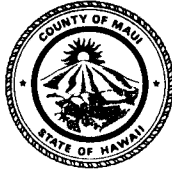


CHARMAINE TAVARES  
Mayor



BRIAN T. MOTO  
Corporation Counsel

**DEPARTMENT OF THE CORPORATION COUNSEL**  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7740 FAX 270-7152

OFFICE OF THE  
COUNTY COUNCIL

10 MAY 10 10:04

RECEIVED

May 10, 2010

**MEMORANDUM**

**T O:** Gladys C. Baisa, Chair  
Land Use Committee

**F R O M:** James A. Giroux, Deputy Corporation Counsel

**SUBJECT:** CHANGE IN ZONING FOR GRAYMARK WAIALE ROAD ASSOCIATES,  
LLC (WAILUKU) (LU-37)

In response to your memorandum of May 4, 2010, attached is the proposed bill entitled, "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 SINGLE FAMILY RESIDENTIAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT TAX MAP KEY NUMBER (2)3-4-003:009, WAILUKU, MAUI, HAWAII", revised as requested.

If you have any questions or concerns, please do not hesitate to contact me.

JAG:ln  
Attachments

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

BILL NO. \_\_\_\_\_ (2010)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM  
R-3 SINGLE FAMILY RESIDENTIAL DISTRICT TO  
M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING)  
FOR PROPERTY SITUATED AT TAX MAP KEY NUMBER  
(2)3-4-003:009, WAILUKU, MAUI, HAWAII

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

SECTION 1. Pursuant to Chapters 19.24 and 19.510, Maui County Code, a change in zoning from R-3 Residential District to M-1 Light Industrial District (Conditional Zoning) is hereby granted for that certain parcel of land situated at Wailuku, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2)3-4-003:009, comprising approximately 30,166 square feet, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-424, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 2. Pursuant to Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the conditions set forth in Exhibit "B", attached hereto and made a part hereof, and the Unilateral Agreement and Declaration for Conditional Zoning, attached hereto and made a part hereof as Exhibit "C".

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

S:\CLERICAL\EK\ORDS\CIZ\graymarkwaialeciz.wpd

**EXHIBIT "A"**

ALL OF THAT CERTAIN PARCEL OF LAND (BEING PORTION(S) OF THE LAND(S) DESCRIBED IN AND COVERED BY ROYAL PATENT GRANT NUMBER 4124, LAND COMMISSION AWARD NUMBER 8076 TO HILO AND POALIMA "KAKAULI" OUT OF ROYAL PATENT NUMBER 4475, LAND COMMISSION NUMBER 7713, APANA 23 TO V. KAMAMALU) SITUATE, LYING AND BEING IN THE ILI OF KALUA, DISTRICT OF WAILUKU, ISLAND AND COUNTY OF MAUI, STATE OF HAWAII, AND THUS BOUNDED AND DESCRIBED:

BEGINNING AT A CONCRETE MONUMENT AT THE NORTHEAST CORNER OF POALIMA "KAKAULI" THE COORDINATES OF WHICH POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "LUKE" BEING 29.85 FEET NORTH AND 979.75 FEET WEST AND RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM THE TRUE SOUTH:

1. 358° 23' 00" 40.90 FEET ALONG L.C.A. 2621 TO PALAOGANUI TO A CONCRETE MONUMENT;
2. 269° 28' 00" 48.08 FEET ALONG THE SAME TO A 1" PIPE;
3. 8° 52' 00" 152.36 FEET ALONG THE WESTERLY SIDE OF WAIALE DRIVE TO A 1" PIPE;
4. 96° 43' 00" 64.02 FEET ALONG THE NORTHERLY SIDE OF HAWAIIAN COMMERCIAL AND SUGAR COMPANY, LIMITED SPRECKELS DITCH RIGHT-OF-WAY TO A 1" PIPE;
5. THENCE ALONG THE SAME, ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT HAVING A RADIUS OF 85.10 FEET AND A CENTRAL ANGLE OF 29° 15', THE AZIMUTH AND DISTANCE OF THE CHORD BEING:  
111° 20' 00" 42.95 FEET TO A 1" PIPE;
6. 125° 58' 00" 201.20 FEET ALONG THE NORTHEASTERLY SIDE OF HAWAIIAN COMMERCIAL AND SUGAR COMPANY, LIMITED SPRECKELS DITCH RIGHT-OF-WAY TO A 1" PIPE;
7. 136° 20' 00" 1.50 FEET ALONG THE SAME TO A 1" PIPE;
8. 269° 20' 00" 160.40 FEET ALONG THE L.C.A. 3233 APANA 2 TO HOAAI TO A 1" PIPE;
9. 186° 18' 00" 51.66 FEET ALONG THE SAME TO A CONCRETE MONUMENT;
10. 273° 30' 00" 75.80 FEET ALONG L.C.A. 2621 TO PALAOGANUI TO THE POINT OF BEGINNING AND CONTAINING AN AREA OF 36,166 SQUARE FEET OR 0.825 ACRE, MORE OR LESS;

BEING ALL OF THE LAND CONVEYED BY LIMITED WARRANTY DEED RECORDED AUGUST 9, 2002 AS REGULAR SYSTEM DOCUMENT NO. 2002-139534 OF OFFICIAL RECORDS.  
GRANTOR: FIRST HAWAIIAN BANK, A HAWAII CORPORATION, AS TRUSTEE OF THE MAUI FUNERAL TRUST  
GRANTEE: RIGHTSTAR MAUI MEMORIAL, LLC, A HAWAII LIMITED LIABILITY COMPANY

TMK(S): (2) 3-4-003-009-0000

EXHIBIT "B"

CONDITIONS OF ZONING

1. That, in order to achieve consistency of site improvements with the proposed new M-1 zoning, and to the satisfaction of the Department of Planning (Department), Graymark Waiale Associates, LLC shall work with the Department's Zoning Administration and Enforcement Division (ZAED) to confirm consistency with and/or necessary measures to achieve full conformance of all current and proposed site improvements and uses with the standards of the M-1 Light Industrial District and any other applicable provisions of the Zoning Code, as well as all current Department of Health standards for stormwater disposal as though the existing uses were new uses. Measures to achieve full zoning conformance shall be implemented within the earlier of three (3) years of the rezoning or any building permit which might be necessary, and shall demonstrate full conformance with all current Department of Health standards for stormwater disposal as though the existing uses were new uses, within 30 days of the approval of the Change in Zoning.
2. That, in order to meet provisions of the Wailuku-Kahului Community Plan, and to the satisfaction of the Department, uses which are permitted within the M-1 Light Industrial District but which are not permitted within the R-3 Residential District and which are not conducted wholly within a completely enclosed building shall be established only upon the approval of a County Special Use Permit until such time that there is no longer any residentially zoned land within 150 feet of the property which is not committed to use as drainage facilities.
3. That, to the satisfaction of ZAED, Graymark Waiale Associates, LLC shall comply with the off-street parking and loading ordinance.
4. That, in order to meet zoning requirements, and to the satisfaction of the Department's Current Division, landscape and irrigation plan approval and installation are required.
5. That, in order to meet provisions of the Wailuku-Kahului Community Plan, and to the satisfaction of the Department, the proposed parking lot upgrade shall include the installation of landscape

planting to provide a buffer between uses on the property and adjoining residential uses. Landscape planting shall incorporate native and drought tolerant species, and practice xeriscaping. Graymark Waiale Associates, LLC shall plant the existing and future right-of-way with appropriate trees and/or turfgrass, and ground cover.

