

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

FRENCHTOWN COMMUNITY  
DEVELOPMENT CORPORATION,

Petitioner

vs.

APPLICATION NO. 2000-0024PLP

FLORIDA HOUSING FINANCE CORP.,

Respondent.

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**PETITION FOR VARIANCE OF RULES 67-38.002 AND 67-38.007, F.A.C.**

FRENCHTOWN COMMUNITY DEVELOPMENT CORPORATION (“Frenchtown CDC”), a Florida limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a variance of Rules 67-38.002 and 67-38.007, Florida Administrative Code (2000). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

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

Frenchtown Community Development Corporation  
c/o Regina Davis, Executive Director  
421 West Georgia Street  
Tallahassee, Florida 32302  
Telephone: (850) 224-9745  
Facsimile: (888) 475-3040

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

Maureen McCarthy Daughton  
Jennifer A. Winegardner  
Broad and Cassel  
215 S. Monroe Street, Suite 400  
Tallahassee, FL 32301  
Telephone: (850) 681-6810  
Facsimile: (850) 521-1478

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FLORIDA HOUSING FINANCE CORPORATION

3. Petitioner successfully applied for financing from the 2000 Pre-development Loan Program (“PLP”) that the Corporation administered pursuant to Chapter 67-38, Florida Administrative Code. The Petitioner’s application number is 2000-0024PLP (the “Application”). Petitioner applied for PLP Funds to finance development of 20 townhome style residences to be known as Frenchtown Village Marketplace (the “Development”), in the Frenchtown neighborhood of Tallahassee, Leon County, Florida. The Frenchtown neighborhood has been designated a Front Porch Florida Community. The Development has been awarded two CRA grants from the City of Tallahassee totaling \$493,000. The first CRA grant in the amount of \$143,000 was awarded in 2002. A second grant was awarded this year in the amount of \$350,000. The Development also carries a \$1,000,000 line of credit with the City of Tallahassee.

4. The Corporation issued a PLP loan in the amount of \$500,000 to the CDC, the first \$100,000 for pre-development activities, the remaining \$400,000 for land acquisition cost. In November of 2003 the utilization of PLP funds for land acquisition required credit underwriting and FHFC Board approval. The credit underwriting analysis was prepared by Seltzer Management Group, Inc. in November 2003 which recommended that FHFC proceed with funding the \$400,000 acquisition cost with PLP funds. Pursuant to Board approval a Land Use Restriction Agreement (LURA) was executed in March of 2003. The LURA provided in Article III, under subheading, Compliance with Program Requirements, that “at least one hundred percent (100%) of the completed homeownership units must be sold to persons or households with incomes that do not exceed eighty percent (80%) of the area median income, as determined by HUD or its successor, with adjustments for family size as established by Florida Housing.”

## **THE RULES FROM WHICH VARIANCE IS SOUGHT**

5. Petitioner requests a variance from Rules 67-38.002 and 67-38.007, Florida Administrative Code.

Rule 67-38.002(21), provides:

- (21) “Minimum Set-Aside Requirement” means, with respect to PLP,

\* \* \*

- (b) for home ownership Developments, all completed housing units must be sold to persons or households with incomes not exceeding 80% of the median annual gross income as established by HUD for households within the State, the MSA or, if not within the MSA, within the county in which the person or household resides, whichever is greater.

Rule 67-38.007(13), provides:

- (13) With respect to home ownership Developments, in order to assure that such Developments will serve the target population and maintain the Minimum Set-Aside Requirements, in addition to the execution and recordation of the Land Use Restriction Agreement (LURA) upon initial purchase by the Applicant, all deeds conveying title to home ownership units shall contain restrictive covenants, encompassing all of the units in the Development for which the Predevelopment Loan Program funds are being used. The LURA shall reflect the provision that all these home ownership units must initially be purchased only by persons who do not exceed income limits established in Rule Chapter 67-38.002(21), F.A.C.

## **STATUTES IMPLEMENTED BY THE RULES**

6. The Rule implements, among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the statute that created the Predevelopment Loan Program. See §420.521-420.529, Florida Statutes. The Act designates the Corporation as the Administrator of the

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes.

