



Episode 8: Access to the World: Accessibility in Commercial Architecture

November 18, 2021

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Mindy Henderson: Welcome to the Quest Podcast, proudly presented by the Muscular Dystrophy Association, as part of the Quest family of content. I'm your host, Mindy Henderson. Together we are here to bring thoughtful conversation to the neuromuscular disease community and beyond about issues affecting those with neuromuscular disease and other disabilities and those who love them. We are here for you to educate and inform, to demystify, [00:00:30] to inspire, and to entertain. We are here shining a light on all that makes you you. Whether you are one of us, love someone who is, or are on another journey all together, thanks for joining now. Let's get started.

Welcome to my guest today. Dominic Marinelli. Dominic works for United Spinal Association as the vice president of accessibility services, a team of professionals including certified accessibility [00:01:00] specialists, plan examiner, attorneys, architects, and code enforcement officials who are skilled in applying state and federal accessibility requirements, including Americans with Disabilities Act, Fair Housing Section 504, and state and local accessibility requirements. He's agreed to join me today to discuss accessibility from a commercial building and architecture perspective. Dominic, thank you so much for joining me today.

Dominic Marinelli: [00:01:30] Oh, thank you for having me. I've been looking forward to this all week. Thank you.

Mindy Henderson: Well, thank you. Well, you and I spoke a few weeks ago and my eyes were really opened by what complicated topic this is. So I want to just jump right in if that's okay with you.

Dominic Marinelli: Oh yeah, please.

Mindy Henderson: Okay. So first, if you would kick us off just by telling us a little bit more about yourself and your expertise in the area of accessibility in architecture, building, construction, [00:02:00] universal design, that whole world.

Dominic Marinelli: Oh sure. I have been with the organization for, God, I think it's my 34th year. So I started in the late 80s. God help me. And my first job out of college, I worked for the Veterans Administration hospitals. And I noticed a lot of members of an organization called Eastern Paralyzed Veterans Association, which was really the East Coast chapter of Paralyzed Veterans of America. [00:02:30] And these paralyzed veterans were at the Veterans Administration hospital for healthcare, et cetera. And there were people that worked to advocate for the veterans, the paralyzed veterans, and their health rights and health reimbursement through the Veterans Administration system.

And I saw them and I was just amazed by that. And I started to dig into a little bit in the organization, and they were finishing [00:03:00] an accessibility standard for disabled people that was being researched. Some of the dimensions needed to accommodate people with disabilities was being researched by the University of Buffalo. And I'm from Buffalo. And it was at the Buffalo VA. And so I kind of talked myself in into the job.

And our first opportunity was something called the American National Standard Institute for Acceptable and Usable Buildings. And it [00:03:30] was really the first large accessibility standard that tried to address the built environment and even some exterior items that as well. So that was how it all started. 1986, ANSI, again, American National Standard Institute for Acceptable and Usable Buildings and Facilities, it was the father of the original ADA. It was the parent of the Fair Housing Acceptability Guidelines, [00:04:00] the federal law that later governed residential projects, multifamily housing projects across the country. So it was a great opportunity to start in this really interesting field.

Mindy Henderson: Fantastic. So it sounds like you have certainly been ingrained in this world and in this field for quite a while. I'm so lucky to have you here today. So let's begin with the Americans with Disabilities Act. Because when [00:04:30] you talk about accessibility, that's what people just sort of out in communities tend to reference. And while that's important, I think most people believe that that's what dictates accessibility in its entirety. But it's more than that, correct? The ADA is great, but there are all sorts of standards and codes and building that have to be adhered to that dictate the specifics of what makes a building accessible. Am I correct in my thinking?

Dominic Marinelli: [00:05:00] Oh, there is. Early on in the process of developing accessibility standards, it was very important to have a standalone federal standard because accessibility requirements were not represented in building codes. So there are building codes to make sure that you get out of a building safely. There are building codes to make sure that the sprinkler head goes off that there's a fire. There's a building code for everything. Accessibility was separate. It wasn't [00:05:30] in the building code. So there needed to be this driving entity to represent the needs of people with disability. And that's where you saw the importance of the ADA. That's where you saw of the importance of the federal

Fair Housing Act Accessibility Guidelines. Again, that was the law that governs multi-family projects.

But what we have tried to do, and it's amazing looking back at it now, was to incorporate the accessibility requirement into [00:06:00] the building code. Accessibility had to be the same consideration of fire rating, had to be the same consideration for snow loads on roof. It had to be in the building codes for it to be enforced by code officials across the country. And that's what we were, and other advocacy organizations, were successful doing. We put the accessibility requirement in the building code so it would be enforced and it would be generally uniform around the [00:06:30] country.

