

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

GREEN CAY VILLAGE APARTMENTS,
LTD., f/k/a HERITAGE AT GREEN CAY, LTD.,
a Florida limited partnership,

Petitioner,

vs.

APPLICATION NO. 2004-028S
CASE NO. 2005-051VW

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER FROM RULE 67-48.004(14)

GREEN CAY VILLAGE APARTMENTS, LTD., f/k/a HERITAGE AT GREEN CAY, LTD., a Florida limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver from Rule 67-48.004(14), Florida Administrative Code (2004). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

Heritage at Green Cay, Ltd.
c/o Shawn Wilson
Housing Trust of Florida, LLC
3250 Mary Street, Suite 500
Miami, Florida 33133
(305)860-8188
(305)860-8308 Facsimile

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FLORIDA HOUSING FINANCE CORPORATION

2. The address, telephone number and facsimile number of Petitioner's counsel is:

Maureen McCarthy Daughton
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215 S. Monroe Street, Suite 400
Tallahassee, FL 32301
(850)681-6810
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3. Petitioner successfully applied for financing from the State Apartment Incentive Loan Program ("SAIL") in the 2004 Universal Application cycle – Multi-Family Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the "Universal Cycle"). The Petitioner's application number is 2004-028S (the "Application"). Petitioner applied for \$2,000,000 in SAIL funds to finance a portion of the costs to develop a multifamily rental apartment complex in Palm Beach County, Florida, known as Green Cay Village Apartments, f/k/a Heritage at Green Cay, Ltd. (the "Development"). The Application for SAIL Funds was approved for funding at the October 14, 2004 Board meeting. During the 2004 Universal Cycle all eligible applications submitted for SAIL Funding in Palm Beach County were funded. The Petitioner has voluntarily chosen to temporarily suspend the credit underwriting process pending consideration of this Petition for Waiver.

THE RULE FOR WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rules 67-48.004(14), Florida Administrative Code. More specifically, Petitioner is seeking a waiver from what is designated as the "Application and Selection Procedures for Development", subsection (14) of Rule 67-48.004.

5. Rule 67-48.004(14) provides:

(14) 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

Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

* * *

- (i) Total number of units;

STATUTES IMPLEMENTED BY THE RULES

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the SAIL Program. See §420.5087, Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULE

7. Petitioner requests a waiver of Rule 67-48.004(14), restricting the ability to change the number of units to be built. Petitioner is seeking the waiver so that it may change the number of units from 320 to 160.

8. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes and Rule Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542 (2), Florida statutes. The rule waiver in this case will prevent substantial hardship to the Petitioner who has fought hard to bring much needed affordable housing to Palm Beach County.

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

9. Petitioner contracted to purchase the property upon which the Development is to be built from Ted Winsberg and his family in 2003. The property was sold well below market rate with the intent that it be utilized in a manner which would benefit the community. The Winsberg Family had previously sold 175 adjacent acres to Palm Beach County for a municipal park and 43 acres to Petitioner to construct an affordable housing development. The original plan for the development was 100 moderately priced townhomes and 320 affordable rental units (hereinafter referred to as “Green Cay Village Development”).

10. In September 2003, Petitioner successfully applied for bond allocation from the Housing Finance Authority of Palm Beach County for 320 units. At that time, the budgeted construction cost per square foot in Palm Beach County was approximately \$64.07.²

11. The surrounding property bordering the Green Cay Development primarily consists of new single-family homes which are estimated at approximately \$400,000 fair market value. Almost immediately after the bond allocation was approved several of the surrounding homeowners groups (“NIMBYS”) began expressing concern over the Development, specifically its affordable nature. Thankfully, the Development was already through the zoning process, however the NIMBYS began to interject themselves into the site plan approval process and the bond approval process. These actions resulted in the approval process coming to an abrupt halt. These NIMBYS also engaged the assistance of their district County Commissioner who began exacting additional upgrades and commitments from Petitioner as part of the site plan approval process. These exactions included most notably over \$1,400,000 for elevators in all of the proposed apartment buildings of the Development. All of these changes not only increased the

² Petitioner closed on Malibu Bay, another affordable housing project in Palm Beach County in November 2003, and is familiar with the costs at that time.

cost of the Development, but also cost the Petitioner valuable time in the development process. The delay, of almost a year in getting the necessary approvals from Palm Beach County resulted in a revocation by the District County Commissioner of approximately \$800,000 which had previously been committed specifically for offsite costs associated with Green Cay Village Development.

12. In September 2004, when the approval process was finally completed, the construction cost per square foot in Palm Beach County had risen to \$89.89, an increase of over 40%. During the delay there were also substantial increases in basic material costs, especially concrete and steel. Moreover, the actual construction costs for 320 units with a total of 315,000 square feet had risen over \$7,000,000 since the Predevelopment Phase.

13. This resulted in the Petitioner being forced to either not move forward with Green Cay Village Development or devise a creative solution to keep the Development economically feasible. Petitioner proposed in early 2005 keeping the same site plan, but reducing the number of rental units to 160. The remaining 160 of the heretofore rental units would be developed as affordable condominiums. The 100 moderately priced town homes would remain. The pricing of the condominiums will be approximately \$65,000 less than the maximum price for the Palm Beach County SHIP Program. This proposed change to the Green Cay Village Development was approved by the original owners of the property, the Winsberg Family, Palm Beach County Board of County Commissioners, the Palm Beach County Housing Finance Authority and the NIMBYS. The Development will still be comprised of 320 affordable units, but only 160 will be rental units.

14. Affordable Housing in Palm Beach County is scarce, particularly when compared with other large counties throughout the State. By granting this waiver and permitting Petitioner

to modify the number of affordable rental units yet still produce 320 affordable units, the Corporation will be acknowledging the efforts of this Petitioner to save this Development and the economic realities of developing and constructing affordable rental housing.

15. The Petitioner's request for a reduction in the number of units results from unforeseen circumstances including a drastic increase in construction costs, plus having to contend with a NIMBY group which caused significant delays to the site plan approval process and delayed construction at least a year. Given these changed circumstances, denial of this Petition would violate principles of fairness.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

16. Petitioner believes that a waiver of this 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 in order to encourage private and public investment in persons of low income. The creation of the SAIL program was to provide first, second or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, non-profit and public entities, to provide affordable housing to very low income persons. By granting this Waiver, the Corporation will be funding a Development which is supported by Palm Beach County and for which there is a desperate need. Clearly the legislative intent will be served by the granting of this waiver.

TYPE OF WAIVER

17. The waiver being sought is permanent in nature.

18. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

ACTION REQUESTED

18. Petitioner requests the following:

a. That the Corporation grant the Petitioner a waiver from Rule 67-48.004(14) such that the Corporation allow a change to the number of units to be developed.

19. This waiver would be permanent as to the Petitioner.

20. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 4 day of November, 2005.



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