

2017 DRAFTING REQUEST**Assembly Substitute Amendment (ASA-AB479)**

For: **Adam Jarchow (608) 267-2365** Drafter: **mshovers**
 By: **Mitch** Secondary Drafters: **amckean**
emueller
 Date: **10/18/2017** **kpleviak**
mduchek
 Same as LRB: **s0137**

May Contact:

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Pre Topic:

No specific pre topic given

Topic:

Developing substandard lots; right to display the American flag; nonconforming structure ordinances; conditional use permits; small private ponds; variances

Instructions:

See attached. Based on the bill, with attached changes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 10/18/2017	kfollett 10/18/2017			
/1	amckean	kfollett	dwalker	dwalker	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/18/2017	10/18/2017	10/18/2017	10/18/2017	
/2			lparisi 10/18/2017	lparisi 10/18/2017	

FE Sent For:

<END>

Shovers, Marc

From: Sands, Mitch
Sent: Wednesday, October 18, 2017 11:10 AM
To: Shovers, Marc
Cc: Ohly, Mitchel
Subject: AB 479 Sub 1

Marc,

We are going to need a Sub for AB 479. This must be done by this afternoon. Thank you!

1. Include Assembly Amendment to AB 479 (LRBa1355/3) in Sub
2. The following must be changed in the above amendment to be included in the Sub
 - a. Page 3, Line 1 – must read “...information other than merely personal...”
 - b. Page 4, Line 6 - must read “...information other than merely personal...”
 - c. Page 5, Line 10 - must read “...information other than merely personal...”
3. Delete ENTIRE provision on Inverse Condemnation
4. On Page 19 of AB 479, please do the following:
 - a. Line 2, Strike “a political subdivision may not prohibit” and replace it with “no political subdivision may enact or enforce an ordinance or take any other action that prohibits”
 - b. Line 12: “...subdivision may enact to enforce an ordinance...”



State of Wisconsin
2017 - 2018 LEGISLATURE

50136/1

LRB0137/1
MS/EM/AM/KRP/ES:all

Assembly

RMR

~~SENATE~~ SUBSTITUTE AMENDMENT,
TO ~~SENATE~~ BILL 387 479

today
4pm
(H)

gen

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), 59.692 (1) (b) (intro.), 60.61
3 (5e) (title), 60.61 (5e) (a) 1., 60.61 (5e) (b), 62.23 (7) (hb) (title), 62.23 (7) (hb) 1.
4 a. and 62.23 (7) (hb) 2.; and *to create* 30.20 (1g) (d), 59.69 (5e), 59.692 (1) (am),
5 59.694 (7) (c) 1., 59.694 (7) (c) 3., 60.61 (4e), 60.62 (4e), 62.23 (7) (de), 62.23 (7)
6 (e) 7. a., 62.23 (7) (e) 7. d., 66.10015 (1) (e), 66.10015 (2) (e), 66.10015 (4), 227.10
7 (2p) and 710.17 of the statutes; **relating to:** limiting the authority of local
8 governments to regulate development on substandard lots and require the
9 merging of lots; requiring a political subdivision to issue a conditional use
10 permit under certain circumstances; standards for granting certain zoning
11 variances; local ordinances related to repair, rebuilding, and maintenance of
12 certain nonconforming structures; shoreland zoning of, and the removal of

1 material from the bed of, certain small, private ponds; inverse condemnation
2 proceedings; and the right to display the flag of the United States.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This substitute amendment makes various changes to local government zoning authority, navigable water permits, inverse condemnation proceedings, and the right to display the flag of the United States.

SUBSTANDARD LOTS

Under this substitute amendment, a city, village, town, or county may generally not prohibit a property owner from doing any of the following:

1. Conveying an ownership interest in a substandard lot.
2. Using a substandard lot as a building site if two conditions are met: the substandard lot has not been developed with one or more of its structures placed partly on an adjacent lot; and the substandard lot is developed to comply with all other ordinances of the political subdivision.

Under the substitute amendment, a substandard lot is defined as a lot that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.

