STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2022-057VW

SANDCASTLES FOUNDATION, INC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC APPLICATION NO. 2021-284H
REQUEST FOR APPLICATIONS 2020-206

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PETITION FOR WAIVER OF RULES 67-48.004(3)(i), (l) AND 67-48.0072(17)(g), FLORIDA ADMINISTRATIVE CODE

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner, Sandcastles Foundation, Inc., ("Sandcastle" or "Petitioner"), a Florida not for profit corporation, submits this Petition to Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of rules 67-48.004(3)(i),(l) and 67-48.0072(26), Florida Administrative Code (Effective June 23, 2020). Sandcastle applied (App. No.2021-284H) for HOME financing in response to *Request for Application 2020-206, HOME Financing for the Construction of Small, Rural Developments* (the "RFA"). Petitioner seeks a waiver of rule 67-48.0072(26) to allow for an extension of the Loan Closing Date for 120 days and a waiver of Rule 67-48.004(3)(i) and (l) so that Petitioner may reduce the total number of units in the proposed Development from, 25 to 21 units[1] and a reduction in the Loan amount.

In support Petitioner states as follows:

[1] All units will remain four (4) bedrooms with two (2) bathrooms.

PETITIONER

1. The name, address, telephone number and email address for the Petitioner is Sandcastle Foundation, Inc., Attn: Jessica Criss, 1801 Sarno Road, Suite 1, Melbourne, Florida 32935, Jess@sandcastlesfoundation.org, (386)-214-5562. For 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 is: 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 November 19, 2020, Petitioner applied in response to the RFA and requested $5,826,000.00 in HOME funding (the "Application") to finance the construction of a proposed twenty-five (25) unit single family home affordable housing development to be known as Sandcastle Pines located in Bradford County, Florida.

4. On January 22, 2021, the Florida Housing Finance Corporation Board (the "Board") approved Petitioner's application for funding, and Petitioner was subsequently invited to enter credit underwriting[2] On March 18, 2021, staff issued the preliminary commitment letter. Pursuant to Rule 67-48, the credit underwriting report had to be completed and firm loan commitment issued by March 29, 2022.

5. On March 4, 2022, the Board approved the final credit underwriting report with a positive recommendation for a HOME loan in the amount of $5,826,000 and a Viability Loan of $186,042.33. The Loans were scheduled to close on July 8, 2022.

[2] After a formal protest by one of the Applicants, the Board on March 12, 2021, approved funding of all the seven (7) Applicants.

6. Prior to the loan closing date, the Petitioner advised Florida Housing that it would need to seek additional funding due to significant increases in construction costs. On July 21, 2022, Petitioner formally notified Florida Housing of its intent to seek additional funding and requested a 90-day extension of the loan closing deadline to October 6, 2022.

7. On August 5, 2022, the Board approved the 90-day extension of the loan closing deadline.

8. On September 23, 2022, Florida Housing issued a revised firm commitment for a HOME Loan in the amount of $5,826,000.00 and increased Viability Loan in the amount of $1,000,000.00 for a total amount of $6,826,000.00. The Loan closing was to occur by October 7, 2022.

9. During this same period, the Petitioner was working diligently with officials from the City of Starke including the Planning and Zoning Board to acquire all the necessary approvals. During this process it was determined that a Zoning Map amendment was required. The Planning and Zoning Board Staff deemed the Zoning Map Amendment consistent with the City's Comprehensive Plan and in compliance with the Land Development Code and recommended approval by the Starke City Commission.

10. On September 19, 2022, the Starke City Commission approved the Zoning Map Amendment filed by the Petitioner to change the relevant zoning designation of the 6.37-acre parcel from *Single Family, Medium Density to Multi-Family Residential*.

11. The Zoning Map Amendment was scheduled for Second Reading, as is required, before the City Commission on Tuesday, October 4, 2022. Quite unexpectedly, the Starke City Commission denied the Zoning Map Amendment by a vote of 5-0 because of concerns raised

for the *first time* by a few citizens regarding stormwater issues, traffic, and a concern that single family rental units would cause a diminution of property values in the general neighborhood.

