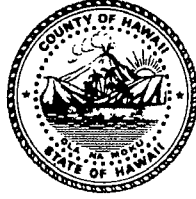


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 09 117 BILL NO. 321A

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 GENERAL COMMERCIAL - 10,000 SQUARE FEET (CG-10) AT WAIAKEA, SOUTH HILO, HAWAI'I, COVERED BY TAX MAP KEY 2-2-025:011.

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 General Commercial - 10,000 square feet (CG-10):

Beginning at the Northwest corner of this parcel of land on the Southeasterly side of Kilauea Avenue Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 3,579.77 feet South and 7,234.64 feet East and running by azimuths measured clockwise from True South:

- | | | | |
|----|----------|-------|--|
| 1. | 238° 10' | 89.53 | feet along the Southeasterly side of Lanikaula Street; |
| | | | Thence along Kilauea Avenue on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being; |
| 2. | 289° 08' | 46.61 | feet; |
| 3. | 340° 06' | 51.62 | feet along the Westerly side of Kilauea Avenue; |

- | | | | |
|----|----------|--------|---|
| 4. | 58° 10' | 108.20 | feet along Lot 7, Block 102, of the Waiakea House Lots, 2 nd Series, Grant 9041 to Sarah K. White; |
| 5. | 148° 10' | 86.70 | feet along Parcel 27 being a portion of Lot 8, Block 102 of the Waiakea House Lots, 2 nd Series and a portion of Grant 9406 to Mrs. Annie N. Macomber to the point of beginning and containing an area of 9,886 Square Feet, 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 applicant, its 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. Conversion of the existing cottage to office uses shall be completed within five (5) years from the effective date of this ordinance. Prior to conversion and/or 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), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and paved parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements) and Chapter 25 (Zoning Code), Hawaii County Code.

- D. The proposed business shall be limited to the existing cottage. If necessary, the cottage shall be replaced by a structure of no more than 1,000 square feet in size and of similar character.
- E. The applicant shall provide improvements to the entire frontage of Lanikaula 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 Americans with Disability Act (ADA) and the approval of the Department of Public Works. All improvements to Kilauea Avenue and Lanikaula Street shall be completed prior to a Certificate of Occupancy.
- F. To preserve adequate vehicle sight distance at the intersection of Kilauea Avenue and Lanikaula Street, the existing wall and shrubbery shall be removed and cut to a maximum height of three feet from the roadway elevation at the corner of Kilauea Avenue and Lanikaula Street. The portion of the rock wall within the Lanikaula Street right-of-way as shown on the survey map dated February 9, 2008 shall be removed or relocated into the property.
- G. No access shall be allowed from Kilauea Avenue. Access to the property from Lanikaula Street shall be limited to the extreme limits of the property, away from the Kilauea Street/Lanikaula Street intersection, and meeting with the approval of the Department of Public Works. All driveway connections shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
- H. Install street lights and traffic controls as required by the Traffic Division, Department of Public Works.
- I. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works. The recommended drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to the 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.

- 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 applicant, successors, or assigns develops 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 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 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 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.

- M. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exaction 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, 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.
- O. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- P. 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 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.

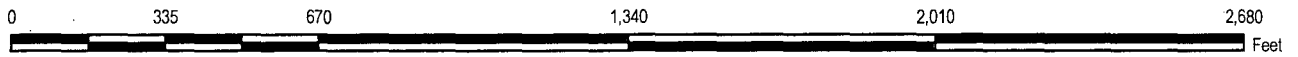
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Kona, Hawai'i

Date of Introduction: October 22, 2008
Date of 1st Reading: August 19, 2009
Date of 2nd Reading: September 2, 2009
Effective Date: September 23, 2009

REFERENCE: ~~Committee~~ 1320



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 GENERAL COMMERCIAL 10,000 SQUARE FEET (CG-10)
AT WAIAKEA, SOUTH HILO, HAWAII

MAP PREPARED BY:
COUNTY OF HAWAII, PLANNING DEPARTMENT

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

Introduced By: K. Angel Pilago
Date: ~~Introduced:~~ October 22, 2008
First Reading: August 19, 2009
Published: August 29, 2009

REMARKS: October 22, 2008-Postponed to June 16, 2009; June 16, 2009 - Postponed to July 8, 2009; July 8, 2009 - Filed due to the vote count of 8 Noes and 1 Absent & Excused; August 5, 2009 - Postponed to the August 19, 2009 Meeting.

Second Reading: September 2, 2009
To Mayor: September 11, 2009
Returned: September 23, 2009
Effective: September 23, 2009
Published: September 30, 2009

REMARKS: Due to a lawsuit (West Hawaii Today vs. County of Hawaii) Re: The Council's June 16, 2009 Meeting (Reorganization) - Re-votes were taken on this measure.

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann		X		
Ikeda	X			
Naeole	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	8		0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann	X			
Ikeda	X			
Naeole	X			
Onishi			X	
Yagong	X			
Yoshimoto	X			
	8	0	1	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:

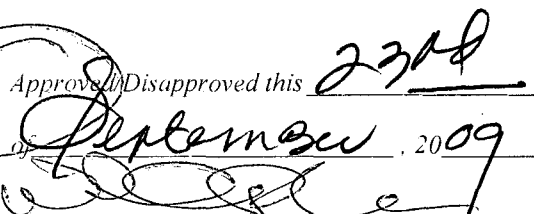

DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date SEP 21 2009


COUNCIL CHAIRPERSON


COUNTY CLERK

Bill No.: 321A (2006-2008)
Reference: C-1320/PC-99
Ord No.: 09 117

Approved/Disapproved this 23rd day
September, 2009

MAYOR, COUNTY OF HAWAII