MINUTES
BUILDING BOARD OF REVIEW
Monday, June 8, 2020 at 1:00 p.m.
Omaha/Douglas Civic Center – 1819 Farnam
Third Floor – Jesse Lowe Conference Room

Board 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, June 1, 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
Don Gerjevic, Chief Electrical Inspector
Inspector Kurt Urkowski, Omaha Fire Department
Lisa Agans, Board Secretary

II. Approval of Minutes

Approval of May 11, 2020 minutes.

Mr. Feuerbach moved to approve the May 11, 2020 minutes. Mr. Therkelsen seconded the motion.

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

Motion carried 7-0. Approved.
III. Cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
<th>LOCATION:</th>
<th>Request:</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-07</td>
<td><em>Layover from 3/9/20</em> WITHDRAWN AT THE REQUEST OF THE APPLICANT</td>
<td>2606 N Main St</td>
<td>Waiver to code section 202</td>
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James E Lang  
8526 F St  
Omaha, NE 68127

Prior to the Building Board of Review meeting held on June 8, 2020, Mr. Jim Lang contacted the department on behalf of the applicant to advise they wished to withdraw the case from the agenda.

Mr. Feuerbach motioned to approve the withdrawal and close the file. Mr. Therkelsen seconded the motion.

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

Motion carried 7-0. Closed.
At the Building Board of Review meeting held on June 8, 2020, Mr. Michael McGuire appeared before the Board on behalf of the applicant who he stated was in poor health and did not feel comfortable coming to the meeting due to the threat of Covid-19. Mr. McGuire stated that the applicant had been granted a waiver from the Zoning Board of Appeals and that she had also gotten signatures from 21 of her neighbors who stated that they had no objection to this waiver request. Upon receipt of the zoning waiver, the contractor went to get a permit but was denied due to the 2' overhang which would be next to the lot line. Mr. McGuire provided photographs showing the proximity of the applicant's home to the impacted neighbor's home as well as copies of elevations showing the design without the overhang compared to its appearance with the overhang. He discussed the required setbacks in the R4 zoning and that the waiver they had received from the ZBA was to allow them to build within 2' of the property line; however, this overhang would extend beyond that 2' limit. Mr. McGuire stated that, while he understands that fire is a concern, in his experience there has not really been an issue of fire jumping from one house to another which is what this section of the code was concerned with.

Mr. McGuire stated that the applicant would like to be approved for the waiver as stated in the application; however, as a compromise they would be willing to only take the overhang part of the way back, to accommodate the gutters, as long as they could keep the front face consistent with the appearance of the other homes in the neighborhood. He pointed out on the plans he had provided to the Board all of the different views of what they were requesting and described how that could be accommodated through the waiver and what areas they were willing to compromise on.

Ms. Anna Bespoyasny, Assistant Director, advised that the Building Code and the Zoning Code are two different codes. She explained that, although the Zoning Code may allow the applicant to build close to the property line, the Building Code is written as it is in order to protect the fire safety of the structures and to restrict the person who is building within their property lines because there is no way of knowing what may happen on a neighboring property in the future such as that neighbor wanting to build closer to the property line in the future, which would present a larger risk if the applicant had already built into that setback. Ms. Bespoyasny stated that the fire ratings in the International Residential Code exist to protect both property owners.

Ms. Le Nguyen, Plans Examiner, pointed out that Table R302.1 stated that any projection within the 2' must also have a fire rating of one hour and that the plan presented by the applicant would take that 2' distance away and eliminate the fire separation distance. She reiterated Ms. Bespoyasny's statement that if the neighbor were to build close to the property line also in the future it would cause a larger fire safety issue.

In response to a question from the Board, Mr. McGuire stated that the edge of the structure would be at the 2' mark and the overhang would extend to the property line. He stated that they would be fine with the compromise he had mentioned previously which would reduce some of the overhang except on the front of the structure. Ms. Nguyen stated that the code does not allow for even this amount of overhang due to the fire safety issue. It was also pointed out that if the neighbor wished to build on that end of their home, they would also have to go before the Board who would see that the applicant had already received the waiver and then the neighbor would be unable to extend their addition into that zone. Mr. McGuire stated that those neighbors had signed a document stating their approval of the applicant being granted the waiver. In response to a question from Mr. Therkelson, Ms. Bespoyasny stated that it would not be possible for the neighbor to sign a document which would prevent a future owner from building in that area.

