

## **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 CFR 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 has an addition being proposed to be constructed above the existing parking spaces. The space on this second floor area, of 1454 sf is for five private offices that will only be available to that person (a maximum of five people) and is not open to the public. Any interface with the public would be accomplished on the first floor of the existing office building. Pursuant to the exemption under 553.509(c) - Occupiable spaces and rooms that are not open to the public and that house no more than five persons are not required to provide vertical accessibility and this alteration falls directly under this allowed exemption.

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Therefore based upon this allowed exemption, to the extent a waiver is required, one shall be granted. Waivers under these set of circumstances have been granted numerous times in the past when the local jurisdiction views this exemption under a different evaluation process that is not consistent with requirements of the statute.