

REQUEST FOR LEGAL SERVICES

Date: August 24, 2015
From: Don Couch, Chair
Planning Committee

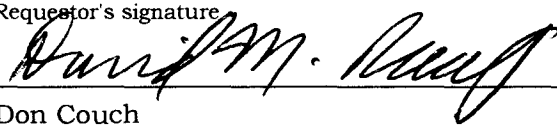
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael J. Hopper, Esq.

Subject: AFFORDABLE ACCESSORY DWELLINGS IN RESIDENTIAL DISTRICTS (PC-28)

Background Data: Please approve as to form and legality the attached proposed resolution, recommended for adoption at the Planning Committee meeting of August 6, 2015.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

| | |
|-------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| Requestor's signature  Don Couch | Contact Person <u>Greg Garneau or Jordan Molina</u> (Telephone Extensions: 7886 or 7134, respectively) |
|-------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|

ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): Wednesday, August 26, 2015
REASON: To meet posting deadline for the September 4, 2015 Council meeting.

FOR CORPORATION COUNSEL'S RESPONSE

| | | |
|--------------|----------------|-----|
| ASSIGNED TO: | ASSIGNMENT NO. | BY: |
|--------------|----------------|-----|

TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____ (Rev. 7/03)

pc:ltr:028acc01:jkm

Attachment

Resolution

No. _____

REFERRING TO THE LANAI, MAUI, AND
MOLOKAI PLANNING COMMISSIONS A
PROPOSED BILL TO AMEND THE
COMPREHENSIVE ZONING ORDINANCE TO
PERMIT AFFORDABLE ACCESSORY
DWELLINGS IN RESIDENTIAL DISTRICTS

WHEREAS, the Council is considering a proposed bill to permit accessory dwellings in residential districts on properties of between 5,000 and 7,499 square feet, for the purpose of increasing the availability of affordable housing; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commissions review proposed land use ordinances and amendments thereto, and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN RESIDENTIAL DISTRICTS," a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Lanai, Maui, and Molokai planning commissions for appropriate action, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended;
2. That it respectfully requests that the Lanai, Maui, and Molokai planning commissions transmit their findings and recommendations to the Council as expeditiously as possible; and

Resolution No. _____

3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel
County of Maui

pc:misc:028areso01:gig

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING
ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN
RESIDENTIAL DISTRICTS

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

SECTION 1. Section 19.04.040, Maui County Code, is amended by
adding a new definition to be appropriately inserted and to read as follows:

“Affordable accessory dwelling” means an accessory
dwelling that meets the provisions of section 19.35.110 of this
title.”

SECTION 2. Section 19.08.020, Maui County Code, is amended to read
as follows:

“19.08.020 Permitted uses. Within residential districts,
the following uses shall be permitted:

- A. Single-family dwellings.
- B. Greenhouses, flower and truck gardens, and nurseries; provided that there shall be no retailing or transacting of business on the premises, except as provided in chapter 19.67 of this title.
- C. Parks and playgrounds, noncommercial; certain commercial amusement and refreshment sale activities may be permitted when under supervision of the government agency in charge of the park or playground.
- D. Elementary, intermediate, and high schools, and colleges, publicly or privately owned, which may include on-campus dormitories.
- E. Buildings or premises used by the federal, State, or County governments for public purposes.
- F. Accessory buildings located on the same lot, the use of which is customary, incidental, usual, and necessary to that of the main building or to the use of the land.

EXHIBIT "1"

G. An accessory dwelling where the area of the lot on which the main house is located is seven thousand five hundred square feet or more. Chapter 19.35 of this title, pertaining to accessory dwellings, shall be applicable to any accessory dwelling.

H. An affordable accessory dwelling where the area of the lot on which the main house is located is at least five thousand square feet but less than seven thousand five hundred square feet. Chapter 19.35 of this title, pertaining to affordable accessory dwellings, shall be applicable to any affordable accessory dwelling.

I. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services. These facilities shall serve six or fewer children at any one time on lot sizes of less than seven thousand five hundred square feet, eight or fewer children at any one time on lot sizes of seven thousand five hundred or more square feet but less than ten thousand square feet, or twelve or fewer children at any one time on lot sizes of ten thousand or more square feet.

[I.] J. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.

[J.] K. Home businesses, subject to the provisions of chapter 19.67 of this title.

[K.] L. Short-term rental homes, subject to the provisions of chapter 19.65 of this title.”

SECTION 3. Chapter 19.35, Maui County Code, is amended to read as

follows:

“Chapter 19.35

ACCESSORY AND AFFORDABLE ACCESSORY DWELLINGS

Sections:

- 19.35.010 Generally.
- 19.35.020 Maximum gross floor area.
- 19.35.030 Separate entrance.
- 19.35.040 No interior connection.
- 19.35.050 One accessory dwelling per lot.
- 19.35.060 Maximum cumulative area of open decks, etc.
- 19.35.070 Off-street parking required.
- 19.35.080 Driveway.
- 19.35.090 Public facilities required.
- 19.35.100 Public facilities clearance.

19.35.110 Affordable accessory dwellings.

19.35.010 Generally. The limitations and requirements of this chapter shall apply to any accessory or affordable accessory dwelling.

A. Any person who wishes to construct, or in any manner otherwise establish, an accessory or affordable accessory dwelling shall apply for a building permit therefor in accordance with this chapter.

B. All provisions of the county zoning district, or state land use district as the case may be, in which the accessory or affordable accessory dwelling is proposed to be constructed shall apply, except the provisions on the number of dwelling units permitted on a lot and except as the provisions of such district may be inconsistent with the provisions applicable to accessory or affordable accessory dwellings. To the extent of such inconsistency, if any, the [accessory dwelling] provisions of this chapter shall prevail.

C. The provisions of this chapter relating to accessory dwellings shall apply to any lots in the following county zoning and state land use districts:

1. Residential district;
2. Apartment district;
3. Hotel district;
4. Interim zoning district; and
5. State land use rural district.

D. The provisions of this chapter relating to affordable accessory dwellings shall apply to lots in the county residential zoning district.

E. No accessory or affordable accessory dwelling shall be placed or constructed on any lot located in any district other than the districts specified in this [subsection.] section.

[D] F. Notwithstanding the provisions of [subsection C] subsections C and D of this section, the provisions of this chapter shall not apply to any lot within a duplex zone, R-O zero lot line residential district zone, R-O zero lot line district, a cluster housing development, or a planned development in any district. No accessory or affordable accessory dwelling shall be permitted on any such lot.

19.35.020 Maximum gross floor area. The maximum gross floor area of an accessory or affordable accessory dwelling shall be determined as follows:

| Lot Area (in square feet) | Maximum Gross Covered Floor Area [(including any storage covered decks, walkways, patios, lanais or similar structures but excluding an attached car-port or parking space)](in square feet)* |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5,000 to 5,999 | 400** |
| 6,000 to 7,499 | 450** |
| 7,500 to 9,999 | 500 [square feet] |
| 10,000 to 21,779 | 600 [square feet] |
| 21,780 to 43,559 | 700 [square feet] |
| 43,560 to 87,119 | 800 [square feet] |
| 87,120 or more | 1000 [square feet] |

* (Including any storage, covered decks, walkways, patios, lanais, and similar structures but excluding a carport or parking space).

** (Affordable accessory dwelling pursuant to section 19.35.110 of this chapter).

19.35.030 Separate entrance. An accessory or affordable accessory dwelling shall have at least one separate entrance.

19.35.040 No interior connection. An accessory or affordable accessory dwelling shall not have an interior connection to the main dwelling.

19.35.050 One accessory dwelling per lot. No more than one accessory or affordable accessory dwelling shall be permitted on a single lot regardless of the size of the lot.

