

2011 DRAFTING REQUEST

Bill

Received: **03/25/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **John**

May Contact:

Drafter: **mshovers**

Subject: **Local Gov't - munis generally
Local Gov't - counties**

Addl. Drafters:

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Variances granted by local zoning agencies; no expiration unless specified

Instructions:

See attached. Specify that a variance granted by a local zoning agency/board/committee does not expire unless an expiration date is specified when the variance is granted

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	mshovers 03/25/2011	wjackson 03/25/2011	mduchek 03/25/2011	_____	ggodwin 03/25/2011		
/2	mshovers 04/14/2011	wjackson 04/19/2011	rschluet 04/19/2011	_____	ggodwin 04/19/2011		
/3	mshovers 05/05/2011	wjackson 05/05/2011	jfrantze 05/06/2011	_____	sbasford 05/06/2011	ggodwin 05/17/2011	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

hone

<END>

2011 DRAFTING REQUEST

Bill

Received: **03/25/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **John**

May Contact:

Drafter: **mshovers**

Subject: **Local Gov't - munis generally
Local Gov't - counties**

Addl. Drafters:

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Variances granted by local zoning agencies; no expiration unless specified

Instructions:

See attached. Specify that a variance granted by a local zoning agency/board/committee does not expire unless an expiration date is specified when the variance is granted

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	mshovers 03/25/2011	wjackson 03/25/2011	mduchek 03/25/2011	_____	ggodwin 03/25/2011		
/2	mshovers 04/14/2011	wjackson 04/19/2011	rschluet 04/19/2011	_____	ggodwin 04/19/2011		
/3	mshovers 05/05/2011	wjackson 05/05/2011	jfrantze 05/06/2011	_____	sbasford 05/06/2011		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: **03/25/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **John**

May Contact:

Drafter: **mshovers**

Subject: **Local Gov't - munis generally
Local Gov't - counties**

Addl. Drafters:

Extra Copies: **EVM, PJK**

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Variances granted by local zoning agencies; no expiration unless specified

Instructions:

See attached. Specify that a variance granted by a local zoning agency/board/committee does not expire unless an expiration date is specified when the variance is granted

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	mshovers 03/25/2011	wjackson 03/25/2011	mduchek 03/25/2011	_____	ggodwin 03/25/2011		
/2	mshovers 04/14/2011	wjackson 04/19/2011	rschluet 04/19/2011	_____	ggodwin 04/19/2011		

FE Sent For:

Handwritten notes:
B MES 5/5/11 13 Wlj 5/5 Jg 5/4 RS 5/4 Jg 5/4

2011 DRAFTING REQUEST

Bill

Received: **03/25/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **John**

May Contact:

Drafter: **mshovers**

Subject: **Local Gov't - munis generally**
Local Gov't - counties

Addl. Drafters:

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Variances granted by local zoning agencies; no expiration unless specified

Instructions:

See attached. Specify that a variance granted by a local zoning agency/board/committee does not expire unless an expiration date is specified when the variance is granted

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	mshovers 03/25/2011	wjackson 03/25/2011	mdushek 03/25/2011	_____	ggodwin 03/25/2011		

2 MES 9/14/12 WLJ 4/19
FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: **03/25/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **John**

May Contact:

Drafter: **mshovers**

Subject: **Local Gov't - munis generally
Local Gov't - counties**

Addl. Drafters:

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Variances granted by local zoning agencies; no expiration unless specified

Instructions:

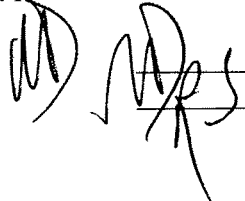
See attached. Specify that a variance granted by a local zoning agency/board/committee does not expire unless an expiration date is specified when the variance is granted

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>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/? mshovers

1/1 WJ 3/25



1/1 WES 3/25/11

FE Sent For:

<END>

Shovers, Marc

From: Vander Leest, John
Sent: Thursday, March 24, 2011 1:56 AM
To: Shovers, Marc
Subject: RE: Bills to be drafted.

