LICENSED ARCHITECT

Association of Licensed Architects

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Summer 2022



Document Management Best Practices

Concrete Masonry Walls

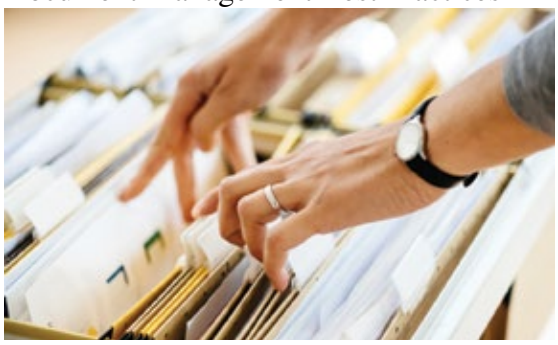
Keeping Your Copyright

New Automatic Door Requirements

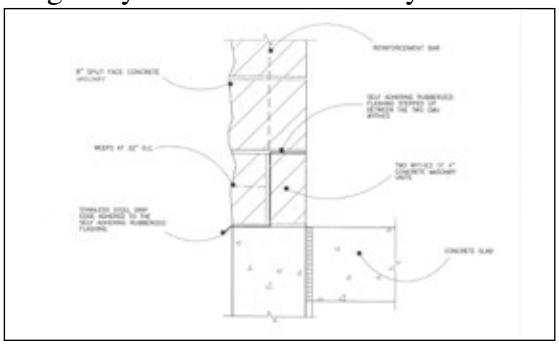
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Cover Photo:
Trout Lake Camp, Pine River, MN
(Courtesy Station 19 Architects Inc.)

PRESIDENT'S message



As summer comes to a close, we hope you've enjoyed some sunshine, time with family, rest and relaxation.

At ALA, we're looking forward to some fresh air with colleagues and friends at our September 14 golf outing, which will he held at the Bloomingdale Golf Club. There's a 9 am shotgun start, with play until 2 pm, followed by a cash bar, dinner, raffle and awards. Along with 18 holes of golf, you'll get a three-pack of golf balls, coffee, lunch and a chicken and ribs buffet dinner. The ticket price is $175, with proceeds helping to keep our dues affordable. A portion of the proceeds also goes to the Student Merit Program, which recognizes deserving architecture students for their achievements. Register with associates and guests and we can set you up as a foursome, or sign up and we can match you with others for a great networking opportunity!

We also have amazing tours of two of Rockford's hidden architectural gems coming up on September 22. First there's a tour of Laurent House. Designed for young paraplegic Ken Laurent, who was impressed with the open floor plan, the home was decades ahead of its time. The second gem is Anderson Gardens, one of the top Japanese gardens in the country, with a 16th century Sukiya-style guest house built by a Japanese craftsman in 1985 and featuring post-and-beam construction. The event includes architect and docent-led tours of the two homes and gardens, presentations and architect-led discussions, welcome coffee and lunch.

Judging of our annual Design Awards wraps up on September 23 and this year we will celebrate the awards on November 18 at the historic Medinah Country Club, Medinah, IL. Medinah Country Club's 1926 clubhouse is one of the most popular buildings designed by Chicago architect Richard Gustav Schmid, who was known for using Byzantine and Oriental features in his buildings. It is certainly a gem for ALA's premier event of the year. We hope you will join us.

The second ALA Architecture Conference for 2022 will be held on November 10 in person and online. The theme is *Our Sustainable Future and How Building Science Contributes*. You can earn up to five continuing education credits. Registration will open in September and tabletops are available for suppliers now.

We hope you are enjoying *Architecture Focus* ALA's weekly industry newsletter. There are many ways to tailor the newsletter by frequency and content. We encourage you to log in and explore the many options, including the free online continuing education available to members. Visit ALA's on demand learning center at www.alatoday.org/odlc

We hope to see you at our fall events. Next year will be packed with interesting continuing education courses, networking opportunities, tours and conferences. Please reach out with ideas, comment and suggestions.

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Document Management Best Practices for Licensed Architects

BY: JOSHUA LEVY, PARTNER, HUSCH BLACKWELL

From the start of every project architects know that hundreds of project records will be created. However it is not always understood how long these records should be preserved. Managing project records requires knowing what records are developed, where they are stored, and how long they must be retained. Paper shredders are as obsolete as VHS. In the digital age, keeping on top of your records is increasingly difficult and especially important. It is easy to delete records from a computer system that you needed to retain, and it can be difficult to find records you need because you have kept ones you do not need. A properly developed and implemented record retention policy can help avoid issues with access and preservation.

Project Records

In addition to general business records typical to any company, design firms have a whole host of project documents to maintain, from design development drawings, construction drawings, and BIM Models to project manuals and specifications, submittals, RFI's, change orders, and on and on.

Knowing where these records are kept is the first step. Project documents may be kept as hard copy records, on a network drive, in the cloud, or they may be in different applications such as an email program, text messages, iMessages, and project management and accounting software. Developing the record retention policy will begin with indexing your universe of project records. This will assist you in finding records needed after project completion. A first step in this process can be developing a Master Project Log for completed projects, which may be kept manually or digitally. The Log should use consistent naming conventions so as to make identifying documents easy. One recommended practice is to use the project's job number as the labeling prefix for each job record. Next consider dating, labeling, and creating an inventory of project documents using the Master Project Log as the structural foundation.

Then, implementing the record retention policy will help you determine when you no longer need to retain certain records, allowing you to save on storage space and cost of storage. Your policy should include provisions for the archiving and destruction of records. For archiving, hard copy documents that exist only in non-digital format should be scanned, consistently labeled, and a digital backup maintained. An important consideration for long-term retention is that a software change could result in



archived information becoming unreadable. Your policy should include a periodic evaluation of the format in which documents are stored and should trigger an automatic review of whether to convert documents from older software in the event of a company-wide change in programs.

For record destruction, the record retention policy should account for complete destruction of both digital and hard copy documents. A policy that hard copy documents are shredded upon the end of the retention period will generally be sufficient. Digital records, on the other hand, may be software and system specific, and information technology personnel should be brought on board to ensure that those records at the end of a retention or archival period is properly deleted.

A record retention policy is only effective if it is implemented and followed. To that end, training

Having a record retention policy is low-hanging fruit in your risk management orchard.

employees to understand and follow the policy is crucial. Identifying key employees for maintaining records is a recommended practice. This group can assign responsibility for periodically reviewing the policy and training employees on implementation.

Legal Reasons to Retain Records

There are different reasons to retain records. You may be contractually obligated to retain certain records for a certain period of time. Or you may simply want to look back to see how a particular design was done or how a particular project was completed.

While some general business records fall under federal requirements for the length of time to preserve, most records should be kept according to state-specific requirements. States generally have Statutes of Limitations and a Statute of Repose. A statute of limitation is triggered by a loss, while a statute of repose sets a claim deadline based on project completion. Thus, while an individual may have two years to bring an injury claim under a statute of limitation, the claim may have to be brought within ten years of substantial completion under a statute of repose. Accordingly, it is important to retain project records at least as long as the requirement under the applicable Statute of Repose.

