BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

JOHNSON LAKES ESCAMBIA LIMITED PARTNERSHIP, a Florida limited partnership,

Petitioner,

vs.

FHFC CASE NO. 2009-009VW

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR VARIANCE OF RULES 67-48.004(1)(a) and 67-48.027(2)(m), FLORIDA ADMINISTRATIVE CODE (2008)

JOHNSON LAKES ESCAMBIA LIMITED PARTNERSHIP, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code ("F.A.C."), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a variance of Rules 67-48.004(1)(a), and 67-48.027(2)(m), Florida Administrative Code (2008), relating to the filing of an application for Non-Competitive Housing Credits in connection with an allocation of tax-exempt bond financing, and the imposition of certain requirements contained within such application. In support, Petitioner states the following:

THE PETITIONER

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

Johnson Lakes Escambia Limited Partnership
c/o Landmark Asset Services, Inc.
406 East Fourth Street
Winston-Salem, NC 27101

2. The address, telephone number and faesimile number of Petitioner's counsel is:

Maureen McCarthy Daughton
Broad and Cassel
215 S. Monroe Street, Suite 400
Tallahassee, FL 32301
Phone: (850) 681-6810
Fax: (850) 521-1478

3. Petitioner successfully applied for financing from the Corporation's Rental Recovery Loan Program in 2005 via the 2005 Rental Recovery Loan Program (RRLP) Application (the "RRLP Application"), and received an award of RRLP funds (the "RRLP Loan") to finance a portion of the costs to develop a multi-family 160-unit garden apartment complex in Escambia County, Florida, and known as Johnson Lakes Apartments (the "Development"). The remaining costs of the Development were financed with tax-exempt bond proceeds issued by the Escambia County Housing Finance Authority, housing tax credit equity, and certain funding from Escambia County. Petitioner has made application to the Corporation for its non-competitive 4% housing credit allocation, which application was made via the 2008 Universal Application Multifamily Revenue Bonds (MMRB) Program, State Apartment Incentive Loan (SAIL) Program, HOME Investment Partnership (HOME) Rental Program, and Housing Credit (HC) Program (the "2008 Application").

THE RULES FROM WHICH VARIANCE IS SOUGHT

4. Petitioner requests a variance of various sections of Rule 67-48, Florida Administrative Code. More specifically, Petitioner is seeking a variance of subsection (a) within Rule 67-48.004(1), designated as the "Application and Selection Procedures for Development," and subsection (m) within Rule 67-48.027(2), designated "Tax Exempt Bond Financed

Developments", along with corresponding provisions of the 2008 Application and 2008 Application Instructions.

5. Rule 67-48.004(1)(a), F.A.C. (2008), provides:

* * * * *

(1)

(a) The Universal Application Package or UA1016 (Rev. 3-08) is adopted and incorporated herein by reference and consists of the forms and instruetions . . . which shall bc completed and submitted to the Corporation in accordance with this rule ehapter in order to apply for the SAIL, HOME, HC, or SAIL and HC Program(s).

* * * * *

6. Rule 67-48.027(2)(m), F.A.C. (2008), provides:

* * * * *

(2)

(m) After bonds are issued to the Development, makc Applieation to the Corporation as required in Rules 67-48.004 and 67-48.0072, F.A.C. Applicant shall submit its Applieation completed in accordanee with the Universal Application Package instructions for receipt by the Corporation no later than July 1 of the year the Development is plaeed in service; and

* * * * *

7. The Specific Instructions of the Universal Application Instructions provides under Part III D.1.f.:

f. The Applicant must provide the following features in the specified percentages of the total units in New Construction (NC) and Rehabilitation/Substantial Rehabilitation (SR) Developments.

The requirement to provide the following features is in addition to the features committed to hy the Applicant in the Construction Features and Amenities section of this Application.

FEATURE	NC	SR
Roll-out shelving or drawers in all bottom bathroom vanity cabinets	100%	100%
Roll-out shelving or drawers in at least one bottom kitchen cabinet	100%	100%

* * * * * *

STATUTES IMPLEMENTED BY
RULES 67-48.004(1)(a) and 67-48.027(2)(m), F.A.C.

8. The Rules implement, among other sections of the Florida Housing Finance Corporation Act[1], the statutes relating to the allocation of low income housing tax credits contained in Section 420.5099, Florida Statutes.

