

**CITY OF TEMPE
BOARD OF ADJUSTMENT**

**Meeting Date: 07/19/2023
Agenda Item: 2**

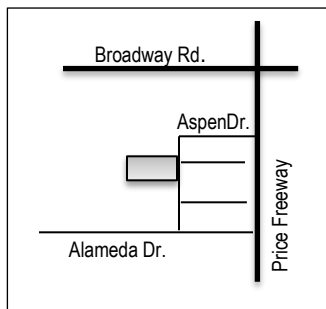
ACTION: Request for an Appeal of the Zoning Administrator’s decision to deny a Reasonable Accommodations Waiver to increase the number of residents in a group home from five (5) to ten (10), pursuant to ZDC Section 3-409, for NORTHSIGHT SIESTA, for a proposed group home located at 2604 South Siesta Drive. The appellant is Northsight Recovery, LLC. (Item was continued from the June 21, 2023 meeting)

FISCAL IMPACT: There is no fiscal impact on City funds.

RECOMMENDATION: None

BACKGROUND INFORMATION: NORTHSIGHT SIESTA (PL220335) includes a request to appeal the Zoning Administrator’s decision to deny an increase in the maximum number of group home residents from five (5) to ten (10). This excludes any staff that may reside on site. If the appeal is approved, the Group Home will be allowed to complete the remaining building permit review process, grant the use of the site as a group home, and receive the necessary permits. The request includes the following:

ADMA230001 Appeal of the Zoning Administrator’s decision to deny a Reasonable Accommodations Waiver to increase the number of residents in a group home from five (5) to ten (10) (ADM220037))



Property Owner	Nolan/Jana Pierce
Original Applicant	Jason Oakley, Northsight Recovery
Appellant	Evan Schlack, Northsight Recovery
Zoning District	R1-6
Gross/Net site area	6,974 s.f. lot
Total Building area	2,033 s.f.

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Ryan Levesque, Deputy Community Development Director (480) 858-2393

Department Director: Jeff Tamulevich, Community Development Director
 Legal review by: N/A
 Prepared by: Ryan Levesque, Deputy Community Development Director

COMMENTS

The City of Tempe, Community Development received a building permit application for a Group Home, consisting of up to 10 residents. Tempe's regulations on the number of allowed residents in a Group Home, pursuant to ZDC Section 3-409, was amended from 10 to 5 residents and went into effect on July 10, 2021. The application received for a Group Home at 2604 South Siesta Drive was in compliance with the 1,200 foot property to property separation requirement from another Group Home. Instead of seeking permission for the property as Group Home compliant with city's regulation the applicant sought to apply for a "Reasonable Accommodations Waiver", a new administrative process allowing persons with a disability the ability to make a request waive certain zoning rules, policies, or practices under the Fair Housing Act.

The applicant had not provided the Community Development staff with the necessary nexus showing the link between the disability and the request to increase occupancy to 10 residents. Under both federal law and the city's ordinance, it is the applicant's burden to show the nexus between the disability and the reasonable accommodation request and this request fails for this reason. The zoning clearance process required the applicant to meet the established zoning district separation requirements, which the site was eligible to have a Sober Living group home with up to 5 residents, excluding staff. During the initial reviews of the application staff provided information that the site was previously used and approved for an elder group home having not more than 5 residents. Group Homes containing 6-10 residents are required to change the use occupancy of the home from an R3 to R4 occupancy. Which means greater building code safety standards provided to the home, including among other requirements, the installation of an emergency fire sprinkler system.

On the April 10, 2023, 3rd revised letter received by the applicant, it was noted that the current 2604 South Siesta Drive, "*The individuals who reside at the property... currently receive treatment with programs like those provided by NorthSight Recovery's outpatient treatment center (Arizona Department of Health Services License: OTC11514)*". To the confirm this information and to the City's surprise, Northsight Recovery had already received a license with the Arizona Department of Health Services (AZDHS) as a sober living home for 10 residents with a license issuance date of April 8, 2022, which has now been renewed with another year until April 7, 2024. AZDHS's initial sober living application requires that the applicant provide, "*Attestation that the applicant is in compliance with local zoning ordinances, building codes, and fire codes.*" This was not the case as the license filing with the state was well in advance of the request made to the City of Tempe. As a result of the reasonable accommodations waiver denial, the State agency was notified of the action rendered by the City and the current non-conforming use.

PUBLIC INPUT

No public input received on this matter. The application was reviewed as an administrative request and public advertisement is not required for this type of appeal.

REASONABLE ACCOMMODATIONS WAIVER

Pursuant to the Tempe Zoning and Development Code, Section 3-409 (D).

Reasonable Accommodation Waiver. The purpose of this Section is to establish a procedure for persons with a disability to make a request for reasonable accommodation in the application of Tempe's zoning rules, policies, practices and procedures pursuant to Section 3604(f)(3)(b) of Title 42 of the Fair Housing Act which prohibits local government from refusing to make reasonable accommodations when these accommodations are necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. A reasonable accommodation for a group home will be granted or denied, In accordance with the requirements stated herein. A request for such a reasonable accommodation waiver must be in writing and filed with the Zoning Administrator (exceptions for the waiver request to be in writing may be made on a case-by-case basis). In all cases, the Zoning Administrator, or designee, shall make findings of fact in support of their determination and shall render a decision in writing. The Zoning Administrator may meet with the person making the request for additional information or discuss an alternative accommodation, in order to ascertain or clarify information sufficiently to make the required findings. To grant a reasonable accommodation waiver, the Zoning Administrator shall find affirmatively all of the following:

1. The requesting party or future occupants of the housing for which the reasonable accommodation has been made are protected under the Fair Housing Act and/or the Americans with Disabilities Act;
2. The request is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling;
3. The request will be in compliance with all applicable building and fire codes;
4. The request will allow for the maintenance and preservation of the residential characteristics of the neighborhood and will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts, impacts on water or sewer system, or other similar adverse impacts; and
5. Profitability or financial hardship of the owner/service provider of a facility shall not be considered by the Zoning Administrator in determining to grant a reasonable accommodation waiver.

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

CONDITION(S) OF APPROVAL:

1. This appeal is valid only after a Building Permit for the Group Home has been obtained and the required inspections have been completed and a Final Inspection passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

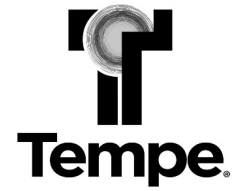
- Approval shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months of the approval or within the time stipulated by the hearing body. The period of approval is extended upon the time review limitations set forth for building permit applications, pursuant to Tempe Building Safety Administrative Code, Section 8-104.15. An expiration of the building permit application will result in expiration of the variance.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through www.tempe.gov/planning/documents.htm or purchase from Development Services.

