

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: April 29, 2015

Findings Date: April 29, 2015

Project Analyst: Gregory F. Yakaboski

Team Leader: Lisa Pittman

Project ID #: O-10366-14

Facility: Liberty Commons Rehabilitation Center

FID #: 943308

County: New Hanover County

Applicant(s): Liberty Commons Nursing Center, Inc., Port City Assisted Living Properties, LLC, S&R Properties I, LLC.

Project: Relocate 72 adult care home beds within the same county to an existing combination nursing facility for a total of 100 nursing facility and 112 adult care home beds upon project completion

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.

C

The applicants for this proposed project are Liberty Commons Nursing Center, Inc. (“lessee”), Port City Assisted Living Properties, LLC (“lessor”), and S&R Properties I, LLC (“lessor”). The applicants may be referred to collectively as the applicants or individually by name. Liberty Commons Nursing Center, Inc. (“Liberty Commons”) owns an existing facility known as Liberty Commons Rehabilitation Center (also to be referred to as “Liberty Commons”). Liberty Commons is an existing combination facility with 100 nursing facility beds (NF beds) and 40 adult care home beds (ACH beds). The 40 ACH beds are not currently being utilized. In 2009 Liberty Commons received an exemption letter to construct

an addition for the existing 40 ACH beds. To date Liberty Commons has not constructed any addition for the existing 40 ACH beds. The 40 ACH beds have been on a temporary hold since 2009 and have not been utilized since 2009.

In this application the applicants propose to construct an addition to Liberty Commons and relocate 72 existing ACH beds within New Hanover County to Liberty Commons and to include the existing unutilized 40 ACH beds for a total of 100 NF beds and 112 ACH beds [72 + 40 = 112]. Port City will purchase a total of 72 ACH beds which are currently located in six separately licensed 12-bed buildings on one campus known as Port South on Covil Avenue in Wilmington (“Port South”). After completing the purchase of the 72 ACH beds Port City would lease the CON for the 72 ACH beds to Liberty Commons which would operate the beds as described above.

The six Port South 12-bed ACH facilities and 40 ACH beds at Liberty Commons are all listed in the inventory of ACH beds in Chapter 11, Table 11A, page 234 of the 2015 State Medical Facilities Plan (“2015 SMFP”).

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 2015 SMFP. However, the following policies are applicable:

- Policy LTC-2: Relocation of Adult Care Home Beds
- Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities

Policy LTC-2: Relocation of Adult Care Home Beds states

Relocations of existing licensed adult care home beds are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate licensed adult care home beds to contiguous counties shall:

1. *Demonstrate that the proposal shall not result in a 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 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 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 State Medical Facilities Plan in effect at the time the certificate of need review begins.”*

Both the existing and proposed locations are in New Hanover County. The application is consistent with Policy LTC-2.

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.”

On page 44 of the application the applicants provide written statements describing the proposed project’s plan to assure improved energy efficiency and water conservation. The applicants state *“Upon approval of this proposal, Liberty Commons would 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 NC State Building Codes.”* (See application page 44) The application is consistent with Policy GEN-4.

In summary, the application is conforming to all applicable policies in the 2015 SMFP. Therefore, the application is conforming 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.

In this application the applicants propose to construct an addition to the Liberty Commons Rehabilitation Center and relocate 72 existing ACH beds from within New Hanover County to Liberty Commons Rehabilitation Center for a total of 100 NF beds and 112 ACH beds [72 + 40 = 112]. Port City will purchase a total of 72 ACH beds which are currently located in six separately licensed 12-bed buildings on one campus known as Port South on Covil Avenue in Wilmington (“Port South”). After completing the purchase of the 72 ACH beds Port City would lease the CON for the 72 ACH beds to Liberty Commons which would operate the beds as described above.

The six Port South 12-bed ACH facilities and 40 ACH beds at Liberty Commons Rehabilitation Center are all listed in the inventory of ACH beds in Chapter 11, Table 11A, page 234 of the 2015 State Medical Facilities Plan (“2015 SMFP”).

Population to be Served

In Section III.8, page 46, the applicants provide the projected patient origin for the ACH beds, as shown in the table below.

