

ARTICLE 21

NONCONFORMITIES

Section 21.01 Intent and Purpose.

Nonconformities are uses, structures, buildings, or lots which do not conform to one or more provisions or requirements of this Ordinance or a subsequent amendment, but which were lawfully established prior to the time of adoption of the 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. Accordingly, the purpose of this section is to establish 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 following table summarizes the nonconforming regulations contained in this Article:

SUMMARY OF NONCONFORMING REGULATIONS

<u>ISSUE</u>	<u>REQUIREMENTS</u>
Period of nonuse before nonconformity must cease	Nonconforming use: 180 days Nonconforming structure: 12 months
Establishment of new conforming use	Nonconforming use must cease
Change in ownership	No effect on nonconformity
Nonconforming single family use	May be enlarged, subject to conditions
Substitution of one nonconformity for another	Permitted under certain conditions
Nonconforming contiguous lots under same ownership	Must be combined
Expansion of nonconforming use within building	Permitted subject to conditions
Expansion of nonconformity use beyond existing building	Not permitted
Enlargement of nonconforming structure	Not permitted
Enlargement of nonconforming structure, when nonconforming with respect to minimum requirement front yard setback	May be enlarged, subject to conditions
Maintenance, structural repairs	Generally permitted
Renovation, modernization	Maximum value: 50% of assessed value
Rebuilding after catastrophe (Amended 2008)	Permitted if damage is less than 50% of pre-catastrophe fair market value

Section 21.02 Definitions.

For the purposes of this article, the following words and phrases shall have the meaning ascribed to them:

- A. Effective Date.** Whenever this article refers to the "effective date," the reference shall be deemed to include the effective date of any amendments to this Ordinance if the amendments created a nonconforming situation.
- B. Nonconforming Structure.** A building or structure or portion thereof that does not meet the limitations on building size, location on a lot, or other regulations for the district in which such building is located. (Amended 2008)
- C. Nonconforming Lot.** A lot existing at the effective date of this Ordinance, or amendments thereto, that does not meet the minimum area or dimensional requirements of the district in which the lot is located.
- D. Nonconforming Sign.** A sign that on the effective date of this Ordinance does not conform to one or more regulations set forth in the Ordinance.
- E. Nonconforming Use.** A use which was lawfully in existence at the effective date of this Ordinance, or amendment thereto, and which does not now conform to the use regulations of this Ordinance for the zoning district in which it is now located.
- F. Structural Nonconformity.** A nonconformity that exists when the height, size, or minimum floor space of a structure or the relationship between an existing building and other buildings or lot lines, does not conform to the standards of the district in which the property is located. Also sometimes referred to as a Dimensional Nonconformity.

Section 21.03 General Requirements.

The following regulations shall apply to all nonconforming uses, structures, and lots:

- A. Continuation of Nonconforming Uses and Structures.** Any lawful nonconforming use existing on the effective date of this Ordinance or amendment thereto may be continued and shall not be considered to be in violation of this Ordinance, provided that, unless otherwise noted in this Article, the use shall not be enlarged, or extended to occupy a greater area of land, or moved in whole or in part to another portion of the lot. Any lawful building or structure existing on the effective date of this Ordinance or amendment thereto may be continued and shall not be considered in violation of this Ordinance, provided that, unless otherwise noted in this Article, The building and land involved shall not be structurally altered, enlarged, or moved unless such modifications conform to the provisions of this Ordinance for the district in which it is located. 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 an official charged with protecting the public safety, upon order of such official.
- B. Buildings Under Construction.** To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has begun preparatory to rebuilding, such work shall be deemed to be actual construction, provided that such work shall be diligently carried on until completion of the building involved.

C. Discontinuation of Nonconforming Uses and Structures

- 1. Nonconforming Structure.** When a nonconforming use of a structure, or structure and land in combination is discontinued or abandoned for twelve (12) consecutive months or discontinued for any period of time without a present intention to reinstate the nonconforming use, the structure or structure and land in combination shall not thereafter be used except in conformance with the provisions of the district in which it is located.
- 2. Nonconforming Uses of Open Land.** If any nonconforming use of open land ceases for any reason for a period of more than one hundred eighty (180) days, any subsequent use of such land shall conform to the provisions set forth of the district in which it is located.
- 3. Seasonal Uses.** In applying this sub-section to seasonal uses, the time during the off-season shall not be counted.

