

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

MALABAR COVE II , LTD.,

Petitioner,

APPLICATION NO. 2008-242S

vs.

FHFC CASE NO.: _____

FLORIDA HOUSING FINANCE CORP.,

Respondent

_____ /

**PETITION FOR WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004**

MALABAR COVE II, LTD. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver from Rule 67-48.004, Florida Administrative Code ("FAC"). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone and facsimile number of Petitioner is:

Malabar Cove II, Ltd.
c/o Atlantic Housing Partners
329 North Park Avenue, Suite 300
Winter Park, Florida 32789
407-741-8500 (telephone)
(407) 643-2551 (facsimile)

2. The address, telephone and facsimile number of Petitioner's attorney is:

Kerey Carpenter
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751
407-741-8534 (direct line)
407-551-2353 (facsimile)

3. Petitioner successfully applied for a loan under the State Apartment Incentive Loan (“SAIL”) Program in the 2008 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67-48, Florida Administrative Code. Petitioner’s Application Number is 2008-242S (the “Application”). The SAIL funds will be used to finance a portion of the costs for the development of Malabar Cove II, an affordable rental housing community located in Palm Bay, Florida (the “Development”).

THE RULES FROM WHICH A WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.004(14), as in effect for the 2008 Universal Application Cycle. Rule 67-48.004(14) provides in relevant part as follows:

(14) 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 make changes to these items will not be accepted. Those items are as follows:

* * *

(e) Site for the Development;

STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the SAIL Program. Section 420.5087, Florida Statutes.

Florida Housing has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means. Section 120.542(2), Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

6. The provisions of the foregoing Rule prohibit a change to the “Site for the Development”. Petitioner is uncertain whether; under the scenario described below, the “Site for the Development” has in fact changed since it remains in the same location as described in the 2008 Universal Application for SAIL funds. Florida Housing advised Petitioner that the Capital Lease described below would result in a change to the Site for the Development. Thus, in order to dispel any ambiguity with respect to this issue, Petitioner is submitting this Petition for Waiver. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to unreasonable consequences, substantial hardship and would violate principles of fairness.

7. In the Application, the Site for the Development was identified as being located at the “South side of Malabar Road NW, approximately $\frac{3}{4}$ miles west of the intersection of Malabar Road NW and Minton Road SE” in Palm Bay, Florida. The Development is Phase II of the Malabar Cove community (“Community”) as shown on Exhibit I. Phase I of the Community includes a library and computer lab room, and Petitioner is requesting a waiver to change the Site for the Development so that it may enter into a Capital Lease for the library and computer lab room from the owner of Phase I, as depicted on the drawing attached as Exhibit 2. If this waiver is granted, the owner of Phase I would not use the leased library and computer lab to satisfy its

application commitments; thus, the owners are not attempting to claim credit for the same amenity.

8. Revising the Site for the Development to include the library and computer lab has no adverse affect on the Development, and in fact, would provide a benefit to the residents. If this waiver is not granted, Petitioner would be required to provide a different amenity, such as a putting green. It would be unreasonable and would result in a substantial hardship for the Petitioner to be required to add a putting green to Phase II rather than including a library and computer lab through a lease from the Phase I owner. Additionally, it would be less efficient and more costly for property management to provide staffing and services for a different amenity, resulting in a management and financial burden to the Petitioner and the Development. Further, including the library and computer lab on the Site for the Development would have had no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors.

9. In light of the considerable time that it takes to develop and construct multifamily rental housing, Florida Housing's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances which might necessitate a modification in a proposed project. This is particularly so when the change arises from site plans which are not required to be final at the time applications are submitted. Florida Housing 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 advantage.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

10. Florida Housing’s approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5087, as well as the SAIL Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, the SAIL allocation in question will be used to fund an affordable multifamily rental housing community for which there is a desperate need in the Orlando, Florida.

11. By granting a waiver and permitting Petitioner to revise the Site for the Development, 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.

TYPE OF WAIVER

12. The waiver being sought is permanent in nature.

ACTION REQUESTED

13. Petitioner requests a waiver from Rule 67-48.004(14) to permit a change in the Site for the Development to a library and computer lab room under a Capital Lease from the owner of Phase I of the Community as reflected on Exhibits 1 and 2.

Respectfully submitted this 30th day of September 30, 2008.



