

City of Calistoga

Staff Report

TO: BSAAB Chairman and Members

FROM: Brad Cannon, Building Official

CC: Steve Campbell, Fire Chief
Charlene Gallina, Planning & Building Director

DATE: January 28, 2010

**SUBJECT: UNREASONABLE HARDSHIP REQUEST BA 2010-01,
LOCATED AT 1413 LINCOLN STREET – CAFÉ SARAFORNIA**

1 **ISSUE:**

2 A request has been received for an unreasonable hardship for the existing entrance at
3 1413 Lincoln street doing business as Café Sarafornia.

4

5 **BACKGROUND:**

6 Current ADA law requires interior or exterior rooms, spaces, or elements that are made
7 available to the public be provided with an accessible entrance at a building or facility
8 that is privately or publicly owned.

9

10 The 2007 California Building Code (CBC) Section 1134B requires all entrances and
11 exterior ground floor exit doors to buildings and facilities be made accessible to persons
12 with disabilities.

13

14 Café Sarafornia was issued a Building Permit No. 5268 on January 12, 2010 to replace
15 the existing front door. The permit was conditioned requiring that an unreasonable
16 hardship claim be submitted for action ratified by the Building Standards Advisory and
17 Appeals Board (BSAAB).

18

19 **RECOMMENDATION:**

20 Staff finds that compliance with this code creates an unreasonable hardship. Staff
21 further recommends approval of the unreasonable hardship claim based on the current
22 design and location of the entrance and the disproportional cost of the project as
23 outlined within the unreasonable application form.

24

25 **SUGGESTED MOTIONS:**

26 I move that the Board approve the unreasonable hardship request at 1413 Lincoln
27 Street – Café Sarafornia.

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29

30 **ATTACHMENTS:**

- 31 1. CBC 2007 Section 1134B
- 32 2. CBC 2007 Section 109.1.5
- 33 3. BA 2010-01, Unreasonable Hardship Application
- 34 4. Pictures

Division IV—ACCESSIBILITY FOR EXISTING BUILDINGS

SECTION 1134B ACCESSIBILITY FOR EXISTING BUILDINGS

1134B.1 Scope. The provisions of this division apply to renovation, structural repair, alteration and additions to existing buildings, including those identified as historic buildings. This division identifies minimum standards for removing architectural barriers, and providing and maintaining accessibility to existing buildings and their related facilities.

No renovation, structural repair, alteration or addition shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a building or facility below the requirements for new construction at the time of renovation, structural repair, alteration or addition.

1134B.2 General. All existing buildings and facilities, when alterations, structural repairs or additions are made to such buildings or facilities, shall comply with all provisions of Division I—New Buildings, except as modified by this division. These requirements shall apply only to the area of specific alteration, structural repair or addition and shall include those areas listed below:

1134B.2.1 A primary entrance to the building or facility and the primary path of travel to the specific area of alteration, structural repair or addition, and sanitary facilities, drinking fountains, signs and public telephones serving the area.

Exceptions:

1. When the total construction cost of alterations, structural repairs or additions does not exceed a valuation threshold of \$50,000, based on January 1981, "ENR US20 Cities" Average Construction Cost Index of 3372.02 (Engineering News Record, McGraw Hill Publishing Company), and the enforcing agency finds that compliance with this code creates an unreasonable hardship, compliance shall be limited to the actual work of the project. The enforcing agency shall annually update the valuation threshold to a current amount based on the increase in the index since the last figure used. (For example, the January 2008 amount is \$119,958.65.) For purposes of this exception, an unreasonable hardship exists where the cost of providing an accessible entrance, path of travel, sanitary facilities, public phones and drinking fountains is disproportionate to the cost of the project; that is, where it exceeds 20 percent of the cost of the project without these features. Where the cost of alterations necessary to make these features fully accessible is disproportionate, access shall be provided to the extent that it can be without incurring disproportionate cost. In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the following order:

- 1.1. An accessible entrance;
- 1.2. An accessible route to the altered area;
- 1.3. At least one accessible restroom for each

- 1.4. Accessible telephones;
- 1.5. Accessible drinking fountains; and
- 1.6. When possible, additional accessible elements such as parking, storage and alarms.

