



## MEMORANDUM

**To:** Adrienne Cali, Bargmann Hendrie + Archetype, Inc.  
**From:** Sara Lavado, P.E., Project Manager, Code Advisory Group  
**Date:** August 7, 2013  
**Re:** Sudbury Town Hall, Sudbury, MA: Proposed Offices on Mezzanine Level

The following memo addresses the accessible route for the proposed office space on the mezzanine level in lieu of the storage space shown on the proposed schemes.

### **Required Codes**

There are two accessibility regulations that apply to buildings in Massachusetts. The Regulations of the Massachusetts Architectural Access Board (MAAB) (521 CMR) are enforced by the local building official as part of the building permit process. The Americans with Disabilities Act (ADA) is self-enforced; violations are subject to civil lawsuit or a complaint filed with the US Department of Justice.

Each regulation consists of two distinct set of provisions; the “scoping” provisions, which outline compliance requirements for construction and renovations projects; and “technical” provisions, which outline dimensional and technical requirements for the actual construction. The scoping provisions differ between the two regulations, while in general the dimensional and technical requirements of the ADA Architectural Guidelines are equivalent or similar to those contained within the MAAB. In any case of conflict between the two regulations, the more restrictive applies.

### **Scoping Provisions**

**ADA** The ADA Title II guidelines, for local and state governments, contain accessibility requirements, which are applicable to all buildings and cover employees in addition to the public. Under the provisions of the ADA, an alteration to a “primary function” area must provide a path of travel that is usable by individuals with disabilities, unless the cost and scope of such alteration is disproportionate to the cost of the overall alteration. The disproportionately is a subjective term but is considered to be where the cost of the alteration exceeds 20% of the proposed cost of construction.

**Analysis: Alterations are required to comply with the ADA but if the cost of construction of an altered element can be shown to be disproportionate to the total cost of construction, the altered element is not required to be compliant. Since the proposed cost of construction is \$6,000,000, the cost of the alteration would be required to exceed \$1,200,000 in order to be considered disproportionate. Adding a lift to the mezzanine to access the office space would not be considered disproportionate. Additionally, if an employee is disabled and needs to access the mezzanine level as a regular part of their job, having no accessible route to the mezzanine may be considered discriminatory.**

**MAAB** In accordance with 521 CMR, only buildings that are open to the public must meet the requirements of it. Areas that are open to the public are buildings that are either privately or publicly financed but that are open to and used by the public. Examples of areas that are open to the public are lobbies, restrooms, meeting rooms, and offices that allow visitors. Storage and mechanical spaces are not considered open to the public.



Areas within existing buildings that are open to the public and are undergoing renovation which meet the following dollar thresholds based on the assessed value of the building must provide access.

1. Work amounting to greater than 30% of the full and fair cash value (100% equalized assessed value) of the building. The building is required to comply with the requirements of 521 CMR in full (521 CMR 3.3.2).
2. Work amounting to less than 30% of the full and fair cash value but greater than \$100,000. All new work must comply and, in addition, an accessible public entrance and accessible toilet room, telephone and drinking fountain (if public toilets, telephones and drinking fountains are provided) are required (521 CMR 3.3.1(b)).
3. Work amounting to less than \$100,000. Only the work being performed is required to comply (521 CMR 3.3.1(a)).

Additionally, any work performed in the public accommodations of the buildings must meet the accessibility requirements.

If items are considered technically infeasible or excessive cost without benefit to the disabled, a variance can be submitted to the MAAB for relief.

**Analysis: The assessed value of the building could not be located but is likely to be much less than the construction cost of the building. Since the cost of construction is likely greater than 30% of the assessed value of the building, the entire building must comply with the requirements of the AAB. A government office on any level must have a compliant accessible route. If no lift is installed, there will be no compliant accessible route.**

**A variance could be sought for relief from having the accessible route to the mezzanine office area comply. The variance would involve providing a meeting area on the lower, accessible level that would be used should a disabled person need to meet with the employees in the office on the upper level. However, our experience with the AAB in similar situations is that this will not be considered technically infeasible or a hardship and a variance would not be granted.**

**The ADAAG does not provide a means to seek relief from technically infeasible items. Since the ADAAG is a federal law, whether an item is technically infeasible is subjective and is only determined in court when a lawsuit is filed.**