



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Planning Division*

### m e m o r a n d u m

**TO:** Mayor Diane W. Marlin

**FROM:** John A. Schneider, MPA, Community Development Manager

**DATE:** August 10, 2017

**SUBJECT:** Annexation Case No. 2017-A-03: Amendment to an Annexation Agreement between the City of Urbana and Terrance A. Bialeschki for a 0.65-acre tract of property known as 2707 East Airport Road

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### **Introduction and Background**

Terrance A. Bialeschki has submitted a request to amend an existing Annexation Agreement for property he owns at 2707 East Airport Road. The property is 0.65 acres and is located southwest of the intersection of East Airport Road and Brownfield Road. The amended Annexation Agreement would allow Mr. Bialeschki to construct a garage that is 1,080 square feet. The Urbana Zoning Ordinance, which has authority according to the existing agreement, allows garages to be 1,000 square feet maximum.

Mr. Bialeschki and the City of Urbana originally entered into an Annexation Agreement in 2009 to allow Mr. Bialeschki to construct a single-family home on his property (Case No. 2009-A-05). The property is not contiguous to the city but is within Urbana's mile-and-a-half extraterritorial jurisdictional area. Under an intergovernmental agreement with the Urbana-Champaign Sanitary District (UCSD), property owners outside the corporate limits of Urbana that request a new connection to the sanitary sewer service must also agree to annex into the City of Urbana once their property becomes contiguous. To comply with the intergovernmental agreement between the City and the UCSD, Mr. Bialeschki had to enter into an Annexation Agreement before building his house and connecting to the sanitary sewer.

### **Discussion**

At the time of the original Annexation Agreement, Mr. Bialeschki did not foresee that he would eventually like to construct a 1,080 square foot garage. Had he known at the time, the request to allow a larger garage could have been written into the original agreement. This is a common practice in drafting Annexation Agreements between the City of Urbana and property owners. Often, the properties involved in Annexation Agreements follow more of a rural development pattern, with larger lots and larger accessory buildings (like garages) than would be appropriate in the more densely developed areas of the city. However, the Urbana Zoning Ordinance, which has authority in these cases, is written to accommodate a more urban type of development, where limiting the size of garages and other accessory buildings is appropriate. The area around 2707 East Airport Road is developed is more rural than urban in character, and a 1,080 square foot garage would not be out of character in the neighborhood. The property to the south, which is not subject to the Urbana

Zoning Ordinance, has a garage that is approximately the same size that Mr. Bialeschki is proposing to build on his property. To meet Mr. Bialeschki's request would not be out of character or detrimental to the surrounding area. The proposed amendment to the Annexation Agreement would grant a variance to allow Mr. Bialeschki to construct a garage that is at most 1,080 square feet.

The property is designated "Residential" in the 2005 Urbana Comprehensive Plan. The proposed amendment to the Annexation Agreement would be consistent with the current use of the property, the current use of surrounding properties, and the future land use designation of the property in the Comprehensive Plan.

### **Summary of Findings**

1. The subject property is not currently contiguous to the city limits, but is within Urbana's mile-and-a-half extraterritorial jurisdictional area.
2. The property is subject to an existing annexation agreement (2009-A-05) that was required due to an intergovernmental agreement between the City and the Urbana-Champaign Sanitary District.
3. The proposed amended annexation agreement would grant a variance to allow the owner to build a garage that is 1,080 square feet maximum.
4. All other terms and conditions of the existing Annexation Agreement will remain in full force and effect should the amendment be approved.

### **Options**

Regarding Amendment No.1 to Annexation Agreement, the Committee of the Whole has the following options:

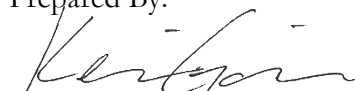
- a. Forward to City Council with a recommendation for approval; or
- b. Forward to City Council with a recommendation for approval, subject to recommended changes. (Note: The petitioner would have to agree to any recommended changes.)
- c. Forward to City Council with a recommendation for denial.

Approval of the amendment requires a two-thirds vote of the City Council.

### **Staff Recommendation**

Based on the analysis and findings presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Committee of the Whole forward the proposed Annexation Agreement in Case No. 2017-A-03 to the City Council with a recommendation for **APPROVAL**.