The obligation to provide access may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking. If an area has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area or a different area on the same path of travel are undertaken within three years of the original alteration, the total cost of alterations to the areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate. Only alterations undertaken after January 26, 1992, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.

2. Certain types of privately funded, multistory buildings and facilities were formerly exempt from accessibility requirements above and below the first floor under this code, but as of the effective date of this regulation are no longer exempt due to more restrictive provisions in the federal Americans with Disabilities Act. In alteration projects involving buildings and facilities previously approved and built without elevators, areas above and below the ground floor are subject to the 20-percent disproportionality provisions described in Exception 1, above, even if the value of the project exceeds the valuation threshold in Exception 1. The types of buildings and facilities are:

- 2.1. Office buildings and passenger vehicle service stations of three stories or more and 3,000 or more square feet (279 m²) per floor;
- 2.2. Offices of physicians and surgeons.
- 2.3. Shopping centers.
- 2.4. Other buildings and facilities three stories or more and 3,000 or more square feet (279 m²) per floor if a reasonable portion of services sought and used by the public is available on the accessible level.

For the general privately funded multistory building exception applicable to new construction and alterations, see Section 1103B.1, Exception 2.

The elevator exception set forth in this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements in this code. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor:

3. Alterations, structural repairs or additions consisting of one or more of the following shall be limited to the actual work of the project:

- 3.1. Altering one building entrance to meet accessibility requirements.
- 3.2. Altering one existing toilet facility to meet accessibility requirements.
- 3.3. Altering existing elevators to meet accessibility requirements.
- 3.4. Altering existing steps to meet accessibility requirements.
- 3.5. Altering existing handrails to meet accessibility requirements.
- 3.6. Alteration solely for the purpose of removing barriers undertaken pursuant to the requirements of Sections 36.402 and 36.404 through 36.406 of Title III of the Department of Justice regulations promulgated pursuant to the Americans with Disabilities Act (Public Law 101-336, 28 C.F.R. Section 36.402, 28 C.F.R. Section 36.404, 28 C.F.R. Section 36.405, and 28 C.F.R. 36.406) or the accessibility requirements of this code as those requirements or regulations now exist or are hereafter amended, including the following:
 - 3.6.1. Installing ramps.
 - 3.6.2. Making curb cuts in sidewalks and entrance.
 - 3.6.3. Repositioning shelves.
 - 3.6.4. Rearranging tables, chairs, vending machines, display racks, and other furniture.
 - 3.6.5. Repositioning telephones.
 - 3.6.6. Adding raised markings on elevator control buttons.
 - 3.6.7. Installing flashing alarm lights.
 - 3.6.8. Widening doors.
 - 3.6.9. Installing offset hinges to widen doorways.
 - 3.6.10. Eliminating a turnstile or providing an alternative accessible path.
 - 3.6.11. Installing accessible door hardware.
 - 3.6.12. Installing grab bars in toilet stalls.
 - 3.6.13. Rearranging toilet partitions to increase maneuvering space.
 - 3.6.14. Insulating lavatory pipes under sinks to prevent burns.
 - 3.6.15. Installing a raised toilet seat.
 - 3.6.16. Installing a full-length bathroom mirror.
 - 3.6.17. Repositioning the paper towel dispenser in a bathroom.
 - 3.6.18. Creating designated accessible parking spaces.

- 3.6.19. Installing an accessible paper cup dispenser at an existing inaccessible water fountain.
- 3.6.20. Removing high-pile, low-density carpeting.
- 3.6.21. Installing vehicle hand controls.

