

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

THE VILLAGES AT HALIFAX HOUSING, LTD., LLLP,

Petitioner,

Agency Case No.: 2007-040VW

Application No. 2005-015C

The Villages at Halifax

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)(e), Florida Administrative Code effective for the 2005 Universal Application Cycle ("FAC") and Rule 28-104.001 through 28-104.006, Florida Administrative Code ("FAC"), Petitioner, THE VILLAGES AT HALIFAX 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)(e) 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 2005-015C.

PETITIONER

2. The Petitioner is The Villages at Halifax 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:

- (e) Site for the Development.

TYPE OF ACTION REQUESTED

4. Petitioner requests that FHFC grant a waiver and variance from the provisions of FAC Rule 67-48.004(14)(e), as in effect and governing the 2005 Universal Application Cycle. The provisions of the foregoing Rule prohibit a change in the site for the development. 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 71 unit development, utilizing HOPE VI funds originally granted to Daytona Beach. Daytona Beach secured such funds from the Federal Government by virtue of submission of a redevelopment plan. The redevelopment plan involved demolition of existing public housing, construction of new affordable tax credit rental housing ("Rental Units") and construction of new single-family homes for ownership ("Homeownership Units").

(b) Site control for the development was evidenced in Petitioner's HC application by a ground lease. The legal description which was attached to the ground lease described the entire redevelopment site, within which both the Rental Units and the Homeownership Units were to be constructed. The original development plan was for the Rental Units and Homeownership Units to be intermixed within the entire development site.

(c) Due to cost constraints and for the reasons set forth below, it was determined that the Homeownership Units would be separated from the Rental Units within the entire redevelopment site. Petitioner determined that spreading out the Rental Units over the entire redevelopment site would make for difficult management of the Rental Units. In addition, due to changes in the construction cost environment at the time of commencement of

construction as compared to the cost environment at the time of initial concept development, it was determined to separate the Homeownership Units from the Rental Units. This concept change prompted the City of Daytona Beach to request separate legal description for those portions of the redevelopment site comprising the Rental Units and the Homeownership Units.

(d) The aggregate development site containing the Rental Units and the Homeownership Units remains the same as that submitted in the 2005 HC application. However, the legal description of that portion of the development site containing the Rental Units is not identical (for the reasons set forth above) to the legal description of the development site contained in the 2005 HC application; the legal description for the site containing the Rental Units is a subset of the entire redevelopment site described in the 2005 HC application. The entire development site remain under the control of the Daytona Beach Housing Authority, and the Petitioner is ground leasing the site upon which the Rental Units will be constructed. The developer (Picerne Development Corporation) continues to pursue plans to develop the Homeownership Units on the remainder of the original development site.

6. Petitioner is uncertain whether, under the above scenario, the “Site for the Development” has in fact changed since it remains in the same location as contemplated in the 2005 HC application. However, in order to dispel any ambiguity with respect to this issue, Petitioner is submitting this Petition for Variance/Waiver. 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 Petitioner 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 a Petitioner from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the Petitioner to gain a possible competitive advantage.

7. The proposed changes to the Villages at Halifax development would have had no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors. In particular, with respect to the award of proximity tie-breaker points to Petitioner's application, Petitioner hereby submits (as attached Exhibit "A") a revised Surveyor Certification form (including the accompanying sketches) and a boundary survey for the revised development site. These documents reflect that (a) the tiebreaker measurement point is located on the development site and within 100 feet of a residential building, and (b) proximity to each of the required services is within the one mile distance require to receive maximum proximity tie breaker points. Please note that the latitude and longitude coordinates for the tiebreaker measurement points are marginally different from those contained in the 2005 application, due to more accurate coordinates obtained by the new surveyor in providing the information in Exhibit "A".

8. 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.

9. 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 Villages at Halifax complex cannot be completed. 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 completion of construction of the Villages at Halifax complex could place Petitioner in danger of failing to meet the foregoing "placed in service" deadline.

10. By granting a waiver and permitting Petitioner to change the development site, 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.

