

This comment supports the appellants challenging the Zoning Officer's determination that they lack standing to appeal ZNCH-25-005 for the following reasons:

1. Standing Under the Ordinance Is Not Limited to Proximity

Section 22(A) of the Sandoval County Comprehensive Zoning Ordinance identifies four categories through which standing to appeal may be established:

1. the owner of the property listed in the application;
2. representatives of affected County departments or governmental agencies;
3. any person or organization able to demonstrate that their property or other legal rights have been specially and adversely affected by the decision; and
4. property owners (other than the applicant) whose land lies within one hundred (100) feet of the subject property, excluding public right-of-way.

At the appeal hearing for APPEAL-25-002, the County cited denial of the appeal on the basis that the appellant did not meet the proximity requirement under category (4), without evaluating whether the appellant may qualify under any of the other categories provided in the ordinance. If proximity were the only qualifying criterion, there would be no reason for the ordinance to enumerate three additional categories.

The structure of the ordinance indicates that these categories function as alternative bases for standing rather than cumulative requirements. Interpreting subsection (4) as a universal proximity requirement would nullify the other categories by excluding individuals who qualify under subsections (1) through (3) but are not within 100 feet. The appellants may qualify under category (3), and that issue was not addressed in the denial of their right to appeal.

2. The Ordinance Does Not Prohibit Joint Appeals

At the appeal hearing for APPEAL-25-002, it was stated that the joint appeal had been rejected because joint appeals are not permitted. However, no such prohibition exists anywhere in the Comprehensive Zoning Ordinance.

Substantive rights cannot be denied based on procedural requirements that the ordinance itself does not impose.

3. State Law Prohibits Narrowing Appeal Rights Beyond the Statute

NMSA § 3-21-8(B) and § 3-21-9 establish that any person aggrieved by a zoning decision has the right to appeal. In *Bogan v. Sandoval County Planning and Zoning Commission*, 1994-NMCA-157, 119 N.M. 334, the New Mexico Court of Appeals held that: "where the class of persons entitled to review is fixed by statute, it cannot be narrowed by ordinance." This principle has recently been reaffirmed by the New Mexico District Court. The Zoning Officer's restrictive reading of the proximity requirement, used to exclude appellants who may qualify under other categories provided by the ordinance, does exactly what *Bogan* prohibits.

Procedural Note

Three property owners filed appeals of ZNCH-25-005. All three appeals were filed within the same statutory period following the Planning and Zoning Commission decision and were therefore received by the County under the same filing deadline. Standing for all three appellants should have been resolved before the County Commissioners heard the appeal so that all eligible parties could participate in the same proceeding. Instead, the appeals have been placed on separate procedural tracks.

- The appeal filed by the author of this comment regarding ZNCH-25-005 was heard by the County Commissioners on January 14, 2026, and was denied. Because the statutory deadline to appeal to District Court runs from the County Commission decision, this timeline requires a decision on whether to file a court appeal before it is known whether the other appellants will ultimately be granted standing and allowed to have their own County Commission hearing on the same underlying decision.
- A second appellant was denied standing by the Zoning Officer, appealed that determination to the Planning and Zoning Commission on January 13, 2026, and has a County Commission appeal hearing scheduled for March 11, 2026.
- A third appellant was also denied standing by the Zoning Officer and appealed that determination to the Planning and Zoning Commission, with a hearing scheduled for March 10, 2026. If that decision is upheld, the appellant may then appeal to the County Commissioners on a separate timeline.

If the second or third appellants are ultimately determined to have standing, their appeals will necessarily involve review of the same zoning decision from the January 14th County Commissioner hearing, but would occur months later in separate proceedings.

This sequencing fragments review of a single zoning decision and creates the possibility of multiple appeals of the same record occurring on different timelines.

Resolving standing for all potential appellants before the County Commissioners considered the merits of the appeal would have allowed all parties to participate in the same proceeding and would have provided greater clarity for the applicant, the appellants, and the public attempting to follow the process.

Both appellants in APPEAL-25-002 and APPEAL-25-003 are entitled to evaluation under all four bases for standing provided in the ordinance, not a determination based on a single criterion or on procedural requirements not stated in the ordinance. The Zoning Officer's determinations should therefore be reversed.

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