

Building Code Board of Appeals-

MEETING AGENDA

Thursday November 10, 2016 11:00 am-12:00 pm

Development Services Conference Room- 1 Riverfront Plaza Suite 110

A. Regular agenda items:

1. Call meeting to order
2. Approve minutes February 17, 2016

B. New Business:

1. Receive recommended hearing procedures and approve if appropriate.
2. Review an appeal to a Notice and Order to install accessible curb ramp, Sprouts, 4740 Bauer Farm Dr.

C. Miscellaneous

1. Consider any other business to come before the Board.

DRAFT

City of Lawrence Building Code Board of Appeals Meeting February, 17th, 2016 Development Services

MEMBERS PRESENT: Dan Wethington, Sean Reardon, Kevin Markley,

MEMBERS ABSENT: Micah Kimball, Dennis Odgers

STAFF PRESENT: Development Services- Lee Queen-Building Inspector
Janet Smalter- Plans Examiner

PUBLIC PRESENT: None

Meeting called to order 11:02am

The Board reviewed minutes from the December 3, 2015 meeting. **Dan Wethington moved to approve minutes as written, Seconded by Sean Reardon. Motion passed 3-0.**

New Business: The first agenda item, appeal for 531 Eldridge St. has been withdrawn

The board proceeded with final review of the 2015 I-Code amendments prior to the submission to the City Commission. Smalter pointed out a new amendment the plumbing board proposed to the IEBC amendments- Section 810. The board reviewed the amendment and endorsed the addition. Smalter discussed the amendments have been edited by the Building Official- Barry Walthall and the City Attorney's office. The edits did not change the intent of the board's amendments and were strictly organizational revisions. The board continued discussion from their last meeting the suggestion to revise the accessibility code for door approach in residential units. The board had determined not to change the code and agreed it was the correct decision. Queen discussed a future amendment the board should review in Appendix F, Passive Radon Gas Controls. The concern is the code is not specific to the size of additions requiring radon resistant construction. The system is required in new construction. The board shall entertain an amendment proposed to not require radon resistant construction for small additions of a determined square foot. This amendment may be addressed at a future board meeting.

Kevin Markley made a motion to adopt the Ordinance 9168-IBC amendments, Ordinance 9169-IRC amendments, Ordinance 9174-IECC amendments, Ordinance 9175-IEBC amendments, seconded by Sean Reardon.

Motion passed 3-0.

Additional business is to review the City of Lawrence Code amendments prepared by Building Official- Barry Walthall. The amendments have been prepared to coordinate with the adoption of the 2015 I-Codes. The board briefly discussed special inspections and inspection agency information provided on a building permit. No revisions were proposed.

Sean Reardon made a motion to adopt the proposed draft City Code amendments as reviewed. Seconded by Kevin Markley. Motion passed 3-0.

No other business is discussed.

Sean Reardon motioned to adjourn, Seconded by Kevin Markley. Motion passed 3-0. Meeting adjourned 11:45 p.m.

Memorandum

City of Lawrence

Planning & Development Services

TO: Building Code Board of Appeals

FROM: Barry Walthall, Building Code Official

CC: Kurt Schroeder, Asst. Director of Planning & Development Services

Date: November 8, 2016

RE: Recommended Procedures for Appeals Meetings

The Development Services Division recommends the following procedures for appeals meetings:

1. Chairperson opens the appeal meeting.
2. Chairperson notes the number of members present. In the event there are fewer than five members present the Chairperson advises the appellant or appellant's representative of their right to request a postponement of the hearing.
3. Chairperson explains the hearing is informal and procedures shall not require compliance with strict rules of evidence, but only relevant information will be received.
4. Chairperson reminds Building Code Board of Appeals (BCBA) members that a member shall not hear an appeal in which that member has a personal, professional or financial interest, and requests any members to disclose such interest at this time.
5. Chairperson briefly explains hearing format and continues appeal meeting in accordance with steps a through l below:
 - a. Chairperson opens public comment pertaining to the appeal of the decision of the Building Official.
 - b. Chairperson calls for staff to provide a report on the appeal of the decision of the Building Official.
 - c. Staff responds to questions from the BCBA.
 - d. Chairperson calls for appellant or appellant's representative to present their request for appeal.
 - e. Appellant or appellant's representative responds to questions from the BCBA.
 - f. Chairperson calls for any other persons whose interests are affected by the appeal to present their comments to the BCBA.
 - g. Any other persons whose interests are affected responds to questions from the BCBA.

