



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF CONSTRUCTION CODES
IRVIN J. POKE
DIRECTOR

STEVE ARWOOD
DIRECTOR

BARRIER FREE DESIGN BOARD

Conference Room 3, First Floor
2501 Woodlake Circle
Okemos, Michigan 48864

AGENDA

May 17, 2013
9:30 a.m.

1. **Call to Order and Determination of Quorum**
2. **Approval of Agenda (pages 1-2)**
3. **Approval of Minutes (pages 3-7)**
4. **Exception Applications**
 - 01) 104225, Power Vac of Michigan, Inc. – Oakland (pages 8-16)
 - 02) 104288, PAAS Investments, Inc. – Oakland (pages 17-36)
 - 03) 104363, The Townes of Liberty Park – Oakland (pages 37-48)
 - 04) 104410, Right Choice Auto Care – Wayne (pages 49-60)
 - 05) 104505, Mason Elementary School – Wayne (pages 61-73)
 - 06) 104506, Richard Elementary School – Wayne (74-85)
 - 07) 104663, Kazanis Dental – Oakland (86-95)
5. **Unfinished Business**
6. **New Business**

Providing for Michigan's Safety in the Built Environment

LARA is an equal opportunity employer
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
P.O. BOX 30254 • LANSING, MICHIGAN 48909
www.michigan.gov/bcc • Telephone (517) 241-9302 • Fax (517) 241-9570

Barrier Free Design Board Meeting Agenda
Page 2
May 17, 2013

- 7. Staff Report**

- 8. Public Comment**

- 9. Next Meeting – July 19, 2013**

- 10. Adjournment**

“The meeting site is accessible, including barrier-free parking. Individuals attending the meetings are requested to refrain from using heavily scented personal care products in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact Margarita Torres at (517) 241-9328 at least 10 working days before the event.”



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF CONSTRUCTION CODES
IRVIN J. POKE
DIRECTOR

STEVE ARWOOD
DIRECTOR

BARRIER FREE DESIGN BOARD

Conference Room 3, First Floor
2501 Woodlake Circle
Okemos, MI 48864

Minutes
March 15, 2013

MEMBERS PRESENT

Mr. Roger Donaldson
Mr. Aaron Besmer
Ms. Emily Blauw
Mr. Vincent DeLeonardis
Mr. Michael Harris
Mr. Brett Holt

MEMBERS ABSENT

Ms. Karla Hudson
Mr. James McGaugh

DEPARTMENT PERSONNEL IN ATTENDANCE

Mr. Irvin Poke, Director, Bureau of Construction Codes
Mr. Keith Lambert, Deputy Director, Bureau of Construction Codes
Mr. Todd Cordill, Chief, Plan Review Division
Mr. George Herrity, Assistant Chief, Plan Review Division
Ms. Usha Menon, Plan Reviewer, Plan Review Division
Ms. Margarita Torres, BFD Board Secretary

Providing for Michigan's Safety in the Built Environment

LARA is an equal opportunity employer
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
P.O. BOX 30254 • LANSING, MICHIGAN 48909
www.michigan.gov/bcc • Telephone (517) 241-9302 • Fax (517) 241-9570

OTHERS IN ATTENDANCE

Mr. Jason Craig, City of Royal Oak
Ms. Sharon Hanshere, Department of Natural Resources
Mr. Jan VanAmberg, Department of Natural Resources

1. **CALL TO ORDER AND DETERMINATION OF QUORUM**

The meeting was called to order at 9:40 a.m. by Chairperson Donaldson. A quorum was determined present at that time.

2. **APPROVAL OF AGENDA**

A **MOTION** was made by Board Member DeLeonardis to approve the agenda as amended for the March 15, 2013 Board meeting. The motion was seconded by Board Member Harris. **MOTION CARRIED.**

3. **APPROVAL OF MINUTES**

A **MOTION** was made by Board Member Holt to approve the minutes of the January 18, 2013 Board meeting. The motion was seconded by Board Member Harris. **MOTION CARRIED.**

4. **EXCEPTION APPLICATIONS**

- 01) 104292, NADA & Company - Oakland
- 03) 104316, Home Instead Senior Care – Wayne
- 04) 104424, Plum Bakery - Manistee

A **MOTION** was made by Board Member Holt to adopt the reports of the Administrative Law Judge and the recommended decisions for the cases listed above. The Board acknowledged the receipt of all material submitted by the applicant. The motion was seconded by Board Member Harris. **MOTION CARRIED.**

Barrier Free Design Board Meeting
 Page 3
 March 15, 2013

02) 104307, YMCA Convent Building - Wayne

A **MOTION** was made by Board Member Harris to grant the exception based on the Administrative Law Judge Recommendation with the condition that the certificate of occupancy states that the second floor will not be occupied. The motion was seconded by Board Member Holt. **MOTION CARRIED.**

05) 104315, A New Life Prosthetics - Wayne

A **MOTION** was made by Board Member Harris to grant the exception based on the Administrative Law Judge Recommendation with the condition that the business plans be for the three year extension be submitted. The motion was seconded by Board Member Besmer. **MOTION CARRIED.**

5. **UNFINISHED BUSINESS**

None

6. **NEW BUSINESS**

Reconsideration of a Previously Issued Order of the Board

104043, Marquette State Fish Hatchery - Marquette

Testimony was provided by Mr. Jan VanAmberg and Ms. Sharon Hanshere of the Department of Natural Resources. The testimony clarified that the lower level is not open to the public to prevent contamination in the fish tanks.

A **MOTION** was made by Board Member Holt to rescind the original **MOTION** denying relief from the 2009 MBC, Section 1104.4 for interior vertical barrier free access between levels. The motion was seconded by Board Member Besmer. **MOTION CARRIED.**

A **MOTION** was made by Board Member Holt to grant the exception based on the Administrative Law Judge Recommendation. The Board concurs with the Conclusion of Law and Recommendation. In addition, the Board finds there is a jurisdictional conflict with the Elevator Rules. The motion was seconded by Board Member Harris. **MOTION CARRIED.**

7. STAFF REPORT

Division Chief Todd Cordill reported on the following

The Construction Code Commission held a meeting last month to consider or to act upon revised fees. The fee for Barrier Free Design Rule Exceptions will go up from \$300.00 to \$500.00 on April 1, 2013. The fee would cover the cost of the administrative law judge hearings and staff preparing for and hosting the meetings. There are various other permit fees that are changing. The Plan Review Application fee will remain at \$125.00 which is a non refundable application fee. The new fee schedule is on our webpage and is based on use group, under the code, and construction. type

By the end of April, Mr. Cordill is expecting to attend more international code council code change hearings in Dallas, Texas for the energy and the residential codes.

8. PUBLIC COMMENT

None

9. NEXT MEETING

May 17, 2013

10. ADJOURNMENT:

Barrier Free Design Board Meeting
Page 5
March 15, 2013

A **MOTION** was made by Board Member Harris to adjourn the meeting. The motion was seconded by Board Member Holt. **MOTION CARRIED.** The meeting adjourned at 10:00 am.

Approved: _____ Date: _____
Roger Donaldson, Chairperson

DRAFT

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

Docket No.: 13-000229-BCC

Power Vac of Michigan, Inc.
44370 Grand River Avenue
Novi, MI 48375,
Applicant

Case No.: 104225

Agency: Bureau of Construction Codes

Case Type: BCC Barrier Free Design

Filing Type: Appeal

RECEIVED

MAR 15 2013

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Issued and entered
this 14th day of March, 2013
by J. Andre Friedlis
Administrative Law Judge

1. EXCEPTION APPLICATIONS
01, 104225

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 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on March 13, 2013, in Lansing, Michigan. Present were David Janks, Owner, representing the Applicant, and Usha Menon, representing the Bureau of Construction Code's Plan Review Division.

ISSUE

Should a two year time exception be granted from Section 1105.1 of the 2009 Michigan Building Code (MBC)?

FINDINGS OF FACT

The building at issue is the last of three buildings formerly used as residences on a parcel of property the Applicant purchased one year ago for \$270,000. Two of the buildings have been torn down. The remaining structure is a two story building with 875 square feet on the first floor and 182 square feet on the second. The upper level will be used for storage only. The levels are 12 feet apart. Access to the first floor is 20 inches above grade with an intervening porch.

The Applicant has been in business for 11 years. The company performs service and repair of plumbing, electrical, and mechanical building systems.

The building at issue will be used by three foremen – plumbing, electrical, and mechanical. These three employees will perform most of their work in the field and return to this building for at most 10% of work time to write estimates and make telephone calls. These three employees must be able bodied in order to go to job sites and review job needs. No members of the public come to this building.

The Applicant's main office is 30 years old; it is 400 feet away from the building at issue. Six employees work in this building. This structure has 5800 square feet on one floor; it satisfies barrier free requirements. There is no space in this building for the three foremen to do their work.

The Applicant estimates it would cost \$5,000 to install a ramp for access to the building at issue. But within 2 years, the Applicant plans to create a development plan for the entire piece of property. This would include tearing down the remaining residence now being used by the three foremen.

If during this two year period one of the three foremen now using the building at issue became temporarily disabled, that employee could do his/her work in the existing barrier free main office next door.

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.

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, technologically, structurally, or administratively feasible.

Section 1105.1 of the 2009 MBC provides:

Public entrances. In addition to *accessible* entrances required by Sections 1105.1.1 through 1105.6, at least 60% of all *public entrances* shall be *accessible*.

Exceptions Omitted

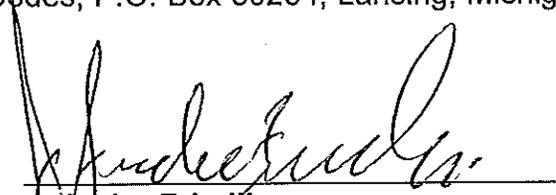
Compelling need has been presented to give the Applicant a two year exception to remove the building at issue. A building plan will be created to make use of the entire site purchased one year ago. This plan will include tearing down the building now lacking barrier free building access. In the meantime, the building will be used on an intermittent basis by three foremen who must be able bodied to go to job sites and review needed work. It would be a waste of resources to require the Applicant to spend \$5,000 for a ramp that will not be used.

RECOMMENDED DECISION

I recommend the Board grant the Applicant a two year time exception from Section 1105.1 of the 2009 Michigan Building Code.

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

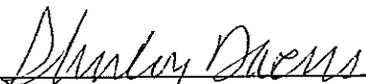
A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: **Todd Cordill**.



J. Andre Friedlis
Administrative Law Judge

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 below this 14th day of March, 2013.



Shirley Dacus/
Michigan Administrative Hearing System

David Janks
Power Vac of Michigan, Inc.
44300 Grand River
Novi, MI 48375

Andy Gerceke
City of Novi
45175 Ten Mile Road
Novi, MI 48375

Power Vac of Michigan, Inc.
44370 Grand River Avenue
Novi, MI 48375

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



FEB 20 2013
BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

February 14, 2013

Department of Licensing and Regulatory Affairs
Bureau of Construction Codes
PO Box 30254
Lansing, MI 48909

RE: Project 104225-Oakland

Ms. Usha Menon,

Please accept the enclosed drawing of the building which we are requesting a Barrier Free Exception. The drawing shows that the two entry points into the building are elevated by steps. We are requesting an exception to the barrier free requirements for the entry into the building. This building is on the property adjacent to our current offices. The building will not be used as public facilities, the building is to be used as offices for our foreman. Barrier free public facilities are located next door (less than 300 ft) in our existing offices.

Please approve an exemption from the barrier free entry requirements to the "home" located at 44370 Grand River in Novi, MI which use is to be changed from residential to private offices for our foreman.

Please contact me if you require any additional information.

Sincerely,

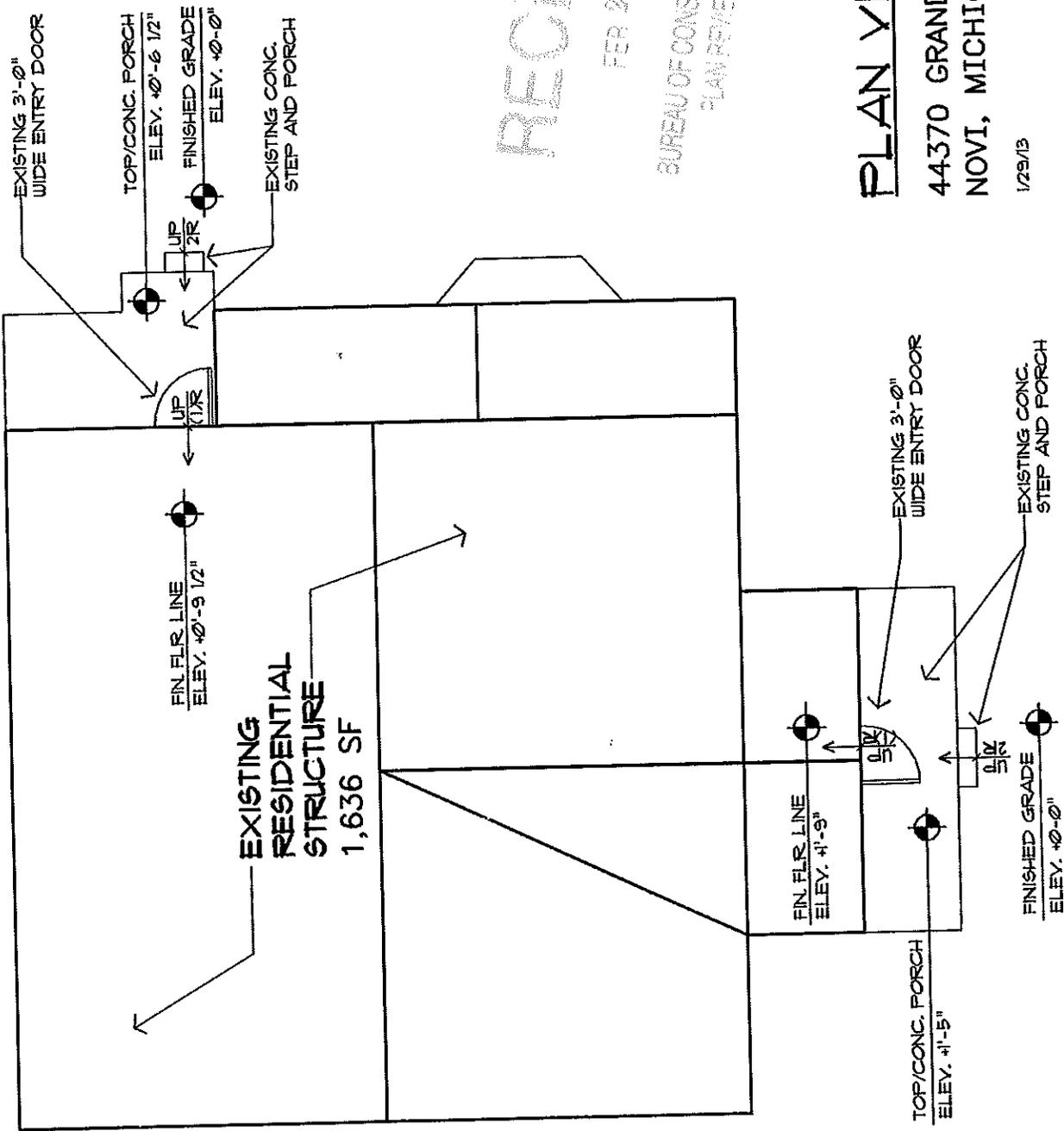
David K. Janks, General Manager

An existing home use will be changed to private offices. A temporary use permit has been obtained from the City of Novi. The home is located on an adjacent lot to our main office which has barrier free access and facilities less than 400 ft away from the existing house.

RECEIVED

NOV 30 2012

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION



RECEIVED

FEB 20 2013

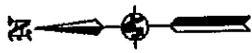
BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

PLAN VIEW

44370 GRAND RIVER AVE.
NOVI, MICHIGAN

1/29/13

SCALE: 1/8" = 1'-0"



RECEIVED

104 225

16

NOV 30 2012

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

Trans Info: 133 10123204-1 11/26/12

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Agency Use Only
FIRM: 3081 Amt: \$300.00
ID: POWER VAC OF MICHIGAN INC

Application Fee: \$300.00

Authority: 1966 PA 1 Completion: Mandatory Penalty: Exception will not be granted	The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.
---	--

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.

FACILITY INFORMATION				
FACILITY NAME <i>Power Vac of Michigan, Inc.</i>		STREET / SITE ADDRESS <i>44370 Grand River Ave</i>		
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: <i>Novi</i>				COUNTY <i>Oakland</i>
Estimated Project Cost \$ <i>0</i>		Estimated Cost of Compliance \$ <i>5,000</i>		
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)				
<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 type="checkbox"/> No <input checked="" type="checkbox"/> Yes		PERIOD OF TIME REQUESTED? <i>2 years</i>	USE GROUP <i>B</i>	CONSTRUCTION TYPE <i>IRB</i>
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) <i>3409.8.1 1105.1</i>				
Reason for Non-Compliance <i>Changed existing residential home into new business office location. Business use requires an accessible entrance.</i>				
NAME <i>Andy Gencel</i>		ENFORCING AGENCY <i>City of Novi</i>		TELEPHONE NUMBER (Include Area Code) <i>(248) 3470417</i>
ADDRESS <i>45175 Ten Mile Rd</i>		CITY <i>Novi</i>	ZIP CODE <i>48375</i>	FAX NUMBER (Include Area Code) <i>248 735 5600</i>
BUILDING OFFICIAL SIGNATURE (Must be an original signature)				
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)				
NAME		MICHIGAN LICENSE NUMBER		FIRM NAME
ADDRESS		CITY	STATE	TELEPHONE NUMBER (Include Area Code)
ZIP CODE				
APPLICANT (Note: All correspondence will be sent to this address)				
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE <i>Power Vac of Michigan, Inc</i>		COMPANY NAME <i>elo David Janke</i>		SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED)
ADDRESS <i>44300 Grand River</i>		CITY <i>Novi</i>	STATE <i>MI</i>	TELEPHONE NUMBER (Include Area Code) <i>248-912-9974</i>
ZIP CODE <i>48375</i>		FAX NUMBER (Include Area Code)		
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)				DATE <i>11-1-12</i>

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 13-000050-BCC

PAAS Investments, Inc.
1663 Stephenson Hwy.
Troy, Michigan,

Case No.: 104288

Agency: Bureau of Constructor
Codes

Applicant

Case Type: BCC Barrier Free Desig

Filing Type: Barrier Free Design

RECEIVED

APR 05 2013

Issued and entered
this 4th day of April 2013
by Lauren G. Van Steel
Administrative Law Judge

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

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 March 6, 2013, in Lansing, Michigan. Present were Dipesh Shah, President of PAAS Investments, Inc., Applicant, and Stanley Skopek, Building Plan Reviewer, on behalf of the Plan Review Division of the Bureau of Construction Codes.

Mr. Shah was sworn in and testified as a witness for the Applicant. The following exhibit, offered by the Applicant, was admitted into evidence:

1. Applicant's Exhibit No. 1 is a copy of guidelines from a federal website regarding R 4.1.6.

The record was closed at the conclusion of the hearing.

ISSUE

The issue presented is whether the Board should grant the Applicant an exception from Sections 1104.3 and 1109.2 of the 2009 Michigan Building Code.

2. EXCEPTION APPLICATIONS
02. 104288

FINDINGS OF FACT

PAAS Investments, Inc., Applicant, seeks a permanent exception from the 2009 Michigan Building Code for a building located at 1663 Stephenson Highway in Troy, Michigan. The application for an exception was received by the Plan Review Division within the Bureau of Construction Codes on December 12, 2012.

The building at issue was built in 1974, and formerly housed a doctor's office. It is bi-level concrete block structure that has a common foyer or landing area with a stairway of 6 or 7 steps leading to the upper and lower levels. It is approximately 8,000 square feet in size (4,000 square feet each on the first and second floors). There has never been an elevator in the building, per Mr. Shah's testimony.

The Applicant plans to remove some partition walls in the process of renovation, but not load-bearing walls. The Applicant is not moving windows or doors. The building inspector informed the Applicant that if an exception was denied for an elevator or platform lift, the Applicant would need to install barrier free toilet rooms.

The eight existing toilet rooms are not barrier free compliant. There are four toilet rooms on each floor. To Mr. Shah's knowledge, the turn-around space in the toilet rooms is not barrier free compliant. Also, at least two toilet rooms on both floors have door widths that are not barrier free complaint.

The estimated cost to purchase an elevator or platform lift as shown in the application attachments is \$25,000.00. The Applicant does not have an estimate at this time of the cost to make the toilet rooms barrier free compliant.

The building was a foreclosed building at the time of the Applicant's purchase in May 2012. The Applicant purchased the building for \$188,000.00. The Applicant developed a plan for renovation and then applied for a bank loan to pay for the renovation. However, the bank denied the loan application. All of the renovation work is now being paid for by the Applicant out of pocket.

