

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

GEORGE LANE, BEVERLY JONES, ANN)
MARIE ZAPPOLA, DENNIS CANTREL,)
RALPH E. RAMSEY, Sr., and)
A. RUSSELL LARSON,)

Plaintiffs,)

v.)

STATE OF TENNESSEE and its political)
subdivisions, POLK COUNTY, BLEDSON)
COUNTY, CANNON COUNTY, CHESTER)
COUNTY, CLAIBORNE COUNTY, CLAY)
COUNTY, COCKE COUNTY, DECATUR)
COUNTY, FAYETTE COUNTY, GRAINGER)
COUNTY, HANCOCK COUNTY, HAWKINS)
COUNTY, HICKMAN COUNTY, HOUSTON)
COUNTY, JACKSON COUNTY, JEFFERSON)
COUNTY, JOHNSON COUNTY, LAKE)
COUNTY, LEWIS COUNTY, MEIGS)
COUNTY, MOORE COUNTY, PERRY)
COUNTY, PICKETT COUNTY, TROUSDALE)
COUNTY, and VAN BUREN COUNTY,)

Defendants.)

No. 3:98 CV 0731
Judge Campbell
Magistrate Judge Griffin
JURY DEMAND

SETTLEMENT AGREEMENT – FAYETTE COUNTY

This Settlement Agreement (hereinafter "Agreement") is entered into this 23 day of February, 2005, by and between Plaintiffs George Lane, Beverly Jones, Ann Marie Zappola, Dennis Cantrel, Ralph E. Ramsey, Sr., and A. Russell Larson (hereinafter "Plaintiffs") and Defendant Fayette County (hereinafter "Defendant County").

This Agreement resolves all of Plaintiffs' claims for injunctive relief against Defendant County. It does not resolve Plaintiffs' claims for damages or attorneys' fees and costs.

PARTIES TO THIS AGREEMENT

1. Plaintiffs have alleged they are qualified individuals with disabilities as that term is defined by 42 U.S.C. §12131(2).

2. Defendant County is a Public Entity as that term is defined in 42 U.S.C. §12131(1). Defendant County is subject to Title II of the ADA, 42 U.S.C. §12132, and its implementing regulations, 28 C.F.R. Part 35.

ADDITIONAL DESIGNATIONS

3. As used herein, the State of Tennessee shall refer collectively to the defendant designated as the State of Tennessee in this litigation, all Tennessee Courts exercising jurisdiction under Tennessee law in the courthouse and any other owned or operated facility of the Defendant County, and the AOC ("Administrative Office of the Courts").

DEFINITIONS

4. Unless otherwise specified in these Definitions, the definitions of terms used in this Agreement shall be the same definitions as are contained in 42 U.S.C. §12131 et seq. and 28 C.F.R. Part 35 and 36 and any accompanying explanations as may be contained in the statutes, appendices or regulations associated with those statutes and regulations.

a. "ALTERATION" refers to any modification, improvement, remodeling, renovation or repair to ANY buildings or structures at the SUBJECT FACILITIES.

b. "DEFENDANT COUNTY" as used herein refers to Defendant County and includes any official agency of Defendant County.

c. "EFFECTIVE DATE" means the last date upon which this Agreement was executed by a party.

d. "SUBJECT FACILITIES" refers to any courthouse and/or other buildings owned and/or operated by Defendant County in which judicial programs and services and/or county commission meetings are held.

FACTUAL BACKGROUND

5. Pursuant to the Constitution of the State of Tennessee and state statutes, the State of Tennessee conducts its judicial program in the county courthouses and other facilities of the State. Defendant County is responsible for providing the facilities in which the State's judicial program is conducted in the Defendant County.

OBLIGATIONS ASSUMED BY THE DEFENDANT COUNTY

6. Defendant County will make the Alterations as enumerated in Appendix A, attached hereto. Defendant County will cooperate with the State of Tennessee to implement the State of Tennessee's policies and procedures to ensure that the State's judicial program is in compliance with Title II of the ADA and its implementing regulations.

7. Defendant County has represented that it is not possible to make all the Alterations delineated in Appendix A immediately. Defendant County agrees to make good faith progress toward the completion of the Alterations delineated in Appendix A. Defendant County will complete as soon as practicable the items delineated in Appendix A. All of the Alterations delineated in Appendix A shall be completed within five (5) years of the Effective Date.

8. Notwithstanding any unforeseen future contingencies that might impact the Alterations set forth in Appendix A, Defendant County agrees to refrain from taking any action that will diminish the level of physical accessibility of the judicial program conducted in Defendant County's subject facilities as achieved through the Alterations enumerated in Appendix A. This paragraph shall not be read to prohibit the curtailment of a judicial program, service, or activity at any of Defendant County's subject facilities for reasons unrelated to compliance with the ADA unless such action eliminates the only such accessible program, service, or activity in Defendant County's subject facilities.

9. Defendant County agrees that all disability access features that are provided for in this agreement shall be inspected and maintained by the Defendant County hereafter to insure the accessibility of the judicial program in the subject facilities at all times, except for isolated or temporary interruptions due to necessary maintenance or repairs.

ENFORCEMENT AND MONITORING

10. Upon the Effective Date, the parties agree to execute an agreed order of dismissal with prejudice as to Plaintiffs' claims for injunctive relief against Defendant County. This Agreement shall be made an exhibit to the dismissal order.

11. The United States District Court for the Middle District of Tennessee shall have exclusive jurisdiction and venue to construe and enforce this Agreement, and to resolve any and all disputes arising out of or relating to this Agreement, which shall be governed by and construed in accordance with the laws of the United States and the State of Tennessee.

12. All claims resolved by this Agreement shall be dismissed with prejudice upon the Effective Date of this Agreement.

13. If any party to this Agreement believes that another party is violating its obligations under this Agreement, or believes a dispute has arisen under the Agreement (the "Complaining Party"), then the Complaining Party shall give written detailed notice (the "Notice") to the other party (the "Responding Party"). The Responding Party shall be given thirty (30) days to provide a written response to the Notice. The Complaining and Responding Parties shall attempt within the next thirty (30) days to resolve their differences regarding the issue(s) addressed in the Notice including any issues of attorneys fees, expenses, and costs. No action may be instituted in the United States District Court for the Middle District of Tennessee relating to this Agreement prior to the expiration of the time periods addressed in this Paragraph.

14. Reasonable attorneys fees, costs, and expenses may be sought by the prevailing party in any judicial proceeding relating to this Agreement to the extent allowed by law.

