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 five members were present.

Motion by Mr. Feuerbach to approve the minutes of the August 13, 2012 meeting. Mr. Santo seconded the motion.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-1
At the Building Board of Review meeting held on Monday, September 10, 2012, Ron Weis appeared before the Board in support of the request.

Mr. Weis stated that a press box was being built for the Skutt Catholic High School softball field. He explained that a waiver was being requested because of ADA requirements that specify that the second floor must be accessible.

Mr. Ryan stated that regardless of how the Board votes, the U.S. Department of Justice, who sets the ADA requirements, could intervene at any time and require that certain changes be made. He explained that the Building Board of Review would decide to grant a waiver according to the City of Omaha building code.

Mr. Weis noted that some changes had been made to the building plans, which included adding a window and conduit to the first level.

In response to Ms. Kiel, Mr. Weis stated that the school did consider installing a lift, but decided against it for cost reasons. Referring to the building plans, Ms. Kiel stated that there should not be a problem for a handicapped person to call games. She recommended that consideration should be given to installing a lift so that a handicapped person can have access to the area.

Mr. Ryan stated that Permits and Inspections does not have any objections to the waiver as long as the applicant realized that there is a federal requirement. Greg Hauptman, Plans Examiner – City of Omaha, advised that the Board has approved this type of request in the past and has informed the applicant of the possibility of federal intervention.

Motion by Ms. Kiel to APPROVE the request as submitted. Seconded by Ms. Makinster.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-0
At the Building Board of Review meeting held on Monday, September 10, 2012, Sheila Ireland and Gary Lynn, both from Leo A. Daly Architect, appeared before the Board in support of the request.

Ms. Ireland stated that the owner would like to use the existing 5th floor assembly space, which raises issues of the elevator car size and stairway width. She explained that currently the elevator does not serve the 5th floor. The college is proposing to make the 5th floor accessible by extending the elevator to that floor. However, the existing structure does not allow extending the elevator cab so that it could meet the current standard for an elevator cab to accommodate a stretcher as per the code. She stated that the Fire Department had been out to the building and were able to fit a stretcher inside the elevator car.

Ms. Ireland added that, because the floor is an assembly space and the occupancy load will exceed 50 people, two exits are required. She stated that the existing stair does not meet the code in regards to width, risers, and treads. She explained that the riser and tread issue could be easily addressed; however, the existing concrete structure would have to be altered to make the existing 41 inch stair the required 44 inches as dictated by the code. Ms. Ireland noted that the width does meet the calculated egress width requirement, not the minimum 44 inch egress requirement. In order to use the exit, the exit enclosure would have to be extended across the hall on the level below so that it could tie in to the existing stair enclosure. She explained that the proposed exit enclosure would also solve both the common path of egress travel and dead end corridor issues. Ms. Ireland noted that the common path of travel issue is clearly defined in the Life Safety Code; however, she claimed that the International Business Code does not clearly differentiate between whether the path of travel takes place inside or outside of the exit closure. Ms. Ireland stated that their proposed plan meets the intent of the code.

In response to Mr. Ryan, Ms. Ireland clarified that the proposed plan meets the Life Safety Code; however, it does not necessarily meet City code.

Mr. Santo inquired as to why the applicant decided to not go along with the recommendation of the Fire Department and Planning Department, eliminating the need for all of the requested waivers with the exception of the Elevator car to accommodate ambulance stretcher. Mr. Ireland responded that it would not be technically feasible since the existing structure of the building would have to be adjusted. She stated that they did not know if the structure would support the additional stairs, and that the client would have to hire a structural engineer to assess it.

Mr. Lynn added that the corridor currently has a smoke detection system installed and that they are proposing to extend the system to the entire area to provide early warning for residents.

Greg Hauptman, Plans Examiner – City of Omaha, stated that the Planning Department does not agree with what the applicant is proposing, or with the claim that the plan meets the intent of the code. He explained that adding doors will not eliminate the dead end corridor issue, and exit enclosures are to be vertical and cannot be extended horizontally, per City code. He further noted that the code does not allow anyone to enter a protected area and then leave it to get to a second exit. Mr. Hauptman noted that, at an earlier meeting with the applicant, the Planning Department was not shown plans for floors 1 – 3, only floors 4 and 5. During that meeting the applicant was advised of where the stair should be located so that the proposed plan would meet code requirements. He explained that when the application was submitted for the Building Board of Review, he noted that there is already an existing stair, and concluded that extending the stair is all
that would be required to eliminate all but one of the waivers being requested. Mr. Hauptman stated that the Planning Department does not support any of the applicant’s requests, except for the "elevator car to accommodate ambulance stretcher," which is also supported by the Fire Department.

