

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PINELLAS AFFORDABLE LIVING, INC.,

Petitioner,

FHFC CASE NO. 2019-082VW

v.

APPLICATION NO. 2019-396S

FLORIDA HOUSING
FINANCE CORPORATION,

Respondent.

_____ /

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

Petitioner, PINELLAS AFFORDABLE LIVING, INC., a Florida corporation (“PAL”) hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”) and requests a waiver of Florida Housing’s Rule 67-48.004(3)(i), Florida Administrative Code (“F.A.C.”) which prohibits changes to the Total Number of Units for a proposed Development.

In support of this Petition, PAL provides as follows:

1. The contact person, address, telephone number, facsimile number, and e-mail address of the PAL is:

Jack Humburg
Pinellas Affordable Living, Inc.
455 31st Street N
St. Petersburg, Florida 33713
Telephone: (727) 821-48195
Email: Jack.Humburg@Boleycenters.org

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2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of PAL's counsel is:

Michael P. Donaldson, Esq.
Carlton Fields
Post Office Drawer 190
Tallahassee, FL 32302-0190
Telephone: 850-224-1585
Facsimile: 850-222-0398
Email: mdonaldson@carltonfields.com

THE DEVELOPMENT

3. PAL timely submitted its Application in response to RFA 2019-104 requesting \$4,639,841 in SAIL Funding and \$287,000 in ELI funding (for 5 ELI units at \$57,400 each) for a total request amount of \$4,926,841 to supplement the construction of an affordable housing complex in Pinellas County, Florida. In its request for funding PAL did not request the maximum SAIL request per unit amount of \$224,000. PAL was awarded its requested funding on May 10, 2019. The funds awarded will be used to supplement the development of 22 affordable apartment units for persons with special needs in a complex named Butterfly Grove Apartments ("Development").

4. PAL was invited into Credit Underwriting on May 16, 2019, and as of the preparation of this Petition is still moving forward through the Credit Underwriting process.

5. This requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) could result in substantial economic hardship to PAL, (b) could deprive Pinellas County, Florida of essential affordable low-income housing units in a timely manner, and (c) would violate the principals of fairness. See Section 120.542.(2), F.S.

THE RULE FROM WHICH WAIVER IS SOUGHT

6. PAL requests a waiver from Rule 67-48.004(3)(i), F.A.C. Specifically, PAL is

seeking a waiver from the Total Number of Units identified by PAL in its Application. Rule 67-48.004(3)(i), F.A.C., provides, in relevant part, as follows:

(3) 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....

STATUTES IMPLEMENTED BY THE RULES

7. The Rule is implementing sections of the Florida Housing Finance Corporation Act and specifically, the Tax Credit Allocation process.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

8. In its Application PAL indicated that the Total Number of Garden Apartments in its proposed Development was 22 unit. The intent of PAL was to replace the existing 22 units with 22 new construction Garden Apartments. PAL seeks a waiver from this Rule to allow it to reduce the Total Number of Units from 22 to 20 units. The Number of Units to be set aside remains 100%.

9. The number of units indicated in the Application was based on a review of the City of St. Petersburg land development regulations and preliminary discussions with planning staff. These initial discussions culminated in the execution of a Florida Housing Finance Corporation Local Government Verification that Development is consistent with Zoning and Land Use Regulations confirming 22 units on the proposed Development site.

10. On September 4, 2019, the City of St. Petersburg approved PAL's development plan application to allow only 20 units to replace the existing 22 unit Development. While PAL

initially requested 22 units, only 20 units were approved based on the Floor Area Ratio Calculation (“FAR”) conducted by for the City based on the gross building square footage of the proposed Development.

11. PAL attempted to work with the City to obtain the 22 unit count as applied for, however this option would have eliminated much of the space needed for the necessary amenities including lobbies, meeting room, office, library, laundry room and restroom. This option ultimately proved unacceptable and the need to reduce the Number of Units became the only viable option.

12. The Application's scoring, and ranking, would not have been affected had PAL selected 20 units in the initial Application. PAL’s initial request did not request the maximum amount per unit. PAL’s application was the lone eligible Application selected for funding in response to RFA 2019-104 and received a substantive score of 107 out of 130 points.

13. PAL requests that no funding reduction occur with the reduction of units. In the alternative if any reduction is required, PAL requests that it receive the maximum request amount of \$224,000 for its approved 20 units or \$4,480,000 in SAIL funding and \$57,400 for its 4 ELI units or \$229,600 for the total request amount of \$4,709,600. With this amount of funding PAL will be able to construct its proposed Development consistent with the requirements and purpose of the RFA.

14. Florida Housing has the authority pursuant to Section 120.542(1), Florida Statutes (“F.S.”), to provide relief from its rules if strict application of those rules will lead to unreasonable, unfair or unintended results in particular instances. Florida Housing has previously granted similar waiver requests.

15. PAL needs to change the Total Number of Units to allow for the construction of

the Development as outlined above to be consistent with the number of units allowed and approved by the City of St. Petersburg.

16. The proposed Development will provide much needed special needs housing for those persons residing in Pinellas County.

17. Unless PAL's request is granted, strict application of the Rule would violate principles of fairness and result in a substantial hardship. Moreover, unless the Rule is waived to allow the requested change, PAL may not be able to ultimately construct the proposed Development.

WAIVER WILL SERVE UNDERLYING PURPOSE OF THE STATUTE

18. PAL believes that a waiver of the Rule will serve the purpose of the Statute which is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, F.S. *et seq.*) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the SAIL and ELI programs is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting PAL to reduce the Total Number of Units and maintain an agreed upon amount of funding as requested in this Petition, Florida Housing would recognize the goal of increasing the supply of affordable housing.

TYPE OF WAIVER

19. The waiver being sought is permanent in nature.

ACTION REQUESTED

20. Should Florida Housing require additional information, PAL is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of

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

WHEREFORE, PAL respectfully requests the following:

- A. Grant the Petition and all relief requested herein;
- B. Waive Rule 67-48.004(3)(i), F.A.C., allowing PAL to reduce the Total Number of Units from 22 to 20 and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted this 16th day of October 2019.

/s/ Michael P. Donaldson

MICHAEL P. DONALDSON

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Attorney for Pinellas Affordable Living, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by Hand-Delivery for filing with Corporation Agency Clerk and Hugh Brown, General Counsel for the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, with copies served via Hand-Delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399 this 16th day of October 2019.

/s/ Michael P. Donaldson

Michael P. Donaldson