The Board members discussed how the zoning setback requirements would affect the proximity of the two houses if the waiver was approved. They also discussed what difference the compromise offer from the applicant would make with regards to the fire safety separation between the two homes and how that could be affected by the types of building and roofing materials used.
Ms. Kiel pointed out that if there were a fire, it could potentially jump much more than 20 feet, so she did not see a problem with allowing this small section of overhang within the 2 foot area would make since fire could jump from even farther away. Mr. Kurt Urkoski, Fire Inspector, stated that the issue is not so much the fire jumping as it is the damages from the radiant heat of the fire, which would be greatly impacted the closer the two homes are to each other.

The Board asked Ms. Jennifer Taylor, City Law Department, to clarify what impact granting the waiver would have on a possible future sale of the neighbor’s home. Ms. Taylor stated that any future buyer would have to be made aware that the waiver exists and the conditions that exist. She advised that any future purchaser may not have any recourse against the applicant or the Board if the waiver is granted.

Mr. Van Moorleghem motioned to grant the waiver based upon the revised plans extending the overhang only 4’ from the front of the structure. Mr. Therkelsen seconded the motion.

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

Motion carried: 7-0. Approved.
At the Building Board of Review meeting held on June 8, 2020, the applicant, Mr. Austin Kay, Project Manager for the Centris project appeared before the Board to discuss the request. Mr. Kay stated that they are requesting an alternate method of inspection for their snowmelt system, which he described as a hydronic loop which they have imbedded in approximately 2200 square feet of concrete at the parking ramp leading to the lower level parking garage.

Mr. Kay advised that he had submitted a 19 page packet which included the time frame around the time of the initial scheduled inspection and the time period when the applicant covered the system prior to a pending snow storm. Mr. Kay advised that on Tuesday, April 7, 2020 they had requested an inspection on the system via the online request system; they had requested the inspection take place on Wednesday, April 8, 2020. He advised that they did not do any work on April 8, 2020 on the snowmelt system in anticipation of the inspection that day and that starting on April 7, they had held 90 psi of pressure on the system. Mr. Kay advised that no inspector came to the site on April 8 so the applicant attempted to reach out to the person who was assigned on the online permit system but were unable to contact the inspector through either phone, text, or email. On Thursday, April 9, 2020, the applicant made the decision to pour the concrete at that location. Prior to pouring concrete, Mr. Kay stated that they had gone through with a 360° camera to attempt to take sufficient photos; the camera used is similar to that of Google street views which allows the user to “walk around” the location to get a view from all angles. Mr. Kay explained that driving their decision to pour the concrete had been weather reports of a pending snowstorm over the weekend which would have ruined the subgrade had it not been covered with concrete. He stated that the system was a continuous loop system which had been installed per manufacturers and engineer specifications. Mr. Kay stated that they are requesting a visual inspection of the system based upon the photographs as well as a hydrostatic inspection at a time determined by either the Board or the Mechanical Inspector; he added that they would be willing to leave the hydro test on for as long as the Board or Inspector required to show that there were no leaks.

Mr. Tom Phipps, Chief Mechanical Inspector, stated that on April 16, 2020 he was called to the Centris site and observed that the snowmelt system had been covered with concrete by the general contractor. Pursuant to Section 40-563 Covering work prior to inspection; Section 40-564 Removal of covering prior to inspection and failure to conduct testing properly, Mr. Phipps ordered a written 20 day notice to remove the concrete from that site. He advised that in the past when this has occurred, Permits and Inspections have required contractors to remove concrete and comply with inspection requirements. Mr. Phipps stated that throughout his time with the department, there has not been another contractor who did not comply with these requirements. He advised that the inspector is to be present during the pouring of the concrete to ascertain that the tubing has not been crushed or otherwise damaged. He advised that by looking at photos taken before the concrete was poured, they would have no idea what the condition of the tubing is now, after the concrete was poured over it. He advised that, as the subcontractor, Waldinger Corporation is in noncompliance with three sections of the Code.

