

An Ordinance to Retroactively Amend Chapter 145 (Land Use) of the Town of Wells to Change the Performance Standards Requirements for Congregate Care Facilities and Life Care Facilities, Related Definitions, and Uses Within the Residential A, Residential-Commercial, General Business and Rural Districts

NOTE: Proposed additions to existing Code sections are underlined.
Proposed deletions of existing Code sections are ~~crossed-out~~.
Other sections of the Ordinance are unchanged.

The Town of Wells hereby ordains and enacts “An Ordinance to Retroactively Amend Chapter 145 (Land Use) of the Town of Wells to Change the Performance Standards Requirements for Congregate Care Facilities and Life Care Facilities, Related Definitions, and Uses Within the Residential A, Residential- Commercial, General Business and Rural Districts” to read as follows:

Part 1: Article II (Word Usage and Definitions), § 145-10, entitled “Definitions” is hereby amended as follows:

§ 145-10. **Definitions.**

CARE PROVIDER

A person over the age of 18 who helps a resident of a Life Care Facility complete activities of daily living and who is responsible for the health and well-being of someone who may not be able to care for themselves due to illness, injury or disability.

CONGREGATE CARE FACILITY

A facility providing congregate housing dwelling units, together with the associated personal service businesses and amenities necessary for independent or semi-independent living which provides residents (who must be elderly persons or physically or mentally disabled persons) with housekeeping services, personal care and assisted living, transportation assistance, recreation activities and specialized shared services such as medical support services and physical therapy. ~~A congregate care facility may include single-family detached dwelling units, duplex or other multifamily units or buildings that contain multiple congregate dwelling units that exceed the multifamily limits under the Code of the Town of Wells, together with~~ The congregate care facility shall also include administrative offices and auxiliary accessory buildings necessary for the operation, care and maintenance of the property. ~~A congregate care facility may include a nursing home (as defined herein or by Maine law) or skilled care facility but such nursing care facility shall be licensed properly in accordance with the prescribed level of care to be provided by such nursing or skilled care facility.~~ A congregate care facility may include a physician's office and a pharmacy ~~but such office as well as the personal service businesses referred to above shall only~~ which may be offered to residents of the congregate care facility and ~~may not be open to~~ the public at large. Congregate care facilities shall include shared community space and shared dining facilities. ~~for common dining, including on-site kitchen facilities suitable for~~

~~preparation of meals for common dining. The common dining room shall be capable of providing seating for at least 60% of the total number of residents at the congregate care facility, less the number of such residents who may be living in a nursing home or skilled care facility and do not take meals other than in their rooms or some other supervised dining arrangement. Congregate care facilities containing three or more dwelling units or three or more congregate dwelling units shall be considered and reviewed as subdivisions under the Code of the Town of Wells.~~

DWELLING UNIT, CONGREGATE HOUSING DWELLING UNIT

One or more rooms designed and equipped for occupancy solely by ~~only one family, or by a single individual~~ elderly persons or physically or mentally disabled persons, containing living, sleeping, bathing and sanitary facilities and which may include ~~cooking~~ kitchen facilities: and are within a Congregate Care Facility.

DWELLING, MULTIFAMILY

A residential use consisting of three or more dwelling units in one building. ~~A Congregate housing dwelling units complex or building~~ shall not be considered a multifamily dwelling.

ELDERLY PERSON - a person 65 years or older or a couple that constitutes a household and at least one of whom is 65 years or older.

ELDERLY HOUSING

~~Housing units intended for and occupied solely by persons 55 years of age or older or an elderly couple one of whom is 55 years of age or older. Elderly housing may have the same common amenities as congregate housing. [Amended 4-26-1996]~~

