

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BERNICE F. BUCHANAN,)
)
 Petitioner,)
)
 vs.) Case No. 08-4498
)
 KEY WEST CONDOMINIUM)
 ASSOCIATION, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case, on December 2, 2008, in Sanford, Florida, before Carolyn S. Holifield, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Bernice Buchanan, pro se
700 Seabrook Court, Unit 103
Altamonte Springs, Florida 32713

For Respondent: Frank Ruggieri, Esquire
Larsen & Associates, P.A.
300 South Orange Avenue, Suite 1200
Orlando, Florida 32801

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent discriminated against Petitioner because of her disability in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

On May 7, 2008, Petitioner filed a Housing Discrimination Complaint (the "Complaint") against Respondent alleging that she was handicapped within the meaning of the Florida Fair Housing Act ("FFHA"), Section 804 of Title VIII of the Civil Rights Act of 1968, as amended (codified at 42 U.S.C. Sections 3604 and 3617). The Complaint also alleged that Respondent had been unwilling to accommodate Petitioner's disabling condition and refused to provide her with a handicap parking space in front of the building in which she lived.

The Complaint was originally filed with the Federal Department of Housing and Urban Development ("HUD") pursuant to 42 U.S.C. Section 3610(a)(1)(A), and referred to the Florida Commission on Human Relations ("Commission"), pursuant to 42 U.S.C. Section 3610(f).

The Commission conducted an investigation of the Complaint. By letter dated July 30, 2008, the Commission notified Petitioner of its determination that reasonable cause did not exist to believe that a discriminatory housing practice occurred and that the Complaint would be dismissed. The Commission's letter provided notice of Petitioner's right to pursue judicial and administrative remedies.

Petitioner timely filed her Petition for Relief with the Commission. On September 16, 2008, the Commission referred the

matter to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct a final hearing.

On November 26, 2008, Respondent filed a Motion for Summary Final Judgment. The motion was denied in a ruling during the proceeding.

At hearing, Petitioner testified on her own behalf. Petitioner's Exhibits 1, 1a, 2, 2a, 3, 6 through 9, 10a, 10b, and 11 through 17 were admitted into evidence. Respondent presented no witnesses at the hearing. Respondent's Exhibits 1 through 4 were admitted into evidence and included the deposition transcripts of Marty Boble, a planning and development specialist with the City of Altamonte Springs; Reggie Caruso, deputy building official with the City of Altamonte Springs; and Petitioner.

No transcript of the final hearing was ordered. Respondent's Post-Hearing Memorandum and a Proposed Recommended Order were filed on December 15, 2008.

FINDINGS OF FACT

1. Petitioner, Bernice Buchanan, an 81-year-old female, lives in a condominium at 700 Seabrook Court, Unit 103, Altamonte Springs, Florida. The condominium unit was purchased by Petitioner and is within the Key West Condominiums complex.

2. Respondent, Key West Condominium Association, Inc. ("Key West Association"), a not-for-profit corporation, is

responsible for the operation of Key West Condominiums, which consists of 60 units.

3. Petitioner has a meniscus tear in her right knee, arthritis in her right knee and right shoulder, and degenerative discs in her lumbar and cervical spine.

4. As a result of the degenerative discs, there are no ligaments between Petitioner's bones in the affected area, thereby causing the degenerated discs to push on her muscles and nerves. Moreover, because there are no ligaments in the affected areas, Petitioner has a problem with balance and must walk very slowly. Finally, because of Petitioner's degenerative disc condition, Petitioner has severe pain when she walks, sits, or lies down.

5. Petitioner's physician, John F. Ryan, M.D., submitted documentation which stated that Petitioner is not allowed to lift more than 15 pounds due to her degenerative discs and severe knee pain. Also, Dr. Ryan indicated that because of the severe pain in Petitioner's right knee, she is limited in walking, even moderate distances.

6. Petitioner's degenerative disc condition and knee pain are permanent disabilities.

7. Petitioner anticipates having surgery that may reduce or alleviate the pain caused by the degenerative discs. She is also contemplating having knee replacement surgery which should

help the right knee. However, unless and until Petitioner has the surgeries, it is impossible to know if those procedures will alleviate her pain and/or otherwise improve her impaired mobility issues.

8. While surgery may possibly improve some of Petitioner's medical conditions, that is not an option with regard to her arthritis. Petitioner is not aware of any surgery or other medical procedure that will improve and/or alleviate the pain she is experiencing due to the arthritis in her knee and shoulder. Furthermore, there is no evidence that any of her physicians have recommended any such procedure.

