

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

August 8, 2008

Committee
Report No.

08-87

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

Chair and Members:

Your Land Use Committee, having met on July 23, 2008, makes reference to County Communication No. 08-70, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3397 (2006), TO EXTEND A CONDITIONAL PERMIT TO CHERIE ATTIX TO ALLOW THE CONTINUED OPERATION OF THE HALE HOOKIPA INN FOR PROPERTY SITUATED AT 32 PAKANI PLACE, MAKAWAO, MAUI, HAWAII". The purpose of the proposed bill is to grant Cherie Attix a one-year extension on her existing Conditional Permit to continue to operate Hale Hookipa Inn, a four-bedroom transient vacation rental, on approximately 21,079 square feet within the R-3 Residential District, at 32 Pakani Place, Makawao, Maui (TMK: (2) 2-4-18:063) (the subject property).

Your Committee notes that the Maui Planning Commission held a public hearing on the Conditional Permit time extension request on November 13, 2007.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings, conclusions, and recommendations presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT AND RECOMMENDATION TO THE MAUI PLANNING COMMISSION NOVEMBER 13, 2007 MEETING" (Department's Report), voted to recommend approval of a one-year extension on November 13, 2007, with 11 conditions, so that the Conditional Permit that was originally granted for a period of one year on August 23, 2006, would expire on August 23, 2008.

By correspondence dated July 1, 2008, the Chair of your Committee requested that the Planning Director provide: (1) a copy of the additional documents referenced at the Maui Planning Commission's meeting of November 13, 2007; and (2) confirmation that the permittee continues to maintain a valid certificate of liability insurance, and the date of its expiration.

By correspondence dated July 11, 2008, the Planning Director provided a copy of the letters and supplemental documents received by the Maui Planning Commission on

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the day of its meeting and the following day; and a current copy of the applicant's Certificate of Liability Insurance, due to expire on August 17, 2008.

By correspondence dated July 21, 2008, Cherie Attix transmitted a booklet entitled "CONDITIONAL USE PERMIT RENEWAL HALE HO'OKIPA INN MAKAWAO", containing letters of support relating to her request for a Conditional Permit time extension, an overview of her operation, and a site plan. The booklet also contains a copy of correspondence dated December 6, 2007, from Ms. Attix to Pat and Helaine Borge, asking if they would be willing to engage in mediation; and a copy of correspondence dated April 8, 2008, from Ms. Attix to Pat Borge, asking whether he would be willing to discuss his concerns with her.

By undated correspondence received on July 22, 2008, Thomas Croly provided testimony in support of a five-year extension of Ms. Attix's Conditional Permit.

At its meeting, your Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works; a Deputy Corporation Counsel; Cherie Attix, the applicant; and William Spence, The William Spence Company, Ms. Attix's consultant.

Ms. Attix provided your Committee with two photographs depicting the proximity of the guest house on the subject property to her house on the adjacent property. She also provided a copy of correspondence dated July 10, 2008, from Virginia Fish, Haleakala Waldorf School, in support of the Conditional Permit.

Your Committee received public testimony from ten individuals, eight of whom supported the Conditional Permit time extension and two of whom opposed it. One individual in support of the extension provided her testimony, made on behalf of the Makawao Main Street Association, in writing. One individual in opposition to the extension provided two pieces of written testimony opposing the extension from Herbert Feliciano and Edeltraud Feliciano, dated January 12, 2008 and December 8, 2008 [*sic*], respectively.

Testifiers in support of the Conditional Permit noted that Ms. Attix has followed all requirements and regulations, that Ms. Attix's commitment to the historic home has kept it from falling into disrepair, that Ms. Attix runs a good operation that provides a sense of place, that the time extension would send a positive message to those who are operating their transient vacation rentals legally, that the Conditional Permit should be extended for more than a year in light of the time and effort required to process an

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extension request, and that the transient vacation rental provides a much needed service to the community.

Testifiers opposed to the Conditional Permit expressed concerns regarding notification of meetings on the application, that granting extensions for longer than one year at a time would discourage regular communications and monitoring, that the residential community is not an appropriate place for a transient vacation rental business, and that neighbors should be entitled to the peaceful enjoyment of their property.

The Planning Director noted that the guest house is listed on the National and State Register of Historic Places, and that Ms. Attix also has a long-term rental on her property. He advised that Ms. Attix has followed the process, that there is a uniqueness to the property and its proposed use, and that the Department supports her application. He further advised that the original recommendation was for a five-year extension; however, letters of concern were received at the Maui Planning Commission's meeting, and the Commission recommended that one year be granted instead to see whether those concerns could be resolved.