Prepared By:

  
Kevin Garcia, Planner II

cc: Terrance A. Bialeschki

Attachments: Draft Ordinance Approving an Amended Annexation Agreement  
Draft Amendment No. 1 to Annexation Agreement  
Exhibit A: Location Map  
Exhibit B: Draft Site Plan  
Exhibit C: Original Annexation Agreement (2009-08-094)

**ORDINANCE NO. 2017-08-045**

**AN ORDINANCE APPROVING AN AMENDMENT TO AN ANNEXATION  
AGREEMENT**

**(2707 East Airport Road / Terrance A. Bialeschki)**

**WHEREAS**, on September 18, 2009, Ordinance No. 2009-08-094 approved an Annexation Agreement between the City of Urbana, Illinois, and Terrance A. Bialeschki; and

**WHEREAS**, said agreement governs a tract totaling approximately 0.65 acres located at 2707 East Airport Road, and said tract is legally described as follows:

Tracts One (1) and Two (2) of Jacob H. Henning's Resurvey and Replat situated in the Northwest Quarter of the Northeast Quarter of Section Three (3) in Township Nineteen (19) North, Range Nine (9) East of the Third Principal Meridian as per plat recorded in Plat Book "F" at page 267 and 268, situated in the County of Champaign and the State of Illinois.

and

**WHEREAS**, Terrance A. Bialeschki has requested to amend said Annexation Agreement to allow for construction of a garage that is up to 1,080 square feet; and

**WHEREAS**, an Amendment No. 1 to Annexation Agreement between the City of Urbana, Illinois, and Terrance A. Bialeschki has been submitted for the Urbana City Council's consideration; and

**WHEREAS**, the City Clerk duly published notice on the 29<sup>th</sup> day of July, 2017 in *The News-Gazette*, a newspaper of general circulation in the City of Urbana, that a public hearing would be held before the Urbana City Council on the matter of the proposed Amendment No. 1 to Annexation Agreement on the 14<sup>th</sup> day of August, 2017; and

**WHEREAS**, the City Clerk also mailed notice of the public hearing to each of the Trustees of the Carroll Fire Protection District on the 7<sup>th</sup> day of August, 2017; and

**WHEREAS**, on the 14<sup>th</sup> day of August, 2017, the Urbana City Council held a public hearing on the proposed Amendment No. 1 to Annexation Agreement; and

**WHEREAS**, the Urbana City Council has determined that the proposed Amendment No. 1 to Annexation Agreement is in conformance with the goals and objectives of the City of Urbana’s 2005 Comprehensive Plan; and,

**WHEREAS**, the City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed annexation agreement will not negatively impact the City of Urbana and would be in the best interests of the City of Urbana and its citizens;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

**Section 1.** The Amendment No. 1 to Annexation Agreement between the City of Urbana, Illinois and Terrance A. Bialeschki, in substantially the form of the copy of said amendment attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

**Section 2.** That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver, and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Amendment No. 1 to Annexation Agreement, for and on behalf of the City of Urbana, Illinois.

**Section 3.** The City Clerk is directed to record a certified copy of this Ordinance and the Amendment No. 1 to Annexation Agreement herein approved, as amended, with the Recorder of Deeds of Champaign County, Illinois.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called of two-thirds of the members of the Corporate Authorities of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council.

**PASSED BY THE CITY COUNCIL THIS** \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

AYES:

NAYS:

ABSTAINS:

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Charles A. Smyth, City Clerk

**APPROVED BY THE MAYOR THIS** \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Diane Wolfe Marlin, Mayor

**This instrument was prepared by:**

Curt Borman  
Assistant City Attorney  
City of Urbana  
400 S. Vine Street  
Urbana, IL 61801

**Mail recorded document to:**

City of Urbana  
Planning Division Manager  
400 S. Vine Street  
Urbana, IL 61801

City of Urbana – Champaign County

**AMENDMENT NO. 1 TO ANNEXATION AGREEMENT**

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**Terrance A. Bialeschki  
2707 East Airport Road  
Urbana, IL 61802-7554**

## AMENDMENT NO. 1 TO ANNEXATION AGREEMENT

Terrance A. Bialeschki (the "Owner") and the City of Urbana (the "Corporate Authorities") mutually agree to the following amendment to the Annexation Agreement authorized by Ordinance No. 2009-08-094 and entered into on September 18, 2009:

Article II, "Representations and Obligations of the Corporate Authorities," is hereby amended by the addition of the following section thereto:

**Section 3: Development Regulations.** The Corporate Authorities agree that all applicable development regulations in force as of the date hereof will apply to the tract, except that the Corporate Authorities hereby grant a variance from Urbana Zoning Ordinance Section V-2(D)(7)(b) (maximum permitted area of an accessory building) to allow the Owner to construct a detached garage not to exceed 1,080 square feet.

All other terms and conditions of the agreement remain in full force and effect.

