

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
FHFC CASE NO. 2010-029YW
Application No. 2006-A-247B

AMERICAN OPPORTUNITY FOR HOUSING-
GREENVIEW MANOR, LP.

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION

Respondent

**PETITION FOR VARIANCE FROM OR WAIVER OF THE PORTION OF
PART III.D.1.F OF THE UNIVERSAL APPLICATION (2006) INSTRUCTIONS THAT
REQUIRE THE PROVISION OF HORIZONTAL GRAB BARS AROUND SHOWERS
AND TOILETS THAT COMPLY WITH ANSI REQUIREMENTS**

Petitioner, American Opportunity for Housing-Greenview Manor, LP (“AOH/Greenview”), pursuant to Section 120.542, Florida Statutes, requests that the Florida Housing Finance Corporation (“FHFC”) enter an order granting a variance or waiver from the provisions in FHFC’s Universal Application (2006 Cycle) and Instructions Part III.D.1.f., which require “Horizontal grab bars around shower per ANSI requirements” and “Horizontal grab bars around toilet per ANSI requirements” for classification as Elderly housing. In support of its Petition, AOH/Greenview states:

1. The Petitioner is AOH/Greenview, a Florida limited partnership, with its principal office located at 7334 Blanco Road, Suite 200, San Antonio, Texas 78216, telephone (210) 341-8097.

2. However, for purposes of this proceeding, Petitioner may be contacted through its counsel, David C. Ashburn, Greenberg Traurig, LLP, 101 East College Avenue, Tallahassee, Florida 32301, telephone (850) 222-6891, facsimile (850) 681-0207.

3. This Petition is in furtherance of AOH/Greenview's efforts to provide affordable housing to the elderly in a project known as "Greenview Manor Apartments" located at 1212 Burlington Avenue North and 241, 301 and 320 13th Street North, St. Petersburg, Florida 33705, as described in the Universal Application No. 2006-A-247B (the "AOH/Greenview Application").

4. The AOH/Greenview Application was filed in December 2006 for the FHFC program described in Part II, Section A.1. of the Universal Application as "Housing Credits (HC) [non-competitive 4% with Tax-Exempt Bonds]."

5. The variance or waiver is sought relative to Rule 67-48.004, Florida Administrative Code (2006), which incorporates by reference FHFC's Universal Application (2006 Cycle) and Instructions (the "Universal Application").

6. The applicable statutory provisions pursuant to which this Petition relates are Sections 420.5087, 420.5089 and 42.5099, Florida Statutes, which provide statutory authority for Rule 67-48.004, Florida Administrative Code.

7. By this Petition, AOH/Greenview seeks a variance from or waiver of the strict application of the portions of Part III.D.1.f. of the Universal Application, which require "Horizontal grab bars around shower per ANSI requirements" and "Horizontal grab bars around toilet per ANSI requirements" for classification as Elderly housing. Those requirements are hereinafter referred to as the ANSI Grab Bar Requirements.

8. Recognizing that, “Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances” the Florida Legislature enacted Section 120.542, Florida Statutes, which provides that Florida state agencies “shall” to grant variances or waivers from their rules upon a demonstration, “that the purpose of the underlying statute will be or has been achieved by other means . . . and when application of a rule would create a substantial hardship or would violate principles of fairness.”¹

9. As will be demonstrated herein, this Petition should be granted because strict application of the ANSI Grab Bar Requirements will lead to unreasonable, unfair, and unintended results if applied to Greenview Manor Apartments. Moreover, the purpose of the underlying statute will be achieved by other means.

10. As further demonstrated herein, strict application of the ANSI Grab Bar Requirements to the Greenview Manor Apartments will create a substantial hardship on AOH/Greenview, both economically and technologically.

11. Greenview Manor Apartments is a 52 unit apartment complex designated as low income housing for the elderly. The complex is comprised of eight single story buildings that were originally developed by a prior owner in 1982. It includes 42 one bedroom, one bathroom units, four 2 bedroom/1 bathroom units and six 1 bedroom/1 bathroom units modified for handicap accessibility.

12. Following acquisition of Greenview Manor Apartments in 2005, the property was refinanced in December 2007 with permanent acquisition and rehabilitation funding provided by tax exempt bonds, a SHIP Loan through the City of St. Petersburg and tax credits.

¹ Sec. 120.542(2), Fla. Stat., provides: “For purposes of this section, substantial hardship means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the waiver or variance.”

