

BEFORE THE  
FLORIDA HOUSING FINANCE CORPORATION

CHARLOTTE CROSSING, LTD.,  
a Florida limited partnership,

Petitioner,

v.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

Application #: 2004-035BS

Case #: 2004- 048 VW

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FINANCE CORPORATION

**PETITION FOR VARIANCE FROM RULES  
67-48.002(111) & 67-21.002(98); 67-48.004(14)(g), (i), & (l) and  
67-21.003(14)(g), (i) & (j); and 67-48.012(1)(g)**

Charlotte Crossing, Ltd. ("Petitioner") hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a variance from Rules 67-48.002(111) and 67-21.002(98); 67-48.004(14)(g), (i), & (l) and 67-21.003(14)(g), (i), & (j); and 67-48.012(1)(g), 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 number, and facsimile number of the Petitioner are:

Charlotte Crossing, Ltd.  
attn: Lloyd J. Boggio  
2950 SW 27<sup>th</sup> Ave., Suite 200  
Miami, Florida 33133  
(305) 476-8118  
(305) 476-1557 fax

2. Petitioner successfully applied for financing from the State Apartment Incentive Loan (“SAIL”) and multifamily mortgage revenue bond (“MMRB”) programs through the 2004 Universal Application Cycle (the “Universal Cycle”) that the Corporation administers pursuant to Chapters 67-21 and 67-48, Florida Administrative Code. The Petitioner’s application was #2004-035BS (the “Application”). Petitioner applied for SAIL funds and MMRB proceeds to finance a portion of the costs to develop a multifamily rental apartment complex in Charlotte County, Florida to be known as Charlotte Crossing (the “Development”). The Application for which Petitioner received a preliminary award of financing from the Corporation was for a 200-unit apartment complex to serve the Family demographic category under the Corporation’s rules.

3. Because of significant changes in the need for affordable housing in Charlotte County and in the costs to develop such housing there, Petitioner is seeking relief from the Corporation to change certain aspects of the Development as initially envisioned in the Application. The unforeseen changes that this summer’s hurricanes caused in Charlotte County during the time since the Petitioner filed the Application have created a substantial hardship to the Petitioner, and it would violate principles of fairness not to permit the requested changes for the Development.

**The Rules from which Variance is Sought**

4. Petitioner seeks a variance from Rules 67-48.002(111) and 67-21.002(98); 67-48.004(14)(g), (i), & (l) and 67-21.003(14)(g), (i), & (j); and 67-48.012(1)(g), Florida Administrative Code.

5. Rules 67-48.002(111) and 67-21.002(98) are substantively identical. Each adopts the Universal Application Package by reference, 67-48.002(111) as to the SAIL program and 67-21.002(98) as to the MMRB program.

6. Rules 67-48.004(14)(g) and 67-21.003(14)(g) are substantively identical, as are rules 67-48.004(14)(i) and 67-21.003(14)(i), and rules 67-48.004(14)(l) and 67-21.003(14)(j). Each rule says that an applicant in the Universal Cycle may not change certain items in its application after the initial submission to the Corporation. Rules 67-48.004(14)(g) and 67-21.003(14)(g) prohibit an applicant from changing its Designation selection. Rules 67-48.004(14)(i) and 67-21.003(14)(i) prohibit a change to the total number of units. Rules 67-48.004(14)(l) and 67-21.003(14)(j) prohibit a change to the funding request.

7. Rule 67-48.012(1)(g) requires that, “The minimum combined debt service coverage shall be 1.10 . . . , including the SAIL mortgage and all other superior mortgages.”

#### **Statutes Implemented by the Rules**

8. The statutes that the rules are implementing are sections 420.507, 420.508, and 420.5087, Fla. Stat.

#### **Petitioner Requests a Variance from the Rules For the Following Reasons**

9. When Petitioner submitted the Application to the Corporation, it did so in the good faith belief that a 200-unit affordable housing development to serve the Family demographic category would be a financially viable undertaking that would serve the affordable housing needs of Charlotte County.

10. While the Application was pending before the Corporation, Hurricane Charley tore through Charlotte County, causing many millions of dollars in damage and destroying thousands of homes. Based on anecdotal evidence and repeated requests from Charlotte County officials to Petitioner, the need for elderly housing in Charlotte County is now far more pressing than the need for housing that would serve the Family demographic category. The Corporation is familiar with the damage in Charlotte County through the considerable efforts it has undertaken to respond to the housing crises of the many residents who have lost their homes.

11. The construction efforts to repair the damage from Hurricane Charley have exacerbated in Charlotte County the dramatic increases in construction and labor costs that have been well-documented throughout Florida and the rest of the country. The Corporation is familiar with these cost increases generally, given its ongoing credit underwriting of proposed developments throughout the state.

