

CITY OF ALBUQUERQUE
LAND USE APPEAL UNDER THE IDO
BEFORE AN INDEPENDENT
LAND USE HEARING OFFICER

APPEAL NO. AC-26-07

CU-2025-00045; PR-2025-020180

The Yale Village Neighborhood Association,
and D. Love's Restaurants, LLC

Appellants,

and,

Partners Hospitality, LLC, d.b.a.
Empower Health Service,

Appellees/ Applicants.

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I. INTRODUCTION

This is an appeal of a May 6, 2026, final decision of the Zoning Hearing Examiner (ZHE) who approved a conditional use application for an overnight shelter land use. Briefly, the overnight shelter use is a regulated use under the Integrated Development Ordinance (IDO) and requires a conditional use permit issued by the ZHE. The overnight shelter use in this

36 appeal houses and treats homeless people afflicted with drug addiction; its staff provide
37 *"intensive outpatient services to its residents"* [R. 094]. The use is located at 2300 Yale
38 Boulevard SE in a 95,035 square foot building that was previously a hotel use [R. 089]. It
39 currently has 140 resident-patients; and is capable of housing up to 210 residents [R. 206 and
40 203, respectively].

41 Predicated on incorrect advice from unknown City Staff, the use was allowed to
42 commence operation in November 2025 without a conditional use permit. Although the record
43 is vague on how this significant mistake transpired, it appears that at some point in time after
44 the Applicant began operating without permitting, Planning Staff determined that the use was
45 an "overnight shelter" use under the IDO, and as such required that the Applicant apply to the
46 ZHE for conditional use approval.¹ Subsequently, in December 2025, Karan Mahajan, MD,
47 the Applicant-owner of Partners Hospitality, LLC, d.b.a. Empower Health Service (Applicant
48 or Appellee), submitted a conditional use application to the ZHE [R. 079].²

49 Following three public, quasi-judicial hearings before the ZHE on the application, the
50 ZHE granted the requested conditional use permit, and in doing so, presumably to mitigate
51 adverse impacts on the surrounding community, adopted and set multiple conditions that are
52 to be implemented at the facility within a year of the ZHE's approval [R. 016-017]. This appeal
53 followed.

1. The record further shows that although the use required a conditional use permit (discussed in more detail below), Planning Staff or Zoning Enforcement Staff took no steps requiring the applicant to either cease and desist operation or maintain the status quo until permitting was approved.

2. As described in more detail below the application lacked detail about how the shelter is operated, staffing details, including detail on the services it provides, its policies and procedures, rules of conduct for patients, and other significant details about the operation of use. At my request during the appeal hearing, the Applicant supplemented the record with the necessary details of the operation of the facility.

After reviewing the record and the supplemental evidence provided by the Applicant and the Appellants, and after listening to arguments of the parties, I first find that the Yale Village Neighborhood Association (YVNA) Appellant failed to satisfy the standing requirement for a neighborhood association in the IDO. As a result, the YVNA Appellant should be dismissed from the appeal as required by the IDO.

I next find that Appellant D. Love Restaurants, LLC, through Donald Love, has standing to appeal the ZHE's decision. I also find that the appeal should be granted in part and denied in part. The record contains substantial evidence of existing adverse impacts directly linked to the use, and the evidence further shows that the conditions adopted by the ZHE are likely sufficient to mitigate those impacts as required by the IDO if implemented promptly. However, under the circumstances shown in this appeal, the timeline for implementing certain conditions is too long and should be modified.

In summary, as explained below in more detail, I respectfully propose that the City Council uphold the ZHE's approval of the conditional use permit, dismiss the YVNA from this appeal for lack of standing, and grant Mr. Love's appeal only to the extent necessary to modify the ZHE's decision regarding the conditions to more promptly address *existing* adverse impacts, including the implementation of certain mitigation measures sooner than the one year timeframe contemplated in the IDO.

Next, the record has been supplemented by 484 additional pages. Without objection from either party, during the appeal hearing, I requested that the Applicant provide better detail about the internal operation of the services it provides, including the policies and protocols for dealing with prospective and active resident-patients at the facility. The Applicant added 475 pages to the record regarding the operational details of the conditional use. In addition, without

objection from the Applicant, the Appellant supplemented the record with nine additional photographs as well as two short videos to further demonstrate the existing offsite conditions.

Finally, the original record lacked Bates-stamped pages. Because of the additional documents, I have recompiled all the documents together and taken the opportunity to Bates-stamp the consolidated 744-page record. The record pages referenced in this disposition report are cited in bold print brackets.

