

MONTCALM COUNTY

AN ORDINANCE TO REGULATE THE CONDITIONS OF PLACEMENT OF RESIDENTIAL STRUCTURES WITHIN THE COUNTY, EXCEPT MANUFACTURED HOMES LOCATED WITHIN MANUFACTURED HOUSING PARKS AND EXCEPT THOSE STRUCTURES SUBJECT TO LOCAL MUNICIPAL ORDINANCE WHICH IMPOSE CONDITIONS OF PLACEMENT; TO PROVIDE FOR THE ENFORCEMENT OF THE ORDINANCE; AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THE ORDINANCE.

ADOPTED 9/22/2003
AMENDED 5/24/04
AMENDED 5/9/05
AMENDED 11/10/25

THE COUNTY OF MONTCALM, MICHIGAN ORDAINS:

Section 1. Name.

This Ordinance shall be known and cited as the Montcalm County "Construction Ordinance."

Section 2. Purpose.

The purpose of this Ordinance is to protect the health, safety and welfare of the residents and property of Montcalm County (the "County") by establishing minimum allowable setbacks for the construction of all structures on private parcels of land and to provide minimum standards for the use of such structures. All construction shall comply with this Ordinance except mobile homes located within a mobile home park or structures subject to local municipal ordinances regulating the same conditions of placement as this Ordinance.

Section 3. Definitions.

- A. "Accessory Structure" means a subordinate structure on the same premises with a main building, or a portion of a main building or structure, occupied by or devoted exclusively as a use incidental and subordinate to the principal use of the land or structure. Where an accessory structure is attached to a main building in a substantial manner, such as a wall or roof, the accessory structure shall be considered a part of the main structure.
- B. "Dwelling" means a structure designed primarily for residential use, including a structure erected on-site, a mobile home, or a pre-manufactured or pre-cut structure, above or below ground.
- C. "Accessory Dwelling Unit (ADU)" means a secondary housing unit located on the same lot as a principal dwelling. An ADU may be attached to the main dwelling or constructed as a separate, detached structure. It is intended to provide complete, independent living facilities for one or more persons and includes provisions for living, sleeping, cooking, and sanitation. ADUs are subordinate in size and use to the primary residence and must comply with applicable zoning and building regulations.
 - a. Size Limits – ADUs shall not exceed 75% of the square footage of the primary dwelling.
 - b. Height Restrictions – ADUs shall not exceed two levels above grade, with the grade level potentially serving as a garage.
 - c. Setback Requirements – ADU setbacks shall be compliant with Michigan Building Code R302.1.
 - d. Permitting Requirements – ADUs shall be approved through Montcalm County's permitting process, which is the same as that required for the primary dwelling.
- D. "Municipality" means a city, village, or township in Montcalm County.

Section 4. Applicability.

This Ordinance shall not apply to the construction of any structure located in a municipality having an ordinance(s) that similarly regulates the conditions of placement of structures. This Ordinance shall apply to the construction of any structure that requires a building permit in accordance with the Stille–Derossett–Hale Single State Construction Code Act, Act 230 of the Public Acts of 1972, as amended, and the State Construction Code promulgated thereunder. Any new construction shall comply with this Ordinance and State Construction Code.

This Ordinance shall not apply to any mobile home located within a mobile home park as defined and as governed by the Mobile Home Commission Act, Act 98 of the Public Acts of 1987, as amended and the regulations promulgated pursuant to that Act.

Section 5. Placement Requirements for Structures.

All structures within the County, except as provided in Section 4, shall meet the requirements of this section as follows:

A. Existing Platted Areas

1. Structures shall be constructed in compliance with Michigan Building Code Section R302.1 and shall be set back a minimum of 10 feet from the road right-of-ways and/or waterfronts.

