



Date:



May 15, 2023

To: Wanda S. Page, City Manager
Through: Keith Chadwell, Deputy City Manager
From: Sara M. Young, AICP, Planning Director
Subject: Consolidated Zoning Map Change – 751 South

Executive Summary

The consolidated zoning map change for 751 South consists of a utility extension agreement and direct translational zoning. The North Carolina General Assembly passed legislation in its 2014 legislative session annexing this property into the City of Durham with an effective date of June 3, 2023. The City of Durham must now hold a public hearing to impose City zoning on the property and to adopt the required consistency statement in order to translate the County zoning into City zoning. Additionally, the developer has requested changes to the committed elements for this project. Because of the state legislation, the proposed changes to the committed elements are included in an amended utility extension agreement (“UEA”), which is also being presented to Council for approval.

As part of this General Assembly-initiated annexation, the applicant is not seeking a change in the underlying zoning district. A direct translational zoning is one in which the existing County zoning is translated to the identical City zoning district upon the annexation of the property into the City limits. In this case, the base zoning includes a development plan, which was approved by the Durham County Commissioners in 2010.

The parcel(s) that make up this development are annexed into the corporate limits of the City of Durham effective June 3, 2023, pursuant to Session Law 2014-47, and the following motions are presented for Council’s consideration:

Motion #1: To authorize the City Manager to execute an amended utility extension agreement, that includes revised development plan committed elements, with Southern Durham Development, LLC, John A. Mitchell, individually, and Seven Five One Investments, LLC;

Motion #2: To adopt an ordinance amending the Unified Development Ordinance by taking property out of Mixed Use with a Development Plan (MU(D)) and Residential Rural (RR), Recorded Utility Extension Agreement 1 (UEA 1), County Jurisdiction and establishing the same as Mixed Use with a Development Plan (MU(D)) and Residential Rural (RR), Amended Utility Extension Agreement 2 (UEA 2), City Jurisdiction, effective June 3, 2023; and

Or, if motion #1 is not approved:

Motion #2: To adopt an ordinance amending the Unified Development Ordinance by taking property out of Mixed Use with a Development Plan (MU(D)) and Residential Rural (RR), Recorded Utility Extension Agreement 1 (UEA 1), County Jurisdiction and establishing the same as Mixed Use with a Development

Plan (MU(D)) and Residential Rural (RR), Recorded Utility Extension Agreement 1 (UEA 1), City Jurisdiction, effective June 3, 2023; and

Motion #3: To adopt a Consistency Statement as required by NCGS 160D-605.

Background

On August 9, 2010, the Durham Board of County Commissioners approved the development plan (Attachment F, Appendix B) and zoning district for the 751 South Assemblage, also known as 751 South, case number Z0800003. In June of 2013, the Durham City Council voted to deny the annexation.

Through session laws 2013-386 and 2014-47, the North Carolina General Assembly annexed 751 South into Durham's corporate limits with an effective date of June 3, 2023. Section 1(c) of session law 2013-386 states that the City of Durham may not impose requirements or commitments on the property that are inconsistent with the requirements and commitments that are contained in the utility extension agreement, dated September 6, 2013. The applicant now proposes amendments to the committed elements that are incorporated into the UEA through the session law. The original UEA and an amended UEA, with revised committed elements, are presented for Council's consideration.

Issues and Analysis

A. *Translational Zoning*

In order to avoid a situation in which newly annexed property does not have a zoning designation, NCGS § 160D-202(g) requires that a municipality annexing property, impose municipal zoning on the property within 60 days of the annexation effective date. This is often called an "initial zoning". The proposed initial zoning associated with this general assembly-initiated annexation is a direct translation from Mixed Use with a Development Plan (MU(D)) and Residential Rural (RR), County jurisdiction to Mixed Use with a Development Plan (MU(D)) and Residential Rural (RR), City jurisdiction.

B. *Utility Extension Agreement(s)*

Recorded UEA (also known as UEA 1, Attachment F)

A Utility Extension Agreement (UEA1) was initially denied by the Durham City Council on June 3, 2013. Session law 2013-386 required the City to enter into UEA1 with the developer, See Attachment G. The requirements and commitments in the original UEA include, but are not limited to, the committed elements of the development plan in a zoning map case approved by Durham County, as found in the development plan, Attachment F, Appendix B.

Among other commitments, the recorded UEA (UEA 1) commit to the donation of land to Durham Public Schools and commit to at least 10% of the units being designated as income-restricted for a 15-year tenure at 80% AMI.

Amended UEA (also known as UEA 2, Attachment G):

UEA 1 has been updated to UEA 2 to include additional improvements and amended commitments by the developer. See Appendix A of Attachment G. Those committed elements in the 751 Assemblage development plan, approved by Durham County on August 9, 2010, in Zoning Map case number Z0800003 and the additional commitments in UEA 1, Appendix B, have been

revised, substituted and modernized and are found in Attachment G, Appendix B. The developer proffers the following additional commitments:

- Increase the maximum number of residential units from 1,300 to 1,753; and
- Decrease the maximum office floor area from 300,000 square feet to 150,00 square feet; and
- Decrease the maximum commercial floor area from 300,000 square feet to 150,00 square feet; and
- Decrease in the minimum vertically integrated commercial space from 75,000 square feet to 37,500 square feet; and
- Make a payment to the Dedicated Housing Fund in the amount of \$2,000,000 in lieu of the commitment to 10% of the units being affordable at the applicant's discretion; and
- Remove the commitment to widen NC 751 to four-lane divided roadway from the southern property line of the site to Stagecoach Road; and
- Remove the commitment to widen NC 751 to four lanes from Stagecoach Road to Renaissance Parkway; and
- Make a contribution to Durham Public Schools (DPS) in the amount of \$1,000,000 in lieu of the original land donation commitments of 10.5 acres for an elementary school or 22.5 acres for an elementary/middle school campus; and
- See the “Summary of Improvement Required of This Development Section under ‘Attachment J – Finalized TIA’ for a list of the transportation improvements that will be required of this development.

Alternatives

- A. The Council may elect not to approve the amended UEA (UEA 2). If the Council does not approve this motion, the recorded UEA, UEA 1, will remain in effect.
- B. The Council may elect to deny the direct translational zoning. As the City has 60-days to apply a base zoning district after an annexation, and the property is being annexed effective June 3, 2023, and whereas the Council is not in session the month of July, this could lead to a situation where no base zoning district applies, and the parcels are in violation of state statutes.

Equal Business Opportunity Summary

This is a consolidated annexation. It was not reviewed by the Finance Department for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.

Contractor Workforce Diversity & Hiring Practice

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

Financial

There is no financial impact for this item.

Staff Contact

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Attachments

- Attachment A:** Transportation Commitments Comparison
- Attachment B:** Zoning Context Map
- Attachment C:** Aerial Map
- Attachment D:** Annexation Overview Map
- Attachment E:** TIA Memo
- Attachment F:** Recorded Utility Extension Agreement (UEA 1)
- Attachment G:** Amended Utility Extension Agreement (UEA 2)
- Attachment H:** Zoning Ordinance (Amended UEA 2)
- Attachment I:** Zoning Ordinance (Recorded UEA 1)
- Attachment J:** Consistency Statement
- Attachment K:** Session Law 2013-396
- Attachment L:** Session Law 2014-47