

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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CASE NO. 2021-040VW

JUNE 23 2021 10:13 AM

AMELIA VILLAGE, L.P.

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FHFC Application No. 2020-157C
REQUEST FOR APPLICATIONS:2019-115

FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS
AND
RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE (2019)**

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner, AMELIA VILLAGE, L.P., ("Amelia Village" or "Petitioner") submits this Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of Subsection II K of the 2019 Qualified Allocation Plan ("2019 QAP"), which was incorporated by reference in rule 67-48.002 (96) (2019). Subsection II.K of the QAP prohibits the return of Amelia Villages' 2020 Housing Credits before the last quarter of 2022. Amelia Village seeks to return the 2020 credits now in exchange for an immediate allocation of 2021 Housing Credits. This would result in an extension to the placed-in-service date from December 31, 2022, to December 31, 2023. In support of this Petition, Amelia Village states as follows:

PETITIONER AND ATTORNEY

1. The name, address, telephone number and email address for Petitioner is.

Amelia Village, L.P., (Attn Shane P. Sarver, 4488 Heaton Park Trail, Viera, Florida, 32955, 321-591-6146, shanes@heritage-inc.net). For purposes of this proceeding, the contact information for Petitioner is that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is Maureen McCarthy Daughton, Maureen McCarthy Daughton, LLC, 1400 Village Square Blvd., Ste 3-231, Tallahassee, Florida 32312, 850-345-8251: mdaughton@mmd-lawfirm.com.

BACKGROUND

3. Amelia Village submitted an application in response to, *RFA 2019-115 Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments* (the "RFA"). Amelia Village proposed to rehabilitate 50 units in multiple quadrplexes in Indian River County to serve an Elderly, Non-ALF demographic.

4. On January 23, 2020, Amelia Village was preliminarily selected for funding by Florida Housing's Board of Directors. Amelia Village was invited into credit underwriting on February 5, 2020.

5. In addition to funding from Florida Housing, Amelia Village is assisted with funding under the United States Department of Agriculture RD 515 Program ("RD Program").

6. If an Applicant cannot complete its development by the end of the year in which the preliminary allocation of Housing Credits is issued, the applicant must enter a "Carryover Allocation Agreement" ("Carryover Agreement") with Florida Housing by December 31 of the year in which the preliminary allocation is issued.¹ Amelia Village and Florida Housing entered into the Carryover Agreement on August 21, 2020.² The Carryover Agreement allows

¹ Rule 67-48.028(1), F.A.C.

² In February of 2020, Amelia Village received from USDA Transfer Checklists and an Appraisal Worksheet. Amelia Village immediately began expending resources so that underwriting could begin in a timely fashion. In April 2020, however COVID began to take hold and Florida Housing offered to delay receipt of the Carryover

(pursuant to Section 42 of the Internal Revenue Code) the applicant until the end of the second year in which the carryover allocation is issued to place the development in service. Amelia Village's Carryover Agreement required that the Development be placed in service by December 31, 2022.

7. On October 6, 2020, Amelia Village was provided with notification that the Southern Region of the Multi-Family Housing ("MFH") Unit of the United States Department of Agriculture ("USDA"), which includes Florida, was transitioning to an "integrated model with specialized teams", which resulted in MFH staff being assigned to one of three new Divisions.³ This reorganization included the RD Program and specifically, the Production & Preservation Division.

8. On November 16, 2020, the application for Transfer of Physical Asset was submitted to the RD Program. Amelia Village sent numerous emails in January and February of 2021 checking on the status of the application.

9. On February 16, 2021, Amelia Village requested an extension of time to Florida Housing to complete both the Site Control Requirement and to meet the federally mandated 10% Test Requirement because the RD Program had not yet approved the Transfer of Physical Asset which is required prior to acquisition of the proposed Preservation Development Site. Florida Housing approved this request and extended the deadline to August 21, 2021. As of now, the IRS has not approved any additional carryover relief for developments awarded in 2020.

Allocation until October 2020. Amelia Village, in light of COVID closures, opted to delay receipt of the Carryover Allocation until October.

³ The Divisions were Field Operations Division, Production & Preservation Division and Asset Management Division.

10. On February 18, 2021, the USDA issued a letter requesting additional information from Amelia Village. Amelia Village responded with the requested documents on March 3, 2021.

11. Beginning in early April 2021, representatives of Amelia Village held weekly calls with representatives of the USDA in an effort to speed up approval of their application for Transfer of Physical Asset.

12. On May 24, 2021, with the application of Transfer of Physical Asset still pending, Amelia Village requested an extension of time to complete the Notice of Commencement, Credit Underwriting Report, and the executed partnership agreement. To this point, the only reasons provided for the approval delay by the USDA representatives were (i) COVID -19 and (ii) the reorganization of the MFH Unit of the USDA. Florida Housing approved this request and granted an extension of time to November 30, 2021.

13. On June 2, of 2021, Amelia Village was notified that their Organizational Chart, which had been submitted in November 2020 as part of their application for Transfer of Physical Asset had been reviewed and approved. On June 14, 2021, Amelia Village was notified that they needed to submit a \$24.00 check so that their Credit Report could be obtained, the requested check was sent the same day. Additionally, in June, one of the weekly conference calls with staff of the USDA was cancelled due to mandatory training.

14. As of the date of this request, Amelia Village is *still* waiting for approval of the application for Transfer of Physical Asset from the USDA as well as the issuance of the Preliminary Assessment Tool and Letter of Conditions to close on the proposed Preservation Development Site.

15. The combined effects of the recent reorganization of the RD Division, including the Production & Preservation Division and COVID, have delayed the necessary review and approvals needed for Amelia Village to move forward.

