

Minutes of the Board of Adjustment STUDY SESSION July 19, 2023

Minutes of the Study Session of the Board of Adjustment, of the City of Tempe, which was held in Council Chambers
31 East Fifth Street, Tempe, Arizona

Present:

Staff:

Chair Richard Watson	Jeff Tamulevich, Community Development Director
Vice Chair John 'Jack' Confer	Ryan Levesque, Comm. Development Deputy Director
Board Member Raun Keagy	Steve Abrahamson, Principal Planner
Board Member Kevin Morrow	Jennifer Daniels, Administrative Assistant II
Board Member Kaelee Palmer	
Board Member Ricky Lynn Gans	
Board Member Robert Miller (Alt)	

Meeting convened at 5:40 p.m. and was called to order by Chair Watson.

Chair Watson asked the Board if there were any questions about tonight's agenda item.

Board Member Miller asked about the specific statute the appellant is sighting. It appears it requires an agrief party The agrief party must be disabled. The appellant is a corporation. The agrief party is hypothetical residents that don't reside in the facility because it is they are not licensed to allow that number. Board Miller stated that he is not sure if it is the appropriate statute to be coming it.

Staff Mr. Ryan Levesque stated that comment might be more appropriate for the applicant to respond to during the hearing process.

Board Member Morrow asked Mr. Levesque what is an alternative way for the applicant is to have 10 residents, other than this statute? Would it be a rezoning? A change in building code? Mr. Levesque stated that other option would be a variance to waive the requirement to comply with the maximum number of residents in a group home.

Board Member Miller asked if the facility is currently listed as R3? Mr. Levesque stated that is correct. Board Member Miller asked if it could be rezoned to R4. Mr. Levesque stated that R3 is a building code and not a zoning district. R3 to R4 just has different building code standard requirements. Board Member Miller stated that if the applicant said the building was R4 and meets the safety code requirements he could have 10 residents, correct? Mr. Levesque state that if the Planning Department did not have jurisdiction in this manor, then a R4 category could be sought by Building and Safety through a building permit request. Our current zoning code restricts the ability to have more than 5 residents in a group home.

Board Member Gans stated the conversation should be held until the actual hearing. Mr. Levesque stated he agrees.

Chair Watson asked if there were any questions on last months meeting minutes. No questions from the Board.

Mr. Levesque updated the Board on conditions of approval and past litigations cases. Mr. Levesque stated that after consulting with the City Attorney's Office in regard to adding conditions of approval as it relates to an appeal, it is noted in the Zoning Development Code, Section 6-802 about the appeal process and criteria. Any appeal grated may be subject to

such conditions as the decision-making body deems applicable. It gives you the authority to add conditions, but it's conditions when granting an appeal. In the case where you have an abatement where the appeal is requesting to overturn the Hearing Officers decision you do not have the granting of the appeal. The process itself, the ability for an applicant to file an appeal or to challenge that decision does give that applicant more time to resolve the issue or address the issue. During that time the City works with the applicant to see if the issues were resolved, and the abatement can be pulled.

Chair Watson asked where in the past the Board executed by approving the appeal with conditions would be invalid as of now. Mr. Levesque state that is the concern of staff identifying or adding a condition to an appeal that is not overturning the decision.

Board Member Palmer asked in the circumstance of abatement that typically relates to city code, the nuisance ordinance. In Section 6 of the Zoning Ordinance would that still pertain to appeals for nuisance complaints or is that appeals? Mr. Levesque stated abatement appeals only.

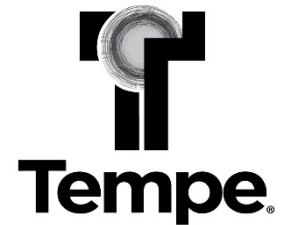
Vice Chair Confer asked as a Board looking at appeals how do we take that direction from the same staff that we are reviewing the appeal for? The Board is reviewing a decision that staff made on an appeal and the same staff is giving advice on what the Board can and can not do. Board Member Palmer stated that the abatements come from the Haring Officer. Vice Chair Confer stated that it is a Hearing Officer decision based on staff's recommendation.

Mr. Levesque stated that there may be a scenario where the Board will need to ask for a continuance for the case and not act on it. There may be missing information or information that needs to be gathered for the next meeting, that's an example of where a continuance would be appropriate.

Mr. Levesque updated the Board on prior litigations pertaining to Board of Adjustment actions regarding Image Productions and Moon Shadow.

Hearing adjourned at 5:58 p.m.

