

County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

May 3, 2010

Newton J. Chu, Esq.
Jennifer L. Zelko, Esq.
120 Pauahi Street, Suite 312
Hilo, HI 96720

Dear Mr. Chu and Ms. Zelko:

Use Permit Application (USE 10-000019)
Applicant: Paradise Retirement Hawaii
Request: Assisted Living Facility in RM-2.5 District
Tax Map Key: 7-5-10:61

The Leeward Planning Commission at its duly held public hearing on April 16, 2010, voted to approve the above-referenced application to allow the establishment of a 160±-unit assisted living facility and related improvements of 9.2 acres of land situated within the Multi-Family Residential (RM-2.5) zoned district. The property is located on the east side of Hualālai Road, approximately 300 feet south of the Nani Kailua Drive – Hualālai Road intersection, Pua'a 1st, North Kona, Hawai'i.

Approval of this request is based on the following:

The applicant requests a Use Permit to allow the operation of an assisted living facility and related uses. The project will consist of the following:

- approximately 160 residential units for 200 seniors
- operation 24 hours a day, 7 days a week
- restaurant and cafeteria
- hairdressers, barbers, beauty, wellness
- gym
- medical offices
- shuttle

- approximately 53 employees.

An assisted living facility is defined as a combination of housing, health care services, and personalized support services designed to respond to individual needs, to promote choice, responsibility, independence, privacy and dignity for seniors. Skilled nursing care will be provided to residents of this project.

Rule 7 (Use Permits) of the Planning Commission's Rules of Practice and Procedure states that the Planning Commission may approve a Use Permit based on the certain criteria. Section 7-6, Criteria for Granting a Use Permit, states:

"The Commission may approve a Use Permit upon finding that:

- (a) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan;
- (b) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties; and
- (c) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure."

The proposed use in the State Land Use Urban district and Multiple-Family Residential 2,500 square foot (RM-2.5) zoned district may be allowed through the granting of a Use Permit. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses as well as the goals and policies of the General Plan. The intent and purpose of the Zoning Code is to promote health, safety, morals or the general welfare of the community through regulations and restrictions relative to the location and use of buildings, off-street parking, the percentage of lots that may be occupied, the density of population and land for trade, industry, residence or other purposes.

The proposed project will complement the goals, policies and standards of, among others, the Land Use and Economic Elements of the General Plan. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property as Medium Density Urban. This designation allows village and neighborhood commercial and single family and multiple family residential and related functions. The property is unclassified under the Agricultural Lands of Importance in the State of

Hawai'i (ALISH) map and soils on the property are designated "E" or "Very Poor" by the Land Study Bureau's Detailed Land Classification System.

The desired use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or surrounding properties. The project site is an approximately 9.2-acre vacant property on the mauka side of Hualālai Road. Lands in the vicinity of the project area are zoned A-1a, A-5a, RS-15, RM-2, RM-4 and CN-20. To the east and southeast are properties zoned A-5a and RM-5. The Pines Subdivision is located adjacent to the property and zoned RM-4, and to the south is the Alii Veterinary Hospital. Hualālai Village is located makai of the property. The area is a mix of commercial and residential uses. Therefore, the proposed use will not detract from the present character of the area, as a variety of urban uses characterize the vicinity of the project site.

Due to the noise and traffic inherent to the activities already established in the area, it is not anticipated that noise and traffic associated with the proposed use will adversely impact surrounding properties. The proposed use will provide much needed services for adults who seek an independent lifestyle, yet with some degree of nursing available on-site. Noise sources that currently impact the project site are minimal.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection, and other related infrastructure. County water is available to the site. Access to the project site is from Hualālai Road, a County roadway. Consistent with department policy for large developments, the Department of Public Works recommends that interconnection be provided to adjoining parcels. In addition, the DPW requires that the applicant widen, realign, and provide collector street improvements to Hualālai Road in addition to a mauka bound left turn lane on Hualālai Road at the proposed entry, as per Conditions G and I of Ordinance No. 03 69 for the subject property. The applicant states that the project will connect to the County's Kealakehe Wastewater Treatment Facility through proposed sewer line easements on parcels makai of the subject property. A private wastewater system is also being explored. All other utilities are available to the site. The Kealakehe Police Station is located less than three miles north of the project site. There are three fire stations within five miles from the site including Kailua-Kona, Kealakehe, and Puuola. The Kona Hospital is located in Kealakekua.

The subject request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Area. The property is not located in the Special Management Area. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental

resources in the area. Thus, the proposed request and use of the property will not adversely impact those resources.

