Mr. Ryan called the meeting to order at 1:00 p.m., introduced the board members and staff, and explained the procedures for hearing the cases. Mr. Ryan informed the public that a copy of the Open Meetings Law was available for review on the north wall of the room. He noted that only those items on the agenda could be discussed at the public hearing.

Mr. Ryan explained that the 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. The 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. Thibodeau to approve the minutes for the June 13, 2016 meeting. Second by Mr. Feuerbach.

AYES: Ramm, Feuerbach, Thibodeau, Ryan

ABSTAIN: Kiel

MOTION CARRIED: 4-0-1

Mr. Jay Davis arrived at 1:06 p.m.
CASES:

Case No. 16-11
Jay Palu – Alley Poyner Macchietto
1516 Cuming St
Omaha NE 68102

LOCATION: 420 S 11 Street
REQUEST: Numerous waivers requested to rebuild fire-damaged apartment building

Mr. Jay Palu with Alley Poyner Macchietto and Mr. Chris Reed with Morrissey Engineering appeared before the Building Board of Review requesting numerous waivers regarding rebuilding a fire-damaged apartment building to its original condition prior to the fire. In review, the building at 420 S 11 Street shares a common wall with the commonly-called “Mercer Building.” There was no fire at The 420 Condo Building, but this building did receive extensive water, heat, smoke, and weeks later - mold damage. After the fire, asbestos was found in the building, and there was an eight-week time period taken to remove all asbestos. This building is listed individually as a Landmark Building. The 420 Building is unique in that the building has one stair within the property line. The second stair is shared with the adjacent building outside the property line. Originally, it was all one building, but Mr. Palu stated they are trying to work through the logistics of what that means. There are twelve individual owners and one of the condo owners owns the building adjacent. There will be two different contractors, two different architects, and there are two tenant bays in the 420 Building that will have separate permits and applications before the City when they go for their tenant buildouts. That work is not included in this waiver. One will be a restaurant and one tenant space will be retail. Mr. Palu stated the primary difficulties with code compliance are listed in this waiver. Mr. Ryan suggested each waiver be presented and voted on separately.

1) The eastern exit stair was located over the east property line of the building, located inside the adjacent building (Mercer Building) and accessible from the 2nd, 3rd, and 4th floors of the building at 420 S 11St. The opening between the two properties will be protected by a fire-rated door. It is requested that the egress stair be allowed to remain in the adjacent property, which discharges at the Howard Street level onto a public way.

Mr. Palu stated the building is required to have two means of egress; two full stairs; and both must egress to a public way. One is basically located in the center of the building, goes out to the main lobby, and basically opens up to 11th Street. The second stair goes through a fire separation wall through a fire enclosure inside the Mercer Building and then exits out onto Howard Street. This is how it functioned before the fire, and this is how Mr. Palu is requesting it be rebuilt.

Mr. Hauptman stated that the Planning Department realizes that there are quite a few areas that are not code-complaint by current standards and expects that any place that can be brought up to code be done. Mr. Jay Davis stated that he has had extensive contact with Mr. Mercer and his architect. The stair tower was only half rated when it was built. Mr. Davis stated that it was found out several days after the fire that the walkway between the two was actually burned out underneath. A lot of people and heavy equipment had been sent through there and that ceased. Mr. Davis stated that he has advised Mr. Mercer’s architect that it be brought back to a rating requirement of 2-Hours to get safe passage access including the floor system. This will be protecting two buildings, and there will be a lot of exiting that occurs in that one particular stair. Mr. Davis stated he has requested an ingress/egress easement recorded with the Register of Deeds.

Mr. Ryan asked if a new easement is required. Mr. Davis replied that it was not clear if the other was ever officially recorded. Mr. Davis stated that the City is asking that it be done properly this time.

Mr. Thibodeau inquired if this needs to be approved contingent upon the stair in the other building being constructed correctly. Mr. Davis replied that the stairs are not actually in the 420 Building. Mr. Davis suggested granting the waiver contingent upon the filing of the ingress/egress easement.
Mr. Palu stated that he cannot draw on someone else's project, but that it is documented on the egress stair that it will be completed as a code-compliant exit corridor by the adjacent building team, and it is documented that this does need to happen before occupancy is granted. Mr. Davis stated the City has met with them and stated it must be done before they will be granted occupancy in either building as well. Mr. Palu said he does not know how much of that stair has to be brought up to current code and that will be something that will be reviewed by the City when they submit that.

