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Legislative Document

No. 1672

H.P. 1070

House of Representatives, April 13, 2023

An Act to Establish an Affordable Housing Permitting Process

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

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

ROBERT B. HUNT
Clerk

Presented by Representative GERE of Kennebunkport.
Cosponsored by Senator POULIOT of Kennebec and
Representatives: ARATA of New Gloucester, CAMPBELL of Orrington, COLLAMORE of
Pittsfield, GATTINE of Westbrook, GOLEK of Harpswell, STOVER of Boothbay, Senators:
PIERCE of Cumberland, VITELLI of Sagadahoc.

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

2 **Sec. 1. 5 MRSA §12004-G, sub-§14-K** is enacted to read:

3 **14-K.**

4 <u>Housing</u>	<u>Affordable Housing Development</u>	<u>Expenses Only</u>	<u>30-A MRSA</u>
5	<u>Review Board</u>		<u>§5073</u>

6 **Sec. 2. 30-A MRSA c. 202-B** is enacted to read:

7 **CHAPTER 202-B**

8 **AFFORDABLE HOUSING**

9 **§5071. Definitions**

10 As used in this chapter, unless the context otherwise indicates, the following terms
11 have the following meanings.

12 **1. Affordable housing.** "Affordable housing" means a decent, safe and sanitary
13 dwelling unit for which the cost of occupancy is no more than 30% of a family's household
14 income for a family with an income up to 80% of the area median income for rental housing
15 and an income up to 120% of the area median income for owned housing as established by
16 the United States Department of Housing and Urban Development.

17 **2. Board.** "Board" means the Affordable Housing Development Review Board
18 established in Title 5, section 12004-G, subsection 14-K.

19 **3. Comprehensive plan.** "Comprehensive plan" has the same meaning as in section
20 4301, subsection 3.

21 **4. Department.** "Department" means the Department of Agriculture, Conservation
22 and Forestry.

23 **5. Designated growth area.** "Designated growth area" means an area of a municipality
24 consistent with section 4349-A, subsection 1, paragraph A or B.

25 **6. Dwelling unit.** "Dwelling unit" has the same meaning as in section 4401, subsection
26 2.

27 **7. Local board.** "Local board" means any municipal entity with authority for
28 approving or supervising the construction of residential buildings or enforcing municipal
29 building laws.

30 **8. Neighborhood standards.** "Neighborhood standards" means local land use
31 standards relating to new development that support local goals related to quality of life,
32 fiscal health, affordability and sustainability, including but not limited to street design and
33 street connections between parcels; characteristics that define neighborhoods including
34 walkability and access to destinations; location and characteristics of civic or open spaces;
35 form, type and orientation of new buildings; and location and management of parking to
36 reduce costs and maintain walkability.

37 **9. Permit.** "Permit" means a permit for an affordable housing development or a
38 workforce housing development under section 5074.

1 **10. Preapproved building type.** "Preapproved building type" means a type of
2 building that has received municipal approval based on the characteristics of the building.

3 **11. Workforce housing.** "Workforce housing" means a decent, safe and sanitary
4 dwelling unit for which the cost of occupancy is no more than 30% of a family's household
5 income for a family with an income up to 120% of the area median income as established
6 by the United States Department of Housing and Urban Development.

7 **§5072. Construction**

8 This chapter may not be construed to:

9 **1. State laws.** Limit the application of state laws to an application for a permit under
10 this chapter, except as specifically provided in this chapter; or

11 **2. Review by local board.** Prevent an applicant for a permit under this chapter from
12 applying to a local board for a permit.

13 **§5073. Affordable Housing Development Review Board**

14 **1. Established.** The Affordable Housing Development Review Board, as established
15 in Title 5, section 12004-G, subsection 14-K, operates under the department's Bureau of
16 Resource Information and Land Use Planning for the purpose of making determinations on
17 applications for permits for affordable housing and workforce housing developments
18 submitted in accordance with section 5074.

19 **2. Membership.** The board consists of 7 members as follows.

