

REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: July 29, 2019

Findings Date: July 29, 2019

Project Analyst: Bernetta Thorne-Williams

Team Leader: Gloria C. Hale

Project ID #: J-11698-19

Facility: Liberty Assisted Living of Durham

FID #: 190084

County: Durham

Applicant: Liberty Healthcare Properties of Durham County, LLC

Project: Relocate no more than 29 ACH beds from Ellison's Rest Home and no more than 20 ACH beds from Carver Living Center pursuant to Policy LTC-2 for a total of no more than 49 ACH beds upon project completion

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

N.C. Gen. Stat. §131E-183(a) The Agency 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.

C

The applicant, Liberty Healthcare Properties of Durham County, LLC, proposes to develop a new adult care home (ACH), Liberty Assisted Living of Durham (Liberty Commons), with 49 ACH beds, 29 relocated beds from Ellison's Rest Home and 20 beds from Carver Living Center, and 39 Multi-Unit Housing with Assisted Services (MUHAS). Both Ellison's Rest Home and Carver Living Center are located in Durham County. The proposed new facility, Liberty Assisted Living of Durham, will be located at 4712 Hope Valley Road. Upon completion of the proposed project, Ellison's Rest Home will have no licensed beds and the building will be closed. Carver Living Center will be licensed for no ACH beds and 232 nursing home (NH) beds.

Need Determination

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 2019 State Medical Facilities Plan (SMFP). Therefore, there are no need determinations applicable to this review.

Policies

There are two policies in the 2019 SMFP which are applicable to this review: *Policy LTC-2: Relocation of Adult Care Home Beds* and *Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities*.

Policy LTC-2: Relocation of Adult Care Home Beds, on page 24 of the 2019 SMFP, states:

“Relocations of existing licensed adult care home beds are allowed to another service area. Certificate of need applicants proposing to relocate licensed adult care home beds to another service area shall:

- 1. Demonstrate that the proposal shall not result in a deficit, or increase an existing deficit in the number of licensed adult care home beds in the county that would be losing adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins; and*
- 2. Demonstrate that the proposal shall not result in a surplus, or increase an existing surplus of licensed adult care home beds in the county that would gain adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins.”*

Ellison’s Rest Home and Carver Living Center are both located in Durham County. According to the 2019 SMFP, Durham County has a surplus of 245 ACH beds. The proposed project does not change the ACH bed inventory in Durham County because the applicant does not propose to relocate beds from another county to Durham County, rather it proposes the relocation of existing beds within the county. Therefore, the application is conforming with Policy LTC-2.

Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities, on page 31 of the 2019 SMFP, 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, Certificate of Need 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 of 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."

The proposed capital expenditure for this project is greater than \$5 million; therefore, Policy GEN-4 is applicable to this review. In Section B.10, page 15, the applicant provides a written commitment assuring improved energy efficiency and water conservation in its construction project. The applicant states that Liberty will implement policies and guidelines for staff to follow, further ensuring continuous energy/water use, monitoring and awareness.

In Section K, page 45, the applicant provides a list of strategies to be incorporated as energy saving features into the construction plans. The applicant adequately demonstrates that the application includes a written statement describing the project's plan to assure improved energy efficiency and water conservation.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant adequately demonstrates that the proposal is consistent with Policy LTC-2 and Policy GEN 4 for the following reasons:
 - The ACH beds are existing beds located in Durham County.
 - The applicant does not propose any change to the existing bed inventory in Durham County.
 - The applicant provides a written statement regarding its plans for energy efficiency and water conservation.

(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 applicant proposes to relocate 29 ACH beds from Ellison’s Rest Home and 20 ACH beds from Carver Living Center for a total of 49 ACH beds and 39 units of MUHAS at Liberty Assisted Living of Durham, a new ACH facility. Upon project completion, Ellison’s Rest Home will have no licensed ACH beds and will be closed. Carver Living Center will have no licensed ACH beds and 232 licensed NH beds.

Patient Origin

On page 219, the 2019 SMFP defines the service area for ACH beds as “*the county in which the adult care home bed is located.*” The proposed facility and the two existing facilities are all located in Durham County, thus, the service area for this project is Durham County. Facilities may also serve residents of counties not included in their service area.

In Section C.2, page 16, the applicant states Liberty Commons is a proposed new facility and therefore has no historical patient origin. In Section C.3, page 17, the applicant provides the projected patient origin for the proposed project in the third full federal fiscal year of operation, as shown in the table below.