II. STANDING TO APPEAL

Because this is an appeal from a decision under the IDO, Appellants must have standing in order to have their appeal heard. However, the law of standing to file an appeal under New Mexico law is distinctive compared to the standing that is required for neighborhood associations to appeal decisions under the IDO.

Under the IDO, individual property owners and neighborhood associations equally have standing to appeal if they own property or the association boundary is within 660 feet of the application site, respectively. See IDO, § 6-4(U)(2)(a)(5) and Table 6-4-2 as it applies to standing to appeal conditional use applications. The evidence in the record reveals that Appellant, D. Love owns a business property that abuts the conditional use application site, and therefore, based on proximity, Mr. Love has standing to appeal the ZHE's decision [**R. 186**].

As for the YVNA, there is also evidence that the YVNA has a boundary within 660 feet of the application. However, neighborhood associations, as a class of appellants, must satisfy an additional prerequisite that other classes of appellants under the IDO need not meet

for standing. If a neighborhood association meets the proximity requirement, that association must also:

submit a petition in support of the appeal, signed by a majority of all property owners or tenants located within 660 feet of the application site, inclusive of all rights-of-way.

IDO, § 6-4(U)(2)(a)(5).³ Irrespective of how this provision should be interpreted, in this appeal, the YVNA Appellants failed to present any petition, and therefore under § 6-4(U)(2)(a)(5), the association does not have standing and cannot proceed with its appeal.

III. ISSUES PRESENTED

In this appeal, the Appellant, D. Love essentially contends that the Applicant failed to show with substantial evidence, even with the conditions set by the ZHE, that the overnight shelter use will not cause material adverse impacts to the surrounding business owners and their customers [R. 023]. He also argues that the conditions set by the ZHE are either insufficient to mitigate the precise impacts that they are currently experiencing as a direct result of the overnight shelter use, or that the conditions are too speculative for approving the conditional use. [R. 24]. Specifically, Appellant argues that the evidence in the record demonstrates that the Applicant is not controlling or managing prospective residents and homeless individuals who are seeking occupancy at the facility from "loitering," "trespassing," engaging in "criminal activity" with drug use offsite on neighboring properties, including at

3. Notably, the IDO, effective April 2025 is applicable to this appeal. It is not clear whether the petition must include association members or also non-association members within the 660 foot proximity requirement therein.

Appellant's restaurant business [R. 024]. In addition, Appellant argues that the Applicant has done little if anything to keep its resident-patients on the shelter premises at night and during the day. Finally, Appellant claims that the ZHE's conditions are a start but are not enough. Specifically, Appellant contends that since the shelter opened in 2025, the neighborhood has deteriorated, becoming more dangerous with increased homelessness and drug use and all the while the ZHE failed to recognize the urgency of the situation when he gave the Applicant 12 more months to meet the conditions of approval. The Appellant seeks a reversal of the ZHE's decision. In the alternative, Appellant asks the City Council to modify the conditions imposed by the ZHE by adding more conditions and by enforcing a clear, shorter deadline for implementing all adopted conditions.

IV. BACKGROUND

What is clear is that when the Applicant submitted a conditional use application to the ZHE, the use was already operating, accepting and presumably treating resident-patients. The record further shows that the application was submitted on December 8, 2025 [R. 077].

In the application, the overnight shelter use is defined as:

An Intensive Outpatient Program is a structured, evidence-based treatment model that provides several hours of therapy multiple days per week while allowing participants to live in the community and maintain daily responsibilities. All individuals are clinically assessed at intake to determine whether they meet criteria for IOP.

For patients whose recovery is significantly hindered by lack of stable housing, we provide temporary housing at no cost. Those residing with us also receive:

- Two meals daily (currently supported through donations mainly),
- Transportation for medical needs, including primary care, dental visits, and travel to methadone or buprenorphine clinics, and

152 • Ongoing clinical and recovery support.
153 [R. 087].
154

155 There is also evidence in the record that at full capacity the use will have 25 staff and
156 additional 24/7 security [R. 203]. However, other than the operational narrative in the application
157 and some vague testimony regarding the use, the record lacked specificity and documentation
158 regarding the operation and administration of this land use. Said another way, precisely how
159 the land use is supposed to function in the building it is housed in was left ambiguous in the
160 application and in the record.⁴ As expected, the supplemental documents include over 475
161 new pages of documents in the record.⁵ These supplemental documents shed light on the
162 operation and will be discussed below.

