

## **Requirements for Providing Vertical Accessibility Under the Applicable Requirements of the FACBC-2012 and Part III of the Americans with Disabilities Act, Public Law 101-336, 28 CFR Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities**

**553.512 Modifications and Waivers; Advisory Council.** The Florida Building Commission shall provide by regulation criteria for granting individual modifications of, or exceptions from, the literal requirements of this part (sections 553.501-553.513, Florida Statutes) upon a determination of unnecessary, unreasonable, or extreme hardship, provided such waivers shall not violate federal accessibility laws and regulations and shall be reviewed by the Accessibility Advisory Council. Notwithstanding any other provision of this subsection, if an applicant for a waiver demonstrates economic hardship in accordance with 28 CFR 36.403(f)(1), a waiver shall be granted.

### **553.509 Vertical Accessibility**

(1) This part and the Americans with Disabilities Act Standards for Accessible Design do not relieve the owner of any building, structure, or facility governed by this part from the duty to provide vertical accessibility to all levels above and below the occupiable grade level, regardless of whether the standards require an elevator to be installed in such building, structure, or facility, except for:

- (a) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, and automobile lubrication and maintenance pits and platforms.
- (b) Unoccupiable spaces, such as rooms, enclosed spaces, and storage spaces that are not designed for human occupancy, for public accommodations, or for work areas.
- (c) 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.
- (d) Theaters, concert halls, and stadiums, or other large assembly areas that have stadium-style seating or tiered seating if ss. 221 and 802 of the standards are met.
- (e) All play and recreation areas if the requirements of chapter 10 of the standards are met.
- (f) All employee areas as exempted in s. 203.9 of the standards.
- (g) Facilities, sites, and spaces exempted by s. 203 of the standards.

The building in question is an existing historical two and three story hotel. The intent of the owner is to upgrade the toilet rooms, the hotel rooms, add a sushi bar, and a retail store. There are eleven hotel guest rooms of which one is an accessible guest room and is located on an accessible route on the first floor.

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See Section **202.5 Alterations to Qualified Historic Buildings and Facilities** within the Florida Accessibility Code for Building Construction which states that alterations to a qualified historic building or facility shall comply with 202.3 and 202.4.

**EXCEPTION:** Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply.

**Advisory 202.5 Alterations to Qualified Historic Buildings and Facilities Exception.** State Historic Preservation Officers are State appointed officials who carry out certain responsibilities under the National Historic Preservation Act. State Historic Preservation Officers consult with Federal and State agencies, local governments, and private entities on providing access and protecting significant elements of qualified historic buildings and facilities. There are exceptions for alterations to qualified historic buildings and facilities for accessible routes (206.2.1 Exception 1 and 206.2.3 Exception 7); entrances (206.4 Exception 2); and toilet facilities (213.2 Exception 2). When an entity believes that compliance with the requirements for any of these elements would threaten or destroy the historic significance of the building or facility, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the requirements for a specific element would threaten or destroy the historic significance of the building or facility, use of the exception is permitted. Public entities have an additional obligation to achieve program accessibility under the Department of Justice ADA regulations. See 28 CFR 35.150. These regulations require public entities that operate historic preservation programs to give priority to methods that provide physical access to individuals with disabilities. If alterations to a qualified historic building or facility to achieve program accessibility would threaten or destroy the historic significance of the building or facility, fundamentally alter the program, or result in undue financial or administrative burdens, the Department of Justice ADA regulations allow alternative methods to be used to achieve program accessibility. In the case of historic preservation programs, such as an historic house museum, alternative methods include using audio-visual materials to depict portions of the house that cannot otherwise be made accessible. In the case of other qualified historic properties, such as an historic government office building, alternative methods include relocating programs and services to accessible locations. The Department of Justice ADA regulations also allow public entities to use alternative methods when altering qualified historic buildings or facilities in the rare situations where the State Historic Preservation Officer determines that it is not feasible to provide physical access using the exceptions permitted in Section 202.5 without threatening or destroying the historic significance of the building or facility. See 28 CFR 35.151 (d).

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Under Title III requirements section **36.405 Alterations: Historic Preservation** states the following:

(a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq) **or are designated as historic under State or local law, shall comply to the maximum extent feasible with this part.**

(b) If it is determined that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or the facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.

The City of Miami Beach has the following -

National Register of Historic Places Within the City of Miami Beach, there are three historic districts listed in the National Register of Historic Places. They are the Miami Beach Architectural District (also known as the Art Deco District), the Normandy Isles Historic District and the North Shore Historic District.

The National Register of Historic Places is a federal program administered by the National Park Service in partnership with state governments. The National Register was created by the National Historic Preservation Act of 1966 to recognize and protect properties of historic and cultural significance at the local, state or national level. It provides incentives for local and private preservation initiatives and requires federal undertakings such as highway construction and urban renewal projects to consider possible impacts on National Register-listed properties.

National Register listing is primarily an honor, meaning that a property has been researched and evaluated according to established procedures and determined to be worthy of preservation for its historical value. The listing of a historic property in the National Register does not obligate or restrict a private owner in any way unless the owner seeks a federal benefit such as a grant or tax credit. For a private owner, a benefit of National Register listing is eligibility for a 20% federal investment tax credit that can be claimed against the cost of a certified rehabilitation of an income-producing historic building.

### **City of Miami Beach Local Historic Designation**

There are currently 12 local historic districts, 13 local historic sites and more than 20 locally designated historic single-family homes within the City of Miami Beach. Local historic designation means the community believes the architecture, history, and character of the area are worthy of recognition and protection. There are several differences between the National Register and local historic

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designation. When a district or site has been locally designated, any major changes or requests for demolition must be reviewed by the City's Historic Preservation Board. Owners wishing to alter the original historic appearance of a designated building are required to apply for what is referred to as a Certificate of Appropriateness. The Board's review of proposed changes ensures that work on property in districts or on a designated historic site is appropriate to the special character of the district or site.

The Urban Design & Historic Preservation Section examines all site and building plans to confirm that physical changes proposed to an existing site or building are consistent with the surrounding aesthetic character of the community. This section also provides technical administrative support to the Design Review Board and the Historic Preservation Board. The Historic Preservation section also prepares reports on historically significant buildings and sites, and makes recommendations to the Historic Preservation Board on requests for Certificates of Appropriateness for demolition and Historic Designation.

The City of Miami Beach Historic Preservation Board has denied the installation of an elevator in this property due to the historical significance of the property and as the authority having jurisdiction over this matter a waiver shall be granted pursuant to section 553.512 of the Florida State Statutes.