**Liberty Assisted Living of Durham
Projected Patient Origin
Third Full Fiscal Year
10/1/25-9/30/26**

County or State	Number of Patients	Percent of Total Patients
Durham	44	93.6%
Orange	3	6.4%
Total	47	100.00%

Source: Section C, page 17

In Section C, pages 17-20, the applicant provides the assumptions and methodology used to project its patient origin. The applicant states the proposed new ACH is less than 3.5 miles from Ellison’s Rest Home and Carver Living Center is 13.1 miles or a 20-minute drive away. The applicant states that historically the patient origin for Ellison’s Rest Home and Carver Living Center have originated from Durham County with a small portion of residents from Orange County. The applicant projects the same patient origin trend. The applicant’s assumptions are reasonable and adequately supported.

Analysis of Need

In Section C, pages 17-20, and Exhibit C.4, the applicant explains why it believes the population projected to utilize the proposed services needs the proposed services. The applicant states:

- Growth in Durham County's senior population (pages 17-18).
- Poor condition of Ellison's Rest Home (page 18).
- Demand among new facilities in Durham County (pages 18-20).

Growth in Durham County's senior population

In Section C, pages 17-18, the applicant states that according to the North Carolina Office of Budget and Management (NCOBM), the Durham County 65-74 population is projected to increase from 26,472 (2010 census) to 59,207 by 2030. This is a projected increase of 124 percent. Additionally, other age cohorts including those 75-84 and 85-99 are projected to increase by 148 percent and 67 percent, respectively. The applicant states on page 18, *"this population represents the most significant demographic in need of the proposed assisted living beds."*

Poor condition of Ellison's Rest Home

In Section C, page 18, the applicant states that Ellison's Rest Home is an old and outdated facility consisting of 15 resident rooms, 14 of those rooms are semi-private rooms and one room is private. The applicant states that today's market trends indicate a desire for private rooms. Additionally, the applicant states that renovations or adding an addition to the existing facility is not *"economically feasible"* because of the age and structure of the building.

Demand among new facilities in Durham County

In Section C, page 19, the applicant states based on the 2018 License Renewal Applications (LRA) for Durham County, the existing ACH facilities operated with a combined occupancy rate of 76 percent. The table on page 19 illustrates that of those 12 facilities identified, only four of those facilities operated with a utilization of below 80 percent, as shown below.

**Durham County ACH Facilities' Utilization
 August 1, 2016 through July 31, 2017**

Facility	Number of ACH Beds	Potential Patient Days	Actual Patient Days	Percent of Occupancy
Atria Southpoint	20	7,300	7,300	100%
Brookdale Chapel Hill	38	13,870	12,257	88%
Brookdale Chapel Hill AL	70	25,550	9,587	38%
Brookdale Durham	119	43,435	34,940	80%
Camellia Gardens*	81	29,565	28,832	98%
Carillion Assisted Living Durham	96	35,040	19,727	56%
Carolina Reserve of Durham**	60	21,900	17,520	80%
Durham Ridge Assisted Living	142	51,830	42,401	82%
Eden Spring Living Center	19	6,935	6,615	95%
Ellison's Rest Home***	29	10,585	1,961	19%
Eno Pointe Assisted Living	147	53,655	45,146	84%
Seasons at Southpoint	51	18,615	14,556	78%
Total****	791 [872]	288,715 [318,280]	218,624 [240,845]	76%

Notes: *Camellia Gardens did not report paid patient days; the applicant calculated occupancy by multiplying the number of residents in the facility by 365.

**Data taken from 2019 LRA

***The 2018 LRA reports the facility had no admissions from August 1, 2016 through July 31, 2017. Three deaths were reported during that same timeframe.

****Project Analyst's corrections are in brackets.

On page 19, the applicant states that it could not obtain copies of LRAs for the all the facilities in Durham County that have ACH beds from the Adult Care Licensure Section, Division of Health Service Regulation. Those facilities and beds missing from the above table include: 30 ACH beds at Croasdaile, 60 ACH beds at Spring Arbor of Durham, and 88 ACH beds located in nursing facilities (20 ACH beds at Carver Living Center, 34 ACH beds at Hillcrest Convalescent Center, Inc., and 34 ACH beds at The Forest at Duke), as reported in the 2018 SMFP. The 2018 SMFP, page 219, reports a total of 990 ACH beds in Durham County, including those ACH beds located in nursing facilities, and a projected surplus of 122 ACH beds by 2021 (Table 11.B, page 238).

The applicant states, on page 20, that older facilities in Durham County tend to have a lower occupancy rate and that the newer facilities have a higher occupancy rate. Potential residents will opt to leave Durham County and receive services in a contiguous county if it means residing in a newer, state-of-the-art facility. Thus, the applicant believes that the relocated beds to a new facility will be in high demand.

The information is reasonable and adequately supported for the following reasons:

- The applicant does not propose to add any new ACH beds in Durham County, rather it proposes to relocate existing ACH beds in Durham County to a new facility in Durham County.