- h. Chairperson closes public comment and opens discussion of the appeal among the BCBA members.
- i. Chairperson asks for motion and second from BCBA on disposition of the appeal. The motion should include the reason or reasons for the decision to uphold or overturn the decision of the Building Official.
- j. Chairperson calls for a vote on the motion. The decision of the board shall be by majority vote of the members present and voting.
- k. If the motion fails items i and j will be repeated.
- l. Upon conclusion of the vote the Chairperson will close the appeal meeting and continue with any other business before the BCBA. The BCBA shall reach a decision on the appeal within five business days.

The BCBA members should be aware of the administrative provisions governing the BCBA, and the authority and responsibility of the BCBA contained in Chapter V, Article 1 of the City of Lawrence Code; particularly sections 5-1.209 through 5-1.227; some key provisions for which are not contained in the recommended hearing procedures above are as follows:

- All meetings before the BCBA are open to the public.
- The appellant shall cause to be made, at his or her own expense, any tests, research or evidence required by the board.
- A copy of the decision of the BCBA shall be delivered to the appellant as prescribed by the City of Lawrence Code.
- Any decision of the BCBA may be appealed to the City Commission. A written appeal must be filed with the City Clerk within ten days of the board's decision.
- The BCBA shall have no authority relative to interpretation of the administration of the City of Lawrence Code, nor shall the BCBA be empowered to waive requirements of the City of Lawrence Code.
- The decision on the use of alternate materials and types of construction shall be by majority vote and if not permitted by any code referenced in Section 5-106 shall become effective only when authorized by an amendment to the Code.
- If it appears that the provisions of this Chapter do not definitively cover a method of construction, construction material, or other subject regulated by the *International Building Code*, as adopted by the City at Article 2 of this Chapter, as amended, the *International Residential Code*, as adopted by the City at Article 3 of this Chapter, as amended, the *International Property Maintenance Code*, as adopted by the City at Chapter IX, Article 6 of the City Code, as amended, or the Residential Rental Property Code, as adopted by the City at in Chapter VI, Article 13 of the City Code, as amended, the Building Code Board of Appeals may interpret the provisions of those adopted Codes in a manner consistent with the intent of the Codes and to prevent manifest injustice.

Memorandum

City of Lawrence

Planning & Development Services

TO: Building Code Board of Appeals

FROM: Barry Walthall, Building Official

C: Kurt Schroeder, Asst. Director of Planning & Development, Development Services

Date: November 3, 2016

RE: 4740 Bauer Farm Drive Request for Appeal

PROJECT SUMMARY

A building permit was issued for the construction of a new structure for Sprouts Farmers Market, 4740 Bauer Farm Drive on September 17, 2014. Construction was completed and a Certificate of Occupancy issued on June 1, 2015. On May 16, 2016 Staff was directed to investigate whether the route from the public sidewalk from Champion Lane to the building entrance complies with the American's with Disabilities Act (ADA), specifically the lack of curb ramps in the sidewalk on either side of the drive aisle where the sidewalk connects to the drive aisle east of the building. After visiting the site and investigating Staff determined that the site as constructed is in violation of the 2010 ADA Standards for Accessibility Design (2010 ADA Standards). A Notice and Order was issued on October 6, 2016 notifying the property owner of the violation and ordering that curb ramps in compliance with the ADA, 2010 ADA Standards Section 206.2.1 be installed on or before November 17, 2016. The property owner submitted an application for appeal on October 25, 2016.



2010 ADA Standards References:

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 the 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 206.2.1 Site Arrival Points Exception 2. Access from 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 does not apply.

Staff Analysis

In the application for appeal the appellant makes two points to dispute the staff interpretation that the route from the Champion Lane site arrival point to the building entrance must be accessible.

