

**Draft Zoning Changes for the 2nd Planning Board Public Hearing,
January 22, 2018.
Proposed new wording from 1st Public Hearing in GREEN**

**ARTICLE IX
ELDERLY HOUSING**

[Added 3-11-80 by ballot by the ATM, Art. 3; amended 3-8-05 ATM; amended 3-14-06 ATM; amended 3-13-07 ATM, Art. 4; amended ATM 3-11-14, Art. 3. Amended Special Town Meeting 6-24-17]

307-49 Purpose & Intent [Amended by STM 6-24-17]

It is the intent of this Article to recognize the need for granting provisions whereby appropriate housing alternatives may be provided for: elderly persons living independently; and, frail elderly persons.

To provide affordable alternative housing for the elderly population in the form of multiple attached or detached units.

The following uses shall be permitted under this article: A variety of housing types exclusively addressing the needs of elderly citizens, including, but not limited to: independent living facilities; CCRC's; ALF's; congregate care facilities; nursing homes; and, skilled nursing facilities.

Elderly complexes, as herein defined, shall be a permitted use in any zoning district, except for Industrial Districts and Recreation-Conservation-Agriculture Districts where such use shall not be permitted. [Amended 3-13-07 ATM]

307-50 Definitions

As used in this Article, the following terms shall have the meanings indicated:

- A. Elderly Housing Complex: One (1) or more dwelling units intended exclusively for occupancy by elderly persons or couples (elderly as defined in accordance with applicable federal regulations and housing types E through M in this section), wherein each dwelling unit shall contain not less than seven hundred (700) square feet of living space and each complex shall be located on a single parcel or lot of land.
- B. Elderly, Handicapped or Disabled Person: A person who is at least 62 years old. The term elderly also means persons with the following handicap or disabilities:
 - 1. Handicapped - inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which:
 - a. has lasted or can be expected to last for a continuous period of not less than 12 months; or which can be expected to result in death;
 - b. substantially impedes the ability to live independently; and
 - c. is of such nature that such ability can be improved by more suitable housing conditions.

In the case of a blind person who is at least 55 years old (within the meaning of "blindness" as determined in Section 223 of the Social Security Act), and who is unable because of the blindness to engage in substantially gainful activity requiring skills or

abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

2. Disabled: in the case of developmental disability, a person with a severe, chronic disability which:
 - a. is attributable to a mental or physical impairment;
 - b. is manifested before the person attains age 22;
 - c. is likely to continue indefinitely;
 - d. results in substantial functional limitations in three or more of the following areas of major life activity:
 - i. self-care,
 - ii. receptive and expressive language,
 - iii. learning,
 - iv. mobility,
 - v. self-direction,
 - vi. capacity for independent living,
 - vii. economic self-sufficiency; and
 - viii. reflects the person's need for a combination and sequence of special, interdisciplinary or generic care or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.
- C. Seniors: Persons age 55 and older. Housing specifically designed for Active Adults aged 55 and older. The Town has eliminated this category of housing as an allowed use in all Pelham zoning districts due to a significant number of such units being constructed and the severe lack of housing designed for Elderly citizens and those who need assisted living accommodations.
[Amended by STM 6-24-17]
- D. Elderly: Persons age 62 and older, as defined in federal regulations.
- E. Elderly Housing: Any of a variety of housing types or housing units intended exclusively for use and occupancy by persons aged 62 years and older. Such housing may include, active adult facilities; independent living facilities; continuing care retirement communities (CCRC); assisted living facilities (ALF); congregate care facilities; nursing homes; and, skilled nursing facilities (SNF).
- F. Elderly Housing Project: One (1) or more buildings situated on contiguous parcel(s) of land and containing elderly housing dwelling units. The age restriction contained within 307-51 F applies.
[Amended 3-13-07 ATM]
- G. Elderly Community: A community or living facility designed specifically for the interests of persons age sixty-two (62) and older, which typically contains recreational amenities and support services for elderly adults who are healthy, active, and capable of completely independent living. The age restrictions contained within 307-51 F apply. [Amended 3-13-07 ATM]