- The 2019 SMFP shows a surplus of 245 ACH beds in Durham County and an overall adjusted occupancy rate of 82.21 percent.
- The North Carolina Office of State Budget and Management (OSBM) projects that Durham County residents 65-74 will increase by 124 percent between 2010 and 2030, while residents 75-84 will increase by 148% during the same timeframe.
- The applicant provides documentation of community support for the proposed project.

Projected Utilization

In Section Q, page 64, the applicant provides the projected utilization (FY2024-FY2026), as shown in the table below.

	Projected		
	FY2024	FY2025	FY2026
# General ACH Beds	49	49	49
Days of Care	6,993	15,663	17,202
Occupancy Rate	39%	88%	96%
#MUHAS Beds	39	39	39
Days of Care	8,034	13,505	13,505
Occupancy Rate	56%	95%	95%

In supplemental information dated July 12, 2019, and in Section Q, the applicant provides the assumptions and methodology used to project utilization, which are summarized below. The applicant states that it projects a net average fill-up rate of three residents per month during the first three months, four residents per month during the next three months and two residents per month until the 49 ACH beds are fully occupied. The applicant will consider the facility fully occupied with 47 ACH residents or 96 percent occupancy.

- Fill-up rate is based on existing ACH facilities operated by Liberty Healthcare.
- Utilization of the proposed facility is based on the growth of the aging population in Durham County.

Projected utilization is reasonable and adequately supported for the following reasons:

- Projected utilization is based on Liberty Healthcare’s experience with occupancy and relocation of beds.
- Aging and growth in the proposed service area population of Durham County.

Access

In Section C.8, page 21, the applicant describes the access low-income people, racial and ethnic minorities, women, disabled people, the elderly, and underserved groups will have to the proposed services. On page 21, the applicant states:

“Services provided will be non-restrictive with respect to social, racial, ethnic, or gender related issues and will be provided on a first come, first served basis. It will be the policy [sic] Liberty Commons to admit anyone over the age of 18 who qualifies for and is in need of care. Liberty Commons will not admit persons for whom the appropriate care cannot be provided by the facility. ... Liberty Commons will admit residents based on the ability of the facility to satisfy the resident’s needs based on bed availability. Therefore, minorities and low income persons will have access to assisted living now and in the future.”

In Section L, page 51, the applicant projects the following payor mix during the third full fiscal year of operation following completion of the project, as illustrated in the following table.

**Liberty Assisted Living of Durham
General ACH Beds Payor Source
Third Full Fiscal Year 10/1/2025-9/30/2026**

Payor Source	General ACH Beds
Private Pay	89%
County Assistance	11%
Total	100.0%

The projected payor mix is reasonable and adequately supported.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Supplemental information requested by the Agency
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant adequately identifies the population to be served.
- The applicant adequately explains why the population to be served needs the services proposed in this application.
- Projected utilization is reasonable and adequately supported.
- The applicant projects the extent to which all residents, including underserved groups, will have access to the proposed services (payor mix) and adequately supports their assumptions.

(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.

C

The applicant, Liberty Healthcare Properties of Durham County, LLC, proposes to develop a new adult care home (ACH), Liberty Assisted Living of Durham (Liberty Commons), with 49 ACH beds, 29 relocated beds from Ellison's Rest Home and 20 beds from Carver Living Center, and 39 Multi-Unit Housing with Assisted Services (MUHAS). Both Ellison's Rest Home and Carver Living Center are located in Durham County. Once the 29 ACH beds from Ellison's Rest Home are relocated that facility will be closed. Once the 20 ACH beds at Carver Living Center are relocated, the facility will only operate 232 NF beds.

In Section D, page 25, the applicant explains why it believes the needs of the population presently utilizing the services to be relocated will be adequately met following completion of the project. On page 25, the applicant states that there is currently only one resident residing at Ellison's Rest Home. Upon completion of the proposed project, that one resident will be relocated to the new facility. The applicant also states on page 25, that Carver Living Center has seven of its 20 ACH beds occupied. Carver Living Center plans to discharge those seven residents to existing ACH facilities in Durham County and to convert all its existing vacant ACH rooms to private NF rooms. In Section C, page 19, the applicant provides a table depicting the utilization of existing ACH facilities in Durham County in FY2017. Seven of the 12 ACH facilities had occupancy rates below 85 percent, indicating sufficient capacity in the county to accommodate Carver Living Center's seven ACH residents.

In Section D, page 25, the applicant states,

"With regard to long-term needs, Durham County residents in need of ACH services will be met in a substantially better fashion by the proposed brand-new, state-of-the art ACH in Durham County rather than the current underutilized options available at Ellison's Rest Home or Carver Living Center."

