



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4107/1
MS/EM/AM/KRP/ES:all

2017 SENATE BILL 387

August 10, 2017 - Introduced by Senators TIFFANY, CRAIG, NASS, DARLING and LASEE, cosponsored by Representatives JARCHOW, R. BROOKS, STAFSHOLT, SANFELIPPO, FELZKOWSKI, TUSLER, EDMING, HORLACHER, MURPHY, KREMER, GANNON, HUTTON and BALLWEG. Referred to Committee on Insurance, Housing and Trade.

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

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1 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 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.

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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

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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

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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
- 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.** 32.09 (6c) of the statutes is created to read:

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1 32.09 (6c) In the case of a taking under subs. (5) and (6), the value of the
2 property taken shall be evaluated based on each individual tax parcel taken, in whole
3 or in part, regardless of whether the tax parcel is under contiguous, common
4 ownership with other tax parcels.

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

6 **32.10** (title) ~~Condemnation proceedings~~ **Proceedings instituted by**
7 **property owner.**

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

9 32.10 (2) If any property has been occupied is taken by a restriction imposed
10 by a governmental unit or by a person possessing the power of condemnation ~~and if~~
11 ~~the person that~~ has not exercised the power, the owner, to may institute
12 condemnation proceedings, shall present under this section by filing a verified
13 petition to with the circuit judge court of the county ~~wherein~~ in which the land
14 property is situated asking ~~that such proceedings be commenced.~~

15 **(3)** The petition shall describe the land property, state the person against which
16 the condemnation proceedings are instituted and describe the use ~~to which it has~~
17 ~~been put or is designed to have been put~~ action by the person against which the
18 proceedings are instituted that is alleged to constitute a taking. A copy of the petition
19 shall be served upon the person ~~who has occupied petitioner's land, or interest in~~
20 ~~land.~~ The petition shall be filed in the office of the clerk of the circuit court and
21 ~~thereupon the matter shall be deemed an action at law and at issue, with~~ against
22 which the proceedings are instituted. The petitioner ~~as~~ shall be the plaintiff and the
23 occupying person ~~as~~ alleged to have taken the property shall be the defendant. The
24 court shall make a finding of whether the defendant is occupying property of the
25 plaintiff ~~without having the right to do so.~~

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1 **(4)** If the court determines that the defendant is ~~occupying such~~ has taken the
2 property of the plaintiff under sub. (1) (b) 1. without ~~having the right to do so~~
3 exercising the power of condemnation, it shall treat the matter in accordance with
4 the provisions of this subchapter assuming the plaintiff has received from the
5 defendant a jurisdictional offer and has failed to accept the ~~same~~ offer and assuming
6 the plaintiff is not questioning the right of the defendant to condemn the property
7 ~~so occupied~~.

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

9 32.10 (1) In this section:

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

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

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

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

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

18 32.10 (5) (a) In an action in which the plaintiff alleges that the defendant has
19 taken plaintiff’s property under sub. (1) (b) 2., the court shall evaluate whether the
20 property has been taken according to the following factors:

21 1. The nature and character of the government action.

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

23 3. The extent to which the restriction interferes with the plaintiff’s
24 investment-backed expectations in the property.

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1 (b) If the court determines that the defendant has taken the property of the
2 plaintiff under sub. (1) (b) 2. without exercising the power of condemnation, the court
3 shall issue an order requiring the defendant to, at the defendant's option, do one of
4 the following:

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

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

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

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

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

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

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

20 2. The requirements and conditions described under subd. 1. must be
21 reasonable and measurable, and may include conditions such as the permit's
22 duration, and the ability of the applicant to transfer or renew the permit. The
23 applicant must demonstrate that the application and all requirements and
24 conditions established by the county relating to the conditional use are, or will be,
25 satisfied, and must demonstrate such satisfaction by substantial evidence. The

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1 county must demonstrate that its decision to approve or deny the permit is supported
2 by substantial evidence. Public testimony alone is not substantial evidence and
3 cannot be the sole basis for the county to deny a conditional use permit.