15. Defendant County shall provide to Plaintiffs (at the address for Plaintiffs set forth in Paragraph 22) a bi-monthly report (no less frequently than every sixty (60) days following the Effective Date) that sets forth its progress in making the Alterations set forth in Appendix A until such time as compliance with the obligations specified therein is achieved. Defendant County agrees to make good faith efforts at completing the Alterations delineated in Appendix during each sixty (60) day time period. When the Defendant County has completed making the alterations in Appendix A, said Defendant County shall submit a certified report signed by an appropriate representative of the County stating that the Alterations set forth in Appendix A have been completed.

16. If at any time Defendant County wishes to modify any portion of this Agreement because of changed conditions making performance impossible or impractical, Defendant County's designated representative will promptly notify Plaintiffs in writing (at the address for Plaintiffs set forth in Paragraph 22), setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification, and provide evidence to support their position that such modification is necessary. Until there is written assent or agreement by Plaintiffs to the proposed modification, the proposed modification will not take effect. If the requested modification is not approved within thirty (30) days of the date of written notification of such need, then Defendant County may proceed as a Complaining Party under the provisions of Paragraph 13 of the Agreement.

MISCELLANEOUS PROVISIONS

17. By entering into this Agreement, no party shall be deemed to have waived any claim or defense not otherwise specifically released in writing, until such time as the Court no longer has jurisdiction over the matters raised in this action.

18. By entering into this Agreement, Defendant County does not waive its defense based on Plaintiffs Zappola, Lane, Jones, and Ramsey's alleged lack of standing to seek injunctive relief against Defendant County since none of these Plaintiffs has ever attempted to access judicial proceedings that are offered in Defendant County.

19. This Agreement will be null and void as to Plaintiffs Zappola, Lane, Jones, and Ramsey if any court of competent jurisdiction reverses Judge Campbell's Order (Docket Entry No. 319), entered on December 7, 2004, relating to a Plaintiff's standing to seek injunctive relief against Defendant County although that Plaintiff allegedly has never attempted to access judicial proceedings that are offered in Defendant County. Defendant County does not dispute that Plaintiffs Cantrel and Larson have standing to enforce this Agreement.

20. The representatives signing this Agreement on behalf of Defendant County represent that they are authorized to bind Defendant County to the provisions agreed upon herein. Each signatory to this Agreement affirms that he or she has consulted with and been

advised by counsel in connection with the execution of this Agreement and that he or she agrees that its terms are fair and reasonable.

21. This Agreement sets forth the entire agreement between Plaintiffs and Defendant County with respect to the subject matters herein, and supersedes all prior oral and written agreements and discussions. No other statement, promise, or agreement concerning the subject matters herein, either written or oral, made by any party or the agents of any party that is not contained in this written Agreement shall be effective. Plaintiffs and Defendant County represent that in entering into this Agreement, none of them has relied upon any statement of any other party to this Agreement except those statements set forth herein.

22. All notices and other correspondence sent by Plaintiffs and Defendant County to one another relating to this Agreement shall be sent to the following addresses or at such other address as the parties may designate in writing in the future:

For Defendant County:

Rhea Taylor, County Mayor
P.O. Box 218
Somerville, Tennessee 38068-0218

- and -

Richard G. Rosser, Esq.
County Attorney
102 Court Square East
Somerville, Tennessee 38068-1436

For Plaintiffs:

William J. Brown & Associates
23 North Ocoee Street
P.O. Box 1001
Cleveland, TN 37364-1001

23. This Agreement shall be binding on the parties, and their elected or appointed successors in interest.

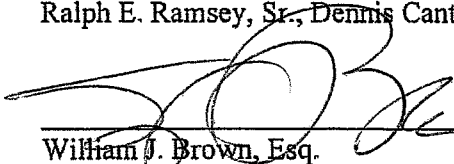
24. This Agreement shall become effective once signed by all parties and the effective date will be the date of the last signature affixed hereto.

25. This Agreement is contingent on the State of Tennessee executing the Compromise and Settlement Agreement which provides, *inter alia*, that Defendant County will not be responsible for any of Plaintiffs' attorneys' fees, expenses and costs through December 17, 2004, including those relating to Defendant County, with the exception of the amount of Two Thousand Six Hundred Eighty Dollars (\$2,680.00) which reflects Defendant County's pro rata

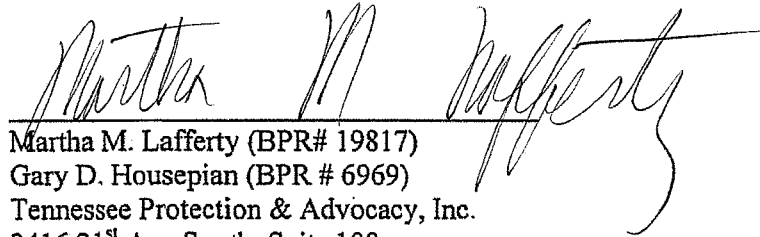
share of the amount of Plaintiffs' expenses and costs accrued through December 17, 2004 and not paid by the State, and the State approving the payments to be made by the State as set out therein.

IN WITNESS WHEREOF, Plaintiffs and Defendant County in the above-captioned action have caused this Agreement to be executed as of the dates subscribed below.

For Plaintiffs George Lane, Beverly Jones, Ann Marie Zappola,
Ralph E. Ramsey, Sr., Dennis Cantrel, and A. Russell Larson:



William J. Brown, Esq.
William J. Brown & Associates
23 North Ocoee Street
P.O. Box 1001
Cleveland, TN 37364-1001



Martha M. Lafferty (BPR# 19817)
Gary D. Housepian (BPR # 6969)
Tennessee Protection & Advocacy, Inc.
2416 21st Ave South, Suite 100
Nashville, TN 37212
(615) 298-1080



Linda M. Dardarian, admitted Pro Hac Vice
Roberta L. Steele, admitted Pro Hac Vice
GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN
300 Lakeside Drive, Suite 1000
Oakland, CA 94612-3534
(510) 763-9800

Attorneys for Plaintiffs

Date: 2/15/2005

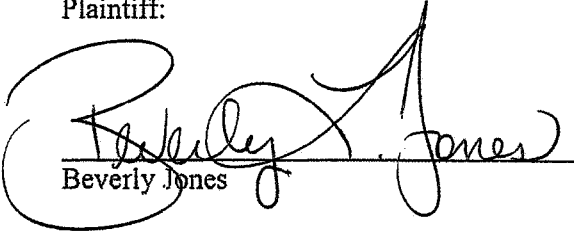
For Defendant County:

Fayette County, Tennessee

By: 
Rhea Taylor, County Mayor

Date: 1/28/05

Plaintiff:


Beverly Jones

2-11-05
Date

FAYETTE COUNTY

Plaintiff:


George Lane

2-14-05
Date

FAYETTE COUNTY

Plaintiff:



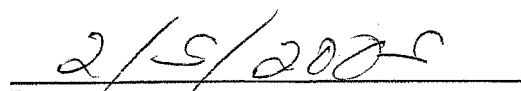
Ann Marie Zappola

2/17/05

Date

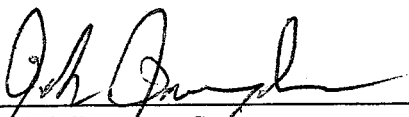
Plaintiff:


Dennis Cantrel


Date

FAYETTE COUNTY

Plaintiff:



Ralph Ramsey, Sr.

