

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1096

S.P. 408

In Senate, March 30, 1995

**An Act to Amend the Law Governing Municipal Zoning with Respect to
Community Living Arrangements.**

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator BUSTIN of Kennebec.
Cosponsored by Senators: MILLS of Somerset, PARADIS of Aroostook, PINGREE of Knox,
RAND of Cumberland, Representatives: CHASE of China, ETNIER of Harpswell,
FITZPATRICK of Durham, JOHNSON of South Portland, MADORE of Augusta,
MITCHELL of Vassalboro, WATSON of Farmingdale.

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

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

6 **4-A. Disability variance.** The board may grant a variance
8 to a property owner for the purpose of making that property
10 accessible to a person with a disability who ~~is living on~~ uses
12 the property. ~~The board shall restrict any variance granted~~
14 ~~under this subsection solely to the installation of equipment or~~
16 ~~the construction of structures necessary for access to or egress~~
18 ~~from the property by the person with the disability. The board~~
20 ~~may impose conditions on the variance, including limiting the~~
22 ~~variance to the duration of the disability or to the time that~~
24 ~~the person with the disability lives on the property. For the~~
26 purposes of this subsection, a disability has the same meaning as
28 a physical or mental handicap under Title 5, section 4553 and the
30 term ~~"structures necessary for access to or egress from the~~
32 ~~property" is defined to include railing, wall or roof systems~~
34 ~~necessary for the safety or effectiveness of the structure.~~

22 **Sec. 2. 30-A MRSA §4357**, as enacted by PL 1989, c. 104, Pt.
24 A, §45 and Pt. C, §10, is amended to read:

26 **§4357. Community living arrangements**

28 **1. Legislative intent.** It is the intent of the Legislature
30 that persons seeking to establish a community living facility
32 arrangement in a single-family residential zone are not
34 prohibited or subject to limitations on the basis of the
36 disability served. It is also the intent of the Legislature that
38 community living facilities arrangements for ~~mentally-handicapped~~
40 ~~and developmentally-disabled~~ persons with disabilities are not
42 prohibited from single-family residential zones or subject to
44 limitations that have the effect of imposing barriers to their
46 location in single-family residential zones in a municipality.
48 Municipal ordinances or actions which that have the effect of
prohibiting these community living facilities arrangements from
single-family residential zones or that otherwise limit them in
locating to those zones, particularly by establishing criteria
for single-family residential zones ~~in excess of the criteria in~~
~~subsections 4 and 5~~ or procedures that have a disparate impact on
persons with disabilities in comparison to persons without
disabilities, are a violation of legislative intent this section.

46 **2. Definitions.** As used in this section, unless the
48 context indicates otherwise, the following terms have the
following meanings.

2 A. ~~---"Board--of--appeals"---means---the---board---of---appeals~~
~~established--by--a--municipality--to--hear--appeals--related--to~~
~~enforcement--of--the--zoning--ordinances.~~

4
6 B. "Community living facility arrangement" means a housing
8 facility arrangement for 8 or fewer ~~mentally-handicapped-or~~
~~developmentally--disabled~~ persons which with disabilities
10 that is approved, authorized, certified or licensed by the
State. A community living facility arrangement may include
a group home, foster home or intermediate care facility.

12 C. "Single-family residential zone" means a residential
14 zone designated by a municipality for single-family housing
except as provided in this section. If there are no
16 residential zones designated or considered by a municipality
as single-family residential zones, all residential zones in
18 the municipality in which community living facilities
arrangements are not a permitted use are deemed to be
single-family residential zones.

20
22 **3. Permitted or conditional community living use;**
definition. In order to implement the policy of this State that
~~mentally--handicapped-or--developmentally--disabled~~ persons shall
24 with disabilities may not be excluded by municipal zoning
ordinances from the benefits of normal residential surroundings,
26 a community living facility ~~shall--be~~ arrangement is deemed a
permitted or conditional single-family residential use of
28 property for the purposes of zoning.

