2017 ASSEMBLY BILL 479

August 24, 2017 - Introduced by Representatives JARCHOW, R. BROOKS, BALLWEG, EDMING, FELZKOWSKI, GANNON, HORLACHER, HUTTON, KREMER, MURPHY, SANFELIPPO, STAFSHOLT and TUSLER, cosponsored by Senators TIFFANY, CRAIG, DARLING, LASEE and NASS. Referred to Committee on Housing and Real Estate.

AN ACT to renumber and amend 32.10, 59.694 (7) (c) and 62.23 (7) (e) 7.; to amend 32.10 (title), 59.69 (10e) (title), 59.69 (10e) (a) 1., 59.69 (10e) (b), 59.692 (title), 62.23 (7) (hb) 1. a. and 62.23 (7) (hb) 2.; and to create 30.20 (1g) (d), 32.09 (6c), 32.10 (1), 32.10 (5), 59.69 (5e), 59.692 (1) (am), 59.694 (7) (c) 1., 59.694 (7) (c) 3., 60.61 (4e), 60.62 (4e), 62.23 (7) (de), 62.23 (7) (e) 7. a., 62.23 (7) (e) 7. d., 66.10015 (1) (e), 66.10015 (2) (e), 66.10015 (4), 227.10 (2p) and 710.17 of the statutes; relating to: limiting the authority of local governments to regulate development on substandard lots and require the merging of lots; requiring a political subdivision to issue a conditional use permit under certain circumstances; standards for granting certain zoning variances; local ordinances related to repair, rebuilding, and maintenance of certain nonconforming structures; shoreland zoning of, and the removal of material
from the bed of, certain small, private ponds; inverse condemnation proceedings; and the right to display the flag of the United States.

**Analysis by the Legislative Reference Bureau**

**INTRODUCTION**

This bill 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 bill, 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 bill, 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 bill 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 bill 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 bill, both the application, and the political subdivision’s decision on the permit application, must be based on substantial evidence, although public testimony alone is not substantial evidence and cannot be the sole basis for a political subdivision to deny a conditional use permit. 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 bill, 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 bill 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 bill 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 bill 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 bill 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.

REGULATORY TAKINGS; EMINENT DOMAIN

This bill codifies the standard adopted by the Wisconsin Supreme Court in Zealy v. City of Waukesha, 201 Wis. 2d 265, 548 N.W.2d 528 (1996), for evaluating whether a regulation enacted by a governmental entity has the effect of taking a person’s property without paying just compensation.

Under current law, if a person’s property is occupied by an entity that possesses the power of eminent domain (a condemnor), but the condemnor has not exercised that power (and has not, therefore, compensated the property owner), the owner may commence an inverse condemnation action against the condemnor. If the property owner is successful, the court may order the condemnor to acquire the owner’s interest in the affected property, resulting in compensation being paid by the condemnor to the owner.

Currently, under Zealy, a property owner may receive compensation when a government restriction imposed by a condemnor deprives that owner of all or substantially all practical use of the property. In order to determine whether the government-imposed restriction deprives the owner of all or substantially all practical use of the property, the court considers three factors: 1) the nature and character of the government action; 2) the severity of the economic impact of the restriction on the plaintiff; and 3) the extent to which the regulation interferes with the plaintiff’s investment-backed expectations in the property.

The bill allows a property owner to bring an action under the inverse condemnation law alleging that a restriction imposed by a governmental unit deprives the owner of all or substantially all practical use of the owner’s property. If a court finds that the governmental unit has effected a regulatory taking, the court must order the governmental unit to do one of the following:

1. Pay to the owner the amount of the reduction in fair market value of the property.
2. Rescind the restriction that resulted in the regulatory taking.

Further, the bill specifies that, when a court determines the compensation that is owed to an owner whose property is taken under the eminent domain law, the court must determine the value of the property according to each individual tax parcel that is determined to have been taken in whole or in part, regardless of whether the tax
ASSEMBLY BILL 479

parcel is under contiguous, common ownership with other tax parcels. Under current law, in Spiegelberg v. State, 2006 WI 75, 291 Wis. 2d, 717 N.W.2d 641, in the case of a partial taking that affects multiple contiguous, commonly-owned parcels, a court may determine the fair market value of the whole property based on the sum of the values of the individual tax parcels or the value of the tax parcels together as one unit, whichever value more adequately reflects the property’s most advantageous use. Under the bill, the court must determine the fair market value based on each individual tax parcel that is taken in whole or in part.

