

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CARIBBEAN VILLAGE, LTD.,

Petitioner,

vs.

CASE NO.: 2018-030VW

**FLORIDA HOUSING FINANCE
CORPORATION**

**APPLICATION NO. 2014-418S
2014-133B**

Respondent.

**PETITION FOR WAIVER OF RULES 67-48.004(3)(g) AND 67-21.003(8)(g) AND RFA
2014-111 REQUIREMENT FOR A CHANGE IN DEVELOPMENT TYPE**

Caribbean Village, Ltd. (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's prohibition on changes in the "Development Type" of a development. See Rule 67-48.004(3)(g) and 67-21.003(8)(g) (2013), and RFA 2014-111, Exhibit E, Part I.A.3.g.

In support of its petition, the Petitioner states:

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

Caribbean Village, Ltd.
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 applications for SAIL financing and for Corporation issued tax-exempt bonds and 4% non-competitive housing credits (the "Applications") is:

Caribbean Village, Ltd.
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 of Managing General Partner

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.
41st Floor
Miami, FL 33131
(305) 347-7308
(305) 347-7808 (Fax)
gcohen@shutts.com

4. Petitioner timely submitted its application in RFA 2014-111 (SAIL Financing of Affordable Multifamily Housing Developments to be used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits) (Application Number 2014-418S) and its non-competitive application for Corporation issued tax exempt bond financing and non-competitive 4% low income housing tax credits (Application Number 2014-133B) for the development named "Caribbean Village". The Corporation has issued its commitment for SAIL financing to Petitioner.

5. The SAIL financing, together with corporation issued tax exempt bond financing and equity raised from the syndication of the 4% tax credits, will be used for the development of Caribbean Village, a new 123 unit apartment development intended to serve the elderly in southern Miami-Dade County, Florida. Petitioner's initial applications contemplated the construction of 82 units. Since that time, Petitioner has requested (and the Corporation has agreed) to increase the total number of units from 82 to 123 (all units are affordable). The final credit underwriting report for the Development is scheduled for review and approval at the Corporation's May 4, 2018 Board meeting.

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 Miami-Dade County of essential, elderly affordable housing units in a timely manner, and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2017).

7. The waivers being sought are permanent in nature.

THE RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from Rules 67-48.004(3)(g) and 67-21.003(8)(g), Florida Administrative Code (2013). Specifically, Petitioner is seeking a waiver from the "Development Type" designation identified by Petitioner in its original applications.

Rule 67-48.004 provides, in relevant part, as follows:

(3) Notwithstanding any other provisions of this rule, 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

Rule 67-21.003 provides, in relevant part, as follows:

(8) Notwithstanding any other provisions of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:

(g) Development Type

9. Similarly, Part I.A.3.g. of Exhibit E of RFA 2014-111 contains the substantially identical restriction on a change in “Development Type”.

STATUTES IMPLEMENTED BY THE RULES

10. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act, the statutes that created the SAIL, tax-exempt bond and tax credit programs. See Sections 420.5087, 420.509 and 420.5099, Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

11. Petitioner requests a waiver from Rules 67-48.004(3)(g) and 67-21.003(8)(g), Florida Administrative Code (2013) and Part I.A.3.g. of Exhibit E of RFA 2014-111. Petitioner is seeking a waiver from the Rules allowing it to change the Development Type listed in the applications from “Mid-Rise, 5 – 6 stories” to “High Rise” and in connection therewith to allow the total development cost per unit limitation applicable to high-rise to apply rather than the limitation applicable to mid-rise concrete.

12. Petitioner is requesting a change in Development Type in order to construct a 7 story building rather than a 5 story building. When the total number of units in the Development increased from 82 to 123, the only way to accommodate the increased number of units was to add additional height to the proposed building, since the size of the development site did not allow for an additional building or for the addition of more units to the existing single building by increasing such building’s footprint. As a result, the only way to accommodate the additional units is to add height (an additional two floors) to the building.

13. The Application’s scoring and funding would not have been affected had the Applicant selected the “High Rise” Development Type when it submitted its original Application. The change in Development Type would not have affected the application or its score in any manner.

14. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes to provide relief from its rules if strict application of the rules will lead to unreasonable, unfair and unintended results in particular instances. Unless the Petitioner’s request is granted, strict application of the Rules would violate principles of fairness. Moreover, unless the Rule is

waived to allow the requested change, Petitioner may not be entitled to close on the SAIL and bond financing from the Corporation, thereby resulting in substantial hardship to Petitioner.

WAIVER WILL SERVE UNDERLYING PURPOSE OF THE STATUTE

15. Petitioner believes that a waiver of these Rules will serve the purposes of the Statute, which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et. seq.) was passed in order to encourage private and public investment in persons of low income. The purpose of the creation of the SAIL, bond and tax credit programs was to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to change its Development Type as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing. The requested waiver will ensure the availability of SAIL financing which might otherwise be lost as a consequence of not granting such waiver.

TYPE OF WAIVER

16. The waiver being sought is permanent in nature.

ACTION REQUESTED

17. Petitioner requests the following:

(a) That the Corporation grant Petitioner a waiver from Rules 67-48.004(3)(g) and 67-21.003(8)(g), Florida Administrative Code (2013) and Part I.A.3.g. of Exhibit E of RFA 2014-111, allowing it to change the Development Type listed in the application from “Mid-Rise, 5-6 stories” to “High Rise”, and

(b) That the Corporation treat the Development as a “High Rise” development for all purposes, including but not limited to determining the applicable Total Development Cost Per Unit limitation.

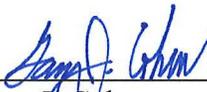
Respectfully submitted,

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By: 
Gary J. Cohen

CERTIFICATE OF SERVICE

The Amended and Restated Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, 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 18th day of April, 2018.



Gary J. Cohen