

North Carolina Department of Health and Human Services Division of Health Service Regulation Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704

http://www.ncdhhs.gov/dhsr/

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor Albert A. Delia, Acting Secretary Craig R. Smith, Section Chief Phone: (919) 855-3873 Fax: (919) 733-8139

December 12, 2012

Susan K. Hackney Attorney K&L Gates, LLP P.O. Box 14210 Research Triangle Park, NC 27709-4210

Exempt from Review - Acquisition of Facility

Facility:

Brookfield Assisted Living Center

Acquisition by:

Lillington AL Investors

County:

Harnett

FID #:

920134

Dear Ms. Hackney:

In response to your letter of October 19, 2012, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Lillington AL Investors may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Adult Care Licensure Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): "A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need."

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Tanya S. Rupp, Project Analyst

Project Analyst

Craig R. Smith, Chief Certificate of Need Section

Adult Care Licensure Section, DHSR



cc:

K&L GATES



K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210
430 Davis Drive, Suite 400
Morrisville, NC 27560

т 919.466.1190

www.klgates.com

October 19, 2012

Susan K. Hackney D 919,466.1195 F 919.516.2025 susan.hackney@klgates.com

Mr. Craig Smith, Chief Certificate of Need Section Division of Health Service Regulation Department of Health and Human Services 809 Ruggles Drive Raleigh, NC 27603

Re: Exemption Notice for Brookfield Assisted Living Center (Adult Care Home in Harnett County)

Dear Craig:

Our client, Lillington AL Investors, LLC ("Lillington Investors") is planning to acquire an adult care home in Lillington, Harnett County, known as Brookfield Assisted Living Center (hereafter "the Facility"). The Facility is located at 2041 NC 210 North in Lillington. The Facility is listed in the "Inventory of Adult Care Home Beds" in the 2012 State Medical Facilities Plan as having 105 adult care home beds. See Exhibit A.

Lillington Investors is seeking to purchase the Facility through a purchase and sale agreement. The purpose of this letter is to provide prior notice of this acquisition, which is exempt from certificate of need ("CON") review, to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency"). Lillington Investors seeks confirmation that it is permitted to acquire the Facility as described herein without CON Review, thus acquiring the Facility's grandfathered rights to own and operate that existing health service facility (as defined in the CON statute) with 105 adult care home beds.

I. THE PROPOSAL

Brookfield Assisted Living Center was not developed pursuant to a CON since adult care homes were not reviewable by the CON Section at the time of its development in approximately 1992. As of this date, The B & W Co., Inc. owns the property and building comprising the Facility which is an existing "health service facility," as that term is defined in N.C. Gen. Stat. § 131E-176(9b). Brookfield Assisted Living Center, Inc. is the current licensee. Lillington Investors will purchase the Facility and Lillington Operations, LLC will become the licensee

K&L GATES

Mr. Craig Smith, Chief October 19, 2012 Page 2

through an operations transfer agreement. The name of the Facility will not change. Lillington Operations is completing a Change Licensure Application Packet and will submit it to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section.

II. EXEMPTION NOTICE

Under North Carolina law, a certificate of need ("CON") is required only prior to offering or developing a "new institutional health service." "New institutional health service" includes a variety of services and activities, including a capital expenditure exceeding \$2 million. N.C. Gen. Stat. § 131E-176(16)(b).

The North Carolina General Assembly saw fit to exempt certain types of services or proposals from CON review, pursuant to N.C. Gen. Stat. § 131E-184. One such exempt service or proposal includes the acquisition of an existing health service facility, "including equipment owned by the health service facility at the time of acquisition." N.C. Gen. Stat. § 131E-184(a)(8).

This project involves only the acquisition of an existing adult care home, which falls within the purview of the statutory definition of "health service facility." After acquisition, Lillington Investors will continue to operate the Facility as an adult care home. Furthermore, Lillington Investors' acquisition of the Facility does not entail the purchase of any major medical equipment or any per se reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(140) and (16)(f1). Likewise, the acquisition does not include the offering of any per se reviewable services. N.C. Gen. Stat. § 131E-176(16)(f). Thus, given that the transaction involves only the acquisition of an existing health service facility, it is exempt from CON review.

III. CONCLUSION

Based on the foregoing information, we hereby request the Agency's confirmation that the proposal described above is exempt from CON review, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), and thus Lillington Investors may acquire the Facility with all its existing CON rights without a CON.

K&L GATES

Mr. Craig Smith, Chief October 19, 2012 Page 3

We respectfully request that this request be considered by December 15, 2012 because the parties wish to proceed with this transaction in late December, 2012. If you require additional information to consider this request, please contact us at the above number as soon as possible. We thank you for your consideration of this request.

