

**STATE OF FLORIDA  
BUILDING COMMISSION**

In the Matter of  
AIA BURRITO WORKS  
608 South Ocean Shore Boulevard  
Flagler Beach, Florida 32136:

VW 2012-273

Nicolas J. Kimball II,  
Petitioner.

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**MOTION FOR REHEARING**

COMES NOW, the Petitioner, Nicolas J. Kimball II, by and through the undersigned attorney, and files this Motion for Rehearing pursuant to Florida Rule of Civil Procedure 1.530. In support thereof, the Petitioner states the following:

1. On August 23, 2012, the State of Florida Building Commission ("Commission") issued a Final Order on the Petitioner's Application for Waiver.
  2. The Petitioner seeks a waiver from the requirement included in Section 553.509 of the Florida Statutes, which requires the Petitioner to provide vertical accessibility to all levels above and below the occupiable grade level of a building, structure or facility.
  3. Section 553.512(1) of the Florida Statutes provides a waiver of the accessibility requirements set forth in Section 553.509 of the Florida Statutes upon a determination of "unnecessary, unreasonable, or extreme hardship" in accordance with 28 C.F.R. section 36.403(f)(1).
  4. In his Application for Waiver, the Petitioner stated that providing vertical accessibility would present an economic hardship based on the fact that the cost of an elevator would be disproportional to the cost of the entire project. The Petitioner also stated that the salt air environment would reduce the life of an elevator or protected lift.
  5. Three of the four members of the Accessibility Advisory Council recommended that the Petitioner's Application for Waiver be granted based upon the Council's consideration of Applicant's representations regarding project design, cost, construction, and all applicable legal requirements.
  6. However, the Commission denied the Petitioner's Application for Waiver based on the fact that costs of construction considered for economic hardship should be based on fair market value.
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7. The Commission failed to properly consider all relevant evidence when they denied the Petitioner Application for Waiver. In addition, the Commission failed to adequately define the basis upon which the Application for Waiver should be based.
8. The Petitioner provided all relevant evidence to the Advisory Council regarding the costs associated with his project and the cost of installing an elevator, pursuant to the applicable Florida Statutes.
9. The Petitioner was never advised to provide a fair market value for the project and the Commission did not make a finding of fact as to the fair market value of the project.

WHEREFORE, the Petitioner respectfully requests that this Motion for Rehearing be granted.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail delivery to the Agency Clerk's Office, Department of Business and Professional Regulation & Florida Building Commission, 1940 North Monroe St., Tallahassee, FL 32399-100, Mary-Kathryn Smith, Codes & Standards Office, Department of Business & Professional Regulation, 2555 Shumard Oak Blvd., Tallahassee, FL 32399-2100, and to Jack Humburg, M.A., C.R.C., Chairman, Accessibility Advisory Council, Boley Centers, Inc., 839 13<sup>th</sup> Avenue North, Saint Petersburg, FL 33701, on this 4<sup>th</sup> day of September, 2012.



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