

APPENDIX 1

TECHNICAL INFEASIBILITY DETERMINATION PROCESS AND POLICY

General

- A. In accordance with federal (ADA), state (28 CFR 35.151 & 2004 ADAAG) and the aforementioned Standards, each facility or portion thereof within the Town's right of way, for the use of a public entity that is constructed or altered shall be designed and constructed in such manner that the facility or portion thereof is readily accessible to and usable by individuals with disabilities.
- B. It is recognized that there are times when full compliance with federal and state laws and the Standards cannot be achieved due to structural impracticality, technical infeasibility, or would result in excessive and unreasonable costs without any substantial benefit to individuals with disabilities, collectively referred to as "needing a variance".
- C. State and federal regulations, while often the same, are not always identical. To simplify the process, the Commonwealth of Massachusetts-Department of Public Safety- Architectural Access Board Application for Variance- Curb Cuts/sidewalks, herein referred to as the "Variance Application" as modified in the attached copy to recognize PROWAG regulations is the basic application form for all variance requests in the right of way. For access to the application please visit: <http://www.mass.gov/eopss/consumer-prot-and-bus-lic/license-type/aab/variance-forms.htm>

Purpose

- A. To ensure that all pedestrian facilities within the town's right-of-way are designed, altered, and/or constructed, for the use of public entities, in accordance with the ADA, ADAAG, PROWAG, MAAB, and the Standards and to ensure that the construction and design is compliant to the maximum extent practicable as determined by the Town Engineer and Massachusetts Architectural Access Board (MAAB).
- B. To document CPW's "in-house" procedure and policy to procure a variance from the regulations and standards as outlined below.
- C. To provide guidance to private developers or contractors working within the right of way of the town's procedure to permit a variance from federal and state regulations as well as these Standards.

Variance Process for "In-house" Design/Construction Projects

- A. All variance requests shall be made as soon as a non-compliant condition is recognized, preferably during the design phase. Sometimes the condition may not become apparent until construction is underway. Regardless of the project stage at which the non-compliant condition becomes apparent, it is the town's responsibility to prepare the Variance Application required to request approval from the MAAB.
- B. The Variance Application and the supporting documentation shall be submitted in both paper hard copy and compact disc (CD) format. The supporting documentation shall include plans (11x17 format), photographs, written estimate of the cost of work required to achieve full

compliance, and a narrative addressing the deficiencies or other areas of non-compliance that provides an explanation for supporting the proposed design.

- C. Variances shall be approved prior to work commencing. In situations where a non-compliant condition is recognized during the construction stage, variances shall be approved prior to completion of a non-compliant facility or portion thereof.
- D. As-built conditions and final inspections will be documented and the information shall be retained by CPW-Engineering Division ensuring that construction was completed in reasonable

Variance Process for Private Design/Construction Projects

- A. The process for variance requests shall be made as soon as a non-compliant condition is recognized, preferably in the design phase to avoid costly delays. Sometimes the condition may not become apparent until construction is underway. Regardless of the project stage at which the non-compliant condition becomes apparent, it is the project proponent's responsibility to prepare the Variance Application.
- B. The project proponent shall submit a pre-application sketch plan to CPW- Engineering Division. The sketch plan shall require a technical review and comply, at a minimum, with the applicable sections of 1.2.1 of the Standards. The proponent is responsible to submit the plan with satisfactory detail which provides sufficient documentation that a determination of technical infeasibility can be adequately established by the town. Often, this will include greater detail than the minimum thresholds outlined in the aforementioned section.
- C. The project proponent shall submit a pre-application narrative to CPW-Engineering Division. The narrative shall clearly outline the deficiencies or deviations from any ADA, ADAAG, PROWAG, MAAB regulations or the Standards and provide an explanation for supporting the proposed design variance based on impracticality, technical infeasibility, or would result in excessive and unreasonable costs.
- D. The project proponent shall submit a pre-application cost comparison to CPW-Engineering Division. The evaluation shall compare the cost estimate to construct the facility to full compliance with the cost estimate of the proposed design. The estimate shall be itemized utilizing estimated quantities and a unit cost.
- E. The project proponent shall allow a minimum of two week review period by CPW-Engineering. The pre-application plan and narrative will be reviewed for completeness and a written (email, letter, etc.) correspondence will be provided with one of three determinations:
 - 1. Negative Determination – The project proponent will redesign the subject facility that complies with federal and state regulations as well as the Standards.
 - 2. Resubmittal Required – The project proponent will provide a re-submittal of the information with revisions as requested by CPW-Engineering Division.
 - 3. Positive Determination – The project proponent will file the Variance Application as outlined in the procedure below.

Variance Application Procedure

- A. The Variance Application, filing fee (check/money order made payable to the “Commonwealth of Massachusetts”, and the supporting documentation shall be submitted in both paper hard copy and compact disc (CD) format. The supporting documentation shall include plans (11x17 format), photographs, written estimate of the cost of work required to achieve full compliance, and a narrative addressing the deficiencies or other areas of non-compliance that provides an explanation for supporting the proposed design.
- B. The application, both hard copy and CD, shall be submitted to the following:
 1. Commonwealth of Massachusetts-Department of Public Safety, Architectural Access Board
 2. Town Engineer
 3. Building Commissioner
 4. Town of Concord – c/o Commission on Disability
 5. Boston Center for Independent Living
- C. The project proponent shall then submit a copy of the MAAB’s decision along with a complete right of way permit application to CPW-Engineering Division. For access to the application please visit: http://www.concordma.gov/Pages/ConcordMA_Engineering/permits.
- D. Work may commence only when the conditional right of way permit is issued by CPW-Engineering. The typical five (5) day right of way permit turnaround period will not apply to permits seeking a variance.