Mr. Jack 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.

Mr. Thibodeau moved to approve the minutes of the September 12, 2011 meeting as amended. Mr. Wiedenman seconded the motion.

AYES: Limpach, Thibodeau, Wiedenman, Santo, Ryan

ABSTAIN: Kucks

MOTION CARRIED 5-0-1.
**NEW CASES:**

<table>
<thead>
<tr>
<th>Case No.</th>
<th>LOCATION:</th>
<th>REQUEST:</th>
</tr>
</thead>
<tbody>
<tr>
<td>11-51</td>
<td>9900 Nicholas Street</td>
<td>Waiver to allow doors to swing into a fixture clearance at a lavatory</td>
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Albert Macchietto of Alley Poyner Macchietto Architecture appeared before the Board. Mr. Macchietto explained that this case is similar to those waivers granted at last month’s meeting (please see the September 12, 2011 meeting minutes for more information). The restroom in question is located in a medical clinic. Mr. Macchietto stated that there are restrooms located in a common area for building tenants and customers to use; however, the medical clinic would like to provide a family restroom for their customers. Due to size constraints, Alley Poyner Macchietto Architecture would like a waiver allowing the door of this family restroom to swing inwards into the fixture clearance.

Greg Hauptman, Plans Examiner, stated that the City is opposed to this waiver request, as it was opposed to those aforementioned waivers granted by the Board last month. He added that at this time, there is no exception allowing this request in the International Building Code (IBC). Also, Mr. Hauptman maintained, the applicant has shown no hardship in installing this door as per code requirements. Mr. Hauptman concluded by stating that there is enough space to swing the doors outward as required in the IBC.

Mr. Macchietto confirmed that there is enough room to make the doors swing outwards; however, as explained at the September 12, 2011 meeting, it is the opinion of his company that swinging a door out into a hallway is not a good solution.

Mr. Limpach recused himself from voting on this case. Mr. Wiedenman made a motion to grant the waiver as submitted. Second by Mr. Santo.

**AYES:** Thibodeau, Wiedenman, Santo, Ryan

**NAYS:** Kucks

**ABSTAIN:** Limpach

Motion approved 4-1-1.
Christopher Reed of Morrissey Engineering, Todd Heistand of NuStyle Development and Albert Macchietto of Alley Poyner Macchietto Architecture appeared before the Board. Mr. Reed explained that his company is currently involved in the conversion of an office building to an apartment building at 2223 Dodge Street. Plans call for a vertical exhaust shaft to be installed in this structure which will handle dryer and bath exhaust from the building’s tenants.

Mr. Reed stated that according to the International Mechanical Code (IMC), dryer and bath connections may be connected to the proposed exhaust shaft, omitting the fire and smoke damper requirements, so long as the shaft is in compliance with the exceptions listed. Mr. Reed explained that in looking at the requirements, his company faces certain challenges: First, the building in question is an existing structure, and demolition is not yet complete. Mr. Reed stated that Morrissey Engineering is not yet certain as to what structural challenges they will face in installing the exhaust shaft. According to code, duct offsets are not allowed. However, Mr. Reed requested that the Board grant a waiver of Exception 2.3, (duct offsets within the shaft are prohibited) permitting ducts in this shaft to be offset in order to allow for potential existing structural issues that they may encounter during renovation. Mr. Reed proposed that these offsets be limited to a maximum of 30 degrees, and assured the Board that the interior of the ductwork would be smooth, with no interior protrusions that could potentially cause lint to collect within the duct.

Second, Mr. Reed continued, the shaft is required to be protected by an automatic fire sprinkler. Mr. Reed stated his company intended to comply with this exception; however, they are unable to find a sprinkler head that is rated for and will function in an exhaust shaft that may be filled with dryer lint. Mr. Reed stated that sprinkler heads installed in such a shaft would clog with lint over time. Therefore, he requested that the Board grant a waiver of Exception 2.5 (The vertical dryer exhaust duct shall be protected by an automatic fire sprinkler system per NFPA 13).

