

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PINNACLE HEIGHTS, LLC,

Petitioner,

vs.

CASE NO.: 2016-036VW

**FLORIDA HOUSING FINANCE
CORPORATION**

APPLICATION NO. 2015-211C

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(3)(J)
FOR A CHANGE IN TOTAL SET-ASIDE PERCENTAGE**

Pinnacle Heights, LLC (the “Petitioner”) hereby petitions Florida Housing Finance Corporation (the “Corporation”) for a waiver of the Corporation’s prohibition on changing the “Total Set-Aside Percentage” in its application submitted under RFA 2014-116. See Rule 67-48.004(3)(j).

In support of its petition, the Petitioner states:

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

Pinnacle Heights, LLC
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:

Pinnacle Heights, LLC
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
(Petitioner’s developer)

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
200 S. Biscayne Blvd.
Ste. 4100
Miami, FL 33131
(305) 347-7308
(305) 347-7808 (Fax)
gcohen@shutts.com

4. The Petitioner timely submitted its Application in RFA 2014-116 (Application #2015-211C) for the development named "Pinnacle Heights" (the "Development"), Florida Housing has issued a Preliminary Allocation of Housing Credits to Petitioner and entered into a Carryover Allocation agreement with Petitioner.

5. Equity raised from Housing Credits will be used for the development of Pinnacle Heights, a new apartment development intended to serve low-income individuals and families in 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. (2016). The requested rule waiver would not affect the scoring of Petitioner's Application nor allow Petitioner to gain an unfair advantage over other applicants.

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(3)(j), Florida Administrative Code (2014). Specifically, Petitioner is seeking to increase the total number of units in the Development from 105 (104 units were indicated in its Application; subsequently increased administratively to 105) to 109, and to decrease the Total Set-Aside Percentage from 100% (as indicated in its Application) to approximately 96.33%. Petitioner intends that the four (4) additional units will be available for non-income/non-rent restricted market rate housing ("Market Rate Housing").

Rule 67-48.004(13) 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 otherwise provided below:

(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) For 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(3)(i) and (j), FAC (2014)

Petitioner has previously requested Corporation staff to increase the total number of units in the Development from 104 to 105 (all low-income), which approval has been granted (see attached Exhibit “A”). As such, Petition is not seeking a waiver from the provisions of Rules 67-48.004(13)(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(13)(j), Florida Administrative Code (2014). Petitioner is seeking a waiver from the Rule allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 96.33%.

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

- a. Petitioner timely submitted its Application to the Corporation for its Housing Credit program (pursuant to RFA 2014-116), for 104 low-income tax credit housing units, with a Total Set-Aside Percentage of 100%, and received a preliminary and carryover allocation of 2015 Housing Credits. Petitioner subsequently requested (and was granted) an increase to 105 low-income units.
- b. Prior to closing on the acquisition of the proposed site (and the accompanying debt and equity financing for the Development), Petitioner acquired an additional parcel of land adjacent to the Development site. Pursuant to applicable zoning for the area in which the Development is located, four (4) additional units can be added to the Development.
- c. Petitioner wishes 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 Market Rate Housing.

- e. The additional Market Rate Housing units will, however, result in a corresponding decrease in the Total Set-Aside Percentage provided for in the Application.
- f. 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 four (4) additional units. More significantly, families would be deprived of the opportunity to obtain Market Rate Housing.

12. A waiver of the Rule's restriction against changing the Total Set-Aside Percentage from Petitioner's 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 Market Rate 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. 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

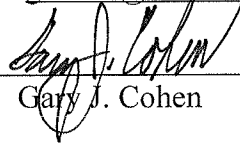
Petitioner requests the following:

- (a) That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(j), Florida Administrative Code (2014), allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 96.33% (105 low-income units) and increase the total number of units from 105 to 109; and
- (b) Grant the Petition and all the relief requested therein; and
- (c) Grant such further relief as may be deemed appropriate.

Respectfully submitted,

SHUTTS & BOWEN LLP
Counsel for Pinnacle Heights, LLC
201 S. Biscayne Blvd.
Suite 1500 Miami Center
Miami, Florida 33131
Tel.: (305) 347-7308
Fax: (305) 347-7808
E-mail: gcohen@shutts.com

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 30th day of August, 2016.



Gary J. Cohen