

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

HARBOUR COVE ASSOCIATES, LTD.,  
a Florida limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

APPLICATION NO. 2003-040S

2006-067VW

RECEIVED  
MAY 29 11:10:00  
FLORIDA HOUSING  
FINANCE CORPORATION

**PETITION FOR VARIANCE AND WAIVER FROM  
RULES 67-48.0004(14)(I), 67-48.009(4) AND PART  
V.A.1. OF THE UNIVERSAL APPLICATION (Rev. 4-03)  
INCORPORATED BY REFERENCE INTO RULE 67-48-.002(111)**

HARBOUR COVE ASSOCIATES, LTD., a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver from Rules 67-48.004(14)(I) and 67-48.009(4), Florida Administrative Code (2003). Petitioner also seeks a variance from Part V.A.1 of the Universal Application (Rev. 4-03) incorporated into by reference by Rule 67-48.002(111), Florida Administrative Code. This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

1. The address, telephone and facsimile number of the Petitioner is:

Harbour Cove Associates, Ltd.  
c/o Mara S. Mades, Executive Vice President  
Cornerstone Group Development, LLC  
2121 Ponce de Leon Boulevard, Penthouse 2  
Coral Gables, FL 33134  
Telephone: (305) 443-8288  
Facsimile: (305) 443-9339

2. The address, telephone and facsimile number of the Petitioner's counsel is:

Maureen McCarthy Daughton, Esquire  
Broad and Cassel  
215 South Monroe Street, Suite 400  
Tallahassee, FL 32301  
Telephone: (850) 681-6810  
Facsimile: (850) 521-1478

3. Petitioner successfully applied for financing from the State Apartment Incentive Loan Program ("SAIL") in the 2003 Universal Application Cycle Multi-Family Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME); Rental Program and Housing Credit (HC) Program (the "Universal Cycle"). The Petitioner's application number is 2003-040S (the "Application"). Petitioner applied for \$2,000,000.00 in SAIL funds to finance a portion of the costs to develop a multifamily rental apartment complex on approximately seven (7) acres in Broward County, Florida, known as Harbour Cove Apartments (the "Development"). The Development will have 212 units. The Application for SAIL funds was approved for funding at the October 9, 2003 Corporation board meeting.

**THE RULES FOR WHICH THE WAIVERS AND VARIANCE ARE SOUGHT**

4. Petitioner requests a Waiver from Rule 67-48.010(14)(l), Florida Administrative Code (the "2003 SAIL Rule"), which provides:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline.

\* \* \*

(l) Funding Request (except for Taxable Bonds) amount; . . .

\* \* \*

5. Petitioner also seeks a waiver from Rule 67-48.009(4), Florida Administrative Code (2003), which provides:

(4) Applicants cannot request additional SAIL funding for the same Development, unless otherwise specified in the Universal Application.

6. Rule 67-48.002(111), Florida Administrative Code (2003), defines "Universal Application Package" as the forms and instructions received by the Corporation. Moreover, it further provides that the Universal Application Package is adopted and incorporated by reference into the Rule.

7. Petitioner seeks a variance from Part V.A. 1 of the 2003 Universal Application Instructions which limits the SAIL request amount of large County applicants to no more than \$2 million or in excess of 25% of the Total Development Cost.<sup>1</sup>

#### **STATUTES IMPLEMENTED BY THE RULES**

8. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act<sup>2</sup>, the Statute that created the SAIL program. See §420.5087, Florida Statutes.

9. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant variances and waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Variances and waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would: (1) create a

---

<sup>1</sup> The pertinent page of the 2003 Universal Application Instructions is page 52. In the 2006 Universal Application Instructions, the allowable SAIL Funding request was increased to \$4 million for large County applicants. Thus, as a matter of policy, the Corporation has determined that such requests are consistent with the provisions of affordable housing in Florida.

<sup>2</sup> The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.516 of the Florida Statutes.

substantial hardship or violate principals of fairness,<sup>3</sup> and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes. Denial of Petitioner's request for rule waivers and a rule variance in this case will present substantial hardship to the Petitioner and will frustrate the underlying purpose of the statute.

