



Building Code Board of Appeals

Meeting Date: March 19, 2020

Requested By: Development Services

Item Title:

Review the 2010 ADA (Americans With Disabilities Act) Standards for Accessible Design code sections 36.104, 36.304, 36.305, 36.402, and 36.403. Requirements for a readily accessible route for use by individuals with disabilities, including individuals who use wheelchairs, in reference to 1001 South Market Street, owned by Zeke and Samantha Howell.

Explanation:

Mr. Zeke Howell has made application to appeal the code requirements of sections 36.304, 36.402, and 36.403 of the 2010 ADA Standards for Accessible Design which requires him, per local, state, and federal law, to construct an ADA accessible handicap ramp for those with disabilities.

On August 28, 2018, city officials discovered Mr. Howell was converting and remodeling a portion of the building located at 1001 South Market Street into a dog grooming business. The construction was started on this project without consulting with the city and without any building permits. On September 4, 2018, a Stop Work Order notice was issued to stop construction of the work.

On September 18, 2018, the proper building and trade permits were issued. During that time frame, Jason VanAusdall with V&K, was the acting Building Official and had been in communication with Mr. Howell on multiple occasions about the requirements of an ADA accessible ramp for his new business. After much discussion, Mr. Howell provided an ADA capital improvement plan to Jason showing that \$3,000 would be provided towards an accessible route into the business, which included an ADA accessible ramp.

Sections 36.402 and 36.403 of the 2010 ADA requires alterations in a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration. Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

Therefore, an agreement was made with city officials that Mr. Howell would provide 20% (\$3,000) of the cost of alterations, (not 20% of the total project valuation which was \$34,975), towards an ADA accessible ramp to provide an accessible entrance into his building. The cost of alterations and project valuation is not set by the property owner and/or contractor, rather, is set by the Building Official and calculated using the cost per square foot formula as set forth and updated annually by the ICC (International Code Council).

As allowed per federal law, the ADA gives the AHJ (authority having jurisdiction), in this case Jason Van Ausdall, the authority to allow the property owner to provide readily achievable accommodations within a reasonable timeline. As such, Jason gave Mr. Howell 12 months from the date the temporary certificate of occupancy was issued to complete the ADA ramp. As a temporary accommodation until the ramp was completed, Mr. Howell was allowed to provide curb side service with a doorbell installed at the bottom of the existing steps.

Mr. Howell did not obtain a building permit to construct the ramp until September 13, 2019, (12 months after the temporary certificate of occupancy was issued), which was when the ramp was supposed to be completed. So the city granted him a 3 month extension, giving him until December 31, 2019 to complete the ramp.

As of today's date, the ramp is still incomplete and all work has stopped. On January 31, 2020, Mr. Howell sent an email to the city debating the city code (federal law) again. After the email communication was received, the city sent a notice to Mr. Howell, giving him another extension, to have the ramp completed by March 4, 2020, with the stipulation that the city would reserve the right to revoke his certificate of occupancy and file a municipal infraction if the work was not completed by this date. The city has delayed taking any legal action against Mr. Howell until this matter is reviewed by the commission.

Mr. Howell has stated that the city has imposed an undue hardship onto his family and business due to the cost of construction. An important fact to point out is that Mr. Howell's construction design of the ramp far exceeds the city and federal government's requirements. The requirement was for a basic ADA compliant handicap ramp to be built with, at minimum, treated lumber and a hard surface parking space (asphalt or concrete) with proper signage.

However, Mr. Howell made the decision to design and construct the deck surface portion of the ramp out of concrete, construct a roof over the ramp structure, and tear out the existing hard surface asphalt and replace it with concrete. These design methods were not required by the city and added significant costs to the project. At this point in time and from the city's standpoint, the ramp is approximately 90% complete and is only lacking the proper hand railing and guards.

Of Special Note:

Section 113.2 of the IBC sets the limitations on authority for the Board of Appeals. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted or the provisions of this code do not fully apply. **The Board shall have no authority to waive requirements of this code.**

Staff Recommendation:

Staff is recommending that the Board of Appeals review all code sections listed, and to uphold the Building Divisions requirement of an ADA accessible ramp as required by local, state, and federal law, allowing Mr. Howell an additional **30 days** from the date of this meeting to complete the ramp.

Attachments:

ADA code sections 36.104, 36.304, 36.305, 36.402, and 36.403. Pictures, Capital Improvement Plan, Elevation Drawings, Email Correspondence, Notices, and Certificate of Occupancy.