

PALM BEACH COUNTY FIRE RESCUE STATION NO. 32

Issue: Vertical accessibility to the second floor of a fire station.

Analysis: The applicant is requesting a waiver from providing vertical accessibility to the second floor of a new \$2,500,000 fire station. The second floor will be occupied only by firefighters who must demonstrate a high level of physical strength and agility, required by both state and federal regulations. The firefighters area will provide quarters for six occupants. According to the applicant, the owner has chosen to design and build the facility in accordance with the Uniform Federal Accessibility Requirements which permit areas not open to the public and in which persons with physical disabilities cannot perform the physical duties required to be constructed without vertical access.

Note: This project previously received a waiver in January, 2008; however, since construction has not commenced a new final order must be issued if it is to proceed at this time.

Project Progress:

The project is under design.

Items to be Waived:

Vertical accessibility to the second floor, as required by Section 553.509, Florida Statutes.

553.509 Vertical accessibility. Nothing in Sections 553.501-553.513 or the guidelines shall be construed to relieve the owner of any building, structure or facility governed by those sections from the duty to provide vertical accessibility to all levels above and below the occupiable grade level regardless of whether the guidelines require an elevator to be installed in such building, structure or facility, except for:

- (1) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks and automobile lubrication and maintenance pits and platforms;
- (2) Unoccupiable spaces, such as rooms, enclosed spaces and storage spaces that are not designed for human occupancy, for public accommodations or for work areas; and
- (3) 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.

Waiver Criteria: There is no specific guidance for a waiver of this requirement in the code. The Commission's current rule, authorized in Section 553.512, Florida Statutes, provides criteria for granting waivers and allows consideration of unnecessary or extreme hardship to the applicant if the specific requirements were imposed.

This application is available in alternate formats upon request.

**REQUEST FOR WAIVER FROM ACCESSIBILITY REQUIREMENTS
OF CHAPTER 553, PART V, FLORIDA STATUTES**

Your application will be reviewed by the Accessibility Advisory Council and its recommendations will be presented to the Florida Building Commission. You will have the opportunity to answer questions and/or make a short presentation, not to exceed 15 minutes, at each meeting. The Commission will consider all information presented and the Council's recommendation before voting on the waiver request.

1. Name and address of project for which the waiver is requested.

Name: Palm Beach County Fire Rescue Station No. 32

Address: 4022 Charleston Street
Lake Worth, Florida 33467

2. Name of Applicant. If other than the owner, please indicate relationship of applicant to owner and written authorization by owner in space provided:

Applicant's Name: Chief Herman W. Brice

Applicant's Address: 50 South Military Trail, Suite 101, West Palm Beach, FL 33415

Applicant's Telephone: 561-616-7000 **FAX:** 561-616-7080

Applicant's E-mail Address: See Contact Person Below

Relationship to Owner: Fire Rescue Administrator

Owner's Name: Palm Beach County

Owner's Address: 50 South Military Trail, Suite 101, West Palm Beach, FL 33415

Owner's Telephone: 561-616-7000 **FAX:** 561-616-7080

Owner's E-mail Address: See contact Person Below

Signature of Owner: _____

Contact Person: Randy Sheppard, Deputy Chief

Contact Person's Telephone: 561-616-7003 **E-mail Address:** rsheppard@co.palm-beach.fl.us

This application is available in alternate formats upon request.
Form No. 2001-01

3. Please check one of the following:

- New construction.
- Addition to a building or facility.
- Alteration to an existing building or facility.
- Historical preservation (addition).
- Historical preservation (alteration).

4. Type of facility. Please describe the building (square footage, number of floors). Define the use of the building (i.e., restaurant, office, retail, recreation, hotel/motel, etc.)

The building will be a two-story, 8,739 sq. ft. fire station. The fire station is operational 24 hours a day and its occupants are firefighters as defined by meeting the requirements of Florida Statutes

633.30-633.35. This facility will serve the community with a full array of emergency response services.

The station will replace an existing station on the same site that has reached the end of its utility.

5. Project Construction Cost (Provide cost for new construction, the addition or the alteration): \$ 2,500,000.00

6. Project Status: Please check the phase of construction that best describes your project at the time of this application. Describe status.

- Under Design Under Construction*
- In Plan Review Completed*

* Briefly explain why the request has now been referred to the Commission.

The project is in plan review and is awaiting the outcome of this application in order to move forward.

7. **Requirements requested to be waived.** Please reference the applicable section of Florida law. Only Florida-specific accessibility requirements may be waived.

