

COUNTY OF HAWAII PLANNING DEPARTMENT
RECOMMENDATION

MAUI VARIETIES INVESTMENTS INC. (FORMERLY JERRY SOUZA)
AMENDMENT TO CHANGE OF ZONE ORDINANCE NO. 14 54
(PL-REZ-2024-000059/ AMEND REZ 13-000171)

Upon review of the request, the Planning Director recommends that a **favorable recommendation** for the requested amendments to Change of Zone Ordinance No. 14 54 be forwarded to the County Council. Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this position based on additional information presented at the public hearing. This favorable recommendation is based on the following findings:

The applicant is requesting a 10-year time extension to Condition C (establishment of a commercial use) and an amendment to condition H (road improvements) to require completion prior to occupancy rather than within 5 years from the effective date of Change of Zone Ordinance No. 14 54, which rezoned approximately 1.0 acre of land from Agricultural-1 acre (A-1a) to Village Commercial-20,000 square feet (CV-20).

The non-performance on timed conditions 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 acquired the subject property in 2017 with the intention of constructing a new 10,800-square foot Ace Hardware store with 36 parking stalls, thereby relocating the business from its current location in the Pāhoa Marketplace Center. However, design and construction work was halted when the 2018 Kilauea eruption threatened the Puna district, which, in addition to the detrimental economic effects of the Covid-19 pandemic, led the applicant to delay the project. The applicant notes that continued apprehension from lenders and insurance carriers as a result of both events, in addition to the time required to complete design plans and construction, contribute to the request for a 10-year time extension to comply with Condition C.

Based on the reasons provided it is determined that the applicant could not have

foreseen the conditions which were beyond their control and were not the result of their fault or negligence and therefore, the Planning Director recommends amending Condition C to address the preceding.

Granting of the proposed amendments would not be contrary to the General Plan, Community Development Plan or Zoning Code. 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 primarily Medium Density Urban (mdu) and allows for village and neighborhood commercial and single family and multiple family residential and related functions (multiple family residential up to 35 units per acre). The time extension request will facilitate establishment of a commercial zoning and use that is consistent with the Medium Density Urban form depicted on the LUPAG Map. Therefore, it is determined that the request is consistent with the LUPAG Map for this area of Puna.

Further, the request continues to be consistent with the following land use goal for the Puna District, as stated in the General Plan:

Centralization of commercial activities in Pāhoa Town, rather than along the Pāhoa By-Pass, to serve the residents of Lower Puna shall be encouraged.

Moreover, the request supports the goal of the Puna Community Development Plan to develop Pāhoa as a regional town center for the lower Puna district by increasing the designated urban density within the town center and directing commercial and industrial uses away from the Pāhoa Bypass Road. Although the subject property is located just outside of the designated Pāhoa Regional Town Center, it is sufficiently close and, given the foreseeable need to provide more commercial services in this area, it can reasonably be included in the designation.

Based on the preceding, the granting of the requested amendments would not be contrary to the General Plan, Community Development Plan or Zoning Code.

Granting of the time extension would not be contrary to the original reasons

for the granting of the change of zone. The proposed request will not unreasonably burden public agencies to provide infrastructure and utilities to the property.

Access to the subject property is from Kahakai Boulevard, a 30-foot-wide paved roadway within a 50-foot right-of-way. At the time of the original rezone application, the Department of Public Works (DPW) recommended that the applicant provide improvements to the property's entire Kahakai Boulevard frontage consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements, and any required utility relocation, meeting the requirements of the Americans with Disabilities Act and the approval of the DPW. According to both DPW and the Hawai'i Department of Transportation (HDOT), there is no objection to the current amendment request. Based on the preceding, the Planning Director agrees with the applicant's request to modify Condition H to pair the timing of road improvements to the issuance of a certificate of occupancy, rather than within a 5-year time frame.

County water is available from an existing 8-inch and 12-inch waterline within Kahakai Boulevard, fronting the property, via an existing 5/8-inch meter. The Department of Water Supply (DWS) has no objection to the amendment request; however, the applicant will need to submit estimated maximum daily water usage calculations for the proposed project and upon receipt, DWS will make a determination as to the water commitment deposit amount and prevailing facilities charge. If the existing meter cannot accommodate the additional estimated demand, a larger or additional meter will need to be installed, meeting with the approval of DWS. The applicant provided comments noting that the water calculations and required improvements, if necessary, will be done in conjunction with the plan approval and building permitting process.

