

South Carolina State Housing Finance and Development Authority Architect and/or Professional Engineer Certification

of Non-Residential Buildings _____

Unit Details

CP = Covered Porches OS = Outside Storage Ot = Other* A = Area

General (not unit specific) Non-Heated Sqft

Type	# of Type	Area	Total Area	Type	Area
Breezeways				Office Area	223
Covered Dr. Thru	1	672	672	Laundry	222
				Exercise Room	420
				Computer Room	158
				Community Building	797
				Corridors (All 3 Floors)	11,526
Total General Non-Heated Sqft =			672	Stairwells (1st Floor Only)	512
Total Heated Area: 80,818					
				Total Common Area = 13,858	

Total Development Area: 81,490

Architect and/or Professional Engineer Certification:

The undersigned certifies to the South Carolina State Housing Finance and Development Authority (SCSHFDA) that:

- (1) the above information is true and correct;
- (2) the development **will be or has been** constructed in accordance with the mandatory design criteria as prescribed in the appropriate SCSHFDA Qualified Allocation Plan and any subsequent clarifying bulletins; and
- (3) the architect and/or professional engineer has reviewed the plans and specifications of the development to ensure that such plans and specifications comply with and the development has been constructed to comply with the accessibility and other requirements of Section 504 of the Rehabilitation Act, the Fair Housing Amendments to the Civil Rights Act of 1968, the American With Disabilities Act, 2010 Americans with Disabilities Act Accessibility Guidelines, local building codes, and any other applicable State or Federal legislation.

The undersigned further certifies that s/he will verify that the construction of the development will meet, at a minimum, the following seven specific requirements based on HUD's Fair Housing Act regulations (24 C.F.R. Part 100 as modified or explained in guidelines, manuals, Q&A's, etc.):

- (1) accessible building entrance on an accessible route,
- (2) accessible and usable public and common use areas,
- (3) usable doors,
- (4) accessible route into and through the covered dwelling unit,
- (5) light switches, electrical outlets, thermostats and other environmental controls in accessible locations,
- (6) reinforced walls for grab bars, and
- (7) usable kitchens and bathrooms.

The undersigned acknowledges that the foregoing certifications will be relied upon by the SCSHFDA and that any misrepresentation, whenever discovered, will result in:

- a) the undersigned and the Developer both being debarred from participation in any Authority administered programs for a minimum of one (1) year and
- b) the filing of a complaint against the architect/professional engineer with the S.C. Department of Labor, Licensing and Regulation.

Firm: Studio 8 Design, LLC

By: Mitchell Bruce Smith

License #: AR9678

Its: Managing Partner/Principal

Signature: 

Date - 5/21/2025

Exhibit AA

SC Housing Accessibility Consultant Qualifications and Requirements

A Qualified Accessibility Consultant is any individual who possess the required knowledge to inspect multifamily properties for compliance with all federal, state and agency accessibility requirements and meets the following experience requirements and qualifications:

1. The Consultant will perform tasks necessary to review LIHTC and/or other SC Housing federally funded properties for compliance with federal, state, and agency accessibility laws and requirements, including, but not limited to:
 - a. Title II and III of the Americans with Disabilities Act and all applicable compliance standards.
 - b. Section 504 of the Rehabilitation Act of 1973 and all applicable compliance standards.
 - c. The Fair Housing Act and all applicable compliance standards.
 - d. The requirements of the SC Housing Qualified Allocation Plan (QAP) applicable to the Project and the SC Housing Appendix B Development Design Criteria.
 - e. Any other accessibility laws and regulations applicable to the project.
2. Consultant cannot be a member of the Project Team nor have an Identity of Interest with any member of the Project Team.
3. Consultant has the capacity to render a high quality report in accordance with the instructions and requirements set forth in the SC Housing Certification of Minimum Scope and Reporting Standards.
4. Consultant has no less than five (5) years of experience performing accessibility compliance assessments for affordable rental housing projects.
5. Consultant is not presently debarred, suspended, proposed for debarment or suspension, declared ineligible or excluded from participation by any state or federal department, agency, or program.
6. Consultant agrees to comply with all applicable laws, including, but not, limited to federal, state and local laws, codes, regulations, ordinances, rules and orders, including all laws concerning fair housing and equal opportunity that protect individuals and groups against discrimination on the basis of race, color, national origin, religion, disability, familial status, or sex.
7. Consultant agrees to comply with the SC Illegal Immigration Reform Act, Title 8, Chapter 14 of the S.C. Code, and any other applicable state or federal immigration laws. Consultant must be registered with and using E-Verify.
8. Consultant agrees to comply with Drug Free Workplace requirements:
 - a. If Consultant is an individual, he or she must not engage in the unlawful manufacture, sale distribution, dispensation, possession or use of controlled substance or marijuana during the performance of accessibility compliance services.
 - b. If Consultant is an entity other than an individual, the entity certifies that a drug-free workplace will be provided for the Consultant's employees during the performance of accessibility compliance services.
9. Consultant shall carry the minimum insurance coverage as required by current industry standards. The developer who contracts with Consultant will bear the responsibility of verifying the insurance coverage and determining its adequacy.

Qualification Package

The following information must be included with this certification in the order shown and numbered as follows (please scan each document separately):

1. Cover Letter: A cover letter which provides the company name, mailing address, contact name, telephone number, and email address of the individual to whom SC Housing may communicate regarding the Qualifications Package.

2. References: Three current customer references for accessibility reviews must be included. Of special interest to SC Housing are any customer references from multi-family housing developers, state or local housing agencies and/or financial institutions. Please provide the customer reference contact person's name and telephone number.
3. Resumes: Copies of resumes for all proposed individuals who will be working directly on the inspections. (Resumes should include any and all trainings and certifications related to accessibility).
4. Report Samples: At least two samples of accessibility reports (one for new construction, one for substantial rehabilitation) that your firm recently completed for a multi-family housing development.
5. Project List: A listing of multi-family rental housing projects on which the Consultant has performed accessibility reviews. This listing should indicate the project name, number of units, proposed tenancy (senior, family or 'other'), source of financing and whether the project was assisted with government funding.

Minimum Scope and Reporting Standards

The following identifies the minimum accessibility work scope and reporting standards:

Plans and Specification Review Report

Scope: A pre-construction plan and specification review to determine that the proposed construction documents will meet all accessibility requirements.

Reporting: Include the following minimum standards in the report:

1. Identify all applicable federal, state, and agency accessibility laws and requirements.
2. Include the documents reviewed.
3. The review comments from the Consultant, all documents related to resolution of identified accessibility issues.
4. Certification from the Consultant that the plan/spec review comments have been incorporated in the construction documents.

Framing Inspection (and additional needed interim inspections) Report

Scope: An inspection of the construction site after framing is completed to determine that the property is following the approved plans and specifications as to accessibility.

Reporting: Include the following minimum standards in the report:

1. Identify all applicable federal, state, and agency accessibility laws and requirements.
2. Description of the general progress of construction activities.
3. Description of the level of compliance with accessibility achieved to date.
4. Details on all areas of inconsistencies, including areas where the project is out of compliance with federal and state laws and regulations.
5. Recommendations that would bring the project in compliance with accessibility regulations
6. Photographs representative of situations that must be addressed.

Final Inspection Report

Scope: A final inspection of the property after completion of construction to determine that the property has been constructed in accordance with all accessibility requirements. This will include inspection of:

1. All units designated equipped for the mobility impaired (5% of the project unit count).
2. All units designated equipped for the audio/visual impaired (2% of the project unit count).
3. Where applicable, a random sample of 5% of the units required to comply with the Federal Fair Housing Amendments Act.
4. Overall review of the site for accessibility.

