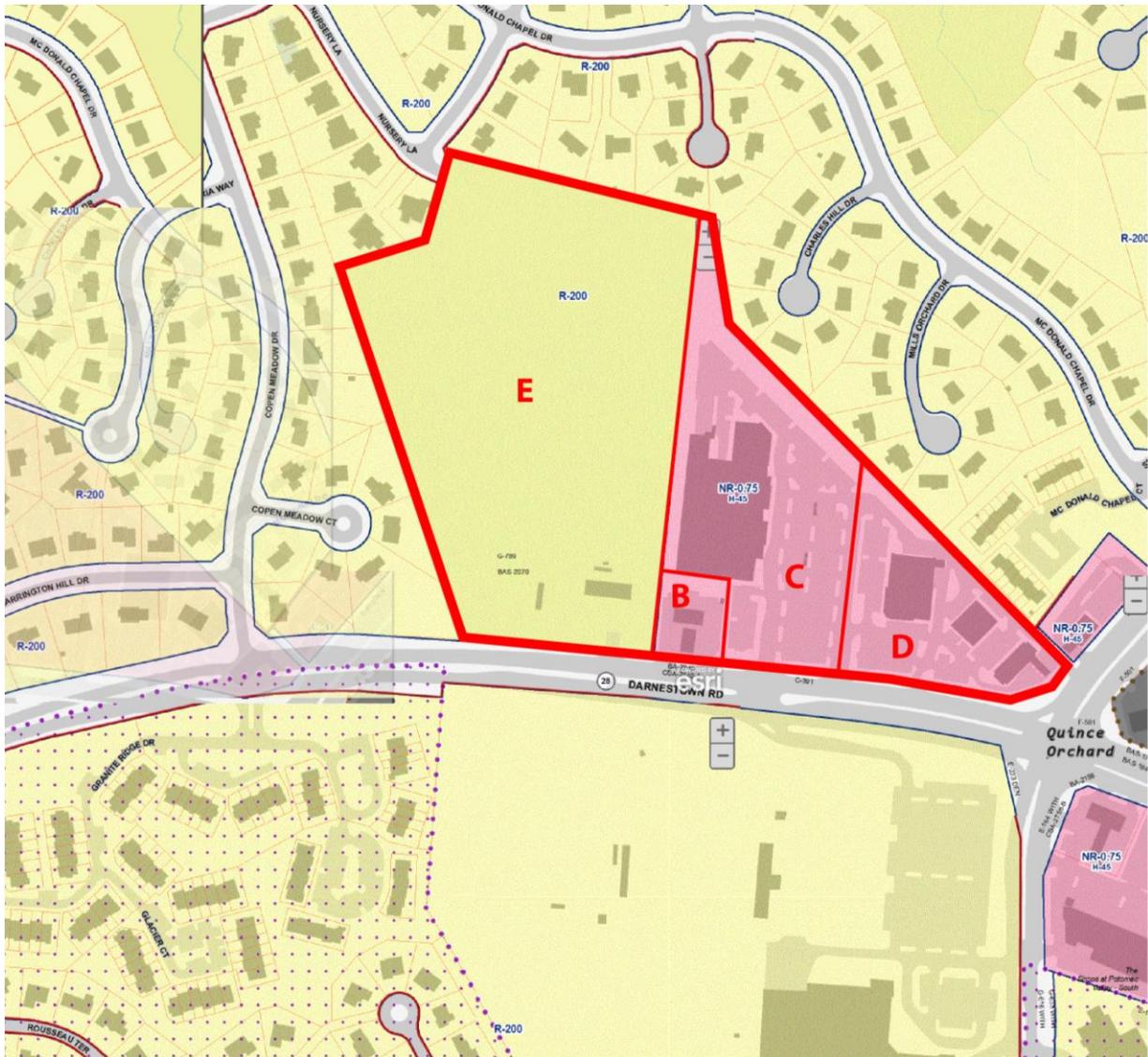


Figure 2 – Existing Zones

As shown in Figure 2, Parcel E is currently zoned R-200 while Parcels B, C & D are zoned NR 0.75 H45. If this annexation is approved, all four parcels will be placed in the City’s MXD Zone. The R-200 Zone is primarily for single-family detached houses at a maximum density of one dwelling unit for every 20,000-square feet under the Standard Method, although up to 40% of units may be townhouses if the property is developed under the MPDU Optional Method development. The NR 0.75 H45 Zone allows a maximum density of 0.75 FAR for non-residential uses permitted in the zone. But residential uses (single and multiple-family) are limited to a maximum 30% of the total density allowed. The City’s MXD Zone is a mixed-use zone similar to the County’s NR 0.75 H45 Zone, except that both the residential and non-residential uses have a maximum FAR of 0.75. Since Parcels B, C & D will go from the County’s NR 0.75 H45 Zone to the City’s MXD zone, there will be no substantial change in the uses permitted for these parcels. Parcel E, currently in the R-200 Zone, however, will be placed in the MXD Zone, which is substantially different for both uses and maximum density allowed.

The following table provides a comparison of the before and after zones:

Table 1- Project Data Table

PROJECT DATA TABLE				
	R-200 Portion Parcel E (13.99 acres, or 609,404.4 sf)		NR 0.75 H 45 Portion Parcels B, C, & D (10.36 acres, or 451,281.6 sf)	
	Current R-200 Zone	Proposed MXD Zone	Current Zone NR 0.75 H 45	Proposed Zone MXD
<b>Permitted Uses</b>	Single-family Residential (detached, very limited townhouses)	Mixed-Use with Residential (SF, MF) and non-residential	Mixed use, with residential limited to 30% of the total floor area (Section 59.4.6.1.A)	Mixed-use with residential (SF, MF) and non-residential
<b>Maximum Density</b>	Up to 30 units (without MPDU bonus)	0.75 FAR, or 457,053 sf residential or non-residential (approximately 189 units)	0.75 FAR, or 325,825 sf non-residential, Residential is limited 30%, or 101,538 sf	0.75 FAR or 325,825 sf non-residential or residential floor area