Issue

1: This code shall apply to state and local government facilities, pursuant to Section 553.503, Florida Statutes.

Issue

2: Florida Statutes Title XXXVIII Regulation of Trade, Commerce, Investments and Solicitations Chapter 553, Part II, Accessibility by Handicapped Persons 553.509 Vertical Accessibility.

Issue

3: Chapter 11, Florida Accessibility Code or Building Construction, Part A, (1-4 Accessible Elements and Spaces: Scope and Technical Requirements, 11-4.1.3 (1) & 11-4.1.3 (5).

8. **Reason(s) for Waiver Request:** The Florida Building Commission may grant waivers of Florida-specific accessibility requirements upon a determination of unnecessary, unreasonable or extreme hardship. Please describe how this project meets the following hardship criteria. Explain all that would apply for consideration of granting the waiver.

The hardship is caused by a condition or set of conditions affecting the owner which does not affect owners in general.

A fire station facility is used mainly to house firefighting equipment and fire firefighters. The minimum requirements to qualify are outlined in Florida Statutes 633.30-633.35. These statutes govern all firefighters. These statutes dictate that a firefighter be in good physical condition as outlined by the National Fire Protection Association (NFPA) Standard 1582. Under no circumstance would an individual with a disability be qualified to be a firefighter. Therefore, making this requirement for an elevator, to be installed, along with any other type of vertical accessibility, to the non-public areas of the fire station as the accessibility code does, is impractical.

Substantial financial costs will be incurred by the owner if the waiver is denied.

The owner has made a **diligent investigation** into the costs of compliance with the code, but cannot find an efficient mode of compliance. Provide detailed cost estimates and, where appropriate, photographs. Cost estimates must include bids and quotes.

9. Provide documented cost estimates for each portion of the waiver request and identify any additional supporting data which may affect the cost estimates. For example, for vertical accessibility, the lowest documented cost of an elevator, ramp, lift or other method of providing vertical accessibility should be provided, documented by quotations or bids from at least two vendors or contractors.

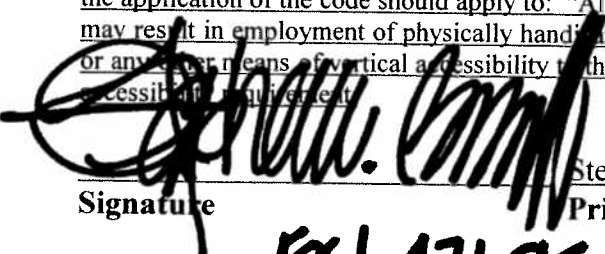
a. See attached estimate and note the area of building construction necessary for the elevator is not a part of this cost. This is approximately 140 sq ft and could cost an additional \$ 40,000.00.

b. _____

10. Licensed Design Professional: Where a licensed design professional has designed the project, his or her comments MUST be included and certified by signature and affixing of his or her professional seal. The comments must include the reason(s) why the waiver is necessary.

The following comments pertain to the new Fire Station #32, 4022 Charleston Street, Lake Worth, Florida 33467. In accordance with the Florida Building Code, Accessible buildings, Section 11.4.1.3(5) 3 "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" and Section 11.4.1.3(5), Exception 1, "Elevators are not required in facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General" we are requesting a waiver. Based on this code section and the requirement that under Florida Statutes 633.30-633.35, specifically F.S. 633.34 (5) these facilities shall not have any firefighter that is either temporarily or permanently disabled, we contend that building does not need to comply with the accessibility code requirement of an elevator or any other means of vertical accessibility to the second floor.

As per the Federal Registrar 28 CFR Part 35 Section 35.151 and 36 CFR Par 1191, the Department of Justice's Title II Regulation give state and local governments the option of choosing between designing, constructing or altering their facilities in conformance with UFAS or with ADAAG. We choose to use UFAS which includes an Occupancy Classification Section that is not included in the ADA. This Section 4.1.4(5) deals with fire stations and states that the application of the code should apply to: "All areas for which the intended use will require public access or which may result in employment of physically handicapped person". Based on this code we again contend that an elevator or any other means of vertical accessibility to the second floor, for the firefighters, does not need to comply with the accessibility code requirement.



Stephen L. Boruff
Printed Name

Signature

Phone number

561-471-8520

(SEAL)

CERTIFICATION OF APPLICANT:

I hereby swear or affirm that the applicable documents in support of this Request for Waiver are attached for review by the Florida Building Commission and that all statements made in this application are to the best of my knowledge true and correct.

