

“Can’t we talk about something more pleasant?” ...like building codes?

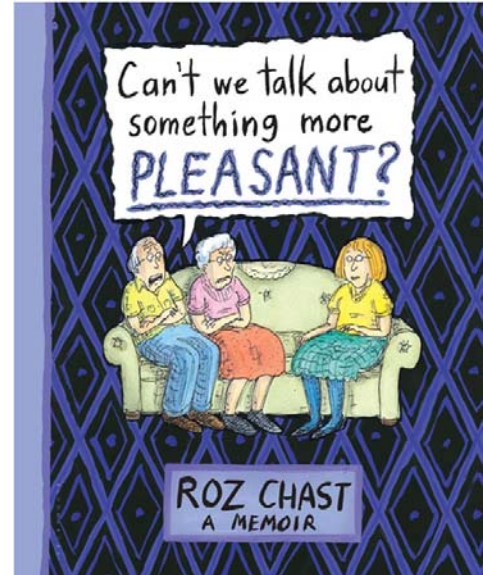
Borrowing a line from New Yorker cartoonist Roz Chast’s best selling graphic novel about aging seems as applicable to building codes as it is to aging parents.

By James Warner, FAIA

The 2015 IBC

- **WHAT IS IT?**

The **International Building Code (IBC)** is a model building code developed by the International Code Council (ICC). It has been adopted and is used as a base code standard throughout most of the United States. The IBC is updated every three years but is not necessarily adopted by each state on the same cycle. Many states recognize older versions, such as the Massachusetts State Building Code (MSBC) which currently utilizes the 2009 IBC. By the end of this year the 2015 IBC should be adopted by most of the New England States (including Massachusetts) and other states throughout the country. The IBC provides a template for design and construction to ensure occupant health and safety.



- **WHY IS IT RELEVANT?**

Buildings are defined or classified according their use because building uses vary widely. Similarly, safety requirements vary along with each individual use and are reflected in the application of the code to that specific use. Most uses are fairly straight forward. As a result, architects, developers, operators, providers, engineers, and code officials are generally on the same page when it comes making a determination with one very big exception: **Assisted Living**.

Assisted Living emerged as a unique building model in the mid 1980’s for housing aging and frail individuals with a growth rate consistent with that of our aging population. Neither a nursing home nor a simple apartment, Authorities Having Jurisdiction (AHJ) wrestled with its use. Organizations such as ALFA (now Argentum) pressed hard to preserve a “homelike” environment and lobbied states, including Massachusetts, to require all Assisted Living to be designated Residential Use. Others focused on frailty, confusion and physical limitations preventing or prolonging emergency evacuations, in the end designating Assisted Living as an Institutional use.

The IBC was an attempt to unify confusing code models of the past: the UBC, SBC and BOCA codes. But not until 2015 was there a definitive categorization of Assisted Living in any of the previous codes or the IBC. At some point in 2017 it will become the standard for all new Assisted Living construction in Massachusetts as well as most other states.

- **WHAT’S DIFFERENT?**

The current code, be it 2009, 2012 IBC or MSBC, allows for Occupancy Use options for Assisted Living, Residential R-2, Institutional either I-1 or Institutional, I-2. R-2 and I-1 can be built with Type V-A, protected wood construction but I-2 requires Type I or II, steel and concrete construction for most multi-story construction. The distinction between these options being a function of evacuation and whether it can be accomplished with or without physical assistance. With regard to “physical assistance” these codes are vague and as a result, code officials, providers and architects all tend to interpret differently.

Under the 2015 IBC, Assisted Living is no longer ambiguous. It is not classified as a Residential, R-2 Use or the more stringent Institutional I-2 Use rather it is now classified as Use Group I-1 with additional Conditions 1 and 2 referring specifically to the level of assistance required for evacuation. The new code goes on to describe **Custodial Care**: Assistance with day to day living tasks; such as assistance with cooking, taking medication, bathing, using toilet facilities and other tasks of daily living. Custodial care includes persons receiving care who have the ability to respond to an emergency situation and evacuate at a slower rate and/or who have mental or psychiatric complications. The code commentary states “Persons who receive custodial care may or may not require assistance with evacuation depending to the occupancy and/or the “condition” in the occupancy. Typically Custodial Care applies to Assisted Living.

