

GENERAL INFORMATION

Applicant: MCDC Penn LLC (Owner)
Penn Lake CityHomes LLC (User)

Location: 8525 and 8545 Penn Avenue South

Request: Change in Condition in Case #PL2020-133 related to the access requirements for the Penn Lake CityHomes townhouse development

Existing Land Use and Zoning: Vacant lots; zoned Townhouse Residential (Planned Development) (R-3(PD))

Surrounding Land Use and Zoning: North, east and west – Single-family residential dwellings; zoned R-1
South – Park; zoned R-1

Comprehensive Plan Designation: Medium Density Residential

HISTORY

City Council Action: 10/05/2020 – Approved Comprehensive Plan Map Amendment to reguide the properties from Low Density Residential to Medium Density Residential and Rezoning of the site from R-1 to R-3(PD) (Case #PL2020-133).

10/19/2020 – Approved Preliminary and Final Development Plans for a 15-unit townhouse development and Preliminary and Final Plat to subdivide two properties into 15 townhouse lots and one common lot

CHRONOLOGY

Planning Commission	04/15/2021	Public hearing held – no recommendation due to split vote (3-3)
Council	05/03/2021	Hearings, Resolutions and Ordinances

DEADLINE FOR AGENCY ACTION

Application Date:	03/10/2021
60 Days:	05/09/2021
120 Days:	07/08/2021
Applicable Deadline:	05/09/2021
Newspaper Notification:	Confirmed (04/01/2021 Sun Current – 10 day notice)
Direct Mail Notification:	Confirmed (500-foot buffer – 10 day notice)

STAFF CONTACT

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PROPOSAL

On October 19, 2021, the City Council approved the Preliminary and Final Development Plans of Penn Lake CityHomes, a 15-unit townhome development located at 8525 and 8545 Penn Avenue South (Case #PL2020-133). The Council action was subject to multiple conditions of approval required to be satisfied prior to the issuance of various permits for site disturbance or other construction activity necessary to complete the project. Condition #7 of the approved Final Development Plan for Penn Lake CityHomes requires the development to include access to Penn Avenue South (CSAH 32) available for public use. The precise language of Condition #7 is as follows:

7. *Prior to Permit The development must include access to Penn Avenue South available for public use as approved by the City Engineer and Fire Marshal. Approval for the access must be obtained from Hennepin County prior to site disturbance or development activity.*

The complete list of the adopted conditions of approval for the approved Final Development Plans in Case #PL2020-133 can be found in the attached Decision Notice document. The applicant submitted an access permit to Hennepin County for public use access (right-in/right-out design) consistent with the condition of approval from the City Council. Despite early indications of support from County staff for a right in/right out public access, Hennepin County staff denied the access permit. The applicant appealed the permit denial to the Hennepin County Engineer and the Hennepin County Board of Commissioners. Both appeals were denied.

As a result of fully exhausting the Hennepin County permit and appeals process, the applicant requests the City Council consider a Change in Condition application related to the required Penn

Avenue South secondary access. The applicant requests Condition #7 in Case #PL2020-133 be revised as follows:

7. *Prior to Permit The development must include emergency-only access to Penn Avenue South ~~available for public use~~ as approved by the City Engineer and Fire Marshal. Approval for the access must be obtained from Hennepin County prior to site disturbance or development activity.*

The application includes a revised site plan showing emergency-only access to Penn Avenue South on the north side of the site in the same location as the previous site plan. The emergency-only access is designed to facilitate southbound ingress and northbound egress movements for emergency vehicles in emergency response situations.

ANALYSIS

The City Council reviewed the development application for the proposed townhomes at two public meetings on October 5th and October 19th, 2020 respectively. For reference, the staff report and staff memorandum from the October 5th and October 19th meetings are attached. At the October 19th, 2020 meeting, the City Council discussed the access needs of the proposed development. The subject Final Development Plan approval was conditioned on the applicant providing a secondary access to Penn Avenue “available for public use”. The secondary access was dependent on Hennepin County’s approval, as Penn Avenue South (CSAH 32) is a County roadway. Based upon the subsequent denial of a public use secondary access, the applicant is now seeking City Council approval of an emergency-only access as directed and allowed by Hennepin County.

As part of the Final Development Plan review for the townhome development, the provision of secondary access was an area of focus. Staff’s concerns were for adequate ingress and egress for emergency vehicles as well as larger vehicles, such as a garbage truck, moving vans or delivery vehicles. At a minimum, the development must provide for safe and efficient emergency vehicle movements throughout the property to facilitate emergency response. Emergency access is ideally provided with multiple points of ingress and egress so emergency responders travelling from different origins have multiple access locations. Whenever secondary access is not possible or available, a development would be required to provide a full cul-de-sac or turnaround to maneuver larger vehicles within the development. Having a secondary access, even just for emergency vehicles, is a preferred emergency response outcome.

