

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CENTERRA ASSOCIATES, LTD.,

Petitioner,

CASE NO.: 2017- 080VW

v.

APPLICATION NO. 2016-104H

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**PETITION FOR WAIVER OF RFA TOTAL DEVELOPMENT
COST LIMITATION AND RULE 67-48.020(5), F.A.C.**

Petitioner Centerra Associates, Ltd., a Florida limited partnership (the “Petitioner”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver and adjustment of the Total Development Cost Per Unit Limitation (“TDC”) found in Exhibit “C” to the Corporation’s Request for Applications 2015-110, Financing of Affordable Multifamily Housing Developments with HOME funding to be used in conjunction with Florida Housing-Issued MMRB and Non-Competitive Housing Credits (the “RFA”) and the strict application of Rule 67-48.020(5), F.A.C. (the “Rule”) in effect at the time the Petitioner submitted its application in response to the RFA. In support of its Petition, the Petitioner states as follows:

A. The Petitioner and the Development

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

Centerra Associates, Ltd.
Attn: Mara Makes
2100 Hollywood Boulevard
Hollywood, FL 33020
Telephone: 305-443-8288
Fax: (954) 362-5987
e-mail: mara.mades@cornerstonegrp.com

The name, address, telephone and facsimile numbers of Petitioner's attorneys are:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
305-789-3350 (Phone)
305-789-3395 (Fax)

2. Pursuant to the RFA, Petitioner timely submitted its application for loan funding. *See* Application Number 2016-104H. Petitioner was preliminarily awarded \$5,304,000 in HOME funding under the RFA, and the firm commitment for closing of the HOME loan was issued on June 27, 2016.

3. The proceeds of the HOME financing will be used for new construction of 104 townhouse units to be known as "Centerra" (the "Development"). The Development will also be financed with (i) the proceeds of the syndication of low-income housing tax credits, (ii) the proceeds of multifamily mortgage revenue bonds anticipated to be issued by the Corporation in the amount of \$15,700,000 (iii) a surtax loan from Miami-Dade County, Florida in the amount of \$4,024,104, inclusive of \$1,424,104 of redeployed funds, (iv) a redeployed HOME loan from Miami-Dade County in the amount of \$2,275,000 and (v) deferred developer fee in such amount as may be necessary. The Development will be a mixed-income community in that it will serve extremely low and low-income households and families in Miami-Dade County, Florida, as well as workforce households. Fifty four (54) units will be set aside as HOME-Assisted units.

B. Rule Requirements from which Relief is Requested and Statute Implemented

4. The relevant portion of the Rule provides as follows:

(5) The accumulation of all Development financing, including the HOME loan and all existing debt within a Development, may not exceed the Total Development Cost, as determined and certified by the Credit Underwriter.

See Rule 67-48.020(5), F.A.C. "Total Development Cost" is defined in Rule 67-48.002(113),

F.A.C. The relevant portion of the RFA provides as follows:

5. Total Development Cost Per Unit Limitation:

The Corporation shall limit the Total Development Cost (TDC) per unit for all Developments categorized by the construction type of the units as indicated by the Applicant in the RFA. The maximum amounts are provided on the TDC Per Unit Limitation chart set out below (the maximum TDC per unit exclusive of land costs and exclusive of any operating deficit reserves that are part of the permanent phase (i.e., non-construction) financing for the Development which have not been included within the Developer fee, applying any applicable TDC multiplier and/or TDC add-on) and will be tested during the credit underwriting process, and during the final allocation process, as outlined below.

This RFA does not incorporate any TDC Multipliers (to be applied against the Development's TDC) or TDC Add-Ons (to be added to the Maximum TDC Per Unit Limitation).

Measure	New Construction Units			
	Garden Wood*	Garden - Concrete*	Mid-Rise-Wood*	Mid-Rise Concrete*
Maximum TDC Per Unit Limitation Limitation** for all counties except Broward and Miami-Dade Counties	\$188,000	\$224,000	\$224,000	\$245,900
Maximum TDC Per Unit Limitation** For Broward and Miami-Dade Counties	\$194,900	\$232,300	\$232,300	\$255,000

* Garden includes all Development Types other than Mid-Rise; Mid-Rise includes Development Types of Mid-Rise with Elevator (4 stories, 5 stories, or 6 stories)

** Exclusive of land costs and exclusive of any approved operating deficit reserves that are part of the permanent phase (i.e., non-construction) financing for the Development which have not been included within the Developer fee. When the term of operating deficit reserves (ODR) are mentioned in this TDC Per Unit Limitation section, the term shall refer to these particular operating deficit reserves.

See RFA, Exhibit C, Section 5.