Mindy Henderson: Gotcha. And that was fascinating to me. Before I spoke to you, and much to my own embarrassment, I thought that it was just the ADA that dictated all of the specifics of what makes a building accessible. So how do the codes and the standards for what makes a building accessible get created?

Dominic Marinelli: Well, we started on the code process years and years ago, [00:07:00] and you can't say enough about the importance of the federal ADA law in kind of pushing that agenda. So years ago in the 90s, there was a building code for every part of the country. There was a Southern building code. There was a building code for the Midwest. There was a building code for the West Coast, the East Coast. And ultimately all of these codes merged under one umbrella, [00:07:30] and there was our opportunity. Now that all of the codes are merged in most of the jurisdictions in the United States, really the world, reference something called the International Building Code. It was our opportunity to put, for lack of a better term, the federal accessibility standard in that building code. So that happens in the late 90s and the early 2000s. And we have just been trying to improve accessibility requirements, certainly before then, [00:08:00] but now in a much more organized, streamlined fashion.

Mindy Henderson: I love that. I love that. So talk me through, because these codes and things, new ones are getting introduced all of the time, and they're always evolving and changing. Is that right?

Dominic Marinelli: They are.

Mindy Henderson: So what's the process for that? Because you talked me through a very well organized, it sounds like, process for considering [00:08:30] new things and pushing them through.

Dominic Marinelli: Right. Well, the building codes are updated every three years. Okay? The building code, the agency that is the head of building code development is the International Code Council. So they're updating their building code every three years. If your audience wants to see the process, work now is being [00:09:00] done on the 2021 edition of the code. And the audience could go to www.iccsafe.org. And I'll say it again because I talk fast, www.iccsafe.org. O-R-G. You can follow what's going on in the next edition, or what's going to be in the next edition of the building code.

Mindy Henderson: Great. I'll put that in the [00:09:30] show notes too so that people, if they don't have a pen, yeah, can go and reference that. Great.

Dominic Marinelli: Now, this cycle, the proposals were already due for this code cycle. Now the groups are meeting to discuss those proposals. But any member of your audience could follow when it's time to provide or when they could provide a code proposal change. I'm going to tell you about the ANSI standard [00:10:00] next, but that is available to your audience.

Our team is the only disability organization that still is part of the process. A lady who works for us, by the grace of God, Marsha Mazz, who used to work for the US Access Board, the US Access Board was the federal agency that developed the ADA, is kind enough to work with us. And her great specialty is to try to provide code [00:10:30] proposals that'll improve conditions for people with disability. So that is her incredible gift that she could get things in the building code that make sense for the builder, the developer, the code enforcement official. All of those entities vote on improvements to the code. And she is just the best at crafting those and getting things that people with disabilities need through.

Mindy Henderson: Wow.

Dominic Marinelli: So that's the building code. It's [00:11:00] something that tells you, Mindy, how many things have to be accessible. How close the things have to be, like acceptable parking. The ANSI standard tells you how to do it. So the building code, it's scoping, scoping is the where to put it, how many. The technical requirements that you find in the ANSI standard is the how to do. And ANSI, again, is the American National Standard [00:11:30] Institute for Accessible and Usable Buildings. And our work has just started on what is going to be the '22 addition of the standard. That comes out every five years.

Mindy Henderson: So all of these standards and ANSI standards that you help contribute to, so I just want to make sure I understand. Do they roll up at a federal level now, or are there some that differ from state to state?

Dominic Marinelli: Well, the [00:12:00] majority of the states are the same. There are some states and jurisdictions that have their own unique accessibility requirements, Massachusetts, California, New York City. There are pockets of entities that are different than the rest of the country.

Mindy Henderson: And why is that?

Dominic Marinelli: Well, I think sometimes the different jurisdictions think that they have a better way to approach it, or sometimes they will require more restrictive [00:12:30] requirement than what you're seeing in the rest of the country. So that's the back and forth about that. In many ways, the ADA and the ADA's accessibility standard, and even the federal law that I kept mentioning that governs multi-family housing, the Fair Housing Act in many ways, those standards have passed the torch to the building code process. We needed those federal laws to get us in the door. [00:13:00] But because of those federal laws, it just made sense for

the building code to say the same thing. Because there was a federal law dictating how wide the door would be. If the building code wouldn't say how wide the door would have to be, it would be just problems for its enforcement and its application. So that was really the beauty about the federal accessibility standards.

