

# BOARD OF ADJUSTMENT REPORT



Meeting Date: 8/3/2022

## ACTION

**Igna Residence - Accommodation**  
6-BA-2022

### Request to consider the following:

1. Request by owner of an existing care home for a disability accommodation to the City of Scottsdale Zoning Ordinance, Section 5.402.A.1 (and Table 5.102. by reference) to reduce the required buffer between care homes to allow for an expansion of approximately 1,892 sq. ft. for a property with Single-family Residential Planned Community district (R1-10 PCD) zoning located at 7512 E. Larkspur Drive.

## OWNER

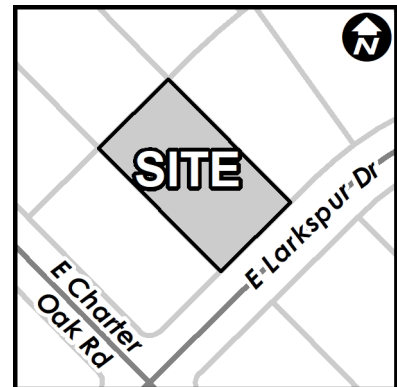
Maria Igna  
480-202-4402

## APPLICANT CONTACT

Denisa Istrate  
Kontexture, LLC  
(602) 875-6221

## LOCATION

7512 E Larkspur Dr



## BACKGROUND

### History

The subject property was annexed into the City of Scottsdale in 1962 under Ordinance 165. The area was rezoned from Single Family Residential (R1-35) to Planned Community District (PCD) in 1973. The PCD zoning district included the three zoning classifications of R1-10, R1-7, and R-4 with amended development standards under case 43-Z-1973. The PCD zoning district was amended in 1977 to include only the R1-35 and R1-10 comparable zoning districts with no amended standards under case 48-Z-77 and adopted through Ordinance No. 1086. The subject site is within the R1-10 portion of the PCD.

The subject site is located within the Buenavante II subdivision which was platted and recorded with Maricopa County in 1979. The existing residence constructed in the 1980s and began operation as a Care Home in 2006. The bullets below identify some key dates in the history of this property and the City's ordinance requirements related to Care Homes.

- 1993, Ord. No. 2636 was adopted to add "Adult Care Home" (ACH) as a permitted use in all single-family residential zoning districts. Care homes were allowed a maximum of 10 residents total and the care home location had a minimum five hundred (500) foot separation between care homes in any direction, or a seven hundred fifty (750) foot separation on the same street.
- January 26, 2005, City approved zoning clearance and letter of compliance for A & M Assisted Living of Scottsdale facility for up to 10 beds/residents at the subject site.
- December 1, 2005, Arizona Department of Health Services licensed the facility to operate as an Assisted Living Home with Directed Care services for a total capacity of 9. Issued August 18, 2006.
- January 27, 2006, City approved a remodel to permit to convert the existing garage area into livable space. The permit expired, and work was not completed.
- December 5, 2017, Ord. No. 4326 was adopted to approve a text amendment in regard to care homes and group homes. This changed the Capacity to a maximum of ten (10) disabled residents plus up to two (2) resident staff for a total of 12; and the location criteria was increased to require a twelve hundred (1200) foot separation between care homes. All other criteria stayed the same. The increased separation requirement caused the property to become non-conforming with this standard.
- December 1, 2019, Arizona Department of Health Services licensed the facility to operate as an Assisted Living Home with Directed Care services for a total capacity of 9 effective as of December 1, 2019.
- April 20, 2022, plans were submitted for a livable and non-livable covered patio addition, and it was determined that the home could not expand due to its non-conforming status.
- May 23, 2022, Pre-Application request 546-PA-2021 was filed for the property at 7512 E. Larkspur Drive, to discuss the request for a Reasonable Accommodation

### **Zoning/Development Context**

The subject site is zoned Single-family Residential Planned Community District (R1-10 PCD) and abuts other single-family detached homes with the same zoning to the north, east, and west. The lot gains primary access along East Larkspur Drive to the front (south).

### **Zoning Ordinance Requirements**

Pursuant to Section 5.402.A.1 pertaining to the required buffer between care homes: A care home shall not be located within twelve hundred (1,200) feet, measured from lot line to lot line, of another care home.

