

RECEIVED

STATE OF FLORIDA

19 AUG 30 PM 2: 15

FLORIDA HOUSING FINANCE CORPORATION FLORIDA HOUSING
FINANCE CORPORATION

CASA JUAREZ, LLC

Petitioner,

FHFC Case No.: 2019-071VW

v.

APPLICATION NO. 2018-328S

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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

Petitioner, Casa Juarez, 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. (the "Rule") in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2018-104 SAIL Financing for the Farmworker and Commercial Fishing Worker Housing (the "RFA"), to allow Petitioner to extend the Firm Loan Commitment deadline for the State Apartment Incentive Loan ("SAIL") funding allocated to Petitioner pursuant to the RFA. In support of this Petition for Rule Waiver of Rule 67-48.0072(21)(b), F.A.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:

Casa Juarez, LLC
19308 SW 380th Street
Florida City, Florida 33034
Attention: Steven C. Kirk
Telephone: (305) 242-2142
Email: 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 SAIL funding.

See Application Number 2018-328S. Petitioner was preliminarily awarded Six Million Five Hundred Thousand and No/00 Dollars (\$6,500,000.00) in SAIL funding under the RFA (the "SAIL Award"), and received an invitation to enter credit underwriting on June 27, 2018. The SAIL Award Firm Loan Commitment issuance deadline was March 28, 2019, which was nine (9) months from the invitation to enter credit underwriting.

3. At the meeting of the Board of Directors of the Corporation (the "Board") on March 22, 2019, the Board granted Petitioner's request to extend the loan commitment issuance deadline to September 28, 2019, subject to the payment of the required non-refundable extension fee of Sixty Five Thousand and No/00 Dollars (\$65,000.00.00) pursuant to the RFA. Petitioner paid the extension fee.

4. The SAIL Award is a critical part of the financing for the new construction of 32 two-bedroom apartment units to be known as Casa Juarez, serving farmworkers below sixty (60%) percent of area median income (the "Development"). The development is located within Everglades Farmworker Village in Florida City, owned and operated by affiliates of Petitioner.

5. The SAIL Award Firm Loan Commitment will not be issued by the September 28, 2019 deadline. Petitioner has finalized its plans and specifications for the Development, and has submitted such plans to Miami-Dade County for permitting. The pre-construction analysis report obtained by Corporation's credit underwriter indicates certain plan corrections are

required to meet requirements of the Americans with Disabilities Act, federal fair housing laws and the Federal Section 4 Capacity Building for Community Capital Development and Affordable Housing Program law. Amendments to the plans and specifications are underway, but will not be completed in time to complete permitting and credit underwriting for the SAIL award in time to meet the September 28, 2019 Firm Loan commitment deadline. In addition, Petitioner is finalizing its construction contract with the general contractor in order to conform to Corporation legal requirements concerning maximum general contractor profit limitations.

6. Petitioner expects to finalize all of the foregoing “open items” in the fourth quarter of 2019. As such, additional time is needed to complete permitting and credit underwriting for the SAIL Award. Accordingly, an extension of the SAIL Award Firm Loan commitment deadline is required.

B. Rule from Which the Waiver is Sought.

7. The relevant portion of the Rule in effect at the time the SAIL funds were awarded for which this waiver is sought, provides as follows:

“(21) Information required by the Credit Underwriter shall be provided as follows:

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) 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 nine (9)

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. (2017).

C. Statute Implemented.

8. 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 SAIL program. See §§ 420.5087, Florida Statutes (2018).

9. Pursuant to Chapter 120.542(1), Florida Statutes, “[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.” 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.

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

D. Justification for Petitioner’s Requested Waiver

11. Petitioner was previously granted a six (6)-month extension to secure a firm loan commitment of the SAIL Award, extending such deadline to September 28, 2019. In connection

with the previous extension, Petitioner paid an extension fee of Sixty Five Thousand and No/00 Dollars (\$65,000.00). A further extension of the deadline to secure a firm loan commitment may not be granted without a waiver of the Rule.

12. Petitioner is requesting an extension of the deadline to secure a loan commitment from September 28, 2019 to December 28, 2019, to have additional time to complete permitting and credit underwriting for the Development.

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

14. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA or the Corporation. 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 Miami-Dade County of the provision of much needed farmworker housing; and (c) violate principles of fairness. §120.542(2), F.S.

15. The requested waiver will ensure the availability of SAIL funding which will otherwise be lost as a consequence of the development delays described herein.

E. Conclusion

16. The facts set forth in Sections 11 through 15 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the delay in permitting and revisions of plans and specifications for the new construction of the Development and the loss of a substantial sum of money should the transaction not go forward.

17. 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, 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.

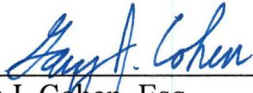
WHEREFORE, Petitioner respectfully requests that the Corporation:

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 September 28, 2019 to December 28, 2019, and not require that an additional extension fee be imposed; and

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

Respectfully submitted,



Gary J. Cohen, Esq.
Shutts & Bowen LLP
Counsel for Casa Juarez, 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 30th day of August, 2019.



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