Reporting: Include the following minimum standards in the report:

1. Identify all applicable federal, state, and agency accessibility laws and requirements.
2. Information outlined in the Exhibit DD SC Housing Final Accessibility Inspection Checklist.
3. Details on all areas of inconsistencies, including areas where the project is out of compliance with federal and state laws and regulations.
4. Recommendations that would bring the project in compliance with SC Housing, state, federal and industry standards.
5. Photographs representative of situations that must be addressed.

Certificate of Accessibility Compliance

Scope: Following the final report after the general contractor and/or developer has had a reasonable opportunity to correct deficiencies; the Qualified Consultant will confirm that the corrections were executed properly.

Reporting: The consultant must sign Exhibit EE SC Housing Consultant Accessibility Certification and return to the SC Housing Tax Credit Manager at Placed in Service.

NOTE: It is incumbent upon the Qualified Consultant to arrange enough visits with his client, the LIHTC Developer, to observe all areas of accessibility and to verify completion of recommended corrections.

Certification Statement: Consultant agrees to comply with all requirements as stated above.

Company Name: _____

Consultant Name: _____ Phone: _____

Signature: Plaitany Date: _____

BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC

THERESA L. KITAY
SHAREHOLDER
Direct Dial: (404) 443-6745
E-Mail Address: tkitay@bakerdonelson.com

MONARCH PLAZA
SUITE 1600
3414 PEACHTREE ROAD N.E.
ATLANTA, GEORGIA 30326

PHONE: 404.577.6000
FAX: 404.221.6501

www.bakerdonelson.com

May 7, 2025

South Carolina State Housing Finance
& Development Authority (SC Housing)
300-C Outlet Pointe Boulevard
Columbia, SC 29210

RE: 2025 SC Housing Accessibility Consultant Qualifications Package

To Whom It May Concern:

Please accept this SC Housing Accessibility Consultant Qualifications Package pursuant to the 2022 SC Housing Accessibility Consultant Qualifications and Requirements.

The contents of this package included with this cover letter and attached as separate documents are:

1. References for Theresa L. Kitay
2. Resume for Individuals Involved – Ronnie Johnson - Measured Access, LLC
3. Report Samples
4. Project List

I am the primary point of contact for SC Housing regarding this Qualifications Package, and my contact information is included on this letter.

Very truly yours,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.



BY: Theresa L. Kitay
Encls.

Personnel Resumes

1. Theresa L. Kitay, Attorney at Law
ICC Certified Accessibility Inspector
California Certified Access Specialist
2. Ronnie Johnson, Accessibility Inspector
Measured Access, LLC

THERESA L. KITAY
SHAREHOLDER
Direct Dial: (404) 443-6745
E-Mail Address: tkitay@bakerdonelson.com

THERESA L. KITAY
ATTORNEY AT LAW
CA CERTIFIED ACCESSIBILITY SPECIALIST
ICC CERTIFIED ACCESSIBILITY INSPECTOR / PLANS EXAMINER

PROFESSIONAL EXPERIENCE

Shareholder, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.

Atlanta, Georgia (from Oak Island, North Carolina)
August 2021-Present

Owner, Theresa L. Kitay, Attorney at Law

Oak Island, North Carolina & Marina Del Rey, California
March 2006-August 2021

Partner, The Law Firm of Coughlin, Kitay & Edelstein, P.C.

Norcross, Georgia & Marina Del Rey, California
March, 1996-February 2006

Private law practice concentrating on defense and preventive representation of the housing industry in all civil rights matters, including fair housing, Section 504, Title VI, and ADA. Clients include many of the leading residential housing providers and public housing authorities in the country.

Representation provided for consultation, conciliation, administrative matters and state and federal court litigation and appeals. Special emphasis on disability and accessibility issues, including compliance with the Fair Housing Act and building code requirements for design and construction of new multifamily housing.

Certified Accessibility Specialist (Casp)

September 2015 (#645)

Certified by State of California, Division of the State Architect, as having given satisfactory demonstration of competence of the laws and regulations mandating non-discriminating access to the built environment by persons with disabilities.

ICC Certified Accessibility Inspector / Plans Examiner

November 2018 (#8029504)

Nationally certified by the International Code Council as having demonstrated knowledge regarding accessibility inspections and accessibility plans examination by successfully completing the prescribed written examination based on codes and standards in effect.

President, Fair Housing Institute

Norcross, Georgia

March 1996-February 2006; 2017-2018 (Director)

Founding director of private consulting firm providing training and consultation for the housing industry on all civil rights matters, including fair housing, Section 504, Title VI, and ADA. Conduct fair housing training seminars for housing providers, including conventional properties, federally-funded properties, public housing authorities and senior housing communities. Author of fair housing reference materials for the industry. Occasionally served as expert witness on fair housing issues.

Trial Attorney, U.S. Department of Housing and Urban Development,

Atlanta, Georgia, February 1991-February 1996

Litigation, conciliation, and administrative representation of the primary federal agency responsible for enforcement of the federal Fair Housing Act and other federal civil rights enactments relating to the housing industry. Presented first occupancy standard case heard by Administrative Law Judge. Assisted in the investigation of fair housing complaints.

Prepared training programs for HUD litigation and investigative staff nationwide.

Finalist, Federal Employee of the Year (scientific/professional), 1995.

Associate Attorney, Kirwan, Goger, Chesin & Parks, P.C.

Atlanta, Georgia, June 1987-February 1991

Litigation practice concentrating in the representation of private and public sector employees in civil rights matters.

Adjunct Professor of Law, Emory University School of Law

Atlanta, Georgia, September 1994-May 1999

PROFESSIONAL AFFILIATIONS

National Multifamily Housing Council

Southeastern Affordable Housing Management Association National Apartment Association

Atlanta Apartment Association

Theresa L. Kitay

Page 3

National Apartment Association (Apartment Association of Greater Los Angeles)

National Apartment Association (Wilmington [NC] Apartment Association)

Georgia Bar Association

California Bar Association

State Bar of North Carolina

North Carolina Bar Association

American Bar Association

Steering Committee Member, Fair Housing and Public Accommodation Subsection - State Bar of California

Board of Advisors, Professional Apartment Manager

Board of Advisors, Fair Housing Coach

Fair Housing Task Force, Atlanta Apartment Association Editor, Fair Housing Advisor

Fair Housing and Accessibility Task Force, National Apartment Association

International Code Council

Certified Accessibility Specialist Institute (CASI)

PRESENTATIONS, ARTICLES, AND OTHER PUBLICATIONS

Testimony Before The United States House Of Representatives On Fair Housing And Accessibility Issues, Available At: <https://www.bakerdonelson.com/>

Webinars (Sponsored):

"Assistance Animals: What Housing Providers Need to Know," February 2016

"Fair Housing and Parking Accommodation Requests," June 2017

"Verification of Requests for Reasonable Accommodations," October 2017

"Setting and Enforcing Occupancy Standards - Avoiding Fair Housing Trouble," October 2018

"Fair Housing: COVID, Animals, and Crimes," April 2020

"Assistance Animal Update," October 2020

Articles:

"Taking Action on Fair Housing Complaints," *CARH News*, May 1996

"Accommodating Disabled Residents: Your Obligations Under the Law," *Multifamily Executive*, October 1996

"Address Fair Housing Issues During Design," *Units*, Nov-Dec 1996

"Companion Animals are Not Pets," *Apartment Industry Magazine*, April 1997

"Avoiding Fair Housing Litigation," *Multifamily Executive*, May 1997

"Will your property pass the fair housing test?" and "What happens when a complaint is filed?", *Abode*, August 1997

