

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 17, 2001

Committee
Report No.

01-251

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

Chair and Members:

Your Land Use Committee, having met on December 3, 2001, makes reference to County Communication No. 01-300, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO TERRY L. AND MELE J. STRICKLAND, OWNERS OF HAIKU GETAWAY BED AND BREAKFAST, TO OPERATE A TRANSIENT VACATION RENTAL BUSINESS IN TWO ROOMS OF A FIVE-BEDROOM SINGLE-FAMILY DWELLING AND IN A TWO-BEDROOM SECOND DWELLING IN THE R-3 RESIDENTIAL DISTRICT AND SITUATED AT 1765 HAIKU ROAD, HAIKU, MAUI, HAWAII".

The purpose of the proposed bill is to grant a Conditional Permit to Terry L. and Mele J. Strickland, owners of Haiku Getaway Bed and Breakfast, to operate transient vacation rentals in a second dwelling and two bedrooms in the main house on approximately 15,244 square feet of land at 1765 Haiku Road, Haiku, Maui, Hawaii.

Your Committee notes that the Maui Planning Commission held a public hearing and meeting on the Conditional Permit application on September 11, 2001. After reviewing the findings presented in the documents entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION SEPTEMBER 11, 2001 MEETING", and "MAUI PLANNING DEPARTMENT'S RECOMMENDATION REPORT TO THE MAUI PLANNING COMMISSION SEPTEMBER 11, 2001 MEETING", the Commission voted to recommend approval of the request for a Conditional Permit subject to the following conditions (as indicated in the proposed bill):

1. That the Conditional Permit shall be valid for a period of one (1) year from the effective date of this ordinance; provided that, an extension of this permit beyond this one-year period may be granted pursuant to Section 19.040.090 of the Maui County Code.

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2. That the Conditional Permit shall be nontransferable.
3. That the applicants, their 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 their 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 this 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 applicants of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance 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 of the date of approval of this permit.
4. That the applicants shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.040.080, Maui County Code.
5. That full compliance with all applicable governmental requirements shall be rendered.
6. That the transient vacation rentals shall be limited to the second dwelling and two bedrooms within this dwelling and to the two rooms in the main dwelling as identified by the floor plan attached

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as Exhibit 4 to the Maui Planning Department's Report to the Maui Planning Commission for the September 11, 2001 meeting.

7. That the applicant shall comply with the Department of Health's waste water disposal requirements and a copy of a revised site plan showing the location of the septic system or cesspool(s) and approval from the Department of Health shall be provided to the Planning Department.
8. That the applicants shall apply for and shall obtain a certificate of occupancy.
9. That the applicants shall comply with the requirements of the Department of Fire Control, including but not limited to: providing a site plan showing access roads to all buildings and water supply for fire protection; providing fire extinguishers for each building and an evacuation plan for each building which shall be posted in each sleeping room; and providing a smoke detector inside and outside every sleeping room, with each smoke detector hard-wired to the building's power supply and having a battery back up. The applicants shall submit a letter from the Department of Fire Control confirming compliance with the Department of Fire Control's requirements.
10. That the applicants shall comply with the following requirements of the Department of Public Works and Waste Management:
 - A. Remove all obstructions from the road shoulder within the road right-of-way.
 - B. All guest parking must be accommodated on site and in conformance with applicable provisions of Chapter 19.36, Maui County Code.
 - C. Provide one parking space for each guest room.
 - D. Driveway connections to the County roadways shall be paved pursuant to the applicable provisions of the Maui County Code.

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- E. Based on the applicants' site plan, two paved on-site garage parking stalls shall be provided. The remaining four stalls may be gravel or grass parking.
11. That the applicants shall comply with Chapter 19.36, and provide a revised parking and landscape plan for the four parking stalls to the Planning Department. The applicant shall provide an accurate topographical survey map which clearly identifies the property line, the County right-of-way, the aisle and parking dimensions, and building lines and setback.
 12. That the applicants shall submit to the Planning Department a detailed report addressing its compliance with the conditions established with the Conditional Permit 90 days prior to filing for an extension of the subject permit.
 13. That any group activity on the property shall be limited to 8:00 a.m. to 10:00 p.m.
 14. That all advertising for the transient vacation rentals shall include the number of the permit granted to the owner of the property.
 15. That the applicants shall be residents of the County, shall be the owner-proprietors of the single-family dwelling, identified as the main dwelling, and shall reside on the property on a full-time basis.
 16. That the applicants shall have and shall maintain a current and valid transient accommodations tax (TAT) license and a general excise tax (GET) license for the transient vacation rental business on the property.
 17. That the applicants shall have and shall retain legal title to the subject property during the entire terms of this permit.
 18. That, not less than thirty (30) calendar days prior to the scheduled meeting of the Maui Planning Commission concerning any request for a time extension of this conditional permit, the applicants shall

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notify, by registered or certified mail, postage prepaid, all current owners and recorded lessees of real property located within 500 feet of the boundaries of the subject property.

