

ORDINANCE NO. \_\_\_\_\_

BILL NO. 97, CD1, FD1 (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.08, MAUI  
COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS

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

SECTION 1. Purpose. This Ordinance's purposes are to: clarify Code provisions regarding yards and setbacks, define terms that are subject to misinterpretation, increase housing options and sustainability, and codify practices regarding Residential Zoning Districts.

SECTION 2. Section 19.04.020, Maui County Code, is amended to read as follows:

**"19.04.020 Compliance.** A. Buildings and [subdivisions] structures. No building or structure [shall] may be erected, structurally enlarged, or maintained unless it complies with [the requirements of] this title and the building code of the County. [No land shall be subdivided unless the subdivision complies with the provisions of this title.]

B. Subdivisions. No land may be subdivided unless the subdivision complies with this title.

[B.] C. Permitted uses in each district. [There may be permitted in the] In the zoning districts, three categories of uses[:]  
are permitted: principal, accessory, and special. Any use that is not expressly listed as a permitted principal, accessory, or special use is prohibited. Unless otherwise expressly prohibited elsewhere in this title, restricted use lots and the uses otherwise allowed [thereon] are permitted in all districts."

SECTION 3. Section 19.04.040, Maui County Code, is amended by amending the definition of "Front of lot" to read as follows:

““Front of lot” or “front lot line” means [the front boundary line of a lot bordering the street or closest to the street, and in the case of a corner lot, may be either frontage.] every lot line bordering a public or private street through which a driveway provides access to the “lot area.””

SECTION 4. Section 19.04.040, Maui County Code, is amended by amending the definition of “Lot line, front” to read as follows:

“Lot line, front. Means the same as “front of lot.” [“Front lot line” means a line separating the lot from the streets or place, and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street.]”

SECTION 5. Section 19.04.040, Maui County Code, is amended by amending the definition of “Setback line” to read as follows:

““Setback line” means the line beyond which [the main] no wall of a building or structure [shall not] may project. Each zoning district specifies the distance from a lot line to a setback line.”

SECTION 6. Section 19.04.040, Maui County Code, is amended by amending the definition of “Street, private” to read as follows:

“Street, private. “Private street” means open passage land, easement, or right-of-way not less than twelve feet in width suitable or intended for pedestrians and vehicles[, the fee of which is vested in the owner or owners of land abutting such open passage land or right-of-way].”

SECTION 7. Section 19.04.040, Maui County Code, is amended by repealing the definition of “Yard.”

“[“Yard” means an open space on a lot unoccupied and unobstructed from the ground upward by any structure except as otherwise provided in this article. Wherever in this article an access yard, front yard, rear yard, or side yard of a stated number of feet is required, such expression shall be deemed to mean that

the yard shall have a minimum depth of the number of feet so specified.]"

SECTION 8. Section 19.04.040, Maui County Code, is amended by amending the definition of "Yard, access" to read as follows:

"[Yard,] Setback, access. "[Access yard] Access setback area" means the [yard on which a driveway is located.] same as front setback area."

SECTION 9. Section 19.04.040, Maui County Code, is amended by amending the definition of "Yard, front" to read as follows:

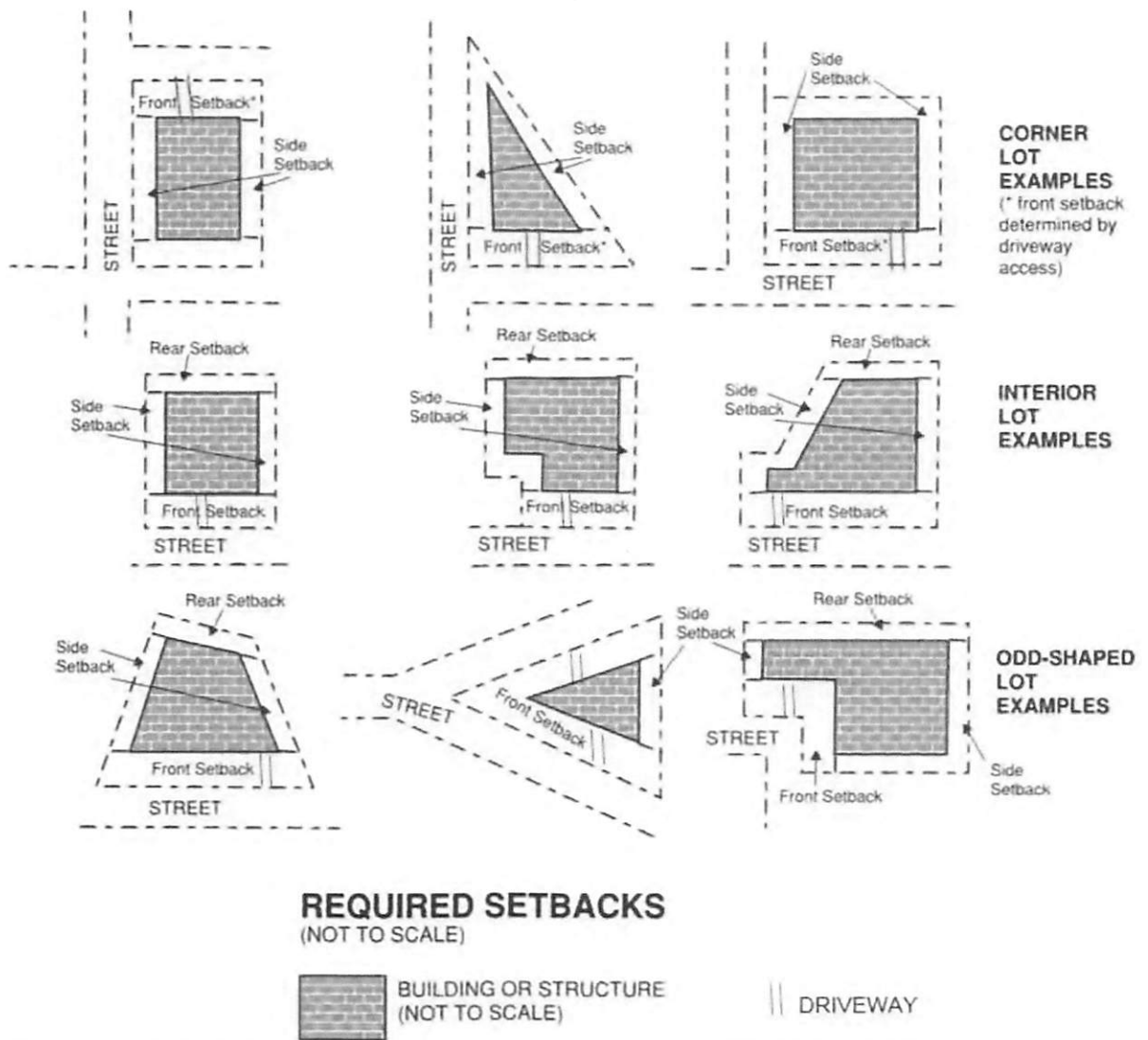
"[Yard] Setback area, front. "Front [yard] setback area" means a [yard] setback area extending [across the full width of the lot, the depth of which shall be the least distance between the front lot line and the front of the main building.] inward from the front lot line to the front setback line."

