

BENTON COUNTY ORDINANCE NO. 447
Subsurface Sewage Treatment Systems, Variance and
Miscellaneous Development Code Corrections

WHEREAS, the Benton County Planning Commission instituted proceedings to amend the Benton County Ordinance 185; and,

WHEREAS, on November 15 and 16, 2011, Notice of Public Hearing and intent to amend Benton County Ordinance was published in the official newspapers of the county; and,

WHEREAS, on December 1, 2011, the Benton County Planning Commission held a public hearing; and,

WHEREAS, on December 20, 2011, the Benton County Board of Commissioners held a public hearing; and,

NOW PURSUANT TO THE AUTHORITY VESTED BY MINNESOTA STATUTES SECTION 394.25, THE BENTON COUNTY BOARD OF COMMISSIONERS ORDAINS:

Section 3 Definitions amend as follows:

Amend the following definitions to read as noted:

Interim Use – **change** “of” to “or” after “particular event.”

Septic, Notice of Noncompliance: **delete** the word “to” after Licensed Inspector

Septic Type II System: **delete** “ with rapidly permeable soils on lots” from the second sentence.

Add the following definition:

Tire Collector: a person who owns or operates a site used for storage, collection, or deposit of more than 50 waste tires.

Section 7 Zoning Districts amend as follows:

Change Solid Waste Management Facilities from permitted to conditional use in the following districts:

Agriculture 7.1.10, Rural Agricultural 7.2.10, Light Industrial 7.7.1 and Heavy Industrial 7.8.1 to Sections 7.1.23, 7.2.22, 7.7.2, and 7.8.2 respectively.

Delete Recycling Center as a conditional use from Business District Section 7.6.2

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Add Recycling Center to the list of Conditional Uses in the following districts: Agriculture 7.1.23, Rural Agricultural 7.2.22, Light Industrial 7.7.2 and Heavy Industrial 7.8.2

Add Tire Collector to the list of Conditional Uses in the following districts: Business 7.6.2, Light Industrial 7.7.2 and Heavy Industrial 7.8.2

Section 7.1.24 and 7.2.27 replace subsections B and C with the following:

B. Second Dwelling

A second dwelling on a property shall be a detached single family dwelling for one of the following uses: (1) supportive care, (2) help on the farm, or (3) farm operator. Second dwellings are not intended as rental property and rental of either dwelling is prohibited. All applications and required documents that require signatures must be signed by the primary dwelling occupant(s) over 18 years of age, secondary dwelling occupant(s) over 18 years of age, and the landowner(s).

1. **Help on the Farm or Farm Operator**, the applicant must provide the documents and meet the criteria listed below:
 - a. Provision of Schedule F, or similar document, demonstrating the need for full time help on the farm.
 - b. Site plan showing the location of the second dwelling unit in relation to the original dwelling unit.
 - c. Signed written statement that the farm operator or the retired operator will reside on the property.
 - d. Signed written statement indicating the name or title of the person(s) occupying the second dwelling.
 - e. A signed statement declaring that the second dwelling shall be removed within 90 days when the demonstrated need for full time help on the farm no longer exists, or the farm operator no longer resides on the property.
 - f. The dwelling must be a manufactured home.
 - g. The dwelling must meet the state building code and meet the 31 point inspection requirement.
 - h. The dwelling must be connected to a permitted sewage treatment system.

2. **Supportive Care**, the applicant must provide the documents and meet criteria listed below:
 - a. Site plan showing the location of the second dwelling unit in relation to the original dwelling unit.
 - b. Documentation of the type of supportive care to be provided by a physician, nurse practitioner or physician assistant to verify the need for supportive care.
 - c. The principal owner of the property shall annually submit an affidavit to the Department of Development verifying that the dwellings are still occupied by the eligible resident(s) named in the original application.
 - d. A signed statement declaring that the second dwelling shall be removed within 90 days of discontinuance of providing or receiving supportive care.
 - e. The dwelling must be a manufactured home.

