

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1263, L.D. 1832, Bill, "An Act Allowing Zoning Boards of Appeal to Grant Dimensional Variances Based On Practical Difficulty"

Amend the bill by striking out the title and substituting the following:

'An Act Allowing Municipalities to Grant Limited Set-back Variances for Single-family Dwellings'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 30-A MRSA §4353, sub-§4, as amended by PL 1991, c. 47, §1, is further amended to read:

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

A. The land in question can not yield a reasonable return unless a variance is granted;

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

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

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

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

8 Sec. 2. 30-A MRS §4353, sub-§4-B is enacted to read:

10 4-B. Set-back variance for single-family dwellings. A
12 municipality may adopt an ordinance that permits the board to
14 grant a set-back variance for a single-family dwelling. An
16 ordinance adopted under this subsection may permit a variance
18 from a set-back requirement only when strict application of the
zoning ordinance to the petitioner and the petitioner's property
would cause undue hardship. The term "undue hardship" as used in
this subsection means:

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

24 B. The granting of a variance will not alter the essential
character of the locality;

26 C. The hardship is not the result of action taken by the
28 applicant or a prior owner;

30 D. The granting of the variance will not substantially
reduce or impair the use of abutting property; and

32 E. There is no other feasible way to accomplish the goals
34 sought by the petitioner.

36 An ordinance adopted under this subsection is strictly limited to
38 permitting a variance from a set-back requirement for a
40 single-family dwelling that is the primary year-round residence
42 of the petitioner. A variance under this subsection may not
exceed 20% of a set-back requirement and may not be granted if
the variance would cause the area of the dwelling to exceed the
maximum permissible lot coverage.'

44 **STATEMENT OF FACT**

46 This amendment replaces the bill and changes the title of
48 the bill. This amendment allows municipalities to adopt
ordinances that permit zoning boards of appeal to grant limited

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2 variances from set-back requirements for occupied year-round
single-family dwellings. Under this amendment, a municipality
4 may allow set-back variances to be granted for up to 20% of a
set-back requirement if the need for the variance is due to the
6 unique circumstances of the property, if granting the variance
does not alter the essential character of the locality or
8 substantially reduce or impair the use of abutting property, if
the hardship is not the result of action taken by the applicant
10 or a prior owner of the property and if there is no other
feasible way to accomplish the goals sought by the person
12 requesting the variance.

Reported by the Committee on Energy and Natural Resources
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COMMITTEE AMENDMENT