MERGING LOTS

This substitute amendment prohibits a state agency, city, village, town, or county from requiring that one or more lots be merged with another lot without the consent of the owners of the lots that are to be merged.

CONDITIONAL USE PERMITS

This substitute amendment requires a city, village, town, or county to issue a conditional use permit to an applicant who meets, or agrees to meet, all of the requirements and conditions specified by the political subdivision. Under the substitute amendment, both the application, and the political subdivision's decision on the permit application, must be based on substantial evidence. Once granted, a conditional use permit may remain in effect as long as the conditions under which it was granted are followed, except that a political subdivision may include conditions relating to the permit's duration, and the ability of the applicant to transfer or renew a permit.

VARIANCES

Under current law, a city, a village, or a town that is authorized to exercise village powers (collectively, "municipality") or a 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 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.

Under this substitute amendment, a property owner bears the burden of proving “unnecessary hardship” by demonstrating either of the following:

1. For an area variance, that strict compliance with a 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.
2. For a use variance, that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In both situations, the property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than personal considerations, and that the unnecessary hardship was not created by the property owner.

NONCONFORMING STRUCTURES

Under current law, zoning ordinances of cities, villages, towns, or counties may not prohibit or limit based on cost the repair, maintenance, renovation, or remodeling of a nonconforming structure. A nonconforming structure is “a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.”

This substitute amendment expands this prohibition, adding a prohibition on requiring a variance, covering rebuilding, and specifying that a part of a nonconforming structure is covered. With these modifications, no ordinance of a political subdivision may prohibit, limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

PRIVATE PONDS

This substitute amendment exempts certain small, private ponds from the permitting requirements for removing material from the bed of a navigable body of water and from shoreland zoning laws.

Current law generally prohibits a person from removing material from the bed of a navigable body of water unless the Department of Natural Resources has issued an individual permit or a general permit authorizing the removal. This substitute amendment adds an exception to these permitting requirements for the removal of material from the bed of a self-contained pond that is five acres or less in size, has no public access, and is located on and entirely surrounded by land privately owned by the same person.

Current law requires each county to zone by ordinance all shorelands in its unincorporated area. Shorelands are defined under current law as the area within certain distances from the ordinary high-water mark of navigable waters. Navigable waters are defined under current law as Lake Superior, Lake Michigan, all natural inland lakes and all streams, ponds, sloughs, flowages, and other waters, including the Wisconsin portion of boundary waters, that are navigable. This substitute amendment excludes from the definition of navigable waters a pond that is not hydrologically connected to a natural navigable waterway, does not discharge into a natural navigable waterway except as a result of storm events, is five acres or less in size, has no public access, and is entirely surrounded by land privately owned by the same person.

RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES

Currently, the federal Freedom to Display the American Flag Act of 2005 generally prohibits a condominium association, housing cooperative, or homeowners' association (organization) from adopting or enforcing a policy, or entering into an agreement, that would restrict or prevent a member of the organization from displaying the flag of the United States on residential property that the member owns or to which the member has the right to exclusive possession and use. This substitute amendment creates a similar provision in Wisconsin law with respect to housing cooperatives and homeowners' associations. Wisconsin law currently prohibits including in any condominium documents a provision that prohibits a condominium unit owner from displaying the flag.

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

1 **SECTION 1.** 30.20 (1g) (d) of the statutes is created to read:

2 30.20 (1g) (d) A removal of material from a pond is exempt from the permit and
3 contract requirements under this section if all of the following apply to the pond:

4 1. It has an area of 5 acres or less.

5 2. It is not hydrologically connected to a natural navigable waterway and does
6 not discharge into a natural navigable waterway except as a result of storm events.

7 3. It has no public access.

8 4. It is entirely surrounded by land privately owned by the same person.

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

10 59.69 (5e) **CONDITIONAL USE PERMITS.** (a) In this subsection:

1 1. “Conditional use” means a use allowed under a conditional use permit,
2 special exception, or other special zoning permission issued by a county, but does not
3 include a variance.

