

## 1999 ASSEMBLY BILL 523

October 12, 1999 – Introduced by Representatives STASKUNAS, ALBERS, KREUSER, MILLER, MUSSER and SYKORA, cosponsored by Senators HUELSMAN, ROSENZWEIG and SCHULTZ. 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             changing the standards under which certain zoning variances may be granted  
3             by a local board of adjustment or appeals.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a city, village, 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 is authorized under current law to hear and decide appeals that allege that 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 of appeals or board of adjustment 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.

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Although the term “unnecessary hardship” is not defined in the statutes, a recent decision of the Wisconsin Supreme Court, *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 398 (1998), held that the legal standard of unnecessary hardship requires that the property owner demonstrate that without the variance, he or she has no reasonable use of the property.

Under this bill, a property owner may establish “unnecessary hardship” by demonstrating that strict compliance with an area zoning ordinance would unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***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 property owner may establish  
7 “unnecessary hardship”, as that term is used in this paragraph, by demonstrating  
8 that strict compliance with an area zoning ordinance would unreasonably prevent  
9 the property owner from using the property owner’s property for a permitted purpose  
10 or would render conformity with the zoning ordinance unnecessarily burdensome.

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

12           62.23 (7) (e) 7. The board of appeals shall have the following powers: To hear  
13 and decide appeals where it is alleged there is error in any order, requirement,  
14 decision or determination made by an administrative official in the enforcement of  
15 this section or of any ordinance adopted pursuant thereto; to hear and decide special

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1 exception to the terms of the ordinance upon which such board is required to pass  
2 under such ordinance; to authorize upon appeal in specific cases such variance from  
3 the terms of the ordinance as 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 practical difficulty or unnecessary hardship, so that the spirit of the  
6 ordinance shall be observed, public safety and welfare secured, and substantial  
7 justice done. The board may permit in appropriate cases, and subject to appropriate  
8 conditions and safeguards in harmony with the general purpose and intent of the  
9 ordinance, a building or premises to be erected or used for such public utility  
10 purposes in any location which is reasonably necessary for the public convenience  
11 and welfare. A property owner may establish “unnecessary hardship”, as that term  
12 is used in this subdivision, by demonstrating that strict compliance with an area  
13 zoning ordinance would unreasonably prevent the property owner from using the  
14 property owner’s property for a permitted purpose or would render conformity with  
15 the zoning ordinance unnecessarily burdensome.

16 (END)