"Obeying the Law: Disabilities and Fair Housing," *Multifamily Executive*, October 1997

Letter to the Editor (clearing up confusion regarding application of Americans with Disabilities Act to housing providers), *Multifamily Executive*, March 1998

"Housing Credit Properties May Have Section 504 Responsibilities," *The Compliance Monitor*, August 1999

"Designing for the Disabled", *Journal of Property Management*, March/April 2000

"Providing Equal Access," *Journal of Housing & Community Development*, September/October 2002

"Accessibility: Build It & They Will Come" (with Nadeen Green), *Units*, May 2004

"7 Features of Accessibility Required by the Fair Housing Act of 1988", *Units*, May 2004

"Other Accessibility Laws May Apply", *Units*, May 2004

"Fair Housing at 50," *Units*, (cover story), April 2018

Guest Columnist:

"Avoiding/Winning Tenant Lawsuits," *Multi-Housing News*, July 2005

"Passing the Test," *Units*, October 2005

"Fair Housing at 50: Looking Back to Predict the Future," *Units*, April 2018

Cited as a significant source in the following articles in *Professional Apartment Manager*:

"New Law Makes It Easier to Set Occupancy Standards Without Discriminating," July 1996

"Fine-Tune Pool Rules to Avoid Discrimination Lawsuits," June 1996

"Don't Base Apartment Charges on Number of Persons," August 1997

"Get Parents to Control Their Destructive Children," January 1998

"Avoid Disability Discrimination Claims by Training Leasing Consultants," December 1999

"Use Written Agreement to Avoid Disputes over Reasonable Modifications," August 2000

Cited as a significant source in the following articles in *Assisted Housing Management Insider*:

"Avoid Disability Discrimination Claims by Training Leasing Staff," *Assisted Housing Management Insider*, January 2001

"Follow five rules to Avoid Fair Housing Problems When Getting Prospects' Photo Ids", *Assisted Housing Management Insider*, January 2004

Cited as a significant source in the following articles in “*Fair Housing Coach*”:
“Your Office & Fair Housing Law,” *Fair Housing Coach*, August 2004

“Evaluate Your Occupancy Standards to Prevent Discrimination Claims,” *Fair Housing Coach*,
November 2018

Cited as a significant source in the following articles in “*Tax Credit Housing Management Insider*”:

“Follow Guidelines for Assistance Animals,” *Tax Credit Housing Management Insider*, April
2010

“Four Key Questions About Section 504 Requirements,” *Tax Credit Housing Management Insider*, August 2010

“Eight Dos and Don’ts for Interviewing Applicants with Disabilities,” *Tax Credit Housing Management Insider*, May 2011

Quoted In:

“Mission from God,” *Multifamily Executive*, September 2008

“Spanos Fallout: IBS Panel Says Expect More, Not Less Fair Housing Suits,” *Multifamily Executive*, March 2010

Other Publications:

Georgia Apartment Law Book; Chapter, “Fair Housing and Accessibility Issues in Multifamily Rental Housing,” 1997, 1999

Testers Welcome! A Program for Fair Housing Success (video); co-wrote and produced with
Kathelene Coughlin

Fair Housing Basics; co-produced with Kathelene Coughlin and Fair Housing Institute Online;
online fair housing training program

National Apartment Association, Accessible Construction DVD Training, subject matter expert,
2008

California Fair Housing and Public Accommodations, Chapter 11, “Americans with Disabilities Act and its Incorporation into California Law”, The Rutter Group, 2014

Emotional Support Animal Toolkit, National Apartment Association, 2022

EDUCATION

Emory University School of Law, Atlanta, Georgia
J.D., with distinction, 1987
Dean’s List
Member of the Board, *Emory Law Review*

Theresa L. Kitay

Page 6

Smith College, Northampton, Massachusetts

A.B., cum laude, 1984 Dean's List

First Group Scholar

Harvard University Graduate School of Design - Executive Education

"Accessibility: Compliance, Comparisons, and Communications" (16 hours), July 2013

"Housing Accessibility" (16 hours), June 2015

"ADA, ABA, & 504 Access to Public, Private, and Federal Non-Residential Facilities and Programs" (16 hours), August 2016


"Fair Housing, ADA, ABA, & 504 Access to Housing and Dorms" (8 hours), August 2016


Fair Housing Accessibility First


Fair Housing Act Requirements Webinars, 2019

RONNIE JOHNSON

ACCESSIBILITY INSPECTOR
MEASURED ACCESS LLC

 **P:** 770-296-0804

 **E:** Ronniejohnson@truquality.com

 **A:** 881 Memorial Drive SE #207
Atlanta, Ga 30316

EXPERTISE

Proficient in ADA compliance inspections, which includes training under the 2010 ADA for Accessible Design, The Fair Housing Act Design Manual, and ANSI Standard & Commentary. Highly skilled with leading multiple Fit & Finish inspections, including team leading and working closely with construction personnel and clients.

WORK EXPERIENCE

- **Fit & Finish Inspector**
Tru-Quality Consulting
2011 - 2020
Working as Fit & Finish inspector.
- **Team Leader and Fit & Finish Inspector**
Tru-Quality Consulting
2015 - 2020
Working as a Fit & Finish inspector. Scheduling, leading teams, and working closely with construction personnel and clients.
- **Accessibility Inspector**
Measured Access
2020 - Present
Working as an accessibility inspector which includes, scheduling with clients and organizing detailed reporting.

REFERENCE

- **Ron Johnson**
CEO (Retired)
TruQuality, LLC
404-512-4561
- **Terry Kitay**
Shareholder
Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC
770-356-9859

TECHNICAL SKILLS AND LANGUAGES

- **Procore | Construction Management Software**
- **Microsoft Word, Excel, and Adobe Acrobat Pro**
- **Spanish**

References

BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC

THERESA L. KITAY
SHAREHOLDER
Direct Dial: (404) 443-6745
E-Mail Address: tkitay@bakerdonelson.com

MONARCH PLAZA
SUITE 1600
3414 PEACHTREE ROAD N.E.
ATLANTA, GEORGIA 30326

PHONE: 404.577.6000
FAX: 404.221.6501

www.bakerdonelson.com

REFERENCES for THERESA L. KITAY
Attorney at Law
California CAsp #645
ICC Certified Accessibility Inspector / Plans Examiner #8029504

1. Mr. Max Kovtoun
Design-Construction Manager | Development
Prestwick Companies
3715 Northside Parkway, NW
Building 200, Suite 175
Atlanta, GA 30327
(470) 925-0270

Prestwick Companies is a multi-state multifamily developer. I have performed accessibility training, plan review, site inspection, and accessibility consultation for this developer for nearly 10 years, including LIHTC and HUD-assisted projects.

2. Mr. Jim Carr
Senior Project Manager
Worthing Southeast Builders
5909 Peachtree Dunwoody Road, Suite 400
Atlanta, GA 30328
(678) 898-0989

Worthing Southeast Builders is a multi-state multifamily developer. I have performed training, plan review, site inspection, and accessibility consultation for this developer for over 10 years.

TLK4886-7631-3893v1
2616900-015274 06/19/2022

3. Mr. Jason Fish
Managing Director - Development
The Spectrum Companies
300 South Tryon Street, Suite 200
Charlotte, NC 28202
(704) 338-3212

The Spectrum Companies is a multi-state multifamily developer. My firm has performed plan review, site inspection, and accessibility consultation for this developer on multiple multifamily residential projects.