Prepared by: Jennifer Daniels, Administrative Assistant II
Reviewed by: Steve Abrahamson, Principal Planner



Minutes of the Board of Adjustment REGULAR MEETING July 19, 2023

Minutes of the Regular Meeting of the Board of Adjustment, of the City of Tempe, which was held in Council Chambers
31 East Fifth Street, Tempe, Arizona

Present:

Staff:

Chair Richard Watson	Jeff Tamulevich, Community Development Director
Vice Chair John 'Jack' Confer	Ryan Levesque, Comm. Development Deputy Director
Board Member Raun Keagy	Steve Abrahamson, Principal Planner
Board Member Kevin Morrow	Jennifer Daniels, Administrative Assistant II
Board Member Kaelee Palmer	
Board Member Ricky Lynn Gans	
Board Member Robert Miller (Alt)	

Regular Meeting 6:01 p.m.

1) Voting of the Meeting Minutes:

Study Session & Formal Meeting Minutes from June 21, 2023.

Motion by Board Member Palmer to approve Meeting Minutes from June 21, 2023; second by Board Member Keagy. Motion passed on **5-0** vote.

Ayes: Chair Watson, Vice Chair Confer, Board Members Keagy, Morrow and Palmer

Nays: None

Abstain: Board Members Miller and Gans

Absent: Board Member Naugle

3) Staff Announcements:

Chair Watson announced Staff, Mr. Steve Abrahamson, Principal Planner will be retiring from the City. Chair Watson thanked Mr. Abrahamson for his service, coaching and the work he has done with the Board.

Mr. Abrahamson stated that we do not have a Board of Adjustment meeting scheduled for August at this point. There is a possibility of a meeting in September.

- 2) 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. (PL220335)**

Applicant Presentation:

Mr. Evan Schlack asked if he could ask a couple of questions before the presentation. Mr. Schlack asked if the scope of this appeal limited to the basis of the denial from the City? Mr. Abrahamson stated, yes, it is.

Mr. Schlack, Northsight Chief Operations Officer, gave a presentation on Northsight Siesta. Northsight was created in 2021 by a group of healthcare providers that wanted to provide relief in the system we currently have. One of the gaps that our healthcare system currently has is addressing the social determinates of health. Very often what we will see is individuals with mental health or substance use issues will go into a residential treatment program, in which they are not able to address social determinates of health. When they are there, they are not getting their driver's license, social security card, birth certificate or working on securing employment. When they come out of the residential treatments they have nowhere to go. One of the main reasons this organization was founded was to do it just a little better. The organization has 3 transitional living homes currently. Each of the homes is accredited by the Joint Commission. The Joint Commission is the golden standard for healthcare and hospitals. The headquarters is located in Tempe Arizona. Northsight currently offers 4 different programs. Outcomes have been fantastic, grated the organization has not been around very long. Due to the current housing problem, with the transitional living, Northsight is trying to address this issue. The Siesta home is designed to be compliant with the state sober living requirements. The atmosphere in the home is designed to be therapeutic. The bedrooms have 2 beds in each. The home is staff 24 hours a day, 7 days a week. The current zoning in Tempe does not allow for more than 5 unrelated persons living at the home. The request is for 10. This was not a made-up number it has actually been supported by medical and social service professionals since as far back as the 70's. It's the idea of group dynamics. Groups of 10 naturally foster the environment that has corrective and supportive dynamics, ensues engagement with other individuals and group stability. Groups of 5 lack these dynamics, there is not enough intellectual, ethic or cultural diversity.

Board Member Miller asked typically how long do the residents reside in this transitional facility? Mr. Schlack stated approximately 120 days. Mr. Schlack stated that the current healthcare system fails to address the mental health issues that many of the individuals are facing. We are trying to give our clients an opportunity to get sober, address mental health issues, find stable employment and safe housing. It could vary depending on someone's condition when entering the program. Board Member Miller asked where the clients are typically coming from, a residential program, 30 day or 90 days? Mr. Schlack stated that it varies but it is not uncommon for the organization to be a step down from the residential program. When individuals are stepping out of the 30-, 60- or 90-days residential program they are not addressing anything in the real world. They may not have a job or housing. They also come from referrals from community partners.

Board Member Gans asked how many staff members are there at night? Mr. Schlack stated that at nighttime it is 1 staff member. Board Member Gans stated that she asked the question because her son worked at an establishment similar to this and he accidentally fell asleep. Essentially there was no staff member there. What happens in that case? Do you have a 2nd staff member available? Mr. Schlack stated that they do have a 2nd staff member available. For the individuals working at the home, they have supervisors and then there is a program manager above them that could come in and fill in if somebody called out or something like that. The employees that work during that shift, that is their only shift. Their life would be scheduled around the graveyard hours. Mr. Schlack stated that have not encountered that problem.

