

**2023 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1422**

# 2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Room JW327C, State Capitol

HB 1422  
01/25/2023

Relating to nonconforming structures in counties, cities, and townships.

Acting Chairman Ruby called to order 10:46 AM

Members Present: Chairman Louser, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.  
Member Absent: Vice Chairman Ostlie

## Discussion Topics:

- Consequences
- Changing ordinances
- Current building codes
- Zoning inspection
- Zoning code compliance disclosure

## In favor:

Representative Steve Vetter, District 18, prime bill sponsor, #16804

## Opposed:

Natalie Pierce, Planning Director, Morton County Planning & Zoning and Advocate of good planning practices, #16803

Ben Ehreth, Community Development Director, City of Bismarck, #16800

## Additional written testimony:

Joe Summers, ND Appraisers Association (NDAA), #16565

Brian Billingsley, Planning Department, City of Minot, #16522

Rachel LaQua, VP ND Planning Association, #16543

Kent Jarcik, City Planner, City of Williston Planning & Zoning, #16636

Acting Chairman Ruby adjourned the meeting 11:50 AM

*Diane Lillis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1422  
02/07/2023

Relating to nonconforming structures in counties, cities, and townships.

Chairman Louser called to order 3:40 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.  
Member absent: Representative Kasper

### Discussion Topics:

- Rebuild home
- Disclosed
- Conforming standards
- Non-conforming exemptions

Representative Koppelman presented a proposed amendment #19650, #19651, LC #23.0437.02003 and moved to adopt.

Representative Tveit seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	N
Representative Jim Kasper	AB
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion 12-1-1

Representative Koppelman moved a do pass as amended.  
Representative Dakane seconded.

Roll call vote:

<b>Representatives</b>	<b>Vote</b>
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	N
Representative Jim Kasper	AB
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 12-1-1

Representative Koppelman will carry the bill.

Chairman Louser adjourned the meeting 4:11 PM

*Diane Lillis, Committee Clerk*

off 2-7-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1422

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact sections 11-33-17.1, 40-47-05.1, and 58-03-14.1 of the North Dakota Century Code, relating to nonconforming structures in counties, cities, and townships.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**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.
2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the expansion is in compliance with applicable state and local zoning regulations. The local zoning authority shall determine whether a proposed expansion is in compliance.
3. Under subsection 1, a nonconforming structure may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations.

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- 4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair, replacement, improvement, maintenance, restoration, rebuilding, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the national flood insurance program and adhere fully to all applicable floodplain management ordinances without increasing flood damage potential or increasing the degree of obstruction to floodflows in the floodway.
- 5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less restrictive ordinance or regulation.
- 6. Unless the county determines the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the county shall issue a building permit to a property owner that meets the qualifications under subsection 1.

**SECTION 2.** Section 40-47-05.1 of the North Dakota Century Code is created and enacted as follows:

**40-47-05.1. 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
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3. Under subsection 1, a nonconforming structure may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations.
4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair, replacement, improvement, maintenance, restoration, rebuilding, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the national flood insurance program and adhere fully to all applicable floodplain management ordinances without increasing flood damage potential or increasing the degree of obstruction to floodflows in the floodway.
5. Notwithstanding section 40-47-13 and subsections 1, 2, and 3, the local zoning authority may create a less restrictive ordinance or regulation.
6. Unless the city determines that the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the city shall issue a building permit to a property owner that meets the qualifications under subsection 1.

**SECTION 3.** Section 58-03-14.1 of the North Dakota Century Code is created and enacted as follows:

**58-03-14.1. 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
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5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less restrictive ordinance or regulation.
6. Unless the township determines that the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the township shall issue a building permit to a property owner that meets the qualifications under subsection 1."

Renumber accordingly

4



**REPORT OF STANDING COMMITTEE**

**HB 1422: Industry, Business and Labor Committee (Rep. Louser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1422 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact sections 11-33-17.1, 40-47-05.1, and 58-03-14.1 of the North Dakota Century Code, relating to nonconforming structures in counties, cities, and townships.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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3. Under subsection 1, a nonconforming structure may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations.
4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair, replacement, improvement, maintenance, restoration, rebuilding, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the

national flood insurance program and adhere fully to all applicable floodplain management ordinances without increasing flood damage potential or increasing the degree of obstruction to floodflows in the floodway.

5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less restrictive ordinance or regulation.
6. Unless the county determines the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the county shall issue a building permit to a property owner that meets the qualifications under subsection 1.

**SECTION 2.** Section 40-47-05.1 of the North Dakota Century Code is created and enacted as follows:

**40-47-05.1. 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
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    - (6) Violate existing sanitary or health standards imposed by the local health district; or
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3. Under subsection 1, a nonconforming structure may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations.
4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair, replacement, improvement, maintenance, restoration, rebuilding, or expansion of nonconforming uses and structures in

floodplain areas to the extent necessary to maintain eligibility in the national flood insurance program and adhere fully to all applicable floodplain management ordinances without increasing flood damage potential or increasing the degree of obstruction to floodflows in the floodway.

5. Notwithstanding section 40-47-13 and subsections 1, 2, and 3, the local zoning authority may create a less restrictive ordinance or regulation.
6. Unless the city determines that the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the city shall issue a building permit to a property owner that meets the qualifications under subsection 1.

**SECTION 3.** Section 58-03-14.1 of the North Dakota Century Code is created and enacted as follows:

**58-03-14.1. 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.
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3. Under subsection 1, a nonconforming structure may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations.
4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair, replacement, improvement, maintenance, restoration,

- rebuilding, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the national flood insurance program and adhere fully to all applicable floodplain management ordinances without increasing flood damage potential or increasing the degree of obstruction to floodflows in the floodway.
5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less restrictive ordinance or regulation.
  6. Unless the township determines that the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the township shall issue a building permit to a property owner that meets the qualifications under subsection 1."

Renumber accordingly

**2023 SENATE INDUSTRY AND BUSINESS**

**HB 1422**

# 2023 SENATE STANDING COMMITTEE MINUTES

## Industry and Business Committee Fort Union Room, State Capitol

HB 1422  
3/13/2023

A bill relating to nonconforming structures in counties, cities, and townships.

10:30 AM Chairman D. Larsen called the meeting to order.

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

### Discussion Topics:

- Non-conforming structure
- Zoning regulations
- Same footprint
- Flood insurance
- Building codes
- Local control

10:30 AM Representative Steve Vetter, District 18, introduced HB 1422 and testified in favor. No written testimony.

10:47 AM Representative Ben Koppelman, District 16 of West Fargo, North Dakota, testified in favor of HB 1422. No written testimony.

11:02 AM Joe Sheehan, Mortgage Banker, testified in favor of HB 1422. No written testimony.

11:09 AM Bill Wocken, North Dakota League of Cities, testified opposed to HB 1422. No written testimony.

11:12 AM Dennis Huber, Appraiser, testified in favor of HB 1422. #24153

12:21 AM Natalie Pierce, North Dakota Planning Association, Flood Plan Administrator, testified opposed to HB 1422. #24182

### Additional written testimony:

Roben Anderson, #24137

11:29 AM Chairman D Larsen closed the hearing on HB 1422.

*Brenda Cook, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

## Industry and Business Committee Fort Union Room, State Capitol

HB 1422  
3/20/2023

A bill relating to nonconforming structures in counties, cities, and townships.

