

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

SOUTHWINDS PARTNERS, L.L.L.P.,

Petitioner,

APPLICATION NO. 2007-140S

vs.

FHFC CASE NO.: \_\_\_\_\_

FLORIDA HOUSING FINANCE CORP.,

Respondent

\_\_\_\_\_ /

**PETITION FOR WAIVER FROM FLORIDA  
ADMINISTRATIVE CODE RULE 67-48.004**

SOUTHWINDS PARTNERS, L.L.L.P. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver from Rule 67-48.004, Florida Administrative Code ("FAC"). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

1. The address, telephone and facsimile number of Petitioner is:

Southwinds Partners, L.L.L.P.  
c/o Atlantic Housing Partners  
329 North Park Avenue, Suite 300  
Winter Park, Florida 32789  
407-741-8682 (telephone)  
(407) 643-2590 (facsimile)

2. The address, telephone and facsimile number of Petitioner's attorney is:

Kerey Carpenter  
AHG Group, LLC  
1551 Sandspur Road  
Maitland, Florida 32751  
407-741-8534 (direct line)  
407-551-2353 (facsimile)

3. Petitioner successfully applied for an allocation of State Apartment Incentive Loan (“SAIL”) in the 2007 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67-48, Florida Administrative Code. Petitioner’s Application Number is 2007-140S (the “Application”). Petitioner applied for SAIL to finance a portion of the costs to develop a 112-unit multifamily rental apartment community located in Lake County, Florida, to be known as Southwinds Cove (the “Development”).

**THE RULES FROM WHICH A WAIVER IS SOUGHT**

4. Petitioner requests a waiver from Rule 67-48.004(14), as in effect for the 2007 Universal Application Cycle. Rule 67-48.004(14) provides in relevant part as follows:

(14) Notwithstanding any other provision 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. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempt to make changes to these items will not be accepted. Those items are as follows:

\* \* \*

(g) Development Type;

**STATUTES IMPLEMENTED BY THE RULE**

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act<sup>1</sup>, the statute that created the SAIL programs. Section 420.5087, Florida Statutes.

6. Florida Housing has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness,

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

**FACTS DEMONSTRATING ENTITLEMENT TO WAIVER**

7. The provisions of the foregoing Rule prohibit a change in the “Development Type”. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

8. In the Application, the Development Type was identified as Garden Apartments.

9. At the time the Application was submitted, the Development Review Committee of the City of Leesburg had approved the preliminary or conceptual site plan, but had not approved the final site plan as reflected on the 2007 Universal Cycle – Local Government Verification of Status of Site Plan Approval for Multifamily Developments Form submitted with the Application. (Attached hereto as Exhibit 1). Final site plan approval from the local government was not required by the rules governing the 2007 Universal Application Cycle.

10. It is not uncommon for local governments to require changes in the preliminary site plans prior to approving the final site plans. The City of Leesburg did, in fact, require site plan changes prior to approving the final site plan resulting in a change from Garden Apartments to Townhouse type apartments. The change to Townhouse type apartments has no adverse affect on the Development and would have had no impact on the Application’s scoring, thus providing Petitioner with no advantage over its competitors.

11. In light of the considerable time that it takes to develop and construct multifamily rental housing, Florida Housing's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. Florida Housing routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible advantage.

**WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

12. Florida Housing's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5087. The purpose of both the Statute and the program is to facilitate and stimulate the development of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, the SAIL allocation in question will be used to fund an affordable multifamily rental housing community for which there is a desperate need in the Leesburg, Florida.

13. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14), would be as follows. Unless the waiver is granted, Petitioner would not be able to utilize the SAIL funds for the development of Southwinds Cove, a much needed affordable housing community. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious.

14. By granting a waiver and permitting Petitioner to revise the Development Type, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, through new construction, in an economical and efficient manner.

**TYPE OF WAIVER**

15. The waiver being sought is permanent in nature.

**ACTION REQUESTED**

16. Petitioner requests a waiver from Rule 67-48.004(14) to permit a change in the Development Type from Garden Apartments to Townhouse type apartments.

Respectfully submitted this 7<sup>th</sup> day of November, 2008.




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Florida Bar No. 963781  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that an original and one copy of the foregoing Petition for Waiver have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.

  
\_\_\_\_\_  
Kerey Carpenter

2007 UNIVERSAL CYCLE - LOCAL GOVERNMENT VERIFICATION OF STATUS  
OF SITE PLAN APPROVAL FOR MULTIFAMILY DEVELOPMENTS

Name of Development: Southwinds Cove

Development Location: West side of South Street, approximately 1350 feet south of the intersection of South Street and West Main Street, Leesburg, Florida 34748  
(At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection and city)

Zoning Designation: R-3

Mark the applicable statement:

1.  The above-referenced Development is new construction or rehabilitation with new construction and the final site plan, in the zoning designation stated above, was approved by action of the \_\_\_\_\_ on \_\_\_\_\_.  
(Legally Authorized Body\*) Date (mm/dd/yyyy)
2.  The above-referenced Development is new construction or rehabilitation with new construction and this jurisdiction provides either preliminary site plan approval or conceptual site plan approval. The preliminary or conceptual site plan, in the zoning designation stated above, was approved by action of the Development Review Committee on 4/10/2006.  
(Legally Authorized Body\*) Date (mm/dd/yyyy)
3.  The above-referenced Development is new construction or rehabilitation with new construction and requires site plan approval for the new construction work. However, this jurisdiction provides neither preliminary site plan approval nor conceptual site plan approval, nor is any other similar process provided prior to issuing final site plan approval. Although there is no preliminary or conceptual site plan approval process and the final site plan approval has not yet been issued, the site plan, in the zoning designation stated above, was reviewed by \_\_\_\_\_ on \_\_\_\_\_.  
(Legally Authorized Body\*) Date (mm/dd/yyyy)
4.  The above-referenced Development, in the zoning designation stated above, is rehabilitation without any new construction and does not require additional site plan approval or similar process.

\* "Legally Authorized Body" is not an individual. Applicant must state the name of the City Council, County Commission, Board, Department, Division, etc., with authority over such matters.

CERTIFICATION

I certify that the City/County of Leesburg has vested in me the authority  
(Name of City or County)

to verify status of site plan approval as specified above and I further certify that the information stated above is true and correct.

Laura McElhanon  
Signature

6/13/07  
Date (mm/dd/yyyy)

Laura McElhanon, AICP

Print or Type Name

Community Development Director

Print or Type Title

This certification must be signed by the applicable City's or County's Director of Planning and Zoning, chief appointed official (staff) responsible for determination of issues related to site plan approval, City Manager, or County Manager/Administrator/Coordinator. Signatures from local elected officials are not acceptable, nor are other signatories. If this certification is applicable to this Development and it is inappropriately signed, the Application will not be eligible for points. If this certification contains corrections or 'white-out', or if it is scanned, imaged, altered, or retyped, the Application will fail to meet threshold. The certification may be photocopied.