

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: PINELLAS AFFORDABLE
LIVING, INC.

FHFC CASE NO.: 2019-082VW

ORDER GRANTING WAIVER OF RULE 67-48.004(3)(i), F.A.C.

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on October 31, 2019, pursuant to a Petition for Waiver of Rule 67-48.004(3)(i) for a Change in Number of Units (“Petition”) filed by Pinellas Affordable Living, Inc. (“Petitioner” or “Pinellas Affordable”) on September 27, 2019. Notice of the Petition was published on October 1, 2019, in Volume 45, Number 191, of the Florida Administrative Register. On September 29, 2019, Florida Housing received an Amended Petition for Waiver of Rule 67-48.004(3)(i) for a Change in Number of Units (“Amended Petition”), which was amended as to the title only. On October 14, 2019, Florida Housing received a Second Amended Petition for Waiver of Rule 67-48.004(3)(i) for a Change in Number of Units (“Second Amended Petition”). On October 16, 2019, Florida Housing received a Third Amended Petition for Waiver of Rule 67-48.004(3)(i) for a Change in Number of Units (“Third Amended Petition”) (all petitions and amended petitions collectively referred to as “petitions”) to correct scrivener’s errors. Florida Housing received no comments regarding the Petition.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Wm. Melamory 10/31/19

After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

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

2. Petitioner was selected to receive State Apartment Incentive Loan (“SAIL”) and an Extremely Low Income (“ELI”) loan under RFA 2019-104 to assist in the construction of Butterfly Grove, a 22-unit housing development for Persons with Special Needs in St. Petersburg, Florida (the “Development”).

3. Rule 67-48.004(3), Fla. Admin. Code, (2017) provides in relevant 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:

(i) Total number of units...

4. In its application, Petitioner indicated that the total number of Garden Apartments in its proposed development was 22 units. At the time of application, Petitioner asserts that it intended to replace the existing 22 units with 22 new construction Garden Apartments. Petitioner now seeks this waiver to allow it to reduce its number of units from 22 to 20. 100% of the units will remain set-aside as affordable units.

5. According to Petitioner, the number of units indicated in its application was based on a review of the City of St. Petersburg (the “City”) land development regulations and preliminary discussions with planning staff. Petitioner asserts that those initial discussions culminated in the execution of Florida Housing’s Local Government Verification that Development is Consistent with Zoning and Land Use Regulations confirming 22 units on the proposed Development site. However, on September 4, 2019, the City approved Petitioner’s development plan application to allow only 20-units to replace the existing 22-unit development. According to Petitioner, it initially requested 22 units, but only 20 units were approved based on the Floor Area Ratio Calculation conducted by the City based on the gross building square footage of the proposed development.

6. Petitioner asserts that it attempted to work with the City to obtain the 22 units as applied for, however, it would have eliminated much of the space needed for the necessary amenities including lobbies, meeting room, office, library, laundry room, and restroom. According to Petitioner, the reduction in the number of units is the only viable option. Petitioner asserts that the scoring and ranking of its application would not have been affected had it initially selected 20 units. Petitioner states that it was the lone eligible application selected for funding in the RFA and it did not request the maximum amount per unit.

7. Petitioner requests that no funding reduction occur with the reduction of units. In the alternative if any reduction is required, Petitioner requests that it

receive the maximum SAIL request amount of \$224,000 for its approved 20 units or \$4,480,000 in SAIL funding and \$57,400 for its 4 ELI units or \$229,600 for the total request amount of \$4,709,600. With this amount of funding Petitioner asserts that it will be able to construct its proposed Development consistent with the requirements and purpose of the RFA.

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

9. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

10. Petitioner has demonstrated that the waiver is necessary and, if the waiver were not granted, Petitioner would suffer a substantial hardship. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

11. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.


IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-48.004(3)(i), Fla. Admin. Code, is hereby **GRANTED** to reduce the total number of units from 22 to 20 and to reduce the funding amount to \$4,480,000 in SAIL funding and \$229,600 in ELI funding for a total amount of \$4,709,600.

DONE and ORDERED this 31st day of October, 2019.

Florida Housing Finance Corporation



By: 
Chair

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.