



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0136/2
CMH:kjf

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 479**

1 **AN ACT** *to renumber and amend* 59.694 (7) (c) and 62.23 (7) (e) 7.; *to amend*
2 59.69 (10e) (title), 59.69 (10e) (a) 1., 59.69 (10e) (b), 60.61 (5e) (title), 60.61 (5e)
3 (a) 1., 60.61 (5e) (b), 62.23 (7) (hb) (title), 62.23 (7) (hb) 1. a. and 62.23 (7) (hb)
4 2.; and *to create* 59.69 (5e), 59.694 (7) (c) 1., 59.694 (7) (c) 3., 60.61 (4e), 60.62
5 (4e), 62.23 (7) (de), 62.23 (7) (e) 7. a., 62.23 (7) (e) 7. d., 66.10015 (1) (e), 66.10015
6 (2) (e), 66.10015 (4), 227.10 (2p) and 710.17 of the statutes; **relating to:** limiting
7 the authority of local governments to regulate development on substandard lots
8 and require the merging of lots; requiring a political subdivision to issue a
9 conditional use permit under certain circumstances; standards for granting
10 certain zoning variances; local ordinances related to repair, rebuilding, and

1 maintenance of certain nonconforming structures; and the right to display the
2 flag of the United States.

Analysis by the Legislative Reference Bureau

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

3 **SECTION 2.** 59.69 (5e) of the statutes is created to read:

4 59.69 (5e) CONDITIONAL USE PERMITS. (a) In this subsection:

5 1. "Conditional use" means a use allowed under a conditional use permit,
6 special exception, or other special zoning permission issued by a county, but does not
7 include a variance.

8 2. "Substantial evidence" means facts and information, other than merely
9 personal preferences or speculation, directly pertaining to the requirements and
10 conditions an applicant must meet to obtain a conditional use permit and that
11 reasonable persons would accept in support of a conclusion.

12 (b) 1. If an applicant for a conditional use permit meets or agrees to meet all
13 of the requirements and conditions specified in the county ordinance or those
14 imposed by the county zoning board, the county shall grant the conditional use
15 permit. Any condition imposed must be related to the purpose of the ordinance and
16 be based on substantial evidence.

17 2. The requirements and conditions described under subd. 1. must be
18 reasonable and, to the extent practicable, measurable and may include conditions
19 such as the permit's duration, transfer, or renewal. The applicant must demonstrate
20 that the application and all requirements and conditions established by the county
21 relating to the conditional use are or shall be satisfied, both of which must be

1 supported by substantial evidence. The county's decision to approve or deny the
2 permit must be supported by substantial evidence.

3 (c) Upon receipt of a conditional use permit application, and following
4 publication in the county of a class 2 notice under ch. 985, the county shall hold a
5 public hearing on the application.

6 (d) Once granted, a conditional use permit shall remain in effect as long as the
7 conditions upon which the permit was issued are followed, but the county may
8 impose conditions such as the permit's duration, transfer, or renewal, in addition to
9 any other conditions specified in the zoning ordinance or by the county zoning board.

10 (e) If a county denies a person's conditional use permit application, the person
11 may appeal the decision to the circuit court under the procedures contained in s.
12 59.694 (10).

13 **SECTION 3.** 59.69 (10e) (title) of the statutes is amended to read:

14 59.69 (10e) (title) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN
15 NONCONFORMING STRUCTURES.

16 **SECTION 4.** 59.69 (10e) (a) 1. of the statutes is amended to read:

17 59.69 (10e) (a) 1. "Development regulations" means the part of a zoning
18 ordinance enacted under this section that applies to elements including setback,
19 height, lot coverage, and side yard.

20 **SECTION 5.** 59.69 (10e) (b) of the statutes is amended to read:

21 59.69 (10e) (b) An ordinance enacted under this section may not prohibit, or
22 limit based on cost, or require a variance for the repair, maintenance, renovation,
23 rebuilding, or remodeling of a nonconforming structure or any part of a
24 nonconforming structure.