The Planner provided background information concerning the application. He alerted your Committee to the certified letters that had been mailed to Ms. Attix's neighbor, requesting a meeting with Maui Mediation Services. He also noted that the extension recommended in the proposed bill would expire on August 23, 2008, or in just one month. The Planner confirmed that Ms. Attix has complied with all conditions of her original Conditional Permit, and that surrounding landowners had been notified of the hearing before the Maui Planning Commission.

Your Committee discussed the concerns raised by some of Ms. Attix's neighbors, and the location of the properties of neighbors in support of and in opposition to the application in relation to the subject property.

Your Committee discussed the proposed duration of the Conditional Permit, balancing considerations over concerns expressed by some of the neighbors with the time required to complete the renewal process and attempt to resolve such concerns through mediation, as well as other factors expressed in the documents and at the meeting. Your Committee recommended that Condition No. 2 be revised to allow a three-year extension of the Conditional Permit, to expire on August 23, 2010.

Your Committee discussed the rationale behind the Maui Planning Commission's recommendation that Ms. Attix be required to move onto the subject property, rather than

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operate her transient vacation rental from the adjacent property she also owns, as allowed under the original Conditional Permit. Your Committee acknowledged that the cottage on the subject property is 50 feet from the guest house, while the house on the adjacent property, where Ms. Attix currently resides, is 60 feet from the guest house. Your Committee recommended that proposed Condition No. 11, which requires Ms. Attix to reside on the subject property, be deleted in its entirety.

Your Committee further recommended that a new Condition No. 11 be inserted, to read as follows: "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." Your Committee added this requirement to foster resolution of concerns expressed by certain neighbors.

Since your Committee had recommended that an extension be granted for three years rather than one, your Committee also recommended that an annual compliance report requirement be added as a new Condition No. 12, worded as noted in the Department's Report, at page 8.

Your Committee voted to recommend passage of a revised proposed bill incorporating the revisions to the conditions recommended by your Committee, and filing of the communication.

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

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2008), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3397 (2006), TO EXTEND A CONDITIONAL PERMIT TO CHERIE ATTIX TO ALLOW THE CONTINUED OPERATION OF THE HALE HOOKIPA INN FOR PROPERTY SITUATED AT 32 PAKANI PLACE, MAKAWAO, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and

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2. That County Communication No. 08-70 be FILED.

Adoption of this report is respectfully requested.

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MICHAEL J. MOLINA Chair

JO ANNE JOHNSON Member

JOSEPH PONTANILLA Vice-Chair

DANNY A. MATEO Member

MICHELLE ANDERSON Member

BILL KAUAKEA MEDEIROS Member

GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

G. RIKI HOKAMA Member

ORDINANCE NO. _____

BILL NO. _____ (2008)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3397 (2006), TO EXTEND A CONDITIONAL PERMIT TO CHERIE ATTIX TO ALLOW THE CONTINUED OPERATION OF THE HALE HOOKIPA INN FOR PROPERTY SITUATED AT 32 PAKANI PLACE, MAKAWAO, MAUI, HAWAII

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

SECTION 1. Ordinance No. 3397 (2006) is amended to extend the duration by three years, by amending Section 2 to read as follows:

"SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for a period of [one year] four years from the effective date of [this ordinance] Ordinance No. 3397 (effective August 23, 2006), to expire on August 23, 2010; provided, that an extension of this Conditional Permit beyond this [one-year] 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 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 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 non-observance or non-performance 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 additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of 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 obtain a Certificate of Compliance for the transient vacation rental from the Department of Planning. Said Certificate shall be issued upon compliance with Conditional Permit conditions and applicable County codes and prior to initiation of the transient vacation rental operation.

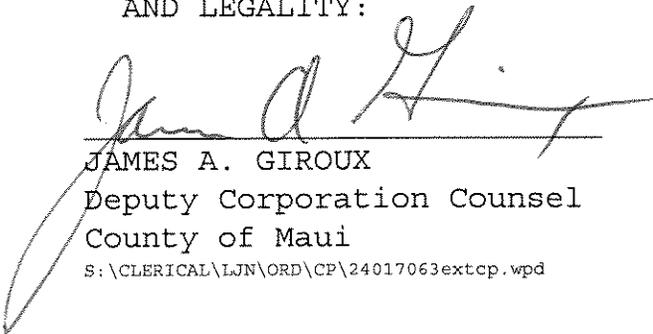
- 7.] 6. That Cherie Attix shall have and shall maintain a current and valid transient accommodations tax (TAT) license and general excise tax (GET) license for the transient vacation rental on the property. That Cherie Attix shall submit the Annual Reconciliation Statements for the TAT and GET licenses to the Department of Planning at the time of extension request.
- [8.] 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.
- [9.] 8. That all parking shall be on-site and approved by the Department of Public Works [and Environmental Management] as to materials and configuration.
- [10.] 9. 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.
- [11.] 10. 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. 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."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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