

PLANNING AND SUSTAINABLE LAND USE COMMITTEE
Council of the County of Maui

MINUTES

September 22, 2021

Online Only Via BlueJeans

RECONVENE: 1:31 p.m.

PRESENT: Councilmember Tamara Paltin, Chair
Councilmember Gabe Johnson, Member
Councilmember Tasha Kama, Member (out 4:00 p.m.)
Councilmember Alice L. Lee, Member
Councilmember Michael J. Molina, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member
Councilmember Shane M. Sinenci, Member
Councilmember Yuki Lei K. Sugimura, Member

EXCUSED: Councilmember Kelly Takaya King, Vice-Chair

STAFF: Wilton Leauanae, Legislative Analyst
Alison Stewart, Legislative Analyst
Shelly Espeleta, Supervising Legislative Analyst
James Forrest, Legislative Attorney
David Raatz, Deputy Director
Clarita Balala, Committee Secretary

Kate Griffith, Executive Assistant to Councilmember Gabe Johnson
Roxanne Morita, Executive Assistant to Councilmember Gabe Johnson
Evan Dust, Executive Assistant to Councilmember Tasha Kama
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King
Sarah Pajimola, Executive Assistant to Councilmember Keani N.W.
Rawlins-Fernandez

ADMIN.: Michael Hopper, Deputy Corporation Counsel, Department of the Corporation
Counsel
Jordan Hart, Deputy Director, Department of Planning
Scott Forsythe, Planner, Department of Planning
Erin Wade, Chief of Planning and Development, Department of Management
Jordan Molina, Deputy Director, Department of Public Works

PRESS: *Akakū: Maui Community Television, Inc.*

PSLU-24: WAILUKU REDEVELOPMENT AREA AND VARIANCES (CC 21-156)

CHAIR PALTIN: . . .*(gavel)*. . . Will the Planning and Sustainable Land Use Committee meeting of...oh, recessed meeting of September 26...22nd return to order. The time is

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1:31. My name is Tamara Paltin, I will be your Chair for today's meeting. If everyone on the line can please silence their cell phones or any other noisemaking devices, that would help our cause. Committee Vice-Chair Kelly King had another engagement, so maybe she'll be in later, maybe not. With us today we have Councilmember Gabe Johnson. Aloha 'auinalā.

COUNCILMEMBER JOHNSON: Aloha, Chair. Aloha, Committee Members. And dumela is the word I think I heard, so good afternoon.

CHAIR PALTIN: Good afternoon. And you got that one pretty good. I'll go to Chair Lee next.

COUNCILMEMBER LEE: Oh, Madam Chair, dumela. Dumela to everyone. And looking forward to a wonderful PSLU meeting. Thank you.

CHAIR PALTIN: Dumela. And we also have with us today Councilmember Mike Molina from under the virtual bridge in Makawao. Dumela and aloha 'auinalā.

COUNCILMEMBER MOLINA: Aloha and dumela to you, Madam Chair and my colleagues, from yes, under the virtual bridge in Makawao where I'm by myself in the room, and my wife and pets are in the other room. Aloha.

CHAIR PALTIN: And...awesome. I...and Member Johnson is also by himself and at home, and so is Member...Chair Lee.

COUNCILMEMBER LEE: Yes.

CHAIR PALTIN: And I am at the West Maui District Office, we're having a party, me and Angela here because we know we're going to pass this out today. And next up we have Councilmember Keani Rawlins-Fernandez from the island of Moloka'i. Aloha 'auinalā and dumela. And please let us know your location and who's with you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha 'auinalā, Chair, mai Moloka'i nui a Hina. I am at the Moloka'i District Office, and I'm alone here. And dumela kākou.

CHAIR PALTIN: Dumela. And next up we have Councilmember Shane Sinenci from East Maui, but looks like he might be at the Council [sic] Building.

COUNCILMEMBER SINENCI: Yeah.

CHAIR PALTIN: Aloha 'auinalā. Dumela.

COUNCILMEMBER SINENCI: Dumela, Chair, and aloha 'auinalā kākou from 100 [sic] South High Street. I'm here with my EA Don Atay.

CHAIR PALTIN: Thank you. Thank you. And we have Councilmember Sugimura from jacaranda country, aloha 'auinalā and dumela.

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COUNCILMEMBER SUGIMURA: Aloha, dumela. Here with me today is the inspector from Bowman, we're getting our termites...treatment of our house. Thank you, Mr. Molina, for the referral. And ready to work. Thank you. Oh, he's outside, he's not in my room.

CHAIR PALTIN: Oh, yeah. I was going to say get out of there before he starts spraying the gas. Okay. And I missed Councilmember Tasha Kama from the neighborhood. Aloha 'auinalā and dumela.

COUNCILMEMBER KAMA: Aloha 'auinalā, Chair, and dumela to each and every one of you. It's a beautiful day in this neighborhood. I am broadcasting from my bedroom, which is now my virtual office, and I'm by myself.

CHAIR PALTIN: Awesome, awesome. Okay. Thank you. And we have with us from Corp. Counsel, Deputy Corp. Counsel Michael Hopper. From the Administration we have Scott Forsythe, the Planner kind of working on this. And I believe we have possibly Erin Wade from the Management Department, also a Planner. And I'm not sure I see anyone from Public Works on the line. So that's that. Our Committee Staff, we have Clarita Balala, our Committee Secretary; Kristeena Locke, the Assistant Clerk; and Alison Stewart, our Legislative Analyst; as well as...looks like Wilton Leauanae, our other Legislative Analyst. And it looks like we have Legislative Attorneys James Forrest filling in for Mr. Mitchell, and Mr. Raatz is also on the line, our OCS Deputy Director. Okay. One item on the agenda, it's PSLU-24, Wailuku Redevelopment Area and Variances. This meeting is being conducted in accordance with the Governor's most recent emergency proclamation on COVID-19. Please see the last page of the agenda for information on meeting connectivity. And since this is a recessed meeting, we will not be taking any further testimony orally, but eComment and written testimony is available to be submitted at any time. So the...the Committee may consider whether to recommend passage of the proposed bill on first reading with or without further revisions. The Committee may also consider the filing of County Communication 21-156 and other related action. So I...I believe, Members, did we leave off on page...was it 27? Because we didn't finish the section. And my Staff and I already went through the bill, and we've asked Mr. Leauanae to post our proposed amendments on Granicus because that can happen when we gavel in. I'm not sure if it's been posted yet, but I think the last changes that we had approved on page 27 was including the stories to the feet. Oh, stories to the feet. Oh, got a direct message. Just a moment. I don't know how to get that direct message. Okay. Well, it's probably not that important. Anyway, so the...the last changes we had made was having the feet include the stories, similar how Nāpili Bay Civic Improvement District is. And then I think under B.A.1 on page 27, we...we changed the "shall" to "must." And so pretty similar changes throughout the...the rest of the document that we...we came up with. I wonder if we can do a blanket change for all the appropriate "shalls" to "must," because that's kind of like the legislative direction that we're going in. There's some areas where the must wouldn't be appropriate, but in all the appropriate places, would that be considered a nonsubstantive change, Mr. Hopper? Changing the "shalls" to "must." Oh, Mr. Raatz? Thank you.

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MR. RAATZ: Thank you, Chair. We feel like that would be an appropriate motion for the body to consider. That's...it's a type of change that we would even have Committee Staff work with you after the meeting if necessary under the general authority to make nonsubstantive revisions and to further the Committee's legislative intent. But if you'd like to put that on the record, that would be fine.

CHAIR PALTIN: Okay. Members, would we like...or would anyone like to make a motion to just broadly change the appropriate "shalls" to "musts?" And then we can go through.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

COUNCILMEMBER SUGIMURA: . . .*(raises hand)*. . .

COUNCILMEMBER KAMA: So moved.

CHAIR PALTIN: Okay. Looks it's been moved by Member Sinenci, seconded by Member Sugimura. Any discussion on that motion to go through the entire document and change the appropriate "shalls" to "musts?" Nobody has any questions about when it would not be appropriate, yeah? Sometimes the wording of how it is, it's not appropriate, but I think it's pretty...our Legislative Staff can figure out when it is appropriate and when it wouldn't be. Okay. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. So I have one, two, three, four, five, six, seven, eight. Eight "ayes"...is that a question, Member Rawlins-Fernandez, or you are voting? Voting. Okay. Eight "ayes," one excused. Motion passes unanimously.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

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CHAIR PALTIN: Oh, I guess Michael Hopper was saying his audio was down. Everybody can hear okay, right? Okay. All right. Moving down on page 28 for D.1, D.2, D.3, as well as D.8, I was thinking those we might want to change over to conditional permits. Any thoughts, discussion or motion on those four? D.1, D.2, D.3 and D.8, which is assembly area, bed and breakfast. Bed and breakfast, that one would have some “musts” into it. Daycare facilities that do not meet the standards of permitted use, and home occupations that do not meet the standards of an accessory use. Any motion for those or discussion? We’re on page 28 and 29.

COUNCILMEMBER SINENCI: Chair, what was the proposal?

CHAIR PALTIN: To change from Maui Redevelopment Agency use permit to conditional permits.

COUNCILMEMBER RAWLINS-FERNANDEZ: So move.

CHAIR PALTIN: Moved by Member Rawlins-Fernandez.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: Seconded by Member Sinenci. Any discussion? Seeing none. All those in favor, raise your hand and say “aye.”

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. Member Kama, are you voting?

COUNCILMEMBER KAMA: Yes.

CHAIR PALTIN: Okay. So I got eight “ayes,” one excused. Measure passes unanimously.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

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CHAIR PALTIN: Page 29, C...D, on maximum height, I would just propose to add 30 feet or two stories, similar to what we did with Nāpili Bay Civic Improvement District to keep it clear.

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: Moved by Member Johnson, seconded by Member Sinenci. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. Measure passes unanimously. You have a question? Member Rawlins-Fernandez has a question.

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry. Mahalo. And I mean I would...I would...I vote for the intent of it, and I know we made this change before. My question is if it's an "or"...I guess this is for Mr. Hopper.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: For Deputy Corporation Counsel. Okay. So the amendment is 40 feet or two stories?

CHAIR PALTIN: 30--30 feet.

COUNCILMEMBER RAWLINS-FERNANDEZ: 30. 30 feet or two stories.

CHAIR PALTIN: And.

COUNCILMEMBER RAWLINS-FERNANDEZ: So the word "or"...no? Oh, and?

CHAIR PALTIN: Well, they're assuming that each story is 15 feet. That was, I guess, the assumption in the --

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, and...

CHAIR PALTIN: -- cover letter from the Planning Department. Maybe Deputy Director Hart, I just saw joined the call. Maybe he can clarify. Is that what you want to ask about?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, yeah. I want to make sure that we're not creating another loophole. I know we said, you know...you know, we...we cleared...we're attempting to clear the loophole by not saying stories anymore, because is a mezzanine a story, is a basement a story, is a loft a story. What is a story? So

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we're...we're saying 30 feet or two stories. Does that create another loophole by saying or?

CHAIR PALTIN: Okay. Deputy Director Hart, are you equipped to answer that question? Is he still on the call? I see him on the call. We might have to unmute him. Okay. I just unmuted you from our end. Mr. Hart, can you unmute yourself?

MR. HART: I apologize, Chair, I was trying to multitask. I was on the phone with counsel. Could you restate the question?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

CHAIR PALTIN: Oh.

COUNCILMEMBER RAWLINS-FERNANDEZ: I can restate the question.

CHAIR PALTIN: Go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So we're amending the language to close the loophole that would...that developers have used in the past of...of building things that are two stories by adding a loft and a mezzanine, and saying that they...they aren't considered stories. So here we're putting in language that clarifies that it must be 30 feet or two stories. Does that not continue that loophole by having the word "or" instead of something like two stories up to 30 feet or something? And not...not 30 feet each, but...I don't know. I think the...the word "or" doesn't close it.

MR. HART: Sure. Chair, I think that the issue is that if you say "or" then they could do a 45-foot two-story building, and that's the problem that the Planning Department encountered as far as why we decided to go with specific feet across the board with...with the most recent exception that everybody's aware of that was missed. That seems to be the better way to do it. From a development perspective, it doesn't...it doesn't really matter how many feet it is. I mean, there's building standards that need to be observed, but the...the height itself tends to be the issue. If you want them to not have lofts, you could...you could just say something like that, or you could address, you know, floor area ratio or lot coverage as a way to regulate what people may be using. But strict feet is the most direct way to address the height issue.

CHAIR PALTIN: Could we say the shorter...the shorter of the two, 30 feet...the shorter of 30 feet or two stories?

MR. HART: Practical matter with regard to the Wailuku Redevelopment Area, why...what does the Council want to achieve by only allowing two stories? I mean, that would be a follow-up question that I would have.

CHAIR PALTIN: Well, I...did you have an answer, Member Rawlins-Fernandez? Or I...I have an answer if not.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. I...well, it's not my proposal, I was going to...I was hoping...Mr. Hart asked the exact question I was going to ask you. What...what...what is the purpose for keeping two stories in?

CHAIR PALTIN: I guess because in the cover letter from the Department, they were saying that they were interpreting 15 feet per story. And so if that's what the cover letter said, then if like say we have a 30-foot building with three stories, then that's not in keeping with what you guys said was the reason for the change, that 15 feet was interpreted as a story.

MR. HART: Yeah, I think I can clarify. I believe that that's viewed as the maximum acceptable single story, like the interpretation of a single story. But if...if you basically set an easy benchmark for the applicants to understand and adhere to, that's the best way for us to regulate. If you just say basically you can't go over whatever height, 35, 45 feet, then they can figure it out. Because in the Commercial District, for instance, there's no problem with having a three-story building, and if they wanted to do 10 feet...10-foot floor heights and a flat roof, you know, they can fit within the criteria, and they could fit within the design criteria of the Wailuku Redevelopment Area, and it would be permitted by zoning. So it's...it's much more straightforward for us to be able to just identify a specific height that can be surveyed and it's indisputable, and then that's it. And then they just work it out with the design guideline parameters and Building Code parameters within that limitation.

CHAIR PALTIN: Okay. I guess my follow-up question would be, did the Maui Redevelopment Agency and the Planning Commission, the way that it came to us was that it was stories, and it was the Planning Department that was the one that changed it to feet. And so in your opinion, I guess, is this not keeping the stories and the feet consistent, going against what the Maui Redevelopment Agency and the Planning Commission had originally proposed in the first bill? Oh, I see Mr. Forsythe, so maybe he can fill us in. Thank you, Mr. Forsythe.

MR. FORSYTHE: Yeah. Good afternoon, Committee Members. So in the version that went to the Planning Commission, for Residential, it has always been 30 feet. Stories was not identified for the Residential District, it was only for the Commercial, Mixed Use, Business, Multifamily, and...what's the one I'm missing here? Yeah, for Residential it was just listed as 30 feet, no stories was involved.

