

**STATE OF FLORIDA
DEPARTMENT OF ELDER AFFAIRS**

PRIME CARE ONE, LLC,
d/b/a HARBORCHASE OF NAPLES,

Petitioner,

v.

CASE NO. _____

STATE OF FLORIDA,
DEPARTMENT OF ELDER AFFAIRS,

Respondent.
_____ /

**EMERGENCY PETITION FOR VARIANCE OF
RULE 58A-5.036, FLORIDA ADMINISTRATIVE CODE**

Pursuant to Section 120.542, Florida Statutes, and Rules 28-104.002 and 28-104.004, Florida Administrative Code, Petitioner (also referred to as "facility"), respectfully requests an emergency variance from Rule 58A-5.036, Florida Administrative Code ("the Rule"). In support of this request, Petitioner states:

Identification of Petitioner

1. The name, address, telephone number and fax number of the Petitioner's counsel are:

Mark Scimeca, Esquire
958 20th Place, 2nd Floor
Vero Beach, Florida 32960
Telephone: (772) 492-5002
Facsimile: (772) 492-5005

2. Petitioner is a 93 bed licensed assisted living facility located at 7801 Airport Pulling Road North, Naples, Collier County, Florida 34109 (License 9172; AHCA File #11964626). It is adjacent to the 40 bed licensed skilled nursing facility, also known as

HarborChase of Naples, and also located at 7801 Airport Pulling Road North, Naples, Collier County, Florida 34109 (License SNF130470984).

Identification of the Agency

3. The name and address of the agency affected by this Petition is:

Department of Elder Affairs
4040 Esplanade Way, Ste. 315
Tallahassee, Florida 32399-7000
850.414.2000

Variance History of Petitioner

4. Petitioner, on October 3, 2018 and thereafter, filed a Petition and supporting documents for compliance with the Rule with the Department of Elder Affairs (“Department”) seeking either a permanent waiver or temporary variance from Rule 58A-5.036, Florida Administrative Code. Pursuant to a Final Order issued on January 15, 2019 in case Number DOEA-2018-0938, the Department granted the Petitioner’s request for a conditional temporary variance to June 1, 2019 to implement the Rule.

5. The Petitioner hereby incorporates and adopts the Petition and all supplemental materials filed in Case number DOEA-2018-0938 except for the overall request for a permanent waiver from the Rule and the anticipated construction completion date of June 1, 2019 outlined in paragraph #37.

6. Due to circumstances beyond the control of the Petitioner, a new implementation date of October 31, 2019 is requested. Please see the attached letter from Steve Dorsey, Assistant Manager/Senior Project Manager, from RingPower Corp., wherein he verified that the generator purchased for this community will not be shipped until the week of June 14, 2019, with startup to be completed within two (2) weeks of delivery. Specifically, by letter dated April 26, 2019

(Exhibit "A" hereto), Petitioner's generator vendor, Ring Power, informed Petitioner that the generator has been delivered to the packager, Fidelity. The packager has updated the ready to ship date to June 14, 2019. The generator would be shipped the week of June 14, 2019, and startup should be completed within two (2) weeks of delivery. The vendor is working on getting all AHJ approvals prior to that date.

7. By letter dated April 25, 2019 (Exhibit "B" hereto), Petitioner's electrical contractor, Eau Gallie Electric, has informed Petitioner that because Petitioner's location includes an ALF and a SNF, AHCA review is required as to the project. An initial submission was made to AHCA, and came back with several comments. Those items were addressed, revised, etc., and the resubmitted was received by AHCA on April 12, 2019. AHCA has up to 60 days to review and respond to the resubmittal. Eau Gallie advised that, in its experience, all of the AHCA review packages they have submitted have taken exactly 61 days for response.

8. Eau Gallie further advised Petitioner that the permit package will be prepared and ready to submit as soon as the AHCA review is completed. The permit process takes 4-6 weeks. The permit form and Notice of Commencement have been sent to Petitioner's representative for signature.

9. Eau Gallie has indicated that the approximate construction time, including inspections, start-up, etc., is sixty (60) days. This time period runs from the arrival of the generator at the community location.

10. In addition to all of the measures to ensure resident comfort and safety during an extended power outage that were outlined in the DOEA-2018-0938 Petition that is adopted and incorporated by reference, and remain in place, the Petitioner has a Contingency Contract dated December 28, 2018 (Exhibit "C" hereto) between **F.S. 119.071(3)2.b.**

F.S. 119.071(3)2.b.

F.S. 119.071(3)2.b.

This

equipment will allow for the cooling of areas for residents to congregate that meet the safe indoor air temperature requirements of Rule 58A-5.036(1)(a), F.A.C., for a minimum of 96 hours.

11. Based upon the Department's adoption of the subject Rule and the above referenced Final Order in DOEA-2018-0938, the Petitioner must be in compliance with the Rule by June 1, 2019. This required Petitioner to have the plan approved by the Department, secure all other regulatory approvals, purchase new (or modify existing) generators, construct and install the generators, ensure it has fuel capacity to support the generator and develop written policies and procedures to ensure that the facility can effectively and immediately activate, operate and maintain the generators. As confirmed by the Petitioner's vendor RingPower Corp., the new generator for the community will not be shipped until the week of June 14, 2019, and requires construction/installation thereafter, making compliance with the Rule by June 1, 2019 impossible. Securing required permits and securing delivery of custom built generators, tanks, switches and related equipment is beyond the control of the Petitioner and the June 1, 2019 deadline is impossible to meet despite Petitioner's best efforts since the Department adopted the Rule. If Petitioner fails to comply with the Rule, it is subject to fines, suspension of its license and revocation of its license thereby creating an emergency circumstance for the Petitioner.

WHEREFORE, Petitioner respectfully requests the entry of a final order granting a temporary conditional variance from Rule 58A-5.036, Florida Administrative Code, as set forth herein.

Respectfully submitted this 30th day of April, 2019.



Mark Scimeca, Esquire
Florida Bar No.: 0947814
On behalf of Petitioner Prime Care One, LLC
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958 20th Place, 2nd Floor
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been provided via e-mail to: the Agency Clerk, Florida Department of Elder Affairs, agencyclerk@elderaffairs.org; and the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, joint.admin.procedures@leg.state.fl.us; and via Federal Express to: Secretary Richard Prudom, Florida Department of Elder Affairs, 4040 Esplanade Way, Ste. 315, Tallahassee, Florida 32399-7000, all on this 30th day of April, 2019.



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