

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

FOUNTAINS AT SAXON POINTE BLVD., LTD.
Petitioner,

vs.

APPLICATION NOS. 2011-231C
2012-038C

FLORIDA HOUSING FINANCE CORP.
Respondent.

FHFC CASE NO: 2014-065VW

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**PETITION FOR WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.010(8)**

FOUNTAINS AT SAXON POINTE BLVD., LTD. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation (the "FHFC") 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:

Fountains at Saxon Pointe Blvd., Ltd.
200 East Canton Avenue, Suite 102
Winter Park, FL 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
700 West Morse Boulevard, Suite 220
Winter Park, Florida 32789
(407) 691-5605 (telephone)
(407) 371-6126 (facsimile)

3. Petitioner successfully applied for financing from the Housing Credits Program in the 2011 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67-

48, Florida Administrative Code. Petitioner's Application Numbers are: 2011-231C and 2012-038C (forward allocation number assigned by Florida Housing) (the "Application"). Petitioner applied for Housing Credits to finance a portion of the costs to construct 84 affordable units in an 84-unit multifamily rental apartment community located in Volusia County, Florida, to be known as Saxon Cove f/k/a The Fountains at Saxon Pointe (the "Development").

THE RULE FROM WHICH A WAIVER IS SOUGHT

4. Petitioner requests a waiver from the portion of Rule 67-48.004 that adopts and incorporates by reference Part III.B.2.a of the Universal Application Package or UA 1016 (Rev. 2-11), which in turn, incorporates by reference the FHFC Universal Design and Visitability Manual ("Manual"), and in particular the Manual's requirements for the height of electrical outlets for all new construction units ("Rule"). The relevant portions of the Rule are as follows:

67-48.004 Application and Selection Procedures for Developments.

- (1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.
 - (a) The Universal Application Package or UA1016 (Rev. 2-11) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's Website under the 2011 Universal Application link labeled Instructions and Application or from <http://www.org/Gateway/reference.asp?No=Ref-00703>, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the HOME and HC Program(s).

Universal Application Package, Instructions, Part III

B. Construction Features and Amenities

All Required Features and Amenities and all Optional Features and Amenities selected by the Applicant, as well as the Applicant's Energy and Green Building commitments, will be included in the Land Use Restriction Agreement and/or Extended Use Agreement and must be maintained in order for the Development to remain in compliance unless the Board approves a change.

2. Required Universal Design and Visitability Features (Threshold)

All universal design and visitability features must meet the specifications outlined in the FHFC Universal Design and Visitability Manual (the Manual). The Manual, effective 11-3-2010, is incorporated by reference and available on the 2011 Universal Application link labeled Related References and Links.

a. For all new construction units:

In addition to meeting the requirements outlined in Item III.B.1. above, all proposed Developments that involve any new construction units, regardless of which Development Category was selected at Part III.A.3.a of the Application, must include the universal design and visitability features and amenities outlined in Part A.1. of the Manual in all of the new construction units

If the proposed Development will include any new construction units, the Applicant must (i) state the number of new construction units at Part III.A.6 of the Application and (ii) commit at Part III.B.2.a of the Application to provide all required universal design and visitability features in all of the new construction units in the proposed Development

If this provision applies to the proposed Development, the Applicant must select "Yes" to be considered for participation in any program.

Universal Application Package, Application, Part III

B. Construction Features and Amenities

1. Required General Features and Amenities for All Developments:

Does the Applicant commit to provide the required general features and amenities (outlined in Part III.B.1. of the Instructions) for the proposed Development?

Yes No

**FHFC Universal Design and Visitability Manual
Part A Required Features in New Construction**

Utility Features

Feature: Mid-point on electrical outlets, phone jacks, and data ports shall be located no less than 18 inches above finished floor level with exception

of those electrical outlets, phone jacks and data points around the cabinetry and electrical outlets for major appliances such as stoves, refrigerators, and washers and dryers.

STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the Housing Credits Program. Section 420.5093, Florida Statutes. The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the Housing Credit Program.

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

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

7. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate

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

principals of fairness. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for a Rule waiver/variance.

8. Applicant committed to provide the required general features and amenities (outlined in Part III.B.1. of the Instructions) for the Development. During construction, Applicant was careful to design and construct the buildings to be in compliance with these commitments, and made sure to include these requirements in the subcontract for the electrical work. Unfortunately, after construction was complete, it was discovered that the electrical subcontractor installed the electrical outlets with a mid-point at 16 inches from the finished floor level, rather than the required 18 inches. It should be noted, however, that all of the electrical outlets are installed to meet UFAS standards and all applicable building codes. The units are now occupied and moving the electrical outlets up 2 inches is not a viable solution and would impose a substantial hardship on Applicant. As an alternative, Applicant proposes to replace all existing compact fluorescent bulbs in the most frequently used fixtures (bedroom light kits, bathroom lights and dining room lights) with LED bulbs (total of 1634 bulbs) at a total cost of \$47,451.00. The swap of more efficient bulbs which will result in a savings to the residents monthly utility bills.

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

9. A waiver of the Rule will serve the purpose of Section 420.5099 and the Act which is implemented by the Rule, because a central goal of both 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.”

Section 420.5099(2), Florida Statutes

10. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in housing for persons of low income. The creation of the Housing Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in housing for persons of low-income.

11. The requested waiver will not adversely impact the Development or Florida Housing.

12. Strict application of the provisions of Rule 67-48.004 would violate principals of fairness and impose a substantial hardship on Petitioner. Unless the waiver is granted, Petitioner would not be able to maintain compliance with the Extended Use Agreement.

13. By granting a waiver, Florida Housing 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

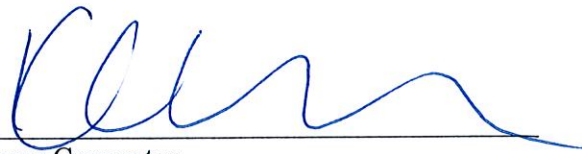
14. The wavier that is being sought is permanent in nature.

ACTION REQUESTED

15. Petitioner requests that Florida Housing grant the following relief: Grant a waiver from Rule 67-48.004 to permit Applicant to replace compact fluorescent bulbs in the bedroom light kits, bathroom lights and dining room lights (total of 1634 bulbs) with LED bulbs, in lieu of moving electrical outlets 2 inches higher from the finished floor level.

18. A copy of this Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Buildings, Tallahassee, FL 32399-1300.

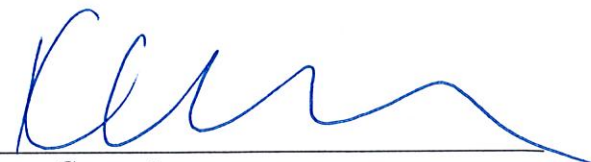
Respectfully submitted on this 21st day of April, 2014.



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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing has been filed with the 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