



Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC, Annexation No. X-7089

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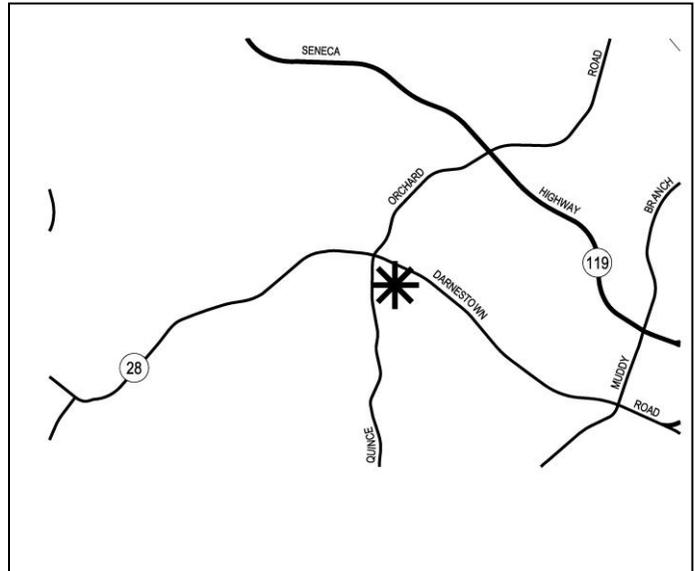
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Completed: 11/05/15

Description

Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC, Annexation No. X-7089

- Request to annex 8.28 acre Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC properties into the City of Gaithersburg and rezone the parcels from the County’s NR 0.75 H 45 Zone to the City of Gaithersburg’s MXD Zone
- Located at 12110, 12130 and 12140 Darnestown Road (MD 28) in Gaithersburg, MD, within the area of the 2002 *Potomac Subregion Master Plan*
- Filed July 14, 2015
- Applicant: Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC
- Action required for the City of Gaithersburg public hearing on November 16, 2015



Summary

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

1. The City of Gaithersburg need not refer the Petition to the Montgomery County Council for its review or approval. The Petition proposes uses and densities in the City’s MXD Zone that are consistent with those allowed in the Employment Office (EOF) Zone currently in place.

BACKGROUND AND LOCATION

The Site of the proposed annexation is located at the intersection of Darnestown and Quince Orchard Roads, and carries the addresses of 12130, 12140 and 12110 Darnestown Road. It is owned by two entities associated with the Magruder family—Darnestown Valley—WHM, LP and Darnestown Valley Petroleum WHM, LLC. It is part of the Potomac Subregion and is included in the 2002 *Potomac Subregion Master Plan*. The Site consists of three recorded lots, which total 4.67 acres, and portions of the rights-of-way of Darnestown and Quince Orchard Roads, totaling 3.61 acres. The overall area to be considered for annexation is 8.28 acres. Figure 1 shows the site and its vicinity.

The intersection of Darnestown and Quince Orchard Roads is dominated by commercial retail and institutional uses, with residential uses surrounding the commercial area. The developed portion of the Site is occupied by the Potomac Valley South Shopping Center, which totals about 40,700 square feet of gross floor area. To the north, across Darnestown Road and east of the intersection, are the Shops of Potomac Valley North and one-family residential development. This area is in the City of Gaithersburg. To the south is the Quince Orchard Library and one-family residential development. To the east is the Potomac Garden Center, which has a special exception/conditional use in the R-200 Zone, and additional one-family residential development. Quince Orchard High School is across Quince Orchard Road to the west, along with additional one-family development. North of Darnestown Road and west of the intersection are the Johnson's nursery properties, mixed residential and commercial properties that are the subject of a Gaithersburg annexation petition currently under review.

