

2001 ASSEMBLY BILL 395

May 14, 2001 – Introduced by Representatives STASKUNAS, ALBERS, SERATTI, MUSSER, STARZYK, HUBLER, HAHN, GARD, STONE, SYKORA, OWENS and PETROWSKI, cosponsored by Senators HUELSMAN, GROBSCHMIDT and WELCH. Referred to Committee on Urban and Local Affairs.

1 **AN ACT to renumber and amend** 62.23 (7) (e) 7.; **to amend** 62.23 (7) (e) 8.; and
2 **to create** 59.694 (7) (cm) and 62.23 (7) (e) 7m. of the statutes; **relating to:**
3 changing the standards under which certain zoning variances may be granted
4 by a local board of adjustment or appeals.

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.

ASSEMBLY BILL 395

4. Due to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship.

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 and subject to an exception, a local board of adjustment or appeal may grant an area variance, which will not be contrary to the public interest, solely on the grounds that strict compliance with the area provisions of a zoning ordinance either would unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome. A variance may not be granted under this provision, however, for an area to which an ordinance that relates to zoning in wetlands, shorelands, or floodplains applies.

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

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

1 **SECTION 1.** 59.694 (7) (cm) of the statutes is created to read:
2 59.694 (7) (cm) Notwithstanding par. (c), to authorize upon appeal in specific
3 cases involving area provisions of a zoning ordinance, variances from the terms of the
4 ordinance that will not be contrary to the public interest, solely on the grounds that
5 strict compliance with the area provisions of the zoning ordinance either would
6 unreasonably prevent the property owner from using the property owner’s property
7 for a permitted purpose or would render conformity with the zoning ordinance
8 unnecessarily burdensome. The board may make the order, requirement, decision,
9 or determination under this paragraph without regard to any other purpose of the
10 ordinance. A variance that may be granted under this paragraph may be granted
11 only for an area other than an area to which an ordinance that relates to zoning in
12 wetlands, shorelands, or floodplains, that is enacted or adopted under s. 59.692,
13 61.351, 62.231, or 87.30, applies.

ASSEMBLY BILL 395

1 **SECTION 2.** 62.23 (7) (e) 7. of the statutes is renumbered 62.23 (7) (e) 7. (intro.)
2 and amended to read:

3 62.23 (7) (e) 7. (intro.) The board of appeals shall have the following powers:
4 ~~To hear~~ may do all of the following:

5 a. Hear and decide appeals where it is alleged there is error in any order,
6 requirement, decision or determination made by an administrative official in the
7 enforcement of this section or of any ordinance adopted pursuant thereto; ~~to hear.~~

8 b. Hear and decide special exception to the terms of the ordinance upon which
9 such board is required to pass under such ordinance; ~~to authorize.~~

10 c. Authorize upon appeal in specific cases such variance from the terms of the
11 ordinance as will not be contrary to the public interest, where, owing to special
12 conditions, a literal enforcement of the provisions of the ordinance will result in
13 practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall
14 be observed, public safety and welfare secured, and substantial justice done. The
15 board ~~may permit~~

16 d. Permit in appropriate cases, and subject to appropriate conditions and
17 safeguards in harmony with the general purpose and intent of the ordinance, a
18 building or premises to be erected or used for such public utility purposes in any
19 location which is reasonably necessary for the public convenience and welfare.

20 **SECTION 3.** 62.23 (7) (e) 7m. of the statutes is created to read:

21 62.23 (7) (e) 7m. The board of appeals may authorize upon appeal in specific
22 cases involving area provisions of a zoning ordinance, variances from the terms of the
23 ordinance that will not be contrary to the public interest, solely on the grounds that
24 strict compliance with the area provisions of the zoning ordinance either would
25 unreasonably prevent the property owner from using the property owner's property

ASSEMBLY BILL 395

1 for a permitted purpose or would render conformity with the zoning ordinance
2 unnecessarily burdensome. The board may make the order, requirement, decision,
3 or determination under this subdivision without regard to any other purpose of the
4 ordinance. A variance that may be granted under this subdivision may be granted
5 only for an area other than an area to which an ordinance that relates to zoning in
6 wetlands, shorelands or floodplains, that is enacted or adopted under s. 59.692,
7 61.351, 62.231, or 87.30, applies.

8 **SECTION 4.** 62.23 (7) (e) 8. of the statutes is amended to read:

9 62.23 (7) (e) 8. In exercising the ~~above-mentioned~~ powers such under subs. 7.
10 and 7m. the board of appeals may, in conformity with the provisions of ~~such section~~
11 those subdivisions, reverse or affirm, wholly or partly, or may modify the order,
12 requirement, decision or determination appealed from, and may make such order,
13 requirement, decision or determination as ought to be made, and to that end shall
14 have all the powers of the officer from whom the appeal is taken, and may issue or
15 direct the issue of a permit.

16 (END)