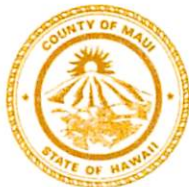


MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

March 2, 2021

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 3/3/21
Mayor Date

OFFICE OF THE
COUNTY CLERK

2021 MAR -4 AM 8:59

RECEIVED

For Transmittal to:

Honorable Alice Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee and Members:

**SUBJECT: BILL FOR AN ORDINANCE AMENDING TITLE 19,
MAUI COUNTY CODE, RELATING TO THE WAILUKU
REDEVELOPMENT AREA**

The Department of Planning (Department) is proposing to amend Title 19 of the Maui County Code to establish a new Chapter 19.39 relating to the Wailuku Redevelopment Area, and to amend Chapter 19.520 relating to variances in the Wailuku Redevelopment Area (WRA).

The WRA's zoning and development standards are identified in the Wailuku Redevelopment Area Zoning and Development Code (WRAZ&DC), adopted by the Maui Redevelopment Agency (MRA) in 2002. Currently these zoning and development standards are not part of Title 19, which pertains to zoning, and the subject proposed bill for an ordinance would integrate the WRAZ&DC into Title 19.

In order for the WRAZ&DC to be incorporated into Title 19, a new Chapter 19.39 would be established with very few changes to the existing uses, standards and requirements. However, the existing MRA variance process would be incorporated into Section 19.520.050, relating to variance procedures and standards; this means that WRA variances would be considered by the Board of Variances and Appeals rather than the MRA, though the existing criteria for such variances would be retained.

The Maui Planning Commission (Commission) reviewed the subject proposed bill on January 26, 2021, and voted 7-0 to recommend approval of the proposed bill to the County Council, as recommended by the Department. The Department notes that the Commission did not recommend any substantive changes on the advice of Corporation Counsel but they did discuss and consider recommending a lower maximum building height development standard.

Please refer to the Commission's meeting minutes on the proposed bill at:
<https://www.mauicounty.gov/Archive.aspx?ADID=27943>

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Alice Lee, Chair
March 2, 2021
Page 2

Subsequent to the Commission's review of the subject bill, the Department recognized the need to clarify a few sections of text and therefore proposes the following minor updates:

1. Section 19.39.030.C.B.3 – WRA Commercial mixed-use districts development standards for minimum setbacks: Reference to 1st, 2nd, 3rd, and 4th story is eliminated and replaced by measurements in 15 foot ranges. Justification for this proposed change is that measurements in range by feet are a more accurate assessment of story height.
2. Section 19.39.040.C.B.3 – WRA Business / multi-family districts development standards for minimum setbacks: Non-substantive change that clarifies the setbacks in 15 foot ranges so as to be consistent with No. 1 above.
3. Section 19.39.050.C.B.3 – WRA Multi-family districts development standards for minimum setbacks: Non-substantive change that clarifies the setbacks in 15 foot ranges so as to be consistent with No. 1 above.
4. Section 19.39.050.C.B.6 – WRA Multi-family districts development standards for maximum lot coverage: Non-substantive change that clarifies the setbacks in 15 foot ranges so as to be consistent with No. 1 above.

Therefore, pursuant to Sections 8-8.3(6) and 8-8.4 of the Revised Charter of the County of Maui (1983), as amended, I respectfully propose the Council's consideration of the attached proposed bill, "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO ESTABLISH A NEW CHAPTER 19.39, MAUI COUNTY CODE, RELATING TO THE WAILUKU REDEVELOPMENT AREA, AND TO AMEND CHAPTER 19.520, MAUI COUNTY CODE, RELATING TO VARIANCES IN THE WAILUKU REDEVELOPMENT AREA."

Thank you for your attention to this matter. Should you have any questions, please feel free to transmit them to the Department of Planning via transmittal through the Office of the Mayor.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

Attachments

xc: Jordan E. Hart, Deputy Director (PDF)
Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Scott J. Forsythe, Staff Planner (PDF)
Richelle Kawasaki, Deputy Corporation Counsel

MCM:SJF:lp

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ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE,
TO ESTABLISH A NEW CHAPTER 19.39, MAUI COUNTY CODE,
RELATING TO THE WAILUKU REDEVELOPMENT AREA, AND TO AMEND
CHAPTER 19.520, MAUI COUNTY CODE, RELATING TO VARIANCES IN THE
WAILUKU REDEVELOPMENT AREA

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

SECTION 1. Findings and purpose. The purpose of this ordinance is to reduce regulatory barriers to business creation and investment within the Wailuku Redevelopment Area, by providing flexible zoning, building, public works, and fire code standards; outdoor dining areas, street vendors, and entertainment; and mixed use zoning including but not limited to residential, retail, office, entertainment, specialty restaurants, cafes, and other similar uses.

SECTION 2. Title 19, Maui County code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 19.39

WAILUKU REDEVELOPMENT AREA

Sections:

19.39.010	Purpose and intent.
19.39.020	Definitions and types of uses.
19.39.030	WRA Commercial mixed-use district.
19.39.040	WRA business/multi-family district.
19.39.050	WRA multi-family district.
19.39.060	WRA residential district.
19.39.070	WRA public/quasi-public district.
19.39.080	General requirements.
19.39.090	Building height.

19.39.100	Lots.
19.39.110	Yards.
19.39.120	Canopies, balconies, and sunshades.
19.39.130	Off street parking and loading.
19.39.135	Temporary parking facilities.
19.39.140	Landscape planting and visual screening.
19.39.150	Non-conformities and legal existing uses.
19.39.160	General administrative procedures.
19.39.170	Urban design.

19.39.010 Purpose and intent. The purpose of this chapter is to adopt zoning standards for properties in the Wailuku Redevelopment Area (“WRA”). This includes areas within the WRA commercial mixed-use district, WRA business/multi-family district, WRA multi-family district, WRA residential district, and WRA public/quasi-public district. This chapter is intended to:

A. Provide for a flexible and creative approach to development that considers physical, environmental, social, and economic factors in a comprehensive manner.

B. Provide for and encourage a mix of compatible land uses that create opportunities to live, work, and shop within the WRA.

C. Facilitate the efficient use of land capitalizing on a high level of services, reduced reliance on the automobile with enhanced bicycle and pedestrian relationships, and creative opportunities for the economical preservation and adaptive reuse of existing structures, most notably those that contribute to Wailuku’s unique traditional urban character.

D. Encourage a mixture of retail shops, restaurants, offices, personal and professional services, boutique hotel, multi-family, residential, and public-use opportunities within the WRA.

E. Promote mixed-use development projects capitalizing on the more flexible design and development opportunities.

F. Streamline the permit review process.

G. Stimulate economic revitalization of the core area of Wailuku Town.

H. Establish the means of implementing various provisions of the Maui County General Plan, Wailuku-Kahului Community Plan, and Wailuku Redevelopment Plan and Design Guidelines.

19.39.020 Definitions and types of uses. A. Definitions. The following definitions shall apply to this chapter. Terms not defined below shall have the meanings set forth in subsection 19.04.040 of this title.

“Accessory use” means a use meeting the following conditions:

1. It is conducted on the same lot or on a contiguous lot in the same ownership, whether in the same building or within an accessory building or structure, or as an accessory use of land.

2. It is clearly incidental to and customarily found in connection with the principal use.

3. It is operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors to the lot with the principal use.

“Administrative review permit” means a permit required for uses meeting the general purpose and intent of the zoning district but which require administrative review by the planning director, or authorized representative, to mitigate the potential impacts of that use at the proposed location on adjacent uses, the physical setting, and public services.

“Administrative use” means a use for which an administrative review permit is required.

“Adult establishment” means businesses or commercial activities primarily restricted to adult customers, including bars, nightclubs, and taverns, and other establishments that dispense alcoholic beverages.

“Balcony” means a platform that projects from the wall of a building and is surrounded by a railing or balustrade.

“Boarding home” means an establishment with a single kitchen that provides living accommodations for roomers in addition to the resident manager or owner and family, with or without meals, for remuneration or in exchange for services. This does not include uses defined as group living facilities.

“Canopy and other building entrances” means a roof structure such as a canopy, awning, and similar appurtenances constructed of rigid or other material designed to complement the streetscape of the area and to be placed so as to extend outward from a building providing a protective shield for doors, windows, and other openings, supported by the building and supports extended to the ground directly under the canopy or cantilevered from the building.

“County” means the County of Maui of the State of Hawaii.

“Day care facility” means an establishment where persons who are not members of the family occupying the premises are cared for on an intermittent basis, but not continuously over a twenty-four hour period, and the operation is monitored and/or licensed by the State of Hawaii. Examples include day nurseries, pre-schools, kindergartens and adult day care.

“Eating and drinking establishment” means a business engaged in the preparation and serving of food to customers on premises. This includes restaurants that also dispense alcoholic beverages, if dining is a principal activity, but not including eating establishment, fast food.

“Eating establishment, fast food” means an establishment, other than a bakery, bake shop, candy or ice cream store, which provides as a principal use the sale of foods or beverages in a ready-to-consume state, for consumption on or off the premises. Fast-food restaurants may have sit-down seating and delivery service, but not provide dancing, live entertainment, the service of alcoholic beverages, or a bar. Fast-food restaurants may have some outdoor dining and drive-up service. A fast food establishments design or principal method of operation includes two or more of the following characteristics:

1. Food or beverages are served in edible containers, or in paper, plastic, or other disposable containers. Eating utensils, if provided, are disposable.

2. The line of food or beverages is limited; and is usually prepared in advance of the customer’s order.

3. Food or beverages are served over a general service counter for the customer to carry to a seating facility within the restaurant, or carry-out off premises, or to an occupant of a motor vehicle while seated in the vehicles, such as through a drive-in window.

4. Carry-out sales, including delivery service, constitute over 10 percent of the food service business.

“Education, major” means facilities, typically in a campus setting, that offer a general educational curriculum and have an enrollment capacity for one thousand or more students. Examples include public and private colleges and intermediate and high schools.

“Education, minor” means facilities offering a general educational curriculum having an enrollment capacity of less than one thousand students. Examples include public and private elementary schools and small colleges, intermediate and high schools.

“Education, specialized” means a facility that offers a specialized educational curriculum. Examples include vocational, language, business, music, dance and art schools.

“Entertainment” means businesses or commercial activities involving live adult entertainment, whether for profit or not for profit, whether open to the public at large or whether entrance is limited by a cover charge or membership requirement. Examples include, but are not limited to, facilities offering live music, singing, comedy

clubs, street performers and other similar activities. This does not include establishments that feature exotic dancers, strippers, topless entertainers or other similar activities that provide entertainment where specified anatomical areas can be seen by patrons.

“Family” means one of the following:

1. An individual or persons related by blood, adoption or marriage;
2. Up to five unrelated persons; or
3. Up to eight unrelated persons living with a residential manager or supervisor in an adult residential care home, special treatment facility or similar facility monitored and/or licensed by the State of Hawaii.

“Floor area” means the combined area under roof of all floors of a building measured from the exterior faces of exterior walls or from the centerline of party walls separating portions of a building. Where there are no exterior walls, the floor area is the usable area under the horizontal projection of the roof, including but not limited to balconies, stairways or elevator shafts. Excluded from floor area are the following: (1) accessory parking, including driveways and access ways; (2) Attic areas with headroom less than seven feet; and (3) basements.

“Floor area ratio” means the total floor area on a lot divided by the total lot area.

“Food, beverage and merchandise kiosk” means a small structure no larger than six feet wide by ten feet long that is open at one or more sides, and used for the sale of merchandise such as arts and crafts, snack food items, clothing, newspapers, magazines, and jewelry, which is a self-contained portable structure, designed as a cart, and does not constrain or block safe pedestrian and or automobile traffic.

“Food and beverage retail” means businesses within permanent facilities engaged in the retail sale of food and beverage products. Examples include supermarkets, convenience stores, bake shops, liquor stores, delicatessens (take-out only), and catering establishments.

“Food processing” means facilities for the preparation of food products for distribution to retail, wholesale and eating establishments. Examples include bakeries, refrigerated storage, canning, bottling, and packaging plants, noodle manufacturing and coffee roasting grinding.

“Funeral home” means a building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

“General merchandise” means businesses within permanent facilities engaged in the retail sale or rental of goods other than food

and beverage products. Examples include department stores, drugstores, home furnishing stores, and hardware stores, pet stores, nurseries, and equipment rental (within enclosed buildings). This does not include new and used car lots.

“General office” means facilities used for the practice of a profession, the conduct of public administration, or the administration of a business or industry. Examples include administrative offices for government agencies and financial, insurance, and real estate companies; and professional practices (except medical and dental); and television and radio stations.

“Grade” means the site ground elevation of a building or structure before construction or after it has been prepared for construction according to a grading permit approved pursuant to title 20 of this code.

“Group living facility” means facilities providing congregate living accommodations, sometimes with care services. Examples include monasteries and convents; group homes for the elderly or disabled; residential counseling centers and shelters for battered children and adults and those recovering from illness or injury; hospices; intermediate-care and extended-care nursing homes.

“Home occupation” means an activity intended to produce income that is carried on within a dwelling or on a lot whose principal use is a dwelling.

“Hotel” means a facility containing lodging units or dwellings in which 50 percent or more of the units are lodging units, and where there is a lobby, clerk’s desk or counter with twenty-four hour clerk service of facilities for registration and keeping records relating to hotel guests.

“Joint lot use” means two or more adjoining lots in the same zoning district which are developed and used for a single, unified project and treated as a single lot for zoning purposes.

“Light manufacturing and processing” means enclosed facilities for the production or assembly of products, other than food or agricultural products, involving limited or minor emissions of odors, fumes, noise, vibrations, heat, glare or electrical interference to the exterior. Examples include small craft boat building, surfboard making, commercial laundries, carpet cleaning, crafts industries, apparel manufacture, and small craft assembly plants.

“Lodging unit” means a room or connected rooms constituting an independent living unit for a family which does not contain food preparation facilities. Unless specifically permitted in use regulations for a zoning district, lodging unit may be used as a transient unit but does not include use as a time-share unit.

“Lot” means a parcel of land considered as a unit and enclosed within defined boundaries, or a building site having the required area for a certain use, or occupied or intended to be occupied by a

use in compliance with the requirements of the applicable zoning district.

“Lot area” means the total area within the lot boundaries exclusive of easements and right-of-way in favor of others for ingress and egress.

“Lot coverage” means the area of a lot covered by all roofed structures; except parking areas, walkways and accessory equipment covered by trellises that are at least 50 percent open to the sky, and underground parking structures which protrude no more than three feet above adjacent grade.

“Maui redevelopment agency use permit” means a permit required for uses which meet the general purpose and intent of the zoning district but which requires review by the Maui Redevelopment Agency to mitigate the potential impacts of that use at the proposed location on adjacent uses, the physical setting and public services.

“Maui redevelopment agency – director” means the director of the Maui redevelopment agency or the authorized representative of that director, or the director of the department that provides administrative support for the agency if no director has been appointed.

“Medical center, major” means a facility established for in-patient maintenance, observation, medical and dental care and supervision, or convalescence of persons afflicted with or suffering from sickness, disease or injury. Examples include hospitals and nursing homes.

“Medical center, minor” means a facility established to provide medical, surgical, dental, laboratory and x-ray, or other similar health care services, but not including substance abuse centers, to the general public without overnight accommodations.

“Maui redevelopment use” means a use for which a Maui redevelopment agency use permit is required.

“Nonconforming building or structure” means a building or structure or portion thereof which was previously lawful but which does not comply with the density, yard, setback or height regulations of the district in which it is located, either on the effective date of these rules or as a result of any subsequent amendment.

“Nonconforming lot” means a lot, the area, dimensions or location of which was lawful prior to the adoption, revision or amendment of the zoning code, but which fails by reason of such adoption, revision or amendment to conform to the present requirements of the zoning district.

“Nonconforming use” means any use of a structure or zoning lot which was previously lawful but which does not conform to the applicable use regulations of the district in which it is located, either

on the effective date of these rules or as a result of any subsequent amendment.

“Outside open air dining” means a restaurant or food service establishment with tables, dining facilities and activities located outside in the open air on a private property, on a public property or on the sidewalk when the open air market is used in conjunction with a business located within the building or structure located along and adjacent to the open air dining facility.

“Outside open air markets” means an outdoor area set aside for the display and sale of products and located on a private or public property. Examples include outside farmer’s markets, craft fairs, street and sidewalk markets and other similar activities.

“Outside open air side walk sales” means outdoor area set aside for the display and sale of products and located on the sidewalk provided the open air market is used in conjunction with a business located within the building or structure located along and adjacent to the side walk sales.

“Open space” means an area essentially free of structures.

“Park” means a tract of land used for public non-commercial use (except when the commercial use is conducted under the supervision of a government agency in charge of parks and playgrounds) as an active or passive recreation area.

“Parking, commercial” means an area of land or a structure used for the storage of vehicles for a fee when the purpose of parking the vehicle is not to support other uses on the same lot.

“Parking, public” means a parking area or facility on private or public property to be used by the public. Fees for the use thereof may or may not be involved.

“Personal and business services” means establishments that offer specialized goods and services frequently purchased by individual consumers and businesses. Examples include barber shops and beauty salons; medical or dental or similar health care services provided by sole practitioners or small group practices; massage services; photo lab and studio; financial institutions with teller windows; tailors; post offices and parcel delivery; travel agencies; laundromats; and printing and duplicating shops not involving mechanical printing presses.

“Planning director” means the director of the county planning department or the authorized representative of that director.

“Principal use” means the primary or predominant activity or purpose for which a lot or building is arranged, designed or intended to be or may be occupied and maintained. When listed as a permitted use in a zoning district, a principal use is limited only to the extent stated in the zoning district regulations and in special requirements that may result from the use’s location in an overlay design district.

“Public street or right-of-way” means vehicular and pedestrian circulation and access.

“Public works” means an improvement, for public purposes, within a right-of-way, easement or lot for transportation, drainage, public utilities purposes, or storage of equipment associated with the facility.

“Public works director” means the director of the county department of public works or the authorized representative of that director.

“Quasi-public use” means a use operated by a private nonprofit educational, religious, recreational, charitable, or philanthropic institution, such as churches, private schools, and similar uses but not including substance abuse treatment centers.

“Radio and television broadcasting station” means an establishment engaged in transmitting oral and visual programs to the public and that consists of facilities such as a studio, transmitter, and antennas.

“Recreation, indoor” means facilities under roof, but not necessarily fully enclosed, for recreational activities. Examples include bowling alleys; gymnasiums; health, massage and fitness spas; racquetball courts; amusement arcades; enclosed skating rinks and pool halls. Not included are facilities with large seating capacities intended for spectator sports events.

“Recreation, outdoor” means leisure time activities and areas and accessory structures designed primarily for recreational activity in the open air. Examples of leisure time activities include, but are not limited to, hiking, fishing, hunting, clay shooting, camping, picnicking, equestrian activities, paragliding and hang gliding, skateboarding, roller blading, and mountain biking. Examples of accessory structures and facilities include, but are not limited to, restrooms, play courts, swimming pools, play fields, picnic grounds, tent campgrounds, arboretums, greenways, botanical gardens, petting zoos and paint-gun and archery ranges. Golf courses, ziplines and canopy tours are not included.

“Repair, major” means repair activities which are likely to have some impact on the environment and adjoining land uses by virtue of their size, appearance, noise generation, traffic generation or operational characteristics. Examples include blacksmithing; boat cleaning and repair; electrical, gasoline and diesel motor repair and rebuilding; furniture repair; industrial machinery and equipment repair; heavy vehicle repair; automobile body and fender repair.

“Repair, minor” means repair activities which have relatively little impact on surrounding land uses and can be compatibly located with other businesses. Examples include interior upholstery repair and repainting of automobiles and motorized bicycles within enclosed buildings; non-motorized bicycle repair; production and

repair of eye glasses, hearing aids and prosthetic devices; garment repair; household appliance repair, except those with gasoline engines; shoe repair; and watch, clock and jewelry repair.

“Shopping center” means a group of retail stores and service establishments developed under a single or unified project concept on one or more zoning lots with five or more uses on a single parcel of land and a minimum of twenty-five thousand square feet of floor area.

“Storage, wholesale and distribution” means activities and facilities for the storage of goods and the bulk sale and distribution of products. Examples include warehouses, freight-forwarding and delivery operations, parcel delivery and postal stations, farm implement sales, self-storage lockers, markets in which products are sold directly by their producers, construction supply businesses and lumber yards.

“Structure” means anything, including buildings, above grade constructed or erected with a fixed location on the ground, or requiring a fixed location on the ground, or attached to something having or requiring a fixed location on the ground.

“Telecommunication and broadcasting tower or antenna” means a self-supporting lattice, guyed, or monopole structure which is designed or intended to support wireless telecommunication antenna and related facilities, including wireless antenna towers constructed for the location of transmission or related equipment to be used in the provision of commercial mobile radio services.

“Wailuku redevelopment area” means an area containing approximately 68 acres that is centrally located within Wailuku and includes the blocks surrounding the Vineyard-Market Street intersections, the housing areas west of Church Street to High Street and north of Vineyard Street to the Wailuku river and Happy Valley.

“Yard setback” means a set area, bounded on at least one side by a lot boundary and measured at right angles from the lot boundary or, which is unobstructed by any structure, except as specifically permitted.

