

## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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

OCT 12 2015

Jill D. Raznov, Esq.  
Law Offices of Yeh & Moore  
85 W. Lanikāula Street  
Hilo, HI 96720

Dear Ms. Raznov:

**SUBJECT: Use Permit (USE 15-000053)**  
**Applicant: Joycare, LLC**  
**Request: Allow the Construction and Establishment of an Adult Residential Care Home (ARCH), Type II Facility for up to 16 Unrelated Adults**  
**Tax Map Key: 2-3-018:072**

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The Windward Planning Commission, at its duly held public hearing on October 1, 2015, voted to approve the above-referenced request to allow the construction and establishment of an adult residential care home (group living facility) for up to 16 unrelated adults within the Multiple-Family Residential (RM-1) zoning district. The project site is situated on the east side of Kapi'olani Street and Ponahawai Street, South Hilo, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The project shall be developed and operated in substantial compliance with the representations made by the applicant within the Use Permit application (USE 15-000053) received July 14, 2015.
3. Prior to the issuance of a water commitment by the Department of Water Supply (DWS), the applicant shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawai'i to the DWS. A water

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commitment deposit shall be paid to the DWS within 180 days from the effective date of this ordinance in accordance with Rule 5 of the Department of Water Supply's Rules and Regulations. The applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.

4. The applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply.
5. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant(s), successor(s) or assign(s) 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 structure(s), paved driveway access and paved parking stalls associated with the proposed development. Landscaping shall be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements) and Chapter 25 (Zoning Code), Hawai'i County Code.
6. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. If required, a drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of a construction permit. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to receipt of a Final Plan Approval.
7. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
8. All driveway connections to Kapi'olani Street shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
9. Sewer lines shall be installed within the development to connect with the County's sewer system, meeting with the approval of the Department of Environmental Management prior to the issuance of a Certificate of Occupancy.

10. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
11. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including the Department of Health for licensing for ARCH facilities.
12. 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.

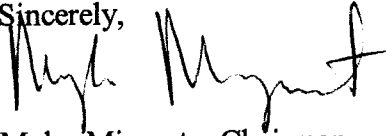
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

Approval of this permit is based on the reasons given in the attached Findings Report.

Jill D. Raznov, Esq.  
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Should you have any questions, please contact Jeff Darrow of the Planning Department at 961-8158.

Sincerely,



Myles Miyasato, Chairman  
Windward Planning Commission

LJoycareUSE15-053wpc  
Enclosure: PC Findings Report

cc: Joycare, LLC  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
Department of Environmental Management  
Department of Health  
Mr. Gilbert Bailado

**COUNTY OF HAWAI'I**  
**PLANNING COMMISSION FINDINGS**

**JOYCARE, LLC**

**USE PERMIT APPLICATION (USE 15-000053)**

JOYCARE, LLC has submitted an application for a Use Permit to allow the construction and establishment of an adult residential care home (group living facility) for up to 16 unrelated adults within the Multiple-Family Residential (RM-1) zoning district. The property is located on the east side of Kapi'olani Street, approximately 620 feet south from the intersection of Kapi'olani Street and Ponahawai Street, South Hilo, Hawai'i, TMK: 2-3-018:072.

The applicant is requesting a Use Permit to allow a group living facility (Adult Residential Care Home (ARCH) -Type II) that will accommodate a maximum of sixteen (16) unrelated adults within the Multiple-Family Residential (RM-1) zoned district. Chapter 25-1-5 (definitions) in the Zoning Code defines a group living facility as a 24-hour residential facility licensed or certified, and monitored by the State of Hawai'i's Department of Health (DOH) or Department of Human Services (DHS), for persons covered under the Fair Housing Act, as amended, containing between six and eight unrelated adults and/or children, plus unrelated home operator or staff who shall not be included in the resident count. These facilities are permitted within in the RS, RD, RM, RCX, RA, FA, A, CN, CG, CV, and V zoning districts. A Use Permit is required to increase the amount of residents within the group living facility beyond eight (8) persons. The applicant will be constructing a new structure for the group living facility and will comply with all applicable licensing and monitoring standards for ARCH facilities.

The new facility will be a two-story, 8,000 square-foot, state-licensed adult residential care home (ARCH). It will consist of 12 rooms and 16 beds (9 private rooms and 3 shared rooms). It will have an elevator and two stairwells (one inside and one outside the building). The first floor will feature a large entrance lobby, security station, resident and visitor gathering area, restrooms, kitchen and dining area and an activity area with a therapeutic pool. There will be 5 resident rooms and an apartment unit for staff. The second floor will have 7 resident rooms and a group sitting and gathering area for residents and guests.

The group living facility will be staffed by a total of 12-15 employees, including 1 licensed Certified Nursing Assistant (CNA) who will be the primary caregiver for the project, 4 to 6 additional CNAs, with at least one CNA available for each shift and on-site 24 hours a day, 1 licensed Registered Nurse (RN), at least 2 security personnel, at least 2 chefs and at least one maintenance/housekeeping employee. There will be at least 2 to 3 personnel on-site at all times. The facility will operate 7 days a week, 24 hours a day.

