

**BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
CASE NO. _____**

LAKESIDE VILLAGE HOUSING, LTD., LLLP,

Petitioner,

Agency Case No.: 2007-009VW
Application No. 2005-031C
Lakeside Village

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

**PETITION FOR VARIANCE/WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004(14)(g)**

Pursuant to Section 120.542, Florida Statutes, Rule 67-48.004(14)(g), Florida Administrative Code ("FAC") and Rule 28-104.001 through 28-104.006, Florida Administrative Code ("FAC"), Petitioner, LAKESIDE VILLAGE HOUSING, LTD., LLLP ("Petitioner") requests the FLORIDA HOUSING FINANCE CORPORATION ("FHFC") to grant a waiver from the provisions of FAC Rule 67-48.004(14)(g) and to grant the relief requested herein. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file or identification number with respect to this matter is 2005-031C.

PETITIONER

2. The Petitioner is Lakeside Village Housing, Ltd., LLLP, a Florida limited liability limited partnership. The address of Petitioner is 247 Westmonte Drive, Altamonte Springs, FL 32714, telephone number (407) 772-0200 facsimile number (407) 773-0220. Petitioner's attorney is Gary J. Cohen, Esq., Shutts & Bowen LLP, whose address is 201 South Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308, facsimile number (305) 347-7808.

RULE WITH RESPECT TO WHICH A WAIVER IS SOUGHT

3. The Rule with respect to which a waiver is sought is FAC Rule 67-48.004(14), as in effect for the 2005 Universal Application Cycle pursuant to which Petitioner received an allocation of low-income housing tax credit authority. Rule 67-48.004(14) provides as follows:

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. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempt to changes to these items will not be accepted. Those items are as follows:

(g) Development Type.

TYPE OF ACTION REQUESTED

4. Petitioner requests that FHFC grant a waiver and variance from the provisions of FAC Rule 67-48.004(14)(g), as in effect and governing the 2005 Universal Application Cycle. The provisions of the foregoing Rule prohibit a change in Development Type. For the reasons

set forth below, compliance with the foregoing provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

FACTS

5. The specific facts that demonstrate a substantial hardship or a violation of principles of fairness which justify a waiver or variance for Petitioner, as requested above, are as follows:

(a) The original HC application filed by Petitioner reflected a 103 unit development. Petitioner selected the development type of “Other”, because less than 50% of the total units were comprised of any of the listed “development types” (garden, townhouse, etc.). In its original application, Petitioner had provided that 21 buildings would be “duplex/triplex/quadruplex” (containing 45 units), 8 buildings would be single family detached buildings (containing 8 units), in one building would be garden style (containing 50 units). On January 20, 2006, FHFC’s Board of Directors approved a change in the identity of the Petitioner’s developer and in Petitioner’s ownership structure, replacing its existing co-Developer (TCG Daytona Beach, LLC) with Picerne Affordable Development, LLC, and replacing its existing co-General Partner (South Street, LLC) with Picerne Lakeside Village, LLC.

(b) As a result of the change in developer (as set forth above) and the new developer’s review of the prior development plans, Petitioner has determined that the preliminary site plan and development type selected by the prior developer were unrealistic, given the set-back requirements applicable to the development site. As such, Petitioner has determined to change the development type from “other” (as more fully described above) to “townhouse”. As redesigned, the development will consist of 11 residential townhouse buildings

containing 103 units. The lesser number of buildings will permit more efficient utilization of the development site, with more realistic set-backs from the edges of such site and generally a less “dense” development. See attached Exhibit “A”.

(c) In light of the considerable time that it takes to develop and construct multi-family rental housing, FHFC’s statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. FHFC routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible competitive advantage.

6. The proposed changes to the Lakeside Village development would have had no impact on the application’s scoring, thus providing Petitioner with no advantage over its competitors.

7. FHFC’s approval of the requested waiver or variance would serve the purpose of the underlined Florida Statute, Section 420.5099, as well as the Federal Low-Income Housing Tax Credit Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of multi-family rental housing that is affordable to families of limited means. If the requested waiver or variance is granted, the tax credits in question will be used to fund a project for which there is a desperate need in the city of Daytona Beach, Florida, a neighborhood with respect to which affordable multi-family rental housing is particularly needed.

8. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14) would be as follows. Unless the foregoing request is granted, construction of the Lakeside Village complex cannot move forward. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious. In addition, the transaction must be completed and placed in service no later than December 31, 2007. Delay in continuation of construction of the Lakeside Village complex could place Petitioner in danger of failing to meet the foregoing “placed in service” deadline.

9. By granting a waiver and permitting Petitioner to change the development type, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent’s purpose by providing affordable housing, through new construction, in an economical and efficient manner.

10. The waiver being sought is permanent in nature.

RELIEF SOUGHT

11. The specific variance/waiver which Petitioner wishes Respondent to grant is to waive the requirements of Rule 67-48.004(14)(g) to permit a change in the development type from “other” to townhouse.

WHEREFORE, Petitioner respectfully requests FHFC:

1. Waive the prohibition on change of development type in order to permit a change from "other" to townhouse.

Respectfully Submitted,

By: 

GARY J. COHEN, ESQ.
Florida Bar No. 353302
SHUTTS & BOWEN LLP
201 South Biscayne Boulevard
1500 Miami Center
Miami, Florida 33131
(305) 347-7308

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Sherry Green, Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.

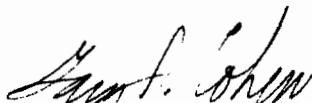

GARY J. COHEN, ESQ.

Exhibit A

February 12, 2007



PLANNING
ARCHITECTURE
INTERIOR DESIGN

Jorge Aguirre
PICERNE DEVELOPMENT
247 N. Westmonte Drive
Altamonte Springs, FL 32714

**RE: LAKESIDE VILLAGE
PROJECT NO: 05-1814**

Dear Mr. Aguirre:

Forum Architecture and Interior Design, Inc. reviewed the preliminary site plan available for Lakeside Village and found that it needed re-design. The proposed site plan was not in compliance with the existing zoning and setback requirements on the site, therefore unfeasible without having to resort to a lengthy rezoning and PUD process.

Because of the amount of space available for multi-family, the use of a "town home" type apartment design for the rental component was proposed in order to fit all the units required. This "town home" type manages to keep the scale of the buildings in line with the adjacent existing neighborhood as well as facing it with its individual entrances.

Sincerely,
FORUM ARCHITECTURE & INTERIOR DESIGN, INC.

A handwritten signature in black ink, appearing to read "Karen McIntyre".

Karen McIntyre
Project Manager

KM/mc