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FLORIDA HOUSING FINANCE CORPORATION 19 MAY -9 PM 3: 17

In re: Westwood Park Partners, Ltd. /

FHFC Case No. 2019-041  
Application No. 2018-513C  
FLORIDA HOUSING  
FINANCE CORPORATION

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

Petitioner, WESTWOOD PARK PARTNERS, LTD., ("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 Variance from the provisions of Rule 67-21.027(1), F.A.C. (2016) 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**

1. Petitioner, Westwood Park Partners, Ltd., is a Florida limited partnership. Petitioner proposed the construction of a 178 unit development in unincorporated Orange County, financed in part with tax-exempt bonds issued by the Orange County Housing Finance Authority.

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

Jay P. Brock  
Westwood Park Partners, Ltd.  
335 N. Knowles Avenue, Suite 101  
Winter Park, Florida 32789  
Telephone: (407) 741-8682  
Facsimile: (407) 643-2590

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

M. Christopher Bryant  
Oertel, Fernandez, Bryant & Atkinson, P.A.  
P.O. Box 1110  
Tallahassee, Florida 32302

Telephone: (850) 521-0700  
Facsimile: (850) 521-0720

4. On December 16, 2016, Petitioner submitted Application No. 2016-513C to Florida Housing for an allocation of Non-Competitive Housing Credits. The financing was sought to assist in the construction of a 178 unit development located in unincorporated Orange County, Florida, to be known as Westwood Park. Petitioner received a Preliminary Determination Certificate dated June 19, 2017 for \$1,235,508 in Housing Credits.

5. Petitioner initially proposed that all of the units in the development would be exclusively for tenants whose household income was at or below 60% Area Median Income (“AMI”).

6. In order to enhance the financial viability of the Development, Petitioner seeks to make a set-aside election to have an income mix of 53 units (29.775% of the total number of units) at 40% AMI; 72 units (40.449%) at 60% AMI; and 53 units (29.775%) at 80% AMI. The average AMI level for the set-aside units would not exceed 60%.

**Type of Waiver**

7. The waiver being sought is permanent in nature.

**Rule For Which a Variance Is Requested**

8. Rule 67-21.027(1), F.A.C. (2016), in effect at the time of original application required 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 (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, instead requiring all affordable units to be for tenants at or below 60% AMI. Therefore Rule 67-21.027(1), F.A.C. (2016) also did not allow income averaging.

**Statutes Implemented by the Rule(s)**

9. The Rule(s) implement, 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(s)**

10. 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)

11. Rules 67-21.027(1) and 67-48.023(2) F.A.C. were revised on July 8, 2018 to incorporate the new subsection 42(g)(1)(C) of the IRC. As a result, any applications for housing

tax credits submitted to Florida Housing after July 8, 2018 are allowed to use the income averaging provisions of the IRC.

12. Petitioner's application was submitted prior to the July 8, 2018 rule revisions and were therefore not allowed to take advantage of the average income test. 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.

13. 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.

14. 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 the flexibility necessary to provide relief when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results.

15. Additionally, 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” (§420.5099, Fla. Stat.), would still be achieved if the variance is granted.

16. 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.

**Action Requested**

WHEREFORE, Petitioner respectfully requests that Florida Housing:

Grant this Petition and all relief request therein;

Grant a variance from Rule 67-48.023(2), F.A.C. (2016) 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 May, 2019.

*/s/ M. Christopher Bryant*

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M. CHRISTOPHER BRYANT  
Florida Bar No. 434450  
OERTEL, FERNANDEZ, BRYANT  
& ATKINSON, P.A.  
P.O. Box 1110  
Tallahassee, Florida 32302-1110  
Telephone: 850-521-0700  
Telecopier: 850-521-0720  
Primary: [cbryant@ohfc.com](mailto:cbryant@ohfc.com)  
Secondary: [bpetty@ohfc.com](mailto:bpetty@ohfc.com)

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that the foregoing Petition was filed by electronic delivery this 9th

of May, 2019 to:

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

Joint Administrative Procedures Committee  
680 Pepper Building  
111 W. Madison Street  
Tallahassee, Florida 32399  
[Joint.admin.procedures@leg.state.fl.us](mailto:Joint.admin.procedures@leg.state.fl.us)

*/s/ M. Christopher Bryant* \_\_\_\_\_

Attorney