

**STATE OF FLORIDA
BUILDING COMMISSION**

In the Matter of
ATLANTIC PRINCESS CONDOMINIUM
ASSOCIATION, INC.
3120 Collins Avenue
Miami Beach, FL 33139:

Eric Nesse,
Petitioner.

FILED	
<small>Department of Business and Professional Regulation</small>	
<small>Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	4/17/2017
File #	2017-03051

VW 2017-065

FINAL ORDER

The Application for Waiver by Petitioner, Eric Nesse, 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 4, 2017, upon the recommendations of the Accessibility Advisory Council (Council). At that meeting, the Commission made the following findings of fact:

1. The Owner and Applicant is Eric Nesse, 3050 Biscayne Blvd. Suite 301, Miami Beach, FL 33139 (Petitioner/Applicant).
2. Todd Tragash, the architect of record for the project, and Eric Contreras, consultant for Atlantic Princess Condominium Association Inc. appeared before the Council on April 3, 2017.
3. The project for which Petitioner/Applicant is seeking a waiver consists of the alteration of three currently existing residential buildings into a hotel and restaurant. Building A is an existing two-story, 5,108 square foot residential building. Building B is an existing two-story, 1058 square foot residential building. Building C is an existing eight-story, 41,548 square

¹ Unless otherwise indicated, all citations to Florida statutes refer to the 2016 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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foot residential building. Petitioner/Applicant submits that the project construction cost is \$9,000,000.00. Phase I of the project is currently under construction, and Phase II is in plan review.

4. Petitioner/Applicant provided documentation showing that the buildings are of historic significance. Petitioner/Applicant submits that under the current vertical accessibility requirements, the installation of an elevator or lift to provide access to the second stories of Buildings A and B would negatively impact the historic structure of the buildings and potentially create a safety hazard by reducing the width of the stairs. Petitioner/Applicant states that Building C already provides vertical access via elevator to all public areas other than the mezzanine level, which is accessible only by stairs and which is intended to be an office for a single hotel employee which is not open to the public. Petitioner/Applicant submits that the available means of providing vertical access to the mezzanine would negatively impact the historically significant structure of the building.

5. 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 mezzanine level of an existing residential building.

6. 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."

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7. Based on consideration of the foregoing information, the description of the construction, the representations by Petitioner/Applicant, and the applicable legal requirements, the Council recommended 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 hardship due to the historic nature of the building.

Having considered the foregoing information, together with the recommendation of the Council, the Commission hereby agrees with the Council's recommendation and concludes that Petitioner/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.

[SIGNATURE PAGE FOLLOWS]

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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 7th day of April, 2017 in Jacksonville,
Duval County, State of Florida.


RICHARD S. BROWDY
Chairman, Florida Building Commission

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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, 2601 Blair Stone Road, Tallahassee, Florida 32399-2202 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 17th day of
April, 2017.



Agency Clerk's Office
Department of Business and Professional
Regulation & Florida Building Commission
2601 Blair Stone Road
Tallahassee, Florida 32399-2202

By U.S. Mail:

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