

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FINLAY INTERESTS 13, LTD.,

Petitioner,

vs.

Case No: 2005-05ZVW 329
Applic. No. 2005-093C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULES
67-48.004(1), (14) AND (15)**

Petitioner, FINLAY INTERESTS 13, LTD. ("Finlay"), pursuant to Section 120.542, Florida Statutes, and Rule Chapter 28-104, Florida Administrative Code ("F.A.C."), hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION ("FHFC"), for a waiver from Rules 67-48.004(1), (14), and (15), F.A.C. In support of its Petition, Finlay states as follows:

1. The name, address, and telephone and facsimile numbers of the Petitioner are:

Finlay Interests 13, Ltd.
4300 Marsh Landing Blvd., Suite 101
Jacksonville Beach, FL 32250
Telephone No.: (904) 280-1000
Facsimile No.: (904) 694-1067

2. The name, address, and telephone and facsimile numbers of the Petitioners' attorney, which shall be the Petitioners' address for service purposes during the course of this proceeding, are:

Warren H. Husband
Metz, Husband & Daughton, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909
Telephone No. (850) 205-9000
Facsimile No. (850) 205-9001

3. Petitioner Finlay successfully applied for housing credits in FHFC's 2005 Universal Application Cycle to help finance the development of a 160-unit garden-style apartment complex in Zephyrhills (Pasco County), Florida, to be known as "Meetinghouse at Zephyrhills" (FHFC Applic. No. 2005-093C). Finlay's application for tax credits for this development was approved for funding by FHFC's Board at its meeting on August 25, 2005.

4. The property on which the development will be constructed is being sold to Finlay by its present owner, Adventist Health System/Sunbelt, Inc. ("Adventist"). The sales contract included in the application and cure materials called for the transfer of a 12-acre parcel out of a larger 30-acre parcel owned by Adventist. This "original" 12-acre parcel is depicted in the attached "Exhibit A" as the shaded area of Tracts 101, 108, and 117.

5. Adventist has now requested that the 12-acre parcel to be sold to Finlay be shifted approximately 400 feet to the north. The boundaries of the new “revised” parcel appear in the attached “Exhibit A” as the diagonally cross-hatched area of Tracts 92, 101, and 108. Adventist has requested this northward shift of the 12-acre parcel because it will give Adventist a unique opportunity to use the remaining southern portion of its 30-acre parcel in an unrelated transfer in which Adventist will acquire property to expand its nearby hospital facility (East Pasco Medical Center).

6. To allow for this change in circumstances, Finlay requests a waiver of Rules 67-48.004(1), (14) and (15), F.A.C. Rule 67-48.004(1) adopts and incorporates the Universal Application Package used by Finlay and other applicants to apply for funding. This rule also requires applicants to submit a complete application. Rule 67-48.004(14) generally prohibits an applicant from changing certain aspects of its application, including the “Site for the Development.” Rule 67-48.004(15) allows FHFC’s Board to withdraw funding for a development if the Board determines that the project has changed so much that it “is no longer the Development . . . described in the Application, and the changes made are prejudicial to the Development or to the market to be served.”

7. These rules specifically implement section 420.5099, Florida Statutes, which designates FHFC as the “housing credit agency” responsible for the proper

allocation and distribution of housing credits.

8. For the reasons described above, Finlay is requesting a waiver of the referenced FHFC rules to allow for a change in the boundaries of the parcel it will purchase and use for construction of the development. In assessing this request, Finlay asks FHFC to consider the following:

- a. The “revised” parcel will be the same size as the “original” parcel – 12 acres – and will contain approximately 70% of the land from the original parcel.
- b. Access to the revised parcel will continue to be off of Wire Road to the east, just as it would have been for the original parcel.¹
- c. The changes in the parcel boundaries will require no change to the development’s site plan – it will just shift 400 feet to the north.
- d. The Tie-Breaker Measurement Point contained in Finlay’s application and cure materials will still be located on the revised parcel and within 100 feet of a residential building (see attached Exhibit A), so the development’s proximity to the services listed in the application will be maintained.
- e. The change in parcel boundaries will not affect the relevant site specific demonstrations contained in the application with respect to zoning, site plan, environmental condition, etc., as will be evidenced to the satisfaction of FHFC’s credit underwriter.

9. Ultimately, the requested change in the boundaries of the 12-acre parcel will result in no negative impact on the development or its tenants. Indeed, the development’s tenants will benefit from the future expansion of the East Pasco

¹ The additional easement originally contemplated to allow secondary access to the 12-acre parcel from Daugherty Road to the south will no longer be practicable or necessary.

Medical Center made possible by this change in the contours of the parcel.

10. Pursuant to section 120.542(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., FHFC has the authority to grant waivers of its rule requirements when strict application of such rules in particular circumstances would lead to unreasonable, unfair, and unintended results. A waiver will be granted when the person subject to the rule demonstrates that strict application of the rule would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. Fla. Stat. §120.542(2) (2005).