Mr. Shah testified that the current estimated renovation costs, not including an elevator/ platform lift or toilet rooms renovation, is \$125,000.00. To date, the Applicant has spent \$75,000.00 on renovation: \$30,000.00 for repairing the parking lot and \$45,000.00 for contractor work including replacing bathroom stalls, removing ceiling tiles and roof repair.

The bank loan amount applied for did not include an elevator or platform lift, or toilet room renovation costs. The Applicant first learned of the need for an elevator when it applied for a building permit to make other renovations.

The Applicant is a real estate investment company that was incorporated in Michigan the spring of 2012, just prior to the building purchase. Mr. Shah's father, mother and wife are officers of the corporation. The Applicant does not have any employees at this

time. Mr. Shah's father usually does the clerical work for the company, per Mr. Shah's testimony.

The Applicant plans to use the second floor of the building, and lease the first floor of the building to Professional Therapy Solutions (PTS), which is a staffing firm also operated by Mr. Shah that is currently leasing space in Madison Heights. PTS has been incorporated in Michigan since 2007, with Mr. Shah, Mr. Shah's wife and Mr. Shah's father as corporate officers. PTS has 30 to 35 employees, who are physical and occupational therapists placed in local health care agencies. The employees come to the current PTS office once a week on Mondays, to drop off paperwork, per Mr. Shah's testimony.

The height of the ceiling in the lower level is about 10 feet. The foyer or landing area is 10 x 4 square feet in size. The Applicant estimates there would be an additional \$15,000.00 in construction costs to install an elevator or platform lift in the concrete structure landing area. According to Mr. Shah, the building inspector did not specify a particular location for the elevator/platform lift.

The Applicant contends that the business use of the building is not being changed and that the number of persons using the building will be minimal. The majority of the renovation work being done is related to mechanical work, carpeting and painting. The Applicant points to federal regulations as shown in its Exhibit No. 1 and points out that the building's load-bearing walls are not being altered in the current renovation plans.

If the Applicant were required to make the building barrier free compliant, it would delay occupancy for at least two years, in order for the Applicant to try to raise the money required. The Applicant cannot afford to make the building barrier free compliant at this time. Mr. Shah stated that he would end up selling the building as is, so as not to have to keep paying to lease its current office space.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, MCL 125.1351 *et seq.* (hereafter "Act") 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, technologically,

structurally, or administratively feasible.

The term, "compelling need" is defined in Section 5a(2) of the Act as follows:

(2) As used in subsection (1), "compelling need" includes, but is not limited to, 1 or more of the following:

- (a) Structural limitations.
- (b) Site limitations.
- (c) Economic limitations.
- (d) Technological limitations.
- (e) Jurisdictional conflicts.
- (f) Historical structures, under conditions prescribed by rule of the construction code commission. MCL 125.1355a(2).

Also, Barrier Free Design Board Rule R 125.1014(2) lists the following factors which may be considered in determining whether compelling need has been demonstrated:

Rule 14. (2) In addition to section 5a(2) of the act, factors which may be considered in determining whether compelling need has been demonstrated include the following, if applicable:

- (a) Circumstances which required compliance, such as any of the following:
 - (i) Use group change.
 - (ii) New construction.
 - (iii) Occupancy load change.
 - (iv) Alteration other than ordinary maintenance.
 - (v) Addition.
- (b) The total project cost, including all of the following:
 - (i) The total construction or remodeling cost.
 - (ii) Land acquisition cost.
 - (iii) Cost for furnishings.
 - (iv) Purchase price of the structure.
- (c) Nature of the business or facility.
- (d) Anticipated public traffic.
- (e) Hours and days of operation.
- (f) Financial position of the business or agency.
- (g) Age of the business.
- (h) Lease provisions, if the applicant is a lessee of the facility; and the name and address of the owner, if the owner refuses to allow compliance with the barrier free design requirements.
- (i) Tax abatements, tax credits, and tax deductions for which the project qualifies.

- (j) Age of existing building.
- (k) Size of all levels and areas of the project and the size of the area or areas proposed to be inaccessible.
- (l) Use of the area proposed to be inaccessible.
- (m) Aspects of the project that do comply with the barrier free design requirements.
- (n) Number of employees who will be using the area or facility.
- (o) Description of the job duties of the employees.
- (p) Vertical distance from grade to entrance level.
- (q) Vertical distance or distances between floor levels.
- (r) Width and layout of existing stairways.
- (s) Cost of compliance in relation to the total project cost, the size of the area proposed to be inaccessible, and the use of the area proposed to be inaccessible.
- (t) Existing structural limitations.
- (u) Site restrictions, such as any of the following:
 - (i) Size of site.
 - (ii) Greenbelt or set-back requirements.
 - (iii) Off-street parking requirements.
 - (iv) Unusual soil or site conditions.
- (v) Spatial and financial feasibility of alternatives to compliance, such as any of the following:
 - (i) Ramp with slightly steeper slope.
 - (ii) Alternative lifting devices such as a special elevating device or wheelchair lifting device.
 - (iii) Accessible entrance other than the nearest entrance.
 - (iv) Unisex barrier free bathroom.
- (w) Feasibility of an exception for a stated period of time after which compliance with the requirements would be achieved and the plan or proposal for compliance.
- (x) Duplication of facilities available.
- (y) Historic designation and character of the facility, as determined by the Michigan bureau of history, department of state, or the United States department of the interior as specified in R 408.30428.
- (z) Similar projects previously reviewed by the board.
- (aa) Whether the applicant complied with the requirements contained in section 10 of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, known as the construction code act.
- (bb) Whether the project was started or constructed, or both, pursuant to a permit based on plans or specifications that complied with the barrier free design requirements, in accordance with section 11 of Act No.230 of the Public Acts

of 1972, as amended, being §125.1511 of the Michigan Compiled Laws, known as the construction code act.

(cc) Any other factual information related to the project which the applicant believes should be considered by the board. 1988 AACCS, R 125.1014(2).

Section 1104.3 of the 2009 Michigan Building Code states as follows:

1104.3 Connected spaces. When a building or portion of a building is required to be accessible, an accessible route shall be provided to each portion of the building, to accessible building entrances connecting accessible pedestrian walkways and the public way.

Exceptions:

1. In assembly areas with fixed seating, an accessible route shall not be required to serve levels where wheelchair spaces are not provided.
2. In Group I-2 facilities, doors to sleeping units shall be exempted from the requirements for maneuvering clearance at the room side provided the door is a minimum of 44 inches (1118 mm) in width.

Section 1109.2 of the 2009 Michigan Building Code states as follows:

1109.2 Toilet and bathing facilities. Each toilet room and bathing room shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing rooms provided within the facility shall not be located on the inaccessible floor. At least one of each type of fixture, element, control or dispenser in each accessible toilet room and bathing room shall be accessible.

Exceptions:

1. In toilet rooms or bathing rooms accessed only through a private office, not for common or public use and intended for use by a single occupant, any of the following alternatives are allowed:
 - 1.1 Doors are permitted to swing into the clear floor space, provided the door swing can be reversed to meet the requirements in ICC A117.1;
 - 1.2 The height requirements for the water closet in ICC A117.1 are not applicable;

- 1.3 Grab bars are not required to be installed in a toilet room, provided that reinforcement has been installed in the walls and located so as to permit the installation of such grab bars; and
 - 1.4 The requirement for height, knee and toe clearance shall not apply to a lavatory.
2. This section is not applicable to toilet and bathing rooms that serve dwelling units or sleeping units that are not required to be accessible by Section 1107.
 3. Where multiple single-user toilet rooms or bathing rooms are clustered at a single location, at least 50 percent but not less than one room for each use at each cluster shall be accessible.
 4. Where no more than one urinal is provided in a toilet room or bathing room, the urinal is not required to be accessible.
 5. Toilet rooms that are part of critical care or intensive care patient sleeping rooms are not required to be accessible.

Given the above findings of fact, it is concluded that the Applicant has presented a compelling reason in this matter to justify a temporary exception based on economic limitations and total project cost under MCL 125.1355a(2) and R 125.1014(2)(b). The Applicant has credibly shown that it is currently unable financially to cover the costs to make the building barrier free compliant, given the existing renovation costs, the failure to secure a loan to pay for existing renovation, and the likely construction costs of installing an elevator or platform lift in the cement structure and making the toilet rooms barrier free compliant.

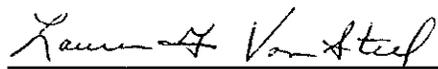
If an exception from Sections 1104.3 and 1109.2 of the 2009 Michigan Building Code were allowed for a significant period of time, such as five years, it appears more likely than not that the Applicant would be able to raise the funds from its business to cover the costs of compliance.

The Applicant did not present sufficient evidence to show that installation of an elevator/platform lift or making the toilet rooms barrier free compliant would not be structurally or technically feasible, or that other compelling reasons for an exception apply.

RECOMMENDED DECISION

Based on the above findings of fact and conclusions of law, the undersigned recommends that the Board grant the Applicant a temporary exception from Sections 1104.3 and 1109.2 of the 2009 Michigan Building Code, for a period of five years.

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. 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.

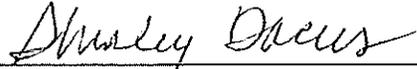


Lauren G. Van Steel
Administrative Law Judge

13-000050-BCC
Page 9

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 below this 4th day of April, 2013.



Shirley Dacus
Michigan Administrative Hearing System

PAAS Investments, Inc.
Attn: Dipesh Shah
1401 West Girard Avenue
Madison Heights, MI 48071

PAAS Investments, Inc.
1663 Stephenson Hwy.
Troy, MI 48084

Mitchell Grusnick
City of Troy
500 West Big Beaver Road
Troy, MI 48084

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

Untitled

4.1.6 ACCESSIBLE BUILDINGS. ALTERATIONS.

(1) GENERAL. Alterations to existing buildings or facilities shall comply with the following:

(a) If existing elements, spaces, essential features, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of 4.1.1 to 4.1.4 of 4.1, Minimum Requirements.

(b) If power-driven vertical access equipment (e.g., escalator) is planned or installed where none existed previously, or if new stairs (other than stairs installed to meet emergency exit requirements) requiring major structural changes are planned or installed where none existed previously, then a means of accessible vertical access shall be provided that complies with 4.7, Curb Ramps; 4.8, Ramps; 4.10, Elevators; or 4.11, Platform Lifts; except to the extent where it is structurally impracticable in transit facilities. *Does not Apply*

(c) If alterations of single elements, when considered together, amount to an alteration of a space of a building or facility, the entire space shall be made accessible.

(d) No alteration of an existing element, space, or area of a building shall impose a requirement for greater accessibility than that which would be required for new construction. For example, if the elevators and stairs in a building are being altered and the elevators are, in turn, being made accessible, then no accessibility modifications are required to the stairs connecting levels connected by the elevator. *Does not Apply*

(e) If the alteration work is limited solely to the electrical, mechanical, or plumbing system and does not involve the alteration of any elements and spaces required to be accessible under these standards, then 4.1.6(3) does not apply.

(f) No new accessibility alterations will be required of existing elements or spaces previously constructed or altered in compliance with earlier standards issued pursuant to the Architectural Barriers Act of 1968, as amended.

(g) Mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6.

(2) Where a building or facility is vacated and it is totally altered, then it shall be altered to comply with 4.1.1 to 4.1.5 of 4.1, Minimum Requirements, except to the extent where it is structurally impracticable.

(3) Where substantial alteration occurs to a building or facility, then each element or space that is altered or added shall comply with the applicable provisions of 4.1.1 to 4.1.4 of 4.1, Minimum Requirements, except to the extent where it is structurally impracticable. The altered building or facility shall contain:

(a) At least one accessible route complying with 4.3, Accessible Route, and 4.1.6(a);

(b) At least one accessible entrance complying with 4.14, Entrances. If additional entrances are altered then they shall comply with 4.1.6(a); and

(c) The following toilet facilities, whichever is greater:

(i) At least one toilet facility for each sex in the altered building complying with 4.22, Toilet Rooms, and 4.23, Bathrooms, Bathing Facilities, and Shower Rooms.

(ii) At least one toilet facility for each sex on each substantially altered floor, where such facilities are provided, complying with 4.22, Toilet Rooms; and 4.23,

Untitled

Bathrooms, Bathing Facilities, and Shower Rooms.

(d) In making the determination as to what constitutes "substantial alteration," the agency issuing standards for the facility shall consider the total cost of all alterations (including but not limited to electrical, mechanical, plumbing, and structural changes) for a building or facility within any twelve (12) month period. For guidance in implementing this provision, an alteration to any building or facility is to be considered substantial if the total cost for this twelve month period amounts to 50 percent or more of the full and fair cash value of the building as defined in 3.5.

EXCEPTION: If the cost of the elements and spaces required by 4.1.6(3)(a), (b), or (c) exceeds 15 percent of the total cost of all other alterations, then a schedule may be established by the standard-setting and/or funding agency to provide the required improvements within a 5-year period.

EXCEPTION: Consideration shall be given to providing accessible elements and spaces in each altered building or facility complying with:

- (i) 4.6, Parking and Passenger Loading Zones,
- (ii) 4.15, Drinking Fountains and Water Coolers,
- (iii) 4.25, Storage,
- (iv) 4.28, Alarms,
- (v) 4.31, Telephones,
- (vi) 4.32, Seating, Tables, and Work Surfaces,
- (vii) 4.33, Assembly Areas.

(4) Special technical provisions for alterations to existing buildings or facilities:

(a) Ramps. Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown in Table 2 if space limitations prohibit the use of a 1:12 slope or less.

Table 2 -- Allowable Ramp Dimensions for Construction in Existing Sites, Buildings, and Facilities

Slope*	Maximum Rise	Maximum Run
Steeper than 1:10 but no steeper than 1:8	3 in 75 mm	2 ft 0.6 m
Steeper than 1:12 but no steeper than 1:10	6 in 150 mm	5 ft 1.5 m

* A slope steeper than 1:8 not allowed.

(b) Stairs. Full extension of stair handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(c) Elevators.

(i) If a safety door edge is provided in existing automatic elevators, then the automatic door reopening devices may be omitted (see 4.10.6).

(ii) where existing shaft or structural elements prohibit strict compliance with 4.10.9, then the minimum floor area dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 48 in by 48 in (1220 mm by 1220 mm).

(d) Doors.

Untitled

(i) Where existing elements prohibit strict compliance with the clearance requirements of 4.13.5, a projection of 5/8 in (16 mm) maximum will be permitted for the latch side door stop.

(ii) If existing thresholds measure 3/4 in (19 mm) high or less, and are beveled or modified to provide a beveled edge on each side, then they may be retained.

(e) Toilet rooms. Where alterations to existing facilities make strict compliance with 4.22 and 4.23 structurally impracticable, the addition of one "unisex" toilet per floor containing one water closet complying with 4.16 and one lavatory complying with 4.19, located adjacent to existing toilet facilities, will be acceptable in lieu of making existing toilet facilities for each sex accessible.

EXCEPTION: In instances of alteration work where provision of a standard stall (Fig. 30(a)) is structurally impracticable or where plumbing code requirements prevent combining existing stalls to provide space, an alternate stall (Fig. 30(b)) may be provided in lieu of the standard stall.

(f) Assembly areas.

(i) In alterations where it is structurally impracticable to disperse seating throughout the assembly area, seating may be located in collected areas as structurally feasible. Seating shall adjoin an accessible route that also serves as a means of emergency egress.

(ii) In alterations where it is structurally impracticable to alter all performing areas to be on an accessible route, then at least one of each type shall be made accessible.

Subject: Fwd: Wheelchair Lift

From: Justin Hillier (justin@protherapysolution.com)

To: dshah@protherapysolution.com;

Date: Tuesday, November 13, 2012 3:22 PM

Sent from my iPhone

Begin forwarded message:

From: Paul R <paulr@adaptenv.com>
Date: November 13, 2012, 3:18:22 PM EST
To: justin@protherapysolution.com
Subject: Wheelchair Lift

Justin,

Below is the price for the most basic lift. I selected a compact size platform (36"x49-1/2") which requires a rough door opening of 42-1/8". This is an effort to fit in 48" space at the entry level. There are no bells & whistles, just a basic lift. Our price includes the unit, tax, freight, permit, installation and state inspection. We will supply site specific shop drawings with internal hoistway dimensions for the hoistway construction you are doing. Our price is \$22,980.

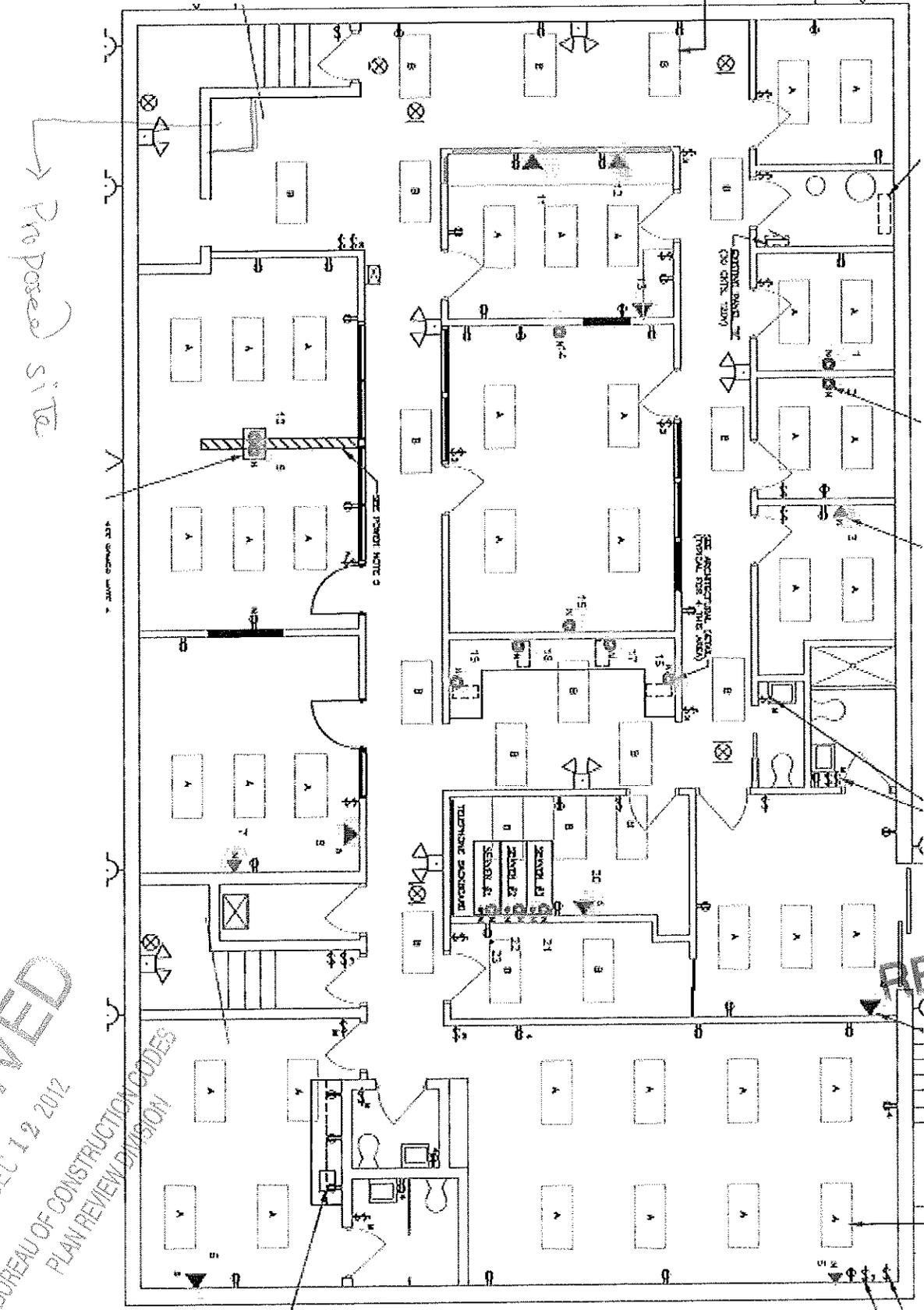
Let me know how you want to proceed.

RECEIVED
 DEC 12 2012
 BUREAU OF CONSTRUCTION CODES
 PLAN REVIEW DIVISION

RECEIVED
 NOV 14 2012
 CITY OF TROY
 BUILDING DEPT.



1st Floor Cabling



104 258
Shelf No.

