

BEFORE THE DEVELOPMENT REVIEW COMMISSION OF THE
CITY OF LAKE OSWEGO

-Approved-

DEVELOPMENT REVIEW PERMIT AND) LU 14-0010-1861
CONDITIONAL USE PERMIT FOR THE) SENIOR HOLDINGS, LLC
CONSTRUCTION OF A 4-STORY 133 UNIT) FINDINGS, CONCLUSIONS & ORDER
COMBINED RESIDENTIAL CARE AND)
CONGREGATE HOUSE DEVELOPMENT)

NATURE OF APPLICATION

The applicant is requesting approval of a Conditional Use Permit (CUP) and a Development Review Permit to construct a 4-story 133-unit combined residential care and congregate housing development. Seven trees will be removed to accommodate site improvements.

The site is located at 3900 Kruse Way Place (Tax Lot 3300 of Tax Map 21E 08BA).

HEARINGS

The Development Review Commission (Commission) held a public hearing and considered this application at its meeting of November 17, 2014. Written testimony was received after the staff report was published. The following exhibits have been added to the record:

Exhibit G-100 Letter in Support, Nick Bunick, dated November 10, 2014
Exhibit G-101 Letter in Support, Waluga NA, dated November 15, 2014

CRITERIA AND STANDARDS

A. City of Lake Oswego Comprehensive Plan:

Only “applicable regulatory Comprehensive Plan policies” are applied as criteria; staff has not identified any regulatory policies to this application other than Goal 5, Policy 4 of the Waluga Neighborhood Plan. However the following policies are discussed in the applicant’s narratives:

Land Use Planning
 Section A: Development
 Section B: Development Review
Community Culture
 Civic Engagement
Complete Neighborhoods and Housing
Connected Community
Waluga Neighborhood Plan

1	B.	<u>City of Lake Oswego Community Development Code (LOC Chapter 50):</u>	
2			
3		LOC 50.02.002	Commercial Zones
4		LOC 50.02.002.2	Specific Standards for Commercial Zones
5		LOC 50.03.003.1.e.i	Residential Uses in Commercial Zones
6		LOC 50.03.003.2.a	Use-Specific Standards for Residential Care Housing & Congregate Housing
7			
8		LOC 50.05.007	Lake Grove Village Center Overlay District
9		LOC 50.06.002	Parking
10		LOC 50.06.003.1	Access/Access Lanes (Flag Lots)
11		LOC 50.06.003.2	On-Site Circulation – Driveways & Fire Access
12		Roads	
13		LOC 50.06.003.3	On-Site Circulation – Bikeways, Walkways & Accessways
14			
15		LOC 50.06.003.4	Local Street Connectivity
16		LOC 50.06.003.5	Transit
17		LOC 50.06.004.1	Landscaping, Screening & Buffering
18		LOC 50.06.004.2	Fences
19		LOC 50.06.004.3	Lighting
20		LOC 50.06.005; 50.07.004.7	Park & Open Space Contributions
21		LOC 50.06.006.3.a; 50.07.004.1	Drainage Standard for Major Developments, Partitions, Subdivisions, & Certain Structures
22			
23			
24		LOC 50.06.008; 50.07.004.11	Utilities
25		LOC 50.07.003.1.b	Burden of Proof
26		LOC 50.07.003.5	Conditions of Approval
27		LOC 50.07.003.6	Effect of Decision
28		LOC 50.07.003.7	Appeals
29		LOC 50.07.003.14	Minor Development Decisions
30		LOC 50.07.003.15	Major Development Decisions
31		LOC 50.07.005	Conditional Use Permits
32			
33	C.	<u>City of Lake Oswego Streets and Sidewalks Code [LOC chapter 42]:</u>	
34			
35		LOC 42.03.005 - 42.03.135	Street Design Standards
36		LOC 42.08.400 - 42.08.470	Streets & Sidewalks
37			
38	D.	<u>City of Lake Oswego Signs Code [LOC Chapter 47]:</u>	
39			
40		LOC 47.10.410	Permanent Signage in the GC zone
41			
42	E.	<u>City of Lake Oswego Tree Code [LOC Chapter 55]:</u>	
43			
44		LOC 55.02.010 - 55.02.084	Tree Removal & Mitigation Requirements
45		LOC 55.08.020 - 55.08.030	Tree Protection
46			