HISTORY & FACTS:

- | | |
|--------------------|--|
| July 24, 2009 | Eldercare at Siesta filed an application for a group home consisting of 5 clients. Date of group home vacating site unknown |
| June 10, 2021 | City Council adopts Ordinance No. O2021.22, a Zoning and Development Code, code text amendment with a comprehensive rewrite of Section 3-409, regarding Group Homes, which included the Code change that reduced the allowed number of residents from 10 residents to 5 residents excluding staff members. |
| September 28, 2022 | Building Permit application filed for Group Home consisting of 10 residents |

October 6, 2022	Community Development notified applicant that permit was not accepted, due to number of residents requested.
November 30, 2022	Northsight Siesta submits application for Reasonable Accommodations Waiver
January 19, 2023	Northsight Siesta 2 nd submittal of revised application in response to city review.
April 14, 2023	Northsight Siesta 3 rd submittal of revised application in response to city review.
April 20, 2023	Zoning Administrator issues decision letter to deny the Reasonable Accommodations Waiver request to increase the number of residents from 5 to 10, excluding staff.
May 3, 2023	Applicant files an appeal from the ZA decision. To be heard at the next available Board of Adjustment meeting.
June 21, 2023	Board of Adjustment, at the request of the applicant, moved to continue the appeal for this request, due to the limited number of Board members (3-2 vote, 2 absent)
July 19, 2023	Boards of Adjustment meeting to hear the appeal for this request (continued from June 21, 2023).

ZONING AND DEVELOPMENT CODE REFERENCE:
Section 3-409(D), Reasonable Accommodation Waiver
Chapter 8, Appeals



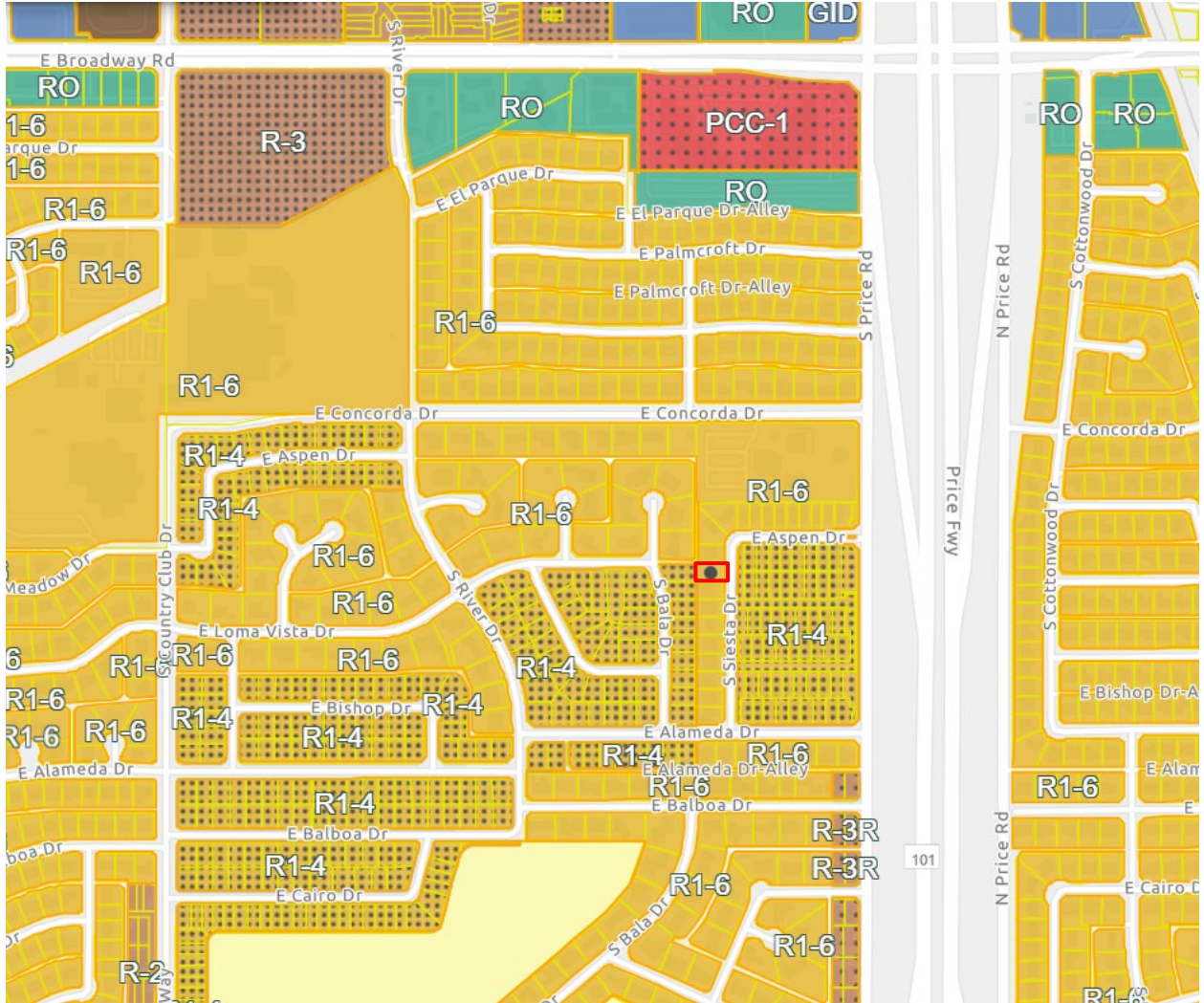
DEVELOPMENT PROJECT FILE
for
NORTHSIGHT SIESTA
(PL220335)

ATTACHMENTS:

1. Location Map
2. Aerial Map & Site Photo
- 3-7. Letter of Appeal with attachments, dated May 5, 2023
- 8-11. 1st Review Reasonable Accommodations Waiver & City Comments
- 12-17. 2nd Review Reasonable Accommodations Waiver (revised) & City Comments
- 18-22. 3rd Review Reasonable Accommodations Waiver (revised)
- 23-24. Zoning Administrator's Decision letter, dated April 20, 2023

LOCATION MAP

NORTHSIGHT SIESTA



AERIAL MAP & SITE PHOTO

NORTHSIGHT SIESTA





T: 800-905-6419
W: www.northsightrecovery.com
E: info@northsightrecovery.com
A: 1440 E. Southern Ave.
Tempe, AZ, 85282

May 3, 2023

City of Tempe
Community Development Department
c/o Board of Adjustment
Tempe, AZ 85280

Re: NorthSight Recovery – Siesta

Appeal of Zoning Administrator Decision – Reasonable Accommodations Waiver Request

2604 South Siesta Drive

DS221693 / BP221985 / PL220335 / ADM220037

To Whom It May Concern:

NorthSight Recovery (“**NorthSight**”) received the Zoning Administrator’s April 20, 2023 denial of the request for a reasonable accommodation waiver. This letter sets forth the specific grounds for appeal of that decision.

