Existing Structures: Barrier Removal, Alterations & Additions

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Title III -- Barrier Removal...

36.304 -- A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

Title II -- Program Access...

35.150 Existing facilities
A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities...

Examples of Program Access

- Relocating a service to an accessible facility, e.g., moving a public information office from the third floor to the first floor of a building.
- Providing benefits or services at an individual's home, or at an alternative accessible site.
- Making structural changes.
2010 Standards Applies...

- Alterations
- State and Local Government Facilities -- Physical Changes for Program Accessibility
- Places of Public Accommodation (businesses) -- Readily Achievable Barrier Removal

What Standards Apply to Existing Facilities?

- Title II — Program accessibility
- Title III — Readily achievable barrier removal
How to apply new requirements in the 2010 Standards to facilities built or altered to comply with the 1991 Standards?

**Existing Facilities...**

An "existing facility" is:

"a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part."

Elements that comply with the corresponding requirements for those elements in the 1991 Standards (or UFAS for title II) do not need to be modified to meet the 2010 Standards unless they are altered on or after March 15, 2012.

Safe Harbor does not apply to elements in existing facilities that were not subject to specific requirements in the 1991 Standards (or UFAS).
Noncomplying Facilities
Element by Element Compliance...

Noncomplying facilities, i.e., facilities built after the compliance date for the 1991 Standards, but that are not in compliance with those standards, must be modified as follows:

Noncomplying Facilities
On and after March 15, 2012, entities must bring their non-complying facilities into compliance with the 2010 Standards...

Not Subject to Safe Harbor
§35.150(b)(2)(ii) and §36.304(d)(2)(iii)

(A) Residential facilities and dwelling units
(B) Amusement rides
(C) Recreational boating facilities
(D) Exercise machines and equipment
(E) Fishing piers and platforms
(F) Golf facilities
(G) Miniature golf facilities

Not Subject to Safe Harbor
§35.150(b)(2)(ii) and §36.304(d)(2)(iii)

(H) Play areas
(I) Saunas and steam rooms
(J) Swimming pools, wading pools, and spas
(K) Shooting facilities with firing positions
(L) Miscellaneous
   (1) Team or player seating
   (2) Accessible route to bowling lanes
   (3) Accessible route in court sports facilities
Supplemental Changes: Existing Facilities

Example: Swimming Pools sections 242 and 1009

2010 ADA Standards Supplemental Change -- New Requirement
Getting into the pool...

§35.133 Maintenance of Accessible Features

If the 2010 Standards reduce the technical requirements or the number of required accessible elements below the number required by the 1991 Standards, the technical requirements or the number of accessible elements in a facility subject to this part may be reduced in accordance with the requirements of the 2010 Standards.
§35.133 Maintenance...

Companion Seats

- Equivalent in size, quality, comfort and amenities
- Permitted to be moveable

Maintenance...

Reducing the Number of Assistive Listening Systems

219 Assistive Listening Systems

706 Assistive Listening Systems

Assistive Listening Systems

Table 219.2 Numbers for Assistive Listening Systems

<table>
<thead>
<tr>
<th>Capacity of Setting in Accessibility Area</th>
<th>Minimum Number of Required/Requisite</th>
<th>Minimum/Number of Supplied Receivers Required to be Hearing Aid Compatible</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 or less</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>51 to 200</td>
<td>2 plus 1 per 25 seats over 25 seats</td>
<td>7 per 4 receivers²</td>
</tr>
<tr>
<td>201 to 500</td>
<td>2 plus 1 per 25 seats over 25 seats</td>
<td>7 per 4 receivers²</td>
</tr>
<tr>
<td>501 to 1000</td>
<td>2 plus 1 per 25 seats over 25 seats</td>
<td>7 per 4 receivers²</td>
</tr>
<tr>
<td>1001 to 1000</td>
<td>2 plus 1 per 25 seats over 100 seats</td>
<td>7 per 4 receivers²</td>
</tr>
<tr>
<td>1001 and over</td>
<td>85 plus 1 per 150 seats over 200 seats</td>
<td>5 per 4 receivers²</td>
</tr>
</tbody>
</table>

1. Or division thereof
Title II Rule adds regulatory text mirroring path of travel requirements in title III.

Path of Travel Safe Harbor

If a covered entity has constructed or altered required elements of a path of travel under the 1991 Standards (or UFAS), before March 15, 2012, then retrofit of these elements to reflect incremental changes in the 2010 Standards is not required just because an area of a primary function area served by the path of travel was previously altered.

(§ 35.151(b)(4)(ii)(C) or § 36.403(a)(2))

Chapter 2: Scoping Requirements

Section 202.2 Additions

Each addition to an existing building or facility shall comply with the requirements for new construction.

