

MINUTES
BUILDING BOARD OF REVIEW
1:00 P.M., July 9, 2012
Third Floor, Jesse Lowe Conference Room
Omaha Civic Center - 1819 Farnam Street

MEMBERS PRESENT: Jack Ryan, Chairman
Martin Wiedeman, Vice Chair
Cynthia Makinster
Cheryl Kiel
Brad Schaefer
Mark Santo

MEMBERS NOT PRESENT: Ronald Feuerbach

OTHERS PRESENT: Jay Davis, Housing Superintendent
Kevin Denker, Chief Housing Inspector
Kevin Mulcahy, Housing Inspector
Tom Phipps, Chief Mechanical Inspector
Yvonne Barna, Housing Inspector
Mike Johnson, Housing Inspector
RoseMarie Horvath, Assistant City Attorney
Clinette Warren, Board Secretary

Mr. Ryan, Chairman, called the meeting to order at 1:00 p.m., introduced the board members, as well as the staff, and explained the procedures for hearing the cases. Mr. Ryan informed the public that a copy of The Open Meetings Law is available in this board room on the north wall for anyone to review. He noted that only those items on today's agenda could be discussed at today's public hearing.

Mr. Ryan requested that speakers limit their presentation to 10 minutes.

Mr. Ryan explained that this Board does not have the authority to waive any requirements of the Americans with Disabilities Act, Federal Fair Housing Act, or NFPA Life Safety Code. This Board does have the authority to hear appeals of the International Fire Code, Nebraska Accessibility Guidelines and the Nebraska Fair Housing Act. Life Safety Regulations are administered by the State Fire Marshal.

Roll call was taken and six members were present.

Motion by Mr. Schaefer to approve the minutes of the June 11, 2012 meeting as submitted. Mr. Wiedeman seconded the motion.

AYES: Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

MOTION CARRIED: 6-0

CASES:

Case No. 12-018
Steven P. Scott
408 South 91st Circle
Omaha, NE 68114

LOCATION: 408 South 91st Circle
REQUEST: Waiver to the minimum allowed ceiling height in
a residence.

At the Building Board of Review meeting held on Monday, July 9, 2012, Steven P. Scott appeared before the Board in support of the request.

Mr. Scott stated that he was remodeling his home. His structural engineer changed the floor truss specifications from 12" to 16" deep. This reduced the ceiling height from 7' to 6'9".

In response to Ms. Kiel, Mr. Scott stated that the space would be used mostly for storage. Jay Davis, City of Omaha – Housing Superintendent, stated that the code allows a minimum height of 6'8" if a space is being used predominately for storage

In response to Mr. Schaefer, Mr. Scott stated that they would not be finishing that area of the basement.

Motion by Ms. Makinster to approve the request as submitted. Seconded by Mr. Wiedeman.

AYES: Makinster, Santo, Kiel, Schaefer, Wiedeman, Ryan

Motion carried 6-0

BUILDING BOARD OF REVIEW

July 9, 2012 - Minutes

Page 3

Case No. 12-019
Dennis S. Basich
11239 Chicago Circle
Omaha, NE 68154

LOCATION: 6901 North 72nd Street – Immanuel Medical Center
REQUEST: Waiver to the requirement for a Type I commercial hood.

At the Building Board of Review meeting held on Monday, July 9, 2012, Dennis Basich appeared before the Board in support of the request.

Mr. Basich, Farris Engineering, stated that he was requesting a waiver for the requirement for a Type I hood, since the kitchen in the In-Patient Rehab Facility is used for the sole purpose of teaching patients who have undergone surgery how to function in their kitchen. He added that the kitchen is only unlocked when staff is bringing a patient in. The kitchen will not be used for food preparation. It will be used solely to teach a patient using a wheelchair, walker, or crutches how to maneuver around a kitchen.

In response to Mr. Schaefer, Mr. Basich stated that, for demonstration purposes, the patient will actually be cooking on the stove. He also stated that the hood would not be ducted.

Tom Phipps, Chief Mechanical Inspector – City of Omaha, stated that the code specifies that if a domestic cooking appliance is used, then a Type I or Type II hood is required over it. He added that in similar situations the hoods are always ducted to the exterior and not recirculative. Mr. Phipps added that some sort of fire suppression system should be in the space since they could not verify exactly what will be cooked on the stovetop.

In response to Ms. Kiel, Mr. Basich stated that the facility is fully sprinklered. He added that they could install fire extinguishers in the area.

Jay Davis, City of Omaha – Housing Superintendent, stated that Permits and Inspections does not support the request since the range is being installed in a commercial facility.

Ms. Kiel noted that in past cases with this type of request, the Board has advised that the hood be vented to the exterior and fitted with a fire suppression system. She suggested that the same be done in this case for the safety of the patients.