As a member of the community – with its headquarters and principal place of business in Tempe, Arizona – NorthSight respectfully requests the Board of Adjustment to grant its reasonable accommodation request to increase occupancy of the residence *from* a maximum of no more than 5 unrelated persons, *to* a maximum of 10.

I. THERE IS A CLEAR NEXUS BETWEEN THE DISABILITY OF THESE INDIVIDUALS, THE NEEDS OF THE OVERALL COMMUNITY, AND THE REQUEST TO INCREASE OCCUPANCY TO 10 RESIDENTS.

As stated in NorthSight’s April 10, 2023 correspondence to the Zoning Administrator – which is attached hereto as **Exhibit A** and incorporated by reference – the requested occupancy increase is necessary for the health of these disabled individuals. More specifically, there is a trilateral nexus which links the needs of these individuals, the needs of our community, and the request to increase occupancy.

A. THE HEALTH NEEDS OF THE DISABLED INDIVIDUALS NECESSITATE COMMUNITY-BASED HOUSING

NorthSight’s outpatient treatment center is home to a diverse clinical team that possesses a unique blend of education and experience. Currently, this team includes Dr. Stephen Bass (Board Certified in Addiction Medicine), Dr. Brittany Pierce (Clinical Psychologist), Dr. Laurel Rettle (PhD, LPC, LISAC), Shawn Gallow (LISAC, CADAC), Danielle Hansen (Psychiatric Mental Health Nurse Practitioner), and a team of other Master’s-level therapists, case managers, medical assistants, and support personnel. This group of

individuals is uniquely-suited to address the needs of individuals affected by mental health and substance use disorders.

When NorthSight is introduced to an individual – by way of direct contact, through a family member, or through a community partner – one of the first matters to address is the individual’s social determinants of health (“**SDOH**”). The SDOH are the nonmedical factors that directly influence health outcomes. The concept of social determinants of health has been embraced by medical and social service professionals, the World Health Organization,¹ the Centers for Disease Control,² and even the City of Tempe itself.³

Five (5) key areas are examined when looking at an individual’s SDOH: healthcare access and quality, education access and quality, social and community context, economic stability, and neighborhood and built environment. All five (5) SDOH are implicated by the reasonable accommodation request for increased occupancy currently under review:

1. Healthcare Access and Quality;
2. Education Access and Quality;
3. Social and Community Context;
4. Economic Stability; and
5. Neighborhood and Built Environment.

NorthSight currently offers transitional, supportive housing to handicapped and disabled individuals that is specifically intended to remove socioeconomic and geographic barriers to healthcare. Each individual who is deemed appropriate for transitional, supportive housing comes from a rural community, built environment, and/or a social environment that is not conducive to healthcare, either due to logistical (e.g., limited healthcare providers, geographic distance from healthcare providers, lack of means or methods of transportation to receive treatment) or other factors (i.e., negative cultural and social stigmas associated with treatment; studies have shown that the impacts of community gossip can worsen health and well-being). Moreover, many of these individuals are currently homeless, in inadequate housing, and/or have disabilities that prevent them from securing gainful employment to improve their economic conditions. Without the option to reside in transitional, supportive housing within a community, many of these individuals will never receive the treatment they so desperately need.

For more than 60 years, medical and social service professionals have understood that institutional life impairs disabled individual’s motor, learning, communication, and general social skills,⁴ whereas life in the community exposes them to “the patterns of life and conditions of everyday living which are as close as possible to the regular circumstances and ways of life of society”⁵ and offers opportunities for normal social

¹ World Health Organization, Social Determinants of Health, available at https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1.

² Centers for Disease Control, Social Determinants of Health at CDC, available at <https://www.cdc.gov/about/sdoh/index.html>.

³ City of Tempe, Community Health and Well-Being, available at <https://covid19.tempe.gov/pages/e8ca15a05b1c43cca3fac62c1f3550ef>

⁴ Faber, Mental Retardation, Its Social Context and Social Consequences (1968); Woloshin et al., The Institutionalization of Mentally Retarded Men Through the Use of a Halfway House, *J. Ment. Retard.* 21 (June 1966); Tizard, Community Services for the Mentally Retarded (1964); Dentler & Mackler, The Socialization of Institutional Retarded Children, 2(4) *J. Health Human Behavior* 243 (1961); Phillips & Bathazar, Some Correlates of Language Deterioration in Severely and Profoundly Retarded LongTerm Institutionalized Residents, 83 *Am. J. Mental Deficiency* 402-408 (1979).

⁵ Steinman, The Impact of Zoning on Group Homes for the Mentally Disabled: A National Survey, at 1, *ABA Section of Urban, State, & Local Gov't Law* (1986) (citing Nirje, “The, Normalization Principle,” in *Changing Patterns in*

integration and interaction that maximize their ability to achieve their human potential and become contributing members of society.⁶ Additionally, a survey conducted by the U.S. General Accounting Office found that the single most important placement factor for group homes for disabled persons was a safe neighborhood, followed by neighborhood stability, and a high percentage of single family residences within the neighborhood.

Here, NorthSight is requesting reasonable accommodation to the occupancy requirement from no more than five (5) residents to no more than ten (10) residents – and for the purposes of creating a therapeutic environment, ten (10) is an important number to reach.

Since as early as 1970 – when Dr. Irvin Yalom (Emeritus Professor of Psychiatry at Stanford University) published *The Theory and Practice of Group Psychotherapy* – medical and social service professionals have gained a greater understanding of how individuals function in a group context as well as how members of group therapy gain from such group participation. And since that time, the field has come to understand that the optimum number of individuals in these settings is approximately ten (10) individuals.⁷ Groups of ten (10) individuals can help to serve a variety of functions which include corrective, developmental, educative, preventative, recreational, and therapeutic functions, naturally fostering the environment for successful reintegration into the community. Groups of five (5) or fewer individuals, however, lack the fundamentals to create these dynamics.

