

APPELLEE DEPARTMENT  
OF PLANNING AND  
NEIGHBORHOOD  
SERVICES BRIEF IN  
SUPPORT OF THE  
HEARING OFFICER'S  
DECISION DATED  
OCTOBER 6, 2023

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7 **BEFORE THE CITY COUNCIL**  
8 **OF**  
9 **THE CITY OF YUMA, STATE OF ARIZONA**

10 Wilson C. Okwuobu,  
11  
12 Appellant,  
13  
14 v.  
15 Department of Planning and Neighborhood  
Services,  
16  
17 Respondent.

**BRIEF OF THE DEPARTMENT  
OF PLANNING AND  
NEIGHBORHOOD SERVICES**

Hearing Date: November 1, 2023  
Place: One City Plaza  
Yuma, Arizona 85364

18  
19 **I. INTRODUCTION**

20 Wilson C. Okwuobu ("Appellant") appeals the denial of his request to open a new  
21 residential care facility within 67 feet of an existing residential care facility. The City  
22 Council hears this appeal in a quasi-judicial capacity pursuant to a process outlined in  
23 A.R.S. § 9-462.06. In this appeal, the Department of Planning and Neighborhood Services  
24 ("City Staff")<sup>1</sup> respectfully requests City Council affirm the denial of the requested  
25 variance.

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27 <sup>1</sup> The City Attorney's Office represents City Staff in this appeal. Independent counsel will advise City  
28 Council during its deliberations on this appeal.

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**II. FACTS**

On April 16, 2023, Appellant acquired the property located at 2475 S. 43<sup>rd</sup> Trail, in Yuma, Arizona (the “Property”), a 2,278 square-foot, 5-bedroom, 3-bath, single-family home constructed in 2017.



The 9,680 square-foot lot, located in the Park West Unit No. 3 Subdivision, is zoned Low Density Residential (R-1-6) District.



Appellant seeks to open a behavioral health residential facility for up to 10 residents

1 at the Property. Yuma City Code allows residential care facilities within Low Density  
2 Residential (R-1-6) but requires a 1,320-foot separation between residential care facilities,<sup>2</sup>  
3 measured from lot line to lot line. The purpose of this distance requirement is to prevent  
4 clustering residential care facilities in a manner that threatens the residential character of  
5 the neighborhood and reduces the efficacy of the residential care facilities by obstructing  
6 the ability to foster normalization and community integration. In other words, the  
7 separation requirement protects residential care facilities and the neighborhood.

8 Appellant's Property does not meet the separation requirement of 1,320 feet; the  
9 Property is only 67 feet from an existing residential care facility.



21  
22 <sup>2</sup> Yuma City Code § 154-01.07 defines *Residential Care Facility, Small* as follows:

23 Establishments primarily engaged in the provision of residential social and personal care for  
24 ten or fewer persons with some limits on ability for self-care, such as children, the elderly,  
25 but where medical care is not a major element. Included are establishments providing 24-  
26 hour year-round care for children. These facilities shall not include any persons whose  
27 occupancy would constitute a direct threat to the health or safety of other individuals or  
28 would result in substantial physical damage to the property of others. Establishments of this  
type located within any residential districts *shall not be located within 1320 feet* of a child  
day care services (large), a nursing care facility, large or small, or a residential care facility,  
large or small that are also located within any residential district.

(emphasis added).

1 Appellant nevertheless requested a variance to reduce the minimum distance requirement  
2 between residential care facilities from 1,320 feet to 67 feet. On July 19, 2023, City Staff  
3 held a neighborhood meeting regarding Appellant's request. Four neighbors attended the  
4 meeting and expressed concerns regarding potential impacts to the neighborhood. City  
5 Staff also received several emails in opposition to the requested variance.

6 On August 10, 2023, the Hearing Officer held a hearing on Appellant's request for a  
7 variance. City Staff filed a report with the Hearing Officer and *recommended denial* of  
8 the request, noting that Appellant's request for a variance failed to meet the criteria of  
9 §154-03.04(D) of the Yuma City Code. The Hearing Officer denied the variance request.  
10 Appellant now timely appeals the decision of the Hearing Officer to the City Council.

