

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

ALTA CARE HOME IS REQUESTING A VARIANCE, #729, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN that the ALTA CARE HOME has requested a variance from Nevada Administrative Code (NAC) 444.218.

A public hearing will be conducted on March 4th, 2022, at 9:00 am by the Nevada State Board of Health to consider this request. This meeting will be held online.

Meeting Locations:

Join from computer using the Zoom meeting link:

<https://zoom.us/j/92537552135?pwd=aEQzR3BCMGJXL1Z6UnJkU21EcWVpdz09>

Online Conference ID Number: 925 3755 2135

Passcode: 818303

Join by Phone:

1-669-900-9128 (San Jose)

Passcode: 818303

Phone Conference ID Number: 925 3755 2135

The ALTA CARE HOME is requesting 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/>

BEFORE THE NEVADA STATE BOARD OF HEALTH

IN THE MATTER OF)
ALTA CARE HOME)
VARIANCE REQUEST: CASE #729)

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 Alta Care Home requesting relief from NAC 449.218(3).

2. NAC 449.218(3) states, "[t]he 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. Alta Care Home is a one-story residential building located at 2007 Alta Drive. Las Vegas, NV 89106. The facility has separately applied for a bed increase to their license from 7 to 10 beds. During the bed increase inspection, it was discovered that the three bedrooms pending addition contained glass windowpanes which do not meet the State minimum 10 percent of the floor space in the bedrooms. 4.

The three bedrooms at the subject of this request have a floor space of 150 square feet, with the windowpanes measuring 12 square feet, resulting in the combined windowpanes equaling 8 percent of the floor space in the bedroom.

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. Compliance would cause exceptional and undue hardship for the applicant to remodel the windowpanes of the three bedrooms. It would also disrupt the daily life of the residents that currently reside at the facility and delay licensed beds needed in the community.

4. Granting this variance would not impair the purpose of the regulation or cause detriment to the public welfare. The three rooms do not meet the 10 percent windowpane requirement; however, the room sizes are much greater than the minimum of 80 square feet. The three bedrooms have a floor space of 150 square feet with the windowpanes being 12 square feet. While the windowpanes constitute only 8 percent of the floor space, the intent of the regulation is to ensure adequate natural lighting in resident bedrooms which these windows achieve.

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

6. 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, the three bedrooms pending addition to the licensed bed count of Alta Care Home will be deemed to comply with the requirement of windowpane size set forth in NAC 449.218.

DATED this _____ day of _____, 2022

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 _____, 2022, I served the foregoing FINDINGS OF FACT AND DECISION by mailing a copy thereof to:

Alta Care Home
2007 Alta Dr.
Las Vegas, NV 89106

Steve Sisolak
Governor

Richard Whitley, MS
Director



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Lisa Sherych
Administrator

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

MEMORANDUM

DATE: February 4, 2022

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

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

RE: Case #729: Alta Care Home (License #69-AGC-32) 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 Alta Care Home, pending the review of separate request for a four bed increase to their residential facility for groups license as a residential facility for groups. The present variance request relief from NAC 449.218(3), relating to the combined size of the panes of glass of the bedroom windows. 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.

Alta Care Home is a one-story residential building located at 2007 Alta Drive. Las Vegas, NV 89106. The original variance application indicated a variance for windowpanes in four bedrooms. However after further communication with the facility, the present variance request is actually for the windowpanes of three bedrooms. The facility is separately requesting the three bedrooms at the subject of this request be added to their license bed count. During the bed increase inspection, the three rooms that are pending addition to the license, revealed the windowpanes did not meet the State minimum 10 percent of the floor space requirement in the bedrooms. The three rooms at issue each have a minimum floor space of 150 square feet, with each windowpane in these rooms measuring 12 square feet. This amounts to 8 percent of the current floor space, falling 3 feet below the required 10 percent windowpane size.,

The request for variance proposes acceptance of the windowpane sizes in the three bedrooms that do not meet the 10 percent floor space minimum 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 three rooms are already existing and to

meet the requirement would have to remodel each room's windowpane. The applicant indicated that it would cause a financial hardship as well as disruption to the residents who currently reside in the facility to reconstruct the windowpanes to the requirements. This would also delay bed availability 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 #729:

PRESENTER: Paul Shubert, Chief, Bureau of Health Care Quality and Compliance

NEVADA STATE BOARD OF HEALTH
NEVADA STATE HEALTH DIVISION
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 432A, 449, 457, 459 & 652)

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

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

Frontier and Rural Health Services
(NAC 211, 444, 446, 447, 583, & 585)

Date: November 19, 2021

Name of Applicant: Alta Care Home Phone: 702-384-6838

Mailing Address: 2007 Alta Drive

City: Las Vegas State: NV Zip: 89106

We do hereby apply for a variance to NAC 449.218 of the Nevada
chapter/section
Administrative Code (NAC). (For example: NAC 449.204)

Title of section in NAC 449.218
question: _____

Statement of existing or proposed conditions in violation of the NAC:
That the sizes of the (4) windows in (4) separate bedrooms did not meet the required of "no less than 10%
of the floor space in the room.

Date of initial operation (if existing): _____

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

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

This is an existing licensed group home facility for seniors and whose residents are under 24-hour care due to poor health conditions, thus, to require a major reconstruction and/or repair of their respective bedrooms in compliance to a 10% window rule will only jeopardize their wellbeing. A reconstruction will expose the seniors to dust and other airborne particles hazardous to their health. This will only result in their untimely transfer causing disorientation and aggravation of their present stress level far worse than what they can handle. Thus, leading to further anxiety and fear. Studies have shown that the negative impact of these types of sudden interruptions in their place of home can cause mental and emotional anguish. Above all, moving them with COVID-19 present will only augment their risk of vulnerability to the virus.

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

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

The present place under consideration is the home to a number of elderly residents with health conditions. A sudden transfer will cause stress and disorientation and fear among the elderly. Also, moving the seniors to another place during COVID-19 pandemic will do more harm than good as they are at a higher risk of getting the virus. Finally, any reconstruction in these rooms will expose the seniors to dust and other airborne particles that may result in respiratory issues. A rigid application of this regulation is not only unreasonable but will only cause hardship among the most vulnerable segment of society, our seniors. Thus, an exemption should be countenanced.

3. The variance, if granted, would not:

- A. Cause substantial detriment to the public welfare.

To grant this request for variance isn't only noble but will aid in protection of the public and the promotion of welfare. The need for secured and safe housing for our seniors during these pandemic times, keeps with the government's program of protecting those who are vulnerable to the virus. What is detrimental therefor, is if we do not allow the request for the variance which underlying reason for denial is the strict observance of the "10% window size rule". This only causes undue burden to a protected class of individuals. In addition, our place has ample escape routes in case of emergency.

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

There isn't substantial impairment of the regulation in question because the sizes of the windows in question are reasonable enough in both width and length, to ensure a safe exit for the occupants therein should an emergency arise. In addition, we have nearby doors that are easily accessible in case of an emergency.

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 _____
-

- _____ 2. General area identification map _____

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 Health Division staff report and recommendation 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.

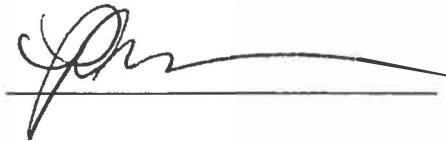
Please schedule this hearing as:

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.

Signature:



Printed Name: PETERSON DURIAS

Title: ADMINISTRATOR