

**BEFORE THE STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION  
CASE NO. \_\_\_\_\_**

**PINE HAVEN HOUSING, LTD., LLLP,**

**Petitioner,**

Agency Case No.: 2007-042 VW  
Application No. 2004-143C/2007-001C  
Pine Haven

vs.

**FLORIDA HOUSING FINANCE  
CORPORATION,**

**Respondent.**

\_\_\_\_\_ /

**PETITION FOR VARIANCE/WAIVER FROM FLORIDA  
ADMINISTRATIVE CODE RULE 67-48.004(14)(g)**

Pursuant to Section 120.542, Florida Statutes, Rule 67-48.004(14)(e), Florida Administrative Code effective for the 2007 Universal Application Cycle ("FAC") and Rule 28-104.001 through 28-104.006, Florida Administrative Code ("FAC"), Petitioner, PINE HAVEN HOUSING, LTD., LLLP ("Petitioner") requests the FLORIDA HOUSING FINANCE CORPORATION ("FHFC") to grant a waiver from the provisions of FAC Rule 67-48.004(14)(e) and to grant the relief requested herein. In support of this Petition, Petitioner states as follows:

**AGENCY AFFECTED**

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file or identification number with respect to this matter is 2004-143C/2007-001C.

**PETITIONER**

2. The Petitioner is Pine Haven Housing, Ltd., LLLP, a Florida limited liability limited partnership. The address of Petitioner is 247 Westmonte Drive, Altamonte Springs, FL 32714, telephone number (407) 772-0200 facsimile number (407) 773-0220. Petitioner's attorney is Gary J. Cohen, Esq., Shutts & Bowen LLP, whose address is 201 South Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308, facsimile number (305) 347-7808.

**RULE WITH RESPECT TO WHICH A WAIVER IS SOUGHT**

3. The Rule with respect to which a waiver is sought is FAC Rule 67-48.004(14), as in effect for the 2007 Universal Application Cycle pursuant to which Petitioner received an allocation of low-income housing tax credit authority. Rule 67-48.004(14) provides as follows:

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 Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempt to changes to these items will not be accepted. Those items are as follows:

- (e) Site for the Development.

**TYPE OF ACTION REQUESTED**

4. Petitioner requests that FHFC grant a waiver and variance from the provisions of FAC Rule 67-48.004(14)(e), as in effect and governing the 2007 Universal Application Cycle. The provisions of the foregoing Rule prohibit a change in the site for the development. For the

reasons set forth below, compliance with the foregoing provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

### FACTS

5. The specific facts that demonstrate a substantial hardship or a violation of principles of fairness which justify a waiver or variance for Petitioner, as requested above, are as follows:

(a) The original HC application filed by Petitioner reflected a 136 unit development, utilizing HOPE VI funds originally granted to Daytona Beach. Daytona Beach secured such funds from the Federal Government by virtue of submission of a redevelopment plan. The redevelopment plan involved demolition of existing public housing, construction of new affordable tax credit rental housing ("Rental Units") and construction of new single-family homes for ownership ("Homeownership Units").

(b) Site control for the development was evidenced in Petitioner's HC application by a ground lease. The legal description which was attached to the ground lease described the entire redevelopment site, within which both the Rental Units and the Homeownership Units were to be constructed. The original development plan was for the Rental Units and Homeownership Units to be intermixed within the entire development site.

(c) Due to cost constraints and for the reasons set forth below, it was determined that the Homeownership Units would be separated from the Rental Units within the entire redevelopment site. Petitioner determined that spreading out the Rental Units over the entire redevelopment site would make for difficult management of the Rental Units. In addition, due to changes in the construction cost environment at the time of commencement of

construction as compared to the cost environment at the time of initial concept development, it was determined to separate the Homeownership Units from the Rental Units. This concept change prompted the City of Daytona Beach to request separate legal description for those portions of the redevelopment site comprising the Rental Units and the Homeownership Units.