11:27 AM Chairman Larsen called the Committee Work meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

### Discussion Topics:

- Committee action HB 1422

11:27 AM Senator Klein moved to adopt an Amendment to HB 1422. LC 23.0437.04002 - #27103

11:34 Senator Barta seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0 DO PASS to ADOPT AMENDMENT to HB 1422.

11:34 AM Senator Barta moved to DO PASS AS AMENDED HB 1422. Senator Boehm seconded the motion.

Roll Call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	N

Vote: 4-1-0 Motion DO PASS AS AMENDED HB 1422.

Senator D. Larsen will carry the bill.

11:36 AM Chairman D. Larsen adjourned the meeting.

*Brenda Cook, Committee Clerk*

AG  
3-20-23  
(1-2)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1422

Page 1, line 2, after "to" insert "legal"

Page 1, line 7, replace "**Nonconforming**" with "**Legal nonconforming**"

Page 1, line 8, after "a" insert "legal nonconforming"

Page 1, line 9, after "use" insert ", situated in a residential zoning district,"

Page 1, line 14, remove "and"

Page 1, line 15, after "c." insert "The lot or parcel upon which the structure dedicated to residential use is located abuts a public right of way; and  
d."

Page 1, line 24, remove "or"

Page 2, line 1, after "safety" insert ":

(8) Encroach upon a public right of way; or

(9) Encroach upon any neighboring property"

Page 2, line 2, after "a" insert "legal"

Page 2, line 5, after "a" insert "legal"

Page 2, line 9, after "of" insert "legal"

Page 2, line 17, after "a" insert "legal nonconforming"

Page 2, line 22, replace "**Nonconforming**" with "**Legal nonconforming**"

Page 2, line 23, after "a" insert "legal nonconforming"

Page 2, line 24, after "use" insert ", situated in a residential zoning district,"

Page 2, line 29, remove "and"

Page 2, line 30, after "c." insert "The lot or parcel upon which the structure dedicated to residential use is located abuts a public right of way; and  
d."

Page 3, line 9, remove "or"

Page 3, line 10, after "safety" insert ":

(8) Encroach upon a public right of way; or

(9) Encroach upon any neighboring property"

Page 3, line 11, after "a" insert "legal"

Page 3, line 14, after "a" insert "legal"



AG  
3-10-23  
(2-2)

Page 3, line 18, after "of" insert "legal"

Page 3, line 26, after "a" insert "legal nonconforming"

Page 4, line 1, replace "**Nonconforming**" with "**Legal nonconforming**"

Page 4, line 2, after "a" insert "legal nonconforming"

Page 4, line 3, after "use" insert ", in a residential zoning district."

Page 4, line 8, remove "and"

Page 4, line 9, after "c." insert "The lot or parcel upon which the structure dedicated to residential use is located abuts a public right of way; and

d."

Page 4, line 18, remove "or"

Page 4, line 19, after "safety" insert ":

(8) Encroach upon a public right of way; or

(9) Encroach upon any neighboring property"

Page 4, line 20, after "a" insert "legal"

Page 4, line 23, after "a" insert "legal"

Page 4, line 27, after "of" insert "legal"

Page 5, line 4, after "a" insert "legal nonconforming"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1422, as engrossed: Industry and Business Committee (Sen. Larsen, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1422 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 2, after "to" insert "legal"

Page 1, line 7, replace "**Nonconforming**" with "**Legal nonconforming**"

Page 1, line 8, after "a" insert "legal nonconforming"

Page 1, line 9, after "use" insert ", situated in a residential zoning district."

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Page 5, line 4, after "a" insert "legal nonconforming"

Renumber accordingly

**TESTIMONY**

**HB 1422**

# City of Minot

Planning Department

The City of Minot submits this written testimony in opposition to House Bill 1422 related to non-conforming uses.

The bill as-written would establish an overwhelming administrative burden on a jurisdiction exercising oversight on non-conforming structures.

The City of Minot holds Development Review Team meetings with property owners wishing to develop within the City or surrounding extra-territorial area. The Development Review Team is comprised of staff from the Fire Department, Planning, Engineering, Public Works, Parks District, and First District Health. This process provides assurances to development of compliance with the codes and processes established to maintain administrative order.

Upon development, site plans and buildings are determined to be compliant or not compliant with the codes. Should the development or building be determined to be compliant with all codes, including zoning, a building permit is issued. Once the final inspection for the newly constructed building is complete, a certificate of occupancy is provided. This is the assurance to the land owner, building tenant, insurance company, and lending institution that this structure was legitimately established.

The determination of a nonconforming structure stems from changes made to codes at the local level that are addressing matters of health, safety, and overall quality of life. These determinations are customarily provided on an ad-hoc basis and can take upwards of several hours of staff time.

To provide an example of the inherent value of permitting a locality to enforce development codes within its own jurisdiction, the City of Minot is presently working with a land owner to reconstruct a fueling station located along Hwy 83. The present site, as-constructed, facilitates traffic entering and exiting along the entirety of Hwy 83 and the entirety of another local road segment (there is no clear curb or driveway apron). This setup permits multiple vehicles entering and exiting the site onto a five lane segment of the highway near an intersection. This is a significant health and safety issue.

While the above layout may have been acceptable decades ago, the present circumstances are much different and prompt changes to the site's access to improve safety. This is all tied to the determination of whether the structure may be reconstructed as-is.

Bill 1422 would establish an increasing administrative burden on the City of Minot and other jurisdictions exercising authority over non-conforming structures. Years 1-5 would require the least amount of administrative effort. The second five years would include both the effort of years 1-5 and 6-10. The third five years would include the effort of Years 1-5, 6-10, and 11-15 and so on. Or, the City of Minot may choose to acquiesce to the alternative provided in Bill 1422 to simply permit non-conforming structures to rebuild in perpetuity, which, in the example provided, would perpetuate the traffic safety issues at the site.

The City of Minot maintains planning commissioners and elected officials that understand the balance and prudence that needs to be applied with regard to this issue and have established codes and procedures to address these concerns appropriately at the local level.

For the reasons stated, the City of Minot opposes Bill 1422.

Brian Billingsley, Community and Economic Development Director, City of Minot





**NORTH DAKOTA  
PLANNING ASSOCIATION**  
Serving North Dakota since 1973

**NDPA Board**

*John Van Dyke – President  
Rachel Laqua - Vice President  
Sandy Rohde - Past President  
Daniel Nairn - Treasurer  
Andrea Edwardson - Secretary  
Will Hutchings – At Large  
Donald Kress – At Large*

January 23, 2023

RE: Opposition of HB1422 regarding zoning inspections

Chairman Louser and members of the House Industry, Business and Labor Committee:

The North Dakota Planning Association is in opposition of the proposed amendment subsection 3 of section 11-10.1-05, section 11-33-04, subsection 1 of section 11-33-18, subsection 6 of section 40-05-02, sections 40-47-06, 40-19-01, and 58-03-13, subsection 2 of section 58-03-19, and section 58-09-03 of the North Dakota Century Code, relating to notices triggering zoning inspections when assessments are conducted and building permits are issued.