Sample Reports

Theresa L. Kitay

ATTORNEY AT LAW

P.O. Box 597 | Oak Island, NC 28465 | Tel: (910) 250-1982 | Fax: (770) 454-0126 | tkitay@kitaylaw.net | www.kitaylaw.net

5.b. - Redacted Substantial Rehab Report

Washington, DC Accessibility Drawing Review - GMP Set February 24, 2019

Prepared for:

cc:

By: Theresa L. Kitay, Attorney at Law

I have reviewed the GMP set of drawings for the _____ s adaptive reuse project in Washington, DC. My review was to determine the drawings' compliance with all applicable accessibility requirements, including the Americans with Disabilities Act and Chapter 11 of the Washington, DC building code. *Note: Because this is an adaptive reuse of an existing facility, the federal Fair Housing Act's accessibility requirements do not apply to this project.*

The project is a Level 3 alteration and repair of an existing historic structure previously occupied and used as institutional housing and conversion to an R-2 multifamily residential "apartment house" occupancy. As the existing site is currently under the control of the Washington, DC government, and will be transferred to the _____ Economic Development Corporation and _____ to establish the 80% affordable housing / 20% market rate housing mix of the reuse.

The following general principles apply to this review:

I. GENERAL NOTES

- A. Because of the involvement of the Washington, DC government, and the transfer of assets from the local government to the EDC and _____ for operation as affordable housing, this project is likely categorized as a "program or activity" of a local government covered by Title II of the Americans with Disabilities Act. Title II new construction and alterations are required to comply with the specific requirements of the 2010 ADA Standards for Accessible Design ("2010 ADA"). Under the 2010 ADA, 5% of the total residential dwelling units must be mobility accessible pursuant to Secs. 809.2-809.4 of the 2010 ADA. In addition, 2% of the total residential dwelling units must be communication accessible pursuant to Sec. 809.5 of the 2010 ADA. At least one (but not more than 10%) of the communication accessible units must also be mobility accessible.
- B. Existing facilities undergoing a Level 3 alteration generally must comply with all the applicable provisions of Chapter 11 of the IBC (as amended by the District of Columbia in 2013), including providing 15% of the total R-2 units on a site as ANSI Type A units, and the remainder of units as ANSI Type B units (assuming the building has an elevator). 2013 DC Existing Building Code, Sec. 906. Similarly, when an existing facility undergoes a

February 24, 2019

complete change of occupancy, it must comply with all provisions of Chapter 11 of the 2013 DC Building Code. DCEBC Sec. 1012.8.

Under this general rule, the project must provide 15% of the total R-2 units on site as ANSI Type A compliant units. One percent of that 15% of total units (but not less than one) must "be served by a roll-in shower that includes a permanently mounted folding shower seat." The ANSI Type A units must be dispersed among the "various classes of units." 2013 DCBC Sec. 1107.6.2.1.1.

Typically, in a complete change of occupancy or a Level 3 alteration, ANSI Type B units must also be included. For this elevator building, all units that are not ANSI Type A units would normally be required to be compliant ANSI Type B units. See Sec. 1205.15. However, the DCEBC includes one other exception for "historic structures." Specifically, historic structures undergoing a complete change of occupancy are not required to provide ANSI Type B units as normally required by Section 1107 of the DCBC. DCEBC Sec. 1205.15, Exception.

With regard to ANSI compliance, therefore, this project consisting of historic structures undergoing a Level 3 alteration and a complete change of occupancy need only provide ANSI Type A units per the DC Building Code, and need not provide any ANSI Type B units per the DC Existing Building Code exception for historic structures.

- C. ANSI Type A units are not precisely the same as ADA mobility accessible residential dwelling units, but they are similar. Since 15% of the units must be ANSI Type A, and only 5% of the units must be ADA mobility accessible, 5% of the units are evaluated for compliance with the 2010 ADA Standards, and the remaining 10% are evaluated for compliance with the ANSI Type A requirements as adopted by Washington, DC.
- D. As noted above, the Fair Housing Act's accessibility requirements do not apply to this project as it does not constitute "new construction," as it was designed and constructed for first occupancy for any purpose prior to March 13, 1991.

I have the following comments and observations from my review of the GMP set of drawings:

II. PUBLIC AND COMMON USE AREAS

1. Parking

1.1 *Number of Accessible Parking Spaces*

If at least one parking space is provided for each individual dwelling unit, the 2010 ADA Standards require that there be at least one accessible residential parking space for each ADA mobility accessible unit. If the total residential parking exceeds one space per unit, then 2% of the parking spaces over the one per unit must also be accessible. Any parking that is provided for guests, employees, or other non-residents, accessible spaces must be provided for that group by application of Table 208.2 of the 2010 ADA.

I did not have either a unit count or a parking count for this project. However, there are 29 Type A units planned, which is 15% of up to 194 total units. Using the 194 units as a benchmark for these calculations, the site must provide 194 parking spaces to require the 2010 ADA standard of



February 24, 2019

one accessible space per mobility accessible unit to apply. (Five percent of 194 is 10 units that will be required to meet the 2010 ADA Standards for mobility accessibility.) From the site plans provided with the GMP set reviewed, it does not appear that there are as many parking spaces as there are units, using 194 as the total for units. **Sheet 0-A0101**. The DCBC requirement for Group R-2 parking is 2% of the total residential parking provided. Four accessible parking spaces are identified on **Sheet 0-A0003**, which is compliant for up to a total of 100 spaces.

The total number of units and total number of parking spaces to be provided should be confirmed, to confirm that the proper calculation of and number of accessible parking spaces is reached.

1.2 Van Accessible Parking Spaces

None of the accessible parking spaces shown on the site plan is designated as van accessible. The DCBC requires that one in every six accessible spaces (or fraction thereof) must be van accessible, requiring at least one van accessible residential parking space be provided on site.

1.3 Leasing Office Parking

It is unclear whether any of the parking provided on site is intended to serve the leasing office. If so, accessibility must be provided for the leasing office parking pursuant to 2010 ADA Standards Table 208.2. Confirm whether leasing office parking is intended, and ensure that van accessible parking on the shortest possible route to the accessible entrance to the leasing office is provided as required.

2. Accessible Route from Public Right of Way

At least one pedestrian accessible route from the public right of way to the leasing office is required. (As all units will have an accessible route to the leasing office, they will have access to the public right of way via the leasing office.) The site plan does not indicate the presence or location of this required accessible route.

3. Fitness Center

ANSI 2009 is the referenced standard for Chapter 11 of the DC Building Code. ANSI 2009 requires a 30" x 48" clear floor space for transfer to or use of at least one of each type of equipment or machine in the fitness center. **Sheet 2-A0132 (SC-202)**.

4. "Community Space"

The "community space" in Building B is intended to be available for the general public, and as such, needs to comply with the ADA as well as Chapter 11 of the DCBC. The "tenant fit out" will be designed by "others"; the developer must confirm that the accessibility requirements of the ADA and the DCBC are complied with in that design. **Sheet 0-A0100**.

5. Community Clubroom Kitchen

The "community clubroom" in Building B will also need to comply with the 2010 ADA Standards since the entire project is subject to Title II of the ADA. **Sheet 0-A0101**.



February 24, 2019

5.1 "Kitchen Notes" - **Sheet 0-A0730**

The "kitchen notes" included on this sheet for common area kitchen and bath types and details are for kitchens located in ANSI Type A units, not common area kitchens. Kitchens in common areas must be fully accessible, rather than the adaptability still permitted even in the more accessible ANSI Type A units.

5.2 Work Space Location

Because the clubroom kitchen must comply with the 2010 ADA Standards, the minimum 30" wide required work space in the kitchen must be located adjacent to the oven in this common kitchen. The work space is provided in the kitchen island opposite the oven and should be relocated. **Sheet 0-A0730 / 1.**

5.3 Vent Hood Controls

In addition, the controls for the vent hood over the range must be in an accessible location, meaning the hood must be wired to an accessible wall switch, or a remote control provided for the controls.

