

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-SIX

—  
S.P. 861 - L.D. 2143

**An Act Facilitating the Reconstruction or Replacement of Storm-damaged  
Commercial Fisheries Facilities and Infrastructure**

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

**Sec. 1. 30-A MRSA §4353, sub-§4**, as amended by PL 2013, c. 186, §1, is further amended to read:

**4. Variance.** Except as provided in subsections 4-A, 4-B and 4-C and section 4353-A, the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- A. ~~The~~ Except as provided in subsection 4-D, the land in question can not cannot yield a reasonable return unless a variance is granted;
- B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- C. The granting of a variance will not alter the essential character of the locality; and
- D. The hardship is not the result of action taken by the ~~applicant~~ petitioner or a prior owner.

Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may be granted only for a use permitted in a particular zone.

**Sec. 2. 30-A MRSA §4353, sub-§4-D** is enacted to read:

**4-D. Floodplain reasonable return variance for functionally dependent use.** The board may grant a variance from a prohibition on construction seaward of mean high tide or requirement to elevate structures above the base flood elevation when placed upon a dock, pier or wharf as prescribed in a municipal floodplain management ordinance that is filed with the municipality's board of appeals if:

- A. The petitioner demonstrates to the board that the petitioner suffered substantial damage, as defined in the municipality's floodplain management ordinance, to a dock, pier or wharf or a structure placed thereon;

B. The damaged dock, pier or wharf or structure placed thereon identified pursuant to paragraph A is proposed to be reconstructed or replaced and be permitted for a functionally dependent use as defined in 44 Code of Federal Regulations, Section 59.1; and

C. The dock, pier or wharf or structure placed thereon under paragraph B is proposed to be elevated or otherwise protected from flood damages to the extent practicable.

A variance granted pursuant to this subsection must be the minimum variance from the municipal floodplain management ordinance necessary to afford relief for the functionally dependent use.

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

C. Establish alternative criteria that are less restrictive than the requirements of subsection 4 for the approval of a housing structure only in circumstances in which the municipality would be able to provide a variance under section 4353, subsection 4, 4-A, 4-B or 4-C or 4-D.

**Sec. 4. 30-A MRSA §4364-B, sub-§8, ¶C**, as enacted by PL 2021, c. 672, §6, is amended to read:

C. Establish alternative criteria that are less restrictive than the requirements of subsections 4, 5, 6 and 7 for the approval of an accessory dwelling unit only in circumstances in which the municipality would be able to provide a variance under section 4353, subsection 4, 4-A, 4-B or 4-C or 4-D.