

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-20A
Z.C. CASE NO. 15-20A
Sursum Corda Cooperative Association, Inc.
(Two-Year PUD Time Extension @ Square 620)
May 8, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on May 8, 2017. At the meeting, the Commission approved a request from the Sursum Corda Cooperative Association, Inc. ("Applicant") for an extension of time of the first-stage planned unit development ("PUD") approved for Square 620, Lots 248, 249, 250, 893, 894, and 895 (collectively, the "Property"). The Commission considered the application pursuant to Subtitle Z, Chapter 7 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 15-20 ("Order"), dated May 9, 2016, the Commission approved a first-stage PUD and related map amendment from the R-4 Zone District to the C-3-C Zone District for the Property. The Property consists of 6.7 acres, and is bounded by M, First, and L Streets and First Place, N.W. The Property is zoned C-3-C by virtue of the zoning map amendment.
2. The Order approves the redevelopment of the Property, divided into two parcels – the North Parcel and the South Parcel – in two or more phases. The South Parcel will be developed in the first phase of the project. It consists of three lots to be developed as follows:
 - Theoretical Lot 1A consists of approximately 44,725 square feet of land area. It will be improved with Building 1A, which has approximately 184,775 square feet of residential gross floor area, including approximately 176 dwelling units. The building has eight stories and a height of 72.45 feet, as measured from First Street, N.W. The density for this lot will be 4.13 floor area ratio ("FAR");
 - Theoretical Lot 1B consists of approximately 39,607 square feet of land area. It will be improved with Building 1B, which has approximately 194,900 square feet of residential gross floor area, including approximately 182 dwelling units. Building 1B has eight stories and a building height of 78 feet, as measured from First Place, N.W. The density for this lot will be 4.92 FAR; and

- Theoretical Lot 1C has approximately 27,139 square feet of land area. It will be improved with Building 1C, which has approximately 92,910 square feet of residential gross floor area, including approximately 63 dwelling units and approximately 8,315 square feet of non-residential gross floor area. Building 1C has six stories and a height of 65.75 feet as measured from First Place, N.W. The density for this lot will be 3.73 FAR.
3. Pursuant to the Order, the first-stage approval is valid until June 30, 2023, provided that a second-stage PUD application for the South Parcel is filed by June 30, 2017.
 4. On April 5, 2017, the Applicant filed a request for a two-year extension of the first-stage PUD approval, such that a second-stage PUD application for the South Parcel shall be filed no later than June 30, 2019. This is the first extension request made by the Applicant.
 5. The Applicant submitted evidence regarding an inability to obtain sufficient project financing for the development, following the Applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the Applicant's reasonable control. As demonstrated in the materials submitted by the Applicant, including the sworn affidavit of Lonnie Duren, the Chairman of the Board of Directors of the Sursum Corda Cooperative Association, Inc., which owns the Property, because there is not currently a buyer/developer for the Property, the second-stage PUD application cannot be filed by June 30, 2017, as required under the Order.
 6. On February 17, 2016, the Applicant engaged the firm of Savills Studley to oversee the marketing and sale of the Property. Savills Studley distributed marketing materials and made available the first-stage PUD approval, environmental reports, and other materials in the project war room so that potential purchasers could perform due diligence on the Property. From this first round of marketing the Property, Savills Studley received approximately eight offers for the purchase of the Property. The highest bidder was Miami-based developer, Global City Development ("Global").
 7. The Applicant entered into a purchase and sale agreement with Global on November 9, 2016. After the expiration of the 90-day due diligence period, Global was unable to timely proceed with the terms of the agreement. As a result, the contract between the Applicant and Global was terminated.
 8. In March 2017, Savills Studley once again circulated marketing materials and solicited offers for the purchase of the Property, but there have not been any offers.
 9. In this case, project financing must be achieved through the sale of the Property. Despite its diligent good faith efforts, the Applicant has been unable to sell the Property. The three primary concerns raised by potential buyers are: (a) the long-term development of

the Property due to its size; (b) the affordable housing requirement for the Property, which is equal to approximately 18% of the total units; and (c) the right of return for the current Sursum Corda households.

10. The application and architectural drawings for the second-stage PUD application will be prepared by the buyer/developer of the Property. Because there is not currently a buyer/developer for the Property, the second-stage PUD application cannot be filed by June 30, 2017, as required under the Order.
11. On April 27, 2017, the Office of Planning (“OP”) submitted a report recommending approval of the application.
12. The only other party to the application was Advisory Neighborhood Commission (“ANC”) 6E and the ANC did not submit anything with respect to this application.
13. Because the Applicant demonstrated good cause with substantial evidence pursuant to Subtitle Z § 705.2(c) of the Zoning Regulations, the Commission finds that the request for the two-year time extension should be granted.

CONCLUSIONS OF LAW

1. Pursuant to 11-Z DCMR § 705.3, the Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided:
 - a. The request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond;
 - b. There is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and
 - c. The applicant demonstrates with substantial evidence that there is good cause for such extension. 11-Z DCMR § 705.2. Subtitle Z § 705.2(c) provides the following criteria for good cause shown:
 - i. An inability to obtain sufficient project financing for the development, following an applicant’s diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant’s reasonable control;
 - ii. An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the

governmental agency approval process that are beyond the applicant's reasonable control; or

- iii. The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.
2. The Commission concludes that the Applicant complied with the notice requirements of Subtitle Z § 705.2(a) by serving ANC 6E, the only party to the original application, with a copy of the extension application and allowing the ANC 30 days to respond.
3. The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.
4. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendations. ANC 6E did not submit anything with respect to this application.
5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission has carefully considered the OP's recommendation in support of the application and agrees that approval of the requested two-year time extension is appropriate.
6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by Subtitle Z § 702.2(c). Specifically, the Applicant entered into a purchase and sale agreement with Global on November 9, 2016. After the expiration of the 90-day due diligence period, Global was unable to timely proceed with the terms of the agreement and there have been no additional offers to purchase the Property despite the Applicant's good faith efforts.
7. Subtitle Z § 705.7 provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in Subtitle Z § 702.2 of the Zoning Regulations.
8. The Commission concludes a hearing is not necessary for this request since there are no material factual conflicts generated by the parties concerning any of the criteria set forth in Subtitle Z § 705.2 of the Zoning Regulations.
9. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year extension of the first-stage PUD approval, such that a second-stage PUD application for the South Parcel shall be filed no later than June 30, 2019. If such a second-stage application is filed by that date, the first-stage approval shall remain valid until June 30, 2023 as to the remaining portions of the PUD.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On May 8, 2017, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application by a vote of **4-0-1** (Anthony J. Hood, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve; Robert E. Miller not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on June 30, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING