

upon the village constituted a failure to make reasonable accommodations in violation of federal law. *United States v. Village of Marshall*, 787 F. Supp. 872 (1992).

Sub. (2) (i) 1. and 2r. are preempted by the Federal Fair Housing Amendment Act and the Americans With Disabilities Act. Sub. (2) (i) 1. and 2r. impermissibly classify people on the basis of disability by imposing a 2,500 foot spacing requirement on community living arrangements for the disabled. *Oconomowoc Residential Programs v. City of Greenfield*, 23 F. Supp. 2d 941 (1998).

The necessity of a zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple. 57 MLR 25.

Architectural Appearances Ordinances and the 1st Amendment. Rice. 76 MLR 439 (1992).

Conditional Use Permits: Strategies for Local Zoning Proceedings. Peranteau. Wis. Law. Sept. 2015.

62.231 Zoning of wetlands in shorelands. (1) DEFINITIONS. AS used in this section:

(a) “Shorelands” has the meaning specified under s. 59.692 (1) (b).

(b) “Wetlands” has the meaning specified under s. 23.32 (1).

(2) **FILLED WETLANDS.** Any wetlands which are filled prior to the date on which a city receives a final wetlands map from the department of natural resources in a manner which affects their characteristics as wetlands are filled wetlands and not subject to an ordinance adopted under this section.

(2m) **CERTAIN WETLANDS ON LANDWARD SIDE OF AN ESTABLISHED BULKHEAD LINE.** Any wetlands on the landward side of a bulkhead line, established by the city under s. 30.11 prior to May 7, 1982, and between that bulkhead line and the ordinary high-water mark are exempt wetlands and not subject to an ordinance adopted under this section.

(3) **ADOPTION OF ORDINANCE.** To effect the purposes of s. 281.31 and to promote the public health, safety and general welfare, each city shall zone by ordinance all unfilled wetlands of 5 acres or more which are shown on the final wetland inventory maps prepared by the department of natural resources for the city under s. 23.32, which are located in any shorelands and which are within its incorporated area. A city may zone by ordinance any unfilled wetlands which are within its incorporated area at any time.

(4) **CITY PLANNING.** (a) *Powers and procedures.* Except as provided under sub. (5), s. 62.23 applies to ordinances and amendments enacted under this section.

(b) *Impact on other zoning ordinances.* If a city ordinance enacted under s. 62.23 affecting wetlands in shorelands is more restrictive than an ordinance enacted under this section affecting the same lands, it continues to be effective in all respects to the extent of the greater restrictions, but not otherwise.

(5) **REPAIR AND EXPANSION OF EXISTING STRUCTURES PERMITTED.** Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on May 7, 1982 related to that structure.

(5m) **RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.** (a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

(b) An ordinance enacted under this section to which par. (a) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if neces-

sary for the structure to comply with applicable state or federal requirements.

(6) **FAILURE TO ADOPT ORDINANCE.** If any city does not adopt an ordinance required under sub. (3) within 6 months after receipt of final wetland inventory maps prepared by the department of natural resources for the city under s. 23.32, or if the department of natural resources, after notice and hearing, determines that a city adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives of s. 281.31 (1), the department of natural resources shall adopt an ordinance for the city. As far as applicable, the procedures set forth in s. 87.30 apply to this subsection.

(6m) **CERTAIN AMENDMENTS TO ORDINANCES.** For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department of natural resources may not proceed under sub. (6), or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet reasonable minimum standards.

History: 1981 c. 330, 391; 1995 a. 201; 1995 a. 227; 1999 a. 9; 2005 a. 112; 2011 a. 6.

Cross-reference: See also ch. NR 117, Wis. adm. code.

The legal standard of unnecessary hardship requires that the property owner demonstrate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96–1235. See also *State v. Outagamie*, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98–1046.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance he or she is prevented from enjoying any reasonable use of the property. *State ex rel. Spinner v. Kenosha County Board of Adjustment*, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97–2094.

Wisconsin’s Shoreland Management Program: An Assessment With Implications for Effective Natural Resources Management and Protection. Kuczynski. 1999 WLR 273.

62.232 Required notice on certain approvals. (1) In this section, “wetland” has the meaning given in s. 23.32 (1).

(2) (a) Except as provided in par. (b), a city that issues a building permit or other approval for construction activity, shall give the applicant a written notice as specified in subs. (3) and (4) at the time the building permit is issued.

(b) 1. A city is not required to give the notice under par. (a) at the time that it issues a building permit if the city issues the building permit on a standard building permit form prescribed by the department of safety and professional services.

2. A city is not required to give the notice under par. (a) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land.

(3) Each notice shall contain the following language: “YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER.”

(4) The notice required in sub. (2) (a) shall contain the electronic website address that gives the recipient of the notice direct contact with that website.

(5) A city in issuing a notice under this section shall require that the applicant for the building permit sign a statement acknowledging that the person has received the notice.

History: 2009 a. 373; 2011 a. 32; 2017 a. 365 s. 112.