

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

**IN RE REQUEST FOR DECLARATORY)
RULING BY CHEROKEE VALLEY, LLC)
AND PEACHTREE MANOR, INC.) **DECLARATORY RULING**
Project I.D. No. A-8701-11)**

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 10 NCAC 14A .0103 under the authority granted me by the Secretary of the Department.

Cherokee Valley, LLC and Peachtree Manor, Inc. (“Petitioners”) have requested a declaratory ruling allowing a change in site for Project I.D. No. A-8701-11 (“Project”) on the grounds that the changes do not constitute a material change in scope or physical location or a failure to materially comply with the representations made by Petitioners in their Certificate of Need (“CON”) application for the Project. 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. Gen. Stat. § 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. Renee J. Montgomery and Robert A. Leandro of Parker Poe Adams & Bernstein Spruill LLP as counsel for Petitioners have requested this ruling and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 20 December 2011, the CON Section issued a CON for the Project to Petitioners to develop an 80-bed adult care home, with a 32-bed special care unit, in Cherokee County. Petitioners now seek to change the site for the Project from 55 Glenn Drive, Andrews, Cherokee

County (the “Original Site”) to 4443 East US Highway 64 Alternate, Murphy, Cherokee County (the “New Site”).

Petitioners state that the New Site, which was listed as the secondary site in the Project Application, has water and sewer hookups available, while the Original Site would require construction of a septic tank type system. They assert that the capital costs of the Project will be approximately \$100,000.00 less at the New Site.

According to Petitioners, the New Site is appropriately zoned and changes in zoning will not be required. They can develop the Project in a manner consistent with the representations made in their CON application. The New Site is 19 miles from the Original Site. It is 0.1 miles from the nearest hospital and within one mile of a community college. Petitioners do not anticipate that the change in sites will affect the population served by the Project.

ANALYSIS

The CON law would require a full review of Petitioners’ change in site if that change were to represent a material change in the physical location or scope of the Project. N.C. Gen. Stat. § 131E-181(a). The proposed site change does not constitute a material change in the physical location or scope of the Project for the following reasons:

The two locations are approximately 19 miles apart and are both located within Cherokee County.

Petitioners have identified the new location as the more cost effective alternative because of the availability of water and sewer.

The change does not affect the scope of the services offered or the population to be served by the Project.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioners' proposal to change the approved site for the Project from the Original Site to the New Site does not constitute a material change in the physical location or scope of the Project, does not violate N.C. Gen. Stat. § 131E-181, and does not constitute a failure to satisfy a condition of the CON in violation of N.C. Gen. Stat. § 131E-189(b).

This ____ day of July, 2014.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONER by causing a copy of same to be placed in the United States mail, postage pre-paid envelope, certified mail, return receipt requested, addressed as follows:

CERTIFIED MAIL

Renee J. Montgomery
Robert A. Leandro
Parker Poe Adams & Bernstein, L.L.P.
150 Fayetteville Street, Suite 1400
Post Office Box 389
Raleigh, N.C. 27602-0389

This the ____ day of July, 2014.

Cheryl Ouimet
Chief Operating Officer