

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**COCOA HOUSING PRESERVATION
II, LLC**

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,
Respondent.**

FHFC Case No. 2017-062VW

**FHFC APPLICATION: 2016-293C
REQUEST FOR APPLICATIONS: 2015-111**

**PETITION FOR WAIVER RULE 67-48004(3)(i) AND (j)
FOR A CHANGE IN NUMBER OF UNITS AND IN TOTAL SET-ASIDE PERCENTAGE**

Petitioner Cocoa Housing Preservation, II, LLC, a Florida limited liability company (“Petitioner”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for (i) waiver or variance of the Corporation’s prohibition on changes in “Total Number of Units” designated by an applicant, and (ii) waiver or variance of the Corporation’s prohibition on changes in the “Total Set-Aside Percentage” designated by an applicant and set forth in the Total Set-Aside Breakdown Chart, in its response to RFA 2015-111 – Housing Credit Financing for Preservation of Existing Affordable Multifamily Housing Developments. See Rule 67-48-004(3)(i) and (j), Florida Administrative Code.

In support of its Petition, Petitioner states:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative are:

Cocoa Housing Preservation, II, LLC
Attention: Herbert Hernandez
828 Stone Street
Cocoa, Florida 32922
Telephone: (321) 636-8535
Facsimile: (321) 632-4729
E-mail: hhernandez@haccfl.com

2. The name, address, telephone and facsimile numbers, and email address for Petitioner's attorneys are:

Bernice S. Saxon, Esq
Saxon Gilmore & Carraway, P.A.
201 E. Kennedy Boulevard, Suite 600
Tampa, FL 33602
Telephone: (813) 314-4501
Facsimile: (813) 314-4555
E-Mail: bsaxon@saxongilmore.com

B. THE DEVELOPMENT

3. Petitioner timely submitted its application in response to the RFA, seeking competitive low-income housing tax credits ("Housing Credits") in the amount of \$1,350,000.00, to assist in the financing of the rehabilitation of a 137-unit residential development in Cocoa, Brevard County, Florida (the "Development"), and was assigned Application No. 2016-293C. Petitioner was awarded such Housing Credits and received an invitation to enter into credit underwriting from the Corporation. The Corporation's 2016 Carryover Allocation Agreement was executed by Petitioner and the Corporation.

4. The equity that will be generated by the Housing Credits is a critical part of the financing for the rehabilitation of the Development.

5. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Petitioner; (b) could result in a reduction of services to the residents of the Development; (c) could deprive Cocoa and Brevard County, Florida of essential affordable housing units in a timely manner; and (d) would violate principles of fairness¹. § 120.542(2), Fla. Stat. (2015).

6. The waiver being sought is permanent in nature.

¹ "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Section 120.542(2), Florida Statutes.

C. RULE FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code (the "Rule"). Specifically, Petitioner is requesting an increase in the total number of units from 137 to 144 and a decrease in the Total Set-Aside Percentage from 100% to 95%. Petitioner will maintain the total number of "low-income units" committed to in its Application at the minimum of 137, and is adding seven units which will be available as non-Housing Credits units. Petitioner recognizes that the Rule provides that the Corporation may approve an increase in the number of units in its underwriting process, but since (a) in this case, the additional units are not "like-kind" (i.e. set-aside at the same income limitations as the units described in the Application), and (b) adding such units is the direct cause of the decrease in the Total Set-Aside Percentage, Petitioner is requesting that the change in unit count be approved as part of the Corporation's approval of the decrease in the Total Set-Aside Percentage.

The Rule provides, in relevant part, as follows:

"(3) For the SAIL, HOME and Housing Credit Program, notwithstanding any other provision of these rules, the following items identified by the Applicant in the Application must be maintained and cannot be changed by Applicant after Application submission, unless provided otherwise below:

- (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;**
- (j) For all SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown charge for the program(s) applied for in the Set-Aside Commitment section of the Application."**

Rule 67-48-004(3)(i) and (j), F.A.C.

D. STATUTE IMPLEMENTED BY THE RULE

8. The Rule is implementing among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. See Section 450.5099, Florida Statutes.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

9. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code. Petitioner is seeking a waiver from the Rule allowing it to increase the total number of units from 137 to 144, and to decrease the Total Set-Aside Percentage from 100% to 95%. As a matter of information, in the Set-Aside Commitments section of the Application, Petitioner committed to set aside 20% (i.e. 28 units) of the Residential Units at or below 35% of the Area Median Income (“AMI”) level and the remaining 80% (i.e. 109 units) of the Residential Units at or below 60% of the AMI. As a result of the requested increase in Residential Units from 137 to 144, the Development will remain committed to providing 20% (i.e. now 29 units, given the overall increase to 144 units) of the Residential Units at or below 35% of the AMI, and 75% (i.e. now 108 units, given the overall increase to 144 units) of the Residential Units at or below 60% of the AMI.

10. It is not uncommon for developer changes to occur after submission of an application to the Corporation. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the rule demonstrates that the application of the rule would 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 by the person. § 120.542(2), Fla. Stat. (2011).