3.7. Altering existing parking lots by resurfacing and/or restriping.

4. Projects which consist only of heating, ventilation, air conditioning, reroofing, electrical work not involving placement of switches and receptacles, cosmetic work that does not affect items regulated by this code, such as painting, equipment not considered to be a part of the architecture of the building or area, such as computer terminals, office equipment, etc., are not considered alteration projects for the purposes of accessibility for persons with disabilities and shall not be subject to this code unless they affect the usability of the building or facility. For the purposes of this section, the term "construction cost" does not include building permit fees or discretionary permit fees.

The only purpose of this exception is to exclude projects from activating the provisions of this section. The exceptions are not intended to relieve projects from complying with other applicable provisions of this code (e.g., replacement of carpet does not activate the provisions of this section; however, it still must comply with Section 1124B.3).

→ 1134B.2.2 Where it is technically infeasible in the area of an alteration to make existing toilet facilities code compliant and to install separate toilet facilities for each sex, then the installation of at least one unisex toilet/facility per floor being altered, located in the same area as existing toilet facilities, will be permitted. Such a facility shall meet the requirements of Section 1115B.3.2.

**SECTION 1135B
HISTORIC PRESERVATION—SPECIAL STANDARDS
OF ACCESSIBILITY FOR BUILDINGS WITH
HISTORICAL SIGNIFICANCE**

1135B.1 General. Qualified historical buildings shall comply with the State Historical Building Code, Part 8, Title 24, of the California Code of Regulations.

109.1.4.3 The building department of every city, county or city and county within the territorial area of its city, county or city and county, where private funds are utilized. "Building department" means the department, bureau or officer charged with the enforcement of laws or ordinances regulating the erection or construction, or both the erection and construction, of buildings.

109.1.5 Special conditions for persons with disabilities requiring appeals action ratification. Whenever reference is made in these regulations to this section, the findings and determinations required to be rendered by the local enforcing agency shall be subject to ratification through an appeals process.

109.1.6 Authority cited—Government Code Section 4450.

109.1.7 Reference cited—Government Code Sections 4450 through 4461 and 12955.1(d) and Health and Safety Code Sections 18949.1, 19952 through 19959.

109.2 Division of the State Architect—Structural Safety.

109.2.1 Application—The Division of the State Architect—Structural Safety (DSA-SS) is authorized by law to promulgate building standards and administrative regulations for application to public elementary and secondary schools, community colleges and state-owned or state-leased essential services buildings.

Enforcing agency—The Division of the State Architect—Structural Safety (DSA-SS) has been delegated the responsibility and authority by the Department of General Services to review and approve the design and observe the construction of public elementary and secondary schools, community colleges and state-owned or state-leased essential services buildings.

Authority cited—Education Code Sections 17310 and 81142 and Health and Safety Code Section 16022.

Reference—Education Code Sections 17280 through 17317, and 81130 through 81147 and Health and Safety Code Sections 16000 through 16023.

109.2.2 Applicable administrative standards.

1. Title 24, Part 1, California Code of Regulations:

1.1 Sections 4-301 through 4-355, Group 1, Chapter 4, for public elementary and secondary schools and community colleges.

1.2 Sections 4-201 through 4-249, Chapter 4, for state-owned or state-leased essential services buildings.

2. Title 24, Part 2, California Code of Regulations [applies to public elementary and secondary schools, community colleges and state-owned or state-leased essential services building(s)]:

2.1 Sections 101 and 109.2 of Chapter 1.

2.2 Sections 102.1, 102.2, 102.3, 102.4, 102.5, 104.9, 104.10 and 104.11 of Appendix Chapter 1.

109.2.3 Applicable building standards. California Building Standards Code, Title 24, Parts 2, 3, 4, 5, 6, 9 and 12, California Code of Regulations, for school buildings, com-

munity colleges and state-owned or state-leased essential service buildings.