13. Beginning in 2008, AOH/Greenview undertook substantial rehabilitation of Greenview Manor Apartments. The substantial rehabilitation was completed in 2009, despite certain structural aspects of the complex that constrained those efforts.

14. Among such constraints are the size of the apartment unit bathrooms and the configurations of lavatories, showers and toilets within those bathrooms. The width of each unit bathroom is 60 inches, and the bathrooms are configured such that the toilet is situated between the lavatory and the bathtub. See **Exhibit A**, which depicts the dimensions and layout of the unit bathrooms, and **Exhibit B**, which is a picture of one of the unit bathrooms.

15. Since there is no sidewall adjacent to the toilets in the unit bathrooms, an ANSI compliant side grab bar would have to be free-standing, floor mounted and extend 54 inches, thereby effectively preventing access to the bathtub.

16. As a result, in the typical unit bathroom at Greenview Manor Apartments, the only way to provide a side grab bar that complies with the applicable provisions of ANSI A117.1-1986 (and all subsequent editions to date), would be to switch the location of the toilet and lavatory so that the toilet is located adjacent to the side wall to which the lavatory is now adjacent. Such relocation of toilets would require the of new toilet waste lines.

17. The cost of the described relocation of toilets, lavatories, waste lines and associated work would exceed \$250,000. See, **Exhibit C**, cost proposal from Chelsea Builders, Inc. evidencing costs on a per unit basis. Incurring that cost would be a substantial hardship on AOH/Greenview, and would render it financially infeasible to make Greenview Manor Apartments available as affordable housing.²

² Due to the fact that the Greenview Manor Apartments are currently almost occupied, the described renovations would also constitute a substantial hardship for residents.

18. Faced with the infeasibility of installing ANSI compliant grab bars in the Greenview Manor Apartments, AOH/Greenview conferred with FHFC staff to determine an appropriate alternative. As a result of those discussions with FHFC staff, AOH/Greenview instead installed grab bars, one of which is shown in the picture attached as **Exhibit B**. Specifications for those grab bars are set forth in **Exhibit D**. The grab bars installed by AOH/Greenview provide benefits substantially equivalent to grab bars that comply with ANSI Grab Bar Requirements.

19. The granting of the variance or waiver sought by this Petition is consistent the purpose of the Fair Housing Act to ensure the availability of affordable housing for elderly residents. Additionally, a denial of this Petition could deprive Pinellas County elderly residents of affordable housing that meets safety and functionality requirements.

20. FHFC has generally approved similar waiver or variance petitions when doing so did not affect the scoring of an application or otherwise allow an applicant to obtain an unfair competitive advantage. The granting of the variance or waiver sought in this Petition will not affect the scoring of AOH/Greenview's Application, nor provide AOH Greenview with an unfair competitive advantage, especially in light of AOH/Greenview's installation of the grab bars described in paragraph 18 above.

21. In sum, the granting of this Petition is compelled by: (a) the fact that doing so is consistent with the purpose of the Fair Housing Act to promote the availability of affordable housing to elderly Florida residents; and (b) the substantial hardship the AOH/Greenview would suffer if strict compliance with the ANSI Grab Bar requirements is required.

WHEREFORE, American Opportunity for Housing-Greenview Manor, LP, requests that the Florida Housing Finance Corporation:

- A. Consider this Petition in conjunction with AOH Greenview's Application;
- B. Grant this Petition and all relief requested herein;
- C. Grant a variance or waiver from the ANSI Grab Bar Requirements in Universal Application Part III.D.1.f; and
- D. Grant such further relief as may be appropriate.

Respectfully submitted this 9th day of August, 2010.

GREENBERG TRAURIG, P.A.

101 East College Avenue
Post Office Drawer 1838
Tallahassee, FL 32302
Telephone (850) 222-6891
Facsimile (850) 681-0207



DAVID C. ASHBURN
Fla. Bar No. 0708046

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing has been furnished by Hand Delivery to the Florida Housing Finance Corporation Clerk, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, and a true and correct copy of same by electronic mail to Wellington H. Meffert, Florida Housing Finance Corporation General Counsel at Wellington.Meffert@floridahousing.org., and a true and correct copy by U.S. Mail to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 9th day of August, 2010.



