

**RESOLUTION  
TOWN OF OSSINING PLANNING BOARD  
(Adopted October 6, 2021)**

**Application of Chocolate Sky LLC  
Property: 39 Stormytown Road (Section 89.07, Block 3, and Lot 62 and R-20 Zone)**

**Background**

WHEREAS, the Town of Ossining Planning Board received an application from Chocolate Sky LLC ("Applicant") for Final Subdivision Plat approval to subdivide the subject property into nine (9) building lots and to construct a road to Town standards to provide access to seven (7) of the nine (9) lots. Lots #1 and #3 are proposed to have direct access to Stormytown Road via existing driveways ("Project"). The subject property is located at 39 Stormytown Road, Town of Ossining, New York, Section 89.07, Block 3, and Lot 62 on the Tax Assessment Map of the Town of Ossining ("Project Site"). The Project Site is located in the R-20 Zoning District; and

WHEREAS, in accordance with Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act) and the implementing regulations in 6 NYCRR Part 617, the Planning Board considered all of the impacts of the action and determined that the proposed action was an Unlisted Action and issued a Negative Declaration on October 2, 2019.

WHEREAS, pursuant to Sections 239-L, M, and N of the New York State General Municipal Law, the Planning Board referred the application materials to the Westchester County Department of Planning for their review and comments in 2018; and

WHEREAS, the Planning Board conducted a duly noticed public hearing on October 7, 2020, at which time all those wishing to be heard were given the opportunity to be heard, and the public hearing remained open until September 1, 2021; and

WHEREAS, The Planning Board has carefully examined and considered the materials submitted by the Applicant in support of the Project as follows:

1. Subdivision Plans by Lagan Engineering dated March 29, 2021, and last revised August 9, 2021, and including the following sheets:
  - a. CS001 Cover Sheet
  - b. CS101 Site Plan
  - c. CD101 Existing Conditions and Removals Plan
  - d. CD102 Tree Removal Table
  - e. CA101 Existing Slopes Analysis Plan
  - f. CG101 Grading and Drainage Plan
  - g. CG201 Road and Driveway Profiles
  - h. CG202 Sight Distance Plan

- i. CG203 Line of Sight Profile
  - j. CU101 Utility Plan
  - k. CU201 Water Min Profile
  - l. CE101 Erosion and Sediment Control Plan
  - m. CS501 to 503 Details
  - n. LP101 Planting Plan
  - o. LP501 Planting Notes and Details
2. Planning Board Application dated April 28, 2021
3. Response to Comments dated by Langan Engineering April 28, 2021, June 8, 2021, and August 10, 2021
4. SEQOR Comparison dated by Langan Engineering April 28, 2021
5. Tree Warden's review letter dated June 6, 2021

WHEREAS, the Planning Board has also reviewed and examined letters, reports, and memorandum from the Board's consulting engineer and planner; and

WHEREAS, all testimony provided at the public hearing was carefully considered, and the Planning Board deliberated in public on the Applicant's request for approval of the Project; and

WHEREAS, the Applicant appeared before the Town Board to request the dedication of the new road to be constructed as a result of the Project and at the September 28, 2021, Town Board meeting the Town Board passed a resolution stating that "it will be in the best interest of the Town and its residents for the Town to accept, upon fulfillment of specified conditions, an offer of dedication of the internal road in order to ensure appropriate maintenance and repairs to the road so that it remains in satisfactory condition over the long-term;" and

#### **Planning Board Determination**

WHEREAS, the Planning Board is familiar with the Project Site and the general vicinity and has reviewed the application in accordance with Chapter 176, Subdivision of Land, of the Town Code; and

NOW, THEREFORE, BE IT RESOLVED, the Planning Board determines that pursuant to Section 176-21 of the Subdivision of Land chapter of the Town Code the Applicant's requested waiver from the requirements of Chapter 176 will be consistent with the spirit and intent of this chapter, all Town laws and ordinances, the Comprehensive Development Plan, and the Official Map, and hereby grants the following:

1. A waiver from Section 176-15 (A), the installation of sidewalks and light fixtures on the new street; and

BE IT FURTHER RESOLVED, the Planning Board hereby finds that a proper case exists for requiring that a park be suitably located for playground or other recreational purposes within

the Town and the Planning Board makes the following findings in accordance with New York Town Law § 274-b:

1. The proposed subdivision with its proposed eight (8) new residential lots would benefit from park, playground or other recreational uses located on the Project Site.
2. However, the proposed subdivision does not include recreational uses such as playgrounds, walking trails. The site plan does not propose any ball fields or courts. In addition, while the proposed site plan provides permanent open space areas, these areas are comprised of steep slopes and other lands that must be preserved and cannot be utilized for recreational purposes. Consequently, certain recreational needs can only be satisfied off the Project Site and future residents of the Project will likely utilize the Town and Village recreational facilities, including the Town and Village parks, ball fields, walking trails, playgrounds, and large community swimming pool.
3. As there are not park or recreational areas of adequate size on the Project Site to fulfill all the recreational needs created by the proposed site plan, the Applicant is required to pay a sum of money in lieu of park, playground or other recreational use in accordance with the 2021 Town of Ossining Fee Schedule, which is set at \$7,500 per lot and \$2,500 per affordable housing unit as directed below.

BE IT FURTHER RESOLVED, the Planning Board of the Town of Ossining determines that in accordance with Section 200-33 of the Town's Zoning Law, the Applicant must provide one (1) below market rate unit in accordance with Sections 200-35 and 200-53(A).

BE IT FURTHER RESOLVED, the Planning Board of the Town of Ossining determines that based upon the findings and reasoning set forth below the application for Final Subdivision Plat approval is granted subject to the conditions:

**Conditions**

1. Except as otherwise provided herein, all work shall be performed in strict compliance with the plans submitted to the Planning Board and approved by the Planning Board as follows:
  - a. Subdivision Plans by Lagan Engineering dated March 29, 2021, and last revised August 9, 2021, and including the following sheets:
    - i. CS001 Cover Sheet
    - ii. CS101 Site Plan
    - iii. CD101 Existing Conditions and Removals Plan
    - iv. CD102 Tree Removal Table
    - v. CA101 Existing Slopes Analysis Plan
    - vi. CG101 Grading and Drainage Plan
    - vii. CG201 Road and Driveway Profiles
    - viii. CG202 Sight Distance Plan

- ix. CG203 Line of Sight Profile
- x. CU101 Utility Plan
- xi. CU201 Water Min Profile
- xii. CE101 Erosion and Sediment Control Plan
- xiii. CS501 to 503 Details
- xiv. LP101 Planting Plan
- xv. LP501 Planting Notes and Details

2. General Conditions. The following conditions must be met before the Planning Board Chair may sign the Final Subdivision Plat:
  - a. In addition to the information required in Section 176-25 of the Subdivision of Land chapter, the Applicant must address to the full satisfaction of the Village Engineer, all outstanding stormwater, stormwater maintenance agreements and easements, and engineering issues raised in the hearings and documents submitted to the Board.
  - b. Upon the full satisfaction of the Town Attorney, a Stormwater Maintenance shall be executed, filed, and recorded with Westchester County and a reference to the stormwater maintenance agreement shall be noted on the Final Subdivision Plat.
  - c. A Final Subdivision Plat prepared by a Licensed Land Surveyor shall be submitted to the Planning Board and its consultants for approval with all appropriate notes and elements from the Subdivision Plans.
  - d. The Subdivision Plat shall be endorsed by the Westchester County Department of Health indicating the Department's approval of the water supply and sewage disposal facilities.
  - e. The Applicant shall submit a letter from the Village of Ossining which confirms the adequacy of the municipal water system to serve the proposed lot(s).
  - f. The Applicant shall submit a statement signed by the Town Receiver of Taxes that indicates that all taxes due on the Subject Property have been paid.
  - g. The Applicant will post a performance bond as required in Section 176-8A(2) of the Subdivision of Land chapter.
  - h. The Applicant shall pay all outstanding consultant review and legal fees in connection with the Planning Board review of this application.
3. Specific Conditions. The following conditions must be met before the Planning Board Chair may sign the approved Final Site Plan Plat:
  - a. The Applicant must provide to the satisfaction of the Building Department that the Final Plat meets the requirements of Section 183-12(G) of the Tree Protection Chapter of the Town Code. The Applicant may propose replacement of trees or payment into the