1 F. Prior Approvals:

- 2
3 ZC 20-84-206
4 DR 8-91/SD 24-91
5 DR 14-96
6

7 **CONCLUSION**

8
9 The Commission concludes that LU 14-0010 can be made to comply with all applicable criteria
10 by the application of certain conditions.
11

12 **FINDINGS AND REASONS**

13
14 The Commission incorporates the November 7, 2014, Staff Report, (with all exhibits attached
15 thereto), as support for its decision.
16

17 In the event of any inconsistency between the supplementary matter herein and the staff
18 report, the matter herein controls. To the extent they are consistent with the approval granted,
19 the Commission adopts by reference its oral deliberations on this matter.
20

21 Following are the supplementary findings and conclusions of this Commission:
22

- 23 1. The Commission finds that the two proposed access points onto Kruse Way Place did not
24 meet the maximum slope and cross slope requirements per On-Site Circulation – Driveways
25 and Fire Access (LOC 50.06.003.2), but that the grading could be corrected at the time of
26 building permit review. The Commission discussed the applicant’s Traffic Impact Analysis
27 report and determined that the development’s projected cueing on Kruse Way Place does
28 not extend to or past the proposed easterly driveway. When the abutting property to the
29 east develops (taking access to Kruse Way Place from the shared access point created with
30 this application), additional traffic impact analysis may be necessary to determine whether
31 mitigation measures are required to ensure that the intersection of Kruse Way Place and
32 Boones Ferry Road continues to operate at the required level of service. The Commission
33 finds that no conditions of approval are necessary to comply with this standard.
34
- 35 2. The applicant requested that the Commission modify Condition A(2)(d) that requires all
36 utilities to be underground as PGE regulations may make it impossible to install that
37 particular transformer vault underground. The Utilities standards (LOC 50.06.008.4.d)
38 require all utilities to be installed underground unless exempted by the City Manager. There
39 is a specific exemption for above-ground pad transformers with multi-phase voltages or high
40 kilo volt amperes (kVA) demands where underground transformers are not feasible. If
41 above ground, the standard requires appropriate screening. The Commission finds that
42 Condition A(2)(d) should be modified as follows:
43

- 44 d. All new utilities (including transformers) shall be installed underground, **unless**
45 **exempted by the City Manager.**

1 3. The Commission discussed the applicant's geotechnical report, noting that it was completed
2 in 2005 and not updated for the purposes of this development application. The Commission
3 finds that an updated geotechnical report with structural engineering recommendations
4 specific to this development (including the retaining wall for the underground parking
5 garage) would be required by the Building Official at the time of building permit review. No
6 condition of approval was deemed necessary to comply with the Drainage standards for
7 retaining walls.

8
9 4. The Commission discussed the LGVCO requirement to create an Access Master Plan
10 coordinating shared internal access and reciprocal parking between the subject site and two
11 abutting properties: Tax Lot 3200 (3800 Kruse Way Place) and Tax Lot 5900 (4004 Kruse Way
12 Place). The Commission noted that the abutting property owners had not provided written
13 consent at the time of application and questioned staff as to the impact on the design if
14 consent could not be obtained. The Commission finds that pursuant to LOC
15 50.06.007.6.b.i(i)(F), if consent is not obtained, the Access Master Plan will be recorded with
16 the right (and future obligation upon development) of the abutting property owners to
17 provide for reciprocal access at the locations provided on the Access Master Plan. This is
18 detailed in Conditions A(6) - A(8).

