

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

NORTH CENTRAL HEIGHTS, LLC,
a Florida limited liability company,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORP.,

Respondent.

APPLICATION NO. 2007-041H

FHFC File No.:

2010-0211111

**PETITION FOR WAIVER FROM RULE 67-48.0072(4)(c),
FLORIDA ADMINISTRATIVE CODE (2007)**

NORTH CENTRAL HEIGHTS, LLC, a Florida limited liability company, ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver from Rule 67-48.0072(4)(c), Florida Administrative Code ("F.A.C.") 2007. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Rule Chapter 28-104, Florida Administrative Code.

THE PETITIONER

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

North Central Heights, LLC
c/o Larry Shoeman
21 Tulane Drive
Avon Park, FL 33826
Telephone: (863) 452-4432
Facsimile: (863) 452-5455

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

Maureen McCarthy Daughton
Broad and Cassel
215 S. Monroe Street, Suite 400
Tallahassee, FL 32301
Telephone: (850) 681-6810
Facsimile: (850) 521-1478

3. Petitioner applied for financing from the Housing Investment Partnership (“HOME”) Rental Program in the 2007 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the “Universal Cycle”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. Petitioner’s sole member is Avon Park Housing Development Corporation, a 501(c)(3) non-profit entity established under Chapter 617, F.S. The Petitioner’s application number is 2007-041H (the “Application”). Petitioner applied for HOME Funds to finance a portion of the costs to develop forty (40) single-family rental units in Highlands County, Florida, to be known as North Central Heights (the “Development”). Petitioner was not initially selected for funding at the conclusion of the 2007 Universal Cycle but received an allocation in January 2008.

THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.0072(4)(c), F.A.C. (2007).

That Rule provides:

67-48.0072 – Credit Underwriting and Loan Procedures.

* * *

(4) If the credit underwriting invitation is accepted:

* * *

(c) For SAIL and HOME Applicants and Applicants eligible for a supplemental loan, the loan(s) must close within 14 months of the issuance of the preliminary commitment. Applicants may request one (1) extension of up to 10 months. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation’s Board for consideration. The Board shall consider the facts and

circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a non-refundable extension fee of 1 percent of each loan amount if the Board approves the request to extend the commitment beyond the initial 14 month period. *In the event the loan does not close within 24 months of the issuance of the preliminary commitment, the preliminary commitment or firm commitment, as applicable will be deemed void and the funds will be deobligated.*

Emphasis supplied.

STATUTES IMPLEMENTED BY THE RULES

5. Among other sections of the Florida Housing Finance Corporation Act, the Rule implements Section 420.5089, Florida Statutes, the statute that created the HOME Program.

6. Pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its rule requirements when the strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Section 120.542, Florida Statutes, addresses the granting of waivers in relevant part, as follows: "Waivers shall be granted when the applicant demonstrates that application of the Rule would create a substantial hardship or would violate principles of fairness.¹ Section 120.542(2) defines a "substantial hardship" as a "demonstrated economic, technological legal or other type of hardship" to the applicant.

FACTS SUPPORTING PETITIONER'S REQUEST FOR RULE WAIVER

7. On January 7, 2008 Petitioner received a Preliminary Commitment for its HOME loan from the Corporation in the amount of \$5,340,560.00. It is believed, Petitioner only received its Preliminary Commitment after another Applicant had to return its allocation back to

¹ "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, Florida Statutes.

the Corporation. Pursuant to the Preliminary Commitment letter Petitioner submitted a check in the amount of \$11,224.00 to the assigned credit underwriter.

8. In Spring of 2008, Petitioner applied for a Federal Home Loan from Federal Home Loan Bank in Atlanta ("FHLB"). Typically FHLB holds two (2) funding rounds each year, the first, in the Spring, which typically closes in March, with funding decisions within 90 days.² In 2008, for the first time FHLB decided to only offer one funding cycle. The FHLB funding cycle did not close until June 2008 and funding decisions were not made until December of 2008.³ The Petitioner's application was approved in December of 2008 for a \$1.1 million dollar subsidized permanent loan with 0% interest to the member bank, SunTrust. The Petitioner also applied for and received a FHLB Grant in the amount of \$650,000.00.

9. Due to this unexpected change in the Application process of FHLB, the Petitioner was not even able to begin the underwriting process until January of 2009.

10. In May of 2009, Petitioner requested a ten (10) month extension of the closing and anticipated, at that point, being before the Board for approval within a few months.

11. The credit underwriting process was completed in September of 2009. Approval of the Credit Underwriting Report was placed on the October 2009 Corporation Consent Agenda.