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 bill 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.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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 contract requirements under this section if all of the following apply to the pond:

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

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

5. It has no public access.

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

7. Section 2. 32.09 (6c) of the statutes is created to read:
32.09 (6c) In the case of a taking under subs. (5) and (6), the value of the property taken shall be evaluated based on each individual tax parcel taken, in whole or in part, regardless of whether the tax parcel is under contiguous, common ownership with other tax parcels.

**SECTION 3.** 32.10 (title) of the statutes is amended to read:

32.10 (title) **Condemnation proceedings** instituted by property owner.

**SECTION 4.** 32.10 of the statutes is renumbered 32.10 (2) and amended to read:

32.10 (2) If any property has been occupied by a restriction imposed by a governmental unit or by a person possessing the power of condemnation and if the person that has not exercised the power, the owner, may institute condemnation proceedings, shall present under this section by filing a verified petition to with the circuit judge court of the county wherein in which the land property is situated asking that such proceedings be commenced.

(3) The petition shall describe the land property, state the person against which the condemnation proceedings are instituted and describe the use to which it has been put or is designed to have been put action by the person against which the proceedings are instituted that is alleged to constitute a taking. A copy of the petition shall be served upon the person who has occupied petitioner's land, or interest in land. The petition shall be filed in the office of the clerk of the circuit court and thereupon the matter shall be deemed an action at law and at issue, with against which the proceedings are instituted. The petitioner shall be the plaintiff and the occupying person as alleged to have taken the property shall be the defendant. The court shall make a finding of whether the defendant is occupying property of the plaintiff without having the right to do so.
(4) If the court determines that the defendant is occupying such property of the plaintiff under sub. (1) (b) 1. without having the right to do so exercising the power of condemnation, it shall treat the matter in accordance with the provisions of this subchapter assuming the plaintiff has received from the defendant a jurisdictional offer and has failed to accept the same offer and assuming the plaintiff is not questioning the right of the defendant to condemn the property so occupied.

SECTION 5. 32.10 (1) of the statutes is created to read:

32.10 (1) In this section:

(a) “Governmental unit” means the state or any department or agency thereof or any city, village, town, or county.

(b) “Taking” means any of the following:

1. The occupation of property by a person possessing the power of condemnation.

2. Any restriction imposed by a governmental unit that deprives an owner of all or substantially all practical use of the owner’s property.

SECTION 6. 32.10 (5) of the statutes is created to read:

32.10 (5) (a) In an action in which the plaintiff alleges that the defendant has taken plaintiff’s property under sub. (1) (b) 2., the court shall evaluate whether the property has been taken according to the following factors:

1. The nature and character of the government action.

2. The severity of the economic impact of the restriction on the plaintiff.

3. The extent to which the restriction interferes with the plaintiff’s investment-backed expectations in the property.
(b) If the court determines that the defendant has taken the property of the
plaintiff under sub. (1) (b) 2. without exercising the power of condemnation, the court
shall issue an order requiring the defendant to, at the defendant’s option, do one of
the following:

1. Pay damages to the plaintiff equal to the amount of the reduction in fair
market value of the property that is attributable to the action under sub. (1) (b).

2. Rescind the government-imposed restriction that was found to have
resulted in the taking.

SECTION 7. 59.69 (5e) of the statutes is created to read:

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

1. “Conditional use” means a use allowed under a conditional use permit,
special exception, or other special zoning permission issued by a county.

2. “Substantial evidence” means evidence of such convincing power that
reasonable persons would accept it in support of a conclusion. “Substantial evidence”
does not include public comment that is based solely on personal opinion,
uncorroborated hearsay, or speculation.

(b) 1. If an applicant for a conditional use permit meets, or agrees to meet, all
of the requirements and conditions specified in the county ordinance, the county
shall grant the conditional use permit.

2. The requirements and conditions described under subd. 1. must be
reasonable and measurable, and may include conditions such as the permit’s
duration, and the ability of the applicant to transfer or renew the permit. The
applicant must demonstrate that the application and all requirements and
conditions established by the county relating to the conditional use are, or will be,
satisfied, and must demonstrate such satisfaction by substantial evidence. The
county must demonstrate that its decision to approve or deny the permit is supported
by substantial evidence. Public testimony alone is not substantial evidence and
cannot be the sole basis for the county to deny a conditional use permit.

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

(d) Once granted, a conditional use permit may remain in effect as long as the
conditions upon which the permit was issued are followed, except that the county
may impose conditions relating to the permit’s duration, and the ability of the
applicant to transfer or renew the permit, as well as any other additional, reasonable
conditions that are specified in the zoning ordinance.

