

**STATE OF FLORIDA
BUILDING COMMISSION**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	4/27/2016
File #	2016-03267

In the Matter of
GARDEN SUITES HOTEL
3900 & 3920 Garden Avenue
Miami Beach, Florida 33140:

Matteo Soldatini,
Petitioner.

VW 2016-095

FINAL ORDER

The Application for Waiver by Petitioner, Matteo Soldatini, came for consideration before the State of Florida Building Commission (Commission) in accordance with Section 553.512(1), Florida Statutes, and Chapter 61G20-4, Florida Administrative Code,¹ at the meeting of the Commission on April 12, 2016, upon the recommendations of the Accessibility Advisory Council (Council). At that meeting, the Commission made the following findings of fact:

1. The Owner is Matteo Soldatini, P.O. Box 191862, Miami Beach, Florida 33119 (Petitioner).
2. The Applicant is Naly Cardenas-Barrero, 6303 Blue Lagoon Drive, Suite 400, Miami, Florida 33126 (Applicant).
3. Naly Cardenas-Barrero appeared telephonically before the Council on March 31, 2016.
4. The project for which the Applicant is seeking a waiver consists of the alteration of two existing two-story apartment buildings on a united parcel undergoing a change of use into a hotel classification. The buildings, taken as a whole, contain 19 units for a total area of 12,714

¹ Unless otherwise indicated, all citations to Florida statutes refer to the 2015 codification of *Florida Statutes*, and all citations to Florida administrative rules refer to the latest version of the final adopted rule presented in *Florida Administrative Code*.

Garden Suites Hotel
3900 & 3920 Garden Avenue
Miami Beach, Florida 33140

square feet. Applicant submits that the current project cost is \$1,585,870 and that the project is currently under design.

5. Applicant asserts that the provision of vertical accessibility to the structures on the parcel would require either an extensive walkway system or a scheme involving two elevators. Applicant submitted an estimate in the amount of \$395,900 for the complete installation of two elevators. Applicant asserts that the owner will incur substantial financial costs if the installation of an elevator or a walkway were to be required.

6. The requirements from which the Applicant seeks a waiver are those in the Florida Americans with Disabilities Accessibility Implementation Act ("the Act"), Section 553.509, Florida Statutes, which require the Petitioner to provide vertical accessibility to all levels above and below the occupiable grade level of a building, structure, or facility. Specifically, Applicant requests a waiver from providing vertical accessibility to the second floors of two buildings situated on a united parcel undergoing an alteration for use as a hotel.

7. Section 553.512(1), Florida Statutes provides for a waiver of the accessibility requirements set forth in Section 553.509, Florida Statutes upon a determination of "unnecessary, unreasonable, or extreme hardship."

8. Section 553.512(1), Florida Statutes, provides that a waiver shall be granted if an applicant demonstrates "economic hardship" in accordance with Title 28 of the Code of Federal Regulations, Section 36.403(f)(1), which states that "[a]lterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area." 28 C.F.R. § 36.403(f)(1) applies only to alterations, not to new construction.

Garden Suites Hotel
3900 & 3920 Garden Avenue
Miami Beach, Florida 33140

9. Based on consideration of the foregoing information, the description of the construction, the representations by the Applicant, and the applicable legal requirements, the Council recommended, by a vote of three to one, that the Request for Waiver be granted under the provisions of Section 553.512, Florida Statutes, on the grounds that adherence to the literal requirements of the Act would cause unreasonable and economic hardship.

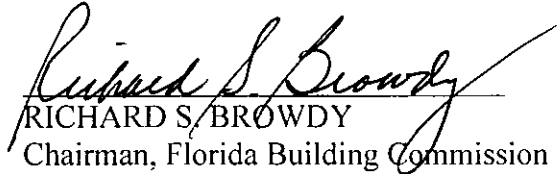
Having considered the foregoing information, together with the recommendation of the Council, the Commission hereby agrees with the Council's recommendation and concludes that the Applicant's Request for Waiver should be, and hereby is, GRANTED.

This Final Order is intended for the enforcement of the Florida Americans With Disabilities Accessibility Implementation Act, as amended, Section 553.501 et seq., Florida Statutes, and, other than as modified by this Final Order, any construction or post-construction activities which deviate from the requirements of that Act will be deemed to be a violation of this Final Order.

Responsibility for the enforcement of this Final Order and for enforcement of the Americans with Disabilities Accessibility Implementation Act shall rest with the Building Official of the local government with permitted authority for the project. §553.513, Florida Statutes. Nothing in this Final Order shall be construed to relieve the Owner of any duties it may have under the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, § 42 U.S.C. 12101 et seq., or other applicable regulations. Any waiver granted in this Final Order shall expire one (1) year from the date of the Order unless the construction has commenced within that time.

Garden Suites Hotel
3900 & 3920 Garden Avenue
Miami Beach, Florida 33140

DONE AND ORDERED this 22nd day of April, 2016 in Jacksonville,
Duval County, State of Florida.


RICHARD S. BROWDY
Chairman, Florida Building Commission

NOTICE OF RIGHT TO APPEAL

Petitioner and any substantially affected parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with Agency Clerk, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1000 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by Section 35.22(3), Florida Statutes.

Garden Suites Hotel
3900 & 3920 Garden Avenue
Miami Beach, Florida 33140

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned and furnished to the persons listed below this 27th day of April, 2016.



Agency Clerk's Office
Department of Business and Professional
Regulation & Florida Building Commission
1940 North Monroe Street
Tallahassee, Florida 32399-1000

By U.S. Mail:

Matteo Soldatini
P.O. Box 191862
Miami Beach, Florida 33119

Naly Cardenas-Barrero
6303 Blue Lagoon Drive
Suite 400
Miami, Florida 33126

Tony Gonzalez
1700 Convention Center Drive
Miami Beach, Florida 33139

By Electronic Mail:

Chip Sellers
Codes & Standards Office
Department of Business & Professional
Regulation
1940 N. Monroe St.
Tallahassee, Florida 32399
Chip.sellers@myfloridalicense.com