This amendment will take effect upon execution by the Owner and the Corporate Authorities.

[Signature page follows]



The parties are signing this agreement on the dates indicated below their signatures.

Terrance A. Bialeschki

City of Urbana, Illinois

\_\_\_\_\_  
Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_  
Diane Wolfe Marlin  
Mayor  
Date: \_\_\_\_\_, 2017

Attest:

\_\_\_\_\_  
Charles A. Smyth  
City Clerk

STATE OF ILLINOIS                    )  
  )    ss.  
COUNTY OF CHAMPAIGN            )

I, the undersigned, a notary public in and for the said County, in the State aforesaid do hereby certify that Terrance A. Bialeschki, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_ 2017.


\_\_\_\_\_  
Notary Public

# Location Map

# Exhibit A



Cases: 2017-A-03  
Subject: Annexation Agreement Amendment  
Addresses: 2707 Airport Road  
Petitioners: Terrance Bialeschki



 Subject Property

# Site Plan

# Exhibit B



Cases: 2017-A-03  
Subject: Annexation Agreement Amendment  
Addresses: 2707 Airport Road  
Petitioners: Terrance Bialeschki

 Subject Property  
 Proposed Garage

## Annexation Agreement

(2707 East Airport Road/Terrance A. Bialeschki)

THIS Agreement is made and entered into by and between the **City of Urbana, Illinois**, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City") and **Terrance A. Bialeschki** (hereinafter referred to as the "Owner"). The effective date of this Agreement shall be as provided in Article III, Section 6.

### WITNESSETH:

WHEREAS, this Agreement is made pursuant to and in accordance with the provisions of Section 11-15.1-1 et seq., of the Illinois Municipal Code (65 ILCS 5/11-15.1-1); and

WHEREAS, Terrance A. Bialeschki is the Owner of record of a certain 0.65-acre parcel of real estate located at 2707 East Airport Road, and having permanent index number 30-21-03-203-006 and 30-21-03-203-007 (combined as 30-21-03-203-012), the legal description of which real estate is set forth in Exhibit 1 attached hereto and referenced herein as "the tract".

WHEREAS, the attached map, labeled Exhibit 2, is a true and accurate representation of the tract to be annexed to the City of Urbana under the provisions of this agreement.

WHEREAS, although the tract is not yet contiguous to the City of Urbana, the owner finds that in order to best utilize the said tract, it is desirous to enter into this agreement to annex the tract to the City of Urbana when the said tract becomes contiguous to the City, pursuant to and as provided for in this annexation agreement.

WHEREAS, the tract is currently zoned R-1, Single Family Residence in Champaign County and the City and the Owner find it necessary and desirable that the tract be annexed to the City with a zoning classification of R-1, Single-Family Residential, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time; and

WHEREAS, such annexation will ensure that the City of Urbana will receive real estate taxes and other revenues and will enable the City to continue to enhance its tax base; and

WHEREAS, the Owner desires to have the aforementioned real estate annexed to the City of Urbana upon certain terms and conditions hereinafter set forth in this Agreement.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:**

**ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNER**

The Owner agrees to the following provisions:

**Section 1: Ownership and Annexation.**

- (a) The Owner represents that he is the sole owner of record of the tract described in Exhibit A and that he shall, within thirty (30) days of the property becoming contiguous to the Urbana City limits cause the tract to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes. Until annexation of the subject tract occurs, Owner shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owner shall file such written agreement with the City Clerk within thirty (30) days of the signing of such.
- (b) Owner further agrees that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tract. If the subject tract is to be platted for subdivision, the Owner agrees that the substance of this provision regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land.
- (c) Owner agrees that if he fails to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owner(s) as a result, the Owner shall be liable to the City for all real estate taxes and other taxes that would have been due to the City had annexation been able to proceed as outlined herein. The Owner agrees for himself, successor and assigns, and all other persons intended herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the subject tract and that mandamus would be an appropriate remedy in the event of refusal so to do, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees. The parties agree that nothing in this section shall preclude the voluntary annexation of the subject tract or any portion thereof earlier than would otherwise be required.

**Section 2: Zoning Classification.** The Owner agrees to accept the direct conversion of Champaign County zoning to City of Urbana zoning classification as provided for by the Urbana Zoning Ordinance Section IV-5 and as such exists at the time of annexation.

**Section 3: Development Regulations.** The Owner agrees to abide by all applicable development regulations, as may be amended from time to time.

