

**STATE OF FLORIDA  
BUILDING COMMISSION**

In the Matter of:  
Vapiano Restaurant  
1221 Brickell Avenue  
Miami, Florida 33131

No. DCA11-HC-131

Vap Sunshine, LLC  
Petitioner.

---

**FINAL ORDER**

The Application for Waiver by Petitioner, Vap Sunshine, LLC, came for consideration before the State of Florida Building Commission (Commission) in accordance with Section 553.512(1), Florida Statutes, and Rule 9B-7, Florida Administrative Code, at the meeting of the Commission on June 7, 2011, upon a recommendation of three individual members of the Accessibility Advisory Council (Council). Pursuant to Rule 9B-7.003(4), F.A.C., absent a quorum of Council members, "individual members of the Council may present recommendations to the Commission." At the meeting, the Commission made the following findings of fact:

1. The Owner is Vap Sunshine LLC, 1470 Royal Palms Square Boulevard, Fort Myers, Florida 33913 (Petitioner).
2. The Applicant is C. Chloe Keidaish, AIA, 3250 NE 1<sup>st</sup> Avenue, Suite 305, Miami, Florida 33137 (Applicant).
3. The Applicant seeks a waiver from providing vertical access to an existing 450 square foot mezzanine and a new 850 square foot mezzanine in a restaurant that is undergoing alterations valued at \$800,000.
4. 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. The Applicant requests a waiver from providing vertical access to both mezzanines. Based on the Applicant's representations, the existing 450 square foot mezzanine will have seating for 32 patrons, does not offer any services or amenities that are not also available on the fully accessible first floor, and providing vertical access via an elevator or lift would be technically infeasible and would reduce the available seating area in the mezzanine from 32 to 24. Also based on the Applicant's representations, the new 850 square foot mezzanine will not be open to the public, will not be used by more than 5 employees at any one time, and will house cooler/freezer storage, an office, and a food prep area.

5. Each Council member present recommended that the waiver be granted for the existing 450 square foot mezzanine on the basis of unnecessary hardship. The Council members also recommended that a waiver be granted for the new 850 square foot mezzanine to the extent that a waiver is actually necessary, but noted that a waiver appears unnecessary because the new mezzanine seems to be subject to the exemption provided in § 559.509(3), F.S.

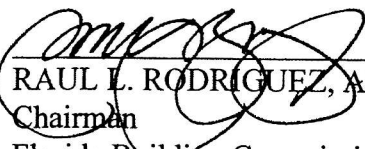
Having considered the foregoing information, together with the recommendation of each Council member, the Commission hereby concludes that action on the Application for Waiver be, and hereby is, GRANTED, upon any condition(s) stated above.

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 permitted 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, 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.

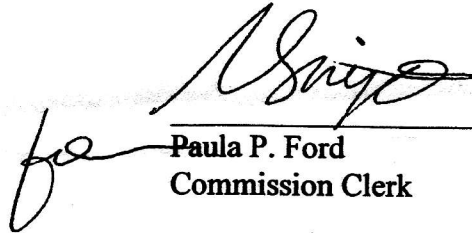
Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, 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 specified by Section 35.22(3), Florida Statutes.

DONE AND ORDERED this 25<sup>th</sup> day of July, 2011, in Coral Gables, Florida.

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

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned Commission Clerk and furnished by U.S. Mail to the persons listed below this 16<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
Paula P. Ford  
Commission Clerk

Jack Humburg, M.A., C.R.C.  
Chairman, Accessibility Advisory Council  
Boley Centers, Inc.  
839 13<sup>th</sup> Avenue North  
Saint Petersburg, Florida 33701

C. Chloe Keidaish, AIA  
3250 NE 1<sup>st</sup> Avenue, Suite 305  
Miami, Florida 33137