



“Providing Sustainable Quality Housing to Southern Vermont.”

**11/1/22**

**To:** Castleton Development Review Board

**Cc:** Castleton Select Board

**Subject:** Testimony Recap

Dear Castleton DRB Members,

I would like to thank the board for their reconsideration. The opportunity to provide the DRB with additional information is very much appreciated. Although the purpose of the DRB is to strictly consider zoning, it is worth mentioning that this project is going to provide a major benefit to the people within the Castleton community. The project will directly benefit those who do not want to leave Castleton but need to reduce the burden of owning a home or traditional renting and who need care as they grow older. Indirectly, this project will benefit current and future Vermonters by freeing up a projected 70 residential units within a 10-mile radius of the facility. I mention this because these facts and findings are what motivate me to pursue this project.

Our main goal is to build a residential facility that people can move into, and in most cases, live the rest of their lives in. If the memory care units are not permitted, then that goal will not be achievable and moving forward with the project will not be an option.

First, I would like to communicate to the board that the licensing requirement for this facility with or without the Memory Care units is strictly for Assisted Living Residence. In a case where someone who is aging in place requires more specialized services, Residential Care Home regulations will come into effect. The secured portion of the building will also require approval from the licensing agency to allow for Special Care Units.

When it comes to zoning, it should be noted that the Castleton Zoning Ordinance does not define Assisted Living Residences which both the Assisted Living Residences and the Memory Care Units will be licensed under. Because Assisted Living Residences are not mentioned does not mean that they are Nursing Homes and therefore Institutional in nature. We are creating an opportunity for people to receive the care they need in a residential setting without the burdens of living alone. Voting that these units are not permitted will eliminate that opportunity for 70 residents in and around the Castleton Community.

The purpose of a Planned Unit Development is to provide the DRB with flexibility to allow uses that are similar in nature. There is a strong case to be made that if a fraternity can be defined as multi-family, then there is no reason why memory care units, which will be licensed as Assisted Living Residences, do not meet the criteria of multifamily or at the very least, residential.

During the public hearing, I provided three documents that I hope the board will consider in their reconsideration. First, is the Memory Care Policy for Chestnut Place in Berlin. The proposed Castleton facility will be almost identical to the Berlin facility. On page 3 of this document under

“Continued Stay” it states: “*Continued Stay will be based on the ability to meet the needs of the resident and that the resident does not have an acute illness requiring nursing home or hospice care.*” In addition, I also provided the physical plant regulations for both an Assisted Living Residence as well as a Nursing Home. As one will see, an Assisted Living Residence requires us to build a facility that is residential in nature. A Nursing Home requires an institutional setting that is designed for nurses to care for their patients.

Another major discrepancy between Assisted Living Residences and Nursing Homes is the requirement of a lease and/or admission agreement with the residents of an Assisted Living Residence but not with a Nursing Home. When it comes to a Nursing Home, people are admitted to the facility and at the time each resident is admitted, the facility must have physician orders for the resident’s immediate care.

All in all, the Berlin facility policy, physical plant criteria, and requirement of mutual agreements upon admission in Assisted Living Facilities are just a few of the differences between Memory Care Unites within an Assisted Living Residences and Nursing Homes. The many other differences that exist are covered in about 100 pages of regulations. To better address the specific questions at hand I have gone through the regulations and pulled our relevant information into a 4-page document that has been provided with this letter. Definitions of each facility and links to the regulations are also provided before those summaries.

Please reach out with any additional questions that you may have.

With much appreciation



Zak Hale  
Partner/CFO  
Hale Resources, LLC  
Cell:802-375-5410  
[Zak@HaleResources.com](mailto:Zak@HaleResources.com)

## REGULATION LINKS AND DEFINITIONS

- ASSISTED LIVING RESIDENCE LICENSING REGULATIONS

- [https://dail.vermont.gov/sites/dail/files/documents/Assisted\\_living\\_regs\\_final\\_2003.pdf](https://dail.vermont.gov/sites/dail/files/documents/Assisted_living_regs_final_2003.pdf)
- I. General Provisions

1.1 Introduction. These regulations are to be used in conjunction with the Residential Care Home Licensing Regulations, which are designed to protect the welfare and rights of residents and to ensure that residents receive quality care. The regulations also are intended to ensure that homes licensed as assisted living residences promote resident individuality, privacy, dignity, self-direction and active participation in decision-making.