County	Projected % of Total ACH Admissions	Projected % of Total NF Admissions
New Hanover	90.0%	90.0%
Brunswick	5.0%	5.0%
Onslow	3.0%	3.0%
Pender	2.0%	2.0%
Total	100.0%	100.0%

On page 46, the applicants state *“The applicants examined its admissions patterns at its existing facilities in New Hanover County. These include Liberty Commons, The Commons at Brightmore, and The Kempton at Brightmore. The applicants feel that this experience in operating within the county and this historical data allows for a reasonable projection based on historical trends.”*

The applicants adequately identified the population to be served.

Analysis of Need

In Section III.1, pages 37-38, the applicants state the need to relocate and replace Port South’s 72 existing ACH beds to the Liberty Common’s facility.

The facts that support the need:

- The Port South facilities are currently closed. State surveyors felt that the Port South facilities were in bad enough shape to require it to discontinue admissions. Subsequently, the owner discharged all residents to other facilities.

- Port South Villages consists of six separate buildings with 12 ACH beds per building. The buildings are approximately 35 years old and lack current amenities sought after by today's ACH residents, such as private rooms and adequate living and dining space.
- Renovation cannot restore the facilities to even an adequate state, much less a state that residents would want to live in.
- It is not desirable to rebuild at the current location and provide the safety that the applicants feel residents deserve. The existing land is a small, oddly shaped parcel located in an unsafe area of Wilmington.
- Any outdoor common areas would be vulnerable to foot traffic in an area where home break-ins and robberies are a regular occurrence. The former residents of this facility would routinely sit on the unprotected steps of these six buildings with a busy street mere feet from the front doors.
- Multiple buildings made it impossible to staff the Port South facilities efficiently. The multiple buildings housing residents could create circumstances where a resident had a need, but there was no staff coverage in that particular building, creating a serious safety hazard.
- New Hanover County has an unmet need for ACH beds in new, efficient, home-like environments.
- Institutional ACH facilities are radically inefficient by today's standards in terms of staffing and energy efficiency. Further, they do not meet the societal expectations of current and projected residents and their families.
- In 2009, Liberty Commons was approved for the development of a project which included putting 40 existing licensed ACH beds on a temporary hold until an ACH addition could be constructed at Liberty Commons. Due to economic conditions Liberty Commons did not move forward with the construction until now. The proposed project includes construction of a wing large enough to accommodate both the 72 ACH beds proposed to be relocated from Port South and the 40 existing, but non-operational, ACH beds from Liberty Commons.
- Liberty Commons is located approximately three miles from the existing Port South facilities, and near the intersection of three main traffic corridors in the County.
- Liberty Commons already provides a majority of its patient days to "*low income residents and the otherwise underserved segment of the population.*" Achieving "*economies of scale*" in such things as dietary, laundry and housekeeping will help Liberty Commons continue to serve the underserved population.

Utilization Projections

In Section IV, page 52, the applicants state that projected occupancy at the end of the second full federal fiscal year of operation is projected to be 91.0% for the total number of adult care home beds proposed to be operated as illustrated in the table below.

**Liberty Commons
 Projected Utilization
 Second Project Year (Oct. 1, 2020 – September 30, 2021)**

	1 ST QUARTER	2 ND QUARTER	3 RD QUARTER	4 TH QUARTER	TOTAL
Second Full Project Year (FFY2021)					
Pt. Days	9,384	9,180	9,282	9,384	37,230
# Beds	112	112	112	112	112
Occupancy	91.0%	91.0%	91.0%	91.0%	91.0%

As shown above, for the second year following completion of the proposed project Liberty Commons projects the 112 ACH beds will operate at 91.0% capacity [$37,230/365/75 = 0.91$ or 91.0%].

In Section III, pages 37-47, and Section IV, pages 49-55, the applicants provide the assumptions and methodology used to project utilization for the 112 ACH beds at Liberty Commons.

In Section IV, page 49, the applicants provide the average historical occupancy of the total number of licensed adult care home beds operated at the Liberty Commons facility over the last nine months as illustrated in the table below. The facility is licensed for 40 ACH beds.

Liberty Commons: Historical Utilization- 2/1/14 through 10/31/14

	Feb	March	April	May	June	July	August	September	October	Total
ADULT CARE HOME BEDS										
Patient Days	0	0	0	0	0	0	0	0	0	0
# of Beds	40	40	40	40	40	40	40	40	40	40
Occupancy Rate	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

As shown in the table above, the average historical occupancy for the last nine months prior to submittal of the application for the ACH beds at the Liberty Commons facility was 0.0%. The Liberty Commons facility does not currently operate any of its 40 licensed ACH beds.

