

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

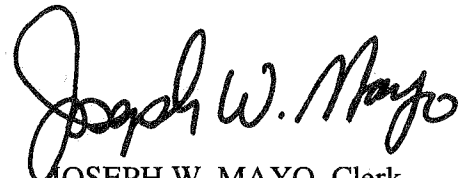
No. 1074

H.P. 786

House of Representatives, February 18, 1997

**An Act to Establish Practical Difficulty Standards for a Variance from
the Dimensional Standards of a Municipal Zoning Ordinance.**

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


JOSEPH W. MAYO, Clerk

Presented by Representative DEXTER of Kingfield.

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 4-B
8 4-C, the board may grant a variance only when strict application
10 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
unless a variance is granted;

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

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

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

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

30 **Sec. 2. 30-A MRSA §4353, sub-§4-B**, as amended by PL 1993, c.
32 627, §1, is repealed.

34 **Sec. 3. 30-A MRSA §4353, sub-§4-C** is enacted to read:

36 **4-C. Variance from dimensional standards.** The board shall
38 grant a variance from the dimensional standards of a zoning
ordinance when strict application of the ordinance to the
petitioner and the petitioner's property causes practical
40 difficulties and when the following conditions exist:

42 A. The need for a variance is due to the unique
44 circumstances of the property and not to the general
condition of the neighborhood;

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

48 C. The practical difficulty is not the result of action
50 taken by the petitioner or a prior owner; and

52 D. No other feasible alternative is available.

2 As used in this subsection, "practical difficulty" means the
4 strict application of the ordinance to the property that
6 precludes the ability to pursue a use permitted in the zoning
district in which the property is located or that results in
significant economic injury to the petitioner.

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SUMMARY

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12 This bill amends the zoning adjustment statute to adopt
14 "practical difficulty" standards for variances from dimensional
16 standards in zoning ordinances. The bill allows a petitioner to
18 obtain a variance from a dimensional standard, such as a yard
20 setback, lot area, lot width or a frontage provision, upon a
22 showing that is less stringent than must be made under "undue
24 hardship" conditions in the Maine Revised Statutes, Title 30-A,
26 section 4353, subsection 4. This bill requires a petitioner for
28 use variances to prove undue hardship under section 4353,
30 subsection 4; a petitioner for dimensional, or area variances may
32 utilize the less stringent practical difficulty standards under
section 4353, subsection 4-C. Although there now are less
stringent undue hardship conditions for set-back variances under
section 4353, subsection 4-B, which is limited to a single-family
dwelling and which is the petitioner's primary year-round
residence, these conditions do not afford relief from lot area,
lot width or frontage requirements, and is only available if a
municipality affirmatively adopts the standard by ordinance.
This bill makes all petitions for dimensional variances, whether
by residential, commercial or industrial property owners, subject
to the practical difficulty standards and does not require
municipal adoption of these standards.