19
20 The Commission received testimony from the property owner of Tax Lot 3200 that she was
21 in agreement with the future access points to her property shown on the applicant's plans.
22 The applicant testified that discussions with the property owner of Tax Lot 5900 were
23 ongoing and nearing completion. This testimony was deemed sufficient by the Commission
24 to ensure compliance with this standard, negating the need to modify the existing
25 conditions regarding the Access Master Plan.

26
27 The site plan also demonstrates a driveway connection to the abutting property to the west,
28 Tax Lot 5900, but shows bollards that cut off reciprocal access between the two sites
29 (Exhibits E6 and E18). Staff has proposed a condition of approval to remove the bollards in
30 order to provide for reciprocal access. The applicant testified that if the lane is opened for
31 reciprocal access purposes, the property owner of Tax Lot 5900 may desire an alternative
32 access location between the two parcels. The Commission finds that if this were to occur,
33 the applicant would likely be required to formally modify the approval as circulation for fire
34 access, required landscaping, and open space configuration would be substantially different
35 than shown on the current plans.

36
37 5. LOC 50.05.007.7.f.iv(3) states that access to and from Kruse Way is prohibited unless the
38 applicant demonstrates that, but for the additional Kruse Way access, the traffic impacts
39 associated with the proposed development would result in the other streets accessible to
40 the development, or their intersections, exceeding permitted service level standards for
41 those streets and intersections. Condition A(11) requires the applicant to record a Notice of
42 Development Restriction acknowledging the applicant would not have "direct access" to
43 Kruse Way. The applicant questioned why Condition A(11) was necessary because the
44 applicant did not seek direct access and there is no evidence that the circumstances for
45 direct access are met. The Deputy City Attorney explained that the reason for the condition
46 is that there are prior recorded agreements (based on prior development applications) that

1 allowed the applicant the opportunity to create a direct access easement to Kruse Way over
2 intervening properties. Condition A(11) memorializes in Tax Lot 3300's chain of title that the
3 prior recorded access agreement to Kruse Way is void because the prior development
4 approval it was based on is void upon approval of LU 14-0010. Staff noted that per LGVCO's
5 requirement for reciprocal access, *if* either of the adjoining properties are eligible for access
6 to Kruse Way, then traffic from the subject site would have *indirect* access to Kruse Way.
7 The Commission finds that Condition A(11) is necessary to clarify the recorded status of this
8 site's access to Kruse Way.
9

- 10 6. The Commission received testimony expressing concern how overflow parking by visitors,
11 vendors to the site, or the site's maintenance vehicles would be handled. The testimony did
12 not identify any failure of the development application to meet the minimum parking
13 requirements. The Commission finds that more than the minimum required parking spaces
14 per LOC 50.06.002 are provided. (The Commission also notes that LOC 50.05.007.6.c.iii
15 requires reciprocal parking rights with the abutting properties where practical; however,
16 underground parking may not be practical for reciprocal parking. The extent of the
17 reciprocal parking will be determined as a part of the Access Master Plan conditions of
18 approval, in coordination with abutting property owners.)
19

20 **ORDER**

21
22 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**
23

- 24 1. LU 14-0010 is approved, subject to compliance with the conditions of approval set forth in
25 Subsection 2 of this Order.
26
27 2. The conditions for LU 14-0010 are as follows:
28

29 **A. Prior to Issuance of any Building permits, the Applicant/Owner Shall:**
30

- 31 1. Submit final site and building plans for review and approval of staff that are
32 the same or substantially similar to the site plan, floor plans, landscape plan,
33 cutsheets, and building elevations illustrated on Exhibits E6-E20, to the
34 satisfaction of staff with the following revisions:
35
36 a. Provide evidence that 25% of the required parking for multi-family
37 housing (a minimum of five spaces) shall be available for common or
38 visitor use.
39
40 b. The parking garage floor plans (Exhibit E11) shall be updated to show the
41 covered bike storage facility for a minimum of 10 spaces.
42
43 c. Remove the bollards from the access lane on the south side of the
44 property (Exhibit E6).
45