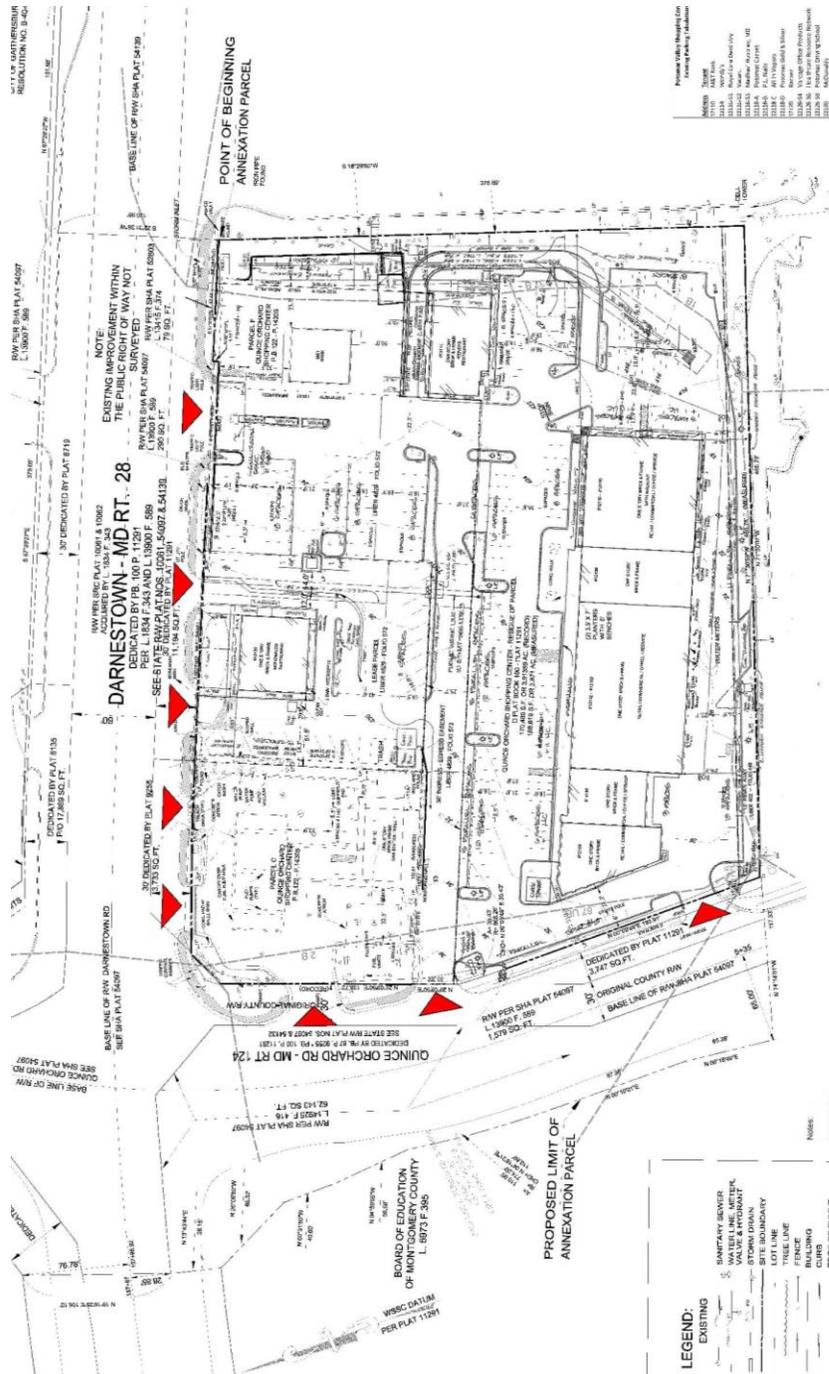
Figure 1: Vicinity



Prior to the county's zoning conversion, the developed portion of the Site was located in the Convenience Commercial (C-1) Zone. It is now in the Neighborhood Retail (NR) Zone, with a maximum

density of 0.75 and a maximum height of 45 feet. The high school and all nearby residential neighborhoods in the county are in the R-200 Zone. In Gaithersburg, the Potomac Valley North center is the city's Local Commercial (C-1) Zone and the adjacent residential neighborhoods are in the Medium Density Residential (RP-T) Zone, a medium density residential zone. Figure 2 shows the shopping center's site plan.

Figure 2: Existing Shopping Center Site Plan



ANNEXATION PROPOSAL

The Petitioners--Darnestown Valley—WHM, LP and Darnestown Valley Petroleum WHM, LLC—submitted the annexation request, seeking annexation into the City of Gaithersburg and reclassification of their property to the city’s Mixed Use Development (MXD) Zone. The Petitioners have no immediate plans for redevelopment of the property.

The Gaithersburg City Council will hold a public hearing on the annexation proposal on November 16, 2015. The city’s Planning Commission reviewed the Petition on October 7, 2015 and recommended its approval on October 21, 2015. The Planning Commission concluded that the Petition was consistent with the City’s Master Plan; that the area proposed for annexation was within the City’s Maximum Expansion Limits; and that it would not burden existing public facilities. The Planning Commission also concluded that the Petition met the City’s goals of “promoting economic development, diversifying local economy to allow a variety of uses, allowing for redevelopment opportunities on underutilized sites, promoting a mix of uses for ‘24/7 activity’ and increasing the City’s tax base.”

MASTER PLAN AND ZONING

The Site is located in the Potomac Subregion and is currently guided by the *2002 Potomac Subregion Master Plan*. It is in North Potomac, a part of the subregion discussed separately in the Plan. The Plan recognizes that North Potomac is the most densely populated part of the subregion and that its residents “are striving to create a clear identity for their community and are seeking needed local community services, such as a recreation center.” (p. 69) The Plan does not make specific recommendations for the Site. The Plan makes no recommendations regarding potential annexations.

The 2009 *City of Gaithersburg Master Plan Land Use Element* includes the Site, which is designated as area 17. The Plan recommends that, should the properties be annexed, they should be placed in the MXD (Mixed-Use Development) Zone, and also put in that zone’s Commercial-Office land use designation.

The properties are in the county’s NR Zone. This new zone was placed on the properties in October 2014 as part of the comprehensive revision to the County’s Zoning Ordinance. The properties had been in the C-1, or Convenience Commercial Zone. The NR Zone, like the C-1 Zone before it, provides commercial uses and services with a neighborhood orientation that, in general, require frequent purchases and auto access. The maximum NR density for the Site is 0.75 FAR, with a maximum building height of 45 feet. The NR Zone allows some residential development, but limits such uses to a maximum of 30 percent of a project’s gross floor area.

The MXD Zone is Gaithersburg’s primary mixed use zone. It is designed to implement master plan recommendations for “comprehensively planned, multi-use projects” that would include residential, commercial, recreational, open space, employment and institutional uses. The zone allows any residential use allowed by right in the city’s residential zones, and a broad range of commercial, employment and industrial uses, with maximum allowable amounts of each type of use. Residential

densities are set in the applicable master plan and confirmed in the review of a sketch plan. Non-residential densities generally may not exceed 0.75 FAR.

The following table offers a broad comparison of uses in the NR and MXD zones:

| Table 1: Project Data Table | | |
|------------------------------------|---|--|
| Jurisdiction | Montgomery County | City of Gaithersburg |
| Zoning District | NR 0.75, H 45 | MXD |
| Permitted Uses | Neighborhood-oriented commercial uses, including retail/services uses, offices and institutional uses; all types of household living uses | Commercial, industrial and employment uses may be mixed with residential uses |
| Density | Overall maximum density of 0.75 FAR; household living is limited to a maximum of 30 percent of gross floor area | Maximum non-residential density of 0.75 FAR; number of dwelling units to be set at sketch plan |

The Petitioner has submitted a Sketch Plan for the properties, which is required by the City’s Zoning Ordinance for properties in the MXD Zone. While the Petitioners are not proposing redevelopment of the properties at this time, the Sketch Plan shows that future development would have two components, which are shown in Figure 3. The area shown as a Commercial Focus would be likely to include retail and service uses, and the combined Office/Commercial area would include those commercial uses, as well as general offices. The Sketch Plan proposes a maximum FAR of 0.75 for the site, should it redevelop. The FAR of the Potomac Valley South Shopping Center is approximately 0.15.

