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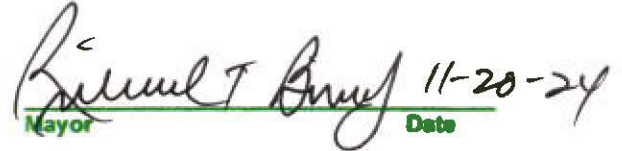


DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

November 19, 2024

Honorable Richard T. Bissen, Jr.
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL


Mayor Date 11-20-24

For Transmittal to:

Honorable Tasha Kama, Chair
Housing and Land Use Committee
200 South High Street
Wailuku, Hawaii 96793
via: hlu.committee@mauicounty.us

Dear Chair Kama:

SUBJECT: BILL 105 (2024), AMENDING SECTION 19.500.110, MAUI COUNTY CODE, REGARDING NONCONFORMITIES (HLU-34)

Thank you for your October 30, 2024 letter requesting information pertaining to Bill 105. The following identifies your request followed by the Planning Department's (Department) response:

1. Please explain the differences between a nonconforming structure and a nonconforming use.

MCC Chapter 19.04 defines nonconforming structure and nonconforming use as follows:

- *"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.*
- *"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*

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 2

or as a result of any subsequent amendment.

A nonconforming structure is legal but not consistent with the current Maui County Code (MCC), Title 19 Zoning development standards (i.e., setbacks, building height, etc.) for the specific zoning district in which the structure resides. For example, a nonconforming residential structure lawfully (at the time) built at five feet from the side property line would be nonconforming to a current MCC required six-foot side yard setback in residential zoning districts.

A nonconforming use is legal but not consistent with the current MCC list of permitted uses identified in the specific zoning district in which the use is being operated. For example, a nonconforming retail use that was (at the time) lawfully established in a residential zoning district (or an area that later became a residential zoning district) would be nonconforming because the current MCC residential zoning districts do not permit retail uses. Such a use may have been established in the past when the zoning district was different than it is today, or perhaps the zoning district is the same as today, but the zoning district's list of permitted uses has changed.

2. *Please explain the differences between “nonconforming” and “legally nonconforming,” if any.*

The term “nonconforming” is frequently used in error to refer to situations that are not legal or not permitted by code. Per MCC, “nonconforming” refers to “legally nonconforming” qualifying structures or uses that are legal and permitted but do not meet the current requirement established in Title 19 Zoning. For a structure or use to be considered nonconforming it must have been previously lawful at the time it was created or initiated as described within the MCC definitions of nonconforming structure and nonconforming use (see answer to question #1). For structures, “previously lawful” would mean that a structure obtained a building permit or was lawfully constructed prior to the requirements for building permits within the area of the County of Maui. For uses, “previously lawful” would mean that a use was legally allowed when it was established and has been continued from that time to date without a break in use of greater than one year.

3. *To the extent possible, please provide a list of all known nonconforming structures and uses in West Maui that would be allowed to be repaired, reconstructed, or reestablished under Bill 105.*

Unfortunately, the Department does not have the resources to conduct a thorough assessment of all structures and uses that pre-existed prior to the 2023 fire in Lahaina, much less all West Maui as requested. The Department is aware of some uses that are nonconforming, such as:

- Churches located in residential zoning districts. For example, unless the Jodo Mission and Kingdom Hall of Jehovah's Witnesses in Lahaina have obtained a Special Use Permit (SUP) for their respective use, they would be considered nonconforming uses

Honorable Richard T. Bissen, Jr
 For Transmittal to:
 Honorable Tasha Kama, Chair
 Housing and Land Use Committee
 November 19, 2024
 Page 3

because they are a church use in a residential zoning district, wherein the residential zoning districts only permit church uses with approval of a SUP. If they do not have a SUP for their use, then they are considered nonconforming. Under current MCC, prior to their reestablishment, approval of an SUP would be required. Bill 105, on the other hand, would allow these uses to continue without obtaining an SUP.

To help understand the type and potential quantity of nonconforming structures, the Department provides the following table that identifies the required Residential development standards in 1960 (County’s first zoning code adopted) as compared to today’s zoning code - 64 years later. The table is a useful example in that it shows the development standards have not changed that much for residential and in some cases has become more liberal. However, for some standards, there are changes that may signify expected nonconforming conditions in residential zoning districts – these have been highlighted in grey.

