

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

DUNBAR IMPROVEMENT ASSOCIATION, INC.,

Petitioner,

CASE NO.: 2017- 026VW

v.

APPLICATION NO. 2015-229E

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c)

Petitioner Dunbar Improvement Association, Inc., a Florida not for profit corporation (the "Petitioner") submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.0072(4)(c) (the "Rule") in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2015-102 Elderly Housing Community Loan (the "RFA"), to allow Petitioner to extend the required closing date for the Elderly Housing Community Loan ("EHCL") funding allocated to Petitioner pursuant to the RFA. In support of this Petition for Rule Waiver of Rule 67-48.0072(4)(c) (the "Petition"), Petitioner states as follows:

A. Petitioner and the Development

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

Dunbar Improvement Association, Inc.
1625 Marsh Avenue
Fort Myers, Florida 33905
Attention: Audrea I. Anderson, President
Telephone: (239) 334-1303
Facsimile: (239) 334-8133
E-mail: pcga@palmcitygarden.com

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Bernice S. Saxon, Esq.
Saxon Gilmore & Carraway, P.A
201 E. Kennedy Blvd., Suite 600
Tampa, Florida 33602
Telephone: (813) 314-4500
Facsimile: (813) 314-4555
E-mail: bsaxon@saxongilmore.com

2. Pursuant to the RFA, Petitioner timely submitted its application for EHCL funding. See Application Number 2015-229E. Petitioner was preliminarily awarded Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000) in EHCL funding under the RFA (the "First EHCL Award"), and received an invitation to enter credit underwriting on May 22, 2015. The First EHCL Award closing deadline was May 23, 2016, which was twelve (12) months from the invitation to enter credit underwriting.

3. On April 14, 2016, Petitioner requested a twelve (12)-month extension of the closing deadline for the First EHCL Award to have additional time to seek supplemental financing. At the meeting of the Board of Directors of the Corporation (the "Board") on May 6, 2016, the Board granted the request to extend the First EHCL Award closing deadline from May 23, 2016 to May 23, 2017, subject to the payment of the required non-refundable extension fee of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) pursuant to the RFA. Petitioner paid the extension fee.

4. On September 30, 2016, pursuant to the Corporation's Request for Applications 2016-108 Elderly Housing Community Loan (the "Second RFA"), Petitioner timely submitted its second application for EHCL funding. See Application Number 2016-352E. Petitioner was preliminarily awarded another Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000) in EHCL funding under the Second RFA (the "Second EHCL Award"), and received an invitation

to enter credit underwriting on December 19, 2016. Petitioner accepted the invitation to enter credit underwriting on December 21, 2016. Pursuant to the Second RFA, the firm loan commitment for the Second EHCL Award must be issued within nine (9) months of Petitioner's acceptance to enter credit underwriting, unless Petitioner requests an extension of up to six (6) months and such request is granted by the Board. Further, the Second EHCL Award must close within one hundred twenty (120) calendar days of the date of the firm loan commitment, unless Petitioner requests an extension of up to ninety (90) calendar days and such request is granted by the Board. As such, without extensions, the loan commitment deadline for the Second EHCL Award would be September 21, 2017, and the loan closing deadline for the Second EHCL Award would be January 2018.

5. The First EHCL Award is a critical part of the financing for the life-safety, health, sanitation, and security-related improvements of the one hundred (100) unit development known as Palm City Gardens, serving elderly residents aged sixty-two (62) or older (the "Development"). The Development will also be financed with the Second EHCL Award, Affordable Housing Program funds, and other supplemental financing which is actively being pursued by Petitioner.

6. The First EHCL Award did not close by the May 23, 2017 deadline. Petitioner fully intended to close the First EHCL Award by the deadline; however, additional time is needed to obtain supplemental financing commitments for the Development and complete credit underwriting for the First EHCL Award and the Second EHCL Award. Accordingly, an extension of the First EHCL Award closing deadline is required.

B. Rule from Which the Waiver is Sought

7. The relevant portion of the Rule provides as follows:

(4) If the invitation to enter credit underwriting is accepted:...

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months....In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

Rule 67-48.0072(4)(c), F.A.C. (2014).

C. Statute Implemented

8. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),¹ the statute that created the EHCL program. *See* § 420.5087, Fla. Stat. (2014).

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

10. In this instance, Petitioner meets the standards for a waiver.

D. Justification for Petitioner's Requested Waiver

11. Petitioner was previously granted a twelve (12)-month extension of the First EHCL Award closing deadline, extending such deadline to May 23, 2017. In connection with the previous extension, Petitioner paid an extension fee of Seven Thousand Five Hundred and

¹ The Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

No/100 Dollars (\$7,500.00). A further extension of the First EHCL Award closing deadline may not be granted without a waiver of the Rule.

12. Petitioner is requesting an extension of the First EHCL Award closing deadline from May 23, 2017 to May 23, 2018, to have additional time to obtain supplemental financing commitments for the Development and complete credit underwriting for the First EHCL Award and the Second EHCL Award.

13. Petitioner is also requesting that no further extension fee be imposed.

14. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive EHCL funding in the RFA or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has incurred over One Hundred Thousand and No/100 Dollars (\$100,000.00) in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Lee County of life-safety, health, sanitation, and security-related improvements to the Development serving persons aged 62 or older; and (c) violate principles of fairness². § 120.542(2), F.S.

15. The requested waiver will ensure the availability of EHCL funding which will otherwise be lost as a consequence of the development delays described herein.

E. Conclusion

16. The facts set forth in Sections 11 through 15 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the delay in commencement of the life-safety, health, sanitation, and security-related

² "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when 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. Section 120.542(2), Florida Statutes.

improvements to the Development and the loss of a substantial sum of money should the transaction not go forward.

17. As demonstrated above, the requested waiver serves the purposes of Section 420.5087, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low-income persons and households. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

18. The waiver being sought is permanent in nature.

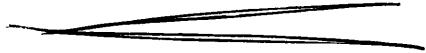
Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant this Petition and all the relief requested therein; and
- B. Grant a waiver of the Rule to extend the First EHCL Award closing deadline from May 23, 2017 to May 23, 2018, and not require that an additional extension fee be imposed; and
- C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

SAXON GILMORE & CARRAWAY, P.A
Counsel for Dunbar Improvements Association, Inc.
201 E. Kennedy Blvd., Suite 600
Tampa, Florida 33602
Telephone: (813) 314-4500
Facsimile: (813) 314-4555
E-mail: bsaxon@saxongilmore.com

By: 
Bernice S. Saxon, Esq.

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 10th day of April, 2017.

By: 

Bernice S. Saxon, Esq.



SAXON | GILMORE

SAXON GILMORE & CARRAWAY, P.A.
Attorneys and Counselors at Law

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April 10, 2017
VIA FEDEX

Ms. Kate Flemming, Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301

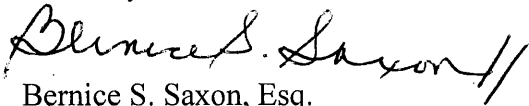
Joint Administrative Procedures Committee
Pepper Building, Room 680
111 West Madison Street
Tallahassee, Florida 32399-1400

Re: Dunbar Improvement Association, Inc.
FHFC Petition for Waiver of Rule 67-48-0072(4)(c)
Our File Number: 734931.0100

Ladies and Gentlemen:

Enclosed please find for filing a Petition for Waiver for the above-referenced matter. Thank you for your attention to this matter.

Sincerely,


Bernice S. Saxon, Esq.

BSS/jjf
Enclosure