

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2009-032VW  
Application No. #2005-319 HR

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STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

**GULF BREEZE APARTMENTS PARTNERS, LTD.**

**Petitioner,**

vs.

**FLORIDA HOUSING FINANCE CORPORATION,**

**Respondent.**

**PETITION FOR WAIVER OF RULE 67ER05-10(14)(h) FOR A CHANGE IN THE  
TOTAL NUMBER OF UNITS**

Gulf Breeze Apartments Partners, Ltd. (the "Petitioner") hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's prohibition on changes to the total number of units. See Rule 67ER05-10(14)(h) (the "Rule").

Pursuant to Section 120.542, Fla. Stat. (2007), and Rule 28-104.001 through 28-104.006, F.A.C. (2007), Petitioner requests a waiver of the Rule to allow a change in the number of units to be included in its development.

Florida Housing has the authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances.

Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of fairness<sup>1</sup>, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2007).

In support of its petition, the Petitioner states:

<sup>1</sup> "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "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 the Rule Section 120.542(2), Florida Statutes (2007).

**A. The Petitioner and the Development**

1. The name, address, telephone number, facsimile number, e-mail address and federal employer identification number of the Petitioner are:

Gulf Breeze Apartments Partners, Ltd.  
c/o Norstar Gulf Breeze, Inc.  
200 South Division Street  
Buffalo, New York, 14204  
(716) 847-1098  
(716) 847-1668  
rhiggins@norstarus.com  
20-2207132

2. The contact person, including his address, telephone number, facsimile number, e-mail address and relationship to Applicant, for the Petitioner's Application – Rental Recovery Loan Program (RRLP) Application (the "Application") is:

Richard L. Higgins, President  
Norstar Gulf Breeze, Inc.  
200 South Division Street  
Buffalo, New York, 14204  
(716) 847-1098  
(716) 847-1668  
rhiggins@norstarus.com  
President of Norstar Gulf Breeze, Inc. (Petitioner's  
managing general partner)

3. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of the Petitioner's attorney are:

Brian J. McDonough, Esq.  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
(305) 789-3350  
(305) 789-3395  
[bmcDonough@stearnsweaver.com](mailto:bmcDonough@stearnsweaver.com)

4. The Petitioner timely submitted its Application in the 2005 RRLP Application Cycle (Application #2005-319 HR) for the development named "Gulf Breeze Apartments" (the "Development").

5. Petitioner anticipated having 171 residential units in the Development, including (a) three market rate units and (b) 168 units of affordable housing to be occupied by households

earning not more than 60% of area median income. The Credit Underwriting Report for 171 residential units in the Development was approved by the Board of Directors of the Corporation.

6. Subsequent to credit underwriting approval, the Petitioner required the non-residential use of one of the three market rate units in the Development for a community police service site, changing the total number of residential units in the Development from 171 to 170. However, the number of affordable housing units to be occupied by households earning not more than 60% of area median income remains unaltered at 168.

7. The Petitioner seeks to change the total number of residential units in the Development from 171 to 170, to allow one market rate unit to be used as a community police service site, while maintaining the number of affordable housing units at 168.

8. Consequently, a waiver of the Rule is necessary to change the total number of residential units in the Development.

#### **B. Rule from Which Relief is Requested and Statute Implemented by the Rule**

9. The prohibition on changing the total number of units in the Development is found in Rule 67ER05-10(14)(h) F.A.C., which provides that:

“(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. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

...

(h) Total number of units;...”

10. The Rule<sup>2</sup> is implementing, among other things, Ch. 2005-92, L.O.F., by establishing procedures under which Florida Housing shall:

“Administer the Application process, determine loan amounts, make and service mortgage loans for the construction or Rehabilitation/Substantial Rehabilitation of affordable rental units utilizing [RRLP] funds.”

67ER05-8, F.A.C. (2005).

11. The Rule is further implementing the enactment of Florida’s response to housing disasters resulting from the 2004 and 2005 hurricane seasons. Section 420.55, Fla. Stat. (2007).

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<sup>2</sup> Rule 67ER05-10(1)(a), F.A.C. (2005), adopts the “RRLP Application Package” and its contents, including, without limitation, the RRLP Application Instructions.

12. Specifically, “[t]he Florida Housing Finance Corporation is authorized to provide funds to eligible entities for affordable housing recovery in those areas of the state which sustained housing damage due to hurricanes during 2004 and 2005.” Florida Housing adopted emergency rules pursuant to Section 120.54, Fla. Stat. (2005), and the Legislature found “that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of s. 120.54(4).” In addition, the Legislature determined that:

“such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to assist those areas of the state that sustained housing damage due to hurricanes during 2004 and 2005.”

§ 420.55, Fla. Stat. (2007).

13. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial hardship to the Development by failing to allow Petitioner to provide additional police presence on site as a resident service; and (b) would violate principles of fairness. §120.542(2), Fla. Stat. (2007).

**C. Justification for Petitioner’s Requested Waiver**

14. The facts stated in Paragraphs 4 through 8 above demonstrate the circumstances leading to this Petition, requesting that the Corporation approve a waiver of the Rule to reduce the total number of residential units in the Development by one market-rate unit, to allow valuable services to be provided to residents of the Development in the form of increased police presence on site by using said unit as a community police service site.

15. The requested waiver to change the total number of residential units in the Development from 171 to 170 will not adversely impact the Development or the Corporation or be prejudicial to the Development or to the affordable housing market to be served by the Development, and will provide a safer environment for residents of the Development. However, the denial of the requested waiver will create a substantial hardship for the Petitioner and residents, arising from the reduction of community police services at the Development site.

16. The affected unit is a market-rate unit for which no unusual demand exists in the community.

17. The waiver being sought is permanent in nature.

**D. Conclusion**

18. The requested waiver will not adversely impact the Development or the Corporation, and will ensure that the promised 168 affordable housing units will continue to be available for occupancy in Charlotte County, Florida with enhanced police presence on site.

19. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant. The Corporation generally approves such waivers when it would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage.

20. Finally, by granting the requested waiver, the Corporation would recognize the principles of fundamental fairness in the development of affordable rental housing for residents in communities where increased police presence is an enhancement. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act through providing residents with a safer environment.

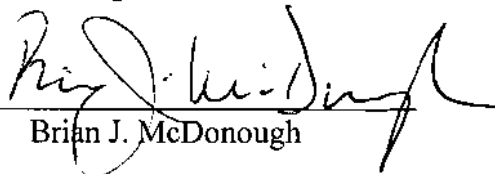
21. Should the Corporation require additional information, the Petitioner is available to answer any questions and to provide any additional information necessary for consideration of this petition.

**WHEREFORE**, the Petitioner respectfully requests that the Corporation:

- A. Consider this Petition in conjunction with the Petitioner's Application;
- B. Grant this Petition and all the relief requested herein;
- C. Waive the prohibition on changing the total number of units in the Development by allowing 170 units in the Development; and
- D. Grant such further relief as may be deemed appropriate.

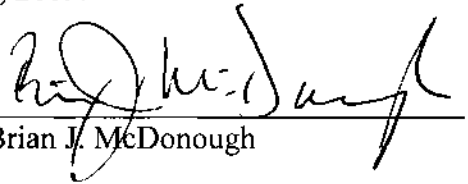
Respectfully submitted,

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By:   
Brian J. McDonough

**CERTIFICATE OF SERVICE**

The Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, on September 16, 2009.

  
Brian J. McDonough