B. Types of uses and interpretation of use terms.

1. Types. For purposes of this title, there are four types of uses: principal use, accessory use, administrative use, and Maui redevelopment agency use. Except as provided in the subsection below, no use shall be permitted in a zoning district unless it is included within the definition of the terms listed and is identified as a principal use or accessory use; meets all criteria identified for the use and if it is identified as a use which requires an administrative review permit or a Maui redevelopment agency permit, said permit is obtained and all conditions are complied with.

2. Interpretation of terms. If a proposed use does not appear in the list of terms or within the definitions of those terms or is not defined elsewhere in this title, the planning director, or authorized representative, will review the proposed use and, based upon the characteristics of the use, determine which listed and/or defined use is equivalent to that proposed; provided further that such use is consistent with the purpose and intent of the applicable zoning district and land use designation and objectives and policies of the community plan of the county and the Wailuku redevelopment area plan.

19.39.030 WRA commercial mixed-use district. A.

Purpose and intent. The purpose of the WRA commercial mixed-use district is to create a mixed-use commercial area to strengthen and enliven the core of Wailuku and its environs. New development should be pedestrian-oriented with buildings close to and oriented to the sidewalks of the public streets and compatible with the traditional architectural character and building heights of the district. The urban design of public spaces should emphasize an aggressive urban landscape planting program, including the design of more visually attractive streetscapes. The district allows for a full range of retail, service, and business uses within a local or regional market area, intermixed with arts, entertainment, multi-family and single-family residential uses to create a lively and aesthetically pleasing environment where people can live, work, dine, receive services, and be entertained within a compact area.

B. Permitted uses.

USES	PERFORMANCE STANDARDS
A. Principal Uses:	
1. Adult establishment	Administrative review permit required for adult establishments on lots that front Maluhia Drive.
2. Animal hospital	All activities shall take place within completely enclosed buildings. Noise, odor, and other emission levels shall not impact neighboring land users.
3. Assembly area	Noise shall not impact neighboring landowners.

4. Automobile services	Subsection 19.39.080(B)
5. Bed and breakfast home	Up to six bedrooms. More than six bedrooms shall require a Maui redevelopment agency use permit.
6. Day care facility	
7. Dwelling	
8. Dwelling unit, multi-family	
9. Eating Establishment	
10. Education, minor	
11. Education, specialized	Subsection 19.39.080(B)
12. Entertainment	Administrative review permit required for "entertainment" uses on lots that front Maluhia Drive.
13. Food and beverage retail	
14. Food, beverage and merchandise kiosk	Subsection 19.39.080(C). Kiosks located on public property or along a public sidewalk shall obtain an administrative review permit.
15. Food processing	All activities shall take place within completely enclosed buildings. Noise, odor, and other emission levels must not impact neighboring land users.
16. Funeral home	
17. General merchandise	Shall be limited to a maximum of 20,000 square feet of gross floor area on the subject lot. Over 20,000 square feet of gross floor area

	shall require the issuance of a Maui redevelopment agency use permit.
18. General office	
19. Home occupation	
20. Hotel	Up to twenty rooms. More than twenty rooms shall require a Maui redevelopment agency use permit.
21. Light manufacturing and processing	All activities shall take place within completely enclosed buildings. Noise, odor, and other emission levels must not impact neighboring land users. Administrative review permit required for "light manufacturing and processing" on lots that front Maluhia Drive.
22. Medical center, minor	Subsection 19.39.080(B). Administrative review permit required for "medical center, minor" on lots that front Maluhia Drive.
23. Outside open air dining	Subsection 19.39.080(G)
24. Outside open air markets	Subsection 19.39.080(H)
25. Outside open air sidewalk sales	Subsection 19.39.080(I)
26. Park	Subsection 19.39.080(B)
27. Parking, commercial and public	Subsection 19.39.080(B)
28. Personal and business services	
29. Recreation, indoor	
30. Recreation, outdoor	

31. Repair, minor	Administrative review permit required for “repair, minor” on lots that front Maluhia Drive.
32. Storage, wholesale and distribution	Only if limited to less than 50 percent of the total floor area on the lot or 2,000 square feet, whichever is less. Also, see subsection 19.39.080(B).
B. Accessory uses:	
1. Structure	Structures that are directly accessory to a permitted principal use
2. Other uses	Other uses that are ancillary, secondary, and directly accessory to a permitted principal use.
C. Administrative review permit:	
1. Adult establishment	For “adult establishment” uses on lots that front Maluhia Drive.
2. Energy system, major	Transmission lines and substations only.
3. Energy system, minor	
4. Entertainment	For “entertainment” uses on lots that front Maluhia Drive.
5. Food, beverage and merchandise kiosk	For kiosks that are located on public property or along public sidewalks. Must also meet the requirements of subsection 19.39.080(C)
6. Group living facility	
7. Light manufacturing and processing	For “light manufacturing and processing” uses on lots that front Maluhia Drive.
8. Medical center, minor	For “medical center, minor” uses on lots that front Maluhia Drive.

9. Other uses	Other uses not specifically enumerated in this section, which are determined by the director of planning, or authorized representative, to be substantially similar in character and use to one or more of the uses enumerated in this section and compatible with the purposes of the zoning district and which create no unusual impacts to neighboring land users.
10. Quasi-public use	
11. Repair, minor	For "repair, minor" uses on lots that front Maluhia Drive.
12. Storage, wholesale and distribution	For uses that do not meet the requirements of a principal use. Structures shall be consistent with the Wailuku redevelopment area design guidelines and the proposed use shall be mitigated so as not to have a deleterious impact on surrounding property owners. Warehousing, storage yards and land extensive manufacturing facilities that are not ancillary or secondary to a permitted use shall be prohibited.
D. Maui redevelopment agency use permit:	
1. Eating establishment, fast food	
2. General merchandise	More than 20,000 square feet of gross floor area on the subject lot.
3. Medical center, major	Emergency rooms only
4. Radio and television broadcasting station	
5. Telecommunications and broadcasting antenna	

	Shall be assessed for its mauka and makai visual impacts, with special consideration given to the visual impacts toward Iao Valley.
6. Bed and breakfast home	More than six rooms
7. Hotel	More than twenty rooms

C. Development standards:

Type of standard:	Standard		
A. Single family dwellings and accessory structures:	For single family dwellings, the minimum setback and maximum height standards shall be the same as those in the WRA residential district (subsection 19.39.060(C)). The minimum lot size shall be 4,500 square feet and the minimum lot width shall be 45 feet.		
B. Commercial and multifamily structures:			
1. Minimum lot size	4,500 square feet (Smaller lot sizes may be permitted by the planning director for utility purposes; roadway or easement lots; lots created for a public purpose, as determined by the planning director; or when the lot is not to be used for a commercial or residential use)		
2. Minimum lot width	45 feet (Smaller lot widths may be permitted by the planning director for utility purposes; roadway or easement lots; lots created for a public purpose, as determined by the planning director; or when the lot is not to be used for a commercial or residential use)		
3. Minimum setback	up to 30 feet	greater than 30 feet to 45 feet	greater than 45 feet to 60 feet
			20'2

<p>a. Front, side and Rear</p>	<p>None¹ For lots whose front yard setback abuts the following streets: Wells Street; Main Street; Vineyard Street; High Street; Church Street between Wells Street and Vineyard Avenue; Market Street and Central Avenue.</p> <p>6 feet For lots whose front yard setback abuts all other streets and for landlocked lots</p>	<p>10'²</p>	
<p>4. Maximum height</p>	<p>30 feet³ For lots whose greatest street frontage is along the following streets, or for the purposes of a landlocked lot, whose principle access is from the following streets: Nani; Loke; Church Street north of Vineyard Avenue and from Main Street to Pakahi; Maluhia and Alahee Drive; Wailani, Kapoai, Lani, and Holowai Place</p>		
	<p>45 feet³ For lots whose greatest street frontage is along the following streets, or for the purposes of a landlocked lot, whose principle access is from the following streets: Wells; Vineyard; Hinano; High; Church Street from Vineyard Street to Main Street; Market Street; Central Avenue.</p>		
	<p>60 feet³ For lots whose greatest street frontage is along Main Street, or for the purposes of a landlocked lot, whose principle access is from Main Street.</p>		

¹ If a side, rear or front yard property line adjoins a lot in the residential or apartment district that side, rear or front yard setback shall be the same as that of the adjoining district.

² Where a conflict exists between this standard and applicable front, rear and side yard setback design guidelines for the third and fourth floors of buildings, the design guidelines shall apply.

³ Additional heights may be permitted, pursuant to the Wailuku Redevelopment Area Design Guidelines, for architectural elements such as false fronts, spires, motifs, etc.

5. Maximum floor area ratio	3.0
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19.39.040 WRA Business/multi-family district. A.

Purpose and intent. The purpose of the WRA business/multi-family district is to promote development that combines commercial and housing uses in a single building or allows for a separated mixture of such uses on a single lot or within a compact neighborhood setting. Development that combines commercial and housing uses in a single building where businesses are located on the ground floor and housing on the upper stories is promoted. It is the intent of the WRA business/multi-family district to establish land use patterns that facilitate pedestrian modes of travel, provide a buffer between busy streets and residential neighborhoods, and provide new housing opportunities in Wailuku. The emphasis on the nonresidential uses is on locally-oriented retail, service, and office uses. Development is intended to be pedestrian-oriented with buildings close to and oriented to the public sidewalk, especially at corners. The urban design of public spaces emphasizing an aggressive urban landscape planting program and the design of more visually attractive streetscapes is encouraged.

B. Permitted uses.

USES	PERFORMANCE STANDARDS
A. Principal uses:	
1. Bed and breakfast home	Up to six bedrooms permitted in detached single-family dwellings only. More than six bedrooms shall require Maui redevelopment agency approval.
2. Day care facility	
3. Dwelling(s)	
4. Dwelling unit, multi-family	
5. Eating establishment	Limited to specialty restaurants such as coffee and donut shops, delicatessens, noodle shops,

	etc., serving a neighborhood or local market area. Noise, odor, and other emission levels must not impact neighboring land users.
6. Food and beverage retail	Limited to uses serving a neighborhood or local market area. Noise, odor, and other emission levels shall not impact neighboring land users.
7. Food, beverage and merchandise kiosk	Subsection 19.39.080(C). Limited to uses serving a neighborhood or local market area. Noise, odor, and other emission levels must shall not impact neighboring land users. Kiosks located on public property or along a public sidewalk shall obtain an administrative review permit.
8. General office	Shall be limited to a maximum of 20,000 square feet of gross floor area on the subject lot. Over 20,000 square feet of gross floor area shall require the issuance of a Maui redevelopment agency use permit.
9. General merchandise	Shall be limited to a maximum of 20,000 square feet of gross floor area on the subject lot. Over 20,000 square feet of gross floor area shall require the issuance of a Maui redevelopment agency use permit.
10. Home occupations	Subsection 19.39.080(F)
11. Hotel	Up to twenty rooms. More than twenty rooms shall require a Maui redevelopment agency use permit.
12. Recreation, indoor	
13. Park	Subsection 19.39.080(B)
14. Personal and business services	All activities requiring the use of mechanical equipment shall take place within an enclosed building.
B. Accessory Uses:	
1. Structure	

	Structures that are directly accessory to a permitted principal use
2. Other uses	Other uses that are ancillary, secondary, and directly accessory to a permitted principal use.
C. Administrative review permit:	
1. Assisted living facility	
2. Entertainment	
3. Food, beverage and merchandise kiosk	For kiosks that are located on public property or along public sidewalks. Must also meet the requirements of subsection 19.39.080(C)
4. Group living facility	
5. Other uses	Other uses not specifically enumerated in this section, which are determined by the director of planning, or authorized representative, to be substantially similar in character and use to one or more of the uses enumerated in this section and compatible with the purposes of the WRA district and which create no unusual impacts to neighboring land users.
6. Outside open air dining	Subsection 19.39.080(G)
7. Outside open air markets	Subsection 19.39.080(H)
8. Outside open air sidewalk sales	Subsection 19.39.080(I)
D. Maui redevelopment agency use permit:	
1. Adult establishment	

2. Bed and breakfast home	More than six bedrooms
3. General merchandise	Uses that do not meet the criteria of a permitted use
4. General office	Uses that do not meet the criteria of a permitted use
5. Hotel	More than twenty rooms
6. Parking, public and private	
7. Quasi-public use	

C. Development standards

Type of standard:	Standard
A. Single family dwellings and accessory structures:	For single family dwellings, the minimum setback and maximum height standards shall be the same as those in the WRA residential district (subsection 19.39.060(C)). The minimum lot size shall be 4,500 square feet and the minimum lot width shall be 45 feet.
B. Commercial and multifamily structures:	
1. Minimum lot size	4,500 square feet (Smaller lot sizes may be permitted by the planning director for utility purposes; roadway or easement lots; lots created for a public purpose, as determined by the planning director; or when the lot is not to be used for a commercial or residential use)
2. Minimum lot width	45 feet (Smaller lot widths may be permitted by the planning director for utility purposes; roadway or easement lots; lots created for a public purpose, as determined by the planning

	director; or when the lot is not to be used for a commercial or residential use)		
3. Minimum setback	up to 30 feet	greater than 30 feet – to 45 feet	greater than 45 feet to 60 feet
a. Front, side and rear	<p>None⁴</p> <p>For lots whose front yard setback abuts the following streets: Wells Street; Main Street; Vineyard Street; High Street; Church Street between Wells Street and Vineyard Avenue; Market Street and Central Avenue.</p> <p>6 feet⁵</p> <p>For lots whose front yard setback abuts all other streets and for landlocked lots</p>	10' ⁵	20' ⁶
4. Maximum height	<p>30 feet⁶</p> <p>For lots whose greatest street frontage is along the following streets, or for the purposes of a landlocked lot, whose principle access is from the following streets:</p> <p>Nani; Loke; Church Street North of Vineyard Avenue and from Main Street to Pakahi; Maluhia and Alahee Drive; Wailani, Kapoai, Lani, and Holowai Place.</p>		

⁴If a side, rear or front yard property line adjoins a lot in the residential or apartment district that side, rear or front yard setback shall be the same as that of the adjoining district.

⁵Where a conflict exists between this standard and applicable front, rear and side yard setback design guidelines for the third and fourth floors of buildings, the design guidelines shall apply.

⁶Additional heights may be permitted, pursuant to the Wailuku Redevelopment Area Design Guidelines, for architectural elements such as false fronts, spires, motifs, etc.

	<p style="text-align: center;">45 feet⁶</p> <p style="text-align: center;">For lots whose greatest street frontage is along the following streets, or for the purposes of a landlocked lot, whose principle access is from the following streets:</p> <p style="text-align: center;">Wells; Vineyard; Hinano; High; Church Street from Vineyard Street to Main Street; Market Street; Central Avenue.</p>
	<p style="text-align: center;">60 feet⁶</p> <p style="text-align: center;">For lots whose greatest street frontage is along Main Street, or for the purposes of a landlocked lot, whose principle access is from Main Street.</p>
<p style="text-align: center;">5. Maximum floor area ratio</p>	<p>1.5</p>

19.39.050 WRA Multi-family district. A. Purpose and intent. The WRA multi-family district is intended primarily to support a concentration of single and multi-family residential uses, intermixed with parks, and limited commercial uses within walking distance of the commercial core of Wailuku. Development that combines commercial and housing uses in a single building where businesses are located on the ground floor and housing on the upper stories is allowed. Smaller sized bed and breakfast accommodations are also allowed in the district. Urban design of public spaces should emphasize an aggressive urban landscape planting program and the design of more visually attractive streetscapes.

B. Permitted uses.

USES	PERFORMANCE STANDARDS
A. Principal uses:	
1. Bed and breakfast home	Up to four bedrooms in detached single-family dwellings only. More than four bedrooms shall require Maui redevelopment agency approval.
2. Boarding home	Uses that meet the definition of hotel or transient vacation rental or time-share unit are not permitted.
3. Day care facility	

4. Dwelling	For multi-family and single family
5. Eating establishment	Permitted on the ground floor of multi-floor buildings. The floor area of any individual establishment shall not exceed 25 percent of the floor area of the building. Uses shall serve the neighborhood market area and be limited to such uses as coffee shops, delicatessens, noodle shops, etc.
6. Food and beverage retail	Permitted on the ground floor of multi-floor buildings. The floor area of any individual establishment shall not exceed 25 percent of the floor area of the building. Uses shall serve the neighborhood market area.
7. General office	Shall not occupy more than 25 percent of the floor area of a building, and must be located on the first floor of a multi-floor building.
8. Home occupations	Subsection 19.39.080(F)
9. Indoor recreation	
10. Park	No commercial use, except when under the supervision of a government agency in charge of parks and playgrounds.
11. Personal and business services	Floor area of any individual establishments shall not exceed 25 percent of the floor area of a building and shall only be allowed on the ground floor of a multi-level building.
B. Accessory uses:	
1. Dwelling, accessory	
2. Structures, accessory	
C. Administrative review permit:	
1. Quasi-public use	
2. Group living facility	
	Other uses not specifically enumerated in this

3. Other uses	section, which are determined by the director of planning, or authorized representative, to be substantially similar in character and use to one or more of the uses enumerated in this section and compatible with the purposes of the zoning district and which create no unusual impacts on neighboring land users.
D. Maui redevelopment agency use permit:	
1. Bed and breakfast home	More than four bedrooms
2. Eating establishment	Uses that do not meet the criteria of a permitted use
3. Entertainment	
4. Food and beverage retail	Uses that do not meet the criteria of a permitted use
5. General office	Uses that do not meet the criteria of a permitted use
6. Parking, public	Uses that do not meet the criteria of a permitted use
7. Personal and business services	Uses that do not meet the criteria of a permitted use

C. Development standards.

Type of standard:	Standard
A. Single family dwellings and accessory structures:	For single family dwellings, the minimum setback and maximum height standards shall be the same as those in the WRA residential district (subsection 19.39.060(C)). The minimum lot size shall be 4,500 square feet and the minimum lot width shall be 45 feet.
B. Multifamily & commercial structures:	

1. Minimum lot size	4,500 square feet (Smaller lot sizes may be permitted by the planning director for utility purposes; roadway or easement lots; lots created for a public purpose, as determined by the planning director; or when the lot is not to be used for a commercial or residential use)		
2. Minimum lot width	45 feet (Smaller lot widths may be permitted by the planning director for utility purposes; roadway or easement lots; lots created for a public purpose, as determined by the planning director; or when the lot is not to be used for a commercial or residential use)		
3. Minimum setback	Up to 30 feet	greater than 30 feet to 45 feet	greater than 45 feet 60 feet
a. Front	15	25' ⁷	35' ⁷
b. Side and rear	10	20' ⁷	30' ⁷
4. Maximum height	30 feet ⁸ For lots whose greatest street frontage is along the following streets, or for the purposes of a landlocked lot, whose principle access is from the following streets: Nani; Loke; Church Street North of Vineyard Avenue and from Main Street to Pakahi; Maluhia and Alahee Drive; Wailani, Kapoai, Lani, and Holowai Place.		
	45 feet ⁸ For lots whose greatest street frontage is along the following streets, or for the purposes of a landlocked lot, whose principle access is from the following streets:		

⁷ Where a conflict exists between this standard and applicable front, rear and side yard setback design guidelines for the third and fourth floors of buildings, the design guidelines shall apply.

⁸Additional heights may be permitted, pursuant to the Wailuku Redevelopment Area Design Guidelines, for architectural elements such as false fronts, spires, motifs, etc.

	Wells; Vineyard; Hinano; High; Church Street from Vineyard Street to Main Street; Market Street; Central Avenue.		
	60 feet ⁸ For lots whose greatest street frontage is along Main Street, or for the purposes of a landlocked lot, whose principle access is from Main Street.		
5. Maximum floor area ratio	1.2		
6. Maximum lot coverage	Up to 30 feet	greater than 30 feet to 45 feet	greater than 45 feet to 60 feet
	60%	50%	40%
	(For multifamily buildings)		

19.39.060 WRA Residential district. A. Purpose and intent. The purpose of the WRA residential district is to provide a harmonious neighborhood setting for single-family dwellings in a higher density setting within walking distance to the business core of Wailuku. It is the intent of the WRA residential district to promote a wide range of choices to consumers in terms of the type, size, design, and price of housing and to improve the character of the districts residential area by promoting safe pedestrian and bicycle travel. Urban design of public spaces should emphasize an aggressive urban landscape planting program and the design of more visually attractive streetscapes.

B. Permitted uses.

USES	PERFORMANCE STANDARDS
A. Principal uses:	
1. Agriculture	Green houses, flower and truck gardens, and nurseries for products grown on the site; provided that there shall not be retailing or business transactions occurring on the premises.
2. Day care facility	Subsection 19.39.080(D)
3. Dwelling	Maximum of one per lot, plus accessory dwellings pursuant to chapter 19.35 of this title.

