



1422 Do Not Pass

Dear Senate Industry & Business Committee members,

The North Dakota Planning Association encourages the committee to provide a “do-not-pass” recommendation for 1422. However, if the committee wishes to provide a do pass recommendation, we *strongly suggest adding the attached amendments in green* to the three sections of the bill (same text amendments for cities, counties and townships).

The bill, in its current form, would force a city, county or township, to issue a building permit to the owner of a residential structure to reconstruct their non-conforming residential structure, within the same footprint, if the residential structure were destroyed beyond 50% of assessed value. The issuance of a building permit is an affirmative governmental act that the public very often presumes to have additional guarantees associated with it, whether the act in fact conveys those guarantees or not. Before issuing a building permit, the political subdivision is responsible for identifying issues associated with the property that affect public health and safety. The political subdivision is also responsible for validating that issuing a permit would not violate other regulations or laws: whether the property is located in the flood hazard area, whether the property has a failing septic system, whether the location of the structure has implications for fire hazard or current building code, etc.

The current bill language makes some exceptions for cases in which a building permit could be denied. But there are three important cases (among others) that are missing from the list of exceptions:

1) *Overstepping onto the rights of neighboring property owners.*

If the destroyed residence was partially located on a neighboring property, the current bill language would force a political subdivision to affirm a trespassing situation and issue a building permit for the destroyed residence to be re-constructed in exactly the same location.

2) *Access to a public right of way.*

If the lot upon which the re-constructed residence is located does not have adequate legal access, this has a bearing on health and safety as it concerns the ability of first responders (ambulance, fire, police) to access the property. If a property owner is required to trespass in order to reach their residence, issuing a building permit to reconstruct the residence will prolong the existence of the trespassing conflict.

3) *Encroaching into public rights of way.*

If the residential structure was partially located within a public right of way, forcing a political subdivision to allow the property owner to reconstruct the structure again in the right of way; prolongs the land use conflict; can create a safety hazard; and also compromises the potential for upgrades to, and expansion of, the road within the right of way.

Forcing a city, county or township to issue a permit without any local evaluation or consideration of the factors at hand, has the potential to put that political subdivision in a precarious legal position. We urge you to give a “do not pass” recommendation, or at least not to allow the bill to pass out of committee without the additional language proposed below. We thank you for your consideration.

Text amendments proposed by the ND Planning Association in green

SECTION 1. Section 11-33-17.1 of the North Dakota Century Code is created and enacted as follows:

11-33-17.1. Zoning - Nonconforming structure.

1. Notwithstanding any other provision of law or local zoning ordinance, a structure devoted to residential use may be repaired, replaced, improved, maintained, restored, or rebuilt in its entirety even though the structure is damaged beyond fifty percent of its value if:
 - a. An application for a building permit is submitted within six months of the date the damage occurs;
 - b. Restoration begins within one year of the date the damage occurred; and
 - c. The new structure will not:
 - (1) Occupy a portion of the lot which was not occupied by the damaged structure;
 - (2) Have more square footage than the damaged structure;
 - (3) Exceed the height or number of stories of the damaged structure;
 - (4) Diminish the number of off - street parking spaces located on the property from the number of spaces before the damage;
 - (5) Violate existing building and fire codes;
 - (6) Violate existing sanitary or health standards imposed by the local health district; or
 - (7) Pose a risk to public health or safety;
 - (8) Encroach upon a public right of way;
 - (9) Encroach upon any neighboring property.
 - d. The lot or parcel, upon which the structure dedicated to residential use is located, abuts a public right of way.

Repeat text in sections 40-57-05.1 and 58-03-14.1