

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2013-006VW
Application No. 2011-050C

DANTE FASCELL PRESERVATION, LLC

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF SECTION III (B) (1) (b)
OF INSTRUCTIONS AND CHAPTER 67-48**

Petitioner, Dante Fascell Preservation, LLC, a Florida limited liability company (“DFP”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the requirement to provide a full size range in the kitchen of the units located in the Development (as defined below). *See* 2011 Universal Application Instructions, Housing Credit Program, Part III, Section B(1)(b) (the “Instructions”) and Chapter 67-48, Florida Administrative Code (the “Rule”).

Pursuant to Section 120.542, Fla. Stat., and Rule 28-104.002, DFP requests a waiver of the Rule to allow for the use of a smaller 24-inch wide range (“Alternative Range”) in lieu of a full sized 30-inch range (“Required Range”) in the redeveloped units in the Development.

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for DFP and its qualified representative are:

Dante Fascell Preservation, LLC
c/o RUDG, LLC
Attention: Alberto Milo, Jr.
315 South Biscayne Boulevard
Miami, Florida 33131
Telephone: 305-460-9900
Facsimile: 305-460-9911
E-mail: amilo@relatedgroup.com

2. The name, address, telephone and facsimile numbers, and e-mail address of DFP's attorney, for purposes of this Petition, are:

Brian McDonough, Esquire
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
Facsimile: 305-789-3395
E-mail: bmcdonough@stearnsweaver.com

3. In 2011, DFP applied for low-income housing tax credits from Florida Housing pursuant to the 2011 Universal Cycle. *See* Application No. 2011-050C. The Universal Application package has been adopted and incorporated into Chapter 67-48 by Rule 67-48.004(1)(a), F.A.C. (2011). DFP received an allocation of low income housing tax credits from Florida Housing.

4. DFP has closed on the financing and housing credit syndication which will provide funds for the renovation of 151 units intended to serve low-income persons in Miami-Dade County, Florida (the "Development").

4. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to DFP by requiring new electrical panels to be installed and a significant redesign of the kitchens in the Development; (b) would deprive residents in the Development of a workable kitchen with proper

counter space and a kitchen drawer; (c) could deprive Miami-Dade County of essential, affordable housing units in a timely manner; and (d) would violate principles of fairness¹. § 120.542(2), Fla. Stat. (2011).

6. The waiver being sought is permanent in nature.

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

7. DFP requests a waiver of Part III, Section B (1) (b) of the Instructions, that provides as follows:

Part III. Proposed Development...

B. Construction Features and Amenities...

1. Required General Features and Amenities for All Developments (Threshold)....

b. All Units in ALL Developments Excepts SRO:...

- Full-size range, oven and Energy Star qualified refrigerator in all units.

C. Justification for Requested Waiver

8. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of

¹ “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Section 120.542(2), Florida Statutes.

fairness,² and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2011).

9. In this instance, DFP meets the standards for a Rule waiver.

10. Pursuant to the Rule, a full size range is required in all units within all developments receiving funding in the 2011 Universal Cycle. However, the electrical consultant for the Development has concluded that if the Required Range were used in the units, the kitchen would not be as usable as if the Alternate Ranges were installed, because (i) the kitchen area within the rehabilitated units did not allow for a range the size of the Required Range, (ii) the use of the Alternative Range will allow for a functioning kitchen with increased usable kitchen countertop space, (iii) the Alternative Range will allow DFP to meet Florida Housing's requirement of at least one drawer in the kitchen of each unit, whereas, the Required Range would necessitate the elimination of the drawer and (iv) the Required Ranges would increase the electrical load in each unit by as much as ten percent (10%), thereby requiring a new electrical panel and other electrical upgrades in each unit which is not feasible or necessary, as a practical matter. The Alternate Ranges have four burners and an oven of sufficient capacity to service the units, which will not be occupied by more than two persons. A copy of the range comparison provided by the Development's electrical consultant is attached hereto as Exhibit "A".

11. Like the Required Ranges, the Alternative Ranges contain a full oven and four burners, which is more than adequate for the residents of the units. Use of the Alternate Ranges will alleviate the need for substantial revisions to the plans for the Development's renovations and thereby ensure timely delivery of the renovated units for occupancy by residents.

² "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Rule Section 120.542(2), Florida Statutes (2009).

12. Because the use of Required Ranges is a requirement for all units in the Development, a waiver is necessary to prevent DFP from being in default under the Rule.

