

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CREATIVE CHOICE HOMES XXVIII, LTD.,

Petitioner,

vs.

FHFC Case No.: 2010-003
Application No.: 2002-026CS

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____ /

**PETITION FOR VARIANCE FROM OR WAIVER FROM
APPLICATION (2002 CYCLE) SECTION III D. 1. f**

Petitioner, CREATIVE CHOICE HOMES XXVIII, LTD., through its undersigned counsel, hereby petitions the Respondent, FLORIDA HOUSING FINANCE CORPORATION (hereinafter the "FHFC"), pursuant to Section 120.542(2), Florida Statutes, Rule 67-48.002(116), Florida Administrative Code (2002) and Universal Application (2002 Cycle) III D. 1. f. to request that an order be entered granting a variance or waiver from the provision of the Land Use Restriction Agreement and the Extended Use Agreement requiring that roll-in showers be provided in 15% of the New Construction units, but allowing that 5%

of that requirement could be met with walk-in shower stalls with a permanently affixed seat. In support of its Petition, Creative Choice Homes states:

1. Petitioner is Creative Choice Homes XXVIII, Ltd. (hereinafter "Creative Choice Homes"), which is also known as Marina Del Ray Apartments. Marina Del Ray Apartments is located at 265 Fathom Loop, Beverly Hills, Citrus County, Florida 34465. Creative Choice Homes received a State Apartment Incentive Loan ("SAIL") and Low Income Housing Credit ("HC") from the FHFC in the 2002 cycle, Application No. 2002-026CS. For purposes of this proceeding, the contact information for Petitioner shall be that of its attorneys:

Pamela C. Marsh and J. Martin Hayes
AKERMAN SENTERFITT
106 E. College Ave, Suite 1200
Tallahassee, Florida 32301
Telephone: (850) 224-9634
Facsimile: (850) 222-0103

2. Section 120.542(2), Florida Statutes, states that variances and waivers shall be granted when a person subject to the rule demonstrates that the purpose of the underlying statute has been achieved by other means and the application of the rule will create a substantial hardship or would violate the principals of fairness. Such is the case in this matter.

3. This variance or waiver is sought pursuant to Rule 67-48.002(116), Florida Administrative Code (2002) which incorporates by reference the Universal Application (2002 Cycle) Section III D. 1. f.

4. The applicable statutory provisions pursuant to which this variance or waiver is sought are Sections 420.5087 and 420.5099, Florida Statutes, which is the statutory authority for Rule 67-48.002(116).

5. Creative Choice Homes requests that a variance be granted from the provision of the Land Use Restriction Agreement and Extended Use Agreement and Universal Application (2002 cycle) Section III. D. 1. f. requiring that roll-in showers will be provided in 15% of the New Construction units. The complex at Marina Del Ray Apartments was completed and has been occupied since 2004. At the time of this filing, Marina Del Ray Apartments is fully occupied.

6. It has recently been determined by the FHFC's Compliance Monitor that there should be 14 roll-in shower units and 1 walk-in shower stall with a permanently affixed seat. There are currently 10 roll-in shower units and 5 walk-in shower stalls with permanently affixed seats.

7. Consistent with the construction approved by the FHFC, there are 100 units at Marina Del Ray Apartments. The specific language contained in Exhibit B

to the Land Use Restriction Agreement and the Extended Use Agreement and the Universal Application (2002 Cycle) Section D. 1. f. provides:

Roll-In Showers* will be provided in **15%** of [New Construction] units and 10% of [rehabilitation/substantial rehabilitation ("SR")] units. **5%** of this requirement may be met with walk-in type shower stalls with permanently affixed seat.

*NOTE: This requirement may be waived in SR Developments if installation is determined to be not feasible as documented by a registered architect.