Figure 3: Sketch Plan



ANNOTATED CODE OF MARYLAND

The Annotated Code of Maryland includes a section that outlines the procedures and requirements for the annexation of land by incorporated municipalities.

1. Section 4-401 of the Maryland Code's Local Government Article, titled "Power to enlarge municipal boundaries by annexation," states:

(a) Subject to subsections (b) and (c) of this section, the legislative body of a municipality may enlarge its boundaries by annexation as provided in this subtitle.

Land to which power applies

(b) The power of annexation applies only to land that:

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

Annexation of land in another municipality prohibited

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

The properties proposed for annexation are now part of an unincorporated area of Montgomery County.



When the rights-of-way of Darnestown and Quince Orchard Roads are included, the proposed Petition meets the definitions of "contiguous and adjoining" previously accepted by the state Attorney General. The Petitioners' attorneys have provided citations for the opinion, and the city's Planning Commission endorsed this position when it recommended approval of the Petition. As a result, addition of the Petitioners' properties to the City of Gaithersburg will create land contiguous and adjoining to the existing boundaries, and will not create an

enclave, or unincorporated land surrounded by land inside or proposed to be inside the municipal boundaries.

2. 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 City has fulfilled its obligations under this Section. On October 2, 2015, the City of Gaithersburg formally notified the Planning Board that it had received this Annexation Petition. The letter indicated that the Petition had been introduced by the Mayor and City Council on September 8; that the City’s Planning Commission would review the Petition on October 7; that the Commission would make its recommendation to the Mayor and Council on October 21; and that the Mayor and City Council would hold a public hearing on the Petition on November 16, 2015.

3. 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.

Gaithersburg need not seek County Council approval of this Petition.

As noted in the Master Plan and Zoning analysis above, Montgomery County’s NR Zone and Gaithersburg’s MXD Zone both allow a mixture of commercial, residential and institutional uses. The City’s Master Plan recommends commercial and office uses for the Petitioners’ properties, and the Sketch Plan submitted with the Petition proposes uses, both current and prospective, that are consistent with that recommendation. The proposed range of uses is substantially similar to the inventory of uses allowed in the NR Zone. The future density proposed for the properties under the MXD Zone, 0.75 FAR, is the same as the maximum allowed in the NR Zone.

PUBLIC FACILITIES AND SERVICES

The Site is in the Quince Orchard Cluster of the Montgomery County Public Schools (MCPS). It is served by Rachel Carson Elementary School, Lakelands Park Middle School and Quince Orchard High School. Because the Petitioners intend to continue the solely commercial activities of the existing shopping center, there is no immediate impact on schools from the proposed annexation. The City’s Planning

Commission notes that future residential uses on the site would have to comply with City Adequate Public Facilities regulations requiring adequate school capacity.

The Site is located in Water Category W-1, and Sewer Category S-1, which means that the property is currently served by both public water and sewer service.

Gaithersburg's Adequate Public Facilities Ordinance requires that development projects be served by two nearby fire stations, and that response times be 10 minutes or less. The Site can be adequately service by Stations 31, 8, and 32.

ENVIRONMENT

The Petitioners included with their application an approved Natural Resources Inventory/Forest Stand Delineation for their properties. The properties contain four specimen trees with diameters at breast height of 24 inches or more. There are no rare, threatened or endangered species on the site, nor are there floodplains, wetlands, steep slopes, or unsuitable soils. No part of the Site includes a cultural or historic resource.

Any redevelopment proposal on the Site will require the applicant to comply with the City's Stormwater Management regulations.

TRANSPORTATION

The *Potomac Subregion Master Plan* recommends that Darnestown Road be classified as a major highway with a 120-foot right-of-way and a four-lane divided cross section. The *2005 Countywide Bikeways Functional Master Plan* recommends a dual bikeway along Darnestown Road. The Potomac Plan recommends that Quince Orchard Road be classified as an arterial, with an 80-foot right-of-way and a two lane cross section. The Bikeways Plan recommends a shared use path on Quince Orchard Road south of Darnestown Road.

The Site is served by two Ride-On routes. Route 56, along Darnestown Road, runs weekdays and weekends about every 30 minutes between Rockville Metro and Lakeforest Transit Center, with a stop on Darnestown Road in front of the Site. Route 76 runs weekdays only about every 30 minutes between Quince Orchard Road and Shady Grove Metro, with rush hour service between Poolesville and Shady Grove. Both routes use the same stop. Should redevelopment occur, Petitioners should work with the Department of Transportation to upgrade the bus stop.

COMMUNITY CONCERNS

Planning staff has received no correspondence on the proposed Petition.

CONCLUSION

Technical staff believes that the proposed annexation can move forward without referral to the Montgomery County Council. The Petition proposes uses and densities in the City's MXD Zone that are consistent with those allowed in the EOF Zone currently in place. Those uses and densities were consistent when the *2002 Potomac Subregion Master Plan* reconfirmed them through its Sectional Map Amendment.

Technical staff recommends that this comment be transmitted to the City of Gaithersburg and to the Montgomery County Council.