D. Conclusion

13. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2011).

14. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 151 affordable housing units will be available for the target population in Miami-Dade County, Florida.

15. However, a denial of the requested waiver could result in a substantial hardship for DFP, which would be unable to provide a usable, accessible kitchen with adequate countertop space for its residents, or would be required to revise the kitchen layout and make significant electrical upgrades, resulting in delay in providing the renovated units for occupancy.

16. The requested waiver serves the purposes of Section 420.5099, Florida Statutes (2011), and the Florida Housing Finance Corporation Act (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. (2011).

17. 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 rehabilitation projects in an economical and efficient manner, as well as providing practical features and amenities within residential units developed for low-income residents.

18. Should Florida Housing require additional information, DFP is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Part III, Section B(1)(b) of the Instructions and Chapter 67-48.

WHEREFORE, Petitioner Dante Fascell Preservation, LLC, respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

- A. Grant the Petition and all relief requested herein;
- B. Waive the Rule's requirement for the use of full size ranges and allow DFP to use 24-inch ranges in the units in the Development; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

By: _____


BRIAN J. MCDONOUGH, ESQ.

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, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 3rd day of May, 2013.

By: _____


Brian J. McDonough, Esq.

JBS15M GE® 30" Free-Standing Electric Range

Dimensions and Installation Information (in inches)

KW Rating	
240V	10.2
208V	7.7
Breaker Size	
40 Amps†	

†Note: Check local codes for required breaker size. Effective January 1, 1996, the National Electrical Code requires that new construction (not existing) utilize a 4-conductor connection to an electric range.

Receptacle Locations: Locally approved flexible service cord or conduit must be used because terminals are not accessible after range installation. See shaded area in drawing for location of electrical outlet box. Recommended outlet locations allow range to be installed directly against wall.

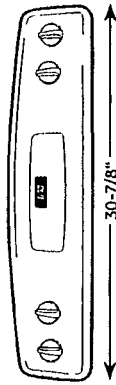
Note: 30" ranges conform to U.L. requirements for 0" spacing from adjacent walls below countertops. To reduce possibility of scorching walls, engineering recommends a minimum of 1-1/2" spacing to allow for possible extended, high-heat, no-load heating element operation.

Installation information: Before installing, consult installation instructions packed with product for current dimensional data.

For answers to your Monogram,® GE Profile™ or GE® appliance questions, visit our website at geappliances.com or call GE Answer Center® service, 800.626.2000.



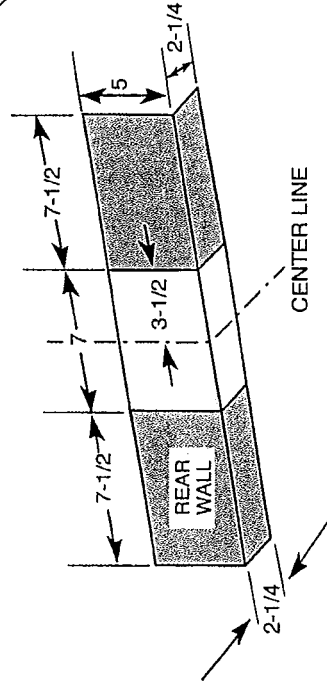
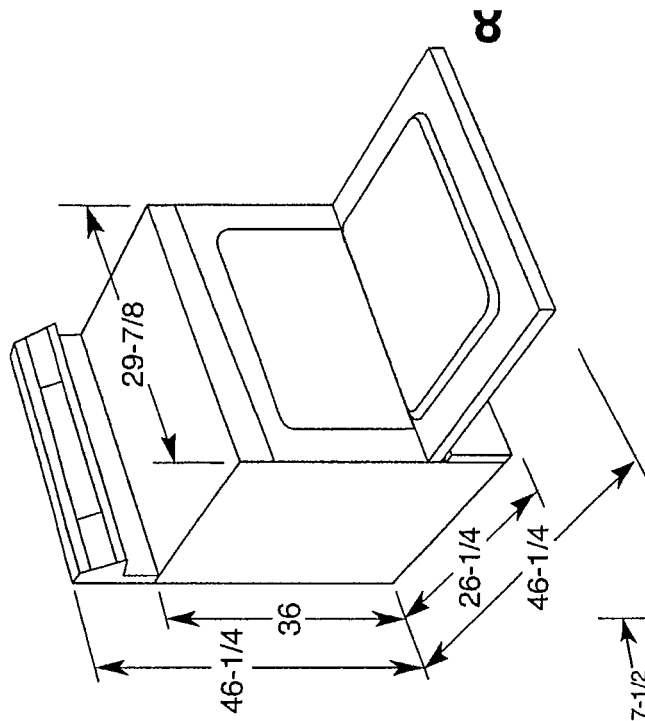
imagination at work



