

Many consequences to anti-stacking bill

THE CHAMBER VIEW

by Pamela Tumpap



Currently within the M1 (light industrial) and M2 (heavy industrial) zoning districts, permitted uses

include M1 and M2 uses, respectively, along with B1, B2 and B3 zoning district uses and apartment uses — for a “stacking,” or combination, of permitted uses. The County Council’s proposed industrial bill seeks to remove “stacked” uses by taking out apartment, B1, B2 and B3 uses from M1 and M2 zoning, hence, the term “anti-stacking.” This bill would impact hundreds of existing nonindustrial Maui businesses and apartment units located in industrial zoning.

If this bill passes:

- Only industrial uses would be permitted in industrial-zoned districts.

- All other nonindustrial uses, while allowed now, no longer would be permitted.

- It would restrict future uses in industrial-zoned districts to industrial uses only, limiting future options.

Many uses that already exist in industrial areas suddenly would be considered “nonconforming” and would not be permitted. These existing uses include: apartments; restaurants; retail outlets; doctor/dentist offices; veterinary clinics; government offices; union halls; office buildings; professional services offices for architects, engineers, CPA firms; and more. Apartments like Kahului Town Terrace and Iao Parkside would be nonconforming. Shopping malls like Queen Ka’ahumanu Center, Maui Mall, Maui Marketplace and Lahaina Cannery Mall would be affected. Island-

wide, industrial areas — such as Kahului Industrial and the Millyard, with high concentrations of business uses — would be changed. The potential blow is huge!

If these businesses no longer were permitted, it does not mean they would have to move or go away; but as “nonconforming uses,” they would

have many restrictions imposed on them.

The Maui County Code imposes strict limitations on nonconforming uses. These limitations would apply to all nonindustrial users and would include:

- Limiting work done on a nonconforming-use structure to ordinary repairs.

- Limiting ordinary repairs to 50 percent of the current replacement cost of the structure within a 12-month period, and limiting the floor area of the structure to the floor area that existed at the time the nonconforming use was created.

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- Preventing the replacement of nonconforming-use structures that have suffered more than 50 percent destruction, unless the nonconforming-use structure is deemed a historic property, as defined by Hawaii state law. And then, if the business were able to rebuild, the construction would have to conform fully to the new provisions of the zoning code.

- Discontinuing the “grandfathering” of any nonconforming use if that use were discontinued for 12 consecutive months.

- This bill presents a scary prospect for many businesses and property owners and raises numerous questions. As “ordinary repairs” are not defined in the code and left to the discretion of the plan reviewer,

would a property lose its grandfathering if the repairs were deemed extraordinary? If so, would a business then have to convert to industrial use? Are we really going to create additional hardships for property owners and prevent them from rebuilding if damage from a disaster exceeds 50 percent and they are not deemed a historic property? Would residential condominium owners in industrial areas be able to get a building permit to repair their units if they were damaged beyond 50 percent? What would happen if construction were too costly and did not pencil out for projects seeking to rebuild to meet the current code? How would construction be monitored?

In these economic times, how are the malls expected to survive such restrictions? If an individual store closes and the space sits vacant for more than

12 months, would a business lose its grandfathering for that space? What would happen to foreclosure properties in industrial areas if they were not sold within 12 months?

Furthermore, nonconforming conditions would have to be disclosed in sales transactions and could hamper the sale of affected business buildings and condominiums. Designation as a nonconforming use also might be problematic for business owners seeking financing or property insurance. The restrictions may impact tremendously the lease or sale of properties, particularly in these times when it is not uncommon for spaces and properties to remain vacant for long periods of time.

Howard Hanzawa organized a private-sector committee to review the proposed industrial and hotel zoning changes. Committee members have

drafted excellent educational pieces to help the community better understand these issues. We thank the committee for its service and for sharing its information on our Web site at www.maui-chamber.com.

The anti-stacking bill would hamper the renovation, repair, lease and sale of properties in industrial-zoned districts, and produce significant economic hardships for many businesses and apartment and condominium owners. This was not the original intent of the bill. Therefore, the Maui Chamber of Commerce will submit testimony in opposition of this bill and the related hotel zoning bill, to be heard by the Maui Planning Commission on Tuesday. We encourage others to do the same.

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is president of the
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