

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB395)

Received: 12/05/2001

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Don Dyke**

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

Drafter: **shoveme**

May Contact: **Don Dyke**

Addl. Drafters:

Subject: **Counties - zoning**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Change the standards for granting certain zoning variances

Instructions:

See attached Leg. Council draft

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>
/1	shoveme 12/12/2001	hhagen 12/17/2001	pgreensl 12/17/2001	_____	lrb_docadmin 12/17/2001	lrb_docadmin 12/17/2001	
/2	shoveme 12/20/2001	hhagen 12/26/2001	haugeca 12/27/2001	_____	lrb_docadmin 12/27/2001	lrb_docadmin 12/27/2001	
/3	shoveme 01/03/2002	hhagen 01/04/2002	pgreensl 01/04/2002	_____	lrb_docadmin 01/04/2002	lrb_docadmin 01/04/2002	

FE Sent For:

<END>

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB395)

Received: 12/05/2001

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Don Dyke**

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

Drafter: **shoveme**

May Contact: **Don Dyke**

Addl. Drafters:

Subject: **Counties - zoning**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Change the standards for granting certain zoning variances

Instructions:

See attached Leg. Council draft

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>
/1	shoveme 12/12/2001	hhagen 12/17/2001	pgreensl 12/17/2001		lrb_docadmin 12/17/2001	lrb_docadmin 12/17/2001	
/2	shoveme 12/20/2001	hhagen 12/26/2001	haugeca 12/27/2001	<i>1/4/02</i>	lrb_docadmin 12/27/2001	lrb_docadmin 12/27/2001	

13 MES 1/3/02
FE Sent For:

1/4/02
Sub
pg
<END>

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB395)

Received: 12/05/2001

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Don Dyke**

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

Drafter: **shoveme**

May Contact: **Don Dyke**

Addl. Drafters:

Subject: **Counties - zoning**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Change the standards for granting certain zoning variances

Instructions:

See attached Leg. Council draft

for 12: Rep. Staskunas agrees w/ drafter's notes, but wants D. 59.694 (7m)(b) 4. + 62.23 (7) (ef) 4. restored to please the LWM,

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>
/1	shoveme 12/12/2001	hhagen 12/17/2001	pgreensl 12/17/2001	<i>CH</i>	lrb_docadmin 12/17/2001	lrb_docadmin 12/17/2001	

12 MES
FE Sent For:

12 hmk
12/21/01

CH
12-26

CH
12-26

<END>

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB395)

Received: 12/05/2001

Received By: shoveme

Wanted: As time permits

Identical to LRB:

For: Tony Staskunas (608) 266-0620

By/Representing: Don Dyke

This file may be shown to any legislator: NO

Drafter: shoveme

May Contact: Don Dyke

Addl. Drafters:

Subject: Counties - zoning

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Change the standards for granting certain zoning variances

Instructions:

See attached Leg. Council draft

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						
11 NCS	12/12/01		ee/ conclusion	12/11	12/11		
FE Sent For:	11 hmb 12/17/01		PG		PG/scar		
			12/17				
			PG				

<END>

Staskunas
sub to AB395

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2001 ASSEMBLY BILL 395**

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

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

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

5 59.694 (7m) AREA VARIANCES. (a) In this subsection, "area provisions of a zoning
6 ordinance" means those provisions governing area, setbacks, frontage, height, bulk, or
7 density.

8 (b) Notwithstanding sub. (7) (c), the board of adjustment may authorize upon appeal
9 in specific cases variances from the area provisions of a zoning ordinance if all of the following
10 apply:

11 1. Due to special conditions, strict compliance with the area provisions would render
12 conformity with the zoning ordinance unnecessarily burdensome.

13 2. The variance will not have a detrimental impact on the character of the neighborhood.

14 3. The variance is consistent with the spirit of the zoning ordinance and the public
15 interest.

16 4. The variance complies with any regulations governing the granting of variances set
17 forth in the zoning ordinance.

1 (c) In order to obtain a variance under this subsection, a property owner is not required
2 to show that without the variance there is no reasonable use of the property.

3 (d) This subsection does not apply to a variance in territory covered by an ordinance
4 adopted under s. 59.692, 61.351, 62.231 or 87.30 that relates to zoning in wetlands,
5 shorelands, or floodplains.

