Mr. Ryan, Chairman, called the meeting to order at 1:04 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 five members were present.

Motion by Mr. Schaefer to approve the minutes of the January 9, 2012 meeting as published. Ms. Kiel seconded the motion.

AYES: Makinster, Kiel, Schaefer, Ryan

ABSTAIN: Feuerbach

MOTION CARRIED: 4-0-1
CASES:

Case No. 12-003
Albert Macchietto
Alley Poyner Macchietto Architecture
1516 Cuming Street
Omaha, NE 68102

LOCATION: 106 South 15th Street
REQUEST:

1) Waiver for an excessive dead end corridor
2) Waiver for excessive common path travel distance
3) Waiver to allow non-conforming landings to remain
4) Waiver for non-compliant rise and run dimensions
5) Waiver to allow non-compliant handrails and guardrails to remain
6) Waiver to eliminate the requirement for elevator lobbies

Albert Macchietto appeared before the Board in support of this request.

Mr. Macchietto presented pictures of the property at 106 South 15th Street. He stated that the 12-story building was built in the early 1930's and explained that his client planned to convert the building into a Marriott Residence Inn that would include 152 guest rooms, meeting rooms and other support spaces. He explained that the building is a historic building on the National Register, and because of this there were some restrictions on the deed that required them to make sure that all work on the building was done to meet the National Park Services historic guidelines for preservation. Mr. Macchietto further explained that most times the guidelines are optional if an owner wants to take advantage of the tax credit program; but in the case of this building, these guidelines are not optional since it was part of the surplus program and a GSA building.

Mr. Macchietto referred to the plans that were included in the packet and began discussion of the six waiver items. He began with the first waiver item for the dead end corridor. He stated that the floor plan is a U-shaped plan with elevators located in the center of the building and two sets of exit stairs. He explained that on the north stair the landing is at the east side of the stair shaft. On the south side of the building the stair shaft is on the west side. Mr. Macchietto explained that they were able to cut a corridor so that there was no issue with having a long dead-end corridor on the south side of the building, but were not able to do this on the north side of the building because of the location of the stair landing.

Ms. Keil made a suggestion for where to put a door to eliminate the dead end corridor issue. In response to Ms. Keil’s suggestion, Mr. Macchietto referred to the current IBC which he stated is 20’ on the dead end corridor, and that subsequent issues of the IBC have been changed to 50’ which he explained coincides with the Life Safety Code. Mr. Macchietto stated that the Marriott has their own Life Safety Code which also puts the dead end corridor at 50’. He explained that because of these codes they were requesting the waiver based on the hardship of the given floor plan. Ms. Keil asked Greg Hauptman, Plans Examiner, his thoughts on Mr. Macchietto’s request. Mr. Hauptman responded that, although a door would solve the problem of the dead end corridor, he agreed with Mr. Macchietto that both the 2009 and 2012 IBC included an R-1 occupancy in the exception that allows 50’. He also stated that the City has every intention to be on the 2012 codes before the year is out and did not object to Mr. Macchietto’s request for a waiver for an excessive dead end corridor. Mr. Ryan agreed, stating that, according to the information in his notes, Permits and Inspections did not to object to the waiver. In addition, Mr. Macchietto further explained that they made a revision to the floor plan that would increase the request for a dead end waiver from 36’ to 40’.

Mr. Macchietto asked Mr. Ryan if the Board would like to hear all of the waivers individually or if he should continue with his presentation. Mr. Ryan responded that the Board would go through the waiver requests individually.

Mr. Feuerbach stated that he would abstain from voting on this case.
Motion by Ms. Makinster to allow for the 40’ waiver on the dead end corridor. Seconded by Mr. Schaefer.

AYES: Makinster, Kiel, Schaefer, Ryan

ABSTAIN: Feuerbach

Motion approved 4-0-1

Mr. Macchietto began discussing the second waiver for excessive common path travel distance for the units in the northwest corner of the building. He stated that the travel path exceeds 75’, and requested a waiver to exceed this distance. He explained there was not much they could do to solve the issue because of the configuration of the building. Mr. Ryan asked Mr. Hauptman if there were any objections to the waiver from Permits and Inspections.

Mr. Hauptman responded that they had no objections to the request for the waiver for excessive common path travel distance, or for any of the remaining waiver requests. Mr. Hauptman further explained that he spoke with Capt. Dickerson, Capt. Bernard and Asst. Fire Marshall Giles from the Omaha Fire Department, and that none of them had any objections with any of the six waivers after discussing those items with them in detail. Mr. Ryan asked Ms. Kiel if she had any questions on item number two and she responded that she did not.

Ms. Makinster suggested that the Board approve all of the waivers as requested since the City had previously approved them all. The Board agreed to hear items 2-6 together, rather than hear each waiver request separately. They asked Mr. Macchietto to continue with his presentation.

