

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 195

H.P. 135

House of Representatives, January 30, 1991

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

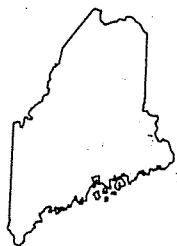
EDWIN H. PERT, Clerk

Presented by Representative LORD of Waterboro.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act Regarding Zoning Variances.



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

2
4 Sec. 1. 30-A MRSA §4353, sub-§4, as enacted by PL 1989, c.
104, Pt. A, §45 and Pt. C, §10, is amended to read:

6 4. Variance. The Except as provided in subsection 4-A, the
8 board may grant a variance only when strict application of the
10 ordinance to the petitioner and the petitioner's property would
12 cause undue hardship. The term "undue hardship" as used in this
14 subsection means:

16 A. The land in question cannot, exclusive of any building
18 or appurtenance attached to the land, can not yield a
20 reasonable return unless a variance is granted;

22 B. The need for a variance is due to the unique
24 circumstances of the property and not to the general
26 conditions in the neighborhood;

28 C. The granting of a variance will not alter the essential
30 character of the locality; and

32 D. The hardship is not the result of action taken by the
34 applicant or a prior owner.

36 Under its home rule authority a municipality may, in a zoning
38 ordinance, adopt additional limitations on the granting of a
40 variance, including but not limited to, a provision that a
42 variance may be granted only for a use permitted in a particular
44 zone.

46 Sec. 2. 30-A MRSA §4353, sub-§4-A is enacted to read:

48 4-A. Disabled persons; variances. A person who applies for
50 a variance for the sole purpose of making that person's property
52 more accessible to disabled persons must be granted a variance
54 unless the Department of Environmental Protection finds that the
56 proposed alteration or construction would have a definite
58 negative impact on the environment.

STATEMENT OF FACT

60 Under current law, municipalities, in considering
62 applications for zoning variances, must determine whether strict
64 application of a zoning ordinance would cause undue hardship.
66 One factor in determining undue hardship is whether the land in
68 question can yield a reasonable return. This bill amends the law
70 to limit the application of the reasonable return question to the
72 land, exclusive of any buildings or appurtenances attached to
74 that land.

2 This bill also provides that variances be granted to persons
4 who apply for variances for the sole purpose of making property
6 more accessible to disabled persons unless the Department of
8 Environmental Protection finds that the alteration or
 construction would have a definite negative impact on the
 environment.