2-23-05
Date

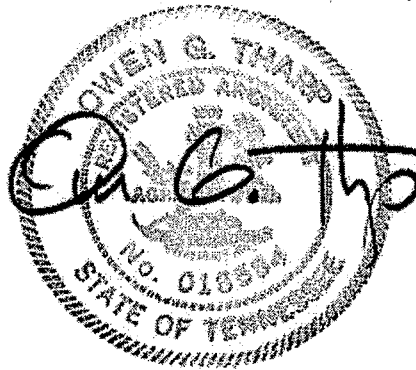
Plaintiff:

A handwritten signature in black ink, appearing to read "A. Russell Larson", written over a horizontal line.

A. Russell Larson

2-15-05
Date

REVIEW OF ADA ISSUES
JUDICIAL SERVICES
FOR
FAYETTE COUNTY COURTHOUSE



The information contained in this Review is described in the Work Statement contained in Section I. The information contained in this Review is copyrighted and may be used only by the parties associated with litigation in the case of Lane et.al v. the State of Tennessee et.al that is pending in the Federal District Court for the Middle District of Tennessee Docket No. 3:98 CV 0731.

Issue Date: June 25, 2004
Site Visit Date: June 21, 2004
Revised: August 23, 2004
Site Visit Date: January 21, 2005
Revised: January 31, 2005

BWSC | BARGE
WAGGONER
SUMNER &
CANNON, INC.

211 Commerce Street, Suite 600
Nashville, Tennessee 37201
Phone: 615-254-1500

APPENDIX A

Fax: 615-255-6572

Cannon County Courthouse
June 18, 2004

TABLE OF CONTENTS

I.	INTRODUCTION.....	Page 2-3
	A. Work Statement	
	B. The Americans With Disabilities Act	
II.	FACILITY BACKGROUND.....	Page 3
III.	FACILITY EVALUATIONS/COMPLIANCE STRATEGIES/OPINIONS.....	Page 3 - 15
	A. Accessible Parking	
	B. Accessible Route from Parking to Entrance Door	
	C. Accessible Entrance	
	D. First Floor Courtroom Entrance Door	
	E. First Floor Small Courtroom	
	F. First Floor Small Courtroom Witness Stand	
	G. First Floor Clerk and Master Office	
	H. Path of Travel to the Second Floor	
	I. Second Floor Large Courtroom Entrance Door	
	J. Second Floor Large Courtroom	
	K. Second Floor Courtroom Witness Stand	
	L. Second Floor Large Courtroom Jury Box	
	M. Path of Travel to the Second Floor Large Courtroom Jury Room	
	N. Jury Room	
	O. Jury Room Break Room	
	P. Path of Travel to the Second Floor Circuit court Clerk's Office	
	Q. Accessible Toilet Room	
	R. First Floor Drinking Fountain	

S. Second Floor Drinking Fountain

T. Fire Extinguishers

U. Interior Signage

V. Area of Rescue Assistance

**IV. ALTERNATIVE LOCATION – AMBULANCE SERVICE
BUILDING (1/31/05) Page 15-17**

A. Accessible Parking

B. Accessible Route from Parking to Entrance Door

C. Accessible Entrance

D. Women's Toilet Room

E. Men's Toilet Room

F. Drinking Fountain

G. Fire Extinguisher

ATTACHMENTS

A. Site

LOCATION:

Fayette County Courthouse
16750 Highway 64
Somerville, TN 38065

I. INTRODUCTION**A. WORK STATEMENT**

This report is prepared by Barge Waggoner Sumner & Cannon, Inc. (BWSC) at the request of Manier & Herod. The information contained herein is a response to the ADA Compliance Report, Judicial Services, on the Fayette County, TN, Courthouse, prepared by Falconnier Design Co. (FDC) and dated April 19, 2004. Data for this report was obtained in a field investigation by BWSC on June 21, 2004. This report responds to items noted and issues raised in the report by FDC. Recommendations are made with the goal of providing access for the disabled to judicial services now provided within the building.

Accessibility Compliance for the purposes of this report means compliance with ADAAG regulations (Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities Appendix A to Part 36 – Standards for Accessible Design Federal Register / Vol. 56, no. 144 / Friday, July 26, 1991, Rules and Regulations.)

This report is not intended to be a complete review of the designated building in relation to requirements of the Americans with Disabilities Act. It addresses only accessibility issues relative to the judicial services provided in the building. It does not address Building Code compliance or Life Safety issues. Alterations undertaken to provide greater accessibility may trigger requirements for Building Code compliance. Any alterations to the building should be designed and reviewed on site by a design professional licensed in the State of Tennessee and must be approved by any Building Authority having jurisdiction.

B. THE AMERICANS WITH DISABILITIES ACT

The American with Disabilities Act (ADA) is a federal civil rights act enacted in 1990 prohibiting discrimination against people with disabilities. There are five sections, or "titles," which cover different aspects of discrimination:

Title I Employment

Title II State and Local Government

Title III Public Accommodations and Commercial Facilities

Title IV Telecommunications

Title V Miscellaneous provisions of the law

The judicial services provided in this courthouse fall under the requirements of Title II. The following excerpts from "The Americans with Disabilities Act Title II Technical Assistance Manual" explain some of these requirements.

“Title II of ADA covers programs, activities, and services of public entities. It is divided into two subtitles. Subtitle A is intended to protect qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments.”

“A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity’s services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as “program accessibility,” applies to all existing facilities of a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible.”

“Public entities may achieve program accessibility by a number of methods. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility. The public entity may, however, pursue alternatives to structural changes in order to achieve program accessibility. Nonstructural methods include acquisition or redesign of equipment, assignment of aides to beneficiaries, and provision of services at alternate accessible sites.”

“Unlike private entities under Title III, public entities are not required to remove barriers from each facility, even if removal is readily achievable. A public entity must make its “programs” accessible. Physical changes to a building are required only when there is no other feasible way to make the program accessible.”

