

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1832

H.P. 1263

House of Representatives, May 9, 1991

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

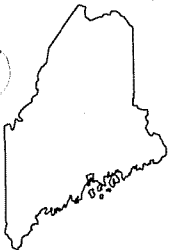
Cosponsored by Representative ANDERSON of Woodland, Representative JACQUES of Waterville and Senator TITCOMB of Cumberland.

STATE OF MAINE

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

**An Act Allowing Zoning Boards of Appeal to Grant Dimensional
Variances Based On Practical Difficulty.**

(AFTER DEADLINE)



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

4 30-A MRSA §4353, sub-§4-B is enacted to read:

6 4-B. Dimensional variances permitted. Notwithstanding
8 subsection 4, the board may grant a dimensional variance from any
10 area, setback, frontage, height or bulk requirement of an
12 ordinance if strict application of the requirement to the
14 petitioner's property causes practical difficulty. The board may
16 grant a dimensional variance for practical difficulty only if:

18 A. Strict application of the ordinance prevents the
20 petitioner from using the property for a purpose otherwise
22 allowed;

24 B. Granting a variance does not substantially reduce the
26 value or impair the use of abutting property; and

28 C. Granting a variance does not conflict with the general
30 purpose of the ordinance, protects the public safety and
32 welfare and does not conflict with the municipality's
34 comprehensive plan.

36 The board may not grant a variance under this section that is
38 more permissive than necessary to mitigate the petitioner's
40 practical difficulty. If the board determines that a variance
42 that is less permissive than that requested by the petitioner
44 mitigates the petitioner's practical difficulty, only then may
46 such a less permissive variance be granted by the board.

32 STATEMENT OF FACT

34 Current law strictly limits the authority of a municipal
36 zoning board of appeals to grant variances. A zoning board may
38 grant a variance only if strict application of an ordinance
40 causes undue hardship to the property owner. To prove undue
42 hardship, a property owner must show that the ordinance prevents
44 the property owner from realizing any reasonable return on the
46 property.

48 This bill allows municipal zoning boards of appeals to grant
50 dimensional variances if the petitioner can demonstrate
52 "practical difficulty." To meet the practical difficulty
standard in the bill, the property owner must show that strict
application of an ordinance prevents the owner from using the
property for a purpose otherwise allowed. The property owner
must also show that granting the variance does not reduce the
value or impair the use of abutting property in the zone and does
not conflict with the general purpose of the ordinance, that the
public safety and welfare is protected and that the variance does
not conflict with the municipality's comprehensive plan.