DAVID C. ASHBURN

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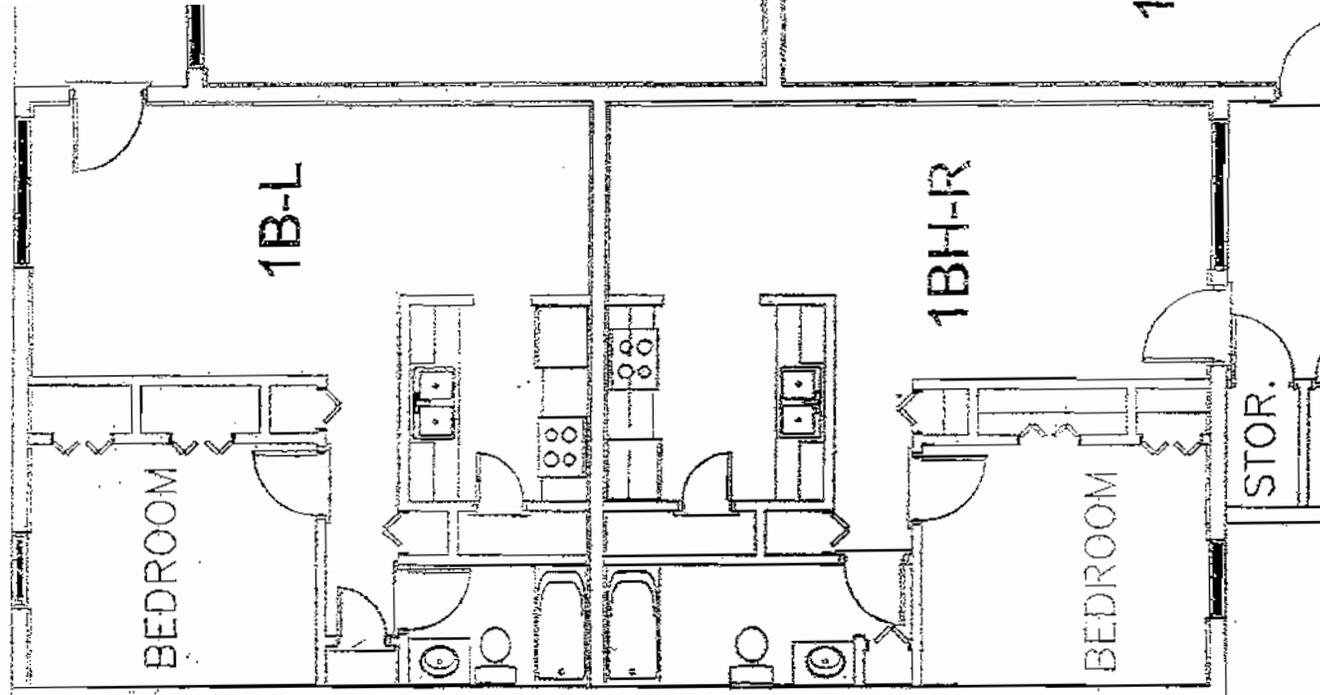