308.3 Institutional Group I-1. Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1 shall be classified as one of the occupancy conditions specified in Section 308.3.1 or 308.3.2. This group shall include, but not be limited to, the following: alcohol and drug centers, congregate care facilities, halfway houses, social rehabilitation facilities, **Assisted Living facilities**, group homes, residential board and care facilities.

Conditions 1 and 2 are spelled out below. While many residents will fall under Condition 1, usually there will be at least one person requiring limited assistance. Anyone who has operated or visited an Assisted



Living facility can appreciate the difficulty presented by an emergency evacuation. Physical, visual, hearing, and cognitive disabilities or frailty and confusion will ultimately necessitate assistance with some residents to guide, orient, transfer to a wheelchair or provide some other form of assistive device to facilitate evacuation. Our clients, some of the most prolific senior living providers in New England, all acknowledge these difficulties. This applies to Assisted Living and

especially Memory or Special Care. At a minimum, we recommend all Assisted Living facilities be constructed to conform to I-1, Condition 2.

308.3.1 Condition 1. This occupancy condition shall include buildings in which all persons receiving custodial care who, without any assistance, are capable of responding to an emergency situation to complete building evacuation. Keep in mind this refers to all persons. All you need is one person who may be temporarily disoriented, infirmed or disabled and this condition is no longer applicable.

308.3.2 Condition 2. This occupancy condition shall include buildings housing any persons receiving custodial care who require limited verbal or physical assistance while responding to an emergency situation to complete building evacuation. The commentary further describes “assistance with evacuation can occur because of care recipients’ physical or mental limitations or both. The ‘Condition 2 assistance with evacuation’ includes help getting out of bed and into a wheelchair or a walker, or help initiating ambulation. It includes continued physical assistance getting out of the building from a sleeping room, apartment, or other rooms during an emergency. Assistance with evacuation includes assisting persons who may have resistance or confusion in response to an alarm, or require help with instructions.”

2015 IBC White Paper

The new code goes on to describe Institutional Use Group I-2 as follows:

308.4 Institutional Group I-2. Institutional Group I-2 occupancy shall include buildings and structures used for *medical care* on a 24-hour basis for more than five persons who are *incapable of self-preservation*. This group shall include, but not be limited to, the following: foster care facilities, detoxification facilities, hospitals, nursing homes, psychiatric hospitals.

- **HOW WILL THIS AFFECT YOU?**

For those hoping to reduce construction costs there is some very good news: you can now build Assisted Living, including Memory Care, to a maximum of three floors with Protected Wood Construction, Type V-A. The drawback being under I-1, condition 2, corridor doors require a 20 minute rating and need to have closers, therefore the resident unit doors would not be allowed to be left open in Special Care. Additionally, compartmentalization requirements of an I-1 Use Group may limit some openness in household designed living, dining, kitchen spaces.

While the code does not distinguish between Assisted Living and Special Care we highly recommend Special Care to remain at grade level to facilitate evacuation, if Type VA, protected wood construction is selected. In fact the New York State code implies, if not requires Special Care or Memory Care to be at grade if it is Type VA ordinary wood construction.



- **CLOSE BUT NOT PERFECT!**

Clearly, the intent of the new code is to eliminate confusion around the classification of Assisted Living. While the 2015 IBC is a major step in the right direction, there remains the potential for some confusion. Attorneys and insurance carriers representing some of our clients have recommended adopting the requirements of Use Group I-1, Condition 2 but also design and build the structure to conform to I-2 Condition 1, similar to the current requirements of the Massachusetts Building Code, 8th Edition and 2009 IBC, I-2 Use Group. This has also considered for other states.

The reasons being:

- I-2 is inherently safer;
- Memory Care can safely be constructed above the first floor;
- I-2 provides more flexibility for common areas;
- I-2 does not require door closers to resident (Memory Care) rooms, *and most importantly;*
- *Providers are migrating to ever increasing age, frailty and sickness. Moreover, in an effort to accommodate residents with like profiles, providers are looking to offer more intensive AL services such as: Short-term rehabilitation, Medicare reimbursement, hospice and other forms of care more appropriately delivered in an Assisted Living setting. This cohort will meet the requirements for an I-2, Condition 1 use but the facilities within which they reside are not licensed or operated as a Nursing Homes, rather they remain Assisted Living. As a result some providers are looking ahead to this future inevitability.*

2015 IBC White Paper

Consistent with these trends, as well as client and attorney preferences, there is no prohibition from a code perspective on voluntarily upgrading a use, such as Assisted Living, to a higher standard, example: I-1 to I-2 and constructing accordingly, either Type I or II. In an attempt to clarify, the authors of the code chose to list specific uses 308.4 similar to 308.3. Based on past experience code officials may arbitrarily choose to ignore the operative words “This group shall include, *but not be limited to*, the following...” While the intent is to simplify and clarify it is a source of confusion especially in the case where one voluntarily chooses to upgrade.