Third, Mr. Reed stated that code states that the airflow of the ventilation shaft exhaust fan may vary according to the number of dryers currently in operation. Mr. Reed asked that the Board grant a waiver of Exception 2.6.2 (The airflow of the fan may vary based on the number of dryers) and allow the exhaust fan’s airflow to vary based on maintaining a negative air pressure within the shaft.

Mr. Ryan asked for confirmation as to whether duct offsets will be required. Mr. Reed stated that at this time, he is not certain whether any offsets will be required; rather, this request is a preventative measure in case structural issues arise. Mr. Thibodeau commented that varying the airflow based on pressure rather than the number of dryers in operation amounts to basically the same thing; he added that he wasn't sure whether Mr. Reed needed to obtain a waiver for this matter. Mr. Reed replied again that his purpose for appearing before the Board today was to prevent possible disputes as construction progresses.

Thomas Phipps, Chief Mechanical Inspector and Robert Dana, Plans Examiner/Engineer appeared before the Board. Mr. Dana stated that they were asked by Greg Hauptman, plans examiner, to speak to the Board in regards to the proposed waivers of exceptions 2.3 and 2.5.
Mr. Dana stated that Exception 2.3 regarding duct offsets was put into place in order to maintain a smooth surface within the exhaust shaft, thereby preventing the build-up of dryer lint. He stated that his division recommended allowing maximum duct offsets of 45 degrees, providing that there were no multiple offsets in one direction. Mr. Dana stated that allowing multiple offsets could result in the exhaust shaft exceeding the 45 degree limit.

As to the request to grant a waiver of the required fire sprinkler protection, Mr. Dana stated that he, too, was unable to find a sprinkler head that would work in such a location, confirming Mr. Reed’s earlier statement. Mr. Dana stated that his division had no objection to a waiver of Exception 2.5.

Mr. Dana stated that he is opposed to the proposed waiver of 2.6.2, to allow varying the airflow in the shaft based on pressure rather than the number of dryers, due to the fact that an air pressure sensor would clog with lint over time. He commented that this waiver request was not on today’s agenda, and he wasn’t certain whether the Board should discuss it at this time.

Mr. Limpach stated that he was on the committee that created the exceptions up for waiver today. He cited the fact that the problem of measuring airflow pressure was a matter of some discussion when the exceptions were being written, and asked Mr. Dana for clarification as to how to determine the number of dryers running without measuring pressure within the duct. He stated that you could alter tenant clothes dryers so that they would signal the exhaust fan; however, this would void the dryer’s UL listing.

Mr. Limpach stated that pre-engineered exhaust systems for apartment buildings do exist; however, they do not have the proper UL listings to be used in Omaha at this time. Mr. Limpach acknowledged that any sensor measuring airflow would require cleaning and maintenance in order to ensure that it did not clog.

Mr. Ryan stated that the applicant and the City appear to be in agreement on the applicant’s first request to allow duct offsets. As regards the applicant’s request for a waiver of the required fire sprinkler protection in the shaft, Mr. Ryan stated that no acceptable product seems to exist that the applicant can use.

When asked for clarification, Mr. Reed stated that the proposed shaft will be big enough to accommodate only the ductwork within it; there will not be space to install a sprinkler head in between the shaft and the ductwork, and any sprinkler heads in the ducts would simply cause the ductwork to clog with lint. Mr. Reed assured the Board the shaft would meet fire-rating requirements for the building.

Mr. Thibodeau asked for clarification regarding the pre-engineered systems discussed by Mr. Limpach for apartment building use. Mr. Phipps confirmed that such systems do exist; however, they do not carry UL listings, and therefore may not be used in Omaha. Mr. Thibodeau asked how manufacturers of pre-engineered systems have dealt with keeping the airflow sensor clear of lint. Mr. Phipps stated that keeping the airflow sensor clear in pre-engineered systems requires continuous maintenance on the part of the owner.