The Applicant proposes up to 60-units of “Multi-Family/Towns” in the R-200 zone (Parcel E, Phase one). While the Montgomery County’s R-200 zone (Section 59.3.1.6. Use Table, Single-Unit Living) allows a total maximum of 30 units with limited number of Two-Unit Living, and allows a Limited Use or Conditional Use for Townhouse Living; it does not permit any Multi-Unit Living.

The ~~Mayor and Council of the City of Gaithersburg Applicant’s~~ Statement in Support of Annexation Petition to the Mayor and Council of the City of Gaithersburg – June 26, 2015, Page 3, states, *“If the Property was not annexed and remained in the County and was developed under the current County Zoning Ordinance adopted in 2014, there are two ways to accommodate townhouse development on Parcel E, as recommended by the Master Plan – Optional Method MPDU Development, or a Local Map Amendment Application of a floating zone. Because Optional Method MPDU Development limits townhouse development to 40% of the total number of units, this approach is not viable, and a floating zone is necessary to accommodate a realistic yield for townhouse development.”*

Although the Applicant claims that the R-200 portion could be rezoned to a townhouse zone, Staff has not analyzed this petition for such a possibility since the annexation law does not contemplate a scenario for a possible rezoning in the County. It requires a comparison of the zone at the time of annexation and the proposed future zone after the proposed annexation.



Figure 3 – Proposed Conceptual Plan



***Annexation of land in another municipality prohibited***

*(c) A municipality may not annex land that is in another municipality.*

Although the Site will be mostly surrounded by the County, the eastern edge of the Site (see Figure 4) consists of right-of-way within Quince Orchard Road (MD Route 124) as described in the Description of Part of Quince Orchard Road Maryland Route No. 124 (see Attachment 1). This portion of the Site is still in fee ownership of the Applicant, and makes the Site contiguous to the City of Gaithersburg limits. Therefore, the petition is compliant with the requirements of Local Government Article § 4-401.

