

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

INNOVARE, LP,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2020-062VW
Application No. 2020-478CSN

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(3)(g), F.A.C. (7/11/19)

Petitioner Innovare, LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.004(3)(g), Florida Administrative Code ("F.A.C.") effective July 11, 2019 (the "Rule"), which prohibits revising the development type identified in the application it submitted in response to RFA 2020-103 Housing Credit and SAIL Financing for Homeless Housing Developments Located in Medium and Large Counties ("RFA"). Due to forces outside of Petitioner's control, Petitioner must change the development type identified in its application, necessitating this request for a Rule waiver. 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:

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

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B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's application:

- Development Name: Innovare
- Development Address: 5th Ave S, SE of the intersection of 5th Ave S. & Dr. Martin Luther King Jr. St. S., St. Petersburg AND 5th Ave S, SW of the intersection of 5th Ave S. & Highland Court S., St. Petersburg
- County: Pinellas
- Developers: Volunteers of America of Florida, Inc.; Lincoln Park, LLC
- Number of Units: 50 new construction
- Type: Garden was indicated in the Application, but this Petition seeks a change to Mid-Rise 5 stories for both buildings
- Set Asides: 85% of units at or below 60% AMI and 15% at or below 33%.
- Demographics: Innovare will set aside at least 50 percent of the total units (50) for Homeless individuals and families as defined in Section 420.621(5), F.S. and at least 15 percent of the total units for Persons with Special Needs as defined in Section 420.0004(13), F.S. The remaining 50 percent of the units will be affordable housing reserved for income qualifying individuals and families, with preference given to formerly homeless households who may no longer need supportive housing.

- Funding: HC request of \$1,165,367 annually; ELI Loan request of \$205,600; and SAIL request of \$3,500,000.

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.004(3)(g), effective July 11, 2019,

which provides in pertinent part:

(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

Id.

E. STATUTES IMPLEMENTED BY THE RULE.

6. Rule 67-48.004, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”):

- Section 420.5087, State Apartment Incentive Loan Program;
- Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund; and
- Section 420.5099, Allocation of the low-income housing tax credit.

7. 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.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

8. Petitioner timely submitted Application No. 2020-478CSN for the Development on March 31, 2020 (“Application”).

9. In Petitioner’s preliminary floor plan, one building was designed to have three floors and one building was designed to have four floors, with residential units on the ground floor of both buildings. However, Petitioner learned after the award of Florida Housing funds that the Development must comply with the St. Petersburg Innovation District requirement that retail, office or amenity space comprise a majority of the ground floors. Accordingly, the floor plan was redesigned such that the large majority of the ground floor consists of a community room and office space. In order to relocate the residential units that were on the ground floors in the preliminary plan, additional floors must be added to the design such that both buildings will have five floors. Accordingly, a change in development type from Garden (as indicated in the Application) to Mid-Rise, 5 to 6 stories, is required. If the Petition is granted, and the development type is changed, the building count will remain the same (*i.e.*, two residential buildings) and Petitioner will maintain the Enhanced Structural Systems Construction qualification.

10. 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

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. § 120.542(2), Fla. Stat.

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.

11. If the Rule is imposed, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Specifically, the Development would not be able to move forward because either: (a) the Development would not satisfy the requirements of the Innovation District; or (b) the Development would consist of less than 50 affordable housing units.

12. Petitioner meets the standards for granting the requested waiver. The need for the waiver was requested early in the process and will not prejudice the Development, Florida Housing, nor any other applicant. Per the RFA, the Total Development Cost ("TDC") per unit limitation to be used during the scoring process, as well as during credit underwriting and final cost certification, is higher for the requested development type (Mid-Rise) than the current development type (Garden). See RFA, Section Five and Exhibit C, pgs. 61 and 91. Additionally, the RFA provides:

Each Application's Leveraging Classification will be determined as follows: The Eligible Housing Credit Request Amount will be multiplied by 9.5 and that product will be added to the Eligible SAIL Request Amount (exclusive of ELI Loan Funding). This total shall be divided by the number of Set-Aside Units in the Development. This will yield the total Corporation funding per Set-Aside Unit to be used for the Leveraging Classification. All Applications will be listed together in ascending order beginning with the Application that has the lowest amount of total Corporation funding per Set-Aside Unit and ending with the Application that has the highest amount of total Corporation funding per Set-Aside Unit.

See RFA p. 91. Based on the foregoing, Petitioner was ranked the highest with \$291,419.73 and the second highest being \$277,361.11. Accordingly, any impact on the scoring would not have

impacted the outcome; and, thus, no party would be prejudiced by granting the requested Rule waiver.²

13. The requested waiver will ensure that 50 affordable housing units will be made available for the target population in Pinellas County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because the redesign is necessary to satisfy requirements imposed by the City of St. Petersburg. Granting the waiver will benefit the residents by providing ample community room space. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Denying the waiver would deny Pinellas County these much-needed affordable housing units.

G. 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 amend the Development Type as described in the 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
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Counsel for Petitioner

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

² Petitioner's Application scored the highest at 124, followed by the next highest score of 117.

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 a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 28th day of September, 2020.

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