In altering facilities in order to make them accessible, government entities must comply with the ADA Standards (ADAAG) unless it is “technically infeasible” to do so. If technically infeasible, the alteration must comply “to the maximum extent feasible.” “Technically infeasible” is defined as having little likelihood of being done because a major structural member would have to be moved or because an existing physical or site constraint prohibits compliance.

II. FACILITY BACKGROUND

The current Fayette County Courthouse was erected in 1925 and appears to have had few changes since that time. A plaque in the Lobby commemorates its listing on the National Register of Historic Places. Great care has been taken to preserve the historic character of both the interior and exterior of the building. Some years ago, a concrete ramp was added to the rear (north) entrance. Two small Toilet Rooms on the First Floor were designated as accessible for Men and Women. A new wall-hung drinking fountain was installed on the First Floor. A conferencing system was installed to allow a person in the First Floor Small Courtroom to see the judicial area and, for Council Meetings, verbally and visually interact with participants in the Second Floor Large Courtroom.

III. FACILITY EVALUATIONS/COMPLIANCE STRATEGIES/OPINIONS

A. ACCESSIBLE PARKING

ISSUE: (Ref: Sec. 1, FDC Report) The FDC report indicates that the parking is noncompliant for the number of spaces provided. The curb ramp is non-compliant for slope and lack of a detectable warning strip.

RECOMMENDATION: Within the parking area there are two spaces specifically used for police / sheriff parking and not available to the general public. Removing these two spaces from the total count would bring the number to 24 and would change the number of required spaces from two to one, meaning the number of spaces provided is compliant. A van accessible space and the required 8'-0" aisle should be provided. This aisle may be shared with the additional handicap space (if this additional space is retained). This space may require a small amount of asphalt fill near the curb to level the space and to bring running slopes into compliance. Additionally, these spaces should have ADA compliant signage including signs for the van space and signage indicating the location of the accessible route to the building. This aisle should also end in an ADA compliant curb ramp (meeting requirements for width, slope and for clear landing space beyond the ramp) between the parking lot and the accessible route. This ramp should also have a detectable warning strip before the ramp slopes into the parking lot.

B. ACCESSIBLE ROUTE FROM PARKING TO ENTRANCE DOOR

ISSUE: (Ref: Sec. 1, FDC Report) The entrance ramp is non-compliant for slopes and handrail location.

RECOMMENDATION: The ramp to the doorway should be repaired and brought into compliance. Beginning at the doorway into the building, the landing is sloped and should be brought to level. From there, the ramp should generally follow the path of the existing ramp, but at a slightly gentler slope (no greater than 8.3%) in compliance with ADA. The cross slope of the ramp should also be flattened. This ramp should have no run of greater than 30'-0" without a level landing of at least 5'-0" in length by the width of the ramp. The ramp should also have ADA compliant handrails, with the required handrail extensions, and edge protection.

C. ACCESSIBLE ENTRANCE

ISSUES: (Ref: Sec. 2, FDC Report) The Rear Entrance Door has non-compliant loose mats both inside and outside the door, and the door closers for both leaves have too fast a closing period.

RECOMMENDATION: The loose mats should either be removed or fastened to the floor in a compliant manner. The closers should be adjusted to a slower, compliant closing period.

PER 2/4/05: LOOSE MAT – NO ACTION REQUIRED AS VENDOR HAS INDICATED IT IS COMPLIANT WITH THE ADA.

D. FIRST FLOOR COURTROOM ENTRANCE DOOR

ISSUE: (Ref: Sec. 16, FDC Report) The signage is non-compliant. A single leaf of the double door gives too narrow a door opening. The door handle is non-compliant.

RECOMMENDATION: A clear opening of 32" through the doorway should be provided. This could be accomplished in a number of ways. The pair of doors could be operated by an automatic door opener. The existing doors could be replaced with a pair of doors of unequal size. The pair of doors could be replaced by a door and fixed sidelight. In any case, the door hardware should be replaced with a compliant lever handle. Compliant signage should be installed.

Another option, preferred by the County, is installation of a buzzer which would sound in the Clerk & Master Office summoning assistance to open both leaves of the door. After the new Justice Center is completed, this room will not longer be needed for judicial services.

1/31/05: Following construction of the new Justice Center, this room may be used as an alternate location for Chancery Court non-jury trials in which a participant has a mobility disability.

E. FIRST FLOOR SMALL COURTROOM

ISSUE: (Ref: Sec. 17, FDC Report) There is a raised platform at the front of the room with a desk, presumably for the Judge's use.

RECOMMENDATION: It does not appear, from a review of other FDC reports, that Judge's Benches are an issue at this time in this case; therefore BWSC has not addressed this area.

F. FIRST FLOOR SMALL COURTROOM WITNESS STAND

ISSUE: (Ref: Sec. 18 & 19, FDC Report) The path of travel to the Witness Stand is by way of a narrow space between the platform and the Witness Stand. The Witness Stand itself is inaccessible because of being raised one step above the main floor and the space within being too small.

RECOMMENDATION: The Witness Stand is not permanently attached to the courtroom floor. It is possible to move it out of the way. The Witness Stand itself is valued as part of the historic fabric of the building. The ADAAG regulations for Justice Facilities, which have been proposed but not yet adopted, allow, in existing facilities, an alternative location for witnesses who cannot climb steps to an elevated Witness Stand. Such a witness could sit at floor level near the Witness Stand and use a hand-held microphone.

Per FDC in meeting on 8/6/04: The County should make a rule that in any proceeding where a witness is unable to climb into the Witness Stand, all witnesses will sit at floor level outside the Witness Stand.

1/31/05: *Alternatively, County has the option of following State protocol.*

G. FIRST FLOOR CLERK AND MASTER OFFICE

ISSUE: (Ref: Sec. 8, FDC Report) A single leaf of the double door leading into the office gives too narrow a door opening. The door handle is non-compliant. There is a loose mat on the floor outside the door. The signage is non-compliant.

RECOMMENDATION: A compliant 32" wide door opening should be provided. The County has a choice of several methods of achieving this. This office opens onto the main hallway of the building, a formal space whose historic character has been carefully preserved in consultation with the Tennessee Historic Commission. The doors to this office are part of that character. Since there is always a clerk on duty in the office during business hours, a solution could be to install a buzzer to summon someone to open both leaves of the door, providing a passageway of over 4 feet.

Compliant hardware should be installed on the doors. The loose mat should be removed. Compliant signage should be installed.

Per FDC in meeting on 8/6/04: required modifications are installation of a buzzer and compliant signage.

