

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. \_\_\_\_\_  
Application Nos. 2006-357HR (2006 RRLP)  
2006A-225B (2006 MMRB)

DIXIE COURT II, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR WAIVERS OR VARIANCES OF RULE 67ER06-27(14)(j) FOR THE  
2006 RENTAL RECOVERY LOAN PROGRAM, AND RULE 67-21.003(14)(j) FOR THE  
2006 MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM TO INCREASE  
THE NUMBER OF UNITS IN THE 2006 APPLICATIONS**

Petitioner Dixie Court II, Ltd., a Florida limited partnership (“Dixie Court”), petitions Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of the restriction on changing the number of residential units in Applications submitted under the 2006 Rental Recovery Loan Program (“RRLP”) and the 2006 Multifamily Mortgage Revenue Bond (“MMRB”) Application Cycle. *See* Rules 67ER06-27(14)(j) and 67-21.003(14)(j), F.A.C. (2006) (collectively the “Rules”).

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Dixie Court requests a waiver or variance of the Rules to increase the number of the residential units from 28 to 32 units, with the four additional units committed to a set-aside at or below 60% of the area median income (“AMI”).

A. **FACTS COMMON TO REQUESTED RULE WAIVERS OR VARIANCES**

2. The name, address, and telephone and facsimile numbers for Dixie Court and its qualified representative are:

Dixie Court II, Ltd.  
Dixie Court II Development, LLC.  
Attention: Lloyd J. Boggio, its managing member  
2950 S.W. 27<sup>th</sup> Avenue, Suite 200  
Miami, Florida 33133  
Telephone: 305-476-8118  
Facsimile: 305-476-1557

3. The name, address, telephone and facsimile numbers, and e-mail addresses of Dixie Court's attorneys are:

Brian J. McDonough, Esquire  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
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4. Dixie Court applied for funding to be used for the development of Dixie Court Apartments II, a new 28-unit garden apartment intended to serve the Family demographic for extremely low and low income families in Fort Lauderdale, Broward County, Florida (the "Development").

5. On March 2, 2006, Florida Housing awarded Dixie Court a preliminary commitment from the RRLP Program for a 2006 RRLP Loan in the amount of \$7,025,000.<sup>1</sup>

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<sup>1</sup>The allocation includes the RRLP Loan Request Amount and Loan Amount.

6. During the 2006 MMRB Application Cycle, Dixie Court applied for tax-exempt MMRBs and Housing Credits (“HC”) (non-competitive 4% with Tax-Exempt Bonds), and received a preliminary reservation of a State Bond Allocation in the amount of \$6,000,000.

7. With the RRLP Loan, State Bond Allocation and HC, Dixie Court has sufficient funding to provide four additional units at the Development. These additional units would be set-aside for families at or below 60 % of the AMI. The additional units, therefore, will enable Dixie Court to provide more residential units for low-income families in Broward County, Florida.

8. The addition of these four units would not have adversely affected the required set-asides for favorable consideration by Florida Housing of either the RRLP Application or 2006 MMRB Application submitted by Dixie Court, and would not have altered the scoring by Florida Housing that qualified Dixie Court for a 2006 RRLP Loan and 2006 MMRB State Bond Allocation and HC allocations. Nor would the additional residential units have provided Dixie Court with an unfair competitive advantage over other applicants.

9. The requested waivers or variances will (a) provide desperately needed affordable housing with 7 ELI set-aside units and 25 units set-aside at or below 60% of the AMI; and (b) ensure the financial feasibility of the Development.

10. The requested Rule waivers or variances, therefore, will not adversely impact the Development. A denial of this Petition, however, could (a) result in substantial economic hardship to Dixie Court, as a consequence of lower rental revenues, and lower economies of scale, i.e., spreading fixed costs over four additional units; (b) deprive Broward County of additional essential,

affordable housing units in a timely manner; and (c) violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

11. More significantly, should its Petition be denied, Dixie Court would be unable to deliver additional low-income housing units to a market in desperate need of quality affordable housing.

12. The requested Rule waivers or variances are permanent in nature.

**B. RRLP RULE FROM WHICH RELIEF IS REQUESTED, STATUTE IMPLEMENTED BY THE RULE, AND FACTS JUSTIFYING THE REQUESTED RULE WAIVER OR VARIANCE**

13. Dixie Court realleges and incorporates Paragraphs 1 through 12 as though fully set forth herein.

14. Dixie Court requests a waiver of Rule 67ER06-27(14)(j)<sup>2</sup> which identifies non-curable matters in an application for a 2006 RRLP loan and provides that:

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. ... Those items are as follows:

(j) Total number of units;

15. The Rule for which this waiver or variance is requested is implementing Florida Housing Finance Corporation Act's statute enacting Florida's response to housing disasters resulting from the 2004 and 2005 hurricane seasons. § 420.55, Fla. Stat. (2006).

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<sup>2</sup>The Total Set-Aside Percentage in the last row of the total set-aside breakdown chart also cannot be revised, corrected or supplemented after the Application Deadline. However, because the Development's Total Set-Aside Percentage remains at 100%, a waiver or variance of Rule 67ER06-27(14)(k) is not required.

16. Specifically, “[t]he Florida Housing Finance Corporation is authorized to provide funds to eligible entities for affordable housing recovery in those areas of the state which sustained housing damage due to hurricanes during 2004 and 2005.” Florida Housing adopted emergency rules pursuant to § 120.54, Fla. Stat. (2006), and the Legislature found “that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of s. 120.54(4).” In addition, the Legislature determined that:

such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to assist those areas of the state that sustained housing damage due to hurricanes during 2004 and 2005.