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

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

13 2. The requirements and conditions described under subd. 1. must be
14 reasonable and, to the extent practicable, measurable and may include conditions
15 such as the permit’s duration, transfer, or renewal. The applicant must demonstrate
16 that the application and all requirements and conditions established by the county
17 relating to the conditional use are or shall be satisfied, both of which must be
18 supported by substantial evidence. The county’s decision to approve or deny the
19 permit must be supported by substantial evidence.

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

23 (d) Once granted, a conditional use permit shall remain in effect as long as the
24 conditions upon which the permit was issued are followed, but the county may

1 impose conditions such as the permit's duration, transfer, or renewal, in addition to
2 any other conditions specified in the zoning ordinance or by the county zoning board.

3 (e) If a county denies a person's conditional use permit application, the person
4 may appeal the decision to the circuit court under the procedures contained in s.
5 59.694 (10).

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

7 59.69 (10e) (title) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN
8 NONCONFORMING STRUCTURES.

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

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

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

14 59.69 (10e) (b) An ordinance ~~enacted under this section~~ may not prohibit, or
15 limit based on cost, or require a variance for the repair, maintenance, renovation,
16 rebuilding, or remodeling of a nonconforming structure or any part of a
17 nonconforming structure.

18 **SECTION 6.** 59.692 (1) (am) of the statutes is created to read:

19 59.692 (1) (am) "Navigable waters" has the meaning given in s. 281.31 (2) (d),
20 except that "navigable waters" does not include a pond to which all of the following
21 apply:

- 22 1. It has an area of 5 acres or less.
- 23 2. It is not hydrologically connected to a natural navigable waterway and does
24 not discharge into a natural navigable waterway except as a result of storm events.
- 25 3. It has no public access.

1 4. It is entirely surrounded by land privately owned by the same person.

2 **SECTION 7.** 59.692 (1) (b) (intro.) of the statutes is amended to read:

3 59.692 (1) (b) (intro.) “Shorelands” means the area within the following
4 distances from the ordinary high-water mark of navigable waters, ~~as defined under~~
5 ~~s. 281.31 (2) (d):~~

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

8 59.694 (7) (c) 2. To authorize upon appeal in specific cases variances from the
9 terms of the ordinance that will not be contrary to the public interest, where, owing
10 to special conditions, a literal enforcement of the provisions of the ordinance will
11 result in unnecessary hardship, and so that the spirit of the ordinance shall be
12 observed and substantial justice done.

13 4. A county board may enact an ordinance specifying an expiration date for a
14 variance granted under this paragraph if that date relates to a specific date by which
15 the action authorized by the variance must be commenced or completed. If no such
16 ordinance is in effect at the time a variance is granted, or if the board of adjustment
17 does not specify an expiration date for the variance, a variance granted under this
18 paragraph does not expire unless, at the time it is granted, the board of adjustment
19 specifies in the variance a specific date by which the action authorized by the
20 variance must be commenced or completed. An ordinance enacted after April 5,
21 2012, may not specify an expiration date for a variance that was granted before April
22 5, 2012.

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

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

25 59.694 (7) (c) 1. In this paragraph:

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

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

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

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

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

21 **60.61 (4e) CONDITIONAL USE PERMITS.** (a) In this subsection:

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

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

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

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

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

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

1 (e) If a town denies a person's conditional use permit application, the person
2 may appeal the decision to the circuit court under the procedures described in s.
3 59.694 (10).

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

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

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

8 60.61 (5e) (a) 1. "Development regulations" means the part of a zoning
9 ordinance ~~enacted under this section~~ that applies to elements including setback,
10 height, lot coverage, and side yard.

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

12 60.61 (5e) (b) An ordinance ~~enacted under this section~~ may not prohibit, or
13 limit based on cost, or require a variance for the repair, maintenance, renovation,
14 rebuilding, or remodeling of a nonconforming structure or any part of a
15 nonconforming structure.

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

17 60.62 (4e) (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 61.35.

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

24 62.23 (7) (de) *Conditional use permits.* 1. In this paragraph:

1 a. “Conditional use” means a use allowed under a conditional use permit,
2 special exception, or other special zoning permission issued by a city, but does not
3 include a variance.

