

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

BRICKELL VIEW TERRACE APARTMENTS, LTD.

Petitioner,

vs.

CASE NO.: 2013-023VW

FLORIDA HOUSING FINANCE
CORPORATION

APPLICATION NO. 2011-067C

Respondent.
_____ /

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.004(14)(j)
FOR A CHANGE IN TOTAL SET-ASIDE PERCENTAGE AND VARIANCE FROM
UNIVERSAL APPLICATION INSTRUCTIONS PART III.E.b.1.(2)(c)

Brickell View Terrace Apartments, Ltd. (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for (i) a waiver of the Corporation's prohibition on changing the "Total Set-Aside Percentage" in its 2011 Universal Application, and (ii) a waiver or variance from the provisions of Part III.E.b.1.(2)(c) of the Universal Application Instructions which require an applicant to set-aside at least 70% of the development's units at 60% of area median income. See Rule 67-48.004(14)(j) and 67-48.004(1).

In support of its petition, the Petitioner states:

1. The address, telephone number, facsimile number and e-mail address of the Petitioner are:

Brickell View Terrace Apartments, Ltd.
c/o Pinnacle Housing Group, LLC
9400 S. Dadeland Boulevard
Suite 100
Miami, Florida 33156
(305) 854-7100
(305) 859-9858 (fax)
david@pinnaclehousing.com

2. The contact person, along with contact information and relationship, for the Petitioner's Application – Housing Credit (HC) Program (the "Application") is:

Brickell View Terrace Apartments, Ltd.
c/o Pinnacle Housing Group, LLC
9400 S. Dadeland Boulevard
Suite 100
Miami, Florida 33156

(305) 854-7100
(305) 859-9858 (fax)
david@pinnaclehousing.com
Vice President – Pinnacle Housing Group LLC
(one of Petitioner’s co-developers)

3. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner’s attorney are:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
1500 Miami Center
201 S. Biscayne Blvd.
Miami, FL 33131
(305) 347-7308
(305) 347-7808 (Fax)
gcohen@shutts.com

4. The Petitioner timely submitted its Application in the 2011 cycle (Application #2011-067C) for the development named “Brickell View Terrace” (the “Development”), Florida Housing has issued a Preliminary Allocation of Housing Credits to Petitioner.

5. Equity raised from Housing Credits will be used for the development of Brickell View Terrace, a new apartment development intended to serve low-income individuals and families in the West Brickell area of downtown Miami, Florida.

6. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner, (b) could deprive the City of Miami and Miami-Dade County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2012).

7. The waiver being sought is permanent in nature.

THE RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from Rule 67-48.004(14)(j), Florida Administrative Code (2011). In addition, Petitioner requests a waiver from the provisions of Part III.E.1.b.(2)(c) of the Universal Application Instructions which award 3 points to applicants setting aside at least 70% of a development’s units at 60% of area median income or less. Specifically, Petitioner is seeking to increase the total number of units in the Development from 100 (as contained in its Universal Application) to up to 154, and to decrease the Total Set-Aside Percentage from 100% (as indicated in its Universal Application) to approximately 65%. Petitioner intends that the additional (up to fifty-four (54)) units will be available for non-income restricted work-force housing (“Work Force Housing”).

Rule 67-48.004(14) provides, in relevant part, as follows:

“(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 and the Application at the time of the Application Deadline, shall result in rejection of the Application without opportunity to submit additional information. Any attempt to make changes to these items will not be accepted. Those items are as follows:

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

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

Rules 67-48.004(14)(i) and (j), FAC (2011)

On page 75 of the 2011 Universal Application Instructions, Part III.E.1.b(2)(c) of such instructions (“Total Set-Aside Commitment”) provides as follows: “Applicants, except those requesting funding for ALF Developments, will receive 3 points for a commitment to set aside at least 70 percent of the Development’s units at 60 percent AMI or less.” In its application, Petitioner committed to set aside 100% of the Development’s 100 units at 60 percent AMI or less.