The first is that the 2010 ADA Standards Section 206.2.1 requires only one site arrival point and that since two other site arrival points are provided with accessible routes to the building entrance that the intent of the ADA has been met. **Advisory 206.2.1 Site Arrival Points** clarifies that the intent of this Section is that each site arrival point must be connected by an accessible route to the accessible building entrance or entrances served.

The appellant's second argument is that the pedestrian route from the Champion Lane site arrival point to the building entrance crosses a "service loading zone vehicular drive" and that Section 206.2.1 Exception 2 exempts the requirement for an accessible route. **Advisory 206.2.1 Site Arrival Points Exception 2** clarifies that the exception does not apply where a vehicular way is provided for pedestrian travel, such as within a shopping center or shopping mall parking lot. Furthermore, if the owner's intent is that pedestrian travel is not encouraged across this vehicular way a sidewalk should not have been installed at this location.

To protect the property owner from improper enforcement and to provide additional support for the Building Code Board of Appeals, Staff consulted with accessibility specialists to review the staff interpretation regarding this matter. An email was sent to Ray Petty, the Kansas Coordinator for the Great Plains ADA Center, outlining the circumstances with photo

attachments. The Great Plains ADA Center provides information, technical assistance and training on the Americans with Disabilities Act and related disability laws, and serves the Great Plains Region of Iowa, Kansas, Missouri and Nebraska. Mr. Petty forwarded his interpretation to Bill Botten at the United States Access Board for additional concurrence. The Access Board is an independent federal agency that promotes equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards, including design criteria for the built environment. Mr. Botten is employed by the Technical and Information Services Department of the Access Board. A copy of the email in which both Mr. Petty and Mr. Botten support the Staff interpretation that the sidewalk as constructed is in violation of the 2010 ADA Standards is attached.

Conclusion

In the opinion of Staff the appellant has not demonstrated that the Staff interpretation of the 2010 ADA Standards Section 206.2.1 is in error, or that the intent of the Section has been fulfilled. The 2010 ADA Standards advisory notes specifically address the appellant's disputed issues, and representatives of the Great Plains ADA Center and the United States Access Board have determined that the Staff interpretation is correct.

Staff requests that the Building Code Board of Appeals uphold the Notice and Order requiring that curb ramps be installed to extend the accessible route from the Champion Lane site arrival point to the building entrance.



DIANE STODDARD
INTERIM CITY MANAGER

City of Lawrence

PLANNING & DEVELOPMENT SERVICES

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CITY COMMISSION

MAYOR
MIKE AMYX

COMMISSIONERS
LESLIE SODEN
STUART BOLEY
MATTHEW J. HERBERT
LISA LARSEN

NOTICE AND ORDER

Address: 4740 Bauer Farm Drive

Date: October 6, 2016

Parcel: 068-28-0-40-04-001.05-0

Property Owner of Record: American Eagle Properties, Inc.
740 Dole Ln
Windsor, CO 80550

RE: Violation of Americans with Disabilities Act 2010 Accessibility Standard

On September 29, 2016, Building Safety Division staff visited the referenced property to investigate the status of an alleged violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (ADA), 2010 ADA Standards for Accessibility Design (2010 ADA Standards), of which American Eagle Properties representative Jamie McCawley has been previously advised. Inspection of the site discloses that an accessible route does not exist from the site arrival point at the public sidewalk north of the driveway access from Champion Lane to the building entrance. The route *via* the private sidewalk to the building entrance includes curbs that are barriers to accessibility in violation of the ADA and the 2010 ADA Standards. The attached aerial photograph shows the locations where curb ramps are required. This Notice and Order is issued to require the reference property to come into compliance with the ADA and the 2010 ADA Standards by installing curb ramps on both sides of the drive aisle on the east side of the building to remove the identified barriers.

Notice of Violation:

Failure to provide an accessible route from the Champion Lane site arrival point to the building entrance is a violation of the following provision of the ADA, 2010 ADA Standards:

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 206.2.1 Site Arrival Points Exception 2. Access from 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 does not apply.