1 **SECTION 8.** 59.694 (7) (c) of the statutes is renumbered 59.694 (7) (c) 2. and
2 amended to read:

3 59.694 (7) (c) 2. To authorize upon appeal in specific cases variances from the
4 terms of the ordinance that will not be contrary to the public interest, where, owing
5 to special conditions, a literal enforcement of the provisions of the ordinance will
6 result in unnecessary hardship, and so that the spirit of the ordinance shall be
7 observed and substantial justice done.

8 4. A county board may enact an ordinance specifying an expiration date for a
9 variance granted under this paragraph if that date relates to a specific date by which
10 the action authorized by the variance must be commenced or completed. If no such
11 ordinance is in effect at the time a variance is granted, or if the board of adjustment
12 does not specify an expiration date for the variance, a variance granted under this
13 paragraph does not expire unless, at the time it is granted, the board of adjustment
14 specifies in the variance a specific date by which the action authorized by the
15 variance must be commenced or completed. An ordinance enacted after April 5,
16 2012, may not specify an expiration date for a variance that was granted before April
17 5, 2012.

18 5. A variance granted under this paragraph runs with the land.

19 **SECTION 9.** 59.694 (7) (c) 1. of the statutes is created to read:

20 59.694 (7) (c) 1. In this paragraph:

21 a. “Area variance” means a modification to a dimensional, physical, or
22 locational requirement such as the setback, frontage, height, bulk, or density
23 restriction for a structure that is granted by the board of adjustment under this
24 subsection.

1 b. “Use variance” means an authorization by the board of adjustment under
2 this subsection for the use of land for a purpose that is otherwise not allowed or is
3 prohibited by the applicable zoning ordinance.

4 **SECTION 10.** 59.694 (7) (c) 3. of the statutes is created to read:

5 59.694 (7) (c) 3. A property owner bears the burden of proving “unnecessary
6 hardship,” as that term is used in this paragraph, for an area variance, by
7 demonstrating that strict compliance with a zoning ordinance would unreasonably
8 prevent the property owner from using the property owner’s property for a permitted
9 purpose or would render conformity with the zoning ordinance unnecessarily
10 burdensome or, for a use variance, by demonstrating that strict compliance with the
11 zoning ordinance would leave the property owner with no reasonable use of the
12 property in the absence of a variance. In all circumstances, a property owner bears
13 the burden of proving that the unnecessary hardship is based on conditions unique
14 to the property, rather than considerations personal to the property owner, and that
15 the unnecessary hardship was not created by the property owner.

16 **SECTION 11.** 60.61 (4e) of the statutes is created to read:

17 60.61 (4e) **CONDITIONAL USE PERMITS.** (a) In this subsection:

18 1. “Conditional use” means a use allowed under a conditional use permit,
19 special exception, or other special zoning permission issued by a town, but does not
20 include a variance.

21 2. “Substantial evidence” means facts and information, other than merely
22 personal preferences or speculation, directly pertaining to the requirements and
23 conditions an applicant must meet to obtain a conditional use permit and that
24 reasonable persons would accept in support of a conclusion.

1 (b) 1. If an applicant for a conditional use permit meets or agrees to meet all
2 of the requirements and conditions specified in the town ordinance or those imposed
3 by the town zoning board, the town shall grant the conditional use permit. Any
4 condition imposed must be related to the purpose of the ordinance and be based on
5 substantial evidence.

6 2. The requirements and conditions described under subd. 1. must be
7 reasonable and, to the extent practicable, measurable and may include conditions
8 such as the permit's duration, transfer, or renewal. The applicant must demonstrate
9 that the application and all requirements and conditions established by the town
10 relating to the conditional use are or shall be satisfied, both of which must be
11 supported by substantial evidence. The town's decision to approve or deny the permit
12 must be supported by substantial evidence.

13 (c) Upon receipt of a conditional use permit application, and following
14 publication in the town of a class 2 notice under ch. 985, the town shall hold a public
15 hearing on the application.

16 (d) Once granted, a conditional use permit shall remain in effect as long as the
17 conditions upon which the permit was issued are followed, but the town may impose
18 conditions such as the permit's duration, transfer, or renewal, in addition to any
19 other conditions specified in the zoning ordinance or by the town zoning board.

20 (e) If a town denies a person's conditional use permit application, the person
21 may appeal the decision to the circuit court under the procedures described in s.
22 59.694 (10).