Perhaps one of the most important reasons to have a record retention policy is to be prepared in case of litigation. Architects can be parties to litigation involving claims of professional negligence or breach of contract. Even if not a party to a lawsuit, architects can be the subject of non-party subpoenas to produce documents. Whether as a party or a non-party you may be subject to a broad request for "documents." The requesting party and the court expect that the architect has kept the appropriate records. You may be asked to explain what happened to any relevant documents that were discarded. Knowing where and how the documents are stored also makes it easier and cheaper to produce the documents.

Having a record retention policy is low-hanging fruit in your risk management orchard. Where a party has a long-standing policy of destruction of documents on a regular schedule, with that policy motivated by general business needs, destruction that occurs in line with the policy is relatively unlikely to be seen as a problem in subsequent litigation. However once a claim or defense is contemplated, the discarding of records most stop until the full scope of litigation records is identified. Following a reasonable record retention policy is important, especially during and in anticipation of litigation.

Key Take-Aways

Not having a policy in place for deleting records can lead to either never deleting records or getting in trouble for randomly deleting records, especially if those records are important for a lawsuit. However, having a well-crafted policy in place, deleting records on the schedule set by the policy, training employees on the policy, and instituting legal holds as needed can save a company from sanctions in a lawsuit, can save time and effort in searching for needed records, and can save storage space and costs for not maintain records longer than needed.

About the Author:
Joshua Levy *is a Partner and Construction & Design Group Leader with Husch Blackwell, an AmLaw 100 firm with 25 offices across the United States. Husch Blackwell applies an industry-centric approach to endow the firm's lawyers with a deep understanding of what architectural clients face every day.*





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The Highlands Church, Delano, MN – New Church Construction

A new 400-seat church on a corner lot that makes the most of connections to neighboring streets and wetlands with a welcoming “Front Porch” patio, window-filled lobby space, and bold, fresh graphics.





Sanctuary Church, Minneapolis, MN – Church Adaptive Reuse with Additions

An abandoned contractor's warehouse was creatively transformed into a new welcoming Lobby with new 500-seat Worship Space and 2-story Classroom addition that integrates into its urban neighborhood.



Ridgewood Church, Minnetonka, MN – Church Remodel

A call to strengthening hospitality, curbside identity, and education, centered on an expanded refreshed Lobby with new finishes, furniture, lighting, graphics, adjacent refreshed secure Kids Space and bold new exterior canopy.



MNTC Women's Rochester, MN – New Treatment Center

Minnesota Adult & Teen Challenge's first all-new facility rooted in 25 years of successful restoration of individual and collective lives. It's become the model for their facilities as they continue to grow.



Hope Academy, Minneapolis, MN – School Gym Addition

Hope outgrew its building in a former hospital, and the only way to grow was up! New competitive gym with sound-isolated, sprung-wood floor above 2 stories of classrooms. It works…with a WOW!



Trout Lake Camp, Pine River, MN – New Camp Cabins

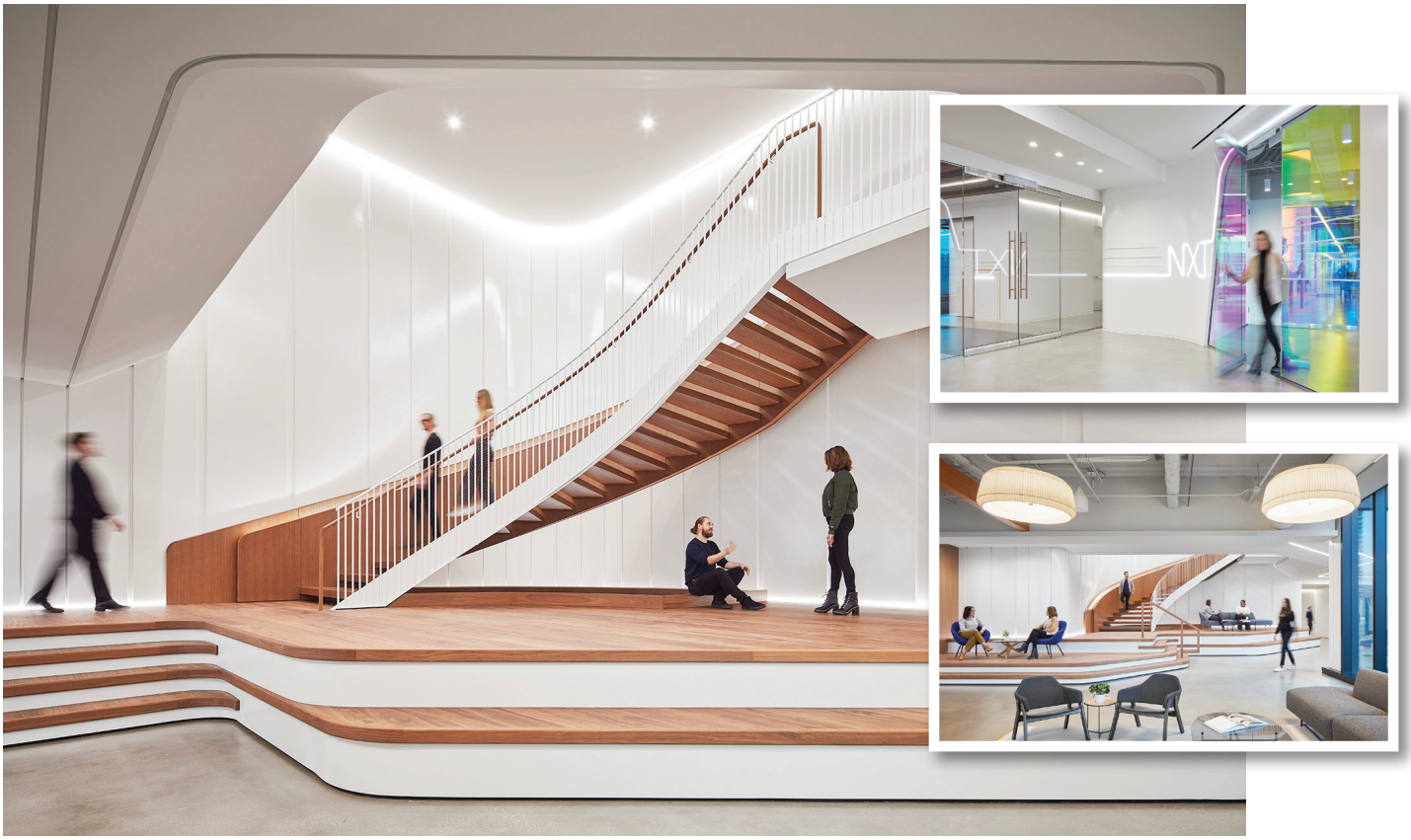
A Vision for a fun and safe adventure for first-time campers to grow together created these unique cabin clusters with walkways and secret escape hatches! "Fishing Village" cabins coming next year!

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Through our thought leadership, we continue to develop ideas, concepts, and inter-connected programmatic languages integrating the complexities of this post-pandemic workplace of the future.

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CCC Intelligent Solutions, Chicago, IL

CCC Intelligent Solution's new headquarters was designed to support the tech leader's growth and foster the company's strong culture of innovation and collaboration. The space includes an eye-catching radiused stairwell.









Convene, Chicago, IL

PBD provided interior design services in four Convene locations across Chicago. The designs focus heavily on amenity space with a hospitality flare, with the goal being to provide users with an exceptional office experience.