NorthSight currently operates a number of transitional, supportive living homes and has consistently found that – in practice – groups of ten (10) individuals enable diverse and strong social ties and familial-like bonds to form among the residents [who are all receiving treatment for the same or similar disabilities, *e.g.*, similar trauma history]. In fact, even in other Maricopa County localities where NorthSight has been granted occupancy waivers for up to fifteen (15) individuals, it has intentionally determined not to place that number in the home in order to preserve the therapeutic environment for the individuals that reside there. Moreover, the City of Tempe was purposefully chosen to be the location of this transitional, supportive living home due to its mix of urban and suburban development, its blend of creative and cultural experiences, the close proximity it has to educational outlets (*e.g.*, Arizona State University, Rio Salado College) and the workforce opportunities it stands to offer these individuals once they have progressed in their treatment.

The requested accommodation is *critical* to provide these disabled individuals with the opportunity to not only receive care in the first place, but to receive care within a social environment (*i.e.*, as stated above) and a community environment (*i.e.*, residential neighborhood) that unequivocally enhances their opportunity for success. The transitional, supportive housing will likewise dramatically improve the residents' geographic proximity to treatment centers and help to mitigate the barriers that economic instability can provide to healthcare by reducing the cost of housing for each individual based on factors

Residential Services for the Mentally Retarded, at 231 (Kugel & Shearer rev. ed. 1976)); Butler & Bjaanes, "Activities and the Use of Time By Retarded Persons in Community Care Facilities," in *Observing Behavior: Theory and Application in Mental Retardation*, at 379-80 (Sackett ed. 1978).

⁶ Jaffe & Smith, American Planning Ass'n, Planning Advisory Serv. Rep. No. 397, *Siting Group Homes for Developmentally Disabled Persons*, at 4 (Hecimovich ed. 1986); Courmos, M.D., *The Impact of Environmental Factors on Outcome in Residential Programs*, 38(8) *Hosp. & Community Psychiatry* 848 (Aug. 1987)

⁷ See, *e.g.*, Ezhumalai S, Muralidhar D, Dhanasekarapandian R, Nikketha BS. Group interventions. *Indian J Psychiatry*. 2018 Feb;60(Suppl 4):S514-S521. doi: 10.4103/psychiatry.IndianJPsychiatry_42_18. PMID: 29540924; PMCID: PMC5844165.

which include the number of individuals in the residence (i.e., a reduced rent obligation per resident relative to a home with a married couple). Community reintegration for disabled individuals *depends* on life in the community. This cannot be overstated.

B. THE NEEDS OF OUR COMMUNITY NECESSITATE THE REQUESTED REASONABLE ACCOMMODATION TO INCREASE OCCUPANCY

As stated in more detail above, community-based housing *is* a critical component for the healthcare of these individuals. Access to healthcare – on the other hand – has been lacking in the State of Arizona and City of Tempe for years.

If the City of Tempe declines to grant the requested reasonable accommodation for the increase in occupancy, it is not difficult to surmise the impact these individuals and the larger community will face. Since 2017, the State of Arizona has been in a public health emergency concerning the opioid epidemic alone.⁸ More than five people die every day from opioid overdoses in Arizona. *Id.*

In the less than 6 years since the statewide public health emergency was declared, the situation has not improved.⁹

21,645 Verified Non-Fatal Opioid Overdose Events
9,349 Confirmed Opioid Deaths
28,229 Emergency and Inpatient Visits Involving Suspected Opioid Overdose
84% Percent of EMS/Law Enforcement Responses for Suspected Opioid Overdoses with Naloxone Administered

The Arizona State University Sun Devil Football Stadium has a capacity of nearly 54,000; despite this, it would fall short in seating the number of individuals whose lives have been impacted – first-hand – by this *single class of substances*. Each of these individuals has (or had) a mother and a father. Many of them have (or had) brothers and sisters, spouses, significant others, and even children. The impact on our community is staggering, even before consideration of the impacts from other substances (e.g., methamphetamine, cocaine, etc.) and from mental health issues (e.g., suicides).

Moreover, this is not an issue isolated to rural communities in Arizona. Maricopa County holds the lion’s share of these statistics, with more than half of the State’s non-fatal overdoses, fatal overdoses, emergency and inpatient visits involving suspected overdoses, and percentages of EMS/law enforcement responses for suspected overdoses with Naloxone administered.¹⁰

⁸ Arizona Department of Health Services, *Opioid Prevention*, available at azdhs.gov/opioid.

⁹ Arizona Department of Health Services, *Opioid Prevention*, available at <https://www.azdhs.gov/opioid/>.

¹⁰ See, e.g., Arizona Department of Health Services, *Verified Reported Overdoses by Primary Care Area*, available at <https://www.azdhs.gov/opioid/#dashboards-overdoses-local>.

The City of Tempe itself is not immune, claiming at least 740 of these overdose deaths¹¹ – more than two times (2x) the size of Tempe High School’s graduating class each year – since the Arizona Department of Health Services began collecting this information in June 2017. As if this data was not alarming enough – to reiterate – this data does not begin to touch on the impact that other substances and mental health issues have had on our community, with the suicide death rates in Maricopa County having steadily increased nearly each over the last decade.¹²

These statistics clearly demonstrate that – as a community – we are facing a crisis concerning access to adequate healthcare. Given this, one might suggest that equally important to the requested increase in occupancy is the interest of the larger community. Here before the City of Tempe is a request for cooperation from a community member¹³ to combat this crisis in the simplest form: granting a request that does not require significant or fundamental changes to its zoning laws.

Critically, the Fair Housing Act imposes an affirmative duty on the City of Tempe to take actionable steps to further its goal. As stated by Assistant Attorney General Kristen Clarke of the U.S. Department of Justice’s Civil Rights Division in February 2023: “Local governments do not have the right to use zoning laws and restrictions as a vehicle to discriminate against people with disabilities.”¹⁴ Of particular reference when making her comment was an Illinois locality’s refusal to grant a reasonable accommodation waiver from a zoning restriction of three (3) residents to ten (10) residents. The request came from a sober living home for persons in recovery from drug and alcohol addiction. One day after the sober living home requested the accommodation, the locality filed a lawsuit against the sober living home and, shortly thereafter, *the locality* agreed in a settlement to pay an \$800,000 to the sober living home. There is an undeniable resemblance to that reasonable accommodation request and the request before the City of Tempe. NorthSight urges the City of Tempe to take actionable steps in accordance with its obligations under the Fair Housing Act to show these disabled individuals some grace and to simultaneously reduce any risk that it might one day share a similar fate.

We appreciate your time and your consideration. Please do not hesitate to contact me if you have any questions. I can be reached by phone at (602) 463-5738 or by email at eschlack@northsightrecovery.com.

Respectfully,



Evan Schlack
Chief Operating Officer & General Counsel

11 See, e.g., Arizona Department of Health Services, *Verified Reported Overdoses by Primary Care Area*, available at <https://www.azdhs.gov/opioid/#dashboards-overdoses-local>.