11. The waiver being sought is permanent in nature.

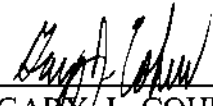
RELIEF SOUGHT

12. The specific variance/waiver which Petitioner wishes Respondent to grant is to waive the requirements of Rule 67-48.004(14)(e) to permit a change in the development site described herein.

WHEREFORE, Petitioner respectfully requests FHFC:

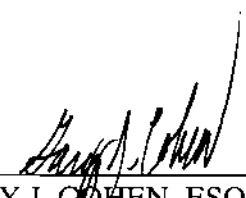
1. Waive the prohibition on change of development site in order to permit the change requested herein.

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.

SURVEYOR CERTIFICATION

Name of Development: The Villages at Halifax

Development Location: International Speedway Blvd., north of the intersection of International
Speedway Blvd. and Adams Street, Daytona Beach, FL 32114

(At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection and city)

The undersigned Florida licensed surveyor confirms that the method used to determine the following latitude and longitude coordinates conforms to Rule 61G17-6, F.A.C.:

State the Tie-Breaker Measurement Point. Tie-Breaker Measurement Point means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites which comprise the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than 4 units.	Latitude			Longitude		
	29 Degrees	12 Minutes	19.9 Seconds (truncated after 1 decimal place)	81 Degrees	02 Minutes	05.6 Seconds (truncated after 1 decimal place)
If the Development consists of Scattered Sites, is a part of the boundary of each parcel located within 1/2 mile of the Tie-Breaker Measurement Point? ☐ Yes ☐ No (check one) Scattered Sites for a single Development means a Development consisting of more than one parcel in the same county where two or more of the parcels (i) are not contiguous to one another or are divided by a street or easement and (ii) it is readily apparent from the proximity of the sites, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.						
Location of closest Public Bus Stop or Metro-Rail Stop	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)
State the name, address (as assigned by the United States Postal Service including the address number, street name and city) and latitude and longitude coordinates of the closest service(s) on the chart below. The latitude and longitude coordinates for each service must represent a point that is on the doorway threshold of an exterior entrance that provides direct public access to the building where the service is located. If there is no exterior public entrance to the service, then a point should be used that is at the exterior entrance doorway threshold that is the closest walking distance to the doorway threshold of the interior public entrance to the service.						
Grocery Store: Name - <u>Pearson's Grocery</u> Address - <u>856 Orange Avenue</u> <u>Daytona Beach, FL 32114-4770</u>	29 Degrees	12 Minutes	07.5 Seconds (truncated after 1 decimal place)	81 Degrees	02 Minutes	00.0 Seconds (truncated after 1 decimal place)
Public School: Name - <u>Bonner Elementary</u> Address - <u>868 George W. Engram Blvd.</u> <u>Daytona Beach, FL 32114-1859</u>	29 Degrees	12 Minutes	47.4 Seconds (truncated after 1 decimal place)	81 Degrees	02 Minutes	22.5 Seconds (truncated after 1 decimal place)
Medical Facility: Name - _____ Address - _____	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)
Pharmacy: Name - <u>The Medicine Shoppe</u> Address - <u>864 Orange Avenue</u> <u>Daytona Beach, FL 32114-4770</u>	29 Degrees	12 Minutes	06.9 Seconds (truncated after 1 decimal place)	81 Degrees	02 Minutes	01.9 Seconds (truncated after 1 decimal place)

If the Corporation discovers that there are any false statements made in this certification, the Corporation will forward a copy to the State of Florida Department of Business and Professional Regulation for investigation.

CERTIFICATION

Under penalties of perjury, I declare that the foregoing statement is true and correct.

Signature [Signature] Date 8/17/07
(mm/dd/yyyy)

Print or Type Name of Signatory
J.E. Zapert
President

Print or Type Title of Signatory
4046
Florida License Number

Sliger & Associates, Inc.
Name of Surveyor

3921 Nova Road
Address
Port Orange, FL 32127

386-761-5385
Telephone Number (including area code)

This certification may not be signed by the Applicant, by any related parties of the Applicant, or by any Principals or Financial Beneficiaries of the Applicant. If the certification is inappropriately signed, the Application will not receive proximity tie-breaker points. If this certification contains corrections or "white-out", or if it is scanned, imaged, altered, or retyped, the Application will not receive proximity tie-breaker points and will fail to meet threshold and will be rejected. The certification may be photocopied.