19.35.060 Maximum cumulative area of open decks, etc. An accessory or affordable accessory dwelling may have uncovered open decks, walkways, patios, lanais, or similar structures[, subject to the following:

A. The uncovered open decks, walkways, patios, lanais or similar structures] that shall not exceed the following respective cumulative total areas:

| Lot Area (in square feet) | Maximum Cumulative Floor Area [of uncovered open decks, walkways, patios, lanais or similar structures](in square feet)* |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------|
| 5,000 to 7,499 | 120** |
| 7,500 to 9,999 | 200 |

| | |
|------------------|-----|
| 10,000 to 21,779 | 240 |
| 21,780 to 43,559 | 280 |
| 43,560 to 87,119 | 320 |
| 87,120 or more | 400 |

* (Cumulative floor area of uncovered open decks, walkways, patios, lanais, or similar structures).

** (Affordable accessory dwelling pursuant to section 19.35.110 of this chapter).

19.35.070 Off-street parking required. An accessory or affordable accessory dwelling shall have a carport or other off-street parking space. The carport shall be a single-car carport not exceeding a total floor area of two hundred forty square feet. Where the first dwelling unit on any lot complies with all provisions applicable to accessory or affordable accessory dwellings, only one carport or off-street parking space shall be required; provided, that if a main dwelling unit is constructed, such main dwelling unit shall have at least two parking spaces or a carport for two cars in addition to the parking for the accessory or affordable accessory dwelling.

19.35.080 Driveway. An accessory or affordable accessory dwelling may have a separate driveway from that of the main dwelling, provided that all driveway requirements are met. In addition to any other requirements, a minimum of ten feet between the lot boundary and any building on the property shall be required for such separate driveway.

19.35.090 Public facilities required. The following public facilities are required to service the lot:

A. Adequacy of sewage disposal system. This shall be secured in writing from the department of [public works] environmental management for public sewage systems and the state [of Hawaii] department of health for cesspools, septic tanks and private sewage systems;

B. Adequacy of water supply. This shall be secured in writing from the department of water supply;

C. Adequacy of fire protection for all lots served by private streets. This shall be secured in writing from the department of fire [control;] and public safety; and

D. Adequacy of street. The lot must have direct access to a street which has a minimum paved roadway width of sixteen feet and which the director of public works determines to be adequate for the proposed construction.

19.35.100 Public facilities clearance. Public facilities clearance may be obtained prior to application for building permit. Forms for public facilities clearance will be available at the [land use and codes administration,] department of public works. The forms shall be submitted with and attached to the building permit application. Where complete plans and specifications are submitted for building permit application processing, the public facilities clearance form and the building permit will be processed concurrently. In all other cases, the forms shall be processed prior to submitting the building permit application.

19.35.110 Affordable accessory dwellings. A. Affordable accessory dwellings will be permitted where the area of the lot on which the main house is located is at least five thousand square feet but less than seven thousand five hundred square feet, provided that the unit will be built to accommodate immediate family members, related to applicant by blood, adoption or marriage, including spouse, children, and siblings; or nonrelated persons of very low income, low income, below-moderate income, moderate income and above-moderate income, as established by the department of housing and human concerns pursuant to section 2.96.020 of this code.

B. There shall be a deed restriction established on the subject property that is utilized consistent with subsection A of this section. The deed restriction shall include the following:

1. The affordable accessory dwelling must remain affordable in perpetuity;

2. The deed restriction shall run with the land, and, if sold, the new property owner will maintain the accessory dwelling consistent with this section;

3. The unit shall never be utilized for short term or market rate rentals; and

4. The property owner must notify the director of housing and human concerns of the intent to sell the property;

C. The applicant must sign an agreement with the department of housing and human concerns agreeing to rent the unit consistent with this section.

D. The monthly rental rates shall be set by the department of housing and human concerns consistent with the United States Department of Housing and Urban Development income limits for very low to above-moderate income groups.

E. The provisions of this section shall apply only to lots within the residential district.”

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

pc:misc:028abill01:gjg