11. In this case, a decision to deny the requested waiver would work a substantial hardship and violate principles of fairness in that it would make it impossible or impracticable for Adventist to acquire the property necessary to expand its hospital facility at East Pasco Medical Center. Denial of the waiver would deprive the residents of the development (which is located very close to East Pasco Medical Center), as well as all of the other residents of Zephyrhills and Pasco County, of the improved medical care that could be provided through the expanded hospital facility. Moreover, approval of the waiver would not negatively impact the development or its tenants in any way.

12. FHFC's granting of the requested waiver also will serve the purposes of the statute that the rules implement. Section 420.5099 and the rest of the Florida

Housing Finance Corporation Act (§§420.501, et seq.) were enacted to encourage private investment in the creation of affordable housing for low-income and very-low-income families. With the approval of the requested waiver, FHFC will continue to realize this goal and ensure the development of 160 units of new affordable housing for the residents of Pasco County.

13. The waiver sought by Finlay is permanent in nature.

14. If FHFC has any questions or requires any additional information regarding this requested waiver, Finlay stands ready to respond quickly to any such request.

WHEREFORE, Petitioner, Finlay Interests 13, Ltd., request that FHFC grant Petitioner a permanent waiver from Rules 67-48.004(1), (14), and (15) to allow the shift in parcel boundaries described herein, subject to verification by FHFC's credit underwriter that the "revised" parcel complies with all relevant site-specific requirements of the application, e.g., zoning, site plan, environmental condition, etc.

Respectfully submitted on this 29th day of November, 2005.



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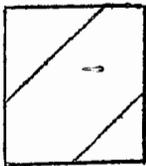
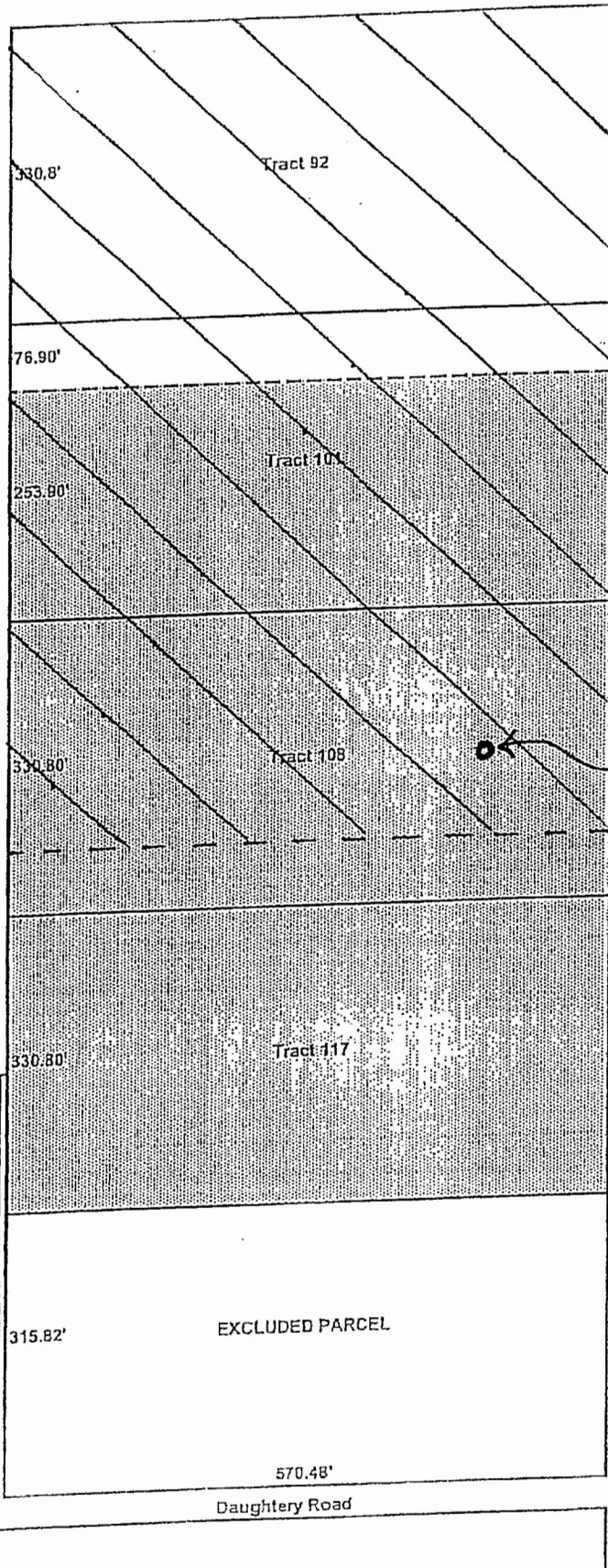
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via U.S. Mail to the Joint Administrative Procedures Committee, Holland Building, Room 120, Tallahassee, FL, 32399-1300, on this 29th day of November, 2005.

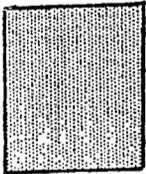


Attorney

Finlay Parcel



Adjusted Site



Original Site

Exhibit A