

STATE OF FLORIDA  
HOUSING FINANCE CORPORATION  
CASE NO.: 2007-0101W

VILLA SETON, INC.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

RECEIVED  
FEB 14 2007

VILLA SETON, INC.'S  
PETITION FOR WAIVER/VARIANCE OF FLORIDA  
ADMINISTRATIVE CODE RULE 67-48.002 (111)

Petitioner, Villa Seton, Inc. ("Villa Seton"), petitions Respondent, Florida Housing Finance Corporation ("Corporation") to grant a Waiver/Variance of 67-48.002 (111). Rule 67-48.002 (111) incorporates by reference the Universal Application and Instructions and all of its provision including the specific requirement that 15% of all units be equipped with roll-in showers. Villa Seton requests relief from solely the 15% roll-in shower requirement. In support of this Petition, VILLA SETON 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.

PETITIONER

2. The Petitioner is Villa Seton, Inc., a Florida non-profit corporation. The address of Petitioner is 3300 Chartwell Street, Port St. Lucie, Florida 34953, telephone number (772) 344-6969, facsimile number (772) 344-8474.

3. The Petitioner's attorney is Thomas H. Courtney, Esq., J. Patrick Fitzgerald, P.A., whose address is 110 Merrick Way, Suite 3-B, Coral Gables, FL 33134, telephone number (305) 443-9162, facsimile number (305) 443-6613.

#### RULE WITH RESPECT TO WHICH A WAIVER/VARIANCE IS SOUGHT

4. Petitioner requests a Waiver/Variance from Rule 67-48.002 (111), Florida Administrative Code. More specifically, Petitioner is requesting a Waiver/Variance from the provision of 67-48.002 (111) which incorporates the Universal Application and its Instructions and by reference, the elderly housing demographic commitment requirement that 15% of all units be equipped with roll-in showers.

5. Universal Application Instructions Part III, D, 1 (f) requires specific features as follows:

***Roll-In Showers\* will be provided in 15% of NC units and 10% of 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.***

Pertinent part attached as Exhibit A.

#### STATUTES IMPLEMENTED BY THE RULES

6. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, the provisions of Florida Statute Sec. 420.507 and 420.5089, which statute designates FHFC to establish and administer the HOME Program.

#### PETITIONER REQUESTS A WAIVER/VARIANCE FROM THE RULE FOR THE FOLLOWING REASON

7. Petitioner requests a Waiver/Variance from the strict requirements of the Universal Application Instructions requirement that 15% of new units be provided with roll-in showers. Villa Seton is a HUD 202 financed project for the elderly in St. Lucie County which was developed and constructed with HOME funds. The project is in full compliance with the

applicable strict guidelines of the Americans with Disabilities Act, the Architectural Barriers Act, the Uniform Federal Accessibility Standards, Section 504 of the Rehabilitation Act and the Fair Housing requirements.

8. The Petitioner completed the Universal Application and was aware of the requirement regarding roll-in showers at the time the project was constructed and in good faith attempted to come into compliance with the requirements. Petitioner calculated the roll-in shower requirement as follows:

50 unit apartment complex.  $15\% \times 50 \text{ units} = 7.5 \text{ units}$  requiring roll-in showers. However, pursuant to the Instructions, 5% of the requirement which could be met with walk-in type shower stalls with permanently affixed seats (5% of 50 units = 2.5 units). Or in other words, the 7.5 total unit requirement is satisfied by having 5 roll-in showers plus 2.5 walk-in type shower stalls with permanently affixed seats.

9. The plans and the above calculation were reviewed and approved by Consultech, a third party consultant, to ensure that all required elements and amenities identified in the Universal Application and Instructions were included. The project was constructed in accordance with the plans as reviewed.

10. Subsequent to the completion of the project, the Petitioner has been identified as being out of compliance.

11. The change will not adversely impact the Project for the following reasons:

- (a) The Project includes 5 roll-in units and 45 units with permanently affixed seats which are an acceptable alternative to traditional roll-in units.
- (b) The Universal Application Instructions recognizes that the roll-in shower requirement may be waived for substantial rehabilitation developments "if installation is determined to be not feasible as documented by a registered

architect." Although the project was not a rehabilitation project, the status of the project and any renovations at this juncture required by the miscalculation is tantamount to a rehabilitation. It is not feasible to reconfigure the apartments to provide roll-in showers and an acceptable and viable alternative is already provided.

