

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: ROSEMARY VILLAGE
APARTMENTS, LLLP

FHFC CASE NO.: 2019-074VW

ORDER GRANTING WAIVER OF RULE 67-48.004(3)(g)

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" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on August 30, 2019, from Rosemary Village Apartments, LLLP ("Petitioner"). Notice of the Petition was published on September 4, 2019, in Volume 45, Number 172, of the Florida Administrative Register. An Amended Petition was filed on October 10, 2019. Florida Housing received no comments regarding the Petition. 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 SAIL funding and 9% housing tax credits under Request for Applications (RFA) 2018-103, to assist in the construction

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Thomas Mlamoros ATL: 10/31/19

of a Development serving homeless households and persons with special needs in Brevard County, Florida known as Heritage Park at Crane Creek.

3. Rule 67-48.004(3)(g), Fla. Admin. Code, provides:

(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:

* * *

(g) Development Type. . . .

4. In its Application for funding under the RFA, Petitioner selected the Development Type of “Garden Apartments.” Petitioner originally intended to construct two garden style apartment buildings housing 80 units. In March of 2019, the Board approved a waiver to allow the construction of an additional 28 units at market rate. Petitioner now alleges that recent soil studies at the Development site indicate some pockets of unsuitable soils will necessitate reducing the total footprint of the residential buildings. Petitioner has determined that the most practical way to address this issue is to construct a single Mid-Rise 4 story building rather than two garden style buildings. The Application’s scoring, ranking, and funding would not have been affected had Petitioner selected Mid-Rise 4 stories in its Application.

5. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

6. 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.

7. Petitioner has demonstrated that the waiver is needed in order to efficiently serve homeless households and persons with special needs. 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.

8. 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)(g), Fla. Admin. Code, is hereby **GRANTED** so that the Development Type may be changed from “Garden Apartments” to “Mid-Rise 4 stories.” As a condition of this waiver, Petitioner shall use the Total Development Cost Per Unit limitation for the Development of “Mid-Rise 4 stories” excluding the portion allocated to the maximum developer fee which shall stay at the “Garden Apartments” limit.

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



Florida Housing Finance Corporation

By: 
Chair

Copies furnished to:

Hugh R. Brown, General Counsel
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org

Marisa Button, Director of Multifamily Development
Florida Housing Finance Corporation
Marisa.Button@floridahousing.org

Gary Cohen
Shutts & Bowen LLP
gcohen@shutts.com

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

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.