

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

TRINITY TOWERS EAST PRESERVATION
ASSOCIATES LLLP

Petitioner,

FHFC Case No.: 2018-078VW

vs.

APPLICATION NO. 2016-168BS

FLORIDA HOUSING FINANCE CORP.,

Respondent.

PETITION FOR WAIVER FROM RULE 67-21.003(8)(j)

TRINITY TOWERS EAST PRESERVATION ASSOCIATES LLLP (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for waiver from Rule 67-21.003(8)(j) Florida Administrative Code (2015). 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 the Petitioner is:

Trinity Towers East Preservation Associates LLLP
c/o Preservation of Affordable Housing Inc.
40 Court Street
Suite 700
Boston, MA 02108
Telephone: (617) 449-0860
Facsimile: (617) 261-6661
E-mail: cmian@poah.org

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

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Boulevard
Miami, FL 33131
Suite 4100
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3. Petitioner successfully applied for an allocation of tax-exempt bond financing ("Bonds") and State Apartment Incentive Loan Funding ("SAIL") in the Request for Applications 2015-112 ("RFA"). Petitioner also successfully applied for an allocation of non-competitive 4% Housing Credits. Petitioner's application number in the RFA was 2016-168BS (the "Application"). Petitioner applied for a Bond allocation of \$8,500,000 (subsequently increased to \$10,500,000) and funding of \$4,908,004 to finance a portion of the cost of acquiring and rehabilitating a multi-family rental apartment complex located in Melbourne, Florida known as Trinity Towers East (the "Development"). The Development is a single building 156 unit elderly apartment complex.

4. Petitioner was awarded an allocation of non-competitive 4% Housing Credits and of Bonds of \$10,500,000 and SAIL of \$4,018,404 and has closed on such financing.

5. In connection with its RFA application, Petitioner committed to setting aside ninety (90%) percent, or 141, of the dwelling units in the Development to be occupied and rented to "Low Income Tenants", defined generally as individuals whose income is sixty percent (60%) or less of area median gross income (adjusted for family size) (the "Income Limit"). The Development is currently operating and is occupied such that less than 141 units meet the foregoing "Low Income" definition.

6. On or about November 17, 2016, Petitioner submitted a petition for rule waiver seeking to change its total set-aside percentage from ninety (90%) percent to eighty (80%) percent. By order of FHFC issued on December 9, 2016, the Corporation permitted Petitioner to change its total set-aside percentage for Bonds to eighty-five (85%) percent of the units at sixty (60%) percent of area median income, and to decrease its total set-aside percentage for SAIL funding to a total set-aside percentage of eighty-five (85%) percent (with seventy-five (75%) percent of the units at sixty (60%) percent of area median income and ten (10%) percent of the units at thirty-five (35%) percent of area median income). However, the Corporation's order stated "This waiver is not needed for, and will not impact, the current set-aside requirements regarding the Four (4%) percent Non-Competitive Housing Credits."

7. A denial of this Petition (a) will result in a substantial economic hardship to Petitioner; and (b) will violate principles of fairness¹. Section 120.542(2), Fla Stat. (2015).

THE RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from a portion of Rule 67-21.003(8)(j), Florida Administrative Code.

9. The Development is an existing elderly development which Petitioner has rehabilitated utilizing Bond and SAIL funding, together with non-competitive four (4%) percent low income housing credits and other subordinate financing.

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.

10. Rule 67-21.003(8)(j) provides that certain items must be included in the Application and cannot be revised, corrected or supplemented after the application is submitted. Those items include the following:

...“the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment Section of the Application...”

In its Application, Petitioner provided for a Total Set-Aside Percentage of ninety (90%) percent, or 141 units. As noted above in paragraph 6, the Corporation has decreased the total set-aside percentage for the Bond and SAIL programs, but did not decrease the total set-aside percentage for the Housing Credit program. The Corporation has requested that Petitioner execute an Extended Low Income Housing Agreement requiring that ninety (90%) percent of the residential units be set aside for persons at or below sixty (60%) median income, which set-aside would be greater than and inconsistent with set-asides applicable under the Bond and SAIL program.

