

Accessibility

PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA BUILDING COMMISSION

January 5, 2006

Martha A. Heller
254 Blue Lake Road
Santa Rosa Beach, Florida 32459
(850) 267-1671

DCA06-DEC-003

FILING AND ACKNOWLEDGMENT
FILED, on this date,
Agency Clerk, receipt
acknowledged.


Winifred Snipes
Deputy Agency Clerk

RE: Florida Accessibility Code for Building Construction Sec. 11-3.4
interpretation by local government of Sec. 11-3.4 regarding inclusion
of vacation rental beach houses within the meaning of "dwelling unit" and "transient
lodging".

Your petitioner is a resident of Walton County, Florida and a disabled person within the meaning of both the Florida Americans with Disability Implementation Act, and Florida Accessibility Code for Building Construction. After seeking assistance from local government, the county attorney has opined that "there is no clear authority" requiring residential property to be constructed as handicap accessible. See Exhibit A.

The Florida Accessibility Code for Building Construction defines "Places of Public Accommodation" so as to include places of lodging such as hotels, motels "or other place[s] of lodging. The code further defines "transient lodging" as a building or facility that contains one or more "dwelling units" or sleeping accommodations. "Dwelling Unit" is defined by the code as a single unit with a kitchen and space for living, bathing and sleeping, and "other similar facilities used on a transient basis."

While the code's definitions and terminology clearly include rental lodging such as hotels and resort condominiums, the attorney for Walton County is unclear as to the code's application to residential homes which are publicly offered to the public for nightly, weekly and monthly rental. Although privately owned, the houses are marketed and managed by professional vacation rental companies. See Exhibits B and C. These exhibits are promotional literature published and distributed by the management companies. These public advertisements further reflect that the houses are available to the public on a transient basis, i.e., nightly, weekly, and monthly.

Owners know when the house is being built for public rental as the management company's sign appears during the earliest construction stage. The average owner has a homesteaded property elsewhere and occupies the rental only briefly in the off-season, if at all.

That words should be given their ordinary meaning is a basic rule of statutory construction. It is submitted that these facilities are encompassed within the ordinary meaning of the code's definitions of "transient lodging" and "dwelling unit" and therefore subject to the code's construction requirements. Although enforcement may be difficult in such circumstances, enforcement is a separate issue. The question posed to the Commission is whether the construction of privately owned homes for public rental falls within the meaning and jurisdiction of the Florida Accessibility Code for Building Construction.

Sincerely,

Martha A. Heller

Martha A. Heller

January 5, 2006

SECTION 11-1 PURPOSE

11-1.1 This code shall take effect October 1, 1997.

11-1.2 All new or altered buildings and facilities subject to this code which may be frequented in, lived in, or worked in by the public shall comply with this code.

11-1.3 This code establishes standards for accessibility to places of public accommodation and commercial facilities by individuals with disabilities. This code shall also apply to state and local government facilities pursuant to Section 553.503, Florida Statutes; to private clubs pursuant to Section 553.505, Florida Statutes; and to residential buildings pursuant to section 553.504(2), Florida Statutes. It is to be applied during the design, construction, and alteration of such buildings and facilities as required by Section 553.501 through 553.512, Florida Statutes.

SECTION 11-2 GENERAL

11-2.1 Provisions for adults. The specifications in this code are based upon adult dimensions and anthropometrics.

11-2.2 Equivalent facilitation. Departures from particular technical and scoping requirements of this code by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility.

Departure from the explicit technical and scoping requirements of this code for any element voids any otherwise applicable presumption of rebuttable evidence that the element has been constructed or altered in accordance with the minimum accessibility requirements of the ADA.

SECTION 11-3 MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS

11-3.1 Graphic conventions. Graphic conventions are shown in Table 1. Dimensions that are not marked minimum or maximum are absolute, unless otherwise indicated in the text or captions.

11-3.2 Dimensional tolerances. All dimensions are subject to conventional building industry tolerances for field conditions.

11-3.3 Notes. Reserved.

11-3.4 General terminology.

Comply with. Meet one or more specifications of the code.

If, if...then. Denotes a specification that applies only when the conditions described are present.

May. Denotes an option or alternative.

Shall. Denotes a mandatory specification or requirement.

Should. Denotes an advisory specification or recommendation.

11-3.5 Definitions.

ACCESS AISLE. An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

ACCESSIBLE. A site, building, facility, or portion thereof that complies with these guidelines.

ACCESSIBLE ELEMENT. An element specified by these guidelines (for example, telephone, controls and the like).

ACCESSIBLE ROUTE. A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.

ACCESSIBLE SPACE. Space that complies with these guidelines.

