

WRIGHT CODE CONSULTING

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September 10, 2019

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4721 W. Eckner Street
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RE: ADA Compliance Review – Town of Southern Shores

Dear Joe:

It was a pleasure talking with you on September 4th. I hope that Dorian was less eventful in your specific area than anticipated. The news reports were not encouraging.

Summary of Results.

In reviewing the issues regarding this site, I did the following:

1. Reviewed the site in question via Google Maps, which allowed me to virtually walk the site from north to south and back.
 - a. Presuming that the land in question on both sides of the road is indeed public right of way (PROW), then the code in effect is applicable on both sides of the PROW.
2. Reviewed and determined the applicable federal code in effect for the project, where, per our discussions, it appeared that more than one might be applicable.
 - a. The *Standards for Outdoor Developed Areas* is not applicable.
 - b. *2010 ADA Standards* is applicable.
3. Determined the minimum accessible route requirements per the applicable code.

2010 ADA Chapter 4: Accessible Route requires:

 - **403.3 Slope.** The running slope of walking surfaces shall not be steeper than 1:20. The cross slope of walking surfaces shall not be steeper than 1:48.
 - **403.4 Changes in Level.** Changes in level shall comply with 303.
 - **303. 4 Ramps.** Changes in level greater than 1/2 inch (13 mm) high shall be ramped, and shall comply with 405 or 406.
 - **403.5.1 Clear Width.** Except as provided in 403.5.2 and 403.5.3, the clear width of walking surfaces shall be 36 inches (915 mm) minimum.
 - **403.5.3 Passing Spaces.** An accessible route with a clear width less than 60 inches (1525 mm) shall provide passing spaces at intervals of 200 feet (61 m) maximum.

DISCUSSION OF FINDINGS

A more in-depth review, complete with specific locations referenced, is provided below.

Applicable code. In beginning my review of the plans, the first item to verify was the applicable code to be used on a federal level. Briefly mentioned was the potential of using something that would permit a variation or an allowance in the slope of the ramping along the accessible route. Since the plans involve new construction, the only federal document of which I am aware that would allow a variance in slope is the *Standards for Outdoor Developed Areas* [<https://www.access-board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas>] (sometimes known as the Outdoor Area Guidelines). While these standards ‘provide exceptions for situations where terrain and other factors make compliance impracticable’, they ‘apply to national parks and other outdoor areas developed by the federal government. They do not apply to outdoor areas developed with federal grants or loans.’

The definition of Trail further excludes this document from any potential of being used as an applicable code for this project. [<https://www.access-board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas/final-guidelines-for-outdoor-developed-areas/text-of-the-guidelines>]

Trail. A pedestrian route developed primarily for outdoor recreational purposes. A pedestrian route developed primarily to connect elements, spaces, or facilities within a site is not a trail.

Since the land in question is part of a Public Right of Way (PROW), the applicable code for this project is title ii of the ADA. Under these regulations, Subpart D – Program Accessibility, Subsection [§ 35.151 New Construction and alterations](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm). [https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm], item (a) states:

§ 35.151 New construction and alterations

(a) **Design and construction.**

(1) Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(2) **Exception for structural impracticability.**

(i) Full compliance with the requirements of this section is not required where a public entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(ii) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(iii) If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs)

would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities, (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(b) Alterations.

(1) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

(2) The path of travel requirements of § 35.151(b)(4) shall apply only to alterations undertaken solely for purposes other than to meet the program accessibility requirements of § 35.150.

(3)

(i) Alterations to historic properties shall comply, to the maximum extent feasible, with the provisions applicable to historic properties in the design standards specified in § 35.151(c).

(ii) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of § 35.150.

(4) **Path of travel.** An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

§ 35.151 New construction and alterations has a section (c)(5) *Noncomplying new construction and alterations* with a chart that indicates the applicable to be used after a certain date. The chart, title **Appendix to § 35.151(c)**, identifies that the applicable standard for New Construction or Alterations done on or after March 15, 2012 is the 2010 Standards.

Discussion re: the above:

1. Structural Impracticability - While § 35.151 does make reference in (a)(2) above to *structural impracticability*, it is my opinion that only an historic tree of distinct significance that had been recognized over a remarkable period of time (e.g., the only one of its type remaining in the state/county; one where a major recognized historic event occurred; or the only grove of trees of this kind remaining in the region, country or the world, and so forth) would qualify. Further clarification on what might likely qualify could be obtained by calling the US Access Board at (202) 272-0080 or (800) 872-2253.
2. NCDOT - Typically, streets and roads in the public right of way (PROW) may often fall under NCDOT regulations. Given the location of these sidewalks, the likelihood is less likely. However, usually the local jurisdiction (the Town of Southern Shores) adopts requirement that parallel those of NCDOT for

consistency. The NCDOT regulations are required to comply with the 2010 ADA Standards as well. So, it seems that there is a consistent theme here.

2010 ADA Standards Requirements

2010 ADA Stds Section 206 addresses Accessible Routes, requiring that they comply with ADA Stds Chapter 4.

206.2 Where Required. Accessible routes shall be provided where required by 206.2.

206.2.1 Site Arrival Points. **At least one accessible route shall be provided** within the site **from** accessible parking spaces and accessible passenger loading zones; **public streets and sidewalks**; and public transportation stops to the accessible building or facility entrance they serve.

EXCEPTIONS: 1. Where exceptions for alterations to qualified historic buildings or facilities are permitted by 202.5, no more than one accessible route from a site arrival point to an accessible entrance shall be required.

2. An accessible route shall not be required between site arrival points and the building or facility entrance if the only means of access between them is a vehicular way not providing pedestrian access.

Advisory 206.2.1 Site Arrival Points. Each site arrival point must be connected by an accessible route to the accessible building entrance or entrances served. Where two or more similar site arrival points, such as bus stops, serve the same accessible entrance or entrances, both bus stops must be on accessible routes. In addition, the accessible routes must serve all of the accessible entrances on the site.

Advisory 206.2.2 Site Arrival Points Exception 2. Access from the site arrival points may include vehicular ways. Where a vehicular way, or a portion of a vehicular way, is provided for pedestrian travel, such as within a shopping center or shopping mall parking lot, this exception shall not apply.

206.2.2 Within a Site. At least one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

EXCEPTION: An accessible route shall not be required between accessible buildings, accessible facilities, accessible elements, and accessible spaces if the only means of access between them is a vehicular way not providing pedestrian access.

2010 ADA Chapter 4: Accessible Route requires:

- 403.3 Slope. The running slope of walking surfaces shall not be steeper than 1:20. The cross slope of walking surfaces shall not be steeper than 1:48.
- 403.4 Changes in Level. Changes in level shall comply with 303.
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- 403.5.1 Clear Width. Except as provided in 403.5.2 and 403.5.3, the clear width of walking surfaces shall be 36 inches (915 mm) minimum.
- 403.5.3 Passing Spaces. An accessible route with a clear width less than 60 inches (1525 mm) shall provide passing spaces at intervals of 200 feet (61 m) maximum.

In completing the review of federal code requirements, I did not review the individual plans. During the course of our telephone discussion, it seemed evident that if the federal requirements offered no relief of any sort, that the designs could be reworked to provide strict compliance with the basic minimum requirements. As a result, no review seemed warranted.

Please let me know if I misunderstood our discussion and if you would still prefer a review of the plans submitted.

Best regards,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Laurel W. Wright
WRIGHT CODE CONSULTING