

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2016-014VW

OSPREY APARTMENTS, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION

Respondent.

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c)

Petitioner Osprey Apartments, LLC, a Florida limited liability company (“Osprey”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rule 67-48.0072(4)(c) pertaining to the required closing date for a SAIL loan.

1. Pursuant to Section 120.542, Fla. Stat. (2015) and Rules 28-104.001 through 28-104.006, F.A.C., Osprey requests a waiver of Rule 67-48.0072(4)(c) pertaining to the required closing date for a SAIL loan.

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

Osprey Apartments, LLC
1398 S.W. 1st Street, 12th Floor
Miami, Florida 33135
Attention: Stephanie Berman
Telephone 305-371-8300
E-Mail: sberman@carrfour.org

3. The name, address, telephone and facsimile numbers of Osprey’s attorneys are:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd., Ste. 4100

Miami, Florida 33131
305-347-7308 (telephone)
305-347-7808 (telecopier)

4. Pursuant to RFA 2014-107, Osprey timely submitted its application for competitive Housing Credits under the Low Income Housing Tax Credit program (“LIHTC Program” or “HC Program”) and for loan funding under the State Apartment Incentive Loan program (“SAIL”). *See* Application Number 2014-398CS. Osprey was the only applicant under this RFA.

5. Equity raised from Housing Credits will be used for new construction of 60 low-income housing tax credit units to be known as Liberty Village (the “Development”). The Development will serve low-income veteran and chronically homeless tenants in Miami, Miami-Dade County, Florida. The Development entails the new construction of one residential building.

6. Osprey’s application was selected for funding by FHFC and awarded at the June 13, 2014 Corporation Board of Directors meeting.

7. Under Rule 67-48.0072(4)(c), for SAIL applicants, the SAIL loan must close within twelve months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to twelve months. In the event the loan does not close by the end of the twelve-month extension period, the preliminary commitment or firm commitment, as applicable, for the SAIL loan will be deemed void and the funds will be de-obligated. Osprey was previously granted a twelve-month extension to the closing deadline, extending such deadline extended to June 19, 2016. A further extension of the closing deadline may not be granted without a waiver of Rule 67-48.0072(4)(c).

8. On November 24, 2015 Osprey submitted a Petition for Rule Waiver, requesting an exchange of 2014 Housing Credits for 2015 Housing Credits. That Rule Waiver was granted

by FHFC at their December 11, 2015 meeting. In connection therewith, a new Carryover Allocation Agreement was entered into between FHFC and Osprey, pursuant to which the Development must commence construction and complete credit underwriting no later than September 30, 2016.

9. The November 2015 petition previously granted by FHFC also permitted a change in development type from High-Rise to Mid-Rise 5 to 6 stories. This change in design and development type was necessary in order to comply with the Total Development Cost Per Unit Limitation set forth in RFA 2014-107 (the "TDC Limit"). The change in design type allowed Osprey to request a substantial reduction in required parking from the City of Miami, thereby removing the necessity of constructing a separate parking deck facility for the Development, instead allowing surface parking and allowing the Development to meet and satisfy the TDC Limit.

10. Osprey is requesting an extension of the SAIL loan closing date from June 19, 2016 to September 30, 2016, co-terminous with the requirement in the Carryover Allocation Agreement for commencement of construction. The reason for this request is as set forth in the prior November 2015 Petition. Osprey has had to resubmit the building plans reflecting the change in design of the project from High-Rise to Mid-Rise 5 to 6 stories, and to obtain City of Miami's Zoning Board Approval for the redesign and for the reduction in required parking from the City of Miami. All such approvals have now been obtained, and the construction plans are 100% complete and are in the permitting process. Osprey believes there are no further impediments to closing the tax credit equity financing and the FHFC SAIL financing by September 30, 2016.

11. The above-described delays were and are outside of Osprey's control. Osprey in good faith believed that the Development would meet the TDC Limit, and it was not until the

initial response to its bid request was received in July, 2015 that Osprey became aware that (as contemplated as a High-Rise) the Development could not satisfy the TDC Limit. Since obtaining FHFC's approval of the change in design type, Osprey has been working diligently to re-design the Development in order to meet the TDC Limit, by reducing one floor from the Development and eliminating the necessity of construction of a separate parking deck by virtue of obtaining a substantial parking reduction from the City of Miami. Osprey has obtained approval of the City of Miami to the parking reduction and re-design of the Development and building plans have been submitted by permitting. Osprey anticipates that the credit underwriting report will be submitted for FHFC Board approval at its May or June 2016 Board meeting. However, due to the foregoing delays, Osprey will not meet the June 19, 2016 closing date for the SAIL loan.

12. The requested waiver will not adversely affect the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to Osprey (as it has over \$1,100,000 at risk in this transaction); (b) deprive the City of Miami and Miami-Dade County of essential affordable rental units set aside for low-income and very low-income disabled veterans and the chronically homeless, who desperately need the housing which the Development will offer (as these tenant populations are not otherwise served by the Corporation's "regular geographic" RFA's); and (c) violate principles of fairness.

13. Rule 67-48.0072(4)(c) sets forth the required timeline for closing upon SAIL financing. The loan must close within twelve months from the date of the invitation to enter credit underwriting, with Applicant able to request one extension up to twelve months. In the event the loan does not close by the end of the 12-month extension period, the preliminary commitment for SAIL funds will be deemed void and the funds will be deemed de-obligated. As

discussed herein, Osprey is requesting an additional extension of the SAIL loan closing date from June 30, 2016 to September 30, 2016, which request requires waiver of the foregoing rule.

14. The applicable Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),¹ the statute that created the SAIL loan program. *See* § 420.5087, Fla. Stat. (2014).

15. The requested waivers will ensure the availability of Housing Credits and SAIL financing which will otherwise be lost as a consequence of development delays described herein.

16. The facts set forth in Sections 8 through 11 of this Petition demonstrate the hardship and other circumstances which justify Osprey’s request for Rule waiver; that is, the delay in commencement of construction of the Development attributable to the necessity of re-designing the Development in order to be compliance with the Corporation’s TDC Limit, the loss of a substantial sum of money should the transaction not go forward, and the loss of affordable housing for an underserved tenant population (disabled veterans and the chronically homeless).

17. As demonstrated above, the requested waivers serve the purposes of Section 420.5087 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households.

18. Further, by granting the requested waivers, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced non-profit developers, such as Carrfour Supportive Housing, Inc., in providing housing to extremely underserved tenant populations (disabled

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes, (the “Act”).

veterans and the chronically homeless), and (b) prevent significant financial hardship to Carrfour Supportive Housing, Inc. should the transaction not move forward.

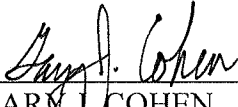
19. The requested waivers will not adversely impact the Development or the Corporation.

20. The waivers being sought are permanent in nature.

Should the Corporation require additional information, Osprey is available to answer questions and to provide all information necessary for consideration of its Petition.

WHEREFORE, Petitioner Osprey Apartments, LLC, respectfully requests that the Corporation:

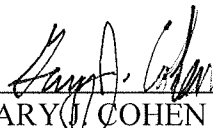
- A. Grant the Petition and all the relief requested therein;
- B. Waive the requirement that the SAIL loan close by June 19, 2016 and grant an extension of such closing date through September 20, 2016; and
- C. Award such further relief as may be deemed appropriate.



GARY J. COHEN
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(305) 347-7308
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The Original Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, Room 5000, Tallahassee, Florida 32399, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400 this 8th day of April, 2016.



GARY J. COHEN