- LICENSING AND OPERATING RULES FOR NURSING HOMES

- [https://dail.vermont.gov/sites/dail/files/documents/Nursing\\_Home\\_Regulations\\_2018.pdf](https://dail.vermont.gov/sites/dail/files/documents/Nursing_Home_Regulations_2018.pdf)
- 1.1 Statement of Purpose and Scope

It is the purpose of these rules to implement state and federal law governing the licensing, operation, and standard of care in nursing homes, also referred to in these rules as “nursing facilities” or “facilities”, located in the State of Vermont. Compliance with these rules will help each resident attain or maintain the highest practicable physical, mental and psychosocial wellbeing in accordance with a comprehensive assessment and plan of care and prevailing standards of care and will promote a standard of care that assures that the ability of each resident to perform activities of daily living does not diminish unless the resident’s ability is diminished solely as a result of a change in the resident’s clinical condition.

- RESIDENTIAL CARE HOME LICENSING REGULATIONS

- [https://dail.vermont.gov/sites/dail/files/documents/Res\\_Care\\_Hom\\_Licensing\\_Regulations\\_2000.pdf](https://dail.vermont.gov/sites/dail/files/documents/Res_Care_Hom_Licensing_Regulations_2000.pdf)
- 1.1 Introduction

The State regulates residential care homes for the dual purposes of protecting the welfare and rights of residents and assuring they receive an appropriate quality of care. Residential care homes provide care to persons unable to live wholly independently but not in need of the level of care and services provided in a nursing home. Toward that end, these regulations are designed to foster personal independence on the part of residents and a home-like environment in the homes.

Residential care homes are licensed as either Level IV or Level III. Both levels must provide room and board, assistance with personal care, general supervision and/or medication management. Level III homes also must provide the additional service of nursing overview.

The intention of the Department of Aging and Disabilities is to assist residential care home providers to attain and maintain compliance with these regulations.

**ASSISTED LIVING RESIDENCE LICENSING REGULATIONS - HIGHLIGHTS**

1. 3.1 “Aging in place” means to remain in a residence despite physical or mental decline that might occur with aging or with disability, as described in 6.3.
  2. 3.2 “Assisted living residence” means a program or facility that combines housing, health and supportive services to support resident independence and aging in place. At a minimum, assisted living residences shall offer, within a homelike setting, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living shall promote resident self-direction and active participation in decision-making while emphasizing individuality, privacy and dignity
  3. 3.3 “Lease” means a written agreement between the assisted living residence and a resident regarding the resident’s rental of the resident unit. A lease may be required in addition to an admission agreement.
  4. Variances from these regulations may be granted by the licensing agency using the same criteria and procedures as set forth in the Residential Care Home Licensing Regulations, Section III.
  5. 5.1 The licensing agency shall not issue an assisted living residence license to an applicant unless all of the applicable requirements of the Residential Care Home Licensing Regulations for a Level III home are met.
  6. 6.1 Eligibility. The licensee may accept and retain any individual 18 years old or older, including those whose needs meet the definition of nursing home level of care if those needs can be met by the assisted living residence, with the following exceptions:
    - (a) The licensee shall not admit any individual who has a serious, acute illness requiring the medical, surgical or nursing care provided by a general or special hospital; and
    - (b) The licensee shall not admit any individual who has the following equipment, treatment or care needs: ventilator, respirator, stage III or IV decubitus ulcer, nasopharyngeal, oral or trachial suctioning or two-person assistance to transfer from bed or chair or to ambulate.
    - (c) A current resident of the facility who develops a need for equipment, treatment or care as listed above in (b) or who develops a terminal illness may remain in the residence so long as the licensee can safely meet the resident’s needs and/or the resident’s care needs are met by an appropriate licensed provider.
  7. 6.2 Admission. The licensee may require a lease in addition to the written admission agreement required pursuant to the Residential Care Home Licensing Regulations.
  8. 6.3 Aging in Place. A licensee shall provide personal care and supportive services, which may include nursing services, to meet the needs and care plans of residents assessed at or below the following levels of need according to the assessment protocol specified by the licensing agency:
    - (a) An ADL score of 10 or less in the daily activities of eating, transfers, toileting and bed mobility, provided that the mobility, ambulation and transfer needs can be met by one staff person;
    - (b) A cognitive impairment at a moderate or lesser degree of severity; or
    - (c) Behavioral symptoms that consistently respond to appropriate intervention
  9. 6.9 Services. The licensee shall have the capacity to provide the following services:
    - (a) A daily program of activities and socialization opportunities, including periodic access to community resources; and
    - (b) Social services, which shall include information, referral and coordination with other appropriate community programs and resources such as hospice, home health, transportation and other services necessary to support the resident who is aging in place.
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**LICENSING AND OPERATING RULES FOR NURSING HOMES - HIGHLIGHTS**