6 SECTION 2. 62.23 (7) (ef) of the statutes is created to read:

7 62.23 (7) (ef) *Area variances.* 1. In this paragraph, "area provisions of a zoning
8 ordinance" means those provisions governing area, setbacks, frontage, height, bulk, or
9 density.

10 2. Notwithstanding par. (e) 7., the board of appeals may authorize upon appeal in
11 specific cases variances from the area provisions of a zoning ordinance if all of the following
12 apply:

13 a. Due to special conditions, strict compliance with the area provisions would render
14 conformity with the zoning ordinance unnecessarily burdensome.

15 b. The variance will not have a substantial impact on the character of the neighborhood.

16 c. The variance is consistent with the spirit of the zoning ordinance and the public
17 interest.

18 d. The variance complies with any regulations governing the granting of variances set
19 forth in the zoning ordinance.

20 3. In order to obtain a variance under this paragraph, a property owner is not required
21 to show that without the variance there is no reasonable use of the property.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 395

Instructions -
WLC:0218/4 put into
LRB form

1 AN ACT *to create* 59.694 (7m) and 62.23 (7) (ef) 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.

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

4 SECTION 1. 59.694 (7m) of the statutes is created to read:

5 59.694 (7m) AREA VARIANCES. (a) In this subsection, "area provisions of a zoning
6 ordinance" means those provisions governing area, setbacks, frontage, height, bulk,
7 or density.

8 (b) Notwithstanding sub. (7) (c), the board of adjustment may authorize upon
9 appeal in specific cases variances from the area provisions of a zoning ordinance if
10 all of the following apply:

1 1. Due to special conditions, strict compliance with the area provisions would
2 render conformity with the zoning ordinance unnecessarily burdensome.

3 2. The variance will not have a detrimental impact on the character of the
4 neighborhood.

5 3. The variance is consistent with the spirit of the zoning ordinance and the
6 public interest.

7 4. The variance complies with any regulations governing the granting of
8 variances set forth in the zoning ordinance.

9 (c) In order to obtain a variance under this subsection, a property owner is not
10 required to show that without the variance there is no reasonable use of the property.

11 (d) This subsection does not apply to a variance in territory covered by an
12 ordinance adopted under s. 59.692, 61.351, 62.231, or 87.30 that relates to zoning in
13 wetlands, shorelands, or floodplains.

14 **SECTION 2.** 62.23 (7) (ef) of the statutes is created to read:

15 62.23 (7) (ef) *Area variances.* 1. In this paragraph, “area provisions of a zoning
16 ordinance” means those provisions governing area, setbacks, frontage, height, bulk,
17 or density.

18 2. Notwithstanding par. (e) 7., the board of appeals may authorize upon appeal
19 in specific cases variances from the area provisions of a zoning ordinance if all of the
20 following apply:

21 a. Due to special conditions, strict compliance with the area provisions would
22 render conformity with the zoning ordinance unnecessarily burdensome.

23 b. The variance will not have a substantial impact on the character of the
24 neighborhood.

1 c. The variance is consistent with the spirit of the zoning ordinance and the
2 public interest.

3 d. The variance complies with any regulations governing the granting of
4 variances set forth in the zoning ordinance.

5 3. In order to obtain a variance under this paragraph, a property owner is not
6 required to show that without the variance there is no reasonable use of the property.

7 4. This paragraph does not apply to a variance in territory covered by an
8 ordinance adopted under s. 59.692, 61.351, 62.231, or 87.30 that relates to zoning in
9 wetlands, shorelands, or floodplains.

10

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0259/1
MES:ll:pg

RMR

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 395

D-note

WANTED
SOON
IN: 12/12

gjm

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.

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

3 SECTION 1. 59.694 (7m) of the statutes is created to read:

4 59.694 (7m) AREA VARIANCES. (a) In this subsection, "area provisions" means
5 those provisions of a zoning ordinance which govern area, setbacks, frontage, height,
6 bulk, or density.

7 (b) Notwithstanding sub. (7) (c) and except as provided in par. (d), the board of
8 adjustment may authorize upon appeal in specific cases variances from area
9 provisions if all of the following apply:

10 1. Due to special conditions, strict compliance with the area provisions would
11 render conformity with the zoning ordinance unnecessarily burdensome.

1 2. The variance will not have a detrimental impact on the character of the
2 neighborhood.