*The applicant is requesting a variance of five hundred (500) feet, which would allow the care home to be located within seven hundred (700) feet of another care home.*

Care Homes are permitted land uses in Single-family Residential zoning districts subject to the following criteria:

- a. *Floor area ratio:* Is limited to thirty-five hundredths (0.35) of the net lot area.
- b. *Capacity:* The maximum number of residents, including up to ten (10) disabled persons, the manager/supervisor, property owner, and residential staff at the home is twelve (12) per residential lot.
- c. *Location:* A care home shall not be located within twelve hundred (1200) feet, measured from lot line to lot line, of another care home.
- d. *Compatibility:* The home and its premises shall be maintained in a clean, well-kept condition that is consistent in materials and design style with homes in the surrounding or adjacent neighborhood.
- e. *Criteria:* Care homes must be licensed by the State of Arizona and must provide proof of such licensing by the State of Arizona as a health care institution to the Director of Planning prior to the commencement of operations. All care homes must pass an initial and annual fire inspection administered by the Scottsdale Fire Department. Proof of such inspection and of correction of any noted deficiencies must be available at the care home at all times.
- f. *Accommodation:* A disabled person may request a disability accommodation from the above criteria or a development standard pursuant to [Section 1.806](#) of the Zoning Ordinance.

Care Home is a permitted land use in the Single-family Residential (R1-10) zoning district applicable to this site.

Zoning ordinance section 1.1304.C. states “Any authorized care home that is lawfully located and operating in a residential zoning district on December 5, 2017, may continue to operate in their existing location. Nothing in this section will grandfather a care home operating unlawfully or that is located in violation of the provisions of the Zoning Ordinance of the City of Scottsdale existing on December 5, 2017.”

### **Code Enforcement Activity**

No code enforcement activity has occurred as of the writing of this report.

### **Community Input**

The applicant’s sent a public outreach letter to property owners and Neighborhood Associations within 750 ft. of the site to inform the neighborhood of their Board of Adjustment application.

City of Scottsdale hearing notification postcards were sent to property owners within 750 feet of the subject site, the site was posted with a notification sign, and a notice was published in a newspaper of local circulation.

As of the writing of this report, staff has received zero (0) letters in opposition or support of the accommodation request, zero (0) phone calls inquiring about the request, and zero (0) phone calls of opposition or support of the request.

### **Discussion**

Earlier this year, the applicant submitted plans for a proposed addition. During the plan review staff identified that the site is in conflict with the separation requirement, along with other general ordinance compliance items.

The applicant is requesting an accommodation to reduce the twelve hundred (1,200) feet buffer between care homes to make an addition to the existing residence. If the accommodation is not granted, no expansion can be permitted on the existing structure based on its legal non-conforming status.

The R1-10 use regulations table allows for a care home to be located at least twelve hundred (1,200) feet, measured from lot line to lot line, of another care home. The care home use was approved on this site in 2005 by the city and state under a previous ordinance that allowed a lesser separation between care homes. The current non-conformity is a result of an ordinance change in 2017 since it is within seven hundred (700) feet from the nearest care home and within the twelve hundred (1,200) foot buffer of four (4) other care homes. Non-conforming provisions in the Zoning Ordinance allow for lawful non-conformities to continue operating (grandfathered), with the intent for the eventual elimination of non-conforming situations. The care home use may continue to operate at this location regardless of the outcome of the accommodation request. As a non-conforming use, no expansion can be permitted on the existing structure.

Authorizing the accommodation for the buffer between care homes would allow the care home to expand while being less than twelve hundred (1,200) feet from other care homes in the area. The applicant has noted that they will remove the bathroom and storage addition in the side yard as part of the renovation to bring the structure into conformance. If the accommodation is approved, expansion of the care home would be limited to a floor area ratio of 35% of the net lot area. The applicant and owner confirm that all the other care home requirements will be met under Sec. 5.102. Other than the existing non-conforming use, the proposed expansion would meet all other ordinance requirements.