CHAIR PALTIN: Okay. Great. So for this one we won't need that then because that's what the intent of the Maui Redevelopment Agency was. So the only places that they intended for stories was Business...and what was the other ones, Mr. Forsythe?

MR. FORSYTHE: So that was just for the Mixed Use District, Business and Multifamily District, and Multifamily District.

CHAIR PALTIN: Okay. All right. So Member Johnson and Member Sinenci, I guess it was 30 feet going through the Planning Commission. Do you mind withdrawing your motion and second based on the input from Mr. Forsythe?

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COUNCILMEMBER JOHNSON: Yes, Chair, I'd like to remove my motion.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I...I think...and Deputy Director Hart, if you can weigh in on this as well, we also need to specify where we're measuring from, right? Whether it's natural grade or infill grade or...I don't know what it's called, but at what level are we measuring the 30 feet? Because if they infill and then they raise up the property a few feet and then they build, then it'll be like, you know, 33 feet from natural grade.

MR. HART: I'm going to have to ask--Scott, do you recall if there's a definition of height inside the Wailuku Redevelopment Area Zoning Code or the Maui...Wailuku Redevelopment (*audio interference*).

MR. FORSYTHE: I am looking for it right now.

MR. HOPPER: Madam Chair?

MR. HART: So anyway, while Scott's looking for that, what I would say is that if this is put in Title 19, then Title 19 has a definition of height, and so that would establish. And...and my general understanding without review...oh, I'll just review it right now actually before I say what I last remember it to be.

CHAIR PALTIN: Okay.

MR. HOPPER: Madam Chair? This is Michael Hopper.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Yeah, I'm sorry, but I had my computer replaced this morning and it looks like the video is not working, but I am here. The...I don't think there's any height definition in the Wailuku Redevelopment Area in this section, but in Title 19 there is a definition of height that would apply throughout Title 19. I think we went through a lot of it with...with the Maui Lani case that had happened a while ago. I think it's a definition that was...that I think it says it's measured from finished grade or natural grade, whichever is lower. I can find it for you, but I believe that is the definition that would apply in lieu of a specific definition in 19.39.

CHAIR PALTIN: Okay. And I think Deputy Director Hart did...is that from 19.39 that you put the wording in the chat? Okay.

MR. HART: Yes, Chair.

CHAIR PALTIN: And so...

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MR. HART: There's also a graphic that I'm not...I don't think I'm going to be able to paste in, but it's...it's in there to depict...to clarify that language.

MR. HOPPER: It's not...

CHAIR PALTIN: Okay. So...

MR. HOPPER: Chair?

CHAIR PALTIN: Oh, go ahead.

MR. HOPPER: I don't think that's from 19.39, right, I think that's from 19.04, just the general definition section.

MR. HART: I...yeah, I apologize, yes, that's correct. That's from...that's from 040.

MR. HOPPER: Because in some cases there's more specific definitions, that's correct; in this case there's not. But because this is becoming part of the County Code, this would be...the height definition would be applicable, I believe.

CHAIR PALTIN: Okay. Shall we insert somewhere in here that by height, we're going by the definition of height in 19 point...what was it, 40 or that's understood in legalese? 19.04?

MR. HOPPER: Chair, I think 19.04 states that...that that applies to all of Title 19, and this is becoming part of Title 19. So I think the intent is that unless there's a more specific definition in 19.39, that those definitions in general would apply to the terms in...in the ordinance. And...and that's consistent with any other zoning ordinance, is you...you generally have those definitions that apply universally throughout Title 19.

CHAIR PALTIN: Okay. So everybody here on the call understands we're going by the definition of 19.40 [sic] on height, and that it's going to be measured from the shorter-- 04, my bad--the shorter of either the natural or the finished grade. So that's how we're measuring height for this area, 19.04. Okay. So...and we'll leave it 30 feet because Mr. Forsythe said that's how it went through the Planning Commission from the Wailuku Redevelopment or Maui Redevelopment. Okay. So we withdrew that motion. Just bringing Members' attention to the bottom of 27, there's a "must," 28 there's a "must." Oh, we're...sorry, we're on 29 already. Okay. And I put in the chat that the document that I'm working off of has been uploaded to Granicus. Just pointing out for Members' information, page 30, number 13, we changed the "shall" to a "must."

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR PALTIN: Okay. Yes, Member Rawlins-Fernandez?

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COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. So you know where we're changing the height...sorry, I don't remember, was that D.2?

CHAIR PALTIN: D...it was just --

COUNCILMEMBER RAWLINS-FERNANDEZ: I'm sorry, where...where...

CHAIR PALTIN: -- D.

COUNCILMEMBER RAWLINS-FERNANDEZ: It...okay, it was just...oh, it was D. Okay.

CHAIR PALTIN: It's C development standards, D maximum height.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. We...okay, I see it, maximum height. So we withdrew the motion --

CHAIR PALTIN: We did.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- so we didn't amend it.

CHAIR PALTIN: We didn't amend it because Mr. Forsythe said that for --

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, said...

CHAIR PALTIN: -- Residential District it was always in feet, and it wasn't in stories. The only place that it was in stories was Business...Mixed Use, Business, Multifamily, Multifamily. Is that correct, Mr. Forsythe?

MR. FORSYTHE: Yes, that's correct. Also for the Public/Quasi-Public District, which is next.

CHAIR PALTIN: Oh, for Public/Quasi-Public it was in stories as well?

MR. FORSYTHE: No, I'm sorry, that was just in feet for Public/Quasi-Public.

CHAIR PALTIN: Oh, okay. That was just in feet. Okay. All right. So we're not changing anything that went through the Planning Commission by not adding stories here. So we don't need to add stories. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that clarification, Chair. For C.C.2, minimum yard setback, side and rear, one story, 6 feet; two stories, 10 feet. Is that clear for enforcement for Planning Department? We're talking about stories again.

CHAIR PALTIN: Deputy Director Hart?

MR. HART: Height...height is the best way to...height is the best way to outright regulate. If you want to, there's...there's character regulations in...in other single-family districts,

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for instance, that are...they limit two stories as well as height, so you could combine that if you wanted to...to maintain a certain type of character. But the...you need the specific height in order to be able to interpret, otherwise anybody could look at it and interpret stories differently, and you have that problem. So if you want to preserve a specific character, then you might call out stories as well as height; but if you wanted to leave it up to the creative ability of the owner or applicant, you could just specifically call for height.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Deputy Director Hart. So is one story 15 feet?

MR. HART: Okay. So...so...

COUNCILMEMBER RAWLINS-FERNANDEZ: Or what would one story and two story for 10 feet be?

MR. HART: Let me...let me try and clarify what...are you...are you asking about the cover letter 15 feet that was being discussed earlier, or are you talking...you could make a story almost whatever you want it to be. For example, if you walk into a large hotel, you're on the first floor, and they have an enormous entry experience that you have, they could have a 30-foot-plus ceiling.

COUNCILMEMBER RAWLINS-FERNANDEZ: I...I...I understand --

MR. HART: So that...

COUNCILMEMBER RAWLINS-FERNANDEZ: -- Deputy...Deputy Director Hart. So I...I'm asking specifically for setbacks for yards. In...on page 29 in the middle, C development standards, C minimum yard setbacks, front yard, side and rear. In side and rear...so in the front, it has 15 feet. In side and rear, it has one story, 6 feet; two stories, 10 feet. So could we change the one story to a height of feet instead of stories here?

MR. HART: Oh...

CHAIR PALTIN: For purposes of enforcement.

COUNCILMEMBER RAWLINS-FERNANDEZ: I would like it to be consistent.

MR. HART: No. That's...that's not necessary.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah (*audio interference*).

MR. HART: Basically that's...that's talking about the step back...the...the setback, like how it steps up like a cake basically as you elevate in stories. So it wouldn't be necessary to do that. It would basically...the setback would be...you could go so deep into the Code that you would specifically prescribe what each floor can be, you know, how high a

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plate height can be, but I...I don't necessarily think that you need to do that. I think that this is...

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So you have no problem *(audio interference)* enforcement for the side and rear yards?

MR. HART: No, no. I believe that we have a clear ability to determine what is the difference between the first and second story, our existing Code. And especially if this is placed under Title 19, then we have all of the definitions in Title 19 that we could make use of, unless they may be superseded by definitions inside of this section. That there's plenty of resources for us to interpret those things.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Deputy Director. Mahalo, Chair.

CHAIR PALTIN: Okay. So did you personally as a policy want it to be in feet, or you're okay if they're okay?

MR. HART: I personally think it's better...

COUNCILMEMBER RAWLINS-FERNANDEZ: I mean...

MR. HART: Oh, I'm sorry, I didn't know who you...were you talking to me or...I apologize.

CHAIR PALTIN: I was talking to Member Rawlins-Fernandez because of the policy part. But maybe she wants to know your opinion, I'm not sure. Go ahead, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. As a policymaker, I generally like to have things as consistent as possible, and since the word "story" has been problematic, I think it would be better for us to do away with the word "story" since it's so vague.

CHAIR PALTIN: I sense that about you.

COUNCILMEMBER RAWLINS-FERNANDEZ: So that would be like...

CHAIR PALTIN: Okay. So you would prefer 15-foot height, 6-foot setback; 30-foot height, 10-foot setback for side and rear? Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. If...if that would be the appropriate measurements, and if that would not make it more complicated for enforcement.

CHAIR PALTIN: Okay. Should we have input from Member [sic] Hart on that proposal? Okay. Member [sic] Hart? Or...

COUNCILMEMBER RAWLINS-FERNANDEZ: Deputy...Deputy Director --

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CHAIR PALTIN: Deputy Director Hart.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- Hart who stepped in as a Member and policymaker for a little bit.

CHAIR PALTIN: You just got upgraded.

MR. HART: Thank you, Chair. I think...I think that if...it would be clear because it's specific numbers, so it's just objective. That's clear, but I don't necessarily know that it's...I think that if you allow people to...to come up with the creativity that they are able to do within the simple parameters, that you'll have a more diverse and interesting community. But if you try to regiment everything, I think that you're going to get very similar and bland development because everything will start to be shaped the same way. So I would say that we can interpret stories...it's...it's the max height that's the issue, and I wouldn't...I wouldn't think that you're going to have much of an issue with people building enormous tall single stories. But you could...you could do the step [sic] back, but I'm not aware that it's been a problem that we've been chasing in the Planning Department. I haven't heard that that's an ongoing concern in my time here.

CHAIR PALTIN: Your whole...

MR. HART: If that's helpful.

CHAIR PALTIN: Your whole three years? Two years?

MR. HART: The entire three years.

CHAIR PALTIN: Or your...your entirety as a planner on Maui?

MR. HART: Oh, no. In my time as a consultant, no I hadn't heard that that is an issue or dealt with any clients who are struggling with it either.

CHAIR PALTIN: Okay. So it looks like it's purely a policy decision. Member Rawlins-Fernandez, I'll leave it to you if you'd like to...

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So I heard that it wouldn't be a problem if we changed it, so I would like to amend it.

CHAIR PALTIN: Okay. Is that a motion?

COUNCILMEMBER RAWLINS-FERNANDEZ: That's a motion to amend the one story to 15 feet and two story to 30 feet.

CHAIR PALTIN: Okay. Moved by Member Rawlins-Fernandez as stated. Is there a second?

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COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: Seconded by Member Sinenci. Any discussion? My only discussion, Member, would...would up to 15 feet be a friendly amendment?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes.

CHAIR PALTIN: Member *[sic]* Hart--or Deputy Director Hart, can we do that up to 15 feet and up to 30 feet?

MR. HART: We could understand that, interpret that. So the setback is...would be a specific up to 15 feet and then above that is the...the more setback.

CHAIR PALTIN: Okay. All right.

MR. HOPPER: Madam Chair?

CHAIR PALTIN: Any more discussion?

MR. HOPPER: Madam Chair?

CHAIR PALTIN: It looks like Deputy Director *[sic]* Hart...Hopper. Sorry, Deputy Corp. Counsel Hopper. Go ahead.

MR. HOPPER: I...I just wanted to make sure...I think...I think the current law says that for your first 15 feet you've got a certain setback, and then whenever you go up above 15 feet, you've got an additional setback. I think that's what they call...it's kind of like a cake effect. And the Deputy Director or maybe Erin Wade could correct me if I'm wrong. So I mean, the intention is not, I believe, that if you have 16 feet, your entire building setback is increased. I think the intent is that for your first 15 feet it's one setback, and then above that the rest of your building is set back more, so it kind of looks like a layer cake type of thing, unless I'm mistaken. So if you do change it to story, it would be...it would be very important, I think, to have that clarification that the...for the first X amount of feet, your setback is this; for the...for the remainder or for your first story the setback is this, for your second story your setback is...is whatever else it is. If you're...

CHAIR PALTIN: Yeah, Deputy Director Hart did explain the cake theory to us.

MR. HOPPER: Okay.

CHAIR PALTIN: And...

MR. HOPPER: As long as...yeah.

CHAIR PALTIN: Okay.

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MR. HOPPER: As long as that's clear and we can write it that way, that's fine, yeah.

CHAIR PALTIN: Okay. And then I think I saw Chair Lee's hand, followed by Member Sinenci.

COUNCILMEMBER LEE: Madam Chair --

CHAIR PALTIN: Yes?

COUNCILMEMBER LEE: -- I...I thought that as the Director said to us last time, that the purpose of this...our...our meeting was to make a couple of changes like the...the variance change and some other change having to do with State statute, and that this was the...our exercise today is primarily to...to pass this...these rules for the Wailuku development area so that would be codified in the Code, right?

CHAIR PALTIN: Right.

COUNCILMEMBER LEE: And that...and that the Code is being reviewed right now so that a lot of these changes would be made in that review process. Otherwise, what we're doing now is going to be different from what's already in the Code, which has to be updated. So that's the reason why I think we asked you to...to come up with the list of things that you felt needed to be passed. But you know, we're only on page 29, we got 99 pages altogether.

CHAIR PALTIN: Yeah.

COUNCILMEMBER LEE: So I mean, what...

CHAIR PALTIN: Well, this wasn't on my list, but I didn't want to be a dictator and not let other voices be heard. But I...the list...or it's not a list, but the markup is uploaded to Granicus if Members wanted to follow along with the changes that I proposed, which some of them might not be necessary based on Mr. Forsythe's comments. But I think we can pass this out today, because once we get through this section, the part where there's just words, there's not very much changes except for the "shalls" to "musts."

COUNCILMEMBER LEE: Okay. So we're not going through 99 pages then?

CHAIR PALTIN: We're going through 99 pages, but it'll pick up speed after we get out of these charts.

