

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

Application No. 2006-305HR (RRLP and MMRB)

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FLORIDA HOUSING FINANCE CORPORATION

NOTRE DAME APARTMENTS, LLC,

Petitioner,

CASE NO. 2008-007VW

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OR VARIANCE OF RULE 67ER06-27(14)(g) FOR THE 2006 RENTAL RECOVERY LOAN PROGRAM, AND RULE 67-21.003(14)(g) FOR THE 2006 MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM TO CHANGE THE DEVELOPMENT TYPE IN THE 2006 APPLICATION

Petitioner Notre Dame Apartments, LLC, a Florida limited liability company (“Notre Dame”), petitions Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of the restriction on changing the "Development Type" of a Project in the Application submitted by Notre Dame Apartments, LLC under the 2006 Rental Recovery Loan Program (“RRLP”) and the 2006 Multifamily Mortgage Revenue Bond (“MMRB”) Application Cycle. *See* Rules 67ER06-27(14)(g) and 67-21.003(14)(g), 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), Notre Dame requests a waiver or variance of the Rules to change the Development Type of the Development from a Mid-Rise with elevator building to a High-Rise building.

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

2. The name, address, and telephone and facsimile numbers for Notre Dame and its

qualified representative are:

Notre Dame Apartments, LLC  
Notre Dame Development, LLC.  
Attention: Michael Cox  
150 S.E. 2nd Avenue, Suite 1202  
Miami, Florida 33131  
Telephone: 305-372-5765  
Facsimile: 305-372-5797

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

HOLLAND & KNIGHT LLP  
701 Brickell Avenue, Suite 3000  
Miami, Florida 33131  
Attn: Lynn C. Washington, Esquire  
Telephone: 305-789-7798  
Facsimile: 305-789-7799  
E-mail: [lynn.washington@hklaw.com](mailto:lynn.washington@hklaw.com)

4. On about August 3, 2006, Notre Dame applied for funding from the 2006 RRLP and MMRB programs administered by the Florida Housing Finance Corporation ("Florida Housing") to be used for the development of Notre Dame Apartments LLC, a sixty four (64) unit multi-story apartment building intended to serve extremely low and low income families in the City of Miami, Miami-Dade County, Florida (the "Development"). The building was initially slated to be a six (6) story building. Therefore, the Development Type was selected as a "Mid Rise."

5. On November 27, 2007, Florida Housing awarded Notre Dame a preliminary commitment for a loan from the RRLP Program for a 2006 RRLP Loan in the amount of \$8,077,936.00. Under the rules of the 2006 RRLP and MMRB programs, this commitment also made the Notre Dame Development eligible for multi-family state bonds and Housing Credits ("HC") under the Florida Housing various programs.

6. After the building was designed and the application submitted to Florida Housing, the architect determined that the developer could better utilize the land upon which Notre Dame was to be built and the adjacent land, if the developer increased the height of the building from six (6) stories to

twelve (12) stories. The increase height would leave additional land to building a subsequent affordable housing development on the remaining land. The change in Development Type would not cause a change in the number of units in the development or cause any issues with the community or any zoning issues. Rather, the change in the building designed would cause the building to have a more aesthetically friendly design.

7. The change in would not adversely affect any required set-asides or points considered by Florida Housing in the scoring of the RRLP or MMRB Applications, and would not alter the scoring by Florida Housing that qualified Notre Dame for a 2006 RRLP Loan and 2006 MMRB State Bond Allocation or HC allocation. The change would also not provide Notre Dame with an unfair competitive advantage over other applicants.

8. The requested waivers or variances will, however, (a) provide for the opportunity for a subsequent affordable development of additional affordable housing units on the Notre Dame site; and (b) ensure the financial feasibility of the Notre Dame development.

9. The requested Rule waivers or variances, will not adversely impact the Notre Dame development or the Florida Housing process. A denial of this Petition, however, could (a) result in substantial economic hardship to Notre Dame, as a consequence of high land costs to be spread over fewer units; (b) deprive Miami Dade County of an opportunity to provide additional, affordable housing units; and (c) violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

10. 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**

11. Notre Dame realleges and incorporates Paragraphs 1 through 10 as though fully set forth herein.

12. Notre Dame requests a waiver of Rule 67ER06-27(14) (g) 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:

(g) Development Type;

13. 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).

14. 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 §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).

15. The facts stated in Paragraphs 1 through 10 demonstrate the significant circumstances and economic hardship that justify Notre Dame's request for a waiver or Rule 67ER06-27(14)(g).

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

17. Notre Dame realleges and incorporates Paragraphs 1 through 10 as though fully set forth

herein.

18. Notre Dame requests a waiver or variance of Rule 67-21.003(14)(g) which identifies non-curable matters in an application for MMRB 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:

(g) Development Type;

19. 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.

20. The facts set forth in Paragraphs 1 through 10 above demonstrate the significant circumstances and economic hardship that justify Notre Dame's request for a waiver of Rule 67-21.003(14)(g).

**D. CONCLUSION**

21. By granting the requested waivers or variances and permitting Notre Dame to change the Development Type for the Notre Dame development, Florida Housing would allow the developer to better utilize the land and would preserve land for affordable housing development in the future. Granting this requested waiver or variance would not unfairly prejudice any other development or cause any delay to this development or any other development or cause any prejudice or delay to the Florida Housing proceed.

22. Failure to grant this waiver or rule will cause substantial economic hardship to the developer of Notre Dame Apartments.

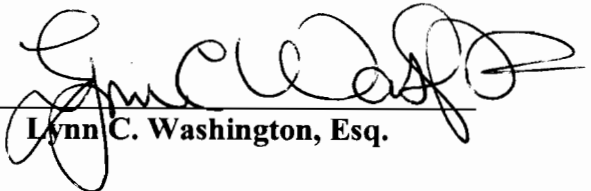
23. If Florida Housing has questions or requires additional information, Notre Dame is available to provide any information necessary for consideration of this Petition.

WHEREFORE, Petitioner Notre Dame Apartments, LLC, 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(g)'s restrictions against changing the Development Type in the RLLP Application after the Application is submitted; and allow the Development Type to be a High-Rise building;
- C. Waive Rule 67-21.003(14)(g)'s restrictions against changing the Development Type in the MMRB Application after the application is submitted; and allow the development to be a High-Rise building;
- D. Grant such further relief as may be deemed appropriate.

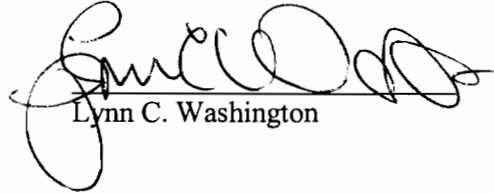
Respectfully submitted,

Lynn C. Washington, Esquire  
Holland & Knight LLP  
Attorneys for Notre Dame Apartments, LLC.  
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Miami, Florida 33131  
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By:   
Lynn C. Washington, Esq.

**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, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, this 11<sup>th</sup> day of February, 2008



Lynn C. Washington

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