These requirements will add a significant burden to administrative staff in most jurisdictions and will require review of all building permits by commissions. Typically, this process is handled administratively by building officials or planning departments. With each building permit applied for, staff review the project and property for compliance with all codes, including any that may govern non-conformities. Requiring an inspection and an individual report to landowners to explain that they are in compliance with a regulation that they would not have been issued a building permit for if they were not in compliance, seems to add time and burden to citizens, staff, and zoning boards.

Many local jurisdictions do not have enough staff to feasibly provide reports for every building permit and assessment that occurs. The number of reports that may be generated could be significant – jurisdictions may have hundreds or thousands of assessments and permits every year. Any citizen has the ability to contact their local jurisdiction at any time for a zoning verification and determination of whether their property is in compliance with all codes, including non-conforming statute.

As planners, we must note that the non-conforming language contained in most codes is a best practice, allowing for jurisdictions to fix dangerous or unwieldy property burdens at a time when it is most convenient for building/property owners. For example, in some cases non-conforming properties may have accesses too close to intersections, or may be built in a floodplain or too close to a setback, allowing for a potentially dangerous situation. Utilizing non-conforming language within a code usually only requires changes if a property has been fully destroyed or is torn down for a new development. At that point, the cost to change a property to meet current codes is much less than if it were to be required while the property or building was still standing.

Because this proposed change would add significant burden to citizens, administrative entities, and commissions, the North Dakota Planning Association respectfully opposes this bill as presented and written.

Thank you for your consideration.

Rachel Laqua  
Vice President, NDPA



January 24, 2023

The Honorable Scott Louser  
North Dakota House of Representatives  
Chair, Industry, Business and Labor Committee

RE: H.B. 1422

Dear Chairman Louser and Industry, Business and Labor Committee members:

The North Dakota Appraiser's Association (NDAAN) was established in 2016 to represent, advocate for, and promote the appraisal profession in the State of North Dakota. Our bedrock belief stands firm on building relationships between all stakeholders in the Real Estate Industry. Today, the NDAAN membership stands at 150 appraisers strong and is growing!

NDAAN was made aware that H.B. 1422, relating to notices triggering zoning inspections when assessments are conducted and building permits are issued, is being considered by the North Dakota House of Representatives. NDAAN provides testimony in favor of this legislation, as it will provide increased transparency of applicable zoning regulations and allowances (already intended for public consumption) in the State of North Dakota. This transparency is essential when members of the public make decisions regarding real estate, as zoning regulations are the guiding principle used in determining allowable uses. And subsequently, appraisal development as guided by the Uniform Standards of Professional Appraisal Practice. Therefore, equally important is the public knowledge of what is or is not allowed in the governing municipality.

Every real estate market would benefit from the transparency that H.B. 1422 would provide. Residential real estate is particularly sensitive to several components in this bill. Namely, defining the recourse if catastrophic damage occurred would dictate whether a market participant could be made whole again. Or, participants who purchased real estate with the intent to improve the property would be served by knowing ahead of time what their zoning regulations allow. The NDAAN believes that when market participants have this information sooner, more appropriate decisions can be made.

As development in North Dakota continues, the need for transparency with zoning regulations grows. By passing H.B. 1422 the public will have easier access to vital property information, so decisions with real estate can be made more quickly and with greater confidence.



This change adds further protection for real estate professionals and the people of North Dakota. Thank you for your time and consideration of the testimony from the North Dakota Appraiser's Association. We politely request the IB&L Committee supports H.B. 1422 with a do pass.

Respectfully submitted,

*Joe Sumers*

Joe Sumers  
President  
North Dakota Appraisers Association  
(701) 200-9610  
[jsumers@FIBT.com](mailto:jsumers@FIBT.com)  
[www.ndappraisers.org](http://www.ndappraisers.org)





January 23, 2023

RE: Opposition of HB1422 regarding zoning inspections

Chairman Louser and members of the House Industry, Business and Labor Committee:

The City of Williston is in opposition of the proposed amendment subsection 3 of section 11-10.1-05, section 11-33-04, subsection 1 of section 11-33-18, subsection 6 of section 40-05-02, sections 40-47-06, 40-19-01, and 58-03-13, subsection 2 of section 58-03-19, and section 58-09-03 of the North Dakota Century Code, relating to notices triggering zoning inspections when assessments are conducted and building permits are issued.

There is significant concern for achieving the requirements of this bill. The two triggers would create numerous zoning inspections and reports. Regarding assessments, The Assessor's office completes valuations on all properties every year. Independent of assessments, the number of building permits generated annually would create a compliance requirement that is unattainable under typical staffing levels.

The City of Williston supports the testimony of the North Dakota Planning Association and would be in opposition to this bill as written.

Respectfully,

**Kent Jarcik**  
City Planner

House Industry, Business, and Labor Committee  
Representative Scott Louser, Chair  
Representative Mitch Ostlie, Vice-Chair  
January 25, 2023

Chairman Louser, Members of the House Industry, Business, and Labor Committee:

My name is Ben Ehreth and I am the Community Development Director for the City of Bismarck.

We greatly appreciate the opportunity to provide testimony related to House Bill 1422.

Specifically, we are opposing the proposed amendments identified on lines 10-12 of page 3 of the bill, requiring notification of planning and zoning commissioners after permits have been issued, and lines 9-23 of page 4 of the bill, requiring a zoning inspection after issuance of a building permit.

Our department deals directly with planning, zoning, and building inspections duties. Our Building Inspection Division issues between 3,000 to 5,000 permits every year. The notification of planning and zoning commissioners of thousands of individual permits issued each year may become an administrative burden and overwhelm planning and zoning commissioners with information. Furthermore, it is undefined as to what action the zoning commission should take beyond being notified of issuance of a permit.

The bill goes on to propose a zoning inspection and report process. The City of Bismarck has a property development process in place, utilizing professional staff, that reviews the zoning of a proposed structure prior to issuance of a building permit. The proposed zoning inspection and report process identified in the bill would be duplicative of property development review processes already in place and could add time and cost to the building permit process.

The City of Bismarck does allow for a damaged structure, beyond 50% of its assessed value, to be restored, repaired, or rebuilt if certain conditions are met. However, this allowance is only for non-conforming residential uses. All other non-conforming uses would not be allowed to be restored, repaired, or rebuilt if damaged beyond 50% of the assessed value of the structure. The proposed bill does not specify what non-conforming uses are considered so may be contradictory to current Bismarck zoning ordinance.

Finally, the City of Bismarck Community Development staff can be contacted, by members of the public, to provide a zoning determination on properties in question.

Given the potential additional administrative burden, inundation of information to planning and zoning commissioners, delay and cost increases associated with the permitting process, and contradiction of Bismarck zoning ordinance we are opposing this bill.

I respectfully request you give HB 1422 a DO NOT PASS recommendation.

Thank you for your consideration of our comments in opposition of House Bill 1422.

Ben Ehreth, Community Development Director  
City of Bismarck  
701-355-1840  
behreth@bismarcknd.gov

## House Bill 1422

### Urge a "Do Not Pass" Recommendation

**This bill is unnecessary.** Zoning information is already public information. If any member of the general public wants to find out what the zoning status of their property is, all they have to do is call or e-mail the Zoning Administrator or Planning Department of the political subdivision in which the property is located. A staff member will provide them with a zoning determination, which tells them what the property is zoned, whether the property is non-conforming, and what uses are allowed by-right, or by conditional use, on the property.