Mr. Feuerbach asked if the 420 Building will be sprinkled. Mr. Palu stated, "Yes, the 420 Building will be sprinkled, and it was during the event."

Ms. Kiel inquired if the stairs in the center of the building are two-hour rated. Mr. Palu stated, "Yes, that is correct. Existing steel survived, and the shaft was removed for mold issues. The build will be all new construction."

Mr. Thibodeau made a motion to allow use of the stair in the adjacent building provided that it is a code-compliant rated stair and that the appropriate ingress and egress easement is recorded. Second by Ms. Kiel.

AYES: Ramm, Kiel, Feuerbach, Thibodeau, Ryan

MOTION CARRIED: 5-0

2) Several 2-level units, located on the 4th and 5th floors, some with roof decks, exceed 125' for the common path of egress distance. All travel distances are less than 150'. The units included are: 407, 408, 409, and 411.

Mr. Palu stated four of the top floor apartments had rooftop decks which exceeded 125' travel distance. Ms. Kiel inquired what the worst case travel distance was. Mr. Palu stated, Apt 409 has 148'; Apt #410 has 115'; #411 has 129.4'; Apt 406 has 108'; Apt 407 has 139'; and Apt 408 has 138' travel distance to stair door. None of these units are over 150'. These are very large, loft-style, multi-level units.

Mr. Palu stated the Condo Association has a tight grip on occupancy. Ms. Kiel asked what the Condo Association's maximum occupancy was. Mr. Palu answered that they regulate businesses in the spaces. They do not allow occupants to have B&Bs or temporary rentals. Mr. Palu did state the Condo Association rules can change by voting from the Association. Mr. Palu wanted the Building Board of Review members to know that there are separate rules for the condo owners. Mr. Palu stated that he looked at alternatives of getting extension of hallways, reduction of unit sizes, but there just wasn't anything more that he could do to resolve this issue.

Mr. Ryan questioned again that none of the units had greater than 150', and Mr. Palu reiterated that was correct. Mr. Palu added that there was no fifth floor hallway in the building. Mr. Palu stated they looked at alternatives. They would have had to legally change property lines for half the building owners to make that physically possible. The decks are existing on the roof. They all have been told that they cannot extend them and that they cannot add on. Mr. Palu stated that they are updating the guardrails to be code compliant. A few of them did not have complete guardrails. The Condo Association does not want people on the roof either.

Ms. Kiel moved to accept the waiver to allow reuse of any existing rooftop decks provided that none of them get any larger or change in any way from the way they were before the fire. Any non-compliant handrails, guardrails, etc. should be brought up to current code requirements. Second by Mr. Feuerbach.

AYES: Ramm, Kiel, Feuerbach, Thibodeau, Ryan

MOTION CARRIED: 5-0
3) Units are privately-owned condominiums which exceed 2000 square feet and typically occupied by one or two people on a daily basis, most units are one or two-bedroom units. Creating a second egress door from the units would require a significant change in the pre-fire layout and require several owners to lose unacceptable amounts of square footage from their units as secondary egress doors would also create the need for an additional corridor on the fifth floor.

Mr. Palu stated there are several units that are over 2000 square feet which require two separate exits. Ms. Kiel inquired how much over these units are. Mr. Palu stated 2000 square feet equates to 10 occupants. The units over include: 2400’ square feet equals 13 occupants; 3500’ equals 18 occupants; a 12 occupant space; a 2000 square feet which equals 10 occupants; 3040 square feet equals 16 occupants; and a 13 occupant space.

Mr. Hauptman inquired if Mr. Palu knew how many occupants actually live in each of these units. Mr. Palu stated that he has met with all of the current residents as part of planning for the redesign and to his knowledge there are two in every unit as a maximum currently that live there full-time. Mr. Paul stated, “There are a handful of single individuals, and then we have none that have school-aged children. There are a few who have college-aged or married, some have grandchildren, but as of now, two is the maximum. There is one individual who may make their unit a one bedroom. The concept is open dining, open kitchen, open living room, and then upstairs one bedroom, one bath, with a large opening to below. This limits the ability to divide it up with a hallway. They are long and typically have exposures just on one side.”