Table 1 - Residential Development Standards

Development Standard	1960 Zoning Code	Current MCC- General	Current MCC – Historic Districts 1 & 2
Front setback	10' (R-1, R-2) and 15' (R-3)	15'	10'
Side setback	5' per 1,000 sq. ft. of floor area + 6" for every 100 sq. ft. additional	6' (10' for portion of building over 15')	5'
Rear setback	15' (R-1, R-2) and 20' (R-3)	6' (10' for portion of building over 15')	15'
Building Height	35'	30'	2 stories
Maximum Impervious Surface Area	100%	65%	100%

For residential structures built between 1960 and the date of which a specific development code standard shown above had changed, it can be expected that there may be a nonconforming condition. In such a case, if Bill 105 passes, the structure may be re-constructed to its prior required development standard.

Similar tables in other zoning districts such as multi-family, commercial, and hotel would also show differences that may result in nonconforming conditions.

4. Please explain how the Department intends to notify the public of opportunities available under Bill 105.

If Bill 105 passes, it is the Department’s intent to provide a press release to the general public as well as take the opportunity to announce the passage of the legislation at future community meetings related to recovery efforts. Further, the Department will post notification on its County website and ensure that all plan reviewers, including consultants such as 4-Leaf, are aware of its

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 4

provisions. The Department will also produce an informational flier for distribution at the above referenced venues.

5. Please explain how the Department will implement Bill 105, including coordination with the office of Recovery, Department of Public Works, and Department of Fire and Public Safety.

Bill 105 will be primarily implemented by the Planning Department (Department). Specifically, it is the Department that will be responsible for approving or denying a property owner's request to maintain a nonconformity. If a property owner believes that they had a nonconformity prior to the fires and decides that they would like to reconstruct or resume that nonconformity, it is the Department that will be available to meet with property owners well in advance of their building plan preparation and submittal of plans to the Public Works Department for a building permit.

Importantly, in some instances, the reconstruction of a nonconforming structure may require additional structural or fire suppression modifications to safely maintain the nonconformity. The Department plans to inform property owners that the Fire Department and/or Public Works Department may require additional modifications to reconstruct the nonconforming structure. The owner may meet in advance with those Departments and/or will be engaged during the review of the building permit.

If an applicant/property owner did not engage in consultation with the Department prior to building permit application submittal, then the initial County review would identify proposed development standards that did not meet current code. The default response would be to require that the application be revised to meet current code standards. When the Applicant's response is that a nonconformity existed that was proposed to be reconstructed or resumed, the application would be referred to the Department for Planning and the Fire Prevention Bureau for additional reviews. If Bill 105 is passed and adopted, routing provisions for this purpose will be made with the Department of Public Works Development Services Administration for implementation with their permitting consultant.

6. Please explain how Bill 105 will affect the following:

a. Transient vacation rental properties, such as Lahaina Inn, Pioneer Inn, and The Plantation Inn.

In a search by name, the Department was not able to locate "Lahaina Inn."

Regarding reestablishing their prior transient vacation rental use for the Pioneer Inn and Plantation Inn, Bill 105 will not have an effect on these properties. Specifically, the Pioneer Inn is located within Historic District 1 (HD-1), which currently permits the transient vacation rental use of hotel. According to current MCC, in the HD-1 District, if such hotel use is lawfully initiated prior to January 7, 2022, it may be reconstructed. The Plantation Inn is

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 5

located within the HM Hotel (HM) zoning district, which currently permits the transient vacation rental use of hotel.

Regarding physical reconstruction of these hotels, Bill 105 may have some effect depending upon the prior structure's level of conformance to their respective zoning districts' development standards. For example, the HD-1 district allows non-residential projects to have a 0' setback along all property lines, and the building height may be no higher than two stories and 35'. The prior structure for the Pioneer Inn may have already met these standards and therefore Bill 105 would not be necessary for its reconstruction. On the other hand, the HM district, where the Plantation Inn is located, has more restrictive setback standards, such as front, rear, and side setback standards based upon the building height of the structure, with a minimum of 15' from the front and rear property line and 10' from the sides. If the prior structure did not meet these standards, then Bill 105 would allow reconstruction to the prior nonconforming setbacks. Without Bill 105, the structure would have to be reconstructed in compliance with the setbacks established in the current MCC for the HM district.

b. Condominium properties, such as Āina Nalu, Puamana, and The Spinnaker.

