

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

NEW SINGELTARY SCATTERED SITES
LIMITED PARTNERSHIP

FLORIDA HOUSING FINANCE CORPORATION

Petitioner,

vs.

FHFC Case No. 2009- 003VW

FHFC Applic. No. 2007-145C

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**PETITION FOR WAIVER OR VARIANCE FROM THE 2007 QUALIFIED
ALLOCATION PLAN REQUIREMENTS FOR RETURNING
HOUSING CREDIT ALLOCATIONS AND FOR AN
IMMEDIATE ALLOCATION OF 2009 HOUSING CREDITS**

Pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, NEW SINGELTARY SCATTERED SITES LIMITED PARTNERSHIP (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver or variance from the Corporation’s requirement that an applicant (such as the Petitioner) wait until the last calendar quarter of the year in which such applicant is otherwise required to place its project in service in order to return a housing credit allocation and obtain a reservation for an allocation in a future year. The return of Petitioner’s 2007 Carryover Allocation of Housing Credits is required before the Corporation may reserve and provide a binding commitment to Petitioner for an allocation of Housing Credits from a future year. See Rules 67-48.002(88) and 67-48.023, Florida Administrative Code (collectively the “Rules”), and Qualified Allocation Plan. In support of its Petition, Petitioner states:

THE PETITIONER

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

New Singeltary Scattered Sites Limited Partnership
1307 6th Street West
Bradenton, FL 34205
Telephone: (941) 748-5568
Facsimile: (941) 748-9058

2. The address, telephone, and facsimile number of Petitioner's counsel, which shall be used for services purposes during the course of this proceeding, are:

Warren Husband, Esquire
Metz, Husband & Daughton, P.A.
215 South Monroe Street, Suite 505
Tallahassee, FL 32301
Telephone: (850) 205-9000
Facsimile: (850) 205-9001

3. Petitioner successfully applied for financing from the Housing Tax Credit ("HC") Program in the 2007 Universal Application Cycle (the "Universal Cycle"), which the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's Application number is 2007-145C (the "Application"). Petitioner applied for an allocation of housing credits to finance a portion of the costs to construct a 36-unit multi-family rental apartment complex in Manatee County, Florida, to be known as Bradenton Village II (the "Development"). The Development is the fourth phase of a HOPE VI Revitalization Plan and is located within a "DDA" as defined in Section 42(d)(5)(c)(iii), Internal Revenue Code. The construction period is projected to take eleven months.

4. As explained below, numerous factors outside of Petitioner's control have delayed the development process and the closing on this project. As a result of these delays, Petitioner anticipates it will be unable to complete the Development before December 31, 2009, the Placed-in-Service Date pertaining to its 2007 Housing Credit allocation.

5. Petitioner seeks to return its 2007 Carryover Allocation of Housing Credits now, rather than wait to the last calendar quarter of 2009, as required under the QAP, and to immediately receive a 2009 Carryover Allocation of Housing Credits from Florida Housing.

THE RULE FROM WHICH A WAIVER/VARIANCE IS SOUGHT

6. Rule 67-48.002(88) (2007) defines the “Qualified Allocation Plan” (QAP) as follows:

“QAP” or “Qualified Allocation Plan” means, with respect to the HC Program, the 2007 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits.

7. Section 11 of the 2007 QAP provides that Housing Credits may be returned only in the last calendar quarter of the year (October through December) in which a Development is required to be placed in service:

. . . where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, such failure is due to circumstances beyond the Applicant’s control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met
. . . .

2007 QAP at pp. 12-13.

8. Here, Petitioner is returning credits before the last quarter of the calendar year and requesting a carryover allocation of Housing Credits from the same calendar year.

9. The requested variance will ensure the availability of Housing Credits for the Development which might otherwise be lost as a consequence of development delays caused by factors outside its control.

10. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for a Rule waiver/variance:

(a) Petitioner timely submitted its Universal Application to the Corporation for its Housing Credits Program;

(b) The Corporation issued its Preliminary Allocation in December 2007;

(c) The Preliminary Allocation reserved \$675,474 for Housing Credits;

(d) As a result of the Carryover Allocation Agreement, the Development's Placed-in-Service Date is December 31, 2009;

(e) Due to multiple issues tied to the current economic environment, closing of this transaction has been delayed. These factors include, changes in the housing credit and syndication market regarding equity levels, which necessitated changes to the deal structure and the final financing plan.

(f) The equity partner has indicated an unwillingness to undertake the initial closing of the equity financing necessary to commence construction, in view of the risk that the Development will not be completed by December 31, 2009, the current placed-in-service deadline. The equity partner (and likely any other tax credit investor in the current marketplace) will not, faced with the aforementioned placed-in-service risk, proceed with the equity closing and permit the commencement of construction unless the Petitioner first obtains an extension of the placed-in-service requirement; and

(g) A denial of this requested variance will result in substantial hardship to the Petitioner. The Petitioner to date has spent over \$125,000 on this project and failure to receive

the requested relief will result in financial hardship and a return of the 2007 credits. Without the assurance of a 2009 Carryover Allocation of Housing Credit from the Corporation, this Development will not go forward.

STATUTES IMPLEMENTED BY THE RULES

11. The Rules implement, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the Housing Credits Program. See §420.5093, Florida Statutes. The Act designates the Corporation as the State of Florida’s housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, the Corporation is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rules subject to Petitioner’s waiver/variance request are implementing, among other sections of the Act, the statutory authorization for the Corporation’s establishment of Allocation Procedures for the HC Program.

12. The pertinent statute regarding granting of waivers provides: “Waivers shall be granted when the applicant demonstrates that application of the rule would create a substantial hardship or would violate principles of fairness.” Section 120.542(2), Florida Statutes. “Substantial Hardship” is defined as a demonstrated economic, technological, legal or other type of hardship “to the applicant.” The hardship in this case is that the Petitioner will not be able to close on this Development, Petitioner will lose in excess of \$125,000 already invested, and construction of these much needed affordable housing units for the benefit of the local residents of the Bradenton area will not occur.

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

**WAIVER/VARIANCE WILL SERVE THE UNDERLYING
PURPOSE OF THE STATUTE**

13. Petitioner believes that a waiver/variance of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rule, 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 by ensuring:

The maximum use of available tax credits in order to encourage development of low-income housing in the State, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the Applicant to proceed to completion of the project in the calendar year for which the credit is sought.

Section 420.5099(2), Florida Statutes (2008).

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 Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver/variance the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income. The recognition would provide participation by experienced developer entities, such as Petitioner, in meeting the purposes of the Act regardless of the possible delays from factors outside their control.

14. The requested waiver/variance will not adversely impact the Development or the Corporation.

TYPE OF WAIVER/VARIANCE

15. The waiver/variance that is being sought is permanent in nature.

16. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

ACTION REQUESTED

17. Petitioner requests that the Corporation grant the following relief:

a. Grant a waiver/variance from the 2007 Qualified Allocation Plan's prohibition from returning Housing Credits prior to the last quarter of 2009;

b. Allow the immediate return of the Petitioner's 2007 Carryover Allocation of Housing Credit;

c. Grant a waiver/variance from the 2007 Qualified Allocation Plan's prohibition on the reservation of a Housing Credit allocation prior to the year in which the Development was otherwise required to be placed in service; and

d. Immediately provide a 2009 Carryover Allocation of Housing Credits to Petitioner in an amount not to exceed the amount of its current Housing Credit Allocation.

18. A copy of this Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted on this 9th day of February, 2009.



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