Mr. Hauptman asked if any of these owners want to change the floor plan such that it will increase the common path travel distance. Mr. Palu stated, “No. Almost all of them want the space next to the windows open.” Some may want expansion of kitchens and conversation regarding possibly the addition of a standup shower and bath as separate functions. One unit is potentially up for sale depending upon the outcome of the settlement. There is one bank-owned unit which there has been no discussion yet on it.” Mr. Palu stated, “They will likely build it exactly as it was before and then it will sell.”

Mr. Ryan asked Mr. Palu if the HOA limits the number people per unit. He replied, “They limit the activities allowed.” Mr. Palu stated they are encouraging the owners to figure out what they want now because it will be hard to change after the plumbing gets put in. There will be one plumber doing all of the work and one design team to be responsible. Changes will be difficult because they would be going through the neighbors, disrupting business on the lower level. Mr. Reed added that the ventilation shafts are designed with respect to the original floor plans. It would be difficult to add another dryer or bathroom.

Permits and Inspections does not object to this waiver provided that none of the units get any larger in square footage, or the rebuild doesn’t provide a floor plan that will change or make the common path of travel distance any longer than it was before the fire. Mr. Palu added that the documents he has submitted for review do not change the common path of travel.

Mr. Feuerbach made a motion to grant the waiver provided that the floor plan change does not make the common path of travel any longer than it was before the fire. Second by Mr. Thibodeau

AYES: Ramm, Kiel, Feuerbach, Thibodeau, Ryan

MOTION CARRIED: 5-0
4) The existing stair leading from the fifth floor to the roof deck in unit #410 does not comply with all dimensions as outlined in the code. The stair is constructed of steel stringers, treads and handrails. The risers are open. The stair is current existing. We are asking for it to remain in place, as-is. This stair is located within a residential unit. Providing a new stair would greatly alter the layout of the unit and create a financial burden for the owner.

Mr. Palu stated unit #410 is a two-story unit, L-shaped with a steel stair from the fifth floor to the roof. It is not compliant with stair egress requirements. It was existing. It was not damaged during the fire. Mr. Palu stated the tenant is requesting to reuse that existing stair.

Ms. Kiel asked what the rise and run is. Mr. Palu stated, “It is more like a ship’s ladder to give an idea of its trajectory. There is no landing. The landing is on the roof and in the unit. It is open treads, and it looks industrial.” Ms. Kiel inquired about a door. Mr. Palu stated that there is a door to the roof. It is open to the fifth floor. It is all within the unit. Ms. Kiel is concerned about someone going up there or children falling and getting hurt. Mr. Palu stated that he is concerned that he could not fit a compliant stair into that space. Mr. Palu did state that this is a two-bedroom apartment and that it is within the center of the unit. “There is just no way to make this industrial stair code compliant regarding the trajectory and the landing, stated Mr. Palu. There is no intermediate landing. Ms. Kiel asked about the rise from floor to floor. Mr. Palu replied, “The roof level is around 162, level five is about 148, and the roof does have some slope in it, so 14 feet.” The other two existing stairs are wooden. Mr. Palu is estimating that the industrial stair was added possibly 20 years ago when it was converted but he cannot be sure of that.

Mr. Davis stated the only way to make this stair more compliant is an alternating tread device and since these units are not public or rental type units and are more like a single family residence and taking into consideration the sacrifice to try to make it compliant, it would be really difficult. Mr. Palu stated they are willing to upgrade the handrails or guardrails to make it more compliant.

Ms. Kiel made a motion to allow the stair to stay as long as the handrails are upgraded to be as compliant as possible. Second by Mr. Ramm.

AYES: Ramm, Kiel, Feuerbach, Thibodeau, Ryan

MOTION CARRIED: 5-0
5) Two windows on the east elevation of the building, on the fifth floor in unit 406, are located in the fire wall between two buildings, less than 5’ from the adjacent property. Mr. Palu is requesting that these openings be allowed to remain. The current windows will be replaced with fire-rated windows and frames.