ADAPTABILITY. The ability of certain building spaces and elements, such as kitchen counters, sinks and grab bars, to be added or altered so as to accommodate the needs of individuals with or without disabilities or to accommodate the needs of persons with different types or degrees of disability.

ADDITION. An expansion, extension, or increase in the gross floor area of a building or facility.

ADMINISTRATIVE AUTHORITY. A governmental agency that adopts or enforces regulations and guidelines for the design, construction, or alteration of buildings and facilities.

ALTERATION. A change to a building or facility made by, on behalf of, or for the use of a public accommodation or commercial facility, that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wall-papering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

AREA OF RESCUE ASSISTANCE. An area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.

ASSEMBLY AREA. A room or space accommodating a group of individuals for recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink.

- (a) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (b) Compulsive gambling, kleptomania or pyromania; or
- (c) Psychoactive substance use disorders resulting from current illegal use of drugs.

DWELLING UNIT. A single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. Dwelling units include a single-family home or a townhouse used as a transient group home; an apartment building used as a shelter; guestrooms in a hotel that provide sleeping accommodations and food preparation areas; and other similar facilities used on a transient basis. For purposes of this code, use of the term "dwelling unit" does not imply the unit is used as a residence.

EGRESS, MEANS OF. A continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with this code and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.

ELEMENT. An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.

ENTRANCE. Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

FACILITY. All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots or other real or personal property located on a site.

GROUND FLOOR. Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.

MEZZANINE OR MEZZANINE FLOOR. That portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.

MARKED CROSSING. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

MULTIPLE-FAMILY DWELLING. Any building containing more than two dwelling units.

OCCUPIABLE. A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.

OPERABLE PART. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, push-button, handle).

PATH OF TRAVEL.

- (1) A path of travel includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.
- (2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.
- (3) For the purposes of this part (Section 553.501 through 553.512, Florida Statutes), the term "path of travel" also includes the restrooms, telephones, and drinking fountains serving the altered area.

POWER-ASSISTED DOOR. A door used for human passage with a mechanism that helps to open the door, or relieves the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

PLACE OF PUBLIC ACCOMMODATION. A facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories:

1. Places of lodging. An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor. Resort condominiums are considered to be public lodging establishments pursuant to Section 509.242, Florida Statutes.
2. Establishments serving food and drink. A restaurant, bar, or other establishment serving food or drink;
3. Places of exhibition or entertainment. A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
4. Places of public gathering. An auditorium, convention center, lecture hall, or other place of public gathering;
5. Sales or rental establishments. A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
6. Service establishments. A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office,

SIGNAGE. Displayed verbal, symbolic, tactile, and pictorial information.

SITE. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

SITE IMPROVEMENT. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

SLEEPING ACCOMMODATIONS. Rooms in which people sleep; for example, dormitory and hotel or motel guest rooms or suites.

SPACE. A definable area, e.g., room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.

STORY. That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of this code. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.

STRUCTURAL FRAME. The structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

TACTILE. An object that can be perceived using the sense of touch.

TEXT TELEPHONE. Machinery or equipment that employs interactive graphic (i.e., typed) communications through the transmission of coded signals across the standard telephone network. Text telephones can include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers.

THEME PARK OR ENTERTAINMENT COMPLEX. (Section 509.0013(9), Florida Statutes). Theme park or entertainment complex means a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

TRANSIENT LODGING. A building, facility, or portion thereof, excluding inpatient medical care facilities, that contains one or more dwelling units or sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.

VEHICULAR WAY. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

WALK. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

SECTION 11-4 ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS

11-4.1 Minimum requirements.

11-4.1.1 Application.

(1) **General.** This code establishes the minimum standards for the accessibility of buildings and facilities built or altered within the state.

(a) All areas of newly designed or newly constructed buildings and facilities required to be accessible by Section 11-4.1.2 and Section 11-4.1.3 and altered portions of existing buildings and facilities required to be accessible by Section 11-4.1.6 shall comply with this code, Section 11-4.1 through Section 11-4.35, unless otherwise provided in this section or as modified in a special application section.

(b) Removal of architectural barriers from buildings, structures, or facilities shall comply with Section 11-4.1.8 of this code unless compliance would render the removal not readily achievable. In no instance shall the removal of an architectural barrier create a significant risk to the health or safety of an individual with a disability or others.

(c) New single-family houses, duplexes, triplexes, condominiums, and townhouses shall comply with Section 11-11 of this code.