Similar to the discuss above regarding transient vacation rental properties, for those condominium properties noted, it depends upon the zoning district in which they are located to determine if the use is a permitted use. If it is a permitted use, then there would be no need to make use of Bill 105. If the use were occurring as a nonconformity use prior to the fire and is not permitted in the existing zoning district, there would need to be a basis for allowing it to resume, which could be Bill 105, depending on the final wording. Further, the current required development standards within their specific zoning district will determine if their respective reconstruction needs the nonconforming provisions of Bill 105 or not. For example, the Spinnaker is located in the A-1 Apartment District, which permits multi-family residential buildings and therefore reestablishing the former multi-family residential use is permitted and Bill 105 would be unnecessary. However, the A-1 district has development standards that may not have been met by the prior structure, in which case Bill 105 would benefit the structure by allowing it to be reconstructed to its former nonconforming condition.

I apologize that the Department was not able to complete a full evaluation of the 'Āina Nalu or the Puamana projects, their approval history, and existing applicable regulations to provide a formal response prior to the requested deadline.

c. Properties along Front Street, particularly those located directly adjacent to the ocean or had structures located above the ocean.

Structures located above the ocean cross several significant regulatory layers and physically extend outside the jurisdiction of the County of Maui which is delineated by the shoreline. If

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 6

passed, Bill 105 would be expected to be a factor for determining compliance with zoning use. However, the zoning compliance portion of the evaluation of an overall proposal to reconstruct one of these structures would be subordinate to and would not dictate the review of and outcome for approval processes that will be required by the Maui Planning Commissions administration of the Special Management and Shoreline Areas or the requirement for review and approval under state and federal regulations.

d. Properties located in the Historic districts, including the ability to repair and reconstruct the historical aspects of the property.

As discussed, uses and structures on properties within HD 1 and HD 2 may be reestablished and reconstructed without the need for Bill 105 if the new use complies with MCC's current list of permitted uses, and the new structure complies with the MCC current required development standards. As discussed above, the current MCC provides for a wide range of permitted uses and very liberal development standards. Hence, it is believed that there may be few nonconformities within the historic districts. For historic structures, existing MCC Section 19.500.110(B)(1)(a) already permits them to be reconstructed in their entirety if fully destroyed. Therefore, Bill 105 will not be necessary to address the reconstruction of historic structures.

e. Properties in the Apartment districts; and f. Properties in the Business districts.

Bill 105 will only affect properties located in Apartment Districts and Business Districts to the extent that the pre-existing uses were not in compliance with the MCC's list of current permitted uses within those Districts. In those instances, Bill 105 would allow the reestablishment of the prior nonconforming use. Further, Bill 105 would permit the full reconstruction of structures in those specific districts to the extent that those structures did not comply with the current MCC development standards for those specific districts.

7. Please explain how Bill 105 ensures Lahaina will be rebuilt safely, including addressing density issues and accounting for Fire Code and Building Code requirements.

In order to complete a productive discussion of these matters, there cannot be a conflation of unpermitted improvements that may have been constructed and in existence prior to the fire with a nonconforming structure (which is legal at the time of construction). Bill 105 will permit nonconforming structures to be reconstructed to their "previously lawful" condition.

The Department has proposed that the reconstruction of nonconforming structures and reestablishment of nonconforming uses will be done in full compliance with the safety provisions implemented in Title 16. Specifically, within Bill 105, CD1, Sections 19.500.110(E)(1)(d)(i), 19.500.110(E)(2)(a) and (b), and 19.500.110(E)(5), it requires said structures and uses to comply

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 7

with requirements of Title 16, which includes the Fire Code, Residential Code, Energy Code, Electrical Code, Plumbing Code, Building Code, and requirements for construction within Flood Hazard Areas.

