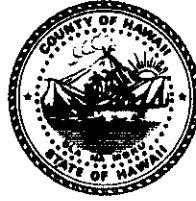


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 08 39 BILL NO. 239

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 SINGLE FAMILY RESIDENTIAL 10,000 SQUARE FEET (RS-10) TO NEIGHBORHOOD COMMERCIAL 20,000 SQUARE FEET (CN-20) AT WAIAKEA, SOUTH HILO, HAWAI'I, COVERED BY TAX MAP KEY 2-2-040:121.

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 Waiakea, South Hilo, Hawai'i, shall be Neighborhood Commercial 20,000 square feet (CN-20):

Beginning at the southeast corner of this parcel of land, also being the northeast corner of Lot 13-A, Block 502, and on the west side of Kilauea Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 8,570.69 feet South and 9,735.36 feet East and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|-------------|---|
| 1. | 85° 40' 00" | 242.00 feet | along Lot 13-A, Block 502; |
| 2. | 175° 40' 00" | 97.35 feet | along Lot 14, Block 502; |
| 3. | 265° 40' 00" | 242.00 feet | along Lot 15, Block 502; |
| 4. | 355° 40' 00" | 97.35 feet | along the east side of Kilauea Avenue to the point of beginning and containing an area of 23,559 Sq. Ft., more or less. |

All as shown on the map attached hereto, marked Exhibit "A" and by reference made 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 applicants, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with the "Water Commitment Guidelines Policy" within 180 days from the effective date of this ordinance.
- C. 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) standards for CN zones adjoining a RS zone.

- D. As represented by the applicants, the site shall be restricted to personal services, residential, and residential-related uses as described in the CN district (Section 25-5-102). Any other uses would be subject to an amendment. Restrictive covenants in the deed of the subject properties shall give notice of this restriction.
- E. Access to Kilauea Avenue shall be limited to a single location and shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
- F. A 10-foot wide future road-widening strip along Kilauea Avenue shall be delineated on the plans submitted for Plan Approval review. The 10-foot future road widening section and roadway improvements along Kilauea Avenue shall be subdivided and dedicated to the County of Hawaii within five (5) years from the effective date of this ordinance.
- G. The applicants shall provide full improvements to the entire frontage along Kilauea Avenue 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. Improvements shall be located within the future road-widening setback as established by the Planning Department and be completed within five (5) years from the effective date of this ordinance.
- H. The applicants shall also install street lights and traffic controls as required by the Traffic Division, Department of Public Works. The applicants shall be responsible for the design, purchase, and installation of such devices. These improvements to Kilauea Avenue shall be completed prior to a Certificate of Occupancy.

- I. The height limit shall be 35 feet as allowed in the Single-Family Residential (RS) district.
- 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 by a licensed civil engineer and submitted to the Department of Public Works prior to issuance of a construction permit. Any recommended drainage improvements, if required, shall be constructed meeting with 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. If the applicants, successors, or assigns develop residential units on the subject property, the applicants 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 combined value of **\$7,043.62** per multiple family residential unit (**\$10,976.69** 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 unit) shall be allocated as follows:

1. **\$3,474.42** per multiple family residential unit (**\$5,293.15** per single family residential unit) to the County to support park and recreational improvements and facilities;
2. **\$109.81** per multiple family residential unit (**\$255.34** per single family residential unit) to the County to support police facilities;
3. **\$337.78** per multiple family residential unit (**\$504.33** per single family residential unit) to the County to support fire facilities;
4. **\$150.55** per multiple family residential unit (**\$220.80** per single family residential unit) to the County to support solid waste facilities; and
5. **\$2,971.05** per multiple family residential unit (**\$4,703.06** per single family residential unit) to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the applicants 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.

- M. 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.
- N. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, if applicable, the applicants 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.
- O. An Emergency Response Plan shall be submitted to the Hawaii County Civil Defense Agency for review and approval prior to the issuance of a Certificate of Occupancy.
- P. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- Q. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the ordinance. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
- 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 applicants, 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 applicants should require an additional extension of time, the Planning Director shall submit the applicants's request to the Planning Commission and County Council for appropriate action.
- S. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the 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 HAWAI'I