Correction Orders:

Based on the foregoing violation:

1. You are hereby ordered to install curb ramps, in compliance with the ADA, 2010 ADA Standards Section 206.2.1, on or before November 17, 2016. Failure to comply with this order may result in a complaint being forwarded to the city prosecutor.

Right to Appeal

You have the right to appeal this notice and order to the Building Code Board of Appeals. An application for appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply or an equally good or better form of construction is proposed. An application for appeal shall contain the following:

- (A) A brief statement setting forth the legal interest of each of the appellants in the building and/or involved in the notice and order.
- (B) A brief statement, in ordinary and concise language, of the specific order or action being appealed, together with any material facts claimed to support the contentions of the appellants. Only those matters or issues specifically listed by the appellant shall be considered in the hearing of the appeal.
- (C) A brief statement, in ordinary and concise language, of the relief sought and the reasons why it is claimed the appealed order or action should be reversed, modified, or otherwise set aside.
- (D) The signatures of all parties named as appellants and their official mailing addresses.

The application for appeal shall be filed with the Development Services Division within 20 days after the date of service of this Notice and Order. Please contact me at (785) 832-3103 if you have questions regarding this Notice and Order.

Sincerely,



Barry Walthall
Building Official

C: Scott McCullough, Planning & Development Services Director
Kurt Schroeder, Assistant Director of Development Services
Toni Wheeler, City Attorney

American Eagle Properties, Inc.
740 Doce Lane,
Windsor, CO 80550

October 25th, 2016

Mr. Barry Walthall, Building Official
City of Lawrence, Kansas
6th East 6th Street
Lawrence, Kansas 66044

**RE: 4740 Bauer Farm Drive – Response to Notice and Order of Violation of ADA 2010
Accessibility Standards**

Dear Mr. Walthall:

In response to the document dated 6 October 2016 detailing an alleged violation with respect to the Americans with Disabilities (ADA) 2010 Accessibility Standards, this document shall serve as notice to appeal by the Property Owner of record, American Eagle Properties, Inc., the alleged violation to the Building Code Board of Appeals.

Per the notice (as attached), in question is the declaration a sidewalk to Champion Lane as a "site arrival point" to the subject property (Sprouts Farmers' Market) per Section 206.2. This section, 206.2.1 clearly states that "***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." In fact, the subject site is served by **three (3)** accessible routes to the subject property:

- Two (2) access points to Bauer Farm Drive ROW: one (1) along the shared access drive south of the store and one (1) to the west and then southward along the private street (constructed to City standards).
- One (1) access point to Overland Drive: similar to route stated above, to the west and then northward along the private street to the Overland Drive ROW.

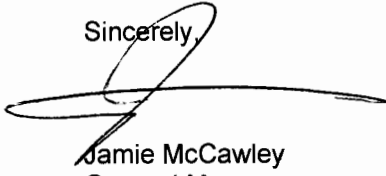
It should be noted that no public transportation routes service the subject property via Champion Lane. All routes that service the property are via Overland Drive (City Routes #6, #9, and #10), stop Number 85.

Therefore, as more than one accessible route has been provided to the subject property from "public streets and sidewalks," the intent of Section 206.2.1 has been met.

In addition, the sidewalk connection that is provided from the subject property eastward to Champion Lane crosses a service loading zone vehicular drive. This service drive is the designated truck route for large semi-trailer deliveries and other large service truck access. Due to this type of vehicular traffic, pedestrian access across this route is not encouraged; thereby, an accessible route was not designated in this location and would refer to Exception #2 under Section 206.2.1.

