

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Osprey Apartments, LLC

FHFC Case No.: 2015-042VW

**ORDER GRANTING WAIVER OF RULES 67-48.002(92) and
67-48.004(3)(g)(14)(g), FLORIDA ADMINISTRATIVE CODE (2013)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 11, 2015, pursuant to a “Petition for Waiver of the Qualified Allocation Plan’s Requirement for Returning Housing Credit Allocations, and for an Immediate Allocation of 2015 Housing Credits and for Waiver of Rule 67-48.004(3)(g) Pertaining to Development Type” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on November 24, 2015, from Osprey Apartments, LLC (“the Petitioner”). Notice of the Petition was published on November 30 in Volume 41, Number 230, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATL: 12-14-15

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner was selected to receive Low Income Housing Tax Credits (HC) and loan funding under the State Apartment Incentive Loan program (“SAIL”) under RFA 2014-107 (the “RFA”) to assist in the construction of new high-rise apartments serving low-income veteran and chronically homeless tenants in Miami, Florida.

3. Rule 67-48.002(92), Fla. Admin. Code (2013), provides:

(92) “QAP” or “Qualified Allocation Plan” means, with respect to the HC Program, the 2014 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. . . .

4. Section II.K. of the Qualified Allocation Plan (“QAP”), as adopted by reference in Rule 67-48.002(92), Fla. Admin. Code (2013), provides:

K. Notwithstanding any other provision of this QAP, 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, and 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: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

5. Petitioner is required by a carryover allocation agreement with Florida Housing to place its proposed Development in service by December 31, 2016. For reasons beyond its reasonable control, which are detailed in the Petition, it will not be possible for Petitioner to meet this deadline.

6. Strict compliance with the QAP would require Petitioner to wait until the fourth quarter of 2016 to return its housing credit allocation, and then hope that Florida Housing would exchange these credits for 2017 housing credits. According to Petitioner, this would put the financing of the project at risk.

7. Petitioner now seeks a waiver of the provision in the QAP that would require it to return its 2014 Housing Credit Allocation in the last calendar quarter of 2016 in order to qualify for a new allocation of Housing

Credits. Petitioner also seeks a waiver of the provision of the QAP that would limit such an allocation to 2017 Housing Credits. Petitioner proposes instead to return its 2014 Housing Credit allocation now, and obtain an immediate allocation of 2015 Housing Credits. Petitioner has demonstrated that it meets all of the other requirements in Section II.K. of the QAP necessary for such an allocation.

8. Rule 67-48.004(3)(g), Fla. Admin. Code (2013), provides in pertinent part:

(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

...
(g) Development Type;

9. Petitioner requests a waiver of the above prohibition against changing the Development Type, in order to change from a development of “High-Rise” to “Mid-Rise 5 to 6 story.” Petitioner requests this change in order to reduce construction costs to be within the Total Development Cost Per Unit Limitation set forth in the RFA.

10. The Board finds that the requested changes would neither affect the scoring of Petitioner’s application nor allow Petitioner to gain an unfair advantage over other applicants. The Board further finds that not granting

these waivers could deprive Miami-Dade County, Florida of essential affordable low-income housing units in a timely manner.

11. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

12. Petitioner has demonstrated that the waivers are needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waivers are not granted. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waivers are granted.

13. The Board finds that strict application of the above Rules under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-48.002(92), Fla. Admin. Code (2013) is hereby **GRANTED** to permit Petitioner to return its 2014

Housing Credit Allocation and to allow the Corporation to allocate an equivalent amount of 2015 Housing Credits to Petitioner. Petitioner's request for a waiver of Rule 67-48.004(3)(g), Fla. Admin. Code (2013) to permit a change in Development Type from "High-Rise" to "Mid-Rise 5 to 6 stories" is hereby **GRANTED**, provided that Petitioner will be subject to and must complete the Development within the Total Development Cost limits of the High-Rise Type as initially applied for.

DONE and ORDERED this 11th day of December, 2015.



Florida Housing Finance Corporation

By: _____

Chair

Copies furnished to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.