Your Committee further notes that the recommendation of the Maui Planning Commission was based upon the findings indicated in the MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION SEPTEMBER 11, 2001 MEETING", and "MAUI PLANNING DEPARTMENT'S RECOMMENDATION REPORT TO THE MAUI PLANNING COMMISSION SEPTEMBER 11, 2001 MEETING".

By correspondence dated November 29, 2001, applicants Terry L. and Mele J. Strickland requested that your Committee recommend deletion of conditions 7, 11 and 18 from the proposed bill.

By correspondence dated November 30, 2001, the Council Chair transmitted correspondence dated November 29, 2001 from the Planning Director, transmitting the following:

1. Written verification from the contractor that condition 7 of the proposed bill had already been satisfied.

2. The minutes of the Maui Planning Commission meeting of September 11, 2001.

At its meeting, your Committee met with the Planning Director; a Staff Planner from the Department of Planning; the Director of Public Works and Waste Management; a Deputy Corporation Counsel; and Terry L. and Mele J. Strickland, the applicants.

The applicants provided background information on their request for a Conditional Permit. They noted that they had been using their property for transient vacation rentals since 1999 without any objections from neighbors. They further informed your Committee that they had not originally been aware of the need for a Conditional Permit, but had applied for a Conditional Permit in January 2001 shortly after becoming aware of the requirement.

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The Staff Planner made a video presentation exhibiting exterior and interior elements of the subject property, which is located near the intersection of Haiku and West Kuiaha roads. She noted that the property location is appropriate for transient vacation rentals because it is within walking distance of the commercial center in Haiku (about seven blocks away).

Your Committee noted that, on a parcel with a single-family residence, a second dwelling is colloquially known as an `ohana unit. Such dwellings were historically permitted as residences for family members of the residents of the primary dwelling, with the purpose of facilitating affordable housing. Allowing such units to be used for transient vacation rentals reduces the availability and raises the cost of long-term rental housing, which is contradictory to the historical justification for `ohana units. Therefore, your Committee voted to revise the proposed bill to provide that the Conditional Permit shall only apply to the two units in the applicants' primary dwelling and not to their two-bedroom `ohana unit.

The Planning Director informed your Committee that, with the elimination of the `ohana unit, the applicants could in the future be considered for a Type 1 bed-and-breakfast permit, pursuant to Chapter 19.64, Maui County Code.

Your Committee also voted to revise the proposed bill by eliminating conditions 7 and 18 and amending condition 1 to extend the Conditional Permit's duration to three years.

The Deputy Corporation Counsel informed your Committee that the applicants applied for a Conditional Permit pursuant to the County's amnesty program. As such, the County agreed not to take any land-use-enforcement action against the applicants during the pendency of their application. Because the applicants advised that they already had existing bookings for the two-bedroom `ohana unit through April 2002, the Deputy Corporation Counsel stated that he would advise the County to continue to refrain from taking any enforcement action regarding the `ohana until after April. Your Committee expressed its concurrence with this course of action, provided that the Planning Department confirms the existing bookings.

Your Committee voted to recommend approval of the proposed bill, as revised, and to file the communication.

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Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO TERRY L. AND MELE J. STRICKLAND, OWNERS OF HAIKU GETAWAY BED AND BREAKFAST, TO OPERATE A TRANSIENT VACATION RENTAL BUSINESS IN TWO ROOMS OF A FIVE-BEDROOM SINGLE-FAMILY DWELLING IN THE R-3 RESIDENTIAL DISTRICT AND SITUATED AT 1765 HAIKU ROAD, HAIKU, MAUI, HAWAII", incorporating the revisions recommended by your Committee (including a title change) and technical revisions.

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 TERRY L. AND MELE J. STRICKLAND, OWNERS OF HAIKU GETAWAY BED AND BREAKFAST, TO OPERATE A TRANSIENT VACATION RENTAL BUSINESS IN TWO ROOMS OF A FIVE-BEDROOM SINGLE-FAMILY DWELLING IN THE R-3 RESIDENTIAL DISTRICT AND SITUATED AT 1765 HAIKU ROAD, HAIKU, MAUI, HAWAII", **PASS FIRST READING** and **BE ORDERED TO PRINT**; and
2. That County Communication No. 01-300 be **FILED**.

Adoption of this report is respectfully requested.

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ALAN M. ARAKAWA **Chair**

DAIN P. KANE **Member**

PATRICK S. KAWANO **Vice-Chair**

MICHAEL J. MOLINA **Member**

ROBERT CARROLL **Member**

WAYNE K. NISHIKI **Member**

G. RIKI HOKAMA **Member**

CHARMAINE TAVARES **Member**

JO ANNE JOHNSON **Member**