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

SECTION 8. 59.69 (10e) (title) of the statutes is amended to read:

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

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

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

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

59.69 (10e) (b) An ordinance enacted under this section may not prohibit, or 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.

**SECTION 11.** 59.692 (1) (am) of the statutes is created to read:

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

1. It has an area of 5 acres or less.
2. It is not hydrologically connected to a natural navigable waterway and does
not discharge into a natural navigable waterway except as a result of storm events.
3. It has no public access.
4. It is entirely surrounded by land privately owned by the same person.

**SECTION 12.** 59.692 (1) (b) (intro.) of the statutes is amended to read:

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

**SECTION 13.** 59.694 (7) (c) of the statutes is renumbered 59.694 (7) (c) 2. and
amended to read:

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

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

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

SECTION 14. 59.694 (7) (c) 1. of the statutes is created to read:

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

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

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

SECTION 15. 59.694 (7) (c) 3. of the statutes is created to read:

59.694 (7) (c) 3. A property owner bears the burden of proving “unnecessary
hardship,” as that term is used in this paragraph, for an area variance, by
demonstrating that strict compliance with a zoning ordinance would unreasonably
prevent the property owner from using the property owner’s property for a permitted
purpose or would render conformity with the zoning ordinance unnecessarily
burdensome or, for a use variance, by demonstrating 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 all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

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

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

1. “Conditional use” means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town.

2. “Substantial evidence” means evidence of such convincing power that reasonable persons would accept it in support of a conclusion. “Substantial evidence” does not include public comment that is based solely on personal opinion, uncorroborated hearsay, or speculation.

(b) 1. If an applicant for a conditional use permit meets, or agrees to meet, all of the requirements and conditions specified in the town ordinance, the town shall grant the conditional use permit.

2. The requirements and conditions described under subd. 1. must be reasonable and measurable, and may include conditions such as the permit’s duration, and the ability of the applicant to transfer or renew the permit. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are, or will be, satisfied, and must demonstrate such satisfaction by substantial evidence. The town must demonstrate that its decision to approve or deny the permit is supported by substantial evidence. Public testimony alone is not substantial evidence and cannot be the sole basis for the town to deny a conditional use permit.
Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing on the application.

Once granted, a conditional use permit may remain in effect as long as the conditions upon which the permit was issued are followed, except that the town may impose conditions relating to the permit’s duration, and the ability of the applicant to transfer or renew the permit, as well as any other additional, reasonable conditions that are specified in the zoning ordinance.

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

**SECTION 17.** 60.61 (5e) (title) of the statutes is amended to read:

> REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.

**SECTION 18.** 60.61 (5e) (a) 1. of the statutes is amended to read:

> “Development regulations” means the part of a zoning ordinance enacted under this section that applies to elements including setback, height, lot coverage, and side yard.

**SECTION 19.** 60.61 (5e) (b) of the statutes is amended to read:

> An ordinance enacted under this section may not prohibit, or limit based on cost, require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

**SECTION 20.** 60.62 (4e) of the statutes is created to read:

> a) In this subsection:
1. “Conditional use” means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town.

2. “Substantial evidence” means evidence of such convincing power that reasonable persons would accept it in support of a conclusion. “Substantial evidence” does not include public comment that is based solely on personal opinion, uncorroborated hearsay, or speculation.

(b) 1. If an applicant for a conditional use permit meets, or agrees to meet, all of the requirements and conditions specified in the town ordinance, the town shall grant the conditional use permit.

2. The requirements and conditions described under subd. 1. must be reasonable and measurable, and may include conditions such as the permit’s duration, and the ability of the applicant to transfer or renew the permit. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are, or will be, satisfied, and must demonstrate such satisfaction by substantial evidence. The town must demonstrate that its decision to approve or deny the permit is supported by substantial evidence. Public testimony alone is not substantial evidence and cannot be the sole basis for the town to deny a conditional use permit.

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

(d) Once granted, a conditional use permit may remain in effect as long as the conditions upon which the permit was issued are followed, except that the town may impose conditions relating to the permit’s duration, and the ability of the applicant


to transfer or renew the permit, as well as any other additional, reasonable
conditions that are specified in the zoning ordinance.

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

SECTION 21. 62.23 (7) (de) of the statutes is created to read:

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

a. “Conditional use” means a use allowed under a conditional use permit,
special exception, or other special zoning permission issued by a city.

b. “Substantial evidence” means evidence of such convincing power that
reasonable persons would accept it in support of a conclusion. “Substantial evidence”
does not include public comment that is based solely on personal opinion,
uncorroborated hearsay, or speculation.

