

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY)
RULING BY GUILFORD AL)
INVESTORS, LLC AND GREENSBORO) **DECLARATORY RULING**
AL HOLDINGS, LLC)
Project I.D. No. G-8549-10)**

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Guilford AL Investors, LLC, and Greensboro AL Holdings, LLC (“Petitioners”) have requested a declaratory ruling allowing for a change in the site for Project I.D. No. G-8549-10 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by Petitioners in their Certificate of Need (“CON”) application for their project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Renee J. Montgomery and Robert A. Leandro of Parker Poe Adams and Bernstein, LLP, counsel for Petitioners, have requested this ruling on behalf of Petitioners, and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 15 December 2010, the CON Section issued a CON to Petitioners to develop a 60-bed adult care home to relocate and replace Oak Hill Rest Home/Guilford County. The adult care home will contain 28 regular adult care home beds and 32 Special Care Unit beds serving residents with Alzheimer's disease and other forms of dementia. The approved site for the adult care home is 5423 N. Church Street in Greensboro (Guilford County), North Carolina (the "Original Site"). Petitioners represent that subsequent to obtaining the CON, they determined that another location would better serve the needs of their patients (the "Proposed Site").

The Proposed Site is identified as 369 Air Harbor Road in Greensboro (Guilford County), North Carolina. Petitioners state the Proposed Site is approximately 1.64 miles from the Original Site; however, Mapquest.com shows that it is approximately 2.26 driving miles away. Petitioners state that the Proposed Site is located on an outparcel of the Christ Community Church of Greensboro which will provide residents of the facility with a convenient location to attend worship services and other church related social activities should they choose to do so. Petitioners also represent that the church's day care services would be available to the facility's staff. Petitioners state that the Proposed Site is already zoned for an adult care home and the cost of the Proposed Site is \$10,000 less than the cost of the Original Site. Petitioners further represent that the site change will not increase the capital cost of the project, will have no effect on the population to be served by the facility, and will not change the scope of services offered.

ANALYSIS

The CON law would require a full review of Petitioners' proposed change of site if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed change of the site for Petitioners' project does not

constitute a material change in the physical location because of the close proximity of the Proposed Site to the Original Site. The change will not affect the scope of services offered or the costs and charges to the public. In addition, there is no proposed change in the person named in the application such that a violation of N.C.G.S. § 131E-181(a) would result.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Petitioners' CON if Petitioners fail to develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. Petitioners will not be developing their project in a manner that is materially different from the representations made in their application, nor will they be developing their project in a manner that is inconsistent with any of the conditions that were placed on their CON.

CONCLUSION

For all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of the Proposed Site for the Original Site for Petitioners' 60-bed adult care home facility (Project I.D. No. G-8549-10) will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the _____ day of April, 2011.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Renee J. Montgomery
Robert A. Leandro
Parker Poe Adams & Bernstein, LLP
Wachovia Capitol Center
150 Fayetteville Street, Suite 1400
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Raleigh, NC 27602

This the _____ day of April, 2011.

Jeff Horton
Chief Operating Officer