

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

DECISION DATE: July 26, 2013

FINDINGS DATE: July 31, 2013

PROJECT ANALYST: Gregory F. Yakaboski

ASSISTANT CHIEF: Martha J. Frisone

PROJECT I.D. NUMBER: O-10088-13 / Carolina Bay of Wilmington, LLC, Carolina Bay Properties of Wilmington, LLC, and Carolina Bay Healthcare Center of Wilmington, LLC / Develop 30 nursing facility beds pursuant to Policy NH-2 in the 2013 SMFP as part of a continuing care retirement community / New Hanover County

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

G.S. 131E-183(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

- (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.

NC

The applicants for this proposed project are:

- Carolina Bay of Wilmington, LLC
- Carolina Bay Properties of Wilmington, LLC
- Carolina Bay Healthcare Center of Wilmington, LLC

The applicants may be referred to collectively as either the applicants or Liberty.

The proposal in this application is part of a larger project to develop a new continuing care retirement community (CCRC) to be known as Carolina Bay of Wilmington at Autumn Hall (Carolina Bay) which will be located at 630 Carolina Bay Drive, Wilmington. Development of the CCRC is not a "new institutional health service" and is not subject to review. The CCRC will consist of 122 independent living units (ILUs) and a 100-bed combination nursing facility with 48 nursing facility (NF) beds and 52 adult care home (ACH) beds.

Development of the 100-bed combination nursing facility is a “new institutional health service” and is subject to review. The applicants submitted three separate applications in order to develop the new 100-bed facility:

- Project I.D. #O-10088-13 – Develop 30 NF beds pursuant to Policy NH-2 (30 Policy NH-2 NF beds) (this application).
- Project I.D. # O-10087-13 – Relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds).
- Project I.D. # O-10086-13 – Relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds).

The applicants plan to include a secure, dedicated wing for a 24-bed Alzheimer’s/Dementia Memory Support Unit but it will not be a licensed special care unit.

The proposed project does not involve the addition of any new health service facility beds, services or equipment for which there is a need determination in the 2013 State Medical Facilities Plan (SMFP). However, the following policies are applicable:

- Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities.
- Policy NH-8: Innovations in Nursing Facility Design.
- Policy NH-2: Plan Exemption for Continuing Care Retirement Communities.

Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities *states*

“Any person proposing a capital expenditure greater than \$2 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178 shall include in its certificate of need application a written statement describing the project’s plan to assure improved energy efficiency and water conservation.

In approving a certificate of need proposing an expenditure greater than \$5 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178, the Certificate of Need Section shall impose a condition requiring the applicant to develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The plan must be consistent with the applicant’s representation in the written statement as described in paragraph one of Policy GEN-4.

Any person awarded a certificate of need for a project or an exemption from review pursuant to G.S. 131E-184 are required to submit a plan for energy efficiency and water conservation that conforms to the rules, codes and standards implemented by the Construction Section of the Division of Health Service Regulation. The plan must be consistent with the applicant’s representation in the written statement as described in paragraph one of Policy GEN- 4. The plan shall not adversely affect patient or resident health, safety or infection control.”

In Section III.4, page 40, Liberty provides a written statement describing the proposed project's plan to assure improved energy efficiency and water conservation. The application is consistent with Policy GEN-4.

Policy NH-8: Innovations in Nursing Facility Design states

“Certificate of need applicants proposing new nursing facilities, replacement nursing facilities, and projects associated with the expansion and/or renovation of existing nursing facilities shall pursue innovative approaches in care practices, work place practices and environmental design that address quality of care and quality of life needs of the residents. These plans could include innovative design elements that encourage less institutional, more home-like settings, privacy, autonomy and resident choice, among others.”

In Section III.4, pages 41-46, Liberty describes how the proposed project will incorporate innovative approaches in work place practices, environmental design and care practices to address quality of life and quality of care issues of the residents. Privacy, autonomy, resident choice and more home-like settings are all included in the proposed project. Therefore the application is consistent with Policy NH-8.

