



May 11, 2021

Penn Lake CityHomes LLC
ATTN: Steve Furlong
5123 West 98th Street, Suite #142
Bloomington, MN 55437

RE: Case # PL202100050 – Change in Condition for emergency access at Penn Lake CityHomes
8525 and 8545 Penn Avenue South

Mr. Furlong:

At its regular meeting of May 10, 2021, the City Council adopted a resolution denying a Change in Condition for Case #PL2020-133 related to the access requirements for the Penn Lake CityHomes townhome development (Case # PL202100050). The Resolution of Denial is attached to this decision notice.

Should you have any questions regarding this action, please contact Nick Johnson, Planner, at (952) 563-8925 or nmjohnson@BloomingtonMN.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen Markegard". The signature is fluid and cursive, written over a light gray background.

Glen Markegard, AICP
Planning Manager

C: Brian Clemens, MCDC Penn LLC

RESOLUTION NO. 2021-81

**A RESOLUTION DENYING A CHANGE IN CONDITION OF APPROVAL FOR
FINAL DEVELOPMENT PLANS FOR A 15-UNIT TOWNHOME DEVELOPMENT
LOCATED AT 8525 AND 8545 PENN AVENUE SOUTH**

WHEREAS, the City Council of the City of Bloomington is the official governing body of the City of Bloomington, Minnesota (“City”); and

WHEREAS, on October 19, 2020 the City Council approved Final Development Plans (“Plans”) for a 15-unit townhome development located at 8525 and 8545 Penn Avenue South, whose property is legally described as follows:

That part of the South One-third of the Southwest Quarter of the Southwest Quarter of Section 4, Township 27, Range 24, Hennepin County, Minnesota, described as follows:

Commencing at a point in the West line of said Section 4, distant 145.2 feet South of the Northwest corner of said South One-third of Southwest Quarter of Southwest Quarter of Section 4; thence East, parallel with the North line of said South One-third of Southwest Quarter of Southwest Quarter, 300 feet; thence South, parallel with the West line of said Section 4, a distance of 176.7 feet more or less, to the center line of West 86th Street; thence Southwesterly along the center line of West 86th Street to its intersection with the West line of said Section 4; thence North along the West line of said Section 4 to the point of beginning.

And

The North 145.2 feet of the West 300 feet of the South One-third of the Southwest Quarter of the Southwest Quarter of Section 4, Township 27, Range 24, Hennepin County, Minnesota

(“Property”); and

WHEREAS, the Property is owned by MCDC Penn LLC (“Applicant”); and

WHEREAS, the City Council approved the Plans subject to Conditions of Approval on October 19, 2020, after holding a public hearing on October 5, 2020 to receive testimony from the public, staff, and the Applicant; and

WHEREAS, Condition of Approval #7 of Case #PL202000133 requires a secondary access available for public-use be provided to Penn Avenue South, rather than the emergency-use only access sought by the Applicant; and

WHEREAS, at the October 5, 2020 and October 19, 2020 public meetings, the City Council heard testimony from staff on the needs and preference for a public-use secondary access, specifically the need for access for fire and emergency vehicles, that from a trip generation standpoint multiple access points assist with the distribution of traffic, site circulation, and that the secondary access would allow larger trucks like garbage, moving vehicles, and delivery vehicles to exit the site without having to turn around; and

WHEREAS, Penn Avenue is a Hennepin County road and subject to Hennepin County design standards and approval processes; and

WHEREAS, prior to approval in Case #PL202000133 at the October 5, 2020 public meeting City Council directed city staff to meet with Hennepin County engineering and determine whether Hennepin County was supportive of a public-use access to Penn Avenue into the Property; and

WHEREAS, City staff reported to City Council on October 19, 2020 that Hennepin County staff was not supportive of public-use access to the Property, but that the County would support emergency-use only access; and

WHEREAS, City staff further reported to City Council that Hennepin County utilized a permit approval process whereby a developer seeking access to a county roadway must apply for an access permit and if contrary to a development's site design could seek an appeal of the county staff determination to the County Engineer and then the Board of Commissioners; and

WHEREAS, at the public meeting on October 19, 2020, city staff presented two options for access conditions to the City Council, specifically asking Council to determine whether it was absolutely necessary for the Plans to include public-use access to Penn Avenue based upon the staff recommendation from Hennepin County for emergency-use only access; and

