STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

2023-070VW
RFA 2021-206

SANDCASTLES FOUNDATION, INC.
Petitioner.

v.

FLORIDA HOUSING FINANCE CORPORATION,
Respondent.
_____/

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FINANCE CORPORATION

AMENDED
PETITION FOR WAIVER OF RULE
67-48.0072(21)(b) FLORIDA ADMINISTRATIVE CODE

Pursuant to section 120.542, Florida Statutes, ("F.S.") and rule 28-104.002, Florida Administrative Code, ("F.A.C.") Petitioner, Sandcastles Foundation, Inc., ("Sandcastles" or "Petitioner"), a Florida not for profit corporation, submits this Amended Petition to Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of rule 67-48.0072(21)(b), F.A.C. (Effective 5/18/2021). Sandcastle applied (App.No.2022-244H) for HOME financing in response to *Request for Application 2021-206, HOME Financing for the Construction of Small, Rural Developments* (the "RFA"). The Petitioner seeks a waiver of rule 67-48.0072(21)(b), F.A.C. to allow for an extension of the Firm Loan Commitment Date for an additional 90 days.

In support Petitioner states as follows:

PETITIONER

1. The name, address, telephone number and email address of the Petitioner is, Sandcastle Foundation, Inc., Attn: Jessica Criss, 700 N. Wickham Rd., Ste 205, Melbourne, Florida 32935, Jess@sandcastlesfoundation.org, (386)-214-5562. For the purposes of this proceeding, the contact information for Petitioner shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney Maureen McCarthy Daughton, Maureen McCarthy Daughton, LLC, 1400 Village Square Blvd., Ste 3-231, Tallahassee, Florida 32312; 850-345-8251; mdaughton@mmd-lawfirm.com.

BACKGROUND

3. On January 25, 2022, Petitioner applied in response to the RFA and requested $5,544,000.00 in HOME funding (the "Application") for the construction of twenty-two (22) single family homes. The proposed development to be known as Sandcastle Manor is located in Macclenny, Baker County, Florida.

4. On March 4, 2022, the Florida Housing Finance Corporation Board (the "Board") approved Petitioner's application for funding, and on March 29, 2022, Petitioner was subsequently invited to enter credit underwriting and Florida Housing issued the preliminary commitment letter. In accordance with rule 67-48.0072(21), F.A.C., the credit underwriting process, including execution of the HOME written agreement had to be completed within twelve (12) months of the applicant's acceptance of the invitation into credit underwriting.

5. On February 6, 2023, Petitioner formally notified Florida Housing of its need to seek a 180-day extension of the Firm Loan Commitment deadline to October 5, 2023, due to site plan revisions requested by the City of Macclenny. The request was granted on April 11, 2023.

6. Currently, Petitioner is waiting on the St. Johns Water Management District (the "District") to issue a permit.[1] Without the Permit the Petitioner cannot submit its plans to the City of Macclenny for approval. Petitioner understands from representatives of the district that the review is in process.

RULE FOR WHICH WAIVER IS SOUGHT

[1] The proposed development is not being built within identified Wetlands however it is Wetlands adjacent and therefore a permit is required.

7. Petitioner requests a waiver of, or variance from, 67-48.0072(21)(b) F.A.C. This rule provide in relevant part, as follows:

> (b) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within twelve (12) months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve 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 twelve (12) month deadline is approved. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

(Eff. May 18, 2021)

8. Application of Rule 67-48.0072(21)(b), F.A.C., and the denial of this Petition will result in the withdrawal of the preliminary commitment Petitioner will not be able to move forward with the provision of these homes without the HOME funds.

9. This Petition should be granted because Baker County is in desperate need of affordable housing for families and granting this waiver will deliver these homes without undue delay.

STATUTES IMPLEMENTED BY RULE

10. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act") the statute that designates the Corporation to administer the HOME program in accordance with the HOME Investment Partnership Program. See §420.5089, Florida Statutes.

JUSTIFICATION FOR REOUESTED WAIVER

11. Under Section 120.542(1), f.s. and Chapter 28-104, F.A.C., "Strict 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." A waiver 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[2] or would violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person.

12. Because Petitioner was previously granted a six-month extension to secure the firm loan commitment a waiver of the rule is necessary for the second extension.

13. The need for the requested extension has been created by circumstances beyond the Petitioner's control. The Petitioner has been in close contact with the St. Johns River Water Management District and while the review of the facts surrounding the Permit application is in process, it is not yet complete. The Petitioner has been responsive to all requests for information and has not caused the delay.

14. There is no doubt that Baker County needs affordable housing and the extension requested will help to meet that need in a manner consistent with the requirements and purpose of the RFA.

15. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of HOME funds in RFA 2021-206, or Florida Housing,

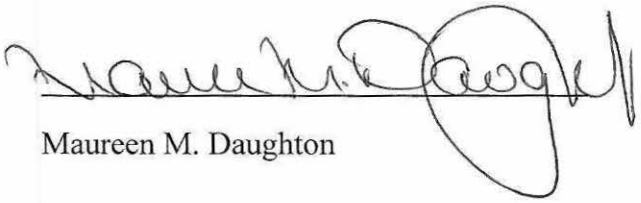
[2] A "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. The "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." § 120.542(2), f.s.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Amended Petition was filed this 3rd day of October, 2023, by electronic mail to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Ste 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Peppers Building
111 W. Madison Street
Tallahassee, Florida 32399



Maureen M. Daughton

16. The Petitioner believes that a waiver will serve the purpose of Section 420.5089, f.s., and the Act that are implemented by Chapter 67-48 F.A.C., because one of the goals is for the proceeds of Corporation funding to be utilized to facilitate the availability of decent and safe housing in the State of Florida to low-income persons and households. The Act was passed to create inducements and opportunities for private and public investments in rental housing to increase the supply of affordable housing for low-income households. By granting this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing units via the construction of new developments throughout Florida and will provide needed affordable housing units to Baker County.

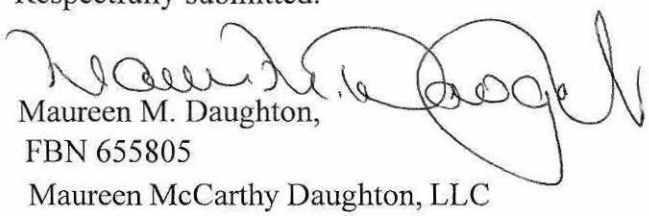
TYPE OF WAIVER

17. The waiver being sought is permanent in nature.

ACTION REQUESTED

18. For the above stated reasons, Sandcastles Foundation respectfully requests that the Florida Housing Board of Directors grant the requested Amended Waiver of rule 67-48.0072(21)(b), Florida Administrative Code.

Respectfully submitted.



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