MEMBERS:

- Jack Ryan – Chairman
- Ron Feuerbach – Vice Chair
- Cheryl Kiel
- Michael Naccarato
- Kent Therkelsen
- Thomas Thibodeau
- Dennis Van Moorleghem

Certification of Publication: Board Secretary certifies publication in the Daily Record, the official newspaper of the City of Omaha, on Monday, May 4, 2020.

THE OWNER, OR A REPRESENTATIVE OF THE OWNER, MUST HAVE SIGNED THE APPLICATION OR BE PRESENT AT THE MEETING FOR THE CASE TO BE HEARD.

NOTE: THIS BOARD DOES NOT HAVE THE AUTHORITY TO WAIVE ANY REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT, FEDERAL FAIR HOUSING ACT, OR THE N.F.P.A. 101 LIFE SAFETY CODE; BUT DOES HAVE THE AUTHORITY TO HEAR APPEALS OF THE INTERNATIONAL FIRE CODE, NEBRASKA ACCESSIBILITY GUIDELINES AND THE NEBRASKA FAIR HOUSING ACT.

Mr. Jack Ryan called the meeting to order at 1:00 p.m.

I. Roll Call

Jack Ryan
Ron Feuerbach
Cheryl Kiel
Michael Naccarato
Kent Therkelsen
Thomas Thibodeau
Dennis Van Moorleghem

Others Present:
- Anna Bespoyasny, Assistant Director Permits and Inspections Division
- Le Nguyen, Plans Examiner
- Jennifer Taylor, City Law
- Tom Phipps, Chief Mechanical Inspector
- Inspector Kurt Urkowski, Omaha Fire Department
- Lisa Agans, Board Secretary

II. Approval of Minutes

Approval of March 9, 2020 minutes

Motion by Mr. Ron Feuerbach to approval the minutes from the March 9, 2020 meeting. Second by Mr. Thomas Thibodeau.

AYES: Feuerbach, Kiel, Naccarato, Therkelsen, Thibodeau, Van Moorleghem, Ryan

Motion carried: 7-0, Approved.
III. Cases

20-07 “Layover from 3/9/20”

| James E Lang | LOCATION: 2606 N Main St |
| 8526 F St | REQUEST: Waiver to code section 202 |
| Omaha, NE 68127 |

At the Building Board of Review meeting held on May 11, 2020, Mr. Jim Lang and Mr. Don Gardiner appeared before the Board in support of the request.

Mr. Lang summarized the project and the reason behind the waiver request. He advised that since the layover in March, they had been unsuccessful in meeting with Union Pacific to work out a compromise plan. Mr. Lang stated that many Union Pacific employees are on furlough as part of the business response to the Coronavirus pandemic response; the remaining employees are working on “essential” projects only which does not include this project.

Mr. Lang provided a new rendering and elevations to the Board, recorded as Exhibit #2 for this case. Mr. Lang stated that his understanding of the code meant that they would be allowed to build the proposed building closer to the lot line, as they wished, as long as that face of the building had no openings such as windows. With that understanding, he advised that they are proposing to build the project on the south lot line and if a future building is built within 3 feet south of that lot line, they would remove the windows on that face in order to comply with the code. Mr. Lang stated that with the proximity to the Union Pacific right-of-way, he feels very confident that nothing will be built there at least during our lifetime.

Anna Bespoyasny, Assistant Director Permits and Inspections Division, stated that the case had been laid over previously to allow the applicant opportunity to work with Union Pacific on a plan; however, she confirmed that Union Pacific does not consider this essential business while they have furloughed a large part of their workforce, so the applicant has come up with this as a compromise to move the project forward. Ms. Bespoyasny stated that within the three to five feet, the openings would have to be under 15% on that face. She stated that she had requested that the applicant bring something to the meeting that the Board could look at to see what the building would look like with the windows removed rather than working “blind”. Mr. Lang advised that they could commit to keeping under the 15% and that they would remove some if the current plans had more than that.

Mr. Gardiner stated that they had previously designed the building to be oriented differently on the site which is very tight and they can’t move any farther north; however, due to the snow load being pushed by the wind from the single-story building to the north, they had to move the building 10’ south.

In response to questions from the Board, Mr. Gardiner stated that the building would be new construction and that they had been working on getting this project moving for four years. He stated that due to the size of the lot, if they were to move it any further away from the lot line, they would basically have to completely redesign the building. In the event someone did build something south of them, they would lose three, south facing, apartments when they remove those windows, as they have agreed to as a condition of approval. Mr. Lang stated that they had anticipated bringing additional plans showing the removal of the windows and other openings on that side, however, the architect was not available to get them done prior to the meeting.

Inspector Kurt Urkowski, Omaha Fire Department, stated that he had nothing to add.