RECEIVED
 DEC 12 2012
 BUREAU OF CONSTRUCTION CODES
 PLAN REVIEW DIVISION

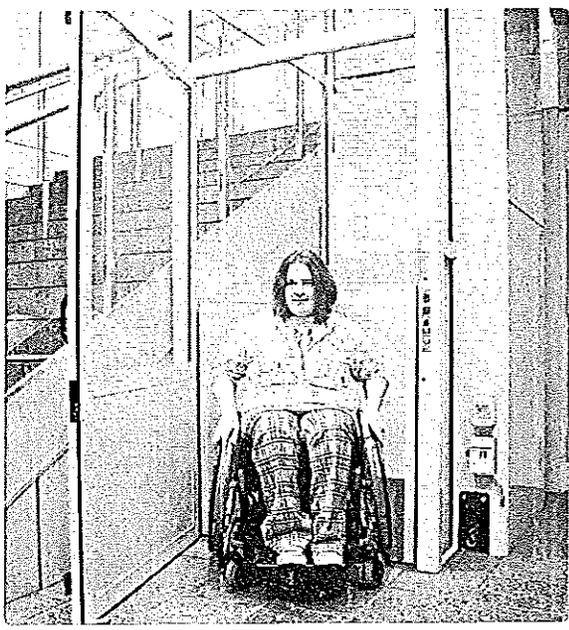
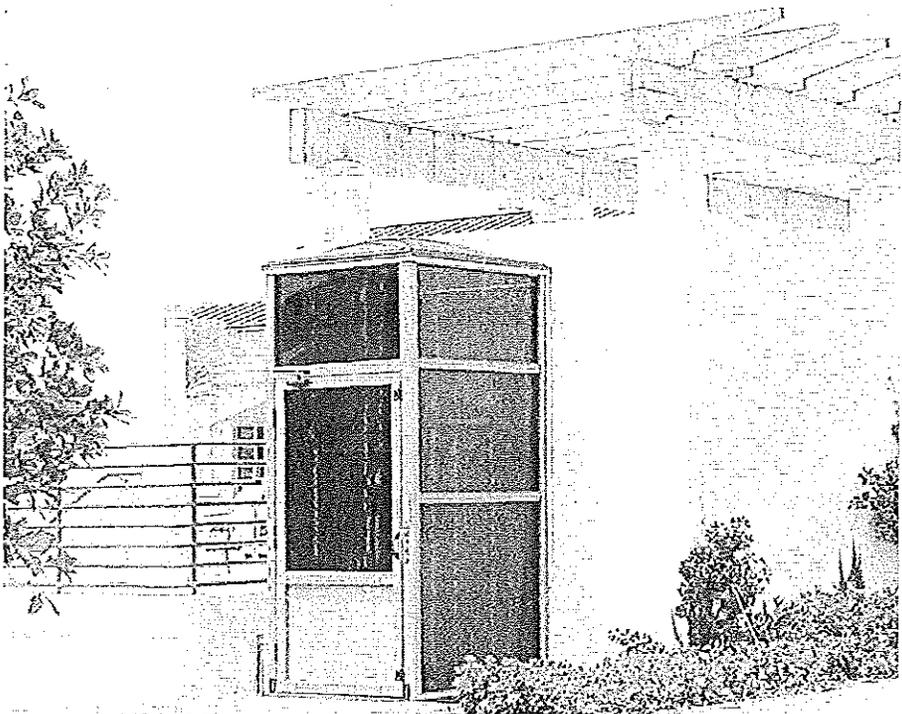
RECEIVED
 NOV 14 2012
 CITY OF TROY
 BUILDING DEPT.



Garaventa Wheelchair Lifts

GENESIS VERTICAL LIFT

Enclosure And Shaftway Models - For Lifting Heights Up To Fourteen Feet



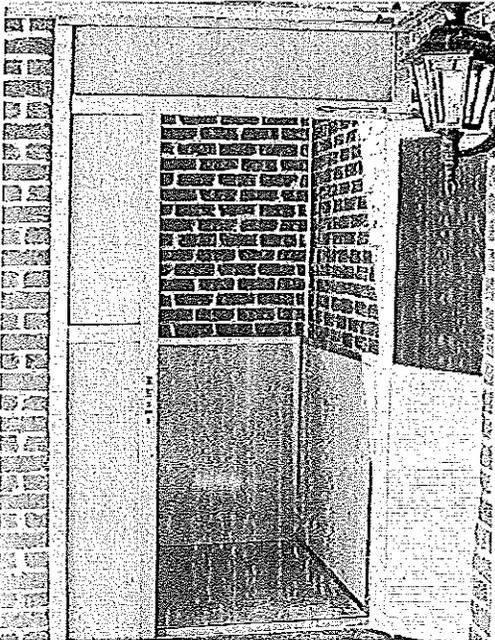
RECEIVED
 NOV 14 2011
 CITY OF TROY
 BUILDING DEPT.

RECEIVED
 DEC 13 2012
 BUREAU OF CONSTRUCTION CODES
 PERMITS REVIEW DIVISION

The Garaventa Genesis is a vertical platform lift designed to provide access into or within public buildings. It travels inside a complete, self-contained enclosure, as shown, or can be located in a shaftway constructed by others. Our unique, anodized aluminum design is strong, durable and attractive.

Shaftway Model

The Genesis Shaftway model fits inside a vertical runway that is built by others in accordance to Garaventa Lift specifications. The system consists of a drive mast, passenger platform and doors or gates. The shaftway can be completely enclosed, much like an elevator shaftway, or it can be open at the upper landing. A variety of doors and gates are available.



The lower landing of this Genesis Shaftway model was designed with filler walls.

Applications:

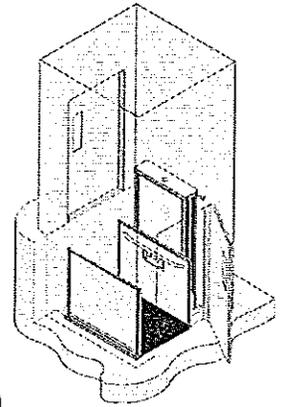
Schools, churches, public buildings, clubs and residences

Standard Features

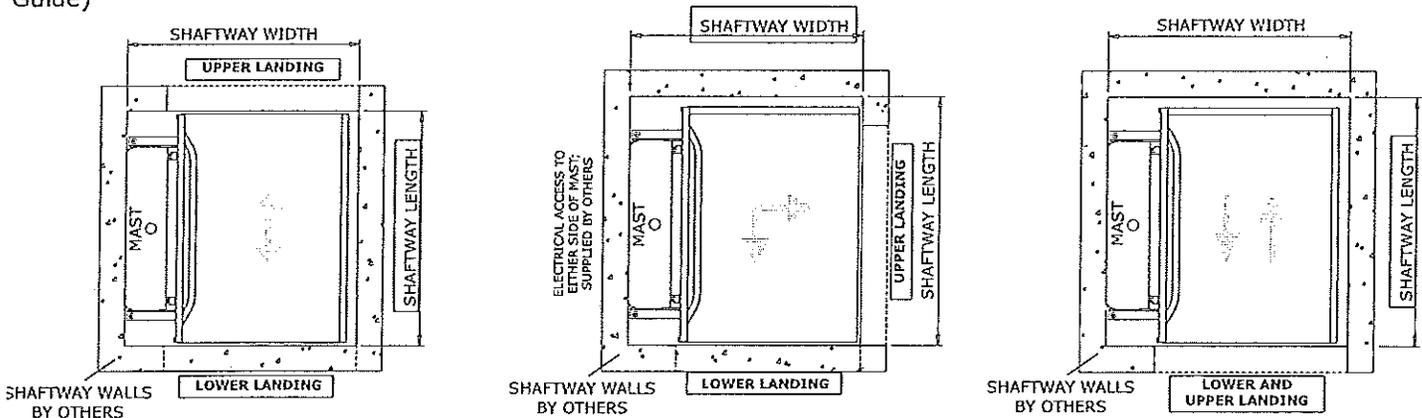
- Choice of Leadscrew or Continuous Mains Powered Hydraulic drive (with an auxiliary power system)
- Leadscrew drive - for lifting heights up to 3734mm (147")
- Hydraulic drive - for lifting heights up to 4343mm (171")
- Certified electric interlocks and automatic closer for doors and gates
- Sturdy 16 gauge galvanized steel platform side walls - 1070mm (42 1/8") high
- Directional control switches and emergency stop switch
- Grab rail on platform side wall panel
- Keyless operation
- Two year warranty

Optional Features

- Power Door Operators (ADA compliant)
- Custom platform sizes available
- Illuminated, tactile constant pressure directional buttons
- Arrival gong and digital floor display
- Anodized aluminum doors/gates with Plexiglas panels or fire rated doors
- Choice of RAL colors
- Autodialer phone (ADA compliant)
- Keyed operation
- Battery powered emergency lowering (Leadscrew drive only)
- Full time battery operation - for low use applications (Hydraulic drive only)
- Custom applications (Consult Garaventa Lift)
- Extended warranty (five additional years) * USA/Canada only



Genesis Shaftway Dimensions (for more detailed technical information refer to the Genesis Design and Planning Guide)



Shaftway Straight Through				
Platform Size	Shaftway Width	Shaftway Length	Platform Width	Platform Length
Compact	1317mm [51 7/8"]	1295mm [51"]	914mm [36"]	1257mm [49 1/2"]
Standard	1394mm [54 7/8"]	1407mm [55 3/8"]	992mm [39"]	1370mm [53 7/8"]
Mid-Size	1394mm [54 7/8"]	1558mm [61 3/8"]	992mm [39"]	1520mm [59 7/8"]
Large	1546mm [60 7/8"]	1558mm [61 3/8"]	1146mm [45"]	1520mm [59 7/8"]

Shaftway 90° Entry/Exit			
Shaftway Width	Shaftway Length	Platform Width	Platform Length
1272mm [50 1/8"]	1316mm [51 7/8"]	940mm [37"]	1208mm [47 1/2"]
1350mm [53 1/8"]	1428mm [56 1/4"]	1017mm [40"]	1320mm [52"]
1350mm [53 1/8"]	1579mm [62 1/8"]	1017mm [40"]	1471mm [57 7/8"]
1502mm [59 1/8"]	1579mm [62 1/8"]	1169mm [46"]	1471mm [57 7/8"]

Shaftway Encl. On / Off Same Side			
Shaftway Width	Shaftway Length	Platform Width	Platform Length
1317mm [51 7/8"]	1316mm [51 7/8"]	914mm [36"]	1209mm [49 1/2"]
1394mm [54 7/8"]	1428mm [56 1/4"]	992mm [39"]	1320mm [52"]
1394mm [54 7/8"]	1579mm [62 1/8"]	992mm [39"]	1471mm [57 7/8"]
1546mm [60 7/8"]	1579mm [62 1/8"]	1144mm [45"]	1471mm [57 7/8"]

(Entry/Exit Adjacent to Mast)

- See separate drawings in the Genesis Design and Planning Guide for door details.
- Platform dimensions are clear inside dimensions.
- Ramp required for floor mount
- If the tie back rail (spreader bar) is to be used to attach the mast to the shaftway wall, the shaftway width dimension will increase by 38 mm [1 1/2"]
- Mast-to-wall attachment required

Enclosure Model

The Genesis Enclosure model is a complete, self-contained vertical access solution. It is similar to the Shaftway Model except it includes its own pre-fabricated enclosure and integrated doors or gates. The enclosure can be built full height and fitted with a Plexiglas dome for weather protection, or can be left open at the top.

RECEIVED

NOV 14 2012

CITY OF TROY
BUILDING DEPT

Applications:

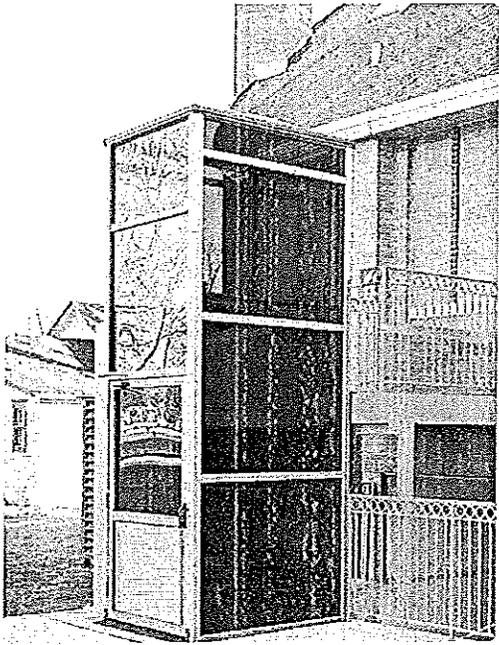
Schools, churches, public buildings, clubs and residences

Standard Features

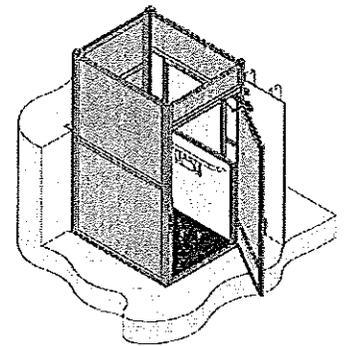
- Choice of Leadscrew or Continuous Mains Powered Hydraulic drive (with an auxiliary power system)
- Leadscrew drive - for lifting heights up to 3734mm (147")
- Hydraulic drive - for lifting heights up to 4343mm (171")
- Interlocks and automatic closer for doors and gates
- Champagne colored anodized aluminum frame enclosure
- Sturdy 16 gauge galvanized steel platform side walls - 1070mm (42 1/8") high
- Directional control switches and emergency stop switch
- Grab rail on platform side wall panel
- Keyless operation
- Two year warranty

Optional Features

- Power Door Operators (ADA compliant)
- Custom platform sizes available
- Illuminated and tactile constant pressure directional buttons
- Arrival gong and digital floor display
- Steel or Plexiglas enclosure panels
- Choice of RAL colors
- Autodialer phone (ADA compliant)
- Keyed operation
- Custom applications (Consult Garaventa Lift)
- Battery powered emergency lowering (Leadscrew drive only)
- Full time battery operation - for low use applications (Hydraulic drive only)
- Fan and Ventilation System with thermostatic controls and battery backup - requires Continuous Mains Power
- Extended warranty (five additional years) * USA/Canada only



This Enclosure model combines anodized aluminum extrusions with Plexiglas panels.

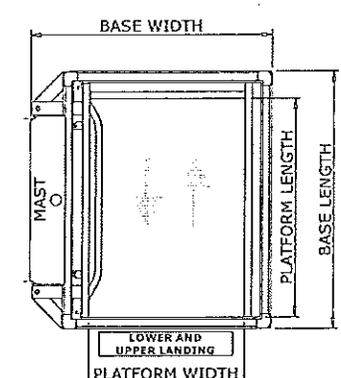
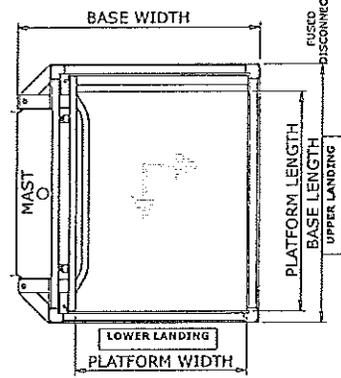
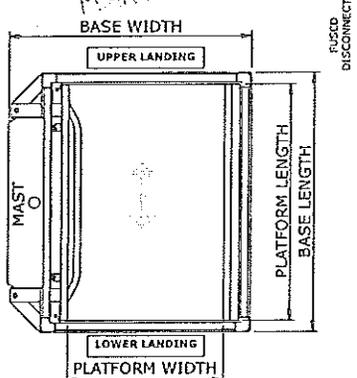


Genesis Enclosure Dimensions

(for more detailed technical information refer to the Genesis Design and Planning Guide)

RECEIVED
DEC 12 2012

PLAN VIEW



Enclosure Straight Through				
Platform Size	Base Width	Base Length	Platform Width	Platform Length
Standard	1399mm [55 1/8"]	1505mm [59 1/4"]	947mm [37 1/4"]	1370mm [53 7/8"]
Mid-Size	1399mm [55 1/8"]	1656mm [65 1/8"]	947mm [37 1/4"]	1520mm [59 7/8"]
Large	1551mm [61 1/8"]	1656mm [65 1/8"]	1099mm [43 1/4"]	1520mm [59 7/8"]

Enclosure 90° Entry/Exit			
Base Width	Base Length	Platform Width	Platform Length
1399mm [55 1/8"]	1505mm [59 1/4"]	1017mm [40"]	1295mm [51"]
1399mm [55 1/8"]	1656mm [65 1/8"]	1017mm [40"]	1446mm [56 7/8"]
1551mm [61 1/8"]	1656mm [65 1/8"]	1155mm [45 1/2"]	1446mm [56 7/8"]

Enclosure On/Off Same Side			
Base Width	Base Length	Platform Width	Platform Length
1399mm [55 1/8"]	1505mm [59 1/4"]	947mm [37 1/4"]	1295mm [51"]
1399mm [55 1/8"]	1656mm [65 1/8"]	947mm [37 1/4"]	1446mm [56 7/8"]
1551mm [61 1/8"]	1656mm [65 1/8"]	1099mm [43 1/4"]	1446mm [56 7/8"]

(Entry/Exit Adjacent to Mast)

- See separate drawings in the Genesis Design and Planning Guide for door details.
- Platform dimensions are clear inside dimensions.
- Ramp required for floor mount
- Mast-to-wall attachment required

Other Garaventa Lift Products:
Genesis Opal Model



The Garaventa Genesis OPAL model is a reliable, cost-effective accessibility solution for buildings or private residences. The OPAL can be installed indoors or outdoors when a hoistway or factory enclosure is not required. This durable lift features easy to use call stations, platform controls and is equipped with many built-in safety features. Maximum floor to floor travel, when floor mounted, is 1600mm (60") (per ASME A18.1).

Architects!

Many resources are available at www.garaventalift.com:

- Design Specifications
- Spec-Wizard
- CAD Blocks
- Design and Planning Guides
- Photo Gallery

Contact us today!

Phone: +1 604 594-0422
Toll Free: 1-800-663-6556
Fax: +1 604 594-9915
Email: productinfo@garaventalift.com
Web site: www.garaventalift.com

© Garaventa Lift. As we are continuously improving our products, specifications outlined in this brochure are subject to change without notice.

Printed in Canada
15805-O-PB

GENESIS VERTICAL LIFT

Need Design Assistance?

Call your local Garaventa Lift representative or our Design Hotline at 1.800.663.6556

Leadscrew Drive

Platform Sizes

Enclosure Model Platforms:
947mm x 1370mm (37 1/4" x 54")
947mm x 1522mm (37 1/4" x 60")
1099mm x 1522mm (43 1/4" x 60")

Shaftway Model Platforms:
914mm x 1257mm (36" x 49 1/2")
992mm x 1370mm (39" x 54")
992mm x 1522mm (39" x 60")
1144mm x 1520mm (45" x 60")

Rated Load

340 kg (750 lbs), with a safety factor of 5

Speed

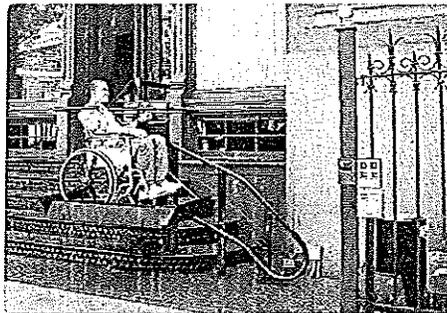
3 meters (10 ft) per minute at full load

Operating Controls

Keyless Controls: no key required for call stations and platform controls
Directional Controls: Constant pressure switches
Control Voltage: 24 VDC

Drive System

Motor:
2 HP (1750 RPM) Motor
Drive Type: ACME screw (1" diameter)
Mains Supply:
North American Models: 120 VAC on a dedicated 20 amp circuit
International Models: 208-240 VAC on a dedicated 16 amp circuit



Hydraulic Drive

Platform Sizes

Enclosure Model Platforms:
947mm x 1370mm (37 1/4" x 54")
947mm x 1522mm (37 1/4" x 60")
1099mm x 1522mm (43 1/4" x 60")

Shaftway Model Platforms:
914mm x 1257mm (36" x 49 1/2")
992mm x 1370mm (39" x 54")
992mm x 1522mm (39" x 60")
1144mm x 1520mm (45" x 60")

Rated Load

340 kg (750 lbs), with a safety factor of 5

Speed

5.2 meters (17 ft) per minute at full load

Operating Controls

Keyless Controls: no key required for call stations and platform controls
Directional Controls: Constant pressure switches
Control Voltage: 24 VDC

Drive System

Motor:
3 HP (2.2 KW) Motor
Drive Type: Chained Hydraulic (Dual 5/8" ANSI 50 chains)
Mains Supply:
North American Models: 120 VAC on a dedicated 15 amp circuit
International Models: 208-240 VAC on a dedicated 16 amp circuit

Garaventa Artira

Inclined Platform Wheelchair Lift

The Artira is able to follow straight and curving stairways up several flights of stairs and across horizontal landings. A variety of platform sizes and options allow for extensive customization of the Artira to meet the needs of the user.



Authorized Garaventa Lift Representative

PAAS Investment, Inc.

Pass Investment, Inc.

1401 W. Girard Ave,

Madison Heights, MI 48071

City of Troy, MI

To whom it may concern,

This letter is to inform and notify City of Troy, MI that PAAS Investment is intending to file for variance for the building located on 1663 Stephenson Hwy, Troy, MI 48083. The Variance will be for the lift for the barrier free access. At this time PAAS Investment is not altering the structure (moving load bearing walls), or the load and use of the building. However we are planning removing few partition walls to improve the usability of the building for us.