By letter dated March 24, 2010, the DLNR-HPD indicated that the information in the application regarding the current status of historic properties on the parcel is incomplete, and conditions of the burial treatment plan need to be satisfied. Pending issues include the sealing of the burial cave, the establishment of a 25-foot buffer around the burial site, and additional construction buffers to protect the iwi as DLNR-HPD deems necessary. By letter dated April 6, 2010, the applicant has stated that all concerns in DLNR-HPD's letter will be addressed. As such, a condition will be included to require the applicant to comply with the requirements of the DLNR-HPD. According to the applicant, there are no listed, candidate or proposed endangered plant or animal species on the site. There is no record of a designated public access to the shoreline or mountain areas that traverses the property. According to the Flood Insurance Rate Map (FIRM), the property is located in Zone "X", area outside of the 500-year flood plain. There are no valued cultural, historical or natural resources on the property and no evidence of any traditional and customary Native Hawaiian rights being practiced on the site. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: The applicant has presented the following information for the Planning Commission to determine the valued cultural, historical, and natural resources within the area sought for rezoning:

- No copies of formal studies were submitted; however, the applicant will work closely with the DLNR-HPD to ensure that all recommendations and conditions are satisfied. As the DLNR-HPD has indicated that the information in the application regarding the current status of historic properties on the parcel is incomplete, conditions of the burial treatment plan need to be satisfied. The applicant has agreed to address those issues regarding the sealing of the burial cave, the establishment of a 25-foot buffer around the burial site, and additional construction buffers to protect the iwi as DLNR-HPD deems necessary.

The valuable cultural, historical, and natural resources found in the rezoning area:

- Studies completed in previous years, most recently in 2004, have indicated the presence of valuable resources in the area. As such, the applicant will comply with the DLNR-HPD's recommendations on the preservation of these resources and sites.

Possible adverse effect or impairment of valued resources:

- The applicant will be required by conditions to implement the recommended treatments for the archaeological sites on the property to preserve the valued archaeological resources of the area. A condition of approval will be added to require the applicant to comply with the DLNR-HPD's recommendations, with documentation to be provided to the Planning Department upon satisfactory completion of requirements.
- No formal flora or fauna study was submitted. However, the applicant has stated that there are no listed, candidate or proposed endangered plant or animal species on the site.
- Native plants could be destroyed by construction and ground alteration. The subject property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights:

- The property is not adjacent to or proximate to the shoreline. As such, gathering of marine life, fishing and coastal access is not an issue. To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights.

Based on the above, the establishment of an assisted living facility on 9.262 acres of land situated within the Multiple-Family Residential 2,500 square foot (RM-2.5) zoned district is compatible with the existing land uses and the physical and social environment of the area, and promotes the effectiveness and objectives of the Zoning Code and General Plan. Approval of the request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant, successors or assigns shall comply with all of the conditions of approval of Ordinance No. 03 69.

3. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to the commencement of construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway accesses and parking stalls associated with the proposed development. Landscaping shall be included on the plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17, Landscaping Requirements.
4. Access to Hualālai Road shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
5. As required under Conditions G and I of Ordinance No. 03 69, the applicant shall widen, realign, and provide collector street improvements to Hualālai Road, in addition to a mauka bound left turn lane on Hualālai Road at the proposed entry, meeting with the approval of the Department of Public Works.
6. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
7. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of Final Plan Approval. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
8. The applicant shall connect to the County's Wastewater Treatment Facility, meeting with the approval of the Department of Environmental Management, prior to the issuance of a Certificate of Occupancy. Should the project not connect to the County's Wastewater Treatment Facility, a private wastewater system shall be constructed, meeting with the requirements of the Department of Health, prior to the issuance of a Certificate of Occupancy.
9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy. A copy of the approved plan shall be submitted to the Planning Department.

10. As required by the March 24, 2010 letter (Document No. 1003MD26) from the Department of Land and Natural Resources - Historic Preservation Division, the applicant shall satisfy Condition F of Ordinance No. 03 69 and pending conditions in the Burial Treatment Plan, prior to the issuance of Final Plan Approval. Documentation confirming satisfaction of conditions shall be provided to the Planning Director prior to the issuance of any land alteration permits.
11. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, or walks be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD that sufficient mitigative measures have been taken.
12. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the permit. The report shall address in detail the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been satisfied.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
14. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

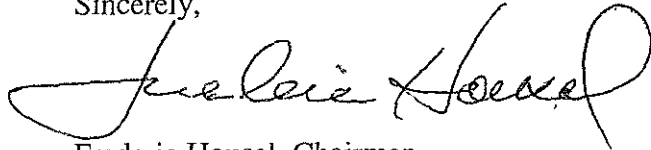
Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate the revocation of the Use Permit.

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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact the Planning Department at 961-8288.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frederic Housel".

Frederic Housel, Chairman
Leeward Planning Commission

Lparadiseretirementuse10-000019

cc: Paradise Retirement Hawaii
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
DOT-Highways, Honolulu
Mr. Gilbert Bailado ✓