In response to Ms. Kiel, Ms. Ireland stated that her client did not want to proceed with the Planning and Fire Departments’ recommendation because it could not be done as part of their project. She added that the owner initially proposed to not use the part of the floor where the classroom is located. This would reduce the number of occupants and allowing them to have only one means of egress, which is allowed for an occupant load of under 50. In addition, they proposed to replace the door with an access panel so that the campus engineer would be able to maintain the area.

In response to Ms. Ireland, Ms. Kiel suggested that the area on the 5th floor not be used at all since it was not safe.

Ms. Makinster inquired into the possibility of adding a fire escape to the exterior that would connect to the existing stairs. Mr. Hauptman agreed that that would be an acceptable option. Ms. Ireland stated that adding a fire escape was not an option for the applicant at this time.

Motion by Mr. Feurbach to APPROVE the waiver for Section 3002.4 – Elevator car to accommodate ambulance stretcher. Seconded by Ms. Kiel.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-0

Motion by Mr. Feurbach to DENY all remaining waiver requests. Seconded by Ms. Kiel.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-0
At the Building Board of Review meeting held on Monday, September 10, 2012, John Chatelain appeared before the Board in support of the request.

Mr. Ryan recalled that the Church was awaiting a court decision in regards to the owner of the property. Mr. Chatelain stated that, although the Nebraska Diocese is claiming ownership, title records actually show that the parish owns the property. He added the case is currently pending in the District Court. Mr. Chatelain further added that the roof had been torn down at the request of the Board’s request and that his client was hesitant to do a lot of work to the property since the Diocese is claiming ownership. Mr. Chatelain suggested that the City notify the Diocese and national Church and request that they appear before the Building Board of Review.

Kevin Denker, Chief Housing Inspector – City of Omaha, confirmed that the porch roof had been torn down as requested. He stated that Roger Carroll, Housing Inspector, had been to the property the morning of September 10, 2012, to take pictures (Exhibit 2, dated 9-11-2012). He noted that there were people in and around the property. There are also issues with holes on the front porch mainly at the top of the stairs, along with the gutter, a light fixture, and other materials hanging from the structure. Mr. Denker stated that the Housing Division would agree to lay the case over, as long as repairs to the items he mentioned were done. Mr. Chatelain stated that he would advise his client of the repairs that needed to be done to the property. He also proposed that his client could board up the entire front porch to keep individuals from entering the property.

In response to Mr. Feuerbach, Mr. Denker stated that an attempt could be made to notify the Diocese. Mr. Chatelain agreed to provide Mr. Denker with contact information for the Diocese. Ms. Kiel agreed that the case should be laid over to give the Diocese the opportunity to appear before the Board.

Motion by Ms. Kiel to LAYOVER until the November 5, 2012 meeting of the Board to give the Diocese the opportunity to appear. Also, the front porch must be repaired or enclosed and all materials hanging from the materials must be secured. Seconded by Ms. Makinster.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-0
At the Building Board of Review meeting held on Monday, September 10, 2012, Liz Culhane, Fraser Stryker Law, appeared before the Board in support of the request.

Motion by Mr. Feuerbach to combine case number 11-54 and 11-55. Seconded by Ms. Makinster.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-0

Kevin Denker, Chief Housing Inspector – City Omaha, stated that Ms. Culhane had met with the Planning Department during the week before the September 10, 2012 meeting of the Board. He submitted a letter regarding the pre-application review from Rick Cunningham, Planning Director, addressed to Jerry Slusky of Smith, Gardner, Slusky Law, dated July 19, 2012 (Exhibit 2, dated 9-10-12). Mr. Denker stated that Millard Lumber has continued to keep the property secure and has agreed to communicate with their neighbors. The applicant has begun to discuss Tax Increment Financing (TIF) with the Planning Department. Mr. Denker further stated that he had no objections to laying the case over at the applicant’s request.

Ms. Culhane noted that the letter (Exhibit 2, dated 9-10-12) listed a variety of issues that needed to be addressed by her client. She requested a 6 month layover to address those issues.