12. Days before the October meeting and without warning, the member Bank withdrew its offer to provide permanent financing and approval of Petitioner's Credit Underwriting Report was pulled from the Board Agenda. The member Bank also withdrew from financing four (4) other transactions, thus it was not a reflection on this Development, but merely a reflection of the extraordinary economic times.

² By way of example, in 2007 the round one deadline for Application submission was March 15th with supporting documents due March 29th. Funding Agreements were finalized June 28, 2007.

³ In 2008 the submission deadline was June 16, 2008, with supporting documents due June 30, 2008.

13. Since that time, FHLB has approved an increase in the original grant to the statutory limit of \$1,000,000.00 and Petitioner has secured a commitment from Bonneville Mortgage for the permanent financing.

14. Petitioner during this process also applied for and received a Pre-Development Loan ("PLP") from the Corporation. The unpaid principal balance is \$500,000.00.⁴

15. Petitioner on November 19, 2009 filed a Petition for Waiver of Rule 67-48.0072(4)(c), Florida Administrative Code (2007) and an Amended Petition on December 14, 2009. The purpose of which was to seek an extension of the January 7, 2010 HOME Loan Closing Deadline to prevent the deobligation of the HOME funds as set forth in the above-referenced rule.

16. On January 22, 2010 the Corporation Board entered a written Order granting the Amended Petition. Specifically, the Corporation Board granted an extension of the time period within which the HOME Loan must close for an additional 120 days to May 7, 2010.

17. Since the entry of this Order, Petitioner has secured signed FHLB AHP Agreements with FHLB Atlanta and Sun Trust for Phase I and Phase II of the Development. In addition, a Preliminary Funding Commitment from Bonneville Mortgage for the USDA RDS 538 Loan is in place. However, since the loan is guaranteed by USDA there is a due diligence component which requires an environmental review and public comment period.

18. To expedite the review process, Petitioners have offered the environmental review that was performed as part of the Corporation's due diligence process, but were advised that this would not be sufficient for purposes of USDA's review.

⁴ North Central Heights II, the Second Phase of this Development which was awarded Home Funds in 2008, has also received \$284,000 in PLP Funds and has been approved for \$350,000 in additional PLP Funds pending a positive credit underwriting report.

19. On March 17, 2010 the USDA issued its, "Finding of No Significant Environmental Impact" ("FONSI") for North Central Heights I and II, LLC. Petitioner is currently in the public advertising phase of the process which requires publication of the FONSI for three (3) consecutive days in a daily newspaper and that the public be given fifteen (15) days to file any objections.

20. The Notice of Finding of No Significant Environmental Impact – North Central Heights was published in the Highlands Today and The Tampa Tribune on March 22 through the 24th. The last day for the public to provide comments and or objections regarding the Development will be Thursday, April 8, 2010.

21. While Petitioner is hopeful that at the conclusion of the "public" phase we will be able to close in time to meet the May 7, 2010 deadline, in an abundance of caution Petitioner is seeking an additional extension of time of the deadline to ensure the funds will not be deobligated.⁵

22. The application of the Rule in this circumstance will create a substantial hardship for the Petitioner who will suffer significant economic loss if the funds are deobligated. Petitioner could not have anticipated the material changes in the application process for the FHLB funding which moved approval of FHLB funding, and in turn commencement of credit underwriting from June of 2008 to January of 2009. Had these changes not occurred credit underwriting would have been completed and approved long before October 2009 and the relief being requested would not be needed.⁶

⁵ Obviously if Petitioner is able to close before the April 30th Board meeting it will withdraw this request.

⁶ Nor could Petitioner have anticipated the loss of financing in the last week of October. Petitioner has replaced those funds so that it can move ahead with this Development, but these new funds are also part of the reason for the delay.

23. If this Petition is not granted or if the funds are deobligated, the Petitioner will be unable to construct the Development resulting in a loss of affordable housing units that would otherwise be available to lower income tenants.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

24. Granting the requested waiver to the Rule will serve the purposes of the Statute that the Rule implements. The HOME Program encourages private developers to construct and operate affordable rental housing for low-income resident. By granting this waiver and giving Petitioners a sixty (60) day extension to close on the HOME loan, the Corporation will permit the Development to be constructed and units placed into service. A grant of the requested waiver will further the Corporation's efforts to fulfill its goal of increasing the supply of affordable housing through private investment.

TYPE OF WAIVER

25. Petitioner's requested waiver is permanent in nature.

26. The Petitioner will immediately respond to any questions that the Corporation may have regarding this Petition and, upon receipt of, the Corporation believes necessary for it to consideration of the Petition.

ACTION REQUESTED

Petitioner requests the following:

27. That the Corporation grant the requested Waiver of Rule 67-48.002(4)(c), F.A.C., and grant Petitioner an extension of sixty (60) days to close the HOME loan.

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

Respectfully submitted this 30 day of March, 2010.



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