

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2002-1024

**Eye Group Associates
11225 S. Saginaw
Grand Blanc, MI 48439,**

Agency No. BFD 02-075

Agency: Bureau of Construction
Codes

Applicant

Case Type: Barrier Free Design
Exception Request

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**Issued and entered
this 10th day of September, 2002
by C. David Jones
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 24.101 *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 August 26, 2002, at 2501 Woodlake Circle, Okemos, Michigan. Present were Peter Agnone, partner of Eye Group Associates, and Usha Menon representing the Barrier Free Design Division.

ISSUE

Whether an exception should be granted from Section 1109.2, 2000 Michigan Building Code.

FINDINGS OF FACT

1. Peter Agnone and his partner, both optometrists, shut down their separate offices and opened a combined business known as Eye Group Associates. The business provides eye exams and glasses. The business has five additional employees (for a total of seven), although not all employees are present every day. The business hours are 9 to 5 Monday thru Friday. The business opened in August 2002.

2. Eye Group Associates purchased the building. The building was built about 1984. It was previously used as a retail lighting store. It has 3,100 feet on the first floor and 3,100 feet on the second floor. The first floor is used for the business and the second floor is unfinished and used for storage.

3. Eye Group Associates remodeled the building to fit their needs. Construction is complete. One unisex accessible toilet is available for patients and staff. In addition, each of the optometrists has a private toilet room off the private office.

4. The two private toilet rooms do not comply with Section 1109.2, 2000 Michigan Building Code, because of inadequate space.

5. The Eye Group Associates requested an exception based on space limitations and the availability of another accessible toilet room.

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 compelling need is demonstrated by the Applicant. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules which 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. MCL 125.1355(a); MSA 38.447(125)(a); 1988 AACCS, R 125.1014.

Section 1109.2, Michigan Building Code requires that toilet and bathing facilities be accessible.

The Applicant has demonstrated compelling need. The toilet rooms are really for private use by the two optometrists, not for public use. An accessible public toilet room is readily available. To make the private toilet rooms accessible would be a duplication of facilities.

RECOMMENDED DECISION

I recommend the Board grant the Applicant an exception from Section 1109.2, 2000 Michigan Building Code.

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

COMMENTS, CLARIFICATIONS OR OBJECTIONS

A party may file comments, clarifications or objections to this Report, including written arguments, with the Barrier Free Design Board (Board). Any comment, clarification or objection shall be notarized and received by the Board's authorized agent before the Board meeting at the following address: Bureau of Construction Codes, 2501 Woodlake Circle, 2nd Floor, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke, Telephone: (517) 241-9300.

C. David Jones
Administrative Law Judge