

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FLORIDA LOW INCOME HOUSING
ASSOCIATES, INC.,

Petitioner,

FHFC CASE NO. 2010-010VW
APPLICATION NO. 2009-204H

v.
FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,
_____ /

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FLORIDA HOUSING FINANCE CORPORATION

**PETITION FOR VARIANCE FROM OR WAIVER OF
RULE 67-47.018(1)(c) FLORIDA ADMINISTRATIVE CODE**

Petitioner, FLORIDA LOW INCOME HOUSING ASSOCIATES, INC., (FLIHA), pursuant to §120.542 *Florida Statutes* and Rule 28-104 *Florida Administrative Code* (F.A.C.), hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION (FHFC), for a waiver or variance from Rule 67-47.018(1)(c) F.A.C. In support of this Petition, FLIHA states:

1. **Agency:** The name and address of the Agency affected and the Agency's file or identification number are as follows:

Florida Housing Finance Corporation
227 N. Bronough Street, Ste. 5000
Tallahassee, FL 32301-1329
Agency's Application Number is 2009-204H

2. Petitioner, Petitioner's Representative and Substantial Interest: The names, addresses and telephone numbers of Petitioner and Petitioner's Representative and an explanation of how the Petitioner's substantial interest will be affected by the Agency determination is as follows:

(i) Petitioner:

Florida Low Income Housing Associates, Inc.
701 White Blvd.
Inverness, FL 34453
Phone: (352) 726-1113
Fax: (352) 726-1130

(ii) Petitioner's Representative:

Bryce W. Ackerman
Gray, Ackerman & Haines, P.A.
125 NE 1 Avenue, Ste. 1
Ocala, FL 34470
Phone: (352) 732-8121
Fax: (352) 368-2183

(iii) Substantial Interest:

FLIHA is an applicant for funding from the HOME Rental Program during the 2009 cycle. FLIHA is substantially affected by the decision of FHFC to apply the provisions of the rule in that it renders FLIHA ineligible to apply for and receive HOME Program funding.

FLIHA and numerous other entities submitted applications seeking funds from the HOME Rental Program during the 2009 cycle. FLIHA submitted its application in accordance with the stated time line. The FLIHA application was reviewed and competitively ranked first. FLIHA has contracted to acquire the Sherwood Apartments (a 33 unit affordable housing complex located in Chipley, Florida). In conjunction therewith FLIHA has applied for and obtained conditional approval to assume the existing USDA- Rural Development mortgage on the property. In support of the application and the conditional approval, FLIHA provided USDA-Rural Development with the scoring information indicating apparent eligibility for approval of the HOME Rental Program application and funding. In seeking to acquire the Sherwood Apartments, FLIHA expended significant sums in obtaining Certificates of Needs and real estate appraisals for USDA-Rural Development.

Sherwood Apartments is a 33 unit complex located 1413 Brickyard Road, Chipley, Washington County, Florida, which provides affordable housing to 33 low income elderly residents. It was built in 1993, and now must be renovated to remain viable. In the absence of substantial renovation, Sherwood Apartments may be lost as a source of affordable housing and Washington County may be deprived of those affordable housing units.

3. Relief Requested. The rule Petitioner seeks a variance from or waiver of is Rule 67-47.018(1)(c) which provides as follows:

(1) Unless the Board approves a competitive allocation process outside the Universal Cycle, an Applicant is not eligible to apply for HOME Program funding if any of the following pertain to the proposed Development:

(c) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing with the following exceptions. Those exceptions being:

(i) a LURA recorded in conjunction with the Predevelopment Loan Program and a LURA , an EUA, or both for an existing building or buildings originally constructed at least twenty-five years prior to the Application Deadline for the current Funding Cycle, where, in the current Application, the Applicant has selected and qualified for the Homeless Demographic commitment with a development category of Rehabilitation, or Acquisition and Rehabilitation.

FLIHA seeks a variance from or waiver of the provision of the rule that disqualifies an applicant if the proposed development is subject to a land use restriction agreement (LURA) or an extended use agreement. Because Sherwood Apartments is subject to a land use restriction agreement, the rule if applied would make it ineligible for the receipt of HOME Program funding.