### **DISABILITY ACCOMODATION CRITERIA ANALYSIS**

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**A. A disability accommodation from a development standard or separation requirement shall not be authorized unless the Board shall find upon sufficient evidence all of the following:**



- 1. The requested accommodation is requested by or on the behalf of one (1) or more individuals with a disability protected under federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.);**

Applicant Statement:

The applicant is requesting an accommodation on behalf of the owner of the existing licensed residence operating as an Assisted Living Home for the elderly.

Staff Analysis:

Based on the applicant's narrative and supporting documentation, the requested accommodation is being made on the behalf of the State licensed assisted living facility with directed care services for the elderly. The Arizona Department of Health Services defines directed care services as "programs and services, including personal care services, provided to persons who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions." Assisted Living Facilities are protected under federal and Arizona fair housing laws.

- 2. The requested accommodation is necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling;**

Applicant Statement:

The applicant's narrative states that the accommodation is necessary to expand the care home. The facility is licensed for 10 residents, but the existing house currently has 6 bedrooms. They would like to add 4 more bedrooms, to provide individual rooms for the residents to offer them more comfortable accommodations.

Staff Analysis:

The City must grant a reasonable accommodation from limiting development standards to individuals with disabilities where the application of that/those development standard(s) would deprive those individuals the ability to enjoy the housing of their choice in a manner equal to that of other individuals.

If existing conditions on the site make it unfeasible to reconfigure the existing residence for additional bedrooms, then the accommodation may be considered necessary.

The applicant's site plan shows 4 bedrooms with approximately 1,800 sq.ft. and 4 bedrooms to be added to the home. The existing livable space in the residence may not be large enough to accommodate up to 10 residents with each having their own individual bedroom.

- 3. The standard or requirement unduly restricts the opportunity for a person with a disability from finding adequate housing within the City of Scottsdale;**

Applicant Statement:

The applicant states that the requirement limits the availability to offer individual rooms to the elderly persons residing at this location, in order to comply with the CDC in case of an epidemic.

Staff Analysis:

Based on the information provided by the applicant, the requested accommodation would allow the residents within the assisted living facility to have the opportunity to have their own room. Without the requested accommodation, they may have to share rooms.

**4. The requested accommodation does not fundamentally alter the nature and purpose of the Zoning Ordinance of the City of Scottsdale;**

Applicant Statement:

The applicant believes that this request does not alter the nature and purpose of the Zoning Ordinance of the City of Scottsdale, since they are not requesting an increase of occupancy or any changes in regard to their license. The house will maintain its single-family look, since there are no changes to be made to the front of the house. The addition will be in the back of the house that consists of 4 bedrooms and will conform to the Zoning Ordinance. The bathroom addition that was made to the west side of the house and the shed will be removed to conform to the Zoning Ordinance.

Staff Analysis:

The Zoning Ordinance accounts for the ability to have a licensed Care Home as a permitted land use in a detached single-family residential home in a Single-family Residential zoning district. The State regulations direct the occupancy of up to 10 residents in a Care Home environment living in a single-family unit as being similar in use and impact as typical occupancy of a single-family dwelling, while allowing for local regulation on proximity of such Care Home locations so as not to create oversaturation and a disparity between the equivalency of impact of the two uses. The purpose of the City's separation standard of twelve hundred (1,200) feet is intended to ensure that there would be no more than one Care Home facility in close proximity to each other, maintaining continuity within single-family neighborhoods.

Although the accommodation sought by the applicant would reduce the distance between Care Homes as required by the zoning ordinance, this care home is already existing and is licensed to have up to 10 residents. The care home use was approved in 2005 by the city and state under a previous ordinance that allowed a lesser separation between care homes. The current non-conformity is a result of an ordinance change in 2017 since it is within seven hundred (700) feet from the nearest care home and within the twelve hundred (1,200) foot buffer of four (4) other care homes. It does not appear that allowing an expansion of the existing facility would fundamentally alter the nature and purpose of the zoning ordinance.

5. The requested accommodation will not impose an undue financial or administrative burden on the City, as "undue financial or administrative burden" is defined in federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.) and interpretive case law;

Applicant Statement:

"The requested accommodation will not impose an undue financial or administrative burden on the City, the owner will pay all applicable building permitting and zoning request fees."

Staff Analysis:

There is no anticipated undue financial or administrative burden on the city if the requested accommodation is granted.