SECTION 10. Section 19.04.040, Maui County Code, is amended by amending the definition of "Yard, rear" to read as follows:

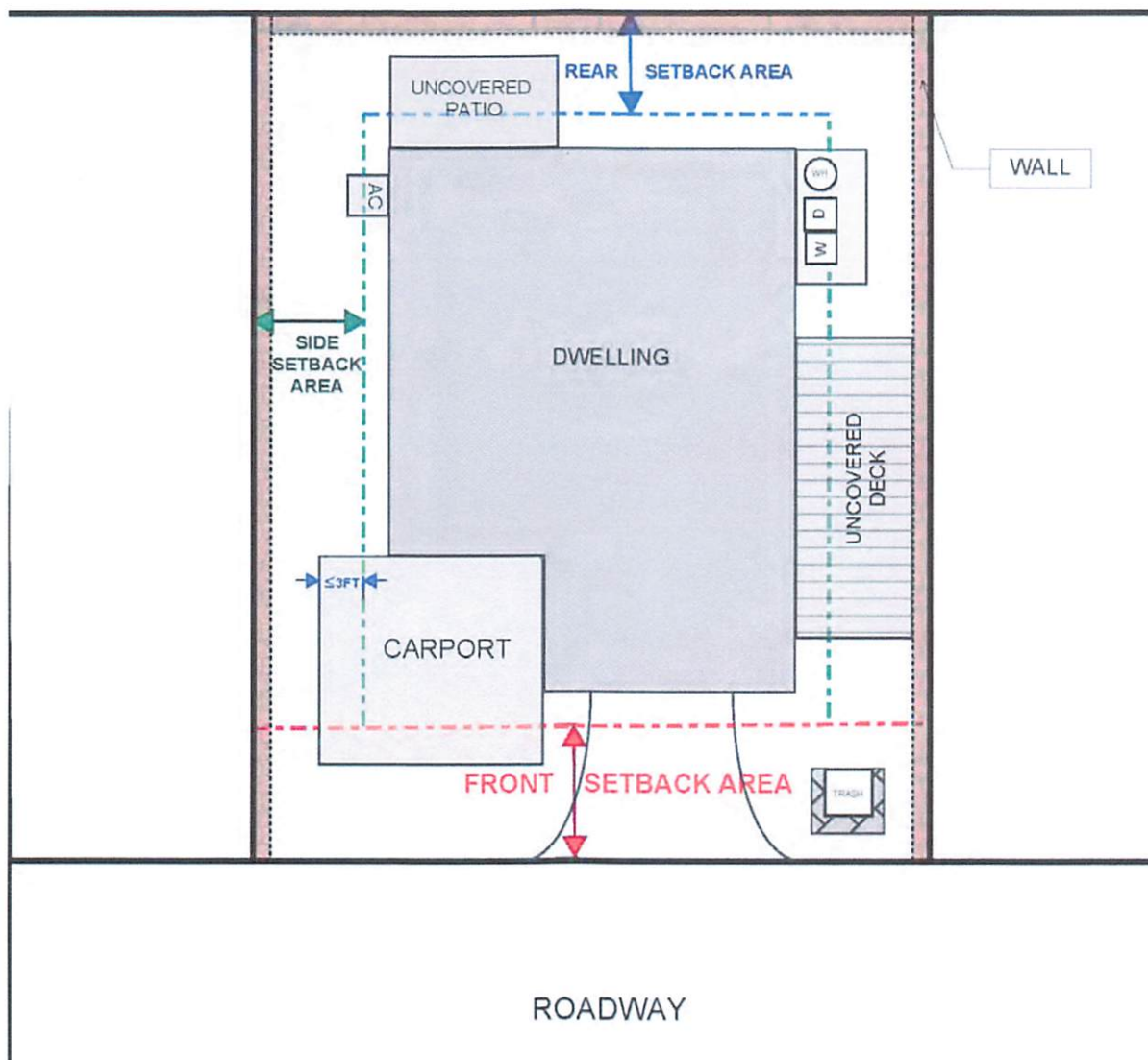
"[Yard,] Setback area, rear. "Rear [yard] setback area" means a [yard extending across the full width of the lot between the main building and the rear lot line. The depth of the required rear yard shall be measured from the nearest part of a main building at a ninety-degree angle from the building to the nearest point of the rear lot line.] setback area extending inward from the rear lot line to the rear setback line."