The provisions of Title 24, Part 2, as adopted and amended by the Division of the State Architect—Structural Safety, shall apply to the applications listed in Section 109.2.1.

The Division of the State Architect—Structural Safety adopts the following building standards in Title 24, Part 2:

Chapters 2 through 10, 12, 14, 15, 16A, 17A, 18A, 19A, 20, 21A, 22A, 23, 24, 25, 26, 30, 31, 32, 33, 34, 35 and Appendix J.

109.2.4 Amendments. Division of the State Architect—Structural Safety amendments in this code appear preceded with the acronym [DSA-SS].

Exceptions:

1. Chapters 16A, 17A, 18A, 19A, 21A, and 22A—Amendments appearing in these chapters without an acronym have been co-adopted by DSA-SS and OSHPD.
2. Chapter 34, Sections 3115-3421—DSA-SS adopts these sections without the use of the DSA-SS acronym.

109.2.5 Reference to other chapters. Where reference is made within this code to sections in Chapters 16, 17, 18, 19, 21 and 22, the respective sections in Chapters 16A, 17A, 18A, 19A, 21A and 22A shall apply instead.

SECTION 110

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

110.1 OSHPD 1. Specific scope of application of the agency responsible for enforcement, enforcement agency and the specific authority to adopt and enforce such provisions of this code, unless otherwise stated.

Application—General acute care hospitals and acute psychiatric hospitals, excluding distinct part units or distinct part freestanding buildings providing skilled nursing or intermediate care services. For structural regulations: Skilled nursing facilities and/or intermediate care facilities except those skilled nursing facilities and intermediate care facilities of single-story, Type V, wood or light steel-frame construction.

Enforcing agency—Office of Statewide Health Planning and Development (OSHPD). The office shall enforce the Division of the State Architect—Access Compliance regulations and the regulations of the Office of the State Fire Marshal for the above stated facility types.

110.1.1 Applicable administrative standards.

1. Title 24, Part 1, California Code of Regulations: Chapters 6 and 7.
2. Title 24, Part 2, California Code of Regulations: Sections 101 and 110 of Chapter 1 and Appendix Chapter 1.

110.1.2 Applicable building standards. California Building Standards Code, Title 24, Parts 2, 3, 4, 5, 9 and 12. <



**CITY OF CALISTOGA
BUILDING DIVISION**
1232 Washington Street, Calistoga, CA 94515 707-942-2827

Unreasonable Hardship Form – Disabled Access

Pursuant to the CBC Section 1134, all existing buildings and facilities, when alterations, structural repairs or additions are made to such buildings or facilities, shall comply with all provisions of Division I – “New Buildings”, except when the enforcing agency finds compliance of these provisions creates an unreasonable hardship.

APPLICANT – PLEASE COMPLETE (added sheets are accepted):
 PROJECT ADDRESS 1413 Lincoln Avenue "Case Sarafornia"
 EMAIL ADDRESS _____

COMPLETE DESCRIPTION OF PROPOSED WORK: Replace Front Door to Commercial Restaurant.

TOTAL VALUE OF ALL IMPROVEMENTS LESS DISABLED ACCESS FEATURES: \$ 2,500.00
 (IMPROVEMENTS INCLUDE COSMETIC ELECTRICAL PLUMBING MECHANICAL)

PROVIDE ITEMIZED T & M COST EXTIMATE OF DISABLED ACCESS IMPROVEMENTS REQUIRED FOR FULL ACCESS COMPLIANCE

1 PRIMARY ENTRANCE:

NEW DOOR	\$ _____	LEVER DOOR HARDWARE	\$ _____
DOOR SIDE CLEARANCE	\$ <u>4,000.00</u>	OTHER	\$ _____
ACCESS SYMBOL SIGN	\$ _____	DOOR THRESHOLD	\$ _____
		DOOR KICKPLATE	\$ _____
TOTAL COST OF IMPROVEMENTS FOR PRIMARY ENTRANCE			\$ <u>4,000.00</u>

