

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 02 BUILDING AND MATERIAL CODES

Chapter 02 Maryland Accessibility Code

Maryland Building Performance Standards Regulations

Authority: Article 83B, Sec. 6-102, Annotated Code of Maryland

.01 Title.

This chapter shall be known as the Maryland Accessibility Code, and is referred to in these regulations as "this Code".

.02 Purpose.

A. The purpose of this Code is to carry out the mandate of Article 83B, Sec. 6-102, Annotated Code of Maryland, as amended (the "Act"), which requires the Department to establish minimum requirements that will provide for the accessibility and usability of buildings and facilities by individuals with disabilities.

B. The standards promulgated under this chapter are designed to carry out the purposes as set forth in Sec. A of this regulation establishing minimum requirements for the construction, alteration, and changes in use of the buildings and facilities covered by this Code.

.03 Scope.

A. The following buildings and facilities are not covered by this Code:

- (1) Residential buildings consisting of less than four dwelling units;
- (2) Structures, sites, and equipment directly associated with the actual processes of construction, such as scaffolding, bridging, materials hoists, or construction trailers;
- (3) Observation galleries less than 150 square feet and used primarily for security purposes;
- (4) Nonoccupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or nonpassenger freight elevators and frequented only by service personnel for repair purposes including, but not limited to, elevator pits, elevator penthouses, and piping or equipment catwalks;
- (5) Transportation vehicles;
- (6) Existing buildings or facilities not undergoing any addition, alteration, or change in use as defined in Regulation .05 of this chapter; and

(7) Existing buildings and facilities undergoing alteration for the sole purpose of complying with the Americans with Disabilities Act, which requires removal of architectural barriers in existing buildings and facilities where removal is readily achievable.

B. This Code applies to all new construction, additions, alterations, and changes of use of certain buildings and facilities in Maryland, as follows:

- (1) Covered multifamily dwellings as defined in Regulation .05 of this chapter;
- (2) State and local government buildings and facilities, including transit facilities;
- (3) All other buildings and facilities, including buildings and facilities used or owned by private clubs and religious organizations, except those listed in Sec. A of this regulation.

.04 Relationship to Federal Law.

A. There is also federal law governing many of the buildings and facilities covered by this Code, and to the extent federal law is more restrictive than this Code, federal law shall control. Federal law also governs some buildings and facilities which are not covered by this Code. For instance, the Americans with Disabilities Act requires owners of existing buildings to make changes that are "readily achievable to accommodate individuals with disabilities".

B. The Department has no authority to interpret federal law. When this Code is parallel with federal law, the Department may only interpret the Code as State law and its interpretations are not binding interpretations of the concurrent federal law.

C. The Department has no authority to waive requirements imposed by federal law, and only where this Code is more restrictive than federal law can the Department exercise its waiver or exemption authority.

.05 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Accessible" means a site, building, facility, or portion of them that complies with these regulations and that can be approached, entered, and used by individuals with disabilities.
- (2) "ADA" means the Americans with Disabilities Act of 1990, Public Law 101-336, 42 U.S.C. Sec. 12101 et seq.
- (3) "ADAAG" means the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities developed by the United States Architectural and Transportation Barriers Compliance Board, and adopted by the United States Department of Justice in Appendix A to 28 CFR 36.
- (4) "Addition" means an expansion, extension, or increase in the gross floor area of a building or facility.
- (5) Alteration.
 - (a) "Alteration" means a change to a building or facility made by, on behalf of, or for the use of a building or facility, that affects or could affect the usability of the building or facility or part of it.
 - (b) "Alteration" includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes in the plan configuration of walls and full-height partitions.
 - (c) "Alteration" does not include normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems unless they affect the usability of the building or facility.

(6) "ANSI A117.1-1986" means the 1986 Edition of American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People, which is incorporated by reference.

(7) "Building" means any structure used and intended for supporting or sheltering any use or occupancy.

(8) "Change of use" means an alteration in an existing building to a new use group which imposes special provisions of law governing building construction, equipment, or means of egress.

