

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

VALOR PRESERVE, LLLP,
a Florida limited liability limited partnership,

Petitioner,

FHFC CASE NO. 2020-059VW
Application No. 2020/453CS

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(3)(g), F.A.C. (7/11/19)

Petitioner Valor Preserve, LLLP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the prohibition against revising the Development Type identified in the Application per Rule 67-48.004(3)(g), Florida Administrative Code ("F.A.C.") effective July 11, 2019 (the "Rule"). To comply with a request of the non-profit owner (Pinellas County Housing Authority) and the service coordinator¹ to utilize single-story micro cottages for the benefit of the Development's residents (the majority of whom will satisfy the "Persons with a Disabling Condition" demographic), Petitioner must adjust its Development Type from garden to quadraplex, while leaving the total number of units, as well as the Total Development Cost per unit limitation, the same. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

¹ Pinellas County Housing Authority will provide operating and management responsibilities for the Development, and Boley Centers, Inc. will serve as the service coordinator for the functions and management related to the disabling condition and homeless population at the Development.

Debra Johnson
Valor Preserve, LLLP
11479 Ulmerton Rd.
Largo, FL 33778
Telephone: (727)443-7684
Fax: N/A
Email: djohnson@pinellashousing.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff &
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150 West Flagler Street
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B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's application:

- Development Name: Valor Preserve at Lake Seminole
- Development Address: Seminole Blvd, SE of the intersection of Seminole Blvd and Village Green Ave, Seminole
- County: Pinellas
- Developers: Norstar Development USA, LP and Pinellas Property Management Company, Inc.
- Number of Units: 64 new construction
- Type: Garden was indicated in the Application, but this Petition seeks a change to Quadraplex.
- Set Asides: 85% of units at 60% AMI or lower and 15% at or below 33%.

- Demographics: At least 50 percent, but less than 80 percent, of the total units will be set aside for Permanent Supportive Housing for persons with a Disabling Condition as defined in Section 420.0004(7), F.S.; and at least 20 percent of the total units will consist of Permanent Supportive Housing for individuals and families that meet the definition of Homeless as defined in Section 420.621(5), F.S., (which may be the same units set aside for persons with a Disabling Condition).
- Funding: HC request of \$1,700,000 annually; ELI Loan request of \$270,400; and SAIL request of \$3,729,600.

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.004(3)(g), effective July 11, 2019,

which provides in pertinent part:

(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:

(g) Development Type

Id.

6. “Development Type” is not defined under Chapter 67-48, nor in Request for Applications 2020-106, Housing Credit Financing for Development of Housing for Persons with a Disabling Condition or Developmental Disabilities (“RFA”); rather, the RFA provides a list of “Development Types” from which applicants are required to select only one, as follows:

Select the Development Type for the proposed Development. **For mixed-type Developments, indicate the type that will comprise the majority of the units in the Development.**

- Garden Apartments (a building comprised of 1, 2 or 3 stories, with or without an elevator)
- Duplexes

- Quadraplexes
- Mid-Rise, 4-stories (a building comprised of 4 stories and each residential building must have at least one elevator)
- Mid-Rise, 5 to 6-stories (a building comprised of 5 or 6 stories and each residential building must have at least one elevator)
- High Rise (a building comprised of 7 or more stories and each residential building must have at least one elevator)

See RFA, p. 18 (emphasis added).

7. In Petitioner's response to the RFA ("Application"), Petitioner selected the Development Type of "Garden." For reasons discussed below, Petitioner must revise the Development's design to a mixed-type development of which the majority of units are quadraplexes. Petitioner must therefore change the Development Type as identified in the Application from Garden to Quadraplex.

E. STATUTES IMPLEMENTED BY THE RULE.

8. Rule 67-48.004, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.5087, State Apartment Incentive Loan Program;
- Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund; and
- Section 420.5099, Allocation of the low-income housing tax credit.