Foxtrot, Chicago, IL

The Foxtrot office space is full of clean lines and a strong collection of neutral palettes, pulling notes and design direction from their retail stores. The large test kitchen dramatically anchors the front half of the office.

Single Wythe 8-Inch Concrete Masonry Walls

BY: MASONRY ADVISORY COUNCIL

Most contemporary masonry walls consist of two separate wythes, comprised of one wythe of brick and one wythe of concrete masonry. However, there is an alternative masonry wall design that can produce economical and structural benefits.

Concrete masonry units are strong in compression and can be produced with strengths in excess of 3000 p.s.i. This is one of the reasons that concrete masonry units are desirable for load bearing, single wythe, concrete masonry wall design. Also, corresponding tensile and flexural bond strengths in the mortar joints contribute to the overall structural design of the wall, and a standard mortar, like type “N” by proportion or type “S” by physical property, will provide the structural strength required.

An 8-inch concrete masonry bearing wall is a popular wall type that is utilized in single-wythe masonry construction for condominiums and other types of buildings in the Midwest. When designed and constructed properly, these walls will perform as intended.

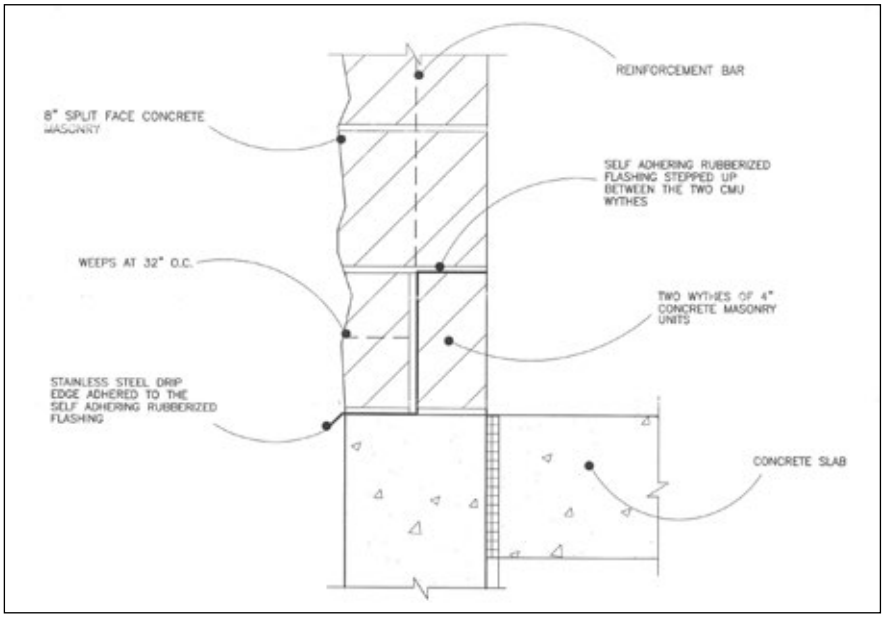


Figure 1

Wall Design

A single wythe concrete masonry wall must be designed with all the typical elements common for a successful multi-wythe wall. The wall must be able to resist moisture penetration or the collection of water within the wall system. Also, the single wythe wall must be capable of resisting lateral wind loads and concrete masonry shrinkage cracks.

Water penetration of the concrete masonry units and mortar repellent to the concrete or brick masonry units. Structural stability of the single wythe wall can be achieved by adding reinforcement in the concrete masonry cores and grouting them solid. Reinforcement bar size and spacing must be determined by the structural engineer.

Wall Base

The bottom of the wall must be protected from water infiltration by installing through wall flashing and weeps. This is achieved by installing two wythes of 4-inch concrete masonry and stepping the flashing up and into the concrete masonry backup (Figure 1).

Wall Openings

Like most typical masonry buildings, wall openings must be protected from water infiltration at the window head above the opening. At this location, the flashing should be stepped up between two 4-inch concrete masonry wythes and terminated into the concrete masonry backup, as indicated in Figure 2. Also, it is more practical and inexpensive if a precast concrete lintel is provided to support the back-half of the concrete masonry above.

Flashing and Weeps

While the masonry is primarily protected from moisture infiltration by

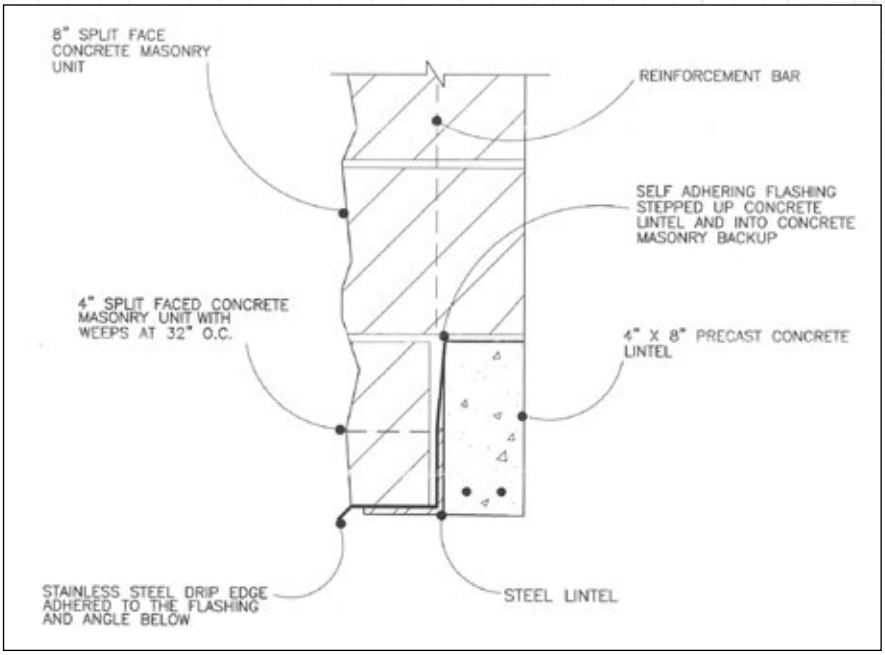


Figure 2

the water repellent, flashing should be installed where previously indicated.

There are numerous types of flashing. There are many types of flashing such as: PVC, asphalt coated copper, polyethylene coated copper or lead, stainless steel, and more. However, the most common flashing in the midwest part of the country is self-adhering flashing or rubberized asphalt flashing. This flashing type consists of rubberized asphalt coated on one side with polyethylene coated and a very sticky surface on the other side, which is covered with a removable contact paper. The advantage of this flashing is that it will stick tightly to nearly any surface, preventing water from flowing under or around the flashing.

Stainless steel drip edges must be installed at all flashing locations. The flashing must be installed lapped over and adhered to the drip edge by a minimum of 1 inch. The drip should extend beyond the face of the wall. A drip edge will prevent water from sheeting down the wall and will assure that interior water is completely drained out of the wall.

Lateral Support

The concrete masonry wythe must be designed to resist wind loads at the masonry wall and horizontal member connections to the wall. There are multiple acceptable connections at this point, depending upon the height and function of the wall.

The type of connection between the joists and wall would depend upon the type of roof and floor system. Also, vertical elements, such as masonry shear walls, should be considered. If the building is residential, it is more likely that wood frame structural components might be used to lateral brace the wall against wind loads as indicated in Figure 3. If the building is commercial, with wider spaces required, and longer spans needed, then a frame, incorporating steel joists welded to steel ledger angles, would be more likely used, as indicated in Figure 4.

