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FLORIDA HOUSING FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

BLUE CASL II, LLC

Petitioner,

v.

FLORIDA HOUSING
FINANCE CORPORATION,

Respondent.

_____/

FHFC CASE NO. 2019-067VW
APPLICATION NO. 2019-372CS

AMENDED PETITION FOR WAIVER OF RULE 67-48.004(3)(g) FOR A CHANGE IN DEVELOPMENT TYPE

Petitioner, BLUE CASL II, LLC, a Florida limited liability corporation ("Blue CASL") hereby petitions, FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") and requests a waiver of Florida Housing's Rule 67-48.004(3)(g), Florida Administrative Code (F.A.C.) which prohibits changes to the "Development Type" for a proposed Development.

In support of this Petition, Blue CASL provides:

1. The address, telephone number, facsimile numbers, and e-mail address of Blue CASL is:

Shawn Wilson
Blue CASL, LLC
5300 W. Cypress Street, Suite 200
Tampa, FL 33607
Telephone: (813) 384-4825
Email: swilson@blueskycommunities.com

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Blue CASL's counsel is:

Michael P. Donaldson, Esq.
Carlton Fields, P.A.
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Tallahassee, FL 32302-0190
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THE DEVELOPMENT

3. Blue CASL timely submitted its Application in response to RFA 2019-106 requesting $1,510,000 in Tax Credits, $5,000,000 in SAIL funding and $286,000 in ELI funds to supplement the construction of an affordable housing complex in Lee County, Florida. Blue CASL was awarded its requested Funding on May 10, 2019. The funds generated from the Tax Credits SAIL and ELI loans will be used to supplement the development of 95 affordable apartment units in a complex named Cypress Village in Lee County Florida ("Development").

4. This requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Blue CASL, (b) could deprive Lee County, Florida of essential affordable low-income housing units in a timely manner, and (c) would violate the principals of fairness. See Section 120.542.(2), Florida Statutes (F.S.)

THE RULE FROM WHICH WAIVER IS SOUGHT

5. Blue CASL requests a waiver from Rule 67-48.004(3)(g), F.A.C. Specifically, Blue CASL is seeking a waiver from the "Development Type" designation identified by Blue CASL in its Application.

Specifically Rule 67-48.004(3)(g), F.A.C., provides, in relevant part, as follows:

> (3) 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: ...\
>
> (g) Development Type; ...

STATUTES IMPLEMENTED BY THE RULES

6. The Rule is implementing sections of the Florida Housing Finance Corporation Act and specifically, the Tax Credit Allocation process.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

7. Blue CASL seeks a waiver from this Rule to allow it to change the Development Type listed in its Application from "Mid-rise 4 Stories" to "Mid-rise 5 Stories."

8. Blue CASL is requesting this change in Development Type in order to construct a mid-rise 5 story Development, rather than mid-rise 4 story Development for several reasons. First, by constructing a mid-rise 5 story Development, Blue CASL will be able to provide the most suitable and desirable accommodations to the residents and the community. Next, constructing a mid-rise 5 story Development rather than mid-rise 4 story Development will permit Blue CASL to construct the Development in a manner which is most appropriate given several limitations of the Development site.

9. Specifically, three factors have been identified in the Development approval process which limit the developable area of the Development site. The factors include:

a) wetland/stormwater retention area,
b) parking, and
c) front setback requirements

10. The wetland/stormwater retention area limitation is based upon calculations performed by Blue CASL's civil engineer and wetland consultant, which based on the current design require the wetland/stormwater area to be approximately 0.76 acres, which constitutes 20% of the Development site. This area must be set aside and limits the buildable area. The alternative to setting aside this area is to construct a costly retaining wall or vault storage system. This additional cost would be a substantial hardship.

11. In discussing the parking limitation, the City of Ft. Myers per code requires 159 parking spaces for the proposed Development . Based on prior experience with other jurisdictions, Blue CASL assumed that a substantial reduction would be available. Accordingly Blue CASL assumed that 115 spaces would be adequate and planned accordingly. Blue CASL was informed by Lee County Planning Staff that a substantial reduction is not available. In fact, Planning Staff is requiring 125 spaces **and** a reserve green area for future development of 18 spaces, for a total of 143 spaces. The requirement to accommodate 28 additional spaces on the Development site further reduces the buildable land area available. The alternative to constructing surface parking spaces is a parking structure. The additional cost of structured parking is a substantial hardship.

12. As to the front setback limitation, the Development site is in an Overlay District that requires a front setback of 80 feet. Typical front setbacks are 25 feet. The additional 55 feet is approximately 0.51 acres in area, which constitutes 13% of the Development site. This further reduces the buildable land available.

13. The above referenced building alternatives, i.e. parking structure, and vault stormwater retention are not cost effective and do not provide a benefit to future residents. In order to address these limiting factors, the Developer and design consultants have determined that the best option is to reduce the overall building footprint. In order to prevent a reduction in the number of apartment units , or the average apartment size and prevent a reduction in common area space, the option of adding a 5th floor to the building is the only viable alternative.

14. In addition to maintaining the size and number of apartment units as currently contemplated, adding a 5th floor will actually increase the common area available to residents. With the 5th Floor, the interior common space will total 3,131 square feet and will include: manager

office, leasing agent office, coffee bar, computer lounge, fitness room, two case manager offices, community/training room, laundry room on each floor (with more than the required number of machines), and a convenient garbage chute on each floor. The outside common areas will include a swimming pool and deck of 5,280 square feet, plus open green space of 5,042 square feet. In a 4-story configuration, the pool would be eliminated and the outside common area would be reduced to less than 2,000 square feet. Accordingly the only viable option is to add a 5th floor.

15. The Application's scoring, ranking, and funding would not have been affected had Blue CASL selected Mid-rise 5 Stories in the initial Application. The actual affordable unit count will remain unchanged by this Petition.

16. Florida Housing has the authority pursuant to Section 120.542(1), F.S., to provide relief from its rules if strict application of those rules will lead to unreasonable, unfair or unintended results in particular instances. Florida Housing has previously granted similar waiver requests.

17. This Development will provide much needed multi-family low-income housing for those persons residing in Lee County. Time is of the essence for the successful completion of this Development.

18. Unless the Blue CASL's request is granted, strict application of the Rule would violate principles of fairness. Moreover, unless the Rule is waived to allow the requested change, Blue CASL may not be able to ultimately construct the Development.

WAIVER WILL SERVE UNDERLYING PURPOSE OF THE STATUTE

19. Blue CASL believes that a waiver of the Rule will serve the purpose of the Statute which is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, F.S. *et seq.)* was passed in order to encourage private and public investment in facilities

for persons of low-income. The purpose of the creation of the Tax Credit, SAIL and ELI Programs was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting Blue CASL to change its Development Type, as requested in this Petition, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

20. The waiver being sought is permanent in nature.

ACTION REQUESTED

21. Should Florida Housing require additional information, Blue CASL is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.004(3)(g), F.A.C.

WHEREFORE, Blue CASL respectfully requests the following:

A. Grant the Petition and all relief requested herein;

B. Waive Rule 67-48.004(3)(g), F.A.C., allowing Blue CASL to change the Development Type listed in the Application from "Mid-rise 4 Stories" to "Mid-rise 5 Stories;" and

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

Respectfully submitted this 12th day of August 2019.

/s/ Michael P. Donaldson

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Attorney for Blue CASL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by Hand-Delivery for filing with Corporation Agency Clerk and Hugh Brown, General Counsel for the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, with copies served via Hand-Delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399 this 12th day of August 2019.

/s/ Michael P. Donaldson
Michael P. Donaldson