

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2016-039VW
Application No. 2014-104

JOE MORETTI PHASE TWO, LLC
Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,
Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(3)(i)
FOR A CHANGE IN NUMBER OF UNITS**

Petitioner Joe Moretti Phase Two, LLC, a Florida limited liability company (“Petitioner”) petitions Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of the Corporation’s prohibition on changes in “Total Number of Units” designated by an applicant in its response to the Corporation’s RFA 2014-104 for Preservation of Existing Affordable Housing Developments (the “RFA”). In support of its petition, the Petitioner states:

A. THE PETITIONER

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

Joe Moretti Phase Two, LLC
Attention: Alberto Milo, Jr.
315 South Biscayne Boulevard
Miami, FL 33131
Telephone: 305-460-9900
Facsimile: 305-460-9911
E-mail: amilo@relatedgroup.com

2. The name, address, telephone and facsimile numbers, and e-mail address of Petitioner’s attorney, for purposes of this Petition, are:

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. THE DEVELOPMENT

3. Petitioner has acquired a long-term leasehold estate in and has nearly completed renovations to an existing 96-unit multifamily affordable/public housing complex known as Joe Moretti Phase Two (the “Development”) located in Miami-Dade County, Florida. Petitioner received a preliminary allocation of Low-Income Housing Tax Credits from the Corporation, the proceeds of which, along with loans and other sources, were used for the renovation of the Development.

4. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Petitioner; (b) could result in delay in completing renovations to the Development; (c) could deprive Miami-Dade County, Florida of essential affordable housing units in a timely and efficient manner and (d) would violate principles of fairness¹. § 120.542(2), F.S.

5. The waiver being sought is permanent in nature.

C. Rule Requirements from Which Relief is Requested and Statute Implemented

6. Petitioner realleges and incorporates Paragraphs 1 through 5 as though fully set forth herein.

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.

7. Petitioner requests a waiver from Rule 67-48.004(3)(i), Florida Administrative Code (the “Rule”). Specifically, Petitioner is requesting a decrease in the total number of residential units from 96 to 95. The Rule provides, in relevant part, as follows:

“(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

(i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation....”

Rule 67-48.004(3)(i), F.A.C.

8. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designates the Corporation as the agency responsible for the allocation and distribution of low-income housing tax credits. *See* Section 420.5099, F.S.

D. Justification for Petitioner’s Requested Waiver; On-Site Amenities.

9. Petitioner realleges and incorporates Paragraphs 1 through 8 as though fully set forth herein.

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 requirements when strict application of these requirements would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the requirement demonstrates that the application of the requirement 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.

11. In this instance, Petitioner meets the standards for a waiver.

12. Petitioner requests a waiver from Rule 67-48.004(3)(i), Florida Administrative Code. Petitioner is seeking a waiver from the Rule allowing it to decrease the total number of units from 96 to 95, in order to re-designate one residential unit as community space for the provision of essential services to all residents of the Development, in lieu of providing such services in other on-site structures.

13. Petitioner is providing certain “Required Resident Programs” to be conducted at the Development, in accordance with Exhibit C, Section 5(b) of the RFA, including Computer Training and Literacy Training. Petitioner further seeks to provide these two programs in one of the originally-planned residential units in the Development, to be converted from residential use to a community space for the provision of these on-site amenities. This is due in large part to the historic character and integrity of the Development, which severely limits the ability of the Petitioner to make changes to it. The State of Florida Division of Historical Resources required that the Development’s plans be revised to remove the originally-planned community space (comprised of separate facilities not included in the residential buildings) in order to minimize adverse effects on the Development’s historic significance. This left Petitioner with no facilities in which to provide the contemplated Literacy and Computer Training courses on site, absent the use of one of the residential units.

14. As a further enhancement to the quality of the amenities provided to the residents of the Development, Petitioner is able and willing to provide transportation for the residents of the Development to an additional off-site location for identical resident programs, located at the “Joe Moretti Phase One” Apartments which is owned and operated by an affiliate of the Petitioner. It should be noted that the resident council for the Development and for the Joe

Moretti Phase One Apartments is a single body, so there is an identity of interest and an existing nexus between the two properties.

15. If the relief sought pursuant to this Petition is not granted, Petitioner will suffer substantial hardship. It is not feasible to provide resident programs on site without repurposing one unit as a venue for that; it puts the Petitioner between the requirements of the RFA, on one hand, and the Secretary of the Interior's Standards for Rehabilitation, on the other. To comply with one invokes a breach of the other. Reduction of the Development by one unit allows the Petitioner to provide Literacy and Computer Training to its residents which inures to the individual skill set of each trainee and the betterment of the community at large.

F. Conclusion

16. Controlling statutes and the Corporation's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when (a) the applicant subject to the requirement demonstrates that strict application would 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.

17. The requested waiver will not adversely impact Petitioner, the Development, any other party that applied to receive an allocation of Housing Credits in the RFA, or the Corporation.

18. A denial of the requested waiver could result in a substantial hardship for Petitioner, which would be unable to renovate the Development without potential violation of historic preservation standards.

19. Finally, by granting the requested waiver, the Corporation would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. The goal of providing affordable housing in Miami-Dade County, Florida will be achieved through the waiver requested in this Petition, with no detriment to any party. Granting the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to households of limited means.

20. 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.

WHEREFORE, Petitioner respectfully requests that Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all relief requested herein; and
- B. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

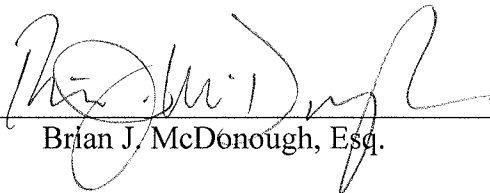
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By: _____


BRIAN J. MCDONOUGH, 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, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 12th day of October, 2016.

By: 
Brian J. McDonough, Esq.