

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

January 20, 2012

**Committee**  
**Report No.** \_\_\_\_\_

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 4, 2012, makes reference to County Communication 11-331, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING CHERIE ATTIX AN EXTENSION OF A CONDITIONAL PERMIT TO ALLOW THE CONTINUED OPERATION OF THE HALE HOOKIPA INN FOR PROPERTY SITUATED AT TAX MAP KEY NO. (2) 2-4-018:063, 32 PAKANI PLACE, MAKAWAO, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Cherie Attix for an extension of a Conditional Permit until August 23, 2015, to continue operating the Hale Hookipa Inn, a transient vacation rental (TVR), on approximately 21,079 square feet within the R-3 Residential District situated at 32 Pakani Place, Makawao, Maui, Hawaii.

Your Committee received a revised proposed bill incorporating nonsubstantive revisions.

Your Committee notes that the Council granted a Conditional Permit for Hale Hookipa Inn by Ordinance 3397 (2006) for one year from the effective date of the Ordinance. The Council extended the permit by Ordinance 3586 (2008) for four years from the effective date of Ordinance 3397, to expire on August 23, 2010.

A Planner with the Department of Planning indicated that the rental home is listed on the State Register of Historic Places and is well maintained. She further noted that there have been no complaints about the TVR, and that Ms. Attix is in compliance with the permit conditions.

Your Committee notes that the Maui Planning Commission recommended that Condition 8, relating to on-site parking, and Condition 11, relating to mediation with opposing neighbors, be deleted. The Planner indicated that Ms. Attix has complied with Conditions 8 and 11, and they are no longer applicable. Based on the Planner's recommendations, your Committee deleted the conditions.

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Ms. Attix noted that she lives on the property, but intends to move to an adjacent property that she owns. According to Section 19.04.040, Maui County Code, a TVR does not qualify as a bed and breakfast home unless the owner-proprietor occupies a unit on the property. Your Committee questioned whether it is more appropriate to call the operation a bed and breakfast home since Ms. Attix is living on the property. Ms. Attix stated that she would prefer to have the option to move to the adjacent property if she chooses. Your Committee noted that the operation is referred to as a TVR in the body of the proposed bill, but not in its title. To provide clarity, your Committee revised the title of the bill to refer to the operation as a transient vacation rental.

Ms. Attix explained that she requested a ten-year permit extension; however, the Maui Planning Commission recommended a five-year extension. She further explained that the Maui Planning Commission was persuaded by the testimony of one individual who, according to her, does not live in her neighborhood. Ms. Attix requested that the Council consider granting her a ten-year extension, in spite of the Maui Planning Commission's recommendation. Your Committee revised Condition 2 to grant an extension until August 23, 2022.

Your Committee was impressed with the way that Ms. Attix manages the TVR, and noted that other TVR owners should look to her operation as a good example.

Your Committee voted 8-1 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Carroll, Vice-Chair White, and members Baisa, Cochran, Couch, Mateo, Pontanilla, and Victorino voted "aye". Committee member Hokama voted "no".

Your Committee is in receipt of a further revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Land Use Committee **RECOMMENDS** the following:

1. That Bill \_\_\_\_\_ (2012), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING CHERIE ATTIX AN EXTENSION OF A CONDITIONAL PERMIT TO ALLOW THE CONTINUED OPERATION OF THE TRANSIENT VACATION RENTAL, HALE HOOKIPA INN, FOR PROPERTY SITUATED AT

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TAX MAP KEY NO. (2) 2-4-018:063, 32 PAKANI PLACE,  
MAKAWAO, MAUI, HAWAII", be PASSED ON FIRST READING and  
be ORDERED TO PRINT; and

2. That County Communication 11-331 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
ROBERT CARROLL, Chair

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2012)

A BILL FOR AN ORDINANCE GRANTING CHERIE ATTIX  
AN EXTENSION OF A CONDITIONAL PERMIT TO ALLOW THE  
CONTINUED OPERATION OF THE TRANSIENT VACATION RENTAL, HALE  
HOOKIPA INN, FOR PROPERTY SITUATED AT TAX MAP KEY NO.

