



*Disability Policy & Universal Design Consultants*

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October 22, 2009

Kathleen S. Wilkie, Public Works Director  
Town of Fairfax  
125 Bolinas Rd.  
Fairfax, California 94930

**Re: Broadway Bulb-Out Accessibility Evaluation**

Dear Ms. Wilkie,

The Town of Fairfax has retained Margen + Associates as specialists in the application disability access laws and regulations to assess the recently constructed sidewalk bulb out on Broadway. Based on our prior conversations and October 1, 2009 site meeting, it is my understanding the bulb out was constructed for the purpose of locating bike racks and a bench away from the frontage zone near the entrance to the ice cream store. The bulb out was funded by the business owner and received approval from the Town of Fairfax prior to installation.

**California Requirements**

There are two applicable state accessibility laws governing the project, the California Government Code and the California Health and Safety Code. Government Code section 4450 requires equal access to sidewalks and other public right-of-way (ROW) projects as follows:

Government Code 4450. (a) It is the purpose of this chapter to ensure that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities.

The Health and Safety Code covers privately funded construction, but also incorporates the requirements of the Government Code 4450. Section 19956.5 of the Health and Safety Code specifically address accessibility to privately funded sidewalks intended for public use:

Health & Safety Code 19956.5. Any curb or sidewalk intended for public use that is constructed in this state with private funds shall conform to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code. This section shall apply, but not be limited in application, to any curb or sidewalk which after construction with private funds will be turned over to a city or county for public use, in order to provide full and easy access to, and use of, such curb or sidewalk by the physically handicapped.

The applicable regulations under these two laws are contained in Chapter IIB of the California Building Code. The fact the bulb out project was privately funded has no bearing on the obligation for it to meet the accessibility requirements.

## **Federal Requirements**

Title II of the ADA covers newly constructed or altered sidewalks as follows:

35.151 New construction and alterations. (a) *Design and construction.* 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.

(b) *Alteration.* 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.

The applicable accessibility standards under Title II of the ADA are either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) depending on the federal standard selected by the Town of Fairfax to use for ADA compliance.

## **Analysis of Existing Conditions**

The bulb out is approximately 11'-6" deep and +/- 36" in length. I measured the running slope (using a 4' long digital level) in the direction of length from 3-4%. The difficulty for the design in terms of use by individuals with mobility impairments are the cross slopes (as a result of the crown of the roadway) which range from 5% to 7%.

The CBC, ADAAG and UFAS specially address cross slope along sidewalks at 2% maximum, but the running slope of sidewalk is a factor of the natural grade of the roadway and is not currently regulated at any maximum slope unless artificially created. Street furniture and furniture placement are not addressed in any of the currently adopted standards, however the applicable state and federal laws and draft pending regulations require that these elements be accessible to and usable by individuals with disabilities.

Based on the aforementioned requirements, it is my opinion that the bulb out should have been constructed to at a minimum, adhere to the 2% maximum cross slope requirement. Functionally, the area most likely to be used by people with mobility impairments is the bench and surrounding area. The bench would need to be located on a level surface and an additional 30"x 48" level area should be provided adjacent to the bench in order to provide seating for someone using a wheelchair.

Of course, should the Town of Fairfax determines that meeting the 2% requirement is technically infeasible, it may be possible to accept something greater than 2% as long as accessibility is provided to the maximum extent feasible. However, it is important to note that unlike "unreasonable hardship" which is an exception process under the California Building Code, under the ADA cost cannot be a determining factor in this analysis (See questions and answers about 504 and the ADA on the FHWA website [http://www.fhwa.dot.gov/civilrights/ada\\_qa.htm#q24](http://www.fhwa.dot.gov/civilrights/ada_qa.htm#q24) ). Here is an excerpt:

24. *What role does the "maximum extent feasible" standard play for ADA accessibility requirements in altered projects?*

In an alteration project, the public agency must incorporate the ADA accessibility standards to the maximum extent feasible. 28 CFR §35.151(b). The feasibility meant by this standard is physical possibility only. A public agency is exempt from meeting the ADA standards in the

rare instance where physical terrain or site conditions restrict constructing or altering the facility to the standard. ADA Accessibility Guidelines 4.1.6(1)(j).

Cost is not a factor in determining whether meeting standards has been completed to the maximum extent feasible. DOJ's ADA Title II Technical Assistance Manual, § II-6.3200(3)-(4), 1993. No particular decision making process is required to determine that an accessibility improvement is not technically feasible, but the best practice is to document the decision to enable the public agency to explain the decision in any later compliance review. (9-12-06)

In summary, it is my opinion that the bulb out does not conform to state and federal accessibility standards. Please contact me if you have any questions or concerns at 510-444-3440.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Margen', followed by a long horizontal line extending to the right.

Peter Margen  
Principal Consultant  
Margen + Associates

ICC Certified Accessibility Inspector/Plans Examiner  
No. 5022552-21  
California Certified Accessibility Specialist - CASp-011