Mindy Henderson: Gotcha. And so it sounds like because these standards are updated in a predictable [00:13:30] way every three years or every five years for the ANSI standard, professionals in this industry, builders, architects, all of those individuals have a predictable way to know when they should be referencing the new standards, right?

Dominic Marinelli: Yeah. In our world, it becomes very public information when the standards are updated. And remember, it's not the ADA model which is enforced by the Department [00:14:00] of Justice through complaints. It is in the building code, the code official. There's a building inspector everywhere, right? They're enforcing it. And the joke has always been, of course, it's not that funny, but the building official would always say, "I don't enforce the ADA. I enforce the building code." And our joke was, yeah, but we put the same requirements in the building code. So you do enforce the ADA. You know what I mean?

Mindy Henderson: [00:14:30] I do.

Dominic Marinelli: It became thank you the way to get it enforced. So that's what's really going on. And I think you're seeing their enforcement of it consistent. There's so much education that code officials get from the ICC. We are the longest tenured providers of continuing education for the American Institute of Architects. There's a lot of education saying this is what complies, this is what doesn't.

The other thing that's certainly [00:15:00] driving the industry and driving compliance is just the number of complaints. Accessibility compliance is big business. So there's a lot of lawsuits, there's a lot of serial plaintiffs who target entities for not complying and file complaints against them. In addition to government agencies that do the same thing.

Mindy Henderson: Okay. And you kind of read my mind, but that was where I was going to go next. I did want to ask you if standards are not adhered [00:15:30] to, what happens? But it sounds like there's a complaints process to handle that.

Dominic Marinelli: Right. Well twofold. Yep. The complaint process. We just talked about how it could be litigated. But on the grants roots or code enforcement level, the bathroom, the toilet's not close enough to the wall. You're not getting a building permit. You're not getting a certificate of occupancy. And so it has some real meaning that toilet has to be next to a wall [00:16:00] for a certain reason. And darn it, now there's a way to enforce that it's installed properly.

Mindy Henderson: Great. Great. So then what about buildings that already exist? Because there are new building codes being created or modified all the time, do those new building codes have to be applied retroactively to already existing buildings?

Dominic Marinelli: They don't in a couple of things. The building is going to have to comply with the accessibility requirement [00:16:30] that were applicable when it was first constructed. So the audience has to know that if the building was built in 2009, what was the code in 2009? That's the one it would have to comply with. The ADA did something where, even if the building was constructed prior to the ADA standard, prior to January of 1993, which is when the ADA began to impact public accommodations, [00:17:00] even if you were built prior to that, the ADA mandated that barriers be removed that were readily achievable, that were inexpensive and easy.

Mindy Henderson: Those feel like they could be sort of subjective terms.

Dominic Marinelli: Oh, absolutely they are. And because the definition of inexpensive and easy changes from building owner to building owner to property to property. If we have [00:17:30] a national pizza chain on one side of the street, what's readily achievable for them might not be readily achievable for the mom and pop pizzeria on the other side. So it has to deal with other financial resources. The Department of Justice who developed, certainly with a variety of entities, who developed the original ADA's regulations that were trying to get buildings [00:18:00] that were built prior to the trigger date, they were trying to enforce or achieve some degree of compliance.

So in that same role that we talked about for public accommodations, like businesses, movie theaters, restaurants, there is a similar requirement for municipalities, even local government. If you were constructed or the site was there, or the municipal building was there prior to the effect of date of the ADA, [00:18:30] the programs and activities that that municipality offered still had to be accessible. So Mindy, it was a way to try to capture things that were provided certainly before the effective date of the federal standards.

Mindy Henderson: Okay. And did you also tell me that there sort of, I don't know of formulas is the right word, but if an existing building is going to go back and remodel, let's say, that maybe they have to be brought up to code [00:19:00] under certain circumstances?

Dominic Marinelli: Yes. Existing building code in the ADA will certainly rear their head if there's an alteration done to the building. So the new work has to comply with the building code that's applicable today, or at the time of the alteration. The thing in the building that's changed has to comply. If somebody's altering a bathroom, that bathroom has to comply. If [00:19:30] a building owner is altering why people go to their building, or what is defined as the primary function area of the building, and again, that just means what do people go to your building for, if that is altered, not only does the space have to comply, but there has to be an accessible path of travel that is required to serve this space. And the codes mandate that [00:20:00] the building owner dedicate 20% of the alteration costs of the project to achieving that accessible path of travel.