Dated this 6 day of Sept., 2007

Herman Brice
Signature

Chief Herman W. Brice
Printed Name

By signing this application, the applicant represents that the information in it is true, accurate and complete. If the applicant misrepresents or omits any material information, the Commission may revoke any order and will notify the building official of the permitting jurisdiction. Providing false information to the Commission is punishable as a misdemeanor under Section 775.083, Florida Statutes.

REVIEW AND RECOMMENDATION BY LOCAL BUILDING DEPARTMENT.

Please state why the issue is being referred to the Florida Building Commission as well as a recommendation for disposition. The building official or his or her designee should review the application and indicate that to the best of his or her knowledge, all information stipulated herein is true and accurate. Further, if this project is complete, explain why it is being referred to the Commission. The building official or his or her designee should sign a copy of the plans accompanying this application as certification that such plans are the same as those submitted for building department review. Please reference the applicable section of the Accessibility Code.

- a. 2004 Florida Building Code Section 11-4.1.3 (5)
- b. The second floor has six beds which exceeds the limit 5 persons per 11-4.1.3 (5) (3)
- c. _____

Has there been any permitted construction activity on this building during the past three years? If so, what was the cost of construction?

Yes No Cost of Construction

Comments/Recommendations I support PBC Fire Rescue's attempt to get the vertical accessibility waived by the Florida Building Commission.

Jurisdiction: Palm Beach County

Building Official or Designee:


Signature

Rebecca Caldwell
Printed Name

BU 626
Certification Number

561-233-5100
Telephone/FAX

Address: 2300 N. Jog Road West Palm Beach, Florida 33411-2741

Owner & Builder Consultants, Inc.
 5689 Native Dancer Road South
 Palm Beach Gardens, FL 33418-7733

Probable Cost

Date	Estimate #
9/4/2007	70402
Customer	Job
Stephen L. Boruff	Fire Station #32

Customer Information

Stephen L. Boruff
 Stephen Boruff Architects, Inc.
 901 Northpoint Parkway, Suite 101
 West Palm Beach, FL 33407

Description	Qty	Rate	Amount
OWNER and BUILDER CONSULTANTS, INC.			
Elevators and Lifts, Subcontract Elevators for apartments or commercial buildings, hydraulic vertical cab, meets code requirements for public buildings, 2,500 pound capacity, to 13 passengers. Includes side opening sliding door, illuminated controls, emergency light, alarm, code-approved fire service operation, motor control unit, wiring in hoistway, cab and door design options. Basic, 2 stop elevator. 150 feet per minute			
Subcontract, per LS	1	48,308.83	48,308.83
Add for hall position indicator			
Subcontract, per Ea	2	423.22	846.44
Add for car position indicator			
Subcontract, per Ea	2	423.22	846.44
Add for car direction light & tone			
Subcontract, per Ea	2	412.90	825.80
Add for hall lantern with audible tone			
Subcontract, per Ea	2	423.22	846.44
<hr/>			
*Project Subtotal			51,673.95
10.00% Overhead	1	5,167.40	5,167.40
10.00% Profit	1	5,684.13	5,684.13
*Markup Charges			10,851.53
*Project Total			62,525.48
Total			62,525.48

January 19, 2009

Mary- Kathryn Smith
Department of Community Affairs
Florida Building Commission
Codes and Standards Section
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

**RE: Palm Beach County Fire Rescue
Fire Station No. 32
Palm Beach County Project Number 07204
Architect's Project No. 06-059**

Dear Ms. Smith:

Stephen L. Boruff, AIA, Architects + Planners, Inc. on September 13, 2007 submitted, on behalf of Palm Beach County Fire Rescue, a request for a waiver pertaining to the elimination of an elevator in the above mentioned Two Story Station. This request was approved January 2008.

Unfortunately because of delays in the project funding, construction of the project has not commenced and will not until after the current waiver has expired.

Accordingly, we respectfully request an extension of the waiver previously granted. The reason for the waiver, the criteria used to justify the original waiver and the application submitted has not changed. Accompanying this letter is the original application package inclusive of all the required documentation and a copy of the original transmittal.

It is our understanding with receipt of this request by February 6, 2009 it will be reviewed at the April Commission Meeting.