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the applicant adequately demonstrates that:

- The needs of the population currently using the services to be reduced, eliminated or relocated will be adequately met following project completion.
- The project will not adversely impact the ability of underserved groups to access these services following project completion.

- (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.

CA

The applicant proposes to relocate 29 ACH beds from Ellison's Rest Home and 20 ACH beds from Carver Living Center for a total of 49 ACH beds and develop 39 unlicensed MUHAS beds upon project completion.

In Section E, pages 28-29, the applicant describes the alternatives it considered and explains why each alternative is either more costly or less effective than the alternative proposed in this application to meet the need. The alternatives considered were:

- Maintain the status quo - The applicant states the ACH beds at both Ellison's Rest Home and Carver Living Center are underutilized with the current resident population being one and seven, respectively. Carver Living Center plans to discharge those seven residents to other facilities within Durham County which could potentially lead to the 20 beds at the facility being removed from Durham County's ACH inventory. The applicant states that there is a strong demand for ACH beds in the county, therefore maintaining the status quo would not promote the well-being of the proposed population to be served. Therefore, this alternative is not an effective alternative.
- Assume operations at the current facility - the applicant states the existing facility at Ellison's Rest Home is "*functionally obsolete, and it is not economically feasible to improve the existing property to today's standards.*" The applicant states that it would be more costly to demolish the existing facility and build a replacement facility on the current site, in part, because the facility is located on a dirt road in the middle of a small residential community that would likely require improvements to the sewer system. Additionally, the real property at Carver Living Center is not for sale, as the facility plans to convert the vacated ACH rooms to private NF rooms. Therefore, this is not a feasible or effective alternative.
- Acquire the licenses and construct a new facility at a different location with 49 ACH beds - the applicant states developing a standalone 49 bed ACH would be incapable of generating enough revenue to make the facility profitable, therefore, this was not considered an effective alternative.

On pages 28-29, the applicant states that its proposal is the most effective alternative because it combines the 49 ACH beds with 39 unlicensed MUHAS to create an 88 unit facility which is an economically effective alternative to meet the needs of the population proposed to be served. The applicant provides supporting documentation in Exhibit E.2.

The applicant adequately demonstrates that the alternative proposed in this application is the most effective alternative to meet the identified need for the following reasons:

- The application is conforming to all statutory and regulatory review criteria.

- The applicant provides credible information to explain why it believes the proposed project is the most effective alternative.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above. Therefore, the application is approved subject to the following conditions:

- 1. Liberty Healthcare Properties of Durham, LLC shall materially comply with all representations made in the certificate of need application and any supplemental responses. In the event that representations conflict, Liberty Healthcare Properties of Durham, LLC shall materially comply with the last made representation.**
- 2. Liberty Healthcare Properties of Durham, LLC shall 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.**
- 3. Liberty Healthcare Properties of Durham, LLC shall relocate no more than 29 ACH beds from Ellison's Rest Home and no more than 20 ACH beds from Carver Living Center, pursuant to Policy LTC-2, for a total of no more than 49 ACH beds at Liberty Assisted Living of Durham upon completion of this project.**
- 4. Upon completion of the project, Ellison's Rest Home shall delicense its 29 ACH beds and Carver Living Center will shall delicense its 20 ACH beds for a facility total of only 232 NF beds.**
- 5. Liberty Assisted Living of Durham shall provide care to recipients of State/County Special Assistance with Medicaid, commensurate with representations made in the application.**
- 6. For the first two years of operation following completion of the project, Liberty Healthcare Properties of Durham, LLC shall not increase private pay charges more than 5% of the projected private pay charges provided in Section Q of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.**
- 7. No later than three months after the last day of each of the first three full fiscal years of operation following initiation of the services authorized by this certificate**

of need, Liberty Healthcare Properties of Durham, LLC shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:

- a. Payor mix for the services authorized in this certificate of need.
- b. Utilization of the services authorized in this certificate of need.
- c. Revenues and operating costs for the services authorized in this certificate of need.
- d. Average gross revenue per unit of service.
- e. Average net revenue per unit of service.
- f. Average operating cost per unit of service.

8. Liberty Healthcare Properties of Durham, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.

- (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

The applicant proposes to develop a new ACH facility by relocating 29 ACH beds from Ellison's Rest Home and 20 ACH beds from Carver Living Center for a total of 49 ACH beds, and by developing 39 unlicensed MUHAS units.

Capital and Working Capital Costs

In Section Q, page 65, the applicant projects the total capital cost for the 49 ACH beds and the 39 MUHAS units, as shown in the table below.