The Department is aware that the Fire Department expressed some concerns with Bill 105, particularly with the reconstruction of nonconforming structures and their proximity to property lines. As a result, the Department met with the Fire Department and agreed to appropriate revisions to address their concerns. During the Department's presentation to the Housing and Land Use Committee on October 23, 2024, the Department requested the following additional changes:

"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."

This addition will allow the Fire Department to call for compliance with all or portions of the Commercial Building Code's 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."

This addition will allow nonconforming uses occurring in an area of concern to the Fire Department 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.

8. *Please explain whether nonconforming structures will impact the installation of underground power lines.*

The Department is not aware of a plan prepared or in draft form identifying the specific location of future undergrounding of power lines, or where those lines cannot be underground within existing rights-of-way. In instances where undergrounding cannot be installed in public right of ways a further evaluation of alternatives would be required.

9. *Will Bill 105 impact United States Representative Tokuda's initiative to designate Lahaina as a National Heritage Area? Why or why not?*

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 8

The Department anticipates Bill 105 may contribute to but will not detract from the initiative to designate Lahaina as a National Heritage Area. Based on our understanding of United States Code §120103. *National Heritage Area studies and designation*, a study for an analysis of qualifying characteristics is required for the completion of the designation process. This study is described to include, but is not limited to, an assessment of the natural, historic, or cultural resources that represent distinctive aspects of the heritage of the United States that are worthy of recognition, conservation, interpretation, and continuing use.

At this time the Department is not aware that the final proposed boundaries of the study area have been established or that the study itself has been initiated. That being said, our opinion is that allowing for the reconstruction of previously existing nonconforming structures in their general massing and configuration, as well as the continuation of previously occurring nonconforming uses will contribute to the reestablishment of the unique character of the areas of Lahaina affected by the fires.

10. Please define “setback” and explain how setbacks are measured.

While the MCC does not define “setback,” it does provide the following setback related definitions that explain the location of setback areas and how setbacks are measured.

- *"Setback area" means the area between the setback line established in the applicable zoning district and the lot line, which includes the boundary of public or private streets. The setback area must remain unoccupied and unobstructed from the ground upward by any structure including above or below-ground swimming pools, except as specifically allowed in each zoning district.*
- *"Setback line" means the line beyond which no wall of a building or structure may project. Each zoning district specifies the distance from a lot line to a setback line.*
- *Setback area, front. "Front setback area" means a setback area extending inward from the front lot line to the front setback line.*
- *Setback area, rear. "Rear setback area" means a setback area extending inward from the rear lot line to the rear setback line.*
- *Setback area, side. "Side setback area" means a setback area extending inward from the side lot line to the side setback line.*

11. How does Bill 105 affect a property’s setbacks? For example, could a property be reconstructed with the same nonconforming setbacks it had prior to being damaged or destroyed? Or could the property be reconstructed with different setbacks than what it had before but that are still nonconforming? Are there any nonconforming setbacks that would not be allowed?

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 9

Bill 105 will allow a structure to be reconstructed to its nonconforming setback for that portion of the structure that existed prior to it being damaged and destroyed.

A property could reconstruct with the same nonconforming setbacks prior to damage or destruction if the Fire Department does not find the reconstruction to be a public safety issue. There are two specific provisions in Bill 105 that restrict the reconstruction only to those portions of the structure that were nonconforming. Section 19.500.110(C)(1)(d), in part indicates that a nonconforming structure *“may be repaired or reconstructed to its former nonconforming condition.”* Further, Section 19.500.110(C)(1)(d)(iii), allows the reconstruction of the nonconforming structure provided that *“The nonconforming structure is repaired, expanded, renovated, or altered in a manner that does not increase its nonconformity.”*

The following example provides answers to your questions. Assume that an 18’ long portion of a previously lawful residential structure was constructed with a 5’ side yard setback, while a remaining 12’ long portion had a 10’ side yard setback to the same side property line. In other words, there is a jog along the side of the residence that is parallel to the side property line. The 18’ long portion of the structure would be nonconforming to the current MCC’s requirement for a 6’ side yard setback, whereas the 12’ long portion would be conforming to the MCC as it is setback 10’ from the side yard property line. Per the proposed code sections identified above, **only** the 18’ long nonconforming section may be reconstructed with a 5’ side yard setback. If desired by the owner, the 18’ long section could also be reconstructed to something greater than 5’ from the side property line. Importantly, any other portion of the structure besides the nonconforming 18’ long section must be reconstructed in compliance with the MCC’s required side yard setback of 6’. Thus, the remaining 12’ long portion could be reconstructed back to its prior 10’ side yard setback if desired, or anything less up to 6’ from the property line.