11. Petitioner requests a waiver from Rule 67-21.003(8)(j), to decrease the total set-aside percentage under the Housing Credit Program from ninety (90%) percent to eighty-five (85%) percent.

12. The waiver request is permanent in nature.

STATUTES IMPLEMENTED BY THE RULES

13. Rule 67-21.003(8)(j) implements, among other sections of the Florida Housing Finance Corporation Act, the statute that governs the 4% Non-Competitive Housing Credit program. See Section 420.5099, Florida Statutes.

14. Petitioner requests a waiver of Rule 67-21.003(8)(j) (which prohibits a change in the total set-aside commitment) to permit up to twenty-three (23) of the units in the Development to be occupied by residents whose income exceeds the Income Limit.

15. Had Petitioner initially indicated (in its Housing Credit application) that one hundred thirty-three (133) of the one hundred fifty-six (156) units of the Development were to be set aside for qualifying tenants, Applicant would have still received an allocation of 4% non-competitive Housing Credits. No scoring reduction would have resulted in its Housing Credit application. No competitive advantage would be gained by Applicant by virtue of allowing up to twenty-three (23) units to exceed the Income Limit. Due to the scarcity of nearby affordable housing, required relocation of current over-income tenants would impose severe hardship upon each of them. No public policy objective is served or furthered by requiring Applicant to evict and relocate the over-income tenants at the Development.

16. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. In addition, the financial viability and well-being of the Development will be furthered by permitting Petitioner to allow the tenants who are currently over-income (in excess of the 90% Low-Income units originally committed to in the Application) to remain residents of the Development. Loss of such residents will result in loss of income to the Development until such time as qualifying replacement tenants can be located. In addition, Petitioner would not have to incur relocation expense in connection with relocating such tenants. As noted above, Petitioner gained no competitive advantage by representing that ninety (90%)

percent of its tenants would be income eligible, as compared to eighty-five (85%) percent requested hereunder.

17. If the relief sought pursuant to this Petition is not granted, Petitioner will suffer substantial hardship. Petitioner's inability to satisfy the currently imposed ninety (90%) percent set-aside requirement would result in non-compliance under the debt and equity documentation, and would require Petitioner to rely on a subsequent waiver of such requirements, which Petitioner's equity investor desires to avoid. Grant of the waiver requested herein would promote principles of fundamental fairness by allowing current over-income tenants to remain as residents of the Development; relocation of such currently over-income tenants would impose severe hardship upon each of such tenants and also the Petitioner. Relocation of currently over-income tenants would negatively impact the financial viability and well-being of the Development, and grant of the waiver requested herein would not negatively impact Respondent.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

18. Petitioner believes that a waiver of these rules will serve the purposes of Section 420.5099 of the Act which is implemented by the rules, because one of their goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households.

The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the Housing Credit program stimulates private sector initiatives to increase the supply of affordable housing. By

granting this request, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

19. The waiver being sought is permanent in nature.

ACTION REQUESTED – TOTAL SET ASIDE PERCENTAGE

20. Petitioner requests the following:

(a) Grant the Petition and all relief requested herein; and

(b) That the Corporation grant this waiver allowing for the Development to require that eighty-five (85%) percent of the 156 units in the Development be set-aside for qualifying low-income tenants meeting the Income Limit under the Housing Credit program.

21. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399-1400.

Respectfully submitted this ^{9th} day of October, 2018.

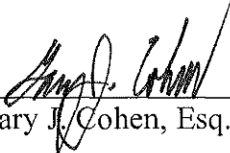


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Counsel for Petitioner

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 680, 600 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this ^{9th} day of October, 2018.



Gary J. Cohen, Esq.