Motion by Mr. Santo to lay the case over for 6 months until the March 2013 meeting of the Board. Seconded by Mr. Feuerbach.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-0
At the Building Board of Review meeting held on Monday, September 10, 2012, John Chatelain and Mary Rivas, appeared before the Board in support of the request.

Mr. Santo moved to combine case numbers 12-030, 12-031, 12-032, and 12-033. Seconded by Mr. Feuerbach.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-0

Kevin Denker, Chief Housing Inspector – City of Omaha, stated that Code Enforcement was contacted by the Omaha Fire Department, who informed them that a vehicle had driven into the lower unit of the property. Mike Johnson, City of Omaha - Housing Inspector, met with the owners and inspected the property. Mr. Denker submitted an article from the Omaha World Herald that reported the incident (Exhibit 2), and pictures taken of the property by Mr. Johnson (Exhibit 3).

Mr. Johnson stated that an occupant of the unit that the car went into allowed him into the apartment. He noted that the owner of the property was on site and accompanied him on his inspection.

Mr. Chatelain stated that his client did not give Mr. Johnson permission to enter the unit. He explained that the occupant of the apartment was in the hospital and, therefore, not able to give permission for Mr. Johnson to enter the unit. Mr. Johnson responded that a woman who lived in the apartment with the legal tenant gave him permission.

Mary Rivas, the property owner, stated that when she arrived at the property the morning after the incident, Mr. Johnson was already there. She further stated that she did speak with Mr. Johnson, but denied walking through the property with him. In response to Mr. Chatelain, Ms. Rivas stated that Mr. Johnson was completing his inspection of the building when she arrived at the property.
RoseMarie Horvath, City of Omaha – Law Department, advised Mr. Johnson to give more details to the Board of what occurred when he visited the property. Mr. Johnson stated that on July 6, 2012 at approximately 9:00 a.m. he met with a female tenant who was removing items from the unit. He explained that, at the time, he did not know the exact nature of the relationship between the woman and the tenant on the lease. He informed her of who he was, then asked for and was given permission to take a look inside the unit.

Mr. Chatelain stated that he and his client had no objection to Mr. Johnson inspecting the damage from the auto accident. They did object to Mr. Johnson entering the unit and performing an inspection on the interior, which he claims did not pertain to the car accident.

In response to Ms. Makinster, Ms. Rivas stated that, given her state of mind at the time of the incident, she was not sure if she would have given Mr. Johnson permission to enter the unit if he had asked.

Mr. Johnson stated that he was never denied access to the property by Ms. Rivas. In response to Mr. Chatelain, Ms. Rivas stated that she may have given Mr. Johnson permission to inspect the basement of the property, although she was not fully aware of the consequences of doing so.

In response to Ms. Kiel, Ms. Rivas stated that she had contacted a structural engineer the day after the accident.

Ms. Keil moved to DENY the Motion to Suppress Evidence. Seconded by Mr. Feuerbach.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-0

Mr. Johnson stated that a Demolition Order was mailed to the property owner based on the structural damage. The Demolition Order also advised what would be required if repairs were going to be made. Mr. Denker explained that Demolition Orders are not sent with the intent to demolish the structure; however, it does give the City the option to demolish the structure if no repairs are made.

In response to Mr. Ryan, Mr. Chatelain stated that his client understands what needs to be done to fix the damage from the car accident. He did not want to agree with all the other issues not directly related to the car damage, stating that they would choosing to deal with the Motion to Suppress for those items in the District Court. Mr. Chatelain submitted a Building Distress Survey & Assessment Report (Exhibit 4) from Thomas Jizba, a structural engineer with Atlas Engineering, LLC. Mr. Denker stated that Code Enforcement had seen Mr. Jizba’s report and agreed with him that the property could be repaired. Mr. Denker stated that he could agree to a layover of 6 months to give the property owner time to complete repairs to the building.

Motion by Mr. Feuerbach to APPROVE an extension for 6 months until the March 2013 meeting of the Board to allow the applicant time to make necessary repairs. Seconded by Mr. Santo.

AYES: Feuerbach, Makinster, Santo, Kiel, Ryan

MOTION CARRIED: 5-0
DISCUSSION:

None

ADJOURNMENT:

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

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

MOTION CARRIED: 5-0

Meeting adjourned at 2:30