

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ST. CLOUD PRESERVE, LLC,

Petitioner,

v.

FLORIDA HOUSING
FINANCE CORPORATION,

Respondent.

FINANCE CORPORATION

CWHIP APPLICATION NO. 06-28

CASE NO. 2008-096VW

PETITION FOR WAIVER OR VARIANCE FROM RULE 67-58.020(6), F.A.C.

Petitioner, ST. CLOUD PRESERVE, LLC ("Petitioner" or "SCP"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation ("FHFC") for a waiver or variance from Rule 67-58.020(6), Florida Administrative Code. This Petition is filed pursuant to Chapter 28-104, Florida Administrative Code and Section 120.542, Florida Statutes.

THE PETITIONER

1. The address, telephone number, telefax number and e-mail address of the Petitioner is:

ST. CLOUD PRESERVE, LLC
1275 Lake Heathrow Lane, Suite 115
Heathrow, Florida 32746
Phone: (407) 333-3233
Fax: (407) 333-3919
Email Address: jwolf@wendovergroup.com

2. The address, telephone number, telefax number and e-mail address of Petitioner's counsel is:

Michael G. Maida
Michael G. Maida, P.A.
Post Office Box 12093
Tallahassee, FL 32317-2093
Phone: (850) 425-8124
Fax: (850) 681-0879
E-mail Address: mike@maidalawpa.com

3. During FHFC's 2006 funding period, Petitioner applied for funding under the Community Workforce Housing Innovation Pilot ("CWHIP") program to assist with financing a workforce housing project in Osceola County, Florida that would consist of 120 multi-family units once completed, and was subsequently invited into credit underwriting. Petitioner's 2006 CWHIP application was assigned application number CWHIP 06-28.

THE RULE FOR WHICH A WAIVER OR VARIANCE IS SOUGHT

4. Petitioner requests a waiver or variance from Rule 67-58.020(6), Florida Administrative Code. This rule states:

The Applicant has 14 months from the date of the acceptance of the letter of invitation to complete credit underwriting and receive Board approval unless an extension of up to 10 months is approved by the Board. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and detail the timeframe to close the loan. The written request will be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of 1 percent of the CWHIP loan amount if the Board approves the extension request.

5. Petitioner previously provided a written request for a ten month extension of time in which to complete credit underwriting and receive Board approval. The Board granted

that request. Petitioner is specifically seeking a waiver or variance of that portion of the rule, which authorizes FHFC to charge an extension fee of 1 percent of the CWHIP loan amount.¹ The portion of Rule 67-58.020(6) for which a waiver or variance is sought is underlined above in paragraph 5.

STATUTES IMPLEMENTED BY THE RULE

6. Rule 67-58.020(6) F.A.C. implements Section 420.5095, Florida Statutes.
7. FHFC has the express authority pursuant to Section 120.542(1), Florida Statutes, to grant variances or waivers to its rules under certain circumstances. Specifically, FHFC may grant relief from strict application of a rule in particular instances when application of the rule would lead to unintended consequences, unreasonable results, or unfair results. A waiver should be granted when the entity 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. The Legislature has indicated a “substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver.
8. Petitioner seeks a waiver of that portion of Rule 67-58.020(6) which imposes a 1% extension fee, or in the alternative, Petitioner requests that the time frame within which to pay a refundable extension fee be changed to January 15, 2009.

¹ At its August 8, 2008 meeting, the Board granted an extension of the credit-underwriting period until May 8, 2009. Prior to this Board meeting, SCP was advised that the 1% extension fee would also be waived and that it was not necessary to file a Petition for Waiver or Variance. In reliance on this representation, SCP never filed a Petition. The Board did not waive the 1% extension fee, and further required payment of a refundable extension fee on or before October 11, 2008. This is SCP’s first opportunity to formally request a waiver of the extension fee and its first opportunity to be heard before the Board.

9. SCP has worked diligently to provide much-needed workforce housing in Osceola County, Florida. However, SCP encountered serious unforeseen NIMBY issues resulting in significant additional expense for attorney fees, public relations consulting fees, mailing to local residents, etc. Ultimately, approval was given by FHFC to use an alternate site. This alternate site has and will require additional architectural, engineering and third party report fees, as the original plans are not compatible with the new site. The incremental expenses associated with moving the site exceed one hundred thousand dollars. Additionally, due to the liquidity crisis, lenders are imposing higher commitment fees incident to securing financing. The 1% fee will impose additional costs on the project of Fifty Thousand Dollars (\$50,000) that will present an economic hardship on SCP. If the variance or waiver request is granted, these funds will be available for the project and assist in providing needed workforce housing in Osceola County. Given the above, an economic hardship is demonstrated and Petitioner's request for a variance or waiver from Rule 67-58.020(6) should be granted.

**GRANTING THE VARIANCE OR WAIVER WILL
SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

10. Granting the variance or waiver as requested will serve the purpose of the underlying statute. Specifically, Section 420.5095 - which is implemented by the rule in question - seeks to provide safe, sanitary and affordable workforce housing to essential services personnel of Osceola County who are working and classified as income and occupational eligible workforce housing beneficiaries. The CWHIP program specifically targeted counties, such as Osceola County, that were facing critical shortages of affordable housing for teachers, fire fighters, police, health care workers and other essential

personnel necessary for the economic well being of their communities. Specifically, Chapter 420.5095 identifies the need for funding for housing in high cost, high growth areas of Florida, like Osceola County, where affordable housing for key employees is lacking. With respect to CWHIP developments in particular, FHFC “is authorized to negotiate any necessary changes to project criteria with any of the housing projects awarded funding under Section 420.5095, Florida Statutes, that will **improve project viability and expedite project completion.**” (See HB-5001 – General Appropriations Act, 2008.)

11. Osceola County ranked in the Top Tier of High Growth Counties in the 2006 CWHIP application cycle, demonstrating the dramatic need for workforce housing. Osceola County is one of the fastest growing counties in the state; and, coupled with the lack of available private and public land available for housing developments, one of the most difficult in the state to develop workforce housing. In addition, the statute directed the Florida Housing Finance Corporation to award funding to high cost, high growth counties that would agree to form creative public private partnerships and develop innovative solutions to their local housing needs. SCP has demonstrated that it is a community wide public private partnership with a very innovative workforce housing solution to local housing needs.

12. In sum, acting favorably on SCP's Petition will promote the development of workforce housing in Osceola County and serve the underlying purpose of Section 420.5095, Florida Statutes.

REQUEST FOR PERMANENT RELIEF

13. The variance or waiver sought is permanent in nature.

RELIEF REQUESTED

14. Petitioner requests:

- a. That a variance or waiver of Rule 67-58.020(6) be granted so that a \$50,000 extension fee is not due and owing to FHFC, but can be used to assist SCP and the proposed project;
- b. That in the alternative, the *time frame* within which to pay a refundable extension fee be extended to January 15, 2009.
- c. SCP requests such other relief as appropriate.

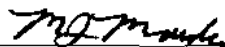
Respectfully submitted this 10th day of October, 2008.



Michael G. Maida
Michael G. Maida, P.A.
Post Office Box 12093
Tallahassee, FL 32317-2093
(850) 425-8124
Florida Bar No. 0435945
Counsel for Petitioner, SCP

CERTIFICATE OF SERVICE

I hereby certify that this Petition was provided by hand-delivery for filing to the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 with a copy being provided by U.S. Mail to the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399 this 10th day of October, 2008.



Michael G. Maida