Site Costs*	\$1,295,875
Construction Costs**	\$12,775,000
Miscellaneous Costs***	\$1,030,000
Total	\$15,100,875

*Includes purchase price of land, closing costs & site preparation

**Includes construction / renovation contracts & architect / engineering costs

***Includes nonmedical equipment, furniture and consultant costs

In Section Q, page 65, the applicant provides the assumptions used to project the capital cost.

In Section F, pages 31-32, the applicant projects that start-up costs will be \$140,896 and initial operating expenses will be \$310,904 for a total working capital of \$451,800. On page

32, the applicant provides the assumptions and methodology used to project the working capital needs of the project.

Availability of Funds

In Section F.2, page 30, the applicant states that the capital cost will be funded as shown in the table below.

Sources of Capital Cost Financing		
Type	Liberty Healthcare Properties of Durham County, LLC	Total
Loans	\$0	\$0
Accumulated reserves or OE *	\$15,100,875	\$15,100,875
Bonds	\$0	\$0
Other (Specify)	\$0	\$0
Total Financing	\$15,100,875	\$15,100,875

* OE = Owner's Equity

In Section F, page 32, the applicant states that the working capital needs of the project will be funded as shown in the table below.

Sources of Financing for Working Capital		Amount
(a)	Loans	\$0
(b)	Cash or Cash Equivalents, Accumulated Reserves or Owner's Equity	\$451,800
(c)	Lines of credit	\$0
(d)	Bonds	\$0
(e)	Total *	\$451,800

Exhibit F.2 contains two letters, one of which is dated April 4, 2019, from the owners of Liberty Healthcare Management, which states,

"We have both agreed and are both committed to personally funding the proposed project, the construction and operation of the proposed facility, including any working capital, start-up and capital expenditures associated with the project. We personally have sufficient funds to provide the required equity and start up operating capital for the development of the proposed project, if it is approved."

The second letter dated April 9, 2019 from Cherry Bekaert CPAs & Advisors states,

"I am aware of the McNeill's [owners] financial status, including current liabilities and debt obligations and I will attest that ... each have in excess of \$15,000,000 in cash, stocks, or short term investments in order to fund any construction and operation of the proposed relocation, including working capital, start-up and capital expenditures associated with the project."

The applicant adequately demonstrates that sufficient funds will be available for the capital needs of the project.

Financial Feasibility

The applicant provided pro forma financial statements for the first three full fiscal years of operation following completion of the project. In Section Q, Form F.5, pages 80-81, the applicant projects that operating expenses will exceed revenues for the ACH component of the proposed project during the first year of operations. However, revenues will exceed operating expenses in the second and third operating years of the project. The inclusion of the 39 MUHAS beds assures that revenues will exceed operating expenses in the second and third operating years of the project for the entire facility, as shown in the tables below.

General ACH Beds	1st Full Fiscal Year 2024	2nd Full Fiscal Year 2025	3rd Full Fiscal Year 2026
Total Patient Days	6,993		
Total Gross Revenues (Charges)	\$1,055,517	\$2,670,450	\$3,060,715
Total Net Revenue	\$1,055,517	\$2,670,450	\$3,060,715
Average Net Revenue per day	\$150.94	\$170.49	\$177.93
Total Operating Expenses (Costs)	\$1,407,660	\$1,809,000	\$1,960,515
Average Operating Expense per day	\$90	\$115	\$114
Net Income	(\$352,143)	\$861,451	\$1,100,200

Entire Facility (Includes MUHAS Beds)	1st Full Fiscal Year 2024	2nd Full Fiscal Year 2025	3rd Full Fiscal Year 2026
Total Patient Days	15,027		
Total Gross Revenues (Charges)	\$2,454,125	\$5,001,843	\$5,400,652
Total Net Revenue	\$2,451,700	\$4,996,875	\$5,395,288
Average Net Revenue per day	\$163.15	\$171.48	\$175.70
Total Operating Expenses (Costs)	\$2,545,235	\$3,248,816	\$3,522,084
Average Operating Expense per day	\$107	\$111	\$115
Net Income*	(9,545,235)	\$1,748,059	\$1,873,204

*Includes contractual adjustments

The assumptions used by the applicant in preparation of the pro forma financial statements are reasonable, including projected utilization, costs and charges. See Section Q of the application for the assumptions used regarding costs and charges. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant adequately demonstrates that the capital and working capital costs are based on reasonable and adequately supported assumptions.

- The applicant adequately demonstrates availability of sufficient funds for the capital and working capital needs of the proposal.
 - The applicant adequately demonstrates sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of costs and charges.
- (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 applicant proposes to develop a new ACH facility by relocating 29 ACH beds from Ellison’s Rest Home and 20 ACH beds from Carver Living Center for a total of 49 ACH beds, and by developing 39 unlicensed MUHAS units.

