STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VALERIE WALTERS,

Petitioner,

vs. Case No. 16-1076

PINE RUN ASSOCIATION, INC.,

Respondent.
_______________________________/

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Tampa and Tallahassee, Florida, on May 3, 2016, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Cindy Hill, Esquire
Hill Law Firm, P.A.
456 South Tamiami Trail
Osprey, Florida 34229

Gary Parker, Esquire
Legal Aid of Manasota
1900 Main Street, Suite 302
Sarasota, Florida 34236

For Respondent: Scott H. Jackman, Esquire
Cole, Scott and Kissane, P.A.
Suite 400
4301 West Boy Scout Boulevard
Tampa, Florida 33607

STATEMENT OF THE ISSUE

Whether Respondent violated the Fair Housing Amendments Act of 1988, as alleged in the Housing Charge of Discrimination filed by Petitioner on or about October 9, 2015.

PRELIMINARY STATEMENT

On or about October 9, 2015, Petitioner, Valerie Walters (Petitioner), filed a complaint with the U.S. Department of Housing and Urban Development (HUD), against Pine Run Association, Inc. (Respondent), alleging housing discrimination under the Fair Housing Amendments Act of 1988 (FHA), as codified at 42 U.S.C. § 3601, et seq. HUD referred the complaint to the Florida Commission on Human Relations (FCHR) for investigation. On January 22, 2016, FCHR issued its determination: No Cause. A Petition for Relief was filed by Petitioner on February 23, 2016. On or about February 24, 2016, FCHR transmitted the case to the Division of Administrative Hearings to conduct a formal hearing of the matter.

At the hearing, Petitioner presented testimony from two witnesses and Respondent offered testimony from one witness. Petitioner's Exhibits A, B, E, F, G, H, K, M, and O were admitted into evidence. Respondent's Exhibits 3 through 8 and 10 through 12 were also admitted into evidence. After the hearing, both Petitioner and Respondent filed Proposed

Recommended Orders. A transcript of the formal hearing was not filed.

FINDINGS OF FACT

1. Petitioner, since March 2015, has been a resident at Respondent's facility. Respondent is a private residential condominium association, which operates and maintains three condominiums in Osprey, Florida.

2. Each condominium unit has its own designated parking space. Petitioner's assigned parking space, number 364, lies between parking spaces 362 and 366. The respective parking spaces are next to each other, with parallel lines dividing the same. Each parking space has a concrete tire-stop that has painted on it the corresponding condominium unit number so that when a vehicle turns into a space the driver is able to discern the corresponding unit number. All parking spaces and road surfaces relevant to this dispute are paved.

3. If one is positioned such that the painted numbers on the tire-stops are visible, then to the left of space 362 is an unassigned space (unassigned space #1) and to the right of space 366 is an area containing shrubbery. From the photographs admitted into evidence, the dimensions of unassigned space #1 appear to be essentially the same as parking spaces 362, 364, and 366. However, unassigned space #1 differs from the others in that on either side of the parallel lines that demark the

interior boundaries of the parking space, there are pathways which provide more space for pedestrian traffic. Although neither party offered evidence of the dimensions of the parking spaces, photographs of the area demonstrate that unassigned space #1, when considering the usable pathways, is wide enough to allow for reasonable entry to and exit from a mid-sized sedan while the vehicle's occupant is being assisted by a walker or wheelchair.

4. In order to access the parking spaces discussed in the preceding paragraph, motorists must use a one-way road which requires them to turn to the right when they are parking their vehicles such that the front tires are closest to the concrete tire-stops. Approximately 20 feet from unassigned space #1, on the other side of the one-way road used to access the parking area, is another unassigned parking space (unassigned space #2). Unassigned space #2 is perpendicular to unassigned space #1 and spaces 362, 364, and 366. Accordingly, motorists parking in unassigned space #2 enter the space by veering to the left off of the one-way road and driving head-on into the parking space (essentially a parallel parking space). There is no evidence of record as to the exact dimensions of unassigned space #2, but in comparing the photographic evidence, this space is comparable in size to the handicapped parking space near the condominium complex clubhouse. Additionally, unassigned space #2 is

situated such that no other vehicles can park in front of, behind, or on either side of a vehicle parked in the space, and there is no curbing that would serve as barrier to accessing one's vehicle while parked in the space.