COUNCILMEMBER LEE: Okay. I'm going to hold you to that. Thank you.

CHAIR PALTIN: Okay. Member Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Yeah, just a question for Deputy Director Hart. And these...these numbers are still subject to variances and appeals as well, yeah?

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MR. HART: Yeah. The proposal is that they would be, yes.

COUNCILMEMBER SINENCI: Thank you.

CHAIR PALTIN: Okay. All right. So we're voting on the main motion as friendly amended. All those in favor...any...any further discussion? Seeing none. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. We got eight "ayes." Measure passes unanimously, one excused, Member King.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: Flipping on to page 30, just an FYI, number 13, we put in a "must." And then I think we don't need to add the story part because of what Mr. Forsythe said, this is the Public/Quasi-Public District. Just a quick question for Mr. Hart. On this one, the maximum height is 35 feet. Just questioning about that, is...I mean we've been going 15, 30, 45 feet. Was there a reason this one was 35 feet, or is that a typo?

MR. HART: What page are you looking at?

CHAIR PALTIN: Page 31, D. It just seemed kind of odd that there was a 35 in there. Or I guess, Mr. Forsythe, if you knew.

MR. HART: No, I'm not aware of the origin.

MR. FORSYTHE: I don't have an answer on that one.

CHAIR PALTIN: Okay. You don't know if that's a typo or not? Because we're going like 15, 30, 45, 60, but this one just pops up as a 35 for some reason.

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MR. HART: I don't think it could be a typo. We didn't get the revisions very tight to the...to the initial proposal rather than tinkering with the details of the...

CHAIR PALTIN: Okay. Mr. Forsythe?

MR. FORSYTHE: So yes, I do have an answer for you. It...it...the version that went to Planning Commission, the 2002, it's always been 35 feet. And the reasoning for this--and Erin just advised me on this--is that due to the vaulted ceilings at Good Shepherd, it was allowed for 35 feet.

CHAIR PALTIN: Okay. Great. Great clarification. And just a side note, the footnote 9 says up to 60 feet may be permitted with the approval of the MRA, and...and the intention is to make that a conditional permit instead of an MRA use permit. I'm not sure if we need to do that right now or if...I think it's in another part of that. So any motion to make it up to 60 feet may be permitted with a conditional permit instead of a approval of the MRA?

COUNCILMEMBER SINENCI: So move.

CHAIR PALTIN: Moved by --

COUNCILMEMBER LEE: . . .*(raises hand)*. . .

CHAIR PALTIN: -- Member Sinenci, seconded by Alice Lee. Any further discussion? Seeing none. All those in favor, raise your hand, say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Motion passes unanimously with Member King excused.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

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CHAIR PALTIN: And then we have...just for Members' information in E, we have a "must." Section 2...3...19.39.080, there's two "musts" and B.1 there's a "must." Page 32 there's a couple incidences of "musts" as in the markup that I uploaded. We...we did discuss a little bit about the food and beverage kiosks. Deputy Director Hart, would this be the appropriate location to talk about the standards for the food and beverage kiosks, about no aggressive sales and keeping sales confined to within the kiosk and not aggressively stopping folks on the sidewalk and like catcalling them and whatnot?

MR. HART: No. If we're putting this in Title 19, you know, that's inside of the Wailuku Redevelopment Area Zoning Code then. So if you wanted...if that was a general concern, you might put it somewhere higher up in the Title 19.

CHAIR PALTIN: Oh, okay. Not in --

MR. HOPPER: Madam Chair?

CHAIR PALTIN: -- this location? Mr. Hopper, was that you?

MR. HOPPER: Yeah. I...I think here, at least for these kiosks, this 080 section is the section that's intended to regulate those types of uses in...in this section. So the...I did see the comments on your sort of blueline--it's not a redline, it's a blueline--but it...I saw the...the portions that talked about no aggressive sales. And I think we understand the intent, but I don't think that, you know, we can enforce something that just says no aggressive sales. So I think more on the lines of what you talked about, if you want to...I mean, I think there are to an extent the ability of sidewalk vendors to talk to customers. But if there's things...like you said, sales shall be confined to the space of the kiosk and, you know, no contact with, you know, pedestrians, things like that. I think specifics like that you may be able to...to do. The other issue is that you may want to check with Erin Wade, but my understanding is that there may generally not be enough sidewalk space for these in Wailuku Town anyway, which may be you don't...you know there's a food truck, but you may not see these...these so-called sidewalk kiosks in existence. So I don't know if any of these actually exist, so you may want to check with Erin or the Department to see if any of these have been permitted or operated in Wailuku Town. And maybe there have been, but that might be relevant information as well.

CHAIR PALTIN: Okay. Ms. Wade, do you know anything of kiosks being allowed in the Public/Quasi-Public of Wailuku Redevelopment Area?

MS. WADE: Good afternoon. Can you hear me?

CHAIR PALTIN: Yes, we sure can.

MS. WADE: Okay. Great. I also got a new computer today, so tech has not been on my side this morning. You are correct, Mr. Hopper. The sidewalk...minimum sidewalk width per Public Works in urban areas is six feet. And when a kiosk is placed on a public

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sidewalk in Wailuku, you run out of adequate passing width in most cases. There might be a handful of locations where it could operate. But for the most part, the outdoor sales activity that's happening in Wailuku is occurring on private property, like on Sundays by Wailuku Coffee Company, Wailuku Farms comes and sets up a farm stand. That's all taking place on private property underneath the awning of the building. So those are permitted and wouldn't be subject to this sidewalk vendor permit.

CHAIR PALTIN: Okay. So is it still worthwhile to have this section in the Code, C, about food, beverage, and merchandise kiosks, Ms. Wade?

MS. WADE: I think that's up to you folks. It hasn't...it doesn't have any relevancy at the moment, I can say that. I think at the point where if we're able to develop the open space, the public open space off of Vineyard at some point, this might become a relevant segment; but at this time, there's nowhere that would qualify.

CHAIR PALTIN: Okay. Members, any objection to just adding a number 7, all sales activity must be confined to the kiosk...to the interior of the kiosk?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Where are we? Sorry --

CHAIR PALTIN: Oh.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- I've been trying to find the...

CHAIR PALTIN: Page 32, C. Page 32, C.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo. I...I support what you're talking about.

CHAIR PALTIN: Okay. Any motion for...we're planning for the next 20 years.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: Moved by Member Sinenci.

COUNCILMEMBER MOLINA: Second.

COUNCILMEMBER KAMA: Second.

CHAIR PALTIN: Seconded by Member Molina. All sales activity shall be...must be confined to the interior of the kiosk. So it's been moved by Member Sinenci, seconded by

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Member Molina. Any discussion, Members? Seeing none. All those in favor of the motion, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. Motion passes unanimously with Member King excused.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: Then we just have a bunch of changes that we already voted on for "must" on page 32. A bunch of "musts" --

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR PALTIN: -- on...yes, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I'm sorry I missed this. On page 31--sorry, backtracking--your blueline for C, development standards, D, 35 feet. Did we incorporate those amendments?

CHAIR PALTIN: Yeah. So Mr. Forsythe said 35 feet because of the Good Shepherd ceiling was the reason for 35 feet. And then the footnote number 9 on page 31, we changed to conditional permit.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So we didn't make the blueline, what...what their proposal was.

CHAIR PALTIN: What we did the 60-foot, four story, because Mr. Forsythe had said for Public/Quasi-Public it was always in feet and it wasn't in story.

COUNCILMEMBER RAWLINS-FERNANDEZ: Got it. Mahalo for that clarification.

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CHAIR PALTIN: Sure.

COUNCILMEMBER RAWLINS-FERNANDEZ: I'm trying to keep up.

CHAIR PALTIN: Okay. No problem. I know we're going --

MR. HOPPER: Madam Chair?

CHAIR PALTIN: -- so fast, but not fast enough for Chair Lee probably.

MR. HOPPER: Madam Chair?

CHAIR PALTIN: Yes, Mr. Hopper?

MR. HOPPER: Just to clarify that with that addition to 080 that you'd be deleting the references in the other parts of the Code that say no aggressive sales since you're sort of defining what aggressive sales are in 080. That would apply to all those other ones up above? Okay. Just wanted to clarify because that could...that could lead to legal issues. I think the more specific language is...is fine.

CHAIR PALTIN: Yeah. That's what we're defining, non-aggressive sales to be that they're confined to the interior of the kiosk. Okay. So --

MR. HOPPER: Thank you, Chair.

CHAIR PALTIN: -- 30...page 32 and 33, there's a bunch of "musts" you can see in blue that we already took the vote on. There's like a nonsubstantive "is." Page 34, also a bunch of "musts," unless anyone had any further changes. Some nonsubstantives, "are," "musts." Everybody okay? We're moving from 34 to 35. Moving to 36 and 37, also a bunch of "musts." And then continuing on, 38, another...a bunch of "musts," 39, some "musts." Okay. Then on 19.39.130 regarding off-street parking and loading, 1.d, the minimum parking ratios indicated below may be increased or decreased when the use requires a, and we just changed it to conditional permit, based on the particular unique characteristics of the proposed use and/or site. Deputy Director Hart?

MR. HART: Chair, I just want to point out that the purpose of the Wailuku Redevelopment Area Zoning Code was to stimulate the redevelopment of Wailuku Town because it is a pretty difficult town to develop, and there's a lot of substandard lots. And there are a lot of...a good amount of roadways that don't have parking on it. And the...while it may not have been organized, you know, in the ideal fashion, the...the Maui Redevelopment Agency was identified as this body that could provide incentives so that Wailuku Town would be redeveloped because it was falling behind. And if...if you kind of make all of these items requiring conditional permits, which is actually a pretty difficult permit track to go on, I think that you're...you're really going to be dampening the incentives and the function of this Zoning Code, which was supposed to facilitate urban renewal of this...this town. And if you think about the parking

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structure that's being built by the County, and that we're only going to really incentivize mass transportation by making it...or bicycles and walking by making it less convenient to park everywhere that you facilitate the reduction of parking...flexible parking standards on a lower level than the Council that I think it's a benefit overall, County and Planning and for the...the function of this Zoning Code. And so I would really encourage you to consider giving that a variance option rather than the conditional permit.

CHAIR PALTIN: So your recommendation would be when the use requires a Maui Redevelopment Agency use permit or conditional permit based on the particular unique characteristics of the proposed use and/or site?

MR. HART: Well, I'd...maybe Council needs to...to provide some comment because...whether this would be considered a...the variance function that the...the MRA was serving or whether it's just a use permit, not MRA use permit function. I would assume it's kind of a version of the variance function, which I was...I was thinking was supposed to be sent into the BVA. Unless something changed in the interim. But just that on either the Maui Redevelopment Area or Maui Redevelopment Agency level or the BVA level, it takes a lot less time and cost and energy to get there versus coming through the...I'm assuming they're going to go to the MRA, and then they're going to the Planning Commission, then...then they're going to come to Council, conditional use permit. So let's say you're trying to build a yoga studio, and you're short three stalls. You're going all the way to Council to figure out whether or not you can even build your project. And I...I don't really think that that's going to facilitate the redevelopment of this area very conveniently. I wanted to point that out.

CHAIR PALTIN: Okay. I guess my interpretation was the things that we had changed to conditional permit would not then apply to being able to increase or decrease the parking if it's left as is. Because there were some things here that we changed to conditional permit instead of a Maui Redevelopment Agency use permit. So my interpretation was giving all the folks more flexibility on the parking rather than the ones that are limited to Maui Redevelopment Agency use permit. That was more flexibility by adding "or conditional permit," rather than limiting it to just the uses that require a Maui Redevelopment Agency use permit.

MR. HART: Just to clarify, I'm looking at page 45, is that...

CHAIR PALTIN: Oh, 39.

MR. HART: Oh, 39.

CHAIR PALTIN: 39, 1.d.

MR. HART: Okay. I apologize, I wanted to apply my...my comments to page 45. I heard you talking about parking and conditional permit, and I lost the location.

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CHAIR PALTIN: Okay. No problem. So 39, 1.d, I guess the suggestion from your Chair would be a motion to amend 1.d to say the minimum parking ratios indicated below may be increased or decreased when the use requires a Maui Redevelopment Agency use permit or conditional permit based on the particular unique characteristics of the proposed use and/or site. Moved by Member Rawlins-Fernandez...no, question...question of Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I thought we deleted the permit, the Maui Redevelopment Agency permit above?

CHAIR PALTIN: I just was going on Deputy Director Hart's comment to give more flexibility. But we can...

COUNCILMEMBER RAWLINS-FERNANDEZ: I know, but we...we just...we just deleted it on page 30-something, 32. Trying to find it.

CHAIR PALTIN: On page 31, that was in reference to height.

COUNCILMEMBER RAWLINS-FERNANDEZ: Page 28.

CHAIR PALTIN: Oh, 28.

COUNCILMEMBER RAWLINS-FERNANDEZ: D --

CHAIR PALTIN: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- Maui Redevelopment Agency use permit, and we deleted that whole thing and we replaced it with conditional permit.

CHAIR PALTIN: Oh, sorry. For 1, 2, 3, and 8. There's still 4, 5, 6, and 7 that are Maui Redevelopment Agency use permits.

COUNCILMEMBER RAWLINS-FERNANDEZ: So for the section that we deleted the Maui use...or Redevelopment Area permit, will that be a problem now that...that...that permit doesn't exist in that section?

CHAIR PALTIN: Well, there still is the Maui Redevelopment Agency use permit for number 4, number 5, number 6, and number 7. So not saying that it doesn't exist, it doesn't...the...the mechanism to get those types of uses approved would be conditional, not Maui Redevelopment Area use. So half of them are going over to conditional, and then the other half are going over to...are staying with Maui Redevelopment Area. So that's why on D --

COUNCILMEMBER RAWLINS-FERNANDEZ: So it's not a problem?

CHAIR PALTIN: -- we're going to do both, instead of just conditional permit, for more flexibility.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo for that clarification.

CHAIR PALTIN: Sure. I think it was moved by Member Sinenci, unless he had a question as well. Okay. Was that a motion?

COUNCILMEMBER SINENCI: . . .(*nods*). . .

CHAIR PALTIN: Moved by Member Sinenci, is there a second?

COUNCILMEMBER LEE: . . .(*raises hand*). . .

CHAIR PALTIN: Seconded by Chair Lee. All those...any discussion, further discussion? All right. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. We got eight "ayes." Motion passes unanimously with Member King absent...or excused.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: So we have...

MR. HOPPER: Madam Chair?

CHAIR PALTIN: Was that Mr. Hopper?

MR. HOPPER: Yes. Sorry, Chair. This is on another matter so if you can...if you want to finish that up, that's fine, but I just wanted to go back to something on page 34 that I think I need to point out to the...to the Committee.

