

Maui Zoning 101

1. What is zoning? How is it different from a permit?

- a. Zoning is the law. It is adopted or can be changed through a legislative act by the lawmaking body.

It separates land uses and is always related to "health, safety, and welfare" of the public. It is an exercise of "police power."

- b. Permits *apply the law*, and granting them are administrative acts by the administrative branch of government.

They can be "ministerial" or "discretionary," and are most often governed by the application of administrative rules which have the "force and effect of law."

- i. Ministerial permits are automatically issued when an applicant meets a set of criteria. Examples could be building, grading, subdivision, plumbing or electric permits.
- ii. Discretionary permits are as the name implies – discretion is exercised by an individual or body within the administrative branch. Examples would be Special Use Permits or Special Management Area Use Permits.

2. State Zoning – Four Districts found in HRS 205. This section not only sets up the four districts, but is "enabling legislation" that grants powers to the counties to develop their own laws. When authority is shared, the counties can be more restrictive than the state, not more lenient.

- a. Urban. The Counties are given the most authority in this district. It includes our most urban uses, including hotels, apartments, single-family residences, industrial and commercial uses.
- b. Rural. The State shares administration with the Counties. This is supposed to be a mix of residential and small farms, but is mostly low density residential of not less than one-half acre. (Please note that Maui County has two Rural districts, one-acre and one-half acre.)
- c. Agriculture. The State shares administration with the Counties. Agriculture is supposed to be the primary use and "Farm Dwellings" are a secondary use. Lot size is not less than one-acre (Maui County is not less than two).
- d. Conservation. Divided into five subzones, the State holds all control in this area, though Maui has a say. Housing is never automatic, but requires a permit from the Land Board.

3. **County Zoning** is found in the Maui County Code, Title 19. There are 67 sections.

In general, each district is divided into sections:

- a. "Purpose and Intent" or "Generally." The section is very important because it provides guidance for interpretation when there are questions.
- b. Permitted Uses – What can you do in this zoning?
- c. Standards – Includes lot sizes, setbacks, yards, heights, and other criteria. Please note that many districts have other criteria.
- d. Special Uses. These require a discretionary permit by the Maui Planning Commission (or Molokai or Lanai Commissions).
- e. Special Zoning Districts
 - i. "Project Districts." These are specialized zoning districts that have a specific ordinance passed for them. Maui Lani is an example.
 - ii. Historic or National Landmark Districts. These areas are in Lahaina and Wailuku, and are administered by the Planning Department and the Maui Cultural Resources Commission. There are particular permitting requirements for building in these areas.
 - iii. Wailuku Redevelopment Area. Administered by Maui Redevelopment Agency, the district is to promote commercial activity in Wailuku Town. Again, review of projects is different in this area.

4. **Community Plans.**

- a. The County has nine community plans that are extensions of the General Plan. These are policy documents that say how to interpret certain situations. For instance, the Paia-Haiku plan prohibits bed and breakfasts on the shoreline.
- b. Each contains a land-use map that shows what exists and what is planned. Developments require "consistency" with the plans. This is an entitlement and is as important as zoning.

5. **Non Conformities.**

- a. True non-conforming uses, buildings, or lots are "grandfathered." Non-conformities are created when a use or structure or lot is lawfully created and then the law changes. These can continue within certain constraints as noted in MCC 19.500.

Examples would be:

- A church or country store or church (like Kihei Baptist Church or Hanzawa Store),

- A parcel with a main house and two or more ohanas,
 - A house built within what are now current setbacks,
 - A lot in the Agricultural District that is less than two acres.
- b. Changing the use of a property to one that is otherwise permitted by law, but without permits is commonly referred to as *non-conforming*, but they are just actually changes done illegally. These are not grandfathered.

In this case, however, an addition or use can be brought into “conformity” by obtaining “after the fact” ministerial permits.

- c. Changing the use of a property that is not allowed by law are not non-conforming, they are just illegal. For instance, building a second Ohana on any lot, or creating an Ohana on a lot less than 7,500 square feet is illegal. A variance can be sought, but it is highly unlikely to be granted.

