RECEIVED
OCT 03 2024 2:11 PM
FLORIDA HOUSING FINANCE CORPORATION

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

POLLYWOG CREEK MEWS, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC Case # 2024-061VW

APPLICATION NO. 2022-242H/2023-238V

PETITION FOR WAIVER OF RULE 67-48.0072(21)(B)

Petitioner, Pollywog Creek Mews, LLC, a Florida limited liability company (the "Petitioner") submits its petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-48.0072(21)(b), F.A.C. (May 18, 2021) (the "Rule") in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2021-206 (the "RFA"), to allow Petitioner to extend the Firm Loan Commitment deadline for HOME Funding allocated to Petitioner pursuant to the RFA. In support of this petition (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:

Pollywog Creek Mews, LLC
c/o Rural Neighborhoods, Inc.
19308 SW 380th Street
Florida City, FL 33034
(305) 242-2142
SteveKirk@ruralneighborhoods.org

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

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd., Ste. 4100
Miami, FL 33131
Telephone: (305) 347-7308
Facsimile: (305) 347-7808
Email: gcohen@shutts.com

2. Pursuant to the RFA, Petitioner timely submitted its application for HOME funding. See Application No. 2022-242H (the "Application"). Petitioner was preliminarily awarded Five Million Six Hundred Ninety Thousand Dollars ($5,690,000.00) in HOME funding under the RFA (the "HOME Award"). Pursuant to the Rule, Applicant was required to complete credit underwriting and execute a HOME firm commitment within twelve (12) months of the date of the invitation to enter into credit underwriting. The invitation to credit underwriting was accepted on April 4, 2022, and, as such, the original firm commitment deadline was April 4, 2023.

3. On February 15, 2023, Petitioner requested approval of extension of the firm commitment deadline until October 4, 2023, which request was approved at the Corporation's March 10, 2023 Board meeting. Petitioner paid a one (1%) percent extension fee in connection with approval of the foregoing extension. On September 29, 2023, Petitioner submitted a Petition for Rule Waiver seeking a further extension of said deadline to June 4, 2024, which request was approved at the Corporation's October 27, 2023 Board meeting. On June 7, 2024, Petitioner submitted a Petition for Rule Waiver seeking a further extension of said deadline to December 4, 2024, which request was approved at the Corporation's June 28, 2024 Board meeting. For the reasons explained more fully below, the HOME Award Firm Loan Commitment will not be issued by the December 4, 2024 deadline. Petitioner is requesting an extension of the Firm Loan Commitment issuance deadline until June 4, 2025.

4. On May 15, 2023, Petitioner timely submitted its application for Construction Inflation Response Viability Funding pursuant to RFA 2023-2011 ("Viability RFA"). See application No. 2023-238V. Petitioner was preliminarily awarded $2,475,000.00 of funding under the Viability RFA ("Viability Award") on June 9, 2023.

5. The HOME Award is a critical part of the financing for the new construction of affordable family housing to be known as Pollywog Creek Mews, serving income qualifying persons (the "Development"). The development is located in Hendry County.

B. Rules from Which the Waiver is Sought.

6. The relevant portions of the Rules in effect at the time the HOME funds were awarded for which this waiver is sought, provide as follows:

> (b) Rule 67-48.0072 provides that "(21) Information required by the Credit Underwriter shall be provided as follows:
>
> ***
>
> (b) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within twelve (12) months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial twelve (12) month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn." Rule 67-48.0072(21)(b), F.A.C. (2021).

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"), the statute that created the HOME program. See § 420.5089, Florida Statutes (2021).

8. Pursuant to Chapter 120.542(1), Florida Statutes, "strict 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." Therefore, under Section 120.542(1), Florida Statutes 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. Specifically, Section 120.542(2) states:

> "Variances and waivers shall be granted when the person subject to the rule demonstrates that 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.

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

D. Justification for Petitioner's Requested Waiver

10. Petitioner was previously granted an extension to secure a firm loan commitment of the HOME Award to December 4, 2024. Petitioner is requesting an extension of the deadline to secure a Firm Loan Commitment for the HOME Award until June 4, 2025. This extension may not be granted without a waiver of the Rule. The reasons for this request are as set forth below.

11. Petitioner has made substantial progress towards closing of financing and commencement of construction of the Development. Previously, Petitioner had obtained a financial commitment for first mortgage construction and permanent financing, had completed building and civil engineering plans and had obtained permit approvals to construct the Development. Notwithstanding the foregoing, the Development stalled due to a series of interest rate increases to its construction and permanent loans that reduced the amount of available first mortgage financing, which in turn required Petitioner to seek additional financing sources.

12. In addition, initial negotiations with multiple general contractors resulted in a determination that budgeted construction costs were insufficient to meet construction labor and materials cost inflation. This situation was further exacerbated by the fact that the Development's rural location negatively impacted the availability of general contractors and subcontractors.

13. In response to these difficulties, Petitioner submitted its application under the Viability RFA and received Board approval of a Viability Award of $2,475,000 on June 9, 2023. In addition, Petitioner applied to Federal Home Loan Bank of Atlanta under the Affordable Housing Program and received an award of $750,000 on August 15, 2023.

14. Currently, Petitioner has completed the following tasks with respect to the Development: site control, environmental assessment and clearance, geotechnical report, architectural and civil engineering plans, municipal approval for project tie-ins of water distribution and sewer collection systems by the Development's civil engineer. Due to the redesign of the Development caused by increasing construction costs, the Development's architect has completed value engineered architectural plans and a new general contractor has been selected at a price which renders the Development economically feasible. This will enable Petitioner to complete credit underwriting in a timely manner.

15. The requested waiver will ensure the availability of HOME funding which will otherwise be lost as a consequence of the failure to obtain the executed HOME firm commitment by the prescribed date.

E. Conclusion

16. The facts set forth in Sections 10 through 14 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver. A denial of the Petition would (a) result in substantial economic hardship to Petitioner, as it has incurred substantial costs to date insuring that the Development proceeds to completion; (b) deprive Hendry County and the City of LaBelle of the provision of much needed affordable housing; and (c) violate principles of fairness. Section 120.52(2), Florida Statutes. As discussed above, the above-described delays have been caused by circumstances outside Petitioner's control, and make it impossible to meet the December 4, 2024 deadline for issuance of a Firm Loan Commitment.

17. As demonstrated above, the requested waiver serves the purposes of Section 420.5089, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary 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.

18. 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;

B. Grant a waiver of the Rule to extend the deadline to secure a Firm Loan Commitment from December 4, 2024 to June 4, 2025, and not require that an additional extension fee be imposed;

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

Respectfully submitted,

Gary J. Cohen, Esq.
Shutts & Bowen LLP
Counsel for Pollywog Creek Mews, LLC
200 S. Biscayne Blvd., Ste. 4100
Miami, FL 33131
Telephone: (305) 347-7308
Fax: (305) 347-7808
E-Mail: gcohen@shutts.com

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 3rd day of October, 2024.

Gary J. Cohen, Esq.
Shutts & Bowen LLP
Counsel for Pollywog Creek Mews, LLC
200 S. Biscayne Blvd., Ste. 4100
Miami, FL 33131
Telephone: (305) 347-7308
Fax: (305) 347-7808
E-Mail: gcohen@shutts.com