

February 12, 2014

Rep. Helen Head, Chair
House Committee on General and Military Affairs
State of Vermont
Montpelier, VT

re: H.629

Dear Representative Head,

Thank you very much for asking for input from the architectural community on House Bill H.629. Let me preface my comments by saying that I am a very strong advocate for improving and providing handicapped accessibility to our buildings and public spaces, and have been a proponent of handicapped accessibility throughout my nearly forty year career, which includes 35 years since having been licensed to practice architecture in Vermont in 1979.

H.629 was introduced to provide consistency between Vermont's elevator requirements and the elevator requirements of the Americans with Disabilities Act (ADA). Last year, the Division of Fire Safety (through the Access Board) undertook a revisions process to update its 2012 Vermont Access Rules; during that process, the requirements for vertical access in existing public buildings was expanded from 1000 SF to 3000 SF, but the requirement for new public buildings was left at 1000 SF. To be sure, the rules were clarified to exempt the area of stairs, mechanical spaces and storage spaces from the 1000 SF, which is helpful. It has come to my attention that others think that H.629 may be in conflict with the ADA; if this is so, it is unintentional. The concern about conflict between H.629 and the ADA may be that the ADA does not distinguish storage and mechanical spaces from its 3000 SF exception. The purpose of H.629 is to make the requirement for vertical access in Vermont to be synchronous with the ADA.

It may be informative to offer a primer on applicable buildings codes in Vermont. Buildings in Vermont are governed by multiple codes and standards: first and foremost is the 2012 Vermont Fire and Building Safety Code (VTF&BSC) which incorporates, modifies and embellishes National Fire Protection Association (NFPA) codes (2012 NFPA 1 and 2012 NFPA 101) and International Code Council (ICC) building code (2012 IBC); the 2011 Vermont Electrical Safety Rules; the 2012 Vermont Plumbing Rules, the 2008 Vermont Elevator Safety Rules, the 2012 Vermont Access Rules, and the 2010 ADA. In addition to all of these documents, many municipalities in Vermont have enacted additional requirements; for example, both Burlington and South Burlington have minimum elevator requirements that significantly exceed the VTF&BSC elevator requirements, which add even more financial burden in increased elevator cab size, elevator shaft size, and electrical motor requirements. H.629 is addressing vertical access, and the principal standard it would affect is the 2012 Vermont Access Rules.

As you no doubt know, the ADA is the law of the land, and is divided into two fundamental sections: Title II (public buildings, essentially all government buildings), and Title III (places of public accommodation which are generally privately owned). The ADA's requirements for vertical access do not provide exemptions for vertical access in Title II facilities; however, it does provide an exemption for private facilities up to 3000 SF (see Section 206.2.3, Exc 1 of the 2010 ADA, which does not exempt such facilities as health care providers, public transportation terminals, a shopping center or mall). Under the ADA, a private facility is "a place of

public accommodation or a commercial building or facility subject to title III of the ADA and 28 CFR part 36 or a transportation building or facility subject to title III of the ADA and 49 CFR 37.35". A public building defined under the 2012 Vermont Access Rules is very broad, and basically covers both Title II and Title III buildings (refer to definition on pg. 5 of 2012 Vermont Access Rules). The issue of vertical access must have been thoroughly discussed and vetted during the development of the ADA rules, balancing issues such as maximizing accessibility while recognizing that there are certain building sizes below which requiring vertical access is practically and financially unfeasible. Simply put, Vermont's requirements should mirror the ADA, whether the building is a new building or an existing building.

While I believe that the 2012 Vermont Access Rules and the overall history of Vermont's approach to handicapped accessibility offer a very progressive approach to maximizing handicapped accessibility, especially in multi-family housing development, the 1000 SF requirement for vertical access in new buildings is a requirement that I and many others involved in design and construction believe is actually detrimental to the types and kinds of development patterns that lend character to our villages and towns.

This 1000 SF requirement for elevators has been in VT law for many years, and I think a confluence of factors has caused me and others to pursue trying to effect its change. As today's elevator cab size requirements have increased and installation and annual service costs have increased, it becomes financially very burdensome to install elevators to serve such small spaces. When looked at in total (elevator package, shaft construction, loss of floor space, increased electrical service, etc.), an elevator to serve a small three story building can easily exceed \$100,000, service contracts can be \$1000/month or more, not to mention increased monthly utility bills. More importantly, however, I feel that the smaller threshold discourages the redevelopment of some of our smaller downtown buildings, many of which have empty upper floors and footprints greater than 1000 SF and less than 3000 SF. I also think this pushes some people to develop in more suburban locations where if they need 4000 SF, they'll just build a one story building rather than a two story 2000 SF building. Decisions like that mean more energy consumption, more land disruption, etc. and are antithetical to sustainable development and smart growth policies. Furthermore, in cases where this 1000 SF requirement prevents the re-use of upper floors of many of our buildings, it also means that those buildings' first floors are most likely not being improved, and thus even those floors don't benefit from the improved accessibility that would be required if the overall building were to be improved. Given the number of tragic fires that have wreaked havoc in some of our towns in recent years, redeveloping those gaping holes becomes all the more difficult if the building footprint is over 1000 SF but under 3000 SF, given the high cost of providing an elevator. I don't think one story infills in these locations serves our communities well, either socially or visually, yet that may be the only affordable way to develop if the 1000 SF threshold remains.

The Vermont Chapter of the American Institute of Architects (VT-AIA) has taken the position that the Vermont Rules should use the ADA threshold of 3000 SF before requiring access by elevator. While I am certain that maximizing handicapped accessibility is an important and sensitive issue, I have become convinced that the national (i.e., ADA) requirement to provide vertical access to spaces greater than 3000 SF is not only rational for Vermont, but is important to continue to keep and maintain healthy and vibrant village and town centers, and make that type of development easier to compete with suburban sprawl.

I urge your committee to seriously consider this issue, and take appropriate action, which could even be a different direction from H.629 but could still achieve the same result. For instance, the legislature could direct the Access Board to amend its rules to make vertical access for new buildings, not just existing buildings, consistent with the ADA.

Sincerely,

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