



Medical Facilities of North Carolina



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October 3, 2011

Mr. Craig Smith, Chief
Certificate of Need Section
North Carolina Division of Health Service Regulation
701 Barbour Dr.
Raleigh, NC 27603

Re: Wake County Health & Rehabilitation Project I.D. # J-8712-11
CON Application for the Development of 120 Nursing Home Beds in Wake County
CON Application number: Project I.D. # J-8723-11, # J-8726-11, # J-8727-11

Dear Mr. Smith:

The future is now. Hospitals have long recognized that private rooms not only contribute to better patient clinical outcomes, but also a better quality of life and customer experience for their patients and families. Imagine the patient's dismay and emotional stress after being discharged from a private room at a hospital into a traditional shoulder-to-shoulder semi-private room for a short term or long term stay at a nursing home. Aside from the concerns of nosocomial infections, there are high levels of anxiety with receiving personal care with only a curtain separating them from their roommate. This "unwilling observer" issue is most concerning during end of life for patients and their loved ones. This trend can stop and a new standard to be set with the approval of Wake County Health and Rehabilitation (WCHR) which proposes virtually all private rooms for its short and long term patients, regardless of payor source.

Medical Facilities of North Carolina (MFNC) has been serving the short and long term care nursing home needs of North Carolina residents for over 20 years. We recognize it is an honor and privilege to be entrusted with caring for one of the state's most vulnerable population; the elderly. We currently serve over 1,000 patients in North Carolina alone with our trademarked programming including The Recovery Map, Advanced Rehabilitation and Conditioning, the 24 Hour Experience, Bridge Builders and LVAD.

Improving access to health care is an essential health care planning goal. The area of the Wake County with the fewest nursing home beds per 1,000 population 65+ is the Cary/Morrisville area with only 13.64 beds/1,000. The WCHR project is centrally located in the Cary/Morrisville area and easily accessible with its location off of Davis Drive. WCHR also provides the most access to Medicaid & Medicare patients (94.7%) of all the applications. Approval of WCHR will improve access to health care to the fastest growing part of the Wake County.

To ensure the project met the local needs, WCHR representatives sought the involvement of 19 community members including health care systems and professionals, existing retirement and assisted living operators, the Alzheimer's Association, Wake County Human Services, technical

community colleges and Cary government officials for their input and involvement in the WCHR project.

Finally, WCHR's proposed construction costs, private pay rates, total operating costs, staffing and salaries are reasonable compared to recently approved applications and existing providers in Wake County. The approval of the WCHR is the most efficient alternative of the applications submitted for 120 of the 240 beds in Wake County.

Please do not hesitate to call me should you have any questions.

Thank you in advance to your time and consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Hedrick", with a horizontal line extending to the right.

Bruce H. Hedrick

Vice President of Development

**Comments in Opposition from
Wake County H & R Re, Limited Partnership, et al.
Regarding Certificate of Need Applications Submitted by
Liberty Healthcare Properties of W. Wake County, LLC
in Response to a Need Determination for 240 Nursing Facility Beds
in the Wake County Service Area
Submitted August 15, 2011 for September 1, 2011 Review Cycle**

I. Introduction

In accordance with N.C.G.S. Section 131E-185(a1)(1), Wake County H & R Re, Limited Partnership, Wake County H & R Ops, Limited, Medical Facilities of America, Inc., and Medical Facilities of North Carolina, Inc. (collectively referred to herein as "Wake County Health and Rehabilitation (WCHR)") submit the following comments regarding three Certificate of Need Applications submitted by Liberty Healthcare Properties of W. Wake County, LLC in response to a need determination for 240 nursing facility beds in the Wake County Service Area for the September 1, 2011 review cycle.

The following 16 CON applications were submitted in response to a need determination for 240 nursing facility beds in the Wake County Service Area in the *2011 State Medical Facilities Plan (2011 SMFP)*:

- J-8711-11: Hillcrest Convalescent Center – develop a 120-bed nursing facility in Wake Forest
- J-8712-11: Wake County H & R Re, Limited Partnership – develop a 120-bed nursing facility called "Wake County Health and Rehabilitation in Cary
- J-8713-11: Britthaven d/b/a Cedar Fork Health and Rehabilitation Center– develop a 120-bed nursing facility in Morrisville
- J-8714-11: Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh – Add 20 nursing facility beds for a total of 132 nursing facility beds
- J-8715-11: Britthaven d/b/a St. Mary's Health and Rehabilitation Center
- J-8717-11: AH North Carolina Owner, LLC – develop a 90-bed nursing facility on the campus of The Heritage of Raleigh
- J-8719-11: UniHealth Post Acute Care – Raleigh – add 20 nursing facility beds for a total of 170 nursing facility beds
- J-8720-11: UniHealth Post Acute Care – Cary – develop a 100-bed nursing facility in Morrisville
- J-8721-11: Universal Properties/Fuquay-Varina – add 60 nursing facility beds for a total of 109 nursing facility beds and 31 adult care home beds, convert 24 adult care home beds to an Alzheimer's unit
- J-8722-11: UniHealth Post Acute Care – North Raleigh – develop a 120-bed nursing facility in Northwest Raleigh
- J-8723-11: Liberty Healthcare – develop a 130-bed nursing facility in Garner by relocating 10 nursing facility beds from Capital Nursing and developing 120 additional beds

- J-8726-11: Liberty Healthcare – develop a 130-bed nursing facility in Morrisville by relocating 10 NF beds from Capital Nursing and developing 120 additional beds
- J-8727-11: Liberty Healthcare – develop a 130-bed nursing facility in North Raleigh by relocating 10 nursing facility beds from Capital Nursing and developing 120 additional beds
- J-8729-11: E.N.W., LLC/Bella Rose Nursing and Rehab Center – develop a 100-bed nursing facility in southeast Raleigh
- J-8730-11: Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary – develop a 120-bed nursing facility in Cary
- J-8731-11: Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh – develop a 120-bed nursing facility in Raleigh.

II. Comparative Analysis

The Comparative Analysis in Attachment I shows that **Wake County Health and Rehabilitation** is the most effective alternative for a new nursing facility in Wake County, and specifically, within the Cary/Morrisville region of Wake County.

III. Three CON Applications of Liberty Healthcare Properties of W. Wake County, LLC

Liberty Healthcare Properties of W. Wake County, LLC (Liberty Healthcare) submitted the following three CON Applications:

- J-8723-11: Liberty Healthcare – develop a 130-bed nursing facility in Garner by relocating 10 nursing facility beds from Capital Nursing and developing 120 additional beds
- J-8726-11: Liberty Healthcare – develop a 130-bed nursing facility in Morrisville by relocating 10 NF beds from Capital Nursing and developing 120 additional beds
- J-8727-11: Liberty Healthcare – develop a 130-bed nursing facility in North Raleigh by relocating 10 nursing facility beds from Capital Nursing and developing 120 additional beds.

Each of the CON Applications seeks to relocate 10 nursing facility beds from Capital Nursing in Wake County and add 120 additional beds to develop three new 130-bed nursing facilities in Wake County: Garner; Morrisville; and North Raleigh.

The need determination in Wake County is for a total of 240 new nursing facility beds. Consequently, the CON Section cannot approve all of the 360 new nursing facility beds proposed by Liberty Healthcare.

The following table shows the capital expenditure and working capital required for each of the three Liberty Healthcare CON Applications.

**Liberty Healthcare
Wake County Nursing Facility CON Applications**

CON Application	Capital Expenditure	Total Working Capital	Grand Total
J-8723-11	\$14,719,180	\$1,600,412	\$16,319,592
J-8726-11	\$13,850,714	\$1,585,103	\$15,435,817
J-8727-11	\$15,667,836	\$1,597,250	\$17,265,086

Each of the three new 130-bed facilities will be operational on April 1, 2014.

As discussed in detail below, the three Liberty Healthcare CON Applications should not be approved because none conform to multiple CON Review Criteria.

IV. CON Review Criteria

The following comments are submitted based upon the CON Review Criteria found at G.S.131E-183. While some issues impact multiple Criteria, they are discussed under the most relevant review Criteria and referenced in others to which they apply.

G.S. 131E-183 (1)

The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.

There are three *State Medical Facilities Plan (SMFP)* Policies applicable to the review of Wake County Nursing Facility Beds:

- Policy NH-8: Innovations in Nursing Facility Design
- Policy GEN-3: Basic Principles
- Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities.

A. Policy GEN-3: Basic Principles

As will be discussed in the context of CON Review Criteria (3), (4), (5), (6), (13), (18a), and (20), Liberty Healthcare does not demonstrate:

- The need for the proposed project;
- That it will maximize health care value for resources expended, and
- That it will encourage provision of quality health care services.

As a result, Liberty Healthcare’s three CON Applications do not conform to Policy GEN-3 and CON Review Criterion (1).

B. Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities

Liberty Healthcare did not include the text of Policy GEN-4 in its three CON Applications, and did not respond to the entirety of requirements in Policy GEN-4. Specifically, Paragraph 3 of Policy GEN-4 requires each applicant to state that if it is awarded a Certificate of Need, then it will comply with the Policy GEN-4 requirement to submit a Plan for Energy Efficiency and Water Conservation to the DHSR Construction Section, which Plan will be consistent with the applicant's representations made pursuant to Paragraph 1 of Policy GEN-4.

As a result, Liberty Healthcare's three CON Applications do not conform to Policy GEN-4 and CON Review Criterion (1).

G.S. 131E-183 (3)

The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.

CON Criteria and Standards for Nursing Facility (10A NCAC 14C .1100 et seq.) contain a Performance Standard (10A NCAC 14C .1102(a)) that requires an applicant proposing to expand an existing nursing facility to show that it had an occupancy rate of at least 90% in the nine months before submission of a CON application.

There is, however, no specific CON Criteria and Standards for Nursing Facility to ensure that existing or approved facilities, as well as related entities of an applicant proposing to develop one or more new nursing facilities in a defined service operate at a sufficient capacity in order to justify one or more new facility in that service area. In the absence of such a Performance Standard, the CON Section must look to CON Review Criterion (3) to serve that function.

CON Criterion (3), therefore, serves as a gatekeeper – requiring each applicant to demonstrate that a defined population has a need for the services/facilities proposed.

An applicant with an existing, approved or related entity facility in a defined service area not operating at an occupancy rate of at least 90% in the most recent fiscal year before submission of a CON application cannot be determined to demonstrate a need to increase its total nursing facility bed inventory in that service area.

According to its 2011 License Renewal Application, Liberty Healthcare's **125-bed Capital Nursing** in Wake County (Raleigh zip code 27610) had an **annual occupancy rate of 84.3%** during the last federal fiscal year (FFY 2010). At an annual occupancy rate of 84.3%, only 105 of the total 125 licensed beds at Capital Nursing were occupied in FFY 2010.

The following table documents the one-way driving distance from Capital Nursing to the proposed Liberty Healthcare facilities in Garner, Morrisville, and North Raleigh, respectively.

**One Way Driving Distance
from Capital Nursing to Proposed Nursing Facilities in Wake County**

From Capital Nursing	Miles/Minutes
To proposed 130-bed facility in Garner	8 miles/11 minutes
To proposed 130-bed facility in Morrisville	19 miles/24 minutes
To proposed 130-bed facility in North Raleigh	11 miles/17 minutes

Source: Mapquest.com

As shown in the previous map and table, Liberty Healthcare proposes to add 360 nursing facility beds to its existing 125-bed inventory in Wake County – all within 8-19 miles and 11-24 minute.

Given the aforementioned circumstances, Liberty Healthcare has not demonstrated a need for any new nursing facility beds in Wake County as required for conformity with CON Review Criterion (3).

G.S. 131E-183 (4)

Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.

As discussed in the context of CON Review Criterion (3), Liberty Healthcare cannot demonstrate a need to develop any new nursing facility beds in Wake County. Consequently, Liberty Healthcare has not proposed the least costly or most effective alternative as required to demonstrate conformity with CON Review Criterion (4).

G.S. 131E-183 (5)

Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.

The following table shows the capital expenditure and working capital required for each of the three Liberty Healthcare CON Applications.

**Liberty Healthcare
Wake County Nursing Facility CON Applications**

CON Application	Capital Expenditure	Total Working Capital	Grand Total
J-8723-11	\$14,719,180	\$1,600,412	\$16,319,592
J-8726-11	\$13,850,714	\$1,585,103	\$15,435,817
J-8727-11	\$15,667,836	\$1,597,250	\$17,265,086

As reflected in the previous table, the total capital expenditure for all three Liberty Healthcare facilities varies by nearly \$1 million to \$2 million dollars. The variance in the proformas for the three facilities is minimal.

The Liberty Healthcare CON Applications are related to the Capital Nursing and Rehab Center in Raleigh. As reflected in the following table, direct expenses projected in the Liberty Healthcare CON Applications are not consistent with direct expenses for Capital Nursing in FFY 2010, and reflect a 37.5% increase over FFY 2010 direct costs. Liberty Healthcare has not documented the reasonableness of increasing costs at a rate 37.5% of its own experience.

