

**ARTICLE 26  
NONCONFORMITIES**

**ARTICLE 26.00      INTENT**

Nonconformities are lots, structures, uses, or uses of land and structures that do not conform to one or more provisions or requirements of this Ordinance, but which were lawfully established prior to the effective date of this Ordinance or amendment. Such nonconformities are not compatible with the current or intended use of land in the district in which they are located. Therefore, it is the intent of this Ordinance to permit such nonconformities to continue under certain conditions but to discourage their expansion, enlargement or extension. It is further the intent of this Ordinance that nonconformities shall not be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

This article establishes regulations that govern the completion, restoration, reconstruction, extension and/or substitution of nonconformities, and to specify the circumstances and conditions under which nonconformities shall be permitted to continue.

The table on the next page provides a summary of the nonconforming regulations included in this article.

**Summary of Nonconforming Regulations**

<b><u>Nonconforming Situations</u></b>	<b><u>Requirements</u></b>	<b><u>Section</u></b>
Period of nonuse before nonconformity must cease	Nonconforming use: 12 months	26.01.B
Establishment or expansion of a nonconforming use	Not permitted	26.03.A
Change in ownership	No effect on nonconforming status or rights	26.08
Substitution of one nonconforming use for another	Permitted under certain conditions, subject to ZBA	26.03.D and 26.05.D
Nonconforming lots under same ownership	Must be combined for zoning purposes	26.02.C.1
Expansion of nonconforming use within building	Permitted subject to conditions	26.03.C
Expansion of nonconforming use beyond building	Not permitted	26.03.C
Enlargement of nonconforming structure	Permitted subject to conditions	26.04.A
Maintenance, structural repairs	Generally permitted, not exceeding 50% of assessed value	26.07
Rebuilding after damage based on pre-damage value	Permitted if damage is less than 50% of assessed value	26.05.G and 26.04.B
Open Space Dependent Properties	Considered conforming subject to conditions	26.10
Boundary realignment of Open Space Dependent Properties	Permitted subject to conditions	26.10.C

**SECTION 26.01            GENERAL REQUIREMENTS**

- A.     Buildings under Construction.** This article shall not be deemed to require a change in plans, construction, or use of any structure on which actual construction was lawfully started prior to the effective date of this Ordinance and upon which construction has been diligently carried on by way of a valid building permit. Actual construction is hereby defined to include the placing and attaching of construction materials in a permanent position. When the demolition or removal of an existing building has substantially started prior to rebuilding, that work shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the structure involved.
- B.     Discontinued Use.** A nonconforming use of a structure or nonconforming use of land, independently or in combination, that ceases operation for a period of more than twelve (12) consecutive months shall thereafter conform to the regulations specified by this Ordinance for the district in which the structure, use, or land is located. A nonconforming seasonal use or nonconforming structure used by an approved seasonal use shall be exempt from this provision.
- C.     Unlawful Nonconformities.** Any structure or use established in violation of this article shall for purposes of this Ordinance be considered a nuisance and shall not receive any of the rights, privileges, or protection conferred by this article. Those alleged nonconforming uses which cannot be proven to have lawfully existed prior to the effective date of this Ordinance shall be declared illegal and shall be discontinued and made subject to the enforcement provisions of this Ordinance.
- D.     Variances.** Any use or structure for which a variance has been granted shall not be deemed a nonconformity.

**SECTION 26.02            NONCONFORMING LOTS OF RECORD**

- A.     Permitted Use.** A nonconforming lot shall only be used for a use permitted in the district in which it is located.
- B.     Single Lot of Record.**

  - 1.     Single Family Dwellings and Customary Accessory Buildings.** In any district in which single family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single family dwelling and customary accessory structures may be erected on any single lot of record at the effective date of adoption or amendment to this Ordinance. This

provision shall apply only if the nonconforming lot of record meets the following conditions:

- a. The lot width and area shall conform to that which has been previously platted and/or established as a pattern of development for the immediate area;
- b. The side yard setbacks are ten (10) feet or more in LK-1, R-1, or R-2 districts; and
- c. All other setbacks can be complied with. The purpose of this provision is to allow utilization of single recorded lots that lack required width or area as long as reasonable living standards can be assured to exist on said lot.

2. **Yard Variances.** If the nonconforming lot requires a variation of the district yard requirements in order to erect or enlarge a structure, then that structure shall only be permitted if a variance is granted by the Zoning Board of Appeals.

**C. Two (2) or More Lots of Record.**

1. **Combination of Parcels or Lots.** In a single family district, if two (2) or more lots, or combination of lots, or portions of lots with continuous frontage are in single ownership at the time of adoption or amendment of this Ordinance, and if all or part of those lots do not meet the requirements for lot width and area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance.
2. **Division of Parcels or Lots.** No portion of any parcel or lot shall be used, occupied, or sold in a manner which diminishes compliance with the lot width and area requirements established by this Ordinance. Moreover, no division of any parcel or lot shall be made which creates a lot width or area less than the requirements set forth in this Ordinance.