[See Attachment 1 to this Petition.]¹

8. The current discrepancy resulted due to a misunderstanding of the proper calculation of the percentages contained in the above-quoted language, and was not intentional or the result of any decision made in bad faith. Creative Choice Homes always intended to comply with the specifications contained in the contracts, and believed it was in full compliance with the specifications at all times. More specifically, Creative Choice Homes believed the proper calculation was as follows: 15% of 100 units is 15 units. 5% of 100 units is 5. As a result, Creative Choice Homes constructed 10 units with roll-in showers, and 5 units with walk-in showers with permanently affixed seats.

¹ The requirements in Exhibit "B" to both Agreements are precisely the same. To avoid duplication, Creative Choice Homes only attached one copy of Exhibit B to its petition as Attachment 1.

9. The FHFC calculated the percentages differently. According to the FHFC, the 5% should be applied to the 15% of the units, not to the total number of units. As a result, proper calculation should be as follows: 15% of 100 units is 15 units. 5% of 15 units is .75, rounded up to 1. The FHFC asserts that there should be 14 roll-in showers, and only 1 walk-in shower with a permanently affixed seat in the complex. As a result, the discrepancy has resulted from an inadvertent difference in interpretations regarding the application of the percentages contained in the contract terms.

10. A variance or waiver of the number of roll-in shower requirements serves the purpose of the FHFC goal of providing safe, affordable housing to citizens of Florida. The grant of the variance or waiver is appropriate due to the circumstances surrounding the long ago completed and fully occupied units. A registered architect prepared a memorandum describing the significant work that would be required for the apartments to be remodeled in accordance with the FHFC's interpretation of the above provisions. His memorandum is attached to this Petition and is identified as Attachment 2. The architect also prepared an estimate of the costs associated with bringing the showers into full compliance, which is provided in Attachment 3 to this Petition. The estimate submitted in Attachment 3 does not, however, include costs of lost revenue or the costs

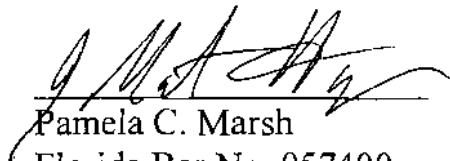
associated with relocating current tenants during any reconstruction work. Those costs are estimated in Attachment 4 to this Petition.

11. Perhaps most importantly, the reconstruction efforts required to comply with the FHFC's interpretation of the contract terms would impose substantial hardship on the elderly tenants. As mentioned above, the complex at Marina Del Ray Apartments is now fully occupied and is currently providing safe, affordable housing to its elderly tenant population in accordance with the purposes of the FHFC statute. Remodeling would require the displacement of at least four tenants for a significant period of time. This displacement could have profound effects on the tenants' physical and/or mental health. As a practical matter, even where a roll-in shower stall is available, a tenant has to make a transfer from a typical wheelchair to a shower-friendly wheelchair. The transfer from a wheelchair to the permanently affixed shower seat – already currently provided by the walk-in shower – does not require a substantially different effort by the tenant. Creative Choice Homes respectfully submits that the potential monetary and human costs significantly outweigh the need for renovation under the circumstances, and not granting the variance will create a substantial hardship on the residents of Marina Del Ray Apartments. Therefore, granting the variance

request furthers the purpose of the FHFC by providing safe and affordable housing to elderly citizens of Florida.

WHEREFORE, Petitioner, Creative Choice Homes XXVIII, Ltd., requests that the Respondent, Florida Housing Finance Corporation, enter an order granting a variance or waiver from the requirements of Section 67-48.002(116), Florida Administrative Code (2002), and Universal Application (2002 Cycle) Section III D. 1. f. so as to allow the continued use and occupancy of the Marina Del Ray Apartments.

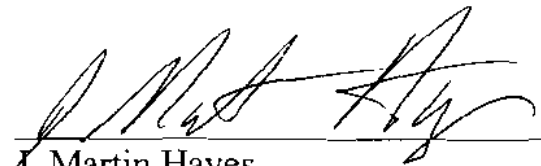
Respectfully submitted,



Pamela C. Marsh
Florida Bar No. 057400
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Florida Bar No. 0971766
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing has been furnished by hand delivery to the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, a copy by hand delivery to Wellington H. Meffert, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, and a copy by U.S. Mail to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 22nd day of January, 2010.



