

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

NATIONAL DEVELOPMENT  
FOUNDATION, INC.,

Petitioner

v.

FLORIDA HOUSING FINANCE CORP.,

Respondent.

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Application No. 2007-157H

*FHFC Case No.*

*2007-022VW*

**PETITION FOR VARIANCE OR WAIVER OF  
RULE 67.48.018(1)(b), FLORIDA ADMINISTRATIVE CODE**

NATIONAL DEVELOPMENT FOUNDATION, INC., a Florida not-for-profit corporation ("NDF"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation ("FHFC") for a variance from or waiver of Rule 67.48.018(1)(b), Florida Administrative Code. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

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

National Development Foundation, Inc.  
c/o Randy Fleming  
4250 Alafaya Trail  
Suite 212-330  
Oviedo, FL 32765  
Telephone: (321) 432-7052  
Facsimile: (321) 454-3969

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

Jon C. Moyle, Jr.  
Moyle, Flanigan, Katz, Breton, White & Krasker, P.A.  
118 N. Gadsden Street  
Tallahassee, FL 32301  
Telephone: (850) 681-3828  
Facsimile: (850) 681-8788

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JUN 11 2007

3. Petitioner applied for financing from the Home Investment Partnership Rental Program (“HOME”) in the 2007 Universal Application Cycle. FHFC administers this program and others pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s application number is 2007-157H (the “Application”). Petitioner applied for HOME funds to finance the development of affordable housing units in Highlands County, Florida, to be known as Sleepy Hollow (the “Development”).

4. On June 5, 2007, FHFC issued its HOME Scoring Summary, a copy of which is attached hereto as Exhibit 1. FHFC indicated the Application failed threshold scoring for the following reason:

As of the Application Deadline, April 10, 2007, the Applicant had a commitment for HOME program funds for the proposed Development (Application No. 2005-104H). As stated in paragraph 67-48.018(1)(b), F.A.C., an Applicant is not eligible to apply for HOME Program funding if the Applicant has already accepted a preliminary commitment of funding for the proposed Development through the HOME Program and the commitment isn’t withdrawn by the Application Deadline for the current cycle. Since the Applicant did not withdraw from previous funding cycle until April 12, 2007, it is not eligible to apply for HOME funds in this funding cycle.

5. The Petitioner sought HOME funds during the 2005 Universal Application Cycle. FHFC awarded \$5,425,000 in funds to NDF during the 2005 funding cycle and provided a preliminary commitment for these funds, which Petitioner accepted. As construction costs escalated, the funds provided during the 2005 cycle were inadequate to complete the project as originally contemplated. Petitioner sought to continue with the project, and had numerous discussions with FHFC about how the project might be able to move forward. FHFC advised Petitioner at one point that it could possibly retain the 2005 funds, and seek additional funds in the 2007 Universal Application Cycle. See Exhibit 2.

6. Petitioner prepared an application for HOME funds for the 2007 cycle and timely submitted the application for the 2007 Universal Application Cycle. To comply with Rule 67-48.018(1)(b), F.A.C., Petitioner intended to relinquish the 2005 HOME funds preliminarily committed by FHFC prior to submitting its 2007 application. However, an oversight resulted in the Petitioner not submitting its notice relinquishing the 2005 funds until April 12, 2007, two days late. It would be manifestly unfair to not consider the Petitioner's 2007 application for Sleepy Hollow, a much-needed affordable housing development in Highlands County, due to this oversight.

**THE RULE FROM WHICH VARIANCE IS SOUGHT**

7. Rule 67-48.018(1)(b), Florida Administrative Code, states the following:

(1) Unless the Board approves a competitive allocation process outside the Universal Cycle, an Applicant is not eligible to apply for HOME Program funding if any of the following pertain to the proposed Development:

...

(b) The Applicant has already accepted a preliminary commitment of funding for the proposed Development through the HOME Program, the SAIL Program, or the RRLP Program, unless the Applicant has provided written notice to the Corporation prior to the Application Deadline for the current cycle that it is withdrawing its acceptance and returning its prior HOME Program, SAIL Program, or RRLP Program funding.

8. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for a variance from or waiver of the Rule:

(a) Petitioner timely submitted its 2005 Universal Application to Florida Housing for HOME funding;

(b) Petitioner's 2005 application was scored and received a preliminary commitment of funds;

(c) Circumstances beyond Petitioner's control, including escalating construction costs, made it impractical to proceed with the development without additional funding.