12. The Petitioner made the rezoning request at the suggestion of City staff to accommodate the number of proposed units and adequate stormwater treatment required by the Suwanee River Water Management District. Since the October 4th denial, Petitioner has been meeting with its own engineers to determine how it can build the proposed units under the existing zoning.

13. A modified site plan and a reduction in the number of units is necessary to meet the lot size required by the *current* zoning category of the property. The modified site plan and reduction of units will allow the Petitioner to meet the applicable technical requirements for approval by the City.[3] This time, however, the City approval is merely an administrative approval and *not* a quasi-judicial hearing.

14. The reduction in units will also require a corresponding loan reduction amount. The combined total of $6,826,000.00 will be reduced to a combined total loan amount of $6,508,137.00.[4]

15. The Petitioner believes the needed approvals can be obtained from the City of Starke within 120 days.

RULE FOR WHICH WAIVER IS SOUGHT

16. Petitioner requests a waiver of, or variance from, Rules 67-48.004(3)(i), (l) and 67-48.0072(26) F.A.C. These Rules provide in relevant part, as follows:

67-48.004

(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other

[3] The proposed change will provide 21 HOME-assisted units, 5 Low HOME Rental Units and 16 High HOME Rental Units.

[4] The Loan reduction is a result of the application of HUD's Maximum Subsidy Limits for HOME units.

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 applicable submission, unless provided otherwise below:

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(i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program.

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(l) Funding Request Amount, exclusive of adjustments by the Corporation as outlined in any applicable competitive solicitation.[5]

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67-48.0072

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(26) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the

[5] The undersigned is filing for a waiver of this rule section out of an abundance of caution since the RFA specifically allows for the Corporation to reduce the loan amount to the maximum amount eligible to be requested. The maximum amount is dictated by the Maximum HUD Subsidy Limit.

extension fee not later than seven (7) Calendar Days after the original loan closing deadline. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

17. Application of Rules 67-48.004(3)(i), (l) and 67-48.0072(26), FAC., will prohibit the extension of the loan closing and preclude the Petitioner from reducing both the total number of units and the amount of the loan. This will result in difficulties moving forward and obtaining the necessary zoning approvals and will threaten the financial viability of the Development and the delivery of needed units in Bradford County.

STATUTES IMPLEMENTED BY RULE

18. The Rules are implementing, 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* Fla. Stat. §402.50289.

JUSTIFICATION FOR REQUESTED WAIVER

19. Section 120.542(1), Florida Statutes, provides that, "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 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. *See* §120.542(2), Fla. Stat.

20. Strict adherence to rules 67-48.004(3)(i), (l) and 67-48.0072(26) will create a substantial hardship for the Petitioner at this late stage in the process. The Petitioner expended significant funds and lost valuable time seeking rezoning. The Petitioner continues to work closely with the officials from the City of Starke to secure the approval of a site plan modification under the *current* zoning requirements, which would require a decrease in the number of units from 25 to 21 units as well as a reduction in the requested loan amount. Bradford County is in dire need of affordable housing, and the extension requested and reduction in units will ensure that the needed units will be successfully constructed and operated in a manner consistent with the requirements and purpose of the RFA.

21. The requested waivers will not adversely affect any party, including any other party that applied to receive an allocation of HOME funds in RFA 2020-206, or Florida Housing.[6]

22. 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 Bradford County.

TYPE OF WAIVER

[6] Florida Housing has previously approved a reduction in units from 24 to 21 units for a HOME Applicant. (*In Re: San Alfonso Housing Inc.., FHFC Case No. 2022-019VW, Amended Order Granting Waiver dated March 16, 2022)*

23. The waiver being sought is permanent in nature.

ACTION REQUESTED

24. For the above stated reasons, Sandcastles Foundation respectfully requests that the Florida Housing Board of Directors grant the requested waiver of rules 67-48.003(i), (l) and 67-48.0072(26). Florida Statutes.

Respectfully submitted,

Maureen M. Daughton,
FBN 655805
Maureen McCarthy Daughton, LLC
1400 Village Square Blvd., Ste 3-231
Tallahassee, Florida 32312.
mdaughton@mmd-lawfirm.com
Counsel for Petitioner.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed this 12 day of October 2022, 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
Joint.admin.procedures@leg.state.fl.us

Maureen M. Daughton