Petitioner previously requested Corporation staff to increase the total number of units in the Development. As such, Petition is not seeking a waiver from the provisions of Rules 67-48.004(14)(i).

STATUTES IMPLEMENTED BY THE RULES

9. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the HC Program. See Section 420.5099, Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

10. Petitioner requests a waiver from Rule 67-48.004(14)(j), Florida Administrative Code (2011) and from Part III.E.1.b(2)(c) of the Universal Application Instructions (2011). Petitioner is seeking a waiver from the Rule allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 65%.

11. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner’s request for waiver:

- a. Petitioner timely submitted its Universal Application to the Corporation for its Housing Credit program, for 100 low-income tax credit housing units, with

the Total Set-Aside Percentage of 100%, and received a preliminary allocation of 2011 Housing Credits.

- b. Pursuant to applicable zoning for the area in which the Development is located, up to fifty-four (54) additional units can be added to the Development.
- c. Local government has urged Petitioner to take full advantage of governmental zoning by providing an additional number of housing units.
- d. An increase in the number of residential units will allow Petitioner to provide a mixed-income Development with both affordable housing and Work Force Housing.
- e. The additional Work Force Housing units will, however, result in a corresponding decrease in the Total Set-Aside Percentage provided for in the Universal Application.
- f. The Development is located directly across from the Brickell Metro Rail Station in the rapidly expanding West Brickell section of downtown Miami, Florida. Vacancy rates are at historically low levels in this area, and the rental market for affordable and Work Force Housing units is significantly underserved. Petitioner's Development offers a unique opportunity to utilize its immediate proximity to the Brickell Metro Rail Station, by offering housing both to "low income" persons and families and persons in need of Work Force Housing. Grant of the requested waiver will not change in any way the number or quality of affordable housing units referenced in Petitioner's application, and would augment the proposed Development by permitting a unique mixed-income housing opportunity.
- g. A denial of the requested waiver would result in a substantial economic hardship for Petitioner, as a consequence of lower rental revenues, and lower economies of scale, i.e., spreading fixed costs over fifty-four (54) additional units. More significantly, up to 54 families would be deprived of the opportunity to obtain essential Work Force Housing.

12. A waiver of the Rule's restriction against changing the Total Set-Aside Percentage from Petitioner's Universal Application would serve the purposes of Section 420.5087, and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households, and would provide the additional benefit of meeting the critical need for mixed-income developments with Work Force Housing units.

13. By granting the waiver and permitting Petitioner to decrease the total Set-Aside Percentage, the Corporation would recognize the economic realities of developing affordable rental housing by encouraging the development of mixed-income housing projects, particularly in an area (proximate to a Metro Rail Station) uniquely suited to a mixed-income housing project, and enabling developers to meet the needs of both low-income families and families in dire need of Work Force Housing. This recognition would promote participation by owners such as Petitioner in meeting the Act's purpose of providing affordable housing in an economical and efficient manner.

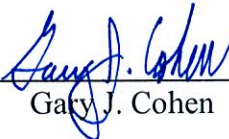
ACTION REQUESTED

Petitioner requests the following:

- (a) That the Corporation grant Petitioner a waiver from Rule 67-48.004(14)(j), Florida Administrative Code (2011), allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 65% and increase the total number of units from 100 to up to 154;
- (b) That the Corporation grant Petitioner a waiver from the provisions of Part III.E.1.b.(2)(c) of the Universal Application Instructions; and
- (c) Grant the Petition and all the relief requested therein; and
- (d) Grant such further relief as may be deemed appropriate.

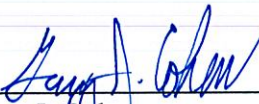
Respectfully submitted,

SHUTTS & BOWEN LLP
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201 S. Biscayne Blvd.
Suite 1500 Miami Center
Miami, Florida 33131
Tel.: (305) 347-7308
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By: 
Gary J. Cohen

CERTIFICATE OF SERVICE

The Petition is being served by 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, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 28th day of August, 2013.



Gary J. Cohen