Policy NH-2: Plan Exemption for Continuing Care Retirement Communities states

“Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for nursing care without regard to the nursing care bed need shown in Chapter 10: Nursing Care Facilities. To qualify for such exemption, applications for certificates of need shall show that the proposed nursing care bed capacity:

1. *Will only be developed concurrently with, or subsequent to, construction on the same site of facilities for both of the following levels of care:*
 - a. *independent living accommodations (apartments and homes) for people who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms;*
 - b. *licensed adult care home beds for use by people who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort.*
2. *Will be used exclusively to meet the needs of people with whom the facility has continuing care contracts (in compliance with the North Carolina Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract.*

3. *Reflects the number of nursing care beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care.*
4. *Will not be certified for participation in the Medicaid program. One half of the nursing care beds developed under this exemption shall be excluded from the inventory used to project nursing care bed need for the general population. Certificates of need issued under policies analogous to this policy in the North Carolina State Medical Facilities Plans subsequent to the 1985 State Medical Facilities Plan are automatically amended to conform with the provisions of this policy at the effective date of this policy. Certificates of need awarded pursuant to the provisions of Chapter 920, Session Laws 1983 or Chapter 445, Session Laws 1985 shall not be amended.*

In Section III.4, pages 40-41, the applicants state that the 30 proposed SNF beds:

- Will be developed on the same site as both the independent living units and the licensed adult care home beds.
- Will be used exclusively to meet the needs of the people with whom Carolina Bay has a continuing care contract and who have lived in a non-nursing unit of Carolina Bay for a period of at least 30 days, unless as excepted by Policy NH-2.
- Are required to meet the projected needs of the Carolina Bay community and its residents.
- Will not be certified for participation in the Medicaid program.

However, the application proposing to relocate 52 ACH beds to the campus of the CCRC was denied on July 26, 2013. Therefore, the applicants do not demonstrate that the 30 Policy NH-2 NF beds will be developed on the same site as both the ILUs and licensed ACH beds. Furthermore, the applicants do not demonstrate that the CCRC proposes to make use of all feasible alternatives to institutional nursing care as required by Policy NH-2. The application is not consistent with Policy NH-2.

In summary, although the application is consistent with Policies GEN-4 and NH-8, it is not consistent with Policy NH-2. Therefore, the application is nonconforming to this criterion.

- (2) Repealed effective July 1, 1987.
- (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.

C

The applicants for this proposed project are:

- Carolina Bay of Wilmington, LLC
- Carolina Bay Properties of Wilmington, LLC
- Carolina Bay Healthcare Center of Wilmington, LLC

The applicants may be referred to collectively as either the applicants or Liberty.

The proposal in this application is part of a larger project to develop a new continuing care retirement community (CCRC) to be known as Carolina Bay of Wilmington at Autumn Hall (Carolina Bay) which will be located at 630 Carolina Bay Drive, Wilmington. Development of the CCRC is not a “new institutional health service” and is not subject to review. The CCRC will consist of 122 independent living units (ILUs) and a 100-bed combination nursing facility with 48 nursing facility (NF) beds and 52 adult care home (ACH) beds. Development of the 100-bed combination nursing facility is a “new institutional health service” and is subject to review. The applicants submitted three separate applications in order to develop the new 100-bed facility:

- Project I.D. #O-10088-13 – Develop 30 NF beds pursuant to Policy NH-2 (30 Policy NH-2 NF beds) (this application).
- Project I.D. # O-10087-13 – Relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds).
- Project I.D. # O-10086-13 – Relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds).

The applicants plan to include a secure, dedicated wing for a 24-bed Alzheimer’s/Dementia Memory Support Unit but it will not be a licensed special care unit.

Population to be Served

In Section III.9, page 49, the applicants provide projected patient origin for the NF beds, as shown in the table below.

County	Projected % of Total NF Residents
New Hanover	100.0%
Total	100.0%

On page 50, Liberty states admission to the NF beds “*will come from New Hanover County because by definition 30 of those beds will be reserved for the Independent Living residents of Carolina Bay with whom the applicants will have continuing care contracts in place. The other 18 beds will be utilized by New Hanover County residents, primarily for short term rehabilitation and therapy.*” The applicants adequately identified the population to be served.

Demonstration of Need

In Section IV.2, pages 51-53, the applicant projects utilization of the 30 Policy NH-2 NF beds for the first two full federal fiscal years (FFYs), as illustrated in the table below.

Projected Utilization - 30 Policy NH-2 NF Beds

	1st Full FFY 10/1/15 to 9/30/16	2nd Full FFY 10/1/16 to 9/30/17
Patient Days	9,882	9,855
Occupancy Rate	90.0%	90.0%
# of Beds	30	30

As shown in the table above, in both the first two full federal fiscal years of operation, Liberty projects the 30 Policy NH-2 NF beds will operate at 90% of capacity [$9,882 / 365 / 30 = 0.902$; $9,885 / 365 / 30 = 0.90$], which is consistent with the performance standard promulgated in 10A NCAC 14C .1102(b). In Section III, pages 33-39, the applicants provide the assumptions and methodology utilized to project utilization for the 30 Policy NH-2 NF beds.

