

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FHFC CASE NO. 2019-087VW
Application No.: 2017-163BS

REDLAND CROSSINGS, LLC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR VARIANCE FROM FLORIDA ADMINISTRATIVE CODE
RULE 67-21.027(1) F.A.C. (2016)

Petitioner, Redland Crossings, LLC. ("Petitioner"), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver or variance from the provisions of Rule 67-21.027(1) Florida Administrative Code (2016) (the "Rule") to allow it to utilize the Average Income Test to calculate its Minimum Set-Aside Commitment as allowed by the Internal Revenue Code section 42(g)(1)(C). In support of this Petition, Petitioner states as follows:

Petitioner and the Development

The name, address, telephone, and facsimile numbers for Petitioner and its qualified representative are:

Redland Crossings, LLC.
C/O Centennial Management Corporation
Attn: Lewis Swezy
7735 NW 146 Street, Suite 306
Miami Lakes, Florida 33016
Telephone: 305-821-0330
Fax: 305-821-0402

The name, address, telephone and facsimile numbers of Petitioner's counsel is:

Samantha D'Angelo, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801-4961
Email: samantha.dangelo@nelsonmullins.com
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Fax: 407-650-0914

On January 4, 2017, Petitioner submitted an application in response to RFA 2016-112 for SAIL Financing for the Construction of Workforce Housing in Miami-Dade County and Monroe County and was assigned Application No. 2017-163BS (the "Application") requesting Workforce SAIL financing in the amount of \$7,488,000 and Florida Housing-issued Multifamily Mortgage Revenue Bonds in the amount of \$16,000,000 to assist in the construction of a 134-unit development located in Miami-Dade County, Florida, known as Redland Crossings (the "Development"). Petitioner also applied to Florida Housing for Non-Competitive Housing Credits in the annual amount of \$437,012 as part of its Application as required by the RFA and was assigned Housing Credit file number 2016-562C. On May 15, 2019, Petitioner submitted to Florida Housing an income averaging set-aside change request to change its minimum set-aside election to use the Average Income Test. With the use of income averaging, the anticipated amount of annual credits has increased to \$842,060.

Type of Waiver

The waiver being sought is permanent in nature.

Rule For Which a Variance Is Requested

Rule 67-21.027(1) requires that each Development comply with the minimum Housing Credit Set-Aside provisions as specified in the version of Section 42(g)(1) of the Internal Revenue Code (the "IRC") that was in effect at the time the rule was adopted. Prior to March

23, 2018, this Section of the IRC did not allow income averaging, and therefore Rule 67-21.027(1), which was adopted prior to that date also did not allow income averaging.

Statutes Implemented by the Rule

The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes.

Justification for Granting Waiver of the Rule

During its 2018 session, the United States Congress passed the “Consolidated Appropriations Act, 2018” (“H.R. 1625”), which was signed into law on March 23, 2018. H.R. 1625 created a new subsection C within Section 42(g)(1) of the IRC, which states as follows:

“(C) AVERAGE INCOME TEST. –

(i) IN GENERAL. – The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit.

(ii) SPECIAL RULES RELATING TO INCOME LIMITATION. -
For Purposes of clause (i)

(I) DESIGNATION. - The taxpayer shall designate the imputed income limitation of each unit taken into account under such clause

(II) AVERAGE TEST.- The average of the imputed income limitations designated under subclause (I) shall not exceed 60 percent of area median gross income

(III) 10-PERCENT INCREMENTS. - The designated imputed income limitation of any unit under subclause (I) shall be 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, or 80 percent of area median gross income.” Section 42(g)(1)(C), I.R.C. (2018)

Rule 67-21.027(1) F.A.C. was revised on July 8, 2018 to incorporate the new subsection 42(g)(1)(C) of the IRC. Petitioner's application in response to the RFA was submitted prior to the date of the adoption of the Average Income Test under section 42 of the IRC and prior to the July 8, 2018 rule revisions. Therefore, a waiver is necessary to implement both the intent of federal law and Florida Housing's policy.

Petitioner is seeking a waiver of the Rule, to the extent necessary, to allow Petitioner to use the income averaging set aside and to change its set-aside percentages to permit the income averaging. The income averaging set asides are currently contemplated to be 14 units at 30% area median income, 54 units at 60% area median income and 42 units at 70% area median income. The proposed set asides average 60% of area median income, which satisfies the Florida Housing Average Income Test requirements.

Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

Variances 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. For purposes of this section, "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.

Granting the requested variance in this instance would allow Petitioner to utilize the Average Income Test as allowed by the Internal Revenue Code. The controlling statutes and Florida Housing's Rules are designed to allow flexibility necessary to provide relief when strict

application, in particular circumstances, would lead to unreasonable, unfair or unintended consequences. Without a corresponding waiver of the Rule, the Petitioner would be treated differently than other similarly situated owners. It would violate principles of fairness and put Petitioner at a competitive disadvantage with other developments if it was not allowed to use the Average Income Test solely because of when its application was submitted.

Further, if Petitioner were able to use the Average Income Test, the Petitioner would increase the 7 units currently designated at 28%¹ area median income to satisfy the ELI set-aside requirement to 14 units at 30% area median income. A variance of the Rule would result in an increase in the supply of deeper set-aside units available for affordable housing. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing and recognize the economic realities and principles of fundamental fairness in developing affordable rental housing. The purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (Section 420.5099, Fla. Stat.), would be achieved if the variance is granted.

In this instance, Florida Housing has jurisdiction to grant a waiver of the Rule and Petitioner meets the standards for a waiver of the Rule.

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¹ Petitioner selected 5% (7) of the total units set aside at 30% AMI in its Application (i.e., the ELI AMI level for Miami-Dade County), however the original credit underwriting report and Average Income Test Election Worksheet indicate 7 units at 28% AMI.

Action Requested

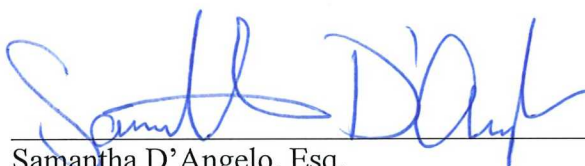
WHEREFORE, Petitioner respectfully requests that Florida Housing:

Grant this Petition and all relief request therein;

Grant a variance from the Rule and allow for calculation of the minimum set aside percentage based on income averaging; and

Grant such further relief as may be deemed appropriate

Respectfully submitted this 9th day of October, 2019.



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

This 9th day of October, 2019.



Samantha D'Angelo, Esq.
Fla. Bar No. 1002952