

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

NVC SPRING HILL, LTD.

Petitioner,

vs.

Application No.: 2009-208C

FLORIDA HOUSING
FINANCE CORPORATION

FHFC File No: 2010-031VW

Respondent.

**PETITION FOR PERMANENT WAIVER AND VARIANCE FROM
ADMINISTRATIVE RULE AND UNIVERSAL APPLICATION**

Petitioner NVC – Spring Hill, Ltd., (“NVC”), pursuant to Section 120.542, Florida Statutes (“FS”), and Rules 28-104.001 through 28-104.006, Florida Administrative Code (“FAC”) files this petition to the Florida Housing Finance Corporation (“Florida Housing”) and requests a waiver from Rule 67-48.004(14)(g), F.A.C., which requires that certain information be included in a Universal Application and prohibits revisions to that information, and a variance to the Universal Application section which requires an applicant to select a specific Development Type. In support of its petition, NVC provides as follows:

Parties

1. NVC is a developer of affordable housing in Florida and is located at 2602 Merida Lane, Tampa, Florida 33618. NVC’s telephone numbers is 813-960-1991.
2. NVC timely submitted an Application (no. 2009-208C) with Florida Housing for an award of competitive Housing Credits in the 2009 Universal Cycle. The funds were to be used to supplement the development of a 90-unit multifamily housing development known as Vista Grand at Spring Hill, in Spring Hill, Hernando County.

3. NVC received a perfect score of 70 points, met all threshold requirements, and achieved six ability to proceed tie-breaker points and seven-and-a-half proximity tie-breaker points. NVC was ultimately awarded an allocation of tax credits in the amount of \$1,275,000. NVC has been invited into credit underwriting and is proceeding through that process.

4. Florida Housing is the agency affected in this proceeding and is located at 227 Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file number for NVC is #2009-208C.

5. The requested rule waiver and variance will not adversely affect the Development. However, a denial of this request would negatively impact NVC's ability to construct this affordable housing project.

6. The variance and waiver being requested is permanent in nature.

Rule and Application Instructions from which Relief is requested

7. The Universal Application at Part III A(4) requires an applicant to select a "Development Type". The Universal Application Instructions provides additional guidance and a list of Developer Types that must be selected as follows:

Applicants must select the one Development Type that best describes the proposed Development. For mixed-type Developments, indicate the type that will comprise 50 percent or more of the units in the Development. Applications requesting funding from MMRB must be for a proposed Development consisting of 2 or more dwelling units in each residential building.

- Garden Apartments
- Townhouses
- High Rise (a building comprised of 7 or more stories)
- Single Family Rental
- Duplexes
- Quadruplexes
- Mid-Rise with Elevator (a building comprised of 4 stories)
- Mid-Rise with Elevator (a building comprised of 5 or 6 stories)
- Single Room 'Occupancy (SRO)
- Other – Specify the type in the addenda

8. Once a Development Type is selected by the applicant, Rule 67-48.005(14)(g), F.A.C., mandates that the Development Type selected cannot be revised after the application deadline or in the instant case August 20, 2009.

9. The Universal Application Package including the Instructions and Application Forms, are incorporated by reference at Rule 67-48.004(1)(a), F.A.C.

Justification for NVC's Requested Waiver and Variance.

10. In response to the above-referenced Universal Application Section and Universal Application Instructions, NVC selected "Other" as its Development Type. As further required by the Universal Application, NVC specified other as a "3 story with Elevator". This response was based on the preliminary site plans and soil surveys.

11. As the project has moved forward, more detailed analysis of the development site has been conducted. Based on these more in-depth studies, certain soil limitations on the site have been discovered, which would require additional remediation to build the project as proposed.

12. To address the soil limitation issues and reduce the amount of additional remediation the building footprint must be reduced. To do this, however, the proposed project must be changed from a "3 story structure with elevator" to a 4 story structure with an elevator. This change will allow for the footprint of the building to be reduced thereby reducing the amount of additional remediation necessary. The number of units will remain the same.

13. No other changes to the designated amenities, or other features, will occur as a result of this request. Additionally, no advantage is gained in that no points or bonus was associated with the selection of Development Type.

Conclusion

14. Florida Housing has the authority pursuant to Section 120.542(1), F.S., and Chapter 28-104, F.A.C. to grant waivers and variances to its rule requirements when the strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances.

15. Waivers and variances shall be granted when the person subject to the rule demonstrates that application of the rule would (1) create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

16. The requested waiver and variance will not adversely impact the Development, and will ensure that 90 affordable housing units will be available for the residents of Hernando County. Not granting the requested variance and waiver will lead to a substantial hardship which is an unintended consequence of the strict application of the Rules and Instructions at issue here.

17. The controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant.

18. The waiver and variance requested here serves the purposes of Section 420.5099, Florida Statutes (2009), and the Florida Housing Finance Corporation Act (the "Act"), as a whole, because one of the primary goals established by the Act 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.

§420.5099(2), Fla. Stat. (2009).

19. Finally, by granting the requested waiver, Florida Housing would recognize the realities and principles of fundamental fairness in the development of affordable rental housing.

20. Should Florida Housing require additional information, NVC is available to answer questions and to provide all information necessary for consideration of its Petition.

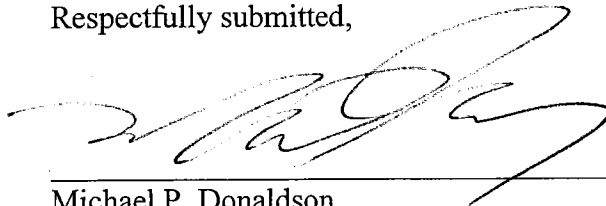
WHEREFORE, Petitioner NVC respectfully requests that the Florida Housing grant the Petition and provide the following relief:

A. Waiver of Rule 67-48.004(14)(g), F.A.C., which prohibits a change in the Development Type after the Application Deadline; and

B. A Variance from Part III (A)(4) of the 2009 Universal Application to allow NVC to revise its selected Development Type from "Other" "Three Story with Elevator", to "Mid-Rise with elevator (a building comprised of 4 stories)"; and

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

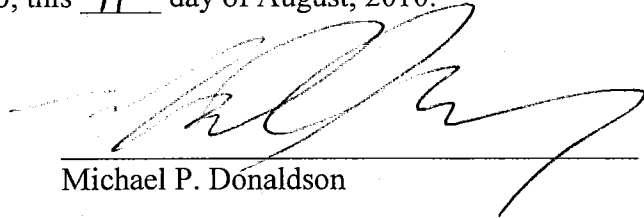
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Petition is being served by hand delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 11th day of August, 2010.



Michael P. Donaldson