HOUSING, CONGREGATE

~~A residential facility occupied exclusively by elderly persons that provides shared community space and shared as well as individual in-apartment dining facilities and normally also provides residents with housekeeping services, personal care and assisted living, transportation assistance, recreation activities and/or specialized shared services such as medical support services and physical therapy. By "elderly" persons it is meant a person 55 years or older or a couple that constitutes a household and at least one of whom is 55 years or older. By "shared community space" is meant space designed to be used in common for the enjoyment and leisure of residents of the facility, such as reading rooms, sitting rooms, recreational rooms, rooms for entertaining guests and exercise rooms. By "shared dining facilities" is meant a room or rooms designed for the serving of meals to residents sitting together plus the kitchen facilities required to prepare the meals. Congregate housing buildings may include congregate dwelling units, and dwelling units in the same building. Congregate dwelling units and buildings containing only congregate dwelling units are not subject to the six dwelling unit per building restrictions found in § 145-48 of the Wells Code. [Amended 4-26-1996; 6-8-2010]~~

LIFE CARE FACILITY

A residential facility consisting of life care housing dwelling units for the transitional residency of elderly persons or physically disabled persons, ~~which includes all of the following: elderly housing, congregate housing and nursing home. [Amended 4-26-1996]~~ that provides shared community space and provides residents with housekeeping services, personal care and assisted living, transportation assistance, recreation activities and specialized shared services such as medical support services and physical therapy. Life care housing dwelling units are not considered a Multifamily Development and are not subject to the restrictions found in § 145-48 of the Wells

Code. Three or more life care housing dwelling units shall be considered and reviewed as subdivisions under the Code of the Town of Wells.

LIFE CARE FACILITY DWELLING UNIT

One or more rooms designed and equipped for occupancy by elderly persons or elderly person and nonelderly spouse or physically or mentally disabled persons or disabled person and nondisabled spouse or legal guardian, containing living, sleeping, bathing and sanitary facilities and kitchen facilities, and are within a Life Care Facility.

MULTIFAMILY DEVELOPMENT

Any combination of buildings containing a total of three or more dwelling units on one lot. The term "multifamily development" does not include a mobile home park, or any congregate **housing care** facility dwelling units or life care facility dwelling units.

NURSING HOME

A facility with beds licensed by the Maine Department of Human Services and in which nursing care and medical services are performed under the general direction of persons licensed to practice medicine in the State of Maine for the accommodation of convalescent or other persons who are not in need of hospital care but do require licensed nursing supervision and related medical services. The Nursing Home shall be licensed properly in accordance with the prescribed level of care to be provided by such nursing or skilled care facility.

PHYSICALLY OR MENTALLY DISABLED PERSON

An individual that has a physical or mental impairment condition that substantially limits one or more of the major life activities as further defined in 5 M.R.S.A. § 4553 and § 4553-A.

SHARED COMMUNITY SPACE

A space designed to be used in common for the enjoyment and leisure of residents in Congregate Care Facilities or Life Care Facilities, such as reading rooms, sitting rooms, medical exam or treatment rooms, recreational rooms, rooms for entertaining guests and exercise rooms.

SHARED DINING FACILITIES

A room or rooms designed for the preparation and serving of meals to residents in a Congregate Care facility and includes areas for sitting together and State licensed kitchen facilities.

Part 2: Article V (District Regulations), § 145-21, 24, 26 and 30, entitled “Residential A, Residential-Commercial, General Business, and Rural Districts” is hereby amended as follows:

§ 145-21. Residential A District.

C. Permitted uses requiring the approval of a site plan. The following uses are permitted upon obtaining site plan approval and any required permits from the Code Enforcement Officer:

- (1) Animal husbandry on lots larger than 25 acres.
- (2) Cemetery larger than 20,000 square feet in area.

- (3) Church.
- (4) Congregate care facility. ([See §145-58.1](#))
- (5) Day-care home.
- ~~(6) Elderly housing.~~
- ~~(7) Housing, congregate.~~
- ~~(6)~~(8) Life care facility. ([See §145-58.](#))
- ~~(7)~~(9) Medical care facility, excluding hospitals.
- ~~(8)~~(10) Municipal facility.
- ~~(9)~~(11) Museum not exceeding 5,000 square feet in floor area.
- ~~(10)~~(12) Nursing home.
- ~~(11)~~(13) Public utility facility.
- ~~(12)~~(14) Recreation, active.
- ~~(13)~~(15) Recreation, low-intensity commercial.
- ~~(14)~~(16) School, public and private.
- ~~(15)~~(17) School, vocational-technical served by public water and sewer and located west of Route 1, north of Buzzel Road, east of the turnpike and south of Route 109.