20 **A.** The Commissioner of Agriculture, Conservation and Forestry shall appoint:

21 (1) One member who works for the department;

22 (2) Two members from the affordable housing development or affordable housing
23 finance industry;

24 (3) One member from municipal government; and

25 (4) One member who is an architect with experience with building codes.

26 **B.** The Governor shall appoint 2 members trained in urban design.

27 **3. Terms.** Members serve one-year terms that may be renewed by the appointing
28 authority.

29 **4. Duties.** Notwithstanding the home rule authority granted to municipalities by
30 section 3001 and by the Constitution of Maine, Article VIII, Part Second, the board shall,
31 with respect to an application for a permit pursuant to section 5074:

32 **A.** Consider whether to grant or deny the application for a permit, including by holding
33 hearings relating to a development;

34 **B.** Issue or deny a permit, including with any conditions or other requirements that a
35 local board would be authorized to include;

36 **C.** Issue decisions or other orders that any local board could issue that are enforceable
37 by an action in Superior Court;

38 **D.** Preempt any municipal or local ordinances; and

1 E. Consult with state agencies with oversight over an area described in section 5074,
2 subsection 1, paragraph A in which a development is proposed in order to ensure a
3 consolidated review of developments and meet local and state objectives of the area.

4 **5. Compensation.** Members of the board are entitled to reimbursement of reasonable
5 expenses incurred in order to serve on the board, including travel expenses, as provided in
6 Title 5, section 12004-G, subsection 14-K, within available funds appropriated or allocated
7 to the board.

8 **6. Rules.** The board shall adopt rules to implement this chapter. Rules adopted
9 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
10 subchapter 2-A. The board shall make the rules available to municipalities.

11 **§5074. Affordable housing development permits**

12 **1. Application.** A housing developer may apply for a permit for an affordable housing
13 development or workforce housing development in lieu of applying for a permit with a
14 local board if all of the following criteria are met.

15 A. The proposed development is in a designated growth area or is in an area served by
16 a public, special district or other centrally managed water system or by a public, special
17 district or other comparable sewer system.

18 B. The proposed development includes affordable housing or workforce housing as
19 50% of the total building square footage.

20 C. The proposed development is in an area described in paragraph A in which an
21 ordinance is not consistent with a municipality's comprehensive plan for that area as
22 evidenced by an ordinance that requires:

23 (1) A minimum lot size of more than 5,000 square feet;

24 (2) Lot area per dwelling unit density restrictions;

25 (3) A minimum dwelling unit size of more than 400 square feet;

26 (4) Lot area or floor area ratio limits;

27 (5) More than 2 parking spaces per 3 dwelling units;

28 (6) More than 50 feet of street frontage;

29 (7) On-site open space;

30 (8) More than 10 feet of front setback; or

31 (9) More than 10 feet per side or 20 feet cumulatively of setback.

32 **2. Procedures.** The following procedures apply to an application for a permit.

33 A. Upon receipt of a permit application, the board shall notify each local board that is
34 affected by the application by sending a copy of the application to each local board and
35 soliciting recommendations from each local board.

36 B. Within 30 days of receipt of a permit application, the board shall schedule a public
37 hearing and notify the applicant and each local board affected by the application of the
38 date of the hearing.

1 C. In making a determination on a permit application, the board shall consider the
2 recommendations of each local board affected by the application and may consider the
3 testimony of consultants.

4 D. Except as provided in paragraph E, the board shall issue its decision, based upon a
5 majority vote, within 40 days of the public hearing on the permit application under
6 paragraph B.

7 E. For permit applications for a preapproved building type, the board shall issue its
8 decision, based upon a majority vote, within 10 days of the public hearing on the permit
9 application under paragraph B. The timeline required by this paragraph may be
10 extended by mutual agreement between the board and the applicant.

11 F. The board shall include in its decision on an application for a permit any findings of
12 fact or conclusions of law necessary to explain its decision.

13 G. If the board does not issue a decision within the timelines required in paragraphs D
14 and E, the application for a permit is deemed to be denied.

