

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

In re SP GARDENS LLC  
(Laburnum Gardens)

RFA 2015-107  
FHFC Case No. 2017-59VW

**PETITION FOR WAIVER OF RULE 67-48.002(95)**

Petitioner, SP Gardens LLC (“SP Gardens”), by and through undersigned counsel and pursuant to section 120.542, Florida Statutes, and Florida Administrative Code Chapter 28-104, hereby petitions Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the timing provisions of the 2016 Qualified Allocation Plan (the “2016 QAP”) as incorporated and adopted by Florida Administrative Code Rule 67-48.002(95) (the “Rule”) pertaining to a tax credit exchange. SP Gardens seeks this waiver in order to immediately return its allocation for 2016 Low-Income Housing Tax Credits in exchange for 2017 Housing Credits and to extend all corresponding deadlines. In support, SP Gardens states as follows:

**The Petitioner**

1. The name of the Petitioner is SP Gardens LLC. For purposes of this proceeding, the address, email address, telephone number, and fax number are that of SP Gardens’ counsel:

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FINANCE CORPORATION

**The Development**

2. On November 4, 2015, SP Gardens timely submitted its application in response to RFA 2015-107 for Housing Credit Financing for Affordable Housing Developments Located in

Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties, to assist in the preservation of an 81-unit development for the elderly located in Hillsborough County, Florida, called Laburnum Gardens (the “Development”). See Application Number 2016-137C.

3. SP Gardens requested housing tax credits in the annual amount of \$1,420,000. The Development received an allocation of 2016 Low-Income Housing Tax Credits (“2016 Housing Credits”) and was invited to underwriting on April 21, 2016.

4. Pursuant to 26 U.S.C. § 42(h)(1)(E)(i), the Development must be placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made; in this case, the federally-mandated placed-in-service date would be December 31, 2018. Under the Carryover Agreement, the Development must be placed in service on or before August 31, 2018.

5. As explained below, SP Gardens seeks to exchange its 2016 Housing Credits for 2017 Housing Credits and a corresponding extension of all deadlines relative to those credits.

**The Rule For Which The Waiver Is Sought**

6. SP Garden requests a waiver of Florida Administrative Code Rule 67-48.002(95) and Subsection II.K. of the 2016 QAP, which provide as follows:

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 [Florida Housing Finance] 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.

*Id.* (emphasis added).

7. The process found in the 2016 QAP requires an applicant to return its allocation of housing tax credits in the last calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of Florida Housing. SP Gardens requests a waiver of this limitation on the timing of the tax credit exchange, to allow a tax credit change to be approved by the Executive Director or the Board of Directors of Florida Housing at this time rather than in the last quarter of 2018.

**Statutes Implemented By The Rule And The 2016 QAP**

8. The 2016 QAP and the Rule implement the statutes governing the allocation of low-income housing tax credits. *See* § 420.5099, Fla. Stat. The Act designates Florida Housing as the State of Florida's housing credit agency, and as the State's designated agent, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits. § 420.5099(1), (2), Fla. Stat.

**Justification For The Requested Waiver**

9. Florida Housing has the authority to grant waivers to its rule requirements when strict application would lead to unreasonable, unfair, and unintended consequences in particular instances. § 120.541(1), Fla. Stat. A waiver shall be granted when the person who is 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. § 120.542(2), Fla. Stat.

10. SP Gardens requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve the tax credit exchange prior to the last quarter of 2018 because imposition of the 2016 QAP will create a substantial hardship for SP Gardens. It is now apparent that the ability of the Development to be placed in service by the date required is in jeopardy due to circumstances beyond SP Gardens' control.

11. The requested extension and waiver of timing requirements are necessary due to delays in the process for obtaining building and development permits from Hillsborough County. These delays have caused SP Gardens' equity investor to grow concerned as to SP Gardens' ability to meet the placed-in-service requirements, and the investor has asked that any housing credit swap not be delayed until the last quarter. A waiver of the timing requirements would also account for any further unforeseen delays.