Attachments

1. Petition of Darnestown Valley—WHM LLC and Darnestown Valley Petroleum WHM LLC for Annexation
2. Letter from Casey L. Cirner, Miles & Stockbridge PC

**BEFORE
THE MAYOR AND CITY COUNCIL OF THE CITY OF GAITHERSBURG**

**PETITION OF DARNESTOWN VALLEY-WHM LP AND DARNESTOWN VALLEY
PETROLEUM WHM, LLC FOR ANNEXTION**

Darnestown Valley–WHM LP, a Maryland limited partnership and Darnestown Valley Petroleum WHM, LLC, a Maryland limited liability company (“Petitioners”), pursuant to Sections 4-401 *et. seq.*, Local Government Article of the Maryland Annotated Code (2013), hereby Petition the Mayor and City Council of the City of Gaithersburg, Maryland to annex into the corporate limits of the City of Gaithersburg (the “City”) that certain property described below. In support of this Petition, the Petitioner represents to the Mayor and City Council as follows:

1. The property that is the subject of this Annexation Petition is approximately 8.2877 acres or 361,013 square feet (the “Subject Property”) and consists of: (a) the three platted parcels known of record as Parcel C, the residue of Parcel D (“Parcel D”) and the residue of Parcel F (“Parcel F”), which together comprise the Potomac Valley Shopping Center South (f/n/a Quince Orchard Shopping Center) located in the southeast quadrant of the intersection of Quince Orchard Road (Md. State Route 124) and Darnestown Road (Md. State Route 28); (b) the abutting Darnestown Road right of way (“Route 28 Parcel”); and (c) the abutting Quince Orchard Road (Md. State Route 124) right of way (“Route 124 Parcel”).

2. The Subject Property is more particularly described by metes and bounds in the description attached hereto and incorporated herein as **Exhibit “A”** and depicted on the Boundary Survey/Annexation Plat prepared by Dewberry and dated May 20, 2014 and the Boundary Survey/Annexation Plan excerpt highlighting the Route 28 Parcel and Route 124 Parcel, both of which are attached hereto and incorporated herein as **Exhibit “B”** and **“B-1”**.

3. The platted parcels consist of approximately 4.6734 acres or 203,572 square feet and are identified on Tax Map ES 562 as Parcel “N272” (Parcel D); Parcel “N244” (Parcel C) and Parcel “N273” (Parcel F). A copy of Tax Map ES 562 is attached hereto and incorporated herein as **Exhibit “C”**. Parcel D was established pursuant to Plat No. 11291 and consists of approximately 168,577 square feet; Parcel C was established pursuant to Plat No. 9255 and consists of approximately 24,907 square feet; and Parcel F was established pursuant to Plat No.

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14305 and consists of approximately 10,046 square feet. A copy of Plats 9255, 11291 and 14305 are attached hereto and incorporated herein as **“Exhibit D.”**

4. Parcel C is owned solely and entirely by Darnestown Valley Petroleum WHM, LLC and Parcel D is owned solely and entirely by Darnestown Valley–WHM LP. The deeds evidencing ownership of Parcels C and D are recorded among the Land Records for Montgomery County, Maryland at Liber 6346, folio 807 and Liber 47880, folio 26, copies of which are attached hereto and incorporated herein as **Exhibit “E”**.

5. Parcel F is owned solely and entirely by Provident Bankshares Corporation, which on information and belief was merged into M&T Bank. The deed evidencing ownership of Parcel F is recorded among the Land Records for Montgomery County, Maryland at Liber 6024, folio 062, a copy of which is attached hereto and incorporated herein as **Exhibit “F”**.

6. The Route 28 Parcel consists of approximately six parcels totaling approximately 2.3209 acres or 101,099 square feet and is right of way for Darnestown Road (Md. Route 28). The Route 28 Parcel is comprised of: (i) land owned by Darnestown Valley–WHM LP, Darnestown Valley Petroleum WHM, LLC, Alexa Investors, LLC, Johnsons Family Enterprises, LLC and M&T Bank and dedicated to public use pursuant to those certain plats recorded among the Land Records for Montgomery County, Maryland as Plat Nos. 6952, 8135, 8719, 9255 and 11291, copies of which are attached hereto and incorporated herein as **Exhibit “G”** and see also **Exhibit “D”**; and (ii) land owned in fee simple by the Maryland State Highway Administration (“SHA”) pursuant to those deeds recorded among the Land Records for Montgomery County, Maryland at Liber 13415, folio 374, Liber 13900, folio 589 and Liber 1834, folio 343, all of which are more fully depicted on the SHA Right of Way Plat Nos. 10058-10062 and 54097. A copy of the deeds conveying fee simple title to SHA and the respective SHA right of way plats are attached hereto and incorporated herein as **Exhibits “H”** and **“I”**.

7. The Route 124 Parcel consists of approximately five parcels totaling approximately 1.2934 acres or 56,342 square feet and is right of way for Quince Orchard Road (Md. Route 124). The Route 124 Parcel is comprised of: (i) land owned by Darnestown Valley–WHM LP and dedicated to public use pursuant to that certain plat recorded among the Land Records for Montgomery County, Maryland as Plat No. 11291; (ii) original right of way, as depicted on **Exhibit “B”**; and (iii) land owned in fee simple by the SHA pursuant to those deeds recorded among the Land Records for Montgomery County, Maryland at Liber 13900, folio 589

and Liber 14925, folio 416, all of which are more fully depicted on the SHA Right of Way Plat Nos. 54097, 54132, and 54139. See **Exhibits “H”, “I” and “D”**.

7. The Subject Property is contiguous to and adjoining the existing boundaries of the corporate limits of the City of Gaithersburg.

8. The Subject Property is also within the boundaries of the City’s designated Maximum Expansion Limits (“MEL”) as depicted in the Growth Element of the City’s 2003 Master Plan, adopted April 6, 2009 and therefore, included in and consistent with the Growth Element’s analysis regarding the future adequacy of public facilities, including schools, libraries, police, fire and rescue, water and sewer, stormwater management and recreation. The applicable portions of the Growth Element of the City’s 2003 Master Plan are attached hereto and incorporated herein as **Exhibit “J”**.