**Section 4: Building Code Compliance.** The Owner agrees to cause any/all new development, construction, or additions on said tract to be in conformance with all City of Urbana building, electrical, fire and plumbing codes, orders or regulations in effect at the time of annexation. The Owner agrees to submit all building construction plans to the City of Urbana for review and further agrees to pay the building permit fee just as though the construction were taking place within the Urbana City limits. The Owner further agrees to correct any deficiencies identified in said plan review. In addition the Owner agrees that all construction will be subject to the same building and construction inspection requirements as construction projects within the City limits.

**Section 5: Amendments Required.** The Owner shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the tract, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by both the Owner and the City. Said action includes petitioning for a county rezoning of said tract without a written amendment to this Agreement.

**Section 6: Right-of-Way Dedication.** The Owner agrees to dedicate right-of-way along East Airport Road equal to forty (40) feet south of the Section Line by signing, concurrently with the execution of this annexation agreement, a right-of-way dedication document prepared by the City of Urbana and attached hereto as Exhibit 3.

## **ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES**

The Corporate Authorities agree to the following provisions:

**Section 1: Annexation.** The Corporate Authorities agree to annex said tract subject to the terms and conditions outlined in this Agreement, when properly and effectively requested to do so, by submission of a legally sufficient petition from the Owner, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

**Section 2: Zoning.** The Corporate Authorities agree that the tract will be zoned R-1, Single-Family Residential per the conversion of Champaign County zoning to City of Urbana zoning classification as provided for by the Urbana Zoning Ordinance or whatever zoning classification is provided for in such conversion table at the time of annexation. Furthermore, although the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the property Owner requesting said change, the Corporate Authorities reserve the right to amend the Zoning Ordinance text even if such amendment affects the property. If the zoning district referenced herein is not in existence at the time of the annexation, the parties agree to reclassify said property to the most comparable zoning classification as is determined by the Zoning Administrator.

### ARTICLE III: GENERAL PROVISIONS

**Section 1: Term of this Agreement.** This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State Statutes, unless other provisions of this Agreement specifically apply a different term. To the extent permitted thereby, it is agreed that, in the event the annexation of subject tract under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owner, his successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

**Section 2: Covenant Running with the Land.** The terms of this Agreement constitutes a covenant running with the land for the term of this Agreement unless specific terms are expressly made binding beyond the term of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, mortgagees, lessee, executors, assigns and successors in interest of the Owner as to all or any part of the tract, and are further expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

**Section 3: Binding Agreement upon Parties.** The Corporate Authorities and Owner agree that neither party will take no action or omit to take action during the term of this Agreement which act or omission as applied to the tract would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by both the Owner and the City.

**Section 4: Enforcement.** The Owner and Corporate Authorities agree and hereby stipulate that either party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or declare this Agreement null and void in addition to other remedies available. Upon breach by the Owner, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

**Section 5: Severability.** If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render invalid other provisions of this Agreement which can be given effect even without the invalid provision.

**Section 6: Effective Date.** The Corporate Authorities and Owner intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall

be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the agreement on behalf of the City.

**Section 7: Irrevocability.** In consideration of the City of Urbana granting approval allowing an Urbana-Champaign sanitary sewer connection pursuant to Resolution No. 9394-R13, this offer of annexation agreement is not revocable for a period of ninety (90) days from the date of execution by owners.

**IN WITNESS WHEREOF**, the Corporate Authorities and the Owner have hereunto set their hands and seals, and have caused this instrument to be signed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year written below.

**Corporate Authorities**  
**City of Urbana:**

**Owner:**

\_\_\_\_\_  
Laurel Prussing, Mayor

\_\_\_\_\_  
Terrance A. Bialeschki

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Phyllis D. Clark  
City Clerk

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Exhibits attached and made a part of this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Location Map
- Exhibit C: Right-of-Way Dedication Document



**Exhibit 1**  
**Legal Description**

Tracts One (1) and Two (2) of Jacob H. Henning's Resurvey and Replat situated in the Northwest Quarter of the Northeast Quarter of Section Three (3) in Township Nineteen (19) North, Range Nine (9) East of the Third Principal Meridian as per plat recorded in Plat Book "F" at page 267 and 268, situated in the County of Champaign and the State of Illinois.

Permanent Parcel Nos.: 30-21-03-203-006 and 30-21-03-203-007  
(combined as 30-21-03-203-012)

## Exhibit 2: Location Map



**Annexation Case:** 2009-A-05  
**Petitioner:** Terrance A. Bialeschki  
**Address:** 2707 East Airport Road  
**PIN No.:** 30-21-03-203-006 and 30-21-03-203-007  
(combined as: 30-21-03-203-012)

*Prepared 8/2009 by Community Development Services - lkk*