The facility is planned to operate as an ARCH Type II facility, which will provide 24-hour living accommodations to no more than 16 unrelated adults who require minimal assistance in their daily living activities and personal and health care services, but who do not need the professional health services provided in an intermediate, skilled nursing, or acute care facility.

**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 (RM-1) zoned district. A group living facility with more than eight unrelated adults 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 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.** According to the Zoning Code, the Multiple-Family Residential (RM) zoning district provides for medium and high density residential use. It covers areas in close proximities to full community facilities and services. It may occupy transition areas between commercial or industrial areas and other districts of less intense land use. The Zoning Code allows for group living facilities to be a permitted use within the County's Multiple-Family Residential (RM) zoned district.

Chapter 25-1-5 (definitions) in the Zoning Code defines a group living facility as a 24-hour residential facility licensed or certified, and monitored by the State of Hawai'i's Department of Health (DOH) or Department of Human Services (DHS), for persons covered under the Fair Housing Act, as amended, containing between six and eight unrelated adults and/or children, plus unrelated home operator or staff who shall not be included in the resident count. A Use Permit is required to increase the amount of residents within the group living facility beyond eight (8) persons.

The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates a portion of the project site as High Density Urban, which are areas that allow for general commercial, multiple family residential (up to 87 units per acre) and related services. The request is not contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area and complements the Land Use and Economic elements of the General Plan.

Based on the above, the request is consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan.

**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.** The property is 24,249 square feet in size and is currently vacant of structures and uses. The property has been previously grubbed and several small rock walls have been constructed.

Surrounding properties along Kapi'olani Street are similarly zoned RM-1 and consist of single and multiple family dwellings, including several apartment buildings. Further east along Ululani and Kinoole Street are properties zoned CG-7.5 that consist of commercial uses and some residential uses. Further west are properties zoned RS-7.5 that consist of single family

dwellings. The property borders the Alenaio Stream along the southwest boundary, which is improved with a drainage channel.

The proposed facility is being constructed in an area proposed for high density urban uses, including multiple-family residential and general commercial types of uses. There are several apartment buildings in the area in close proximity to the proposed group living facility. The proposed ARCH facility is not anticipated to adversely affect surrounding property owners regarding noise, visual or traffic impacts. The facility is proposed to be two stories in height. The majority of the residents will be elderly and will not be licensed drivers or own vehicles.

Based on the above discussion, it is determined that 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. In addition, the Planning Department received no objections or concerns from the community.

**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.** Access to the property is from Kapi'olani Street, which is a County owned and maintained roadway with a 20-foot asphalt pavement with curb, gutter and sidewalks on both sides within a varying right-of-way width. A traffic impact study of the proposed use was not prepared nor was one required. It is not anticipated that the proposed use will have an adverse impact on existing traffic conditions. The nature of the proposed use and its scope will not generate levels of traffic that will unreasonably burden the existing roadways within this area. County water is available to the project site.

In the application, it is represented that the applicant is proposing to connect to the County sewer system fronting the property within Kapi'olani Street. The Planning Department received comments from the Department of Environmental Management-Wastewater Division generally stating that the existing 8-inch sewer main on Kapi'olani Street is substandard with multiple sags in the line, which was built in 1939 and traverses a steep embankment in private properties beneath existing structures to connect to Kūkūau Street. Based on the above, DEM is recommending that TMK: 2-3-018:072 not be allowed to connect to the County Sewer System without upgrades to the sewer system, including relocating the sewer line traversing properties 2-3-018:001 & 063 to the County Right-of Way, which would likely result in requiring that the sewer line be replaced on Kapi'olani Street to Kūkūau Street, as well as partially down Kūkūau Street in order to allow gravity flow to the sewer main.

In consultation with the Director of the Department of Environmental Management (DEM) and according to the Sewer Code (Chapter 21 of the Hawai'i County Code), there are no other options open to the applicant, such as constructing a septic system or a cesspool for the project. The proposed project must connect to the County sewer system. The cost of upgrading the sewer lines in this area would be extremely expensive for one applicant to bear and essentially put a stop to this project. DEM cannot prevent the applicant from connecting the project to the sewer system as it is a requirement of law. The applicant will be required to comply with DEM's requirements for connection. DEM understands that there are needed improvements for the system in this area and will be working towards getting the funding to have these improvements completed in the future.

Electricity and telephone services are available to the project site. Lastly, a condition will be added requiring the applicant to comply with all applicable County, State and Federal laws, rules, regulations and requirements. Therefore, based on the above discussion, with conditions

of approval added, the granting of the request will not unreasonably burden public agencies to provide needed services and infrastructure.

**In addition to the criteria for granting a Use Permit, the request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Area.** The property is not located within the Special Management Area and is approximately one-half mile from the nearest coastline. There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the project site's distance from the shoreline, the property will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources.

The Department of Land and Natural Resources-State Historic Preservation Division issued a "no effect" letter dated July 8, 2015 stating that their determination is that no historic properties will be affected by the project. The site has been cleared in the past and it is unlikely that there are any archaeological or cultural features on the property. There are no known valued cultural, historical or natural resources on the project site 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.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above considerations, Use Permit No. 15-000052 is approved to allow the construction and establishment of an adult residential care home (group living facility) for up to 16 unrelated adults within the Multiple-Family Residential (RM-1) zoning district on the above referenced property is approved.