132nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2025

Legislative Document	**No. 1829**
H.P. 1224	House of Representatives, April 30, 2025

An Act to Build Housing for Maine Families and Attract Workers to Maine Businesses by Amending the Laws Governing Municipal Land Use Decisions

Reference to the Committee on Housing and Economic Development suggested and ordered printed.

ROBERT B. HUNT
Clerk

Presented by Speaker FECTEAU of Biddeford.

Printed on recycled paper

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

Sec. 1. 4 MRSA §18-C is enacted to read:

§18-C. Housing Development Resolution Board

1. Board established. There is established within the Administrative Office of the Courts the Housing Development Resolution Board, referred to in this section as "the board," to hear an appeal of a final decision by a municipal reviewing authority affecting housing development in the municipality. For the purposes of this section, "municipal reviewing authority" means a municipal board of appeals established pursuant to section 2691, planning board, site plan board, design review board, historic preservation review board or any other review board created by municipal charter or ordinance.

2. Membership; appointment. The Chief Justice of the Supreme Judicial Court, or the justice's designee, shall appoint 3 members to the board with experience and knowledge of land use law or housing development. One member must be an attorney licensed to practice law in the State and one member must be a professional engineer or land surveyor.

3. Term; chairs; compensation; vacancy. Board members serve 5-year terms or until a successor is appointed, whichever is later. The initial members of the board serve staggered terms of 3, 4 and 5 years. The Chief Justice of the Supreme Judicial Court, or the justice's designee, shall designate one member as chair to serve in that capacity for the duration of the member's term. The Chief Justice, or the justice's designee, shall establish compensation for board members and for the payment of expenses. Any vacancy on the board must be filled for the unexpired term of the vacant seat.

4. Conflicts of interest. Board members shall avoid actual and perceived conflicts of interest with their duties as a board member. A board member may not represent a party, testify as an expert witness or render any professional service for any party or interest before the board, and any member having an interest in a matter before the board is disqualified to act on that appeal.

5. Removal. A board member may be removed by the Chief Justice of the Supreme Judicial Court, or the justice's designee, for inefficiency, neglect of duty or malfeasance in performance of the member's duties.

6. Duties. Notwithstanding any provision of law to the contrary, the board has the power and authority to and shall hear and affirm, reverse or modify, in whole or in part, appeals of a final decision of municipal reviewing authority under subsection 1 regarding questions of housing and housing development. The powers and duties under this subsection include, but are not limited to, appeals concerning:

A. Decisions on subdivisions or site plans;

B. Decisions on variances, special exceptions, administrative appeals and ordinance administration;

C. The use of innovative land use controls;

D. Growth management controls and interim growth management controls;

E. Decisions of historic district commissions, heritage commissions and conservation commissions;

F. Decisions on other municipal permits and fees applicable to housing and housing developments; and

G. Decisions on mixed-use combinations of residential and nonresidential uses. Such different uses may occur on separate properties as long as the properties are all part of a common scheme of development.

7. Timing of appeals. If a municipal reviewing authority issues a final decision denying an application for a housing or housing development project, the appeal must be filed within 14 business days of the decision. If a municipal reviewing authority issues a final decision approving an application for a housing or housing development project, the appeal must be filed within 14 business days of the decision, except that, for a housing or housing development project that requires more than one application to be reviewed and a final decision issued by one or more municipal reviewing authorities, an appeal of a decision may not be filed until a decision has been issued for all applications for the project.

8. Notice. At the same time an appeal is filed with the board, the appellant shall notify the municipal reviewing authority of the appeal.

A. The municipal reviewing authority shall within 14 business days of receipt of the notice of appeal submit to the board a certified record of its proceedings on the matter subject to the appeal.

B. The board shall hold a hearing on the merits within 60 days of its receipt of a notice of appeal.

C. The board shall issue a written decision on an appeal within 30 days after conducting a hearing on the merits.

9. Parties to the appeal. After local remedies have been exhausted, appeals may be brought before the board by an applicant to the municipal reviewing authority, or by any other aggrieved or injured party who demonstrates legal standing to appeal. The municipality shall be a party to the action. If the applicant is not the party initiating the action before the board, then the applicant is automatically an intervenor. The board shall grant intervenor status to abutters and to any other aggrieved or injured party who demonstrates legal standing to appeal.

10. Notice. The board shall serve written notice of the time, place and cause of any hearing upon all parties at least 20 days prior to the hearing date.

11. Jurisdiction. Notwithstanding any provision of law to the contrary, in matters within its authority, the board has concurrent jurisdiction with the Superior Court. An election by any party to bring an action before the board waives any right to bring an action in the Superior Court. At any time during an appeal to the board, if the board determines that it does not have jurisdiction to hear the appeal, the appellant has 30 days to file an appeal with the Superior Court.

12. Automatic stay; dismissal. An appeal to the board of a final decision of a municipal reviewing authority that has previously been or is subsequently included in an appeal in Superior Court by another party to the final decision of the municipal reviewing authority, or by any other aggrieved or injured party who demonstrates legal standing to appeal, must automatically be stayed by the Superior Court to provide the party with standing the opportunity to intervene in the matter before the board. If intervenor status is granted, the stay of the Superior Court action regarding those claims continues during the

pendency of the appeal to the board. After the board has decided the appeal, the Superior Court shall dismiss the matter before it to the extent the matter has been resolved by the board. Any claim included in an appeal to Superior Court that is not within the board's authority is not subject to the automatic stay.