§ 145-24. Residential-Commercial District.

C. Permitted uses requiring the approval of a site plan. The following uses are permitted upon obtaining site plan approval and any required permits from the Code Enforcement Officer:

- (11) Club.
- (12) Congregate care facility. ([See §145-58.1](#))
- (13) Day-care home.
- (14) Day-care center/nursery school.
- (15) Drug abuse shelter. (Note: A drug abuse shelter will only be permitted on a lot within this district which lot either has frontage along Route One, or is located within 150 feet of Route One.)
- ~~(16) Elderly housing.~~
- ~~(16)~~(17) Freestanding residential detoxification program. (Note: A freestanding residential detoxification program facility will only be permitted on a lot within this district which lot either has frontage along Route One, or is located within 150 feet of Route One.)
- ~~(17)~~(18) Function hall without commercial-type cooking facilities.
- ~~(19) Housing, congregate.~~
- ~~(18)~~ Life care facility. ([See §145-58.](#))
- ~~(19)~~(20) Medical care facility, excluding hospitals.
- ~~(20)~~(21) Municipal facility.
- ~~(21)~~(22) Museum.
- ~~(22)~~(23) Neighborhood convenience store, excluding sale of motor vehicle fuels and including a restaurant area not exceeding 15 seats.
- ~~(23)~~(24) Nursing home.
- ~~(24)~~(25) Private non-medical institution (PNMI).
- ~~(25)~~(26) Public utility facility.
- ~~(26)~~(27) Recreation, active.
- ~~(27)~~(28) Recreation, medium intensity commercial.
- ~~(28)~~(29) Restaurant, standard, containing 36 seats or fewer and located west of Route 1 and east of the turnpike on Route 109.
- ~~(29)~~(30) School, public and private.

§ 145-26. General Business District.

C. Permitted uses requiring the approval of a site plan. The following uses are permitted upon obtaining site plan approval and any required permits from the Code Enforcement Officer:

- (12) Club.
- (13) Congregate care facility. ([See §145-58.1](#))
- (14) Day-care home.
- (15) Day-care center/nursery school.
- (16) Drug abuse shelter
- ~~(17) Elderly housing. [Amended 4-26-1996]~~
- ~~(17)~~(18) Freestanding residential detoxification program.
- ~~(18)~~(19) Function hall.
- ~~(19)~~(20) Hotel/motel. (See § 145-52.)
- ~~(21) Housing, congregate.~~
- ~~(20)~~(22) Life care facility. ([See §145-58.](#))
- ~~(21)~~(23) Medical care facility.
- ~~(22)~~(24) Municipal facility.
- ~~(23)~~(25) Museum.
- ~~(24)~~(26) Neighborhood convenience store.
- ~~(25)~~(27) Nursing home. [Amended 4-26-1996]
- ~~(26)~~(28) Parking lot, commercial.
- ~~(27)~~(29) Private non-medical institution (PNMI).
- ~~(28)~~(30) Public transportation shelter.
- ~~(29)~~(31) Public utility facility.
- ~~(30)~~(32) Recreation, active.
- ~~(31)~~(33) Recreation, high-intensity commercial.
- ~~(32)~~(34) Recreation, low-intensity commercial.
- ~~(33)~~(35) Recreation, medium intensity commercial.
- ~~(34)~~(36) Registered medical marijuana dispensary. No more than three registered medical marijuana dispensaries shall be allowed to be approved at any given time in the Town of Wells.
- ~~(35)~~(37) Restaurant, standard.
- ~~(36)~~(38) Restaurant, fast-food.
- ~~(37)~~(39) Sawmill producing less than 100,000 board feet of lumber per year.
- ~~(38)~~(40) School, public and private.
- ~~(39)~~(41) Tent and recreational vehicle park. (See § 145-50.)
- ~~(40)~~(42) Transportation facility.

Part 3: Article VII (Performance Standards), § 145-58, entitled “Life care facilities” is hereby amended as follows:

§ 145-58. Life care facilities.

