

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

<p>In the matter of</p> <p>Hartlieb Building 103 S. Bridge Street DeWitt, MI, Applicant</p> <hr style="width: 300px; margin-left: 0;"/>	<p>Docket No.     2011-144</p> <p>Agency No.     96602</p> <p>Agency:        Bureau of                     Construction Codes</p> <p>Case Type:      Barrier Free Design                     Exception Request</p>
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4. EXCEPTION APPLICATIONS  
04. 96602

Issued and entered  
this 28<sup>th</sup> day of February, 2011  
by Lauren G. Van Steel  
Administrative Law Judge

**REPORT OF THE ADMINISTRATIVE LAW JUDGE**

**PROCEDURAL FINDINGS**

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq.*; 1972 PA 230, as amended, MCL 125.1501 *et seq.*; and 1969 PA 306, as amended, MCL 24.201 *et seq.*

The purpose of this review is to examine an application for an exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on February 28, 2011, in Lansing, Michigan. Present were Paul Hartlieb, Owner, and Peter Holz, Architect, representing the Applicant, Hartlieb Building, and Usha Menon, representing the Plan Review Division of the Bureau of Construction Codes. Mr. Hartlieb and Mr. Holz were sworn in and testified as witnesses for the Applicant. The following exhibits, offered by the Applicant, were admitted into evidence:

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1. Applicant's Exhibit No. 1 contains a drawing and six photographs prepared by Peter B. Holz, Architect, Rockwood Design, P.C., showing the exterior and interior of the building located at 103 S. Bridge Street in DeWitt, Michigan.
2. Applicant's Exhibit No. 2 is a copy of a letter to Paul Hartlieb from Jim Rundborg, Mayor, City of DeWitt, dated December 22, 2010.
3. Applicant's Exhibit No. 3 is a copy of a letter to Paul Hartlieb from Mark Swanson, Milestone Construction Co., dated January 14, 2011, "Subject: Rear exit ramp construction as per the drawings by Rockwood Design dated 12-7-10".
4. Applicant's Exhibit No. 4 is a copy of a letter to Paul Hartlieb from Mark Swanson, Milestone Construction Co., dated January 14, 2011, "Subject: Front entry renovations as per the drawings by Rockwood Design dated 12-7-10".

The record was closed at the conclusion of the hearing.

### ISSUE

The central issue presented is whether the Board should grant the Applicant an exception from Section 1105.1 of the 2006 Michigan Building Code.

### FINDINGS OF FACT

The Applicant, Hartlieb Building, seeks an exception from the 2006 Michigan Building Code for three entrances to its building located at 103 S. Bridge Street in DeWitt, Michigan. The building was constructed in or around 1952, and formerly housed a hardware store. In 2002, Paul Hartlieb purchased the building for \$220,000.00 and has put approximately \$200,000.00 of his own money into renovating

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the building, including installing code-compliant bathrooms and insulation. The renovations have included dividing the space into three separate suites.

Mr. Hartlieb has a jewelry business in one suite with five employees, marked as "Suite B" on Petitioner's Exhibit No. 1. Another suite, marked as "Suite C" on Petitioner's Exhibit No. 1, is currently leased by a computer business with two employees.

Mr. Hartlieb intends to lease the third suite, marked as "Suite A" on Petitioner's Exhibit No. 1, to a hair salon business. The lease would be for a three-year period. Mr. Hartlieb estimated that there would be four employees and 32 patrons a day in the hair salon. This third suite has been vacant for five to six years, although the building is considered in a prime business location in DeWitt. The vacancy is likely due to current difficult economic conditions. The new tenant will need to renovate certain aspects of the interior to create hair-cutting stations for purposes of its hair salon. The Applicant's current income from the building is \$2,600.00/month for the current two suites together, which essentially covers the current financing and other costs. The proposed rental amount for the third suite is \$1,266.00/month.

All entrances to the building, on the front, side and back, are above the adjacent sidewalk. The property line is at the building face and the sidewalks are public spaces. On the front of the building, there is a concrete stoop, making the front entrance 7 to 10 inches from grade (with a sloping sidewalk). The DeWitt city council has declined to re-grade the sidewalk and has recently installed sidewalk or pavers. (See Photo #1 on Exhibit No. 1 and Exhibit No. 2).

