

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2019-094VW

MHP JORDAN BAYOU, LLC,

Petitioner,

vs.

FHFC Application No. 2019-413H
REQUEST FOR APPLICATIONS: 2019-109

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.004(3)(i),
FLORIDA ADMINISTRATIVE CODE

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner MHP Jordan Bayou (“Jordan Bayou” or “Petitioner”) submits this Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of rule 67-48.004(3)(i), Florida Administrative Code. Jordan Bayou submitted an Application (No. 2019-413H) for HOME financing in response to Request for Applications (the “RFA”) 2019-109, HOME Financing to be Used for Rental Developments in Hurricane Michael Impacted Counties and in Rural Areas. Jordan Bayou seeks a waiver of rule 67-48.004(3)(i) so that it may reduce the total number of units in the proposed Development from 50 to 39. This request will not reduce the number of HOME-financed units; rather, only the proposed market-rate units would be eliminated. In support of this Petition, Jordan Bayou states:

A. PETITIONER AND ATTORNEY

1. The name, address, telephone number, and email address for Petitioner is: MHP Jordan Bayou, LLC, McDowell Housing Partners, 601 Brickell Key Drive, Suite 700, Miami,

Florida 33131; 786-257-2767; cshear@mcdhousing.com. For purposes of this proceeding, the contact information for Petitioner shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is: Donna E. Blanton, Radey Law Firm, 301 South Bronough Street, Suite 200, Tallahassee, Florida 32301; 850-425-6654; dblanton@radeylaw.com.

B. BACKGROUND¹

3. Jordan Bayou submitted an application in response to the RFA and requested an allocation of \$4,998,000 in HOME funding for its proposed 50-unit affordable housing development to serve the family demographic in Franklin County.

4. On June 21, 2019, Florida Housing's Board of Directors selected Jordan Bayou for funding, and Jordan Bayou was subsequently invited to enter credit underwriting. Jordan Bayou accepted that invitation and has been working with First Housing Development Corporation of Florida, one of Florida Housing's designated credit underwriters.

5. Jordan Bayou does not utilize housing credits; the only sources of funding are the

¹ The following background information regarding Jordan Bayou (taken from its original Application) is provided to facilitate staff's preparation of a memorandum to the Florida Housing Board:

- Development Name: Jordan Bayou
- Developer, including at least one natural person Principal: Jordan Bayou Developer, LLC; Shear Development Company, LLC; Heartland Development Group, LLC; Martin M. Wohl
- County of Development: Franklin
- Number of Units: 50
- Type: Single family
- Set Asides: 39 HOME assisted units, consisting of 8 Low Home Rent Units and 31 High HOME Rent Units.
- Demographics: Family
- Funding Amounts: \$4,998,000 in HOME funding

first mortgage proceeds, HOME loan proceeds, and deferred developer fees. Jordan Bayou has proposed to build 39 HOME assisted units, consisting of eight Low HOME Rent Units and 31 High HOME Rent Units. The remaining 11 units proposed in Jordan Bayou’s application were proposed to be market-rate units. Jordan Bayou now wishes to eliminate those proposed market rate units due to the perceived market conditions of Jordan Bayou’s location within Carrabelle, Franklin County, FL.

6. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

7. Rule 67-48.004(3)(i) provides as follows:

(3) For the SAIL, HOME and Housing Credit programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

....

(i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant’s request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;

D. STATUTES IMPLEMENTED BY THE RULE

8. Rule 67-48.004(3)(i) implements section 420.5087 (State Apartment Incentive Loan Program), section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund), and section 420.5099 (allocation of the low-income housing tax credit program). All of these programs are part of the Florida Housing Finance Corporation Act,

found at sections 420.501-420.517, Florida Statutes. One of the purposes of the Act is “to create new programs to stimulate the construction and substantial rehabilitation of rental housing for eligible persons and families.” § 420.502(8), Fla. Stat.

E. JUSTIFICATION FOR REQUESTED WAIVER

9. Section 120.542(1), Florida Statutes, provides that “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” That procedure requires those seeking a variance of, or waiver from, a particular rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. § 120.542(2), Fla. Stat. Petitions for variances and waivers also are required to demonstrate the purposes of the underlying statute will be achieved. *Id.*

10. Strict adherence to rule 67-48.004(3)(i) would impose a hardship on Jordan Bayou because the necessary rental rates for the eleven (11) market rate units to be financially viable is not supported by the population and demographics of the primary market area. The market-rate units were scheduled to rent at a 25% premium over the High HOME rental rates for an identical unit. The market study from Integra Realty Sources, dated September 27, 2019, indicates potential demand and absorption risk for a fifty (50) rental unit development within the primary market area. Furthermore, given the lack of comparable market-rate rental units, it is difficult to deduce with any certainty the achievable market-rate unit rents. Areas of Florida hit by Hurricane Michael, including Franklin County, are in dire need of affordable housing, and the proposed elimination of the eleven (11) market-rate units, reducing the total units from 50 to 39, would help ensure that

the proposed Development can be successfully executed under the allocated HOME financing. Although the reduction in the number of units would reduce the Total Development Cost and thus allow the number of HOME-assisted units to be less than 39 pursuant to section FourA.6.b.(1) of the RFA, Jordan Bayou proposes to maintain the 39 HOME-assisted units as originally proposed.

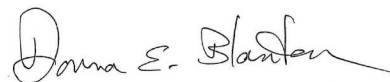
11. The requested waiver will not adversely affect any party, including any other party that applied to receive financing in connection with RFA 2019-109, or Florida Housing.

12. The statutes underlying the rule will be served by the approval of Jordan Bayou's waiver request. Section 420.502(4), Florida Statutes, states that Florida faces "a serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income" One of the primary purposes of the Act is to facilitate the availability of affordable housing. Granting Jordan Bayou's waiver request would be consistent with the goals of the Act.

F. ACTION REQUESTED

13. For the reasons expressed, Jordan Bayou respectfully requests that the Florida Housing Board grant the requested waiver of rule 67-48.004(3)(i) and approve the change in the number of units, as described above.

Respectfully submitted,



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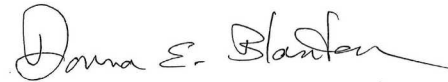
Counsel for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was filed his 12th day of November, 2019, by
electronic delivery to:

Florida Housing Finance Corporation
Attn: Corporate Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
Corporationclerk@floridahousing.org
Ana.McGlamory@floridahousing.org

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