

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2009-008VW
APPLICATION NO. 2007-150C

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Florida Housing Finance Corporation

PANA VILLA REDEVELOPMENT, LTD.,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OR VARIANCE OF THE QUALIFIED ALLOCATION PLAN'S
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATION AND FOR
AN IMMEDIATE ALLOCATION OF 2009 HOUSING TAX CREDITS**

Petitioner Pana Villa Redevelopment, Ltd., a Florida limited partnership ("Petitioner"), petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver or variance of the Qualified Allocation Plan's requirement that applicants wait until the last calendar quarter of the year in which the applicant is required to place its project in service to return a housing credit allocation and for an immediate allocation of 2009 Housing Tax Credits. *See* Rules 48.002(83) and 67-48.023, Florida Administrative Code (collectively the "Rules), and Qualified Allocation Plan at ¶ 11.

1. Pursuant to Section 120.542, Fla. Stat. (2008), and Rules 28-104.001 through 28-104.006, F.A.C. (2008), Petitioner requests a waiver of Rule 67-48.002(83), F.A.C., and a variance of Paragraph 11 of the Qualified Allocation Plan ("QAP") to allow the return of its 2007 Housing Credit Allocation, and to obtain an immediate allocation of 2009 Housing Tax Credits in an amount not to exceed its 2007 Housing Credit Allocation.

A. The Petitioner and The Development

2. The name, address, and telephone and facsimile numbers for Petitioner and its qualified representative are:

Pana Villa Redevelopment, Ltd.
Attention: Kimberly K. Murphy
1002 West 23rd Street, Suite 400
Panama City, Florida 32405
Telephone: 850-769-8981
Facsimile: 850-769-1294

3. The name, address, telephone and facsimile numbers and e-mail address of Petitioner's attorney is:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3336
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E-mail: bmcdonough@swmwas.com

4. During the 2007 cycle, Petitioner submitted its Universal Application¹ (Application No. 2007-150C) for housing tax credits ("HCs") and received a preliminary allocation of \$930,070. The HCs are being used to finance a portion of the acquisition and rehabilitation of Pana Villa Apartments, a 72-unit multi-family rental development (the "Development") intended to serve families in Panama City, Bay County, Florida. The construction period is projected to take 14 months.

¹The Universal Application Package has been adopted and incorporated into Chapter 67-48 by Rule 67-48.004(1)(a), F.A.C. (2006).

5. As permitted by Rule 67-48.028, F.A.C. (2007), Petitioner applied for a carryover of the HCs which was granted by Florida Housing pursuant to the parties' Carryover Allocation Agreement. As a result, the Placed-in-Service Date for the Development is December 31, 2009.

6. Consequently, it is anticipated that there will be a Final Housing Credit Allocation granted to Petitioner in accordance with Florida Housing's usual final allocation procedures.

7. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to the Petitioner; (b) could deprive Bay County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. 2008).

8. The waiver and variance being sought are permanent in nature.

B. The Rules from Which Relief is Requested and the Statute Implementing the Rules

9. Rule 67-48.002(88), F.A.C (2007), defines the "Qualified Allocation Plan" as follows:

QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2007 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.

10. Section 11 of the 2007 QAP provides that HCs may be returned only in the last calendar quarter of the year (October through December) in which a development is required to be placed in service:

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, 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: . . . 2007 QAP, pp. 12-13.

11. Sections 420.501 through 420.516 of the Florida Statutes set forth the Florida Housing Corporation Act (the “Act”), which designates Florida Housing as the State of Florida administrator for the State Housing Tax Credit Program to establish procedures necessary for the proper allocation of tax credits and to ensure the maximum use of available credits in order to encourage development of low-income housing and associated mixed-use projects in urban areas (the “Procedures”). See §§ 420.501, 420.5093, Fla. Stat. (2007). These Procedures are established in Rule Chapter 67, Florida Administrative Code (2007). Accordingly, as set forth herein, the applicable requirements subject to Petitioner’s waiver and variance requests are implementing, among other sections of the Act, the statutory authorization for Florida Housing’s establishment of Procedures for the State Housing Tax Credit Program. *Id.*

C. Justification for Petitioner’s Requested Waiver and Variance

12. Florida Housing has the authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., to grant waivers and variances 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 the person who is subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of fairness¹, 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. (2008).

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

13. As a consequence of multiple and unforeseeable factors related to the current economic environment, closing on financing for the Development has been delayed. These factors include changes in the housing credit and syndication market pertaining to equity levels which have required changes to the structure and final financing plan for the Development.

14. Moreover, Petitioner's equity partner has indicated an unwillingness to undertake the initial closing of equity financing necessary to commence construction because of the risk that the Development will not be completed by December 31, 2009, its current placed-in-service deadline. The equity partner (and, in all probability, any other tax credit investor in the current market) will not proceed with the equity closing and permit construction to commence unless Petitioner obtains an extension of the placed-in-service requirement.

15. A denial of the requested waiver and variance will result in substantial economic hardship to Petitioner. To date, Petitioner has spent more than \$1,950,000 on the Development and failure to receive the requested relief will result in financial hardship and the return of the 2007 HCs. Without the assurance of a 2009 Carryover Allocation of HCs from Florida Housing, Petitioner cannot proceed with the Development.

D. Conclusion

16. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a)

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 (2008).

create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2008).

17. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 72 affordable housing units will be available for families in Bay County, Florida.

18. However, a denial of the requested waiver would result in a substantial hardship for Petitioner. More significantly, Petitioner would be denied the ability provide decent, safe, and affordable housing units to a market in desperate need of extremely low and low income housing.

19. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act in an economical and efficient manner.

20. Should Florida Housing require additional information, Petitioner is available to answer questions and provide all information necessary for consideration of its Petition for Waiver or Variance of the Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations and for an Immediate Allocation of 2009 Housing Tax Credits.

WHEREFORE, Petitioner Pana Villa Redevelopment, Ltd., respectfully requests that the Florida Housing Finance Corporation:

- A. Grant this Petition and all the relief requested herein;
- B. Grant a waiver of and/or variance from the 2007 Qualified Allocation Plan prohibition on returning HCs prior to the last quarter of 2009;
- C. Allow the immediate return of Petitioner's 2007 Carryover Allocation of HCs;

D. Grant a waiver from and/or variance of the 2007 Qualified Allocation Plan prohibition on the reservation of a HC allocation prior to the year in which the Development was otherwise required to be placed in service; and

E. Provide an immediate 2009 Carryover Allocation of Housing Credits in an amount not to exceed the amount of Petitioner's current HC Allocation; and

F. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

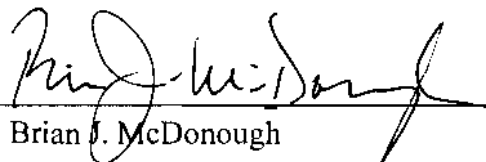
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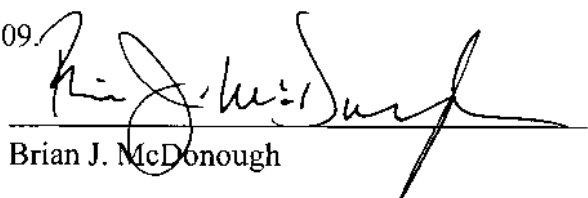
Facsimile: (305) 789-3395

E-mail: bmcdonough@swmwas.com

By: 
Brian J. McDonough

CERTIFICATE OF SERVICE

The Petition is being served by facsimile and 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 by overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, on March 23, 2009.


Brian J. McDonough

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