

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

ROSEMARY VILLAGE APARTMENTS, LLLP

Petitioner,

vs.

CASE NO.: 2019-023VW

**FLORIDA HOUSING FINANCE
CORPORATION**

APPLICATION NO. 2018-344CS

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(3)(j)
FOR A CHANGE IN TOTAL SET-ASIDE PERCENTAGE AND VARIANCE FROM
PROVISIONS OF RFA 2018-103**

Rosemary Village Apartments, LLLP (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for (i) a waiver of the Corporation's prohibition on changing the "Total Set-Aside Percentage" in its application filed pursuant to RFA 2018-103, and (ii) a waiver or variance from the provisions of Sections Four A.2.a.(1) (requiring that at least 70% of the total units to be set aside for homeless individuals and at least 20% of the total units to be set aside for persons with special needs), Section Four A.6.d.(2)(a) (requiring that at least 80% of the total units be set aside at 60% of area median income or less), and Section Four A.6.d.(3) (stating the total set-aside breakdown for the Development). See Rule 67-48.004(3)(j).

In support of its petition, the Petitioner states:

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

Rosemary Village Apartments, LLLP
c/o Carrfour Supportive Housing, Inc.
1398 S.W. 1st Street, 12th Floor
Miami, Florida 33135
(305) 371-8300
Sberman@carrfour.org

2. The contact person, along with contact information and relationship, for the Petitioner's application under RFA 2018-103 (the "Application") is:

Rosemary Village Apartments, LLLP
c/o Carrfour Supportive Housing, Inc.
1398 S.W. 1st Street, 12th Floor
Miami, Florida 33135
(305) 371-8300
Sberman@carrfour.org

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 Boulevard
Suite 4100.
Miami, FL 33131
(305) 347-7308
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4. The Petitioner timely submitted its application under RFA 2018-103 (Application #2018-344CS) for the development named "Heritage Park at Crane Creek" (the "Development"). Florida Housing has issued a preliminary allocation of Housing Credits and SAIL funds to Petitioner.

5. The SAIL funds and equity raised from Housing Credits will be used for the development of "Heritage Park at Crane Creek", a new apartment development intended to serve homeless households and persons with special needs in Melbourne, Brevard County, Florida.

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 the City of Melbourne and Brevard County of essential, affordable housing units for the homeless and disabled in a timely manner, and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2018).

7. The waiver being sought is permanent in nature.

THE RULES AND RFA PROVISIONS FROM WHICH WAIVER IS SOUGHT

8. Petitioner is seeking to (a) increase the total number of units in the Development from 80 to 108, (b) decrease the Total Set-Aside Percentage from 100% to approximately 74.1%, (c) decrease the percentage of units set aside for homeless persons from 70% to approximately 51.85%, and (d) decrease the percentage of units set aside for persons with special needs from 20% to approximately 14.81%. Petitioner intends that the additional 28 units will be available for non-income restricted housing. Petitioner has secured an additional \$3,000,000 of subordinate below market rate funding which will assist in funding the construction of 28 additional market rate units, and enable the Development to be a true mixed-income community.

The addition of market rate units will allow the Development to operate in a more economically efficient manner, which is always a challenge for supportive housing communities.

Rule 67-48.004(3) provides, in relevant part, as follows:

“(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: Notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant’s request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development...

(j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside break-down chart for the program(s) applied for in the Set-Aside Commitment section of the Application...”.

Rules 67-48.004(3)(j), FAC (2018).

Section Four A.2.a.(1) (“Demographic Commitment”) of RFA 2018-103 (the “RFA”) requires applicants that commit to serve the Homeless demographic to set aside at least 70% of the total units for homeless individuals and families, and at least 20% of the total units for persons with special needs (which may be the same units set aside for homeless individuals and families).

Section Four A.6.(a) provides that the total number of units stated in the Application may be increased after the applicant has been invited into credit underwriting, subject to written request of an applicant to Corporation staff and approval of the Corporation.

Section Four A.6.(d)(2)(a) of the RFA requires that the applicant must set aside at least 80% of the Development’s total units at 60% area median income or less.

Section Four A.6.d.(2)(b) of the RFA requires that the applicant must commit to set aside 15% of the total units in the proposed Development to serve extremely low income households.