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

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

13 b. The requirements and conditions described under subd. 2. a. must be
14 reasonable and, to the extent practicable, measurable and may include conditions
15 such as the permit’s duration, transfer, or renewal. The applicant must demonstrate
16 that the application and all requirements and conditions established by the city
17 relating to the conditional use are or shall be satisfied, both of which must be
18 supported by substantial evidence. The city’s decision to approve or deny the permit
19 must be supported by substantial evidence.

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

23 4. Once granted, a conditional use permit shall remain in effect as long as the
24 conditions upon which the permit was issued are followed, but the city may impose

1 conditions such as the permit's duration, transfer, or renewal, in addition to any
2 other conditions specified in the zoning ordinance or by the city zoning board.

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

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

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

18 e. The council of a city may enact an ordinance specifying an expiration date
19 for a variance granted under this subdivision if that date relates to a specific date by
20 which the action authorized by the variance must be commenced or completed. If no
21 such ordinance is in effect at the time a variance is granted, or if the board of appeals
22 does not specify an expiration date for the variance, a variance granted under this
23 subdivision does not expire unless, at the time it is granted, the board of appeals
24 specifies in the variance a specific date by which the action authorized by the
25 variance must be commenced or completed. An ordinance enacted after April 5,

1 2012, may not specify an expiration date for a variance that was granted before April
2 5, 2012.

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

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

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

10 62.23 (7) (e) 7. a. In this subdivision, “area variance” means a modification to
11 a dimensional, physical, or locational requirement such as a setback, frontage,
12 height, bulk, or density restriction for a structure that is granted by the board of
13 appeals under this paragraph. In this subdivision, “use variance” means an
14 authorization by the board of appeals under this paragraph for the use of land for a
15 purpose that is otherwise not allowed or is prohibited by the applicable zoning
16 ordinance.

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

18 62.23 (7) (e) 7. d. A property owner bears the burden of proving “unnecessary
19 hardship,” as that term is used in this subdivision, for an area variance, by
20 demonstrating that strict compliance with a zoning ordinance would unreasonably
21 prevent the property owner from using the property owner’s property for a permitted
22 purpose or would render conformity with the zoning ordinance unnecessarily
23 burdensome or, for a use variance, by demonstrating that strict compliance with a
24 zoning ordinance would leave the property owner with no reasonable use of the
25 property in the absence of a variance. In all circumstances, a property owner bears

1 the burden of proving that the unnecessary hardship is based on conditions unique
2 to the property, rather than considerations personal to the property owner, and that
3 the unnecessary hardship was not created by the property owner.

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

5 62.23 (7) (hb) (title) *Repair, rebuilding, and maintenance of certain*
6 *nonconforming structures.*

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

8 62.23 (7) (hb) 1. a. "Development regulations" means the part of a zoning
9 ordinance ~~enacted under this subsection~~ that applies to elements including setback,
10 height, lot coverage, and side yard.

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

12 62.23 (7) (hb) 2. An ordinance ~~enacted under this subsection~~ may not prohibit,
13 or limit based on cost, the repair, maintenance, renovation, or remodeling of a
14 nonconforming structure.

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

16 66.10015 (1) (e) "Substandard lot" means a legally created lot or parcel that met
17 any applicable lot size requirements when it was created, but does not meet current
18 lot size requirements.

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

20 66.10015 (2) (e) Notwithstanding any other law or rule, or any action or
21 proceeding under the common law, no political subdivision may enact or enforce an
22 ordinance or take any other action that prohibits a property owner from doing any
23 of the following:

- 24 1. Conveying an ownership interest in a substandard lot.
25 2. Using a substandard lot as a building site if all of the following apply:

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

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

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

6 66.10015 (4) Notwithstanding the authority granted under ss. 59.69, 60.61,
7 60.62, 61.35, and 62.23, no political subdivision may enact or enforce an ordinance
8 or take any other action that requires one or more lots to be merged with another lot,
9 for any purpose, without the consent of the owners of the lots that are to be merged.

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

11 227.10 (2p) No agency may promulgate a rule or take any other action that
12 requires one or more lots to be merged with another lot, for any purpose, without the
13 consent of the owners of the lots that are to be merged.