Board Member Morrow stated if the Board grants the request, you would be allowed to have 10 clients, are you anticipating having 10 clients at the Siesta House? Mr. Schlack stated they are anticipating up to 10 clients. It will depend on the dynamic within the group of individuals that are there. For example, if there are 6 pr 7 strong personalities, we would not push the limits. One of the other transitional homes is zoned for 15 clients in the City of Phoenix yet has never had 15 clients. Board Member Morrow asked how many bedrooms does the home have? Mr. Schlack stated it has 4 bedrooms and the garage acts as a bedroom. Board Member Morrow stated that with 4 bedrooms where would you put the other 2 people? Mr. Schlack stated that most bedrooms would have 2 beds in it and the master bedroom can usually accommodate 3 perhaps 4 beds. Board Member Morrow stated that based on the square feet 9 beds may be your max. Mr. Schlack stated that it could be and maybe there is a way to get 10 beds in there.

Chair Watson stated that if your capacity seems to be 9, why are you asking for 10? Mr. Schlack stated that the request was done before he joined the organization. Mr. Schlack stated that having 10 allows them to be between the 8-12 persons when thinking about the group dynamics.

Chair Watson stated that according to his math this will be taking the square footage from 400 sf per person to 200 sf per person, including the common spaces as well. What are the reasonable accommodations square footage per person according to the Doctor that has been referenced? Mr. Schlack stated he does not know if the Doctor has an opinion on square footage per individual.

Board Member Palmer asked if the garage has been converted to a bedroom and is going to remain a bedroom? Mr. Schlack stated yes, and he believes it was that way prior to their occupancy in the home. Board Member Palmer asked staff if converting the garage into a bedroom is legal in the City of Tempe. The reason for the question is that if you have 10 residents and staff, you can assume that multiple people will have vehicles so then you are taking up driveway space in addition to roadway space and could be altering the appearance of a residential neighborhood. Mr. Schlack stated that there is still a garage there. The residents in the home are not permitted to have personal vehicles at the residence. The only vehicle you will see is a van that will be used to transport the residents to the clinic and the staff members vehicle. Board Member Palmer stated that in the pictures it does appear that there is a garage door, correct? Mr. Schlack stated yes there is a garage door. Board Member Palmer asked if there is a garage? Mr. Schlack stated yes, he is unaware if the space was modified. Staff, Mr. Ryan Levesque stated that he recalls looking up the history on this house, it is his understanding the garage can still accommodate 2 vehicles on site. If that is not the case that will require a Use Permit through a public hearing process.

Board Member Miller stated that he was not aware that The Joint Commission certified facilities like this. Mr. Schlack stated that they were certified as a transitional living home. Board Member Miller asked if they have specific square footage requirements per resident in the certification? Mr. Schlack stated that the Joint Commission does not that he is aware of, they defer to state and local law. The local law that they would be referring to is 9-12 sober living rules in Arizina and Northsight is compliant there.

Board Member Gans asked how many bathrooms are in the facility? Mr. Schlack stated there are 3 bathrooms.

Staff Presentation:

Staff, Mr. Ryan Levesque, Community Development Deputy Director for Planning Division gave a presentation on Northsight Siesta. Mr. Levesque also serves as Zoning Administrator for this case. This sight previously did have an elder care that was classified as a group home in 2009. Around 2013-2015 is when the prior use for the group home had been vacated. In 2021 City Council adopted ordinance 02021.22 which basically did an overall of our group home section within the Zoning and Development Code. There were concerns from community members and residents that some sites were being converted and adding 10 bedrooms, changing the appearance and feel of some of the properties. We had the opportunity to evaluate our group home regulations, that have not been changed since the mid 90's. We researched other cities and came up with the revisions provided in the group home regulations that exists today. One of the major changes was reducing the number of residents allowed in a group home from 10 to 5. That went into effect in July 2021. We also introduced the Reasonable Accommodations Waiver process. It is set up to allow someone with a disability to seek a waiver or grant an approval of that specific matter that is needed to grant of this use of the house for reasons of disability. Part of the review process is that we review the application and ask for some revisions. We have had 3 updates of their justification letter. Our primary concern is that the nexus between the request for the reasonable accommodation was not enough grated to identify this as a specific need for a certain disability. If we were to grant this type of request of waiver then we would be allowing all group homes to allow up to 10 residents. That is out concern with this request. The group home does meet our separation requirements, 1200 feet from one existing group home to another. It does have the ability to operate as a legal group home with the limitation of 5 residents. If they so, choose they can proceed with the building permit process to get clearance.

