

COUNCIL OF THE COUNTY OF MAUI  
**LAND USE COMMITTEE**

March 2, 2001

**Committee  
Report No.**

01-38

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on January 29, 2001, makes reference to County Communication No. 00-302, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO OPERATE AN ART GALLERY AND GIFT SHOP SELLING MADE-IN-HAWAII ART WORK AND CRAFTS WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KAHAKULOA, MAUI, HAWAII".

The purpose of the proposed bill is to grant a Conditional Permit authorizing Kaukini Art Gallery & Gift Shop to operate an art gallery and gift shop. The subject property is comprised of 2.51 acres, is identified as TMK: 3-1-002:021, and is located in Kahakuloa, Maui.

Your Committee notes that County Communication No. 00-302 was referred to your Committee at the Council meeting of January 12, 2001 (County Communication No. 01-8).

Your Committee notes that the Maui Planning Commission held a public hearing and meeting on the application on November 14, 2000. At the hearing, five individuals testified in support of the subject application. After reviewing the findings presented in the documents entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION NOVEMBER 14, 2000 MEETING" and "MAUI PLANNING DEPARTMENT'S REVISED CONCLUSIONS OF LAW AND RECOMMENDATION REPORT NOVEMBER 14, 2000 MEETING," the Commission voted to recommend approval of the application with the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered;

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2. That the Conditional Permit shall be valid for a period of three years from the effective date of the ordinance; provided that, an extension of the permit beyond the three-year period may be granted pursuant to Section 19.40.090 of the Maui County Code;
3. That the Conditional Permit shall be nontransferable without the prior written approval of the Maui County Council;
4. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of the permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. A copy of the Certificate of Insurance naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order;
5. That the applicant shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit; and
6. That full compliance with the conditions of State Land Use Commission Special Use Permit, Docket No. SP2 2000 0001 shall be rendered.

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At its meeting, your Committee met with the Planning Director; a Planner from the Department of Planning; a Deputy Corporation Counsel; Karen Lei Noland, the applicant; and Michele Chouteau, the applicant's consultant.

Your Committee received testimony in support of the proposed bill from eight artisans and arts supporters. They indicated that the applicant's business promotes Maui artists and products and that she is a respected and successful entrepreneur.

The applicant's consultant presented a computer-generated slideshow exhibiting the art gallery and gift shop and providing background information on the application. She noted that the Kahakuloa area is remote, located on the makai side of the West Maui Mountains, between Kapalua and Waihe`e. The applicant's consultant informed your Committee that the applicant's business is operated on the first floor of the two-story building that exists on the subject property and that the applicant resides on the second floor. She further informed your Committee that the subject property comprises approximately 2.5 acres of land and is located 0.7 miles east of Kahakuloa Village and 9.5 miles west of Waihe`e. According to the applicant's consultant, the applicant sells paintings, prints, jewelry, soaps, candles, handbags, greeting cards, pottery, and wood carvings, all of which are made in Hawai`i and most of which are made in Maui. The applicant also sells soft drinks and snacks in response to frequent requests she received from visitors, who have few other opportunities to purchase such products along the scarcely developed area along Kahekili Highway between Kapalua and Waihe`e. The applicant's business is open daily from 10:00 a.m. to 5:00 p.m. An informal study by the applicant's consultant revealed that nearly 100 cars drive past the subject property daily from Waihe`e to Kapalua and that nearly 200 drive from Kapalua to Waihe`e. The applicant maintains private water and wastewater systems on the subject property. State ratings indicate that the land at the subject property is not well-suited for agricultural uses. The Maui Planning Commission granted the Application a State Special Use Permit on November 14, 2000.

The applicant's consultant listed the following justifications supporting the application:

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- Positive contribution to resident and visitor communities and local economy;
- No negative impacts or burden on public services;
- Approval would enable the applicant to remain living on her family's property and functioning as a self-sufficient member for the community;
- The subject property is not suitable for agricultural uses; and
- Approval would provide conformity with applicable State and County land-use laws.

The Planner presented a videotape exhibiting the art gallery and gift shop and the surrounding area.

Your Committee expressed concern about public safety and potential traffic problems in the remote area surrounding the applicant's business and about potential County liability. During its discussion, your Committee noted that, apparently, the applicant's business does not produce substantial traffic and that the applicant's insurance policy will provide the County with at least \$1 million of liability protection. Nonetheless, because of concerns relating to the quality of infrastructure in the area, your Committee noted that it would be undesirable if the applicant were to increase traffic by widely advertising her business.

After further discussion, your Committee voted to recommend passage of the proposed bill, subject to the additional condition that the applicant refrain from advertising, except for the phone book and two existing on-site signs, and filing of the communication.

Your Committee is in receipt of a revised proposed bill, incorporating the new condition recommended by your Committee and updating the reference date.

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Your Land Use Committee RECOMMENDS the following:

1.     That Bill No. \_\_\_\_\_ (2001), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO OPERATE AN ART GALLERY AND GIFT SHOP SELLING MADE-IN-HAWAII ART WORK AND CRAFTS WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KAHAKULOA, MAUI, HAWAII"; and
  
2.     That County Communication No. 00-302 be FILED.

Adoption of this report is respectfully requested.

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