PER 2/4/05: LOOSE MAT – NO ACTION REQUIRED AS VENDOR HAS INDICATED IT IS COMPLIANT WITH THE ADA.

H. PATH OF TRAVEL TO THE SECOND FLOOR

ISSUE: (Ref: Sec. 20, FDC Report) The only access to the Second Floor is by way of the central, divided monumental stair. FDC notes some non-compliant features of the stairs and handrails.

RECOMMENDATION: Access to the Second Floor should be provided for persons who cannot climb stairs. The County is proposing to install an inclined platform lift along the run of the monumental stair. ADAAG allows the use of platform lifts in alterations of existing buildings. The Appendix to the ADAAG rules and Regulations specifically mentions inclined platform lifts as available. The model chosen should comply with ADAAG regulations and be equally suitable for wheelchair users and semi-ambulatory individuals.

The Fayette County Board of Commissioners has approved the construction of a new Justice Center which would include fully accessible courtrooms and related spaces. Construction of such a Center could allow moving a majority of the courtroom proceedings out of the existing Second Floor Courtroom, in particular those proceedings where a person unable to climb stairs is a participant.

The Appendix to the ADAAG regulations states that stairs connecting levels also connected by an elevator or other accessible means of vertical access are not required to meet the standards for stair and handrail design.

The County will install either an elevator or a lift between the first and second floors.

1/31/05: Noting that Fayette County will construct a new Justice Center, Fayette County will not install an elevator or a chair lift in the existing Courthouse. Following construction of the Justice Center, Circuit Court and General Sessions cases will be heard in the new Justice Center. Chancery Court will move upstairs to the existing Second Floor Large Courtroom.

Title II of the ADA requires that all persons have access to the judicial services currently provided in this building. Title II allows government entities to use alternative means in order to provide program accessibility. For the estimated two year period while the new Justice Center is being designed and built, the County has identified the Ambulance Service Building, at 102 East Latta Lane, as an alternative location for court proceedings when persons with mobility disabilities are participants in those proceedings. An evaluation of accessibility issues at that location is at the end of this report. After construction of the new Justice Center, Chancery Court non-jury trials involving persons with mobility disabilities will be held in the First Floor Small Courtroom. Chancery Court jury trials involving persons with mobility disabilities will be held at the new Justice Center in accordance with State Protocol.

Non-compliant features of the monumental stairs and handrails and recommendations for modification are as follows:

- The rounded $\frac{3}{4}$ " nosings on the stair treads are cited as non-compliant. In fact, the regulation cited, {4.9.3}, calls for a "radius of curvature" not more than $\frac{1}{2}$ ". The radius of the nosing is $\frac{3}{8}$ " and is compliant.*
- The handrail height is between 29 $\frac{1}{2}$ " and 30 $\frac{1}{2}$ " above the nosings. ADAAG requires a height of 34" to 38". The handrails lack required extensions at the top and bottom of the stairs. A handrail of compliant height should be provided along the open side of the stairs. The County should consult with a historic preservation specialist and with the State Historic Commission to arrive at a design solution which preserves the historic character of the building while providing access to the Second Floor.*
- There are no handrails on the wall side of the stairs. Fully compliant handrails should be installed along the wall side of the stairs. The County should consult with a historic preservation specialist and with the State Historic Commission to arrive at a design solution which preserves the historic character of the building while providing access to the Second Floor.*
- The risers in the top flight vary in height, being 5 $\frac{7}{8}$ ", 6 $\frac{1}{8}$ " and 6 $\frac{1}{4}$ ". It is recommended that the existing, historic stairs not be modified. The ADAAG regulations do not make any allowance for small variations caused by the limitations of construction conditions. The 1999 edition of the Standard Building Code, currently adopted by the State of Tennessee, {1007.3.4} allows a variance*

of up to 3/8" between the tallest and shortest riser heights in a flight of stairs. The variance in the existing risers falls within that range.

- The top guardrail does not comply with Life Safety Code requirements. It is not within the scope of this review to address Life Safety issues.*
- The handrail is 2" wide, wider than the required maximum of 1 1/2". It is recommended that the existing, historic handrail not be modified. In the new ADA and ABA Accessibility Guidelines for Buildings and Facilities, published in the Federal Register July 23, 2005, {505.7} allows a width of up to 2" for round handrails and 2 1/4" for oval handrails. Although these new guidelines have not been adopted into law, they demonstrate that the Access Board thinks the older regulations are overly restrictive.*

I. SECOND FLOOR LARGE COURTROOM ENTRANCE DOOR

ISSUE: (Ref: Sec. 21, FDC Report) There are three pairs of doors leading into the Large Courtroom. Only one leaf of one pair is used at present. That door has a closer that requires too great a push/pull pressure and closes the door too quickly.

RECOMMENDATION: The door closer for the active leaf should be adjusted or replaced in order to provide a compliant push/pull pressure and closing period.

Per FDC in meeting on 8/6/04: These doors have spring hinges. The active leaf should have a closer installed and the hinges replaced.

J. SECOND FLOOR LARGE COURTROOM

ISSUE: (Ref: Sec. 22, FDC Report) The space at the left front of the visitors' section which is presumably intended for wheelchair spaces is not compliant. The space from the front pew to the bar is not large enough.

RECOMMENDATION: Four compliant wheelchair spaces should be provided in the visitors' section. This could be accomplished by removing the next pew, or part of the next pew, at the left front of the visitors' section.

1/31/05: It is the general recommendation of this report that the County has the option of providing programs and services at an alternative location for persons with mobility disabilities. Consequently, the Second Floor Large Courtroom will not be made accessible to persons in wheelchairs and no wheelchair locations will be needed in the visitors' section.

K. SECOND FLOOR COURTROOM WITNESS STAND

ISSUE: (Ref: Sec. 24, FDC Report) The Witness Stand is inaccessible to a person in a wheelchair because it is raised two steps above the Courtroom Floor and the space within is too confined. In addition the path of travel to the Witness Stand past the Judge's Bench is too narrow.

RECOMMENDATION: The existing Witness Stand cannot be made compliant without both rebuilding the structure and adding either a ramp or platform lift. The Witness Stand is valued as part of the historic fabric of the building. A ramp to the existing height would be 10'-6" long and 3' wide, with a maneuvering space at the top 5 feet square. A lift would take up an area about 54" square and would require a similar maneuvering space in the Witness Stand. There is not room to add either option without blocking access to the Jury Box and the path to the Jury Room. The ADAAG regulations for Justice Facilities, which have been proposed but not yet adopted, allow, in existing facilities, an alternative location for witnesses who cannot climb steps to an elevated Witness Stand. Such a witness could sit at floor level near the Witness Stand and use a hand-held microphone.