### 11 III. ARGUMENT

#### 12 A. Appellant is not Eligible for a Variance Under State Statute or 13 City Code.

14 To receive a variance from the City of Yuma's zoning ordinance, Appellant must  
15 satisfy the conditions required by State statute and City code. A.R.S. § 9-426.06(G)(2)  
16 directs a Board of Adjustment [or a Hearing Officer] to

17 [h]ear and decide appeals for variances from the terms of the zoning  
18 ordinance *only if*, because of special circumstances applicable to the  
19 property, including its size, shape, topography, location, or surroundings,  
20 the strict application of the zoning ordinance will deprive the property of  
privileges enjoyed by other property of the same classification in the same  
zoning district.

21 (emphasis added). A.R.S. § 9-426.06(H)(2) explicitly forbids a Board of Adjustment [or a  
22 Hearing Officer] from "[g]ranting a variance if the special circumstances applicable to the  
23 property are self-imposed by the property owner."

24 These statutory requirements are also spelled out in Yuma City Code § 154-  
25 03.04(D), which provides that the Hearing Officer

26 . . . shall grant a variance(s) *only when* findings of fact are made that *all*  
27 *of the following conditions exist:*

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(a) There is a special circumstance(s) or condition(s), applying to the property or building referred to in the application and which do(es) not apply to most other properties in the district;

(b) That such special circumstance(s) was not created, or caused, by the property owner or applicant;

(c) The granting of the variance(s) is necessary for the preservation of substantial property rights enjoyed by other property owners in the vicinity under identical zoning designations; and

(d) The granting of the variance shall not be materially detrimental to any person(s) residing, or working, in the vicinity, to adjacent property, to the neighborhood or to the public health, safety and general welfare.

(emphasis added).

Here, there is no special circumstance unique to the Property because all properties in the zoning district must comply with the 1,320-foot separation requirement applicable to residential care facilities, and even if a special circumstance existed, it would be of Appellant’s own making since Appellant acquired the Property in April 2023, when there was already a residential care facility operating 67 feet from the Property. Appellant cannot meet the four required conditions and is not eligible for a variance under State law or City code.

**B. Appellant is not Entitled to an Accommodation Under Federal Law.**

The federal Fair Housing Act (“FHA”), 42 U.S.C. § 3601 *et seq.*, and the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12101 *et seq.*, allow qualifying individuals to request a reasonable accommodation—i.e., a change, exception or adjustment—to a rule, policy, practice, or service followed by a municipality. The integration of people with disabilities and people of all races, cultures, and creeds into the mainstream of American life is a fundamental purpose of the reasonable accommodation process under federal law. Where a state law or local rule, policy or practice affects qualifying individuals in a disproportionately burdensome way, the qualifying individual

1 may be entitled to a reasonable accommodation. An accommodation that would result in a  
2 fundamental alteration in the purpose of a law, rule, policy, or practice is generally not  
3 required.

4 Appellant bears the burden of demonstrating entitlement to a reasonable  
5 accommodation and must show (1) that the Appellant is disabled within the meaning of the  
6 FHA and ADA; (2) that City Staff knew or should have known of Appellant's disability;  
7 (3) that the accommodation is necessary to afford Appellant an equal opportunity to  
8 acquire residential property; (4) that the accommodation is reasonable; and (5) that City  
9 Staff refused to make the requested accommodation. *See Dubois v. Ass'n of Apt. Owners,*  
10 453 F.3d 1175, 1179 (9th Cir. 2006).

11 In this case, Appellant fails to meet his burden because Appellant did not establish  
12 and inform City Staff of any disability. Appellant has not shown how a waiver of the  
13 1,320-foot separation requirement for residential care facilities is necessary to afford him  
14 an equal opportunity to acquire residential property or that a waiver would be reasonable  
15 under the circumstances.

16 **CONCLUSION**

17 Because Appellant is neither eligible for a variance under state law nor entitled to  
18 an accommodation under federal law, City Staff respectfully requests City Council affirm  
19 the Hearing Officer's denial of Appellant's variance request.

20 DATED this 6th day of October, 2023.

21 **YUMA CITY ATTORNEY'S OFFICE**

22  
23 By: /s/ L. John LeSueur  
24 L. John LeSueur  
25 *Attorney for Respondent Department of*  
26 *Planning and Neighborhood Services*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of October, 2023, I filed the foregoing BRIEF OF THE DEPARTMENT OF PLANNING AND NEIGHBORHOOD SERVICES with the City of Yuma's Clerk Office. Copies also delivered by U.S. Mail and Electronic Mail this 6th day of October 2023, to:

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Connie Carlson  
Yuma City Attorney's Office