Parapet Wall

The primary purpose of a parapet wall is to keep water from entering into the masonry wall below. Wall copings are typically manufactured from limestone or precast concrete and are capable of resisting water penetration into the wall beneath. Also, lateral support is required along the roof top to support the masonry above and below the roof line, as indicated in Figure 5.

Wall Movement

Concrete masonry shrinks, just as cast in place concrete does. This shrinkage is due to initial drying of the material. Therefore, this shrinkage must be accommodated to prevent cracks from developing in the concrete masonry walls. Shrinkage cracks are not structural and are more of an aesthetic issue.

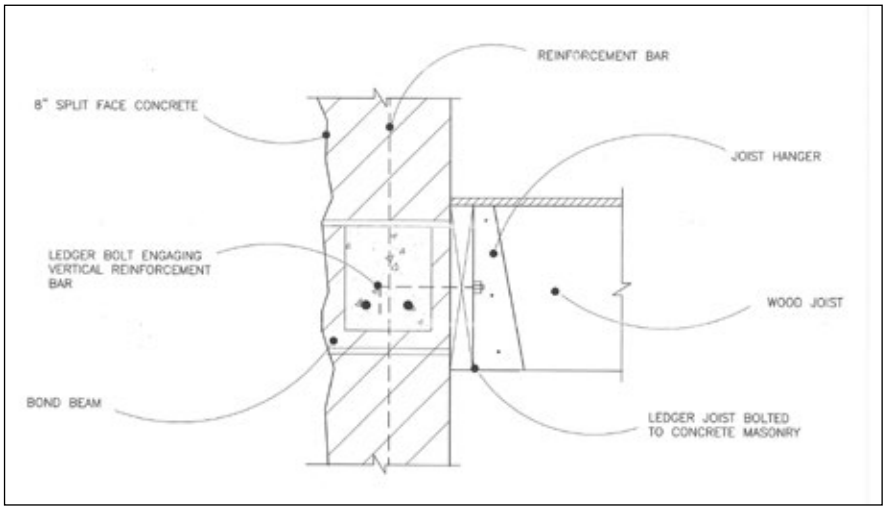


Figure 3

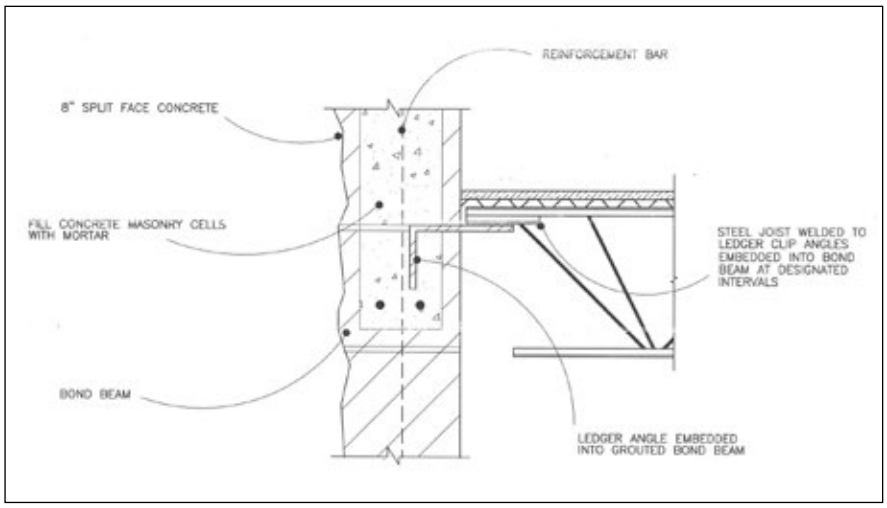


Figure 4

Control joints regulate where the concrete masonry shrinkage cracks occur in the concrete masonry walls. A control joint will accommodate shrinkage by creating a plane of weakness to accommodate where the concrete masonry will crack. As a result, a shrinkage crack will not be observable in the concrete masonry wall. See Figure 6. Control joints should be spaced at 20-foot horizontal intervals.

Moisture Barriers

All single wythe masonry walls are barrier walls. Barrier walls prevent water from flowing into the interior of the building. The water is prevented from entering the single wythe wall at its outer surface unlike cavity walls that drain penetrating water out of the wall system.

To achieve water repellency in a single wythe concrete masonry wall, the concrete masonry should be manufactured with water repellent added to the concrete during the manufacturing process. Also, a water repellent must be added to the mortar during the construction process to achieve total water repellency of the entire single wythe masonry wall. An alternative method of achieving water repellency on single wythe concrete masonry and brick wall is to apply water repellent to the masonry.

After the wall is completed, a single wythe masonry wall is most vulnerable at the unit-to-mortar joint interface where separation cracks can develop. A typical water repellent can span and seal cracks.

A surface applied water repellent must be breathable. This will allow any water trapped in the single wythe wall to exit to the exterior of the wall in the form of water vapor. One of the most common chemicals in the surface applied water repellent is siloxane. Both an integral water repellent added to the concrete mix, and subsequently to the mortar and surface applied water repellents, will perform successfully if all proper measures are followed.

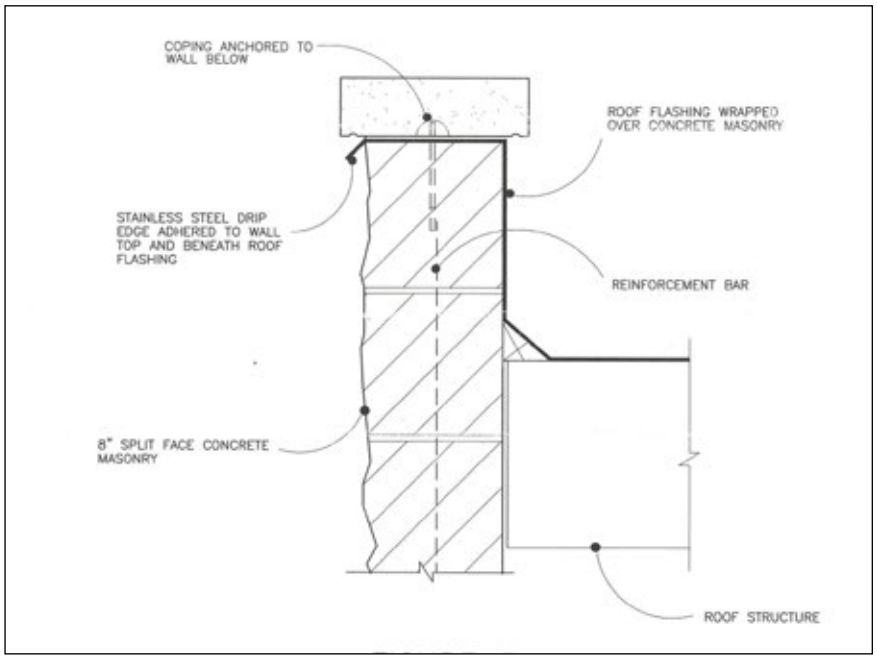


Figure 5

Wall Insulation

All single wythe masonry walls require insulation. The application of insulation depends upon the interior finish of the wall. If the interior of the single wythe wall is to be covered with drywall or similar material, then the interior of the wall can be fitted with sheets of rigid insulation consisting of extruded polystyrene or polyisocyanurate. The sheets of insulation are secured to the wall with "z" channels set at 4 feet on center. These channels are mechanically fastened to the outer wythe of masonry then the four x eight-foot insulation board is held in place by the "z" channels. Next, the drywall is fastened to the outer surface of the "z" channel. See Figure 7.

