



CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

City of Albuquerque Family and Community Services (Agent, Consensus Planning) requests a conditional use to allow an overnight shelter for Lot A1A1A/Lovelace Hospital, Lovelace Hospital, located at 5400 Gibson BLVD SE, zoned MX-H [Section 14-16-4-2]

Special Exception No:..... **VA-2021-00316**
Project No: **Project#2021-005834**
Hearing Date: 03-15-22
Closing of Public Record: 03-15-22
Date of Decision: 03-30-22

On the 15th day of March, 2022, Consensus Planning, agent for property owner City of Albuquerque Family and Community Services (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow an overnight shelter (“Application”) upon the real property located at 5400 Gibson BLVD SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow an overnight shelter.
2. This Application came before the ZHE at the March 15, 2022 ZHE hearing, upon remand from the Land Use Hearing Office (“LUHO”), pursuant to the “LUHO Remand to ZHE and Recommendation to City Council” in AC-21-15 and AC-21-16, dated February 18, 2022 (the “LUHO Remand”)
3. The LUHO Remand arose from an appeal of the ZHE Notification of Decision on the Application, dated November 3, 2021 (the “November ZHE NOD”).
4. All findings and conclusions of the November ZHE NOD are incorporated by reference as though fully set forth in this Notification of Decision. However, if there is a conflict between this Notification of Decision and the November ZHE NOD, this Notification of Decision prevails and controls.
5. The LUHO Remand directed the ZHE to examine only the strict issue of whether the Application more appropriately satisfies the requirements of a “Group Home, Large” rather than a “Overnight Shelter,” as such terms are defined in IDO Section 7-1.
6. Agent Consensus Planning, Applicant representative Director Carol Pierce, and Lawrence M. Wells, legal counsel for Applicant appeared at the March 15, 2022 ZHE hearing and provided testimony and legal argument.
7. Applicant asserts that it correctly characterized the proposed use requested in the Application as an Overnight Shelter, and that the City has historically and continuously interpreted the term “Overnight Shelter” to include facilities that provide housing for multiple consecutive nights.
8. Applicant asserts that the definitions of “Overnight Shelter” and “Group Home, Large” in IDO Section 7-1 are ambiguous as they apply to the phrase “24 hours”.

9. Counsel for Applicant states that “a period of less than 24 hours,” as used in the definition of Overnight Shelter, is a euphemism for “temporary,” while by contrast the phrase “a period of more than 24 hours” in the definition of Group Home is a euphemism for more permanent housing of persons who could not be housed on their own without the assistance of a Group Home.
10. Further, counsel for Applicant notes that “a period of less than 24 hours” does not prohibit multiple overnight stays -- there is no requirement for a person to stay only overnight and never come back.
11. Counsel for Applicant cites the New Mexico Supreme Court case of *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, 126 N.M. 413, 970 P.2d 599.
12. In *Hinkle*, the New Mexico Supreme Court stated that “persuasive weight is to be given the long-standing construction of ordinances by the agency.” *Id.* ¶ 7.
13. *Hinkle* discussed that an “administrative gloss” applies to an ordinance “when those responsible for its implementation interpret the clause in a consistent manner and apply it to similarly situated applicants over a period of years without legislative interference. If an administrative gloss is indeed found to have been placed on a clause, the municipality may not change such a de facto policy, in the absence of legislative action, because to do so would presumably violate legislative intent.” *Id.* ¶ 9.
14. Further, the *Hinkle* court relied on the interpretation by the City Zoning Enforcement Officer (“ZEO”) in that case, whom was the “person designated by the Zoning Code to enforce the Code and issue declaratory rulings as to its applicability,” as conclusive of the City’s interpretation of its zoning ordinance. *Id.*
15. Although *Hinkle* was decided under the pre-IDO City zoning ordinances, the ZEO remains under IDO Section 6-2(B)(1)(c) “a member of the City Planning Department staff and has authority to interpret this IDO” See also IDO Section 6-4(A) (“The ZEO has authority to interpret this IDO, including the authority to determine its applicability to specific properties or situations”) IDO Section 6-9(C)(1)(a) (“The ZEO has the authority and duty to enforce this IDO”); IDO Section 7-1 (“A City Planning Department employee or his/her authorized representative who interprets the provisions of this IDO”).
16. The rationale of *Hinkle* appropriately applies to this case.
17. Evidence was provided by managers and directors of facilities providing housing for multiple nights per stay, substantiating that such facilities have operated continuously within City limits for up to 71 years as Overnight Shelters:
 - a. Steve Decker, CEO of Heading Home testified that his organization has operated multiple homeless shelters within the City limits that have no effective time limit on stays or that allow multiple successive overnight stays, all of which have been classified as Overnight Shelters by the City. Mr. Decker also testified that Group Homes house people that need more permanent care and shelter and would not be able to live alone in absence of such care, while Overnight Shelters provide temporary shelter for people who could live alone if they had housing.
 - b. Heather Hoffman, Executive Director of the Barrett Foundation, also known as the Barrett House, testified that Barrett House is classified as an Overnight Shelter and shelters each night between 35 and 40 women and children, many of whom stay for multiple nights. All persons staying at Barrett House must be able to perform “Activities of Daily Living” in order to stay in the Overnight Shelter.

- c. Patricia Gonzales, Executive Director of S.A.F.E. House, testified that her organization runs an 85-bed-capacity shelter for domestic violence survivors, which she stated is classified as an Overnight Shelter and has operated as such for 47 years.
 - d. Nicholas Foran, Executive Director of the Good Shepherd Center, testified that his organization runs a 58-bed shelter that provides housing for men, many of whom stay for multiple overnight stays, sometimes for months, and which has operated for 71 uninterrupted years characterized as an Overnight Shelter.
18. James Aranda, City Planning Department Deputy Director and current City ZEO, advised that the City has consistently interpreted Overnight Shelter to be consistent with the uses described, above, by Heading Home, Barrett House, S.A.F.E. House, the Good Shepherd Center, each of which is characterized and identified as an Overnight Shelter and each of which allows multiple consecutive overnight stays.
 19. Director Pierce testified that the characterizations of Overnight Shelters as providing multi-night temporary housing, in contrast to Group Homes as providing permanent housing, are consistent with U.S. Department of Housing and Urban Development (HUD) definitions.
 20. In light of the testimony regarding historic and continuous Overnight Shelter uses and the ZEO's confirmation of the City's consistent interpretation of Overnight Shelters, the City has established an "administrative gloss" under *Hinkle*, which constitutes a de facto policy that Overnight Shelters may allow persons to stay for multiple consecutive nights, as is proposed in the Application.
 21. Given the totality of the circumstances discussed, above, and as further contained in the record, Applicant has established that the conditional use requested in the Application qualifies as an Overnight Shelter under the IDO.

DECISION:

APPROVAL of a conditional use to allow an overnight shelter.

APPEAL:

If you wish to appeal this decision, you must do so by April 14, 2022 pursuant to Section 14-16-6-4(V), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed, or utilized.



Robert Lucero, Esq.
Zoning Hearing Examiner

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NOTIFICATION OF DECISION

City of Albuquerque Family and Community Services (Agent, Consensus Planning) requests a conditional use to allow an overnight shelter for Lot 1, Swift Addn, located at 5006 Gibson BLVD SE, zoned MX-H [Section 14-16-4-2]

Special Exception No:..... **VA-2021-00317**
Project No: **Project#2021-005834**
Hearing Date: 03-15-22
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