- H. Independent Living Facilities: Housing which groups elderly residents for the purpose of social interaction and mutual support in a common interest community. Group facilities may be provided on premises for recreation and social interaction, but only limited support services are typically provided. [Amended by STM 6-24-17]
- I. Continuing Care Retirement Community (CCRC): A variety of housing options to meet the spectrum of needs and interests ranging from active elderly citizens through assisted living. These often include on-premises skilled nursing facilities. CCRC's where a primary feature is the provision of "lifetime" supportive services at each stage of an elderly person's later life.
- J. Assisted Living Facility (ALF): Housing for frail elderly persons, typically age 75 to 85, who require limited supportive services for their daily living activities. ALF's typically require residents to be mobile and capable of performing most routine tasks.
- K. Congregate Care Facility: A congregate care facility is a group living facility for the elderly who may or may not require assistance with daily living. Congregate care facilities tend to be limited in size and scope of services, often providing more intensive services than can be provided in an ALF, but requiring residents to have at least partial mobility and reasonably good health.
- L. Nursing Home: A group living facility in which semi-skilled, rehabilitative nursing services are provided for patients who have impaired mobility or health problems of a limited duration. Nursing homes may or may not cater exclusively to elderly patients, and may provide rehabilitative services for patients of all ages.
- M. Skilled Nursing Facility (SNF): A group living facility providing extended nursing care exclusively to elderly patients. SNF's are specifically defined under federal regulations and are regulated through the New Hampshire Department of Health under criteria established for a Certificate of Need.
- N. Handicapped Accessible: Meeting the design requirements of the "Barrier-Free Design Code for the State of New Hampshire" and/or the Uniform Federal Accessibility Standards (UFAS).
- O. Net Area: Contiguous useable land excluding wetlands and land with slopes greater than 25%.
- P. Maximum Project Density: The total number of bedrooms that the subject site can support, based upon the development capability of the subject site and calculated in accordance with the provisions of this Section and 307-52. [Amended 3-13-07 ATM]

307-51 Requirements for complex

Each elderly housing complex shall meet the following requirements:

- A. It will be located on a single, undivided parcel or lot of land.
- B. The number of units shall be established by compliance with Section 307-52 of this ordinance. [Amended 3-13-07 ATM]
- C. Each dwelling unit within the complex shall contain at least seven hundred (700) square feet of living space.
- D. Each dwelling unit shall have no more than two bedrooms, and shall be specifically designed for occupancy by the elderly providing for such things as emergency lighting, exits, fire safety equipment, and adequate structural design features to permit handicapped accessibility such as handicap ramps, etc.

- E. Residential facilities designed for exclusive occupancy by elderly citizens, as a minimum, must meet federal regulations for such facilities.
- F. Occupancy of each unit shall be restricted to persons sixty-two (62) years and older, with the following exceptions: **[Amended by STM 6-24-17]**
 - 1. An adult caregiver(s) over the age of twenty-one (21), if their presence is a reasonable accommodation to the care or well-being of a disabled or elderly person under the Fair Housing Act and the caregiver would not be living in the unit except to provide such reasonable accommodating supportive services. The caregiver has no right to live in the unit if the tenant in need of support moves out.
 - 2. Employees of the elderly housing project (and family members living in the same unit) who are under sixty-two (62) years of age, provided the employees perform substantial duties related to the management or maintenance of the project's facilities and such occupancy is allowed by federal law or regulation.
 - 3. Elderly Housing with the age restriction set forth as that term is defined above in Section 307-50.E.
- G. Each Elderly Housing complex shall provide not less than 10% of the ~~lot~~ buildable land (as described in 307-52) as open space for use by the residents for outside social and/or recreational purposes and shall be independent from the small areas of land located between units and those areas required for buffer(s).

