

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY THE HERITAGE PROPERTIES) DECLARATORY RULING
OF UNION COUNTY, INC. AND THE)
HERITAGE OF UNION, LLC)
Project I.D. No. F-8071-08)**

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

The Heritage Properties of Union County, Inc. and The Heritage of Union County, LLC (hereinafter “Heritage”) have requested a declaratory ruling to allow it to develop a previously authorized nursing home facility at a site not identified in its CON application. Heritage filed a certificate of need application to develop a new 90-bed nursing home facility in Union County and said application was conditionally approved on August 28, 2008. Heritage asserts that the site change would not constitute a material change in physical location for purposes of N.C. Gen. Stat. §131E-181(a).

This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Gary S. Qualls of K&L Gates LLP has requested this ruling on behalf of Heritage and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

The Heritage Properties of Union County, Inc. and The Heritage of Union County, LLC were granted a certificate of need effective October 1, 2008 to construct a 90 bed nursing facility in Unionville, which is in Union County. Said Certificate of Need bears Project Identification Number #F-8071-08. The approved site for the nursing facility was near the intersection of Sikes Mill Road and Tom Helms Road in Union County. However, a previously issued sewer moratorium remains in effect for any site not approved prior to the issuance of the moratorium. Neither the proposed primary nor secondary sites were approved by the County prior to the moratorium. In this request, the applicants seek a change from the previously approved site location of the nursing home facility to a site located on Potters Road in the Sandy Ridge Township (the “Quintessa Site”), also in Union County. The applicants state the newly proposed site is approximately one mile away from the proposed secondary site and approximately 12 miles away from the originally approved site.

ANALYSIS

N.C. Gen. Stat. §131E-181 (a) states “*A certificate of need shall be valid only for the defined scope, physical location, and person named in the application.*” The Heritage Properties of Union County, Inc. and The Heritage of Union County, LLC requests a declaratory ruling that the proposed change in location of The Heritage of Union County, LLC is in material compliance with the CON for the project.

The proposed site is located within 12 miles from the primary site and one mile from the secondary site identified in the original CON approved in 2008. The proposed alternative site was previously approved for a large residential subdivision and already has the necessary water/sewer flow capacity approval. The applicants contend the proposed change in site does not materially vary from the application or certificate of need. The applicants also state that upon further review of

the demographics and more recent data in the 2008 State Medical Facilities Plan, the Sandy Ridge and Goose Creek Townships have the largest deficit of nursing facility beds, 77 and 79 beds respectively. Furthermore, the applicants contend that neither access to the medically underserved nor capital cost will materially change from the application.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request are true, I conclude that Heritage may change the location of the 90 bed nursing home facility authorized by the Certificate of Need issued to Heritage effective October 1, 2008; the site may be changed to the Potter Road (Quintessa Site) located in the Sandy Ridge Township of Union County.

This the _____ day of May, 2010.

Jeff Horton, Acting Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

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

CERTIFIED MAIL

Gary Qualls
430 Davis Drive, Suite 400
Morrisville NC 27560

This the _____ day of May, 2010.

Jesse Goodman
Acting Chief Operating Officer