9. Although Petitioner's ability to walk is impaired, she does not presently use any walking devices such as a cane or walker.

10. Petitioner's ability to drive is not impacted by her medical conditions and associated physical impairments. In fact, Petitioner regularly drives to places such as the grocery store, church, and to visit family.

11. The Key West Condominium complex has three types of parking spaces: (1) assigned garage spaces¹; (2) unassigned uncovered non-handicap parking spaces ("regular parking spaces"); and (3) unassigned uncovered handicap parking spaces ("handicapped parking spaces").

12. Petitioner has an assigned garage space which is located in a bank of four garages. That assigned parking space is about ten feet wide.

13. The regular parking spaces are not assigned and may be used by homeowners, residents and visitors on a "first come, first serve basis."

14. The handicap parking spaces are not assigned and may be used by the homeowners and residents of Key West Condominiums and their visitors who have appropriate handicap decals.

15. There is one handicap parking space located to the left of the bank of garages where Petitioner's garage space is located. Also, there are several regular parking spaces to the right of that garage bank.

16. Because Petitioner's assigned garage is only ten feet wide, it is difficult for her to enter and exit her small Toyota sedan when it is parked in the garage. Nonetheless, provided Petitioner does not have groceries or packages to remove from her car, the garage space is "adequate." Due to the width of Petitioner's assigned garage, when Petitioner parks her car in that space, the car doors cannot be opened wide enough to allow her to remove groceries or packages from her vehicle. Thus, when Petitioner has groceries or packages to unload from her vehicle, in order to unload them, she must park in a space other than her assigned garage space.

17. When Petitioner has groceries and/or other packages to unload and carry into her unit, she usually parks in a regular parking space in front of and close to her condominium unit. When Petitioner parks in the regular parking spaces, it is easier for her to unload the groceries from her car and carry them to her unit.

18. If all of the regular parking spaces in front of her building are occupied by other vehicles, Petitioner has sometimes double-parked behind those vehicles. In those instances, Petitioner would unload the groceries or packages from her car, take them into her condominium unit, and then return to her car and park it in her assigned garage.

19. Petitioner no longer double parks behind vehicles parked in the regular parking spaces when she has groceries and/or packages to unload from her car and take to her condominium. The reason is that Petitioner found that double parking and walking behind parked vehicles to unload her groceries was dangerous.

20. When Petitioner has groceries or packages to take into her condominium and no regular parking spaces are available, she must park across the street and wait until a space becomes available. In such instances, Petitioner reported that she sometimes had to wait for up to 25 minutes for an available space.

21. Petitioner's decreased mobility and impaired ability to walk, even moderate distances, and her lifting restrictions significantly impair her ability to retrieve groceries and packages from her car and carry them into her unit.

22. Petitioner's assigned garage is 47 feet and nine inches from the front door of her unit.

23. The handicap space to the left of the garage bank is 90 feet from the front door of Petitioner's unit.

24. The regular parking space to the right of the garage bank, which Petitioner sometimes uses, is 38 feet from Petitioner's front door.

25. In a letter dated May 15, 2007, Petitioner requested that the Key West Association provide her with a parking space close to her unit marked "Handicapped Parking" and designated only for her. Petitioner noted that she did not need space for a wheelchair. Finally, Petitioner advised Key West Association that the request was based on medical reasons.

26. At the time Petitioner wrote the May 15, 2007, letter, there was a handicap parking space with the painted markings of a handicap parking space. However, that handicap parking space did not have a "handicap parking" sign designating that space as such.

27. In her May 15, 2007, letter, Petitioner advised the Key West Association that the handicap parking space referenced

in paragraph 29 would not meet her needs because it was too far for her to carry her groceries.

28. In June 2007, the Key West Association Board of Directors ("Board"), denied Petitioner's request for the regular parking space closest to her unit to be designated as a "handicap parking" space reserved for her use only.² Instead, the Board directed Petitioner to use the handicap parking space to the left of the garage bank. The Board also notified Petitioner that it would reinstall the "Handicapped Parking" sign³ at the above-referenced handicap parking space.

29. The Board did not designate the handicap parking space for Petitioner's exclusive use. Therefore, it could be used by any Key West Condominium homeowner or resident or their visitors with a handicap decal.