PAAS Investment, Inc. has great respect for the City of Troy, and values its adherence with the codes to improve the environment by making it safe for us work in. However due to minimal change and significant financial constraint (non approval of loan) it is making very difficult for us to place a lift in the building at this time.

Following the decision of the review committee, PAAS will comply with its decision to fullest extent. PAAS will attempt to finish the project within 4 months of the committee's decision, barring any unforeseen circumstances that are out of control of the PAAS investment.

With this letter we are attaching a copy of the quote received from a vendor with the specification of the lift that we are planning on using if the decision is rendered against us, also attached is a copy of the plan siting the tentative location of the lift.

I sincerely appreciate all the advice we have received from the city enabling us to make better and safer decision. Feel free to reach me at (251)-767-5999 should you have any questions or concerns.

Sincerely,



Dipesh Shah

RECEIVED

DEC 12 2012

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

RECEIVED

NOV 14 2012

CITY OF TROY
BUILDING DEPT.

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

Trans Info: 133 (8165419-1 12/06/12)
 Chk#: 1529 Amt: \$300.00
 TO: PAAS INVESTMENT INC

104 *288*

Application Fee: \$300.00

Authority: 1966 PA 1 Completion: Mandatory Penalty: Exception will not be granted	The Department of Labor & Economic Growth will not discriminate again color, marital status, disability, or political beliefs. If you need help with rel make your needs known to this agency.	if origin, you may
---	--	--------------------

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.

RECEIVED

FACILITY INFORMATION	
FACILITY NAME PAAS INVESTMENT, INC	STREET / SITE ADDRESS 1663 STEPHENSON HWY
NAME OF CITY, VILLAGE, OR TOWNSHIP IN WHICH THE FACILITY IS LOCATED <input checked="" type="checkbox"/> CITY <input type="checkbox"/> VILLAGE <input type="checkbox"/> TOWNSHIP OF: TROY	COUNTY OAKLAND
ESTIMATED PROJECT COST \$ 25,000.00	ESTIMATED COST OF COMPLIANCE \$ 25,000.00
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project.)	
<input type="checkbox"/> NEW BUILDING <input type="checkbox"/> ALTERATION <input type="checkbox"/> CHANGE OF USE	BUILDING PERMIT/FILE NUMBER _____
IS A TEMPORARY EXCEPTION REQUESTED? <input 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): <i>3411.7</i> REASON FOR NON-COMPLIANCE <i>EXISTING BUILDING CONSTRUCTED IN 1974 IS A SPLIT LEVEL STRUCTURE WHICH IS SERVED BY A COMMON FOYER LANDING WHICH LEADS TO THE UPPER & LOWER LEVELS BY STAIRWAY. ALSO, THE EIGHT EXISTING TOILET ROOMS ARE NOT BARRIER FREE COMPLIANT.</i>	
NAME <i>Mitchell E Grusnick</i>	ENFORCING AGENCY <i>City of Troy</i>
ADDRESS <i>500 W. Big Beaver</i>	CITY <i>Troy</i>
BUILDING OFFICIAL'S SIGNATURE (Must be an original signature) <i>Mitchell E Grusnick</i>	TELEPHONE NUMBER (Include Area Code) <i>248-524-3344</i>
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)	ZIP CODE <i>48084</i>
NAME KAMEL NAZAR	FAX NUMBER (Include Area Code) <i>248-689-3120</i>
MICHIGAN LICENSE NUMBER	FIRM NAME INNOVATIVE ENGINEERED SOLUTIONS, INC
ADDRESS 17001 19 MILE RD STE 3	STATE MI
CITY CLINTON TOWNSHIP	ZIP CODE 48038
TELEPHONE NUMBER (Include Area Code) (586) 416-7702	
APPLICANT (Note: All correspondence will be sent to this address)	
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE DIPESH SHAH	COMPANY NAME PAAS INVESTMENT, INC
ADDRESS 1401 W. GIRARD AVE	SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED)
CITY MADISON HEIGHTS	TELEPHONE NUMBER (Include Area Code) (251) 767-5999
STATE MI	FAX NUMBER (Include Area Code) (248) 327-6628
ZIP CODE 48071	
I certify that 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) <i>Dipesh Shah</i>	DATE <i>11/14/2012</i>

RECEIVED
NOV 14 2012
CITY OF TROY
BUILDING DEPT.

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

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 13-000053-BCC

The Townes of Liberty Park
Twelve Mile Road and Declaration Drive
Novi, Michigan,

Case No.: 104363

Agency: Bureau of Constructor
Codes

Applicant

Case Type: BCC Barrier Free Desig

Filing Type: Barrier Free Design

3. EXCEPTION APPLICATIONS
03. 104363

RECEIVED
APR 08 2013

Issued and entered
this 5th day of April 2013
by Lauren G. Van Steel
Administrative Law Judge

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

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 March 6, 2013, in Lansing, Michigan. Present were Eric Lord, Licensed Engineer with Atwell, LLC, Steve Atwood, Officer for Pulte Homes, and Brian Newcomb, Development Director for Pulte Homes, on behalf of the Townes of Liberty Park, Applicant. Stanley Skopek, Building Plan Reviewer, appeared on behalf of the Plan Review Division of the Bureau of Construction Codes.

Mr. Lord, Mr. Atwood and Mr. Newcomb were sworn in and testified as witnesses for the Applicant. The following exhibit, offered by the Applicant, was admitted into evidence:

- 1. Applicant's Exhibit No. 1 is a copy of plans for site construction by the Atwell Group.

The record was closed at the conclusion of the hearing.

ISSUE

The issue presented is whether the Board should grant the Applicant a permanent exception from Section 1107.6.2.1 of the 2009 Michigan Building Code.

FINDINGS OF FACT

The Townes of Liberty Park, Applicant, seeks a permanent exception from the 2009 Michigan Building Code for a building located at Twelve Mile Road and Declaration Drive in Novi, Michigan. The application for an exception was received by the Plan Review Division within the Bureau of Construction Codes on or about January 7, 2013.

The construction project was originally designed as all townhouses. However, with a change in the economy, the construction project changed to building upper and lower-level stacked dwellings. Site construction started in 2005. (See letter to Board from Eric Lord, dated July 30, 2012.)

At this time, the Applicant has sold all of the townhouses on the site except one building that has not yet been built. The proposed building was originally designed as a townhouse. There are architectural restrictions from the City of Novi and a consent judgment that pertain to the location of the proposed building.

The Applicant estimates the project cost to be \$120,000.00 and the cost to make the building barrier free compliant at \$70,650.00. The average selling price for the proposed building is \$180,000.00, meaning that the Applicant estimates it would lose \$10,650.00 in construction costs in order to make the building barrier free compliant.

The Applicant also points out that there are "soft costs" that would apply in making the building barrier free compliant, because the consent judgment strictly mandates the type of buildings that can be constructed at the site. The consent judgment was reached when the City of Novi sought to restrict the use of the property. The consent judgment allows for a certain number of single-family residences and multi-family residences on the site. One of the architectural requirements stipulated to in the consent judgment pertains to frontages on main arteries, such as the proposed building on Declaration Drive. The consent judgment specifies roof height and pitch, along with other architectural details.

The dimensions on the proposed building would change, giving it a different look than the rest of the units on site. There would be a process that the Applicant would have to go through to amend site approval from the City of Novi. This would entail additional costs that are difficult for the Applicant to determine at this time.

The Applicant asserts that the proposed building's marketability is greater as a townhouse, rather than as a stacked product. The Applicant believes it is able to readily sell this building as a townhouse. The Applicant is no longer building stacked units at the site, because of a change in market demand for such units.

There are two products on the site. The townhouse product has three levels which are not required to be accessible. There are 333 total units in 71 total buildings on the site. The proposed building is near the main entrance to the site, being the second building on the right. The Applicant plans on construction as soon as possible.

In order to make the proposed building barrier free compliant, there would need to be an outside front ramp created. In order to reach the porch at six to seven feet above grade, the ramp would need to be 35 feet long and probably have three turns. The Applicant asserts that such a ramp would not be aesthetically appealing.

The one car garage in the proposed building would not be compliant and would need to be expanded. However, there is not sufficient exterior space to expand the garage front to back, given the required set backs in the consent judgment. There is not exterior space to expand the garage three to five feet in width, with the current approved footprint. The Applicant would need to seek a variance and an amendment of the consent judgment.

The Applicant points out that there are two doors to the stacked units. To be barrier free compliant, both units would need to share the same ramp. The Applicant contends that clientele purchasing the units may want the appearance of the steps for the townhouse look, and adding a ramp would affect marketability. Part of the requirement of the consent judgment is that the stacked products still look like the other townhouses on site. The proposed building would not be consistent with the rest of the development, if it was barrier free compliant.

In addition, adding a 5 x 5 platform lift from the garage to the first floor would take up interior square footage in the living room or kitchen, and limit the marketability of the unit. The Applicant estimates that the interior square footage would drop from 983 sq. ft. to 930 sq. ft. to allow for installation of a platform lift from the garage.

In summary, the Applicant considers the compelling need for an exception from Section 1107.6.2 of the 2009 Michigan Building Code to be the fact that it is bound by the consent judgment with the City of Novi, which has limitations on architecture. The units need to be harmonious with the other buildings on site. The townhouses and stacked units on site have stairs to the front door. The single car garage does not have space for barrier free compliance. To retrofit would require dimensional changes to make the building bigger or lose interior space. There will be a change in the look of the architecture from stairs in front to a ramp. Further, the economic impact of the cost to retrofit the units would be significant. Finally, to install a ramp, the Applicant would have to go back to the City of Novi for approval, because the ramp would not meet the set back requirements.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, MCL 125.1351 *et seq.* (hereafter "Act") 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, technologically, structurally, or administratively feasible.

The term, "compelling need" is defined in Section 5a(2) of the Act as follows:

(2) As used in subsection (1), "compelling need" includes, but is not limited to, 1 or more of the following:

- (a) Structural limitations.
- (b) Site limitations.
- (c) Economic limitations.
- (d) Technological limitations.
- (e) Jurisdictional conflicts.
- (f) Historical structures, under conditions prescribed by rule of the construction code commission. MCL 125.1355a(2).

Also, Barrier Free Design Board Rule R 125.1014(2) lists the following factors which may be considered in determining whether compelling need has been demonstrated:

Rule 14. (2) In addition to section 5a(2) of the act, factors which may be considered in determining whether compelling need has been demonstrated include the following, if applicable:

- (a) Circumstances which required compliance, such as any of the following:
 - (i) Use group change.
 - (ii) New construction.
 - (iii) Occupancy load change.
 - (iv) Alteration other than ordinary maintenance.
 - (v) Addition.
- (b) The total project cost, including all of the following:
 - (i) The total construction or remodeling cost.
 - (ii) Land acquisition cost.
 - (iii) Cost for furnishings.
 - (iv) Purchase price of the structure.
- (c) Nature of the business or facility.
- (d) Anticipated public traffic.
- (e) Hours and days of operation.
- (f) Financial position of the business or agency.
- (g) Age of the business.

- (h) Lease provisions, if the applicant is a lessee of the facility; and the name and address of the owner, if the owner refuses to allow compliance with the barrier free design requirements.
- (i) Tax abatements, tax credits, and tax deductions for which the project qualifies.
- (j) Age of existing building.
- (k) Size of all levels and areas of the project and the size of the area or areas proposed to be inaccessible.
- (l) Use of the area proposed to be inaccessible.
- (m) Aspects of the project that do comply with the barrier free design requirements.
- (n) Number of employees who will be using the area or facility.
- (o) Description of the job duties of the employees.
- (p) Vertical distance from grade to entrance level.
- (q) Vertical distance or distances between floor levels.
- (r) Width and layout of existing stairways.
- (s) Cost of compliance in relation to the total project cost, the size of the area proposed to be inaccessible, and the use of the area proposed to be inaccessible.
- (t) Existing structural limitations.
- (u) Site restrictions, such as any of the following:
 - (i) Size of site.
 - (ii) Greenbelt or set-back requirements.
 - (iii) Off-street parking requirements.
 - (iv) Unusual soil or site conditions.
 - (v) Spatial and financial feasibility of alternatives to compliance, such as any of the following:
 - (i) Ramp with slightly steeper slope.
 - (ii) Alternative lifting devices such as a special elevating device or wheelchair lifting device.
 - (iii) Accessible entrance other than the nearest entrance.
 - (iv) Unisex barrier free bathroom.
- (w) Feasibility of an exception for a stated period of time after which compliance with the requirements would be achieved and the plan or proposal for compliance.
- (x) Duplication of facilities available.
- (y) Historic designation and character of the facility, as determined by the Michigan bureau of history, department of state, or the United States department of the interior as specified in R 408.30428.
- (z) Similar projects previously reviewed by the board.
- (aa) Whether the applicant complied with the requirements contained in section 10 of Act No. 230 of the Public Acts of

1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, known as the construction code act.

(bb) Whether the project was started or constructed, or both, pursuant to a permit based on plans or specifications that complied with the barrier free design requirements, in accordance with section 11 of Act No.230 of the Public Acts of 1972, as amended, being §125.1511 of the Michigan Compiled Laws, known as the construction code act.

(cc) Any other factual information related to the project which the applicant believes should be considered by the board. 1988 AACCS, R 125.1014(2). (Emphasis supplied).

Section 1107.6.2 of the 2009 Michigan Building Code states as follows:

1107.6.2 Group R-2. Accessible units, Type A units and Type B units shall be provided in Group R-2 occupancies in accordance with Sections 1107.6.2.1.1 and 1107.6.2.1.2.

1107.6.2.1.1 Type A units. In Group R-2 occupancies containing more than 20 dwelling units or sleeping units, at least 2 percent but not less than one of the units shall be a Type A unit. All R-2 units on a site shall be considered to determine the total number of units and the required number of Type A units. Type A units shall be dispersed among the various classes of units.

Exceptions:

1. The number of Type A units is permitted to be reduced in accordance with Section 1107.7.
2. Existing structures on a site shall not contribute to the total number of units on a site.

1107.6.2.1.2 Type B units. Where there are four or more dwelling units or sleeping units intended to be occupied as a residence in a single structure, every dwelling unit and sleeping unit intended to be occupied as a residence shall be a Type B unit.

Exception: The number of Type B units is permitted to be reduced in accordance with Section 1107.7.

Given the above findings of fact, it is concluded that the Applicant has not presented a compelling reason under MCL 125.1355a(2) to justify the applied-for permanent exception at this time. Rather, it appears clear that Section 1107.6.2.1 of the 2009 Michigan Building Code contemplates situations just such as is presented here, meaning that at least one unit in a multi-dwelling site is expected to be different from the

rest of the units in order to allow for barrier free access.

The Applicant has credibly shown that a jurisdictional conflict does likely exist currently, pertaining to a consent judgment with the City of Novi. It has also shown that there are site limitations regarding setback space and the required space between buildings. However, the Applicant has not demonstrated that these limitations are insurmountable such as to justify a permanent exception.

In particular, the Applicant has not shown that it has applied for and been refused modification of the consent judgment with the City of Novi to allow for a change in the setback or side space and other architectural requirements, in order to allow installation of a ramp and an expanded one-car garage. The Applicant also has not applied for an exception with the Board, to install a slightly steeper ramp as an alternative under R 125.1014(2)(v) in order to conserve space.

Further, while the Applicant has credibly shown that installation of a ramp and reduction of square footage for a platform lift may reduce the marketability of the building, it has not demonstrated that a severe economic difficulty likely exists given the completed sales of the rest of the buildings at the site.

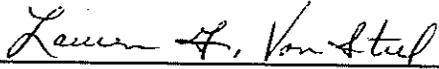
The Applicant did not show that barrier free compliance would not be structurally or technically feasible, or that other compelling reasons for an exception apply.

If the Applicant applies for and is unable to obtain modification of the consent judgment with the City of Novi, it would seem appropriate for it to resubmit an exception application for reconsideration by the Board.

RECOMMENDED DECISION

Based on the above findings of fact and conclusions of law, the undersigned recommends that the Board deny the Applicant an exception from Section 1107.6.2.1 of the 2009 Michigan Building Code at this time, allowing for the possibility of reconsideration as set forth above.

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.

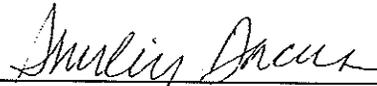


Lauren G. Van Steel
Administrative Law Judge

13-000053-BCC
Page 8

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 below this 5th day of April, 2013.



Shirley Dacus
Michigan Administrative Hearing System

Pulte Homes
Attn: Stephen Atwood
100 Bloomfield Hills Parkway
Bloomfield Hills, MI 48304

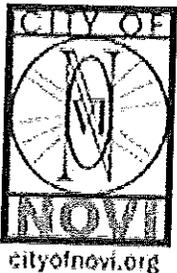
Andy Gerceke
City of Novi
45175 Ten Mile Road
Novi, MI 48375

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

From: Elphinstone, Ken [kelphinstone@cityofnovi.org]
Sent: Tuesday, January 15, 2013 11:32 AM
To: Mark Collins
Cc: Menon, Usha (LARA); Gerecke, Andy; bnewcomb@pulte.com
Subject: Pulte, Liberty Park
Attachments: image001.jpg

Mark, I talked to the State today about the Barrier Free Exception hearing application and paperwork. This plans submitted for this process must include the plans for each type of building as you have several buildings under the Michigan Building Code designated as an R-2 Use Group. These types of units are the basis of your request to the state. The state will need a site plan for the entire project area. That same site plan shall identify each building that is already built or currently under construction. Each type of building must be identified as either under the Michigan Building Code or under the Michigan Residential Code or simply identified as R-2 or R-3. The townhouse plans that were sent in are misleading as these are an R-3 Use and do not show the R-2 Use.

Because there are R-2 Use Group units in this development an appropriate number of barrier Free compliant units must be provided per the Building Code. The Barrier Free Design Board must have this information available to them to effectively rule on the matter. Please forward the site plans and building drawings, including the R-2 types, to Barrier Free Division as soon as possible. You may want to contact the state to see how much time you have to complete this process so as not to delay the hearing date. If you have any questions please e-mail me at this address, thanks.



Ken Elphinstone | Plans Examiner
City of Novi | 45175 W. Ten Mile Road | Novi, MI 48375 USA
t: 248.347.0415 f: 248.735.5633

cityofnovi.org | InvestNovi.org
To receive monthly e-news from Novi or follow us on Facebook, [click here](#).



July 30, 2012

RECEIVED

JAN 07 2013

Barrier Free Design Board
Michigan Department of Licensing and Regulatory Affairs
Bureau of Construction Codes / Plan Review Division
PO Box 30255
Lansing, MI 48909

RE: The Townes at Liberty Park Residential Community – Novi MI
Application for Barrier Free Design Rule Exception

Dear Board Members,

On behalf of our client, Pulte Homes, please accept this letter and attached documentation as a request for exception from Michigan's barrier free code requirement for the above referenced project in the City of Novi. We are seeking relief from Section 1107.6.2 of the Michigan Barrier Free Code due to certain hardships that will be explained in this letter and supportive information.

Liberty Park is a multi-phased residential development consisting of a mixture of single family homes (Liberty Park Phases 1-3) and multi-family product (the Townes at Liberty Park). These are for sale residences, as opposed to rentals or apartment complexes – which is an important distinction as it relates to the building code. The community was originally site planned in 2005 through the City of Novi and construction began on the site that same year. At that time, there was home buyer demand for a stacked unit (separate second floor units) multiple family product, which was part of the Townes at Liberty Park site plan approval along with a Townhouse product. Some of the stacked buildings were constructed and sold in 2005/2006, however the downturn in the housing market began shortly thereafter. Economic conditions in the region continued to decline and the demand for this stacked unit product all but ceased. Approximately 60 units of the stacked product were ultimately built.

The housing market is beginning to show some moderate signs of improvement in the region, however the market for multiple family housing has changed significantly from 2005 when this community was originally planned. In an effort to react to current buyer demands, Pulte has amended the site plan to allow for a different product to be built in place of the stacked unit – which is no longer desired by homebuyers. As part of the site plan amendment process, the City of Novi required consistent architecture and planning to be provided between the new product and those currently built in order to provide a cohesive community.

According to the Michigan Building Code, we understand that a certain number of accessible units are required as a result of the previously constructed multiple family stacked product on



the site. The multiple family product currently being offered in Novi are not accessible units, and would be impractical to design and build as such while being consistent with the Townhouse style and architecture. The need to provide consistent architecture between the existing townhomes in The Townes at Liberty Park created a hardship to provide an accessible unit.

It is also important to note that market conditions have necessitated a change in the home product being offered in the Townes at Liberty Park. In order to respond to the needs of the local home buyer and offer a product that can be marketed in today's economic environment, Pulte is unable to offer a product throughout the community that will meet the accessible requirements of the Michigan barrier free code.

Should you have any questions regarding this request for exception, please don't hesitate to contact me. Thank you very much for your time and consideration in this matter.

