STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

PINNACLE 441, LLC

Petitioner,

vs. CASE NO.: 2022-008VW

FLORIDA HOUSING FINANCE CORPORATION APPLICATION NO. 2021-017C

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.004(3)(j)
FOR A CHANGE IN TOTAL SET-ASIDE PERCENTAGE

Pinnacle 441, LLC (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's prohibition on changing the "Total Set-Aside Percentage" designated by an applicant and set forth in the total set-aside breakdown chart, in its response to RFA 2020-202-Housing Credit Financing for Affordable Housing Developments located in Broward, Duval, Hillsborough, Orange, Palm Beach and Pinellas Counties. ("RFA"). See Rule 67-48.004(3)(j)(2020).

In support of its petition, the Petitioner states:

1. The address, telephone number, facsimile number and e-mail address of the Petitioner and its authorized principal representative are:

Pinnacle 441, LLC
c/o Pinnacle Communities, LLC
9400 S. Dadeland Boulevard
Suite 100
Miami, Florida 33156
Attention: David O. Deutch
(305) 854-7100
(305) 859-9858 (fax)
david@pinnaclehousing.com

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorney are:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd., Ste. 4100
Miami, FL 33131

(305) 347-7308
(305) 347-7808 (Fax)
gcohen@shutts.com

3. The Petitioner timely submitted its Application in the RFA (Application #2021-017C) for the development named "Pinnacle 441" (the "Development"), Florida Housing has issued a Preliminary Allocation of Housing Credits and has entered into a Carryover Allocation Agreement with Petitioner.

4. Equity raised from Housing Credits will be used for the development of Pinnacle 441, a new apartment development intended to serve low-income individuals and families in the City of Hollywood, Broward County, Florida.

5. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner, (b) could deprive the City of Hollywood and Broward County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2021).

6. The waiver being sought is permanent in nature.

THE RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-48.004(3)(j), Florida Administrative Code (2020). Specifically, Petitioner is seeking to increase the total number of units in the Development from 110 (as contained in its Application) to 113, and to decrease the Total Set-Aside Percentage from 100% (as indicated in its Application) to 97%. A rule waiver is required in order to decrease the "Total Set Aside Percentage" designated by Petitioner in its Application. Petitioner intends that the three additional units will be available for non-income and non-rent restricted market rate housing.

Rule 67-48.004(3) provides, in relevant part, as follows:

"(3) For the SAIL, HOME and Housing Credit programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the Application submission, unless otherwise provided below:

(j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the total set-aside break-down chart for the program(s) applied for in the Set-Aside Commitment section of the Application…".

Rules 67-48.004(3)(j), FAC (2020).

Petitioner is (by virtue of this Petition) requesting Corporation staff to increase the total number of units in the Development. As such, Petition is not seeking a waiver from the provisions of Rules 67-48.004(3)(i) (pertaining to a change in the total number of units).

STATUTES IMPLEMENTED BY THE RULES

8. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the HC Program. See Section 420.5099, Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

9. Petitioner requests a waiver from Rule 67-48.004(3)(j), Florida Administrative Code (2020), to allow decreasing the Total Set-Aside Percentage from 100% to 97%

10. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for waiver:

a. Petitioner timely submitted its Application to the Corporation for its Housing Credit program, for 110 low-income tax credit housing units, with the Total Set-Aside Percentage of 100%, with 10% of the units (11 units) set-aside at or below 25% of the Area Median Income ("AMI") level, and received a preliminary allocation of 2021 Housing Credits and has entered into a Carryover Allocation Agreement with Corporation.

b. Pursuant to applicable zoning for the area in which the Development is located, additional units can be added to the Development. Petitioner seeks to add three additional units, increasing the total number of units to 113.

c. Petitioner is seeking a waiver from Rule 67-48.004(3)(j) to decrease the Total Set-Aside Percentage from 100% to 97%. As a result of the requested increase in total units from 110 to 113, the Developer will remain committed to providing 10% (now 12 units, given the overall increase to 113 units) of the residential units at or below 25% of the AMI). The additional three units will be market rate with no income or rent restrictions.