## **FACTS DEMONSTRATING ENTITLEMENT TO RELIEF SOUGHT**

### **Background**

10. Petitioners acquired the approximately seven acre site for the Development by special warranty deed dated July 29, 2003. Petitioners performed their due diligence with regard to the Phase I Environmental Site Assessment and Soils test. The plan for development was 212 units, with construction anticipated to be completed in July 2004.

11. In January 2004, during construction, Petitioner discovered oil on the property and the site was shut down for 18 months, while remediation plans were drafted, reviewed and approved. The presence of oil had not been disclosed by the seller of the property who was aware prior to the sale of Department of Environmental Resource Management ("DERM") violations on the site. The engineer who performed the soil evaluation was also aware of the presence of oil on the site prior to the construction beginning, however, failed to disclose this to Petitioner's representative. The Petitioner, upon discovery of this environmental hazard, immediately contacted the Hallendale Beach City Commission and sought their assistance in having the property designated as a Brownfield Area pursuant to Section 376.80 (2)(b), Florida statutes. On

---

<sup>3</sup> "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance "Principles of Fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to Rule 120.542(2), Florida Statutes.

June 15, 2004, the Hallandale Beach City Commission adopted Resolution 2004-18 which designated the Development site as a Brownsfield Area.

12. Subsequently, Petitioner hired an engineering firm to draft recommendations for remediation and submit them to the Department of Environmental Resources Management for review and approval. In December 2004 these plans were approved and a Brownfield Site Rehabilitation Agreement ("BSRA") was entered into between Broward County and Harbour Cove Associates, Ltd. The BSRA required the Petitioner to conduct site rehabilitation and throughout the process to submit technical reports to Broward County for oversight purposes. The site work remediation has recently been concluded.

13. The Petitioner closed on the SAIL Loan in May 2005. Due to the extended delay caused by the discovery of oil and the ensuing Brownfield remediation process, Petitioner, who is also the General Contractor on the Development, has had to rebid all of the subcontractor work at great expense. There have been significant increases in basic material costs during this interim period. These factors, as well as the significant additional costs attached to the remediation process, have resulted in cost overruns in excess of approximately \$8,000,000 to date, including 1.9 million dollars in additional construction period interest and more than 2.5 million dollars for site remediation. It is anticipated that this number will continue to rise, at least in the immediate future. Due to these unforeseen delays, completion of the construction of the Development will now take three (3) years and three (3) months resulting in Petitioner losing approximately \$1,400,000 in tax credit equity.

### Recent Events

14. The 2006 Universal Cycle Application Instructions allowed Applicants that were successful in receiving SAIL funding for the first time in the 2005 Universal Application Cycle to apply in 2006 for End-of-the-Line SAIL funding to obtain additional SAIL funding for their Developments.<sup>4</sup> The Instructions also provided that Developments located in large counties, including Broward County, Florida, could obtain SAIL funding in an amount not to exceed four million dollars (\$4,000,000.00) in the 2006 Universal Cycle.<sup>5</sup>

15. On July 31, 2006, the Corporation Board entered its Order in FHFC Case No. 2006-029VW, granting Casa San Juan Bosco, Inc.'s Petition for Waiver. Casa San Juan Bosco, Inc. had been allocated \$2,000,000 in SAIL funds pursuant to a 2004 RFP for Farmworker Housing and requested a waiver to ask for additional funds through the 2006 End-of-the-Line SAIL program. The Order found that the Petitioner, which had not obtained SAIL funding from the 2005 Universal Cycle,<sup>6</sup> was eligible to apply for additional 2006 SAIL funds, if any remained after all of the eligible 2006 SAIL applications had been funded.<sup>7</sup> A copy of the Final Order in FHFC Case No. 2006-029VW is attached hereto as Exhibit 1.

16. Petitioner is requesting the above-stated waivers and variance from the 2003 SAIL Rule to allow it to receive an additional \$2 million in SAIL funding for this Development,

---

<sup>4</sup> Page 93 of the 2006 Universal Application Instructions states in pertinent part:

A proposed Development that was successful in receiving SAIL funding for the first time in the 2005 Universal Application Cycle may receive additional SAIL funding for the same Development.