30. The handicap parking space that the Board made available for use by Petitioner is located between two garage banks so that the handicap space is bordered on each side by a wall of the abutting garage bank.

31. As noted above, the handicap parking space that the Board told Petitioner to use is 90 feet from the front door of Petitioner's condominium; this is 52 feet farther than the regular parking space in front of Petitioner's building.

32. The Board's June 2007, denial letter expressed concern about the cost of constructing the handicap parking space.

Additionally, the Board noted that construction of a new handicap parking space would result in the loss of two non-handicap parking spaces. (This was because two non-handicap parking spaces were needed to construct one handicap parking space.)

33. By letter dated September 12, 2007, Petitioner advised the Key West Association that she was still having problems with parking. Petitioner reiterated that the handicap parking space, which the Board had opened for use (by re-installing the handicap parking sign), was too far for her to carry her groceries and other items (90 feet from the front door of her unit). Petitioner also noted that she had the following problems with the handicap parking space: (1) The handicap parking space was often occupied by a vehicle with no handicap decal; (2) Petitioner was required to exit her vehicle on the side of the parking space next to the wall of the garage bank; and (3) After exiting the handicap space, she could only access the sidewalk to her unit by stepping over a curb into the grass or walking around her car to the other side.⁴

34. Based on the problems enunciated in her September 12, 2007, letter, Petitioner again requested a "handicapped parking space closest to [her] building without having to walk in between cars." Petitioner wanted the requested handicap parking space to be for her exclusive use.

35. Along with Petitioner's letter was a note from her physician, Dr. John Ryan, which supported her request for a handicap parking space. Dr. Ryan's note stated, "[d]ue to her [Petitioner's] medical condition, I request that [Petitioner] be assigned a parking area closest to her building. . . . She requires a handicap space."

36. There is no evidence that the Key West Association ever responded in writing to Petitioner's September 12, 2007, request or asked for additional information about her medical condition.

37. Reggie Caruso, the deputy building official, is the principal plan reviewer for new and large construction projects, including condominium complexes, for the City of Altamonte Springs, Florida. Mr. Caruso is familiar with the parking requirements for condominium complexes, and his office enforces the laws and regulations applicable thereto.

38. Unless otherwise exempt, condominium complexes are required to have a certain number of handicap parking spaces. However, except for the public areas, the Key West Association has the discretion to place the handicap parking spaces wherever it chooses and/or where such spaces are needed.

39. Section 553.5041, Florida Statutes (2008),⁵ regulates parking spaces for persons with disabilities (i.e., handicap parking spaces) and applies to Key West Condominiums.

40. Subsection 553.5041(5)(c)1., Florida Statutes, provides that: (1) handicap parking spaces be no less than 12 feet wide; (2) the parking access aisle be no less than five feet wide and be placed adjacent to the handicap parking space; and (3) the access aisle be part of an accessible route to the building or facility entrance. Also see Sections 11-4.6.2(1) and 11-4.6.3, Florida Building Code.⁶

41. Subsection 553.5041(4), Florida Statutes, provides that the number of "accessible parking spaces" (handicap parking spaces) must comply with the parking requirements in Section 4.1.2(5)(a) of the Americans With Disabilities Act ("ADA") Accessibility Guidelines. These requirements have been adopted and are in Section 11-4.1.2(5)(a) of the Florida Building Code.

42. The number of handicap parking spaces in the Key West Condominium complex complies with applicable law, if the handicap parking space discussed below that does not meet minimum legal requirements, is counted.

43. Subsection 553.5041(4)(c), Florida Statutes, provides that "[t]he number of parking spaces for persons who have disabilities must be increased on the basis of demonstrated and documented need."

44. In or about mid-November 2008, Mr. Caruso inspected the handicap parking space that the Board advised Petitioner to use. That inspection revealed two areas in which that handicap

space and the adjacent access aisle were not in compliance with Subsection 553.5041(5)(c)1., Florida Statutes, and the Florida Building Code.⁷

45. The first area of non-compliance involves the width of the handicap parking space and adjacent access aisle. Here, the handicap parking space, including the adjacent access aisle, is tapered and has a width that ranges from 16 feet to 18 feet. Accordingly, at certain points, the handicap parking space, including the adjacent access aisle, is only 16 feet wide, not 17 feet, the prescribed minimum width.