163 The record next shows that on January 20, 2026, the ZHE held the first hearing on the
164 application [R. 003]. Sixteen people testified opposing the application [R. 172-196]. Incidents
165 of alleged crime, loitering, trespassing, destruction of property, public drug use and other
166 similar activity were described to the ZHE as being directly linked to the use [R. 174-196].
167 The record demonstrates that homeless people with drug addiction apparently are (for lack of
168 a better term) drawn to the facility in hopes of becoming a resident-patient or to be near
169 someone who already is in the facility. For whatever reason, some people are either turned

4. Notably, as stated above, at the LUHO appeal hearing, additional operational documentation was requested, including policies, resident and treatment protocols, rules of conduct for residents, as well as staffing requirements and other operational details. These were eventually submitted into the record after the appeal hearing. As discussed below, these documents should have been included in the original application as they are necessary for addressing mitigation of adverse impacts.

5. Normally, when an applicant's application is inadequate, I would remand the matter to the original reviewing body. However, a remand would result in a fourth ZHE hearing. The supplemental documents show that the operation is well thought out and establish the necessary clarity (at least for the operational aspect of the facility) for a proposed disposition.

away or are waiting for the facility to open so that they can speak with someone at the facility either to visit a patient or to seek help [R. LUHO Hrg. and video evidence]. Appellant and others testified that these people tend to camp outside the facility at night [R. 178].

The overnight shelter's Medical Director (Dr. Mahajan) and its Chief of Operations Officer both testified that they are doing everything they can to prevent these adverse impacts described by witnesses [R. 192-195]. However, the ZHE heard conflicting information about these secondary offsite adverse effects linked to the facility. The facility's Chief of Operations (Max Juarez) testified that the facility's security personnel are doing everything they can to respond and to intercede offsite when they observe homeless individuals camping offsite near the facility [R. 195]. However, this issue or problem did not appear to be addressed adequately by the Applicant at the hearing. For various reasons, including inadequate staffing, security personnel have not always responded to all the occurrences complained of by Appellant and others who testified at the ZHE hearings [R. 183, 213-215, 221-222].

In a written decision, dated February 4, 2026, the ZHE concluded that the record *"lacks substantial evidence to render a decision"* and continued the hearing to February 17, 2026 [R. 003]. The ZHE requested that the Applicant and those opposing the application submit additional evidence in the record regarding whether the proposed use can satisfy IDO, § 6-6(A)(3)(e).⁶

Next, at the February 17, 2026, second hearing, the ZHE concluded that the nearest residential neighborhood is 695 feet from the overnight shelter use, satisfying IDO, § 6-

6. IDO, § 6-6(A)(3)(e) is part of the conditional use test and requires an applicant to demonstrate that the proposed use will not increase "non-residential activity within 300 feet... of a lot in a residential zone district..."

6(A)(3)(e) [R. 205]. However, the ZHE again heard conflicting testimony regarding the impact on the neighborhood that is alleged to be attributable to the use offsite and in the immediate area [R. 210-225]. At that second hearing, the ZHE concluded that there is substantial evidence in the record demonstrating that the use does indeed cause adverse impacts on the neighborhood and the ZHE decided that another hearing is necessary to explore how to further mitigate the impacts through the setting of conditions for the operation of the use [R. 009]. In continuing the hearing, the ZHE asked Planning Staff to obtain recommendations from relevant city "commenting agencies" on appropriate conditions specifically to mitigate the impacts of the use [R. 009-010].

The hearing was continued to the April 21, 2026, hearing docket [R. 010]. To this end, Planning Staff sent a memorandum to six city agencies, including Environmental Health, the Fire Marshal, Police (APD), Code Enforcement, the Health, Housing, and Homelessness Department, and to the Community Safety Division, requesting that their Staff make recommendations regarding *"potential conditions of approval that might be imposed...to mitigate against significant adverse impacts..."* [R. 151].

In the meantime, the ZHE also referred the matter to a *"post-submittal facilitated meeting"* to allow the Applicant and those opposing the application to attempt finding a middle ground, presumably on how to manage alleged adverse impacts [R. 010]. The facilitated meeting occurred on April 13, 2026, and the facilitator submitted to the ZHE a detailed summary of the meeting [R. 166]. It appears that no agreements were made.

Next, the record shows that the ZHE received written proposed conditions for mitigating impacts from APD staff, staff with the Fire Marshal, and from Code Enforcement staff [R. 154-164]. After the ZHE held the final third hearing on the application, the record

shows that in a written decision, dated May 6, 2026, the ZHE adopted all of the proposed conditions recommended by the above stated agency Staff and approved the conditional use application [R. 012-018].

Subsequently, on May 20, 2026, the Appellants filed a timely appeal. An extended quasi-judicial appeal hearing was held on July 30, 2026, at which the Appellants and the Applicant were allowed to testify, present new evidence, and cross-examine witnesses.