5.4 Countertop Depth

The depth of the countertops in the common kitchen is not dimensioned on the plan. **Sheet 0-A0730.** To the extent there are wall mounted switches, outlets, or other controls over the countertop, the maximum reach over the countertop depth in this common area kitchen is limited to 24".

6. **Staff Kitchenette**

As an employee common area, the staff kitchenette is subject to the ADA. **Sheet A-A0730 / 12.** The sink in the kitchenette is shown with a removable base cabinet; however, if a kitchen does not have either a conventional oven or cooktop, no knee and toe space at the sink is required. (Note that if knee and toe space were required in this location, no base cabinet - even a removable one - would be permitted at the sink.)

7. **Common Area Restrooms**

The elevations and details for the common area restrooms are generally compliant; although the required location of the toilet paper dispensers is not dimensioned. **Sheet 0-A0730 / 2, 7.** The toilet paper dispenser must be 7"-9" in front of the front edge of the toilet, measured to the center of the dispenser.

8. **Coffee Bar**

The coffee bar is correctly shown at 34" AFF maximum. If the coffee machine in this location will be built-in, confirm that the controls will be of an accessible type, and located within the accessible reach range of 15"-48" AFF. **Sheet 0-A0750 / 3.**

9. **Mailboxes**

The height of the residential mailboxes is not dimensioned on the interior details. **Sheet 0-A0750 / 8, 15.** All ANSI Type A or ADA mobility accessible units must have a mailbox with its operable

February 24, 2019

controls (the lock) located within the accessible reach range of 15"-48" AFF. Confirm that all 29 ANSI Type A units are assigned mailboxes within this reach range.

10. Typical Unit Entry

The detail for the typical unit entry has the exterior unit signage mounted on the hinge side of the door. **Sheet 0-A0750**. The proper location for this signage is on the wall at the latch side of the door.

III. **INDIVIDUAL DWELLING UNITS**

As noted above, 5% of the total units must be compliant with the 2010 ADA Standards for mobility accessibility. These are ADA "residential dwelling units" pursuant to Sec. 233 of the 2010 ADA Standards.

Another 10% of the total units must be compliant with ANSI Type A units from ANSI 2009. Combined with the 5% ADA mobility accessible residential dwelling units, these ANSI Type A units will meet the 15% ANSI Type A requirement of the DC Building Code. At least one of the ANSI Type A units must contain a compliant roll-in shower.

No ANSI Type B units are required because this project is a change of occupancy of a historic structure.

This breakdown of unit accessibility differs from what is stated on the drawings in the "general notes". See **Sheet 1-A0620B**, for example. The general notes indicate that ANSI "accessible" units are included (marked A+), and that ANSI Type A units (marked A) are included. There is no mention of any ADA mobility accessible units. In addition, the general notes include that "all units shall meet requirements for Type B units per ICC A117.1-2009 unless noted otherwise." Because of the DC Existing Building Code exemption for historic structures, no ANSI Type B units are required for this project.

In the event the the local AHJ is imposing a requirement for ANSI Type B units, I have included below my comments on the compliance of units intended to be ANSI Type B units.

11. General Note - Changes in Level

The "general notes" include a note that states "changes in level in Type A units can be up to $\frac{1}{4}$ " without treatment or $\frac{1}{2}$ " if beveled with a slope no steeper [than] 1:2." See note 13. In fact, the maximum abrupt change in level in an ANSI Type A unit is only $\frac{1}{4}$ ", not $\frac{1}{2}$ ", and anything over $\frac{1}{4}$ " up to the maximum permitted $\frac{1}{2}$ " must be beveled at a slope of 1:2.

12. Typical Accessibility Compliance - Sheet 0-A0700

A number of the accessibility compliance details shown on **Sheet 0-A0700** are, in fact, not "typical" for individual dwelling units in general. As there is no requirement for ANSI Type B units in historic structures undergoing change of occupancy, all references to the ANSI Type B unit accessibility elements are not applicable to this project.

I note that **Sheet 0-A0700** does not include any typical locations or specifications for the installation of reinforcements in bathroom walls for the later installation of grab bars. These reinforcements are required in all bathrooms of all ANSI Type A units in this project.



February 24, 2019

13. "Hoteling" Units

I have assumed that the "hoteling" units in Building G are intended to be short term rentals, rather than residential units. As such, they represent "transient" housing that is subject to greater standards of accessibility under the ADA. Specifically, the bathrooms in the units must have a 60" turning space (or T-turn), and there must be a 30" x 48" clear floor space for a parallel approach to the bed on each side of the bed. (If two beds are provided, a single 30" x 48" clear floor space between the beds can be shared.) In addition, the bathroom must have knee and toe space at the lavatory, with no cabinet, and all doors intended for passage must provide a full 32" clear opening.

Note that at least one of the "hoteling" units has a shower as the only bathing facility in the unit. As this shower is not large enough to be a roll-in shower, it must be a compliant transfer shower. A transfer shower must have an interior measurement of exactly 36" x 36", with a 36" x 48" clear floor space outside the shower for a parallel approach, starting at the control wall of the shower. **Sheet 2-A0170** (Unit G007); see also **Sheet 2-A0670B**.

14. ANSI Type A Units

14.1 *Door Widths*

ANSI Type A units must have all interior doors intended for passage (leading to a space deeper than 24") provide a full 32" clear opening width when open 90°. If double doors are used, the full 32" clear opening must be provided with one door acting independently.

In Kitchen Type K4, the pantry is deeper than 24", and has double doors. At least one door must provide a full 32" clear opening. These doors are scheduled for a 5'0" total width, which will not provide the full 32" clear opening required. **Sheet 1-A1010** (door schedule); see Building A Basement Floor Plan (Unit A007), **Sheet 1-A0610A**. Also in **Sheet 1-A0611A** (Unit A107) and **Sheet 1-A0612A** (Unit A207).

14.2 *Door Maneuvering Space*

Doors intended for passage in ANSI Type A units must have an 18" pull side, latch side maneuvering space. (The only exception is the toilet side of the door to a secondary bathroom when there is another bathroom in the unit that is the ANSI Type A complying bathroom.) In the Building A two bedroom Type A units (A007 stack), there is less than 18" pull side, latch side maneuvering space at the secondary bathroom entry door, which opens out of the bathroom and is therefore not exempt. **Sheet 1-A0610A** (Unit A007); **Sheet 1-A0611A** (Unit A107); **Sheet 1-A0612A** (Unit A207).

14.3 *Bathroom Compliance*

Bath 1 Type B1 is used as the only bathroom in the Building A 1 bedroom Type A unit (A106). **Sheet 1-A0611D**. This bathroom is not a compliant ANSI Type A bathroom and needs to be changed in this unit plan.

The unlabeled bathroom in the Building C 1 bedroom Type A units (C110 and C210) is not a compliant ANSI Type A bathroom and needs to be changed in this unit plan. **Sheet 2-A0111** and **Sheet 2-A0112**. See also Building D 1 bedroom Type A unit (D102), **Sheet 2-A0121**.

