

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2014-079VW
Application No. 2014-316S

NVC HALEY PARK, LTD.
Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,
Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(3) (g) FOR A CHANGE IN
DEVELOPMENT TYPE**

Petitioner, NVC Haley Park, Ltd., a Florida limited partnership (“Haley”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of the Respondent’s prohibition on changes in the “Development Type” selected by an applicant. See Rule 67-48.004(3) (g) F.A.C. (2013) (the “Rule”).

Haley requests a waiver of the Rule, in order to allow for the construction of Garden Apartments (the “Garden Designation”) in lieu of Mid-Rise with Elevator (a building comprised of four stories) (the “Mid-Rise Designation”).

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Haley and its qualified representative for Haley’s application (the “Application”) in response to RFA 2014-103 Financing of Affordable Multifamily Housing Developments with Sail Funding to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits are:

NVC Haley Park, Ltd.
Attention: Jonathan L. Wolf
1105 Kensington Park Drive, Suite 200
Altamonte Springs, FL 32746
Telephone: 407-333-3233
Facsimile: 407-3333919
E-mail: jwolf@wendovergroup.com

2. The name, address, telephone and facsimile numbers, and e-mail address of Haley's attorney, for purposes of this Petition, are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
Facsimile: 305-789-3395
E-mail: bmcdonough@stearnsweaver.com

B. THE DEVELOPMENT

3. Haley timely submitted its Application in response to RFA 2014-103 Financing of Affordable Multifamily Housing Developments with SAIL Funding to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the "RFA"). See Application No. 2014-316S for the development named Haley Park. Haley received an award of SAIL funds in the amount of \$2,300,000.

4. The SAIL funds awarded to Haley, together with other loan sources and the proceeds of the syndication of low-income housing tax credits, will provide funds for the construction of eighty units in one residential building intended to serve low-income persons in Hillsborough County, Florida, together with a swimming pool, victory garden, dog walk, gazebo, and a recreation area (collectively, the "Development").

5. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Haley; (b) could result

in delay in completing construction of the Development; (c) could deprive Hillsborough County, Florida of essential affordable housing units in a timely manner and (d) would violate principles of fairness¹. § 120.542(2), Fla. Stat. (2013).

7. The waiver being sought is permanent in nature.

C. Rule from Which Relief is Requested and Statute Implemented by the Rule

8. Haley realleges and incorporates Paragraphs 1 through 7 as though fully set forth herein.

9. Haley requests a waiver of Rule 67-48.004(3)(g) F.A.C. (2013) that provides, in relevant part, as follows:

(3) 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;...

10. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the State Apartment Incentive Loan Program. *See* Section 420.5087, F.S.

D. Justification for Petitioner's Requested Waiver

11. Haley realleges and incorporates Paragraphs 1 through 10 as though fully set forth herein.

12. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the rule demonstrates

¹“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person 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 persons who are subject to the rule. Section 120.542(2), Florida Statutes.

that the application of the rule would 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. § 120.542(2), Fla. Stat. (2011).

13. In this instance, Haley meets the standards for a waiver.

14. Haley requests a waiver from Rule 67-48.004(3)(g), F.A.C. (2013), which waiver will allow it to change the Development Type listed in the Application from the Mid-Rise Designation to the Garden Designation.

15. It is not uncommon for development changes to occur after submission of an application to Florida Housing. The site on which the Development is located is comprised of four heavily-treed acres. At the time the Application was submitted, it was the opinion of the civil engineer and the architect that, in order to achieve an eighty-unit density, a four-story building would be required, based upon the creation of a building footprint which would save as many trees as possible, provide for adequate stormwater retention, allow for adequate ingress and egress, comply with the required setbacks, and provide the required number of parking spaces. As the building design and site planning began for permitting in the months following submission of the Application, it was discovered that (a) re-orienting the front of the building allowed more latitude in relation to setbacks, parking, and retention and (b) the building could be designed as a three-story structure and still accommodate eighty units and all of the Development amenities. The re-design allowed for the preservation of a number of trees that might otherwise have been removed.

16. Haley's scoring and SAIL funding would not have been affected if Haley had originally selected the Garden Designation. There are no points associated with the selection of Development Type. Nor does this change adversely impact any other applicant in the RFA.

17. If the relief sought pursuant to this Petition is not granted, Haley will suffer substantial hardship. The Development site is zoned for multifamily at twenty units per acre. However, there is a height limitation of forty five feet. A four-story building would have to be fifty seven feet tall, exceeding the height limitation. A variance would be required in order to build a four-story building. Haley has no way of knowing whether this variance would be granted. Further, obtaining a variance would add time and expense to the permitting process and the start of construction of the Development. Delivery of the Development to the residents of Hillsborough County, Florida would certainly be delayed and, if a variance could not be obtained, could potentially be denied.

E. Conclusion

18. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when (a) the applicant subject to the rule demonstrates that strict application would create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. §120.542(2), Fla. Stat. (2011).

19. The requested waiver will not adversely impact the Development, any other applicant in the RFA or Florida Housing.

20. A denial of the requested waiver could result in a substantial hardship for Haley which would be required to construct a development which does not provide the most suitable and desirable building type given the location and orientation of the building on its site.

21. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. The goal of providing eighty units of affordable housing in Hillsborough County,

Florida will be achieved through the approval of the Development Type as the Garden Designation, with no detriment to any party. Granting of the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to households of limited means.

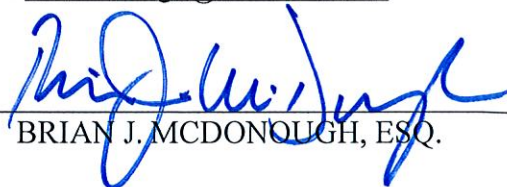
22. Should Florida Housing require additional information, Haley is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner NVC Haley Park, Ltd., respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all relief requested herein;
- B. Approve the change in the Development Type from the Mid-Rise Designation to the Garden Designation; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

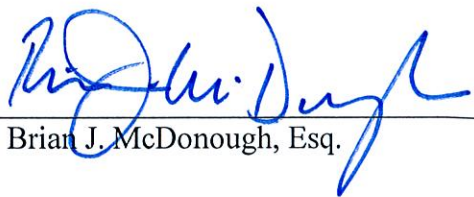
STEARNS WEAVER MILLER WEISSLER
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By: 
BRIAN J. MCDONOUGH, ESQ.

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 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 31 day of October, 2014.

By: _____


Brian J. McDonough, Esq.

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

Patricia K. Green
150 West Flagler Street, Suite 2200
Miami, FL 33130
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October 31, 2014

Via FedEx

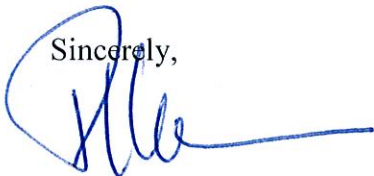
Ashley Black
Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough St.
Suite 5000
Tallahassee, Florida 32301

RE: Petition for Rule Waiver

Dear Ms. Black:

Enclosed is a Petition for Rule Waiver, submitted on behalf of NVC Haley Park, Ltd., for consideration by the Board at its next meeting. I have sent a duplicate copy to the Joint Administrative Procedures Committee. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Patricia K. Green

PKG/zs
Enclosures

cc: Joint Administrative Procedures Committee (with Enclosures)