County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
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APR 1 4 2014

Mr. Gregory Pyle
Regency South, Inc.
P.O. Box 2708
Issaquah, WA 98027

Dear Mr. Pyle:

Use Permit (USE 12-000034)
Applicant: Regency South, Inc
Request: Amendment to Condition No. 8 to Allow Construction of On-Site Vertical Project Components at the Same Time as Improvements to Kaūmana Drive
Tax Map Key: 2-5-006:012 (Formerly 2-5-006:023, 2-5-007:001, 008, 046 & 047

The Windward Planning Commission, at its duly held public hearing on April 3, 2014, considered the status of Regency South, Inc.'s compliance with Condition No. 8 of Use Permit No. 12-000034 and its other conditions of approval and Regency South, Inc.'s request for an amendment to Use Permit No. 12-000034. Use Permit No. 12-000034 allowed the establishment of a 100-bed skilled nursing and rehabilitation center and related uses on 17.61 acres of land situated within the Single-Family Residential (RS-15 to RS-10) zoning districts. Condition No. 8 require improvements to Kaūmana Drive be completed prior to the start of construction of the vertical component of any structures on the property. The amendment is to modify Condition No. 8 to allow construction of on-site vertical project components at the same time as improvements to Kaūmana Drive. The properties are located on the east (makai) side of Kaūmana Drive between 'Aipuni Street and Luana Way, Ponahawai, South Hilo, Hawai'i .

Regarding the compliance status, the Windward Planning Commission agreed with the Planning Director's findings and voted 7-0 to authorize the Planning Director to take immediate action to enforce the conditions of Use Permit No. 12-000034 within the authority granted in the Zoning Code and Planning Department Rule No. 9 including assessing administrative fines pursuant to Planning Department Rule 9, Section 9-5. The Commission also amended the permit by adding a new condition to allow the Planning Director to take immediate action in the future to enforce

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conditions of the permit. The new condition is reflected as Condition No. 20 in the following conditions of approval. You will receive a letter from the Planning Director shortly informing you of the enforcement actions and administrative fines for violation of the permit conditions. At the same meeting, the Windward Planning Commission also granted your request to amend Condition No. 8 of Use Permit No. 12-000034 by a vote of 4-3.

Approval of the amendment to Use Permit No. 12-000034 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. Prior to submitting plans for Plan Approval review, the applicant shall secure Final Subdivision Approval for the consolidation of tax map key numbers 2-5-006:012, 2-5-007:001, 008, 046 and 047 into one 17.61-acre parcel.

3. Before a water commitment for the proposed development can be obtained, the applicant shall submit to the Department of Water Supply a conceptual water plan for the necessary offsite water system improvements which may include, but not be limited to, extending a water main from an existing 8-inch waterline from the intersection of Kaūmana Drive and Mohouli Street, approximately 1,730 feet to the property. Upon approval of the conceptual water plan and prior to Final Plan Approval, the required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy". The applicant shall construct all water system improvements as required by the Department of Water Supply and the Fire Department to meet the water and fire flow needs of the proposed development.

4. Prior to submittal of plans for Plan Approval, the applicant shall secure by public meeting, the input of the Luana Gardens Subdivision Community Association (LGSCA) on matters such as the placement of all proposed structures, air conditioners and generators, wastewater system(s), paved driveway accesses, loading areas and parking stalls, and landscaping. 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 properties, particularly along the common boundaries of properties within the Luana Gardens Subdivision. 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. Landscaping between those properties and at least 20 feet within the subject site shall include

the clearing of the existing underbrush and invasive trees and the retention of certain large trees to be determined by the LGSCA. As much as possible, landscaping shall include native or endemic plant material. A report of this meeting shall be submitted for the review and information of the Planning Director, with a copy to the LGSCA, along with plans submitted for Plan Approval review.

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.

6. The applicant's contractor shall hold a community meeting at least 30 days prior to mobilization of any heavy equipment to the site to explain and discuss: the location and construction of the staging area and general site work for the proposed development, importation of fill, interim drainage controls, construction signage, timetable and hours of construction, and any other construction-related safety concerns. The Planning Department shall be notified of the meeting prior to it being held.

7. Access to Kaūmana Drive shall comply with Chapter 22, County Streets, of the Hawai'i County Code.

8. Concurrent with the start of construction of the vertical component of any structures on the property, the applicant shall install a dedicated left-turn lane on Kaūmana Drive for vehicles turning into the site, a left-turn refuge acceleration lane on Kaūmana Drive for vehicles turning out of the site, separate left- and right-turn exit lanes from the site's driveway, remove rock outcroppings, relocate retaining walls and widen pavement as shown on the plan entitled Conceptual Layout dated June 7, 2012. These improvements shall be implemented to maintain adequate sight distance at the site's driveway, adjacent driveways and along Kaūmana Drive, and shall be constructed in a manner meeting with the requirements of the Department of Public Works, prior to issuance of a Certificate of Occupancy.

9. The applicant shall be responsible for the design, purchase and installation of streetlights and traffic control devices (which may include, but not be limited to, smart signs) as may be required by the Traffic Division, Department of Public Works.