(9) "Covered multifamily dwelling" means:

(a) Buildings consisting of four or more dwelling units if the buildings have one or more elevators; and

(b) Ground floor dwelling units in buildings consisting of four or more dwelling units if there are no elevators in the building, although dwelling units within a single structure separated by fire walls do not constitute separate buildings.

(10) "Designated disability advisory group" means an individual, group of individuals, agency, or organization designated in writing by a local government or, in the absence of a written designation of a local government, by the Secretary, to advise the Department with respect to standards substantially equivalent to ADAAG under Regulation .08 of this chapter and waiver requests under Regulation .09 of this chapter.

(11) Dwelling Unit.

(a) "Dwelling unit" means a single unit of residence for a household of one or more individuals.

(b) "Dwelling unit" includes:

(i) Condominiums;

(ii) An apartment unit within an apartment building; and

(iii) Other types of units in which sleeping accommodations are provided but toilet or cooking facilities are shared by occupants of more than one room or portion of the dwelling unit, with examples of this including dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless individuals.

(12) "Existing building" means a structure erected before the adoption of this Code, or one for which a legal building permit has been issued.

(13) "Facilities" means all or any portion of buildings, structures, site improvements, roads, walks, passageways, parking lots, or other real property, located on a site.

(14) "FHAA" means the Federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3604 et seq.

(15) "FHAG" means Fair Housing Accessibility Guidelines, adopted by the United States Department of Housing and Urban Development in 24 CFR Ch. 1, Part IV, to provide technical guidance on how to comply with the Federal Fair Housing Amendments Act (FHAA).

(16) "Historic properties" means a qualified historic building or facility that is:

(a) Listed or eligible for listing in the National Register of Historic Places; or

(b) Designated as historic under State or local law.

(17) "Mezzanine or mezzanine floor" means that portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor. For the purpose of these regulations, mezzanine or mezzanine floor is considered as a story.

(18) "Secretary" means the Secretary of Housing and Community Development.

(19) "Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

(20) "Story" means that portion of a building between the upper surface of a floor and the upper surface of the floor next above, or the roof above.

(21) "Structure" means that which is built or constructed.

(22) "UFAS" means Uniform Federal Accessibility Standards developed in accordance with the Architectural Barriers Act of 1968, as amended, Public Law No. 90-40, 42 U.S.C. Sec. 4151--4157, and adopted by the Department of Housing and Urban Development in 24 CFR 40.

(23) "Use group" means the classification of a building based on the purpose for which the building is used as listed in the building code of the jurisdiction.

.06 Implementation.

A. Application.

(1) Except as set forth in Sec. A(2) of this regulation, application and enforcement of this Code is the responsibility of the local subdivision or other governmental agency having primary jurisdiction over a building, structure, facility, or site.

(2) The application and enforcement of this Code as it pertains to State and local government buildings and facilities including public transit facilities shall be delegated as the responsibility of the governmental agency having jurisdiction over the building or facility.

B. Interpretation. The Department of Housing and Community Development shall decide all questions relating to interpretation of this Code and shall determine whether any requests for waivers or exemptions from this Code may be approved.

C. Actions to Enforce.

(1) Except as provided in Sec. C(3) of this regulation, the Secretary may institute in any court of competent jurisdiction an action for equitable relief, if the Secretary determines that a violation of this Code exists.

(2) The Secretary may not institute an action under Sec. C(1) of this regulation until 5 working days after the Secretary has sought to seek a resolution of the violation through informal mediation and conciliation.

(3) Enforcement of this Code as it pertains to a covered multifamily dwelling as defined in Regulation .05B of this chapter is also under the jurisdiction of the Human Relations Commission under Article 49B, Sec. 22, Annotated Code of Maryland. The Department is required to cooperate with and provide technical assistance to the Human Relations Commission.

.07 Applicable Standards.

A. Dwelling Units.

(1) This section is not applicable to the dwelling units used on a transient basis and covered under Sec. B and C of this regulation.