The requested rule waiver will not adversely affect any other proposed HOME Program funding and, if not granted, would result in a substantial hardship to FLIHA as the result of significant loss of money spent to assume the USDA-Rural Development loan and in the deprivation of affordable housing for the elderly in Chipley, Washington County, Florida. Granting of the waiver would actually benefit FHFC in compliance with Rule 67-48.014(2) *Florida Administrative Code* which requires that fifteen percent (15%) of HOME funds must first go to qualified Community Housing Development Organization (CHDO) applicants. FLIHA is a qualified CHDO applicant.

4. Basis for FLIHA's Requested Waiver. The rule from which FLIHA seeks waiver implements *Florida Statute* §420.5089. The HOME Program provides funds for the purpose of developing low cost affordable housing that will assist low income persons in securing affordable shelter by reducing the cost of the housing unit.

In the 2009 Strategic Plans submitted by FHFC to the Florida legislature, one of the primary goals of the corporation was to "... develop a strong and comprehensive preservation strategy to save critical, aging assisted rental developments...". If the subject rule is applied to FLIHA's application in this case, it will result in the loss of the Sherwood Apartments as assisted housing to low

income elderly citizens. Loss of the Sherwood Apartments would be contrary to the stated primary goal of preserving critical, aging assisted rental developments.

By granting the variance or waiver, funding under the HOME Rental Program will require FLIHA to enter into a long-term use agreement that will preserve and allow the Sherwood Apartments to continue to provide affordable housing for another fifty (50) years.

FLIHA submitted for and was approved for RFP 2008-04 for Rehabilitation of Affordable Rental Housing Developments in Florida Housing's Portfolio. The RFP was a demonstration program that showed that Rule 67-47.018(1)(c) is not compatible with the current long-term primary goals of FHFC. The funds used for the RFP were HOME funds not utilized in previous Universal Cycles.

In addition, a variance or waiver of this rule is appropriate under the circumstances of FLIHA's application because subsection (c) which disqualifies developments subject to LURAS or extended use agreements, only applies to funding actually financed by FHFC as opposed to funds from the United States Department of Housing and Urban Development and distributed or allocated by FHFC.

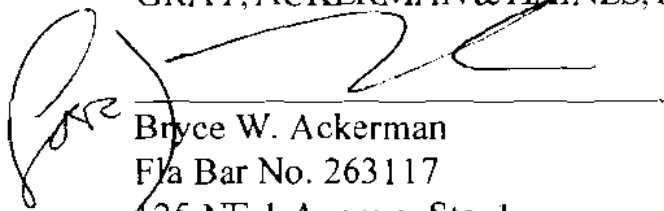
WHEREFORE, Petitioner, FLORIDA LOW INCOME HOUSING ASSOCIATES, INC., respectfully requests that the FLORIDA HOUSING FINANCE CORPORATION grant the Petitioner the following relief:

A. Waive subsection (c) of Rule 67-47.018(1)(c) which disqualifies developments subject to land use restriction agreements or extended use agreements such as the Sherwood Apartments.

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

Respectfully submitted:

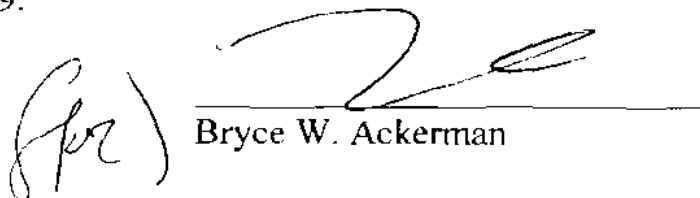
GRAY, ACKERMAN & HAINES, P.A.



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Attorneys for Petitioner
Florida Low Income Associates, Inc.

Certificate of Service

I hereby certify that this 19 day of March, 2010, by Federal Express an original and one true copy of the foregoing Petition for Variance From or Waiver of Rule 67-47.018(1)(c) Florida Administrative Code has been furnished to Della M. Harrell, Corporation Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, #5000, Tallahassee, Fl 32301; and that a true and correct copy has been provided to Wellington H. Meffert, General Counsel, Florida Housing Finance Corporation, 227 N. Bronough Street, #5000, Tallahassee, FL 32301-1329; and to Scott Boyd, Joint Administrative Procedures Committee, 600 S. Calhoun Street, Room 120, Holland Building, Tallahassee, FL 32399.



Bryce W. Ackerman