

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

GAINESVILLE HOUSING DEVELOPMENT AND
MANAGEMENT CORPORATION,

Petitioner,

CASE NO.: 2018- 006VW

v.

APPLICATION NO. 2016-314E

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c)

Petitioner Gainesville Housing Development and Management Corporation, a Florida not for profit corporation (the "Petitioner"), submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.0072(4)(c) (the "Rule") in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2015-114 Elderly Housing Community Loan (the "RFA"), to allow Petitioner to extend the required closing date for the Elderly Housing Community Loan ("EHCL") funding allocated to Petitioner pursuant to the RFA. In support of this Petition for Rule Waiver of Rule 67-48.0072(4)(c) (the "Petition"), Petitioner states as follows:

A. Petitioner and the Development

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

Gainesville Housing Development and Management Corporation
1900 Southeast 4th Street
Gainesville, Florida 32641
Attention: Pamela E. Davis
Telephone: (352) 872-5000
Facsimile: (352) 872-5501

E-mail: pamelad@gnvha.org

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Bernice S. Saxon, Esq.
Saxon Gilmore & Carraway, P.A
201 E. Kennedy Blvd., Suite 600
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2. Pursuant to the RFA, Petitioner timely submitted its application for EHCL funding. See Application Number 2016-314E. Petitioner was preliminarily awarded Six Hundred Thirty Thousand and No/100 Dollars (\$630,000) in EHCL funding under the RFA (the "EHCL Award"), and received an invitation to enter credit underwriting on March 24, 2016. The EHCL Award closing deadline was March 24, 2017, which was twelve (12) months from the invitation to enter credit underwriting.

3. On January 12, 2017, Petitioner requested a twelve (12)-month extension of the closing deadline for the EHCL Award to have additional time to finalize the construction documents. At the meeting of the Board of Directors of the Corporation (the "Board") on February 3, 2017, the Board granted the request to extend the EHCL Award closing deadline from March 24, 2017 to March 24, 2018, subject to the payment of the required non-refundable extension fee of Six Thousand Three Hundred and No/100 Dollars (\$6,300.00) pursuant to the RFA. Petitioner paid the extension fee.

4. The EHCL Award is a critical part of the financing for the life-safety and security-related repairs and/or improvements of the one hundred one (101) unit development known as Oak Park, serving elderly residents aged sixty-two (62) or older (the "Development").

5. The EHCL Award may not close by the March 24, 2018, deadline due to unforeseen delays associated with the Physical Needs Assessment (“PNA”). First Housing initially contracted with GLE Associates, Inc. (“GLE”) to perform the PNA, but GLE could not perform the PNA due to a conflict since GLE is the Applicant’s architect/engineer of record. Accordingly, an extension of the EHCL Award closing deadline is required.

B. Rule from Which the Waiver is Sought

6. The relevant portion of the Rule provides as follows:

(4) If the invitation to enter credit underwriting is accepted:...

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months....In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

Rule 67-48.0072(4)(c), F.A.C. (2014).

C. Statute Implemented

7. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),¹ the statute that created the EHCL program. *See* § 420.5087, Fla. Stat. (2014).

8. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers shall be granted when (a) the person who is subject to the requirement demonstrates that the application of the requirement would create a substantial hardship or

¹ The Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

violate principles of fairness, and (b) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

9. In this instance, Petitioner meets the standards for a waiver.

D. Justification for Petitioner's Requested Waiver

10. Petitioner was previously granted a twelve (12)-month extension of the EHCL Award closing deadline, extending such deadline to March 24, 2018. In connection with the previous extension, Petitioner paid the required extension fee. A further extension of the EHCL Award closing deadline may not be granted without a waiver of the Rule.

11. Petitioner is requesting an extension of the EHCL Award closing deadline from March 24, 2018 to March 24, 2019, to have additional time to complete credit underwriting for the EHCL Award.

12. Petitioner is also requesting that no further extension fee be imposed.

13. The requested waiver will not adversely affect Petitioner, the Development, the Corporation, or any other applicant since no other party applied to receive EHCL funding in the RFA. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has incurred substantial costs to date toward ensuring that the Development proceeds to completion; (b) deprive Alachua County of life-safety and security-related repairs and/or improvements to the Development serving persons aged 62 or older; and (c) violate principles of fairness². § 120.542(2), F.S.

14. The requested waiver will ensure the availability of EHCL funding which will otherwise be lost as a consequence of the Development delays described herein.

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.

E. Conclusion

15. The facts set forth in Sections 11 through 14 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the delay in commencement of the life-safety and security-related repairs and/or improvements to the Development and the loss of a substantial sum of money should the transaction not go forward.

16. As demonstrated above, the requested waiver serves the purposes of Section 420.5087, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent and safe housing in the State of Florida to low-income persons and households. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

17. The waiver being sought is permanent in nature.

Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner respectfully requests that the Corporation:

A. Grant this Petition and all the relief requested therein; and

B. Grant a waiver of the Rule to extend the EHCL Award closing deadline from March 24, 2018 to March 24, 2019, and not require that an additional extension fee be imposed; and

C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

SAXON GILMORE & CARRAWAY, P.A
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Management Corporation
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By: 

Bernice S. Saxon, Esq..

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 2nd day of February, 2018.

By: _____

Bernice S. Saxon, Esq.