Mr. Limpach stated that the idea of operating this system based on maintaining a negative pressure within the shaft means that the exhaust fan can be allowed to run more slowly when fewer dryers are running. This results in an energy savings for the building. Mr. Thibodeau stated that his understanding of this matter is that as more dryers come on and begin to vent into the shaft, the exhaust fan will spin faster. He added that he didn’t believe that the Code actually designates how the speed of the exhaust fan must be controlled, to which Mr. Dana objected.

Mr. Heistand stated that the City’s exceptions were impossible to comply with without voiding the UL listings of their tenant’s clothes dryers, which is what prompted their application to the Board for a waiver of these requirements. He stated the need to get these questions cleared up before the time came to issue a certificate of occupancy.
Mr. Thibodeau stated the fact that a system requires maintenance does not necessarily mean that it is not in compliance with Code. Mr. Ryan asked Mr. Heistand whether NuStyle Development had any problems with maintaining the sensor in this exhaust system. Mr. Heistand stated that his company had no objection to keeping the airflow sensor clean. He suggested that the airflow sensor could be installed on the roof, where it can easily be accessed for maintenance and cleaning. Mr. Dana stated that the City could work with the applicant to design an acceptable air-pressure measuring system.

Mr. Wiedenman stated that he agreed with Mr. Thibodeau’s earlier statement that varying the airflow based on pressure rather than the number of dryers in operation amounts to basically the same thing. Mr. Limpach stated that since the City seems to be opposed, it would be best if the applicant received a waiver now to avoid complications later.

Motion by Mr. Thibodeau to approve subject to: 1) duct offsets must not exceed 45 degrees; also, multiple offsets turning in the same direction will not be acceptable; 2) a sprinkler head will not be required in the duct or shaft; and 3) air flow in the exhaust shaft will be controlled by sensing the pressure within the shaft. Second by Mr. Kucks.

AYES: Kucks, Thibodeau, Wiedenman, Santo, Ryan

ABSTAIN: Limpach

Motion approved 5-0-1
Dennis P. Lee, attorney for the Twin Towers Condominium Association, appeared before the Board. Mr. Lee presented the Board with a copy of a restraining order that was entered by Judge Thomas Otepka at 10:45 am on October 3, 2011.

According to the language of this restraining order, the Board is “...restrained and precluded from proceeding with any further steps or hearings of any kind to proceed with the demolition or destruction of the parking garage of the north tower of the Twin Towers complex located at 3000 Farnam Street, in Omaha, Douglas County, Nebraska, or the surface parking lot adjacent to the north and south towers of the Twin Towers complex...”.

Mr. Lee stated that his client has alleged in their complaint that there have been several insufficiencies as it relates to notice of property owners at this location. He stated that the purpose of his appearance before the Board today was to provide them with a copy of Judge Otepka’s restraining order. Mr. Lee stated that another copy of this restraining order was delivered to City of Omaha Law Department this morning, and asked that the Board make a motion to delay any action on this case until further notice from the courts.

Mr. Ryan asked Mr. Denker what knowledge he had of Judge Otepka’s restraining order. Kevin Denker, Chief Housing Inspector, stated that he received a copy of this order upon entering the room for today’s meeting: he had no other previous knowledge of this action. Mr. Denker added that his understanding of standard procedure is that when an applicant receives notice of a violation, they have the option to appeal the notice with the Building Board of Review. If the applicant does not like the decision that the Board hands to them, they then have the option of appealing the notice of violation to the courts.

Mr. Denker stated that he cannot comment upon the restraining order; however, he stated that this property was brought before the Board six months ago, at which time they were granted an extension by the Building Board of Review. Ten days ago, according to Mr. Denker, a temporary fence was erected around the perimeter of the structure. One week ago, a permit was taken out for shoring at this property. Roger Carroll, housing inspector, subsequently made an inspection of the property. Mr. Denker stated that as of today’s date, work has not yet started on this property.
Rosemarie Horvath, Law Department, stated that she, too, received Judge Otepka’s order upon entering the meeting room today, and has not had a chance to review it. However, she added, the applicant has not exercised all of their administrative remedies. She stated that the district court does not yet have jurisdiction over this case, as the Building Board of Review has not yet made a decision.