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

15 **710.17 Right to display the flag of the United States. (1) DEFINITIONS.**

16 In this section:

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

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

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

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

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

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

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

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

23 **SECTION 28. Initial applicability.**

24 (1) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES. The treatment of section
25 710.17 of the statutes first applies to a covenant, condition, or restriction that is

1 adopted, renewed, or modified, or to an agreement that is entered into, renewed, or
2 modified, on the effective date of this subsection.

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

6 (END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0136/L
MS/EM/AM/KRP/ES:all

2

ASSEMBLY SUBSTITUTE AMENDMENT ,
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), 59.692 (1) (b) (intro.), 60.61
3 (5e) (title), 60.61 (5e) (a) 1., 60.61 (5e) (b), 62.23 (7) (hb) (title), 62.23 (7) (hb) 1.
4 a. and 62.23 (7) (hb) 2.; and *to create* 30.20 (1g) (d), 59.69 (5e), 59.692 (1) (am),
5 59.694 (7) (c) 1., 59.694 (7) (c) 3., 60.61 (4e), 60.62 (4e), 62.23 (7) (de), 62.23 (7)
6 (e) 7. a., 62.23 (7) (e) 7. d., 66.10015 (1) (e), 66.10015 (2) (e), 66.10015 (4), 227.10
7 (2p) and 710.17 of the statutes; **relating to:** limiting the authority of local
8 governments to regulate development on substandard lots and require the
9 merging of lots; requiring a political subdivision to issue a conditional use
10 permit under certain circumstances; standards for granting certain zoning
11 variances; local ordinances related to repair, rebuilding, and maintenance of
12 certain nonconforming structures; shoreland zoning of, and the removal of

- 1 material from the bed of, certain small, private ponds; and the right to display
2 the flag of the United States.
-

Analysis by the Legislative Reference Bureau

INTRODUCTION

This substitute amendment makes various changes to local government zoning authority, navigable water permits, inverse condemnation proceedings, and the right to display the flag of the United States.

SUBSTANDARD LOTS

Under this substitute amendment, a city, village, town, or county may generally not prohibit a property owner from doing any of the following:

1. Conveying an ownership interest in a substandard lot.
2. Using a substandard lot as a building site if two conditions are met: the substandard lot has not been developed with one or more of its structures placed partly on an adjacent lot; and the substandard lot is developed to comply with all other ordinances of the political subdivision.

Under the substitute amendment, a substandard lot is defined as a lot that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.

MERGING LOTS

This substitute amendment prohibits a state agency, city, village, town, or county from requiring that one or more lots be merged with another lot without the consent of the owners of the lots that are to be merged.

CONDITIONAL USE PERMITS

This substitute amendment requires a city, village, town, or county to issue a conditional use permit to an applicant who meets, or agrees to meet, all of the requirements and conditions specified by the political subdivision. Under the substitute amendment, both the application, and the political subdivision's decision on the permit application, must be based on substantial evidence. Once granted, a conditional use permit may remain in effect as long as the conditions under which it was granted are followed, except that a political subdivision may include conditions relating to the permit's duration, and the ability of the applicant to transfer or renew a permit.

VARIANCES

Under current law, a city, a village, or a town that is authorized to exercise village powers (collectively, "municipality") or a 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 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.

Under this substitute amendment, a property owner bears the burden of proving “unnecessary hardship” by demonstrating either of the following:

1. For an area variance, that strict compliance with a 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.
2. For a use variance, that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In both situations, the property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than personal considerations, and that the unnecessary hardship was not created by the property owner.

NONCONFORMING STRUCTURES

Under current law, zoning ordinances of cities, villages, towns, or counties may not prohibit or limit based on cost the repair, maintenance, renovation, or remodeling of a nonconforming structure. A nonconforming structure is “a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.”

This substitute amendment expands this prohibition, adding a prohibition on requiring a variance, covering rebuilding, and specifying that a part of a nonconforming structure is covered. With these modifications, no ordinance of a political subdivision may prohibit, limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

PRIVATE PONDS

This substitute amendment exempts certain small, private ponds from the permitting requirements for removing material from the bed of a navigable body of water and from shoreland zoning laws.