9. The proposed annexation will not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the City of Gaithersburg, real property proposed to be within the corporate limits of the City of Gaithersburg as a result of the proposed annexation, or any combination of such properties.

10. The Subject Property is currently classified in the NR – 0.75 H-45, Neighborhood Retail Zone pursuant to the Montgomery County (“County”) Zoning Ordinance and official Zoning Map, a copy of which is attached hereto and incorporated herein as **Exhibit “K”**.

11. The Subject Property is currently within the County’s Potomac Planning Area as defined by the Maryland-National Capital Park and Planning Commission and is subject to the 2002 Approved and Adopted Potomac Subregion Master Plan. The Potomac Subregion Master Plan identifies the area within which the Subject Property is located as “North Potomac.” The Potomac Subregion Master Plan recommends that the Subject Property be classified in the C-1 Zone, the zoning classification of the Subject Property prior to the adoption of the comprehensive revision to the County Zoning Ordinance. The C-1 Zone is similar to the current commercial zone. The applicable portions of the County’s Master Plan are attached hereto and incorporated herein as **Exhibit “L”**.

12. The zoning classification for the Subject Property proposed by this Petition is the MXD, Mixed Use Development Zone and is consistent with the recommendation for the Subject Property set forth in the City of Gaithersburg 2009 Land Use Plan (“City Master Plan”). The City’s Master Plan recommends that the retail shopping center property be classified in the MXD

zone upon annexation. The City Master Plan contains the same recommendation for the remainder of the retail shopping center (Potomac Valley Shopping Center North) situated on the north side of Darnestown Road, within the Gaithersburg corporate limits. See **Exhibit “M”**.

13. The MXD zoning classification proposed for the Subject Property upon annexation does not permit development of the annexed land for land uses that would be substantially different than the uses permitted in the NR – 0.75 H-45 Zone by the Montgomery County Zoning Ordinance; further the proposed MXD zoning classification would not permit development at a substantially higher density than that allowed by the County’s NR – 0.75 H-45 zoning classification standards.

14. Petitioners are the owners of more than 25% of the assessed valuation of the Subject Property and there are no persons residing within the area of the Subject Property who are registered voters in the precinct within which the Subject Property is located. No additional consents to this Annexation Petition are required under Sections 4-401, *et seq.*, Local Government Article of the Maryland Annotated Code.

15. Petitioners reserve the right to withdraw this Petition without liability to the City (except for costs of public notice advertising), if the conditions of annexation as specified in the Annexation Agreement and as set forth in the Annexation Resolution are substantially different and/or materially changed to Petitioners’ detriment, as determined by Petitioners in their sole and absolute discretion. Petitioners may elect to withdraw this Annexation Petition and terminate the Annexation Agreement at any time prior to the effective date of the Annexation Resolution.

16. The following Exhibits are submitted in support of this Petition and incorporated herein:

- | | |
|-------------|--|
| Exhibit A | Legal Description |
| Exhibit B | Boundary Survey/Annexation Plat |
| Exhibit B-1 | Boundary Survey/Annexation Plat Excerpt |
| Exhibit C | Tax Map ES562 |
| Exhibit D | Plats 9255, 11291 and 14305 |
| Exhibit E | Parcel C and D Deed |
| Exhibit F | Parcel F Deed |
| Exhibit G | Plat Nos. 6952, 8135 and 8719 Dedicating Right of Way to SHA |
| Exhibit H | SHA Property Deeds |

- Exhibit I SHA Plat Nos. 10058-10062; 54097, 54132 and 54139
- Exhibit J Excerpts from the Growth Element of the City of Gaithersburg's 2003 Master Plan, adopted April 6, 2009; excerpts from the City of Gaithersburg's Land Use Element of the General Plan for the City of Gaithersburg, including the recommendation for the annexation of the Subject Property; and City of Gaithersburg Mayor and Council Resolution No. R-88-11, adopting the 2009 Land Use Element Amendment to the General Plan for the City of Gaithersburg Master Plan
- Exhibit K Certified copy of Montgomery County Zoning Map for the Subject Property
- Exhibit L Excerpts from Montgomery County 2002 Approved and Adopted Potomac Subregion Master Plan
- Exhibit M List of entities with an ownership interest in the Subject Property and Adjoining and Confronting Property Owners
- Exhibit N Approved NRI/FSD
- Exhibit O Sections 24-160D.1, *et seq.*, Division 19, MXD Zone, Mixed Use Development, Article III, Chapter 24 of the City of Gaithersburg Zoning Ordinance, and O-03-13, amending the MXD Zone
- Exhibit P Vicinity Map
- Exhibit Q MXD Zone Justification Statement
- Exhibit R Sketch Plan
- Exhibit S Existing Conditions Plan

>>>SIGNATURE PAGE TO FOLLOW<<<

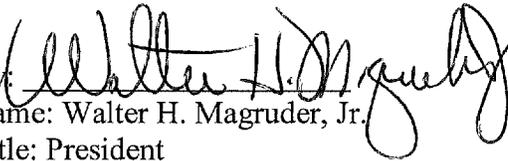
WHEREFORE, DARNESTOWN VALLEY-WHM LP and DARNESTOWN VALLEY PETROLEUM WHM, LLC respectfully request that the Mayor and City Council of the City of Gaithersburg initiate the process required by law for final enactment of a Resolution annexing the Subject Property into the corporate boundaries of the City of Gaithersburg.