Existing Nursing Facility	FFY 2010 Unaudited Cost Report	Related Entity - Wake County Applicant	Proposed Direct (less Ancillary) Operating Cost per Day PY 2 for Related Entities	Percent of Existing Related Entity – FFY 2010
Capital Nursing and Rehab Center	\$104.37	Liberty Healthcare Facilities	\$143.54	137.5%

CON should compare each applicant’s projected direct operating costs with actual experience in Wake County on average to determine the reasonableness of the projections. Liberty Healthcare’s proposed direct costs are significantly higher than average Wake County direct costs for FFY 2010 as shown in the following table.

First Applicant	Direct (less Ancillary) Operating Cost per Day Compared to Wake County Average	Percent of FFY 2010 Wake County Average
Liberty Healthcare	\$143.54	126.7%
Liberty Healthcare	\$143.54	126.7%
Liberty Healthcare	\$143.54	126.7%
Wake County - Average Freestanding NHs - 2010 Cost Reports	\$113.30	100.0%

The previous table shows that the proposed direct costs for Liberty Healthcare facilities of the sixteen applicants are 26.7% greater than the FFY 2010 average direct cost for Wake County nursing facilities.

The CON Section also should compare projected staffing ratios and staff salaries to other facilities in Wake County and to other related entities owned by the Applicants in North Carolina to determine the reasonableness of assumptions included in the applications.

The following table shows a comparison of FFY 2010 nursing staff at Capital Nursing and the proposed staffing of Liberty Healthcare’s three CON Applications in Project Year 2.

Facility	Total Nursing FTEs	RN FTEs	LPN FTEs	Aides FTEs
Liberty Healthcare - PY 2	101.60	11.23	19.66	70.19
Capital Nursing – FFY 2010	66.11	8.51	16.42	41.18
Difference	35.49	2.72	3.24	29.01

Source: 2011 LRA

Additionally, Liberty Healthcare is proposing to provide 4.47 nursing hours per patient day at its proposed facilities, yet it only provides 2.85 nursing hours per day at their existing Wake County facility, according to the 2011 LRA for Capital Nursing. Liberty Healthcare should have included at least some explanation for why it projects to provide 28% higher direct care staffing in the proposed facilities, over and above the direct care staffing that Liberty Healthcare provided to patients of its existing Wake County facility.

The following table shows a comparison of FFY 2010 nursing staff salaries at Capital Nursing and the proposed nursing staff salaries for Liberty Healthcare's three CON Applications in Project Year 2.

Facility	Director of Nursing Salary	Asst Director of Nursing Salary	RN Salary	LPN Salary	Aides Salary
Liberty Healthcare	\$85,234	\$70,000	\$57,000	\$47,000	\$27,000
Capital Nursing	\$76,936	\$65,815	\$56,960	\$46,893	\$26,794
Difference	\$8,298	\$4,185	\$40	\$107	\$206

Source: 2011 LRA

A reasonable person must question the assumptions included in the Liberty Healthcare CON Applications, particular as they involve the financial projections and feasibility of the proposed facilities.

Lastly, as the CON Section is aware, the number of private rooms proposed in an application is not always the number of private rooms that are developed by an applicant. On July 11, 2011, the CON Section issued a No Review letter to Liberty Healthcare approving its request to reduce the number of private rooms from 46 to 24 and to eliminate a 20-bed special care unit from the approved 120-bed Churchill Commons Nursing and Rehabilitation Center (Project I.D. #F-7911-07). Reduction of the number of private rooms and elimination of the 20-bed special care unit were based on Liberty Healthcare's representation that it could not construct the Churchill Commons facility within the approved capital expenditure of \$8.5 million plus the maximum 15% overrun. Liberty Healthcare stated that:

[b]y reducing the number of private rooms from 46 to 24, the percentage of private rooms will change from 55% to 33%. **A ratio of 33% private rooms is more consistent with the 30% range for private rooms that Liberty is considering for newer facilities. [Emphasis added.]**

A copy of the July 11, 2011 CON No Review letter is attached as Attachment 2.

For example, Liberty Healthcare proposes to develop a 130-bed facility in the Cary/Morrisville region of Wake County with 66 private rooms and an Alzheimer's unit. That is a **ratio of 50.7% private rooms**, which ratio is **not "consistent with the 30% range for private rooms that Liberty Healthcare is considering for newer facilities."** Should Liberty Healthcare's Cary/Morrisville facility be approved, will Liberty Healthcare subsequently request approval to reduce private rooms from 66 to 39 and eliminate the proposed Alzheimer's unit? That is certainly

As illustrated in the previous map, six applicants targeted the Morrisville/Cary region of Wake County.

The following table identifies existing and the number of proposed facilities by WCHR-defined geographic regions in which they are located.

Location Analysis

GEOGRAPHIC REGION	LEGEND FOR PREVIOUS MAP	NUMBER OF EXISTING FACILITIES**	NUMBER OF EXISTING AND CON APPROVED BEDS	BEDS PER 1000 POPULATION OVER 65	NUMBER OF PROPOSED NEW NURSING FACILITIES
Cary/Morrisville	Green	3	199	13.64	4 / 6*
North/Wake Forest	Yellow	2	242	28.51	1
Knightdale/Wendell/Zebulon	Purple	3	159	29.14	0
Central Raleigh	Blue	8	718	29.15	2 / 4*
East Raleigh/Garner	Orange	5	580	31.58	4
Apex/Holly Springs/Fuqua Varina	Pink	4	317	34.15	0
Total		25	2,215	27.41	13

Source: WCHR CON Application, Exhibit 7, Tables 18, 19

*Two facilities self-identified the proposed location as Morrisville.

**Reflects the relocation of beds to Britthaven of Holly Springs

The previous table shows that the Cary/Morrisville region of Wake County has the lowest beds per thousand population ages 65 and over. The two proposed facilities in Brier Creek (zip code 27617) identify their location as in zip code 27560, which is in the Cary/Morrisville region as defined by WCHR. Two of the three Liberty Healthcare CON Applications are located in other regions of Wake County.

As a result, the Liberty Healthcare CON Applications do not conform to CON Review Criterion (6).

G.S. 131E-183 (13)

The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:

- a. *The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;*

During the period of FFY 2010 as reported in its 2011 License Renewal Application, Capital Nursing provided 79.2% of its days of care to the medically underserved population, as shown in the following table.

**Liberty Healthcare
Capital Nursing
Days of Care to the Elderly and Medically Underserved Population
October 1, 2009 – September 30, 2010**

Days of Care	Medicaid	Medicare	Total
FFY 2010	71.3%	7.9%	79.2%

The following table shows the average percentage of days of care provided to elderly and medically underserved population by all existing nursing facilities in Wake County, as documented in the Division of Medical Assistance (DMA) 2009 Audited Cost Reports and 2010 Unaudited Cost Reports, respectively.

**Existing Wake County Nursing Facilities
Average Days of Care to the Elderly and Medically Underserved Population
October 1, 2008 – September 30, 2010**

Average Days of Care	Medicaid	Medicare	Total
FFY 2009	67.6%	16.5%	84.1%
FFY 2010	67.5%	17.4%	84.9%

When compared with DMA Cost Reports, Capital Nursing Medicare days of care are more than two times lower than the average percentage of days of care in the DMA Cost Reports for existing Wake County nursing facilities in FFY 2009 and FFY 2010, respectively.

Total percentage of days of care at Capital Nursing to the elderly and medically underserved population is approximately 5 percentage points lower than average percentage of days of care in the DMA Cost Reports for existing Wake County nursing facilities in FFY 2009 and FFY 2010, respectively.

Liberty Healthcare fails to document that it provides adequate access to elderly and medically underserved populations, which demonstrates non-conformity to CON Review Criterion (13.a).

- c. *That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and*

On page 88 of its CON Applications, Liberty Healthcare projects Medicaid and Medicare utilization in its Second Project Year, as shown in the following table. Please note that the utilization shown in the following table is for all nursing patients.

Liberty Healthcare
Projected Days of Care to Elderly and Medically Underserved Population

Days of Care	Medicaid	Medicare	Total
Capital Nursing – FFY 2010	71.3%	7.9%	79.2%
Liberty Healthcare - PY 2	67.18%	18.92%	86.1%
Difference	4.12%	-11.02%	-6.90%

The previous table shows that Liberty Healthcare projects that each of its proposed new 130-bed nursing facilities will have a different payor mix than Capital Nursing. Specifically, Liberty Healthcare projects its new facilities will have a lower percentage of Medicaid days of care and substantially more Medicare days of care, respectively, than Capital Nursing.

Liberty Healthcare does not offer any explanation for the difference between actual and projected Medicaid and Medicare utilization of its Capital Nursing facility and its three proposed 130-bed nursing facilities. Liberty Healthcare’s projections are not based on reasonable and supported assumptions, which result in unreasonable and unsupported utilization projections.

As a result, Liberty Healthcare’s three CON Applications are not conforming to CON Review Criterion (13.c.).

G.S. 131E-183 (18a)

The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.

As discussed in the context of CON Review Criteria (1), (3), (4), (5), (6), (13), and (20), Liberty Healthcare does not demonstrate:

- The need for the proposed project;
- That it will maximize health care value for resources expended, and
- That it will encourage provision of quality health care services.

Consequently, Liberty Healthcare has not demonstrated conformity with CON Review Criterion (18a).

Furthermore, the three Liberty Healthcare CON Applications have a related entity in Wake County. Therefore Liberty Healthcare does not propose a new entrant into the Wake County nursing facility market, and will not enhance competition and choice in that market.

G.S. 131E-183 (20)

An applicant already involved in the provision of health services shall provide evidence that quality of care has been provided in the past.

On pages 53-54 of its three CON Applications, Liberty Healthcare states that a January 2011 Quality Indicator Survey (QIS) assessed three immediate jeopardy deficiencies for a lab error and a \$30,000 fine against Capital Nursing.

Liberty Healthcare has not demonstrated that within the 18 months immediately preceding the date of its CON Applications, there were no incidents at Liberty Healthcare facilities for which certification deficiencies constituting substandard quality of care were imposed on the facility. Therefore, the three CON Applications are not conforming to CON Review Criterion (20).

V. Conclusion

The three Liberty Healthcare CON Applications have not demonstrated conformity with the CON Review Criteria and should be denied.

Location Analysis

GEOGRAPHIC REGION	LEGEND FOR PREVIOUS MAP	NUMBER OF EXISTING FACILITIES**	NUMBER OF EXISTING AND CON APPROVED BEDS	BEDS PER 1000 POPULATION OVER 65	NUMBER OF PROPOSED NEW NURSING FACILITIES
Cary/Morrisville	Green	3	199	13.64	4 / 6*
North/Wake Forest	Yellow	2	242	28.51	1
Knightdale/Wendell/Zebulon	Purple	3	159	29.14	0
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Apex/Holly Springs/Fuqua Varina	Pink	4	317	34.15	0
Total		25	2215	27.41	13

Source: WCHR CON Application, Exhibit 7, Tables 18, 19

*Two facilities self-identified the proposed location as Morrisville.

**Reflects the relocation of beds to Britthaven of Holly Springs

The previous table shows that the Cary/Morrisville region of Wake County has the lowest beds per thousand population for the 65+ population. WCHR is the most effective alternative because it is centrally located in the Cary/Morrisville region of Wake County. Of the remaining five applicants in the Cary/Morrisville region of Wake County, the new facility proposed by Cary Operations is one street (less than ¼ mile) from one of three existing nursing facilities in Cary, and does not improve access to services and therefore is not the most effective alternative.

Water and Sewer Availability

All applicants provided documentation of the availability of sewer and water.

Innovations in Nursing Facility Design

2011 SMFP Policy NH-8

While all applications propose "innovation" and "neighborhoods," some provide more common areas for residents and more personal living space.

Nursing and Common Area per Bed

The following table compares the combined nursing and patient area per bed for each of the facilities proposed in Wake County.

First Applicant	Total Beds	Total Sq Ft per Bed	Nursing sq ft per Bed	Combined Dining and Recreation Patient Areas sq ft per Bed	Combined Nursing and Patient Areas	Other sq ft per Bed
Hillcrest Convalescent Center	120	669.6	355.8	107.8	463.5	206.1
Liberty Healthcare	130	610.7	273.3	130.1	403.3	207.3
Liberty Healthcare	130	610.7	273.3	130.1	403.3	207.3
AH North Carolina Owner, LLC	90	830.2	311.5	78.5	389.9	440.3
Liberty Healthcare	130	648.1	242.7	143.9	386.6	261.5
Wake County H&R Re, LP	120	544.7	269.3	110.8	380.1	164.5
Universal Properties/Fuquay-Varina	109	496.0	281.3	88.9	370.2	125.8
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	100	608.8	275.8	82.8	358.6	250.1
UniHealth Post Acute Care – Cary	100	538.0	254.8	95.6	350.4	187.7
E.N.W, LLC	102	565.1	229.8	113.2	343.0	222.1
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	120	536.5	240.8	92.7	333.5	203.1
UniHealth Post Acute Care – North Raleigh	120	498.5	253.7	79.7	333.4	165.1
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	120	458.3	230.8	66.7	297.5	160.8
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	120	455.8	230.8	66.7	295.0	160.8
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	132	437.5	192.8	43.9	236.7	200.9
UniHealth Post Acute Care – Raleigh	20	0.0	0.0	0.0	0.0	0.0

The following table compares the combined nursing and patient area per bed for each of the six facilities proposed in the Morrisville/Cary region of Wake County.

