

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

February 22, 2008

Committee
Report No.

_____ 08-32

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

Chair and Members:

Your Land Use Committee, having met on February 6, 2008, makes reference to County Communication No. 07-331, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO JANICE AND THOMAS N. FAIRBANKS TO OPERATE A TEN-BEDROOM TRANSIENT VACATION RENTAL AT THE OLD WAILUKU INN AT ULUPONO FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Janice Fairbanks and Thomas N. Fairbanks III for a ten-year Conditional Permit to operate a ten-bedroom transient vacation rental on approximately 22,532 square feet within the R-2 and R-3 Residential Districts, located at 2199 Kahookele Street, Wailuku, Maui (TMK: (2) 3-4-05:015).

Your Committee notes that the Maui Planning Commission held a public hearing on the Conditional Permit application on March 22, 2005.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION MARCH 22, 2005 MEETING" (Department's Report), and the conclusions and recommendations presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATIONS TO THE MAUI PLANNING COMMISSION MARCH 22, 2005 MEETING", voted to recommend approval of the Conditional Permit on March 22, 2005, subject to 12 conditions.

By correspondence dated December 4, 2007, Reverend Robb Kojima, on behalf of the Wailuku Union Church, provided written testimony in support of the Conditional Permit.

By correspondence dated February 4, 2008, the Chair of your Committee requested that the Planning Director clarify the following points at the upcoming

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Committee meeting: (1) whether the reference in the County Communication to a December 14, 2004 public hearing means that there is a second set of minutes, and if so, to provide them; and (2) the reference to a requirement for a certificate of occupancy for “the ten-bedroom vacation rental structure” in proposed Condition No. 7. Your Committee notes that, according to the Department’s Report, there is a main dwelling with seven bedrooms for rent and a second, three-bedroom dwelling on the property.

By correspondence dated February 4, 2008, the Planning Director transmitted the following: (1) correspondence dated November 7, 2007, from Jennifer K. Nguyen, A Saigon Café, in support of the Conditional Permit; and (2) correspondence dated October 30, 2007, from Curtis Tom, in support of the Conditional Permit.

At its meeting, your Committee met with the Deputy Planning Director; a Planner, Department of Planning; the Director of Finance; the Director of Housing and Human Concerns; the Deputy Director of Public Works; a Captain, Fire Prevention Bureau, Department of Fire and Public Safety; a Deputy Corporation Counsel; and Janice Fairbanks and Thomas N. Fairbanks III, the applicants/property owners (the Fairbanks).

Your Committee received oral testimony from two individuals in support of the Conditional Permit. The first testifier, the daughter and an employee of the Fairbanks, provided information concerning the existing operation, noting a charge of \$150 to \$190 per night per room, excluding taxes, with an occupancy rate ranging from 70 percent to 100 percent. The second testifier, the closest neighbor to the Fairbanks, described the history of the home, noted no objections to the addition to the previous bed and breakfast operation, and indicated that the Fairbanks should be commended for their renovation of the historic home, which contributes to the preservation of old Wailuku Town.

Your Committee received a computer-generated presentation from Mr. Fairbanks, along with a printout of the presentation and a brochure for the Old Wailuku Inn at Ulupono. The presentation provided background information concerning the home and operation, including a chronology of the “Historic Lufkin Residence”, listed on the Hawaii Register of Historic Places in 1996, as well as a chronology of permits received; photographs of the subject property, reflecting its condition before and after renovations; and highlights of community involvement and awards received. Mr. Fairbanks informed your Committee that the Old Wailuku Inn at Ulupono has been operating since September 1997 without complaint, that the property contains onsite parking in excess of the County requirement, that the operation enjoys broad-based community support and

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has helped to establish Wailuku as a visitor destination, and that the owners live in the main dwelling on the property.

The Planner summarized the application and distributed a replacement page 2 to the Department's Report. She noted that the reference to a December 2004 public hearing was in error and that your Committee has the only set of Maui Planning Commission meeting minutes, from its March 22, 2005 meeting. She advised that the former project was a seven-bedroom rental, with the six-bedroom maximum permitted under the bed and breakfast ordinance, and the seventh bedroom operating under a Conditional Permit. She noted that the request to expand the operation to ten bedrooms, to include a second structure with three bedrooms on the property, led the Department to recommend that the entire operation be subject to a single Conditional Permit. Should the Conditional Permit be approved, the existing bed and breakfast permit would be allowed to lapse. She further advised that requests for time extensions were timely submitted.

The Planner noted that the Department had recommended a five-year extension, while the Maui Planning Commission had recommended the ten-year extension requested by the Fairbanks. She advised that the Fairbanks had obtained a certificate of occupancy for the main dwelling (containing the seven-bedroom rental) on August 23, 2007, and that the Department of Public Works had only required a certificate of occupancy for that structure, due to the number of occupants anticipated. She, therefore, recommended that Condition No. 7, requiring that the Fairbanks obtain a certificate of occupancy for the "ten-bedroom vacation rental structure", be deleted from the proposed bill. She also recommended that the names of the permittees in the proposed bill be changed to reflect the legal names of the owners, Janice Fairbanks and Thomas N. Fairbanks III.