From a subdivision or development design standpoint, the provision of secondary access for the travelling public is desirable. Providing multiple ingress/egress locations allows for increased travel efficiency and trip distribution. For these reasons, secondary access is a design feature that increases in importance as more residential units are proposed.

The City Code does not require a secondary access for private roads or driveways located on the common property of a townhome development. However, the City Code does require any dead-end

public street to have a full turn-around when the street exceeds 300 feet. Private street or driveway access for any development is reviewed on the basis of traffic needs as determined by the City's Traffic Division and City Engineer in consultation with the Planning Division. The City's Traffic & Transportation Engineer evaluated the proposed townhome development as part of the Final Development Plan review in Case #PL2020-133. The Traffic & Transportation Engineer concluded that a single public access to West 86th Street, a City major collector roadway, would provide adequate, although not ideal, access and circulation for the typical traffic generated by a 15-unit townhome development. While the proposed design allows for the maneuvering of larger vehicles, a less experienced operator of a larger vehicle may encounter some difficulty while executing turn-around movements.

Table 1: Townhome Developments Comparison

Development	Address	# of Units	Site Area	Density	Secondary Access?	Arterial or Collector Access
Penn Lake CityHomes (Proposed)	9525 and 9545 Penn Ave S	15	1.88 acres	7.98 units/acre	No, County denied	Yes
Kennedy Court	9731 3rd Ave S	13	1.22 acres	10.66 units/acre	No – Planned 2 nd access	No
Tierney's Woods Townhomes	7815 Marth Ave	8	1.8 acres	4.44 units/acre	No, Cul-de-sac provided	No
Cavell Circle Townhomes	10211 Cavell Cir	20	3.25 acres	6.15 units/acre	No, Cul-de-sac provided	No
Trail West Townhomes	11045 Trail West	30	5.59 acres	5.37 units/acre	Yes	Yes
Trail East Townhomes	9524 Trail East	28	3.10 acres	9.03 units/acre	No – Planned 2 nd access	Yes
Bloom Hill Townhomes	8105 Xerxes Cir	15	2.63 acres	5.70 units/acre	No	No
Nine Mile Creek Townhomes	10531 Morgan Ave S	16	3.30 acres	4.85 units/acre	No, circle drive	No

As part of the Final Development Plan review in October of 2020, staff analyzed seven other townhome developments of similar size or unit counts located in Bloomington (See Table 1). Of the seven other townhome developments evaluated, six of seven did not benefit from existing secondary access available for public use. However, five of the six developments without existing secondary access had a full turnaround/circulation drive or plans to continue or expand the development in future phases, thereby potentially providing a secondary access at a later date. While staff would encourage public secondary access be provided whenever possible, it is not uncommon for similarly

sized townhome developments in Bloomington to be served by a single public access when a full turn-around or future access is provided. Based on the public communications and trip generation figures associated with these developments, the City's Traffic staff have not identified significant challenges or failures pertaining to access and circulation at these locations for the traditional daily traffic.

To demonstrate the proposed emergency-only vehicle access to Penn Avenue South would provide adequate circulation, the applicant has submitted an auto-turn exhibit demonstrating vehicle movements of a Bloomington Fire Department ladder truck. The exhibit does not currently model southbound ingress movements as desired by the Fire Department. Should the emergency-only access be deemed acceptable, the applicant's design engineer would need to provide an updated auto-turn exhibit demonstrating the ability to complete this movement. The auto-turn exhibit otherwise demonstrates adequate fire access and circulation.

In addition to the fire apparatus auto-turn exhibit, turning and circulation movements of a semi-trailer or larger truck is also modeled. The purpose of providing this exhibit is to address discussion and review on the part of City staff, Planning Commission and City Council pertaining to the ability to turn larger delivery and service vehicles around within the development. The emergency-only access would not be available to these types of vehicles for egress per the restrictions established by Hennepin County. As a result, larger vehicles, including delivery, garbage, snow plow, contractor, moving and other trucks must be able to turn around. The auto-turn exhibit demonstrates these vehicles can turn around utilizing the proposed roadway and turnaround on the north side of the site in proximity to the emergency-only access. To ensure these vehicles have adequate space to safely complete turn-around movements, vehicle parking within the internal circulation drive is not permitted. Staff is concerned that the limited amount of guest parking could increase the potential for parking in locations that might inhibit the turn-around movements of larger vehicles.

For the emergency-only access to Penn Avenue South to be accepted, it has to meet design approval of the City Engineer, Fire Marshal and Hennepin County. The revised condition of approval (Condition #7) would still require City and County approval of the design prior to issuance of permits for any site disturbing activity. The applicant proposes the emergency-only access have a surmountable curb to discourage non-emergency use and to be surfaced with concrete, providing a visual queue of differentiation from the internal driveways with non-emergency access. The access would also be signed both on the private and public side of the access to limit public use. The County Engineer provided the applicant design criteria and feedback in an e-mail dated 12/30/2020. The County design recommendations are attached to the staff report for reference. Should the Change in Condition be approved, the applicant will need to obtain City Engineer, Fire Marshal and Hennepin County approval of the final access design. Based upon an initial access review by the Traffic and Fire Prevention Divisions, it appears that the emergency-only access would work with minor adjustments. A County access or right-of-way permit will need to be obtained prior to work commencing in the Penn Avenue right-of-way.