First Applicant	Total Beds	Total Sq Ft per Bed	Nursing sq ft per Bed	Combined Dining and Recreation Patient Areas sq ft per Bed	Combined Nursing and Patient Areas	Other sq ft per Bed
Liberty Healthcare	130	610.7	273.3	130.1	403.3	207.3
Wake County H&R Re, LP	120	544.7	269.3	110.8	380.1	164.5
UniHealth Post Acute Care – Cary	100	538.0	254.8	95.6	350.4	187.7
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	120	536.5	240.8	92.7	333.5	203.1
UniHealth Post Acute Care – North Raleigh	120	498.5	253.7	79.7	333.4	165.1
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	120	458.3	230.8	66.7	297.5	160.8

Private Rooms

The **WCHR** project is unique because it will provide private bedrooms to all residents, regardless of payor source. This includes two new designs for private rooms with a shared bath (vs the standard shoulder-to-shoulder semi-private rooms) as part of its innovative approach to providing nursing care. In its companion suite and toe-to-toe suite, there are two private rooms with a shared bathroom. Each of these suites includes its own nurse's call pull station, individually controlled air conditioning unit, window, bedroom furniture, closet, and television. As discussed in the **WCHR** application, private rooms provide substantial

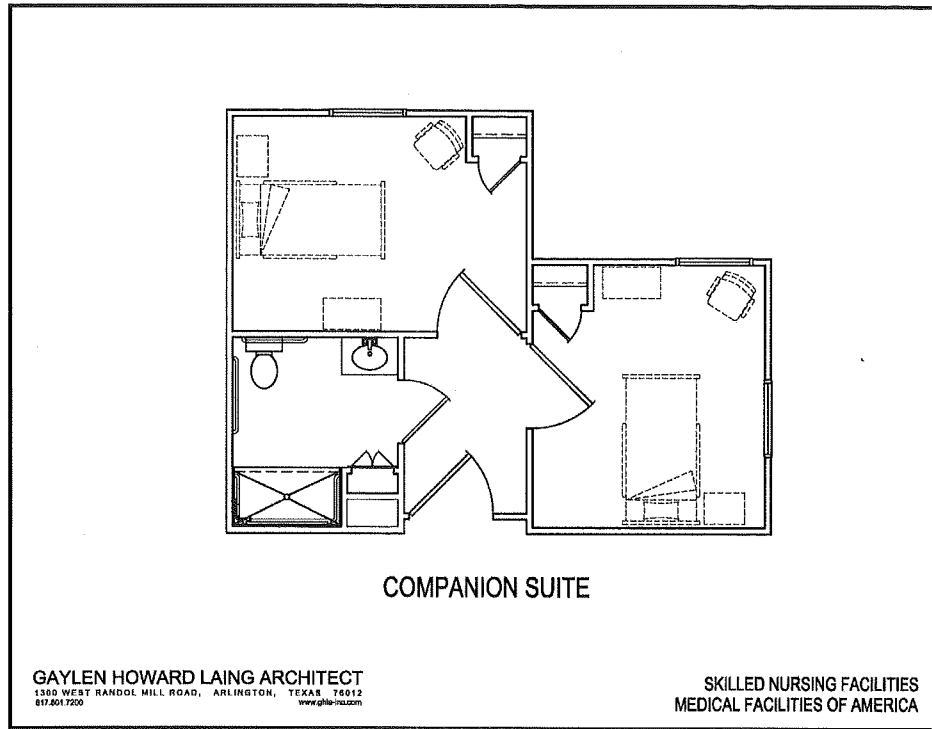
advantages to the residents of the facility and provide a better quality of life for short-term and long-term care residents. Benefits of Private Rooms include¹:

- Preferred room option by residents (individuals older than 50 preferred a private room over a semi-private room by a ratio of 20:1)
- Increases privacy for resident/guests
- Prevents resident from being an “unwilling observer” during activities of daily living, medical care, guest interactions, and end of life
- Decreases anxiety/aggression with dementia residents
- Enhances ability to meet the end of life needs for the resident and their family members
- Better setting for HIPPA compliance
- Operational efficiencies
 - Reduced marketing time for vacant units
 - Less time dealing with roommate and family conflicts (ranging from 2-3 hours per week to 25 hours per week)
 - Less time spent on managing unanticipated resident relocation within the facility and the domino effect of moving other residents to accommodate the initial relocation
 - There is some evidence that staff prefer when more residents are in private rooms
- Improves clinical outcomes
 - Residents in shared rooms are significantly higher at risk for nosocomial (health-care setting acquired) infections including clostridium difficile-associated diarrhea, antibiotic-associated diarrhea, methicillin-resistant staphylococcus aureus, influenza A, acute nonbacterial gastroenteritis and pneumonia
 - Residents face a 5% to 10% risk per year of an infection
 - These infections, mainly pneumonia and influenza A, account for almost ¼ of hospitalizations of nursing home residents
 - Pneumonia, the leading cause of death among nursing home residents (20-50% mortality rate) is the second most frequent nosocomial infection in nursing homes
 - In 1994, the average cost of hospitalization for an infection was \$7,500, and undoubtedly has increased significantly since then. But even at \$7,500, it would only take only 4.5 hospital stays to recoup the \$32,018 in added cost for the two private rooms vs. one semi-private room
 - In one study, the cost implication of nosocomial infections is estimated to be \$1 billion.
- Supports resident control
 - Lack of control over schedule (rise and retire time) and environment (TV, windows, light, etc.) cause frequent roommate conflict

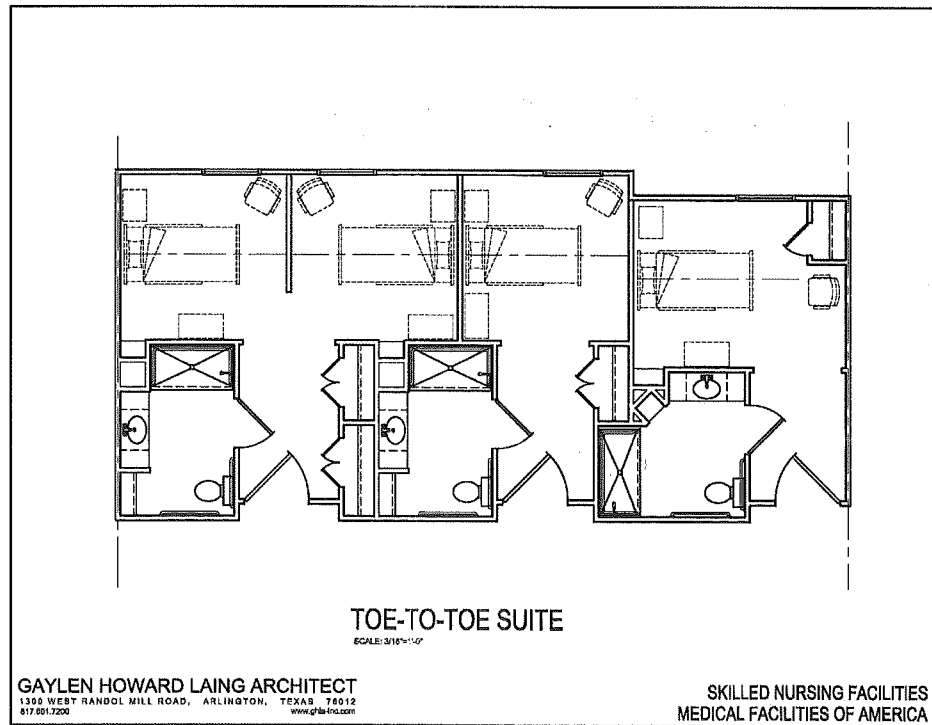
Further, new hospitals include 100% private rooms for many of these same reasons. As discussed above, there is considerable research regarding the clinical savings of private rooms versus semi-private rooms; no research provides evidence of an actual cost savings associated with semi-private rooms. The following illustrations show the unique designs in semi-private rooms at **WCHR**, which enhance privacy for all residents, making companion suites “virtually private” accommodations.

¹ 2009 LNHA Annual Convention September 2009, Linda Sadden and KaraLe Causey “Envisioning your future in a nursing home”, Margaret P. Calkins, Ph.D. “Private Bedrooms in Nursing Homes; benefits, disadvantages and costs”, Margaret P. Calkins, Ph.D.

- Companion suites allow for enhanced privacy.



- Toe-to-toe designed suites also allow for enhanced privacy, by placing a wall between the two beds.



The following table illustrates the number of private, private with a shared bath (companion and toe-to-toe suites), and semi-private rooms proposed by each applicant.

First Applicant	PROPOSED # OF PRIVATE BEDS	PROPOSED # OF COMPANION SUITE BEDS	PROPOSED # OF TOE TO TOE BEDS	PROPOSED # OF PRIVATE BEDS	PROPOSED # OF TRADITIONAL SEMIPRIVATE BEDS
Wake County H&R Re, LP	40	32	48	120	0
Hillcrest Convalescent Center	104	0	0	104	16
AH North Carolina Owner, LLC	78	0	0	78	12
UniHealth Post Acute Care – North Raleigh	72	0	0	72	48
Universal Properties/Fuquay-Varina	67	0	0	67	42
Liberty Healthcare	66	0	0	66	64
Liberty Healthcare	66	0	0	66	64
Liberty Healthcare	66	0	0	66	64
UniHealth Post Acute Care – Cary	60	0	0	60	40
E.N.W, LLC	46	0	0	46	56
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	44	0	0	44	56
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	40	0	0	40	80
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	40	0	0	40	80
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	40	0	0	40	80
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	36	0	0	36	96
UniHealth Post Acute Care – Raleigh	30	0	0	30	140

As shown in the previous table, **WCHR** proposes the largest number of private rooms in a 120-bed facility. As the CON Section is aware, the number of private rooms proposed in an application is not always the number of private rooms that are developed by the applicant. On July 11, 2011, the CON Section issued a No Review letter to Liberty Healthcare approving its request to reduce the number of private rooms from 46 to 24 and to eliminate a 20-bed special care unit from the approved 120-bed Churchill Commons Nursing and Rehabilitation Center (Project I.D. #F-7911-07). Reduction of the number of private rooms and elimination of the 20-bed special care unit were based on Liberty Healthcare's representation that it could not construct the Churchill Commons facility within the approved capital expenditure of \$8.5 million plus the maximum 15% overrun. Liberty Healthcare stated that:

[b]y reducing the number of private rooms from 46 to 24, the percentage of private rooms will change from 55% to 33%. **A ratio of 33% private rooms is more consistent with the 30% range for private rooms that Liberty is considering for newer facilities.**
[Emphasis added.]

A copy of the July 11, 2011 CON No Review letter is attached as Attachment 2.

Liberty Healthcare proposes to develop a 130-bed facility in the Cary/Morrisville region of Wake County with 66 private rooms and an Alzheimer's unit. That is a **ratio of 50.7% private rooms**, which ratio is **not "consistent with the 30% range for private rooms that Liberty Healthcare is considering for newer facilities."** Should Liberty Healthcare's Cary/Morrisville facility be approved, will Liberty Healthcare subsequently request approval to reduce private rooms from 66 to 39 and eliminate the proposed

Alzheimer's unit? That is certainly precedent for consideration by the CON Section when evaluating Liberty Healthcare's three applications, and the Cary/Morrisville region facility in particular.

As shown in the following table, **WCHR** is among the top three applicants based on square feet of patient rooms of the six facilities proposed for the Cary/Morrisville region of Wake County. Please note that Cary Operations' semi-private room square footage does not equal the square footage in its square footage table in Section XI of the application. In fact, the square footage provided in the five competing applications do not compare on the basis of units to beds. As a result, the following table contains calculations based on the patient room square footage and number of units.

First Applicant	SF OF PATIENT ROOMS	# OF UNITS	SF PER UNIT
Liberty Healthcare	28,194	98	288
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	22,400	80	280
Wake County H&R Re, LP	21,504	80	269
UniHealth Post Acute Care – North Raleigh	20,736	96	216
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	20,160	80	252
UniHealth Post Acute Care – Cary	17,280	80	216

Of the six facilities proposed for the Cary/Morrisville region of Wake County, **WCHR** also is the most effective alternative regarding the number of private rooms proposed, as shown in the following table.

First Applicant	PROPOSED # OF PRIVATE BEDS	PROPOSED # OF COMPANION SUITE SEMIPRIVATE BEDS	PROPOSED # OF TOE TO TOE SEMIPRIVATE BEDS	PROPOSED # OF "VIRTUAL" PRIVATE BEDS	PROPOSED # OF TRADITIONAL SEMIPRIVATE BEDS
Wake County H&R Re, LP	40	32	48	120	0
UniHealth Post Acute Care – North Raleigh	72	0	0	72	48
Liberty Healthcare	66	0	0	66	64
UniHealth Post Acute Care – Cary	60	0	0	60	40
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	40			40	80
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	40	0	0	40	80

Therefore, the proposal submitted by **WCHR** is the most effective alternative with regard to the number of private rooms to be developed.

