

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FHFC CASE NO. 2017-069VW
Application No. 2017-181C

ST. ELIZABETH GARDENS APARTMENTS, LTD.,
a Florida limited partnership

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(3)(i) and (j)
FOR A CHANGE IN NUMBER OF UNITS AND IN TOTAL SET-ASIDE PERCENTAGE

St. Elizabeth Gardens Apartments, Ltd., a Florida limited partnership (the “Petitioner”) hereby petitions Florida Housing Finance Corporation (the “Corporation”) for (i) a waiver or variance of the Corporation’s prohibition on changes in “Total Number of Units” designated by an applicant, and (ii) a waiver or variance of the Corporation’s prohibition on changes in the “Total Set-Aside Percentage” designated by an applicant and set forth in the Total Set-Aside Breakdown Chart, in its response to RFA 2016-116 – Housing Credit Financing for the Preservation of Existing Affordable Multifamily Developments. See Rule 67-48.004(3)(i) and (j), F.A.C. (2016).

In support of its petition, the Petitioner states:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative for Petitioner’s application (the “Application”) in

response to RFA 2016-116 – Housing Credit Financing for the Preservation of Existing Affordable Multifamily Developments. are:

St. Elizabeth Gardens Apartments, Ltd.
2950 SW 27th Avenue, Suite 200
Miami, FL 33133
Attn: Elizabeth Wong
Telephone: 305-357-4725
Facsimile: 305-476-1557
E-Mail: lwong@apcommunities.com

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorney 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. The Petitioner timely submitted its Application in response to the RFA for the development named "St. Elizabeth Gardens" (the "Development"). *See* Application No. 2017-181C. Petitioner received a preliminary allocation of Low-Income Housing Tax Credits for the Development.

4. The syndication of Low-Income Housing Tax Credits, together with other loan sources, will provide funds for the construction of a multifamily residential apartment community intended to serve low-income elderly households in Pompano Beach, Florida.

5. 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 Broward County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness¹. Section 120.542(2), Fla. Stat.

6. The waiver being sought is permanent in nature.

C. RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code in effect as of the submission of the Petitioner's Application (the "Rule"). Specifically, Petitioner is requesting an increase in the total number of units from 151 to 153 and a decrease in the Total Set-Aside Percentage from 100% to approximately 98.7%. Petitioner will maintain the total number of committed "low-income units" at 151, and is increasing the total number of units by 2, which additional 2 units will be available for market-rate rental (the "Market Rate Housing"). Petitioner recognizes that the Rule provides that the Corporation may approve an increase in the number of units in its underwriting process, but, since (a) in this case, the additional units are not "like-kind" (i.e., set-aside at the same income limitations as the units described in the Application), and (b) adding such units is the direct cause of the decrease in the Total Set-Aside Percentage, Petitioner is requesting that the change in unit count be approved as part of the Corporation's approval of the decrease in the Total Set-Aside Percentage.

The Rule provides, in relevant part, as follows:

“(3) (3) For the SAIL, HOME and Housing Credit Programs, 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:

¹“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.

...

(i) Total number of units; notwithstanding the foregoing, 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. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;

(j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. For the HOME Program, the total number of HOME-Assisted Units committed to in the Set-Aside Commitment section of the Application. Notwithstanding the foregoing, the Total Set-Aside Percentage, or total number of HOME-Assisted Units, as applicable, 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. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program; Rule 67-48.004(14)(i) and (j), F.A.C.

D. STATUTES IMPLEMENTED BY THE RULE

8. 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.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

9. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code. Petitioner is seeking a waiver from the Rule allowing it to increase the

total number of units from 151 to 153, and to decrease the Total Set-Aside Percentage from 100% to approximately 98.7%.

10. It is not uncommon for development changes to occur after submission of an application to the Corporation. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation 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 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.

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 in response to the RFA, for 151 low-income tax credit housing units, with the Total Set-Aside Percentage of 100%.
- b. Petitioner's affiliated non-profit organization, Catholic Health Services, Inc., was not using the existing 2 additional units at the time of submitting the Application and such units were not originally included in the unit count for the Development, as they were not marketable units, due to the lack of kitchens and living areas. Catholic Health Services, Inc. has since decided to renovate these units to make them marketable and when completed, desires flexibility in the use of these additional units, which

may include making such units available for occupancy by parish clergy and lay leaders.

- c. 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.
- d. Petitioner's scoring and allocation of Low-Income Housing Tax Credits would not have been affected if Petitioner had originally included 151 units in the Application, with 100% of them designated as set-aside units, and an additional two (2) Market-Rate Housing units in the Development. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other applicant in the RFA.
- e. 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., the Development's feasibility is enhanced by spreading fixed costs, such as recreational amenities, over two (2) additional units. Two (2) additional Market Rate Housing units add financial stability to the Development and improve the Development's operating abilities. Underwriting of the Development is facilitated by the inclusion of the extra units, which should enhance Petitioner's ability to receive loan and investment approvals in a timely manner. The additional rental revenue from the two (2) units will correspondingly increase the

Development's debt service coverage ratio, mitigating any operational risks of the Development and further ensuring long-term viability.

- f. The addition of two (2) Market Rate Housing units to the total unit count will necessarily result in a corresponding decrease in the Total Set-Aside Percentage provided for in the Application, but the waiver requested herein will not result in any decrease in number of committed "low-income units".

12. A waiver of the Rule's restriction against increasing the total number of units and changing the Total Set-Aside Percentage from Petitioner's Application would serve the purposes of Section 420.5099, F.S., 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 households of limited means, 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 and principles of fundamental fairness in developing affordable rental housing by encouraging the development of mixed-income housing projects, particularly in urban areas well-suited to a mixed-income housing project, and enabling developers to meet the needs of both low-income families and families in need of moderately-priced Market Rate 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.

14. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code, allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 98.7% and to increase the total number of units in the Development from 151 to up to 153;
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

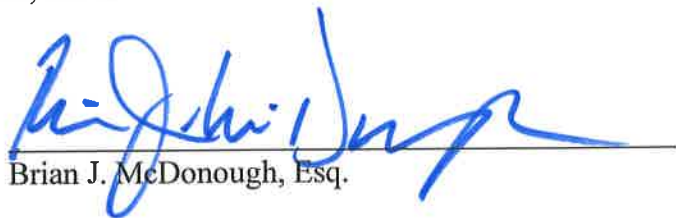
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By: _____


BRIAN J. MCDONOUGH, ESQ.

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 overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this ____ day of October, 2017.


Brian J. McDonough, Esq.