46. During the inspection, Mr. Caruso observed that a "fixed" building (a bank of garages) was on each side of the handicap parking space, including access aisle. Thus, Mr. Caruso determined that there is no reasonable way to change the space so that the minimum width of the handicap parking space and adjacent access aisle is 17 feet at all points as prescribed in Subsection 553.5041(5)(c)1., Florida Statutes.⁸

47. The second area of non-compliance concerns the requirement that the access aisle be connected to an accessible route.

48. During his inspection of the handicap parking space, Mr. Caruso observed that there is no direct route from the handicap parking space's adjacent access aisle to a sidewalk. Instead, there is a five-inch high curb which obstructs the

accessible route. Consequently, the access aisle is not connected to the access route (sidewalk) to the building in which is located Petitioner's unit or any other building in the complex.

49. Mr. Caruso testified credibly that to establish an accessible route from the access aisle (adjacent to the handicap parking space), part of the five-inch high curb would have to be removed and the concrete would have to be extended from the access aisle to the sidewalk.

50. The removal of the curb would result in compliance with the requirement in Subsection 553.5041(5)(c)1., Florida Statutes, that the access aisle connect with and is "part of an accessible route to the building." Also, the removal of the curb would make the space safe because persons using the space would no longer have to step over the five-inch high curb to get to the accessible route.

51. Even if the curb is removed, the parking space, including access aisles, would still not be in compliance with law because the space does not meet the minimum width requirement of 17 feet prescribed in Subsection 553.5041(5)(c)1., Florida Statutes. Moreover, as noted above, because the handicap parking space is bordered on each side of a "fixed" building, it cannot reasonably be brought into compliance.

52. Marty Boble is a planning and development review specialist for the City of Altamonte Springs. In that position, he determines compliance as it relates to the number of parking spaces on-site.

53. In November 2008, Mr. Boble went to the Key West Condominium complex and inspected the property, including the above-referenced handicap parking space. He also reviewed the Key West Condominium plans, which showed the buildings and parking spaces in the complex.

54. The Florida Building Code requires the Key West Condominium complex to have two parking spaces per dwelling. Key West Condominium, which counts its garage spaces as parking spaces, not only meets the requirement as to number of spaces per unit, but exceeds it by 20 spaces.

55. To construct a new handicap parking space that complies with the legally prescribed width requires that two non-handicap parking spaces be used. Thus, the result of constructing a new handicap parking space would result in the loss of two existing regular parking spaces. Nonetheless, Key West Association would still be in compliance with the Code requirement of two parking spaces per unit because it currently has 20 more spaces than required.⁹

56. Petitioner's request for a handicap parking space near her condominium unit is reasonable. In light of her impaired

ability to walk, even moderate distances, and her lifting restrictions, Petitioner is unable to retrieve groceries and other packages from her vehicle and take them to her unit. Without an accommodation for her handicap, Petitioner cannot have an equal opportunity to use and enjoy her condominium unit.

57. In this case, Petitioner has a disability which significantly impairs her ability to walk. Thus, Respondent is required to provide her with a reasonable accommodation.

58. As of the date of this proceeding, Respondent has not provided any accommodation to Petitioner.

59. The reasonable accommodation that Respondent should provide is to convert non-handicap or regular parking spaces into a handicap parking space. This remedy is required due to the non-compliance issue of the handicap space which cannot be corrected.¹⁰ By converting two non-handicap or regular parking spaces to one handicap parking space, Respondent will be able to construct and provide a handicap parking space that complies with applicable law and regulations.

60. The accommodation offered by the Key West Association and its Board is not a reasonable one. As noted above, the handicap parking space offered to Petitioner did not comply with the provisions of Subsection 553.5041(5)(c)1., Florida Statutes. Moreover, the Key West Association failed to take steps to bring that parking space into partial compliance and to make it safe

for Petitioner's use, although it had more than a year to do so. Finally, even though it was clearly established that Petitioner needed a space closer to her unit, the Key West Association and its Board offered her a space that was not only unsafe and non-compliant with law, but was further away from her unit.

61. The Declaration of Condominium for Key West provides that material alterations of common elements, such as regular parking spaces, require approval of two-thirds of the owners at a properly noticed meeting. Despite the Key West Association's position, use of two regular parking spaces to construct a handicap space is a material alteration, it never called a meeting for that purpose.