D. Purchase or Condemnation. In order to accomplish the elimination of nonconforming uses and structures which constitute a nuisance or are detrimental to the public health, safety and welfare, Quincy Township, pursuant to Section 16, Public Act 184 of 1943, as amended, may acquire by purchase, condemnation or otherwise, private property for the purpose of removal of nonconforming uses.

E. Recording of Nonconforming Uses and Structures. The Zoning Administrator shall be responsible for maintaining records of nonconforming uses and structures as accurate as is feasible, and for determining legal nonconforming uses and structures in existence on the effective date of this Ordinance. Failure on the part of a property owner to provide the Zoning Administrator with necessary information to determine legal nonconforming status may result in denial of required or requested permits.

F. Establishment of a Conforming Use or Structure. In the event that a nonconforming principal use or structure is superseded by a conforming principal use or structure on a site, the nonconforming use or structure shall be immediately and permanently removed.

G. Change of Tenancy or Ownership. In the event there is a change in tenancy, ownership, or management, an existing nonconforming use or structure shall be allowed to continue provided there is no change in the nature or character of such nonconformity.

H. Exceptions and Variances. Any use for which a special exception or variance has been granted as provided in this Ordinance shall not be deemed a nonconformity.

I. Unlawful Nonconformities. No nonconformity shall be permitted to continue in existence if it was unlawful at the time it was established.

J. Nonconforming Single-Family Uses. Notwithstanding the limitations outlined in this article, any structure used for single-family residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements.

K. Substitution. A nonconforming use may be changed to another nonconforming use upon approval of the Zoning Board of Appeals provided that no structural alterations are required to accommodate the new nonconforming use, and that the proposed use is equally or more appropriate in the district than the existing nonconformity. In permitting such a change, the Zoning Board of Appeals may require conditions to accomplish the purposes of this Ordinance.

- L. Change of Location.** Should a nonconforming structure be moved to another parcel or to another location on the same parcel for any reason whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Section 21.04 Nonconforming Lots of Record.

The following regulations shall apply to any nonconforming lot of record or nonconforming lot described in a deed or land contract executed and delivered prior to the effective date of this Ordinance or amendment thereto:

- A. Use of Nonconforming Lots.** Any nonconforming lot shall be used only for a use permitted in the district in which it is located. Notwithstanding limitations imposed by other provisions of this Ordinance, a permitted use may be erected on any single lot of record in existence at the effective date of adoption or amendment thereto, unless such use has been restricted by a prior affidavit recorded with the Branch County Register of Deeds or as evidenced in the records of the Township. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, provided that the lot can be developed as proposed without any significant adverse impact on surrounding properties or the public health, safety, and welfare.
- B. Variance from Area and Bulk Requirements.** If the use of nonconforming lot requires a variance from the area or bulk requirements, then such use shall be permitted only if a variance is granted by the Zoning Board of Appeals.
- C. Nonconforming Contiguous Lots Under the Same Ownership.** If two or more lots or combination of lots with contiguous frontage in single ownership are of record at the time of adoption or amendment of this Ordinance, and if all or part of the individual lots do not meet the requirements established for lot width and area, the lots involved shall be considered to be an individual parcel for the purposes of this Ordinance. No portion of said parcel shall be used, occupied, or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of a parcel be made which creates a lot with width or area less than the requirements stated in this Ordinance.
- D. Combination of Nonconforming Lots.** The County Register of Deeds may permit the combination, in whole or in part, of nonconforming lots of record into building sites less than the size requirements established by this Ordinance, provided that the combination of lots reduces the degree of nonconformity and results in a parcel which is capable of accommodating a structure that is in conformance with the building area and setback requirements of this Ordinance.

Section 21.05 Modification to Nonconforming Uses or Structures.

No nonconforming use or structure shall be enlarged, extended, or structurally altered, nor shall any nonconformity be changed to a different nonconformity which increases the intensity of use or nonconformity, except as permitted in this Section.

A. Applicability

The following regulations shall apply to any nonconforming use or structure, including:

1. Nonconforming uses of open land.
2. Nonconforming use of buildings designed for a conforming use.

3. Nonconforming use of buildings specifically designed for the type of use which occupies them but not suitable for a conforming use.
4. Buildings designed and used for a conforming use but not in conformance with area and bulk, parking, loading, or landscaping requirements.
5. Nonconforming structures, such as fences and signs.

