

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

PALM BREEZE PARTNERS, LTD.,

Petitioner,

APPLICATION NO. 2014-066C

vs.

FHFC CASE NO.: 2014-072VW

FLORIDA HOUSING FINANCE CORP.,

Respondent

**PETITION FOR WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004**

PALM BREEZE PARTNERS, LTD. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver from Rule 67-48.004, Florida Administrative Code ("FAC"). 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 Petitioner is:

Palm Breeze Partners, Ltd.
c/o Atlantic Housing Partners
200 East Canton Avenue, Suite 102
Winter Park, FL 32789
407-741-8500 (telephone)
(407) 643-2551 (facsimile)

2. The address, telephone and facsimile number of Petitioner's attorney is:

Kerey Carpenter
AHG Group, LLC
700 W. Morse Blvd., Suite 220
Winter Park, FL 32789
407-691-5605 (direct line)
407-371-6126 (facsimile)

3. Petitioner successfully applied for financing from the Housing Credits Program in response to RFA 2013-001 that Florida Housing administered pursuant to Chapters 67-60 and 67-48, Florida Administrative Code. Petitioner's Application Number is 2014-006C. Petitioner applied for Housing Credits to finance a portion of the costs to construct 51 affordable units in a 60-unit multifamily rental apartment community for seniors located in Flagler County, Florida, to be known as the Palm Coast Landing Senior Living f/k/a Palm Breeze Apartments (the "Development"). Subsequent to the Application, Florida Housing approved a change in the total number of units to 61 with 52 affordable units.

THE RULES FROM WHICH A WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.004(3), as in effect for RFA 2013-001. Rule 67-48.004(3) provides in relevant part as follows:

(3) 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 attempt to make changes to these items will not be accepted. Those items are as follows:

* * *

(g) Development Type;

STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the Housing Credits Program. Section 420.5093, Florida Statutes. The Act designates Florida Housing 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

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing’s establishment of Allocation Procedures for the Housing Credit Program.

6. Florida Housing has 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, and (2) the purpose of the underlying statute has been or will be achieved by other means. Section 120.542(2), Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

7. The provisions of the foregoing Rule prohibit a change in the “Development Type”. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

8. In the Application, Petitioner identified the Development Type as Mid-Rise with Elevator (a building comprised of 5 or 6 stories) with concrete construction.

9. Applicant is requesting to change the Development Type to Mid-Rise with Elevator (a building comprised of 4 stories) with wood construction.

10. On an annual basis, HUD releases a list of areas that are considered difficult development areas (DDA). These areas are designated by HUD as DDAs because of the high cost of construction, land and utilities compared to the median gross

income for the area. To facilitate and encourage the development of affordable housing in these areas, the DDA designation allows a project to increase the eligible basis by 130%. At the time that Florida Housing issued RFA 2013-001 and the Application was submitted, the location of this Development was not designated by HUD as a DDA. Subsequently, HUD released its 2014 DDA list and the Development location is now designated as a DDA. This designation confirms that the location is in a difficult development area with high costs of construction, land and utilities as compared to the median gross income for the area. Since the Development will receive its allocation of Housing Credits in 2014, the Development is eligible for the 130% DDA adjustment to its eligible basis. Petitioner is requesting a change in the Development Type to reduce overall project costs which will assist in making for a financially feasible project given its location in a DDA, without sacrificing any resident amenities or unit features. The reduction in project costs will also result in a reduction in general contractor fees and developer fees.

11. It is not uncommon for development and construction changes to occur after submission of an application for Housing Credits. The proposed change to Mid-Rise (4 stories) with wood construction has no adverse effect on the Development and would have had no impact on the Application's scoring or threshold criteria. The proposed change would result in a significant decrease in overall project costs, which is consistent with Florida Housing's objective of reducing development costs, as shown by Florida Housing imposing the development cost limitations for RFA 2013-001. The Development's leveraging calculation per set-aside unit with the proposed change, when adjusted for the DDA designation, is actually lower than when calculated without the

proposed change.

12. In light of the considerable time that it takes to develop and construct multifamily rental housing, Florida Housing's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. Florida Housing routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(3) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible advantage.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

13. Florida Housing's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5093, as well as the Housing Credit Program. The purpose of both the Statute and the program is to facilitate and stimulate the development and/or preservation of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, the Housing Credit allocation in question will be used to fund the construction of an affordable multifamily rental housing community for seniors for which there is a desperate need in this DDA location in Flagler County, Florida.

14. By granting a waiver and permitting Petitioner to revise the Development Type as described above, Respondent would recognize the economic realities of developing, preserving and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, in an economical and efficient manner.

TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

ACTION REQUESTED

16. Petitioners request a waiver from Rule 67-48.004(3) to permit a change in the Development Type and construction type as set forth in Paragraphs 8 and 9 above.

Respectfully submitted this 23rd day of July, 2014.



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CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing Petition for Waiver have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 680 Pepper Building, 111 West Madison Street, Tallahassee, FL 32399-1400.



Kerey Carpenter