To facilitate DWS review of the required water usage calculations, the Planning Director is recommending amending Condition D to specify that updated water calculations shall be submitted within 180 days of the effective date of amended ordinance and to address potential improvements as noted by DWS.

There is no municipal sewer system in the area, thus an individual wastewater system meeting with the approval of the State Department of Health will be utilized.

There are no municipal solid waste collection services in the County. Solid waste

will be disposed of at an authorized landfill by commercial haulers or by the landowner.

The request is not contrary to Chapter 205A, Hawai‘i Revised Statutes, relating to Coastal Zone Management. The project site is located approximately 5.5 miles from the nearest shoreline and is not situated within the SMA. Thus, the property will not be affected by coastal hazards and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, or marine resources on the subject property.

In view of the Hawai‘i State Supreme Court’s PASH and “Ka Pa‘akai O Ka‘aina” decisions, the issue relative to native Hawaiian 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 professional archaeological and cultural study was conducted as the subject property has been cleared and impacted by residential development. According to comments from the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), the project area has been impacted by ground-disturbing activities, no archaeological inventory survey has been conducted and no historic properties have been identified previously in the project area, therefore the determination is “no historic properties affected.”

The valued cultural, historical, and natural resources found in the rezoning area: As mentioned above, SHPD determined that no historic properties would be affected and the property has been cleared and impacted by residential development.

There are no known features of cultural importance, there is no known history of traditional practices associated with the property, nor is there any record of a designated public access to the shoreline or mountain areas that traverses the property.

Possible adverse effect or impairment of valued resources: There is no evidence of any possible adverse effects or impairments will occur to any valued resources.

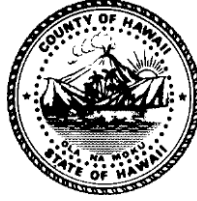
Feasible actions to protect native Hawaiian rights: There is no evidence of any valued cultural, historical, and/or natural resources found on the site, thus to the extent which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to

protect these rights. A condition of approval has been updated to address requirements for inadvertent historic site finds during the development process.

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 a favorable recommendation for a 10-year time extension to Condition C (establishment of a commercial use) and an amendment to condition H (road improvements) be forwarded to the County Council.** The accompanying draft bill to amend Ordinance No. 14 54 is provided for your consideration. Please note the proposed conditions of approval attached to the draft bill, including updates to conditions to reflect current standard condition language. Material to be deleted is bracketed and struck through; new material is underscored.

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. _____

ORDINANCE NO. _____

(PLANNING DEPARTMENT)

AN ORDINANCE AMENDING ORDINANCE NO. 14 54 WHICH AMENDED SECTION 25-8-26 (PĀHOA 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 AGRICULTURAL- 1 ACRE (A-1a) TO VILLAGE COMMERCIAL-20,000 SQUARE FEET (CV-20) AT KEONEPOKO HOMESTEAD LOTS, PUNA, HAWAI'I, COVERED BY TAX MAP KEY: 1-5-007:061.

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

SECTION 1. Section 2 of Ordinance No. 14 54 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:

MAUI VARIETIES INVESTMENTS INC. (FORMERLY JERRY SOUZA)
AMENDMENT TO CHANGE OF ZONE ORDINANCE NO. 14 54 (PL-REZ-2024-000059/
AMEND REZ 13-000171)
CONDITIONS OF APPROVAL

- A. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Site layout and building design for any new structure within the proposed commercial development shall adhere to any design guidelines established for Pāhoa Village when plans are submitted for Final Plan Approval.
- C. The commercial use of the property shall be established (certificate of occupancy) within ~~[five (5)]~~ten (10) years from the effective date of this amended ordinance. Prior to construction, the applicant shall secure Final Plan Approval for the development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai‘i County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, paved driveway access and paved parking stalls associated with the proposed development. Landscaping shall 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 Rule No. 17 (Landscaping Requirements) and Chapter 25 (Zoning Code), Hawai‘i County Code.
- D. The applicant shall submit estimated maximum daily water usage calculations prepared by a professional engineer licensed in the State of Hawai‘i, and a water commitment deposit in accordance with the “Water Commitment Guidelines Policy” to the Department of Water Supply (DWS) within 180 days from the effective date of this amended ordinance. The water usage calculations should include the total estimated maximum daily water usage in gallons per day and the estimated peak flow in gallons per minute. Upon receipt of the water usage calculations, DWS will make a determination as to the water commitment deposit amount and prevailing facilities charge to be paid, if necessary. If the existing meter cannot accommodate the additional estimated demand, a larger or additional meter shall be installed and remittance of the prevailing facilities charge, which is subject to change, will be required~~[Should the estimated water usage~~

