

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
APPLICATION NO. 2009-153C

FHFC CASE NO. _____

SUNRISE PARK PHASE I, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(14)(g)

Petitioner Sunrise Park Phase I, Ltd. ("Sunrise I") petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of the restriction on changing development type after the Application Deadline for submitting the 2009 Universal Application for the Housing Credit Program ("Application"). See Rule 67-48.004(14)(g), F.A.C. (the "Rule"). In support of its Petition, Sunrise I states:

1. Pursuant to Section 120.542, Fla. Stat., and Rule 28-104.002, F.A.C., Sunrise I requests a waiver of the Rule which prohibits changing the development type selected in the Application after the Application Deadline as proscribed in Rule 67-48.004(14)(g), F.A.C.

A. THE PETITIONER

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

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c/o Paula McDonald-Rhodes
Norstar/Primerica Multifamily Development Group
3629 Madaca Lane
Tampa, Florida 33618
Telephone: 813-933-0629 (x212)
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Email: prhodes@primericagroupone.com

3. For purposes of this Petition, the address, telephone and facsimile numbers of Petitioner's attorneys are:

Brian J. McDonough, Esquire
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B. THE DEVELOPMENT AND FUNDING

4. Sunrise I applied for funding to be used for the development and construction of Sunrise Park Apartments, a new 72-unit development intended to serve the Family demographic for low income families in Lake Wales, Polk County, Florida (the "Development"). The Development site was previously comprised of 100 affordable housing units that were destroyed and had to be demolished as a result of damage sustained during the 2004 hurricane season.

5. Sunrise I submitted its Application for the Housing Credits Program from which it seeks an annual allocation of \$998,400 in Housing Credits ("HC") and has received a Certificate of Binding Commitment from the HC Program for a preliminary annual allocation of \$998,400.

6. Sunrise I also was awarded \$3,600,000 under the Tax Credit Exchange Program (“TCEP”) as provided in RFP 2010-04.

7. The Development is being developed as a joint venture with the Lake Wales Housing Authority (the “Housing Authority”).

8. When Sunrise I submitted its Application, the Development’s 72 units were to be in two different building types: 5 townhouses with 40 units and 4 stacked-flats with 32 units for a total of 9 residential buildings with 72 units. Because more than 50% of the units were anticipated to be townhouses, Sunrise I selected “Townhouses” as the development type. *See* 2009 Universal Application Instructions, Part III, A.4.

9. After the deadline for submitting 2009 Universal Applications, the development plans were further defined by Sunrise I to take into account limitations imposed by the site’s topography and to meet conditions imposed by the City of Lakes Wales’ zoning, building and fire departments. Specifically, Sunrise I modified the development plans to provide for the development for 5 townhouses and 6 stacked-flats for a total of 11 residential buildings.

10. Among other reasons, the modification was necessary under Lake Wales’ ordinances requiring two site entrances for all developments comprised of 50 or more units. Therefore, Sunrise I needed to add an additional entrance way and modify the internal roads that will service the Development. As a result, the modified development plan now includes a total of 6 stacked-flat buildings instead of the 4 stacked-flat buildings originally anticipated when Sunrise I submitted its Application.

11. The Development will now be comprised of 5 townhouses with 24 units and 6 stacked-flats with 48 units for a total of 11 buildings with 72 units.

12. The number of units, unit mix and legal description for the Development remains unchanged, and the Development will still provide 72 residential units for the Family demographic as contemplated by the Application.

13. However, the number of stacked-flat units will now be more than 50% of the Development's total units. Under the terms of the Universal Application Instructions, the Development type is now "Other – Stacked Flats" as opposed to Townhouses. As a result, Sunrise I requests a waiver of the Rule's restriction on changing the Development type after the Application Deadline.

14. The change in the number of buildings and Development type would not have altered the scoring by Florida Housing for qualifying for HC allocations or for the TCEP. Nor would the change have provided Sunrise I with an unfair competitive advantage over other applicants.

15. The requested Rule waiver will enable Sunrise I to provide desperately needed affordable housing for 72 families in Polk County who were displaced from their homes during the 2004 hurricane season.