11. The following facts demonstrate the circumstances which justify Petitioner’s request for waiver:

a. Petitioner timely submitted its Application to the Corporation in response to the RFA, for 137 low-income tax credit housing units, with the Total Set-Aside Percentage of 20% at or below 35% of the AMI level, and 80% at or below 60% of the AMI level.

b. Petitioner submitted a request to the Corporation for approval of a change to its development team, replacing certain affiliates of the Pinnacle Housing Group (“Pinnacle”) with an affiliate of Smith & Henzy Advisory Group, Inc., which request was approved by the Corporation’s Board at its June, 2017 meeting. CHA Developer, LLC, which is an affiliate of the Housing Authority of the City of Cocoa, Florida (the “Housing Authority”) remains a co-developer.

c. At the time the Application was submitted, Pinnacle and the Housing Authority contemplated combining existing small units in order to increase the number of larger units in the Development. However, the Housing Authority’s current waiting list demonstrates a greater need for studio and one-bedroom units rather than larger sized units. Furthermore, the reduction of tax credit pricing experienced since November, 2016, essentially makes the unit configuration plan in the Application unfeasible due to cost. By changing the configuration of the unit sizes, the number of units will be increased from 137 to 144 as evidenced by Exhibit A attached hereto, thereby necessitating the requested waiver.

d. The Total-Set Aside Residential Units will remain at 137 units. All of the existing units in the Development are public housing units, restricted to household incomes, at the time of initial occupancy, that do not exceed 80% of AMI. The majority of the existing households have incomes far below 80% of AMI. However, since the time of the Application, at least a couple of the existing households have incomes that exceed 60% of AMI. An increase in the total number of units from 137 to 144, with the seven additional units being non-Housing Credits units, will allow the existing public housing residents whose incomes exceed 60% of AMI to remain in the Development, and not be displaced. The additional seven units will receive Section 8 subsidy under HUD’s Rental Assistance Demonstration Program.

e. Petitioner’s scoring and allocation of Low-Income Housing Tax Credits would not have been affected if Petitioner had originally included 144 units in the

Application, with 20% of them designated as units set aside for occupancy by households earning not more than 35% of the AMI, and 75% of them designated as units set aside for occupancy by households earning not more than 60% of the AMI. In the Application, Petitioner indicated it would be providing 137 units with 100% of them designated as set-side units. If this request is granted, Petitioner will be providing 144 total units, with 95% of them (i.e. 137 units) being set aside for occupancy by households earning not more than 60% of the AMI. However, if this request is granted, 29 of the 137 set-aside units will be set-aside for occupancy by households earning not more than 35% of the AMI, as opposed to 28 as set forth in the Application. Given that the 137 set-aside units will remain unchanged, the Application's Leveraging Classification will remain the same, since this is determined by calculating the Total Corporation Funding Per Set-Aside Unit. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other application in the RFA.

f. The waiver requested herein will not result in any decrease in number of "low-income units," but rather will only increase the total number of units to provide for additional non-Housing Credits units. The addition of seven non-Housing Credits units to the total count will necessarily result in a corresponding decrease in the Total Set-Aside Percentage provided for in the Application, from 100% to 95%.

12. A Waiver of the Rule's restriction against increasing the total number of units and changing the Total Set-Aside Percentage from Petitioner's Application would serve the purpose of Section 420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to households of limited means, and would provide the additional benefit of meeting the critical need for mixed-income developments.

13. By granting the waiver and permitting Petitioner to decrease the total Set-Aside Percentage, the Corporation would recognize the principles of fundamental fairness in developing affordable rental housing by encouraging the development of mixed-income housing projects, particularly in urban areas well-suited to a mixed-income housing project, and enabling developers to meet the needs of both low-income families and households in need of non-Housing Credits subsidized housing.

14. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. **ACTION REQUESTED**

Petitioner requests the following:

a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code, allowing it to decrease the Total Set-Aside Percentage from 100% to 95% and to increase the total number of units in the Development from 137 to 144.

b. That the Corporation grant the Petition and all the relief requested therein; and

c. That the Corporation grant such further relief as may be deemed appropriate.

Respectfully submitted,

SAXON GILMORE & CARRAWAY, P.A.

Counsel for Petitioner

201 E. Kennedy Boulevard, Suite 600

Tampa, FL 33602

Telephone: (813) 314-4501

Facsimile: (813) 314-4555

E-mail: bsaxon@saxongilmore.com

By: _____

Bernice S. Saxon, Esq.

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 21st day of August, 2017.

By: _____



Bernice S. Saxon, Esq.

EXHIBIT A

Carryover Unit Breakdown

Unit Type	# of units	Minimum Square feet of heated and cooled living area
Studio/one Bath	13	400
One bedroom/one bath	42	600
Two Bedrooms/one bath	28	800
Two Bedrooms/one bath townhouse	2	1026
Three Bedroom/ one bath	45	980
Three Bedroom/ one and a half bath townhome	1	1274
Four Bedroom/ one bath	3	1229
Four Bedroom/ two baths	2	1350
Five Bedroom/ two baths	1	1280
	137	

Requested unit breakdown revision

	#of units
Studio/one Bath	23
One bedroom/one bath	46
Two Bedrooms/one bath	26
Two Bedrooms/one bath townhouse	2
Three Bedroom/ one bath	40
Three Bedroom/ one and a half bath townhome	1
Four Bedroom/ one bath	3
Four Bedroom/ two baths	2
Five Bedroom/ two baths	1
	144