

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2019-059VW
APPLICATION NO.: 2018-035BS

BDG HIBISCUS APARTMENTS, LP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

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

BDG HIBISCUS APARTMENTS, LP, a Florida limited partnership (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.0072(21)(b), Florida Administrative Code (May 24, 2017). This Petition is filed pursuant to Section 120.542, Florida Statutes (2018), and Chapter 28-104, Florida Administrative Code (2018). In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner is as follows:

BDG Hibiscus Apartments, LP
Attn: Alexander Kiss
501 N. Magnolia Avenue
Orlando, Florida 32801
Telephone: (407) 233-3335
Email: alexbkiss@gmail.com

2. The mailing address, telephone number and email of the Petitioner's legal counsel is as follows:

Gene E. Crick, Jr., Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Email: gene.crick@nelsonmullins.com

3. On October 10, 2017, the Petitioner timely submitted an application in response to RFA 2017-108 SAIL Financing of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bond Financing and Non-Competitive Housing Credits (“RFA”) (the “Application”) to finance the construction of a multifamily apartment complex to be known as Hibiscus Apartments in Lee County, Florida (the “Property”), which will serve low income families in Lee County. The Petitioner received a preliminary award for \$5,125,000 in SAIL funding (the “SAIL Loan”) and \$510,800 in ELI funding (the “ELI Loan”) from the Corporation. The Property will also be financed with a tax-exempt bond issuance by the Corporation of approximately \$9,400,000 (the “Bonds”), an annual allocation of approximately \$689,594 of 4% non-competitive low-income housing tax credits (the “Credits”), and deferred developer fee as necessary to fill a gap in the various funding sources.

4. The Petitioner received from the Corporation an invitation to enter into credit underwriting for the SAIL Loan and ELI Loan (the “FHFC Loans”) by letter dated May 9, 2018, which was executed on May 14, 2018. Petitioner’s initial deadline to finalize credit underwriting and receive a final loan commitment for the FHFC Loans was February 14, 2019 (“Initial Deadline”). As permitted by the Corporation’s rules, on December 14, 2018, the Petitioner requested a six (6) month extension of the deadline to receive a final loan commitment for the FHFC Loans. On February 1, 2019, the Corporation approved the six (6) month extension request extending the deadline to receive the firm loan commitment for the FHFC Loans to **August 14,**

2019 (“Commitment Deadline”). The Petitioner paid the extension fee associated with the extension of the Commitment Deadline.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

5. The Petitioner requests a waiver from Rule 67-48.0072(21)(b), Florida Administrative Code (effective May, 24, 2017) (the “Rule”), which provides in part:

67-48.0072(21)(b) – Credit Underwriting and Loan Procedures.

(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.

C. STATUTES IMPLEMENTED BY THE RULES

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that created the Housing Tax Credit Program, the Multifamily Mortgage Revenue Bonds Program and the State Apartment Incentive Loan Program. See Fla. Stat. §§ 420.5087, 420.509, 420.5099.

7. “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.” See Fla. Stat. § 120.542(1). The pertinent statute regarding granting of waivers provides: “[W]aivers shall be granted . . . when application of a rule would create a substantial hardship or would violate principles of fairness.” See Fla. Stat. § 120.542(2). “Substantial Hardship” is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. See Fla. Stat. § 120.542(2).

D. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

8. The Petitioner is requesting a waiver of the Rule to extend the deadline to receive a firm loan commitment for the FHFC Loans from August 14, 2019 to December 31, 2019. As mentioned above, Petitioner was not able to meet the Initial Deadline and timely requested a six (6) month extension of the Initial Deadline as permitted by the Rule, which the Corporation approved. Accordingly, Petitioner must now receive a firm loan commitment from the Corporation by August 14, 2019. A further extension of the firm loan commitment deadline may not be granted without a waiver of the Rule.

9. The Petitioner is unable to meet the Commitment Deadline, mainly due to the fact that Petitioner has experienced extended delays in obtaining site plan /site permit approval and plat approval from the City of Fort Myers. The Petitioner has submitted all requests and information timely and the delays in obtaining the various approvals are outside of the Petitioner’s control.