In response to Mr. Schaefer, Mr. Basich stated that he did not know if there was local smoke detection in that area, adding that the building is fully sprinklered.

Motion by Ms. Kiel to approve the request with the stipulation that the hood be vented to the exterior; installed with a fire suppression system (Guardian or similar product); and that smoke detection be installed in the local area and/or HVAC system. Seconded by Mr. Schaefer.

AYES: Santo, Kiel, Schaefer, Wiedeman, Makinster, Ryan

Motion carried: 6-0

BUILDING BOARD OF REVIEW

July 9, 2012 - Minutes

Page 4

The Board decided to hear this case next.

Case No. 12-022

Bill Pelton

P.L. Enterprises

P.O. Box 1812

Council Bluffs, IA 51502

LOCATION: 1310 South 31st Street

REQUEST: Appeal International Property Maintenance Code
Notice of Violation dated May 22, 2012

At the Building Board of Review meeting held on Monday, July 9, 2012, no one appeared before the Board.

No action was taken on this case. This case has been scheduled for the August 13, 2012 meeting of the Board at the request of the applicant.

BUILDING BOARD OF REVIEW

July 9, 2012 - Minutes

Page 5

Case No. 12-020

John C. Chatelain
14707 California Street, Suite 1
Omaha, NE 68154

LOCATION: 706 South 35th Avenue
REQUEST: Appeal International Property Maintenance Code
Notice of Violation dated May 14, 2012

At the Building Board of Review meeting held on Monday, July 9, 2012, John Chatelain, Matt Saathoff, Josh Scott, and Matt Maderios appeared before the Board in support of the request.

Mike Johnson, Housing Inspector – City of Omaha, began to give his statement. Mr. Chatelain interjected that he had filed a motion to suppress the testimony. Mr. Johnson responded that both the Motion to Suppress and the Motion to Consolidate should be heard in a court of law. He added that he would supply Mr. Chatelain with the information he requested, as per the Request for Production of Documents.

Mr. Chatelain insisted that the Motion to Suppress be dealt with by the Board before the City offered any evidence.

RoseMarie Horvath, Attorney – City Law Department, explained that Building Board of Review meetings are informal meetings. It was her understanding that Mr. Chatelain wanted the Board to decide whether the warrant was constitutionally valid and that the notice supplied correctly. She further explained that the Board is not a court; therefore, it does not have full judicial authority. Ms. Horvath suggested that Mr. Chatelain explain to the Board why he did not want the evidence discussed. Mr. Chatelain suggested that the Board lay the case over for a month until they have had a chance to review the Brief in Support of Motion to Suppress (Exhibit #6). He explained that the brief was regarding a stale warrant where there was not probable cause because of old evidence. Ms. Horvath noted that a judge made the determination that there was probable cause. Matt Saathoff, Attorney, commented that although the warrant was issued, it did not mean that it was constitutional. He claimed that their clients' fourth amendment right was violated.

Mr. Wiedeman made a motion to layover the case until the August 13, 2012 meeting of the Board to give them time to look over the brief submitted by Mr. Chatelain. Seconded by Mr. Schaefer.

Mr. Johnson suggested that the appeal be denied. Mr. Chatelain objected to Mr. Johnson's statement claiming that he was attempting to get into the evidence of the case. Mr. Chatelain reiterated that the Motion to Suppress needed to be dealt with. Mr. Johnson explained that he submitted written evidence and photos to the judge in order to obtain the search warrant in order to gain access into the first floor apartment. He was denied access to the second floor apartment by the property owners, since it is a separate property, so he obtained a search warrant for the second floor. The evidence for the second search warrant was obtained during the first search. Mr. Chatelain objected to Mr. Johnson's explanation. In response, Ms. Horvath stated that the Building Board of Review is not a court of law; therefore, it does not have to abide by the rules and procedures as if it were a judicial body.

Mr. Wiedeman suggested that the Board vote on his motion to lay the case over.

AYES: Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

MOTION CARRIED: 6-0

Mr. Chatelain submitted into evidence: the Inspection and Search Warrant for 706 South 35th Avenue (Exhibit #2); Affidavit and Application for Issuance of an Inspection and Search Warrant (Exhibit #3); Notice of Violation from Permits and Inspections for 706 South 35th Avenue dated May 14, 2012 (Exhibit #4); and a picture of the building exterior (Exhibit #5).

Mr. Chatelain suggested that the Board rule on whether they would accept the exhibits into evidence.

Ms. Makinster made a motion to reopen the case. Seconded by Mr. Wiedeman.

BUILDING BOARD OF REVIEW

July 9, 2012 - Minutes

Page 6

AYES: Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

MOTION CARRIED: 6-0

Ms. Kiel made a motion to receive the exhibits into evidence. Seconded by Mr. Wiedeman.