30 **4. ~~Hearing.~~** ~~The municipality shall hold a public hearing~~
~~within--60--days--of--receipt--of--an--application--to--establish--a~~
32 ~~community--living--use--within--a--single--family--residential--zone,~~
~~unless--a--community--living--use--is--a--permitted--use--within--the~~
34 ~~single--family--zone.---The--failure--to--hold--the--public--hearing~~
~~required--by--this--subsection--within--the--60--day--period--constitutes~~
36 ~~approval--of--the--application--unless--the--time--period--is--extended--by~~
~~mutual--agreement--of--the--parties.~~

38
40 A. ~~The public hearing shall be conducted by the board of~~
~~appeals--and--interested--parties--shall--be--notified.---The~~
42 ~~notice--period--and--procedure--for--zoning--appeals,---as~~
~~established--by--the--municipality,--must--meet--the--notice~~
44 ~~requirements--of--this--section.~~

46 B. ~~The board of appeals shall receive public comment on the~~
~~proposed--community--living--facility.---The--board--may--modify--or~~
48 ~~disapprove--the--application--only--upon--a--finding--of--one--or~~
~~more--of--the--following:~~

2 (1)---The--proposed--use--would--create--or--aggravate--a
traffie-hazard;

4 (2)---The--proposed--use--would--hamper--pedestrian
circulation;

6 (3)---The--proposed--use--would--not--permit--convenient
8 access--to--commercial--shopping--facilities,--medical
10 facilities,--public--transportation,--fire--protection--or
police--protection;

12 (4)---The--proposed--use--would--not--comply--with--applicable
14 building,--housing,--plumbing--and--other--safety--codes,
including--municipal--minimum--lot--size--and--building
16 set-back--requirements--for--new--construction,--or

18 (5)---The--proposed--use--would--not--comply--with--the--density
requirements--of--subsection-5.

20 **5.---Density.**---Density--regulation--of--community--living--uses--is
22 intended--to--permit--the--location--of--these--uses--within--a
municipality--while--ensuring--that--they--will--not--become--overly
24 concentrated--in--neighborhoods--to--the--detriment--of--either--the
neighborhoods--or--those--residing--in--the--community--living--uses.

26 No--state--agency--may--approve,--authorize,--certify--or--license--a
community--living--use--nor--may--the--board--of--appeals,--pursuant--to--an
28 authorized--public--hearing,--approve--an--application--for--a--community
living--use,--if:

30 A.---A--proposed--community--living--use--would--be--located--within
32 1,500--feet--of--an--existing--community--living--use,--or

34 B.---A--proposed--community--living--use--would--result--in--the
excessive--concentration--of--these--uses--within--the--zone--or
36 municipality.

38 The--board--of--appeals--may--waive--density--regulations--for--adjacent
community--living--uses--providing--essential--components--of--a--single
40 program.

42 **6.---Appeals.**---Any--decision--by--the--board--of--appeals--under
this--section--may--be--appealed--in--accordance--with--section--2691,
44 subsection-3,--paragraph-G.

46 **7.---Applicability.**---Except--for--the--density--requirements--of
subsection-5,--this--section--does--not--apply--to:

48 A.---Community--living--uses--authorized,--certified--or--licensed
50 before--July-13,--1982;

2 ~~B. Community living uses for which an application was made~~
before July 13, 1982, or

4
6 ~~C. Facilities licensed by the Department of Human Services~~
under Title 22, section 8101, subsections 1 to 3, subsection
4, paragraph A and subsection 5.

8
10 ~~8. Repeal of designation. If a municipality repeals the~~
designations of single family residential zones, community living
12 ~~facilities located in the other residential zones before~~
September 29, 1987, are not required to meet the criteria of
subsections 4 and 5.

14

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STATEMENT OF FACT

18

This bill amends the current law governing municipal zoning
by allowing a local zoning board to grant a zoning variance for
20 persons with disabilities who use the property, instead of
limiting the variance to persons with disabilities living on the
22 property.

24

The bill also repeals the requirement of a municipality to
hold a public hearing prior to approval of a community living
26 facility.