The side entrance to Applicant's building is 14 inches from grade, and has two steps to the interior. (See Photo #2 on Exhibit No. 1.) If a ramp were installed on

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the side of the building, shown in Photo #3 on Exhibit No. 1, it would not be on the Applicant's property and would only provide access to one of the suites.

The rear entrance, which currently has a set of wooden steps, is 46 or 47 inches from grade. (Photos #4 & 5 on Exhibit No. 1.) If a ramp were installed for the back entrance, it would be in an alley that is 20-feet wide, and reduce the alley width to about 16 feet. The Applicant has obtained an estimate of \$9,835.00 for installation of a rear exit ramp. (See Exhibit No. 3.) A platform lift would be likely considerably more expensive and has not been considered for that reason.

With an exterior rear ramp installed, the alley would still be passable by vehicles. Given the current make-up of the building's interior, however, a ramp installed for the rear entrance would only make two of the three suites accessible. If the rear entrance were going to be re-configured to make all three suites accessible, Mr. Holz credibly estimates the additional cost at \$24,000.00 or \$25,000.00, because it would be necessary to move existing walls, bathroom fixtures, electrical and plumbing. Further, as Mr. Hartleb points out, certain existing computer space in one of the suites would be lost.

If the front entrance were re-configured to become barrier free compliant, three sections of sidewalk would need to be re-poured and a six-foot long interior ramp with handrails would need to be created in a new vestibule, which would entail structural adjustments in the basement framing and ceiling. Per Mr. Holz's credible testimony, such a re-configuration would be structurally feasible, but very costly. The Applicant has obtained an estimate of \$19,550.00 for this renovation, as shown in Exhibit No. 4. Even if the front entrance were reconfigured, however, this would only allow access to the two front suites. Employees and patrons would have to walk through one of the

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suites to reach the back suite. (See Exhibit No. 1, p 3.)

Mr. Hartlieb credibly testified that the necessary costs to make the building's entrances barrier free accessible are not economically feasible for the Applicant at this time. The large front suite has been vacant for five or six years. The proposed hair salon tenant wishes to lease the space immediately; if there is delay in granting an exception the Applicant will likely lose the tenant. The current lease income from the building is only covering current costs. If the Applicant had to secure funding to make the necessary re-configurations to make the building barrier free accessible immediately, the Applicant would effectively lose income stream from the building and would likely lose money on the building on a net basis.

#### CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier-free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier-free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted. MCL 125.1355(6).

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier-free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically,

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technologically, structurally, or administratively feasible.

Section 1105.1 of the 2006 Michigan Building Code states as follows:

1105.1 Public entrances. In addition to accessible entrances required by Sections 1105.1.1 through 1105.1.6, at least 60 percent of all public entrances shall be accessible.

Exceptions:

1. An accessible entrance is not required to areas not required to be accessible.
2. Loading and service entrances that are not the only entrance to a tenant space. (Emphasis supplied)

Based on the above findings of fact, it is concluded that the Applicant has presented compelling reasons in this matter to justify an exception for a period of time. The compelling reasons are the existing structural limitations on both the front and rear of the building, jurisdictional conflicts and the estimated cost of compliance. See MCL 125.1355a(2) and 1988 AACRS, R 125.1014(2)(b) and (t).

First, the Applicant has credibly shown that there are some existing structural limitations, both interior and exterior, which would make the addition of an interior ramp on the front of the building not impossible but quite costly. The local jurisdiction will not agree to re-installing the sidewalk on the exterior to make the grade even with the building. Further, the proposed interior ramp on the front of the building would not allow direct access to the rear suite. Making the side entrance accessible would only allow barrier free entry to one suite. For the exterior ramp to be barrier free accessible to all three suites in the building, a wall and existing fixtures, plumbing and electrical work would have to be moved, which would be also quite costly. It appears the most reasonable option is for the building to be made barrier free accessible using a rear entrance ramp, so that all three suites can be accessed (even though that will

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reduce available space in one of the suites). Of course, even with this option, there would not be 60% of the building entrances accessible as Section 1105.1 of the 2006 Michigan Building Code envisions.