“Predevelopment Loan Program.” As the Administrator the Corporation is responsible for making loans to eligible sponsors when it determines (a) a need for housing for the target population exists in the area within the application; and (b) federal, state or local public funds or private funds are likely to be available to aid in site acquisition or support of the housing proposed in the application.

**PETITIONER REQUESTS A VARIANCE FOR THE FOLLOWING REASONS**

7. The Petitioner is seeking relief to reduce the minimum set aside requirements that requires one hundred percent (100%) of the completed homeownership units to be sold to persons or households with incomes that do not exceed eighty percent (80%) of the area median income. The Petitioner is seeking to reduce the minimum set-aside to require fifty percent (50%) of the completed homeownership units to be sold to households whose income does not exceed 80% of the area median income.<sup>2</sup> This request also requires an amendment to the LURA demonstrating this reduction.

8. The Frenchtown neighborhood is one of the oldest residential and commercial areas in the City of Tallahassee, until racial desegregation and urban flight in the 1960’s and 1970’s, Frenchtown was a socially thriving economic, educational, and residential center of African-American culture in North Florida. At present, however, the Frenchtown community housing stock is substandard and aged, with most houses dated to the 1930s. The community suffers from overcrowding and high levels of poverty. Despite the overcrowding, over 250 lots in this 1.88 mile area are vacant or have abandoned buildings on them. A revitalized Frenchtown

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<sup>2</sup> In the most recent revisions to the 2007 draft PLP Rule (67-38.0026(7)) the rule reduces the set aside requirement to fifty percent (50%). As stated in the most recent draft:

- (7) for home ownership in Developments:
  - (a) The Applicant must commit to sell *a minimum of 50%* of completed housing units to persons or households whose income does not exceed 80% of the area median income.

area will offer an alternative to urban sprawl by providing a newly renovated residential neighborhood.

9. In 1996, the City of Tallahassee approved an aggressive revitalization strategy to rebuild the homeownership and economic bases of the Frenchtown community. In conjunction with the City's initiatives, in 1999, the State of Florida recognized the Frenchtown neighborhood among the first in The Front Porch Florida program. Following the Front Porch Florida program, in 2003, the State approved Frenchtown as an Enterprise Zone – a specific geographic area targeted for economic revitalizing. Frenchtown Community Development Corporation was created in 2000 to ensure that the significant community and political support for revitalization would not wane. The CDC is a non-profit corporation that partners with public and other private entities for funding and support in the revitalization effort.<sup>3</sup>

10. The CDC's goal with the Development is to augment the mixed-use and mixed-income developments already completed or underway.<sup>4</sup> The Development was designed to offer both immediate, mid-range, and long-term benefits in the community: there is an immediate improvement of razed blight, immediate job opportunity, mid-term alleviation of housing demands, and long-term protection of property values by continued rehabilitation of neighboring existing homes. The CDC acquired several small properties and lots, and petitioned the City of

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<sup>3</sup> The CDC qualifies as a Community Development Entity by the U.S. Department of Treasury, a certification attained after demonstrating stringent requirements, including demonstrated accountability. The CDC has also been certified as a Community Housing Development Organization by the City of Tallahassee, the State of Florida and federal Department of HUD after demonstrating sufficient experience, capacity, and financial accountability. It is also a Community Based Development Organization certified by HUD. The CDC gained these certifications as it gained experience as a Developer.

<sup>4</sup> For example, the CDC is also the project manager for the 24-unit development known as Carolina Oaks. Carolina Oaks is in partnership with the City of Tallahassee and Housing Tallahassee LLC. The City provided a \$1.5M line of credit to construct the units. Phase II of Carolina Oaks is on city-owned land and the homeowner has a forgivable land mortgage on the property if he or she remains in the house for 10 years. Because Frenchtown is a Front Porch community, homeowners are able to receive low interest rate financing through financial institutions that have bonds with the Florida Housing Corporation at rates that are approximately 5%. Carolina Oaks has been hugely successful blending mixed income homeowners seamlessly.

