

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2006-073VW
Application No. 2005-319HR

GULF BREEZE APARTMENTS PARTNERS, LTD,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

**PETITION FOR VARIANCE OF EMERGENCY
RULE 67ER05-17(3)(b), F.A.C. (2005)**

Gulf Breeze Apartments Partners, Ltd., a Florida limited partnership (“Gulf Breeze”), petitions the Florida Housing Finance Corporation (“Florida Housing”) for a variance of the 3% per annum interest for non-ELI units financed through the 2005 Rental Recovery Loan Program (“2005 RRLP”). *See* Emergency Rule 67ER05-17(3)(b), F.A.C. (2005) (“2005 Rule”). In support for the requested Rule variance, Gulf Breeze states the following:

1. Pursuant to Section 120.542, Fla. Stat.(2005) and Rules 28-104.001 through 28-104.006, F.A.C. (2005), Gulf Breeze requests a variance of the 2005 Rule which requires a “3% simple interest per annum on the pro-rata portion of the RRLP base loan attributable to non-ELI units.” Relief sought through the requested variance would provide Gulf Breeze with the same “1% simple interest per annum on the pro-rata portion of the RRLP base loan attributable to non-ELI units” as successful applicants received under the 2006 Rental Recovery Loan Program (“2006 RRLP”). *See* Emergency Rule 67ER06-34(3)(b), F.A.C. (2006) (“2006 Rule”).

2. The name, address, telephone and facsimile numbers for Gulf Breeze and its qualified representative are:

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c/o Norstar Gulf Breeze, Inc.
Attention: Richard Higgins
200 South Division Street
Buffalo, New York, 14204
Telephone: (716) 847-1098
Facsimile: (716) 847-1668
E-mail: rhiggins@norstarus.com

3. For purposes of this Petition, the address, telephone number and facsimile number of Petitioner's attorneys are:

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WEISSLER ALHADEFF & SITTERSON, P.A.
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4. During the 2005 RRLP cycle, Gulf Breeze was awarded a total commitment of up to \$2,400,000 in RRLP financing towards construction costs of Gulf Breeze Apartments, a new 184-unit apartment development (the "Development") intended to serve very-low and low-income families in Punta Gorda, Charlotte County, Florida.

5. Gulf Breeze received the 2005 RRLP loan commitment for the Development because Charlotte County was designated as one of the Florida counties impacted by the 2004 hurricane season, and 2005 RRLP financing was made available to assist in hurricane recovery. Under the 2005 Rule, however, *pro rata*, per annum interest on non-ELI units is 3% simple interest.

6. As set forth more fully below, the requested relief, reducing non-ELI unit interest from 3% to 1%, will not adversely impact the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to Gulf Breeze; (b) deprive Charlotte County of essential affordable rental units; and (c) violate principles of fairness.

7. The 2005 RRLP funding was made pursuant to Section 2 of Chapter 2005-92, Laws of Florida (“Section 2”), under which Florida Housing was allocated a portion of the Local Government Housing Trust Fund and the State Housing Trust Fund to provide funds to eligible entities for affordable housing recovery efforts, including the funding of the RRLP, to assist with building and rehabilitating affordable rental housing in response to hurricane recovery needs. Section 3 of Chapter 2005-92, Laws of Florida (“Section 3”), authorizes Florida Housing to, among other things, administer the funds allocated pursuant to Section 2, and to adopt emergency rules to administer those funds.

8. Pursuant to these provisions, Florida Housing adopted rules for the terms and conditions of RRLP fund loans. The 2005 Rule established interest rates as follows:

(3) The base loan shall be non-amortizing and shall have interest rates as follows:

(a) 0% simple interest per annum on the pro-rata portion of the base loan attributable to ELI units over the life of the loan; and

(b) 3% simple interest per annum on the pro-rata portion of the base loan attributable to non-ELI units.

Rule 67ER05-17(3), F.A.C. (2005).

9. Consequently, the 2005 Rule, for which Gulf Breeze requests a variance, implements Sections 2 and 3 of Chapter 2005-92, Laws of Florida.