A. A life care facility must be served by public sewer and public water.

B. A life care facility may include one or more of the following as accessory uses:

1. Daycare [Center](#) for persons age [65 or older, or for physically or mentally disabled persons](#).

2. Daycare Center for children of employees of the life care facility, personal service business and/or retail business for residents of the life care facility.
- C. The minimum lot size for a Life Care Facility shall be 100,000 square feet of net area. Notwithstanding the dimensional requirements of Article V of this chapter, the maximum density for ~~the elderly housing portion of the~~ life care facility dwelling units is eight (8) units per net acre ~~, and the maximum density for the congregate housing portion is 15 units per net acre.~~
- D. ~~The elderly housing units, congregate housing units and nursing home portion of the~~ Life care facility dwelling units are exempt from Multifamily Development standards § 145-48B of this chapter.
- E. Each life care dwelling unit ~~of the elderly housing portion~~ of a life care facility must contain at least 600 square feet of gross floor area and may contain no more than ~~4,500~~ 1,850 square feet of gross floor area. ~~Each dwelling unit in the congregate housing portion of a life care facility must contain at least 300 square feet of gross floor area and may contain no more than 550 square feet of gross floor area.~~ Each life care unit shall have a maximum of 2 bedrooms. Each life care unit shall have a minimum of a 1 car ADA garage. All lifecare dwelling units and shared community space in the Life Care Facility shall be protected by the use of fire suppression sprinkler systems.
- F. Overnight guests are allowed to stay with the occupants of the ~~elderly housing and congregate portions of a~~ life care facility dwelling units but for no longer than eight consecutive nights or eight nights during any one-month period, except as allowed under Subsection G.
- G. ~~One~~ Two adult care providers over the age of 18 ~~is~~ are allowed to occupy a ~~congregate unit or an elderly housing~~ life care facility dwelling unit provided that person's presence is required to care for one of the elderly or physically or mentally disabled occupants.
- H. ~~Neither the elderly housing units, the congregate housing units nor the nursing home rooms~~ No life care facility dwelling unit may be sublet.
- I. Continuing qualification of occupants. If, because of the death, relocation (not by divorce), or absence of any person of a household over the age of 65 or absence of a disabled person, a unit would no longer qualify as a Life Care Unit, the surviving or remaining spouse or guardian who uses the unit as a principle residence may continue to occupy the Life Care Unit provided that no additional person who does not qualify shall occupy the unit.
- J. Buildings and structures shall be separated by at least 15 feet. In a life care facility, buildings may be connected by use of walkways, covered and/or enclosed, but such a connection shall not be considered as causing two or more buildings or structures to be considered as one.
- K. Two parking spaces per life care dwelling unit shall be provided.
- L. In any life care facility development abutting a residential use in a residential or rural zoning district, the setback shall be equal to at least two times the required structure setback or 25 feet, whichever is greater (e.g., required fifteen-foot setback x 2 = 30 feet). This setback requirement shall not be required when the lot adjacent to any proposed life care facility is undeveloped. In such case, the normal setback requirements of the zoning district in which the facility is to be located shall govern.

M. All life care housing dwelling units and shared community space within a life care facility shall be constructed as ADA accessible units and shall meet the requirements of the Americans with Disabilities Act requirements and be designed by a licensed design professional:

1. Units shall include a compliant bedroom and full compliant bathroom on the first floor.
2. Accessible floor and ground surfaces, kitchen facilities, bathroom facilities, laundry facilities, fire alarm systems, electrical switches and outlets.
3. Accessible railings and grab bars in appropriate locations.
4. A minimum of one accessible entrance at an exterior door.
5. Accessible hardware on doors.
6. Accessible sidewalks, walkways, ramps, and parking shall be concrete or pavement and a minimum of 5 feet in width.
7. Accessible public use or shared areas.
8. All second and third floors of buildings to be compliant and designed to accommodate potential installation of elevators or chair lifts.
9. Life Care dwelling units shall have a minimum of a 1 car garage. The garage shall include a ramp into the dwelling unit to meet ADA requirements.
10. Exterior alarm klaxon systems installed.
11. Generators or other form of back up power supply installed for each building other than small accessory structures.

