

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

Division Administration
(NAC 439, 441A, 452, 453A, & 629)

Health Care Quality & Compliance
(NAC 449, 457, 459 & 652)

Child, Family & Community Wellness
(NAC 392, 394, 432A, 439, 441A, & 442)

Health Statistics, Planning,
Epidemiology and Response
(NAC 440, 450B, 452, 453, 453A, & 695C)

Public Health & Clinical Services
(NAC 211, 444, 446, 447, 583, & 585)

Date: 1/19/21

Name of Applicant: Summerlin Senior Development Company, Inc. Phone: 561-322-9264

Mailing Address: 1001 East Telecom Drive

City: Boca Raton State: FL Zip: 33431

We do hereby apply for a variance to _____ of the Nevada
chapter/section NAC 4 4.218
Administrative Code (NAC). (For example: NAC 449.204)

Title of section in question: Bedrooms: Floor space, windows, doors, privacy, storage space, bedding, personal furnishings, lighting

Statement of existing or proposed conditions in violation of the NAC:

The window openings in the resident rooms exceeds the building code and NAC requirements. The actual window sizes are 6'0" x 5'0". When you attempt to meet the additional NAC requirement of 10% glass, some of the rooms are approximately 90% of the requirement which is over 22 s.f. of glass when the minimum requirement of the room is 80 s.f. and the minimum requirement of glass is 8 s.f.

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Date of initial operation (if existing): N/A

ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
 - (a) There are circumstances or conditions which:
 - (1) Are unique to the applicant;
 - (2) Do not generally affect other persons subject to the regulation;
 - (3) Make compliance with the regulation unduly burdensome; and
 - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
 - (b) Granting the variance:
 - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
 - (2) Will not be detrimental or pose a danger to public health and safety.

2. Whenever an applicant for a variance alleges that he suffers or will suffer economic hardship by complying with the regulation, he must submit evidence demonstrating the costs of his compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supportive of your variance request.

Statement of degree of risk of health

This is a new building that is already under construction and framed in. The windows have been ordered and are in production. To meet this requirement would necessitate replacement of not just the windows, that are deemed to be non-compliant, but virtually all windows in the building as it would affect the the exterior architecture of the building. Also it would, cost an additional \$292,223 and a minimum of three months delay and removal of the drywall stucco around the building.

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Please state in detail the circumstances or conditions which demonstrate that:

1. An exceptional and undue hardship results from a strict application of the Regulation:

The minimum room size is 80 s.f. and the associated minimum compliant window size is 8 s.f.
Therefore, we are providing a minimum of 21.84 s.f. of light and being penalized for having larger
rooms which provides better care for the residents. Even with the stringent requirement, we meet
building code and approximately 90% of the NAC regulation. The difference is 3 - 5 s.f. of glass.

2. The variance, if granted, would not:

A. Cause substantial detriment to the public welfare.

None

B. Impair substantially the purpose of the regulation from which the application seeks a variance.

None

The bureau may require the following supporting documents to be submitted with and as a part of this application:

1. Legal description of property concerned

Parcel No. 138-15-402-002 Being the southeast quarter of the

southwest quarter of Section 15, Township 20 South, Range 60 East, M.D.M. City of Las Vegas, Clark County, NV

2. General area identification map - With an address of 7560 Smoke Ranch Road, Las Vegas, NV 89128

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- 3. Plat map showing locations of all pertinent items and appurtenances
- 4. Well log (if applicable)
- 5. Applicable lab reports
- 6. Applicable engineering or construction/remodeling information
- 7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application and supporting documentation will form the basis for the Division of Public and Behavioral Health staff report and recommendation(s) to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

Please schedule this hearing during:

The next regularly scheduled Board of Health meeting, regardless of location.

The next scheduled meeting in Carson City.

The next scheduled meeting in Las Vegas.

Summerlin Senior Development Company, Inc.

Ma Signature: _____

Printed Name: Larry D. Silver

Title: President and CEO

Date: 1/19/21

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APPLICATION FOR VARIANCE

**PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING
ANY OF THE FOLLOWING METHODS:**

MAIL TO:

Lisa Sherych, Administrator
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

FAX:

775-687-7570

EMAIL:

DPBH@health.nv.gov

SR CONSTRUCTION

Estimate

Project: Memory Care - Summerlin - Window Size
Location: Las Vegas Nevada

Project Manager: Robin Allen
Estimator:
Estimate Date: 1/19/2021
Revision Date:
Revision #:
Building SF:



Conceptual Estimate - 34 Windows
 SUMMARY

SECTION	DESCRIPTION	BUDGET	REMARKS
0100	General Conditions	\$ 87,577	3 Months
0114	General Requirements, General & Final Cleanup, & Dumpsters	\$ 8,700	
0610	Rough Carpentry / Blocking & Backing	\$ 48,000	Rework Framing
0725	Stucco	\$ -	Additional scaffold rental time may be required.
0880	Glass/Glazing	\$ 33,490	34 windows x \$985 each.
0925	Drywall, Tape & Texture	\$ 68,000	Drywall, Tape & Texture
0990	Painting	<u>\$ 17,000</u>	
	Sub Total	\$ 262,767	
	Overtime Allowance	<u>\$ -</u>	
	Sub Total	\$ 262,767	
0180	General Liability Insurance	\$ 2,890	1.10%
	Fee	\$ 26,566	10.00%
Total Project Budget:		<u>\$ 292,223</u>	

General Conditions Analysis

General Conditions						
Project Size		SQ.FT.				
Anticipated Duration		0.00	Months			
LABOR						
PERSONNEL	QTY REQ'D	Anticipated Commitment	Weeks	\$/week		TOTAL
Senior Superintendent	0	0%	0.00	\$ 2,800.00		\$ -
Superintendent	1	100%	12.00	\$ 3,200.00		\$ 38,400
Project Manager	1	50%	12.00	\$ 3,200.00		\$ 19,200
Project Engineer	1	50%	4.00	\$ 2,400.00		\$ 4,800
Project Assistant/Accountant	1	20%	12.00	\$ 1,200.00		\$ 2,880
Preconstruction	0	50%	0.00	\$ 2,800.00		\$ -
Safety Director	1	25%	3.00	\$ 5,350.00		\$ 4,013
Sub Total - Labor						\$ 69,293
MATERIAL & EQUIPMENT						
DESCRIPTION	UNITS	\$/Week	\$/Month	Lump SUM		TOTAL
Mobilization	0.00	\$ -	\$ -	\$ -		\$ -
Demobilization	0.00	\$ -	\$ -	\$ -		\$ -
Field Office	1.00	\$ -	\$ 459.00	\$ -		\$ 459
Field Office Supply	1.00	\$ -	\$ 150.00	\$ -		\$ 150
Expendable Tools	3.00	\$ -	\$ 1,200.00	\$ -		\$ 3,600
Gas ,Oil. Car	3.00	\$ -	\$ 850.00	\$ -		\$ 2,550
Postage	0.00	\$ -	\$ -	\$ -		\$ -
Temporary Fence	3.00	\$ -	\$ 1,200.00	\$ -		\$ 3,600
Temporary Electric	3.00	\$ -	\$ 500.00	\$ -		\$ 1,500
Temporary Water	3.00	\$ -	\$ 75.00	\$ -		\$ 225
Temporary Telephone	0.00	\$ -	\$ -	\$ -		\$ -
Temporary Sanitary	3.00	\$ -	\$ 400.00	\$ -		\$ 1,200
Temporary Heat	0.00	\$ -	\$ -	\$ -		\$ -
Temporary Structures	1.00	\$ -	\$ -	\$ 5,000.00		\$ 5,000
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
Construction Administration	1.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
	0.00	\$ -	\$ -	\$ -		\$ -
Sub Total - Material & Equipment						\$ 18,284
TOTAL GENERAL CONDITIONS EXPENSE						\$ 87,577

Steve Sisolak
Governor

Richard Whitley, MS
Director



**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical Officer

NOTICE OF PUBLIC HEARING

SUMMERLIN SENIOR DEVELOPMENT COMPANY, INC. IS REQUESTING A VARIANCE, #714, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN that SUMMERLIN SENIOR DEVELOPMENT COMPANY, INC. has requested a variance from Nevada Administrative Code (NAC) 449.218.

A public hearing will be conducted on June 4, 2021 at 9:00 am, by the Nevada State Board of Health to consider this request. This meeting will be held via teleconference only. Pursuant to Governor Sisolak's March 22, 2020, Declaration of Emergency Directive 006, the requirement contained in NRS 241.023(1)(b) that there be a physical location is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Coronavirus). Accordingly, all members of the public must participate by using the teleconference number provided in this notice.

Meeting Locations:

Join from computer using the meeting link:

<https://nvhealth.webex.com/nvhealth/j.php?MTID=ma2f389786827d3f157e2b016794639c6>

Join by Meeting Number:

Meeting Number (Access Code): 187 171 9645

Meeting Password: JruWeMY3z49

Join by Phone:

1-415-655-0001 Access Code: 187 171 9645## US Toll

Summerlin Senior Development Company, Inc. has requested a variance from NAC 449.218, which states:

NAC 449.218 Bedrooms: Floor space; windows and doors; privacy; storage space; bedding; personal furnishings; lighting. ([NRS 449.0302](#))

1. A bedroom in a residential facility that is shared by two or three residents must have at least 60 square feet of floor space for each resident who resides in the bedroom. A resident may not share a bedroom with more than two other residents. A bedroom that is occupied by only one resident must have at least 80 square feet of floor space.