STATUTES IMPLEMENTED BY THE RULES

9. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the HC Program. See Section 420.5099, Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

10. Petitioner requests a waiver from Rule 67-48.004(3)(j), Florida Administrative Code (2018) and from the above-referenced provisions of the RFA, and approval of an increase

in the total number of units . Petitioner is seeking a waiver from the Rule and the provisions of the RFA allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 74.1%, which is less than the required 80% set-aside. Petitioner is seeking a waiver from the provisions of the RFA to set aside approximately 51.85% of the total units for homeless individuals and families, rather than the 70% set aside required by the RFA. Petitioner is seeking a waiver from the provisions of the RFA to allow it to set aside approximately 14.81% of the units for persons with special needs, rather than 20% as required by the RFA.

Petitioner is not seeking a waiver from the requirement that it set aside 15% of the total units to serve extremely low income households; Petitioner will set aside 17 of the total units (15.74%) for extremely low income households.

11. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for waiver:

- a. Petitioner timely submitted its Application under the RFA to the Corporation, for 80 housing units, with a Total Set-Aside Percentage of 100%, and received a preliminary allocation of \$1,151,000 of 2018 Housing Credits and \$4,469,500 of SAIL funds.
- b. Pursuant to applicable zoning for the area in which the Development is located, additional units can be added to the Development. However, by increasing the number of units, the Total Set-Aside Percentage will decrease.
- c. Granting the requested waiver will not change the number or quality of affording housing units identified in the Application.
- d. Petitioner has an opportunity to take full advantage of governmental zoning by providing an additional 28 housing units, and the land seller has committed to loan \$3,000,000 to Petitioner on advantageous terms in order to assist in the construction of the 28 additional units.
- e. Denying this Petition would cause substantial economic hardship for Petitioner in the form of lower Development rental revenues and decreased economies of scale. The Development's feasibility is enhanced by spreading fixed costs over 28 additional units. Underwriting of the Development is facilitated by the inclusion of the extra units, as the additional rental revenue from the 28 units will correspondingly increase the Development's debt-service coverage ratio, mitigating any operational risks of the Development and further ensuring long-term viability.
- f. Structuring the Development as a condominium form of ownership whereby the market rate units would be separately owned by another owner would add significant cost to the project and would delay closing. Developing the project as, in many respects, two developments (which would be the effect if this waiver request is not granted) would require a duplication of several costs (permits, plans, contracts with professionals, etc.) as well as entering into

separate construction contracts for each project, cross easement agreement, shared use agreement, and the like. All these items would add to the financial burden of constructing the proposed Development. In light of rising construction costs and lower equity pricing, increased costs would have a significant negative impact and add unnecessary costs to the overall development of the project.

- g. The additional market rate units will, however, result in a corresponding decrease in the Total Set-Aside Percentage provided for in the Application, and a decrease in the percentage of units set-aside for homeless households and for persons with special needs.
- h. Grant of the requested waiver will not change in any way the number or quality of affordable housing units referenced in Petitioner's application (56 units will still be provided for homeless households, and 16 units for persons with special needs), and would augment the proposed Development by permitting a unique mixed-income housing opportunity.

12. A waiver of the Rule's restriction against changing the Total Set-Aside Percentage from Petitioner's Application (and the RFA's requirements of minimum set-asides for homeless households and persons with special needs) would serve the purposes of Section 420.5087, and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households, and would provide the additional benefit of meeting the critical need for mixed-income developments with market rate units.

13. By granting the waiver, the Corporation would recognize the economic realities of developing affordable rental housing by encouraging the development of mixed-income housing projects, particularly with respect to supportive housing communities, and enabling developers to meet the needs of both low-income homeless/special needs households and families in dire need of market rate housing. This recognition would promote participation by owners such as Petitioner in meeting the Act's purpose of providing affordable housing in an economical and efficient manner.

ACTION REQUESTED

Petitioner requests the following:

- (a) That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(j), Florida Administrative Code (2018), allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 74.1% and increase the total number of units from 80 108;
- (b) That the Corporation grant Petitioner a waiver from the Sections 2.a.(1), 6.d.(2)(a), and 6.d.(3) of Section 4.A. of the RFA; and

- (c) Grant the Petition and all the relief requested therein; and
- (d) Grant such further relief as may be deemed appropriate.

Respectfully submitted,

SHUTTS & BOWEN LLP
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By: 
Gary J. Cohen

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, 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 4th day of March, 2019.


Gary J. Cohen