Mr. Ryan inquired as to whether Alan Thelen of the Law Department received a copy of the restraining order. Mr. Lee replied that he delivered a copy of the complaint, motion and proposed order to Mr. Thelen this morning at 10:05 am, prior to appearing before Judge Otepka. Mr. Lee added that he did not speak with Mr. Thelen this morning, but rather dropped the aforementioned items off with Mr. Thelen’s office at 10:05. He returned to Mr. Thelen’s office at approximately 11:00 am with a copy of the restraining order from Judge Otepka. Mr. Lee stated that a hearing has been scheduled for October 13th; at which time, Judge Otepka may decide to extend the restraining order. Mr. Lee maintained that until such time as Judge Otepka rescinds the restraining order, the Building Board of Review may not proceed with any decision.

James Sherrets, attorney for the ND 24 Turner Park Lofts, LLC, appeared before the Board. He stated that there were some technical deficiencies on the City’s part which prompted his client going to court. Mr. Sherrets stated that his client had hoped to have repairs to the property finished by this time; however, there were difficulties in raising financing for repairs. Mr. Sherrets stated that the City notified his clients improperly, by taping notices to windows. Mr. Sherrets stated that ordinance requires that notice be sent by US mail or personal service. At this time, financing has been secured for repairs, and materials have been delivered to the site so that work may begin. Mr. Sherrets presented photographs of the materials that have been delivered to the Twin Towers complex. He assured the Board that work is now under way, and that his client anticipates completion by no later than February 2012. Mr. Sherrets concluded by asking that the Board consider a continuance of their previous extension to March 2012.

Mr. Ryan stated that when the Building Board of Review receives a case, the applicant is usually asking for more time to complete repairs. As a general rule, if the Board grants an extension to the applicant, it is with the understanding that progress is being made. He asked Roger Carroll, housing inspector, whether he feels that progress is being made at this location. Mr. Carroll stated that he re-inspected the site approximately one week ago; at that time, he did not see that anything had been accomplished. Mr. Denker stated that the large amounts of steel referenced by Mr. Sherrets is shoring steel; this is not the final setting steel which will ultimately be installed in the garage. Mr. Carroll stated that he returned to the site this morning to take pictures of the worksite. He noted the presence of a machine for lifting steel, the aforementioned shoring steel, and the temporary fence. Mr. Carroll added that he spoke to the contractor for this property last week – this contractor stated that he was prepared to begin work on October 3rd (today). Mr. Carroll concluded by stating that it appears that progress is now being made.

David Davis, Blackthorne Real Estate Development Company, appeared before the Board. He stated that the process of obtaining a loan for the repairs was difficult, owing to the fact that there are more than one hundred owners at this property, and the banks were unsure how to proceed if one of the owners defaulted on the loan. Mr. Davis stated that they had obtained financing at one point - however, the provider changed their mind unexpectedly. Mr. Davis concluded by stating that this process took longer than anticipated; however, as he assured the Board, this delay was not due to the applicant “dragging their feet”.

Mr. Ryan asked Mr. Denker whether his department had any concerns regarding the Board granting an additional extension for this applicant to March 1st as requested by Mr. Sherrets. Mr. Denker stated that his division wants the building to be fixed, and added that they don’t have a problem with an extension being granted; however, his division would like to see continued progress, rather than the five months of apparent inactivity that it has recently observed. Mr. Denker stated that his division would prefer a layover of only ninety days.
Mr. Sherrets suggested that the Board grant an extension to March 1, 2012, with the condition that this case could be brought back before the Board without prejudice towards the City in ninety days if they determined that substantial progress has not been made. Mr. Lee stated that granting this type of motion would be in compliance with the restraining order currently in place. Mr. Davis stated his support for this action, citing the fact that each time he has to appear before the Board, it takes money away from repairs due to the need to pay for counsel.