J. Martin Hayes

EXHIBIT "B"
MARINA DEL RAY APARTMENTS (2002-026CS)
DESCRIPTION OF FEATURES AND AMENITIES

A. The Development will consist of:

100 garden apartment units located in 4 residential buildings.

Unit Mix:

Sixty-six (66) one bedroom / one bath units comprised of
approximately 765 sq. ft

Four (4) two bedroom / one bath units comprised of
approximately 1,005 sq. ft

Thirty (30) two bedroom/ two bath units comprised of
approximately 1,005 sq. ft

100 Total units

B. Each unit will be fully equipped with the following:

1. Air conditioning (window units are not allowed, however, through-wall units are permissible for rehabilitation)
2. Window treatments for each window
3. Termite prevention and pest control throughout the entire affordability period
4. Exterior lighting in open and common areas
5. Cable or satellite TV hook-up in all units
6. Range, oven, and refrigerator in all units
7. At least two full bathrooms in all three bedroom or larger new construction units
8. Bathtub with shower in at least one bathroom in new construction non-elderly units

C. The Applicant has committed to provide the following features in each new construction unit:

1. Ceramic tile bathroom floors in all new construction units
2. Microwave oven in all new construction units

EXHIBIT "B"
MARINA DEL RAY APARTMENTS (2002-026CS)
DESCRIPTION OF FEATURES AND AMENITIES

3. *Marble window sills in all new construction units*
4. Steel exterior entry door frames in all new construction units
5. Dishwasher in all new construction units
6. Garbage disposal in all new construction units
7. Emergency call service in all new construction units

D. The Applicant has committed to the following amenities in the Development:

1. 30 Year expected life roofing on all buildings
2. Exercise room with appropriate equipment
3. Community center or clubhouse
4. Swimming pool
5. Car care area (for cleaning/washing)
6. Outside recreation facility: Shuffleboard court

E. Elderly requirements:

The following will be provided in all units:

1. Thermostat placed at 48" maximum height.
2. Tight-napped Berber-type carpet.
3. 36" wide entrances on all exterior doors.
4. All wall electrical outlets placed at 18" to 24" above the floor.
5. Scald control valves on shower faucet.
6. Fire retardant window treatments.
7. Peephole at 4' 10" on all exterior doors.
8. Toggle type switches for all lights, fans, etc.

EXHIBIT "B"
MARINA DEL RAY APARTMENTS (2002-026CS)
DESCRIPTION OF FEATURES AND AMENITIES

9. Adjustable shelving in master bedroom closets.
10. Lever action handles on all doors in units and public areas.
11. Horizontal grab bars around shower per ANSI requirements.

The following will be provided in at least fifteen percent (15%) of the units:

12. Roll-in showers (5% of this requirement may be met with walk-in type shower stalls with permanently affixed seat).
13. Horizontal grab bars around toilet per ANSI requirements.

F. The Applicant has committed to provide the following energy conservation features for all buildings in the Development:

1. Heat pump with minimum HSPF of 7.4 instead of electric resistance
2. Air conditioning with SEER rating of 12 or better
3. Electric water heater with Energy factor of .91 or better
4. Wall insulation of R-13 or better for frame-built construction or wall insulation of R-7 or better for masonry/concrete block construction
5. Attic insulation of R-30 or better
6. Ceiling fans in all bedrooms and living area

G. The Applicant has committed to provide the following Resident Programs:

1. Daily Activities: Borrower or its Management Agent must provide on-site supervised, structured activities, at no cost to the resident, at least five days per week.
2. Resident Assurance Check-In Program: Borrower commits to provide and use an established system for checking in with each resident on a pre-determined basis not less than once per day, at no cost to the resident. Residents may opt out of this program with a written certification that they choose not to participate.
3. Manager On-Call 24 Hours Per Day: Borrower must provide management personnel on the Development's premises at all times who will be available and accessible to the residents 24 hours per day, seven days per week, at no cost to the resident.

