

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

In re: SP DOWNS LLC
(Delphin Downs)

FHFC Case No.: 2018-032VW
RFA 2016-109
Application No. 2016-356S
Application No. 2018-337V
FHFC Case No. 2018- VW

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FLORIDA HOUSING FINANCE CORPORATION

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

Petitioner, SP Downs LLC (“SP Downs”), by and through undersigned counsel and pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions Florida Housing Finance Corporation (“Florida Housing”) for a waiver of or variance from the requirement in Rule 67-48.0072(21)(b), Florida Administrative Code, and to extend for an additional six (6) months the time to achieve credit underwriting report approval and issuance of a firm loan commitment. In support thereof, SP Downs states as follows:

The Petitioner

1. The name of the Petitioner is SP Downs LLC. For purposes of this proceeding, the address, email address, telephone number, and fax number are that of SP Downs’ undersigned counsel.

The Development

2. SP Downs timely submitted its Application No. 2016-356S in response to RFA 2016-109, SAIL Financing of Affordable Multi-Family Housing Developments to be used in conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits. The application was for a 72-unit new construction family demographic development to be located in Pensacola, Florida, called Delphin Downs (the “Development”).

3. SP Downs was selected for funding and, after Board approval, was subsequently invited to credit underwriting. The Development received a preliminary annual allocation of SAIL

Funding in the amount of \$4,180,000, an Extremely Low Income (ELI) Loan in the amount of \$400,000, and LIHTC in the amount of \$500,000 (annual).

4. Pursuant to its invitation to credit underwriting and RFA 2016-109, the firm loan commitment was to be issued within nine (9) months of the Applicant's acceptance to enter credit underwriting. The deadline for the credit underwriting and firm loan commitment process was January 5, 2018.

5. By letter dated November 7, 2017, SP Downs requested a six (6) month extension of the deadline for credit underwriting and firm loan commitment, as authorized by Rule 67-48.0072(21)(b). By letter dated December 18, 2017, Florida Housing granted the requested extension, from January 5, 2018 to July 5, 2018.

6. Shortly thereafter, SP Downs — like many others who had received similar allocations — experienced a reduction in equity funding, as well as changes in market pricing that were exacerbated by increased construction costs due to construction market changes, all of which adversely affected the viability of the development of Delphin Downs — unless it could receive additional funding.

7. Recognizing these conditions, on March 28, 2018, Florida Housing issued RFA 2018-109, Development Viability Loan Funding, in order to provide additional funding to applicants with active awards, such as SP Downs. Notably, to be eligible for this additional funding, the applicant must not have received a final underwriting report. As such, SP Downs could not achieve its final underwriting approval until it determined whether it would receive this additional viability funding and, if it was selected for funding, until such award becomes final.

8. SP Downs timely submitted an application (Application No. 2018-331V) in response to RFA 2018-109 for Development Viability Loan Funding on April 12, 2018.

9. On May 4, 2018, the Board approved the recommendations of the Review Committee to select certain applicants for a preliminary award. SP Downs' application for Delphin Downs was one of those selected for a preliminary award. However, an applicant that was not selected (Osceola Palos Verdes) has filed a notice of intent to protest; if a formal protest is filed (and it is not due until May 21, 2018), it will delay the issuance of the final awards—possibly by months. As such, it is unclear when SP Downs will receive the necessary viability loan funding and be able to achieve a final credit underwriting approval. Most importantly, it now appears very unlikely that SP Downs will be able to achieve the final credit underwriting approval by the July 5, 2018 deadline. (As a practical matter, the last Board meeting before the deadline is June 15, 2018, and materials for the Board package generally must be submitted well in advance, or by late May.)

10. For these reasons, SP Downs will require an extension of this current deadline to achieve credit underwriting report approval and issuance of a firm loan commitment. Florida Housing staff has suggested that SP Downs seek a six (6) month extension.

The Rule For Which The Waiver or Variance Is Sought

11. SP Down requests a waiver of or variance from Rule 67-48.0072(21)(b), Florida Administrative Code (the Rule). The Rule 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 Board 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.

Id. (emphasis added).