Exception: detached accessory structures for residential use shall be allowed to construct no less than three (3) feet from the side or back property line providing all of the following conditions are complied with:

- a. Construction shall be compliant with Michigan Residential Code R302.1.
- b. Walls constructed within three feet of the property line shall not be greater than nine (9) feet in height at the eave.
- c. Eaves shall not overhang more than twelve inches.
- d. Construction shall be placed behind any existing dwelling on the lot.
- e. Construction shall not in any way prohibit or restrict access of emergency personnel to any adjacent properties.
- f. All adjacent dwellings shall be a minimum of nine (9) feet from accessory structures constructed under this exception.
- g. Any request to commence construction under this exception shall require that the site be visually inspected and approval received by the Building Official prior to performing construction.

[Section 5.A.1 was amended on 5/24/04 by Ordinance 2004-3]

2. Existing platted areas shall provide a minimum of one parking space per dwelling, located either on the parcel containing the dwelling or on an adjoining parcel under the same ownership. This parking space shall measure at least 12 feet by 20 feet and must be accessed from an adjoining road right-of-way.
3. In addition, existing platted areas shall comply with Part 91, "Soil Erosion and Sedimentation Control," of the Michigan Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended.
4. Existing structures encroaching on the setback minimums shall not perform any new construction any nearer the property lines. All existing dwellings shall be required to comply with section R102.7 and Appendix E, section AE102 of the Michigan Residential Code.
5. In case of a discrepancy, it shall be the responsibility of the property owner who is performing the construction to provide a legal survey to approve the exact location of existing property lines and comply with the minimum setbacks.

B. New Construction or New Platted Areas

1. Any parcel located at the intersection of two or more road right-of-ways, i.e., a "corner lot," shall maintain a setback of 25 feet from each line separating the parcel from the road right-of-way.

2. Existing structures encroaching on the setback minimums shall not perform any new construction any nearer the property lines. All existing dwellings shall be required to comply with section R102.7 and Appendix E, section AE102 of the Michigan Residential Code.
3. In case of a discrepancy, it shall be the responsibility of the property owner who is performing the construction to provide a legal survey to approve the exact location of existing property lines and comply with the minimum setbacks.

Section 6. Additional Placement Requirements for Dwellings.

All structures that are defined as "dwellings" by this Ordinance shall meet the requirements of this section as follows:

- A. No single parcel of property shall be allowed to have more than two dwellings on that parcel whether or not the dwellings are occupied.
- B. A single parcel of property containing three or more dwellings shall be allowed to continue as a non-conformity until such time as the owner wishes to perform the construction, alteration, addition, removal, replacement, or relocation of any structure, or perform any work which requires a building permit as required by the State Construction Code. At that time, the owner shall be required to comply with this Ordinance.
- C. Before a building permit may be issued for construction of a new dwelling, the property owner shall apply with the Montcalm County Equalization Department for an address for the dwelling and shall submit the address given to the County Building Official.
- D. Each dwelling, and any additions to a dwelling, shall be firmly attached to a permanent frost-free foundation constructed on the site in accordance with all building and other pertinent construction codes applicable to residential dwellings within the County and as provided by this section. If a dwelling is a mobile home, the dwelling shall be installed pursuant to the manufacturer's instructions specifying the location and required minimum imposed load capacity of pillars in the location and the minimum imposed load capacity of any other stabilizing devices. In the absence of the manufacturer's installation instructions of a mobile home, the installation of the mobile home shall be in accordance with Appendix E of the Michigan Residential Code.

Section 7. Building Permit Required.

The construction of any structure shall not be commenced until the building permit has been obtained in accordance with the State Construction Code, the requirements and standards referenced within this Ordinance, and any other applicable County Ordinance standards and requirements. The County Building Official shall be the County Official authorized to issue a Building Permit.

The construction of an Agricultural Exempt Building shall not commence until the Agricultural Exempt Application has been filed and it has been approved by the Montcalm County Building Official.

Section 8. Board of Appeals.

- A. **Application for Appeal.** Any person directly affected by a denial of a building permit request shall have the right to appeal to the Montcalm County Board of Commissioners (hereafter "Board"), provided that a written application for appeal is filed within twenty (20) calendar days following the date of the building permit denial.

