

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

---

---

ONE HUNDRED AND SIXTH LEGISLATURE

---

---

Legislative Document

No. 1075

---

---

H. P. 814 House of Representatives, February 22, 1973  
Referred to Committee on State Government. Sent up for concurrence and  
ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mrs. Clark of Freeport.

---

---

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

---

AN ACT to Establish a State Board of Zoning Appeals.

---

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

R. S., T. 30, c. 1, sub-c. II, Article 9, additional. Subchapter II of chapter I of Title 30 of the Revised Statutes is amended by adding a new Article 9, to read as follows :

ARTICLE 9. STATE BOARD OF ZONING APPEALS

§ 421. Short title

This Act may be known and cited as the State Board of Zoning Appeals Act.

§ 422. Declaration of purpose; State Board of Zoning Appeals established

It is found and declared that there exists in this State a shortage of decent, safe and sanitary housing at prices which many residents of this State can afford. Despite this shortage, many communities have acted to ban further housing construction within their corporate limits. It is found that attempts by some communities to limit growth, forces other communities to accept unnecessary pressures. It is therefore found desirable to establish a State Board of Zoning Appeals to hear the complaints of individuals or developers who feel that they have been denied the right to construct housing which is needed by a local community and to affirm or overturn the ruling of the local governing body with regard to said denial.

§ 423. Definitions

As used in this Article, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Developer.** "Developer" shall be any person, corporation, association or other legal entity which has expressed a desire to construct at least one residential housing unit or complex of such units in any area in which a zoning ordinance is in force and has verified that desire by the expenditure of money or effort to plan for said construction or by petitioning the local governing body to allow said construction in contravention of the applicable zoning ordinance.

2. **Housing unit.** "Housing unit" shall be any permanently plumbed structure designed to accommodate persons as a home.

3. **Local governing body.** "Local governing body" means any county, city, village, town or other jurisdiction within this State with authority to establish zones for acceptable development or to appoint boards to establish said zones.

4. **Zoning ordinances.** "Zoning ordinances" means any laws, regulations, ordinances, subdivision ordinances, or other binding rules adopted by a local governing body to limit the size of lots, location of lots, use of lots, market availability of lots, physical layout of lots or the positioning on lots of structures where such limitations may act to impede the construction of residential housing units. This term shall not apply to any law, regulation, ordinance or rule having state-wide application or enforced by any state agency as distinguished from a local governing body.

#### § 424. Board of Zoning Appeals

There is established a State Board of Zoning Appeals to be made up of the following persons: The Director of the State Planning Office; the Executive Director of the Land Use Regulation Commission; the Commissioner of the Department of Environmental Protection; the Director of the State Housing Authority and 5 at-large members to be appointed by the Governor for terms of 5 years each, except that the original appointees shall draw lots to determine which one shall serve each of the following terms: One year, 2 years, 3 years, 4 years and 5 years.

Any one of the statutory members of the board may appoint a member of his department or agency to serve in his stead for any administratively discreet period of time or on any special basis which allows, in the opinion of the other members of the board, for responsible decision making.

#### § 425. Executive secretary

The Director of the Maine State Housing Authority shall designate one employee of the authority to serve as the executive secretary of the board. The board shall reimburse the State Housing Authority for the services and expenses of the executive secretary in connection with board functions out of fees generated by hearings.

#### § 426. Chairman of the board

The chairman of the board shall be elected by the members of the board from among the at-large members appointed by the Governor. The chairman

shall serve a term of one year and shall be ineligible to serve consecutive terms.

§ 427. Compensation

The members of the board shall receive compensation for their services at the rate of \$50 a day, except that the statutory members of the board shall receive no compensation for time spent working for the board during normal working hours on week days. The executive secretary shall receive a salary as determined by the board and may hire such assistants as the board deems necessary. The board members and permanent employees shall be reimbursed for the authorized expenses they incur in connection with the performance of their duties.

§ 428. Powers and duties

The State Board of Zoning Appeals shall have the following powers and duties.

1. Rules and regulations; power to subpoena. The board shall adopt regulations specifying the practices, including the right to subpoena persons and records, to be used before the board and the rights, duties and privileges of parties or other interested persons appearing before the board.

2. Hear complaints. To consider complaints lodged by any developer, according to proper procedures, as adopted by the board, against any local governing body on the grounds that said local governing body has denied said developer the right to build or install any number of housing units which comply with or would reasonably be expected to comply with all applicable codes other than the zoning ordinance or subdivision regulation and which would fill an identifiable housing need.

3. Consider evidence. To consider evidence as to housing need as compiled by any one of the state agencies represented on the board or by any federal agency as well as by any reasonable evidence presented by the complaining developer.

4. Rule on zoning and ordinances. To overrule local zoning or subdivision ordinances, but only within the scope of the facts of any given case and to the extent necessary to satisfy the complainant, whenever they are found to be:

A. Arbitrary in design or application;

B. Inconsistent with the housing needs of the citizens of the affected community or surrounding communities.

5. Approve construction; advise of board's decisions. To grant, subject to approval by all other cognizant agencies, approval for the construction of the housing units proposed by the developer and to advise local governing bodies of decisions of the board along with specific steps to be followed or facts to be considered by the local governing bodies in rewriting the zoning ordinance overruled under subsection 3, or both.

6. **Nonbinding advice.** To offer nonbinding advice, at any time, upon the official request of any local governing body, as to the most reasonable zoning restrictions which might be written for the jurisdiction in question.

**§ 429. Hearings**

The board may hold hearings as necessary, but need not convene hearings more than once every 6 months regardless of the number of cases pending. In those cases where the board determines that a hearing would be unnecessary, it can refuse to hold any hearings whatsoever and issue a decision based on written evidence.

**§ 430. Appeals**

Any developer who brings a complaint before the board or any official representative of a local governing body may appeal a decision of the board to the Superior Court with jurisdiction over the district in which the land in question is situated.

**§ 431. Fees and costs**

The board shall have the authority to charge the parties to any proceeding appropriate fees to cover all costs and expenses of the board, plus appropriate administrative expenses of persons acting in behalf of the board.

The board shall have the authority to require any appellant to post a bond in an amount sufficient to cover the expected costs of a hearing and administrative preparation for said hearing.

A losing appellant before the board shall forfeit the portion of his bond required to cover actual costs and administrative expenses as determined by the board. In cases in which the appellant is successful in overturning a ruling of a municipal body, the municipality shall bear the expenses as determined by the board. The board may apportion costs among parties in cases where that appears to be the most equitable solution.

These fees shall be valid debts of the party assessed regardless of the filing or prosecution of any appeal under section 429.

## STATEMENT OF FACT

This bill establishes a State Board of Zoning Appeals and provides an administrative remedy whenever local zoning ordinances are determined to be arbitrary in design or application or not consistent with local needs.