- f. The dwelling unit must be connected to a permitted sewage treatment system.
 - g. The dwelling must meet the state building code and meet the 31 point inspection requirement.
3. A second dwelling may be allowed as a permanent site built dwelling if:
- a. The requirements of Section B(1)(a-d, g, h) or Section B(2)(a-c, f, g) are met;
 - b. The property may be legally subdivided to create one lot for the primary dwelling and a separate lot for the secondary dwelling; and
 - c. The property to be subdivided shall meet the zoning district requirements established and documented at the time of the application:
 - i. residential density
 - ii. all lot standards (length, width, area) as indicated on a site plan
 - iii. all existing or proposed structures meeting the setback requirements
 - iv. access approval from the road authority
 - v. standard sewerability requirements (soil borings meeting the minimum requirement for two sewage treatment areas)
 - vi. As an interim use a condition shall be placed on the property that indicates that a change in status of either occupant of the dwellings will require a subdivision of said property according to the requirements established in the permit and within the subdivision portion of the ordinance.
 - d. Upon the expiration of the IUP, the property to be split shall be subdivided in accordance with standards of the Benton County Development Code in place at the time of the actual subdivision. The lots to be created will not need to meet the current zoning district requirements for lots at the time of the actual subdivision, but the lots created must meet the documented zoning district requirements that existed at the time of application for the IUP.
4. **Exemption.** If the second dwelling is to be constructed as the principal dwelling to replace the existing dwelling it shall be exempt from items B(1)(a-f) and B(2)(a-e). A condition shall be placed on all associated Interim Use Permits for second dwellings stating the original dwelling shall be removed within 90 days after the original party or parties named in the permit are no longer residing in the original dwelling.

Section 7.2A.23 B replace with the following:

1. **Supportive Care**, the applicant must provide the documents and meet criteria listed below:
 - a. Site plan showing the location of the second dwelling unit in relation to the original dwelling unit.
 - b. Documentation of the type of supportive care to be provided by a physician, nurse practitioner or physician assistant to verify the need for supportive care.
 - c. The principal owner of the property shall annually submit an affidavit to the Department of Development verifying that the dwellings are still occupied by the eligible resident(s) named in the original application.
 - d. A signed statement declaring that the second dwelling shall be removed within 90 days of discontinuance of providing or receiving supportive care.
 - e. The dwelling must be a manufactured home.
 - f. The dwelling unit must be connected to a permitted sewage treatment system.

- g. The dwelling must meet the state building code and meet the 31 point inspection requirement.
2. A second dwelling may be allowed as a permanent site built dwelling if:
- a. The requirements of Section B(1)(a-c, f, g) are met;
 - b. The property may be legally subdivided to create one lot for the primary dwelling and a separate lot for the secondary dwelling; and
 - c. The property to be subdivided shall meet the zoning district requirements established and documented at the time of the application:
 - i. residential density
 - ii. all lot standards (length, width, area) as indicated on a site plan
 - iii. all existing or proposed structures meeting the setback requirements
 - iv. access approval from the road authority
 - v. standard sewerability requirements (soil borings meeting the minimum requirement for two sewage treatment areas)
 - vi. As an interim use a condition shall be placed on the property that indicates that a change in status of either occupant of the dwellings will require a subdivision of said property according to the requirements established in the permit and within the subdivision portion of the ordinance.
 - d. Upon the expiration of the IUP, the property to be split shall be subdivided in accordance with standards of the Benton County Development Code in place at the time of the actual subdivision. The lots to be created will not need to meet the current zoning district requirements for lots at the time of the actual subdivision, but the lots created must meet the documented zoning district requirements that existed at the time of application for the IUP.
3. **Exemption.** If the second dwelling is to be constructed as the principal dwelling to replace the existing dwelling it shall be exempt from items B(1)(a-f). A condition shall be placed on all associated Interim Use Permits for second dwellings stating the original dwelling shall be removed within 90 days after the original party or parties named in the permit are no longer residing in the original dwelling.

Amend Section 8 Performance Standards as follows:

Amend 8.5 Solid Waste Disposal to read as follows:

All disposal of solid waste shall be in accordance with the Benton County Solid Waste Ordinance # 162 as amended from time to time.