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CHAIR PALTIN: Okay. Page...backtracking to page 34. Okay. Go ahead. We didn't really make any changes on page 34, but go ahead.

MR. HOPPER: Right. The...the issue was Member Rawlins-Fernandez had raised...raised the issue of height, and while there is not a definition of height in the definition section, I do see that this 19.39.090 is dedicated to building height. And I...I had text...I had spoken with Erin Wade a bit and...and I'm wondering...this may be due to the Wailuku...the character of Wailuku Town due to the slope that it has. And I don't...I don't know the history of this section well enough to advise you on it. I...I think it passed through essentially as it is in the...as it has been for 20 years. And I don't want to comment on how...how it has applied, so I'd recommend sort of following up with the Planning Department on this. But it does not look like the height definition in the County Code, the...the finished or natural grade would necessarily be the...the sole item that's applied here. It looks like there's...these items with respect to building height that I think it'd be important to find out how height is managed for these buildings. But it does certainly seem that this section, there was a lot of thought put into this, and I don't want to speak incorrectly about how it's administered and how it has been administered over the last, you know, 20 years or so. So I...I'd maybe recommend getting some advice from the Department, or even if you can't get it all today, maybe at first reading or at some point to have that clarified. But I wanted to point that out and correct what I said earlier that the 19.04 definition, those...though those would apply normally if there wasn't a definition, there's this special subsection here with respect to height that I think is important for the Members to understand. And I apologize for not pointing it out sooner.

CHAIR PALTIN: Thank you, Mr. Hopper, for your clarification and correction. Deputy Director Hart, do you think...who do you think would be best able to clarify this for us? Is it Mr. Forsythe or Ms. Wade or would it be you?

MR. HART: I'm thinking it's going to be Erin if she's seen any of these come through. I kind of have...envision what location this was set up for on the edge --

CHAIR PALTIN: Okay.

MR. HART: -- of Happy Valley basically.

CHAIR PALTIN: Ms. Wade, can you clarify for us about this height section and how it differs from 19.04 definition?

MS. WADE: I wish I could. Height and setbacks, when I would get applications when I was the small town planner, height and setbacks would get sent to ZAED for verification. So they would be the one corresponding with the applicant about whether or not it met the height limits.

CHAIR PALTIN: Okay. Well, we see how that worked in NBCID. Anyways, maybe Mr. Forsythe?

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MR. FORSYTHE: Yeah, I couldn't add anything more than what Erin has just said.

CHAIR PALTIN: Okay. So I mean, just looking on past practice and what's happened in our special district, it seems easier to have one definition of height because Nāpili Bay Civic Improvement District had its own height rules, and now we're in a lot of hot water there. Mr. Hart, can we just go with 19.04 and strike this height section or what?

MR. HART: So I mean in my opinion, this kind of goes back to what I was talking about earlier about the variance function that used to exist with the...the MRA. If...if there is still...okay, so first of all, if you have a dramatic slope, you might qualify for a regular variance outright, but there was the variance criteria, or the variance criteria for the Wailuku Redevelopment Areas. That's preserved...you know, an issue like this could be addressed by variance request. We're just going...talking about cutting something like this out on the fly. But otherwise, we'd have to kind of look at it and see which situations even came up. But I'm pretty certain it's this ridge right here that separates Vineyard Street from Happy Valley. That's the only thing I...place I can think of that would have grades like that in this area. We'd have to analyze it and, you know, give you an opinion. But I agree that...with Mr. Hopper that there was a lot of thought and effort that was put into...to crafting this Code at the time.

CHAIR PALTIN: Okay.

MR. HOPPER: Madam Chair?

CHAIR PALTIN: Thank you. Mr. Hopper, you had something --

MR. HOPPER: Just...

CHAIR PALTIN: -- to add?

MR. HOPPER: Yeah. Just delete...deleting this when there could be property owners who this has applied to and currently applies to, I...I think you would definitely want to take a look at that and see how it's...how it's applied. There...there's...there's not just this section of saying what the height is, but there's also exceptions for chimneys, vent pipes, safety railings, other things like that. And my concern with deleting this whole section...I mean, maybe you could look at, you know, clarifying in this section that height should be measured from finished grade or something like that for a clarification. But deleting the whole section when this has, you know, applied...applied for this amount of time based on how this was...how this has gone through, I would just...I would caution about that without at least talking to...getting clarification from Zoning Enforcement Division as to how this has been applied in the area. Because it's...it's a very detailed section that looks like it currently applies to properties there.

CHAIR PALTIN: Okay. I...I think I got it. Mr. Hart, would it be okay for us to say...I'm on page 34 at the bottom, height measurement, the height of a building or a structure

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must be the vertical distance from the shorter of the finished grade or the natural grade to the highest point? Would that be okay?

MR. HART: We'd really have to look at it. So basically...in just reading this, it's...looks like it's talking about unique conditions and accommodating situations. So I'm not sure that...

CHAIR PALTIN: Well, I guess the issue is when it says grade, we don't know what they're talking about. So how do you folks interpret it, is the question? Because if it gets interpreted for one person as the finished grade, and it gets interpreted for another person as an infill grade or whatever, I mean it's...what...what are...what...how do you guys interpret this? That's like the whole problem with Maui Lani, Nāpili Bay Civic Improvement District. Like that was...we don't want more lawsuits.

MR. HART: Okay. So we...that...those scenarios are kind of apples and oranges though, like...and we can --

CHAIR PALTIN: Okay.

MR. HART: -- get into...to why. But what Mr. Hopper was discussing was basically people who may become nonconformities as a result of some special condition that they have, that they comply...they...they qualified for where there's like height bonuses that are described. So I don't know how...we'd have to figure out how many of those we think went through recently to know whether or not that would be affected. If you have no problem creating nonconformities, which...I mean, nonconformities are not convenient, but not the worst thing in the world. If you have no problem creating nonconformities then you could change the definition to a simple definition like you were discussing. But we'd have to basically --

CHAIR PALTIN: Okay.

MR. HART: -- have a conversation to give you a real coherent answer on what's happened recently and what our opinion in a future outcome...

CHAIR PALTIN: I can see Mr. Forsythe's hand up. Maybe he has a how-it's-been-interpreted-to-this-date answer for us. Mr. Forsythe?

MR. FORSYTHE: Well, you'll have to excuse me if it's already been brought up, but I just wanted to point out that within the definition section, there is a definition for grade.

CHAIR PALTIN: That'd be great. Okay.

MR. FORSYTHE: So the...that definition reads the...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.

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CHAIR PALTIN: Okay. So I think that could address our issues. That's a great answer. Thank you. And it hasn't been broughten [sic] up. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair, for getting a much more satisfying answer to your question about how (*audio interference*) enforce now. So is it...would it...so in practical terms, would the Planning Department go out and check the site elevation before construction, or before anything starts? Is that how it works?

CHAIR PALTIN: Mr. Hart?

MR. HART: Chair? So...so let me clarify a few things. What...what Mr. Forsythe pointed out was the...the definition of grade, which is a component of concluding height. So anyway, basically, through the building permit process, it's generally established unless there's some sort of permit before and there's a survey of establishing the height. But basically you show the...you either show the elevations of the...of the existing area when you're...you're showing on your plans to calculate what your height is, you're basically depicting all of this information. So if there's a grading plan, you're showing pre-grading and post-grading elevations, and generally the...the interpretation is whichever is lower is your...is your height that you're measuring off of. But it's rigorously verified in the building permit process, but is generally projected in land use approval process. So you...you...you have to...you have conceptual-level plans when you're in your...your project approval process, but you have to give very technical specific plans when you're in your building and grading permit process. But those have to align with the...the conceptual-level plans that you presented earlier. So that's a long and short way of saying that basically there's a documentation process of showing the existing and proposed, and then there's a measurement...a calculation that's done on that height. They use a survey to establish the initial height, and then a grading plan to show how that height will be...the grade will be changed after grading. But there's all kinds of different configurations that projects come through. There's like post and pier that doesn't involve grading. So in all of those possible configurations of projects, there's...the applicant discloses the existing condition and proposed condition, and there's calculations done.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Deputy Director. Mahalo, Chair.

CHAIR PALTIN: Okay. So now that we have the...oh, Member Sugimura?

COUNCILMEMBER SUGIMURA: Based upon what Director just said, and as we're going through and making changes, it's making me feel very uncomfortable about what we're doing on our own, and the impact that this one document or one town has already been in existence since HRS 53 was established, or when this was established and it be implemented. It's tying into what Director Hart said earlier going back, he...when he thought we were talking about page 39 or...or whatever it was. And there's so many implications that have already happened, and I'm just wondering, is...how is it affecting a town that has been living with a structure, which HRS 53 allowed the MRA to then make decisions based upon its existing old town building...I mean, it kind of looks like...you know, like, Tamara, it looks like your...your Lāhainā

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Town where all the buildings are, you know, built next to each other, and it has very historic land use uses, you know, from years ago. And I'm just...your...your...this...what Jordan Hart said, it's making me nervous about we're...we're talking to ourselves and thinking that we're doing something, and I just wonder what the bigger implications are for a town that's been existing, you know, for generations. And it could be minor, but I mean what he said, it...it...it rang a bell to me that this is maybe more important or more far reaching, that I wonder if Erin Wade can talk about what has the MRA been doing in terms of outreach and talking about this, instead of us talking to ourselves. And who has it impacted, because there's a lot of old...old-time families there.

CHAIR PALTIN: Okay. Well, my preference is we got to get through this bill and pass it out of Committee right today. So...

COUNCILMEMBER SUGIMURA: Oh, I'm feeling uncomfortable about changing it though, Chair. Is...is...what I'm hearing us doing, you know, piece by piece. You can change "shall" to "must" and things like that, but if we start changing other things, you know, then what does that do? I mean Makawao Town is like historical. Like all the small towns kind of lived with this character of whatever when it was developed. The --

CHAIR PALTIN: And I guess --

COUNCILMEMBER SUGIMURA: -- Lāhainā Town...

CHAIR PALTIN: -- wouldn't it be the same, like when they're telling us to pass it as is and there's this Title 19 rewrite coming up, wouldn't it be the same this way or that way? You know, we're...we're trying to accommodate the Corp. Counsel because of some litigation going on, which I don't want to get into. But that's what we've been told, like pass it as is as fast as you can. And I think we have two more hours about to get it through, and I think we made some progress. And there's not too much more things going on. But the reason this all came up was because I feel that there was a redevelopment agency member that took that and used it for their own personal monetary benefit, and it caused a huge community uproar. And so in us fixing it, you know, it can be addressed after we pass it, but I...I feel like in that interim between the rewrite and settling the lawsuit, fixing it for the lawsuit, I'd like to be more conservative. When we go through the rewrite and more time can be set...spent on it because there's not a lawsuit hanging over our head, we can adjust it back like everyone's saying that we could in the other direction. But for my...for my comfort level because we've already seen what happened with a certain developer and development who was formerly on the Maui Redevelopment Agency, for this interim of time while we pass it to fix whatever the lawsuit is addressing to the Title 19 rewrite, I would like to be a little bit more conservative. When the rewrite goes through and there is more time and we want to change it back to something, at that time I would feel more comfortable is...is the way I'm feeling. Because we...we saw the example of what went wrong. And...and, you know, maybe it only applies to a hotel or one developer. But that's...that's my point of view. Like for this interim of when we fix it

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for the lawsuit to when the rewrite happens, I feel like we should be more conservative than less because we already seen it.

COUNCILMEMBER SUGIMURA: So if I could then, I don't mean to really take you down a path about the lawsuit because that's not what I was talking about. But what I was talking about is the character and the...the town that it is today. If you take away the...the hotel, you know, problem because it doesn't sound like that's moving forward anyway, and we're trying to stop something that's really not happening, I...I think. I haven't heard any more about the...you know, the...the...the hotel in Wailuku Town anymore. It definitely...you know, this lawsuit is definitely stopping it, it sounds like. I don't know, and since we don't really want to go down the Corp. Counsel path of talking about it, I'm going to guess by what I read in the paper. But I...I totally understand what, you know, Director Hart is saying. If I'm looking at the town in general and the way that it is, you know, we're trying to...we're trying to carve out a let's hope it never happens again for this hotel to get built...I think. If that's the perspective we're going, and we're not supposed to talk about the lawsuit, then I'm going to guess, you know, like I'm trying to guess what we're all trying to do. But what we're forgetting is that we're talking about a town that's been existing for many, many years, and that I'm...I'm not sure...and that's a...that's a really good point that Director Hart brought up is, is it being affected by the people who are currently doing business or living there. I mean, the buildings were built long time ago, some of these are, you know, like Director said, it's...it's because of a church that's there, right. So are there other situations like that, that our actions are affecting? So Chair, I...I...I don't mean to take you down the lawsuit path because you already expressed yourself that you don't really want to go into Executive Session and talk about it. But I...I'm being...feeling very uncomfortable to the residents that are living there or the businesses that have been existing there. And I don't think we're trying to affect that, I don't think, you know, the Councilmembers are, but I don't know, I can only speak for myself, I don't know that our actions are changing something that's been existing there for a long time. And possibly the MRA has been acting based upon the rules that were established. And I mean, are...are we doing something that we don't really realize we're doing because we haven't had the public input? I...I don't know. So...

CHAIR PALTIN: Okay. Thank you. Thank you. And Member Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. You know I can understand, you know, we're having to go down this path in light of what's been happening, so I think it's legitimate for us to at least just take a look at things, change where we...where change needs to be made. And then maybe take a pause and do further review on certain areas where change is being considered. So anyway. But I just have just a general question for the Department. Will the Wailuku Redevelopment Area design guidelines need to be updated if this bill is passed? And if so, how long would it...do they believe it will take the Department to update the design guidelines? I guess maybe for Ms. Wade or Director Hart.

CHAIR PALTIN: Okay. Would it not...or just to further clarify Member Molina's question, would it not be part of the Title 19 rewrite? I thought that's what you had said, that

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like people had said that there was a Title 19 rewrite coming up, would it be part of that? Is that further clarify your question, Member Molina?

COUNCILMEMBER MOLINA: You know...you know, I think...well, because the current guidelines often reference the Wailuku Redevelopment Area zoning and development code which, you know, we're now trying to get...getting rid of, you know, incorporate it into the Wailuku Redevelopment Area if that is in Title 19. So I guess so, it may clarify it. But anyway, I don't know if you guys can make sense out of my question, but...

CHAIR PALTIN: Okay. Mr. Hart, is it due for an update in...in or without the Title 19 rewrite? Either within it or without it?