5. The applicable Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),¹ the statute that created the HOME loan program. *See* § 420.5087, Fla. Stat. (2014). Further, pursuant to the RFA, “Proposed Developments funded with HOME funds will be subject to the requirements of the RFA, the MMRB requirements outlined in Rule Chapter 67-21, F.A.C., effective February 2, 2015, the Application requirements outlined in Rule Chapter 67-60, F.A.C., effective October 8, 2014, the HOME credit underwriting and program requirements outlined in Rule Chapter 67-48, F.A.C., effective October 8, 2014, the federal requirements of the HOME Program outlined in the July 24, 2013 edition of the Federal Register....and the Compliance requirements of Rule Chapter 67-53, F.A.C.” *See* RFA, Exhibit C.

6. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the requirement demonstrates that the application of the requirement 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.

7. In this instance, Petitioner meets the standards for a waiver.

C. Justification for Petitioner’s Requested Waiver

8. Petitioner requests an adjustment from the TDC limitation of \$232,300 per unit for new construction garden-style concrete projects, as set forth in Section 5 of Exhibit C to the

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes (the “Act”).

RFA, and in the chart above, to \$255,000 per unit, which is the same amount available for new construction mid-rise concrete projects in the RFA.

9. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive HOME funding in the RFA, or the Corporation. All of the applications that were submitted in the RFA were funded. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner due to an inability to realize the full potential of funds currently committed to the Development; (b) deprive Miami-Dade County of essential affordable rental units set aside for persons of limited means who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness². § 120.542(2), F.S.

10. Petitioner is in need of the requested waiver because it was forced to proceed with a townhome model for which the RFA does not include an applicable TDC category. The RFA includes only garden-style and mid-rise models in establishing the respective TDC limitations. The Development is in a predominantly single-family neighborhood and its zoning was approved strictly as a townhome community. Petitioner had no discretion in electing the townhome model. Local opposition from neighboring single-family communities, in “NIMBY” fashion, factored into the denial of the requested rezoning which would have permitted a garden-style project. Due to the NIMBY opposition, the only way this project would be approved was as a townhome-style community. Because there is no TDC for a townhome-style project, the Petitioner is

²“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.

seeking approval of the application of the TDC limitations that pertain to mid-rise construction, for the reasons described below.

- Each townhome unit costs more per unit to construct than garden-style units, due to their significantly larger sizes, internal stairs, extra half-bath and higher sitework expenses per unit, as the lower density townhome product requires twice as much land than garden style apartments. Further, economies of scale such as being able to put multiple floors of units under one roof do not apply; each townhome unit has its own individual roof.
- While the RFA does include “all development types other than mid-rise” in the garden-style category, this grouping is arbitrary and not reflective of actual costs; townhomes, by their nature, are much larger in size than garden-style apartments (more conducive to families) and it would be inequitable to impose garden-style limitations on their cost. There are no 1-bedroom townhomes in the Development, and the average size of the two-and three-bedroom townhome units is approximately 1,300 square feet. This can be compared with a garden-style average unit size of 925 square feet.

11. The unavoidably higher project costs resulting from the NIMBY imposed townhome model, combined with the regulated 18% developer fee and overhead for bond-financed transactions, should result in the Development being within the TDC of a mid-rise project as prescribed by the RFA. Because the RFA includes no townhome category for TDC, if the garden-style limits on TDC were imposed, the Petitioner would only be able to allocate 8% for developer overhead and developer fee. Losing 10% of the 18% fee allowed for bond-financed transactions reduces the tax credit equity that otherwise would go into the

Development, by approximately \$900,000, handicapping the viability of the Development to include the finishes and amenities that are the hallmark of quality affordable housing. With the additional equity that could be realized by the adjustment of TDC as requested in this Petition, the Petitioner could deliver a quality community while still deferring well over 50% of the aggregate developer fee and overhead.

12. Petitioner considered means to fit the NIMBY-imposed townhome model within the Rule. However, no reduction in the size of the units, quality of the finishes, or number of amenities is feasible, nor is it legally possible to improve the economies of scale by reconfiguring the Development. Petitioner has done all it can to achieve an acceptable matrix of project costs in light of its desire to provide quality housing, and further recognizes the intent of the Corporation in enacting the TDC limit.

13. Petitioner has determined that, notwithstanding exhaustive efforts to reduce expenses, including but not limited to aggressively renegotiating and value engineering the most favorable of the construction bids received for the Development, the projected costs of the Development will exceed the garden style TDC limitation.

D. Conclusion

14. The facts set forth in Sections 8 through 13 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver. There has been no new affordable housing in the Perrine area of Miami-Dade County for fifteen years, and the Development is desperately needed.

15. Controlling statutes and the Corporation's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. As demonstrated

above, the requested waiver serves the purposes of Section 420.5087 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

16. The waiver being sought is permanent in nature.

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

WHEREFORE, Petitioner Centerra Associates, Ltd., respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein; and
- B. Award such further relief as may be deemed appropriate.

Respectfully submitted,

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ALHADEFF & SITTERSON, P.A.
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By: /s/ Brian J. McDonough
BRIAN J. MCDONOUGH, 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 20th day of November, 2017.

By: /s/ Brian J. McDonough
Brian J. McDonough, Esq.