



Proposed Ordinance to Address Nonconforming Structures and Uses Affected by a Disaster

Housing and Land Use Committee

County of Maui

October 23, 2024



Background:

What does Nonconforming mean?

■ Definition of Nonconforming Building or Structure:

- "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 the ordinance codified in this article or as a result of any subsequent amendment.
- Example: Permitted residential structure with 5' side setback nonconforming to current code's required 6' side setback.

■ Definition of Nonconforming Use:

- "Nonconforming uses" 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 the ordinance codified in this article or as a result of any subsequent amendment.
- Example: lawfully permitted retail use in a structure where that use is nonconforming to the current code's zoning of residential, which prohibits retail uses.



Background: Issue and Purpose

- ▶ **Current Nonconforming Code Section:**
 - ▶ Allows nonconforming structures and uses to continue
 - ▶ Nonconforming structures damaged or destroyed by more than 50% required to conform to new code requirements
 - ▶ Nonconforming uses that are discontinued for 12 months shall not be resumed
 - ▶ Purpose: establish compliance with current code through attrition
- ▶ **Issue:**
 - ▶ Current Code does not account for large disasters such as August 2023 wildfires
 - ▶ Nonconforming structures (setbacks, height, impervious surfaces, density)
 - ▶ Nonconforming uses – not possible to be re-established within 12 months
- ▶ **Purpose of Bill/Ordinance:**
 - ▶ Revise the Nonconforming section to provide the opportunity for nonconforming structures and uses to be re-established to their state prior to a disaster



Proposed Code Amendment

■ Nonconforming Structures – Summary:

- Allows nonconforming structures to be repaired or reconstructed for structures damaged or destroyed in a disaster by more than 50%.
 - Current Code requires nonconforming structures that exceed 50% damage to comply with Code.
- Reconstruction must comply with Title 16 (building code, fire code, and flood hazard regulations)
- Building permit for repair or reconstruction must be completed within 5 years with potential of 2-year extension by Director.
- The reconstructed structure is still considered nonconforming and thus any future changes must comply with Code.



Proposed Code Amendment

■ Nonconforming Uses – Summary:

- Allows a nonconforming use in a damaged or destroyed structure as a result of a disaster to be re-established within 5 years with potential 2-year extension by Director.
- If the nonconforming use was **not** in a damaged or destroyed structure but was discontinued due to lack of access or lack of business activity and is located in the same specific area as where the disaster occurred, then it may be reestablished within 5 years with potential 2-year extension by Director.
- The re-established nonconforming use must be in compliance with requirements of Title 16 (building and fire code) prior to occupancy.
- Once re-established, the use will still be considered as nonconforming and thus any future changes to the use must comply with the MCC.



Planning Commission Recommendations

- ▶ **Planning Commission Recommendations:**

- ▶ **Lānaʻi Planning Commission Meetings:** February 21, 2024: Recommend approval with an amendment that would allow an extension to the four-year time frame
- ▶ **Maui Planning Commission Meeting:** February 27, 2024: Recommend approval with an amendment to change the four-year time frame to five years, with up to a two-year extension if necessary.
- ▶ **Molokaʻi Planning Commission Meeting:** March 13, 2024: The Commission voted to recommend approval of the proposed bill with an amendment that would exclude Molokaʻi.

Department Recommendations

- ▶ **Department recommends approval of the CD 1 version with revisions:**
 - ▶ Minor revisions – October 17, 2024 correspondence
 - ▶ “SECTION 2. Section 19.39.150, Maui County Code, is amended by amending Subsection (A) to read as follows:
 - ▶ “A. Nonconforming lots, structures, and uses may continue, subject to the provisions and conditions of subsections [19.500.110(A), (B), and (C),] 19.500.110(B), (C), ~~and (D)~~, **and (E)**; respectively.”
 - ▶ Amend subsection 19.500.110(C)(1)(a) “a. A nonconforming structure that is [an] a historic property as defined in chapter 6E of the [Hawaii] Hawai‘i Revised Statutes and a nonconforming structure devoted to a conforming use that contains multi-family dwelling units owned [by owners] under the authority of chapter ~~514A~~ **514B** of the [Hawaii] Hawai‘i 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] ~~if the restoration is permitted by the building code and flood hazard regulations~~ **in compliance with Title 16** and is started within two years.”



Department Recommendations

- ▶ Addressing Fire Department Concerns – October 1, 2024 correspondence

- ▶ 19.500.110.C.1.d

ii. The repair or reconstruction is permitted in compliance with title 16, **provided that for residential projects, the Fire Chief may require compliance with section 16.25 and 16.26C, or portions thereof, as may be necessary for the improvement of public safety**

DESCRIPTION: This addition will allow Fire to call for compliance with all or portions of the Commercial Building Code, procedures and standards, for the improvement of public safety if residential nonconformities proposed to be reconstructed under the residential building code (16.08A) would create a potential hazard.

- ▶ 19.500.110.D

1. A nonconforming use [shall] may not extend to any part of the structure or lot that was not arranged or designed for [such] the use at the time the use became nonconforming[.] , **provided that nonconforming uses on Lanai or Maui affected by emergency or disaster under subsection (E) may be relocated in an equal proportion on the same lot, or within a structure, as recommended by the Fire Chief to the Director of Planning for the improvement of public safety.**

DESCRIPTION: This addition will allow a nonconforming uses occurring in an area of concern to Fire to be called to be relocated into an area of a building or parcel that was not previously used for nonconforming purposes, for the improvement of public safety.

HLU Committee

From: Gregory Pfof <Gregory.J.Pfof@co.maui.hi.us>
Sent: Wednesday, October 23, 2024 9:23 AM
To: HLU Committee
Subject: Power point presentation for October 23 HLU
Attachments: CC Presentation 19.500 Nonconforming Legislation.pptx

My apologies, here is the powerpoint presentation for today's HLU meeting.

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