12 Arizona Department of Health Services, *Suicide Data*, available at <https://www.maricopa.gov/5079/Mental-Health-and-Substance-Use#suicide>

13 NorthSight’s headquarters and principal place of business is in Tempe, Arizona.

14 United States Department of Justice, *Justice Department Reaches \$800,000 Settlement in Housing Discrimination Lawsuit Against the Village of Hinsdale, Illinois*, <https://www.justice.gov/usao-ndil/pr/justice-department-reaches-800000-settlement-housing-discrimination-lawsuit-against>.

**1ST REASONABLE ACCOMMODATIONS WAIVER LETTER
& CITY REVIEW COMMENTS**



T: 800-905-6419
W: www.northsightrecovery.com
E: info@northsightrecovery.com
A: 1440 E. Southern Ave.
Tempe, AZ, 85282

11/1/2022

To Ryan Levesque,

This is the reasonable accommodation waiver for 2604 S. Siesta Dr. Tempe, AZ. We are seeking to accommodate ten individuals in an Arizona Recovery Housing Association (AZRHA) licensed transitional home in accordance with Section 3-409, D.

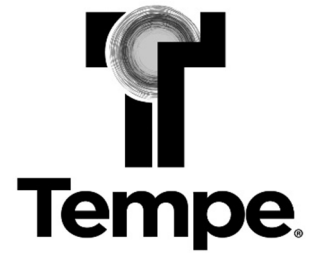
Individuals recovering from alcohol or other substance abuse can be considered disabled under the ADA and FHA. See 42 U.S.C. § 12210(b); 28 C.F.R. § 35.104(4)(1)(ii) (listing "drug addiction" and "alcoholism" as physiological impairments); Jeffrey O., 511 F. Supp. 2d at 1346-47; MX Group, Inc. v. City of Covington, 293 F.3d 326, 336-40 (6th Cir. 2002). In expanding the occupancy, we are making a reasonable and necessary request to afford individuals with a disability an equal opportunity to use and enjoy a dwelling. This request is in compliance with all applicable building and fire codes, and the personal space allotted per resident for the dwelling is both secure and comfortable.

This request will allow for the maintenance and preservation of the residential characteristics of the neighborhood due to 24-hour staffing on-site and control over the activities of the residents. This will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts, impacts on the water or sewer system, or other similar adverse impacts due to limited vehicles for residents and no excessive use of systems as monitored by staff.

Finally, there is no consideration of a financial impact included in this waiver. The only financial hardship would be the potential hardship of those in NorthSight Recovery's care that would need to be transferred to higher levels of care or risk becoming unhoused, impacting their ability to continue working on their treatment.

NORTHSIGHT RECOVERY
A PLACE FOR HEALING

City of Tempe
Community Development Department
Planning Division
Mail Stop 01-7
PO Box 5002
Tempe, AZ 85280-5002
www.tempe.gov



December 19, 2022

Jason Randy Oakley
NorthSight Recovery
1440 East Southern Avenue
Tempe, AZ, 85282
joakley@northsightrecovery.com

RE: NORTHSIGHT SIESTA RECOVERY

Administrative Review for a Group Home – Reasonable Accommodations Waiver Request

2604 South Siesta Drive

DS221693 / BP221985 / PL220335 / ADM220037

Dear Jason Oakley,

The Community Development Department received your application submitted on November 30, 2022, requesting a reasonable accommodations waiver, for a proposed Group Home, for the maximum number of residents (no more than 5, excluding staff) to no more than 10 residents, located at the site identified above. The location proposed must be in compliance with the Tempe Zoning and Development Code (ZDC), Section 3-409, Group Homes for Adult Care, Persons with Disabilities, and Child Shelter.

Before a final determination can be made on the requested reasonable accommodations waiver, please provide a response and updated letter, based on the following comments below:

- A fee was charged in error for this request, in the amount of \$502.00. We are currently in the process of issuing a refund for the total amount. No further follow-up required at this time and we apologize for any inconvenience.
- In order to grant such a waiver pursuant to ZDC Section 3-409 (D), the Zoning Administrator must affirmatively evaluate the justifications for all five (5) criteria. The letter received provides no justification or explanation to Subsection Criteria #2. *“The request is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling.”* Please explain/justify how this criteria is met? Why are you making this request to change from no more than five (5) residents to ten (10) residents, excluding staff? Please expand on and revise letter.
- Second paragraph states, *“This request will allow for the maintenance and preservation of the residential characteristics of the neighborhood...”* Please elaborate further. Was the home previously used as a group home? What was the prior occupancy allowance for the home? Does NorthSight Siesta need to make modifications to the home to allow the up to 10 occupants? (i.e. Interior or exterior modifications, additional bedrooms, building expansion, or work that may require structural or electrical permits?) Please explain and revise letter.
- Third paragraph states, *“...no excessive use of systems...”* Please clarify the meaning of this sentence or edit accordingly. Is this in response to the #4 criteria regarding “impacts on water or sewer system?”
- In response to Criteria Subsection #4, *“...will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts...”* How many vehicles do you anticipate to be on-site at any given time? And where will parking be provided?

If you have any questions, please feel free to contact the Planning Division at planning@tempe.gov, (480) 350-4311, or TDD (480) 350-8400.

Sincerely,

Ryan Levesque
Deputy Community Development Director – Planning (Zoning Administrator)
Community Development Department
Planning Division

**2ND REASONABLE ACCOMMODATIONS WAIVER LETTER (REVISED)
& CITY REVIEW COMMENTS**



T: 800-905-6419
W: www.northsightrecovery.com
E: info@northsightrecovery.com
A: 1440 E. Southern Ave.
Tempe, AZ, 85282

1/17/2023

To Whom it May Concern:

This is the follow-up on reasonable the accommodation waiver sent in November 2022 for 2604 S. Siesta Dr. Tempe, AZ. We are seeking to accommodate ten individuals in an Arizona Recovery Housing Association (AzRHA) certified transitional home in accordance with Section 3-409, D.

In response to the letter received 12/19/2023:

Thank you for refunding the fee of \$502.00.

In expanding the occupancy, we are making a reasonable and necessary request to afford individuals with a disability an equal opportunity to use and enjoy a dwelling by providing more space to serve those interested in our services. This request is being made to accommodate the waiting list of individuals who have chosen NorthSight Recovery programming as their preferred option for transitional living.

This request will allow for the maintenance and preservation of the residential characteristics of the neighborhood due to 24-hour staffing on-site and oversight for the activities of the residents. The criteria for 10 resident occupancy are met due to the home being a suitable square footage to accommodate 10 residents. In addition, the minimum restroom guidelines are met. This request follows all applicable building and fire codes, and the personal space allotted per resident for the dwelling is both secure and comfortable. The location was not previously used as a group home, to our knowledge. No modifications are needed on the home due to a previously completed addition.

