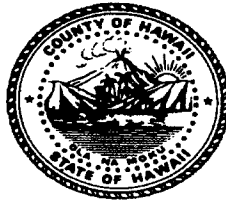


Harry Kim
Mayor



Gregory Henkel, Chair
Myles Miyasato, Vice Chair
Joseph Clarkson
Donn Dela Cruz
Donald Ikeda
Raylene Moses

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

JAN 12 2017

Thomas L.H. Yeh, Esq.
Law Offices of Yeh and Moore
85 W. Lanikāula Street
Hilo, HI 96720

Dear Mr. Yeh:

SUBJECT: Use Permit No. USE-16-000065
Applicant: Rhodes Moore, LLC
Permitted Use: Allow the Establishment of a 120-Bed Assisted Living Facility and Related Uses
Tax Map Key: 2-2-044:032, 035 and 037

The Windward Planning Commission, at its duly held public hearing on January 5, 2017 voted to approve the above-referenced request to allow the establishment of a 120-bed assisted living facility and related uses on 6.22 acres of land. The project site is situated within the Neighborhood Commercial (CN-7.5) zoning district located on the southeast side of the intersection of Kanoolehua Avenue (State Highway 11) and East Kahaopea Street, Waiākea Homestead House Louts, 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 effective date of this Use Permit shall be the effective date of Ordinance No. 12 111, as amended.
3. The applicant shall comply with conditions of Ordinance No. 12 111, and any amendments thereof.
4. Prior to submitting plans for Plan Approval review, the applicant shall secure Final Subdivision/Consolidation Approval to consolidate and/or re-subdivide tax map key numbers 2-2-044:032, 035 and 037 in a manner such that the land to be used for the assisted living facility and related improvements shall be located on a lot of appropriate size and location to accommodate the facility, related improvements and required building setbacks.

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JAN 12 2017

5. 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 proposed structures, fire protection measures, road and utility easements, paved driveway accesses and paved parking stalls associated with the proposed development. In accordance with the Planning Department's Rule No. 17, landscaping shall be included on the plans to mitigate any potential adverse noise or visual impacts to adjacent residential properties related to parking lot landscaping and screening for loading spaces, trash disposal areas, and mechanical equipment. All buffer yard landscaping shall conform to the standards for separation of a residential (RS) zoning district from a commercial (CN) zoning district as provided for in Planning Department Rule No. 17 regarding landscaping.
6. Prior to the issuance of a Certificate of Occupancy for the assisted living facility, the applicant shall provide an alternative access for emergency access to the facility when the primary access driveway is not accessible.
7. If required by the Department of Public Works, the applicant shall obtain a FEMA Conditional Letter of Map Revision (CLOMR) prior to the issuance of Final Plan Approval and a FEMA Letter of Map Revision (LOMR) prior to the issuance of a Certificate of Occupancy for any development within the subject properties.
8. Prior to receipt of a Certificate of Occupancy, a private wastewater treatment plant shall be installed meeting with the requirements of the Department of Health.
9. 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.
10. 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.
11. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

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 procedures to revoke 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.

Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8159.

Sincerely,



Gregory Henkel, Chairman
Windward Planning Commission

LRhodesmooreLLCUSE16-065wpc
Enclosure: PC Findings Report

cc: Rhodes Moore, LLC
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
Mr. Gilbert Bailado

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

RHODES MOORE, LLC

USE PERMIT APPLICATION NO. 16-000065 (USE 16-65)

Based on the following, Use Permit No. 16-65 is hereby issued to allow the establishment of 120-bed assisted living facility and related uses on 6.22 acres of land situated within the Neighborhood Commercial (CN-7.5) zoning district. The property is located on the southeast side of the intersection of Kanoelehua Avenue (State Highway 11) and East Kahaopea Street, Waiākea Homestead House Lots, South Hilo, Hawai‘i, TMK: 2-2-044:032, 035 and 037.

RHODES MOORE, LLC is requesting a Use Permit to allow the establishment of an assisted living facility for up to 120 full-time residents within a three-story, approximately 81,404 square foot building to be known as “Hilo Senior Housing”. The facility will provide 24-hour living accommodations in a home-like environment and offer support and assistance for resident’s daily living needs and activities, including but not limited to, meal services and personalized services designed to respond to and maintain resident’s well-being, individuality, independence and dignity. The project will provide transportation assistance, social programs and managed and shared amenities. Optional memory care will also be available for those residents who require additional security, safety, and mental stimulation services. The project will be constructed in two phases consisting of a mix of studios, one and two-bedrooms, and Alzheimer’s/memory care units, with the first phase to include 88-beds (73 units) and the second phase to include 32 beds (32 units). The facility will feature two elevators, three interior stairwells, two community patios, several courtyards, gardens and grounds. The facility will employ about 40 staff members over three shifts in Phase I, and an additional 5-7 employees in Phase 2. Onsite transportation will be provided to take residents on shopping trips, medical appointments and for recreational and therapeutic outings. Parking will be provided onsite for staff, residents and visitors. The property will be consolidated and re-subdivided in order to accommodate the proposed use and other commercial uses. The applicant is undertaking the project based upon the Big Island community’s need for more availability of assisted living facilities for elderly, disabled and/or blind individuals, only one of which currently exists in the County, located in Kailua-Kona.

