

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

LOFTS ON LEMON DEVELOPMENT PARTNERS, LLC

Petitioner,

vs.

CASE NO.: 2020-035VW

**FLORIDA HOUSING FINANCE
CORPORATION**

APPLICATION NO. 2018-151C

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(3)(i)
FOR A CHANGE IN TOTAL SET-ASIDE PERCENTAGE AND
VARIANCE FROM RFA 2017-111 SECTION 4.A.6d.(2)(a)(i)**

Lofts on Lemon Development Partners, LLC (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for (i) a waiver of the Corporation's prohibition on changing the "Total Set-Aside Percentage" in its application submitted under RFA 2017-111, and (ii) a waiver or variance from the provisions of Section 4.A.6d.(2)(a)(i) of the RFA 2017-111 Instructions which require an applicant to set-aside at least 80% of the development's units at 60% of area median income, and (iii) approval of an increase in the total number of units from 76 units to 128 units. See Rule 67-48.004(3)(i) and (j) (2017).

In support of its petition, the Petitioner states:

1. The address, telephone number, and e-mail address of the Petitioner are:

Lofts on Lemon Development Partners, LLC
c/o Sarasota Housing Authority
269 Osprey Avenue, Suite 100
Sarasota, FL 34236
Attention: William Russell, Executive Director
Telephone: (941) 361-6290
Email: wrussell@sarasotahousing.org

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

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd.
Suite 4100
Miami, FL 33131
(305) 347-7308
(305) 347-7808 (Fax)
gcohen@shutts.com

3. The Petitioner timely submitted its Application in RFA 2017-111 (Application #2018-151C) for the development named “Lofts on Lemon” (the “Development”). Corporation has issued a Preliminary Allocation of Housing Credits to Petitioner.

4. Equity raised from Housing Credits will be used for the development of Lofts on Lemon, a new apartment development intended to serve low-income individuals and families in Sarasota, 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 Sarasota and Sarasota County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2019).

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 (2017). In addition, Petitioner requests a waiver from the provisions of Section 4.A.6d. (2)(a)(i) of the RFA 2017-111 Application Instructions which requires applicants to set aside at least 80% of a development’s units at 60% of area median income or less. Specifically, Petitioner is seeking to increase the total number of units in the Development from 76 (as contained in its application) to 128, and to decrease the Total Set-Aside Percentage from 100% (as indicated in its Application) to approximately 59.375%. Petitioner intends that the additional fifty-two (52) units will not be subject to Section 42 income or rent restrictions (“Non-Credit Units”).

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

“(3) for SAIL, HOME and Housing Credit Programs, notwithstanding any other provisions 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, 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...;

(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...”.

Rules 67-48.004(3)(i) and (j), FAC (2017)

On page 27 of RFA 2017-111 Application Instructions, Section 4.A.6d.(2)(a)(i) of such instructions (“Total Income Set-Aside Commitment”) provides as follows: “...the Applicant must set aside a total at least 80 percent of the Development’s total units at 60 percent AMI or less.” In its application, Petitioner committed to set aside 100% of the Development’s 76 units at 60 percent AMI or less.

As part of this Petition, Petitioner is requesting the Corporation to approve an increase in the total number of units in the Development from 76 units to 128 units, pursuant to the provisions of Rule 67-48.004(3)(i).

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 (2017) and from Section 4.A.6d.(2)(a)(i) of the RFA 2017-111 Application Instructions. Petitioner is seeking a waiver from the Rule allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 59.375%.

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 Corporation for its Housing Credit program, for 76 low-income tax credit housing units, with the Total Set-Aside Percentage of 100%, and received a preliminary allocation of 2018 Housing Credits (subsequently exchanged for 2019 Housing Credits).
- b. Pursuant to applicable zoning for the area in which the Development is located, additional units can be added to the Development.
- c. Local government has urged Petitioner to take full advantage of governmental zoning by providing an additional number of housing units. The local government has provided a commitment for subordinate financing of \$3,500,000.00, and in addition Petitioner has received commitments for \$2,000,000.00 of subordinate financing from the Barancik Foundation and \$2,000,000.00 from the Community Foundation of Sarasota, specifically with the goal of constructing additional units for the local residents with incomes above Section 42 limits.

- d. An increase in the number of residential units will allow Petitioner to provide a mixed-income Development with both affordable housing and Non-Credit Units.
- e. The additional Non-Credit Units will, however, result in a corresponding decrease in the Total Set-Aside Percentage provided for in its application.
- f. Vacancy rates are at low levels in this area, and the rental market for affordable and Non-Credit Units is significantly underserved. Grant of the requested waiver will not change in any way the number or quality of affordable housing units referenced in Petitioner's application, and would augment the proposed Development by permitting a unique mixed-income housing opportunity. Grant of the requested waiver will not generate any additional Housing Credits; the Housing Credits are generated by the percentage of the Development's eligible basis equal to the low-income set-aside percentage (in this case, 59.375% of the eligible costs incurred in constructing the Development). As such, the existing allocation of Housing Credits (and Housing Credit financing) effectively does not pay for the development of the Non-Credit Units.
- g. 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 fifty-two (52) additional units. More significantly, up to 52 families would be deprived of the opportunity to obtain housing.

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 with Non-Credit Units.

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, particularly in an area uniquely suited to a mixed-income housing project. 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 (2017), allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 59.375% and increase the total number of units from 76 to 128;

(b) That the Corporation grant Petitioner a waiver from the provisions of Section 4.A.6d.(2)(a)(i) of the RFA 2017-111 Application Instructions; and

- (c) That the Corporation grant Petitioner's request to increase the total number of units from 76 units to 128 units; and
- (d) Grant the Petition and all the relief requested therein; and
- (e) Grant such further relief as may be deemed appropriate.

Respectfully submitted,

SHUTTS & BOWEN LLP
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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, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 17th day of June, 2020.



Gary J. Cohen