3 3. The variance is consistent with the spirit of the zoning ordinance and the
4 public interest.

5 (c) To obtain a variance under this subsection, a property owner is not required
6 to show that without the variance there is no reasonable use of the property.

7 (d) The board of adjustment may not authorize a variance under this subsection
8 if the variance would apply to territory to which an ordinance, that relates to zoning
9 in wetlands, shorelands, or floodplains and which is enacted or adopted under s.
10 59.692, 61.351, 62.231, or 87.30, applies.

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

12 62.23 (7) (ef) *Area variances.* 1. In this paragraph, “area provisions” means
13 those provisions of a zoning ordinance which govern area, setbacks, frontage, height,
14 bulk, or density.

15 2. Notwithstanding par. (e) 7. and except as provided in subd. 4., the board of
16 appeals may authorize upon appeal in specific cases variances from ~~the~~ area
17 provisions if all of the following apply:

18 a. Due to special conditions, strict compliance with the area provisions would
19 render conformity with the zoning ordinance unnecessarily burdensome.

20 b. The variance will not have a substantial impact on the character of the
21 neighborhood.

22 c. The variance is consistent with the spirit of the zoning ordinance and the
23 public interest.

24 d. The variance complies with any regulations governing the granting of
25 variances set forth in the zoning ordinance.

1

3. ~~An order~~ [✓] to obtain a variance under this paragraph, a property owner is not
2 required to show that without the variance there is no reasonable use of the property.

3

4

5

6

7

4. The board of appeals may not authorize a variance under this paragraph if
the variance would apply to territory to which an ordinance, that relates to zoning
in wetlands, shorelands, or floodplains and which is enacted or adopted under s.
59.692, 61.351, 62.231, or 87.30, applies.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0259/1dn
MES: *hps*

Date

Representative Staskunas:

Please review the changes I've made in ss. 59.694 (7m) (d) and 62.23 (7) (ef) 4., and the minor changes I've made in ss. 59.694 (7m) (a) and (b) (intro.) and 62.23 (7) (ef) 1. and 2. (intro.).

In addition, I deleted ss. 59.694 (7m) (b) 4. and 62.23 (7) (ef) 2. d. because they are unnecessary. If a zoning ordinance contains regulations that govern the granting of variances, there is no reason for the statutes to require that a variance authorized under s. 59.694 (7m) ~~(b) 4.~~ or 62.23 (7) (ef) ~~2. d.~~ complies with such regulations; a variance that does not comply with the ordinance would not be validly authorized.

Conversely, if the substitute amendment retains ss. 59.694 (7m) (b) 4. and 62.23 (7) (ef) 2. d., there is nothing to stop a county or municipality from amending its zoning ordinance or regulations so that it may authorize a variance that would otherwise not "comply" with its (unamended) ordinance or regulations.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0259/1dn
MES:hmh:pg

December 17, 2001

Representative Staskunas:

Please review the changes I've made in ss. 59.694 (7m) (d) and 62.23 (7) (ef) 4., and the minor changes I've made in ss. 59.694 (7m) (a) and (b) (intro.) and 62.23 (7) (ef) 1. and 2. (intro.).

In addition, I deleted ss. 59.694 (7m) (b) 4. and 62.23 (7) (ef) 2. d. because they are unnecessary. If a zoning ordinance contains regulations that govern the granting of variances, there is no reason for the statutes to require that a variance authorized under s. 59.694 (7m) or 62.23 (7) (ef) complies with such regulations; a variance that does not comply with the ordinance would not be validly authorized.

Conversely, if the substitute amendment retains ss. 59.694 (7m) (b) 4. and 62.23 (7) (ef) 2. d., there is nothing to stop a county or municipality from amending its zoning ordinance or regulations so that it may authorize a variance that would otherwise not "comply" with its (unamended) ordinance or regulations.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0259/2
MES:hmh:pg

stays
RMA

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 395

WANTED,
SOON
IN 12/20

Regenerate

1 AN ACT *to create* 59.694 (7m) and 62.23 (7) (ef) 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.

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

4 SECTION 1. 59.694 (7m) of the statutes is created to read:
5 59.694 (7m) AREA VARIANCES. (a) In this subsection, "area provisions" means
6 those provisions of a zoning ordinance which govern area, setbacks, frontage, height,
7 bulk, or density.