In considering a Use Permit for any proposed use, Rule 7 (Use Permits), Section 7-6, of the Planning Commission's Rules of Practice and Procedure states that the Planning 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 is consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County 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 a lot that may be occupied, and the density of population and land for trade, industry, residence or other purposes. The Zoning Code requires the issuance of a Use Permit for group living facilities having more than eight residents in the Neighborhood Commercial (CN) district. Use Permits are permits to allow uses in zoning districts which require special attention to insure that the uses will not unduly burden public agencies to provide public services or cause substantial adverse impacts upon the surrounding community. In the CN zoning district the maximum density allowed for multiple-family dwellings is 35 rentable units per acre (1,250 sq ft of land area per rentable unit). The proposed 120-bed facility would be equivalent to 60 rentable units, since two beds is equal to one rentable unit. The 60 rentable units would be well below the maximum 211 rentable units permitted on the 6.22-acre property in the CN district.

The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for the property is Low Density Urban, which allows residential (overall residential density may be up to six units per acre), with ancillary community and public uses, and neighborhood and convenience-type commercial uses. The density of the proposed assisted living facility is about 10 units per acre. While the density of the proposed use would be better suited in an area designated Medium Density Urban, which allows for residential density up to 35 units per acre, there is an urgent need for facilities that care for the elderly and the proximity to existing public services and infrastructure is ideal at this particular property. Additionally, the General Plan indicates that there will be a greater need for assisted living, skilled nursing, and intermediate care facilities in the various districts as the number of elderly resident's increases. Consequently, the Housing Element of the General Plan encourages the construction of specially designed facilities or communities for elderly persons needing institutional care and small home care units for active elderly persons. Currently there is one assisted living facility on the island, in Kailua Kona. The proposed assisted living facility will fulfill this need in the community and therefore is consistent with the General Plan.

The proposed use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties. The surrounding area is primarily residential and commercial in character. There is a single-family dwelling on Parcel 30, which is an RS-10 zoned lot fronting Kanoelehua Avenue that is surrounded by the subject property. Lands to the north, east and south of the property are zoned RS-10 and consist of single-family residential subdivisions. There are two vacant parcels zoned CN-7.5 between the subject property and the Hilolani Subdivision to the east. The majority of these two parcels are situated in the "AE" flood zone. The Puainako Town Center is located northwest of the property across the East Kahaopea Street/ Highway 11 intersection.

Potential short-term impacts will be limited to an increase in noise, dust and traffic associated with earthmoving equipment during construction. These impacts will be temporary in nature and minor in scope and therefore are not anticipated to have a

substantial adverse impact on the surrounding properties. 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 applicant will adhere to minimum yard requirements in the Zoning Code and will provide landscaping to visually screen the facility from surrounding properties to reduce the effects of noise and nighttime lighting associated with the facility. Landscaping should be installed to visually screen the facility from surrounding residential properties, particularly along the south property line to screen the facility from the adjacent residence on parcel 30 and along the north and east property boundaries to screen the facility from the adjacent residences across Kahaopea Street and in the Hilolani Subdivision. The proposed use will provide much needed services for adults who seek an independent lifestyle, yet with some degree of assistance available on-site. With the implementation of recommended conditions, the proposed use is not anticipated to have an adverse effect on surrounding properties.

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, schools, police and fire protection and other related infrastructure. County water is available to the property at this time and improvements to the existing water system, such as additional water laterals or meters, may be required in order to provide the amount of water needed for the proposed development based on the estimated water usage calculations submitted by the applicant's engineer. The applicant has indicated that they are amenable to providing these improvements should they be required by the Department of Water Supply. Primary access to the project will be provided by a new 30-foot wide driveway located off of Kahaopea Street across from 'Awapuhi Street. Kahaopea Street is a County roadway with a 40-foot wide right-of-way and is paved with no sidewalks or curbs. The Police Department has indicated the East Kahaopea Street approach to the highway intersection has a steep incline and limited visibility, and East Kahaopea Street near the proposed access across from 'Awapuhi Street is narrow and would need to be improved to handle the project's traffic. The applicant plans to widen the road and install curb, gutter and sidewalk improvements along the property's entire Kahaopea Street frontage. The Planning Director recommends an alternative access be provided in situations, such as intermittent flooding, where the primary access is not accessible and staff and emergency responders need to get to the facility. The applicant will also install a private wastewater treatment plant to dispose of wastewater generated by the proposed development. Portions of the property are in an area designated as Flood Zone AE on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). The applicant will construct drainage improvements due to the "AE" flood zone and all development-generated runoff will be disposed of on-site. All other utilities are available to the site. Police, fire and medical services are available nearby in Hilo.

The proposed use is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to the Coastal Zone Management Area. The subject property is located over two miles from the shoreline and is not in the Special Management Area. Thus, the property will not be affected by coastal hazards and beach erosion. There are no identified recreational resources, public access to the shoreline or mountain areas, scenic

and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources on the subject property.

Because the property is undeveloped, 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 property was previously used as a nursery but currently no structures exist on the property. The property was grubbed around 2001. In February 2009, a field inspection was conducted by an archaeologist to assess the site conditions related to historic and cultural sites.
- The valued cultural, historical, and natural resources found on the property: During the field inspection the archaeologist observed that most of the property had been mechanically altered in the past. In a letter dated July 18, 2016, the Department of Land and Natural Resources- State Historic Preservation Division concluded no historic properties will be affected by the proposed project. No valued cultural, historical, and natural resources have been found on the property and it is unlikely that any of these resources exist since the property is located in an urbanized area.
- Possible adverse effect or impairment of valued resources: It is possible, but unlikely, that an inadvertent discovery of historic or cultural resources could be made during construction.
- Feasible actions to protect native Hawaiian rights: To the extent 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. A condition of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-SHPD.

Based on the above, the establishment of 120-bed assisted living facility and related uses on 6.22 acres of land situated within the Neighborhood Commercial (CN-10) 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.

However, this recommendation is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the proposed use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, 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.