~~exceed the current water availability, extensive improvement will be required, including, but not limited to additional source, storage and booster pump facilities].~~

- E. The applicant shall install a reduced pressure type backflow prevention assembly on private property within five (5) feet of any water meter(s) serving the proposed development, which must be inspected and approved by the Department of Water Supply before water service can be activated.
- F. The applicant shall be responsible for the relocation and adjustment of the Department of Water Supply's affected water system facilities, including the installation of a fire hydrant fronting the subject property, should they be necessary.
- G. A five (5) foot wide future road widening strip along the property's frontage on Kahakai Boulevard shall be subdivided, improved and dedicated, at no cost to the County, to facilitate the widening and improvement of Kahakai Boulevard along the subject property's frontage as detailed in Condition H.
- H. Prior to issuance of a certificate of occupancy, ~~the~~ applicant shall provide improvements to the property's frontage along Kahakai Boulevard consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements and any required utility relocation, meeting the requirements of the Americans with Disabilities Act and the approval of the Department of Public Works~~], within five (5) years from the effective date of this ordinance].~~
- I. Should the applicant submit plans to develop a land use beyond that proposed in the application, and 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 and Department of Transportation prior to Final Plan Approval. When required by the Department of Public Works, the applicants shall implement, at no cost to the County, any transportation improvements deemed necessary by the Department of Public Works.
- J. The driveway connection to Kahakai Boulevard shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
- K. Install street lights and traffic control devices as may be required by the Traffic Division, Department of Public Works. The applicant shall be responsible for the design, purchase, and installation of such devices.

- L. Any new construction, exterior renovation of existing structures and signage shall conform to any design guidelines established by the Pāhoa Village Design Guidelines.
- M. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- N. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.
- O. The method of sewage disposal shall meet with the requirements of the Department of Health.
- P. 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 State Historic Preservation Division at (808) 933-7651~~[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.
- Q. If residential units are developed on the subject property, the applicant, successors or assigns shall make its fair share contribution to mitigate the potential regional impacts of the development 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 ~~[\$8,394.57]~~11,018.76 per multiple family residential unit (~~[\$13,081.99]~~17,171.49 per single family residential unit). The total amount shall be