2. Each bedroom in a residential facility must have one or more windows to the outside that can be opened from the inside of the room without the use of tools or a door to the outside which is at least 36 inches wide and can be opened from the inside.

3. The combined size of the panes of glass of the windows in a bedroom in a facility that was issued a license on or after January 14, 1997, must equal not less than 10 percent of the floor space in the room.

4. The arrangement of the beds and other furniture in the bedroom must provide privacy for and promote the safety of the residents occupying the bedroom. Adjustable curtains, shades, blinds or similar devices must be provided for visual privacy.

5. Each resident must be provided:

(a) At least 10 square feet of space for storage in a bedroom for each bed in the bedroom; and

(b) At least 24 inches of space in a permanent or portable closet for hanging garments.

6. A separate bed with a comfortable and clean mattress must be made available for each resident. The bed must be at least 36 inches wide. Two clean sheets, a blanket, a pillow and a bedspread must be available for each bed. Linens must be changed at least once each week and more often if the linens become dirty. Additional bedding, including protective mattress covers, must be provided if necessary.

7. Upon the request of a resident, a residential facility may authorize the resident to use personal furniture and furnishings that comply with the requirements of subsection 6 if their use does not jeopardize the health and safety of any of the residents of the facility.

8. There must be a light outside the entrance to each bedroom to provide a resident with adequate lighting to reach safely a switch for turning on a light fixture inside the bedroom. Upon the request of a resident, bedside lighting must be provided.

(Added to NAC by Bd. of Health by R003-97, eff. 10-30-97; A by R073-03, 1-22-2004; R119-10, 1-13-2011)

The authority of the State Board of Health to consider and grant a variance from the requirements of a regulation is set forth at NRS 439.200 and NAC 439.200 – 439.280.

Persons wishing to comment upon the proposed variance may appear at the scheduled public hearing or may submit written testimony at least five days before the scheduled hearing to:

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Anyone wishing to testify for more than five minutes on the proposed variance must petition the Board of Health at the above address. Petitions shall contain the following: 1) a concise statement of the subject(s) on which the petitioner will present testimony; 2) the estimated time for the petitioner's presentation.

This notice has also been posted at the following locations:

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, 4150 TECHNOLOGY WAY, CARSON CITY, NV

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH WEBSITE:

<http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/>



April 7, 2021

Memorandum

To: Jon Pennell, DVM, Chairperson
State Board of Health

From: Lisa Sherych, Administrator
Division of Public and Behavioral Health

RE: Poet's Walk - Summerlin (Summerlin Senior Development Company Inc.)

Subject: Case #714: Poet's Walk - Summerlin variance to Nevada Administrative Code (NAC) chapter 449.218(3).

Staff Review

The Division of Public and Behavioral Health received an application for variance from Summerlin Senior Development Company Inc. for Poet's Walk – Summerlin, pending licensure as a residential facility for groups, requesting relief from NAC 449.218(3) Bedrooms: Floor space; windows and doors; privacy; storage space; bedding; personal furnishings; lighting. The combined size of the panes of glass of the windows in a bedroom in a facility that was issued a license on or after January 14, 1997, must equal not less than 10 percent of the floor space in the room.

Summerlin Senior Development Company Inc. explains Poets Walk - Summerlin is a one-story building located at 7395 Smoke Ranch Road, Las Vegas, Nevada 89128. The facility has applied to be licensed as a 72 bed Residential Facility for Groups and has started construction at the address above. During their development of the architectural drawings, it was discovered that not all glass windowpanes met the State minimum 10% of the floor space requirement in the bedrooms. There are 30 of 60 bedrooms that do not meet the minimum 10% of floor space windowpane requirement. The facility's bedroom's floor space ranges from 155 sq. ft up to 327 sq. ft, with the smallest pane of glass being 21 sq. ft, and the highest pane being 43.6 sq. ft. The facility's bedrooms are much larger than the minimum 80 sq. ft of floor space that is required in the NAC for single occupant rooms and are larger than the 60 sq. ft. of floor space per resident in multiple occupant rooms.

The request for variance proposes acceptance of the windowpane sizes in the 30 bedrooms that do not meet the 10% floor space minimum requirement. The windowpanes that are furthest from meeting the requirement are approximately 3.4 sq. ft. deficient (the requirement for the room size is 25.2 sq. ft., the windowpane as designed is 21.8 sq. ft.). Others are along a range up to those just shy of the requirement that are only 0.4 sq. ft. deficient (the requirement for the room size is 22.2 sq. ft., the windowpane as designed is 21.8 sq. ft.). For the other 30 rooms in the facility, the windowpane sizes exceed the size requirement.