SECTION 11. Section 19.04.040, Maui County Code, is amended by amending the definition of "Yard, side" to read as follows:

"[Yard,] Setback area, side. "Side [yard] setback area" means a [yard between the main building and the side lot line, extending from the front yard or front lot line where no front yard is required, to the rear yard or rear lot line. The width of the required side yard shall be measured from the nearest point of the side lot line toward the nearest part of the main building.] setback area extending inward from the side lot line to the side setback line."



**Figure 1 Examples of different front setback areas**



**Figure 2 Examples of front, side, and rear setback areas for a single-family dwelling”**

SECTION 12. Section 19.04.040, Maui County Code, is amended to add new definitions to be appropriately inserted and to read as follows:

“Impervious surface” means a surface covering or pavement of a developed parcel of land that prevents the land’s natural ability to absorb and allow rainfall or storm water to infiltrate its surface. Impervious surfaces can include rooftops, walkways, patios, pools, driveways, parking lots, impermeable concrete and asphalt, and any other continuous watertight pavement or covering.”

“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.”

SECTION 13. Chapter 19.08, Maui County Code, is amended to read as follows:

### **“Chapter 19.08**

#### **RESIDENTIAL DISTRICTS**

Sections:

|            |  |
|------------|--|
| 19.08.010  | Generally.   |
| 19.08.020  | Permitted uses.  |
| 19.08.030  | Special uses.  |
| 19.08.040  | [Area regulations.] <u>Development standards, height regulations, and setback lines.</u> |
| 19.08.050  | [Height regulations.] <u>Permitted structures in the setback area.</u>                   |
| [19.08.060 | Yards.]  |

**19.08.010 Generally.** Areas for single-family dwellings are established to provide for harmonious residential neighborhood without the detraction of commercial and industrial activities.

**19.08.020 Permitted uses.** Within residential districts, the following principal uses [shall be] and structures are permitted:

- A. Single-family dwellings.

B. Greenhouses, [flower and truck gardens, and] plant nurseries]; provided that there shall be no], and the raising of plants, flowers, fruits, or vegetables for subsistence or commercial purposes; except for retailing or transacting of business on the premises, [except as provided in] unless allowed by 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,] Publicly or privately owned and operated 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] uses and structures located on the same lot, the use of which is customary, incidental, usual, and subordinate [necessary] to that of the main building or to the use of the land. The initiation of accessory uses and the erection of accessory structures are not contingent on the existence, and may be in advance of the main building or use of the land.

G. Accessory dwellings [pursuant to] under chapter 19.35 [of this title].

H. 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] may 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[.], or as otherwise required under chapter 46, Hawaii Revised Statutes.

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

J. Home businesses[,], subject to the provisions of chapter 19.67.] that meet the requirements of sections 19.67.030 and 19.67.040.

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

L. Family child care homes, hospice homes, adult residential care homes, and adult family care homes, as required under chapter 46, Hawaii Revised Statutes.

**19.08.030 Special uses.** The following uses and structures [shall be permitted in the residential districts provided that] require a County special use permit[, as provided in] obtained under section 19.510.070 [of this title, has first been obtained], except that an application for a special use permit may not be denied on the basis of the content of protected expression associated with the proposed use:

A. Churches, including any accessory buildings[.], such as a parsonage, Sunday school, nursery school, thrift shop, or office, except that subsections 19.510.070(B)(4) and (5) do not apply.

B. 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 serving more than the number of children defined in [section] subsection 19.08.020(H).

C. Hospitals[; provided that], if written consent of [seventy-five] 75 percent of the property owners within five hundred feet of the property [to be used for such purpose,] has been obtained.

D. Nursing or convalescent homes and domiciliary facilities operated and maintained to provide nursing or supporting care[.] that do not meet the criteria of section 19.08.020(L).

E. Housing for the aged, operated by governmental or nonprofit organizations[; provided that the normal population density is not increased more than ten percent.] if the normal unit density is increased by more than 25 percent.

