

## **Article 208: ELDERLY HOUSING**

(Adopted 03/14/2006)

**208.1 AUTHORITY:** In accordance with RSA 674:21(c), (f), (h) and (k), this ordinance is adopted to permit the establishment and construction of affordable and market rate elderly housing in Kingston. Consistent with the provisions of RSA 674:21, the ordinance provides for a use incentive that permits increase densities and development flexibility.

**208.2 PURPOSE:** This ordinance seeks to address the housing needs of the elderly, and to encourage the development of such housing to meet the needs of persons who have lived in Kingston and who would like to continue to reside in Town, but who are no longer able or interested in residing in and maintaining a conventional residence. The ordinance also seeks to address the economic needs of those elderly who are unable to afford market rate housing in their retirement years. This ordinance is divided into two parts: Affordable Elderly Housing, which aims to provide housing for persons over the age of 55 who meet certain state and federal maximum income criteria and which generally appeals to retirees on a limited or fixed retirement income, and Market Rate Elderly Housing, which is housing restricted to occupancy by persons over the age of 55, but which has no income eligibility criteria. This ordinance encourages the development of elderly housing by permitting such housing to be developed at a unit density and with a certain amount of planning flexibility that is greater than that permitted for conventional single family housing development. The Townspeople recognize that one aspect of elderly housing development is that the housing built will continue to be put to this use in perpetuity, consistent with restrictive covenants allowed by state and federal law that permit occupation to be limited exclusively to persons over age 55. The effect of such age restricted occupation is that this housing will add no school aged children to the Town's school enrollment, yet such housing will be assessed for purposes of property taxation at the fair market value of such housing, thereby paying the full municipal, school, county and state property tax rates. The net effect of such assessment and taxation is to create a significantly

positive tax impact when measured against the demand for school and municipal services that elderly housing creates.

**208.3 DEFINITIONS:**

- A. Affordable Elderly Housing:** is housing where one hundred percent (100%) of the Units approved and constructed shall meet the guidelines of applicable state and federal affordable housing income eligibility criteria. Affordable Elderly Housing shall be designed and constructed in accordance with the State of New Hampshire Architectural Barrier Free Design Code, as amended. It shall be operated by or funded by a federal, state or non-profit program that provides below market rate housing as part of its purpose.
- B. Bedroom:** shall mean a room (other than a bathroom), with an interior door and closet.
- C. Market Rate Elderly Housing:** shall mean housing that is permitted and constructed without regard to market subsidies, or state or federal income eligibility considerations.
- D. Unit:** shall mean a single residential dwelling, with no more than two (2) bedrooms.

**208.4 AFFORDABLE ELDERLY HOUSING:**

- A. Location:** this use is permitted by a special use permit granted by the Planning Board as an overlay use in the portion of the R-34 zoning district that is SW of Route 125 and the R-33 zoning district.
- B. General Standards:** All Affordable Elderly Housing developments shall conform to the following standards:
  - 1. Dimensional and Density Requirements:
    - a. Maximum density: six (6) Units per acre of gross tract area excluding all wetlands as defined by this ordinance.
    - b. Minimum acreage: ten (10) acres
    - c. Maximum building height: thirty five (35') feet, measured at the top of the roofline.
    - d. Maximum building floors/stories: two (2)

- e. Minimum Lot Frontage: at least sixty (60') feet on a public road.
- f. Minimum Lot Setbacks: Setback requirements for exterior boundaries must be met; however, the dwelling units may be clustered within the gross tract area.
- g. All dwelling units shall have a minimum floor area of 600 square feet and the master bedroom shall be on the primary floor.

**C. Other Standards:**

1. Units shall be specifically designed to provide housing for elderly residents, and shall contain the usual amenities and living aids found in housing designed for use by the elderly. The applicant shall demonstrate that each Unit shall be designed to meet the needs and accessibility requirements of the elderly as reflected in HUD's Fair Housing Accessibility Guidelines. Units shall have a maximum of two bedrooms. Buildings shall be separated by a minimum space of thirty-five (35') feet. No individual Unit shall exceed 1,500 square feet of living space.
2. Parking facilities shall comply with existing site plan review regulations, unless the Planning Board authorizes waivers following submission of information showing a decreased need for on-site parking. The Planning Board may require land to be set aside for future expansion of parking facilities and may require a performance security be posted by the applicant to ensure its construction in the event actual parking demand exceeds the amount required to be constructed after a waiver has been granted.
3. Units may be owner-occupied or rented. However, all permanent resident/occupants of all Affordable Elderly Housing Units shall be at least 55 years of age. "Occupant" shall mean any person who stays overnight in a Unit for more than twenty-one (21) days in any sixty (60) day period or for more than thirty (30) days in any 12-month period. The over 55 age restriction shall not apply to persons who stay overnight to provide nursing or physical assistance care to a unit resident, or to related family members who are over the age of twenty-one(21) and who have a physical or mental disability as determined by applicable law.