V. STANDARD OF REVIEW

A review of an appeal under the IDO is a whole record review to determine whether the ZHE's decision granting the conditional use application was fraudulent, arbitrary, or capricious under the IDO; or whether the decision is not supported by substantial evidence; or if in granting the application, the ZHE erred in the facts, or in applying the requirements of the IDO regulations to the facts. See IDO, § 6-4(U)(3)(d).

Under New Mexico law, arbitrary and capricious action is action taken that “is unreasonable or without a rational basis, when viewed in light of the whole record.” *Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission*, 2003-NMSC-005, ¶ 17. Moreover, it is action taken “without proper consideration in disregard of the facts and circumstances.” *Perkins v. Department of Human Services*, 1987-NMCA-148, ¶ 20. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 1994-NMSC-126, ¶ 21.

The Land Use Hearing Officer (LUHO) is an independent hearing officer and has been delegated the authority by the City Council to hold quasi-judicial appeal hearings regarding

appeals under the IDO, make findings, and to propose dispositions of appeals, including whether a decision appealed should be affirmed, reversed, or otherwise modified to bring the decision into compliance with the standards and criteria of the IDO. See, IDO, § 14-16-6-4(U)(3)(d). Finally, if it is determined that the matter should be remanded for a lack of sufficient facts or for additional clarity of the decision(s) appealed, the LUHO is required to set forth the reason(s) for the remand and the matters to be reconsidered and may order such remand without review from the City Council. IDO, § 14-16-6-4(U)(3)(d)6. With these significant appellate review principles and considerations in mind, the substantive merits of the appeal are discussed next.

VI. DISCUSSION

Because this appeal concerns a conditional use, this discussion must begin with the conditional use regulations in the IDO and how they apply to an overnight shelter use. First, in the IDO, a conditional use is defined as:

A land use that is allowable in a particular zone district subject to conditional approval by the ZHE based on a review of the *potential adverse impacts* of the use and any appropriate mitigations to minimize those impacts on nearby properties.

IDO, § 7-1, Definitions (emphasis added). Thus, in the IDO, there is a presumption that conditional uses, without "*appropriate mitigations to minimize those impacts*," are capable of producing harm to a neighborhood. Presumably, because shelters can negatively or adversely impact a neighborhood in which they are located, there is no dispute that an overnight shelter

land use is categorized under the IDO as a conditional use. Precisely what those adverse impacts are, must be identified before mitigation can be rendered.⁷

Overnight shelters are regulated under two regulatory frameworks in the IDO, first under the Use Specific Standards of § 4-3(C)(6) and then as a conditional use under § 6-6(A)(3). Under § 4-3(C)(6), an overnight shelter cannot be within 1,500 feet of another lot containing another overnight shelter use, and the use must be conducted indoors. See, IDO, § 4-3(C)(6)(a) and (b).⁸ The undisputed evidence in the record shows that the overnight shelter in this appeal satisfies the Use Specific Standards of § 4-3(C)(6), and these criteria are not at issue in this appeal.

Section 6-6(A)(3) of the IDO are the provisions that specifically regulate conditional uses. The five prong conditional use regulation states in full:

6-6(A)(3) Review and Decision Criteria

An application for a Conditional Use Approval shall be approved if it meets all of the following criteria.

6-6(A)(3)(a) It is consistent with the adopted ABC Comp Plan, as amended.

6-6(A)(3)(b) It complies with all applicable provisions of this IDO, including but not limited to any Use-specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in a prior permit or approval affecting the property, or there is a condition of approval that any Variances or Waivers needed to comply with any of these provisions must be approved or the Conditional Use Approval will be invalidated pursuant to Subsection (2)(c)2 above.

7. Notably, the IDO does not require absolute mitigation, only "sufficient" mitigation." See Section V above on the standard of how this is judged.

8. Under § 4-3(C)(6)(c), there is a third criteria, but it is inapplicable to the shelter use in this appeal; it restricts the size of an overnight shelter use to 25,000 square feet in a MX-M zone. The shelter in this appeal is in a NR-LM zone district.