B. Enlargement, Extension, or Alteration

1. **Increase in Nonconformity Prohibited.** Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of any nonconformity. For example, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:
 - a. An increase in the total amount of space devoted to a nonconforming use, or
 - b. Greater nonconformity with respect to dimensional restrictions, such as setback requirements, height limitations, density requirements, or other requirements in the district in which the property is located.
2. **Permitted Extension.** Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building. No nonconforming use of land shall be enlarged, increased, or extended to occupy a greater area of land, nor shall any such use be moved in whole or in part to any portion of the lot or parcel than was occupied on the effective date of this Ordinance or amendment thereto.
3. **Permitted Enlargement.** A structure that is nonconforming with respect to the minimum required front yard setback may be enlarged provided that:
 - a. Such enlargement shall be permitted only for a primary building;
 - b. Such enlargement shall not extend closer to the front lot line than the front façade of the building; and
 - c. Such enlargement shall conform to all other dimensional standards of the District in which the building is located, as provided in Section 5.101 (Table of Dimensional Standards by District), including side and rear yard setbacks, maximum building coverage, and maximum building height.
 - d. If the nonconforming structure is on a corner lot and is nonconforming with respect to both front yards, this permitted enlargement shall only be permitted within one of the front yards (along one of the street frontages). Any enlargement must satisfy the minimum front yard requirement along the other street frontage.(Amended 2008)
4. **Alterations that Decrease Nonconformity.** Any nonconforming structure or any structure or portion thereof containing a nonconforming use, may be altered if such alteration serves to decrease the nonconforming nature of the structure or use. The Zoning Board of Appeals shall determine if a proposed alteration will decrease the degree of nonconformity.

5. **Variance to Area and Bulk Requirements.** If a proposed alteration is deemed reasonable by the Zoning Board of Appeals by virtue of the fact that it would decrease the nonconforming nature of a structure or use, but such alteration requires a variance from the area or bulk requirements, then such alteration shall be permitted only if a variance is granted by the Zoning Board of Appeals.

C. Repairs, Improvements, and Modernization

1. **Required Repairs.** Repairs or maintenance deemed necessary by the Zoning Administrator to keep a nonconforming building structurally safe and sound are permitted. However, if a non-conforming structure or a structure containing a nonconforming use becomes physically unsafe and/or unlawful due to lack of maintenance and repairs and is declared as such by the Zoning Administrator or the County Building Official, it shall not thereafter be restored, repaired, or rebuilt except in full conformity with the regulations in the district in which it is located.
2. **Additional Permitted Improvements.** Additional repairs, improvements, or modernization of nonconforming structures, beyond what is required to maintain the safety and soundness of the structure, shall be permitted provided such repairs or improvements do not exceed fifty percent (50%) of the assessed value of the structure during any period of twelve (12) consecutive months. Any such repairs, improvements, and modernization shall not result in enlargement of the cubic content of the nonconforming structure. The provisions in this paragraph shall apply to all structures except as otherwise provided in this Article for single-family residential uses and for reconstruction of structures damaged by fire or other catastrophe.

- D. Damage by Fire or Other Catastrophes.** Any nonconforming structure or structure housing a nonconforming use that is damaged by fire, flood, or other means not caused by the property owner may be restored to its pre-catastrophe status. The replacement structure shall not be permitted to expand beyond the footprint (horizontal dimensions) of the pre-catastrophe structure or otherwise increase the nonconformity unless that portion of the structure that is expanding is in conformance with the requirements of this Ordinance. (Amended 2010).

Section 21.06 Nonconforming Uses Determination.

The following shall apply to all nonconforming uses of land in the Township:

- A. Determinations that a use of land is nonconforming.** This Section is intended to provide reasonable standards for determining whether a use of land is conforming, nonconforming or illegal in the district where it is located. When there is a question or dispute over the status of a use, the Zoning Board of Appeals shall have the authority to make such determinations, subject to the following procedure and standards:
1. **Procedure.** The procedure for making such determinations shall be as follows:
 - a. **Public hearing.** Such action may be taken only after a public hearing has been held in accordance with the procedures set forth in Section 1.11 (Public Hearing Procedures), at which time the owner, operator or person having beneficial use of the land in question shall be given an opportunity to present evidence and documentation about the status of the use of land.
 - b. **Determination.** Subsequent to the hearing, the Zoning Board of Appeals shall make a determination with regard to whether the use of land is conforming, nonconforming

or illegal in the district where it is located, and written notification provided to said owner, operator or person having beneficial use of the land in question.