Importance: High

Marc,

I am gathering more information on the moratorium bill for background. Can you get a draft of the variance issue we spoke about by Friday AM?
Keep me posted.

John Vander Leest
District Director for Senator Lasee
920-737-0999

From: Vander Leest, John
Sent: Tuesday, March 22, 2011 4:35 PM
To: Shovers, Marc
Subject: FW: Bills to be drafted.

Marc,

Please see below on the moratorium law.

John Vander Leest
920-737-0999

From: Orr, Isaac
Sent: Thursday, March 17, 2011 11:50 AM
To: Vander Leest, John
Cc: Kruse, Jon
Subject: Bills to be drafted.

<< File: Moratorium Law.pdf >>

Hey Johnny, here are few bills that need to be drafted. Since you are the real estate guy, we figured you would be most qualified to handle this.

Shovers, Marc

From: Vander Leest, John
Sent: Tuesday, March 29, 2011 3:26 PM
To: Shovers, Marc
Cc: Kruse, Jon
Subject: RE: Bills to be drafted.

Importance: High

Marc,

This bill is intended to clarify or codify current law. My feedback found the same thing that you found through your research -- Wisconsin case law is not 100% clear on this issue, but nothing indicates that variances expire. In fact, the leading land use treatise states that they do not expire. Accordingly, we are looking to clarify, not change, current law.

With that said, the "no expiration date on variances" concept should apply to both use and area variances because if the legislature applied the concept to only one type of variance, a court may be interpret this to mean that the other type of variance does expire at some point.

With your hypothetical question, the variance would not expire unless the community placed an expiration date on it. This would be true under both current law and the proposed legislation.

Does this help? Let me know what other questions you have so we can get this completed soon.

John Vander Leest

From: Shovers, Marc
Sent: Friday, March 25, 2011 12:24 PM
To: Vander Leest, John
Subject: RE: Bills to be drafted.

Hi John:

Yes, that would be better, thanks. I've been researching WI case law on variances, and I can't find anything that indicates that a variance expires. My notes indicate that you want to specify in the statutes that if a local zoning board approves a variance, it doesn't expire if the landowner does not build on or alter his or her property, as allowed by the variance that's granted, within any particular time frame unless, at the time of issuance, the local zoning board specifies a time limit for the applicability of the variance. Is this correct?

Just so I have a better understanding of your intent, let me ask you for a little clarification, based on a hypothetical situation.

There are 2 kinds of variances -- use variances and area variances. The courts have described them like this:

A use variance is one that permits a use other than that prescribed by the zoning ordinance in a particular district. An area variance has no relationship to a change of use. It is primarily a grant to erect, alter, or use a structure for a permitted use in a manner other than that prescribed by the restrictions of a zoning

ordinance.

First of all, do you want the bill to apply to both area and use variances?

Here's the hypothetical question I have, based on an example from a zoning treatise cited in the case *State v. Outagamie County* 244 Wis. 2d 613 (2001), which will help me understand your intent. Is this how you envision the bill working if it becomes law?

Assume Mr. Jones requests a variance from a zoning ordinance that requires 800 square feet of lot area for an apartment building; Mr. Jones wants a variance so he can build with only 400 square feet of lot area per apartment building.

The court said that since this variance deals with square footage, it seems like an area variance but, because it could substantially change the character and density of the neighborhood by allowing double the number of apartments otherwise allowed on each lot, it may also be a use variance.

In any event, assume the village grants Mr. Jones the variance but, due to some financial setbacks, he can't build the apartments right away. After 10 years, his finances improve but, in the meantime, the character of the neighborhood has changed quite a bit and the village that granted the variance would never do it now because of density concerns that didn't exist 10 years ago when the variance was granted.

Using this example, under your bill, would Mr. Jones be allowed to build his apartments under the variance if the village did not put an "expiration date" on the variance? Thanks for your help, John.

Marc

From: Vander Leest, John
Sent: Friday, March 25, 2011 11:43 AM
To: Shovers, Marc
Subject: RE: Bills to be drafted.

Marc,

Monday would be fine. Does that work for you?

