

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

DUNBAR IMPROVEMENT ASSOCIATION, INC.,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

FHFC Case No.: 2018-011VW

CASE NO.: 2017- \_\_\_\_\_

APPLICATION NO. 2015-229E

APPLICATION NO. 2016-352E

\_\_\_\_\_/

**PETITION FOR WAIVER OF RULE 67-48.0072(4)(c) AND RULE 67-48.0072(21)(b)**

Petitioner Dunbar Improvement Association, Inc., a Florida not for profit corporation (the “Petitioner”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rule 67-48.0072(4)(c) (the “2015 Rule”) in effect at the time Petitioner submitted its application in response to the Corporation’s Request for Applications 2015-102 Elderly Housing Community Loan (the “2015 RFA”), to allow Petitioner to extend the required closing date for the Elderly Housing Community Loan (“EHCL”) funding allocated to Petitioner pursuant to the 2015 RFA. Also, Petitioner submits its Petition to the Corporation for a waiver of Rule 67-48.0072(21)(b) (the “2016 Rule”) in effect at the time Petitioner submitted its application in response to the Corporation’s Request for Applications 2016-108 Elderly Housing Community Loan (the “2016 RFA”), to allow Petitioner to extend the firm commitment issuance deadline for the EHCL funding allocated to Petitioner pursuant to the 2016 RFA. In support of this Petition for Waiver of Rule 67-48.0072(4)(c) and Rule 67-60.0072(21)(b) (the “Petition”), Petitioner states as follows:

**A. Petitioner and the Development**

1. The name, address, telephone, and facsimile numbers for Petitioner and its qualified representative are:

Dunbar Improvement Association, Inc.  
1625 Marsh Avenue  
Fort Myers, Florida 33905  
Attention: Audrea I. Anderson, President  
Telephone: (239) 334-1303  
Facsimile: (239) 334-8133  
E-mail: pcga@palmcitygarden.com

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Bernice S. Saxon, Esq.  
Saxon Gilmore & Carraway, P.A  
201 E. Kennedy Blvd., Suite 600  
Tampa, Florida 33602  
Telephone: (813) 314-4500  
Facsimile: (813) 314-4555  
E-mail: bsaxon@saxongilmore.com

2. Pursuant to the 2015 RFA, Petitioner timely submitted its application for EHCL funding. See Application Number 2015-229E. Petitioner was preliminarily awarded Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000) in EHCL funding under the 2015 RFA (the "2015 EHCL Award"), and received an invitation to enter credit underwriting on May 22, 2015. The 2015 EHCL Award closing deadline was May 23, 2016, which was twelve (12) months from the invitation to enter credit underwriting.

3. On April 14, 2016, Petitioner requested a twelve (12)-month extension of the closing deadline for the 2015 EHCL Award. At the meeting of the Board of Directors of the Corporation (the "Board") on May 6, 2016, the Board granted the request to extend the 2015 EHCL Award closing deadline from May 23, 2016 to May 23, 2017.

4. On April 13, 2017, Petitioner requested a twelve (12)-month extension of the closing deadline for the 2015 EHCL Award. At the meeting of the Board on May 5, 2017, the Board granted the request to extend the 2015 EHCL Award closing deadline from May 23, 2017 to May 23, 2018.

5. On September 30, 2016, pursuant to the 2016 RFA, Petitioner timely submitted its second application for EHCL funding. See Application Number 2016-352E. Petitioner was preliminarily awarded another Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000) in EHCL funding under the 2016 RFA (the "2016 EHCL Award"), and received an invitation to enter credit underwriting on December 19, 2016. Petitioner accepted the invitation to enter credit underwriting on December 21, 2016. Pursuant to the 2016 RFA, the firm loan commitment for the 2016 EHCL Award must be issued within nine (9) months of Petitioner's acceptance to enter credit underwriting, unless Petitioner requests an extension of up to six (6) months and such request is granted by the Board. As such, without extension, the loan commitment deadline for the Second EHCL Award would be September 21, 2017.

6. On August 15, 2017, Petitioner requested a six (6)-month extension of the firm loan commitment deadline for the 2016 EHCL Award. On September 22, 2017, the Corporation granted the request to extend the firm loan commitment deadline for the 2016 EHCL Award from September 21, 2017, to March 21, 2018.

7. The 2015 EHCL Award and the 2016 EHCL Award are critical parts of the financing for the life-safety, health, sanitation, and security-related improvements of the one hundred (100) unit development known as Palm City Gardens, serving elderly residents aged sixty-two (62) or older (the "Development").

