



DEBORAH A. RYAN & ASSOCIATES
14 DORCHESTER ST., #3
SOUTH BOSTON, MA 02127

Phone: 617-268-9423
Cell: 617-548-7451
dryan@dryanassociates.com

ARCHITECTURAL ACCESSIBILITY SPECIALIST SINCE 1977
Code Compliance - Access Surveys - Training Seminars - Technical Assistance

To: Adam Barnosky, Esq. and John Hauck

From: Deborah A. Ryan, Deborah A. Ryan & Associates

Subject: Comm Ave. Canna, 1030 Commonwealth Avenue, Brookline

Date: December 1, 2020

Confirming our conference call and based upon emails provided, the following is my assessment of the accessibility requirements for your building. The assessment is based upon the state requirements which are: 521 CMR, the Rules and Regulations of the Massachusetts Architectural Access Board (AAB) with an effective date of 1/26/06.

521 CMR, Rules and Regulations of the Massachusetts Architectural Access Board:

The building is an existing 2 story commercial building located at 1030 Commonwealth Avenue in Brookline. The space in question is on the second floor. As an existing building the extent of compliance required with 521CMR will depend upon the estimated cost of construction compared to the assessed value of the portion of the building in question. The requirements of Section 3.3 state:

3.3 EXISTING BUILDINGS

All additions to, reconstruction, remodeling, and alterations or repairs of existing public buildings or facilities, which require a building permit or which are so defined by a state or local inspector, shall be governed by all applicable subsections in 521 CMR 3.00: JURISDICTION.

For specific applicability of 521 CMR to existing multiple dwellings undergoing renovations, see 521 CMR 9.2.1.

3.3.1 *If the work being performed amounts to less than 30% of the full and fair cash value of the building and*

a. if the work costs less than \$100,000, then only the work being performed is required to comply with 521 CMR

or

b. if the work costs \$100,000 or more, then the work being performed is required to comply with 521 CMR. In addition, an accessible public entrance and an accessible toilet room, telephone, drinking fountain (if toilets, telephones and drinking fountains are provided) shall also be provided in compliance with 521 CMR.

Exception: General maintenance and on-going upkeep of existing, underground transit facilities will not trigger the requirement for an accessible entrance and toilet unless the cost of the work exceeds \$500,000 or unless work is being performed on the entrance or toilet.

Exception: Whether performed alone or in combination with each other, the following types of alterations are not subject to 521 CMR 3.3.1, unless the cost of the work exceeds \$500,000 or unless work is being performed on the entrance or toilet. (When performing exempted work, a memo stating the exempted work and its costs must be filed with the permit application or a separate building permit must be obtained.)

- a. *Curb Cuts: The construction of curb cuts shall comply with 521 CMR 21.00: CURB CUTS.*
- b. *Alteration work which is limited solely to electrical mechanical, or plumbing systems; to abatement of hazardous materials; or retrofit of automatic sprinklers and does not involve the alteration of any elements or spaces required to be accessible under 521 CMR. Where electrical outlets and controls are altered, they must comply with 521 CMR.*
- c. *Roof repair or replacement, window repair or replacement, repointing and masonry repair work.*
- d. *Work relating to septic system repairs, (including Title V, 310 CMR 15.00, improvements) site utilities and landscaping.*

3.3.2 If the work performed, including the exempted work, amounts to 30% or more of the full and fair cash value (see 521 CMR 5.00) of the building the entire building is required to comply with 521 CMR.

- a. *Where the cost of constructing an addition to a building amounts to 30% or more of the full and fair cash value of the existing building, both the addition and the existing building must be fully accessible.*

When determining the above figures, the full and fair cash value of the building is defined as:

5.38 FULL AND FAIR CASH VALUE OF THE BUILDING: *The assessed valuation of a building (not including the land) as recorded in the Assessor's Office of the municipality at the time the building permit is issued as equalized at 100% valuation.*

EXCEPTIONS:

- a. *If no assessed value exists, or the assessed value is more than three years old, a request to substitute the appraised value may be submitted to the Board. The request to use the appraised value must be submitted by a certified appraiser or for transit facilities, either a certified appraiser or an independent registered professional engineer and must be submitted prior to obtaining a building permit for the project.*

The 100% equalized assessed value shall be based upon Massachusetts Department of Revenue's determination of the particular city's or town's assessment ratio.

EXAMPLE: *Town X has an assessment ratio of 40%, the particular building in question is assessed at \$200,000.00. To determine the equalized assessed value of this building, divide \$200,000.00 by 0.4. The equalized assessed value equals \$500,000.00.*

When determining the “work performed”, you use the estimated cost of construction as stated on the building permit. Building permits are also added for three-year periods when determining the extent of compliance.

Section 3.5-WORK PERFORMED OVER TIME: When the work performed on a building is divided into separate phases or projects or is under separate building permits, the total cost of such work in any 36 month period shall be added together in applying 521 CMR 3.3, Existing Buildings)

Based upon the information provided, the work to be performed in any three-year period, will be more than \$100,000 but less than 30% of the assessed value of the portion of the building. Based upon the Town of Brookline assessing department, the entire building is assessed at \$3,089,800 and since the space in question consists of ½ of the building, the assessed value of the space is \$1,544,900. You have stated that you will be spending less than \$463,470.00, therefore, Section 3.3.1b will apply.

Based upon Section 3.3.1b, the entire building is NOT required to comply. Section 3.3.1b only requires that the work being performed must comply with 521 CMR, plus an accessible entrance to the building, an accessible bathroom in the building, and an accessible drinking fountain and telephone must be provided (if bathrooms, drinking fountains and telephones are provided).

Proposed plans:

Based upon the plans provided and our conversation, namely that you are providing two entrances into the facility, one on Commonwealth Avenue and one in the rear of the facility. The rear entrance will be accessible, and signage will be provided at the Commonwealth Avenue Entrance indicating the location of the accessible entrance in the rear. Accessible parking is not required under *521 CMR as I understand that the lot has less than 15 spaces.

*Note: Under the ADA however, one space would be required if you have 1-25 spaces for the business.

Access to the space will be via a designated pedestrian path from the side street to the rear entrance. There will be a short ramp which leads to a platform that leads to a vertical wheelchair lift. Due to the nature of the facility, BOTH entrances will be fully staffed at all times the facility is open.

Under 521 Section 28.12.1 the installation of a vertical wheelchair lift is allowed, without a variance, under the following condition:

- d. In existing buildings of less than 3 stories in height or that have less than 3000 sf per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider.

Since the building is a two-story building, the exception in Section 28.12.1d will apply and you may install a vertical wheelchair lift without approval or a variance from the Architectural Access Board.

In addition, if restrooms are made available to the customers of the facility, then you must have an accessible restroom. Based upon the plans provided, it appears that you have two fully accessible restrooms.

It is therefore my opinion that the plans for the space in question appear to comply with 521 CMR.

If you have any further questions, please feel free to contact me.