(2) **Application based on building use.** Special application Section 11-5 through Section 11-12 provide additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile, libraries, accessible transient lodging, transportation facilities, residential buildings and theme park entertainment complexes. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

(3) Areas used only by employees as work areas. Areas that are used only as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. This code does not require that any areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

(4) Temporary structures. This code covers temporary buildings or facilities as well as permanent facilities. Temporary buildings and facilities are not of permanent construction but are extensively used or are essential for public use for a period of time. Examples of temporary buildings or facilities covered by this code includes, but are not limited to: reviewing stands, temporary classrooms, bleacher areas, exhibit areas, temporary banking facilities, temporary health screening services, or temporary safe pedestrian passageways around a construction site. Structures, sites and equipment directly associated with the actual processes of construction, such as scaffolding, bridging, materials hoists, or construction trailers are not included.

Cindy Wilson

From: David Hallman
Sent: Thursday, November 03, 2005 7:17 AM
To: Cindy Wilson
Subject: RE: phone call

You may forward this email to Ms. Heller.

I have reached the opinion that there is no clear authority requiring that all residential property which may hypothetically in the future be rented be required to be constructed as handicap accessible.

From: Cindy Wilson
Sent: Tuesday, November 01, 2005 4:27 PM
To: David Hallman *D. HALLMAN IS WALTON COUNTY'S ATTORNEY*
Subject: phone call

Ms. Heller called (ADA issues). You met with her back in early September regarding ADA and vacation-rental homes. She said that you told her that you were going to touch base with other counties on this issue and get back with her. Ms. Heller said that she would be leaving to go back up north around the first week in January, and she does not want to drag this out any longer. 267-1671

Please let me know how you would like for me to handle this.

Cindy

EXHIBIT A

11/3/2005

WALTON-DEC-003

254 Blue Lake Road
 Santa Rosa Beach, Florida 32459
 January 5, 2006

Paula Ford
 Clerk of The Florida Building Commission
 Department of Community Affairs
 2555 Shumard Oak Boulevard
 Tallahassee, Florida 32399-2100

Dear Ms. Ford:

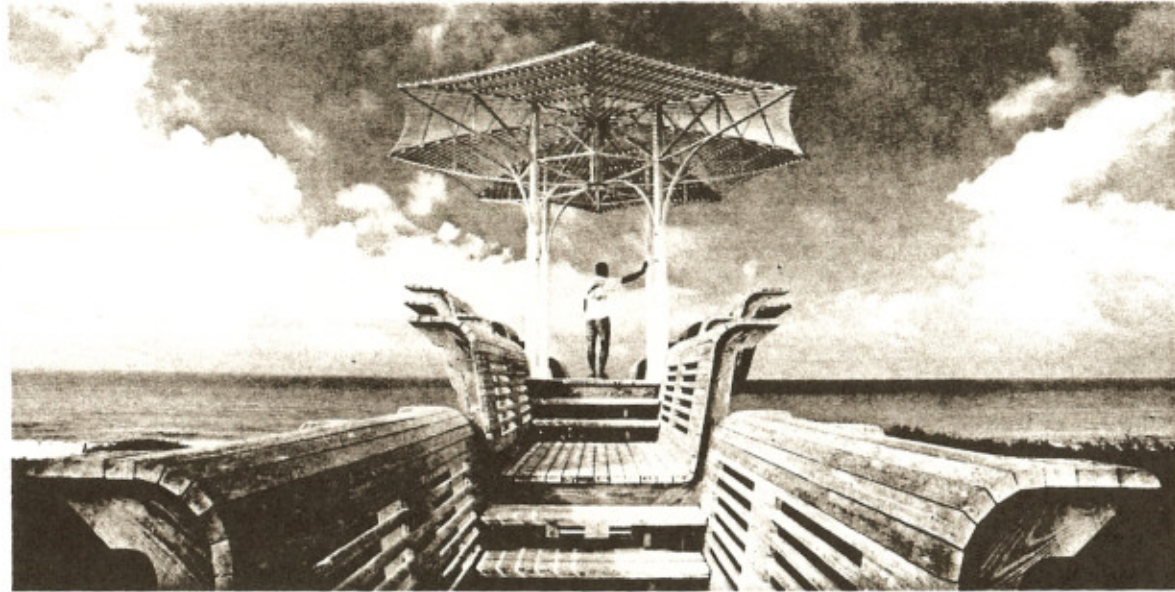
Enclosed you will find my petition for declaratory statement before the Florida Building Commission with attachments and exhibits for filing.

Thank you for your assistance with this matter.

Sincerely,

Martha A. Heller

2005 BEACH VACATION PLANNER



Dune & Allen **EXHIBIT B**

forever your florida

FLORIDA VACATIONS

RIVARD
OF SOUTH WALTON
RENTALS

EXHIBIT C

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