Access by Underserved Groups

Medicaid

The following table illustrates the applicants' projected percentage of total nursing patient days to be provided to Medicaid recipients, as well as the FFY 2010 Wake County and statewide averages.

Applicant*	Medicaid
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	74.00%
E.N.W, LLC	72.00%
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	76.00%
Wake County H&R Re, LP	67.90%
Liberty Healthcare	67.18%
Liberty Healthcare	67.18%
Liberty Healthcare	67.18%
Universal Properties/Fuquay-Varina	66.67%
UniHealth Post Acute Care – Cary	64.60%
UniHealth Post Acute Care – North Raleigh	64.40%
AH North Carolina Owner, LLC	55.40%
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	55.12%
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	50.65%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	50.65%
UniHealth Post Acute Care – Raleigh	46.30%
Hillcrest Convalescent Center	25.45%
Wake County Freestanding Nursing Facilities 2010 Medicaid (LRAs data from WCHR Exhibit 7, Table 31)	60.44%
Wake County Average Medicaid All Nursing Facilities 2010 Cost Report	67.5%

As shown in the above table, **WCHR** projects the fourth highest percentage of total patient days to Medicaid recipients. AH North Carolina, Universal Properties North Raleigh, Raleigh Operations, Cary Operations, Uni-Health Post Acute - Raleigh, and Hillcrest each project Medicaid patient data at a percent lower than currently provided in the market.

Of the six facilities proposed for the Cary/Morrisville region of Wake County, **WCHR** is the second most effective alternative with regard to the number of Medicaid days proposed as shown in the following table.

First Applicant	Medicaid
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	74%
Wake County H&R Re, LP	67.90%
Liberty Healthcare	67.18%
UniHealth Post Acute Care – Cary	64.60%
UniHealth Post Acute Care – North Raleigh	64.40%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	50.65%
Wake County Freestanding Nursing Facilities 2010 Medicaid (LRAs data from WCHR Exhibit 7, Table 31)	60.44%
Wake County Average Medicaid All Nursing Facilities 2010 Cost Report	67.5%

Medicare

With the aging population and the changes in the health care delivery system underway, more and more patients are being discharged from the hospital to nursing facilities for extended periods of rehabilitation and intensive care as discussed on paged 34-36 of the **WCHR CON** Application. As a result, the Medicare payor mix also is a relevant comparative factor for the review of new nursing facilities, as shown in the following table.

First Applicant	Medicare
Hillcrest Convalescent Center	49.09%
UniHealth Post Acute Care – Raleigh	32.30%
Wake County H&R Re, LP	26.80%
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	25.67%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	25.67%
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	22.83%
UniHealth Post Acute Care – North Raleigh	21.70%
UniHealth Post Acute Care – Cary	20.80%
AH North Carolina Owner, LLC	20.00%
Liberty Healthcare	18.92%
Liberty Healthcare	18.92%
Liberty Healthcare	18.92%
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	18.00%
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	18.00%
Universal Properties/Fuquay-Varina	17.14%
E.N.W, LLC	17.00%
Wake County Freestanding Nursing Facilities 2010 Medicare (LRAs data from WCHR Attachment 1, Table 31)	19.3%
Wake County Average Medicare All Nursing Facilities 2010 Cost Report	17.4%

Of all of the facilities proposed in Wake County, **WCHR** is the third most effective alternative overall with regard to the number of Medicare days. Only Hillcrest and UniHealth Acute Care - Raleigh (an existing facility) propose to provide more Medicare days of care. Both of those facilities provide less Medicaid days of care than the Wake County average provider as shown in the previous table, and are thus two of the least effective alternative for Medicaid.

Of the six facilities proposed for the Cary/Morrisville region of Wake County, **WCHR** is the most effective alternative with regard to the number of Medicare days proposed, as shown in the following table.

First Applicant	Medicare
Wake County H&R Re, LP	26.80%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	25.67%
UniHealth Post Acute Care – North Raleigh	21.70%
UniHealth Post Acute Care – Cary	20.80%
Liberty Healthcare	18.92%
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	18.00%
Wake County Freestanding Nursing Facilities 2010 Medicare (LRAs data from WCHR Attachment 1, Table 31)	19.3%
Wake County Average Medicare All Nursing Facilities 2010 Cost Report	17.4%

Medicare/Medicaid Combined

The combined Medicare and Medicaid payor mix illustrates the proposed facilities commitment to meeting the needs of the elderly and underserved population in Wake County, as shown in the following table.

First Applicant	Medicaid/Medicare
Wake County H&R Re, LP	94.70%
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	94.00%
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	92.67%
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	92.00%
E.N.W, LLC	89.00%
UniHealth Post Acute Care – North Raleigh	86.10%
Liberty Healthcare	86.10%
Liberty Healthcare	86.10%
Liberty Healthcare	86.10%
UniHealth Post Acute Care – Cary	85.40%
Universal Properties/Fuquay-Varina	83.81%
UniHealth Post Acute Care – Raleigh	78.60%
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	77.95%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	76.32%
AH North Carolina Owner, LLC	75.40%
Hillcrest Convalescent Center	74.55%

Of all of the facilities proposed in Wake County, **WCHR** has the highest proposed Medicare/Medicaid payer mix. As discussed in the WCHR Application, the payor mix for **WCHR** was determined after review of historical payer mix for existing Wake County facilities and facilities managed by MFNC in North Carolina. Therefore, **WCHR** is the most effective alternative overall with regard to the number of combined Medicare/Medicaid days proposed.

Of the six facilities proposed for the Cary/Morrisville region of Wake County, **WCHR** also is the most effective alternative with regard to the number of Medicare/Medicaid days proposed, as shown in the following table

First Applicant	Medicaid/Medicare
Wake County H&R Re, LP	94.70%
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	92.00%
Liberty Healthcare	86.10%
UniHealth Post Acute Care – Cary	85.40%
UniHealth Post Acute Care – Raleigh	78.60%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	76.32%

Private Pay Charges

The following table illustrates the applicants projected private pay charges in the second full year of operation. Applicants are instructed to “assume all current charges, rates, costs and salaries will not be inflated to future operating years.” (*Emphasis* in original.) Further, in Section X.4, applicants are instructed to assume that “all current charges and rates will not be inflated to future operating years.” (*Emphasis* in original.)

First Applicant	Private Pay Charges for Private Room	Private Pay Charges for Semi-private Room
Hillcrest Convalescent Center	\$311.00	no data
UniHealth Post Acute Care – Raleigh	\$253.61	\$216.07
Wake County H&R Re, LP	\$250.00	\$225.00
AH North Carolina Owner, LLC	\$244.33	\$221.13
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$240.00	\$205.00
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	\$240.00	\$205.00
FFY 2010 Wake County Average	\$236.86	\$207.84
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$198.00	\$188.00
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	\$198.00	\$188.00
E.N.W, LLC	\$196.00	\$186.00
Universal Properties/Fuquay-Varina	\$190.00	\$180.00
Liberty Healthcare	\$190.00	\$170.00
Liberty Healthcare	\$190.00	\$170.00
Liberty Healthcare	\$190.00	\$170.00
UniHealth Post Acute Care – Cary	\$188.00	\$179.00
UniHealth Post Acute Care – North Raleigh	\$188.00	\$179.00
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	\$180.00	\$165.00

As shown in the previous table, the FFY 2010 Wake County average private pay rate is higher than the proposed private pay rates of ten of the applicants in this review. In addition, inflating the FFY 2010 average by 6% for one year to FFY 2011 (the current year) results in an estimated private pay rate for Wake County of over \$250.00 per day. Only two applicants, Hillcrest and Uni-Health Raleigh, have higher private pay rates. Because the majority of applicants understated private pay charges, it is not reasonable to use that variable in the comparative analysis.

First Applicant	Private Pay Charges for Private Room	Private Pay Charges for Semi-private Room
Wake County H&R Re, LP	\$250.00	\$225.00
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$240.00	\$205.00
FFY 2010 Wake County Average	\$236.86	\$207.84
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$198.00	\$188.00
Liberty Healthcare	\$190.00	\$170.00
UniHealth Post Acute Care – Cary	\$188.00	\$179.00
UniHealth Post Acute Care – North Raleigh	\$188.00	\$179.00

The following table compares the applicants' projected private pay charges in the second full year of operation to their Wake County related entity(ies) FFY 2010 private pay rates.

First Applicant	Private Pay Charges for Private Room	Private Pay Charges for Semi-private Room	Wake County Related Entity	Private Pay Charges for Private Room	Private Pay Charges for Semi-private Room
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$240.00	\$205.00	Blue Ridge	\$455.00	\$405.00
Wake County H&R Re, LP			none	\$250.00	\$225.00
FFY 2010 Wake County Average				\$236.86	\$207.84
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$198.00	\$188.00	Britthaven City of Oaks	\$192.00	\$182.00
Liberty Healthcare	\$190.00	\$170.00	Capital Nursing	\$170.00	\$150.00
UniHealth Post Acute Care – Cary*	\$188.00	\$179.00	The Oaks at Mayview*	\$239.00	\$198.25
UniHealth Post Acute Care – North Raleigh*	\$188.00	\$179.00	UniHealth Post Acute Raleigh*	\$237.00	\$202.00

*The Oaks at Mayview and UniHealth Post Acute Raleigh are related entities of UniHealth Post Acute Care – Cary and UniHealth Post Acute Care – North Raleigh.

As shown in the previous table, the Wake County related entity(ies) FFY 2010 private pay rate is higher for all but one of the applicants. For example, the FFY 2010 private pay rate for Blue Ridge, the Wake County related entity of Cary Operations is more than twice the projected private pay charges. The previous table is a further illustration that a majority of applicants understated private pay charges. It is therefore not reasonable to use that variable in the comparative analysis.

Operating Costs

The following table illustrates the applicants' projected operating costs per patient day in the second year of operation. Applicants are instructed to *“assume all current charges, rates, costs and salaries will not be inflated to future operating years.”* (Emphasis in original.) The data shown in the following table is taken from each applicant's table in Form C.

First Applicant	Direct (less Ancillary) Operating Cost per Day PY 2	INDIRECT COST PER PATIENT DAY	TOTAL DIRECT COST (LESS ANCILLARY) PLUS INDIRECT COST PER PATIENT DAY
Universal Properties/Fuquay-Varina	\$121.05	\$ 52.02	\$173.07
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	\$136.21	\$ 55.17	\$191.38
E.N.W, LLC	\$139.09	\$ 58.65	\$197.74
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$140.89	\$ 61.88	\$202.77
Liberty Healthcare	\$143.54	\$ 59.27	\$202.81
Liberty Healthcare	\$143.54	\$ 59.57	\$203.11
Liberty Healthcare	\$143.54	\$ 59.65	\$203.19
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	\$142.86	\$ 63.02	\$205.88
Wake County H&R Re, LP	\$128.01	\$ 86.92	\$214.93
Hillcrest Convalescent Center	\$134.24	\$ 97.38	\$231.62
UniHealth Post Acute Care – Cary	\$157.87	\$ 76.77	\$234.64
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$154.58	\$ 82.04	\$236.62
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	\$154.58	\$ 82.25	\$236.83
UniHealth Post Acute Care – North Raleigh	\$162.97	\$ 74.87	\$237.84
UniHealth Post Acute Care – Raleigh	\$192.26	\$ 81.34	\$273.60
AH North Carolina Owner, LLC	\$192.60	\$104.87	\$297.47

Total operating costs for **WCHR** are in the middle of the group overall as shown in the previous table, and are reasonable as determined in the review. Direct operating costs (less ancillary) for **WCHR** are the second lowest of all applicants, as shown in the following table.

First Applicant	Direct (less Ancillary) Operating Cost per Day PY 2	INDIRECT COST PER PATIENT DAY	TOTAL DIRECT COST (LESS ANCILLARY) PLUS INDIRECT COST PER PATIENT DAY
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$140.89	\$ 61.88	\$202.77
Liberty Healthcare	\$143.54	\$ 59.27	\$202.81
Wake County H&R Re, LP	\$128.01	\$ 86.92	\$214.93
UniHealth Post Acute Care – Cary	\$157.87	\$ 76.77	\$234.64
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$154.58	\$ 82.04	\$236.62
UniHealth Post Acute Care – North Raleigh	\$162.97	\$ 74.87	\$237.84

Total operating costs for **WCHR** are in the middle of the group overall for the six facilities proposed in the Cary/Morrisville region of Wake County, as shown in the previous table, and are reasonable as determined in the review. Direct operating costs (less ancillary) for **WCHR** are the lowest of the six applicants.

The CON Section also should compare each applicant’s projected direct operating costs with actual experience in Wake County and in North Carolina on average, to determine the reasonableness of the projections. The following table shows that direct costs for ten of the sixteen applicants are 25% greater than the FFY 2010 average direct cost for Wake County nursing facilities. The CON Section should compare projected staffing ratios and staff salaries to other facilities in Wake County and to related entities of the applicants in North Carolina.