- (c) Michael Schiff, the registered architect who designed the project, has determined that installation of roll-in showers is not feasible given the configuration of the units.
- (d) The continuity, progress and quality of the Project are not disrupted by the Waiver/Variance.

12. A pertinent statute relating to the granting of waivers provides:

**"Waivers shall be granted when the applicant demonstrates that the application of the rule would create a substantial hardship or would violate principles of fairness." (See Section 120.542(2) Florida Statute).**

The term "substantial hardship" is defined as a demonstrated economic, technological, legal and other type of hardship to the applicant. The hardship in this case is related to technological reasons, specifically the architectural infeasibility of redesigning the units to provide additional roll-in showers; for economic reasons, the prohibitive cost of redesigning, demolishing and reconstructing units; and most importantly, the legal and human toll of displacing residents who are already happily occupying units so that the units could be reconfigured.

**WAIVER/VARIANCE WILL SERVE THE UNDERLYING  
PURPOSE OF THE STATUTE**

13. Granting the requested Waiver/Variance would serve the purpose of Florida Statute Sec. 420.501, et seq. The Florida Housing Finance Corporation Act was enacted to encourage private and public investment in housing for persons of low income. The HOME Program was created to provide financing of non-luxury housing with suitable amenities which Villa Seton meets, by providing quality rental housing to the elderly.

14. The granting of the Waiver/Variance in no way would have affected the competitive bidding process nor scoring nor ranking of the various applicants for the Home Funds.

**NEXT TYPE OF WAIVER/VARIANCE**

15. The Waiver/Variance being sought is permanent in nature.

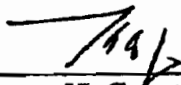
**RELIEF SOUGHT**

16. Petitioner requests that the Corporation grant the specific Waiver/Variance from Rule 67-48.002 (111) and to permit that the Universal Application Instruction requirement for roll-in showers be satisfied by the currently constructed mix of roll-in showers and walk-in showers with permanently affixed seats.

17. The Waiver/Variance would be permanent as to the Petitioner.

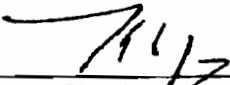
18. Grant such further relief as may be deemed appropriate.

RESPECTFULLY submitted this 13 day of February, 2007.

  
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 Thomas H. Courtney, Esquire  
 Florida Bar No.: 0098795  
 J. PATRICK FITZGERALD, P.A.  
 Attorneys for Petitioner  
 110 Merrick Way, Suite 3-B  
 Coral Gables, Florida 33134  
 Telephone: (305) 443-9162  
 Facsimile: (305) 443-6613

**CERTIFICATE OF SERVICE**

A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300; and the original and one copy to Sherry Green, Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, and via facsimile (850) 414-6548 on this 13 day of February, 2007.

  
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 Thomas H. Courtney, Esquire  
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 J. PATRICK FITZGERALD, P.A.  
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Evidence of appropriate zoning must be demonstrated for all property locations if the proposed Development has Scattered Sites. The verification must demonstrate that the zoning designation for the Development site was effective on or before the Application Deadline.

If the proposed Development is in the Florida Keys Area, proper execution of the Local Government Verification That Development Is Consistent with Zoning and Land Use Regulations Form or the Local Government Verification That Permits Are Not Required For This Development Form will constitute the Local Government's certification that the Applicant has obtained the necessary Rate of Growth Ordinance (ROGO) allocations from the Local Government.

**5. Environmental Site Assessment (Threshold)**

- a. Applicant must demonstrate that a Phase I Environmental Site Assessment (ESA) has been performed. The firm performing the ESA must certify that the review was performed in accordance with ASTM Practice #E1527-00. The properly completed and executed Verification of Environmental Safety – Phase I Site Assessment Form must be provided behind a tab labeled “Exhibit 33”.
- b. If the Phase I ESA disclosed potential problems on the proposed site and required or recommended a Phase II ESA, the firm that performed the Phase II ESA, even if it is the same firm that performed the Phase I ESA, must certify that the Phase II ESA has been performed in accordance with ASTM Practice #E1527-00. The properly completed and executed Verification of Environmental Safety – Phase II Site Assessment Form must be provided behind a tab labeled “Exhibit 34”.