Sincerely,

Eric M. Lord, PE, LEED AP
Atwell, LLC

Application for Barrier Free Design Rule Excep
 Michigan Department of Licensing and Regulatory
 Bureau of Construction Codes / Plan Review Div
 P.O. Box 30255, Lansing, MI 48909
 517-241-9328
 www.michigan.gov/bcc

104 363

Application Fee: \$300.00

Authority: 1986 PA 1 Completion: Mandatory Penalty: Exception will not be granted	LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
---	--

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.

FACILITY INFORMATION				
FACILITY NAME The Townes at Liberty Park			STREET / SITE ADDRESS Twelve Mile Road & Declaration Drive	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: Novi			COUNTY Oakland	
Estimated Project Cost \$ 120,000.00			Estimated Cost of Compliance \$ 70,650.00	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)				
<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 R-2	CONSTRUCTION TYPE R-2B
Project Does Not Comply With Barrier Free Design Requirements As Follows:				
Michigan Building Code Section(s) 1107.6.2			Tran Info: 133 18228063-1 12/21/12 Chkd: 146536 Amt: \$300.00 ID: ATWELL LLC	
Reason for Non-Compliance See attached letter				
ENFORCING AGENCY City of Novi		BUILDING OFFICIAL NAME Andy Gerecke		REGISTRATION NUMBER 3938
ADDRESS 45175 W. Ten Mile Road	CITY Novi	STATE MI	ZIP CODE 48375	TELEPHONE NUMBER (Include Area Code) (248) 347-0417
BUILDING OFFICIAL SIGNATURE (Must be an original signature) 		DATE 12/17/12	E-MAIL ADDRESS agerecke@cityofnovi.org	FAX NUMBER (include Area Code) 248 725 56 00
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)				
COMPANY NAME Pulte Homes		LICENSED INDIVIDUAL Ryan Young		MICHIGAN LICENSE NUMBER 1301058816
ADDRESS 1901 N. Roselle Rd, Ste. 1000	CITY Schaumburg	STATE IL	ZIP CODE 60195	TELEPHONE NUMBER (Include Area Code) (847) 230-5309
APPLICANT (Note: All correspondence will be sent to this address)				
COMPANY NAME Pulte Homes		APPLICANT NAME Stephen Atwood		FEIN OR SS NO. (Required)
ADDRESS 100 Bloomfield Hills Parkway	CITY Bloomfield Hills	STATE MI	ZIP CODE 48304	TELEPHONE NUMBER (Include Area Code) (734) 276-0419
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.				FAX NUMBER (Include Area Code) (734) 783-0545
APPLICANT SIGNATURE (Must be an original signature) 			DATE 12-11-12	

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 13-000054-BCC

Right Choice Auto Care
16600 Joy Road
Detroit, Michigan,

RECEIVED

Case No.: 104410

Agency: Bureau of Construction Codes

Applicant

APR 25 2013

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Case Type: BCC Barrier Free Design

Filing Type: Barrier Free Design

Issued and entered
this 24th day of April 2013
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 March 6, 2013, in Lansing, Michigan. Adrian Bazaj, General Manager, appeared as a representative on behalf of Right Choice Auto Care, Applicant. Stanley Skopek, Building Plan Reviewer, appeared on behalf of the Plan Review Division of the Bureau of Construction Codes.

Mr. Bazaj was sworn in and testified as a witness for the Applicant. In addition, Ed Alshiblawi and Raynald White were sworn in and testified as witnesses for the Applicant. No exhibits were offered into evidence by the Applicant at hearing.

At the conclusion of the hearing, the record was held open at the Applicant's request for submission of additional evidence by March 22, 2013, pertaining to the position of the City of Detroit on "change of use".

On March 13, 2013, the Applicant submitted a memorandum, which was admitted into the record as "Petitioner's Exhibit No. 1". On March 28, 2013, the Bureau of Construction Codes filed correspondence containing e-mail communication from Daljit Singh Benipal, P.E., S.E., Head Engineer, Buildings, Safety Engineering and

4. EXCEPTION APPLICATIONS
4. 104410

Docket No. 13-000054-BCC

Page 2

Environmental Department, City of Detroit. On March 29, 2013, the March 28, 2013 filing was forwarded to the Applicant for a response due by April 12, 2013.

The Applicant did not file any objection to the March 28, 2013 filing. The March 28, 2013 filing was then admitted into the record as evidence, marked as "ALJ Exhibit A". The record was closed as of April 12, 2013.

ISSUE

The issue presented is whether the Board should grant the Applicant a temporary exception from Section 1109.2 of the 2009 Michigan Building Code.

FINDINGS OF FACT

Right Choice Auto Care, Applicant, has filed an application for a temporary (two-year) exception from the 2009 Michigan Building Code for a building located at 16600 Joy Road in Detroit, Michigan. The application for an exception was received by the Plan Review Division within the Bureau of Construction Codes on January 18, 2013.

Adrian Bazaj, General Manager for the Applicant, credibly testified that the building in question has been vacant since 2003 or 2004. There are two unisex toilet rooms, one in the office area and one in the garage area, neither of which are barrier-free compliant. The Applicant would need to modify only one of the two toilet rooms, per the City of Detroit building official's communications with the Applicant.

The building formerly contained a collision auto-body and mechanical repair shop. The Applicant plans to have a used car dealership, as well as a collision auto-body/mechanical repair shop just for the cars that the Applicant is selling.

There is a post office on one side of the building site, and a church on the other side. Persons from the church have expressed excitement over the Applicant moving in and starting a business in the vacant building.

As determined by a City of Detroit building official, the existing use of the building is for a "Bumping and Paint Shop". The Applicant wants to change the use to "Used Motor Vehicle Sales", while still doing the bumping and painting of automobiles. The existing use is "S-1" and the proposed use is "B/S-1". (See ALJ Exhibit A.)

To date, the Applicant has spent over \$10,000.00 in order to bring the building up to code. The Applicant has cleaned out a lot of junk and debris from the building and parking lot, as well as done electrical and plumbing work to bring the building up to code. In addition, the Applicant was not able to pull a permit for this work until it had paid \$5,000.00 or \$6,000.00 in back fees to the City of Detroit.

The Applicant is only a lessee on the building. The landlord is not helping with costs because of the landlord's own financial difficulties. The Applicant has been paying monthly rent of \$1,200.00 since 2009, although it is not yet occupying the building. The

Applicant is not currently operating at another site.

The Applicant hopes to have a crew of at least seven full-time employees, including salespeople, a clerical worker/secretary, mechanics, and collision auto-body workers. Mr. Bazaj testified that the Applicant will not discriminate in hiring. The mechanics and collision auto-body workers would likely need to be able-bodied. The salespersons would need to be able-bodied to the extent that they could show cars and drive with prospective customers. The clerical/secretarial person would not need to be able-bodied.

Although the Applicant has submitted an application for a temporary exception, the Applicant would like to not have to provide a barrier free toilet room at all, if possible. The next option would be to have the barrier free requirement delayed for two years. The Applicant has spent a lot of its capital to keep the rent payments going and to pay the back fees. Also, the Applicant is really taking a financial risk in starting up a new business in Detroit with the city losing population. The Applicant plans to hire people from the city.

To make the toilet room in the garage area barrier free compliant, the Applicant would have to take out a wall, move plumbing, install grab bars, and build a new space to meet the required parameters. The new toilet room in the garage area would cut into one automobile bay lift space, reducing the available automobile bays from two to one.

Mr. Bazaj credibly testified that the Applicant has obtained verbal estimates of \$5,000.00 to \$7,000.00 for this work on the garage area toilet room. The Applicant believes it would be able to raise the necessary funds to make the modifications to the toilet room within two years.

If a barrier free toilet room is required, the Applicant would plan to make the toilet room in the garage area barrier free compliant, rather than the toilet room in the office area. The building structure in the office area is concrete block and steel, and there is less available space to expand the toilet room in the office area.

The Applicant has not obtained an estimate on costs involved to make the toilet room in the office area barrier free compliant, although it is likely that it would cost more than the estimated work on the garage area toilet room. Mr. Bazaj does not think many customers or members of the public would use the toilet room at any rate, since most of the Applicant's sales will be through the Internet.

Mr. Bazaj credibly testified that the main reason for the requested exception is economic. The Applicant has spent a lot of its capital on the building repairs to date and its funds are running out. The estimated time to complete the barrier free compliance work, if required, is 45 days. If the Applicant did not have to do this compliance work, it would open its new business tomorrow.

It appears doubtful that it would be safe or appropriate for customers and clerical employees to have to use the barrier free compliant toilet room in the garage area

rather than the office area, given the likely proximity to mechanical and auto-body repair work. The question was also raised whether the Applicant's liability insurance company would approve of customers accessing the barrier free compliant toilet room in the garage area of the business. The Applicant will likely need additional time to raise the funds necessary to cover the costs to make the toilet room in the office area barrier-free compliant.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, MCL 125.1351 *et seq.* (hereafter "Act") 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, technologically, structurally, or administratively feasible.

The term, "compelling need" is defined in Section 5a(2) of the Act as follows:

(2) As used in subsection (1), "compelling need" includes, but is not limited to, 1 or more of the following:

- (a) Structural limitations.
- (b) Site limitations.
- (c) Economic limitations.
- (d) Technological limitations.
- (e) Jurisdictional conflicts.
- (f) Historical structures, under conditions prescribed by rule of the construction code commission. MCL 125.1355a(2).

Also, Barrier Free Design Board Rule R 125.1014(2) lists the following factors which may be considered in determining whether compelling need has been demonstrated:

Rule 14. (2) In addition to section 5a(2) of the act, factors which may be considered in determining whether compelling need has been demonstrated include the following, if applicable:

- (a) Circumstances which required compliance, such as any of the following:
 - (i) Use group change.
 - (ii) New construction.
 - (iii) Occupancy load change.
 - (iv) Alteration other than ordinary maintenance.
 - (v) Addition.
- (b) The total project cost, including all of the following:
 - (i) The total construction or remodeling cost.
 - (ii) Land acquisition cost.
 - (iii) Cost for furnishings.
 - (iv) Purchase price of the structure.
- (c) Nature of the business or facility.
- (d) Anticipated public traffic.
- (e) Hours and days of operation.
- (f) Financial position of the business or agency.
- (g) Age of the business.
- (h) Lease provisions, if the applicant is a lessee of the facility; and the name and address of the owner, if the owner refuses to allow compliance with the barrier free design requirements.
- (i) Tax abatements, tax credits, and tax deductions for which the project qualifies.
- (j) Age of existing building.
- (k) Size of all levels and areas of the project and the size of the area or areas proposed to be inaccessible.
- (l) Use of the area proposed to be inaccessible.
- (m) Aspects of the project that do comply with the barrier free design requirements.
- (n) Number of employees who will be using the area or facility.
- (o) Description of the job duties of the employees.
- (p) Vertical distance from grade to entrance level.
- (q) Vertical distance or distances between floor levels.
- (r) Width and layout of existing stairways.
- (s) Cost of compliance in relation to the total project cost, the size of the area proposed to be inaccessible, and the use of the area proposed to be inaccessible.
- (t) Existing structural limitations.
- (u) Site restrictions, such as any of the following:
 - (i) Size of site.
 - (ii) Greenbelt or set-back requirements.
 - (iii) Off-street parking requirements.
 - (iv) Unusual soil or site conditions.
 - (v) Spatial and financial feasibility of alternatives to compliance, such as any of the following:
 - (i) Ramp with slightly steeper slope.

- (ii) Alternative lifting devices such as a special elevating device or wheelchair lifting device.
- (iii) Accessible entrance other than the nearest entrance.
- (iv) Unisex barrier free bathroom.
- (w) Feasibility of an exception for a stated period of time after which compliance with the requirements would be achieved and the plan or proposal for compliance.
- (x) Duplication of facilities available.
- (y) Historic designation and character of the facility, as determined by the Michigan bureau of history, department of state, or the United States department of the interior as specified in R 408.30428.
- (z) Similar projects previously reviewed by the board.
- (aa) Whether the applicant complied with the requirements contained in section 10 of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, known as the construction code act.
- (bb) Whether the project was started or constructed, or both, pursuant to a permit based on plans or specifications that complied with the barrier free design requirements, in accordance with section 11 of Act No.230 of the Public Acts of 1972, as amended, being §125.1511 of the Michigan Compiled Laws, known as the construction code act.
- (cc) Any other factual information related to the project which the applicant believes should be considered by the board. 1988 AAC, R 125.1014(2).

Section 1109.2 of the 2009 Michigan Building Code states as follows:

1109.2 Toilet and bathing facilities. Each toilet room and bathing room shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing rooms provided within the facility shall not be located on the inaccessible floor. At least one of each type of fixture, element, control or dispenser in each accessible toilet room and bathing room shall be accessible.

Exceptions:

1. In toilet rooms or bathing rooms accessed only through a private office, not for common or public use and intended for use by a single occupant, any of the following alternatives are allowed:
 - 1.1 Doors are permitted to swing into the clear floor space, provided the door swing can be reversed to meet the requirements in ICC A117.1;
 - 1.2 The height requirements for the water closet in ICC A117.1 are not applicable;

- 1.3 Grab bars are not required to be installed in a toilet room, provided that reinforcement has been installed in the walls and located so as to permit the installation of such grab bars; and
 - 1.4 The requirement for height, knee and toe clearance shall not apply to a lavatory.
2. This section is not applicable to toilet and bathing rooms that serve dwelling units or sleeping units that are not required to be accessible by Section 1107.
 3. Where multiple single-user toilet rooms or bathing rooms are clustered at a single location, at least 50 percent but not less than one room for each use at each cluster shall be accessible.
 4. Where no more than one urinal is provided in a toilet room or bathing room, the urinal is not required to be accessible.
 5. Toilet rooms that are part of critical care or intensive care patient sleeping rooms are not required to be accessible.

Given the above findings of fact, it is concluded that the Applicant has presented a compelling reason in this matter to justify a temporary exception based on economic limitations for this start-up business and the likely total project cost under MCL 125.1355a(2) and R 125.1014(2)(b). The Applicant has credibly shown that it is currently unable financially to cover the costs to make the building barrier free compliant, given the existing renovation costs and the likely construction costs of making the toilet room barrier free compliant.

If an exception from Section 1109.2 of the 2009 Michigan Building Code were allowed for a significant time frame, it appears likely that the Applicant would be able to raise the funds from its business to cover the costs of compliance.

The Applicant did not present sufficient evidence to show that making the toilet room barrier free compliant would not be structurally or technically feasible, or that other compelling reasons for an exception apply. In particular, the Applicant has not shown that it would be appropriate to make the toilet room in the garage area barrier free compliant, rather than the toilet room in the office area.

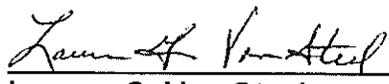
RECOMMENDED DECISION

Based on the above findings of fact and conclusions of law, the undersigned recommends that the Board grant the Applicant a temporary exception from Section 1109.2 of the 2009 Michigan Building Code, for a period of at least three years.

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.

Docket No. 13-000054-BCC
Page 8

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.

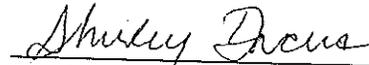


Lauren G. Van Steel
Administrative Law Judge

13-000054-BCC
Page 9

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 below this 24th day of April, 2013.



Shirley Dacus
Michigan Administrative Hearing System

Right Choice Auto Care
Attn: Adrian Bazaj
1660 Joy Road
Detroit, MI 48228

Daljit Benipal
City of Detroit
2 Woodward Avenue, Suite 409
Detroit, MI 48226

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

Menon, Usha (LARA)

From: Daljit Singh Benipal [BenipalD@detroitmi.gov]
Sent: Thursday, March 28, 2013 2:04 PM
To: Menon, Usha (LARA)
Subject: Re: Right Choice Auto Care, 16600 Joy Road, Barrier free exception # 104410

Usha:

We researched our records and our findings are as follows.

1. The existing use is Bumping and Paint shop for this building.
2. The customer want to change the use to Used Motor Vehicle Sales. He still be doing the Bumping and Painting, but only to the vehicles they own. In other words, he will be providing this service to fix the cars they bought and put them on display to sell them.

So the existing use is S-1 and proposed use is B/S-1. Now he is adding use group B to the existing use group S-1.

This was the reason they need to comply with all code requirements.

Let me know if you need any additional info.

Thanks

Daljit Singh Benipal, P.E., S.E.
 Head Engineer
 Buildings, Safety Engineering and Environmental Dept.
 City of Detroit
 409 Coleman A. Young Municipal Center
 Two Woodward Avenue
 Detroit, MI. 48226
 Phone (313) 224-0297
 Fax (313) 224-1634
 Email: benipald@detroitmi.gov

This e-mail communication, including any attachments, is intended solely for the use of the addressee (s) and may contain information that is confidential or protected by privilege. If the reader of this message is not an intended recipient, you are hereby notified that any review, distribution, copying, or retention of this communication or any attachments is strictly prohibited. If you have received this communication in error, please notify me immediately via reply e-mail and delete this message and any attachments from your computer system. Thank you.

>>> "Menon, Usha (LARA)" <menonu@michigan.gov> 3/28/2013 10:02 AM >>>
 Dear Mr. Benipal,

I am writing this letter as advised by the Administrative Law Judge who conducted the hearing for the above said project on March 06, 2013. According to the application the building shall comply with accessibility requirements due to a change in the use. At the hearing the applicant stated that the building was vacant for few years but there is no change in the use. Based on Act 1 of 1966 and 2009 Michigan Building Code being vacant is not a reason for compliance with accessibility. Since there was no one present at the hearing representing the Detroit Building Department, the judge needs the clarification on the change of use. Please provide documents stating the existing use and proposed use and/or other reasons you consider for compliance with

3/28/2013

accessibility requirements.

59

Thank you,

Usha Menon
Plan Review Division
Bureau of Construction Codes
517-241-9328

Click [here](#) to report this email as spam.

This message has been scanned for malware by SurfControl plc. www.surfcontrol.com

RECEIVED

JAN 18 2013

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

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

104 410

Application Fee: \$300.00

Authority: 1966 PA 1
Completion: Mandatory
Penalty: Exception will not be granted
The Department of Labor & Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

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.

FACILITY INFORMATION					
FACILITY NAME <i>Right Choice Auto Care</i>			STREET / SITE ADDRESS <i>16600 Joy Rd</i>		
NAME OF CITY, VILLAGE, OR TOWNSHIP IN WHICH THE FACILITY IS LOCATED <i>Detroit</i>			COUNTY <i>Wayne</i>		
<input checked="" type="checkbox"/> CITY <input type="checkbox"/> VILLAGE <input type="checkbox"/> TOWNSHIP OF:					
ESTIMATED PROJECT COST \$ <i>0</i>		ESTIMATED COST OF COMPLIANCE \$ <i>0</i>			
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project.)					
<input type="checkbox"/> NEW BUILDING <input type="checkbox"/> ALTERATION <input checked="" type="checkbox"/> CHANGE OF USE			BUILDING PERMIT/FILE NUMBER <i>BLD2011-06103</i>		
IS A TEMPORARY EXCEPTION REQUESTED? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES			PERIOD OF TIME REQUESTED? <i>2 years</i>	USE GROUP <i>B/S-1</i>	CONSTRUCTION TYPE <i>IB</i>
PROJECT DOES NOT COMPLY WITH BARRIER FREE DESIGN REQUIREMENTS AS FOLLOWS:					
MICHIGAN BUILDING CODE SECTION(S): <i>Sec. 1109.2 of Michigan Building Code 2009</i>					
REASON FOR NON-COMPLIANCE: <i>Applicant is proposing delayed compliance. He will comply after within two years.</i>					
NAME <i>DALJIT BEMPAL</i>		ENFORCING AGENCY <i>CITY OF DETROIT</i>		TELEPHONE NUMBER (Include Area Code) <i>313-224-0297</i>	
ADDRESS <i>2 WOODWARD AV. # 409</i>		CITY <i>DETROIT</i>	ZIP CODE <i>48226</i>	FAX NUMBER (Include Area Code) <i>313-224-1634</i>	
BUILDING OFFICIAL SIGNATURE (Must be an original signature) <i>D. Bempal</i>					
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)					
NAME <i>FREDERICK O. IDEOLU</i>		MICHIGAN LICENSE NUMBER <i>45508</i>	FIRM NAME <i>FONATH ARCHITECTS & CONSULTANTS</i>		
ADDRESS <i>400 MONROE # 237</i>		CITY <i>DETROIT</i>	STATE <i>MI</i>	ZIP CODE <i>48226</i>	TELEPHONE NUMBER (Include Area Code) <i>313/964-3794</i>
APPLICANT (Note: All correspondence will be sent to this address)					
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE <i>Adrian Banzel</i>			COMPANY NAME <i>Right Choice</i>		SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED)
ADDRESS <i>16600 Joy Rd</i>		CITY <i>Detroit</i>	STATE <i>MI</i>	ZIP CODE <i>48228</i>	TELEPHONE NUMBER (Include Area Code) <i>313-739-6671</i>
I certify that 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) <i>[Signature]</i>					DATE <i>11-15-2012</i>

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 13-000247-BCC

Mason Elementary School
1640 Vernier
Grosse Pointe Woods, Michigan,

Case No.: 104505

Agency: Bureau of Construction
Codes

Applicant

Case Type: BCC Barrier Free Design

Filing Type: Barrier Free Design
Exception Request

RECEIVED

APR 26 2013

Issued and entered
this 25th day of April 2013
by Lauren G. Van Steel
Administrative Law Judge

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

REPORT OF THE ADMINISTRATIVE LAW JUDGE

5. EXCEPTION APPLICATIONS
5. 104505

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 March 27, 2013, in Lansing, Michigan. Angela Burke, Architectural Designer with Ehresman Associates, Inc., appeared on behalf of the Mason Elementary School within the Grosse Pointe Public School System, Applicant. Usha Menon appeared as representative on behalf of the Plan Review Division of the Bureau of Construction Codes.

