

**STATE OF FLORIDA
BUILDING COMMISSION**

In the Matter of
KAI OEN COFFEE
254 North Division Street
Oviedo, Florida 32765:

James Cucinella,
Petitioner.

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	6/23/2016
File #	2016-04835

VW 2016-146

FINAL ORDER

The Application for Waiver by Petitioner, James Cucinella, 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 June 8, 2016. Upon the recommendations of the Accessibility Advisory Council (Council) the Commission made the following findings of fact:

1. The Owner and Applicant is James Cucinella, 911 Carissa Lane, Oviedo, Florida 32765 (Petitioner/Applicant).
2. Petitioner/Applicant did not appear telephonically before the Council on May 27, 2016.
3. The project for which Petitioner/Applicant is seeking a waiver consists of an alteration to an existing two-story, 1,170 square foot building to be used as a coffee shop. Petitioner/Applicant provides that the project construction cost is approximately \$5,000 and that there has been approximately \$20,000 of construction activity on the building in the past three years. The project is currently in plan review.

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*.

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4. The requirements from which Petitioner/Applicant may seek a waiver are those in the Florida Americans with Disabilities Accessibility Implementation Act (“the Act”), Section 553.509, Florida Statutes, which requires Petitioner/Applicant to provide vertical accessibility to all levels above and below the occupiable grade level of a building, structure, or facility. Specifically, Petitioner/Applicant is requesting a waiver from providing vertical accessibility to the second floor of a coffee shop.

5. Petitioner/Applicant provided an attachment to this Request for Waiver which listed an internet address as an estimate of the cost of compliance. The internet address led to a retail site for vertical lifts. The Council found this submission was lacking information, such as the cost of lift installation. Further, the listed retail value of the lift at the website does not rise to the level of economic hardship which would qualify this project for a waiver under Section 553.512(1), Florida Statutes.

6. Based upon the Council's consideration of the foregoing information, Petitioner/Applicant's representations regarding project design, cost, construction, and all applicable legal requirements, the Council recommended that the waiver be denied.

Having considered the foregoing information, together with the recommendation of the Council, Petitioner/Applicant's representations to the Council, and all applicable legal requirements, the Commission hereby agrees with the Council's recommendation and concludes that Petitioner/Applicant's request for waiver should be, and hereby is, DENIED.

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

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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.

DONE AND ORDERED this 16 day of June, 2016 in Jacksonville,
Duval County, State of Florida.


RICHARD S. BROWDY
Chairman, Florida Building Commission

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NOTICE OF RIGHT TO APPEAL

Petitioners 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.

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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 23rd day of June, 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:

James Cucinella
911 Carissa Lane
Oviedo, Florida 32765

Don Fuchs
Building Official
400 Alexandria Boulevard
Oviedo, Florida 32765

By Electronic Mail:

Chip Sellers
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