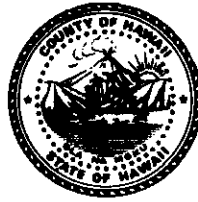


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 07 137 BILL NO. 138
(DRAFT 2)

AN ORDINANCE AMENDING SECTION 25-8-33 (CITY OF HILO ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – 1 ACRE (A-1a) TO NEIGHBORHOOD COMMERCIAL – 20,000 SQUARE FEET (CN-20) AT PONAHAWAI, SOUTH HILO, HAWAI'I, COVERED BY TAX MAP KEY 2-3-037:009.

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

SECTION 1. Section 25-8-33, Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Ponahawai, South Hilo, Hawai'i, shall be Neighborhood Commercial (CN-20):

Beginning at a point at the north corner of this parcel of land being also the northwest corner of Lot 3 and on the southeasterly side of Ponahawai Street the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 708.02 feet South and 807.37 feet East and running by azimuths measured clockwise from true South:

Thence along Lot 3, along a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being:

- | | | | |
|----|----------|--------|--|
| 1. | 277° 30' | 28.28 | feet; |
| 2. | 322° 30' | 425.00 | feet along Lot 3; |
| 3. | 52° 30' | 100.00 | feet along Lot 3; |
| 4. | 142° 30' | 445.00 | feet along Lot 4 to a point at the southeasterly side of Ponahawai Street; |

5. 232° 30' 80.00 feet to along the Southeasterly side of Ponahawai Street to the point of beginning and containing an area of 1.020 acres, more or less.

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

SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code 1983 (2005 Edition), the County Council finds the following conditions are:

- (1) Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or
 - (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.
- A. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within 180 days from the effective date of this ordinance.
- C. The applicant shall construct water system improvements meeting with the requirements of the Department of Water Supply, prior to the issuance of a Certificate of Occupancy.

- D. Construction of the proposed improvements shall be completed within five (5) years from the effective date of this ordinance. This time period shall include securing Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans shall identify proposed structure(s), fire protection measures, access roadway, driveway and parking stalls. Landscaping shall be indicated on the plans for the purpose of mitigating any potential adverse noise or visual impacts to adjoining parcels. Landscaping shall be provided in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).
- E. Notwithstanding Section 25-4-51(a)(3), the project shall provide a minimum of one parking space for each two hundred square feet of gross floor area, or the requirements of Section 25-4-51, whichever is greater. The minimum off-street parking spaces for this project shall initially be 12 spaces.
- F. The applicant shall provide full improvements to the project's frontage along Ponahawai Street consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements, and any required utility relocation, meeting with the approval of the Department of Public Works.
- G. Access from Ponahawai Street shall be from the private easement ("RU-7") located adjacent to and east of the property. A minimum 20-foot wide pavement shall be constructed within the private easement from Ponahawai Street to the project's driveway entrance.
- H. Install street lights and traffic control devices as may be required by the Traffic Division, Department of Public Works, prior to the issuance of a Certificate of Occupancy.
- I. The applicant shall install a septic system meeting with the requirements of the Department of Health, prior to receipt of a Certificate of Occupancy.

- J. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and the recommended drainage system shall be constructed, meeting the approval of the Department of Public Works, prior to receipt of a Certificate of Occupancy.
- K. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
- L. All earthwork activity shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawaii County Code.
- M. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations 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-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken.
- N. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code relating to Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to final plan approval or final subdivision approval for any new residential structures.
- O. If the applicant, successors, or assigns develop residential units on the subject property, the applicant shall make its fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. The fair share contribution

shall become due and payable prior to receipt of Final Plan Approval. The fair share contribution for each lot shall be based on the actual number of residential units developed. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of **\$6,653.40** per multiple family residential unit (**\$10,368.57** per single family residential unit). The total amount shall be determined with the actual number of units according to the calculation and payment provisions set forth in this condition. The fair share contribution per multiple family residential unit (single family residential units) shall be allocated as follows:

1. **\$3,281.93** per multiple family residential unit (**\$4,999.91** per single family residential unit) to the County to support park and recreational improvements and facilities;
2. **\$103.73** per multiple family residential unit (**\$241.20** per single family residential unit) to the County to support police facilities;
3. **\$319.07** per multiple family residential unit (**\$476.39** per single family residential unit) to the County to support fire facilities;
4. **\$142.21** per multiple family residential unit (**\$208.57** per single family residential unit) to the County to support solid waste facilities; and
5. **\$2,806.46** per multiple family residential unit (**\$4,442.50** per single family residential unit) to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the applicant may contribute land and/or construct improvements/facilities related to parks and recreation, fire,

police, solid waste disposal facilities and roads within the region impacted by the proposed development, subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council.

- P. Should the Council adopt an 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.
- Q. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- R. 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.