10. All earthwork activity, including grading and grubbing, shall conform to Chapter Erosion and Sedimentation Control, of the Hawai'i County Code.

11. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study, including proposed on-site drainage improvements which may include pervious or porous asphalt, shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of Final Plan Approval. To reduce and better control or manage the sheet flow storm water passing through the subject property, the proposed on-site, sub-area(s) drainage improvements shall have a capacity equal to or greater than 110% of the calculated on-site development generated runoff and shall be directed to controlled points within the property and shall not change the location of their exit point(s). Further, a chain link or similar fence shall be constructed proximate to the floodway at the eastern end of the property and extending from TMK: 2-5-012:051 (lot 4) to the end of the improved section of the project. All required and approved drainage improvements, including the fence, shall be constructed in a manner meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.

12. Prior to receipt of a Certificate of Occupancy, individual wastewater systems or a private wastewater treatment plant shall be installed meeting with the requirements of the Department of Health.

13. To protect the endangered Hawaiian hoary bat during breeding and pup-rearing season, woody vegetation greater than 15 feet in height shall not be removed or trimmed between June 1 and September 15 throughout the construction and ongoing operations of the proposed development.

14. To protect the endangered Hawaiian hawk during breeding season of March to September, prior to clearing vegetation during this period the applicant shall conduct surveys for nests and coordinate the protection of found nests with the U.S. Fish and Wildlife Service.

15. 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.

16. Prior to the submittal of any plans for the 17.61-acre property, other than the 100-bed skilled nursing and rehabilitation center, the applicant shall notify and secure the input of the Luana Gardens Subdivision Community Association. Further, any such plans shall also include, if feasible, consideration for a secondary access other than Luana Way.

17. 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.

18. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

19. 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).

20. The Planning Commission authorizes the Planning Director to take immediate action to enforce the conditions of the permit within the authority granted in the Zoning Code and Planning Department Rule 9.

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 the amendment is based on the reasons given in the attached recommendation report.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288, ext 8142.

Sincerely,

Ronald Gonzales, Chairman
Windward Planning Commission

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Enclosure: PC Recommendation Report

cc: Mr. Sidney Fuke, Planning Consultant
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State DLNR-HPD
Mr. Gilbert Bailado
Luana Gardens C.A.
Administrative Permits (Zoning Inspector)

COUNTY OF HAWAI'I
PLANNING COMMISSION RECOMMENDATION

REGENCY SOUTH, INC.
AMENDMENT TO USE PERMIT NO. 12-034 (USE 12-034)

The applicant is requesting to amend Condition No. 8 of Use Permit No. 12-00034 in order to allow construction of on-site vertical project components at the same time as improvements to Kaūmana Drive. Condition No. 8 currently requires that construction of Kaūmana Drive improvements be completed prior to the start of vertical construction of any structures on the property. As approved by the Planning Commission, Condition No. 8 states:

"Prior to the start of construction of the vertical component of any structures on the property, the applicant shall install a dedicated left-turn lane on Kaūmana Drive for vehicles turning into the site, a left-turn refuge acceleration lane on Kaūmana Drive for vehicles turning out of the site, separate left- and right-turn exit lanes from the site's driveway, remove rock outcroppings, relocate retaining walls and widen pavement as shown on the plan entitled Conceptual Layout dated June 7, 2012. These improvements shall be implemented to maintain adequate sight distance at the site's driveway, adjacent driveways and along Kaūmana Drive, and shall be constructed in a manner meeting with the requirements of the Department of Public Works."

The applicant is requesting the amendment because construction of the Kaūmana Drive improvements has fallen behind schedule due to weather delays, additional work completed at the request of neighbors, and additional utility work. Currently the road work is underway and construction of the building itself is falling significantly behind schedule. For these reasons, the amendment is needed to allow concurrent construction of the road work and nursing and rehabilitation center building. This recommendation is based on the following findings:

Approval of the amendment would not be contrary to the original reasons for granting the Use Permit. At issue is the timing of construction of the project's Kaūmana Drive access intersection improvements in relation to the timing of construction of the skilled nursing and rehabilitation facility. Condition No. 8 was created as a result of concerns expressed by the Luana Gardens Subdivision Community Association (LGSCA) and agreed to by the Applicant regarding traffic safety along Kaūmana Drive, which is a substandard and curvy County roadway with limited sight distance. The applicant had intended to begin construction on the Kaūmana Drive improvements at the same time as site grading and grubbing work but the road work was delayed due to weather delays, additional work completed at the request of neighbors, and additional utility work. Construction of the roadway improvements has already begun and sight distance improvements have already been completed. Additionally, the Department of Public Works has not identified any traffic safety concerns with allowing the concurrent construction of the roadway improvements and skilled nursing and rehabilitation facility. The DPW recommends roadway improvements be completed prior to occupancy of the nursing and rehabilitation facility. Thus, the proposed amendment will not be contrary to the original reasons for granting the permit.

Based on the above, the amendment to Condition No. 8 of Use Permit No. 12-034 is approved to allow construction of on-site vertical project components at the same time as improvements to Kaūmana Drive on Tax Map Key 2-5-006:012.