- 287
288 6-6(A)(3)(c) It will not create significant adverse impacts on adjacent
289 properties, the surrounding neighborhood, or the larger
290 community.
291
292 6-6(A)(3)(d) It will not create material adverse impacts on other land
293 in the surrounding area through increases in traffic
294 congestion, parking congestion, noise, or vibration
295 without sufficient mitigation or civic or environmental
296 benefits that outweigh the expected impacts.
297
298 6-6(A)(3)(e) On a project site with existing uses, it will not increase
299 nonresidential activity within 300 feet in any direction of
300 a lot in any Residential zone district between the hours of
301 10:00 P.M. and 6:00 A.M.
302
303 6-6(A)(3)(f) It will not negatively impact pedestrian or transit
304 connectivity without appropriate mitigation.
305

306 It is clear that the purpose of the threshold test for allowing or denying a conditional
307 use under the IDO is an inquiry to identify all the impacts of a use. It seeks to have the ZHE
308 evaluate not only the adverse impacts and methods for mitigating them, but it also allows for
309 an inquiry of the societal utility or benefits the use may garner for the larger community. In
310 this regard, the societal benefits are evaluated by the ZHE through an analysis of the first and
311 the fourth prongs encompassed in §§ 6-6(A)(3)(a) and 6-6(A)(3)(d), respectively.

312 The first prong requires that the land use (in this case an overnight shelter) be consistent
313 (harmonious) with the policies and goals of the city's Comprehensive Plan (Comp Plan).
314 Although, in this appeal, the Appellant did not challenge the ZHE's finding that the use is in
315 fact consistent with the Comp. Plan, for a better understanding of the ZHE's overall decision,
316 the beneficial attributes of the use must be briefly discussed.⁹

9. This is because the full analysis required for any conditional use under the IDO, initially requires a comparative analysis of benefits verses adverse impacts when the ZHE is considering *denying* a use. The second step is an evaluation of how the uses' adverse impacts (if any) are to be "sufficiently" mitigated if the ZHE is considering *approving* a use. See, IDO § 6-6(A)(3)(d).

The ZHE concluded in Finding 23 of his final decision dated May 6, 2026, that the use met or "furthered" numerous housing goals and policies in the Comp. Plan [R. 015]. This finding was not disputed by the Appellant. Although the ZHE didn't elaborate on the significance of the housing goals and policies as they affect or relate to the totality of the Comp. Plan's goals, it is clear that in general terms, housing in the Comp. Plan is prominent among all the goals in the Comp. Plan. In the Housing Plan element of the Comp Plan, it states in part:

Housing policies relate to and support almost every element of the Comp Plan, especially community identity, land use, and economic development. In the short term, new housing construction creates jobs and increases tax revenue. In the long term, thoughtful housing policies help to make Albuquerque a desirable place to live, creating vibrant, sustainable neighborhoods that connect residents to nearby jobs and amenities, which can attract workers and employers to the region.

Comp. Plan, Sec. 9.1.1, Introduction.¹⁰

In addition, it is anticipated under § 6-6(A)(3)(d) (the fourth prong), that certain categories of adverse impacts ("traffic congestion, parking congestion, noise, or vibration") require "sufficient mitigation" or in the alternative, the use must contribute *"civic or environmental benefits that outweigh the expected impacts."* In this case, the ZHE did not make any findings that the civic or environmental benefits of the use outweigh the impacts. However, like the provision above regarding the Comp. Plan, this provision demonstrates that conditional uses, despite their adverse impacts, are tolerated in society depending on the extent of their societal benefits. It is clear under the facts of this appeal that the overnight shelter does

10. Although the overnight shelter use is temporary housing, the goals and policies identified by the ZHE as being furthered by the use, are still relevant and applicable to the use. Again, this was undisputed by the Appellant.

in fact provide considerable civic or societal benefits. Regardless, however, of how the civic benefits of the overnight shelter use are viewed, the appeal is about how to mitigate the adverse impacts, and whether or not the ZHE erred in concluding that the conditions will *sufficiently* mitigate those impacts.

And as alluded to above, the precise essence of those impacts stem from people who are lingering around the facility for various reasons, including people who are seeking to be enrolled at times when the facility is closed, people who for whatever reason are rejected as resident-patients, and people who are discharged for violating facility rules. These people, according to the witnesses who gave first-hand testimony to the ZHE at all three hearings, are the fundamental problem for the neighborhood because some tend to linger in the area. The evidence shows that these are the circumstances that create the material adverse impacts.

The testimony revealed that these people tend to have nowhere else to go, so they remain on the street front or in dark places near the facility on private property. This was the crux of the adverse impact that the facility has on the neighborhood according to the multiple witnesses who appeared before the ZHE in all three hearings. Thus, how the ZHE's conditions mitigate this problem must be analyzed to determine if they address this concern sufficiently. However, before getting to the crux issue, a very brief discussion of the ZHE's decision approving the application, rather than denying it, is in order.

A. The appeal of the decision specifically granting the conditional use application should be denied as there is substantial evidence in the record to support this aspect of the ZHE's decision.