WHEREAS, at the public meeting on October 19, 2020 Council found that public-use access to Penn Avenue was absolutely critical for Applicant's development to move forward in order to facilitate ingress and egress from the Property, that emergency-use only access was inadequate to meet concerns regarding site circulation, distribution of vehicles through the Property, prevent queuing on adjacent roadways, and to facilitate use of the internal roadway by delivery vehicles, large trucks, garbage haulers as well as emergency vehicles, and specifically, that Condition of Approval #7 was designed to address public health, safety, and welfare impacts to the surrounding properties; and

WHEREAS, following City approval, the Applicant applied for an access permit from Hennepin County for public-use access to Penn Avenue; and

WHEREAS, Hennepin County staff did not support a public-use access to Penn Avenue; and

WHEREAS, the Applicant appealed Hennepin County staff denial to the Hennepin County Engineer and to the Hennepin County Board of Commissioners who ultimately denied the Applicant's request for public-use access; and

WHEREAS, based in the County's denial of Applicant's access permit, Applicant is seeking to move forward with the development as proposed, providing emergency-use only access to Penn Avenue contrary to the specific findings made by the City Council at its October 19, 2020 public meeting without providing any site design changes to mitigate impacts to the surrounding neighborhood or address the concerns highlighted by the City Council at the October 19, 2020 meeting; and

WHEREAS, the Applicant filed to amend the Condition of Approval #7 in Case #PL2020000133 to designate the required secondary access to Penn Avenue South for emergency-use only (Case #PL202100050); and

WHEREAS, the application was considered by the Bloomington Planning Commission at a duly noticed public hearing on April 15, 2021, where the public had the opportunity to be heard on the proposed Change in Condition of Approval #7 for Case #PL202000133; and

WHEREAS, the Bloomington Planning Commission failed to make a recommendation on the proposed Change in Condition of Approval #7 for Case #PL202000133 due to a tied vote on April 15, 2021; and

WHEREAS, the City Council has reviewed the report from the Planning Commission at the City Council's duly called public meeting on May 3, 2021, and considered the report of City staff, all information provided in the agenda materials, reviewed the public hearing conducted by the Planning Commission, and the requirements in Bloomington City Code and state law; and

WHEREAS, at the May 3, 2021 City Council meeting, consistent with its previously stated concerns and objections, the City Council articulated that the Applicant's requested Change in Condition of Approval #7 is insufficient as emergency-use only access. Emergency-use only access is otherwise inadequate to address the movement of resident vehicles, delivery vehicles, trucks, trailers, garbage haulers, and internal circulation through the proposed development and that the proposed amended condition failed to address the Council's concerns about safety and site functionality first articulated in the Council approval of October 19, 2020; and

WHEREAS, the City Council finds that without public-use access to Penn Avenue as described in Condition of Approval #7, the proposed development on the Property will be injurious to the surrounding neighborhood and otherwise harm health, safety or welfare.

CASE #PL2021-50

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, MINNESOTA that based on the foregoing, which is hereby incorporated by reference, the requested Change in Condition of Approval #7 is hereby DENIED.

Passed and adopted this 10th day of May, 2021.

DocuSigned by:

Tim Bause

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Mayor

ATTEST:

DocuSigned by:

Denise Christenson

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Secretary to the Council



October 20, 2020

Bloomington Redevelopment Co.
ATTN: Steve Furlong
5123 West 98th Street, Suite #142
Bloomington, MN 55437

RE: Case # PL202000133 – 15-Unit Townhome Development (Penn Lake CityHomes)
8525 and 8545 Penn Avenue South

Mr. Furlong:

At its regular meeting of October 19, 2020, the City Council approved a Comprehensive Plan Amendment to reguide 8525 and 8545 Penn Avenue from Low Density Residential to Medium Density Residential and a rezoning of the subject properties from R-1 to R-3(PD) (Case #PL202000133). The final adoption of the Comprehensive Plan Amendment and associated rezoning action is subject to the approval of the Metropolitan Council.

At its regular meeting of October 19, 2020, the City Council approved Preliminary and Final Development Plans for a 15-unit townhome development and a Type III Preliminary and Final Plat (PENN LAKE CITYHOMES), creating 15 townhome lots and one common lot (Case #PL202000133).

The approval of the Preliminary and Final Development Plans is subject to conditions that must be satisfied prior to the issuance of a Grading, Footing, Foundation or Building Permit. While the conditions list includes selected City Code requirements of particular interest, the development must comply with all applicable local, state and federal codes.

