

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: BLUE BROADWAY, LLC

FHFC CASE NO.: 2018-071VW

ORDER GRANTING WAIVER OF RULE 67-48.002(96)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on November 2, 2018, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition for Waiver on September 26, 2018, from Blue Broadway, LLC (“Petitioner”). Notice of the Petition was published on September 28, 2018, in Volume 44, Number 190, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner successfully applied for an award of competitive housing credits under RFA 2016-113 – to assist in financing the construction of a development known as Preserve at Sabal Park (the “Development”).

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Thomas Blamoy
DATE: 11/7/18

3. Petitioner requests waiver of Rule 67-48.002(96), Fla. Admin. Code which subsection Section II.K. of the 2016 Qualified Allocation Plan, which provides:

Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

4. Petitioner requests a waiver of the above provisions to permit an exchange of its 2017 housing credits for an allocation of 2018 housing credits now rather than in the last calendar quarter of 2019.

5. According to Petitioner, unforeseen and unanticipated delays caused by a decrease in tax credit equity proceeds and an increase in construction costs have resulted in a delay in the permitting process.

6. Petitioner states that it is ready to move forward with the Development, and the Credit Underwriting Report is completed and has been submitted for Board approval.

7. The Board finds that granting the waiver will not impact other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

8. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

9. Petitioner has demonstrated that strict application of the above Rule and QAP provision under these circumstances would constitute a substantial hardship and violate the principles of fairness. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

10. The Board finds that strict application of the above Rule and QAP provision under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of the above Rule and 2016 QAP provision is GRANTED to permit Petitioner to exchange its 2017 credits for an allocation of 2018 credits now rather than in the last calendar quarter of 2019.

DONE and ORDERED this 6th day of November 2018.

Florida Housing Finance Corporation



By:

Ray E. Duhague
Chair

Copies furnished to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.