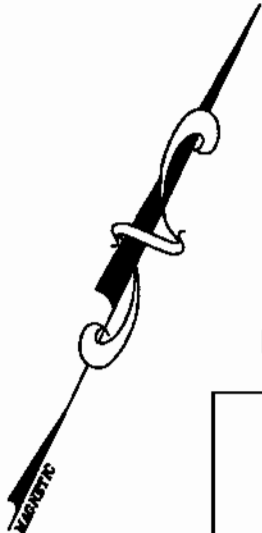
SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

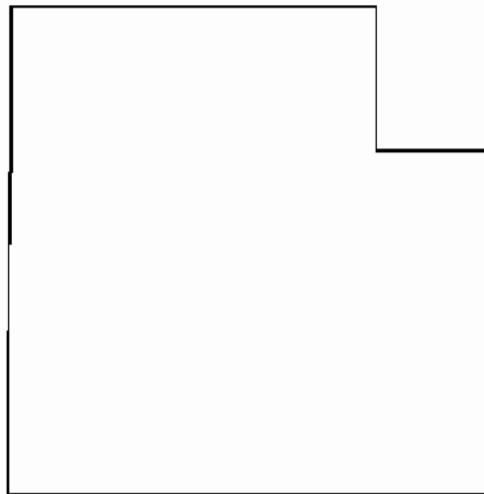
LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD
PORT ORANGE, FL. 32127
(386) 761-5385

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www.sligerassociates.com



PEARSON'S GROCERY
856 ORANGE AVENUE
DAYTONA BEACH, FLORIDA 32114-4770



ENTRANCE
29° 12' 07.5" N
81° 02' 00.0" W

REVA STREET

ORANGE AVENUE

SPECIFIC PURPOSE SURVEY
NOT A BOUNDARY SURVEY

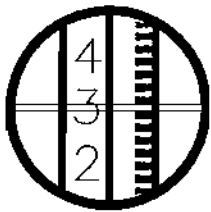
FOR: PICERNE DEVELOPMENT CORPORATION

DESCRIPTION: SKETCH TO SHOW LOCATION OF ENTRANCE TO
SERVICE AS NOTED. LATITUDE & LONGITUDE ARE NAD 83 FLORIDA
EAST ZONE, ACQUIRED USING DUAL FREQUENCY GPS RECEIVER

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

I HEREBY CERTIFY THAT THIS PLAT
MEETS THE MINIMUM TECHNICAL
STANDARDS SET FORTH BY THE
FLORIDA BOARD OF PROFESSIONAL
LAND SURVEYORS IN CHAPTER
61G17-6, FLORIDA ADMINISTRATIVE
CODE, PURSUANT TO SECTION
472.027, FLORIDA STATUTES.

J.E. ZAPERT, P.L.S. NO. 4046
STEVEN T. KRUGER, P.L.S. NO. 4722
C.O. VAN KLEECK JR., P.S.M. NO. 6149
MICHAEL S. MURPHY, P.S.M. NO. 6208



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LAURA STREET

(MULTIPLE
STAND ALONE
BUILDINGS)

BONNER ELEMENTARY SCHOOL
868 GEORGE W INGRAM BLVD.
DAYTONA BEACH, FLORIDA 32114-1859

MAIN ENTRANCE
29° 12' 47.4" N
81° 02' 22.5" W

GEORGE W INGRAM BLVD.

SPECIFIC PURPOSE SURVEY
NOT A BOUNDARY SURVEY

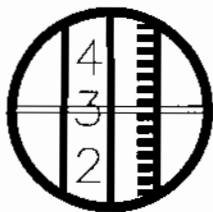
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S. ADAMS STREET



ENTRANCE
29° 12' 06.9" N
81° 02' 01.9" W

THE MEDICINE SHOPPE
864 ORANGE AVENUE
DAYTONA BEACH, FLORIDA 32114-4770

ORANGE AVENUE

SPECIFIC PURPOSE SURVEY
NOT A BOUNDARY SURVEY

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SCALE NONE

SHEET 1 OF 1

JOB NO. 07-1192