Ms. Burke was sworn in and testified as a witness for the Applicant. The following exhibits offered by the Applicant were admitted into evidence:

1. Applicant's Exhibit No. 1 is a copy of an Order of the Michigan Barrier Free Design Board, Exception No. 2011-932, dated September 21, 2011.
2. Applicant's Exhibit No. 2 is a copy of the Applicant restroom's floor plan.

The record was closed at the conclusion of the hearing.

ISSUE

The issue presented is whether the Board should grant the Applicant an exception from 2003 ICC/ANSI A117.1 Section 404.2.3.1.

FINDINGS OF FACT

The Applicant seeks a permanent exception from Section 404.2.3.1 of the 2003 ICC/ANSI A117.1 for the Mason Elementary School building located at 1640 Vernier in Grosse Pointe Woods, Michigan. The estimated project cost for alterations of the building is \$94,000.00 and the estimated cost of compliance is \$5,000.00.

The Applicant plans to remodel the interior only of two of the four restrooms in the school building this coming summer, and then remodel the other two restrooms in the summer of 2014. The restrooms and fixtures are original to the building, which was built in 1929. The restrooms are recessed 30 inches from the corridor wall.

The restrooms to be remodeled this summer are side-by-side restrooms on the second floor. The Applicant will be removing and replacing the plumbing, piping, electrical, exhaust system, fixtures, and finishes in the restrooms to bring them up to modern, sanitary standards. The toilet stalls are not currently barrier free accessible, and the Applicant will be making the toilet stalls accessible as part of the remodeling project. [Applicant's Exhibit No. 2].

The existing doors meet the barrier free requirement of 32" clear width opening while in the open position. However, they do not meet the 18-inch pull-side latch approach clearance requirement. The Applicant asserts that the restroom walls and ceiling are fire rated, so that the doors could be held in the open position throughout the day (with an existing opener device). The school keeps the doors open throughout the regular school day, but closes and locks them after hours and during cleaning.

The restrooms are located in school corridors that are constructed of masonry, with marble and plaster finishes. The Applicant does not want to alter the historic nature of the school corridors. It would be a financial hardship for the Applicant to have to remove and replace the marble and plaster finishes (although the exact cost has not been estimated). The marble that was used on the wall in 1929 is no longer quarried and could not be readily replaced.

Ms. Burke credibly testified that there are also columns within the corridor walls that would likely need to be moved at significant cost, which might also cause structural problems to the building if an exception were not granted. The Applicant has not thoroughly explored the location of the columns within the corridor walls at this point.

Ms. Burke credibly testified that if the columns within the corridor walls had to be moved, it would likely delay the planned construction timeframe of June 17 to August 16, 2013. There are only two restrooms on the second floor of the school building. If an

exception were not granted, it would pose a problem for the school district because if the school did not have functioning restrooms on the second floor the fire marshal would not likely approve the school's opening in the fall.

The Applicant is prepared to provide wireless automatic door openers on the restroom doors as a means to meet the maneuvering clearance requirements with the present doors. The cost of the automatic door openers is included in the current \$94,000.00 project cost estimate. The Applicant points out that the Board granted an exception for another school building within the Grosse Pointe School System with the same clearance issue provided the applicant install automatic door openers. The Board's order stated in pertinent part:

The Board determined that it is impractical to have the doors in a held-open position only while the building is occupied and that compelling need was not demonstrated that precludes the installation of a fully automatic door opener at the corridor side of the subject door. [Applicant's Exhibit No. 1].

If the Board grants the applied-for exception, the Applicant wishes it to also be applied to the second phase of the remodeling project in the summer of 2014 for the other two restrooms in the school building.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, MCL 125.1351 *et seq.* (hereafter "Act") 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, technologically, structurally, or administratively feasible.

The term, "compelling need" is defined in Section 5a(2) of the Act as follows:

(2) As used in subsection (1), "compelling need" includes, but is not limited to, 1 or more of the following:

- (a) Structural limitations.
- (b) Site limitations.
- (c) Economic limitations.
- (d) Technological limitations.
- (e) Jurisdictional conflicts.
- (f) Historical structures, under conditions prescribed by rule of the construction code commission. MCL 125.1355a(2).

Also, Barrier Free Design Board Rule R 125.1014(2) lists the following factors which may be considered in determining whether compelling need has been demonstrated:

Rule 14. (2) In addition to section 5a(2) of the act, factors which may be considered in determining whether compelling need has been demonstrated include the following, if applicable:

- (a) Circumstances which required compliance, such as any of the following:
 - (i) Use group change.
 - (ii) New construction.
 - (iii) Occupancy load change.
 - (iv) Alteration other than ordinary maintenance.
 - (v) Addition.
- (b) The total project cost, including all of the following:
 - (i) The total construction or remodeling cost.
 - (ii) Land acquisition cost.
 - (iii) Cost for furnishings.
 - (iv) Purchase price of the structure.
- (c) Nature of the business or facility.
- (d) Anticipated public traffic.
- (e) Hours and days of operation.
- (f) Financial position of the business or agency.
- (g) Age of the business.
- (h) Lease provisions, if the applicant is a lessee of the facility; and the name and address of the owner, if the owner refuses to allow compliance with the barrier free design requirements.
- (i) Tax abatements, tax credits, and tax deductions for which the project qualifies.
- (j) Age of existing building.
- (k) Size of all levels and areas of the project and the size of the area or areas proposed to be inaccessible.
- (l) Use of the area proposed to be inaccessible.
- (m) Aspects of the project that do comply with the barrier free design requirements.

- (n) Number of employees who will be using the area or facility.
 - (o) Description of the job duties of the employees.
 - (p) Vertical distance from grade to entrance level.
 - (q) Vertical distance or distances between floor levels.
 - (r) Width and layout of existing stairways.
 - (s) Cost of compliance in relation to the total project cost, the size of the area proposed to be inaccessible, and the use of the area proposed to be inaccessible.
 - (t) Existing structural limitations.
 - (u) Site restrictions, such as any of the following:
 - (i) Size of site.
 - (ii) Greenbelt or set-back requirements.
 - (iii) Off-street parking requirements.
 - (iv) Unusual soil or site conditions.
 - (v) Spatial and financial feasibility of alternatives to compliance, such as any of the following:
 - (i) Ramp with slightly steeper slope.
 - (ii) Alternative lifting devices such as a special elevating device or wheelchair lifting device.
 - (iii) Accessible entrance other than the nearest entrance.
 - (iv) Unisex barrier free bathroom.
 - (w) Feasibility of an exception for a stated period of time after which compliance with the requirements would be achieved and the plan or proposal for compliance.
 - (x) Duplication of facilities available.
 - (y) Historic designation and character of the facility, as determined by the Michigan bureau of history, department of state, or the United States department of the interior as specified in R 408.30428.
 - (z) Similar projects previously reviewed by the board.
 - (aa) Whether the applicant complied with the requirements contained in section 10 of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, known as the construction code act.
 - (bb) Whether the project was started or constructed, or both, pursuant to a permit based on plans or specifications that complied with the barrier free design requirements, in accordance with section 11 of Act No.230 of the Public Acts of 1972, as amended, being §125.1511 of the Michigan Compiled Laws, known as the construction code act.
 - (cc) Any other factual information related to the project which the applicant believes should be considered by the board.
- 1988 AACS, R 125.1014(2).

The applicable code section of 2003 ICC/ANSI A117.1 states in pertinent part:

404.2.3 **Maneuvering Clearances at Doors.** Minimum maneuvering clearances at doors shall comply with Section 404.2.3 and shall include the full clear opening width of the doorway.

404.2.3.1 **Swinging Doors.** Swinging doors shall have maneuvering clearances complying with Table 404.2.3.1.

The minimum maneuvering clearance, parallel to a doorway (beyond latch) from a front approach is 18 inches (455 mm), per the table in Section 404.2.3.1. of the 2003 ICC/ANSI A117.1.

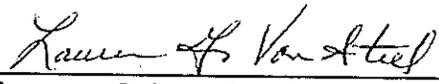
Given the above findings of fact, it is concluded that the Applicant has not shown sufficient evidence to prove compelling need for an exception under Section 5a(2)(a)&(c) of the Act regarding structural impediments to compliance or economic hardship, although those issues are clearly of significant and legitimate concern.

However, the Applicant has presented compelling reasons in this matter under Rules 14(2)(j), (m), (v) & (z) above to justify the applied-for permanent exception from Section 404.2.3.1. The Applicant has shown by a preponderance of the record evidence that an exception is properly granted based on the age of the existing building (including the fact that the marble in the corridor of the 1929 building cannot be readily replaced); aspects of the total project that do comply with barrier free requirements (making the toilet stalls barrier free); alternatives to compliance (being the wireless automatic door opener); and a similar project previously approved by the board (Applicant's Exhibit No. 1). 1988 AACS, R 125.1014(2)(j), (m), (v) & (z).

RECOMMENDED DECISION

Based on the above findings of fact and conclusions of law, the undersigned recommends that the Board grant the Applicant a permanent exception from Section 404.2.3.1 of the 2003 ICC/ANSI A117.1, for both the current phase of the restroom remodeling project and the other two restrooms in the building.

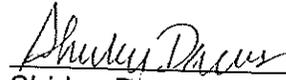
As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building. A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Todd Cordill.



Lauren G. Van Steel
Administrative Law Judge

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 below this 25th day of April, 2013.



Shirley Dacus

Michigan Administrative Hearing System

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

Richard VanGorder
Grosse Pointe Public Schools
389 St. Clair Street
Grosse Pointe, MI 48230



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF CONSTRUCTION CODES
IRVIN J. POKE
DIRECTOR

STEVE ARWOOD
DIRECTOR

February 28, 2013

Mr. Richard VanGorder
Grosse Pointe Public School
389 St Clair Avenue
Grosse Pointe, MI 48230

RE: Project Number: 104452 - Wayne	Use Group:	E
Arch. Project Number: 6512	Construction Type:	IIB
Mason Elementary School	Square Footage:	Alt 702
1640 Vernier	Actual Occupant Load:	350
Grosse Pointe Woods, MI		
Description: Second Floor Boys/Girls Restroom Remodel		

Dear Mr. VanGorder:

This project has been reviewed for compliance with the State of Michigan Construction Code.

2009 Michigan Building Code - Sheila Hartfield

Project cannot be approved until we receive from your office a copy of the exception granting relief from 2003 ICC/ ANSI A117.1 Section 404.2.3.1 from the Barrier Free Design Board

Upon receipt of a written satisfactory response to each Building code plan review comment, the approval will be forwarded.

If you have any questions regarding your plan review, please contact our office at (517) 241-9328.

Sincerely,

Signed and Filed on: February 28, 2013

Sheila Hartfield, Plan Reviewer

SH/kc

cc: BCC - Electrical, Plumbing, Building, Mechanical Division(s)
Ehresman Associates Inc - Dale Ehresman

Providing for Michigan's Safety in the Built Environment

Ehresman Associates, Inc.

architects • engineers

January 15, 2013

Michigan Department of Licensing and Regulatory Affairs
Bureau of Construction Codes
Plan Review Division
PO Box 30254
Lansing, MI 48909
2501 Woodlake Circle
Okemos, MI 48864

RECEIVED

FEB 07 2013

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

RE: Grosse Pointe Public School System
Mason Elementary School
Restroom Alteration
Application for Barrier Free Design Rule Exception
EA Project No. 6512

Dear Todd,

We are requesting this project be approved for a Barrier Free Design Rule Exception, based upon the Historic Nature of the building, the extent of the interior alteration of the project and the existing structural integrity of the building. Altering the doorway in the historic corridor, which are constructed of masonry, with marble and plaster finishes could be a very costly and time consuming addition to an otherwise straight forward restroom remodeling project. It is the owner's intent to have this project start as soon as school is out for the summer and be completed and open for the 2013-2014 school year.

This project is Phase One of an interior restroom alteration at Mason Elementary School. It consists of remodeling two (2) restrooms of the four (4) total in the building. The school district intends on remodeling the other two (2) restrooms next summer (2014). Each phase of this alteration contains a similar door issue. We are requesting approval for both phases.

We've attached photos of the overall building and restrooms, for your reference. The restrooms to be remodeled as a part of this project are original to the building. The fixtures, plumbing, HVAC, finishes, etc. are all approximately 84 years old, long past the estimated useful life of such items.

The project does not include replacement of the existing doors, limiting the work to the interior of the restrooms only. The existing doors meet the barrier free requirement of 32" clear width opening, while in the open position. The restroom walls and ceiling are fire rated, allowing the door to be held in the open position throughout the day. The door has a hold open on it, which is engaged at all times students occupy the building, the staff does close and lock the doors after hours and for cleaning purposes.

Please note, in the past we have provided automatic door operators on the restroom doors as a solution to the maneuvering clearance issues present at the existing doors. Please refer to project no. 98664, exception no. 2011-931. We propose the same solution in this instance, as noted on drawings Sheets A20, A50 and in the Project Manual as described in Section 08 711.

Enclosed is (1) set of plans and specifications (signed and sealed) for your department's review, along with a check in the amount of \$600.00 (check #578154 to cover \$300 fee for Richard and \$300 fee for Mason).

Ehresman Associates, Inc.

Mason Restroom (Phase 1)

Project No. 6512

Please **INVOICE** the **GROSSE POINTE PUBLIC SCHOOL SYSTEM** for any additional fees:

Mr. Rich VanGorder
Grosse Pointe Public School System
389 St. Clair
Grosse Pointe, MI 48230

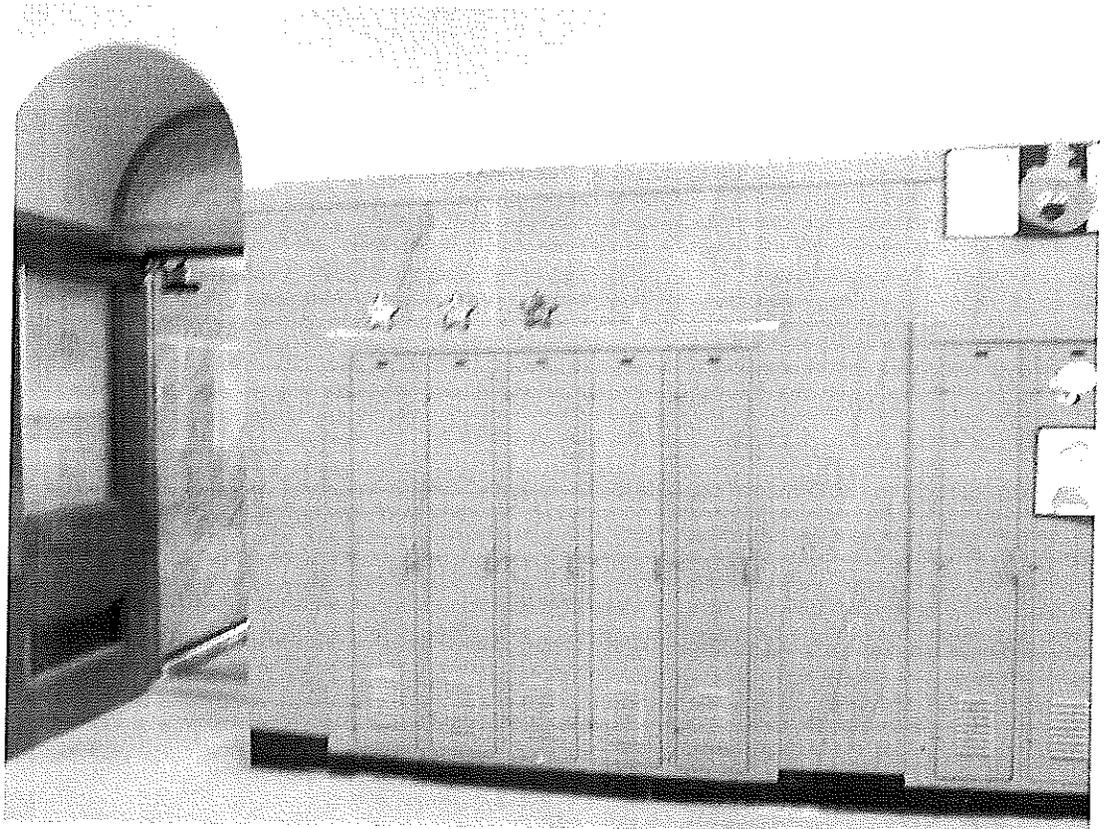
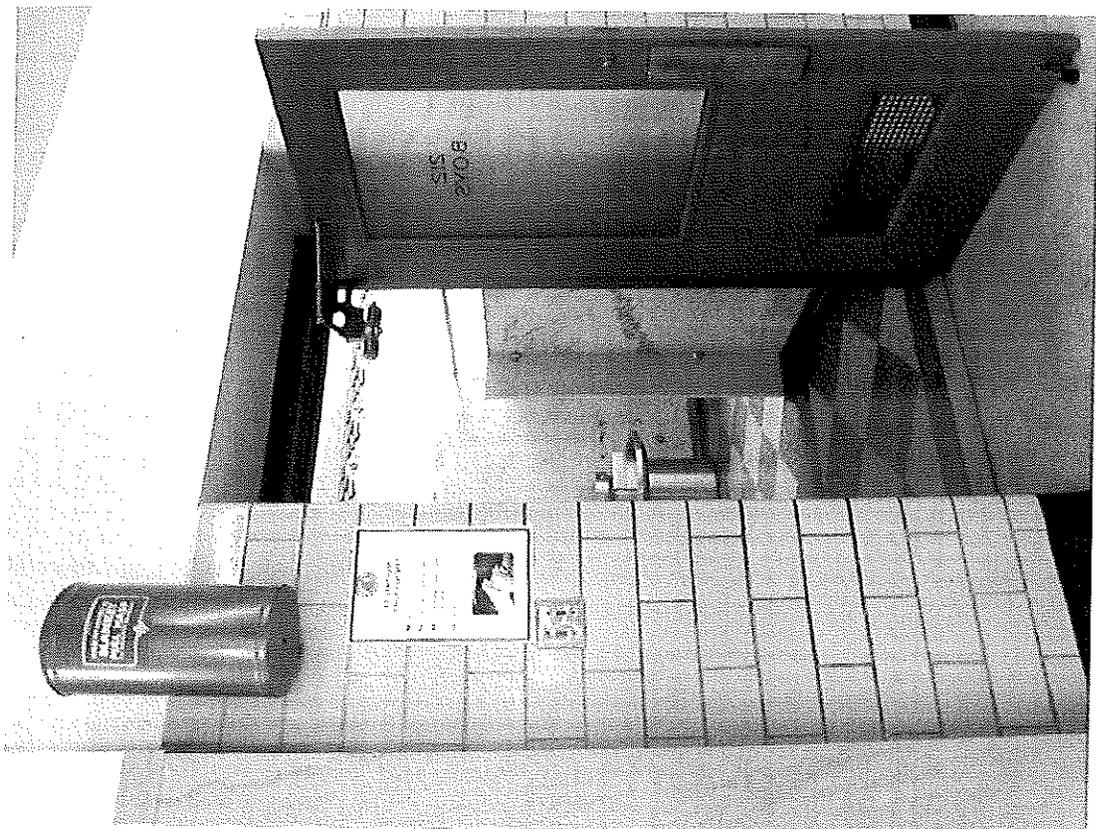
If you should have any questions, or require additional information, please contact this office.