8 (b) Notwithstanding sub. (7) (c) and except as provided in par. (d), the board of
9 adjustment may authorize upon appeal in specific cases variances from area
10 provisions if all of the following apply:

11 1. Due to special conditions, strict compliance with the area provisions would
12 render conformity with the zoning ordinance unnecessarily burdensome.

1 2. The variance will not have a detrimental impact on the character of the
2 neighborhood.

3 3. The variance is consistent with the spirit of the zoning ordinance and the
4 public interest.

DNS
2-45

5 (c) To obtain a variance under this subsection, a property owner is not required
6 to show that without the variance there is no reasonable use of the property.

7 (d) The board of adjustment may not authorize a variance under this subsection
8 if the variance would apply to territory to which an ordinance, that relates to zoning
9 in wetlands, shorelands, or floodplains and which is enacted or adopted under s.
10 59.692, 61.351, 62.231, or 87.30, applies.

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

12 62.23 (7) (ef) *Area variances.* 1. In this paragraph, "area provisions" means
13 those provisions of a zoning ordinance which govern area, setbacks, frontage, height,
14 bulk, or density.

15 2. Notwithstanding par. (e) 7. and except as provided in subd. 4., the board of
16 appeals may authorize upon appeal in specific cases variances from area provisions
17 if all of the following apply:

18 a. Due to special conditions, strict compliance with the area provisions would
19 render conformity with the zoning ordinance unnecessarily burdensome.

20 b. The variance will not have a substantial impact on the character of the
21 neighborhood.

22 c. The variance is consistent with the spirit of the zoning ordinance and the
23 public interest.

DNS
2-24

24 3. To obtain a variance under this paragraph, a property owner is not required
25 to show that without the variance there is no reasonable use of the property.

**2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0259/2ins
MES:hmh:pg

Insert 2-4

4. The variance complies with any regulations governing the granting of
variances set forth in the zoning ordinance. ✓

Insert 2-24

d. The variance complies with any regulations governing the granting of
variances set forth in the zoning ordinance.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0259/2
MBS/hmh/ch

RMK

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 395

Wanted
Fri, 1/4

Regenerate

1 AN ACT *to create* 59.694 (7m) and 62.23 (7) (ef) 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.

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

4 SECTION 1. 59.694 (7m) of the statutes is created to read:

5 59.694 (7m) AREA VARIANCES. (a) In this subsection, "area provisions" means
6 those provisions of a zoning ordinance which govern area, setbacks, frontage, height,
7 bulk, or density.

8 (b) Notwithstanding sub. (7) (c) and except as provided in par. (d), the board of
9 adjustment may authorize upon appeal in specific cases variances from area
10 provisions if all of the following apply:

11 1. Due to special conditions, strict compliance with the area provisions would
12 render conformity with the zoning ordinance unnecessarily burdensome.

1 2. The variance will not have a ~~detrimental~~ ^{substantial} impact on the character of the
2 neighborhood.

3 3. The variance is consistent with the spirit of the zoning ordinance and the
4 public interest.

5 4. The variance complies with any regulations governing the granting of
6 variances set forth in the zoning ordinance.

7 (c) To obtain a variance under this subsection, a property owner is not required
8 to show that without the variance there is no reasonable use of the property.

9 (d) The board of adjustment may not authorize a variance under this subsection
10 if the variance would apply to territory to which an ordinance, that relates to zoning
11 in wetlands, shorelands, or floodplains and which is enacted or adopted under s.
12 59.692, 61.351, 62.231, or 87.30, applies.

13 **SECTION 2.** 62.23 (7) (ef) of the statutes is created to read:

14 62.23 (7) (ef) *Area variances.* 1. In this paragraph, "area provisions" means
15 those provisions of a zoning ordinance which govern area, setbacks, frontage, height,
16 bulk, or density.

17 2. Notwithstanding par. (e) 7. and except as provided in subd. 4., the board of
18 appeals may authorize upon appeal in specific cases variances from area provisions
19 if all of the following apply:

20 a. Due to special conditions, strict compliance with the area provisions would
21 render conformity with the zoning ordinance unnecessarily burdensome.

22 b. The variance will not have a substantial impact on the character of the
23 neighborhood.

24 c. The variance is consistent with the spirit of the zoning ordinance and the
25 public interest.