To ensure that the emergency-only access is available year-round regardless of seasonal conditions, it must be cleared of snow and ice and remain unencumbered at all times. The emergency access

and turnaround area may not be used for snow storage or overflow parking. Emergency responders must have the ongoing ability to utilize the access regardless of the time or circumstance. Staff recommends a condition of approval requiring the access to remain unencumbered at all times on an ongoing basis. In addition, the townhome development home owners association (HOA) maintenance agreement must include provisions requiring the removal of snow and ice from the access, as well as restrictions about blocking the access. Staff recommends a condition that the required maintenance agreement include provisions related to the ongoing maintenance of the emergency-only access.

Should the Change in Condition request not be approved, the applicant would likely need to redesign the townhome development to provide a more robust turn-around or cul-de-sac for emergency vehicles. The revised site plan may need to be reviewed and approved by the City's Planning Commission and City Council in the form of a revised Final Development Plans application depending on the final result of the Change in Condition application.

Public Correspondence

As of the publication date of the staff report, the City has received three email communications from the public regarding the subject application. Both email express opposition to the requested change in access and the proposed development more generally. Concerns are noted regarding the number of residential units previously approved and potential stormwater and wildlife impacts. Analysis and discussion about these specific issues were conducted during the review of the Final Development Plans in October of 2020.

Status of Enforcement Orders

The properties are not currently subject to any open enforcement orders.

Summary

The denial by Hennepin County prohibits the use of the secondary access by the general public as desired by the previous Council approval of the Final Development Plans. While the trip generation and circulation for the residents' daily use would not necessitate a secondary access, staff concerns of adequate maneuverability of larger vehicles remain depending on the vehicle type and operator skill level. While the submitted auto-turn exhibit, which is based on veteran driver skills, show the turn-around to be adequate, the potential for illegal parking or snow storage impacting larger vehicle maneuverability is a concern. The area must be signed no parking and enforced by the association, and the association must manage snow removal to allow the required turning movements. Staff supports the proposed change in condition related to secondary access, subject to ongoing management to eliminate any aforementioned issues.

Planning Commission Review

The Planning Commission held a public hearing for the subject Change in Condition application on April 15, 2020. In addition to the applicant, eight members of the public spoke at the hearing. All of the public speakers were opposed to the request to change the secondary access to emergency-only use. Following the public testimony, the Planning Commission discussed the design of the secondary access and the resulting forecasted use. Half of the Planning Commission was supportive of revising the access to Penn Avenue to emergency-only use, whereas the other half of the body were opposed. The commissioners who were supportive of the application argued that restricting access to Penn Avenue South would remove and reduce conflicts with that busier roadway. Alternatively, the members opposed to the application noted that public use access was needed to serve the development. The full discussion of the Planning Commission can be found in the attached meeting minutes. Following discussion, the Planning Commission failed to reach a consensus with motions to both approve and to deny resulting in tied votes (3-3). As a result, the subject application proceeds to City Council for final decision without a recommendation from the Planning Commission.

RECOMMENDATION

Due to 3-3 votes, the Planning Commission was unable to make a recommendation in this case.

Staff recommends approval of the requested Change in Condition through the following motion:

Motion by _____, seconded by _____, in Case #PL2021-50, I move to adopt a resolution approving a Change in Condition of Approval #7 in Case #PL2020-133 to allow an emergency-only secondary access to Penn Avenue South for a 15-unit townhome development, subject to the conditions listed in the resolution.

RECOMMENDED CONDITIONS OF APPROVAL

Case #PL2021-50

Project Description: Change in Condition for Case #PL2020-133 related to the access requirements for Penn Lake CityHomes townhome development.

Address: 8525 and 8545 Penn Avenue South

The subject Change in Condition application modifies Condition of Approval #7 in Case #PL2020-133 to read as follows:

7. Prior to Permit The development must include emergency-only access to Penn Avenue South as approved by the City Engineer and Fire Marshal. Approval for the access must be obtained from Hennepin County prior to site disturbance or development activity.

Approval of the Change in Condition application in Case #PL2021-50 is subject to the following conditions of approval:

1. Prior to C/O The Home Owners Association (HOA) Maintenance Agreement required by City Code (Sec. 21.302.08(c)(20)(B)) must include provisions pertaining to the ongoing successful maintenance of the proposed emergency-only access to Penn Avenue South. Emergency-only access maintenance provisions must address signage, snow removal and restrictions on access obstruction as approved by the City Engineer and Fire Marshal.
2. Ongoing The emergency-only access to Penn Avenue South must maintain emergency vehicle only signs in both directions, remain free of snow and ice and be clear of any obstructions on an ongoing basis.