4. Park	No commercial use, except when under the supervision of a government agency in charge of parks and playgrounds. See subsection 19.39.080(B)
B. Accessory uses:	
1. Dwelling, accessory	Subsection 19.39.080(E)
2. Assembly area	For use by resident community association members and their guests only.
3. Home occupations	Subsection 19.39.080(F)
C. Administrative review permit:	
1. Bed and breakfast home	Up to two bedrooms. The home shall include bedrooms, one kitchen, and living areas used by the family occupying the home.
D. Maui redevelopment agency use permit:	
1. Assembly area	Use must be operated by non-profit organization for services to the residential community, such as a church, community theater or recreation hall; 15,000 sf minimum lot size.
2. Bed and breakfast home	Short-term rental of three to four bedrooms shall require a lot size of at least 7,000 sf; short-term rental of five to six bedrooms shall require a lot size of at least 10,000 sf; short-term rental of more than six bedrooms is prohibited. The home shall include bedrooms, one kitchen, and living areas used by the family occupying the home.
3. Day care facility	Day care facilities that do not meet the standards of a permitted use.
4. Education, minor	
5. Education, major	
6. Education, specialized	

7. Group living facility	
8. Home occupation	Home occupations that do not meet the standards of an accessory use.

C. Development standards

Type of standard	Zoning district	
	WRA R-1 residential (standard)	WRA R-2 residential (standard)
A. Minimum lot size	6,000 square feet	7,500 feet
B. Minimum lot width	60 feet	65 feet
C. Minimum yard setbacks		
1. Front	15 feet	15 feet
2. Side & rear	1 story / 6 feet 2 story / 10 feet	1 story / 6 feet 2 story / 10 feet
D. Maximum height	30 feet	30 feet

19.39.070 WRA Public/quasi-public district. A. Purpose and intent. The public facility zoning district is established to provide areas for public and quasi-public buildings and other uses of a non-commercial nature that serve the general community. The zoning district may be applied to both public and private lands. Urban design of public spaces should emphasize an aggressive urban landscape planting program and the design of more visually attractive streetscapes.

B. Permitted uses.

USES	PERFORMANCE STANDARDS
A. Principal uses:	
1. Assembly area	For public agencies and non-profit organizations only.
2. Base yard	
3. Day care facility	

4. Education, minor	
5. Education, major	
6. Education, specialized	
7. General office	For public agencies and non-profit organizations only.
8. Medical center, minor	
9. Medical center, major	
10. Parking, commercial	
11. Parking, public	
12. Public works	Subject to compliance with applicable public works standards; does not include storage facilities for potable water.
13. Public utility substations	Shall not be hazardous or a nuisance to surrounding areas.
14. Police and fire stations	
15. Quasi-public use	
B. Accessory uses	
1. Structure	Structures that are directly accessory to a permitted principal use
2. Other uses	Other uses that are ancillary, secondary and directly accessory to a permitted principal use

C. Development standards.

Type of standard	Standard
A. Minimum lot size	7,500 square feet for lots with an existing dwelling; otherwise, 4,500 square feet. (Smaller lot sizes may be permitted by the planning director for utility

	purposes; roadway or easement lots; lots created for a public purpose, as determined by the planning director)
B. Minimum lot width	45 feet (Smaller lot widths may be permitted by the planning director for utility purposes; roadway or easement lots; lots created for a public purpose, as determined by the planning director)
C. Minimum setback	
1. Front	15 feet
2. Side	10 feet
3. Rear	15 feet
D. Maximum height	35 feet ⁹
E. Walls	A 6-foot high solid masonry wall shall be constructed and maintained on any property line adjoining a WRA residential or WRA multi-family zoning district.

19.39.080 General requirements/specific use requirements. A. Purpose and applicability.

1. The purpose of this section is to establish special standards for certain land uses that may affect adjacent properties, the neighborhood, or the community. It is the intent of this subchapter to establish appropriate standards for the location, design and operation of the land uses covered herein, to avoid their creating problems and hazards, and to ensure their consistency with the general plan.

2. Applicability of standards. All land uses listed in this section shall conform to the minimum standards established by this chapter. Such land uses shall also conform to all other applicable requirements of these rules.

B. Specified uses abutting a WRA residential or WRA multi-family district.

1. The following uses shall maintain a six-foot high solid masonry wall on any property line adjoining a WRA

⁹Up to 60 feet may be permitted with the approval of the MRA.

residential or WRA multi-family district:

- a. Automobile services.
- b. Education, specialized.
- c. Medical center, minor.
- d. Park.
- e. Parking, commercial.
- f. Parking, public.
- g. Police and fire substations.
- h. Storage, wholesale and distribution.

2. Automobile services. The fuel pump island shall be located at least seventy-five feet from the property line of any lot in a residential, multi-family, or public/quasi public district.

3. Education, specialized. All buildings, parking lots and common activity areas, such as outdoor dining, playgrounds, tot lots and similar facilities shall be located at least ten feet from the property line.

4. Park. All active recreation areas, such as playgrounds, play courts and similar facilities shall be located at least ten feet from the property line of any lot in a WRA residential or WRA multi-family district.

C. Food, beverage and merchandise kiosks. Food, beverage and merchandise kiosks shall be subject to the following conditions:

1. The use is compatible with the aesthetics, site, urban design, and architectural character of the neighborhood.

2. No permanent fixtures, facilities or encroachments are affixed to the sidewalk, except for required utilities; or installed within public street or right-of-way.

3. No business, product, or advertising signage is placed on any encroaching item, except the kiosk itself.

4. The sidewalk is clean and free from litter, food products and other items.

5. No outdoor speakers are installed.

6. At least three feet from the edge of curb along the sidewalk is free from obstructions and the use does not impede pedestrian or automobile circulation.

D. Day care facility (WRA residential district). Day care facilities within the WRA residential district shall serve six or fewer children at any one time on lot sizes of less than seven thousand five hundred square feet; shall serve eight or fewer children at any one time on lot sizes of seven thousand five hundred or more square feet; shall serve twelve or fewer children at any one time on lot sizes of ten thousand or more square feet.

E. Dwelling, accessory. Maximum of two per lot with size

limitations pursuant to chapter 19.35 of this title.

F. Home occupations.

1. Commercial/business WRA multi-family district. Home occupation activities shall take place within completely enclosed buildings. Noise, odor, and other emission levels shall not impact neighboring land users.

2. WRA Residential and WRA multi-family districts. A home occupation is an accessory use so located and conducted that the average neighbor, under normal circumstances, would not be aware of its existence. The standards for home occupations in this section are intended to ensure compatibility with other permitted uses and with the residential character of the neighborhood. The home occupation shall clearly be secondary or incidental in relation to the residential use of the main dwelling. Home occupation activities shall comply with the following requirements:

a. No employee other than a resident of the dwelling.

b. The peace, quiet, and dignity of the neighborhood shall not be disturbed by electrical interference, dust, noise, smell, smoke or traffic generated by the use.

c. No mechanical equipment shall be used except that which is normally used within a residential dwelling.

d. No more than 25 percent of floor area used for home occupation.

e. No on-site group instruction, sales meetings, sale of merchandise.

f. No sign, display or change in the exterior of the dwelling to advertise the home occupation.

g. All materials and supplies shall be stored within the dwelling.

h. No clients or customers on premises except for one-to-one pupil-teacher sessions limited to eight pupils per day.

i. No on-site sheltering, training or raising of animals for commercial purposes.

G. Outside open air dining. Outside open air dining shall be subject to the following conditions:

1. No permanent fixtures, facilities or encroachments are affixed to the sidewalk; or installed within the public right-of-way.

2. No business, product, or advertising signage is placed on any encroaching structure, except for a kiosk.

3. The sidewalk is clean and free from litter, food

products and other debris.

4. The activity is accessory to a restaurant or kiosk located adjacent to the principal use.

5. At least three feet from the edge of curb along the sidewalk is free from obstructions and the use does not impede pedestrian circulation.

6. No outdoor speakers are installed

7. Outdoor dining areas shall not be used after 11:30 p.m.

8. Outdoor dining capacity shall not increase the total seating capacity of the restaurant without adequate mitigation of the increased parking demand.

H. Outside open air markets. Open air markets shall be subject to the following conditions:

1. No permanent fixtures, facilities or encroachments are affixed to the sidewalk; or installed within city right-of-way.

2. No business, product, or advertising signage is placed on any encroaching structure, except at the entrance to the market.

3. The sidewalk is clean and free from litter, food products and other debris.

4. At least three feet from the edge of curb along the sidewalk is free from obstructions and the use does not impede pedestrian circulation.

I. Outside open air sidewalk sales. Outside open air sidewalk sales shall be subject to the following conditions:

1. No permanent fixtures, facilities or encroachments are affixed to the sidewalk; or installed within the public right-of-way.

2. No business, product, or advertising signage is placed on any encroaching structure.

3. The sidewalk is clean and free from litter, food products and other debris.

4. At least three feet from the edge of curb along the sidewalk is free from obstructions and the use does not impede pedestrian circulation.

5. During the special events, each open air sidewalk vendor may be limited in location, and sales, as well as duration of time by the Maui redevelopment agency.

19.39.090 Building height. A. Height measurement. The height of a building or structure shall be the vertical distance from grade to the highest point of the parapet coping of a flat roof on all exterior walls, or to the deck line of a mansard roof, or the average height of the highest gable of a pitched or hipped roof. The height

of other structures shall be the vertical distance from grade to the highest point of the structure.

B. Exceptions from building or structure height. The following structures and associated screening shall be exempt from zoning district height limits under the specified restrictions:

1. Vent pipes, fans, roofs access stairwells, and structures housing rooftop machinery, such as elevators and air conditioning, not to exceed twelve feet above the governing height limit.

2. Chimneys.

3. Safety railings not to exceed forty two inches above the governing height limit.

4. Spires and flagpoles.

5. Any energy-savings device, including heat pumps and solar collectors, not to exceed five feet above the governing height limit.

6. Construction and improvements on building sites with special conditions, as provided in subsection 19.39.090(D).

C. Height of boundary fences and retaining walls. Unless specified elsewhere in these rules, boundary fences and walls shall not exceed a height of four feet above grade in the front yard for all zoning districts. Retaining walls containing a fill within required yards shall not exceed a height of six feet, measured from existing grade to the top of the wall along the exposed face of the wall. Heights of terraced walls or combinations of retaining walls shall be measured combining all walls located in the required yard. The public works director, or authorized representative, may adjust the maximum height of the retaining wall on a finding that additional height is necessary to retain earth, water, or both for health and safety purposes. The public works director, or authorized representative, may impose reasonable conditions when granting this additional height, such as type of materials and colors, landscape planting, terracing, setbacks and offsets, as may be necessary to maintain the general character of the area.

D. Height adjustments for special site conditions. The public works director may adjust the building height envelope under the following conditions, provided that such adjustment is in accordance with the intent of the pertinent district regulations:

1. To permit reasonable building design on a site where unusual natural deviations in grade occur.

2. To allow up to five feet of additional height for dwellings on building sites with slopes of 40 percent or more on lots where there are no reasonable alternative building sites with less slope.

3. To allow up to five feet of additional height for

buildings in the residential districts where the floor level is required to be elevated above the design flood level as defined in Chapter 19.62 of the Maui County code, as amended.

19.39.100 Lots. A. Lots in two zoning districts. The following shall apply to lots within two or more zoning district categories:

1. For a use common to the zoning district categories, boundary lines may be ignored for the purpose of yard and height requirements.

2. For uses not common to the zoning district categories, yard and height regulations of each zoning district shall be applicable from the lot lines on the portions of the lot lying within that district category.

3. Where a lot lies in two zoning districts and a permitted use is common to both districts, but the floor area ratios differ, the floor area ratio (FAR) shall be calculated by the following formula, where:

a. $A = \text{FAR for total parcel in most intense district.}$

b. $B = \text{FAR for total parcel in least intense district.}$

c. $C = \text{Area of parcel in most intense district.}$

d. $\text{FAR} = (A - B) \times C / \text{Total lot area} + B$

B. Joint lot use. Two or more adjoining lots may be used and developed as a joint lot use provided that the following conditions are met:

1. The owner(s), duly authorized agents of the owner, or duly authorized agents of the lessee(s) holding leases with a minimum of thirty years remaining in their terms of the adjoining lots shall submit to the planning director an agreement which binds themselves and their successors in title and lease, individually and collectively, to maintain the pattern of development proposed in such a way that there will be conformity with applicable zoning regulations. The right to enforce the agreement shall also be granted to the county.

2. If the planning director, or authorized representative, finds that the proposed agreement assures the future protection of the public interest and a more efficient use of land in accordance with the intent and purpose of this title, he shall recommend approval and forward it to the corporation counsel for review and approval as to form and legality.

3. The agreement shall not take effect until it is filed as a covenant running with the land with the State bureau of conveyances or the registrar of the land court. Proof of such

filing in the form of a copy of the covenant certified by the appropriate recording agency shall be submitted to the public works director before the issuance of any construction permits on the affected lots.

C. Street-widening setback lines. No business, merchandising displays, uses or structures shall be located or carried on within any street setback area, as determined on a map adopted by the public works director pursuant to rules and regulations, except for the following:

1. Poles, posts, wires.
2. Customary yard accessories.
3. Structures for newspaper sales and distribution.
4. Fences and retaining walls as provided in subsection 19.39.090(C).
5. Other structures not over thirty inches.
6. Temporary or portable structures.
7. Food, beverage, and merchandise kiosks, subject to the provisions of this chapter.
8. Outside open air markets, subject to the provisions of this chapter.
9. Outside open air sidewalk sales, subject to the provisions of this chapter.
10. Outside open air dining, subject to the provisions of this chapter.

D. Flag lots.

1. Flag lots are permitted when a parcel lacks sufficient street frontage for more than one lot or parcel. This parcel may be subdivided to create a flag lot, provided that the access drive for the flag lot shall be the sole access for only one lot and shall have a minimum width of twelve feet and that the parcel does not abut an existing flag lot.

2. The lot area excluding the access drive used for ingress and egress shall be not less than 80 percent of the minimum lot area required for the zoning district. The total lot area shall meet the minimum lot area standard for the zoning district.

19.39.110 Yards. Activities and structures in yards. No business, merchandising displays, discarded appliances and machinery (automobiles, refrigerators, etc.,) uses, structures or umbrellas, shall be located or carried on within any required yard except for the following:

- A. Poles, posts, wires.
- B. Customary yard accessories.
- C. Structures for newspaper sales and distribution.
- D. Fences and retaining walls as provided in subsection

19.39.090(C).

E. Other structures not more than thirty inches in height.

F. Displays for yard and garage sales of a temporary nature.

19.39.120 Canopy, balcony, and sunshade requirements.

A. The following guideline is provided to accommodate canopies, balconies, and sunshades over sidewalks compatible with historic precedent for new buildings and allow reconstruction of existing or previously existing deteriorated structures. Canopies, balconies, and sunshades, cantilevered or structurally attached to a building facade, may extend into a public street or right-of-way over the sidewalks and pedestrian ways, only. The front edge of canopies and balconies are permitted only within six inches of the front face of the curb. Canopies shall provide clearance of not less than eight feet above the sidewalk. A canopy or balcony may not be enclosed. No canopy, balcony, or sunshade shall be erected, enlarged, or altered over the public sidewalk without prior approval from the planning director, or authorized representative, for consistency with the Wailuku redevelopment area design guidelines.

B. Insurance required. No canopy or balcony projecting over county property shall be erected, re-erected, located or relocated, or enlarged or modified structurally or changed in ownership, without first receiving approval of the planning director or authorized representative, and submitting a hold harmless agreement and certificate of liability insurance against all claims for personal injuries and/or property damage in the standard amount determined by the corporation counsel. The County of Maui must be named in the certificate of insurance as an additional insured. A thirty-day written notice to the department of planning of cancellation or expiration must be included in the insurance certificate. The name of the owner of the canopy or balcony must be clearly identified on the application for a permit as an official corporation, partnership, or a sole proprietorship with appropriate names of individuals involved.

19.39.130 Off-Street parking and loading. A. Method of determining number of required off-street parking spaces.

1. Method of determining number of required off-street parking spaces. This section sets forth parking requirements for properties within the WRA, and shall apply instead of any other parking requirements in this title. To determine the required number of off-street parking spaces, floor area shall be as defined in subsection 19.39.020(A), except that for the purposes of this article, basement space shall be included as floor area for parking purposes when it is

devoted to uses having a parking requirement specified in this section. The following shall apply when determining parking requirements:

a. When the computation of required parking spaces results in a fractional number of spaces, the number of spaces required shall be rounded up to the nearest whole number when a fraction of a stall is greater than .5 and rounded down when a fraction of a stall is less than or equal to .5.

b. In assembly areas in which patrons or spectators occupy benches, pews, or other similar seating facilities, each twenty-four inches of width shall be counted as a seat for the purpose of determining requirements for off-street parking.

c. When a building or premise includes uses incidental or accessory to a principal use, the total number of spaces required shall be determined on the basis of the parking requirements of the principal use(s), unless otherwise noted.

d. The minimum parking ratios indicated below may be increased or decreased when the use requires a Maui redevelopment agency use permit, based on the particular unique characteristics of the proposed use and/or site.

e. If a use not listed below is permitted as a principal use in a zoning district category, the planning director shall determine the minimum required parking based on the closest equivalent use or waive the off-street parking requirement for the use.

B. Required off-street parking spaces by use.

Use	Minimum parking ratio (sf refers to square feet of floor area unless otherwise noted)
Adult establishment	None
Animal hospital	One space per 500 sf of building
Assembly area	Church: One space per 100 sf of floor area of building, where the church is within 500 feet of a public parking lot with more than one hundred fifty stalls the Maui redevelopment agency may grant the church a waiver of up to 75 percent of the required stalls provided that service times are limited to weekends and after 6:00 p.m. on weekdays. Library, museum, art gallery: one space per 300 sf of

Use	Minimum parking ratio (sf refers to square feet of floor area unless otherwise noted)		
	floor area of building. Auditorium, theater, stadium, bleachers, place of assembly: one space per six seats. All other types of assembly: One space per 75 sf of floor area or one space per five fixed seats, whichever is greater		
Automobile services	One space per 200 sf of floor area or 40 percent of lot area, whichever is greater; for car wash facilities, ten standing spaces for waiting vehicles for each wash rack		
Base yard	One space per operating vehicle		
Bed and breakfast home	One space per bedroom used for short-term rental, in addition to any other spaces required pursuant to this section		
Beverage and service kiosk	None		
Boarding home	.75 spaces per lodging unit		
Day care facility	One space per ten care recipients, plus four pick-up/drop-off spaces for facilities with more than twenty-five care recipients		
Dwelling	Two spaces per unit for detached single-family dwellings and duplexes	Multifamily	
		Size (bedrooms)	Spaces
		Studio	1
		1	1
Dwelling, accessory	1 space per unit		
Eating establishment	None - drive through windows not permitted, except that drive through windows in existence prior to September 30, 2015 may be internally reconfigured to improve site circulation		
Education, major/ Education, minor	Each classroom with students less than sixteen years of age: one space per classroom.		

Use	Minimum parking ratio (sf refers to square feet of floor area unless otherwise noted)
	Each classroom with students sixteen years of age or older: eight spaces per classroom
Education, specialized	One space per each ten students of design capacity, plus one space per 400 sf of office floor space
Entertainment	See adult establishment
Food, beverage and merchandise kiosk	None
Food and beverage retail	None
Food processing	One space per 600 sf of floor area of building or 25 percent of the lot area, whichever is greater.
Funeral home	One space per six seats and one space per 1,500 sf of storage area
General merchandise	One space per 500 sf of floor area of building; provided, that the minimum shall be three parking spaces. One space per 600 sf of floor area of building for appliance, furniture, plumbing supply, automobile, marine supply and machinery stores requiring large floor spaces for product display
General office	One space per 500 sf of floor area of building; provided, that there shall be a minimum of three parking spaces for employees and patrons.
Group living facility	0.5 spaces per bed
Home occupation	One space per 750 sf of floor area used for home occupation
Hotel	One space per two lodging units
Light manufacturing and processing	One space per 1,500 sf of floor area for warehousing; One space per 600 sf of floor area for other uses
Medical center, major	One space per three beds; 0.5 spaces per bed for skilled nursing facilities
Medical center, minor	Same as personal and business services
Outside open air dining	None

Use	Minimum parking ratio (sf refers to square feet of floor area unless otherwise noted)
Outside open air markets	None if within 400 feet of a public parking lot with more than one hundred fifty parking spaces. Otherwise, one space per 500 sf of floor area; none required during County sponsored special events.
Outside open air sidewalk sales Park	None See standards for outdoor recreation and indoor recreation; for parks that primarily serve pedestrians this requirement may be reduced or waived by the planning director or authorized representative.
Personal and business services	One space per 300 sf of floor area of building for personal services such as medical and dental clinics, beauty salons, financial institutions and health spas; provided, that a minimum of three parking spaces are required for employees and patrons; One space per 400 sf of floor area of building for business services such as photocopy shops; provided, that a minimum of three parking spaces are required for employees and patrons. One space per 500 sf of floor area of building for all other business buildings; provided, that a minimum of three parking spaces are required for employees and patrons
Quasi-public use	As specified in this section; otherwise one space per 500 sf of floor area of building
Recreation, indoor	Bowling alley: five spaces per alley Swimming pool, gymnasium: one space per 600 sf of floor area of pool or building Tennis courts: six spaces per court All other types of indoor recreation and play courts one space per 300 sf or three spaces per play court, whichever is greater
Recreation, outdoor	Six spaces per tennis court One space per hole for miniature golf courses One space per 600 sf of swimming pool Two spaces per play court for other types of courts; twelve spaces per playing field if no bleachers are provided; parking spaces for other uses to be determined by the planning director or authorized

Use	Minimum parking ratio (sf refers to square feet of floor area unless otherwise noted)
	representative
Repair, major	One space per 1,500 sf of floor area for warehousing and one space per 700 sf of floor area of building or 20 percent of the lot area, whichever is greater, for other uses.
Repair, minor	One space per 1,500 sf of floor area for warehousing and one space per 600 sf of floor area of building or 20 percent of the lot area, whichever is greater, for other uses.
Shopping center	One space per 200 sf of floor area of building; except for assembly areas and eating establishments which shall be subject to the parking requirements for such uses as set forth herein.
Storage, wholesale and distribution	One space per 1,500 sf for storage facilities; One space per 600 sf for other uses.
Transient or time-share unit	One space per unit

C. Parking reductions. The existing compact mixed-use land use pattern within the redevelopment area fosters more pedestrian trips and fewer automobile trips than other more automobile dependent commercial districts in the County. As such, the following parking reduction shall apply to lots zoned for commercial, non-profit and public/quasi-public uses within the Wailuku redevelopment area.