If the interior of the wall is left exposed, then the cells of the concrete masonry

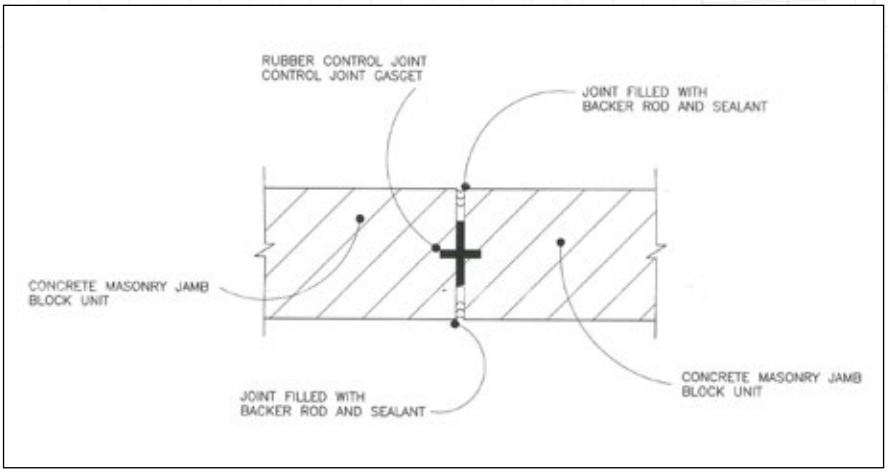


Figure 6

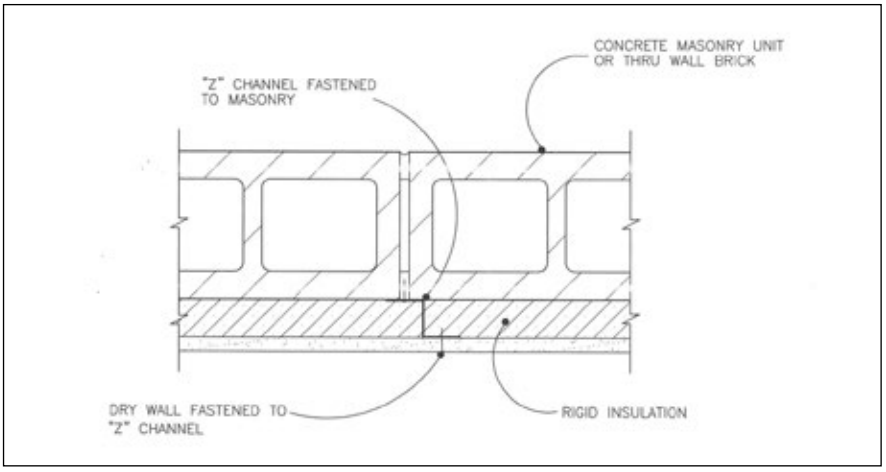


Figure 7

or through wall brick can be filled with foam or with loose fill insulation. Single wythe walls insulated on the interior surface will provide a much better R value then wall insulated with the cells of masonry units. This is due to thermal bridging.

Single wythe walls insulated on the interior surface of the wall will experience minimal thermal bridging through the flange in the "z" channel, whereas single wythe walls insulated within their cells will experience thermal bridging through the cross webs in the masonry unit and through grouted cells.

It should be noted that there are some proprietary concrete masonry units that are manufactured with integral styrofoam insulation that eliminates some of the thermal bridging.

About the Author:
The Masonry Advisory Council (MAC) *provides Masonry education and technical support for architects and industry professionals.*
For more information, visit our website:
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Test Questions

CE Quiz - Continuing Education Test – Concrete Masonry Walls

1. What is the recommended detail for flashing along the base of a single wythe wall?
   a. Install an 8” concrete masonry unit along the base of the wall and caulk the vertical leg of the flashing to it
   b. Install two 4” CMU units and step flashing 8” up interior CMU and into the inner CMU mortar joint
   c. Install 8” CMU along the base of the wall and form a continuous end dam at the base of the interior CMU
   d. None of the above

2. Why are ledger connections so critical?
   a. They provide a bearing point for roof and floor structure
   b. They reduce the cost of the wall
   c. They decrease the structural load imposed on the wall
   d. Two or more of the above

3. Parapet wall copings provide protection from water entry into the wall below?
   a. True
   b. False

4. Single wythe concrete masonry wall movement is due to the following:
   a. Concrete masonry shrinkage
   b. Thermal expansion
   c. Initial drying of concrete materials
   d. Two or more of the above

5. How should an 8-inch concrete masonry wall be supported above a wall opening?
   a. By grouting all concrete masonry units directly above the opening
   b. By incorporating a horizontally reinforced wide concrete masonry bond beam above the opening
   c. By providing back-to-back loose structural lintels to support two 4-inch wythes of masonry
   d. Two or more of the above

6. How can structural stability be achieved in a single wythe masonry wall
   a. By increasing the size of the vertical joint reinforcement
   b. By adding reinforcement into the cells of the CMU and grouting solid
   c. By adding a bond-enhancing agent to the mortar
   d. Two or more of the above

7. What type of flashing is preferred?
   a. Asphalt water copper
   b. Rubberized asphalt
   c. Polyethylene coated copper
   d. Stainless Steel

8. What type of wall system is an 8-inch single wythe wall?
   a. A barrier wall
   b. A cavity wall
   c. A veneer wall
   d. None of the above

9. What is recommended spacing for weeps for single wythe wall?
   a. 24 inches
   b. 26 inches
   c. 32 inches
   d. 36 inches

10. How are newly erected 8-inch single wythe walls insulated?
    a. By pouring loose fill insulation into the cells
    b. By securing sheets of rigid board insulation to the walls interior surface
    c. By injecting foam insulation
    d. Two or more of the above

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Keeping Your Copyright: Recent Trends and Strategies

BY: BOB GREENSTREET, PHD FRIBA FRSA DPACSA

1. INTRODUCTION

Before 1990, architects had relatively little protection for their design ideas, so the Architectural Works Copyright Protection Act (AWCPA) was intended as a significant step forward in the protection of original design work from unauthorized copying. However, despite its alignment with copyright protection established in Europe by the Berne Convention, the Act had a number of shortcomings in both its coverage and definitions that were highlighted in subsequent years following its creation that, according to some, reduced its intended effectiveness (1).

One of the major negative consequences of the AWCPA which was unforeseen both during its drafting and in the years immediately following its enactment is now apparent and has had significant repercussions in the homebuilding sector of the construction industry. This is perhaps not an area that is a primary focus for many architects, but the increase in legal action in the copyright realm has affected a number of designers across the country. For some years after the consequences of the Act became apparent, courts appeared reticent to stop ongoing legal cases and were cautious in their judgments on the issue of substantial similarity of contested models and the alleged originality of copyrighted ideas.