In this appeal, the Appellant seeks a reversal of the ZHE's decision approving the conditional use application [R. 023]. However, the standard for reversal has not been met by

the Appellant. See, Section V above, Standard of Review. The Appellant has not shown that the ZHE erred in the facts or in applying the IDO to those facts regarding the approval. The ZHE clearly took the application seriously as he held three hearings on the application and sought out comments from outside city agencies. His decision approving the application is rational and reasonable.

Specifically, the Appellant failed to show that the use does not satisfy the Use Specific Standards in § 4-3(C)(6) and the conditional use standards in § 6-6(A). Conversely, the evidence clearly shows that the use is more than 1500 feet from another similar use, that the use is conducted fully indoors, and that the use is not in an MX-M zone district **[R. 26-29]**. As for the conditional use, the Appellant did not dispute the ZHE's findings that the use is "consistent" with or "furthers" the Comp. Plan as the ZHE concluded in Finding 23 **[R. 014]**.

In addition, although not reviewed or evaluated by the ZHE, I find that when it is fully operational (at staffing levels contemplated in the staffing documentation in the supplemental evidence submitted by the Applicant), the facility is intended to be well run with competent, trained onsite service providers **[R. 272-744]**. Had this documentation been submitted with the application, much of the mystery regarding the facility's operation would potentially have been easily resolved without so many hearings. Of the 475 pages of supplemental documents regarding the operational aspects of the facility that were submitted in the record, many include staffing requirements, policies and protocols for dealing with potential patients, and admitted patients and their treatments, including admission and safety policies and protocols **[R. 272-744]**. On-site management, professional staffing and strict codes of conduct help manage prospective patient behavior and patient activity and can influence the potential for the adverse impacts complained about by the Appellant.

389 Next, Appellant has not shown with the presentation of any evidence that the adverse
390 impacts associated with the use cannot be sufficiently mitigated to the extent that a denial of
391 the application is appropriate. In addition, at the appeal hearing, Appellant did not satisfy his
392 legal burden to show that the use is inappropriate at the location it is in. The crux of Appellant's
393 appeal has all to do with the conditions set by the ZHE and whether those conditions are
394 sufficient and/or based on conjecture to actually mitigate the impacts. However, the converse
395 is also true and as shown in the next section the conditions stem from experts who are arguably
396 experienced in how to mitigate crime and homelessness. For these reasons, the City Council
397 should deny the appeal insofar as it relates to Appellant's request for a reversal of the ZHE's
398 decision approving the conditional use application.

399
400 **B. The Appellant has not shown how the ZHE erred in adopting the**
401 **conditions, however, because of the *existing* impacts of the use, the City**
402 **Council should modify the ZHE's decision to require the Applicant to**
403 **satisfy certain conditions sooner than the one year imposed by the**
404 **ZHE.**

405
406 Although the Appellant contends that the conditions the ZHE set for the conditional
407 use are insufficient to mitigate the adverse impacts, Appellant has not shown why or how those
408 conditions are inadequate. The record reflects that the adverse impacts are real. However,
409 Appellant presented no evidence to show that the impacts cannot be sufficiently mitigated.
410 Instead, Appellant merely claims, without proof, that the conditions may not sufficiently
411 mitigate the impacts, and because of this, the conditional use should have been denied.
412 However, Appellant has not reconciled the fact that the ZHE's conditions were designed by
413 experts who deal with, or manage crime and the homeless population in the city, or who assist

the city's efforts in solving the ever-increasing homelessness problem in the city. Thus, the conditions are not merely speculative in nature as Appellant claims.

It is noteworthy to emphasize that after the second hearing on the application, through Planning Staff, the ZHE sought comments from outside experts on potential conditions to mitigate the offsite impacts created by the overnight shelter use [R. 151]. The ZHE obtained recommended conditions from a Senior Crime Prevention Specialist with the Albuquerque Police Department, a Captain with the Fire Marshal's ADAPT Division, and Staff from the City's Development Facilitation Team (DFT) [R. 154-164]. The ZHE adopted every agency condition proposed [R. 015-016]. If the conditions will have a speculative impact on the problems that have been identified offsite, Appellant has not shown how or why he believes they are unrealistic, speculative, or untested for curbing the problems. I find that the conditions are rational, reasonable, and designed to confront and to sufficiently mitigate the impacts described in this appeal.¹¹