2 PATH OF TRAVEL:

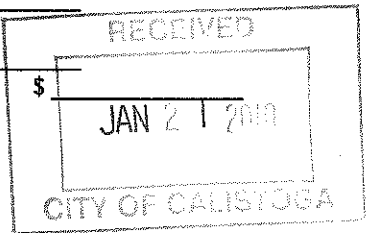
ENTRY DOOR LANDING	\$ _____	ACCESS RAMP	\$ <u>8,500.00</u>
PATHWAY PROTRUDING	\$ _____	RAMP HANDRAILS	\$ _____
CURB RAMP	\$ _____	CURB/WHEELGUARDS	\$ _____
OBSTRUCTIONS	\$ _____		
LEVEL SIDEWALK	\$ _____		
OTHER	\$ _____		
TOTAL COST OF PATH OF TRAVEL IMPROVEMENTS			\$ <u>8,500.00</u>

3 RESTROOM:

ENLARGE ROOM	\$ _____	MODIFY FIXTURES	\$ _____
NEW DOOR	\$ _____	LEVER DOOR HARDWARE	\$ _____
DOOR ACCESS SIGNS	\$ _____	GRAB BARS	\$ _____
RELOCATE FIXTURES	\$ _____	RELOCATE ACCESSORIES	\$ _____
OTHER	\$ _____	PROVIDE 2 ND RESTROOM	\$ _____
LAVATORY IINSULATION	\$ _____		
TOTAL COST OF RESTROOM IMPROVEMENTS			\$ _____

4 PARKING:

OTHER STRIPING	\$ _____	RESTRIPE EXISTING	\$ _____
OTHER	\$ _____	STRIPE VAN UNLOAD	\$ _____
PARKING STALL SIGN	\$ _____		
TOTAL COST OF HANDICAP PARKING IMPROVEMENTS			\$ _____



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5 MISCELLANEOUS:

DRINKING FOUNTAIN \$ _____
MODIFY SWITCH, OUTLET, OR OUTLET, OR CONTROL LOCATIONS \$ _____
PUBLIC TELEPHONE \$ _____
OTHER \$ _____
TOTAL COST OF MISCELLANEOUS IMPROVEMENTS \$ _____

TOTAL COST OF ALL DISABLED ACCESS IMPROVEMENTS: \$ 12,500.⁰⁰

THE NATURE OF ACCESS WHICH WOULD BE GAINED OR LOST IF GRANTED UNREASONABLE HARDSHIP:

No loss, No gain

THIS FACILITY IS USED BY EMPLOYEES, CLIENTS, AND GENERAL PUBLIC FOR THE PURPOSE OF:

Entering the facility

I CERTIFY THAT THE VALUE OF ALL PROPOSED CONSTRUCTION COVERED BY THE PERMIT APPLICATION IS TRUE AND ACCURATE.

Bill Vance _____ 1/20-2010
NAME OF APPLICANT DESIGN PROFESSIONAL/CONTRACTOR SIGNATURE DATE

OFFICE USE ONLY

APPROVAL OF STATED VALUATION OF TENANT IMPROVEMENT

YES NO \$ _____

ITEMIZED COST ESTIMATE REQUIRED BY DESIGNER/ARCHITECT OR CONTRACTOR: YES NO

MAXIMUM AMOUNT TO BE DEDICATED FOR HANDICAP IMPROVEMENT (CONSTRUCTION VALUE X 0.2): \$ _____

IT IS THE FINDINGS AND DECISION OF THE BUILDING OFFICIAL THAT BASED UPON INFORMATION PROVIDED, **UNREASONABLE HARDSHIP IS GRANTED** PROVIDED THAT THE IDENTIFIED FEATURES FROM PAGE 1 OF 2 ARE INCORPORATED INTO THE PROJECT.

SIGNATURE: BRAD CANNON, BUILDING OFFICIAL DATE