

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

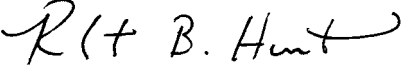
No. 1706

H.P. 1095

House of Representatives, April 18, 2023

**An Act to Clarify Statewide Laws Regarding Affordable Housing
and Accessory Dwelling Units**

Reference to the Joint Select Committee on Housing suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative MALON of Biddeford.
Cosponsored by Senator PIERCE of Cumberland and
Representatives: GATTINE of Westbrook, GERE of Kennebunkport, GOLEK of Harpswell,
KUHN of Falmouth, RANA of Bangor, SHEEHAN of Biddeford.

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

2 **Sec. 1. 30-A MRSA §4364, sub-§1**, as enacted by PL 2021, c. 672, §4, is amended
3 to read:

4 **1. Definition.** For the purposes of this section, "affordable housing development"
5 means:

6 A. For rental housing, a development in which a household whose income does not
7 exceed 80% of the median income for the area as defined by the United States
8 Department of Housing and Urban Development under the United States Housing Act
9 of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority
10 of the units ~~that the developer designates as affordable~~ without spending more than
11 30% of the household's monthly income on housing costs; and

12 B. For owned housing, a development in which a household whose income does not
13 exceed 120% of the median income for the area as defined by the United States
14 Department of Housing and Urban Development under the United States Housing Act
15 of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority
16 of the units ~~that the developer designates as affordable~~ without spending more than
17 30% of the household's monthly income on housing costs.

18 **Sec. 2. 30-A MRSA §4364, sub-§3**, as enacted by PL 2021, c. 672, §4, is amended
19 to read:

20 **3. Long-term affordability.** Before ~~approving~~ granting final approval of an
21 affordable housing development, including but not limited to issuing an occupancy permit,
22 a municipality shall require that the owner of the affordable housing development have
23 executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit
24 of and enforceable by a party acceptable to the municipality, to ensure that for at least 30
25 years after completion of construction:

26 A. For rental housing, occupancy of all of the units designated affordable in the
27 development will remain limited to households at or below 80% of the local area
28 median income at the time of initial occupancy; and

29 B. For owned housing, occupancy of all of the units designated affordable in the
30 development will remain limited to households at or below 120% of the local area
31 median income at the time of initial occupancy.

32 **Sec. 3. 30-A MRSA §4364, sub-§6**, as enacted by PL 2021, c. 672, §4, is amended
33 to read:

34 **6. Subdivision requirements.** This section may not be construed to exempt a
35 subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~
36 subchapter 4.

37 **Sec. 4. 30-A MRSA §4364-A, sub-§1**, as enacted by PL 2021, c. 672, §5, is
38 amended to read:

39 **1. Use allowed.** Notwithstanding any provision of law to the contrary, except as
40 provided in Title 12, chapter 423-A, for any area in which ~~housing is~~ residential uses are
41 allowed, including as a conditional use, a municipality shall allow structures with up to 2
42 dwelling units per lot if that lot does not contain an existing dwelling unit, except that a

1 municipality shall allow up to 4 dwelling units per lot if that lot does not contain an existing
2 dwelling unit and the lot is located in a designated growth area within a municipality
3 consistent with section 4349-A, subsection 1, paragraph A or B or if the lot is served by a
4 public, special district or other centrally managed water system and a public, special district
5 or other comparable sewer system in a municipality without a comprehensive plan.

6 A municipality shall allow on a lot with one existing dwelling unit the addition of up to 2
7 dwelling units: one additional dwelling unit within or attached to an existing structure or
8 one additional detached dwelling unit, or one of each.

9 A municipality may allow more units than the number required to be allowed by this
10 subsection.

11 **Sec. 5. 30-A MRSA §4364-A, sub-§2, ¶A,** as enacted by PL 2021, c. 672, §5, is
12 amended to read:

13 A. If more than one dwelling unit has been constructed on a lot as a result of the
14 allowance under this section ~~or section 4364-B~~, the lot is not eligible for any additional
15 increases in density except as allowed by the municipality.

16 **Sec. 6. 30-A MRSA §4364-A, sub-§3,** as enacted by PL 2021, c. 672, §5, is
17 amended to read:

18 **3. General requirements.** A municipal ordinance may not establish dimensional
19 requirements ~~or, including but not limited to~~ setback requirements, for dwelling units
20 allowed under this section that are greater than dimensional requirements ~~or, including but~~
21 not limited to setback requirements, for single-family housing units, except that a municipal
22 ordinance may establish requirements for a lot area per dwelling unit as long as the required
23 lot area for subsequent units on a lot is not greater than the required lot area for the first
24 unit.