Mr. Lang stated that there are six more years remaining on the original 20 year lease. Anna stated that she would be more comfortable if the lease were for a much longer period, such as 30 years to ensure that nothing else would be built there. Mr. Lang stated that they had been having discussions with Union Pacific since October of 2019 which were going well until the Covid-19 pandemic shut down a lot of their operations. He stated that now they are unable to get meetings with Union Pacific because they have furloughed so many workers and are only working on essential projects. He stated that currently there is no schedule as to when they may be taking meetings again at U.P. Mr. Lang pointed out that the
applicant has been working very closely with the Planning Department regarding all aspects of the design and placement.

Mr. Ryan asked whether the applicant would consider another layover. Mr. Gardiner stated that they would rather not since they have already been working on this for several years and there is no time-table to indicate when Union Pacific may be back up and running for “non-essential” meetings. He advised that when he last spoke with a railroad representative they told him that they have a large back-log to get to once they return to regular business and it could be a while before this case came up on the list.

Ms. Bespoyasny stated that she believes they may need to re-write the waiver request and clarified that the applicant is proposing to provide the 15% openings on that face with the understanding that if something is built within 3’ south of the lot line, the windows would be removed. She advised that she preferred not to approve anything until they see some new plans showing what they are proposing. She stated that she understands there is 50’ of right-of-way there that the railroad is not likely to do anything with, but there is no guarantee that they won’t. Ms. Bespoyasny reiterated that she would be much more comfortable moving forward once they have plans to look at and advised that other Boards require the plans before any approval can be granted. This way the plans that are approved would be in the record for future reference and to protect everyone by ensuring that they were all agreeing on the same thing and prevent any misunderstanding or conflict.

Motion by Ms. Kiel to layover the request for one month. Second by Mr. Thibodeau

AYES: Feuerbach, Kiel, Naccarato, Therkelsen, Thibodeau, Van Moorleghem, Ryan

Motion carried: 7-0. Laid over to the June 8, 2020 meeting.
At the Building Board of Review meeting held on May 11, 2020, Mr. Aaron Gall of TACK Architects; Mr. Justin Veik of Engineering Technologies; and Mr. Alex Harrington of Pickleman’s appeared before the Board in support of the request. Mr. Tom Phipps, Chief Mechanical Inspector, appeared on behalf of the City.

Mr. Veik stated that they are requesting to use no commercial venting hood and believe that they meet requirements under exception #2 of 507.1. He pointed out to the Board cut-sheets in their packets of the warming oven they are using which he stated is designed specifically with all the UL listings to not require a hood. Mr. Veik stated that Pickleman’s uses the warming ovens solely for toasting bread and melting cheese which does not require a venting hood. The HVAC system does have two dedicated exhausts directly above the ovens to remove any heat.

Mr. Thomas Phipps stated that it is the opinion of Permits & Inspections that a Type II hood be placed above the warming ovens. He stated that Pickleman's currently uses this type of hood with the same ovens in other kitchens, such as the one in Aksarben Village. Mr. Phipps advised that the duct work is, or was, in place which a type II hood could be attached to.

In response to several questions from Mr. Feuerbach, Mr. Harrington advised that there are two ovens which are stacked. He stated that they did have the same ovens in other stores which had the hoods and that other stores do not and have no problems at all. He advised that of the five stores in Nebraska, three had the hoods and two do not. Mr. Veik stated that they have not planned for the hood and they do not believe they need it as they feel they are already meeting the need for ventilation with other exhaust through the HVAC.

Mr. Phipps stated that another concern he has is with smoke from the ovens. He stated that at the Aksarben Village store he noted smoke escaping from the Type II hood while he was there and that with no hood, he is concerned there will be more smoke in the restaurant. He described the ovens as being a “chain link” moving pizza oven for non-grease laden product which may produce some smoke and perhaps a slight grease smell. He advised that each oven has 10” of open grate on both sides and is 3 ½ feet wide and 48” long.

Mr. Harrington stated that when sometimes there is some smoke occasionally from the cheese, but that it is rare. He advised that there is no cooking of raw materials, the oven just toasts the pizza and sandwiches.

Mr. Thibodeau read from Code section 507.2.2 which stated, in part, that a Type II hood is needed above appliances which produce heat or moisture and do not produce grease or smoke. Therefore, he stated that if it is established that the oven does not produce grease or smoke, but they are putting an exhaust duct above it to get rid of the heat, it seems the Type II hood should be used. Mr. Harrington stated that historically they have always put more ventilation in the back room where the ovens are because there are more people and the air does not move around as much due to the restricted size of the area. He stated that there is a soffit which is about 11’ off the ground.

Mr. Phipps confirmed for the Board that this type of oven is different than a pizza oven which is classified as a deck oven in which the pizza is slid in and out. He stated that pizza ovens are usually ventilated with a hood and pressurized duct for natural gas. Mr. Harrington stated that what they use is more of a toaster.

In response to questions from the Board, Mr. Phipps confirmed that the hood could tie into the Type I duct work which is already there. He stated that the Type I duct work is thicker. If that has been removed, Type II duct work could also be used. He advised that a Type II hood does not require fire suppression, it is used for moisture and odor. Mr. Phipps stated that a UL Type II hood could be used, but if a fabricated Type II hood met the Mechanical code it would be fine as well. He stated that there were several shops in Omaha which could create a Type II hood. He advised that if the Board denied the request, a minimum of a Type II hood would be required.
Motion by Mr. Thibodeau to deny the waiver. Second by Mr. Therkelsen.