Current law generally prohibits a person from removing material from the bed of a navigable body of water unless the Department of Natural Resources has issued an individual permit or a general permit authorizing the removal. This substitute amendment adds an exception to these permitting requirements for the removal of material from the bed of a self-contained pond that is five acres or less in size, has no public access, and is located on and entirely surrounded by land privately owned by the same person.

Current law requires each county to zone by ordinance all shorelands in its unincorporated area. Shorelands are defined under current law as the area within certain distances from the ordinary high-water mark of navigable waters. Navigable waters are defined under current law as Lake Superior, Lake Michigan, all natural inland lakes and all streams, ponds, sloughs, flowages, and other waters, including the Wisconsin portion of boundary waters, that are navigable. This substitute amendment excludes from the definition of navigable waters a pond that is not hydrologically connected to a natural navigable waterway, does not discharge into a natural navigable waterway except as a result of storm events, is five acres or less in size, has no public access, and is entirely surrounded by land privately owned by the same person.

RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES

Currently, the federal Freedom to Display the American Flag Act of 2005 generally prohibits a condominium association, housing cooperative, or homeowners' association (organization) from adopting or enforcing a policy, or entering into an agreement, that would restrict or prevent a member of the organization from displaying the flag of the United States on residential property that the member owns or to which the member has the right to exclusive possession and use. This substitute amendment creates a similar provision in Wisconsin law with respect to housing cooperatives and homeowners' associations. Wisconsin law currently prohibits including in any condominium documents a provision that prohibits a condominium unit owner from displaying the flag.

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

- 1 **SECTION 1.** 30.20 (1g) (d) of the statutes is created to read:
- 2 30.20 (1g) (d) A removal of material from a pond is exempt from the permit and
- 3 contract requirements under this section if all of the following apply to the pond:
- 4 1. It has an area of 5 acres or less.
- 5 2. It is not hydrologically connected to a natural navigable waterway and does
- 6 not discharge into a natural navigable waterway except as a result of storm events.
- 7 3. It has no public access.
- 8 4. It is entirely surrounded by land privately owned by the same person.
- 9 **SECTION 2.** 59.69 (5e) of the statutes is created to read:
- 10 59.69 (5e) **CONDITIONAL USE PERMITS.** (a) In this subsection:

1 1. “Conditional use” means a use allowed under a conditional use permit,
2 special exception, or other special zoning permission issued by a county, but does not
3 include a variance.

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

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

13 2. The requirements and conditions described under subd. 1. must be
14 reasonable and, to the extent practicable, measurable and may include conditions
15 such as the permit’s duration, transfer, or renewal. The applicant must demonstrate
16 that the application and all requirements and conditions established by the county
17 relating to the conditional use are or shall be satisfied, both of which must be
18 supported by substantial evidence. The county’s decision to approve or deny the
19 permit must be supported by substantial evidence.

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

23 (d) Once granted, a conditional use permit shall remain in effect as long as the
24 conditions upon which the permit was issued are followed, but the county may

1 impose conditions such as the permit's duration, transfer, or renewal, in addition to
2 any other conditions specified in the zoning ordinance or by the county zoning board.

3 (e) If a county denies a person's conditional use permit application, the person
4 may appeal the decision to the circuit court under the procedures contained in s.
5 59.694 (10).

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

7 **59.69 (10e)** (title) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN
8 NONCONFORMING STRUCTURES.

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

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

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

14 **59.69 (10e)** (b) An ordinance ~~enacted under this section~~ may not prohibit, or
15 limit based on cost, or require a variance for the repair, maintenance, renovation,
16 rebuilding, or remodeling of a nonconforming structure or any part of a
17 nonconforming structure.

18 **SECTION 6.** 59.692 (1) (am) of the statutes is created to read:

19 **59.692 (1)** (am) "Navigable waters" has the meaning given in s. 281.31 (2) (d),
20 except that "navigable waters" does not include a pond to which all of the following
21 apply:

- 22 1. It has an area of 5 acres or less.
- 23 2. It is not hydrologically connected to a natural navigable waterway and does
24 not discharge into a natural navigable waterway except as a result of storm events.
- 25 3. It has no public access.

