

COUNCIL OF THE COUNTY OF MAUI
PLANNING AND SUSTAINABLE LAND
USE COMMITTEE

September 17, 2021

Committee
Report No. _____

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

Chair and Members:

Your Planning and Sustainable Land Use Committee, having met on August 19, 2021, makes reference to County Communication 20-274, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3377, BILL NO. 24 (2006) TO DELETE CERTAIN CONDITIONS, GRANT A A TIME EXTENSION AND TO TRANSFER A CONDITIONAL PERMIT TO HELAINA DiMARTINO FOR THE BANYAN TREE TRANSIENT VACATION RENTAL WITHIN THE RU-1 RURAL ZONING DISTRICT FOR PROPERTY SITUATED AT 3265 BALDWIN AVENUE, HAMAKUAPOKO - MAKAWAO, MAUI, HAWAII."

The purpose of the proposed bill is to grant a Conditional Permit transfer and time extension, and to delete certain conditions for 2.102 acres, located at 3265 Baldwin Avenue, Makawao, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 2-4-002:002, and to allow Helaina DiMartino to operate a transient vacation rental within the R-1 Rural Zoning District.

By correspondence dated August 13, 2021, the Chair of your Committee transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE 3377, TO AMEND CONDITIONS, GRANT A TIME EXTENSION, AND TRANSFER A CONDITIONAL PERMIT TO HELAINA DIMARTINO FOR THE BANYAN TREE TRANSIENT VACATION RENTAL WITHIN THE RU-1 RURAL ZONING DISTRICT FOR PROPERTY SITUATED AT 3265 BALDWIN AVENUE, HAMAKUAPOKO—MAKAWAO, MAUI, HAWAII."

The purpose of the revised proposed bill is to grant a Conditional Permit transfer and time extension, for 2.102 acres located at 3265

COUNCIL OF THE COUNTY OF MAUI
PLANNING AND SUSTAINABLE LAND
USE COMMITTEE

Page 2

Committee
Report No. _____

Baldwin Avenue, Makawao, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 2-4-002:002, to allow Helaina DiMartino to operate a transient vacation rental within the Rural Zoning District, and to amend certain conditions of the Conditional Permit as follows:

- Banyan Tree Bed & Breakfast must not operate during any times the owners-proprietors are away overnight; and
- Owners-proprietors must be County residents and reside, on a full-time basis, on the same lot being used as the transient vacation rental.

Your Committee noted certain conditions listed in the proposed bill have already been completed or are no longer applicable.

Your Committee notes the applicant, Helaina DiMartino, purchased the property from her father and original permit holder, Marty Herling. The transfer of Conditional Permit is necessary to continue operating the seven-bedroom Banyan Tree Bed & Breakfast as permitted since 2006, with no proposed changes to the existing operation.

Your Committee discussed the matter with the applicant and her representative, who noted the historic property includes a residence constructed in 1926 and a servants' cottage constructed in 1938. An accessory dwelling unit was added in 2008 for the owners' use.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Paltin, Vice-Chair King, and members Johnson, Lee, Rawlins-Fernandez, Sinenci, and Sugimura voted "aye." Committee members Kama and Molina were excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, entitled

COUNCIL OF THE COUNTY OF MAUI
PLANNING AND SUSTAINABLE LAND
USE COMMITTEE

Page 3

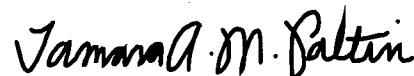
Committee
Report No. _____

“A BILL FOR AN ORDINANCE AMENDING ORDINANCE 3377, TO AMEND CONDITIONS, GRANT A TIME EXTENSION, AND TRANSFER A CONDITIONAL PERMIT TO HELAINA DIMARTINO FOR THE BANYAN TREE TRANSIENT VACATION RENTAL WITHIN THE RU-1 RURAL ZONING DISTRICT FOR PROPERTY SITUATED AT 3265 BALDWIN AVENUE, TAX MAP KEY (2) 2-4-002:002 HAMAKUAPOKO - MAKAWAO, MAUI, HAWAII,” incorporating nonsubstantive revisions.

