

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
CASE NO. _____

HARDING VILLAGE, LTD.,

Petitioner,

Agency Case No.: Application No. 2003-016CS
Pinnacle Square

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR VARIANCE/WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004(14)

Petitioner, HARDING VILLAGE, LTD. ("Petitioner") requests the FLORIDA HOUSING FINANCE CORPORATION ("FHFC") to grant a waiver from the provisions of Florida Administrative Code ("FAC") Rule 67-48.004(14) and to grant the relief requested herein. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file or identification number with respect to this matter is 2003-016CS.

PETITIONER

2. The Petitioner is Harding Village, Ltd., a Florida limited partnership. The address of Petitioner is 155 South Miami Avenue, Suit 850, Miami, Florida 33131, telephone number (305) 371-8300, facsimile number (305) 371-1376. Petitioner's attorney is Gary J. Cohen, Esq., Shutts & Bowen LLP, whose address is 201 South Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308, facsimile number (305) 347-7808.

RULE WITH RESPECT TO WHICH A WAIVER IS SOUGHT

3. The Rule with respect to which a waiver is sought is FAC Rule 67-48.004(14), as in effect for the 2003 Universal Application Cycle pursuant to which Petitioner received an allocation of low-income housing tax credit authority and SAIL funds. FAC Rule 67-48.004(14) provides as follows:

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 changes to these items will not be accepted. Those items are as follows:

- (i) Total number of units;
- (l) Funding Request (except for Taxable Bonds) amount....

TYPE OF ACTION REQUESTED

4. Petitioner requests that FHFC grant a waiver and variance from the provisions of FAC Rule 67-48.004(14), as in effect and governing the 2003 Universal Application Cycle. The provisions of the foregoing Rule prohibit a change in the total number of units, and a change in the funding request amount. For the reasons set forth below, compliance with the foregoing provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

FACTS

5. The specific facts that demonstrate a substantial hardship or a violation of principles of fairness which justify a waiver or variance for Petitioner, as requested above, are as follows:

(a) The original HC application filed by Petitioner reflected a 93 unit single-room occupancy development for the homeless. Petitioner originally intended for there to be 92 units for residents and 1 manager's unit. The development also contemplated the provision of on-site supportive services to aid the formerly homeless residents of the development. As a result of a zoning dispute which arose with the City of Miami Beach in connection with the issuance of a final certificate of occupancy for the development, Petitioner was forced to reduce the total number of units to 92. As a result, Petitioner has determined to convert what would have been the manager's unit into common area office space to be utilized for the provision of on-site supportive services to the development's residents.

(b) Petitioner submitted an application in FHFC's 2003 Universal Application Cycle for \$497,510 in annual tax credits and \$2,000,000 in SAIL funds to finance the development. In its application, Petitioner committed to setting aside 16% (15) of its units to persons at or below 30% of area median income. The Land Use Restriction Agreement entered into between Petitioner and FHFC further evidences this set-aside. In recognition of the fact that Petitioner seek to reduce the "total number of units" from 93 to 92, Petitioner seeks to proportionately reduce its requested annual tax credits from \$497,510 to \$492,160.43, resulting in the return of \$5,349.57 in annual tax credits. In addition, Petitioner seeks to set aside one additional unit to a tenant with income at or less than 30% of area median income.

(c) In light of the considerable time that it takes to develop and construct multi-family rental housing, FHFC'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. FHFC 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 competitive advantage.

6. As explained above, the project changes requested by Petitioner result from action by the local government which were not anticipated by Petitioner at the time it commenced construction of the development. However, the reduction in total number of units (from 93 to 92) does not result in any loss of units to tenants, as the "lost" unit was planned to be used for an on-site manager and now instead will be used for additional office space to provide on-site supportive services to the development's tenants.

7. FHFC's approval of the requested waiver or variance would serve the purpose of the underlined Florida Statute, Section 420.5099, as well as the Federal Low-Income Housing Tax Credit Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of multi-family rental housing that is affordable to families of limited means. If the requested waiver of variance is granted, additional common area space will become available which may be utilized to provide supportive services to the formerly homeless on the development site.

8. 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 foregoing request is granted, provision of supportive services to the homeless population of the Development may have to be partially provided off-site rather than on-site. In addition, reduction in the total number of units is necessary in order for the development to remain in compliance with City of Miami Beach zoning requirements.

9. By granting a waiver and permitting Petitioner to reduce the total number of units and tax credit amount, 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.

10. The waiver being sought is permanent in nature.

RELIEF SOUGHT

11. The specific variance/waiver which Petitioner wishes Respondent to grant is to waive the requirements of Rule 67-48.004(14) to permit a change in the total number of units from 93 to 92 units, to permit a change in the housing credit request amount from \$497,510 to \$492,160.43, and increase the number of units set aside for tenants at or below 30% of area median income from 15 to 16.

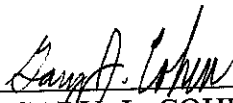
WHEREFORE, Petitioner respectfully requests FHFC:

1. Waive the prohibition on change of total number of units in order to permit a decrease in total number of units from 93 to 92 units.
2. Waive the prohibition on change in the funding request amount, in order to permit a decrease in the housing tax credit request from \$497,510 to \$492,160.43.

3. Increase the number of units set-aside for tenants at or below 30% of area median income from 15 units to 16 units.


4. Grant such further relief as may be deemed appropriate.

Respectfully Submitted,

By: 
GARY J. COHEN, ESQ.
Florida Bar No. 353302
SHUTTS & BOWEN LLP
201 South Biscayne Boulevard
1500 Miami Center
Miami, Florida 33131
(305) 347-7308

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing 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, this 5th day of November, 2007.


GARY J. COHEN, ESQ.