EXHIBIT "B"
MARINA DEL RAY APARTMENTS (2002-026CS)
DESCRIPTION OF FEATURES AND AMENITIES

4. **Health Care:** At least quarterly visits by health care professionals such as nurses, doctors, or other licensed care providers. At a minimum, the following services must be provided: health screening, flu shots, vision and hearing tests. Regularly scheduled is defined as not less often than once each quarter. On-site space must be provided. Service must be provided at no cost to the residents, with the exception that the residents may be charged for medications.
5. **Resident Activities:** These specified activities are planned, arranged, provided and paid for by the Borrower or its Management Agent. These activities must be an integral part of the management plan. The Borrower must develop and execute a comprehensive plan of varied activities that brings the residents together and encourages community pride. The goal here is to foster a sense of community by bringing residents together on a regularly scheduled basis by providing activities such as holiday and special occasion parties, community picnics, newsletters, children's special functions, etc.
6. **Health and Nutrition Classes:** At least eight hours per year, provided on site at no cost to the residents.
7. **Computer Lab:** The Borrower or its Management Agent must provide an area on-site, at no cost to the resident, with a minimum of one computer per 50 units, with basic word processing, spreadsheets and assorted educational and entertainment software programs. At least one printer must also be provided.

BOB SNOW ASSOCIATES

Florida Architect Firm AA3531

Robert P. Snow, RA ~ Principal

Florida Registration AR 13179

4243 Northlake Blvd. ~ Palm Beach Gardens, FL 33410 [bob@creativechoice.net]
(561)627-3210 x13 fax (561)627-5116 cell (772)214-5293

MEMO

date: 4 November 09
to: Jason Larson, CCH
from: Bob
project: Marina Del Ray - Beverly Hills, FL
subject: roll-in shower issue

This senior housing development was permitted in 2004. Attached is the original accessible units breakdown.

Total accessible showers are 15% or 15. The project has 15. [9 - 1 BR & 6 - 2 BR]
Under proposed interpretation, need 14 roll-in & 1 transfer type.
I suggest creating 3 - 1 BR & 1 - 2BR units to meet this interpretation. (For the record, I do not agree with this interpretation.) This balance approximates the 66% one bedroom, 34% 2 bedroom mix.

The existing accessible showers are all on the first floor. Two reasons, we could slope the concrete floor to the floor drain & potential leaks would not cause problems on units below. Proposed additional roll-in showers should be located on the first floor for the same reasons.

This will require cutting & demolishing existing concrete slabs on grade. This is very expensive & messy work that will prevent tenant use for a month. Clean up and preparing the apartment for the tenant to return will also be a major challenge.

One Bedroom Units

To enlarge the shower space for a roll-in shower will eliminate the MBR closet. A new one, with adjustable shelf & rod, must be built within the existing Master Bed Room. The existing shower area must be totally demolished including partitions & plumbing and entirely rebuilt.

Two Bedroom Units

The area between the 2 showers has a number of pipes, which will all have to be relocated. The whole floor must be demolished & concrete repoured to create slopes to floor drain. All the piping must be relocated. The roll-in shower must face & be included in Bath 1. Bath 2 would become a half bath.

NEGATIVE RESULTS

One Bedroom Units - 1. relocate tenant, including furniture, 2. reduce size of existing Master Bedroom, 3. spend a lot of construction & cleaning money as well as lost rent, 4. second tenant disruption by moving them back after work complete.

Two Bedroom Units - 1. relocate tenant, including furniture, 2. remove shower from Master Bath, (reducing 2 bath unit to a 1 & $\frac{1}{2}$ bath unit) 3. spend a lot of construction & cleaning money as well as lost rent, 4. second tenant disruption by moving them back after work complete.

