

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FHFC CASE NO. 2014-082VW
Application No. 2014-239C

HTG MIAMI-DADE 5, LLC

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(14)(i) and (j)
FOR A CHANGE IN NUMBER OF UNITS AND IN TOTAL SET-ASIDE PERCENTAGE**

HTG MIAMI-DADE 5, LLC (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for (i) a waiver or variance of the Corporation's prohibition on changes in "Total Number of Units" designated by an applicant, and (ii) a waiver or variance of the Corporation's prohibition on changes in the "Total Set-Aside Percentage" designated by an applicant and set forth in the Total Set-Aside Breakdown Chart, in its response to RFA 2013-003 - Affordable Housing Developments Located in Broward, Miami-Dade and Palm Beach Counties. See Rule 67-48.004(14)(i) and (j), F.A.C.

In support of its petition, the Petitioner states:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative for Petitioner's application (the "Application") in response to RFA 2013-003 - Affordable Housing Developments Located in Broward, Miami-Dade and Palm Beach Counties (the "RFA") are:

HTG Miami-Dade 5, LLC
3225 Aviation Drive, Suite 602
Miami, FL 33133
Attn: Matthew Reiger
Telephone: 305-860-8188
Facsimile: 305-856-1475
E-Mail: mattr@htgf.com

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorney are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
Facsimile: 305-789-3395
E-mail: bmcdonough@stearnsweaver.com

B. THE DEVELOPMENT

3. The Petitioner timely submitted its Application in response to the RFA for the development named "Wagner Creek" (the "Development"). *See* Application No. 2013-239C. Petitioner received a preliminary allocation of Low-Income Housing Tax Credits for the Development.

4. The syndication of Low-Income Housing Tax Credits, together with other loan sources, will provide funds for the construction of a multifamily residential apartment community intended to serve low-income individuals and families in Miami, Florida.

5. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner; (b) could

deprive Miami-Dade County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness¹. Section 120.542(2), Fla. Stat. (2013).

6. The waiver being sought is permanent in nature.

C. RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-48.004(14)(i) and (j), Florida Administrative Code (the “Rule”). Specifically, Petitioner is requesting an increase in the total number of units from 68 to 73 and a decrease in the Total Set-Aside Percentage from 100% to approximately 93%. Petitioner will maintain the total number of “low-income units” at 68, and is increasing the number of units which will be available for workforce housing (“Work Force Housing”) from 0 units to 5 units. Petitioner recognizes that the Rule provides that the Corporation may approve an increase in the number of units in its underwriting process, but, since (a) in this case, the additional units are not “like-kind” (i.e., set-aside at the same income limitations as the units described in the Application), and (b) adding such units is the direct cause of the decrease in the Total Set-Aside Percentage, Petitioner is requesting that the change in unit count be approved as part of the Corporation’s approval of the decrease in the Total Set-Aside Percentage.

The Rule provides, in relevant part, as follows:

“(14) 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

¹“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “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(2), Florida Statutes.

Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation;

(j) With regard to the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside break-down chart for the program(s) applied for in the Set-Aside Commitment section of the Application.”

Rule 67-48.004(14)(i) and (j), F.A.C.

D. STATUTES IMPLEMENTED BY THE RULE

8. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. See Section 420.5099, Florida Statutes.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

9. Petitioner requests a waiver from Rule 67-48.004(14)(i) and (j), Florida Administrative Code. Petitioner is seeking a waiver from the Rule allowing it to increase the total number of units from 68 to 73, and to decrease the Total Set-Aside Percentage from 100% to approximately 93%.

10. It is not uncommon for development changes to occur after submission of an application to the Corporation. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its rule requirements when strict

application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the rule demonstrates that the application of the rule would 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. § 120.542(2), Fla. Stat. (2011).

11. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for waiver:

- a. Petitioner timely submitted its Application to the Corporation in response to the RFA, for 68 low-income tax credit housing units, with the Total Set-Aside Percentage of 100%.
- b. Pursuant to applicable zoning for the area in which the Development is located, up to five (5) additional units can be added to the Development, for a total of 73 units.
- c. Local government has urged Petitioner to take full advantage of governmental zoning and other incentives available to Petitioner under applicable land use laws, by providing an additional number of housing units.
- d. An increase in the number of residential units will allow Petitioner to provide a mixed-income development with both affordable housing and Work Force Housing, in an area that is underserved by new construction of Work Force units but ideally suited for such mixed-income housing.