307-52 Site Requirements [Amended 3-13-07 ATM, entire section]

Every elderly housing complex must be located on a site that meets the following minimum requirements:

- A. Minimum Lot Size: The site shall have a minimum net area of not less than ten (10) contiguous acres at least five (5) acres of which shall not contain poorly or very poorly drained soils as defined by the Site Specific Soils Mapping Standards for New Hampshire and Vermont. No portion of the ten (10) acre minimum shall contain land with a slope in excess of 25%, land located within any high-tension electrical or high-pressure gas line easement, or land located within the limits of the 100-year flood as defined by the Flood Insurance Maps prepared by the National Flood Insurance Administration. Land located within a Wetland Conservation District buffer may be counted towards the minimum lot size calculations.
- B. Density Criteria: The site shall provide at least 15,000 square feet of land area for each dwelling unit. No part of the 15,000 square feet per unit minimum shall include: **[Amended by STM 6-24-17]**
 - 1. land containing poorly or very poorly drained soils as defined by the Site Specific Soils Mapping Standards for New Hampshire and Vermont, and;
 - 2. land with a slope in excess of 20%, and;
 - 3. land areas within any high-tension electrical or high-pressure gas utility line easement, (areas located on opposite sides of any high tension electrical easement shall not be considered contiguous for the purposes of this section)
 - 4. land within a ledge or bedrock area covered with less than two feet of pre-existing naturally occurring non-wetland soils, and;
 - 5. land areas located within a Recreation, Conservation and Agriculture District, and;
 - 6. land areas located outside of the corporate limits of the Town of Pelham, and;

7. land within the limits of the 100-year flood as defined by the Flood Insurance Maps prepared by the National Flood Insurance Administration, and.

This density criteria is not intended to limit a developer's options to cluster or place separate units within the overall site, except that no unit (clustered or separate) shall be placed within any land area described in subparagraphs one (1) through seven (7).

- C. Frontage Requirement: Every elderly housing complex shall have 50 continuous feet of frontage on a Class V or higher public road. The 50 feet of public road frontage must be accessible to police, fire and medical emergency vehicles without those vehicles first having to leave the corporate limits of the Town of Pelham.
- D. Set Back Requirement: All parking areas shall be set back from the nearest lot line a minimum of fifty (50) feet. All buildings shall be set back from the lot's boundary lot lines a distance of one hundred (100) feet. The Planning Board may require additional buffering if the natural vegetated buffer within the 100-foot setback is deemed by them to be insufficient. [Amended by STM 6-24-17]

307-53 Plan Approval

- A. Each proposed elderly housing complex must receive site plan approval from the Pelham Planning Board in accordance with its Subdivision Regulations.
- B. The Planning Board shall review all applications for housing developments for the elderly according to the above procedures and approve or deny such applications and require such covenants or legal restrictions they deem necessary to insure the intent of the ordinance.
- C. Each plan for an elderly housing complex must:
 1. Respect the integrity of adjacent single-family neighborhoods and, to the extent feasible, minimize any conflicts with the character of the existing neighborhood.
 2. The design and site layout of the development shall maximize the privacy of the dwelling units, preserve the natural character of land where feasible, provide for the appropriate separation of parking and living areas as determined by the specific use, and consider such factors as orientation, energy usage, view, etc.
 3. The development shall be landscaped so as to enhance its compatibility with the Town with emphasis given to the use of existing natural features where possible.
 4. The Planning Board may require sufficient landscaped or naturally vegetated buffers for adjacent uses. Buffers shall be maintained to provide continued screening.
 5. Performance Bond and other legal data shall be submitted as required by the Planning Board to insure the completion of streets, buffers, and amenities in accordance with the accepted plans and the subdivision regulations of the Town of Pelham as adopted or hereafter amended.

