

**STATE OF FLORIDA  
DEPARTMENT OF ELDER AFFAIRS**

SILVERSTONE HARBORCHASE PBG  
OPERATING, LLC, d/b/a  
HARBORCHASE OF PALM BEACH GARDENS,

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 20<sup>th</sup> Place, 2<sup>nd</sup> Floor  
Vero Beach, Florida 32960  
Telephone: (772) 492-5002  
Facsimile: (772) 492-5005

2. Petitioner is a 160 bed licensed assisted living facility located at 3000 Central Gardens Circle, Palm Beach Gardens, Palm Beach County, Florida 33418 (License No. 13037; AHCA File No. 11969234).

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 25, 2019 in case Number DOEA-2018-0940, 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-2018-0940 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 e-mail dated January 30, 2019 (Exhibit "A", Part 1) from Daphnie Moore from TAW, Inc. wherein she verified that the generator purchased for this community is estimated to arrive at the TAW warehouse the week of June 3, 2019. Additionally, by e-mail dated January 30, 2019 (Exhibit "A", Part 2), Clint Gulick, Construction Manager of Silverstone Health Care Company, indicated that once the generator arrives, three additional weeks will be required to install and commission it.

7. By e-mail dated April 15, 2019 (Exhibit "B"), Mr. Gulick provided an update on the progress of preparation for the generator at HarborChase of Palm Beach Gardens as follows: "The concrete slab, CMU block walls, and electrical conduits have been completed and all inspections have been passed. In addition, all material testing reports have come back passed/within tolerance. The next step will be to complete the installation of the architectural foam cap at the top of the walls, then finish the exterior with stucco and paint. This will complete all available work prior to arrival of the Generator." Mr. Gulick further indicated that he is coordinating the **F.S. 119.071(3)2.b.**

**F.S. 119.071(3)2.b.** Finally, he confirmed that delivery of the generator is still slated for June 3, 2019.

8. In addition to all of the measures to ensure resident comfort and safety during an extended power outage that were outlined in the DOEA-2018-0940 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.

9. Based upon the Department's adoption of the subject Rule and the above referenced Final Order in DOEA-2018-0940, 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 Taw, Inc., the new generator for the community will not be delivered until the week of June 3, 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 30<sup>th</sup> day of April, 2019.



Mark Scimeca, Esquire  
Florida Bar No.: 0947814  
On behalf of Petitioner Silverstone HarborChase  
PBG Operating, LLC d/b/a HarborChase of  
Palm Beach Gardens  
958 20<sup>th</sup> Place, 2<sup>nd</sup> Floor  
Vero Beach, Florida 32960  
Telephone: (772) 492-5002  
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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](mailto: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](mailto: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 30<sup>th</sup> day of April, 2019.



Mark Scimeca, Esquire

Florida Bar No.: 0947814.

On behalf of Petitioner Silverstone HarborChase

PBG Operating, LLC d/b/a HarborChase of

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