

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2015-030VW  
Application No. 2015-067C

SAN JUAN OF OSCEOLA, LP  
Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,  
Respondent.

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**PETITION FOR WAIVER OF RULE 67-48.004(3) (g) FOR A CHANGE IN  
DEVELOPMENT TYPE**

Petitioner, SAN JUAN OF OSCEOLA, LP, a Florida limited partnership (“San Juan”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of the Respondent’s prohibition on changes in the “Development Type” selected by an applicant. *See* Rule 67-48.004(3) (g) F.A.C. (2013) (the “Rule”).

San Juan requests a waiver of the Rule, in order to allow for the construction of Mid-Rise with Elevator (a building comprised of four stories) (the “Mid-Rise Designation”) in lieu of Garden Apartments (the “Garden Designation”).

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for San Juan and its qualified representative for San Juan’s application (the “Application”) in response to RFA 2014-114, Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties are:

San Juan of Osceola, LP  
Attention: Kim Murphy  
1002 West 23<sup>rd</sup> Street, Suite 400  
Panama City, FL 32405  
Telephone: 850-769-8981  
Facsimile: 850-769-1294  
E-mail: kim.murphy@royalamerican.com

2. The name, address, telephone and facsimile numbers, and e-mail address of San Juan's attorney, for purposes of this Petition, are:

Brian J. McDonough, Esquire  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: 305-789-3350  
Facsimile: 305-789-3395  
E-mail: bmcdonough@stearnsweaver.com

**B. THE DEVELOPMENT**

3. San Juan timely submitted its Application in response to RFA 2014-114, Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties (the "RFA"). *See* Application No. 2015-067C for the development named The San Juan.

4. The allocation of low-income housing tax credits awarded to San Juan, together with other loan sources and the proceeds of the syndication of such low-income housing tax credits, will provide funds for the construction of 112 units (administratively approved as to an increase from the 110 units set forth in the Application) intended to serve low-income elderly persons in Osceola County, Florida (the "Development").

5. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to San Juan; (b) could result in a total inability to construct the Development; (c) could deprive Osceola County,

Florida of essential affordable housing units in a timely manner and (d) would violate principles of fairness<sup>1</sup>. § 120.542(2), Fla. Stat. (2013).

7. The waiver being sought is permanent in nature.

**C. Rule from Which Relief is Requested and Statute Implemented by the Rule**

8. San Juan realleges and incorporates Paragraphs 1 through 7 as though fully set forth herein.

9. San Juan requests a waiver of Rule 67-48.004(3)(g) F.A.C. that provides, in relevant part, as follows:

(3) Notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below....(g) Development Type;...

10. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. See Section 420.5099, Florida Statutes.

**D. Justification for Petitioner's Requested Waiver**

11. San Juan realleges and incorporates Paragraphs 1 through 10 as though fully set forth herein.

12. 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 (1) the person who is subject to the rule demonstrates

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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.

that the application of the rule would create a substantial hardship or violate principles of fairness, 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. (2011).

13. In this instance, San Juan meets the standards for a waiver.

14. San Juan requests a waiver from Rule 67-48.004(3)(g), F.A.C., which waiver will allow it to change the Development Type listed in the Application to the Mid-Rise Designation from the Garden Designation.

15. It is not uncommon for development changes to occur after submission of an application to Florida Housing. The site on which the Development is located is comprised of 4.5 acres. At the time the Application was submitted, it was the opinion of the civil engineer and the architect that adequate stormwater retention was available from the existing on-site pond (the “Existing Pond”) even taking into account the three buildings, various green spaces, landscape areas, recreational areas, and the surface parking lot contemplated under the Garden Designation. As San Juan embarked on the permitting process following submission of the Application, it was discovered that the South Florida Water Management District (the “District”) could not verify the original master-planning for the Existing Pond, nor could the District confirm that the Existing Pond was originally engineered to accommodate the surfacewater runoff for the Development as well as two adjacent communities intended to be served by the Existing Pond. In an abundance of caution, the District is now requiring that the Existing Pond be enlarged to serve all of the adjoining properties, regardless of whether its current capacity is adequate for that intended purpose. The result is that the increased surface area of the Existing Pond will usurp square footage within the Development, leaving inadequate space in which to build the three separate low-rise buildings that would be mandated under the Garden Designation. San

Juan desires to construct instead a single building under the Mid-Rise Designation, to accommodate the District's drainage requirements, while not compromising the required parking and the amenities to be enjoyed by the residents of the Development in the form of green space, recreational areas and parking.

16. The change from the Garden Designation to the Mid-Rise designation will not cause the Development to exceed the amount of Total Development Costs ("TDC") committed to by San Juan. The TDC is served by the economy of constructing a single roof rather than three separate roofs, and a single elevator rather than three separate elevators, which would have been required in the Garden Designation. Other similar cost-consolidation features allow San Juan to deliver the Development, allowing the change from Garden Designation to Mid-Rise Designation, while staying within the TDC, and not compromising the features and amenities intended to be available to the residents of the development.

17. San Juan's scoring and the allocation of low-income housing tax credits to the Development would not have been affected if San Juan had originally selected the Mid-Rise Designation. There are no points associated with the selection of Development Type. Nor does this change adversely impact any other applicant in the RFA.

18. If the relief sought pursuant to this Petition is not granted, San Juan will suffer substantial hardship. The District would refuse to issue the requisite permits for drainage and San Juan would therefore be unable to proceed to construct the Development. There is no alternative that can be addressed by further engineering or the expense of additional sums to resolve the issue presented by the requirement that the surface area of the Existing Pond be enlarged. Delivery of the Development to the residents of Osceola County, Florida would not be possible.

**E. Conclusion**

19. 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 (a) the applicant subject to the rule demonstrates that strict application would 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. (2011).

20. The requested waiver will not adversely impact the Development, any other applicant in the RFA or Florida Housing.

21. A denial of the requested waiver could result in a substantial hardship for San Juan, which would be unable to construct the Development, given the location and orientation of the Existing Pond (when enlarged per the District's requirements), the three currently planned buildings, the parking lot and the other amenities on its site.

22. 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. The goal of providing 112 units of affordable elderly housing in Osceola County, Florida will be achieved through the approval of the Development Type as the Mid-Rise Designation, with no detriment to any party. Granting of the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to households of limited means.

23. Should Florida Housing require additional information, San Juan is available to answer questions and to provide all information necessary for consideration of this Petition.

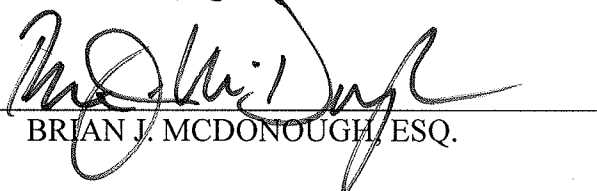
WHEREFORE, Petitioner San Juan at Osceola, LP, respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all relief requested herein;
- B. Approve the change in the Development Type to the Mid-Rise Designation from the Garden Designation; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
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By:



BRIAN J. MCDONOUGH, ESQ.

**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 the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 18 day of August, 2015.

By:   
Brian J. McDonough, Esq.