**Does zoning non-conformity rise to the level of being important enough for the state to mandate notices to property owners?** A non-conforming structure can persist as-is and routine maintenance is generally allowed. There are arguably more critical issues, pertaining to real estate, that the state does not mandate notices for.

If the non-conforming status of a property *is* important enough to warrant the state intervening to mandate a notice, then the legislature should be equally interested in both the ***mechanics of the disclosure*** and the ***timing of the disclosure***. If you were a property owner, when would be the most opportune time for you to find out that there are limitations on what you can construct on your property? In all likelihood, you'd rather discover that information before you even purchased the property. In that case, the *disclosure should be made by the listing agent or the seller*. That's the best time to provide that information.

The current bill language sets the timeframe for the disclosure at the point of a tax assessment being conducted and at the point of the property owner applying for a building permit. The proposed timing doesn't help the general public at the most critical time (i.e. before they even purchase the property).

The process outlined in the bill is **inefficient** and would create a **significant administrative burden**. **All properties would be subject to the proposed inspection, reporting and notification process when only a small subset of properties within a political subdivision are non-conforming.** In addition, a zoning inspection and report are not necessary in the majority of cases. A Zoning Administrator can determine if a lot is non-conforming simply by looking at a zoning/parcel map, and can then draft a concise statement about the zoning status.

This bill is unnecessary. It also suggests a cumbersome and inefficient process that is not even targeted at the properties of interest. **Please recommend a do-not-pass vote** on this incomplete bill.

Natalie Pierce  
Advocate of good planning practices  
Work: 701-667-3361  
natalie.pierce@mortonnd.org

# North Dakota House of Representatives

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Representative Steve Vetter

District 18  
804 South 17th Street  
Grand Forks, ND 58201-4241

[smvetter@ndlegis.gov](mailto:smvetter@ndlegis.gov)

## COMMITTEES:

Judiciary  
Government and Veterans Affairs

01/25/2023

Chairman Louser and IBL committee.

My name is Steve Vetter representing district 18.

This bill is a disclosure bill that requires political subdivisions to disclose to property owners if their house is in compliance with zoning code or if the house is nonconforming and the local ordinance if you can rebuild if you are over 50% damaged. However, with this bill, if a political subdivision has an ordinance that allows for nonconforming houses to be rebuilt if over 50% damaged then they are exempt from the bill and this bill does not affect them at all.

This bill says that when a new assessment inspection takes place or a permit is issued within 6 months a zoning inspection must take place. The zoning inspection is done to verify if the property conforms to zoning code or to indicate if the house is nonconforming. The property owner is then notified if the property is nonconforming and if it can be rebuilt if it is over 50% destroyed.

If the community allows nonconforming houses to be rebuilt then they are exempt from this bill.

So, the triggers of which requires a compliance: at minimum every 5 years or when a new assessment is done, when a building permit is issued or whenever the political subdivision wants to do a compliance check. So, a political subdivision could do large areas or sections of town all at once without having to do a new assessment or a permit issued.

Let's start with what is a legally nonconforming structure. This is a structure that at one time complied with zoning code. However, the zoning code was changed so now that structure no longer complies to zoning code hence it is now a legally nonconforming structure. Depending on where you live, there might be consequences if you own a nonconforming house. In about 40-50% of North Dakota, if your structure is over 50% damaged or destroyed, you cannot rebuild/repair.

Here are some examples on nonconforming house in each of the different areas. Your city changes your zoning and the new zoning requires a 7000 square foot lot and yours is 5000 sf. For County zoning. If you have a 20 acre site and you refinance to a 2.5 acre lot and the county requires 5 acre lot, 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 structure.

Some examples include a duplex in a R1 zone(single family homes only). A resident house in a commercial zone. Other examples include a house having too small of a site or the setbacks are no longer the same as current zoning codes.

However, several communities have adopted nonconforming ordinances over the recent years.

Bismarck, Fargo, Wahpeton, Lisbon, Casselton, Mayville, Grafton, Stanley and recently Minot. All these areas are exempt from this bill.

Unfortunately, Grand Forks, West Fargo, Mandan and Williston do not. Grand Forks has changed zoning codes in recent years to lower lot sizes so there is a limited amount a nonconforming single family houses. In Grand Forks defense, they allowed a variance or rebuild in all but one case that I know of and the 1 case the owner didn't want to rebuild.

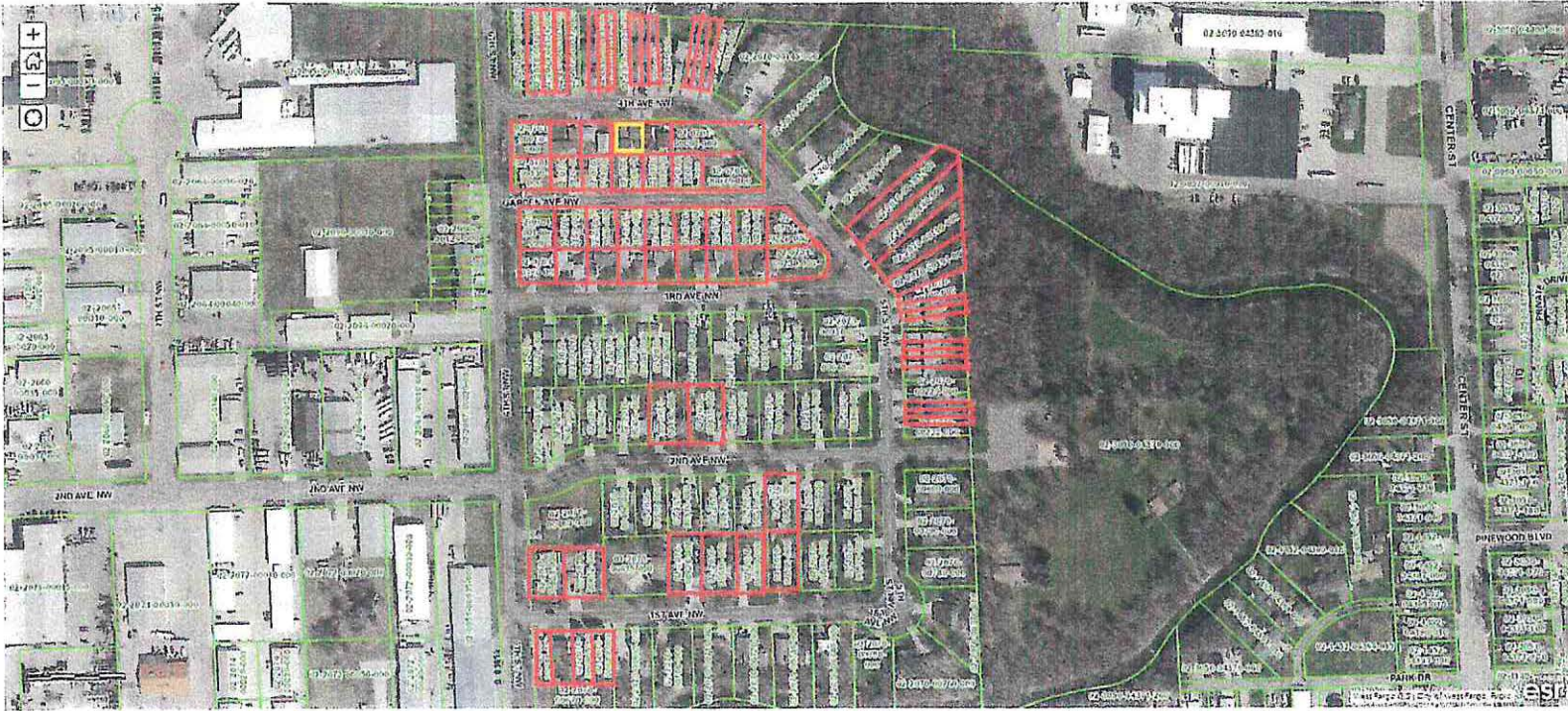
However areas like West Fargo the variance is not accepted by local authorities and there are lots of single family houses that are nonconforming in the area. I provided the committee with a map of an area in West Fargo called the Stockyard Development. I have all the nonconforming houses circled. If you request it I could forward you the zoning code for that area to indicate the nonconformities of all the identified houses. I hope it's not someone you know cause they can't rebuild if over 50% damaged or destroyed. Do you see where their might be some liability? Who is to blame?

