

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**SULZBACHER CENTER FOR WOMEN
AND CHILDREN, LTD.,
a Florida limited partnership,**

Petitioner,

CASE NO. 2019-053VW

vs.

Application No. 2015-149CS/2016-423CS

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(3)(i) - (j) (10-8-14) AND RFA § 4(A)(7)
TO CHANGE THE NUMBER OF UNITS, TOTAL SET-ASIDE PERCENTAGE AND
HOMELESS DEMOGRAPHIC COMMITMENT ELI SET-ASIDE REQUIREMENT**

Sulzbacher Center for Women and Children, Ltd., a Florida limited partnership (the “Petitioner”) hereby amends its petition to Florida Housing Finance Corporation (the “Corporation”) for: (i) a waiver or variance of the Corporation’s prohibition on changes in “Total Number of Units” designated by an applicant, and (ii) a waiver or variance of the Corporation’s prohibition on changes in the “Total Set-Aside Percentage” designated by an applicant. *See* Rule 67-48.004(3)(i) and (j), F.A.C. (10-8-14). Petitioner also seeks to waive the Homeless Demographic Commitment ELI Set-Aside Requirement in Section 4(A)(7)b.(2) of RFA 2014-115 as it pertains to the additional units because Petitioner intends for 100% of the additional units to be utilized for the benefit of homeless persons. In support of its petition, the Petitioner states:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative for Petitioner’s application:

Sulzbacher Center for Women and Children, Ltd.
611 E Adams St
Jacksonville, FL 32202
Attn: Cindy Funkhouser, MSW
Telephone: (904) 923-0433
Facsimile: N/A
E-Mail: cindyfunkhouser@SulzbacherJax.org

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

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
Facsimile: 305-789-3395
E-mail: bmcdonough@stearnsweaver.com

B. THE DEVELOPMENT

3. Petitioner timely submitted an application pursuant to RFA 2014-115, “Housing Credit Financing For Affordable Housing Developments Located In Broward, Duval, Hillsborough, Orange, Palm Beach, And Pinellas Counties” (the “RFA”). The funds were intended to finance the construction of a 70-unit new construction garden-style Homeless development in Duval County, known as Sulzbacher Village (the “Development”).

4. Petitioner requested \$3,500,000 SAIL and \$922,492 9% Housing Credits with set asides of 15% at 33% AMI and 85% at 60% AMI.

5. Corporation staff issued Petitioner an at-risk invitation to enter credit underwriting on November 2, 2015.

6. A Carryover Allocation Agreement was issued on December 29, 2016.

7. Petitioner's application reflected a total of 70 units, with a Total Set-Aside-Breakdown of 100%, as follows: 10 units at 33% AMI and 60 units at 60% AMI. Petitioner is seeking to increase the total number of units from 70 to 97 units. Because Petitioner intends for the additional 27 units to be at market rate, the Total Set-Aside Percentage would decrease from 100% to 72.1649%. However, 100% of the original 70 units would still be set aside with 15% of those original units at 33% AMI and 85% at 60% AMI. Moreover, 100% of the additional 27 units will serve Female Homeless Veterans, as well as respite units, providing places for the Homeless to recover after a hospital stay.

C. **RULES FROM WHICH WAIVER IS SOUGHT**

8. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code in effect as of the submission of Petitioner's Application (the "Rule"):

The Rule 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 applicable submission, unless provided otherwise below:

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs **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;

(j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. Notwithstanding the foregoing, **the Total Set-Aside Percentage 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;

See Rule 67-48.004(3)(i) and (j), F.A.C. (10-8-14).

9. Petitioner also seeks to waive the Homeless Demographic Commitment ELI Set-Aside Requirement in Section 4(A)(7)b.(2) of the RFA, as applied to the 27 additional units, which provides:

7. Set-Aside Commitments:

b. Set-Aside Commitments per Corporation Requirements:

The Corporation has set-aside requirements beyond those required by Section 42 of the IRC which must be reflected on the Total Set-Aside Breakdown Chart at question 7.b. of Exhibit A, as outlined below:

(2) ELI Set-Aside Commitments:

(b) Homeless Demographic Commitment ELI Set-Aside Requirements:

The Applicant must set aside at least 15 percent of the total units as ELI Set-Aside units, one-third of which must be set-aside for Persons with a Disabling Condition (*i.e.*, 5 percent of the total units must be set aside as ELI Set-Aside units that serve Persons with a Disabling Condition).