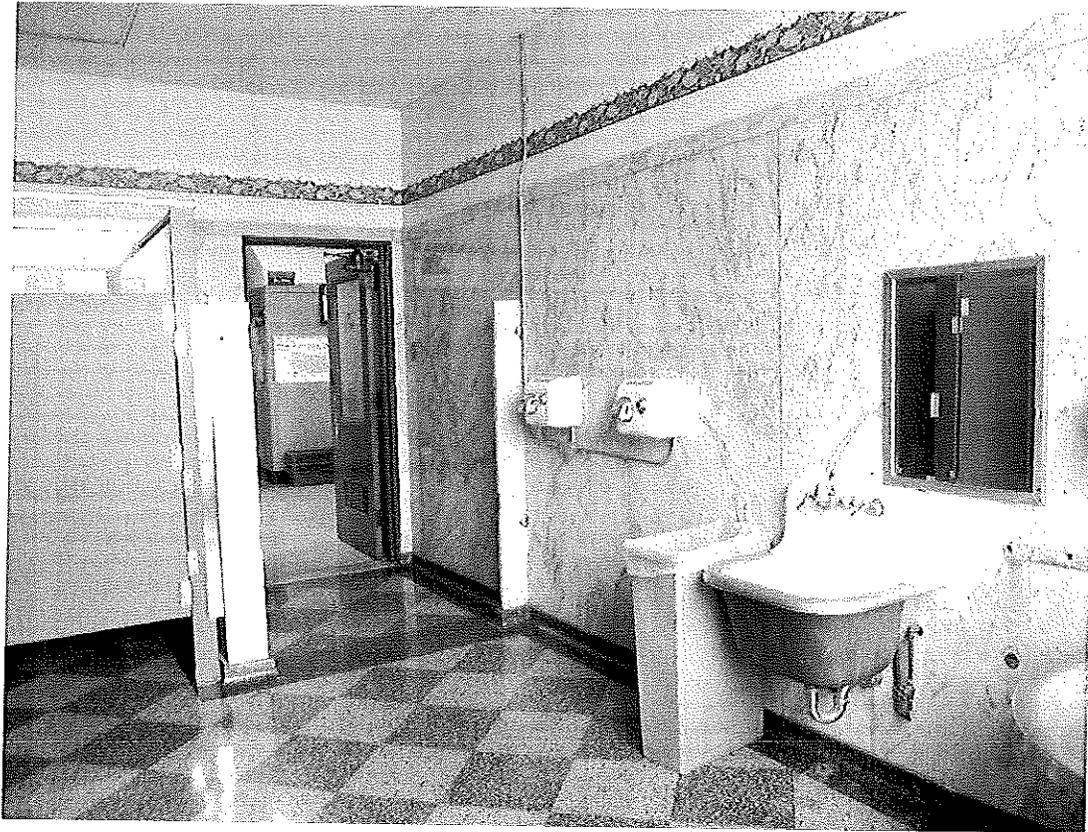
Sincerely,



Angela Burke
Architectural Designer
angela@ehresmanassociates.com

cc: C. Fenton, GPPSS
R. VanGorder, GPPSS





Application for Barrier Free Design Rule Exception
 Michigan Department of Licensing and Regulatory Affairs
 Bureau of Construction Codes / Plan Review
 P.O. Box 30255, Lansing, MI 4890
 517-241-9328
 www.michigan.gov/bcc

104 505

Application Fee: \$300.00

Authority: 1966 PA 1 Completion: Mandatory Penalty: Exception will not be granted	LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
---	--

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.

FACILITY INFORMATION				
FACILITY NAME Mason Elementary School		STREET / SITE ADDRESS 1640 Vernier Road		
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: Grosse Pointe Woods				COUNTY Wayne
Estimated Project Cost \$ 94,000.00		Estimated Cost of Compliance \$ 5,000.00		
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)				
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number _____		
Is a Temporary Exception Requested? <input type="checkbox"/> No <input type="checkbox"/> Yes	PERIOD OF TIME REQUESTED?	USE GROUP E	CONSTRUCTION TYPE II B	
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) 2003 ICC/ANSI A117.1, SECTION 404.2.3.1 Reason for Non-Compliance See attached letter from Angela Burke dated 1-15-2013				
ENFORCING AGENCY STATE OF MICHIGAN, BUREAU OF CONSTRUCTION CODES		BUILDING OFFICIAL NAME Dale Cordill		REGISTRATION NUMBER 4994
ADDRESS P.O. Box 30254	CITY LANSING	STATE MI	ZIP CODE 48969	TELEPHONE NUMBER (Include Area Code) (517) 241-9328
BUILDING OFFICIAL SIGNATURE (Must be an original signature) <i>[Signature]</i>		DATE	E-MAIL ADDRESS cordill@michigan.gov	FAX NUMBER (Include Area Code) (517) 241-9308
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)				
COMPANY NAME Ehresman Associates, Inc.		LICENSED INDIVIDUAL Mr. Dale Ehresman		MICHIGAN LICENSE NUMBER 18759
ADDRESS 803 W. Big Beaver Rd, Ste 350	CITY Troy	STATE MI	ZIP CODE 48084	TELEPHONE NUMBER (Include Area Code) (248) 244-9712
APPLICANT (Note: All correspondence will be sent to this address)				
COMPANY NAME Grosse Pointe Public School System		APPLICANT NAME Mr. Richard VanGorder		FEIN OR SS NO.* (Required)
ADDRESS 389 St. Clair	CITY Grosse Pointe	STATE MI	ZIP CODE 48230	TELEPHONE NUMBER (Include Area Code) (313) 432-3082
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.				FAX NUMBER (Include Area Code) (313) 432-3086
APPLICANT SIGNATURE (Must be an original signature) <i>[Signature]</i>			DATE 2/6/13	

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

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 13-000248-BCC

Richard Elementary School
176 McKinley
Grosse Pointe Farms, Michigan,

Case No.: 104506

Agency: Bureau of Construction
Codes

Applicant

Case Type: BCC Barrier Free Design

Filing Type: Barrier Free Design
Exception Request

6. EXCEPTION APPLICATIONS
6. 104506

RECEIVED

Issued and entered
this 25th day of April 2013
by Lauren G. Van Steel
Administrative Law Judge

APR 26 2013

BUREAU OF CONSTRUCTION (PLAN REVIEW DIVISION) 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 March 27, 2013, in Lansing, Michigan. Angela Burke, Architectural Designer with Ehresman Associates, Inc., appeared on behalf of the Mason Elementary School within the Grosse Pointe Public School System, Applicant. Usha Menon appeared as representative on behalf of the Plan Review Division of the Bureau of Construction Codes.

Ms. Burke was sworn in and testified as a witness for the Applicant. The following exhibits offered by the Applicant were admitted into evidence:

1. Applicant's Exhibit No. 1 is a copy of an Order of the Michigan Barrier Free Design Board, Exception No. 2011-932, dated September 21, 2011.
2. Applicant's Exhibit No. 2 is a copy of the Applicant restroom's floor plan.

The record was closed at the conclusion of the hearing.

ISSUE

The issue presented is whether the Board should grant the Applicant an exception from 2003 ICC/ANSI A117.1 Section 404.2.3.1.

FINDINGS OF FACT

The Applicant seeks a permanent exception from Section 404.2.3.1 of the 2003 ICC/ANSI A117.1 for the Richard Elementary School building located at 176 McKinley in Grosse Pointe Farms, Michigan. The estimated project cost for alterations of the building is \$94,000.00 and the estimated cost of compliance is \$5,000.00.

The Applicant plans to remodel the interior only of two of the four restrooms in the school building this coming summer, and then remodel the other two restrooms in the summer of 2014. The restrooms and fixtures are original to the building, which was built around 1930. The restrooms are recessed 30 inches from the corridor wall.

The restrooms to be remodeled this summer are two restrooms, one restroom on the first floor and one restroom on the second floor that are stacked together. The Applicant will be removing and replacing the plumbing, piping, electrical, exhaust system, fixtures, and finishes in the restrooms to bring them up to modern, sanitary standards. The toilet stalls are not currently barrier free accessible, and the Applicant will be making the toilet stalls accessible as part of the remodeling project. [Applicant's Exhibit No. 2].

The existing doors meet the barrier free requirement of 32" clear width opening while in the open position. However, they do not meet the 18-inch pull-side latch approach clearance requirement. The Applicant asserts that the restroom walls and ceiling are fire rated, so that the doors could be held in the open position throughout the day (with an existing opener device). The school keeps the doors open throughout the regular school day, but closes and locks them after hours and during cleaning.

The restrooms are located in school corridors which are constructed of masonry, with marble and plaster finishes. The Applicant does not want to alter the historic nature of the school corridors. It would be a financial hardship for the Applicant to have to remove and replace the marble and plaster finishes (although the exact cost has not been estimated). The marble that was used on the corridor walls in the 1930-era building is no longer quarried and could not be readily replaced.

Ms. Burke credibly testified that there are also columns within the corridor walls that would likely need to be moved at significant cost, which might also cause structural problems to the building if an exception were not granted. The Applicant has not thoroughly explored the location of the columns within the corridor walls at this point. The Applicant believes it would have to hire a structural engineer and redesign structural support to the second floor if an exception were not granted.

Ms. Burke credibly testified that if the columns within the corridor walls had to be moved, it would likely delay the planned construction timeframe of June 17 to August 23, 2013.

The Applicant is prepared to provide wireless automatic door openers on the restroom doors as a means to meet the maneuvering clearance requirements with the present doors. The cost of the automatic door openers (about \$2,500.00 each plus electrical work) is included in the current \$94,000.00 project cost estimate. The Applicant points out that the Board granted an exception for another school building within the Grosse Pointe School System with the same clearance issue provided the applicant install automatic door openers. The Board's order stated in pertinent part:

The Board determined that it is impractical to have the doors in a held-open position only while the building is occupied and that compelling need was not demonstrated that precludes the installation of a fully automatic door opener at the corridor side of the subject door. [Applicant's Exhibit No. 1].

If the Board grants the applied-for exception, the Applicant wishes it to also be applied to the second phase of the remodeling project in the summer of 2014 for the other two restrooms in the school building.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, MCL 125.1351 *et seq.* (hereafter "Act") 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, technologically, structurally, or administratively feasible.

The term, "compelling need" is defined in Section 5a(2) of the Act as follows:

(2) As used in subsection (1), "compelling need" includes, but is not limited to, 1 or more of the following:

- (a) Structural limitations.
- (b) Site limitations.
- (c) Economic limitations.
- (d) Technological limitations.
- (e) Jurisdictional conflicts.
- (f) Historical structures, under conditions prescribed by rule of the construction code commission. MCL 125.1355a(2).

Also, Barrier Free Design Board Rule R 125.1014(2) lists the following factors which may be considered in determining whether compelling need has been demonstrated:

Rule 14. (2) In addition to section 5a(2) of the act, factors which may be considered in determining whether compelling need has been demonstrated include the following, if applicable:

- (a) Circumstances which required compliance, such as any of the following:
 - (i) Use group change.
 - (ii) New construction.
 - (iii) Occupancy load change.
 - (iv) Alteration other than ordinary maintenance.
 - (v) Addition.
- (b) The total project cost, including all of the following:
 - (i) The total construction or remodeling cost.
 - (ii) Land acquisition cost.
 - (iii) Cost for furnishings.
 - (iv) Purchase price of the structure.
- (c) Nature of the business or facility.
- (d) Anticipated public traffic.
- (e) Hours and days of operation.
- (f) Financial position of the business or agency.
- (g) Age of the business.
- (h) Lease provisions, if the applicant is a lessee of the facility; and the name and address of the owner, if the owner refuses to allow compliance with the barrier free design requirements.
- (i) Tax abatements, tax credits, and tax deductions for which the project qualifies.
- (j) Age of existing building.
- (k) Size of all levels and areas of the project and the size of the area or areas proposed to be inaccessible.
- (l) Use of the area proposed to be inaccessible.
- (m) Aspects of the project that do comply with the barrier free design requirements.

- (n) Number of employees who will be using the area or facility.
- (o) Description of the job duties of the employees.
- (p) Vertical distance from grade to entrance level.
- (q) Vertical distance or distances between floor levels.
- (r) Width and layout of existing stairways.
- (s) Cost of compliance in relation to the total project cost, the size of the area proposed to be inaccessible, and the use of the area proposed to be inaccessible.
- (t) Existing structural limitations.
- (u) Site restrictions, such as any of the following:
 - (i) Size of site.
 - (ii) Greenbelt or set-back requirements.
 - (iii) Off-street parking requirements.
 - (iv) Unusual soil or site conditions.
- (v) Spatial and financial feasibility of alternatives to compliance, such as any of the following:
 - (i) Ramp with slightly steeper slope.
 - (ii) Alternative lifting devices such as a special elevating device or wheelchair lifting device.
 - (iii) Accessible entrance other than the nearest entrance.
 - (iv) Unisex barrier free bathroom.
- (w) Feasibility of an exception for a stated period of time after which compliance with the requirements would be achieved and the plan or proposal for compliance.
- (x) Duplication of facilities available.
- (y) Historic designation and character of the facility, as determined by the Michigan bureau of history, department of state, or the United States department of the interior as specified in R 408.30428.
- (z) Similar projects previously reviewed by the board.
- (aa) Whether the applicant complied with the requirements contained in section 10 of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, known as the construction code act.
- (bb) Whether the project was started or constructed, or both, pursuant to a permit based on plans or specifications that complied with the barrier free design requirements, in accordance with section 11 of Act No.230 of the Public Acts of 1972, as amended, being §125.1511 of the Michigan Compiled Laws, known as the construction code act.
- (cc) Any other factual information related to the project which the applicant believes should be considered by the board.
1988 AACS, R 125.1014(2).

The applicable code section of 2003 ICC/ANSI A117.1 states in pertinent part:

404.2.3 Maneuvering Clearances at Doors. Minimum maneuvering clearances at doors shall comply with Section 404.2.3 and shall include the full clear opening width of the doorway.

404.2.3.1 Swinging Doors. Swinging doors shall have maneuvering clearances complying with Table 404.2.3.1.

The minimum maneuvering clearance, parallel to a doorway (beyond latch) from a front approach is 18 inches (455 mm), per the table in Section 404.2.3.1. of the 2003 ICC/ANSI A117.1.

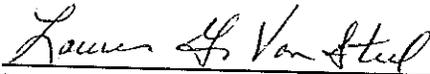
Given the above findings of fact, it is concluded that the Applicant has not shown sufficient evidence to prove compelling need for an exception under Section 5a(2)(a)&(c) of the Act regarding structural impediments to compliance or economic hardship, although those issues are clearly of significant and legitimate concern.

However, the Applicant has presented compelling reasons in this matter under Rules 14(2)(j), (m), (v) & (z) above to justify the applied-for permanent exception from Section 404.2.3.1. The Applicant has shown by a preponderance of the record evidence that an exception is properly granted based on the age of the existing building (including the fact that the marble in the corridor of the 1930-era building cannot be readily replaced); aspects of the total project that do comply with barrier free requirements (making the toilet stalls barrier free); alternatives to compliance (being the wireless automatic door opener); and a similar project previously approved by the board (Applicant's Exhibit No. 1). 1988 AACCS, R 125.1014(2)(j), (m), (v) & (z).

RECOMMENDED DECISION

Based on the above findings of fact and conclusions of law, the undersigned recommends that the Board grant the Applicant a permanent exception from Section 404.2.3.1 of the 2003 ICC/ANSI A117.1, for both the current phase of the restroom remodeling project and the other two restrooms in the building.

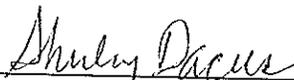
As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building. A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Todd Cordill.



Lauren G. Van Steel
Administrative Law Judge

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 below this 25th day of April, 2013.



Shirley Daqus
Michigan Administrative Hearing System

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

Grosse Pointe Public Schools
389 St. Clair Street
Grosse Pointe, MI 48230



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF CONSTRUCTION CODES
IRVIN J. POKE
DIRECTOR

STEVE ARWOOD
DIRECTOR

February 19, 2013

Mr. Richard VanGorder
Grosse Pointe Public School
389 St Clair Avenue
Grosse Pointe, MI 48230

RE: Project Number: 104451 - Wayne	Use Group:	E
Arch. Project Number: 6412	Construction Type:	IIB
Richard Elementary School	Square Footage:	Alt 506
176 McKinley	Actual Occupant Load:	400
Grosse Pointe Farms, MI		
Description: Remodel of Boys/Girls Restroom		

Dear Mr. VanGorder:

This project has been reviewed for compliance with the State of Michigan Construction Code.

2009 Michigan Building Code - Sheila Hartfield

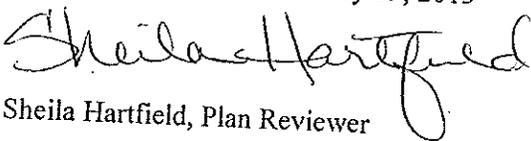
Provide a copy to this office of the exception granting relief from 2003 ICC/ ANSI A117.1 Section 404.2.3.1 from the Barrier Free Design Board.

Upon receipt of a written satisfactory response to each Building code plan review comment, the approval will be forwarded.

If you have any questions regarding your plan review, please contact our office at (517) 241-9328.

Sincerely,

Signed and Filed on: February 19, 2013


Sheila Hartfield, Plan Reviewer

SH/kc

cc: BCC - Building Division
Ehresman Associates Inc - Dale Ehresman

Providing for Michigan's Safety in the Built Environment

LARA is an equal opportunity employer
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
P.O. BOX 30254 • LANSING, MICHIGAN 48909
www.michigan.gov/bcc • Telephone (517) 241-9328 • Fax (517) 241-9308

Ehresman Associates, Inc.

architects • engineers

January 15, 2013

Michigan Department of Licensing and Regulatory Affairs
Bureau of Construction Codes
Plan Review Division
PO Box 30254
Lansing, MI 48909
2501 Woodlake Circle
Okemos, MI 48864

RECEIVED

FEB 07 2013

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

RE: Grosse Pointe Public School System
Richard Elementary School
Restroom Alteration
Application for Barrier Free Design Rule Exception
EA Project No. 6412

Dear Todd,

We are requesting this project be approved for a Barrier Free Design Rule Exception, based upon the Historic Nature of the building, the extent of the interior alteration of the project and the existing structural integrity of the building. Altering the doorway in the historic corridor, which are constructed of masonry, with marble and plaster finishes could be a very costly and time consuming addition to an otherwise straight forward restroom remodeling project. It is the owner's intent to have this project start as soon as school is out for the summer and be completed and open for the 2013-2014 school year.

This project is Phase One of an interior restroom alteration at Richard Elementary School. It consists of remodeling two (2) restrooms of the four (4) total in the building. The school district intends on remodeling the other two (2) restrooms next summer (2014). Each phase of this alteration contains a similar door issue. We are requesting approval for both phases.

We've attached photos of the overall building and restrooms, for your reference. The restrooms to be remodeled as a part of this project are original to the building. The fixtures, plumbing, HVAC, finishes, etc. are all approximately 83 years old, long past the estimated useful life of such items.

The project does not include replacement of the existing doors, limiting the work to the interior of the restrooms only. The existing doors meet the barrier free requirement of 32" clear width opening, while in the open position. The restroom walls and ceiling are fire rated, allowing the door to be held in the open position throughout the day. The door has a hold open on it, which is engaged at all times students occupy the building, the staff does close and lock the doors after hours and for cleaning purposes.

Please note, in the past we have provided automatic door operators on the restroom doors as a solution to the maneuvering clearance issues present at the existing doors. Please refer to project no. 98664, exception no. 2011-931. We propose the same solution in this instance, as noted on drawings Sheets A20, A50 and in the Project Manual as described in Section 08 711.

Enclosed is (1) set of plans and specifications (signed and sealed) for your department's review, along with a check in the amount of \$600.00 (check #578154 to cover \$300 fee for Richard and \$300 fee for Mason).

Ehresman Associates, Inc.

Richard Restroom (Phase 1)

Project No. 6412

Please **INVOICE** the **GROSSE POINTE PUBLIC SCHOOL SYSTEM** for any additional fees:

Mr. Rich VanGorder
Grosse Pointe Public School System
389 St. Clair
Grosse Pointe, MI 48230

If you should have any questions, or require additional information, please contact this office.