10. The following facts demonstrate the economic hardship and other circumstances which justify Gulf Breeze's request for the Rule variance:

- a. Gulf Breeze initially entered into a December 2004 Memorandum of Agreement ("Agreement") with the Punta Gorda Housing Authority for the issuance of Multifamily Mortgage Revenue Bonds ("MMRB"), in an amount not to exceed \$14,000,000.¹ The MMRB will be used for financing new construction to replace affordable housing units within the City of Punta Gorda, Charlotte County, Florida.
- b. As a consequence of damage caused by the 2004 hurricanes, however, development costs, including construction and insurance costs, have significantly increased.
- c. As a result, Gulf Breeze was able to apply for and receive 2005 RRLP funding for the Development because Charlotte County was one of the Florida counties impacted by the 2004 hurricane season.
- d. The Florida Legislature subsequently appropriated additional funds for the 2006 RRLP Application Cycle to assist those counties impacted by the 2004 and 2005 hurricane seasons. The appropriation of additional funds enabled Florida Housing to increase subsidy limits.
- e. In addition to increasing the subsidy limits, Florida Housing adopted the 2006 Rule which reduced the pro rata non-ELI unit interest rate from 3% to 1%. *See* Rule 67ER06-34(3)(b), F.A.C. (2006).
- f. Despite the decreased interest rate under the 2006 Rule, Gulf Breeze's 2005 RRLP funding remains subject to the higher 3% interest rate under the 2005 Rule, whereas, applicants who received 2006 RRLP financing for the same 2004 hurricanes obtained the benefit of the 1% interest rate under the 2006 Rule.
- g. Had Gulf Breeze been able to wait and apply for the 2004 hurricane-season assistance under the 2006 RRLP, it would have received the lower 1% interest rate.

¹The December 2004 Agreement was replaced by a June 15, 2006 Agreement, and that Agreement was subsequently replaced by the current October 19, 2006 Agreement with the Punta Gorda Housing Authority.

11. Florida Housing is authorized by Section 120.542(2), Florida Statutes, and Rule Chapter 28-104, F.A.C. (2005), to grant variances to its rule requirements when strict application of such rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Variances shall be granted when the person subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or violate principles of fairness; and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Fla. Stat. (2005).

12. The granting of Gulf Breeze's requested Rule variance would serve the purpose of Section 120.542(2), by ensuring the viability of its affordable housing Development, by allowing Gulf Breeze the benefit of the lower interest rate, and making it more likely that the Development will be completed on time and in budget, thereby furthering Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

13. Strict application of the 2005 Rule will create a substantial hardship for Gulf Breeze because it remains subject to the same increased construction and insurance costs as applicants for 2006 RRLP funds. The requested variance will mitigate some of the financial stress resulting from these increased costs that could result in unnecessary delay and expense, and might make it difficult to complete the Development in time and within budget.

14. The requested variance will not adversely impact the Development or Florida Housing.

15. The Rule variance being sought is permanent in nature.

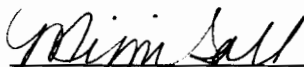
16. Should Florida Housing require additional information, Gulf Breeze is available to answer questions and to provide all information necessary for consideration of its Petition for Variance of Emergency Rule 67ER05-17(3)(b), F.A.C. (2005).

WHEREFORE, Petitioner Gulf Breeze Apartments Partners, Ltd., respectfully requests that the Florida Housing Finance Corporation grant the Petition for the following relief:

- A. Provide a variance of Emergency Rule 67ER05-17(3)(b), F.A.C., to reduce the *pro rata*, per annum interest on the Development's non-ELI units from 3% to 1% simple interest; and
- B. Award such further relief as may be deemed appropriate.

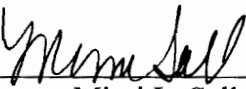
Respectfully submitted,

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By: 
MIMI L. SALL

CERTIFICATE OF SERVICE

The Original Petition is being served by overnight delivery, with a copy served by electronic transmission, for filing with Florida Housing Clerk for the Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301. A copy of the Petition was served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 2nd day of November, 2006.

By:  _____
Mimi L. Sall