23 **SECTION 12.** 60.61 (5e) (title) of the statutes is amended to read:

24 60.61 **(5e)** (title) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN
25 NONCONFORMING STRUCTURES.

1 **SECTION 13.** 60.61 (5e) (a) 1. of the statutes is amended to read:

2 60.61 **(5e)** (a) 1. “Development regulations” means the part of a zoning
3 ordinance ~~enacted under this section~~ that applies to elements including setback,
4 height, lot coverage, and side yard.

5 **SECTION 14.** 60.61 (5e) (b) of the statutes is amended to read:

6 60.61 **(5e)** (b) An ordinance ~~enacted under this section~~ may not prohibit, or
7 limit based on cost, or require a variance for the repair, maintenance, renovation,
8 rebuilding, or remodeling of a nonconforming structure or any part of a
9 nonconforming structure.

10 **SECTION 15.** 60.62 (4e) of the statutes is created to read:

11 60.62 **(4e)** (a) In this subsection:

12 1. “Conditional use” means a use allowed under a conditional use permit,
13 special exception, or other special zoning permission issued by a town, but does not
14 include a variance.

15 2. “Substantial evidence” means facts and information, other than merely
16 personal preferences or speculation, directly pertaining to the requirements and
17 conditions an applicant must meet to obtain a conditional use permit and that
18 reasonable persons would accept in support of a conclusion.

19 (b) 1. If an applicant for a conditional use permit meets or agrees to meet all
20 of the requirements and conditions specified in the town ordinance or those imposed
21 by the town zoning board, the town shall grant the conditional use permit. Any
22 condition imposed must be related to the purpose of the ordinance and be based on
23 substantial evidence.

24 2. The requirements and conditions described under subd. 1. must be
25 reasonable and, to the extent practicable, measurable and may include conditions

1 such as the permit's duration, transfer, or renewal. The applicant must demonstrate
2 that the application and all requirements and conditions established by the town
3 relating to the conditional use are or shall be satisfied, both of which must be
4 supported by substantial evidence. The town's decision to approve or deny the permit
5 must be supported by substantial evidence.

6 (c) Upon receipt of a conditional use permit application, and following
7 publication in the town of a class 2 notice under ch. 985, the town shall hold a public
8 hearing on the application.

9 (d) Once granted, a conditional use permit shall remain in effect as long as the
10 conditions upon which the permit was issued are followed, but the town may impose
11 conditions such as the permit's duration, transfer, or renewal, in addition to any
12 other conditions specified in the zoning ordinance or by the town zoning board.

13 (e) If a town denies a person's conditional use permit application, the person
14 may appeal the decision to the circuit court under the procedures described in s.
15 61.35.

16 **SECTION 16.** 62.23 (7) (de) of the statutes is created to read:

17 62.23 (7) (de) *Conditional use permits.* 1. In this paragraph:

18 a. "Conditional use" means a use allowed under a conditional use permit,
19 special exception, or other special zoning permission issued by a city, but does not
20 include a variance.

21 b. "Substantial evidence" means facts and information, other than merely
22 personal preferences or speculation, directly pertaining to the requirements and
23 conditions an applicant must meet to obtain a conditional use permit and that
24 reasonable persons would accept in support of a conclusion.

1 2. a. If an applicant for a conditional use permit meets or agrees to meet all of
2 the requirements and conditions specified in the city ordinance or those imposed by
3 the city zoning board, the city shall grant the conditional use permit. Any condition
4 imposed must be related to the purpose of the ordinance and be based on substantial
5 evidence.

6 b. The requirements and conditions described under subd. 2. a. must be
7 reasonable and, to the extent practicable, measurable and may include conditions
8 such as the permit's duration, transfer, or renewal. The applicant must demonstrate
9 that the application and all requirements and conditions established by the city
10 relating to the conditional use are or shall be satisfied, both of which must be
11 supported by substantial evidence. The city's decision to approve or deny the permit
12 must be supported by substantial evidence.

13 3. Upon receipt of a conditional use permit application, and following
14 publication in the city of a class 2 notice under ch. 985, the city shall hold a public
15 hearing on the application.

