

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2020-063VW
Application No.: 2020-411BS**

BDG ROYAL PARK APARTMENTS, LP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULES 67-48.004(3)(g) AND 67-21.003(8)(g)

Petitioner, BDG Royal Park Apartments, LP (“Petitioner”), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, through its undersigned counsel, hereby petitions Florida Housing Finance Corporation (“Florida Housing”) for a waiver of Florida Housing’s prohibition on changes in the “Development Type” pursuant to Rules 67-48.004(3)(g) and 67-21.003(8)(g), Florida Administrative Code (“F.A.C”) effective July 11, 2019 (the “Rule”). In support of this 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:

BDG Royal Park Apartments, LP
Attn: Scott Zimmerman
501 North Magnolia Avenue
Orlando, Florida 32801
E-mail: szimmerman@agpmanager.com
Telephone: (407) 447-1780 (Ext. 2001)
Facsimile: N/A

2. The name, address, telephone and facsimile numbers of Petitioner’s counsel is:

Yisell Rodriguez, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801-4961
Email: yisell.rodriguez@nelsonmullins.com
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3. On December 16, 2019, Petitioner submitted an application in response to RFA 2019-116 for SAIL Financing Of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bonds And Non-Competitive Housing Credits and was assigned Application No. 2020-411BS (the “Application”) requesting \$19,000,000 in Corporation-issued Multifamily Mortgage Revenue Bonds (the “MMRB Loan”), a \$5,280,000 SAIL loan (the “SAIL Loan”), a \$600,000 SAIL ELI loan (the “SAIL ELI Loan”), and \$1,271,191 (annually) in low-income housing tax credits (the “Housing Credits” and together with the MMRB Loan, the SAIL Loan, and the SAIL ELI Loan, the “FHFC Financing”) to assist in the construction of a 176-unit development located in Alachua County, Florida, known as Royal Park Apartments (the “Development”).

B. TYPE OF WAIVER

4. The waiver being sought is permanent in nature.

C. RULE FOR WHICH A WAIVER IS REQUESTED

5. Petitioner requests a waiver from Rule 67-48.004(3)(g), Florida Administrative Code (2019). Specifically, Petitioner is seeking a waiver to permit it to change the “Development Type” designation identified by Petitioner in its Application. Rule 67-48.004(3)(g) provides, in relevant part, as follows:

(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:

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

Rule 67-21.003(8)(g) provides, in relevant part, as follows:

(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.**

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

D. STATUTES IMPLEMENTED BY THE RULE

6. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099, the SAIL Program in Section 420.5087, and the MMRB Program in Section 420.509, of the Florida Statutes (2019).

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

7. In section 4(c) of the Application, Petitioner listed the Development Type as “Mid-Rise, 5 to 6-stories”. However, for the reasons set forth below, Petitioner would like to change the Development Type to a more cost-effective design: “Garden Apartments”. Petitioner is therefore in need of a Rule waiver to make the change.

8. Petitioner is requesting a change in Development Type in order to construct Garden Apartments, rather than Mid-Rise, 5 to 6 stories, for the following reasons:

- a. Since the Application, construction costs, especially wood material costs, have increased substantially for various reasons, including the COVID-19

pandemic. The change in Development Type will eliminate the cost of elevators, as well as structural and fire-safety related requirements, and help to decrease overall construction costs, approximately \$15,000 per unit.

- b. Additionally, since the Application, housing credit equity pricing has declined in the wake of the anticipated recession caused by the COVID-19 pandemic. The change in Development Type will help to offset this decline in equity funding caused by the decrease in credit pricing.
- c. The change is also anticipated to allow the Applicant to construct an additional 16 affordable units, bringing the total units to 192. The unit mix in the Application and the anticipated new unit mix are as follows:

Unit Type	Application	Anticipated
1 bedroom / 1 bath	73	36
2 bedroom / 2 bath	73	120
3 bedroom / 2 bath	30	36
Total	176	192

Set Aside	Application	Anticipated
30% AMI	8	8
40% AMI	9	10
60% AMI	117	130
70% AMI	42	44
Total	176	192

- d. Upon approval of the request to change the Development Type, the Applicant will move to finalize the site planning needed to confirm the anticipated unit mix.

9. The Application's funding would not have been affected had the Applicant selected the "Garden Apartments" Development Type when it submitted its Application. While

the requested change would affect the leveraging score, this Development would have nonetheless received an award of SAIL funding as a Medium County Self-sourced application. If this waiver is approved, the Development will also meet the more restrictive Total Development Cost per Unit Limitation for “Garden Wood”.

9. Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances.

Specifically, Section 120.542(2) states:

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. For purposes of this section, “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.

10. Petitioner believes that a waiver of the Rule will serve the purposes of the Statute, which is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, et. seq.) was passed to increase the supply of affordable rental housing. Furthermore, the purpose of the Housing Tax Credit Program is to encourage the development of low-income housing in the State. By granting this waiver and permitting Petitioner to change its Development Type, as requested in this Petition, Florida Housing would recognize the Applicant’s furthering of this goal of increasing the supply of affordable housing for persons of low-income by facilitating the Applicant’s anticipated construction of up to 16 additional affordable units and 53 additional bedrooms in Alachua County.

11. Moreover, unless the Petitioner's request is granted, strict application of the Rule would result in substantial hardship to the Petitioner and the Development. If the Rule is not waived to allow the requested change in Development Type, it would result in economic hardship to the Petitioner relating to additional construction costs associated with the "Mid-Rise, 5 to 6 stories" Development Type compared to the "Garden Apartments" Development Type.

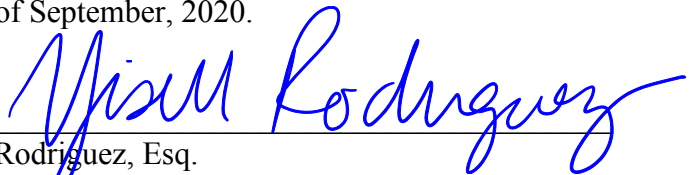
12. In this instance, Florida Housing has jurisdiction to grant a waiver of the Rule and Petitioner meets the standards for a waiver of the Rule.

F. ACTION REQUESTED

WHEREFORE, Petitioner respectfully requests that Florida Housing:

- (i) Grant Petitioner a waiver from the Rule, allowing it to change the Development Type listed in its Application from "Mid-rise 5-6 Stories" to "Garden Apartments";
- (ii) Grant this petition and all relief request therein; and
- (iii) Grant such further relief as may be deemed appropriate.

Respectfully submitted this 29th day of September, 2020.



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COUNSEL FOR PETITIONER

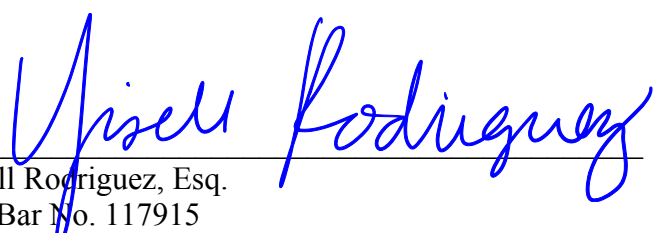
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

This 29th day of September, 2020.



Yisell Rodriguez, Esq.
Fla. Bar No. 117915