d. The Development is located in a special overlay transportation oriented development district of the City of Hollywood, which encourages the development of mixed income housing, particularly in urban areas well-suited to a mixed income development. The high-intensity character of the State Road 7/U.S. 441 corridor (where the Development is located), and the fact that the Development is located only 1.5 miles south of the new Hard Rock Casino causes the Development site to be a prime location for housing for those earning in excess of the housing credit income limitations.

e. One of the three non-income restricted units will operate as "live-work" space, wherein the resident operates a storefront business on the street, with their residential unit located on the ground floor of the building. This concept, which is in addition to the approximately 6,750 square feet of commercial space planned for the Development, meshes well with the urban design standards noted above. However, this concept is problematic to execute with income limited units, hence Petitioner's request to add additional market rate units without rent or income restrictions.

f. An increase in the number of residential units will allow Petitioner to provide a mixed-income Development. Two of the three additional market rate units in the Development would serve the needs of students, teachers and other professionals earning in excess of the income limitations applicable to affordable housing (the third market rate unit will serve the live/work space resident.

g. The scoring of Petitioner's Application for low-income housing tax credits would not have been affected if Petitioner had originally included 113 units in the Application, with 97% (110) of such units designated as units set-aside for occupancy by households not earning more than 60% of the AMI. If this request is granted, Petitioner will be providing 113 total units, with 97% of them (i.e., 110 units) being set-aside for occupancy by households not earning more than 60% of the AMI. Further, if this request is granted, 12 of the 110 set-aside units will be set-aside for occupancy by households not earning more than 25% of the AMI, as opposed to 11 as set forth in the Application. Since the 110 set-aside units will remain unchanged, the Application's Leveraging Classification will remain the same, since this is determined by reference to the Total Corporation Funding Per Set-Aside Unit. There are no points associated with this aspect of the Application, nor does this change adversely impact any other applicant in the RFA.

h. The waiver requested herein will not result in any decrease in the number of "low-income units", but rather will only increase the total number of units to provide for three additional market rate housing units. The addition of three market rate housing units to the total unit count necessarily results in a corresponding decrease in the Total Set-Aside Percentage provided for in the Application, from 100% to 97%.

i. A denial of the requested waiver would result in a substantial economic hardship for Petitioner, as a consequence of lower rental revenues, and lower economies of scale, i.e., spreading fixed costs over three additional units. In addition, up to three families would be deprived of the opportunity to obtain market rate housing in a mixed income development.

11. A waiver of the Rule's restriction against changing the Total Set-Aside Percentage from Petitioner's Application would serve the purposes of Section 420.5087, and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households, and would provide the additional benefit of meeting the critical need for mixed-income developments.

12. By granting the waiver and permitting Petitioner to decrease the total Set-Aside Percentage, the Corporation would recognize the economic realities of developing affordable rental housing by encouraging the development of mixed-income housing projects and enabling developers to meet the needs of both low-income families and families in dire need of non-income restricted housing. This recognition would promote participation by owners such as Petitioner in meeting the Act's purpose of providing affordable housing in an economical and efficient manner.

ACTION REQUESTED

Petitioner requests the following:

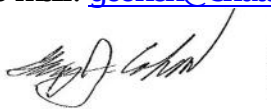
(a) That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(j), Florida Administrative Code (2020), allowing it to decrease the Total Set-Aside Percentage from 100% to 97%;

(b) Grant the Petition and all the relief requested therein; and

(c) Grant such further relief as may be deemed appropriate.

Respectfully submitted,

SHUTTS & BOWEN LLP
Counsel for Pinnacle 441, LLC
200 S. Biscayne Blvd., Suite 4100
Miami, Florida 33131
Tel.: (305) 347-7308
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By:_____
Gary J. Cohen

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, 680 Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 4th day of February, 2022.



Gary J. Cohen