All 30" GE gas and electric range backguards are 30-7/8" wide.*

Note: 30" ranges conform to U.L. requirements for 0" spacing from adjacent walls below countertops. To reduce possible scorching of walls, engineering recommends a minimum of 1-1/2" spacing to allow for possible extended, high heat, no-load heating element operation.

*Except these models: JGBS07, JGBS04, JGBP90, all GE Profile free-standing electric and gas ranges
Fits most countertop splash applications.
Consult Use & Care Manual for detailed installation instructions.



*Dimension from wall to front of closed door handle is 27-3/4\"/>



All GE ranges are equipped with an Anti-Tip device. The installation of this device is an important required step in the installation of the range.

Listed by Underwriters Laboratories

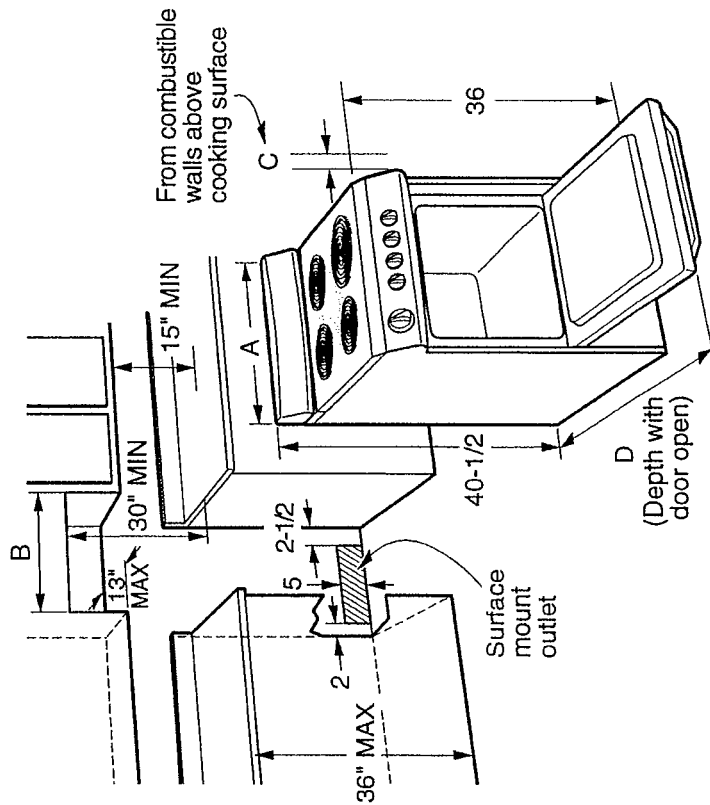
Specification Revised 9/10

322037

HOTPOINT®

RA724K – Hotpoint 24" Free-Standing Electric Range

Dimensions (in inches)



Models	A	B	C	D
20" Wide	20"	20-3/8"	(recommended) 2"	41"
24" Wide	24"	24-3/8"	2"	41"

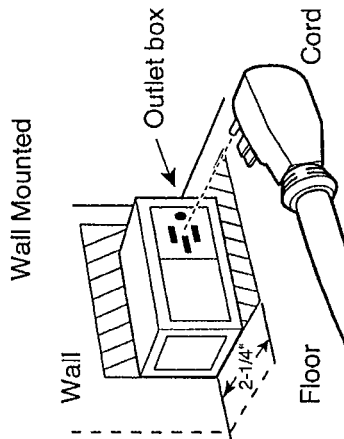
Specification Revised 11/06

420512

KW Rating	
240V	9.2
208V	6.9

Receptacle locations

Locally approved flexible service cord or conduit must be used because terminals are not accessible after range installation. See shaded area in drawings for location of electrical outlet box. Recommended outlet locations allow range to be installed directly against rear wall.



Recommended acceptable electrical outlet area. Orient the electrical receptacle so the length is parallel to the floor.



All GE ranges are equipped with an Anti-Tip device. The installation of this device is an important, required step in the installation of the range.