

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

EIGHTY-SECOND LEGISLATURE

H. P. No. 4

H. D. No. 2

House of Representatives, Jan. 13, 1925.

Referred to Committee on Judiciary and 1000 copies ordered printed. Sent up for Concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Oakes of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-FIVE

AN ACT Relating to the Limitation of Buildings in Specified
Districts of Cities and Towns.

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

Section 1. *Grant of Power.*—For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body of cities and incorporated villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Sec. 2. *Districts.*—For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this Act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

Sec. 3. *Purposes in View.*—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Sec. 4. *Method of Procedure.*—The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such

4 districts shall be determined, established, and enforced, and
5 from time to time amended, supplemented, or changed.
6 However, no such regulation, restriction, or boundary shall
7 become effective until after a public hearing in relation
8 thereto, at which parties in interest and citizens shall have
9 an opportunity to be heard. At least 15 days notice of the
10 time and place of such hearing shall be published in an
11 official paper, or a paper of general circulation, in such
12 municipality.

Sec. 5. *Changes.*—Such regulations, restrictions, and
2 boundaries may from time to time be amended, supplement-
3 ed, changed, modified, or repealed. In case, however, of a
4 protest against such change, signed by the owners of 20
5 per cent or more either of the area of the lots included in
6 such proposed change, or of those immediately adjacent
7 in the rear thereof extending.....feet therefrom, or of
8 those directly opposite thereto extending.....feet from
9 the street frontage of such opposite lots, such amendment
10 shall not become effective except by the favorable vote of
11 three-fourths of all the members of the legislative body of
12 such municipality. The provisions of the previous section
13 relative to public hearings and official notice shall apply
14 equally to all changes or amendments.

Sec. 6. *Zoning Commission.*—In order to avail itself of
2 the powers conferred by this act, such legislative body shall
3 appoint a commission, to be known as the Zoning Commis-
4 sion, to recommend the boundaries of the various original

5 districts and appropriate regulations to be enforced therein.
6 Such commission shall make a preliminary report and hold
7 public hearings thereon before submitting its final report,
8 and such legislative body shall not hold its public hearings
9 or take action until it has received the final report of such
10 commission. Where a city plan commission already exists,
11 it may be appointed as the Zoning Commission.

Sec. 7. *Board of Adjustment.*—Such local legislative body
2 may provide for the appointment of a Board of Adjustment,
3 and in the regulations and restrictions adopted pursuant to
4 the authority of this act may provide that the said Board
5 of Adjustment may, in appropriate cases and subject to
6 appropriate conditions and safeguards, make special excep-
7 tions to the terms of the ordinance in harmony with its
8 general purpose and intent and in accordance with general
9 or specific rules therein contained.

The Board of Adjustment shall consist of five members,
2 each to be appointed for a term of three years and removable
3 for cause by the appointing authority upon written charges
4 and after public hearing. Vacancies shall be filled for the
5 unexpired term of any member whose term becomes vacant.

The board shall adopt rules in accordance with the pro-
2 visions of any ordinance adopted pursuant to this act.
3 Meetings of the board shall be held at the call of the chair-
4 man and at such other times as the board may determine.
5 Such chairman, or in his absence the acting chairman, may
6 administer oaths and compel the attendance of witnesses.

7 All meetings of the board shall be open to the public. The
8 board shall keep minutes of its proceedings, showing the
9 vote of each member upon each question, or, if absent or
10 failing to vote, indicating such fact, and shall keep records
11 of its examinations and other official actions, all of which
12 shall be immediately filed in the office of the board and
13 shall be a public record.

Appeals to the Board of Adjustment may be taken by
2 any person aggrieved or by any officer, department, board
3 or bureau of the municipality affected by any decision of
4 the administrative officer. Such appeal shall be taken with-
5 in a reasonable time, as provided by the rules of the board,
6 by filing with the officer from whom the appeal is taken and
7 with the Board of Adjustment a notice of appeal specifying
8 the grounds thereof. The officer from whom the appeal is
9 taken shall forthwith transmit to the board all the papers
10 constituting the record upon which the action appealed from
11 was taken.

An appeal stays all proceedings in furtherance of the
2 action appealed from, unless the officer from whom the
3 appeal is taken certifies to the Board of Adjustment after
4 the notice of appeal shall have been filed with him that by
5 reason of facts stated in the certificate a stay would, in
6 his opinion, cause imminent peril to life or property. In
7 such case proceedings shall not be stayed otherwise than by
8 a restraining order which may be granted by the Board of
9 Adjustment or by a court of record on application on notice

10 to the officer from whom the appeal is taken and on due
11 cause shown.

