

ORDINANCE NO. 03 6

AN ORDINANCE AMENDING SECTION 25-8-23 (VOLCANO – MT. VIEW ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL (RS-20) TO VILLAGE COMMERCIAL (CV-20) AT 'OLA'A, PUNA, HAWAI'I, COVERED BY TAX MAP KEY 1-9-4:PORTION OF 14.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Section 25-8-23, Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code, is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at, 'Ola'a Puna, Hawai'i, shall be Village Commercial (CV-20):

Beginning at a spike in tree (found) at the South corner of this piece of land, being also the East corner of Lot 3 (Grant 5643 to R. W. Filler) and on the Northerly side of Volcano Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Kulani" being 33,199.18 feet South and 22,632.86 feet East thence by azimuth measured clockwise from true South 149 31', 415.16 feet along Lot 3 of Olaa Summer Lots, (Grant 5643 to R. W. Filler) to the true point of beginning and running from said true point of beginning by azimuth measured clockwise from true South.

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|----|---------|--------|--|
| 1. | 149 31' | 400.00 | Feet along Lot 3 of Olaa Summer Lots<br>(Grant 5643 to R. W. Filler)   |
| 2. | 239 31' | 154.15 | Feet along Lot 4-B Being the remainder of<br>Lot 4 Olaa Summer Lots    |
| 3. | 329 31' | 400.00 | Feet along Lot 5 of Olaa Summer Lots<br>(Grant 5683 to A. M. Cabrinha) |

4. 59 31' 154.15 Feet along Lot 4-A being originally a portion of Lot 4, Olaa Summer Lots and containing an area of 1.416 acres, more or less.

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2. This change in district classification is conditioned upon the following:

The County Council finds the following conditions are (1) necessary to prevent circumstances which may be adverse to the public health, safety and welfare; and (2) reasonably conceived to fulfill needs directly emanating from the land use proposed with respect to (A) protection of the public from the potentially deleterious effects of the proposed use, or (B) fulfillment of the need for public service demands created by the proposed use. In this case, these conditions are imposed because of concerns regarding the lack of water, character of the surrounding area and to mitigate potential impacts upon public facilities and infrastructure servicing the affected area. Therefore, this change in district classification is conditioned upon the following:

- A. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Restrictive covenants for the subject site shall require that the subject development:
  - (1) Provide a water catchment system and storage capacity, meeting with the requirements of the Planning Department, the Fire Department, the Department of Water Supply, and the State Department of Health based on a formula using median annual rainfall and daily usage of gallons per day per unit as determined by the Planning Department in consultation with the appropriate agencies;

- (2) Provide easy Fire Department hose hook-up in an accessible location for fire equipment for unrestricted use of the water storage in case of fire emergency;
- (3) Provide disclosure and waiver provisions relating to the lack of a private or municipal water system meeting with the requirements of the Department of Water Supply, and which shall also include that the County of Hawaii shall not be responsible to provide water, at any time, to the development of the subject property, regardless of the situation.

A copy of the covenants with the above requirements shall be submitted to the Planning Department for review and approval prior to Final Plan Approval for any portion of the subject site. A copy of the recorded document shall be recorded with the Bureau of Conveyances and filed with the Planning Department.

- C. Property shall be developed in substantial compliance with representations made in the application.
- D. The following uses shall not be permitted on the subject property:
  1. Boarding facilities, rooming, or lodging houses.
  2. Dwellings, double-family or duplex
  3. Dwellings, multiple-family
  4. No dwellings, single-family - beyond what would normally be permitted by the existing RS-20 zoning
  5. Hotels
  6. Lodges
  7. Repair establishments, major

- E. Hours of operation shall be limited to 8:00 am to 5:00 pm, daily.
  
- F. Plan Approval shall include review of placement of structures and review of construction best practices, for purposes of suppression of construction noise. All construction noise suppression measures shall be installed prior to any other construction work. During the construction phase of this project, the use of heavy equipment and machinery shall be limited between the hours of 9:00 am to 5:00 pm, daily.
  