The Development is in the heart of Miami's hospital district and within close proximity to the Civic Center Metrorail Station. The Development will serve the needs of nurses, technicians and other health professionals earning in excess of the income limitations applicable to affordable housing, yet still unable to afford area market-rate rents. Vacancy rates are at historically low levels in this area, and the rental market for affordable and Work Force Housing units is significantly underserved.

- e. Petitioner's scoring and allocation of Low-Income Housing Tax Credits would not have been affected if Petitioner had originally included 68 units in the Application, with 100% of them designated as set-aside units, and an additional five (5) Work Force Housing units in the Development. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other applicant in the RFA.

- f. A denial of the requested waiver would result in a substantial economic hardship for Petitioner, as a consequence of lower rental revenues, and lower economies of scale, i.e., the Development's feasibility is enhanced by spreading fixed costs, such as foundations, roof and amenities, over five (5) additional units. The aforementioned economies of scale also provide relief against the Corporation's prescribed Total Development Cost ("TDC") cap. Without the additional units, due to steady increases in construction costs, the feasibility of staying within the TDC cap remains uncertain. Five (5) additional Work Force Housing units add financial stability to the Development and improve the Development's operating

abilities. Underwriting of the Development is facilitated by the inclusion of the extra units, which should enhance Petitioner's ability to receive loan and investment approvals in a timely manner. The additional rental revenue from the five (5) units will correspondingly increase the Development's debt service coverage ratio, mitigating any operational risks of the Development and further ensuring long-term viability. More significantly, up to five (5) families would be deprived of the opportunity to obtain essential Work Force Housing, absent the inclusion of the Work Force Housing units in the Development.

- g. The waiver requested herein will not result in any decrease in number of "low-income units," but rather will only increase the total number of units to provide for additional Work Force Housing units. The addition of five (5) Work Force Housing units to the total unit count will necessarily result in a corresponding decrease in the Total Set-Aside Percentage provided for in the Application.

12. A waiver of the Rule's restriction against increasing the total number of units and changing the Total Set-Aside Percentage from Petitioner's Application would serve the purposes of Section 420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means, and would provide the additional benefit of meeting the critical need for mixed-income developments with Work Force Housing units.

13. By granting the waiver and permitting Petitioner to decrease the total Set-Aside Percentage, the Corporation would recognize the economic realities and principles of fundamental fairness in developing affordable rental housing by encouraging the development of mixed-income housing projects, particularly in urban areas well-suited to a mixed-income housing project, and enabling developers to meet the needs of both low-income families and families in dire need of Work Force Housing. This recognition would promote participation by owners such as Petitioner in meeting the Act's purpose of providing affordable housing in an economical and efficient manner.

14. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(14)(i) and (j), Florida Administrative Code, allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 93% and to increase the total number of units in the Development from 68 to up to 73;
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

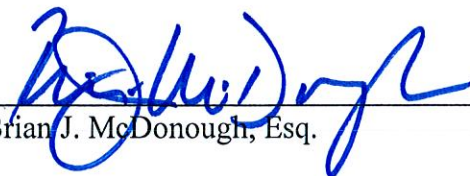
STEARNS WEAVER MILLER WEISSLER
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Miami, Florida 33131
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E-mail: bmcdonough@swwwas.com

By: _____


BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 12 day of November, 2014.



Brian J. McDonough, Esq.

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

Patricia K. Green
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November 12, 2014

Via FedEx

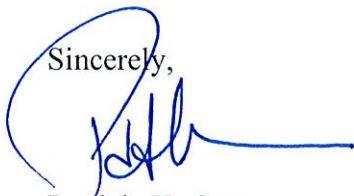
Ashley Black
Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough St.
Suite 5000
Tallahassee, Florida 32301

RE: Petition for Rule Waiver

Dear Ms. Black:

Enclosed is a Petition for Rule Waiver, submitted on behalf of HTG Miami-Dade 5, LLC, for consideration by the Board at its next meeting. I have sent a duplicate copy to the Joint Administrative Procedures Committee. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Patricia K. Green

PKG/zs
Enclosures

cc: Joint Administrative Procedures Committee (with Enclosures)