In Section III.2, page 37, the applicants state

“Liberty feels that a new CCRC in this community will be well received and in high demand as the Baby Boomer generation continues to age, retire, and seek a living arrangement that will allow them to age in place as they need progressively higher levels of care.” Currently the only existing CCRC is Plantation Village, located in Porter’s Neck on the outskirts of Wilmington. Plantation Village does not have a healthcare facility on site, but rather contracts with Davis Healthcare and Champions Assisted Living to provide healthcare services to its residents. Wilmington has established itself as a favorable area for the 65+ population. ... Liberty has analyzed the local demographics and feels that the New Hanover County market is strong enough to support this project.”

On pages 37-38, the applicants state that the need for the 30 Policy NH-2 NF beds is based on the following:

- An aging population seeking to retire in a living arrangement that allows them to age in place even as they need progressively higher levels of care.
- Based on Claritas data, New Hanover County has a high percentage of residents age 65+ (14.96%) as compared to other counties in North Carolina.
- Wilmington is a destination retirement location.
- Lack of competition in Wilmington.

In Section III.1, page 33, Liberty states *“The applicants project that 30 skilled nursing beds will be sufficient to serve the proposed 122 unit Independent Living facility. Please see Exhibit 7 for a copy of the actuarial and market studies conducted.”* In Section III.4, page 41, Liberty states *“The proposed number of skilled nursing beds (30) is required to meet the projected needs of the Carolina Bay community and its residents.”*

The Continuing Care Retirement Communities 2013 Reference Guide published by the North Carolina Department of Insurance reports in Appendix 3 Occupancy Report documents that there are:

- 57 CCRCs in North Carolina
- a total of 11,430 ILUs in those 57 CCRCs
- a total of 4,069 NF beds in those 57 CCRCs

Thus, in North Carolina the ratio of ILUs to NF beds is 1 NF bed for every 2.18 ILUs [$11,430 / 4,069 = 2.18$]. The applicants are developing 122 ILU's and 30 Policy NH-2 NF beds which is 1 NF bed for every 4.1 ILUs [$122 / 30 = 4.1$]. Liberty's ratio of ILUs to NF beds is substantially higher than the industry average in North Carolina.

In summary, the applicants adequately identified the population to be served and demonstrated the need for the 30 proposed Policy NH-2 NF beds. Therefore, the application is conforming with this criterion.

- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.

NA

- (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.

NC

In Section III.2, pages 36-39, Liberty describes the alternatives considered, which include the following:

1. Maintain the Status Quo- The applicants considered maintaining the status quo, however, the applicants concluded that to do nothing would not allow the applicants to meet the needs of the population in need of the proposed services in New Hanover County.
2. Construct a new, traditional combination nursing facility. – The applicants determined that this alternative would be financially infeasible due to the lack of available licensed NF beds. The applicants state that Liberty Commons Nursing and Rehabilitation Center has only approximately 20 underutilized NF beds. (Note: there is no need determination for additional NF beds in New Hanover County in the 2013 SMFP. In fact, there is a projected surplus of 50 NF beds in 2016 in the 2013 SMFP.)

3. Construct a Continuing Care Retirement Community (CCRC) with no licensed beds available to the general public- The applicants determined this alternative was not the least costly or most effective alternative for three reasons: 1) it would not solve Liberty’s issue of unutilized beds at existing facilities; 2) a small healthcare facility (30 beds) is operationally inefficient; and 3) the facility would need to be fully staffed and operational, even though the first resident could not be admitted until living in an independent living unit for 30 days.
4. Construct a Continuing Care Retirement Community (CCRC) with a full service healthcare center with beds open and available to the general public – Liberty states that this proposal addresses the issues with the other alternatives and was deemed the least costly and most effective alternative by the applicants.

However, the application to relocate 52 ACH beds was denied on July 26, 2012. Thus, the applicants cannot demonstrate that the proposed Policy NH-2 NF beds will be developed on the same site as both ILUs and ACH beds as required by Policy NH-2. The application is not conforming to all other applicable statutory review criteria, and thus is not approvable. See Criterion (1). A project that cannot be approved cannot be an effective alternative.

Therefore, the applicants did not adequately demonstrate that the proposal is their least costly or most effective alternative to meet the stated need. Consequently, the application is nonconforming to this criterion.

- (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.