## **SUMMARY**

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Based on the facts presented by the applicant, the evidence may support a finding that the requested accommodation meets the ordinance criteria of section 1.806. While the requested accommodation represents a significant alteration to the standards of the zoning ordinance, the circumstances considered may warrant the granting of the accommodation to ensure that the owner has equal opportunity to enlarge their property to accommodate the care home. Further, the applicant's proposed accommodation does not appear that it would be detrimental to persons residing or working in the surrounding neighborhood.

However, the decision about whether the criteria have been met and that a reasonable accommodation should be granted is for the Board to make after hearing all the evidence at the hearing.

## APPROVED BY

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Nicole Garcia, Report Author  
480-312-4213, ngarcia@scottsdaleaz.gov

7/14/2022

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Date



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Bryan Cluff, Board of Adjustment Liaison  
480-312-7713, bcarr@scottsdaleaz.gov

7/15/2022

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Date



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Tim Curtis, AICP, Current Planning Director  
480-312-4210, tcurtis@scottsdaleaz.gov

7/16/2022

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Date



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Erin Perreault, AICP, Executive Director  
Planning, Economic Development, and Tourism  
480-312-7093, eperreault@scottsdaleaz.gov

07/19/2022

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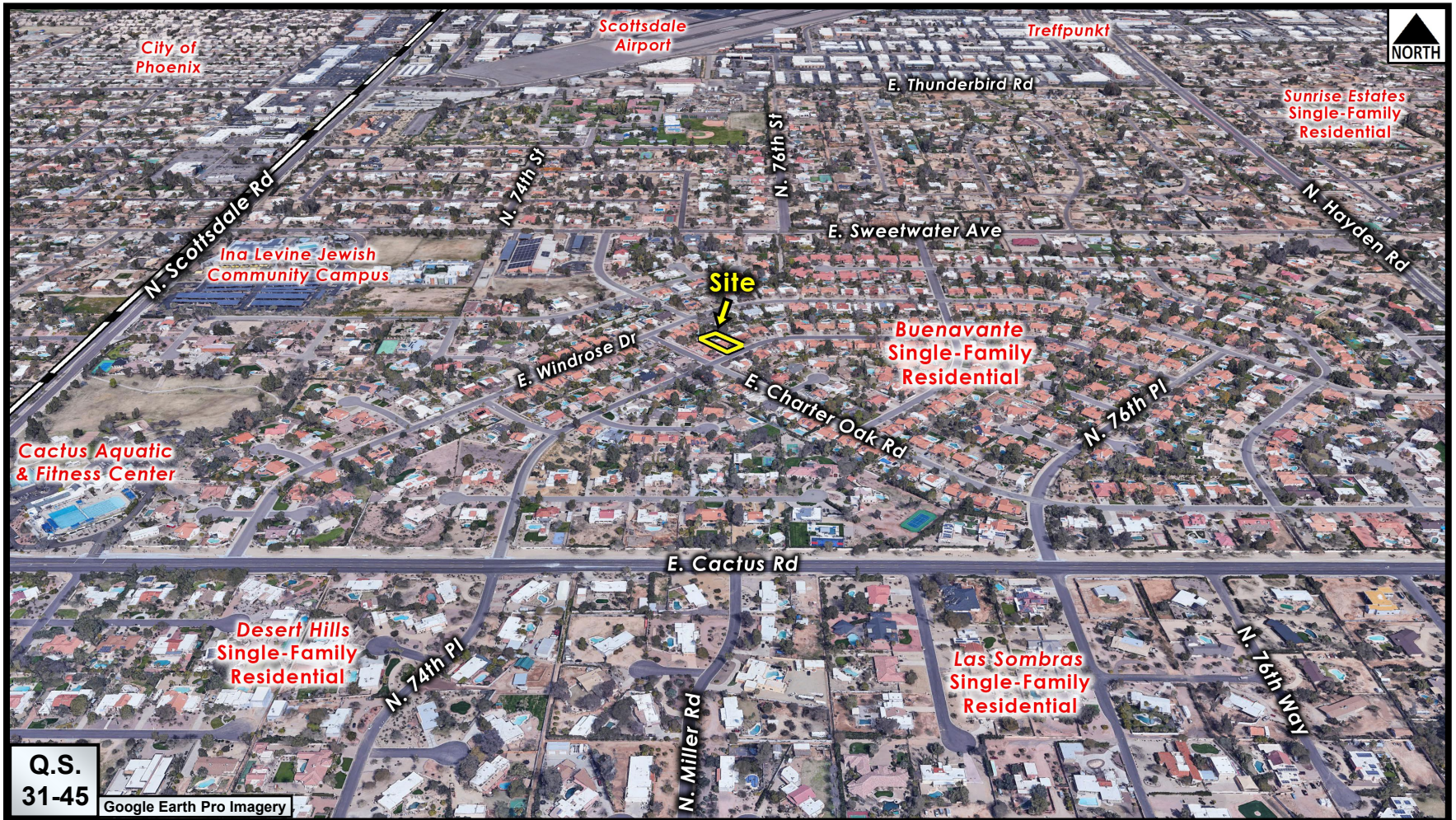
Date

