

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (After Deadline)

3 FIRST REGULAR SESSION
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE
6

7 Legislative Document

No. 1519

8
9 S.P. 503

In Senate, April 26, 1983

10 Approved for introduction by a majority of the Legislative Council
11 pursuant to Joint Rule 27.

12 Referred to the Committee on Local and County Government. Sent down
for concurrence and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

13 Cosponsors: Senator Collins of Knox, Representative Livesay of
Brunswick and Representative Soule of Westport.

14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-THREE
18

19 AN ACT to Clarify the Law Concerning
20 Certain Appeals from Planning Board Decisions.
21

22 Emergency preamble. Whereas, Acts of the Legis-
23 lature do not become effective until 90 days after
24 adjournment unless enacted as emergencies; and

25 Whereas, a recent Law Court decision interpreted
26 certain Maine statutes to require all appeals from
27 planning board decisions to go to a board of appeals;
28 and

29 Whereas, this interpretation seems contrary to
30 legislative intent and the best resolution of certain
31 zoning conflicts; and

32 Whereas, this decision affects the enforcement of
33 zoning ordinances throughout the State; and

1 Whereas, in the judgment of the Legislature,
2 these facts create an emergency within the meaning of
3 the Constitution of Maine and require the following
4 legislation as immediately necessary for the preser-
5 vation of the public peace, health and safety; now,
6 therefore,

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

9 Sec. 1. 30 MRSA §4963, sub-§1, as amended by PL
10 1979, c. 541, Pt. A, §196, is further amended to
11 read:

12 1. Establishment. A board of appeals is estab-
13 lished in any municipality which adopts a zoning
14 ordinance for the purpose of hearing appeals from ac-
15 tions or failure to act of the ~~office official~~
16 charged with the enforcement of the zoning ordinance.
17 Such board of appeals shall be governed by section
18 2411, except that section 2411, subsection 2 shall
19 not apply to boards existing on September 23, 1971.

20 Sec. 2. 30 MRSA §4963, sub-§2, ¶B, as enacted by
21 PL 1971, c. 455, §2, is amended to read:

22 B. The board may approve the issuance of a spe-
23 cial exception permit or conditional use permit
24 in strict compliance with the ordinance; and pro-
25 vided ~~the municipality has not authorized the~~
26 ~~planning board, agency or office to issue said~~
27 ~~permits that, if the municipality has authorized~~
28 ~~the planning board, agency or office to issue~~
29 ~~these permits, no appeal from the granting or~~
30 ~~denial of such a permit may be taken to the board~~
31 ~~of appeals unless specifically required by local~~
32 ~~ordinance;~~

33 Emergency clause. In view of the emergency
34 cited in the preamble, this Act shall take effect
35 when approved.

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STATEMENT OF FACT

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The purpose of this bill is to address a problem created by a recent Law Court interpretation of Title 30, section 4963. In Cushing v. Smith, decided on March 10, 1983, the Law Court held section 4963 to mean that appeals from planning board decisions regarding special exception permits must be made to a board of appeals before seeking judicial review in Superior Court.

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This bill amends section 4963 to make it clear that appeals regarding special exception or conditional use permits, when a municipality has authorized a planning board to issue those types of permits, may be made directly to Superior Court rather than to a board of appeals first. This conforms to past municipal interpretations of the original intent of section 4963, subsection 1, section 4963, subsection 2, paragraph B, and section 2411, subsection 4, and conforms to the principle of home rule.

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Section 1 of this bill replaces "office" with "official" to make it clear that this term was intended to refer to the building inspector or zoning enforcement officer and not to the planning board.

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Section 2 of this bill makes it clear that a municipality may authorize a planning board to issue special exception or conditional use permits, and that when it does any appeal from these planning board decisions will be to Superior Court unless expressly provided otherwise by the municipality.

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This bill is intended, then, to overrule the interpretation of section 4963 in Cushing v. Smith.

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