Hilo, Hawai'i

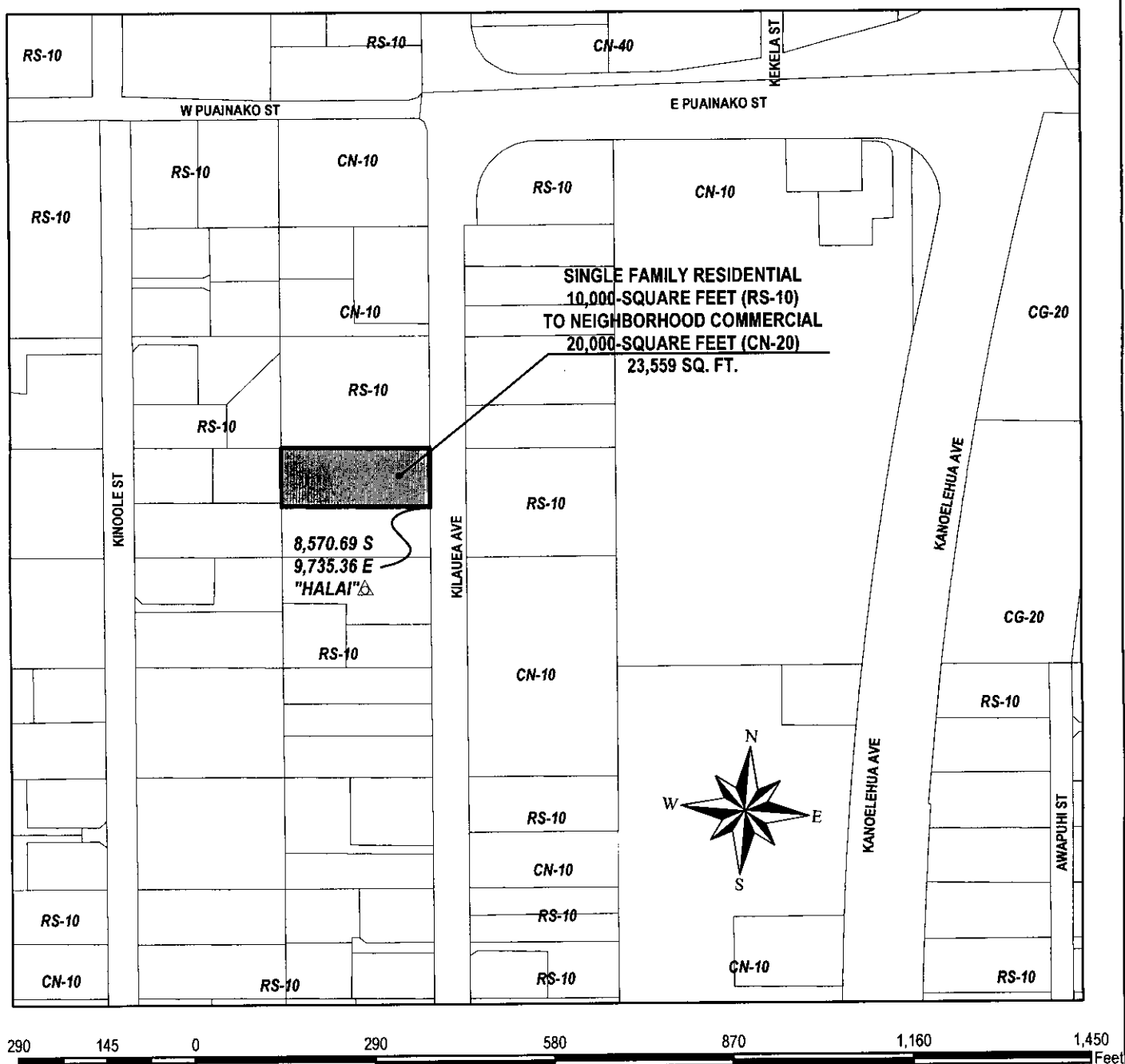
Date of Introduction: March 12, 2008

Date of 1st Reading: March 12, 2008

Date of 2nd Reading: March 25, 2008

Effective Date: April 11, 2008

REFERENCE: Comm: 1002



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 SINGLE FAMILY RESIDENTIAL 10,000-SQUARE FEET (RS-10)
TO NEIGHBORHOOD COMMERCIAL 20,000-SQUARE FEET (CN-20)
AT WAIAKEA, SOUTH HILO , HAWAII

PREPARED BY: PLANNING DEPARTMENT
COUNTY OF HAWAII

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

RECEIVED

Introduced By: K. Angel Pilago
Date Introduced: March 12, 2008
First Reading: March 12, 2008
Published: March 22, 2008

REMARKS: _____

Second Reading: March 25, 2008
To Mayor: April 3, 2008
Returned: April 11, 2008
Effective: April 11, 2008
Published: April 19, 2008

REMARKS: _____

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			
	7	0	2	0

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			
	9	0	0	0

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

APPROVED AS TO
FORM AND LEGALITY:

Angela Pilago
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date APR - 4 2008

Robert H. Gifford
COUNCIL CHAIRMAN
Casey Jarman
COUNTY CLERK

Approved Disapproved this 11th day

of April, 2008
Harry Kim
MAYOR, COUNTY OF HAWAII

Bill No.: 239
Reference: C-1002/PC-71
Ord No.: 08 39