The applicants cite the following factors in support of projected utilization:

- The applicants calculate an overall county occupancy rate for ACH beds “to be 83% which demonstrates that there is a significant demand for ACH beds in New Hanover County.” (See pages 39-41)
- In New Hanover County there is an unmet need for ACH beds in new, efficient, home-like environments;

- The area around Liberty Commons has limited availability of ACH beds (See page 37);
- Liberty Commons is in an area of the county that is accessible to all county residents. Central in location and near the intersections of the county's three main traffic corridors. (See page 38)
- Liberty Commons already provides a majority of its patient days to low income residents and the otherwise underserved segment of the population. This will continue with the addition of the ACH beds and will expand Liberty Commons' ability to offer ACH...services to these residents.
- This proposal will create a very nice, state of the art addition that will have the ability to serve the underserved population. This is in part due to the economies of scale that will be achieved with a large combination facility that can share ancillary spaces such as dietary, laundry and housekeeping.
- The residents will have the added benefit of having multiple levels of licensed care on one campus.
- The proposed project will bring existing licensed ACH beds back into service.
- Liberty Commons is an existing facility with ancillary space sufficient *“to support the proposed addition and vacant adjacent land suitable for the proposed addition. This addition proposal was deemed to be the most effective because it would provide the most benefit to residents while minimizing the capital dollars expended per bed. The addition will lower the operating cost of the ACH best (relative to a new facility at the existing location) because the ancillary infrastructure already exists and this same fact will lower the operating cost for the existing beds at Liberty Commons. This results in the ability to serve more Medicaid and low income individuals while maintaining a financially viable facility.”* (See pages 41-42)

As stated above and on page 52 of the application, the applicants project occupancy of the 112 ACH Beds at the end of the second full federal fiscal year of operation is projected to be 91.0%. Rule 10A NCAC 14C .1102 (Performance Standards) found in *Criteria and Standards for Nursing Facility or Adult Care Home Facility Services* states in part that a project *“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.”*

The application does not provide documentation and analysis to support the projection of a 91.0% occupancy rate at the end of the second full federal fiscal year of operation. The analysis provided on pages 39-41 concludes *“...the overall county occupancy rate of the remaining facilities [containing ACH beds] is 83% which demonstrates that there is a*

significant demand for ACH beds in New Hanover County.” (See application page 40) Even if the analysis on pages 39-41 is accepted in full this only shows an occupancy rate of 83.0% for the ACH beds in New Hanover County. The 83.0% occupancy rate is less than required by rule 10A NCAC 14C .1102. Further, Table 11B: Adult Care Home Need Projections for 2018, page 244 of the 2015 SMFP shows a projected surplus of 242 ACH beds for 2017 in New Hanover County. The documentation and analysis provided does not demonstrate why the projected utilization of the 112 ACH beds of the proposed project would exceed 83.0%.

Access

On pages 62-63 of the application the applicants state *“Services provided by Liberty Commons are non-restrictive with respect to social, racial ethnic, or gender related issues and will be provided on a first come, first served bases. It is the policy of Liberty Commons to admit anyone over the age of 18 who qualifies for and is in need of skilled nursing care. ... No payment is required upon admission for Medicare or Medicaid residents upon admission. ... If a private pay resident “spends down” and becomes Medicaid or State Assistance eligible he or she will not be discharged for that reason.”* On page 62, the applicants project the percentage of projected days as a percent of total days for patients receiving County Assistance would be 25.49%. The applicant states that *“No payment will be required upon admission for Special Assistance residents.”* (See application page 63.)

Furthermore, at present, no medically underserved residents are being served either by Liberty Commons’ 40 ACH beds or by any of Port South’s 72 ACH beds since none of those beds are currently being utilized.

Conclusion

In summary, the applicants identified the population to be served including the extent to which medically underserved groups are likely to have access to the proposed services. However, the applicants did not adequately demonstrate the need and projected utilization for the proposed project.

Therefore, the application is nonconforming to 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.

In this application the applicants do not propose to offer any new services. The applicants propose to add a new wing to the existing Liberty Commons facility and locate the 40 existing, but not operational Liberty Commons ACH beds and relocate 72 existing but not operational ACH beds from the six separately licensed 12-bed buildings known as Port South for a total of 100 NF beds and 112 ACH beds.