307-53-1 Evaluation Criteria [Amended 3-13-07 ATM]

In considering plans submitted under this ordinance, the Planning Board shall take into consideration the public health, safety and general welfare and the comfort and convenience of the public in general and the residents of the immediate neighborhood in particular and shall make any appropriate conditions and safeguards in harmony with the general purpose and intent of this ordinance and particularly in regard to achieving:

- A. Maximum safety of traffic access and egress, with minimum impact on the capacity of existing roads and sufficient parking areas to provide for adequate off-street parking.
- B. Reasonable screening of all parking lots, service areas, and multi-family housing developments from the view of adjacent residential properties and streets.
- C. Installation of public improvements and amenities, at the expense of the applicant, to assist in the establishment of a sound neighborhood environment. Such improvements shall include, but shall not be limited to, sidewalks and street trees, extension of utilities and, when deemed necessary, improvements to existing roadways and/or drainage systems in order to adequately serve the proposed project. [Amended 3-13-07 ATM, Amended by STM 6-24-17]
- D. Conformance of the building and all related signs and structures to the properties of the aesthetic character of the area, as determined by consideration of architecture, building size and type, scale of lot coverage, and consistency of uses in the immediate area.
- E. Continuation of existing trails and establishment of new trails including interconnections with pedestrian walkways between abutting or adjacent parcels. [Amended 3-13-07 ATM]

307-53-2 Development Standards.

- A. Elderly facilities must be served by municipal water and sewer, by private systems suitable for community use, or by individual septic systems and wells approved by the Planning Board and the state of New Hampshire.
- B. Facilities designed as dwelling units within the district may have a maximum of two bedrooms.
- C. Open space shall consist of no less than 30% of the lot area and shall be protected by covenants, recorded with the plans, and deed restrictions. Open space shall include all land areas without building structures, impervious surfaces (other than porous pavement), and slopes greater than twenty (20%). No more than ten percent (10%) of the open space can be poorly or very poorly drained soils as defined by the Site-Specific Soils Mapping Standards for New Hampshire and Vermont. At least 10% of the open space shall be beneficial to the residents of the complex for walking trails or other passive recreational uses. [Amended 3-13-07 ATM]
 - 1. Entrances. Building entrances must comply with all current accessibility regulations. Building should be designed with entrances that are barrier free for the intended residential uses. [Amended by STM 6-24-17]
 - 2. No building shall contain more than six (6) dwelling units, except that the Planning Board may permit more than six (6) units per building when, in the Board's sole discretion, such increase provides specific, substantial benefits consistent with the purpose and intent of this Ordinance;
 - 3. Where there will be more than one (1) building on a lot, the following minimum horizontal separation between units shall apply, provided NFPA standards are met to the satisfaction of the Authority Having Jurisdiction (AHJ): [Amended 3-11-14 ATM]
 - a. Detached single unit structure – twenty (20) feet
 - b. Duplex, two-unit structure – thirty (30) feet
 - c. Three to six-unit structure – forty (40) feet

The Planning Board may require a greater separation where topography or other unique characteristics of the site or the development will affect:

- (1) the use of emergency equipment between buildings;
 - (2) the privacy or aesthetics of the unit placement;
4. All units within a building shall have at-grade access and shall be fully ADA compliant; **[Amended by STM 6-24-17]**
 5. No unit shall contain more than two (2) bedrooms;
 6. Units may occupy two (2) floors, provided that at least one bedroom and one full bathroom must be situated on the floor containing the principal access and main living area for the unit.
 7. Parking for visitors and guests will be provided as required by the Pelham Planning Board.
 8. Sidewalks on at least one side of each roadway/driveway within the interior of the complex shall be provided to allow for and encourage safe pedestrian flow. **[Added 3-13-07 ATM]**
 9. All units shall be serviced by sprinklers. Additional fire suppression water supply, such as cisterns, shall be required and located at the direction of the Fire Chief or his appointed inspector. **[Added 3-13-07 ATM]**
 10. If the Elderly Housing Units are single-unit buildings and or duplex units a clubhouse is required with adequate interior space and parking for social activities and Homeowner's Association meetings at the discretion of the Planning Board, of a size consistent with New England region planning norms for this use. The clubhouse shall have interior space and parking to accommodate social activities and homeowner/condominium owner meetings. **[Added by STM 6-24-17]**

307-53-3 Additional Criteria for Approval

It is intended under this Section that the Applicant comply with applicable state/federal law which imposes similar requirements. To the extent that a state/federal regulatory agency concludes that the Applicant has not fully complied with this Section, the Applicant must comply with such state and federal requirements.

