

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

CEC TIMBER TRACE, LLC,

Petitioner,

FHFC Universal Application  
No.2007-101BS

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

**PETITION FOR WAIVER OR VARIANCE FROM  
RULES 67-21.006(2), 67-48.002(96), 67-48.004(1)(2)(9), AND  
UNIVERSAL APPLICATION PART III.A.**

Petitioner, CEC TIMBER TRACE, LLC ("CEC"), pursuant to Section 120.542, Florida Statutes, and Rule Chapter 28-104, Florida Administrative Code ("F.A.C."), hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION ("FHFC"), for a waiver or variance from Rules 67-21.006(2), 67-48.002(96), 67-48.004(1), (2) and (9), and 2007 Universal Application Part III, Section A, subsection 3.b., 4, 5 and 6, and the requirements incorporated therein that developments applying for funding pursuant to the State Apartment Incentive Loan Program ("SAIL") must be comprised of one or more residential buildings containing 5 or more dwelling units. In support of this Petition, CEC provides as follows:

1. The name and address of the Petitioner is:

CEC Timber Trace, LLC  
151 Summer Street  
Somerville, MA 02143

2. The name, address, telephone and facsimile number of CEC's attorney, which shall be the appropriate address for service purposes during the course of this proceeding is:

Michael P. Donaldson  
Carlton Fields, P.A.  
P.O. Drawer 190  
Tallahassee, FL 32302  
850/224-1585 (telephone)  
850/222-0398 (facsimile)

3. CEC is a Florida for profit limited liability corporation in the business of providing affordable rental housing.

4. On or about April 10, 2007, CEC applied for funding pursuant to the Multifamily Mortgage Revenue Bond (MMRB), SAIL, a Supplemental EII Loan, and non-competitive Housing Credit ("HC") funding programs. The requested funds will supplement the acquisition and substantial rehabilitation of a 116-unit apartment complex in Hillsborough County, Florida, named Timber Trace (Applic. No. 2007-101BS).

5. Part III, Section A, subsection 3, of the 2007 Universal Application Instructions, states that applications for funding be for proposed Development consisting of 5 or more dwelling units in each residential building. Similarly, Rules 67-21.006(2) and 67-48.002(96), F.A.C., define SAIL and MMRB development as residential development comprised of one or more residential buildings, each containing five or more dwelling units.

6. Rule 67-48.004(1), F.A.C., adopts and incorporates the 2007 Universal Application Package used by CEC and other applicants to apply for funding, including the 5-unit requirement. The cited rules also require applicants to submit an application completed in accordance with the Universal Application Package. Rule 67-48.004(2) and (9), F.A.C., allow FHFC's Board to reject an application, after submission of cure materials, where the application does not conform to the application requirements or fails to meet threshold criteria, including providing accurate information.

7. These rules, as well as the Universal Application, specifically implement sections 420.502, 420.507, and 420.508, Florida Statutes, which empower FHFC to issue funding for the purpose of promoting the development of affordable housing for Florida's low income and very low income families.

8. In the instant case, FHFC is strictly interpreting the Universal Application and the responses given by CEC to reject CEC's funding request from further consideration during the 2007 Universal Cycle for allegedly not complying with the 5-unit rule.

9. Specifically, FHFC bases its interpretation on CEC's responses to the Universal Application, Part III.A.3-6 which require information concerning the proposed development. The responses are as follows:

Part III.A.

3. Development Category:

a. Select one category –

- o New Construction (where 50% or more of the units are new construction)

- Acquisition and New Construction (Acquisition plus 50% or more of the units are new construction)
  - Rehabilitation/Substantial Rehabilitation (where less than 50% of the units are new construction)
  - Acquisition and Rehabilitation/Substantial Rehabilitation (Acquisition plus less than 50% of the units are new construction)
- b. Will each residential building consist of 5 or more dwelling units?
- Yes      ○ No
4. Development Type:  
Garden Apartments
- 
5. Number of buildings with dwelling units:  
36
- 
6. Total number of units:  
116
- 

10. While CEC in response to Part III, Section A, subsection 3(b), specifically indicates that each residential building “will” consist of 5 dwelling units or more, FHFC, based apparently on a mathematical calculation of the buildings and units found at Part III.A.5. and 6., has determined that the Timber Trace project will not meet the 5-unit per building rule.

11. The existing complex that will become Timber Trace as purchased by CEC currently includes 116 units and 36 buildings. The current building configuration is made up primarily of residential duplexes as previously permitted by Hillsborough County (see Attachment 1). Through the substantial rehabilitation of the existing development, CEC intends to combine many of the existing residential buildings and ultimately reduce the number of building units.