## ATTACHMENTS

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1. Context Aerial
2. Close-Up Aerial
3. Zoning Aerial
4. Applicant's Narrative
5. Proposed Site Plan
6. Parcel Context Exhibit
7. Site Photographs

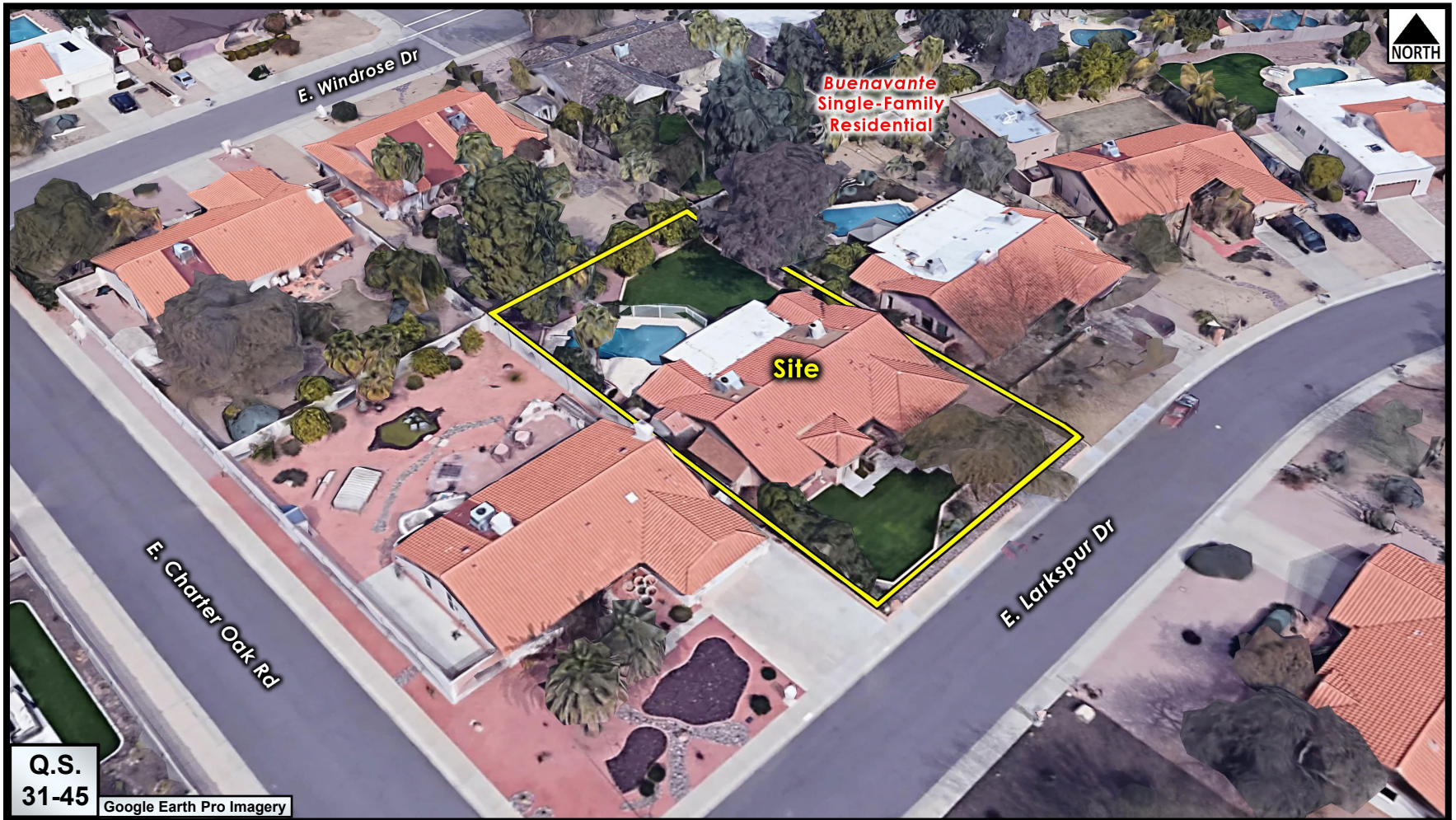




Context Aerial

6-BA-2022





Close-up Aerial

6-BA-2022





Q.S.  
31-45

Aerial

Zoning Aerial

6-BA-2022

**Kontexture, LLC**  
3334 N. 20<sup>th</sup> Street  
Phoenix, AZ 85016  
[www.kontexture.com](http://www.kontexture.com)

June 27<sup>th</sup>, 2022

City of Scottsdale  
Planning and Development  
7447 E. Indian School Road, Suite #105  
Scottsdale, AZ 8525

## Project Narrative

**547-PA-2022**

June 27<sup>th</sup>, 2022

This request is for a Disability Accommodation in order to make an addition of 1,747 SF that consists of 4 bedrooms to be able to offer individual rooms to the elderly, to the existing non-conforming Assisted Living home at 7514 E. Larkspur Dr. The reason for this request is that the Assisted Living home is within a quarter mile from another Assisted Living home with a distance of 655 ft. between them. The Zoning Ordinance does not allow any changes to be made to existing non-conforming residences.

This property is registered as an Assisted Living Home for the elderly with a 6-10 residents License since 2005. It was the first home to hold a license of 10 residents in a quarter mile radius. In the meantime, more homes were issued a license to operate in the area, less than a quarter mile distance. When the zoning ordinance changed and the distance delimitation was put in place, our residence became existing non-conforming thus, we are unable to make any changes to our residence.

- 1. The requested accommodation is requested by or on the behalf of one (1) or more individuals with a disability protected under federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.);**

The requested accommodation is requested on behalf of the owner of the licensed residence at 7512 E. Larkspur Dr. that operates as an Assisted Living Home for the elderly.

