

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**IN RE: CASTLE WOODS APARTMENTS
2013-516C**

FHFC Case No. 2015-027VW

**PETITION FOR WAIVER OF, OR VARIANCE FROM, RULE 67-21.003(8)
TO DECREASE THE TOTAL SET-ASIDE PERCENTAGE**

Dalcor Castle Woods, Ltd., a Florida limited partnership (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of, or variance from, Rule 67-21.003(8), Florida Administrative Code, to decrease the percentage in the "MMRB" column of the Total Set-Aside Percentage table in the Application from 85% to 76% (i.e., 232 out of 304 units).

In support of its petition, the Petitioner states:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative are:

Dalcor Castle Woods, Ltd.
15950 N. Dallas Parkway, Suite 300
Dallas, TX 75248
Attn.: Randy Plitt
Telephone: 972-769-2002
Facsimile: 972-769-2004
E-mail: rplitt@dalcorcompanies.com

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorney is:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
Facsimile: 305-789-3395
E-mail: bmcdonough@stearnsweaver.com

B. BACKGROUND

3. Petitioner submitted an Application in 2013 pursuant to Rule 67-21.003, Florida Administrative Code, for non-competitive Housing Tax Credits to finance the acquisition and rehabilitation of the development named “Castle Wood Apartments” (the “Development”). The Development consists of 304 total units of affordable housing. *See* Application 2013-516(C). In its Application, Petitioner made a commitment to set aside 85% of the 304 units (i.e., 259 units) for occupancy by residents earning 60% or less of the Area Median Income (the “AMI Threshold”), with regard to the Multifamily Mortgage Revenue Bonds (“MMRB”) allocated to Petitioner. However, 27 households within the required 259 set-aside units are currently earning an income which exceeds the AMI Threshold. The critical fact is that these 27 households initially qualified to reside in the Development pursuant to the income restrictions in place prior to Petitioner’s acquisition of the Development, and are allowed to continue to reside there under the applicable tax credit rules, pursuant to a “safe harbor” provision which permits such ongoing residency in the Development, notwithstanding the fact that the current income of these 27 households exceeds the AMI Threshold.

C. RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver of, or variance from, Rule 67-21.003(8), Florida Administrative Code (the “Rule”) to decrease the total set-aside percentage in the “MMRB” column of the “Percentage of Residential Units” table set forth in the Application, from 85% to 76% (i.e., 232 out of 304 units). The Rule 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 Those items are as follows...:

(j) The Total Set-Aside Percentage as stated in the last row of the total set-aside break-down chart for the program(s) applied for in the Set-Aside Commitment section of the Application.”

D. STATUTES IMPLEMENTED BY THE RULE

5. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. See Section 420.5099, Florida Statutes.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

6. Petitioner requests a waiver of, or variance from the Rule to decrease the Total Set-Aside Percentage from 85% to approximately 76% (232 out of 304 units), to allow the 27 households currently failing to meet the AMI Threshold to continue to reside in the Development. As noted, these 27 households initially qualified to reside in the Development and would be allowed to continue to reside in the Development pursuant to a “safe harbor” provision.

7. Because the Application was non-competitive, allowing this change does not permit the Petitioner to gain any advantage over other developers.

8. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner and (b) would violate principles of fairness¹. Section 120.542(2), Fla. Stat. (2013).

9. The waiver being sought is permanent in nature.

10. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation 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 (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, 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. (2011).

11. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for waiver:

a. A denial of the requested waiver would result in a substantial economic hardship for Petitioner, as a consequence of having to vacate otherwise qualified residents from the Development.

b. More importantly, 27 households in need of decent, safe affordable housing might be deprived of a secure and comfortable place to live.

12. A waiver of the Rule's restriction against changing the MMRB column in the Total Set-Aside Percentage table in Petitioner's Application would serve the purposes of Section

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.

420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver/variance, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in facilities for persons of limited means, while allowing the Development to adapt to market conditions.

13. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Rule 67-21.003(8) Florida Administrative Code, allowing it to decrease the Total Set-Aside Percentage in the MMRB column of the Total Set-Aside Percentage from 85% to approximately 76%;
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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By:



BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 3 day of June, 2015.



Brian J. McDonough, Esq.

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

Patricia K. Green
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June 3, 2015

Via FedEx

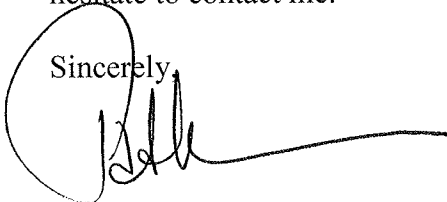
Ms. Kate A. Flemming
Legal Analyst/Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough Street
Suite 5000
Tallahassee, Florida 32301

RE: Petition for Rule Waiver

Dear Ms. Flemming:

Enclosed is a Petition for Rule Waiver, submitted on behalf of Dalcour Castle Woods, Ltd., for consideration by the Board at the next available meeting. I have sent a duplicate copy to the Joint Administrative Procedures Committee. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Patricia K. Green

PKG/zs
Enclosure

cc: Joint Administrative Procedures Committee (with Enclosure)