

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

MILLENIA DEVELOPMENT GROUP, LLLP,
A Florida limited liability limited partnership,

Petitioner,

vs.

APPLICATION NO. 2006-095C

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**PETITION FOR WAIVER FROM
RULES 67-48.004(14)(j) AND 67-48.004(14)(k)**

MILLENIA DEVELOPMENT GROUP, LLLP, a Florida limited liability limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for waiver from Rules 67-48.004(14)(j) and 67-48.004(14)(k), Florida Administrative Code (2006). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone and facsimile number of the Petitioner is:

Millenia Development Group, LLLP
c/o Jay P. Brock
Atlantic Housing Partners
329 North Parks Avenue, Suite 300
Winter Park, Florida 32789

2. The address, telephone and facsimile number of Petitioner’s counsel is:

Maureen McCarthy Daughton, Esquire
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3. Petitioner successfully applied for financing from the Housing Credit (“HC”) program in the 2006 Universal Application Cycle – Multi-Family Mortgage Revenue Bonds (“MMRB”) Program; State Apartment Incentive Loan (“SAIL”) Program; Home Investment Partnership (“HOME”); Rental Program and Housing Credit (“HC”) Program (the “Universal Cycle”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s Application number is 2006-095C (the “Application”). Petitioner applied for HC funds to finance a portion of the costs to develop a 164 unit garden apartment complex named The Fountains at Millenia – Phase I (the “Development”) in Orange County, Florida. The Total Set-Aside Percentage is 88%. The Application for HC Funds was approved at the July 28, 2006 Corporation Board meeting.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from certain sections of Rule 67-48, Florida Administrative Code (2006) (the “Rule”). More specifically, Petitioner requests a waiver from Rule 67-48.004(14)(j), F.A.C. (2006), which provides:

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

* * *

(j) Total number of units.

5. Rule 67-48.004(14)(k), F.A.C. (2006) provides:

(14) . . . There are certain items that must be included in the Application and cannot be revised . . . after the Application Deadline

Those items are as follows:

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

* * *

STATUTES IMPLEMENTED BY THE RULE

6. The Rules implement, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the HC program. Section 420.5093, Florida Statutes.

7. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness,² and (2) the purpose of the underlying statutes has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

8. The Development, as submitted in the Application, reflects a total set aside percentage of 88% with a total of 145 affordable units based on a total of 164 units. Subsequent

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.516, Florida Statutes.

² "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the 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 Section 120.542(2), Florida Statutes.

to the completion of the final design and permitting process, Petitioner needs to eliminate two of the market rate units to enlarge the community room to make it more functional for the residents. Petitioner is seeking to reduce the number of total units by two, from 164 to 162. Since the number of affordable units will not be reduced, the amount of tax credits will not be affected and the Total Set-Aside Percentage will actually increase to 89%.

9. These changes will not adversely impact the Development or the delivery of affordable units. To the contrary, they will enhance an amenity within the Development available to all of its residents, without decreasing the number of affordable units that will be available to prospective tenants. Strict application of the Rule in this case will lead to an unreasonable and certainly an unintended result. The intent of the Rule was to ensure that Developers do not provide fewer units of affordable housing than what is set forth in their application. In this case the number of affordable units that will be provided remains the same as that set forth in Petitioner's Application. The Total Set-Aside Percentage will actually increase as a result of this unit modification. Accordingly, denial of this petition will violate principles of fairness and will not further the purpose for which the Rule was implemented.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

10. Granting the requested waiver will serve the purposes of the statute which is implemented by the Rules for which waiver is sought. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was enacted to encourage private and public investment in housing for persons of low income. The Housing Tax Credit Program was created to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to make the aforementioned changes, the Corporation will continue to recognize the goal of increasing the supply of affordable housing since granting this waiver will

increase the Total Set-Aside Percentage and not dilute the number of affordable units that Petitioner will be able to provide. The residents will, in fact, receive the added benefit of a larger community room at the Development complex.

TYPE OF WAIVER

11. The waiver being sought is permanent in nature.
12. Should the Corporation have questions or require any additional information necessary for consideration of the Petition, please contact the undersigned.

ACTION REQUESTED

13. Petitioner requests that the Corporation grant the Petition for Waiver From Rule 67-48.004(14)(j), such that the Corporation permits the reduction in total units from 164 to 162, with the reduction to be applied to the market rate units.
14. Petitioner requests that the Corporation grant the Petition for Waiver from Rule 67-48.004(14)(k), such that the Corporation permits the Total Set-Aside Percentage to increase from 88% to 89%.
15. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 19 day of September, 2006.



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