Board Member Palmer stated that it was previously mentioned that there could be an alternative they could seek a variance request. Can you explain what that would look like? Mr. Levesque stated that there is specific criteria outlined in our code under the group home classification that must be met in order to obtain the variance.

Vice Chair Confer stated that Mr. Levesque talked about the application. The application was for the change from 5 to 10 residents? Mr. Levesque stated that the initial application was for a building permit for a group home and within the group home permit application there are some questions. One of the questions is how many residents attended to be occupied in there? There is a reference to our Zoning and Development Code about the limitations up to 5. They noted they would like to have 10. Which would be an occupancy classification change under the permit process. As part of the application process there is a review component to make sure it complies with our Zoning Code. The number of residents was denied. They then filed a Reasonable Accommodation Waiver and is then sent to the Zoning Administrator for review and follow up. That item was ultimately denied after review. Vice Chair Confer asked if the request for the ADA accommodation is separate from the building permit application? Mr. Levesque stated the number of residents. We have the Zoning Code ability to determine how many residents are allowed, there is an occupancy classification with Building and Safety in terms of the allowed number of residents in the home. Most homes are built in R3 occupancy construction, which is standard for single family homes. R4 occupancy would be anywhere from 6-10 residents, this would require greater building code requirements for the site, like providing fire sprinkler systems. Vice Chair Confer asked if that is when you have more than 6 residents? Mr. Levesque stated yes 6 or more.

Board Member Keagy asked if there is any zoning district in the City of Tempe that would allow a group home of more than 5 people. Mr. Levesque stated no not at this time. There have been group homes in the past under the prior regulations that did allow up to 10. Those can remain legal nonconforming. Board Member Keagy stated that the only experience he has with a Reasonable Accommodation Wavier is when it was an individual with a disability who was looking for this wavier. An example would be that a home does not allow animals yet this person needs a service assistance animal so they would apply for the wavier. This does not seem to be an individual that is asking for this wavier. This seems to be a request to just increase the number of residents that can be in this facility. Mr. Levesque stated that is correct. We looked at the request similarly. The site is allowed as a group home, sober living does fall under fair housing as a disability. They are allowed residents there as a sober living home just not based on the number of residents that is being proposed at this time.

Board Member Morrow asked, when you use the word building permit application, is that just so they can operate as a group home they weren't trying to alternate the physical structure? Mr. Levesque stated that is correct. All group home classifications must get clearance through the building permit whether there is an occupancy change or not. Board Member Morrow asked if the Board was to grant the appeal and allow up to 10 that would not give them the opportunity to add on another 1000 square feet and 5 more bedrooms, correct? Mr. Levesque stated that it is not intent of this request of this application, but they could request modifications to the site that is compliant with the zoning standards setbacks. Board Member Morrow asked if that would require a separate process? Mr. Levesque stated yes.

Board Member Gans asked in regard to the fire regulations require if you go to 10 you must have a fire alarm or sprinkler system, but with a group home of 5 you do not? Mr. Levesque stated that is the difference between the R3 and R4 building code occupancy.

Board Member Miller, besides the fire sprinkler system and fire alarm what are the other requirements for R4? Mr. Levesque stated that he does not have the comprehensive list of everything that is required. The big-ticket item is usually getting a suppressed fire sprinkler system installed within the facility.

Board Member Morrow asked how would you get it reclassified from R3 to R4? Mr. Levesque stated that is the appeal was approved the applicant to move forward and provide the necessary plans that Building and Safety need to verify the R4 occupancy. After review and compliance, they can then issue a permit and then the applicant can move forward with any necessary improvements needed on site. Board Member Morrow asked if the Board approves the appeal will the applicant still need to go through the process of getting the site set to R4 and install the sprinkler system? Mr. Levesque stated that is correct.

Board Member Keagy asked since the applicant is applying for the appeal and intend to have more than 6 residents, they understand they must go through the R4 occupancy? Can the applicant explain what changes they would need to make and are they prepared to do that?