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the subject area 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:

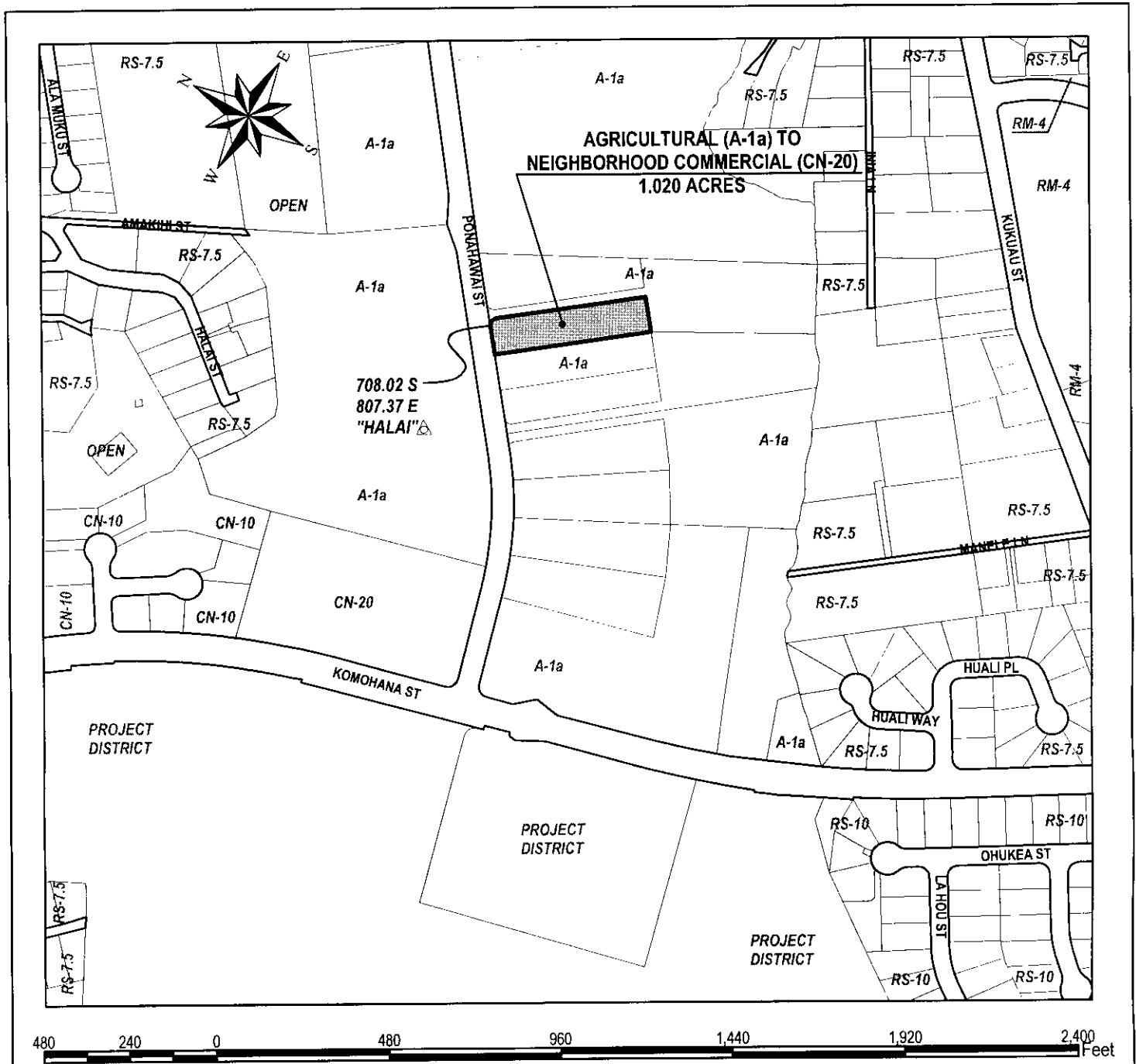


COUNCIL MEMBER, COUNTY OF HAWAII

_____ Kona, Hawai'i

Date of Introduction: September 6, 2007
Date of 1st Reading: September 6, 2007
Date of 2nd Reading: September 19, 2007
Effective Date: October 10, 2007

REFERENCE: Comm: 564.2



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-33 (CITY OF HILO ZONE MAP)
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE
 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION
 FROM AGRICULTURAL (A-1a)
 TO NEIGHBORHOOD COMMERCIAL (CN-20)
 AT PONAHAwai, SOUTH HILO, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK
County of Hawai'i
Kona, Hawai'i

207 OCT 11 11 02 '07

Introduced By: K. Angel Pilago
Date Introduced: September 6, 2007
First Reading: September 6, 2007
Published: September 15, 2007

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford	X			
Higa	X			
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong			X	
Yoshimoto	X			
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REMARKS: _____

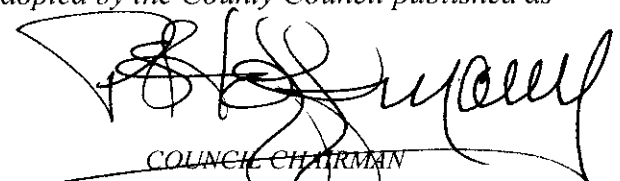
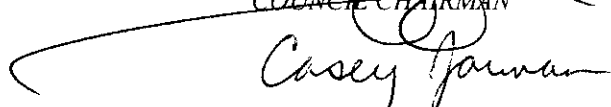
Second Reading: September 19, 2007
To Mayor: September 27, 2007
Returned: October 10, 2007
Effective: October 10, 2007
Published: October 18, 2007

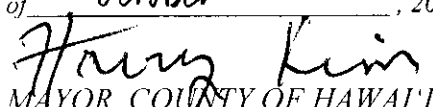
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford	X			
Higa	X			
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong			X	
Yoshimoto	X			
	8	0	1	0

REMARKS: _____

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
FORM AND LEGALITY:

DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII
Date OCT - 2 2007


COUNCIL CHAIRMAN

COUNTY CLERK

Approved/Disapproved this 16th day
of October, 2007

MAYOR, COUNTY OF HAWAII

Bill No.: 138 (Draft 2)
Reference: C-564.2/PC-42
Ord No.: 07 137