9. Per Section 420.5099(1)-(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

10. Petitioner timely submitted the Application for the Development on March 26, 2020.

11. On July 16, 2020, Pinellas County Housing Authority (“PCHA”), the non-profit owner, requested revision of the proposed Development design to utilize single-story micro cottages. See E-mail from D. Johnson, attached as Exhibit A. PCHA made the request upon the belief the residents (the majority of whom will satisfy the “Persons with a Disabling Condition” demographic) would “benefit from having single-story cottages that provide more direct access from parking areas, more immediate access to supportive services and community amenities, and increased privacy from being in smaller buildings with few neighbors.” *Id.* PCHA also felt the residents would “appreciate having direct access to explore the natural beauty of the lakefront and surrounding area.” *Id.* The Development’s service coordinator, Boley Centers, Inc., has also advised that the cottage-style single-story buildings will better serve the residents with disabling conditions.²

12. To accommodate this request, Petitioner must change the number of residential buildings identified in the Application from one garden-style apartment building of 64 units to 18 single-story micro cottages (3 duplexes, 2 triplexes, and 13 quadraplexes) containing 64 total units and a stand-alone clubhouse. If this request is granted, the total unit number would remain the same (64 units), and the unit mix would remain the same (58 one-bedroom units and 6 two-bedroom units). However, because the majority of the mixed-type development would be quadraplexes, the Development Type would change from “Garden” to “Quadraplex.”

² PCHA has partnered with Boley Centers, Inc. (“Boley”) to provide permanent supportive services coordination for the Development’s population. Founded in 1970, Boley is a not-for-profit organization serving individuals with mental disabilities, homeless, Veterans and youth in Pinellas, Hillsborough, Manatee, Pasco and Sarasota counties. Both PCHA and Boley Centers have extensive experience addressing the needs of disabled persons and Veterans. This experience has revealed many of the typical challenges these populations face, and – as set forth in the Application at p. 3, the Development “will be designed to address some of those challenges.”

Accordingly, Petitioner respectfully requests a waiver of the Rule to permit a change in the Development Type identified in the Application.

13. Under Section 120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers 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, violate principles of fairness,³ and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

14. If the Rule is imposed, Petitioner will suffer a substantial and unnecessary economic and operational hardship. After submitting the Application, Petitioner must redesign the Development due to circumstances outside of its control. The waiver would allow Petitioner to address the needs of the Development's residents with Disabling Conditions – as identified by two entities with decades of experience in addressing such needs – by providing more direct access from parking areas, more immediate access to supportive services and community amenities, increased privacy, and direct access to explore the natural beauty of the lakefront.

15. Petitioner meets the standards for granting the requested waiver. The need for the waiver was requested early in the process and will not prejudice the Development, Florida Housing, nor any other applicant. Per the RFA, the Total Development Cost (“TDC”) per unit limitation to be used during the scoring process, as well as during credit underwriting and final

³ “Substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the 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. § 120.542(2), Fla. Stat.

cost certification, is the same for garden and quadraplexes. *See* RFA, Section Five and Exhibit C, pgs. 65 and 86 (“Garden includes all Development Types other than Mid-Rise and High-Rise”). Granting this Petition would not affect the TDC limitation.

16. The requested waiver will ensure that 64 affordable housing units will be made available for the target population in Pinellas County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because the redesign is necessary to satisfy the non-profit owner’s request and meet the needs of the Development’s residents with Disabling Conditions. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Denying the waiver would deny Pinellas County these much-needed affordable housing units.

G. ACTION REQUESTED

17. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the Rule such that Petitioner is able to amend the Development Type as described in the Application; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
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Counsel for Petitioner

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

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 17th day of September, 2020.

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

EXHIBIT A

From: Debbie Johnson <djohnson@pinellashousing.com>
Sent: Thursday, July 16, 2020 1:24 PM
To: Brian Evjen <bevjen@norstarus.com>
Subject: Valor Preserve - request to change building count

Brian,

Per our discussion, Pinellas County Housing Authority (PCHA) requests that Norstar revise the proposed design for Valor Preserve at Lake Seminole to utilize micro cottages similar to those built by Lakeland Housing Authority (LHA) at its Williamstown Micro Cottages development. We believe the residents would benefit from having single-story cottages that provide more direct access from parking areas, more immediate access to supportive services and community amenities, and increased privacy from being in smaller buildings with few neighbors. With the property being located on Lake Seminole, we also believe the tenants would appreciate having direct access to explore the natural beauty of the lakefront and surrounding area.

Will you please have the design team draw up plans incorporating the 64 units into duplex style, single story buildings and have your contractor price the construction to make sure it falls within the proposed budget submitted to FHFC?

Thank you,
Debbie



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