

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

QUEST VILLAGE, LTD.,

Petitioner,

CASE NO.: 2016- 056VW

v.

APPLICATION NO. 2014-113/2015-004CSG

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c)

Petitioner Quest Village, Ltd., a Florida limited partnership (the “Petitioner”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rule 67-48.0072(4)(c) (the “Rule”) in effect at the time the Petitioner submitted its application in response to the Corporation’s Request for Applications 2014-113, Financing To Build Larger Permanent Supportive Housing Properties For Persons With Developmental Disabilities (the “RFA”), to allow Petitioner to extend the required closing date for the SAIL loan proceeds allocated to Petitioner pursuant to the RFA. In support of its Petition, the Petitioner states as follows:

A. The Petitioner and the Development

1. The name, address, telephone and facsimile numbers for Petitioner and its qualified representative are:

Quest Village, Ltd.
Attn: John Gill
500 East Colonial Drive
Orlando, FL 32803
Telephone: 407-218-4300
e-mail: jgill@questinc.org

The name, address, telephone and facsimile numbers of Petitioner's attorneys are:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A
150 West Flagler Street, Suite 2200
Miami, Florida 33130
305-789-3350 (Phone)
305-789-3395 (Fax)

2. Pursuant to the RFA, Petitioner timely submitted its application for loan funding. See Application Number 2015-004CSG. Petitioner was preliminarily awarded \$1,000,000 in SAIL funding under the RFA, and received an invitation to enter credit underwriting on December 23, 2014. The firm commitment for closing of the SAIL loan has not yet been issued.

3. The proceeds of the SAIL financing will be used for new construction of 48 low-income quadruplex units to be known as "Quest Village" (the "Development"). The Development will also be financed with (i) the proceeds of low-income housing tax credits, of which \$2,380,930 will be funded during construction, (ii) \$6,260,000 in conventional construction financing from JP Morgan Chase, (iii) a grant from the Corporation in the amount of \$1,000,000, (iv) an affiliate loan in the amount of \$855,354 and (v) \$1,208,910 in deferred developer fee. The Development will serve special-needs individuals with developmental and intellectual disabilities in Orange County, Florida. Twelve units will be set aside for residents earning not more than 40% of Area Median Income, with the balance of the units set aside at 60% of Area Median Income.

B. Rule Requirements from Which Relief is Requested and Statute Implemented

4. The relevant portion of the Rule provides as follows:

(4) If the invitation to enter credit underwriting is accepted:...

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit

underwriting. Applicants may request one (1) extension of up to 12 months....In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

Rule 67-48.0072(4)(c), F.A.C. (2013).

5. The applicable Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),¹ the statute that created the SAIL loan program. *See* § 420.5087, Fla. Stat. (2014). Further, pursuant to the RFA, “Proposed Developments will be subject to the requirements of the RFA, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the credit underwriting requirements outlined in Exhibit F of this RFA, *the SAIL and Housing Credit requirements of Rule Chapter 67-48, F.A.C.*, and the Compliance requirements of Rule Chapter 67-53, F.A.C.” (emphasis added).

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

7. In this instance, Petitioner meets the standards for a waiver.

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes (the “Act”).

C. Justification for Petitioner's Requested Waiver

8. Petitioner was previously granted a twelve-month extension of the SAIL loan closing deadline, extending such deadline to December 23, 2016. A further extension of the closing deadline may not be granted without a waiver of the Rule.

9. Petitioner is requesting an extension of the SAIL loan closing date from December 23, 2016 to June 30, 2017, due to delays in the development process caused by Petitioner's continuing efforts to (a) rezone the land to meet the demographics of the Development and (b) reorient the Development improvements on a small area of the site due to due to unforeseen geotechnical conditions.

10. Petitioner was originally advised that the property needed to be zoned so as to prohibit occupancy by any person under the age of 18 years in the Development. Petitioner accordingly sought and obtained such zoning. The Corporation then advised Petitioner that having done so constituted a violation of the Fair Housing Act, because the Development will not be restricted to elderly residents who qualify for Fair Housing Act Exemptions, but rather to special-needs tenants of any age. The current zoning permits the construction of the Development but is inconsistent with the demographic aspects of the population that will reside there. Therefore, Petitioner is required to rezone the property again to eliminate the age restriction. The rezoning efforts have caused delay in the overall development schedule.

11. Petitioner has also been required to reorient its planned improvements on the property due to geotechnical issues that were difficult to discover and assess, as to dimensions and depth, prior to acquisition and clearing of the site. The property was formerly heavily wooded and access was impossible to all of the areas; further, impacting could not be performed until some of it was cleared. The resulting analysis indicated that a portion of the Development's

improvements could not be supported in the contemplated areas and it was necessary to reorient the layout to accommodate the soil issues. This process took approximately six months, during which other pre-development activities had to be tolled, and are now being recommenced.

12. The above-described facts have delayed the development process. Notwithstanding such delay, Petitioner believes it may be in a position to close the SAIL funding by the December 23, 2016 deadline, but in an abundance of caution, is seeking approval of this Petition in the event that the zoning process, still to be completed, is further delayed. As previously noted, the current zoning permits the Development to be built, so construction should commence promptly following closing, but the age restriction needs to be lifted from the zoning category affecting the Development. Petitioner expects that the Credit Underwriting Report for the Development will be presented to the Corporation's Board for approval at its December, 2016 meeting. As noted, closing of the SAIL loan is anticipated to occur prior to the current deadline; however an extension of the SAIL closing deadline to June 30, 2017, is being requested to ensure adequate time for closing in the event there are other unforeseen minor delays.

13. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA, or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has acquired the property and incurred between \$1,500,000 and \$2,000,000 in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Orange County of essential affordable rental units set aside for persons with developmental and intellectual disabilities who

desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness². § 120.542(2), F.S.

14. If this Petition is not granted, the equity investor which has committed to serve as the Petitioner's investment limited partner and to syndicate the housing tax credits will likely withdraw from the transaction and the Development will fail to be constructed.

15. As discussed herein, Petitioner is requesting an additional extension of the SAIL loan closing date from December 23, 2016 to June 30, 2017, which request requires a waiver of the Rule. Petitioner respectfully requests that no further extension fee be imposed.

16. The requested waiver will ensure the availability of SAIL financing which will otherwise be lost as a consequence of pre-development delays described herein.

D. Conclusion

17. The facts set forth in Sections 8 through 16 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the delay in commencement of construction of the Development, the loss of a substantial sum of money should the transaction not go forward, and the loss of critical housing for special-needs individuals of limited means.

18. Controlling statutes and the Corporation's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. As demonstrated above, the requested waiver serves the purposes of Section 420.5087 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary

²“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.

housing in the State of Florida to low-income persons and households. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

19. The waiver being sought is permanent in nature.

Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition.

WHEREFORE, Petitioner Quest Village , Ltd., respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein; and
- B. Award such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Quest Village, Ltd.
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

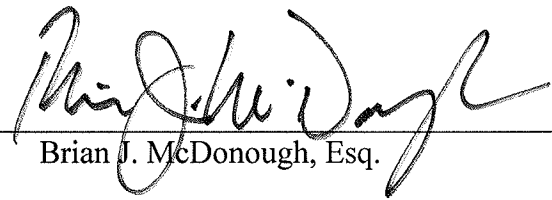
By: _____


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 18 day of November, 2016.

By: _____



Brian J. McDonough, Esq.