(d) Petitioner proactively met with FHFC to inform them of the situation and to explore other ways to provide the affordable housing units in Highlands County, Florida.

(e) Petitioner was informed by FHFC staff that it could possibly retain the 2005 HOME Funds while seeking 2007 HOME Funds. See Exhibit 2.

(f) Petitioner complied with the requirements of Rule 67-48.018(1)(b) by relinquishing the 2005 funds; however, by means of an inadvertent oversight, Petitioner's withdrawal was submitted shortly after its 2007 application was filed, not prior to filing the 2007 application as required by the rule.

(g) A denial of the requested variance or waiver will result in substantial economic hardship to the Petitioner and be unfair to the Petitioner. Without receiving and scoring Petitioner's 2007 HOME application, the much needed Sleepy Hollow affordable housing development in Highlands County will suffer considerable harm.

#### **STATUTES IMPLEMENTED BY THE RULES**

9. The Rule implements, among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the statute that created the HOME program. Section 420.5089, Florida Statutes, authorizes FHFC to make loans available to eligible housing providers, such as Petitioner.

10. The pertinent statute regarding granting of variance and waivers provides: "Variances and waivers shall be granted when the person subject to the rule demonstrates that

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "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." Section 120.542(2), Florida Statutes. The hardship in this case is that the Petitioner will not be able to move forward with a much needed affordable housing project in Highlands County into which considerable time, energy, effort and money has been invested. It is unfair that Petitioner, after successfully applying for HOME funds during the 2005 cycle, would not receive consideration of its 2007 application due to an oversight. Petitioner was provided with no material advantage compared to other applicants as it relinquished its 2005 HOME funds shortly after, rather than before, the 2007 application deadline.

**WAIVER OR VARIANCE WILL SERVE THE  
UNDERLYING PURPOSE OF THE STATUTE**

11. Petitioner believes that a variance or waiver of Rule 67.48.018(1)(b), Florida Administrative Code, will serve the purposes of Section 420.5089, Florida Statutes, and the Act which is implemented by the rule, because one of the statutory goals is to facilitate the availability of affordable, decent, safe and sanitary housing in the State of Florida.

It is the intent of this act to begin the process of articulating a state housing strategy that will carry the state towards the goal of assuring that by the year 2010 each Floridian shall have decent and affordable housing.

See Section 420.0002(1), Florida Statutes.

The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage the development of additional affordable housing. By granting this variance and waiver request, FHFC would recognize the goal of increasing the supply of affordable housing to Floridians, particularly those Floridians of Highlands County.

12. The requested variance or waiver will not adversely impact FHFC.

**TYPE OF VARIANCE**

13. The variance being sought is permanent in nature.

14. Should FHFC have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

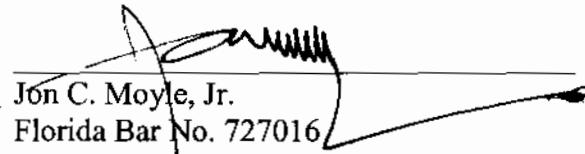
**ACTION REQUESTED**

15. Petitioner requests the following:

- a. Grant the Petition and all the relief requested herein;
- b. Provide a variance from or waiver of Rule 67.48.018(1)(b), Florida Administrative Code.
- c. Score and rank Petitioner's 2007 application for HOME funds submitted for the 2007 Universal Application Cycle.
- d. Provide such other relief as deemed applicable.

16. 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 18<sup>th</sup> day of June, 2007.



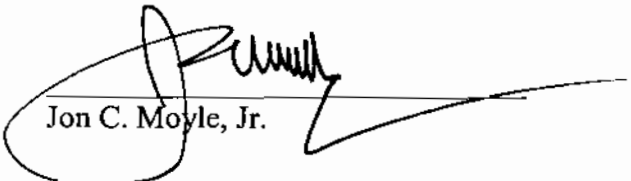
Jon C. Moyle, Jr.  
Florida Bar No. 727016  
Moyle, Flanagan, Katz, Breton,  
White & Krasker, P.A.  
118 N. Gadsden Street  
Tallahassee, FL 32301  
Telephone: (850) 681-3828  
Facsimile: (850) 681-8788  
Counsel for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by  
(\* ) hand delivery and U.S. Mail this 18<sup>th</sup> day of June, 2007.

\*Sherry Green, Clerk  
Florida Housing Finance Corporation  
227 North Bronough Street  
Suite 5000  
Tallahassee, FL 32301

Joint Administrative Procedures Committee  
600 S. Calhoun Street  
Room 120 Holland Building  
Tallahassee FL 32399-1300



Jon C. Moyle, Jr.