Section 4-406 of the Maryland Code’s Local Government Article, titled “Public notice and hearing on resolution,” states in relevant 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.*

***Notice to county and planning agencies***

*(c) 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 letter from the City of Gaithersburg, dated August 19, 2015, serves as official notification, as required by Section 4-406. It states 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” by the Montgomery County Planning Board is issued and any actions by the Montgomery County Council, if necessary, are scheduled. The City Council’s record is currently open. Advertising for the public hearing will be in accordance with Section 4-406.

Section 4-416 of the Maryland Code’s Local Government Article 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.*

***County approval of zoning classification***

*(c) Notwithstanding § 4-204 of the Land Use Article and if the county expressly approves, the municipality may place the annexed land in a zoning classification that allows a land use or density different from the land use or density specified in the zoning classification of the county or agency with*

*planning and zoning jurisdiction over the land prior to its annexation applicable at the time of the annexation.”*

The Applicant proposes up to 375,000 square feet of commercial use and 305 dwelling units (125-units in the NR Zone and up to 180-units in the R-200 Zone). The existing R-200 Zone does not allow non-residential uses, but the proposed MXD Zone allows commercial uses. Both the NR and MXD Zones allow commercial uses. The density proposed by the petition exceeds the maximum allowed by the County for both residential and non-residential uses by more than 50%.

## **PUBLIC FACILITIES AND SERVICES**

The Site is located within the area served by Thurgood Marshall Elementary School, Ridgeview Middle School, and Quince Orchard High School. The petition’s total residential development of up to 305 dwelling units may negatively impact the area’s elementary and high school capacity. If developed in the County, Phase one development (Parcel E) would require a school facility payment since, according to the Subdivision Staging Policy FY 2016, the projected 2020 Elementary School Cluster utilization is at 115.3% and High School capacity is currently at 108.7%.

As part of the annexation petition, the Applicant will request relief from the City’s APFO School Test either through a comprehensive City-wide change to the APFO standards or under the City’s Zoning Ordinance Section 24-244, which allows relief when a property is subject to an annexation agreement.

The Site is located in water and sewer service categories W-1 and S-1 and will be served by public water and sewer. Electric, gas and telecommunications services also will be available. Other public facilities and services – including police stations, firehouses, and health care facilities – are also estimated to be adequate.

## **ENVIRONMENT**

There are no environmental concerns with the proposed annexation.

The City of Gaithersburg approved the Natural Resources Inventory/Forest Stand Delineation for this Site in association with this application. The NRI/FSD reports no forest, streams or their buffers, floodplains or their buffers, or wetlands or their buffers on the Site. The Site contains 9 significant trees (over 24 inches diameter at breast height, or dbh), and four specimen trees (over 30 inches dbh). One white pine tree (*Pinus strobus*) is within 75% of the diameter of the current County champion for that species. No rare, threatened or endangered species or cultural or historic resources are known to exist on the Site. The Site drains to the Great Seneca Creek watershed, which is a Use Class I/IP stream.

The major environmental issues affecting this Site is noise. The Site is adjacent to two major highways (Route 28 and Quince Orchard Road). Montgomery County development review procedures would require any proposed residential use of the Site to undergo a Phase I noise analysis as part of the review process, with possible noise abatement required if necessary to bring the development into compliance with the noise guidelines.

## TRANSPORTATION

The *Great Seneca Science Corridor Master Plan* (“Master Plan”) recommends Quince Orchard Road (State route MD 124) to be a 6-lane major highway, M-24, with a 150-foot wide right-of-way and a dual bikeway, DB-44 -- a shared-use path along the Site’s frontage and bike lanes. Currently along the Site’s frontage of Quince Orchard Road, the right-of-way near the intersection with Darnestown Road is at least 119-feet wide with the shared-use path located on the opposite south side and a 5-foot wide sidewalk with a 2.5-foot wide green buffer panel.