16 4. Once granted, a conditional use permit shall remain in effect as long as the
17 conditions upon which the permit was issued are followed, but the city may impose
18 conditions such as the permit's duration, transfer, or renewal, in addition to any
19 other conditions specified in the zoning ordinance or by the city zoning board.

20 5. If a city denies a person's conditional use permit application, the person may
21 appeal the decision to the circuit court under the procedures contained in par. (e) 10.

22 **SECTION 17.** 62.23 (7) (e) 7. of the statutes is renumbered 62.23 (7) (e) 7. b. and
23 amended to read:

24 62.23 (7) (e) 7. b. The board of appeals shall have the following powers: To hear
25 and decide appeals where it is alleged there is error in any order, requirement,

1 decision, or determination made by an administrative official in the enforcement of
2 this section or of any ordinance adopted pursuant thereto; to hear and decide special
3 exception to the terms of the ordinance upon which such board is required to pass
4 under such ordinance; to authorize upon appeal in specific cases such variance from
5 the terms of the ordinance as will not be contrary to the public interest, where, owing
6 to special conditions, a literal enforcement of the provisions of the ordinance will
7 result in practical difficulty or unnecessary hardship, so that the spirit of the
8 ordinance shall be observed, public safety and welfare secured, and substantial
9 justice done.

10 e. The council of a city may enact an ordinance specifying an expiration date
11 for a variance granted under this subdivision if that date relates to a specific date by
12 which the action authorized by the variance must be commenced or completed. If no
13 such ordinance is in effect at the time a variance is granted, or if the board of appeals
14 does not specify an expiration date for the variance, a variance granted under this
15 subdivision does not expire unless, at the time it is granted, the board of appeals
16 specifies in the variance a specific date by which the action authorized by the
17 variance must be commenced or completed. An ordinance enacted after April 5,
18 2012, may not specify an expiration date for a variance that was granted before April
19 5, 2012.

20 f. A variance granted under this subdivision runs with the land.

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

1 **SECTION 18.** 62.23 (7) (e) 7. a. of the statutes is created to read:

2 62.23 (7) (e) 7. a. In this subdivision, “area variance” means a modification to
3 a dimensional, physical, or locational requirement such as a setback, frontage,
4 height, bulk, or density restriction for a structure that is granted by the board of
5 appeals under this paragraph. In this subdivision, “use variance” means an
6 authorization by the board of appeals under this paragraph for the use of land for a
7 purpose that is otherwise not allowed or is prohibited by the applicable zoning
8 ordinance.

9 **SECTION 19.** 62.23 (7) (e) 7. d. of the statutes is created to read:

10 62.23 (7) (e) 7. d. A property owner bears the burden of proving “unnecessary
11 hardship,” as that term is used in this subdivision, for an area variance, by
12 demonstrating that strict compliance with a zoning ordinance would unreasonably
13 prevent the property owner from using the property owner’s property for a permitted
14 purpose or would render conformity with the zoning ordinance unnecessarily
15 burdensome or, for a use variance, by demonstrating that strict compliance with a
16 zoning ordinance would leave the property owner with no reasonable use of the
17 property in the absence of a variance. In all circumstances, a property owner bears
18 the burden of proving that the unnecessary hardship is based on conditions unique
19 to the property, rather than considerations personal to the property owner, and that
20 the unnecessary hardship was not created by the property owner.

21 **SECTION 20.** 62.23 (7) (hb) (title) of the statutes is amended to read:

22 62.23 (7) (hb) (title) *Repair, rebuilding, and maintenance of certain*
23 *nonconforming structures.*

24 **SECTION 21.** 62.23 (7) (hb) 1. a. of the statutes is amended to read:

1 62.23 (7) (hb) 1. a. “Development regulations” means the part of a zoning
2 ordinance ~~enacted under this subsection~~ that applies to elements including setback,
3 height, lot coverage, and side yard.

4 **SECTION 22.** 62.23 (7) (hb) 2. of the statutes is amended to read:

5 62.23 (7) (hb) 2. An ordinance ~~enacted under this subsection~~ may not prohibit,
6 or limit based on cost, the repair, maintenance, renovation, or remodeling of a
7 nonconforming structure.