For example, APD Senior Crime Prevention Specialist Laura Kuehn expressly proposed thirteen conditions that were all "*based on Crime Prevention through Environmental Design*" [R. 154]. Senior Specialist Kuehn also advised that community policies setting curfew, visiting hours, prohibiting weapons, illegal drugs and violence must be implemented to ensure success, presumably with the conditions proposed as well as success with the staff and resident-patients [R. 155]. There is evidence in the record that the Applicant has already

11. Again, absolute mitigation is not the standard. However, if for some reason the conditions, when fully implemented, do not "sufficiently" mitigate the impacts, there are alternatives. Fire Captain David Baca advised in his memorandum to the ZHE, "[s]hould these issues [impacts] rise to the a level that constitutes a nuisance, under the city's nuisance ordinance, ADAPT program would require the property owner and management to take reasonable and timely corrective actions" [R. 157].

enacted the internal policies and protocols recommended by Senior Specialist Kuehn [R. 272-292]. Captain David Baca of the Fire Marshal's Office wrote in a memorandum to the ZHE that the ADAPT program of the City is designed to confront nuisances of *"trespassing, littering, loitering, vandalism, and other disruptive behaviors"* linked to any property including the overnight shelter use at issue in this appeal. Captain Baca submitted proposed conditions in the form of what is called "Crime Prevention Standards" [R. 157-163]. In reviewing the details of the policies, procedures and protocols of the overnight shelter use, I find that the Applicant has enacted some elements of the "Design Concepts" described by Captain Baca in his recommendation for crime prevention submitted to the ZHE, including access control measures, surveillance measures, behavior policies and rules, rational business practices, and property maintenance policies for the facility [R. 247-740]. Moreover, the ZHE essentially adopted all the conditions proposed as they apply to access and surveillance [R. 15-16].

The proposed conditions recommended by DFT Planning Staff are similar to what Captain Baca proposed and were also adopted as conditions by the ZHE [R. 163-164]. Thus, the conditions are not merely speculative, they are supported by substantial evidence that all the conditions are specifically designed to sufficiently mitigate adverse offsite and onsite impacts linked to the overnight shelter use. Appellant did not show otherwise. Thus, I find that the conditions are not arbitrary or capricious, but are well-founded to satisfy IDO, § 6-6(A)(3)(c) and (d).

However, despite all this, I find that because the adverse impacts are existing and have been contemporaneous to the opening of the facility in November 2025, the record shows some urgency with the need for more prompt mitigation. Although the utility of, and necessity for,

456 this facility is apparent, it appears to have opened and continued operating without due
457 consideration of its adverse impacts. One need not look further than in the record for an
458 abundance of factual first-hand accounts of these impacts. The only error I can find with the
459 ZHE's conditions is that he did not impose a clear timeframe in which the Applicant must
460 satisfy the mitigation measures encompassed in the conditions. And, although, IDO, § 6-
461 4(O)(4), establishes a one-year default timeframe for satisfying conditions imposed by the
462 ZHE, I find that under the circumstances, a shorter timeframe is necessary for some of the
463 conditions.¹²

464 Certain conditions should be immediately satisfied. For example, appropriate fencing
465 in height and in type to properly secure the facility would accomplish much in mitigating the
466 loitering, trespassing, and criminal activity stemming from on-site by keeping existing
467 residents on site at night. In addition, it is reasonable to assume that securing the facility with
468 the recommended fencing will also discourage after-hours attempts at getting into the facility.¹³
469 Similarly, it appears from the record that the Applicant is understaffed with security personnel.
470 The facts show that there is one security guard for the entire premises at night. Appellant
471 testified that it takes the private security officer too long to address nighttime problems as they
472 come up offsite [R. LUHO Hrg.]. Appellant was credible and the Applicant did not dispute

12. The circumstances, as mentioned above, are that the facility has been in operation since November 2025, and other than minimal security personnel randomly patrolling the offsite perimeter of the facility, the Applicant has not done much else to mitigate the adverse impacts.

13. Note that the DFT Staff **"strongly encourage"** that the Applicant seek a variance for a taller fence than what is allowed in the zone district. Although the ZHE's decision was made in May 2026, there is no evidence that the Applicant has applied for such a variance.

473 this testimony. Also, despite that the ZHE expressly required better lighting in outside areas,
474 the facts show that the outside areas are still poorly lit [R. LUHO Hrg.].

475 IDO, § 6-4(O)(4), by its language allows for shorter timeframes for implementing
476 conditions of approval. As indicated in the next section, the timeframes for meeting the
477 conditions relating to fencing, lighting, and security personnel should be shortened.