- G. Construction of the proposed development within the subject site shall be completed within five (5) years from the effective date of this ordinance. Prior to the start of any construction, Final Plan Approval for the proposed development shall be secured from the Planning Director in accordance with Chapter 25-2-70 of the Zoning Code. Plans shall identify existing and proposed structures, paved driveway access, loading and unloading docks, parking stalls, lighting and landscaping associated with the proposed use.
  
- H. A comprehensive Landscaping Plan for the entire CV-20 zoned area (including the existing CV-20 area) shall be submitted for the purpose of maintaining the rural character of the area and of mitigating any adverse noise and/or visual impacts in respect of adjoining residents in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). As much as possible, the existing forest cover shall be retained. For additional landscaping requirements, native species from the area shall be used when possible. Landscaping shall be installed as follows:
  - 1. There will be a 125-foot wide natural forest cover between the existing reservoir and the proposed structures.

2. A 20-foot wide landscaping buffer shall be installed, to include the existing forest cover and supplemented by additional understory in keeping with the area's character, pursuant to Planning Department's Rule No. 17, along the western boundary property line.
3. A 10-foot wide forest cover shall be retained along the eastern boundary property line.

Further, in light of reviewing existing landscaping on the property in relation to the entire commercial development, plans shall show additional landscaping, to include trees along the frontage of the subject property, adjacent to the Old Volcano Road. Also, additional landscaping shall be included within the interior of the existing parking lot.

- I. Storage of materials and rental of equipment shall be conducted entirely within the proposed buildings. Open storage yards for materials or outdoor area for rental equipment shall not be allowed.
- J. Repair and testing of rental equipment will be conducted entirely within the buildings.
- K. Heat sensors shall be used for security lighting.
- L. Access to the project site shall be restricted to the Old Volcano Road, meeting with the requirements of the Department of Public Works.

- M. Street lights and other traffic control devices shall be installed as required by the Traffic Division, Department of Public Works. All improvements shall be completed prior to issuance of a Certificate of Occupancy.
- N. A drainage study shall be prepared and the recommended drainage system shall be constructed meeting with the approval of the Department of Public Works.
- O. A Solid Waste Management Plan shall be submitted for review and approval to the Department of Environmental Management in conjunction with the submittal of plans for Plan Approval.
- P. Wastewater disposal shall meet with the rules and regulations of the Department of Health.
- Q. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations, lava tubes, caves or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
- R. Upon compliance with applicable conditions of approval, prior to the establishment or the opening of the proposed development, the applicant shall submit a final status report, in writing, to the Planning Director.
- S. Comply with all other applicable laws, rules, regulations and requirements of the affected agencies for the development of the subject property.

- T. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- U. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:
1. 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.
  2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  3. Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone.
  4. 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).
  5. If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.

- V. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the area within the subject property to its original or more appropriate designation.

SECTION 3. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:

  
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COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i

Date of Introduction: January 8, 2003  
Date of 1st Reading: January 8, 2003  
Date of 2nd Reading: January 23, 2003  
Effective Date: February 4, 2003

REFERENCE: Comm. 19



OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

Introduced By: Bobby Jean Leithead-Todd  
 Date Introduced: January 8, 2003  
 First Reading: January 8, 2003  
 Published: N/A

REMARKS: \_\_\_\_\_  
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Second Reading: January 23, 2003  
 To Mayor: January 29, 2003  
 Returned: February 5, 2003  
 Effective: February 4, 2003  
 Published: February 18, 2003

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS.	EX
Arakaki	X			
Chung		X		
Elarionoff	X			
Holschuh		X		
Jacobson		X		
Leithead-Todd	X			
Reynolds	X			
Safarik	X			
Tyler		X		
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung		X		
Elarionoff	X			
Holschuh	X			
Jacobson		X		
Leithead-Todd	X			
Reynolds	X			
Safarik	X			
Tyler		X		
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I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO FORM AND LEGALITY:

Justin Okada  
 DEPUTY CORPORATION COUNSEL  
 COUNTY OF HAWAII

Date January 29, 2003

[Signature]  
 COUNCIL CHAIRMAN

[Signature]  
 COUNTY CLERK

Bill No.: 4  
 Reference: C-19/PC-4  
 Ord No.: 03 6

Approved/Disapproved this 4th day  
 of February, 2003

[Signature]  
 HARRY KIM  
 MAYOR, COUNTY OF HAWAII