10. Before the Corporation issues a firm loan commitment to Petitioner, a credit underwriting report must be completed and approved by the Board of Directors of the Corporation (“Board”) at a meeting of the Board. A draft credit underwriting report for the Corporation’s

funding must be submitted to the Corporation's staff approximately four weeks prior to a meeting of the Board, with the final underwriting report to be submitted to the Corporation's staff approximately two weeks before a Board meeting. Accordingly, the credit underwriting will then need to be submitted to the Corporation's staff at least four weeks before a Board meeting. The next possible meeting Petitioner could present the credit underwriting report for the Board's approval is August 2, 2019, which means the report must have been completed late June/early July.

11. The Rule states that a failure of the Petitioner to receive the Corporation's issuance of a firm loan commitment by August 14, 2019 will result in a withdrawal of the preliminary commitment for the SAIL Loan and the ELI Loan. Such a result would be catastrophic financially for the Property, and the Property would not be able to proceed with its construction and operation should the SAIL Loan and the ELI Loan be terminated by the Corporation. In addition to resulting in the loss of 100 affordable units, a denial of the Rule Waiver would be unfair and result in substantial hardship to the Petitioner. Under the new rules¹, the Petitioner would have an initial period of twelve (12) months to obtain a firm loan commitment instead of the nine (9) month initial period which was the rule at the time of the Petitioner's Application. The Corporation recently changed the rules allowing for the additional time to receive a firm loan commitment. Furthermore, the Petitioner has spent a substantial amount of money to date in furtherance of the closing on the Property, which, if lost, would cause substantial economic hardship to the Petitioner.

12. Consequently, an extension of the time period for completing the credit underwriting process and obtaining the firm loan commitment until December 31, 2019 is

¹ Specifically, Section 67-48.0072(21)(b), effective as of July 8, 2018.

necessary to avoid unfairness and substantial hardship on the Petitioner and the Property. By granting the requested time extension, the Property will be able to proceed to reach completion in the future, which will provide 100 affordable rental housing much needed units in Lee County, Florida; such a result assists the Corporation at fulfilling its statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

13. The Petitioner believes that a waiver of this Rule will serve the purposes of Section 420.5087 and the Act that are implemented by Chapter 67-48 of the Florida Administrative Code, because one of the goals is for the proceeds of a SAIL Loan be used to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act (Section 420.501, *et seq.*) was passed in order to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing for low-income persons and households. By granting this waiver, the Corporation would recognize the goal of increasing the supply of affordable housing units via the construction of new developments throughout Florida, particularly in the high-need area of Lee County.

17. The requested waiver will not adversely impact the Property or the Corporation.

E. TYPE OF WAIVER

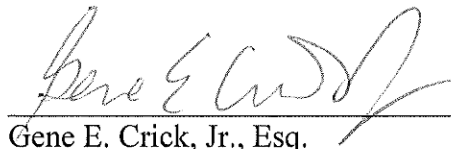
18. The waiver being sought is permanent in nature.

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F. ACTION REQUESTED

19. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant the requested waiver of the time period for issuance of a firm loan commitment until December 31, 2019; (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,



Gene E. Crick, Jr., Esq.

Fla. Bar No. 0972258

Nelson Mullins Broad and Cassel

390 N. Orange Ave., Suite 1400

Orlando, Florida 32801

Telephone: (407) 839-4200

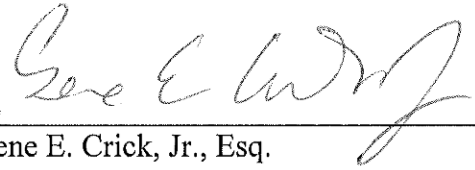
Facsimile: (407) 425-8377

Email: gene.crick@nelsonmullins.com

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The original 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 32301-1329, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 3rd day of July, 2019.

By: 
Gene E. Crick, Jr., Esq.
Fla. Bar No. 0972258