25 **Sec. 7. 30-A MRSA §4364-A, sub-§7,** as enacted by PL 2021, c. 672, §5, is
26 amended to read:

27 **7. Subdivision requirements.** This section may not be construed to exempt a
28 subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~
29 subchapter 4.

30 **Sec. 8. 30-A MRSA §4364-B, sub-§1,** as enacted by PL 2021, c. 672, §6, is
31 amended to read:

32 **1. Use permitted.** Except as provided in Title 12, chapter 423-A, a municipality shall
33 allow an accessory dwelling unit to be located on the same lot as a single-family dwelling
34 unit in any area in which ~~housing is~~ residential uses are permitted, including as a conditional
35 use.

36 **Sec. 9. 30-A MRSA §4364-B, sub-§3,** as enacted by PL 2021, c. 672, §6, is
37 amended to read:

38 **3. Zoning requirements.** With respect to accessory dwelling units, municipal zoning
39 ordinances must comply with the following conditions:

40 A. At least one accessory dwelling unit must be allowed on any lot where a single-
41 family dwelling unit is the principal structure; ~~and~~

1 B. If more than one accessory dwelling unit has been constructed on a lot as a result
2 of the allowance under this section ~~or section 4364-A~~, the lot is not eligible for any
3 additional increases in density except as allowed by the municipality; and

4 C. An accessory dwelling unit is allowed on a lot that does not conform to the
5 municipal zoning ordinance if the accessory dwelling unit does not further increase the
6 nonconformity.

7 **Sec. 10. 30-A MRSA §4364-B, sub-§4, ¶B**, as corrected by RR 2021, c. 2, Pt. A,
8 §110, is amended to read:

9 B. For an accessory dwelling unit located within the same structure as a single-family
10 dwelling unit or attached to or sharing a wall with a single-family dwelling unit, the
11 ~~setback requirements and~~ dimensional requirements, including but not limited to
12 setback requirements, must be the same as the ~~setback requirements and~~ dimensional
13 requirements, including but not limited to setback requirements, of the single-family
14 dwelling unit, except for an accessory dwelling unit permitted in an existing accessory
15 building or secondary building or garage as of July 1, 2023, in which case the requisite
16 setback requirements for such a structure apply. A municipality may establish more
17 permissive dimensional ~~and setback~~ requirements, including but not limited to setback
18 requirements, for an accessory dwelling unit.

19 **Sec. 11. 30-A MRSA §4364-B, sub-§4, ¶D** is enacted to read:

20 D. An accessory dwelling unit that was not built with municipal approval must be
21 allowed if the accessory dwelling unit otherwise meets the requirements for accessory
22 dwelling units of the municipality and under this section.

23 **Sec. 12. 30-A MRSA §4364-B, sub-§5**, as enacted by PL 2021, c. 672, §6, is
24 amended to read:

25 **5. Shoreland zoning.** ~~An~~ Notwithstanding subsection 4, paragraph A, an accessory
26 dwelling unit must comply with shoreland zoning requirements established by the
27 Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland
28 zoning ordinances.

29 **Sec. 13. 30-A MRSA §4364-B, sub-§8, ¶A**, as enacted by PL 2021, c. 672, §6, is
30 amended to read:

31 A. Establish an application and permitting process for accessory dwelling units that
32 does not require planning board approval;

33 **Sec. 14. 30-A MRSA §4364-B, sub-§10**, as enacted by PL 2021, c. 672, §6, is
34 amended to read:

35 **10. Subdivision requirements.** This section may not be construed to exempt a
36 subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~
37 ~~subchapter 4.~~

38 SUMMARY

39 This bill makes changes to provisions of law regarding affordable housing and
40 accessory dwelling units by:

- 1 1. Removing from the definition of "affordable housing development" that the
2 developer designates the development as affordable;
- 3 2. Clarifying that municipal approval of an affordable housing development for
4 purposes of timing of the execution of a restrictive covenant means granting final approval,
5 including issuing an occupancy permit;
- 6 3. Clarifying that setback requirements are just one type of dimensional requirements;
- 7 4. Changing language stating where housing is allowed or permitted to refer to where
8 residential uses, including as a conditional use, are allowed or permitted;
- 9 5. Allowing accessory dwelling units on nonconforming lots, including in shoreland
10 zones, if the accessory dwelling units do not further increase the nonconformity;
- 11 6. Allowing accessory dwelling units built without municipal approval, including
12 accessory dwelling units in shoreland zones, if the accessory dwelling units otherwise meet
13 state and municipal requirements for accessory dwelling units; and
- 14 7. Allowing municipalities to approve accessory dwelling units through a permitting
15 process that does not require planning board approval.