1. Commercial, non-profit and public/quasi public uses on lands zoned for such uses within the Wailuku redevelopment area shall receive a 30 percent reduction in the required number of parking stalls.

2. When the computation of required parking spaces results in a fractional number of spaces, the number of spaces required shall be rounded up to the nearest whole number when a fraction of a space is greater than or equal to .5 and rounded down when a fraction of a space is less than .5.

3. When the local conditions change or projects provide additional amenities for multi-modal transportation, additional parking reductions may be considered with a Maui redevelopment agency use permit. The applicant shall provide

clearly presented and sound information on one or more of the following:

- a. Access to transit (the frequency and quality of the transit service will also be a factor);
- b. Experienced demographics for residential developments (age, income, other auto-ownership factors);
- c. Overall auto ownership rates in the community;
- d. Implementation of programs to reduce demand for parking such as parking cash out, unbundled parking, priority parking for carpools, bike parking spaces, or car sharing; or
- e. Project-specific parking studies including local area analysis providing data to support requests to reduce parking.

D. Shared parking. The planning director may permit shared use of required parking spaces where two or more uses on the same or separate sites are able to share the same parking spaces because their parking demands occur at different times. The planning director, or authorized representative, may permit shared parking subject to the following conditions and application requirements:

1. The names and addresses of the owners that will participate in the sharing of parking.
2. The location and number of parking spaces that will be shared.
3. An analysis showing that the peak parking times of the uses occur at different times and that the parking area will be large enough for the anticipated demands of both uses.
4. The distance of the entrance to the parking facility from the nearest principal entrance of the building occupied by the use which is served by the parking shall not exceed four hundred feet by customary pedestrian routes.
5. A written agreement assuring continued availability of the number of required spaces at the period indicated shall be drawn and submitted to the planning director and County corporation counsel for review and approval. No change in use shall be permitted which increases the requirements for off-street parking spaces unless such additional spaces are provided. A certified copy of the executed agreement shall be submitted to the planning director or authorized representative.
6. Any other information required by the planning director to assess the application.

E. Off-site parking. Off-site parking may be permitted where a surplus of parking stalls exists on a commercial zoning lot

that allows for commercial parking facilities and those surplus stalls are available for long term lease to the owner and/or long-term lessee of a separate zoning lot situated within close proximity to the surplus stalls. Off-site parking may be approved by the planning director or authorized representative, subject to the following conditions and application requirements:

1. The names and addresses of the owners that are entering into an off-site parking agreement.

2. The location and number of parking spaces that are being leased for off-site parking.

3. Documents which identify the owner of the subject properties (lessees of the subject off-site parking stalls shall submit a copy of the recorded lease document for said stalls which shall have an unexpired term of at least five years from the date of filing of the application).

4. The distance of the entrance to the parking facility from the nearest principal entrance of the building occupied by the use which is served by the off-site parking shall not exceed four hundred feet by customary pedestrian routes.

5. A written agreement assuring continued availability of the number of required spaces at the period indicated shall be drawn and submitted to the planning director and county corporation counsel for review and approval. No change in use shall be permitted which increases the requirements for off-street parking spaces unless such additional spaces are provided. A certified copy of the executed agreement shall be submitted to the planning director or authorized representative.

6. Any other information required by the planning director to assess the application.

F. Parking abatement with approval of the Maui redevelopment agency. The Maui redevelopment agency may offer a partial or total abatement of parking spaces required pursuant to subsection 19.39.130(B), provided that criteria 1 and a majority of criteria 2 to 6 are met. The criteria are as follows:

1. The abatement will forward the vision, guiding principles, and objectives of the Wailuku redevelopment plan.

2. The majority of trips generated can be expected to be pedestrian oriented because the project's principal market area is the Wailuku commercial core as defined by the boundaries of the Wailuku redevelopment area.

3. The floor area of the proposed use is less than 1,000 square feet.

4. The applicant, for economic reasons, is not capable of providing cash in-lieu-of parking or participating in

other parking programs set forth herein.

5. It is impractical to provide parking at the proposed site.

6. The project will have little or no effect on the parking supply.

G. Design standards for off-street parking.

1. Configuration of parking spaces.

a. Except for landscape planting and irrigation requirements as provided under section 19.39.140, all spaces shall be unobstructed, provided that building columns may extend a maximum total of 6 inches into the sides of the parking space. A wall is not considered a building column.

b. Where four or more parking spaces are required, other than for one- and two-family dwellings, the parking lot or area shall be designed or configured in a manner that no vehicle maneuvering into or from any street, alley, or walkway is necessary in order for a vehicle to enter or leave a space, and which allows all vehicles to enter the street in a forward manner.

c. All spaces shall be configured so that any automobile may be moved without moving another except that tandem parking shall be permissible in any of these instances:

i. Where two parking spaces are assigned to a single dwelling unit.

ii. For use for employee parking, except that at no time shall the number of parking spaces allocated for employees exceed 25 percent of the total number of required spaces. Also, for employee parking, "tandem" parking shall be limited to a configuration of two stacked parking stalls.

iii. Where all parking is performed by an attendant at all times.

iv. For assembly areas and temporary events when user arrivals and departures are simultaneous and parking is attendant-directed.

2. Minimum dimensions for parking facilities.

a. Each parking space shall have a minimum width of 8.25 feet and a minimum length of eighteen feet at all points.

b. Minimum aisle widths for parking bays shall be provided in accordance with the following:

Parking Angle	Aisle Width
0° - 44°	12 ft
45° - 59°	13.5 ft
60° - 69°	18.5 ft
70° - 79°	19.5 ft
80° - 89°	21 ft
90°	22 ft

c. Ingress and egress aisles shall be provided to a street and between parking bays and no driveway leading into a parking area shall be less than twelve feet in width.

3. Parking for the physically disabled. For all non-dwelling uses, the parking for the physically disabled shall be provided as follows:

Total required parking spaces	Spaces allocated for physically disabled
11 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
Total required parking spaces	Spaces allocated for physically disabled
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	10
more than 1,000	10 plus 1 for each additional 500 or fraction thereof

Parking spaces for the disabled shall be identified by posted upright sign and blue paint on the curb or on the pavement edge of the space and shall be at least eight feet wide and shall have an adjacent access aisle a minimum of five feet. Parking access aisles shall be part of an accessible route to the building or facility. Surface slope shall not exceed 4 percent in any direction. Two adjacent spaces may share a common access aisle. Parked vehicle overhangs shall not

reduce the clear width of an accessible circulation route.

4. Paving of parking areas.

a. All off-street parking spaces, parking lots and driveways shall be provided and maintained with an all-weather surface.

b. Parking areas for three or more automobiles shall have individually striped spaces.

c. Illuminated parking lots or areas shall be illuminated with individual light poles not exceeding twelve feet in height and shall be shielded downward to prevent any direct illumination toward any zoning lot within a residential - MRA or multi-family - MRA district.

d. All parking lots shall incorporate landscape planting and irrigation as specified in section 19.39.140.

5. Compact car parking stalls. Parking stalls for compact cars may be permitted not to exceed 25 percent of the total off-street parking requirements; provided, that the stalls shall be grouped and properly identified and the compact stalls shall be at least seven feet six inches wide and sixteen feet in length.

H. Required off-street loading spaces by use.

1. For businesses with a floor area less than five thousand square feet or less and within two hundred feet of an on-street loading zone, no off-street loading facility shall be required.

2. Adjacent uses may share off-street loading facilities.

3. Off-street loading requirements shall apply to all zoning lots exceeding five thousand square feet in area for the class or kind of uses indicated below. The minimum number of off-street loading spaces shall be as follows:

Use or use category	Floor area (in sf) or units	Loading space(s)
General merchandise; eating establishments; storage, wholesale, and distribution; personal and business services; repair, major and minor; industrial and waste products processing; food	2,000 sf - 10,000 sf	1
	10,001 sf - 20,000 sf	2
	20,001 sf - 40,000 sf	3
	40,001 sf - 60,000 sf	4
	Each additional 50,000 sf or major fraction thereof	1

processing		
Hotel; medical facility, major; assembly area	5,000 sf - 10,000 sf	1
	10,001 sf - 50,000 sf	2
	50,001 sf - 100,000 sf	3
	Each additional 100,000 sf or major fraction thereof	1
General office	20,000 sf - 50,000 sf	1
	50,001 sf - 100,000 sf	2
	Each additional 100,000 sf or major fraction thereof	1
Dwelling (in multi- family building)	20 units - 150 units	1
	151 units - 300 units	
	Each additional 20 units or major fraction thereof	

4. Method of determining number.

a. To determine the required number of loading spaces, floor area shall be as defined in subsection 19.39.020(B), except that when a basement is devoted to a use having a loading requirement, loading spaces shall be required as specified above.

b. When a building is used for more than one use, and the floor area for each use is below the minimum requiring a loading space, and the aggregate floor area of the several uses exceeds the minimum floor area of the use category requiring the greatest number of loading spaces, at least one loading space shall be required.

c. The number of loading spaces required may be adjusted to 50 percent of the required number when such spaces are assigned to serve two or more uses jointly, provided that each use has access to the loading zone without crossing public streets or sidewalks.

I. Design standards for off-street loading spaces.

1. Minimum dimensions.

a. When only one loading space is required and total floor area is less than five thousand square feet, the horizontal dimensions of the space shall be nineteen feet by eight and one-half feet. It shall have a

vertical clearance of ten feet.

b. When more than one loading space is required or total floor area is more than five thousand square feet, the minimum horizontal dimension of at least half of the required spaces shall be twelve feet by twenty feet and have a vertical clearance of at least fourteen feet. The balance of required spaces may have horizontal dimensions of nineteen feet by eight and one-half feet and vertical clearance of at least ten feet.

2. Location and Paving.

a. No required loading space shall be in any street or alley but shall be provided within or adjacent to the building it serves.

b. Where loading areas are illuminated, all sources of illumination shall be shielded to prevent any direct illumination toward any rural, residential, multifamily or hotel districts.

c. Each required loading space shall be identified as such and shall be reserved for loading purposes, only.

d. No loading space shall occupy required off-street parking spaces or restrict access.

e. All loading spaces and maneuvering areas shall be paved or covered with an all-weather surface.

f. Except in front and side yards in residential - MRA districts, no loading space or maneuvering area shall be located within a required yard, except if the area displaced by the loading space or maneuvering area is provided as open space immediately abutting the required yard, and the design is approved by the director of public works.

19.39.135 Temporary parking facilities. A. A temporary parking lot shall be any parking lot which does not contain any required parking spaces for a specific land use. Temporary parking facilities may be developed for the following purposes:

1. To accommodate existing parking demand that may be displaced during construction.

2. To accommodate new parking demand anticipated to be temporary as a result of a construction activity (i.e. construction workers).

3. To accommodate existing parking demand on an existing vacant or under-developed lot for a period of time not to exceed two years.

B. Design standards.

1. All spaces shall be unobstructed

2. Where four or more parking spaces are developed, the parking lot or area shall be designed or configured in a manner that no vehicle maneuvering into or from any street, alley or walkway is necessary, in order for a vehicle to enter or leave a space, and which allows all vehicles to enter the street in a forward manner.

3. All off-street parking spaces, parking lots and driveways shall be provided and maintained with an all-weather surface. The parking and driveway surface shall consist of a minimum of two inches of a 90 percent compacted base, a treatment of bituminous material, or some other dustless and permeable surface approved by the planning director. Parking surfaces must be maintained regularly to assure the safe and efficient maneuverability of vehicle. Temporary parking facilities must remain water permeable to avoid installing storm drainage facilities.

4. Parking areas for twenty three or more automobiles shall have individually identified spaces. Spaces may be striped or marked with wheel stops. Adequate wheel stops shall be provided where parking spaces approach a property line, building wall or public sidewalk.

5. If temporary parking facilities will be operated as facilities that require a parking permit for individual users, the parking lot shall be appropriately marked and signed to indicate the permit requirements.

6. Lighting shall be provided in conjunction with the nighttime use of the area. Lighting shall not glare onto adjacent or nearby properties or buildings.

7. There shall be a minimum four-foot landscape strip adjacent to any adjoining street right-of-way. This four-foot strip shall contain a perimeter hedge with hedge plants spaced at a maximum of sixteen inches on center. A minimum thirty six inch high wall or fence may be placed on the setback line with a street side flowering vine on the fence or wall and other landscape materials in lieu of a perimeter hedge. Perimeter hedges or walls/fences may not exceed four feet in height.

C. Temporary parking permit approval process.

1. The applicant shall be required to submit a scaled site plan of the proposed temporary parking facility illustrating the proposed layout and all structures, trees or other physical features of the site.

2. The applicant shall be required to submit a narrative description of how the parking lot will be managed, i.e. permits, revenue control equipment, hours of operation, signage, lighting, security, etc. Specifications of any

equipment, lighting or signage shall be submitted with the application.

3. The planning department shall have the authority to approve such plans, and may also have the discretion to impose additional conditions upon the project for the protection of health, safety and welfare.

19.39.140 Landscape planting and visual screening. A. Parking and loading areas.

1. Parking Areas. Parking lots, automobile service stations, service and loading spaces, trash enclosures and utility substations shall be visually screened with landscape planting or by other appropriate methods in all zoning districts as follows:

a. Parking lots and automobile service stations shall provide a minimum four-foot landscape strip adjacent to any adjoining street right-of-way. This four-foot strip shall contain trees, groundcover and a perimeter hedge maintained at not less than four feet in height with hedge plants spaced at a maximum of sixteen inches on center. A minimum forty-eight inch high wall or solid fence may be placed on the setback line with a street side flowering vine on the fence or wall, and tree, shrub, and groundcover foundation planting in lieu of a perimeter hedge. One minimum six-foot tall large crown shade tree with a minimum of two-inch caliper depth, breadth and height (as measured six inches above the ground) shall be planted in the landscape strip for each fifty feet or major fraction of adjacent lineal street frontage. Also, a two-foot wide side and rear yard landscape strip shall be provided immediately adjacent and parallel with each property line where automobile parking abuts.

b. To provide shade within parking lots and minimize visibility of open paved surfaces, one minimum six-foot tall large crown shade tree with a minimum of two-inch caliper depth, breadth and height (as measured six inches above ground) shall be provided for every five parking stalls or major fraction thereof. The minimum mature spread of the crown specimen canopy tree shall be thirty feet. Each tree shall be located in a planting area and/or tree well no less than four feet square. If wheel stops are provided, continuous planting areas with low groundcover, and tree wells with trees centered at the corner of parking stalls may be located within the three-foot bumper

overhang space of parking stalls. Hedges and other landscape elements, including planter boxes over six inches in height, are not permitted within the bumper overhang space of the parking stalls. Trees shall be sited so as to evenly distribute shade throughout the parking lot.

c. Parking lots shall be screened from adjoining lots in residential and apartment districts by walls or continuous screening hedges at a minimum of sixty inches high adjacent to the abutting property line.

d. The Maui redevelopment agency shall have the authority to waive all or part of the requirements of this section to accommodate site conditions while always prioritizing the pedestrian experience on public streets and rights-of-way.

2. Parking Structures. Parking structures with open or partially open perimeter walls which are adjacent to zoning lots with side or rear yard requirements shall meet the following requirements:

a. A two-foot landscape strip along the abutting property line shall be provided. The landscape strip shall consist of a perimeter hedge at a minimum of forty-two inches in height. A solid wall forty-two inches in height may be substituted for this requirement.

b. A minimum two-inch caliper depth, breadth and height (as measured six inches above the ground) shade tree shall be planted for every fifty linear feet of building length, abutting a required yard.

c. Each parking deck shall incorporate an architectural perimeter wall or planter at least two feet in height to screen vehicular lights.

3. Loading Areas. All service areas and loading spaces shall be screened from adjoining lots in residential and apartment districts by a wall six feet in height.

B. Other areas.

1. Trash Enclosures. All outdoor trash storage areas, except those for one- or two-family dwelling use, shall be screened on a minimum of three sides by a wall or hedge at least six feet in height. The wall shall be painted, surfaced or otherwise treated to blend with the development it serves.

2. Utility Substations. Utility substations, other than individual transformers, shall be enclosed by a solid wall or a fence with a screening hedge a minimum of five-feet in height, except for necessary openings for access. Transformer vaults for underground utilities and similar uses shall be

enclosed by a landscape hedge, except for access openings.

19.39.150 Non-conformities and legal existing uses. A. Nonconforming lots may be continued, subject to the following provisions:

1. A nonconforming lot shall not be reduced in area, width or depth, except by government action to further public health, safety or welfare.

2. Any nonconforming structure or use may be constructed, enlarged, extended, or moved on a nonconforming lot as long as all other requirements of this title are met.

B. Non-conforming structures.

1. If a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this title; except, that:

a. A nonconforming structure which is a historic property as defined in chapter 6E of the Hawaii Revised Statutes and a nonconforming structure devoted to a conforming use which contains multifamily dwelling units owned by owners under the authority of chapters 514A and 421G of the Hawaii Revised Statutes, or units owned by a "cooperative housing corporation" as defined in section 403-98(b) of the Hawaii Revised Statutes, and whether or not the structure is destroyed by accidental means, including destruction by fire, other calamity, or natural disaster, may be restored to its former condition; provided, that such restoration is permitted by the building code and flood hazard regulations and is started within two years.

b. The burden of proof to establish that the destruction of a structure was due to accidental means as described above and that the structure was legally nonconforming shall be on the owner.

c. Except as otherwise provided in this title, no nonconforming structure that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except in full conformity with the provisions of this title.

2. If a nonconforming structure is moved, it shall conform to the provisions of this title.

3. Any nonconforming structure may be repaired, expanded or altered in any manner which does not increase its nonconformity.

4. If the use of a nonconforming structure is discontinued, and or changes, the structure may be converted to a use permitted within the zoning district and repaired, expanded, or altered in any manner which does not increase its nonconformity.

C. Non-conforming uses.

1. A nonconforming use shall not extend to any part of the structure or lot which was not arranged or designed for such use at the time the use became nonconforming.

2. Any nonconforming use that is discontinued for twelve consecutive months shall not be resumed.

3. Work may be done on any structure devoted in whole or in part to any nonconforming use; provided, that work is limited to ordinary repairs, including repair or replacement of walls, fixtures, wiring or plumbing. Further, this work shall not exceed 50 percent of the current replacement cost of the structure within a twelve-month period, and the floor area of the structure, as it existed at the time the nonconforming use was created, shall not be increased.

4. No nonconforming use shall be changed to another nonconforming use.

D. Non-conforming parking and loading.

1. If there is a change or intensification of use, the new use shall meet the off-street parking and loading requirement established in this title.

2. Except for expansion of individual dwelling units, any use that adds floor area shall provide off-street parking and loading for the addition as required by section 19.39.140.

E. Legal uses and structures existing prior to the enactment of this chapter.

1. Legal use(s) existing at the time of adoption of this chapter shall be grandfathered and may continue without having to obtain administrative review permits, Maui redevelopment agency use permits, or variances until such time as the use(s) are discontinued for twelve or more consecutive months.

2. Any dwelling or structure that was constructed with a building permit that was approved prior to the enactment of this chapter need not acquire an administrative review permit, Maui redevelopment use permit, or variances and may be reconstructed as permitted by the original building permit(s), and such dwellings or structures may be expanded or modified with a building permit, subject to the

other provisions of this code.

19.39.160 General administrative procedures sections.

A. Purpose and intent.

1. Purpose. The purpose of this article is to protect the public health, safety, and welfare by establishing a process for the review of land uses throughout the WRA; prescribe the manner by which permits and approvals are processed and approved, approved with conditions, or denied; and to ensure that all developments within the WRA are in compliance with the provisions of the Wailuku-Kahului community plan, the WRA, the Wailuku redevelopment area design guidelines, the rules of practice and procedure for the Maui redevelopment agency and all other applicable laws.

2. Intent. It is the intent of this article to establish a development review process which will:

- a. Foster public participation.
- b. Encourage more informed and better decision making.
- c. Protect and preserve cultural, historical, environmental, and natural resources for present and future generations.
- d. Improve the quality of development throughout the WRA.
- e. Protect the public health and safety from natural and man-made hazards.
- f. Forward the implementation of the Wailuku redevelopment plan including the elimination of slum and blight.

3. The review of all applications under these rules shall be substantive - based on conformance with this title and all other applicable laws.

4. Applicability. Any department or agency of the State or County or any person having a legal or equitable interest in the land for which a land use permit is sought may file an application in accordance with the provisions set forth herein. Except as otherwise provided, all permits and development approvals required by these rules shall comply with the procedures specified herein.

B. Administrative duties.

1. Duties of the director of public works. The director of public works shall have the following duties to carry out the purpose of this chapter:

- a. Review and act on applications for subdivision, building, certificate of occupancy, grading, plumbing, electrical, or other development or

construction permits, which comply with the provisions of this title.

