

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1853

H.P. 1369

House of Representatives, February 10, 1994

**An Act to Amend the Growth Management Laws Concerning
Dimensional Variances.**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative GOULD of Greenville.
Cosponsored by Representative: NORTON of Winthrop.

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

2 **Sec. 1. 30-A MRSA §4353, sub-§4,** as amended by PL 1991, c.
4 659, §1, is further amended to read:

6 **4. Variance.** Except as provided in subsections 4-A and,
8 4-B and 4-C, the board may grant a variance only when strict
10 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:

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

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

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

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

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

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

32 **4-C. Dimensional variances.** A municipality may adopt an
34 ordinance that permits the board to grant a dimensional variance
for structures that are not located within a shoreland zone if:

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

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

44 C. Any hardship that may result from failure to grant a
46 variance is not the result of action taken by the applicant
or a prior owner;

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

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E. The granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

An ordinance adopted under this subsection is strictly limited to granting of dimensional variances and may not be used to grant any form of use variance.

STATEMENT OF FACT

This bill allows towns to adopt an ordinance allowing the zoning board of appeals to grant dimensional variances under standards that do not include the "reasonable return" standard in the definition of undue hardship. The standards enacted in this bill are the same standards as those in existing law that apply to limited set-back variances for single family dwellings.

This bill does not allow use variances to be granted under the new standards and only applies the new standards to structures located outside of shoreland zone areas.

This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.