- d. Distinguish the pedestrian pathway along the west property line as it crosses the access lane through the use of surface material changes, signage, or lighting.
- e. Modify the east driveway approach to a maximum of 24 feet in width unless otherwise justified by a modified TIA.
- f. Modify the landscape plan (Exhibit E14) to show an evergreen hedge around the 8-foot tall memory care fence in compliance with the Fence standards per LOC 50.06.004.2.b.iv. In addition, the plan shall be modified to show full screening around any at-grade mechanical equipment or the use of structural screening, to the satisfaction of staff.

2. Submit final construction plans for the public improvements and storm water management facilities, and an itemized cost estimate for review and approval by the City Engineer. The final plans shall conform to the City’s design standards and specifications, and shall include the following supplementary materials, design features, and notes, to the satisfaction of the City Engineer:

- a. Design details of the on-site public water line relocation to Kruse Way and Boones Ferry Road and the water main up Kruse Way Place.
- b. Design of 12-inch public storm sewer main extension to the site, from the existing public storm conveyance system in Kruse Way. A cleanout shall be provided at the right-of-way line.
- c. Design of the private on-site stormwater system.
- d. All new utilities (including transformers) shall be installed underground, **unless exempted by the City Manager.**
- e. Design of drainage facilities as necessary to accommodate the frontage improvements.
- f. Design of the private sanitary service lateral to serve the development.
- g. Design of the private water service and fire service line, to the satisfaction of the Fire Marshal. The domestic water service and fire hydrant line shall have separate connections to the mainline, and the water meter shall be located behind the sidewalk. A public water easement shall be provided around the vault and meter if located outside of the right-of-way. Fire hydrant requirements shall be to the satisfaction of the Fire Marshal.
- h. Show a minimum 20-foot wide public pedestrian access easement for the public pathway along the western property line.

1 Kruse Way Place frontage:

- 2
- 3 i. Design details of a 7-foot wide sidewalk with a minimum 5.5-foot wide
- 4 planter strip adjacent to the back of curb.
- 5 j. Design details of the removal and reconstruction of the curb ramp at the
- 6 mid-block pedestrian crossing at the northwest corner of the site to ADA
- 7 accessible standards.
- 8
- 9 k. Show adequate right-of-way dedication to construct the frontage
- 10 improvements inside of the public right-of-way.
- 11
- 12 l. Removal of the tree/shrub on the north side of Kruse Way Place
- 13 immediately west of the Boones Ferry Road, according to the TIA (Exhibit
- 14 F7).
- 15
- 16 m. On-site landscaping within the frontage of Kruse Way Place shall
- 17 accommodate a clear line of sight (field-measured) at each driveway per
- 18 the TIA, Table 8 (Exhibit F7).
- 19
- 20 n. Design for the installation of a regulatory speed sign for eastbound traffic.
- 21
- 22 o. Design details to establish stop control at each driveway.
- 23
- 24 p. Design details of the driveway approaches in compliance with City, ADA,
- 25 and AASHTO standards.
- 26

27 Boones Ferry Road Improvements:

- 28
- 29 q. Upgrade two of the three pedestrian signals in the existing signalized
- 30 intersection of Boones Ferry Road/Kruse Way Place/Spring Lane. Install
- 31 pedestrian countdown signal heads and upgrade the push button
- 32 assemblies to include audible features.
- 33
- 34 3. Complete all public improvements or provide a financial guarantee to ensure
- 35 their construction per LOC 50.07.003.9. The financial guarantee shall be
- 36 based on an itemized engineer's estimate that is in turn based on plans that
- 37 are far enough advanced to support the estimate, to the satisfaction of the
- 38 City Engineer.
- 39
- 40 4. Obtain a street opening permit (tapping permit) for connecting the sanitary
- 41 sewer lateral to the existing public sanitary sewer system.
- 42
- 43 5. Apply for an erosion control permit and install the erosion control fencing as
- 44 required by LOC 52. These measures shall remain in place throughout
- 45 construction period.
- 46