Regarding the last question, *“Are there any nonconforming setbacks that would not be allowed?”* As discussed in the answer to question #7, there may be instances where the reconstruction of the nonconforming residential structure, given its proximity to the property line, creates a fire safety issue as determined by the Fire Department. The Fire Department may require reconstruction of the nonconforming structure to come in compliance with Commercial Building Code standards, which the owner may not desire to comply with and hence would have to reconstruct the nonconforming structure to conforming setbacks. Beyond that example, there are no other nonconforming setbacks that would not be allowed.

12. Please explain how “more than 50 percent of [a structure’s] replacement cost” is determined. Is the “cost” used from prior to after the disaster?

The 50 percent of a structure’s replacement cost is based upon the structure’s replacement value prior to the disaster. In determining replacement cost, the owner would be responsible for

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 10

submitting an estimate of the full replacement value of the structure based upon materials and labor. Examples of evidence include insurance coverages and contractor bids.

13. Please provide the types of “proof” property owners may use to show that their structure was destroyed due to accidental means.

Depending upon the type of destruction, “proof” may include an after-fire investigation report, a structural or geological report, or other types of investigation reports for insurance purposes.

14. Please provide the types of “proof” property owners may use to show their nonconforming structure or use existed prior to a disaster.

“Proof” may include copies of prior building permits; records from the Real Property Tax Division; business licenses, business records, and/or tax records for uses; and photographs including aerial photographs. In some cases, especially for those structures constructed or uses established prior to 1959, it may be difficult to provide such proof. However, Bill 105’s proposed Section 19.500.110(C)(1)(d)(iv) provides discretion to the Director for reviewing and approving the owner’s submittal of proof by indicating, *“The property owner meets the burden of proof to establish the nonconforming portion of the structure existed before the emergency or disaster. Evidence supporting the property owner’s burden of proof is subject to the review and approval by the director.”*

15. Please explain how a use or structure is determined to be “reestablished.”

A use is determined to be “reestablished” upon receiving a certificate of occupancy.

16. If a structure is being reconstructed but does not receive final inspection within the initial five-year deadline or the two-year extension, what happens to the structure? Will it need to be demolished?

If a structure does not receive its final inspection prior to the total seven years allotted in Bill 105, then the nonconforming portion of the structure would need to be brought into compliance with the current code, which could include movement or removal. Alternatively, the owner may apply for a variance to maintain the nonconforming portion of the structure.

17. Please provide examples of “good cause” that would allow the Director to grant a two-year extension for a nonconforming structure to receive its building permit, complete repair or reconstruction, and receive final inspection.

It is difficult to provide specific examples of “good cause” given its subjectivity to the situation at hand, and hence the broad discretion given to the Director to allow for the extension. Examples

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 11

of “good cause” may include delays on the part of the County in reviewing/approving permits, or events (personal or non-personal) beyond the control of the owner that may delay construction.

18. If transient vacation rental uses are excluded from Bill 105, please explain the impact it would have on transient vacation rentals. In particular, please explain how this would impact Ordinance 5473. To the extent possible, provide a list of properties that would be impacted.

If transient vacation rentals (TVR) are excluded from Bill 105, then the effect on TVRs depends on whether the pre-existing TVRs are nonconforming to the MCC’s current list of permitted uses in their respective zoning districts. For example, as it pertains to the Lahaina area, the MCC currently permits, under certain criteria (see below discussion on Ordinance 5473), the reconstruction of TVRs in the Apartment district, Hotel district, Historic Districts 1 and 2, and the Community Business (B-2) district. Thus, in those districts, TVR uses (under certain conditions) are not nonconforming and may be reestablished/reconstructed without the need for Bill 105 and would not be affected by the exclusion of TVRs from Bill 105.