Discretionary Permits

1. In general:
 - a. Two types, those that can be approved administratively, and those that require public hearings.
 - b. Many require an extensive process through the Planning Department, and may require the services of engineers, architects, archaeologists, or a surveyor.
 - c. Discretionary permits are NOT automatically transferable from one owner to the next; that must be approved by the Planning Department, possibly the Planning Commission. For instance, a Bed and Breakfast Permit does not run with the property, it runs with the owner. Changing the owner or holder of the permit requires approval.
2. Special Management Area (SMA) This is an area that roughly encompasses everything on the makai side of the nearest coastal highway. It is mauka in some places like Makena and Paia, so you have to double check and not assume.

The law stems from the Coastal Management Act, and is applied by 205A HRS, then by administrative rules on Maui. It is to protect near shore resources, but many, many other issues get mixed in.

There are three types of permits or applications that could be required:

- a. SMA Assessment. These are required for virtually any “*development*,” including everything that requires a building permit. Some developments are “exempt,” but an assessment is still required.

An exempt action may be a single family residence, agriculture, zoning variances, and subdivision of three or fewer lots where there are no improvements.

- b. SMA Minor Permit. These are for projects that are not exempt, but cost less than \$125k, do not have any environmental impacts, or have an impact where mitigation is simple. The application is identical to an assessment.
 - c. SMA Major. This is the kind of application that you read about in the paper for new projects. All kinds of studies are required, a public hearing is held in front of the Maui Planning Commission, the neighbors may have a large say in what is built. The services of engineers, planners, architects, archaeologist, and often attorneys, are necessary.
3. Shoreline Setback. All properties that are either on the shoreline, have a beach reserve in front of them, or are otherwise near the water, are subject to shoreline setbacks. While different than SMA, all shoreline properties are in the SMA.

The setback is variable with the age of the lot, depth of the lot, and the coastal erosion rate. Any construction on a shoreline property requires a "certified shoreline" and review by the Planning Department. Certification requires the services of a surveyor or civil engineer.

4. Special Uses. There are State SUPs and County SUPs. These are uses which are considered compatible with the surrounding area, but require more review. The most common would be something like a bed and breakfast. Again, these are NOT automatically transferable from one owner to the next.
5. Conditional Uses. These are for other permits that are not permitted by special use. They are granted by the County Council and permitted by legislative action. Again, the most common would be bed and breakfasts, but either in the Agricultural or Rural Districts.
6. Variances. These are to vary from the strict application of various codes. Often they are for something already built, but can be applied to new houses or properties. They are granted where:
- a. That the strict application, operation or enforcement of the code . . . would result in practical difficulty or unnecessary hardship . . .
 - b. That the granting of the variance shall not be detrimental to the public health, safety or welfare.
 - c. That the granting of the variance would not be injurious to the adjoining lots and the buildings thereon.
 - d. That the granting of the variance would not be contrary to the purposes of this code and the public interest.

In other words, they are not granted frivolously.

Links:

Maui County Code: <http://ordlink.com/codes/maui/index.htm>

Maui Planning Department: <http://www.co.maui.hi.us/departments/Planning/> (has rules, application forms, explains shoreline setbacks, etc.)

County Online Data: http://www.co.maui.hi.us/online_services/index1.htm?btnSubmit=Accept

Please note – the County online data is not 100% accurate and should be double checked with Planning or Public Works.

Real Property Tax Info: <http://www.mauipropertytax.com/>

Can search by TMK or address, has data for individual properties, very up to date - about 98% accurate

“KIVA” – Parcel and permitting information: <http://kivanetext.co.maui.hi.us/kivanet/2/> Basic information about properties, about 90-95% accurate.

Parcel information viewer: <http://accelagis.co.maui.hi.us:8080/agis/map/viewer.jsp> This is a very informative, interactive visual tool that ties so data. All should be double checked.

