

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

BIG ISLAND CANDIES, INC
AMENDMENT TO CHANGE OF ZONE ORDINANCE NO. 16-85
(REZ 05-000023/PL-REZ-2024-000065)

Upon careful review for an 8-year time extension to Condition C (time requirement to commence construction) and amendments to Conditions D, E, and F (roadway infrastructure improvements) of Change of Zone Ordinance No. 16-85, the Planning Director is recommending that a **favorable recommendation be forwarded to the Hawai‘i County Council**. Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter the recommendation. This favorable recommendation is based on the following findings:

The applicant has submitted a request for an 8-year time extension to condition C and amendments to Conditions D, E and F of Change of Zone Ordinance No. 16-85, which rezoned approximately 45,450 square feet of land from a Single-Family Residential – 10,000 square feet (RS-10) to a General Commercial-20,000 square feet (CG-20) zoning district, to specify that required road improvements be constructed prior to occupancy permits for further development of the subject parcels, rather than within a specific timeframe.

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. The applicant originally proposed to develop a production facility, cold storage, and visitor center on the subject properties. However, according to the applicant the delays in meeting the development conditions for Big Island Candies (BIC) are attributed to a variety of external factors impacting their financial and operational capabilities. A significant contributor is the adverse economic environment, including a weakened yen-to-dollar exchange rate that has reduced Japanese tourism, a critical market for BIC. Additionally, inflation has constrained the spending power of mainland tourists, directly affecting BIC’s sales and, consequently, its capacity to fund expansions. This challenging economic backdrop has led BIC to seek

extensions in zoning and construction deadlines as they navigate these market constraints.

Furthermore, BIC has faced operational difficulties, including persistent labor shortages and supply chain issues that have increased the costs of materials and limited production capacity. These issues, exacerbated by the COVID-19 pandemic, have delayed BIC's ability to meet the scheduled development milestones for additional production and storage facilities. Past natural events, such as the 2018 lava flow, also limited visitor traffic to the region, compounding the economic strain on BIC's operations during that period. These factors, along with the pandemic's long-term effects, have hampered the company's plans for expansion and construction.

BIC may plan to build a new production and storage facility at a different scale and design than what was originally proposed on Parcels 78 and 79 at Kekūanāo'a and Laukapu Streets in the future, however, given the preceding discussion, those plans will not occur in the near term, thus they are requesting the 8-year time extension. Currently, Parcel 66 is used as a residential property and is occupied by two dwellings, which are permitted within the existing Commercial General (CG) zoning. Parcels 78 and 79, located at the corner of Kekūanāo'a and Laukapu Streets, are used for temporary employee parking which is an accessory use to the main structure on an adjacent parcel.

Additionally, BIC has requested amendments to specific development conditions, particularly those related to road improvement requirements, to allow for greater flexibility in their timeline. Given the economic pressures and shifting market conditions, extending deadlines for facility and road improvements will enable BIC to adapt to these circumstances more effectively, while maintaining economic viability and meeting the zoning requirements in a more sustainable manner.

Based on the preceding, the Director has determined that the non-performance of required conditions of approval is the result of conditions that could not have been foreseen or are beyond the control of the applicant, and that are not the result of their fault or negligence.

Granting of the proposed amendments would not be contrary to the General Plan, Community Development Plan, Zoning Code nor the original reasons for granting the Change of Zone. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to

guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County.

The proposed request continues to conform to the LUPAG Map, which designates the property as High Density Urban (hdu) and allows for General commercial, multiple family residential and related services (multiple family residential up to 87 units per acre). There have not been any significant changes to the General Plan for this area since this request was originally approved that would affect this project. The existing CG-20 zoning and any subsequent commercial development of the property will continue to support a land use pattern consistent with the General Plan's hdu LUPAG designation. The approval of this time extension request and amendments to several conditions would not be contrary to the General Plan and zoning code, therefore, the Director recommends retaining the property's existing CG-20 zoning.

