

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1567

S. P. 490

In Senate, March 22, 1973

Referred to Committee on Legal Affairs. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Aldrich of Oxford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Clarify Zoning Enabling Legislation.

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

Sec. 1. R. S., T. 30, § 4963, sub-§ 3, amended. Subsection 3 of section 4963 of Title 30 of the Revised Statutes, as enacted by section 2 of chapter 455 of the public laws of 1971, is amended to read as follows:

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 cause undue hardship ~~or would not be in the best interest of the community.~~

Sec. 2. Application to other law. Whenever in the statutes there is a reference to the Administrative Hearing Commission or to the Administrative Hearing Commissioner, it shall be deemed to refer to the Administrative Court and the Administrative Court Judge, respectively.

STATEMENT OF FACT

It is the intent of this Act to remove from Zoning Boards of Appeals the power to determine that the application of a Zoning Ordinance "would not be in the best interest of the community" for the following reasons:

(1) The power to make such a determination vests a Zoning Board of Appeals with legislative power superior to that of the legislative body of the municipality.

(2) The enactment of a Zoning Ordinance by a municipality is a determination by and declaration of its legislative body that the Ordinance itself is designed to provide for the highest and best type of use of land within its boundaries.

(3) "Would not be in the best interest of the community" is not a legal standard and would be legally impossible for a court to define, let alone a local administrative board.

(4) A municipality has the power to provide proper standards for its Zoning Board of Appeals to follow, which standards can be easily provided by ordinance. Permitting a Zoning Board of Appeals to grant a variance where there is "undue hardship" is a safety valve where a municipality has failed to provide proper standards.