I tried to fix the problem with legislation in previous sessions that passed with overwhelming numbers in the House, THANK YOU and then failed in the Senate twice. HB doesn't fix the problem but it seeks to bring disclose to those affected and don't even know it. I would suspect 80-90% of property owners that have a nonconforming house don't know it.

Question on the triggers. The triggers put in the bill were meant to be the least evasive. I originally thought the trigger should be before a real estate sale or transfer of property. However, this could slow down the transaction because the city would need to do the compliance check before the sale so I would think the Realtors might be opposed to that idea. Or maybe that is better idea to protect the buyer? Mr Chairman, as a Realtor, is that a good idea to add this trigger before the transfer of sale?

The opposition argues it is too much of an administrative burden. Once a compliance check is done, it is good for 5 years. Not every time a permit is issued. I don't this is too much too ask for the citizens of ND. Is there another trigger they would suggest or do they just not want to disclose this valuable information to their citizens. Or simply pass an ordinance to allow nonconforming houses to be rebuilt and there is no administrative burden...None. -Don't understand the opposition from Minot planners association.

Mr Chairman and IBL committee this a good bill that brings disclosure to people who don't know they are affected. I would humbly ask for a Do Pass recommendation. Thank you. I will stand for questions.



23.0437.02002

Sixty-eighth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1422**

Introduced by

Representatives Vetter, Klemin, Koppelman, Motschenbacher, Sanford, Toman  
Senators Barta, Cleary, Clemens, Larsen, Meyer, Vedaa

1 A BILL for an Act to amend and reenact ~~subsection 3 of section 11-10.1-05~~, section 11-33-04,  
2 subsection 1 of section 11-33-18, subsection 6 of section 40-05-02, sections 40-47-06, ~~40-19-01-~~  
3 ~~47-10-02.1~~, and 58-03-13, and subsection 2 of section 58-03-19, ~~and section 58-09-03~~ of the  
4 North Dakota Century Code, relating to notices triggering zoning inspections ~~when-~~  
5 ~~assessments are conducted~~ before residential real property is sold and when building permits  
6 are issued.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** ~~Subsection 3 of section 11-10.1-05 of the North Dakota~~  
9 ~~Century Code is amended and reenacted as follows:~~

10 ~~3. The county director of tax equalization shall supervise all individuals performing~~  
11 ~~assessor services in the county and arrange for the assessment of property within the~~  
12 ~~county, except within the jurisdiction of a city or township in which the governing body~~  
13 ~~retains a certified class I or class II assessor. When an assessment is performed, the~~  
14 ~~county director of tax equalization immediately shall notify the planning commission of~~  
15 ~~the assessment for purposes of section 11-33-04.~~

16 **SECTION 1. AMENDMENT.** Section 11-33-04 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **11-33-04. County planning commissions authorized - Membership.**

19 1. The board of county commissioners of any county desiring to ~~avail itself of~~ exercise the  
20 powers ~~conferred by~~ under this chapter shall establish, by resolution, a county planning  
21 commission to recommend the boundaries of the various county zoning districts and  
22 appropriate regulations and restrictions to be established ~~therein~~ in the districts. In  
23 counties with three-member boards of county commissioners, the planning  
24 commission consists of seven members, of whom at least one must be appointed from

1 the governing body of the city that is the county seat, and of whom at most one may  
2 be appointed from the board of county commissioners. In counties with five-member  
3 boards of county commissioners, the planning commission consists of nine members,  
4 of whom at least two must be appointed from the governing body of the city that is the  
5 county seat, and of whom at most two may be appointed from the board of county  
6 commissioners. The term of an ex officio member is coterminous with the member's  
7 term in the underlying office. The remaining members ~~shall~~must be appointed from the  
8 county at large. In counties that elect county commissioners from districts, at least one  
9 at large member of the planning commission must be appointed from each district.  
10 When appointments to ~~said~~the commission are first made, three members at large  
11 ~~shall~~must be appointed for a two-year term and two members at large for a four-year  
12 term, after which all subsequent appointments for members at large ~~shall~~must be for a  
13 four-year term. Appointments to fill vacancies ~~shall~~must be for the unexpired portion of  
14 the term. All appointments to the county planning commission ~~shall~~must be made by  
15 the board of county commissioners.

16 2. Within six months of receiving a notice, from the board of county commissioners that a  
17 building permit has been issued to a landowner under section 11-33-18 or an  
18 assessment of real property under section 11-10.1-05 has occurred a seller of real  
19 property has ordered a zoning inspection under section 47-10-02.1, the county  
20 planning commission or its appointed agent or designee shall inspect the affected  
21 property to determine if the property complies with the applicable county zoning  
22 ordinances affecting a landowner's ability to repair or rebuild a structure if that  
23 structure is more than fifty percent damaged or destroyed. After the inspection, the  
24 county zoning commission or its appointed agent or designee shall furnish a written  
25 report to the affected property owner. The report must address whether the affected  
26 property complies with the applicable county zoning ordinances. A zoning inspection  
27 under this subsection is not required if the county has adopted a zoning ordinance that  
28 permits a property owner to repair or rebuild a nonconforming structure if that structure  
29 is more than fifty percent damaged or destroyed. An inspection under this subsection  
30 applies to residential property only and may occur only once every five years on the



1           same parcel of property, unless an additional inspection is deemed necessary by a  
2           majority of the county planning commission.

3           **SECTION 2. AMENDMENT.** Subsection 1 of section 11-33-18 of the North Dakota Century  
4 Code is amended and reenacted as follows:

5           1. The board of county commissioners may authorize and provide for the issuance of  
6           permits as a prerequisite to construction, erection, reconstruction, alteration, repair, or  
7           enlargement of any building or structure otherwise subject to this chapter. When a  
8           permit is issued under this section, the board of county commissioners immediately  
9           shall notify the county planning commission of the issuance of a permit for purposes of  
10           section 11-33-04.

11           **SECTION 3. AMENDMENT.** Subsection 6 of section 40-05-02 of the North Dakota Century  
12 Code is amended and reenacted as follows:

13           6. Building permits. To provide by ordinance and to fix the fees for the issuance of  
14           building permits. When a permit is issued under this section, the city council or city  
15           commission immediately shall notify the zoning commission of the issuance of a  
16           permit for purposes of section 40-47-06.