Despite the 1975 Hilo Community Development Plan's suggested residential designation, this area is transitioning to commercial and light industrial uses. Land uses in the immediate area are a mix of commercial, industrial and residential uses. The property is bordered to the east and south by residential properties zoned Single-Family Residential-10,000 square feet (RS-10) and Neighborhood Commercial-10,000 square feet (CN-10,000). The area fronting Kekūanāo'a Street is a mix of residential, commercial, and limited industrial including a Church between parcels 66 and 79, thus the proposed change of zone would be consistent with the zoning/land uses in the area.

Access to the project site is currently from Kekūanāo'a Street to the existing single-family dwellings on Parcel 66 and from Hinano Street for Parcels 78 and 79. Condition G of Ordinance No. 06-114 prohibits access from Kekūanāo'a Street once the single-family dwellings are demolished. Access to Parcels 78 and 79 will be from Laukapu Street and access to Parcel 66 will be from Hinano Street. Roadway conditions D, E, and F will be amended as requested to reflect timing of roadway improvement requirements associated with further development of the properties prior to occupancy.

To be consistent with the concurrency requirements of the Zoning Code, a condition of approval will require submittal of a Traffic Impact Analysis Report (TIAR) if a land use is developed that would generate over 50 peak hour trips. The applicant will

be responsible for constructing any improvements identified in the TIAR required by the Department of Public Works.

Electricity and telephone, fire, police, and emergency medical services are all available to the site nearby in Hilo. Based on the preceding, the proposed request will not unreasonably burden public agencies to provide for infrastructure and utilities to the project site.

In their amendment request letter, the applicant proposed language to clarify the construction deadline and roadway improvement timeline. While previous Directors insisted on strict adherence to the timed performance conditions, the current administration is open to the applicant's suggested amendment language to roadway improvement conditions. Additionally, if approved, the amendment to Condition C will require some development to occur within 8 years of the amendment, thus if that development requires a certificate of occupancy, the roadway improvements will be triggered.

Appropriate infrastructure such as water, wastewater, and roadway access are available or will be constructed by the applicant to support uses permitted under the CG-20 zoning. Conditions of approval will require the applicant to comply with Department of Water Supply (DWS) and Fire Department requirements to provide potable water and fire suppression water to the site, and to connect to the County sewer in the area.

Based on the preceding, the request to amend Condition C (time to complete construction) to allow a time extension to complete construction of the proposed project and associated Conditions D, E, and F (Roadway Infrastructure) is not contrary to the original reasons for granting the change of zone.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management. The project site is situated approximately 0.34 miles from the nearest shoreline and is not situated within the Special Management Area, there is no direct public access to the shoreline or mountains located within the project site, and commercial development of the property will be required to follow County drainage code for on-site drainage mitigation and to connect to the County sewer. As such, the proposed development should not have any substantial adverse impacts on

coastal processes or conditions, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS relating to Coastal Zone Management.

The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist. In view of the Hawai'i State Supreme Court's "*PASH*" and "*Ka Pa'akai O Ka' Āina*" decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kama'aina accounts of the area, historical survey of documentary records, or botanical study was included in the application, however, during the previous change of zone amendment in 2016, the Department of Land and Natural Resources – State Historic Preservation Division (SHPD) determined that although no archaeological inventory survey had been conducted, aerial photos indicated that the area had been subject to previous grading which has significantly altered the land. In addition, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area.

The valuable cultural, historical, and natural resources found within the project site. Although no professional surveys were conducted on this site, the area has been improved and is located within an urban environment close to commercial, industrial and residential uses, it is unlikely that rare or endangered floral or faunal resources are on the site.

Possible adverse effect or impairment of valued resources and feasible actions to protect native Hawaiian rights: There is no evidence of any valued cultural, historical, and/or natural resources found on the site, thus to the extent which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights. However, conditions of approval will require the applicant to implement the archaeological monitoring plan and to follow necessary mitigation procedures in the event of an inadvertent find of archaeological remains while developing the property.

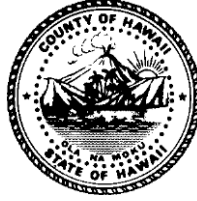
With implementation of the mentioned conditions of approval the proposed action will not affect traditional Hawaiian rights.

