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March 1, 2023

Chairman and Commissioners
Florida Building Commission
2601 Blair Stone Road
Tallahassee, FL 32399

Chairman and Council Members
Accessibility Advisory Council
2601 Blair Stone Road
Tallahassee, FL 32399

Re: Application for Waiver of Accessibility Requirements

Dear Chairmen, Commissioners and Council Members,

This letter constitutes the Licensed Design Professional's Comments in support of the application of applicant Island Coconut Grove Building for a waiver of the requirement to provide vertical accessibility in the applicant's building that would otherwise be required by Section 201.1.1 of the Florida Building Code-Accessibility (the "FAC") and Section 553.509(1) of the Florida Statutes. The hardship basis for the requested waiver is undue financial hardship.

The subject building is very small. The local tax rolls reflect a total of 2175 square feet contained in two stories. It will house a small local construction company as its only occupant. The scope of work includes renovations to make the building better suited for the intended occupant, but also includes, as required, providing accessible toilet facilities. As such, the project includes providing accessible single user men's and single user women's restrooms on the ground floor and an accessible single user restroom on the second floor.

To determine what defines undue financial hardship, Florida Statute 553.512 states: "if an applicant for a waiver demonstrates economic hardship in accordance with 28 C.F.R. s. 36.403(f)(1), a waiver shall be granted." 28 C.F.R. §36.403(f)(1) states: "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." (Emphasis added). Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function. 28 C.F.R. § 36.403(b), § 106.5, FAC. "For the purposes of this code, the term *"path of travel"* also includes the restrooms, telephones, and drinking fountains serving the altered area." § 106.5, FAC; *see also* 28 C.F.R. § 36.403(e)(1).

If a requested waiver, if granted, would cause the resulting structure to be in violation of the ADA, then the Council should not recommend, and Commission may not grant, that waiver. The subject building in this application has less than 3 stories, is less than 3000 square feet per story, and is not intended to house a shopping center, transportation depot, or the professional offices of a health care provider. In addition, with the exception of the relief requested, the project will be performed in conformance with the Florida Accessibility Code which is considered to be equivalent, if not more stringent, than the 2010 ADA Standards. Accordingly, the granting of the requested waiver will not result in the building being out of compliance with ADA.

The project before you has an overall projected construction cost of \$472,203. However, \$141,120 of that amount is for items and areas that are not within the ADA and FAC's definition of "area containing primary function".¹ Therefore, the appropriate project cost to use to calculate the threshold amount for undue financial hardship is \$331,083. 20% of \$331,083 is \$66,217. The lower of the two estimated costs to provide vertical accessibility is \$119,025 which is well in excess of \$66,217, and approximately 36% of the cost of the alterations to the areas containing primary functions.

¹ \$141,120 is the cost of constructing accessible restrooms on two floors, a staff kitchen, ground floor closet and custom steel lobby stair.

It should be noted that even if the applicant is granted the waiver requested it will still be expending significant funds on the path of travel. Providing accessible restrooms on the ground floor and second floor, and an accessible hi-lo drinking fountain (all of which are considered elements of the path of travel) is estimated to cost \$71,290, which in and of itself exceeds the path of travel cost hardship threshold set forth in 28 C.F.R. § 36.403(f)(1) by a small amount before even considering the cost of providing vertical accessibility.

Because the applicant cannot provide vertical accessibility to the second floor of the subject building for an amount that does not exceed the cost hardship set forth in Section 553.512, Florida Statutes, and will in fact be making accessibility improvements to the path of travel in an amount exceeding the statutory undue financial burden even without providing vertical accessibility, it is my professional opinion that the requested waiver should be granted.

Please do not hesitate to contact us at emuhina@reddesigngroup.net or 305.392.0024 if you have any further questions.

Sincerely,



Eduardo H. Muhiña
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Principal
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