AYES: Feuerbach, Naccarato, Therkelsen, Thibodeau, Van Moorleghem, Ryan

NAYES: Kiel

Motion carried: 6-1. Denied.
At the Building Board of Review meeting held on May 11, 2020, Mr. Mark Rickley, Property Director of the Abide Network appeared before the Board in support of the request.

Mr. Rickley explained that the Abide Network is a non-profit committed to creating safer neighborhoods, stronger families, and emerging leaders. He stated that they have been operating in North Omaha for 30 years and have a 24 acre, main campus at 45th and Bedford and own 25 other “light houses” in North Omaha. He stated that they typically take homes in very poor condition and refurbished them by installing new electrical, plumbing, and HVAC systems as well as adding new doors, windows, and cabinetry using volunteers from the neighborhood. Mr. Rickley stated that once the home is finished, they recruit a Light House Leader to move into the neighborhood and work with the community on clean-up and beautification and sponsoring block parties and things of that nature to get the community working together. Mr. Rickley stated that statistics show that crime has been reduced in communities with the Light Houses.

Mr. Rickley advised that they had previously applied for a remodeling permit in September of 2019. After that they found out that they needed a different permit since they were adding square footage to the house. In March of 2020 they were granted a Building Permit with a note that they needed to add a landing at the exterior stairs per the 2006 Building Code. He explained that the existing porch was in very bad shape, so it was removed and the stairs that are present are the ones which were attached to the existing porch. Mr. Rickley advised that they are constrained by driveways on both sides of the property which prevents them from adding the landing as it would render the driveway to be unusable. He stated that they could not move the stairs to the front due to the setback so they determined that this waiver request would be the best way to proceed. Mr. Rickley stated that he went and looked at some of the neighboring properties and found that four of them have porches with stairs that have no landings. He advised that he had spoken with the neighbor directly east of this house and they are supportive of the waiver.

In response to questions from the Board, Mr. Rickley advised that the porch they are replacing has a roof over it which they are not removing, so moving the whole porch back is not an option. He advised that they have poured footings but have not done anything more. He said he was told that putting the stairs to the south encroaches on the setbacks.

Anna Bespoyasny, Assistant Director Permits and Inspections Division, clarified the requirements for the stairs and the restrictions on building in the setback. She confirmed with Mr. Rickley that they were rebuilding the existing porch and the stairs would be back where they were originally, but that the landing would extend into the driveway if the waiver were not granted. Mr. Rickley stated that the stairs were 3’ high and approximately 5’ out from the house; the door swings into the house rather than coming out over the stairs.

In response to a question from Mr. Therkelsen, Ms. Bespoyasny stated that if the stairs were not in bad shape and could be repaired, he could leave them where they were and would not need the landing since they were already existing.

Ms. Kiel confirmed with Ms. Bespoyasny that Mr. Rickley could put the existing stairs back where they were and repair them, there would be no problem because he would not have to add a landing to existing stairs. Ms. Bespoyasny confirmed that the stairs would have to be strengthened and repaired, but that would be considered maintenance to existing stairs. If this is acceptable to Mr. Rickley, they could deny the waiver and he can maintain the existing stairs. Mr. Rickley stated that this was fine with him.

Motion by Ms. Kiel to deny the waiver. Second by Mr. Feuerbach.

AYES: Feuerbach, Kiel, Naccarato, Therkelsen, Thibodeau, Van Moorleghem, Ryan.

Motion carried: 7-0. Denied.
IV. Review Board Policy and Procedures

Ms. Taylor provided a packet of materials which will be on the June 8, 2020 agenda. Ms. Taylor encouraged Board members to make note of any concerns or questions regarding the materials for discussion at that time.

V. Adjournment

Motion by Mr. Feuerbach to adjourn. Second by Ms. Kiel.

AYES: Feuerbach, Kiel, Naccarato, Therkelsen, Thibodeau, Van Moorleghem, Ryan.

Motion carried: 7-0. Meeting adjourned at 2:08 p.m.

The Building Board of Review agenda and other information regarding the Building Board of Review and the Planning Department is available on the Internet at [http://www.cityofomaha.org/planning](http://www.cityofomaha.org/planning). The agendas available on the Internet are subject to change and are for convenience purposes only. The agenda may be altered no later than 24 hours before the scheduled commencement of the meeting. A copy of the official agenda, kept continually current, shall be available for public inspection during normal business hours at the City of Omaha Planning Department, 1819 Farnam Street, Suite 1100, Omaha, Nebraska.

Prior to the hearing, the applicant may schedule a time to review the City’s case file during normal business hours by contacting Lisa Agans, Secretary to the Building Board of Review at (402) 444-5150 ext. 2013.

If an alternative (audio version) to this agenda is necessary, please notify Lisa Agans, Secretary to the Building Board of Review at (402) 444-5150 ext. 2013, 72 hours in advance.