All of the facilities are located in New Hanover County. The six Port South 12-bed ACH facilities and 40 ACH beds at Liberty Commons are all listed in the inventory of ACH beds in Chapter 11, Table 11A, page 234 of the 2014 SMFP.

Because the 112 ACH beds to be located and relocated to Liberty Commons are currently not occupied, no patients will be displaced as a result of the proposed project. Furthermore, the applicants project 25.9% of all resident days for the ACH beds will be provided to County Assistance recipients. At present, no medically underserved residents are being served by the 112 ACH beds, since those beds are currently not operational.

At present, no medically underserved residents are being served by the 72 ACH beds to be relocated since they currently have no patients. On page 37, the applicants state *“State surveyors felt that the facility was in bad enough shape to require it to discontinue admissions. The owner subsequently discharged all residents to other facilities and closed the facility.”*

The applicants 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 needs of the population presently served would be adequately met following the relocation of the ACH beds. Therefore, the application is conforming to this criterion.

- (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 41-42, the applicants discussed the alternatives considered by Liberty Commons, which include:

- 1) Maintain the Status Quo. The applicants dismissed this alternative based on the outdated condition and design of the Port South buildings which could not provide adequate safety measures or staffing for the residents, in addition, safe outdoor areas could not be provided. Therefore, maintaining the status quo would not be in the best interest of their patients.

- 2) Renovate the existing facility or rebuild on-site. Both renovating the existing facility or rebuilding at the existing location were also considered but were dismissed due to the status of the current facility and the location neither of which would not allow for resident safety and would necessitate expensive and unnecessary capital cost expenditures. Thus, the applicants concluded that the project as proposed was their least costly and most effective alternative.

The applicants adequately demonstrated that the proposal is their least costly or most effective alternative to meet the stated need.

However, the application is not conforming to all other applicable statutory and regulatory review criteria, and thus, is not approvable. See Criterion (3) and the *Criteria and Standards for Nursing Facility or Adult Care Home Facility Services*, promulgated in 10A NCAC 14C .1100. A project that cannot be approved is not an effective alternative.

Consequently, the application is not conforming 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.

NC

In Section VIII.1, page 78, the applicants project the total capital cost for the proposal will be \$11,680,651, which includes:

Site Costs	\$1,037,350
Construction Costs	\$8,561,801
Equipment and Furniture	\$1,680,000
Consultant Fees	<u>\$ 401,500</u>
Total:	\$11,680,651

In Section VIII.2, page 79, the applicants indicate that the capital cost of the project will be financed by the owner's equity of John A. McNeill, Jr and Ronald B. McNeill. In Section IX, page 84, the applicants state that total working capital needed is \$495,118 (\$76,997 in start-up expenses and \$418,120 in initial operating expenses). On page 87, the applicants indicate that the working capital will be financed by the owner's equity of John A. McNeill, Jr and Ronald B. McNeill.

Exhibit 16 contains a copy of a letter from a CPA of Cherry Bekaert, CPA's and Advisors which states:

“I am the CPA for both Mr. John A. McNeill, Jr. and Mr. Ronald McNeill. I understand that they have agreed to provide the funding for the capital costs and working capital associated with a proposed ACH facility addition for Liberty Commons Nursing Center in New Hanover County, NC.

I am aware of the McNeill’s financial status, including current liabilities and debt obligations and 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 addition, including any working capital, start-up and capital expenditures associated with the project.”

Exhibit 16 also contains a copy of a letter from John A. McNeill, Jr and Ronald B. McNeill. dated November 10, 2014, which states:

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

The applicants adequately demonstrate the availability of sufficient funds for the capital and working capital needs for this project.

In Section X, page 95, the applicants projected charges/rates for the ACH beds for the first two operating years following completion of the project. The per diem private pay charge is projected to be \$185.00 for a private room and \$95.00 for a semi-private room in each of the first two full federal fiscal years. The applicants further state *“ACH private pay rates of \$185 and \$175 blends into an average rate of \$160.18 in our projections based upon expected room choices and levels of care needed by residents. For details and an explanation of how the rates are calculated for blended private pay, Medicare, Medicaid and County Assistance, please see assumptions before Form A, which include varying ACH level of care rates.”* (See pages 95-96 of the application.)