PETITIONERS

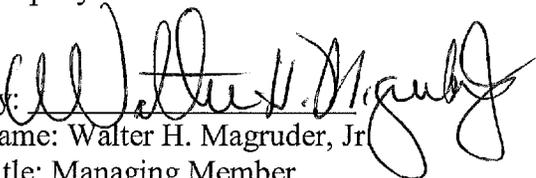
DARNESTOWN VALLEY – WHM LP,
a Limited Partnership

By: Its: General Partner

Darnestown Valley, Inc.,
a Maryland corporation

By: 
Name: Walter H. Magruder, Jr.
Title: President

DARNESTOWN VALLEY PETROLEUM
WHM, LLC, a Maryland limited liability
company

By: 
Name: Walter H. Magruder, Jr.
Title: Managing Member

STATE OF MARYLAND
COUNTY OF MONTGOMERY, TO WIT:

I HEREBY CERTIFY, that on this 7th day of July, 2015 before me, a Notary Public of the aforesaid State, personally appeared **WALTER H. MAGRUDER, JR., PRESIDENT OF DARNESTOWN VALLEY, INC.,** a Maryland corporation and **GENERAL PARTNER of DARNESTOWN VALLEY – WHM LP** and managing member of **DARNESTOWN VALLEY PETROLEUM, LLC,** a Maryland limited liability company, who acknowledged himself to be, was known to me (or satisfactorily proven) to be the person whose name is subscribed to the above and acknowledged that he executed the same for the purposes therein contained.

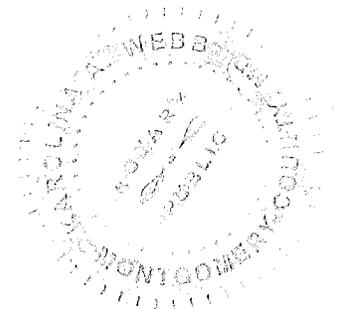
WITNESS my hand and Notarial Seal.



Notary Public

My Commission Expires:

KAROLINA A. WEBB
Notary Public-Maryland
Montgomery County
My Commission Expires
October 29, 2017





Casey L. Cirner
301.517.4817
ccirner@milesstockbridge.com

July 9, 2015

**VIA ELECTRONIC MAIL
AND REGULAR MAIL**

Fred.Boyd@mncppe-mc.org

Mr. Fred Boyd
The Maryland-National Capital Park
& Planning Commission
Planning Area 3
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Annexation – Potomac Valley Shopping Center (South)
12130, 12140 and 12110 Darnestown Road, Gaithersburg, MD (the “Subject Property”)

Dear Mr. Boyd:

We appreciate you meeting on June 22, 2015 with representatives of the Co-Petitioners of the above-referenced Annexation Petition, Darnestown Valley-WHM, LP and Darnestown Valley Petroleum WHM, LLC, Martin Matsen, Planning Division Chief for the City of Gaithersburg and Trudy Schwarz, Community Planning Manager for the City of Gaithersburg and Steve Orens and me.

As you may recall from our meeting, the Co-Petitioners propose to annex into the City of Gaithersburg 8.2877 acres, which includes the Subject Property and abutting Maryland State Highway right of way. The Subject Property is currently classified in Montgomery County’s NR- 0.75 H 45 (Neighborhood Retail) Zone and proposed for reclassification into the City’s MXD, Mixed Use Development Zone, upon annexation. The Subject Property is currently within the County’s Potomac Planning Area as defined by the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) and is subject to the 2002 Approved and Adopted Potomac Subregion Master Plan. The Potomac Subregion Master Plan identifies the area within which the Subject Property is located as “North Potomac.” The Potomac Subregion Master Plan recommends that the Subject Property be classified in the C-1 Zone, the zoning classification of the Subject Property prior to the adoption of the comprehensive revision to the County’s Zoning Ordinance and adoption of the district map amendment. The C-1 Zone is similar to the current commercial zone.

The Subject Property is within the City of Gaithersburg's Maximum Expansion Limits as set forth in the Municipal Growth Element of the City of Gaithersburg's Comprehensive Plan. As a result, the City's Land Use Element of its Comprehensive Plan contains a site specific recommendation for the Subject Property that provides for rezoning the Subject Property to the MXD zone with a commercial-office land use designation.

As discussed in our meetings, M-NCPPC plays a limited role in the process of annexing Montgomery County property into the local municipalities. That role, in conjunction with Section 4-416 of the Local Government Article of the Maryland Annotated Code, is to analyze for the Montgomery County Council whether the density of the proposed zoning classification upon annexation is substantially higher than the current zoning classification and whether the uses of the proposed zoning classification are substantially different than those in the current zoning classification. If the density is substantially higher and the uses are substantially different, the zoning reclassification may not occur until five years following annexation, subject to the Montgomery County Council's right to waive that restriction.

Here, as we discussed, the density (0.75 FAR) is the same in both the County and the City's zoning classifications and the uses are not substantially different. As you requested, attached is a chart listing the uses in both the County's NR and the City's MXD zones for comparison purposes. As you can see, the uses in both zones are not substantially different and taken in context with the City's Land Use Element of its Comprehensive Plan, the Subject Property is recommended for a commercial-office land use designation. Accordingly, the annexation of the Subject Property should not restrict the reclassification of the Subject Property into the MXD zone upon annexation.

In addition, we want to take this opportunity to detail the purpose of the Co-Petitioners including certain abutting rights of way as part of the annexation petition. Pursuant to Section 4-401(b)(1) of the Local Government Article of the Maryland Annotated Code, the property to be annexed must be "...contiguous and adjoining to the existing boundaries of the municipality."

In an opinion issued by the Office of the Attorney General, 82 Md. Op. Atty. Gen. 87 (1997), the Attorney General interpreted "contiguous" to be "in contact with" and "adjoining" to be "located next to" the city boundaries. The Attorney General opined that the "annexation of state-owned land is generally permissible" and that the annexation of right of way to connect a property to the city boundaries would likely be approved by the court if the annexation would result in a "unified sense of community identity between the municipality and the annexed land."

