

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1754

H. P. 1338

House of Representatives, May 19, 1971

Reported by a Majority of the Committee on Legal Affairs and printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

**AN ACT to Make Municipal Planning Legislation Consistent with
Home Rule.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 30, c. 213, sub-c. V, additional. Chapter 213 of Title 30 of the Revised Statutes, as amended, is further amended by adding a new subchapter V to read as follows:

SUBCHAPTER V

BOARD OF APPEALS

§ 2411. Board of Appeals

1. Establishment. A municipality may establish a board of appeals and the municipal officers shall appoint the members and determine their compensation. It is intended that all boards of appeals established subsequent to the effective date of this Act be governed by this section.

2. Organization.

A. The board shall consist of 5 or 7 members, serving staggered terms of at least 3 and not more than 5 years. The board shall elect annually a chairman and secretary from its membership.

B. A municipal officer may not serve as a member.

C. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

D. A member of the board may be dismissed for cause by the municipal officers before the expiration of his term.

3. Procedure.

A. The chairman shall call meetings of the board as required. The chairman shall also call meetings of the board when requested to do so by a majority of the members or by the municipal officers. A quorum of the board necessary to conduct an official board meeting shall consist of at least 3 members. The chairman shall preside at all meetings of the board and be the official spokesman of the board.

B. The secretary shall maintain a permanent record of all board meetings and all correspondence of the board. The secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. All records to be maintained or prepared by the secretary are deemed public, shall be filed in the municipal clerk's office and may be inspected at reasonable times.

C. The board may provide by rule, which shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the chairman upon good cause shown.

D. The board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

E. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed to every party within 7 days of each decision.

F. An appeal may be taken by any party to Superior Court from any order, relief or denial in accordance with Rule 80B. The court may, after consideration, affirm, modify or reverse any decision based upon an erroneous ruling or finding of law provided that decisions of the board upon all questions of fact shall, in the absence of fraud, be final.

4. Jurisdiction. Any municipality establishing a board of appeals under this section may vest the board with the power to hear any appeal by any person, affected directly or indirectly, from any decision, order, rule or failure to act of any officer, board, agency or other body where such appeal is necessary, proper or required.

Sec. 2. R. S., T. 30, c. 239, sub-c. VI, additional. Chapter 239 of Title 30 of the Revised Statutes, as amended, is further amended by adding a new subchapter VI to read as follows:

SUBCHAPTER VI
PLANNING AND ZONING

§ 4961. Comprehensive plan

1. Definition. "Comprehensive Plan" shall mean a compilation of policy statements, goals, standards, maps and all pertinent data relative to the past, present and future trends of the municipality with respect to its population, housing, economics, social patterns, land use, and water resources and their use, transportation facilities and public facilities prepared by the municipal planning board, agency or office. The comprehensive plan, being as much a process as a document capable of distribution, may at successive stages, consist of data collected, preliminary plans, alternative action proposals, and finally as a comprehensive plan to be adopted. In its final stages, it may consist of a series of subsidiary but interrelated plans such as, but not limited to, a water and sewerage system plan, a land use plan, a community facilities plan, a transportation plan, an urban renewal or rehabilitation plan, an air or water pollution control plan, and a park and open space plan. The comprehensive plan shall include recommendations for plan execution and implementation such as, but not limited to, a capital improvements program, renewal and rehabilitation programs, land use control ordinances, and building, safety and housing codes. The comprehensive plan shall include mechanisms which will ensure continual data collection, re-evaluation in light of new alternatives, and revision. The comprehensive plan may include planning techniques such as, but not limited to, planned unit development site plan approval, open space zoning and clustered development.

2. Public participation. In the preparation of a comprehensive plan, the public shall be given an adequate opportunity to be heard.

§ 4962. Zoning ordinances

1. Terms. Any zoning ordinance, or provision thereof, adopted pursuant to the home rule power granted to all municipalities under the Constitution, Article VIII-A and chapter 201-A, specifically section 1917 shall be subject to the following:

A. Such ordinance or provision shall be pursuant to and consistent with a comprehensive plan.

B. A zoning map describing each zone established or modified shall be adopted as part of the zoning ordinance or incorporated therein. Any conflict between said zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

C. Real estate used or to be used by a public service corporation shall be wholly or partially exempted from an ordinance only where on petition, notice and public hearing the Public Utilities Commission has determined that such exemption is reasonably necessary for public welfare and convenience.

D. County and municipal governments, and districts shall be governed by the provisions of any zoning ordinance.

E. Any zoning ordinance shall be advisory with respect to the State.

F. Any property or use existing in violation of any zoning ordinance, is a nuisance.

G. A municipality shall provide for a means of enforcement of the zoning ordinance by the requirement of a performance bond. Such bond shall be for at least 25% of the value of the project and must be submitted before the issuance of a building permit.

§ 4963. Zoning adjustment

1. Establishment. A board of appeals is established in any municipality which adopts a zoning ordinance for the purpose of hearing appeals from ordonance or failure to act of the office charged with the enforcement of the zoning ordinance. Such board of appeals shall be governed by section 2411, except that subsection 2 of section 2411 shall not apply to boards existing on the effective date of this Act.

2. Powers. In deciding any appeal:

A. The board may interpret the provisions of the ordinance which are called into question.

B. The board may approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance; and provided the municipality has not authorized the planning board, agency or office to issue said permits.

C. The board may grant a variance in strict compliance with subsection 3.

3. Variance. A variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would amount to a taking of property in violation of the Constitutions of the State of Maine and the United States. A use variance may be granted only after the legislative body has refused to amend the zoning ordinance.

4. Parties. The board shall reasonably notify of any hearing, the petitioner, the planning board, agency or office and the municipal officers and such persons shall be made parties to the action. All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing.

§ 4964. Savings provisions

Any planning board or district established and any ordinance or map adopted under a prior, inconsistent and repealed statute shall remain in effect until abolished, amended or repealed.

Sec. 3. R. S., T. 30, §§ 4951 to 4955 and 4957 to 4959, repealed. Sections 4951 to 4955 and 4957 to 4959 of Title 30 of the Revised Statutes, as amended, are repealed.

STATEMENT OF FACT

The purpose of this bill is to make certain provisions of Title 30 which pertain to land use control consistent with the home rule powers granted to all municipalities under the Constitution, Article VIII-A and Title 30, chapter 201-A. This bill makes provisions with respect to boards of appeals available to municipalities where appeals are granted from other codes and ordinances. This bill provides that use variances cannot be granted by the board of appeals except after denial by the legislative body.