5. Although each unit is assigned one designated parking space, Petitioner recalls that when she initially moved in, she parked her vehicle by straddling the line between parking spaces 364 and 366. According to Petitioner, she was able to use both spaces because the respective tire-stops for the spaces were each marked "364." Petitioner stopped parking her vehicle in this manner after the association re-painted all of the tire-stops; which included refreshing the unit numbers painted on the same so as to make it clear that there were not two parking spaces for unit 364. Also, Petitioner testified that her vehicle was vandalized once while parking her car in spot 364.

6. After Petitioner's car was vandalized and Respondent re-painted the tire-stops, Petitioner, during the weeks leading to June 2015, began occasionally parking her vehicle in the designated handicapped parking space located at the condominium clubhouse parking lot.

7. Petitioner asserts that because of issues related to her physical disability, it is necessary that she be able to park her car, without restriction, in the handicapped parking space designated by Respondent for use by visitors and residents

at the condominium complex clubhouse. The handicap parking space is several hundred feet from Petitioner's condominium unit, and in order to access the handicap parking space, Petitioner utilizes a pathway constructed of dirt and crushed seashells. There is no record evidence indicating that Petitioner has difficulty traversing the seashell pathway or walking from her condominium unit to her car, and vice versa.

8. Petitioner's designated parking space is considerably closer to her unit (less than one hundred feet) than the handicapped parking space, but, according to Petitioner, her designated parking space is inadequate because it does not provide her with sufficient space to enter and exit her vehicle. Respondent does not dispute this fact.

9. Petitioner suffers from a physical disability which requires her to ambulate with the occasional assistance of either a walker or wheelchair. Petitioner drives a late model, mid-size four-door Mercedes Benz. Petitioner's vehicle is not equipped with any special assistive devices, such as a ramp, which would add to the amount of space needed for vehicle ingress and egress.

10. When Petitioner is either entering or exiting her vehicle while using her walker or wheelchair, she requires additional space beyond the swing path of her car doors. Petitioner did not offer evidence of the amount of space

required for her to enter or exit her vehicle when using either her walker or wheelchair. Petitioner also did not offer evidence regarding the dimensions of her vehicle, or the dimensions of either her designated parking space or any of the other parking spaces at issue. Nevertheless, Respondent concedes that Petitioner's designated parking space, when cars are parked on either side of her in spaces 362 and 366, does not afford Petitioner adequate space to reasonably access her walker or wheelchair when entering and exiting her vehicle.

11. In June 2015, Petitioner, as she often did, parked her car overnight in the handicapped parking space at the clubhouse. When Petitioner arrived at her vehicle, she noticed that a note from Respondent had been placed on the car, which reads as follows:

> Overnight parking in this clubhouse lot must have approval of the Pine Run Board of Directors. Approval is normally awarded for stays of no more than one week. In addition, this handicapped space is reserved for residents or visitors to the pool or clubhouse, not for general resident parking. We discourage resident parking in this lot if not for these reasons. However, if on rare occasion, you wish to park a car in this lot during the day when you are not using the pool or clubhouse, please use an unassigned space on the pond side. This minimizes the chance that you will interfere with our maintenance crew, or the delivery of a large quantity of materials.

12. Within a few days of receiving the note, Petitioner explained to Respondent that she has a handicapped parking decal

and should therefore be able to park in the handicapped parking space without restriction. Under the circumstances, Petitioner's statement is reasonably interpreted as a request to Respondent that her physical disability should be accommodated by allowing her to park in the handicapped space. Respondent took no immediate action regarding Petitioner's request for accommodation. Respondent did, however, allow Petitioner to continue to park in the handicapped space whenever Petitioner desired to do so.

13. On August 27, 2015, Petitioner sent an email to Respondent and stated therein the following:

> We are formally informing you again, since our encounters with Mrs. and Mr. Foley, that we do indeed, have a disabled tag, and need and expect accommodations for ours and others, disabled individuals, owners, lessees and visitors, with any parking accommodations, walkers, chairs, etc., and their vehicles and equipment and with regards to any and all entrances to, and any and common areas, we should have easy access to.

The circumstances leading up to, and including, Petitioner's correspondence of August 27, 2015, make clear that Petitioner continues to seek a parking accommodation.

14. At 4:51 p.m. on October 5, 2015, a letter from Petitioner's attorney, Ms. Jennifer Daly, was sent to Respondent's representative Jim Kraut. The missive from Ms. Daly states:

> As you are aware, this firm represents Ms. Valerie Collier [Walters] and I am contacting you to notify you and the Association that she will be parking in the handicapped parking spot tomorrow due to a surgery she is having. Please notify the Board of Directors to ensure no threats of towing are made and no notes are left on her car during her recovery.