MR. HART: I'm not really sure. We'd have to really look at the changes that have...are being proposed or whatever does happen and see whether or not it...you know, how things change. I mean, we would be able to interpret it. I'm not seeing anything that's totally destroying the design character so far. The use...how the uses are supposed to work together, that is...I'm...I'm...I'm waiting to see how the dust settles on that. How long it would take to update it, you know, we would have to ask you for a budget, we would have to bid it. You know, probably like three years from the time that it's resolved that we're going to do that, we're going to ask for Council...ask for the money from Council, to have the money appropriated and then do the contract and get through the public engagement process--excuse me, I'll turn that off--the public engagement process. There's been talk about including this in the Wailuku Redevelopment...or sorry, the Title 19 rewrite, but there's also this initiative to what's going on right now. So if it's put in Title 19, we'd have to look at the contract and see, you know, how this relates to the existing resources that are allocated and all of those kinds of things. So I don't exactly know at this point, based on changes that are being made right now and how it's being handled in the current contract to...we can provide that information.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Director. So basically everything is contingent upon should this bill be passed, what has been changed, then you can kind of make that determination if we need to, you know, update the Wailuku Development Area design guidelines, yeah. So okay. All right. That...that clears...clears that up for me. Thank you, Mr. Director. Thank you, Madam Chair.

CHAIR PALTIN: Okay. I...I just want to try and focus us back and get done in an hour and a half. So we're on the height. Grade has been clarified and defined in the context of this 19.39.090. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. So in grade, the definition of grade, it says construction...site ground elevation of a building or structure before construction or after it has been prepared for construction, which sounds to me like it's existing ground elevation or after it's been graded for their new construction. So that it could potentially be higher if the plan was for it to be higher pursuant to Title 20 of this Code.

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CHAIR PALTIN: I did see Public Works on the call. Can you clarify for us what pursuant to Title 20 of this Code is? Or did they leave already, Public Works?

COUNCILMEMBER RAWLINS-FERNANDEZ: Maybe Deputy Director Hart. He's laughing, he might know the answer.

CHAIR PALTIN: Okay. That might be out of his wheel...oh, I do see a Public Works, they unmuted briefly. Okay. They're unmuted. Go ahead, Public Works.

MR. MOLINA: Hi, Chair --

CHAIR PALTIN: Hi, Mr. Molina.

MR. MOLINA: -- and Committee Members. Do you mind repeating the question?

CHAIR PALTIN: We were --

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR PALTIN: -- reading on page 6 the definition of grade, but we're not clear on what that means pursuant to Title 20 of this Code. We're on page 6, definition of grade, if you can explain what pursuant to Title 20 of this Code means in this context for us.

COUNCILMEMBER RAWLINS-FERNANDEZ: And it...and its...in its entirety, it says after it has been prepared for construction according to a grading permit approved pursuant to Title 20 of this Code.

MR. MOLINA: So Title 20 refers to the grading permit process and the grading ordinance, which would...generally speaking, if you're going to be modifying the height of land, you would need a grading permit, and so grade refers to what that final elevation.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So Deputy Director Molina, so in this definition of grade, it says 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. So does that mean basically natural grade or finished grade?

CHAIR PALTIN: In layman's terms.

MR. MOLINA: Sorry, I...catch up, I got to...but it sounds like yeah, either before construction --

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes, it sounds like...

MR. MOLINA: -- or after. So it's not necessarily natural grade if it allows you to modify the grading under a grading...

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CHAIR PALTIN: So it...it's not very clear to you, Deputy Director Molina?

MR. MOLINA: No, it says "or" so I read "or" to mean either...so before construction would refer to natural grade, after construction would be finished grade. So either is acceptable for the way --

CHAIR PALTIN: Okay.

MR. MOLINA: -- this definition is written.

CHAIR PALTIN: Okay. I see Deputy Director Hart, the other Jordan with his hand up. Let's go with that one.

MR. HART: Chair, the...the...that was why I made the comment that grade is a component of the...grade is defined, but it's a component of the definition of height. So you have to establish what the word means in order to use the definition of height, because grade is used in the definition of height. So grade...the...the definition of height in Title 19 talks about how you use the grade. That is what I had --

CHAIR PALTIN: Okay.

MR. HART: -- pasted into the chat earlier in this...

CHAIR PALTIN: Okay. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. And mahalo, both Deputy Director Molina and Deputy Director Hart. I understand what you're saying. Grade is just defining grade, it's not saying whether it's finished or natural. Therefore, in that section that Deputy Corp. Counsel Hopper pointed out on page 34, I believe it was, the building height, and it just says grade without a qualifier before it. So it...it would be either natural or finished. So we would have to add a qualifier to explain which grade we're referring to in height. So it's page 34, 19.39.090 building height, and wherever it says "grade" we would have to decide whether it's natural or finished.

CHAIR PALTIN: And for me, for consistency, I would go with what was pasted in from 19.04, the lower of either the natural or the finished grade for consistency. So is that a motion, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: So move. So move.

CHAIR PALTIN: Okay. Is there a second?

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: Second by Member Sinenci. Okay. So what we're doing here is just making it easier to understand height by defining grade as the lower of either the natural or finished grade as it appears to be defined in 19.04.

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MR. HOPPER: Madam Chair?

CHAIR PALTIN: Any further discussion?

MR. HOPPER: Madam Chair?

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: I'm sorry to interrupt. It's just like with other sections of the Code, you're making a change here. And I don't know currently how this has been applied to properties in the Wailuku Redevelopment Area, and I don't know if this change would...at all, how it would affect current owners as far as making them nonconforming as far as heights or other things like that. It may not, I don't know...

CHAIR PALTIN: Thank you, Mr. Hopper. You're totally pointing out the problem because we asked that question at the start of this discussion, and nobody could answer it. So that's exactly the problem we're trying to fix.

MR. HOPPER: So...so...well, I mean the advice is though, if has been interpreted to allow that and there are buildings that have been built with that, making this change could render properties nonconforming. And I don't know if that's something that...that those owners are aware of or...or if that has happened at that point. And so I generally advise to get a clear answer from the Department on what effect, if at all, this would have. Because when I had worked on this ordinance, it was to take what was there and...and being applied, and put that into the Code. And now if there are changes, I don't know how that will affect things or affect the legality of the...of the...the section. So that's...that's my only concern I would have to point out.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez, were you going to suggest taking a ten-minute break to call Mr. Rapacz, or what?

COUNCILMEMBER RAWLINS-FERNANDEZ: Well...well, actually...well, one, I wouldn't...I would vote against passage of this bill without the amendments that we're making. And I still don't even know if I will vote in favor of the whole bill with the amendments. I haven't decided yet. I wasn't going to contact Mr. Rapacz, but I was going to suggest to Mr. Hopper if we added a date, if it would --

CHAIR PALTIN: Oh, that's a *(audio interference)*.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- *(audio interference)* that problem. So then moving forward, those that are existing, you know, nonconforming wouldn't be nonconforming because they already exist, and we're...we're saying from here forward.

CHAIR PALTIN: Mr. Hopper, would that rectify the situation that you brought up?

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MR. HOPPER: I think that if you...if you had said that those...this maybe will not apply to those that have gotten building permits granted prior with...that that would...that would suffice. I would still urge to understand how this definition applies currently though. I think that's very important.

CHAIR PALTIN: Mr. Hart, could Mr. Rapacz clarify this for us as the zoning ZAED guy?

MR. HART: I just sent him an email with...with the appropriate Staff to...to warn him that he better get ready for this. But I think that if you cold called him, whether or not he specifically remembered any recent applications, it would be the luck of the draw. I'm not sure...I'm not sure how often these provisions come into play or how many applications have been processed recently. But generally, you get Staff together and talk it out on who's seeing these applications, and then you compile your response, and then one person presents it to Council.

CHAIR PALTIN: Okay. I think that's kind of the problem, like it should be very clear how height is measured. We're seeing...we saw the issue at Maui Lani, Nāpili Beach House LLC, and so we're trying to help you help us help Corp. Counsel here. Let's add a friendly amendment of this is the date going forward, upon passage of second and final reading, which would be like a month out, legislative intent. Everyone okay with that friendly amendment of the date? Okay. So moving forward, we're trying to help you guys be clear on what height means. The motion was made, Member Rawlins-Fernandez, she had a friendly amendment to add a date certain when this would take effect, and that's legislative intent. Any further discussion? Okay. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: One, two, three, four...I see seven "ayes." Any opposed?

COUNCILMEMBER SUGIMURA: No.

CHAIR PALTIN: One "no." Okay. We have seven "ayes." Motion passes, one "no," Member Sugimura, and one excused, Member King.

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VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, and Sinenci.

NOES: Councilmember Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: Okay. So that was a backtrack. Prior to that, I believe we were just finished with page 39. I didn't have any changes for page 40. Couple of "musts" on page 41 that we agreed to. We didn't have any changes on page 42. A few "musts" on page 43. On page 43, at the bottom, number C.3., I think this is similar to page 39 where we should keep both of the Maui Redevelopment Area and the conditional permit because of the prior work we did. So I'll entertain a motion to add conditional permit --

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: -- in addition to Maui Redevelopment Agency use permit since some are one and some are the other. Looks like it was moved by Member Sinenci --

COUNCILMEMBER LEE: . . .*(raises hand)*. . .

CHAIR PALTIN: -- seconded by Chair Lee. All those in favor...or any discussion? All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Eight "ayes." Measure passes unanimously with Member King excused.

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VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: Okay. On page 44, I just had some “musts” that is nonsubstantial. Page 45, this looks like where we’re getting to Member...or Deputy Director Hart’s thing. And then maybe we should do both again, Maui Redevelopment Agency and conditional use permit because of our prior actions to change some of the ones from Maui Redevelopment Agency use permit to conditional permit. Is that a...oh, I thought that was a motion from Member Sinenci, but it looks like he’s eating a snack.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: Oh, that was a motion. Okay. Motion by Member Sinenci to add conditional permit --

COUNCILMEMBER LEE: . . .*(raises hand)*. . .

CHAIR PALTIN: -- in addition to Maui Redevelopment...second by Chair Lee.

COUNCILMEMBER LEE: No, I also wanted to let you know that Jordan Hart had his hand up.

CHAIR PALTIN: Oh, I didn’t see that. Okay. Deputy Director Hart?

MR. HART: Chair, so...

CHAIR PALTIN: I think we have a motion by Member Sinenci, a second by Chair Lee, and then now we’re going to Deputy Director Hart. Go ahead.

MR. HART: Thank you. So previously...I made my comments too early, but it’s...the sentiment is the same that basically I...I completely understand the concern on the potential for large impact actions that did exist in the Code as was...as it existed. And...and I do understand the concern about how the Code was formed, and it seems like those things are being addressed. But there’s these much smaller things, these

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affect much smaller parcels that seem to have been working fine. We're changing the authority for all of these actions up to the Council level, and I really think that you're going to convert the intent...it's...this Wailuku Redevelopment Area is not going to function the way it was intended. And if that's the intent of the Council, that's fine; but if...if the intent of the Council is just to eliminate the potential for significant harm so that the Council can be the deciding body on that and to procedurally correct the creation of the...of the enabling legislation, I...it would be great if you would reduce it to those specific things rather than adding the requirement for conditional permits to all of these small things that, you know, have not been issues of larger concern for the community, and have seemed to have been functioning well over this period of time. And there has been a good amount of redevelopment, the Wailuku...in this...this town, and it was pretty bad before this...this Zoning Code was established and the function of the MRA was established. So I think that it has shown that it's worthwhile, and that making all these changes so quickly is...it's going to have dramatic effect, and we're going to have to figure out how it...it all works together. But I think that it's going to kind of be a little dysfunctional period before there's a total overhaul, so I would just kind of ask you to see if there's an option to preserve the function of the area while eliminating the large concern items.

CHAIR PALTIN: Thank you, Mr. Hart. And in my response, I don't feel comfortable putting it in the Code as is with the...these things. Like they said oh, we can go back and change it. We can still go back and change it, you know, if...if these issues come up that we took it. But I'm just erring on the side of being conservative. If something comes up that they want a redevelopment...redevelop and they say hey, this conditional permit is an unwieldy process, we can go change the Code in the other direction. But for me, you know, this was written in 2002, and so it kind of is due for an update. It's about 20 years later. So I think an update wouldn't be a bad idea. We...we try to update our community plans every ten years. Wailuku-Kahului is next up after South Maui. So I mean, it's just the same thing that we've been told, but in the opposite direction. Like pass this now, and you can fix it later. Okay. We're passing it now in a way that we feel comfortable, and if somebody comes up and say this is too unwieldy, we can fix it later in the other direction as well. And the timeline is not mine necessarily, it's still based on litigation. So if we're not comfortable with these fast changes, that is fast because of litigation, as well as the Charter deadline. Okay. Ms. Wade...oh, Member Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Just for clarification, we're just...we're not removing MRA in this motion, we're just adding conditional as an option, yeah?

CHAIR PALTIN: Correct. Because some of the things that we changed before are conditional and some are still MRA. So it's to give greater flexibility in this case than just MRA or just conditional. Ms. Wade? Did you have...

MS. WADE: Thank you, Chair. I just wanted to...I do. I just wanted to acknowledge that parking is tied to use, not to the building. So you have to just keep in mind because Wailuku is the lowest rent space for businesses now, there's a lot of turnover, there can be a lot of turnover. So as Director Hart was saying, what's a yoga studio today

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could, in six months, be an office space, which in another year and a half could be a restaurant space. And each of those each time they're opening, they're reviewing the parking requirements. And so for a lot of these properties that have no potential of onsite parking, that parking abatement question comes up over and over and over. So just keep in mind in terms of your folks' workload is that do you want to be seeing that as often as...however many businesses are in Wailuku needing parking abatements, is that...what is the impact to your folks' schedule? So I just wanted to inform you that yes, it does come up when there's new construction, but far more often it just comes up when there's a change in tenancy in an existing building.

CHAIR PALTIN: Okay. Thank you. All right. So any further discussion? We're not taking out Maui Redevelopment Agency, we're just adding conditional. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. We got seven "ayes." All those opposed raise your hand and say "no."

COUNCILMEMBER SUGIMURA: No.

CHAIR PALTIN: We got one "no." That measure passes, seven "ayes," one "no," and one excused, Member King.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, and Sinenci.

NOES: Councilmember Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: Moving on to page 46, there's a number of "shalls" changed to "musts." Number 47, I didn't propose any changes to parking angle, aisle width or spaces according to the section. There's a lot of "must" changes. Moving on to page 48, more "musts." No changes to use or use category, floor area, or loading spaces, from me. Just a bunch of "musts" on 48 and 49, 50 and 51, more "musts," couple "is." 52, more "musts," a "has." Okay. 53, my proposal on 1.d was for Maui Planning Commission with input from Maui Redevelopment Agency. You can take it, you can

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leave it. Member Sinenci?

COUNCILMEMBER SINENCI: Move.

CHAIR PALTIN: Oh, was that a so moved? Okay.

COUNCILMEMBER JOHNSON: . . .*(raises hand)*. . .