(d) The aggregate development site containing the Rental Units and the Homeownership Units remains the same as that submitted in the 2004 HC application. However, the legal description of that portion of the development site containing the Rental Units is not identical (for the reasons set forth above) to the legal description of the development site contained in the 2004 HC application; the legal description for the site containing the Rental Units is a subset of the entire redevelopment site described in the 2004 HC application. The entire development site remain under the control of the Daytona Beach Housing Authority, and the Petitioner is ground leasing the site upon which the Rental Units will be constructed. The developer (Picerne Development Corporation) continues to pursue plans to develop the Homeownership Units on the remainder of the original development site.

6. Petitioner is uncertain whether, under the above scenario, the “Site for the Development” has in fact changed since it remains in the same location as contemplated in the 2004 HC application. However, in order to dispel any ambiguity with respect to this issue, Petitioner is submitting this Petition for Variance/Waiver. In light of the considerable time that it takes to develop and construct multi-family rental housing, FHFC’s statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. FHFC routinely approves such changes when they would not have otherwise

affected the scoring of the application, because the Petitioner thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(14) is to prevent a Petitioner from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the Petitioner to gain a possible competitive advantage.

7. The proposed changes to the Pine Haven development would have had no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors. In particular, with respect to the award of proximity tie-breaker points to Petitioner's application, Petitioner hereby submits (as attached Exhibit "A") a revised Surveyor Certification form (including the accompanying sketches) and a boundary survey for the revised development site. These documents reflect that (a) the tiebreaker measurement point is located on the development site and within 100 feet of a residential building, and (b) proximity to each of the required services is within the one mile distance require to receive maximum proximity tie breaker points. Please note that the latitude and longitude coordinates for the tiebreaker measurement points are marginally different from those contained in the 2004 application, due to more accurate coordinates obtained by the new surveyor in providing the information in Exhibit "A".

8. FHFC's approval of the requested waiver or variance would serve the purpose of the underlined Florida Statute, Section 420.5099, as well as the Federal Low-Income Housing Tax Credit Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of multi-family rental housing that is affordable to families of limited means. If the requested waiver of variance is granted, the tax credits in question will be used to fund a project for which there is a desperate need in the city of Daytona Beach, Florida, a

neighborhood with respect to which affordable multi-family rental housing is particularly needed.

9. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14) would be as follows. Unless the foregoing request is granted, construction of the Pine Haven complex cannot be completed. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious. Delay in completion of construction of the Pine Haven complex could place Petitioner in danger of failing to meet the foregoing “placed in service” deadline.

10. By granting a waiver and permitting Petitioner to change the development site, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent’s purpose by providing affordable housing, through new construction, in an economical and efficient manner.

11. The waiver being sought is permanent in nature.

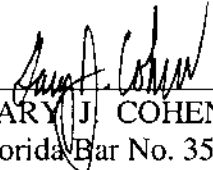
**RELIEF SOUGHT**

12. The specific variance/waiver which Petitioner wishes Respondent to grant is to waive the requirements of Rule 67-48.004(14)(e) to permit a change in the development site described herein.

WHEREFORE, Petitioner respectfully requests FHFC:

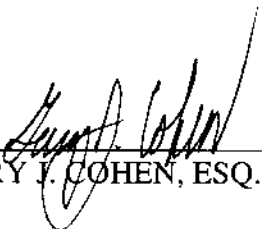
1. Waive the prohibition on change of development site in order to permit the change requested herein.

Respectfully Submitted,

By:   
GARY J. COHEN, ESQ.  
Florida Bar No. 353302  
SHUTTS & BOWEN LLP  
201 South Biscayne Boulevard  
1500 Miami Center  
Miami, Florida 33131  
(305) 347-7308

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Sherry Green, Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.

  
GARY J. COHEN, ESQ.

**SURVEYOR CERTIFICATION**

Name of Development: Pine Haven

Address of Development Site: Dr. Mary McLeod Bethune Blvd. northwest of the intersection of Dr. Mary McLeod Bethune Blvd. and Rose Ave.

The undersigned Florida licensed surveyor confirms that the method used to determine the following latitude and longitude coordinates conforms to Rule 61G17-6, F.A.C.:

State the Tie-Breaker Measurement Point. Tie-Breaker Measurement Point means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites which comprise the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than 4 units.	Latitude			Longitude		
	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)
	29	12	31.4	81	02	15.7

If the Development consists of Scattered Sites, is a part of the boundary of each parcel located within 1/2 mile of the Tie-Breaker Measurement Point?  Yes  No (check one)  
 Scattered Sites for a single Development means a Development consisting of more than one parcel in the same county where two or more of the parcels (i) are not contiguous to one another or are divided by a street or easement and (ii) it is readily apparent from the proximity of the sites, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.

Location of closest Public Bus Stop or Metro-Rail Stop	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)

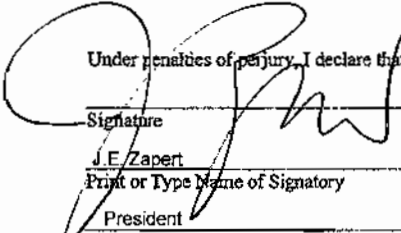
State the name, Address and latitude and longitude coordinates of the closest service(s) on the chart below. The latitude and longitude coordinates for each service must represent a point that is on the doorway threshold of an exterior entrance that provides direct public access to the building where the service is located. If there is no exterior public entrance to the service, then a point should be used that is at the exterior entrance doorway threshold that is the closest walking distance to the doorway threshold of the interior public entrance to the service.

Grocery Store: Name - <u>Pearson's Grocery</u> Address - <u>856 Orange Avenue</u> <u>Daytona Beach, FL 32114-4770</u>	Latitude			Longitude		
	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)
	29	12	07.5	81	02	00.0
Public School: Name - <u>Bonner Elementary</u> Address - <u>868 George W. Ingram Blvd.</u> <u>Daytona Beach, FL 32114-1859</u>	29	12	47.4	81	02	22.5
Medical Facility: Name - _____ Address - _____	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)
Pharmacy: Name - <u>The Medicine Shoppe</u> Address - <u>864 Orange Avenue</u> <u>Daytona Beach, FL 32114-4770</u>	29	12	06.9	81	02	01.9

If Florida Housing discovers that there are any false statements made in this certification, Florida Housing will forward a copy to the State of Florida Department of Business and Professional Regulation for investigation.

**CERTIFICATION**

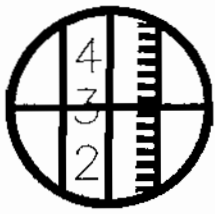
Under penalties of perjury, I declare that the foregoing statement is true and correct.

  
 Signature \_\_\_\_\_ Date 8/17/07  
J.E. Zapert  
 Print or Type Name of Signatory  
 President  
 Print or Type Title of Signatory  
 4046  
 Florida License Number

Siger & Associates, Inc.  
 Name of Surveyor  
3921 Nova Road  
 Address  
Port Orange, FL 32127  
388-761-5385  
 Telephone Number (including area code)

This certification may not be signed by the Applicant, by any related parties of the Applicant, or by any Principals or Financial Beneficiaries of the Applicant. If the certification is inappropriately signed, the Application will not receive proximity tie-breaker points. If this certification contains corrections or "white-out", or if it is scanned, imaged, altered, or retyped, the Application will fail to meet threshold and will be rejected. The certification may be photocopied.





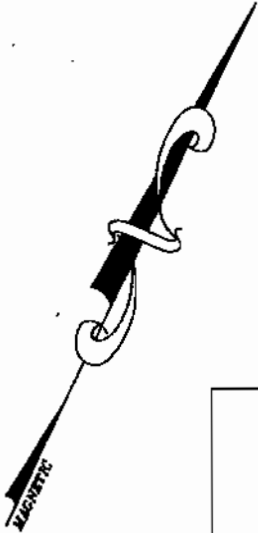
# SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

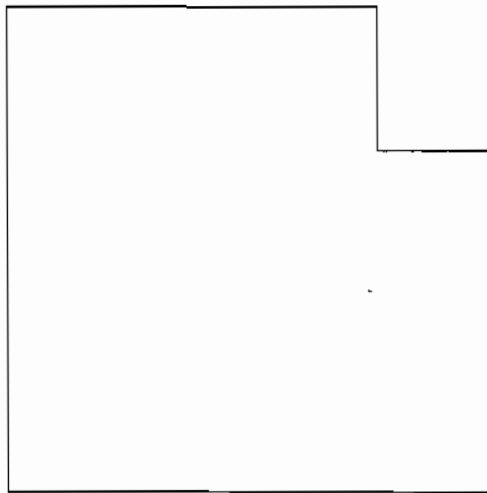
LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD  
PORT ORANGE, FL. 32127  
(386) 761-5385

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www.sligerassociates.com



PEARSON'S GROCERY  
856 ORANGE AVENUE  
DAYTONA BEACH, FLORIDA 32114-4770



ENTRANCE  
29° 12' 07.5" N  
81° 02' 00.0" W

REVA STREET

ORANGE AVENUE

SPECIFIC PURPOSE SURVEY  
NOT A BOUNDARY SURVEY

FOR: PICERNE DEVELOPMENT CORPORATION

DESCRIPTION: SKETCH TO SHOW LOCATION OF ENTRANCE TO  
SERVICE AS NOTED. LATITUDE & LONGITUDE ARE NAD 83 FLORIDA  
EAST ZONE, ACQUIRED USING DUAL FREQUENCY GPS RECEIVER

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

I HEREBY CERTIFY THAT THIS PLAT  
MEETS THE MINIMUM TECHNICAL  
STANDARDS SET FORTH BY THE  
FLORIDA BOARD OF PROFESSIONAL  
LAND SURVEYORS IN CHAPTER  
61G17-6, FLORIDA ADMINISTRATIVE  
CODE, PURSUANT TO SECTION  
472.027, FLORIDA STATUTES.

J.E. ZAPERT, P.L.S. NO. 4046  
STEVEN T. KRUGER, P.L.S. NO. 4722  
C.O. VAN KLEECK JR., P.S.M. NO. 614  
MICHAEL S. MURPHY, P.S.M. NO. 6208



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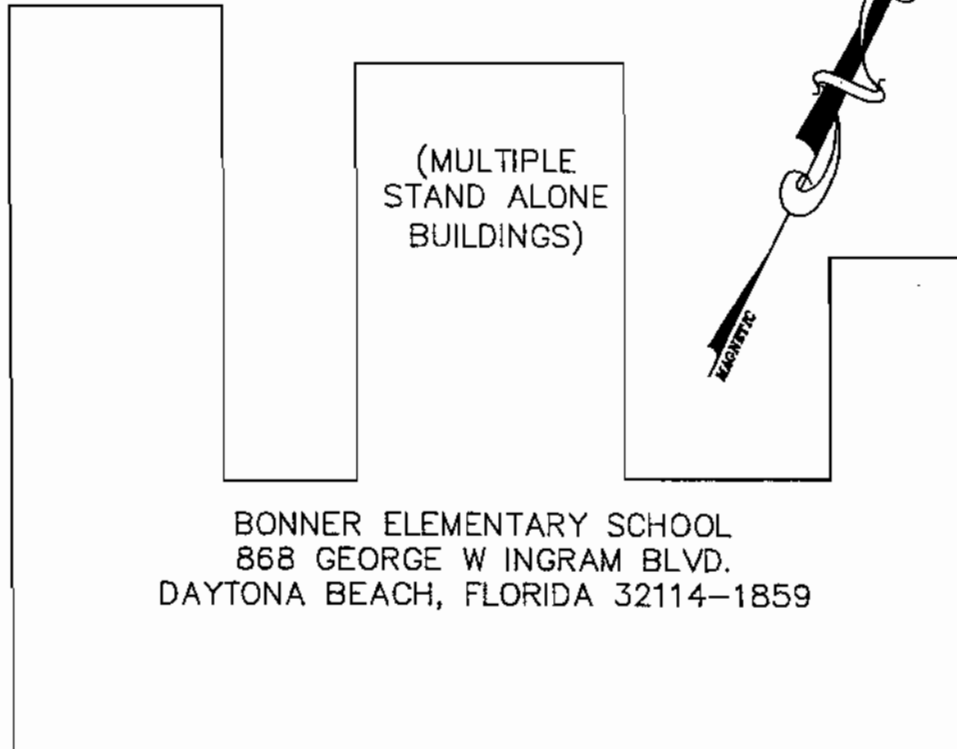
PORT ORANGE, FL. 32127