17           **SECTION 4. AMENDMENT.** Section 40-47-06 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **40-47-06. Zoning commission - Appointment - Duties - Preliminary and final report.**

20           1. ~~The governing body of a city desiring to avail itself of exercise the powers conferred~~  
21           ~~by under this chapter shall appoint a zoning commission, to be known as the zoning~~  
22           ~~commission, to recommend the boundaries of the various original districts and~~  
23           ~~appropriate regulations to be enforced therein in the districts.~~ In addition to the  
24           members appointed by the city, the zoning commission ~~shall~~must include at least one  
25           person residing outside of the corporate limits of a city having a population of less than  
26           five thousand, two persons residing outside the corporate limits of a city having a  
27           population of five thousand or more, but less than twenty-five thousand, or three  
28           persons residing outside the corporate limits of a city having a population of  
29           twenty-five thousand or more if zoning authority is exercised pursuant to section  
30           40-47-01.1. Such persons ~~shall~~must be appointed by the board or boards of county  
31           commissioners of the county or counties ~~within~~in which ~~such~~ zoning authority is to be

1 exercised and ~~shall~~must reside within the territorial limits of the zoning regulation  
2 authority exercised by the city, if such persons are available and will serve on the  
3 zoning commission. Of the members of the commission appointed by a board or  
4 boards of county commissioners pursuant to this section, the first member appointed  
5 shall hold office for five years, the second member appointed shall hold office for three  
6 years, and the third member appointed shall hold office for one year. Thereafter, the  
7 members ~~shall~~must be appointed for terms of five years. ~~Such~~The commission shall  
8 make a preliminary report and hold public hearings ~~thereon~~on the report before  
9 submitting ~~its~~the final report. The governing body ~~shall~~may not hold ~~its~~ public hearings  
10 or take action until ~~it~~the governing body has received the final report of the zoning  
11 commission. If a city has a planning commission, ~~it~~the planning commission may be  
12 appointed as the zoning commission.

13 2. Within six months of receiving a notice, from the city council or city commission that a  
14 building permit has been issued to a landowner under section 40-05-02, or an  
15 assessment of real property under section 40-19-01 has occurred a seller of real  
16 property has ordered a zoning inspection under section 47-10-02.1, the city zoning  
17 commission or its appointed agent or designee shall inspect the affected property to  
18 determine if the property complies with the applicable city zoning ordinances affecting  
19 a landowner's ability to repair or rebuild a structure if that structure is more than fifty  
20 percent damaged or destroyed. After the inspection, the city zoning commission or its  
21 appointed agent or designee shall furnish a written report to the affected property  
22 owner. The report must address whether the affected property complies with the  
23 applicable city zoning ordinances. A zoning inspection under this subsection is not  
24 required if the city has adopted a zoning ordinance that permits a property owner to  
25 repair or rebuild a nonconforming structure if that structure is more than fifty percent  
26 damaged or destroyed. An inspection under this subsection applies to residential  
27 property only and may occur only once every five years on the same parcel of  
28 property, unless an additional inspection is deemed necessary by a majority of the city  
29 zoning commission.

30 **SECTION 6. AMENDMENT.** ~~Section 40-19-01 of the North Dakota Century Code is~~  
31 ~~amended and reenacted as follows:~~

~~40-19-01. Duties of city assessor.~~

~~The city assessor within the city shall perform all the duties necessary in assessing the property within the city for the purpose of levying the municipal, county, school, and state taxes. Such assessors shall be governed by and shall make assessments and returns as is provided in title 57 and in this chapter. When an assessment is performed, the city assessor immediately shall notify the planning commission of the assessment for purposes of section 40-47-06.~~

**SECTION 5. AMENDMENT.** Section 47-10-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**47-10-02.1. Property disclosure - Requirements - Exceptions.**

1. Unless the transaction is exempted under subsection 7, this section applies to a transaction for the sale, exchange, or purchase of real property if:
  - a. A real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm represents or assists a party to the transaction; and
  - b. The real property is a residential dwelling with no more than four units located in this state being sold or exchanged by the owner.
2. Except as otherwise provided in an offer to purchase agreement, before the parties sign the final acceptance of the purchase agreement for the sale, exchange, or purchase of the real property, the seller in a transaction subject to subsection 1 shall prepare a written disclosure form and shall make the written disclosure form available to the prospective buyer. The written disclosure form must include all material facts the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure form must disclose whether a zoning inspection under section 11-33-04, 40-47-06, or 58-03-13 has occurred within the last five years before the date of disclosure. If a zoning inspection has occurred, the seller shall disclose to the buyer the date of the last zoning inspection on the disclosure form. If a zoning inspection has not occurred, the seller shall order a zoning inspection to be conducted on the property from the appropriate zoning authority before the seller executes and delivers a conveyance instrument to the buyer which is in sufficient form to pass the title to the property. The written disclosure form must be in the form of the written

- 1 disclosure form established by the North Dakota real estate commission under  
2 subsection 4 or in a substantially similar form and must include latent defects, general  
3 condition, environmental issues, structural systems, and mechanical issues regarding  
4 the property. The seller shall complete the written disclosure in good faith and based  
5 upon the best of the seller's knowledge at the time of the disclosure.
- 6 3. If a real estate broker, real estate broker associate, or real estate salesperson who is  
7 associated with a real estate brokerage firm represents or assists a party to the  
8 transaction, following the sale, exchange, or purchase of real property, the brokerage  
9 firm shall retain a copy of the written disclosure completed and signed by the seller  
10 and signed by the prospective buyer. The brokerage firm's duties under this section do  
11 not supersede any other common law or statutory duties.
- 12 4. The North Dakota real estate commission shall establish and make available a written  
13 disclosure form meeting the requirements of this section. In establishing the form, the  
14 commission shall consult with stakeholders, such as professional organizations.
- 15 5. If a real estate broker, real estate broker associate, or real estate salesperson who is  
16 associated with a real estate brokerage firm violates this section, the state real estate  
17 commission may investigate and take disciplinary action under section 43-23-11.1.
- 18 6. Unless the transaction is subject to subsection 1 or exempted under subsection 7, the  
19 seller of real property that is a residential dwelling with no more than four units located  
20 in this state being sold or exchanged by the owner shall comply with the provisions of  
21 this subsection. Except as otherwise provided in an offer to purchase agreement,  
22 before the parties sign the final acceptance of the purchase agreement for the sale,  
23 exchange, or purchase of the real property, the seller in a transaction subject to this  
24 subsection shall disclose to the buyer, in writing, all material facts the seller is aware  
25 could adversely and significantly affect an ordinary buyer's use and enjoyment of the  
26 property or any intended use of the property of which the seller is aware. The written  
27 disclosure may be in the form of a written property disclosure form.
- 28 7. This section does not apply to transactions for the sale, exchange, or purchase of real  
29 property made:
- 30 a. Pursuant to a court order;
- 31 b. Between government agencies;

- 1 c. By a mortgagor in default to a mortgagee;
- 2 d. Pursuant to a foreclosure sale;
- 3 e. By a mortgagee or a beneficiary of a deed of trust who acquired the real property
- 4 by a:
- 5 (1) Foreclosure;
- 6 (2) Deed in lieu of foreclosure; or
- 7 (3) Collateral assignment of beneficial interest;
- 8 f. By a fiduciary administering a decedent's estate, guardianship, conservatorship,
- 9 or trust;
- 10 g. Between co-owners of the real property;
- 11 h. To a spouse, child, parent, sibling, grandchild, or grandparent; or
- 12 i. If the real property is newly constructed residential real property with no previous
- 13 occupancy.