This will not create a substantial detriment to neighboring properties via traffic impacts or parking issues, due to having a maximum amount of three vehicles at a given time on location. Parking on-site is available in two driveway spots or in one spot immediately in front of the house on the street. Resident vehicles may be stored off-site, if

1 of 2

needed. Often, residents do not possess a vehicle.

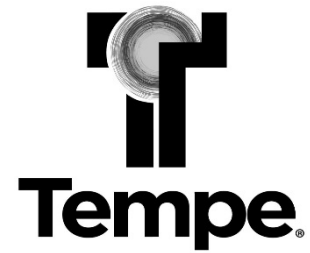
Due to the 24/7 staffing of the house, there is reasonable oversight to the amount of water being used by residents of the house as evidenced by the attached water bill.

Finally, there is no consideration of a financial impact included in this waiver. The only financial hardship would be the potential hardship of those in NorthSight Recovery's care that would need to be transferred to higher levels of care or risk becoming unhoused, impacting their ability to continue working on their treatment.

Thank you for your consideration,

Randy Oakley
Director of Housing
NorthSight Recovery

City of Tempe
Community Development Department
Planning Division
Mail Stop 01-7
PO Box 5002
Tempe, AZ 85280-5002
www.tempe.gov



March 20, 2023

Jason Randy Oakley
NorthSight Recovery
1440 East Southern Avenue
Tempe, AZ, 85282
joakley@nightsightrecovery.com

RE: NORTHSIGHT SIESTA RECOVERY

Administrative Review for a Group Home – Reasonable Accommodations Waiver Request

2604 South Siesta Drive

DS221693 / BP221985 / PL220335 / ADM220037

Dear Jason Oakley,

The Community Development Department received your application submitted on November 30, 2022, and a revised letter received on January 17, 2023, requesting a reasonable accommodations waiver, for a proposed Group Home, for the maximum number of residents (no more than 5, excluding staff) to no more than 10 residents, located at the site identified above. The location proposed must be in compliance with the Tempe Zoning and Development Code (ZDC), Section 3-409, Group Homes for Adult Care, Persons with Disabilities, and Child Shelter.

The City's review is based on compliance with Section 3-409 (D).

D. Reasonable Accommodation Waiver. The purpose of this Section is to establish a procedure for persons with a disability to make a request for reasonable accommodation in the application of Tempe's zoning rules, policies, practices and procedures pursuant to Section 3604(f)(3)(b) of Title 42 of the Fair Housing Act which prohibits local government from refusing to make reasonable accommodations when these accommodations are necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. A reasonable accommodation for a group home will be granted or denied, in accordance with the requirements stated herein. A request for such a reasonable accommodation waiver must be in writing and filed with the Zoning Administrator (exceptions for the waiver request to be in writing may be made on a case-by-case basis). In all cases, the Zoning Administrator, or designee, shall make findings of fact in support of their determination and shall render a decision in writing. The Zoning Administrator may meet with the person making the request for additional information or discuss an alternative accommodation, in order to ascertain or clarify information sufficiently to make the required findings. To grant a reasonable accommodation waiver, the Zoning Administrator shall find affirmatively all of the following:

1. The requesting party or future occupants of the housing for which the reasonable accommodation has been made are protected under the Fair Housing Act and/or the Americans with Disabilities Act;
2. The request is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling;
3. The request will be in compliance with all applicable building and fire codes;

4. The request will allow for the maintenance and preservation of the residential characteristics of the neighborhood and will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts, impacts on water or sewer system, or other similar adverse impacts; and
5. Profitability or financial hardship of the owner/service provider of a facility shall not be considered by the Zoning Administrator in determining to grant a reasonable accommodation waiver.

There is not enough specified information regarding the waiver for the disability or criteria identified above to justify the need for a reasonable accommodations waiver pertaining to the number of allowed residents within the home (excluding staff). After further research, the home was previously used as a “group home” with up to 5 residents. This building is compliant with the current R3 occupancy allowed under the building code, not to exceed 5. The property also maintains a 2 vehicle garage, as required for the home. I can provide you one more opportunity to address, in further detail, the explanations needed for a reasonable accommodations that are deemed necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. The site currently complies with Zoning and Development Code separation requirements and maximum allowed occupancy of up to five (5) residents, excluding staff.

PREVIOUS COMMENTS (ON 12/19/22):

Before a final determination can be made on the requested reasonable accommodations waiver, please provide a response and updated letter, based on the following comments below:

- A fee was charged in error for this request, in the amount of \$502.00. We are currently in the process of issuing a refund for the total amount. No further follow-up required at this time and we apologize for any inconvenience.
- In order to grant such a waiver pursuant to ZDC Section 3-409 (D), the Zoning Administrator must affirmatively evaluate the justifications for all five (5) criteria. The letter received provides no justification or explanation to Subsection Criteria #2. *“The request is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling.”* Please explain/justify how this criteria is met? Why are you making this request to change from no more than five (5) residents to ten (10) residents, excluding staff? Please expand on and revise letter.
- Second paragraph states, *“This request will allow for the maintenance and preservation of the residential characteristics of the neighborhood...”* Please elaborate further. Was the home previously used as a group home? What was the prior occupancy allowance for the home? Does NorthSight Siesta need to make modifications to the home to allow the up to 10 occupants? (i.e. Interior or exterior modifications, additional bedrooms, building expansion, or work that may require structural or electrical permits?) Please explain and revise letter.
- Third paragraph states, *“...no excessive use of systems...”* Please clarify the meaning of this sentence or edit accordingly. Is this in response to the #4 criteria regarding “impacts on water or sewer system?”
- In response to Criteria Subsection #4, *“...will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts...”* How many vehicles do you anticipate to be on-site at any given time? And where will parking be provided?

If you have any questions, please feel free to contact the Planning Division at planning@tempe.gov, (480) 350-4311, or TDD (480) 350-8400.

