

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

AMERICAN OPPORTUNITY FOR
HOUSING-GREENVIEW MANOR
LIMITED PARTNERSHIP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

APPLICATION NO. 2006A-247B

FHFC Case No. 2007-015 JW

**PETITION FOR WAIVER FROM RULES 67-21.003(1)(a),
67-21.006(2), AND 67-48.004(1)(a), F.A.C.**

AMERICAN OPPORTUNITY FOR HOUSING-GREENVIEW MANOR LIMITED PARTNERSHIP ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rules 67-21.003(1)(a), 67-21.006(2) and 67-48.004(1)(a), Florida Administrative Code (2006). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone and facsimile number of the Petitioner is:

American Opportunity for Housing-Greenview Manor Limited Partnership
7334 Blanco Road, Suite 200
San Antonio, Texas 78216
Telephone: (210) 341-8097
Facsimile: (210) 341-8573

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

Maureen McCarthy Daughton, Esquire
Broad and Cassel
215 South Monroe Street, Suite 400
Tallahassee, FL 32301
Telephone: (850) 681-6810
Facsimile: (850) 521-1478

3. Petitioner successfully applied for financing from the Multifamily Mortgage Revenue Bond ("MMRB") Program in the 2006 Supplemental MMRB Application Cycle of the Universal Application Multifamily Mortgage Revenue Bonds (MMRB) Program, State Apartment Incentive Loan (SAIL) Program, HOME Investment Partnerships (HOME) Rental Program, and Housing Credit (HC) Program (the "Supplemental Cycle") that the Corporation administers pursuant to Chapter 67-48, and 67-21, Florida Administrative Code. The Petitioner's Application number is 2006A-247B (the "Application"). Petitioner applied for MMRB funds to finance a portion of the costs to rehabilitate a multi-family rental apartment complex in St. Petersburg, Florida, and known as Greenview Manor Apartments (the "Development").

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from various sections of Rules 67-21.003, 67-21.006 and 67-48.004, Florida Administrative Code (2006). More specifically, Petitioner is seeking a waiver from what is designated as the "Application and Selection Process for Developments", subsection (1)(a) of Rule 67-21.003, F.A.C., and "Application and Selection Procedures for Development," subsection (1)(a) of Rule 67-48.004, F.A.C., and what is designated as "Development Requirements", subsection (2) of Rule 67-21.006, F.A.C.

Rule 67-21.003(1)(a) provides:

(1)

(a) The Universal Application Package or UA1016 (Rev. 1-06) is adopted and incorporated herein by reference and consists of the forms and instructions, obtained from the Corporation, at 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, or available, without charge, on the Corporation's Website under the 2006 Universal Application link labeled Instructions and Application, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the MMRB Program.

Rule 67-21.006(2) provides:

A Development shall at a minimum meet the following requirements or an Applicant shall be able to certify that the following requirements shall be met with respect to a Development:

* * *

(2) Must be owned, managed and operated as a Development to provide multifamily residential rental property comprised of a building or structure or several proximate buildings or structures, each containing five or more dwelling units and functionally related facilities, in accordance with Section 142(d) of the IRC.

* * *

Rule 67-48.004(1)(a) provides:

(1)

(a) The Universal Application Package or UA1016 (Rev. 1-06) is adopted and incorporated herein by reference and consists of the forms and instructions, obtained from the Corporation, at 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, or available, without charge, on the Corporation's Website under the 2006 Universal Application link labeled Instructions and Application, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME, HC or SAIL and HC Programs(s).

5. The Specific Instructions of the Universal Application Instructions provides under Part III A.3.b.:

3.
 - b. Indicate whether each residential building will consist of 5 or more dwelling units.

6. The Specific Instructions of the Universal Application Instructions provides under Part III A.4.:

4. Applicants must select the one Development Type that best describes the proposed Development. For mixed-type Developments, indicate the type that will comprise 50% or more of the units in the Development. Applications requesting funding from MMRB, SAIL or MMRB and SAIL must be for a proposed Development consisting of 5 or more dwelling units in each residential building.

* * *

7. The Universal Application provides under Part III A.3.b.:

3.
 - b. Will each residential building consist of 5 or more dwelling units? [Yes/No response required].