Your Planning and Sustainable Land Use Committee
RECOMMENDS the following:

1. That Bill _____ (2021), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING ORDINANCE 3377, TO AMEND CONDITIONS, GRANT A TIME EXTENSION, AND TRANSFER A CONDITIONAL PERMIT TO HELAINA DIMARTINO FOR THE BANYAN TREE TRANSIENT VACATION RENTAL WITHIN THE RU-1 RURAL ZONING DISTRICT FOR PROPERTY SITUATED AT 3265 BALDWIN AVENUE, TAX MAP KEY (2) 2-4-002:002 HAMAKUAPOKO - MAKAWAO, MAUI, HAWAII,” be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 20-274 be FILED.

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



TAMARA PALTIN, Chair

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE 3377,
TO AMEND CONDITIONS, GRANT A TIME EXTENSION,
AND TRANSFER A CONDITIONAL PERMIT TO HELAINA
DIMARTINO FOR THE BANYAN TREE TRANSIENT VACATION
RENTAL WITHIN THE RU-1 RURAL ZONING DISTRICT FOR
PROPERTY SITUATED AT 3265 BALDWIN AVENUE,
TAX MAP KEY (2) 2-4-002:002
HAMAKUAPOKO – MAKAWAO, MAUI, HAWAII

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

SECTION 1. Ordinance 3377 (2006) is amended in Section 1 to read as follows:

“SECTION 1. [Pursuant to] In accordance with Chapter 19.40, Maui County Code, and subject to the conditions [set forth] in Section 2 of this ordinance, a Conditional Permit is [hereby] granted to [Marty Herling] Helaina DiMartino for operation of the Banyan Tree Bed & Breakfast, a transient vacation rental located within the RU-1 Rural Zoning District. The site is identified for real property tax purposes by Tax Map Key Number: (2) 2-4-002:002, comprising [approximately] 2.102 acres of land at 3265 Baldwin Avenue in Hamakuapoko – Makawao, Maui, Hawaii.”

SECTION 2. Ordinance 3377 (2006) is amended in Section 2 to read as follows:

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

1. That the Conditional Permit [shall be] is valid for a period of [five (5) years] five years from the effective date of this amended ordinance[; provided, that] , except an extension of this Conditional Permit beyond this five-year period may be granted [pursuant to] in accordance with Section 19.40.090, Maui County Code.

2. That the Conditional Permit [shall be] is nontransferable unless the Council approves a transfer by ordinance.

3. That [Marty Herling] Helaina DiMartino [shall] must exercise reasonable due care [as] to third parties [with respect to] in all areas affected by [subject] the Conditional Permit, and [shall] must procure at [his] 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 (\$1,000,000.00)] \$1,000,000 naming the County of Maui as a named additional insured, insuring and defending [Marty Herling] Helaina DiMartino and the County of Maui against any and all claims or demands for property damage, personal injury, [and/or] 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 [Marty Herling] Helaina DiMartino of [said] her permitted 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 the County of Maui as [a named] an additional insured [shall] must be submitted to the Department of Planning within ninety [(90)] calendar days from the effective date of this amended ordinance.

4. That [Marty Herling] Helaina DiMartino [shall] must 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 accordingly may result in the revocation of the Conditional Permit [pursuant to] under Section 19.40.080 [of the], Maui County Code.

5. That full compliance with all applicable governmental requirements [shall] must be rendered.

6. That full compliance with the conditions of the Land Use Commission Special Use Permit (SUP2 2000/0007) [shall] must be rendered.

[7. That Marty Herling shall grade the banks on each side of the driveway to improve sight distance.

8. That Marty Herling shall repave the driveway upon completion of the grading of the banks.

9.]7. That [Marty Herling] Helaina DiMartino [shall] must execute a hold harmless agreement indemnifying the County should final sight distance after grading of the banks not be adequate to meet County standards.

[10. That Marty Herling shall install warning signage for vehicles traveling in an east and westbound direction along Baldwin Avenue.

11. That Marty Herling shall continue to meet the requirements for individual wastewater treatment systems of the State Department of Health.]

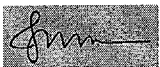
8. That the Banyan Tree Bed & Breakfast must not operate during any times that all owners-proprietors are away overnight.

9. That the owners-proprietors must be residents of the County and must reside, on a full-time basis, on the same lot being used as the transient vacation rental."

SECTION 3. 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 4. This Ordinance takes effect on approval.

APPROVED AS TO FORM
AND LEGALITY:



2021.09.03
16:24:48 -10'00'

for

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
LF2021-0016/2020-0231
PSLU-61 2021-09-03 Ord Am CP Banyan Tree
pslu:misc:061abill01:wal