Mindy Henderson: Okay. Interesting. So then again, I'm playing ping pong just a little bit, but back to existing structures. If they don't have a remodel or anything planned, and some new building codes come into play, how would it be enforced then if you've got,

say, a movie [00:20:30] theater, but the movie theater doesn't plan on doing any construction for the next five years. So is there anyone going in and taking a look to see if their bathrooms or their door openers or things like that are up to code?

Dominic Marinelli: Well, yes. That's the part that I mentioned first. Where even if the building was built prior to the ADA, they have to remove barriers. And so a lot of what you're talking about with that theater are being [00:21:00] enforced by the private litigant. We talk about that whole discussion about the number of ADA lawsuits that are coming up. Remember if that theater was built after 1993, it would've had it comply with the original ADA standards. The new ADA standards went into effect in March of 2012. So the buildings that were constructed during those periods would've had to comply with the federal law. And then [00:21:30] the National Building Code starts making its play in the late 1990s, the early 2000s. That building would've had to comply with those accessibility guidelines and those standards. If it was built prior, it would still have to remove barriers under the ADA.

Mindy Henderson: Okay. I think what I'm wondering is, let's maybe use the example of a restaurant, which could be independently owned, let's say. And let's say they're [00:22:00] a case where they were built in 1992 and new standards were created in 2012. But they don't have a remodel happening. They don't have any kind of construction project. How does the owner or the manager of that restaurant know that they may not be up to code?

Dominic Marinelli: Well, a lot of them don't is the real answer. A lot of them realize it when they're handed with a complaint.

Mindy Henderson: I see. Okay.

Dominic Marinelli: Yep. Hopefully [00:22:30] the professional organization that they're involved with tells them, like the Restaurant Association Managers of America. Hopefully that's true. So they're built prior to the ADA. What impacts them? The law that says they have to remove barriers that are readily achievable. Now, the other thing that happens is the building officials throughout the country, even though there's no alterations going on, they're still doing their annual [00:23:00] inspection of egress stores. They're still doing their annual inspection of fire sprinklers. So a lot of times the code officials bring them message of, "Hey, even though nothing is going on here, don't forget the ADA requires that barriers be removed." It's part of their community. They don't want their citizens being sued. They become very savvy to what's going on.

Mindy Henderson: Right. Okay, fantastic. So then what are the objections [00:23:30] that you hear typically if a change to a building code or a new building code is rejected?

Dominic Marinelli: It's always cost. It's always cost. So of course, United Spinal Association, and its predecessor name, Eastern Paralyzed Veterans, we were founded by paralyzed veterans after World War II. So we want access for people [00:24:00] with disabilities. And the way to achieve better access is more space. Though in creating the more space, every time you do it, it's more square footage, it's

more construction cost. That's the typical rejection of it. Everybody would think that it's great, but the cost is going to be the counter argument to a lot of accessibility improvements that you would put forth.

One of the things that's going on [00:24:30] that hedges this a little bit is aging in place. You talk in your description for today about universal design and things like that. As America gets older, and we like to stay in our homes, if the homes had adaptability features or some base features where grab bars could be installed, or the doors were already wide enough, it would really do wonders for the individual. [00:25:00] And it would put less pressure on the nursing home system and the long term care system. So now that we've gone through that, that's kind of positive for people to think if things are improved, it will lead to all of these other benefits. So that's kind of the champion against the cost argument.

Mindy Henderson: Okay. Okay. Is there any sort of federal funding or anything that could also potentially help maybe [00:25:30] small business owners or anyone else to make these changes?

Dominic Marinelli: Well periodically, and it depends. But municipalities can offer businesses community development block grants for accessibility improvements. So that you could always find out from your town, village, city, if those community development block grants are available. CDBG funds. The other thing, and this sounds crazy until you actually have to do [00:26:00] it, but there are tax incentives on the book. Section 44, or Section 190 that are still on the books. If you'll make accessibility improvement in your business, you can write those improvements off on your taxes. And so I don't think that gets out enough, but it's such an incentive. If it costs me \$20,000 to improve my bathroom and [00:26:30] my path of travel to that bathroom, I can deduct that for my taxes in simple terms.

Mindy Henderson: Oh, that's so great. Okay. Well, that's huge.

Dominic Marinelli: It is.

