

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
CASE NO. _____

THE CORINTHIAN APARTMENTS, LTD.,

Petitioner,

Agency Case No.: Application No. 2004-043C
The Corinthian

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR VARIANCE/WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004(14)

Pursuant to Section 120.542, Florida Statutes, Rule 67-48.004(14), Florida Administrative Code ("FAC") and Rule 28-104.001 through 28-104.006, Florida Administrative Code ("FAC"), Petitioner, THE CORINTHIAN APARTMENTS, LTD. ("Petitioner") requests the FLORIDA HOUSING FINANCE CORPORATION ("FHFC") to grant a waiver from the provisions of FAC Rule 67-48.004(14) and to grant the relief requested herein. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file or identification number with respect to this matter is 2004-043C.

PETITIONER

2. The Petitioner is The Corinthian Apartments, Ltd., a Florida limited partnership. The address of Petitioner is 9400 S. Dadeland Boulevard, Suite 100, Miami, Florida 33156, telephone number (305) 854-7100, facsimile number (305) 859-9858. Petitioner's attorney is Gary J. Cohen, Esq., Shutts & Bowen LLP, whose address is 201 South Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308, facsimile number (305) 347-7808.

RULE WITH RESPECT TO WHICH A WAIVER IS SOUGHT

3. The Rule with respect to which a waiver is sought is FAC Rule 67-48.004(14), as in effect for the 2004 Universal Application Cycle pursuant to which Petitioner received an allocation of low-income housing tax credit authority. Rule 67-48.004(14) provides as follows:

Notwithstanding any other provision of these Rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempt to changes to these items will not be accepted. Those items are as follows:

- (f) Development Type;
- (i) Total number of units;
- (l) Funding Request (except for Taxable Bonds) amount....

TYPE OF ACTION REQUESTED

4. Petitioner requests that FHFC grant a waiver and variance from the provisions of FAC Rule 67-48.004(14), as in effect and governing the 2004 Universal Application Cycle. The

provisions of the foregoing Rule prohibit a change in Development Type, a change in the total number of units, and a change in the funding request amount. For the reasons set forth below, compliance with the foregoing provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

FACTS

5. The specific facts that demonstrate a substantial hardship or a violation of principles of fairness which justify a waiver or variance for Petitioner, as requested above, are as follows:

(a) The original HC application filed by Petitioner reflected a 144 unit mid-rise with elevator development, comprised of 4 stories. Due to rapid increases in construction costs, the cost of mid-rise construction has threatened the viability of the proposed complex. Petitioner has determined that, rather than returning the tax credits, to redesign from a mid-rise complex to a garden style apartment complex. Mid-rise construction is very inefficient compared to garden style construction, due primarily to the fact that mid-rise construction requires the construction of corridors, stairwells and elevators which yield a significant amount of gross square footage which does not pertain to actual residential units. By converting to a garden-style apartment product, Petitioner will be able to counteract the increase in construction costs.

(b) Based on the latest analysis of construction costs, a 12.5% decrease in the total number of units and a change in design from mid-rise with elevator to garden style results in an approximate 25% decrease in total square footage to be constructed, and approximately a 30% decrease in total construction cost per unit, with no appreciable decrease in average square footage of living area in the apartment units.

(c) Petitioner submitted an application in FHFC's 2004 Universal Application Cycle for \$1,200,000 in annual tax credits to finance the development of The Corinthian Apartments. In recognition of the fact that Petitioner seek to reduce the "total number of units" for The Corinthian Apartments from 144 to 126, Petitioner seeks to proportionately reduce its requested annual tax credits from \$1,200,000 to \$1,050,000, resulting in the return of \$150,000 in annual tax credits.

(d) In light of the considerable time that it takes to develop and construct multi-family rental housing, FHFC's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. FHFC routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible competitive advantage.

6. As explained above, the project changes requested by Petitioner result from unforeseen circumstances (rapid rises in the cost of construction) outside Petitioner's control. Further, the proposed changes to The Corinthian Apartments would have had no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors.

7. FHFC's approval of the requested waiver or variance would serve the purpose of the underlined Florida Statute, Section 420.5099, as well as the Federal Low-Income Housing Tax Credit Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of multi-family rental housing that is affordable to families of limited

means. If the requested waiver of variance is granted, the tax credits in question will be used to fund a project for which there is a desperate need in the Liberty City area of Miami-Dade County, Florida, a neighborhood with respect to which affordable multi-family rental housing is particularly needed.

8. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14) would be as follows. Unless the foregoing request is granted, construction of the Corinthian Apartment complex cannot move forward. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious. In addition, the transaction must be completed and placed in service no later than December 31, 2006. Delay in commencing construction of the Corinthian Apartment complex could place Petitioner in danger of failing to meet the foregoing "placed in service" deadline

9. By granting a waiver and permitting Petitioner to change the development type, total number of units and tax credit amount, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, through new construction, in an economical and efficient manner.

10. The waiver being sought is permanent in nature.

ADDITIONAL CHANGES REQUESTED

11. Although not technically required to be addressed by way of a Petition for Variance/Waiver, Petitioner also seeks to change certain amenities with respect to The Corinthian Apartments, as follows:

(a) In its application, Petitioner selected (in Part III.B.2.c. of its Application) the amenity of an “outside recreation facility”. Petitioner requests to delete this amenity, and replace it with the permitted amenity of a “computer lab on-site”. This change in amenity results in the addition of 1 point in a section of the application with respect to which points were already maximized. Petitioner requests this change in amenity because, due to the redesign of the project from mid-rise with elevator to garden style, the footprint of the garden style apartment product is larger than the mid-rise product, resulting in lack of space for the “outside recreation facility”.

(b) Petitioner requests to delete the energy conservation feature (in Part III.B.2.e.(4) of the Application) of “insulation of R-19 with radiant barrier” to “attic insulation of R-30 or better”. Both energy conservation features have equal points; the change in the insulation item results from the change from a four-story mid-rise product to a three-story garden-style product.

RELIEF SOUGHT

12. The specific variance/waiver which Petitioner wishes Respondent to grant is to waive the requirements of Rule 67-48.004(14) to permit a change in the development type from mid-rise with elevator (4 stories) to garden apartment, to permit a change in the total number of units from 144 to 126 units, to permit a change in the housing credit request amount from \$1,200,000 to \$1,050,000, to permit a substitution of a computer lab for an outside recreation facility and to permit the replacement of R-19 insulation with attic insulation of R-30.

WHEREFORE, Petitioner respectfully requests FHFC:

1. Waive the prohibition on change of development type in order to permit a change from mid-rise with elevator (4 stories) to garden-style apartment.

2. Waive the prohibition on change of total number of units in order to permit a decrease in total number of units from 144 to 126 units.

3. Waive the prohibition on change in the funding request amount, in order to permit a decrease in the housing tax credit request from \$1,200,000 to \$1,050,000.

4. Permit the substitution of a computer lab for an outside recreation facility, and the substitution of attic insulation rated R-30 for insulation of R-19.

Respectfully Submitted,

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Maelene Tyson, Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.

Gary J. Cohen

GARY J. COHEN, ESQ.