

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2005-053C

BHG-79th St., LLC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(14)(e) TO CHANGE
THE SITE OF THE VILLA PATRICIA DEVELOPMENT**

Petitioner BHG-79th St., LLC, a Florida limited partnership (“BHG”), petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of restrictions on changing a development site. *See* Rule 67-48.004(14)(e), Florida Administrative Code (2005) (the “Rule”).

1. Pursuant to Section 120.542, Fla. Stat. (2006) and Rules 28-104.001 through 28-104.006, F.A.C. (2006), BHG requests a waiver of the Rule to allow for a change of its development site.

A. THE PETITIONER

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

BHG-79th St., LLC
Attention: Liz Wong
2950 S.W. 27th Avenue, Suite 200
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

3. The name, address, telephone and facsimile numbers, and e-mail addresses of BHG's attorneys, for purposes of this Petition, are:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
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Mimi L. Sall, Esquire
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4. Pursuant to the 2005 Combined Universal Cycle, BHG submitted its 2005 Universal Application ("Universal Application") for housing tax credits ("Housing Credits") under the Low Income Housing Tax Credit program. *See* Application No. 2005-053C.

5. Equity raised from Housing Credits was to be used for the development of 160 very-low and low-income individual and household tax credit units for the Development, with 80% of the units reserved for the elderly. The Development would serve individuals and elderly families in Miami, Miami-Dade County, Florida.

6. Florida Housing issued its Preliminary Allocation of Housing Credits reserved in the amount of \$2,368,500.

7. As a consequence of the impact of Hurricane Wilma, Florida Housing also offered additional funding through its SAIL Program's Hurricane Wilma Go-Zone SAIL Cycle (RFP 2006-04) ("Wilma Go-Zone Funding"). BHG submitted its request for Wilma Go-Zone Funding to Florida Housing, and was awarded a preliminary commitment for a loan of up to \$1,800,000.

8. However, as a result of matters outside its control, including but not limited to, increased construction costs as a consequence of the 2004 and 2005 hurricane seasons, BHG filed Petitions for a variance of Paragraph 11 of the 2005 Qualified Allocation Plan, and waivers of the restrictions on changing number of units and funding under Rules 67-48.004(j) and 67-48.004(14)(m), F.A.C. (2005). *See* FHFC Case Nos. 2006-60 through 063VW.

9. On October 20, 2006, Florida Housing granted the Petitions and provided, in part, for (a) the return of BHG's 2005 Housing Credit allocation and a binding commitment for an allocation of 2007 Housing Credits; (b) the reduction in the total number of units from 160 to 125; (c) reduction of Housing Credits from \$2,368,500 to \$1,850,390; and (d) reduction of Wilma Go-Zone funding from \$1,800,000 to \$1,562,500.

10. It is anticipated that there will be a Final Housing Credit Allocation in the amount of \$1,850,390 granted to BHG in accordance with Florida Housing's usual final allocation procedures, and disbursement of Wilma Go-Zone funding in the amount of \$1,562,500.

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

12. The waiver being sought is permanent in nature.

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

13. BHG requests a waiver of Rule 67-48.004(14)(e). As applied to applications for Housing Credits, the Rule identifies certain non-curable matters and includes the following:

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 ...
Those items are as follows:

(e) Site for the Development;

14. The applicable Rule for which the waiver is requested is implementing Florida Housing Finance Corporation Act's statute that created the Housing Credits Program. § 420.5099, Fla. Stat. (2004).¹ 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. (2004). Accordingly, the Rule that is the subject of BHG's 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. (2004).

¹The 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).

C. Justification for BHG's Request to Change Its Development's Site

15. BHG's Development is the first phase of a three-phase project of affordable housing units in Miami-Dade County, Florida.²

16. When BHG submitted its Universal Application, it intended that the entire project would consist on two phases. However, it has been determined that a three-phase project could be developed on the property.

17. The purpose of this Petition, is to change only the Development's legal description by, in essence, separating and carving out its legal description from the entire three-phase project's description, and to meet City of Miami site plan requirements. The location of the Development will not be changed, and its Tie-Breaker Measurement Point ("TBMP"), identified in Exhibit 25 to BHG's Universal Application, remains within the Development's modified legal description. *See* Amended Surveyor Certification and revised legal description attached hereto as Exhibits A and B, respectively.

18. Additionally, because the Development's TBMP remains the same, the 7.5 Proximity Tie-Breaker Points awarded to BHG would not have changed.

19. The requested change to the Development's legal description would not have impacted the scoring of BHG's Universal Application and request for Wilma Go-Zone Funding, and would not have provided BHG with an unfair advantage over other applicants.

² Simultaneously with the filing of this Petition, Villa Patricia Phase II, LLC, and Villa Patricia Phase III, LLC, the applicants for the second and third phases of the project, are filing their Petitions for Rule Waivers to change the sites of the Villa Patricia II and Villa Patricia III Developments. *See* Application Nos. 2006-060C and 2006-348CHR.

20. The requested waiver will not prejudice the Development or the affordable housing market to be served by the Development, and may result in a savings of construction and development costs.

