

## “Prohibitively Costly” Policy

The Vermont Access Rules allow a person to obtain an exemption or variance from specific access requirements where compliance with required technical standards “would be prohibitively costly in relation to the normal cost of the total project,” provided that compliance with the standards is not required by federal law. The exemption or variance is applicable to renovations to existing public buildings<sup>1</sup> and to new construction.

Applicants must demonstrate to the Access Board that the access requirement from which they are seeking an exemption or variance is not required by federal law. The Access Board cannot grant variances from federal requirements.

In order to demonstrate that compliance with a specific access requirement is “prohibitively costly”, the person applying for an exemption or variance must provide written documentation to the Access Board demonstrating that the cost of complying with a specific access requirement exceeds 20%<sup>2</sup> of the costs of a project<sup>3</sup>.

If the cost of access improvements is less than 20% of the costs of a project, the Board may also consider one or more of the following extenuating circumstances in deciding whether to grant a variance based on the “prohibitively costly” criteria:

- a. unusual financial constraints on the project;
- b. the amount of space that would be made accessible if the access requirement were met is small in comparison to the total area of the space affected by the renovations;
- c. the building already provides, or after the alterations are completed will provide accessible space for employees and other users of the space to have alternate equal access elsewhere in the building to the jobs, goods, and services provided in the space affected by the alterations;
- d. the building has separate functions on each floor and there is separate at-grade access to each level of the building available when the building is occupied.

Applicants for an exemption or variance should provide the Access Board with information on the expenditures they have made, or plan to make to improve access to people with disabilities, including accommodations for people with hearing and vision disabilities.

Total project costs include all alterations made within a three-year period before or after the year in which the exemption or variance is sought.

<sup>1</sup> “Public building” is a broad term that generally means any building that the public might have occasion to enter. It is fully defined at 21 V.S.A §271(3).

<sup>2</sup> The 20% guideline mirrors the Americans With Disabilities Act (ADA) use of 20% for calculating disproportionality.

<sup>3</sup> Alteration costs include the cost of remodeling, renovation, rehabilitation, reconstruction, historic restoration, and changes or rearrangement in the plan or reconfiguration of walls and full-height partitions. Generally the following costs are included in alteration costs: architects and engineers fees, permit fees, materials, labor, and site work. However, costs of reroofing, normal maintenance, painting or wallpapering, asbestos removal, lead paint hazard reduction, or changes to the electrical or mechanical systems are not included as alterations unless they directly affect the usability of the building. See 21 V.S.A. §271(4).