February 24, 2019

The lavatory in the complying bathroom of an ANSI Type A unit must have knee and toe space for a forward, pull under approach, or have a base cabinet designed to be removable to provide the required knee and toe space. The bathroom typical details and elevations do not call out a removable base cabinet in the following ANSI Type A complying bathrooms A1, A2, and A3. **Sheet 0-A0721.**

14.4 Kitchen Compliance

Kitchens in ANSI Type A units need to have a 60" turning space (or space for a T-turn), even if the kitchen itself is a "galley-style" that need only have a 40" clearance between opposing sides. If the kitchen is a dead end, confirm the presence of the 60" turning space. See, for example, Kitchen Type K2 (ANSI Type A). **Sheet 0-A0710 / 4.**

15. ANSI Type B Units

ANSI Type A units should not be required in this change of occupancy of a historic structure. To the extent it is determined that ANSI Type B units should be provided, I have the following observations and comments:

16. Powder Rooms

If a powder room is in a unit that has only Option A bathrooms, the powder room must meet the maneuvering space requirements for an Option A bathroom as well. In the two bedroom, one and one half bathroom unit in Building B, the clear floor space at the lavatory in the powder room is not centered on the sink for a parallel approach. **Sheet 1-A0631B** (Unit B112); **Sheet 1-A0632B** (Unit B212). In order to be compliant, a removable base cabinet or other knee and toe space must be provided in this powder room. See also **Sheet 2-A0111** (Unit C112); **Sheet 2-A0640D** (Unit E012); **Sheet 2-A0641D** (Unit E112).

17. Bathroom Maneuvering Space

Option A and Option B bathrooms in ANSI Type B units must have a 30" x 48" clear floor space outside the swing of the door to allow the user to enter the bathroom and close the door behind him or her. The unlabeled bathrooms in some units have, in some cases, in-swinging doors that do not allow for a 30" x 48" clear floor space outside the swing of the door. **Sheet 2-A0121** (Unit D108), (D104), (D103 - 2 of three bathrooms), (D109 - 2 of three bathrooms); **Sheet 2-A0122** (Unit D210), (Unit D208), (Unit D209 - 2 of three bathrooms), (Unit D204 - 2 of three bathrooms); **Sheet 2-A0640B** (E004); **Sheet 2-A0641B** (Unit E104); **Sheet 2-A0641C** (Unit E108); **Sheet 2-A0642B** (Unit E203 - 2 of three bathrooms); **Sheet 2-A0642C** (Unit E208); **Sheet 2-A0651A** (Unit F108); **Sheet 2-A0651D** (Unit F104); **Sheet 2-A0652A** (Unit F208); **Sheet 2-A0652D** (Unit F204).

18. Shower Issues

18.1 *Location of Control Wall to Provide Parallel Approach*

ANSI Type B units have no requirement that the shower be any particular size, unless a shower is the only bathing facility in the unit. In that case, the shower must have a minimum 36" x 36" interior measurement. In Bathroom The B4 (ANSI Type B), confirm the location of the control wall for the 36" x 36" shower so that the 30" x 48" clear floor space parallel to the shower can start at the control wall. **Sheet 0-A0720 / 15.**



February 24, 2019

18.2 Shower Surround

The freestanding showers in the ANSI Type B units are called out as having "fiberglass shower enclosures". **Sheet 0-A0720 / 4, 5.** Confirm that any pre-fabricated surround for either a shower or a bathtub will have a flat back, allowing for the later compliant installation of a grab bar on the back wall. (Note also that the required reinforcements for the later installation of grab bars must be either installed directly on the back of the surround, or the gap between the surround and the wall must be filled, in order to allow for compliant installation of grab bars.)

19. Kitchen Sink Maneuvering Space

In the Type K1 kitchen in ANSI Type B units, the centerline of the sink is less than 24" from the side wall, so that the parallel approach to the sink is not centered on the sink. **Sheet 1-A0632A** (Unit B207); **Sheet 1-A0632B** (Unit B210). A forward approach (a removable base cabinet or knee and toe space) must be provided at this sink for ANSI Type B compliance. See also **Sheet 2-A0640D** (Unit E012); **Sheet 2-A0641A** (Unit E113); **Sheet 2-A0641D** (Unit E112); **Sheet 2-A0642A** (Unit E213); **Sheet 2-A0642D** (Unit E212); **Sheet 2-A0650A** (Unit F007); **Sheet 2-A0650B** (Unit F010); **Sheet 2-A0651B** (Unit F110); **Sheet 2-A0652A** (Unit F207); **Sheet 2-A0652B** (Unit F210); **Sheet 2-A0652D** (Unit F205); **Sheet 2-A0670A** (Unit G003); **Sheet 2-A0671A** (Unit G103, Unit G104); **Sheet 2-A0671B** (Unit G105); **Sheet 2-A0671C** (Unit G112); **Sheet 2-A0671D** (Unit G114); **Sheet 2-A0672A** (Unit G203); **Sheet 2-A0672D** (Unit G215, Unit G214).

*The typical layout of Kitchen Type K1 for an ANSI Type B unit calls out a 30" wide removable base cabinet. Note that a 30" wide cabinet, when removed, is likely not to provide the full 30" wide knee and toe space required for a forward, pull under approach at this kitchen sink. **Sheet 0-A0710 / 1, 2.***

This same issue is also present in the K5 kitchen in ANSI Type B units, since the sink is located with the centerline of the sink less than 24" from the side wall. **Sheet 2-A0641C** (Unit E108); **Sheet 2-A0642B** (Unit F204); **Sheet 2-A0650D** (Unit F004); **Sheet 2-A0651D** (Unit F104, F105); **Sheet 2-A0652A** (Unit F208); **Sheet 2-A0652D** (Unit F204).

*The typical layout of Kitchen Type K5 for an ANSI Type B unit calls out a 30" wide removable base cabinet. Note that a 30" wide cabinet, when removed, is likely not to provide the full 30" wide knee and toe space required for a forward, pull under approach at this kitchen sink. **Sheet 0-A0711 / 2.***

The same issue is also present in the K6 kitchen in ANSI Type B units, since the sink is located with the centerline of the sink less than 24" from the side wall. **Sheet 2-A0670A** (Unit G004); **Sheet 2-A0670B** (Unit G005). No removable base cabinet is called out on the typical K6 kitchen in ANSI Type B units. **Sheet 0-A0711 / 4.**

I hope this is helpful to you. Please let me know if you have questions or need anything further.


Theresa L. Kitay
Attorney at Law

ICC Certified Accessibility Inspector / Plans Examiner



**Salt Lake City, Utah
Accessibility Drawing Review – As-Built
February 5, 2022**

Prepared for:

**By: Theresa L. Kitay
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C.**

I have reviewed the as built drawings for _____, a 252-unit multifamily residential community located in Salt Lake City, Utah. My review was to determine the accessibility compliance of the residential amenity and dwelling units at the community, including several “live-work” residential units. In addition, the community has some retail / restaurant space on the ground level. Assessment of accessibility compliance of the interior of these commercial spaces is outside the scope of this review.

The community was constructed for first occupancy in approximately 2015. It is required to comply with the accessibility provisions of the federal Fair Housing Act (“FHA”) and, where applicable, the Americans with Disabilities Act (“ADA”). In addition, the 2015 International Building Code was in effect in the state of Utah at the time of design and construction of the project without relevant amendments; the review included compliance with Chapter 11 of the 2015 IBC, referencing ANSI A117.1-2009.

I have the following comments and observations regarding the review of the as-built drawings:

I. PUBLIC AND COMMON USE AREAS

1. Parking

1.a. *Number of Accessible Parking Spaces*

All parking provided for the community is located on one of the two levels of below-ground parking in the building. **Sheet C2.0.** The architectural site plan shows a total of 7 accessible spaces at this parking level. **Sheet AS101.** The civil site plan shows a total of 8 accessible

parking spaces at this level.¹ **Sheet C2.0.** The location of the accessible spaces differs on the architectural plan from the civil plan.