Add Section 8.5.3 The storage of more than 50 waste tires is prohibited unless permitted as a tire collector or exempt according to the Solid Waste Ordinance. Tire collectors shall be permitted as a conditional use as specified within a zoning district. All waste tires shall be stored indoors or in a manner which will not create a nuisance, blight, health hazard or fire hazard (i.e. tarped).

Amend Section 9 Special Provisions as follows:**Amend Section 9.6.2D**

1. Where a single SSTS or group of SSTS existing or proposed under single common ownership are within one-half mile of each other, have a combined design flow greater than 10,000 gallons per day for a consecutive seven-day period, the owner or owners must ~~shall~~ make application for and obtain a State Disposal System (SDS) permit from PCA according to Chapter 7001.

Amend Section 9.6.3**E. Sewerability Requirements**

All newly created lots, vacant lots and/or vacant lot of records shall have a minimum of two Type I septic sites ~~or two Type II septic sites if the site has rapidly permeable soils types 1 or 4.~~ A site without a septic system or a septic system that has not been in operation for more than five years shall be considered a vacant lot.

Add to Section 9.6.7B as follows:

1. A minimum of two soil borings are required in the primary site and a minimum of one boring is required for the secondary site; however, if the primary and secondary site do not adjoin each other a minimum of two soil borings are required in both the primary and secondary locations. Soil borings must be representative of the soil conditions throughout the absorption area and will be verified by staff.

Delete Sections 9.6.7B 2 and 8

Amend 9.6.7B 14. First sentence add an “s” to “vacant lot” and delete the “s” from records and delete the following “or two Type II septic sites if the site has rapidly permeable soils type 1 or 4” from the first sentence.

Renumber 9.6.7 subsections 3-14 to read 2-12.**Amend Table 1 and 2 of Section 9.6.7 C and D respectively as follows:**

Table 1.

Source	Septic Tank Setback
Occupied Buildings Structures	10 ft.
Unoccupied Buildings Property Lines	10 ft. 5 ft.
Road right-of-way	5ft.
<u>Road right of way in Shoreland</u>	<u>0 ft.</u>

Table 2.

Source	Drainfield Setback
Occupied Building Structures	20 ft.
Unoccupied Building Property Line	10 ft.5 ft.
Road right-of-way	5ft.
Road right-of-way in Shoreland	0 ft.

Amend 9.6.7 K. Bedroom Addition(s) to read as follows:

1. A bedroom addition requires the submission of a compliance inspection. A compliant system shall require the property owner to develop and comply with an operation and maintenance agreement for said system.
2. The addition of more then one bedroom will requires a new design.

Amend Section 9.6.11 C 3. First sentence change the word “certificated” to “certificate”

Amend Section 9.6.11 D 4. First sentence add “to” between “relates the”

Amend Section 9.6.12C1e. add “/ interim” after “conditional”

Amend Section 9.6.12D 3 add “/ interim” after “conditional”

Amend Section 9.6.12F1a. Third sentence change “to proving” to “for providing”

Amend Section 9.6.12F1c. add “completed” before “compliance” and “inspection” after “compliance” .

Amend 9.7 Mining Operations as follows:

9.7.1 B **Add sentence** to the end of the paragraph stating: Any expansion of an existing Land Use Permit, beyond the limits established in the land use permit requires the entire site to be permitted as an Interim Use Permit and the entire site is subject to the provisions of the Interim Use Permit.

Amend 9.7.6 (r) Signage: from “ 5’ x 10’” to “4’x 8’”

Amend 9.15 Home Occupations to read as follows:

9.15.1(d) Any sign(s) on the premises shall meet the requirements of the zoning district.

9.15.2 (g) A sign shall meet the requirements of the zoning district.

Add Section 9.19 Performance standards for Solid Waste Management/ Recycling Facilities

9.19 Solid Waste Management/ Recycling Facilities

9.19.1 The facility/operation is in compliance with the Benton County Solid Waste Ordinance and any other applicable ordinance.