Furthermore, the applicants project that revenues will exceed operating costs in the second full federal fiscal year following completion of the proposed project, as shown in the table below.

Net Income	1st Full FFY (2018)	2nd Full FFY (2019)
Total Revenue	\$8,160,129	\$8,160,129
Total Operating Expenses	\$7,719,619	\$7,427,900
Net Profit	\$440,510	\$732,229

However, the applicants did not adequately demonstrate that projected revenues and operating costs are based on reasonable and adequately supported assumptions, including projected utilization. See discussion of projected utilization in Criterion (3) which is incorporated herein by reference.

In summary, the applicants adequately demonstrated the availability of sufficient funds for the capital and working capital needs of the project. However, the applicants did not adequately demonstrate that the financial feasibility of the proposal is based upon reasonable projections of operating costs and revenues. Therefore, the application is nonconforming 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.

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In this application the applicants do not propose to offer any new services. The applicants propose to add a new wing to the existing Liberty Commons facility and locate the 40 existing, but not operational Liberty Commons ACH beds and relocate 72 existing but not operational ACH beds from the six separately licensed 12-bed buildings known as Port South for a total of 100 NF beds and 112 ACH beds.

All of the facilities are located in New Hanover County. The six Port South 12-bed ACH facilities and 40 ACH beds at Liberty Commons are all listed in the inventory of ACH beds in Chapter 11, Table 11A, page 234 of the 2015 SMFP. Therefore, the proposed project would not result in an increase in the inventory of ACH beds in New Hanover County.

On page 38 the applicants state *“Entities affiliated with the applicants are currently developing a CCRC project down the road named Carolina Bay of Wilmington at Autumn Hall. This CCRC will have “open” ACH beds that will be available to the public. However, this project will be a premium, upscale community that will target a different segment of the county population. The majority of these ACH beds will not be available to low-income, State-County Assistance residents. Therefore, the applicants do not consider this project to be a competitor with this proposal. Indeed, this proposal will create a very nice, state of the art addition that will have the ability to serve the underserved population.”*

On page 39 the applicants state *“Although the 2014 SMFP shows a surplus of adult care beds in New Hanover County, the vast majority of these beds are clustered in a very small area of Wilmington. This area is in a triangle that is made up of Market Street, College Road S, and Carolina Beach Road. [See picture on page 39] This concentration of adult care homes has left a significant gap in the middle of New Hanover County, precisely where Liberty Commons is located. ... This proposal will improve the geographic access of adult care beds in New Hanover County and will bring back existing licensed adult care beds back into service in a home-like environment that is in high demand in the area.”*

Therefore, the applicants adequately demonstrated the proposed project will not result in the unnecessary duplication of existing or approved ACH beds within 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

The applicants propose to provide personal care staff twenty-four hours per day, seven days per week. In Section VII., pages 72-73, the applicants state that by FFY2021 (the second full federal fiscal year) the combination facility will be staffed by 180.89 full-time equivalent (FTE) positions [78.87 for the ACH beds and 102.01 for the NF beds].

The applicants project 2.29 direct care hours per patient day for the ACH beds.

Adequate costs for the health manpower and management positions proposed by the applicants are budgeted in the pro forma financial statements. The applicants adequately demonstrate the availability of sufficient health manpower and management personnel to provide the proposed services. 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.1, pages 17-31, the applicants describe the ancillary and support services that will be provided by the facility or made available through agreements with other providers including dietary, medical transportation, dentistry, physician, therapy, personal care, rehabilitation, housekeeping and laundry services. Liberty Commons is an existing facility that will utilize existing facility and contracts. Exhibit 8 contains copies of contracts with service providers for dental, dialysis, podiatry, x-ray, hospice, beautician and hospice services. In Section VI.7, pages 64, the applicants state that Liberty Commons has “*been operating for nearly 20 years in New Hanover County*” and has received referrals and expects to continue to receive referrals from local professional referral sources including:

- *New Hanover Regional Medical Center*
- *Liberty Home Care*
- *Local Physician Practices*
- *Cape Fear Hospital*

The applicants adequately demonstrate that they will provide or make arrangements for the necessary ancillary and support services and that the proposed services will be coordinated with the existing health care community. 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 existing Liberty Commons facility located at 121 Racine Drive, Wilmington is currently 50,505 square feet in size. In Section XI, page 105, the applicants state that the proposed project proposes adding 53,679 in new square footage to the facility. There are no plans to renovate any of the existing square footage. Upon project completion the facility would be 104,184 square feet in size.