D. Conclusion

21. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 125 affordable housing units will be available in Miami-Dade County, Florida.

22. 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. Florida Housing generally approves such waivers when it would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage. § 420.5099(2), Fla. Stat. (2006).

23. 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).

24. 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. 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.


25. Should Florida Housing require additional information, BHG is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.004(14)(e) to Change the Site of the BHG Development.

WHEREFORE, Petitioner BHG-79th St., LLC, respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

- A. Waive the prohibition on changing a development's site location after submission of the Universal Application;
- B. Allow the BHG Development to be developed on the site identified in Exhibit B to this Petition; and
- C. Award such further relief as may be deemed appropriate.


Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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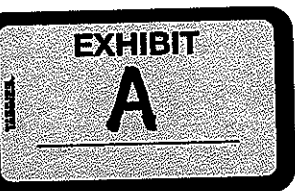
By:  _____
MIMI L. SALL

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 24th day of September, 2007.

By: 
Mimi L. Sall

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2007 UNIVERSAL CYCLE - SURVEYOR CERTIFICATION

Name of Development: Villa Patricia I

Development Location: * 234-42 NE 79th St, Miami, FL 33138

(As a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, corner designated intersection and city)

* If the Development consists of Scattered Sites, the Development Location stated above must reflect the site where the Tri-Block Measurement Point is located

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.:

Location of closest Public Bus Stop or Metro Rail Stop	Latitude		Longitude	
	Degrees	Minutes	Degrees	Minutes
<u>N25</u> Degrees <u>50</u> Minutes	<u>50.9</u> Seconds (truncated after 1 decimal place)	<u>W 80</u> Degrees <u>11</u> Minutes	<u>80.2</u> Seconds (truncated after 1 decimal place)	

State the name, address and latitude and longitude coordinates of the closest service(s) on the street below. The latitude and longitude coordinates for each service must represent a point that is on the driveway fronted by 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 during the survey. The closest walking distance to the driveway threshold of the service public entrance to the building.

Service Name	Latitude		Longitude	
	Degrees	Minutes	Degrees	Minutes
<u>Price Supermarket</u>	<u>N 25</u> Degrees	<u>51</u> Minutes	<u>W 80</u> Degrees	<u>11</u> Minutes
<u>3600 Biscayne Blvd, Miami, FL 33138</u>				
<u>Public School</u>	<u>N</u> Degrees	<u></u> Minutes	<u>W</u> Degrees	<u></u> Minutes
<u>Address -</u>				
<u>Medical Facility</u>	<u>N 25</u> Degrees	<u>50</u> Minutes	<u>W 80</u> Degrees	<u>11</u> Minutes
<u>Name - Centro Medico (CMA Clinic)</u>				
<u>Address - 8000 Biscayne Blvd, Miami, FL 33138</u>				
<u>Pharmacy</u>	<u>N</u> Degrees	<u></u> Minutes	<u>W</u> Degrees	<u></u> Minutes
<u>Name -</u>				
<u>Address -</u>				

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

CERTIFICATION - Under penalty of perjury, I declare that the foregoing statement is true and correct.

09/24/2007

Date (mm/dd/yyyy)

Sea Diversified Inc.

Name of Surveyor

4549

Florida License Number

561-243-4920

Telephone Number (including area code)

1200 NW 17th Ave., Suite 3

Address

Delray Beach, FL 334452

Address

Vice President

Title of Signatory

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 preliminary title-block status. If this certification contains corrections or "white-out", or if it is scanned, imaged, altered, or copied, the Application will not receive preliminary title-block status and will fail to meet threshold. The Application may still be eligible for automatic review. The certification may be photocopied.

DESCRIPTION

Villa Patricia Phase 1

A parcel of land, being a portion of Tract "A", **VILLA PATRICIA**, according to the Plat thereof, as recorded in Plat Book 166, page 61 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

BEGIN at the northeast corner of said Tract "A" as shown on said Plat; thence along the easterly and southerly lines of said Tract "A", the following eight (8) courses: thence South 00°01'08" West, 131.00 feet; thence South 89°59'22" East, 40.80 feet; thence South 00°01'08" West, 10.00 feet; thence North 89°59'22" West, 1.00 feet; thence South 00°01'08" West, 94.00 feet; thence North 89°59'22" West, 50.00 feet; thence South 00°01'08" West, 105.29 feet; thence South 89°53'38" West, 16.35 feet; thence North 00°06'22" West, 33.50 feet; thence South 89°53'38" West, 198.38 feet; thence North 00°01'08" East, 176.24 feet; thence South 89°59'22" East, 80.00 feet to a corner of said Tract "A"; thence along a westerly line of said Tract "A", North 00°01'08" East, 131.00 feet to a corner on the North line of said Tract "A"; thence along said line, South 89°59'22" East, 145.00 feet to the Point of Beginning.

Said lands lying and situate in Miami-Dade County, Florida, and containing 1.4362 acres (62,563 square feet) more or less, and subject to all easements and Rights-of-Way of record.

