

## Vetter, Steve M.

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**From:** Vetter, Steve M.  
**Sent:** Thursday, January 28, 2021 10:50 AM  
**To:** Vetter, Steve M.  
**Subject:** HB 1222

Good Afternoon,

Chairman Docktor and members of the Political Subdivisions.

HB 1222 is a bill you heard last session about nonconforming structures. It passed overwhelming in the House and then failed in Senate. This bill has been misunderstood and mischaracterized. It sounds complex when called nonconforming structures but it is actually simple from this perspective.

It is a property in which the zoning was changed therefore making it nonconforming.

If for any reason the zoning was changed and the structure no longer meets the new zoning regulations, it becomes nonconforming. The ordinances in many communities in North Dakota do not allow a nonconforming property to be rebuilt if it is over 50% damaged or destroyed.

The bill is the same as last session except this time it adds the option for the city to pay for the property if they choose to not allow the property owner to rebuild or repair.

The argument in the Senate was they wanted the control to not allow a property owner to rebuild. So, if a government wants the property, they should pay for it.

Let me go through the bill and what it does. There are 3 sections that are identical other than Section 1 is counties, Section 2 is cities and Section 3 is townships.

Subsection 1. Says that a residential nonconforming structure can be rebuilt or repaired if over 50% damaged if it meets several conditions.

Go through the Bill...

Additional language was added for issues from flood insurance and for less restrictive language of cities like Bismarck.

As I said earlier, I worked with legislative counsel for the language for Subsection 6. It was added to allow a city, county, or township not to allow a nonconforming structure not to be rebuilt if the owner is compensated. The fair market value language was used because that is what the language is used with the eminent domain part of law. Fair market value is commonly understood term in the Real Estate world. However, if the committee feels there should be more clarification, then amend it please.

Here are some examples on nonconforming house in each of the different areas. County zoning set a minimum acreage for each site. If you have a 5 acre site and the county changes it to require 10 acres, you have a nonconforming property.

Anytime the city changes a zoning regulation the house that doesn't conform to the new regulation becomes a nonconforming house. Some examples include a duplex in a R1 zone(single family homes only). A resident house in a commercial zone. Other examples include house having too small of a site or the setbacks are no longer the same as current zoning codes.

With townships and smaller towns they are often littered with nonconforming house because of lot size.

Bismarck and Fargo along with several smaller towns have modified the common boilerplate to automatically allow for the repair or replacement of non-conforming properties under the conditions that this bill includes. Unfortunately, Grand Forks, West Fargo, Minot and Williston do not.

The proposed law was based on Bismarck and Fargo zoning code and the State of Minnesota Statutes. In recent times, Minnesota passed a law that in essence forced the government entity to fully compensate a property owner that was denied a building permit due to a legal non-conforming property. In essence, it amounted to a government taking and all the conditions and issues that arise from such actions. However, I found that in 2017 they simply created a Statute that is similar to HB1165 from last session. HB1222 this session is more flexible than the Fargo and Bismarck ordinances. Yet the testimony of the opponents to the bill is doom and gloom. There have been no issues anywhere this law was put into affect. The only issues are the areas where this law is not in affect.

Homeowners are never informed when their house becomes nonconforming nor are they informed when they buy a nonconforming house.

This bill deals with Nonconforming structures not nonconforming uses.

This bill deals with zoning only. Houses rebuilt under this bill would need to comply to all applicable building codes. There is a difference between zoning code and building code. This bill in no way affects building code. Building code always comes into effect whenever repairs or replacement takes place. This law does not change any of that. It does not impact safety issues, building inspections, or other State Laws.

If any structure is proven to be unsafe then the city can condemn a structure for safety reasons. This bill deals only with zoning not safety issues as all building and fire codes need to be followed.

An illegal structure is not a nonconforming structure. For example, residential structures are never allowed in an industrial area. If an area is zoned industrial, nonconforming houses or any other residential houses are not allowed. This bill does not effect industrial areas.

The Grand Forks City example is the same fairy tale they told last session in the Senate. The house on the 1400 square foot site that burned down. It didn't burn down because of zoning. It didn't burn down because it was too close to another property nor did it damage the neighboring property. This issue wasn't solved by collaboration between the owner and the city. The structure was never going to get rebuilt because the owner didn't have insurance on it. That is why it was never going to get rebuilt. If it was a life-safety impact, they why didn't they condemn the house?!

A house being close to another house is not a safety concern if the proper building codes and materials are used. Ever heard of a duplex or a twin home? Are they a safety risk? How close are they together. How about Row houses and attached twin homes? Are they a safety risk because they are close together?

Grand Forks talks about collaboration when the homeowner has no choice but to beg the city for variance. Since the last session, there were several instances that GF issued nonconforming homeowners a variance. If they are allowing everyone a variance, at what point does it become discriminatory to say no and for what reason, they don't get one. What about people that don't have help and don't know the process of getting a variance? However, in other areas like West Fargo, they don't always issue a variance and once realized that immediately decreases the value of that property by doing so. The value goes down because a house cannot be financed if it cannot be rebuilt.

Since the last session, several communities have adopted ordinances like Bismarck. In Mayville, when came to their attention that the majority of the houses listed for sale were actually nonconforming along with many other houses so they changed their ordinances.

How does not allowing someone to rebuild help the community? How is it fair to a homeowner when it was never disclosed to them? Zoning is supposed to be about health, welfare and safety of the public. It is not supposed to be about ways the city/county can take away you ability to rebuild.

How much would your car be worth if you weren't ever allowed to fix your tires?

The opposition is fighting for the ability to not allow a nonconforming to not be rebuilt. They can have it but they will need to pay for it. Just like with any government taking, the owner must be compensated. What do they really accomplish by having this ability? Can they really change the neighborhood by not allowing houses to be rebuilt. No, all they do is cause blight in the neighborhood. They are willing to not allow an owner to rebuild but they don't inform the public in a manner that the effect on their property is understood. they not willing to disclose to all the nonconforming owners until the Ike comes when they want to repair or rebuild their property. Then they require the owner to beg them for the ability to repair or rebuild.

Address the opposition to the bill:

City of MInot- Show me where your policy has worked to provide health, welfare and safety of the public. Do they really believe this is the only tool they have for zoning?

Williston: Nonconforming house or any other residential house are not allowed

I would ask you to push back and challenge on the same inaccurate testimony provided by the opposition with questions.

Grand Forks:

This is not an issue of safety as all building codes and safety issues are required anytime someone rebuilds. This an issue of fairness. This is a bill that needs to become law. I would ask you for a Do Pass recommendation. I will stand for questions.