However, several recent rulings provide some indication that the courts are beginning to focus their attention more critically on architectural copyright infringement cases, and be more assertive in their assessment of issues such as 'originality', 'creativity' and 'substantial similarity'. This article examines the background of the AWCPA, explores its largely unforeseen consequences, and reviews several recent legal decisions that indicate a shift in attitude and a clearer approach towards the determination of substantial similarity in design. It concludes with providing some recommendations to practicing architects for effectively protecting their copyrightable work and suggesting strategies to protect them from unfair allegations of copyright violation.

2. THE DEVELOPMENT OF COPYRIGHT PROTECTION

Before 1990, architects had limited copyright protection under the prevailing 1976 Copyright Act beyond the coverage of their actual drawings. As "instruments of



service", architects' designs were regarded more of a product than a service, and the original ideas that created them were therefore vulnerable to misappropriation.

In order to conform to the 1968 Berne Convention, the United States developed the Architectural Works Copyright Protection Act (AWCPA) which came into law in 1990. Interestingly, the Act was not ultimately supported by the American Institute of Architects, which expressed some well-founded concerns about the proposed Act's impact on originality and contextualism within the built environment. While the AIA initially supported expanded copyright protection, a number of prominent architects were concerned that copyright protection might affect their ability to use elements from other architects' work, a longstanding tradition in the profession, where contextualism and 'fitting in' to an existing design vocabulary were considered acceptable.

"Our concern is that the well-accepted traditions of reference and limited borrowing of elements and details should be suppressed (United States Congress, 1990b)

However, their concerns were not heeded. Subsequent to the enactment of the AWCPA, studies of its effectiveness revealed a number of shortcomings, including a lack of clarity regarding ownership of original ideas, a wide range of interpretation in the apportionment of damages, and an inconclusive definition of 'building' covering habitable and non-habitable buildings like churches and gazebos, but

The increase in legal action in the copyright realm has affected a number of designers across the country.

excluding significant structures such as garages, bridges and silos (2).

However, despite these shortcomings, the Act did provide additional copyright protection for architects, and has been instrumental in the successful resolution of a number of cases, usually at a larger scale of construction than single family homes, such as condominiums or hotels (3).

3. UNINTENDED CONSEQUENCES

A less welcome outcome of the AWCPA, not predicted during its formation, has occurred primarily in the housing sector. In the past few years, countless designs of single-family homes have been registered with the United States Copyright Office. Once granted protection, these designs can be systematically compared to the designs of other homebuilders and, if the copyright owner believes they are 'substantially similar', legal action can (and has been) initiated.

Given the limited cost of a market rate single family home, it is inevitably limited in size, program (i.e. the number and type of rooms and spaces), layout and appearance, and also heavily influenced by market and consumer demand. It is hardly surprising then that the number of similarities can be considered quite high – and the consequent number of lawsuits numerous.

4. THE COURTS' RESPONSE

While some cases were resolved appropriately after careful deliberation of the substantial similarities between contested buildings, they were typically large, complex multi-unit structures with multiple design components and usually designed by licensed architects. In such situations, substantial similarity of protected elements is easier to prove or disprove. However, cases addressing design similarity between simpler, single family homes posed challenges for the judiciary which initially handled them tentatively given the subjective, loosely defined concepts such as originality, creativity and substantial similarity.

Certainly, in the assessment of pleadings to determine if there was a genuine need for trial, courts often appeared, from an expert witness's perspective, reluctant to issue summary judgment (4), deferring the judgment call on these matters to 'the ordinary reasonable person' and allowing many cases to go forward to trial. This strengthened the resolve of plaintiffs, who calculated that settlement was a less costly option for defendants and their insurers than a long, costly trial, and increased the number of complaints accordingly.

Paradoxically, while most courts found that copyright protection afforded by the AWCPA was limited, or 'thin', the degree of originality necessary to successfully claim copyright protection was really minimal, and rarely successfully challenged. A review of copyrighted homes registered in the United States Copyright Office, all of which are claimed to be original creations that are 'completely new' and not based upon previous designs (5), reveals that many of the houses are based upon pre-existing, traditional design solutions. Such solutions have been used throughout the country for many years, but have rarely been challenged either upon, or subsequent to, registration.

Finally, the question of design comparability and how to fairly determine substantial similarity raised challenging questions. Given the non-quantifiable definitions of the Act, courts were focused on the broad, 'look and feel' of designs, and had to wrestle with comparing vague, subjective elements such as 'character' and the 'flow of space' or 'overall concept and feel'. These are terms that may have meaning in the architectural profession, but do not provide lawyers and judges with much guidance in setting quantifiable standards. They are also conveniently non-specific terms for the plaintiffs to invoke to demonstrate a general similarity of compared designs without having to provide specific, quantifiable details of copying.

In consequence, the first 25 years of the AWCPA saw a great deal of unnecessary litigation particularly in the housing sector, some of which rebounded onto the architectural profession. The result was a significant amount of financial settlement by parties who, it could be argued, were never culpable of design copying but were forced to settle to prevent further nuisance and cost.

5. RECENT DEVELOPMENTS

In the past several years, there have been a few copyright cases, all in the Midwest and all concerning single family

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homes, which indicate an interesting shift in the judicial approach to copyright infringement cases (6). All three cases discussed here (where the author acted as expert witness) follow a similar pattern to dozens of comparable cases across the United States. The plaintiff (not an architectural practice in this case), having registered multiple home designs with United States Copyright Office, reviewed the housing models of scores, if not hundreds, of homebuilders in search of actionable infringement of their intellectual property. Those targeted homebuilders were not necessarily direct competitors, and were often situated in other states, many hundreds of miles away from the Plaintiff's home base. If the copyright holders detected some similarity to any of their registered models in appearance and layout, they sued for copyright infringement. These are three of the 150 cases instigated by just one plaintiff in the past few years (7), which represents one in every 300 builders in the United States.

These recent cases indicate some important changes in attitude and actions concerning copyright protection (8). While it is still premature to establish these as firm principles, there do appear to be three important clarifications and shifts which, from an expert witness's perspective, strengthen the hand of defense counsels in combatting copyright infringement claims and give greater clarity on protection to the architectural profession.

A. A Closer Look

In contrast to the previous reluctance to making firm judgments on similarity, choosing instead to pass the responsibility on to the jury of 'ordinary persons', the judge in Heller affirmed her intention of 'going deep', confirming the previous opinions in Kerstiens and Lexington and taking 'a closer look' at the contested designs (6).

This contention that, at a small scale, differences however seemingly minor are relevant, indicates a willingness to take a detailed look at designs differences, reaffirming the thinking in several other cases and shows a willingness to act emphatically on clear evidence on a lack of substantial similarity. This willingness to look carefully at the evidence led to summary judgment on behalf of the defendant in all three cases.

B. Differences Rather Than Similarities

In addition to confirming that access is not proven simply by alleged substantial similarity (9) – a retreat from the universal, automatic access inferred by the Internet in prior times – the cases show a shift in attitude towards looking at differences, as opposed to similarities, which moves the assessment of substantial similarity from the vague, 'look and feel' to more specific, quantifiable and demonstrable differences of protectable elements:

"Accordingly, this Court views Lexington as requiring the Court to focus on the differences between the plans rather than the similarities. Where sufficient differences exist, the existence of superficial similarity cannot demonstrate a copyright violation" (see Footnote 6: Heller).