On the other hand, using the Lahaina area as an example, if TVR uses pre-disaster were nonconforming to the district in which they reside, and the TVR exclusion is added to Bill 105, then those nonconforming TVR uses would not be able to be reestablished/reconstructed. Unfortunately, the Department has not had sufficient time to identify properties that include nonconforming TVRs.

Regarding Ordinance 5473, Bill 105 does not necessitate any changes to or have an effect upon this Ordinance. Specifically, Ordinance 5473 (effective on December 4, 2022), as it relates to TVRs, established specific criteria (as described above) and/or permit processes in order to accommodate the use of TVRs in Apartment districts, Hotel districts, Country Town Business districts, Community Business (B-2) districts, Central Business (B-3) districts, Planned Development districts, and Historic Districts 1 and 2. For example, as it relates to Lahaina, which includes B-2, Apartment, Hotel and Historic Districts 1 and 2, Ordinance 5473 added the following text to the list of permitted uses, specifically related to the permitted use of TVR:

- B-2 District – *“If the use was lawfully initiated prior to January 7, 2022. Existing transient vacation rentals may be reconstructed, renovated, or expanded if no new rooms or transient vacation rental units are added.”* (emphasis added)
- Apartment District – *“The number of rooms or units allowed for transient vacation rental use may not increase beyond those allowed for such use as of January 7, 2022. Existing transient vacation rentals may be reconstructed, renovated, or expanded if no new rooms or transient vacation rental units are added.”* (emphasis added)

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 12

- Hotel District – *“The number of rooms or units allowed for transient vacation rental use may not increase beyond those allowed for such use as of January 7, 2022, unless such new rooms or units are situated landward of the line set at the distance from the certified shoreline to the mapped line for coastal erosion at 3.2 feet of sea level rise, as depicted on the State of Hawai‘i sea level rise viewer hosted by the Pacific Islands Ocean Observing System as of November 4, 2022. For all such new rooms or units, any ground altering activity proposed in culturally sensitive areas as determined by the County archaeologist will be referred to the Maui County Cultural Resources Commission, which may review and comment on the potential impact to historic properties and cultural resources to the State historic preservation division in accordance with Hawai‘i Revised Statutes chapter 6E.”*
- HD 1 and 2 Districts – *“Hotels, if the use was lawfully initiated prior to January 7, 2022. Existing hotels may be reconstructed, renovated, or expanded if no new rooms or transient vacation rental units are added and any ground altering activity proposed in culturally sensitive areas as determined by the County archaeologist is referred to the Maui County Cultural Resources Commission, which may review and comment on the potential impact to historic properties and cultural resources to the State historic preservation division in accordance with Hawai‘i Revised Statutes chapter 6E.”*

Hence, if an existing TVR meets the criteria above (established through Ordinance 5473) and any other additional criteria within MCC, then that TVR use is conforming as a permitted use in their respective district, therefore not effected by Bill 105.

19. If the amount of short-term rental permits issued exceeds the amount of permits authorized by the Maui County Code, are permit holders considered nonconforming?

No. For those Community Plan areas where the number of short-term rental permits issued exceeds the amount of permits authorized by MCC, the total number will eventually come into compliance through attrition.

20. As it relates to Maui Guest House at 1620 Ainakea Road, Lahaina:

- a. Please identify the nonconformity that allowed bed and breakfast operations at this facility prior to the August 2023 Maui wildfires.***

The Department is not exactly clear as to the reason why this specific address is listed on the Department’s list of “Non-Apartment District Properties Allowed to be used for Short-Term Occupancy” other than most likely it being nonconforming for the reason of operating a

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 13

perceived Bed and Breakfast without having an approved permit. It is assumed that the perceived Bed and Breakfast was operating prior to the County's adoption of Ordinance 2609 in 1997, which is when procedures to permit Bed and Breakfast homes were first adopted and permitted in Residential zones.

b. If the nonconformity does not exist under Bill 105, can the property owner apply for a Bed and Breakfast home permit? Please explain why or why not.

Under Bill 105, provided that the owner can prove that the nonconforming Bed and Breakfast use was not discontinued for twelve consecutive months prior to the fire, then it would still be considered nonconforming and would be allowed to continue. Without that evidence, it would not be allowed to continue under Bill 105.