CHAIR PALTIN: And seconded by Member Johnson. Okay. The proposal is to give the authority to Maui Planning Commission with input from Maui Redevelopment Agency. Any discussion? Seeing none. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Three, four, five, six. Six "ayes"...seven "ayes." Any opposed, raise your hand and say "no."

COUNCILMEMBER SUGIMURA: No.

CHAIR PALTIN: One "no." So we have seven "ayes" and one "no," Member Sugimura, one excused, Member King.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, and Sinenci.

NOES: Councilmember Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: Okay. Following on down we have a bunch of "musts." Page 54, there's a bunch of "musts." On page 55, E.1 and E.2, it talks about legal uses existing at the time of adoption of this chapter must be grandfathered, and may continue without having to obtain administrative review, Maui Redevelopment Agency use permits, or variances. And on 1 and 2, I'm going to include conditional permit. So that's just grandfathering existing things in without having to get any of those types of permits or variances. To let the folks that are existing, they don't have to get a administrative review permit, they don't have to get a Maui Redevelopment Agency use permit, they

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don't have to get a variance, and they don't have to get a conditional permit. So because we were adding conditional permit, I thought it would be good to specify they don't need to get a conditional permit either because it's an existing at the time of adoption of this chapter. So it's not making it tighter, it's keeping it as it is, clarifying no conditional permit.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: Looks like Member Sinenci is making the motion.

COUNCILMEMBER JOHNSON: . . .*(raises hand)*. . .

CHAIR PALTIN: Seconded by Member Johnson. Any discussion? Everyone aware of what we're doing here? Member Johnson?

COUNCILMEMBER JOHNSON: I approve of this because I think this addresses a lot of conservation we had about what this would do to affect the people who are already there, so I like the idea of grandfathering it in. Thank you, Chair.

CHAIR PALTIN: Okay. Member Sugimura, was your hand up?

COUNCILMEMBER SUGIMURA: So I...I understand what you're saying, is...does Mr. Hart have any comments or...or Erin Wade?

CHAIR PALTIN: Okay. Either Mr. Hart or Mr. Wade...or Ms. Wade, I'll let you folks decide who you think is the most appropriate to speak to this. Anyone...or not. Ms. Wade or Mr. Hart, any comments? I'm just saying that folks wouldn't need a conditional permit if they're already doing the usage as of this date, the date the thing passes.

MS. WADE: Chair, you're looking at 19.39.140; is that correct?

CHAIR PALTIN: 19.39.150.E.1 and 2, the bottom of page 55.

MS. WADE: Yes. I mean, this has been used quite a bit within the district. It doesn't cover conversions of uses in existing structures. So like I said, when law offices inhabit historic homes, that's happened quite a bit, or accounting firms, they still need to go in and get variances because it's a change of use. But --

CHAIR PALTIN: Okay.

MS. WADE: -- this does protect the continuation of an existing use.

CHAIR PALTIN: Yeah. That was the question, are you for the...adding of conditional permits or are you against it in this case?

MS. WADE: Oh, I...I won't weigh in on...on that, that can be up to you folks.

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CHAIR PALTIN: Oh, okay. All right. Ms. Sugimura, is your concern been addressed?

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: Yes.

CHAIR PALTIN: All right. Call for the question. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. Looks like unanimous, with Member King excused.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: We made those changes to E.1 and E.2. Moving on to page 56, couple of "musts." Page 57, couple of "musts." At the bottom, C.3, we just added types of applications to include Maui Planning Commission as well. Any...general application requirements, we added Maui Planning Commission. Any motion?

COUNCILMEMBER MOLINA: . . .*(raises hand)*. . .

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: Moved by Member Molina, seconded by Member Sinenci. Any...

COUNCILMEMBER MOLINA: Hold on. Madam Chair? Madam Chair, sorry, was more of one question. Sorry.

CHAIR PALTIN: Oh, sorry about that.

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COUNCILMEMBER MOLINA: For the Department.

CHAIR PALTIN: Okay. Go ahead, Member Molina.

COUNCILMEMBER MOLINA: Yeah, I just want to get...just want to get Director Hart's take on that, this proposed amendment.

CHAIR PALTIN: Okay. Director Hart, do you have a comment on the proposed amendment of...we're on page 57, 19.39.160, Section C.3, types of applications, and we're just adding in Maui Planning Commission to the list of application. Any comment, Deputy Director Hart?

MR. HART: No. I mean, nothing different from the prior comments I made about...about the purpose of the district and . . .*(inaudible)*. . .

CHAIR PALTIN: Okay. All right. So we're in the middle of the motion, let's take this vote and then take a break, take a recess. Any further discuss...or wait, we don't have a motion yet because I thought Member Molina made a motion, but he was asking a question.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: So Member Sinenci is making the motion. Is there a second?

COUNCILMEMBER JOHNSON: . . .*(raises hand)*. . .

CHAIR PALTIN: Seconded by Member Johnson. Any discussion? All those in favor, raise your hand and say "aye." Or Member Sugimura, are you voting or discussing?

COUNCILMEMBER SUGIMURA: So I just wanted to just say I'm going to vote against this because I think we're adding another layer of a approval process that may be difficult. So I'm going to vote no.

CHAIR PALTIN: Okay. Thank you. Member...Chair Lee? Can't hear you.

COUNCILMEMBER LEE: I was voting.

CHAIR PALTIN: Oh, sorry. Okay. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Seven "ayes," one "no," and one excused. Measure passes.

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VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, and Sinenci.

NOES: Councilmember Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: And let's take a...you guys are doing good. We're on page 58, so I'll give you guys a 15-minute break. We'll return at 3:45. Ready? . . .*(gavel)*. . .

RECESS: 3:28 p.m.

RECONVENE: 3:45 p.m.

CHAIR PALTIN: . . .*(gavel)*. . . Will the Planning and Sustainable Land Use Committee meeting of September 22nd return to order. The time is 3:45. We have one Member that has a medical appointment at 4:00 p.m. and will need to drop off at that time, but if we're quick, we can finish before 4:00. Okay. So moving right along, we were on page 57, and we added MPC. On page 58, my proposal was to add conditional permits and special use permits. And the reasoning behind that is this section talks about all the types of applications there are. And the previous work that we had done, we made some things be conditional permits, some things be, you know, Planning Commission is special use permits. And so I just, you know, trying to be consistent and listing all the different types of permits there are. And I guess, you know, the legislative intent would fill in the applicable information related to conditional permit and special use permit. So this is more of a consistency thing than an additional thing. Any questions, or if somebody wanted to make a motion? Oh --

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: -- you guys hear me? Oh, okay.

COUNCILMEMBER JOHNSON: . . .*(raises hand)*. . .

CHAIR PALTIN: Member Sinenci move, seconded by Member Rawlins...oh, by Member Johnson or Rawlins-Fernandez...Member Johnson. Okay. Any discussion? Seeing none. All those in favor, raise your hand and say "aye."

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COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. This passes unanimously with Member King excused.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: Going on down we have one “shall” changed to “must.” Page 59, another “must” at the top. Okay. Now, number 59 on Section E talks about public notification. The following public notification requirements shall apply to Maui Redevelopment Agency use permits. Said notification requirements must not apply to applications for administrative review permits and design review permits. So I was just thinking that the public notification for conditional permits would be similar to Maui Redevelopment Agency permit, and maybe even special use permits. But I leave it to the Members to make that motion.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: This is about public notification. It looks like it’s been moved by Member Sinenci. Did you want to do conditional permits as well as special use permits? Yes. Okay. So we have a motion by Member Sinenci to make the public notification the same for a Maui Redevelopment Agency use permit, a conditional permit, and a special use permit, same requirements. Is there a second?

COUNCILMEMBER JOHNSON: . . .*(raises hand)*. . .

CHAIR PALTIN: Seconded by Member Johnson. So same requirements for those three types, not the same requirement for administrative review permit. Any further discussion? Member Sugimura?

COUNCILMEMBER SUGIMURA: I’m just curious if MRA or Mr. Hart could speak to this.

CHAIR PALTIN: Okay. Deputy...

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COUNCILMEMBER SUGIMURA: I'm sorry, Erin Wade...I meant Erin Wade. Sorry.

CHAIR PALTIN: Okay. Ms. Wade, any comments? We're just making the public information...public notification process the same for all the permits except for the administrative review permits. Any input on that, Ms. Wade?

MS. WADE: Just that, you know, that increases notification for design review, which the notification can be timely or...or time intensive, but it...it...

CHAIR PALTIN: Oh, sorry. Design review was not included, it says --

MS. WADE: Okay.

CHAIR PALTIN: -- said notification requirements must not apply to applications for administrative review permits and design review permits. Sorry, I left that out.

MS. WADE: Okay. Okay. Very good. No, I don't have any comments then.

CHAIR PALTIN: Okay. Sorry. Yeah, I...I...I just stopped reading when I shouldn't have.

MR. HOPPER: Madam Chair?

CHAIR PALTIN: Okay. Mr. Hopper?

MR. HOPPER: Oh, just to clarify, the conditional use permit is going to be one where the public notification does not apply, right? Because that's in 19.40...19.40 already has public notification requirements for the conditional permits. Is that...that was the intent?

CHAIR PALTIN: Oh, okay. I...I guess I...I missed that 19.40. So your recommendation is to let 19.40 conditional permit notification process be the one we go with?

MR. HOPPER: I mean, if you're going to reference conditional permits, Madam Chair, I think you could say pursuant to 19.40 of the Code and just make that clear. Because I believe that already requires a public hearing under 19.510.

CHAIR PALTIN: Okay. Thank you. And a further question, Mr. Hopper. Is there also a public notification process for special use permits as well that we can reference in the Chapter 19?

MR. HOPPER: Yeah, Mr. Hart can maybe clarify, but I believe special permits, special use permits also have the same public hearing requirements as conditional permits.

CHAIR PALTIN: Okay. Mr. Hart, can you verify that it's in 19.4 [sic] for special use permits as well?

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MR. HART: I have to verify that. I'm not sure that it's the same requirement, but they do also have notification requirements.

MR. HOPPER: It's a different section. I'm sorry, Madam Chair. The 19.40 are conditional permits, and special use permits are separate, but I think they both reference 19.510.020 as applications that require public hearings. Again, that could...that should all be verified and I think is correct, but I...I don't think you...you would want to have two separate public notification sections, one in here and one in...when you actually get to those types of permits.

CHAIR PALTIN: Thank you. Thank you for that clarification. So maybe the friendly amendment would be the applicable public notification requirements as is written in Title 19, and that would be our legislation intent. And then the Analysts can verify which exact area it is in Title 19. Is that satisfactory, Mr. Sinenci and Hopper?

MR. HOPPER: Yes. Yes, I think that's fine.

CHAIR PALTIN: Okay. So we're just clarifying that if it's a conditional use permit, it goes through the regular process in Title 19. If it's a special use permit, it goes through that notification process as written in Title 19. And friendly amendment...Mr. Sinenci accepted it. Was the seconder Mr. Johnson?

COUNCILMEMBER JOHNSON: . . .*(raises hand)*. . .

CHAIR PALTIN: Accepted that friendly amendment as well. Okay. So all those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. Measure passes unanimously with Member King excused.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

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CHAIR PALTIN: Okay. Review process on Page 60. And I included conditional use permit and special use permit because those were the two other types that we added on. And I think based on Mr. Hopper's advice in the previous section, we would say review process for conditional permits and special use permits must be processed as specified in Title 19. Or no need. Mr. Hart? Or you're not...shaking...

MR. HART: Yeah, my camera was on. No, I...I was wondering if you need to insert a section to address the Council's action in these situations because it's only written for the MRA.

CHAIR PALTIN: Yeah, that's why I was saying conditional use permit. Address the review process for conditional permit, which would be the Council's action, must be done as specified in Title 19? Would that be appropriate?

MR. HART: You might add something that...well, so basically, in Title 19, my understanding is if things are coming from the planning commissions. So I think that you might need to put it in here and talk about the transition between the MRA, whether or not the BVA is going to be included, and/or the Maui Planning Commission, and then how it goes up to the Council. Because none of the existing sections in Title 19 would have that configuration. Only...only between Planning Commission and going up, but it kind of has to be hammered out to be put in here because they're coming off the MRA.

CHAIR PALTIN: Okay. So the MRA is certainly invited to weigh in on conditional permit, but if you don't want the process to be any longer than it is, I would just say conditional permit as the regular process, right? Because MRA would be welcome to weigh in at any time, would be encouraged, but if we specify MRA review first, then this, then this, then this, it's lengthening a process that you said you didn't want lengthened, right?

MR. HART: Well, I did say that, but I didn't really understand that the MRA was basically marginalized almost completely. So I mean yeah, I think that...that there is a process outlined existing in Title 19. I think that there should be some correlation on which actions are done by the MRA and which are not. I guess I just didn't realize that the vision was that it would just...things would just go to the Planning Commission, skip the MRA. But I'm...I'm not proposing to add new layers.

CHAIR PALTIN: Okay. So I guess for me, I would say, you know, the special...special use permit and conditional permit process would apply as is written in Title 19, with the caveat that the MRA is encouraged to participate in that process, the existing process. Is...Ms. Stewart, would that legislative intent be clear to you?

MS. STEWART: Chair, would you mind repeating that?

CHAIR PALTIN: When we're talking about section F on page 60, the review process, the conditional permit and special use permit would apply as written in Title 19, and that the Maui Redevelopment Agency would be strongly encouraged to participate through the existing process so as not to add another layer of time and (*audio interference*).

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MS. STEWART: Yes, Chair. Thank you.

CHAIR PALTIN: Okay. So we don't have a motion. If anybody likes that, I think it's prudent for us to explain how the review process would work, and that would be my recommendation of how it should work. I mean, we could have it go through the MRA, go through that process, then go through the Planning Commission, go through that process, and go through the conditional permit process. But like Mr. Hart said, that adds another layer onto what we're doing. So just wait...oh, Member Sinenci?

COUNCILMEMBER SINENCI: Yeah, so moved.

CHAIR PALTIN: Okay. Moved by the legislative intent that I explained to Ms. Stewart. Is there a second?

COUNCILMEMBER RAWLINS-FERNANDEZ: . . .*(raises hand)*. . .

CHAIR PALTIN: Seconded by Member Rawlins-Fernandez. Any discussion? Seeing none. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. We have five "ayes." All those opposed, raise your hand and say "no."

COUNCILMEMBERS: No.

CHAIR PALTIN: Three "noes." Measure passes with Chair Lee, Member Kama, and Member Sugimura voting no, and Member King excused.

