

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION  
APPLICATION NO. 2009-145C

FHFC CASE NO. \_\_\_\_\_

NORTHWEST PROPERTIES III, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF RULE 67-48.004(14)(g)**

Petitioner Northwest Properties III, Ltd. (“Northwest III”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the restriction on changing development type after the Application Deadline for submitting the 2009 Universal Application for the Housing Credit Program (“Application”). *See* Rule 67-48.004(14)(g), F.A.C. (the “Rule”). In support of its Petition, Northwest III states:

1. Pursuant to Section 120.542, Fla. Stat., and Rule 28-104.002, F.A.C., Northwest III requests a waiver of the Rule which prohibits changing the development type selected in the Application after the Application Deadline as proscribed in Rule 67-48.004(14)(g), F.A.C.

**A. THE PETITIONER**

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

Northwest Properties III, Ltd.  
c/o Liz Wong  
2950 SW 27<sup>th</sup> Avenue, Suite 200  
Miami, Florida 33133  
Telephone: 305-476-8118  
Facsimile: 305-476-1557  
Email: [lwong@carlisledevelopmentgroup.com](mailto:lwong@carlisledevelopmentgroup.com)

3. For purposes of this Petition, the address, telephone and facsimile numbers of Petitioner's attorney is:

Brian J. McDonough, Esquire  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
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**B. THE DEVELOPMENT AND FUNDING**

4. Northwest III applied for funding to be used for the development and construction of Northwest Gardens III, a new 150-unit development intended to serve the Family demographic for extremely low income and low income families in Fort Lauderdale, Broward County, Florida (the "Development").

5. Northwest III submitted its Application for the Housing Credits Program from which it seeks an annual allocation of \$2,340,000 in Housing Credits ("HC"), and a preliminary certificate for HC was issued on September 10, 2010.

6. On or about May 3, 2010, Northwest III applied for the Tax Credit Exchange Program (“TCEP”) by submitting its RFP 2010-04 Request for Exchange Funding in the amount of \$5,000,000.

7. The Development is being developed in partnership with the Housing Authority of the City of Fort Lauderdale (the “Housing Authority”). The Development is part of a neighborhood redevelopment plan being undertaken in partnership with the Housing Authority.

8. When Northwest III submitted its Application, the Development’s 150 units were to be in 13 buildings comprised of both garden-style apartments and townhome-style buildings. Because more than 50% of the units were anticipated to be garden apartment units, Northwest III selected “Garden Apartments” as the development type. *See* 2009 Universal Application Instructions, Part III, A.4.

9. After the deadline for submitting 2009 Universal Applications, the development plans were further defined by Northwest III at the request of the Housing Authority. Specifically, Northwest III modified the development plans to accommodate the Housing Authority’s request for a development that would offer housing options that were different from development types in the same general area. Additionally, by redefining the site plan, Northwest III will be able to provide townhouses with more square feet than originally planned and provide more units with direct front entries.

10. As a result, the Development will now be comprised of 18 townhouse-style buildings with 84 units and 4 three-story garden-style buildings containing 66 units for a total of 22 buildings.

11. The number of units and unit mix for the Development remains unchanged, and the Development will still provide 150 residential units for the Family demographic as contemplated by the Application.

12. However, the number of townhouse units will be more than 50% of the Development's total units. Under the terms of the Universal Application Instructions, the Development type is now townhouse as opposed to garden-style apartments. As a result, Northwest III requests a waiver of the Rule's restriction on changing the Development type after the Application Deadline.

13. The change in the number of buildings and Development type would not have altered the scoring by Florida Housing for qualifying for HC allocations or for the TCEP. Nor would the change have provided Northwest III with an unfair competitive advantage over other applicants.

14. The requested Rule waiver will enable Northwest III to provide desperately needed affordable housing for 150 families in Fort Lauderdale.

