

ANNEXATION FROM A DEVELOPMENT PERSPECTIVE

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Annexation is the process to incorporate a property located in a county into the boundaries of a municipality. In other words, the annexation process seeks to expand the municipalities' boundaries to include a contiguous and adjoining property (and sometimes right-of-way) located within the county. However, the process is not available to annex properties between municipalities. §4-401(c), Local Gov. Article I, Md. Ann. Code.

The annexation process is governed primarily by State statute. The applicable statutes, having been recently moved from Article 23A of the Maryland Annotated Code, are now codified in Title 4, Subtitle 4 of the Local Government Article I of the Maryland Annotated Code. To land use lawyers, the annexation process may be an exciting multi-step process with opportunities to represent a client before both the municipality and the county planning commissions and legislative bodies. To a property owner, the annexation process may be a way to better position property for future development or redevelopment.

A property must first be eligible for the annexation process. Eligibility requires the property: (i) to be "contiguous and adjoining to the existing boundaries of the municipality"; and (ii) not create an area where all four sides of county property are bounded by property that is in or proposed to be in the municipality or a combination of both. §4-401, *Local Gov. Article I*, Md. Ann. Code. In other words, the annexation does not create an enclave (*i.e.*, municipal land surrounding county land on all four sides).

Annexation petitions initiated by the property owner, rather than the municipalities' legislative body, must be signed by 25% of the registered voters

who are residents in the proposed area to be annexed and the owners of at least 25% of the assessed valuation of the area proposed to be annexed. Md. Local Gov. Code Ann, § 4-404(a). These signatures will be verified by the municipality prior to the introduction of a resolution to annex the property and a resolution authorizing the city manager to negotiate the terms of the annexation agreement. § 4-404(b). As you can imagine, it is much easier for a vacant (or commercial) property to satisfy these requirements.

There are various reasons why a property owner annexes property into a municipality. The decision to annex may be based on the property owner's preferences. For example, a property owner may prefer working with the municipality staff on development projects or the municipal development approval processes may be more efficient, in turn, saving the property owner money in the long run. The property owner may consider the availability of public services in the municipality, such as public water and sewer, trash pick-up or snow removal, but there may be a property tax increase associated with these benefits. There could also be different adequate public facilities tests applied by the municipality to development projects, such as school capacity tests.

A main consideration, however, is often the available zoning classifications and density in the municipality.

A petitioner seeking a new and different zoning classification or higher density by annexing into the municipality must be mindful of what is commonly referred to as the "five-year freeze" provision or historically as the "statutory consistency requirement." This requirement, set forth in §4-416, *Local Gov. Article I*, Md. Ann. Code, provides in pertinent part that:

Without the express approval of the county commissioners or the 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.

This requirement is often summarized as follows: if the annexation petition includes a request for a zoning classification for the proposed property to be annexed, the proposed zoning classification upon annexation must not provide: (i) land uses substantially different from the pre-annexation zoning classification (county's zoning classification); and (ii) the density allowed under the post-annexation zoning classification (the municipality's zoning classification) must not exceed one and

a half times the density allowed under the pre-annexation zoning classification. Otherwise, the county will need to consent to the municipalities' zoning classification or the property owner will need to wait for five years before the municipality may rezone the property (through a piecemeal rezoning application) to allow development. *The Mayor and Council of Rockville, et al. v. Rylins Enterprises, Inc.*, 372 Md. 514, 814 A.2d 469 (2002). This requirement is aimed at preserving the integrity of the county's master plan, specifically its consideration of the surrounding properties, to avoid disruptions from the post-annexation zoning classification. *Id.* This requirement applies regardless of the property being included in the municipalities' maximum expansion limits or the Land Use Element of

the municipalities' Comprehensive Plan recommending a specific zoning classification for the property. The failure of a municipality to abide by this requirement may provide the county an opportunity to challenge the annexation, which, notably, is not the only way by which an annexation and associated original zoning may be challenged.

While there are various reasons for annexing property, the property owner should assure its eligibility and give careful consideration to the proposed zoning classification upon annexation to avoid the possibility of having to pursue a piecemeal rezoning application five years after annexation.

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