First Applicant	Direct (less Ancillary) Operating Cost per Day Compared to Wake County Average	Percent of FFY 2010 Wake County Average
AH North Carolina Owner, LLC	\$192.60	170.0%
UniHealth Post Acute Care – Raleigh	\$192.26	169.7%
UniHealth Post Acute Care – North Raleigh	\$162.97	143.8%
UniHealth Post Acute Care – Cary	\$157.87	139.3%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$154.58	136.4%
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	\$154.58	136.4%
Liberty Healthcare	\$143.54	126.7%
Liberty Healthcare	\$143.54	126.7%
Liberty Healthcare	\$143.54	126.7%
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	\$142.86	126.1%
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$140.89	124.4%
E.N.W, LLC	\$139.09	122.8%
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	\$136.21	120.2%
Hillcrest Convalescent Center	\$134.24	118.5%
Wake County H&R Re, LP	\$128.01	113.0%
Universal Properties/Fuquay-Varina	\$121.05	106.8%
Wake County - Average Freestanding NHs – FFY 2010 Cost Reports	\$113.30	100.0%

WCHR based its staffing patterns and salaries on historical utilization of related entities in North Carolina.

The following table shows that direct costs for thirteen of the sixteen applicants are 25% greater than the FFY 2010 average direct cost for Wake County nursing facilities.

First Applicant	Direct (less Ancillary) Operating Cost per Day Compared to Statewide Average	Percent of FFY 2010 Statewide Average
AH North Carolina Owner, LLC	\$192.60	178.7%
UniHealth Post Acute Care – Raleigh	\$192.26	178.4%
UniHealth Post Acute Care – North Raleigh	\$162.97	151.2%
UniHealth Post Acute Care – Cary	\$157.87	146.5%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$154.58	143.4%
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	\$154.58	143.4%
Liberty Healthcare	\$143.54	133.2%
Liberty Healthcare	\$143.54	133.2%
Liberty Healthcare	\$143.54	133.2%
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	\$142.86	132.5%
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$140.89	130.7%
E.N.W, LLC	\$139.09	129.0%
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	\$136.21	126.4%
Hillcrest Convalescent Center	\$134.24	124.5%
Wake County H&R Re, LP	\$128.01	118.8%
Universal Properties/Fuquay-Varina	\$121.05	112.3%
All NHs - Average Statewide – FFY 2010 Cost Reports	\$107.79	100.0%

The following table provides FFY 2010 direct costs for existing facilities in Wake County, and compares those with related entities of applicants in this review.

Existing Nursing Facility	FFY 2010 Unaudited Cost Report	Related Entity - Wake County Applicant	Proposed Direct (less Ancillary) Operating Cost per Day PY 2 for Related Entities	Percent of Existing Related Entity – FFY 2010
Glenaire	\$182.06			
Mayview Convalescent Center/The Oakes at Mayview	\$180.74	UniHealth Facilities	\$192.26; \$157.87 ; 162.97	106.4% ; 87.4%; 90.2%
Rex Rehab and Nursing Care Center of Apex	\$160.72			
Sunnybrook Healthcare/Rehab Specialists	\$124.99			
Raleigh Rehabilitation & Healthcare Center	\$121.15			
City of Oaks Health & Rehab Center	\$119.82			
Blue Ridge Health Care Center	\$113.13	Cary Operation/North Operation	\$154.58	136.6%
The Laurels of Forest Glenn	\$113.11			
Wellington Healthcare and Rehabilitation	\$112.72			
Cary Health & Rehabilitation Center	\$106.18			
Capital Nursing and Rehab Center	\$104.37	Liberty Facilities	\$143.54	137.5%
Guardian Care of Zebulon	\$100.12			
Hillside Nursing Center of Wake Forest	\$100.07	ENW	\$139.09	139.0%
Litchford Falls Healthcare & Rehab Center	\$97.97			
Universal Health Care - North Raleigh	\$97.27	Universal Facilities	\$136.21 ; \$121.05	140% ; 124.5%
UniHealth Post-Acute Care- Raleigh	No Report	UniHealth Facilities	\$192.26; \$157.87 ; 162.97	

The previous table illustrates that the range of direct costs, as reflected in the FFY 2010 cost reports, were \$182.06 per day at Glenaire, to \$97.27 per day at Universal Health Care – North Raleigh. The previous table also matches related entities in Wake County with applicants. With the exception of UniHealth, proposed direct costs exceed the historical of all related entities of applicants by 25% to 40% as shown in the previous table.

Staffing

Salaries

Those applicants highlighted in red in the following tables were identified as applicants with direct costs greater than 25% of FFY 2010 Wake County average direct costs. The following tables illustrate the applicants' projected direct care nursing salaries during Project Year Two, as reported by the applicants in Section VII.3.

First Applicant	RN
UniHealth Post Acute Care – Raleigh	\$66,253
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	\$64,200
Universal Properties/Fuquay-Varina	\$62,691
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$61,194
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	\$61,194
UniHealth Post Acute Care – North Raleigh	\$60,454
UniHealth Post Acute Care – Cary	\$60,342
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$58,240
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	\$58,240
Liberty Healthcare	\$57,000
Liberty Healthcare	\$57,000
Liberty Healthcare	\$57,000
E.N.W, LLC	\$57,000
Wake County H&R Re, LP	\$56,160
AH North Carolina Owner, LLC	\$54,237
Hillcrest Convalescent Center	\$50,462

First Applicant	LPN
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$54,309
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	\$54,309
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	\$53,498
UniHealth Post Acute Care – Raleigh	\$50,443
Wake County H&R Re, LP	\$49,920
Universal Properties/Fuquay-Varina	\$48,256
UniHealth Post Acute Care – North Raleigh	\$48,138
UniHealth Post Acute Care – Cary	\$48,138
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$47,320
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	\$47,320
Liberty Healthcare	\$47,000
Liberty Healthcare	\$47,000
Liberty Healthcare	\$47,000
E.N.W, LLC	\$47,000
AH North Carolina Owner, LLC	\$45,488
Hillcrest Convalescent Center	\$39,808

2011 Wake County Nursing Facility Review
Page 16

First Applicant	Aide
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	\$30,654
Liberty Healthcare	\$27,000
Liberty Healthcare	\$27,000
Liberty Healthcare	\$27,000
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$26,874
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	\$26,874
Wake County H&R Re, LP	\$25,350
Universal Properties/Fuquay-Varina	\$25,175
E.N.W, LLC	\$25,000
UniHealth Post Acute Care – Raleigh	\$24,716
AH North Carolina Owner, LLC	\$24,619
UniHealth Post Acute Care – North Raleigh	\$23,054
UniHealth Post Acute Care – Cary	\$23,054
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	\$22,425
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$22,245
Hillcrest Convalescent Center	\$22,196

First Applicant	Director Nursing
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	\$99,009
UniHealth Post Acute Care – Raleigh	\$94,483
UniHealth Post Acute Care – Cary	\$90,311
UniHealth Post Acute Care – North Raleigh	\$90,311
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	\$89,933
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	\$89,933
AH North Carolina Owner, LLC	\$89,757
Universal Properties/Fuquay-Varina	\$89,627
Liberty Healthcare	\$85,234
Liberty Healthcare	\$85,234
Liberty Healthcare	\$85,234
E.N.W, LLC	\$85,000
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$83,000
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	\$83,000
Wake County H&R Re, LP	\$81,120
Hillcrest Convalescent Center	\$74,991

First Applicant	Asst Director Nursing
UniHealth Post Acute Care – Raleigh	\$76,960
UniHealth Post Acute Care – Cary	\$70,000
UniHealth Post Acute Care – North Raleigh	\$70,000
Liberty Healthcare	\$70,000
Liberty Healthcare	\$70,000
Liberty Healthcare	\$70,000
E.N.W, LLC	\$70,000
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	\$69,618
Universal Properties/Fuquay-Varina	\$67,018
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	\$63,000
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	\$63,000
Hillcrest Convalescent Center	\$48,565
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	NA
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	NA
AH North Carolina Owner, LLC	NA
Wake County H&R Re, LP	NA

Nursing Hours per Patient Day

Those applicants highlighted in red in the following table were identified as applicants with direct costs greater than 25% of FFY 2010 Wake County average direct costs.

The following table illustrates the applicants' projected nursing hours per patient day (NHPPD) to be provided by direct care routine services staff (RNs, LPNs & Aides) in Project Year Two as reported in the table in Section VII.4 of the application and budgeted in the proformas.

First Applicant	Total Nursing Hrs/Pt
Liberty Healthcare	4.67
Liberty Healthcare	4.67
Liberty Healthcare	4.67
UniHealth Post Acute Care -- North Raleigh	4.30
UniHealth Post Acute Care -- Raleigh	4.25
E.N.W, LLC	4.22
UniHealth Post Acute Care -- Cary	4.07
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	4.04
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	4.00
Hillcrest Convalescent Center	3.74
AH North Carolina Owner, LLC	3.65
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	3.64
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	3.64
Wake County H&R Re, LP	3.59
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	3.10
Universal Properties/Fuquay-Varina	2.92

The following table illustrates the applicants' projected NHPPD to be provided by licensed direct care routine services staff (RNs & LPNs) in Project Year Two as reported in the table in Section VII.4 of the application and budgeted in the proformas.

First Applicant	RN/LPN Nursing Hrs/Pt
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	1.60
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	1.54
UniHealth Post Acute Care -- North Raleigh	1.53
UniHealth Post Acute Care -- Raleigh	1.50
E.N.W, LLC	1.43
Liberty Healthcare	1.43
Liberty Healthcare	1.43
Liberty Healthcare	1.43
AH North Carolina Owner, LLC	1.42
UniHealth Post Acute Care -- Cary	1.41
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	1.30
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	1.30
Wake County H&R Re, LP	1.17
Hillcrest Convalescent Center	1.09
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	0.95
Universal Properties/Fuquay-Varina	0.89

Construction Cost

First Applicant	New Beds	Total Capital Cost	Total Cost per Bed	Percent Above or Below Average	Construction Cost	Construction Cost per Bed	Percent Above or Below Average
AH North Carolina Owner, LLC	90	\$20,961,007	\$232,900	110.1%	\$16,752,498	\$186,139	157.1%
Hillcrest Convalescent Center	120	\$17,916,708	\$149,306	34.7%	\$11,508,707	\$95,906	32.5%
Liberty Healthcare	130	\$15,667,836	\$120,522	8.7%	\$9,046,046	\$69,585	-3.9%
Liberty Healthcare	120	\$14,719,180	\$122,660	10.7%	\$9,554,230	\$79,619	10.0%
Liberty Healthcare	130	\$13,850,714	\$106,544	-3.9%	\$9,046,046	\$69,585	-3.9%
Wake County H&R Re, LP	120	\$13,650,000	\$113,750	2.6%	\$7,008,430	\$58,404	-19.3%
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	120	\$11,360,686	\$94,672	-14.6%	\$6,912,436	\$57,604	-20.4%
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	120	\$11,335,022	\$94,459	-14.8%	\$7,592,940	\$63,275	-12.6%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	120	\$10,933,149	\$91,110	-17.8%	\$7,303,440	\$60,862	-15.9%
UniHealth Post Acute Care – North Raleigh	120	\$10,604,159	\$88,368	-20.3%	\$6,597,828	\$54,982	-24.1%
UniHealth Post Acute Care – Cary	100	\$9,713,726	\$97,137	-12.4%	\$5,937,316	\$59,373	-18.0%
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	100	\$9,035,239	\$90,352	-18.5%	\$6,535,584	\$65,356	-9.7%
E.N.W, LLC	100	\$8,534,150	\$85,342	-23.0%	\$5,764,400	\$57,644	-20.4%
Universal Properties/Fuquay-Varina	60	\$3,541,100	\$59,018	-46.8%	\$2,657,000	\$44,283	-38.8%
Average New Facility Beds	1550	\$171,822,676	\$110,853		\$112,216,901	\$72,398	
UniHealth Post Acute Care – Raleigh	20	\$2,173,393	\$108,670		\$1,459,622	\$72,981	
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	20	\$1,490,200	\$74,510		\$1,057,200	\$52,860	