Sincerely,

Susan K. Hackney

	Table 112	4: Invento	ry of Adul	Table 11A: Inventory of Adult Care Home (Assisted Living) Beds	e (Assis	ted L	iving) B	eds				
		Licensed Beds	Licensed Beds	Licensed Beds	Total	CON	. Doroved/Li	Annroved/License-Pending	Available	_		Total
County	Facility Name	in Nursing Homes	in Hoenitele	in Adult Care	Licensed	200	ACH A	ACH CON Bed	_	Available	Exclusions	Planning
Guilford	Verra Springs at Heritage Greens	0	0	45		10	0		Carre	4		Inventory 45
Guilford	Well-Spring	72	0	0	72	0	0	0		77	36	36
Gmlford	Westchester Harbor Wesleyan Arms Retirement Community - Replacement - (+ additional CON approved heds)	o	ď			6				6		8
:	Westchester Harbor/Wesleyan Arms Retirement					1	3					R
Guilford	Community	0	0		69	-69	0	0	0	0	0	0
Guilford	Woodland Place - Greensboro	O		96	96	0	0	0	0	96 0	9	96
Guilford	WhiteStone: A.Masonic and Eastern Star Community	12				0	0	0	0	0	2 . 0	12
	Guiford Totals	617 7410	語の特別権	建 一	2388	29	0.2	200	50 35 75	0 241	104	2313
Halifax	Carolina Rest Home	0				0	0	0	0	0	0 0	40
Halifax	Liberty Commons Nursing & Rehab Center	25	ō		25	0	0	0	0	25	0	25
Halifax	Our Community Hospital	ő	20			0	0	0	0	0 2(0 (0	20
Halifax	Woodhaven Rest Home #1 - Replacement	0				09	0	0	0)9	0	09
Halifax	Woodhaven Rest Home #1	0	0			-60	0	0	0	0	0	0
Halifax	Woodhaven Rest Home #2	0				0	О	0	0	9 (0	0	09
	The transmitter of the transmitt	25	10.5 × 15.0	· 图像中部的课	- 120g	0.5	0.2	0.0	9	0	0 - · · · · · · · · · · · · · · · · · ·	205
Harnett	Alzheimer's Related Care	0				0	0	0	0	36	6 0	36
riensee	Brookineta Assisted Laying Center	0				0	0	0	0	0	5. 0	105
Harnett	Cornerstone Nursing and Rehabilitation Center	8	0			0	6	lo	0	0 8		80
Hamett	Johnson Better Care Facility	0				0	0	0	0	0 5(0 0	50
Hamett	Oak Hill Living Center	0			122	0	0	0	0	0 12:	2 0	122
Harnett	Pinecrest Gardens	0				0	0	О	0	0 (0	0 0	9
Harnett	Prinnose Villa Retirement Home II	0	0			0	o	0	0	0 12	2 0	12
Hamett	Primose Villa Retirement Hone III	0			1	0	0	0	0	0	2 0	12
Hamett	Printose Villa Retrement Home IV	0			1	0	0	0	0		2 0	12
Hamett	Senior Citizens Village	0	0	65	1	0	0	0	,	0.	5 0	. 65
Harnett	Senter's Rest Home	0		50	95	0	0	0	0	0 20	0	20
Harnett	Stage Coach Manor	0	0	40	1	0	0	0				40
Hamett	Universal Health Care/Lillington	106		0	1	6	0	0	0		0	106
Harnett	- 18	0	Control of Court States	21	7.1.1	0	0	- California de la Cali	Acceptance of the second	The Control of Control	Called State Class	12
The state of the s	Charnett Librais			9/6		in c	0				0	080
Наумоод	Ann Davis Kest Home	2		DT		3	5	7		5	0	2
Haywood	Autumn Care of Waynesville	07		0		5	5	5	3 (10	0	2]
Наумоод	Chestrut Park Rest Home #1	0		IO		5	5	0				12
Haywood	Chestnut Park Retirement Center	0	0	20	20	0	0	0	0	0 20	0	20
Haywood	Community Care of Haywood #1	0		20		0	0	0	0	22	0	20
	Haywood House - (50 Beds SMFP 2008 CON Awarded +				- 1							
Haywood	10 Bed Transfer from Ann Davis Rest Honie)	0				8	0	0	0		0	09
. Haywood	Haywood Lodge and Retirement Center	0	0	89		0	8	0			0	89
Haywood	Loving Way Retreat 1	0		20		0	0	0		0 20	0	20
Haywood	Mountain Hart Retirement	0		20		0	0	0	0	20		20
Haywood	McCracken Rest Home	0	0	22		9	0	0	0	22	0	22
Haywood	Pigeon Valley Rest Home	0		29	29	0	9	0	0) 29	0	29
poon	Queen Retirement Home	0	0	20		0	8	0	0	9	0	20
	Richland Community Care #2	0	0	TII I	11	0	0	0	~ 			=
poon	Silver Bluff	13	0	ō	13	5	0	0	0		0	13
が行うな状态は高速を通過	をおけれる。 は、これは、これは、これは、これは、これは、これは、これは、これは、これは、これ	一種のできるのでは、	10年後の大田田田田田田田田田田田田田田田田田田田田田田田田田田田田田田田田田田田田	1248の大人はいいいからない	金田の名の名の	STO AND	Territor Constitution	Carried Charles Control	大田田のはずけん	CONTRACTOR OF THE PARTY OF THE	Charles and the charles and the	一世十七十二日日日日日日日日日日日日日日日日日日日日日日日日日日日日日日日日日日日

EXHIBIT

EXHIBIT PAPER