

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2013-001VW

WEST BARTOW PARTNERSHIP LTD., LLLP, a
Florida limited liability limited partnership

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,
a public corporation and a public body corporate and
politic duly created and existing under the laws of
the State of Florida

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF PART III.D.1.F. OF THE 2007 UNIVERSAL
APPLICATION INSTRUCTIONS TO PROVIDE SPECIFIC FEATURES IN UNITS
DEVELOPED FOR ELDERLY RESIDENTS**

Petitioner West Bartow Partnership LTD., LLLP, a Florida limited liability limited partnership (“West Bartow”) petitions Respondent Florida Housing Finance Corporation, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (“Florida Housing”) for a waiver of the requirement to provide tight-napped Berber-type carpet (“Carpet”) in units developed for elderly residents. *See* Part III.D.1.f., 2007 Universal Application Instructions (the “Rule”). In support of its Petition, West Bartow states:

1. Pursuant to Section 120.542, Fla. Stat. (2007), and Rules 28-104.001 through 28-104.006, F.A.C. (2007), West Bartow requests a waiver of the Rule to allow West Bartow, at its

election, to use non-skid vinyl composition floor tile (“Non-Skid Flooring”) in lieu of the Carpet in certain living areas of certain units.

A. THE PETITIONER

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

West Bartow Partnership LTD., LLLP
430 Hartsell Avenue
Lakeland, Florida 33815
Attention: Benjamin Stevenson
Telephone: (863) 687-2911
Facsimile: (863) 413-2976

3. For purposes of this Petition, the address, telephone and facsimile numbers for Petitioner’s attorney are:

Saxon, Gilmore, Carraway & Gibbons, P.A.
201 E. Kennedy Boulevard, Suite 600
Tampa, Florida 33602
Attention: Jozette V. Chack-On, Esq.
Telephone: (813) 314-4519
Facsimile: (813) 314-4555

B. THE DEVELOPMENT AND FUNDING

4. West Bartow owns and operates a 100-unit multifamily development for elderly residents known as The Manor at West Bartow located in Polk County, Florida (the “Development”).

5. West Bartow successfully applied to Florida Housing for a loan under the Supplemental Loan Program created by Section 420.507, Fla. Stat., and implemented under Sections 420.5087, 420.5089, and 420.5099, Fla. Stat. (the “Program”) in the amount of \$850,000, for the purpose of providing a portion of the construction and permanent financing of the Development.

6. The Rule requires West Bartow to use Carpet in the rental units of the Development. However, West Bartow would like, at its election, to use Non-Skid Flooring instead of Carpet in certain living areas of certain Development units.

7. The requested Rule waiver will not adversely affect the Development or Florida Housing. However, a denial of this Petition (a) would result in substantial economic hardship to West Bartow; and (b) would violate principles of fairness. § 120.542(2), Fla. Stat. (2007).

8. The requested Rule waiver is permanent in nature.

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

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

10. The Rule provides in pertinent part:

D. Demographic Commitment (Threshold)

1. Elderly

In order for a proposed Development to be classified as Elderly (ALF or non-ALF), the Development must meet the following requirements:

...

- f. The Applicant must provide the following features in the specified percentages of the total units in New Construction (NC), and Rehabilitation/Substantial Rehabilitation (SR) Developments.

The requirement to provide the following features in addition to the features committed to by the Applicant in the Construction Features and Amenities section of this Application.

Feature	NC	SR
....		

Tight-napped Berber-type carpet 100% 100%

11. Rule 67-48.004(1)(a) Fla. Admin. Code (2007) provides, in pertinent part:

(a) The Universal Application Package or UA1016 (Rev. 3-07) is adopted and incorporated herein by reference and consists of the forms and instructions, obtained from the Corporation, for a fee, at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or available, without charge, on the Corporation's Website under the 2007 Universal Application link labeled Instructions and Application, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME, HC, or SAIL and HC Program(s).

D. JUSTIFICATION FOR WEST BARTOW'S REQUESTED WAIVER

12. West Bartow realleges and incorporates Paragraphs 1 through 11 as though fully set forth herein.

13. Pursuant to the Rule, Carpet is required in all units intended to serve the elderly. However, West Bartow has found that-Non-Skid-Flooring allows for greater mobility by elderly individuals, who rely on walkers, wheelchairs, and other forms of assistance to ambulate within their residential units.

14. Additionally, whereas carpeting can accumulate, dust, molds, bacteria, and other pollutants that can affect an individual's health, Non-Skid Flooring is easier to maintain and provides a cleaner environment that is more beneficial for elderly residents suffering from allergies, asthmas, respiratory ailments, and other health issues.

15. Further, Non-Skip Flooring allows for improved sanitary conditions.

16. The use of Non-Skid Flooring, therefore, would be more effective in meeting the health, safety and daily-living needs of the elderly individuals for whom the Development is intended.

17. Because the use of Carpet is a threshold requirement for an applicant seeking Program funds for developments designated for elderly residents, a Rule waiver is necessary to permit the use of Non-Skid Flooring, at West Bartow's election.

18. 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, 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. (2008).

19. In this instance, West Bartow meets the standards for a waiver of the Rule.

E. CONCLUSION

20. Controlling Florida law is 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. (2007).

21. The requested waiver will not adversely impact the Development or Florida Housing.

22. However, a denial of the requested waiver could result in a substantial hardship for West Bartow, which would impact West Bartow's ability to provide decent, safe, and affordable housing.

23. Should Florida Housing require additional information, West Bartow is available to answer questions and provide all information necessary for consideration of its petition.

WHEREFORE, Petitioner West Bartow respectfully requests that Florida Housing:

- A. Grant the Petition and all the relief requested herein;
- B. Waive the Rule's strict requirement in this instance only, and allow West Bartow, at its election, to use Non-Skid Flooring in lieu of Carpet in certain living areas of certain Development units; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

SAXON, GILMORE, CARRAWAY &
GIBBONS, P.A.

Attorney for Petitioner

201 E. Kennedy Boulevard, Suite 600

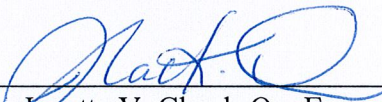
Tampa, Florida 33602

Attention: Jozette V. Chack-On, Esq.

Telephone: (813) 314-4519

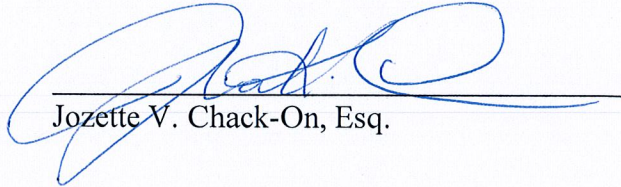
Facsimile: (813) 314-4555

By: _____


Jozette V. Chack-On, Esq.

CERTIFICATE OF SERVICE

The original Petition for Waiver of Rule 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, Suite 500, 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 22nd day of March, 2013.



Jozette V. Chack-On, Esq.