15 **3. Review standards.** Notwithstanding chapter 187, subchapter 4, the board shall
16 review a permit application in accordance with this subsection and neighborhood standards.
17 The following standards must be met:

18 A. A proposed development must protect the health and safety of the occupants of the
19 proposed development;

20 B. If a proposed development creates a new street:

21 (1) The housing developer must demonstrate an ability to pay for maintenance and
22 replacement costs for the street for 30 years;

23 (2) The street must conform with local road construction standards and may not be
24 more than 20 feet wide for 2-way local roads or driveways and not more than 12
25 feet wide for one-way local roads or driveways; and

26 (3) The street must be straight in its orientation and connect to adjacent streets,
27 including streets on adjacent parcels, or provide for future connectivity to adjacent
28 parcels;

29 C. A building in a proposed development must:

30 (1) Be situated close to the street and oriented parallel to the street, with a front
31 setback that is consistent with the majority of the setbacks of buildings on the same
32 block or in a manner that meets the requirements with the municipality's
33 comprehensive plan and neighborhood standards;

34 (2) Have a roof shape and pitch that is consistent with the majority of the roofs of
35 buildings on the same block or in a manner that meets the requirements with the
36 municipality's comprehensive plan. Buildings in residential areas must have gable
37 or hip roofs with a slope that meets neighborhood standards. Buildings in
38 commercial or mixed-use areas may have flat roofs;

39 (3) Have a width and depth consistent with the historic pattern of the neighborhood
40 or meet the intent of the area as described in the municipality's comprehensive plan;

41 (4) Be elevated a minimum of 1 1/2 feet above grade if the building does not
42 contain ground floor retail space;

- 1 (5) Contain ramps and stairs for accessible dwelling units;
- 2 (6) Be within one story high of the average height of buildings located in the
3 surrounding neighborhood or consistent with the intent for the area in the
4 municipality's comprehensive plan;
- 5 (7) Meet all state building code standards in accordance with Title 10, section 9724;
6 and
- 7 (8) Be evaluated to meet state requirements for private water and wastewater
8 services or meet local system capacity if on public water and sewer services or
9 contain a package system for smaller lot sizes less than 20,000 square feet;
- 10 D. Interior and exterior parking for a proposed development must be located 20 feet
11 back from the front of a building, except when there is a driveway. Parking must be
12 screened from the street by buildings, low walls, fences or hedges;
- 13 E. Driveways in a proposed development in a neighborhood may not be more than 10
14 feet wide. Driveways in a proposed development in a commercial or mixed-use area
15 may not be more than 20 feet wide;
- 16 F. In areas in which there is a majority of retail space along the street, the proposed
17 development must provide ground floor retail space to a minimum depth of 20 feet
18 from the front of the building, with store fronts designed in a manner that is consistent
19 with the historic pattern of the design of retail space;
- 20 G. Building materials for the proposed development must be made of quality materials
21 consistent with materials historically used in the neighborhood or consistent with the
22 intent for the area in the municipality's comprehensive plan;
- 23 H. The proposed development must have a scale, floorplate, form, height and other
24 basic architectural features that are consistent with the features on buildings within 250
25 feet of the proposed development or in a manner that meets the intent for the area in
26 the municipality's comprehensive plan;
- 27 I. In residential areas, porches must be a minimum of 8 feet deep and covered stoops
28 must be provided along the street front of the building with a width consistent with
29 others in the neighborhood. Covered stoops are required on secondary doors; and
- 30 J. Comply with all state environmental and wetlands laws and rules.
- 31 **4. Preapproved buildings.** Preapproved buildings are deemed to meet all of the
32 standards in subsection 3.
- 33 **5. Comprehensive review.** Notwithstanding any provision of law to the contrary, for
34 a development in an area described in subsection 1, paragraph A, the board has authority
35 to review and make determinations necessary to issue permits for:
- 36 A. An area designated as a historical district by a municipality by ordinance;
- 37 B. A shoreland area as established in Title 38, section 435; or
- 38 C. An area not listed in paragraph A or B with a designation that makes it subject to
39 additional local or state oversight.