<sup>5</sup> Page 10 of the 2006 Universal Application Instructions.

<sup>6</sup> The original funding for Casa San Juan Bosco, Inc. was via a 2004 Request for Proposal for the development of farmworker housing.

<sup>7</sup> Although not clear in its Order, it appears the granting of the Petition in FHFC Case No. 2006-029VW was as to Rule 67-48.004(14)(b) (2006) and the above provision of the 2006 Universal Application. (Paragraph 8 of the Order provides, "The Board finds that a waiver of the above Rules . . .").

from the 2006 Universal Cycle.<sup>8</sup>

17. As in the attached Order, if the requested relief is not granted, Petitioner will be precluded from obtaining additional SAIL Funds that other developers, some who obtained an allocation of SAIL Funds in 2005 and some who did not, were afforded.

18. In this case, continued strict application of Rules 67-048.004(1), 67-48.009(4) and Part V.A.1 of the Universal Application (Rev. 4-03) under these circumstances will be fundamentally unfair and will create a substantial hardship for Petitioner. The granting of this request will serve the underlying purpose of the statute in that additional funding will enhance the likelihood of financial success and, in turn, will further Florida Housings statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. Due to the unexpected series of events and delays resulting from the Brownsfield designation and execution of the BSRA, Petitioner must now meet significant cost overruns. To deny Petitioner's request will create an economic hardship in that Petitioner will not have the use of the additional funds to offset the \$8 million in cost overruns described herein as a result of the Brownfield.<sup>9</sup> As set forth in the Casa San Juan Bosco, Inc. Order, "without the waiver, this unanticipated expense will make it impossible to complete the Development on time and within budget." This same statement is appropriate for Petitioner.

---

<sup>8</sup> A Petition, which similarly seeks 2006 SAIL funds, but which did not apply for SAIL funds in 2005, is currently before the Board in Case No. 2006-044VW.

<sup>9</sup> In Casa San Juan Bosco, Inc., the substantial hardship was over \$2 million in impact fees associated with supplying water and wastewater to the Development. In Case No. 2006-044VW, the substantial hardship is over approximately \$2,000,000 in increased construction and development costs and impact fees.

**VARIANCE WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

19. Petitioner believes that the requested waivers and variance of this Rule will serve the purposes of the statute which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the SAIL program was to provide first, second or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, non-profit and public entities, to provide affordable housing to very low income persons. The legislative intent will be served by the granting of these requests.

**TYPE OF VARIANCE**

20. The waivers and variance being sought are permanent in nature.

21. Should the Corporation have questions or require any additional information necessary for consideration of this Petition please contact the undersigned.

**ACTION REQUESTED**

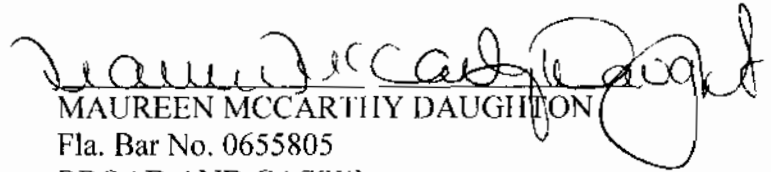
22. Petitioner requests the following:

a. A waiver from Rules 67-48.004(14) and 67-48.009(4), Florida Administrative Code, and a variance from Part V.A.1 of the Universal Application (Rev. 4-03) incorporated by reference into Rule 67-48.002(111), F.A.C., such that Petitioner is allowed to increase its funding request \$2 million to a total request of \$4 million and receive additional SAIL funds from the 2006 Universal Cycle.

23. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.



Respectfully submitted this 20 day of September, 2006.



MAUREEN MCCARTHY DAUGHTON

Fla. Bar No. 0655805

BROAD AND CASSEL

215 South Monroe Street, Suite 400

Tallahassee, FL 32301

Telephone: (850) 681-6810

Facsimile: (850) 521-1478

Counsel for Petitioner

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: CASA SAN JUAN BOSCO, INC.