1. t. “Nursing home”, which is also referred to in these rules as “nursing facility” or “facility”, means an institution or a distinct part of an institution (excluding intermediate care facilities for individuals with intellectual disabilities) which is primarily engaged in providing to its residents:
    - a. 1. skilled nursing care and related services for residents who require medical or nursing care;
    - b. 2. rehabilitation services for the rehabilitation of injured, disabled or sick persons; or
    - c. 3. on a 24-hour basis, health related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care.
  2. “Resident” means an individual admitted for care in a nursing home, and, for purposes of these rules, includes, except as limited by context, any legal representative or next of kin acting on behalf of the resident according to law.
  3. z. “Special Care Unit” means a unit located in an identified distinct part of a nursing home and provides an intensity of specialized services that is not routinely available in the rest of the facility.
  4. 3.16 Admissions and Payment Policy
    - a. a. A nursing home shall not:
      - i. 1. require residents or potential residents to waive their rights to Medicare or Medicaid;
      - ii. 2. require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits; or
      - iii. 3. require, request, or accept a deposit or other payment from a Medicare or Medicaid beneficiary as a condition for admission, continued care, or the provision of service.
    - b. b. A nursing home shall not require a third-party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal right and access to a resident’s income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from a resident’s income or resources. Staffing Levels. The facility shall maintain staffing levels adequate to meet resident needs.
  5. 1. At a minimum, nursing homes must provide:
    - a. i. no fewer than three (3) hours of direct care per resident per day, on a weekly average, including nursing care, personal care and restorative nursing care, but not including administration or supervision of staff; and
    - b. ii. of the three hours of direct care, no fewer than two (2) hours per resident per day must be assigned to provide standard LNA care (such as personal care, assistance with ambulation, feeding, etc.) performed by LNAs or equivalent staff and not including meal preparation, physical therapy or the activities program.
  6. 7.14 Dietary Services
    - a. f. Assistive devices. The facility must provide special eating equipment and utensils for residents who need them
  7. 8. PHYSICAL ENVIRONMENT
    - a. The facility must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.
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**RESIDENTIAL CARE HOME LICENCING REGULATIONS - HIGHLIGHTS**