Robert P. Snow, RA

marina del ray

Beverly Hills, Florida

Construction began in 2004

bldg	1 BR	2 BR	1 BR	2 BR	1 BR	2 BR	total
			roll-in	roll-in	access.	access.	
A	14	13	1	2	1	1	32
B	24	8	3	0	1	0	36
C	1	7	1	2	0	1	12
D	18	0	1	0	1	0	20
	57	28	6	4	3	2	100

ACCESSIBLE UNITS BREAKDOWN

	req. %	req. #	provided	Bldg. A	Bldg. B	Bldg. C	Bldg. D
handicapped shower units	5%	5	5	2	1	1	1
roll-in shower units	10%	10	10	3	3	3	1
TOTALS	15%	15	15	5	4	4	2

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5-Nov-2009

Marina Del Ray

Budget Estimates

Convert basic apartment into roll-in shower style

ONE BEDROOM

WORK	DETAILS	BUDGET COST	TIME
demolition	45 SF shower piping & fittings closet 15 SF sawn concrete SOG carpet	\$850	1 week
remove & reinstall	bi-fold door closet adj. rod & shelf shower drain carpet pad	\$350	x
roll-in shower	shower pan & 15 SF conc. ceramic tile surface 70 SF cement backer board & tile wainscot	\$2,250	2 weeks
partition	16 LF	\$450	x
carpet	25 SY bedroom	\$500	x
plumbing & accessible fixtures	assume same location new head, hose, track, mixing valve 5 LF rod & shower curtain grad bars & soap dish	\$600	1 week
permit, hauling, dump charge.		\$350	

subtotal		\$5,350	1 month	
O.H. + Profit	assume 20%	\$1,070		
TOTAL		\$6,420	2 months	add move out, cleaning, etc. rent loss

TWO BEDROOM


WORK	DETAILS	BUDGET COST	TIME	
demolition	25 SF 2 showers add'l piping & fittings 15 SF sown concrete SOG carpet	\$850	1/2 week	coordinate with plumbing from above units
remove & reinstall	1 shower drain	\$150	x	
roll-in shower	shower pan & 15 SF conc. ceramic tile surface 70 SF cement backer board & tile wainscot	\$2,250	2 weeks	
partition	10 LF	\$250	x	
plumbing & accessible fixtures	new fittings location new head, hose, track, mixing valve relocated piping from above 5 LF rod & shower curtain grad bars & soap dish	\$1,100	1-1/2 weeks	
permit, hauling, dump charge.		\$250		
subtotal		\$4,850	1 month	
O.H. + Profit	assume 20%	\$970		
TOTAL		\$5,820	2 months	add move out, cleaning, etc. rent loss

TABULATION PER my 4 November 09 Memo to Jason

3 - 1 BR	\$6,420 X 3 =	\$19,260
1 - 2 BR	\$5,820 X 1 =	\$5,820
Architect Fee including inspections		\$5,500
Owner Property Mgr. coordination		\$4,250
TOTAL COST minus lost revenue		<u>\$34,830</u>

8 months lost revenue x to be provided by Owner

MEMORANDUM

TO: PAMELA MARSH
FROM: JASON LARSON 
SUBJECT: MARINA DEL RAY - RESIDENT DISPLACEMENT AND LOST RENTAL INCOME IN
CONJUNCTION WITH DEMO, REDISIGN, AND CONSTRUCTION OF ROLL IN SHOWER
UNITS
DATE: 11/6/2009

Pamela,

Per our architects November 4, 2009 memo regarding the cost associated with reconfiguring the bathrooms of 3 one bedroom and 1 two bedroom units from a shower with seat to a roll-in shower, I am putting below an estimate as to the cost associated with lost rent and relocation expenses.

Because we remain 100% occupied, these costs are very relevant.

It is also important to realize that because our residents are elderly, the stress of moving can be greater than that of a more youthful resident.

Monthly Rental Income One Bedroom unit:	\$460
Monthly Rental Income Two Bedroom Unit:	\$528
10 Months Lost Rental Income One Bedroom:	\$4,600
10 Months Lost Rental Income Two Bedroom:	\$5,280
10 Months Lost Rental Income 4 Units:	\$19,080
Moving Expenses Per Unit:	\$1,500
Moving Expense Total 4 Units:	\$6,000
Total Moving and Lost Revenue Cost:	\$25,080