12. SP Downs requests a waiver of or variance from the requirement in Rule 67-48.0072(21)(b) to extend for an additional six (6) months the time to achieve credit underwriting report approval and issuance of a firm loan commitment

Statutes Implemented By The Rule

13. The Rule implements Sections 420.5087 (State Incentive Loan Program), 420.5089 (HOME Investment Partnership Program) and 420.5099 (Allocation of the low-income housing tax credit), all of which are part of the Florida Housing Finance Corporation Act. One of the purposes of the Act is to encourage the construction and reconstruction of new and rehabilitated housing to meet the shortage of decent, safe and sanitary housing for person and families of low, moderate and middle income. .

Justification For The Requested Waiver or Variance

14. Florida Housing has the authority to grant waivers of or variances from its rule requirements when strict application would lead to unreasonable, unfair, and unintended consequences in particular instances. Section 120.541(1), F.S. A waiver shall be granted when the person who is subject to the rule demonstrates that application of the rule would: (1) 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. Section 120.542(2), F.S.

15. SP Downs requests a waiver of or variance from the requirement in Rule 67-48.0072(21)(b) to extend for an additional six (6) months the time to achieve credit underwriting report approval and issuance of a firm loan commitment because the strict application of this rule would create a substantial hardship for SP Downs. For the reasons described above (relating to the viability loan funding process), it is now apparent that SP Downs cannot achieve credit underwriting report approval and issuance of a firm loan commitment by the July 5, 2018 deadline due to circumstances beyond SP Downs' control. SP Downs expects that it can achieve credit underwriting report approval and issuance of a firm loan commitment within an additional six (6) months, or by January 5, 2019.

16. Florida Housing recently has approved other, similar requests. *See In Re: West Lake I, Ltd*, FHFC Case No. 2018-002VW (final order dated Jan. 26, 2018); *In Re: Dunbar Improvement Association, Inc.*, FHFC Case No. 2018-011VW (final order dated Mar. 16, 2018); *In re: Woodland Park Redevelopment I, LLC*, FHFC Case No. 2018-029VW (final order dated May 4, 2018).

17. Here, SP Downs has satisfied the requirements justifying waiver of or variance from the Rule. Granting the waiver or variance will not have any impact on other participants in funding programs administered by Florida Housing, nor will it have a detrimental impact on Florida Housing or the Development. Granting the requested waiver or variance also will ensure that 72 affordable family housing units will be made available for the target population in Pensacola, in Escambia County. Denial of SP Downs' request would (a) result in substantial economic hardship to SP Downs, as it has already incurred significant costs to date toward ensuring

that the Development proceeds to completion, and (b) deprive Escambia County of essential affordable housing. Further, granting the waiver or variance will serve the purposes of the statute and the Florida Housing Finance Corporation Act because one of the Act's primary purposes is to facilitate the availability of decent, safe, and sanitary housing in this state. Denial of the waiver would deprive Escambia County of essential and affordable housing units for families.

Petitioner Requests A Waiver or Variance for Six Months

18. SP Downs requests a waiver of or variance from the requirement in Rule 67-48.0072(21)(b) to extend for an additional six (6) months the time to achieve credit underwriting report approval and issuance of a firm loan commitment.

Action Requested

WHEREFORE, SP Downs respectfully requests that Florida Housing:

- A. Grant this Petition and all of the relief requested herein;
- B. Grant the requested waiver of or variance from the requirement in Rule 67-48.0072(21)(b) to extend for an additional six (6) months the time to achieve credit underwriting report approval and issuance of a firm loan commitment;
- C. Grant such further relief as it may deem appropriate.

Respectfully submitted on May 16, 2018.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this Petition for Waiver of Rule 67-48.0072(21)(b) was filed by email with Ana McGlamory, Agency Clerk, ana.mcglamory@floridahousing.org, and that a copy of the original physically signed Petition shall be delivered within five business days to the Agency Clerk; that a true and correct copy was provided by email to Hugh Brown, General Counsel, hugh.brown@floridahousing.org, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301; and that a true and correct copy was provided to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, and via email to joint.admin.procedures@leg.state.fl.us, all on May 16, 2018.



Lawrence E. Sellers, Jr.