



CITY ATTORNEY

CITY OF DURHAM

Date: October 19, 2023

Through: Kim Rehberg, Durham City Attorney
From: Don O'Toole, Senior Deputy City Attorney

Subject: Modification of the existing Durham-Chapel Hill Annexation Boundary
PRIORITY ITEM

Executive Summary

This is a request by a developer that Council approve a resolution seeking amendment of the existing Durham-Chapel Hill annexation boundary. The developer has requested that Council suspend the rules and vote on this resolution at the October 19, 2023 Work Session to assist the developer in meeting the State's affordable housing tax credit deadline.

Motion

Motion 1: To adopt a resolution authorizing amendment to the consent order *Town of Chapel Hill v. City of Durham*, 85 CVS 3108 and approving a modification of the line representing the limits for future annexations by the municipalities of Chapel Hill and Durham.

Background

There is property located in Orange County, east of I-40, that is currently on the Chapel Hill side of the Durham-Chapel Hill annexation boundary. This boundary was established through Court Orders issued in 1986 and 1994. Because the property is on Chapel Hill's side of the annexation boundary only Chapel Hill has the legal authority to annex this property. The property owner would like to develop the property into a mix of townhouse units, single-family units, and multi-family apartment units ("proposed development"). The owner plans to incorporate 75-80 units of affordable housing into this project utilizing 9% tax credits (affordability will be set at 30% and 60% AMI). The tax credit deadline is May 2024, and there are a number of land use entitlements that must be obtained by that deadline.

Water and sewer service are required to bring this develop to fruition. The Orange Water and Sewer Authority ("OWASA"), which provides water and sewer service to Chapel Hill, has confirmed that it cannot serve the property with water or sewer because of its location to the east of I-40. The City of Durham has water and sewer utilities in the general area, that could be extended to serve this project. However, annexation into the City of Durham is generally required prior to the extension of City of Durham water or sewer service. In order to fully achieve the extension of water and sewer to the proposed development the following steps are required:

- Approval of this resolution by the Durham City Council authorizing the amendment of the annexation boundary. Note: The Town of Chapel Hill has already approved a resolution providing its consent to the proposed amendment to the boundary.
- Seek the Court's approval of the proposed amendment to the annexation boundary.
- If the annexation boundary amendment is approved by the Court, the property owner will need to submit a consolidated annexation application to the City. A consolidate
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- annexation request includes: an annexation petition, a request for initial City zoning, and an application for a utility extension agreement (“UEA”). Note: the consolidated annexation application will require a public hearing before Council, and approval of the resolution presented to Council today in no way dictates that Council must approve any element of the consolidated annexation application.

Alternatives

A. Deny the Resolution

City Council may elect to not adopt this resolution. This would mean the existing annexation boundary remains unchanged, and City water and sewer cannot be extended to the proposed development.

Financial Impact

This resolution has no financial impact.

Equal Business Opportunity Summary

This item was not reviewed by the Finance Department for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.

Contractor Workforce Diversity & Hiring Practices

Due to the nature of this agenda item, obtaining Contractor Workforce Diversity & Hiring Practices information is not applicable.

Staff Contact

Don O’Toole, City Attorney’s Office

Attachments

Attachment A: Proposed resolution for Council’s consideration

Attachment B: Map showing the proposed amendment to the annexation boundary

Attachment C: Metes and bounds description of the proposed amendment to the annexation boundary