

City of Blaine

Building Inspection Department Policy Guide

Category: Interpretation

Date: 02/09/2024

Subject: guidance on converting assisted living facilities, non-dementia care, with five or fewer persons receiving care from an existing one- or two-family dwelling or townhouse classified as a Group R-3 “dwelling unit.” This policy also includes information regarding other similar conversions to facilities licensed by the MN Department of Human Services such as foster care also classified as Group R-3.

Background:

These conversions to assisted living are projected to be more common. DLI said starting in August of 2023, there was a push for greater code enforcement (new statute effective 08/01/23). Conversions to DHS licensed facilities has similar requirements.

Policy/Information:

The following is based on information provided by DOLI.

Converting a one or two-family dwelling or townhouse to an assisted living facility, non-dementia care, with five or fewer persons receiving care – classified as a Group R-3 “dwelling unit”.

Effective August 1st, 2023, the Minnesota State Legislature has added assisted living facilities and assisted living facilities with dementia care to the group of State Licensed Facilities as defined in MN Statute 326B.103 Subp. 13. [Sec. 326B.103 MN Statutes](#)

As a result, all buildings including **existing residential homes** that are proposed to be licensed or are licensed for assisted living or assisted living with dementia care must obtain plan review and permits from the City Building Department as Blaine has a delegation agreement pursuant to Minn. Stat. 326B.107.

Applications for plan review and permitting must include drawings of the building, a construction codes analysis, and specifications, among other documentation. All documents are required to be certified by an architect licensed in Minnesota for the proposed new construction, alteration, or change of use. [1800.5200 - MN Rules Part](#)

A change of use to an assisted living facility or an assisted living facility with dementia care will require a **New Certificate of Occupancy** in accordance with MN Rule 1300.0220 and IEBC 1001.3 from the City Building Department prior to final MDH inspection of the facility.

Assisted living facilities licensed prior to 8/1/23: these will not require a new certificate of occupancy unless the owner opts to get one, and then, the certificate of occupancy would be there just to document the pre-existing condition. In this case there would be no new requirements for change of occupancy because the change of occupancy occurred before the jurisdiction changed. Any non-conforming conditions would be allowed to remain per Minnesota Rule 1311. Future alterations would also not force a change of occupancy unless they were changing the occupancy to something else such as adding dementia care after 8/1/23.

Please follow the steps outlined below.

NEXT STEPS:

1. Obtain construction documents certified from a Minnesota licensed architect demonstrating compliance with the 2020 Minnesota State Building Code. The documents must include whether this is constructed in accordance with 1305 MN Building Code – IBC, or 1309 MN Residential Code. See details below for the differences between these. The document must certify that the building is in full compliance with how it is constructed as noted above. The architect is responsible for coordinating all the other disciplines as noted below (electrical, plumbing, HVAC) whether they are directly responsible for the actual work or not.
2. Obtain a signed statement, from a MN licensed electrician or electrical engineer, that the electrical system is certified as compliant with state requirements as defined by the architect. This is not required if the house was just built, and this is the first occupant. *If the architect notes that this building is constructed in accordance with MN Rule 1305, the electrical system must comply with MN Rule 1311, section 1007. This covers unsafe conditions, and NFPA 70 compliance for the new occupancy regarding service upgrade, and number of electrical outlets.*
3. Obtain a signed statement, from a MN Licensed Master Plumber or MN licensed mechanical/plumbing engineer, that the plumbing system is certified as compliant with state requirements as defined by the architect. This is not required if the house was just built, and this is the first occupant. *If the architect notes that this building is constructed in accordance with MN Rule 1305, provisions of MN Rule 1311, Minnesota Conservation Code for Existing Buildings, which allows existing construction to remain as long as it was code compliant at the time of construction. Other provisions of this code apply when certifying as compliant.*
4. Obtain a signed statement, from a MN licensed mechanical engineer, that the HVAC system is certified as compliant with state requirements as defined by the architect. This is not required if the house was just built, and this is the first occupant. *. If the architect notes that this building is constructed in accordance with MN Rule 1305, provisions of MN Rule 1311, Minnesota Conservation Code for Existing Buildings, which allows existing construction to remain as long as it was code compliant at the time of construction. Other provisions of this code apply when certifying as compliant.*
5. Apply for a “BLDG – Commercial Certificate of Occupancy” permit online with the City Building Department. You will be required to upload the following for the permit to be issued:

- a. The certified documents mentioned above in items 1-4.
 - b. The application you submitted to the MN Department of Health (MDH). If you already have a license from the MDH for this specific address, then this must be uploaded to the permit instead of the application. If you have had a license for this address prior to August 1st, 2023, you do not have to apply for this Commercial Certificate of Occupancy permit.
 - c. A SAC determination must be obtained from Met Council – either the auto-email notification you receive from Met Council once you apply for the SAC determination, or the SAC Determination itself.
6. Upon completion of permitting and inspections, a New Certificate of Occupancy will be issued from the City of Blaine Building Department.

Please see the additional details below – including information for homes with a license issued prior to August 1st, 2023.