STEPHEN BORUFF, AIA
ARCHITECTS + PLANNERS, INC.
901 NORTHPOINT PARKWAY, SUITE 101
WEST PALM BEACH
FLORIDA 33407
PHONE 561-471-8520
FAX 561-471-8539
AA C002296

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Mary Kathyn Smith
January 19, 2009

If you should have any question or need further information please do not hesitate to contact me.

Thanks you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Luchner". The signature is fluid and cursive, with a horizontal line extending from the end.

Philip F. Luchner, Architect
Senior Vice President

1/2-10

STATE OF FLORIDA
BUILDING COMMISSION

In the Matter of)
PALM BEACH COUNTY FIRE RESCUE)
STATION)
Petitioner)
_____)

No.: DCA-08-HC-008

FINAL ORDER

The Application for Waiver by Petitioner, PALM BEACH COUNTY FIRE RESCUE STATION, came before the State of Florida Building Commission (the "Commission") in accordance with Section 553.512(1), Florida Statutes and Fla. Admin. Code Chapter 9B-7,¹ at the meeting of the Commission on December 11, 2007, upon a recommendation by the Accessibility Advisory Council (the "Council"). At that meeting, the Commission made the following findings of fact:

1. The Owner is Palm Beach County, 50 South Military Trail, Suite 101, West Palm Beach, FL 33415 (the "Owner").
2. The Applicant is Chief Herman W. Brice, 50 South Military Trail, Suite 101, West Palm Beach, FL 33415 (the "Applicant"). The Applicant represented himself at the December 10, 2007 meeting of the Council.
3. The project for which the Applicant is seeking a waiver is the construction of a new, \$2,500,000, two-story fire station. The project is located at 4022 Charleston Street, Lake Worth, FL 33467.

¹ Unless otherwise indicated, all citations to Florida statutes refer to the 2007 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*.

4. The accessibility requirements which the Owner seeks to waive are set forth in Section 553.509, Florida Statutes, which states that the Owner shall provide vertical accessibility to all levels above and below the occupiable grade level.

5. 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”.

6. The building has been designed and built in accordance with the Uniform Federal Accessibility Standards (UFAS), which allow areas not open to the public, and in which persons with physical disabilities cannot perform the physical duties required, to be constructed without vertical accessibility.

7. According to the Applicant, the second floor will be occupied only by firefighters, who must demonstrate the high level of physical strength and agility required by both state and federal regulations.

8. The Applicant has demonstrated, given the design and construction of the building in accordance with UFAS, the use of the second floor exclusively by firefighters, the reality that persons with physical disabilities cannot perform the physical duties required of firefighters, and the fact that UFAS does not require vertical accessibility in such circumstances, that providing vertical accessibility would create an unnecessary hardship.

9. Based upon the Council’s consideration of the foregoing information, the Applicant’s representations regarding project design and construction, and all applicable legal requirements, the Council members present unanimously recommended approval of a waiver for vertical accessibility due to unnecessary hardship pursuant to Section 553.512(1), Florida Statutes, in that UFAS.


Having considered the foregoing findings of fact, together with the recommendation of the Council, the Commission hereby agrees with that recommendation and concludes that the Applicant's request for a 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 permitting authority for the project. § 553.513, Fla. Stat. 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(ADA), Pub. L. No. 101-336, 42 U.S.C. section 12101 et seq. (2000), or the regulations under the ADA. The 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.

Petitioner and all other interested 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 Fla. R. App. P. 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Florida Building Commission, Department of Community Affairs, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee set forth in Section 35.22(3), Florida Statutes.

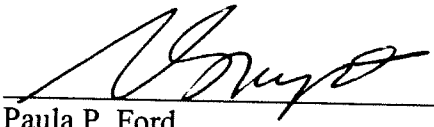
DONE AND ORDERED this 22 day of January, 2008 in Coral Gables, County of Miami-Dade, State of Florida.



RAUL L. RODRIGUEZ, ALA
Chairman
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF FILING AND SERVICE

I HEREBY CERTIFY that the above document has been filed with the Department's designated Agency Clerk and that true and correct copies have been furnished to the persons listed below in the manner described, on the 24th day of January, 2008.



for Paula P. Ford
Agency Clerk

By U.S. Mail:

Chief Herman W. Brice
50 South Military Trail, Suite 101
West Palm Beach, FL 33415

Rebecca Caldwell
Building Official, Palm Beach County
2300 N. Jog Road
West Palm Beach, FL 33411-2741

Neil Melick
Chairman, Accessibility Advisory Council
P.O. Box 3366
West Palm Beach, Florida 33042-3366