Mr. Palu stated there were two windows which were added approximately 20 years ago on the wall that is shared with the Mercer Building. They are not fire-resistant construction. They are traditional double-hung windows. They remained intact throughout the fire and did not melt. The request is to allow them to remain and would upgrade to a fire-rated window.

Ms. Kiel inquired if they would be adding fire protection for those windows. Mr. Palu stated that they are just proposing to do fire-rated windows and then fire suppression. Ms. Kiel asked if it would be fire light glass? Mr. Palu stated, “yes.” Ms. Kiel asked if it would be 90 minute or 60 minute. Mr. Hauptman asked how close the windows are to the Mercer Building. Mr. Palu stated within 5’ to 6’ approximately. Mr. Hauptman commented that if the windows are more than 30” above the Mercer Building roof, then the rating could drop back to a 60-minute rating rather than 90.

Motion by Ms. Kiel to approve leaving the windows as long as they use fire light at a rating of a minimum of 60 minute. Second by Mr. Thibodeau.

AYES: Ramm, Kiel, Feuerbach, Thibodeau, Ryan

MOTION CARRIED: 5-0

6) Mr. Ryan stated this item is a Zoning Board issue, and this Board will not address it.
7) The existing roof decks exceed the current code limits for occupied floor height limits. The roof decks were not damaged during the event. Mr. Palu is requesting they remain in place. Sprinkler heads will be installed on the exterior side of adjacent walls to cover areas of the roof deck, and all decks with non-compliant guardrails will be upgraded during the second phase of the project.

Mr. Palu stated there are three existing roof decks. One was permitted, and two were not. They are in place and the owners would like to keep them. The request is to not consider them a story to allow the three existing roof decks to remain in place. Mr. Palu wanted it noted that there is a commitment by his team to keep the three and then obviously not add any additional decks. This has been expressed to all the individual owners, and all the individual owners heard Mr. Palu’s team say that. Ms. Kiel asked if this was in writing, and Mr. Palu stated that everything they have given the owners has been in writing. Mr. Palu stated that regardless to what the real estate agents may have told the owners, they are aware that nothing can be approved without going through the City. A few of the owners were told they had rights to a rooftop deck. Mr. Palu informed the owners that he did not know what that meant, but that it doesn’t mean anything to his team of architects or to the City. Mr. Palu has told the Condo Board that all they can address is the current City-adopted code and that there are no rights to anything until it is approved by the City.

Ms. Kiel made a motion to allow this waiver as is with the stipulation that no additional areas up on the roof be added. Second by Mr. Feuerbach.

AYES: Ramm, Kiel, Feuerbach, Thibodeau, Ryan

MOTION CARRIED: 5-0
8) The current code requires dryer venting to be placed on an emergency generator. A fan will be installed to provide continuous upward airflow. The request is for the emergency generator requirement be waived for this system. The dryer venting systems in the building will meet all other current code requirements.

Mr. Reed stated that the building does not really allow use of sidewall exhaust methods for bath exhaust and dryer exhaust. In addition, because these units are so large, the windows are not big enough to allow natural ventilation so, therefore, outside air will need to be brought into the building for ventilation to meet the code requirement. Therefore, all bath exhaust, dryer exhaust, and outside air are going to the roofs and shafts. The code requires that there is a fan at the top of the shaft that is continually pulling air out of the shaft, but we do not have it connected to an emergency generator.

Mr. Thiebodeau asked for clarification of the smoke damper at the shaft. Mr. Reed stated that the code requires any penetration into a shaft be provided with smoke/fire dampers, and that a backup power source be provided. The only request for this waiver is for the backup power. All other provisions of this section shall still apply. Mr. Reed stated in defense of this waiver that in the event of a power failure, the dryers and bath fans would not be able to operate so no one would be adding lint to that shaft even though the fan at the top of the shaft would not be operating. The whole system would just shut down.

