BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

MORRIS MANOR, LLLP

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORP.,

Respondent.

_____/

FHFC CASE NO. 2024-059VW____

APPLICATION NO. 2021-037C

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PETITION FOR WAIVER FROM RULE 67-48.004(3)(j), F.A.C.

MORRIS MANOR, LLLP, a Florida limited liability limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rule 67-48.004(3)(j) Florida Administrative Code (2020). 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 the Petitioner is:

Morris Manor, LLLP
1100 N.W. 4th Avenue
Delray Beach, FL 33444
Phone: (561) 859-8520
E-mail: dsmith@smithhenzy.com

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

Terry M. Lovell, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
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3. Petitioner successfully applied for an allocation of low income housing federal tax credits ("HC") in the Request for Applications 2020-204 ("RFA"). Petitioner's application number in the RFA was 2021-037C (the "Application"). Petitioner applied for an HC allocation of $1,868,000 to finance a portion of the cost of acquiring and rehabilitating a multi-family rental apartment complex located in Jacksonville, Florida known as Morris Manor (the "Development"). The Development is a 168 unit elderly apartment complex.

4. Petitioner was awarded an allocation of $1,868,000 of HC, and closed on its HC financing in December 22, 2021.

5. In connection with its RFA application, Petitioner selected the 40% of units at 60% or lower set-aside commitment and committed to setting aside one hundred (100%) percent, or 168, of the dwelling units in the Development to be occupied and rented as follows: 34 units at 30% AMI and 134 units at 60% AMI, all as evidenced in the Total Set-Aside Breakdown Chart contained in the Application. Due to circumstances described below, Petitioner now seeks to change the Total Set-Aside Breakdown Chart from 100% to 99.405% (167 out of 168 units). In particular, Petitioner seeks to remove one unit from the 60% AMI income band and reallocate such unit as a market rate unit. Such reallocation will cause the total set-aside percentage to decrease from 100% to 99.405%, and will still enable the Petitioner to maintain an overall income average below 60% AMI and therefor satisfy the 40% of units at 60% or lower set-aside commitment.

THE RULES FROM WHICH WAIVER IS SOUGHT

6. Petitioner requests a waiver from a portion of Rule 67-48.004(3)(j), Florida Administrative Code (2020).

7. The Development is an existing elderly development which Petitioner has rehabilitated utilizing HC funding. Completion of the Development occurred in April 2023.

8. Rule 67-48.004(3) provides that ". . . notwithstanding any other provision of these rules, the following as identified in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

> [. . .] (j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment Section of the Application. . . ."

In its Application, Petitioner provided for a Total Set-Aside Percentage of one hundred (100%) percent, or 168 units.

9. Petitioner requests a waiver from Rule 67-48.004(3)(j), to permit a reduction in the total Set-Aside from 100% to 99.405%. Petitioner agrees to continue to satisfy the ELI Set-Aside by setting aside 34 units at the 30% ELI level.

10. Upon completion of the rehabilitation of the Development in April 2023 and during rent up of the Development, it was brought to Applicant's attention that one (1) unit was rented to a tenant whose income exceeded the 60% AMI limit. The tenant has been a tenant at the Development since 2007, and the Development's property manager has confirmed that the tenant was income qualified at original move-in based on the income qualifications in place at that time for Project Based Rental Assistance (PBRA)[1]. The tenant in question is currently 81 years old and has expressed a strong desire to remain at the development he has called home for the last 17 years. Applicant would also prefer to allow such tenant to remain a tenant of the Development. As such, Petitioner requests

[1] Petitioner notes that it will continue to receive PBRA for 166 units at the Development pursuant to, and consistent with the terms under, the applicable Housing Assistance Payments Contract.

a waiver from or variance to the Rule, to enable Petitioner to revise the Total Set-Aside Breakdown Chart in order to redesignate one 60% AMI unit as a market rate unit in order to resolve the situation regarding the tenant. Such redesignation will result in Petitioner maintaining an overall income average at or below 60% AMI and to continue to satisfy the 40% of units at 60% or lower set-aside commitment.

11. The waiver request is permanent in nature.

STATUTES IMPLEMENTED BY THE RULE

12. Rule 67-48.004(3)(j) implements, among other sections of the Florida Housing Finance Corporation Act, the statute that created the HC Program. See Section 420.5099, Florida Statutes.

13. Petitioner requests a waiver of Rule 67-48.004(3)(j) (which prohibits a change in the total set-aside commitment) to permit the reduction of the total set-aside commitment for the Development from 100% of 99.405% (168 to 167 units).

14. Had Petitioner initially indicated (in its RFA application) that 167 of the 168 units of the Development were to be set aside for qualifying tenants, Applicant would have still been funded under the RFA. No scoring reduction would have resulted in its RFA application, and Petitioner has sufficient basis in the Development to generate the requested amount of HC, regardless of whether the "applicable fraction" for purpose of computing the amount of HC was one hundred (100%) percent or 99.405%. In computing the "leveraging" rankings under the RFA, Applicant would have still been in the "A Group". No competitive advantage would be gained by Applicant by virtue of decreasing the total set-aside commitment from 100% to 99.405%. Due to the scarcity of nearby affordable housing, required relocation of such tenant would impose severe hardship upon such

tenant. No public policy objective is served or furthered by requiring Applicant to evict and relocate the tenant at the Development.

15. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. In addition, the financial viability and well-being of the Development will be furthered by permitting Petitioner to allow the tenant who is currently over-income to remain as a resident of the Development. Loss of such resident will result in loss of income to the Development until such time as a qualifying replacement tenant can be located. In addition, Petitioner would not have to incur relocation expense in connection with relocating such tenant. As noted above, Petitioner gained no competitive advantage in the RFA by representing that one hundred (100%) percent of its tenants would be income eligible, as compared to 99.405% requested hereunder. Petitioner agrees to continue to set-aside twenty (20%) percent of the 168 units (34 units) at or below the 30% ELI level.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

16. Petitioner believes that a waiver of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rules, because one of their goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

> The maximum use of available tax credits in order to encourage development of low-income housing in the State, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the Applicant to proceed to completion of the project in the calendar year for which credit is sought. Section 420.5099(2), Fla. Stat.

The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the Housing Credit program stimulates private sector initiatives to increase the supply of affordable housing. By granting this request, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

17. The waiver being sought is permanent in nature.

ACTION REQUESTED – TOTAL SET ASIDE PERCENTAGE

18. Petitioner requests the following:

(a) Grant the Petition and all relief requested herein; and

(b) That the Corporation grant this waiver allowing for 167 (or 99.405%) of the 168 units in the Development be set-aside for qualifying low-income tenants.

19. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399-1400.

Respectfully submitted this 3rd day of October, 2024.

BILZIN SUMBERG BAENA PRICE & AXELROD LLP
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/s/ Terry M. Lovell

CERTIFICATE OF SERVICE

The Petition is being served via e-mail for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served electronically and by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400; (Joint.Admin.Procedures@leg.state.fl.us), this 3rd day of October, 2024.

/s/Terry M. Lovell