Competition and Duplication of Services

First Applicant	Wake County Related Entity	Wake County Related Entity FFY 2010 Occupancy
Hillcrest Convalescent Center	N/A	N/A
Wake County H&R Re, LP	N/A	N/A
AH North Carolina Owner, LLC	N/A	N/A
Britthaven d/b/a Cedar Fork Health and Rehabilitation Center	Britthaven of Holly Springs	under development
Universal Properties/North Raleigh d/b/a University Health Care/North Raleigh	Universal Properties/FV	no occupancy in FFY 2010
Britthaven d/b/a St. Mary's Health and Rehabilitation Center	Britthaven of Holly Springs	under development
UniHealth Post Acute Care – Raleigh	<ul style="list-style-type: none"> UniHealth Post Acute Care - Raleigh Oaks at Mayview 	<ul style="list-style-type: none"> UniHealth Post Acute Care - Raleigh - 93.4% Oaks at Mayview - 87.9%
UniHealth Post Acute Care – Cary	<ul style="list-style-type: none"> UniHealth Post Acute Care - Raleigh Oaks at Mayview 	<ul style="list-style-type: none"> UniHealth Post Acute Care - Raleigh - 93.4% Oaks at Mayview - 87.9%
Universal Properties/Fuquay-Varina	Universal Properties/North Raleigh	93.1%
UniHealth Post Acute Care – North Raleigh	<ul style="list-style-type: none"> UniHealth Post Acute Care - Raleigh Oaks at Mayview 	<ul style="list-style-type: none"> UniHealth Post Acute Care - Raleigh - 93.4% Oaks at Mayview - 87.9%
Liberty Healthcare	Capital Nursing	84.3%
Liberty Healthcare	Capital Nursing	84.3%
Liberty Healthcare	Capital Nursing	84.3%
E.N.W, LLC	<ul style="list-style-type: none"> Hillside Wake Forest Windsor Point CCRC Fuquay-Varina 	<ul style="list-style-type: none"> Hillside - 93.4% Windsor Point - 72.7%
Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary	Blue Ridge	86.2%
Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh	Blue Ridge	86.2%

Community Contacts and Letters of Support for Wake County Health and Rehabilitation

During the preparation of the **Wake County Health and Rehabilitation CON** Application, representatives visited the area on several occasions and met with community representatives and local agencies and providers. Numerous other agencies and providers were contacted via telephone, email, and letter, to include:

- Earl C. Parker, President, Elms Group Senior Living,
- Bob Ricker, Associate VP of Suburban Services, Rex Healthcare,
- William Pittman, Director Strategic Planning and Business Development, Rex Healthcare
- Tammie Stanton, Vice President Post Acute Services, UNC Health Care
- Bill Sears, President, Searstone Retirement Community
- Ms. Jean, RN, Capital Internal Medicine
- Jason Proctor, President, Franklin Regional Medical Center
- M. Bold, RN, Raleigh Geriatrics
- Talie Madans, Community Manager, Carolina Preserve
- Sanford Jordan, Vice President, Cary Economic Development
- Howard S. Johnson, President, Cary Chamber of Commerce
- Jennifer Robinson, Cary Town Council Member

- Alice W. Watkins, Executive Director, Alzheimers North Carolina
- Gail Holden, Director of Senior Services, Wake County Human Services
- Greg Griggs, Executive Vice President, NC Academy of Family Physicians
- Jody Morris, VP and COO, Novant Health Triangle Market
- Martin Janis, MD, Raleigh Geriatrics
- Dr. Helen Ayres, Program Director, Durham Technical Community College
- Dianne Hinson, Dean, Wake Technical Community College.

Efforts to involve the local community included personal visits, telephone calls, email correspondence, and written correspondence with representatives of the community. Local community contacts included:

- Physicians
- Adult care homes
- Nursing facilities
- Hospitals
- Wake County Human Services
- Real estate brokers and land owners
- Cary Chamber of Commerce
- Professional training facilities.

Contact was made with Wake County and Town of Cary representatives on numerous occasions from March 2011 through July 2011. Representatives of **WCHR** met with a variety of persons regarding the proposed project.



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

Beverly Eaves Perdue, Governor
Lanier M. Cansler, Secretary

www.ncdhhs.gov/dhsr

Craig R. Smith, Section Chief
Phone: 919-855-3875
Fax: 919-733-8139

July 11, 2011

Doug Whitman, Development Director
Long Term Care Management Services
2334 S. 41st Street
Wilmington, NC 28403

RE: No Review/ Churchill Commons Nursing and Rehabilitation Center/ Reduction in the number of private rooms from 46 to 24 and elimination of a 20 bed Special Care Unit/ Mecklenburg County FID # 070529


Dear Mr. Whitman:


The Certificate of Need (CON) Section received your correspondence of June 13, 2011 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

In addition, you should contact the Construction Section to determine if they have any requirements for development of the proposed project. Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D.# (FID) if the facility is licensed.

Sincerely,


Fatimah Wilson
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section

cc: Nursing Home Licensure and Certification Section, DHSR
Medical Facilities Planning Section, DHSR
Construction Section, DHSR





Long Term Care Management Services

Caring with Excellence

Received by the
CON Section

14 JUN 2011 2:05:21

Liberty Healthcare Properties of Mecklenburg County, LLC
Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC

2334 S. 41st Street • Wilmington, NC 28403

(910) 332-1982 • FAX: (910) 815-3111

June 13, 2011

Craig Smith, Section Chief
Carol Hutchison, Analyst
NC Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699-2704

RE: Request to reduce the number of private rooms at the future Churchill Commons Nursing and Rehabilitation Center, Project Identification Number F-7911-07, from 46 to 24 and to eliminate a 20 bed Special Care Unit

Dear Mr. Smith and Ms. Hutchison:

In this letter, Liberty Healthcare Properties of Mecklenburg County, LLC and Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (collectively, "Liberty") respectfully request the Certificate of Need Section's (the "CON Section") approval of the reduction of the number of private rooms in the future Churchill Commons Nursing & Rehabilitation Center of Mint Hill ("Churchill Commons") nursing facility, Project Identification Number F-7911-07, from 46 to 24. Liberty also respectfully requests the CON Section's approval of the elimination of a 20 bed Special Care Unit ("SCU"). Although the number of private rooms and SCU are not conditions on the Churchill Commons CON, Liberty seeks the express approval of the CON Section out of an abundance of caution.

A reduction in the number of private rooms at Churchill Commons is necessary for Liberty to construct the facility within the approved capital expenditure of \$8,587,383.00, plus the maximum 15% overrun. Two unanticipated circumstances drive Liberty's request: (1) the economic downturn that began after Liberty initially filed the application for the Churchill Commons certificate of need ("CON") in July 2007; and (2) a new, highly restrictive tree ordinance that reduces the amount of buildable space on every parcel in Charlotte. These two circumstances are discussed more fully below.

Similarly, it is also necessary that Liberty eliminate a 20 bed SCU within Churchill Commons. Although a SCU was proposed as part of the original Churchill Commons CON application, there is currently not a SCU operating in the existing facility (Liberty Nursing and Rehabilitation of Mecklenburg County). Therefore, Liberty's elimination of a 20 bed SCU will not reduce existing services or access to underserved groups. As is the case regarding the number of private rooms, both the economic downturn and tree ordinance require that Liberty not construct the 20 bed SCU.¹

Background

Liberty filed an application for a CON to develop the Churchill Commons facility on July 16, 2007. In its application, Liberty proposed to relocate 120 beds from its existing 289-bed facility to Churchill Commons, and in a companion application, proposed to relocate the remaining 169 beds to another new facility named Royal Park. After some protracted litigation unrelated to the issues addressed in this letter, the CON Section issued CONs authorizing Liberty's development of the Churchill Commons and Royal Park facilities on May 21, 2009.²

Liberty's application for the Churchill Commons CON proposed the construction of 46 private rooms in a 120-bed nursing facility. At the time Liberty submitted the application, the nation was experiencing the height of an economic boom that followed a trend of increased demand for private rooms in nursing facilities. That demand was a driving force behind Liberty's proposal for a high percentage (55%) of private rooms, and Liberty was actively seeking to meet that demand.

Shortly after Liberty submitted its application, the country fell into economic crisis and the resulting recession has forced healthcare providers across all disciplines to reevaluate business plans that were created in the time of the economic boom.

Economic Issues

- *Private Rooms*

In Liberty's case, the recession has made it financially infeasible for Liberty to offer 46 private rooms in the Churchill Commons nursing facility. By reducing the number of private rooms from 46 to 24, the percentage of private rooms will change from 55% to 33%. A ratio of 33% private rooms is more consistent with the 30% range for private rooms that Liberty is considering for newer facilities. In addition, the proposed reduction of private rooms will bring the total number of rooms and overall square footage to a size that can be built within the approved capital expenditure and be economically sustainable.

¹ These proposed changes will not exceed the 115% capital cost overrun. As shown in the document enclosed herein as Exhibit 1, which states the revised capital costs, the projected expense is \$9,314,797, which is only a 108% increase over the CON approval of \$8,587,383.00.

² A copy of the Churchill Commons CON is enclosed herein as Exhibit 2 for the CON Section's convenience.

Furthermore, the trends of neighborhood design concepts and larger amounts of resident space in nursing home construction have become popular since the time Liberty first submitted the Churchill Commons CON application. In order to stay within the approved capital expenditure, Liberty cannot provide both a high percentage of private rooms and larger resident areas. Although Liberty is reducing the number of private rooms in its facility, the new floor plan (copy attached hereto as Exhibit 3) actually adds 2,200 square feet to the total square footage for resident rooms. This reflects Liberty's effort to design the new facility in a way that will benefit all residents, not just a few. In addition, in the original Churchill Commons CON application, the average resident room size was approximately 216 square feet. The average resident room size under the new floor plan is 278 square feet, which is an increase of an average of 29% to resident room size. The new floor plan also equips all resident rooms with a private bathroom and private shower, and it increases the average bathroom size by 15%.

With respect to larger community areas, the new floor plan increases the size of the rehab gym from 2,442 square feet to 5,522 square feet, which more than doubles the size set forth in the original proposal. The new floor plan also has an additional 1,137 square feet of recreational/activity space, which increases the amount in the original Churchill Commons CON application by 37%. A spa suite is included in the new floor plan that expands the beauty shop's original design and offers additional amenities not included in the original proposal. This change adds an additional 1,034 square feet, more than tripling the size of this service area. Moreover, an additional 1,200 square feet of corridor space has been added to provide more indoor walking areas for the residents.

A significant amount of additional storage areas have also been included in the new floor plan in an effort to create more efficient work spaces and improved work flow for the direct care staff. The new floor plan includes additional "pockets" of storage rooms throughout the resident areas for supplies and equipment in each CNA work area, including resident lift storage, clean linen storage, medical supplies, and dirty linen storage. In comparison to the original proposal, the additional storage areas allow CNAs and nurses to be near their residents throughout their shift and therefore, more responsive to residents' needs.

By reducing the number of private rooms, Liberty will be able to construct a larger facility with more resident space and additional amenities that will benefit all Churchill Commons residents, instead of just a few. If Liberty were to add this additional space without reducing the number of private rooms, Liberty would have to add an additional 3,000 square feet to the size of the facility and increase construction costs by approximately \$300,000. This would push the total project cost near to the 115% cost overrun maximum and would not be in the best interest of the facility community at large.

- *SCU Beds*

Economic factors are also behind Liberty's inability to include a 20 bed Special Care Unit (SCU) within Churchill Commons while staying within the 115% cost overrun maximum. Upon further examination, it has become evident that the construction of a SCU would require additional square feet to construct dedicated living, dining, ancillary and nursing areas, which would add another 1,275 square feet of indoor space to the building's footprint and more than \$100,000 of increased construction costs. In addition, an Alzheimer's/Dementia SCU requires a dedicated outdoor activity space. The SCU courtyard in the original CON application was projected to be approximately 3,600 square feet. In order to accommodate this extra square footage within the parcel parameters, Liberty would have to sacrifice space in other areas of the building to the detriment of the general resident population. Given that the existing facility does not contain a SCU, it is not in the best interests of these residents for Liberty to construct a 20 bed SCU. There will not be any effect on patient care if Churchill Commons does not contain any SCU beds. Dementia and other special needs residents are currently being served at Liberty's existing facility even though the existing facility does not have an SCU. Liberty will continue to accommodate its existing dementia and other special needs residents at Churchill Commons without SCU beds.

Tree Ordinance

- *Private Rooms*

On September 27, 2010, the City of Charlotte approved changes to its tree ordinance that increased the number of trees that must be saved in commercial development.^{3,4} Since Churchill Commons is to be located within the City of Charlotte, the new tree ordinance has a direct effect on Churchill Commons' planned construction. In order to build the proposed facility so that it would be large enough to house 46 private rooms and comply with the new tree ordinance, Liberty would be forced to acquire additional land at an additional cost. However, a more sensible and economic solution is to reduce Churchill Commons' overall size by reducing the number of private rooms. As explained above, this change will benefit all of the facility's residents instead of just a few.

- *SCU Beds*

Likewise, constructing a SCU while complying with the new tree ordinance would require additional square footage, necessitating the purchase of more land at additional cost or the shrinking of resident space, at a cost to the residents' comfort and quality of life. In addition, the lack of a SCU will not affect Liberty's ability to service its existing dementia and special needs residents. Liberty therefore believes it is in the best interest of Mecklenburg County's residents to not construct a SCU in Churchill Commons.

³ See Steve Harrison, New Rule: Builders Must Save More Trees, Charlotte Observer, Sept. 28, 2010, available at <http://www.charlotteobserver.com/2010/09/28/1723250/new-rule-builders-must-save-more.html> (copy enclosed herein as Exhibit 4).

⁴ Enclosed herein as Exhibit 5 is a copy of the approved amendments to Chapter 21 of the Charlotte City Code, titled "Trees."