8 **SECTION 23.** 66.10015 (1) (e) of the statutes is created to read:

9 66.10015 (1) (e) “Substandard lot” means a legally created lot or parcel that met
10 any applicable lot size requirements when it was created, but does not meet current
11 lot size requirements.

12 **SECTION 24.** 66.10015 (2) (e) of the statutes is created to read:

13 66.10015 (2) (e) Notwithstanding any other law or rule, or any action or
14 proceeding under the common law, no political subdivision may enact or enforce an
15 ordinance or take any other action that prohibits a property owner from doing any
16 of the following:

17 1. Conveying an ownership interest in a substandard lot.

18 2. Using a substandard lot as a building site if all of the following apply:

19 a. The substandard lot or parcel has never been developed with one or more of
20 its structures placed partly upon an adjacent lot or parcel.

21 b. The substandard lot or parcel is developed to comply with all other
22 ordinances of the political subdivision.

23 **SECTION 25.** 66.10015 (4) of the statutes is created to read:

24 66.10015 (4) Notwithstanding the authority granted under ss. 59.69, 60.61,
25 60.62, 61.35, and 62.23, no political subdivision may enact or enforce an ordinance

1 or take any other action that requires one or more lots to be merged with another lot,
2 for any purpose, without the consent of the owners of the lots that are to be merged.

3 **SECTION 26.** 227.10 (2p) of the statutes is created to read:

4 227.10 **(2p)** No agency may promulgate a rule or take any other action that
5 requires one or more lots to be merged with another lot, for any purpose, without the
6 consent of the owners of the lots that are to be merged.

7 **SECTION 27.** 710.17 of the statutes is created to read:

8 **710.17 Right to display the flag of the United States. (1) DEFINITIONS.**

9 In this section:

10 (a) "Housing cooperative" means a cooperative incorporated under ch. 185 or
11 organized under ch. 193 that owns residential property that is used or intended to
12 be used, in whole or in part, by the members of the housing cooperative as their
13 homes or residences.

14 (b) "Member of a homeowners' association" means a person that owns
15 residential property within a subdivision, development, or other similar area that is
16 subject to any policy or restriction adopted by a homeowners' association.

17 (c) "Member of a housing cooperative" means a member, as defined in s. 185.01
18 (5) or 193.005 (15), of a housing cooperative if the member uses or intends to use part
19 of the property of the housing cooperative as the member's home or residence.

20 **(2) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES.** (a) Except as provided
21 in sub. (3), a homeowners' association may not adopt or enforce a covenant, condition,
22 or restriction, or enter into an agreement, that restricts or prevents a member of the
23 homeowners' association from displaying the flag of the United States on property
24 in which the member has an ownership interest and that is subject to any policy or
25 restriction adopted by the homeowners' association.

1 (b) Except as provided in sub. (3), a housing cooperative may not adopt or
2 enforce a covenant, condition, or restriction, or enter into an agreement, that
3 restricts or prevents a member of the housing cooperative from displaying the flag
4 of the United States on property of the housing cooperative to which the member has
5 a right to exclusive possession or use.

6 (3) EXCEPTIONS. A homeowners' association or housing cooperative may adopt
7 and enforce a covenant, condition, or restriction, or enter into an agreement, that
8 does any of the following:

9 (a) Requires that any display of the flag of the United States must conform with
10 a rule or custom for proper display and use of the flag set forth in 4 USC 5 to 10.

11 (b) Provides a reasonable restriction on the time, place, or manner of displaying
12 the flag of the United States that is necessary to protect a substantial interest of the
13 homeowners' association or housing cooperative.

14 **SECTION 28. Initial applicability.**

15 (1) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES. The treatment of section
16 710.17 of the statutes first applies to a covenant, condition, or restriction that is
17 adopted, renewed, or modified, or to an agreement that is entered into, renewed, or
18 modified, on the effective date of this subsection.

19 (2) CONDITIONAL USE PERMITS. The treatment of sections 59.69 (5e), 60.61 (4e),
20 60.62 (4e), and 62.23 (7) (de) of the statutes first applies to an application for a
21 conditional use permit that is filed on the effective date of this subsection.

22 (END)