



Date: May 18, 2020

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Jina B. Propst, Director, General Services Department
Subject: Restrictive Covenants for 505 W. Chapel Hill Street

Executive Summary

On November 4, 2019, the Durham City Council voted 6-0 to direct the City Manager to enter into negotiations with The Fallon Company for the purchase and redevelopment of 505 W. Chapel Hill Street into a mixed-use redevelopment project including affordable housing. Since that time General Services Department, in collaboration with the Office of Economic and Workforce Development, City Attorney's Office, City/County Planning Department and Community Development, have been negotiating with The Fallon Company to develop the appropriate documents to effectuate the City Council priorities for the site.

At this time, City staff recommends that restrictive covenants be placed on the property as a means to legally enforce the City's affordable housing goals for the project. Such covenants would be in addition to terms and conditions placed on the property by the Development Plan (Z2000006) for which the City/County Planning Department reviewed, and is presenting the request and recommending approval.

Related items anticipated to be presented at a subsequent City Council meeting for consideration include (1) Master Development Agreement, (2) Purchase and Sale Agreement, (3) UBE Hiring and Engagement Plan, and (4) Minority Ownership and Participation Plan.

Recommendation

The General Services Department recommends that City Council approve the following motions:

- To declare restrictive covenants applicable to property located at 505 W. Chapel Hill Street, Parcel ID 114577; and
- To authorize the City Manager to execute and record any necessary documents for the declaration and to make any changes to the documents consistent with the intent of the City.

Background

505 W. Chapel Hill Street is a 4.1 acre parcel located on the western edge of Downtown Durham (see **Attachment A**). This site is owned by the City of Durham and most recently housed the Durham Police Department headquarters; however, it is currently vacant. After a multi-year community outreach effort, request for qualifications, and request for proposals process, the Durham City Council voted 6-0 on November 4, 2019 to select The Fallon Group (TFC) as the preferred developer to prospectively to redevelop the site. A Master Development Agreement (MDA) and other documents are currently being negotiated and will be presented to Council for review later this year.

In addition to the restrictive covenants, City staff are also requesting a rezoning of the site (Z2000006). These two agenda items are running concurrently with one another and are necessary to actualize the City's vision for the site. Staff recommends that both should be approved prior to review of the forthcoming Purchase & Sale Agreement and other documents later this year.

Issues/Analysis

Restrictive covenants are legally binding conditions or requirements placed on a piece of real property either in perpetuity or for a set period of time. In the case of 505 W. Chapel Hill Street, the City is seeking to use this legal tool to require that future owners of the property, including The Fallon Company, develop and/or maintain a portion of the property as affordable housing in perpetuity.

The proposed restrictive covenants, if approved, will provide that the site forever include affordable housing units (see **Attachment B**). The key components of the proposed restrictive covenants include:

- **Provision of 80 affordable residential units.** The future owner shall construct and/or maintain a minimum of 80 affordable housing units on the site.
- **Monitoring by the City.** The tenancy of the affordable units will be monitored by the City's Community Development Department to ensure that units are being rented to low income households or individuals.
- **Consent to sale.** The City shall be notified and provide consent for future conveyances of the property.
- **Perpetual duration.** Restrictive covenants shall run with the land (e.g. they are transferred upon any sale of the property). and will last forever, unless the City terminates the covenants at a future date. The covenants shall also survive legal actions such as foreclosures, probate, and bankruptcy.
- **Breach.** If a future property owner breaches the covenants, the City shall have the right to sue and other remedies in response to the breach.

Alternatives

The City Council could decline to require affordable housing restrictive covenants be placed on the property; however, that would jeopardize the perpetual requirements, as desired.

Financial Impact

N/A

Equal Business Opportunity Summary

N/A

Attachments

Attachment A - Aerial Views & Photograph

Attachment B - Restrictive Covenants