

Requirements for Providing Vertical Accessibility Under the Applicable Requirements of the FACBC-2012 and Part III of the Americans with Disabilities Act, Public Law 101-336, 28 CFR Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

553.512 Modifications and Waivers; Advisory Council. The Florida Building Commission shall provide by regulation criteria for granting individual modifications of, or exceptions from, the literal requirements of this part (sections 553.501-553.513, Florida Statutes) upon a determination of unnecessary, unreasonable, or extreme hardship, provided such waivers shall not violate federal accessibility laws and regulations and shall be reviewed by the Accessibility Advisory Council. Notwithstanding any other provision of this subsection, if an applicant for a waiver demonstrates economic hardship in accordance with 28 C.F.R. 36.403(f)(1), a waiver shall be granted.

553.509 Vertical Accessibility

(1) This part and the Americans with Disabilities Act Standards for Accessible Design do not relieve the owner of any building, structure, or facility governed by this part from the duty to provide vertical accessibility to all levels above and below the occupiable grade level, regardless of whether the standards require an elevator to be installed in such building, structure, or facility, except for:

- (a) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, and automobile lubrication and maintenance pits and platforms.
- (b) Unoccupiable spaces, such as rooms, enclosed spaces, and storage spaces that are not designed for human occupancy, for public accommodations, or for work areas.
- (c) Occupiable spaces and rooms that are not open to the public and that house no more than five persons, including, but not limited to, equipment control rooms and projection booths.
- (d) Theaters, concert halls, and stadiums, or other large assembly areas that have stadium-style seating or tiered seating if ss. 221 and 802 of the standards are met.
- (e) All play and recreation areas if the requirements of chapter 10 of the standards are met.
- (f) All employee areas as exempted in s. 203.9 of the standards.
- (g) Facilities, sites, and spaces exempted by s. 203 of the standards.

The building in question is an existing two story building. The intent of the owner is to modify the existing tenant space to be a restaurant. The alteration to the existing tenant space where there is 1328 sf on the first floor that will be modified for a dining area with the associated modifications to the kitchen and the construction of two fully accessible toilet rooms, an office space for the manager and a corridor for access to the toilet rooms as well as access to exterior patio for additional bar/dining area. On the mezzanine level, which will comprise of 575 sf, it will be modified to allow for a bar area and minimal table seating. All food service and pickup will occur on the first floor.

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The estimated project budget is \$565018.00, excluding the general conditions, general liability insurance and construction fee. Of this work \$341,275.00 is for work that is not associated with the alterations to the primary function area that would affect accessibility. The costs that are associated with the work related to accessibility compliance requirements to meet the 20% rule is \$185,028.00. The cost for the installation of a vertical platform lift will be \$38,715.00.

Section 202.4.1 Disproportionate Cost states that alterations 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. Costs that may be counted as expenditures required to provide an accessible path of travel may include:

- (i) costs associated with providing an accessible entrance and an accessible route to the altered area;
- (ii) costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;
- (iii) costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY);
- (iv) costs associated with relocating an inaccessible drinking fountain.

FACBC Requirements - 202.4.2 Accessible Features in the Event of Disproportionality When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs. In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:

- (i) an accessible entrance;
- (ii) an accessible route to the altered area;
- (iii) at least one accessible restroom for each sex or a single unisex restroom;
- (iv) accessible telephones;
- (v) accessible drinking fountains; and (vi) when possible, additional accessible elements such as parking, storage, and alarms.

2010 ADA Standards Requirements - 36.403(f)(1)(f) Disproportionality

(1) Alterations 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.

(2) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

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- (i) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;
 - (ii) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;
 - (iii) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY);
 - (iv) Costs associated with relocating an inaccessible drinking fountain.
- (g) Duty to provide accessible features in the event of disproportionality.
- (1) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.
 - (2) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:
 - (i) An accessible entrance;
 - (ii) An accessible route to the altered area;
 - (iii) At least one accessible restroom for each sex or a single unisex restroom;
 - (iv) Accessible telephones;
 - (v) Accessible drinking fountains; and
 - (vi) When possible, additional accessible elements such as parking, storage, and alarms.

Since the gross project budget is \$565,018.00 and you can deduct \$341,275.00 as costs not related to any modifications as outlined per the requirements of the ADA regulations the real project budget would then be \$185,028.00 as the costs towards accessibility requirements. 20% of this number would be \$37,005.60. The costs towards accessibility elements is \$185,028.00 which far exceeds the required 20% number of \$37,005.60. If you add in the cost of the lift of \$38,715.00 the costs towards providing accessibility features would then be \$223,743.00. This far exceeds the required 20% requirement.

Based upon this information a waiver shall be granted pursuant to section 553.512 of the Florida State Statutes.