9.19.2 The facility /operation is in compliance with the adopted Comprehensive Plan and the Solid Waste Master Plan.

9.19.3 The site shall not be located within the Shoreland or Floodplain Districts.

9.19.4 The site shall not be located within a wetland as defined in MN Statute 103G.005.

- 9.19.5 Any required environmental assessment documents have been developed and required review procedures have been completed.
- 9.19.6 Any required County, State, or federal licenses have been issued.
- 9.19.7 The facility/operation is in compliance with all applicable Minnesota Pollution Control Agency (MPCA) and U. S. Environmental Protection Agency (EPA) rules and regulations.
- 9.19.8 An Operation plan shall be developed and the activity conducted in accordance with the operational plan.
- 9.19.9 The permit shall be subject to annual renewal. Renewal shall occur during the same month as the County license renewal.
- 9.19.10 A site plan is submitted showing adjacent land uses and the type of measures that will be used to buffer the physical impacts to these sites.
- 9.19.11 Reports as required by MPCA/EPA rules and regulations.
- 9.19.12 The facility/operation must not be constructed or used until the property owner complies with all local ordinances and has obtained the appropriate permits(s) from the MPCA.
- 9.19.13 Buildings and any exterior storage shall meet the setback requirements of the underlying zoning district.
- 9.19.14 All parking areas and access drives to parking areas shall be durable and dustless.
- 9.19.15 The site shall be located at least five hundred feet from any residential dwelling unit.

Amend Section 10 Subdivision Regulations as follows:

Amend Section 10.6.2 Administrative Corrective Action to read "A-C"

Amend Section 10.7B. to read as follows:

10.7B Park Dedication Review

Each Plat intended for residential purposes shall be reviewed by the Department of Development for compliance with the Park Dedication requirements of this Ordinance.

Amend Section 10.11.4(1) replace "ordinance." with "district." **Add** Lots designed as a part of an approved Interim Use Permit for a second dwelling shall be allowed to subdivide the approved design per current subdivision standards.

Amend Section 10.12.2 C. Dedication Determination Procedure: To read as follows:

The amount and location of lands to be dedicated shall be determined in the following manner:

1. Prior to the public hearing on the preliminary plat, the Department of Development shall review the plat and formulate a written recommendation that will be forwarded to the Board of Commissioners if there is potential park land or trail easement that meets the criteria established below..
2. The amount and location of lands to be donated for park purposes shall be consistent with the standards set forth in M.S. 394.25., subd. 7.

- 3. The determination shall be made by the County Board at a regular meeting prior to the public hearing on the preliminary plat.
- 4. In lieu of land dedication, the Board and Director may require a financial contribution pursuant to paragraph E.

Amend Section 10.12.2 E. First sentence **delete** “, upon recommendation of the Benton County Parks Commission”. Third sentence **delete** “and the Director”

Amend Section 11 Administration as follows:

Amend Section 11.5.1(4) to read as follows:

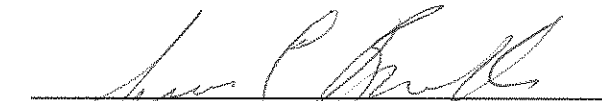
(4) The landowner must show that the variance is necessary to alleviate the practical difficulties in complying with the official control.

"Practical Difficulty" as used in connection with the granting of a variance means:

- a. The property owner proposes to use the property in a reasonable manner not permitted by an official control ;
- b. The plight of the landowner is due to circumstances unique to the property, not created by the landowner;
- c. The variance, if granted, will not alter the essential character of the locality.
- d. The need for the variance involves more then economic considerations.

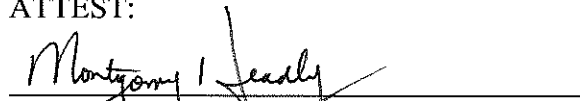
Approved and adopted by the Benton County Board of Commissioners this 20th day of December in the year of 2011.

This ordinance shall be effective January 3, 2012.



 Spencer Buerkle, Chair
 Benton County Board of Commissioners

ATTEST:



 Montgomery Headley
 Benton County Administrator