

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

EDWARD WATERS COLLEGE SENIOR

CITIZENS HOME, INC.,

Petitioner,

FHFC Case No.: 2018-010VW

CASE NO.: 2017-

v.

APPLICATION NO. 2016-350E

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b)

Petitioner, Edward Waters College Senior Citizens Home, Inc., a Florida not for profit corporation (the “Petitioner”) submits its Petition to Respondent, Florida Housing Finance Corporation (the “Corporation”), for a waiver of Rule 67-48.0072(21)(b), F.A.C. (the “Rule”) in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2016-108 Elderly Housing Community Loan (the “RFA”), to allow Petitioner to extend the Firm Loan Commitment deadline for the Elderly Housing Community Loan (“EHCL”) funding allocated to Petitioner pursuant to the RFA. In support of this Petition for Rule Waiver of Rule 67-48.0072(21)(b), F.A.C. (the “Petition”), Petitioner states as follows:

A. Petitioner and the Development.

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

Edward Waters College Senior Citizens Home, Inc.
1850 Kings Road
Jacksonville, Florida 32209
Attention: Adam J. Richardson, President
Telephone: (904) 354-47301
Facsimile: (904) 354-4785
E-mail: bishoprichardson@icloud.com

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

Brenda Ezell, Esq.
Ezell Law Firm, P.A
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2. Pursuant to the RFA, Petitioner timely submitted its application for EHCL funding. See Application Number 2016-350E. Petitioner was preliminarily awarded Seven Hundred Fifty Thousand and No/00 Dollars (\$750,000.00) in EHCL funding under the RFA (the “EHCL Award”), and received an invitation to enter credit underwriting on December 19, 2016. The EHCL Award Firm Loan Commitment issuance deadline was September 27, 2017, which was nine (9) months from the invitation to enter credit underwriting.

3. On July 21, 2017, Petitioner requested an extension of the loan commitment issuance deadline in order to have additional time to obtain pre-underwriting due diligence inspections. At the meeting of the Board of Directors of the Corporation (the “Board”) on September 22, 2017, the Board granted the request to extend the loan commitment issuance deadline to March 27, 2018, subject to the payment of the required non-refundable extension fee of Seven Thousand Five Hundred and No/00 Dollars (\$7,500.00.00) pursuant to the RFA. Petitioner paid the extension fee.

5. The EHCL Award is a critical part of the financing for the life-safety, health, sanitation, and security-related improvements of the one hundred ninety two (192) unit development known as Campus Towers, serving elderly residents aged sixty-two (62) or older (the “Development”). The Development will also be financed with the a refinance of the existing

HUD mortgage loan, as well as other supplemental financing which is actively being pursued by Petitioner.

6. The EHCL Award Firm Loan Commitment will not be issued by the March 27, 2018 deadline. Petitioner fully intended to have all plans and specifications ready to and provide all information required to receive the Firm Loan Commitment by the deadline; however, additional time is needed to obtain supplemental financing commitments for the Development and complete credit underwriting for the EHCL Award. Accordingly, an extension of the EHCL Award Firm Loan commitment deadline is required.

B. Rule from Which the Waiver is Sought.

7. The relevant portion of the Rule for which this waiver is sought, provides as follows:

“(21) Information required by the Credit Underwriter shall be provided as follows:

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) months of the Applicant’s acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant’s request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial nine (9) month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.” Rule 67-48.0072(21)(b), F.A.C. (2017).

C. Statute Implemented.

8. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that created the EHCL program. See §§ 420.507 and 420.508, Florida Statutes (2017).

9. Pursuant to Chapter 120.542(1), Florida Statutes, “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” Therefore, under Section 120.542(1), Florida Statutes 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. Specifically, Section 120.542(2) states:

“Variances 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. For purposes of this section, “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 manner significantly different from the way it affects other similarly situated persons who are subject to the rule.” *Section 120.542(2), Florida Statutes.*

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

D. Justification for Petitioner's Requested Waiver

11. Petitioner was previously granted a six (6)-month extension to secure a firm loan commitment of the EHCL Award, extending such deadline to March 27, 2018. In connection with the previous extension, Petitioner paid an extension fee of Seven Thousand Five Hundred and No/00 Dollars (\$7,500.00). A further extension of the deadline to secure a firm loan commitment may not be granted without a waiver of the Rule.

12. Petitioner is requesting an extension of the deadline to secure a loan commitment from March 27, 2018 to September 27, 2018, to have additional time to obtain completed plans and specifications for the rehabilitation of the Development, which was originally constructed in 1965 and has never undergone any rehabilitation efforts, which made it more difficult and time consuming to obtain original plans and documents for the Development that are required for underwriting. Additionally, the Petitioner is simultaneously seeking to refinance the existing HUD mortgage, which mortgage will provided the additional funds needed for the complete rehabilitation of the Development.

13. Petitioner is also requesting that no further extension fee be imposed.

14. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive EHCL funding in the RFA or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has incurred over Seventy Five Thousand and No/00 Dollars (\$75,000.00) in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Duval County of life-safety, health, sanitation, and security-related improvements to the Development serving persons aged 62 or older; and (c) violate principles of fairness. §120.542(2), F.S.

15. The requested waiver will ensure the availability of EHCL funding which will otherwise be lost as a consequence of the development delays described herein.

E. Conclusion

16. The facts set forth in Sections 11 through 15 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the delay in commencement of the life-safety, health, sanitation, and security-related improvements to the Development and the loss of a substantial sum of money should the transaction not go forward.

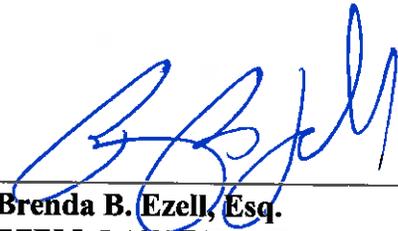
17. As demonstrated above, the requested waiver serves the purposes of Section 420.5087, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low income persons and households.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

18. 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 this Petition.

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant this Petition and all the relief requested therein;
- B. Grant a waiver of the Rule to extend the deadline to secure a firm loan commitment from March 27, 2018 to September 27, 2018, and not require that an additional extension fee be imposed; and
- C. Award such further relief as may be deemed appropriate.

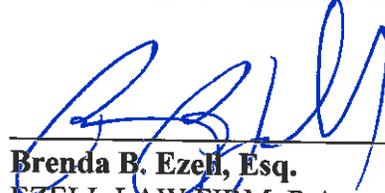
Respectfully submitted,



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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 26th day of February, 2018.



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