

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2006-041C

HIGHLAND GARDENS DEVELOPMENT, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

**PETITION FOR WAIVER OF PART III.D.1.f. OF THE 2006 UNIVERSAL
APPLICATION INSTRUCTIONS TO PROVIDE SPECIFIC FEATURES IN UNITS
DEVELOPED FOR ELDERLY RESIDENTS**

Petitioner Highland Gardens Development, Ltd., a Florida limited partnership (“Highland Gardens”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the requirement to provide specific flooring in units developed for elderly residents. *See* Part III.D.1.f., 2006 Universal Application Instructions (the “Rule”).

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Highland Gardens requests a waiver of the Rule to allow for the use of non-skid ceramic floor tile (“Non-Skid Flooring”) in lieu of tight-napped Berber-type carpet (“Carpet”).

A. THE PETITIONER

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

Highland Gardens Development, Ltd.
c/o PHG-Highland, LLC
Attention: David O. Deutch
9400 South Dadeland Boulevard, Suite 100
Miami, Florida 33156
Telephone: 305-854-7100
Facsimile: 305-859-9858

3. The name, address, telephone and facsimile numbers, and e-mail address of Highland Gardens' attorney, for purposes of this Petition, are:

Mimi L. Sall, Esquire
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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4. Pursuant to the 2006 Combined Universal Cycle, Highland Gardens submitted its Universal Application for Housing Credits under the Low Income Housing Tax Credit program. *See* Application No. 2006-041C.

5. Florida Housing has issued its Preliminary Allocation of Housing Credits reserved in the amount of \$1.5 million, and it is anticipated that there will be a Final Housing Credit Allocation granted to Highland Gardens in accordance with Florida Housing's final allocation procedures.

6. Equity raised from Housing Credits will be used for the development of Highland Gardens, Phase II, a new 100-unit apartment development (the "Development") intended to serve very-low and low-income elderly individuals in Deerfield Beach, Broward County, Florida.

7. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Highland Gardens; (b) could deprive Broward County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

8. The waiver being sought is permanent in nature.

B. Rule from Which Relief is Requested and Statute Implemented by the Rule

9. Highland Gardens requests a waiver of Part III.D.1.f. of the Universal Application Instructions, which provides as follows:

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 all units in new construction (NC) and Rehabilitation/Substantial Rehabilitation (SR) Developments.

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

Tight-napped Berber-type carpet...

10. The applicable Rule¹ for which the waiver is requested is implementing Florida Housing Finance Corporation Act's statute that created the Housing Credits Program. §

¹ Pursuant to Rule 67-48.004(1)(a), F.A.C. (2006), the 2006 Universal Application Instructions are incorporated into Rule Chapter 67-48.

420.5099, Fla. Stat. (2006).² The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits. §§ 420.5099(1) and (2), Fla. Stat. (2006). Accordingly, the Rule that is the subject of Highland Gardens' waiver request is implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2006).

C. Justification for Highland Gardens' Requested Waiver

11. Pursuant to the Rule, Carpet is required in all units intended to serve the elderly populace. However, as a result of its experience in developing affordable housing units, the developer for the Development has found that Non-Skid Flooring, an upgraded amenity for which the developer will bear the increased cost, allows for greater mobility by elderly individuals who rely on walkers, wheelchairs, and other forms of assistance to ambulate within their residential units.

12. Additionally, whereas carpeting can accumulate, dust, molds, bacteria, and other pollutants that can effect 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.

13. 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.

² The Florida Housing Finance Corporation Act (the "Act") is set forth in Sections 420.501 through 420.516 of the Florida Statutes. *See also* Rule 67-40.020(1), F.A.C. (2006).

14. Because the use of Carpet is a threshold requirement for an Application seeking Housing Credits for developments designated for elderly residents, a waiver is necessary to permit the use of Non-Skid Flooring. However, the requested waiver will not prejudice the Development or the affordable housing market to be served by the Development, and will provide upgraded features and amenities within the units for the Development's elderly residents.

D. Conclusion

15. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 100 affordable housing units will be available for the elderly population in Broward County, Florida.

16. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant.

17. The requested waiver serves the purposes of Section 420.5099, Florida Statutes (2006), and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§ 420.5099(2), Fla. Stat. (2006).

18. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing for the elderly. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act through new construction in an economical and efficient manner, as well as providing safer, upgraded features and amenities within residential units developed for elderly residents.

19. Should Florida Housing require additional information, Highland Gardens is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Part III.D.1.f. of the 2006 Universal Application Instructions to Provide Specific Features in Units Developed for Elderly Residents.

WHEREFORE, Petitioner Highland Gardens Development, Ltd., respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

A. Waive Part III.D.1.f. of the 2006 Universal Application Instructions that requires the use of tight-napped Berber-type carpet in residential developments for the elderly, and allow the use of non-skid ceramic floor tile by Highland Gardens in its Development; and

B. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
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By: 
MIMI L. SALL

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, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 21st day of August, 2007.

By: Mimi Sall
Mimi L. Sall