15. Upon receipt of the email from Ms. Daly, Mr. Kraut immediately conveyed the request to Mrs. Foley, who at the time was president of Respondent's board of directors. In response to Petitioner's request, Mrs. Foley, at 5:02 p.m. on October 5, 2015, sent the following email message to Mr. Kraut:

> Jim,
>
> Since the handicapped spot by the Club House is a considerable distance from her unit could you suggest that she just pick a spot in front of her unit that is much closer? We would have no problem identifying a handicapped spot closer to her unit.

16. Mr. Kraut conveyed Mrs. Foley's suggestion to Petitioner's attorney Ms. Daly, who at 5:21 p.m. on October 5, 2015, responded via email as follows:

> Jim,
>
> Thank you for your rapid response and Ms. Foley's suggestion; however, please let her know that choosing a different spot near her unit will not address our client's needs.
>
> Rather, the problem is when the Association repainted the parking lot, the parking spots were made too small. From what we have been

> advised, all the spaces in close proximity to our client's unit are only slightly bigger than the width of a sedan and offer no additional space for the opening of doors, much less the further space needed for someone who requires the assistance of a walker or wheelchair in addition to other equipment.

17. Mrs. Foley, in response to Ms. Daly's email, stated the following:

> I note your reply concerning Mrs. Valerie Collier [Walters]. Please be advised that the Association has not changed either the size or assignment of any parking spaces in the even 300's on Pine Run Drive. All of the spaces have been repainted if the numbers were not visible or the curbs required repair in the entire Association. The size of the spaces ha[s] never changed. We would be very willing to accommodate Mrs. Collier's [Walters] need for a handicapped space closer to her unit if she requested such. My suggestion was the quite large parallel space next to the grass island [unassigned space #2]. There is no curb there and no vehicle could park beside her. Another suggestion would be to swap her space for the adjacent space for #366. This is the same size but an end space, however I think she would have more room with the parallel space just behind her assigned space.

18. Petitioner's reaction to Respondent's suggested parking accommodations was to file, on or about October 9, 2015, a charge of housing discrimination. Additionally, Petitioner parked her car in the handicap space without incident following her surgery.

19. As noted in Ms. Daly's email of October 5, 2015, Petitioner rejected the parking spaces offered by Respondent because the spaces are "too small." Petitioner offered no standard by which to determine the appropriateness of the offered parking spaces other than her own subjective opinion. Additionally, Petitioner testified that both unassigned spaces are unacceptable because they are too close to the condominium unit of a neighbor she dislikes.

20. Petitioner testified that what she now wants is to park in space 366, if Respondent widens the space by removing the hedges to the immediate right and paving the newly-cleared area. Petitioner offered no credible evidence establishing that this proposed accommodation is equal to, or more reasonable than the accommodations offered by Respondent.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2015).

22. The Fair Housing Amendments Act of 1988, as codified at 42 U.S.C. § 3604, protects individuals with disabilities from discriminatory housing practices. In her housing discrimination complaint, Petitioner alleges that Respondent violated "[s]ections 804(b) or (f) and 804(f)(3)(B) of Title VIII of the

Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988."

23. The FHA, 42 U.S.C. § 3604(f)(2), makes it illegal 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" due to a person's handicap. The FHA defines discrimination based on handicap to include "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." Id. § 3604(f)(3)(B). Accordingly, a respondent is liable under the FHA if it refuses to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling or facilities offered in connection with such dwelling. See Schwarz v. City of Treasure Island, 544 F.3d 1201, 1218-19 (11th Cir. 2008). The essence of Petitioner's claim is that Respondent failed to accommodate her request to park without restriction in the handicap parking space near Respondent's clubhouse.

24. In order to prevail in a claim of disability-based housing discrimination, Petitioner bears the burden of establishing that:

> (1) [Petitioner] is a person with a disability within the meaning of the FHA or a person associated with that individual; (2) [Petitioner] requested a reasonable accommodation for the disability; (3) the requested accommodation was necessary to afford [Petitioner] an opportunity to use and enjoy the dwelling; and (4) [Respondent] refused to make the accommodation.

