

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MARICA GARDENS, LLC.

FHFC Case No.: 2015-005VW

---

**ORDER GRANTING WAIVER OF RULE 67-48.004(3)(i),  
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on March 18, 2016, pursuant to a “Petition for Waiver of Rule 67-48.004(3)(i), for a Change in Number of Units” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on February 11, 2016, from Marcia Gardens, LLC (“Petitioner”). Notice of the Petition was published in Volume 42, Number 29, 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:

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

2. Petitioner was selected to receive \$4,500,000 in HOME funds from Florida Housing under RFA 2015-110 to assist in the construction of a 70 unit low-income housing development named “Marcia Gardens” (the “Development”), with a commitment to provide 55 HOME-Assisted units. Petitioner’s Application

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

 /DATE: 3-18-16

Number was 2016-106H. Petitioner also obtained \$8,500,000 in Multifamily Mortgage Revenue Bonds (MMRB) for this 70-unit development. After being invited to credit underwriting, Petitioner obtained approval from Florida Housing to increase the MMRB amount to \$15,500,000 in order to increase the total number of low-income housing units in the development to 134. Petitioner now seeks to change the total number of low-income units in the Development from 70 units to 134 units for purposes of its HOME application.

3. Rule 67-48.004(3)(i), Fla. Admin. Code provides, in relevant part:

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

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs that 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;

4. Petitioner had initially contemplated constructing this development in two phases, with the second phase on adjacent land to include 64 low-income housing units. Building out the entire development as a single project is expected to be less costly and more efficient. If the Rule is not waived Petitioner alleges that it will suffer a substantial and unnecessary economic hardship because it would incur

duplicate due diligence, closing and construction costs, and would suffer ongoing inefficiency of project management with attendant increased costs.

5. The Petitioner is not asking to change the number of Home-assisted units, only the total number of low-income units in the development. The scoring of Petitioner's application for RFA2015-110 would not have been affected if Petitioner had originally included 134 units in the Application, nor would the ranking of any other application.

6. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, Florida Housing 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. Section 120.542(2) 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

The 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.

7. The Board finds that granting the waiver 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 granting the waiver would have no detrimental impact on Florida Housing or any of its programs.

8. Petitioner has demonstrated that it would suffer a substantial hardship if the waiver is 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 waiver is granted.

9. The Board finds that strict application of the above rules under these circumstances would cause substantial hardship to Petitioner. The Board further finds 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 waiver of Rule 67-48.004(3)(i), Fla. Admin. Code, is hereby **GRANTED**, so that Petitioner may increase the total number of units set aside for low-income tenants in the Development from 70 to 134, while maintaining the same total number of HOME-assisted units.

DONE and ORDERED this 18th day of March, 2016.

Florida Housing Finance Corporation

By: \_\_\_\_\_

  
Chairperson

**Copies furnished to:**

Hugh R. Brown  
General Counsel  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Ken Reecy  
Director of Multifamily Development Programs  
Florida Housing Finance Corporation  
337 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301

Brian J. McDonough, Esq.  
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130

Joint Administrative Procedures Committee  
Attn: Ms. Yvonne Wood  
120 Holland Building  
Tallahassee, Florida 32399-1300

**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.**