Upon completion of the construction, the new wing would contain 2 private ACH beds and 110 semi-private ACH beds. The existing 50 private NF beds and 50 semi-private NF beds would remain the same.

Construction costs for new addition to the existing building are projected to be \$8,561,801, which includes a ten percent contingency of \$778,346. Exhibit 25 contains a letter from the architect confirming that the construction costs for proposed new addition will be \$7,783,455 which corresponds with line 7 on page 78 in Table VIII.I Estimated Capital Costs without adding in the ten percent contingency.

In Section III, page 44 and in Section XI, pages 83-84, the applicants detail the energy and water saving features to be included in the proposed project which include: high efficiency thermal pane windows, compact fluorescent lighting, active energy use monitoring by staff, closed loop air recirculation systems which reduce heating and cooling needs, use of natural lighting through strategically placed windows, renovation of existing laundry to accommodate a cold water ozone laundry system for water and energy conservation, energy star rated appliances and high-efficiency HVAC systems with HEPA filters for residents rooms.

The applicants adequately demonstrate that the cost, design and means of construction represent the most reasonable alternative and that the construction costs will not unduly increase costs and charges for health services. See discussion of costs and charges in Criterion (5) which is incorporated herein by reference. Therefore, the application is conforming with 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;

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Liberty Commons is currently licensed for 100 NF beds and 40 ACH beds. However, the 40 existing ACH beds are not currently being utilized. The 40 existing ACH beds are on a temporary hold. Therefore, the current payor mix for the Liberty Commons facility on page 61 of the application only reflects nursing patients as illustrated in the table below:

**Current days as a % of Total Days
 October 1, 2012 – September 30, 2013**

Payor	Nursing Patients
Medicare	26.0%
Medicaid	51.1%
Hospice	6.8%
Private Pay	14.1%
Commercial Insurance	1.1%
Other (HMA, VA, various)	1.0%
Total	100.0%

The Division of Medical Assistance (DMA) maintains a website which offers information regarding the number of persons eligible for Medicaid assistance and estimates of the percentage of uninsured for each county in North Carolina. The following table illustrates those percentages for New Hanover, Brunswick, Onslow and Pender counties and statewide.

County	2010 Total # of Medicaid Eligibles as % of Total Population *	2010 Total # of Medicaid Eligibles Age 21 and older as % of Total Population *	CY2008-2009 % Uninsured (Estimate by Cecil G. Sheps Center) *
New Hanover	13%	6%	20.4%
Brunswick	7%	3%	19.8%
Onslow	11%	4%	23.4%
Pender	17%	7%	21.0%
Statewide	17%	7%	19.7%

* More current data, particularly with regard to the estimated uninsured percentages, was not available.

The majority of Medicaid eligibles are children under the age of 21. This age group does not utilize the same health services at the same rate as older segments of the population, particularly adult care home services.

Moreover, the number of persons eligible for Medicaid assistance may be greater than the number of Medicaid eligibles who actually utilize health services. The DMA website includes information regarding dental services which illustrates this point. For dental services only, DMA provides a comparison of the number of persons eligible for dental services with the number actually receiving services. The statewide percentage of persons eligible to receive dental services who actually received dental services was 45.9% for those age 20 and younger and 30.6% for those age 21 and older. Similar information is not provided on the website for other types of services covered by Medicaid. However, it is reasonable to assume that the percentage of those actually receiving other types of health services covered by Medicaid is less than the percentage that is eligible for those services.

The Office of State Budget & Management (OSBM) maintains a website which provides historical and projected population data for each county in North Carolina. In addition, data is available by age, race or gender. However, a direct comparison to the applicants' current payor mix would be of little value. The population data by age, race or gender does not include information on the number of elderly, minorities or women utilizing health services. Furthermore, OSBM's website does not include information on the number of handicapped persons.

The applicants demonstrate that medically underserved populations have adequate access to the services provided at Liberty Commons Rehabilitation Center. 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

In Section VI.6, page 63, the applicants state

“There have been no civil rights access complaints filed against the existing facility or any related facilities.”