**Note:** If the Phase I ESA and/or the Phase II ESA disclosed environmental problems requiring remediation, a plan, including time frame and cost, for the remediation is required. By answering the applicable questions and executing the Phase I and/or Phase II verification(s), the environmental provider is certifying that such plan has been prepared. In addition, by executing the Applicant Certification and Acknowledgement Form, the Applicant certifies that the plan has been prepared and the costs associated with such remediation have been included in the Development Cost Pro Forma submitted in this Application.

**D. Demographic Commitment (Threshold)**

Selection of the Elderly, Farmworker/Commercial Fishing Worker, or Homeless demographic commitment will be included in the Land Use Restriction Agreement(s) and/or Extended Use Agreement and must be maintained in order for the Development to remain in compliance, unless the Board approves a change.

In order to compete in the SAIL Elderly, SAIL Farmworker/Commercial Fishing Worker or SAIL Homeless Special Set-Asides (see Designation at Part V.), the Applicant must have also selected and qualified for the applicable Demographic Commitment in this section.

All Applicants must select one of the following demographic commitments. If an Applicant selects more than one commitment, fails to select a commitment, or fails to qualify for the selected commitment, the Application will be rejected.

1. Elderly

Indicate whether the proposed Development will be an Assisted Living Facility (ALF).

In order for a proposed Development to be classified as Elderly (ALF or non-ALF), the Development must meet the following requirements:

- a. A Non-ALF Development cannot consist of more than 160 total units, unless the proposed Development constitutes the Rehabilitation/Substantial Rehabilitation or Acquisition and Rehabilitation/Substantial Rehabilitation (Applicant selected the applicable Development Category at Part III.A.3.) of an existing, occupied elderly housing facility that is operating as an elderly housing facility as set forth in the Federal Fair Housing Act as of the Application Deadline. An ALF Development cannot consist of more than 100 total units; and
- b. Applicant understands, acknowledges and agrees that it will comply with the Federal Fair Housing Act requirements and rent at least 80% of the total units to residents that qualify as Elderly pursuant to that Act. Further, Applicant understands, acknowledges and agrees that all such units are subject to the income restrictions committed to in the Set-Aside Commitment section of this Application; and
- c. For a non-ALF Development, at least 50% of the total units must be comprised of one-bedroom units and no more than 15% of the total units can be larger than 2 bedroom units. For an ALF Development, at least 90% of the total units must be comprised of one-bedroom or zero bedroom (efficiency) units and the sharing of a unit by two or more unaffiliated residents cannot be a condition of occupancy; and
- d. Applicant must provide a market analysis, dated within 9 months of the Application Deadline, that demonstrates a local need for the low-income Elderly housing that is the subject of this Application (non-ALF or ALF). The market analysis must be provided behind a tab labeled "Exhibit 35"; and
- e. A minimum of one elevator per residential building must be provided for all new construction Developments that consist of more than one story if



any of the Elderly set-aside units will be located on a floor higher than the first floor; and

- f. **The Applicant must provide the following features in the specified percentages of all units in new construction (NC) and Rehabilitation/ Substantial Rehabilitation (SR) Developments.**

**The requirement to provide the following features is in addition to the features committed to by the Applicant in the Construction Features and Amenities section of this Application.**

FEATURE	NC	SR
Roll-In Showers * 5% of this requirement may be met with walk-in type shower stalls with permanently affixed seat.	15%	10%
* NOTE: This requirement may be waived in SR Developments if installation is determined to be not feasible as documented by a registered architect.		
Thermostat placed at 48" maximum height	100%	100%
Tight-napped Berber-type carpet	100%	100%
36" entrances on all exterior doors	100%	100%
All wall electrical outlets placed at 18" to 24"	100%	100%
Scald control valves on shower faucet	100%	100%
Fire retardant window treatments	100%	100%
Peephole at 4' 10" on all exterior doors	100%	100%
Toggle type switches for all lights and fans	100%	100%
Adjustable shelving in master bedroom closets	100%	100%
Lever-action handles on all doors in units and public areas	100%	100%
Horizontal grab bars around shower per ANSI requirements	100%	100%
Horizontal grab bars around toilet per ANSI requirements	100%	100%

**2. Farmworker or Commercial Fishing Worker**

**In order for a proposed Development to be classified as Farmworker or Commercial Fishing Worker, the Development must meet the following requirements:**

- a. **Development cannot have more than 160 total units; and**
- b. **Applicant must commit to target not less than 40% of the total units for Farmworker or Commercial Fishing Worker Households; and**