C

In Section VIII.1, page 86, the applicants project the total capital expenditure for the proposal to develop 30 Policy NH-2 NF beds will be \$6,814,536. This proposed project is part of a larger project with capital costs of \$57,176,626.

The \$6,814,536 capital cost for this project includes:

Site Costs	\$ 1,013,854
Construction Costs	\$ 4,885,418
Equipment and Furniture	\$ 390,000
Consultant Fees	\$ 343,464
Financing Costs	\$ 53,062
Interest during Construction	\$ 128,738
Total:	\$ 6,814,536

In Section VIII.2, page 89, the applicants indicate that the capital cost of the project will be financed with a commercial loan and owner’s equity. In Section IX, page 92, the applicants state that total working capital needed is \$1,187,108 (\$296,810 in start up expenses and

\$890,298 in initial operating expenses). On page 94, the applicants state that the working capital will be financed by owner equity.

Exhibit 23 contains a copy of a letter signed by a Senior Vice President of Branch Banking and Trust Co., which states

“BB&T has been informed that Carolina Bay Properties, LLC and Carolina Bay of Wilmington, LLC are submitting a Certificate of Need application to construct a proposed continuing care retirement community (CCRC) at 630 Carolina Bay Drive, Wilmington, NC 28403 in the Autumn Hall development. It is my understanding that this project will consist of 122 independent living units and a health care center with a bed compliment [sic] of 70 licensed adult care home beds and 30 non-Medicaid certified skilled nursing beds.

I have been informed that the estimated project cost for this proposed CCRC is \$57,176,626 and that credit estimated in the amount of approximately \$46,000,000 will be required to finance the land purchase and construction of this new CCRC. As you know, the Bank cannot offer a commitment until a formal application is submitted with all project details and is satisfactorily reviewed and approved by the Bank. However, please be aware that McNeill’s [sic] and Liberty Healthcare have a material banking relationship with BB&T which includes credit, deposit and other services. At this time, the Bank has outstanding loans to the Liberty Healthcare organization to permanently finance property and equipment including past skilled nursing facility projects. Typical loan terms would include a 20 year amortization and 5 year balloon at prevailing market rates.

Overall, the McNeill’s [sic] and Liberty Healthcare are considered Clients in good standing with the Bank and have handled all obligations as agreed.”

Exhibit 25 contains a letter dated January 30, 2013 signed by Joel M. White, CPA of Cherry Bekeart, LLP, which states

“I have been informed that Carolina Bay Properties, LLC and Carolina Bay of Wilmington, LLC are submitting a Certificate of Need application to construct a proposed continuing care retirement community (CCRC) at 630 Carolina Bay Drive, Wilmington, NC 28403 in the Autumn Hall development. It is my understanding that this project will consist of 122 independent living units and a health care center with a bed compliment [sic] of 70 licensed adult care home beds and 30 non-Medicaid certified skilled nursing beds.

I am the CPA for both John A. McNeill, Jr. and Ronald B. McNeill. I understand that they have agreed to provide funding for the proposed CCRC in the amount of approximately \$11,500,000 for construction and approximately \$850,000 in working capital.

In lieu of submitting financial statements, I will attest that John A. McNeill, Jr. and Ronald B. McNeill each have in excess of \$10,000,000 in cash, stocks, or short term

investments in order to fund the construction and operation of the proposed CCRC including any working capital, start-up and capital expenditures associated with this project.”

Exhibit 25 also contains a letter signed by both John A. McNeill, Jr. and Ronald B. McNeill, which states

“Please accept this letter as a commitment to contribute personal funds for the capital costs and working capital requirements for Carolina Bay, estimated to be approximately \$11,500,000 and \$1,200,000, respectively.

We jointly have in excess of the estimated equity amounts available to fund the project and will do so, if approved.”

Therefore, the applicants adequately demonstrate the availability of sufficient funds for the capital and working capital needs for this and the two related projects.

In Section IX, pages 102-103, the applicants projected charges/rates for the first two operating years following completion of the project as illustrated in the following tables:

30 Policy NH-2 NF Beds

Payor Source	First Full FFY (2017)	Second Full FFY (2018)
Private Pay	\$295.02	\$295.02
Medicare	\$458.00	\$458.00

Furthermore, in Form B, the applicants project that revenues will exceed operating costs in the first two full operating years following completion of the proposed project for the 100-bed facility, as shown in the table below.