**SECTION 26.03 NONCONFORMING USES OF LAND**

Any lawful nonconforming use of land established prior to the effective date of adoption of this Ordinance shall not be considered to be in violation of this article and may be continued, so long as it remains otherwise lawful and subject to the following provisions:

- A. **Enlargement of a Nonconforming Use.** A nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.

- B. Relocation of a Nonconforming Use.** Such nonconforming use shall not be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance. If a nonconforming use is moved, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- C. Extension of Use in an Existing Structure.** A nonconforming use may be extended throughout any part of a building which was clearly and intentionally arranged or designed for that use and which existed at the effective date of this Ordinance, but the nonconforming use may not be extended to occupy any land outside the building.
- D. Change of Nonconforming Use.** A nonconforming use may be changed to another nonconforming use, provided that the Zoning Board of Appeals finds that the proposed use is more conforming to the uses permitted in the district in which it is located. In permitting this change, the Zoning Board of Appeals may require appropriate conditions in accord with the intent of this article. Where a nonconforming use is changed to a more conforming use, it shall not thereafter be changed to a less conforming use.

#### **SECTION 26.04 NONCONFORMING STRUCTURES**

Any lawful nonconforming structure established prior to the effective date of this Ordinance shall not be considered in violation of this article and may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. Enlargement, Extension, or Alteration of a Nonconforming Structure.**

  - 1. Increase in Nonconformity Prohibited:** A structure's nonconformity may not be enlarged or altered in any way which increases its nonconformity; for example, a single family residence with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback, lot coverage, and other applicable requirements are met. Any such expansion, alteration or extension must be within required setbacks and all other Ordinance requirements must be met.
  - 2. Increase in Nonconformity.** A structure's nonconformity shall be considered increased if the structure is modified in any of the following ways:

    - a.** Extended along a nonconforming setback;
    - b.** Extended closer to the lot line;



1. A nonconforming structure damaged by any means that can be salvaged with reasonable repairs, as determined by the County Building Official or a Township-contracted State-registered Building Inspector, shall be permitted to be repaired and utilized as a nonconforming structure.
2. **Definition of a catastrophic event.** An occurrence of wind, lightning, tornado, fire, or other natural disaster deemed similar by the Planning Commission which results in damage to a nonconforming structure. Damage such as vehicular accidents, vandalism, or similar, may be considered a catastrophic event if it can be demonstrated the owner of the structure did not intentionally cause the damage.
3. A nonconforming structure damaged by a catastrophic event beyond reasonable repair, as determined by the County Building Official or a Township-contracted State-registered Building Inspector, may be permitted to be reconstructed as a nonconforming structure after a public hearing and Planning Commission review and approval. The Planning Commission shall determine the following standards are observed:
  - a. **Neighborhood Compatibility.** The nonconforming structure will be designed, constructed, and maintained to be compatible with the existing character of the general vicinity in consideration of:
    1. Environmental impacts and drainage;
    2. Views;
    3. Aesthetics;
    4. Noise, vibration, glare, and air quality;
    5. Traffic;
    6. Property values.
  - b. **Health, Safety, and Welfare.** The proposed use shall be designed, located, planned, and operated to protect the public health, safety, and welfare.
  - c. **Additional Development.** The nonconforming structure shall be of a location, height, and nature that will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.
  - d. **Unreasonable Burden.** Reconstruction of a similar structure in strict conformance with the standards of the Zoning Ordinance will be unreasonable or unnecessarily burdensome, preventing the use of land for any and all permitted purposes.



- C. Addition of Signs or Uses.** A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses which are prohibited generally in the zoning district involved.
- D. Commercial or Industrial Uses.** In any business or industrial district, if no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use of the same or a more restricted classification, provided that the Zoning Board of Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Board of Appeals may require appropriate conditions and safeguards in accord with the purpose and intent of this Ordinance. Where a nonconforming use of a structure, land, or structure and land in combination, is hereafter changed to a more restrictive classification, it shall not thereafter be changed to a less restricted classification.
- E. Conformity to Zoning District.** Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations of the district in which such structure is located, and the nonconforming use may not thereafter be resumed.
- F. Reversion of Status.** Where nonconforming use status applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
- G. Reconstruction.** Any structure containing a nonconforming use damaged by any means in excess of 50% of the structure's pre-damage assessed value (exclusive of the foundation), as determined by the Township Assessor, shall not be reconstructed except in conformity with the provisions of this Ordinance.
- H. Exclusions.** There are certain existing uses which the Township finds to be of historic and functional significance which would not be permitted under the current terms of the Zoning Ordinance. These uses are important to maintaining the essential character of the neighborhood and it is herein determined they should be allowed to continue. Therefore, notwithstanding the other provisions of Article 26, a nonconforming Country Store as defined in this Ordinance shall be permitted to be reconstructed in the event of damage, and the use may be resumed to the limits of the use and structure as existing at the time of this amendment.

