

RESOLUTION NO. 20-05

A RESOLUTION TO PROVIDE FOR THE ENLARGEMENT OF THE CITY BOUNDARY OF THE CITY OF FREDERICK BY EXTENDING CITY BOUNDARY AS DESCRIBED IN ARTICLE I, ENTITLED "INCORPORATION AND GENERAL GOVERNMENT", SECTION 2, ENTITLED "CITY BOUNDARY", OF THE CHARTER OF THE CITY OF FREDERICK TO PROVIDE FOR THE ANNEXATION OF 8.52 ACRES OF LAND, MORE OR LESS, ON THE WESTERN BOUNDARY OF THE CITY, AS MORE PARTICULARLY DESCRIBED IN THE METES AND BOUNDS DESCRIPTION ATTACHED HERETO AS EXHIBIT I (THE "PROPERTY")

WHEREAS, the requisite owners of the Property have petitioned for the annexation of their land into the City Boundary of The City of Frederick (the "City"); and

WHEREAS, pursuant to the authority of Article XI-E of the Constitution of the State of Maryland and Sections 4-401 et seq. of the Local Government Article of the Annotated Code of Maryland, it is the intention of the Board of Aldermen of the City to annex the Property; and

WHEREAS, the Property is eligible for annexation since it is contiguous to and adjoining the existing City Boundary, and the annexation will not create an unincorporated area bounded on all sides by real property presently within the City Boundary; real property proposed to be within the City Boundary as a result of the proposed annexation, or any combination of such properties; and

WHEREAS, in accordance with §4-415 of the Local Government Article of the Annotated Code of Maryland, the Board of Aldermen of the City have adopted an Annexation Plan for the Property; and

WHEREAS, the Board of Aldermen of the City has determined that the annexation of the Property is in the best interests of the health and welfare of the residents of the City.

NOW THEREFORE BE IT RESOLVED, ORDAINED, AND ENACTED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK AS FOLLOWS:

Section I. The City Boundary, as provided in the Charter of The City of Frederick, as the same was enacted by the General Assembly of Maryland in Chapter 539, of the Laws of 1951, be amended to include the above-described Property, and the City Surveyor shall so amend the description of the City Boundary to include all the Property more particularly described in **EXHIBIT I**.

Section II. The Property and the persons residing on the Property are included for all purposes and subject to the Charter and Code of the City of Frederick in said area as if the Property had been originally or subsequently included within the City Boundary EXCEPT as set forth to the contrary in the conditions applying to this annexation, as hereinafter set forth.

The conditions of this annexation are as follows:

1. Petitioners, Edward M. Lupcho, Brenda S. Lupcho and Kenneth W. Klipp, their successors and assigns (hereinafter referred to as the "Petitioners"), shall pay the costs of any required advertising of this Annexation Resolution.
2. The Property shall be added to the City Boundary of the City and the Property and any persons residing on the Property shall be generally subject to the provisions of the Charter and Code of the City, EXCEPT as set forth to the contrary in the following paragraphs of this Annexation Resolution.
3. Municipal ad valorem real estate taxes (hereinafter referred to as "City taxes") shall not be imposed on the Property or on any subdivided portion of the Property (hereinafter referred to as "Lot") until the earlier to occur of the following:

(a) Petitioners request that the City provide to the Property or that Lot public water or sanitary sewer and/or municipal services not available to the Property or that Lot as of the Effective Date of this Annexation Resolution, and, pursuant to such request, such services requested are made available to the Property or that Lot, and one or more buildings or structures on the Property or that Lot is actually connected to such services; or

(b) seven (7) years from the Effective Date of this Annexation Resolution except in the event of a moratorium imposed by any applicable governmental, authority which has the effect of denying public utilities or services to any or all of the Property, in which case, the moratorium shall delay the running of the seven (7) year period, to the extent of the time of the moratorium, as to any of the Property which cannot be provided public utilities or services as a result of the moratorium. For the purposes of this Paragraph 3(b), the failure of Frederick County to expressly approve the zoning and development of the Property in accordance with this Annexation Resolution, pursuant to §4-416 of the Local Government Article of the Annotated Code of Maryland, shall be deemed a moratorium for such time as express approval is not granted, not to exceed five (5) years.

In the event any Lot becomes subject to City taxes pursuant to either paragraphs 3.(a) or 3.(b) above, the remainder of the Property from which the Lot was subdivided which has not previously connected to municipal service in the case of a. above, shall not be subject to City taxes.

4. Extension of sanitary sewer, water and storm drain lines, streets, curbs, gutters, and all other public improvements typically provided by the City to and within the Property to the extent allowed by law and unless provided otherwise by this Annexation Resolution or by written agreement, shall be at the expense of the owner(s) or developer(s) requesting same and shall be at no cost to the City; provided, however, that extensions of all such services beyond the boundaries of the Property, including, but not limited to, the lateral connection to public water

and sanitary sewer from the trunk lines installed by Petitioners, and connection or tap fees, shall be at the expense of the owner of the property desiring such services.