Exhibit C to RFA 2014-115 - Housing Credit Financing for Affordable Housing Developments located in Broward, Duval, Hillsborough, Orange, Palm Beach and Pinellas Counties

1. Elderly or Homeless Demographic Commitment Requirements:

b. Homeless Demographic Commitment:

In order for a proposed Development to qualify for the Homeless Demographic, the Development must meet the following requirements:

- (4) If the proposed Development is not located in an LDA, the Applicant must set aside at least 15 percent of the total units as ELI Set-Aside units, 5 percent of which must be set aside for Persons with a Disabling Condition. If the proposed Development is located in an LDA, the Applicant must set aside at least 30 percent of the total units as ELI Set-Aside units, 5 percent of which must be set aside for Persons with a Disabling Condition;

No waiver is sought as to the original 70 units.

D. STATUTES IMPLEMENTED BY THE RULE

10. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, Section 420.5087 (State Apartment Incentive Loan Program), and Section 420.5099 (Allocation of the low-income housing tax credit).

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

11. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code. Petitioner also seeks a waiver of the Homeless Demographic Commitment ELI Set-Aside Requirement in Section 4(A)(7)b.(2) of the RFA as it pertains to the additional 27 units.

12. It is not uncommon for development changes to occur after submission of an application to the Corporation. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would 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. *See* § 120.542(2), Fla. Stat.

13. The waiver is being requested because, after submission of the Application stating that the Development would comprise 70 units, the space originally designed to hold 54 units was reconfigured to create an additional 27 (*i.e.*, the total number of units increased from 70 to 97 units). These 27 additional units will serve Female Homeless Veterans as well as respite units providing places for the Homeless to recover after a hospital stay. Denying this request would cause economic hardship for the community as well as the Petitioner in not being able to further

their mission of providing housing for the Homeless in our community. Granting this request will not impact the number or quality of affordable housing units referenced in Petitioner's application and would augment the proposed Development by permitting additional units to help serve the communities' Homeless population.

14. Similarly, the waiver from the Homeless Demographic Commitment ELI Set-Aside Requirement in the RFA would further the goal of providing additional affordable housing to the homeless above and beyond what has been committed to through the State Apartment Incentive Loan and low-income housing tax credit programs. In order for the Development to qualify for the RFA's Homeless Demographic, the Development need only commit to rent at least 50 percent of the total units to Homeless Households at 60 percent or less of the AMI and set aside at least 15% of the total units as ELI Set-Aside units. However, Petitioner intends for 100% of the additional units to serve homeless persons, and these persons will be moving into respite units from living on the street, coming out of treatment or other facilities, or other similar situations, and will have little to no income. Thus, the additional units would be used to enhance the ability of extremely low-income households to access affordable housing. Requiring the Development to provide an additional 4 ELI units over and above the ELI units originally set aside would cause Petitioner economic hardship in the form of reduced rental value.

15. The changes are not prejudicial to the Development or to the market. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, Section 420.5087 (State Apartment Incentive Loan Program), and Section 420.5099 (Allocation of the low-income housing tax credit). The requested increase of the total number of units, decrease of the Total Set-Aside Percentage, and waiver of the Homeless Demographic Commitment ELI Set-Aside Requirement, would serve the purposes of Section 420.5099, Florida Statutes, 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 households of limited means, and would provide the additional benefit of meeting the critical need for more units to serve the Homeless population.

16. A denial of this Petition (a) will result in substantial economic hardship to Petitioner; (b) could deprive Duval County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness.¹ *See* § 120.542(2), Fla. Stat.

17. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. PERMANENCY

18. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

Petitioner requests that the Corporation:

- a. Grant Petitioner a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code, allowing it to increase the total number of units from 70 to 97 and to decrease the Total Set-Aside Percentage from 100% to 72.1649%;
- b. Waive the Homeless Demographic Commitment ELI Set-Aside Requirement in Section 4(A)(7)b.(2) of RFA 2014-115 as applied to the 27 additional units;
- c. Grant the Petition and all the relief requested therein; and

¹“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when 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. *See* § 120.542(2), Florida Statutes.

- d. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

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By: s/Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 4th day of June, 2019.

s/Brian J. McDonough
Brian J. McDonough, Esq.