



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Assembly Bill 403

Assembly Amendment 1

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CURRENT LAW

Under current law, a town authorized to exercise village powers, a village, or a city (municipality), and a county may enact zoning ordinances that regulate and restrict the height, number of stories, and size of a building, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, and the location and use of buildings, structures, and land for various purposes.

Also, a municipality's zoning board of appeals or a county's zoning board of adjustment (board), may, among other things, authorize upon appeal a variance from the terms of the ordinance to allow property to be used in a manner that is not authorized by the zoning ordinance. The board may authorize a variance from the terms of the ordinance if the board finds all the following:

- The variance will not be contrary to the public interest.
- Substantial justice will be done by granting the variance.
- Due to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship.
- The variance is needed so that the spirit of the ordinance is observed.

[ss. 59.694 (7) (c) and 62.23 (7) (e) 7., Stats.]

Wisconsin courts have clarified that any variance issued runs with the land, not with the person who appealed for the variance. [*Goldberg v. Milwaukee Zoning Appeals Board*, 115 Wis. 2d 517 (Ct. App. 1983).]

THE BILL

The bill does all of the following:

- Codifies a board's authority to enact an ordinance specifying an expiration date for a variance. If there is no ordinance in effect, the variance does not expire unless, at the time it is granted, the board specifies in the variance the date after which the variance does not apply.
- Codifies current law under *Goldberg*, that a variance granted runs with the land.

The bill first applies retroactively to a variance that was granted before the effective date of the bill.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 limits what kind of expiration dates a board may place upon a variance. Under the amendment, a board may enact an ordinance specifying the expiration date for a variance ***if the expiration date relates to a specific date by which the action authorized by the variance must be commenced or completed***. Likewise, if there is no such ordinance in effect, the variance does not expire unless, at the time it is granted, the board specifies in the variance, a ***specific date by which the action authorized by the variance must be commenced or completed***.

LEGISLATIVE HISTORY

On February 27, 2012, Representative Steineke introduced Assembly Amendment 1. On March 6, 2012, the Assembly Committee on Urban and Local Affairs voted to recommend adoption of Assembly Amendment 1 by a vote of Ayes, 9; Noes, 0; and voted to recommend passage of the bill, as amended, by a vote of Ayes, 9; Noes, 0.

MS:jb;ksm