Here, the Subject Property is being annexed along with the contiguous Maryland Route 28 (Darnestown Road) and Maryland Route 124 (Quince Orchard Boulevard) right of way. The right of way is under the jurisdiction of the Maryland State Highway Administration and will continue to be maintained and operated as such following annexation. In addition to providing contiguity with the City's boundaries, the inclusion of this right of way will avoid confusion as

to which jurisdiction (the County or the municipality) is responsible for providing services to the streets and roads (i.e., police and trash removal). Inclusion of the right of way will also provide for the annexation of property that will result in a unified sense of community identity because it will annex the remaining portion of the Potomac Valley Shopping Center (South) into the City, thereby enabling the redevelopment of both the South and North portions of the Potomac Valley Shopping Center (North) under one set of development standards.

Given M-NCPPC's limited role in this annexation petition, we submit that an efficient and economic means of engaging the Planning Board in the proposed annexation is to include the Staff's report on the annexation petition on the Planning Board's consent agenda.

Again, we appreciate your assistance with this matter and should you need any additional information from us, please do not hesitate to contact Steve Orens or me.

Sincerely,



Casey L. Cirner

Enclosure

cc: Martin K. Matsen, City of Gaithersburg
Trudy Schwarz, City of Gaithersburg
William Magruder
Stephen J. Orens, Esq.

**USE COMPARISON CHART
NO SUBSTANTIALLY DIFFERENT USES**

| | Montgomery County Neighborhood Retail Zoning Classification (P-Permitting/L- limited) | City of Gaithersburg MXD Zoning Classification (Permitted/Section references may have use specific requirements) |
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| Ag | <ul style="list-style-type: none"> • Community garden L • Farm Supply, Machinery Sales, Storage and Service L • Retail Nursery P • Urban Farming L • Farm Market, on-site • Ag Vending L • Seasonal Outdoor sales L | <ul style="list-style-type: none"> • Farms and other uses associated with agricultural activities |
| Residential | <ul style="list-style-type: none"> • Single-unit living L • Two unit living L • Townhouse Living L • Multi-unit Living L • Group Living <ul style="list-style-type: none"> ○ Senior Living L ○ Personal living quarters up to 50 L ○ Residential Care facility up to 8 P ○ Residential Care facility 9-16 L • Home Health Practitioner Low Impact L • Home Occ. No Impact L • Home Occ. Low Impact L | <ul style="list-style-type: none"> • All types of residential uses allowed by right in Chapter 24 • Dwellings, one-family detached • Dwellings, one-family semidetached • Multifamily dwellings • Home based business |
| Civic & Inst. | <ul style="list-style-type: none"> • Private Ambulance Rescue P • Day Care (all) P • Private Educational Inst. P • Playground, outdoor private P • Public Use P • Religious Assembly P | <ul style="list-style-type: none"> • Public buildings and uses subject to 24-143(2) in I-3 • Publicly owned and operated uses • Public buildings, churches and similar uses • veterinary • medical facilities such as, but not limited to, medical labs, medical schools and convalescent homes • Ambulance or rescue squads, publicly supported • Fire stations • Signs, subject to article IX of this chapter |
| Commercial | <ul style="list-style-type: none"> • Animal Services <ul style="list-style-type: none"> • Veterinary Office, Hospital L • Restaurant P • Bed and Breakfast L • Medical Dental <ul style="list-style-type: none"> • Clinic up to 4 P • Office P • Surface Parking For Uses Allowed in Zone L • Health clubs and Facilities L | <ul style="list-style-type: none"> • Recreational facilities primarily for the use of employees subject to 24-160A(8) • Trade, artistic and technical schools • Off-street parking • Recreational or educational buildings or uses • Offices, professional and business • Bed and breakfast subject to the requirements contained in <u>section 24-</u> |

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| | | <p><u>167B</u></p> <ul style="list-style-type: none"> • Cocktail lounges, dance halls, bowling alleys, billiard parlors, theaters, ice and roller skating rinks and similar places or indoor amusement • Restaurants (class A when located within the same building which is substantially devoted to a recreational use and Class C) • Restaurants Class B subject to 24-117(16) • Restaurants of all classes shall be permitted where all three classes or restaurants are housed within the same structure and have common access and one of them occupies at least 2,500 sq.ft. • Motels • Hotel full service, subject to 24-143(12) • Hotel, limited service, subject to 24-143(13) • Hotel, full service • Hotel, limited service • Research, experimental or testing labs • Wholesale businesses, warehouses and similar non-processing storage and distribution uses, except bulk storage or chemicals, petroleum products and other inflammable, explosive or noxious materials • Communications centers |
| <p>Retails Sales and Service</p> | <ul style="list-style-type: none"> • Retails/service 0 – 5k sq. ft. • Retail/services 5001-15k sq. ft. • Retail/services 15,001-50k sq. ft. • Retails/services 50,001 -85k sq. ft. • Retail 85,001-120k sq. ft. L • Vehicle Equip. Sales & Service • Accessory Comm. Uses <ul style="list-style-type: none"> ○ Amateur Radio Facilities Up to 65 ft. P ○ Antenna on existing structures L ○ Lawn Maintenance Service L ○ Construction Sales Off. L ○ Transitory Use L • Live/work unit P | <ul style="list-style-type: none"> • Retail sales and consumer service establishments, incidental to and located within an office structure, limited to restaurants, drugstores, newsstands, barbershops, valet shops, specialty shops and delicatessens, banks and financial institutions • Bookstores, excluding printing or binding • Florist shops • Gift shops • Jewelry stores • Photographic and art supply stores Photography and artist studios Publicly owned and operated uses • Specialty and craft shops • Tailoring and dressmaking shops • Retail stores and shops such as grocery stores, drugstores, ice cream shops, variety stores and bakeries; provided good baked on site |