(2) 2-4-018:063, 32 PAKANI PLACE, MAKAWAO, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, the Conditional Permit granted by Ordinance No. 3586 (2008), is extended, subject to the conditions imposed in Section 2 of this ordinance, for the operation of the Hale Hookipa Inn within the County R-3 Residential District. The site is identified for real property tax purposes by Tax Map Key No. (2) 2-4-018:063, and is comprised of approximately 21,079 square feet of land.

SECTION 2. The conditions imposed in Ordinance No. 3586 (2008) are amended to read as follows:

- "1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid [for a period of four years from the effective date of Ordinance No. 3397 (effective August 23, 2006), to expire on August 23, 2010;] until August 23, 2022; provided, that, an extension of this Conditional Permit beyond this [four-year] period may be granted pursuant to Section 19.40.090, Maui County Code.

3. That the Conditional Permit shall be nontransferable unless the Council approves the transfer by ordinance.
4. That Cherie Attix, her successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Conditional Permit and shall procure at her 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), naming the County of Maui as [a named] an additional insured, insuring and defending Cherie Attix and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this Conditional 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 Cherie Attix 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 Conditional Permit. A copy of the certificate of insurance naming County of Maui as [a named] an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of the most recent amendment to this ordinance.
5. That Cherie Attix 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 19.40.080, Maui County Code.

6. That Cherie Attix shall have and shall maintain a current and valid transient accommodations tax (TAT) license and general excise tax (GET) license for the transient vacation rental on the property. That Cherie Attix shall submit the Annual Reconciliation Statements for the TAT and GET licenses to the Department of Planning at the time of extension request.
7. That Cherie Attix shall install mounted accessible fire extinguishers in each guest bedroom and smoke detectors inside and outside of each guest room, and shall post evacuation plans in each guest room.
- [8. That all parking shall be on-site and approved by the Department of Public Works as to materials and configuration.
- 9.] 8. That Cherie Attix shall inform guests that all parking shall be on-site and that the public right-of-way shall not be used. This information, as well as other pertinent information, shall be provided on a written "house rules" to be handed to all guests at check-in.
- [10.] 9. That there shall be no physical alterations to the historic guest house (the Gomes residence) without the prior approval of the Maui County Cultural Resources Commission.
- [11. That before August 23, 2009, Cherie Attix shall have made a good faith effort to meet with those neighbors in opposition to her business operation and a professional mediator to discuss concerns and mitigation to address those concerns. The professional mediator shall transmit a report of this meeting to the Department of Planning by August 23, 2009.]
- [12.] 10. That this extension is subject to annual compliance reports to be reviewed and approved by the Planning

Director. Said reports shall be submitted to the Planning Director each year no later than August 23rd. Failure to submit annual reports could result in the Conditional Permit being revoked.

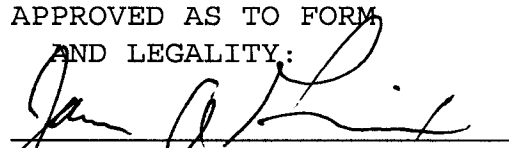
11. That Cherie Attix will post "House Policies" within each guest room and understands that she is responsible for enforcing such policies; continued documentation is required in the Compliance Report. The "House Policies" shall include the following provisions:

- A. Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m., during which noise in the transient vacation rental shall not disturb anyone on a neighboring property;
- B. Amplified sound that is audible beyond the property boundaries of the transient vacation rental is prohibited; and
- C. Vehicles shall be parked in the designated on-site parking area and shall not be parked on the street."

SECTION 3. Material to be repealed is bracketed. New material is underscored.

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

APPROVED AS TO FORM  
AND LEGALITY:

  
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JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui

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