AYES: Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

MOTION CARRIED: 6-0

Mr. Wiedeman made a motion to lay this case over until the August 13, 2012 meeting. Seconded by Mr. Schaefer.

AYES: Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

MOTION CARRIED: 6-0

Case No. 12-021
John C. Chatelain
14707 California Street, Suite 1
Omaha, NE 68154

LOCATION: 706 ½ South 35th Avenue
REQUEST: Appeal International Property Maintenance Code
Notice of Violation dated May 29, 2012

At the Building Board of Review meeting held on Monday, July 9, 2012, John Chatelain, Matt Saathoff, Josh Scott, and Matt Maderios appeared before the Board in support of the request.

Mr. Chatelain, Attorney, stated that he wanted to renew his motion to suppress the evidence for this case. He submitted a Motion to Suppress Evidence (Exhibit #2).

Mike Johnson, Housing Inspector – City of Omaha, suggested that the appeal be denied since there was no cooperation with the property owners.

Mr. Chatelain submitted an Inspection and Search Warrant (Exhibit #3) and the Notice of Violation from Permits and Inspections for 706 ½ South 35th Avenue dated May 29, 2012 (Exhibit #4).

Mr. Chatelain suggested that the Board accept the same exhibits for case number 12-021 that were submitted for case number 12-020. (This would include the Motion to Suppress Evidence (Exhibit #2) and a photo of the property (Exhibit #6)).

Motion by Mr. Wiedeman to accept the exhibits for Case 12-021 into evidence. Seconded by Ms. Kiel.

AYES: Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

MOTION CARRIED: 6-0

Mr. Chatelain suggested that the Board accept into evidence the same set of exhibits that was submitted for Case 12-020 for the purposes of Case 12-021.

Motion by Mr. Wiedeman to accept the exhibits from Case 12-020 that are relevant to Case 12-021. Seconded by Ms. Kiel.

Before roll was called for the motion, Mr. Schaefer suggested that the Board not decide to accept the exhibits into evidence for Case 12-020 until they have had the opportunity to review them and decide if Case 12-020 and 12-021 should be combined.

Mr. Wiedeman withdrew his motion.

In regards to the Motion to Suppress, Ms. Horvath stated that the Board that needed to decide and vote on whether there was enough evidence for Mr. Johnson to obtain a search warrant. Ms. Horvath encouraged Mr. Chatelain to explain to the Board what he wanted them to decide. Mr. Chatelain responded that the information was included in the brief. Ms. Horvath suggested that she and Mr. Chatelain should sit down with the Board so that he could explain what it is that he is seeking. Mr. Chatelain responded that they could discuss it at the next meeting after the brief had been studied.

Mr. Chatelain stated that he would submit Exhibits 1-4 (the Building Board of Review's case file will show these exhibits numbered differently) from Case 12-020, that are relevant to Case 12-021, for the Board's review.

Motion by Mr. Schaefer to accept four additional exhibits, to be sent at a later date, for Case 12-021. Seconded by Mr. Wiedeman.

AYES: Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

BUILDING BOARD OF REVIEW

July 9, 2012 - Minutes

Page 8

MOTION CARRIED: 6-0

Motion by Mr. Wiedeman to lay this case over until the August 13, 2012 meeting of the Board. Seconded by Ms. Makinster.

AYES: Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

MOTION CARRIED: 6-0

BUILDING BOARD OF REVIEW

July 9, 2012 - Minutes

Page 9

Case No. 12-007

(Held over from 3/12/12, 5/9/12 & 6/11/12)

Thomas J. Anderson, Esq.
12020 Shamrock Plaza, #333
Omaha, NE 68154

LOCATION: 809 South 25th Street – Commercial Building
REQUEST: Appeal International Property Maintenance Code
Notice of Violation dated January 18, 2012

At the Building Board of Review meeting held on Monday, July 9, 2012, Thomas Anderson and Anthony Savich appeared before the Board in support of the request.

Kevin Denker, Chief Housing Inspector – City of Omaha, stated that no progress had been made on this case. He added that Mr. Savich still had not contacted Permits and Inspections to schedule inspections. Yvonne Barna, Housing Inspector – City of Omaha, and Jay Davis, Housing Superintendent – City of Omaha, both confirmed that they had received no contact from Mr. Savich.

Mr. Anderson responded that his client had an independent HVAC contractor go into the building to verify that the system is in compliance and can be used for residential purposes.

For clarification purposes, Mr. Schaefer explained that the issue with the property is that it is listed by the City as a commercial property, while being occupied as a residential property. Since being purchased by Mr. Savich, the property has not had an inspection to approve it for residential use. He noted that no progress had been made in obtaining the necessary inspections.