On page 219, the 2019 SMFP defines the service area for ACH beds as “*the county in which the adult care home bed is located.*” Thus, the service area for this project is Durham County. Facilities may also serve residents of counties not included in their service area.

Table 11A on pages 226-227 of the 2019 SMFP lists 12 ACH facilities and two nursing facilities with ACH beds for a total of 926 ACH beds in Durham County. Table 11C, page 250, shows Durham County with an adjusted occupancy rate of 82.19% and a projected surplus of 245 ACH beds by 2022.

Durham County 2019 SMFP ACH Bed Inventory

Facility	Number of ACH Beds	Occupancy Rate
Atria Southpoint	20	
Brookdale Chapel Hill	38	
Brookdale Durham	119	
Brookdale Chapel Hill AL	70	
Camellia Gardens	81	
Carillion Assisted Living Durham	96	
Carolina Reserve of Durham	60	
Carver Living Center	20	
Durham Ridge Assisted Living	142	
Eden Spring Living Center	19	
Ellison’s Rest Home	29	
Eno Pointe Assisted Living	147	
Hillcrest	34	
Seasons at Southpoint	51	
Total	926	82.19%

Source: 2019 SMFP

In Section G, page 37, the applicant explains why it believes its proposal would not result in the unnecessary duplication of existing or approved ACH bed services in Durham County. The applicant states that eight of the 12 facilities in Durham County reported an occupancy rate greater than 80 percent. Additionally, the applicant states that if you remove those facilities with low occupancy rates due to the condition of the facility, the overall occupancy rate of the ACH facilities in Durham County increases to 85 percent. The applicant does not propose to add additional ACH beds to the Durham County bed inventory, but rather to relocate existing, underutilized ACH beds to a new facility, therefore, the project will not result in unnecessary duplication of existing or approved ACH beds.

The applicant adequately demonstrates that the proposal would not result in an unnecessary duplication of existing or approved services in the service area for the following reasons:

- The proposal would not result in an increase in the ACH bed inventory in Durham County.
- The applicant adequately demonstrates the need for the 49 relocated ACH beds in addition to the existing or approved ACH beds in Durham County.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Information which was publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (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

In Section Q, Form H, page 84 the applicant provides projected staffing for the proposed services in full-time equivalent (FTE) positions, as illustrated in the following table.

Position	1 st FFY FTEs FY2024	2 nd FFY FTEs FY2025	3 rd FFY FTEs FY2026
Registered Nurses	1.9	1.9	1.9
Licensed Practical Nurses	4.2	4.2	4.2
Personal Care Aides	28.0	28.0	28.0
Medical Technicians	11.2	11.2	11.2
Activities	1.0	1.0	1.0
Housekeeping Supervisor	1.0	1.0	1.0
Housekeeping & Laundry	8.4	8.4	8.4
Plant Operation & Maintenance	1.0	1.0	1.0
Administration	1.0	1.0	1.0
Business Office Staff	1.0	1.0	1.0
TOTAL	59.0	59.0	59.0

Source: Form H in Section Q of the application
 Totals may not sum due to rounding

The assumptions and methodology used to project staffing are provided in Section Q, page 83. Adequate costs for the health manpower and management positions proposed by the applicant are budgeted in Form A, which is found in Section Q. In Section H.2 and H.3, pages 38-39, the applicant describes the methods to be used to recruit or fill new positions and its proposed training and continuing education programs. The applicant adequately demonstrates the availability of sufficient health manpower and management personnel to provide the proposed services.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (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 I.1, page 41, the applicant states that the following ancillary and support services are necessary for the proposed services and will be provided by the facility or contracted and billed to an outside Provider:

LIBERTY ASSISTED LIVING OF DURHAM ANCILLARY AND SUPPORT SERVICES	
Services	Provider
Podiatry	Southeastern Foot and Ankle
Pharmacy	Liberty LTC Pharmacy
Laboratory	Solstas Lab Partners
Dietary Services	Morrison’s Community Living
Transportation	Liberty Assisted Living
Speech Therapy	Patient selection
Optometry	On-Sight Eye Care
Rehabilitation	Patient selection
Occupational Therapy	Patient selection
Social Work services	Liberty Assisted Living
Housekeeping	Liberty Assisted Living
Barber/Beauty	Contracted to be determined
Hospice/Respite	Liberty Home Care & Hospice
Pastoral/Chaplaincy	On Site Volunteer
Personal Laundry	Liberty Assisted Living
X-ray/Radiology	MobilexUSA
Dialysis	DaVita Wilmington Dialysis

In Section I, page 42, the applicant describes its existing and proposed relationships with other local health care and social service providers as a “*integrated post-acute healthcare company*” and provides supporting documentation in Exhibit 1.2.