2. Duties of the planning director. The planning director shall have the following duties to carry out the purpose and intent of this title:

a. Interpret the provisions of this title as applied to specific land uses and activities.

b. Review and process applications required by this title.

c. Review all proposed land uses for consistency with all applicable laws and the provisions of this title.

d. Enforce the provisions of this title.

e. Prepare and initiate amendments to this title.

f. All other duties related to the administration of this title.

C. General application requirements.

1. Submittal and Acceptance of Applications. All applications required by this chapter shall be submitted to the planning director. The planning director shall review the application to determine if the application is complete or incomplete. If the application is determined to be complete, the planning director shall notify the applicant in writing and process the application as set forth herein. If the application is determined to be incomplete the planning director shall give the applicant written notification identifying the portions of the application determined to be incomplete or the additional information that is needed to process the application.

2. Fees. Except for applications filed by County agencies, applicants shall pay a fee in the amount specified in the annual budget of the County. Checks issued to pay for application fees shall be made payable to the director of finance of the County.

3. Types of applications.

a. Administrative review permit. Administrative review permit applications shall be decided upon by the planning director. However, the planning director shall forward an administrative review permit application to the Maui redevelopment agency if the applicant submits a written request to do so to the planning director at the time the application is submitted, or as required by this chapter. The planning director may also refer an administrative review permit application to the Maui redevelopment agency when the planning director determines that

broader public review is warranted.

b. Maui redevelopment agency use permit. Maui redevelopment agency use permit applications shall require a final determination from the Maui redevelopment agency.

c. Design review. Design review applications shall be subject to the application content requirements of subsection 19.39.160(D), and shall be processed pursuant to section 19.39.170.

D. Content of application.

1. All applications shall include the following information:

a. Documents identifying the owner of the subject parcel of land and a letter bearing the signature and written authorization for the application by the owner.

b. Owner's name, address and telephone numbers.

c. Agent's name, address and telephone numbers, if applicable.

d. Property description, including the following elements:

i. Tax map key parcel number.

ii. Property address.

iii. Lot size.

iv. Location map identifying the site, adjacent roadways, and identifying landmarks.

v. Photographs of the site and surrounding properties.

vi. Site plan of the project site.

vii. Copies of all previously approved building permits and violation notices for the subject parcel, that applicants are aware of or have in their possession.

e. Proposed project description, including the following elements:

i. Narrative description of what is being proposed, why it is being proposed, and the project schedule.

ii. Preliminary schematic drawing showing project location, size, shape, materials and colors of proposed uses, structures and signs.

2. The following information shall be provided, if applicable, as determined by the Maui redevelopment agency or director:

a. Floor plans, drawn to scale, of existing buildings.

b. Architectural plans, drawn to scale of at least 1/8" = 1', including site plans, floor plans, sections and elevations, exterior finish schedule, and any other detailed plans which may be necessary to completely identify the scope and design of the project. The plans shall identify the building materials, color scheme, exterior lighting and graphics, mechanical equipment and landscaping included in the project.

c. Required off-street parking.

d. Description of future project expansions or additions.

e. Identification of all meetings held between the applicant and any community organization that may be impacted by the applicant's request, the issues raised at these meetings, and any measures proposed by the applicant to resolve or mitigate these issues.

f. Operation and management of the proposed use including, but not limited to, number of employees and hours of operation.

g. Location(s) and plans for all signs that are to be constructed or maintained in connection with the project or businesses which may occupy the property.

4. The Maui redevelopment agency or the director may request other information, as needed, to assess the application.

E. Public notification. The following public notification requirements shall apply to Maui redevelopment agency use permit applications. Said notification requirements shall not apply to applications for administrative review permits and design review.

1. Mail a notice of the date of the Maui redevelopment agency hearing on a form prescribed by the planning director by certified mail, return receipt requested, to each of the owners as listed in the County real property tax roll, adjacent to and across from the proposed use or project and any other person or organization that has requested notification of such application. The applicant shall mail the notice at least thirty calendar days before the Maui redevelopment agency hearing.

2. Submit each of the return receipts for the certified mail to the director not less than ten business days before the date of the Maui redevelopment agency hearing.

3. Publish notice of the date, time, place, and subject matter of the Maui redevelopment agency hearing once in a newspaper which is printed and issued at least twice

weekly in the County and which is generally circulated throughout the County and shall transmit a copy of the notice to the director. The applicant shall publish the notice at least thirty calendar days before the Maui redevelopment agency hearing.

4. Notice shall be considered validly given if the applicant has made a good faith effort to comply with the procedures set forth in this subsection.

F. Review Process. Applications for administrative review permits and Maui redevelopment agency use permits shall be processed as follows:

1. No application shall be deemed complete until the Director has received comments from all applicable agencies; and all other requirements set forth herein and in subsection 19.39.160(D) "content of application" have been met.

2. Within ten days after deeming that an application for a Maui redevelopment agency use permit is complete, the director shall forward the application to the Maui redevelopment agency for the Maui redevelopment agencies' scheduling of a hearing on the application.

3. Within forty-five days of determining the application for an administrative review permit or Maui redevelopment agency use permit is complete, the director shall do one of the following:

a. Approve, deny or approve with conditions or modifications an administrative review permit application.

b. Prepare and provide the Maui redevelopment agency a written report and recommendation to approve, deny or approve with conditions or modifications a Maui redevelopment agency use permit refer the application to the Maui redevelopment agency for its review prior to the hearing.

c. The planning director shall transmit a report on the application to the Maui redevelopment agency, the applicant, the appropriate State and County agencies, and all interested persons not less than six business days prior to the date of the hearing.

4. The Maui redevelopment agency shall forward its decision and order or letter of approval, as the case may be, to the applicant and other parties within one hundred twenty days from the later of:

a. The date the application is deemed complete by the director; or

b. The closing of the Maui redevelopment agency meeting on the application, provided that, if a

contested case proceeding is conducted pursuant the rules of practice and procedure of the Maui redevelopment agency, the decision shall be rendered within the time specified by the applicable rules. This time period shall be extended in the event of a national disaster, state emergency, or union strike, which would prevent the authority from reviewing and making a decision within the specified time period.

G. Review criteria for administrative review permits and Maui redevelopment agency use permits. No application required by this chapter shall be approved unless each of the following criteria have been met:

1. The proposed request complies with Hawaii Revised Statutes chapter 53, the urban renewal law; the Wailuku-Kahului community plan; the Wailuku redevelopment plan; and the rules of practice and procedure for the Maui redevelopment agency; and all other applicable federal, state and county laws. See section 5, "redevelopment area project scorecard" for specific criteria.

2. The proposed request is consistent with and supports the implementation of the Wailuku redevelopment plan.

3. The proposed request meets the purpose and intent of the applicable zoning district.

4. The proposed request is consistent with the Wailuku redevelopment area design guidelines.

5. The proposed request or the cumulative impact generated by the proposed request does not adversely impact the character of the WRA; or cultural and historic resources. Measures shall be employed to mitigate any of the above or other identified impacts and to protect the public health, safety and welfare.

19.39.170 Urban design. A. The Maui redevelopment agency shall review plans for each structure to be constructed or rehabilitated or remodeled as set forth herein. In approving the design of the structure(s), the Maui redevelopment agency will be guided by the appropriateness of the design to the immediate area and the city as a whole. The following activities and structures shall be exempt from Maui redevelopment agency review:

1. Repair and maintenance of existing structure(s).

2. The construction, rehabilitation or remodeling of single-family dwellings and related accessory structures, such as garages and greenhouses, that are used principally for residential use; however, single-family dwelling owners shall be encouraged to follow the design guidelines so that

renovated and new residences complement and are compatible with Wailuku Town's historic character.

3. Temporary structures for special events that are erected for not more than fourteen consecutive calendar days per year. Temporary structures erected for more than fourteen consecutive calendar days per year shall be reviewed pursuant to subsection 19.39.170(c).

B. Design guidelines. Criteria for design review are found in the Wailuku redevelopment area design guidelines, prepared by the department and dated October 1997, as amended, incorporated by reference herein. These design guidelines shall be used by the Maui redevelopment agency for review of plans for construction, rehabilitation, or remodeling, in accordance with the Wailuku redevelopment plan, prepared by the department and dated December 2000.

C. Review process.

1. Applications for construction of accessory structures or rehabilitation or remodeling of existing structures involving any exterior elevation of the structure shall be processed as follows:

a. Upon receipt of the application, the director shall review the plans for compliance with the Wailuku redevelopment area design guidelines.

b. If the design elements are in accord with the checklist for the pertinent district found in the design guidelines, the director shall issue the Maui redevelopment agency use permit within thirty days of receipt of the applications.

c. The director may submit any application to the Maui redevelopment agency if there are outstanding questions of compliance with the design guidelines.

d. The director shall forward the application, on a routine and timely basis, to individuals and organizations that have requested, in writing, to provide comments on projects.

e. The director shall provide a report to the Maui redevelopment agency no less than six calendar days prior to its regularly scheduled meetings, summarizing all administrative approvals granted pursuant to this section.

2. Applications for new principle structures shall be processed as follows:

a. Upon receipt of the application, the director shall forward the application to the next available meeting date of the Maui redevelopment agency. The Maui redevelopment agency shall review the application

for compliance with the Wailuku redevelopment area design guidelines.

b. The director or the Maui redevelopment agency may also refer the plans to the urban design review board for comments and recommendations.

c. The Maui redevelopment agency shall forward its decision and order or letter of approval, as the case may be, to the applicant and other parties within sixty days of receipt of the application or receipt of all information requested by the department.

3. Sign reviews. Signs within the Wailuku redevelopment area shall be in accordance with the Wailuku redevelopment plan and Wailuku redevelopment area design guidelines. Signs shall be processed in accordance with the provisions of chapter 16.13 of this code, as amended. Variances from chapter 16.13 may be processed through the Maui redevelopment agency.

4. Streetscape projects shall be processed in accordance with subsection 19.39.170(c)(2).”

SECTION 3. Section 19.06.010, Maui County Code, is amended to read as follows:

“19.06.010 Districts designated. The County shall be divided into the following use zone districts:

- A. Open space districts:
 - 1. OS-1.
 - 2. OS-2.
- B. Residential districts:
 - 1. R-1.
 - 2. R-2.
 - 3. R-3.
- C. R-0 zero lot line residential district.
- D. Two-family districts:
 - 1. D-1.
 - 2. D-2.
- E. Apartment districts:
 - 1. A-1.
 - 2. A-2.
- F. Hotel districts:
 - 1. H-1.
 - 2. H-M.
 - 3. H-2 and hotel.
- G. Business districts:
 - 1. SBR service.

2. B-CT country town.
 3. B-1 neighborhood.
 4. B-2 community.
 5. B-3 central.
 6. B-R resort commercial district.
- H. Industrial districts:
1. M-1 light.
 2. M-2 heavy.
 3. M-3 restricted.
- I. Park districts:
1. PK.
 2. GC.
- J. Airport district.
- K. Agricultural district.
- L. Rural districts:
1. RU-0.5.
 2. RU-1.
 3. RU-2.
 4. RU-5.
 5. RU-10.
 6. County rural.
- M. Public/quasi-public - districts:
1. P-1.
 2. P-2.
- N. Kihei research and technology park district.
- O. Maui research and technology park district.
- P. Napili Bay civic improvement district.
- Q. Urban reserve district.
- R. Interim.
- S. Maui County historic districts.
- T. Project districts.
- U. Districts in the Wailuku Redevelopment Area,

including:

1. WRA Business/multi-family (currently designated as "Business Multi Family - MRA" on the digital zoning map).
2. WRA Commercial mixed-use (currently designated as "Commercial Mixed Use - MRA" on the digital zoning map).
3. WRA Multi-family (currently designated as "Multi Family - MRA" on the digital zoning map).
4. WRA Public/quasi-public (currently designated as "Public/Quasi Public - MRA" on the digital zoning map).
5. WRA Residential (currently designated as "Business Multi Family - MRA" on the digital zoning map)."

SECTION 4. Section 19.520.050, Maui County Code, is amended to read

as follows:

“19.520.050 Variance procedure and standards. A. At the time of filing the application, the applicant [shall] must provide notice of application pursuant to section 19.510.020.B.3.f[.]of this title.

B. Not less than thirty calendar days prior to the public hearing date on an application for a variance, the applicant [shall] must give notice by certified mail, return receipt requested, of the date, time, place, and subject matter of the public hearing, in a form prescribed by the director of public works, to the owners and lessees of record adjacent to the subject property and shall submit any updated names and addresses of these owners and lessees derived from the return receipts received on the notices of application previously mailed to these owners and lessees. Not less than ten business days prior to the date of the public hearing, the applicant [shall] must submit all certified mail receipts received for the certified mail sent out. For purposes of this section, notice [shall] will be considered validly given upon compliance to the following provisions:

1. The applicant [shall] must make a good faith effort to mail a copy of the notice of public hearing in a form approved by the director of public works by certified mail, return receipt requested, to all of the owners and lessees of record located adjacent to and across the street from the subject parcel[; and].

2. The applicant [shall] must publish a copy of the notice of public hearing in a form approved by the director of public works once per week for three consecutive weeks prior to the public hearing date in a newspaper which is printed and issued at least twice weekly in the [county] County and which is generally circulated throughout the [county.] County.

C. Pursuant to the charter of the [county] County of Maui (1983) as amended, and in accordance with the provisions of this article and the procedures established in this chapter, variances from the provisions of this title may be granted by the board of variances and appeals if the board finds that due to the particular physical surroundings, shape or topographical condition of the subject property, compliance to the provisions of this chapter would result in hardship to the owner which is not mere inconvenience or economic hardship on the applicant. The board shall grant a variance if the board finds the following:

1. For all areas of Maui County outside the Wailuku redevelopment area, the following criteria shall apply:

a. That there is an exceptional, unique, or unusual physical or geographical condition existing on the subject property which is not generally prevalent in the neighborhood or surrounding area and the use sought to be authorized by the variance will not alter the essential character of the neighborhood[;].

[2]b. That strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property[; and].

[3]c. That the conditions creating a hardship were not the result of previous actions by the applicant.

2. Within the Wailuku redevelopment area: Variances from the strict compliance with this title or design guidelines adopted by the Maui Redevelopment Agency or as part of the Wailuku redevelopment plan may be permitted when the variation is consistent with the objectives of conservation (the preservation, maintenance, and management of natural or manmade resources) or economic revitalization and when one or more of the following conditions justify the variation:

a. Site topography makes full compliance impossible or impracticable.

b. Local practices and customs that are long established in the area ensure the continued market acceptance of the variation.

c. The design and plans for the site incorporate improved or compensating features that will provide equivalent desirability and utility.

d. The project will further the elimination of slum and blight and forward the vision, principles, and objectives of this Wailuku redevelopment plan. The board shall not grant use variances for parcels designated for single-family use in the Wailuku-Kahului community plan. Mitigative measures shall be incorporated into the project, as required, to protect public health and safety.

D. The board of variances and appeals [shall] must comply with the general plan and the community plan provisions of the [county.]County. The board [shall] will not grant an application for a variance [which] that requests a use [which] that does not conform with the applicable community plan designation for the subject property.

E. On every application for a variance, the board of variances and appeals [shall] must review the report submitted by the director of public works and hold a public hearing. At the close of the public hearing, the director of public works shall submit a written recommendation to the board which recommends that the board either grant, grant subject to conditions identified by the director, or deny the application for a variance. Unless a formal, contested case hearing on the application has been approved by the board, the board [shall] must take action on the application within not more than sixty calendar days from the date of the public hearing.”

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing the bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

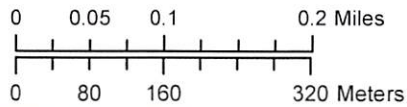
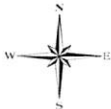
SECTION 6. This ordinance takes effect upon its approval. All approvals of any kind granted by the Maui Redevelopment Agency, Planning Department or other agency prior to the effective date of this ordinance in accordance with the Wailuku Redevelopment Area Zoning and Development Code, dated September 2002, including variances, shall remain in full force and effect and shall not be impaired by this ordinance.

APPROVED AS TO FORM
AND LEGALITY:

/s/ Michael J. Hopper

MICHAEL J. HOPPER
Department of the Corporation Counsel
County of Maui
2020-0737
2021-02-19 Ord Chapter 19.39 WRA (final)

Wailuku Redevelopment Area Boundary



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**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM B.1
JANUARY 26, 2021**

Ms. McLean: I'll just read the item into the record and then we'll pass it over to you, Scott. This is a public hearing item from myself referring to this commission, a proposed bill to establish a new Chapter 19.39, Maui County Code relating to the Maui Redevelopment...Maui Redevelopment Area, and to amend Chapter 19.520, Maui County Code relating to variances in the Wailuku Redevelopment Area. And Scott Forsythe is the project planner. And again, for those members of the public participating, please mute your video and your audio. Take it away, Scott.

B. PUBLIC HEARINGS (Action to be taken after each public hearing.)

1. **MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Maui Planning Commission a Proposed Bill to establish a new Chapter 19.39, Maui County Code, relating to the Maui Redevelopment Area, and to Amend Chapter 19.520, Maui County Code, relating to variances in the Wailuku Redevelopment Area. (S. Forsythe)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed> and is summarized as follows:

It is proposed that the Wailuku Redevelopment Area Zoning and Development Code with will be incorporated into the Comprehensive Zoning Ordinance as a new Chapter 19.39, and that the existing Maui Redevelopment Area (MRA) variance process will be incorporated into Chapter 19.520.050, relating to variance procedures and standards; this means that Wailuku Redevelopment Area variances would be considered by the Board of Variances and Appeals rather than the MRA.

Mr. Scott Forsythe: All right, thanks Michele and good morning, Commissioners. I'm Scott Forsythe, a planner with the Department of Planning, and I have a presentation to share. So, if you don't mind, I'm going to share my screen right now, help walk us through this. All right, can everyone see my screen?

Ms. McLean: Yes.

Mr. Forsythe: Great. Here we go. So, before proceeding with the presentation, I want to bring to your attention a few public comments or a public comment that was received after posting of the agenda, let's see here, the screen doesn't seem to be...oh, there we to, all right. So, yesterday there were a few testimonies that were uploaded to the agenda website, I believe there were six of those, and since yesterday we did receive one more from Mr. and Mrs. Best, if you would like I could read that testimony to that, however, the tally of the testimonies including the ones that you received yesterday there were seven testimonies in total and they were all in support of the proposed bill. Would you like me to read Mr. and Mrs. Best's testimony or are you good?

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Mr. Tackett: Yes, please.

Mr. Forsythe: Sure. So, the testimony is—

Mr. Hopper: Mr. Chair? Mr. Chair? This is Michael Hopper with the Corporation Counsel. There's been a variety of written and oral testimony on this. Is there a reason why you would read one particular letter into the record in its entirety? I mean, you've got a lot of testimony that can be transmitted to the commissioners for their information. Is there a reason you would read one particular testimony verbatim? We typically wouldn't I don't think do that for a...

Mr. Tackett: No, I'm okay with not reading it in. The reason why I chose to allow that one to be read in because it sounded like it might have happened right before the cut off time and so it seems like something that maybe nobody got a chance to hear, but being as that they are all in support, I have no problem waiving the listening to of that testimony. I just thought that possibly some of the commissioners might not have heard that one because it came in right at the end. So, if Corporation Counsel, I'm more than willing to go along with your suggestion and so I believe we'll be waiving the reading of that particular testimony for the record. Thank you for your input. Please proceed.

Mr. Forsythe: Okay. So, this agenda item is for a proposed bill for an ordinance to amend existing Wailuku Code into Title 19's Zoning Code. To help put this into perspective, I have a few slides that will provide an overview of the Wailuku Redevelopment Area, Maui Redevelopment Agency and the Wailuku Redevelopment Area Zoning and Development Code, and since that's such a long name, I'm going to refer to it as Wailuku Code from here on out.

And this photo is of Market Street looking towards Main Street, and I'm thinking it was probably taken around the '40s or '50s from the cars. So, what is the Wailuku Redevelopment Area? This map shows the boundaries for the area, which encompasses approximately 68 acres of Central Wailuku and Happy Valley. It's been documented in plans dating back to the '60s. Now Wailuku was experiencing effects of decentralization and urban blight was taking its toll as the area was becoming increasingly rundown and dilapidated. Efforts to revitalize the town have been in the making for decades, with the 1972 General Plan and community plans from '72, '87 and '99 all calling for efforts to address this problem. And this culminated with the development of the 2000 Wailuku Redevelopment Plan.

What is the MRA? The MRA has existed in various forms since about 1964 as Hawaii law permitted county boards to create a local redevelopment agency. Later on, Hawaii's Urban Renewal Law provided powers and duties to carry out urban renewal projects and related activities. In 1989, the MRA was established in Maui County Code with these urban renewal powers and was also charged with implementing a plan for Wailuku's redevelopment. Some of the activities that the agency has oversight and responsibility for includes development plans, studies, capital projects and community programs. The agency also reviews applications for new developments and renovation type projects.