Hunt v. Aimco Props., L.P., 814 F.3d 1213, 1225 (11th Cir. 2016) (citing Bhogaita v. Altamonte Heights Condo. Ass'n, 765 F.3d 1277, 1285 (11th Cir. 2014)).

A. Petitioner's Disability

25. Respondent does not dispute, and in fact concedes, that Petitioner is a person with a physical disability within the meaning of the FHA. Petitioner's first element of proof is therefore satisfied.

B. Request for Reasonable Accommodation

26. The undisputed evidence establishes that Petitioner, during all times relevant hereto, possessed a valid handicap parking decal. It is reasonable for a person who possesses a handicap parking decal to request to be able to park their vehicle, without restriction, in a designated handicap parking space. Petitioner has met her burden with respect to establishing the second element of proof required by Hunt.

C. Necessity of the Requested Accommodation

27. "To prove that an accommodation is necessary, [Petitioner] must show that, but for the accommodation, [she]

likely will be denied an equal opportunity to enjoy the housing of [her] choice." Hoang v. Dekalb Hous. Auth. Section 8, No. 1:13-cv-3796-WSD, 2014 U.S. Dist. LEXIS 35774 (N.D. Ga. Mar. 19, 2014) (citing Giebeler v. M&B Assocs., 343 F.3d 1143, 1155 (9th Cir. 2003)).

28. The evidence establishes that in response to Petitioner's requests to park on an unrestricted basis in the handicap parking space, Respondent offered Petitioner her choice of parking spaces located within a few feet of Petitioner's unit when compared to the handicap space that Petitioner desires. Petitioner generically rejected the offered parking spaces because they are "too small," yet she failed to provide credible comparative evidence to substantiate this contention. In other words, Petitioner can establish the necessity of her selected parking spaces by demonstrating that the alternatives offered by Respondent are unacceptable because they deny her an equal opportunity to access her condominium unit. Petitioner has failed to make such a showing.

29. Additionally, Petitioner also rejected unassigned spaces #1 and #2 because they are too close to the unit occupied by a neighbor that she dislikes. Arguably the same is true for each of the other offered spaces rejected by Petitioner as they too are within a stone's throw of the neighbor disliked by Petitioner. Petitioner's dislike of her neighbor is not

competent evidence which can support a claim of necessity as it relates to her rejection of the parking spaces offered by Respondent. See Schwarz v. City of Treasure Island, 544 F.3d at 1226 ("if accommodations go beyond addressing [the effects of a handicap] and start addressing problems not caused by a person's handicap, then the handicapped person would receive not an 'equal,' but rather a better opportunity to use and enjoy a dwelling, a preference that the plain language of this statute cannot support").

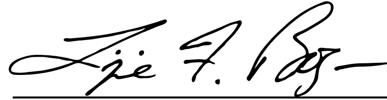
30. Petitioner has not met her burden of proving that her request to park in the clubhouse handicap space, as well as her request to modify space 366, is necessary in order to accommodate her disability. Petitioner has, therefore, failed to meet her ultimate burden of proof, and has thus failed to prove that she is the victim of unlawful discrimination under the FHA. Accordingly, Respondent was justified in refusing Petitioner's request for accommodation, and Petitioner is subject to, without modification, the same rules, policies, and practices which govern others who park in the clubhouse handicap parking space.

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 finding that Respondent, Pine Run

Association, Inc., did not commit unlawful housing discrimination as alleged by Petitioner, Valerie Walters, and denying Petitioner's Housing Charge of Discrimination.

DONE AND ENTERED this 17th day of June, 2016, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of June, 2016.

COPIES FURNISHED:

Tammy S. Barton, Agency Clerk
Florida Commission on Human Relations
Room 110
4075 Esplanade Way
Tallahassee, Florida 32399
(eServed)

Cindy Hill, Esquire
Hill Law Firm, P.A.
456 South Tamiami Trail
Osprey, Florida 34229
(eServed)

Gary Parker, Esquire
Legal Aid of Manasota
1900 Main Street, Suite 302
Sarasota, Florida 34236

Sharon S. Vander Wulp, Esquire
Sharon S. Vander Wulp, P.A.
712 Shamrock Boulevard
Venice, Florida 34293
(eServed)

Scott H. Jackman, Esquire
Cole, Scott and Kissane, P.A.
Suite 400
4301 West Boy Scout Boulevard
Tampa, Florida 33607
(eServed)

Cheyanne Costilla, General Counsel
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399
(eServed)

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.