

**STATE OF FLORIDA
BUILDING COMMISSION**

In the Matter of
EMPIRE PLAZA, LLC,

Petitioner.

)
)
)
)
)

No. DCA05-HC-128

FINAL ORDER

The Application for Waiver by Petitioner EMPIRE PLAZA, LLC, came for consideration before the State of Florida Building Commission (the "Commission") in accordance with Section 553.512(1), Florida Statutes (2004), and Chapter 9B-7, Florida Administrative Code (2004), at the meeting of the Commission on June 28, 2005, upon a recommendation of the Accessibility Advisory Council. At that meeting, the Commission made the following findings of fact:

1. Empire Plaza is an existing, two-story office building undergoing an \$88,742.00 alteration. The building accommodates approximately five employees per floor. It is located at 7699-7657 Biscayne Boulevard, Miami, Florida 33137.
2. Empire Plaza is owned by Albert Elbaz, 1853 West Avenue, Miami Beach, Florida 33139. Mr. Elbaz was not represented at the July 27, 2005 Council meeting.
3. According to the application, the Owner has used \$49,715.00 of the \$88,742.00 total remodeling costs in providing accessibility improvements, which include entry and toilet room accessibility.
4. The requirements for which the Owner is seeking a waiver are those in Section 553.509, Florida Statutes (2004), which states that the Owner shall provide vertical accessibility to all levels above and below the occupiable grade level. The Owner is requesting a waiver from providing vertical accessibility to the second floor of the office building.

5. The Owner submitted cost estimates to bring the building up-to-date with the vertical accessibility requirements, reflecting a cost of \$103,000.00 to install a passenger elevator to the second floor. He represents that the installation of an elevator would result in a financial hardship.

6. Based on its consideration of the foregoing information, the description of the construction, the representations by the Owner, and the applicable legal requirements, the Council recommended that the Application for Waiver of vertical accessibility be approved under Section 553.512, Florida Statutes (2004), based on disproportionate cost.

Having considered the foregoing information, together with the recommendation of the Council, the Commission hereby agrees with the Council's recommendations, and concludes that action on the Application for Waiver be, and hereby is, GRANTED due to disproportionate costs. Section 553.512, Florida Statutes (2004).

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 (2004), 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. Section 553.513, Florida Statutes (2004). 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., (2000), or the regulations under the Act. The 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 (2004), and Rules 9.110(a) and 9.030(b)(1)(C), Florida Rules of Appellate Procedure. 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 (2004).

DONE AND ORDERED this 16th day of August, 2005 in Coral Gables, Miami Dade County, State of Florida.

FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Clerk, receipt of which is hereby
acknowledged.

Paula P. Ford 8/18/05
Paula P. Ford Date
Commission Clerk


RAUL L. RODRIGUEZ
Chairman

Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Copies To:

Mr. Neil Melick
Chairman, Accessibility
Advisory Council
City of West Palm Beach
P.O. Box 3366
West Palm Beach, Florida 33402-3366

Jose L. Ferrac
Building Official, Miami, Florida
444 S.W. 2nd Avenue
Miami, Florida 33130

Albert Elbaz
Empire Plaza, LLC
1853 West Avenue
Miami Beach, Florida 33139