	Relocated NF Beds	Policy NH-2 NF Beds	ACH Beds	Total Facility
1 st Full FFY (2017)	\$812,856	\$459,065	\$415,288	\$1,687,209
2 nd Full FFY (2018)	\$792,785	\$450,966	\$406,286	\$1,650,037

Projected utilization of the 30 Policy NH-2 NF beds is based on reasonable, credible and supported assumptions. See Criterion (3) for discussion which is incorporated hereby as if set forth fully herein. Consequently, operating costs and revenues that are based on this projected utilization are also reliable. Therefore, the applicants adequately demonstrate that the financial feasibility of the proposal is based on reasonable assumptions regarding revenues and operating costs.

In summary, the applicants adequately demonstrated the availability of sufficient funds for the capital and working capital needs of the proposal and adequately demonstrated that the financial feasibility of the project is based on reasonable projections of revenues and operating costs. Therefore, the application is conforming to this criterion.

- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

C

The proposal in this application is part of a larger project to develop a new continuing care retirement community (CCRC) to be known as Carolina Bay of Wilmington at Autumn Hall (Carolina Bay) which will be located at 630 Carolina Bay Drive, Wilmington. Development of the CCRC is not a “new institutional health service” and is not subject to review. The CCRC will consist of 122 independent living units (ILUs) and a 100-bed combination nursing facility with 48 nursing facility (NF) beds and 52 adult care home (ACH) beds. Development of the 100-bed combination nursing facility is a “new institutional health service” and is subject to review. The applicants submitted three separate applications in order to develop the new 100-bed facility:

- Project I.D. #O-10088-13 – Develop 30 NF beds pursuant to Policy NH-2 (30 Policy NH-2 NF beds) (this application).
- Project I.D. # O-10087-13 – Relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds).
- Project I.D. # O-10086-13 – Relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds).

The applicants plan to include a secure, dedicated wing for a 24-bed Alzheimer’s/Dementia Memory Support Unit but it will not be a licensed special care unit.

The Continuing Care Retirement Communities 2013 Reference Guide published by the North Carolina Department of Insurance reports in Appendix 3 Occupancy Report documents that there are:

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Thus, in North Carolina the ratio of ILUs to NF beds is 1 NF bed for every 2.18 ILUs [$11,430 / 4,069 = 2.18$]. The applicants are developing 122 ILU’s and 30 Policy NH-2 NF beds which is 1 NF bed for every 4.1 ILUs [$122 / 30 = 4.1$]. Liberty’s ratio of ILUs to NF beds is substantially higher than the industry average in North Carolina.

Only one of the 57 existing CCRCs is located in New Hanover County and it does not have NF or ACH beds of its own. Instead, Plantation Village contracts with Davis Health Care Center and Champions Assisted Living for nursing and assisted living services for its residents. There are no CCRCs in any of the counties contiguous to New Hanover (Brunswick, Columbus and Pender).

The applicants adequately demonstrate that the proposal to develop 30 Policy NH-2 NF beds for the new CCRC would not result in the unnecessary duplication of existing or approved

NF beds in New Hanover County. Consequently, the application is conforming to this criterion.

- (7) The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided.

C

Liberty proposes to provide personal care staff twenty-four hours per day, seven days per week. In Section VII.2, page 73, the applicants state that in FFY 2017, the direct care staffing for the 30 Policy NH-2 NF beds will be 12.28 full-time equivalent (FTE) positions. Adequate costs for the health manpower and management positions proposed by the applicants are budgeted in the pro forma financial statements.

In Section VII.6, pages 83-84, the applicants describe the recruitment and staff retention plan. Exhibit 22 contains a letter from Dr. Mary K. Rudyk stating that if the proposed project is approved she “*would consider serving as the Medical Director for the Carolina Bay Health Care Center.*”

The applicants adequately demonstrate the availability of adequate health manpower and management personnel to provide the proposed services, and therefore, the application is conforming to this criterion.

- (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

C

In Section II.4, pages 27-29, and in Section III, pages 33-35, the applicants describe the ancillary and support services that will be provided by the facility or made available through agreements with other providers including physician services, podiatry, pharmacy, audiology, laboratory services, optometry, barber/beauty, mental health services, x-ray/radiology services, dialysis services and dietary services. In Section II.4, pages 28-29, Liberty states

“Carolina Bay, through Senior Living Management Services, LLC, projects to have third party contracts to provide the following services See Exhibit 4 for copies of contracts in place at The Kempton and Liberty Commons Nursing and Rehabilitation Center. Should this proposal be approved, Senior Living Management Services, LLC will contract these or similar providers to provide services at the new facility.”

Exhibit 21 contains correspondence from local physicians and letters of support. The applicants adequately demonstrate the availability of the necessary ancillary and support

services and that the proposed services would be coordinated with the existing health care system. Therefore, the application is conforming to this criterion.

- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

NA

- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates: (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and (b) The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers:
- (i) would be available under a contract of at least 5 years duration;
 - (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
 - (iii) would cost no more than if the services were provided by the HMO; and
 - (iv) would be available in a manner which is administratively feasible to the HMO.

NA

- (11) Repealed effective July 1, 1987.
- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

C

The applicants propose to construct a 75,471 square foot building at 630 Carolina Bay Drive, Wilmington. The area in the facility for the NF beds will consist of 4,320 square feet. Construction costs for the 30 Policy NH-2 NF beds will be \$4,885,418. See Section VIII.1, page 86. Exhibit 32 contains a letter dated February 13, 2013 from Sarah Gregory, AIA of LS3P LTD, which states that the construction costs for the total new building will be \$39,768,023 which corresponds to the estimated construction costs for the full project found in Section VIII.1, page 88, of the application.

In Section XI.8, page 112, the applicants provide the projected number of private rooms as illustrated in the table below.

	Number of Private Beds
Nursing Facility	48
Adult Care Home	52

In Section XI.14, page 116, and Section III.4, page 40, the applicants describe the energy efficiency and sustainability plan and water conservation plan. Exhibit 31 contains the site and floor plans. See Criterion (1) for additional discussion regarding energy conservation which is incorporated hereby as if set forth fully herein. The applicants adequately demonstrate that applicable energy saving features have been incorporated into the construction plans.

The applicants adequately demonstrate that the cost, design and means of construction represent the most reasonable alternative for the proposed development of a 100-bed facility, including the 30 Policy NH-2 NF beds. Furthermore, the applicants adequately demonstrate that the project will not unduly increase costs and charges. See Criterion (5) for discussion of costs and charges which is incorporated hereby as if set forth fully herein. Therefore, the application is conforming to this criterion.

- (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;

NA

Carolina Bay does not currently operate either a nursing or adult care home facility in New Hanover County.

- (b) Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;

NA

Carolina Bay does not currently operate either a nursing or adult care home facility in New Hanover County.

- (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

C

In Section VI.5, page 68, the applicants state “*Carolina Bay will admit to its 30 skilled nursing “closed” beds anyone over the age of 62 (the minimum age for entry to Carolina Bay independent living) who qualifies for skilled nursing ... and who has a continuing care contract in place with Carolina Bay and who has been an independent living resident at Carolina Bay for at least 30 days.*” In Section VI.2, page 67, the applicants project the following payor mix during FFY 2017 (second full FFY) for the 30 Policy NH-2 NF beds. These beds, unlike the 18 relocated NF beds proposed in a different application, cannot be utilized except by residents of the CCRC. They are often referred to as “closed” NF beds. The 18 relocated NF beds are often referred to as “open” beds because anyone can be admitted to those beds.

30 Policy NH-2 (“Closed”) NF Beds

Payor Source	Projected Days as a % of Total Days
Private Pay	100.0%
Total	100.0%

As shown in the table above, the applicants project that 100% of the patients utilizing the 30 Policy NH-2 NF beds will be private pay patients. The application is conforming to this criterion.

- (d) That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

C

In Section VI.7, page 69, Liberty states “*Carolina Bay anticipates receiving referrals from the following:*

- *New Hanover Regional Medical Center*
- *Cape Fear Hospital*
- *Local physicians practices*
- *Liberty Home Care*
- *Liberty’s in-house marketing team”*

The applicants adequately identified the range of means by which patients will have access to the proposed services. Therefore, the application is conforming to this criterion.

- (14) The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.

C

In Section V.1, page 63, Liberty states “*Liberty will accommodate that clinical health needs of health professional training programs in the area and will make the facility available to host health professional students.*” Exhibit 19 contains a sample health professional training agreement with Cape Fear Community College. The applicants adequately demonstrate that the proposed 100-bed facility would accommodate the clinical needs of area health professional training programs. Therefore, the application is conforming to this criterion.

- (15) Repealed effective July 1, 1987.
(16) Repealed effective July 1, 1987.
(17) Repealed effective July 1, 1987.
(18) Repealed effective July 1, 1987.
- (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.