1 These are the three primary guiding documents for the MRA. There is the 2000 Wailuku
2 Redevelopment Plan which provides the vision, direction and course of action for the revitalization
3 of the Wailuku Redevelopment Area. And the plan made it a priority to adopt a Small Town
4 Development Code, and also to develop the Wailuku Design Guidelines. In 2002, Wailuku
5 Redevelopment Area Zoning and Development Code is what we're discussing today, and this is
6 the current code for Wailuku and defines the zoning districts, development standards as well as
7 application procedures and some other things as well, which I'll get into. And then there's the
8 2006, Wailuku Redevelopment Area Design Guidelines and these provide the standards that we
9 assess new developments and rehabilitation projects for when we receive applications.

10
11 Now the Wailuku Code, the reminder of you know, the slides that I'm going through are going to
12 get into the code and the proposed ordinance and this slide includes what is in the Wailuku Code,
13 it's the Table of Contents and to the left are some of the specific sections within the document. It
14 includes a section for each of the zoning districts in Wailuku and for each of the zoning districts it
15 identifies the allowed uses and their development standards such as setbacks, building heights
16 and lot size. It also identifies the administrative procedures and application submittal and review
17 processes.

18
19 So, there are a few types of applications for the Wailuku Redevelopment Area and the first one is
20 Administrative Review Permits, and these are for activities that do not require the MRA's approval.
21 There are MRA Use Permits and those are for uses already identified in a Code, but require a
22 determination by the MRA. And there are variances and these are to request a waiver of sorts
23 from zoning requirements. And then there is the Design Review Application, which I already
24 explained that the...they are assessed with the design guidelines.

25
26 This map illustrates the zoning districts within the Redevelopment Area. There is the Residential
27 District, Multi-Family Business and Multi-Family Commercial Mixed-Use and Public/Quasi-Public.

28
29 Now I'm moving into the proposed changes. So, the table on your left is the table that was
30 provided with your agenda packet, and this summarizes the substantive changes made to the
31 Code that's within the proposed ordinance. The zoning districts and development standards
32 remain relatively the same, with only a few minor changes. And this includes the addition,
33 modification or deletion of definitions and some minor text edits. The most significant change is
34 that the variance application criteria and review process would be incorporated into the existing
35 Countywide Variance Code and then subject to review and decision by the BVA, the Board of
36 Variances and Appeals. Another change worth noting is with accessory dwellings, those increase
37 from one to two per lot and the maximum floor areas increase as well. And this is removed from
38 the existing Code and would now be referred to in Chapter 19.35 for accessory dwellings.

39
40 So, why does the Wailuku Code need to be incorporated into Title 19? The Maui County Charter
41 was adopted in 1969, and established that the Council is the legislative body of the County and
42 that means every legislative act needs to be approved by the Council by ordinance. This authority
43 cannot be delegated to the MRA or to anyone else. Zoning and rezoning of land are considered
44 legislative acts, so that means these land use decisions require Council approval by ordinance.

1 So, why was the MRA making these decisions in the past? The Hawaii Urban Renewal Law gives
2 some authority and the Wailuku Code was adopted through proper rulemaking procedures. So,
3 it was assumed that these actions were legitimate. Only after recent scrutiny was it made clear
4 that this is not the case. That's why the Wailuku Code needs to be incorporated into Title 19,
5 because it's a zoning document.

6
7 Also, under Title 19, variances which are the deviations from the zoning requirements, only can
8 be heard by the Board of Variances and Appeals. The MRA has been the body that heard and
9 acted upon the variances, but this authority is exclusively vested in the Board of Variances and
10 Appeals, and by incorporating it into...and by incorporating the Wailuku variance process into
11 Title 19, it turns these decisions over to the BVA.

12
13 The proposed bill, this is the language for or the title language for the proposed bill and basically
14 what it's saying is that the Wailuku Code will have its own chapter in Title 19 alongside with all
15 the other county zoning districts, and also that Wailuku's variance criteria will be incorporated into
16 the Title 19 Variance Code.

17
18 Options for the Commission. You can recommend approval of the proposed bill to Maui County
19 Council, recommend approval of the proposed bill with amendments to the Maui County Council,
20 recommend denial of the proposed bill to the Maui County Council or vote to defer action to gather
21 specific additional information. That's the end of my presentation, so if you have any questions,
22 I'd be more than happy to answer those, and before moving on this is a photo of the Main Street
23 Promenade Building and MRA, they have a program for the Small Town Big Arts Project, and the
24 mural on the side of the building is one of the more recent artistic inclusions here in Wailuku. So,
25 that's it for me.

26
27 Mr. Tackett: Thank you. Thank you, for your presentation. So, do we have any, do we have any
28 questions on the presentation? I'll start with Kellie, and then I'll go to P. Denise.

29
30 Ms. Pali: Yeah, thank you. Um, if this were to move forward, would it then be effective immediately
31 for things moving forward or is there any language in this bill that would sort of retroactive the
32 date that would be my first question.

33
34 Mr. Forsythe: There is no language in the bill that would retroact the date and after, after going
35 to County Council, then the bill would become effective after the ordinance approval.

36
37 Ms. Pali: Great, thank you. And, you know, this is...there's a lot of pages and a lot of legal jargon
38 that I would admit, even with being around contracts and legal stuff in real estate for 20 years,
39 there was still a lot of stuff that might go over my head. And so, when you did your presentation,
40 you had a screen shot of the changes were those just the bigger changes? And would you say
41 that there might be some minor changes that are in the small print or would you say that those
42 would really be the only changes in this bill, in this Title 19?

43
44 Mr. Forsythe: Yeah, so they're...included with your agenda, with the staff memo, those are
45 the...that's the table of the changes that were included within the slide. And these are the more
46 substantive changes. There are some other changes that are not in this table, but those are more

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1 so reorganization, moving a paragraph here and moving to paragraph there so that it fits more
2 appropriately within the Title 19.

3

4 Ms. Pali: Okay, when you, when you reference the table, are you on Page 12 and going all over
5 the Page 31, is that the table? Can you reference what table or are you just talking about Page 2,
6 kind of the at-a-glance?

7

8 Mr. Forsythe: Here, let me bring it up for you, I'll share my screen again.

9

10 Ms. McLean: Yeah, Commissioner Pali, he is referring to the table in the memo, not the table in
11 the bill itself.

12

13 Ms. Pali: Yep. I'm looking at the memo. It's like 67-8 pages.

14

15 Mr. Forsythe: Yeah, it would be...so here is the memo and it is on Page 2 of the memo.

16

17 Ms. Pali: So, Page 2?

18

19 Mr. Forsythe: Yes, it's this right here.

20

21 Ms. Pali: Okay, that's it for now.

22

23 Mr. Forsythe: All right.

24

25 Mr. Tackett: Thank you, Kellie. P. Denise.

26

27 Ms. La Costa: Thank you, Vice-Chair. Yes, I have a couple of questions myself. First of all, you
28 mentioned that you got seven letters all are approval. I must have been reading something
29 different because I read several letters that people were opposed to some of the changes and
30 specifically, they mentioned the Wailuku Hotel, that wasn't brought up at all and it is part of this
31 area. So, I'm a little confused of why you said everyone approved it when the...some of the
32 testimony that I read was not the case. That's my first point.

33

34 Mr. Forsythe: So, to clarify there, I was tallying up the support for the amendments. Correct, that
35 the letters do, many of the letters do reference their opposition to the hotel. However, in regards
36 to this proposed bill for an ordinance, that's what I was trying to refer to, is that there was the
37 support for the proposed bill for an ordinance.

38

39 Ms. McLean: If I could, if I could add to that Commissioner La Costa?

40

41 Ms. La Costa: Thank you, Chair.

42

43 Ms. McLean: The reason...into this is because under the current Wailuku Redevelopment Area
44 Zoning and Development Code, the MRA would have the authority to approve variances that the
45 hotel has requested. Under the proposed bill, variances would have to go to the Board of
46 Variances and Appeals. So, this proposed bill doesn't change anything related to the hotel, it

1 doesn't change the standards or you know the height and number of rooms and things like that.
2 It keeps those requirements the same from the existing Code to the...(inaudible)...Chapter. But
3 the significant change is it would be the BVA rather than the MRA that would hear the variance
4 request.

5
6 Ms. La Costa: Director, as always, thank you for your intelligence and your insight. I do have
7 another question, however. In this document, it does not encourage live/work units in Wailuku.
8 It talks about new buildings and what they will have to do, all of their parameters, but there isn't
9 anything about live/work units and I'm wondering if that should be incorporated somewhere so
10 that it is in the forefront of developers minds.

11
12 Mr. Forsythe: Within the...(inaudible-feedback)...there are a couple of sections that I can think
13 of within the general requirements, specific use section, it does address home occupations and
14 there are certain requirements to having home occupations. However, within the Commercial
15 Mixed-Use District as well as the Business Multi-Family District, it is encouraged to have
16 developments or existing structures to have both live/work type of units within the same structure.

17
18 Ms. La Costa: Thank you, cause we need that. And then my last question—

19
20 Ms. McLean: Commissioner La Costa, if I can also add to that. What the proposed bill endeavors
21 to do is to take the exact Wailuku Redevelopment Code and put it in Title 19 without making
22 changes in uses or standards. Some changes had to occur like the variances that I mentioned,
23 but otherwise we just tried to take the same thing, the same wording, the same uses, the same
24 standards and put it into Title 19. So, I don't disagree with your question about encouraging
25 live/work, but that's, that's why we just tried to replicate it in a format for Title 19.

26
27 Ms. La Costa: And if, if I might direct this question to the Director also, please, Vice-Chair?

28
29 Mr. Tackett: Yes, please.

30
31 Ms. La Costa: Thank you. On Page 7, it talks about joint lot use, and I'm just wondering why
32 consolidation would not be there instead of, instead of that verbiage. But if you're just mirroring
33 it and putting it in 19, then that's something that probably can be addressed later. I'm just looking
34 for simplicity, because as with Commissioner Pali, there is...I'm very experienced at contracts
35 and some of this I had to go back and read two and three times for it to make sense to me.

36
37 Ms. McLean: Yeah, it will be a little different for staff too. Right now, if there are two that are used
38 for the same purpose in any other area of the county, buildings have to be setback from the
39 property line and this is saying that that would not be the case. They can be considered one lot,
40 so that's a special treatment, if you will, for the Wailuku Redevelopment Area.

41
42 Ms. La Costa: And I just had one more if I can beg your indulgence and then I'll be pau. Under
43 Page 53, 19.39.140, Landscaping, Planting and Visual Screening. On A, it talks about parameter
44 hedge of not less than four feet abutting the road, and then if you go over to 2A, it talks about a
45 parameter hedge minimum of 42 inches in height, and I just wondered why it wasn't consistent
46 one to the other.

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Ms. McLean: That's a great question. The first is for parking lots, the other is for parking structures.

Ms. La Costa: Right.

Ms. McLean: And why they're not consistent with each other I don't know. Again, when... actually it was Mr. Hopper who did the grueling work of preparing this bill. It was just taking what was there and replicating it without going through and saying oh we should change this. In your example, make these consistent weren't proposed, it was just taking the existing language and I don't know why—

Ms. La Costa: I'm just thinking about the consumer and how confusing the permit process, et cetera is already. So, thank you very much for your time and information Director.

Mr. Tackett: Thank you, P. D. Commissioners, do we got any, any other questions at this time?

Mr. Freitas: Commissioner Freitas has a question, maybe you can't see me.

Mr. Tackett: Yeah, you're stuck, but go ahead Commissioner Freitas, thank you.

Mr. Freitas: I've been many things, never stuck. Okay, question, so everything in all the rules listed in here, we can't at least make a recommendation? This question is to Mr. Scott Forsythe.

Mr. Forsythe: Yes, you can. One of the options that the Commission has is to recommend approval of the proposed bill with amendments to the Maui County Council.

Mr. Freitas: Okay, good. Thank you. My question is after hearing testimonies previous about construction in this area, height has always been a problem. Height limit. As I read through some of these, you have, you have three categories, and you have a 30-foot height, 45-foot height, 60-foot height, and as I look up, I have no idea what that pertains to. I would highly recommend that one of the biggest things that was a problem was the height of that proposed hotel. I would like to add a recommendation to eliminate the 60-foot height and make 45 be the maximum with the understanding that if someone really wants one bigger, they would have to go through a process of approval. Can we look...do others feel the same way or is there a real need because when I look at these...that map of where all of these are, it looks like low lying, low homes, it's void of the County Building and State Building which are high and we can't change that already, but everything else it seems like the community wanted things low. Anyway, can we consider that or discuss that? Any other Commissioners wanna talk about that?

Ms. Pali: I'd like to jump in if I can, Commissioner?

Mr. Tackett: Yeah, go ahead, go ahead, Kellie.

Ms. Pali: Uh, yeah, Commissioner Freitas I like the idea of considering what's been done may not be what's good for today. I definitely am on the same page with you on that. I just feel for

1 me, I would need a lot more research before me kind of come in with that kind of adjustment. And
2 the other thing I try to look at is I know that this proposed bill would impact the immediate project
3 ahead of us which is the Wailuku Hotel, but it's also going to impact all future, so I try to look past
4 just sort of the present. And also, you know, Wailuku really well it's actually really sloped and
5 there's a lot of low spots, and a higher elevation spots. It's not flat. And so, to make a judgment
6 call without further investigation, to cut the 60 to 45 when, when that might be different in different
7 spots. I don't know that I would be comfortable with that quite yet. I like your idea. I like where
8 you're going with it. And I still like the fact that, the fact that we're putting it into Title 19 is now
9 giving us more control because there's a different vetting process. And remember, when County
10 Council goes to approve these things, we get to come and have public testimony, public
11 transparency, and that's when we can do a little bit more research and then come and have a say
12 again at the table. I think that might be the idea of why we're trying to put it into Title 19. So, I
13 think that just doing this today is going to give us that opportunity to speak up, opportunity for the
14 voices to be heard, and that public transparency. So, I think your idea of revisiting some of this
15 is going to be solved with Title 19 without having to maybe take a firmer spot on the reduction
16 without really necessarily looking at how that would impact future projects, putting the current one
17 on the side. That's just my two cents.

18
19 Mr. Freitas: That's all I have, Vice-Chair.

20
21 Mr. Tackett: Thank you, Kawika. Thank you, Kellie. Does anybody else have any, any questions,
22 any comments? I'm not sure if I'm seeing everybody because like I said, and possibly I labeled it
23 incorrectly, but you, you weren't stuck to Kawika but you were frozen and you're still frozen on my
24 screen, so I cannot, I cannot really tell. So, does...do any Commissioners, any Commissioner
25 that has a question for this agenda item, please go ahead.
26 If not...

27
28 Ms. La Costa: I have, I have Vice-Chair, this Commissioner La Costa, I have one more question,
29 please.

30
31 Mr. Tackett: Okay, P. D., go ahead.

32
33 Ms. La Costa: Thank you. Um, this probably will also go to the Director or maybe Mr. Hopper. I
34 just need some clarification on some of the language on Page 55. Under, it looks like B1B and
35 Number 3.

36
37 Ms. McLean: Okay, what is the question?

38
39 Ms. La Costa: Will the...the sentence, the burden of proof to establish that the destruction of a
40 structure was due to accidental means as described above, and that the structure was legally
41 nonconforming shall be on the owner. Does legally mean that it was previously existed as and
42 overlooked. I didn't think that nonconforming was a legal aspect.

43
44 Ms. McLean: Well, you can have legal nonconforming and you can have illegal nonconforming.
45 A nonconformity is when something isn't compliant with the current code. A legal nonconformity
46 is it's not compliant with the current code, but when the structure was built or when the use was

1 initiated, it was allowed. And so that can be demonstrated by having a building permit or some
2 other type of approval. In the case where throughout the County we have structures that were
3 built before building permits were required, and so generally the Tax Office has field notes going
4 back, way back then to show that the structure existed. So, there is a way, there are ways to
5 document that a structure was, was legal. Usually, it's a building permit that shows that it was
6 permitted or if it was before building permits were required. There are other ways to show that it
7 existed.

8
9 Ms. La Costa: And then on Number 3, any nonconforming structure may be repaired, expanded
10 or altered in any manner which does not increase its nonconformity. So, when I say expanded,
11 I'm thinking about it expanding in size and going by the original building permit how would that fall
12 in line if it does not increase its nonconformity but can be expanded?

13
14 Ms. McLean: Well, if the nonconformity is that it's built in the current setback then the structure
15 could expand but it would have to expand away from the setback. It couldn't expand farther into
16 the setback, but it could expand in the other direction in a way that was...(inaudible)...

17
18 Ms. La Costa: I'm sorry, I'm full of questions today, so, and if I might, Vice-chair, one more please?

19
20 Mr. Tackett: Go ahead.

21
22 Ms. La Costa: On Page 63, under C, 1A, upon receipt of the application, the Director shall review
23 the plans for compliance in the Wailuku Redevelopment Area Guidelines. Does that mean that
24 you review every plan or does some of your staff do it? And if some of your staff does it, perhaps
25 it should be changed to say or appointed staff just to make sure that we are clear within the bill.

26
27 Ms. McLean: Throughout Title 19, there's reference to the Director and then I delegate those
28 responsibilities to staff because if I had to do everything that Title 19 says I have to do, I'd never
29 see my husband, and things would take a lot longer than they take now, and they already take
30 longer than some people want. Maybe Mr. Hopper on that legality of referring to the
31 Department...to the Director and I, it probably comes from the Charter where the Charter
32 authorizes the Director to perform certain functions, not staff. So, then I in turn, can delegate that
33 to staff. Mr. Hopper might have more to say about that as to why it says the Director and not the
34 Department.

35
36 Mr. Hopper: Thank you.

37
38 Ms. La Costa: ...(inaudible)... Director and/or delegate, so that's why I was bringing that up.

39
40 Mr. Hopper: In Title 19, the definition of Director means the Director of the Department of Planning
41 or the Director's authorized representative. So, that's consistent throughout Title 19, so I think
42 putting this into Title 19 would make that clear that that's...that delegation is permissible.

43
44 Ms. La Costa: Thank you very much, Mr. Hopper.

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46 Mr. Edlao: I have a question.

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Mr. Tackett: Okay, Jerry, go ahead.

Mr. Edlao: Yeah, I've got a question for the Director, Michele. My question is, anything that falls under this new chapter, whatever the case may be, do we get to review these things or goes to Council, Board of Variance and Approval?

Ms. McLean: Well, if there are, there are certain permits in here that the MRA would still have the authority to review. Variances would have to go to the Board of Variances and Appeal. I don't believe there is anything in here for the Commission, for the Planning Commission to review. Scott or Mike can, can confirm that. But approvals, there are a lot of administrative functions which the Department would continue to handle. The current MRA functions would continue for some types of permits and variances would then be the BVA. Scott or Mike can you confirm that?

Mr. Forsythe: Yes, that's correct, Michele.

Mr. Hopper: Yeah, the only, the only situation, I don't know if there's the potential to apply for a conditional use permit or something, in which case you'd be a recommending agency to the County Council. But because the existing Code was for the MRA for either their review or to have staff review, the original did not have the Planning Commission doing any reviews. So, it...it's mirroring that. I suppose the Council could decide to make a change and have the Planning Commission do a review instead of certain other agencies, but at this point, the Planning Commission wouldn't really have much to review. There's not, there's not county special permits and other permits. I would say that's probably generally the case with most zoning ordinances. The Planning Commission would review things like county special permits and maybe conditional permits. But the day-to-day approvals and variances are something that the planning commission generally doesn't, doesn't get involved in unless there's a, like I said, a conditional use permit or county special permit and that's not in this ordinance.

Mr. Edlao: Okay, thank you.

Mr. Tackett: Thank you, Jerry. Do we have, do you have any other questions at this time? Hearing none, could we could we get a motion on this matter?

Ms. McLean: Chair?

Mr. Tackett: Yeah.

Ms. McLean: Excuse me, we haven't taken public testimony yet.

Mr. Tackett: Oh, I didn't know we had public testimony on this, sorry.

Ms. McLean: Yes. So far, we have two people signed up to testify.

Mr. Tackett: Okay.

1 Ms. McLean: The first is Jonathan Starr, and he'll be followed by Robin Knox. This is not a
2 contested case item, so you don't need to swear in the testifiers. Jonathan, if you want to unmute
3 your audio, and if you wish, unmute your video.
4

5 Mr. Tackett: Uh, I can't hear anything. Commissioners, can you guys hear anything? Jonathan,
6 you got no audio at this point.
7

8 Ms. McLean: Think he's going to try to call in.
9

10 Mr. Tackett: Okay.
11

12 Mr. Jonathan Starr: Hello, am I...is my audio coming through? Okay, let me just mute it locally.
13 Okay, thank you for bearing with me. My name is Jonathan Starr. I've been a property owner in
14 Wailuku for about 25 years. I've also served for most of those 25 years in various boards and
15 commissions, including as Chair of the County Planning Commission, on the MRA, Board of
16 Water Supply, State Water Commission, et cetera, et cetera. Anyway, I've been involved in
17 Wailuku and the attempt to move it away from being a area of slum and blight as it's categorized
18 by the Federal Government. It's improved somewhat, but I think there's still a ways to go. We
19 still have people selling methamphetamine on the corner of Central and Main most every day.
20

21 There's been hundreds of public meetings, thousands and thousands and thousands of
22 community members and property owners involved over these 20 years, and it's moved to a point
23 where there has been a desire and that's been very clearly laid out by the County after a lot of
24 consultants have been involved to try to create development and more density and more activity
25 in Wailuku, and it was starting to move forward, and now here this seems to be a step to
26 completely turn that around, and to stop any efforts to improve the town and make it economically
27 viable.
28

29 I don't really understand why this happened. I have spoken to a number of other major property
30 owners. None of them seem to know anything about this. None of them have been contacted.
31 This is a very major change. It's being made to look like it's a very minor change, but it's not, it
32 completely changes the...in terms of process and in terms of what the property owners have to
33 get through to make any changes or they get value out of their property. It's a pretty major taking
34 without any public outreach. It's being done in the height of a pandemic and it's being done in the
35 dark, and it seems to be very much against what's supposed to be happening. The fact that the
36 Chair of the body did not realize there's supposed ... (inaudible-technical difficulties)...testimony
37 and allow deliberations to take place before public testimony has been received is just indicative
38 of the way this is being handled. I think a little bit more thought and a little bit more time and a
39 little bit more outreach needs to be done before this sort of thing would or should occur. Thank
40 you very much. Aloha.
41

42 Mr. Tackett: Thank you for your testimony, Mr. Starr. Do we have any other testimony on this
43 item?
44

45 Ms. Pali: Chair, I have a question for the testifier.
46

1 Mr. Tackett: Sure. Go ahead.

2

3 Ms. Pali: Hi, Mr. Starr. Thank you for your testimony. I just want to reconfirm what I think I heard
4 you say in the testimony. Did you say you believe that this change to put everything under Title
5 19 would greatly hurt the current owner's ability to make changes that they believe are profitable
6 to the area and their own properties?