F. Housing for low and moderate income families, operated by governmental or nonprofit organizations[; provided that the normal dwelling unit density is not increased more than ten percent.] that do not meet the criteria of subsection 19.08.020(L) or if the normal unit density is increased by more than 25 percent.

G. Public utilities substations[, which] that are not and will not be hazardous or a nuisance to the surrounding areas.

H. Domestic-type businesses in the home that do not meet the definition of home business or home occupation, including group instruction of traditional Hawaiian practices, such as lei making, ukulele classes, hula classes, and lomi lomi, [provided] if [that] there will be no detrimental or nuisance effect upon the neighbors, and further, [provided that] if off-street parking is available to participants.



I. Home businesses], subject to the provisions of chapter 19.67.] that meet the requirements of sections 19.67.030 and 19.67.050.

J. Two-family dwelling units or duplexes beyond the density allowed under section 19.08.020, subject to the setback standards in section 19.10.050.

K. Retail food and beverage establishments, excluding liquor stores of two thousand square feet or less gross covered floor area.

L. Modification of the minimum lot area development standard of section 19.08.040 may be reduced to no less than four thousand square feet, subject to the following requirements:

i. The project is designed to meet the needs of low, below moderate, or moderate income families, and deed restrictions are recorded to ensure owner-occupancy and the prevention or limitation of speculation.

ii. Shared use paths crossing through the subdivision are provided for bicycles and pedestrians to connect to adjacent lands on all sides of the project, such as existing shared use paths, roadways, parks, commercial areas, and vacant land that may be developed or further subdivided.

iii. The commission may increase the impervious surface requirement to no more than 75 percent of the total lot area.

**19.08.040 [Area regulations.** A. The minimum lot area shall be six thousand square feet in R-1 residential districts, seven thousand five hundred square feet in R-2 residential districts, and ten thousand square feet in R-3 residential districts. The minimum lot width shall be sixty feet for R-1, sixty-five feet for R-2, and seventy feet for R-3. There may be more than one single-family dwelling on any lot when the minimum lot area of six thousand square feet in R-1, seven thousand five hundred square feet in R-2, and ten thousand square feet in R-3 is provided for each dwelling unit.

B. Subject to approval of the commission, mixture of lot sizes may be permitted within any residential district; provided, however, that the minimum lot size shall not be less than six thousand square feet, and that the overall project density shall not exceed that permitted within the district. Where the subdivision or project is designed to meet the needs of low or moderate income families, and adequate provisions are provided to insure owner-occupancy and the control or limitation of speculation, the commission may permit an increase in density not

to exceed ten percent.] **Development standards, height regulations, and setback lines.**

|   | <u>R-1</u>   | <u>R-2</u>   | <u>R-3</u>    | <u>Notes and exceptions</u> |
|---|--|--------------|---------------|-----------------------------|
| <u>Minimum lot area (square feet)</u>   | <u>6,000</u>   | <u>7,500</u> | <u>10,000</u> |                             |
| <u>Minimum lot width (in feet)</u>  | <u>60</u>  | <u>65</u>    | <u>70</u>     |                             |
| <u>Maximum building height</u>  | <u>Building height must not exceed 30 feet</u>   |              |               |                             |
| <u>Setback lines</u><br><u>(For any portion of a building up to and including 15 feet in height as measured from the natural or finish grade, whichever is lower)</u> |  |              |               |                             |
| <u>Front (in feet)</u>  | <u>15</u>  |              |               |                             |
| <u>Side/Rear (in feet)</u>  | <u>6</u>   |              |               |                             |
| <u>Setback lines</u><br><u>(For any portion of a building more than 15 feet in height as measured from the natural or finish grade, whichever is lower)</u>           |  |              |               |                             |
| <u>Front (in feet)</u>  | <u>15</u>  |              |               |                             |
| <u>Side/Rear (in feet)</u>  | <u>10</u>  |              |               |                             |
| <u>Surfaces</u>   | <u>For dwellings constructed under building permits applied for after January 1, 2023, the impervious surface area of a zoning lot must not exceed 65 percent of the total zoning lot area</u> |              |               |                             |