FHFC Case No.: 2006-029VW  
RFP No.: 2004-11

---

**ORDER GRANTING WAIVER OF RULE 67-48.004(14)(m),  
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on July 28, 2006, pursuant to a Petition for Waiver of Rule 67-004(14)(m), Fla. Admin. Code (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on June 20, 2006, from Casa San Juan Bosco, Inc., ("Petitioner"). On June 30, 2006, Florida Housing published the Notice of the Petition in Volume 32, Number 26, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Pursuant to "The Development and Rehabilitation of Farmworker Housing" Request for Proposal #2004-11 ("RFP"), Florida Housing awarded an allocation of \$2,000,000 in State Apartment Incentive Loan Program (SAIL) funding to Petitioner to construct a 44-unit farmworker housing project in DeSoto County, Florida ("Development"). Petitioner did not obtain funding from the 2005 Universal Cycle for the San Juan Bosco Development.
3. Petitioner requests a waiver of Rule 67-004(14)(m) to permit a change in the funding request. Specifically, Petitioner wishes to change the current funding request of

FILED WITH THE CLERK OF  
FLORIDA HOUSING FINANCE CORPORATION

*S. Green* /DATE. 7-31-06



\$2,000,000.00 to request an additional \$2,000,000.00 for a total funding request of \$4,000,000.00.

4. Rule 67-48.004(14)(b), Florida Administrative Code (2004), states in pertinent part:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline....those items are as follows:

(m) Funding request;

5. Page 93 of the 2006 Universal Application Instructions states in pertinent part:

A proposed Development that was successful in receiving SAIL funding for the first time in the 2005 Universal Application cycle may receive additional SAIL funding for the same Development. The combined total of the 2005 request amount and the 2006 End-of-the-Line SAIL request amount cannot exceed the maximum request amount for the county group/designation stated on the SAIL request amount chart at Part V.A.2. of the 2006 Universal Application Instructions.

6. Section 120.542(2), Florida Statutes provides in pertinent part:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

7. In 2006, The Universal Cycle Application Instructions allowed End-of-the-Line SAIL funding for developers to obtain additional SAIL funding, provided that the initial allocation of SAIL funds occurred through the 2005 Universal Cycle. Developments located in DeSoto County, Florida could obtain SAIL funding in an amount not to exceed four million dollars (\$4,000,000.00).

8. The Board finds that a waiver of the above Rules is necessary and that denial thereof would create a substantial hardship for Petitioner or violates principles of fairness, in that

Petitioner will be precluded from obtaining additional financing that Petitioner would be otherwise eligible to obtain had Petitioner participated in the 2005 Universal Cycle.

9. The granting of a waiver of the aforementioned rules would serve the purpose of the underlying statute, Chapter 420, Part V, Fla. Stat., in that it would further the goal of facilitating the availability of decent, safe and sanitary housing in the State of Florida to farmworker households.

10. Strict application of Rule 67-48.004(14)(m), will create a substantial hardship for Petitioner, as Petitioner demonstrated that it will pay over two million dollars in unanticipated costs associated with supplying water and waste water to the Development. Without the waiver, this unanticipated expense will make it impossible to complete the Development on time and within budget.

**IT IS THEREFORE ORDERED:**

The Petition for Waiver of Rule 67-48.004(14)(m), Florida Administrative Code, is hereby **GRANTED** specifically to permit a change in the funding request. Petitioner shall be eligible for the requested additional SAIL funds if any SAIL funds remain after all of the eligible SAIL applications (including end-of-the-line applications) have been funded in the 2006 Universal Application. All other relief requested in the Petition, if any, is hereby denied.

DONE and ORDERED this 28th day of July, 2006.



Florida Housing Finance Corporation

By: Terry Partino  
Chairperson

**Copies furnished to:**

Wellington H. Meffert II  
General Counsel  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Vicki Robinson  
Deputy Development Officer  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Michael Maida, Esquire  
Rultledge, Ecenia, Purnell & Hoffman, P.A.  
215 S. Monroe Street, Ste. 420  
Tallahassee, Florida 32301

Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
120 Holland Building  
Tallahassee, Florida 32399-1300

**NOTICE OF RIGHTS**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN L. KING, JR., BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.**