

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**IN RE: SP BV APARTMENTS LLC**

**PETITION FOR WAIVER OF RULE 67-21.003(8)(f)  
FOR A CHANGE IN DEVELOPMENT CATEGORY**

FLORIDA HOUSING  
FINANCE CORPORATION

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Petitioner, SP BV Apartments LLC., a Florida limited liability company ("Petitioner"), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION (the "Corporation") for a waiver of Rule 67-21.003(8)(f), Florida Administrative Code, and particularly the prohibition on changes in the "Development Category" of a development.

In support of this petition, the Petitioner states:

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

SP BV Apartments LLC  
c/o Southport Development, Inc.  
5403 West Gray Street  
Tampa, FL 33609  
Attn: Scott Seckinger  
Telephone: (813) 288 6988  
Facsimile: (813) 288 1511  
Email: sseckinger@sphome.com

2. The contact person, along with contact information and relationship, for the Petitioner's Application to RFA 2014-111 – SAIL Financing of Affordable Multifamily Housing Developments with Funding to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the "Competitive Application") is the same as listed in Paragraph 1.

3. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel is:

Lawrence E. Sellers, Jr.  
Holland & Knight LLP  
315 S. Calhoun Street, Suite 600  
Tallahassee, FL 32301  
Phone: 850-224-7000  
Facsimile: 850-224-8832

4. The Petitioner timely submitted its Competitive Application under RFA 2014-111 (Application No. 2014-419S) for the development named "Brookside Village" (the "Development").

5. The Petitioner also timely submitted an application pursuant to Rule 67-21, Florida Administrative Code, for non-competitive Housing Tax Credits (the "Non-Competitive Application") for the Development because the Housing Tax Credits will be generated from the Corporation's issuance of tax-exempt Multifamily Mortgage Revenue Bonds.

6. Equity and debt financing raised from Housing Tax Credits, the SAIL Loan, and the Multifamily Mortgage Revenue Bonds will be used for the development of Brookside Village, an acquisition/rehabilitation of a previously-constructed 50-unit development intended to serve low-income families living in Lee County, Florida.

7. 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, and (b) would violate the principles of fairness. *See* Section 120.542(2), F.S.

8. The waiver being sought is permanent in nature.

The Rule For Which Waiver Is Sought

9. Petitioner requests a waiver of Rule 67-21.003(8)(f), F.A.C. (the "Rule"). Specifically,

Petitioner is seeking a waiver of the "Development Category" designation identified by Petitioner in the Non-Competitive Application.

Rule 67-21.003(8)(f), F.A.C., provides, in relevant part, as follows:

(8) 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 is deemed complete. Those items are as follows: ... (f) Development Category; ...

Statutes Implemented By The Rule

10. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. See Sections 420.509, 420.5099, F.S. (the "Statute").

Petitioner Requests A Waiver of The Rule For The Following Reasons

11. Petitioner requests a waiver of Rule 67-21.003(8)(f), F.A.C. Petitioner seeks a waiver of the Rule allowing it to change the Development Category listed in the Non-Competitive Application of "Acquisition/Preservation" to match what is stated within the Competitive Application of "Acquisition/Rehabilitation."

12. Petitioner is requesting a change in Development Category in order to complete an Acquisition and Rehabilitation of the Development as indicated in the Competitive Application, rather than an Acquisition and Preservation.

13. The Non-Competitive Application's scoring and funding would not have changed if the Applicant selected "Acquisition/Rehabilitation" rather than "Acquisition/Preservation." In addition, the 50-unit count and 100-bedroom count remain unchanged by this Petition.

14. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of those rules will lead to unreasonable, unfair or unintended results in particular instances. This is of particular importance in the current situation

because the inconsistency<sup>1</sup> in the Competitive Application and the Non-Competitive Application is an inadvertent error for which a correction will not alter the current plans for rehabilitation of the Development. Also, this Development will provide much needed low-income housing for families living in Lee County, Florida. Time is of the essence for the successful completion of this Development. Unless the Petitioner's request is granted, strict application of the Rule would violate principles of fairness. Moreover, unless the Rule is waived to allow the requested change, Petitioner will not be entitled to proceed with the tax-exempt Multifamily Mortgage Revenue Bonds, thereby resulting in substantial hardship to Petitioner and the Development.<sup>2</sup>

The Requested Waiver Will Serve The Underlying Purpose of The Statute

15. A waiver of the Rule will serve the purpose of the Statute which is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, *et seq.*) was enacted in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to change its Development Category, as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in facilities for persons of low-income.<sup>3</sup>

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<sup>1</sup> The Competitive Application does not provide the option to select "Acquisition/Preservation."

<sup>2</sup> The Corporation recently granted a very similar petition for waiver. See In Re: SP GA Apartments, LLC - FHFC Case No. 2015-006VW (March 24, 2015).

<sup>3</sup> Petitioner is available to answer questions and provide any requested additional information.

Type of Waiver

16. The waiver being sought is permanent in nature.

Action Requested

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant the Petition and all relief requested herein;
- B. Waive Rule 67-21.003(8)(f), Florida Administrative Code, thereby allowing Petitioner to change the Development Category listed in the Non-Competitive Application of "Acquisition/Preservation" to match what is stated within the Competitive Application of "Acquisition/Rehabilitation;" and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,



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*Attorneys for SP BV Apartments LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Petition for Waiver of Rule 67-21.003(8)(f) for a Change in Development Category was filed by electronic mail with Kate Flemming, Agency Clerk, that a true and correct copy was provided by electronic mail to Wellington Meffert, General Counsel, Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, and that a true and correct copy was provided to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 3299-1400, all on this 13th day of April, 2015.



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Lawrence E. Sellers, Jr.