

2011 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB300)

Received: 03/07/2012

Received By: mshovers

Wanted: As time permits

Companion to LRB:

For: Frank Lasee (608) 266-3512

By/Representing: David Lovell

May Contact: Tom Larson

Drafter: mshovers

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

Addl. Drafters:

Extra Copies: EVM; David Lovell @ Leg. Co

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. Add in SA 1 and attached modifications

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 03/07/2012	jdye 03/07/2012		_____			
/1			jmurphy 03/07/2012	_____	mbarman 03/07/2012	mbarman 03/07/2012	

FE Sent For:

<END>

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/? mshovers 1/3
1/1/12 3/7/12 Jld

FE Sent For:

<END>

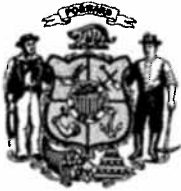
3/7/12

Instructions
from
David Lovell
Tom Larson

61537
David

If no such ordinance is in effect at the time a variance is granted ~~and~~^{or} if the board of adjustment does not specify an expiration date for the variance, a variance granted under this paragraph does not expire

An ord enacted ^{after the eff date of this [} ~~under this paragraph~~ ^{... [CRB inserts date]} may not specify an expiration date for a variance that was granted before the eff date of this paragraph ... [CRB inserts date]



State of Wisconsin
2011 - 2012 LEGISLATURE

50404/1



LRB-1763/3

MES:wlijjf

SSA

RMHB

Keep ↑↑ + jld

to 2011 SENATE BILL 300

Now

November 21, 2011 - Introduced by Senators LASEE, DARLING and GROTHMAN, cosponsored by Representatives STEINEKE, STROEBEL, BIES, RIVARD and JACQUE. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

LX

gen

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~~ ^{amendment} authorizes a municipality or county to enact an ordinance specifying an expiration date for a variance. If no such ordinance ~~exists~~, however, the ~~bill~~ ^{amendment}

Substitute amendment ✓

exists at the time a variance is granted, or if a board of adjustment or appeals does not specify an expiration date ✓ substitute amendment

SENATE BILL 300

Substitute amendment

score
↓
or if the board of adjustment does not specify an expiration date for the variance, a variance granted

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 ~~bill~~ also codifies a court decision (*Goldberg v. Milwaukee Zoning Appeals Board*, 115 Wis. 2d 517 (Ct. App. 1983)) stating that a variance runs with the land.

The ~~bill~~ first applies, retroactively, to a variance that was granted before the effective date of the ~~bill~~.

meaning a specific date by which the action authorized by the variance must be commenced or completed

Substitute amendment

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 ^{at the time} a variance ^{is} 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

11 paragraph runs with the land. ^{effective date of this paragraph...} ~~Effective date~~ ^{may not specify an expiration date for a}

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

13 62.23 (7) (e) 7. The board of appeals shall have the following powers: To hear
14 and decide appeals where it is alleged there is error in any order, requirement,
15 decision or determination made by an administrative official in the enforcement of
16 this section or of any ordinance adopted pursuant thereto; to hear and decide special
17 exception to the terms of the ordinance upon which such board is required to pass
18 under such ordinance; to authorize upon appeal in specific cases such variance from
19 the terms of the ordinance as will not be contrary to the public interest, where, owing

NO # variance that was granted before the effective date of this paragraph... [LPB inserts date]

SENATE BILL 300

1 to special conditions, a literal enforcement of the provisions of the ordinance will
2 result in practical difficulty or unnecessary hardship, so that the spirit of the
3 ordinance shall be observed, public safety and welfare secured, and substantial
4 justice done. The council of a city may enact an ordinance specifying an expiration

5 date for a variance granted under this subdivision. ^{INS 3-5 ✓} ^{at the time} If no such ordinance is in effect,

6 a variance granted under this subdivision does not expire unless, at the time it is
7 granted, the board of appeals specifies in the variance a date after which the variance

8 ~~does not apply.~~ ^{INS 3-7} A variance granted under this paragraph ^{subdivision} runs with the land. The
9 board may permit in appropriate cases, and subject to appropriate conditions and
10 safeguards in harmony with the general purpose and intent of the ordinance, a
11 building or premises to be erected or used for such public utility purposes in any
12 location which is reasonably necessary for the public convenience and welfare.

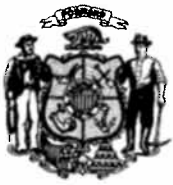
13 **SECTION 3. Initial applicability.**

14 (1) This act first applies, retroactively, to a variance that was granted before
15 the effective date of this subsection.

16 (END)

, or if the board of appeals does not specify an
expiration date for the variance, a variance
granted

→ An ordinance enacted after the effective date of
this subdivision ... [LRB inserts date] may not specify an
expiration date for a variance that was granted before
the effective date of this ~~paragraph~~ ... [LRB inserts
subdivision ~~date~~].



SENATE AMENDMENT 1,
TO 2011 SENATE BILL 300

March 5, 2012 - Offered by Senator LASEE.

1 At the locations indicated, amend the bill as follows:

INS 2-7

2 1. Page 2, line 7: after "paragraph" insert "if ^{that} the ~~expiration~~ date relates to a
3 specific date by which the action authorized by the variance must be commenced or
4 completed".

INS 2-10

5 2. Page 2, line 10: delete "date after which the variance does not apply" and
6 substitute "specific date by which the action authorized by the variance must be
7 commenced or completed".

INS 3-5

8 3. Page 3, line 5: after "subdivision" insert "if ^{that} the ~~expiration~~ date relates to a
9 specific date by which the action authorized by the variance must be commenced or
10 completed".

11 4. Page 3, line 7: delete "date after which the variance" and substitute "specific
12 date by which the action authorized by the variance must be commenced or
13 completed".

INS 3-7

1

5. Page 3, line 8. delete "does not apply".

2

~~END~~