

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

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INDEPENDENCE VILLAGE, LLC,

Petitioner

v.

SAIL LOAN NO. 2008-01-05

FHFC File No. 2014-058VW

FLORIDA HOUSING  
FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OR VARIANCE FROM  
RULE 67-48.004(14)(i), F.A.C.**

Petitioner, INDEPENDENCE VILLAGE, LLC (“Independence”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (“FHFC”) for a waiver or variance from Rule 67-48.004(14)(i), Florida Administrative Code. Specifically, Petitioner seeks a waiver or variance from the rule requirement contained in Rule 67-48.004(14)(i) that it maintain 24 units in the development as originally proposed and approved. Instead, Petitioner seeks Board consent to maintain 23 units to allow for one unit to be converted into a management/supervisory office unit. The Petitioner also seeks to reduce by fifteen percent (15%), from fifty percent (50%) to thirty five percent (35%), from 12 units to 8 units, the number of units in the demographic category “Youth Aging Out of Foster Care” as that provision was contained within the Request for Proposal to which the Petitioner responded. This Petition is filed pursuant to Chapter 28-104, Florida Administrative Code and Section 120.542, Florida Statutes.

**THE PETITIONER**

1. The address, telephone number and telefax number of the Petitioner is:  
  
Independence Village, LLC

525 N. Martin Luther King Jr. Blvd  
Tallahassee, Florida 32301  
Phone: (850) 410-1020  
Fax: (850) 410-1076  
Email Address: lgulledge@bigbendcbc.org

2. The address, telephone number, telefax number and e-mail address of Petitioner's counsel is:

Jon Moyle  
The Moyle Law Firm  
The Perkins House  
118 North Gadsden Street  
Tallahassee, Florida 32301  
Phone: (850) 681-3828  
Telefax: (850) 681-8788  
Email Address: jmoyle@moylelaw.com

3. Petitioner successfully applied for State Apartment Incentive Loan ("SAIL") funding during FHFC's 2008 funding period. The proposed development was targeted to assist individuals who are foster care recipients, but age out of eligibility for foster care when they become eighteen (18) years old, but are still in need of affordable housing. The project is a demonstration project, and as originally proposed and developed, had 24 units.

**THE RULE FOR WHICH A WAIVER OR VARIANCE IS SOUGHT**

4. Petitioner requests a waiver or variance from Rule 67-48.004(14)(i), Florida Administrative Code, as the rule existed at the time Independence Village was awarded its SAIL loan in 2008.

5. The language of this particular rule provision, 67-48.004(14)(i), is set forth below:  
67-48.004 (14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application that 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 the opportunity to

submit additional information. Any attempted changes to these items will not be accepted.

Those items are as follows:

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation;

6. Petitioner is specifically seeking a waiver or variance of that portion of Rule 67-48.004(14)(i) which provides that the total number of units cannot be decreased and has been underlined in the preceding paragraph. Petitioner seeks to decrease the set aside units at the development from 24 units to 23 units. This request, if granted, will enable the development to convert one housing unit into a management and supervisory office that will be used to better manage the property and address the requirements of this special needs population. An onsite presence in the form of a management office with supervision will benefit the overall development, assist Youth Aging out of Foster care and other special needs residents transitioning into independent living, and provide better case and facility management. The request should be granted.

Furthermore, the Petitioner seeks a waiver or variance from the Board to allow it to reduce by approximately fifteen percent (15%), from fifty percent (50%) to thirty five percent (35%), from 12 units to 8 units, the percentage of units in the demographic category "Youth Aging Out of Foster Care" (YAOFC). Several factors make this request necessary. Since the project was completed in 2011, a significant number of youth removed from their biological parents in Bay County have been transferred to foster homes out of the county due to a lack of available foster parent homes within Bay County. These youth, had they remained in Bay

County, would have been potential residents of Independence Village. Specifically, in 2013, over 130 Bay County young persons removed by court order from their parents' home have been placed in foster and group homes in locations as far away as Jacksonville, Pensacola and Tallahassee. This reduction of foster children living in Bay County foster homes, who normally would be aging out of the system within Judicial Circuit 14, has made filling 50% of the units targeted for Bay County YAOFC problematic. Put simply, the eligible residents to fill these units has not materialized compared to what was originally projected in 2008.

However, a number of other special needs teens and older youth participating in case managed supportive services program desperately need affordable housing. Many have requested housing at Independence Village. These youth share many of the social, emotional and familial challenges that confront the YAOFC population. Though many of these youth have been consistently homeless, they have not been part of the foster care system, and therefore, do not presently qualify for the housing unit set aside under the YAOFC classification. Nevertheless, these young adults are currently enrolled in supportive programs, such as Anchorage Children's Services, and need affordable housing within Bay County. The requested reduction in the YAOFC set aside will allow Independence Village to lease units to other special needs youth without jeopardizing the YAOFC compliance requirements under the SAIL loan. Accordingly, for the reasons set forth above, the Petitioner asks the Board to approve reducing the number of "Youth Aging Out of Foster Care" set aside units at the development from 12 to 8.