**VOTE: AYES: Chair Paltin, Councilmembers Johnson, Molina,
 Rawlins-Fernandez, and Sinenci.**

NOES: Councilmembers Kama, Lee, and Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

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CHAIR PALTIN: Okay. Continuing on down, page 60, we have a number of “musts.” Page 61, a number of “musts.” We go through urban design, talk about that. No real changes, a number of “musts.” Page 63, a number of “musts.” Then we get to page 64, no changes from me. Okay. Now we get to page 65, and this is what Chair Lee was very excited about, the variance procedures and standards. So...

COUNCILMEMBER LEE: I think you’re confusing me with somebody else.

CHAIR PALTIN: Oh, I...I thought you wanted to talk about the variances, no?

COUNCILMEMBER LEE: No, no. I mentioned earlier that according to the Planning Department, that was one of the main issues why we’re reviewing this whole...you know, all the rules and so forth from MRA. And that except for the variances and something about HRS, that’s all the changes they needed, you know, because it’s going through a review process.

CHAIR PALTIN: Oh, okay.

COUNCILMEMBER LEE: Yeah.

CHAIR PALTIN: My bad. I misunderstood what you were saying. Okay. So I believe this version is something that we had worked on for trying to address the testifier, Ms. Mahina Martin’s concerns. So I’ll just read through it and...and Members can make comments. Number 1, so this is not really changing anything on page 65 about the variance procedures and standards. Number 1, it just says for all areas of Maui County outside the Wailuku Redevelopment Area, the following criteria should [sic] apply. So that’s the...the standard procedure that goes on for anything that gets a variance right now, a, b, and c. So then we get to section...or number 2, within the Wailuku Redevelopment Area: Variances from...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...variation is consistent with the objectives of conservation (the preservation, maintenance, and management of natural or manmade resources) or economic revitalization and...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 the...forward the vision, principles, and objectives of this Wailuku Redevelopment Plan. The board shall not grant use variance for parcels designated for single-family use in the Wailuku-Kahului Community Plan. Mitigative...or I guess that should be must not grant use variances for parcels designated for single-family use in the Wailuku-Kahului Community Plan. Mitigative measures must be incorporated into the project, as required, to protect public health and safety. And then the Board of Variances, that’s pretty standard, D and E. So any conversation? I believe Ms. Martin did get input from Ms. Wade. Ms. Wade, any comment on the section as read? It’s in Granicus on page 66 if you didn’t catch everything that I read out loud.

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MS. WADE: Yeah. I don't have any comments. What you read is what is in the existing Code, and is what the MRA sent up, so I don't have any comments on that.

CHAIR PALTIN: Oh, that's...that's what's in the existing Code?

MS. WADE: Yes.

MR. HOPPER: Madam Chair?

CHAIR PALTIN: Yes, Mr. Hopper?

MR. HOPPER: Oh, just a note. There's a little bit of an error in subsection d, starting from the board shall not grant use variances for parcels. That should be separated out of subsection d. That's intended to apply to basically subsection 2, to...to all variances, not just part of subsection d. So it's sort of a nonsubstantive amendment to take that out of d and just put that in generally the way that the old Code read. I think that was just an error in copying that over. So that shouldn't be part of subsection d, that should just be after a, b, c, and d. That should be just a general section applying to all variances in Wailuku Town was the intent.

CHAIR PALTIN: Okay. We'll get to that after that we get to...finish part 2. I think I got that...the amendments were on this, but let me find them again. Sorry, my bad. Thank you, Ms. Wade. Try to find that. Okay. Here we go. Okay. 2.a was the same; b, should have been local practices and customs, and neighborhood character, that are long established in the area ensure the continued market community acceptance of the variation; and c, the design and plans for the site incorporate improved or compensating features that will provide equivalent desirability and utility, so that's the same; Section d, after slum and blight is added, the reuse and revitalization of historic buildings and assets. So it should read, the project will further the elimination of slum and blight, the reuse and revitalization of historic buildings and assets, 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. So there's one, two, three main...main changes to that. In b, we added neighborhood character and community acceptance; in d, we add in the reuse and revitalization of historic buildings and assets. Now, Ms. Wade, how's that one? Oh.

MS. WADE: Sorry. Thanks, Chair. I think the...the only correction or...or change that I discussed with Ms. Martin was to take in...in b, local practices, further down that sentence, taking out "continued market acceptance" and replacing "market" with "community." Because the concern was that the community should drive the expectation, not the market.

CHAIR PALTIN: Oh, okay. So strike "market," replace it with "community."

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MS. WADE: Right.

CHAIR PALTIN: And then local practices and customs, as well as neighborhood character, or was it local neighborhood character and practices and customs?

MS. WADE: It was local practices and neighborhood character, so just removing “customs,” because that was difficult to define.

CHAIR PALTIN: Okay. When I did discuss those changes with Mr. Mitchell before he went on vacation, he said legally, practices and customs come as a unit, and they’re easier to understand if you keep practices and customs together. And so we just kept that together and did neighborhood character. Mr. Raatz, did Mr. Mitchell discuss that with you? Is he on the call? Oh, he’s not on the call. Sorry, talking to myself. Mr. Forrest, did Mr. Mitchell discuss that with you about practices and customs meaning something together and not meaning something with just practices in legalese?

MR. FORSYTHE: Was that question for me?

CHAIR PALTIN: Not, it was for an attorney. Sorry.

MR. FORSYTHE: Okay. Sorry about that. Yeah.

CHAIR PALTIN: No problem. Thank you for being responsive. Let’s see. Okay, try another attorney. Mr. Hopper, does practices and customs mean something when you put it together that it doesn’t mean if you just say practices in legalese?

MR. HOPPER: I would assume using the word “customs” has a...has an intended meaning, so I wouldn’t necessarily change that unless there was some intention to...to change the meaning of it.

CHAIR PALTIN: Okay. So we’re having local practices and customs in addition to neighborhood character is...was our regular attorney’s advice on the proposed language. Member Rawlins-Fernandez, did you have a question? Followed by Member Molina, followed by Member Lee.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. Well, in the law that I studied, we would write it customary practices, so I don’t know if you want to write it that way. And I like also having the neighborhood character in there. So I would...I would keep them all. But if you want to, you know, instead of practices and customs and you say customary practices, local customary practices, that...that would be understood too.

CHAIR PALTIN: Okay. Mr. Hopper, is that your understanding as well, customary practices would be understood legally?

MR. HOPPER: Sure. I...I...I would probably recommend keeping just local practices and customs as is if...if your intention is to say if there was a practice or a custom in the

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Wailuku Town that...that...that might not be in conformance with the Code, but has...is, you know, prevalent in the...in the area, I think that that's the idea behind that language. So if you're okay with, you know, if something has been a longtime or...or generally a local practice and custom and...and is...is present there, even though it doesn't strictly comply with the Code, then that's something that you would...you would want to...to keep to allow. Probably a lot of the substandard lots and substandard parking and things like that would be what you would be allowing. So I think most important is what you want to allow potentially through...what you'd like the BVA to allow, and if it's a local practice or custom or customary practice, I don't think those are major substantive differences, but would probably advise just keeping local practices and customs as is. And if you want to add that additional language I suppose you can, but the most important thing is what you want. So this would basically say if something's longstanding there, even if it doesn't comply with the Code, a variance could allow that in...in that circumstance.

CHAIR PALTIN: Okay. I saw Mr. Hart raised his hand. Were you going to say something germane to this discussion?

MR. HART: I hope so, Chair. I was going to bring up the community character concept. So this had been originally established as urban renewal to eliminate slum and blight. And basically, you know, what does...what does the character of the community mean in that context. If these are supposed to be redeveloped properties, and the prior character of the community had been dilapidated, is redeveloping deviating from the character and then no longer qualifying you from the...for the variance?

CHAIR PALTIN: So did you want community character instead of neighborhood character, or were you discussing neighborhood character and you just used the word "community?"

MR. HART: Oh, excuse me. I was...I was focused on the word "character." Basically, you know, the prior character of the area had been...had been basically run down, and the redevelopment intent was to improve it. So if the variance criteria is that you're consistent with the character, you know, which...which character are we talking about? Are we talking about the past, you know, rundown character? And is that...excuse me, I got a call.

CHAIR PALTIN: In this I think we're...we're talking more about the neighborhood character rather than the...the business area. Like would you have called the neighborhood slum and blight 20 years ago?

MR. HART: The...it would depend. I mean, select houses I'm sure were...were rundown. There has been...there has been many houses that have been completely renovated that were really...really in bad shape. So I mean, selective. I guess what I'm trying to say is that...

CHAIR PALTIN: I think that's across the whole entire County though, right? I mean, it's not specific to Wailuku.

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MR. HART: Perhaps, but that was the intent of...of establishing this area and creating this Code was to try and turn that around. And basically what I'm trying to say is that this is...if this had been...the intention of this had been some sort of transitional code to basically improve the area, you're tying the...the future improvements to the past character, you know, is that having the intended effect or not. I just wanted to raise that.

CHAIR PALTIN: Thank you. I think from what Member Sugimura had said in the past, it's about how she remembered it, and revitalizing it, but keeping that historic neighborhood character that she remembered and Chair Lee remembered while growing up, that look. But I think we're on Member Rawlins-Fernandez's question right now. So was your question answered, practices and customs? Keep it same as customary practices?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, I...I don't have a preference. That's fine. If you want to keep them separated, I don't really have a strong preference. But I...I do want to comment on what I just heard come out of Deputy Director Hart's mouth --

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- regarding slum and blight. And I think that's...it...it's pretty subjective. I wouldn't call Wailuku Town slum and blight. I think that's so offensive. And...and I understand, I understand before I was born Wailuku Town looked like something different. I get it, I get it. But I think one of the main things that the community is like fighting to protect is against gentrification, against Wailuku looking like small California. You know, like they're fighting to keep it to be boutique shops, locally-owned businesses, and not somewhere that you would go to L.A. and see. So you know...sorry, Chair, what'd you say?

CHAIR PALTIN: Strip malls.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, strip malls, just, you know, franchises that look just like any other cookie-cutter place. And if that is what, you know, we're trying to move toward, then...then I...you know, I object to that. Like I think even though, you know, at...at...at a time before I was born it...it...it looked different, there were local hotels and inns and...but they were locally owned. They weren't owned by some multinational corporation, they were owned by our community members, right, and so that's what we want to preserve. I mean, that's what I want to preserve anyway, you know, and I'm...I've heard a lot of my colleagues on this Council say that they want more locally owned. We all want to uplift our community members in...in having little boutique shops, and I think that's part of the overall character. Even though like the old...the buildings are getting older, and you know, I...I...I heard Deputy Director Hart say that...you know, that the MRA has been a good return on investment. And I don't know, I think...I mean, with all the time and money we've invested in the MRA and in laws for the MRA, I think it would have been better if we just provided no-interest loans to...to the business owners there so that they could fix

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up their buildings and bring them up to Code if possible, and...and just, you know, renew them. And that way they would stay in locally-owned hand.

CHAIR PALTIN: Okay. Thank you. Member Molina, followed by Chair Lee, followed by Member Sugimura. If we can keep it to two minutes, that would help our cause, but you know, I didn't start the clock earlier, so the honor system.

COUNCILMEMBER MOLINA: Okay. Thank you, Madam Chair. I'll try to be on my honor. Just with that letter b, the...where it states local practices and customs that are long established in the area ensure the continued market acceptance of the variation. Now, there's a proposal to change that to community acceptance. And I'm just wondering if maybe we should define that or strengthen that with additional language. I mean, what is community acceptance? Is that going to be based on oral and written testimony or surveys or...and the like? So that would kind of be my question, maybe for Corp. Counsel, if we should add specific language to strengthen that...that language. I was thinking of, you know, like maybe be real specific. Okay. There's community acceptance, and add to that, as reflected in oral and written testimony, and anything else. So that way we have something that...that...that's a measurable, so we can measure what is...what exactly is that community acceptance. So if I could get some thoughts from Corporation Counsel or the Director, Madam Chair?

CHAIR PALTIN: Good point, Member Molina, too, because we have the old community of Wailuku that maybe lives someplace else now, or the new community that bought in there. So this was worked out with Ms. Martin and Ms. Wade. But Corp. Counsel, do you have any suggestions, or is it a problem to say community acceptance? I guess, you know, basically not public outrage or any comment?

MR. HOPPER: Thank you, Chair. Again, I wasn't...I didn't participate in that language decision, so I think whatever the intent was could be reflected. I think if you put that in there and then it would give...the BVA would be able to review that and determine that for themselves, along with the other criteria. Again, this states that if one or more of the conditions justify this variation, it can be...it can be there. I don't know if you want to include this in this subsection b, or add a new subsection, I'd say. If you want to define it more closely, that's...that's fine too. I don't know if you'll necessarily have oral or written testimony in all these cases. I do think generally, variances have public hearings, but I don't think that you necessarily have to like Council does. These are...these are I think contested case hearing, so it might be a little different with how oral and written testimony are...are heard. So I mean, my...my main advice is if you...you know, I think you can leave it as is, but if you want to add clarity, you can. And as far as the intent, I'd want to know that from the drafters, what...what you were really getting at there.

CHAIR PALTIN: Okay. Ms. Wade, did you want to comment as to intent in your discussions with Ms. Martin?

MS. WADE: Yeah, I can just state I talked to Ms. Martin following the discussion last week about her questions and concerns, and the concern was specific, very specific to the

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most recent proposal. And the concern just being stated that yes, the market does show a strong need for hotel, that there is a huge market demand for hotel, but that doesn't necessarily mean that that's what the community wants to see. And so relying exclusively on market in that statement is discounting the needs of the community, I think what reflect her thoughts. So replacing...replacing the word "market" with "community" was something that we discussed. These aren't my changes, these are just reflections of my conversation with her.

CHAIR PALTIN: Thank you. So I guess to answer Member Molina's question, we would be kind of...you know, no public outrage or leaving it up to the Board of Variances to determine community acceptance, unless somebody wanted to clarify or define what community acceptance was basically. Does that address your issue? I guess Mr. Hopper is okay with it as it's written. But you would be free to clarify it if you had some proposed language.

COUNCILMEMBER MOLINA: Yeah. I guess, you know, I'll leave it up to...to...to the body if you want...we want to get even more specific on it. Like I said, just...just in...because when I hear community acceptance, it seems somewhat broad. And it's like okay, well, what specifically is community acceptance; oral testimony, written testimony, surveys, and the like? I mean, even a market survey is...could be potentially a...you know, it's something in the community, right? Now, who does the market survey, I don't know. Typically it's some organization that's out of town. So I mean, I can agree with, you know, inserting community acceptance instead of market. But you know, like I said, I just wanted to bounce this idea off you, Madam Chair, and the Committee if...if we need to get that specific. So I'll just leave it at that, Madam Chair. If...if Corporation Counsel feels it's okay to leave it as such, then so be it. But I just --

CHAIR PALTIN: Thank you.