INTENT OF THE REGULATION

The intent of NAC 449.218(3) serves to ensure adequate natural lighting in the resident bedrooms.

EXCEPTIONAL AND UNDUE HARDSHIP

Compliance would cause exceptional and undue hardship for the applicant. The facility's construction is 80%

complete and the applicant indicated that it would cost approximately \$292,223 to restructure all windows in the facility. The applicant indicated they would have to refit all 60 windows to maintain the exterior structure of the building. This would also delay completion of construction for at least 3 months during a time when residential beds are needed in the community.

DEGREE OF RISK TO HEALTH AND SAFETY

There would be no risk to health and safety in the windowpanes being slightly less than the requirement. The windowpanes as designed will allow sufficient natural light even though the bedrooms exceed minimum floor space requirements.

CRITERIA FOR GRANTING VARIANCE

Staff review found the applicant did meet the criteria found in NAC 439.240 for granting a variance as follows:

- (a) There are circumstances or conditions which:
 - (1) Are unique to the applicant.
 - (2) Do not generally affect other persons subject to the regulation.
 - (3) Make compliance with the regulation unduly burdensome; and
 - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
- (b) Granting the variance:
 - (1) Is necessary to render substantial justice to the applicant and enable the applicant to preserve and enjoy his or her property right; and
 - (2) Will not be detrimental or pose a danger to public health and safety.

PUBLIC COMMENT RECEIVED

None.

STAFF RECOMMENDATION

Staff recommends the Board of Health approve the variance for Case #714:

PRESENTER: Steve Gerleman, Health Facilities Inspector III, Bureau of Health Care Quality and Compliance

BEFORE THE NEVADA STATE BOARD OF HEALTH

IN THE MATTER OF)
POETS WALK AT SUMMERLIN MEMORY CARE)
VARIANCE REQUEST: CASE #714)

The Nevada State Board of Health ("Board"), having considered the application for a variance and all other related documents submitted in support of the application in the above-referenced matter, makes the following Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

1. The Division of Public and Behavioral Health received an application for variance from Poets Walk at Summerlin Memory Care requesting relief from NAC 449.218 (3).
2. NAC 449.218 (3) **“Bedrooms: Floor space; windows and doors; privacy; storage space; bedding; personal furnishings; lighting.** The regulation states, “The combined size of the panes of glass of the windows in a bedroom in a facility that was issued a license on or after January 14, 1997, must equal not less than 10 percent of the floor space in the room.”
3. Poets Walk is a one-story building located at 7395 SMOKE RANCH ROAD Las Vegas, Nevada 89128. The facility has applied to be licensed as a 60 bed Residential Facility for Groups and has started construction at the address above. During their development of the architectural drawings, it was discovered that not all glass windowpanes met the State minimum 10% of the floor space in the bedrooms.
4. Granting this variance would not impair the purpose of the regulation or cause detriment to the public welfare. There are 30 rooms that do not meet the 10% windowpane requirement; however, the room sizes are much greater than the minimum of 80 sq. feet. The facilities bedrooms range from 155 sq. ft up to 327 sq. ft with the smallest pane of glass being 21 sq. ft. The intent of the regulation is to ensure adequate natural lighting in resident bedrooms.

5. Compliance would cause exceptional and undue hardship for the applicant. The facility indicated that it would cost up to \$292,223 to restructure all the windows in the facility. The facility also indicated they would have to refit all 60 windows to maintain the exterior structure of the building. This would take at least 3-month delay in construction during time when residential beds are a need in the community.

CONCLUSIONS OF LAW

1. This matter is properly before the Nevada State Board of Health pursuant to NRS 439.200 and determination of the matter on the merits is properly within the subject matter jurisdiction of the board.

2. NRS 439.200 provides:

The State Board of Health may grant a variance from the requirements of a regulation if it finds that:

(a) Strict application of that regulation would result in exceptional and undue hardship to the person requesting the variance; and

(b) The variance, if granted would not:

(1) Cause substantial detriment to the public welfare; or

(2) Impair substantially the purpose of the regulation.

3. The Board finds that strict application of the regulation would result in an exceptional and undue hardship.

4. The Board finds that granting this variance would not impair the purpose of the regulation or cause a substantial detriment to the public welfare.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing, therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the variance from NAC **449.218(3)** is APPROVED as presented; specifically Summerlin Senior Development Inc. will be able to complete construction without high cost of construction to comply with the requirement.

DATED this _____ day of _____, 2021

Lisa Sherych, Secretary

Nevada State Board of Health

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Department of Health & Human Services, Division of Public and Behavioral Health, and that on the _____ day of _____, 2021, I served the foregoing

FINDINGS OF FACT AND DECISION by mailing a copy thereof to:

Summerlin Senior Development Company Inc.

1001 E. Telecom Dr.

Boca Raton, FL 33431