Mr. Macchietto explained that the stairs are 48” in width until you get to the landings which are 45”. He explained that the code states that the landing has to be the same width as the stair, although 44” is all that is required. He also stated that the only fix for this would be to narrow the stairways down to match the width of the existing landing which he did not want to do.

Mr. Macchietto explained that item number 4 dealt with the dimension for both stairs. Mr. Macchietto stated that the rise and run for the stairs vary from 7 ¼” - 7 ¾” and that the tread ranges were from 10 ¼” to 11”, although they were uniform on a given flight of stairs. He stated that Chapter 34 gave some exception to these for existing buildings for existing stairs when you can’t technically make any changes to the stair.

In regards to item number 5, Mr. Macchietto referred to the pictures in the packet to discuss the which addresses handrails and guardrails in an existing stair. He stated they are historic in nature and the existing handrail on the walls didn’t extend 12” beyond in every case. Ms. Kiel asked for the height of the guardrail, and wanted to know if they were the standard guardrail height of 34”. Mr. Macchietto replied that they were not standard guardrail height. Mr. Macchietto stated that he did not have the information with him that gave the height of the existing guardrail.

Mr. Macchietto proceeded to item 6 which he stated dealt with the elevators. He explained that there were two elevators off of the historic lobby, but that there was not enough room to create an elevator lobby. He referred to the Code provision that would allow his client to pressurize the shafts of the elevator in lieu of creating an actual elevator lobby on each floor level. He explained that his engineers have looked at the design criteria and determined that it would not be possible to meet the criteria because the space was too small.

Ms. Kiel questioned Mr. Macchietto about the possibility of putting a drop down screen on the doors. Mr. Macchietto replied that they were a possibility, but expressed concerns about the cost and appearance of drop down screens. Ms. Kiel advised that perhaps a bulkhead could be put over the top to hide the
screens. Mr. Macchietto responded that because of the historic profile of the doors it would not be easy to make those fit. He stated that the criteria set forth in the 2006 Code are not achievable, so the criteria for 2009 and 2012 were updated to a different standard. Mr. Macchietto stated that they would like to use the 2012 standard instead of those for 2006.

Mr. Schaefer asked for verification for item number 5 in regards to the City’s recommendation that the handrails be upgraded along the wall. Mr. Macchietto responded they are historic handrails and that they are at the right height and did extend for the correct distance. In response to Mr. Schaefer's question, Mr. Hauptman stated that the City would make an allowance for the historical guardrails down the center of the stair shafts, but fully expected for the handrails along the wall to be brought up to current code. Mr. Machietto agreed that they would comply with that stipulation. Ms. Kiel agreed that at least one side of the handrails needed to be brought up to code.

Ms. Kiel made the motion to approve items 2 – 6 as submitted, with the exception that the wall handrails at this location must meet code. Seconded by Ms. Makinster.

AYES: Makinster, Kiel, Schaefer, Ryan
ABSTAIN: Feuerbach

Motion approved: 4-0-1

Case No. 11-58

Willie L. McCarthy
1919 John Creighton Blvd
Omaha, NE 68111

Mr. McCarthy appeared before the Board in support of this request. Mr. Kevin Denker, Chief Housing Inspector, stated that he and Mr. Kurt Holmstrom, Housing Inspector, met with Mr. McCarthy at his property about a month ago to go over what needed to be done. Mr. Denker stated that a lot of the work had been done and that they needed to get Mr. Holmstrom back out to the location to verify what was done. Mr. Denker stated that he felt that everything was moving towards completion and would be done soon. Mr. McCarthy stated that all of the work had been done and that he was waiting on approval from the City. Mr. Ryan asked Mr. McCarthy if all of the work had been done and he responded that it was complete. Mr. Denker requested an extension of 30 or 60 days to make sure that everything was finished.

Motion by Mr. Feuerbach to grant an extension of 30 days for completion of work. Seconded by Mr. Schaefer.

AYES: Feuerbach, Makinster, Kiel, Schaefer, Ryan

Motion approved: 5-0
Carol Cosgrove appeared before the Board in support of the request. Kevin Denker, Chief Housing Inspector, explained that Mike Johnson was the inspector handling this case; was filling in since Mr. Johnson was not able to attend today’s meeting.

Mr. Denker asked Ms. Cosgrove if she needed more time to make repairs and she responded that she did. She also stated that she was not aware prior to the Board meeting that she could have asked Mr. Johnson for more time for repairs. Mr. Denker questioned Ms. Cosgrove as to how much more time she would need for repairs, then referred to Mr. Johnson’s documentation that showed a completion date of May 1 and asked if she would need more time than that. Ms. Cosgrove responded that she would like until the end of August to finish all necessary repairs, including siding.

Mr. Denker agreed to give Ms. Cosgrove more time for repairs.

Motion by Ms. Kiel to grant an extension until the end of August. Seconded by Mr. Feuerbach.