June 13, 2011

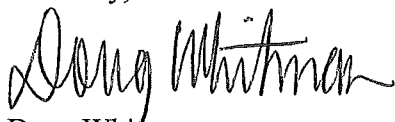
Page 5 of 5

Conclusion

Liberty sincerely appreciates the CON Section's consideration of these requests to reduce the number of private rooms in Churchill Commons from 46 to 24 and to eliminate a 20 bed SCU. Since the number of private rooms and SCU are not conditions of the Churchill Commons CON, these requests will not prevent Liberty from complying with all conditions of the CON. Further, a reduction in private rooms and elimination of a SCU will allow Liberty to construct Churchill Commons within the approved capital expenditure, as well as better serve its residents. Therefore, these requests benefit all involved.

Please do not hesitate to contact me with any questions or for any further information.

Sincerely,

A handwritten signature in black ink that reads "Doug Whitman". The signature is written in a cursive, flowing style.

Doug Whitman

Development Director

DWhitman@libertyhcare.com

(910) 512-2988

Table VIII.1 – Estimated Capital Costs

A. Site Costs

(1) Full purchase price of land		
# Acres _____ Price per acre _____		<u>\$702,247</u>
(2) Closing costs and legal fees		<u>\$5,000</u>
(3) Site inspection and survey		<u>\$3,000</u>
(4) Site preparation costs		
Soil borings	<u>\$8,000</u>	
Clearing – earthwork – grading	<u>\$425,000</u>	
Roads – paving – sidewalks	<u>\$375,000</u>	
Landscaping	<u>\$72,000</u>	
Water and sewer hookup	<u>\$120,000</u>	
Water treatment plant	<u>\$0</u>	
Septic system	<u>\$0</u>	
Other (specify)	<u>\$0</u>	
Subtotal site preparation costs		<u>\$1,000,000</u>
(5) Other		<u>\$0</u>
(6) Subtotal Site Costs		<u>\$1,710,247</u>

B. Construction Contract(s)

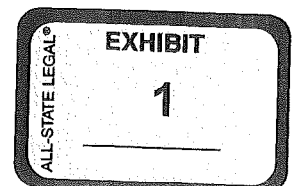
(7) Cost of construction contract(s)		<u>\$6,177,150</u>
(8) Other (Contingency)		<u>\$100,000</u>
(9) Subtotal construction contract(s)		<u>\$6,277,150</u>

C. Miscellaneous Project Costs

(10) Building purchase		<u>\$0</u>
(11) Equipment & furniture not included above		<u>\$692,400</u>
(12) Consultant fees		
Architect & engineering fees	<u>\$260,000</u>	
Certificate of need preparation	<u>\$0</u>	
Legal fees	<u>\$0</u>	
Market analysis	<u>\$0</u>	
Other (specify)	<u>\$0</u>	
Subtotal consultant fees		<u>\$260,000</u>
(13) Financing costs		
Bond	<u>\$0</u>	
HUD	<u>\$150,000</u>	
Commercial loan	<u>\$0</u>	
Other (specify)	<u>\$0</u>	
Subtotal financing costs		<u>\$150,000</u>
(14) Interest during construction		<u>\$225,000</u>
(15) Other (specify)		<u>\$0</u>
(16) Subtotal miscellaneous project costs		<u>\$1,327,400</u>

D. Total Capital Cost of the Project

[sum of lines (6), (9) and (16)]		<u>\$9,314,797</u>
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STATE OF NORTH CAROLINA

*Department of Health and Human Services
Division of Health Service Regulation*

CERTIFICATE OF NEED

for

Project Identification Number #F-7911-07

FID # 070529

ISSUED TO: Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (Lessee) and
Liberty Healthcare Properties of Mecklenburg County, LLC (Lessor)
2334 South 41st Street
Wilmington NC 28403

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Relocate 120 existing nursing facility (NF) beds in Liberty Nursing & Rehabilitation Center of Mecklenburg County to a replacement facility in Mint Hill, a/k/a Churchill Commons Nursing & Rehabilitation Center of Mint Hill/ Mecklenburg County

CONDITIONS: See Reverse Side


PHYSICAL LOCATION: Churchill Commons Nursing & Rehabilitation Center of Mint Hill
7712 Wilson Grove Road
Mint Hill, NC 28227

MAXIMUM CAPITAL EXPENDITURE: \$ 8,587,383

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: June 1, 2010

This certificate is effective as of the 21st day of May, 2009



Chief, Certificate of Need Section
Division of Health Service Regulation



CONDITIONS:

1. Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (Lessee) and Liberty Healthcare Properties of Mecklenburg County, LLC (Lessor) shall materially comply with all representations made in its certificate of need application and supplemental information submitted to the Agency, except as specifically amended by the conditions of approval.
2. Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (Lessee) and Liberty Healthcare Properties of Mecklenburg County, LLC (Lessor) shall construct a replacement facility with no more than 120 nursing facility beds for a total licensed bed complement of no more than 120 nursing facility and zero adult care home beds upon completion of the project.
3. Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (Lessee) and Liberty Healthcare Properties of Mecklenburg County, LLC (Lessor) shall not discharge any dementia patients unless those patients indicate that they are not interested in moving to one of the replacement facilities. Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (Lessee) and Liberty Healthcare Properties of Mecklenburg County, LLC (Lessor) shall not represent to the existing dementia patients that there is not sufficient room in the replacement facilities for more than 20 dementia patients. Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (Lessee) and Liberty Healthcare Properties of Mecklenburg County, LLC (Lessor) shall provide the Certificate of Need Section with copies of correspondence sent to the Liberty Nursing & Rehabilitation Center Family Council and the 42 existing dementia patients informing them that they will be served in one of two replacement facilities, in the same manner as they are currently served, if the patient chooses to relocate to one of the replacement facilities.
4. Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (Lessee) and Liberty Healthcare Properties of Mecklenburg County, LLC (Lessor) shall submit all patient charges and actual per diem reimbursement rates for each source of payment to the CON Section at year end for each of the first two operating years following licensure of the beds in the facility.
5. Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (Lessee) and Liberty Healthcare Properties of Mecklenburg County, LLC (Lessor) shall receive the Medicaid per diem reimbursement rates allowed by the Division of Medical Assistance, under the NC State Plan Section .0102.
6. The facility's private pay charges for the first three years of operation following completion of this project shall be limited to the following percentage of the facility's then current Medicaid rate.

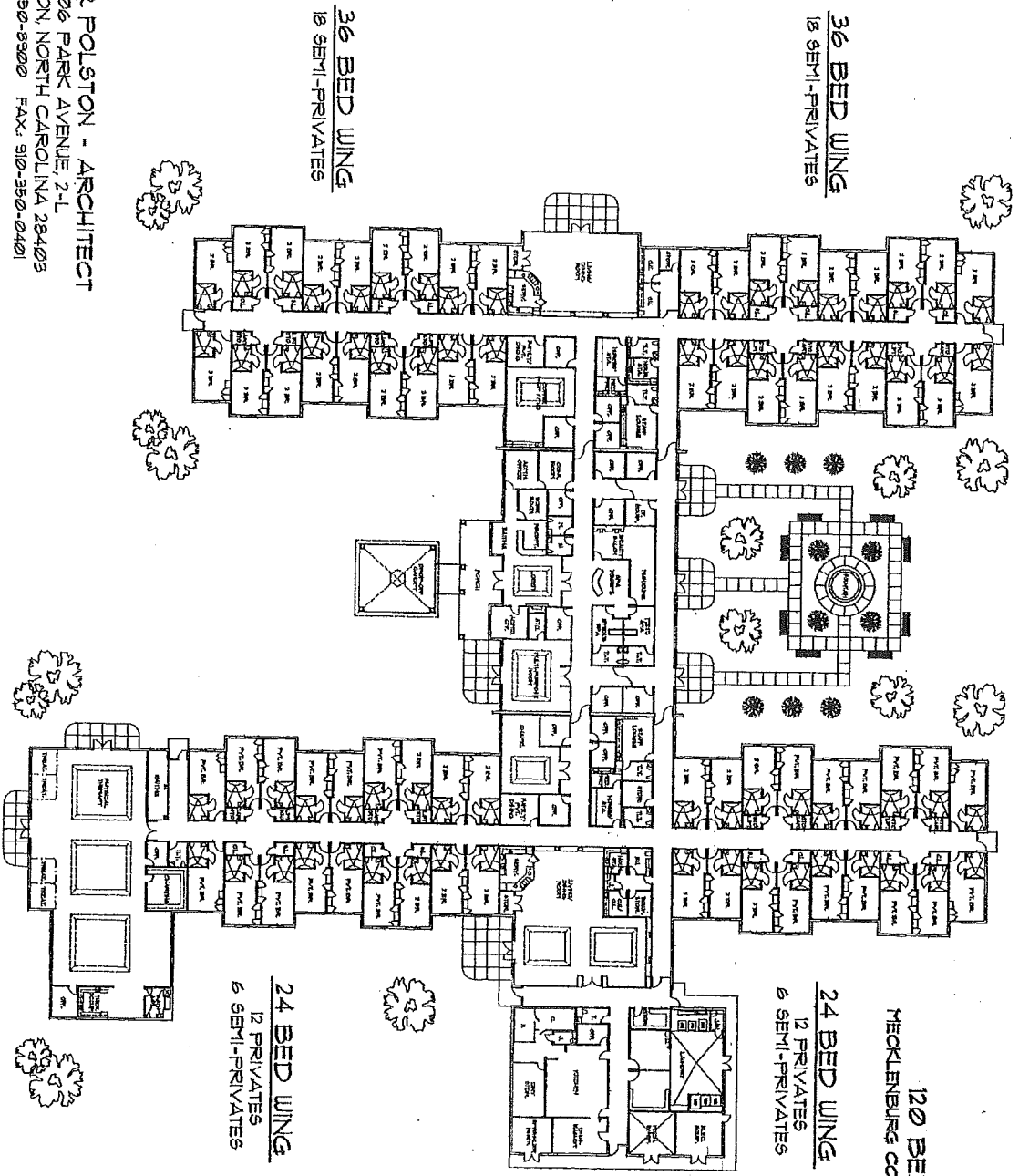
Year	Nursing	
	Private	Semi-Private
1	140%	131%
2	140%	131%
3	140%	131%

7. The approved total capital expenditure amount for Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (Lessee) and Liberty Healthcare Properties of Mecklenburg County, LLC (Lessor) shall be \$8,587,383.

TIMETABLE:

Site Acquired	October 29, 2007
Preliminary drawings submitted to Construction Section, DHSR.....	May 31, 2010
Building permit obtained.....	January 31, 2011
25% completion of construction.....	September 30, 2011
50% completion of construction.....	January 31, 2012
Completion of construction.....	September 30, 2012
Licensure of facility.....	October 31, 2012
Medicare/Medicaid certification.....	November 30, 2012

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 3806 PARK AVENUE, 2-FL
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120 BED FACILITY
 HECKLEBURG COUNTY, NORTH CAROLINA

New rule: Builders must save more trees

By Steve Harrison

PUBLISHED IN: LOCAL NEWS

In an effort to save Charlotte's tree canopy, the City Council approved changes to its tree ordinance Monday night that will increase the number of trees that must be saved in commercial development and apartment complexes.

The tree ordinance had been debated for five years, as developers and environmentalists engaged in a tug-of-war over the issue. The council approved the changes by an 8-3 vote, but only after another debate over how the requirements would impact affordable housing.

Council members Warren Turner, a Democrat, voted against the tree ordinance changes, as did Republicans Andy Dulin and Warren Cooskey.

The biggest changes will increase the amount of trees saved on commercial development from 10 to 15 percent, starting in January.

In addition, there will be more trees in parking lots in the future. The ordinance decreases the spacing between trees from 60 to 40 feet in parking lots.

There are some exceptions to the ordinance, and in some cases, developers can pay into a fund instead of planting.

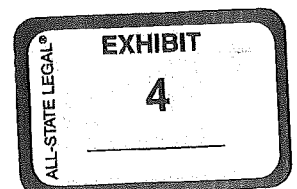
The changes were driven, in some cases, by alarm over the area's rapid urbanization. It has been estimated that the city has lost half of its tree canopy since 1985, and Mecklenburg County has lost a third of its canopy.

As the tree ordinance changes neared completion, some affordable housing advocates complained that the changes would increase the cost of building and drive up the price of renting.

"We're really concerned," said Bill Daleure, president of Avant Garde Real Estate Consulting, which has been an advocate for building low-income housing. "They are layering more costs on providers, and I'm not sure if they can overcome it."

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The tree ordinance changes are among three issues that have been contested, at times, by the development community. In recent years, the city has passed rules for how builders handle stormwater runoff, as well as requirements that require shorter street lengths and sidewalks as part of its Urban Street Design Guidelines.

Mayor Pro Tem Patrick Cannon, a Democrat, suggested during the debate Monday night to remove affordable housing from the tree ordinance changes. But City Attorney Mac McCarley said there would be legal problems with that.

Then Dulin suggested that all multifamily housing complexes be removed from the tree ordinance - a proposal that drew groans from some supporters of the changes in the audience. Cannon said he wasn't willing to do that, and the idea failed.