2. **Standards for determining that a use of land is nonconforming.** The Zoning Board of Appeals shall determine that a use of land is nonconforming upon finding that the following statements (a – c) are true:
 - a. The use of land does not conform to the purpose and use regulations of the district where it is located, and the nonconformity cannot be resolved by means available under this Ordinance, such as Article 16 (Special Land Uses).
 - b. The use of land complies with all other applicable federal, state, county and Township laws, ordinances, regulations and codes.
 - c. Evidence from a minimum of three (3) of the following sources demonstrates that the use of land was legally established prior to the effective date of adoption or amendment of this Ordinance:
 - (1) Local, county or state government files or records, including but not limited to permits, inspection reports, dated photographs or notarized statements of government officials, agents, representatives or employees.
 - (2) Dated telephone directories or similar dated records that provide information about the occupants or uses located on a street by address or lot number.
 - (3) Utility records, including but not limited to providers of water, sewer, electric, natural gas or telecommunications service.
 - (4) Dated advertising or other information published in a newspaper, magazine or similar periodical including but not limited to advertisements, articles, features or photographs that address the use of the land in question.
 - (5) Dated aerial photos from Branch County, the U.S. Department of Agriculture or other sources accepted by the Zoning Board of Appeals.
 - (6) Other relevant information, including but not limited to date-stamped photographs, diary or log entries, affidavits or notarized statements.
3. **Standards for determining that a use of land is conforming.** The Zoning Board of Appeals shall determine that a use of land is conforming upon finding that the use of land is in compliance with the use regulations of the district where it is located, including any required permits or special approvals.
4. **Standards for determining that a use of land is illegal.** Any use of land that is not a conforming use in the district where it is located, or determined to be a nonconforming use of land, shall be considered an illegal use of land in the district that has been established in violation of this Ordinance.

B. **Determinations that a nonconforming use of land has ceased.** The following is intended to provide reasonable standards for determining whether a nonconforming use of land has been removed, discontinued or otherwise ceased to occupy the land in question. When there is a question or dispute over whether a nonconforming use has ceased, the Zoning Board of Appeals shall have the authority to make such determinations, subject to the following procedure and standards:

1. **Procedure.** The procedure for making such determinations shall be as follows:
 - a. **Public hearing.** Such action may be taken only after a public hearing has been held in accordance with the procedures set forth in Section 1.11 (Public Hearing Procedures), at which time the owner, operator or person having beneficial use of the land in question shall be given an opportunity to present evidence and documentation about the status of the use of land.
 - b. **Determination.** Subsequent to the hearing, the Zoning Board of Appeals shall make a determination with regard to whether the nonconforming use of land has been removed, discontinued or otherwise ceased to occupy the land in question, and written notification provided to said owner, operator or person having beneficial use of the land in question.
2. **Standards for determining that a nonconforming use of land has ceased.** The Zoning Board of Appeals shall determine that a nonconforming use of land has been removed, discontinued or otherwise ceased to occupy the land in question upon finding that a minimum of three (3) of the following six (6) statements (a – f) are true:
 - a. **Local, county or state government files or records show that the nonconforming use of land has ceased.** Such evidence may include, but shall not be limited to permits, inspection reports, dated photographs or notarized statements of government officials, agents, representatives or employees.
 - b. **Dated telephone directories, or similar dated records that provide information about the occupants or uses located on a street by address or lot number, show that the nonconforming use has ceased.** Such evidence may include, but shall not be limited to entries that show the address associated with the use as vacant or occupied by another use, or show the telephone number associated with the use as disconnected or in use at another location.
 - c. **Utility records, including, but not limited to providers of water, sewer, electric, natural gas or telecommunications service, show that the nonconforming use has ceased.** Such evidence may include, but shall not be limited to records indicating that the address of the use is vacant or occupied by another use, the utility service associated with the use has been disconnected or the business, organization or individual associated with the use has moved to another location.
 - d. **Dated advertising or other information published in a newspaper or magazine show that the nonconforming use of land has ceased.** Such evidence may include, but shall not be limited to advertisements, articles, features or photographs that address the use of the land in question.
 - e. **Dated aerial photos from Branch County or other sources as accepted by the Zoning Board of Appeals show that the nonconforming use of land has ceased.**

- f. **Other relevant information shows that the nonconforming use of land has ceased.** Such evidence may include, but shall not be limited to date-stamped photographs, diary or log entries, affidavits or notarized statements.