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| | | <ul style="list-style-type: none"> • Personal service businesses such as shoe repair, beauty parlors and barbershops and laundries and dry-cleaning establishments which are self-service or pickup stations only • Catering establishments, offering catering services primarily on the premises, and retail sales and consumer services, establishments incidental to and located within the same structure, limited to florists, photographers, and formal wear clothing sales and rentals • Offices for professional or business purposes, including but not limited to medical, law, real estate, insurance and manufacturer's representatives offices • Offices for general office purposes • Animal hospitals, animal boarding places and pet shops • Retail stores, businesses and services similar to the foregoing but not already identified in C-1 zone • Antique shops • Repair and business services, including but not limited to carpenter, cabinet, plumbing, or electrical shops, laundry, or dry cleaning establishments, bicycle, appliance or other local repair shops and printing or publishing shops • Automobile filling stations subject to 24-111(14) in C-1 and 24-711(24) C-2 and 24-123 (1) in C-3 • Sales and service of automobiles, mobile homes, farm equipment and marine equipment • Retail, service and general commercial uses similar to the foregoing in C-2 zone • Automatic automobile car wash subject to 24-117(15) • Automobile, truck and transport vehicle rental • Automobile service center • Banks, offices, restaurants (class A and C), bars and similar services |
| Industrial | <ul style="list-style-type: none"> • Dry Cleaning up to 3k sq. ft. L • Transportation <ul style="list-style-type: none"> • Bus, Rail Terminal P • Railroad Tracks P • Taxi/limo facility P | <ul style="list-style-type: none"> • Dry cleaning and laundry establishments, pick-up only and no work for similar institutions |

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| Utilities | <ul style="list-style-type: none"> • Distribution Line P • Pipeline (below) P | |
| Miscellaneous | <ul style="list-style-type: none"> • Solar Collection Sys. L • Accessory Structure P • Accessory Use P | <ul style="list-style-type: none"> • Accessory structures and uses |
| Prohibited | <ul style="list-style-type: none"> • Ag Auction facility • Ag Processing • Equestrian facility • Farming • Nursery wholesale • Slaughterhouse • Winery • Farm Airstrip/Helistop • Dormitory • Resident care over 16 • Attached accessory apartment • Detached accessory apartment • Dwelling for caretaker • Farm tenant dwelling • Guest house • Cultural Institution • Hospital • Private club, service organization • Swimming pool community • Media broadcast tower • Country inn • Cemetery • Crematory • Funeral home • Landscape contractor • Hotel, motel • Medical, dental lab • Life sciences • Research development • Structured parking for Commercial Uses in Historic District • Adult entertainment • Campground • Conference center • Golf course, country club • Shoot range (in/out) • Rural antique shop • Rural country market • Heavy vehicle sales and rental • Light vehicle sales and rental (indoor) • Auto storage lot • Car wash • Repair (comm. Vehicle) | <ul style="list-style-type: none"> • Adult-oriented businesses subject to 24-143(5) (otherwise permitted) • Automobile paint and body repair shops • Body piercing establishments • Drive-in theaters • Hotel, extended stay (otherwise permitted) • Manufacture, compounding, processing assembly and retail sales of articles using prepared materials which are entirely stored within a structure (otherwise permitted) • Pawnshops • Tattoo parlor |

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| | <ul style="list-style-type: none"> • Repair (major) • Commercial kitchen • Helistop • Special event parking • Animal research facility • Contractor storage yard • Dry cleaning over 3k sq. ft. • Artisan manufacturing and production • Heaving manufacturing and production • Light manufacturing and production • Medical/scientific manufacturing and production • Mining, excavation • Helipad, heliport • Distribution line (above) • Pipeline (above) • Freight movement • Hazmat storage • Mineral storage • Self-storage • Storage facility • Landfill, incinerator, or transfer station • Recycling collection and processing • Noncommercial kennel • Wildlife, game preserve, and other conservation areas • Security pavilion | |
| Special exceptions | <ul style="list-style-type: none"> • Personal Living quarters over 50 C • Home Health Practitioner Major C • Home Occupation Major Impact C • Animal Boarding C • Charitable, philanthropic Inst. C • Cable Comm. System C • Telecom. Tower C • Medical Dental Clinic more than 4 C • Recreation and Entertainment (all) C • Combination Retail C • Retail over 120k sq. ft. C • Light Vehicle Sales and Rental (outdoor) C • Filing Station C • Repair (Minor) C • Accessory Comm. Uses • Amateur Radio Fac. Over 65 ft. C • Drive-thru L/C • Public utility structure C | <ul style="list-style-type: none"> • Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to 24-167A(d)(2) • Hospitals • Child or elderly care facilities in single-family detached dwellings or duplexes accommodating not more than eight (8) individuals or more than eight (8) individuals subject to Section 24-25(4) and 24-111(10) in C-1 and 24-117 (23) in C-2 and 24-151(15) for E-1or 24-143(8) in I-3 • Funeral homes/parlors and undertaking establishments • Private clubs, lodges and recreational • Satellite television antennas and towers, poles, antennas, or other structures intended for use in connection with transmission or receipt of radio or television signals or both, subject to the |

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| | | <p>provisions of <u>section 24-167A</u></p> <ul style="list-style-type: none"> • Amusement center, whether operated separately or in conjunction with a permitted use • Assembling of prepared materials of electric devised and electrical appliances • Boarding homes • Care homes • Cemeteries • Clinics • Commercial parks and other outdoor places of amusements, including miniature golf courses, driving ranges, carnivals and fairs • Group residential facilities operated by nonprofit or public entities • Nursing and care homes • Public utilities, such as electric substations and offices, excluding the storage of material and trucks and repair facilities • Radio and television broadcasting stations, towers and accessory structures • Telecommunication facilities |
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