Council members did vote unanimously to study how the ordinance would impact affordable housing.

Mayor Anthony Foxx, a Democrat, said he was in favor of the tougher tree ordinance. Earlier this year, he urged city staff members to be "flexible" when enforcing the new development rules on trees, stormwater and street design. He said that some flexibility could help developers adjust.

He said studies showing that the ordinances and guidelines would increase developer's costs might overstate the financial impact to developers.

"What troubles me is that the studies are based on worst-case scenarios," Foxx said. "I have asked (city) staff: Are we applying these rules to the extreme?"

Foxx said there have been times when city staff haven't been accommodating, but he said that most of the time staff members have given developers flexibility. He said the city can study the impact of the new rules, but he said the city should wait until new projects are built.

Democrat Nancy Carter, who supported the tree changes, said "a trend is reversing itself, slowly but surely. We can add to our population of trees."



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Back to North Carolina Municodes

Charlotte, North Carolina

CODE OF ORDINANCES

SUPPLEMENT HISTORY

PART I - CHARTER

CHAPTER 1. -

CHAPTER 2. -

CHAPTER 3. -

CHAPTER 4. -

CHAPTER 5. -

CHAPTER 6. -

CHAPTER 7. -

CHAPTER 8. -

CHARTER CODE

PART II - CODE OF ORDINANCES

Chapter 1 - GENERAL

Chapter 2 - ADMINISTRATION

Chapter 3 - ANIMALS

Chapter 4 - AVIATION

Chapter 5 - BUSINESS

Chapter 6 - BUSINESS

Chapter 7 - CELEBRATIONS

Chapter 8 - FIRE

Chapter 9 - FIRE

Chapter 10 - HISTORIC

Chapter 11 - HISTORIC

Chapter 12 - HISTORIC

Chapter 13 - LAND

Chapter 14 - LAND

Chapter 15 - OFFICIALS

Chapter 16 - PUBLIC

Chapter 17 - SIGNAGE

Chapter 18 - SIGNAGE

Chapter 19 - SIGNAGE

Chapter 20 - SIGNAGE

Chapter 21 - TREES

Chapter 22 - UTILITIES

Chapter 23 - UTILITIES

APPENDIX A -

CODE COMPARISON

CODE COMPARISON

STATE LAW REFERENCE

Charlotte, North Carolina, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 21 - TREES >>

Chapter 21 - TREES ⁽⁶⁰⁾

ARTICLE I. - IN GENERAL

ARTICLE II. - ADMINISTRATION

ARTICLE III. - MAINTENANCE AND PROTECTION OF TREES

ARTICLE IV. - GENERAL LAND DEVELOPMENT REQUIREMENTS

ARTICLE V. - MODIFICATION, INSPECTION, ENFORCEMENT AND APPEAL

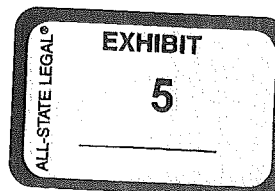
FOOTNOTE(S):

⁽⁶⁰⁾ **Editor's note**— Ord. No. 4521, § 1, adopted September 27, 2010, amended chapter 21 in its entirety to read as herein set out. Formerly, chapter 21, articles I—V pertained to similar subject matter, and derived from the Code of 1985, §§ 21-1—21-20, art. III, and Ord. No. 2447, § 11, adopted November 24, 2003. Section 2 of Ord. No. 4521 states the following: "Section 2. These amendments shall apply to all development and additions to existing sites within the corporate limits of this city and its extraterritorial jurisdiction, unless one of the following exemptions applies as of the effective date: (1) Residential and nonresidential development and additions to existing sites submitted and accepted for review; (2) Zoning use application submitted and accepted for review for uses that do not require a building permit; (3) Valid building permit issued pursuant to G.S. 153A-344 or G.S. 160A-385, so long as the permit remains valid, unexpired, and unrevoked; (4) Common law vested right established (e.g., the substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid governmental approval to proceed with a project); and/or (5) A conditional zoning district (including those districts which previously were described variously as conditional district, conditional use district, parallel conditional district and parallel conditional use district) approved, provided formal plan submission has been made and accepted for review prior to the date that the vested rights for the conditional zoning district expire pursuant to G.S. 160A-385.1 and Sec. 1.110 of the Charlotte zoning ordinance. (Back)

⁽⁶⁰⁾ **Charter reference**— Trees, § 6.221. (Back)

⁽⁶⁰⁾ **Cross reference**— Buildings and building regulations, ch. 5; streets, sidewalks and other public places, ch. 19; subdivisions, ch. 20. (Back)

⁽⁶⁰⁾ **State Law reference**— Cutting, injuring or removing timber, G.S. 14-135. (Back)



ARTICLE I. - IN GENERAL

Sec. 21-1. - Short title.

Sec. 21-2. - Definitions.

Sec. 21-3. - Purpose and intent.

Sec. 21-4. - Applicability and exemptions.

Secs. 21-5—21-30. - Reserved.

Sec. 21-1. - Short title.

This chapter will be known and may be cited as the "Charlotte Tree Ordinance."

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-2. - Definitions.

Words and phrases used in this chapter that are not specifically defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Caliper means the diameter measurement of the trunk taken six inches above ground level for trees up to and including four-inch caliper size. Measurement shall be taken 12 inches above the ground level for larger trees.

City means the city engineer, the city arborist or the senior urban forestry specialist, or their designated agent.

Commission means the city tree advisory commission.

dbh (diameter at breast height) means the diameter of a tree four and one-half feet above the average ground level.

Corridors are identified on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

Designated mixed-use centers are identified on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

Drip line means a vertical line running through the outermost portions of the tree crown extending to the ground.

Existing tree canopy means tree canopy that has existed for at least two years prior to development as evidenced by city or county aerial photographs, or a tree survey of trees one-inch caliper and larger.

Heritage tree means any tree that is listed in the North Carolina Big Trees List, the American Forest Association's Champion Tree list or any tree that would measure 80 percent of the points of a tree on the North Carolina Big Trees List.

Homeowner means a tenant or owner of an existing single-family or duplex residence.

Impervious cover means buildings, structures and other paved, compacted gravel or compacted areas which by their dense nature do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.

Internal planting area means a planting area located on private property outside the public right-of-way.

Invasive plant species means plant species that spread rapidly with little or no assistance. For the purposes of this chapter the following plant species are considered invasive: Bushkiller-Cayratia japonica, Chinese wisteria-Wisteria sinensis, English ivy- Hedera helix Japanese wisteria-Wisteria floribunda, Japanese honeysuckle- Lonicera japonica, Kudzu-Pueraria montana.

Land conservation group means a nonprofit land trust or similar organization approved by the city that permanently protects land, water, trees and wildlife habitat to enhance quality of life in Charlotte and Mecklenburg County.

Off-site mitigation means requirement of the developer and the property owner to convey at no cost to the city an equal amount of land in Mecklenburg County with a mature tree canopy to Mecklenburg County or to a land conservation group pursuant to the tree ordinance guidelines. The land shall be conveyed subject to either a permanent conservation easement or deed restrictions for the purpose of preserving tree canopy. The conveyance and its terms must be:

- (1) Approved by the city;
- (2) Be acceptable to either Mecklenburg County or a land conservation group; and
- (3) Comply with the tree ordinance guidelines.

Paved area means any ground surface covered with concrete, asphalt, stone, compacted gravel, brick, or other paving material.

Payment in lieu means contribution by the developer and the property owner to a city administered tree preservation fund a dollar amount equal to a percentage of the tax value of the land being developed at the time of the plan approval in accordance with section 21-94 and the tree ordinance guidelines. The tax value shall not exceed 90 percent of the average tax value of land in the city limits of and the ETJ, excluding the land within the boundaries of I-277 and in accordance with the tree ordinance guidelines.

Pedestrian scale lighting means lighting that is specifically intended to illuminate the sidewalk, as opposed to vehicular travel ways, and shall not exceed 15 feet in height.

Perimeter planting strip means a planting strip that abuts a public street or transportation right-of-way.

Person means a public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative, or other legal entity.

Planting strip and *planting area* means ground surface free of impervious cover and/or paved material which is reserved for landscaping purposes.

Renovation means any construction activity to an existing structure which changes its square footage, changes its footprint, or modifies the exterior wall material excluding cosmetic maintenance and repairs.

Root protection zone means, generally, 18 inches to 24 inches deep and a distance from the trunk of a tree equal to one-half its height or its drip line, whichever is greater.

Specimen tree means a tree or group of trees considered to be an important community asset due to its unique or noteworthy characteristics or values. A tree may be considered a specimen tree based on its size, age, rarity or special historical or ecological significance as determined by the city. Examples include large hardwoods (e.g., oaks, poplars, maples, etc.) and softwoods (e.g., pine species) in good or better condition with a dbh of 24 inches or greater, and smaller understory trees (e.g., dogwoods, redbuds, sourwoods, persimmons, etc.) in good or better condition with a dbh of ten inches or greater.

Streetscape plan means a plan that specifies planting strips, tree species, sidewalk locations, building setbacks and other design aspects for streets within the city. Such plans are effective following approval by the city council.

Suburban commercial zones mean all zoning districts other than single-family development and urban zones as defined in this section.

Topping means any pruning practices that result in more than one-third of the foliage and limbs being removed. This includes pruning that leads to the disfigurement of the normal shape of the tree.

Transit station area means high density area within approximately one-half mile of an existing or planned rapid transit station as designated by the city planning department.

Tree, large maturing means any tree the height of which is 35 feet or greater at maturity.

Tree, large maturing shade means any tree the height of which is 35 feet or greater at maturity and has a limb spread of 30 feet or more at maturity.

Tree, small maturing means any tree the height of which is less than 35 feet at maturity.

Tree evaluation formula means a formula for determining the value of trees and shrubs as published by the International Society of Arboriculture.

Tree ordinance guidelines means instructions and specifications of tree planting and tree protection as published by the city and subject to amendment from time to time by the city.

Tree protection zone mean a distance equal to the designated zoning district setback or 40 feet from the front property line, whichever is less, or from the side lot line on a corner lot. For urban zones, the tree protection zone shall be the same as the planting strip required for the associated zoning district or as designated in a streetscape plan. This definition does not apply to single-family development.

Tree save area means an area measured in square feet containing existing healthy tree canopy in a single-family subdivision or an area containing existing or mitigated off site healthy tree canopy in a commercial development. The area may include up to five feet beyond the drip line of the tree.

Urban zones means zoning districts within the city as listed in the tree ordinance guidelines and as may be amended from time to time by the city.

Wedges are those areas shown on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

(Ord. No. 4521, § 1, 9-27-2010)

Cross reference— Definitions generally, § 1-2.

Sec. 21-3. - Purpose and intent.

- (a) It is the purpose of this chapter to preserve, protect and promote the health, safety and general welfare of the public by providing for the regulation of the planting, maintenance and removal of trees located on roadways, parks and public areas owned or controlled by the city and on new developments and alterations to previous developments on private property.
- (b) It is the intent of this chapter to:
 - (1) Protect, facilitate and enhance the aesthetic qualities of the community to ensure that tree removal does not reduce property values.
 - (2) Emphasize the importance of trees and vegetation as both visual and physical buffers.
 - (3) Promote clean air quality by reducing air pollution and carbon dioxide levels in the atmosphere, returning pure oxygen to the atmosphere and increasing dust filtration.
 - (4) Reduce the harmful effects of wind and air turbulence, heat and noise, and the glare of motor vehicle lights.
 - (5) Minimize increases in temperatures on lands with natural and planted tree cover.
 - (6) Maintain moisture levels in the air of lands with natural tree cover.
 - (7) Preserve underground water reservoirs and permit the return of precipitation to the groundwater strata.
 - (8) Prevent soil erosion.
 - (9) Provide shade.

- (10) Minimize the cost of construction and maintenance of drainage systems necessitated by the increased flow and diversion of surface waters by facilitating a natural drainage system and amelioration of storm water drainage problems.
- (11) Conserve natural resources, including adequate air and water.
- (12) Require the preservation and planting of trees on site to maintain and enlarge the tree canopy cover across the city.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-4. - Applicability and exemptions.

This chapter shall apply to all developers and/or owners of real property involved with the erection, repair, alteration or removal of any building or structure as well as the grading in anticipation of such development. Compliance with this chapter will be required in the following circumstances:

- (1) New development.
- (2) In the case of the following cumulative (since January 2011) additions or changes:
 - a. Additions to existing sites that are equal to or greater than five percent of the site's existing building square footage or the addition of 1,000 square feet or more of building;
 - b. When ten or more parking spaces are added to the site with no building; or
 - c. Facade changes to ten percent or more of any building wall facing a vehicular way intended for public travel regardless of ownership (e.g., adding or eliminating doors, windows, closings, openings, or increased wall area).
- (3) The following are excluded from the requirements of sections 21-94, 21-95 and 21-96
 - a. The homeowner of a single-family or duplex residence.
 - b. Property which as altered does not meet the requirements of subsection (2).

(Ord. No. 4521, § 1, 9-27-2010)

Secs. 21-5—21-30. - Reserved.