1. Prior to Permit A Site Development Agreement, including all conditions of approval, must be executed by the applicant and the City and must be properly recorded by the applicant with proof of recording provided to the Director of Community Development.
2. Prior to Permit A building permit for all required changes to accommodate the proposed use be obtained.
3. Prior to Permit Sewer Availability Charges (SAC) must be satisfied.
4. Prior to Permit Project Phasing Plan be submitted and approved.
5. Prior to Permit A Construction Management Plan must be submitted for review and approval by the City prior to any grading or site disturbance.
6. Prior to Permit Access, circulation and parking plans must be approved by the City Engineer.
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.
8. Prior to Permit Grading, Drainage, Utility and Erosion Control plans must be approved by the City Engineer.
 9. Prior to Permit Storm Water Management Plan must be provided that demonstrates compliance with the City's Comprehensive Surface Water Management Plan. A maintenance plan must be signed by the property owners and must be filed of record with Hennepin County.
 10. Prior to Permit A Nine Mile Creek Watershed District permit must be obtained and a copy submitted to the Engineering Division.
 11. Prior to Permit An erosion control surety must be provided (16.08(b)).
 12. Prior to Permit A Minnesota Pollution Control Agency (MPCA) Sanitary Sewer Extension or Modification Permit must be obtained or notification from the MPCA that this permit is not required must be submitted to the City (State of MN).
 13. Prior to Permit A Minnesota Department of Health (MDH) watermain review and approval must be obtained or notification from MDH that this permit is not required must be submitted to the City (State of MN).
 14. Prior to Permit Utility plan showing location of existing and proposed water main and fire hydrant locations must be approved by the Fire Marshal and Utilities Engineer (City Code Sec. 6.20, Minnesota State Fire Code Sec. 508).
 15. Prior to Permit Landscape plan must be approved by the Planning Manager and landscape surety must be filed (Sec 19.52).
 16. Prior to Permit Townhome structures must comply with the articulation and design standards specified in Section 21.302.08(c)(10) of the City Code.
 17. Prior to Permit The properties must be platted per Chapter 22 of the City Code and the approved final plat must be filed with Hennepin County prior to the issuance of a footing/foundation or building permit (22.03(a)(2)).
 18. Prior to C/O The developer must submit electronic utility as-builts to the Public Works Department prior to the issuance of the Certificate of Occupancy.
 19. Prior to C/O Prior to occupancy, life safety requirements must be reviewed and approved by the Fire Marshal.
 20. Ongoing All construction stockpiling, staging and parking must take place on site and off adjacent public streets and public right-of-way.
 21. Ongoing Three foot high screening must be provided and maintained along the guest parking stalls as approved by the Planning Manager (Sec. 19.52).
 22. Ongoing Alterations to utilities must be at the developer's expense.
 23. Ongoing Fire lanes must be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3).
 24. Ongoing Development must comply with the Minnesota State Accessibility Code (Chapter 1341).
 25. Ongoing Site lighting must comply with Section 21.301.07 of the City Code. All lighting, other than architectural, decorative or landscape lighting, on the northeast building's east elevation must have 90-degree cutoff fixtures to reduce light pollution.
 26. Ongoing Signs must be in compliance with the requirements of Chapter 19, Article X of the City Code and Uniform Design Plan.

27. Ongoing A minimum of six guest parking stalls must be available and maintained at all times. Guest parking spaces may not be utilized for snow storage.

The approval of the Type III Preliminary and Final Plat (PENN LAKE CITYHOMES) is subject to the following conditions of approval:

1. Prior to Recording A title opinion or title commitment that accurately reflects the state of title of the property being platted, dated within 6 months of requesting City signatures, must be provided.
2. Prior to Recording A consent to plat form from any mortgage company with property interest must be provided.
3. Prior to Recording Right-of-way on Penn Avenue South must be dedicated to the public as approved by the City Engineer.
4. Prior to Recording Public drainage and utility easements must be provided as approved by the City Engineer.
5. Prior to Recording Public sidewalk and bikeway easements must be provided along all street frontages as approved by the City Engineer.
6. Prior to Recording Park dedication must be satisfied.

Should you have any questions regarding this action, please contact Nick Johnson, Planner, at (952) 563-8925 or nmjohnson@BloomingtonMN.gov.

Sincerely,



Glen Markegard, AICP
Planning Manager

C: Brian Clemens, McDonnell Clemens LLC