John

From: Shovers, Marc
Sent: Friday, March 25, 2011 9:31 AM
To: Vander Leest, John
Subject: RE: Bills to be drafted.

Hi John:

I was out of the office yesterday and just now read your email. I've been working on other drafts that have come in before your request from late Tuesday afternoon. I can put everything else aside and try to get you something today, but I haven't started it yet. When exactly do you need it? I'm sorry, but I had no idea this request was such a high priority. I'll let you know if it turns out to be very complicated or if there are any other problems with it.

Marc

From: Vander Leest, John
Sent: Thursday, March 24, 2011 1:56 AM
To: Shovers, Marc
Subject: RE: Bills to be drafted.
Importance: High

Marc,

I am gathering more information on the moratorium bill for background. Can you get a draft of the variance issue we spoke about by Friday AM?
Keep me posted.

John Vander Leest
District Director for Senator Lasee
920-737-0999

From: Vander Leest, John
Sent: Tuesday, March 22, 2011 4:35 PM
To: Shovers, Marc
Subject: FW: Bills to be drafted.

Marc,

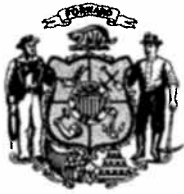
Please see below on the moratorium law.

John Vander Leest
920-737-0999

From: Orr, Isaac
Sent: Thursday, March 17, 2011 11:50 AM
To: Vander Leest, John
Cc: Kruse, Jon
Subject: Bills to be drafted.

<< File: Moratorium Law.pdf >>

Hey Johnny, here are few bills that need to be drafted. Since you are the real estate guy, we figured you would be most qualified to handle this.



WLJ
RM R

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today

gm

1 AN ACT ...; relating to: ~~specifying~~ 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 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.

This bill 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 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 variance granted under this paragraph
7 does not expire unless, at the time it is granted, the board of adjustment specifies in
8 the variance a date after which the variance does not apply.

History: 1973 c. 60, 336; 1981 c. 289, 354; 1983 a. 192 ss. 132, 133, 303 (2); 1987 a. 395; 1991 a. 316; 1993 a. 171; 1995 a. 201 s. 479; Stats. 1995 s. 59.694; 1997 a. 35; 2005 a. 34.

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

10 62.23 (7) (e) 7. The board of appeals shall have the following powers: To hear
11 and decide appeals where it is alleged there is error in any order, requirement,
12 decision or determination made by an administrative official in the enforcement of
13 this section or of any ordinance adopted pursuant thereto; to hear and decide special
14 exception to the terms of the ordinance upon which such board is required to pass
15 under such ordinance; to authorize upon appeal in specific cases such variance from
16 the terms of the ordinance as will not be contrary to the public interest, where, owing
17 to special conditions, a literal enforcement of the provisions of the ordinance will
18 result in practical difficulty or unnecessary hardship, so that the spirit of the
19 ordinance shall be observed, public safety and welfare secured, and substantial
20 justice done. A variance granted under this subdivision does not expire unless, at

STET

1 the time it is granted, the board of appeals specifies in the variance a date after which
 2 the variance does not apply. The board may permit in appropriate cases, and subject
 3 to appropriate conditions and safeguards in harmony with the general purpose and
 4 intent of the ordinance, a building or premises to be erected or used for such public
 5 utility purposes in any location which is reasonably necessary for the public
 6 convenience and welfare.

History: 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221, 355; 1981 c. 289, 341, 354, 374; 1983 a. 49, 410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187, 225, 281, 316; 1987 a. 161, 395; 1989 a. 201; 1991 a. 255, 316; 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246; 1999 a. 9, 148; 1999 a. 150 s. 672; 2001 a. 30 ss. 16, 17, 108; 2001 a. 50; 2005 a. 26, 34, 79, 81, 112, 171, 208; 2007 a. 20 ss. 1868 to 1873, 9121 (6) (a); 2007 a. 72; 2009 a. 28, 209, 276, 351, 372, 405.