Each addition that affects or could affect the usability of or access to an area containing a primary function shall comply with 202.4.
2010 Standards

Alteration

A change to a building or facility that affects or could affect the usability of the building or facility or portion thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Chapter 2: Scoping Requirements

Section 202.3 Alterations

Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements of Chapter 2.

EXCEPTIONS: 1. Unless required by 202.4, where elements or spaces are altered and the circulation path to the altered element or space is not altered, an accessible route shall not be required.

2. In alterations, where compliance with applicable requirements is technically infeasible, the alteration shall comply with the requirements to the maximum extent feasible.

Chapter 2: Scoping Requirements

Section 202.3 Alterations

Section 106.5 -- Technically Infeasible

With respect to an alteration of a building or a facility, something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements.

Chapter 2: Scoping Requirements

Section 202.3 Alterations

The requirement in section 4.1.6(1)(c), "If alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire space shall be made accessible." is not in the 2010 Standards.

See Advisory 202.3 Alterations.
Chapter 2: Scoping Requirements

Section 202.4
Alterations Affecting Primary Function Areas

For title II facilities, read with 35.151(b)(4) Path of Travel.
Residential dwelling units are not required to comply with 202.4

2010 Standards
Path of Travel

28 CFR 35.151(b)(4)
and
28 CFR 36.403(e)

Disproportionate Costs

Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.
What is a Qualified Historic Building or Facility?

It is a building or facility that is
• listed in or eligible for listing in the National Register of Historic Places
• or designated as historic under an appropriate State or Local law.

What happens when historic status is not known?

• The State Historic Preservation Officer (SHPO) has the authority to determine eligibility for historic status with respect to “qualified historic buildings and facilities.”
Why might you want to know whether or not a building or facility is a “qualified historic building or facility?”

Quite simply, because 202.5 EXCEPTION gives the SHPO the authority to determine if “compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility;” then exceptions to 202.3 and 202.4 shall be permitted to apply.

Who is the SHPO in Maryland?

J. Rodney Little  
Director / State Historic Preservation Officer  
Phone: (410) 514-7602  
E-mail: rlittle@mdp.state.md.us  
Website: http://mht.maryland.gov/MHT

Example of a Qualified Historic Building where the 202.5 Exception has been applied:  
The Homewood Museum  
at The Johns Hopkins University

Example of a facility that is not a Qualified Historic Facility despite its location within a very old and possibly historic building:  
McDonalds at Light and Baltimore Streets
Evergreen Museum
Front entrance with small sign directing visitors to the left of the building.

Evergreen Museum
Brick paved walkway leading to accessible entry on the left. There is no directional signage to indicate a change of direction.

Evergreen Museum
Path to accessible entry. Interior elevator goes to upper level and a connecting bridge crosses the walkway below to the principal structure.

A small 1899 lift original to the main building provides access to the “ground” level of the museum. Note that, again, there is no directional signage.

Despite this fact, Evergreen surpasses many other facilities of its type in its efforts to make the museum experience accessible to a broad range of participants.

North Elevation, Shriver Hall, Johns Hopkins Homewood
View prior to major alterations to entrance steps.
View prior to major alterations to entrance steps clearly shows the challenge to making this entrance accessible.

It should be noted that there were several other accessibility alterations to Shriver Hall prior to this latest one, including creating accessible entrances on the east and west lower level entrances, adding a lift to the backstage area, and creating dispersed wheelchair seating within the auditorium.

Shriver Hall Main Entrance after 2010 alterations.

Upper run of steps (shown in previous slide) has been relocated 8' away from the portico to create a substantial landing area for new ramps that have been built symmetrically on each side of a new plaza. Ramps allow access to the plaza as well as the uppermost landing, using existing marble steps and materials similar to the existing as well as attractive and creative landscaping.

Front steps were rebuilt to allow for the creation of a series of ramps that allow for level terraces on three levels and front door access for all users.

Because of funding availability, Shriver’s lower level entries were made accessible prior to the major front entry work. Existing 5’ door openings were modified with unequal leaf doors and, at the exterior, automatic door operators were installed.
Shriver’s auditorium floor and aisles have running slopes of less than 1:12. Level areas were created and dispersed to provide wheelchair seating at a number of locations.

An example of a well integrated solution to a change in level within an existing campus building.

This is an example of a common situation in campus lecture halls and in many stadium style movie theatres: a steep incline with multiple steps. The seating solution here was complicated but reasonably successful and involved a vertical platform lift adjacent to a stairway that served the lower level of the auditorium.

Clearly, the pharaoh is not going to get his wish. So how does a person with a mobility disability experience historic sites where ramps, lifts or elevators are not in the cards?
Alternatives? Interpretive material such as video, photos with descriptive text and tour guide commentary are examples.