Lastly, this recommendation is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the proposed use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the preceding findings, **the Planning Director recommends that a favorable recommendation be forwarded to the County Council to amend Ordinance No 16-85.**

The accompanying draft bill to amend Ordinance No. 16-85 is provided for your consideration. Please note the proposed conditions of approval attached to the draft bill. Material to be deleted is bracketed and struck through; new material is underscored.

COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. _____ BILL NO. _____
(Planning Dept.)

AN ORDINANCE AMENDING ORDINANCE NO. 16 85 WHICH AMENDED ORDINANCE NO. 06 114, WHICH AMENDED SECTION 25-8-33 (CITY OF HILO ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED) BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL – 10,000 SQUARE FEET (RS-10) TO GENERAL COMMERCIAL – 20,000 SQUARE FEET (CG-20) AT WAIĀKEA HOUSE LOTS, HAWAI'I, COVERED BY TAX MAP KEY: 2-2-034:066, 078 & 079.

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

SECTION 1. Section 2 of Ordinance No. 16 85 is amended as follows

“SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code 1983 (2016 Edition, as amended), 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.

INSERT CONDITIONS ”

SECTION 2. Material to be deleted is bracketed and stricken. New material is underscored.

SECTION 3. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

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

INTRODUCED BY:

COUNCIL MEMBER, COUNTY OF HAWAI'I

_____, Hawai'i
Date of Introduction:
Date of 1st Reading:
Date of 2nd Reading:
Effective Date:

BIG ISLAND CANDIES, INC.
CHANGE OF ZONE ORDINANCE 16 85 (REZ 05-023/PL-REZ-2024-000065)
AMENDMENT TO CONDITIONS C, D, E, & F
CONDITIONS OF APPROVAL

- A. The applicant(s), successor(s) or assign(s) (“applicant”) shall be responsible for complying with all of the stated conditions of approval.
- B. The applicant shall construct necessary water system improvements as required by the Department of Water Supply (DWS), which may include, but not be limited to, the installation of a reduced pressure type backflow prevention assembly and improvements to meet DWS’ commercial zoning fire flow standard of 2,000 GPM at the site for fire protection. The applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full. The applicant shall comply with all other applicable DWS policies and requirements.
- C. Construction of the proposed improvements shall be completed within eight (8) years from the effective date of this amended 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).]~~ The time during which required plans, reports, studies, or relevant permit applications are under review for approvals by government agencies shall not count towards the deadline established in the ordinance. To justify this tolling, the applicant shall provide evidence of the excluded time period to the planning department for its review and approval, which shall consist of dates obtained from a government agency website, permitting program, or office indicating when the required plans, reports, studies, or permit applications were submitted, approved, denied, or returned by the government agency. Any request for tolling shall be verified and approved in writing by the director prior to the deadline established by

- the ordinance. The director shall notify the council of any approval of a request for tolling within thirty days of such approval. If any conditions have not been completed by the deadline, or if a time extension request has not been submitted in accordance with section 25-2-44(c), the planning department shall inform the applicant that the ordinance is null and void without further action by the County. In that event, the zoning designation of the property(s) affected by the ordinance shall automatically revert to its immediate prior zoning designation.
- D. The applicant shall include securing Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans for any new improvements 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).
- ~~[D.]~~ E. A five-foot-wide future road widening strip along the Hīnano Street and Laukapu street frontages and a 10-foot-wide future road widening strip along the Kekūanāo'a Street frontage shall be subdivided and dedicated to the County ~~[within eight (8) years from the effective date of this amended ordinance or]~~ prior to issuance of occupancy permits for the ~~[proposed]~~ further development~~[-, whichever is sooner]~~ of the property.
- ~~[E.]~~ F. The applicant shall provide full improvements to the project's frontage along Kekūanāo'a Street and Laukapu 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~~[-, within eight (8) years from the effective date of this amended ordinance or]~~ prior to issuance of occupancy permits for the ~~[proposed]~~ further development~~[-, whichever is sooner]~~ of the property. The improvements shall be located within the future road widening setback.
- ~~[F.]~~ G. The applicant shall ~~[P]~~ provide a minimum 20-foot corner radius (property line) at the intersection of the future road widening setback lines along Kekūanāo'a Street and

Laukapu Street. The applicant shall [P]provide a 33-foot corner radius (conforming to the back edge of the existing sidewalk) at the intersection of the future road widening setback lines along Kekūanāo‘a Street and Hīnano Street [~~within eight (8) years from the effective date of this amended ordinance or~~] prior to issuance of occupancy permits for the [~~proposed~~] further development[~~, whichever is sooner~~] of the property.