JUSTIFICATION FOR GRANTING VARIANCE
OF RULES 67-48.004(1)(a) and 67-48.027(2)(m), F.A.C

9. In the RRLP Application, the Corporation required that Petitioner commit to eleven (11) mandatory features specific to Elderly housing, in order to apply under the Elderly demographic. Petitioner agreed to commit to those eleven mandatory features, and that commitment was memorialized in the RRLP Land Use Restriction Agreement that was executed and recorded upon closing of the RRLP Loan. Petitioner then constructed its Development with those approved features in place. Pursuant to the Corporation's rules regarding applying for non-competitive HC in conjunction with tax-exempt bond financing, an applicant has until July 1st of the year the Development is placed in service to apply for its allocation of non-competitive HC from the Corporation. As such, Petitioner submitted its application, using the 2008 Application form, by the deadline indicated in the Rules. However, subsequent to Petitioner's RRLP Application submission and the construction of the Development in accordance with Petitioner's Elderly features and amenities commitments, the Corporation modified its features and amenities

[1] The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.516, Florida Statutes.

requirements for Elderly developments. Specifically, the 2008 Application contained thirteen (13) mandatory features specific to Elderly housing, two of which were not contained in the RRLP Application: (1) roll-out shelving or drawers in all bottom bathroom vanity cabinets, and (2) roll-out shelving or drawers in at least one bottom kitchen cabinet (the "2008 Additional Elderly Requirements"). Both of those amenities were required for 100% of new construction and rehab/substantial rehab units when applying for funding under the Elderly demographic via the 2008 Application in the competitive cycle. However, Petitioner was not applying for Corporation funding, but rather for an allocation of low-income housing tax credits for which the Corporation is responsible for allocating in conjunction with tax-exempt bond financing. The application is considered non-competitive and is ministerial in nature. The Petitioner must meet threshold and must obtain a certain number of points (less than the competitive number of points) for its non-competitive HC application. Because Petitioner is already designated as an Elderly development, and met the Corporation's requirements for such designation in connection with the Corporation's RRLP Program, Petitioner seeks a variance of the Rules to forego the two 2008 Additional Elderly Requirements.

10. The Corporation is authorized by Section 120.542(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant variances to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Variances 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 principles of fairness[2]; and (2) the purpose of the underlying statute has been or will be achieved by other means by the

[2] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. "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 persons who are subject to Rule 120.542(2), Florida Statutes.

person. Section 120.542(2), Florida Statutes. The application of these rules will have a material adverse effect on the viability of the Development.

11. In this case, strict application of Rules 67-48.004(1)(a) and 67-48-027(2)(m), F.A.C. (2008), and the corresponding provisions of the 2008 Application, will create a substantial hardship for Petitioner. Petitioner previously committed to provide certain mandatory features and amenities in connection with its RRLP Application, and constructed the Development based on those commitments. The Corporation approved a credit underwriting report that enumerated those features and amenities and approved draws throughout the construction process to construct and install those features and amenities. To later require Petitioner to include additional features in an already-constructed development that has been approved by the Corporation creates a substantial hardship in that Petitioner would have to expend significant time and expense, not to mention disrupting tenants, to include those features. To deny Petitioner its variance request also violates principals of fairness because the literal application of the Rules relating to the 2008 Application would require Petitioner to incorporate features and amenities that were not required at the time Petitioner constructed its Development -- the Rules in place when Petitioner applied for RRLP financing gave Petitioner until July 1 of the year the Development was placed in service to submit its non-competitive HC application. Petitioner timely submitted its non-competitive HC application, and to then require Petitioner to abide by new Rules, simply because the form of application had changed in the normal course of the Corporation's processes, would result in unfair and unintended consequences. The purpose of the underlying statute has been achieved by other means by Petitioner, in that Petitioner is providing decent, safe and affordable housing to elderly residents, with features approved by the Corporation at the time Development construction was commenced.

ACTION REQUESTED

12. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested variance of Rules 67-48.004(1)(a) and 67-48-027(2)(m), F.A.C. (2008), and Part III.D.1.f. of the Specific Instructions of the 2008 Application, to allow Petitioner to provide all but two of the features contained in that section of the 2008 Application (such two features having been described in this Petition as the 2008 Additional Elderly Requirements) and still be permitted to select the Elderly demographic in its 2008 Application.

13. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300, as required by Section 120.542(5), Florida Statutes.

Respectfully submitted this 24 day of March, 2009.

MAUREEN McCARTHY DAUGHTON
Fla. Bar No. 0655805
Broad and Cassel
215 S. Monroe Street, Suite 400
Tallahassee, FL 32301
(850) 681-6810
(850) 521-1478 Facsimile

Counsel for Petitioner, JOHNSON LAKES ESCAMBIA LIMITED PARTNERSHIP