ZONING FACT SHEET

USE ZONES	LOT AREA	LOT WIDTH	BLD'G. HT.	YARD SPACING			% LOT COVERAGE	FLOOR AREA RATIO
				FRONT	REAR	SIDE		
R-1 RESIDENTIAL	6,000 SF	60 FT	2 STORIES 30 FEET	15 FEET	1 STORY / 6 FEET 2 STORY / 10 FEET			
R-2 RESIDENTIAL	7,500 SF	65 FT	2 STORIES 30 FEET	15 FEET	1 STORY / 6 FEET 2 STORY / 10 FEET			
R-3 RESIDENTIAL	10,000 SF	70 SF	2 STORIES 30 FEET	15 FEET	1 STORY / 6 FEET 2 STORY / 10 FEET			
A-1 APARTMENT	10,000 SF	70 FT	2 STORIES 30 FEET	1 & 2 STORIES 15 FT	1 & 2 STORIES 15 FEET	1 & 2 STORIES 10 FEET	25%	LOT SIZE LESS THAN 3AC 50% OTHERS 40%
A-2 APARTMENT	10,000 SF	70 FT	4 STORIES	3 & 4 STORIES 20 FT	3 & 4 STORIES 20 FEET	3 & 4 STORIES 16 FEET	35%	90%
H-1 HOTEL	10,000 SF	LOT FRONTAGE 70 FT	2 STORIES	FRONT & REAR YARDS ½ THE HEIGHT OF THE BUILDING WITH A MINIMUM OF 15 FEET		1&2 STORIES 10 FT	25%	50%
H-M HOTEL	15,000 ST	LOT FRONTAGE 85 FT	6 STORIES			3&4 STORIES 15 FT 5&6 STORIES 20 FT	30%	100%
H-2 HOTEL	20,000 SF	LOT FRONTAGE 100 FT	12 STORIES			7&8 STORIES 25 FT 9-12 STORIES 30 FT	35%	150%
B-R RESORT COMMERCIAL	6,000 SF	60 FT	2 STORIES 35 FEET	15 FEET	NONE	NONE		
B-1 BUSINESS	6,000 SF	LOT FRONTAGE 60 FT	2 STORIES 30 FEET	15 FEET	1 STORY 8 FT 2 STORIES 10 FT	1 STORY 8 FT 2 STORIES 10 FT		
B-2 BUSINESS	6,000 SF	LOT FRONTAGE 60 FT	6 STORIES	NONE EXCEPT WHEN ABUTTING RESIDENTIAL, APARTMENT OR HOTEL DISTRICT THEN SPACING IN ACCORDANCE WITH ABUTTING DISTRICTS**				200%
B-3 BUSINESS	6,000 SF	LOT FRONTAGE 60 FT	12 STORIES					300%
BCT COUNTRY TOWN	6,000	60 FT	2 STORIES 35 FEET	None (unless specified by adapted design guidelines)	REAR & SIDE none except when side or rear of lot abut districts requiring setback shall be as required in the district.			
M-1 INDUSTRIAL	7,500 SF	65 FT	4 STORIES OR 48 FEET	None if frontage within B or M district. Residential 10ft	REAR & SIDE none except when abutting Agriculture, Residential, Duplex, Apartment or Hotel district then 10ft			
M-2 INDUSTRIAL	10,000	75 FT	6 STORIES	None except 10 ft for street widening if applicable	REAR & SIDE none except when abutting Agriculture, Residential, Duplex, Apartment or Hotel district then 10ft			
AIRPORT	20,000 FT	100 FT	ESTABLISHED BY STATE AIRPORT ZONING BOARD	20 FT	NONE ON B OR M OTHERWISE 10 FEET	NONE IN B OR M OTHERWISE 10 FEET		
INTERIM	6,000 SF	LOT FRONTAGE 60 FT	2 STORIES / 30 FEET	15 FEET	1 STORY 8 FT 2 STORY 10 FT	1 STORY 8 FT 2 STORY 10 FT		
AGRICULTURE	2 ACRES	200 FT	FARM DWELLING 30 FEET; NON- DWELLING 35 FEET PLUS	25 FEET	15 FEET	15 FEET		10 PERCENT OF TOTAL LOT AREA (applies to farm dwellings but not to structures used to support agriculture)
RURAL RU-0.5	½ ACRE	100 FT	30 FEET	25 FEET	15 FEET	15 FEET		
RURAL RU-1	1 ACRE	150 FT	30 FEET	35 FEET	20 FEET	20 FEET		

All shoreline properties are subject to Shoreline Setback Laws

* Except where the side or rear yard abut a lot in any residential, apartment house, or hotel district, the abutting side or rear yard shall be 10 feet.

** For apartment, apartment-hotel or hotel uses, spacing shall be in accordance with the requirements of apartment and hotel districts.

*** Provided however, that the height of such building or structure shall not exceed one and one half (1 ½) times the width of the widest street which it fronts.