The Applicant has credibly shown that the \$9,835.00 estimated cost of compliance to construct an exterior ramp to the rear entrance, plus the \$24,000.00 or \$25,000.00 cost to re-configure the interior in the rear of the building to make all three suites accessible, would not be economically feasible given the Applicant's current income from the building and having had an extended vacancy of the third suite. Therefore, compelling need has been shown based on the total cost of compliance at this time under R 125.1014(2)(b).

Nevertheless, the Applicant has not shown why an exception should be granted on a permanent basis, rather than for a period of years. The Applicant has not shown that, after receiving lease payments for the third suite for a period of years, it would not be economically capable of making the necessary barrier free renovations. While the Applicant contends that it does not know whether the leaseholder would continue after the three-year lease period or what the construction costs would be after a period of years, it would appear more appropriate for the Applicant to address these concerns after the expiration of a compliance exception period. It would not appear appropriate, given the intent of the Act, to allow the building to remain permanently inaccessible. Allowing an exception for a significant time period such as five years, would reasonably allow for the possible improvement of economic conditions, additional rent monies to be received, or for the Applicant to obtain funding to make the rear entrance barrier free accessible.

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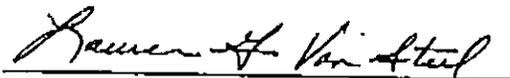
**RECOMMENDED DECISION**

Based on the above findings of fact and conclusions of law, the undersigned recommends that the Board grant the Applicant a five-year time exception from Section 1105.1 of the 2006 Michigan Building Code.

As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

As a condition to granting this time exception, the Applicant shall submit, within 60 days from the Board's Final Order issued after review of this recommendation, a plan/proposal detailing how compliance will be achieved within the time exception period. The plan/proposal must show or state that it is technically and structurally feasible to meet the applicable Barrier Free Design Rules.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Todd Cordill.



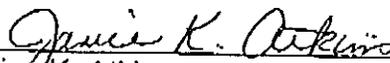
Lauren G. Van Steel  
Administrative Law Judge

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PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 28<sup>th</sup> day of February, 2011.

  
\_\_\_\_\_  
Janice K. Atkins  
State Office of Administrative Hearings and Rules

Bert Gale  
City of DeWitt  
414 East Main Street  
Dewitt, MI 48820

Todd Cordill  
Bureau of Construction Codes  
Plan Review Division  
2501 Woodlake Circle  
Okemos, MI 48864

Usha Menon  
Bureau of Construction Codes  
Plan Review Division  
2501 Woodlake Circle  
P.O. Box 30254  
Lansing, MI 48909

Paul Hartlieb  
Hartlieb, LLC  
Hartlieb Building, Suite B  
103 South Bridge Street  
Dewitt, MI 48820



January 14, 2011

Paul Hartlieb  
103 S. Bridge St.  
Dewitt, MI 48820

Subject: Front entry renovations as per the drawings by Rockwood Design dated 12-7-10

Price Includes:

1. Remove front concrete as shown
2. Install approximately 75sf of new concrete sidewalk
3. Remove existing vestibule and floor system as shown
4. Construct the new floor with ramp
5. Construct new walls and ceiling as shown
6. New aluminum windows and doors as shown
7. New brick as shown
8. Paint new drywall
9. Trash removal and clean up
10. Building permit

Total Cost: \$19,550.00

Alternate Cost:

If we reuse one existing storefront door you can save \$600.00 from the above price.

Submitted By:

A handwritten signature in black ink, appearing to read "Mark Swanson", is written over a horizontal line.

Mark Swanson  
Milestone Construction Co.



January 14, 2011

Paul Hartlieb  
103 S. Bridge St.  
Dewitt, MI 48820

Subject: Rear exit ramp construction as per the drawings by Rockwood Design dated 12-7-10

Price Includes:

1. Remove existing stairs and porch
2. Cut concrete for new post and pipe bollard holes
3. Excavate and pour concrete footings
4. Labor and materials to build the deck, ramp and stairs (all decking to be 5/4" x 6" Trex decking)
5. Furnish and install (5) steel pipe bollards
6. Concrete patch
7. Trash removal and clean up
8. Building permit

Total Cost: \$9835.00

Submitted By:

A handwritten signature in black ink, appearing to read "Mark Swanson", is written over a horizontal line.

