

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1082

H.P. 760

House of Representatives, March 21, 2017

**An Act To Amend the Laws Governing the Granting of a Variance
from the Dimensional Standards of a Zoning Ordinance**

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative CAMPBELL of Orrington.
Cosponsored by Senator CUSHING of Penobscot and
Representatives: FECTEAU of Biddeford, TUELL of East Machias, Senators: CARSON of
Cumberland, DESCHAMBAULT of York, GRATWICK of Penobscot.

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

2 **Sec. 1. 30-A MRSA §4353, sub-§4-C**, as amended by PL 2005, c. 244, §2, is
3 further amended to read:

4 **4-C. Variance from dimensional standards.** ~~A municipality may adopt an~~
5 ~~ordinance that permits the board to grant a variance from the dimensional standards of a~~
6 ~~zoning ordinance when strict application of the ordinance to the petitioner and the~~
7 ~~petitioner's property would cause a practical difficulty and~~ Except as provided in this
8 subsection, the board of appeals may grant a variance from the dimensional standards of a
9 zoning ordinance when the following conditions exist:

10 A. The need for a variance is due to the unique circumstances of the property ~~and not~~
11 ~~to the~~ or the variance is consistent with the general condition of the neighborhood;

12 B. The granting of a variance will not produce an undesirable change in the character
13 of the neighborhood and will not unreasonably detrimentally affect the use or market
14 value of abutting properties;

15 ~~C. The practical difficulty is not the result of action taken by the petitioner or a prior~~
16 ~~owner;~~

17 D. No other feasible alternative to a variance is available to the petitioner; and

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

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

22 As used in this subsection, "dimensional standards" means and is limited to ordinance
23 provisions relating to lot area, lot coverage, frontage, impervious surface space, open
24 space ratios, yard and setback requirements.

25 The provisions of this subsection do not authorize the reduction of dimensional standards
26 required by the mandatory shoreland zoning laws in Title 38, chapter 3, subchapter 1,
27 article 2-B.

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

32 Under its home rule authority, a municipality may, ~~in an ordinance adopted pursuant to~~
33 ~~this subsection~~ after January 1, 2018, adopt additional limitations on the granting of a
34 variance from the dimensional standards of a zoning ordinance. A zoning ordinance also
35 may explicitly delegate to the municipal reviewing authority the ability to approve
36 development proposals that do not meet the dimensional standards otherwise required, in
37 order to promote cluster development, to accommodate lots with insufficient frontage or
38 to provide for reduced setbacks for lots or buildings made nonconforming by municipal
39 zoning. As long as the development falls within the parameters of such an ordinance, the
40 approval is not considered the granting of a variance. This delegation of authority does

1 not authorize the reduction of dimensional standards required under the mandatory
2 shoreland zoning laws, Title 38, chapter 3, subchapter 1, article 2-B.

3

SUMMARY

4 This bill provides a municipal board of appeals the authority to grant a variance from
5 the municipality's dimensional standards if the variance is consistent with the general
6 condition of the neighborhood and removes the requirement that the variance cause a
7 practical difficulty. This bill also includes impervious surface space, open space ratios
8 and yard and setback requirements in the meaning of dimensional standards.