Further, a nonconforming Country Store structure may be expanded or extended following special approval and site plan approval by the Township in accordance with the provisions of Articles 22 and 23 and the following standards:

1. The expansion does not extend closer to the side or rear lot line than any existing nonconforming part of the structure.
2. The expansion does not extend beyond the predominant existing building line along the same block, does not block lines of sight for traffic or block views from adjacent lots, or impede light and air.
3. The addition retains compliance with all other setback, lot coverage and height requirements.
4. The resultant addition will be compatible in terms of scale and design with the existing structure and the established scale and character of the residential neighborhood.
5. The use shall be subject to applicable regulations for public health and safety and shall be subject to all regulations of the County, State, Federal and other agencies with jurisdiction.

A nonconforming Country Store may not be changed to another use unless that use is permitted in the underlying zoning district. If the Country Store is discontinued, the site and all structures shall thereafter conform to the district in which it is located.

## **SECTION 26.06 ELIMINATION OF NONCONFORMING USES AND STRUCTURES**

- A. Acquisition of Property.** By authority of applicable state legislation, the Township Board may acquire, by purchase, condemnation, or otherwise, property or an interest in property for the removal of nonconforming buildings, structures, or uses, and may remove those uses or structures. The property acquired may be leased or sold for a conforming use or may be used by the township for a public use.

The cost of the acquisition may be assessed against a special district as a public improvement in accordance with applicable statutory provisions, or may be paid from general funds.

- B. Condemnation.** The Township Board has the right to condemn or purchase an interest in private property. The Township Board may purchase or condemn the right to conduct a particular nonconforming use, but leave the property owner with the property itself. The property may be used only for uses allowed in that zoning district.

#### **SECTION 26.07 REPAIRS AND MAINTENANCE**

On any building devoted in whole or in part to any nonconforming use or on a building which is a nonconforming structure, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, plumbing, or wiring to an extent not exceeding fifty (50) percent of the assessed value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

#### **SECTION 26.08 CHANGE OF TENANCY, OCCUPANCY, OR OWNERSHIP**

There may be a change of tenancy, occupancy, ownership, or management of any existing nonconforming use of land, structures, and premises, provided there is no change in the nature or character of the nonconformity, except as provided herein. See also Section 22.05.Q.

#### **SECTION 26.09 RECORD OF NONCONFORMING BUILDING OR USE**

- A. Survey.** The Zoning Administrator shall, at the discretion of the Township Board, compile a list of existing nonconforming buildings, structures, and uses within a category as of a specific date. Structures, buildings, and uses in existence prior to the enactment of this Ordinance or a section of this Ordinance shall be considered existing legal nonconforming uses.
- B. Maintenance of Record.** The Zoning Administrator shall maintain a record of nonconforming uses, structures and buildings, which shall be organized by survey sections, and wherever possible, by named plats within sections. Periodic review shall be made of this record. Abandonment of buildings, structures, or uses shall be reported to the Planning Commission and the Township Board by the Zoning Administrator.

**SECTION 26.10**

**OPEN SPACE DEPENDENT PROPERTIES**

- A. Intent.** It is the intent of the Township to retain property values and continued investment in land, and the Township recognizes updated dimensional zoning regulations in the FR, RE, R-1, and R-2 Districts create a situation in which previously approved parcels may no longer meet the Ordinance standards for minimum lot size. It is not the intent of the Township to create nonconforming parcels; therefore, Tyrone Township recognizes that dependent properties created prior to March 18, 2018 were permitted based on the zoning regulations in effect at the time of their creation.

The Township will consider all open space dependent properties conforming in terms of minimum lot size that were legally created and recorded with an associated dedicated open space, regardless of their ability to achieve current minimum lot size standards. Parcels, units, and lots that were dimensionally nonconforming under previous regulations remain nonconforming unless they can achieve all current standards governing land in the Township.

- B. Open Space Dependent Properties.** Open Space dependent properties are parcels, lots, or units created with dedicated open space, as required by the Zoning Ordinance in effect at the time of creation, which is internal to, contiguous with, or detached from the property.
- C. Boundary Realignment of Open Space Dependent Properties.** Boundary realignment to distribute open space among dependent properties may be considered when all properties resulting from the realignment achieve the minimum lot sizes required by the zoning district, in accordance with the Tyrone Township Land Division Ordinance. Further, the open space conservation easement, plat dedication, restrictive covenant, or other legal mechanism that runs with the land must be appropriately disposed of to the satisfaction of the Township. In no case shall overall development density be increased unless otherwise permitted by this Ordinance.

REVISIONS:

- 2007 APRIL - 26.01.A.2; 26.04.C, 26.07 (formerly 22.05.Q), 26.08 (formerly 26.07), 26.09 (formerly 26.08).
- 2013 OCTOBER - Revised Article 26 Nonconformities to consolidate and clarify regulations.
- 2014 SEPTEMBER – 26.05.H (new) to support the 2013 Township Master Plan (Future Land Use Plan section footnote).
- 2018 MARCH – Added Section 26.10.
- 2018 SEPTEMBER – 26.04.B to include provisions for the rebuilding of nonconforming structures after a disaster.