

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

CAPE MORRIS COVE, L.L.L.P.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORP.,

Respondent

APPLICATION NO. 2007-142S

FHFC CASE NO.: 2008-004 VW

**PETITION FOR WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004(14)**

SPRING LAKE COVE, L.L.L.P. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver from Rule 67-48.004(14), Florida Administrative Code ("FAC"). 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 Petitioner is:

Cape Morris Cove, L.L.L.P.
c/o Atlantic Housing Partners
329 North Park Avenue, Suite 300
Winter Park, Florida 32789
407-741-8500 (telephone)
(407) 551-2353 (facsimile)

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

Kerey Carpenter
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751
407-741-8534 (direct line)
407-551-2353 (facsimile)

FLORIDA HOUSING FINANCE CORPORATION

OFFICE OF THE SECRETARY

10/1/08

3. Petitioner successfully applied for financing from the State Apartment Incentive Loan (“SAIL”) Program in the 2007 Universal Application Cycle that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s Application Number is 2007-142S (the “Application”). Petitioner applied for SAIL funds to finance a portion of the costs to develop a multi-family rental apartment community in Volusia County, Florida, to be known as Cape Morris Cove - Phase I (the “Development”). At the time of the Application, it was anticipated that the Development would be a 128-unit apartment community consisting of 18 one bedroom, 12 two bedroom and 98 three bedroom units.

THE RULES FROM WHICH A WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.004(14) (j), as in effect for the 2007 Universal Application Cycle. Rule 67-48.004(14) provides in relevant part as follows:

(14) Notwithstanding any other provision of these Rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempt to make changes to these items will not be accepted. Those items are as follows:

- (j) Total number of units;

STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the SAIL program. Section 420.5087, Florida Statutes.

6. The Corporation has 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

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

application of the rule would (1) create a substantial hardship or violate principals of fairness, 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

7. The provisions of the foregoing Rule prohibit a change in the total number of units and a change in the funding request amount. For the reasons set forth below, compliance with the foregoing provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

8. The original SAIL application filed by Petitioner reflected a 128-unit apartment community consisting of 18 one bedroom, 12 two bedroom and 98 three bedroom units. Petitioner desires to increase the size of development to 130 units consisting of 11 one bedroom, 5 two bedroom, 106 three bedroom and 8 four bedroom units. The proposed increase in units was made possible by final architectural and engineering designs which provided an opportunity to increase the number of units in the Development. The proposed changes to Cape Morris Cove – Phase I would have had no impact on the application’s scoring, thus providing Petitioner with no advantage over its competitors.

9. In light of the considerable time that it takes to develop and construct multi-family rental housing, FHFC’s statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that result in an improvement to the Development and a higher than anticipated number of affordable housing units being made available to serve with limited means. FHFC routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of

Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible advantage.

10. As explained above, the project changes requested by Petitioner increase the number of units being provided and they would have had no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

12. FHFC's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5087, as well as the SAIL Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of multi-family rental housing that is affordable to families of limited means. If the requested waiver is granted, the SAIL funds in question will be used to fund an affordable multi-family rental housing community for which there is a desperate need in Volusia County, Florida.

13. The violation of principles of fairness and imposition of a substantial hardship that would result from strict compliance with the provisions of FAC Rule 67-48.004(14) is obvious.

14. By granting a waiver and permitting Petitioner to increase the total number of units, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, through new construction, in an economical and efficient manner.

TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

ACTION REQUESTED

16. Petitioner requests a waiver from Rule 67-48.004(14) to permit a change in the total number of units from 128 units consisting of 18 one bedroom, 12 two bedroom and 98 three bedroom units to 130 units consisting of 11 one bedroom, 5 two bedroom, 106 three bedroom and 8 four bedroom units.

Respectfully submitted this 4th day of February, 2008.


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Florida Bar No. 963781
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.


Kerey Carpenter