Mindy Henderson: So good. Okay. So let me ask you what, and I'll preface by saying that you and I talked a couple of weeks ago, like I said, and I've got a bee in my bonnet about door openers. You and I talked about this. And you explained [00:27:00] to me that there's a range for door opener height and things like that. When I go to a building, more often than not, I would say 99% of the time that I get to a building that has a door opener, it's too high for me to reach. It's maybe somewhere between three and six inches higher than I can reach. Because my muscles are affected and I'm working against gravity to reach up.

And so if I show [00:27:30] up at a building and it's got an automatic door opener that senses me coming, I feel like it's my birthday. It's absolutely amazing. So what are the best ways for people like me who may want to push for something like an auto detection door opener, kind of a thing. I'm sure that's not the right term. But the best way for people like me to advocate for better accessibility [00:28:00] in buildings in our communities.

Dominic Marinelli: There's a couple of ways. Certainly there are vehicles on the iccsafe.org website for being able to make proposals to building code. And if you go to that website, you can search and see. And the number of that committee, of that standard is A117.1. If you searched [00:28:30] A117.1, you could see where there's an opportunity for public proposals, and you can see that opportunity.

The other thing, and I can give you our technical assistance website, as well our email, is we collect ideas all the time. And it's ta@accessibilityheightsandservices.com. It's still part of the United Spinal Association group. It's still me. It just gives us a place to collect [00:29:00] proposals or people's ideas that we really use.

So I think that's a great idea what you're saying about the height of doors, for operable parts on doors. And you're seeing a large component, or a large push, because of COVID to have things that don't require touching anything. So I mean this is an opportunity perhaps [00:29:30] to get that recognized. As it is today, the opener, the actuator button for the automatic door is required to be 15 minimum to 48 inches maximum above the floor.

Mindy Henderson: Oh, interesting.

Dominic Marinelli: So 15, I don't know what your reach range is, but in that dimension, in that range, a lot of different disability groups were considered, including Little People of America [00:30:00] who have been very successful getting things in that benefit little people. There's one avenue for which you can propose the code changes. You can use us certainly to champion something that we think we can get done. But there's a range there for the reach.

And one last thing on that group, they were successful in getting public bathrooms to have the lavatory faucet on the outside [00:30:30] of the bowl, instead of at the rear of the bowl. If you think of a typical sink. In building code language, a lavatory is a sink. It's just called a lavatory in the bathroom. Toilets are called water closets. You know what I mean? But they were successful getting the faucet requirements on the outside edge of that countertop. So it would be more reachable. It's very similar to what I think you're looking at.

Mindy Henderson: Okay. [00:31:00] Interesting. Yeah, because to answer your question my reach is only, I want to say, about 30 to 32 inches. And yeah, I would say most buildings, at least that I frequent, are considerably higher than that. I'm so excited to have some avenues to send in ideas and proposals. And again, I'll make sure that we put all of that information, and the email and all of that good stuff, into the show notes so people who are listening can also send in [00:31:30] their ideas and proposals. So I'm sorry to say that we are about out of time, but this has been so interesting and so enlightening. Are there any last words on the subject of accessibility that you would like to leave us with?

Dominic Marinelli: I just think that the audience has to know that it's come a long way. In my 35 years doing this, 34 years doing this, I don't want to get ahead of myself, but it's just amazing how [00:32:00] mainstream accessibility requirements are, and how that affects everything. So if you think about a door threshold, a metal door

threshold at the base of the door, in non-compliant, they don't have high thresholds anymore. All of them are accessible thresholds. They don't have high bathroom sinks or lavatories anymore. They're all a standard 34 inches. [00:32:30] So the accessibility push to help with disabilities is really mainstreamed. And it's really across the board to so many things you're going to see in the built environment.

Mindy Henderson: Well, that is fantastic to hear. It's encouraging. And I personally am glad that we have people like you at the helm advocating for this community. So again, I just want to thank you for your time and your wisdom and your expertise. It's been a pleasure talking to you.

Dominic Marinelli: Thank you so much for having me.

Mindy Henderson: [00:33:00] Thank you for listening. For more information about the guests you heard from today, go check them out at mda.org/podcast. And to learn more about the Muscular Dystrophy Association, the services we provide, how you can get involved and to subscribe to Quest Magazine or to Quest Newsletter, please go to mda.org/quest. If you enjoyed this episode, we'd be grateful if you'd leave a review. [00:33:30] Go ahead and hit that subscribe button so we can keep bringing you great content and maybe share it with a friend or two. Thanks everyone. Until next time go be the light we all need in this world.