The applicant adequately demonstrates that the proposed services will be coordinated with the existing health care system.

Conclusion

The Agency reviewed the:

- Application,
- Exhibits to the application

Based on that review, the Agency concludes that 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

The applicant does not project to provide the proposed services to a substantial number of persons residing in Health Service Areas (HSAs) that are not adjacent to the HSA in which the services will be offered. Furthermore, the applicant does not project to provide the proposed services to a substantial number of persons residing in other states that are not

adjacent to the North Carolina county in which the services will be offered. Therefore, Criterion (9) is not applicable to this review.

- (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

The applicant is not an HMO. Therefore, Criterion (10) is not applicable to this review.

- (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 applicant proposes to develop a new ACH facility by relocating 29 ACH beds from Ellison's Rest Home and 20 ACH beds from Carver Living Center for a total of 49 ACH beds, and by developing 39 unlicensed MUHAS units.

In Section K.1, page 44, the applicant states that the project involves constructing a 65,000 square foot new facility. Line drawings and cost estimate certification are provided in Exhibits K.1 and K.3, respectively.

On page 44, the applicant adequately explains how the cost, design and means of construction represent the most reasonable alternative for the proposal and provides supporting documentation in Exhibit K.3.

In Section K.3(b), page 44, the applicant adequately explains why the proposal will not unduly increase the costs to the applicant of providing the proposed services or the costs and charges to the public for the proposed services.

In Section B.10, page 15 and Section K.3(c), page 45, the applicant identifies any applicable energy saving features that will be incorporated into the construction plans.

On pages 45-46, the applicant identifies the proposed site and provides information about the current owners, zoning and special use permits for the site, and the availability of water, sewer, waste disposal and power at the site.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that 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;

C

The applicant proposes the construction of a new facility by relocating 29 ACH beds from Ellison's Rest Home and 20 ACH beds from Carver Living Center for a total of 49 ACH beds. Thus, Liberty Assisted Living of Durham is not operational. In Section L, pages 49-50, the applicant provides the historical payor mix during FY2017 for Carver Living Center and Ellison's Rest Home, respectively, as reported on their 2018 LRAs, as shown in the tables below.

**Carver Living Center
 FY2017**

General NF Beds	
Payor Category	Services as Percent of Total Days
Privat Pay	3%
Medicare*	15%
Medicaid*	75%
Other	7%
Total	100%
General ACH Beds	
County Assistance	100%

Source: Application page 49, Exhibits C.4 and D.3 2018 LRA for Ellison’s Rest Home and Carver Living Center, respectively.

*Includes managed care plans

**Ellison’s Rest Home
 FY2017**

General ACH Beds	
Payor Category	Services as Percent of Total Days
Privat Pay	27%
County Assistance	73%
Total	100%

Source: Application page 49, Exhibits C.4 and D.3 2018 LRA for Ellison’s Rest Home and Carver Living Center, respectively.

In Section L, pages 48-49, the applicant provides the following comparisons for Carver Living Center’s ACH beds and Ellison’s Rest Home, as illustrated in the following tables.

Carver Living Center	Percentage of Total Patients Served by the Facility or Campus during the Last Full FY	Percentage of the Population of the Service Area
Female	67%	52.2%
Male	33%	47.8%
Unknown		
64 and Younger	33%	87.3%
65 and Older	67%	12.7%
American Indian		
Asian		
Black or African-American		
Native Hawaiian or Pacific Islander		
White or Caucasian		
Other Race		
Declined / Unavailable		
Ellison's Rest Home	Percentage of Total Patients Served by the Facility or Campus during the Last Full FY	Percentage of the Population of the Service Area
Female	100%	52.2%
Male	0%	47.8%
Unknown		
64 and Younger	0%	87.3%
65 and Older	100%	12.7%
American Indian		
Asian		
Black or African-American		
Native Hawaiian or Pacific Islander		
White or Caucasian		
Other Race		
Declined / Unavailable		

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the applicant adequately documents 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. Therefore, the application is conforming to this criterion.

- (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;

C

Regarding any obligation to provide uncompensated care, community service, or access by minorities and persons with disabilities, in Section L, page 50, the applicant states that it is not obligated to provide uncompensated care, community service, or access by minorities and persons with disabilities.

In Section L, page 50, the applicant states that during the last five years, there have been no patient civil rights access complaints filed against the facility or any similar facilities owned by the applicant or a related entity and located in North Carolina.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion.

- (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 L, page 51, the applicant projects the following payor mix for the proposed services during the third full fiscal year of operation following completion of the project, as shown in the table below.

