

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

OCEANSIDE HOUSING PARTNERS,
LP, a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2017-091VW
Application No. _____

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____ /

PETITION FOR WAIVER OF RULE 67-21.003(1)(b), F.A.C.

Petitioner Oceanside Housing Partners, LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of the requirement that 15% of equity be paid in at the closing of construction financing per the Non-Competitive Application Package (Rev. 08-2016) ("NCA") adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code ("F.A.C.") (the "Rule"). In support, Petitioner states as follows:

A. THE PETITIONER

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

Oceanside Housing Partners, LP, a Florida limited partnership
c/o Vitus Development IV, LLC
Attn: Stephen R. Whyte
1700 Seventh Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206)621-7420
Email: Stephen.whyte@vitus.com

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

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. Petitioner requests a waiver of the NCA, adopted and incorporated by reference by the Rule. The Rule provides:

If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in Rule Chapter 67-60, F.A.C., **the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 08-2016) is adopted and incorporated herein by reference** and consists of the forms and instructions available, without charge, on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Programs or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-07356>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

See Rule 67-21.003(1)(b), F.A.C. (emphasis added).

5. The NCA provides, in pertinent part:

7. Applicant Certification:

By completing, executing and submitting this Application form and all applicable exhibits, the Applicant certifies and acknowledges that:

j. The proposed equity amount to be paid prior to or simultaneous with the closing of construction financing is at least 15 percent of the total proposed equity to be provided (the 15 percent criteria)

See Non-Competitive Application Form (Rev. 08-2016), p. 14 (the “15% Criteria”).

D. STATUTES IMPLEMENTED BY THE RULE.

6. Rule 67-21.003, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”):

- Section 420.502, Legislative findings.
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

7. Per Section 420.5099(1),(2), Florida Housing acts as the State’s housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

8. Petitioner requests a waiver of the 15% Criteria.

9. Petitioner timely submitted a housing credit application for Oceanside Estate Apartments, 6700 102nd Ave N, Pinellas Park, FL 33782 (the “Development”). The Development has 104 units that the Petitioner intends to rehabilitate and finance through the issuance of multifamily housing revenue bonds and equity generated through the syndication of housing credits that are allocated to projects that utilize such form of financing to fund greater than 50% of the cost of the project.

10. On November 16, 2017, the U.S. House of Representatives passed bill 227-205 (the "Bill"), which would terminate the tax-free status of a large portion of Petitioner’s financing

beginning January 1, 2018 if adopted. Due to the uncertainty created by this Bill as to whether Petitioner would be able to obtain tax exempt financing next year, Petitioner had to close this year to avoid the risk of losing the benefits of such tax exempt financing (including the tax credit equity that is generated through the anticipated allocation of housing credits that the Development will receive due to its use of tax exempt financing to construct the Development).

11. Because the Bill suddenly necessitated the closing to occur sooner than anticipated, Petitioner has not yet brought an investor limited partner into its ownership structure and thus the 15% of equity required at the construction loan closing was not yet available at the time of the closing.

12. Petitioner is therefore in need of a waiver from the Rule imposing the 15% Criteria.

13. Because of the uncertainty surrounding the possible abolishment of the Private Activity Bond tax exemption, Petitioner had to close on its financing prior to the entry of its investor.

14. If the requested waiver is not granted, Petitioner will not be able to apply for housing credits and will lack the funds necessary to complete the Development.

15. Under Section 120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,¹

¹ Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a

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. (2017).

16. If the 15% Criteria is imposed, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Due to the uncertainty created by the sudden passage of the Bill, Petitioner had to close before December 31, 2017, without first obtaining a Rule waiver. Absent the waiver, Petitioner will not be able to secure the benefits of the tax-exempt financing necessary to complete rehabilitation of the Development.

17. In this instance, Petitioner meets the standards for the requested waiver. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 104 affordable housing units will be preserved and made available for the target population in Pinellas County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because it will not be able to rehabilitate the Development if it is ineligible to apply for housing tax credits. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Denying the waiver would deny Pinellas County the preservation of these much-needed affordable housing units.

manner significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), Fla. Stat. (2017).

F. ACTION REQUESTED

18. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the 15% Criteria such that Petitioner was not required to pay 15% of the equity at the construction loan closing; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

Counsel for Petitioner

By: /s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by hand delivery, with a copy served by electronic transmission for filing with the Florida Housing Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by hand delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 22nd day of December, 2017.

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