

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: FEDERATION GARDENS
PRESERVATION, LP

FHFC Case No.: 2019-062VW

**ORDER GRANTING WAIVER OF RULE
67-21.003(8)(g), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (“Florida Housing”) on August 2, 2019, pursuant to a “Petition for Waiver of Rule 67-21.003(8)(g), F.A.C.” Florida Housing received the Petition on July 12, 2019, from Federation Gardens Preservation LP (“Petitioner”). Notice of the Petition was published on July 15, 2019 in Volume 45, Number 136, of the Florida Administrative Register. 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 (“Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. On May 13, 2019, Petitioner submitted its 2018 Non-Competitive Application (“Application”) for an allocation of non-competitive housing tax credits (“4% HC”) and Multifamily Mortgage Revenue Bonds

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

J. McAlamy / DATE: 8/5/19

("MMRB") funds to finance the acquisition and rehabilitation of the Federation Gardens I & II ("Development") located in Miami-Dade County, Florida to provide 161 affordable housing units in a non-assisted living facility for elderly residents.

3. Petitioner, in its Application, indicated that the Development was a "High Rise."

4. The 2018 Non-Competitive Application Instructions ("Application Instructions"), Part A, subsection 6.g., defines "High Rise" as "a building comprised of 7 or more stories..."

5. Petitioner was awarded an allocation of 4% HC and MMRB based on its Application for funds to be used for the acquisition and rehabilitation of two "High Rise" developments.

6. The Development, however, that Petitioner intends to acquire and rehabilitate is only four stories tall and was reflected as such in its Application.

7. Rule 67-21.003(8)(g) Fla. Admin. Code, effective July 8, 2018, 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;

8. Petitioner requested a waiver of the above Rule to allow it to correct the Development Type indicated in its Application. As justification, Petitioner states that it inadvertently marked “High Rise” instead of “Mid-Rise 4-stories” in its Application as evidenced by the fact that the Development is pre-existing, is only 4 stories tall, and falls within the definition of “Mid-Rise 4-stories” rather than “High Rise.”

9. “Mid-Rise 4-stories” is defined in Part A., subsection 6.g. of the Application Instructions as “a building comprised of 4 stories...”

10. Petitioner further asserts that in order to adhere to the terms reflected in its Application, it would have to add 3 stories to the pre-existing Development which would be cost-prohibitive, would likely not be allowed under current zoning and would also require the relocation of the current elderly residents.

11. Additionally, Petitioner asserts that the waiver would serve the purposes of the State Housing Strategy Act, Chapter 420, Fla. Stat., to facilitate the availability of decent, safe and sanitary housing in the State.

12. Petitioner also asserts that the waiver was requested early in the process and would not prejudice the Development, Florida Housing, nor any other applicant.

13. 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.

14. Granting the requested waiver would 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.

15. Petitioner demonstrated that strict application of the above Rule under these circumstances would result in a substantial hardship or violate the principles of fairness.

16. Petitioner demonstrated that the Development Type indicated in its Application does not accurately describe the pre-existing Development it intends to acquire and rehabilitate.

17. Petitioner has demonstrated that granting the waiver would better fulfill the purposes of the State Housing Strategy Act, Chapter 420, Fla. Stat., to stimulate public and private entities to build or rehabilitate “housing in order to provide decent, safe and sanitary conditions for very-low income persons, low-income persons, and moderate income persons.”


18. Petitioner has also demonstrated that the purpose of the Section 420.5099, Fla. Stat. to “encourage development of low-income housing in the state,” would be better achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner’s request for a waiver of Rule 67-21.003(8)(g), Florida Administrative Code, to allow Petitioner to change the Development Type from “High Rise” to “Mid-Rise 4-stories” is hereby **GRANTED**.

DONE and ORDERED this 2nd day of August, 2019.



Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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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.