Dwelling units shall be subject to any applicable elderly housing impact fee which shall be assessed either in conjunction with Planning Board approval or upon application for a building permit as is authorized by RSA 674:21.

Any site on which an elderly housing project is proposed shall be reviewed with respect to the proposed construction and design of the elderly housing project containing the usual amenities and living aids found in housing designed for use by the elderly.

All Elderly facilities are required to be inspected by the Town's Building Inspector, Health Officer, and Life Safety Officer for specific criteria required by them in providing a safe environment for the elderly. It is recommended that applicants meet with these individuals early in the design process to understand the codes and requirements they will need to meet including the topography and other characteristics of the site which must be suitable for the type of development being proposed to ensure that conflicts with the character of adjacent neighborhoods will be minimal. [Amended 3-13-07 ATM]

The design and layout of the development shall emphasize the rural character of the town, maximize the privacy of the dwelling units, preserve the natural character of land, and consider such factors as orientation, energy usage, views, etc.

307-53-4 Other Provisions

- A. Interpretation: To the extent that the specific requirements of this Elderly Housing Ordinance are inconsistent with any other requirements contained in the Zoning Ordinance, the requirements imposed herein shall govern and control an Elderly Housing proposal. To the extent that specific requirements imposed herein are inconsistent with or in conflict with the requirements of the State of New Hampshire or the requirements of the Federal Government with respect to the operation or construction of an elderly housing project, such State or Federal requirements shall supersede the requirements of this Ordinance.
- B. Legal Documents Required: The Planning Board shall require such covenants, legal restrictions, or maintenance schedules that it deems necessary to insure the intent of this ordinance. The Planning Board shall require review and approval of any such documents by legal counsel to insure that the form and substance of such documents is sufficient to achieve and preserve the requirements of this Ordinance. The provision and review of any documents required hereunder shall be at the Applicant's expense. [Amended 3-13-07 ATM]
- C. Assurances of Elderly Residency: The Applicant shall provide deed restrictions, use limitations, covenants, or some other legally enforceable instrument, which shall permanently restrict occupancy of the housing facilities to persons who meet all applicable restrictions regarding age as required by this ordinance. Said assurances shall include provisions for: [Amended 3-13-07 ATM]
 - 1. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner(s) or manager(s) to provide housing for persons sixty-two (62) years of age or older; and
 - 2. Annual verification of compliance with the age restrictions by reliable surveys and affidavits. Notice of the results of the annual verification process is to be provided to the Planning Department. [Amended 3-13-07 ATM, Amended by STM 6-24-17]
- D. Performance Guarantees Required: The Planning Board shall require that a restoration bond and/or such other legal assurances be submitted as are required to insure the completion of streets, buffers, amenities, or common area improvements, or offsite improvements in accordance with the approved plans and the Subdivision Regulations of the Town of Pelham. An escrow deposit shall be required for construction monitoring by the Planning Board's review engineer to assure the project is built according to an approved plan. [Amended 3-13-07 ATM]

307-54 Septic System

The septic system for any elderly housing complex shall comply with the minimum requirements imposed by the New Hampshire Water Supply and Pollution Control Commission for the size of the complex proposed. No portion of the leach field shall be less than seventy-five (75) feet from the well or wells which are to service the complex or any wells on adjoining properties.

307-55 Interpretation

To the extent the specific requirements in this Article are inconsistent or in conflict with any other requirements contained in this ordinance, the requirements imposed herein shall govern and control an elderly housing complex.

DRAFT

DRAFT