Vice Chair Confer asked how many group homes does the City have that might be effected by the Board's decision today? Mr. Levesque stated that another Reasonable Accommodations Waiver request was received today. Mr. Levesque stated that he will have to look and see if it is related to number of residents. If you are currently operating a group home with up to 10 residents that does not change. Vice Chair Confer asked if a group home can be elderly care and sober living? Do we know how many group homes we have in Tempe? Mr. Levesque stated there are approximately 75 group homes. There are different types. There is elder care, adult therapeutic, child shelters, and sober living homes. There is also about 80 developmentally disabled classified homes that they City does not regulate.

Board Member Miller asked if the current group homes have been grandfathered in, those that were operating at 10 or less are they still able to operate under the old code? Mr. Levesque stated that they are legally allowed to remain non-conforming to our current standards. There are about 25-30 group homes operating as non-conforming to our current standards.

Public Comment:

None

Applicant Response:

Mr. Schlack responded to Board Member Keagy's prior question. Mr. Schlack stated he is aware of the process and is prepared to continue. He is aware of the exact cost of the fire sprinkler system, but they are aware of the approximate cost. They have a facility management team that would be responsible to insuring the home was brought to standard.

Mr. Schlack stated that there are 3 sober living homes in Tempe.

Board Member Miller stated that Mr. Schlack stated that they have a facility in Phoenix that is licensed for up to 15. Is that home equipped with fire sprinklers to bring it to R4 standard? Mr. Schlack stated he did not know. He did not believe so. It is a ranch style home, so the layout is a little different, it has a mother-in-law suite attached to it.

Commission Discussion:

Board Member Miller stated that he is inclined to support this based on what he heard from the applicant, taking the necessary steps to get to a R4 standard. He does not share the same concern as staff for opening the flood gates for other group homes to come in because if one of the things they have to do is go from R3 to R4 that is probably a minimum of \$20,000-\$25,000 that they would have to invest.

Chari Watson stated that they would have to do the fire upgrades regardless because that is code, and not a stipulation.

Board Member Keagy stated that this does not appear to be a waiver request from an individual. This appears to be a request to double the amount of people that they can put into a home that is being run by a business. Board Member Keagy stated that he is not sure he can support this request.

Board Member Palmer stated that looking at the 5 requirements to grant a reasonable accommodations waiver she does not see the justification for it. They are allowed to operate a group home for up to 5 people and are not being deprived of that right. They are simply trying to double the occupants in the home. Board Member Palmer stated she will be voting to uphold the decision.

Board Member Morrow stated that they are representing the 5 members that are currently living there, if you buy into their nexus analysis then those 5 clients need a more clients to be among them to help with the group dynamic.

Something that was said by Mr. Schlack, stating that 8-12, those words are very significant because those are the constitutionally required numbers for juries in Arizona. There are very good reasons for having that number. You need a diverse group of people that can formulate a discussion to get to the result. Board Member Morrow stated he can see why the doctors want 8-12 people in a group home to prevent 1 person from being isolated and to always make sure there is a good number of people there. Board Member Morrow stated that he does not share the same concern as Board Member Keagy and agrees with Board Member Miller. Board Member Morrow stated he will be voting in favor of the applicant.

Chair Watson stated he will be voting against this. He does not believe that appealing under the disabilities clause concerns him. Chair Watson stated that he understands the clients have disabilities but the organization that is making the request does not. Chair Watson is concerned that the comment about the garage could accommodate someone living there means it has been discussed and or thought of and that would be a code compliance issue. Chair Watson stated he will be voting against this.

Motion by Vice Chair Confer to deny the appeal request, for Northsight Siesta, located at 625 West 3rd Street: second by Board Member Gans. Motion passed on **5-2** vote.

Ayes: Chair Watson, Vice Chair Confer, Board Members Gans, Keagy and Palmer

Nays: Board Members Morrow and Miller

Abstain: None

Absent: Board Member Naugle

4) **Staff Announcements:**

Mr. Abrahamson stated that if there is going to be BOA meeting next month it will be on August 23rd. There are no cases currently. Mr. Abrahamson stated that he wants to thank everyone for their civic mindedness and volunteerism.

5) **Adjourn**

Motion by Vice Chair Confer to adjourn meeting; second by Board Member Miller. Motion passed on **7-0** vote.

Ayes: Chair Watson, Vice Chair Confer, Board Members Keagy, Morrow, Palmer, Gans and Miller

Nays: None

Abstain: None

Absent: Board Members Naugle, Miller, and Gans

Hearing adjourned at 6:55 p.m.

Prepared by: Jennifer Daniels, Administrative Assistant II
Reviewed by: Steve Abrahamson, Principal Planner