

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2006-047VW

Application 2005-100C

PINNACLE PARK, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVERS OF RULES 67-48.004(14)(j) AND
67-48.004(14)(k)**

Petitioner Pinnacle Park, Ltd. ("Pinnacle Park") petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for waivers of restrictions on changing (1) the total number of units; and (2) Total Set-Aside Percentage in its 2005 Universal Application. *See* Rules 67-48.004(14)(j) and (k), F.A.C. (2005) (collectively the "Rules").

1. Pursuant to Section 120.542, Fla. Stat. (2005), and Rules 28-104.001 through 28-104.006, F.A.C. (2005), Pinnacle Park requests waivers of the Rules to allow for the increase in the total number of units and a decrease of the Total Set-Aside Percentage for Pinnacle Park (the "Development").

2. Pinnacle Park's name, address, telephone and facsimile numbers are:

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c/o PHG-Park LLC
General Partner
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9400 South Dadeland Boulevard
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Miami, FL 33156
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Facsimile: 305-859-9858
E-mail: david@pinnaclehousing.com

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

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4. Pursuant to the 2005 Combined Rental Cycle Program, Pinnacle Park timely submitted its 2005 Universal Application ("Universal Application") for competitive Housing Credits ("Housing Credits") under the Low Income Housing Tax Credit program. *See* Application No. 2005-100C.

5. As identified in its Universal Application, equity raised from Housing Credits will be used for the development of 128 low-income family housing tax credit units for the Development. *See* Universal Application at Part III, A. 6.

6. The Universal Application further provides that the Development will serve the general population in Miami, Miami-Dade County, Florida, and will have a Total Set-Aside Percentage of 100%. *See* Universal Application at Part III, D.4. and E.1.b.(3).

7. Pinnacle Park requests rule waivers to (a) increase the number of residential units from 128 to 135, with the additional seven (7) units available for non-income restricted work-force housing (“Work-Force Housing”); and (b) decrease the Total Set-Aside Percentage from 100% to approximately 95% (94.8%).

8. The requested waivers will not adversely affect the Development. A denial of this Petition, however, would (a) result in substantial economic hardship to Pinnacle Park; (b) deprive Miami of essential affordable rental units and Work-Force Housing; and (c) violate principles of fairness.

9. Rule 67-48.004(1)(a) sets forth one of the applicable rules which is impacted by this Petition, and provides as follows:

“Universal Application Package”... consists of the forms and instructions, obtained from the Corporation ... which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME and/or HC Program(s). **The Universal Application Package is adopted and incorporated herein by reference, effective February 7, 2005.**

Rule 67-48.004(1)(a), F.A.C. (2005) (emphasis added).

10. Rules 67-48.004(14)(j) and (k) are subject to this Petition, and they provide as follows:

Notwithstanding any other provisions of these rules, there are certain items that must be included in the Application and **cannot be revised, corrected or supplemented after the Application Deadline. ...**

(j) Total number of units;

(k) With regard to the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. ...

Rules 67-48.004(14)(j) and (k), F.A.C. (2005) (emphasis added).

11. The applicable Rules for which waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),¹ the statute that created the Housing Credits Program. *See* § 420.5099, Fla Stat. (2005). The Act designates Florida Housing as the State of Florida’s housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). §§ 420.5099(1) and (2), Fla. Stat. (2003). Accordingly, the Rules subject to Pinnacle Park’s waiver requests are implementing, among other sections of the Act, the statutory authorization for Florida Housing’s establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2005).

12. The following facts demonstrate the economic hardship and other circumstances which justify Pinnacle Park’s request for Rule waivers:

- a. Pinnacle Park timely submitted its Universal Application to Florida Housing for its Housing Credits Program, for 128 low-income tax credit housing units, with a Total Set-Aside Percentage of 100%, and received an allocation of 2005 Housing Credits.
- b. Pursuant to applicable zoning for the area in which the Development is located, seven (7) additional units can be added to the Development.
- c. Local government has urged Pinnacle Park to take full advantage of governmental zoning by providing the maximum number of housing units.
- d. An increase in the number of residential units will allow Pinnacle Park to provide a mixed-income development with both affordable housing and Work-Force Housing.

¹The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the “Act”). See also Rule 67-40.020(1), F.A.C.

- e. The additional Work-Force Housing units, however, will result in a corresponding decrease in the Total Set-Aside Percentage provided for in the Universal Application.
- f. The Total Set-Aside Percentage decrease will not adversely affect the required set-asides for favorable consideration, by Florida Housing, of Pinnacle Park's Universal Application and would not have altered the scoring that qualified Pinnacle Park for an allocation of 2005 Housing Credits.
- g. A denial of the requested waivers would result in a substantial economic hardship for Pinnacle Park, as a consequence of lower rental revenues, and lower economies of scale, i.e., spreading fixed costs over seven additional units. More significantly, Pinnacle Park would be denied the ability to deliver low income housing units to a market in desperate need of this housing. Furthermore, seven families would be deprived of the opportunity to obtain essential Work-Force Housing.

13. A waiver of the Rules' restrictions against changing the total number of units, and the Total Set-Aside Percentage from Pinnacle Park's Universal Application would serve the purposes of Section 420.5087, and the Act as a whole, because one of their primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households, and would provide the additional benefit of meeting the critical need for mixed-income developments with Work-Force Housing units.

14. By granting the waivers and permitting Pinnacle Park to increase the number of residential units for the Development, and decrease the Total Set-Aside Percentage, Florida Housing would recognize the economic realities of developing affordable rental housing by encouraging the development of mixed-income housing projects, and enabling developers to meet the needs of both low-income families and families in dire need of Work-Force Housing. This recognition would promote participation by owners such as Pinnacle Park in meeting the Act's purpose of providing affordable housing in an economical and efficient manner.

15. The waivers being sought are permanent in nature.

16. Should Florida Housing have questions or require any additional information, Pinnacle Park is available to provide additional information necessary for consideration of this Petition.

WHEREFORE, Petitioner Pinnacle Park, Ltd., respectfully requests that the Florida Housing Finance Corporation :

- A. Grant the Petition and all the relief requested therein;
- B. Waive Rules 67-48.004(14)(j) and (k)'s restrictions against changing the total number of housing units and Total Set-Aside Percentage in Universal Applications by (a) allowing the number of units in the Development to increase from 128 to 135 units, with seven (7) units available for non-income restricted work-force housing; and (b) decrease in the Total Set-Aside Percentage from 100% to approximately 95%; and
- C. Grant such further relief as may be deemed appropriate.

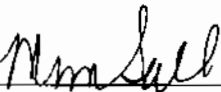
Respectfully submitted,

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By: 
MIMI L. SALL

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 N. Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 22nd day of August, 2006.

By:  _____
Mimi L. Sall