In response to questions from Ms. Kiel, Mr. Phipps advised that if the tubes had been crushed or otherwise damaged it could lead to leaks in the system, no circulation, and improper heat transfer, among other things. Mr. Kay stated that the system is supplied, installed, and warranted by the manufacturer; the general contractor MCL; and the subcontractor, Waldinger Corporation. He advised that the system did hold the 90 psi of air pressure throughout the pour which was verified by their mechanical engineer who was onsite watching the gauges during the pour as well as the field engineer; additionally he stated that the system is still holding 90 psi of air pressure to this day. Mr. Kay stated that his company is going to have to go back in and repair it if anything goes wrong; so it was in their best interest to see to it that it was installed properly. He stated that they can show the inspector that the system is holding the 90 psi of air pressure and are also willing to do a hydrostat test if the inspector wishes.
In response to questions regarding the time frame for inspections, Ms. Anna Bespoyasny, advised that typically when a person requests an inspection it goes on the next day’s list for inspection. In this case, the request was made on April 7, 2020 for the following day, April 8. She advised that the standard operating procedure is that if an inspection cannot be done on the day following the request, it is to be completed first thing the next day. In this case, they had one less inspector in the Mechanical section due to the Covid-19 restrictions and the inspector scheduled for that area was ill on the date the inspection was requested, which is why the applicant was unable to reach him. Ms. Bespoyasny stated that the applicant could have escalated the matter by calling the Chief Inspector, Mr. Phipps, but they did not do so and instead chose to forgo the inspection and pour concrete over the system.

Mr. Kay stated that they had used the online system to turn in the permit and to request inspections from the various trades in the past without problem. He pointed to one of the documents in the packet which showed a printout of what they see on the website when the inspection is requested as well as who is assigned to perform the inspection and their contact information. He stated that within the system it is easy for the applicant to see if the inspector is unable to make it to the inspection or if the inspector is changed. He stated that since that time, there is now a prompt on the system when you inspect this type of inspection that you must call and confirm it; that prompt was not there when they scheduled this inspection. Mr. Kay stated that the system did not work in this instance and that they are seeking a less punitive manner to resolve the inspection issue which would work for both parties.

In response to questions from the Board regarding the precedent which could be set if the Board approves this request. Their concern was that, although this applicant may have installed the system correctly with no problems, there may be another contractor who does not install it correctly or damages it somehow and just covers it with concrete and uses this case as an example of the Board making exceptions in this regard. Ms. Bespoyasny stated that that is always the problem when exceptions are made. She stated that the bottom line is that, any time you have an inspection scheduled you need to confirm it prior to covering up the work. Ms. Bespoyasny explained that just as easily as a contractor can see in the system who is assigned to do the inspection, they can also see whether the inspection occurred and whether it passed.

Mr. Kay stated that the storm forecasted for that weekend is what prompted them to pour the concrete; otherwise, they could have waited longer for the inspection to take place although they did not know when the inspection may occur.

Mr. Don Gerjevic, Chief electrical Inspector, advised the Board that all trades have the same code requirements for inspections, so whatever precedent is set in this case will apply throughout all the trades. He stated that all inspectors, all trades, are required by City Code to lay eyes on the system they are inspecting prior to that work being covered. Therefore, approving this waiver would open the door to a lot more cases before the Board requesting waivers based on this precedent.

Ms. Bespoyasny stated that they have conducted virtual inspections recently, due to the Covid-19 restrictions, without going to the site. Mr. Kay stated that, if they had known at the time that this would occur, they would probably have requested a virtual inspection. Ms. Bespoyasny stated that, going forward, they may consider doing more inspections virtually throughout the division.

Mr. Thibodeau stated his understanding that the air pressure test shows that it is not leaking, and the water test would confirm whether there are leaks or whether the tubes were crushed. Mr. Kay confirmed that this was true and the photos would also show that it had been installed correctly under the concrete. Mr. Phipps stated that the hydrostatic test is what is required by code and that it can show if there is a leak; he advised that the problem is that the subcontractor had been told not to pour the concrete until after the inspection had taken place, as required by code, which would have enabled the inspector to see that the entire system had been properly installed, there were no leaks, there was nothing crushed. Mr. Kay stated that they had not been told this until after they had begun pouring. He agreed that they had taken a calculated risk that it would work and would be approved by the inspector after the concrete was poured. Mr. Kay advised that the system was under a one year warranty and that they could have a conversation with Centris to see if they wanted to extend the warranty. Mr. Van Moorleghem stated that they were asking about extending the warranty to get the waiver approved, the representative from Waldinger Corporation stated that they would extend the warranty if that was what the Board needed for approval.
In response to questions from the Board, Mr. Phipps stated that he was unaware of any testing he could do to ensure that the circuits were all correctly installed and undamaged, as well as other parts of the system which could not be tested with the hydrostatic test. He stated that an engineer would have to be consulted for that type of testing.