478 479 **VII. PROPOSED FINDINGS AND RECOMMENDED CONDITIONS**

480 In conclusion, after hearing the appeal, reviewing the record, including the additional
481 484 supplemental pages of documents, considering the written arguments made by the parties,
482 and evaluating the applicable provisions of the IDO and the Comprehensive Plan, I respectfully
483 recommend that the City Council deny the appeal except as to the implementation of a shorter
484 timeframe for selected mitigation conditions. The ZHE's approval of the conditional use is
485 supported by substantial evidence, but the record also supports requiring faster implementation
486 of many of the conditions most directly tied to existing adverse impacts.

487 Because the use has been in operation since November 2025 and the record shows that
488 the Applicant has not yet done enough to mitigate offsite adverse effects, the ZHE should have
489 required immediate satisfaction of the most significant mitigation conditions. I respectfully
490 propose that the City Council modify the ZHE's decision as set forth below and otherwise deny
491 the appeal. Below are the findings of fact including the proposed modifications of the
492 conditions:

- 493 1. The Appellants filed a timely appeal under the IDO.
- 494 2. The Appellant, D. Love has standing to appeal the ZHE's May 6, 2026, decision
495 approving the conditional use application of Partners Hospitality, LLC, d.b.a. Empower Health

496 Service.

497 3. Under IDO, § 6-4(U)(2)(a)(5), the Yale Village Neighborhood Association
498 Appellant does not have standing to have its appeal heard and should be dismissed from the
499 appeal.

500 4. A quasi-judicial appeal hearing at which the parties were given an opportunity to
501 present arguments and testimony, bring witnesses to testify, and to cross-examine witnesses,
502 was held on July 30, 2026.

503 5. Mr. Love's appeal should be partly denied and partly granted.

504 6. Mr. D. Love has not met his burden of proof to show that the ZHE erred in
505 approving the conditional use.

506 7. Insofar as the ZHE set numerous operating conditions to mitigate adverse
507 community impacts, Mr. Love did not meet his burden of proof to show that the ZHE erred in
508 adopting those conditions.

509 8. Mr. Love has met his burden of proof to show that, under the circumstances, the
510 ZHE erred by allowing the Applicant up to one full year from May 6, 2026, to implement all
511 conditions, despite evidence of existing adverse impacts since November 2025.

512 9. The circumstances in the record support that the Applicant should be required to
513 implement certain conditions under a shorter timeframe including certain security, lighting,
514 and access-control conditions, and all remaining conditions no later than May 5, 2027.

515 10. Specifically, the Applicant should fully satisfy ZHE conditions number 25.a, 25.b,
516 and 25.q regarding campus lighting no later than 60 days after the City Council makes a final
517 decision in this matter.

518 11. The Applicant should fully satisfy ZHE condition number 25.p regarding on-site

519 overnight responses with appropriate security personnel no later than 60 days after the City
520 Council makes a final decision in this matter.

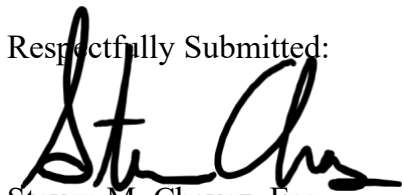
521 12. The Applicant should fully satisfy ZHE conditions number 25.f, 25.i, 25.m, and
522 25.n regarding securing the campus facility with locking devices, demarcated access points for
523 ingress and egress, signage, and controlled access with adequate fencing and gates no later
524 than 90 days after the City Council makes a final decision in this matter.

525 13. All other conditions set by the ZHE should be implemented not later than May 5,
526 2027.

527 14. Because the appeal should be partly granted, the Appellant should not be assessed
528 "appeal costs" as required under IDO, § 6-4(U)(5)(b) for appellants who "lose" appeals.

529 15. As an additional condition, the Applicant should be advised that under IDO, § 6-
530 4(O), "[i]f any conditions are not met within that time, the approval is void. The Planning
531 Director may extend the time limit up to an additional 1 year."

532 Respectfully Submitted:

533 

534 Steven M. Chavez, Esq.
535 Land Use Hearing Officer
536 August 7, 2026

537 Copies to:

538 City Council
539 Appellants
540 Appellees/ Party Opponents
541 ZHE
542 Planning Staff
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Notice Regarding City Council Rules Under IDO, § 6-4(U)(3)(e)

When the Council receives the Hearing Officer’s proposed disposition of an appeal, the Council shall place the decision on the agenda of the next regular full Council meeting provided that there is a period of at least 10 days between the receipt of the decision and the Council meeting. The parties may submit comments to the Council through the Clerk of the Council regarding the Hearing Officer’s decision and findings provided such comments are in writing and received by the Clerk of the Council and the other parties of record four (4) consecutive days prior to the Council “accept or reject” hearing.