Title II allows government entities to use alternative means in order to provide program accessibility. The proposed new Justice Center could be designated as an alternate location for court proceedings when a person unable to climb stairs is scheduled to appear as a witness.

Per FDC in meeting on 8/6/04: The County should make a rule that in any proceeding where a witness is unable to climb into the Witness Stand, all witnesses will sit at floor level outside the Witness Stand.

1/31/05: It is the general recommendation of this report that the County has the option of providing programs and services at an alternative location for persons with mobility disabilities. Consequently, the Second Floor Large Courtroom will not be made accessible to persons with mobility disabilities in accordance with State Protocol..

L. SECOND FLOOR LARGE COURTROOM JURY BOX

ISSUE: (Ref: Sec. 25 & 26, FDC Report) The path of travel to the Jury Box is very narrow at the front wall of the room, where the path is obstructed by both the step up to the Jury Box and a heating radiator. The Jury Box itself is at two levels, both raised above main floor level. There is not a compliant maneuvering space for a wheelchair at either level.

RECOMMENDATION: The existing Jury Box cannot be made compliant without rebuilding the structure and adding either a ramp or platform lift. A ramp to the existing lower level would be 6 feet long and 3 feet wide, with a minimum maneuvering space at the top 5 feet square. A lift would take up an area about 54" square and would require a similar maneuvering space in the Witness Stand. There is not room to add either option without blocking access to the Jury Box and the path to the Jury Room. The ADAAG regulations for Justice Facilities, which have been proposed but not yet adopted, allow, in existing facilities, an alternative location for jurors who cannot climb steps to an elevated Jury Box. In such a case, a wheelchair space may be located outside the defined area of a raised Jury Box.

Title II allows government entities to use alternative means in order to provide program accessibility. The proposed new Justice Center could be designated as an alternate

location for court proceedings when a person unable to climb stairs is scheduled to appear as a juror.

Per FDC in meeting on 8/6/04: Modification of the Jury Box in order to enable a person in a wheelchair to participate from a location inside the Jury Box enclosure is required. It was suggested that a 36" long section of the solid front rail be removed, and a section of the lower platform be cut out and replaced with a removable platform. This would enable a person in a wheelchair to sit at floor level, yet be within the Jury Box enclosure. Provision of a 60" x 60" maneuvering space within the Jury Box is not required.

1/31/05: It is the general recommendation of this report that the County has the option of providing programs and services at an alternative location for persons with mobility disabilities. Consequently, the Second Floor Large Courtroom and the jury box will not be made accessible to persons in wheelchairs.

M. PATH OF TRAVEL TO THE SECOND FLOOR LARGE COURTROOM JURY ROOM

ISSUE: (Ref: Sec. 27, FDC Report) The path of travel to the Jury Room passes through the narrow, inaccessible area between the Jury Box and the front wall of the Courtroom. The door leading out of the Courtroom has non-compliant hardware.

RECOMMENDATION: Title II allows government entities to use alternative means in order to provide program accessibility. As an immediate measure, in jury trials where a wheelchair user is a member of the jury, the jury could be escorted to the Jury Room through the public entrance doors, through the main Second Floor hallway, through the corridor behind the Courtroom and to the Jury Room. This path is accessible.

The long term solution should be construction of the proposed Justice Center which could be designated as an alternate location for court proceedings when a person unable to climb stairs is scheduled to appear as a juror.

1/31/05: It is the general recommendation of this report that the County has the option of providing programs and services at an alternative location for persons with mobility disabilities. Consequently, the Second Floor Large Courtroom will not be made accessible to persons in wheelchairs and no accessible route will be required to the Jury Room.

N. JURY ROOM

ISSUE: (Ref: Sec. 27, FDC Report) There is no compliant room identification signage and the door hardware is non-compliant.

RECOMMENDATION: Compliant hardware and room identification signage should be installed.

O. JURY ROOM BREAK ROOM

ISSUE: (Ref: Sec. 30, FDC Report) Opening off the Jury Room and also opening into an adjacent meeting room is a small space with a sink and counter. This room is not accessible.

RECOMMEDATION: The "Break Room" was not identified by any signage. Within the Jury Room and in an accessible location BWSC saw a coffee maker and refreshment supplies, implying that the "Break Room" is not used directly by jurors. Refreshments for jurors should be made available in a location accessible to all.

P. PATH OF TRAVEL TO THE SECOND FLOOR CIRCUIT COURT CLERK'S OFFICE

ISSUE: (Ref: Sec. 31 & 32, FDC Report) There are two entrances to the Circuit Court Clerk's Office. One is directly from the back of the Courtroom through a pair of doors, neither leaf of which is a compliant width. The more public entrance is from the Stair Lobby through a door with non-compliant hardware, down a compliant corridor and into the Office through another pair of doors. This pair of doors does not have a compliant opening through either leaf. All three doors identified here lack compliant hardware.

RECOMMENDATION: The Circuit Court Clerk's Office must have one accessible entrance. The entrance off the corridor should be identified as the accessible entrance and made compliant. As for other pairs of door in this building, there are several possible modifications. Since there is always a clerk on duty in the office during business hours, a buzzer could be installed to summon someone to open both leaves of the doors, providing a passageway of over 4 feet. Compliant hardware should be installed on both doors along the path to the accessible entrance, and compliant directional and room identification signage installed.

1/31/05: It is the general recommendation of this report that the County has the option of providing programs and services at an alternative location for persons with mobility disabilities. Noting that Fayette county will construct a new Justice Center, the Second Floor of the Courthouse will not be made accessible to persons with mobility disabilities.

A sign should be installed on the First Floor directing persons unable to climb stairs who have business with the Circuit Court Clerk's office to the Chancery Court Clerk's office.

Q. ACCESSIBLE TOILET ROOM

ISSUE: (Ref: Sec. 10, 11 & 29, FDC Report) There are two small Toilet Rooms on the First Floor, for Men and Women, identified as accessible. Neither of these is compliant with ADAAG regulations.

RECOMMEDATION: At least one compliant accessible Toilet Room should be provided on the First Floor. The most minimal modification would be to make the current Women's Accessible Toilet Room compliant and identify it as a Unisex Toilet Room. As an alternative, by moving the plumbing wall 6" further into the Women's Toilet Room,

the required 60" clear floor space could be provided in the Men's Toilet Room and the Courthouse could have two accessible Toilet Rooms on the First Floor.

