

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

HTG Valencia II, Ltd.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2019-076VW
Application No. 2019-165BS

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-21.003(8)(g), F.A.C.

Petitioner HTG Valencia II, Ltd., (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the prohibition under Rule 67-21.003(8)(g), Florida Administrative Code ("F.A.C.") effective July 8, 2018 (the "Rule") against changing the Development Type to a more cost-effective design that will not affect scoring or leverage. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

HTG Valencia II, Ltd
ATTN: Matthew Rieger
3225 Aviation Avenue, 6th Floor
Coconut Grove, FL 33133
Telephone: 305-860-8188
Fax: N/A
Email: mattr@htgf.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. Petitioner requests a waiver of Rule 67-21.003(8)(g), effective July 8, 2018,

which provides in pertinent part:

(8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and **cannot be revised, corrected or supplemented** after the Application is deemed complete. Those items are as follows:

(g) **Development Type**

(emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE.

5. Rule 67-21.003, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”):

- Section 420.507, Powers of the corporation;
- Section 420.508, Special powers; multifamily and single-family projects;
- Section 420.509, Revenue bonds; and
- Section 420.5099, Allocation of the low-income housing tax credit.

6. Per Section 420.5099(1)-(2), Florida Housing acts as the State’s housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

7. Petitioner timely submitted the Non-Competitive Application for Valencia Grove II, to newly construct 110 units for the Elderly (Non-ALF) in Lake County (the “Development”). The Application includes a \$5,750,000 SAIL request, \$600,000 EU request, and \$10,000,000 MMRB request.

8. In Petitioner’s Non-Competitive Application Package, submitted on November 27, 2018, Petitioner listed the Development Type as “Mid-Rise, 4 Stories.” *See* Application 2018-102B, Section 6(g). Petitioner chose this Development Type because, at that time, the site plan required a large retention pond that encompassed a large portion of the site. The original plan was designed as Mid-Rise, 4 Stories, to ensure the correct amount of units and limit the building footprint. However, after receiving board approval and working through the schematic design, the required retention pond is smaller than originally planned. Accordingly, Petitioner would like to change the Development Type to a more cost-effective design: Garden Style, 3-Stories. Petitioner is therefore in need of a Rule waiver to make the change.

9. The need for the waiver was requested early in the process and will not prejudice the Development, Florida Housing, nor any other applicant.

10. The requested change does not affect scoring, ranking, or selection. The Development was the only Elderly Medium County New Construction Application submitted with regard to RFA 2018-116 (SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits), and was therefore selected because it was the only development that met such goal.

11. If this Rule waiver is denied, Petitioner would be required to proceed with a less cost-effective design, which would defeat the purpose of the Act. Specifically, Petitioner will be required to proceed with a flat roof as opposed to a pitched roof. Additionally, if the waiver is not granted, Petitioner will have difficulties closing within the time provided by its Purchase and Sale Agreement.

12. Under Section 120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,¹ and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

13. For the reasons discussed above, the waiver should be granted to prevent Petitioner from suffering a substantial and unnecessary economic and operational hardship. The requested waiver will ensure that 110 affordable housing units will be made available at the lowest possible cost for the target population in Lake County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because Petitioner would be required to proceed with a more costly design that is no longer necessitated by the size of the retention pond. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary

¹ “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. *See* § 120.542(2), Fla. Stat.

purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Denying the waiver would deny Lake County more affordable housing units.

F. ACTION REQUESTED

14. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the Rule such that Petitioner is able to change the Development Type identified in its Application; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

Counsel for Petitioner

By: /s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 9th day of September, 2019.

By: /s/ Brian J. McDonough
Brian J. McDonough, Esq.