Motion by Mr. Schaefer to deny the appeal. Motion dies for lack of a second.

In response to Mr. Wiedeman, Mr. Denker explained that even if a system were installed by a licensed contractor or qualified installer, the City would still need to come into the building to perform the required inspections.

In response to the Board, Mr. Davis stated that the most recent Certificate of Occupancy he had on file for the property, which was in either 2008 or 2010, was for auto sales and auto repair. He added that if it was for auto sales only, they would not have entered the building. In response to Mr. Ryan, Mr. Davis stated that if the property has been converted to a residence, it will still need to undergo the required inspections.

In response to Ms. Makinster, Mr. Savich stated that he purchased the property in April of 2008. Mr. Davis stated that it was zoned DS (Downtown Service District). He added that although the residential use is allowed, the property would still need to be inspected.

Ms. Barna informed the Board that she did write up violations for the property after performing an interior inspection in December 2008. She ordered the vacate order because no action had been taken.

In response to Mr. Ryan, Mr. Anderson stated that his client was unwilling to allow any inspections of the property by the City of Omaha; instead, Mr. Anderson stated that they were offering a letter stating that the HVAC was safe and code compliant.

Mr. Wiedeman explained that any inspections performed from entities outside of the City of Omaha were irrelevant to the inspections that are required by the City.

Mr. Anderson made another attempt to submit a letter from an independent HVAC contractor who he claimed checked the system for compliance. Mr. Wiedeman suggested that the letter be submitted to Permits and Inspections.

BUILDING BOARD OF REVIEW

July 9, 2012 - Minutes

Page 10

Motion by Mr. Wiedeman to deny the appeal. Seconded by Mr. Schaefer.

AYES: Kiel, Shaefer, Wiedeman, Santo, Ryan

ABSTAIN: Makinster

Motion carried 5-0-1

BUILDING BOARD OF REVIEW

July 9, 2012 - Minutes

Page 11

Case No. 12-023

Andrew Spiegel
1004 Cole Creek Drive
Omaha, NE 68114

LOCATION: 2558 Camden Avenue

REQUEST: Appeal International Property Maintenance Code
Notice of Violation dated May 17, 2012

At the Building Board of Review meeting held on Monday, July 9, 2012, no one appeared before the Board. Kevin Denker, Chief Housing Inspector – City of Omaha, stated that John Malone contacted the City Law Department to request a layover of the case for health reasons.

Motion by Mr. Wiedeman to lay the case over until the August 13, 2012 meeting of the Board. Seconded by Ms. Makinster.

AYES: Santo, Kiel, Schaefer, Wiedeman, Makinster, Ryan

Motion carried: 6-0

BUILDING BOARD OF REVIEW

July 9, 2012 - Minutes

Page 12

Case No. 12-024

Ryan Basye
652 North 58th Street
Omaha, NE 68132

LOCATION: 634 North 47th Street

REQUEST: Appeal International Property Maintenance Code
Notice of Violation dated June 18, 2012

At the Building Board of Review meeting held on Monday, July 9, 2012, Ryan Basye appeared before the Board in support of the request.

Kevin Mulcahy, Housing Inspector – City of Omaha, stated that he was filling in for Roger Carroll, the inspector for this property. Mr. Mulcahy explained that Mr. Basye was requesting more time to complete the repairs for the property. He added that Mr. Basye agreed with the repairs that needed to be done.

In response to Mr. Ryan, Mr. Basye stated that he has completed at least half of the work that needs to be done. He added that he is doing all of the work himself.

Kevin Denker, Chief Housing Inspector - City of Omaha, suggested an extension of 60 days.

Motion by Mr. Wiedeman to grant an extension of 60 days to allow the applicant time to complete repairs. Seconded by Ms. Kiel.

AYES: Wiedeman, Makinster, Santo, Kiel. Schaefer, Ryan

Motion carried 6-0.

DISCUSSION:

RoseMarie Horvath, Attorney – City Law Department, explained to the Board that they are a tribunal and not a judicial body. The Board can take a look at the evidence submitted and decide to deny or grant an appeal. If an applicant does not agree with what the Board decides, they can appeal it to a higher court. She explained that the District Court decides whether a committee or board had had enough information presented to them to make a valid decision. Ms. Horvath explained that “due process” means that a person is given notice and the opportunity to be heard. Ms. Horvath stated that she would do research and advise the Board on the laws and precedents in regards to some of the cases that were heard during the July 9, 2012 meeting. She also stated that she would provide information regarding the rights an inspector has when he/she is attempting to inspect a property.

ADJOURNMENT:

Motion to adjourn made by Mr. Wiedeman. Seconded by Ms. Makinster.

AYES: Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

MOTION CARRIED: 6-0

Meeting adjourned at ~~1:41 p.m.~~ 2:41 p.m.