

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1559

H.P. 1159

House of Representatives, March 13, 2001

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### An Act to Amend the Zoning Laws Regarding Dimensional Variances.

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Reference to the Committee on Natural Resources suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative MUSE of South Portland.

Cosponsored by Representatives: BLISS of South Portland, GLYNN of South Portland.

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

2  
3       **Sec. 1. 30-A MRSA §4353, sub-§4-C**, as enacted by PL 1997, c.  
4 148, §2, is amended to read:

6       **4-C. Variance from dimensional standards.** A municipality  
7 ~~may adopt an ordinance that permits the~~ municipal zoning board to  
8 may grant a variance from the dimensional standards of a zoning  
9 ordinance when the use proposed for the property is permitted in  
10 that zoning district, strict application of the ordinance to the  
11 petitioner and the petitioner's property would cause a practical  
12 difficulty and ~~when~~ the following conditions exist:

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

18       B. The granting of a variance will not produce an  
19 undesirable change in the character of the neighborhood and  
20 ~~will not unreasonably detrimentally affect the use or market~~  
21 ~~value of abutting properties;~~

22       C. The practical difficulty is not the result of action  
23 taken by the petitioner or a prior owner;

26       D. No other ~~feasible~~ reasonable alternative to a variance  
27 is available to the petitioner;

28       E. The granting of a variance will not unreasonably  
29 adversely affect the natural environment; and

32       F. The property is not located in whole or in part within  
33 shoreland areas as described in Title 38, section 435.

34       As used in this subsection, "dimensional standards" means and is  
35 limited to ordinance provisions relating to lot area, lot  
36 coverage, frontage ~~and~~, setback requirements and height.

38       As used in this subsection, "practical difficulty" means that the  
39 ~~strict application of the ordinance to the property precludes the~~  
40 ~~ability of the petitioner to pursue a use permitted in the zoning~~  
41 ~~district in which the property is located and results in~~  
42 ~~significant economic injury to the petitioner~~ detriment to the  
43 property owner in complying with the strict requirements of the  
44 ordinance is greater than the detriment to the integrity of the  
45 zoning ordinance or the adverse impact on the neighborhood or  
46 community if the variance is granted.

48       Under its home rule authority, a municipality may, in an  
49 ordinance adopted pursuant to this subsection, adopt additional  
50

2 limitations on the granting of a variance from the dimensional  
standards of a zoning ordinance.

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### 6 SUMMARY

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8 This bill clarifies that a dimensional variance under the  
"practical difficulty" standard is available for area variances  
10 in situations where the use pursued is permitted in the zoning  
district. The "practical difficulty" standard applies a  
12 balancing test, weighing the difficulty for the property owner in  
complying with the strict terms of the zoning ordinance against  
14 the detriment to the integrity of the zoning ordinance or the  
negative impact on the neighborhood if the variance is granted.