Sincerely,

Ryan Levesque
Deputy Community Development Director – Planning (Zoning Administrator)
Community Development Department
Planning Division

3RD REASONABLE ACCOMMODATIONS WAIVER LETTER (REVISED)

EXHIBIT A

*(NorthSight Recovery's April 10, 2023 Reasonable Accommodation
Waiver Request)*



T: 800-905-6419
W: www.northsightrecovery.com
E: info@northsightrecovery.com
A: 1440 E. Southern Ave.
Tempe, AZ, 85282

April 10, 2023

City of Tempe
Community Development Department
Planning Division
c/o Ryan Levesque
Mail Stop 07-1
PO Box 5002
Tempe, AZ 85280

Re: NorthSight Recovery – Siesta

Administrative Review for a Group Home – Reasonable Accommodations Waiver Request

2604 South Siesta Drive

DS221693 / BP221985 / PL220335 / ADM220037

Mr. Levesque:

NorthSight Recovery (“**NorthSight**”) received your letter dated March 20, 2023 (the “March 20th Letter”) concerning the Community Development Department’s (“**Department**”) review of NorthSight’s November 30, 2022 and January 17, 2023 communications. This is NorthSight’s response to the Department’s March 20th Letter. This response is intended to provide the Department with the information it needs in order to fully consider and approve NorthSight’s request for a reasonable accommodation waiver.

In the interest of efficiency and clarity, we will address each of the findings the Zoning Administrator is required to find affirmatively separately.

The requesting party or future occupants of the housing for which the reasonable accommodation has been made are protected under the Fair Housing Act and/or the Americans with Disabilities Act.

The individuals who reside at the property located at 2604 South Siesta Drive, Tempe, Arizona 85282 (the “**Siesta House**”) – including any future occupants after a potential grant of the reasonable accommodation waiver – currently receive treatment with programs like those provided by NorthSight Recovery’s outpatient treatment center (Arizona Department of Health Services License: OTC11514).

NorthSight specializes in treating complex mental health diagnoses, co-occurring problematic substance use, and lacking social determinants of health. NorthSight treats individuals with various mental health and psychiatric conditions, including but not limited to mood and anxiety disorders, personality disorders, trauma, stressor-related disorders, and substance-related and addictive disorders.

These individuals are disabled or handicapped persons for purposes of both federal and state laws which include, but are not limited to, the federal Fair Housing Act, Arizona Revised Statute §41-1491(5), and the Arizona Administrative Code. *See, e.g., Pac. Shores Props., LLC v. City of Newport Beach, Mun. Corp.*, 730 F.3d 1142, 1157 (9th Cir. 2013); 42 U.S.C. § 3602(h); A.R.S. 41-1491(5); A.A.C. R-10-2-101(b)(17)(ii).

The request is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling.

Equal opportunity laws such as the federal Fair Housing Act were intended to provide handicapped and disabled individuals the right to choose to live in neighborhoods of their choice and by serving to end their continued exclusion from mainstream society. Here, NorthSight is requesting that the Department grant a reasonable accommodation waiver for the maximum number of residents at the Siesta House to not more than 10 residents, excluding staff members [who do not reside at the home]. Granting the request for a reasonable accommodation waiver would not require the Department to make a fundamental or substantial modification to the Tempe Zoning and Development Code (“ZDC”), Section 3-409 and would be consistent with both the legislative history and purposes of the Fair Housing Act as well as the caselaw applying the Fair Housing Act to similar ordinances throughout the country. *See, e.g., City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994) (Zoning exclusions for 5 unrelated persons are not exempt from review under the federal Fair Housing Act), *aff’d sub nom. City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 115 S. Ct. 1776, 131 L. Ed. 2d 801 (1995).

In extending the protections of the Fair Housing Act to handicapped and disabled individuals, Congress was aware that many of the handicapped and disabled individuals to whom it was extending protections would require group living arrangements in residential areas. Beginning as early as the 1960s, medical and social service professionals gained a better understanding of the capabilities and needs of individuals with disabilities. They came to understand that institutional life impairs these individual's motor, learning, communication, and general social skills,¹ whereas life in the community exposes them to “the patterns of life and conditions of everyday living which are as close as possible to the regular circumstances and ways of life of society”² and offers opportunities for normal social integration and interaction that maximize their ability to achieve their human potential and become contributing members of society.³ A later survey by the U.S. General Accounting Office found that the single most important siting factor for group homes for disabled persons was a safe neighborhood, followed by neighborhood stability, and a high percentage of single family residences within the neighborhood.

¹ Faber, *Mental Retardation, Its Social Context and Social Consequences* (1968); Woloshin et al., *The Institutionalization of Mentally Retarded Men Through the Use of a Halfway House*, *J. Ment. Retard.* 21 (June 1966); Tizard, *Community Services for the Mentally Retarded* (1964); Dentler & Mackler, *The Socialization of Institutional Retarded Children*, 2(4) *J. Health Human Behavior* 243 (1961); Phillips & Bathazar, *Some Correlates of Language Deterioration in Severely and Profoundly Retarded Long-Term Institutionalized Residents*, 83 *Am. J. Mental Deficiency* 402-408 (1979).

² Steinman, *The Impact of Zoning on Group Homes for the Mentally Disabled: A National Survey*, at 1, *ABA Section of Urban, State, & Local Gov't Law* (1986) (citing Nirje, “The, Normalization Principle,” in *Changing Patterns in Residential Services for the Mentally Retarded*, at 231 (Kugel & Shearer rev. ed. 1976)); Butler & Bjaanes, “Activities and the Use of Time By Retarded Persons in Community Care Facilities,” in *Observing Behavior: Theory and Application in Mental Retardation*, at 379-80 (Sackett ed. 1978).

³ Jaffe & Smith, *American Planning Ass'n, Planning Advisory Serv. Rep. No. 397, Siting Group Homes for Developmentally Disabled Persons*, at 4 (Hecimovich ed. 1986); Courmos, M.D., *The Impact of Environmental Factors on Outcome in Residential Programs*, 38(8) *Hosp. & Community Psychiatry* 848 (Aug. 1987)

By granting the reasonable accommodation waiver for the Siesta House, the Department and the City of Tempe can satisfy its affirmative duties under the Fair Housing Act by taking actionable steps to further these goals and prevent the perpetuation of the unnecessary discrimination and exclusion of these persons. *See City of Edmonds*, 18 F.3d at 806.

As members of the community, we are hopeful the Department is willing and able to extend grace to those who need special living arrangements that are provided for under the law, particularly to those who may be rebuilding their lives. These individuals may not have the opportunity for another chance at community reintegration.

The request will be in compliance with all applicable building and fire codes.

Restrictions on the maximum number of occupants permitted to occupy a dwelling to prevent the health and safety problems caused by overcrowding – presumably the foundation of the limitation imposed by ZDC 3-409 – are not lost on NorthSight. However, those problems are not inherent to the Siesta House nor by the requested occupancy in the reasonable accommodation waiver.