For compliance in the current Women's Toilet Room:

- Compliant room identification signage should be installed.
- The door opening should be widened to accommodate a 36" door with compliant hardware.
- The closer should be adjusted to a compliant closing period.
- A threshold with beveled edges should be installed.
- The sink should be reinstalled at a compliant height and distance from the wall.
- Compliant insulation should be installed on the exposed drain piping under the sink.
- The paper towel dispenser should be relocated outside the required path of travel.
- The bottom of the mirror should be lowered $\frac{3}{4}$ ".
- The toilet should be reinstalled with the centerline at a compliant distance of 18" from the side wall.
- The side wall grab bar should be replaced with a 42" long model mounted in a compliant location.
- The rear wall grab bar should be re installed at a compliant height.
- The toilet seat should be lowered $\frac{1}{4}$ " to a compliant height, possibly by installing a different seat.
- The toilet seat cover dispenser should be reinstalled at a compliant height of 48" above the floor.

The FDC report identifies a small Toilet Room on the Second Floor as a Jury Toilet Room. BWSC was told that this unlabeled Toilet Room is not used by the jury, but by Courthouse staff. ADAAG does not require provision of an accessible toilet room specifically for jury use.

Per FDC in meeting on 8/6/04: The small Toilet Room on the Second Floor is used by jurors. (This was confirmed in subsequent conversations with Courthouse staff.) FDC requested that the Jury Toilet Room be made as accessible as possible without moving any walls. However, even that level of modification would be expensive and would not produce a room with a 60"x60" maneuvering space. Modification of this Toilet Room will not be required if the County makes a rule that when a member of the jury is in a wheelchair this Toilet Room will be locked and will be unavailable for use by jurors.

1/31/05: *It is the general recommendation of this report that the County has the option of providing programs and services at an alternative location for persons with mobility disabilities. Consequently, the Second Floor of the Courthouse will not be made accessible to persons in wheelchairs and no accessible Toilet Room is required on the Second Floor.*

R. FIRST FLOOR DRINKING FOUNTAIN

ISSUE: (Ref: Sec. 7, FDC Report) The drinking fountain projects more than the allowed

4" into the corridor space.

RECOMMENDATION: A railing or other barrier should be installed on either side of the drinking fountain, leaving not less than 30" clear width under the fountain.

Per FDC in meeting on 8/6/04: No modification required.

S. SECOND FLOOR DRINKING FOUNTAIN

ISSUE: (Ref: Sec. 34, FDC Report) The drinking fountain is mounted too high and projects more than the allowed 4" into the corridor space. There is a loose mat on the floor under it.

RECOMMENDATION: The drinking fountain should be reinstalled at a compliant height. A railing or other barrier should be installed on either side of the drinking fountain, leaving not less than 30" clear width under the fountain. The loose mat should be removed or fastened to the floor in a compliant manner.

Per FDC in meeting on 8/6/04: Railing or barrier on either side of the drinking fountain is not required.

1/31/05: It is the general recommendation of this report that the County has the option of providing programs and services at an alternative location for persons with mobility disabilities. Consequently, the Second Floor of the Courthouse will not be made accessible to persons in wheelchairs. Since the lower mounting height is solely to allow accessibility for persons in wheelchairs, no change of height is required.

T. FIRE EXTINGUISHERS

ISSUE: (Ref: Sec. 6, 14, 36 & 37, FDC Report) Fire extinguishers in the First and Second Floor corridors are mounted too high. Fire extinguishers on the First Floor project further than the allowed 4" into the path of travel.

RECOMMENDATION: Remount the fire extinguishers at a compliant height of 54". Replace the First Floor Fire extinguishers with a model that projects a maximum of 4" from the wall.

1/31/05: It is the general recommendation of this report that the County has the option of providing programs and services at an alternative location for persons with mobility disabilities. Consequently, the Second Floor of the Courthouse will not be made accessible to persons in wheelchairs and no change to the height of the Second Floor fire extinguisher is required.

U. INTERIOR SIGNAGE

ISSUE: (Ref: Sec. 40 and throughout FDC Report) There is a lack of compliant room identification and directional signage both inside and outside the building.

RECOMMENDATION: Compliant signage should be installed to designate permanent rooms and spaces throughout the building, and to provide directions to, or information about functional spaces of the building. On the exterior of the building, the accessible entrance should be identified, and signage at other entrances should indicate the route to the accessible entrance.

V. AREA OF RESCUE ASSISTANCE:

ISSUE: (Ref: Sec. 41, FDC Report) ADA and Building Codes require an Area of Rescue Assistance where disabled persons can await rescue in the event of a fire if there is not an accessible means of egress from that part of the building. There is no Area of Rescue Assistance on the Second Floor of this building.

RECOMMENDATION: ADAAG exempts existing buildings from the requirement for an Area of Rescue Assistance. This building is of non-combustible construction, and has only one, unenclosed stair. While not required by ADAAG regulations, the county should work with a design professional to determine a feasible location and design requirements for construction of an Area of Rescue Assistance on the Second Floor.

1/31/05: It is the general recommendation of this report that the County has the option of providing programs and services at an alternative location for persons with mobility disabilities. Consequently, the Second Floor of the Courthouse will not be made accessible to persons in wheelchairs and no Area of Rescue Assistance will be required.

IV. ALTERNATIVE LOCATION - AMBULANCE SERVICE BUILDING (1/31/05)

A. ACCESSIBLE PARKING

ISSUE: The parking lot is currently striped for 20 parking spaces, with two non-compliant spaces designated with the symbol for accessibility painted on the pavement. Slopes in the parking area are compliant.

RECOMMENDATION: The parking area should be restriped to include one compliant van-accessible space (min. 8' wide) and passenger access aisle (min. 8' wide.) A pole mounted sign should identify the accessible space.

B. ACCESSIBLE ROUTE FROM PARKING TO ENTRANCE DOOR

ISSUE: The accessible route includes a curb ramp, with a non-compliant slope of 10%, up to a compliant sidewalk.

RECOMMENDATION: The curb ramp should be removed and rebuilt at a compliant slope of not more than 8.3% (1:12).

PER 2/4/05: NO ACTION REQUIRED.

C. ACCESSIBLE ENTRANCE

ISSUE: The entrance door is a compliant 36" wide door with compliant lever hardware on the exterior, a panic device on the interior and a closer. The closing speed is too fast. The threshold is non-compliant with a total height of 1 3/8". There is a compliant 5'-3" deep clear space on the exterior side of the door.

RECOMMENDATION: The closer should be adjusted to a minimum closing time of 3 seconds. The threshold should be replaced with a compliant design with a height of no more than 1/2".