COUNCILMEMBER MOLINA: -- don't want to create...you know, to ensure that we don't have any controversies in the future. Somebody may argue well, what is the community acceptance being based on, you know, where is the measurable, how do we measure that, yeah? So...

CHAIR PALTIN: Yeah.

COUNCILMEMBER MOLINA: And if it's not reflected in the Code then, you know. So that's why, you know, with any type of legislation, you want to be as specific as possible so you don't have any types of different interpretations, yeah. And then --

CHAIR PALTIN: Thank you.

COUNCILMEMBER MOLINA: -- you get stuck in the weeds. Yeah.

CHAIR PALTIN: Yeah.

COUNCILMEMBER MOLINA: Or...or what is that --

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CHAIR PALTIN: . . .*(inaudible)*. . .

COUNCILMEMBER MOLINA: -- Councilmember Johnson's term, curmudgeons or whatever it's called.

CHAIR PALTIN: Kerfuffle. We don't want no kerfuffles here.

COUNCILMEMBER MOLINA: Yeah. Okay. That...that was the reason for my question, but anyway, I'll leave it at that. Thank you, Madam Chair.

CHAIR PALTIN: Okay. And next up we have Chair Lee.

COUNCILMEMBER LEE: Thank you for your...sharing your concerns, Member Molina. I just love how this particular Council tends to slaughter the English language. Curmudgeons? Oh, that's a cute one. Okay. So my comment, Madam Chair, is...is really...I can't...I can't imagine anybody in their right minds wanting to invest in Wailuku Town. Not with this loads and loads and loads of conditions and...and layers and layers and layers of regulation. Because the Vice-Chair touched on it for...briefly when she said this...this is a revitalization project, and so we're supposed to be coming up with incentives for the shopkeepers, yeah, the owners. But what we're doing is spending a whole lot of time on well, concerns of one person. And as Member Molina said, you know, we need to have, whether it's the results of a survey or some kind of broad base input or feedback from the community, which we're lacking. And secondly, we seem to be only concerned about the shoppers and not the shopkeepers. But you see, the shoppers don't invest in the town as far as running a business and taking the risk of a business. So I think that we may sometimes get carried away with coming up with too many regulations. Because if we keep on this track I think the town will turn into slum and blight. Because who can afford...who can afford to invest in this old town? It's...it...and it's symbolic of every little town, whether it's Makawao, whether it's Pā'ia, whether...you know, whether it's Hāna, whatever. It...it doesn't matter. There's no way we can go back to the old days, you know. What we remember, Member Sugimura and myself, it's...it's not going to come back. It's not going to come back. So...but still, we can somehow retain the flavor of the past. And you know, perhaps we should come up with regulations that are feasible and workable, and...and even have a few incentives. You know that idea of a loan is not a bad idea, a loan program, because how else...because I can just imagine...because growing up in that...that town, the...the standards were very low. So if I was a shopkeeper and I wanted to build a fence, probably I couldn't because there's not enough setback, and there's not enough this, and there's not enough that. So again, you know, it...and then if I do want to build a fence and I have to go through layers and layers and layers of approvals, I'm going to say you know what, I'm not going to build a fence, never mind the fence. So --

CHAIR PALTIN: Chair Lee, there's --

COUNCILMEMBER LEE: -- we just have to be careful.

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CHAIR PALTIN: -- three...

COUNCILMEMBER LEE: Did I exceed my two minutes?

CHAIR PALTIN: Kind of. And...and we're trying to focus in on the variance here. There's basically three changes talking about neighborhood character, community acceptance, the reuse and revitalization of historic buildings and assets. If we can focus in on that wording, then we can be done with this. It's already 4:30, my kids have swimming --

COUNCILMEMBER LEE: Okay.

CHAIR PALTIN: -- at 5:30.

COUNCILMEMBER LEE: The reason...the reason for the market acceptance, there's a reason for that. There's got to be a market. You know, you cannot just have happy days are here again, and then nobody goes and buys things. There's a tremendous turnover at...you know, in...in town, as it is everywhere. Look at Sears leaving. So the...the...the point is, there's got to be a market. So you...I don't think you can dismiss that. You can include community acceptance or whatever you want, but market acceptance is also very critical, otherwise the train is not going to go. Thank you.

CHAIR PALTIN: So you'd like market and community acceptance? Is...

COUNCILMEMBER LEE: Yes, I would.

CHAIR PALTIN: Okay. All right. So no motion yet, we're still in discussion. Member Sugimura, if we can keep it tight to the variance part that we're discussing right here.

COUNCILMEMBER SUGIMURA: So I wanted to explain the term "slum and blight" as it relates to this whole town, and because it's so relevant to what you're talking about. It's a...it's a terminology that was used and it...what it got was funding from the Federal Government. Slum and blight is why we got funding for the Īao Theatre when we revitalized it. And...and the EDA, which helped get...you know. So there's so much more to this town than these words, and that I think the Members are...I so agree, we're trying to condition this, we're acting like this is a development project, and we're adding on layers and layers of making life difficult. So that's my...that's my speech.

CHAIR PALTIN: Okay. And...and I...I agree. I mean to me, the slum and blight is vacancies as we discussed in the vacancy tax. I mean, we have that slum and blight here in Lāhainā with all the vacancies, and then it like brings in like the homeless right in front of the vacancies, and it creates that disconnect. But sorry, Member Sinenci, you had your hand up?

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COUNCILMEMBER SINENCI: Yeah. Thank you, Chair. I just had a question for Mr. Hopper. So it looks like number 2 is kind of at the...at the center of this discussion. This is where the MRA has its, you know, variance criterias [sic] listed, whereas every other small town would just have the...the normal BVA process, yeah?

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Yes. This number 2 would apply to Wailuku Town only; although, I would say that I believe in some cases small towns, through their country town design guidelines, can have different standards in certain cases. So it's not really a variance, but generally speaking yes, the BVA would look...this is a special variance criteria for the Wailuku Redevelopment Area that does apply now, but...but the MRA applies it now because they grant variances. And this is being put into the Code, and the same processed being retained; however, it's going to be the BVA instead of the MRA that hears this, and they're going to hear it based on the standards that the MRA now would...now uses for variances in Wailuku Town. So that's...that's what this ordinance has right now.

COUNCILMEMBER SINENCI: Okay. Thank you, Mr. Hopper. Thank you, Chair.

CHAIR PALTIN: Okay. So what we have on the floor is changing (b) to local practices and customs as well as neighborhood character that are...that is long established in the area, ensure the continued market and community acceptance of the variation. And then (d) would change to, the project will further the elimination of slum and blight, the reuse and revitalization of historic buildings and assets, and forward...vision, principles, and the rest of it. So those are the small amendments to what...what was written in the original variance procedure.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: And...and if we can agree on that, we can cross this over the finish line. And then if folks want, they can update this and change it, but this is like to get us past the lawsuit for this time, and...and then propose that whole hearing with all the people and get to some other place. But looked like Member Sinenci moved to accept that, market...market acceptance and community acceptance, local practices and customs, and neighborhood character, adding the reuse and revitalization of historic buildings and assets, and forward the vision. So that's what the motion on the floor is.

COUNCILMEMBER JOHNSON: . . .*(raises hand)*. . .

CHAIR PALTIN: Is there a second? Second by Member Johnson. Any further discussion? Seeing none. I'll call for the question. All those in favor, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Six "ayes." Any opposed?

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COUNCILMEMBER SUGIMURA: No.

CHAIR PALTIN: One “no.” Measure passes with six “ayes,” one “no,” Member Sugimura, two excused, Member Kama and King.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Lee, Molina, Rawlins-Fernandez, and Sinenci.

NOES: Councilmember Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King and Councilmember Kama.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR PALTIN: And then now we can go to the portion that Mr. Hopper had talked to us about earlier. I believe he wanted section d to be section 5, is that correct, Mr. Hopper?

MR. HOPPER: No, it was just subsection d from...there's one sentence, and then the remainder of the...of the underlined portion should just be in another...another section. It should be under number 2, but not part of subsection d. So...because that's supposed to apply...that language is supposed to apply to all...all variances in Wailuku Town, not just things under subsection d. So the last two sentences that says, the board shall not grant use variances for parcels designated for single-family use in the Wailuku-Kahului Community Plan, that's true of all variances requests. And mitigative measures shall be incorporated into the project as required to protect public health and safety. That applies to all variances in Wailuku Town. And I checked the original language, and that wasn't...it was not part of subsection d. So that got inadvertently combined with subsection d. That should just be its own standalone part of number 2, I think, but not part of subsection d. So just...I think you would make a new paragraph after the first sentence of subsection d. I think it's a nonsubstantive amendment because that's what was in the original Code. But we can, I think, figure out exactly the...how they...how to get that in there that way. But I think it's...I think we would want to do that.

CHAIR PALTIN: Okay. Everybody completely understands what Mr. Hopper was talking about, and agrees that it's a nonsubstantive change; is that correct?

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COUNCILMEMBER LEE: Only that part.

CHAIR PALTIN: Okay. Only that part. All right. Okay. And that brings us to the conclusion of our review of Chapter 19.39, a new chapter in Title 19. I know nobody's happy with it, but we're just trying to get past this lawsuit, and then people can change it up and we can move forward. C'est la vie. Staff, is there anything...do I have to make like a big motion or we just changed it motion by motion, so are we done and we can adjourn and move it on to first reading?

MS. STEWART: Chair, did you make a motion to adopt the...to recommend adoption --

CHAIR PALTIN: Of the entire --

MS. STEWART: -- of the entire...

CHAIR PALTIN: -- thing?

MS. STEWART: Yes.

CHAIR PALTIN: No, I don't think we did do that.

MS. STEWART: I think you...you might want to do that.

CHAIR PALTIN: Okay. I'll entertain a motion to accept Chapter 19.39, as amended in Committee, and file the communication, and move it on to first reading. Is that the right way to say it? Okay. Here I got it, the right words. Members, the Chair will entertain a motion to recommend passage on first reading of the proposed bill, as amended, entitled "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;" incorporating nonsubstantive revisions; and filing of County Communication 21-156.

COUNCILMEMBER JOHNSON: . . .*(raises hand)*. . .

CHAIR PALTIN: Moved by Member Johnson.

COUNCILMEMBER SINENCI: . . .*(raises hand)*. . .

CHAIR PALTIN: Seconded by Member Sinenci. Any discussion? This one will have a one-minute clock on it. Go ahead, Member Sinenci. One-minute clock.

COUNCILMEMBER SINENCI: Mahalo, Chair. Mahalo, Chair, and mahalo for this process. Yeah, I think the work that we do and we've done, Wailuku is at the heart of our community. I think we all hold Wailuku dear to...to our hearts. It has both cultural,

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historical, and familial significance. So I'm happy that we can bring everybody to get through this...through this bill today. Thank you.

CHAIR PALTIN: Awesome, under a minute. Okay. And anyone else discussion? Member...Chair Lee, go ahead. Your minute.

COUNCILMEMBER LEE: I'm going to vote in favor of the motion, although, I don't agree with a lot of it. I think we have to move this forward. As a person who went to school and grew up in Wailuku, it...it was a wonderful experience, but there's no way you can bring that back. And I...I really believe that we're not providing the incentives that are needed to make this town revitalized. Thank you.

CHAIR PALTIN: Thank you. Under a minute. Okay. Member Sugimura, your minute, ready? Go.

COUNCILMEMBER SUGIMURA: I'm going to vote against the motion. And I understand why we did this, but I think we've taken ourselves too far away from the intent of HRS 53, the MRA, the things that have happened in the town ever since its inception. Although I understand where the Members were going, I think we were trying to eliminate a hotel being built, but I think what we're trying...what we ended up doing is taking a town and...I'm not even sure what the impact is, but I think it's huge. So I can't vote for it. Thank you.

CHAIR PALTIN: Okay. Under a minute, great. Anyone else? Member Molina, go ahead, one minute.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. I guess we're...we're sort of caught between a rock and a hard place on this one with the situation regarding the lawsuit versus the proposed changes that could disincentivize further improvements in the town. But it's something we...we unfortunately have to choose and do to avoid any potential longstanding litigation that could cost the taxpayers a bunch of money. So at this point, it's sort of a wait and see, and see what kind of effect it will have in terms of future investment in the town. So I will support. Thank you.

CHAIR PALTIN: Okay. Anyone else for their one minute? Member Rawlins-Fernandez, ready? Go.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. Two things...three things. One, I'm going to vote for this out of Committee because of the Charter mandate and we need to take final action, but I'll likely vote against it at full Council because I don't support this bill overall. I would like an opinion from Corporation Counsel to clear the Council of any potential Charter violations. I would like it in writing. I know it's been said multiple times verbally, but I'd like that in writing. And I wanted to also clarify that I...you know, I supported revitalization. Instead of the \$40 million going to a parking structure, I said that it would have been better used if we had a no-interest loan to the businesses instead of, you know, wasting it on a parking

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structure. So that's where that idea of a no-interest loan to these businesses came from. Mahalo, Chair.

CHAIR PALTIN: Oh, under a minute. Great. Okay. Anyone else? Seeing none. I'll give myself a minute. And you know, this...I invite folks, if this doesn't work out of them, to go through the process to start amending this bill as well. But because of the lawsuit, you know, we just took it in the other direction, as was our authority as explained to us by Mr. Hopper. Instead of changing it later to make it more strict, we can change it later to make it more loose. And if that's what the community or the market desires, you know, get started on it right away. And you know, I think nobody likes to be sued. We can be sued at anytime, anywhere, anyplace for any reason, and that's just the hand that we're dealt. So all those in favor of the main motion as amended, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Two, four, six...six "ayes." All those opposed raise your hand and say "no."

COUNCILMEMBER SUGIMURA: No.

CHAIR PALTIN: One opposed, Member Sugimura. Two excused, Member Kama and Member King.

VOTE: AYES: Chair Paltin, Councilmembers Johnson, Lee, Molina, Rawlins-Fernandez, and Sinenci.

NOES: Councilmember Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair King and Councilmember Kama.

MOTION CARRIED.

ACTION: Recommending FIRST READING of revised bill and FILING of communication.

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CHAIR PALTIN: This concludes today's Planning and Sustainable Land Use Committee meeting. Thank you to everyone who participated. The time is now 4:45. Great work, and this meeting is adjourned. . . .*(gavel)*. . .

ADJOURN: 4:45 p.m.

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use Committee

pslu:min:210922r:ds

Transcribed by: Daniel Schoenbeck

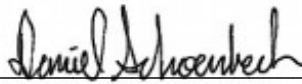
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CERTIFICATION

I, Daniel Schoenbeck, hereby certify that pages 1 through 65 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 26th day of October 2021, in Kula, Hawai'i

A handwritten signature in cursive script, reading "Daniel Schoenbeck", is written over a horizontal line.

Daniel Schoenbeck