Mr. Thibodeau stated that the request proposed by Mr. Sherrets seems to satisfy all those parties concerned. Mr. Ryan asked legal counsel whether, due to the order placed before them this morning, whether they can grant the proposed extension for any of the three cases regarding this property. Mr. Lee stated that according to the language of Judge Otepka's order, the Board is prohibited from proceeding with an action against his client’s property as regards case number 11-41; however, they may choose to proceed with an action on case numbers 11-28 and 11-29. Mr. Lee added that he would not object to the Board granting a continuance to March 2012 as discussed. Mr. Sherrets stated that it would be allowable for the Board to grant a continuance of all three cases to the March 2012 meeting, citing Mr. Lee's statement that he would not object to a continuance on case number 11-41.

After some discussion, Mr. Thibodeau made a motion to lay case numbers 11-41, 11-28 and 11-29 over to the March 2012 meeting of the Building Board of Review, with the stipulation that if sufficient progress has not been made within ninety days, the City may at that time bring all three cases back before this Board. Mr. Lee stated that he had no objection to this motion. Second by Mr. Limpach.

AYES: Kucks, Limpach, Thibodeau, Santo, Ryan

ABSTAIN: Wiedenman

Motion passed 5-0-1.
Case No. 11-35
(Over from 6/13/11 and 8/8/11)
James Severa
P.O. Box 31009
Omaha, NE  68131


Roger Carroll, Housing Inspector and Kevin Denker, Chief Housing Inspector, appeared before the Board. Mr. Carroll reported that this case pertains to an apartment building at 3304 Burt Street. At the August 8, 2011 meeting of the Building Board of Review, it was reported that the building would be closed so that repairs could take place (please see August 8, 2011 minutes for more information). Mr. Carroll stated that he inspected the property this morning to find that no repairs have been made.

Sean Cuddigan, legal representation for Dr. James Severa, appeared before the Board. Mr. Cuddigan confirmed that the building was closed for repairs, pending funds from Dr. Severa’s insurance company. Mr. Cuddigan stated that at this time, his client has been unable to reach a settlement with the insurance company, due to the lack of tenants at this property.

Mr. Cuddigan stated that the building has been listed in a trustee sale set for next week due to the fact that Dr. Severa has been unable to make payments on the property. Mr. Cuddigan stated that Dr. Severa is interested in making repairs to the property; however, he is financially unable to do so without funds from the insurance company.

Mr. Cuddigan asked that the Board lay this case over for 60 days. This continuance will either result in Dr. Severa no longer being the owner of the property or would allow Dr. Severa more time to come to an agreement with his insurance company so that repairs can be made.

Mr. Ryan stated that this would be Dr. Severa’s third request for layover. Mr. Kucks asked Mr. Denker whether his department had any objection to this case being laid over. Mr. Denker stated that his department wants the building to be repaired; he would prefer that the repairs be completed within 30 days, but would not object to the request for more time.

Motion by Mr. Kucks to grant an extension for 60 days as requested by the applicant. Second by Mr. Wiedenman.


Motion passed 6-0.
Case No. 11-44  
(Over from 9/12/11) 
John Malone  
Leviticus Rental Properties  
11806 Washington Circle  
Omaha, NE 68108  

LOCATION: 412 Valley Street – Dwelling Interior  
REQUEST: Appeal International Property Maintenance Code  
Notice of Violation dated August 10, 2011

No action was taken on this case. This case has been scheduled for the November 14th, 2011 meeting of the Building Board of Review.

**ADJOURNMENT:**

Motion to adjourn by Mr. Thibodeau. Second by Mr. Limpach.

AYES: Kucks, Limpach, Thibodeau, Wiedenman, Santo

MOTION CARRIED: 7-0. Meeting adjourned at 2:26pm.