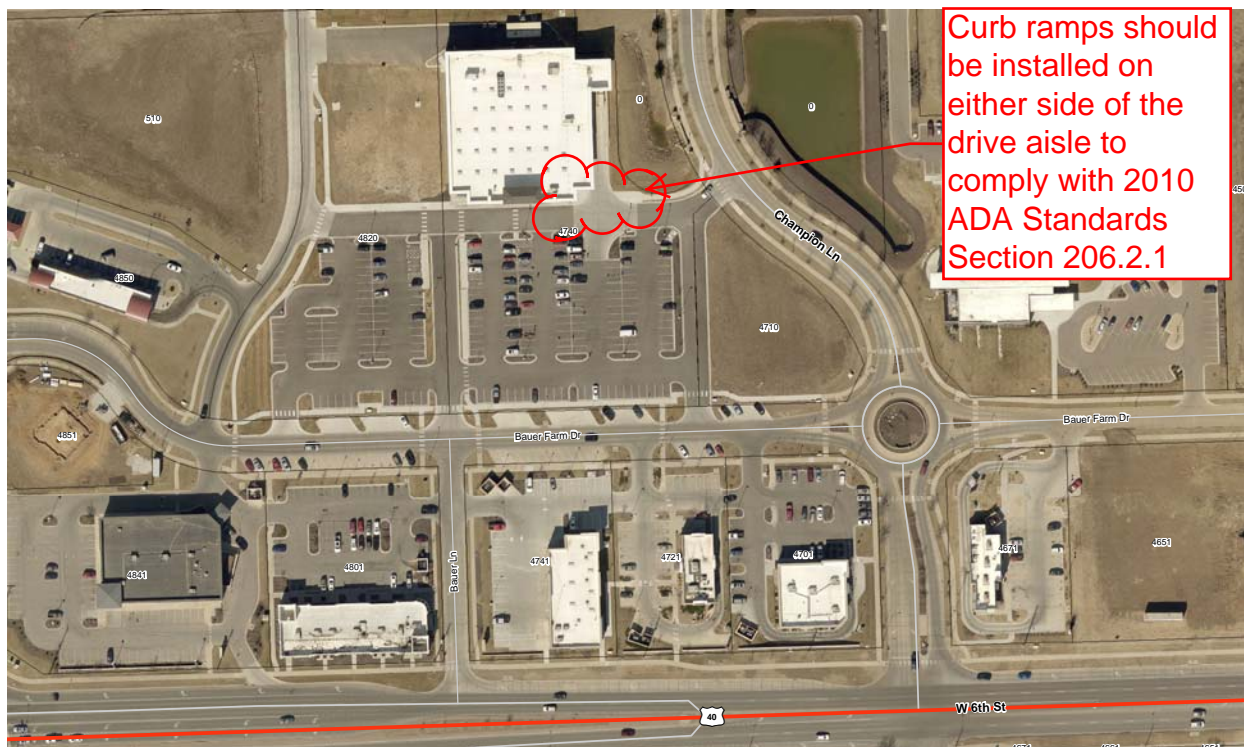
If any additional information or further documentation is needed to address this formal appeal, please contact us via voice or e-mail: 970.381.7500 or jmccawley@budhouseaed.com. Thank you for your review of this request.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jamie McCawley', with a large, stylized loop at the end.

Jamie McCawley
General Manager
American Eagle Properties, Inc.

Attachments







Barry Walthall

From: raypetty@aol.com
Sent: Wednesday, November 02, 2016 7:56 AM
To: Barry Walthall
Subject: Fwd: Sprouts ADA question, 4740 Bauer Farm Dr -- BILL, CAN YOU CHECK ME OUT ON THIS ANSWER PLEASE!

**Barry -- checked my take on it with Bill Botten at the US Access Board -- and he agrees -- all 3 need to be accessible routes.
2 more curb ramps are required.
rp**

-----Original Message-----

From: Botten, Bill <botten@Access-Board.gov>
To: raypetty <raypetty@aol.com>
Sent: Wed, Nov 2, 2016 7:33 am
Subject: RE: Sprouts ADA question, 4740 Bauer Farm Dr -- BILL, CAN YOU CHECK ME OUT ON THIS ANSWER PLEASE!

Good morning Ray, if all three arrival points are on the site then yes they need to be connected by an accessible route. If the sidewalk needing curb ramps is not on the site it becomes more grey. Our guidance does not make it more clear. But if all site arrival points are on the site then yes they all must be connected.

Hope this helps,

I am out of the office the rest of the week north of Syracuse, NY so call my cell if needed and I will try get back to ASAP.