Mark Swanson  
Milestone Construction Co.



# CITY OF DEWITT

DEWITT CITY HALL • 414 EAST MAIN STREET • DEWITT, MICHIGAN 48820

December 22, 2010

Paul Hartlieb  
103-B S. Bridge Street  
DeWitt, MI 48820

Dear Mr. Hartlieb:

I am writing to inform you that at the City Council meeting of December 21, 2010, the City Council did not feel the barrier free design for your building was aesthetically appealing to downtown and therefore voted to not approve the plans.

Should you have any questions, please feel free to contact me.

Sincerely,

Jim Rundborg  
Mayor  
City of DeWitt

# RECEIVED

DEC 22 2010

BUREAU OF CONSTRUCTION CODES  
PLAN REVIEW DIVISION

Application for Barrier Free Design Rule Exception  
Michigan Department of Energy, Labor & Economic Growth  
Bureau of Construction Codes / Plan Review  
P.O. Box 30255, Lansing, MI 48909  
517-241-9328  
www.michigan.gov/bcc

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96602

Application Fee: \$300.00

Authority: 1966 PA 1 Completion: Mandatory Penalty: Exception will not be granted	DELEG is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
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The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

<b>FACILITY INFORMATION</b>	
FACILITY NAME Hartlieb Building	STREET / SITE ADDRESS 103 South Bridge Street
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: DeWitt	COUNTY Clinton
Estimated Project Cost \$	Estimated Cost of Compliance \$
<b>BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)</b>	
<input type="checkbox"/> New Building <input type="checkbox"/> Alteration <input checked="" type="checkbox"/> Change of Use	Building Permit / File Number
Is a Temporary Exception Requested? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	PERIOD OF TIME REQUESTED? USE GROUP CONSTRUCTION TYPE
Project Does Not Comply With Barrier Free Design Requirements As Follows:  Michigan Building Code Section(s) MBC 2006 Sections 1103.1 and 3410.2.5 Reason for Non-Compliance All entrances to the building are above the adjacent sidewalk (West 7", North 14", East 46"). Property line is at building face and sidewalks are in public spaces where ramp construction is not feasible. See drawing and photos.	
ENFORCING AGENCY City of DeWitt	BUILDING OFFICIAL NAME BERT GALE
ADDRESS 414 E. MAIN ST. DeWitt	REGISTRATION NUMBER P002275
CITY DeWitt	STATE MI
DATE 1-10-11	ZIP CODE 48820
BUILDING OFFICIAL SIGNATURE (Must be an original signature) Bert Gale	E-MAIL ADDRESS AGSINSPOETS@YALCO.CO
TELEPHONE NUMBER (Include Area Code) (517) 669-2441	FAX NUMBER (Include Area Code) (517) 641-4170
<b>PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)</b>	
COMPANY NAME Rockwood Design, PC	LICENSED INDIVIDUAL Peter B. Holz
ADDRESS 2215 Burcham Drive	MICHIGAN LICENSE NUMBER 1301032602
CITY East Lansing	STATE MI
TELEPHONE NUMBER (Include Area Code) (517) 290-6780	ZIP CODE 48823
<b>APPLICANT (Note: All correspondence will be sent to this address)</b>	
COMPANY NAME Hartlieb LLC	APPLICANT NAME Paul Hartlieb
ADDRESS 103 S Bridge Street, Suite B	FEIN OR SS NO.* (Required)
CITY DeWitt	TELEPHONE NUMBER (Include Area Code) (517) 669-8200
STATE MI	FAX NUMBER (Include Area Code) (517) 669-6060
ZIP CODE 48820	
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the state of Michigan and all information submitted is accurate to the best of my knowledge.	
APPLICANT SIGNATURE (Must be an original signature) Paul Hartlieb	DATE 12-22-10

\*This information is confidential. Disclosure of confidential information is protected by the Federal Privacy Act.