STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Sandcastles Foundation, Inc.,

Petitioner,

v.

Florida Housing Finance Corporation

Respondent.
_____/

RFA 2020-206
FHFC Case No.: 2023-035VW

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.0072(26) FLORIDA ADMINISTRATIVE CODE

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner, Sandcastles Foundation, Inc., ("Sandcastle" or "Petitioner"), a Florida not for profit corporation, submits this Petition to Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of rule 67-48.0072(26), Florida Administrative Code (Effective June 23, 2020). Sandcastle applied (App. No. 2021-284H) for HOME financing in response to *Request for Application 2020-206, HOME Financing for the Construction of Small, Rural Developments* (the "RFA"). The Petitioner seeks a waiver of rule 67-48.0072(26) to allow for an extension of the Loan Closing Date for 90 days.

In support Petitioner states as follows:

PETITIONER

1. The name, address, telephone number and email address of the Petitioner is,

Sandcastle Foundation, Inc., Attn: Jessica Criss, 1801 Sarno Road, Suite l, Melbourne, Florida 32935, Jess@sandcastlesfoundation.org, (386)-214-5562. For the purposes of this proceeding, the contact information for Petitioner shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is Maureen McCarthy Daughton, Maureen McCarthy Daughton, LLC, 1400 Village Square Blvd., Ste 3-231, Tallahassee, Florida 32312; 850-345-8251; mdaughton@mmd-lawfirm.com.

BACKGROUND

3. On November 19, 2020, Petitioner applied in response to the RFA and requested $5,826,000.00 in HOME funding (the "Application") to finance the construction of a proposed twenty-five (25) unit single family home affordable housing development to be known as Sandcastle Pines located in Bradford County, Florida.

4. The Petitioner owns the six (6) acre parcel upon which the proposed single-family homes will be built.

5. On January 22, 2021, the Florida Housing Finance Corporation Board (the "Board") approved Petitioner's application for funding, and Petitioner was subsequently invited to enter credit underwriting.[1] On March 18, 2021, staff issued the preliminary commitment letter. Pursuant to Rule 67-48, the credit underwriting report had to be completed and firm loan commitment issued by March 29, 2022.

6. On March 4, 2022, the Board approved the final credit underwriting report with a positive recommendation for a HOME loan in the amount of $5,826,000 and a Viability Loan of $186,042.33. The Loans were scheduled to close on July 8, 2022.

[1] After a formal protest by one of the Applicants, the Board on March 12, 2021, approved funding of all seven (7) Applicants.

7. Prior to the loan closing date, the Petitioner advised Florida Housing that it would need to seek additional funding due to significant increases in construction costs. On July 21, 2022, Petitioner formally notified Florida Housing of its intent to seek additional funding and requested a 90-day extension of the loan closing deadline to October 6, 2022.

8. On August 5, 2022, the Board approved the 90-day extension of the loan closing deadline.

9. On September 23, 2022, Florida Housing issued a revised firm commitment for a HOME Loan in the amount of $5,826,000.00 and increased the Viability Loan in the amount of $1,000,000.00 for a total amount of $6,826,000.00. The Loan closing for both loans was to occur by October 7, 2022.

10. During this same period, the Petitioner was working diligently with officials from the City of Starke including the Planning and Zoning Board to acquire all the necessary approvals. During this process it was determined that a Zoning Map amendment was required. The Planning and Zoning Board Staff deemed the Zoning Map Amendment consistent with the City's Comprehensive Plan and in compliance with the Land Development Code and recommended approval by the Starke City Commission.

11. On September 19, 2022, the Starke City Commission approved the Zoning Map Amendment filed by the Petitioner to change the relevant zoning designation of the 6.37-acre parcel from *Single Family, Medium Density* to *Multi-Family Residential.*

12. The Zoning Map Amendment was scheduled for Second Reading, as is required, before the City Commission on Tuesday, October 4, 2022. Quite unexpectedly, the Starke City Commission denied the Zoning Map Amendment by a vote of 5-0 because of concerns raised

for the *first time* by a few citizens regarding stormwater issues, traffic, and a concern that single family rental units would cause a diminution of property values in the general neighborhood.

13. The Petitioner made the rezoning request at the suggestion of City staff to accommodate the number of proposed units and adequate stormwater treatment required by the Suwanee River Water Management District.

14. On October 12, 2022, the Petitioner filed a Petitioner for Waiver with Florida Housing to address the citizen concerns by reducing the number of total number of units from 25 to 21, resulting in a corresponding request to reduce the Loan amount and allow for an extension of the closing date.

15. An Order granting the Waiver was entered by the Board on October 28, 2022. The Board granted the extension of the Loan Closing Date from October 7, 2022, to February 6, 2023.

16. The Applicant submitted the updated Site Plan to the City of Starke on November 16, 2022. The city then forwarded the updated site plan to the Regional Planning Council for a "process" review which was concluded favorably in early January 2023. The Petitioner was notified by the city of the favorable review on or about January 11, 2023.

17. The city then sent the site plan to an outside engineering firm for a technical review.

18. The Petitioner began reaching out to Florida Housing staff in late January and early February regarding the need for another waiver since it was not likely Petitioner would be able to close by the February 6th deadline.

19. The technical review was completed on February 2, 2023, and the city advised that the matter would be placed on the agenda of the February 21st meeting of the Starke City Council.

