

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Sulzbacher Center for Women and Children, Ltd.

FHFC CASE NO.: 2019-053VW

ORDER GRANTING WAIVER OF RULE 67-48.004(3)(i)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 21, 2019, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on May 30, 2019, from Sulzbacher Center for Women and Children, Ltd. (“Petitioner”). Notice of the Petition was published on June 3, 2019, in Volume 45, Number 107, of the Florida Administrative Register. On June 4, 2019, Petitioner filed an 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 (the “Board”) of Florida Housing hereby finds:

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

2. Petitioner was selected to receive SAIL funding and 9% housing credits (HC) under RFA 2014-115 to assist in the construction of a development serving homeless individuals in Jacksonville, Florida.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Thomas Blannery DATE: 6/24/19

3. Rules 67-48.004(3)(i) and (j), Fla. Admin. Code (2014), provide:

(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:

* * *

(i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

(j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. Notwithstanding the foregoing, the Total Set-Aside Percentage may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development.

4. Petitioner has requested approval from the Corporation to increase the total number of units from 70 to 97, pursuant to Rule 67-48.004(3)(i). Petitioner now seeks a waiver from Rule 67-48.004(3)(j) to reduce the Total Set-Aside Percentage from 100% to 72.1649%. This would have the effect of allowing the development of 27 additional non-housing credit units. These units will be labeled as market rate units but will be utilized to serve Female Homeless Veterans as well

as respite units providing places for the Homeless to recover after a hospital stay. Without this waiver, these additional units would also have to be limited as housing credit units, and the units would not be able to be utilized to serve the Homeless population on a transitional basis or provide respite care to the most vulnerable population.

5. Additionally, Petitioner is seeking a waiver of Section Four 4(A)(7)b.(2) of RFA 2014-115, which states:

7. Set-Aside Commitments:

b. Set-Aside Commitments per Corporation Requirements:

The Corporation has set-aside requirements beyond those required by Section 42 of the IRC which must be reflected on the Total Set-Aside Breakdown Chart at question 7.b. of Exhibit A, as outlined below:

(2) ELI Set-Aside Commitments:

(b) Homeless Demographic Commitment ELI Set-Aside Requirements:

The Applicant must set aside at least 15 percent of the total units as ELI Set-Aside units, one-third of which must be set-aside for Persons with a Disabling Condition (*i.e.*, 5 percent of the total units must be set aside as ELI Set-Aside units that serve Persons with a Disabling Condition).

6. Currently, Petitioner is required to set aside 11 of the original 70 units as ELI units. If Petitioner is allowed to increase the total number of units to 97, it would be required to set aside 15 of the total units as ELI units under the RFA

requirements. Petitioner asks to be allowed to continue to set aside 11 of the total units as ELI units, which would have the effect of lowering the Total ELI Set-Aside to 11.34%. Petitioner asserts that because all of the additional units are intended to provide respite care to homeless persons it would create a substantial hardship and serve no useful purpose to require an additional 4 units be set aside as ELI units.

7. The Board finds that granting the waiver will 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.

8. 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.

9. Petitioner has demonstrated that it would suffer a substantial hardship if the waiver is not granted. 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.

10. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

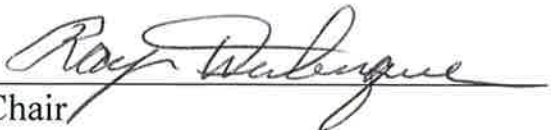
Petitioner's request to increase the total number of units from 70 to 97 pursuant to Rule 67-48.004(3)(i), Fla. Admin. Code (2014), is hereby **GRANTED**. Petitioner's request for a waiver of Rule 67-48.004(3)(j), Fla. Admin. Code (2014), is hereby **GRANTED**. Petitioner's request for a waiver of Section 4(A)(7)b.(2) of RFA 2014-115 is hereby **GRANTED** so that Petitioner will be able to reduce its Total Set-Aside Percentage from 100% to 72.1649% and add 27 additional non-housing credit units. As a condition of this waiver, Petitioner must provide five additional ELI units. This waiver will not decrease the total number of units set aside for low-income tenants, for homeless individuals or families, or for persons with special needs.

DONE and ORDERED this 21st day of June, 2019.



Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

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.