1 4. It is entirely surrounded by land privately owned by the same person.

2 **SECTION 7.** 59.692 (1) (b) (intro.) of the statutes is amended to read:

3 59.692 (1) (b) (intro.) “Shorelands” means the area within the following
4 distances from the ordinary high-water mark of navigable waters, ~~as defined under~~
5 ~~s. 281.31 (2) (d):~~

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

8 59.694 (7) (c) 2. To authorize upon appeal in specific cases variances from the
9 terms of the ordinance that will not be contrary to the public interest, where, owing
10 to special conditions, a literal enforcement of the provisions of the ordinance will
11 result in unnecessary hardship, and so that the spirit of the ordinance shall be
12 observed and substantial justice done.

13 4. A county board may enact an ordinance specifying an expiration date for a
14 variance granted under this paragraph if that date relates to a specific date by which
15 the action authorized by the variance must be commenced or completed. If no such
16 ordinance is in effect at the time a variance is granted, or if the board of adjustment
17 does not specify an expiration date for the variance, a variance granted under this
18 paragraph does not expire unless, at the time it is granted, the board of adjustment
19 specifies in the variance a specific date by which the action authorized by the
20 variance must be commenced or completed. An ordinance enacted after April 5,
21 2012, may not specify an expiration date for a variance that was granted before April
22 5, 2012.

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

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

25 59.694 (7) (c) 1. In this paragraph:

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

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

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

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

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

21 60.61 (4e) **CONDITIONAL USE PERMITS.** (a) In this subsection:

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

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

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

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

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

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

1 (e) If a town denies a person's conditional use permit application, the person
2 may appeal the decision to the circuit court under the procedures described in s.
3 59.694 (10).

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

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

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

8 60.61 (5e) (a) 1. "Development regulations" means the part of a zoning
9 ordinance ~~enacted under this section~~ that applies to elements including setback,
10 height, lot coverage, and side yard.

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

12 60.61 (5e) (b) An ordinance ~~enacted under this section~~ may not prohibit, or
13 limit based on cost, or require a variance for the repair, maintenance, renovation,
14 rebuilding, or remodeling of a nonconforming structure or any part of a
15 nonconforming structure.

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

17 60.62 (4e) (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 61.35.

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

24 62.23 (7) (de) *Conditional use permits.* 1. In this paragraph:

1 a. “Conditional use” means a use allowed under a conditional use permit,
2 special exception, or other special zoning permission issued by a city, but does not
3 include a variance.

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

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

13 b. The requirements and conditions described under subd. 2. a. must be
14 reasonable and, to the extent practicable, measurable and may include conditions
15 such as the permit’s duration, transfer, or renewal. The applicant must demonstrate
16 that the application and all requirements and conditions established by the city
17 relating to the conditional use are or shall be satisfied, both of which must be
18 supported by substantial evidence. The city’s decision to approve or deny the permit
19 must be supported by substantial evidence.

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

23 4. Once granted, a conditional use permit shall remain in effect as long as the
24 conditions upon which the permit was issued are followed, but the city may impose

1 conditions such as the permit's duration, transfer, or renewal, in addition to any
2 other conditions specified in the zoning ordinance or by the city zoning board.

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

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

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

18 e. The council of a city may enact an ordinance specifying an expiration date
19 for a variance granted under this subdivision if that date relates to a specific date by
20 which the action authorized by the variance must be commenced or completed. If no
21 such ordinance is in effect at the time a variance is granted, or if the board of appeals
22 does not specify an expiration date for the variance, a variance granted under this
23 subdivision does not expire unless, at the time it is granted, the board of appeals
24 specifies in the variance a specific date by which the action authorized by the
25 variance must be commenced or completed. An ordinance enacted after April 5,

1 2012, may not specify an expiration date for a variance that was granted before April
2 5, 2012.