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CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing Petition for Waiver have been filed with 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.



Kerey Carpenter

CANAL NO. 20

MALAWAR ROAD

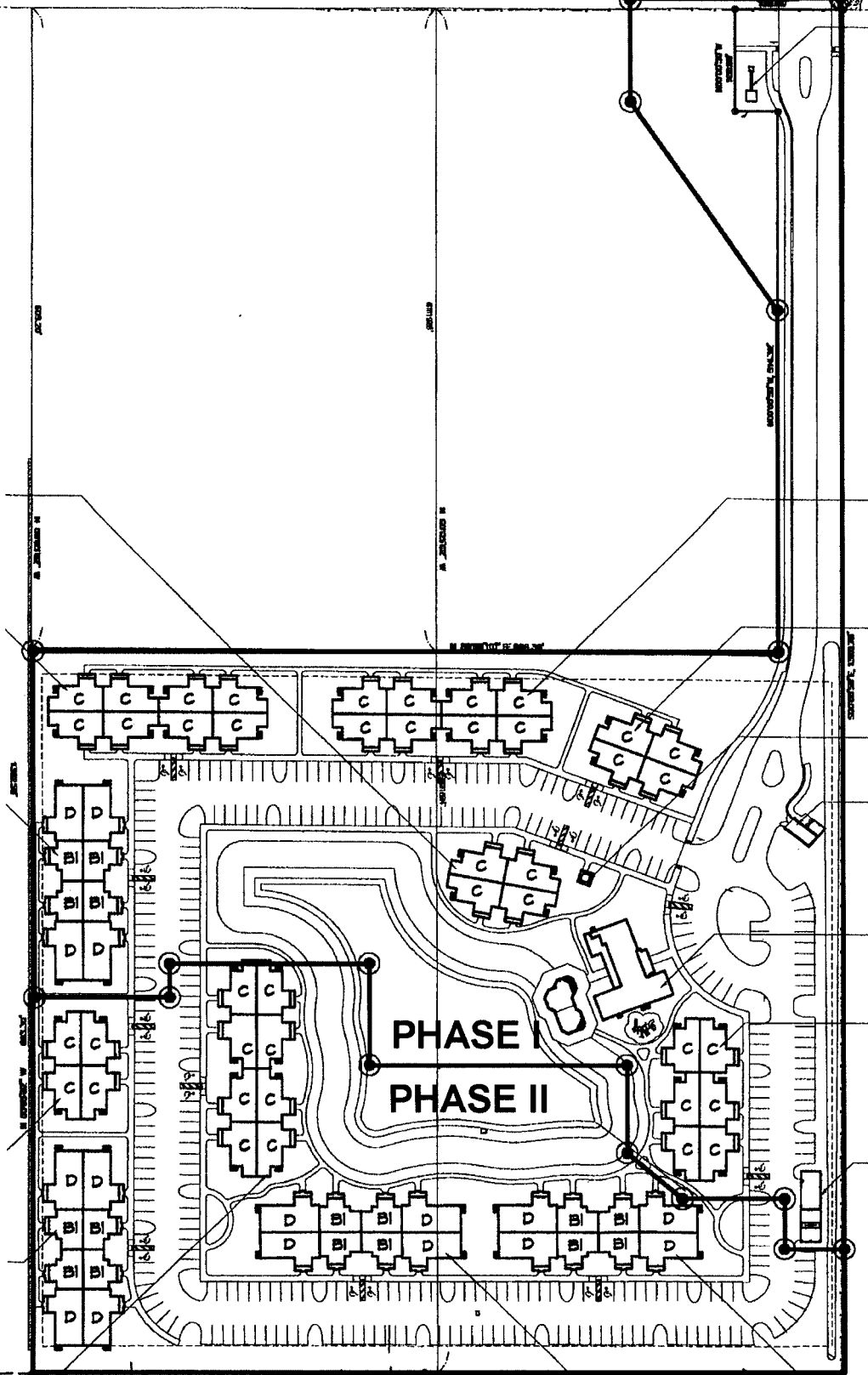


EXHIBIT 1

BLDG. H
TYPE II

BLDG. I
TYPE II



G.G.
#3

1 ARCHITECTURAL SITE PLAN
 SCALE: 1" = 80'

BY BRIDGE RIGHT OF WAY