The *Master Plan* recommends Darnestown Road (State route MD 28) to be a 4-lane major highway, M-22, with a 120-foot wide right-of-way and a dual bikeway, DB-16 -- a shared-use path along the Site’s frontage and bike lanes. The current right-of-way along the Darnestown Road frontage is 60-feet wide in front of the undeveloped Parcel E and 75-feet wide from the centerline in front of the proposed redeveloped Parcels N88 (Parcel C), N144 (Parcel B), and N139 (Parcel D). Thus additional right-of-way dedication would not be required if the Site was a subdivision case in Montgomery County. However, along the Site’s Darnestown Road frontage, the Applicant should 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*.

The Site is served by Ride On bus route 76 along Darnestown Road and route 56 along Quince Orchard Road with bus stops along the Site’s roadway frontages. Ride On route 76 operates buses approximately every 30 minutes only on weekdays. Ride On route 56 operates buses approximately every 30 minutes on weekdays and weekends. The Applicant should work with the Montgomery County Division of Transit Services regarding the possible upgrading and relocation of the existing bus stops.

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 Applicant should enter into a Traffic Mitigation Agreement with the City and the Montgomery County Department of Transportation (MCDOT) to comply with the *Master Plan* requirements to participate in the TMD and assist the City and County in achieving and maintaining its Stage 2 non-auto driver mode share of 18%. The Traffic Mitigation Agreement should be executed prior to release of the relevant City approval or building permit.

The transportation Adequate Public Facility test includes the Local Area Transportation Review (LATR) test and the Transportation Policy Area Review (TPAR) test.

Under the County’s LATR test, the proposed 185 mid-rise apartments, 95 townhouses, 25 single-family detached units, 125,000-square feet of general office space, and an undefined 250,000 square feet of mixed land uses will generate well over 400 peak-hour trips. A traffic study would be required to satisfy the LATR test (over 30 peak-hour trips).

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 approximately 2 million dollars.

## COMMUNITY OUTREACH

The Applicant held a community outreach meeting regarding the proposed annexation at the Johnson warehouse building located at 12311 Darnestown Road, Gaithersburg, Maryland, on Tuesday, October 27, 2015 at 7:00 p.m.

On October 29 and 30th, 2015, Staff received over 550 emails/letters and over 30 voice messages opposing the annexation. The letters and voice messages express the community's request to delay the decision to annex the Johnson Property pending further studies and impact analyses. The letters in opposition assert the following:

1. The proposed development would increase traffic and safety concerns in an area that is already congested.
2. The proposed development would increase school enrollment for the elementary, middle and high schools in schools that are already overcrowded.
3. The proposed development would increase demand and burden on current utilities, infrastructure, recreation, and the environment.
4. Annexation will create an area that is a part of the city of Gaithersburg surrounded on all sides by neighborhoods that are not part of the city of Gaithersburg.
5. The R-200 lot is much better suited to include community resources that are already needed in the surrounding area. Possible programmed spaces for recreation could be a part of the proposal and serve to balance the proposed residences. Possible uses of the Site may include: Pocket parks, gardens for education, multi-programmable fields for soccer and baseball, a recreation center, etc.
6. The annexation will propose an increase in density that does not comply with the Approved and Adopted *2010 Greater Seneca Science Corridor Master Plan*.

## CONCLUSION

The requested annexation proposes a use that is substantially different than the uses authorized in the existing R-200 Zone, and the petition is contrary to the recommendations of the *Great Seneca Science Corridor Master Plan*. The development density allowed in the City's MXD Zone is substantially higher (more than 50% higher) than the maximum allowed under the current zone. As recommended in the GSSC Master Plan, an isolated area not fully contiguous to the City limits should not be annexed into the City. In addition, this petition will locate multi-family units on a property intended in the Master Plan to be park facilities or contain only single-family units, and it will introduce more density to the area than allowed in the R-200 and NR zones. Staff therefore recommends that the County Council not approve the proposed development associated with the annexation petition. Without the Council's express approval, the City of Gaithersburg cannot approve development of the annexed property for land uses substantially different than the currently authorized uses, or at a substantially higher density than currently allowed, for five years after the annexation.

### Attachments:

1. Petition for Annexation into the City of Gaithersburg
2. Johnson Community Meeting Invitation
3. Community Letters
4. Chairman's Correspondence