2. a. If an applicant for a conditional use permit meets, or agrees to meet, all
of the requirements and conditions specified in the city ordinance, the city shall grant
the conditional use permit.

b. The requirements and conditions described under subd. 2. a. must be
reasonable and measurable, and may include conditions such as the permit’s
duration, and the ability of the applicant to transfer or renew the permit. The
applicant must demonstrate that the application and all requirements and
conditions established by the city relating to the conditional use are, or will be,
satisfied, and must demonstrate such satisfaction by substantial evidence. The city
must demonstrate that its decision to approve or deny the permit is supported by
substantial evidence. Public testimony alone is not substantial evidence and cannot
be the sole basis for the council to deny a conditional use permit.
3. Upon receipt of a conditional use permit application, and following
publication in the city of a class 2 notice under ch. 985, the city shall hold a public
hearing on the application.

4. Once granted, a conditional use permit may remain in effect as long as the
conditions upon which the permit was issued are followed, except that the city may
impose conditions relating to the permit’s duration, and the ability of the applicant
to transfer or renew the permit, as well as any other additional, reasonable
conditions that are specified in the zoning ordinance.

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

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

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

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

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

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

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

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

**SECTION 24.** 62.23 (7) (e) 7. d. of the statutes is created to read:

62.23 (7) (e) 7. d. A property owner bears the burden of proving “unnecessary
hardship,” as that term is used in this subdivision, for an area variance, by
demonstrating that strict compliance with a zoning ordinance would unreasonably
prevent the property owner from using the property owner’s property for a permitted
purpose or would render conformity with the zoning ordinance unnecessarily
burdensome or, for a use variance, by demonstrating 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 all circumstances, a property owner bears
the burden of proving that the unnecessary hardship is based on conditions unique
to the property, rather than considerations personal to the property owner, and that
the unnecessary hardship was not created by the property owner.

**SECTION 25.** 62.23 (7) (hb) (title) of the statutes is amended to read:

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

**SECTION 26.** 62.23 (7) (hb) 1. a. of the statutes is amended to read:

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

**SECTION 27.** 62.23 (7) (hb) 2. of the statutes is amended to read:

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

**SECTION 28.** 66.10015 (1) (e) of the statutes is created to read:

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

**SECTION 29.** 66.10015 (2) (e) of the statutes is created to read:
66.10015 (2) (e) Notwithstanding any other law or rule, or any action or proceeding under the common law, a political subdivision may 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 all of the following apply:
   a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
   b. The substandard lot or parcel is developed to comply with all other ordinances of the political subdivision.

SECTION 30. 66.10015 (4) of the statutes is created to read:

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

SECTION 31. 227.10 (2p) of the statutes is created to read:

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

SECTION 32. 710.17 of the statutes is created to read:

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

In this section:

(a) “Housing cooperative” means a cooperative incorporated under ch. 185 or organized under ch. 193 that owns residential property that is used or intended to be used, in whole or in part, by the members of the housing cooperative as their homes or residences.
“Member of a homeowners’ association” means a person that owns residential property within a subdivision, development, or other similar area that is subject to any policy or restriction adopted by a homeowners’ association.

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

Right to Display the Flag of the United States. (a) Except as provided in sub. (3), a homeowners’ association may not adopt or enforce a covenant, condition, or restriction, or enter into an agreement, that restricts or prevents a member of the homeowners’ association from displaying the flag of the United States on property in which the member has an ownership interest and that is subject to any policy or restriction adopted by the homeowners’ association.

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

Exceptions. A homeowners’ association or housing cooperative may adopt and enforce a covenant, condition, or restriction, or enter into an agreement, that does any of the following:

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

(b) Provides a reasonable restriction on the time, place, or manner of displaying the flag of the United States that is necessary to protect a substantial interest of the homeowners’ association or housing cooperative.
SECTION 33. Initial applicability.

(1) **Right to display the flag of the United States.** The treatment of section 710.17 of the statutes first applies to a covenant, condition, or restriction that is adopted, renewed, or modified, or to an agreement that is entered into, renewed, or modified, on the effective date of this subsection.

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

(3) **Inverse condemnation.** The renumbering and amendment of section 32.10 of the statutes and the creation of section 32.10 (1) and (5) of the statutes first apply to takings that occur on the effective date of this subsection.

(END)