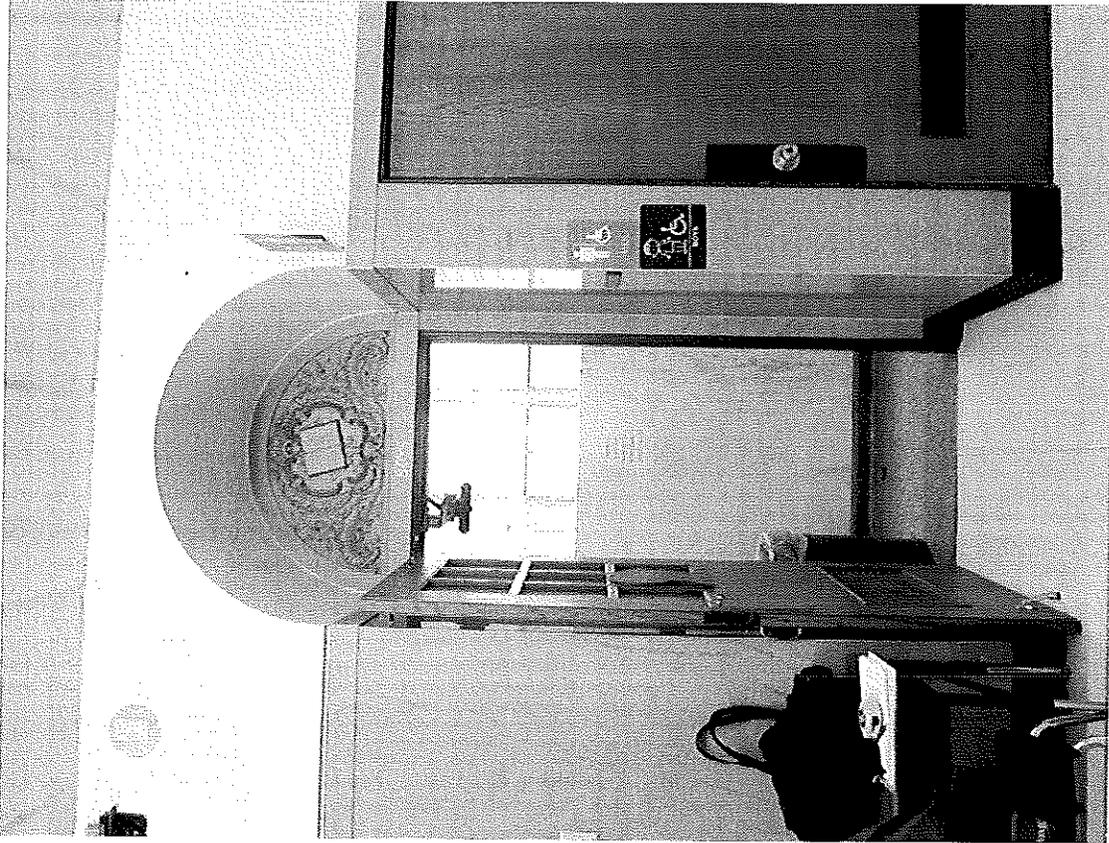
Sincerely,



Angela Burke
Architectural Designer
angela@ehresmanassociates.com

cc: C. Fenton, GPPSS
R. VanGorder, GPPSS

6412 Richard Restroom (Phase 1)\documents\Barrier Free Design Exception



Application for Barrier Free Design Rule Exception
 Michigan Department of Licensing and Regulatory Affairs
 Bureau of Construction Codes / Plan Review
 P.O. Box 30255, Lansing, MI 48901
 517-241-9328
 www.michigan.gov/bcc

104506

Application Fee: \$300.00

Authority: 1966 PA 1 Completion: Mandatory Penalty: Exception will not be granted	LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
---	--

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.

FACILITY INFORMATION				
FACILITY NAME Richard Elementary School		STREET / SITE ADDRESS 176 McKinley		
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: Grosse Pointe Farms				COUNTY Wayne
Estimated Project Cost \$ 94,000.00		Estimated Cost of Compliance \$ 5,000.00		
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)				
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number _____		
Is a Temporary Exception Requested? <input type="checkbox"/> No <input type="checkbox"/> Yes	PERIOD OF TIME REQUESTED?	USE GROUP E	CONSTRUCTION TYPE II B	
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) 2003 ICC / ANSI A117.1, SECTION 404.2.3.1 Reason for Non-Compliance See attached letter from Angela Burke dated 1-15-2013				
ENFORCING AGENCY STATE OF MICHIGAN, BUREAU OF CONSTRUCTION CODES		BUILDING OFFICIAL NAME Tad Cordill		REGISTRATION NUMBER 4774
ADDRESS P.O. Box 30255	CITY Lansing	STATE MI	ZIP CODE 48909	TELEPHONE NUMBER (Include Area Code) (517) 241-9328
BUILDING OFFICIAL SIGNATURE (Must be an original signature) <i>Tad Cordill</i>		E-MAIL ADDRESS cordill@michigan.gov		FAX NUMBER (Include Area Code) (517) 241-9308
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)				
COMPANY NAME Ehresman Associates, Inc.		LICENSED INDIVIDUAL Mr. Dale Ehresman		MICHIGAN LICENSE NUMBER 18759
ADDRESS 803 W. Big Beaver Rd, Ste 350	CITY Troy	STATE MI	ZIP CODE 48084	TELEPHONE NUMBER (Include Area Code) (248) 244-9712
APPLICANT (Note: All correspondence will be sent to this address)				
COMPANY NAME Grosse Pointe Public School System		APPLICANT NAME Mr. Richard VanGorder		FEIN OR SS NO.* (Required)
ADDRESS 389 St. Clair	CITY Grosse Pointe	STATE MI	ZIP CODE 48230	TELEPHONE NUMBER (Include Area Code) (313) 432-3082
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.				FAX NUMBER (Include Area Code) (313) 432-3086
APPLICANT SIGNATURE (Must be an original signature) <i>R. VanGorder</i>			DATE 2/6/13	

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

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 13-000298-BCC

Kazanis Dental
4251 Coolidge Highway
Royal Oak, Michigan,

Case No.: 104663

Agency: Bureau of Constructio
Codes

Applicant

Case Type: BCC Barrier Free Desi

Filing Type: Barrier Free Design
Exception Request

7. EXCEPTION APPLICATIONS
7. 104663

RECEIVED

APR 26 2013

Issued and entered
this 25th day of April 2013
by Lauren G. Van Steel
Administrative Law Judge

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

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 March 27, 2013, in Lansing, Michigan. Robert Cliffe, Architect with MGA Architects, appeared on behalf of Kazanis Dental, Applicant. Usha Menon appeared as a representative on behalf of the Plan Review Division of the Bureau of Construction Codes.

Mr. Cliffe was sworn in and testified as a witness for the Applicant. The following exhibit, offered by the Applicant, was admitted into the record as evidence:

1. Applicant's Exhibit No. 1 is a photograph of the shower area within Petitioner's private washroom.

The record closed at the conclusion of the hearing..

ISSUE

The issue presented is whether the Board should grant the Applicant a permanent exception from Section 1109.2 of the 2009 Michigan Building Code.

FINDINGS OF FACT

The Applicant, Kazanis Dental, has filed an application for a permanent exception from the 2009 Michigan Building Code for a building located at 4251 Coolidge Highway in Royal Oak, Michigan. The application for an exception was received by the Plan Review Division within the Bureau of Construction Codes on March 7, 2013.

Robert Cliffe, Architect, credibly testified that the Applicant has conducted an interior renovation of the building in question, which was completed in December 2012. The renovation was in an empty tenant space for a new 4,200 square-ft. dental office within the existing building. The project included a custom-designed private washroom/shower off of the Applicant's private office. An accessible toilet and shower area were installed. The only matter at issue is installation of three grab bars in the shower.

Mr. Cliffe credibly testified that Demetra Kazanis, D.D.S. is the only dentist who works in the building. Dr. Kazanis owns the portion of the building that houses the dental office. The private washroom/shower is accessible only through Dr. Kazanis' own private office. No staff person, patient or member of the public is expected to use the private washroom/shower. There is a separate washroom for patients and a separate washroom for staff persons in the dental office.

The Applicant does not wish to install grab bars in the shower at this time, because they would interfere with the Applicant's use of the custom-designed shower seat, as shown in Applicant's Exhibit No. 1. Installing grab bars would interfere with the Applicant's access to the shower seat and prevent her from leaning back on the shower seat.

Also, installing grab bars would require punching through the existing limestone tile of the shower walls. The Applicant has reinforced the underlying walls with blocking, however, so that grab bars could be installed as an adaptation in the future if the need ever arose.

Exception 1.3 to Section 1109.2 of the 2009 Michigan Building Code includes an exception from installation of grab bars "in a toilet room, provided that reinforcement has been installed in the walls and located so as to permit the installation of such grab bars". Mr. Cliffe notes that this exception does not clearly state that grab bars are not required in private shower/bathing rooms, although Exception 1 to Section 1109.2 does address both toilet rooms and bathing rooms.

Mr. Cliffe's office has contacted the International Code Council, which indicated that it recognized the wording of Exception 1.3 did not expressly include bathing or shower rooms, and that this omission was a clerical matter.

The entire renovation project cost is \$320,000.00 and the estimated cost of compliance to install grab bars is \$600.00. Mr. Cliffe acknowledged that the cost of compliance is not really at issue.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, MCL 125.1351 *et seq.* (hereafter "Act") 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, technologically, structurally, or administratively feasible.

The term, "compelling need" is defined in Section 5a(2) of the Act as follows:

- (2) As used in subsection (1), "compelling need" includes, but is not limited to, 1 or more of the following:
 - (a) Structural limitations.
 - (b) Site limitations.
 - (c) Economic limitations.
 - (d) Technological limitations.
 - (e) Jurisdictional conflicts.
 - (f) Historical structures, under conditions prescribed by rule of the construction code commission. MCL 125.1355a(2).

Also, Barrier Free Design Board Rule R 125.1014(2) lists the following factors which may be considered in determining whether compelling need has been demonstrated:

- Rule 14. (2) In addition to section 5a(2) of the act, factors which may be considered in determining whether compelling need has been demonstrated include the following, if applicable:
 - (a) Circumstances which required compliance, such as any of the following:
 - (i) Use group change.
 - (ii) New construction.
 - (iii) Occupancy load change.
 - (iv) Alteration other than ordinary maintenance.
 - (v) Addition.
 - (b) The total project cost, including all of the following:

- (i) The total construction or remodeling cost.
- (ii) Land acquisition cost.
- (iii) Cost for furnishings.
- (iv) Purchase price of the structure.
- (c) Nature of the business or facility.
- (d) Anticipated public traffic.
- (e) Hours and days of operation.
- (f) Financial position of the business or agency.
- (g) Age of the business.
- (h) Lease provisions, if the applicant is a lessee of the facility; and the name and address of the owner, if the owner refuses to allow compliance with the barrier free design requirements.
- (i) Tax abatements, tax credits, and tax deductions for which the project qualifies.
- (j) Age of existing building.
- (k) Size of all levels and areas of the project and the size of the area or areas proposed to be inaccessible.
- (l) Use of the area proposed to be inaccessible.
- (m) Aspects of the project that do comply with the barrier free design requirements.
- (n) Number of employees who will be using the area or facility.
- (o) Description of the job duties of the employees.
- (p) Vertical distance from grade to entrance level.
- (q) Vertical distance or distances between floor levels.
- (r) Width and layout of existing stairways.
- (s) Cost of compliance in relation to the total project cost, the size of the area proposed to be inaccessible, and the use of the area proposed to be inaccessible.
- (t) Existing structural limitations.
- (u) Site restrictions, such as any of the following:
 - (i) Size of site.
 - (ii) Greenbelt or set-back requirements.
 - (iii) Off-street parking requirements.
 - (iv) Unusual soil or site conditions.
- (v) Spatial and financial feasibility of alternatives to compliance, such as any of the following:
 - (i) Ramp with slightly steeper slope.
 - (ii) Alternative lifting devices such as a special elevating device or wheelchair lifting device.
 - (iii) Accessible entrance other than the nearest entrance.
 - (iv) Unisex barrier free bathroom.
- (w) Feasibility of an exception for a stated period of time after which compliance with the requirements would be achieved and the plan or proposal for compliance.
- (x) Duplication of facilities available.

(y) Historic designation and character of the facility, as determined by the Michigan bureau of history, department of state, or the United States department of the interior as specified in R 408.30428.

(z) Similar projects previously reviewed by the board.

(aa) Whether the applicant complied with the requirements contained in section 10 of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, known as the construction code act.

(bb) Whether the project was started or constructed, or both, pursuant to a permit based on plans or specifications that complied with the barrier free design requirements, in accordance with section 11 of Act No.230 of the Public Acts of 1972, as amended, being §125.1511 of the Michigan Compiled Laws, known as the construction code act.

(cc) Any other factual information related to the project which the applicant believes should be considered by the board. 1988 AACCS, R 125.1014(2).

Section 1109.2 of the 2009 Michigan Building Code states as follows:

1109.2 Toilet and bathing facilities. Each toilet room and bathing room shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing rooms provided within the facility shall not be located on the inaccessible floor. At least one of each type of fixture, element, control or dispenser in each accessible toilet room and bathing room shall be accessible.

Exceptions:

1. In toilet rooms or bathing rooms accessed only through a private office, not for common or public use and intended for use by a single occupant, any of the following alternatives are allowed:
 - 1.1 Doors are permitted to swing into the clear floor space, provided the door swing can be reversed to meet the requirements in ICC A117.1;
 - 1.2 The height requirements for the water closet in ICC A117.1 are not applicable;
 - 1.3 Grab bars are not required to be installed in a toilet room, provided that reinforcement has been installed in the walls and located so as to permit the installation of such grab bars; and

- 1.4 The requirement for height, knee and toe clearance shall not apply to a lavatory.
2. This section is not applicable to toilet and bathing rooms that serve dwelling units or sleeping units that are not required to be accessible by Section 1107.
3. Where multiple single-user toilet rooms or bathing rooms are clustered at a single location, at least 50 percent but not less than one room for each use at each cluster shall be accessible.
4. Where no more than one urinal is provided in a toilet room or bathing room, the urinal is not required to be accessible.
5. Toilet rooms that are part of critical care or intensive care patient sleeping rooms are not required to be accessible. 2009 Michigan Building Code, Section 1109.2 (Emphasis supplied).

Based on the above findings of fact, it is concluded that the Applicant has demonstrated compelling reasons to justify an exception, given the private location and use of the shower/toilet room in question. Compelling need has been shown based on the proposed private use of the non-barrier free compliant area. No persons other than the Applicant (Dr. Kazanis) are expected to use the custom-designed washroom/shower space. Therefore, compelling need has been shown pursuant to Rules 14(2)(l)&(n), being 1988 AACS, R 125.1014(2)(l)&(n), above.

Further, it appears that the intent, if not the exact wording, of Exception 1.3 to Section 1109.2 of the 2009 Michigan Building Code above has been satisfied by the Applicant through the reinforcement of the walls in the private shower space to allow for installation of grab bars if ever needed in the future.

An exception is therefore properly granted for the duration of the Applicant's use of the building space.

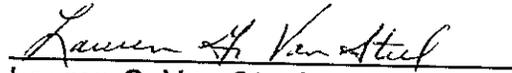
RECOMMENDED DECISION

Based on the above findings of fact and conclusions of law, the undersigned recommends that the Board grant the Applicant an exception from Section 1109.2 of the 2009 Michigan Building Code, for the duration of the Applicant's use of the building space.

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. A party may file comments, clarifications or objections to this Report, including written

Docket No. 13-000298-BCC
Page 7

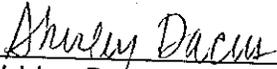
arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Todd Cordill.



Lauren G. Van Steel
Administrative Law Judge

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 below this 25th day of April, 2013.

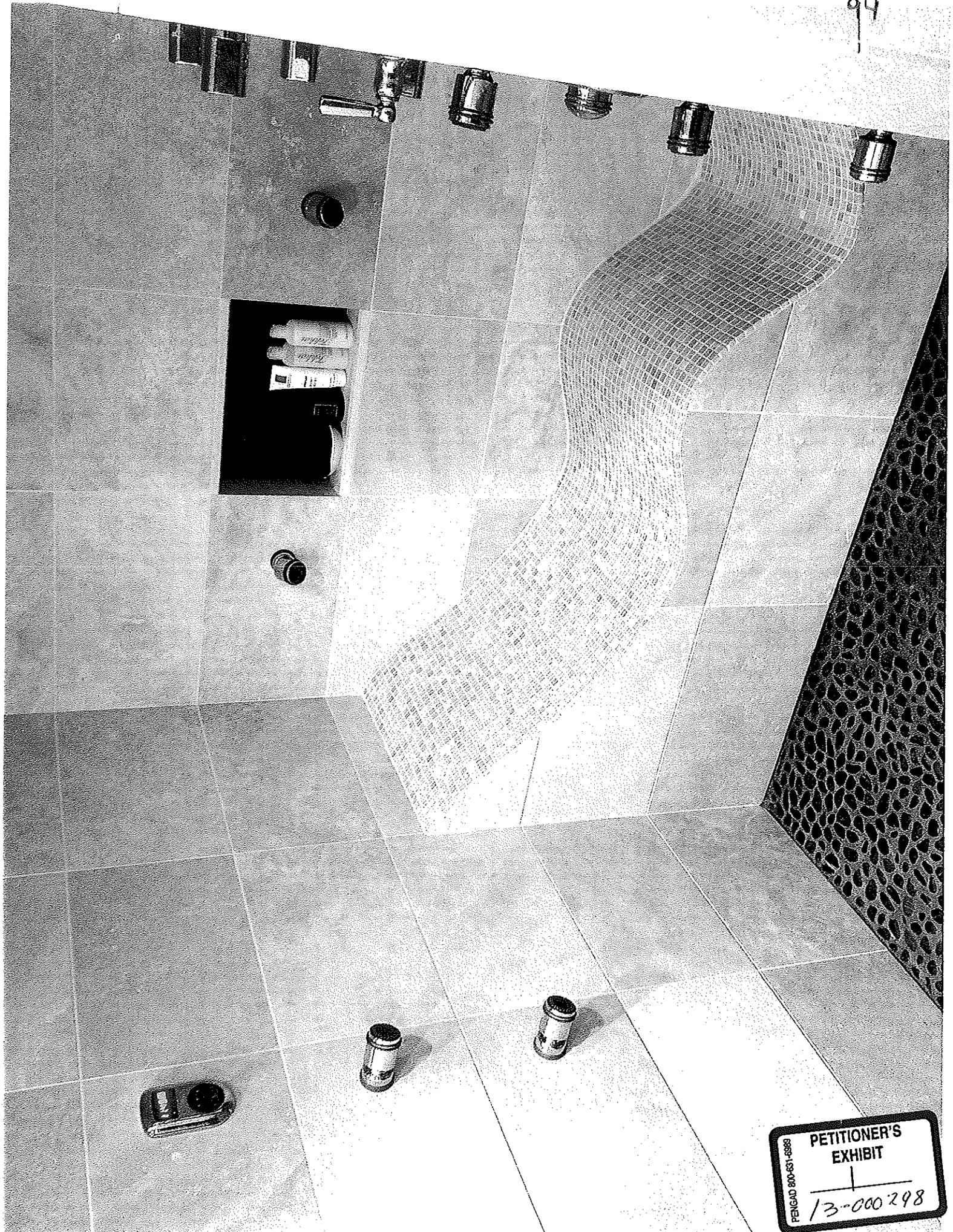


Shirley Dacus
Michigan Administrative Hearing System

Robert Cliffe
MGA Architects
4351 Delemore Court
Royal Oak, MI 48073

Jason Craig
City of Royal Oak
211 Williams
Royal Oak, MI 48068

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



PETITIONER'S
EXHIBIT
13-000298

PERIGAD 800-631-6868

RECEIVED

MAR 07 2013

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Application for Barrier Free Design Rule Exception
Michigan Department of Licensing and Regulatory Affairs
Bureau of Construction Codes / Plan Review
P.O. Box 30255, Lansing, MI 48909
517-241-9328
www.michigan.gov/bcc

104663

Application Fee: \$300.00

Authority: 1968 PA 1 Completion: Mandatory Penalty: Exception will not be granted	LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
---	--

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.

FACILITY INFORMATION			
FACILITY NAME KAZANIS DENTAL		STREET / SITE ADDRESS 4251 COOLIDGE HIGHWAY	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: ROYAL OAK		COUNTY OAKLAND	
Estimated Project Cost \$ 320,000		Estimated Cost of Compliance \$ 600.00	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number DB12-00480	
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) 1109.2 Reason for Non-Compliance RULES GOVERNING CONSTRUCTION HAVE BEEN INCORRECTLY INTERPRETED.			
ENFORCING AGENCY CITY OF ROYAL OAK		BUILDING OFFICIAL NAME JASON CLIFFE	
REGISTRATION NUMBER 004849		TELEPHONE NUMBER (Include Area Code) 248 246 3225	
ADDRESS 211 WILCOX	CITY ROYAL OAK	STATE MI	ZIP CODE 48068
BUILDING OFFICIAL SIGNATURE (Must be an original signature) 		E-MAIL ADDRESS JASONC@CI.ROYAL-OAK.MI.GOV	
DATE		FAX NUMBER (Include Area Code) 248 246 3006	
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)			
COMPANY NAME MGA ARCHITECTS		LICENSED INDIVIDUAL ANDREW MOISEV RA.	
MICHIGAN LICENSE NUMBER 31108		TELEPHONE NUMBER (Include Area Code) 248-549-4500	
ADDRESS 4351 DELOMORE CT.	CITY ROYAL OAK	STATE MI	ZIP CODE 48073
APPLICANT (Note: All correspondence will be sent to this address)			
COMPANY NAME MGA ARCHITECTS		APPLICANT NAME ROBERT CLIFFE RA.	
FEIN OR SS NO. * (Required)		TELEPHONE NUMBER (Include Area Code) 248-549-4500	
ADDRESS 4351 DELOMORE COURT	CITY ROYAL OAK	STATE MI	ZIP CODE 48073
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.		FAX NUMBER (Include Area Code) 248-549-7300	
APPLICANT SIGNATURE (Must be an original signature) 		DATE Dec. 7, 2012	