4. The design and site layout of all such Affordable Elderly Housing developments shall compliment and harmonize with the rural character of the Town of Kingston, shall maximize the privacy of dwelling Units and preserve the natural character of the land.
5. All such Affordable Elderly Housing development shall make provision for pedestrian access within the development and, to the extent possible, to off-site community facilities.
6. All such Affordable Elderly Housing developments shall be landscaped to enhance their compatibility with surrounding areas, with emphasis given to the utilization of natural features wherever possible.
7. The perimeter of all such Affordable Elderly Housing developments shall be treated with a landscaped buffer zone of a minimum of twenty-five (25') feet which may consist in whole or in part of existing natural growth.
8. Existing trees and vegetation must be incorporated into the landscaped buffer and landscape design. Fencing alone shall not be considered an acceptable method of screening, but fencing may be an element of design.
9. The Planning Board may require that all roads within the development shall be privately owned and built according to Town standards.
10. The Planning Board retains the right to approve the specific road construction and width and structure layouts for the purpose of the health, safety, and welfare of the town as well as for efficiency and aesthetic variety and quality of design.
11. Conversion of Affordable Elderly Housing to other uses shall not occur unless the proposed use complies with all then applicable zoning and site plan regulations, even if such conversion requires the demolition of excess Units.
12. The Planning Board shall maintain and exercise the authority to approve or disapprove all proposed Affordable Elderly Housing developments. The Planning Board shall act reasonably in exercising such discretionary authority but shall take into consideration such factors, for example, as: the health, safety and general welfare of the citizens of Kingston; the aesthetic impact on immediately surrounding areas; whether the design is adequate to meet the unique needs of elderly residents; and whether the proposed development complies with the requirements of Kingston's

Subdivision and Site Plan Regulations, which provisions the Board may waive or relax in its discretion to encourage the development of this type of housing.

13. The Applicant/Owner shall incorporate a written enforcement mechanism satisfactory to the Planning Board and its legal counsel whereby on an annual basis, a written age based census of the existing Occupants shall be provided to the Planning Board. Upon any Unit change in ownership or tenancy, the age of any new occupants shall be given to the Planning Board within thirty (30) days of tenancy/ownership change. The applicant shall also provide an enforcement mechanism acceptable to the Planning Board and its legal counsel that the affordable housing units shall remain affordable for a period of no less than thirty (30) years.
14. Affordable Elderly Housing shall be exempt from Growth Control Regulations and School Impact Fees.
15. The provisions of the Affordable Elderly Housing shall supersede any other inconsistent or conflicting dimensional or density provisions of the Kingston Zoning Ordinance.

**208.5 MARKET RATE ELDERLY HOUSING:**

- A. Location:** this use is permitted by special use permit issued by the Planning Board as an overlay use in the R-33 zoning district.
- B. General Standards:** All Market Rate Elderly Housing shall conform to the following standards:
  1. Dimensional and Density Requirements:
    - a. Density: six (6) Units per acre.
    - b. Minimum acreage: twenty (20) acres.
    - c. Maximum Building height: thirty-five (35') feet, measured at the top of the roofline.
    - d. Maximum building floors/stories: two (2) (excluding basement). A master bedroom shall be located on the first floor.
    - e. Minimum Lot frontage: sixty (60') feet on a public road.
    - f. Minimum Lot Setbacks: Setback requirements for exterior boundaries must be met; however, the dwelling units may be clustered within the gross tract area.

- g. All dwelling Units shall have a minimum floor area of 600 square feet.