D. WOMEN'S TOILET ROOM

ISSUE: The following non-compliant items were observed:

- Signage is mounted in a non-compliant location on the door.
- The drain piping protrudes slightly into the required clear space under the sink.
- The dimension from the back wall to the front of the sidewall grab bar is a non-compliant 47.5"
- The mirror is mounted at a non-compliant height of 46.5 " to the bottom of the glass.
- The toilet is a non-compliant 21" from the side wall.

RECOMMENDATION:

- Relocate signage to a compliant location on the wall at the latch side of the door, with the center of the sign 60" above the floor.
- Install an offset trap assembly on the sink drain piping.
- Relocate the sidewall grab bar to be 54" from the back wall to the front mounting.
- Relocate mirror to 40" maximum from floor to bottom of glass.
- Given the difficulty of relocating the floor-mounted toilet, the 21" distance from the side wall is a useable dimension.

E. MEN'S TOILET ROOM

ISSUE: The following non-compliant items were observed:

- Signage is mounted in a non-compliant location on the door.
- The clearance at the pull side of the door is a non-compliant 12".
- The grab bar behind the toilet is a non-compliant 24" long.
- The toilet is installed a non-compliant 21.5" from the sidewall.
- The drain piping protrudes slightly into the required clear space under the sink.
- The sidewall grab bar is mounted with the front edge at a non-compliant 47.5" from the back wall.
- The mirror is mounted at a non-compliant 47" to the bottom of the glass.
- The paper towel dispenser is mounted at a non-compliant 55" to the bottom.

RECOMMENDATION:

- Relocate signage to a compliant location on the wall at the latch side of the door, with the center of the sign 60" above the floor.

- The door clearance is limited by the drinking fountain. If the drinking fountain is moved, it will intrude on the required clearance at the Women's Toilet Room door. Therefore no change should be made.
- The toilet is set in a 12" deep, 36" wide alcove, which meets the requirements for clear space in {4.16.2}. A 36" long grab bar should be installed behind the toilet. This may require widening the alcove by a few inches.
- Given the difficulty of relocating the floor-mounted toilet, the 21.5" distance from the side wall is a useable dimension.
- Install an offset trap assembly on the sink drain piping.
- Relocate the sidewall grab bar to be 54" from the back wall to the front mounting.
- Relocate mirror to 40" maximum from floor to bottom of glass.
- Relocate the paper towel dispenser to 54" maximum from the floor.

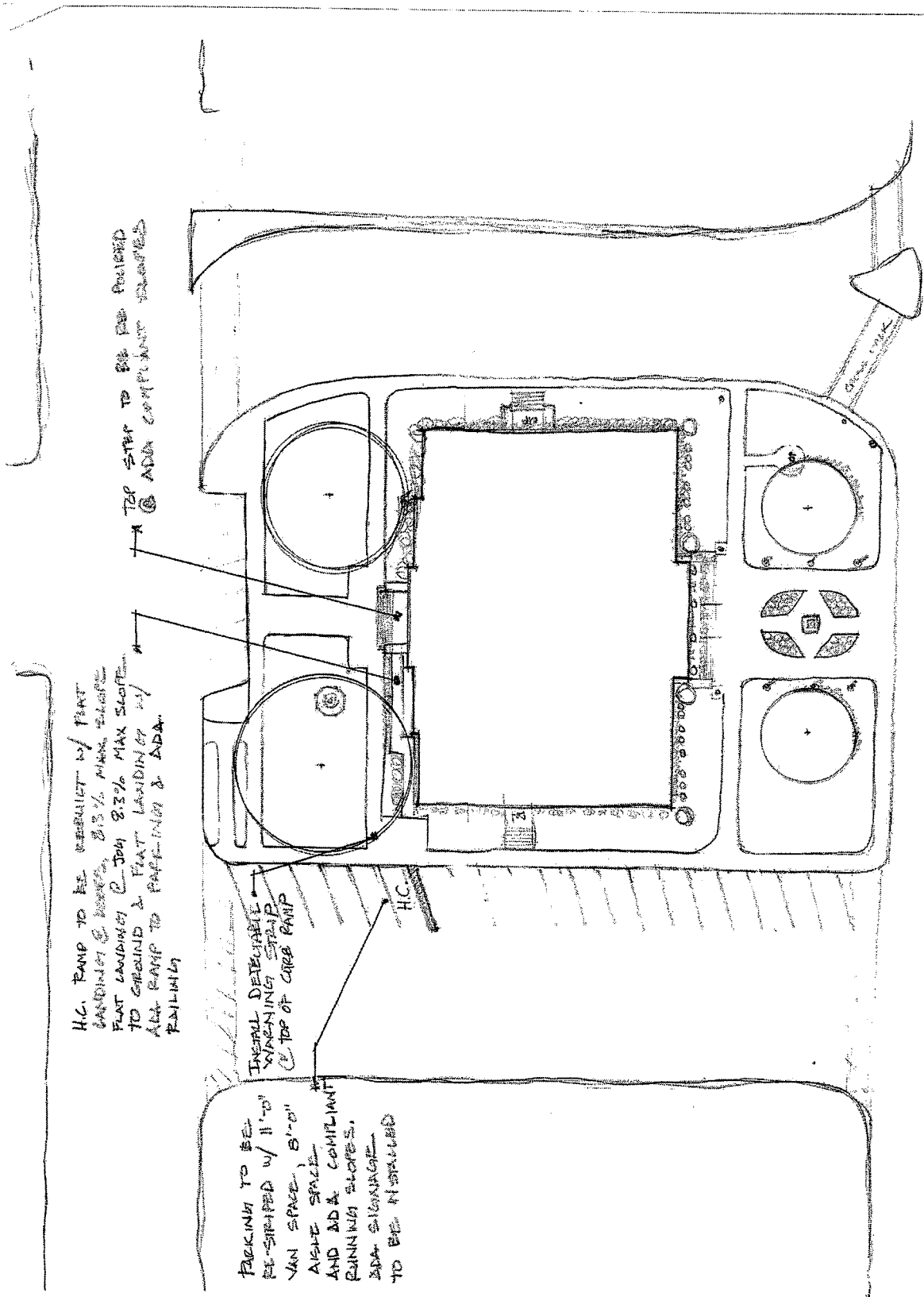
PER 2/4/05: THE ALCOVE NEED NOT BE WIDENED. THE GRAB BAR BEHIND THE TOILET SHALL EXTEND THE WIDTH (OR SLIGHTLY LESS THAN THE WIDTH) OF THE ALCOVE.

F. DRINKING FOUNTAIN

The drinking fountain is compliant.

G. FIRE EXTINGUISHER

The fire extinguisher is mounted at a compliant height.



ATTACHMENT A SITE