

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: 414 East Pine Street, LP

FHFC Case No.: 2023-062VW

**ORDER GRANTING WAIVER OF
RULE 67-21.026(13)(e), FLA. ADMIN. CODE (2022)**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the “Board”) on September 8, 2023. On July 14, 2023, Florida Housing Finance Corporation (“Florida Housing”) received a Petition for Waiver of Rule 67-21.026(13)(e) (the “Petition”) from 414 East Pine Street, LP (the “Petitioner”) to allow the Development’s general contractor (“GC”) to self-perform work exceeding the de minimis amount allowed by Rule. Notice of the Petition was published July 18, 2023, in Volume 49, Number 138, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised on the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Tomé Ramirez / DATE: 9/11/2023

2. Petitioner has applied for funding to assist in the acquisition and rehabilitation of Baptist Terrace, a 197-unit development located in Orange County, Florida (the “Development”).

3. Rule 67-21.026(13)(e), Fla. Admin. Code (2020), applies; however, on April 29, 2022, the Board amended Rule 67-21.026(13)(e), Fla. Admin. Code, effective retroactively to developments that had previously submitted applications under prior rule versions. Rule 67-21.026(13)(e), Fla. Admin. Code, as amended, states in relevant part:

Ensure that no construction or inspection work is performed by the General Contractor, with the following exceptions: (i) the General Contractor may perform its duties to manage and control the construction of the Development; and (ii) the General Contractor may self-perform work of a *de minimis amount*, defined for purposes of this subparagraph as the lesser of \$350,000 or 5 percent of the construction contract.

(Emphasis Added)

4. Petitioner requests a waiver of the above rule to allow the Development’s GC to self-perform work exceeding the *de minimis* amount. Petitioner states that, when it initially began rehabilitation of the development, the GC did not expect to self-perform any work. However, as the project progressed, unforeseen complications arose from the Covid-19 pandemic, resulting in labor shortages, supply chain disruptions, and difficulty hiring subcontractors. A detailed breakdown of the self-performed work is provided

in the Petition, and Petitioner confirms that no profit, overhead, or administrative fees were included in any of the self-performed costs. The GC self-performed work amounting to \$475,902.51, exceeding the de minimis amount of \$350,000 by \$125,902.51.

5. Staff requested Seltzer Management Group, Inc., the underwriter on this transaction, to provide Florida Housing with a recommendation on the costs incurred by the GC. Staff received a positive recommendation on July 26, 2023 to approve the work that was self-performed by the GC.

6. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

7. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control and that it would suffer a substantial hardship if the waiver is not granted.

8. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state,” would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner’s request for a waiver of Rule 67-21.026(13)(e), Fla. Admin. Code (2022), is hereby

GRANTED to allow the Development's general contractor to self-perform work exceeding the de minimis amount. No further workout is being proposed with this recommendation because the General Contractor's Fee is already below the maximum allowed amount, however, this waiver is conditioned upon the Petitioner's compliance with the following:

(i) The general contractor has included no profit in the cost of the self-performed work.

(ii) In addition to verifying the amount paid to the general contractor for the self-performed work based on the steps prescribed in the GCCC instructions, an independent CPA will also confirm/audit all labor and equipment hours and rates and material invoices for the self-performed work.
And,

(iii) As part of the cost certification process, in addition to confirming/auditing all self-performed work as noted in item 2, an independent CPA will confirm and/or verify an additional 40% of the development's costs per the Final Cost Certification Application Package.

DONE and ORDERED this 8th day of September, 2023.



Florida Housing Finance Corporation

By: _____

Chairperson

Copies furnished to:

Yisell Rodriguez
Nelson Mullins Riley & Scarborough LLP
yisell.rodriguez@nelsonmullins.com

Ethan Katz, Assistant General Counsel
Melissa Levy, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Ethan.Katz@floridahousing.org
Melissa.Levy@floridahousing.org

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.