5. Provided such extensions are requested under the terms outlined in paragraphs 3. and 4., above, the City will allow Petitioners, at their expense, to extend sanitary sewer and water service to the Property and will allocate water and sewer taps to the Property or any portion thereof (i.e. Lot) at the time the extensions are completed and inspected by the City, and such taps are requested by the owner(s) or developer(s) of a Lot or the Property. All water taps fees will be paid to the City by the individual Lot owners or developers requesting the same. All water engineering plans will be submitted to the City Engineer for review and approval. All sewer taps fees will be paid to the City by the individual Lot owners or developers requesting the same. All sewer engineering plans will be submitted to the City Engineer for review and approval.
6. Petitioners acknowledge, subject to the terms of this annexation, that the contemplated development of the Property is subject to the City's Adequate Public Facilities Ordinance ("APFO") as set forth in Chapter 4 of the Frederick City Code, to insure that public roads, schools, water and sanitary sewer service facilities are available and adequate to serve the contemplated development of the Property. The City agrees that it will, to the extent possible, reasonably cooperate with Petitioners following annexation of the Property to secure the public facilities necessary to accommodate the proposed development so that the development may satisfy the APFO.
7. Subject to all appropriate laws and administrative requirements, the Property is hereby zoned by the adoption of this Resolution, and simultaneously with its annexation into the City as **R8 (Medium Density)**. The City will cooperate with Petitioners in all regards and make all reasonable efforts to seek the express consent and approval by the County Council for Frederick County, Maryland, or by any other governmental entity agency with jurisdiction, to such zoning classification and the requested annexation for the Property. Furthermore, the City will cooperate with the Petitioners in any application to Frederick County for an amendment to the water and sewer classification of the Property, as same may be required to develop the Property, and shall add the Property to the Potomac River Water Supply Agreement ("PRWSA").
8. The requirements of Section 721 of the City of Frederick Land Management Code shall be met through onsite afforestation or retention.
9. Except as set forth below, the City will not require the Petitioners, the owners(s) or developer(s) of the Property, individually or collectively, to provide any additional off-site improvements or contribute to any accounts or otherwise make any contributions to any other off-site road improvements as a condition of this Annexation, unless otherwise provided herein or required by the LMC, other

provisions of the City Code, the APFO, or by written agreement between the City and the Petitioners, the owner(s) or developers(s) of the Property and only to the extent allowed by law. The Petitioners acknowledge that all future development will be required to pay its proportionate share of improvements necessitated by reason of such future development as required by the APFO, which may or may not be included herein. The City of Frederick will require the Petitioners, the owner(s) or developers(s) of the Property, individually or collectively, at the time of or prior to being granted a building permit on the Property, to do the following:

- i. Facilitate the dedication of right-of-way necessary for the construction of Grove Hill Road from the limits of the State Highway Administration (SHA) right-of-way for U.S. Route 40 to the boundary of the Property by providing a road dedication plat that has been recorded among the Frederick County Land Records.
- ii. Be responsible for the construction of Grove Hill Road from U.S. Route 40 to Huntsman Road to City standard for a local road, subject to such modifications as may be approved by the City's Planning and Engineering Departments.
- iii. Provide a per dwelling unit contribution to the City's cost to construct a pedestrian bridge along the south side of US Route 40 between Grove Hill Road and Waverly Drive, in the amount of Six Hundred Dollars (\$600.00) per approved and constructed dwelling unit on the Property, to be paid to the City at the time of building permit application for each such dwelling unit.

10. The Petitioners or owner(s) or developer(s) of the Property shall not be permitted to apply for building permits until the deficiencies in the sewer infrastructure serving the Property have been mitigated, unless a pro rata share contribution toward the cost of mitigation is made.


BE IT FURTHER RESOLVED, ENACTED AND ORDAINED, that the Mayor of The City of Frederick shall give public notice of the introduction of this Annexation Resolution at least two (2) times at weekly intervals in the Frederick News-Post, a newspaper of general circulation in Frederick City and Frederick County, Maryland, briefly and accurately describing the proposed change and the conditions and circumstances applicable, and shall provide for a public hearing to be held on Thursday, March 5, 2020 at City Hall, Frederick, Maryland, at the hour of 7:00 p.m., which hearing shall be held not less than fifteen (15) days after the second (2nd) publication of this notice.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED, that this annexation shall become effective forty-five (45) days after the passage of this Annexation Resolution unless a proper petition for referendum pursuant to §§ 4-408 et seq. of the Local Government Article of the Annotated Code of Maryland, be presented to the Mayor within said forty-five (45)-day period.


INTRODUCED at a regular meeting of the Mayor and Board of Aldermen of the City of Frederick on June 6, 2019.

APPROVED: March 5, 2020

PASSED: March 5, 2020

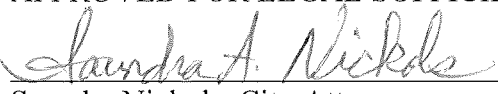


Michael O'Connor, Mayor
The City of Frederick



Michael O'Connor, President, Board of
Aldermen

APPROVED FOR LEGAL SUFFICIENCY:



Sandra Nickols, City Attorney

**L&B 7491854v2/13870.0001