

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING  
FINANCE CORPORATION

Federation Gardens Preservation LP,  
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2019-062VW  
Application No. 2018-102B

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-21.003(8)(g), F.A.C.**

Petitioner Federation Gardens Preservation LP, (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”), for a waiver of the prohibition under Rule 67-21.003(8)(g), Florida Administrative Code (“F.A.C.”) effective July 8, 2018 (the “Rule”) against correcting the Development Type mistakenly identified in the Application. 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:

Federation Gardens Preservation, LP,  
ATTN: John Tatum  
250 W 55<sup>th</sup> Street, 35<sup>th</sup> Floor  
New York, NY 10019  
Telephone: (212) 798-4081  
Fax: N/A  
Email: John.Tatum@Fairstead.com

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

Brian J. McDonough, Esq.

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
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Telephone: 305-789-3350  
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Email: Bmcdonough@stearnsweaver.com

**B. WAIVER IS PERMANENT**

3. The waiver being sought is permanent in nature.

**C. THE RULE FROM WHICH WAIVER IS REQUESTED**

4. Petitioner requests a waiver of Rule 67-21.003(8)(g), effective July 8, 2018,

which 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:

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(g) **Development Type . . . .**

(emphasis added).

5. In Petitioner's Non-Competitive Application Package, submitted on May 13, 2019, Petitioner mistakenly listed the Development Type as "High Rise." *See* Application 2018-102B, Section 6(g). Petitioner is therefore in need of a waiver to correct the Application.

**D. STATUTES IMPLEMENTED BY THE RULE.**

6. Rule 67-21.003, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.507, Powers of the corporation;
- Section 420.508, Special powers; multifamily and single-family projects;
- Section 420.509, Revenue bonds; 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.

**E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.**

8. Petitioner timely submitted the Non-Competitive Application for Federation Gardens I & II, to acquire and rehabilitate 161 units for the Elderly (Non-ALF) in unincorporated Miami-Dade County (the "Development"). The Application seeks \$40,270,000 corporation-issued MMRB and \$1,759,500 annual 4% non-competitive LIHTC. Petitioner committed to set aside 100% of the units at 60% AMI or less.

9. Within weeks of submitting the Application, Petitioner discovered that it had mistakenly identified the wrong Development Type. Instead of selecting "Mid-Rise, 4-Stories," Petitioner inadvertently selected "High Rise."

10. "Development Type" is defined at Part A, Section 6(g) of the Application Instructions, which is incorporated by Rule. "High Rise" is defined as a building comprised of 7 or more stories and each residential building must have at least one elevator. "Mid-Rise, 4-Stories" is defined as a building comprised of 4 stories and each residential building must have at least one elevator.

11. Petitioner never intended to develop a High Rise. Indeed, the Application is limited to rehabilitating 161 units that were originally built in 1982 (Federation Gardens I) and 1990 (Federation Gardens II) and that are contained within two buildings, each of which are only four stories tall.

12. If this Rule waiver is denied, Petitioner would be required to add at least three stories to the pre-existing building structures. Not only would this task be cost-prohibitive, but it would likely require the current elderly residents to relocate from their homes. Further, current zoning would likely prohibit such additional construction.

13. The need for the waiver was requested early in the process and will not prejudice the Development, Florida Housing, nor any other applicant.

14. 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,<sup>1</sup> 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.* (2017).

15. For the reasons discussed above, the waiver should be granted to prevent Petitioner from suffering a substantial and unnecessary economic and operational hardship. The requested waiver will ensure that 161 affordable housing units will be made available for the target population in Miami-Dade County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because adding three stories to each building due solely to a mistaken Development Type selection in the Application would necessitate a costly redesign, and development, not contemplated by Petitioner. Further, the waiver will serve the purposes of the

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<sup>1</sup> “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. *See* § 120.542(2), *Fla. Stat.*

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 Miami-Dade County these much-needed affordable housing units.

**F.ACTION REQUESTED**

16. 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 identified in its 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.

**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 copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 12th day of July, 2019.

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