Under the FHA, 2% of the parking serving residents and their guests is required to be accessible. I did not have a total parking count, but 6 residential parking spaces is FHA compliant up to 300 residential parking spaces total.

Under the 2015 IBC, if there is a 1:1 ratio of parking spaces to individual dwelling units (which, with two levels of parking, there is presumed to be), at least one accessible parking space for each ANSI “Accessible” or “Type A” unit provided is required. With 252 total units (including the live-work units), six accessible parking spaces constitute the minimum number for IBC compliance.

It is unclear whether any of the parking spaces are intended to serve the residential leasing office. If so, accessible parking compliant with the ADA must be provided in a number indicated by Table 208.2 of the 2010 ADA Standards. The seventh or eighth accessible parking space appears to be van accessible, is located at the Building 3 area of the parking level, and is connected to an accessible route to the leasing office. This seventh or eighth accessible space would be sufficient for ADA compliant leasing office parking. **Sheets C2.0, AS101.**

1.b. Accessible Route from Accessible Parking

Some of the accessible parking spaces provided require crossing or travel in the vehicular way to reach an accessible building entry. A marked accessible route must connect the access aisle from these parking spaces to an accessible building entry:

- Two accessible spaces in the center aisle of parking at the north end of the parking level. **Sheet AS101.**
- Two accessible spaces at the west aisle of parking at the Building 2 area of the parking level – **Sheet AS101.** NOTE: on the civil site plan, this is only one accessible space whose access aisle is directly adjacent to the accessible building entry, so no modification would be required in this location. **Sheet C2.0.**
- Two accessible spaces in the center aisle of parking at the Building 2 area of the parking level (only present on the civil site plan). **Sheet C2.0.**

2. Leasing Office – ADA Covered Areas

The leasing office for the community is a two story area located in Building 3. **Sheet AE132.**

¹ I have assumed that the designated accessible parking space in the angled street parking on the north side of the community is not controlled by the property and is “public” parking on a public street.

2.a. *Inaccessible Upper Level*

There does not appear to be any accessible route to the upper level of the leasing office, containing a lounge / open work area (3203), a flex office (3220), and a storage room. **Sheet A2/AE251**. Even if the lounge and flex office are only available for residents and their guests, rather than the general public, they must still be on an accessible route under the Fair Housing Act if not the ADA. If no accessible route is provided to these areas, they should not have any amenities or features that are not available on the accessible level of the leasing lobby (3107).

2.b. *Kitchenette in Lobby*

The leasing lobby (3107) includes a kitchenette. It is unclear whether this kitchen and bar seating area is intended to be for use by residents and their guests or members of the public who visit the leasing office. If the latter, the kitchenette must comply with the ADA. If only for residents and their guests, only the FHA's accessibility requirements apply. The difference between the ADA and the FHA for purposes of this kitchenette will be that if the ADA applies, at least 50% of the kitchen shelf storage space must be located within the 15"-48" AFF accessible reach range of the 2010 ADA Standards. (FHA has no requirement for any percentage of the kitchen shelf storage provided, assuming there is at least one storage space available within the 15"-48" AFF accessible reach range.)

Because the kitchenette does not have a conventional range or cooktop, the sink is not required to have open knee and toe space for a forward, pull under approach (a centered parallel approach to the sink is provided, which is compliant). **Sheet D2/AE251**. The depth of the counter at the sink, however, is 26", which means that any switches or outlets mounted at the back wall of the sink and counter will not be within the 24" maximum accessible reach depth. **Sheet D5/AE251**.

The knee and toe space under the seating bar is only 12" deep, rather than the minimum 17" required for compliant knee and toe space for a forward approach. **Sheet D5/AE251**. Without sufficient knee and toe space, there is no wheelchair accessible portion of the seating bar (a 30" wide wheelchair accessible seating space is required).

3. **Restrooms Serving the Leasing Office**

The restrooms serving the leasing office are required to be ADA compliant.

3.a. *ADA Typical Mounting Heights*

The "ADA Typical Mounting Heights" at **Sheet E5/AE241** is presumably intended to apply to all common area restrooms, not just those serving the leasing office and subject to the ADA. Two of the elevations for typical mounting heights in the restrooms are somewhat inaccurate or incomplete:

- The maximum height of a mirror over a lavatory in a common area restroom is 40", measured *to the bottom of the reflective surface*, not the bottom of the mirror.

- The toilet paper dispenser in an accessible stall of a multiuser restroom or an accessible single user restroom must be located 7"-9" in front of the front edge of the water closet, measured to the centerline of the dispenser. No dimension for the location of the toilet paper holder is given in the "typical mounting" elevations for restrooms.

3.b. *Unisex Single-User Restrooms at Leasing Office*

There are three unisex restrooms in a row in the corridor outside the leasing office (2120, 2121, 3106). Only one of the three is ADA compliant (2121 and 3106 are unlikely to have a forward, pull under approach centered on the sink because of the sink's location directly adjacent to a wall). As long as these restrooms are, in fact, unisex, having only one of three in this "cluster" accessible is FHA and ADA compliant.

4. Residential Amenities

Those common areas of the community that are only available for residents and their guests are not required to be ADA compliant, but must be accessible under the FHA.

4.a. *Mailroom*

HUD's interpretation of the FHA is that all "covered" units must have a mailbox located within the ANSI 1986 reach range of 15"-54" AFF. The mail room plan does not include an elevation or dimension for the height of the individual mailboxes. **Sheet C2/A241.** Because this community has elevator service in all buildings, all units are "covered" by the FHA and all mailboxes must be within the 15"-54" AFF accessible reach range. In addition, the ANSI Type A units required by the 2015 IBC must have mailboxes within the 15"-48" AFF accessible reach range of ANSI 2009, the referenced edition of ANSI for the 2015 IBC.

4.b. *Accessible Seating at Outdoor Terraces*

The only other residential amenities shown on the drawings reviewed are outdoor terraces. To the extent there is table seating provided at any outdoor terrace, 5% or at least one of the seating spaces in each area must be accessible. Accessible table seating is no more than 34" AFF, with knee and toe space for a forward, pull under approach for at least one 30" wide seating space.

II. **INDIVIDUAL DWELLING UNITS**

The most significant accessibility compliance issues were noted in the individual dwelling units.

Note that the trend in the law is that a subsequent owner uninvolved in the original design and construction of is not liable for FHA accessibility deficiencies. The statutory violation under the FHA is the "failure to design and construct" a new covered property with the required elements of FHA accessibility, not the failure to maintain accessibility by a subsequent owner. *See Harding v. Orlando Apartments, LLC*, 748 F.3d 1128 (11th Cir. 2014). In addition, knowledge of FHA deficiencies alone, without some other "benefit" to a subsequent owner from a lack of FHA accessibility, is insufficient to extend the FHA liability to that uninvolved subsequent owner.

See *United States v. Mid-America Apartments Communities, Inc.*, 247 F.Supp.3d 30 (D. DC 2017).

Because as an uninvolved subsequent owner you are unlikely to be ultimately held liable for retrofit of FHA deficiencies, it is a reasonable business decision to forego any retrofit of FHA accessibility deficiencies absent an enforcement action or a demonstrated need by a bona fide resident with a disability.

I have the following comments and observations regarding the accessibility compliance of the individual units reviewed:

5. Live/Work Units –Sheet AE401 (Layout 1); Sheet AE402 (Layouts 2 and 3)

Live/work units are required to be ANSI “Accessible” or ADA compliant in the “work” areas of the unit, including at least one toilet facility. The remainder of the unit must comply with FHA / ANSI Type B requirements. I have assumed that the live/work unit kitchens are part of the “live” area, although they are located on the “work” level of the multistory live/work units.