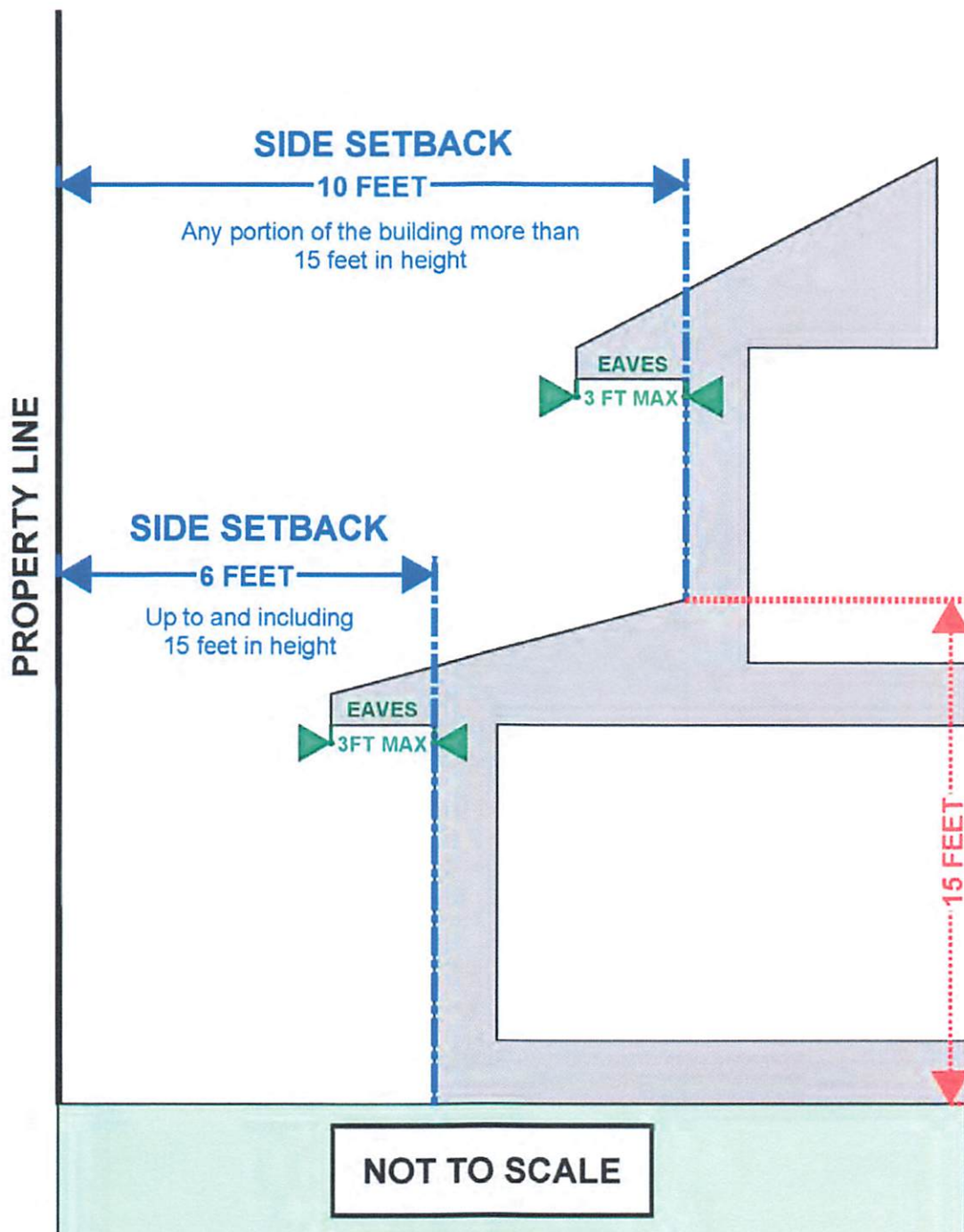


Figure 3 Example of rear and side setback areas for single-family dwelling >15 feet in height (not to scale)

