

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PARRAMORE OAKS, LLC,
a Florida limited liability Company,

Petitioner,

FHFC CASE NO. 2018-12VW
Application No. 2017-200C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(3)(g), F.A.C.

Petitioner Parramore Oaks, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the prohibition against revising the Development Type identified in the Application under Rule 67-48.004(3)(g), Florida Administrative Code ("F.A.C.") effective September 15, 2016 (the "Rule"). Due to forces outside of Petitioner's control, Petitioner must change the Development Type as described in the Addenda section of its Application. In support, Petitioner states as follows:

A. THE PETITIONER

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

Parramore Oaks, LLC
C/O Invictus Development, LLC
ATTN: Paula McDonald Rhodes
2002 N. Lois Ave.
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Telephone: (813) 448-7868
Fax: N/A
Email: prhodes@invictusdev.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.
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B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. Petitioner requests a waiver of Rule 67-48.004(3)(g), effective September 15, 2016, which provides in pertinent part:

(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:

(g) **Development Type**

Id. (emphasis added).

5. "Development Type" is not defined under Chapter 67-48, nor in Request for Applications 2016-113 ("RFA"); rather, the RFA provides a list of "Development Types" from which applicants are to select only one, as follows:

The Applicant must select the Development Type for the proposed Development. For purposes of determining the number of stories, each floor in the building(s) should be counted regardless of whether it will consist of retail, parking, or

residential. *For mixed-type Developments, indicate the type that will comprise the majority of the units in the Development [emphasis supplied].*

- Garden Apartments (a building comprised of 1, 2, or 3 stories, with or without an elevator)
- Townhouses
- Duplexes
- Quadraplexes
- Mid-Rise, 4-stories (a building comprised of 4 stories and each residential building must have at least one elevator)
- Mid-Rise, 5 to 6-stories (a building comprised of 5 or 6 stories and each residential building must have at least one elevator)
- High Rise (a building comprised of 7 or more stories and each residential building must have at least one elevator)

6. In Petitioner’s response to the RFA (“Application”), Petitioner selected the Development Type of “Mid-Rise, 4-stories.” Additionally, in the Addenda section of the Application (“Addenda”), Petitioner stated:

Exhibit A, Question 5.d, Development Type. Parramore Oaks will consist of 120 total New Construction units, made up of 52 Mid-Rise units, 49 Garden Apartments, and 19 Townhouses. There is thus not one Development Type that constitutes a "majority" of the units within the Development, as contemplated by the RFA instructions at Page 17. The Applicant selected "Mid-Rise" at Exhibit A, Question 5.d because there are more Mid-Rise units than units of any other single Development Type in Parramore Oaks.

For reasons discussed below, Petitioner must delete reference to “Townhouses” which, although not a change in the selected Development Type of Mid-Rise, 4 stories, is a change to the Development Type *as identified* in the Addenda section of the Application.

D. STATUTES IMPLEMENTED BY THE RULE.

7. Rule 67-48.004, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”):

- Section 420.5087, State Apartment Incentive Loan Program;

- Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund; and
- Section 420.5099, Allocation of the low-income housing tax credit.

8. Per Section 420.5099(1)-(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

9. Petitioner timely submitted the Application for Parramore Oaks, located at the corner of South Parramore Avenue and Conley Street (the "Development"). As originally designed, the Development's larger structure had a four-story ("Mid-Rise") section with 52 units and a three-story ("Garden Apartment") section that had 49 units. Additionally, the Development included 19 two-story townhouses comprised of three separate buildings ("Townhouses"). Accordingly, the Addenda section of the Application identified the Development Type to include 52 Mid-Rise units, 49 Garden Apartment units, and 19 Townhouses.

10. Subsequent to submission of the Application for the Development, construction prices increased dramatically due to a combination of factors, including a booming market-rate rental construction market, three devastating hurricanes, an unusually severe wildfire season out west, and tariffs on lumber, steel, and aluminum. When value engineering alone was not sufficient to bring costs back in line with sources, Petitioner was forced to redesign the Development. As part of the redesign, the two-story townhouse structures were converted to two-story "unit over unit" or "stacked townhouse" structures. and the number of units in these

structures was reduced from 19 to 16. In order to maintain the number of units in the overall development at 120, three units were added to the four-story section of the larger structure.

11. Although the term “Townhouse” is not defined in the Act nor is it defined in the RFA, Florida Housing staff advised Petitioner the two-story structures would not be considered Townhouses, citing the Florida Building Code’s definition of a Townhouse that describes in relevant part structures of three or more units “in which each unit extends from foundation to roof.” (2017 Florida Building Code – Residential, Sixth Edition, Chapter 2 Definitions)

12. In addition to the movement of three townhouse units to the four-story section of the larger structure, six units were moved from the three-story section of the larger structure to the four-story section. Consequently, the redesigned structure now consists of 104 units of which 61 are in the four-story portion of the building and 43 are in the three-story portion. Because a majority of the units in the structure are contained in four stories, the structure constitutes a “Mid-Rise, 4 Stories” and the Development Type remains Mid-Rise, 4 Stories.

13. Thus, while the total number of units has not changed and the Development Type of “Mid-Rise, 4 Stories” identified in the Application remains correct, the reference to “Townhouse” as well as the breakdown of the number of units in each type of structure as described in the Addenda section of the Application is no longer accurate based on the definition of a “Townhouse” as provided by Florida Housing staff from the Florida Building Code.

14. 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 the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the

application of the rule would: (1) create a substantial hardship or, violate principles of fairness,¹ 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. (2017).

15. If the Rule is imposed, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Petitioner was forced by circumstances outside of its control to redesign the Development after submitting the Application to address a steep increase in construction pricing. As a result of the redesign, the project is once again financially feasible but has likely been set back four months. The waiver would allow Petitioner to move ahead with the redesign and prevent further delay. Absent the waiver, Petitioner will need to seek additional sources to cover the cost of the Development and the resulting delay will put at risk its favorable equity pricing, result in further increases in its permanent loan rate, and jeopardize its ability to place the Development in service by the end of next year, as required.

16. Petitioner meets the standards for granting the requested waiver. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 120 affordable housing units will be made available for the target population in Orange County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because the redesign is necessary to offset increased prices and move forward with the Development. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary

¹ "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the 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. § 120.542(2), Fla. Stat. (2017).

housing in the State. Denying the waiver would deny Orange County these much-needed affordable housing units.

F. ACTION REQUESTED

17. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the Rule such that Petitioner is able to amend the Development Type as described in the Addenda section of its Application; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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Counsel for Petitioner

By: /s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by handdelivery, with a copy served by electronic transmission for filing with the Florida Housing 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 28th day of March, 2018.

By: /s/ Brian J. McDonough
Brian J. McDonough, Esq.