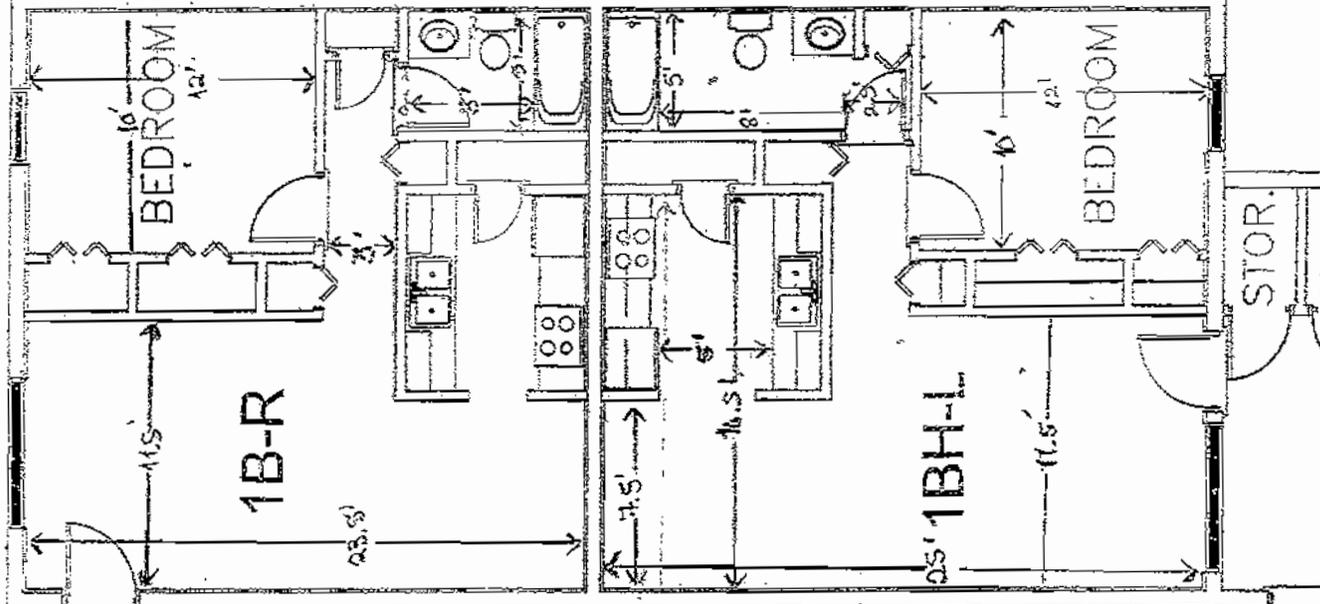
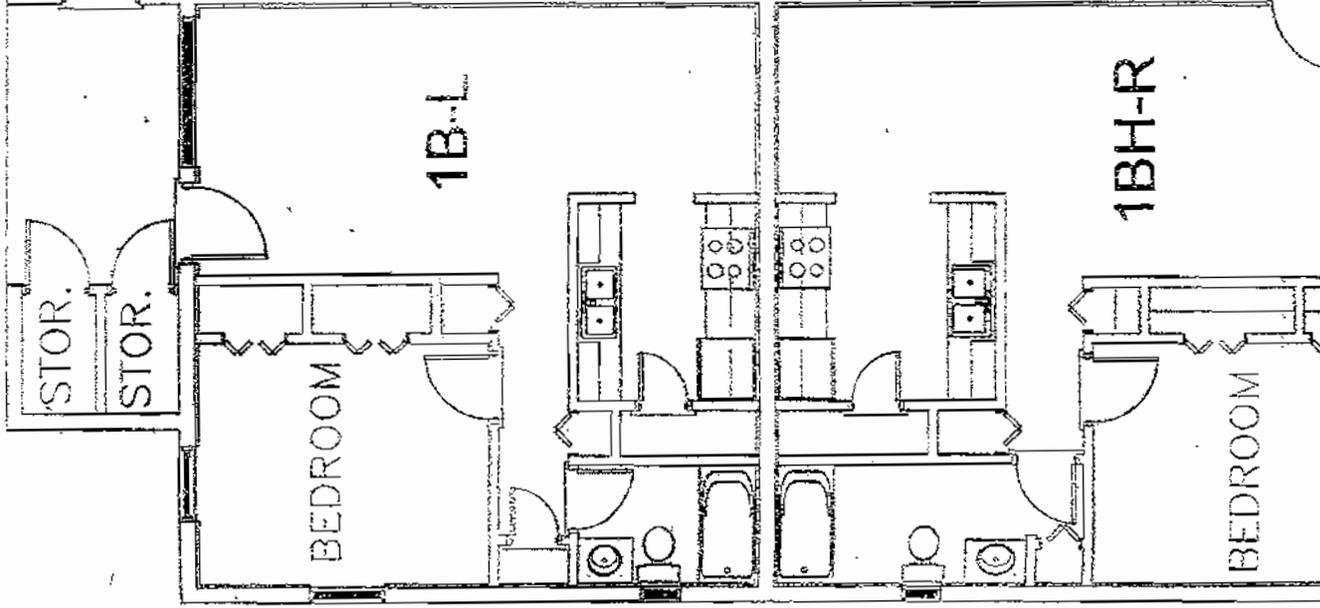