7 **SECTION 3. Initial applicability.**

8 (1) This act first applies to a variance that is granted on the effective date of
 9 this subsection.

10 (END)

Shovers, Marc

From: Vander Leest, John
Sent: Tuesday, April 05, 2011 11:12 AM
To: Shovers, Marc
Cc: 'franklasee@yahoo.com'; Kruse, Jon
Subject: RE: LRB draft on variances

Importance: High

Marc,

Any word on my changes noted below? Senator Lasee would like to see this done ASAP.

John

From: Vander Leest, John
Sent: Friday, April 01, 2011 6:49 PM
To: Shovers, Marc
Cc: 'franklasee@yahoo.com'; Kruse, Jon
Subject: RE: LRB draft on variances
Importance: High

Marc,

I think the bill is almost there. It recognizes that local boards of appeals/adjustment can establish expiration dates for variances at the time the variance is granted, but it does not recognize that local communities can establish expiration dates by local ordinance. For example, some communities have adopted ordinances that say a variance expires within 12 months if all local building permits have not been obtained. I think we want to preserve their ability to continue to do this.

Let me know your thoughts.

John Vander Leest

From: Shovers, Marc
Sent: Wednesday, March 30, 2011 3:39 PM
To: Vander Leest, John
Subject: LRB draft on variances

Hi John:

Here you go. Please let me know if you have any questions.

Marc

<< File: 11-1763/1 >>

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau



Stays → fmr

2011 BILL

SOON

regen

- 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.

BILL

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

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

No ff

A county board may enact an ordinance specifying an expiration date for a variance granted under this paragraph. If no such ordinance is in effect

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 variance granted under this paragraph
7 does not expire unless, at the time it is granted, the board of adjustment specifies in
8 the variance a date after which the variance does not apply.

9 SECTION 2. 62.23 (7) (e) 7. of the statutes is amended to read:
10 62.23 (7) (e) 7. The board of appeals shall have the following powers: To hear
11 and decide appeals where it is alleged there is error in any order, requirement,
12 decision or determination made by an administrative official in the enforcement of
13 this section or of any ordinance adopted pursuant thereto; to hear and decide special
14 exception to the terms of the ordinance upon which such board is required to pass
15 under such ordinance; to authorize upon appeal in specific cases such variance from
16 the terms of the ordinance as will not be contrary to the public interest, where, owing
17 to special conditions, a literal enforcement of the provisions of the ordinance will
18 result in practical difficulty or unnecessary hardship, so that the spirit of the
19 ordinance shall be observed, public safety and welfare secured, and substantial
20 justice done. A variance granted under this subdivision does not expire unless, at

No ff

The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision. If no such ordinance is in effect

BILL

1 the time it is granted, the board of appeals specifies in the variance a date after which
2 the variance does not apply. The board may permit in appropriate cases, and subject
3 to appropriate conditions and safeguards in harmony with the general purpose and
4 intent of the ordinance, a building or premises to be erected or used for such public
5 utility purposes in any location which is reasonably necessary for the public
6 convenience and welfare.

SECTION 3. Initial applicability.

7
8 (1) This act first applies to a variance that is granted on the effective date of
9 this subsection.

10 (END)

5/4/11

suggestion of Tom Larson

Nonstatutory provision. Legislative Intent

This act is intended to restate, clarify and affirm the intent, interpretation and enforcement of sections 59.694(7)(c) and 62.23(7)(e)7 with respect to the expiration of zoning variances granted under these sections. The act is not intended to expand or change the intent, interpretation or enforcement of zoning variances granted under these sections, nor is it intended to differentiate between zoning variances granted prior to and after the effective date of the act.

Tom & Jon Kruse agree /3 should:

- 1) specify the variance mens w/ the land
- 2) add retroactive mit app

Shovers, Marc

From: Kruse, Jon
Sent: Thursday, May 05, 2011 11:40 AM
To: Shovers, Marc
Subject: RE: LRB -1763

Marc,
No changes are needed. Looks good. Please proceed with /3

Thanks!