- 2. The requested accommodation is necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling;**

The requested accommodation is necessary in order to be able to provide individual rooms for the residents. The house is licensed for 10 residents, but at the moment the house only has 6 bedrooms. We would like to add 4 more bedrooms, in order to provide individual rooms for the residents to offer them more comfortable accommodations.

- 3. The standard or requirement unduly restricts the opportunity for a person with a disability from finding adequate housing within the City of Scottsdale;**

This requirement makes us unable to offer individual rooms to the elderly persons residing at this location, in order to comply with the CDC in case of an epidemic.



**4. The requested accommodation does not fundamentally alter the nature and purpose of the Zoning Ordinance of the City of Scottsdale;**

This request does not alter the nature and purpose of the Zoning Ordinance of the City of Scottsdale, since we are not requesting an increase of occupancy or any changes in regard to our license. The house will maintain its single-family residence look, since there are no changes to be made to the front of the house. There will be an addition to the back of the house of 1,747 SF that consists of 4 bedrooms, that will conform to the Zoning Ordinance. The bathroom addition that was made to the west side of the house and the shed will be removed to conform to the Zoning Ordinance.

**5. The requested accommodation will not impose an undue financial or administrative burden on the City, as "undue financial or administrative burden" is defined in federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.) and interpretive case law;**

The requested accommodation will not impose an undue financial or administrative burden on the City, the owner will pay all applicable building permitting and zoning request fees.

