

MAINE STATE LEGISLATURE

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DATE: 5.12.05

(Filing No. S-174

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
SENATE
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 331, L.D. 991, Bill, "An Act To Restore Municipal Authority To Review Development Using Flexible Standards"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 30-A MRSA §4301, sub-§1-A is enacted to read:

1-A. Cluster development. "Cluster development" means a form of development that allows a subdivision design in which individual lot sizes and setbacks are reduced in exchange for the creation of common open space and recreation areas, the preservation of environmentally sensitive areas, agriculture and silviculture and the reduction in the size of road and utility systems.

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

4-C. Variance from dimensional standards. A municipality may adopt an ordinance that permits the board to 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 would cause a practical difficulty and when the following conditions exist:

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- 2 A. The need for a variance is due to the unique
circumstances of the property and not to the general
4 condition of the neighborhood;
- 6 B. The granting of a variance will not produce an
undesirable change in the character of the neighborhood and
8 will not unreasonably detrimentally affect the use or market
value of abutting properties;
- 10 C. The practical difficulty is not the result of action
taken by the petitioner or a prior owner;
- 12 D. No other feasible alternative to a variance is available
14 to the petitioner;
- 16 E. The granting of a variance will not unreasonably
adversely affect the natural environment; and
- 18 F. The property is not located in whole or in part within
20 shoreland areas as described in Title 38, section 435.

22 As used in this subsection, "dimensional standards" means and is
limited to ordinance provisions relating to lot area, lot
24 coverage, frontage and setback requirements.

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

32 Under its home rule authority, a municipality may, in an
ordinance adopted pursuant to this subsection, adopt additional
34 limitations on the granting of a variance from the dimensional
standards of a zoning ordinance. A zoning ordinance also may
36 explicitly delegate to the municipal reviewing authority the
ability to approve development proposals that do not meet the
38 dimensional standards otherwise required, in order to promote
cluster development, to accommodate lots with insufficient
40 frontage or to provide for reduced setbacks for lots or buildings
made nonconforming by municipal zoning. As long as the
42 development falls within the parameters of such an ordinance, the
approval is not considered the granting of a variance. This
44 delegation of authority does not authorize the reduction of
dimensional standards required under the mandatory shoreland
46 zoning laws, Title 38, chapter 3, subchapter 1, article 2-B.'

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SUMMARY

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This amendment strikes and replaces the bill and defines "cluster development" as development in which individual lot sizes and setbacks may be reduced in exchange for areas of common space and recreation and environmental purposes. The amendment also allows a zoning ordinance to delegate to the municipal reviewing authority the ability to approve development proposals that do not meet dimensional standards in order to promote cluster development, accommodate lots with insufficient frontage or provide for reduced setbacks for lots or buildings. The amendment specifies that the delegation of authority does not authorize the reduction of shoreland zoning dimensional requirements.