-For all homes licensed as a care facility, regardless of when the license was issued, the home shall be considered “commercial” in terms of the City of Blaine’s permit and license process for all future projects requiring permits and permit types (such as sheds, decks, fences, remodel, re-roof, re-side). An architect will not be required for these projects (Minnesota Rule 1800.5900 exempts alterations from architectural certification if the accommodations are for ten or fewer people).

- Licensed contractors are required to perform any work required to have permits. Please refer to the document regarding licensing requirements for commercial projects. Plumbing permit applications must be submitted to the State of MN. An R-3 dwelling unit is classified first by Minnesota Rule 1305. Therefore, it is technically a commercial building and would not require a residential contractor license to work on the building. The property owner can only do work if they have a license to perform after a permit for such work has been issued.

- Homes with a certificate of occupancy with a license issued on or after August 1st, 2023, will be considered R-3 as declared by an architect as either Constructed and compliant with MN Rule 1305 MN Building Code – IBC or Constructed and compliant with MN Rule 1309 MN Residential Code – IRC. See the details below for the differences between these two designations.

- Homes without a certificate of occupancy with a license issued prior to August 1st, 2023, will be considered R-3 as constructed with MN Rule 1305 MN Building Code – IBC in terms of how the code will be applied for future permits (see details below for homes Constructed and compliant with MN Rule 1305 MN Building Code – IBC). They do not need a Certificate of Occupancy

- Dementia care cannot start with an occupancy classification of R-3 and then be interpreted as an R-3 Dwelling Unit and allowed to be constructed per Minnesota Rule 1309. That is not to say that someone who starts out in an R-3 Dwelling Unit and their health deteriorates, must move. Like residential hospice which also has some who are unable to self-preserve, the classification must remain R-3. Much of the same rules apply, including those as interpreted below from MR 1311, but as an R-3 (NOT Dwelling unit), the sprinkler provisions of 903.2.8 will certainly be required when the building is equal to or greater than 4,500 square feet of fire area (excluding attached garage space).

- A SAC determination must be obtained from Met Council. Any SAC fees that may be required must be paid in full prior to the C of O being issued (fees are added to the “BLDG – Commercial Certificate of Occupancy” permit either before or after issuance.

- Once the city permit has been issued, the applicant can schedule an inspection of the house to be performed to verify the approved architect review and code requirements for how the building is classified and what code it is considered constructed under. Life-safety items may include, but are not limited to, the following: smoke alarms (with battery backup) properly installed and must be interconnected (either through hardwire or wi-fi), CO detectors properly installed, properly sized egress windows in every bedroom (4.5 sq. ft. is required by the MDH), handrails, guardrails, tempered glass, proper clothes dryer exhaust vents, etc).

- Assisted living facilities that were licensed prior to 8/1/23 will not require a new certificate of occupancy unless the owner opts to get one, and then, the certificate of occupancy would be there just to document the pre-existing condition. There would be no new requirements for change of occupancy because the change of occupancy occurred before the jurisdiction changed. Any non-conforming conditions would be allowed to remain per Minnesota Rule 1311. Future alterations would also not force a change of occupancy unless they were changing the occupancy to something else.... like adding dementia care after 8/1/23.

- It is recommended that due to the MN Dept. of Health typically being several weeks out for approving their applications, that you should submit your license application with the MDH as soon as possible. Contact MDH for any other requirements they may have to obtain a license for a care facility.

- An assisted living facility or assisted living with dementia care could be in a manufactured home or in a townhome.

- Septic systems are not affected. If a bedroom is added, then a septic compliance inspection is required by a licensed private inspector.

Details for homes declared by an architect to be an R-3 occupancy constructed and compliant with MN Rule 1305 (IBC), the Minnesota State Building Code

1. If the Assisted Living or Dementia Care facility has five or fewer care recipients, then it is deemed an R-3 Dwelling Unit.
2. Will be able to leverage Minnesota Rule 1311 (Conservation Code).
3. The compliance path being utilized for the "design" of the dwelling, in accordance with Section 301 of the Minnesota Conservation Code for Existing Buildings, must be included in the code analysis submitted by the architect. Either the Prescriptive (Section 301.3.1), Work Area (Section 301.3.2), or Performance (Section 301.3.3) compliance path must be utilized.
4. Minnesota Rule 1311 allows existing construction to remain as long as it was code compliant at the time of construction (paraphrased from 1311.1004.1, and 1011.6). IRC-1 classification is interpreted to be at a relative hazard level of 3 in Table 1011.6, same as all of Group R and Group I. Because of this, an existing condition such as an exterior wall being closer than 10 feet from a property line, may remain under the change of occupancy as long as the exterior wall is not modified.
5. If the building is closer than 5 feet to a property line, and a new exterior wall is being constructed, or if replacing siding along with replacing exterior sheathing (except repairs), then it will be required to have a fire-resistance rating in accordance with MN Rule 1305 Section 705.5 (rated to exposure from fire on both sides). When replacing windows, MN Rules 1305, Table 705.8 would be required (protection requirements and allowances for % of unprotected openings).