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

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

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

10 62.23 (7) (e) 7. a. In this subdivision, “area variance” means a modification to
11 a dimensional, physical, or locational requirement such as a setback, frontage,
12 height, bulk, or density restriction for a structure that is granted by the board of
13 appeals under this paragraph. In this subdivision, “use variance” means an
14 authorization by the board of appeals under this paragraph for the use of land for a
15 purpose that is otherwise not allowed or is prohibited by the applicable zoning
16 ordinance.

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

18 62.23 (7) (e) 7. d. A property owner bears the burden of proving “unnecessary
19 hardship,” as that term is used in this subdivision, for an area variance, by
20 demonstrating that strict compliance with a zoning ordinance would unreasonably
21 prevent the property owner from using the property owner’s property for a permitted
22 purpose or would render conformity with the zoning ordinance unnecessarily
23 burdensome or, for a use variance, by demonstrating that strict compliance with a
24 zoning ordinance would leave the property owner with no reasonable use of the
25 property in the absence of a variance. In all circumstances, a property owner bears

1 the burden of proving that the unnecessary hardship is based on conditions unique
2 to the property, rather than considerations personal to the property owner, and that
3 the unnecessary hardship was not created by the property owner.

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

5 62.23 (7) (hb) (title) *Repair, rebuilding, and maintenance of certain*
6 *nonconforming structures.*

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

8 62.23 (7) (hb) 1. a. “Development regulations” means the part of a zoning
9 ordinance ~~enacted under this subsection~~ that applies to elements including setback,
10 height, lot coverage, and side yard.

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

12 62.23 (7) (hb) 2. An ordinance ~~enacted under this subsection~~ may not prohibit,
13 or limit based on cost, the repair, maintenance, renovation, or remodeling of a
14 nonconforming structure.

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

16 66.10015 (1) (e) “Substandard lot” means a legally created lot or parcel that met
17 any applicable lot size requirements when it was created, but does not meet current
18 lot size requirements.

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

20 66.10015 (2) (e) Notwithstanding any other law or rule, or any action or
21 proceeding under the common law, no political subdivision may enact or enforce an
22 ordinance or take any other action that prohibits a property owner from doing any
23 of the following:

- 24 1. Conveying an ownership interest in a substandard lot.
- 25 2. Using a substandard lot as a building site if all of the following apply:

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

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

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

6 66.10015 (4) Notwithstanding the authority granted under ss. 59.69, 60.61,
7 60.62, 61.35, and 62.23, no political subdivision may enact or enforce an ordinance
8 or take any other action that requires one or more lots to be merged with another lot,
9 for any purpose, without the consent of the owners of the lots that are to be merged.

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

11 227.10 (2p) No agency may promulgate a rule or take any other action that
12 requires one or more lots to be merged with another lot, for any purpose, without the
13 consent of the owners of the lots that are to be merged.

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

15 **710.17 Right to display the flag of the United States. (1) DEFINITIONS.**

16 In this section:

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

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

1 (c) “Member of a housing cooperative” means a member, as defined in s. 185.01
2 (5) or 193.005 (15), of a housing cooperative if the member uses or intends to use part
3 of the property of the housing cooperative as the member’s home or residence.

4 (2) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES. (a) Except as provided
5 in sub. (3), a homeowners’ association may not adopt or enforce a covenant, condition,
6 or restriction, or enter into an agreement, that restricts or prevents a member of the
7 homeowners’ association from displaying the flag of the United States on property
8 in which the member has an ownership interest and that is subject to any policy or
9 restriction adopted by the homeowners’ association.

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

15 (3) EXCEPTIONS. A homeowners’ association or housing cooperative may adopt
16 and enforce a covenant, condition, or restriction, or enter into an agreement, that
17 does any of the following:

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

20 (b) Provides a reasonable restriction on the time, place, or manner of displaying
21 the flag of the United States that is necessary to protect a substantial interest of the
22 homeowners’ association or housing cooperative.

23 **SECTION 28. Initial applicability.**

24 (1) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES. The treatment of section
25 710.17 of the statutes first applies to a covenant, condition, or restriction that is

1 adopted, renewed, or modified, or to an agreement that is entered into, renewed, or
2 modified, on the effective date of this subsection.

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

6 (END)