- [G.] H. Access shall be prohibited from Kekūanāo‘a Street, except for access to the two existing homes until they are demolished.
- [H.] I. The applicant shall [I]install streetlights and traffic control devices as required by the Traffic Division, Department of Public Works. The applicant shall be responsible for the design, purchase, and installation of such devices.
- [I.] J. Should the applicant(s), successor(s) or assign(s) develop a land use which the Planning Department, in consultation with the Department of Public Works, determines will generate over 50 peak hour trips, a Traffic Impact Analysis Report (TIAR) shall be submitted for review and approval by the Department of Public Works prior to Final Plan Approval. The applicant(s) shall implement, when required by the Department of Public Works, at no cost to the County, any transportation system improvements to Laukapu Street, Hīnano Street, or Kekūanāo‘a Street that may be deemed necessary by the Department of Public Works.
- [J.] K. Any existing and/or proposed structures shall connect to the public sewer in accordance with Section 21-5 of the Hawai‘i County Code prior to issuance of a Certificate of Occupancy.
- [K.] L. If required by the Director of the Department of Environmental Management, the applicant shall conduct a sewer study in accordance with the then applicable wastewater system design standards prior to approval to connect to the County sewer system. Prior to the issuance of a Certificate of Occupancy, the applicant shall provide such sewer line or other facility improvements as the Director of the Department of Environmental Management may reasonably require, which the sewer study may indicate are advisable for mitigation of impacts of the development.

- [~~L.~~] M. 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,]~~ by a professional civil engineer licensed in the State of Hawai‘i 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 the approval of the Department of Public Works prior to the receipt of a certificate of occupancy.
- [~~M.~~] N. 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.
- [~~N.~~] O. All earthwork activity shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai‘i County Code.
- [~~O.~~] P. ~~[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-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigation measures have been taken.]~~ In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- [~~P.~~] Q. 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.
- [~~Q.~~] R. 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, Hawai‘i 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 for any new residential structures.

[R.] S. If the applicant(s), successors, or assigns develop residential units on the subject properties, the applicant(s) shall make its (their) fair share contribution to mitigate the potential regional impacts of the properties 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 ~~[\$8,754.58]~~ \$11,018.76 per multiple family residential unit (~~[\$13,672.20]~~ \$17,171.49 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. ~~[\$4,318.39]~~ \$5,435.24 per multiple family residential unit (~~[\$6,608.08]~~ per single family residential unit) to the County to support park and recreational improvements and facilities;
2. ~~[\$136.48]~~ \$171.78 per multiple family residential unit (~~[\$317.37]~~ \$399.45 per single family residential unit) to the County to support police facilities;
3. ~~[\$419.84]~~ \$528.42 per multiple family residential unit (~~[\$626.84]~~ \$788.96 per single family residential unit) to the County to support fire facilities;

4. ~~[\$187.12]~~ \$235.52 per multiple family residential unit (~~[\$274.44]~~ \$345.41 per single family residential unit) to the County to support solid waste facilities; and
5. ~~[\$3,692.75]~~ \$4,647.80 per multiple family residential unit (~~[\$5,845.47]~~ \$7,357.27 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.

[S.] T. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

[T.] U. 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 the extent to which the conditions of approval have been satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.

[U.] V. If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the Hawai'i County Council for appropriate action in accordance with Section 25-2-44, subsection (d), of the Hawai'i County Code.

~~[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.]~~



PREPARED BY: PLANNING DEPARTMENT
COUNTY OF HAWAII.