**C. Other Standards:**

1. Units shall be specifically designed to provide housing for elderly residents. Units shall have a maximum of two bedrooms, may not exceed thirty-five (35') feet in height, and may be either one or two stories. Buildings shall be separated by a minimum space of forty (40') feet, with an additional ten (10') feet of building separation for each additional Unit in a building. There shall be a maximum of four (4) Units per building. No individual unit shall exceed 2,400 square feet of living space.
2. Adequate on site space shall be provided for off-parking for two vehicles per Unit.
3. Except as noted in the proviso contained in this subparagraph, all such market rate elderly housing developments shall comply in all respects with the Town of Kingston's Site Plan Review Regulations and/or Subdivision Regulations, though the Planning Board may grant waivers from such regulations; provided, however, that any Growth Control regulations and School Impact Fees shall not apply to any Market Rate Elderly Housing developments.
4. Units may be owner-occupied or rented. However, all occupants of all Elderly Housing Units shall be at least 55 years of age. "Occupant" shall mean any person who stays overnight in a Unit for more than twenty-one (21) days in any sixty (60) day period or for more than thirty (30) days in any 12-month period. This over 55 age restriction shall not apply to persons who stay overnight to provide nursing or physical assistance to a unit resident, or to related family members who are over the age of twenty-one (21) and who have a physical or mental disability as determined by applicable law.
5. The design and site layout of all such Market Rate Elderly Housing developments shall compliment and harmonize with the rural character of the Town of Kingston, shall maximize the privacy of dwelling units and preserve the natural character of the land.
6. All such Market Rate Elderly Housing developments shall



2. In calculating common/open space area, the following shall not be included: public right-of-way, soils with slopes over 25%, and parking lots. For developments with interior lot lines, the areas inside the lot lines shall not be included in the open space calculations.

**208.6 Use of Common Land:**

- A.** Such common land/open space shall be restricted to recreational uses such as park lands, swimming pool, tennis courts, golf courses, walking trails or conservation. While the property setbacks are considered part of the common land/open space, none of the above uses, other than walking trails, shall be allowed within these areas, nor any other uses that would disturb the natural vegetation within these areas. These restrictions of the use of the common land/open space (including the landscaped buffered area), shall be stated in the covenants running with the land.
- B.** Access to Open Space/Common Land. Such common land shall have suitable access to a road or walking trail within the development.
- C.** This common open space shall be permanently restricted for recreation, open space or conservation uses. It shall not be re-subdivided but may contain accessory or utility structures and improvements necessary for the development or for educational or recreational use. The Planning Board reserves the right to approve, from the options below, the holder of open space rights. The open space or common land, or any portion of it shall be held, managed and maintained by the developer until it is owned, in one or more of the following ways:
1. By a Homeowner's, or Condominium Association, set up by the developer and made a part of the deed or agreement for each lot or dwelling unit;
  2. By a Conservation Trust or private nonprofit organization, such as the Society for the Protection of New Hampshire Forests or Audubon Society which will ensure that the common land will be held in perpetuity as open space;

3. A public body which shall maintain the land as open space for the benefit of the general public – for example, the Town;
4. All agreements, deed restrictions, organizational provisions for a Homeowners' Association and any other method of management of the common land shall be established prior to Planning Board approval;
5. Common open space areas shall have adequate access to allow for recreational use of those areas.

**208.7 Legal Documents:** It shall be the responsibility of the developer/builder of each such elderly housing development to establish a Homeowners' Association and to prepare and adopt appropriate Articles and By-Laws which are to be submitted in advance to the Planning Board and Town Counsel for their review and approval. In preparing the Articles and By-Laws, particular consideration shall be given to accommodating the unique needs of the elderly citizens. The creation of the Homeowners' Association and the Articles and By-Laws shall be at the sole expense of the developer/builder and the costs of the review by the Planning Board and Town Counsel shall also be borne by the developer/builder. Any association formed for the purpose of elderly housing must have stipulated in their By-Laws and Declaration of Covenants, that the Association will, at all times, be in compliance with current Kingston's ordinances governing Market Rate Elderly Housing.

**208.8 The Planning Board** shall maintain and exercise the authority to approve or disapprove all proposed Market Rate Elderly Housing developments. The Planning Board shall act reasonably in exercising its discretionary authority to issue a conditional use permit and shall take into consideration such factors, for example, as: the health, safety and general welfare of the citizens of Kingston; the aesthetic impact on immediately surrounding areas; whether the design is adequate to meet the unique needs of elderly residents; and whether the proposed development complies with the requirements of the applicable requirements of Kingston's Zoning Ordinance and Subdivision and Site Plan Regulations. (Amended 03/14/2006)