7

8 Mr. Tackett: Mr. Starr, are you still there?

9

10 Ms. Pali: I see him nodding his head, so that would be a yes. Okay, shoots, I shoots, I suspect
11 you've already hung up the phone. I would have one further question to sort of go into a little bit
12 more detail because you're saying that you believe this process is more in the dark. And I viewed
13 it as it being more in the light. So, I do want to just explore that. If you could call back in and just
14 explain that, because I want to make sure I have a full understanding of this before I make a
15 determination, please sir.

16

17 Mr. Starr: Am I back in the audio?

18

19 Ms. McLean: Yes, we can hear you.

20

21 Mr. Starr: Okay, please, could you repeat your question?

22

23 Ms. Pali: Yes, you, in your testimony, you believe that this process would put it into the dark
24 where decisions would be made, made in the dark, where people would not have that
25 transparency. And I was actually thinking the opposite. It was my initial look that putting it in this
26 process would make it more open. And so, can you just further explain your position?

27

28 Mr. Starr: Well, I can a little bit. The fact that you were just told that the bill before you is not the
29 complete text of what is being contemplated by the Planning Department would be one thing.
30 You know, six, seven, eight months ago, the MRA was told that they could not do any decision
31 making and then the next thing that happens is rumors are around about some lawsuit, and then
32 some settlement that the County had done with some people from outside the Wailuku area or
33 outside that, you know, on the mainland or whatever about changing all the rules for Wailuku, but
34 no one has ever seen that settlement or understand what that's about. And there's never been
35 an explanation of why this is all being done. You know, there's rumor that it's because of some
36 settlement, but that settlement done by the County is being kept in secret. So...also, I spoke to
37 several other property owners and they have no idea that this is going on, so if that's not in the
38 dark, I don't know what is. And so, I would think that it would create contentiousness in the future
39 when the community has been working for 20 years with one voice to do one thing and then
40 everything gets changed without anyone knowing why. Thank you.

41

42 Ms. Pali: Yeah, I think if I could just wrap it up, Commissioner Chair Tackett. I don't know about
43 what you spoke of, so I cannot really speak on that, but I suspect if the County through whatever
44 process, revealed that the initial process that they set up, maybe not, could not hold water legally,
45 it almost makes me feel like we should be doing things accurately, whether we were doing them
46 inaccurately in the past, and so, can you just answer one last question? Do you feel like Title 19

1 would help current owners make profitable changes or hinder them from making profitable
2 changes to their properties?
3

4 Mr. Starr: I think it would hinder, it would give the only ability to be done...to do anything would
5 be to recourse, how about all the projects that were approved under something that we're told
6 now is defective, and how about the buildings, you know, that were built or whatever under
7 processes? Remember, before this Code came in, everything was 12-story with variable zoning.
8 So, if that's being said that is defective then that to me is a case will likely be made that it should
9 revert back to the original 12-story and then a new start should be made. So, I think if this is going
10 to create a lot of confusion and it has...(inaudible-technical difficulties)... the goal, then that is
11 what we'll likely...(inaudible-technical difficulties)...
12

13 Ms. Pali: Thank you. Thank you for your time. Thank you, Chair.
14

15 Mr. Tackett: Thank you, Kellie. Thank you, Jonathan. Do we have any other or any other
16 questions for this testifier? Okay, could we have our next testifier please?
17

18 Ms. McLean: Yes, Chair, and the next testifier is Robin Knox, and she will be followed by
19 Albert Perez. Robin, you can unmute your audio and if you wish you can unmute your video.
20

21 Ms. Robin Knox: Aloha, good morning. My name is Robin Knox. I just wanted to say I think this
22 is a good thing to move the decisions on variances to the Board of Variances and to move, you
23 know, these...this into Chapter 19. I did want to call out one thing that is unclear to me about
24 home-based businesses or home occupation that I believe there's another part of the Maui County
25 Code that says that that use is only for businesses that don't have employees and that doesn't
26 make sense to me in the context of the virtual world that we all live in now. When I read this text,
27 it seems acceptable to me because it doesn't have that specification. It just says that it is
28 something that your neighbors basically wouldn't notice and that it's, you know, contained within
29 the extent of the home and things like that. So, I'm just wondering if, if there is, if that other part
30 of the County Code would also apply and if there's a conflict between this and that, and I think
31 that home-based occupations and businesses should be able to have, you know, virtual
32 employees who aren't coming and going to the home, but who are employed by the business.
33 So, those are my two comments. Thank you.
34

35 Mr. Tackett: Thank you. Does anybody have any questions for the just for the testifier? Thank
36 you very much.
37

38 Ms. Knox: You're welcome.
39

40 Ms. McLean: Chair, Commissioner La Costa raised her hand.
41

42 Mr. Tackett: Oh, okay. Go ahead P. D.
43

44 Ms. La Costa: Thank you, Chair. So, my question is to Ms. Knox, do you operate a home-based
45 business right now and do you or do you not have virtual employees?
46

1 Ms. Knox: I do. I operate a home-based business that has virtual employees, but I have had
2 landlords you know, put in the lease that I have to meet a certain definition and the definition says
3 you can't have employees which doesn't make sense to me if the employees never come to the
4 place, if they're working at job sites and their, you know, activities related to the home are totally
5 virtual.

6

7 Ms. La Costa: Thank you, and perhaps Mr. Hopper, if you could please chime in so that Ms. Knox
8 and myself and other Commissioners is there language in the rest of Title 19 that is in conflict with
9 this new proposed bill? Thank you.

10

11 Ms. Knox: I apologize that I don't have that citation. I tried to find it, but I couldn't.

12

13 Mr. Hopper: There could be some places in Title 19 where there's definitions that I think the intent
14 and again, Planning Department can comment on this because that's, that's something generally
15 that's going to have to get clarified, is that this ordinance, at least with respect to the area zoned
16 in the Wailuku Redevelopment Area would apply over those definitions to the extent they're
17 inconsistent. We could at clarifying language to that, but there is a definition for home occupation
18 or there's a definition for home-based business in here. And it said if these, if the definitions are
19 not included in this section, the Title 19 definitions will apply. So, I think the options would be to
20 have the, have it clarified that the definitions in this section as well as the substantive terms would
21 apply over Title 19, but right now there is a statement that the definitions in this section apply if
22 there's not a defined term in Title 19 or if there's not a, if there's not a defined term in this ordinance
23 that the definition in Title 19 would apply. So, this ordinance would apply over that. But we can
24 add additional clarification to that with respect to businesses. And I don't know if the Departments
25 look at that from a policy perspective if they'd prefer that the universal definition or not, but right
26 now, it says the definition in this Code would apply and if it's not defined in this Code, then the
27 definition in the Maui County Code would apply.

28

29 Ms. La Costa: Thank you, Mr. Hopper. I don't know if I speak for everybody else, but it's really
30 difficult to have this new code and then the existing code and someone will say, oh, no, Title 19
31 says you cannot have employees. And then, oh, but look we have a new bill that says so. So,
32 the conflict is is going to be an issue to the public, and I think we're here to make things easier for
33 the public and as well as continue to be legal. So, I think that, that needs to be looked at so that
34 they are the same. Thank you.

35

36 Mr. Hopper: If you wanted to make it so it's restricted like the rest of Title 19. I think that's an
37 option but you'd want to be clear. Here this says, that this section would apply. So, if it's more
38 permissive, it would apply with respect to the Wailuku Redevelopment Area, but if you want to
39 make it consistent, you would need to amend the rest of Title 19, which is not part of this, this bill.

40

41 Ms. La Costa: I understand. No, I meant the whole Title 19 should be consistent. It was a blanket
42 statement versus this makes more sense what is stated here as far as a home operating business.
43 That's it, Chair. Thank you.

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45 Mr. Tackett: Thank you, P. D. Do we have any more questions for the testifier? Hearing none,
46 could we have our next testifier, please, Director?

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Ms. McLean: Yes, Chair. The next person, and so far, the last to sign up is Albert Perez.

Mr. Tackett: Go ahead Albert.

Mr. Albert Perez: Aloha, can you hear me?

Mr. Tackett: Yes, I can.

Mr. Perez: Good morning, everyone. Albert Perez with Maui Tomorrow and we are here to support the proposed ordinance. Legislative authority resides with the County Council, so land use decisions cannot be made by the MRA, the Maui Redevelopment Agency. Similarly, variances can only be heard by the Board of Variances and Appeals, so they cannot be heard by the Maui Redevelopment Agency, and so this ordinance would correct the current situation to comply with the law. I want to point out that the Maui Redevelopment Agency reviewed and recommended approval of the proposed bill. I think it was unanimous. I'm not sure about that, but I think it was. As far as the process, there are no changes proposed in the process. The zoning must still be complied with and variances must still be obtained. The only change is in which bodies will be making those decisions in order to comply with the law. The Maui Redevelopment Agency doesn't have that authority, so this corrects that situation. We support this ordinance and we urge that you recommend approval by the Maui County Council. Mahalo.

Mr. Tackett: Thank you, Albert. Do we have any questions for Mr. Perez? I don't see any at this time. Please speak up if you have a question. Thank you, Albert.

Mr. Perez: Okay, mahalo.

Mr. Tackett: Do we have any other testifiers that are wanting to testify that have not signed up at this time?

Ms. McLean: Chair, I'm looking in that chat and it looks like Kaneloa Kamaunu has just indicated he wishes to testify.

Mr. Tackett: Okay, thank you.

Ms. McLean: You can unmute your audio and if you wish, unmute your video.

Mr. Kaneloa Kamaunu: Aloha mai kakou Kaneloa Kamaunu. I'm not sure what the right agencies are, but with what's going on, I think with...I've been involved in a lot of projects because of the iwi kupuna. There needs to...I think the, you know, the ones that actually have the responsibility to make sure that all members of the community are actually engaged should be the party if that be the County Council, I'm not sure of all the parties that would weigh in on this. But I think a lot of times, you know, it's in the wrong, it's in the wrong venue. And the venue that it goes into sometimes is quite short-sighted and not all aspects are looked at especially when it comes to the culture area. When, when depending on what area it goes into or agency, you know, not everything is considered. They only look at their directives and sometimes are short-sighted on

1 the full scope of impact that whatever decision they make is going to have on others that may not
2 be directly involved say in redevelopment or who may be against it, but a lot of times they don't
3 get heard. And being one that has been advocating for protection of our iwi and have found many
4 walls that actually stop us from engaging because the outline of that agency or commission that
5 is involved doesn't look at that. Is, you know, it becomes highly prejudicial. It's usually one-sided,
6 and you know, they tend to side to the areas supposedly that they're just restricted to. And so,
7 either the outline of the agencies need to be redefined and their direction, but I believe that, you
8 know, that the agency involved in making decisions should be one that actually takes into
9 consideration all aspects of the community. And, you know, it's sad to say that even though—

10
11 Ms. Takayama-Corden: Three minutes.

12
13 Mr. Kamaunu: Yeah, and it's sad to say that even though we live in Hawaii that the culture of
14 Hawaii is really not looked at and its importance unless it's dealing with tourism. Thank you.

15
16 Ms. Pali: All right, Chair, we can't hear you.

17
18 Mr. Tackett: That would explain a lot. Thank you, Kaneloa for your, for your testimony. Does
19 anybody have questions for Kaneloa at this time? Please speak up if you have any questions,
20 because I cannot see all of you at once. Okay, thank you. Director, do we have any other testifier
21 signed, signed up at this time?

22
23 Ms. McLean: Chair, yes, we do. Carol Lee Kamekona has also indicated she wishes to testify.

24
25 Mr. Tackett: Thank you.

26
27 Ms. McLean: Carol, can you unmute your audio, and if you wish, unmute your video.

28
29 Ms. Carol Lee Kamekona: Aloha kakahiaka ia oukou, can you hear me?

30
31 Mr. Tackett: Yes, I can.

32
33 Ms. Kamekona: Mahalo. Mahalo, Chair, mahalo, Director, and mahalo and good morning to
34 Commissioners. With regard to the Redevelopment Agency, I believe that if there is an entity that
35 is specifically been established in order to handle certain issues, i.e., the Board of Variances and
36 Appeals, then I believe that this ordinance is a good way that allows that allocation to a specific
37 entity that has been developed for that reason. And therefore, with regards to what
38 Mr. Albert Perez said from Maui Tomorrow, I do support this ordinance moving forward. Mahalo.

39
40 Mr. Tackett: Thank you. Do we have any questions for the testifier, please? Hearing none,
41 Director, do we have any other testifiers?

42
43 Ms. McLean: No, Chair, there is no one else who has signed up to testify.

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45 Mr. Tackett: Okay, since we have no more testifiers, I believe we're moving on to deliberations
46 and motions is that correct?

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Ms. McLean: We could first ask if there is anybody else on the call who wishes to testify on this item.

Mr. Tackett: Okay.

Ms. McLean: Please, please jump in and offer your testimony. Okay, it looks like you're in the clear Chair.

Mr. Tackett: Outstanding.

Ms. McLean: You can, you can formally close the public hearing on this item.

Mr. Tackett: Thank you. So, I'd like to formally close the public hearing on this item and open the floor to, to motions and deliberations. So, do we have any, do we have any motions or, or deliberations that we got to work through at this time?

Ms. Pali: I have a question, Chair.

Mr. Tackett: Go ahead.

Ms. Pali: I think this might be to the Director. You may not have this information like dialed in exactly at your fingertips since you didn't see this coming, but I'm just curious, so I would allow any form of good estimate if you, if you were that in tune with the numbers, but since the Wailuku review committee, I guess you guys are calling it MRA, sorry. Yeah, MRA. When that was originally created, was there...you guys must have had to find some legal aspect that allowed that to be a legal change if you did it. I have a hard time believing that something was done that was screaming illegal. So, what do you know off the top of your head, what...is there some little rule that says on the authority of somebody, you can create this separate review that makes the area exempt from a total, you know, Title 19? I mean, can you just give us a little background there?

Ms. McLean: I'll say what I understand, and Mr. Hopper, might—

Mr. Hopper: I could.

Ms. McLean: I think he wants to—

Ms. Pali: Yeah, let's go. Mr. Hopper.

Ms. McLean: First crack at this.

Mr. Hopper: Yeah, I did research the background on this. There was a...there's...I don't want to get into too much 'cause this is a subject of a lawsuit. I think I can say publicly what happened was, was that there was a, there was an action taken by the Maui County Council under the State Law HRS, I believe 53 which is the State's Urban Renewal Law which allows the creation of a Redevelopment Agency, and that Redevelopment Agency has broad powers to do various things.

1 The MRA was created, eventually it resulted in an adoption in 2000, the year 2000 of a Wailuku
2 Redevelopment Plan, I'm skipping over a variety of history for brevity, but in around 2000, the
3 Wailuku Redevelopment Plan was adopted. In that plan which was adopted by the County
4 Council by resolution, there were several statements about the MRA adopting flexible zoning and
5 development standards by Administrative Rule that's what the Council had adopted by resolution
6 in order to do that. Two years after that, the Wailuku Redevelopment, the Wailuku Area Zoning
7 and Redevelopment Code which is essentially the text you have here that's being moved into the
8 County Code was adopted by the Maui Redevelopment Agency by Administrative Rule. That,
9 that...and that was consistent with Corporation Counsel opinions at the time which stated that
10 that was a permissible action to do the basis being the Urban Renewal Law allowing broad powers
11 to redevelop the area, and so that happened...that happened around 2002, that was adopted by
12 Administrative Rule and it's been applied to those properties up till today. However, the original
13 authority to do that was done by the County Council. They adopted the Wailuku Redevelopment
14 Plan. So, if the County Council eventually would want to say we want this in the Zoning Ordinance
15 instead of it being Administrative Rule they would very much have that authority to decide that by
16 ordinance which is what this ordinance would do that they want that to be done through the regular
17 process that all other zoning goes through which is through Title 19 of Maui County Code, and
18 the process by which all other variances go through which is through the Board of Variances and
19 Appeals.

20
21 Now there has been a lawsuit filed on this. I would say that we don't agree that the process to
22 date has been illegal. We would disagree with that. However, I think the Council does have it
23 fully within their authority to decide this should be part of the Zoning Code like the rest of the
24 County. And so, I think that that's something that the Council can decide. This is part of that
25 process. I think the Planning Department wanted to go forward with that as well, and so, you
26 know, we have this ordinance to make this more consistent with the rest of the of the law. So, I
27 think that's, that's sort of the background here. I would note that as part of this ordinance, at the
28 very end, it states that all approvals of any kind granted by the Maui Redevelopment Agency,
29 Planning Department or other agency prior to the effective date of this ordinance, in accordance
30 with the Wailuku Redevelopment Area Zoning and Development Code dated September 2002,
31 including variances shall remain in full force in effect and shall not be impaired by this ordinance.
32 So, it's basically saying that any action taken to date, the Council is saying that's all valid and I
33 think that that's fair because those actions were taken and development done, you know,
34 consistent with that. And again, I would, I think, dispute that anything illegal was done, but I think
35 it would be cleaner to have this as part of Title 19 to be consistent with what's done throughout
36 the rest of the county, even though this is a bit of a special area because a Redevelopment
37 Agency was created to manage this area. I think we support that that change. Well, we support
38 that it is legal for that change to be made. Our office doesn't necessary formally support any
39 particular action, but that's an action that can be taken. And that's what this ordinance would do.

40
41 Ms. Pali: Thank you so much, Mr. Hopper. That is super clear, I think, because sometimes as
42 Commissioners, we get a little confused when testifiers use language and we forget that we still
43 have the responsibility to fact check that language. And so, it was a little odd to hear that we
44 would do something illegal. I suspect if you're in a lawsuit that's yet to be determined. But it is
45 interesting to know that the County Council at that time themselves created this, approved it, and
46 then adopted a resolution in 2000, so that does make me feel a little better. And I do believe that

1 I agree that if this new Council on this new day and age and maybe over the last 20 years, that
2 board served its purpose and now moving forward, it may be more consistent. I do believe that
3 that might be the step in the right direction. So, thank you.

4
5 Mr. Tackett: Kellie, you got any other questions? Kellie, do you have any other questions?

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7 Ms. Pali: Sorry, Chair. I shook my head. No, I do not. Thank you.

8
9 Mr. Tackett: No problem. Commissioners, anybody have any other questions at this time?

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11 Mr. Freitas: Vice-Chair, Commissioner Freitas.

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13 Mr. Tackett: Thank you, Kawika. Go ahead, my brother.

14
15 Mr. Freitas: My question is in support of Mr. Kamaunu's testimony and his concern for, and our
16 concern for iwi kupuna. As I look through this bill, there's nothing that suggests if anything is
17 found, that SHPD is notified. Is that because this is just a guideline and it falls under another
18 rules for building that that would be covered? I want to make sure if it's not that something be put
19 in here. I mean, we have how high a hedge should be, but we put nothing about our iwi kupuna,
20 that's kind of a bad oversight. Mr. Hopper can you explain that?

21
22 Mr. Hopper: The Planning Director could add as well, but you generally you deal with...and I don't
23 think there's much about the iwi kupuna in Title 19. That's generally dealt with when construction
24 happens. So, I think in the Building Code, in the Grading Ordinance and then independently
25 through State Laws, HRS 6E and the other Administrative Rules those will apply and have various
26 requirements if there's going to be work done on historic properties, if there's gonna be grading
27 done, that's universal regardless of the zoning. So, whether you're zoned in the MRA or the
28 Wailuku Redevelopment Area now, the WRA or your zoned somewhere else, those laws would
29 generally apply to you regardless of where you're at, so I think that's why you wouldn't see
30 something specific in a Zoning Ordinance to deal with, with that issue because it's generally dealt
31 with in the various building, grading and obviously State Law would deal with that in general no
32 matter what zoning you're in. So, you wouldn't do it specific to each zoning district because that's
33 supposed to apply universally to the work that you're doing regardless of the zoning district you're
34 in'

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36 Mr. Freitas: Okay, thank you. One more thing I would like to ask and not just to you Mr. Hopper,
37 I want to go back to my height limit comment I made earlier. It's still bothering me as one of the
38 main things on here. I respect Commissioner Pali's response, it's a very good response.
39 However, some of these that were written and were passed we're passed like ten years ago or
40 seven years ago, but since that time, there's a lot that has changed and it's very evident in
41 testimonies that I've heard and presentations that I've attended that height limits are a big concern.
42 Now, if we approve this bill to pass it forward with recommendation, am I correct in saying that
43 County Council will look at it again and they can throw it out, but just note that that was addressed?

