

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: CANNERY ROW AT
REDLANDS CROSSING, LLLP

FHFC Case No.: 2019-073VW

**ORDER GRANTING WAIVER OF RULE
67-48.004(3)(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 October 31, 2019, pursuant to an “Amended and Restated Petition for Waiver of Rule 67-48.004(3)(g) for a Change in Development Type” (“Amended Petition”). Florida Housing received the Petition on October 10, 2019, from Cannery Row at Redlands Crossing, LLLP (“Petitioner”). Petitioner previously filed its initial “Petition for Waiver of Rule 67-48.004(3)(g) for a Change in Development Type” (“Initial Petition”) on August 30, 2019. Notice of the Petition of the Initial Petition was published on September 4, 2019, in Volume 45, Number 172, of the *Florida Administrative Register*. No additional notice was required upon the Petitioner filing its Amended Petition. 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:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Wm. M. Lamoreaux TEL: 10/31/19

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner submitted its Application 2019-058C in response to Request For Application 2018-111, Housing Credit Financing for Affordable Housing Developments located in Miami-Dade County (“RFA”), for Cannery Row at Redlands Crossing (the "Development").

3. Petitioner was awarded a preliminary allocation of federal low-income housing credits ("Credits") and was invited to enter underwriting.

4. Equity raised from the Credits will be used for the construction of the Development, a new 112-unit apartment development intended to serve the low-income elderly population in Miami-Dade County, Florida.

5. Petitioner, in its Application, indicated that the Development would be a “Mid-Rise 4 Stories” structure.

6. Petitioner, for multiple reasons further discussed below, requests that it be allowed to change the Development from a “Mid-Rise 4 Stories” structure to a “High-Rise” structure.

7. Therefore, Petitioner seeks a waiver from Rule 67-48.004(3), Florida Administrative Code, which in relevant part provides:

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; ...

8. To support its request, Petitioner asserts that a “High-Rise” structure would be a more efficient overall design for the Development and that the change in Development Type will not increase the overall cost of the Development because of this increased efficiency.

9. In addition, Petitioner, while undergoing its Administrative Site Plan Review with Miami-Dade County (“County”), learned that the County prefers and strongly supports the “High-Rise” structure rather than the “Mid-Rise 4 Stories” structure since the “High-Rise” structure is more consistent with the County’s planning and zoning goals. At this time, Petitioner is uncertain if the County would even approve a “Mid-Rise 4 Stories” structure under the Administrative Site Review Process.

10. Petitioner also submits that decreasing the footprint of the structure provides additional benefits: reducing the distance between the structure and parking and increasing the area available for parking, thereby improving accessibility; increasing the area available for green space and related amenities; and shortening the walking distance for the elderly tenants.

11. To further its request for waiver of Rule 67-48.004(3), Florida Administrative Code, Petitioner indicates that scoring and funding would not have been affected if it had selected “High-Rise” in its original Application.

12. Petitioner indicates that the rule waiver is necessary to avoid economic hardship and that strict application of Rule 67-48.004(3), Florida Administrative Code, would lead to unreasonable, unfair and unintended consequences because:

a. Petitioner has begun preparing plans and specifications for the Development and allowing a change Development Type at the beginning of the planning process and credit underwriting would prevent substantial delay, facilitate more orderly credit underwriting, allow for quicker closing of debt and equity financing which would result in more timely commencement of construction;

b. time is of the essence for completion for successful completion of construction in order to supply much need affordable housing for the elderly population and more timely commencement of construction would expedite the Petitioners efforts to provide the much needed affordable housing;

c. allowing Petitioner to build a “High-Rise” structure rather than a “Mid-Rise 4 Stories” structure results in a more efficient

Development that would also benefit the elderly tenants and optimize utilization of the building site; and

d. Petitioner may not be allowed to build a “Mid-Rise 4 Stories” structure whereby the Petitioner may not be entitled to receive a final allocation of Credits and be unable to provide the much needed affordable housing for the elderly population.

13. By allowing the rule waiver and change in Development Type, Petitioner asserts that the purposes of the Florida Housing Finance Corporation Act, Sections 420.501-420.55, Florida Statutes, and Chapter 67-48, Florida Administrative Code, to stimulate creative private sector initiatives to increase the supply of affordable housing would be met because Petitioner would be increasing the supply of affordable housing that it otherwise may not be able to construct.

14. Section 120.542(2), Florida Statutes provides in pertinent part:

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.

15. 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.

16. Petitioner has demonstrated that the waiver is needed because of it may be prohibited from building a “Mid-Rise 4 Stories Structure,” the change in Development Type would also provide additional benefits such as increased efficiency, optimization of resources and amenities circumstances, and improved facilities for its tenants beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

17. Petitioner has also demonstrated that 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 waiver is granted.

18. In addition, the Petitioner shall also be allowed to use a combination total development cost per unit limitation comprised of the maximum total development costs for a “High-Rise” Development cost and maximum developer fee of 16% of the maximum total development costs for a “Mid-Rise 4 Stories,” calculated and indicated as follows:

RFA 2018-111 (Family, non-PHA):

Total TDC PU Limitation	Mid-Rise Concrete	High-Rise
At Application	\$287,000	\$332,000
Increase for Post-Application purposes	3.00%	3.00%
Current Total TDC PU Limitation	\$295,610	\$341,960

Cannery Row at Redlands Crossing:

Limitation Categories	Mid-Rise Concrete	High-Rise	Combination
Development Cost	\$254,836.21	\$294,793.11	\$294,793.11
Developer Fee	\$40,773.79	\$47,166.89	\$40,773.79

Total TDC PU Limitation	\$295,610.00	\$341,960.00	\$335,566.90
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IT IS THEREFORE ORDERED: Petitioner’s request for a waiver of Rule 67-48.004(3)(g), Florida Administrative Code, is hereby **GRANTED** so that Petitioner may change its Development Type from “Mid-Rise 4 Stories” to “High-Rise” and to allow Petitioner to use the Total Development Cost Per Unit limitation for the Development of “High-Rise” excluding the portion allocated to the maximum developer fee which shall stay at the “Mid-Rise 4 Stories” limit.

DONE and ORDERED this 31st day of October, 2019.



Florida Housing Finance Corporation

By *[Signature]*
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.