

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

PINE HAVEN HOUSING, LTD., LLLP,

Petitioner,

Agency Case No.: 2007-0081W
Application No. 2004-143C/2007-001C
Pine Haven

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

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

Pursuant to Section 120.542, Florida Statutes, Rule 67-48.004(14)(f), Florida Administrative Code (“FAC”) and Rule 28-104.001 through 28-104.006, Florida Administrative Code (“FAC”), Petitioner, PINE HAVEN 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)(f) 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 2004-143C/2007-001C.

PETITIONER

2. The Petitioner is Pine Haven 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 2004 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:

- (f) 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)(f), as in effect and governing the 2004 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 136 unit development, comprised of duplexes/quadrplexes. On January 20, 2006, FHFC’s Board of Directors approved a “swap” of Petitioner’s low-income housing tax credits (“Credits”), in order to permit receipt of a housing credit allocation from a later year which in turn would permit the proposed project to be placed in service at a later date.

(b) After the relocation of the remaining tenant population at the development site and the demolition of the Bethune Park public housing development, further inspection of the development site revealed the presence of an eagle’s nest. Due to requirements imposed in connection with building on a site inhabited by an active eagle’s nest, Petitioner was forced to reconfigure its entire site plan to allow the appropriate space for both the eagle’s nest and the proposed 136 unit housing development. As a result of the decreased amount of building space remaining after allowing space for the active eagle’s nest, and the large number of buildings which were proposed for the duplexes/quadrplexes building type (57 buildings with dwelling units), Petitioner has determined that in order to retain the viability of the proposed development the building type must be modified from “duplexes/quadrplexes” to “townhouses”. Changing to the “townhouse” development type will result in the development being comprised of 20 buildings containing dwelling units, rather than the 57 buildings contemplated by the

“duplexes/quadrplexes” building type. Attached as Exhibit “A” is further information pertaining to the need to reconfigure the proposed site plan and to change the proposed building type.

(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. As explained above, the project changes requested by Petitioner result from unforeseen circumstances (location of an eagle’s nest on the development site) outside Petitioner’s control. Further, the proposed changes to the Pine Haven 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 of 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 Pine Haven 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, 2009. Delay in commencing construction of the Pine Haven 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.

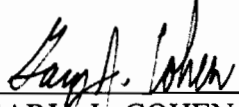
RELIEF SOUGHT

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

WHEREFORE, Petitioner respectfully requests FHFC:

1. Waive the prohibition on change of development type in order to permit a change from duplexes/quadrplexes to townhouse.

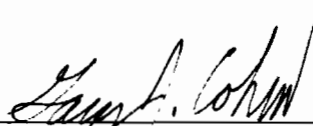
Respectfully Submitted,

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



Biological Research Associates

Founded 1974

8 February 2007

Jorge Aguirre
Picerne Development
Picerne Development Corporation
247 N. Westmonte Drive
Altamonte Springs, FL 32714

RE: Modification of Pine Haven Site Plan as a Result of Discovery of Bald Eagle Nest
City of Daytona Beach, Volusia County, Florida

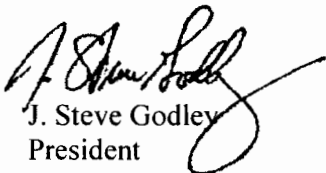
Dear Jorge:

You have requested that Biological Research Associates (BRA) provide an explanation as to why the original, approved site plan for Pine Haven had to be modified. As you are aware, a new bald eagle (*Haliaeetus leucocephalus*) nest was discovered on the Pine Haven site in December 2005. Subsequently, on 25 January 2006 we met with Candace Martino, Bald Eagle Coordinator for the U.S. Fish and Wildlife Service (USFWS), on the site to discuss what measures would be necessary to allow the proposed construction of the Pine Haven HOPE VI Grant Project. Ms. Martino indicated that with certain modifications to the proposed site plan to minimize the effects of the project on bald eagles as required by Section 7 of the Endangered Species Act (ESA), the USFWS would prepare a Biological Opinion/Incidental Take Statement (BO/ITS) that would allow the project to go forward. These site plan modifications included a buffer around the nest tree to ensure the tree would not be killed, surrounded by a detention pond to minimize access to the nest tree, less intense single-family development at closer distances, followed by higher intensity multi-family construction at greater distances. Accordingly, the site plan was modified to meet the requirements of the USFWS and the BO/ITS was issued on 14 August 2006.

I hope this letter explains the required changes to the site plan. If you have any questions, please give me a call.

Sincerely,

BIOLOGICAL RESEARCH ASSOCIATES



J. Steve Godley
President

JSG/nnc

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Tampa • Sarasota • Tallahassee • Destin • Port. St. Joe • Vero Beach

3910 U.S. Hwy. 301 North, Suite 180 • Tampa, Florida 33619 • (813) 664-4500 • (813) 664-0440 Fax
www.biologicalresearch.com

February 8, 2007



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

PLANNING
ARCHITECTURE
INTERIOR DESIGN

RE: PINE HAVEN: (Dr. Mary McLeod Bethune Boulevard Northwest of the Intersection of Dr. Mary McLeod Bethune Boulevard and Rose Avenue, Daytona Beach, FL 32114)

Dear Mr. Aguirre:

Forum Architecture and Interior Design, Inc. was asked to redesign the Pine Haven site plan to comply with USF&WS requirements. This request was due to the discovery of an inactive eagle nest found on the site after an already approved site plan had been procured.

The location of the nest and the criteria surrounding its protection necessitated the placement of the multi-family component at the southern edge of the site, reducing development density in the immediate vicinity of the eagle's nest. A proposed pond and existing tree buffer surround the nest, around that is the single family component of the project, which is less dense than the multi-family portion. Because the amount of space available to the multi-family component was reduced, the use of a "town home" type apartment design for the rental component was proposed.

This "town home" type manages to keep the scale of the buildings in line with the adjacent existing neighborhood and helps to provide a more personal feel with its individual entrances. This arrangement has provided a happy compromise for all components of this proposed re-development project and at the same time provides an undeveloped "green space" for all to enjoy.

Sincerely,
FORUM ARCHITECTURE & INTERIOR DESIGN, INC.

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

Karen McIntyre
Project Manager

KM/mc