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 VI, page 62, the applicants project projected payor mix for the second full federal fiscal year of operation as illustrated in the table below.

**Projected days as a % of Total Days
October 1, 2020 – September 30, 2021**

Payor	Nursing Patients	Adult Care Residents
Medicare	26.14%	0.00%
Medicaid	54.55%	0.00%
Private Pay	13.64%	74.51%
Commercial Insurance	5.68%	0.00%
County Assistance	0.00%	25.49%
Total	100.00%	100.00%

The applicants demonstrate that medically underserved populations will continue to have adequate access to the adult care home services provided by Liberty Commons. Therefore, 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, pages 64, the applicants state that Liberty Commons has “*been operating for nearly 20 years in New Hanover County*” and has received referrals and expects to continue to receive referrals from local professional referral sources including:

- New Hanover Regional Medical Center
- Liberty Home Care
- Local Physician Practices
- Cape Fear Hospital

The applicants adequately demonstrate they offer a range of means by which residents will have access to the facility. 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 57, the applicants state that it has clinical training agreements with both Pitt Community College and Cape Fear Community College. Exhibit 10 contains copies of those agreements.

The applicants adequately demonstrate that the 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

In this application the applicants do not propose to offer any new services. The applicants propose to add a new wing to the existing Liberty Commons facility, keep the 100 NF beds that are currently located there and relocate 72 existing but not utilized ACH beds from the six separately licensed 12-bed buildings known as Port South and locate the 40 existing, but not utilized ACH beds from Liberty Common to the new wing proposed to be constructed at the existing Liberty Commons facility, for a total of 100 NF beds and 112 ACH beds.

All of the facilities are located in New Hanover County. The six Port South 12-bed ACH facilities and the 40 ACH beds at Liberty Commons are all listed in the inventory of ACH beds in Chapter 11, Table 11A, page 234 of the 2015 SMFP.

According to Map Quest from the Port South facilities to the Liberty Commons facility is approximately 2.9 miles or 6 minutes. A major transportation corridor connects the Port South facilities to the Liberty Commons facility. Thus, the 72 ACH beds being relocated within New Hanover County from the Port South facilities to Liberty Commons would be geographically accessible to the same population formerly served.

At present, no medically underserved residents are being served by either the 40 non-operational ACH beds at Liberty Commons or the 72 ACH beds to be relocated since they currently have no patients. On page 37, the applicants state *“State surveyors felt that the facility was in bad enough shape to require it to discontinue admissions. The owner subsequently discharged all residents to other facilities and closed the facility.”*

On page 38 the applicants state *“Entities affiliated with the applicants are currently developing a CCRC project down the road named Carolina Bay of Wilmington at Autumn Hall. This CCRC will have “open” ACH beds that will be available to the public. However,*

this project will be a premium, upscale community that will target a different segment of the county population. The majority of these ACH beds will not be available to low-income, State-County Assistance residents. Therefore, the applicants do not consider this project to be a competitor with this proposal. Indeed, this proposal will create a very nice, state of the art addition that will have the ability to serve the underserved population.”

On page 39 the applicants state “*Although the 2014 SMFP shows a surplus of adult care beds in New Hanover County, the vast majority of these beds are clustered in a very small area of Wilmington. This area is in a triangle that is made up of Market Street, College Road S, and Carolina Beach Road. [See picture on page 39] This concentration of adult care homes has left a significant gap in the middle of New Hanover County, precisely where Liberty Commons is located. ... This proposal will improve the geographic access of adult care beds in New Hanover County and will bring back existing licensed adult care beds back into service in a home-like environment that is in high demand in the area.”*

See also Sections II, III, V, VI and VII and supplemental information where the applicants discuss the impact of the project on cost-effectiveness, quality and access.