STATUTES IMPLEMENTED BY THE RULE

8. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the MMRB program. Section 420.509, Florida Statutes.

9. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.516, Florida Statutes.

fairness², and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

10. The Corporation, through implementation of Rules 61-21.003(1)(a), 61-21.006, and 67-48.004(1)(a), requires that developments for which MMRB are sought have at least five dwelling units in each residential building, and seeks information as to whether an applicant meets that requirement in the Universal Application at Part III., Section A, Paragraph 3.b. In its Application to the Corporation, the Applicant responded that each residential building will NOT consist of 5 or more dwelling units. Because the Application Instructions specifically require a Development to consist of buildings each containing 5 or more dwelling units if applying for MMRB funding, Petitioner respectfully requests a waiver of that requirement so that Petitioner can proceed with MMRB funding for the Development.

11. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rule if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. Unless the rule is waived to allow the changes as outlined above, certain unreasonable, unfair and unintended consequences will result. Petitioner has applied for MMRB funds to rehabilitate an existing multifamily development in St. Petersburg, Florida that was originally constructed in the early 1980s. Because the residential buildings in the Development are pre-existing buildings, Petitioner is not able to meet the current requirements of the Corporation to apply for MMRB funding with residential buildings that each contain five or more dwelling units. Out of the eight (8) total residential buildings within the Development, six (6) of the residential buildings meet the

² “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. Section 120.542(2), Florida Statutes.

Corporation's requirements of having five or more dwelling units per building, and two (2) of the residential buildings within the Development have only four (4) units per residential building. If the Corporation were to deny Petitioner's request to waive the requirement that each residential building within this Development consist of five or more residential units, Petitioner would not be able to move forward with the MMRB financing, and thus would not be able to rehabilitate this 25-year old Development, which is an unreasonable, unfair and unintended consequence of the rule.

12. The Corporation, in its Rule, requires that the Development provide a multifamily residential rental property in accordance with Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"). Section 142(d), addresses the "qualified residential rental project", which is one of the uses for which exempt facility bonds, including MMRB, may be issued. Further guidance as to what constitutes a "residential rental project" is provided in the corresponding Treasury Regulations, at Treas. Reg. § 1.103-8(b)(4). A "residential rental project", under those regulations, does not include owner-occupied residences, which is any building or structure which contains fewer than five units, one unit of which is occupied by an owner of the units. Treas. Reg. § 1.103-8(b)(4)(iv).³ The Corporation must ensure that a Development meets the requirements of Section 142 of the Code, and the corresponding regulations, as an issuer of exempt facility bonds. However, Petitioner is not violating Section 142 of the Code and the corresponding regulations by having buildings within the developments that do not contain five or more dwelling units, as none of those units will be owner-occupied residences. Because Petitioner is not occupying any of the units within the buildings consisting of less than five dwelling units, there is no reason that the buildings within the Development

³ A similar requirement exists under Section 42(i)(3)(C) of the Code with respect to low-income housing tax credits. In that section, which defines "low-income unit", no unit in a building having four or fewer units can be treated as a low-income unit if a unit is occupied by an owner or a person related to the owner.

must contain five or more dwelling units to be considered “residential rental units” for purposes of Section 142(d) of the Code.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

13. Petitioner believes that a waiver of these rules will serve the purposes of the statute which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the MMRB program was to provide loans to sponsors, including for-profit, non-profit and public entities, to provide affordable housing to very low income persons. By granting this Waiver to allow Petitioner to move forward with MMRB financing notwithstanding the fact that not all of the residential buildings within the Development have five or more units, the Corporation would recognize the goal of continuing to supply of affordable housing through private investment in persons of low-income that is safe and livable to its residents. The Corporation is not harmed by granting this waiver, as the Corporation will continue to uphold the requirements for issuing exempt facility bonds for residential rental projects because none of the units within the buildings of the Development will be owner-occupied.

TYPE OF WAIVER

14. The waiver being sought is permanent in nature.

15. Should the Corporation have questions or require any additional information necessary for consideration of the Petition, please contact the undersigned.

ACTION REQUESTED

16. Petitioner requests the following:

a. A waiver from Rules 67-21.003(1)(a), 67-21.006(2), and 67-48.004(1)(a), F.A.C. (2006), to allow the relief requested.

17. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 23 day of March, 2007.



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