1. 2.1 General Definitions
    - (a) For the purposes of these regulations, words and phrases are given their normal meanings unless otherwise specifically defined.
  2. j. "Day of service" means a day when an eligible resident is living in the home and is provided with the resident's ACCS services. A day of service does not include any day in which a resident is absent from the home for the entire 24 hours of the calendar day and any day on which a resident is discharged or transferred from the home to another care setting (hospital, nursing home, etc.).
  3. m. "Home" means a licensed residential care home.
  4. q. "Level III" means a residential care home licensed and required to provide room, board, personal care, general supervision, medication management and nursing overview as defined by these regulations.
  5. tt. "Variance" means a written determination from the licensing agency, based upon the written request of a licensee, which temporarily and, in limited, defined circumstances, waives Compliance with a specific regulation.
  6. 3.1. Variances from these regulations may be granted upon a determination by the licensing agency that:
    - (a) 3.1.a Strict compliance would impose a substantial hardship on the licensee or the resident; and
    - (b) 3.1.b The licensee will otherwise meet the goal of the statutory provision or rule; and
    - (c) 3.1.c A variance will not result in less protection of the health, safety and welfare of the residents.
  7. 3.3 A home requesting a variance must contact the licensing agency in writing describing how the variance request meets the criteria in 3.1 above.
  8. 3.5 A request for a variance from section 5.1.a to retain or admit a resident whose needs exceed that for which the home is licensed to provide must include:
    - (a) 3.5.a A current assessment, with a description of the resident's care needs and how the home will meet those needs;
    - (b) 3.5.b A written statement from the resident or the resident's legal representative stating the resident's fully informed choice to remain in the home; and that they have been informed the resident will have to leave if the variance is terminated.
    - (c) 3.5.c A written statement from the resident's physician giving the resident's prognosis and recommending retention at or admission to the home.
  9. 5.1 Eligibility
    - (a) 5.1.a The licensee shall not accept or retain as a resident any individual who meets level of care eligibility for nursing home admission, or who otherwise has care needs which exceed what the home is able to safely and appropriately provide.
    - (b) 5.1.b A person with a serious, acute illness requiring the medical, surgical or nursing care of a general or special hospital shall not be admitted to or retained as a resident in a residential care home.
  10. 5.6 Special Care Units
    - (a) 5.6.a The home must obtain approval from the licensing agency prior to establishing and operating a special care unit. Approval will be based on a demonstration that the unit will provide specialized services to a specific population.
    - (b) 5.6.b A request for approval must include all of the following:
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- i. (1) A statement outlining the philosophy, purpose and scope of services to be provided;
  - ii. (2) A definition of the categories of residents to be served;
  - iii. (3) A description of the organizational structure of the unit consistent with the unit's philosophy, purpose and scope of services;
  - iv. (4) A description and identification of the physical environment;
  - v. (5) The criteria for admission, continued stay and discharge; and
  - vi. (6) A description of unit staffing, to include:
    - 1. i. Staff qualifications;
    - 2. ii. Orientation;
    - 3. iii. In-service education and specialized training; and
    - 4. iv. Medical management and credentialing as necessary.
- (c) 5.6.c A home that has received approval to operate a special care unit must comply with the specifications contained in the request for approval. The home will be surveyed to determine if the special care unit is providing the services, staffing, training and physical environment that was outlined in the request for approval.
- (d) 5.6.d The requirements of sections 5.2 and 5.3 above shall apply.
11. 5.9.a Residents who require more than nursing overview or medication management shall not be retained in a residential care home unless the provisions of the following subsections (1)-(5) are all met:
- (a) (1) The nursing services required are either:
    - i. i. Provided fewer than three times per week; or
    - ii. ii. Provided for up to seven days a week for no more than 60 days and the resident's condition is improving during that time and the nursing service provided is limited in nature; or
    - iii. iii. Provided by a Medicare-certified Hospice program; and
  - (b) (2) The home has a registered nurse on staff, or a written agreement with a registered nurse or home health agency, to provide the necessary nursing services and to delegate related appropriate nursing care to qualified staff; and
  - (c) (3) The home is able to meet the resident's needs without detracting from services to other residents; and
  - (d) (4) The home has a written policy, explained to prospective residents before or at the time of admission, which explains what nursing care the home provides or arranges for, how it is paid for and under what circumstances the resident will be required to move to another level of care; and
  - (e) (5) Residents receiving such care are fully informed of their options and agree to such care in the residential care home.
12. 5.9.b The following services are not permitted in a residential care home except under a variance granted by the licensing agency: intravenous therapy; ventilators or respirators; daily catheter irrigation; feeding tubes; care of stage III or IV decubitus; suctioning; sterile dressings.
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