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LAURA STREET



MAIN ENTRANCE  
 29° 12' 47.4" N  
 81° 02' 22.5" W

GEORGE W INGRAM BLVD.

SPECIFIC PURPOSE SURVEY  
 NOT A BOUNDARY SURVEY

FOR: PICERNE DEVELOPMENT CORPORATION

DESCRIPTION: SKETCH TO SHOW LOCATION OF ENTRANCE TO  
 SERVICE AS NOTED. LATITUDE & LONGITUDE ARE NAD 83 FLORIDA  
 EAST ZONE, ACQUIRED USING DUAL FREQUENCY GPS RECEIVER

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

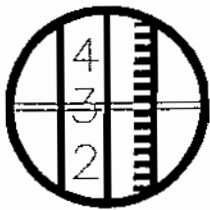
I HEREBY CERTIFY THAT THIS PLAT  
 MEETS THE MINIMUM TECHNICAL  
 STANDARDS SET FORTH BY THE  
 FLORIDA BOARD OF PROFESSIONAL  
 LAND SURVEYORS IN CHAPTER  
 61G17-6, FLORIDA ADMINISTRATIVE  
 CODE, PURSUANT TO SECTION  
 472.027, FLORIDA STATUTES.

J.E. ZAPERT, P.L.S. NO. 4046  
 STEVEN T. KRUGER, P.L.S. NO. 4722  
 C.O. VAN KLEECK JR., P.S.M. NO. 6149  
 MICHAEL S. MURPHY, P.S.M. NO. 6208

SCALE NONE

SHEET 1 OF 1

JOB NO. 07-1193



# SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

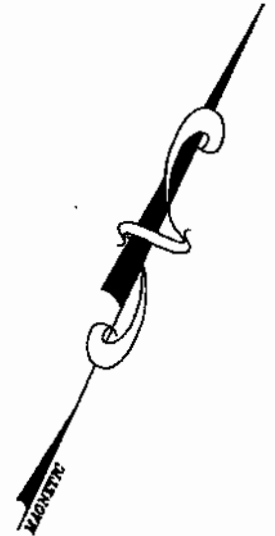
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PORT ORANGE, FL. 32127

(386) 761-5385

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S. ADAMS STREET



ENTRANCE

29° 12' 06.9" N

81° 02' 01.9" W

THE MEDICINE SHOPPE  
864 ORANGE AVENUE

DAYTONA BEACH, FLORIDA 32114-4770

ORANGE AVENUE

SPECIFIC PURPOSE SURVEY  
NOT A BOUNDARY SURVEY

FOR: PICERNE DEVELOPMENT CORPORATION

DESCRIPTION: SKETCH TO SHOW LOCATION OF ENTRANCE TO SERVICE AS NOTED. LATITUDE & LONGITUDE ARE NAD 83 FLORIDA EAST ZONE, ACQUIRED USING DUAL FREQUENCY GPS RECEIVER

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

I HEREBY CERTIFY THAT THIS PLAT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61G17-8, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

J.E. ZAFER, P.L.S. NO. 4046

STEVEN T. KRUGER, P.L.S. NO. 4722

C.O. VAN KLEECK JR., P.S.M. NO. 61

MICHEAL S. MURPHY, P.S.M. NO. 620

SCALE NONE

SHEET 1 OF 1

JOB NO. 07-1193