

## MEMO

TO: Three Forks Planning Board

FROM: Lee Nellis, FAICP

DATE: October 3, 2024

### **RE: Second Procedural Chapter**

Chapter 2 addresses the many variations of the question: How does the change to new regulations affect my property? I used this opportunity to begin addressing the question that was raised on Tuesday about completion (and what exactly is completion) vs substantial progress. See the note. The final answer – the section where the expiration of permits is defined - will be in Chapter 4.

We can still answer any questions about Chapter 1. Just ask.

**Zoning Homework Reminder.** Please remember to look for and photograph examples of good landscaping. Send photos to Randy and me before the meeting on October 16 if you can.

## Chapter 2 – Vested Rights

### Nonconforming Lots, Uses, Structures, & Signs

#### **11-2-1 What is the purpose of this chapter?**

This chapter governs the transition from the previous regulations and future transitions, when these regulations are revised, by providing for vested rights and nonconforming uses. In doing so, it strives to prevent community blight by permitting continuing investment in nonconforming uses and structures.

#### **11-2-2 What happened to the previous regulations?**

All zoning and subdivision regulations previously adopted by the City of Three Forks are hereby repealed and replaced. The previous regulations may, however, continue to apply in the specific circumstances explained in 11-2-3, below.

#### **11-2-3 What if my development was approved before the regulations changed, but has not been completed?**

11-2-3.1 You have a ‘vested right’ to complete your development in compliance with the regulations that were in effect on the date your application for a permit was filed, if that application was subsequently approved, a permit was issued, and that permit has not expired.

*A good question was raised on October 1. Does an applicant have to literally complete the project before the permit expires (which allows two years with the automatic extension) OR is substantial progress enough? Let's put a definition of substantial progress on the table to talk about. What I heard people say is this: "Substantial Progress means that a structure has been fully enclosed and sided." That's a good start, but I suggest some additions: "Substantial Progress means that a structure has been connected to municipal utilities and power; is fully enclosed, sided, and roofed; and has installed any required landscaping or other improvements required by its approval." This mean allows interior work to continue. We can discuss this on October 17.*

11-2-3.2 Vested rights cannot be established by filing a request for pre-application review, filing an incomplete application, or filing an application that was not approved.

11-2-3.3 Lots in subdivisions that are completed in reliance on a vested right may be conveyed even if they have become nonconforming. Development of such lots must, however, comply with these regulations or obtain a variance using their nonconforming status as a basis for the findings required by Chapter 11.? – Variances.

11-2-3.4 Uses, structures, and signs that are completed in reliance on a vested right may be occupied even if they have become nonconforming, but are subject to the limitations on nonconforming uses, structures, and signs established in this chapter.

11-2-3.5 Any substantial change in the approved plans for a development void its vested rights. The Administrator may approve minor changes, as provided by Chapter 11.4 – Permits.

#### **11-2-4 What is a nonconforming lot?**

A nonconforming lot is an existing lot that could not be created in compliance with these regulations because it is too small to accommodate any of the uses permitted in its zoning district or because it has no legal access to a street or utilities.

#### **11-2-5 How can a nonconforming lot be used?**

11-2-5.1 Vacant nonconforming lots that are in the same effective ownership as an adjoining lot must be merged with the adjoining lot in compliance with the requirements of these regulations for boundary adjustments.

*'Effective ownership' is about actual control, not what's on paper. Two nonconforming lots under the control of the same person, partnership, or corporation must be merged regardless of how the names appear on the deeds.*

11-2-5.2 Vacant nonconforming lots that are in separate ownership may be developed for any of the uses permitted in their zoning district, provided that the proposed development complies with all other requirements of these regulations. If compliance is not possible, a variance may be approved using the nonconformity as a basis for the findings required by Chapter ? – Variances.

11-2-5-3 For occupied nonconforming lots, please see 11-2-6, et seq, below.

*There are additional limitations on nonconforming lots, uses, and structures in the floodplain.*

#### **11-2-6 What is a nonconforming use or structure?**

A nonconforming use or structure is one that complied with the previous regulations, but that does not comply (a permit could not be approved for it) with these regulations.

#### **11-2-7 How can a nonconforming use or structure be used?**

11-2-7.1 Nonconforming uses and structures must be maintained as provided by . . .

*At some point, after we've made more progress on the zoning districts, we'll need to talk about how these regulations interact with (or possibly consolidate and replace) the city's existing ordinances that govern abandoned buildings and nuisances.*

11-2-7.2 Nonconforming uses and structures may be expanded, replaced, or changed where the Planning Board approves a conditional use permit based on its finding that a proposed expansion, replacement, or change will be consistent with the safety and character of the neighborhood, and that any potentially adverse impacts of the existing, expanded, or replacement use or structure can be mitigated by reasonable conditions.

11-2-7.3 If a nonconforming use or structure is essentially abandoned for more than two years it may be replaced only with a conforming use or structure.

*The adjective 'essential' is used so that the period of abandonment would not be interrupted by occasional use of the property for parking, storage, staging, or other temporary activities.*

#### **11-2-8 What is a nonconforming sign?**

A nonconforming sign is an existing sign that complied with the previous regulations, but that does not comply (a permit could not be approved for it) with these regulations.

#### **11-2-9 How can a nonconforming sign be used?**

11-2-9.1 Nonconforming signs must be maintained and repaired as required by Chapter 11.?  
– Signs.

11-2-9.2 Nonconforming signs can be replaced only with conforming signs.