Jon Kruse
Chief of Staff
Office of Senator Frank Lasee

phone: 608-266-3512
jon.kruse@legis.wisconsin.gov

From: Shovers, Marc
Sent: Wednesday, May 04, 2011 2:51 PM
To: Kruse, Jon
Subject: LRB -1763

Hi Jon:

To follow up our conversation with Tom Larson, Tom wanted to know whether towns that are not authorized by a town meeting to exercise village powers may grant a variance. Generally, the answer to this question is no. Towns with village powers may act under s. 60.62, which authorizes action under s. 61.35 in the village chapter, which in turn authorizes action under s. 62.23, where the authority to grant variances is located.

But towns that are not authorized to exercise village powers exercise their zoning authority under s. 60.61 of the statutes and that statute does not, generally, authorize such towns to grant variances. The one exception I found to this general rule is in s. 60.63, which deals with "community and other living arrangements." See s. 60.63 (5):

60.63(5)

(5) In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subs. (1) and (2), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in sub. (10), but is entitled to apply for special zoning permission to locate in those areas. **The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.**

"Special zoning permission" includes variances, under s. 60.63 (8):

60.63(8)

(8) In this section, "special zoning permission" includes but is not limited to the following: special

exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

These community living arrangements refer to the following situations:

60.63

60.63 (intro.) Community and other living arrangements. For purposes of s. 60.61, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1) (a) or (b), in any town shall be subject to the following criteria:

In most cases, I can't imagine that s. 60.63 (1), (5), and (8), would lead to a situation that could impact the provisions in the bill or that it would need to be amended to take account of the bill, but you may wish to discuss this with Tom or the Senator to see if they believe these statutes should be amended similarly to the way that ss. 59.694 (7) (c) and 62.23 (7) (e) 7. are amended in the bill.

Please let me know if you'd like any changes to the /2 version beyond what we discussed this afternoon. I've made those changes and will put the /3 version into editing right away if no further changes are needed. Thanks.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608-266-0129)
E-Mail: marc.shovers@legis.wisconsin.gov



stays
fmr

2011 BILL

WANTED;
Fri.

repen

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} placing an expiration for a variance. If no such ordinance exists, however, the bill specifies that

date

BILL

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.

NSANL

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*
paragraph runs with the lands

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
16 exception to the terms of the ordinance upon which such board is required to pass
17 under such ordinance; to authorize upon appeal in specific cases such variance from
18 the terms of the ordinance as will not be contrary to the public interest, where, owing
19 to special conditions, a literal enforcement of the provisions of the ordinance will
20 result in practical difficulty or unnecessary hardship, so that the spirit of the
21 ordinance shall be observed, public safety and welfare secured, and substantial

BILL

SECTION 2

the lands

1 justice done. The council of a city may enact an ordinance specifying an expiration
 2 date for a variance granted under this subdivision. If no such ordinance is in effect,
 3 a variance granted under this subdivision does not expire unless, at the time it is
 4 granted, the board of appeals specifies in the variance a date after which the variance
 5 does not apply. *A variance granted under this subdivision runs with*
 6 The board may permit in appropriate cases, and subject to
 7 appropriate conditions and safeguards in harmony with the general purpose and
 8 intent of the ordinance, a building or premises to be erected or used for such public
 9 utility purposes in any location which is reasonably necessary for the public
 10 convenience and welfare.

SECTION 3. Initial applicability.

11 (1) This act first applies *retroactively,* to a variance that ~~is~~ *was* granted *before* on the effective date of
 12 this subsection.

(END)

INS ANL

NO# The bill also codifies a court decision (i) Goldberg v.
 Milwaukee Zoning Appeals Board, 115 Wis.2d 517 (ct. of
 App. 1983) stating that a variance runs with
 the lands

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

Godwin, Gigi

From: Kruse, Jon

Sent: Tuesday, May 17, 2011 11:58 AM

To: LRB.Legal

Subject: Draft Review: LRB 11-1763/3 Topic: Variances granted by local zoning agencies; no expiration unless specified

Please Jacket LRB 11-1763/3 for the SENATE.

Thank you !

Jon Kruse

5/17/2011