14 **SECTION 6. AMENDMENT.** Section 58-03-13 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **58-03-13. Township zoning commissions - Membership - Reports and**  
17 **recommendations - District boundaries - Hearings - Notice.**

- 18 1. The board of township supervisors of a township desiring to ~~avail itself of~~exercise the  
19 powers ~~conferred by~~under sections 58-03-11 through 58-03-15 shall establish, by  
20 resolution, a township zoning commission to recommend the boundaries of the various  
21 township zoning districts and appropriate regulations and restrictions to be established  
22 ~~therein in the districts~~. Membership of the commission must consist of three township  
23 supervisors and two members appointed from the municipalities concerned in relation  
24 to which the zoning is contemplated. ~~Where~~If the area to be regulated and restricted is  
25 situated in two or more townships, a joint zoning commission may be established.  
26 Membership of a joint zoning commission must consist of two township supervisors  
27 from each township and two members from the municipality in relation to which the  
28 zoning is contemplated. A zoning commission shall make a preliminary report and hold  
29 public hearings before submitting its final report and recommendations to the board or  
30 boards of township supervisors. The board or boards of township supervisors may  
31 establish, and from time to time change, the boundaries of township zoning districts

1 and establish, amend, supplement, and enforce regulations and restrictions in the  
2 districts. ~~No~~A regulation, restriction, or boundaries may not become effective until after  
3 a public hearing at which parties in interest and citizens have an opportunity to be  
4 heard. At least fifteen days' notice of the time and place of the hearing must be  
5 published in the official newspaper of the county and ~~also in~~ the official newspaper of  
6 the municipality in relation to which the zoning action is taken, if in the municipality an  
7 official newspaper other than the official newspaper of the county is published. The  
8 description of ~~any~~ land within ~~any~~ a zoning district established by a zoning commission  
9 together with any regulations and restrictions established must be filed with the  
10 governing bodies of the township and municipalities concerned, and if amendments  
11 are made to the boundaries of the zoning district or the regulations or restrictions, the  
12 amendments must be filed in the same manner. A zoning commission established  
13 under this section and a board of township supervisors shall state the grounds upon  
14 which any request for a zoning amendment or variance is approved or disapproved,  
15 and written findings upon which the decision is based must be included within the  
16 records of the commission or board.

17 2. Within six months of receiving a notice, from the township that a building permit has  
18 been issued to a landowner under section 58-03-19 or ~~an assessment of real property~~  
19 ~~under section 58-09-03 has occurred~~ a seller of real property has ordered a zoning  
20 inspection under section 47-10-02.1, the township zoning commission or its appointed  
21 agent or designee shall inspect the affected property to determine if the property  
22 complies with the applicable township zoning ordinances affecting a landowner's  
23 ability to repair or rebuild a structure if that structure is more than fifty percent  
24 damaged or destroyed. After the inspection, the township zoning commission or its  
25 appointed agent or designee shall furnish a written report to the affected property  
26 owner. The report must address whether the affected property complies with the  
27 applicable township zoning ordinances. A zoning inspection under this subsection is  
28 not required if the township has adopted a zoning ordinance that permits a property  
29 owner to repair or rebuild a nonconforming structure if that structure is more than fifty  
30 percent damaged or destroyed. An inspection under this subsection applies to  
31 residential property only and may occur only once every five years on the same parcel

1 of property, unless an additional inspection is deemed necessary by a majority of the  
2 township zoning commission.

3 **SECTION 7. AMENDMENT.** Subsection 2 of section 58-03-19 of the North Dakota Century  
4 Code is amended and reenacted as follows:

5 2. If the building or structure for which a permit is requested meets all applicable zoning  
6 regulations and the board of township supervisors or other appropriate official fails to  
7 respond as required under subsection 1, the application is deemed to be approved  
8 and the applicant may proceed with the construction, erection, reconstruction, repair,  
9 or alteration of the building or structure and the township shall return any permit fee  
10 submitted with the application. When a permit is issued under this section, the  
11 township immediately shall notify the zoning commission of the issuance of a permit  
12 for purposes of section 58-03-13.

13 ~~**SECTION 9. AMENDMENT.** Section 58-09-03 of the North Dakota Century Code is~~  
14 ~~amended and reenacted as follows:~~

15 ~~— **58-09-03. Assessors -- How governed.**~~

16 ~~— The township assessor must be governed by, and shall make assessments and returns as~~  
17 ~~provided in, title 57. When an assessment is performed, the township assessor immediately~~  
18 ~~shall notify the township zoning commission of the assessment for purposes of section-~~  
19 ~~58-03-13.~~

23.0437.02003  
Title.

Prepared by the Legislative Council staff for  
Representative Vetter  
February 6, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1422

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact sections 11-33-17.1, 40-47-05.1, and 58-03-14.1 of the North Dakota Century Code, relating to nonconforming structures in counties, cities, and townships.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**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.
2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the expansion is in compliance with applicable state and local zoning regulations. The local zoning authority shall determine whether a proposed expansion is in compliance.
3. Under subsection 1, a nonconforming structure may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations.



4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair, replacement, improvement, maintenance, restoration, rebuilding, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the national flood insurance program and adhere fully to all applicable floodplain management ordinances without increasing flood damage potential or increasing the degree of obstruction to floodflows in the floodway.
5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less restrictive ordinance or regulation.
6. Unless the county determines the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the county shall issue a building permit to a property owner that meets the qualifications under subsection 1.

**SECTION 2.** Section 40-47-05.1 of the North Dakota Century Code is created and enacted as follows:

**40-47-05.1. 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.
2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the expansion is in compliance with applicable state and local zoning regulations. The local zoning authority shall determine whether a proposed expansion is in compliance.

3. Under subsection 1, a nonconforming structure may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations.
4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair, replacement, improvement, maintenance, restoration, rebuilding, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the national flood insurance program and adhere fully to all applicable floodplain management ordinances without increasing flood damage potential or increasing the degree of obstruction to floodflows in the floodway.
5. Notwithstanding section 40-47-13 and subsections 1, 2, and 3, the local zoning authority may create a less restrictive ordinance or regulation.
6. Unless the city determines that the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the city shall issue a building permit to a property owner that meets the qualifications under subsection 1.

**SECTION 3.** Section 58-03-14.1 of the North Dakota Century Code is created and enacted as follows:

**58-03-14.1. 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.

2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the expansion is in compliance with applicable state and local zoning regulations. The local zoning authority shall determine whether a proposed expansion is in compliance.
3. Under subsection 1, a nonconforming structure may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations.
4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair, replacement, improvement, maintenance, restoration, rebuilding, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the national flood insurance program and adhere fully to all applicable floodplain management ordinances without increasing flood damage potential or increasing the degree of obstruction to floodflows in the floodway.
5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less restrictive ordinance or regulation.
6. Unless the township determines that the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the township shall issue a building permit to a property owner that meets the qualifications under subsection 1."