8. The 2015 EHCL Award may not close by the May 23, 2018 deadline, and the 2016 EHCL Award may not receive a firm loan commitment by March 21, 2018. Petitioner fully intended to meet these deadlines; however, in September 2017, Hurricane Irma had a direct impact on the City of Fort Myers, Florida, including significant property damage to the Development, which caused unforeseen delays. Petitioner had to focus its resources on preparations for the hurricane and the aftermath, which consisted of determining the property damage to the Development, submitting the insurance claim, and addressing water intrusion, roof damage, and replacement of flooring. Further, local contractors and architects were also dealing with the hurricane, so the schedule for finalizing the plans and specifications and negotiating the construction contract for the Development was delayed by several months. The plans and specifications, along with the negotiated construction contract have now been submitted to the underwriter, and third party review is scheduled. Construction and permanent financing is being provided by Chase Bank, and the loans are in final underwriting. All other third party reports are complete. In addition to the hurricane delay, Petitioner required additional time to receive approval from the U.S. Department of Housing and Urban Development for a rent increase. Accordingly, an extension of the 2015 EHCL Award closing deadline and the 2016 EHCL Award firm loan commitment deadline are required.

**B. Rules from Which the Waivers are Sought**

9. The relevant portion of the 2017 Rule provides as follows:

**(4) If the invitation to enter credit underwriting is accepted:...**

**(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months....In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.**

Rule 67-48.0072(4)(c), F.A.C. (2014).

10. The relevant portion of the 2017 Rule provides as follows:

**(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) months of the Applicant's acceptance to enter credit underwriting....**

Rule 67-48.0072(21)(b) (2016).

11. Section 5.d. of Exhibit C to the 2016 RFA provides, in relevant part, as follows:

**... The firm loan commitment must be issued within nine (9) months of the Applicant's acceptance to enter credit underwriting. The Applicant may request one (1) extension of up to six (6) months to secure a firm loan commitment. The Corporation shall charge a non-refundable extension fee of one (1) percent of the loan amount if the Board approves a request to extend the credit underwriting and firm loan commitment process beyond the initial nine (9) month deadline....**

**C. Statute Implemented**

12. The 2015 Rule, the 2016 Rule, and the RFA for which the waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),<sup>1</sup> the statute that created the EHCL program. *See* § 420.5087, Fla. Stat. (2014).

13. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers shall be granted when (a) the person who is subject to the requirement demonstrates that the application of the requirement 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 by the person. § 120.542(2), Fla. Stat.

---

<sup>1</sup> The Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

14. In this instance, Petitioner meets the standards for waivers.

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

15. In order to have additional time to complete credit underwriting for the 2015 EHCL Award and the 2016 EHCL Award, Petitioner is requesting (i) an extension of the 2015 EHCL Award closing deadline from May 23, 2018 to October 31, 2018; and (ii) an extension of the 2016 EHCL Award firm loan commitment deadline from March 21, 2018 to October 31, 2018.

16. The requested waivers will not adversely affect Petitioner, the Development, the Corporation, or any other party that applied to receive EHCL funding in the 2015 RFA or the 2016 RFA. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has incurred over One Hundred Thousand and No/100 Dollars (\$100,000.00) in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Lee County of life-safety, health, sanitation, and security-related improvements to the Development serving persons aged 62 or older; and (c) violate principles of fairness<sup>2</sup>. § 120.542(2), F.S.

17. The requested waivers will ensure the availability of EHCL funding which will otherwise be lost as a consequence of the Development delays described herein.

**E. Conclusion**

18. The facts set forth in Sections 15 through 17 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for waivers of the 2015 Rule and the 2016 Rule; that is, the delay in commencement of the life-safety, health, sanitation,

---

<sup>2</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.

and security-related improvements to the Development and the loss of a substantial sum of money should the transaction not go forward.

19. As demonstrated above, the requested waivers serve the purposes of Section 420.5087, Florida Statutes, 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. Further, by granting the requested waivers, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.


20. The waivers being sought are permanent in nature.

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant this Petition and all the relief requested therein; and
- B. Grant a waiver of the 2015 Rule to extend the 2015 EHCL Award closing deadline from May 23, 2018 to October 31, 2018; and
- C. Grant a waiver of the 2016 Rule to extend the 2016 EHCL Award firm loan commitment deadline from March 21, 2018 to October 31, 2018; and
- D. Award such further relief as may be deemed appropriate.

Respectfully submitted,

SAXON GILMORE & CARRAWAY, P.A.  
Counsel for Dunbar Improvement Association, Inc.  
201 E. Kennedy Blvd., Suite 600  
Tampa, Florida 33602  
Telephone: (813) 314-4500  
Facsimile: (813) 314-4555  
E-mail: bsaxon@saxongilmore.com

By:   
Bernice S. Saxon, 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 28<sup>th</sup> day of February, 2018.

By: \_\_\_\_\_

Bernice S. Saxon, Esq.