Tree Fund or some combination thereof to meet the requirements.

- b. Landscaping notes shall be revised as follows:
    - i. The Applicant will preserve the following trees: 1604 - Northern Red Oak, 1608 - Norway Spruce, 1631 - Cherry, and 1632 - Sugar Maple.
    - ii. The existing vegetative screening on site shall be maintained and if the existing screening is damaged or dies, the Applicant needs to replace the vegetative screening. All replacement landscaping shall be installed in a healthy and vigorous state and shall be inspected at the beginning and end of the growing season within the first, second, and third year of installation. Individual species that do not survive beyond the first, second, and third year shall be replaced at the beginning of the next growing season with another native species suitable for the site conditions. The Applicant will provide the Planning Board a tree installation schedule and year one of inspections will commence with the installation of the trees or the issuance of the Certificate of Occupancy whichever happens first. Yearly inspections will be conducted by the Town's Tree Warden.
  - c. In accordance with Section 200-33 of the Town's Zoning Law, the Applicant must provide one (1) below market rate unit in accordance with Sections 200-35 and 200-53(A). Upon the full satisfaction of the Town Attorney, a deed restriction shall be executed, filed, and recorded with Westchester County and a reference to the location of the below market rate unit shall be noted on the Final Subdivision Plat.
4. Force and Effect. No portion of any approval by the Planning Board shall take effect until (1) all conditions are met, (2) the Final Subdivision Plat is signed by the Chair of the Planning Board and (3) the Final Subdivision Plat filed with the Office of the County Clerk, Division of Land Records and with the Town Clerk.
5. Recreation Fees. In accordance with Section 277.4 of New York State Town Law, the need for recreation fees and the amount of said fees as required by the Town's Zoning Law have been established. Pursuant to Section 200-51(A)(1)(b) of the Zoning Law and Chapter A203, Fees, of the Town Code, the Applicant shall submit to the Town a recreation fee for the eight (8) additional homes in the amount required by the Ossining Town Code before the issuance of the Building Permit.
6. Field Changes. Any further modification of the subject premises beyond those approved herein shall be subject to further Board review. The Applicant is subject to all permits, time limits, and applicable fees as set forth in NYS Town Law and the Town Code.

7. Dedication of Town Road. The Applicant must complete all required conditions in the September 28, 2021, Town Board resolution prior to any acceptance of the Town Road.
8. Expiration of Final Subdivision Approval Resolution. In accordance with New York Town Law § 276(7)(c) this resolution granting final subdivision approval shall expire within 180 days after the date of this resolution unless all requirements stated herein have been certified as complete. Notwithstanding the foregoing, the Planning Board may extend for periods of ninety days each (or two ninety day periods) upon request by the Applicant and based upon the particular circumstances.
9. Filing of Final Subdivision Plat: In accordance with New York Town Law § 276(11) and Town Code § 176-9 (A)(2), any Final Subdivision Plat not filed or recorded within 62 days of the date upon which such plat is endorsed by the Planning Board Chair shall expire.

Dated as of October 6, 2021



Chairman

Motion by: Carolyn Stevens

Second by: Jim Bossinas

In Favor: All

Opposed: None

Abstaining: None