CONCLUSIONS OF LAW

62. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

63. The FFHA is set forth in Sections 760.20 through 760.37, Florida Statutes.

64. Section 760.23, Florida Statutes (2007), part of the FFHA, provides in pertinent part:

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

* * *

(8) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available;

* * *

(9) For purposes of subsections (7) and (8), discrimination includes:

* * *

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.^[11]

65. Section 760.22, Florida Statutes, provides in relevant part:

(7) "Handicap" means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in s. 393.063.

66. The Florida Legislature essentially codified the U.S. Fair Housing Amendments Act of 1988 ("FHAA"), when it enacted

the FFHA. Dornbach v. Holley, 854 So. 2d 211, 213 (Fla. 2d DCA 2002). Therefore, in considering the FFHA, the application of the FHAA by the federal courts is instructive and persuasive. Id. The definition of "handicap," as defined in the FFHA, is virtually identical to those found in the FHAA, 42 U.S.C. Section 3602(h) (defining "handicap"); the ADA, 42 U.S.C. Section 12102(2)(A) (defining "disability"); and the Rehabilitation Act, 29 U.S.C. Section 705(9)(B) (defining "disability"). Under the term "handicap" or "disability," each of these laws provides relief only to a person with an impairment that substantially limits a major life activity. See § 760.22(7), Fla. Stat. and Id. at 1577-78; see also Godwin v. State, 593 So. 2d 211, 215, 219 (Fla. 1992).

67. The United States Supreme Court has addressed the definition of "disability" in the context of a case brought pursuant to the ADA. Sutton v. United Airlines, 527 U.S. 471, 119 S. Ct. 2139, 2145 (1999), also relied on the definitions of "substantially limits" and "major life activities" contained in the regulations of the Equal Employment Opportunities Commission, as follows:

The term "substantially limits" means, among other things, "[u]nable to perform a major life activity that the average person in the general population can perform;" or "[s]ignificantly restricted as to the condition, manner, or duration under which an individual can perform a particular major

life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity" [Citation omitted.] Finally, "[m]ajor [l]ife [a]ctivities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." [Citation omitted.]

Sutton, 119 S. Ct. at 2145.

68. Petitioner has the burden of proving by a preponderance of the evidence that Respondents violated the FFHA. See §§ 760.34(5) and 120.57(1)(j), Fla. Stat. (2007).

69. To establish a prima facie case of housing discrimination, Petitioner must show:

- a) that she suffers from a handicap;
- b) that Respondents knew of the handicap;
- c) that an accommodation of the handicap was necessary to afford Petitioner an equal opportunity to use and enjoy the housing in question; and
- d) Respondent refused to make such an accommodation.

U.S. v. California Mobile Home Park Mgmt Co., 107 F.3d 1374, 1380 (9th Cir. 1997); Schanz v. Village Apartments, 998 F. Supp. 784, 791 (E.D. Mich. 1998).

70. Reasonable accommodation claims like this one are analyzed under a burden-shifting analysis. Therefore, if

Petitioner meets her burden, the Key West Association must show that the requested accommodation is unreasonable.¹²

71. Petitioner established that she is handicapped within the meaning of the FFHA. The credible, persuasive and undisputed evidence established that as due to her medical conditions--degenerative discs and arthritis--Petitioner has decreased mobility and is substantially limited in her ability to walk, as well as the distance she can walk. The undisputed evidence also established that the medical conditions which cause Petitioner's decreased mobility and ability to walk are permanent disabilities.

72. The evidence established that Respondent knew of Petitioner's handicap. The undisputed evidence established that Petitioner first notified Respondent, in writing, of her handicap in May 2007. The undisputed evidence also established that Petitioner again notified Respondent of her handicap and submitted a supporting note from her physician.

73. Petitioner has established that an accommodation of her handicap is necessary to afford her an equal opportunity to use and enjoy the condominium unit in which she lives.

74. The credible and undisputed evidence established that: (1) Petitioner is significantly impaired in her ability to walk and is limited in her ability to lift groceries and other packages from her car and to carry them to her unit; (2) the

narrow width of Petitioner's currently assigned garage space makes it difficult for her to get out of her car and impossible, or nearly impossible, for her to then retrieve groceries and other packages from her car; and (3) because of her impaired ability to walk, Petitioner cannot walk even moderate distances.

75. The undisputed evidence established that due to her impaired ability to walk, it is very difficult for Petitioner to perform the routine task of removing her groceries and other packages from her car and carrying them to her condominium unit.

76. To accommodate her handicap, Petitioner requested a handicap parking space close to her condominium that was designated for her use. § 553.5041(5)(c)1., Fla. Stat.

