STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
FHFC Case No.: ~~2022-060VW~~ 2023-030VW
Application No.: 2021-269SN

SOUTHWICK COMMONS, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.004(3)(i)

Petitioner, Southwick Commons, Ltd., ("Petitioner") submits its petition to Respondent, Florida Housing Finance Corporation ("FHFC"), for a waiver of Rule 67-48.004(3)(i), F.A.C. (2020) in effect at the time Petitioner submitted its application in response to FHFC's Request for Applications 2020-205 (the "RFA"), to allow Petitioner to change the total number of units for the proposed development. Petitioner states as follows in support of the Petition:

A. Petitioner and the Development.

1. The name, address, telephone, and facsimile numbers for Petitioner and its qualified representative are:

Southwick Commons, Ltd.
Attn: Jonathan L. Wolf
1105 Kensington Park Drive, Suite 200
Altamonte Springs, FL 32714
Telephone: (407) 333-3233
jwolf@wendovergroup.com

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

J. Timothy Schulte, Esquire

Zimmerman, Kiser & Sutcliffe, P.A.
315 E. Robinson Street, Suite 600
Orlando, FL 32801
Telephone: (407) 425-7010
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2. Pursuant to the RFA, Petitioner timely submitted its application for SAIL, ELI, and NHTF funding. See Application Number 2021-269SN. Petitioner was preliminarily awarded $8,689,548.00 of funding under the RFA (the "Award").

3. Petitioner was invited into Credit Underwriting on June 23, 2021, and as of the preparation of this Petition is still moving forward through the Credit Underwriting process.

4. In its Application, Petitioner's proposed development was new construction of 195 units of workforce housing (the "Development") in the City of Apopka, Orange County, Florida.

B. Rules from Which the Waiver Is Sought.

5. The relevant portion of the Rules in effect at the time the funds were awarded, for which this waiver is sought, 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 …

6. Petitioner seeks a waiver from this Rule to allow it to reduce the total number of units from 195 to 192 units. The number of units to be set aside remains 100 percent.

C. Statute Implemented.

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

D. Justification for Petitioner's Requested Waiver

8. 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.

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

10. The reasons and good cause for this Petition for Rule Waiver are set forth below:

A. The number of units indicated in the Application was based on a review of the City of Apopka Land Development Regulation and preliminary discussions with planning staff. These initial discussions culminated with the City of Apopka providing the Petitioner the *Florida Housing Financing Corporation Local Government Verification that Development is Consistent with Zoning and Land Use Regulations* (the "Verification"), on November 4, 2020, confirming

195 units on the proposed Development Site. As a result, Petitioner expected the City to fully cooperate with the approval of 195 units on the Development site.

B. On November 2, 2021, Petitioner closed on the sale of the property for the Development.

C. Petitioner then filed an application with the City of Apopka requesting approval of the Development of 195 units.

D. City of Apopka staff is now indicating that Petitioner is only approved for 192 units, not 195 as the City confirmed on the Verification.

E. Petitioner attempted to work with the City staff to obtain a 195 units approved in the Verification; however, the City insists that it made an error in the acreage calculation when it signed the Verification.

F. The Application's scoring and ranking would not have been affected had Petitioner selected 192 units in the initial Application. Based on FHFC staff analysis, neither the leveraging level for Petitioner nor the final award of SAIL would be affected by a unit count reduction from 195 to 192.

G. Petitioner's Application requested $8,689,548 in funding for its Proposed Development of 195 units. While a request to reduce units may results in a reduction in funding, such a result here would be problematic and negatively impact the overall final Development. Petitioner has previously applied for CHIRP, as the initial SAIL funding awarded under the RFA was not sufficient to construct the development. As such, a reduction in unit count will likely also cause a reduction in additional SAIL monies required from FHFC. This additional SAIL amount will be confirmed and sized during credit underwriting. Petitioner requests that no funding

reduction occur and agrees its funding associated with the 3 unit reduction will be used to further the Development of this Workforce Housing Development.

11. Florida Housing has the authority pursuant to Section 120.542(1) *Florida Statutes* to provide relief from its rules if strict application of those rules will be too unreasonable, unfair, or unintended results in particular circumstances. Florida Housing has previously granted similar waiver requests.

12. Petitioner needs to change the total number of units to allow for the construction of the Development as outlined above to be consistent with the number of units allowed by the City.

13. The proposed Development will provide much needed Workforce Housing for persons residing in Orange County.

14. Unless Petitioner's request is granted, strict application of the Rule would violate principles of fairness.

15. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive funding in the RFA or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner because Petitioner has expended funds to acquire the land and because Petitioner has incurred substantial costs to date toward ensuring that the Development proceeds to completion; (b) deprive Orange County and the City of Apopka of the provision of much needed affordable housing; and (c) violate principles of fairness. §120.542(2), Fla. Stat.

16. The requested waiver will ensure the availability of SAIL, ELI, and NHTF funding, which will otherwise be lost as a consequence of the development delays described herein.

E. Conclusion

17. The facts set forth in this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver.

18. Petitioner's Development will serve to provide affordable housing in Orange County.

19. 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.

20. 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.

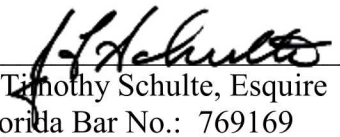
WHEREFORE, Petitioner respectfully requests that the Corporation:

A. Grant this Petition and all the relief requested herein.

B. Grant a waiver of the Rule to allow a reduction in the number of units from 195 to 192.

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

Respectfully submitted,



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CERTIFICATE OF SERVICE

The original Petition is being served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301 (CorporationClerk@floridahousing.org; hugh.brown@floridahousing.org), and a copy served via email on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399-1400 (japc@leg.state.fl.us), and via email to Hugh Brown, Esq. (hugh.brown@floridahousing.org), Marisa Button, Esq. (marisa.button@floridahousing.org) and KaCee Johnson Lackey, Esq. (KaCee.Johnson@floridahousing.org), Florida Housing Finance Corporation 17th day of March, 2023.



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