6. Regarding the stairs, when following MR 1311, an existing handrail is required because one has always been required – if there is one existing handrail then nothing else is needed. It doesn't matter the height or diameter or extensions, the stairs themselves are acceptable, period. Code tracking is MR 1311, Section 1005 Means of Egress, which refers to Section 1011 Change of Occupancy Classification. In Section 1011.4 it can be interpreted that IRC-1 is in the same relative hazard category as R-3, or Level 4. Therefore Section 1011.4.2 applies here you will find language in the subsections regarding egress capacity, handrails, and guards. If the stairway width seems reasonable to accommodate the occupant load by the architect and the AHJ, then it can be approved even if it isn't quite 36" clear (there's nothing magic about 36", someone just had to pick a number. If there are only five people upstairs, a 32" wide stair still certainly works. The architect will need to identify this as a deficiency and request a ruling to document it).
7. MN Rules 1311, Section 1005.1 requires compliance with Section 1011. Section 1011.4.1 requires compliance with Chapter 10 of MN Rules 1305 which requires the following:
 - a. Stairways must be enclosed - two stories can be open. Under the change of occupancy, three stories may not be open to one another. In a split-level, the intermediate stories are assigned to another story to complete a whole. So, if you had a four-level split with two stories on each side of the split, that would still be okay. Crawl spaces are not considered a story, so they would not contribute to the number of stories required to be separated.
 - b. Existing stairs can be acceptable (rise, run, handrails, guards).
 - c. Replacement stairs can be acceptable (rise & run can match other existing)
 - d. Existing corridor walls constructed with plaster or gypsum board can be acceptable.
 - e. The requirements of interior wall and ceiling finishes shall be Class C with a flame spread index of not more than 200 and a smoke-developed index of not more than 450. Section 803.1.2 and Table 803.13 of the MN Building Code aligns with MN Residential Code sections 302.9 – 302.9.4.
 - f. Existing doors and transoms can be acceptable.
 - g. Existing dead-end corridors can be 35 feet or up to 70 feet if the building is sprinkled.
 - h. Emergency escape and rescue openings (egress windows): Minnesota Conservation Code of Existing Buildings, Section 1011.4.1 exception 7, permits an existing operable window with clear opening area not less than 4 square feet with a minimum opening height of 22 inches and minimum opening width of 20 inches to be accepted as an emergency escape and rescue opening. If the existing window does not comply with this provision a new emergency escape and rescue opening must be installed to comply with Minnesota State Building Code Section 1030. Note: Minnesota Department of Health will not license a bedroom that has an existing window with a clear opening of less than 4.5 square feet in accordance with the Minnesota State Fire Code pursuant to Minn. Stat. 144G45. If less than 4.5 square feet, as a courtesy it may be noted on the certificate of occupancy.
8. Accessibility features:
 - a. Accessibility features are not required in existing buildings undergoing a change of occupancy in conjunction with alterations where the work area is 50% or less of the aggregate area of the building in compliance with MN Rule 1341.0305.4
 - b. If the existing building undergoing a change of occupancy in conjunction with an alteration that exceeds 50% of the aggregate area of the building, accessibility features must be provided in accordance with MN Rule 1341.0304.4.2 and 1341.0305.6.
9. Automatic sprinkler systems: automatic sprinkler systems are required when the fire area is equal to or greater than 4,500 square feet in accordance with MN Rule 1305.0903.2.8 pursuant to MN Rule 1311.1004.1, and if there is dementia care involved.

Details for homes declared by an architect to be an R-3 occupancy Constructed and compliant with MN Rule 1309 (IRC), the Minnesota State Building Code

1. Using MN Rule 1309 does not mean that the building can be classified as Occupancy IRC-1.
2. There is no conservation code or “grandfathering” with the residential code, so either the building completely complies with all current Minnesota Residential Code requirements, or it must be corrected. The only exceptions are Energy Code items (unless there is an increase demand for fossil fuel or electrical energy in which case all provisions of the energy code will apply) and possible radon provisions (it is interpreted that radon control systems would not apply because MR 1303.2400 Subpart 2, Exception 3). Minnesota Rule 1311 (Conservation Code) does not apply. The list of possible corrections might include many items such as foundation drainage, foundation waterproofing, all plumbing code such as materials & backwater valve when applicable, garage door wind rating, exterior weather barrier, fire protection of floors, narrow wall bracing, braced wall panels, all mechanical code items, emergency escape and rescue windows, handrails & guards, etc. The architect will need to identify all deficiencies. Permits will be required for corrections.
3. Construction, projections, openings, and penetrations of exterior walls of dwelling (including decks) and accessory buildings need to comply with MN Rule 1309 Section R302.
4. Stairs: provide compliant handrail, guards, rise/run and all other applicable provisions of the current Minnesota Residential Code.
5. Accessibility features: Accessibility features are not required as the Minnesota Residential Code does not address accessibility for these types of facilities.
6. Automatic sprinkler systems: automatic sprinkler systems are not required when the fire area is less than 4,500 square feet in accordance with MN Rule 1305.0903.2.8

Duration: Review in 5 years or upon applicable changes to MN Code requirements and Blaine ordinance requirements.

Building Official Approval: DJH