It is particularly problematic in Massachusetts where nursing homes are statutorily required to be constructed similar to hospitals or Type I construction irrespective of the IBC code, which allows for all construction Types I through V under certain conditions. JSA has experienced multiple situations where code officials in Massachusetts are willing to allow upgrading Assisted Living to an I-2 use classification because it’s safer, and provides more flexibility. Because Assisted Living is not specifically listed in 308.4, in the opinion of some Massachusetts jurisdictions it should be re-classified in the Use Group that the occupancy most nearly resembles, hence a Nursing Home. This in spite of the fact that Assisted Living in Massachusetts is licensed not as a Nursing Home, but as Assisted Living, meet requirements of 651 CMR, which include, among others, disaster and emergency preparedness plan requirements and evacuation strategies. Nursing Home classification creates multiple regulatory, zoning, construction type and budgetary problems making Assisted Living financially and programmatically infeasible. What worries JSA most is the potential for other jurisdictions to make the same interpretation as the new code is adopted in other states and the code is interpreted along similar lines.

- **WHERE DO WE STAND AND WHAT SHOULD WE DO?**

Providers, developers, operators, architects, code officials and AHJ’s alike need to become familiar with the new code as it will become law by the end of this year.



The vast majority of Senior Living projects should fall neatly into either R-2 for Independent Living, where Aging-in-Place is not an option, or; I-1, Condition 2 for all Assisted Living including Memory Care or communities where Aging-in-Place is anticipated.

It may be wise to seek a clarification from the International Code Council (ICC), or in the specific case of Massachusetts the Board of Building Regulations and Standards (BBRS), to avoid the requirements of a *Nursing Home* classification for those seeking to upgrade from an I-1 to an I-2 Occupancy in order to accommodate:

- Projected demographics of residents who are older, frailer and sicker;
- Those who are looking to expand services to include Medicare, Short Term Rehabilitation, Hospice and other services more appropriately and less expensively provided in an Assisted Living setting, or;
- Memory Care when located above the first floor.

2015 IBC White Paper

The Massachusetts BBRS has found, in precedent setting appeals, in favor to approve the upgrade from I-1 to I-2 while remaining classified Assisted Living and not re-classified Nursing Home in specific communities where the issue has been raised by code officials. It is likely that Massachusetts will not be the only state to be confused once the new code goes into effect.

Therefore, a global clarification should be sought and issued as confusion will continue to exist. Argentum, Mass ALA, LeadingAge and LeadingAge Massachusetts, the organizations representing Assisted Living communities and providers, in Massachusetts and elsewhere are the most likely candidates to advocate for Assisted Living with agencies such as the ICC, AHJ's and BBRS. Most organizations representing senior living businesses are either unaware of the implications of the new code and do not see the need or, lack the specific knowledge in order to mount the effort. In addition to making architects, developers and providers aware of the issues, hopefully this paper will ignite the conversation, engage these organizations and lead to a consensus that makes sense.



About the author: James Warner, FAIA

A founding principal of JSA and head of their nationally recognized senior living studio, Jim is a firm believer that design can have a profound impact on human behavior and at its very best can actually extend and improve the quality of one's life. His insights into the lifestyle of an aging society, the forces that shape them and the innovation resulting from that insight, have resulted in many awards and publications. Jim has played leadership roles in LeadingAge, Environments for Aging, ALFA and Design for Aging. He is a Fellow of the American Institute of Architects and received degrees in Architecture and Engineering from Syracuse University and the United States Military Academy.

About JSA :

JSA creates enriching environments that allow seniors to enjoy life to the fullest, integrating physical and social activity. JSA has established significant expertise designing senior living communities for non-profits, as well as national corporations - expertise that helps communities reflect their unique culture while incorporating the realities of market appeal, operational efficiency, and budget. JSA's design success is reflected by numerous design awards from both architectural and industry sources.