

**Vetter, Steve M.**

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**From:** Vetter, Steve M.  
**Sent:** Friday, March 19, 2021 8:48 AM  
**To:** Vetter, Steve M.  
**Subject:** 1222

Good Afternoon,

Chairman Burchard and Senators in the Political Subdivisions Committee

#### Introduction

HB 1222 is a bill you heard last session about nonconforming structures. This bill is a true grandfathered property law as properties will be grandfathered in. This session there was opposition to the subsection 6 of the original bill so it was taken out. Amendments were added to try to cure some of the concerns of the opposition and now you have the bill before you today. The bill adds specifically that the structure cannot 'violate building or fire codes' as some opponents have made false claims that this bill will allow unsafe houses to be rebuilt. Basically all this bill is trying to do is allow the homeowner of a nonconforming house after meeting the long list of requirements and exceptions, to rebuild or repair. In order to finance a house the lender needs to know the house can be rebuilt so this law is important for lending purposes.

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 50 acre site and you refinance to a 10 acre lot and the county requires 20 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 houses 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. Originally the bill was introduced with a provision that gave compensation to the owner of a nonconforming if not allowed to rebuild. There was a lot of opposition to this idea so it was amended. However, 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 HB1222.

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 repaired, improved, maintained, restored or rebuilt if over 50% damaged if

A permit is applied for within six months and restoration begins within 1 year.

Subsection c.

Needs to keep the same foot print of the damaged structure

Can't have more square footage or exceed the same number of stories.

Diminish the number of off street parking spaces

Can't violate building or fire codes.

Subsection 2 & 3 can't expand unless expansion is in compliance with zoning regulations. Can't move the footprint unless it put it into compliance.

Subsection 4 is very important as this is the flood plain language.

Subsection 5 says the local zoning authority can be less restrictive

Subsection 6 says they can rebuild if they follow subsection c

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 to the zoning. It is NOT nonconforming because it is unsafe or a poorly built house, its nonconforming status is based solely on zoning. 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.

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. The basic rule of building codes is if you open something up you have to bring it up to code.

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 with this bill.



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 affect industrial areas.

The Grand Forks City's example is the same fairy tale they told last session. 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 or Thompson, 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. There has been a few court cases in the last year.

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.

Also, Homeowners are not informed when their house becomes nonconforming nor are they informed when they buy a nonconforming house. This is an issue of property rights for the homeowner. This has become a bigger issue as this has caused delays or cancelled transactions. Several realtors have come across this issue in the last couple years and have expressed the desire for change. Buyers and sellers should be able to expect the ability to rebuild or repair a property they spend hundreds of thousands of dollars for.

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. 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 time 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- I didn't think they even have very many nonconforming houses in Minot. Do they really believe this is the only tool they have for zoning?

Williston: A structure in an industrial zone is illegal structure not nonconforming.

Grand Forks: The President of the City Council is in support of the bill. The testimony against has limited merit. If a house can be brought into by changing the footprint, it is allowed. There is strong flood protection language in the bill that came from the state engineer lobbyist last session.

Planners: You can't build a septic system on your neighbor's property, that is NOT nonconforming it is illegal. Objection to their testimony. Amendments.

This bill solves issues for property owners. I would challenge any of the opponents of this bill to show somewhere that this law was put in place and there were problems because of this law. Show me somewhere. The only issues are the areas where this law is NOT in effect. Yet the testimony of the opponents to the bill is doom and gloom. I ask again show me somewhere that this law has been in effect and it caused any kind of the doom and gloom that the opponents claim will happen if this law goes into effect. Also, Homeowners are not informed when their house becomes nonconforming nor are they informed when they buy a nonconforming house. This is an issue of property rights for the homeowner.

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Local Control? What is more local than the individual Property Owner? They want the "local control" to not allow an individual to rebuild or repair their house. Not for safety reasons but because they can. How is that local control?

What is more local than the individual homeowner? What is more local the homeowner or the city official? The league of cities represents the elected officials not the people of those cities.

Property rights is a state issue, zoning and planning are local issues. This bill is an issue of property rights.

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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.

Amendments:

I would ask for a Do Pass recommendation. I will stand for questions.