Mr. Therkelsen motioned for approval of the request based on the extraordinary circumstances created by the Covid-19 pandemic and conditioned upon the system passing hydrostatic testing by the city. Mr. Thibodeau seconded the motion.

AYES: Naccarato, Therkelsen, Thibodeau, Van Moorleghem

DENIED: Kiel, Ryan

ABSTAIN: Feuerbach

Motion carried: 4-2-1. Approved.
Prior to the advertisement appearing in the Daily Record on June 1, 2020, and prior to the Building Board of Review meeting held on June 8, 2020, the applicant contacted the department to advise they wished to withdraw the case from the agenda.

As this case was never advertised, no action was taken by the Board and the file has been closed by the Board Secretary.
At the Building Board of Review meeting held on June 8, 2020, no one was present at the meeting to present the applicant’s case. Mr. Don Gerjevic, Chief Electrical Inspector for the City of Omaha, appeared before the Board to advise that the applicant had not claimed any acceptable hardship, other than cost and time. He advised that the requested type of wiring was only allowed in a very limited number of occupancy types. Due to the business in the building being a daycare, the City does not support the waiver as to do so would decrease the safety of the occupants of the building.

Mr. Feuerbach motioned for denial. Ms. Kiel seconded the motion.

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

Motion carried: 7-0. Denied.
At the Building Board of Review meeting held on June 8, 2020, the applicant, Mr. Sam Michael of Pope Architects, appeared before the Board to discuss the request. Mr. Michael stated that they are in the process of building a 36 unit senior living and memory care establishment. He advised that the major concern with this type of establishment is the safety of their residents and prevention of elopement which is the reason they are requesting the waiver. Mr. Michael stated that the 2012 IBC, occupancy type I1 is not allowed to have access controlled egress; they are seeking approval to use magnetic locks on the exterior doors which would prevent a resident freely opening the doors to exit without the knowledge of staff members. Mr. Michael stated that newer IBC codes do allow this type of locks in this occupancy type and they would be installed to meet the requirements of that code; some of those requirements include the presence a 24 hour global override switch for the locks to allow staff to push a button and disengage the locks; magnetic locks which disengage in a power outage; magnetic locks which disengage in the event a fire alarm system is tripped. There will be a safe dispersal area in the courtyard 50’ from the building for the residents in the event of an emergency. He stated that this type of system is utilized in a large number of this type of establishment and that it is a tried and safe system.

Ms. Anna Bespoyasny stated that the department does not object to the request because they are considering moving to the 2018 IBC, which does allow this type of delayed egress system.

Mr. Feuerbach motioned for approval. Mr. Van Moorleghem seconded the motion.

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

Motion carried: 7-0. Approved.
IV. Approve revised Board Policy and Procedures

Regarding the revised Board policy and procedures; Mr. Feuerbach asked for clarification on a few of the items in the report.

Regarding item #9 regarding the action of the Board following a motion. Ms. Jennifer Taylor, City Law department, explained that following a motion and a second, discussion can take place and an amendment may be made to the motion; however, the amended motion can only be approved with a majority vote of the Board.

Regarding item #10, Ms. Taylor stated that a vote can be changed within 30 days. She explained that if the Board makes a decision to grant or deny a waiver, they can, within 30 days, decide to revisit the case and potentially change the vote.

Regarding item #12, Ms. Taylor stated that the Law Department will provide legal representation for the Board and the individual members. She stated that this representation is available unless the Board takes an action which would negate the ability to defend it or the individual member. As an example, Ms. Taylor stated that if the Board voted on the case and it was discovered that the Board or member had taken a bribe to approve the request, the City would not defend the Board or member. If the Board or member takes an action outside of the boundaries of the Board; or if the Board or member takes an action in a case which for which they do not have necessary information to support that decision, the City would be unable to provide a defense in that case.

Regarding #13, Ms. Taylor stated that if the applicant in a Building Board of Review case wishes to appeal the decision of the Board, by statute they can only appeal to the District Court.

Mr. Feuerbach moved to approve the rules as published. Mr. Van Moorleghem seconded the motion.

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

Motion carried: 7-0. Approved.

V. Adjournment

Mr. Feuerbach moved to adjourn the meeting. Mr. Therkelsen seconded the motion.

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

Motion carried: 7-0. Meeting adjourned at 2:17 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. 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.