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

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

12 (e) If a county denies a person's conditional use permit application, the person
13 may appeal the decision to the circuit court under the procedures contained in s.
14 59.694 (10).

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

16 59.69 (10e) (title) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN
17 NONCONFORMING STRUCTURES.

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

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

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

23 59.69 (10e) (b) An ordinance ~~enacted under this section~~ may not prohibit, or
24 limit based on cost, or require a variance for the repair, maintenance, renovation,

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1 rebuilding, or remodeling of a nonconforming structure or any part of a
2 nonconforming structure.

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

4 59.692 (1) (am) “Navigable waters” has the meaning given in s. 281.31 (2) (d),
5 except that “navigable waters” does not include a pond to which all of the following
6 apply:

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

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

13 59.692 (1) (b) (intro.) “Shorelands” means the area within the following
14 distances from the ordinary high-water mark of navigable waters, ~~as defined under~~
15 ~~s. 281.31 (2) (d)~~:

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

18 59.694 (7) (c) 2. To authorize upon appeal in specific cases variances from the
19 terms of the ordinance that will not be contrary to the public interest, where, owing
20 to special conditions, a literal enforcement of the provisions of the ordinance will
21 result in unnecessary hardship, and so that the spirit of the ordinance shall be
22 observed and substantial justice done.

23 4. A county board may enact an ordinance specifying an expiration date for a
24 variance granted under this paragraph if that date relates to a specific date by which
25 the action authorized by the variance must be commenced or completed. If no such

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1 ordinance is in effect at the time a variance is granted, or if the board of adjustment
2 does not specify an expiration date for the variance, a variance granted under this
3 paragraph does not expire unless, at the time it is granted, the board of adjustment
4 specifies in the variance a specific date by which the action authorized by the
5 variance must be commenced or completed. An ordinance enacted after April 5,
6 2012, may not specify an expiration date for a variance that was granted before April
7 5, 2012.

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

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

10 59.694 (7) (c) 1. In this paragraph:

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

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

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

19 59.694 (7) (c) 3. A property owner bears the burden of proving "unnecessary
20 hardship," as that term is used in this paragraph, for an area variance, by
21 demonstrating that strict compliance with a zoning ordinance would unreasonably
22 prevent the property owner from using the property owner's property for a permitted
23 purpose or would render conformity with the zoning ordinance unnecessarily
24 burdensome or, for a use variance, by demonstrating that strict compliance with a
25 zoning ordinance would leave the property owner with no reasonable use of the

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1 property in the absence of a variance. In all circumstances, a property owner bears
2 the burden of proving that the unnecessary hardship is based on conditions unique
3 to the property, rather than considerations personal to the property owner, and that
4 the unnecessary hardship was not created by the property owner.

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

6 **60.61 (4e) CONDITIONAL USE PERMITS.** (a) In this subsection:

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

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

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

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

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

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

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

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

13 60.61 (5e) (title) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN
14 NONCONFORMING STRUCTURES.

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

16 60.61 (5e) (a) 1. "Development regulations" means the part of a zoning
17 ordinance ~~enacted under this section~~ that applies to elements including setback,
18 height, lot coverage, and side yard.

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

20 60.61 (5e) (b) An ordinance ~~enacted under this section~~ may not prohibit, or
21 limit based on cost, or require a variance for the repair, maintenance, renovation,
22 rebuilding, or remodeling of a nonconforming structure or any part of a
23 nonconforming structure.

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

25 60.62 (4e) (a) In this subsection:

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

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

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

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

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

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

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

3 (e) If a town denies a person's conditional use permit application, the person
4 may appeal the decision to the circuit court under the procedures described in s.
5 61.35.

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

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

8 a. "Conditional use" means a use allowed under a conditional use permit,
9 special exception, or other special zoning permission issued by a city.