In all the live/work units, the toilet rooms in the “work” area of the units are not ADA/ANSI Accessible compliant as required:

- The door to the toilet room is a 2’10” door that will not provide the required 32” clear opening width with the door open 90°. Passage doors in the “work” area of live/work units must be 3’0” minimum doors.
- A full 60” wide clearance at the water closet is required. While the width of the toilet room is not specifically dimensioned in any of the live/work plans, it does not appear to be more than the minimum 48” width which would be compliant for FHA.
- The lavatory in the toilet room must have open knee and toe space for a forward, pull under approach. No base cabinet is permitted. The sink should be tagged as having the millwork for the common area lavatories, not unit lavatories (which, even in ANSI Type A units, are permitted to have a base cabinet that is designed to be removable).
- Grab bars must be installed at the rear and side walls of the water closet in the “work” area toilet rooms.

Some of the live/work units have the following FHA deficiencies:

- The range in Layout 2 is located very close to the refrigerator, with the depth of the refrigerator blocking the required centered parallel approach to the range. **Sheet A5/AE402.** (In the same kitchen, the range possibly also obstructed the centered parallel approach to the sink.)
- In Layout 3, the sink is located too close to the corner and will not have a centered parallel approach. A forward pull under approach to the sink is also not possible even if the base cabinet at the sink were removable, because the depth of the range protrudes into the clear floor space for the forward approach to the sink. **Sheet D5/AE402.**

6. Kitchen Centered Clear Floor Space

A parallel approach centered on the fixture or appliance is required at the kitchen sink and range. The elevations for unit kitchen layouts at **Sheet AE241** do not always match the layout on the individual unit plans, where the centering of the required parallel approach appears to be off:

- Unit Type 7 (and variation) (range) – **Sheet A5, A6/AE404**
- Unit Type 5 (range) – **Sheet D5/AE404**
- Unit Type 8 (range) – **Sheet C5/AE405**
- Unit Type 15 (range) – **Sheet C2/AE408**
- Unit Type 16 (sink because of depth of range) – **Sheet A5/AE409**
- Unit Type 9 – Type A (range) – **Sheet B5/AE405**

7. Bathroom Issues

7.a. *Lack of Clear Floor Space Outside Swing*

A complying bathroom in an FHA / ANSI Type B unit must have a 30" x 48" clear floor space outside the swing of the door to allow the user to enter the room and close the door behind. The 30" x 48" clear floor space is not present in the complying bathrooms in the following units:

- Unit Type 1 – **Sheet D5/AE403**
- Unit Type 5 – **Sheet D5/AE404**

7.b. *Centered Clear Floor Space at Lavatory*

The lavatory in a complying bathroom must have a 30" x 48" clear floor space centered on the sink. Unless the base cabinet is designed to be removable, the approach to the sink must be parallel, requiring at least 24" clear floor space on each side of the sink centerline. This clearance does not appear to be present in the following complying bathrooms:

- Unit Type 6 – **Sheet C5/AE404**
- Unit Type 8 – **Sheet C5/AE405**
- Unit Type 9 – **Sheet A5/AE405**
- Unit Type 14 (both bathrooms) – **Sheet C5/AE408**
- Unit Type 15 – **Sheet C2/AE408**

7.c. *Water Closet Clearance*

In Unit Type 13, the master bathroom must have compliant maneuvering space at the water closet because there is no Specification B bathroom elsewhere in the unit. The master bathroom could be a compliant Specification B bathroom, but the water closet is in an alcove that is deeper than 24" but less than 48" wide. **Sheet A5/AE408.**

8. Accessible Route Through Unit

In Unit Type 16, the required 36" wide accessible route is not present at the closet entry from the bedroom. The passageway to enter the closet is likely longer than 24", and is dimensioned at only 34-3/4" wide. **Sheet A5/AE409.**

9. ANSI Type A Units – Sheets B5/AE404 (Unit Type 6), B5/AE405 (Unit Type 9), and C5/AE406 (Unit Type 10)

With 252 individual dwelling units on site, the Utah adoption of the 2015 IBC would require that at least 6 units be compliant ANSI Type A units. ANSI Type A units are solely a matter of local building code compliance; features of accessibility specific to ANSI Type A units are not required for FHA / ANSI Type B compliance.

The three unit types that are provided as ANSI Type A have the following compliance issues on the drawings:

- All of the kitchens have base cabinets at the sink, with none of them designated as removable to provide the required knee and toe space for a forward, pull under approach. *See also Sheet B4/AE241, B5/AE241,*
- None of the kitchens has a 30" wide work surface with knee and toe space for a forward, pull under approach (removable base cabinet acceptable). *See also Sheet B4/AE241.*
- None of the complying bathrooms has a base cabinet designed to be removable to allow for the forward, pull under approach.
- The clear width behind the water closet in the complying bathrooms is dimensioned at "33" minimum", rather than the required 36" minimum for an ANSI Type A complying bathroom.
- In the Unit Type 9 – Type A, the pull side, latch side maneuvering space at the door to the bathroom is less than the minimum required 18". **Sheet B5/AE405.**

I hope this is helpful to you. Please let me know if you have questions or need anything further.

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

BY:


Theresa L. Kitay
Attorney at Law
ICC Certified Accessibility Inspector / Plans Examiner

Project List

BAKER DONELSON

BEARMAN, CALDWELL & BERKOWITZ, PC

THERESA L. KITAY
SHAREHOLDER
Direct Dial: (404) 443-6745
E-Mail Address: tkitay@bakerdonelson.com

MONARCH PLAZA
SUITE 1600
3414 PEACHTREE ROAD N.E.
ATLANTA, GEORGIA 30326

PHONE: 404.577.6000
FAX: 404.221.6501

www.bakerdonelson.com

PROJECT LIST

The following is a sampling of projects for which the firm has performed plan reviews, site inspections, or both within the last twelve months:

San Marco – Jacksonville, Florida
196 units, general occupancy, private financing

Holden of Pearl – Portland, Oregon
200+ units, senior (independent living, assisted living, memory care), private financing

Aster Conservatory Green – Denver, Colorado
286 units, general occupancy, private financing

Broadstone Redmond – Redmond, Washington
362 units, general occupancy, private financing

One Nexton – Summerville, South Carolina
200+ units, general occupancy, private financing

Parkside at Butler – Mauldin, South Carolina
72 units, general occupancy, LIHTC

601 N. Liberty – Savannah, Georgia
219 units, general occupancy, new construction and adaptive reuse, private financing

Modera Argyle – Los Angeles, California
~250 units, general occupancy, private financing

Sedgefield – Charlotte, North Carolina
166 units, general occupancy, private financing

Olmsted Savannah – Savannah, Georgia
163 units, general occupancy, private financing

Dawson Forest – Dawsonville, Georgia
240 units, general occupancy, private financing

Page 2 – Project List

Aintree – Gallatin, Tennessee

240 units, general occupancy, private financing

Sagefield – Jacksonville, Florida

234 units, general occupancy, private financing

Top of the Hill – Cleveland Heights, Ohio

9 residential stories, general occupancy, private financing

Anthem II – South Fulton, Georgia

70 units, senior, LIHTC

Northwinds – Alpharetta, Georgia

140 units, general occupancy, private financing

Carolyn University Apartments – Charlotte, North Carolina

General occupancy, private financing

55 Milton – Atlanta, Georgia

144 units, general occupancy, LIHTC

Buffington Road Apartments – Union City, Georgia

156 units, general occupancy, private financing

NoDa Mill Apartments – Charlotte, North Carolina

General occupancy, new construction and adaptive reuse of historic structure (84 units);
private financing