12. Florida Housing has already approved other, similar requests to waive the timing requirements of the 2016 QAP for developments. *See In Re: SP Manor, LLC*, Order Granting Waiver of Rule 67-48.002(95), FHFC Case No. 2017-053VW (July 28, 2017); *In Re: Amelia Court at Creative Village Partners, Ltd.*, Order Granting Waiver of Rule 67-48.0072(95), FHFC Case No. 2017-054W (July 28, 2017); *Equality Park, Ltd. v. Fla. Housing Fin. Corp.*, Order Granting Waiver of Rule 67-48.002(95), FHFC Case No. 2017-039VW (June 16, 2017); *Dr. Alice Moore Apartments, LLLP v. Fla. Housing Fin. Corp.*, Order Granting Waiver of Rule 67-48.002(95), FHFC Case No. 2017-028VW (June 16, 2017); *In Re: Jasmine Housing, Ltd.*, Order Granting Waiver of Rule 67-48.002(95), FHFC Case No. 2017-028VW (May 5, 2017).<sup>1</sup>

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<sup>1</sup> In addition, such waivers are routinely granted by Florida Housing. *See, e.g., In Re: Osprey Apartments, LLC*, Order Granting Waiver of Rules 67-48.002(92), 67-48.004(3)(g)(14)(g), Florida Administrative Code (2013), FHFC Case No. 2015-042VW (Dec. 11, 2015); *Janie Poe Assocs. 3, LLC v. Fla. Housing Finance Corp.*, Order Granting Waiver of 2012 Qualified Allocation Plan, Paragraph 9, as incorporated by reference at Rule 67-48.002(94), F.A.C., FHFC Case No. 2015-002VW (March 20, 2015).

13. Here, SP Gardens has satisfied the requirements justifying waiver of the Rule and timing limitations in the 2016 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 81 affordable elderly housing units will be preserved and made available for the target population in Hillsborough County. Denial of SP Gardens' request would (a) result in substantial economic hardship to SP Gardens, as it has already incurred significant costs to date toward ensuring that the Development proceed to completion and it further jeopardizes SP Gardens' ability to retain its equity investor, and (b) deprive Hillsborough County of essential affordable housing for its vulnerable elderly population. Further, the waiver will serve the purposes of the statute and the Florida Housing Finance Corporation Act because one of the Act's primary purposes is to facilitate the availability of decent, safe, and sanitary housing in this state. *See* § 420.5099(2), Fla. Stat. Denial of the waiver would deprive Hillsborough County of essential and affordable housing units for the elderly.

14. Moreover, the Florida Housing Finance Corporation Act was enacted, at least in part, to encourage private and public investment in facilities for persons of low income. By granting this waiver, it increases the chances that SP Gardens will be retain its tax credit investor to support the Development. If the Development is supported by a tax credit investor, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in housing for persons of low income, and recognize the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), Fla. Stat.

#### **Petitioner Requests A Permanent Waiver**

15. SP Gardens requests a permanent waiver.

**Action Requested**

WHEREFORE, SP Gardens respectfully requests that Florida Housing:

- A. Grant this Petition and all of the relief requested herein;
- B. Grant the requested waiver of the timing requirements found in the 2016 QAP and allow the requested credit exchange before the last calendar quarter of 2018;
- C. Grant a corresponding extension of all deadlines relative to those credits; and
- C. Grant such further relief as it may deem appropriate.

Respectfully submitted on August 17, 2017.



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*Attorneys for Petitioner, SP Gardens LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this Petition for Waiver of Rule 67-48.002(95) was filed by email with Kate Fleming, Agency Clerk, [kate.flemming@floridahousing.org](mailto:kate.flemming@floridahousing.org), and that a copy of the original physically signed Petition shall be delivered within five business days to the Agency Clerk; that a true and correct copy was provided by email to Hugh Brown, General Counsel, [hugh.brown@floridahousing.org](mailto:hugh.brown@floridahousing.org), Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301; and that a true and correct copy was provided to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, and via email to [joint.admin.procedures@leg.state.fl.us](mailto:joint.admin.procedures@leg.state.fl.us), all on August 17, 2017.

  
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Tiffany A. Roddenberry