Your Committee noted the quality of the operation. The Planner advised that all letters received by the Department have praised the Fairbanks' operation and their stewardship of the property.

Your Committee discussed the Department's policy and practice with respect to durational recommendations for transient vacation rental conditional permits. The Deputy Planning Director explained that the Department typically recommends a one-year initial duration, followed by an initial three-year extension, with five-year extensions thereafter. She advised that the initial one-year period allows the Department to check for compliance with conditions prior to recommending any time extensions.

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Your Committee debated the duration of the Conditional Permit, noting concerns over consistency in the duration of conditional permits and extensions of those permits. Recognizing that the Department of Planning had recommended a five-year extension, while the Maui Planning Commission had recommended a ten-year extension, your Committee weighed the need to maintain consistency against the unique circumstances applying to the historical property. Your Committee found particularly relevant the lack of a single complaint over the ten-year history of the operation, community support for the operation, contributions to old Wailuku Town as a visitor destination and in maintaining a sense of place, preservation of this historic property, and the Fairbanks' history of paying real property taxes at an appropriate level for the operation. Your Committee considered a revision to the proposed bill to provide for a five-year duration; however, the proposed revision failed. Accordingly, the Maui Planning Commission's recommended ten-year extension remains. Your Committee urged the Department to formalize its practice concerning durational recommendations for such permits through an amendment to the Maui County Code or the administrative rule-making process.

Your Committee discussed the fire prevention requirements for the property with the Captain. Your Committee noted that fire flow and domestic flow calculations had been reviewed and approved by the Department of Water Supply (Exhibit "16" to the Department's Report). The Captain advised that the Department of Fire and Public Safety had last conducted a fire inspection of the property in July 2007, and the Firefighter conducting the inspection had been impressed and had no concerns.

In response to questions concerning taxation of the property, the Planner advised that Condition No. 11 had been incorporated into the proposed bill to require that the Fairbanks file a supplemental public report with the Department of Finance, Real Property Tax Division, identifying the property as a commercial business relative to real property taxes. She noted that the intention was to alert the Department of Finance to an appropriate real property tax rate classification for the operation.

The Director of Finance informed your Committee that, with respect to the issue of taxation, there is currently a bed and breakfast ordinance which is very explicit and which indicates that bed and breakfast operations do not receive the homeowner's exemption. Without a transient vacation rental ordinance, there is no corollary treatment for transient vacation rentals. In this particular case, proposed Condition No. 11, which requires the Fairbanks to file a report with the Real Property Tax Division, identifying the property as a commercial business relative to real property taxes, does not clearly articulate the Maui Planning Commission's intention that the Fairbanks' property would

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continue to be treated as a bed and breakfast for tax purposes. Accordingly, the owners could apply for the homeowner's exemption, and that application could also apply to the cottage that is on the property.

The Director of Finance advised that for the past five years, the property had been classified as improved residential. He further advised that, if a transient vacation rental Conditional Permit is granted, the property would subsequently be amended to the hotel and resort classification, but would qualify for the homeowner classification and a homeowner's exemption. He noted the resulting impact on the Fairbanks' tax assessment. The Director requested that the condition be clarified if Condition No. 11 is intended to articulate that a specific tax rate will apply. The Planner also recommended that the condition be clarified.

With that guidance, your Committee recommended that Condition No. 11 of the proposed bill (to be renumbered as Condition No. 10) be revised to delete the reference to "commercial business" and instead identify the property as a bed and breakfast for real property tax purposes. Your Committee notes that the improved residential tax rate is applied to a bed and breakfast.

Your Committee also recommended deletion of Condition No. 7 of the proposed bill, relating to the certificate of occupancy requirement, since the certificate of occupancy had already been obtained, and renumbering of the subsequent conditions accordingly. Your Committee recommended that the names of the permittees be clarified to consistently reference "Janice Fairbanks and Thomas N. Fairbanks III", and that the reference year of the bill be revised to "(2008)".

Your Committee voted to recommend passage of a revised proposed bill incorporating your Committee's requested revisions, and filing of the communication.

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO JANICE FAIRBANKS AND THOMAS N. FAIRBANKS III TO OPERATE A TEN-BEDROOM TRANSIENT VACATION RENTAL AT THE OLD WAILUKU INN AT ULUPONO FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII", approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's requested revisions.

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Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2008), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO JANICE FAIRBANKS AND THOMAS N. FAIRBANKS III TO OPERATE A TEN-BEDROOM TRANSIENT VACATION RENTAL AT THE OLD WAILUKU INN AT ULUPONO FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 07-331 be FILED.

Adoption of this report is respectfully requested.