Bill

William R. Botten
Accessibility Specialist
US Access Board
1331 F Street NW, Suite 1000
Washington, DC 20004
800-872-2253, EXT. 0014
202-272-0014
botten@access-board.gov

From: raypetty@aol.com [<mailto:raypetty@aol.com>]
Sent: Tuesday, November 01, 2016 4:14 PM
To: Botten, Bill <botten@Access-Board.gov>
Subject: Re: Sprouts ADA question, 4740 Bauer Farm Dr -- BILL, CAN YOU CHECK ME OUT ON THIS ANSWER PLEASE!

Barry --

First -- here is the language from 206.2.1:

206 Accessible Routes

206.1 General. Accessible routes shall be provided in accordance with 206 and shall comply with 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 206.2.1 Site Arrival Points Exception 2. Access from 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 does not apply

OK -- this isn't historic -- so the first exception is irrelevant. Next, the only means of access between site arrival points and the facility entrance is not via a vehicular way not providing pedestrian access, so that 2nd exception isn't relevant. This point is a bit confusing -- but what that advisory means is that if there IS a portion of the vehicular way provided for pedestrian travel, then an accessible route is required from site arrival points to the building entrance.

My take on this is that there are multiple accessible routes -- 3 from the parking area within crosswalk areas plus one from the west end sidewalk, but the sidewalk from the east leaves someone needing a curb ramp stranded on that sidewalk with no safe route to take them to the building entrance. As you can see from the GoogleEarth image below - approach from the east would need to be within the 2 traffic lanes and there is no room there for a safe pedestrian approach, especially by someone using a wheelchair.



I believe the expectation is that there would be at least one accessible route from:

- A. accessible parking spaces and passenger loading zones,
- B. public streets and sidewalks, and
- C. public transportation stops.

I didn't notice public transportation stops -- which would leave accessible routes from A and B -- from accessible parking, and from public streets and sidewalks -- of which there

are two prominent locations -- one on the west which is accessible -- and one on the east which is not, because 2 curb ramps are missing.

So, I agree with your position -- and agree there should be an accessible route from the public sidewalk at east side of the building to the building entrance.

rp

-----Original Message-----

From: Barry Walthall <bwalthall@lawrenceks.org>

To: 'raypetty@aol.com' <raypetty@aol.com>

Sent: Tue, Nov 1, 2016 10:37 am

Subject: Sprouts ADA question, 4740 Bauer Farm Dr

Ray,

Good morning. I was hoping you could help out with an interpretation of the 2010 ADA Standards.

During site plan review and construction of the Sprouts grocery store that was recently constructed at 4740 Bauer Farm Lane, an issue slipped through that was not noticed until after the building was occupied. The site arrival point from the Champion Lane public sidewalk (Champion Lane is a north/south street immediately east of the project) to the building entrance was constructed without curb ramps, see attached photos.

After several weeks/months of discussion with the contractor and property owner about correcting this problem, I sent a notice and order to install curb ramps. The notice and order is now being appealed to the City's Building Code Board of Appeals.

Before proceeding with a meeting to decide on the appeal I wanted to get an expert opinion.

The 2010 ADA Standards, Section 206.2.1 requires that at least one accessible route be provided within the site. Three site arrival points are available at this site. My interpretation, based on "Advisory 206.2.1 Site Arrival Points", is that each site arrival point must be connected by an accessible route to the accessible building entrance. The owner is taking the position that three site arrival points are provided and that since two of them are connected to the building entrance with a fully accessible route that the requirement has been fulfilled.

Would you be willing to share your opinion about whether I have correctly interpreted the 2010 ADA standard to require that all site arrival points must be provided with a continuous accessible route to the building entrance? I understand that only one site arrival point with associated fully accessible route to the building entrance is required, but since multiple site arrival points are provided each must be fully accessible. Also, do you see any other alternatives other than installing curb ramps or eliminating this site arrival point entirely?

Let me know if this should be going to someone else.

Thanks in advance!

Barry Walthall, Building Official bwalthall@lawrenceks.org

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