6. That, in order to meet provisions of the Wailuku-Kahului Community Plan, and to the satisfaction of the Current Division, plans shall be submitted to and approved by either the Current Division or the Urban Design Review Board to meet the Community Plan provision to "Emphasize contrasting earth-tone schemes for buildings", and said plans shall thereafter be implemented.
7. That, in order to meet provisions of the Wailuku-Kahului Community Plan, and to the satisfaction of the Department of Public Works, Graymark Waiale Associates, LLC shall participate in "The Bike Plan Hawaii" by making provisions along Waiale Drive for pedestrian and bicycle access by striping a bike lane in an appropriate location fronting the subject property.
8. That, in recognition of potential historical resources presented by buildings on the property, and to the satisfaction of the Department, an architectural inventory of the buildings shall be prepared prior to any future exterior modifications to the buildings.
9. That, in order to minimize construction impacts, and to the satisfaction of the Department of Health, the Police Department, or the Department, during any construction, efforts shall be made to minimize noise, dust and debris, and adequate traffic control devices and personnel shall also be utilized to minimize the impact of construction vehicles accessing the property and work being done adjoining the right-of-way.
10. That, in order to meet fire flow requirements for Light Industrial zoned land, and to the satisfaction of and on a schedule approved by the Department of Water Supply (DWS), Graymark Waiale Associates, LLC shall install two (2) fire hydrants on the 12-inch waterline at a spacing of 250 feet. Further, should any building occur in the future, Graymark Waiale Associates, LLC shall provide for

water service and fire protection in accordance with system standards.

11. That, in order to conserve water, and all to the satisfaction of either the DWS or the Department, Graymark Waiale Associates, LLC shall employ the following water conservation measures: install low-flow fixtures and devices, including but not limited to low-flow water fixtures and devices in faucets, showerheads, urinals, water closets, and hose bibs; establish a regular maintenance program for fixtures to prevent leaks; use climate adapted, drought tolerant, and non-invasive plantings; limit irrigated turf; provide rain-sensors on all automated irrigation controllers; and check and reset irrigation controllers at least once a month to reflect the monthly changes in evapotranspiration rates at the site, or as an alternative, provide the more automated, soil-moisture sensors on controllers.
12. That in accordance with Subsection 14.25A.130(C), Maui County Code, and to the satisfaction of the Wastewater Reclamation Division of the Department of Environmental Management, Graymark Waiale Associates, LLC shall provide the location of any existing property cleanout and if none exists, install one after submittal to and approval of the plans by the Wastewater Reclamation Division.
13. That, in order to protect archaeological sites which may be present in subsurface deposits exposed during proposed work, and to the satisfaction of the State Historic Preservation Division (SHPD), a qualified archaeological monitor shall be present during all ground-altering disturbance within the subject parcel in order to document any historic properties which may be encountered and to provide mitigation measures as necessary.
14. That, to the satisfaction of the SHPD, prior to the commencement of ground-altering disturbance associated with the proposed project, Graymark Waiale Associates, LLC must submit an appropriately prepared monitoring plan to SHPD for review and acceptance. The plan must contain the following provisions:
  - A. Specify the kinds of historically or culturally significant sites or remains of sites anticipated and where in the

construction area they are likely to be found;

- B. Specify how such sites or remains of sites will be documented;
  - C. Specify how such sites or remains of sites will be treated;
  - D. Specify that the archaeologist(s) conducting the monitoring has (have) the authority to halt construction in the immediate area of the find in order to carry out the plan;
  - E. Specify that coordination between the archaeologist and construction crew has been scheduled so that all involved parties are aware of the plan and what it means;
  - F. Specify what laboratory work will be performed on any cultural sites or remains of sites that might be found in the project area;
  - G. Specify details concerning the archiving of any collections that are made; and
  - H. Specify a schedule of report preparation and that the report will be submitted within the required 180 days after completion of the proposed undertaking.
15. That, in order to encourage timely compliance with the conditions of approval, a Compliance Report shall be submitted to the Department within three (3) years of the effective date of the rezoning and shall be approved by the Department prior to approval of any building permits subsequent to three (3) years of the effective date of the rezoning.
16. With the exception of the four (4) stalls on Waiale Road, 100 percent of the drainage from a 50 year storm shall be filtered for petrochemicals and shall be retained on-site.