- 1 6. Submit an Access Master Plan for review and approval of staff that states the
2 timing for implementing the required access and reciprocal parking area
3 connections with the abutting properties to the west (Tax Lot 5900/4004
4 Kruse Way Place) and to the east (Tax Lot 3200/3800 Kruse Way Place).
5
- 6 7. The Access Master Plan shall be signed and recorded by the owners of 4004
7 and 3800 Kruse Way Place. In the event that these abutting owners refuse to
8 sign the Access Master Plan, the applicant shall demonstrate that an effort
9 was made to meet with and coordinate with these abutting owners.
10
- 11 8. Submit a nonrevocable reciprocal parking facility and access easement
12 benefiting the abutting properties listed in Condition A(7), above, and a
13 covenant to participate in the maintenance of the shared access parking lot
14 aisles for the completed interconnected parking lot and drive aisle(s) in the
15 future, for review and approval of staff. In the event one or more of the
16 abutting owners of 4004 and 3800 Kruse Way Place declines to enter into a
17 reciprocal parking facility and access easement, the applicant shall submit a
18 nonrevocable option or covenant to enter into a parking facility and access
19 easement, subject to review and approval by staff, which option or covenant
20 may be exercised by the abutting property owners.
21
- 22 9. Submit for review and approval of staff an Operations and Maintenance Plan
23 for the private on-site storm facilities and record a Declaration of Covenant
24 for Operation and Maintenance of Surface Water Management Facilities.
25
- 26 10. Record the 20-foot wide public access easement along the west property line,
27 the nonrevocable reciprocal parking and access easement (or covenant)
28 benefiting the abutting properties to the east and west, the Access Master
29 Plan, and the Declaration of Covenant for Operation and Maintenance of
30 Surface Water Management Facilities at the Clackamas County Recorder's
31 Office.
32
- 33 11. Submit to the staff for review and approval a Notice of Development
34 Restriction acknowledging that direct vehicular access from the site to Kruse
35 Way through an access easement that extends from the site to Kruse Way is
36 prohibited. Upon approval, record the Notice with the Clackamas County Clerk.
37
- 38 12. Dedicate the necessary right-of-way to ensure required frontage improvements
39 are inside of the public right-of-way, to the satisfaction of the City Engineer.
40
- 41 13. Submit a final site plan, stormwater plan and drainage report for the on-site
42 stormwater quality and detention system, prepared by a registered engineer.
43 The drainage report shall include a complete downstream analysis of the
44 existing conveyance system from the site down to Springbrook Creek. Any
45 recommendations for downstream improvements and/or upgrades shall be
46 incorporated, to the satisfaction of the City Engineer.

- 1 14. Pay all applicable System Development Charges pertaining to the
2 development.
- 3
- 4 15. Submit a letter of authorization from the westerly abutting property owners
5 for removal of the four off-site trees and modification of their parking lot to
6 accommodate the construction of the proposed access lane connection.
7
- 8 16. Apply for and obtain a verification tree removal permit for the seven trees
9 approved by this application. The verification tree removal application
10 submittal shall include an 8½" x 11" copy of the tree removal plan and a
11 mitigation plan showing replacement trees on a 1:1 basis. Replacement trees
12 shall not be dwarf or ornamental varieties and shall be at least three inches in
13 caliper for both evergreen and deciduous trees.
14

15 **B. Prior to any Final Building Inspection or Occupancy of the Structure, the**
16 **Applicant/Owner Shall:**
17