This reverses the approach stated in previous cases which involved buildings that were larger, more complex, custom built and had substantial budgets, a far cry from the modestly priced, minimally scaled designs of the market price home building industry. The three new cases focus more directly on simple housing models that are, by definition, largely composed of pre-existing, traditional elements to develop more specific views on substantial similarity.

C. An Analytic Tool

The judges in all three cases expressed a preference for objective, quantifiable data rather than vague, subjective claims of similarity, and relied on 'analytic tools' to inform their decision making. In each case, their opinions enumerated specific differences between the contested plans and, in two cases, relied exclusively on the defendants' expert witness reports, which painstakingly detail the differences between the models, demonstrated that in shape, program, layout, square footage, dimensions, materials and details, there were multiple differences that denied the claims of substantial similarity. The sheer number of quantifiable difference within the various categories, regardless of size, often led to 50 pages of data and provided the judges with visible, objective evidence which collectively demonstrated the lack of substantial similarity.

6. SUMMARY

Despite the best intentions of the AWCPA, it contains a number of shortcomings that became apparent after its implementation, although perhaps none as unintended or consequential as its impact upon the homebuilding sector.

Loopholes and laxities in the copyright registration process have led to countless law suits and settlements in favor of design trolls, who have cynically used the registration of their traditional, generic design solutions to profit from attacks on owners of similar traditional design without comparable copyright protection.

In the past, the courts have provided little relief for the accused homebuilders, who in many instances, settled with plaintiffs to avoid costly and time-consuming legal battles. But the three recently decided cases in the Midwest indicate more decisive court action on providing summary judgment, closely reviewing the details of the contested designs, focusing upon specific differences rather than general similarities and taking a quantifiable, objective approach in assessing substantial similarity through the use of 'analytic tools'. This more rigorous approach shows a clearer understanding of the concept of substantial similarity and a hardening of attitudes towards claims of originality for designs based upon traditional, pre-existing elements.

This new approach will better serve an original goal of copyright protection – to preserve ownership of design originality for the architectural profession, while enabling the open use of pre-existing design elements in circumstances where contextualism and 'fitting in' are appropriate design strategies.

To that end, this article concludes with four suggestions for architects to ensure their own copyright protection while maintaining an effective defense against unfair claims of copyright violation against their work:

1. Regularly and routinely file for copyright protection of all new work. It is fast and inexpensive.

2. Keep ALL design development drawings and files for every design (including images of models), no matter how modest. They provide invaluable evidence of design originality if they show a progression of ideas, even if the final product closely resembles the work of another architect.

3. If accused in writing, contact your insurance agent right away. It is required by the policy.

4. Before you talk to your attorneys, assemble and order all relevant background materials. This will save time – and money – during the preliminary discussions. Documentation should include:
   a. All files
   b. All drawings, images etc. as described above
   c. A timeline of all relevant dates in chronological order
   d. If you have access to the plaintiff's designs, carefully compare them to your own contested work and tabulate the differences. Review the designs in the following categories:

      Shape – the building profile, rooflines and overall mass of the buildings
      Program – compare the number and use of rooms and spaces
      Layout – identify any differences in spatial relationships
      Square footage – compare the overall footprint of the two models
      Dimensions – list all the different room dimensions of walls and ceiling heights
      Materials – compare exterior building materials
      Details – compare windows, doors, eaves, porches etc.

FOOTNOTES

1. For example: Michael E. Scholl, 'The Architectural Works Protection Act of 1990: A Solution or Hindrance?" 22 Mem. St U.L. Rev. 807 (1992); Andrew Pollock, "The Architectural Works Copyright Protection Act: Analysis of Possible Ramifications and Arising Issues" 70 Nebraska L. Rev. 873 (1992); Raleigh Newsam, "Architecture and Copyright: Separating the Poetic from the Prosaic," 71 Tul. L. Rev. 1073 (1997); Gregory Hancks, "Copyright Protection For Architectural Design: A Conceptual and Practical Criticism," 71 Wash. L. Rev. 177 (1996); Todd Hixon, "The Architectural Works Copyright Protection Act of 1990: At Odds With the Traditional Limitations of American Copyright Law," 37 Ariz. L. Rev. 629 (1995); Clark Thiel, "The Architectural Works Copyright Protection Gesture of 1990, or, 'Hey, That Looks Like My Building!'" 7 De Paul J. of Arts and Entertainment Law 1 (1996).
2. Greenstreet, R., and Klingaman, R. "Architectural Copyright: Recent Developments in Protecting Originality and the Architect's Right of Ownership", Architectural Research Quarterly, Cambridge University, England. Vol. 4, No. 2, 2000, pp. 177-183.
3. Humphreys & Partners Architects, L.P., v. Lessard Design, Inc., et al No. 1:13-cv-433 (2014)
4. Whereby a Judge reviews the pleadings presented by the plaintiff and the defendant prior to a court hearing and assesses the proof in order to determine if there is a genuine need for a trial.
5. "The work must be completely new in the sense that it does not contain material that has been previously published or registered or that is in the public domain" (United States Copyright Office).
6. Design Basics, LLC, et al., v. Lexington Homes, Inc. et al., No 14-CV-1102 (U.S. Court of Appeal, &th Circuit) 2017, Design Basics, LLC, et al v. Kerstiens Homes & Designs, Inc., et al. No. 1:16-cv-00726-TWP-DLP. and Design Basics LLC, v. Heller and Sons, Inc. d/b/a Heller Homes No. 1:16-cv-175-HAB.
7. See Lexington
8. Greenstreet R. 'The origins and Unforeseen Implications of the Architectural Works Copyright Protection Act and Recent Developments in its Interpretation and Implementation'. Marquette Intellectual Property and Innovation Law Review. Volume 25. Summer 2021. Number 2.
9. See T-Peg, Inc. v. Vermont Timber Works, Inc.,459 F.3d 97 (Ist Cir. 2006) and Sturdza v. United Arab Emirates, 281 F.3d 1287 (D.C. Cir. 2002).

About the Author:
Robert Greenstreet Ph.D. *is Professor and Dean Emeritus of the School of Architecture and Urban Planning at the University of Wisconsin-Milwaukee. He served in the role of Dean for 29 years and is one of the longest serving Deans of Architecture in the United States.*

New Automatic Door Requirements for Accessibility

BY KIMBERLY PAARLBERG, RA, INTERNATIONAL CODE COUNCIL

Automatic doors offer convenience, but also have additional benefits. Automatic doors improve building access for persons using wheelchairs, scooters or walking aids, as well as parents pushing strollers, customers pushing shopping carts or people carrying items in their hands. Automatic doors can help reduces energy usage in a building by opening and closing in a timely manner, thus helping to maintain the heating and cooling of the building. Automatic doors can also be a benefit in areas where there is a concern about hygiene control. Options that are hands-free have been used for many years in areas where sanitation is important – such as hospitals, food processing plants and laboratories. In addition, many businesses have added automatic doors as part of their response to help lessen the spread of Covid.

There are three types of automatic door operators used for pedestrian doors that are addressed by the automatic safety standards referenced in the building codes and developed by Builders Hardware Manufacturers' Association (BMHA A156 standards). The three main types are:

1. Power operated doors – Doors that open for pedestrians with door opening initiated by a motion sensor or pressure pad
2. Low energy power operated doors – Doors that open for pedestrians by operation of a button or panel control near the door.
3. Power assist doors - A door with a mechanism that reduces the opening force to operate a door. If the opening force on the door is released, the door will close. Power assist doors are not very common, but are typically used on very large doors.