16. Due to circumstances beyond the control of Amelia Village, described herein, the federally mandated 10% test cannot be met which will result in the December 31, 2022, placed-in-service deadline not being met. The foregoing further includes all remedial measures attempted by Amelia Village to mitigate the delays by USDA.

17. Amelia Village proposes to exchange its 2020 Housing Credits for an allocation of 2021 Housing Credits now rather than wait until the last quarter of 2020, which would effectively extend the placed-in-service deadline of the Development until December 31, 2023.

This exchange will require a waiver of Subsection II.K of the QAP, which provides:

Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and such failure is due to circumstances beyond the Applicants control, **and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service** pursuant to Section 42 of the IRC, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing the delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally, allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

A Development located in a HUD-designated DDA or QCT at the time of original allocation may retain its designation as such.

(Emphasis Supplied)

18. The requested waiver is permanent in nature.

RULE FOR WHICH WAIVER IS SOUGHT

19. Amelia Village seeks a waiver from Subsection II.K of the 2019 QAP, which was incorporated by reference into Rule 67-48.0002(96) (2019).

STATUTES IMPLEMENTED BY RULE

20. Pursuant to section 420.5099(1), Florida Statutes, Florida Housing is designated as the “housing credit agency” for Florida within the meaning of section 42 of the Internal Revenue Code. Florida Housing is responsible for the allocation plan that includes priorities and selection criteria. Section 420.5099(2) also requires Florida Housing to “adopt allocation procedures that will ensure the maximum use of available tax credits in order to encourage development of lo the a of the applicant to proceed to competition of the project in the calendar year for which the credit is sought.” Thus, the rules subject to this waiver request implement sections 420.5099(1) and (2), Florida Statutes, as well as other provisions of Part V of chapter 420, Florida Statutes, the Florida Housing Finance Corporation Act.

JUSTIFICATION FOR REQUESTED WAIVER

21. Section 120.542(1), Florida Statutes, provides that [s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” That procedure requires those seeking a variance of, or waiver from, a rule to demonstrate that application of the rule would create a substantial hardship

or would violate principles of fairness. §120.542(2), Fla. Stat.⁴ Petitions for variances and waivers are also required to demonstrate the purposes of the underlying statute will be achieved.

22. Strict adherence to Subsection II.K. of the QAP would create a substantial hardship for Amelia Village. Without the requested credit swap, the previously awarded Housing Credits will be unavailable, which means the Development cannot be completed. That would deprive low-income elderly residents of Indian River County of much needed affordable housing. As illustrated above, issues relating to the development of the site of the proposed Development are beyond the Applicant's control. Amelia Village exercised due diligence in seeking to resolve the circumstances causing the delay. Other than the delays caused by USDA, the Development in all respects still meets the conditions upon which the Housing Credits were originally allocated and the Development is still desirable in terms of meeting the affordable housing needs in Indian River County.

23. Strict adherence to Subsection 11.K. of the QAP also would violate principles of fairness, as Florida Housing has granted similar waivers to other Developments facing similar circumstances. (Arbor Village-granted credit swap in Nov. 2019; Georgian Gardens- granted credit swap in 2019; Luna Trails-granted credit swap in 2019; Northside Village- granted credit swap in 2019; Silver Pointe- granted credit swap in 2021)⁵

24. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of Housing Credits in RFA 2019-115, or Florida Housing. A denial

⁴ "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 not significantly different from the way it affects other similarly situated persons who are subject to rule..

⁵ The reasons that precipitated the credit swaps include but are not limited to need for off-site improvements which required negotiation with neighboring property owners; revision to construction plans due to increased construction costs which required securing of additional funds; replacement of key development team members; delay in obtaining HUD approvals; title issues which only became known after the design process.

of the requested waiver, however, would result in substantial economic hardship to Amelia Village as it will be unable to complete the Development, which will only contribute further to the shortage of affordable housing in Indian River County. Additionally, denial of the waiver request would violate principles of fairness, as other similarly situated Developments have been granted waivers to Subsection IIK of the QAP and the rule that incorporates it by reference.

25. The statutes underlying the QAP, and the rule will be served by the approval of Amelia Village' waiver request. Section 420.504(4), Florida Statutes, states that Florida faces "a serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income..." One of the primary purposes of the Act is to facilitate the availability of affordable housing. Granting the waiver request will further these goals, as Amelia Village, will not be able to build the proposed development if the waiver is not granted.

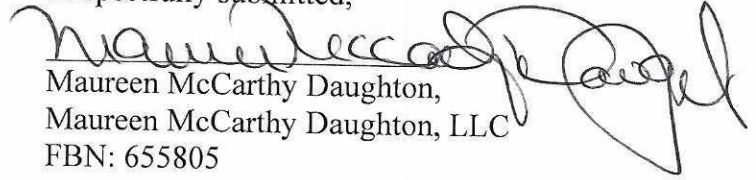
ACTION REQUESTED

26. For the above stated reasons, Amelia Village respectfully requests that the Florida Housing Board of Directors:

- Grant the requested waiver of Subsection II.K of the 2019 QAP and rule 67-48.002(96);
- Allow the immediate return of Amelia Village's 2020 Housing Credit Allocation; and
- Immediately allocate new Housing Credits to with a later placed in service date of December 31, 2023.

Dated this 23rd of June 2021.

Respectfully submitted,



Maureen McCarthy Daughton,
Maureen McCarthy Daughton, LLC

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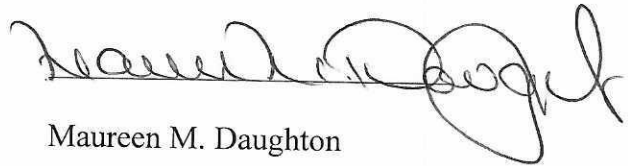
Counsel for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was filed this 23rd day of June 2021, 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



Maureen M. Daughton