12. As proposed, Timber Trace will be a project comprised of 116 substantially rehabilitated units and will be constructed as a typical garden-style apartment complex that will contain at least 5 dwelling units per building. Accordingly, it is CEC's intent that the project will be consistent with the Universal Application and applicable Rules. Through the Universal Application process, including a "cure" which provided additional information, CEC has fully explained these facts to FHFC.

13. CEC is requesting a waiver or variance from the cited rules and Application provisions concerning the 5-unit requirement to allow for the acceptance of the application and funding of its proposed development. Specifically, CEC is requesting a variance from the Universal Application provision which FHFC alleges requires an applicant to respond to a question in the present tense when it is asked in the future grammatical tense. This distinction in wording is important in that depending on the tense an applicants on this must change to insure an accurate answer.

14. This requested variance will result in no negative impact to the community or the affordable housing programs implemented by FHFC. On the contrary, the Timber Trace development will provide residents with much needed affordable housing in a convenient and attractive setting. This is especially true given that it is CEC's intent in the final project to comply with the 5-unit requirement.

15. Pursuant to section 120.542(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., FHFC has the authority to grant waivers or variances from its rule requirements when strict application of such rules in particular circumstances would lead to

unreasonable, unfair, and unintended results. A waiver or variance will be granted when the person subject to the rule demonstrates that strict application of the rule would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. Fla. Stat. §120.542[2] (2005).

16. In this case, a decision to deny the requested waiver or variance would cause a substantial hardship on CEC in that it would make it impossible for CEC to acquire and substantially rehabilitate the proposed residential dwelling units. A decision to deny the requested waiver or variance would also violate principles of fairness in that the 5-unit requirement affects CEC in a significantly different manner than it affects other developers. Denial of the waiver or variance would deprive the future residents of this development much needed affordable housing, as well as all of the other residents of the opportunity to establish an economically diverse community that affords working families with decent and safe affordable housing. The instant request is similar to variance and waiver requests made by Old Orchard Village Associate, Ltd., 2006A-234B, which was granted by the FHFC Board of Directors on October 20, 2006.

17. As was the case in the Old Orchard case, FHFC's granting of the requested waiver or variance here also will serve the purposes of the statute that the rules implement. Sections 420.502, 420.507, and 420.508, and the rest of the Florida Housing Finance Corporation Act (§§420.501, et seq.) were enacted to encourage private investment in the creation of affordable housing for low income and very low income families. With

the approval of the requested waiver or variance, FHFC will continue to realize this goal and ensure the continued provision of 116 units of affordable housing for the residents of Hillsborough County.

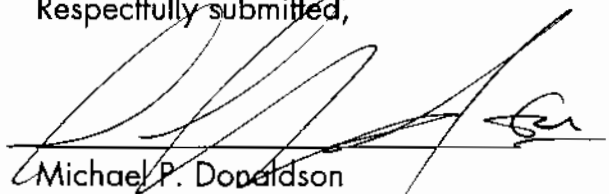
18. The waiver or variance sought by CEC is permanent in nature.

19. If FHFC has any questions or requires any additional information regarding this requested waiver or variance, CEC stands ready to respond quickly to any such request.

WHEREFORE, Petitioner, CEC, request that FHFC grant Petitioner a permanent waiver or variance from Rules 67-48.002(96), 68-004(1)(2)(9), F.A.C., the 2007 Universal Application, and the 5-unit requirement incorporated therein, so that CEC may apply for, and potentially receive, 2007 funding for its proposed development.

Respectfully submitted on this 3<sup>rd</sup> day of August, 2007.

Respectfully submitted,

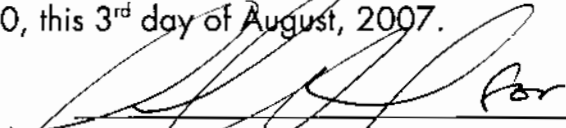


Michael P. Donaldson  
FL Bar No. 0802761  
CARLTON FIELDS, P.A.  
P.O. Drawer 190  
215 S. Monroe St., Suite 500  
Tallahassee, FL 32302  
Telephone: (850) 224-1585  
Facsimile: (850) 222-0398

Counsel for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via U.S. Mail to the Joint Administrative Procedures Committee, Holland Building, Room 120, Tallahassee, FL 32399-1300, this 3<sup>rd</sup> day of August, 2007.

  
MICHAEL P. DONALDSON



**Timber Trace  
Parcel map with satellite overlay**

