

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: SP Gardens, LLC

FHFC CASE NO.: 2017-059VW

ORDER GRANTING WAIVER OF RULE 67-48.002(95)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 22, 2017, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 17, 2017, from SP Gardens, LLC (“Petitioner”). Petitioner filed an amended petition on August 24, 2017. Notice of the Petition was published on August 18, 2017, in Volume 43, Number 161, 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 was successfully applied for an award of competitive housing credits under Request for Application (“RFA”) 2015-107 to assist in the construction

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HOUSING FINANCE CORPORATION

J. Marshall /DACL: 9/22/2017

of Laburnum Gardens, an 81-unit housing development in Hillsborough County, Florida. Petitioner's Application Number was 2016-137C (the "Application").

3. Petitioner seeks a waiver from Rule 67-48.002(95), Fla. Admin. Code.

4. Rule 67-48.002(95), Fla. Admin. Code which defines and incorporates

by reference the following provision of the 2016 QAP provides the following:

K. 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 Application 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.

5. Petitioner requests a waiver of the above Rule and bolded selection of the QAP provision above to permit it to exchange its tax credits now rather than in the last calendar quarter of 2018. Petitioner asserts that unforeseen events will cause the Development to not be placed in service by December 31, 2017. Petitioner asserts that, based on discussions with Florida Housing, it has upgraded and revised its construction plans for the Development, which has delayed the permitting process. Additionally, Petitioner asserts that pending litigation has the potential to cause further delay, but Petitioner is hopeful for a quick resolution. Further, Petitioner asserts that the tax credit syndicator is requiring Petitioner to request the exchange of the credit allocation for a 2017 allocation. Petitioner therefore requests that it be permitted to swap the allocated tax credits now instead of the last quarter of 2018.

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

7. 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.

8. Petitioner has demonstrated that strict application of the above Rule under these circumstances would constitute a substantial hardship and violate the principals 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.

9. The Board finds that strict application of the above Rule 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 Rule 67-48.002(95), Florida Administrative Code and 2016 QAP provision is hereby **GRANTED** to allow Petitioner to exchange its 2016 credits for a subsequent year’s allocation now rather than in the last calendar quarter of 2018.

DONE and ORDERED this 22nd day of September, 2017.

Florida Housing Finance Corporation

By:


Chair

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic mail this 22nd day of September, 2017 to the following:

Hugh R. Brown, General Counsel
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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300



Corporation Clerk

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE 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.