§ 420.55, Fla. Stat. (2006).

17. The following facts demonstrate the significant circumstances and economic hardship that justify Dixie Court’s request for a Rule waiver:

- a. In 2006, RRLP financing was made available to assist in hurricane recovery pursuant to Section 31, Chapter 2006-69, L.O.F.
- b. For 2006 RRLP Applications, “[a]t least 15% of the total units must be set aside for ELI Households,” and [a]t least 70% of the total units must be set-aside at or below 60% of the area median income (AMI).” In Broward County, ELI set-aside units are committed to Households at or below 30% of the AMI. *See* Rule 67ER06-32(3) and RRLP Application Instructions at Part III, § E.1(b).
- c. In its RRLP Application, Dixie Court committed to a Total Set-Aside Percentage of 100% of the Development’s 28 residential units. Seven units, or 25% of the total residential units, designated for ELI Set-Aside units, with the remaining 21 units (75%) set-aside at or below 60% of the AMI. *See* Application No. 2006-357HR, at Part III, § E.1 and 2.
- d. With funds available from the RRLP Loan, MMRB and HC, Dixie Court can provide four additional units at the Development which would be set-aside for families at or below 60 % of the AMI.
- e. The Total Set-Aside Percentage would remain at 100%. With the additional four residential units set-aside at or below 60% of the AMI, the ELI Set-

Aside Commitment would be approximately 22%, which still exceeds the required minimum 15% ELI set-aside.

**C. MMRP/HC RULE FROM WHICH RELIEF IS REQUESTED, STATUTE IMPLEMENTED BY THE RULE, AND FACTS JUSTIFYING THE REQUESTED RULE WAIVER OR VARIANCE**

18. Dixie Court realleges and incorporates Paragraphs 1 through 12 as though fully set forth herein.

19. Dixie Court requests a waiver or variance of Rule 67-21.003(14)(j)<sup>3</sup> which identifies non-curable matters in an application for MMRB and for HC and provides:

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. ... Those items are as follows:

(j) Total number of units;

20. The Rule implements sections 420.502, 420.507, 420.508, and 420.509, Florida Statutes, which empower Florida Housing to issue revenue bonds for the purpose of funding the development of affordable housing for low-income individuals and families.

21. The following facts demonstrate the significant circumstances and economic hardship that justify Dixie Court's request for a Rule waiver:

- a. For the 2006 MMRB Application Cycle, "[f]orty percent of the residential units in the Development shall be occupied by or reserved for occupancy by a Family whose Annual Household Income does not exceed 60 percent of the area median income limits ..." See Rule 67-21.004(2) and Universal Application Instructions at Part III, § E.1(a).
- b. In its 2006 MMRB Application, Dixie Court committed to:

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<sup>3</sup>The Total Set-Aside Percentage in the last row of the total set-aside breakdown chart also cannot be revised, corrected or supplemented after the Application Deadline. However, the additional units will not change or alter the Total Set-Aside Percentage. Consequently, a waiver or variance of Rule 67-21.003(14)(l) is not required.

(i) an MMRB Total Set-Aside Percentage of 85% of the Development's residential units at or below 60% of the AMI; and

(ii) a non-competitive HC Total Set-Aside Percentage of 100% of the Development's 28 residential units at or below 60% of the AMI.

Consequently, all 28 residential units are set-aside at or below 60% of the AMI. *See* Application No. 2006A-225B, at Part III, § E.1.a. and b.(2)(d).

- c With funds available from the RRLP Loan, MMRB and HC, Dixie Court can provide four additional units at the Development which would be set-aside for families at or below 60 % of the AMI.
- d. As a result, all 32 residential units at the Development will be set aside at or below 60% of the AMI.

**D, CONCLUSION**

22. By granting the requested waivers or variances and permitting Dixie Court to increase the number of residential units for the Development, Florida Housing would recognize the economic realities and principles of fundamental fairness of developing affordable residential housing by encouraging the development of affordable housing projects, and enabling developers to meet the needs of both very low-income and low-income families in dire need of affordable and safe housing and social services. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act, through new construction, in an economical and efficient manner.

23. Should Florida Housing have questions or require additional information, Dixie Court is available to provide any information necessary for consideration of this Petition.

WHEREFORE, Petitioner Dixie Court II, Ltd., respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all the relief requested herein;

B. Waive Rule 67ER06-27(j)'s restrictions against changing the total number of housing units, and allow the number of units identified in the 2006 RRLP Application to be increased from 28 to 32 units, with the additional four units committed to a set-aside at or below 60% of the AMI;

C. Waive Rule 67-21.003(14)(j)'s restrictions against changing the total number of housing units, and allow the number of units in the 2006 MMRP Application to be increased from 28 to 32 units, with the additional four units committed to a set-aside at or below 60% of the AMI;  
and

D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

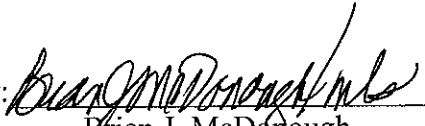
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By:   
BRIAN J. McDONOUGH



**CERTIFICATE OF SERVICE**

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 30th day of April, 2007.

By:   
Brian J. McDonough