Exhibit B

LICENSED

CBC059557

INSURED



UNIQUE REDESIGNS OF INTERIOR SPACES FOR BETTER LIVING

Phone: 727.573.2200

11813 44th. Street North, Suite 5 · Clearwater, FL 33762

Fax: 727.573.1523

NAME: A O H	PHONE: (210) 341-8097	JOB/CELL PHONE:	DATE: 8/6/2010
STREET: 7334 Blanco Road, Suite 200		JOB NAME: Greenview Manor Apartments	
CITY: San Antoino	STATE: TX	ZIP: 78218	LOCATION: St Petersburg FL.

Remove existing bath door and frame ✓
 Supply and install new out swing door and frame
 Remove water closet and vanity
 Reverse locations of both water closet and vanity
 Cut concrete floor Relocate plumbing to facilitate moving water closet
 Open wall and relocate plumbing to accommodate new vanity location
 Supply and install new V C T flooring
 Reinstall vanity cabinet
 Reinstall water closet
 Repaint entire bath including new door

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, flood, tornado, and other necessary insurances.

Authorized Signature _____

Four Thousand Nine Hundred Fifty \$ 4950.00

Payments to be made as follows:
 Balance upon completion

Acceptance of Proposal

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to go the work as specified. Payments will be made as outlined above.

Date of Acceptance: _____

Signature: _____

Signature: _____

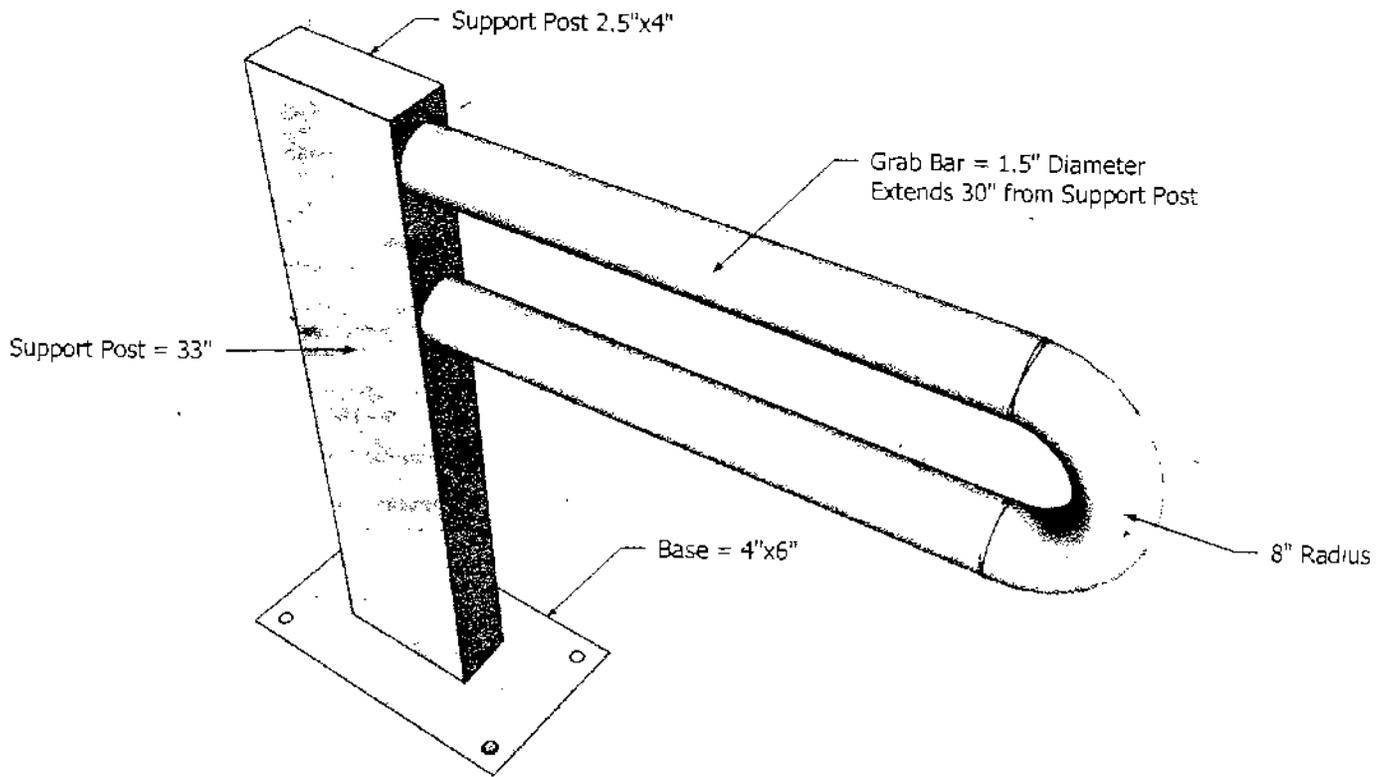


Exhibit D