The three types of automatic door operators can be used on side swinging, sliding, or revolving pedestrian doors. Revolving doors cannot serve as part of an accessible route.

The primary focus of this discussion are the revisions to the automatic door opener requirements in the *2021 and 2024 International Building Codes (IBC), and the referenced accessibility standard, 2017 ICC A117.1 Standard for Accessible and Usable Buildings and Facilities (ICC A117.1).*

Exterior doors do not have an opening force in the IBC, ICC A117.1 or 2010 ADA standard. Due to pressure differences between the inside and outside of buildings, the direction the and force of the wind outside, and the need of exterior doors to stay closed to keep heated or cooled air inside the building,

exterior doors would not have a consistent opening force that could be uniformly met. Regulations must have requirements that can be consistently met. However, in consideration of their customers and staff, many building owners voluntarily provide an automatic door at a primary entrance.

Where an exterior door providing a power operated or low energy power operated door, the door maneuvering clearance at the doors is not required for entry in the building (2017 ICC A117.1 Section 404.3.4). A maneuvering clearance is required at a power assist door. Vestibules with a power operated or a low energy power operated door on the exterior and interior side of the vestibule do not have to have a turning spaces within the vestibule since the automatic doors minimizes the chance of entrapment in the vestibule by opening the doors for you (2017 ICC A117.1 Section 404.3.6). However, if an automatic doors is used as part of an accessible means of egress route, maneuvering clearance is required on the in the direction of egress travel in case the doors loose power. The exceptions allow for alternatives for loss of power to the door would be addressed by 1) battery backup; 2) the door would unlock/unlatch or 3) the door has a break-away feature. These three options would allow for free egress without additional maneuvering clearance at the doors on the egress side.



2021 IBC

1105.1.1 Automatic doors. In facilities with the occupancies and building *occupant loads* indicated in Table 1105.1.1, *public entrances* that are required to be *accessible* shall have one door be either a full *power-operated* door or a *low-energy power-operated door*. Where the *public entrance* includes a vestibule, at least one door into and one door out of the vestibule shall meet the requirements of this section.

TABLE 1105.1.1

PUBLIC ENTRANCE WITH POWER-OPERATED DOOR[a]

OCCUPANCY	BUILDING OCCUPANT LOAD GREATER THAN
A-1, A-2, A-3, A-4	300
B, M, R-1	500

a. In mixed-use facilities where the total sum of the building occupant load is greater than those listed, the most restrictive building occupant load shall apply.

For low energy power operated doors, where a person sits in their wheelchair to manually operate the door opener, must be clear of the door swing so the door would not open and hit them (2017 ICC A117.1 404.3.7). Best practice would also locate the operator so someone could roll straight in from that location and not have to back up or move around the door. While a button or control within reach range is acceptable, there are new styles where you wave your hand in front of a sensor to open the door, or the control is a tall bar that can be pushed with a hand or a foot plate.

The 2021 IBC has incorporated a requirement for automatic doors in some occupancies (2021 IBC Section 1105.1.1). Groups A-1 through A-4 includes basically all assembly occupancies other than outdoor assembly (Group A-5). Examples are theaters, restaurants, museums, places of religious worship, and indoor sporting activities. Group B, M and R-1 are business, mercantile and hotel occupancies respectively. Where the occupant load in the entire building is greater than the loads indicated in Table 1105.1.1, all the required accessible public entrances have to include at least one door with a power operated or low energy operated door.

Let's use a hotel as an example. Most hotels offer an automatic door at their main lobby entrance and several manual doors around the building for guest access. To determine the number of accessible entrances required, you look at all the entrances to the building and at least 60 percent of those doors are required to serve as an accessible entrance. Service doors and doors for means of egress only are not counted as entrance doors. However, a common mistake is to consider doors that are locked for security from the outside as "restricted entrances" and assume that they are not counted as a public entrance. That is not the case.

This is the guidance in the 2010 ADA guide –

Therefore, in most situations, 60 percent of the entrance doors to the hotel will need to include an automatic door opener. If there is a

Do requirements for "public entrances" apply only to those entrances used by the public?

No, scoping provisions for accessible public entrances are not limited to those used by the public. The term "public entrance" applies to all entrances other than service or restricted entrances. "Restricted entrances" are those available for common use (but not public use) on a controlled basis. This is intended to apply specifically to entrances where user identity is verified and entry is strictly limited to certain occupants, but no one else, including guests or companions of authorized individuals. Other types of entrances with lower levels of security, including employee-only entrances requiring keys, keypads, or access cards, are considered "public entrances."

vestibule, the automatic door will be required on an exterior door and a door from the vestibule into the building. If there is a security keypad for entry, this would need to be considered in the door operation.

If the hotel includes an amenity like a coffee shop or restaurant (Group A), footnote 'a' to Table 1105.1.1 would require the automatic door openers where the occupant load for the building was greater than 300 rather than 500.

There were three successful code change proposals to this section that will be in the 2024 International Building Code (E116-21, E118-21 and E119-21). The code changes including their reason statements can be viewed at *Group E proposed changes* (https://www.iccsafe.org/wp-content/uploads/IBC-Egress-2021-Group-A.pdf). The committee reason and the modifications can be reviewed at *Report of the Committee Action Hearing* (https://www.iccsafe.org/wp-content/uploads/GROUP-A-2021-REPORT-OF-THE-COMMITTEE-ACTION-HEARING.pdf).

2024 IBC

1105.1.1 Power-operated doors at public entrances. In facilities with the occupancies and building *occupant loads greater than* indicated in Table 1105.1.1, each *public entrance* required to be *accessible* shall have a minimum of one door be a *power-operated* door or a *low-energy power-operated door*. Where the accessible *public entrance* includes doors in series, such as a vestibule, a minimum of one set of two doors in series shall meet the requirements of this section.

Exceptions:

1. For the purpose of determining *power-operated* door requirements, a tenant space with its own exterior *public entrance* shall be considered a separate facility and building.
2. In mixed-use facilities, where the total building occupant load for the occupancies listed in the table is calculated as the sum of the ratios of the actual occupant load of each occupancy divided by the building occupant load threshold of each occupancy in Table 1105.1.1, and the sum of the ratios is less than 1, the requirements of Section 1105.1.1 do not apply. Where the sum of the ratios is equal to 1 or greater, the requirements of Section 1105.1.1 are applicable.

TABLE 1105.1.1
PUBLIC ENTRANCE WITH POWER-OPERATED DOOR

OCCUPANCY	BUILDING OCCUPANT LOAD GREATER THAN
A-1, A-2, A-3, A-4	300
B, M, R-1	500

The differences in the main paragraph was for more specific terminology – however, the requirement for the automatic doors at all required accessible public entrances remains (60 percent of public entrances).

Exception 1 allows for tenant spaces that have their own exterior entrances to not be considered in the building occupant load. In our hotel example, if the restaurant is only open to the hotel lobby, the occupant load would be included. If the restaurant, has its own entrance door so it could operate with or without access to the hotel, the occupant load could be excluded.

The 2017 ICC A117.1 is referenced for the first time in the 2021 IBC. The revisions for the 2024 IBC Chapter 11 are finalized and will be published in fall of 2023. Please check with your local jurisdiction so see which edition of the IBC they are referencing.

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