

2001 DRAFTING REQUEST

Bill

Received: 02/09/2001

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

For: **Tony Staskunas (608) 266-0620**

By/Representing: **Adrian**

This file may be shown to any legislator: **NO**

Drafter: **shoveme**

May Contact:

Addl. Drafters:

Subject: **Counties - zoning
Munis - zoning**

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Standards for granting a zoning variance

Instructions:

See Attached. Redraft AB 523 (LRB -2207) and incorporate ASA 1 to AB 523, LRB s0309.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	shoveme 02/10/2001	jdye 02/13/2001		_____			S&L
/1			rschlue 02/14/2001	_____	lrb_docadmin 02/14/2001	lrb_docadmin 04/09/2001	

FE Sent For:

→ **At
Intro.**

<END>

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1/?	shoveme	1 3/12 jld	9 2-14-1	9 2-14-1			

FE Sent For:

<END>

Shovers, Marc

From: Ramirez, Adrienne
Sent: Thursday, February 08, 2001 3:24 PM
To: Shovers, Marc
Subject: drafting request

Marc-

Last session you drafted AB 523 (LRB-2207) for Rep. Staskunas. He would like you to redraft this proposal including the changes made to the bill by ASA 1 (LRB-s0309) for introduction this session.

Please call if you have any questions. Thank you for your help.

Adrienne Ramirez
Office of Rep. Tony Staskunas
6-0620

part of the instructions

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.

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.

ASSEMBLY BILL 523

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.

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

ASSEMBLY BILL 523

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)



JLD (RMNR)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(Signature)

1 AN ACT ...; relating to: changing the standards under which certain zoning
2 variances may be granted 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.
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. ~~which~~ ^{which}

* Under this bill and subject to an exception, a local board of adjustment or appeal
* may grant an area variance, ~~that~~ ^{which} will not be contrary to the public interest, solely on the grounds that strict compliance with the ~~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

(END)



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 528**

February 22, 2000 - Offered by Representative STASKUNAS.

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.

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

5 **SECTION 1.** 59.694 (7) (cm) of the statutes is created to read:

6 59.694 (7) (cm) Notwithstanding par. (c), to authorize upon appeal in specific
7 cases involving area provisions of a zoning ordinance, variances from the terms of the
8 ordinance that will not be contrary to the public interest, solely on the grounds that
9 strict compliance with the area provisions of the zoning ordinance either would
10 unreasonably prevent the property owner from using the property owner's property
11 for a permitted purpose or would render conformity with the zoning ordinance
12 unnecessarily burdensome. The board may make the order, requirement, decision,

1 or determination under this paragraph without regard to any other purpose of the
 2 ordinance. A variance that may be granted under this paragraph may be granted
 3 only for an area other than an area to which an ordinance that relates to zoning in
 4 wetlands, shorelands, or floodplains, that is enacted or adopted under s. 59.692,
 5 61.351, 62.231, or 87.30, applies.

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

8 62.23 (7) (e) 7. (intro.) The board of appeals ~~shall have the following powers:~~
 9 To hear may do all of the following:

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

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

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

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

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

RWF

1 62.23 (7) (e) 7m. The board of appeals may authorize upon appeal in specific
2 cases involving area provisions of a zoning ordinance, variances from the terms of the
3 ordinance that will not be contrary to the public interest, solely on the grounds that
4 strict compliance with the area provisions of the zoning ordinance either would
5 unreasonably prevent the property owner from using the property owner's property
6 for a permitted purpose or would render conformity with the zoning ordinance
7 unnecessarily burdensome. The board may make the order, requirement, decision,
8 or determination under this subdivision without regard to any other purpose of the
9 ordinance. A variance that may be granted under this subdivision may be granted
10 only for an area other than an area to which an ordinance that relates to zoning in
11 wetlands, shorelands or floodplains, that is enacted or adopted under s. 59.692,
12 61.351, 62.231, or 87.30, applies.

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

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

21

(END)

Pw/F



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

FEB 14 2001
gave to Tony

February 14, 2001

MEMORANDUM

To: Representative Staskunas

From: Marc E. Shovers, Senior Legislative Attorney

Re: LRB-2470 Standards for granting a zoning variance

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0129 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.