AYES: Feuerbach, Makinster, Kiel, Schaefer, Ryan

Motion approved: 5-0

**ACTION ITEM:**

Mr. Ryan began discussion of new bylaws and procedures. Mr. Ryan then turned that discussion over to RoseMarie Horvath, Assistant City Attorney. Ms. Horvath referred to documents that were sent to the Board Members prior to the meeting. Ms. Horvath stated that she noticed in the Procedures it was unclear that on Building Code waiver requests that the applicant goes first. She stated that the Board Members could look the over Procedures and could vote on them at their next meeting.

Mr. Ryan requested clarification from Ms. Horvath about Section B of the Building Board of Review Bylaws in regards to quorum. He stated that it was his understanding that there had to be at least five board members present for a quorum, but in reading section B he understood that four out of seven members needed to be present for a quorum to take action. In response to Mr. Ryan’s request, Ms. Horvath and Mr. Hauptman both agreed that the Municipal Code states that five member needed to be present for a quorum. Ms. Horvath stated that she would make the necessary corrections.

Mr. Feuerbach asked Mr. Hauptman whether the Board had any jurisdiction on the Boiler Code and made the suggestion that the wording in the opening statement might be adjusted to show that the Board has no authority to make changes to the Boiler Code. Mr. Hauptman replied that the Board has no jurisdiction over the Boiler Code, but that the State does. Mr. Feuerbach asked if the Board could grant any waivers to the Boiler Code. Mr. Hauptman’s responded that they do not. He further explained that when he receives any applications for request for waivers on the State Boiler Code, he refers the applicant to the State.

Mr. Feuerbach also asked for clarification about the Boards jurisdiction over the Energy code, and Mr. Hauptman responded that request for waivers on the Energy Code could go through the Building Board of Review since the City has an adopted Energy Code. Mr. Hauptman further stated that the Board could not do anything to lessen the restrictions of the State.
Ms. Horvath discussed the results of Mr. John Malone’s case against the City of Omaha Building Board of Review in the District Court. Ms. Kiel verified that the property at 412 Valley Street would remain vacant until it was brought up to code. Mr. Denker confirmed that an unfit designation remains on this property.

In response to Mr. Feuerbach’s question as to whether the Board had to conduct itself by strict judicial standards, Ms. Horvath replied that according to the District Court’s decision no cross-examinations had to take place; nor is it necessary to swear an oath, but that it is sufficient that applicants are allowed to question certain officials who are present at the meetings.

Ms. Horvath then referred to a 2001 consent decree in the federal courts against the City of Omaha. She also referred to a 2002 case that Mr. Denker explained the details of to the Board. Mr. Denker explained that in that case the court set forth that the City would adhere to the standards of the 2000 International Property Maintenance Code. He also explained that this was the case Mr. Malone referred to in his lawsuit against the City of Omaha where several landlords accused the City of unconstitutional practices and using an exorbitant fee structure. Mr. Denker explained that this case was before the time of the Building Board of Review and only condemnation hearings were heard in front of Mr. Denker himself. Mr. Denker stated that at that time they agreed to adopt the 2000 International property maintenance Code and to adjust decisions to the local atmosphere. He further explained that in the adoption of that case, decisions were made as to the levels of buildings which affects the amount the City charges for Certificates of Occupancy. Mr. Denker stated that the language in that 2002 lawsuit affect how the City operates and that any changes to that agreement must be heard addressed in court.

Mr. Ryan mentioned the possibility of the Mayor issuing executive orders that would affect the Code Enforcement Department. Mr. Denker confirmed that Code Enforcement had been requested by the Mayor’s office to provide a history of repeat offenders and persons with multiple cases against them. He stated that this information had been forwarded to the Mayor’s office who then shared the information with the PRT (Problem Resolution Team) which includes the City Prosecutor’s office, Omaha Police Department, Omaha Fire Department, Parks Code Enforcement, Health Department, Nebraska Humane Society, Planning Code Enforcement and Omaha Housing Authority who all meet once a month to discuss the properties between them checking to see where these might overlap. Mr. Denker explained that the PRT was originally formed by executive order from a prior police chief and not the Mayor’s Office. Mr. Ryan asked Mr. Denker if these orders would only affect the Code Enforcement Department and not the Building Board of Review and Mr. Denker responded that those orders would only affect Code Enforcement.

**ELECTION OF OFFICERS:**

Mr. Ryan opened the discussion for the election of officers.

Motion by Mr. Feuerbach for the nomination of Mr. Ryan as Chairman of the Board. Seconded by Ms. Makinster.

AYES: Feuerbach, Makinster, Kiel, Schaefer, Ryan

Motion approved: 5-0

Motion by Ms. Makinster for the nomination of Mr. Wiedeman as Vice Chair of the Board. Seconded by Mr. Feuerbach.

AYES: Feuerbach, Makinster, Kiel, Schaefer, Ryan

Motion approved: 5-0
ADJOURNMENT:

Motion to adjourn made by Ms. Kiel. Seconded by Ms. Makinster.

AYES: Feuerbach, Makinster, Kiel, Schaefer, Ryan

Meeting adjourned at 1:48 p.m.