



2011 ASSEMBLY BILL 403

December 1, 2011 – Introduced by Representatives STEINEKE, STROEBEL, BIES, RIVARD and JACQUE, cosponsored by Senators LASEE, DARLING and GROTHMAN. Referred to Committee on Urban and Local Affairs.

- 1 **AN ACT to amend** 59.694 (7) (c) and 62.23 (7) (e) 7. of the statutes; **relating to:**
2 the length of time for which a variance applies.

Analysis by the Legislative Reference Bureau

Under current law, a city, village, or town that is authorized to exercise village powers (municipality) or county is authorized to enact zoning ordinances that 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 and other open spaces, the density of population, and the location and use of buildings, structures, and land for various purposes.

A municipality's board of appeals or a county's board of adjustment (board) is authorized under current law to hear and decide appeals that allege there is an error in the enforcement of a zoning ordinance, to hear and decide special exceptions to the terms of a zoning ordinance, and to authorize a variance from the terms of a zoning ordinance. A "use" variance grants permission for a use that is not permitted by the zoning ordinance, and an "area" variance relaxes restrictions on dimensions, such as setback, frontage, height, bulk, density, and area. To grant a variance, a board must find four things:

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

This bill authorizes a municipality or county to enact an ordinance specifying an expiration date for a variance. If no such ordinance exists, however, the bill

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specifies that a variance that is granted does not expire unless the board specifies in the variance, at the time it is granted, a date after which the variance does not apply. The bill also codifies a court decision (*Goldberg v. Milwaukee Zoning Appeals Board*, 115 Wis. 2d 517 (Ct. App. 1983)) stating that a variance runs with the land.

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

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.694 (7) (c) of the statutes is amended to read:

2 59.694 (7) (c) To authorize upon appeal in specific cases variances from the
3 terms of the ordinance that will not be contrary to the public interest, where, owing
4 to special conditions, a literal enforcement of the provisions of the ordinance will
5 result in unnecessary hardship, and so that the spirit of the ordinance shall be
6 observed and substantial justice done. A county board may enact an ordinance
7 specifying an expiration date for a variance granted under this paragraph. If no such
8 ordinance is in effect, a variance granted under this paragraph does not expire
9 unless, at the time it is granted, the board of adjustment specifies in the variance a
10 date after which the variance does not apply. A variance granted under this
11 paragraph runs with the land.

12 **SECTION 2.** 62.23 (7) (e) 7. of the statutes is amended to read:

13 62.23 (7) (e) 7. The board of appeals shall have the following powers: To hear
14 and decide appeals where it is alleged there is error in any order, requirement,
15 decision or determination made by an administrative official in the enforcement of
16 this section or of any ordinance adopted pursuant thereto; to hear and decide special
17 exception to the terms of the ordinance upon which such board is required to pass
18 under such ordinance; to authorize upon appeal in specific cases such variance from
19 the terms of the ordinance as will not be contrary to the public interest, where, owing

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1 to special conditions, a literal enforcement of the provisions of the ordinance will
2 result in practical difficulty or unnecessary hardship, so that the spirit of the
3 ordinance shall be observed, public safety and welfare secured, and substantial
4 justice done. The council of a city may enact an ordinance specifying an expiration
5 date for a variance granted under this subdivision. If no such ordinance is in effect,
6 a variance granted under this subdivision does not expire unless, at the time it is
7 granted, the board of appeals specifies in the variance a date after which the variance
8 does not apply. A variance granted under this paragraph runs with the land. The
9 board may permit in appropriate cases, and subject to appropriate conditions and
10 safeguards in harmony with the general purpose and intent of the ordinance, a
11 building or premises to be erected or used for such public utility purposes in any
12 location which is reasonably necessary for the public convenience and welfare.

SECTION 3. Initial applicability.

13
14 (1) This act first applies, retroactively, to a variance that was granted before
15 the effective date of this subsection.

16 (END)