As previously mentioned in NorthSight’s January 17, 2023 correspondence, the Siesta House is certified by the Arizona Recovery Housing Association. Additionally, the Siesta House is licensed as a sober living home by the Arizona Department of Health Services (SLH10347) and is among only a handful of such homes in the State of Arizona that have accreditation from the Joint Commission as a transitional living home. Put simply, the Siesta House is not your *typical* “group home” – it is a home that has consistently been tested against some of the most stringent third-party standards and has excelled each step of the way.

Assuming, *arguendo*, the Department grants the reasonable accommodation waiver, no modifications (interior, exterior, expansion, etc.) will be required in order to accommodate the increased occupancy in the home. Moreover, and as previously alluded to in prior correspondence, the existing floor plan for the Siesta House is sufficient to ensure – consistent with the Arizona Administrative Code – that there will be appropriate a square footage-per-resident ratio in each bedroom, a sufficient number of restrooms per resident, a sufficient number of emergency exits, each resident will have individual storage space for personal possessions and clothing, etc. *See AAC R9-12-207(A), (C)(1)-(3).*

In sum, the requested reasonable accommodation waiver will not pose any issues to compliance with existing building and fire codes. In fact, NorthSight would go so far as to suggest that the inherent reality the residents live in (i.e., treatment, sobriety, and recovery) and rigorous standards applied to the Siesta House by organizations like the Joint Commission (the golden standard for hospital accreditation) have likely caused the Siesta House to become a healthier and safer place to be than many other homes, regardless of location or community.

The request will allow for the maintenance and preservation of the residential characteristics of the neighborhood and will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts, impacts on water or sewer system, or other similar adverse impacts.

In every way imaginable, the Siesta House is occupied by individuals who utilize the home as their residence insofar as they receive mail, sleep in the bedrooms, eat meals, wash their clothes, return to the homes after shopping or other outings. Because of this, the Siesta House residents take great pride in their “home.”

The Siesta House – like other NorthSight transitional living homes – is limited by design to a maximum of two (2) vehicles at any given time. By and large, at any given moment, there is one vehicle belonging to the staff member working at the home and a second, larger vehicle (e.g., a van that is well-maintained and

kept in good condition) that the residents use to travel in groups together. As previously mentioned, these limitations are put into place by design not only to preserve the visually appealing characteristics of the home, but also to present what often turns out to be *less* traffic congestion than other homes in the neighborhood, which regularly have three (3) or even more vehicles. If and when residents have vehicles of their own, they will be stored at an offsite location.

Furthermore – as it relates to impact on water, sewage, and other similar matters – there can be no good faith reason to believe that the requested reasonable accommodation will lead to adverse impacts. The Siesta House residents will ordinarily be away from the property at outpatient treatment centers like NorthSight Recovery for most of the day, which greatly reduces the potential for any adverse impact. Additionally, each resident of the Siesta House is and will continue to be required to abide by “Good Neighbor” policies which guide them on actions and behaviors that they are expected to emulate as members of the community, both inside and outside of the home. And with Siesta House staffed on a 24/7 basis, NorthSight can ensure that residents continue to uphold those standards.

Profitability or financial hardship of the owner/service provider of a facility shall not be considered by the Zoning Administrator in determining to grant a reasonable accommodation waiver.

NorthSight has not previously requested and is not currently requesting the Department’s consideration of NorthSight’s profitability or financial hardship in the determination to grant the reasonable accommodation waiver – this should remain immaterial to the Department’s review and determination.

NorthSight would, however, be remiss if it did not request that the Department take into consideration the financial hardships that potential residents might otherwise face if a reasonable accommodation waiver is not granted – *i.e.*, their equal opportunity access. In such a case, these members of the community may be forced to resort to transfers to higher levels of care or face the risk of continuing to be homeless or becoming homeless, which would create a significant impediment to their continued ability to work on their treatment and may potentially pose greater issues to the community as a whole.

We appreciate your time and your consideration. Please do not hesitate to contact me if you have any questions. I can be reached by phone at (602) 463-5738 or by email at eschlack@northsightrecovery.com.

Respectfully,

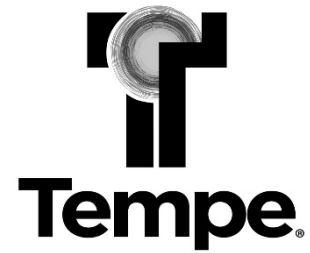


Evan Schlack
Chief Operating Officer & General Counsel



ZONING ADMINISTRATOR'S DECISION LETTER

City of Tempe
Community Development Department
Planning Division
Mail Stop 01-7
PO Box 5002
Tempe, AZ 85280-5002
www.tempe.gov



April 20, 2023

Jason Randy Oakley
NorthSight Recovery
1440 East Southern Avenue
Tempe, AZ, 85282
joakley@northsightrecovery.com

RE: NORTHSIGHT SIESTA RECOVERY

Administrative Review for a Group Home – Reasonable Accommodations Waiver Request

2604 South Siesta Drive

DS221693 / BP221985 / PL220335 / ADM220037

Dear Jason Oakley,

The Community Development Department received your original application submitted on November 30, 2022, in addition to a 2nd revised letter received on April 10, 2023, requesting a reasonable accommodations waiver, for a proposed Group Home, for the maximum number of residents (no more than 5, excluding staff) to no more than 10 residents, located at the site identified above.

The Zoning Administrator has denied the request for a reasonable accommodations waiver. The applicant has not provided the Community Development staff with the necessary nexus showing the link between the disability and the request to increase occupancy to 10 residents. Under both federal law and the city's ordinance, it is the applicant's burden to show the nexus between the disability and the reasonable accommodation request and this request fails for this reason. Furthermore, the city has found no possible alternatives. The city is also responsible for notifying the State agency in charge of the licensing program of this outcome.

If you wish to seek allowance for a group home at this location, a new application submittal is required, identifying compliance with the maximum number of residents (excluding staff). The location proposed at the time of the resubmittal must be in compliance with the Tempe Zoning and Development Code (ZDC), Section 3-409, Group Homes for Adult Care, Persons with Disabilities, and Child Shelter.

If you are aggrieved by this decision, you may appeal to the Board of Adjustment, within fourteen (14) calendar days from the date of this letter, by filing a notice of appeal with the Community Development Department, specifying the grounds for such appeal and paying the applicable fees. Please see ZDC Section 6-803, Appeal Criteria. After receipt of an appeal application, a public hearing for the appeal will be scheduled at the next regular meeting of the Board of Adjustment.

If you have any questions, please feel free to contact me at (480) 858-2393 or ryan_levesque@tempe.gov.

Sincerely,

A handwritten signature in black ink that reads 'Ryan Levesque'.

Ryan Levesque
Deputy Community Development Director – Planning (Zoning Administrator)
Community Development Department
Planning Division