44
45 Ms. McLean: Commissioner Freitas, I think the Commission could make a specific
46 recommendation or just a general recommendation. You know, you could recommend specifically

1 that the height be reduced to a certain foot level or you could make the general recommendation
2 for the Council to consider lowering the height. So, it's up to the Commission.

3
4 Mr. Freitas: Okay, okay, thank you, Vice-Chair.

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6 Mr. Tackett: All right, so Kawika do you have, do you have a recommendation like that, that you
7 would like to bring to the floor or what's you're—

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9 Mr. Freitas: I would like to go to the middle column which was 45 feet and bring that as to the
10 maximum height limit.

11
12 Mr. Tackett: Go ahead, Mr. Hopper.

13
14 Mr. Hopper: Just to...I know that this is a bill to...it's essentially to adopt the current code into
15 the, into existing Title 19. If you're going to look at changing the existing height limit to 45 feet in
16 areas where it's 60 feet, I think that that may be an issue that you're going to want to notice
17 publicly as a separate issue and give notice to people that that's, that's going to happen. I mean,
18 I think you're going to have to deal with people who have existing buildings that are over 60 feet.
19 I don't know how many of them there are, but the way this was noticed today, it was I mean, I
20 think you can make some changes. So, if you want to recommend to the Council that they
21 examine changing the height. But if you're going to do it now after I mean, there hasn't been really
22 public notice of the fact that the 60 feet is you know, that the height limits in the existing areas are
23 going to change, you, you may want to consider having that as a separate bill, I think would be
24 my recommendation so you don't deal with the argument that, you know, this was not publicly
25 noticed as part of the hearing because that's for existing buildings that can be a major change.
26 Not to say you couldn't do it, you can change height limits, but as far as doing it, as part of this
27 bill, I don't think I'd recommend doing that. I think you could recommend to the Council that they,
28 they consider maybe not in this exact go around, but that they consider examining changing that
29 height to 45 feet.

30
31 In addition, the Planning Commission at a later date could also propose its own change plan. The
32 Planning Commission does have the authority to propose changes to Title 19, so it could, it could
33 do that separately but with today's public hearing notice, I would have issues I think with changing
34 the height, the existing height limits in those areas without, without having that as noticed as part
35 of the original bill.

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37 Mr. Freitas: Thank you, Mr. Hopper.

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39 Mr. Tackett: Go ahead, Jerry.

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41 Mr. Edlao: Okay, Mr. Hopper, with that said, then why are we reviewing this and it says here we
42 can make recommendations or changes to this title? I mean, it doesn't make sense. I mean, you
43 guys are asking us to review this and put comment to make or changes but now you're telling us
44 that any changes we make has to be notified for the public for comment. I don't understand this,
45 so kinda clarify this. Why would they, if that's the case, why the hell are we looking at this for
46 then?

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Mr. Hopper: There's a state law that talks about when there's a public hearing or public notice required for either changes to rules or ordinances, and the issue is whether or not the changes will make this an entirely different proposal in this situation. You could make the argument that changing the height limit to 40...from 60 to 45 feet is not an entirely different proposal from what has been proposed. My advice to you is that doing that with this particular ordinance, and that's the case of any proposed bill that comes to you, remember when a bill comes to you that has been published in the newspaper with the text of the bill, and so the public will see here's what's being changed in the bill so they can come in and check and see what changes are being made and decide to come and testify at the hearing or not testify at the hearing based on the changes that have been made. In general, there are state law that says that if you publish the notice and then the changes you make are so substantive that it essentially is a different proposal than that which was originally proposed that it's totally different essentially then you have to go back and have another public notice so the public knows that. That's the case law there. That standard can be difficult to evaluate. But I'm saying with respect to this one, I would recommend that that change not be made because I can see an argument that that change would render this an entirely different bill with respect to the fact that it reduces the height, the maximum height allowed in certain areas where there you could have existing buildings by, by 15 feet, which can be substantial. So, that's what I'm saying with respect to this this particular bill. If you, you want to defer action and have another public hearing notice where that change is made maybe that's another option because you're not at County Council yet. So, you could do that. I think that could be a potential option. You in the newspaper wait another 30 days and then and then do that. But I think it would probably be easier to make that as a separate proposal to this ordinance. And I can give you the case law citations if you'd like because there's a pretty substantial body of law on those issues.

Mr. Edlao: Okay, then in my mind, the changes, you know, taking away that 60 and just going to the 45 like Kawika says, in my mind, I don't think that's a substantial change. Even if we did make that change it wouldn't affect what was happening prior to this because whatever happened prior to this, once it's approved, you know, won't change that. I mean, this is just the changing would be moving forward. I beg to differ that the...that would be changing height would be a substantial change, but you know, you are the lawyer, so you know, that said, end of my question.

Mr. Freitas: Vice-Chair, can I add to my original question?

Mr. Tackett: I got, I got a question, I got a question for you Kawika. Seem like there's a little bit of confusion here. I thought that perhaps you were making a recommendation for the Council to look at that. I thought that that's where you were going with that, that that was your recommendation to Council. I did not feel like you were trying to change it right here in this particular meeting. Mr. Hopper is, is, are those two distinctly different things and is that something that Kawika could do?

Mr. Hopper: I think you can definitely recommend to Council that they consider changing the height to 45 feet as part of a future bill. With the...I don't think the Council could do that...you see, any time the Council makes a change to a zoning ordinance, they have to give public hearing notice and you have to have a hearing on that issue. I don't think when this goes up to them as

1 part of this bill they could make that change. I think that they could either initiate another bill to
2 do that or you, again, as the Planning Commission can initiate that as a separate proposal. My
3 main issue is that you have a public hearing with it published in the newspaper that everybody
4 who has a height limit of 60 feet, all those properties are now going to have a height of 45 feet
5 and that get publicly noticed and people are aware of that, of that issue because that's not part of
6 these original bills. But I think, yes, you can tell the Council, the Council should examine that. Of
7 course, you yourselves, if you want to do that as part of a future meeting, could do that too to
8 initiate that or the Planning Department could initiate that. I don't know if, if there's support for
9 that or not, but that's, legally you can, you could do that. But I don't think the Council could pass
10 that change as part of this bill. But I think you could recommend to them that they, that they
11 consider lowering the limit to 45 feet and doing that through, through a noticed, properly noticed
12 proposal.

13
14 Mr. Tackett: Thank you, Mr. Hopper. Kawika, what you, what you got?

15
16 Mr. Freitas: A quick question and clarification. So, the 60-page document that we got talks about
17 heights, and you're saying, this is to Mr. Hopper that the public did not know that height limits are
18 part of this. You giving me different mixed information here. If this is what we're reading, I'm
19 assuming this is what the public get to look at. So, the public was able to look and see that there
20 are 30, 46, 60 feet limits, and I cannot even understand what category or what... I guess if you're
21 in the front of Main Street, had some kind of a details, but it's in here. So how are you saying that
22 the public didn't know so that we can't make a recommendation?

23
24 Mr. Hopper: I am certainly not attempting to send mixed signals here. There is no change stating
25 that the 60 feet maximum height limits are changing to 45 feet in the existing areas. Remember,
26 this is an existing area that is subject to these requirements already. And so right now, it says
27 that it's 60 feet and you're adopting that consistent with that. If the proposal was, we're going to
28 reduce the height limit by 45 or by 15 feet for all properties that have 60-foot height limit, then
29 that's something that you could do. At this point, I'm saying, that if you did that, I'd be concerned
30 that there would be a lawsuit for lack of public notice and that we would have trouble defending
31 that lawsuit that's what I'm explaining to you right now and stating my concern.

32
33 Mr. Freitas: Okay, thank you.

34
35 Mr. Tackett: Thank you, Kawika. Commissioners, is there any other issues that we have to work
36 through before we put a motion onto the floor?

37
38 Ms. Pali: P. Denise, ...(inaudible)...

39
40 Ms. La Costa: Yeah, Vice-Chair, you probably can't see me. I have an additional question for
41 Mr. Hopper on this line of questioning, please.

42
43 Mr. Tackett: Okay, go ahead, P. Denise.

44
45 Ms. La Costa: In this document there, I read that if there was a building and/or a use that was in,
46 that was currently being used for that use or for that height, that it would be grandfathered so to

1 speak, if that's the case, then anyone who lives in a building over 60 feet, the height limitation of
2 45 feet, if that were to be the recommendation, would not apply because it was already existing.
3 I can't find that where in this document it says that, but I do remember reading that it was whatever
4 is existing is considered grandfathered. So how does that conflict with us putting a
5 recommendation forward of 45 feet when that is in the document that was published.
6

7 Mr. Hopper: Okay, if we need to discuss this further, I may recommend we go into executive
8 session. I want to go into the details of, of the potential claims against the County on this issue.
9 There's a nonconformity section in this ordinance and it states that if you, if you're a
10 nonconforming building that you can continue to be nonconforming, but if something happens like
11 a fire or the nonconforming use, that's a use, but if a fire happens in and the building is destroyed,
12 generally, you cannot rebuild at that height. In addition, there could potentially be other owners
13 who, who would have to, who may be considering building that wouldn't have had notice of this
14 of this change, and that would apply immediately. But in addition to all of that, again, the issue is
15 public notice with respect to this. And there's case law on the issue of public notice with respect
16 to is this a substantively different procedure? We may be able to win the lawsuit with that
17 happening. I'm not saying that that's not an argument you can make, but I have to give legal
18 advice that in this case is in the best interest of the County and protects the County with respect
19 to this. So, I think that, that's the best advice I can give. The nonconforming height section or
20 nonconforming I think it would be structure or building section, I can read to you. You would be
21 rendering any building over 60 feet as nonconforming and that could potentially impact the
22 continued use of that building if certain things were to happen. So, it's not...you could put in
23 language that says, that if buildings were already built at 60 feet, then that new height limit doesn't
24 apply at all. You could do a variety of things, that wasn't considered as part of this bill. You have
25 probably a variety of options to do that if you want to reduce height limits. But if we were going
26 to do that in any, any district, I think we would look at the language that deals with the existing
27 buildings and things like that. But the, that I do not believe was something that was contemplated
28 by, by these original changes was to, was to change the height limit to 60 feet or to 45 feet. Again,
29 that's only for portions of the, of the properties that are zoned. It's not everywhere. But again, I
30 think it's more of a public notice issue, and if we want to discuss that further, and in more detail,
31 we can go into executive session. But I again, I think I've raised the concerns that I would have
32 with, with doing that as part of this particular proposal.
33

34 Ms. Pali: Chair, if I may jump in and assist Mr. Hopper, 'cause my brain is kind of funky. Chair's,
35 Chair and Commissioners, I think what he's saying is that there's two issues. The first issue at
36 hand today is creating and moving over existing policy under Title 19. That's what's at stake,
37 that's what's been posted, the public notice that we want to move it where it's at into Title 19. And
38 the confusement for you guys is that you're seeing the whole policy, existing policy attached
39 because we have to show what we're moving into Title 19. But just because the policy is attached
40 doesn't mean we gave the public notice that we would actually be changing existing policy that's
41 a second issue. Issue one, move it to Title 19. Issue two, let's now look at the existing policy and
42 let's update it. So, Chair Freitas, you might actually right in the fact that it needs updating, but
43 there is no public notice that we were going to update the current policy. The only public notice
44 that was given is that we're moving it to Title 19. So, I feel like that's the confusion that you guys
45 may be having, the struggle. And so, recommendation is, if you want to update the policy, it's

1 probably a good idea, but we have to give proper public notice. We have not done that today.
2 Can't hear you Chair.

3
4 Mr. Tackett: I said, thank you very much Kellie for your description of that. I actually fully
5 understood that from the beginning so I don't know where, where you found that I was remiss in
6 that. I believe these, these questions are coming from my commissioners and I'm just trying to
7 be unbiased in my approach and give everybody the ability to voice their concerns. Actually, on
8 this issue, I am completely against changing the heights, and I'm completely against changing
9 the heights because that is a main hub for this island and those heights are, are allowed in very,
10 very specific areas for very specific reasons. So, like I said, I just haven't weighed in on it because
11 it's not my time to weigh in on it, it is not that I don't understand and I do agree with what you're
12 saying—

13
14 Ms. Pali: Sorry, I didn't mean it for your Chair. I didn't mean it for you, I was just trying to help
15 the others, that's all.

16
17 Mr. Tackett: Yeah, so I appreciate it. Thank you very much, Kellie, and I think, I think that I view
18 it the same way as you. But that being said, I'm gonna take the rest of the...I'm gonna take
19 whatever, whatever input I have from the rest of the...oh, I got Mr. Hopper again. Mr. Hopper, go
20 ahead.

21
22 Mr. Hopper: Just, just to clarify, this was not an intention to be in favor of or against a height
23 change proposal. It's something you can certainly do. But my concern is you would go through
24 and do it and the Council could potentially do it and then it could all get undone if there's a notice
25 issue, and I just wanted to avoid that. So, if you want to go ahead and look at changing the height
26 limit, if this is adopted as part of the Code, that's something within your authority to do, certainly.
27 But I just wanted to have that clarified that this is not a statement in favor of or against doing that,
28 it's an issue of if you do, it will stand up, and I have concerns in that situation.

29
30 Mr. Tackett: Thank you. Thank you, Mr. Hopper. I think that you've been very clear on that. So,
31 I believe everybody understands that. Commissioners, does everybody understand what he's
32 saying is, is to either convey this document or don't convey this document and make
33 recommendations to this document, so that's...but that the document remains the document.
34 Anybody, anybody else have any questions that they need answered from either Mr. Hopper or
35 the Director or deliberations with each other on this issue? I can't see everybody at all time, so if
36 somebody has something to say, please speak up.

37
38 Mr. Freitas: Vice-Chair, no one's saying anything can, can we make a motion to vote on this? I
39 would like to make the motion to recommend approval of the proposed bill.

40
41 Mr. Tackett: Okay, go ahead. P. D. can I let him make his motion or request?

42
43 Mr. Freitas: Looks like she's seconding.

44
45 Ms. La Costa: I was seconding it.

46

1 Mr. Tackett: Oh, better yet. Thank you, P. D. Okay so we got a motion and a second. And what
2 is your motion, Kawika?

3
4 Mr. Freitas: Recommend approval of this proposed bill.

5
6 Mr. Tackett: Okay, and I got the second on that, and then, all in favor? And all opposed? Director,
7 can...do you have the count on that?

8
9 Ms. McLean: Yeah, Chair, the only person I couldn't see is Commissioner Pali 'cause she's frozen
10 on screen. She's been frozen on my screen for like an hour with her coffee mug right up to her
11 mouth. It's a great screen shot of her.

12
13 Ms. Pali: I voted in favor, Director.

14
15 Ms. McLean: Okay, so that's seven ayes, Chair.

16
17 **It was moved by Mr. Freitas, seconded by Ms. La Costa, then**

18
19 **VOTED: To Recommend Approval of the Proposed Bill to the County Council,**
20 **as Recommended by the Department.**
21 **(Assenting – K. Freitas, P. D. La Costa, S. Castro, J. Edlao,**
22 **M. Hipolito, K. Pali, D. Thompson)**

23
24 Mr. Tackett: Thank you, Director and thank you, Commissioners for bearing with me, I appreciate
25 it.

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32

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

**MAUI PLANNING COMMISSION
SUMMARY MINUTES
JANUARY 26, 2021**

(HYPERLINK TO CHAPTER 1 AUDIO RECORDING OF THE MEETING)

(HYPERLINK TO CHAPTER 2 AUDIO RECORDING OF THE MEETING)

(HYPERLINK TO CHAPTER 3 AUDIO RECORDING OF THE MEETING)

(HYPERLINK TO CHAPTER 4 AUDIO RECORDING OF THE MEETING)

(HYPERLINK TO CHAPTER 5 AUDIO RECORDING OF THE MEETING)

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Christian Tackett at approximately 9:00 a.m., Tuesday, January 26, 2021, online via BlueJeans; **Meeting ID: 957 104 845**

B. PUBLIC HEARINGS (Action to be taken after each public hearing.)

1. MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Maui Planning Commission a Proposed Bill to establish a new Chapter 19.39, Maui County Code, relating to the Maui Redevelopment Area, and to Amend Chapter 19.520, Maui County Code, relating to variances in the Wailuku Redevelopment Area. (S. Forsythe)

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed> and is summarized as follows:

It is proposed that the Wailuku Redevelopment Area Zoning and Development Code with will be incorporated into the Comprehensive Zoning Ordinance as a new Chapter 19.39, and that the existing Maui Redevelopment Area (MRA) variance process will be incorporated into Chapter 19.520.050, relating to variance procedures and standards; this means that Wailuku Redevelopment Area variances would be considered by the Board of Variances and Appeals rather than the MRA.

(Item B.1 begins at approximately 00:04:57 of Chapter 1 of the audio recording.)

(Motion was made at approximately 01:42:45 of Chapter 1 of the audio recording.)

It was moved by Mr. Freitas, seconded by Ms. La Costa, then

(Vote was taken at approximately 01:43:25 of Chapter 1 of the audio recording.)

**VOTED: To Recommend Approval of the Proposed Bill to the County Council, as Recommended by the Department.
(Assenting – K. Freitas, P. D. La Costa, S. Castro, J. Edlao, M. Hipolito, K. Pali, D. Thompson)**

C. COMMUNICATIONS

1. AINA LANI PACIFIC LLC, requesting a transfer of ownership of a County Special Use Permit relating to the construction and operation of a sewage treatment facility for the Haliimaile Residential Subdivision located at Haliimaile Road, Haliimaile, Island of Maui, TMK: (2) 2-5-003:029. (CUP 99/0004) (A. Cua)

(Item C.1 begins at approximately 00:00:08 of Chapter 2 of the audio recording.)

(Motion was made at approximately 00:14:38 of Chapter 2 of the audio recording.)

It was moved by Ms. Pali, seconded by Mr. Castro, then

(Vote was taken at approximately 00:15:25 of Chapter 2 of the audio recording.)

**VOTED: To Approve the Transfer of Ownership of the County Special Permit, as Recommended by the Department.
(Assenting – K. Pali, S. Castro, J. Edlao, K. Freitas, M. Hipolito, P. D. La Costa, D. Thompson)**

2. MS. MICHELE CHOUTEAU MCLEAN, Planning Director, notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of her intent to process the following time extension requests administratively:

- a) HONUULA PARTNERS, LLC requesting a two-year time extension on the Special Management Area Use Permit for the Proposed Wailea Alanui Drive and Wailea Ike Drive Intersection Improvements at TMK: 2-1-008:118, 131, and 134, Wailea, Island of Maui. (SM1 2009/0012) (W. Bradshaw)

The Commission shall acknowledge receipt of the request. The Commission may decide whether to waive its review or review the time extension request at a future meeting.

(Item C.2 begins at approximately 00:16:35 of Chapter 2 of the audio recording.)

(Motion was made at approximately 00:55:33 of Chapter 2 of the audio recording.)

It was moved by Ms. La Costa, seconded by Mr. Freitas, and

(Vote was taken at approximately 01:01:03 of Chapter 2 of the audio recording.)

The Motion to Not Waive Its Review of the Time Extension Request, FAILED.
(Assenting – P. D. La Costa, K. Freitas)
(Dissenting – S. Castro, J. Edlao, M. Hipolito, K. Pali, D. Thompson,
C. Tackett)

Then,

(Motion was made at approximately 01:02: 05 of Chapter 2 of the audio recording.)

It was moved by Mr. Edlao, seconded by Mr. Hipolito, then

(Vote was taken at approximately 01:02:16 of Chapter 2 of the audio recording.)

VOTED: To Waive Its Review of the Time Extension Request.
(Assenting – J. Edlao, M. Hipolito, S. Castro, K. Pali, D. Thompson,
C. Tackett)
(Dissenting – K. Freitas, P. D. La Costa)

D. WORKSHOP ON THE PROPOSED SMA AND SHORELINE RULE AMENDMENTS

(Item D begins at approximately 00:00:45 of Chapter 3 of the audio recording.)

Presentations were given by the Planning Department Staff after which the Commission had discussion and public testimony was taken.

E. DIRECTOR'S REPORT

(Item E begins at approximately 00:31:58 of Chapter 5 of the audio recording.)

1. SMA Minor Permit Report

This is for notification and review purposes. No action is anticipated.

2. SMA Exemptions Report

This is for notification and review purposes. No action is anticipated.

The Commission had no comments on the SMA Minor and SMA Exemption Reports.

3. Discussion of Future Maui Planning Commission Agendas

a. February 9, 2021 agenda items

Ms. McLean went over the items scheduled for the February 9, 2021 meeting.

F. NEXT REGULAR MEETING DATE: February 9, 2021

G. ADJOURNMENT

The meeting was adjourned at approximately 5:09 pm

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Stephen Castro
Jerry Edlao
Kawika Freitas
Mel Hipolito
P Denise La Costa
Kellie Pali
Christian Tackett, Vice Chair
Dale Thompson

Others

Michele McLean, Director, Department of Planning
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Jordan Molina, Deputy Director, Department of Public Works