

RESOLUTION NO. 2022-139

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

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

WHEREAS, the Bloomington City Council approved Final Development Plans for a 15-unit townhome development located at 8525 and 8545 Penn Avenue South, subject to Conditions of Approval in Case #PL202000133; and

WHEREAS, an application (Case #PL202100050) was filed on behalf of MCDC Penn LLC (Applicant), the owner of the premises located at 8525 and 8545 Penn Avenue South, to amend the Conditions of Approval in Case #PL202000133 and 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, existing Condition of Approval #7 of Case #PL202000133 requires a secondary access available for public-use be provided to Penn Avenue South; and

WHEREAS, Applicant sought to amend Condition of Approval #7 of Case #PL202000133 to designate the required secondary access to Penn Avenue South for emergency-only use; and

WHEREAS, the matter was referred to the Bloomington Planning Commission at a duly noticed public hearing on April 15, 2021, where all persons interested were given the opportunity to be heard on the proposed Change in Condition of Approval 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 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, subject to compliance with the amended Condition of Approval #7, the proposed development is not in conflict with the approved Final Development Plans in Case #PL202000133; and

WHEREAS, subject to compliance with the amended Condition of Approval #7, the proposed development will not be injurious to the surrounding neighborhood or otherwise harm health, safety or welfare. The amended condition allows for the required secondary access to Penn Avenue South to be designated as emergency-use only, subject to conditions of approval; and

WHEREAS, the City Council did not approve the foregoing findings and on May 10, 2021 denied the Change in Condition application; and

WHEREAS, the Applicant filed a lawsuit (File No. 27-CV-21-10098) challenging the denial of the Change in Condition Application in the District Court of the Fourth Judicial District, State of Minnesota; and

WHEREAS, on July 5, 2022, District Court Judge Guthmann issued an order requiring the City to approve the City Council Resolution related to MCDC LLC's request for a change in condition (Case #PL202100050) as presented at the May 3, 2021, City Council meeting ("District Court Order").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, MINNESOTA, based on the foregoing recitals and as required by the District Court Order in File No. 27-CV-21-10098:

- A. The recommendation of the City staff adopted;
- B. Condition of Approval #7 for Case #PL202000133 shall be amended to read:

- 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.

C. Approval of the proposed Change in Condition of Approval #7 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.

D. All other Conditions of Approval from Case #PL202000133 shall remain unchanged.

BE IT FURTHER RESOLVED that staff are hereby directed and authorized to take all necessary and expedient steps to accomplish the intent of this Resolution.

Passed and adopted this 8th day of August 2022.

DocuSigned by:

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Mayor

DocuSigned by:

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Secretary to the Council