This appeal process is specific to the Montcalm County Construction Ordinance and is separate from the appeal procedures outlined in Section R112 of the Michigan Residential Code.

An application for appeal shall be based on one or more of the following claims:

1. That the Ordinance has been incorrectly interpreted; or
2. That the provisions of this Ordinance do not fully apply to the specific circumstances; or
3. That the requirements of this Ordinance are adequately satisfied by alternative means; or
4. That the strict application of any requirement of this Ordinance would result in undue hardship.

All appeals shall be accompanied by payment of applicable fees as established by the Montcalm County Board of Commissioners.

B. **Notice of Meeting.** The Board shall meet upon notice from the chairman, within twenty (20) days of the filing of an appeal, or at stated periodic meetings.

C. **Open Hearing.** All hearings before the Board shall be open to the public and all meetings and notices of meetings of the Board and its committees shall comply with the Open Meetings Act (MCL 15.261 *et seq.*). The appellant, the appellant's representative, the Building Official and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the Board membership.

1. **Procedure.** The Board shall adopt and make available to the public, through the secretary, procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence but shall mandate that only relevant information be received.

D. **Postponed Hearing.** When the full Board is not present to hear an appeal, either the Appellant or the Appellant's Representative shall have the right to request a postponement of the hearing.

E. **Board Decision.** The Board shall modify or reverse the decision of the Building Official only by a concurring vote of a majority of the total number of appointed Board members.

1. **Records and Copies.** The decision of the Board shall be recorded. Copies shall be furnished to the Appellant and to the Building Official.

2. **Administration.** The Building Official shall take immediate action in accordance with the decision of the Board.

[Section 8 was added on 5/24/04 by Ordinance 2004-3]

Section 9. Violation, Penalties, Civil Infraction.

(a) Any person, firm or corporation who violates any provision of this Ordinance, or the terms or conditions of a permit, is responsible for a municipal civil infraction, and shall be subject to payment of a civil fine of not less than \$50, plus costs and other sanctions, for each infraction (as authorized by Section 10b of Act No. 156 of the Public Acts of 1851, as amended). Repeat offenses under this Ordinance shall be subject to increased fines as provided by this Section. As used in this Section, "repeat offense" means a second (or any subsequent) violation of the same requirement or provision of this Ordinance (i) committed by a person within any 90-day period and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under this Ordinance shall be as follows:

- (1) The fine for any offense that is a first repeat offense shall be not less than \$250, or two times the permit fee, whichever is greater, plus costs.
- (2) The fine for any offense which is a second repeat offense, or any subsequent repeat offense, shall be not less than \$500 each, or 4 times the permit fee, whichever is greater, plus costs.

(b) Each day on which any violation of this Ordinance occurs or continues constitutes a separate offense subject to separate sanctions. Failure to answer a citation or notice to appear in court for a municipal civil infraction is a misdemeanor violation punishable by a fine of not more than \$500, plus other costs, or by imprisonment for a term not to exceed 90 days, or both fine and imprisonment.

(c) Failure to comply with an order, judgment or default in payment of a civil fine, costs, damage, or expenses so ordered may result in enforcement actions, including but not limited to imprisonment, collections, placement of liens or other remedies as permitted by Chapter 87 of Act 236 of the Public Acts of 1961, as amended.

(d) A municipal infraction is not a lesser included offense of a criminal offense or an ordinance violation that is not a civil infraction.

(e) Nothing in this Section 8 shall be construed to limit the remedies available to the County in the event of a violation by a person of this Ordinance or a permit, including seeking injunctive relief to compel compliance.

(f) The County Building Official or his or her designee is hereby designated as the authorized County official to issue municipal civil infraction citations directing alleged violators to appear in court.

[Section 9 was renumbered from Section 8 on 5/24/04 by Ordinance 2004-3]

[Section 8 amended on 5/9/05]