

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY FRANKLIN AL INVESTORS,)
LLC & ZOLLIEVILLE REST HOME NO. 2,) DECLARATORY RULING
INC. (LESSORS) AND FRANKLIN)
OPERATIONS, LLC (LESSEE))
Project I.D. No. K-8675-11)**

I, Drexdal Pratt, as 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.

On September 20, 2011, Petitioners, Franklin AL Investors, LLC & Zollieville Rest Home No. 2 Inc. (lessors) and Franklin Operations, LLC (lessee) (“Franklin House”), received a certificate of need (CON) to develop a replacement adult care home facility with 54 beds on a site located at 473 US Highway 1 in Youngsville, North Carolina. Petitioners request a declaratory ruling permitting a change of site from 473 US Highway 1 in Youngsville to a site located at the corner of Sunset Road and US Highway 1 in Youngsville. 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 Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Petitioners originally filed a CON application to replace and relocate Zollieville Rest Home, a 54-bed adult care home located in Franklin County, rename the facility Franklin House, and designate the 54 adult care beds as special care unit beds serving residents with Alzheimer's Disease and other forms of dementia. The CON application was approved by the CON section, which issued a CON for the project on September 20, 2011.

Petitioners request a ruling that they be permitted to construct the project on an alternative site on the basis that the site change would not be a material change in location for purposes of N.C. Gen. Stat. § 131E-181(a). The alternative site is located at the corner of Sunset Road and US Highway 1 in Youngsville, Franklin County, North Carolina. The alternative site is less than a quarter (1/4) mile from the original site and within the same county. Petitioners state the alternative site will cost \$75,000 more to acquire, but such additional cost is less than the additional costs Petitioners would face to develop the project at the original site due to poor soil conditions.

ANALYSIS

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioners’ proposal were to represent a material change in the scope of the project, the CON law would require a full review of OSC’s site relocation. N.C.G.S. § 131E-181(a).

Petitioners’ proposal does not constitute a material change in the physical location of the project and is allowable. The alternative site is located approximately one quarter mile and a

one-minute drive from the original site proposed in the CON application. In addition, Petitioners will develop the project in a manner consistent with all other representations made in the application and with all conditions that were placed on the CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioners' proposed relocation will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of December, 2011.

Drexdal Pratt, 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 S. Qualls
K&L, LLP
430 Davis Dr., Suite 400
Morrisville, NC 27560

This the _____ day of December, 2011.

Jeff Horton
Chief Operating Officer