

RESOLUTION PROPOSING THE ANNEXATION
OF CERTAIN LANDS INTO THE MUNICIPAL LIMITS
OF THE TOWN OF SMYRNA; DESIGNATING THE PROPOSED
ZONING CLASSIFICATION THEREOF; SCHEDULING A PUBLIC
HEARING; REFERRING THE PROPOSAL TO THE TOWN
PLANNING COMMISSION; AND NOTIFYING THE DELAWARE
OFFICE OF STATE PLANNING

WHEREAS, the municipal charter of the Town of Smyrna empowers the Town to annex additional contiguous territory adjoining the corporate limits of the Town in accordance with the procedures set forth therein, and subject to state laws of general application to municipalities pertaining to annexation of territory;

WHEREAS, the record owners of the hereinafter-described parcel of land (contiguous with the existing corporate limits of the Town) have petitioned the Town, in writing duly executed and acknowledged (such petition setting forth a description of the lands proposed for annexation, the proposed zoning classification consistent with the Town's Comprehensive Plan, the reasons for the proposed annexation, and the property owned by each petitioner);

WHEREAS, the Town Council has considered such petition and has determined that it would be in the best interests of the Town to accept such petition and initiate the proceedings required for annexation as set forth in the Town's municipal charter;

NOW THEREFORE, BE IT HEREBY RESOLVED, by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that:

1. The hereinafter-described territory, contiguous with the existing corporate limits of the Town, is hereby proposed for annexation into the Town of Smyrna:

RECORD OWNER: Ronald I., Sr. & Joyce A. Fretz
49 Myrtle Street
Smyrna, DE 19977

PROPERTY ADDRESS: 49 Myrtle Street and two (2) adjacent vacant lots
Smyrna, DE 19977

TAX MAP ID: 1-00-00920-01-0600-00001
1-00-00920-01-0700-00001
1-00-00920-01-0800-00001

DEED REFERENCE: K 0027 0338

T 0040 0072
Z 0027 0312

BRIEF DESCRIPTION:

PARCEL #1. All that certain lot, piece or parcel of land with the improvements thereon erected designated as Lot #29 on a Plot of Lots A. J. Lebel, Duck Creek Hundred, Kent County, State of Delaware, and bounded as follows, to wit:

BEGINNING at a point on the easterly side of Myrtle Street (50' wide) at a corner for Lot #29 herein described and Lot #28; thence running with Lot #28, South 52degrees 45 minutes West, a distance of 148.00 feet to a point in line of lands now of McAllister; thence turning and running with said McAllister lands, North 37 degrees 15 minutes West, a distance of 75.00 feet to a point; thence turning and running with line of Lot #30, North 52 degrees 45 minutes East, a distance of 148.00 feet to a point in the westerly line of Myrtle Street; thence turning and running with the westerly line of Myrtle Street, South 37 degrees 15 minutes East, a distance of 75.00 feet back to the point and place of beginning, be the contents thereof what they may.

PARCEL #2. All that certain lot, piece, or parcel of land situated in Duck Creek Hundred, Kent County, State of Delaware, being bounded on the northeast by a fifty (50) foot street, on the northwest by other lands of Ronald I. Fretz and wife, on the southwest and on the southeast by lands now or formerly of Alfred J. Lebel and wife, and being more particularly described as follows, to-wit:

BEGINNING at an iron pipe set on the southwesterly side of said fifty (50) foot street at a corner for the original lot of the said Fretz, said pipe being north thirty-seven (37) degrees fifteen (15) minutes west, two hundred seventy-five (275) feet from the intersection of the northwesterly right of way line of Glenwood Avenue and the southwesterly right of way line of the said fifty (50) foot street, thence from said point of beginning and running along said street south thirty-seven (37) degrees fifteen (15) minutes East a distance of seventy-five (75) feet to an iron pipe, thence turning and running along lands now or formerly of Lebel the following two courses: South fifty-two (52) degrees forty-five (45) minutes west a distance of one hundred forty-eight (148) feet to an iron pipe, thence north thirty-seven (37) degrees fifteen (15) minutes west, a distance of seventy-five (75) feet to an iron pipe, at a corner for the original lot of the said Fretz, thence running along said lot, north fifty-two (52) degrees forty-five (45) minutes East a distance of one hundred forty-eight (148) feet to the point of beginning, being Lot #28 on a plan of lots of Alfred J. Lebel prepared by Charles C. Brown, September, 1953, and containing an area of Eleven Thousand One Hundred (11,100) square feet more or less.