Tallahassee for a unity of title. With one large tract of land on an entire city block, the CDC will develop a 20-unit residential condominium complex, with a separate 15,000 square foot commercial building that will be converted to commercial condominium use and will house a restaurant, as well as other commercial operations. Site plans have been approved.

11. The initial financial projections for the Development were made in 2003. Since that time, the estimated budget has had to be modified because of certain infrastructure challenges that changed the site work estimated budget. While some projected expenses are actually lower now, unexpected site work expenses now exist because of the City's stringent infrastructure requirements in the downtown area. For example, the unexpected location of a large drainage pipe through the middle of the already-permitted construction site has resulted in additional costs to construct a storm water management facility. Also not included are additional expenses for landscaping, irrigation, pavers, driveways, fences and parking around the storm water facility. The CDC has a loan commitment from AmSouth (now Regions Bank) in the amount of \$2,895,000.00 for the construction of the residential portion of the Development.<sup>5</sup> The loan will be used to pay off the existing PLP loan in full, and a current debt to the City of Tallahassee for an extended line of credit in the amount of approximately \$1,000,000. However because of the increases, due largely to the storm water management issues, the CDC cannot move forward with this Development pursuant to the 100% affordable housing constraints. The CDC believes it can move forward with the current financing and still provide fifty percent (50%) low income housing and the remaining fifty percent (50%) at market rate. This is consistent with the current version of the 2007 PLP Rule under consideration by the Corporation and Florida Statutes.

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<sup>5</sup> While the Loan Commitment letter from Regions has expired the undersigned is in the process of confirming with Regions that they will continue that Commitment for the next thirty (30) days. The undersigned will update the Corporation once this is confirmed.

12. The pertinent statute regarding granting of variances provides: Variances shall be granted when the applicant demonstrates that application of the rule would create a substantial hardship or would violate principles of fairness. Section 120.542(2), Florida Statutes. “Substantial Hardship” is defined as a demonstrated economic, technological, legal or other type of hardship “to the applicant.” Petitioner has tapped all available resources for funds, and successfully secured not only the PLP funds, but substantial funding by way of grants and credit with the City of Tallahassee. The Lender has been exceedingly supportive. Subsequent to the initial budgeting, the project design faced significant alterations through no fault of the Petitioner. The City imposed additional drainage and infrastructure modifications that added a significant amount to the development costs. With this increase in development costs, the Petitioner was required to readjust its budget and was left with no alternative than to reconsider the number of available low-income units. The economic hardship is tied tightly to the technological hardship the Petitioner faces in complying with the City’s infrastructure and drainage requirements. Petitioner was required to redesign the Development site plan to comply with technical drainage and stormwater issues that arose after the Development was initially designed. Unless there is a modification to the number of Units, Petitioner will not have the financial ability to meet the technical aspects of the site plan requirements.

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

13. Petitioner believes that a variance of these rules 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 purpose of the PLP Program is to provide for financial and technical assistance to local governments, housing authorities, and not-for-profit organizations who will

provide for the sponsorship of housing for the target population. By granting this variance and permitting Petitioner to make the aforementioned changes, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income persons.

14. The requested variance will not adversely impact the Development or the Corporation, in fact it will insure payment in full of its PLP loan. Additionally it will guarantee the delivery of affordable units in a location in which the need for affordable housing is great.

**TYPE OF VARIANCE**

15. The variance being sought is permanent in nature.

16. Should the Corporation have questions or require any additional information, Petitioner will provide any additional information necessary for full consideration of the Petition.

**ACTION REQUESTED**

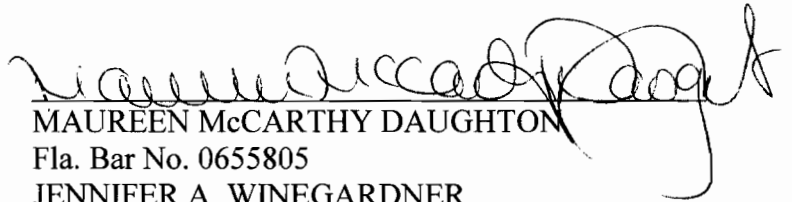
17. Petitioner requests the following:

a. Grant the Petition and all the relief requested herein;

18. 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 25 day of September, 2007.



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