The Petitioner ask the Board to waive a provision contained within the applicable Request for Proposal ("RFP"), found within Section 4.B.1.d of the RFP, that required at least 50% of the units be set aside. This reduction will still meet the goals and objectives of the

initiative to provide housing for special needs populations, and the request should be granted. The total number of income eligible set aside units will remain at 100%.

**STATUTES IMPLEMENTED BY THE RULE**

7. Rule 67-48.004 and Rule 67-48.004(14)(i) F.A.C., set forth above and for which a waiver or variance is sought, are listed as implementing sections 420.5087, 420.5087(6)(c), 420.5089, 420.5089(6), 420.5099, 420.5099(2), Florida Statutes.

8. FHFC has the express authority pursuant to section 120.542(1), Florida Statutes, to grant variances or waivers to its rules under certain circumstances. Specifically, FHFC may grant relief from strict application of a rule in particular instances when application of the rule would lead to unintended consequences, an unreasonable result, or an unfair result. A waiver should be granted when the person subject to the rule demonstrates that the application of the rule would 1) create a substantial hardship or violate principles of fairness; and 2) the purpose of the underlying statute has been or will be achieved by other means. The Legislature has indicated that a “substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver.

9. Petitioner seeks a waiver of select portions of Rule 67-48.004(14)(i) to enable it to have an onsite management office which will be an overall benefit to the project, despite a slight reduction of one “Youth Aging Out of Foster Care” set aside unit. Petitioner also seeks a reduction from 12 to 8 in the required number of set aside units for YAOFC for the reasons set fourth above. Independence Village is a not-for-profit entity that is working hard to provide transitional housing for foster children in Bay County, Florida and Judicial Circuit 14, who age out of foster home placement. Continuing to operate the development without an onsite management office presents an operational hardship to the development that can be remedying

by granting the requested waiver or variance. In addition, the reduction in the 50% set aside requirement for YAOFC will enable Independence Village to lease units to other special needs populations who are in need of such units.

**GRANTING THE VARIANCE OR WAIVER WILL  
SERVE THE UNDERLYING PURPOSE OF THE STATUTES**

10. Granting the variance or waiver as requested will serve the purposes of the underlying statutes. Specifically, sections 420.5087, 420.5087(6)(c), 420.5089, 420.5089(6), 420.5099, 420.5099(2), Florida Statutes, which are implemented by the rule in question, seek to provide safe, sanitary and affordable housing pursuant to the SAIL loan program. The Independence Village housing development seeks to provide safe, sanitary and affordable housing to a targeted population of foster care children who are 18 years or older and have aged out of foster care housing and other special needs youth in need. This request for a waiver or variance will enable Independence Village to be managed by means of an onsite management office, an improvement for the project. It will also enable certain affordable housing units to be available to other special needs youths. Accordingly, granting of the variance or waiver will serve the underlying purposes of, and comport with the objectives of the statutes cited above, which are the statutes Rule 67-48.004(14)(i) implements.

**REQUEST FOR PERMANENT RELIEF**

11. The variance or waiver being sought is permanent in nature.

**RELIEF REQUESTED**

12. Petitioner requests the following:

a. Petitioner seeks a waiver or variance from the requirement contained in Rule 67-48.004(14)(i) to maintain 24 units in the development as originally proposed and approved, and instead, seeks Board consent to maintain 23 units; the unit in

question will be converted from a housing unit to an onsite management/supervisory office;

- b. Petitioner also seeks to reduce by approximately fifteen percent (15%), from fifty percent (50%) to thirty five percent (35%), from 12 units to 8 units, the percentage of units in the demographic category “Youth Aging Out of Foster Care” as that provision was contained within Section 4.B.1.d of the Request for Proposal to which the Petitioner originally responded. These 4 units will remain income restricted.<sup>1</sup>

13. A copy of this Petition has been provided by U.S. Mail to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.

Respectfully submitted this 19th day of February, 2014.



JON MOYLE  
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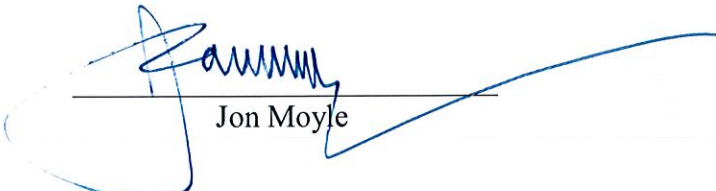
Counsel for Petitioner, Independence  
Village, LLC

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<sup>1</sup> The percentage calculations assume that the request to use one existing unit as a management/supervisory office is granted, resulting in 23 units. Petitioner seeks to reduce the “Youth Aging Out of Foster Care” units from 12 to 8. 8 units represents 34.78% of 23 units.

**CERTIFICATE OF SERVICE**

I hereby certify that this Petition was provided by hand-delivery for filing to the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 with a copy being provided by U.S. Mail to the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399 this 19th day of February 2014.



Jon Moyle