PARCEL #3. All that certain lot, piece, or parcel of land situated in Duck Creek Hundred, Kent County, State of Delaware, being bounded on the northeast by a fifty (50) foot street, on the northwest and southwest by lands now or formerly of Lebel, on the

southeast by the original lot of the said Fretz, being more particularly described as follows, to-wit:

BEGINNING at an iron pipe set on the southwesterly side of said fifty (50) foot street at a corner for the original lot of the said Fretz, said pipe being north thirty-seven (37) degrees fifteen (15) minutes West a distance of Three Hundred Fifty (350) feet from the intersection of the northwesterly right of way line of Glenwood Avenue, and the southwesterly right of way line of the said fifty (50) foot street, thence from said point of beginning and running along the original lot of the said Fretz, south fifty-two (52) degrees forty-five (45) minutes west a distance of one hundred forty-eight (148) feet to an iron pipe, thence turning and running along lands now or formerly of Lebel, the following two courses, north thirty-seven (37) degrees fifteen (15) minutes west a distance of seventy-five (75) feet to an iron pipe, thence fifty-two (52) degrees forty-five (45) minutes east a distance of one hundred forty-eight (148) feet to an iron pipe set on the southwesterly right of way line of the said fifty (50) foot street, thence running with the said right of way line south thirty-seven (37) degrees fifteen (15) minutes east a distance of seventy-five (75) feet to the point of beginning, being Lot #30 on a plan of lots of Alfred J. Lebel prepared by Charles C. Brown, September, 1953, and containing an area of Eleven Thousand One Hundred (11,100) square feet more or less.

The lands and premises encompassed within the areas proposed to be annexed as described above are depicted on the tax map attached hereto as Exhibit A and incorporated herein by specific reference, a copy of said tax map shall be available for inspection at the Smyrna Town Hall.

2. The proposed zoning district classification(s) for such lands is Residential-3 which is in accordance and consistent with the Town's Comprehensive Plan.
3. A public hearing to receive public comment for purposes of legislative fact-finding is scheduled for November 4, 2013 at 7:15 p.m. in the Council Chamber of Smyrna Town Hall, 27 S. Market Street Plaza, Smyrna, Delaware. Any person wishing to be heard is invited to attend. Persons desiring to submit written comments may do so by mailing such comments to: Town of Smyrna, P.O. Box 307, Smyrna, DE 19977, Attn: Town Manager. To be considered, written comments must be received by the Town Manager before the close of the public hearing.
4. A copy of this Resolution shall be delivered to the Town Planning Commission as soon as conveniently possible following the adoption hereof for its advisory review and comment; provided that, if the Town Planning Commission does not submit its recommendations and comments back to the Town Council at or prior to the hereinabove-scheduled public hearing, the Town Council may proceed to consider and act upon the proposed annexation without the benefit of the Planning Commission's recommendations and comments.

5. Public Notice, setting forth the text of this resolution, shall be provided, not less than 14 days, nor more than 60 days, prior to the date set for the public hearing as follows:

- (a) By publication at least once in a newspaper of general circulation in the Town and in the territory proposed to be annexed, such publication to be in bold print or bordered in black so as to call attention thereto;
- (b) By posting in at least five (5) public places in the Town and in at least one (1) place, viewable to the public, in the territory hereby proposed for annexation;
- (c) By mailing or delivering a copy of such notice to the Office of the State Planner and otherwise complying with the applicable provisions of 29 Del.C. Chapters 92 and 93 (or with any future corresponding provisions of law);
- (d) By mailing a copy of such notice, via certified mail, to the owners of record of the lands hereby proposed for annexation at their address as shown on the public tax records; written notice to one co-owner shall constitute written notice to all.

6. At any time following the herein-scheduled public hearing (as the same may be continued or re-scheduled), the Town Council may pass a resolution ordering a special election to be held (in accordance with the public notice requirements and procedures set forth in the Town's municipal charter) at which election those qualified persons residing within the territory proposed for annexation, and each legal entity or natural person holding record title in its own name to lands within the territory proposed for annexation, shall each be entitled to one vote on the question of annexation. The adoption of the resolution ordering such special election shall ipso facto be considered the determination of the Town Council to proceed with the proposed annexation and zoning district classification if a majority of the votes cast in the special election are cast in favor of the proposed annexation; and following such favorable vote, the Town Council shall adopt a final Resolution including such territory within the municipal limits of the Town and designating the zoning district classification(s) of such territory, which final resolution, together with a plot of the territory so-annexed, shall be recorded in the Office of the Recorder of Deeds in and for Kent County, and a copy thereof shall be sent to the Delaware Office of State Planning.

7. The Town Council hereby places the owners of record of the lands herein proposed for annexation, and all other interested parties, on notice that, if the annexation is finally approved, the Town shall not be obligated to provide or extend any municipal facilities or improvements unless and until the Town Council, in the sole exercise of its reasonable discretion, determines that it is appropriate for the Town to do so *or* the owner or developer of any property so annexed (or any portion thereof) binds itself, with reasonable surety acceptable to the Town, to pay in full all costs and expenses to provide and/or to extend or construct such municipal facilities and improvements to serve such lands (in strict accordance with all governing federal, state, and Town regulations and

standards), subject to an appropriate “recapture agreement” (acceptable to the Town) pursuant to which the owner(s) or developer(s) of other lands benefited by the extensions or improvements paid for by the initial owner/developer under the recapture agreement would pay to the Town their equitably-determined proportionate share of such costs and expenses (as a condition precedent to obtaining such extensions and/or improvements) which amounts the Town would, upon receipt, rebate to the owner or developer which had originally paid for those extensions and/or improvements.

Adopted by the Town Council of the Town of Smyrna, this 16th day of September, 2013.