The Board of Adjustment shall fix a reasonable time for
2 the hearing of the appeal, give public notice thereof, as well
3 as due notice to the parties in interest, and decide the same
4 within a reasonable time. Upon the hearing any party may
5 appear in person or by agent or by attorney.

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there
2 is error in any order, requirement, decision, or determina-
3 tion made by an administrative official in the enforcement
4 of this act or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of
2 the ordinance upon which such board is required to pass
3 under such ordinance.

3. To authorize upon appeal in specific cases such vari-
2 ance from the terms of the ordinance as will not be con-
3 trary to the public interest, where, owing to special condi-
4 tions, a literal enforcement of the provisions of the ordi-
5 nance will result in unnecessary hardship, and so that the
6 spirit of the ordinance shall be observed and substantial
7 justice done.

In exercising the above-mentioned powers such board may,
2 in conformity with the provisions of this act, reverse or
3 affirm, wholly or partly, or may modify the order, require-
4 ment, decision, or determination appealed from and may
5 make such order, requirement, decision, or determination as

6 ought to be made, and to that end shall have all the powers
7 of the officer from whom the appeal is taken.

The concurring vote of four members of the board shall
2 be necessary to reverse any order, requirement, decision, or
3 determination of any such administrative official, or to de-
4 cide in favor of the applicant on any matter upon which it
5 is required to pass under any such ordinance, or to effect
6 any variation in such ordinance.

Any person or persons, jointly or severally, aggrieved by
2 any decision of the Board of Adjustment, or any taxpayer,
3 or any officer, department, board, or bureau of the munici-
4 pality, may present to a court of record a petition, duly
5 verified, setting forth that such decision is illegal, in whole
6 or in part, specifying the grounds of the illegality. Such
7 petition shall be presented to the court within 30 days after
8 the filing of the decision in the office of the board.

Upon the presentation of such petition the court may allow
2 a writ of certiorari directed to the Board of Adjustment
3 to review such decision of the Board of Adjustment and
4 shall prescribe therein the time within which a return there-
5 to must be made and served upon the relator's attorney,
6 which shall not be less than 10 days and may be extended
7 by the court. The allowance of the writ shall not stay
8 proceedings upon the decision appealed from, but the court
9 may, on application, on notice to the board and on due
10 cause shown, grant a restraining order.

The Board of Adjustment shall not be required to return

2 the original papers acted upon by it, but it shall be sufficient
3 to return certified or sworn copies thereof or of such
4 portions thereof as may be called for by such writ. The
5 return shall concisely set forth such other facts as may be
6 pertinent and material to show the grounds of the decision
7 appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that
2 testimony is necessary for the proper disposition of the
3 matter, it may take evidence or appoint a referee to take
4 such evidence as it may direct and report the same to the
5 court with his findings of fact and conclusions of law, which
6 shall constitute a part of the proceedings upon which the
7 determination of the court shall be made. The court may
8 reverse or affirm, wholly or partly, or may modify the de-
9 cision brought up for review.

Costs shall not be allowed against the board unless it shall
2 appear to the court that it acted with gross negligence, or
3 in bad faith, or with malice in making the decision appealed
4 from.

All issues in any proceeding under this section shall have
2 a preference over all other civil actions and proceedings.

Sec. 8. *Remedies.*—In case any building or structure is
2 erected, constructed, reconstructed, altered, repaired, con-
3 verted, or maintained, or any building, structure, or land is
4 used in violation of this act or of any ordinance or other
5 regulation made under authority conferred hereby, the
6 proper local authorities of the municipality, in addition to

7 other remedies, may institute any appropriate action or pro-
8 ceedings to prevent such unlawful erection, construction,
9 reconstruction, alteration, repair, conversion, maintenance,
10 or use, to restrain, correct, or abate such violation, to pre-
11 vent the occupancy of said building, structure, or land, or
12 to prevent any illegal act, conduct, business, or use in or
13 about such premises.

Sec. 9. *Conflict with Other Laws.*—Wherever the regula-
2 tions made under authority of this act require a greater
3 width or size of yards, courts, or other open spaces, or re-
4 quire a lower height of building or less number of stories,
5 or require a greater percentage of lot to be left unoccupied,
6 or impose other higher standards than are required in any
7 other statute or local ordinance or regulation, the provisions
8 of the regulations made under authority of this act shall
9 govern. Wherever the provisions of any other statute or
10 local ordinance or regulation require a greater width or size
11 of yards, courts, or other open spaces, or require a lower
12 height of building or a less number of stories, or require a
13 greater percentage of lot to be left unoccupied, or impose
14 other higher standards than are required by the regulations
15 made under authority of this act, the provisions of such
16 statute or local ordinance or regulation shall govern.