N. Life Care Facilities shall provide common or shared buildings for the following on-site amenities to be available to residents of the life care facility and not the general public.

1. Housekeeping services to support independent or semi-independent living.
2. Shared community space shall consist of meeting or sitting rooms, medical exam or treatment rooms (1 exam/treatment room per 10 life care dwelling units), recreational rooms or spaces, clubhouse, pools with pool houses or combination of facilities as determined by the Planning Board based on the number of life care dwelling units and services.
3. Personal care services.
4. Assisted living and transportation services.
5. Sidewalks along proposed streets required.
6. Sidewalks meeting the standards of Chapter 201 shall be required along any street frontage along Route One, Route 109, Route 9A, Route 9B and Route 9.

Part 4: Article VII (Performance Standards), § 145-58.1, entitled “Congregate care facilities” is hereby amended as follows:

§ 145-58.1. Congregate care facilities.

A. Congregate care facilities are allowed subject to the following performance standards in addition to the requirements of the districts in which the developments are located.

B. ~~Congregate housing and congregate housing communities~~ Congregate care facilities may be placed only on properties served by public water (defined as water provided by the Kennebunk, Kennebunkport & Wells Water Company or its successors) and public sewer (defined as sewerage services provided by the Wells Sanitary District or its successors).

C. Notwithstanding the dimensional requirements for dwelling units within a particular zoning district, congregate housing dwelling units in a congregate care facility ~~other than single-family or duplex units~~, shall be permitted at one unit for every 2,500 square feet of net area. A minimum of 4 congregate housing dwelling units shall be located in each building containing

congregate housing dwelling units. Congregate housing dwelling units are not subject to the Multifamily Development standards of 145-48. Single-family or duplex two-family dwelling unit (duplex) and multifamily dwelling units within such a complex a congregate care facility shall not be permitted. only at the underlying density for a dwelling unit within the zone.

D. The minimum lot size for a congregate care facility shall be 200,000 square feet net area in contiguous ownership. In the event that a developer will own a lot or lots separate from the lot on which the buildings of the congregate care facility will be located (e.g. for parking, see below), the net area square footage of the noncontiguous lots shall not be counted in computing the 200,000 square foot minimum lot size.

E. A vegetated buffer which includes ~~fencing or~~ live landscaping or vegetation of at least 15 feet in width along all lot boundaries of developed properties that provides an actual which creates a visual screen along the lot lines ~~of at least 15 feet in width along all lot boundaries of developed properties~~ shall be required. The buffer strip shall not contain parking areas or structures but may contain a perpendicular access driveway(s) or road(s) to connect with existing streets. Said visual screening shall consist of a continuous border of staggered shrubbery at least six feet in height, trees or, if required by the Planning Board, solid fencing an average of six feet in height. Said visual screening shall be owned in fee, managed and maintained by the owner or owners of the development.

F. All buildings containing congregate housing dwelling units or shared community space or dining facilities shall be protected by use of fire suppression sprinkler systems.

G. Buildings shall be separated by at least 15 feet. In a congregate care facility, buildings may be connected by use of walkways, covered and/or enclosed, ~~and in such a development only and only for zoning purposes and not for building code purposes, and nowhere else within the Town of Wells, but~~ such a connection shall not be considered as causing two or more buildings or structures to be considered as one. All walkways shall be concrete or pavement.

H. Parking.

1. Congregate care facilities shall have at least one parking space for each employee on the two largest shifts combined.
2. The Planning Board may seek the services of a consultant in parking matters, and the applicant shall be responsible for payment of any and all fees of such consultant.
3. The Planning Board may, subject to conditions that it may impose, permit some, but not all, of the parking for a congregate care facility to be located other than on the lot or lots which comprise such facility, and there shall be restrictions to this effect placed in all of the deeds associated with the congregate housing development.
4. Where the Planning Board makes written findings of fact that there are special circumstances of a particular lot, it may waive portions of the parking requirements contained herein, to permit more practical and economical development, provided that the public health, safety and welfare are protected. Any waivers granted hereunder are not a variance and may be granted by the Planning Board in the absence of hardship. In granting waivers to these parking requirements, the Board shall require such conditions as to assure that the objectives of these parking requirements are met. In the event of conflict between this subsection and any other provision of this chapter or any other ordinance, this subsection shall control.

