

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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MARATHON KEY HOUSING
PARTNERS, LP

FLORIDA HOUSING
FINANCE CORPORATION

FHFC File No.: 2018-060VW

Petitioner,

APPLICATION NO. 2018-305CS

**PETITION FOR WAIVER OF PROVISIONS OF RULE 67-48.004(3)(g), FLORIDA
ADMINISTRATIVE CODE REGARDING DEVELOPMENT TYPE**

Petitioner, Marathon Key Housing Partners, LP, a Florida limited liability company (“Petitioner”) submits this Petition to the Florida Housing Finance Corporation (the “Corporation”) for a waiver of certain provisions of its Request for Applications 2018-107 (the “RFA”), and Rule 67-48.004(3)(g), Florida Administrative Code, in order to permit an adjustment of the Development Type and the strict application of Rule 67-48.004(3)(g), Florida Administrative Code.

1. Pursuant to Section 120.542, Florida Statutes (2017) and Rules 28-104.001 through 28-104.006, Florida Administrative Code, Petitioner requests a waiver of that portion of the RFA (described more fully herein) and of Rule 67-48.004(3)(g), Florida Administrative Code, in order to permit an adjustment of the Development Type.

2. The name, address, telephone and facsimile numbers for Petitioner are:

Marathon Key Housing Partners, LP
c/o The NuRock Companies
800 North Point Parkway
Suite 125
Alpharetta, Georgia, 30005
(770) 552-8070
(770) 552-8748 (Fax)
E-Mail: rhoskins@nurock.com

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

J. Stephen Menton
Tana D. Storey
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Tallahassee, FL 32301
(850) 681-6788
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4. Pursuant to RFA 2018-107 (the "RFA"), Petitioner timely submitted its application for competitive housing credits ("Housing Credits") and for loan funding under the State Apartment Incentive Loan program ("SAIL"). See Application Number 2018-305CS. Petitioner was preliminarily awarded Housing Credit and SAIL funding.

5. The proceeds of the above-referenced financing will be used for new construction of at least 55 low-income units to be known as Residences at Marathon Key ("Development"). The Development will serve low-income residents in Marathon Key, Monroe County, Florida.

The Rule From Which Relief is Requested

6. Rule 67-48.004(3)(g) provides, in pertinent part, 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:

(g) Development Type;

7. The RFA provides, in pertinent part, as follows:

c. Development Type

Select the Development Type for the proposed Development. For mixed-type Developments, indicate the type that will comprise the majority of the units in the Development.

- Garden Apartments (a building comprised of 1, 2 or 3 stories, with or without an elevator)

- Townhouses

See RFA, Section Four, 4. (c).

8. Rule 67-48.004(3)(g) implements, among other provisions of the Florida Housing Corporation Act (the “Act”), the statute that created the SAIL Loan Program and provides for the allocation of housing credits. See §§420.5087 and 420.5099, Fla. Stat. Further, pursuant to the provisions of the RFA, “Proposed Developments funded with Housing Credits and, if applicable, SAIL funding, will be subject to the requirements of the RFA, the Application requirements outlined in Rule Chapter 67-60, F.A.C., credit underwriting and program requirements for Housing Credits and, if applicable, SAIL, as outlined in Rule Chapter 67-48, F.A.C., and the Compliance Requirements of Rule Chapter 67-53, F.A.C.”. See RFA, Section Three.F.3.

Justification for Requested Waiver

9. Pursuant to Section 120.542(1), Florida Statutes and Rule 28-104.002, Florida Administrative Code, the Corporation has the authority to grant waivers from its rules when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers 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 violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. See §120.542(2), Fla. Stat.

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

11. Petitioner is seeking the waiver to allow it to adjust the Development Type from Townhouses to Garden Apartments. Petitioner does not seek an adjustment of the Total Development Cost limitation amount, as the Total Development Cost does not change between these two development types. Furthermore, the adjustment in Development Type from

Townhouses to Garden Apartment would not have provided the Petitioner a competitive advantage.

Substantial Hardship and Statutory Purpose

12. A denial of the Petition would (a) result in substantial economic hardship to Petitioner due to the immediate need to revise the site plan to better accommodate the site with a development type more suitable and to address the rise in construction costs; (b) deprive Marathon Key and Monroe County of essential affordable rental units set aside for persons of limited means who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness.¹ §120.542(2), Fla. Stat.

13. Petitioner is in need of the requested waiver because (as is well known) construction prices have risen, and as a result the difference in development type will provide a relief as the costs for constructing townhomes are higher than for constructing garden apartments. In addition, the site is more conducive to garden apartments and construction for such should move more rapidly which will allow much needed housing to be delivered quicker.

14. If the waiver is not granted the Development would be delayed due to possible financing shortfalls and planning hurdles.

15. The facts set forth above demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the increase in construction costs referenced herein, the possible financing shortfall and the loss of affordable housing for the low-income and very low-income families in Marathon Key and Monroe County.

¹ "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person who is requesting the variance or waiver. "Principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated person who are subject to the rule. § 120.542(2), Fla. Stat.

16. One of the fundamental goals of Sections 420.5087 and 420.5099, and the Act as a whole, is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The statutory purpose of financing the development of affordable housing for low-income persons will be furthered by granting the requested waiver. Also, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

17. The requested waiver will not adversely impact the Development or the Corporation. The waivers being sought are permanent in nature.

Conclusion

18. The controlling statutes and Florida Housing's Rules are designed to allow flexibility necessary to provide relief from rule requirements when strict application would lead to unreasonable, unfair or unintended results in particular circumstances. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved. See §120.542(2), Fla. Stat.

19. Here, a waiver will benefit the citizens and further the statutory intent of providing safe, sanitary and affordable housing units to those in need. Denial of the requested waiver would result in a substantial hardship for the Petitioner which has already expended considerable time and expense on the proposed development.

20. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition.

WHEREFORE, Petitioner Marathon Key Housing Partners, LP, respectfully requests that
the Corporation:

- A. Grant the Petition for waiver and all the relief requested herein; and
- B. Grant such further relief as may be deemed appropriate.

/s/ Tana D. Storey

J. Stephen Menton

Tana D. Storey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this Petition has been filed with the Agency Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 and that a true and correct copy has been provided, via hand delivery, to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and an electronic copy provided, via email, to Hugh Brown, General Counsel, Florida Housing Finance Corporation (Hugh.Brown@floridahousing.org) this 11th day of July, 2018.

/s/ Tana D. Storey
Tana D. Storey