Main entrance and accessible entrance (via ramp) are conveniently located next to one another. The permanent ramp is constructed of materials that are similar to and completely compatible with the existing.

This illustrates the all-too-frequent extreme difficulty in finding acceptable solutions to access at the front door to existing older buildings for persons with mobility disabilities.

This poorly designed and poorly constructed wood ramp is out of character with all existing elements of the building’s structure. Saving grace: It is temporary, can be replaced at a future date, and historic fabric has not been compromised.
The Village Learning Place

Originally a branch of Baltimore's Enoch Pratt Library, the building is typically entered via a formidable set of steps. Signage on the wall to the left of the entrance indicates an accessible entrance in that direction.

Gate to rear garden with the international symbol of accessibility indicates an accessible entrance somewhere beyond the gate.

Threshold at gate opening has an unacceptable change of level where it adjoins brick paving. (303.2: Changes in level of ¼" high maximum shall be permitted to be vertical.)

Rear doors clearly marked as accessible.

Again, a vertical change in level greater than ¼" at the threshold creates a barrier. This change in level may be modest or seemingly non-existent to the able-bodied, but may present a barrier to persons with mobility disabilities.
Just inside the rear doors is a clearly marked lift – completely blocked by stacks of chairs.

Even temporary blockages can present hardships for those with mobility disabilities.

Bottom line: Even good faith attempts to make a site accessible can be defeated by failure to maintain the accessible route.

Vital resource material from the National Park Service. Preservation Brief 32 on-line copy (left) and hard copy (right). Both are informative and not all material has been highlighted. Get both!

Some further examples of attempts to make existing buildings that are not historic accessible.

Front entrance of an apartment building showing significant barrier of seven risers.

Developer is seeking funds under the NED (Non-elderly disabled) HUD program and first floor unit is to be made accessible.

Neither a ramp nor a lift is feasible at this location.
Rear yard is deep and there is ample space to create a parking pad and ramp to a new deck that will be built at same level as floor.

Kappa Alpha Theta Sorority House (1938) at the University of Maryland

Raised entrance requires stair modification to create ramp and landing for accessible entry to building.

An inclined platform lift goes from the mid-level entrance to the level that includes two accessible sleeping rooms, the shared dining room and accessible bathrooms.
For budgetary reasons and because the project met the 20% rule, there is no elevator nor does the inclined platform lift extend to the uppermost floor or to the floor below the main floor.

Another example of how designing for access does not assure access. The knee hole under the lavatory at the left has become a repository for toiletries.

Curb ramps at parking spaces
Raised curb ramps of the type shown do not comply and are dangerous. This afterthought is a poor solution to the accessible route requirement where the landlord had been cited for not providing accessible parking.

Mobility van parked adjacent to 5 foot wide access aisle. 8 foot access aisle was not provided.
Passenger Loading Zone?

During football games, the University provides several areas adjacent to the football stadium for passenger drop off and pick up. These areas are for buses, shuttle vans, and individual vehicles. Currently there is one accessible passenger loading zone provided. This loading zone complies with the 1991 Standards.

As part of preparations for the fall football season, you are asked to review the transportation plan and comment on ADA compliance and accessibility. You notice that physical plant is preparing to restripe the areas around the stadium, including the sections that are for passenger drop off. And you see that only one accessible loading zone will be provided after the restriping is completed.

What is required for ADA compliance? What do you do to explain the requirements?

Passenger Loading Zones at Stadium

Reducing Accessible Seating...

Visual Alarms...

The university is experiencing a significant increase in the number of students who are veterans of the Iraq and Afghanistan wars. Some of these students are deaf or have significant hearing loss.

As the students select student housing on campus, you are contacted and asked about adding more rooms that are equipped with communication features including visible devices connected to the fire alarm system. The demand for housing, both undergraduate and graduate housing units, is greater than the number of rooms with communication features. Many of the rooms that are equipped with visible alarms are also rooms with features for students with mobility disabilities.

What do you do? Does the university have to add visible alarms to a variety of sleeping rooms and student housing options?
Housekeeping is approached by a vendor for toilet paper and paper towels who offers to provide, and install, new dispensers in your company’s office buildings. You receive a call from the director of housekeeping who asks for help in deciding what should be provided. The director says she suspects that the ADA may have requirements that might apply.

According to the director of housekeeping, the vendor says that they will comply with all state and federal requirements. But the director is not convinced that the vendor knows the ADA requirements. She is looking for your help...

What do you do? What do you look to for the ADA requirements and what do you tell the director of housekeeping? What else can you suggest to make sure that the new dispensers comply with the ADA?

Dispensers in Toilet Rooms...

Safe Harbor?

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Questions

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