13. Subpoena power; administration of oaths. The board has the same authority to issue subpoenas, administer oaths and compel the attendance of witnesses to proceedings before it as exists for the Superior Court.

14. Perjury. Any testimony given by a person duly sworn in an action before the board is subject to the penalties of perjury.

15. Hearing procedure. Appeals to the board must be consistent with appeals to a Superior Court. Appeals must be on the written record of the municipal reviewing authority certified by a notary public, and, except in such cases as justice may warrant, in the sole discretion of the board, additional evidence may not be introduced. The rules of evidence do not strictly apply. The board shall record the proceedings of any hearing before it and shall make the recordings available to the public for inspection and viewing from the date of the hearing to a date 15 working days after the board has made a final decision on the appeal.

16. Standard of review. The board may not reverse or modify a final decision of a municipal reviewing authority except for errors of law or if the board is persuaded by the balance of probabilities, on the evidence before it, that the final decision of a municipal reviewing authority is unreasonable.

17. Remedies. In exercising its authority under this section, the board has the power to award all remedies available to the Superior Court in similar cases, including permission to develop the proposed housing and to award costs and reasonable attorney's fees.

18. Filing and enforcement of decisions. The board shall file a certified copy of a final decision in the Superior Court of the county in which the municipal reviewing authority is located. The judgment may be enforced in the same manner as a final Superior Court judgment.

19. No appeal right. A final decision of the board is not appealable to a Superior Court or the Supreme Judicial Court.

20. Procedures and rules. The court may adopt administrative orders and court rules to govern the practice, procedure and administration of the board.

Sec. 2. 30-A MRSA §4324, sub-§2, ¶C is enacted to read:

C. Planning committee members shall attend a training on land use planning offered by a state agency or a statewide association representing municipalities within 180 days of appointment or of the effective date of this paragraph, whichever is later. If a training is not available within the 180-day period, a planning board member must attend the next available training.

Sec. 3. 30-A MRSA §4360, sub-§2-A is enacted to read:

2-A. Prohibition. Notwithstanding subsection 2, a municipality may not enact an ordinance that limits the rate of growth of residential development in a designated growth area.

Sec. 4. 30-A MRSA §4364-A, sub-§1, as amended by PL 2023, c. 192, §6, is repealed and the following enacted in its place:

1. Use allowed. Notwithstanding any provision of law to the contrary, except as provided in Title 12, chapter 423-A, for any area in which residential uses are allowed, including as a conditional use, a municipality shall allow:

A. Two dwelling units per lot if the lot is not in a designated growth area within a municipality consistent with section 4349-A, subsection 1, paragraph A or B;

B. Four dwelling units per lot if the lot is located in a designated growth area within a municipality consistent with section 4349-A, subsection 1, paragraph A or B;

C. Four dwelling units per lot if the lot is served by public water and public sewer; and

D. Up to 2 additional dwelling units on a lot with one existing dwelling unit.

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

Sec. 5. 30-A MRSA §4364-A, sub-§2-A is enacted to read:

2-A. Additional height allowance. A municipality shall allow an affordable housing development to exceed any height restrictions otherwise applicable to the project by no more than 14 feet.

Sec. 6. 30-A MRSA §4364-A, sub-§3, as amended by PL 2023, c. 192, §9, is repealed and the following enacted in its place:

3. General requirements. A municipal ordinance may not establish or enforce:

A. Dimensional requirements, including but not limited to setback requirements, for dwelling units allowed under this section that are greater than dimensional requirements, including but not limited to setback requirements, for single-family housing units, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit; or

B. Minimum lot size requirements greater than 5,000 square feet per dwelling unit allowed under this section that are served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system.

Sec. 7. 30-A MRSA §4364-D is enacted to read:

§4364-D. Exception

Notwithstanding any provision of law to the contrary, a municipality only has the authority to conduct an administrative review for an affordable housing density bonus or when the project has 4 or fewer units.

Sec. 8. 30-A MRSA §4482, first ¶, as enacted by PL 2015, c. 459, §1, is amended to read:

~~This~~ Except as otherwise provided in Title 4, section 18-C, this section governs the process of filing complaints in Superior Court to challenge a significant municipal land use decision or the failure to make such a decision.

Sec. 9. 30-A MRSA §4482-A, first ¶, as enacted by PL 2017, c. 241, §5, is amended to read:

~~This~~ Except as otherwise provided in Title 4, section 18-C, this section governs the review process for a municipal land use decision that is not a significant municipal land use decision under section 4482, except as provided in section 4482, subsection 3, or a decision of a board of appeals under section 2691.

SUMMARY

This bill makes the following changes in the laws governing municipal land use decisions:

1. It establishes the Housing Development Resolution Board within the judicial branch. The board has concurrent jurisdiction with the Superior Court to hear appeals of final decisions by municipal reviewing authorities regarding housing and housing development. Decisions of the board are binding and not appealable to either the Superior Court or the Supreme Judicial Court;

2. It requires a municipality to allow a certain number of dwelling units per lot depending on whether the lot is in a designated growth area or is served by public water and sewer;

3. It requires members of municipal planning committees to attend land use planning training;

4. It requires a municipality to allow an affordable housing development to exceed any height restrictions by no more than 14 feet;

5. It prohibits a municipality from enacting an ordinance that limits the rate of growth of residential development in a designated growth area;

6. It prohibits a municipality from establishing or enforcing a minimum lot size requirement greater than 5,000 square feet per dwelling unit to be served by public water and public sewer; and

7. It limits municipal review for an affordable housing density bonus and a development with 4 or fewer units to administrative review.