12. Section 420.5087(3)(d), Fla. Stat., requires the Corporation to set aside a portion of its SAIL proceeds each year to serve elderly households. For the 2004 Universal Cycle, the Corporation determined that the statewide rental market study required the Corporation to set-aside 24% of the SAIL funds for households serving the Elderly demographic and designation. Of the \$56,925,000 available, the statute contemplates that the Corporation would have awarded \$13,662,000 to proposed developments serving the Elderly demographic. Because the Corporation did not receive enough Elderly applications, it only awarded \$7,500,000 in SAIL funds to Elderly applications, or just over 13% of the total amount available.

13. Given the damage to Charlotte County that Hurricane Charley caused, and given that the Corporation did not meet its goal for funding Elderly housing through the SAIL program in 2004, it is in the best interests of Charlotte County to create new Elderly housing there as quickly as possible.

14. It would not be enough, though, to merely permit the Development to become an Elderly development under the Corporation's rules and to award it the level of SAIL funding that Elderly developments can receive. Rule 67-48.012(1)(g) requires that "The minimum combined debt service coverage shall be 1.10 . . . , including the SAIL mortgage and all other superior mortgages." (the "1.10 Requirement") The MMRBs that provide the first mortgage typically must underwrite to a 1.15 or 1.20 debt service coverage ratio. Based on the Petitioner's current projections, and even if the Corporation grants the other relief that this Petition seeks, the 1.10 Requirement would obligate the Petitioner to use an extra \$1,100,000 of the SAIL proceeds to pay down bonds below the level that the bond credit enhancer would require. That is, \$1,100,000 of financial resources that should be available to build the much needed affordable housing for the elderly in Charlotte County would instead be used to satisfy the 1.10 Requirement. Without relief from the 1.10 Requirement, it appears that there would not be adequate sources to finance the Development. Regardless of whether the 1.10 Requirement is appropriate in other places at other times, it violates principles of fairness and imposes a substantial hardship on the Petitioner to apply the 1.10 Requirement for Elderly affordable housing in Charlotte County so soon after Hurricane Charley.

15. The Petitioner has invested hundreds of thousands of dollars in the Development. However, the Petitioner will be unable to build the Development unless it

is able to restructure the Development and the financial structure of the Development. If the Corporation does not grant the relief requested in this petition, the Petitioner will suffer substantial hardship.

16. Because Hurricane Charley made landfall in Charlotte County while the Application was pending and because that landfall had a material adverse effect on the viability of the Development, it would violate principles of fairness not to permit Petitioner to restructure the Development as requested in this Petition.

**Action Requested**

17. Petitioner requests the following relief :

a. That the Corporation permit Petitioner to change the Development from the Family demographic to the Elderly demographic and designation and to revise the amenities selections, unit mix, and other relevant items in the Application to conform to that change. Consistent with that change in demographic and designation categories, Petitioner requests that the Corporation permit Petitioner to reduce the number of units in the Development from 200 to 160. Such a reduction would conform the Development to the Corporation's rules that limit the number of units that may be built in an Elderly development in Charlotte County.

b. That the Corporation increase the amount of SAIL awarded to the Petitioner from the current \$1,500,000, which is the maximum permissible under the Corporation's rules for a Family development, to \$3,000,000, which is the maximum permissible under the Corporation's rules for an Elderly development.

c. That the Corporation grant the Petitioner a variance from rule 67-48.012(1)(g) such that the Corporation not require the SAIL loan to the Development to meet any specific debt service coverage requirement.

d. That the Corporation permit Petitioner to increase the amount of MMRB authority allocated to the Development, if such an increase is supported by the Corporation's credit underwriting process and any entity that would be credit enhancing the bonds, or buying them on a private placement basis if not credit enhanced.

18. Each of these variances would be permanent as to the Petitioner.

19. The variances would serve the purposes of the underlying statutes because they would permit much needed affordable housing to be built in an area that has suffered significant losses of its housing stock this year. To grant the variances would permit the new affordable housing to better meet the needs of the community and would ensure that there are adequate financial sources to do so and therefore improve the financial viability of the Development.

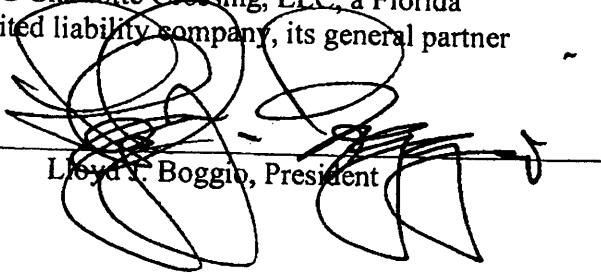
20. A copy of this petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.

Respectfully submitted this 1 day of November 2004.

**Petitioner**

**CHARLOTTE CROSSING, LTD.**, a Florida  
limited partnership

By: TCG Charlotte Crossing, LLC, a Florida  
limited liability company, its general partner

By:   
Lloyd F. Boggio, President