15. Moreover, the Rule waiver will not adversely impact the Development. A denial of this Petition could (a) result in substantial hardship to Northwest III and impact its relationship with the Housing Authority; (b) deprive Fort Lauderdale of additional and essential affordable housing units in a timely manner; and (c) violate principles of fairness. § 120.542(2), Fla. Stat. (2009).

16. More significantly, should its Petition be denied, Northwest III may be unable to deliver additional low-income housing units to a market in desperate need of quality affordable housing.

17. The requested Rule waiver is permanent in nature.

**C. THE RULE FROM WHICH RELIEF IS REQUESTED AND THE STATUTE IMPLEMENTING THE RULES**

18. Northwest III realleges and incorporates Paragraphs 1 through 17 as though fully set forth herein.

19. Northwest III requests a waiver of the Rule which identifies non-curable matters in a 2009 Universal Application for funding through the HC Program and provides:

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. . . .

(g) Development Type;

Rule 67-48.004(14)(g).

20. The Florida Housing Finance Corporation Act<sup>1</sup> designates the Corporation as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). §§ 420.5099(1) and (2), Fla. Stat. (2009). The Allocation Procedures were established in Rule Chapter 67, Florida Administrative Code. Accordingly, the Rule subject to Northwest III's waiver request is implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2009).

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<sup>1</sup>The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the "Act"). See also Rule 67-40.020(1), F.A.C. ("Act" means the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes").

21. The HC Program comports with the legislative recognition for the need “to encourage development of low-income housing in the state.” § 420.5099 (2), Fla. Stat. (2009).

**D. JUSTIFICATION FOR NORTHWEST III’S REQUESTED WAIVER**

22. Northwest III realleges and incorporates Paragraphs 1 through 21 as though fully set forth herein.

23. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., 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. 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 fairness,<sup>1</sup> 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. (2009).

24. In this instance, Northwest III meets the standards for a Rule waiver.

25. The Housing Authority requested that the Development offer housing alternatives that are different from or are more diverse than those available, in the same area, in: (a) existing developments; (b) developments currently under construction or (c) developments for which construction is anticipated.

26. Without the Rule waiver, Northwest III will be unable to accommodate the Housing Authority’s needs which could prevent or delay construction of the Development and

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<sup>1</sup> “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 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 (2009).

could negatively impact the existing and future working relationships and partnerships between Northwest III and the Housing Authority.

27. The requested waiver, therefore, would significantly benefit residents of Fort Lauderdale by enabling Northwest III to develop the Development in a timely and efficient manner in partnership with the Housing Authority.

**E. CONCLUSION**

28. 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) 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. (2009).

29. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 150 affordable housing units will be constructed and available for families in Fort Lauderdale, Broward County, Florida.

30. However, a denial of the requested waiver could result in a substantial hardship for Northwest III which 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.

31. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness of developing affordable residential housing by encouraging the development of affordable housing projects and enabling developers to meet the needs of both very low-income and low-income families in dire need of affordable and safe housing and social services. This recognition would promote participation by

experienced developer entities in meeting the purpose of the Act, through new construction and in an economical and efficient matter.

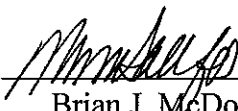
32. Should Florida Housing require additional information, Northwest III is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.004(14)(g).

WHEREFORE, Petitioner Northwest Properties III, Ltd., respectfully requests that Florida Housing Finance Corporation:

- A. Grant the Petition and all the relief requested herein;
- B. Waive the Rule's restriction against changing the development type, and allow the development type to be changed from Garden Apartments to Townhouses; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

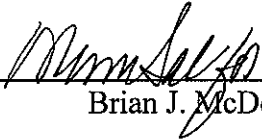
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By:   
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Brian J. McDonough



**CERTIFICATE OF SERVICE**

The Original Petition is being served by overnight delivery, with a copy served by electronic transmission, for filing with the Corporation Clerk for Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 16th day of September, 2010.

  
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Brian J. McDonough