

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**IN RE:           GARDEN VISTA APARTMENTS  
                  2014-527C**

**FHFC Case No. 2016-012VW**

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

Garden Vista Preservation, L.P., a Delaware limited partnership (the “Petitioner”) hereby petitions Florida Housing Finance Corporation (the “Corporation”) for a waiver of, or variance from, Rule 67-21.003(8)(j), Florida Administrative Code, to decrease the percentage in the “Commitment for Non-Competitive HC” column of the Total Set-Aside Percentage table in the Application from 100 % to 99.333% (i.e., 149 out of 150 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:

Garden Vista Preservation, L.P.  
60 Columbus Circle  
New York, NY 10023  
Attn.:       David Pearson  
Telephone:   212-801-3738  
Facsimile:   212-801-3731  
E-mail:       dpearson@related.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 2014 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 “Garden Vista Apartments” (the “Development”). The Development consists of 150 units of affordable housing. *See* Application 2014-527(C). In its Application, Petitioner made a commitment to set aside 100% of the 150 units for occupancy by residents earning 60% or less of the Area Median Income (the “AMI Threshold”), with regard to the Non-Competitive Housing Credits (the “Housing Credits”) allocated to Petitioner. However, one household within the required 150 set-aside units is currently earning an income which exceeds the AMI Threshold. The critical fact is that this single household initially qualified to reside in the Development pursuant to the HUD Section 8 income restrictions in place prior to Petitioner’s acquisition of the Development, and is allowed to continue to reside there under the HUD Model Lease and 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 this household 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)(j), Florida Administrative Code (the “Rule”) to decrease the total set-aside percentage in the Housing Credits column of the “Percentage of Residential Units” table set forth in the Application, from 100% to 99.333% (i.e., 149 out of 150 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 100% to approximately 99.333% (i.e., 149 out of 150 units), to allow the single household currently failing to meet the AMI Threshold to continue to reside in the Development. As noted, this household initially qualified to reside in the Development under applicable HUD regulations and is 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. The change in the applicable fraction from 100% to 99.333% is *de minimus*.

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 fairness<sup>1</sup>. Section 120.542(2), Fla. Stat. (2013).

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<sup>1</sup>“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.

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. The Petitioner is legally prohibited from causing the non-compliant household (which, in any event, is of limited means due to qualification under applicable HUD Section 8 requirements) to vacate its unit, which means that the applicable fraction of 100% cannot be satisfied;
- b. If the applicable fraction is not reduced from 100% to 99.333%, the Petitioner will fail to achieve final cost certification for the Development; and
- c. Without final cost certification, the Development will fail to obtain Housing Credits, the Petitioner's limited partner will declare a default under the Petitioner's Agreement of Limited Partnership, and the capital contributions made to date by such limited partner will be subject to repayment by the Petitioner.

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

13. Should the Corporation require additional information, a representative of 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 100% to approximately 99.333%;
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

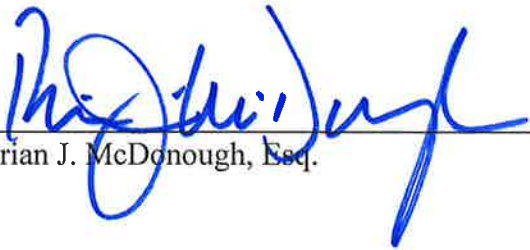
STEARNS WEAVER MILLER WEISSLER  
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By: \_\_\_\_\_

  
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 30 day of March, 2016.

  
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Brian J. McDonough, Esq.

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

Patricia K. Green  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Direct: (305) 789-3345  
Fax: (305) 789-2621  
Email: pgreen@stearnsweaver.com

March 31, 2016

**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 Waiver of, or Variance From, Rule 67-21.003(8)(j) to Decrease the Total Set-Aside Percentage, submitted on behalf of Garden Vista Preservation, L.P., for consideration by the Board at its next 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)