The applicants adequately demonstrate that any enhanced competition will have a positive impact on the cost-effectiveness, quality and access to the proposed services based on the information in the application and the following analysis:

- The applicants adequately demonstrate the need to relocate 72 ACH beds from the Port South facilities to the Liberty Commons facility. The applicant also demonstrates that the proposed project is a cost-effective alternative to meet the need to provide access to ACH beds in New Hanover County. See discussion of utilization in Criterion (3) which is incorporated herein by reference;
- The applicants adequately demonstrate they will continue to provide quality services. The information regarding staffing provided in Section VII is reasonable and credible and demonstrates adequate staffing for the provision of quality care services in accordance with 42 C.F.R., Section 494 (formerly 405.2100). The information regarding ancillary and support services and quality of care programs in Section II, pages 17-21, and coordination of services with the existing health care system in Section V, pages 47-48, and referenced Exhibits, is reasonable and credible and demonstrates the provision of quality care.
- The applicants adequately demonstrate they will continue to provide adequate access to medically underserved populations. The percentage of projected ACH days as a percent of total days for the second full federal fiscal year (FFY 2021) following project completion is 25.49% Special Assistance with Basic Medicaid and 74.51% private pay.

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 11, the applicants state that they currently own, lease, or manage a total of 20 nursing facilities in North Carolina, including Liberty Commons facility. According to the Nursing Home Licensure and Certification Section, DHSR, during the 18 months immediately preceding the submittal of the application through the date of the decision there were 2 incidents in 2 facilities for which certification deficiencies constituting substandard quality of care were found at the facilities listed in Section 2, pages 32-35 of the application. After reviewing and considering information provided by the applicants and by the Nursing Home Licensure and Certification Section and considering the quality of care provided at all 20 facilities, the applicants provided sufficient evidence that quality care has been provided in the past and adequately demonstrated that there is no pattern of substandard quality of care. 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.

NC

The application is nonconforming to certain applicable *Criteria and Standards for Nursing Facility or Adult Care Home Facility Services*, promulgated in 10A NCAC 14C .1100. The specific criteria are discussed below.

.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.*

-NA- The applicants propose to relocate 72 existing ACH beds.

- (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.*

-NA- The applicants propose to relocate 72 existing ACH beds.

- (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 relocate 72 existing ACH beds.

- (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.*

-NA- The applicants propose to relocate 72 existing ACH beds.

- (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.*

-NA- The applicants propose to relocate 72 existing ACH beds.

- (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.*

-NA- The applicants propose to relocate 72 existing ACH beds.

.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 propose to relocate 72 existing 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.*

-NA- The applicants propose to relocate 72 existing ACH beds.

(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.*

-NC- In Section IV, page 49, the applicants provide the average historical occupancy of the total number of licensed adult care home beds operated at the Liberty Commons facility over the last nine months.

Liberty Commons: Historical Utilization- 2/1/14 through 10/31/14

	Feb	March	April	May	June	July	August	September	October	Total
NURSING FACILITY BEDS										
Patient Days	2,334	2,671	2,472	2,322	2,195	2,330	2,456	2,423	2,527	21,730
# of Beds	100	100	100	100	100	100	100	100	100	100
Occupancy Rate	80.48%	86.16%	82.40%	74.90%	73.17%	75.16%	79.23%	80.77%	81.52%	80.48%
ADULT CARE HOME BEDS										
Patient Days	0	0	0	0	0	0	0	0	0	0
# of Beds	40	40	40	40	40	40	40	40	40	40
Occupancy Rate	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

As shown in the table above, the average occupancy over the last nine months of the total number of licensed adult care home beds within the facility in which the new beds are to be operated was 0.0% which is less than the required minimum of 85.0%. Therefore, the application is nonconforming with this rule.

(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.*

-NC- In Section IV, page 52, the applicants state that projected occupancy at the end of the second full federal fiscal year of operation is projected to be 91.0% for the total number of adult care home beds proposed to be operated as illustrated in the table below. See discussion of utilization assumptions and methodology in Criterion (3) which is incorporated herein by reference.

**Liberty Commons
 Projected Utilization
 Second Project Year (Oct. 1, 2020 – September 30, 2021)**

	1 ST QUARTER	2 ND QUARTER	3 RD QUARTER	4 TH QUARTER	TOTAL
Second Full Project Year (FFY2021)					
Pt. Days	9,384	9,180	9,282	9,384	37,230
# Beds	112	112	112	112	112
Occupancy	91.0%	91.0%	91.0%	91.0%	91.0%

As shown above, occupancy at Liberty Commons is projected to exceed 85.0% for the total number of adult care home beds proposed to be operated for each quarter of the second year following completion of the proposed project. However, the projected utilization is not based on reasonable and credible methodology, assumptions and documentation. See discussion of projected utilization in Criterion (3) which is incorporated herein by reference. Therefore, the application is not conforming to this rule.