C

The proposal in this application is part of a larger project to develop a new continuing care retirement community (CCRC) to be known as Carolina Bay of Wilmington at Autumn Hall (Carolina Bay) which will be located at 630 Carolina Bay Drive, Wilmington. Development of the CCRC is not a “new institutional health service” and is not subject to review. The CCRC will consist of 122 independent living units (ILUs) and a 100-bed combination nursing facility with 48 nursing facility (NF) beds and 52 adult care home (ACH) beds. Development of the 100-bed combination nursing facility is a “new institutional health service” and is subject to review. The applicants submitted three separate applications in order to develop the new 100-bed facility:

- Project I.D. #O-10088-13 – Develop 30 NF beds pursuant to Policy NH-2 (30 Policy NH-2 NF beds) (this application).
- Project I.D. # O-10087-13 – Relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds).
- Project I.D. # O-10086-13 – Relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds).

The applicants plan to include a secure, dedicated wing for a 24-bed Alzheimer’s/Dementia Memory Support Unit but it will not be a licensed special care unit.

Enhanced Competition

In Section V.6, pages 64-65, the applicants discuss the expected effects on competition of the proposal to develop 30 Policy NH-2 NF beds, including how any enhanced competition will have a positive impact on the cost effectiveness, quality and access to the services proposed. See also Sections II, III, VI and VII of the application.

Impact on Cost Effectiveness

The Continuing Care Retirement Communities 2013 Reference Guide published by the North Carolina Department of Insurance reports in Appendix 3 Occupancy Report documents that there are 57 CCRCs in North Carolina. Only one of the 57 existing CCRCs is located in New Hanover County and it does not have NF or ACH beds of its own. Instead, Plantation Village contracts with Davis Health Care Center and Champions Assisted Living for nursing and assisted living services for its residents. There are no CCRCs in any of the counties contiguous to New Hanover (Brunswick, Columbus and Pender).

The applicants adequately demonstrate that the proposal to develop 30 Policy NH-2 NF beds at Carolina Bay would enhance competition, including a positive impact on the cost effectiveness of the proposed services.

Impact on Access

In Section VI.5, page 68, the applicants state “*Carolina Bay will admit to its 30 skilled nursing “closed” beds anyone over the age of 62 (the minimum age for entry to Carolina Bay independent living) who qualifies for skilled nursing ... and who has a continuing care contract in place with Carolina Bay and who has been an independent living resident at Carolina Bay for at least 30 days.*”

In Section VI.2, page 67, the applicants project the following payor mix during FFY 2017 (second full FFY) for the 30 Policy NH-2 NF beds. These beds, unlike the 18 relocated NF beds proposed in a different application, cannot be utilized except by residents of the CCRC. They are often referred to as “closed” NF beds. The 18 relocated NF beds are often referred to as “open” beds because anyone can be admitted to those beds.

30 Policy NH-2 (“Closed”) NF Beds

Payor Source	Projected Days as a % of Total Days
Private Pay	100.0%
Total	100.0%

As shown in the table above, the applicants project that 100% of the patients utilizing the 30 Policy NH-2 NF beds will be private pay patients.

The applicants adequately demonstrate that the proposal to develop 30 Policy NH-2 NF beds at Carolina Bay would enhance competition, including a positive impact on access to the proposed services.

Impact on Quality

In Section II.5, page 29, Liberty states

“Carolina Bay will have a Quality of Care and Quality of Life program in place to ensure the highest quality care provided. This will be a multi-faceted program consisting of quarterly reports submitted by department managers, weekly, monthly, and quarterly meetings, and oversight of the program by a Registered Nurse. Carolina Bay will employ a Staff Development/Quality Assurance RN who will be responsible for the oversight of the aforementioned Quality of Care/Life programs. Individual departments will determine any necessary changes and obtain data subsequent to the changes over the next two to three quarters.”

The applicants adequately demonstrate that the proposal to develop 30 Policy NH-2 NF beds at Carolina Bay would enhance competition, including a positive impact on the quality of the proposed services.

In summary, the applicants adequately demonstrate how any enhanced competition includes a positive impact on cost effectiveness, access and quality. Therefore, the application is conforming to this criterion.

- (19) Repealed effective July 1, 1987.
- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

C

In Section I.12, page 9, the applicants state that affiliates own and operate 19 nursing facilities in North Carolina, including Liberty Commons in New Hanover County, which is licensed for 100 NF beds. In Section II.6, pages 29-31, the applicants identify three nursing facilities, including Liberty Commons in New Hanover County, that were found to have provided substandard quality of care, as that term is defined in 42 CFR 488.301, during the 18 months immediately preceding the submittal of the application. The applicants also identified two nursing facilities that paid fines during that same time period.