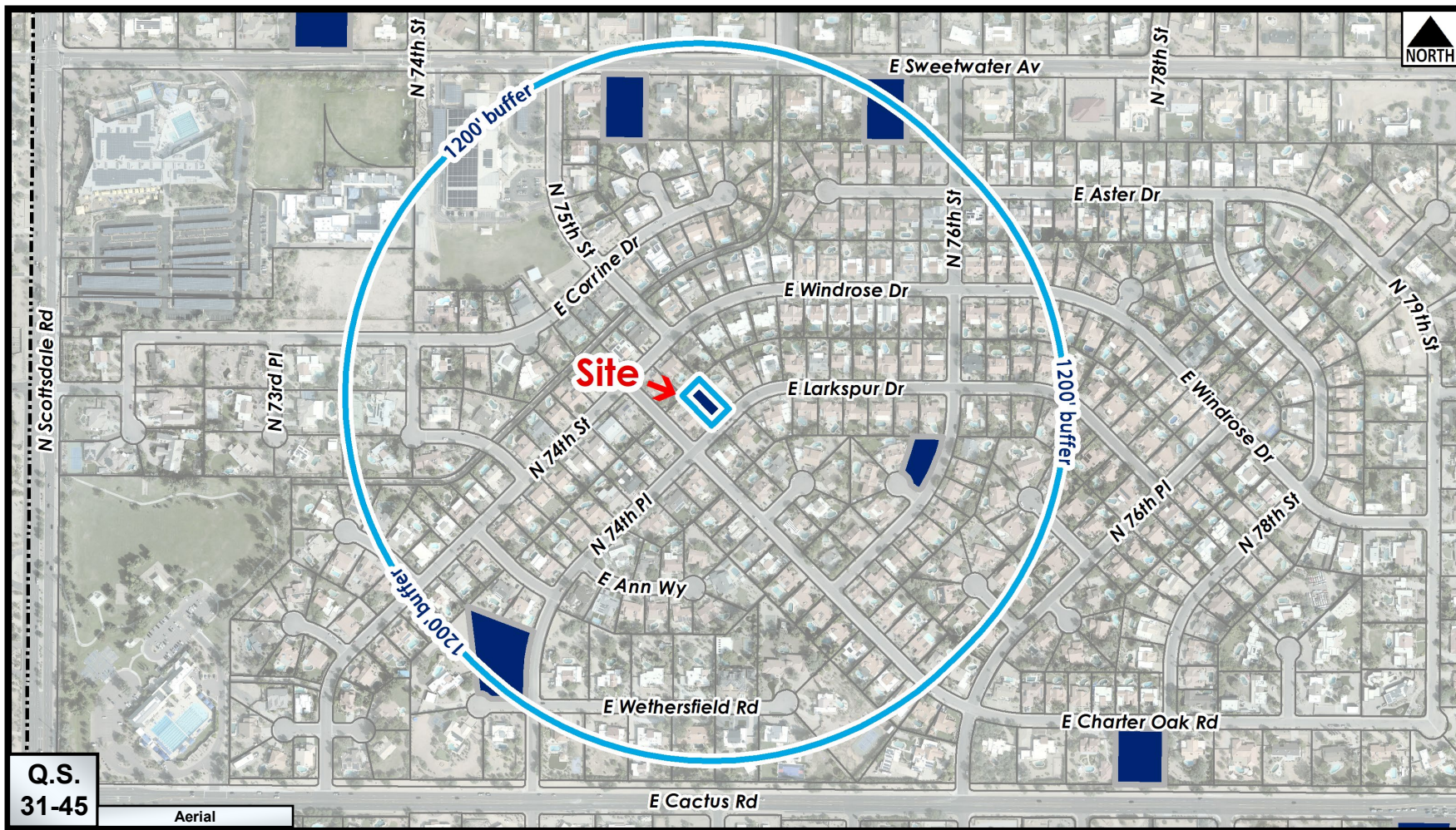
I would be happy to answer any questions or hear any concerns that you may have regarding this request. You may reach me at 602-875-6231 or [daniel.istrate@kontexture.com](mailto:daniel.istrate@kontexture.com) or by fax at 602-875-6239.

Sincerely,

Daniel Istrate, AIA  
Architect



## A0.2



### Care Homes within 1200'









3751E

6-BA-2022  
6/30/2022





6-BA-2022  
6/30/2022





6-BA-2022  
6/30/2022