77. There is no disputed evidence established that Respondent denied Petitioner's request for an accommodation. However, merely denying a requested accommodation does not establish discrimination under the FFHA.

78. The U.S. Supreme Court has decided that discrimination under the FFHA, 42 U.S.C. Section 3601, et seq., includes a refusal to make a reasonable accommodation for handicapped persons. Loren v. Sasser, 309 F.3d 1296 (11th Cir. 2002). Whether a requested accommodation is reasonable is highly fact-specific, requiring a case-by-case determination. Id. at 1302.

79. Based on the facts in this case, it is concluded that Petitioner's requested accommodation is a reasonable one.

80. Here, it is undisputed that in June 2007, when Respondent denied Petitioner's request for an accommodation, it "re-installed" the handicap parking sign on a space and advised her that she could use that space. The evidence established that in September 2007, Petitioner advised Respondent, in writing, of several problems she had with the handicap parking space. Two of those problems established by the evidence and deemed to be relevant are that the parking space was: (1) too far for her to walk (90 feet from the front door of her unit); and (2) unsafe in that she had to step over a five-inch high curb to get to the sidewalk. That these problems existed was established by credible, persuasive, and undisputed evidence.

81. The evidence established that as a result of the five-inch curb, the access aisle and access route of the handicap parking space did not comply with the legally prescribed requirements. Moreover, the evidence establishes that the five-inch curb created an unsafe condition for handicapped users of the space. The evidence showed that the unsafe situation created by the five-inch curb was obvious and could be corrected. Yet, as of the date of this proceeding, which was more than a year after Petitioner reported the

problem, Respondent had taken no action to correct that situation.

82. The evidence established that the width of the parking space does not comply with the legal requirements for handicap parking spaces. The evidence established that this area of non-compliance cannot be corrected, because the space is bordered on each side by a fixed building.

83. Petitioner requires space that is wide enough to allow her to get out of her car without difficulty and to remove her groceries and other packages from her car. Due to her impaired ability to walk and her inability to walk even moderate distances, Petitioner needs a parking space that is close to her unit. See Jankowski Lee and Associates v. Cisneros, 91 F.3d 891, 895 (7th Cir. 1996) (holding that where tenant needed larger space close to apartment and had problems finding parking space, it was reasonable accommodation to provide assigned space).

84. The FFHA requires the Key West Association to make reasonable accommodations in its rules and practices so as to enable Petitioner to use and enjoy her dwelling. As discussed above, Petitioner is unable to remove groceries or other packages from her car when she parks in her ten-foot wide assigned garage space, she is unable to walk, even a moderate distance due to her impaired ability to walk, and spaces near

her unit are often not available. Based on these facts, it is clear that Petitioner needs a parking space that is close to her unit and one that is wide enough to allow her to remove her groceries and other packages from her vehicle. See Shapiro and U.S. v. Cadman Towers, Inc., 51 F.3d 328, 335 (2nd Cir. 1995) (finding that in view of tenant's difficulties, nearby parking was a substantial factor in Shapiro's use and enjoyment of her dwelling.

85. The undisputed evidence established that due to her decreased mobility and ability to walk, she is only able to walk moderate distances. Given Petitioner's impaired ability to walk, the accommodation offered by Respondent (a handicap parking space that is 90 feet from her unit) is not a reasonable one.

86. In light of the specific facts, Petitioner's request for a handicap parking space close to her unit and designated for her use is a reasonable accommodation.¹³

87. Pursuant to Subsection 760.23(9)(b), Florida Statutes, quoted above, it is discriminatory and illegal to refuse to make a reasonable accommodation in rules, policies, practices or services, when an accommodation may be necessary to afford an equal opportunity to use and enjoy a dwelling.

88. Respondent makes several arguments to justify its decision to deny Petitioner's request. All have been considered, but are not persuasive.