## 2007 HOME Scoring Summary

As of: 06/05/2007

File # 2007-157H

Development Name: Sleepy Hollow

As Of:	Total Points	Met Threshold?
05 - 05 - 2007	66	N
Preliminary	65	N
NOPSE	65	N
Final	0	N
Final-Ranking	0	N

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1S	III	B	2 a	Optional Features & Amenities	9	5	9	0	0
1S	III	B	2 b.	New Construction	9	0	0	0	0
2S	III	B	2.c.	Rehabilitation/Substantial Rehabilitation	12	12	12	0	0
2S	III	B	2.d	All Developments Except SRO	12	0	0	0	0
3S	III	B	2.e	SRO Developments	9	9	9	0	0
				Energy Conservation Features					
4S	III	C	1	Ability To Proceed	2	2	2	0	0
5S	III	C	4.	Site Plan/Plat Approval	3	3	3	0	0
				Evidence of Zoning					
6S	III	F	2.b	Set-Aside Commitments	3	3	3	0	0
7S	III	E	3	Commitment to Set Aside Units Beyond the Minimum	5	5	5	0	0
				Affordability Period					
8S	III	F	1	Resident Programs	6	6	6	0	0
8S	III	F	2	Programs for Non-Elderly & Non-Homeless	6	0	0	0	0
8S	III	F	3	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	4	Programs for Elderly	6	8	8	0	0
				Programs for All Applicants					



## 2007 HOME Scoring Summary

As of: 6/15/2007

File #: 00011774

Development Name: Safety Follow

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1C	II		A	Local Government Support	5	5	5	0	0
1D	IV		B	Incentives	4	4	4	0	0

**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1F	II	B	3.b	General Contractor	The Applicant failed to include the Name of General Contractor or qualifying agent of General Contractor on the General Contractor's or qualifying agent's Prior Experience Chart	Preliminary	
2F	III	C	5	Environmental Safety	The Applicant failed to provide the required Verification of Environmental Safety Phase I Environmental Site Assessment form and, if applicable, the Verification of Environmental Safety Phase II Environmental Site Assessment form	Preliminary	
3F				Program Eligibility	As of the Application Deadline, April 10, 2007, the Applicant had a commitment for HOME Program funds for the proposed Development (Application No. 2005-1044). As stated in paragraph 67-48.018(1)(b) F.A.C., an Applicant is not eligible to apply for HOME Program funding if the Applicant has already accepted a preliminary commitment of funding for the proposed Development through the HOME Program and the commitment isn't withdrawn by the Application Deadline for the current cycle. Since the Applicant did not withdraw from previous funding until April 12, 2007, it is not eligible to apply for HOME funds in this funding cycle.	NOPSE	

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From: randyfleming@msn.com  
To: daskrocki@cfl.rr.com; okonski1@msn.com; pvermales@cfl.rr.com;  
RandyFleming@email.msn.com; dbays@cfl.rr.com  
Subject: Fw: Sleepy Hollow Home funds  
Date: Wed, 13 Sep 2006 11:24:01 -0400

All,

As a follow up to our conversation, Carolyn has confirmed the following.

Sleepy Hollow can pursue two avenues to acquire additional Home funds.

1. Apply in the 2007 Home application for the difference in what was awarded to Sleepy Hollow in 2005 and what is allowed in 2007. Taking this path enables NDF to apply for less funding in the 2007 cycle and increased our chances of the award.

**or**

2. Keep the 2005 funding in place while applying for 2007 Home funds as a new application. NDF would not have to turn the 2005 award in prior to applying for the new funds.

Randy  
----- Original Message -----  
From: Carolyn Hayse  
To: randyfleming@msn.com  
Cc: Heather Boyd  
Sent: Monday, September 11, 2006 4:22 PM  
Subject: Sleepy Hollow

Randy,

**Below is the part of the HOME Rule 24CFR Part 92 stating when additional HOME funds may be committed to a project. I did not get a chance today to speak with Derek about applying in the 2007 Universal Cycle. I said I would let you know something today so I wanted to send this information to you.**

**Carolyn Hayse**

**HOME Rental Manager**

**Multifamily Loans Program**

**Florida Housing Finance Corp**

**(850) 488-4197**

**§ 92.214 Prohibited activities.**

**EXHIBIT 2**

(6) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under §92.504. **However, additional HOME funds may be committed to a project up to one year after project completion (see §92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under §92.250.**

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