- 18 1. Complete all public improvements and submit certified "as-built" drawings of
19 public improvements conforming to the City's standards for record drawings.
20 (If any existing public improvements are damaged in the construction
21 process, the applicant shall repair/replace as needed, i.e., the existing curb
22 along Kruse Way Place frontage, which will be between sidewalk construction
23 and waterline construction.)
24
- 25 2. Complete all private utility services, including water, storm, sanitary and
26 franchise utilities.
27
- 28 3. Record adequate public water easement around the water meter and fire line
29 vault, if located outside of the public right-of-way, to the satisfaction of the
30 City Engineer.
31
- 32 4. Install all landscaping including mitigation trees, as required by Conditions
33 A(1) and A(16), above.
34
- 35 5. Provide a 1-year guarantee (one 12-month growing season from the date
36 of installation) for all landscape materials, pursuant to LOC 50.06.010.2.
37 The guarantee shall consist of a security in the amount of 5% of the total
38 landscaping cost. The applicant/owner shall also submit a landscape
39 maintenance plan for review and approval of staff.
40
- 41 6. Provide verification that all regulatory licenses are obtained for the new
42 residential care and congregate housing services.
43
- 44 7. Install all tree protection fencing as required by the Code Requirement No. 2,
45 below. All protection fencing shall be inspected and approved by staff prior
46 to the issuance of any grading or building permits.

- 1 8. Submit a title report, or lot book report from a title company demonstrating
2 that the public utility and access easements, the nonrevocable reciprocal
3 Kruse Way Place access and parking easement (or covenant) benefiting the
4 abutting properties to the east and west, the Access Master Plan, the Notice
5 of Development Restriction, and the Declaration of Covenant for the Surface
6 Water Facilities, are valid and subsisting, and that the site is either free and
7 clear of liens or encumbrances, or that the holders of the liens and
8 encumbrances consents to the creation and recordation of the easements,
9 Plan, Notice, and Declaration.

10
11 **C. Prior to Issuance of any Sign Permit, the Applicant/Owner Shall:**

- 12
13 1. Obtain all necessary sign permits. The applicant/owner shall submit sign plans
14 and elevations in accordance with the Sign Code for review and approval of
15 staff. Colors and material of the signs shall be compatible with the
16 architectural details and colors of the approved building in the following
17 manner:
18
19 a. Wall signs, including internally lit cabinet signs or plastic-faced signs, shall
20 be prohibited.

21
22 (Note: The Conditions of Approval regarding sign limitations are not exclusive to the
23 requirements and standards that will be reviewed when a sign permit application is
24 submitted; there are additional compatibility standards for signs relating not only to
25 the building itself, but to the surrounding area, in the Sign Code, LOC Chapter 47.)

26
27 **Code Requirements:**

- 28
29 1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the Development
30 Review permit approved by this decision shall expire three years following
31 the effective date of this approval, and can be extended by the City Manager
32 pursuant to the provisions of this section.
33
34 2. **Tree Protection:** Submit a tree protection permit application as required by
35 LOC 55.08.020 and 55.08.030 for review and approval of staff, including off-
36 site trees that are within the construction zone. This plan shall be attached to
37 the construction documents or printed on the construction site plans, and
38 shall include:
39
40 a. The location of temporary tree protection fencing, consisting of a
41 minimum 6-foot high cyclone fence secured by steel posts, around the
42 tree protection zone, or as recommended by the project arborist and
43 approved by the City.
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- b. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. Such measures shall be clearly outlined in the tree protection plan. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.

- c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.

- d. A sign shall be attached to the tree protection fencing, which states that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and project arborist.

1 DATED this 17th day of November, 2014.

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Brent Ahrend /s/
Brent Ahrend, Vice-Chair
Development Review Commission

Janice Reynolds /s/
Janice Reynolds
Administrative Support III

ATTEST:

TENTATIVE DECISION – November 17, 2014

- AYES: Ahrend, Johnson, and Prichard
- NOES: Poulson
- ABSTAIN: None
- ABSENT: Creighton and Melendez

WRITTEN FINDINGS – December 1, 2014

- AYES: Ahrend, Johnson, and Prichard
- NOES: Poulson
- ABSTAIN: None
- ABSENT: Creighton and Melendez