If the property's Bed and Breakfast use is determined to no longer be nonconforming, unfortunately MCC Chapter 19.64.030.N indicates that "*Bed and breakfast homes must be limited to a single-family dwelling constructed as least five years prior to the date of the application for the bed and breakfast home permit and the dwelling unit must be owned by the applicant for at least five years prior to the date of the application*" (emphasis added). Since the structure no longer exists as a result of the fire, unless the MCC is changed, the owner would not be able to reconstruct and meet this requirement at least for another five years.

c. If the owner can apply for a Bed and Breakfast home permit, when can they apply? What must be included in the rebuilt structure, if anything, to qualify?

As discussed above, unless the MCC is changed, the owner would have to wait at least five years after the structure was reconstructed before applying for Bed and Breakfast home permit. Regarding what must be included in the reconstructed structure to qualify, please refer to Chapter 19.64 for the full list of restrictions and standards that would have to be complied with prior to approval of a permit.

21. Please explain how the Department will address the lack of parking in Lahaina if nonconforming properties do not need to meet current off-street parking requirements.

Successfully addressing parking for any location within the community should be driven by a collaborative effort involving the community, appropriate boards and commissions, governmental agencies and potentially the Council. The Department is anticipated to be a participant and may also function as lead facilitator.

The October 2024 draft of the Lahaina Long-Term Recovery Plan proposes a Rebuild Lahaina Plan which would be led by the Department and is described as "*focusing on business centers,*

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 14

public lands, circulation and mobility, and Front Street." It further describes the proposed project as being *"finer grained than previous plans, identifying specific areas for mixed-use, parks, housing, transit hubs, and public facilities."*

22. *Is there an opportunity to create an agency similar to the Maui Redevelopment Agency for Lahaina? Please explain why or why not.*

Hawai'i Revised Statutes Chapter 53 Urban Renewal Law does include features that may be implemented in the Lahaina area. The Committee may choose to direct inquires on the augmentation and/or formation of new county entities and or agencies to the Department of Management.

23. *How do nonconformities affect insurance costs?*

The Department of Planning is not sufficiently qualified to provide information on insurance costs.

24. *Does the Department recommend incorporating Insurance Institute for Business & Home Safety standards into the Maui County Code? Please explain why or why not. Furthermore, would incorporating these standards affect insurance costs?*

The Department of Planning is not sufficiently qualified to advise the Council on this matter but is available to respond to information relating to state and county land use regulations.

25. *Please explain what options owners have with their properties if Bill 105 is not enacted.*

If Bill 105 is not enacted, then owners where nonconforming structures have been damaged or destroyed by more than 50% of their replacement value will have to reconstruct their structures in compliance with current MCC. The only other option for an owner is to apply for and obtain approval of a variance to reconstruct their nonconforming structure.

For nonconforming uses, without Bill 105 the owner would not be able to be reestablished their use because according to current MCC, nonconforming uses that are discontinued for twelve consecutive months shall not be resumed. For any nonconforming uses in Lahaina, that time period has lapsed. There are no other options.

26. *Please provide your feedback on comments the Committee has received from other Departments relating to Bill 105.*

The Department is aware of comments forwarded to the Committee from the Fire Department and has been working with the Fire Department to address their concerns. Please see the response to question #7 for more information on our collaboration.

Honorable Richard T. Bissen, Jr
For Transmittal to:
Honorable Tasha Kama, Chair
Housing and Land Use Committee
November 19, 2024
Page 15

Thank you for the opportunity to provide this information. If you have any further questions, please do not hesitate to contact me.

Sincerely,



KATE L. K. BLYSTONE
Planning Director

XC: Ana Lillis, Deputy Director (pdf)
Jordan Hart, Planning Program Administrator (pdf)
Gregory Pfost, Administrative Planning Officer (pdf)

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HLU Committee

From: Michelle L. Santos <Michelle.Santos@co.maui.hi.us>
Sent: Wednesday, November 20, 2024 1:14 PM
To: HLU Committee
Cc: Cynthia E. Sasada; Josiah K. Nishita; Keli P. Nahooikaika; Ana L. Lillis;
joy.paredes@co.maui.hi.us; Katie L. Blystone
Subject: MT#10864 Bill 105
Attachments: MT#10864-HLU Committee.pdf