According to the Nursing Home Licensure and Certification Section, DHSR, during the 18 months immediately preceding the date of the decision through the date of the decision, two deficiencies were identified at Liberty Commons in New Hanover County at

“harm level 2 (potential for harm, not harm and not jeopardy) ... for privacy, vaccinations, food palatability, kitchen sanitation, quality assurance, pressure sores and self administration of medications and grievances. They received a G level (actual harm occurred) at supervision to prevent accidents and it was past non compliance (facility identified their own problem and systemically corrected it before the survey)”

However, none of these deficiencies amount to substandard quality of care as defined in 42 CFR 488.301. The applicants adequately demonstrate that quality care has been provided in the past. The application is conforming to this criterion.

(21) Repealed effective July 1, 1987.

G.S. 131E-183(b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service.

C

The proposal is conforming with all applicable Criteria and Standards for Nursing Facility or Adult Care Home Facility Services, promulgated in 10A NCAC 14C .1100, as indicated below.

SECTION .1100 – CRITERIA AND STANDARDS FOR NURSING FACILITY OR ADULT CARE HOME SERVICES

10A NCAC 14C .1101 INFORMATION REQUIRED OF APPLICANT

- (a) *An applicant proposing to establish new nursing facility or adult care home beds shall project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be stated.*
 - C- The applicants project an occupancy level for the entire facility for each of the first eight calendar quarters following completion of the proposed project in Section IV.2, pages 54-56, and provide all assumptions and the specific methodology used to project occupancy in Section III., pages 33-49.
- (b) *An applicant proposing to establish new nursing facility or adult care home beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, shall be stated.*
 - C- In Section III.9, page 49, the applicants project patient origin by percentage by county residence and provide the specific methodology by which patient origin was projected.
- (c) *An applicant proposing to establish new nursing facility or adult care home beds shall show that at least 85 percent of the anticipated patient population in the entire facility lives within a 45 mile radius of the facility, with the exception that this standard shall be waived for*

applicants proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, facilities that are fraternal or religious facilities, or facilities that are part of licensed continuing care facilities which make services available to large or geographically diverse populations.

-NA- The applicants propose to develop the 30 Policy NH-2 NF beds as part of a CCRC.

(d) *An applicant proposing to establish a new nursing facility or adult care home shall specify the site on which the facility will be located. If the proposed site is not owned by or under the control of the applicant, the applicant shall specify at least one alternate site on which the services could be operated should acquisition efforts relative to the proposed site ultimately fail, and shall demonstrate that the proposed and alternate sites are available for acquisition.*

-C- In Section XI.2, page 108, the applicants identify the proposed site as 630 Carolina Bay Drive, Wilmington. On page 109, the applicants state that the site has already been purchased. Exhibit 26 contains a copy of the North Carolina Special Warranty Deed dated May 11, 2012.

(e) *An applicant proposing to establish a new nursing facility or adult care home shall document that the proposed site and alternate sites are suitable for development of the facility with regard to water, sewage disposal, site development and zoning including the required procedures for obtaining zoning changes and a special use permit after a certificate of need is obtained.*

-C- In Section XI, pages 108-109, the applicants state that the current zoning of the site is appropriate for the use proposed, the site has been inspected and that water and sewer are available. See also Exhibits 27, 29 and 30.

(f) *An applicant proposing to establish new nursing facility or adult care home beds shall provide documentation to demonstrate that the physical plant will conform with all requirements as stated in 10A NCAC 13D or 10A NCAC 13F, whichever is applicable.*

-C- In Section II.1, page 13, the applicants state that the physical plant will conform to 10A NCAC 13D. See also Section XI.5-9, pages 111-115.

10A NCAC 14C .1102 PERFORMANCE STANDARDS

(a) *An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.*

-NA- The applicants proposed to develop a new 100-bed combination nursing facility (48 NF beds and 52 ACH beds).

(b) *An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.*

-C- In Section IV, pages 54-56, Liberty projects that occupancy of the 48 NF beds will be 91.9% during FFY 2016 (the first full FFY). The assumptions and methodology by which occupancy was projected are provided in Section III, pages 33-47. See Criterion (3) for additional discussion which is incorporated hereby as if set forth fully herein.

(c) *An applicant proposing to add adult care home beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed adult care home beds within the facility in which the new beds are to be operated was at least 85 percent.*

-NA- The applicants are not proposing to add ACH beds as part of this application.

(d) *An applicant proposing to establish a new adult care home facility or add adult care home beds to an existing facility shall not be approved unless occupancy is projected to be at least 85 percent for the total number of adult care home beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be stated.*

-NA- The applicants are not proposing to establish a new adult care home facility or add ACH beds as part of this application.