Renumber accordingly

Re: HB 1422

Chairman Larsen and members of the Senate Industry and Business Committee,

I am submitting testimony in favor of HB 1422. This bill will allow someone to rebuild their home, that they worked so hard for, if it gets damaged to a level that it would need to be torn down to fix. Many of the properties in my neighborhood, along the Sheyenne River, have non-conforming structures on them, and if these structures were damaged, my neighbors would lose their homes, have no where to go, and have property that is worthless. Allowing the rebuilding of structures that do not change the footprint of the original structure I feel is a viable alternative to the extreme measures that would otherwise happen under current law.

I am asking you for a DO PASS recommendation on HB 1422.

Thank you for your service to the State of North Dakota, and for your time.

Roben Anderson

108 Francis St

West Fargo, North Dakota

HB 1422

Chairman Larsen and members of the Industry & Business Committee, my name is Dennis Huber. Thank you for granting me the opportunity to provide testimony on this important topic.

As an appraiser that has covered the eastern 1/3<sup>rd</sup> of the State for the past 30 years, I have been concerned about the number of homeowners that have no idea that their house is legally non-conforming nor are they aware of the potential financial and personal hazards they may face.

I believe it is important to address many of the misconceptions, if not outright misleading statements and testimony in previous sessions on this subject.

\*The largest number of these non-conforming houses did not become non-conforming on purpose. These neighborhoods, or specific houses, weren't selected by the authorities for such treatment. It simply happened because upon updating the regulations and the classifications, they either didn't fit the new model designed for new growth, or in many cases were simply misclassified. I shall demonstrate a recent case later in this presentation.

\*The zoning documents only sets forth the minimum requirements. That is often stated within the code. All other laws and regulations that are stricter apply. Building codes, Fire and Health safety, flood zones, etc. all must be met before a building permit is issued. The right to repair or rebuild in this bill does not affect this subordinate role.

\* The additional amendments proposed by the ND Planners Association are not needed. Those items and many of the amendments within the bill are already covered by local ordinances and these other regulations.

\*The use of the non-conforming clauses to attempt to change neighborhoods has never worked. Zoning authorities have other means at their disposal to promote or force change. They simply don't need this archaic provision.

\*The public, and even the elected commissioners, lack adequate knowledge and information to understand the effects of changes to zoning regulations when they are happening.

A recent real-world example of how things work:

According to public records a woman purchased a single family detached home built in 1977 at 5xx 3<sup>rd</sup> Ave NW in West Fargo for \$126,000 in August of 2018. She was represented by a Realtor who was obligated to represent her best interests. The property was appraised, and mortgages totaling \$125,250 by a local bank and ND bonds.

In 2020 a fire damaged the garage, the 3-season porch and the house. She obtained a damage estimate from the insurance company and requested a building permit. She was turned down because her house was legally non-conforming and the cost to repair exceeded the 50% rule. She attempted to apply for a variance but was turned down without a hearing because the terms of allowing a variance approval in this case could not be met. The City's regulations prevented it because it was not physically unusual, as there are about 27 other properties in the same situation in her neighborhood. This same requirement is in nearly every zoning document I've ever read.

This issue with this neighborhood is that it was developed in the mid 70's as a way to provide affordable housing, thus smaller lots and houses closer together than typical. However, these 960 sf ramblers with double garages and a private yard serve a good purpose and have been largely problem free for 50 years. Whereas today we would attach 2-6 of these structures and create a higher density neighborhood, this early attempt was a very good solution for the times.

When updating the zoning classifications in very recent times, none of the classifications that have a minimum depth or rear setback fit this development. So, it appears that rather than create one for this neighborhood, they were thrown into the legal non-conforming status. This is how the state has wound up with thousands of non-conforming residential properties.

I respectfully request you reject any further amendments or attempts to delay this bill. The opponents have been on notice for years to clean up the conflicting classifications creating a hardship to the citizens of North Dakota. The solution in this bill has been present in many locations, such as Bismarck, Fargo, and the state of Minnesota. If it created a problem, wouldn't the opponents have enlisted them to oppose this needed legislation. This isn't taking away local control; it is necessary because they failed to work in the best interests of their citizens.

I urge you to support and vote in favor of this bill.

Dennis Huber

701-306-4255

[dennis@eappraisaloffice.com](mailto:dennis@eappraisaloffice.com)

The Rest of the Story: How was the above case resolved?

Due to time constraints, this part may not be part of the oral testimony.

Options on the table:

Sue the Realtor for inadequate representation.

Sue the appraiser, a proper appraisal would have prevented the approval of the loan.

Sue the insurance company seeking the face amount instead of the cost to repair.

Sue the City of West Fargo, claiming a "taking of the property".

Walk away, let the foreclosure happen, the property condemned, and returned to the city for back taxes.

Get a contractor's estimate that magically showed the damage at 49%.

Often, the path taken isn't the most honest, it's the path of least resistance.



## **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



23.0437.04002  
Title.

Prepared by the Legislative Council staff for  
the Senate Industry and Business Committee  
March 16, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1422

Page 1, line 2, after "to" insert "legal"

Page 1, line 7, replace "**Nonconforming**" with "**Legal nonconforming**"

Page 1, line 8, after "a" insert "legal nonconforming"

Page 1, line 9, after "use" insert ", situated in a residential zoning district."

Page 1, line 14, remove "and"

Page 1, line 15, after "c." insert "The lot or parcel upon which the structure dedicated to residential use is located abuts a public right of way; and

d."

Page 1, line 24, remove "or"

Page 2, line 1, after "safety" insert ":

(8) Encroach upon a public right of way; or

(9) Encroach upon any neighboring property"

Page 2, line 2, after "a" insert "legal"

Page 2, line 5, after "a" insert "legal"

Page 2, line 9, after "of" insert "legal"

Page 2, line 17, after "a" insert "legal nonconforming"

Page 2, line 22, replace "**Nonconforming**" with "**Legal nonconforming**"

Page 2, line 23, after "a" insert "legal nonconforming"

Page 2, line 24, after "use" insert ", situated in a residential zoning district."

Page 2, line 29, remove "and"

Page 2, line 30, after "c." insert "The lot or parcel upon which the structure dedicated to residential use is located abuts a public right of way; and

d."

Page 3, line 9, remove "or"

Page 3, line 10, after "safety" insert ":

(8) Encroach upon a public right of way; or

(9) Encroach upon any neighboring property"

Page 3, line 11, after "a" insert "legal"

Page 3, line 14, after "a" insert "legal"

Page 3, line 18, after "of" insert "legal"

Page 3, line 26, after "a" insert "legal nonconforming"

Page 4, line 1, replace "**Nonconforming**" with "**Legal nonconforming**"

Page 4, line 2, after "a" insert "legal nonconforming"

Page 4, line 3, after "use" insert ", in a residential zoning district."

Page 4, line 8, remove "and"

Page 4, line 9, after "c." insert "The lot or parcel upon which the structure dedicated to residential use is located abuts a public right of way; and

d."

Page 4, line 18, remove "or"

Page 4, line 19, after "safety" insert ":

(8) Encroach upon a public right of way; or

(9) Encroach upon any neighboring property"

Page 4, line 20, after "a" insert "legal"

Page 4, line 23, after "a" insert "legal"

Page 4, line 27, after "of" insert "legal"

Page 5, line 4, after "a" insert "legal nonconforming"

Renumber accordingly