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

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

17 b. The requirements and conditions described under subd. 2. a. must be
18 reasonable and measurable, and may include conditions such as the permit's
19 duration, and the ability of the applicant to transfer or renew the permit. The
20 applicant must demonstrate that the application and all requirements and
21 conditions established by the city relating to the conditional use are, or will be,
22 satisfied, and must demonstrate such satisfaction by substantial evidence. The city
23 must demonstrate that its decision to approve or deny the permit is supported by
24 substantial evidence. Public testimony alone is not substantial evidence and cannot
25 be the sole basis for the council to deny a conditional use permit.

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

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

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

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

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

24 e. The council of a city may enact an ordinance specifying an expiration date
25 for a variance granted under this subdivision if that date relates to a specific date by

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1 which the action authorized by the variance must be commenced or completed. If no
2 such ordinance is in effect at the time a variance is granted, or if the board of appeals
3 does not specify an expiration date for the variance, a variance granted under this
4 subdivision does not expire unless, at the time it is granted, the board of appeals
5 specifies in the variance a specific date by which the action authorized by the
6 variance must be commenced or completed. An ordinance enacted after April 5,
7 2012, may not specify an expiration date for a variance that was granted before April
8 5, 2012.

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

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

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

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

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

24 62.23 (7) (e) 7. d. A property owner bears the burden of proving “unnecessary
25 hardship,” as that term is used in this subdivision, for an area variance, by

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1 demonstrating that strict compliance with a zoning ordinance would unreasonably
2 prevent the property owner from using the property owner's property for a permitted
3 purpose or would render conformity with the zoning ordinance unnecessarily
4 burdensome or, for a use variance, by demonstrating that strict compliance with a
5 zoning ordinance would leave the property owner with no reasonable use of the
6 property in the absence of a variance. In all circumstances, a property owner bears
7 the burden of proving that the unnecessary hardship is based on conditions unique
8 to the property, rather than considerations personal to the property owner, and that
9 the unnecessary hardship was not created by the property owner.

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

11 62.23 (7) (hb) (title) *Repair, rebuilding, and maintenance of certain*
12 *nonconforming structures.*

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

14 62.23 (7) (hb) 1. a. "Development regulations" means the part of a zoning
15 ordinance ~~enacted under this subsection~~ that applies to elements including setback,
16 height, lot coverage, and side yard.

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

18 62.23 (7) (hb) 2. An ordinance ~~enacted under this subsection~~ may not prohibit,
19 or limit based on cost, the repair, maintenance, renovation, or remodeling of a
20 nonconforming structure.

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

22 66.10015 (1) (e) "Substandard lot" means a legally created lot or parcel that met
23 any applicable lot size requirements when it was created, but does not meet current
24 lot size requirements.

25 **SECTION 29.** 66.10015 (2) (e) of the statutes is created to read:

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1 66.10015 (2) (e) Notwithstanding any other law or rule, or any action or
2 proceeding under the common law, a political subdivision may not prohibit a
3 property owner from doing any of the following:

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

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

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

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

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

11 66.10015 (4) Notwithstanding the authority granted under ss. 59.69, 60.61,
12 60.62, 61.35, and 62.23, no political subdivision may enact an ordinance or take any
13 other action that requires one or more lots to be merged with another lot, for any
14 purpose, without the consent of the owners of the lots that are to be merged.

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

16 227.10 (2p) No agency may promulgate a rule or take any other action that
17 requires one or more lots to be merged with another lot, for any purpose, without the
18 consent of the owners of the lots that are to be merged.

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

20 **710.17 Right to display the flag of the United States. (1) DEFINITIONS.**

21 In this section:

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

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

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

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

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

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

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

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

SENATE BILL 387**1 SECTION 33. Initial applicability.**

2 (1) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES. The treatment of section
3 710.17 of the statutes first applies to a covenant, condition, or restriction that is
4 adopted, renewed, or modified, or to an agreement that is entered into, renewed, or
5 modified, on the effective date of this subsection.

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

9 (3) INVERSE CONDEMNATION. The renumbering and amendment of section 32.10
10 of the statutes and the creation of section 32.10 (1) and (5) of the statutes first apply
11 to takings that occur on the effective date of this subsection.

12 (END)