Mr. Thibodeau wanted clarification that Mr. Reed is proposing to omit the fire/smoke dampers on the exhaust duct. Mr. Reed stated, “Yes, which is per Code, just to allow us to do it without the addition of the generator.” Mr. Reed reiterated that the generator is the only issue and that all other code requirements will be met.

Mr. Ramm asked if it is a life-saving issue. Mr. Reed stated, “No, the shafts are rated. The intent of the fan is to keep an upflow of air in that shaft to get lint which is flammable out of the building. If there is a power outage and the fan fails, the dryers would stop running, so there is no way to generate lint.”

Motion by Mr. Thibodeau to approve the waiver for installation without a backup generator. Second by Ms. Kiel.

AYES: Ramm, Kiel, Thibodeau, Ryan

NAYS: Feuerbach

MOTION CARRIED: 4-1
Mr. and Mrs. Roger Knobbe appeared before the Board requesting a waiver to allow the use of electric fencing within a residential area. This is the Skyline Ranch area which is an equestrian area. There are 13 miles of trails which are allowed for horses intertwined within this area. This property is between 2.5 to 3 acres. This area is zoned R-1 which does not allow the use of electric fencing.

Mr. Knobbe stated that they have two horses which they would like to move onto this property. They are show horses, and one of them is a “leaner.” Mrs. Knobbe stated that she has questioned several veterinarians regarding this issue, and they have stated that an electric fence would not harm the animals. They would like to put in a high tensile steel fence as pictured at the bottom of Exhibit One. This would be four row of high tensile and top is vinyl lining that is more of a barrier and a visual appearance. Two of the wires they are requesting to be electric and would not be on at all times. This would be used for training. If the horses start leaning again, they could turn them back on in increments to get them trained. Mr. Knobbe stated they have submitted it to the Neighborhood Association who were good with it. Two properties would share the fence and put it right on the property line. Their two children would be training the horses. Barbied-wire is dangerous both for the children and the horses. Mrs. Knobbe stated this is the safest fence for her horses. She does not want them to get lose on 204 Street.

Mr. Ryan asked what kind of a sensation the animals would feel. Mrs. Knobbe replied, it is similar to radio fencing for your dogs. It will not hurt them. There are ranges that you can set it at.

Ms. Kiel asked how much it would be turned on. Mrs. Knobbe said it would depend on how long it takes to train the horses; possibly 100% of the time in the first two weeks, and then it would be backed off. Mrs. Knobbe said it has a manual turn off. Once they are trained, she will leave it off. Possibly in the spring, it would be turned back on when the horses are trying to stick their heads through the wires to eat the grass.

Ms. Kiel asked about children being around it. Mr. Knobbe said the fence would be along the backside horse trail. Mrs. Knobbe said there is a 5’ buffer between the fence and the trail. Mr. Knobbe stated there was an old split-rail fence with a hot wire on the top. It was beyond repair so they took it down. Mr. Knobbe stated they would be willing to put up signage.

Mr. Ryan asked about the sensation if standing in a puddle of water. Ms. Kiel asked what happens when it rains. Mrs. Knobbe stated that if the fence breaks, as if a tree would fall on it, the fence stays straight, and the circuit breaks. It is vinyl covered so unless someone would take a knife to it and strip it, nothing is going through it and you do not have to worry about exposure. Ms. Kiel inquired as to the voltage. Mrs. Knobbe said it would not be much stronger than putting your tongue on a battery.

Mr. Feuerbach stated he is reluctant due to kids being back along the trail. Mrs. Knobbe stated they would be willing to put the wire on the backside of wood and also would be willing to post signage. Mr. Feuerbach agreed that would be safer from his perspective.

Mr. Hauptman stated that the zoning issue was the only reason that the electric fence was denied by the City. After discussion by the Board and Mr. Davis, the unique area seems to be fit closer to DR than R-1.

Mr. Thibodeau made a motion to allow the use of the electric fence provided that the sections that are along the trail have two levels of wood of some type attached to the outside of the two electric wires and that the fence is marked as an electrified fence. Second by Ms. Kiel.

AYES: Ramm, Kiel, Feuerbach, Thibodeau, Ryan
MOTION CARRIED: 5-0
ADJOURNMENT:

Meeting was adjourned by consensus at 2:23 p.m.