Payor Category	Services as Percent of Total Days
Private Pay	89%
County Assistance	11%
Total	100%

As shown in the table above, during the third full fiscal year of operation, the applicant projects that 89% of total services will be provided to private pay patients and 11% to Medicaid County Assistance patients. The applicant states that bad debt is projected to be 0.10% of total net revenue, which is based on Liberty Healthcare's historical experience.

On page 51, the applicant provides the assumptions and methodology used to project payor mix during the third full fiscal year of operation following completion of the project. The projected payor mix is reasonable and adequately supported for the following reasons:

- Projected payor mix is based on the existing payor mix of other ACH facilities in the area.
- The applicant's extensive experience, and knowledge of the local area and market.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that 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 L, page 51, the applicant adequately describes the range of means by which patients will have access to the proposed services.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application.

Based on that review, the Agency concludes that 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 M, page 53, the applicant adequately describes the extent to which area health professional training programs will have access to the facility for training purposes.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the applicant adequately demonstrates that the proposed services will accommodate the clinical needs of area health professional training programs, and 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 applicant proposes to develop a new ACH facility by relocating 29 ACH beds from Ellison's Rest Home and 20 ACH beds from Carver Living Center for a total of 49 ACH beds, and by developing 39 unlicensed MUHAS units.

On page 219, the 2019 SMFP defines the service area for ACH beds as "*the county in which the adult care home bed is located.*" Thus, the service area for this project is Durham County. Facilities may also serve residents of counties not included in their service area.

Table 11A on pages 226-227 of the 2019 SMFP lists 12 ACH facilities and two nursing facilities with ACH beds for a total of 926 ACH beds in Durham County. Table 11C, page 250, shows Durham County with an adjusted occupancy rate of 82.19% and a projected surplus of 245 ACH beds by 2022.

Durham County 2019 SMFP ACH Bed Inventory

Facility	Number of ACH Beds	Occupancy Rate
Atria Southpoint	20	
Brookdale Chapel Hill	38	
Brookdale Durham	119	
Brookdale Chapel Hill AL	70	
Camellia Gardens	81	
Carillion Assisted Living Durham	96	
Carolina Reserve of Durham	60	
Carver Living Center	20	
Durham Ridge Assisted Living	142	
Eden Spring Living Center	19	
Ellison’s Rest Home	29	
Eno Pointe Assisted Living	147	
Hillcrest	34	
Seasons at Southpoint	51	
Total	926	82.19%

Source: 2019 SMFP

In Section N, page 54, the applicant describes the expected effects of the proposed services on competition in the service area and discusses how any enhanced competition in the service area will promote cost-effectiveness, quality, and access to the proposed services. On page 54, the applicant states:

“The expected effects of the proposed project on competition in the proposed service area will be favorable. Current market conditions necessitate a newer (if not new) facility with a majority of private rooms... whether that is for private pay residents or state/county special assistance residents. ... The Liberty organization’s global population is roughly comprised of two-thirds of its inpatient population with Medicaid or S/C assistance residents.”

The applicant adequately describes the expected effects of the proposed services on competition in the service area and adequately demonstrates:

- The cost-effectiveness of the proposal (see Sections F and Q of the application and any exhibits).
- Quality services will be provided (see Section O of the application and any exhibits).
- Access will be provided to underserved groups (see Section L of the application and any exhibits).

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application, and
- Information which was publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (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 Q, pages 60-62 and Exhibit A.7, pages 89-90, the applicant provides a list of the 31 facilities owned, operated or managed by the applicant or a related entity. The applicant identifies a total of four ACH facilities located in North Carolina.

In Section O, page 57, the applicant states that, during the 18 months immediately preceding the submittal of the application, incidents related to quality of care occurred in none of these ACH facilities. According to the files in the Adult Care Licensure Section, DHSR, during the 18 months immediately preceding submission of the application through the date of this decision, incidents related to quality of care occurred in none of these facilities. After reviewing and considering information provided by the applicant and by the Adult Care Licensure Section and considering the quality of care provided at all 31 facilities, the applicant provided sufficient evidence that quality care has been provided in the past. Therefore, the application is conforming to this criterion

- (21) Repealed effective July 1, 1987.
- (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 Criteria and Standards for Nursing Facility or Adult Care Home Services promulgated in 10A NCAC 14C .1100 are applicable to this review. The specific criteria are discussed below.

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

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 applicant does not propose to add nursing facility beds to an existing facility.
- (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.*
- NA- The applicant does not propose to establish a new nursing facility or add nursing facility beds to an existing facility.
- (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 applicant does not propose to add adult care home beds to an existing facility.
- (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.*
- C- In Section Q, on Form C and supplemental information, the applicant projects that the proposed facility will have an occupancy rate of 88 percent by the end of the second operating year following project completion. The applicant provides the assumptions and methodology to project utilization in Section Q, page 63.1 and supplemental information. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