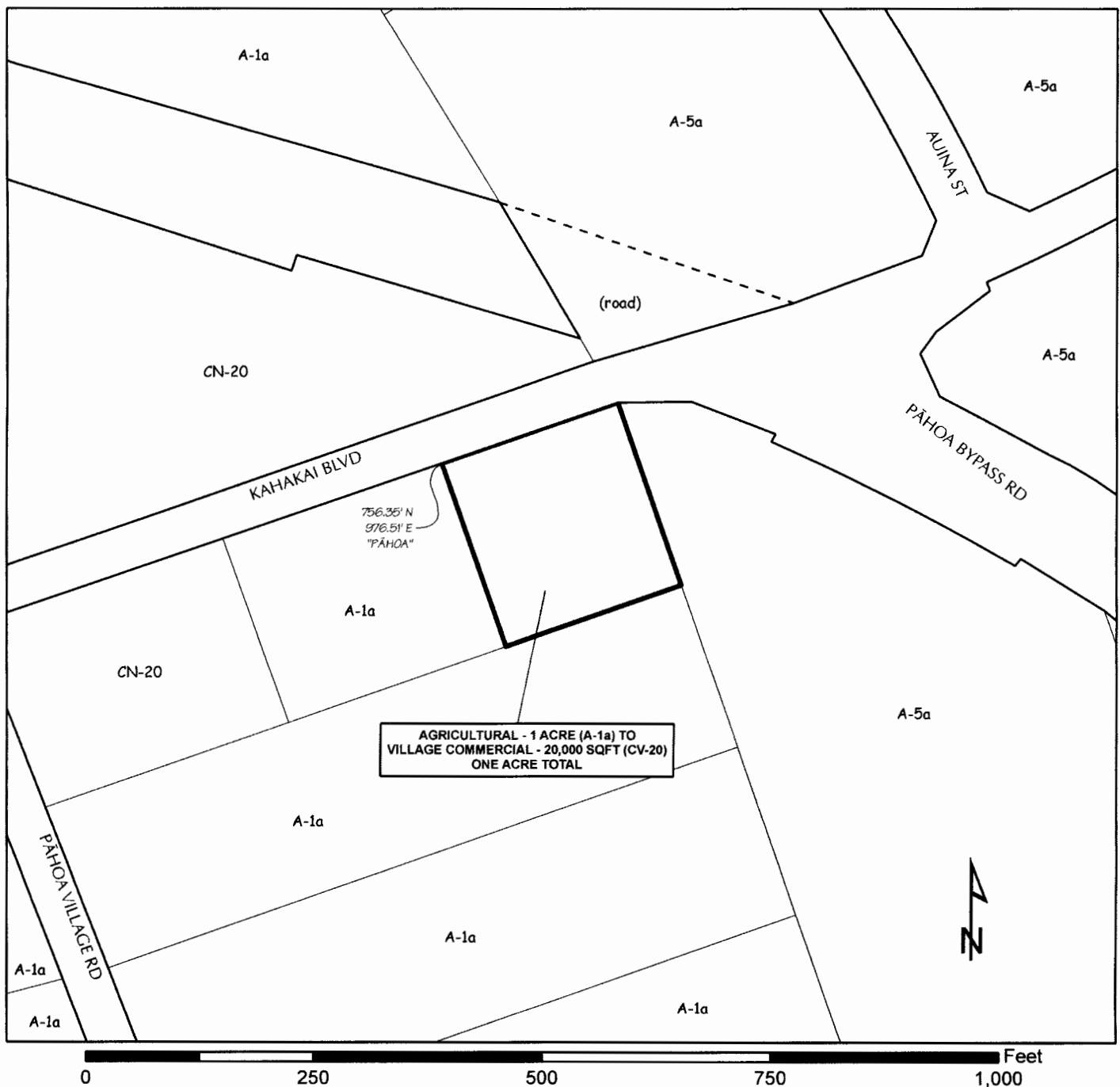
determined by the actual number of units according to the calculation and payment provisions set forth in this condition. The fair share contribution per multiple family residential unit (single family residential units) shall be allocated as follows:

- ~~\$(4,140.80)~~5,435.24 per multiple family residential unit (~~\$(6,308.37)~~8,280.39 per single family residential unit) to the County to support park and recreational improvements and facilities;
- ~~\$(130.87)~~171.78 per multiple family residential unit (~~\$(304.32)~~399.45 per single family residential unit) to the County to support police facilities;
- ~~\$(402.57)~~528.42 per multiple family residential unit (~~\$(601.06)~~788.96 per single family residential unit) to the County to support fire facilities;
- ~~\$(179.43)~~235.52 per multiple family residential unit (~~\$(263.15)~~345.41 per single family residential unit) to the County to support solid waste facilities; and
- ~~\$(3,540.90)~~4,647.80 per multiple family residential unit (~~\$(5,605.09)~~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, successors or assigns 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 pursuant to Section 2-162.1(a) of Hawai'i County Code.

- R. 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.
- S. 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 the Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to Final Plan Approval.
- T. The applicant, successors or assigns shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including the Department of Health.

- U. An initial extension of time for the performance of conditions within this amended ordinance may be requested in accordance with Section 25-2-44, subsections (c) and (d), of the Hawai‘i County Code.~~[An initial extension of time for the performance of conditions within the ordinance, with the exception of Condition H, 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. If the applicant fails to fulfill any conditions of the zone change within the specified time limitations, the Planning Director or County Council may initiate the process for enactment of an ordinance reverting the affected property back to its original zoning designation or a more appropriate zoning designation in accordance with Section 25-2-43 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].~~



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-26 (PĀHOA 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 ACRES (A-1a) TO VILLAGE COMMERCIAL - 20,000 SQFT (CV-20)
AT KEONEPOKO HOMESTEAD LOTS, PUNA, HAWAI'I

MAP PREPARED BY:
COUNTY OF HAWAI'I, PLANNING DEPARTMENT

TMK: (3)1-5-007:061

DATE: Nov. 6, 2013

EXHIBIT "A"

FOR REFERENCE ONLY

Jerry and Erlinda Souza
Map: 1342