(2) New Construction--Covered Multifamily Dwellings. The design and construction of a newly constructed covered multifamily dwelling shall be in accordance with FHAG and subsequent federal standards issued in reference to FHAA.

(3) Additions, Alterations, or Change of Use of Existing Buildings of Four or More Dwelling Units. The alteration, change of use, or addition to an existing residential building of four or more units shall comply with this Code as follows:

(a) Dwelling units shall comply with this Code by either:

(i) Containing at least one dwelling unit for every 25 dwelling units, or fraction of dwelling units, in the structure that is accessible and usable according to the requirements pertaining to dwelling units in ANSI A117.1-1986, with the complying dwelling units proportionately distributed throughout all types of units, or

(ii) Having dwelling units at the accessible level comply with the standards under Sec. A(2) of this regulation;

(b) If the addition or alteration involves common area facilities and parking, it shall be accessible in accordance with the standards under Sec. A(2) of this regulation.

B. New Construction, Alterations, Additions, and Changes of Use of State and Local Government Buildings and Facilities.

(1) All State and local government-owned buildings and facilities, including public transit facilities, shall comply with the standards prescribed in Title II of ADA and 28 CFR 35.

(2) The federal regulations require that all State and local government-owned buildings comply either with:

(a) UFAS; or

(b) ADAAG, except that the elevator exemption set forth at Sec. 4.1.3(5) and 4.1.6(1)(j) of ADAAG does not apply.

(3) As additional Maryland requirements for State and local government buildings, accessibility for toilet stalls shall be assured as follows:

(a) The size of a wheelchair-accessible toilet stall shall be a minimum of 60 inches wide and 56 inches deep for wallhung water closets, and 59 inches deep for floor-mounted water closets;

(b) In instances of alteration work when provision of this minimum stall size is structurally impracticable or when plumbing code requirements prevent combining existing stalls to provide space, the minimum dimensions of the wheelchair accessible stall are 48 inches wide and 66 inches deep for wall-hung water closets and 69 inches deep for floor-mounted water closets.

C. New Construction, Alterations, Additions, and Changes of Use of All Other Buildings and Facilities. The new construction, alteration, addition to, or change of use of buildings and facilities, including buildings and facilities owned or used by private entities such as private clubs and religious organizations, shall comply with:

(1) ADAAG and all federal accessibility guidelines promulgated to carry out Title III of the ADA and set forth in 28 CFR 36; and

(2) The following additional Maryland requirements:

(a) Accessibility shall be assured for the second story of a two-story building if the gross floor area of the second story exceeds 4,000 square feet; and

(b) Accessibility for toilet stalls shall be assured as follows:

(i) The size of a wheelchair-accessible toilet stall shall be a minimum of 60 inches wide and 56 inches deep for wall-hung water closets, and 59 inches deep for floor-mounted water closets,

(ii) In instances of alteration work when provision of this minimum stall is structurally impracticable or when plumbing code requirements prevent combining existing stalls to provide space, the minimum dimensions of the wheelchair accessible stall shall be 48 inches wide and 66 inches deep for wall-hung water closets, and 69 inches deep for floor-mounted water closets.

D. Parking Space Signs--Public and Private Facilities.

(1) The parking areas of all buildings and facilities, including the buildings and facilities of State and local governments, shall identify each accessible parking space by a sign.

(2) If the sign in Sec. D(1) of this regulation is:

(a) Not placed flush against a building, structure, or other location that does not obstruct vehicle or pedestrian traffic, it shall be at least 7 feet above the ground;

(b) Placed flush against a building structure or other location that does not obstruct vehicle or pedestrian traffic, it shall be at least 6 feet, and not more than 10 feet, above the ground.

(3) Signs shall bear the international symbol of access and the words "Reserved Parking", and shall be in conformance with the requirements for uniform traffic control devices under Transportation Article, Sec. 25-104, Annotated Code of Maryland. (See Regulation .12 of this chapter for explanatory material.)