89. First, Respondent contends that it would lose two regular parking spaces if it constructed a new handicap parking space. This is because two regular spaces are needed to construct a handicap space that complies with the law. Because Key West Association has 20 spaces more than is required by law, there is no harm to Respondent by losing two regular parking spaces to construct a needed handicap parking space.¹⁴

90. Second, the Key West Association contends that it has no authority to convert a non-handicap parking space into a handicap parking space. According to the Key West Association, because the uncovered non-handicap parking spaces are part of the common elements of the condominium complex, to convert such space(s) to a handicap parking space requires a two-thirds vote of the community. Assuming that this position has merit, there is no evidence that Respondent has called for such a vote, even though Petitioner's request for an accommodation initially was made in 2007.¹⁵

91. Finally, Respondent contends that the Key West Condominiums has the required number of handicap parking spaces. Implicit in this position is that Respondent is not required to, and should not have to, construct any additional handicap

parking spaces. Respondent's position disregards the requirement in Subsection 553.5041(4)(c), Florida Statutes, that the number of handicap parking spaces must be increased based on demonstrated and documented need. Also, Respondent counts as one of its required handicap parking spaces, a space which the evidence clearly shows does not comply with Subsection 553.5041(5)(c)1., Florida Statutes. Because, as the evidence established, one of Key West Condominium's handicap parking spaces does not meet the legally prescribed requirements, it is doubtful that such a space should be counted to establish that the Key West Condominiums have the required number of handicap spaces.

92. By refusing to make a reasonable accommodation for Petitioner, Respondent discriminated against her under the FFHA.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order:

1. Finding that Respondent, Key West Condominium Association, Inc., discriminated against Petitioner, Bernice Buchanan, under the FFHA by refusing to make a reasonable accommodation for her handicap;

2. Ordering Respondent to cease the discriminatory practice; and

3. Ordering Respondent to provide a handicap parking space close to Petitioner's condominium unit.

DONE AND ENTERED this 29th day of May, 2009, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of May, 2009.

ENDNOTES

^{1/} As part of the purchase of certain units, including the one owned by Petitioner, specific assigned garage parking spaces are included. Thus, when such a unit is sold, the assigned garage space for that unit is transferred to the purchaser/new owner.

^{2/} In its letter, the Board stated that Petitioner's request "to move the [handicap] space closer to her unit" was considered, but it was determined that it was not feasible at that time. According to the letter, "[t]he primary reason is the loss of two valuable spaces in order to accommodate the single handicapped space that would only be available to a select few that have 'Handicapped Permits'."

^{3/} No evidence was presented as to the reason the "Handicapped Parking" sign had been previously removed.

4/ Petitioner noted that during the two weeks after the Board denied her request for a handicap space, there were non-handicap parking spaces available near her unit in which she parked. According to Petitioner, after that two-week period, those non-handicap parking spaces were often occupied and, thus, not available. Petitioner's letter stated that when all the spaces near her unit were occupied, she had to park in spaces that were not close to her unit or in her garage and wait until a space became available so that she could unload her groceries.

5/ All statutory references are to Florida Statutes (2008), unless otherwise noted.

6/ Section 11-4.6.2(1) provides:

Each parking space must be no less than 12 feet (3658 mm) wide.

(1) All spaces must be located on an accessible route no less than 44 inches (1118 mm) wide so that users will not be compelled to walk or wheel behind parked vehicles. . . .

Section 11-4.6.3 provides:

Parking access aisles must be no less than 5 feet (1524 mm) wide and must be part of an accessible route to the building or facility entrance. . . .

7/ Mr. Caruso conducted the inspection in preparation for his deposition which was taken on November 21, 2008. Until that time, he did not know that this condition existed.

8/ To correct the problem and bring the handicap parking space into compliance with Subsection 553.5041(5)(c)1., Florida Statutes, would require that the garage banks on either side of the parking space or parts thereof be torn down.

9/ Mr. Boble testified that to the extent there is a shortage of parking spaces, it is because homeowners are using their assigned garage space for storage and not parking. According to the Declaration of Condominiums, the garage spaces should be used for their intended purposes--parking.

^{10/} The buildings on both sides of the parking spaces make it impossible to extend the width of the parking space and adjacent access aisle.

^{11/} This definition is almost identical to 42 U.S.C. Section 3604(f)(3)(B).

^{12/} Sharpvisions, Inc. v. Borough of Plum, et al., 475 F.Supp.2d 514, 526 (W.D. Pa. 2007).

^{13/} An example of a "reasonable accommodation is provided in 24 C.F.R. Section 100.204(b), Example 2, a regulation promulgated by HUD. The example set forth in that provision is as set forth:

Reasonable accommodations.

* * *

(b) The application of this section may be illustrated by the following examples:

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of Sec. 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

^{14/} Respondent presented no evidence as to why this accommodation was an unreasonable one (i.e., cost or shortage of parking spaces).

^{15/} Respondent implies that it is Petitioner's responsibility to seek the unit owners' consent for her requested accommodation.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.