I. On any lot divided by a zoning district boundary line, the lot coverage for any portion of the lot lying within a specific zoning district shall not exceed the permitted lot coverage for that district.

J. In the event that the owner(s) of a congregate care facility wish(es) to convert such a facility to some other residential use, such conversion will be subject to review and approval by the Planning Board of the Town of Wells. Any such conversion will be subject to the density requirements for dwellings within the district where the congregate care facility is located, and neither the Planning Board nor the Zoning Board of Appeals may change or alter such densities except as may be appropriate under the requirements for a ~~clustered subdivision~~ [Multifamily Development per 145-48](#). The limitations on multifamily dwellings and multifamily development as may exist in the Wells Code shall apply to any such conversion.

K. In any congregate care facility development abutting a residential use in a residential [or rural](#) zoning district, the setback shall be equal to at least two times the required structure setback or 25 feet, whichever is greater (e.g., required fifteen-foot setback x 2 = 30 feet). This setback requirement shall not be required when the lot adjacent to any proposed congregate care facility is undeveloped. In such case, the normal setback requirements of the zoning district in which the facility is to be located shall govern.

L. All congregate housing dwelling units within a congregate care facility shall be constructed with a minimum of 300 square feet of gross floor area and a maximum of 600 square feet of gross floor area. Congregate housing dwelling units shall be constructed as ADA accessible units and shall meet the requirements of the Americans with Disabilities Act requirements and be designed by a licensed design professional to meet the following standards:

1. Accessible floor and ground surfaces, kitchen facilities, bathroom facilities, laundry facilities, fire alarm systems, electrical switches and outlets.
2. Accessible railings and grab bars in appropriate locations.
3. Accessible entrance at exterior door or garage.
4. Accessible hardware on doors.
5. Accessible sidewalks, walkways, ramps, and parking shall be concrete or pavement and a minimum of 5 feet in width.
6. Accessible public use or shared areas.
7. All two and three story buildings to be compliant and constructed with elevators.
8. All units shall have alarm systems that are linked and monitored.
9. Generators or other form of back up power supply installed for each building other than small accessory structures.

M. Congregate Care Facilities shall provide common or shared buildings for the following on-site amenities to be available to residents of the congregate care facility and not the general public.

1. Personal Service Business uses to support independent or semi-independent living.
2. Congregate care facilities shall include shared community space and shared dining facilities.
 - a. The shared dining facilities shall include a State licensed kitchen and shall be capable of providing seating for at least 60% of the total number of residents at the congregate care facility, less the number of such residents who may be living in a nursing home on the property and do not take meals other than in their rooms or some other supervised dining arrangement.
 - b. The shared community space to consist of meeting or sitting rooms, recreational rooms or spaces, entertainment spaces, pools or pool houses.
3. Business Office uses or Medical Clinic to provide space for physicians, nurses, therapists and other associated medical needs to be conducted. A pharmacy may also be permitted.

- 4. [Business Office uses to provide space for congregate care facility property management and maintenance.](#)

[N. No dwellings or congregate housing dwellings in a congregate care facility may be sublet.](#)

[O. Sidewalks meeting the standards of Chapter 201 shall be required along any street frontage along Route One, Route 109, Route 9A, Route 9B and Route 9.](#)

[P. Sidewalks along proposed streets required.](#)

Part 5: Retroactive Application of Ordinance Amendments.

Notwithstanding the provisions of 1 M.R.S.A. § 302 and regardless of the date on which these amendments are approved by voters, these amendments shall govern any and all applications for permits and approvals required under Chapter 145 (Land Use) of the Code of the Town of Wells that were received, or, that were pending before any official, officer, committee or board at any time on or after January 23, 2024.

Part 6: Effective Date.

This Ordinance shall take effect upon adoption by the Town Meeting.

Given under our hands this ____ day of _____, 2024.

THE SELECT BOARD OF THE TOWN OF WELLS:

John MacLeod III

Scott DeFelice

Kathleen Chase

Robert Foley

James N. Smith