20. The Petitioner filed a Petition for Waiver to continue the loan closing. An Order approving the Petition and extending the loan closing to May 8, 2023, was entered on March 10, 2023.

21. Shortly before the February 17th City Commission meeting the Petitioner was informed by the Commission staff that the engineering firm still needed multiple items to complete their review.[2]

22. The requested items were provided within days and the Applicant requested to be placed on the March 7th agenda but was placed on the March 21st agenda.

23. At the March 21st City Commission meeting, a quasi-judicial hearing was commenced the purpose of which was to determine if the proposed site plan meets the requirements of the land development code. After the Petitioner made their initial statements, four (4) homeowners who all live in the neighborhood where the proposed development will be located spoke out against the proposed development.

24. The concerns raised were surrounding the possible traffic impacts to adding twenty-two (22) single family homes at the end of their street and the potential for flooding their properties from construction. The Petitioner submitted evidence, including two traffic studies, demonstrating that any traffic impacts meet the level of service required by the City's land development code and additionally that the requirements being imposed on the Petitioner by the North Florida Water Management District will improve flooding that the homeowners have experienced in the past.[3]

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[2] The requested items had all been previously provided to either staff or the engineering firm by the Applicant.
[3] There was no substantial competent evidence presented by the homeowners to rebut the professional opinions offered by the Petitioner.

25. The City at that point decided to bifurcate the quasi-judicial hearing to provide the City Commissioners additional time to review the evidence and formulate questions for the parties.

26. The matter was reconvened on April 4, 2023, at which time the City denied the application by a vote of 3 to 2, raising new, never raised issues regarding placement of sidewalks and the possible elimination of the Community Center.

27. The Petitioner has refiled the application with the City Commision as of Thursday April 27, 2023, making the requested modifications to the sidewalks and eliminating the club house.[4]

28. Since everything else in the application to the City is the same, the Petitioner expects the review to be completed quickly and for this matter to be back on the agenda for approval on the May 16th agenda. In the interim, the Petitioner is scheduling meetings with individual commissioners in advance of the City Commission meeting with the approval of the City Attorney.

RULE FOR WHICH WAIVER IS SOUGHT

29. Petitioner requests a waiver of, or variance from, 67-48.0072(26) F.A.C. This rule provide in relevant part, as follows:

> For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days, all extension requests must be submitted in writing to the program

[4] In the application Petitioner committed to providing both Adult Literacy and Financial Management education service to the residents. The RFA requires that adult literacy services be provided to residents "in a private space on-site." Petitioner has space to provide these services on-site even with the elimination of the Community Center per the City Commissions request.

administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request,inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (l) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void, and the funds shall be de-obligated.

(Eff. June 23, 2020)

30. Application of Rule 67-48.0072(26), FAC., and the denial of this Petition will result in the firm loan commitment being deemed void and the funds de-obligated. Petitioner will not be able to move forward without the HOME funds and the viability loan.

31. The Petitioners, to this point have done everything asked of them by the City Commission to secure the approval to build these units. The delays to this point, while unfortunate, have been necessary to secure the approval from the City Commission.

32. This Petition should be granted as opposed to de-obligating the award because Bradford County is in desperate need of affordable housing for families and granting this waiver will deliver those units quicker than de-obligating the award.

STATUTES IMPLEMENTED BY RULE

33. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act") the statute that designates the Corporation to administer the HOME program in accordance with the HOME Investment Partnership Program. See §420.5089, Florida Statutes.

JUSTIFICATION FOR REQUESTED WAIVER

34. Section 120.542(1), Florida Statutes, provides that, "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." A waiver shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or would violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person.

35. Strict adherence to rule 67-48.0072(26), F.A.C., will create a substantial hardship for the Petitioner at this stage in the process. The Petitioner, owner of the land upon which the development is proposed to be constructed, has expended significant funds and lost valuable time seeking rezoning which the city requested and them voted against. The Petitioner has met every requirement of the relevant land development code, has continued to work closely with the city staff and most recently met with Florida Housing HOME staff to determine if there is additional information that can be shared with the City Commission to encourage their support of the proposed development. There is no doubt that Bradford County needs affordable housing, and the extension requested will help to meet that need in a manner consistent with the requirements and purpose of the RFA.

36. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of HOME funds in RFA 2020-206, or Florida Housing,

37. The Petitioner believes that a waiver will serve the purpose of Section 420.5089, f.s., and the Act that are implemented by Chapter 67-48 F.A.C., because one of the goals is for the proceeds of Corporation funding to be utilized to facilitate the availability of decent and safe housing in the State of Florida to low-income persons and households. The Act was passed to

create inducements and opportunities for private and public investments in rental housing to increase the supply of affordable housing for low-income households. By granting this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing units via the construction of new developments throughout Florida and will provide needed affordable housing units to Bradford County.

TYPE OF WAIVER

38. The waver being sought is permanent in nature.

ACTION REQUESTED

39. For the above stated reasons, Sandcastles Foundation respectfully requests that the Florida Housing Board of Directors grant the requested waiver of rule 67-48.0072(26), Florida Administrative Code.

Respectfully submitted.

Maureen M. Daughton,
FBN 655805
Maureen McCarthy Daughton, LLC
1400 Village Square Blvd., Ste 3-231 Tallahassee, Florida 32312.
mdaughton@mmd-lawfirm.com
Counsel for Petitioner.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed this 10th day of May 2023, by electronic mail to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Ste 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Peppers Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us