(4) Each van-accessible parking space shall be identified with a supplemental sign in conformance with the requirements for uniform traffic control devices under Transportation Article, Sec. 25-104, Annotated Code of Maryland (See Regulation .12 of this chapter for explanatory material.)

.08 Standards Substantially Equivalent to ADAAG.

A. Applicability.

(1) Standards substantially equivalent to ADAAG may be used only when a building or facility elects to or is required by these regulations to comply with ADAAG.

(2) This regulation does not apply to the additional Maryland requirements set forth in Regulation .07A(3), B(3), and C(2) of this chapter. A request for a waiver of the additional Maryland requirements shall be submitted in accordance with the provisions of Regulation .09 of this chapter.

B. Substantially Equivalent Standards for State and Local Government Buildings and Facilities. A State-owned or government-owned building or facility which has elected to comply with the ADAAG instead of the UFAS may depart from particular technical and scoping requirements of ADAAG by using alternative designs or technologies that are substantially equivalent to ADAAG, or that provide greater access to and usability of the building or facility.

C. Substantially Equivalent Standards for Other Buildings and Facilities. Other buildings and facilities that are required to comply with ADAAG may depart from particular technical and scoping requirements of ADAAG by using alternative designs and technologies that are substantially equivalent to ADAAG, or that provide greater access to and usability of the building or facility.

D. Determination of Substantial Equivalency.

- (1) Proposed alternative designs or technologies shall be submitted to the Department before beginning construction, alteration, addition, or change of use of the building or facility by the owner or other person identified as the responsible person in the submission to the Department.
- (2) The Department shall issue a written determination to the responsible party identified in the submission as to whether the Department considers that the alternative design or technology is substantially equivalent to ADAAG, or provides greater access to or usability of the building or facility than the applicable ADAAG standards.
- (3) Construction, alteration, addition, or change of use of the building or facility may not begin until the responsible person has received a favorable determination from the Department.
- (4) A determination by the Department of substantially equivalent or greater access relates only to the requirements imposed under these regulations. The determination by the Department does not apply as to whether the building or facility complies with ADA.
- (5) The Department may consult with public building officials, the designated disability advisory group, or the State historic preservation officer or the designee of the State historic preservation officer, in a determination of substantial equivalency.
- (6) A request for a determination under this regulation does not constitute a contested case proceeding under the Maryland Administrative Procedure Act and is not subject to the provisions of COMAR 05.01.01.

.09 Waiver Request.

A. Standards Covered.

- (1) If strict compliance with the additional Maryland requirements set forth in Regulation .07A(3), B(3), and C(2) of this chapter will cause undue hardship because of the nature of use, occupancy, or other factors, a waiver from these requirements may be requested.
- (2) The Department has no authority to waive requirements imposed by federal law and shall only exercise its waiver authority when this Code is more restrictive than federal law in connection with the additional Maryland requirements set forth in Regulation .07A(3), B(3), and C(2) of this chapter.

B. Procedures.

- (1) A written waiver request form and supporting documents shall be submitted in triplicate to the Director, Maryland Codes Administration, Department of Housing and Community Development.
- (2) The Maryland Codes Administration shall review the documents submitted for completeness, and shall contact the applicant promptly for any additional information needed to process the request.
- (3) Upon receipt of all required documents, the Maryland Codes Administration shall send one copy of the waiver request documents to the local government officials and one copy to the designated disability advisory group.
- (4) The local government officials and the designated disability advisory group may provide their written comments jointly or separately to the Maryland Codes Administration within 21 days of dated transmittal from the Maryland Codes Administration.
- (5) The Maryland Codes Administration shall review the waiver documents and any comments received from the local building officials and the agency or organization advocating for individuals with disabilities. For historic properties, the Maryland Codes Administration shall make its decisions in consultation with the State historic preservation officer or the officer's designee.
- (6) The investigation may include a site visit by a State official, local government official, designated disability advisory group, and, for historic properties, the State historic preservation officer or the officer's designee.