16. Significantly, should its Petition be denied, Sunrise I would be unable to close on the HC allocated in the 2009 Universal Cycle, and will lose \$3,600,000 awarded under the TCEP. Without these funds, it will not be financially feasible to go forward with the Development. This will result in Sunrise I being unable to deliver additional low-income housing units to a market in desperate need of quality affordable housing.

17. The requested Rule waiver will not adversely impact the Development. A denial of this Petition would (a) result in substantial hardship to Sunrise I and impact its relationship with the Housing Authority; (b) deprive Polk County of additional and essential affordable

housing units in a timely manner; and (c) violate principles of fairness. § 120.542(2), Fla. Stat. (2009).

18. The requested Rule waiver is permanent in nature.

C. THE RULE FROM WHICH RELIEF IS REQUESTED AND THE STATUTE IMPLEMENTING THE RULES

19. Sunrise I realleges and incorporates Paragraphs 1 through 18 as though fully set forth herein.

20. Sunrise I requests a waiver of the Rule which identifies non-curable matters in a 2009 Universal Application for funding through the HC Program 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. . . .

(g) Development Type;

Rule 67-48.004(14)(g).

21. The Florida Housing Finance Corporation Act¹ designates the Corporation as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). §§ 420.5099(1) and (2), Fla. Stat. (2009). The Allocation Procedures were established in Rule Chapter 67, Florida Administrative Code. Accordingly, the Rule subject to Sunrise I's waiver request is implementing, among other

¹The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the "Act"). See also Rule 67-40.020(1), F.A.C. ("Act" means the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes").

sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2009).

22. The HC Program comports with the legislative recognition for the need "to encourage development of low-income housing in the state." § 420.5099 (2), Fla. Stat. (2009).

D. JUSTIFICATION FOR SUNRISE I'S REQUESTED WAIVER

23. Sunrise I realleges and incorporates Paragraphs 1 through 22 as though fully set forth herein.

24. 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 these 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,¹ 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. (2009).

25. In this instance, Sunrise I meets the standards for a Rule waiver.

26. Sunrise I is required to modify its development plan to comply with Lake Wales' current ordinances and zoning requirements by providing at least two entrances for a development with more than 50 units.

27. Without the Rule waiver, Sunrise I will be unable to comply with the ordinances and zoning requirements which could prevent or delay construction of the Development and

¹ "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of fairness" are violated when 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 Section 120.542(2), Florida Statutes (2009).

could negatively impact the existing and future working relationships and partnerships between Sunrise I and the Housing Authority.

28. More significantly, without the Rule waiver, Sunrise I will be unable to provide affordable housing units for families displaced during the 2004 hurricane season and who have waited more than 6 years for decent and safe affordable housing. The requested waiver, therefore, would significantly benefit residents of Lake Wales by enabling Sunrise I to develop the Development in a timely and efficient manner in partnership with the Housing Authority.

E. CONCLUSION

29. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2009).

30. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 72 affordable housing units will be constructed and available for families in Lake Wales, Polk County, Florida.

31. However, a denial of the requested waiver would result in a substantial hardship for Sunrise I which will be unable to provide decent, safe, and affordable housing units to a market in desperate need of extremely low and low income housing.

32. Finally, by granting the requested waiver, 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 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 and in an economical and efficient matter.

33. Should Florida Housing require additional information, Sunrise I is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.004(14)(g).


WHEREFORE, Petitioner Sunrise Park Phase I, Ltd., respectfully requests that Florida Housing Finance Corporation:

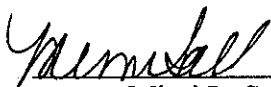
- A. Grant the Petition and all the relief requested herein;
- B. Waive the Rule's restriction against changing the development type, and allow the development type to be changed from Townhouses to Other - Stacked-Flats; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

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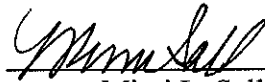
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By: 
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Mimi L. Sall

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 Florida Housing Finance Corporation, 227 N. 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 15th day of September, 2010.



Mimi L. Sall