**19.08.050 [Height regulations.** No building shall exceed two stories nor thirty feet in height.] **Permitted structures in the setback area.**

| <u>Description</u>  | <u>Measurement</u>  | <u>Notes and exceptions</u>   |
|---|---|---|
| <u>Walls and fences</u>   | <u>May not exceed 7 feet in height</u>  |   |
| <u>Roof eaves, including those used for photo-voltaic, carports and dwellings, and other roof-like structures</u>                   | <u>May extend or overhang no more than 3 feet into the setback area at no less than 8 feet in height at their lowest point</u>  |   |
| <u>Porches/lanai, decks, and walkways that are uncovered or under roof eaves, and associated with steps, railings, and landings</u> | <u>Must be at finished or natural grade, whichever is lower; may extend no more than 3 feet into the setback area</u>   | <u>Cannot be used to extend the building floor area in the setback area</u> |
| <u>Mail boxes and trash enclosures</u>  |   |   |
| <u>Minor utility equipment and their enclosures on lots 7,500 square feet or smaller</u>  | <u>A. Equipment 7 feet in height or less and accessory to a principal use, such as water heaters, pool pumps, gas tanks, laundry machines, clotheslines, dryers and air-conditioning units</u><br><u>B. Wall enclosures for the equipment are allowed, and are limited to the lesser of the height of the equipment or 4 feet</u><br><u>C. A minimum of 3 feet from the equipment and wall enclosure to the property line must be unobstructed from the ground upward</u> |   |
| <u>Existing greenhouses</u>   | <u>May continue to comply with the code in existence at the time the greenhouse was built</u>   |   |

**[19.08.060 Yards.** A. There shall be a front yard of fifteen feet, side yard of six feet, and rear yard of six feet for all residential districts. Side and rear yards for two-story buildings shall be ten feet in all residential districts.

B. Greenhouses may be constructed along the rear or side lot lines, provided, the entire roof is constructed of laths or screen to permit passage of light and air; the clear distance to the front lot line is not less than thirty feet; and that no portion of the greenhouse shall overhang into the next property. If the greenhouse is not constructed on the lot lines, then it must conform to the side and rear yard spacing of six feet.]"

SECTION 14. This Ordinance does not apply to existing setbacks and permit applications submitted prior to its effective date.

SECTION 15. 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 16. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

*Stephanie Chen*

Department of the Corporation Counsel  
County of Maui

paf:pmg:22-295a

DIGEST

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 97, CD1, FD1 (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.08, MAUI  
COUNTY CODE, RELATNG TO RESIDENTIAL DISTRICTS

This bill proposes to clarify provisions in Chapters 19.04 and 19.08, Maui County Code, regarding yards and setbacks; define certain terms subject to misinterpretation; increase housing options and sustainability; and codify practices regarding residential zoning districts.


I, MOANA M. LUTEY, Interim County Clerk of the County of Maui, State of Hawaii,  
DO HEREBY CERTIFY that the foregoing BILL NO. 97, CD1, FD1 (2022) was passed on  
First Reading by the Council of the County of Maui, State of Hawaii, on the 2nd day of  
December, 2022, by the following vote:

AYES: Councilmembers Gabriel Johnson, Natalie A. Kama, Kelly T. King,  
Michael J. Molina, Tamara A. M. Paltin, Shane M. Sinenci,  
Yuki Lei K. Sugimura, Vice-Chair Keani N. W. Rawlins-Fernandez,  
and Chair Alice L. Lee.

NOES: None.

EXCUSED: None.

DATED at Wailuku, Maui, Hawaii, this 4th of January, 2023.

  
\_\_\_\_\_  
MOANA M. LUTEY, INTERIM COUNTY CLERK  
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk,  
County of Maui, for use and examination by the public.