(7) Upon completion of the investigation, the Director of the Maryland Codes Administration, or the Director's designee, shall determine if a waiver should be granted or denied based upon factors such as, but not limited to:

- (a) Feasibility hardship due to unusual building or site conditions which prevent the construction of access facilities as described in supporting documentation, such as plans, sketches, and site drawings provided for clarification by the applicant;
- (b) Financial hardship when the cost of compliance is disproportionate to the cost of construction, if the applicant has provided financial statements; or
- (c) The information supplied by the designated disability advisory group, State and local government officials, and, for historic properties, the State historic preservation officer or the officer's designee.

(8) Notice of the waiver determination shall be delivered to:

- (a) The local government official;
- (b) The designated disability advisory group;
- (c) The waiver applicant; and
- (d) For historic properties, the State historic preservation officer or the officer's designee.

(9) The applicant may request reconsideration of the decision of the Maryland Codes Administration within 45 days by writing to the Director of the Community Assistance Administration for a final administrative decision. The reconsideration review may include additional site visits and meetings with the applicants, the designated disability advisory group, and local building officials. The decision by the Director of the Community Assistance Administration is final and binding upon the parties.

C. A waiver request and decision on it under Sec. B(7) or (9) of this regulation does not constitute a contested case proceeding under the Maryland Administrative Procedure Act and is not subject to the provisions of COMAR 05.01.01.

.10 Private Action.

This Code is not intended to grant or imply a private cause of action to an individual against the State, the Department, its employees, agents, or assignees for violations of this Code.

.11 Copies of Standards and Code.

A. Copies of the standards and Code referenced in this chapter may be obtained as follows:

(1) The Maryland Department of Housing and Community Development,

100 Community Place,

Crownsville, Maryland 21032,

telephone (410) 514-7220,

TDD (410) 514-7531;

(2) United States Department of Justice,

Office of the Americans with Disabilities Act,

Civil Rights Division,

P. O. 66118,

Washington, D.C. 20035-6118,

telephone (202) 514-0301(V),

TT/TDD (202) 514-0381 or 0383;

(3) Architectural and Transportation Compliance Board,

1331 F Street, N.W.,

Suite 1000,

Washington, D.C. 20004-1111,

telephone V and TT/TDD (800) USA-ABLE, or

V and TT/TDD (202) 272-5434;

(4) Independence Center for Northern Virginia,

2111 Wilson Boulevard,

Suite 400,

Arlington, Virginia 22201,

telephone (703) 525-3268,

V/TT/TDD (800) ADA-4999;

(5) United States Department of Housing and Urban Development (HUD),

Office of the General Counsel,

451 Seventh Street, S.W.,

Washington, D.C. 20410-0500,

telephone (202) 755-5570,

TDD (800) 543-8294;

(6) Public libraries throughout Maryland.

B. The final rule implementing the Fair Housing Amendments Act of 1988 is available in braille and on tapes at the United States Department of Housing and Urban Development (HUD), Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410-0500, telephone (202) 755-5570, TDD (800) 543-8294.

.12 Explanatory Material.

For purposes of Regulation .07D of this chapter, the following signs may be used: (See "Parking Space Signs", 21:17 Md. R. 1445, and "Van Accessible Parking Sign", 21:17 Md. R. 1446)

Administrative History

Effective date: April 16, 1975 (2:8 Md. R. 563)

Regulations .01--.11 amended effective March 3, 1976 (3:5 Md. R. 295)

Chapter revised effective September 5, 1980 (7:18 Md. R. 1736)

Chapter revised effective January 1, 1985 (11:26 Md. R. 2277)

----- Chapter recodified from COMAR 05.01.07 to COMAR 05.02.02

Appendix A recodified as Regulation .07

----- Regulations .01--.07 under Maryland Building Code for the Handicapped repealed and new Regulations .01--.12 under Maryland Accessibility Code adopted effective February 1, 1995 (21:24 Md. R. 1986)

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